

At a point of inflexion

Michael McHugh SC

Recently, I had the privilege of attending the swearing-in of the eighteenth chief justice of New South Wales, the Honourable Andrew Bell. The Supreme Court is two years shy of its bicentenary and increasing challenges to the rule of law at home and around the world gave the ceremony added historical and constitutional significance.

Chief Justice Bell spoke with justifiable pride about the role of the Supreme Court in promptly quelling disputes during the height of the pandemic and contrasted it with the erosion of respect elsewhere for judicial independence. He identified public education about the role of the courts in civil society as an important function of the court's bicentennial celebrations.

Two years have passed since the start of the pandemic and the profession of law has, to an extent, become depersonalised. His Honour spoke in a refreshingly personal and direct way about the consequences and of his concerns for the vitality and wellbeing of the profession. In his view, 'while the remote practise of law may be possible, it is far from desirable'. He continued:

The administration of justice is best served in open court for reasons which are profoundly important. More than that, though, the absence of practitioners from chambers and solicitors' offices will sap them of vitality and will stunt the personal growth and professional development of young lawyers in particular. An essential part of being a good lawyer is understanding people and human nature, how others react to different situations, perform under pressure and interact with each other. So much of this is lost in a professional practice or hearings reduced to scheduled Zoom or MS Teams meetings. What hope, moreover, is there for achieving work/life balance in the profession when work takes over the living room or bedroom at home and further blurs an important distinction? ... I do not mean by this to suggest that there are



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not real opportunities and benefits presented by the technology with which we have all become familiar and the concomitant advantages of workplace flexibility and significant cost savings. Both of those considerations are very important.

Chief Justice Bell delivered a crisp message to those seated before him at the Bar table, myself included:

It is incumbent on senior members of the profession to take the lead in the return to professional life as we knew it more than two years ago. Just as there is nothing quite so demoralising as walking down a strip of shops to find half of them empty, chambers and solicitors' offices which are half full will rapidly lose their soul and personality. That would be a very bad thing. It must not happen.

I agree. While there appears to be no shortage of work for local barristers, and the median income of under-5 juniors increased in 2020-21, I have also heard that one set of chambers has closed its doors. Many readers and under-5 juniors are not getting time on their feet to hone their advocacy skills in court.

The Bar Council recognises that having to cancel conferences, in-person CPDs and social events *has* eroded the general sense of collegiality. According to the BarCare annual report, presentations increased from 71 in 2018-19, to 86 in 2020-21 and there were more than 600 unique visits to their website in February 2021 alone.

On 28 February Chief Justice Andrew Bell published two new Supreme Court protocols, which are based on a presumption that, beginning on 4 April, substantive hearings and contested matters will be heard in-person rather than via AVL. This important announcement heralds a new phase in the court's response to the pandemic. The Supreme Court Revised COVID Protocols and the Protocol for Supreme Court Criminal Jury Trials include precautions in respect of masks, vaccination status, courtroom capacity, rapid antigen screening and criminal trial 'bubbles'. They also provide for the continuation of registrars' lists and uncontested matters to proceed via AVL only, and in the event that legal representatives and interested parties are unable to attend in-person due to COVID or related reasons, then applications may be made to participate via AVL. I urge all members of the Bar, whether or not your practice takes you often to the Supreme Court, to study the protocols closely.

An inflexion point

The question for the profession is: how do we affect a return to professional life as it was before the pandemic began, as the chief justice has exhorted us to do? Recently, I announced the Bar Association's COVID-19 Re-Opening Plan: a roadmap for the return to in-person services. By the time this edition

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of *Bar News* lands in people's mailboxes, the Bar Association will be in Phase 4: COVID-safe 'business as usual'. The Bar Library will be open full-time. Staff will be working in the office part-time. Reception will be open full-time and the Common Room will be open for pre-booked, COVID-safe events. CPDs will be online but with regular hybrid events.

Similarly, the Bar Association's Strategic Plan 2021-25 aims to support barristers in the conduct of their profession and their practice. Subordinate to those aims are initiatives designed to 'Support the Bar as we all deal with COVID-19' and 'Support the junior Bar'. The Strategic Plan was approved in March 2021 but at the time some queried whether the emphasis on COVID-19 is warranted. Case numbers were trending down. A national vaccination program seemed imminent. However, 12 months later, the answer is plainly yes. Over summer the Omicron variant caused a wave of infections and hospitalisations, with all the attendant disruptions. Until the start of March the rhythm and tempo of operations at the Bar Association was still punctuated by daily gathering and distribution of information, social distancing, rapid antigen testing and a range of practices and procedures for state and federal courts across NSW.

While Chief Justice Bell's remarks point in the direction of a return to in-person advocacy, does this mean a return to professional life as it was before the pandemic? Will all aspects of a barristers practice revert to the way they were? On balance, that isn't likely.

According to survey data collected by the Bar Association in 2021, one quarter of respondents reported that they had invested in IT equipment for their chambers.

Roughly ten per cent of respondents said that they did more advice work from home.

The Bar Association itself has been part of a much larger operation to minimise disruption to the legal system and to pivot in the way we deliver our services. In particular, committees now meet mostly online with the result that attendances are higher and members in suburban and regional locations are now able to participate more readily in the policy work of the Bar. Professional Development, including both CPDs and the Bar Practice Course, have undergone nothing short of a revolution in the way they are delivered, either entirely online or in hybrid in-person and online sessions.

Flooding and resilience in northern New South Wales

As I write this column Lismore in northern New South Wales is experiencing its second flooding emergency in a month. It is difficult to convey just how destructive flooding can be. Telecommunications are cut, roads are blocked, and the losses caused by damage to homes and businesses are enormous. The effects on courts and on the legal profession are equally widespread. During the first flood, Lismore Chambers was completely inundated. Court houses might be closed periodically, but even in areas where they are not, it is far from certain whether jurors can present for duty if roads are impassable.

Our Strategic Plan calls for the Bar Association to 'Engage with, understand and meet the needs of barristers and chambers in regional NSW'. We know from data we collect during PC renewals that since the pandemic began, the number of barristers claiming regional status leapt

from 276 in 2020 to 372 in 2021. It would appear that a number of barristers have relocated but in one sense they might be running towards a greater problem. The increasing frequency and intensity of natural disasters due to climate change will highlight the need for us to consider the resilience of regional Bars and what they need to ensure continuity of their practice.

The Bar Council's regional representative in the Northern Rivers, Sophie Anderson, has been tireless in her efforts to assess the damage and enquire after the wellbeing of our members in and around Lismore. On behalf of a grateful Bar Council I thank her for the work she and others are doing.

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LARS

The Legal Assistance Referral Scheme (LARS) recently launched an initiative that would enable members to receive a weekly email providing the details of available pro bono matters. You may simply click on a link and be presented with more, relevant information about a pro bono matter and be given an opportunity to accept the brief. I understand that on Thursday evening the Practice Development Committee hosted a webinar on pro bono work and how it can, under particular circumstances, assist barristers to acquire new skills and opportunities to pick up briefs. That webinar is available on the CPD streaming site. 