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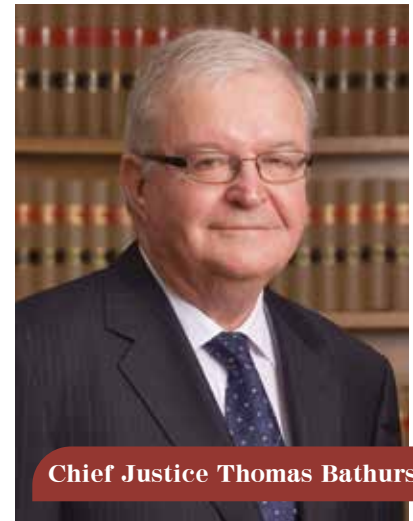


INTER-PACIFIC BAR ASSOCIATION



# Interview with The Honorable Chief Justice Thomas Bathurst, Supreme Court of New South Wales

While in Sydney last year, Caroline Berube was given the opportunity to interview the Honorable Chief Justice Thomas Bathurst for the *IPBA Journal*. The following is a condensed version of the conversation that was held on Tuesday, December 18th, 2012.



Chief Justice Thomas Bathurst

Thomas Frederick Bathurst was appointed Chief Justice of New South Wales on 1 June 2011. Graduating with degrees in Arts and Law from the University of Sydney in 1971, he went on to practise as a solicitor in 1972. He was admitted as a barrister in 1977, specialising in corporate law and litigation and was appointed Queen's Counsel in 1987. His considerable experience in corporate law saw his appointment as a member of the Australian Government's Takeovers Panel (2006-2011). Prior to his appointment to the bench, the Chief Justice served as President of both the Australian Bar Association (2008-2010) and the New South Wales Bar Association (2009-2011), the Executive Committee of which he has been a member since 2002.

1. During your appointment speech you mentioned that as a solicitor you were "hopeless", but that it helped prepare you for your future practice. What initially attracted you to becoming a lawyer and why do you feel you found your calling as a barrister and now as Chief Justice?

The regulation of society always interested me as a student, particularly the corporate areas of legal work. I had an instinctive feeling that my interest in the law would lead me to the bar. Getting a job with routine tasks didn't interest me very much. I was attracted to the idea of building a sound knowledge of the law. The legal profession also provided an opportunity to interact more with clients. My aim was actually to go to the bar in order to make a decent living and

eventually retire as a barrister. My goal was not to become a judge. I had done some litigation work in the pursuit of my legal career when the opportunity to move to the bench came. In my view, many individuals take jurisdictional appointments for the wrong reasons. I've learned that in this field of work, it's important to stay connected with reality, the real issues, and to maintain rich interaction with people.

**2. You are only the fifth Chief Justice to be elevated directly from the role of barrister to Chief Justice. How do you think this will benefit your work as Chief Justice?**

Being appointed directly from the bar, the advantage of coming straight from the legal profession is that you have experience working with the community. Having legal experience from the other side of the court is a benefit to your jurisdictional work because you gain an invaluable perspective, a fresh outlook. It allows you to sympathize with people and the problems they face.

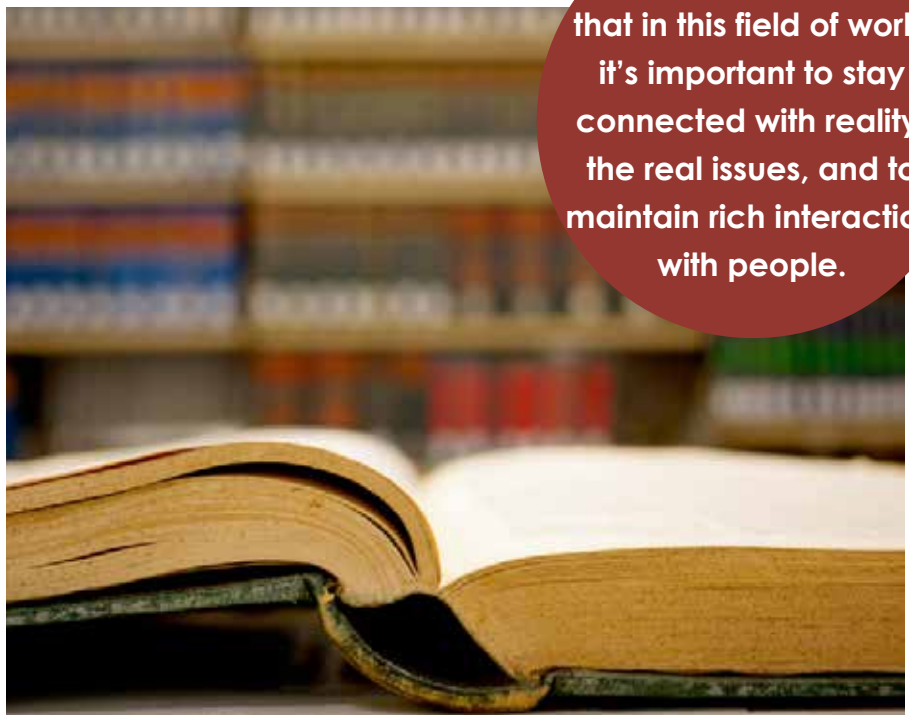
**3. During your time as President of the New South Wales Bar, you declared that one of your priorities was to make the justice system more accessible, which you helped to do by attending legal education events in rural and remote areas. How do you plan to continue to work towards this priority with your new role as Chief Justice?**

As Chief Justice, I've tried to maintain a focus on the real issues in cases. I plan to keep encouraging a culture of cooperation between the bench and private practitioners. We always need to ask how much discovery is required. It's doubly important that justice must be accessible, especially to mid-level income earners. I believe there isn't enough legal aid in this jurisdiction. As Chief Justice, I want to simplify the court procedures and would like to see more practitioners accept this simplification. The court system can always be more efficient. Too often, I find that resources are wasted on small issues. I've stressed before that accessibility need to be improved – having a community that is involved in the legal system. I would like to ensure provisions for will access

and early advice, especially for family cases.

Moving forward, we need to maintain contact with the Law Society and the Bar Association through various avenues, such as interest groups, gatherings and informal meetings so that the legal community can tell us more about what the current issues they face.

**4. You have also mentioned that you want to make the best use of technology in the courts, and have noted that technology presents a challenge as well as an opportunity in the courtroom. What particular challenges and opportunities do you see for using technology in international cases?**



**I've learned that in this field of work, it's important to stay connected with reality, the real issues, and to maintain rich interaction with people.**

I don't think technology in the courtroom brings challenges *per se*. In my swearing-in speech, I mentioned that technology helps us review a lot of materials in a very short period of time. However, we must exercise caution as access to various types of information can be dangerous at different levels of authority. Through technological advances, courts benefit from quick access to data and strong information. International matters no longer need judges to be sent overseas. Administrative resources and services are alleviated. For example, notices of injunction can now be sent by e-mail. Electronic filing is also progressing. Pretrial procedures can be done electronically without a need for meetings in person.

**5. What is your opinion of the increased emphasis on alternative dispute resolution, including mediation, and what issues to you see with this emerging trend?**

Mediation is an accepted part of the court process and I believe it's likely to continue. Practitioners ought to be conscious of the benefit of mediation as it is up to judges to decide to settle the case. It shouldn't be used as a vehicle to deny access to justice court. I believe the use of

arbitration will also increase. This brings two advantages. The first concerns enforcement. There is a problem with the way courts should interfere with awards. The high court takes a conservative approach and it can be difficult to get enforcement. The second concerns privacy, which is attractive to a lot of people. I resort to alternative dispute resolution depending on the quality of the process offered by arbitrators. Overall, I'm happy with the process of enforcement.

**6. You have a reputation for always being respectful and polite with fellow practitioners, clients, and witnesses. What are your thoughts on the importance of professional ethics and respect in the legal practice?**

I believe it's vital to maintain an ethical standard. If you conduct yourself in a polite and respectful manner you're more likely to get the best from practitioners. Like witnesses, if they feel comfortable with you they are more likely to cooperate and share information. A basic level of courtesy towards peers is important. It would be ideal to have a situation where you have a fair hearing, even if you lose in court.

**7. What aspect of your role have you found most difficult and what aspect have you found to be most rewarding?**

I would say the most difficult aspect was the administrative side of the work as a Chief Justice. At the bar you practice alone; there's no need to deal with bureaucracy and there's no need to manage people. In court, you get used to a great deal of more administrative work. It has been challenging – it took me almost a year to get used to it. The most rewarding aspect would be serving as the public face of the court, being able to show to the public that judges work their best to produce their best. It's also rewarding work to convince the community that we can produce fair results.



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Caroline Berube is managing partner of HJM Asia Law & Co LLC and focuses on Chinese corporate law and commercial practice. She has advised clients in various industries such as manufacturing, energy (oil, gas and mining), technology and services. Caroline is also a regular speaker at many international conferences and is an arbitrator approved by the Chinese European Arbitration Centre.