

New South Wales Bar Association

Continuing Professional Development – The Advocacy Strand

Curriculum Proposal

Objectives

1. The Bar Council's adoption of Advocacy as a core strand in the Continuing Professional Development programme requires the development of an appropriate strategy for its delivery. The objective of this proposal is to outline an Advocacy curriculum that will:
 - 1.1 provide a range of educational activities likely to be of practical interest to, and supported by, NSW barristers – having regard to the diversity of their experience and areas of practice;
 - 1.2 demonstrate commitment to the pursuit of excellence in advocacy;
 - 1.3 be achievable within the realistically available administrative, financial and personnel resources of the Bar.

Rationale for the curriculum

1. The Advocacy curriculum proposal reflects the following rationale.
 - 1.1 A significant proportion of practising barristers are likely to master, or to feel that they have sufficiently mastered, the basic skills of advocacy within their first few years of admission. This carries the implication that a CPD Advocacy programme will not appeal to a significant proportion of the Bar if its principal emphasis is on basic advocacy skills
 - 1.2 A significant proportion of practising barristers have areas of practice narrower than their interests, inclinations and abilities. This carries the implication that a CPD programme ought to provide a range of opportunities in different areas of substantive law.
 - 1.3 A significant proportion of barristers have limited opportunities to observe and emulate the practical courtroom skills of the leaders of the Bar. This carries the implication that a CPD programme ought to involve the leaders of the Bar - so

that the example of their skills and dedication has a more pervasive impact on the ethos and practices of barristers.

Underlying assumptions

2. The Advocacy curriculum proposal is based on these assumptions:
 - 2.1 the curriculum will be supported by a core team of practising barristers who are
 - (a) interested in promoting Advocacy training in general, and in developing the curriculum as part of the Bar’s CPD programme;
 - (b) able and willing to take an active role in:
 - (i) developing the curriculum materials;
 - (ii) delivering Advocacy teaching within the proposed curriculum;
 - (iii) planning and organisation of curriculum events;
 - (iv) monitoring the quality of advocacy training delivered within the curriculum, and ensuring the maintenance of standards consistent with the Advocacy curriculum objectives.
 - 2.2 the curriculum will adhere to the basic tenets of the AAI’s approach to advocacy training - namely that
 - (a) the skills required to achieve an appropriate level of skill as an advocate can be both “taught” and “learned”
 - (b) that the skills required to be an effective advocacy “teacher / trainer” can themselves be both “taught” and “learned”
 - (c) that effective advocacy training, including teacher training, is principally, though not exclusively, based on the concept of “learning by doing” in an environment that involves a process of instruction, demonstration, performance and constructive review.

Outline curriculum

3. The Advocacy curriculum proposal is based on 4 core subjects or concepts -

- 3.1 ***Advocacy Skills*** - devoted to the basic concepts of effective case presentation namely:
- (i) case analysis
 - (ii) opening addresses
 - (iii) evidence in chief
 - (iv) cross-examination
 - (v) closing address
- 3.2 ***Practical Advocacy*** - devoted to commonly encountered practical advocacy tasks such as:
- (i) leading evidence in chief from difficult witnesses - including forgetful, resentful, hostile, illiterate, unintelligent, infant witnesses
 - (ii) cross-examination
 - (iii) cross examination of “investigator” witnesses - police & regulatory inspectors
 - (iv) cross-examination on documents
 - (v) re-examination
 - (vi) prior statements - admissibility and cross examination
 - (vii) objections to affidavit evidence - standard grounds of objection and tactical considerations
 - (viii) objections to oral evidence - standard grounds and tactical considerations
 - (ix) leading evidence in chief from expert witnesses
 - (x) discovery and privilege issues
 - (xi) subpoenas, notices to produce and privilege issues.
- 3.3 ***Advocacy Craft*** - devoted to the application of advocacy skills and practical knowledge to a range of different areas of substantive law - such as:
- (i) personal injury litigation - complex medical disability issues

- (ii) personal injury litigation - complex psychiatric injury issues
- (iii) commercial litigation - complex accounting issues
- (iv) land and environment court litigation - valuation issues
- (v) criminal proceedings - complex evidentiary issues
- (vi) employment and equal opportunity litigation
- (vii) administrative law litigation.

- 3.4 *Non trial - Advocacy* - devoted to:
- (i) witness and case preparation
 - (ii) written advocacy
 - (iii) appellate advocacy.

Proposals for delivery

Advocacy Skills

4. Basic advocacy training is currently provided (i) within the Bar Practice Course, (ii) by commercial CLE providers (occasionally), (iii) by the AAI. These would continue to be the principal avenues for delivery of advocacy workshops directed towards achieving basic advocacy skill levels.
5. However, demand for teaching / training in this area should be monitored by the Bar Association. That monitoring could be done in two ways. The first is by ensuring good communication with the AAI and obtaining feedback about the rate of utilisation of AAI workshops by New South Wales barristers. The second monitoring method is to make available “off-the-shelf” advocacy workshops which the association would undertake to provide floors or groups of barristers in response to specific requests.
6. A possible strategy is to structure a small number of sets of workshop problems (say 4 sets) which could be “taught” to groups of eight barristers over a two to three hour workshop period. Barristers could register their interest with the Association and then the workshops could be scheduled in response to registered need. The workshops would have to be “taught” by competent advocacy teachers. Those teachers would have to be

willing to participate even though only very small numbers may be involved in any particular workshop of this kind.

7. In the first instance this proposal is only intended to operate as a means of assessing the demand for workshop style exercises of this kind. It would be unreasonable and unrealistic to deliver workshops of this kind on anything more than an occasional basis. If it emerged that of the demand was any greater than this, that demand would have to be satisfied either by greater involvement with an external provider (such as the AAI or some other CLE service provider) , or by larger periodic workshops - similar to those envisaged for the “advocacy craft” curriculum.

Practical Advocacy

8. The concept behind this component of the curriculum is that of blending evidence and advocacy issues in the context of specifically recurring courtroom “problems”. Those problems would then be addressed in a format combining elements of lecture, demonstration and discussion. The nature of the topics suggests that many of them could be effectively “taught” in one to two-hour sessions built around the demonstration of a well constructed problem scenario.
9. The practical task in developing this part of the curriculum would be to formulate the most appropriate core “topics” - and then prepare the “teaching” materials. Those core “topics” could then be presented over a two to three-year period. For example, if there were 12 “topics” they could be presented quarterly over a three-year cycle. Delivery of “topics” in this cyclical manner would (i) permit advance planning and preparation, (ii) permit ample time feedback and content development, (iii) reduce the demand on “teacher” resources - by comparison with the more familiar advocacy “workshop” format and, (iv) (at least theoretically) could permit “teachers” to be more easily programmed well in advance (because the teaching time requirement ought to be much less than that required for the “workshop” format) Furthermore, with proper planning and preparation the topic delivery sessions might well lend themselves to video recording so they became a permanent teaching resource. Over a period of time, it may be possible to further reduce the “live” teaching demand by substituting some of the recorded sessions.

Advocacy Craft

10. This subject area would be devoted to the familiar workshop teaching model. However, these exercises would be pitched at a more advanced level than the workshops conducted at the Bar Practice Course or those provided by the AAI. They would be characterised by (i) realistic problem materials (ii) “real” (i.e., non-barrister participant) witnesses, (iii) day long workshop format, (iv) use of advocacy “teachers” with a renowned reputation for their ability as effective advocates, (v) specific demonstrations by advocates of excellence as part of the workshop format & (vi) feedback from the “witnesses” - both lay and expert.

11. These workshops would be demanding in concept, planning and execution. It would be ambitious to achieve two per year. Over a three year cycle, 6 of these style workshops could be provided. Views may differ as to whether this would be too frequent - either from the point of view of the likely demand or the difficulty of sustaining “teacher” and support staff commitment.

Non trial - Advocacy

12. This subject area would be devoted to matters including:
 - (a) written advocacy;
 - (b) appellate advocacy;
 - (c) witness and case preparation.

13. The Bar Association has in the past provided seminars on appellate advocacy. The Australian Institute of Advocacy has provided occasional appellate advocacy workshops. Both formats could be used within the proposed curriculum and provided periodically – perhaps every two years.

14. Written advocacy and witness and case preparation are important topics, but ones which pose particular challenges in developing an effective teaching / training format. Tackling topics such as these will pose special challenges, but ones that ought not to be ignored.

Resources required

15. The fundamental requirement for implementing a curriculum such as this is a core team of capable enthusiasts. This requirement has been outlined in the Underlying Assumptions set out earlier.
16. Development of the Curriculum would require, in the first instance, preparation of materials and teaching formats for the first two strands - *Advocacy Skills* and *Practical Advocacy*. Some material relevant to those areas is already available from (i) the Bar Practice Course material, (ii) the AAI materials and (iii) the materials generated by the former *Advocacy Committee*. However, a new perspective would be required to assess the suitability of that material for the proposed Curriculum, bearing in mind its particular objectives.
17. Delivery of the both these two strands will require Advocacy teachers / trainers with the required level of skill and the confidence of the core discipline team. A beginning point in assembling such a team will be to determine the available / willing personnel.

Next Stage

1. Approve/ refine / reformulate the curriculum
2. Publish the curriculum proposal (invite assistance, ideas and feedback)
3. Develop models for delivery of *Advocacy Skills* and *Practical Advocacy* topics
4. Allocate teams to develop detailed programme and materials for, and implement delivery of *Advocacy Skills* and *Practical Advocacy* topics

5. Develop Outline programme and timetable for the *Advocacy Craft* topics
6. Allocate team to implement delivery of *Advocacy Craft* topics
7. Develop Outline programme for *Non trial advocacy* topics
8. Allocate team to develop *Non trial advocacy* topics