

WILLIAM & LONSDALE – Lives in the Law

Ep 13. Hon Betty King QC

Voiceover [00:00:14] This is William and Lonsdale, a podcast about the legal ecosystem in Victoria and the fascinating people and stories that make it tick. Today, your host, Michael Green speaks with the Honorable Betty King, former criminal law Queen's Counsel, County Court judge and justice of the Supreme Court. From the get go, Betty knew she wanted to practice criminal law. Only problem was she knew no one in crime and was reading with a commercial barrister. Despite the difference in their professional focus, her mentor was fantastic and gave her sage advice. Pick a criminal trial, sit in the back of the courtroom and observe everything you can. Not only did she learn an incredible amount about running a trial, she also learned about the remarkable support and camaraderie of the bar.

Betty King QC [00:00:58] And I've walked in, sat down, watched it for a little while, and after a while, Ramon Lopez came up and said, who are you and what are you doing here? And I went, Oh, I'm a reader. And I've come to watch. And he said to me, "oh, good, we thought you might be here to run the rabbit". And I went... I don't even know what that is. But apparently it's sitting in court to hear the evidence and then going outside and telling everyone what's been said. I said no. And those guys opened their arms, said, come here, we'll tell you all about what we're doing. So the prosecutor told me about his brief, the defense counsel told me all about theirs, the tactics their plans, they just trusted that I would stay strong with the others. And I sat there and watched this for four weeks. It was the greatest learning curve of my life. It was fantastic. And those guys remain, my friends, for the rest of my time at the bar.

Michael Green [00:02:10] Our guest this morning is Betty King, former member of the Victorian Bar former member of the County Court of Victoria and a judge of the Supreme Court of Victoria. Good morning, Betty.

Betty King QC [00:02:21] Good morning, Michael.

Michael Green [00:02:22] I want to start, first of all, by saying congratulations, because it been a wonderful honor bestowed on your family with your daughter becoming a QC, as you were to be the first mother and daughter QCs at the Victorian bar.

Betty King QC [00:02:35] Certainly we think we are. I have not been able to find anyone else who are mother daughter found mother sons, father daughters, but not mother daughter. So that was fun.

Michael Green [00:02:44] And I think you and I covered enough of the time at the Victorian bar to be confident that that is the case.

Betty King QC [00:02:50] It seems like 400 years, but it's actually only 40, for me

Michael Green [00:02:54] Now. Let's go back to the start, which is a grocery store in Thornbury.

Betty King QC [00:02:59] Mm hmm.

Michael Green [00:02:59] You grew up there with your mother and your siblings, your mother and father sorry, and your siblings, a sister and two brothers.

Betty King QC [00:03:05] Yeah.

Michael Green [00:03:06] You lived at the rear of the shop, which in I'm thinking we're talking about maybe the 1950s into the 60s.

Betty King QC [00:03:12] We moved there in 1960,.

Michael Green [00:03:15] But it wasn't that unusual at the time for the proprietors of shops to live in the shops. What was it like as a kid growing up there?

Betty King QC [00:03:22] Oh, I wasn't a fan of Thornbury. I lived in Oakleigh prior to that. We moved there when I was 10. And, you know, we had big old Edwardian house, lots of land and trees and green. And then when I went to Thornbury, it had streets with no nature strips and no trees and little houses on tiny blocks. I think we all missed the outdoor space where we used to live. And interestingly, my sister and I drove past our old house yesterday and she said to me, I can't believe it. They've put nature strips in the street. We were both laughing about the lack of green that used to be and the new Thornbury that now exists.

Michael Green [00:04:03] Now, your secondary education and the most influential part of your education was done at University High School.

Betty King QC [00:04:09] Yeah,.

Michael Green [00:04:10] It had a big influence on you and on the rest of your life as I'm reading things. Why was that?

Betty King QC [00:04:15] Well, I was the third in my family, and my older brother and older sister were very good sporting wise. And I was so bad sporting wise. I could trip over my own feet walking up the stairs. So at school there was this sort of expectation that I would be like my sister or like my brother and excel in sports. And I didn't do that. And I wasn't brilliant academically. I was OK. But I had teachers there who said because I wanted to leave at one point and go and do secretarial college training because I thought that be fun and, I'd like to be somebody's secretary and mentioned me as the secretary from hell. But the school actually contacted my mum and dad and said, you can't let her do this. There's something there. She's really very bright underneath that if she ever finds a confidence. And so I stayed and I just had these inspirational teachers that by the end of matriculation, really had given me a good deal of confidence. They also said when I thought I'd be really brave and apply for teaching, that I should apply for something at university. The only thing I could think of because I didn't have language, French or German, I couldn't do art was law. And so I did law at Melbourne Uni. I amazed everyone, my family included by getting in and then the school gave me a free place at university on the basis of their considered. I had potential.

Michael Green [00:05:34] I mean, that's that's a wonderful story both about inspirational teachers who are just such a benefit and a boon to anyone in their life, and the generosity of the Melbourne University Law School to give you a free place. That's that's terrific as well. Did you enjoy your time at law school?

Betty King QC [00:05:49] No, no, I didn't like law school, but I liked law. I've worked out, I reckon, about six or eight weeks into it that I'd come home and I'd found what was me. It

just to me was an extension of clear thinking that we did in matriculation English. And it just all made sense. I didn't like it. I think I had a bit of a chip on my shoulder about almost everyone else seemed to be from a private school and knew each other and all talking about their holidays that they had together. So I didn't enjoy it much. I worked most of the time I was at uni.

Michael Green [00:06:21] Interestingly what do you say there is a reasonably common theme. We've heard that before about people going to Melbourne University. I'm not sure about Monash at Melbourne University Law School, 50s, 60s, 70s. It was pretty cliquey.

Betty King QC [00:06:34] I used to think it was because it was cliquey. But looking back, I just wonder how much of it was my own personal resentment that I thought they wanted to exclude me. So I excluded myself before they had the opportunity.

Michael Green [00:06:49] You successfully completed your law degree at Melbourne and you then went on to articles, which are what today would be called a graduate traineeship. What were your articles like that it set you up well for your life as a lawyer?

Betty King QC [00:07:01] Oh, I think I probably had the worst articles that ever existed in... Certainly in Melbourne. I went to a firm, a small firm, in those days, they paid us 25 dollars a week gross. And they took tax out of that. So it came down to 23 dollars and 18 cents or something. And we used to live on it. They hired two article clerks, both of us were female, and we had to do things like go and pick up the groceries for the partner's wife. We had to man the switchboard when the receptionist had her lunch. We had to wash the car... Stuff that when I think back, I find it indescribable that I was still quiet and docile enough then to put up with it. But I did until my last day. The principal called me and said, "I thought you might like to stay on. Would you like to have a job as a solicitor?". And I said, Oh, my God, you're joking! I said, I intend to go to the Victorian bar. I am going to be opposed to this firm one day and I'm going to rub your noses in shit. I don't think I've ever been as angry as I was from that year of appalling behavior. And if we want to do law, we really had to do it at night. So I'd often be there till eight, eight thirty trying to do some probate cases and learning what I was supposed to do, learning about the law after I'd done a day of running around.

Michael Green [00:08:29] So you immediately come to the bar in 1974 and you are the 24th woman to sign the bar role here in Victoria. Now, I went back and had a look, and I'm pretty sure the Victorian bar commenced in about 1884. So in a period of 90 years prior to you, the Victorian had 23 women.

Betty King QC [00:08:47] Oh, yeah. Yeah. I went and had a look at it too much later. It's breathtaking.

Michael Green [00:08:53] It is breathtaking.

Betty King QC [00:08:54] When you think about it. Can I say I had absolutely no idea I was doing that at the time. I just wanted to be a barrister and I thought, that's what you did. You just went and got someone to read with and started being a barrister. It was only later that I sat down and had a look at this and realized that we'd have 10 years go by and one woman would come and she might last for months or maybe two years.

Michael Green [00:09:16] Possibly have a child and never come back.

Betty King QC [00:09:18] Yeah, yeah. Or just get no work and disappear.

Michael Green [00:09:21] Yeah. And that's obviously far worse. That is bad.

Betty King QC [00:09:24] Yeah. And lots that happened to lots of the early women.

Michael Green [00:09:27] You commence at the bar and were mentored by in fact a commercial barrister, not a criminal or barrister indeed. But it still worked out well for you.

Betty King QC [00:09:36] Indeed it was very odd. I suppose. The thing is, I'd never known a lawyer before I did law. I still didn't know many when I completed it. I had no one in my family, no relatives, no no one. So I'd never met a real grown up proper lawyer except those who taught me. Which is why I probably end up with the articles I did. But I thought, well, I'll just be a barrister because that's what I wanted to be. I'd seen them in action and I loved evidence, problems of proof, all of this. I love criminal law. I went, Oh, I'm going to go be a criminal barrister. So I just I understood you had to ask someone who was senior enough. Now, the only person I'd ever briefed who was senior enough was John Kaufman, a commercial barrister. So I asked him and he said, yeah, terrific. You know, so I went along and signed. I was twenty four years old. After three weeks of me writing, he said, why did you choose me, Betty? I said, Oh, well, you were the only person I knew that was ten years call. So he said, do you want to be a commercial lawyer? No. Oh, no, no. I'm going to be a criminal barrister. Okay, so he gave me some advice and sent me off. He said go pick a trial, any criminal trial and watch it. You'll learn from that because there were no readers courses, no exams, no nothing. You just came and followed your master around for three months as they then were. And at the end of that, you were a barrister. So I went off and watched a trial. Prosecutor was Allan Dixon, defense counsel was Ray Lopez, Boris Kaiser, Peter Carl. I'm the client with Hoover Harris, and Tommy Donald. I can remember all this like it was yesterday. And I've walked in, sat down, watched it for a little while. And after a while Raymon Lopez came up and said, who are you? What are you doing here? And I went, Oh, I'm a reader. And I've come to watch and he said to me, "Oh, good, we thought you might be here to run the rabbit". And I went, I don't even know what that is. But apparently it's sitting in court to hear the evidence and then going outside and telling everyone what's been said. I said no. And those guys opened their arms, said, come here. We'll tell you all about what we're doing. So the prosecutor told me about his brief, defense counsel told me all about this tactics their plans. They just trusted that I would stay strong with the others. And I sat there and watched this for four weeks. It was the greatest learning curve of my life. It was fantastic. And those guys remain, my friends, for the rest of my time at the bar.

Michael Green [00:12:04] Just to follow up on that point, I became a clerk about twenty five years ago, and the most attractive feature of the bar to me as an observer was the generosity that barristers show to each other.

Betty King QC [00:12:18] Oh yeah.

Michael Green [00:12:19] They can be in court and beating each other's brains out one day and the next day they are heads together helping each other work out a problem. So can you tell us a bit about that camaraderie at the bar? Tell us about a place called Domino's. What is it and what went on there? Because it is such an attractive feature of the bar.

Betty King QC [00:12:38] Oh, I think it's its shining glory is the system where you are part of a true college of equals. There was a little table down in Domino's. Domino's was a cafe still is, I think, underneath Owen Dickson West, down the bottom floor, pretty dingy. But a group of people who did crime used to sort of go down there at lunchtime because the old Essoign had become a bit too formal. It had white starched cloths and people drinking wine, and we were running trials. We couldn't afford to be doing any of that. We didn't have the time. We needed to go grab a sandwich, cup of coffee, cup of tea, chat vent about what's going on, how much we hated our judges or our opponents, talk about our problems, what's happening. There was this sort of table that grew up in dominoes and it became the criminal table, and it just got bigger and bigger and got longer they had to keep putting more tables on, it because anyone could come, anyone at all, and often people just came for advice.

Michael Green [00:13:39] And I bet you could have on that table a first year barrister and the most senior criminal Silk.

Betty King QC [00:13:44] And also criminal judges. We had judges would come, Silks, senior juniors, baby barristers, readers, solicitors, and they'd all come. And the smokers would have the tables outside. But if you came out of court, I can recall coming out of court one day beside myself saying, I know there's an answer to this. And I went down to lunch and this was really pre much in the way of computers and I was explaining my problem. I know there's got to be something about it. And Weinberg, now Justice Weinberg, turned to me and he said, oh, there's a case on this Betty, and it's ummm.... and bingo! Was in the VR's, got the year right. Got the page wrong. So he's not perfect. And I had that by the time I went back in at 2:15, I had a total and utter answer to the Crown case. I presented it. They rolled over. That's what used to happen all the time at lunch.

Michael Green [00:14:38] That's not a unique or uncommon story, those sorts of things. And and to be fair to the bar, it's not just in crime, although crime is such a shining example of it, but right across the bar, those things happen all the time,

Betty King QC [00:14:52] without a doubt happens in all the jurisdictions my daughter works in, in civil as well as crime. And she said the camaraderie of the bar remains as good as it was in terms of people helping each other, picking up a phone, popping a head around a door. Hey, I can you can I talk about this with you? It is the magic thing, magic ingredient of this place.

Michael Green [00:15:14] Now, you mentioned your daughter and let's move on to there, because she had a stellar entry into the legal world, didn't she?

Betty King QC [00:15:21] Yeah, probably not the one she was after, I was on the circuit, Colac, which is an amazingly interesting court because it rains a lot in Colac. But despite that, they built a court with a tin roof so that every time it rained, and it rained a lot, we had to stop talking because no one could hear us. I was running a trial down there. One of the accused were charged with having committed an armed robbery on a service station. We had a jury of 12 Colac farmers, basically, and they were terrific. We got to the stage of final addresses. And at that stage I started to think, oh, I've got that fake labor pains, because I was about seven months pregnant. I've got through it. And it was wonderful because the farmers, obviously birth lots of cows, they did the breathing with me as I took big breaths.

Michael Green [00:16:13] So you're standing up at the bar table?

Betty King QC [00:16:16] I'm addressing the jury. I'm thinking, you know, it's just bloody fake labor. So that's all right. And and it did sort of ease, and sat down the jury went out, got a verdict, which was not guilty. But I then really thought, I'm in a bit of trouble here. I need to get back to Melbourne. Anyway, she was born the next day. Next morning. And the headline of the Colac Times. I kept a copy for my daughter's "Trial end just beats the stork". They went right through about Miss King, Miss King, Miss King, Miss King. And then they said, Miss King last night, Miss King is married because I couldn't have me Miss King and I'm pregnant.

Michael Green [00:16:55] And so you then would have taken off, what, six months, a year, two years and recommenced your practice?

Betty King QC [00:17:01] Six days, six. I think six days I took because she was prem, so she had to stay in hospital. So I might as well go back and do some work and on the way. So it was... People were terribly obliging back then. They were terrified of mums who were nursing. So the clerk of course, you turn up to do a simple plea and they go, didn't you just have a baby, Miss King? I go yes. Oh, do you want to get on first? Yes. And it was you know, amazing, people were so accommodating and it was a smaller, more intimate place where people all knew each other. So I'd go into a play, feed the baby, sit with her for a while, and eventually she came home and she was fine.

Voiceover [00:17:44] Lives in the Law is proudly sponsored by City Maps Illustrated. Their recent publication, The Melbourne Map, is a celebration of our wonderful city. This stunning hand drawn illustration, which took more than three years to create, is available as an art print, jigsaw puzzle and calendar. The perfect acquisition for your home, office or corporate gifting. More information can be found on their website, themelbournemap.com.au.

Michael Green [00:18:13] Now, you mentioned the jury of a dozen Colac farmers, and I'm interested just to pursue a little bit the subject of juries, I'm reading here that you say that you have to charm a jury, if they don't like you, won't listen to you. Why do you need to charm a jury? What's special about appearing before a jury?

Betty King QC [00:18:31] I've always described it as you're taking them on a journey. So to do that, because you don't often get them to sit through weeks or months of often tedious material, listening devices and tape recordings and forensic evidence can be incredibly tedious. It can be difficult to comprehend, difficult to listen to. So you've got to say to them, come with me. This is a story I'm going to tell you. And at the end of this story, you're going to be asked to make a decision. They've got to want to come with you. Nobody wants to go with someone they don't like. So I've always believed as a judge, prosecutor or as defense counsel, you must make yourself personally likable to the jury, not sycophantic, but likable, relatable and human, because if they don't like you, their minds turn off. They don't listen. So I've always just taken the view you need, first of all, to be likable and relatable.

Michael Green [00:19:27] And the jury then comes on on the journey with you.

Betty King QC [00:19:29] They mightn't agree with you, but they'll come and listen to you. I only want them to listen to me. You know, they make up their own mind, but I want them to listen to me and listen, because if they listen to me, they'll listen to the evidence.

Michael Green [00:19:40] In your career as a barrister, elected both as a prosecutor and as counsel for the accused, does it entail different skills to be the prosecutor on behalf of the state of Victoria, to ask the jury to convict this person as opposed to the skills you need to be counsel for the accused. Asking the jury to find that is a reasonable doubt and therefore not to convict this person?

Betty King QC [00:20:00] Very different skills required. As a prosecutor, you have to construct something, like Lego. You've got to build your bottom layer, right to make sure the foundation is secure. And then each piece of evidence you call just builds on until at the end of the trial, I used to describe it to the jury as; it's like a jigsaw puzzle and we're just putting all the bits in. You mightn't see where this fits when you first see it. But later on, when you've got other bits, you go, oh, yes, that makes a picture of a face there. And you might be able to see that every single bit fits. But you've got to be confident that at the end of the time you have a picture that paints the only thing at should paint is a picture of guilt. One of the things you've got to do is be very good at examination in chief, which is non-leading questions building a picture without leading the witness by the nose. Defense counsel. What you have to do is just say, well, say that picture of the face over there. I can pick out I can make doubts about the eyes and the nose. So can you be satisfied? It is the face of that person you're looking for? And it's about picking holes, knocking out one really important ingredient, an element of an offense, and you have an acquittal. So it's really a big cross-examination skills that matter for defense, whereas its examination in chief skills for the Crown, I don't know which is harder and which is easier, I think they both have their problems, but it's a good thing to be able to do both. I think it makes you a much more all round barrister. I've always liked constructing, I think possibly more, but I also enjoyed my defense work. But they are, I think, quite different skills.

Michael Green [00:21:42] That's interesting, isn't it, to hear the difference there. And as you explain it with the analogy of the jigsaw puzzle, the concepts are not that difficult. They're the doing of the of constructing the puzzle or pulling the puzzle apart may be difficult. But the concept in our head and mind listening, I can say, oh, yes, I now I do see how those roles play out in court.

Betty King QC [00:22:02] And I used to use that that type of analogy to explain to a jury the different roles that people have in the court. I'd say, you know, prosecutors have to do this. Defense counsel have to do this. So don't be surprised that they do things differently. And one of the other things greatest thing a defense counsel can do is catch a police officer telling a lie. Once you've done that, it's almost over for the crown.

Michael Green [00:22:24] There has to be a reasonable doubt.

Betty King QC [00:22:26] Well, juries just go, no, why did he lie? And it could be the most minor, silly lie that's not relevant. They're embarrassed about they've done something stupid and they'll just tell you something. And you can see a jury just turn away from fascinating. Fascinating to watch from the bench.

Michael Green [00:22:41] Well, we'll get to that. I'm interested to talk to you about that and about juries and their role and the role of the judge as well. So we might get there later.

Betty King QC [00:22:49] Oh, yes. Sorry.

Michael Green [00:22:50] No, no, it's it's very interesting stuff. But just following your career now, 1992 soon after you've taken Silk and become Queen's Counsel, you become

one of three members of the National Crime Authority. What is the National Crime Authority? What does it do? What role does it play in our criminal justice system?

Betty King QC [00:23:08] Well, it was sort of secret squirrel stuff in some ways. A bit like IBAC, but not, bit like the Crime Commission, so it was an Australia wide organization that had three members who were lawyers who conducted hearings. All the hearings were done in secret. We could subpoena anyone to come and give evidence. There was no privilege against self incrimination. So they were really intense, intense hearings in which we were trying to uncover organized crime to us. And this was all to assist prosecution authorities. So it was quite draconian in terms of the power we had. The appeals against us were pretty limited and it was an interesting experience because it made me realize that I perhaps, mightn't have been suited to judge because I loved it. I thought, oh, I can ask anything I want. No one can stop me. So I thought, that's not good for you. But I flew around Australia, basically Sydney, West Australia, Queensland, as well as Victoria, and it got disbanded or some years ago. And I think because the police I think we're a little unhappy that we weren't as responsive to their demands as... I was only there two and a half years and left, but it continued on for some time after that. But I think police were unhappy with the progress and it basically became the Australian Crime Commission, which gets itself into a bit of a spot of bother every so often with what they do

Michael Green [00:24:30] Just to pursue that. The Australian Crime Commission, the National Crime Authority, it concerns me as a citizen that a lot of our civil liberties started about 800 years ago with Magna Carta when the barons took some power away from the king of England. And from then until now, civil liberties have grown in the last, not in 92, so 30 odd years. It also seems to me that we have given up a lot of those civil liberties, the right to not incriminate yourself, possibly the right to be represented. Is that a concern to us as a community that we have given up civil liberties? And will we get them back?

Betty King QC [00:25:05] I think it should be a concern because we've given up quite a few. I did a paper on this some years ago about the right to silence and the right against self incrimination. And there were I came across 40, count them up. There were 42. This is back in 1993. There were 42 organizations that had the power to compel you to answer questions without the privilege against self incrimination, one of which was the banana board of Queensland. And I thought, yay! So things just quietly get done. And no one seems to realize what we lose at that time. And we we've lost quite a number of our liberties. We have IBAC the public hearings are interesting. I think sometimes you need them, sometimes you don't. The matter of compulsion is a problem. And my biggest problem I find in all of them is the fact that you're not allowed to tell anyone that you're attending these hearings. And that was the rule with the National Crime Authority as well, was an offense to tell anyone except a lawyer that you're appearing. So you couldn't tell your partner or children. And I just thought that was that's a really big difficulty for me.

Michael Green [00:26:15] With the prevalence of drugs in our society and the growth of terrorism, is it reasonable to give up civil liberties because of these the dangers? I mean, it's always a balancing act between freedom on the one hand and security on the other hand.

Betty King QC [00:26:29] Well we need to rethink drugs altogether. Yeah, it just this process we work through of total restriction just doesn't work. Just plain doesn't work. Jails are full of minor drug traffickers, people who are selling drugs to fund the addiction they have. And it just goes on and on. Very rarely do we catch the big ones. I've done some of the big ones, but it's a rare thing to catch anyone worthwhile. But just so you know for what

it is, it's a health issue, seriously, a health issue. We are losing people all the time to meth. Methamphetamine is just mind numbingly bad. Heroin, at least you should just put people to sleep. But methamphetamine makes them crazy and they do crazy things and they hurt people. We need to treat it as a health issue. It is terrorism. Different matter. Um, the problem is it's lone wolf terrorism is the really frightening one because there's nothing much you can do about it. There's always going to be a trade off in any community about civil liberties and crime and crime prevention. Biggest problem with terrorism is to know when to make a call, when the thoughts become actions, when the actions become dangerous. And for terrorism, they step in much earlier than they do in most crimes. Interesting concept about what you give up. As a community we're actually very patient and trusting actually of our authorities. We trust our our government surprisingly well. I think the pandemic's been the greatest example of the trust that people are putting government to a large degree people still trust the police force. They have some concerns about some of their actions, such as Gobbo, for example. But in all honesty, although it might trouble the community, I don't think it troubles them nearly as much as it troubles lawyers.

Michael Green [00:28:09] That would be my observation as well, lawyers are troubled by the trouble about the loss of civil liberties, but the community in general are more concerned maybe about security and safety and therefore not troubled.

Betty King QC [00:28:21] I think they're much more concerned about security and safety. But I think part of it is because we now have cameras, everyone's got a camera. So there's a particular type of newspaper that takes things like schoolyard fights that have happened since time immemorial. Now someone's got a camera and the next thing you know, it's on the front page of the Herald Sun as schoolyard bullying and fighting. And this has gone on forever. But they make people afraid. And I think there's been a real fear campaign about crime in our community. Crime in our community has not increased fact. If anything, it's got less. You know, I, I can tell you the murder rate has gone down. Percentage wise, enormously. But no one wants to hear that. But what they hear from the media is about all of crime. Crime is now news rather than information. It's the lead in every new service, first five pages of every newspaper, well, certain particular types of newspapers. And as a result, people think they are under attack and they're not statistically, you know, they're random acts happen, but they've always happened.

Michael Green [00:29:32] And always will.

Betty King QC [00:29:33] Yeah, hasn't got worse.

Michael Green [00:29:38] Betty, coming back to your career in the year 2000, you joined the County Court bench. How did that come about and what was it like being a judge? Was it did it require an entirely different mindset to being a barrister? Do you start with training wheels on and learn to be a judge?

Betty King QC [00:29:54] I think you do. Now, how it came about was I just, I got a phone call from a senior member of the bar who said just ringing on behalf of the attorney wants to know if you'd be interested in going to the County Court.

Michael Green [00:30:06] The attorney being the then attorney general of the state of Victoria,

Betty King QC [00:30:09] Rob Hulls. And I said, oh, let me think about it. Thought about it overnight. And I rang up and I said, Can I just say thanks but no thanks to which I got the what? Thanks, but no thanks. I'm too young.

Michael Green [00:30:22] Can I just break in? You say you're too young. Do you think there is a finite period for judges and they may burn out and therefore they can't go for a lengthy career as a judge?

Betty King QC [00:30:34] I think being a judge for too long is a terrible thing. It becomes a bit soul destroying to listen. To be the recipient of nonstop violence is difficult. And I always thought 10 years was about what people should do. If everyone gives 10 years, it's good. If you want to do more, you can. So I always thought sixty five is retirement age just when you can retire as a judge. So I thought 55 was a good time and if you wanted to do another five years, it gave you up to 15. But it became a choice then. I thought compulsory 15 years was too long.

Michael Green [00:31:11] So take you back. So you've knocked back the offer from Rob Hulls, our attorney general, to be a County Court judge. And yet you became one.

Betty King QC [00:31:18] Because he was apparently a lot more persistent than I expected. After I'd said no via this other process, he rang directly and said, why won't you do it? Well... And I went through my reasons, one of which was I thought I was too young. But the final straw was when he came to my chambers, he was the Attorney-General. He was very noticeable. I said, please, no, no, don't, I'll come up to you. And he said, no, no, I'm coming to your chambers. So once he walked into my chambers, I reckon 15 people came and knocked on the door to say if he really was there and that was it, because I was screwed from that point on, everyone assumed I was going to the court and I went, I can recall it. There was no introduction course. There was nothing like that. It was you turned up, they gave you robes and a wig and you went and sat it was announced on the Tuesday. I sat in a case on the Wednesday at ten o'clock in the morning, did appeals for a week. I said to Glen, I'd like three months in crime to find my feet as a judge because I haven't done this before. And he said, oh, yeah, that will be right. Anyway, a week after I was there, I was sent to do civil,

Michael Green [00:32:26] Which you had never done in your working life. Oh, sorry. In articles you did a little bit of civil?

Betty King QC [00:32:31] And I did a couple of I did some crash and bash when I was first at the bar and that was it for Civil. And I remember sitting there going, what am I doing? How does this work? And I got civil juries as well. So I'm about to impanel 12 and of course they're six. They have a different impaneling process. It was absolute, unmitigated chaos.

Michael Green [00:32:55] Did you have colleagues you could go to and ask about all this?

Betty King QC [00:32:58] I went to I went and knocked on the door of next door and I said, look, I'm in civil. How does it work? Oh, it's easy. Yeah, but how. And there were no books or hand outs about it. Now there's all that sort of stuff. But it was very funny. It was people just spent a lot of time laughing because they'd come into court. I'd say now, all right. So we've got to impanel a jury. How do we do that? What about how do we do it? Do I call their names what? It's so it was pretty funny. I did about three months of that and thought, there's nothing I can't do after this.

Michael Green [00:33:33] And then you stay on the County Court for five years, I assume, doing mainly criminal law

Betty King QC [00:33:39] Oh yes, after that three months, I indicated that I was not really happy doing civil and that I would prefer to do crime. And I think I indicated in a fairly forceful manner. And what I did was I've got a lot of long and complex trials. And once we moved to the new court and we had a new chief judge, Michael Rosen, and Michael gave me really good, interesting, complex work. As he said, he said I was one of the worker bee judges. I would just go to Court and work.

Michael Green [00:34:07] After five years in the County Court, you are appointed to the Supreme Court. That's not common. More typically, people go directly from being a practicing barrister and occasionally a solicitor onto the Supreme Court to move from County Court Supreme Court does happen sometimes, but it's not common. How did that come about?

[00:34:25] I got a phone call from the chief justice. I'm sorry. I got a phone call from the chief justice's associate asking me if I could make the chief justice, so I said to her can you tell me what chief justice wants to speak to me about? Oh, well, about possibly coming to the court. No, it's OK. They're not hung up on.. Jesus because, it wasn't what I expected. Um, I thought I was in trouble, if anything. And I wanted to know. Well, I was in trouble for which could have been anything. So I met with the chief and she said she'd been discussing it with Hulls and they would like me to come to the Supreme and I said to her "oh, I'm not sure I need to think about this". She said, well, why? And I said well, I was pretty unhappy when I first went to the County Court, I didn't you know, the transition from barrister to judge was awful. And it was a strange, pretty blokey place the County when I went. You know, the first two years were pretty miserable. But then along came mates and people I knew more, my vintage, et cetera. So it changed and the type of person appointed but was also changing. And I'd got to be very happy there. So I actually quite liked being in the County. I thought, oh, I'm not sure if I like the Supreme. Yeah, I thought it could be pretty stuffy in terms of it's a much different type of building. We'd moved into the new building, which is really good for people mixing in and getting that camaraderie of the bar going in the county. The Supreme is vast, big rooms. And I thought, I'm not sure and I didn't want to be unhappy again. I don't enjoy being miserable in my work. My work was important, so I wanted it to be enjoyable. So anyway, I agonized over that and I was due to fly out holidays. So I've flown for twenty four hours, arrived and this is what's happening here and gone out and drunk with, with them for another fifteen hours I think. And at the end of that decided. Yes, I'll go. So then the attorney rang me in New York and I can remember this because he rang me and he started singing New York, New York to me. OK, this is the most unusual question, New York, New York so he sang that and then said, so are you coming or not? And yes, I am. Most unusual way of going to the Supreme.

Michael Green [00:36:47] Most unusual. Now, you started, the Supreme Court I think was a pretty low key sort of a trial, one that didn't attract any attention?

Betty King QC [00:36:57] Well, I day I started in the Supreme Court, the chief justice set me down that same process that Glen Waldren did, you know what would you like and all of this? He said, now, your position is an additional position. It's been created and it's been created to deal with the ganglands. Are you happy to do all the Carl Williams matters and take control of that? And I went. Oh, yeah. Um, so that was day one. And I went, oh, hell. So it was it was bit surprising.

Michael Green [00:37:28] In walking straight into a gangland trial, you made some suppression orders. Could you explain to us how suppression orders operate and why you thought it was necessary to make those orders?

Betty King QC [00:37:40] Okay, if I can take you back to 2005. Carl Williams had been on bail. His wife was on bail, but he was now on remand, charged with, I think, five murders, one conspiracy to murder, no maybe six murders, one conspiracy to murder, two attempted murders and drug trafficking. His wife was on bail. His father was on bail charges relating to similar matters. They were on the news, I would say, every night, either on A Current Affair or news service, talking about Carl and how important he was and how he's innocent and was just nonstop media about this family. So when I've come in, I went on the first application I would make if I was a lawyer. Acting for Carl Williams was a permanent stay of the trial because of the publicity, because he can't get a fair trial with this sort of publicity. So the best idea, I thought, was to have a suppression order, which is stop media about the Williams family. His permanent presence just kept him in the public eye non stop. So why I issued the suppression order against him and any reporting relating to him, his wife, his father, his mother, his child, I don't think I included the dog, but I probably would have if I could have. Full stop no reporting. Give the public a breathing space, let some of this fade before we try and get to a jury. They appealed that to the Court of Appeal and they said, yes, I've got a bit wide, which I had. But yeah, I'm not surprised considering I've been there about three and a half seconds. But they upheld basically the suppression order just reduced the the width of it. And as a result, we had no media about Carl Williams and his family for months.

Michael Green [00:39:31] If you're talking about how much media was involved with Carl Williams and all of those gangland trials with that spotlight on high profile trials like that, does that make the Supreme Court a different place in which to be a judge from the County Court?

Betty King QC [00:39:45] It's an entirely different place from the County Court anyway, the County Court is not a court of record, so that might not mean much to people. But what it means is that as a Supreme Court judge, everything you do is, every word you utter.

Michael Green [00:40:01] Literally.

Betty King QC [00:40:01] In a courtroom, every single word you utter in a courtroom is recorded and capable of being reviewed at any time by the Court of Appeal. So you have to be very careful. You have to think carefully. You can't be any any flippant, offhand comments. So it makes you gives you great pause for thought in terms of... I got used to it when I first started. It was pretty intimidating because I was used to running trials and I'd run them in a certain manner. And all of a sudden I realized, no, I had to perhaps just be more careful with my words. So that was that was interesting. And also it was so much more high profile. And I hadn't expected that there would be any profile on judges because we don't normally have profiles on judges. So that was pretty worrying to me that we actually had profiles on judges. But I figured, OK, I'm not doing anything wrong. I don't do anything wrong in my private life, so I'll be fine. But it was a different place. So you go in there, you've got robes with fur and and you were sitting about 20 feet off the ground, it seems, king of the world. Basically, it makes you aware every second you sit in that courtroom that you are doing something that is very important

Michael Green [00:41:18] And central to the rule of law in our society.

Betty King QC [00:41:21] Yeah, yeah.

Michael Green [00:41:22] Which is one of the planks underpinning our society.

Betty King QC [00:41:25] Yes, it. And you're conscious of it I think every second you spend in that courtroom, you need to be careful. You need to be thoughtful. You need to be thorough and you need to be fair.

Voiceover [00:41:40] William and Lonsdale is brought to you by Greens list, one of the leading multidisciplinary barristers lists in Australia, Greens list believe in promoting conversation around the ideas and issues that shape not only our legal system but our wider community.

Michael Green [00:41:57] Can I get back to the topic of juries? You said that as a barrister, you need to charm a jury so they will come with you. Yeah, as a judge, how do you work with a jury?

Betty King QC [00:42:08] Much the same. It was just much the same way. One of the things you do as a judge is you're giving the jury instructions, which is quite different to counsel who makes submissions and ask them to do things, you know, find that, agree with this, as a judge. You direct them to do things. Now, I have to say, I always think about what I do if I was on a jury, well, you need to explain to me why I'm doing something. So I just took the view, even though it's not in any of the charge books, et cetera, that I would explain to them why I'm giving them directions to do something, for example, with one of the directions is you must not access the Internet and look up anything to do with this case on the Internet. So I'd say to them, I'm going to ask you to do this. And the reason is because what you've done is just taken an oath that you will decide this case on the evidence and evidence is only ever in this courtroom. So if you go and look up something on the Internet about this case, you've got secret evidence that none of us know of it. And it might be right. Might be wrong. No idea. But no one else knows what it is you've read. So you're not going to decide the case according to your oath, when this is over, look up anything you like, but can't do it now because you'd be breaking that oath that you've just given. And I used to talk to them very directly and I'd wait until I saw them nodding in agreement before I gave up the point I needed to get feedback that they understood what it was I was talking about.

Michael Green [00:43:32] Did you ever get the feeling that a jury didn't understand either what you were talking about or what counsel was doing? Did you ever have doubts about this jury may not really have picked up the essence of what's happening here?

Betty King QC [00:43:44] You would get that feeling sometimes, occasionally. So when I did get that feeling, I had to stop what was happening and start explaining it to them, because I think a jury must decide upon material they understand. Sometimes I stop counsel and say that question is too confusing for the witness and for the jury, make it simple

Michael Green [00:44:05] To a person, Betty, every criminal lawyer I've ever spoken to has great faith in the jury system. And you do, too.

Betty King QC [00:44:12] Oh, yeah.

Michael Green [00:44:13] Why is this? And with trials becoming longer and more complicated now, I mean, when you started a long trial was three weeks. Now trials can go for years. With them becoming more complicated like that. Might there be trials which are better suited to have a judge alone to deal with the complexity of the issues rather than have a jury?

Betty King QC [00:44:32] I'm such a such a supporter of juries and such an opponent of judge alone. A couple of reasons. I think. First of all, if you ask Judge alone to do it, you'll kill the judges. You can't expect someone to just shoulder every decision in respect of someone's guilt or otherwise at this sort of level. The other juries bring what we want, which is the attitude of the community. So if you can't satisfy the community that someone's guilty, then that's how it should be. It shouldn't be satisfy one person. But if you can't satisfy 12 members of the community that someone's guilty of a crime, then they deserve not to be. And it's shouldering and determining other things, such as did this person have the intent? They look at all the surroundings of all the circumstances and go and they discuss it and debate it. They reflect what the community actually thinks out there. That's what justice supposed to be. It's supposed to reflect the community. I don't think a judge alone does reflect the community in the same way they look at it infinitely as a legal issue, a legal problem, rather than what do we as a community think of this, of these actions with these thoughts so much better if we have it decided by the community.

Michael Green [00:45:44] Thank you. That's very interesting and very persuasive. An interesting, and not to say intriguing topic, Betty, that we haven't covered is the question of sentencing. How does a judge go about making a sentence? What sort of gravity responsibility rests upon a judge in sentencing somebody? And how do you cope with that?

Betty King QC [00:46:03] Sentencing is the hardest thing that any judge does. Everyone who is a judge will tell you that you have principles that guide you. They're contained in the Sentencing Act. And they're, yeah, really set out quite, quite clearly. But it's all individual. We don't have an American grid system, which is, you know, you go down one column and across the other. This is what we call intuitive synthesis. It is this is what the crime carries. And you got to work out where this crime fits in terms of severity. So it seems very hard to imagine, but there are bad murders and worse murders and you've got to have an ability to fit within those ranges. Not everyone gets life imprisonment not to be released. That's for the worst example of a case. And for someone who's committed a murder, that is just a murder, as in just fell over the line that's possibly the less serious end of it, so you have great variety. One of the things that always intrigued me was how under sentenced people were for what they refer to as domestic murders, and that basically is usually partners, female partners being killed by male partners,.

Michael Green [00:47:14] And that is the majority of murders in our society?

Betty King QC [00:47:17] Majority of murders are domestic murders. As a judge, we would sit there and if you heard some news, you would immediately just think, where is the partner. So often, sometimes it turns out not to be, but they are the rare cases. The death of a woman is almost invariably down to the hands of a partner. And they've been notoriously, in my view, under sentence for a long time. That changed about, uh, 10 to 15 years ago. I refused to consider the tariff, as it was called. The ordinary sentence applied to domestic murder because it was a less serious version of murder. I didn't think it was. I thought it was a far more serious version. A woman is home in her own home, should be feeling safe and secure. She's killed by someone in those circumstances. I think that's

aggravating rather than mitigating. So I got rolled by the Court of Appeal a few times on my sentences. But over time, the sentences for domestic murders increased. This is how our system does change sentences, is that the court looks at it and they look at the sentencing that's been imposed. And if someone does something that's higher than normal, they look at why and the reasons, because we have to sentencing. We have to justify every single thing we do. You might get five seconds of sentence on the news, but would take me usually an hour to read out my sentence and all the reasons how I come to the decisions, all those things. It's it can sway a court of appeal eventually that in fact, that is an appropriate sentence. And over time, the Court of Appeal will incrementally increase what is the appropriate range. And that's what's happened with domestic murders. It happened with manslaughter cases. They were very much possibly under sentenced, could be a good description. And over a period of time, the Court of Appeal just increased via their judgments, the appropriate range for those sentences and the courts respond. We are guided by precedent to a degree, but we are not hidebound by it, as in each case must be considered on the circumstances of that case and that individual.

Michael Green [00:49:25] And we're seeing there our common law system work the way it's meant to work.

Betty King QC [00:49:30] Yes, yes. That there be the Court of Appeal. Look at it and look at what the community thinks about the sentences and about the standards. And via that, they will say that either a sentence or a range of sentences need to increase or decrease depending upon what they perceive to be rightly so community attitudes towards this particular type of crime, such as domestic murder.

Michael Green [00:49:54] Would I be right in saying, therefore, that you see the law, the criminal justice system as the servant of our community?

Betty King QC [00:50:03] Oh, I, I really do. I think the community is the thing that matters most. And I do get very annoyed with newspapers or commentary suggesting that, you know, these are judges imposing their views on the community, what I think they're trying to do is certainly what I did is try and reflect what the community thinks about these things, not what the Herald Sun thinks about it, but what the community actually thinks about it.

Michael Green [00:50:35] You have got another life which does involve the law in some way.

Betty King QC [00:50:39] Little bit, but not much

Michael Green [00:50:41] With the voluntary assisted dying review board.

Betty King QC [00:50:43] Yes.

Michael Green [00:50:44] A relatively new statutory board here in Victoria, which plays a very important part, again, in the life of our community. Could you explain it to us a bit what the role of the board is?

Betty King QC [00:50:56] What we are we're a board of 13 made up by clinicians. So palliative care specialists and ecologists, motor neuron intensivists, pharmacists, nurses, laypeople, and we are the voluntary assisted dying. So as you will recall, two years ago, the legislation passed. And since then we've been we've had a year, year and a half,

actually, almost of assisted dying in Victoria as the board. We review each of the decisions to make sure that what was done was legal and compliant.

Michael Green [00:51:33] Is this after

Betty King QC [00:51:33] After the event yes

Michael Green [00:51:35] Is that I mean, does that make sense?

Betty King QC [00:51:37] That's what the government decided.

Michael Green [00:51:39] It seems to me that if if you make a decision that it wasn't compliant...

Betty King QC [00:51:44] Well, the decision to issue a voluntary assisted dying permit resides with the secretary of the Department of Health and Human Services. What we do as the board is that we run, we have a secretariat who receives all of the steps in the process. Those steps are examined by the secretariat on our behalf. Issues are escalated to me. If there is something that is troubling in relation to it, advice is then given to the medical practitioner that perhaps this is not compliant and they can accept it or reject it, of course. But if we think it's non-compliant and they persist, that will often be the view of the secretary as well. So it can be rejected. Usually the doctors or practitioners will make an amendment to make it more in line with what we perceive to be the correct process.

Michael Green [00:52:36] You've had a marvelous career of service to our community and you continue that now in your retirement. And on behalf of all of us, I thank you. It has been fascinating to talk to you this morning and hear about your life in the law. Thank you very much.

Betty King QC [00:52:47] Thank you.

Voiceover [00:52:53] Show notes from today's episode can be found at [Greenslist.com.au/podcast](https://greenslist.com.au/podcast), there you'll find links to things talked about in this episode, a transcript of the show and some wonderful photos of our guests. If you're enjoying Lives in the Law, please tell your networks and subscribe, rate and review the show. It really helps others find out about us. Your host is former lawyer and Greens List clerk Michael Green. Our show is produced by me, Catherine Green, mixed and mastered by Windmill Audio and recorded by Alex Macfarlane, who also wrote and performed all the music for the series. With covid restrictions limiting numbers inside the County Court of Victoria. We are currently recording our shows at Owen Dixon Chambers on the corner of William and Lonsdale Streets in our beautiful city of Melbourne. We acknowledge The Wurundjeri People of the Kulin Nation as the traditional custodians of this land and pay our respect to their elders past and present. There is no doubt that conversations about justice have been taking place on this land for thousands of years, and we are privileged to continue the discussion here today.