



PRACTICAL ADVOCACY: The Australian Advocacy Training Council — The bar takes a hand

*C P Shanahan SC**

Since 2004 the Australian Bar Association has introduced an innovative new advocacy training program. In 2008 it created an Australian Advocacy Training Council (ATC), a curial standards body with ex officio membership of the ABA Bar Council. The ATC oversees the advocacy training program and continuing legal education for barristers. The developing advocacy training program has seen the ABA offer two annual advocacy courses to-date. Of these courses one is a Readers' course that assists the smaller Bars in WA, SA, Tasmania and the Territories, whereas the second is an advanced international advocacy course. The latter incorporates world best practice and is recognised by other common law Bars. The ABA's Advanced Course is to be offered in Melbourne in January 2011 and there is an imminent prospect of a third ABA course directed at appellate advocacy involving the High Court of Australia.

1 Introduction

Advocacy is the primary activity of barristers. It is their profession and should be their passion. It is no surprise, therefore, that Bar Associations around the world seek to foster the quality of the advocacy skills of their members. Nor is it remarkable that judges concern themselves with the quality and professionalism of those that appear before them. This article describes how those dynamics have contributed to a renaissance both figuratively and literally in the Australian Bar's engagement with advocacy training: first through the creation of the Australian Bar Association's Advocacy Training Council (ATC) in 2008, and second, from 2007, the introduction of two permanent advocacy courses run by the Australian Bar — one for Readers, and the other an international advanced trial advocacy course.

The story of the Australian ATC would not be complete if it did not rehearse the influence of its English exemplar, the foundational Australian contribution to advocacy training techniques in the common law world and the established impact and potential of further ABA advocacy courses in Australia.

2 An Italian renaissance

It was 2004 in the middle of a typically breathless Italian summer, when many barristers and judges found themselves sweating it out at the ABA's annual conference in the cultural stews of Florence. A conference ultimately immortalised by pictures of a promenading Justice in his panama hat. Somewhat paradoxically what follows is a tale of how that ABA Conference

* Barrister practising at Francis Burt Chambers in Perth; member of the Australian Advocacy Training Council since its inception.

provided the catalyst for reinvigorating advocacy training by the Bars in this country. In that year the WA Bar was offering its Readers course for the first time and, as in most Bars, the idea of a mandated or recommended advocacy course as an entry requirement had reignited the debate as to the utility, structure and merits of advocacy courses for barristers. The first session that I attended in Florence included a presentation by Timothy Dutton QC who, at that time, was Leader of the South Eastern Circuit. Readers will be familiar with the organisation of the English Bar, with each barrister being a member of one of the four Inns of Court and often a member of a circuit depending on where he or she practices in England. The South Eastern Circuit includes London and Oxford.

Dutton QC gave an inspiring performance in which he described the foundational influence on advocacy training in England of a presentation made to the English Bar by Professor the Honourable George Hampel AM QC in the early 1990s. Professor Hampel will be well known to many as a former Judge of the Victorian Supreme Court and the principal of the Australian Advocacy Institute. The English Bar had thereafter adopted 'The Hampel Method' of advocacy training, a method that continues to be employed as the basis of all its advocacy training.

The Hampel Method provided a technique for advocacy training in common law systems, a technique influenced by the professional programmes developed by the American National Institute of Trial Advocacy in the 1970s and 1980s.

By 2004, Dutton QC had been responsible for a series of reports by a Working Party on 'Advocacy Training At The Bar of England and Wales', including its second report in October 2002 which recommended that 'the Bar needs to train its members from the start of their BVC . . . [Bar Vocational Course] . . . and throughout their careers, to the highest standards in the specialist skill which distinguishes the bar from other providers of legal services — advocacy'. The 2002 paper also recommended the creation of a single body to oversight the Bar's training programmes. Ultimately, the Advocacy Training Council of England and Wales was set up in 2004, it is the only body with members drawn from across the Inns and Circuits, together with representatives from the judiciary, the Bar Council, the Bar Standards Board and academia.

Following Dutton QC's Florence presentation, the WA Bar Association through its then President, Ian Viner AO QC (who was also then President of the ABA), invited him, accompanied by his wife Sappho Dias, to deliver a similar seminar in Perth in November 2004, to participate in associated workshops with representatives from the various Australian Bars. Professor Hampel was also invited and delivered a motivational account of the history of advocacy training in England and Australia. The ABA, after the presentation of a January 2005 memorandum by Glenn Martin SC (as his Honour then was), created a Working Party to explore the potential for an Australian Advocacy Training Council, and that group began to meet in April 2005.

3 Oxford — ‘An English Summer’

In August 2005 I taught in the ‘International Advanced Advocacy Course’ run by the South-Eastern Circuit at Keble College, Oxford. The Keble College Course is a demanding 1 week residential course, which has been run annually since 1993, starting with the arrival of faculty on the August Bank holiday. The course has both *civil* and *criminal* streams, it also has two expert evidence options: *medical* or *accounting*. Participants choose one of the streams and an expert evidence module. Faculty are largely drawn from the English Bar but also include international trainers, in 2005 four such trainers attended from Australia, India, South Africa, and Pakistan.

On my return from Keble I provided a report to the ABA regarding the nature, quality and utility of the course. One of my concerns was to try to persuade the ABA to support the creation of a 1 week residential course suitable for Readers that might be shared by the smaller Bars of Western Australia and South Australia (and others). The need for that course emerged from the volume of resources that each of the smaller State Bar Associations had to aggregate annually to run the advocacy components of their respective Readers courses.

4 The ABA Readers trial advocacy courses

In January 2007 the first of the ABA’s courses was offered at the University of Western Australia. This was largely due to the support of the ABA under successive Presidents Ian Viner QC and Glenn Martin SC, and the then president of the WABA, Ken Martin QC (as his Honour then was). The course was designed, organised and run by the effervescent Phil Greenwood QC, and we were lucky enough to have Edwin Glasgow QC, a very experienced English advocacy trainer, add his accumulated wisdom and acumen to the faculty.

The first course had a mixture of experienced and inexperienced barristers. Since then, a dedicated ABA Trial Advocacy Course for Readers has been developed. It is conducted over 5 days in the middle of the year. These courses have been run successfully in 2008 (Barossa Valley), 2009 (Perth) and 2010 (Adelaide). The 2011 course will return to Perth.

These courses have been roughly modelled on the Keble College course in the sense that they are 1 week residential trial advocacy courses. The opportunity to focus for extended periods on one case and to immerse oneself in each aspect of its preparation and presentation is rare and very valuable. While intensive, the courses seek to replicate what every new barrister can, and should, do with every case that comes to them.

A Federal Court brief is used to make provision for participants from every Australian jurisdiction. Both structured preparation in advance and the development of a case theory are emphasised. Discussions occur before each type of performance to provide general guidance on what is required and how it can be achieved. Demonstrations are given. Readers then have the opportunity to reflect and hone their performances.

Participants perform the various aspects of trial advocacy in a trial setting in groups of 6. There are three ABA accredited advocacy coaches allocated to each group — providing an extraordinary ratio of 1 coach per 2 barristers.

Each of the coaches is an experienced barrister and is now an accredited ABA advocacy coach.

Performances take place (since 2009) in real courtrooms. The participants appear before a judge and are required to lead and cross-examine witnesses. These performances are reviewed both by: (i) a coach in the courtroom in front of the balance of the participating group, and (ii) later on a one-on-one basis when a second coach in a different room sits down with the participant and analyses the performance on DVD and works on improvements for the next performance.

The coaching methodology for the Readers focuses on ensuring that the participant is able to undertake the *necessary* aspects of good advocacy before moving to more refined considerations.

The effectiveness of the training technique is easily demonstrated. Perhaps the most revealing measure of its success is when a participant replays their DVD showing their performances over the week. Rapid improvement and increasing self-confidence is obvious.

These Readers courses have been attended by participants from all of the Australian Bars and provided a high quality, and previously unavailable, training facility to WA, SA, Tasmania, the ACT and the NT Bars. In this role the ABA has realised an important and fundamental expression of its role as a *national* professional body representing the independent referral Bars throughout the Commonwealth. These courses also give the ABA a snapshot of advocacy standards across the country, and a vehicle for seeking to improve standards.

5 An Australian Advocacy Training Council

In 2008, with the initial success of the ABA Readers Courses came the formation of the Australian Advocacy Training Council under the Chairmanship of Glenn Martin SC, and the creation of an *ex officio* seat for the ATC on the ABA's Bar Council. The ATC has, from its inception, provided direct input into Bar Council's deliberations on advocacy generally and advocacy training in particular.

The existence of a curial advocacy standards body is a major step forward for the Australian Bar because it facilitates a national approach to advocacy training and continuing legal professional education for barristers. Importantly, it allows the Bar to approach training and education systematically and to identify and attain long term goals. It also allows for the Australian Bar to liaise with similar bodies that are now springing up in common law Bars around the world.

In September this year the ABA resolved that it be a prerequisite for persons called to the bar to demonstrate to their respective Bars a satisfactory standard of competence in each of the following areas:

1. Evidence
2. Practice and procedure, including pleadings
3. Ethics and professional conduct
4. Addressing the court
5. Adducing evidence
6. Cross examination

7. Written advocacy
8. Alternative forms of dispute resolution
9. Practice management
10. Local requirements. ('the ABA 10')

The Advocacy Training Council has been given the primary responsibility for coordinating the Bars' approaches to the implementation of the ABA 10 and the development of a common set of standards to be applied by all Bars. This is a major step forward in the development of our national Bar.

The ATC comprises individuals from each State and Territory. The current members are Phil Greenwood SC (NSW, Chairman), Justice Glenn Martin Justice David Boddice (Qld), Stephen Estcourt QC (Tas), Justice Ken Martin and Christopher Shanahan SC (WA), Graeme Blank (ACT), Ross Ray QC and Will Alstergren (Vic), Ian Robertson SC (SA) and Raelene Webb QC (NT).

6 An advanced ABA trial advocacy course

While it may have taken the Australian Bar some time to enter the arena of domestic advocacy training in a studied way and to begin to develop its own courses to meet the needs of its members, having dipped its toe in the water in 2007 we have now seen the creation of an ABA Advanced Trial Advocacy Course in 2008 and advanced planning for further offerings.

The ABA Advanced Trial Advocacy Course is a more intense and sophisticated version of the ABA Readers Courses. The first of the ABA Advanced Trial Advocacy Courses was run at Macquarie Graduate School of Management in 2008, reprised in 2009 and then taken on the road (Brisbane) in 2010. The chautauqua is scheduled to roll into Melbourne for a fourth offering in January 2011.

There are a number of distinctive features about the ABA's Advanced Course.

The first is that it employs a senior faculty of coaches drawn from around Australia and overseas. The faculty includes judges, and both senior and junior counsel. The cross-pollination between States, Territories and other jurisdictions ensures a high quality faculty that reflects a broad cross section of Australian and international practice. In 2010, the coaches included Supreme Court Justices and Senior Counsel from England, South Africa, Scotland, New Zealand and the Australian Bar.

Second, the development of different and more sophisticated materials has allowed faculty to demand a higher standard of performance from participants. We customarily see the enrolment of members of the senior bar in these courses. The average seniority of barristers attending the 2010 course was over 10 years and included three Silk.

A third important innovation has been the developing use of professional performance coaches; coaches who advise on voice and posture. The role of these coaches is to assist and advise a participating advocate on personal aspects of their performances, it has been a very useful and popular advance.

The courses commence with the coaches spending a day together to discuss coaching technique and to perform and critique their own advocacy skills. Empathy and awareness lie at the heart of the advocacy coach's task and these opportunities at the outset of a course focus attention on what is required.

These courses provide a fantastic collegiate environment in which members of the Bar can hone their skills, swap their experiences and engage with like-minded professionals from around the world.

7 An ABA Appellate Advocacy Course

The ATC is now seeking to design and run an appellate advocacy course in 2011. A number of potential formats have been considered. At this stage we are considering a proposal to run the course as an analogue of a special leave list — with participants making a 20 minute argument based on specially designed case studies. It is hoped to secure the participation of members of the High Court as sitting judges in the putative list. At this stage we are aiming to run the course in September 2011.

8 Conclusion

Many barristers remain unaware of the formation of the ABA Advocacy Training Council and the growth of domestic advocacy training by the Bar in this country. The Australian Bar has now taken responsibility for the training of its members and the maintenance and improvement of standards throughout the country. The collegiality and the quality of independent referral Bars around the world is an amazing resource that is yet to be fully tapped. Some of the barristers that you will meet, if you choose to engage in this type of training, are very special professionals with much to offer the Australian Bar. The practice of advocacy, the art of persuasion, lies at the heart of our professional lives. The quality of our performances deserves review. The renewal of our technique is a natural corollary to the changing structure of courts and the contemporary role of the legal advocate.