

Parental responsibilities and the bar

Ingmar Taylor SC, in a reprise of his seminal 2002 *Bar News* article, asks: Can you succeed at the bar while having child care responsibilities?

In 2002 I wrote an article for *Bar News*, which posed the question ‘If I came to the bar, could I work part-time?’

The article concluded that 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 willpower) 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.

This has been borne out by a survey conducted by the New South Wales Bar Association in 2014 which over 1170 barristers completed (‘2014 survey’). It revealed over 10 per cent of barristers work less than 35 hours a week; the majority of these being older men.¹

The article also made the obvious point that juggling part-time work with child care responsibilities is not easy. You cannot take on the long-running cases. You must carry fixed overheads with a reduced income. You need flexible child care. And you must suffer the slings and arrows of negative assumptions about your ability (or undertake the charade of pretending to be full-time).

I finished the article by saying:

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.

Thirteen years later I return to the subject to examine those structural barriers and what has been done about them, as part of considering a broader question: Can you succeed at the bar while having child care responsibilities?

These questions arise for both men and women. They are particularly acute for women who are more likely to take parental leave and thereafter are more likely to take on a significant role in child care. They arise against a background of increasing numbers of women coming to the bar, but continued difficulty in retaining them. In 2014, 59 per cent of women at the bar were in their first 10 years of practice, compared to 26.5 per cent of men.² A key aspect to retaining women at the bar is addressing issues that make it harder to succeed at the bar with child care responsibilities.



The author, in chambers with his family.

The pressure of having to keep it secret

Anecdotally, the bar and solicitors are more understanding of barristers having parental responsibilities today than in the past. Yet the perception that you cannot have significant child care responsibilities and be a successful barrister remains.

My 2002 article started as follows:

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.

Not much has changed. There were many barristers who were very happy to speak to me on the record about working flexibly and about periods in the past when they were part-time. But none of the barristers I spoke to who *currently* work part-time at the private bar were prepared to be named.

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Penny Thew, a senior junior at 8th Floor Wentworth Chambers said: ‘I can understand why some barristers would want to speak to you on an anonymous basis given the stigma often attached to women having children at the bar. When I fell pregnant I delayed for as long as possible telling barristers and solicitors with whom I worked that I was pregnant. Even now I talk as

Ingmar Taylor, 'Parental responsibilities and the bar'



Brett Hatfield gets some help with his chamber work.

little as possible about having had children and never use carer's responsibilities as a reason for being in any way unavailable for work.'

Why do those who work reduced hours for child care reasons keep it secret? As the Law Council's National Attrition and Re-engagements Study (NARS) Report concluded, there is a perception held by many that if a lawyer has accessed flexible working arrangements, their priorities have lain outside work.

One male barrister I spoke to said the perception that if you are part-time you are not seriously committed to your career at the

bar is perhaps one of the most significant issues that women face if they are considering working part-time.

Most I spoke to 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.'

But is the perception warranted?

Some barristers I spoke to were genuinely surprised that anyone could be at the bar part-time. They do exist. And each of those I spoke to has a very successful practice.

There is, of course, no good reason why a person who has child care responsibilities will not be able to do as good a job as one who does not. In the 2002 article, Kylie Nomchong SC, of Denman Chambers addressed the 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.'

Case study

Sally Dowling SC, Crown prosecutor

I came to the bar in 1997. I had my first child in 2001.

I was appointed a Crown prosecutor in 2002 on a part-time basis. At the time I was appointed a Crown prosecutor I had returned to the bar after my first child was born and was working three days a week doing commercial/intellectual property work. I was initially offered a full-time position which I turned down because I preferred the flexibility that I could get at the private bar. I was then offered a position on the basis that I worked three weeks on and two weeks off, or six weeks on and three weeks off, which I accepted. That enabled me to do trial work. To do that I had a full-time nanny who worked flexibly. She worked fewer hours in the weeks that I was off.

In 2010 I took an appellate position within the Crown Prosecutor's Office. Since then I have worked three and a half days a week every week. I work fixed days. My matters tend to be all heard in one day. Usually the office can arrange matters such that no matters I am in are listed for the one and a half days that I am not in chambers.

I tend to do four or five appeals before the Court of Criminal Appeal on the one day. Most of my working time is preparing submissions and preparing for hearing. I would have on average one hearing day every three or four weeks.

In 2013 I took silk. I was one of the first to be appointed silk while part-time.