The Hon Margaret Beazley AO QC

The following is an edited transcript of an interview conducted by Victoria Brigden with the former President of the NSW Court of Appeal and governor-designate, the Hon. Margaret Beazley AO QC

What first attracted you to the law, and then to the Bar?

I didn't decide to do law until right at the end of year 12. Not many women did law in those days, so it wasn't an obvious career path. But I was certain that I would go to university, again not an automatic assumption for females at that time and certainly not an automatic assumption given my socio-economic background. And the principal choices in those days for women who wanted to do tertiary education were teaching or nursing – and I didn't want to do either.

The way I have made decisions throughout my career seems to have been fairly consistent. Essentially, when I decide to do something, I do it. But my thinking process is always to think of various options, work out the down sides and what choices I would have if my decision didn't turn out to be right. I am not sure where or why I developed that habit of decision making but it seems to have worked!

My first decision came in Year 11 when I had a timetable clash between what were then called first levels in English/History and Maths/Science, so I had to choose between those two streams. I decided to maintain first levels in English and History and had to drop a level in Maths and Science to fit my timetable. These days there are very good reasons to see Science and Maths as an important adjunct to law. However, in having to make that choice that early I realised that I was drawn to the humanities. My only other thinking at that time was to do medicine. The view I took was that if I did decide on medicine I could always do a bridging course over summer to get me the right maths and science qualifications to get into medicine. It never really occurred to me that I couldn't do what I chose to do – including that I would have the marks for the courses I was considering!

I was also doing first level French and Economics, but my thinking was: 'What do you do with economics as a career?' I didn't want to be a banker. And as I have said I didn't want to teach. In putting all those factors together, I was eliminating things that didn't have a pull for me.

That said, I always liked debating, but I didn't have a fancy education. In junior high school we didn't have debating, so I didn't

start debating until the last two years of high school but once I started – there was just no doubt that I loved working out the best argument to put forward and which was the best way to attack the argument on the other side.

Once I decided to do law, my only thought was to go to the Bar. Which I did almost immediately. I was 23. I didn't really contemplate being a solicitor.

Is that because there weren't as many solicitors then or the firms weren't as big, so it wasn't as common a desired career path then for law students as it is now?

No, I just think I saw myself as going to the Bar. Having decided to do law, it just seemed to me to be the obvious thing for me to go to the Bar. And as it turned out, it was the right decision. On the way through law school the only other career I seriously thought about was a diplomatic career. I did apply for and was offered a position in what was is now ASIC. However, by then I had decided to go to the Bar so I turned down that job.

Once you started studying law, did you enjoy it?

It was just always the right decision. I did straight law which was a four year course. I would have done Economics/ Law, had that been available, but the only combined course available was Arts/ Law. It was a six year course, and when I was starting to think about it, I talked to my teacher, Sister Jude, (Associate Professor Patricia Malone) and she said, 'Margaret, I know you, you'll get halfway through this six year course and you'll be thinking, if I'd done that straight law course, I'd be done'. She was smart, and she really knew her students, so I opted for straight law. But of course when I started first year law, I was in a cohort of people who were in their third year of university, and I was very green.

I loved the commercial law subjects, I loved tax and loved equity. It's interesting to reflect on what attracts you to a particular aspect of the discipline you study – but they were subjects that I really liked. Having said that, there was no subject I didn't really like.

Did you take to the Bar quite quickly? What did you particularly love about your time as a barrister?

Yes, I did. It is great winning cases! I loved the jousting aspect of it: not only working out how to construct your own case but how to undermine your opponent's case! You're not always going to win cases, but sometimes you can lose cases well, and that can be as important. When you know the chances are that you are not on a winner, there can still be a significant difference between a particular order being made against your client as opposed to some different order. So the way you lose is important. Or success, if acting for a defendant, could mean a lower verdict than was being sought by the other side. I always considered it to be imperative to advise the client of what the possible outcomes of the case were likely to be so as to assist the client to decide whether the downsides of running the case were worth it.

Most barristers would agree that it's great when you win, but not so great when you lose. Did that perspective you've just described of losing cases well allow you to help process your losses, in the sense of thinking that things could have been worse?

I just think that if you do not lose as badly as you could have, you've actually had a victory. If you've advised your client 'you will not win this case', or advise on the worst likely outcome, I think you've done the right thing.

Different barristers enjoy different aspects of life at the Bar – some love the collegiality and being around other barristers, others love the thrill of argument. Is there a particular aspect

of life at the Bar which stood out for you?

I did love the thrill of the argument. When I came to the Bar, I could probably count about six women who were actively practising, and they were in different chambers, so there weren't the women around with whom to build up deep friendships and the women who were at the Bar at that time were at least 20 years older than me. There was certainly collegiality on the floor, mostly around Friday night drinks. However, the collegiality was very male-dominated. Once I had a family that made it much more difficult to engage in that aspect of the life of the Bar. Certainly I had very good friends at the Bar who were men, in fact most of my friends at the bar were male, because that's who was there.

You go on to floors now and feel a different collegiality. Lots of floors to which I applied refused to consider me for chambers because I was female and that attitude dominated the 'feel' of those chambers.

Purely because you were a woman?

Only because I was a woman.

I would make the application and they would tell me to my face that they would not have women on the floor and that if I wanted to be at the Bar, I should go round to Frederick Jordan Chambers where there were a couple of women who did family law, and that is what I should do. I was told that in explicit terms on more floors than I would like to name.

The thing that most annoyed me (and this is really the story of the red pant suit recounted at my retirement ceremony – and I did not imagine that that story would take off in the way that it has), but the point of the story is that there were so many male barristers who thought that they had the right to tell me what my role was, what type of law I should and only could do, where I should have my chambers, so long as it wasn't their floor. So the red pant suit story was my personal, if somewhat colourful protest against the discrimination that women encountered in those days – against people who told me what I should do, how I should act, what I should wear, rather than seeking to find out what I was capable of doing.

When you look back at your time as a judge, on the Federal Court and then on the Court of Appeal, is there anything about being a judge which surprised you compared with your expectations before you became a judge?

Becoming a judge wasn't an easy decision for me to make, because I was quite young, and I'd only been a silk for three years, but I did have three children and I was getting busier. My decision was essentially a choice for a more structured life to make things easier with the children. I had the six week Christmas break and four weeks' variable leave which really helped with organising life around school terms. It didn't mean that I didn't work late into the night, after reading to the kids. I have read every Roald Dahl book ever published.

Hopefully there were fewer phone calls and disruptions outside work. Although being a judge involves a heavy workload, were there fewer unexpected intrusions and contact with people than at the Bar?

Yes, but if you're in court a lot, that time's taken up anyway. I took the view, although it was still quite rare, that if judicial office didn't suit me I could just leave in six months, and hopefully go back to the Bar. But once I started, I felt that judicial office was right for me. I really loved it. So again, it was part of the decision-making process that I described earlier. Run with your decisions but if they don't work out do something about it. I got a lot of satisfaction out of being in court and in writing judgments. It's a significant intellectual exercise.

Did you find your time as a judge more collegiate than at the Bar, because certainly by the end, there were many more women, or was it just different from the Bar?

It was different. There were no other women in the Federal Court when I started and it was ten years before there was another woman on the Court of Appeal. That's a long time, and then for a long time there were only two of us. The Court has become a lot more collegiate over the years for many reasons. One reason was that Chief Justice Gleeson decided for the first time to hold the court conference away from the court precincts. That was a small innovation but it meant judges were mixing with each other in a professional and social milieu which was more relaxed and the Divisions and the Court of Appeal were mixing. Gradually the appointment of more women and more judges who had young families also created a different, more collegiate atmosphere. Over the years, that collegiate atmosphere has built under the three chief justices and under the Presidents and the court as I know it now is a really collegiate place.

What significant changes in the Bar have you noticed over time that have changed the way barristers have practised?

One of the biggest changes is the use of technology, particularly barristers appearing in court with submissions and documents on their iPads. I don't know that it's changed either the presentation or has resulted in significantly better advocacy. But it is a difference.

What has assisted in much better advocacy from my perspective, is that barristers have learned how to write a good set of 20 page submissions, at the appellate level, and then how to speak to those submissions. I think, overall, that this has led to an improvement in oral advocacy. It may also be that there is now more advocacy training when you start at the Bar, which we didn't have. There are also advocacy courses available right through one's time at the Bar. So there does seem to be a cumulative effect, overall, of significantly better advocacy.

Do you think that's because having to prepare written submissions weeks or months in advance focusses the mind and forces one to reduce one's argument concisely down on paper and then develop that orally?

That's my perception, and it's quite a strong perception. One of the reasons we had to introduce the page limit on written submissions in the Court of Appeal was that we

were getting submissions running to 80 or 90 pages. You can't advance a succinct argument in 80 or 90 pages. It was quite obvious that a lot of these were 'stream of consciousness' submissions, probably dictated reasonably late at night, and it was a nightmare to have to read them. They were not concise, and you wouldn't necessarily know what point was being made at what point of the submissions. There would be long slabs of quotations from cases, where it would have been much better just to cite the case and extract a few lines or passages to demonstrate the legal principle. When it's just a rabble of 80 or 90 pages, the submission totally loses its effectiveness.

The limit on the length of written submission makes the advocate really think about what points need to be made and how those points actually link to their grounds of appeal. And, of course, the grounds of appeal have to link back to the judgment. Finally, there has to be a link back to the pleadings. So written submissions directed to the issues constructed in the way I have described provides a more cohesive approach to advocacy. Those who get it, get it really well. I think also that younger barristers have done a lot more mooting than was hitherto the case and there is a lot more assignment writing at university with word limits. My feeling is that there's an entire lift in the quality of presentation that is needed for good advocacy: a lift in the quality of writing, in confidence in speaking, and in the ability to see the point to be made and in the ability to make the point.

Returning to what you said earlier about the use of technology and iPads, I think some people's fear of relying on them too much is that they fail. Have you had much experience of people using technology such as iPads in court before you and it's clear that it's failing when they're on their feet?

No, and I think the reason we haven't seen that is that there are not sufficient numbers of barristers who use them in court yet. It's going to be interesting so see how it will develop. Almost invariably when you see someone presenting a case from paper, they will have their written notes, either handwritten or typed. You'll see them drawing lines through them when they've covered their point, and when they're reviewing whether they've covered everything, they go back and they check it. You'll see them sitting there working out whether or not they need to reply to something. That's not as easy with an iPad. You can write on it, but I don't find that easy, and I don't find the scrolling function easy. When I use iPads, where possible I use the turning-page function and I find that much easier, but maybe that's my reading memory – how I've learned to think and operate.

We increasingly took iPads onto the Bench, and could look up cases ourselves, although I always found it easier to ask the tipstaff to do that for me rather than bringing the case up for myself. I was more intent on concentrating on the argument and you could miss something if you were trying to bring up a case.

Is there anything you wish that junior barristers would do differently, or that they understood better about their role in the court and their participation in the administration of justice?

Your role in the administration of justice is very important, and I consider that should always be at the forefront of one's mind. But at the end of the day, you're in there for a client, and that's what your job is, to do the best job that you can for your client. You can't resile from that for some perceived greater good, but the rules that govern barristers are all directed to assisting the administration of justice: by requiring honest submissions, in alerting the court to authorities to the contrary, and not being sneaky about the way you put your submissions. That is all very important. It doesn't mean there aren't hard tactical decisions that you are entitled to make, and you're not going to be a great barrister if you don't know the tactical aspects of your case as much as the legal aspects. That's all part of it. I don't resile from that, but I think underneath all of that, there's got to be honesty and integrity in the way that you perform that role. I do think barristers need to really, really understand that.

I did mean what I said in my retirement ceremony about aggressive conduct. We judges hear a lot of stories about aggressive conduct. I'm told it occurs more frequently in the District Court, and more frequently, apparently by solicitors rather than barristers, who are said to write to, email or telephone the District Court judges and I'm told the rudeness can on occasions be quite extraordinary.

Before we got the profession understanding our practice notes well, and the requirement to file not only written submissions but lists of authorities, there used to be a lot of passive aggression directed at the tipstaves by barristers over the phone. If ever I picked up that was happening I would just take the phone from the tipstaff and say to the barrister: 'do you have a problem?'

Interestingly, when we developed the system that allowed the list of authorities to be filed electronically, a lot of that aggression just stopped. Not only that, we were getting the list of authorities before time in a significant number of cases. It was interesting that it took such a small tweak to have things being done properly.

It's clear from your speech in your retirement ceremony yesterday that you consider that there's still more work to be done in terms of increasing the participation of women at the Bar. Do you have any ideas about ways of managing that, or what the top priorities should be going forward? Do you consider that change will happen organically as more and more women come to the bar, and take silk?

I think a lot of it is organic, but I'm surprised that we're still talking about it. We should not be still talking about this. Change has been extraordinarily slow, and I think that's quite a problem. I have been told that there has been a problem with the reluctance of female students in their early years of law school to engage in mooting, so some women law students set up a female mooting competition at Sydney University. There is also a national female mooting competition and

both of those initiatives seem to have been very successful in promoting and supporting the female students to have the confidence to moot.

I have had heard some say: 'Isn't the aim to have women being part of the bigger game?' But what I'm hearing from the students and the young lawyers who have become involved is that they find, for some reason, that these female mooting competitions have given women the opportunity to start to moot, and to get their confidence up so that they can go into the mixed mooting competitions. So far as I know there are no male mooting competitions, but there seemed to be a sense that there were a sufficient number of female students who didn't feel confident enough at the outset to engage in the mixed competitions, for something to be done about it. And when the women do moot, they do as brilliantly as the men.

I think that things like female mooting competitions are therefore worth supporting – just to get that cohort of students who aren't comfortable on their feet, mooting, learning how to argue, to prepare them for life in the profession, whether that be at the Bar or not. However, as I have said I do find it interesting that we are still talking, in 2019, of a need for initiatives such as this.

Whenever I have been involved in the female mentoring programmes, my philosophy about it is, as I tell the young mentees: 'The whole purpose of this is for you to feel that there is a person that you can relate to, speak to if you have any problems, so that you can then better integrate into the profession. It's not about keeping you separate. It's about giving you the wherewithal to integrate'. Some people need it, some people don't. It is apparently very competitive to get into these mentoring programmes. You have to make an application, and not everyone is accepted. This could all be part of the general competitiveness of the profession. I've not given a lot of thought to that, but it's not about keeping people apart.

Have you observed that female advocates appearing before you in court were less confident than male advocates, or is it too hard to say when one considers differences in seniority?

I don't think women are less confident, I wouldn't say that. You get such a range of styles of advocacy anyway. The worst style of advocate is the over-confident one, or the over-stylistic advocate. You can sometimes think they've been to advocacy school, and they've learnt to make the hand gestures. I suppose it's better that poor speakers are turned into good speakers, with a structure as to how to advance an argument, but there has to be a naturalness to advocacy. When I judge moots and when I talk to students about mooting, I tell them it is much better to have a conversational style. There are always tricks and traps. The trap is over-familiarity. The trick is the confident, persuasive, conversational style that engages the judge. You learn a lot of that on your feet but good advocacy training should enable the young advocate to develop a style which is natural to the individual advocate.

What are you most looking forward to in your upcoming role as Governor?

That's a hard question. I know what I'm not looking forward to! I don't want the role to be superficial. As I'm hearing what the other governors are doing, they seem to have been very adept at making the role of governor a significant, engaged role that operates at all levels of the community. I'll be very interested to learn and absorb more. There was one comment in one of the newspapers about the role which said that it's mainly ceremonial. I would doubt whether any of the governors would agree with that. It has ceremonial significance and there are important ceremonial functions, but it is what lies behind the ceremony which is significant. There is an underlying community aspect which needs to be understood and demonstrated.

It seems that the role involves a lot of hard work and a lot of meeting people.

Again, that will be part of the challenge, to make sure that meeting people isn't superficial. That's different from saying that I will go into the role to make best friends with the people I'm meeting, but I consider it important to look at what the particular organisation is doing, whether it be scientific, medical, educational, cultural or part of the many not-for-profit initiatives in our community and to get an understanding of that. What I do with that is going to be part of my learning curve.

What do you think you'll miss about being a judge?

All the judges! The wonderful collegiate court that we now have, having spoken about how hard it was with a lack of collegiality at the beginning. One of my daughters said to me, 'Gosh, I thought we were going to have to prise you out of there!' so I suppose it was just so much a part of what I did. Now I have to create something new for myself and that's exciting and challenging.

Every day as a barrister and a judge there is an intellectual engagement with the case and I don't know that that will be a feature of all aspects of the life as a governor, so that in itself will be a challenge. I've had the privilege of spending some time with the present governor, David Hurley, who has been very generous with his time and in his support. There is no way that he would think his role is superficial and he has built a strong base that I am sure will be of huge assistance to me as I take on the role. And as Marie Bashir has said to me, there is no greater honour than being able to serve your community. So I believe that there is much that can be done which will have significance. And as I have indicated, I see community as operating at all levels of society.

It's very exciting, and we wish you all the best in the role.

Thank you.