

Working flexibly at the Bar - fact or fiction?

By Surya Palaniappan, Nicholas Kelly and Alexandra Rose

In 2002, Ingmar Taylor SC wrote an article for *Bar News*, asking 'If I came to the Bar, could I work part-time?' In 2015, he followed this up with a further article entitled 'Parental responsibilities and the Bar'. As Jane Needham SC, then-President of the Bar Association, noted in her President's column: 'One of the major changes [since 2002] is the terminology; almost everyone now refers to 'flexible' rather than 'part-time' practice'.

'Flexible' work or practice, it seems, does not necessarily mean the same thing from one person to the next. This article explores a few ways barristers can, and indeed do, work flexibly, including working part-time or from home, sharing rooms and taking sabbaticals.

Many barristers are attracted to the Bar because of the flexibility that working for yourself enables, and many barristers already practise flexibility – even if they do not call it that – by taking school holidays off, taking long holidays in January and mid-year, and taking breaks between trials. But on a more granular level, a unifying theme of what 'flexible' work encapsulates seems to be less hours in chambers and more hours at home.

In Ingmar Taylor SC's articles he concluded that it was possible to work flexibly at the Bar, with a few limitations on the volume and type of work one might accept. The 2015 article, published at a time when the authors of this article were starting out at the Bar, was simultaneously terrifying and inspiring. It could be done, the question was how.

A supportive partner, disposable income for daycare and/or nannies (booked but not necessarily used) and a discipline to say no to certain briefs (urgent, long-running, interstate etc) seemed to be a minimum. However, this sometimes seems like an insurmountable goal for those who can't meet all those criteria, particularly more junior barristers.

It is often those with parental or other carer responsibilities that seek to work flexibly, so they can work remotely, be available for pickups and the dinner, bath and bedtime routine and generally be more present and involved in their children's lives. But at what cost?

There are flow-on effects of not being present in chambers. Working from home can also make it impossible to separate work life from home life.

There are also some structural impediments to working flexibility at the Bar, including the traditional chambers model and the high cost of childcare. Ingmar Taylor SC described this in 2015 as follows:

...the Bar is set up on the assumption of



full time practice. Room rent, floor fees, practising certificate and professional indemnity insurance are all costs that do not reduce for those working part-time. Add to that the cost of funding child care out of after-tax dollars and it is very difficult for those without a high-income partner or a high hourly rate to be able to afford to work part-time at the Bar.

Those with criminal or government practices may feel these financial pressures even more keenly. Junior barristers may also find it more difficult to work flexibly as they juggle the expectations of both the client and their leader.

However, there may be some relatively simple adaptations a leader can make, to accommodate a junior who is trying to work 'flexibly', including:

1. Giving sufficient notice as to the timing of conferences so alternative childcare arrangements can be made.
2. Avoiding conferences on the days someone is working from home.
3. Liaising with your junior about suitable conference times prior to responding to the solicitor: It is much harder for a junior to tell a solicitor that they usually leave early on Thursdays if their leader has just written back saying they are available for a 5pm conference.
4. Using face to face conferences sparingly: Conference calls can be just as effective and will cut out unnecessary travel time for barristers working from home.
5. Remembering that weekends are not, by default, workdays (unless you are in court on Monday).
6. Refraining from asking a barrister why they are unavailable at a certain time, unless they volunteer this information themselves.

A critical part of a junior barrister's wellbeing and ability to work flexibly is the support of their leader. In an industry where one's reputation is their livelihood, it is understandable

that a barrister's part-time or flexible hours are not published on websites or business cards for everyone to see. But within our profession, where we aim to look out for one another, there should ideally be an open and frank two-way line of communication between a leader and their junior at the start of a case.

There is a top-tier management consulting firm that asks its team members to set out three personal 'Key Performance Indicators' (KPIs) at the start of each project, focused on achieving work-life balance. Barristers could set similar boundaries at the beginning of a matter such as 'no conferences on Wednesday afternoons' or 'emails sent after 5pm will be responded to between the hours of 8-10pm'.

Thus, while the bulk of the responsibility lies with the barrister aiming to work flexibly, there are some simple steps that colleagues can take to ease the burden – which will hopefully encourage greater sustainability and diversity of people practising at the Bar.

Get a room

Mention 'room sharing' and for many it will conjure memories of annoying siblings, youth hostel dorms or boarding school. However, in recent years, sharing a room at work has become quite common. Many law firms have moved to open plan offices, including, very recently, the NSW Crown Solicitor's Office. However, as things presently stand, the possibility of shared barristers' workspaces seems quite remote – hot chambers anyone? Nevertheless, until quite recently, it was quite common for barristers to share rooms.

The Hon Peter Jacobson QC, lately of the Federal Court, came to the Bar in 1979. Peter recalls that chambers were very limited at that time, and the only commercial chambers were in Selborne and Wentworth chambers. Even within the building at 176-180 Phillip St, the number of good floors was limited and finding a room was a challenge for any new barrister. Peter had been briefing John Bryson (later John Bryson QC) before coming to the Bar, and Bryson told Peter not to wait for a room, offering Peter the opportunity to sit in his room in 10th Floor Selborne Chambers for the duration of an upcoming long trial, and for Peter to 'float' out of Bryson's room.

Bryson had a small table in the corner that Peter used when they were both in chambers. Bryson's trial was running for ten weeks at Liverpool Street and every morning and afternoon he and Peter would have a chat before Bryson went to court, at which point Peter could occupy the large round table Bryson used as his

desk. 'It was terrific'. Peter says.

'He was a very experienced junior at that stage. Having the opportunity to sit in the room with someone like that gave me the opportunity to meet other people and learn a lot. When John finished his trial, I was still floating, out of Keith Mason's room on 10 Wentworth. Keith was a very busy practitioner, so I'd often have to use other rooms if I needed space for a conference.'

Peter notes that one of the main disadvantages of floating was that as you get more senior you need your own space and clients start to have expectations that when they arrive with solicitors, you'll have a room.

Peter says that only some floors allowed barristers to float out of others' chambers, but recalls it being pretty common, with some people sitting in their pupil masters' rooms for 12 months. However, he notes it was probably easier at that time than now, because barristers were in court a lot:

'When you were very junior, you'd do a lot of short appearance work and then chambers work during the day. Floating was also easier then because we had smaller briefs. It would be much harder today with the size of the briefs.'

As to more recent examples, Peter says that in the late 90s or 2000, by which time he was practising from 7 Selborne, there was a large room in the floor's annexe in Lockhart Chambers that was used as a shared workspace.

Kristina Stern SC practised for many years in London. Kristina says that about 50% of rooms in her old chambers were shared, and that she shared with two others for eight years. Kristina says that the room sharing was common partly because the general practice of chambers was that if the chambers wanted someone to become a new member, the person was taken on regardless of the available space:

'This allowed a degree of flexibility to bring people you want into chambers, which meant it was less likely that a floor would lose the people that it wanted on the floor.'

Kristina also identifies the pupillage practices of the UK Bar as a reason for why room sharing is more common there: 'You automatically sat on the other side of the desk from your pupil master, so you got into a working practice where you were used to sharing a room.' More



Carolina Soto with her children

senior barristers also shared rooms, including silks, with people sharing up until they took silk and then continuing to share.

Kristina's experience of room sharing was extremely positive:

'It was really fantastic. We loved it. You could run things by people. There was no sense of isolation, you would always see people and it encouraged greater camaraderie because you didn't have to make an effort to find people, and other people might come in to see one of your colleagues. The people I shared with became my best, best friends. You were able to bond in a way that isn't as easy when you're not sharing. You also learn a lot through indirect experience by seeing how someone else runs their practice. It also worked really well in terms of maternity leave.'

There were challenges though: 'You have to be able to concentrate while people are working around you. Sometimes all three of us would be on our phones at the same time.' Issues could arise if one of the occupants was working on something particularly confidential or where room-mates were acting against each other. Kristina says this was manageable, but recognises that room sharing was much easier to achieve generally because barristers do not hold conferences in chambers in London, they use conference rooms: 'In 10 years of practice I

never saw people having a conference in chambers. It would be difficult to make sharing work unless you have separate conference facilities.'

Sophie Callan and Nick Kelly have been sharing a room in 12 Wentworth Selborne Chambers since 2016. Nick says that overwhelmingly, his experience of room sharing has been a positive one:

'Sophie and I were friends before we started sharing, so that probably made the whole process a little easier. But, to be honest, we settled in pretty quickly. One of the big positives for me is having a colleague who works in similar areas of the law to me sitting right next to me for sense checks and advice. It's also great just having a friend to chat to about your day to day troubles. I've also found that I get the opportunity to engage with some of Sophie's readers when she's out of chambers, which I find really rewarding;

However, Nick recognises that there are challenges to making it work:

'I tend to try and use the conference rooms we have on our floor for conferences, but every now and again we'll find each other having a conference that we didn't tell the other one about, or that happens at short notice. It happens very rarely, but when it does it's usually pretty easy to decamp to a café nearby to work for a while, or to go and sit in someone else's room for an hour or so.'

Sophie acknowledges that sharing a room in chambers is clearly not for everyone, but for her, it has been a great success:

'I came to share my room on 12 Wentworth Selborne after two years of absence from the floor. When I returned, the floor agreed to let me share with Nick, who was already a very good friend and colleague. In my experience, it seems to me that successful room sharing can really only work where there's mutual consideration and easy communication. It's not unusual for Nick and I to sit together in the room for hours without talking while we focus on our work. But, we often debrief after a difficult day in court, which I think helps us both to clear our head for the next day's work. And when one of us is wrestling with a particularly tricky forensic, legal or ethical issue, we've found it really beneficial to



Ed sailing in Tuscany



Ed (and friends) walking the 'sentiero del viandante' in Lake Como



Tom graduating from his LLM at Columbia Law School



Judge Bourke and Juliet Bourke in Tuscany

easily and quickly have a quick discussion to help resolve it.'

Rebekah Rodger and Ragni Mathur share a room at Maurice Byers Chambers. Rebekah's experience of the positives of room sharing is consistent with what Nick and Sophie describe:

'I prefer sharing a large room with Ragni than having my own small room. It is an enjoyable collegiate atmosphere in which we are both able to respect each other's need for silence and have someone nearby to bounce ideas off.'

Rebekah also highlights the benefits of a large room, which she and Ragni may not otherwise be able to afford, for use in conferences. Rebekah says that defraying the costs of chambers also allows for greater flexibility in terms of choosing to work from home at times and assists in achieving a better work/life balance generally.

However, Rebekah says that it's crucial to share with someone that you get on well with, and who has a similar practice. She and Ragni are both in court a lot and/or working from home, which allows for use of the room by each of them for conferences. They also have access to a break out conference room in chambers, which means they can have conferences at the same time when the need arises. She recommends finding someone who is happy to chat when appropriate but also happy to be quiet.

Rebekah advises that sharing will be much easier in a room that is fitted out to allow both occupants to work in the space at the same time, and so that one doesn't have to pack up when the other is using the room. She also suggests investing in some noise cancelling headphones for when you are both in chambers and there's a need to have extended telephone calls.

It is striking that the positives and negatives of room sharing described above are consistent across time and location, and that the negatives are largely related to logistics. In circumstances where our profession has such high rates of depression and anxiety, the positives described above that come from the close support and friendship that room sharing provides, a move towards more room sharing may be one small way of addressing this blight on our working lives. Room sharing may also provide financial benefits to people at the beginning of their

career, at the end of their career or for whom the costs of chambers are too big to bear on their own, for any number of reasons.

However, despite these benefits, room sharing appears to be relatively rare and, when it happens, it does so on an *ad hoc* and informal basis. Anecdotally, it appears that some floors expressly prohibit room sharing. As an exception, Banco Chambers has taken a step towards formalising room sharing by including it in its Parental Leave Policy. The policy provides that a barrister who takes parental leave may share his or her room with another member, or a licensee approved by the floor, for 12 months upon returning to work. Each barrister is liable for 2/3rds of clerk fees in that instance.

This is a positive step towards formalising a flexible way of working at the Bar with clear benefits. Perhaps as the needs of the members of the profession evolve, we will see a return to our past, where sharing was common and, at times, encouraged.

Sabbaticals

The term 'sabbatical' comes from the Greek *sabbatikos*, meaning a 'ceasing'. It also comes from the Sabbath, the one day per week set aside for rest and the one year every seven that fields were left fallow, to allow the land time to regenerate. Such periods of rest could have similar effects on humans, even barristers.

Academics often take sabbaticals – to conduct research, or to write articles or books. It is often also used as a euphemism for parents taking time off work to practise the art of parenting – although that is rarely described as a period of rest.

You may also be surprised to learn that many of your colleagues have taken extended leave from the Bar to travel, study, compete in sporting events, conduct research or write books. Others simply want to experience life in another place and to read, rest and reconnect.

There are no rules when it comes to sabbaticals. They can be for any length of time. They can be in pursuit of any goal. The only expectation there seems to be is that you return to your job at the end of it. And the benefits are obvious. It provides opportunities for further professional growth and development, time to reflect on the direction of one's career and a well-deserved mental and physical rest.

Barristers seem to be quite fond of this

ancient tradition. In 1970, Justice Michael Kirby took 12 months out of practice to drive a kombi, with his partner, now husband Johan, through Asia and Europe. He had only been at the Bar for five years at that time and was bored with his workers compensation practice. He told his biographer in 2012 that 'going overseas allowed me to clear the decks. When I came back I effectively let it be known that I was not going to do that work', allowing him to develop an industrial practice.¹ Justice Kirby was so taken with the concept, that he took another sabbatical in 1973, driving a different kombi through Europe, to Ceylon (as it then was) and back again. He admitted that

'if I had not been appointed a judge, that's what I would have done with my life – I would have gone on being a barrister for a time and then gone off and done these overseas trips. Which were a kind of epiphany or self-exploration'.²

Modern-day barristers are getting into the act too. In 2012, Edward Cox SC, from Greenway Chambers, spent a few months travelling through the Americas before renting an apartment on the shores of Lake Como in Italy for 12 months. Ed had been at the Bar for 11 years by then and was feeling a bit stale at work. He also wanted to fulfil a lifelong dream of racing dinghies in world championships around Europe. He didn't take on any new work while he was away, but he did keep some of his ongoing matters, and flew back to Australia when needed to appear in short matters. He even appeared in a hearing via video link from a hostel in Chile once, fighting off other backpackers for bandwidth! Overall, Ed worked about two days per week on his ongoing cases and spent the rest of his time sailing, travelling, reading and walking his neighbours' dogs. Ed also read more books in 2012 than he had in the 15 years prior.

However, it was not a tough decision for Ed to come back to the Bar when he did, as he missed running cases. His initial concerns about rebuilding a practice were also quickly overcome as his solicitors were happy to brief him again. Others hadn't even realised he had gone! Ed was also open to accepting briefs outside of his usual commercial work, including coronial inquiries. Overall, it only took him about six months to build his practice back up

to where it was before he left. He has been back at the Bar for five years now and was made a silk last year.

Ed used his time away as a period of reflection and never regrets his sabbatical, noting that 'barristers are unlikely to regret not spending enough time in chambers on their death bed'.

Similarly, in 2012, Andrew Gotting (from PG Hely Chambers) and Michelle Rabsch (from 12 Wentworth Selborne), took 12 months out of their practices to live in Valencia in Spain with their three children. They had promised each other they would take a sabbatical when they turned 40. Andrew had been at the Bar for 12 years and Michelle was the Counsel assisting the NSW Solicitor General and Crown Advocate. The family spent the first few months settling into their new home, learning Spanish and travelling through Europe. There was also a period of home schooling before the older kids (aged 7 and 9) joined the local school. They took advantage of the slower pace of life, the Spanish culture and made great friends.

Prior to the sabbatical, Andrew had been involved in large matters which would often take 6-12 months to complete. Therefore, taking 12 months away from the Bar did not prejudice his practice in any way. He licensed his room out and his clerk simply informed solicitors that he was unavailable for the next few months. When he returned to Australia in 2013, he went straight into a hearing and the work resumed as it had before. Michelle returned to her job and then joined the private Bar in 2016.

Each recalls that there were naysayers, suggesting that they were making a career limiting move. But the sky did not fall in and they are even thinking about taking another sabbatical in a few years' time. Andrew advises those that are thinking about taking some time off to 'just do it. It will work – it always works'.

Michelle organised school books for the kids before they left, packed one big suitcase for everyone and left the accommodation, language lessons and other matters until they arrived in Spain. She describes the experience as a great adventure and one that she would recommend for any family. And if you are wondering how you could afford to stop working and take your family overseas for a year, you could consider renting out your house in Australia, like Michelle and Andrew did, as your rental income is likely to be more than enough to live on in somewhere like Spain or parts of Italy.

More recently, his Honour Judge Ian Bourke SC, his wife, Juliet, and daughter Eliza, took a six-month sabbatical to live in the ancient walled city of Lucca in Italy. They rented an apartment in a 500-year-old building, learned Italian, took walks around *Le Mura* (the walls), travelled throughout Italy and Europe, went

to concerts, ate pizza and met new friends for evening drinks. Judge Bourke also bought a new guitar to learn some new songs.

A little concerned about taking a pause, Juliet persuaded Judge Bourke that they needed a sabbatical as they had both been working hard for 30 years. However, Judge Bourke found it nerve-wracking to leave his practice for six months and wondered whether it would recover, but he thought it was time to take a risk, after 21 years at the private Bar.

He kept lightly connected by responding to a few email inquiries about his diary while he was away and spending a few days at the beginning of the sabbatical finishing off some work and a few days at the end, preparing for a trial he was starting as soon as he came back. But this was not a major intrusion into their time away.

Contrary to his fears, Judge Bourke said that the sabbatical did not disadvantage his ongoing practice, indeed it gave him new energy and something interesting to talk about with his solicitors and juniors. He also relished the quality time he got to spend with Juliet and making new lifelong friends. His concerns about having sufficient funds were also unrealised (he still had to maintain his chambers while away), with the cost of living surprisingly cheap in Italy.

Judge Bourke wonders whether six months was long enough and advises others thinking about taking a sabbatical to consider taking 12 months off. He also recommends speaking to people who have lived in the country you are going to about the visa requirements – as the information you get in Australia may not be accurate.

Juliet and Judge Bourke plan to take another pause in five years, having had such a great experience. Thinking about the regenerative benefits of their sabbatical, Judge Bourke worries that the sustained pace of life at the Bar is unhealthy and is thankful to those fellow barristers who encouraged him to take a break.

Ultimately, Judge Bourke notes that,

'if I was asked what I did in 2017, or 2015, I would probably have to look at my diary, and I would no doubt see a series of cases in which I appeared that are now a vague memory. But if I am asked what I did in 2018, I will always remember that for the first half of the year I was living and travelling in Italy'.

But sabbaticals aren't all about drinking aperitivi on the Adriatic or sangria in San Sebastian. Sometimes they involve serious study. Take for example, Tom Dixon from State Chambers. In 2014/15, Tom completed his LLM at Columbia Law School in New York, focussing on constitutional law. He had always wanted to live in the Big Apple and was looking for a change of scenery after 10 years

at the Bar.

Tom decided to up the ante a little and flew to New York the morning after finishing a big trial with nothing but hand luggage and nowhere to live. But as luck would have it, he soon found an apartment on the upper west side, next to Central Park. Not only did he complete his LLM while he was there, he also completed an economics degree he had started in Australia! He loved studying, but found he was learning just as much after class as in class with prominent jurors like Supreme Court Justice Ruth Bader Ginsberg and Amal Clooney popping into Columbia to give lunchtime lectures. Tom bought a Vespa to discover the wonders of Manhattan and rode to classes most days. He spent days off socialising with classmates including watching the NY Yankees as often as possible.

The impetus for the sabbatical was not only to follow his passion in constitutional law but to focus on living, instead of working. Tom had been working seven days a week for years and knew that the only way he could switch off was if he was outside of his usual environment.

Tom came back to Australia the fittest he has ever been and with a different mindset. He also started accepting more diverse briefs and it only took him a few months to rebuild his practice.

Tom highly recommends taking a sabbatical but notes that he couldn't have taken one any earlier in his career as he couldn't have afforded to stop working for 14 months and live the lifestyle he did – noting that although he was a student, he didn't live like one in New York! Although, he was able to license his room in chambers while he was away, which was a great help.

Taking a career break may not be something that interests you now, or it may not be feasible either financially or logistically at the moment. But a sabbatical may be worth considering if you are burnt out, lacking inspiration, or seeking to pivot into a different area of law. Ed, Andrew, Michelle, Tom and Judge Bourke each describe their experiences as refreshing and reinvigorating, and each returned to thriving practices.

Sometimes all you need is a break.

For those of you that are considering taking time out, remember to contact the Bar Association to discuss your practising certificate renewal and the various ways you can fulfill your CPD obligations while you are away.

ENDNOTES

- 1 Michael Kirby: *Law, Love & Life*, Daryl Dellora, Penguin Group 2012, p 152.
- 2 Michael Kirby: *Law, Love & Life*, Daryl Dellora, Penguin Group 2012, p 144.