The colourful agony of finalising written submissions

'I slept, and dreamed that life was Beauty;

I woke, and found that life was Duty.

Was thy dream then a shadowy lie?

Toil on, sad heart, courageously,

And thou shalt find thy dream to be

A noonday light and truth to thee.'

It is unlikely that the American Ellen Sturgis Hooper had the circumstances of 21st century antipodean junior barristers in mind when she wrote these words in 1840, but they are entirely apposite to the daily realities of at least this junior, leaving aside the blissful month of January, which offers such riches of beauty and freedom from duty that it more than makes up for the preceding year's eleven months of grind. Duty is an important feature of the practice of a barrister, but the closest experience of beauty most barristers have in the course of daily practice is found in a walk through Hyde Park on the way to the District Court. Those barristers who crave beauty in their work may seek to find it in elegant, yet succinctly drafted, written submissions. Yet nowhere in barristerial practice is the gulf between beauty and duty so apparent as in the process of finalising opening written submissions.

The drafting process itself is a hard slog, of course, and with good reason. The primary purpose of written submissions may be thought to be to assist the Court with a view to persuading it of the merits of one's own case. Where one is led by senior counsel, it may be said that a lesser-stated but no-less significant purpose of written submissions is to remind, or in some cases, inform for the first time, the senior counsel settling them of the evidence in the case at hand. The submissions must be factually accurate, legally accurate and also (and herein lies the rub) persuasive. It's not easy combining all three of these facets within a 10 or 15 or 20 page limit on a deadline using the common headings the parties agreed to and submitted to the Court some weeks or months earlier while simultaneously responding to, or deftly warding off, emails and phone calls from solicitors on both the matter at hand and unrelated matters. Nevertheless, since drafting written submissions is such a central part of a junior's role, one feels a sense of accomplishment when the draft is complete. So far, so (relatively) beautiful.

Once the submissions are drafted by the junior, they must then be settled by the silk, and despite my occasional melodramatic imaginings that the silk will telephone me to say, 'I'm sorry, but these are so hopeless that I can't use them at all, and I'm recommending to the solicitors that a new junior be briefed in your place', experience has demonstrated that the process is generally fairly speedy, straightforward and painless. It is when the silk has settled the draft submissions and they are sent to the solicitors and the client for approval that all aspirations of beauty are abandoned and duty rises to the fore.

There are occasions where solicitors helpfully detect typographical errors and update citations for the inclusion of authorised reports and respectfully raise points of substance as to arguments or factual matters, and clients raise any necessary factual corrections or commercial sensitivities for consideration, and all that is completed in plenty of time before the submissions are due to be served. Those occasions are, however, increasingly rare.

Regrettably, while technological changes have brought many benefits to practice and life, they have also brought the undesirable ability for multiple people to make changes to a document whenever they like. It is not unusual, in the experience of this junior, for submissions which have been settled by senior counsel some days before their due date to boomerang back upon counsel by email only a matter of hours before they are due to be served, in an unrecognisable rainbow form, containing the tracked changes of five different authors from the solicitors and the client organisation. Defined terms, which had previously been inserted sparingly by counsel, have bred overnight, now requiring a dictionary in order to read the submissions. Among the generally reworded sentences, formerly grammatically correct sentences have been edited by junior employees of the client organisation so as to introduce split infinitives. References to longstanding High Court authorities have been struck through, and in their place, a command from the client instructor to counsel has been included: 'Find more recent first-instance authorities and cite those instead.' A reference to the leading text on the subject authored by a retired High Court judge is deleted, accompanied by the comment, 'Do not cite this text' with no further elaboration.

Any feelings of satisfaction at a job well-done, or at least completed, now completely evaporated, I find myself having to resist the twin temptation to hit the 'Reject All Changes and Stop Tracking' button and send a passive-aggressive email in the manner of George Frederic Handel, who upon being the recipient of a complaint from a friend as to how dreary the music at the Vauxhall Gardens was, responded, 'You are right, sir, it is pretty poor stuff. I thought so myself when I wrote it.' In the few hours remaining I turn to working out which changes are helpful, which are neutral, which are positively harmful, which the busy silk (now in conference on another matter) needs to be bothered with, and how to broach the topic with the client who seemingly thinks that the submissions are theirs despite the document bearing counsel's name.

In the meantime, I exhort my sad heart to toil on courageously – even if the highest expression of beauty that can be hoped for is that the submissions are filed on time with no accidental mark-up remaining in the document. BN