

An alternative voice in the law and order debate

Caroline Dobraszczyk spoke with Phil Boulten SC shortly after he stepped down as president of the New South Wales Bar Association.

Phillip Boulten SC recently retired as our president. I thought it would be very interesting for all of us to find out what it was like to be the president of the New South Wales Bar Association and to ask one of our most experienced senior counsel, some questions about law and order and barristers in general.

Bar News: Can you describe a busy day in the life of the president?

Boulten SC: I started out with the idea that I would set two or three days a week to go to court and leave the rest of the time for bar president's tasks, but you can't turn your practice half off and in the end it was about fitting bar tasks in, wherever possible. Everyday I would receive about 30 – 40 emails that had something to do with being on the Bar Council, I would respond quickly during a morning tea break when I was in court or at lunch.

I will start with the typical day. The papers arrive at home. I read them first thing – the *Telegraph* and the *Herald* and the *Australian*. Sometimes the telephone would ring and it would be the radio - would you like to comment on. This would happen two or three times a month perhaps and sometimes I would agree and sometimes I wouldn't agree.

Then into the office, quick breakfast and out to court and dealing with issues on the way through.

There is a committee meeting perhaps nearly every week including Bar Council, functions, helping to come up with the results for policy. The Bar Council has an extraordinary range of issues to deal with. A lot of it is about discipline issues. A lot of time is spent dealing with discipline and regulation. I enjoyed it. It was a great opportunity to be able to be the bar president and I was really pleased to be able to do what I did.

Bar News: Of course you had many particular criminal law related issues during your time if I can put it that way...

Boulten SC: It was good to have a criminal lawyer as the president especially when there are important issues. The changes to right to silence and the mandatory sentencing issues needed someone with experience and expertise to deal with it. It also helps that I was able to talk with the attorney general, he knowing that I knew what I was talking about and I knowing that he knew what he was talking about. We had a very good line of communication and we had been able to reach agreement up to a point. He understood that the bar could not agree with what the government was proposing and he understood that we had a job to do. There was no personal rancour. It was as it



should be, highly professional. There was no grievance or any kind of personal attack because you weren't seeing my way of looking at things. I think governments generally understand that the legal profession play a necessary role as a contradictor in debates about law and order and justice. Often political parties are fighting for an extreme position and the only alternative voice is the legal profession. So most governments understand that that is the way it has to be (probably because they know where they are coming from which is a different agenda). I also think they rely on the legal profession to save policies from becoming too extreme so that they can actually say we've had to have another look at this.

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Bar News: What are you most pleased or satisfied about during your time as president?

Boulten SC: The position of mandatory sentencing is the most important thing over the past 18 months. At least so far, it seems to have been effective. Time will tell whether this state of impasse that exists between the parties and the houses of parliament on mandatory sentencing continues.

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Bar News: Did you take on less work on behalf of clients as a result of being the president, consciously or unconsciously?

Boulten SC: To start with I decided I would not do any jury trials, but by the end of last year I had longstanding clients whose cases were coming up for hearing and I could not just bow out. So this year I have been doing jury trials and yeah, having to fit everything in accordingly.

Bar News: What can the New South Wales Bar Association do better for its members and the community?

Boulten SC: We have to think about where the legal profession is going to be in 15 or 20 years. Barristers have practised as court advocates. Being an advocate is still, I think, an essential part of being a barrister, but extraordinary amounts of barrister hours are not spent in court. We have to come up with a way to understand and recognise that practice at the bar will involve increasingly non-litigious advice and representation and work out a way to market barristers' skills in the legal services industry, to compete with solicitors. And that is a big change.

We have a lot going for us, basically nearly all barristers are really, really clever. They are very good litigators but also extremely good value. The fees that an excellent barrister charges almost always compare favourably to the fees that solicitors charge for doing exactly the same thing. We have to find ways to explain to people that you don't need three lawyers to do work when one or two including a barrister will do it just as well.

Bar News: And the community – what can the New South Wales Bar Association do better for the community?

Boulten SC: I think we don't put enough effort into explaining how the legal system works. Clearly people misunderstand it or have misconceptions about it. We are not helped by the popular press, which is hell bent on a distortion of the legal system. We really do need to find ways to explain simple things – like, what is involved in fixing a person's sentence; why is it that it takes time for a court case to be resolved? How is it that people can feel like they have a just cause but lose a court case?

I think engaging with community groups, seminars or being involved in legal education, becoming more connected to young people, explaining their rights. I say all of these things we can do better, but the bar is actually not a huge organisation. It is actually us – the barristers – and it is really hard to find the time to do what we normally do and then decide we need to educate the community.

At least there is a lot more than there used to be. I like the fact that the barristers go to schools and act as the judges for example to help them. There are now legal studies in high school – there wasn't when I was in high school, and solicitors with barristers

are also going out and judging competitions and helping with that type of stuff. And I like what women barristers do for female law students, encouraging them in particular at the bar.

Bar News: Times are tough for many NSW barristers - not enough work – what should they do?

Boulten SC: Barristers should deliver their services with excellence. They should take nothing for granted, work hard and that will be the best way to attract work. But assuming that's a given, I think barristers also need to be prepared to move into areas of practice that they have not formerly had experience in. Be prepared to take up cases that are not an easy fit. Stretch your comfort zone. Be prepared to learn about six or seven cases that you have never heard of so that you can be somebody who can say something in another jurisdiction. Barristers need to be flexible.

Bar News: What are the main challenges now and in the future for barristers in NSW or in Australia and does it depend on what area you practise in?

Boulten SC: There is a decreasing amount of legal aid money, especially in criminal law and family law, this is a problem for those who represent the most disadvantaged people. In England this has caused real problems. Barristers have to work out ways of coping with more scarce public funding. Barristers doing the 'top end of town' work are also affected particularly as the economy tightens. Corporations are deciding to spend less on litigation and without complex court cases. There is a real squeeze on fees.

Bar News: And lastly, why do you love the law?

Boulten SC: I get thrown in to deal with so many people's problems, people I would never get to meet. There have been all types and they are all interesting. Robber barons, premiers, scientists, accountants, spies, horse trainers, doctors, priests - with every problem imaginable. Who else gets to meet such a mix of people? I can say that I have not had one day where I have thought I hate going to work. There have been days of course where I have thought how will I get through a particular issue, I have been worried about particular issues and what would the judge do, but I always think, I'm glad I'm going to work!

Bar News: Thank you to Phillip Boulten SC