

# New Ways of Working: COVID-19's Silver Lining

By Kylie Nomchong SC and Sarah McCarthy, Wellbeing Committee

If you had suggested to us in March 2019 that having physical chambers would feel obsolete in 12 months' time, we would have scoffed at the idea.

What had been on our list? The NSW Bar Association's Wellbeing Committee's intentions for 2020 looked something like this: meditate daily, exercise more, eat properly, promote mental health, engage in collegiality, laugh more and make sleep a priority.

As March rolled around however, it was clear to us that 2020 was about surviving, not thriving. As the Ancient Greek dramatist Menander once said, *'we live, not as we wish to, but as we can'*.

As the pandemic closed in, barristers were relegated to 'home offices'. That is a loose term which appears from the many Zoom conferences we have been in to cover everything from sitting on a bed with a lap top, setting up a desk in the corner of a

living room (being shared with your partner and two children being home-schooled) to clearing out a proper space and going wild with IKEA online shopping for desks and bookshelves.

As the Courts closed down, scheduled hearings were adjourned and for many barristers, their diaries emptied with no prospect of work (or income) for many months. Isolation, uncertainty and anxiety were prevalent.

For the advocacy work that remained, it meant barristers were required to embrace audiovisual technology – and quickly. Hellishly, because most of the jurisdictions have opted for different AVL platforms, that meant learning to use not one, but a number of different technological systems. Thankfully, *most* judges and their ever-courteous associates (how many times do you have to tell people to mute their microphones!?) have been patient in assisting advocates to engage in the virtual courtroom.

Understanding the challenges, the Wellbeing Committee promoted the psychological and counselling services of BarCare, ensured that members were aware of the Benevolent Fund, collaborated with the IT, Education, Practice Development and New Barristers Committees to roll out a range of initiatives to assist members in online learning about the prevailing court systems.

As the restrictions begin to ease, we have got to thinking are we really only *just* surviving? With the deepest acknowledgement and respect for the lives that have been lost and impacted as a result of COVID-19, as we examine our new work-from-home environments and daily routines, we cannot help but think that we are living far more as we had initially wished than merely as we can.

As Tim Harcourt, Economist and J.W. Nevile Fellow in Economics at UNSW Business School, recently opined:

*'It could well be that whilst the nation and the world bring in temporary measures to deal with COVID-19, this could also be an opportunity to remake ourselves, develop new industries and new ways*



Kylie Nomchong SC appearing before Justice Farrell in the Federal Court of Australia

*of working while dealing with work, education and family life<sup>1</sup>.*

So, how will we, the NSW Bar, remake ourselves and develop new ways of working? Will we have the courage to cast off the shackles of our old ways of working and embrace the change?

The various Barristers Wellbeing and Quality of Working Life surveys showed us that before COVID-19 many barristers reported high levels of stress, perfectionism and self-criticism. Two-thirds did not feel they were getting adequate sleep.

*New York Times* best-selling author and research professor Dr Brené Brown PhD LMSW suggests that these types of issues at work often derive from a sense of personal shame. Dr Brown defines shame as,

*'the fear of disconnection – it's the fear that something we've done or failed to do, an ideal that we've not lived up to, or a goal that we've not accomplished makes us unworthy of connection.'*<sup>2</sup>

For our junior members that shame can show up (separate from your capabilities in law) in the pressure to get floor membership, pathological peer comparison, choices between family and work, and financial burden. For senior members of the Bar it can have similar manifestations, particularly in the way in which comparisons are inevitably made with others who appear to be smarter, wealthier, better connected or who appear to get better briefs.

The new world order may unintentionally be guiding us towards new ways of combating these problems. Dr Brown suggest that *'shame resilience is the ability to practise authenticity ... and moving from shame to empathy...'*<sup>3</sup> COVID-19 has inadvertently stripped back some of the pomp and rigour around how we carry ourselves as barristers every day and, we would argue, is allowing us all to be our authentic selves.

In a telephone Directions Hearing, it doesn't matter if you're in a \$3,000 suit, a \$300 suit or your tracksuit. When your brief is delivered by DropBox and you take all conferences via Zoom it does not matter if you have a marble reception foyer or you are in your home office



Sarah McCarthy

(as defined above). If the only people you speak with are those colleagues who support you and encourage you, there is less scope for comparison, and shame.

We are in no way suggesting that all the old ways of the Bar are obsolete, but like all professions we must move into the future in a way that is sustainable and innovative. COVID-19 may be the trigger that necessitates that invention.

From our perspective, the Wellbeing Committee would like to see us use empathy to embrace a new way of practising. Again, Dr Brown's advice is apposite:

- strive for excellence, not perfectionism;
- practise gratitude and celebrate your achievements;

- know your value;
- avoid numbing behaviours (excessive working, alcohol, drugs, social media, etc);
- set boundaries;
- stop rewarding exhaustion and attaching productivity to self-worth;
- cultivate a culture of belonging, inclusivity, and diverse perspectives. **BN**

## ENDNOTES

- 1 <https://newsroom.unsw.edu.au/coronanomics-key-learnings-about-economics-coronavirus>.
- 2 *Dare to Lead, Brave Work, Tough Conversations, Whole Hearts*, Dr Brené Brown p 134.
- 3 *Ibid* at p 146.