



The author

Working part-time at the Bar¹

By Ingmar Taylor

'When I grow up, I want to be a client': said by a six year old son to his mother, an American litigator²

There are a significant number of barristers who work part-time. Not that you would know.

'Who told you I work part-time? I don't work part-time' was the initial reaction of many I contacted.

My interest in the subject commenced about 18 months ago when a senior solicitor asked: 'If I came to the Bar, could I work part-time?'

I thought the answer was 'yes', but other barristers, who had not worked part-time themselves, were not so sure.

Then I worked part-time myself for four months, looking after our 11 month-old twins, when my wife returned to work. That led me to find others who are, or have been, at the Bar part-time because they are looking after children.

What became clear is that, contrary to solicitor expectations and peer pressure, one can successfully work part-time at the Bar.

As the President of the Bar Association, Bret Walker SC, noted, 'You can't have a full-time practice if you are part-time, but you can have a very successful part-time practice if that's your preference'.

That is not to say that it is easy. As anyone who has done it knows, to do any professional job part-time while balancing primary childcare responsibilities is hard, and being at the Bar has unique difficulties.

Keeping it secret

The first of those difficulties is dealing with the perception that one cannot be a part-time barrister and be successful.

Almost all of the barristers interviewed expressed concern about solicitors knowing that they worked part-time and/or that they had young children. For that reason more than half would speak to me only on condition of anonymity.

For example, my phone call with a senior junior at the criminal Bar with young children and works usually four days a week commenced as follows: 'Who told you I worked part-time? I don't work part-time. I work flexible hours. However, to the outside world I am a full-time barrister. I wouldn't want the outside world to know that I was not working full-time at the Bar.'

Most thought solicitors would brief them less if the solicitors knew they worked part-time. A senior junior working in commercial and equity who works three days a week told me, 'If people think you work part-time they may not take you as seriously because you are not there full-time, even if you are in court as much as other barristers.'

Another barrister who is new to the Bar explained why she did not want her name published: 'I don't want people to perceive that I am not really committed to the Bar', she said. 'I haven't had

experience of any negative reaction, but I wouldn't want people who don't know me and my ability to assume that because I have other responsibilities I can't manage what I have to manage.'

Is the perception that a barrister will lose work if he or she is working part-time at the Bar accurate?

Margaret Sneddon, of Ground Floor Wentworth Chambers, has a commercial and building law practice. She is now full-time, but for about two and a half years worked four days a week, being home to look after her son on Thursdays.

She did not tell solicitors that she did not work on Thursdays, because she thought she would be overlooked for briefs if they knew. Sneddon thought this was 'understandable'. 'If I was a solicitor I would have overlooked someone who was not available one day a week'.

Sneddon told me that a solicitor had once said to her that he would 'never brief a barrister not available five days a week'. Ironically, she had that conversation on the one day that she had arranged Dial-an-Angel as a last resort to look after her son Tom so that she could get in on what was normally her day at home. 'I hadn't told the solicitor that I had any difficulty attending that day and he had no idea that I was in fact part-time myself.'

Another barrister with a predominantly criminal practice who did not wish to be named told *Bar News* that she had definitely lost some work as a result of having a young child.

'Some clients don't care at all. Funnily enough private law firms with solicitors who themselves have had children are the worst. One law firm which had briefed me consistently before I had my first child stopped briefing me thereafter', she said. 'That was a firm where predominantly women with children were the decision-makers. Overall I am fine because I have picked up other work and I am very busy.'

'Funnily enough men are less likely to be concerned about the fact that I have a child and work part-time than women', she continued. 'That is partly because men don't ask about your private life and women are more likely to be aware of the amount of time and work involved in having a young child. Many are simply less interested. They just want to know whether you can do the work or not.'

Louise Clegg, of Denman Chambers, commenced at the Bar with two young children, initially working five days a week, but during her first year she stopped practising briefly, before starting again on a part-time basis.

Before she started at the Bar, Clegg had heard a senior barrister say that he did not understand why more women with childcare responsibilities did not take advantage of the flexibility of the Bar.

'I thought his comments about flexibility at the Bar were wrong. My attitude, as a solicitor, was that a part-time barrister was a 'pretend' barrister. In hindsight I think he was right', Clegg said. 'You just have to be confident enough to say "no" to some work that comes in the door. The way I look at it is that I have got

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20 years to do my time at the Bar. I do not need to prove myself to anyone in my first year or two.'

Clegg has also found she is briefed predominantly by men rather than women. When discussing the fact that she works part-time, she has found it is not so much a problem for men, but it is for women.

'I can't blame them. If I was a solicitor and I was tossing up between a male and female counsel with equal reputations, both of whom I did not know, and I knew the woman had young children, I'd go for the man instead.'

Clegg has since taken more time off from the Bar to have her third child, and plans to return to the Bar in a full-time capacity next year. However she says that does not undermine what she previously said about working part-time.

'I plan to fully exploit the opportunities that the Bar offers to work more flexibly around hearings and to take additional holidays than I would be entitled to if I were a salaried employee. But that – and indeed working part-time - is no different to what many male barristers do. That is the beauty of the Bar.'

Sophie York, of Sir James Martin Chambers, commenced at the Bar full-time because she thought that was the only way to do it. 'I didn't think there were any other options. They were the expectations that others had. It is funny how over time you abandon other people's expectations.'

York moved to a flexible part-time hour arrangement after about 18 months at the Bar. While she has some regrets about not starting on a part-time basis York said she did not think she could have started at the Bar part-time. 'I had to leap into it. I was relatively young coming to the Bar (28 years) which was 10 years younger than the average age of those in my Bar practice course. I had little prior litigation experience and no reputation as a litigator.'

While 'part-time' York makes herself available any day of the week as necessary, while trying to keep Mondays free if possible. This 'flexible' part-time arrangement was the preferred choice of a number I interviewed, being those who had a

nanny or family members who were able to cover for the extra day(s) when needed.

For many, the issue was as much that they were primary care givers as the fact that they were working part-time was because they had young children.

'Society still censures people who have family commitments which affect the amount of time they can work' said York. 'Others, like a silk I know, have no qualms about disappearing at short notice to go trout fishing. Solicitors aren't told that of course. The clerk will simply say "he is jammed".'

'Others will say that they sail on Wednesday afternoons and so are not available', York said. 'They probably don't mind solicitors knowing that they are not available on Wednesday afternoons for that reason because sailing is probably seen as a mark of their success. But those same solicitors would no doubt have a different opinion if the barrister said he was looking after his kids on Wednesday afternoons.'

Of course attempting to maintain the perception of a full-time practice while working part-time can be difficult. It makes it hard to say no to work that falls on your 'day off'.

Margaret Sneddon recalls: 'If I had to come in on a Thursday for a short matter like a directions hearing I would bring Tom in with me and the very understanding secretaries would take him for milkshakes and toast while I was in court. If I had full-day matters I had to arrange some other child-care, but my options were limited. I would also do things like come in late on a Thursday afternoon for a conference starting at 5.30pm I wouldn't tell people I was coming in from home, I would just say that I had other commitments up to that time. Wednesday nights would be very tense if I was trying to arrange care for the full day.'

'One of the difficulties in having Thursdays off is that anything that was required to be done on Friday needs to be prepared on Thursday' Sneddon said. 'I decided I couldn't tell people that I was working at home. Reception would take messages and tell people calling I was in court on Thursdays and that I was contactable on my mobile. I would then take the call at home on my mobile. The mobile phone is a saving grace of working part-time mothers. Of course it can be a problem if in the middle of the call the Bob the Builder video finishes and your child starts yelling 'play it again Mum!'. I locked myself in the bathroom more than once to shut out the sounds. I would say things like, 'I am at the District Court. I do wish people could control their children'.

While currently full-time, Sneddon said that now she is established at the Bar she would be more up-front about being part-time if she was to work part-time again. 'I would have the confidence to tell people that I am working part-time. But in the first three years at the Bar you need to build contacts and you need to put up an appearance of being always available. You need to put up an appearance of being very determined and not being distracted by any life outside the Bar otherwise people over look you no matter how good you are.'

Kylie Nomchong, of Denman Chambers, has not worked part-time, but has had two children since coming to the Bar. She agreed that there is a perception held by some that a mother with young children is not the best person to brief, particularly in relation to complicated matters.

'If those people only opened their eyes they would realise that the very *best* person to brief in a complicated matter is a mother. Mothers are excellent time managers and have great project management skills and logistical skills. If you have got four young children, a household and a career and you are managing all reasonably successfully, you are clearly a very capable person.'

Sophie York echoed these thoughts, saying: 'Clients should recognise that mothers are extremely good people to brief. Logistics become your way of life. An interstate trip with young children is more complex than the moon landing.'

Is it feasible to work part-time at the Bar?

The President of the New South Wales Bar Association, Bret Walker SC, believes the Bar should be the ideal place to work part-time. 'By part-time work I mean a person who works less than 60 hours a week, six to seven days a week', says Walker SC. 'However that theory tends to fall to pieces under the excessive burdens laid by barristers on themselves. Barristers tend to define success by how constantly busy they are. That is a superficial measure of success' he said. 'People who are forever busy have failed to properly schedule and do the work in a way that is civilised.'

'If you are successful at the Bar the most obvious side of that success is that people want to brief you all the time', Walker SC said. 'I have never heard of anyone who can so finely calibrate

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their practice such that no one wants to brief them for more or less hours than they have available to do work. So if you are successful you will always be saying no to work. They would have you working 24 hours a day, 365 days a year, and one more day every fourth year, if you kept saying yes. Some people fall into the trap by thinking that the only limit to how much work they can take on is the biological need for sleep.'

'The second difficulty in working part-time', Walker SC continued, 'is that cases that go for more than a few days are set down on consecutive dates. This is because of the convenience and social benefit of consecutive dates. It is unthinkable, more or less, to arrange dates to suit those who are working on a part-time basis. Cases can't run that way.'

As a result, Walker SC said, if you want to be part-time you can't do long cases.

'But that may be acceptable to those who work part-time', Walker SC said. 'They can, like many of us do, decline to take cases that run more than a certain length because of the impact on their life. They are quite entitled to do that. So one can simply say you are 'not available' for the cases that last, say, more than two days. And in my opinion, in any event, cases that are less than two days are the best ones to run.'

A fundamental difficulty that must be faced by those who work part-time at the Bar is the fact that the 'norm' for barristers is to work long hours and 'success' is defined as being very busy, such that those who want to work part-time must battle with the perception that because they are working less than 60 hours a week they are unsuccessful.

A number of the barristers said that while they had initially thought that they had to work all the hours in the day in order to 'succeed' they now thought it was less important how many hours you worked, but rather whether the work you do is good.

'I used to be a workaholic', recalled one senior junior. 'I used to think it was important how many hours one worked. Now I think the amount of hours you work doesn't matter. What is important is whether you get the work done well or not.'

'I have managed to use the flexibility of the Bar to my advantage. I think it takes guts to walk out of chambers at 4.00pm. But in my book it doesn't matter when you walk out as long as you get the work done. The Bar is an ideal career to work part-time in' she said. 'Having said that, I think others

still judge one on whether you are in chambers or not. That needs to change if people are going to be viewed as successful at the Bar and still have childcare responsibilities.'

Others spoke of being forced to be more efficient now they are part-time. One said, 'In my view full-time barristers spend time just hanging around chambers. I don't do that. I might be in chambers for less time, but I am not sure I am much less productive.'

Better than being a solicitor

A number of those I interviewed had worked part-time as a solicitor in private practice. All said how much easier it was to work part-time as a barrister than as an employed solicitor in a private law firm.

Walker SC believes that the system of rewarding success at

the Bar consistent with part-time work is better than for any other professional work. 'The Bar is suited better for part-time practice than being a solicitor because one has no obligations to partners, employees or clients who expect you to be always available. Because work at the Bar comes in discrete units, provided you pace it out, it can be readily done. Until we realise that fact, child bearing at the Bar will be less pleasant than it should be.'

One junior of three years standing said, 'I have found it far better than when I was a solicitor. As a solicitor I had no control over my arrival and departure times. I came to the Bar for more flexibility and I have not been disappointed from that point of view. I have had no suggestion that people think less of me because I work reduced hours. If I have work and I do it to their satisfaction then it is really my choice as to where and when I do it provided I am at court when required and at conferences when required. The Bar suits me far better as a person and suits my family responsibilities better than as a solicitor. I have independence.'

Margaret Sneddon has similar views. 'The Bar is the best place to be part-time because you are your own boss. You don't need to tell people where you are. As long as you get the work done and you are contactable at all times it doesn't matter. I couldn't have worked part-time as a solicitor', she said.

I should note that the comparisons made by those I interviewed with employed solicitors in private practice. Partners in a law firm, or those employed as an in-house solicitors might well point to real benefits

in their work situation over that of the Bar, such as a steady income, and greater control over their hours of work (which would suit those with limited flexibility with childcare).

Judicial attitudes

For those I interviewed, it went without saying that if you work part-time you either do not take on cases that go multiple days, or you have a back-up system of child-care that allows you to switch to full-time for the period of a proceeding.

One senior junior said, 'A lot of people are unavailable for various reasons on various days. It is no different for me to say that I am not available at certain times because I have child-care responsibilities.'

Barristers with child-care responsibilities however have more limited flexibility when courts decide to change the usual sitting hours.

Kylie Nomchong has had mainly positive experiences with the judiciary, which in her experience has been very accommodating for those who have childcare responsibilities. 'The Australian Industrial Relations Commission once agreed to start a half hour early and finish a half hour early so that I could get away to a school orientation day'.

Nomchong said she was aware of a barrister who obtained leave from the Supreme Court to have breaks during the day to

His Honour asked whether a certain date was available. I told him that that particular date was not suitable as on that date I expected to be in labour at the King George Hospital.



Louise Clegg

allow her to express milk.

Nomchong has also had experience in having to change a court date due to child-rearing responsibilities. ‘I appeared before Justice Hungerford in a matter that was part heard and a further hearing date had to be set. His Honour asked whether a certain date was available. I told him that that particular date was not suitable as on that date I expected to be in labour at the King George Hospital. His Honour appeared a little embarrassed but took it in good humour and an alternative suitable date was set.’

One barrister told me of the difficulties that arise when you do not want to reveal to the court that child-care issues make it difficult to meet changed court sitting times. She was in an eight day matter and it appeared towards the end of the hearing that in order to complete the matter on the eighth day the court would have to sit extended hours to avoid the matter going over part heard. ‘The presiding member looked at me and asked whether there was any problem starting at 8.30am rather than the usual 10.00am I said nothing. I didn’t want them to know. I just said ‘yes, that’s fine’. I didn’t say the truth which is that most childcare facilities only open at 8.00am and that in order to get to court by 8.30am I would need to leave my child in someone’s care by 7.00am and it is pretty hard to get a baby sitter at 7.00 a.m. for an hour or two before the childcare commences.’

Margaret Sneddon had a more positive experience before Garling J in the District Court. ‘His Honour suggested that we might sit a little later that day to finish a matter. I said that I had commitments and that if I didn’t pick up my child he would be put out on the street. His Honour took it in good humour and said that was fine and we finished at the usual time.’

Attitude of the Bar

Some barristers who work part-time found it took time for their floor members to accept their hours of work.

One junior who does commercial work said, ‘On my floor no one said anything to me about the fact that I was working part-time although I think it

took them quite some time to get their heads around it. I set my own agenda and I ignored the expectations or what hours I should work.’

While most of those I interviewed said that in general other members of the Bar had been positive or at least neutral on the subject of working part-time, most had at least some negative experiences with other (usually senior male) members of the Bar with respect to them working part-time in order to care for children.

Margaret Sneddon said, ‘I have had positive responses from some at the Bar who actively encouraged me to work part-time and who appear to be giving me work because I was working part-time. They would set conferences knowing that I was not available on Thursdays. On the other hand there were some negative responses particularly from the ‘older’ members of the Bar.’

Sophie York had a couple of revealing experiences. ‘A male silk once told me that in his opinion a female barrister who was a mother ‘does the Bar as a bit of a hobby’’. Sneddon said she had to put up with similar comments on occasion.

And when York went from full-time to part-time (or as she terms it, ‘flexible’) practice at the Bar a female barrister said to

her: ‘Oh, you have effectively left the Bar’. ‘I found that comment very disappointing’ York said, ‘because I had thought she would be supportive of me’. ‘She had decided that in order to be a proper barrister you have to be at the Bar full-time.’ York is still very positive overall about attitudinal change being merely a function of time and said her own floor colleagues are supportive.

Difficulties with working part-time

For those who work at the Bar part-time because of child-care responsibilities, flexible child-care can be a major issue.

One senior junior who does commercial work said, ‘Being at the Bar is one of those professions where you simply have to be there. That is, in court. In almost any other profession you can run late, or in emergencies cancel. That means for barristers childcare is a big issue. If your child is ill you need some emergency back-up system so that you can still go to work.’

For those with older children at school, the current court hours make it hard to drop off or pick up children. Sophie York has written on the subject of flexible hours for barristers.³ She proposed a ‘twin session’ court system. She explained it this way: ‘Under current court hours if you are working a normal day with conferences before and after court you miss out on the time required to drop off and pick up your children from school. If court hours were staggered, say from 10.00 a.m. to 12.50pm and the next session starting at 1.00pm to 4.00pm, with cases scheduled to be heard either in the morning or the afternoon (but not both), then that would allow you to have time to complete the day’s work and still pick up the children.’

Other than child-care, the second major difficulty in choosing to work part-time is that overheads are fixed on the assumption that you work full-time. The practising certificate fee, professional indemnity insurance rates, electronic library access fees, law books, and (for most) floor fees are not capable of being paid on a pro rata basis for those who work less than full-time. Similarly, except for a rare few who share a room, room license fees or mortgage repayments are the same whether you work full-time or part-time. As a result there is a strong financial incentive for barristers to work full-time.

Another issue for some is the increasing scale of practising certificate fees based on years of experience. For those that work part-time and then take time off to have children, the increasing fee based on years of experience fails to take into account of situations where a person has in fact had less experience than a mere count of the number of years since their start date. The result, says Sophie York, is ‘you return [from maternity leave] usually with reduced or limited work which takes time to build up again yet at the same time paying a practising certificate as if there had been no interruption in your career’⁴

Finally there is the issue of career advancement. Most barristers stated they understood that while they were working part-time their career would not move forward, or at least not as quickly as if they were full-time. Louise Clegg said that being at the Bar is, in part, about putting the runs on the board. The more experience you have on your feet, she said, the better barrister you become. ‘And working part-time will slow that advancement although presumably it will not stop one getting there. Having said that, there are many male barristers who combine their practices with other commitments such as teaching or other business interests – no one refers to them as working part-time. Only the Mummies get that tag.’

Of course being part-time one cannot take on the headline-

‘A male silk once told me that in his opinion a female barrister who was a mother ‘does the Bar as a bit of a hobby’.’

grabbing long-running cases, Royal Commissions and the like. Also one is less likely to do urgent interlocutory work with its tendency to require extended hours at unexpected times.

While accepting that being part-time affects one's career, many nevertheless pointed to the fact that, unlike as a solicitor, at least one can choose the type of work one does. You do not get shunted into updating precedents, as happens to some solicitors. And one can work part-time and still establish a strong reputation.

So, can it be done?

Is it feasible to work part-time at the Bar? Compromises must be made. You cannot take on the long-running cases (although if you are like our President, Walker SC, you will not find that a disadvantage). You must carry fixed overheads with a reduced income. You will probably need flexible child-care. You may well need, at least initially, a spouse contributing a regular income. And you must suffer the slings and arrows of negative assumptions about your ability (or undergo the charade of pretending to be full-time).

Yet, while it might not suit everyone, it can be done, and done successfully. The flexibility of being your own boss, the per hour pay basis, and the fact that work at the Bar can (with will-power) be accepted only in bite-size pieces, makes the Bar ideal for many who wish to work part-time so they can take on other responsibilities. Of course, that is not to say it is easy to juggle working part-time work with child-care responsibilities (Margaret Sneddon concluded our conversation saying 'I hope one thing you get across in your article is that it is not easy but it can be done, and more easily than as a solicitor.')

Consistent with the trend in society, one might expect more and more barristers to choose to work part-time. At the judicial level there are already part-time members sitting in the Administrative Appeals Tribunal and the Local Court.

The aim of this article was not so much to find out why more

do not choose to work part-time at the Bar, but to find out whether it is done at all, and if so how. Accordingly I did not set out to find out what barriers exist that prevent more working part-time.

I am conscious of the fact that I only interviewed those who had worked successfully part-time at the Bar. Perhaps a more complete picture would be obtained by speaking to those who have considered working part-time, but found it impossible in their circumstances. Certainly those I did speak to identified significant issues that might well have led others to decide not to work part-time at the Bar, such as the need to have flexible child care, and the perception that one cannot be successful working less than 60 hours per week. There are no doubt other factors I did not investigate, like the need for many, particularly those who are the household's primary income source, to have a regular income.

To a large extent those disincentives are bound up in the requirement that every barrister be a sole practitioner.

Questions of what can be done to make it easier to work part-time have perhaps not traditionally been important to the Bar, made up as it is overwhelmingly by full-time, primary income earning, men. However an examination of the various structural and other factors that prevent more working part-time might well be something the Bar will need to consider in the future if more women are to come to the Bar.

- 1 I would like to acknowledge all those who participated in the interviews, and who gave me useful feedback on the first draft of this article. I would also like to thank Dr John Buchanan, Deputy Director of the Australian Centre for Industrial Relations Research and Training, who was kind enough to review a first draft and provide very insightful comments.
- 2 Lisa Brennan, 'Women having it all: They're mothers and partners in New York: You got a problem with that?', Nat'l. L. J., Aug 17, 1998, as quoted in the American Bar Association publication *'Balanced lives, changing the culture of legal practice'*, September 2001.
- 3 'Court hours - can they be modified or made more flexible?', *Stop Press*, No. 69, December 1999, p.4
- 4 The Bar Council does have the discretion to reduce a practicing certificate fee in circumstances where a barrister has not worked for the full year, for example where the barrister has taken maternity leave, taken time off for study purposes or had an incapacitating illness. It does not allow for a reduction in fee for those who are working part time.

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