THE ADVOCACY SKILLS WORKSHOP

A person who holds him or herself out as a specialist advocate must have at least a basic understanding of the concepts of good advocacy and the ability to perform the essential skills of an advocate in the adversary system.

The level of such understanding and performance competence is measured by reference to these objectives.

The Australian Advocacy Institute's materials and workshops are designed to enable advocates to achieve a basic level of competence and to develop their skills in the pursuit of professional excellence.

Professor The Hon. George Hampel AM QC, Chairman, Australian Advocacy Institute

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Revised by Professor The Hon. George Hampel AM QC.
ADVOCACY
AND THE AUSTRALIAN ADVOCACY INSTITUTE

The crucial role of the advocate in the adversary system

In the adversary system, the parties are responsible for the conduct of the litigation, subject to the court’s procedural rules and case management.

The independent judge or jury has no investigative role, and no preconceptions of the merits of the case until the evidence and submissions are presented by the parties.

The court’s role is to decide on what it finds to be the facts established by the evidence and the legal consequences which flow from such facts. Ultimately, after evaluating the evidence and argument, the court makes its decision by asking the question, whether or not the party making the allegation or claim has proved their case to the required standard.

The system depends on each party presenting its best case, on the understanding that “truth is best discovered by powerful statements on both sides of the question.”1

The advocates’ role is crucial because they decide how to conduct their case, what evidence to present and what arguments to put. Their role is not to judge but to present and argue consistently with their client’s instructions and in their client’s best interests.

By skilfully dealing with the facts and submissions, the advocates’ role is to persuade the court to accept the version of events and legal consequences which best suit their client’s case.

There is no objective truth in the courtroom. The events, the subject matter of the case, are long over. The court hears various accounts of those events from witnesses. It then hears argument about the evidence and the conclusions to be drawn from it. Recollection, reconstruction, inaccuracy, partisanship and lack of honesty are all factors which may create differences between what actually happened and what the court hears.

Ultimately the ‘truth’ is the reality most persuasively presented and accepted by the court as that from which the legal consequences flow.

Advocacy training and the establishment of the Australian Advocacy Institute

For centuries there was a wide spread belief that advocacy could not be taught. Lawyers who wanted to practice as advocates relied on observation, trial and error, experience and some form of osmosis to learn their art. All this was often done at the expense of the client and without any defined standards or assessment of even minimal competence in advocacy.

This was not a professional approach. Advocacy is a specialised activity for lawyers which requires developed disciplines and skills. A competent advocate must be more than someone performing “to the best of their skill and ability”.2 A minimum standard of competence should be required.

1 Denning LJ in Jones v National Coal Board [1957] 2 QB 55, 63, quoting Lord Eldon LC in Ex p Lloyd (1822), Mont 70, n.
2 Part of the admission oath or affirmation.
The realisation that advocacy can and should be taught as a set of disciplines, skills and techniques by the workshop method came about in the 1970s. The philosophy and teaching methods were developed first in the United States and Australia.

In Australia, this work was initiated and carried on by a number of committed individuals during the 1970s. It was adopted by the Victorian Bar Readers’ Course which was the first course of its kind in 1979 and later by the New South Wales Bar Readers Course. It has since been adopted generally in advocacy training in most common law countries.

In September 1991, at the Australian Legal Convention, the Australian Advocacy Institute (AAI) was launched. Alex Chernov QC, the then President of the Law Council of Australia, was a strong advocate for and prime mover in the formation of the AAI. Present at the launch was Jim Seckinger, the director of the National Institute for Trial Advocacy (NITA) in the United States, who supported the establishment of the AAI, and encouraged its cooperation with NITA.

The AAI was born in response to the ever growing demand by the Australian profession for advocacy training, which could no longer be met by a handful of enthusiastic committed individuals.

It was established under the auspices and with the financial assistance of the Law Council of Australia.

The AAI’s patrons were Sir Gerard Brennan, Sir Anthony Mason and now Chief Justice Murray Gleeson.

The Institute is an independent not for profit body governed by a board of directors appointed by the Law Council. Since 1996 the Institute has been financially self sufficient.

The first board members were:-

Hon Justice George Hampel QC - Chairman (Vic)
Geoffrey Davies QC (Qld)
Barry O’Keefe AM QC (NSW)
Alex Chernov QC (Vic)
Christopher Crowley (ACT)
John Chaney (WA)

The aims of the Institute are to:-

- improve the standards of advocacy skills throughout Australia
- provide an Australia-wide forum in which ideas and experience in advocacy training can be shared and developed
- design and develop methods and materials for training lawyers in advocacy
- train lawyers to teach advocacy skills.
AAI Teaching Philosophy

The AAI teaching philosophy is based on the following 13 principles:

1. Competent advocacy in the adversary system is essential to serve the best interests of clients, the community and the interest of justice

2. Advocacy is characterised as the art of persuasion

3. Its practice must be in accordance with professional ethics and etiquette

4. Advocacy consists of developed disciplines, skills and techniques applied with such talent as each advocate has

5. Essential to teaching of advocacy as the art of persuasion are effective court room communication skills

6. These disciplines, skills and techniques can be taught, learned and developed at basic and advanced levels

7. Advocacy skills are best taught and learned by the workshop method of:
   - instruction
   - demonstration
   - performance
   - review

8. The focus of teaching is on methods of:
   - preparation
   - analysis
   - performance
   which enables advocates to develop their own style and approach free of fundamental error.

9. The disciplines, skills and techniques taught are generic and cross jurisdictional

10. Experience alone is usually not sufficient. The approach to preparation, analysis and performance helps advocates to learn from their experience and develop their talent

11. The emphasis in teaching is on:
   - complete familiarity with factual and legal materials
   - a method of analysis of those materials, to produce a consistent case theory
   - a method of preparation for the performance of specific advocacy tasks
   - development of skills in:
      - legal argument
      - opening and closing addresses
      - evidence in chief and re examination
      - cross examination
      - written advocacy

12. The teachers are:
   - experienced and competent advocates
• trained in the skills method of teaching by the AAI in accordance with its philosophy
• able to explain and demonstrate advocacy skills to the students

13 The Institute is committed to the pursuit of excellence in advocacy and advocacy training by:
• encouraging advocates at all levels to continue learning and developing their skills
• equipping advocates with the ability to analyse their work and critically assess their performance
• identifying members of the profession as potential teachers
• training its teachers
• continuing to develop their skills in order to maintain quality and consistency in advocacy training.

Education, training and research by the AAI

The work of the Institute includes:-

• researching and developing advocacy techniques and advocacy training methods
• developing workshop materials
• providing general advocacy skills workshops open to the profession
• designing and conducting in-house workshops for law firms and institutions such as offices of DPP, Australian Government Solicitor and Legal Aid Services
• conducting advanced and specialised workshops in appellate advocacy, expert evidence and advanced cross examination techniques
• providing teacher training workshops for Australian, English, Scottish, Hong Kong, Singaporean and South African advocacy teachers according to the AAI method
• giving advice and instruction in advocacy training to the English Bar, the Scottish Bar, the Singapore Bar, the Hong Kong, Malaysian and South African professions, the College of Law and Oxford Institute of Legal Practice in the UK
• structuring and providing workshops in conjunction with Monash, Melbourne and Bond Universities, ANU, University of Hong Kong and the Leo Cussen Institute
• presenting seminars and demonstration sessions at the Australian Legal Convention and other National and International conferences
• training of the war crimes prosecutors in the Hague and Tanzania
• supporting undergraduate and post graduate courses at Universities
• supporting and teaching at the Bar Readers courses in Australia
Acknowledgments

The AAI is now recognised as a world leader in advocacy training. Its work would not be possible but for the contributions of all of the AAI Board members and instructors whose ideas and teaching have enabled the philosophy of the Institute and the teaching of advocacy to develop.

In developing its philosophy and methodology, the Institute has benefited from its interaction with the National Institute for Trial Advocacy (USA), the Scottish Faculty of Advocates, the English Bar and the many committed individuals in Australia and overseas.

We acknowledge the continuing support of the Law Council of Australia and the profession as a whole.

Finally, we acknowledge the work done by the many judges and practitioners who have contributed to the development of advocacy training by donating their time, ideas and energy as instructors.

Current Board and contact details

The current Board of the Institute is –

Professor the Hon. George Hampel AM QC (Chairman)
Fabian Dixon SC (TAS) (Deputy Chairman)
Judge Ann Ainslie-Wallace (NSW)
Judge John Chaney SC (WA)
Judge Felicity Hampel SC (VIC)
David Grace QC (VIC)
Ross Ray QC (VIC)

The AAI’s contact details are:-

General Manager:
Scott Wallace
Australian Advocacy Institute
Monash University Law Chambers
472 Bourke Street, Melbourne, Vic 3000

ph: (03) 9641 6229   fax: (03) 964 6228
Mob: 0418 473 303
website: www.advocacy.com.au
email: aai@law.monash.edu.au

The assistant to the Chairman and General Manager is Nina Massara.