



SUPREME COURT  
OF QUEENSLAND

Bar Practice Course  
Final Address  
Thursday, 5 October 2023

Chief Justice Helen Bowskill

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**10 THINGS I ... (AM GOING TO LOVE) ABOUT YOU ...  
AS NEW COUNSEL<sup>1</sup>**

These are not in any particular order. And I am not including the things that are a given – honesty, integrity, diligence, learning.

First, I will love it if you **always read your brief**, cover to cover – **every document**. The brief is important. For this address, my brief was to speak for about 20 to 30 minutes, and keep it reasonably light, given that it is at the end of an intense course, you are all tired, and I'm standing between you and your final certificate ... and a celebratory drink. So I've taken that on board. I toyed with the idea of a paper on indefeasibility, but as that was not consistent with my instructions, and was not going to be a persuasive point, I exercised judgment and discarded that. But on a serious note, you will be a far better prepared and more persuasive advocate if you are completely across every detail of your brief; you will be surprised what might be lurking in there – favourable or unfavourable. Face your fears. By that I mean – face those unfavourable or weaker points – deal with them head on. Don't leave them as fuel for your opponent or to diminish your witnesses' evidence. It is disconcerting to first become aware of it, while your star witness is being cross-examined; or perhaps, even worse, when the judgment is delivered.

Next, I will love it if you remember that one of the key elements of the rule of law is **the ability to access justice** – and if you do whatever you can to facilitate that, particularly for the less fortunate and vulnerable in our society. As you know, you owe a paramount duty to the courts and to the administration of justice; you also have a role to play in encouraging the public to have confidence in the legal profession and the justice system. The Barristers Rules start with a statement of purpose, which includes

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<sup>1</sup> Actually, there are more like 15 – but that didn't suit my choice of title, so ...

to provide common and enforceable rules and standards which require barristers (a) to be completely independent in conduct and in professional standing as sole practitioners; and (b) to acknowledge a public obligation based on the paramount need for access to justice to act for any client in cases within their field of practice.

There are really three parts to this:

- (1) Embody the **cab rank rule** – that is, take a brief that is offered to you, if it is within your capacity, skill and experience; you are available; and the fee is acceptable. Don't get a name for only acting for a particular kind of party, or side of a dispute – the independence and objectivity of the barrister is only enhanced if you have experience of acting for all sides – at different times, of course. Also, try to be as expansive as you can, in terms of the work that you do; rather than practising in only one niche area. I realise specialisation is to some extent inevitable these days; but that is not inconsistent with also trying to do a range of work, so that you maintain skills such as intrinsic understanding of the rules of evidence, practice and procedure. Perhaps this will involve you **going outside your comfort zone sometimes** – there's nothing wrong with that, in fact it is a good thing.
- (2) Relatedly, keep your **fees sensible**: perhaps this is a message for your future selves, rather than now – because of course as you start out you will do this. But I ask you to keep it in mind even as you become more established. Today there are more lawyers than ever before, but it has never been harder for ordinary people to obtain the services of a lawyer. How does that facilitate the administration or justice, or access to justice? The answer is easy – it doesn't.

And

- (3) Where you can, do some **pro bono work**. Community legal centres, and organisations such as LawRight will gladly have you as a volunteer. The Courts will gladly welcome you acting in this capacity.

I will love it if you do all these things.

Coming back to this paramount duty that you owe – to the court and to the administration of justice – it makes sense, given that important relationship, that you **participate in the life of the court**. Please come along to ceremonial sittings of the court, and other court events. We would love to see you there, and it is very important to the judges and to the court as an institution. It can also be a great source of information, for example, if you have to appear before a judge, you might learn a thing or two, that could help your advocacy style, if you heard the speeches made about and by them when they were sworn in. It is also a social occasion – a timely opportunity to catch up with colleagues and friends. That is important too as the life of a barrister can be quite isolating and lonely at times.

On that note, also, **participate in your professional association** – the Bar Association. Obviously you will attend the seminars and educational events that you must, to get your CPD points. But don't just do the bare minimum; make the most of the many excellent lectures that are on offer. It is a chance to learn, but also to meet

others in the profession, including the judges. And be proactive and get involved where you can in the work of the various committees of the Bar Association. There is a great deal of satisfaction and fulfilment, professional and personal, to be had from getting involved in broader matters affecting our society and our profession; and the work of the committees is extremely worthwhile and valuable.

And more generally, resist the temptation, if it exists, to work from home. **Come into your chambers**, be part of that wonderful collegiate atmosphere – take advantage of the camaraderie, the companionship, support and cooperation that you can share with your colleagues. I completely understand the need for work flexibility and endorse the idea of sharing rooms, and some combination of working in chambers and at home. But if you are rarely coming into your chambers, or only coming in when you have to attend a conference, mediation or court, you may be missing out on some of the most significant incidental interactions that take place there, which help you to learn, improve, recover and discover. Independence is the hallmark of a barrister's practice of the law. Isolation does not need to be.

Coming back to your day jobs – I am going to love it if you demonstrate **excellence, diligence and lateral thinking** in your approach to legal problems. Make it a badge of pride that you have thoroughly researched the particular point of law concerned – not with a view to giving the court 40 pages of submissions about it – please don't do that – but rather so that you can present the argument with the precision of a surgeon's scalpel, knowing that if there is an authority for the point, you have found it. This might involve going further afield than Queensland for cases – is there something in the Victorian, New South Wales or Western Australian Court of Appeal on the point, for example? Or it might involve delving into the legislative history of a provision. Whatever it takes. Think laterally. This is hopefully why you have all chosen to undertake this course, leading to practice as a barrister – the freedom, released from the shackles of billable hours, to really immerse yourself in a legal problem, with a view to providing the best answer to it that you can. If you don't do this, I will when I write the judgment – but I am going to be much more enamoured with your performance as an advocate, if it is apparent to me that you have done your absolute best to provide me, the judge, with as much assistance as you possibly can.

But having done this excellent work, be discerning about what ends up in your written submissions – don't refer to 10 cases when one will do. And don't just cut and paste 10 paragraphs from the judgment. Try to think critically and elicit the relevant principle in a succinct way. Of course at times it is necessary, and persuasive, to include an extended passage from the judgment, but most times the better approach is to carefully extract the principle that emerges from the leading authority you rely on.

Here's a hard one – but I'm setting you the challenge – I am going to love it if you show **judgment and insight** about the points you run.... and don't run. This takes confidence and sheer hard work. If you've done the work, you should know what the good point(s) are – focus on those, rather than throwing the kitchen sink at the judge. Have the courage to let the weak points go. I know this is hard – and lots of experienced counsel, even silks, don't do it. So I'm asking a lot of you, but there you go, I am not going to curtail you with low expectations.

And when you give me only your best point or points, I am going to love it if you **make it simple**. In a paper presented to the Bar Care Committee Seminar in Brisbane in March 2019, Pat Keane, former justice of the High Court, said:

“One of the most misleading clichés which you will hear about advocacy is the phrase: ‘Keep it simple, stupid’. The reason for having [advocates] at all is that it is not simple. The task is not to keep it simple; **but to make it simple**. And that is hard. But it is your job.”

Remember your audience is a busy judicial officer whose only concern is deciding the case fairly, efficiently and correctly – they are looking to you for help; they are not interested in flashy tricks, or academic debates about things that don’t really matter to the outcome of the case.

Another thing I will love about you is if you remember we have this thing called the **Human Rights Act**. That might seem like an odd thing for me to say in this context, but I was motivated to include it after listening to a presentation given at a conference in Cairns in May this year, by the Human Rights Commissioner, Mr Scott McDougall. He made the point that lawyers have possibly the most critical role to play in breathing life into the *Human Rights Act*, by developing our human rights jurisprudence; and that the quality of human rights is only as strong as the profession that is willing to stand up for them. By reference to some decisions, the Commissioner identified ways in which human rights can arise in Queensland legal proceedings, including: (1) piggy back proceedings (that is, where the issues under the HRA are “piggybacked” onto another proceeding, such as a judicial review proceeding); (2) in the context of statutory interpretation, giving effect to s 48 of the Act, which requires that all statutory provisions must, to the extent that is consistent with their purpose, be interpreted in a way that is compatible with human rights; and (3) by direct application of the Act, for example, in relation to the exercise of the Supreme Court’s power to make orders under the *Dangerous Prisoners (Sexual Offenders) Act*. As the Commissioner said, “[t]he need for a strong human rights culture is becoming more important as other accountability mechanisms and normative rules of society are starting to fray”.

Moving on, I will love it if you make a home for yourself on the high moral ground – not in the sense of being high and mighty, but in terms of always holding yourself to a **high standard of professional, ethical and interpersonal conduct**. In this regard, I am speaking about showing courtesy and respect to your opponents, to instructing solicitors (yours or your opponents’), to clients and witnesses, and judicial officers and court staff. This includes avoiding belittling or sarcastic language in your written submissions – or if you are settling letters for your instructing solicitors – remembering that those letters often end up before the judge. Arrogance is an empty vessel – indeed, it has been said that “[a]rrogance is the way poor advocates compensate for lack of skill or experience.”<sup>2</sup> Humility is a far better characteristic to strive for – and as Justice Lincoln Crowley reminded us, when he was sworn in as a judge, humility is not thinking less of yourself but thinking of yourself less.

And I cannot say anything about conduct without also encouraging you to be **vigilant** about doing what you can to try turn the tide on the appalling statistics that bedevil the

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<sup>2</sup> T Mauet and L McCrimmon, *Fundamentals of Trial Technique* (Thomson Reuters, 4<sup>th</sup> ed, 2018), p 317.

legal profession, in terms of **sexual harassment and bullying in the legal profession**. I am asking you to be conscious of your own conduct, but also to have the courage to call out inappropriate conduct when you observe it – or at least not passively demonstrate your acceptance of it. Surely, we can change the culture, if we all move in that direction. I certainly think it is worth trying.

Some time last year, there was an article in the Weekend Australian magazine about Dr Nikki Stamp, a heart surgeon. She told the story of her first day in the operating theatre, the wonder of holding a human heart in a patient's open chest for the first time; and of the older male surgeon in charge saying to her, "If I accidentally grope you, I'm not sorry"; her response was "If you grope me, you'd better run". What a great comeback; but what an absolute shame, in the literal sense of the word, that she had to do that. She said that was the first of what would become frequent sexist and harassing comments directed at her. She survived, stayed in the profession and is part of a group of people working assiduously to change the culture in the medical profession. We have to do that as well.

In the report from the 2019 International Bar Association's survey on bullying and sexual harassment in the legal profession, reference is made to the number of men who reported having witnessed instances of sexual harassment, which was higher than the number of women. It was suggested this may be because women have become desensitised to low-severity sexual harassment. That observation struck a chord. I have had conversations with women of my age and older, and we say exactly that – we just got so used to the jokes and comments, they no longer had any impact. Younger women and men react differently – and rightly so. It's a bit like the "boys will be boys" comment, in the context of violence against women. If you let what seems like a benign comment go, then as a society we are leaving space for the conduct that flows from that. Which we simply cannot do. Sexual harassment is incredibly damaging to the victims of it, leading talented clever people to leave the profession. But it is also corrosive to the legal profession and the administration of justice as whole. How can we ask the public to have confidence in the system, if we as participants in it cannot behave respectfully and appropriately? At a broader level, there is a great deal of focus on this issue, and work being done. We need to keep talking about it, and calling it out; enabling people to make complaints and ensuring complaints are dealt with properly. The increasing diversity within the profession, and the judiciary, will also serve to address this.

In this context, it must be acknowledged that judicial conduct is also an important issue. There has been some organisational progress in recent years – for example, there are now judicial conduct policies with BAQ, QLS and the DPP, and there is a Supreme Court judges' policy on workplace conduct, adopted in May last year (mirroring the High Court's policy).

I appeared before my fair share of grumpy judges; so I can relate to how frustrating it can be. Although, as with most things in life, it can help to look at things from another person's perspective. Judges are human beings too – with their own stressors (reserved judgments; busy court lists etc). What they want is help, to identify the issues and decide the case fairly and efficiently. The most common thing judges say, when talking about the people who appear – which we do – is not "what a fabulous advocate's flourish she had", but how helpful they were, in terms of their submissions

and the manner in which they presented their client's case; whether they demonstrated good insight and judgment about the points that were run. When this is absent, judicial frustration will appear. But rudeness, sarcasm and personal attacks are another thing altogether and are not to be tolerated.

And the last thing that is on my list of what I will love about you, as new counsel, is that you **take care of yourselves**, by looking after your physical health and your mental health and wellbeing. A key theme that runs through the research data in relation to the health and wellbeing of lawyers concerns organisational responsibility. But as self-employed barristers, you will be the main "organisation". I say "main" because your instructing solicitors, clients and the courts/judicial officers are also part of the picture. But you are the boss of the work you do and how you do it. That can of course be good and bad: autonomy is one of the main attractions to being a barrister. Interestingly, "autonomy" is also one of the three "basic psychological needs" of all human beings – the other two being competence and relatedness.

Wellbeing is not all about fruit bowls and yoga, as the saying goes – you may have to make structural changes to the way you conduct your business. That might involve taking on less work; or taking on a different type of work. It may mean you need to activate the metaphorical "no" button at times (or buy yourself a real one); hone your skills in time management; and practice "pragmatic perfectionism".

As for the "no" button, you will have heard about the "barranoia" that plagues counsel: but the reality is that you will not lose work if you say no – on the contrary, instructing solicitors will respect you for it and be more inclined to approach you on another occasion (as opposed to being frustrated, when you've taken a brief that you did not really have time for, and then let them or the client down). There is an elegant phrase that reflects this: "less, but better". It is attributed to the great stoic philosopher, Marcus Aurelius; and also to Dieter Rams, the industrial designer behind the company Braun. I was incidentally reminded of it when practising some work avoidance online shopping. So that made me feel better about that sojourn.

And at the risk of hypocrisy in that regard – because I am at times an excellent candidate for the work-avoidance Olympics – in addition to general organisational skills, time management is about making efficient use of ordinary working hours, so that you don't need to eat into the weekends. It's a really bad habit to get into – having wasted time during the week, to say "oh well I'll come in on Sunday to do it". Try to make Sundays the exception – only for emergencies. Maybe come in an hour earlier during the week; or don't go out for coffee mid-morning. Work hard during work hours; and try to keep the weekends for other fun things.

And what is this thing I call pragmatic perfectionism? Perfectionism can be a great strength – but not if it becomes paralysing. There's a great saying: "perfect is good; done is better".

Wellbeing also involves, quite simply, being kind to yourself. The job you are about to embark on is very stressful. There's a reason this kind of stress can impact poorly on us – another of the three basic psychological needs is "competence", which refers to our need to feel capable, confident and effective in relation to achieving desired outcomes as opposed to inept, self-doubting or ill-equipped.

Everyone has “bad barrister days”. But as Pat Keane said, in that same talk from March 2019 that I referred to earlier, “they will not always be your fault: 100 per cent of cases that proceed to judgment have a loser”.

There are not many opportunities for feedback in our jobs (barristers and judges). If you are beating yourself up about a “bad barrister” day, you might be being too hard on yourself. Of course, there is a place for honest and reasonable self-reflection, if you legitimately messed something up, or missed something. Perhaps you could do better next time. But be kind to yourself; learn from it, forgive yourself, and move on.

And, circling back to one of my earlier points, it is very important to talk to your friends and colleagues about these things – debrief; have a laugh; go for a walk to shake it off. That’s one of the fabulous things about the Bar – the camaraderie, that ability to talk to someone who understands what you’re going through. This picks up the third of the basic psychological needs – “relatedness” – which refers to our need to experience intimacy and genuine connection with others, as opposed to suffering from social exclusion and isolation.

Well there you have it, for what it is worth, the 10 (ish) things I am going to love about you as new counsel. I congratulate you on completing the Bar Practice Course, wish you every success as you embark on your careers as barristers, and look forward to seeing you appearing in court.

And as the late Heath Ledger said,<sup>3</sup> “Don't let anyone ever make you feel like you don't deserve what you want. Go for it.”

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<sup>3</sup> In the classic 1999 film “10 Things I Hate About You”.