

The Callover

Guest | Margaret McMurdo

Host | Georgia Athanasellis



Georgia Athanasellis:

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

Welcome to Country

Welcome to The Callover, I'm Georgia Athanasellis, and in honour of International Women's Day, I'm speaking with a true trailblazer of the legal profession, the Honourable Justice Margaret McMurdo, AC. When she finished law school, she was one of a handful of women at the bar. In 1991, she went on to become the youngest person ever appointed to Queensland's District Court, and the first woman to ever hold that role, before becoming the first and still only female president of Queensland's Court of Appeal in 1998.

She is a true inspiration to women in the profession and I am incredibly honoured that she has agreed to join us for this very special episode. Margaret, thank you so much for joining me today.

Margaret McMurdo:

My pleasure, Georgia.

Georgia:

Thank you. You were conferred your law degree in 1976. Can you describe to me the legal landscape and what it was like to be a woman beginning her career at that time?

Margaret:

Well, there were not a lot of women in the law, especially as barristers in the criminal law, especially as barristers. And so it was very exciting. You did feel as though you were trailblazer, and you were young and idealistic, so it was a very exciting time in that respect, starting my career.

I was at that time working...I was still working for Judge Demack, as he was then in the District Court, and then I later that year moved on to be the first woman paralegal in the public defender's office, which at those, in those days was independent from Legal Aid, Legal Aid hadn't yet started in Queensland. So it was a separate office as part of the Justice Department, but they were, those were

the 'Joh' years, police corruption was rife...and so the people that we were appearing for in the public defender's office were very much the underclass, underprivileged people and they were considered fair game by the police, and if the police felt that they'd committed an offense, it didn't matter that they didn't have the evidence, they'd just make it up. And we had to...and sometimes they were right and sometimes they weren't. And of course we had to challenge that in the courts. And so that was a very exciting way for a young, idealistic barrister to cut her teeth.

Uh, certainly the...the courts were not used to women barristers, let alone very young ones. And...and green too, and I dare say I often deserved to be chipped and put in my place. But there were one or two who just found it particularly difficult to have a young woman barrister appearing in the criminal court...in their criminal courts, and they certainly gave me a hard time.

Those ones perhaps gave me an even harder time than they gave the young men barristers. But then on the other hand, there were also progressive judges who were really excited and keen to have young women coming into the law as barristers and as criminal barristers, and who were very supportive and took on a mentoring role, and so it kind of work both ways.

I guess I was I had the personality to...to be pretty robust so that was a big help. I was the youngest of six children in a large family, so I'd had the rough edges knocked off me a bit. So being fairly robust did help, but they were challenging years, but exciting years, I can't...I must say I enjoyed them, but it was such a different world...we didn't know the term sexual harassment, it was it was rife. In those days, the public defender's office was clearly absolutely male dominated, hardly any women there at all, even in secretarial roles. And they had to be vetted carefully to make sure that they wouldn't get upset at typing the briefs for some pretty horrible cases and confronting cases.

So quite a different world, and there were girlie pictures, nude ladies all over the walls, and you didn't even think twice to tip the boys about it, it was just the way it was, and you just got on with it.

Georgia:

It's unfathomable, in today's landscape.

Margaret:

Yes, it is. It is. But it's good to be reminded about how far things have changed for the good and how much has improved since then.

Georgia:

Absolutely. Well, I think you mentioned there were only a handful of female barristers when you arrived at the bar. I read recently in the Queensland Bar Association's most recent annual report that we're at 25.5% now, and that's obviously a big improvement, but there's still a way to go to parity. What can we do to encourage more women to go to the bar, and is it important that we do?

Margaret:

Well, it is really important that we encourage more women to go to the bar, because they are actually a fundamental part of our democracy. The bar advocates in the legal profession are a fundamental part of our democracy, because they ensure that everybody has equal access to the rule of law, and they also defend the judiciary against any incursions by the executive on their independence, which is so fundamental to our rule of law, and would also lead any charge to be critical of any judge who was not independent of the executive.

And so for that...in that respect, if we want our society to be truly democratic, it's really important that the advocates, primarily the bar, but not solely, the advocates come from a wide pool reflective of the community. And if women's voices are unrepresented or underrepresented in that, that's a bad thing. Similarly, the case for a more diverse legal profession, it's very important to have the advocates in the legal profession represent a diverse community...First Nations people, very important that they have a voice after so many centuries of colonization and dispossession, it's time for them to recognize that

the law and the legal system is their place and that they own it as well, and it works...it works for them, but also all the multicultural Australia that we now are...all cultures, all ethnic backgrounds should be represented in the...in...in the advocate...advocates stream of the legal profession, including women at every level.

Georgia:

Yes. And so I suppose the bar is an intimidating place for those that don't know, what can we do to encourage women, but also people of all...of all backgrounds to embark on that journey?

Margaret:

Yeah, well, I think it's important. This is where the trailblazers, I guess in each of those areas play an important role, because it is good for young people thinking about what career they going to have to see diversity there, because that makes them feel that it is their place to be there. So that's important, so it's important that the trailblazers get in there and fly the flag. But it's also important that the profession holds out a welcome mat and mentors and encourages people of diversity and gender diversity at the bar.

Georgia:

Absolutely. And if I can take you back to 1978 for a moment when you and others co-founded the Women Lawyers Association of Queensland, what were you...what were you trying to address or what were you hoping to achieve in doing so?

Margaret:

Leneen Ford was of course the driving force in that...in that respect, and she has always been a great mentor to me, which was great. A few weeks after I joined the public defender's office, Barbara Newton, who was a young solicitor, had been...had a practice in Kingaroy, also joined the office and she had actually completed her law degree with Leneen and a group of other women – Carla Macdonald, Sue Currie, Anne McMillan, who went on to form the Youth Advocacy Centre in the early days.

And they met regularly for lunch as a sort of support group and Barbara dragged me along. And so that's when I met Leneen and the others. And over lunch every couple of weeks we decided that it was time for a Women Lawyers Association in Queensland. One had been started in New South Wales and we were very impressed with what it was doing, so off we went.

Georgia:

Started as a lunchtime support group, I love that...

Margaret:

It did start as a lunchtime support group, yes. And away we went, and the Law Society was actually quite supportive for something that was very frowned upon by a lot of people in the profession, as you know, "Why should you have a women lawyers? You know, we're all lawyers, it doesn't matter that you're a woman, don't need a women lawyers association".

We'd argue, "Well, you know, hopefully you won't always need a Women Lawyers Association, but you do at the moment". And I mean, these, these were the days when Courier Mail advertisements used to...for solicitors used to be in the Men and Boys column and not in the Women and Girls column, even though there was a Professional column. And so we took the Courier on and the people who advertised in it, which was very brave...you know, I was a very green young lawyer doing this and writing off to...to firms telling them that they should be advertising in the Professional column in a non-sexist way. And writing the same thing to the Courier Mail and the Courier Mail would blame the

lawyers, and the lawyers would blame the Courier Mail or just tell us...or not respond or just tell us it was none of our business.

And one of the time... one of the times I do remember writing a letter to a firm that my...one of my brothers was involved in who...who'd sinned (laughs) so...but gradually that changed, but I don't think it did change until the Anti-Discrimination Act came in with the Goss government, and it became the law. Yeah

Georgia:

Well, you were ahead of your time acting for all the right reasons. If we can turn now to your appointment to the District Court. I'm sure being appointed to a court is a significant milestone for any lawyer. But did you feel that your appointment was especially momentous, given you were the first female appointed, as well as the youngest person ever appointed? Did you feel the pressure of that when you got the phone call?

Margaret:

Oh, yes, I did. I did most definitely, because trailblazers, whoever they are, whatever gender they are and whatever field, always carry that weight of knowing that if you fail, then it'll be seen as a failure for women. It won't just be seen as a failure for Margaret McMurdo, which is an added...added weight for someone who's who is a trailblazer.

So I was very conscious of that. But I was even in those days, the District Court work was probably about 70% crime. I think it's much higher now in terms of its criminal work, but, so I was very well prepared for the criminal side of things. I had been appearing in the criminal courts for about...oh, probably about 15 years, all told by then, I'd been doing some civil work since I'd gone into private practice at the bar for about 18 months. So I was, I was well prepared for the criminal side of things.

I'd also worked for a judge who was a wonderful mentor and role model, who was a model of courtesy and patience and, and temperance, and so I think I was well enough prepared for a judge for becoming a judicial officer. Civil work was a challenge but one which I enjoyed very much. I enjoyed the variety, but certainly the first few years of being a judge, no matter what your background, I think is challenging it's a different role, and...and certainly I was conscious that there were eyes on me and not everybody wanted me to succeed.

Georgia:

What was your favourite thing about being a judge of the District Court?

Margaret:

Oh, there were many, many things I enjoyed. I will say the thing about being a judge after you've been an advocate is that the mornings are always better. At that stage, I had three young children, so my life was more ordered. So I did enjoy...I enjoyed the work. I enjoyed the break from advocacy and partisanship that you have to do when you were an advocate. So I enjoyed the ability to feel that you were contributing to the community. I also enjoyed the extra curial stuff making speeches in the community and flying the flag for women in the law and women's judicial officers. I certainly enjoyed that.

The circuit work was also interesting, I was kindly given circuits that would I could get to on a Monday morning and come home on a Friday evening so that that assisted with the...the family routine, and you know, being on circuit you get all sorts of work and all sorts of things pop up and you also get to see the...the broader community. You know, Queensland is, is different to any other state in terms of its decentralisation. So...so that was that was interesting. You know, the other judges too were very supportive and kind and I learned a lot from them. So it was...it was a pleasant time in my in my life, but still very exciting and challenging one.

Georgia:

I can imagine. You mentioned they your three children and I understand you welcomed your youngest child while you were on the bench. How did the court react to having to contemplate that for the first time?

Margaret:

Well, that was...that was a shock to the court. It was a shock to the court. Well, at that stage, actually, when I first became a judge, the Judicial Pensions Act had to be amended because it only ever referred to wives and not spouses or partners. So that was the first thing. And of course, then the next thing was...I caused trouble all the way along Georgia. The next thing, of course, there was no maternity leave, or parental leave at all. So it hadn't ever been considered, there never been a woman, actually, a woman judge having a baby. They hadn't considered that, so...so that was a whole new thing. And I'm delighted to know that there have been a couple of other babies born to women on the court since then, Judge Richards...and...so that was another little bit of...a little bit of trailblazing and trouble causing that I got into.

Georgia:

How did you balance just generally having...having a beautiful, large family along with such an incredible career?

Margaret:

Well, obviously, I married the right person. That's kind of very important, if there's one thing that you...you could give someone advice on and it's not necessarily advice, that...that the wisest heads can...can actually take because there's, I think, a lot of luck in it. But finding a good partner in life is...is probably the best thing you can do in your life to...to assist you in your career I think. So he was very supportive, but he was, of course, very busy in his own career and had a very busy practice. So we had nannies who would come each day and they were all wonderful and became part of our family, and so between the...the nanny and Phil and me, we managed. Luckily the children were in good health. You know, it might have been quite a different thing if I'd had a...children who were not and were not healthy. So yeah, with a lot of multi-tasking and a...great organisational skills and...and you know, waves of flu and colds and all those things and gastro that go through the house one after the other, you know, it was...they were busy years, they were quite...they were hard years. I think every working parent understands what it's like.

You know, you obviously you always put your children first, but you also have to be professional, and that juggle is really difficult in those...particularly in the early years when the children are very tiny, but then it just kind of changes, they continue to have needs, they're just different needs as they get older.

Georgia:

Well, if we can move on to your appointment as the President of the Queensland Court of Appeal, you were also the first woman appointed to that position and the first woman appointed as a presiding judge of any Australian appellate court.

There can be no doubt now that you were eminently qualified and well suited to that position, but I understand that at the time your appointment was controversial. How did you cope with the...response to your appointment, I suppose?

Margaret:

Well, it, it was controversial and...and I have to say, understandably, so, because I'd only been a judge seven and a half years and I was a junior judge on the District Court, and so to...to be

appointed from that role, to be president of the Court of Appeal amongst the great Court of Appeal judges and particularly at that time, and I'm sure all the Court of Appeal judges are always great, but at that time, maybe it's just because I was younger, I certainly saw them as giants of the profession.

Bill Pincus. Bruce McPherson, Jeff Davies. Jim Thomas, who was appointed at the same time as me, and I was replacing...or if anybody could replace, Tony Fitzgerald. So that was absolutely daunting. And...and there were many, many people who, probably quite rightly, thought that on many levels they were better qualified to do the role than me.

But for whatever reason, it wasn't a job I sought out, it never was, it wasn't a job I ever aspired to, but I was...the offer was made to me in a way that I couldn't really say no, I felt it was my responsibility to take the role, and so I did. It wasn't probably the best decision in terms of Work-Life Balance, and...and for my family to see more of me, because certainly if I'd stayed as a District Court judge or even as a...a trial judge on the Supreme Court, if that hadn't been offered to me, which it wasn't, I would have had had a better work-life balance, that's for sure, because I had this very steep learning curve to, get up to...attempt to even get up to speed with the other Judges of Appeal, on the cases...some of the cases that I was hearing, on the other hand, I guess I was very experienced in...as a trial judge and particularly in sentencing. And a huge amount of the court's work is crime and sentencing, and of course then I brought a different perspective of a younger...a younger judge and a younger person, and the young woman with a lot of community contacts and community outreach.

So I guess, you know, there were pros and cons in terms of what I was bringing to the job. So...so yes, it would...came I learned a lot about administering a Court of Appeal. I...I implemented with the support of the other Judges of Appeal, a very...a number of changes, including the circuits to the north, to Cairns and Townsville in alternate years, setting up the pro-bono Court of Appeal scheme for those charged with the most serious criminal offenses who weren't represented and that with the support of the bar and the...the Law Society.

So I'm very proud of the work we did and we...we...we were a very well regarded and very efficient intermediate Court of Appeal. So I am very proud of the achievements I had there, but I couldn't have done it without the support of the judges. And it was a great pleasure to work with all of them over my career, and I learned such a lot from all of them.

And, and certainly I, I administered the court in a collegiate way so that they were involved in decision making, and...and I consider that that was the real strength of the court.

Georgia:

We might turn now to the legal profession generally, it's obviously changed a lot in the last 40 years. The female graduates now outnumber men. What are the biggest changes, and you've mentioned a few already, that you've witnessed for women in the law over the course of your career?

Margaret:

Undoubtedly, the biggest change is the...the involvement of women in the law, the feminisation of the legal profession to make it very much a woman's place as well as a man's place. That...that is definitely the biggest change and that has come to reflect...to be reflected in every aspect of the law. Not only from the fact that there are so many lawyers now, I think there are more women solicitors member of...members of the QLS than men now, but that has had other impacts, too.

Clearly, there are a lot more women also in higher positions, although it's not yet reflecting that the number of women generally in the profession, but it is changing. But also as to the law itself, the role of women has brought many changes to the way the law responds to women. And so when I started in the law as a criminal law barrister, in sex cases, which mainly affected women and children, I think the statistics that one in five women have experienced sexual assault after the age of 15 and one in 20 men, so it does affect men as well. But it is correct to say that it mostly affects women. If...if the evidence of the woman or the child was uncorroborated as a matter of law, there could not be a conviction. And so most of these offenses occurred in secret and so generally there wasn't any corroboration of the...of the...of the assault.

And so most complaints didn't even, if they were taken to the police, they didn't even get beyond the police station because they would simply say, well, there's no evidence to support what you say, and that was the end of it, and that has changed dramatically, and when the few women who did go on, and children, who did go on to give evidence in these cases had to give evidence in open court with the media reporting every word, and it would be...could be reported, these intimate details in...in full in the...in the media.

And they were cross-examined up hill and down...down dale about the character and every aspect of their life. And it was absolutely a harrowing experience, and no wonder many of them ended up not answering questions asked of them, and...and so not coming up to proof and charges being dropped, and the few that did go on very, very few were convicted.

Well, that has changed, as you know, enormously now. And there's still a great deal of advocacy for further change saying that we...we haven't gone far enough, but certainly it's so much better than it used to be. There are now limits on cross-examination that mean that it has to be relevant. You can't just go on some vicious attack. The evidence of children is...is pre-recorded the...the evidence of adults is given all in closed court and with screens up so that the...the alleged perpetrator, the accused can be screened from the person giving evidence if the...if the witness wants that and it's not reported in the in the media.

And I know that is another controversy since Grace Tame has done her advocacy. And I think that's all about giving the victim the right to decide whether it should be public or not, and...and certainly, well, as it turns out now with the task force work that I'm doing at the moment, we're looking at these issues, and...and so the...the law is constantly reacting in a measured, appropriate way to the requests the demands, the advocacy in the community about change. And there's been so much change already, but it's a moving feast and it's still happening.

So yeah, I think that all that can be related to women in the law and perhaps takes it back to my point about women as advocates in the law and how important it is as a...in a democracy for women lawyers to be in there so that their voice is heard.

Georgia:

I think that's absolutely true.

You mentioned the Women's Safety and Justice Taskforce that you're leading. Can you explain to listeners, I'm sure most will know a little bit about it, but what it is and where...what stage it's up to?

Margaret:

Yes, sure. We were set up in...about a year ago now by the Queensland Government as an independent taskforce, to look at a number of areas, firstly our first task was to look at whether coercive control should be criminalised and the best legislative model to do so and whether domestic violence should be a standalone offense.

We were also asked to look more generally at women in the criminal justice system. The first aspect of the work we had to complete, we had an extension, but we had to deliver that by the 30th of November last year...complete that by the 30th of November last year, which we did and I know the Law Society has given an initial response to that and is working on that. We're still waiting to hear the government's response to...to that report.

And in the meantime, we've moved on to the second part. We reached out to the community and the profession to say, well, in the short time available, with our limited resources, we can't look at the entire role of women and girls in the criminal justice system - I've always said you need a standing taskforce to do that - what areas should we concentrate on?

And the feedback that we had was that it was women as...women and girls as victims of sexual offenses, and a quite different aspect, women and girls as offenders. What works, what doesn't, in terms of what's best for them, what's best for the community. So we've just released our discussion paper on that, there are cross-cutting issues, again, over both those quite different aspects, things like the overrepresentation of First Nation women and girls, the fact that so many women who are offenders are actually victims of domestic violence and sexual abuse. So there are these cross-cutting issues that we're looking at.

And so we've asked for submissions by those with lived experience, but also from those involved in supporting them, whether that's in the legal profession or other areas, and certainly from the legal profession on these issues, by the 8th of April. And we'll be delivering our report on those aspects by the...on the 30th of June. I don't think it'll be too much beforehand. I think we'll be pretty busy. So in the meantime, we're also consulting broadly in the community, visiting prisons throughout the state, visiting a number of First Nations communities throughout the state, so we've got a busy time ahead with this.

Georgia:

Sounds like it. And for any listeners who might want to make a submission, we will have a link for the website...

Margaret:

...To the website – womenstaskforce.qld.gov.au . Thank you

Georgia:

Thank you. Yes. We'll make sure we do that.

Margaret:

And could I say too that although the submission in response to that close on the 8th of April. Those with lived experience, anybody really, but particularly those with lived experience can make submissions through the website at any time if they wish to, and they can request to be confidential and it will certainly be secure.

Georgia:

I daresay your younger self would be incredibly proud of the career that you have created. Looking back, what advice would you give her as she started her journey in the law?

Margaret:

Oh well, probably as I mentioned earlier, the best thing is something she did, and that was probably to choose a wisely the partner in life. So that's a very important thing, and luckily she did that, I don't know that she was actually giving herself advice when she made that decision, but it was...it was the right one. And that's probably particularly, having seen the work on the taskforce, I've just realized how important that is and a wrong decision there can really detrimentally impact your life. But be comfortable in your own skin, be kind to yourself and to others, but be kind to yourself as well and listen to criticism learn, from it if you should learn from it.

But in the end, stick to your beliefs, your high ethical standards, and if you've done your work and done your research, you've listened to the criticism and you know that you're right and they're wrong - well, find your voice.

Georgia:

That is a fantastic note to end it on. Margaret McMurdo, thank you so much for joining me on The Callover, it has been an absolute honour to have you as our guests, and thank you for everything you've done for women in the profession, and for giving up your time to do this this morning. So thank you very much.

Margaret:

Thanks, Georgie. It's been fun.

Georgia:

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