



An interview with the Hon AS Bell, the new Chief Justice of New South Wales

Interview by Ingmar Taylor SC

Ingmar Taylor (IT): *You've been Chief Justice for a few months now, has it been a big change from being President? Has it been different to what you expected?*

The Hon Chief Justice AS Bell (HCJAB): It has been a big change. To a certain extent the change has been magnified by the emergence from COVID. There are a lot more speaking engagements, a lot more functions and, given my support for getting back physically into chambers and courts etc, I have said yes to a lot of extramural commitments.

More generally, the Chief Justice not only has a responsibility across the Supreme Court, which means 55 judges as opposed to 11 or 12 in the Court of Appeal but there is also the role as the President of the Judicial Commission of New South Wales, and vice regal obligations as well when the Governor is overseas, interstate or in regional New South Wales.

In many respects, the role of President of the Judicial Commission translates the position of Chief Justice of the Supreme Court to something akin to head of the judiciary for the whole of New South Wales because the Judicial Commission is responsible for complaints against all judicial officers in the state, that's the Local Court, the District

Court, Land Environment Court, Industrial Relations Commission, Drug Court, Children's Court as well as the Supreme Court. It's also responsible for judicial education of all judicial officers in the state.

So yes, it is a big change from being President of the Court of Appeal. As to whether the role is different to what I expected, only to some extent. I worked very closely with Tom Bathurst over my three years as President and had a pretty good insight into the role and responsibilities of Chief Justice.

IT: *Has it been more challenging? What are the challenges?*

HCJAB: It's definitely a challenging role. There's more policy work and, as the head of jurisdiction, I've had to think much more deliberately about institutional matters; the role of judiciary, the health of the judiciary, the future of the judiciary and the challenges facing the judiciary on a macro level. I have to do that for a number of reasons. One, because it's a long-term position and I have to take on and assume responsibility for planning mid-to long-term. But also because of the public facing nature of the position, I have to in a sense lead debate both within the court and

externally about issues affecting not just the judiciary but the judicial system and the legal profession. That is a challenge but it's also a very interesting component of the job.

IT: *What have you been finding most enjoyable?*

HCJAB: I think the huge variety of tasks is intrinsically interesting, challenging and enjoyable. I've been introduced to areas of legal practice that I haven't previously had any or much engagement with. For example I've been to the Children's Court. I've seen the Youth Koori Court in operation. I've been to the launch of the District Court's Walama List. From a background of being a predominantly commercial lawyer, and although I obviously broadened my experience through three years on the Court of Appeal and CCA but, with this new role, I have had even greater exposure to the work of all the other courts in New South Wales, the Local Court, specialist courts such as the Children's Court and the Drug Court, and the District Court and so forth.

There are so many very good, dedicated judicial officers doing a very large volume of very important work and my eyes have

been opened to the vast range of work that lawyers do throughout New South Wales. That's been both interesting and inspiring, and I include in this observation the work that barristers and solicitors do across the whole spectrum of the New South Wales judicial system.

IT: *Do you have any big plans for the future of the court? Small changes or big changes that you would like to make?*

HCJAB: I don't think it's a good idea to have 'big plans' for a court. Courts should be stable and predictable and, as I said in my swearing-in, I inherited a Supreme Court which was, in my view, working very well. Having said that, there are always new problems which emerge, and to some extent new opportunities.

One matter for planning which I have been putting a lot of thought into is the bicentenary of the first sitting of the Supreme Court, in May 2024. That is a very significant event and I want to ensure that it is marked appropriately and that we use the opportunity to emphasise the importance of a stable, independent court system for a healthy democracy and the rule of law. It's quite an achievement when you think back: the first sitting of the court was in 1824, Napoleon had died three years beforehand, electric light and the telephone were still many years off being invented. We've had one continuous court and set of traditions which have evolved institutionally since then and continue to evolve. So, in terms of my planning, that is a particular focus.

I also think that the court will have to engage significantly with technology in terms of filing and the administrative side of the court. That's a question of resourcing and as well as planning. It is already being done with various pilot schemes but that's an area where the court will need to move ahead.

One benefit of COVID has been that in terms of the audio-visual side of things and remote hearings, directions hearings etc, there has been an improvement in technology and a corresponding increase in familiarity by judges and judicial staff with this technology. We of course had some teething problems and issues as every court did, and they weren't always one-sided, but that having been said, that is one significant benefit from the pandemic, which has given and continues to give the courts greater flexibility and agility in hearing cases where there are remote witnesses, for example.

IT: *Do you have a view about whether there should be any default position as to when AVL will be used?*

HCJAB: There's no one size fits all answer. So, for example, take directions hearings: I think the first directions hearing in any case

is often very significant. It is important for the judicial officer to engage with the parties at the first directions hearing of a matter to make sure that there is a proper understanding of the issues. This might best be done in-person. After that, it may be, depending on extent of agreement, cooperation and compliance by parties, that a number of subsequent directions can be dealt with remotely.

For certain lists there will be a default towards telephone or AVL hearings, with their obvious cost savings etc. But in other types of matters, directions hearings often expand to a more extended form of case management where physical presence may be important. The Succession Act family provision list, for example, often involves Justice Hallen speaking directly to the parties at an early stage with a view to encouraging the exploration of mediation or settlement. I think that's something best done in the presence of the judge and the parties, not just the lawyers but the parties themselves. But the court will not take a rigid view and, to a certain extent, particular judges and registrars in particular lists will have a preference.

But where matters are truly by consent or where there are regional lawyers involved or even outer suburban lawyers or interstate lawyers, there's every reason why the benefits of technology should be used. I think by and large the judges understand that and understand the importance of controlling the costs of litigation. So, we will have a flexible approach rather than a rigid policy.

IT: *In a macro sense what's your hope for the future of the court?*

HCJAB: I want the court to be and continue to be a highly respected, well-regarded body of diverse judges who are of the utmost competence and integrity. I think that one of the ways any institution, including a court, functions well and thrives is if there is a strong sense of collegiality among its members. So, I aspire to ensuring that there is an atmosphere of genuine collegiality, by which I don't simply mean social functions but professional friendships, professional support and mutual respect among judges and judicial and court staff. If you have an institution which is thriving in that way, it will then attract good people to it. It will make barristers and solicitors think that being a judge is an attractive and a rewarding career, which it is.

So, that's what I want for the institution. It's important that the courts be respected in the community, because if the courts lose respect, then key stability in society unravels. We shouldn't take it for granted. It has to be worked at and it's a constant work in progress.

IT: *What are you looking forward to the most?*

HCJAB: Well, I'm looking forward to settling into the role. The first four months have been very, very busy. We've had seven new judges; the chief executive of the Judicial Commission retired after being in the job for 33 years, so we've had to find a replacement for him; there have been scores of 'stakeholder' meetings and, on top of all that, there were two major conferences which I was organising as President, which occurred in the second and third weeks of becoming Chief Justice. So, it's been a busy, full-on start but now that those initial aspects of the job are largely over, I'm looking forward to settling into a pattern where I can sit regularly and focus on the core work which is writing high-quality judgments in both the Court of Appeal and the Court of Criminal Appeal and continuing to give speeches and lend support to the whole of the profession, not only the other courts but also the bar, the Law Society, Legal Aid, Public Defenders, Prosecutors, Crown Lawyers as well as sub-groups in the profession. Senior judges get invited to a lot of events of that kind. I not only enjoy them but I consider it is important that judges remain in touch with and actively engage with and support the profession.

IT: *You've been a judge for a few years. Do you miss the bar? What are the things you don't miss?*

HCJAB: Well, I loved the bar. I was there for 24 years. But I don't miss it. That may come as a surprise to some people, but I have really relished the change from being a barrister to being a judge. It was time for a change. I worked very long hours at the bar and I still do work very hard and long hours as a judge. But I'm a bit more in control of my time; I certainly was as President in any event! But I can focus on a smaller number of cases, reading into them, hearing them and then writing judgments whereas at the bar, I might have had 25 or 30 cases on the go at any one time with everyone wanting a piece of you in terms of your advice.

Jumping around from case to case was very demanding. Now if I'm writing a judgment, I make the time to have 'clear air' thinking time and writing time, so I'm enjoying that. There's not as much adrenaline as there was at the bar, but being a judge is a role that gives you the opportunity to put back into society and to get to know a new group of people, a body of judges, some of whom I obviously knew well before I became a judge, but others whom I didn't, and I've enjoyed getting to know them and being exposed to other areas of practice, particularly criminal law which I didn't practise in at all.

IT: *How's the move to level 13 been?*

HCJAB: Well, for those who don't know, the Chief Justice's chambers are on level 13 of the Supreme Court building, the same floor as the Banco Court, and it's the only set of chambers on that floor. This means that, unlike other floors, I don't have other judges in the corridor. But I have become a bit of a wanderer (usually with a purpose!) but a wanderer of corridors and other floors, to put my head into various judges' chambers to catch up. I also have a deliberately open-door policy and judges drop in on a fairly regular basis. Of course, I invite judges up for hospitality and chats about various issues affecting the court. So, it's a collegiate place, notwithstanding the fact that I'm the only inhabitant of level 13.

IT: *Turning back to the bar. What are you looking for from counsel, as Chief Justice?*

HCJAB: I'll answer that in two ways. As individual barristers presenting arguments, the secret to being a good barrister is preparation. A well-prepared barrister is going to help a judge or the court best. I like to see counsel who are discriminating in their choice of argument, who have plainly thought through what are the strong arguments, what are the weak arguments and don't insist on throwing in the kitchen sink but are properly selective as to their arguments. And, of course, all judges place great store on being able to trust barristers in their submissions, to make proper concessions, not to take cute or sharp points, and not conceal arguments or points of evidence which are against their interests.

Secondly, from my perspective as Chief Justice, I am concerned that the bar as an institution continues to flourish. I have been disappointed by the relatively small number of people voting for Bar Council over the last two years. That may be a function of COVID and if it is, so be it, but so far as I can

tell, the number of people actually engaged in the process both standing for office and exercising an interest in the bar by voting for Bar Council has declined quite significantly. I'm concerned about that because the bar as an institution is very important. It has to thrive and that lies behind a lot of my outspoken statements about people coming back to chambers, people participating in the corporate life of the bar as opposed to just being focussed on their own cases.

Having said that, there are huge numbers of barristers who volunteer their time and efforts to committees such as *Bar News*, the Professional Conduct Committees, the Education committee, the New Barristers committee and many others. Their efforts are to be applauded, but I would be very concerned if the levels of participation in the bar's communal and corporate life diminished.

IT: *What are your hopes for the bar as a whole into the future, and its interactions with the court?*

HCJAB: Well, developing a little bit from my last answer, my hope for the bar is that it remains an institution where good people aspire to work and interact. The bar became more inclusive and diverse during my 24 years, but it's still got a way to go. I've certainly observed in admission ceremonies over the last three and a half years that, in terms of new lawyers entering the profession, there's incredible diversity, not only gender but also ethnic and cultural diversity among new lawyers. I suspect it's inevitable, and I certainly hope that will filter through to the bar.

My hope is that barristers remain conscious that they're members of a special profession with a wonderful stimulating range of work at the same time being a profession which gives its members a certain measure of flexibility which one doesn't necessarily get when working for a large firm or in a corporate institution.

IT: *Your swearing-in speech stirred some controversy in its call back to the courtroom, chambers and solicitors' offices. Did you expect such a mixed response?*

HCJAB: Well, I'm not sure I agree that it stirred controversy, but perhaps it's not surprising that I only tend to hear positive remarks! I did feel very strongly, particularly at the time of my swearing-in, that it was important to make the points I did about the depersonalisation of the law as a result of the pandemic. I did so very deliberately because I was concerned that the ethos of the profession, and the community more generally has been hit by COVID. I don't think it's healthy that people retreat to their homes for work. Half empty chambers are a matter of real concern because the whole esprit de corps of the bar or a set of chambers is diminished.

I believe very strongly that it was important to say what I did. I did temper it by accepting that there are advantages in workplace flexibility, particularly for people with family responsibilities etc, and I don't for one moment think that that's not important. But I do think that, by and large, the practice of the law is intensely human and that practitioners should be interacting on a personal level with each other. Interacting over Microsoft Teams or Zoom is not the same. There's a lot that is lost. I also don't think that we have yet fully seen the social and psychological consequences of the retreat which COVID forced on people. It's particularly important for younger, new barristers and barristers trying to develop their practice to be interacting in person. Although it's anecdotal, one remembers that serendipitous events occur in chambers where you pick up work simply by being there, being in the corridor, being at a function, talking to other barristers about your areas of interest, the availability in your diary, your willingness to try new things. They're not things which



tend, to my observation, to be discussed in a formal Zoom or Teams meeting, which is for a specific purpose which arrives and is over. There's not much lingering, people turn the screen off.

Now the difficulty with the argument is that the benefits of the kind I'm speaking about are intangible. They are difficult to quantify. The people who have benefited from those advantages in the past have in a sense 'banked' those benefits and it's the younger members of the profession who I think will miss out unless there is a fairly prominent return to chambers.

My impression is that, on the whole, there is strong support for returning to chambers and genuine interpersonal, human engagement. We've had a lot of positive feedback that the Supreme Court has been very proactive in having full in-person hearings.

It also mustn't be overlooked that barristers have always had flexibility. That's one of the great advantages of being at the bar. So, working from home is not new, it was happening before the pandemic. But I just did not want to see it 'morph' into a default position, because I think there are very big costs. So, I don't regret what I said. It wasn't, though, perhaps quite as absolute as it was reported.

IT: *Not long after your speech Justice Gageler expressed similar views. The Chief Justice of Victoria though expressed a different view. Do you think there's a reason for that? Cultural differences between the states? Background of solicitor versus barrister? Gender?*

HCJAB: Well, this question is based on some coverage of the ABA conference in Melbourne in April of this year and it's true that Justice Gageler and I espoused a very 'pro return to chambers' approach, and the Chief Justice of Victoria presented perhaps the opposite view. But I think, as with all journalism, the differences were perhaps somewhat exaggerated and there was probably more common ground than the newspaper reporting reflected. But I did reflect on the differences.

One thing one has to remember is that Victoria had a very different experience with COVID than we did in New South Wales and a much harsher experience. They had more lockdowns, and for the most part more severe and longer lockdowns (although I am not overlooking or seeking to diminish the impact of residents and practitioners in south-western Sydney). Some members of the Victorian Court of Appeal did not see each other in person for 18 months over the pandemic. Her Honour the Chief Justice in Victoria was speaking not long after Victoria was emerging, and they no doubt did as good a job as they



Bell CJ with Yehia J

could in really difficult circumstances. So, I suspect that the difference of experience may partly explain the differences in views.

I don't think there are real or major cultural differences between the Victorian Bar and the New South Wales Bar or the two Supreme Courts for that matter. My guess would be that the Victorian Bar is keen for a full return to chambers and to be engaged with their communities and with each other, in the same way that the New South Wales Bar is making concerted efforts to achieve this.

IT: *There are people, including women with family responsibilities, who have found it professionally liberating to be able to work more from home, including doing appearance work from home.*

HCJAB: My hope for barristers, and my observation, has been for a change towards a greater sharing of parental responsibilities between men and women. I don't know whether that's accurate or an aspirational comment.

I would hope that, to the extent that it has become a part of practice, both male and female barristers with parental responsibilities can take and will take advantage of the flexibility which the technology and in a sense the experience of COVID has presented. I want to make it clear I'm not opposed to that. I'm also certainly not critical of practitioners who are time poor, seeking to manage their load by doing some work remotely. But I do think that for both men and women, being present around chambers is the optimal model.

IT: *One of the things you mentioned was your view that coming back to the office would achieve greater work-life balance. You've said how can we ever expect to achieve work-life balance from working at the dining table? One response from the younger members of the bar has been that their work has always been at the dining table; it's been in our pockets, emails on phones, since we started. The pandemic made things better, not worse. Do you think your perspective might be different from perhaps younger practitioners who've come to the bar with technology?*

HCJAB: Well, I seriously doubt that anybody thinks that the pandemic made things better, not worse. The pandemic did force us to become accustomed to alternate ways of working and that was a good thing because it gives people greater flexibility. I wasn't meaning to suggest that people should not or did not work at home before the pandemic. I can tell you that I worked at home for hours most nights of the week when I was at the bar (and still do as a judge). But my point was more that there is a distinction between your family life and your work life and while inevitably busy people will carry their work with them and do carry their work with them, institutionally and formally, chambers is the principal place for work, and home is the principal place for family life.

I don't think lawyers who become withdrawn or retreat into a closed environment do themselves any favours, not only in terms of their exposure to other practitioners but their general exposure to people beyond say the immediate family environment. Some people are rigorous about not blurring home and work although I was never one of those people. But I think the point is still a valid one. **BN**