

The Callover

Guest | Kristy Bell

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Georgia Athanasellis:

Welcome to The Callover, the Queensland Law Society podcast that hopes to inspire a future of connected, capable and healthy lawyers.

Welcome to Country

I'm Georgia Athanasellis and in this episode, I speak to Kristy Bell, partner at Howden and Sagger, a criminal law firm in Brisbane, about how she deals with controversial clients and colleagues in the courtroom.

Kristy Bell, thank you so much for joining us.

Kristy Bell:

Thank you very much for having me, Georgia.

Georgia:

Now, to an outsider, the criminal law seems exciting and action packed - the stuff of John Grisham novels and 'Suits' episodes, but I imagine it can also be incredibly confronting. What's the most difficult case or client you've had?

Kristy:

Oh gosh. One of my staff actually asked me this yesterday, and as weird as this makes me sound, I managed to find something to like about all of my clients. I think it's the only way to do this job.

They're all difficult in different ways. Some are difficult because the stakes are much higher. I find the most difficult clients are the ones with the most to lose, because that imparts a lot of pressure on us. I think there's always with clients with difficult personalities.

It's just a matter of working out how best to manage that personality, and trying to adapt your communication style to the way that they best understand it, because once you find that ability to communicate with a client things get much easier. Some do take a lot more work than others.

Georgia:

And if it's a particularly emotional case, whether it be because of the person has more to lose or they've come from somewhere that's particularly bad, which sort of explains how they've ended up there, how do you cope with that or deal with that on a case by case basis?

Kristy:

I've worked both in prosecutions and in defence, and I actually think that defence is easier to manage...that kind of difficult case. We don't deal so much with the complainants or the victims, if at all, and so we're more focused on what the evidence is and what that proves. Usually, the client's instructions are something quite different to what the case is against them, and so you're more focused on their version and whether or not the evidence fits that. So we're not exposed, I suppose, in the same way that the prosecutors or the police are to the impact of the offending on the other person, and so I think that just has to be a focus. If you think too far into that, it gets really difficult to manage and you lose your objectivity.

Georgia:

Has the way you deal with or approach cases of any kind, but particularly those difficult ones changed from when you started out as a young lawyer to now?

Kristy:

Yeah, absolutely. I think my scale of what is and isn't normal behaviour is completely off the charts, always ten years later. But I think the thing that I struggled with the most starting out was you're effectively in crisis management as a lawyer, and it doesn't really matter whether you're practicing in civil litigation or criminal law. People that are coming into contact with the courts, usually for the first time, are in some kind of crisis, whether it be financial or whether their liberty's at risk, whether it's custody of their children. It's a really stressful time and they bring all of that stress with them and they dump it in your lap and say, fix this...yeah, exactly right.

So in the beginning, I really took all of that on and I thought, "Oh my God, if this person gets convicted and they go to jail, it's going to be all my fault. How am I going to kick them out?", and it took me a really long time to learn that it's actually not our responsibility to save people. It's our responsibility to educate people and give them a realistic understanding of what the possible outcomes are, and help them best manage that in a way that gets them the best outcome.

It took me a really long time to realise that I can't control what comes before they land in my office, and all I can do is give them the best possible chance at a fair trial, or tell them about the things that they can do to achieve the best possible outcome.

Georgia:

And how do you manage those expectations for the client who comes in with all their life story and says, "Fix it?"

How do you explain your role to them?

Kristy:

I think there's one thing that sticks in my mind from when I was a judge's associate, and I remember the first sentence I did where the person sitting in the dock clearly didn't expect to go to jail that day. And the look on that person's face will stay with me, I think, for the rest of my career and I never wanted to be responsible for that. So I think you just you need to right from the very first meeting with a client, you need to work out what is the most important thing for them. So whether that is not getting a conviction recorded, or whether it's not going to prison, or whether it's not losing that blue card, you know, it could be any number of different things and sometimes its things you just don't expect.

And then that's your starting point. So once you understand what's most important to them, it either makes your job easier or harder, depending on what the goal is. I think you always should prepare them for the worst possible scenario and never, ever, ever over promise.

Never tell them, you know, there's no way you're getting convicted. It's always a possibility because it's not up to you. Same goes for sentence. Never, ever tell a client they're not going to jail because it's not your decision to make, and you just don't know what's going to happen, what decision the magistrate or the judge will make or what verdict the jury will come back with. So I find that clients who are best prepared for the worst case scenario are so much better able to deal with the stress of the process, and what comes next because they don't feel like they're in limbo.

Georgia:

And I suppose they're not blindsided in the dock on the first day.

Kristy:

And, you know, going to jail, despite what you may hear on the news, is terrifying. It's a terrifying fact for any person to confront, particularly for the first time.

And often times, the thought of that possibility is the worst thing for a client. And bearing in mind, some matters take 12,18 months, two years to resolve, that stress over time really takes its toll and so if they're prepared and they know what to expect, it's a lot easier for them to manage.

Georgia:

So if we talk about the other people in the courtroom, the other practitioners, I've heard from some people who practice in crime that the nature of the adversarial system can create tension and stress between practitioners inside the courtroom, and sometimes, unfortunately, that escapes into their professional lives outside the court. Has that ever been your experience?

Kristy:

In my personal experience, I think we're incredibly lucky in crime. Maybe it's because I've worked on both sides, but I think some jurisdictions are better than others, but by and large, there's a really good understanding that it's not personal. I think as a practitioner, particularly in defence work, you really need to pick your battles and realise that there's no one client that is worth damaging your professional relationship with the people that you're going to have to be working with for the next 5, 10, 15, maybe more, years. Some people are difficult to deal with, but my personal view is if the argument isn't worth making before a magistrate or before a judge, don't have it. And if you can't see eye to eye with the prosecutor - that's...that's not always going to happen - so just listen to the argument, have the argument, let someone else decide, and it just takes the personal side out of it. I really believe that we need to realise we're never going to agree on anything, but equally, you should be able to go out for a coffee with the person that's on the other end of the bar table at the end of the day. It's not always possible with some matters. Sometimes people do get very invested, but you just have to remember to leave it at the door, and just say a friendly hello to that person next time you see them and usually all's forgiven.

Georgia:

You've almost answered it already. But what advice then, other than leaving it at the door, would you give to young lawyers about ensuring that those necessarily fierce sort of legal arguments don't then escape into tension outside of court, and so that you can go and have a coffee with the other solicitor understanding that they need to do their job as well?

Kristy:

Yeah, I think the biggest thing is just say hi to people. Say a friendly hello and you say them in George Street. Say a friendly hello when you're sitting in the back of court, or just ask them how the day is going, and it just doesn't allow that tension to build up. You're reminding each other really that it's not personal, there's no issue between the two of you, you're both doing the same job from different perspectives, effectively, and with different constraints. Private practice and government can be difficult to manage, you know, at the best of times. So there are a lot of reasons to argue with the other side, just keep it friendly when you're not in court, and don't talk about the matters that you have in court. Talk about what you can do on the weekend or, you know, what the kids are up to or how their family is, just make that connection and make it outside of...

Georgia:

...A human connection.

Kristy:

Exactly right, that's right. Yeah, human connection.

Georgia:

I imagine that standing in front of a magistrate or judge as an advocate is stressful a lot of the time, particularly if they don't agree with you. Do you have any suggestions or tips about how to persuade a Judicial Officer who, after you've walked in and made some submissions, just doesn't seem to be buying your position?

Kristy:

Yeah. It's funny that you say its nerve wracking. I think it's I've heard Saul Holt say on a number of occasions that "...When you stop getting nervous before you stand up in court, you should give it away because the nerves remind you that doing a really important job".

So it's true, I still get nervous all the time. Unfortunately, the unpopular answer to that question is you just have to prepare really well. There's no shortcut. There's just no shortcut. When I was a young solicitor, I used to think that the people that were appearing in court around me just knew everything, and I knew nothing, and everyone was going to find out that I knew nothing. And so I would overcook everything. I'd prepare these matters to within an inch of their lives, and it probably drove me mad at the time, but it stood me in really good stead later on, because all of that research and extra preparation that I done made it easy for me to recall that information later on.

The most persuasive thing I think for a Judicial Officer, is someone who has done the work and can answer their questions. There's nothing worse for a magistrate or a judge when they ask you something, or ask you why you're making a particular submission and you can't justify it, and particularly, you can't justify it by reference to the relevant legislation or a case. I find that if you're prepared and you're confidently stating your case because you understand it, they're going to be a lot more receptive to that, even if I don't agree with you and they won't always. You can at least justify your position and explain why you say "This is the correct sentence", or "This person should get bail for these reasons".

If it's very clear that that Judicial Officer has formed a view that's adverse to you, all you can do is make sure that you cover off on the points that you would need to if you if your client wants to lodge an appeal later on down the track. Some Judicial Officers just like to test you as well, particularly young practitioners. Some I know will see a new practitioner come in full of confidence, and just wonder whether or not they quite know why it is that they're making the submission that they're making or whether someone else in the firms just said, "Just ask for this, you'll be right, you'll be fine".

I actually don't think there's anything wrong with that, it's a good lesson. So the best advice I think I have is just remember that Judicial Officers are just people too, and believe it or not, they don't know everything either, and they're dealing with so many matters on any given day that the more information you can give to them, the better the outcome's likely going to be for you.

Georgia:

On a personal note, do you enjoy getting up in front of a judge and making the case or would you rather be instructing...what's your personal preference?

Kristy:

I think personally, my own, my strengths are better suited to practice as a solicitor rather than as a barrister. I would miss the human element a lot. I actually again, weirdly enjoy dealing with the clients.

I feel like the roles are very different, but complementary to one another, and I feel that the role of a solicitor is special and that we do get that advocacy in the Magistrates Court and we can do as much of it as we like, really. Whereas with the higher court matters, we have the opportunity to work with counsel. And if you get a good team, you know, together around you, you're briefing good people that you can learn from, it makes you a better advocate as well.

Georgia:

Obviously, criminal law can be challenging, particularly because you can be called on at any time of the night from a client who gets arrested. How have you coped with that throughout your career, and how do you stop yourself for want of... the classic phrase... from burning out.

Kristy:

I'm still working on that, honestly, I have gotten much better at it, again, I think a lot of the burnout in the earlier years stemmed from taking on that responsibility, from absorbing all the stress of the clients and getting a call at 2am and them saying "I'm being arrested, what do I do?", and "Oh my God, I'm not going to get bail". And in the beginning I would freak out like, "Oh my God, this person's in custody its 2am what am I going to do? Where am I going to go?" And I eventually realised there's nothing I can do at 2 o'clock in the morning, so you just have to wait till the next morning and give the watch house a call and find out what the position is.

You just get better at crisis management, I think is the way to manage burnout. You need to have things outside of work, I think is the most important thing. Family, friends, activities that don't involve the law or lawyers, but we're a pretty social bunch but tend to stick to our own, and so you often say lawyers having coffee with other lawyers, but then they'll be at work, you know, late at night and not socialising with people outside of the sector. So I think that having those connections outside of the law keeps you grounded and it just is a reminder that when you 'tools down' at the end of the day, there is a life outside the office, but it is a difficult balancing act.

Georgia:

I think that's good advice for young lawyers out there. So despite all the challenges in practicing in criminal law, you obviously still love it.

Kristy:

Yeah. Look, I think that I'm really lucky that I have a job that I absolutely love. Lots of people don't understand quite why we love it so much, but I think it's a combination of the work that we do, the opportunity that that gives us to make real changes in people's lives, and make a real difference to people's lives at the time that they need it the most. And the people that we work with, I think that we're incredibly lucky. I know that in my firm, we have a wonderful group of people that work with us and for us.

Everybody supports one another and it's just such a positive environment. The ability to call up another law firm and ask them to help you out, or refer them a matter, even though we should be in competition with one another, we're all friends and I think that that's really special. The ability to go and, you know, have a really good robust argument in court and take a win, that means so much to the client that's been sweating on it for such a long time is such an amazing feeling.

There's a flip side to that, which is not so amazing. But yeah, I think it is a difficult job. But yeah, I just think it's a combination of what we're able to achieve and the people that we do it with.

Georgia:

You've almost converted me! Being a partner at Howden Saggars now, your role I imagine has transitioned from just being a criminal lawyer to also having a role in supporting the junior lawyers coming through. How do you go about sort of helping them enter the legal profession and navigating those challenges of criminal law that you encountered?

Kristy:

I had never been in a management position until I became partner at Howden Saggars. I find that really interesting, and it provides a great change up in the day, from file work to management work. It's a nice contrast, but I really do love working with our junior solicitors.

I have a young girl working for me at the moment. She, like me, went to high school in a very regional country town, and she did work experience for me when she was, I think 16 or 17, for a week and was just the hardest working young girl I've ever met in my life. She's wonderful, and I said to her, "If you ever want a job when you get to uni, let me know". And sure enough, I think four or five years later, she called and said, "I'm ready to work part time".

She was pretty nervous. She didn't know if she'd be able to do the court work. And I said, "Well, how about you come in for a day, follow around the law clerk that I have at the moment, and if you can do what she can do, you've got a job."

So she came in for the day and at the end of the day, she looked a little bit shell-shocked and she said, "I just want to think about it for a bit". And she called me the next day and said, "I'm in", and she was never...it was never an issue for her working in the office, she's the most diligent young girl.

And Court terrified her. And so I had some lovely other staff who sat down with her and write out the scripts, you know, how to announce your appearance, and how to do a mention, and we sent her over for...two weeks was the cap that she got to go and observe the other girls do the mentions and run the callover, and at the end of that two weeks, one of my solicitors took her over to court and we'd worked out which mentions were the more straightforward ones for that day, and we knew that she knew what to do by this time, she knew it off of the top of her head. And Kate said to her - the matter was called - and she said, "Oh, you're up" and I think the colour just drained from her face but she knew exactly what to do, and she nailed it. Absolutely nailed it. And if I had told her she was doing that two days before, she wouldn't have slept, she would have obsessed over it for hours and hours and she absolutely nailed it. And she came back feeling so good about it and ready to have another go.

So I think really, I've seen people from different schools of thought who think you just throw them under the bus and they learn, you know, it's a tough lesson, but you learn from experience.

I just don't believe that that's a positive way to introduce someone to this type of work. It's difficult as it is; appearing in court is like a public display of your ability every single day in front of everybody else that you work with, and so you need to prepare young solicitors for that and young clerks for that. And I think the better prepared they are, not only the better it reflects on you as a manager, but the better reflects on your firm and the better their experience is and the more they want to continue in that job.

So I think as young solicitors, you need to keep asking questions. Please don't ever just think you'll go and give it a crack. It can end terribly. But if you ask the questions and you get the answers and you are well prepared, you'll be fine, but don't hold back. You know, law firms are busy places. I know I say to my clerk, she came in yesterday and just stood in the doorway because we had booked a time to sort out a brief that she was doing for me, and I'd been putting it off and putting it off and putting it off. She said, "I'm just going to stand here until you are ready". And I said, "No, please do that because otherwise I'll, I won't...I won't get to it". So you need to be a little bit pushy and you need to get in and ask those questions because as employers, we love it.

The best thing that we can possibly have is someone who will diligently go about their work, and I can trust that if they run into something they don't know how to do, they'll come and ask me about it because it means I don't have to micromanage them, they don't have me hanging over their shoulder every five minutes and we're both more efficient.

Georgia:

It will send shockwaves down every junior lawyer who listens to it, but equally, it has a happy ending.

Kristy:

I did the same thing to her in the Supreme Court about two weeks later, so I don't know if she's over that story.

Georgia:

Maybe we need to get her in next time just to see what she says.

Georgia:

She can give the other side of the story. Oh, that sounds like a lovely spot to wrap things up. Thank you for joining us. We really appreciate having you on the show.

Kristy:

My pleasure. Thanks for having me.

Georgia:

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