**William & Lonsdale – Lives in the Law**

**Episode 29. Sally Nicholes interviewed by Michael Green.**

**Presenter:** This is William and Lonsdale, a podcast about the legal ecosystem in

Victoria and the fascinating people and stories that make it tick. This week, your host

Michael Green speaks with Sally Nicholes, founder and managing partner at Nicholes

Family Lawyers. Sally has worked on some extraordinary cases throughout her career,

including a ground-breaking matter involving sperm donor rights and an international

kidnapping case that she led as an articled clerk and first year solicitor. When Sally began

her own firm, pro bono work was central to her vision, to the extent that she had it written

into the charter, and this passion certainly came to the fore when she was a guest on the

Jon Faine radio show.

**Sally Nicholes**: Well, Jon Faine would have me on occasionally when his regular lawyer

wasn't available. And I would take calls. And I really enjoyed taking those calls from

vulnerable people, people with family law questions quite spontaneously. And one really

gripped me, and it was a lady who explained that she'd been the victim of domestic violence,

quite significant violence, that she was undergoing cancer treatment. And as a result, she

had, when she was assaulted, her bones had broken. And I do recall her telling me her

pelvis, for example, had been shattered. And it was just such an awful story. But she spoke

passionately about her children as all people do at the end of the day, not feeling sorry for

herself. But she said her concern was the legal advice she had been given by two solicitors

whichwas that the father, or the perpetrator that she alleged, would actually have the

children come to live with him when she died, and she was terminal. And she was frightened

and that advice just didn't seem right to her. But she no longer had any money or funds to

fight this. And I actually remember catching my breath because if what she said was true

(and she appeared authentic and I of course, supported her), and I said, look, what you're

saying - I've actually sadly hada couple of cases - is not right. Parents don't inherit children

by survivorship, that if there is a more adequate person to look after your children once you

have gone, the court will absolutely be motivated to look at a proposal where they're not

exposed to a perpetrator who's going to be potentially violent to them, who's been so

shockingly violent to you. I remember looking at Jon. He looked very sad and we both did.

And I motioned to him and said:I'll help her. And that wasn't my role. And we had a bit of

sign language going on between us. So, we talked offline. And having met this lady, we

acted for her on a pro bono basis, and we were successful. Her sister was granted joint

parental responsibility with her for the children, and she did come and talk to our staff about

how she was in remission, which she was crediting to her relief at that time. But it just made

such a difference to her life. And why I wanted her to come and talk to my staff was I wanted

them to really remember why they became a lawyer and that we actually can…. if we impact

on one life, it's a good thing.

**Michael Green**: Good morning to Sally Nicholes, who is our guest this morning in Lives in

the Law. Sally, thank you very much for coming in.

**Sally Nicholes**: Oh, it's my absolute pleasure, Michael.

**Michael Green**: So, Sally, let's go back to the start. Looking back over your life,

professionally and growing up, there is a theme of great passion and tenacity and

determination, when you see injustice or you see unfairness. Did this start in your

childhood?

**Sally Nicholes**: It certainly did, Michael, and I’ve thought about it and reflected on

this quite a bit. My parents were advocates, from a very early age, for children, for example,

with disabilities. And my dad often would talk to me about his work at the Nepean Special

School, as it was called back then, and talk about what impact having a child with

disabilities had on a family, for example. And he really was able to talk quite passionately

about seeing the world through those children's eyes. And he'd been given an opportunity

to study overseas through Rotary. He'd been given a scholarship. So, Mum and Dad were

very passionate about giving back. We're so grateful for that chance in life to live in the

States, for him to get a Masters in Special Education as it was back then. And so, we

would be handing out Staminadeat big runs and fundraisers, and they were very

community minded. So, I think that that really was something we just did. It wasn't

something that we were asked to do. We were expected to go along with them and give

back. We were lucky.

**Michael Green**: Lucky to have parents like that. This passion, tenacity,

determination took a personal bent, when you were in Year 11, and you had a teacher

who gave you a report which you thought was unfair.

**Sally Nicholes:** Oh, I'd forgotten about that story. Yes, I had a religious

education teacher, and I think that's somewhat where my definition of Christianity

became I think a little bit more subjective, perhaps, than that teacher's version. She gave

me a report card saying that I wouldn't listen to other people's opinions so for my attitude - I

got a zero out of ten, so I got a B, and that was a bit staggering for me because I was used

to getting an A and I was a bit competitive about it. But what I did is I actually held it up

and presented it to the rest of the class, and I asked their honest opinion about whether

they thought that my attitude was anything along the lines of this, how this teacher had

described, and did I listen to people, and they all chorused - I don't think they were

necessarily all my friends - they all said, that's unfair. That's not right. And I think what had

happened between me and this particular teacher is that she had actually made a racist

observation in relation to Indigenous people. I think I read Sally Morgan's story about her

search for identity, a powerful indigenous woman, and it was before the Stolen Generation

had really taken rise, as we know now, in the newspapers. And we were being shown a

picture of children being removed, Indigenous children, and taken into white families. And

this teacher was endorsing that. And I had stood up and said, this is wrong. And I think

what you're saying is racist. So, I learned to be more diplomatic, but I did. I called her on

it and she wasn't happy with me at all.

**Michael Green**: It's an amazingly courageous thing for a Year 11 student to do,

particularly in that context of a private school and children at that time being obedient

and being respectful. That was a gutsy call.

**Sally Nicholes**: It is in a way, but I just felt it was just a natural thing to do. And I

was actually reflecting with a friend, a judge, recently, that there was a young

lady who was being bullied because she had a moustache. So, we were at a very exclusive

private girls’ school. And this girl was being victimized and was actually huddling in a

corner because she was being taunted about this moustache. And I told the girls to rack

off in colourful language. And I went and reported it. And I was very unpopular with my

class for a little while, and they soon forgot about it and moved on to some other drama. But

I remember the stares of oh, just, I was really reviled at that time. They were not happy with

me at all in terms of having done that, but it was wrong, and I was tall and I was strong and

I just didn't care if I was unpopular for a little while for doing it because it was just wrong.

**Michael Green**: You go to Melbourne University and do Law and Arts. Had you

always wanted to do Law? Had Law been something on your radar and you'd had an

ambition to be a lawyer? Or did you take it because it was that you had the marks for it?

**Sally Nicholes**: I had the marks for it. And I think it was probably that competitive edge of

thinking, I wanted to do something that was worthy of the results. I had

looked at journalism, but my work experience showed me that you were edited quite

strongly in journalism, so that was not for me. Also, I did have just a sense…. there was a

sense of maybe beingmore empowered in my passions, I think.

**Michael Green**: What was your experience like at university? Did you enjoy it?

**Sally Nicholes**: I had a lot of fun, and I made some lifelong friends. And it was still

interesting because I remember if I did actually put my hand up to answer a question, in

those large lecture halls, I did still feel the stigma of being agirl, putting my hand up!

**Michael Green**: So, in what decade did you do Law?

**Sally Nicholes**: Oh, gosh, I just spoke to my Law students last night who were born in the

90s. I did it in 1988 to 1993.

**Michael Green**: Okay. And then so the numbers of women doing Law still at that

stage were very small?

**Sally Nicholes**: They weren't small, funnily enough. But the girls just didn't tend

to have voices. It was really interesting, and maybe I was lucky to have gone to an all-girls

school. So, I used to put my hand up but what I noticed was that there was just a

tendency for the girls to be quieter. I think the numbers were fairly even, funnily enough, at

that time. But it was just, as I found in my legal career, in terms of girls progressing to senior

associate and partnership roles, there just seemed to be an unwillingness to be as

proactive as the boys.

**Michael Green**: One of the things that you say helped you in your Law degree

was taking notes for a hearing-impaired student or students. How did that come about?

How did you get the opportunity to do it and what was the effect of doing it?

**Sally Nicholes**: Well, it was incredible. I was, I needed to have about three or

four jobs to keep myself living independently. And there was an ad for a note-taker for a

hearing-impaired student. And I felt dreadfully guilty about the fact that my handwriting is

awful. I did have to fess up about that and I'd have to really work on that. And we didn't have

laptops at that time. So, it was that all the notes were handwritten. And I met Rebecca. And

it was interesting because my marks certainly weren't as good as some of the other

applicants, and I'm sure that my handwriting was appalling compared to theirs. But

Rebecca and I hit it off and you wouldn't believe it, but we worked out that her father had

been great friends with my dad, and her dad was one of the inspirations for my dad to get

into Special Education, and he was hearing-impaired. They were very close family friends

and we couldn't believe it. I remember working out the connection and telling my dad

about it too. So, dad was principal at Victorian School for the Deaf for many years.

**Michael Green**: Did you work with Rebecca throughout the term of her degree

or until she graduated?

**Sally Nicholes**: No, until I graduated, I had her only for I think 18 months, but it

was wonderful and I really enjoyed doing it. And we had a column for just gossip and we

had a column for Torts and Legal Process. And I'm actually pretty good at Torts. I had to do

it a couple of times, you know, having helped her and she was great.

**Michael Green**: And had a positive influence or positive impact upon your own

marks, I assume, by having to give some thought to......

**Sally Nicholes**: It did. My best subject was Conflict of Laws. And I studied that in

final year where you had to revisit all different types of black letter law, but you had to look

at an international focus, forum issues. And I think having to re-engage with that study

probably more diligently this time, it helped. I really enjoyed Torts. I thought that it was a

terrific subject.

**Michael Green**: After uni, you took a gap year. Why did you do that and would

you recommend gap years? They're quite common now with young people finishing

Year 12 and possibly finishing university. Was it a positive thing for you to do?

**Sally Nicholes**: It was absolutely wonderful. I worked for a touring company

called AAT Kings and Australian Pacific Tours, and I worked as a receptionist and an

accounts clerk. And I remember watching that clock tickingsometimes as every hour went

past because some of the work was pretty menial and difficult, but the centreof Australia

was just gorgeous. Alice was beautiful.

**Michael Green**: You were in Alice Springs?

**Sally Nicholes**: Yeah. Surrounded by the MacDonnell Ranges. And I was able to

then hop onto any tour bus and actually look and explore the area and Imade some good

friends there too. It was eye opening and again too, getting out of that little bubble of

having grown up in Brighton, gone to Firbank Anglican school, gone straight to Melbourne

University. I actually think it did open my horizons.

**Michael Green**: And it didn't hinder you in obtaining Articles the following year?

**Sally Nicholes**: No, I had done a number of summer clerkships and my greatest

synergy was with Middletons Moore & Bivans as it was then. And happily, they offered

me Articles and they were happy to give me a year’s grace in relation to that.

**Michael Green**: And it was during Articles that Family Law really took a hold

of you. You loved it, you enjoyed it more than the other rotations you did. Why was that?

**Sally Nicholes**: Well, it's really interesting. I think back in those days, we were

so lucky to go into different areas of law, different areas of the firm. So, Family

Law for me, though, was exciting because I was, I had a lot more leeway. It was a new

practice. It was small, so I was given a lot more opportunities and having actually rotated in

Commercial, in Property, Equity and I also practised in Commercial Litigation, what Family

Law represented to me was an amalgam of all the different disciplines. So, I realised you

had to know enough about Commercial, for example, to know to go and ask somebody,

because we have accrued jurisdiction in Family Law**.** We could cross vest back in those

days. I could actually run a Statement of Claim combined with a Family Law application if

there was an assault, for example. So I found it very, very stimulating. But also, too, I think,

it was the freedom and meeting people and clients right from the start in person because we

were such a small practice. So I actually had files and by the time I was a third year, I had

my own practice, but I was very, very much supported by the likes of Noel Ackman QC, John

Udorovic QC, David Brown, Paul Guest. They were very, very good to me. Dan Sweeney,

Joe Mullaly - identities who, some of them, are still with us, still practising, but they

were just incredibly generous and probably saw my diligence and knew that I was happy to

work on a weekend and I wanted to make things perfect and to learn. And so, they were

incredible mentors to me as well.

**Michael Green**: Sally as an articled clerk and first year solicitor at Middletons, you had the

most amazing experience where you became involved in a complex, high level case for an

American client whose son was removed from the US to Australia by the mother. Can you

tell us about it? I find it astounding that an articled clerk and a first-year solicitor can be

driving such a case.

**Sally Nicholes**: It was, and I think it was one of those opportunities that really

just fell in my lap. I think that on the face of it, this child had been missing for some time.

The Hague Convention was still a very new treaty that deals with parental child abduction.

And the partner gave it to me and said, look, there's nothing in this. You can have

this. And they were fateful words because having met the client and actually

having to help forensically unpick what was happening with the federal police who were

searching for the child, it began to have legs. And what I really discovered and what

was happening is that the law couldn't adequately deal at that time. It was very clunky

dealing with missing children from parental abduction. But what I did find was thatthere was

a lack of coordination between the federal police, the state central authority in Victoria, which

was then the Department of Community Services and the Attorney-General's Department in

Canberra. There was just a little bit of disconnect. Everyone wasn't working together as a

team. I actually took the client and flew up to Canberra because the police felt that

if they put an operational team onto this case after the client and I lobbied them a

little, they felt they would find this child, but they needed each segment and each party to

this convention to work together. So, I flew up to Canberra with the client, with Jim. He could

be identified because there was, there was a publication order that is still with us to this

day. We flew up to Canberra and I remember meeting the identities, the head of the

department, the Family Law section, the Attorney-General's Department, and they were

just delightful people working there, and they said no one had ever come up to see them

before!

Again, I felt too that it's a credit to those people in that department because they were

welcoming. They listened to where the federal police were coming from. They listened to

the facts. They knew they had an international convention, and it was their brief on behalf

of the Australian Government to see it through and try and locate this child and return the

child ostensibly to America if there weren't mitigating factors. So, we all worked together as

a team and we divided the work that needed to be done. I think the client really felt for the

first time empowered, but for me, I didn't see the hierarchy there. I just saw everyone as a

human being. But I must say, people I remember, John Udorovic in that case, gave me

incredible strategic advice that told me if anyone ever called me to say or to negotiate with

me and say, we've got the child, that I was just to keep that person talking and get

as much information as possible. So as a young person, I feel a huge weight of

responsibility because of this. It was quite a planned abduction, but he was incredible in

the advice he gave me and had faith in me that I'd followed his advice.

**Michael Green**: We might digress a moment here. Tell us about your grandfather. He was, I

think, Melbourne's first and leading physical trainer. He ran a gymnasium. He did physical

training for footballers, cricketers, rowers, champion tennis players, etc. And had a big

influence upon you as a person who maybe had given you confidence in yourself and an

ability to challenge authority on occasions. His name was Stan Nicholes. Can you tell us

about him?

**Sally Nicholes**: He was so grounded and so down to earth. He hadn't had an

education past Year 12 and was very conscious of that in some ways, but would tell me

stories as a kid in terms of meeting many Prime Ministers. He turned, I believe, Robert

Menzies away from the Davis Cup changerooms at one stage because Harry Hopman had

told him no one's to come in. So, an important part of my grandfather, though, was he also

had your every-day-Joe at the gym. And so, it had an amazing atmosphere. I went there

from when I was 14 and I would be training with Raelene Boyle, Chris Evert Lloyd would be

there. He had Kevin Sheedy attending and his players - all these identities were there. But

the role modellingI got from my grandfather was that everyone was treated the same. He

had a way of bringing out the best in people, but also, he was very direct, and he would work

out what a stumbling block was, and he'd find a solution. But he was also extremely humble

and he liked other people succeeding. So, I felt that he was just a tremendous role model in

that way, and he was also very aware of his imperfections, I can tell you. And he was very

open about that. And we discussed those, too, and he always seemed to have a knowledge

of where people were at and could draw them out.

**Michael Green**: Getting back to Middletons and you as a young lawyer, you said your

grandfather, Stan Nicholes, was a very direct person in dealing with other people, which is a

quality I suspect you have inherited from him. You used it as a young lawyer to get the firm

Middletons to send you to the World Congress in Family Law and Children's Rights in San

Francisco, as a third-year solicitor.

**Sally Nicholes**: Yes, I put in a submission, and I think Robert Desmond, who was

a lovely, lovely man, but was quite conservative and rightly so, as Managing Partner at the

time. I was quite surprised that he needed to have a meeting with me and deal with this

application. I did offer to pay for half of it, which was a fortune at that time.

**Michael Green**: Did they accept your offer?

**Sally Nicholes**: They did. They did. Because I think they saw that I had investment in the

game. And I have to say, I think I have a little bit of largesse with my staff now because I

want them to have the same experience. But going back then, it was good for me. I think

they could see that I was serious about it and it was having run that Karidescase

without really having the knowledge and having to learn on the job.

**Michael Green**: The*Karides*case (*Karides v Karides 1996*) was the Hague

Convention case which took you to Canberra?

**Sally Nicholes**: That's right. And having run that, I really then felt that

there was work to be done that I could learn from other people. I saw that this World

Congress had a whole stream about the Hague Convention and that there were no

Australian speakers. And I knew that some judges would be going, but I thought I really

want to go there and I really want to learn. And I also - it had to be explained to me by the

people, the powers that be in the Attorney-General's Department, that there was a

panel which could actually provide for private solicitors to be on the panel, where I had the

potential to then run these cases for the government as a private solicitor. And I thought

that would be fabulous because I just felt a passion for them. So, I put all of that to

Robert and it was with great trepidation. And he sent me, and I do have to say that was

1997, 1998. I succeeded. We got on the panel, which was terrific. And I've worked for many

years with Andrew Strum, who's now a Family Court judge. I approached him and said,

Andrew, I'm on this panel. They can't pay much money for it. It's a government job. But it's

fascinating. It's about International Law. I'd really love to work with you. And we worked

beautifully together. I did brief other people, but Andrew developed actually quite a strong

practice in International Family Law as a result, and he was fantastic to work with and we

were model litigants. It was a great era. I really enjoyed doing those cases.

**Michael Green**: From there, you move on to become a partner at Middletons.

Just paint that picture for us, how those things occur within large firms.

**Sally Nicholes**: Back then I think the emphasis was on the commerciality of your practice

and having a practice. And I think that's one thing, very early on, I think I was

a bit disgruntled and wanted to run my own race and one of my friends said, well, look,

stop complaining, you just go and build your own practice then. So, I did.

**Michael Green**: So, within the larger practice, you built your own family law practice?

**Sally Nicholes**: Oh, completely - a significant family law practice. And I

devised a marketing plan every year about what I would do. And obviously the

international work was part of it. And I began to build a little team underneath myself

and hopefully a little level hierarchy and mentor younger practitioners. But I built a team

and I think at the same time I was coaching rowing, and I think there's something

to be said about that team experience, that coaching and drawing the best out of people

and actually creating teams and obviously at the end of the day creating a good product.

So, I began to run very large pieces of litigation, which again I think require those logistical

skills I showed earlier on with that *Karides*case, the Hague Convention case.

**Michael Green**: In building a practice like that, where does the work come from?

Is it word of mouth that people hear about? Doing a good job, hear about you

looking after your clients well or are there other referrals from maybe accountants or from

other solicitors who don't do Family Law. How does the build occur?

**Sally Nicholes**: Yes, as I used to train the younger ones, it's from doing a

really good job. So, I would get quite a lot of work from QCs and from barristers who would

be working with me. I think it's also trust, so I still have a really strong relationship with my

old firm, which is now K&L Gates because of the years of trust I built up. If

someone's mother or parent had an issue, they'd come and say, do you have 5 minutes?

And I would obviously give them more than five minutes and we'd try to find

a solution. Also, that if, say, for example, the commercial partners would know if I had a

matter that required me to look at a constitution or directors’duties, I'd run up to them and

say, look, I want this absolutely shmicko - how do I actually - how would you phrase it? This

is what I want to achieve in an application, can you give me the main elements? So, I just

would have that commercial edge so they could see that I had the passion to do it right and I

wasn't afraid to go and ask for help. And I do think the barristers liked the fact that I would

try and get the brief to them way in advance or the material to them in advance so they could

check it and make sure that there were those little nuances that only barristers could pick

up that I wouldn't, as a solicitor, because they are in court every day. And sometimes, I

mean, John would rip something apart. Early days, for example, John Udorovic or Noel

Ackman would go through with a fine-tooth comb. And as I became more senior, they might

just change a few words and nuances. And they would explain to me why. And I think that's

why I got that following. But I also would then give seminars to accountants, work

with psychologists, and that's how I think I built that trusting relationship with third party

referrals as well.

**Michael Green**: One of the comments you have made is that at that time you were working

very hard and were able to give all of your attention to building your practice. Other women

weren't as fortunate because of having children and the firm was losing a great deal of what

you refer to as greymatter, because of that.

**Sally Nicholes**: It's interesting. I think it was two things: they were losing as they

were merging. A lot of the older senior partners were becoming consultants. I actually had

a view about that as a young partner. I thought that that was a shame. I thought that even

if you had a part time partner, that could be someone who's a part time mum. And I was

quite vocal about that, I just felt I leaned upon the former managing partners

and I felt that they had a wealth of knowledge. I thought it was a shame that we were

losing them and bringing in the new partners. And I think they should have still been around

the table.

**Michael Green**: Those with corporate knowledge, which is built up over generations.

**Sally Nicholes**: And relationship skills and just the smarts that you have -

someone who's been just working for so many years and being solution driven and that

work is a wealth of experience.

**Michael Green**: In 2004, you opened your own firm, Nicholes Family Lawyers. Why did you

do that and what was your vision for the firm?

**Sally Nicholes**: It was made very clear but very nicely, as Middletons were expanding, that

the private client work would actually be segmented off and that we'd be given all the

support in the world that we could take our practices, but eventually, in the future, even

though we did well, and we were light, we realised that that wasn't the vision.

They wanted to become global. They wanted to have large corporate clients. And so, I read

the play and wanted to move while on a high. And I did and we did have a fabulous party

and they've asked me back ever since for alumni chats and all sorts of things, which was

great. But my vision was also, when we marketed family law, to use our resources, not to

take people to an elaborate lunch and wine and dine them, take them to the kids’ helpline

ball, for example, because it was so aligned, because we were dealing with families and

dealing with children and vulnerable people. I just thought I wanted to put all my resources

into that type of marketing, if it was to be done, but also if there was actually a problem, to

make sure that we addressed it on a pro bono basis. So, the pro bono that I was

doing at Middletons, which I was supported in as long as I met my budget, I wanted to make

it part of the partnership deed. So, we actually have a large turnover that’s devoted to pro

bono and we've set up various clinics and that's really now taken off in a significant way.

**Presenter**: William and Lonsdale is brought to you by Greens List, one of the

leading multidisciplinary barristers lists in Australia. Greens List believes in promoting

conversation around the ideas and issues that shape not only our legal system but our

wider community.

**Michael Green**: The complexity that grows up in the whole of our world and

plays out in your world of family law, I find quite amazing. You have told us in preparation

for today about issues involving sperm donation, LGBTQIA+ rights, raising children after

breakdowns of same sex relationships, transgender issues. It is really staggering. I mean,

that those sorts of changes have come about in your working lifetime.

**Sally Nicholes**: Well, I think that's where family law can be quite exciting and the

mental gymnastics can be challenging but can be overcome. And what's been challenging

for all family law solicitors is that the legislation is often drifting behind all these modern

family changes. So, the family law jurisdiction is actually governed by a welfare jurisdiction

called *parens patriae*. It goes back to the days of the Chancery Courts. And so often - it's

been a little bit of a hobbyhorse of mine that, if anything that's concerned with a child's

welfare…in looking through the lens of a child, we can, we have jurisdiction to deal with.

And it's trying to then play catch up, a bit of social engineering as well to make

sure that vulnerable people aren't mistreated and that good parents are recognized. But

also, if you keep looking through the lens of the child, you can, I think, navigate some of

these different social norms. But for example, the same sex marriage plebiscite - our firm

was quite active in campaigning for equal rights. And again, very humbling to be

an ally and to have to advocate for someone to have the same legal right as I do to be

married. I think it was really sad in this day and age, but very happy to help.

**Michael Green**: What can you tell us about cases where issues about sperm

donation or LGBTQIA rights have come into play and how you've dealt with them, because

you are working in an area without set guidelines at the moment, I assume, or legislation?

**Sally Nicholes:** It's catching up. It's catching up. But we did have to work

in the old days even so that de facto’s might be governed by the Property Law Act and same

sex couples were actually governed by just laws of equity. So back when I started, but

there's been huge developments where de facto, same sex relationships, were then

recognised as de facto relationships and were then given the same status as married

couples. So, there is a bit of catch up, but there's often gaps in the law. And there was one

case that I worked on probably about 10 years ago, where I had a client who had actually

donated sperm to a single mum, and under the Victorian Act that father had no rights or

obligations to his son. But under the Family Law Act, there appeared to be a gap where he

would actually have, if there was no intervening de facto relationship, he would actually be

a father under the Commonwealth Act. So, there was actually a conflict between the two

acts and if there is, then the Commonwealth Act actually trumps the Victorian Act. Now it

was interesting, in running this case, a few of my lesbian friends were cross because they

thought I was interfering with lesbian rights, but I said no, just single mothers, and I felt

really awful about that and I said no. But again too, you have to bring it back to look at a

child's right to know where they've come from. And that became a really interesting case, a

ground-breaking case. And the law was changed to recognise fathers and really looking at a

child's right to have a relationship with both parents.

**Michael Green**: Sally, very interestingly, you were involved in the first transgender case in

Australia in the name of ***Re: Alex***. What was it about?

**Sally Nicholes**: Alex was a child who was suffering from gender dysphoria, which, as we

know now, is a child who doesn't identify as their biological being. They want to be the

opposite gender. And they've had struggles traditionally from when they were actually very

young. Often, they report struggling with their identity from when they're about four, it has

nothing to do with sexuality, just their gender. So, I was presented with this case where this

child was a ward of the court and there had been no case to really determine whether or not

the government who were ostensibly the parents of this child, could actually make a decision

for this child to firstly identify as trans. But also, back then there'd be a series of treatments

which were being recommended by the medical practitioners looking after this child, that

would actually impact on that child's fertility. So, when I was presented with that case, I

guess it's a situation of reminding us about why family law is so interesting. But also, the

legislation just didn't provide directly for these types of cases. So, I, because the fertility was

going to be impacted upon, identified this case as falling under a Special Medical Procedure

case, because there was case law in relation to parents not being able to make decisions

about their children when fertility was to be impacted. So, there was a long line of cases and

it's just been changed relatively recently in a case called ***Re Kevin,*** where children needed

to go through the court because parents couldn't make decisions that impacted on them in

that way. But it's meant that I've met all these fascinating kids, and I feel very passionately

about their wish to identify and work with the doctors who have been assisting them. But it's

interesting. It's very controversial now, I know, but for those children that we were acting for

at the time, they needed to have that court intervention, and it was again a very stimulating

area.

**Michael Green**: When these cases come up now, does a court make the decision on

whether there can be some medical procedure carried out or how is the decision

ultimately made?

**Sally Nicholes**: What was advocated for and against, at the 2009 World Congress it kept

popping up. We actually brought this issue before the World Congress and looked at what all

the different countries were doing because we were the most interventionist country. So the

trans kids, it was traumatic enough to actually have to come out, who want to identify, but

then to have the families go through a court process to get permission for this treatment was

considered a little bit barbaric. And so, what ended up happening is that a test case ran

before Full Court of the Family Court, and it was agreed that if a child was Gillick-competent,

(that they understood the consequences of this treatment) and generally they were at about

16 when they were starting puberty blockers then they could actually make that decision

based on the medical advice without court intervention. There’re still cases where one parent

might vehemently disagree or the doctors might disagree. There's a little bit of a debate, but

at the moment, it's now a medical decision.

**Michael Green**: Made by?

**Sally Nicholes**: The doctors in consultation and if they believe the child is Gillick-competent

(and Gillick-competency means they understand the consequences), they’re mature enough,

of their treatment. So, it's actually their decision. It's a child's decision based on medical

advice.

**Michael Green**: Would I be right in assuming that it's something which is still very much in

flux and may continue to be controversial for the foreseeable future?

**Sally Nicholes**: It is, it is particularly because you're impacting on someone's ability to

procreate, to have babies. And I think it will be for a while.

**Michael Green**: Yeah. In this sort of area, in other areas, you've been very

active in an educational role through podcasts, radio programs, etc. Could you tell us

about that? Well, I guess it raises the profile of Nicholes Family Law, but it doesn't directly

have a commercial benefit for you?

**Sally Nicholes**: No, it doesn't. But I think it's just so important and I think that's something

I've been passionate about, that when I've identified an issue in a case rather than just

resting on our laurels, you want to try and fix it. You want to see what other people are

doing. So, with the transgender cases, certainly, working with doctors, we brought all the

specialists that we could identify, or the Royal Children’s Hospital identified as being

pertinent in this area and getting everyone to look at best practices. So that's something I've

been passionate about. When we had ***Groth and Banks*,** which was the sperm donor case,

where we highlighted a conflict that was not known widely, particularly amongst the IVF

clinics, they were giving the opposite advice at the time.

**Michael Green**: This was the conflict between the Commonwealth law and the

state law?

**Sally Nicholes**: Yes, so the state IVF clinics, based on the ART Act at the time

were saying, look, you do realise that if you do donate sperm that you won't have

any parental rights to the donors and to the, for example, single mothers, they would be

reassured by the ART Act, Victorian Act, well the donor will not actually have any

parental responsibility. So yeah, I thought it was really important after that case that we

immediately educated the community. So, we did a Modern Family live session at our

office with Joy, the LGBTQI+ community radio. And it was wonderful. We actually had

donors attend. It was also a push for people to actually celebrate rainbow families, but to

learn about them, which is so, so important for me. Podcasts, seminars can be a great form

of advocacy in COVID especially. I remember talking to the CEO of WIRE at the time, Julie

Coyne, and we thought, what is going to happen to victims of family violence? That’s

Women’s Information Referral Exchange. And we were worried about victim survivors being

stuck with perpetrators because of the lockdown rules. And also, a lot of the courts were

closing and there was misinformation. I had clients saying, look, I've just received this text

from my husband, ex-husband, who's been violent, saying, I can do whatever I want, I'm not

going to return the children because your courts are closed.

So, what we did is we actually put out, we unpacked COVID in terms of who was most

vulnerable, and that's where we set up our podcast series. I had the AFP identities, the

cyber-safety people talk about cyber-safety with Vince Papaleo, trying to unpack any issue

we thought might impact on people, and it was really fulfilling that we did it. It was quite raw.

We didn't have the skills that you've got in your podcast series, but we did actually have a

brilliant young film directing student who was working with us at the time, and it was lovely

to have him work with us. He was terrific.

**Michael Green**: You mentioned WIRE, the Women's Information Referral

Exchange. Can you explain for me because I've never heard of them before? What does

WIRE do?

**Sally Nicholes**: Oh, they're fabulous. They've been around for a long time,

they have a phone service where they have trained counsellors to take phone calls to

direct women who are in crisis, whether it be housing, family violence, legal issues. They

also, I think, help with employment and vocation work as well. I think we donated

computers to them one year to help women come and actually have a safe place to look

for jobs, for example. But they do a lot of advocacy as well. They approached me when

one of their CEOs retired to say that the North Melbourne Legal Service was closing, that

actually provided financial and property family law advice, would we consider helping set up

a clinic, a legal clinic with them. So, we did. So, we've always, I've always worked with them

there. They've got amazing reach, but I've also learned a lot working with them about

victim survivors as well.

**Michael Green**: We've been talking about these fascinating cases and controversial cases

in areas of sperm donation, LGBTQIA+ rights, etc. But I assume Nicholes Family Lawyers,

that's a part of what you do, but I'm assuming the majority of what you do is family law

as we know it to be.

**Sally Nicholes**: We do. We do. But it's interesting, I think, that our ability to be

agile helps us with the standard cases. You need to have the empathy; you need to be...

every case is different and turns differently. So, I think that it's really important and we do

a lot of the larger cases and we do what's called the “house and garden” cases, if you like.

But I think this advocacy just gives us a passion and just that agility that you really need to

find a solution in every case that comes in front of you.

**Michael Green**: This is a question off the top of my head, Sally: percentage of

your clients who are male and percentage who are female?

**Sally Nicholes**: Equal.

**Michael Green**: So if I'm a male who's going through a relationship breakdown, I might

tactically think, oh, I'll use Nicholes Family Lawyers because it's a firm of women.

Have you got male partners?

**Sally Nicholes**: We haven't got male partners yet. I feel awful, poor male partners. It's just

such a funny thing to say, be apologetic for it. We're an all-female partnership. Most of us

are parents, some with very young children, which I'm very proud to say. But we do actually

have a male Senior Associateand we do have male employees and associates and

accounts clerk, my CFO is male, but it's not deliberate. We get the best person

for the job.

**Presenter**: Lives in the law is proudly sponsored by City Maps illustrated the

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.

**Michael Green**: And how have you juggled; professionally you grew up in a generation

where women were starting to say we shouldn't be discriminated against because we're

having children. We should be able to have full rights as a partner in a firm. It's a difficult

one, or it was a difficult one certainly back then when you were a young lawyer. How have

you juggled it within your own firm?

**Sally Nicholes**: Well, I think we had to walk the talk. I was very passionate about

part time partnership back in Middletonsdays, even though it didn't impact on me because

I just felt we were losing out in not having female partners. And that was in essence, they

were just having children. So, in terms of whatthey needed to do, I felt, running on

the spot whilst they were on maternity leave. And if anyone was to look at their performance,

just judge it from when they left to when they were coming back. And I thought there were

some strategies that could have been employed. I just felt being in a smaller firm, being

able to control it, that we can offer all sorts of supports to our fabulous female partners.

And I actually just feel now particularly we've always been so flexible that we actually get, if

we provide people with family support, they're at peace. They're very motivated to do well.

It simply hasn't been an issue, part-time partnership. I've made one partner with a three

month old baby recently, Catherine.

**Michael Green**: Appointed a partner when the baby was three months old?

**Sally Nicholes**: Yes, she's just fabulous, but also too, what we do is

we unpack what can we do to support you during COVID. For those two years, I missed all

the partners, but there were children in the background, as we all know. So, a lot of firms

have adjusted to the family, I think, organically, because of COVID, but we certainly were

doing that a long time ago.

**Michael Green**: Sally, in practical terms, what does it mean to support a mother

with a three-month-old who is also a partner at your firm?

**Sally Nicholes**: Well, I think part of the delivery for every single partner or every

employee is to have the individual conversation and to work out what do they need

to be able to succeed. So being a partner means you're leading a team, often, of people, but

if you're a part-time partner, we need to work together. So, Catherine, who is a partner, is

just exceptional. She and I love working on files together, so I'll have her back on the days

that she's not working, and I'll run the case. And with this we have a great collaboration, but

also, too, she needs to, she's very vocal about what she needs. And I think with COVID,

what we've actually come to is that we are hugely flexible. We need to have a check-in point

with all our younger people. I think face to face engagement is so important for our

younger team, especially and for clients too. But we also have the opportunity to work from

home and that incredible flexibility if, for example, if the little one is sick, but they're still

able to work comfortably from home, it's a non-issue. We have the ability to work remotely

and that's a supportive thing to do. We will support that to the hilt in terms of what more can

we do to help you on that day.

**Michael Green**: Sally, I want to thank you very, very much for coming in today and

enlightening me as someone who didn't do much Family Law and didn't like it, to

understand what a fascinating area it is, what an extremely worthwhile area it is in helping

people who need help in the most difficult of situations. And the way the laws are evolving

in this area to be really dynamic and interesting. It has been a wonderful time. Thanks,

Sally.

**Sally Nicholes** [00:47:15] Absolute pleasure. Thank you for having me.

**Presenter** [00:47:21] Show notes from today's episode can be found at

Greenslist.com.au/podcast, where you'll find links to things we've 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, subscribe, rate and review the show.

Your host is former lawyer and Greens list clerk Michael Green. Our show is produced and

edited 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. We're coming

to you from the iconic 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 that discussion

here today.

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