

Ep 29. Sally Nicholes

Presenter [00:01:36] 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 groundbreaking matter involving sperm donor rights and an international kidnapping case that she led as an article, 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 [00:02:18] Well, John 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 said and 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 was 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 a 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 be absolutely 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 John. He looked very sad and we both did. And I motion 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 off line. And having met this lady, we acted for her 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 was she she was crediting it 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 [00:05:12] 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 [00:05:17] Oh, it's my absolute pleasure, Michael.

Michael Green [00:05:19] So, Sally, let's get back to the start. Looking back over your life and professionally and you're growing 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 [00:05:35] It certainly did, Michael and I 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's 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 master's in special education as it was back then. And so we would be handing out stem and aid at big runs and fundraisers, and they were very community minded. So I think that that really was just 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 [00:06:39] Lucky, 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 [00:06:51] Oh, I'd forgotten about that story. Yes, I had a religious education teacher, and I think that's somewhat where I my definition of Christianity became I think a little bit more subjective, perhaps, in that teacher's version. She gave me a report card saying that I that I wouldn't listen to other people's opinions so 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 were chorused - I don't think they were 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 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 that's 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 [00:08:24] It's an amazingly courageous thing for a year 11 students to do, particularly in a in that context of a private school and children at that time being obedient and being respectful. That was a gutsy call.

Sally Nicholes [00:08:37] It is in a way, but it just felt it was just a natural thing to do. And I was actually reflecting it with a friend, a judge actually recently that there was a young lady who was being bullied because she had a mustache. So we we were at a very exclusive private girls school. And this this girl was being victimized and was actually huddling in a corner because she was being taunted about this mustache. And I told the girls to wrack off in colorful 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 [00:09:38] 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 you had the marks for it?

Sally Nicholes [00:09:50] 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 it for me. Also, I did have just a sense. There was a sense of maybe and. Been more empowered in my passions, I think.

Michael Green [00:10:13] What was your experience like at university? Did you enjoy it?

Sally Nicholes [00:10:17] I had a lot of fun. I had a lot of fun and 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 that always a girl.

Michael Green [00:10:34] So, in what decade do you law?

Sally Nicholes [00:10:39] Oh, gosh, I just spoke to my law students who were born in the 90s. I did it in 1988 to 1993.

Michael Green [00:10:50] Okay. And then so the numbers of women doing law still at that stage were very small.

Sally Nicholes [00:10:54] They weren't small, funnily enough. But 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 and but what I noticed was that there was just a tendency for the girls to be quiet. 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, they just seemed to be an unwillingness to be as proactive as the boys.

Michael Green [00:11:26] 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 [00:11:37] Well, that's 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 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 all all the notes were handwritten. And I met Rebecca. And it was interesting because my marks weren't certainly 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 Deaf for many years.

Michael Green [00:12:35] Did you work with Rebecca throughout the term of her degree or until she graduated?

Sally Nicholes [00:12:40] 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 [00:12:59] And had a positive influence or positive impact upon your own marks, I assume by having to give some thought to...

Sally Nicholes [00:13:07] It did, the best subject was conflict of laws. And I started 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 reengage with that study probably probably more diligently this time, it helped. I really enjoyed Torts. I thought that was a terrific subject.

Michael Green [00:13:29] After uni, you took a gap year. Why did you do that and would you recommend gap years? To me, 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 [00:13:43] It was absolutely wonderful. I worked for a touring company called AAT Kings and Australia Pacific Tours, and I worked as a receptionist and an accounts clerk. And I remember watching that clock ticks sometimes as every hour went past because some of the work was pretty menial and difficult, but the center of Australia was just gorgeous. Alice was beautiful.

Michael Green [00:14:03] You were in Alice Springs?

Sally Nicholes [00:14:05] Yeah. Surrounded by the McDonald Ranges. And I was able to then hop onto any tour bus and actually look and explore the area and made some good friends there too. It was it was eye opening and again to getting out of that little bubble of having grown up in Brighton, gone to Firbank Anglican school, gone straight to Melbourne University. I actually do think it did open my horizons.

Michael Green [00:14:27] And it didn't hinder you in obtaining articles the following year.

Sally Nicholes [00:14:32] No, I done a number of summer clerkships and my greatest synergy was with Middleton's Moore and Bevans as it was then. And happily they offered me articles and they were happy to give me a years grace in relation to that.

Michael Green [00:14:46] And it was during articles that the 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 [00:14:55] Well, it's really interesting. I think back in those days, we were so lucky to go into different areas of law, different so 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. I was given a lot more opportunities and having actually rotated in commercial in property equity and I also practiced in commercial litigation. What family law represented to me was an amalgam of all the different disciplines. So I realized you had to know enough about commercial, for example, to know to go to ask somebody, because we have a crude jurisdiction, a 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, 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 Mullally identities who are still some of them are still with us, still practicing, 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 [00:16:30] Sally as an article clerk in 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 in the US to Australia by the mother. Can you tell us about. I find it astounding that an article clerk in a first year solicitor can be driving such a case.

Sally Nicholes [00:16:54] 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 landed, gave it to me and said, look, there's nothing in this. You can 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 there, it began to have legs. And what 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 there 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 actually felt that if they actually 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's 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 it had always ever come up to see us 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 court really felt 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 JohnUdorovic 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 actually just to keep that person talking and 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 acquitted and I'd follow his advice.

Michael Green [00:19:41] 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 [00:20:08] He was so grounded and so down to earth hadn't had an education past 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 at the at the gym. And so it had an amazing atmosphere. So 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, but all these identities were there. But the role modeling I got from my grandfather was everyone was treated the same. He had a way of bringing out the best of 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 two and he always seemed to have a knowledge of where people were at and could draw them out.

Michael Green [00:21:26] 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 Middleton's to send you to the World Congress in family law and Children's Rights in San Francisco. As a third year solicitor.

Sally Nicholes [00:21:47] Yes, I put in. submission, and I think Robert Desmond, who is 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 [00:22:08] Did they accept your offer?

Sally Nicholes [00:22:10] They did. They did. Because I think I 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 I could say that I was serious about it and it was having run that case without really having the knowledge and having to learn on the job.

Michael Green [00:22:34] The Koridis Case was the Hague Convention case which took you to Canberra?

Sally Nicholes [00:22:36] That's right, yeah. 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 private 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 just be fabulous because I just felt a passion for them. So I put all of that to Robert and it was great trepidation. And he sent me and I do have to say that was 97, 98. We succeeded. We got on the panel, which was terrific. And I've worked for many years

with Andrew Strong, 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 it was a great era. I really enjoyed doing those cases.

Michael Green [00:24:04] From there, you move on to become a partner at Middletons. Yes. Just paint that picture for us how those things occur within large firms.

Sally Nicholes [00:24:16] 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 can't build your own practice then. So I did.

Michael Green [00:24:33] So within the larger practice, you built your own family law practice?

Sally Nicholes [00:24:37] Oh, so 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, 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, 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 Koridis case, the Hague Convention case.

Michael Green [00:25:21] In building a practice like that, where does the work come from? Is it word of mouth that people hear about? You're doing a good job here about you looking after your clients well or other referrals from maybe accountants or from other solicitors who don't do family law. How did the how does the build occur?

Sally Nicholes [00:25:40] Extensively 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 and L gates because of the years of trust are built up. If someone's mother or parent had an issue, they'd come say, Do you have 5 minutes? And I would actually obviously give them more than five minutes and we'd try not out a solution. Also that if, say, for example, 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 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. What are. He give me the main elements. So I just would had 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 like the fact that I would try and get the brief to them way in advance or material to them in advance so they could check it and make sure that there were those little nuances that only baristers could pick up that I wouldn't, as a solicitor say in court every day. And sometimes, I mean, John would rip something apart. Early days, for example, Johnny 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 explained to me why. And I think that's why I got that following. But I also would actually then give seminars to accountants, work with

psychologist, and that's how I think I built that trust trusting relationship with third party referrals as well.

Michael Green [00:27:19] One of the comments you have made is that at that time you were working very hard and we were able to give all of your attention to building your practice. Although women weren't as fortunate because of having children and the firm was losing a great deal of what you referred to as gray matter. Because of that.

Sally Nicholes [00:27:39] 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 or somebody I just felt I leaned upon the former managing partners and and I felt that they were had a wealth of knowledge. I thought it was a shame that we were losing and bringing in the new partners. And I think they should have still been around the table.

Michael Green [00:28:15] That that corporate knowledge, which is built up over generations.

Sally Nicholes [00:28:20] Relationship skills and just that smarts that you have someone who's been just working for so many years and being solution driven and that worked is a wealth of experience.

Michael Green [00:28:32] 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 [00:28:42] It was made very clear as millions 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 up eventually, in the future, even though we did well, we realized 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 high. And I did have had 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 and wine and dine them, take them to the kids helpline board, for example, because it was so aligned, because we were dealing with families when 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 to actually if there was a problem to make sure that we actually addressed it on a pro-bono basis. So the pro bono that I was doing at Middletons, which I supported as long as I met my budget, I wanted to make it part of the partnership deed. So we actually have a large turnovers devoted to pro-bono and we've set up various clinics and that's really now taken off in a significant way.

Presenter [00:30:12] 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 [00:30:29] 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, and that those sort of changes have come about in your working lifetime.

Sally Nicholes [00:30:52] Well, I think that's where family can be quite exciting in the mental gymnastics can be challenging, but can be overcome. And what's been challenging for family law solicitors is the legislation is often drifting behind all these modern family changes. So the family law jurisdiction is actually governed by a welfare jurisdiction called *parents 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. And in looking through the lens of a child, we can actually we have jurisdiction to deal with. And it's actually 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 I found was quite active in actually campaigning for equal rights. And again, very humbling to be an ally and to have to advocate for someone to have the same legal rights as I do to be married. I think was really sad in this day and age, but very happy to help.

Michael Green [00:32:06] 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 state guidelines at the moment, I assume, or legislation.

Sally Nicholes [00:32:22] It's catching up. It's catching up there. But we did have to work in the old days even to *de factos* 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 recognized as *de facto* relationships with being 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 where I point out ten 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 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 actually a real, really interesting case, a groundbreaking case. And the law was changed to recognize fathers and really get a child's right to have relationship with both parents.

Michael Green [00:33:55] 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 [00:34:05] Alex was a child who was suffering from gender dysphoria, which is, as we know now, is a child who doesn't identify as a 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 has nothing to do with sexuality, just their gender. So this I was presented with this case where this child was awarded the court and there had been no case to really determine whether or not the government who were actually ostensibly the parents of the

child, could actually make a decision for this child to firstly identify as trans. But also back then there'd be a series of treatment was 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 so interesting. But also the legislation just didn't provide directly for these types of cases. So I because fertility was going to be impacted upon, identified this case as clearly under a special medical procedure case, because there was case law in relation to parents not being able to make decisions about the 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 it's interesting. It's very controversial. Now, I know to a perhaps people having trans regret, but for those children that we were acting for at the time, they needed to have that court intervention. And it was, again, another very stimulating, interesting area.

Michael Green [00:36:03] When these cases come up. Now, does a court make the decision on whether there can be some medical procedure carried out or has the decision ultimately not.

Sally Nicholes [00:36:12] What was advocated for and again, at the 2009 World Congress, World Congress 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 there was traumatic enough to actually have to come out who want to identify, but then to have 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 competent, that they understood the consequences of this treatment generally 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's 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 [00:37:09] Made by?

Sally Nicholes [00:37:10] The doctors in consultation with and if they believe the child's 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 [00:37:24] Would I be right in assuming that it's something which is still very much in flux and may may continue to be controversial for the foreseeable future?

Sally Nicholes [00:37:32] It is it is particularly because you're impacting on someone's ability to procreate, to have to have babies. And I think it will be for a while.

Michael Green [00:37:40] 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 [00:38:00] You know, 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, 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, which was a where we highlighted a conflict that was not known widely, particularly that's the IVF clinic they were giving actually the opposite advice at the time.

Michael Green [00:38:40] This was the conflict between the Commonwealth law and the state law.

Sally Nicholes [00:38:43] Yes, so the state IVF clinics, based on the ART Act at the time were saying, look, you do realize that if you do donate to sperm that you won't be have any parental rights to the donors and to this for example a single mothers they would be reassured by the ART Act, Victorian act well that the donor would 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. We actually had. 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 a 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 courts were closing and there was a misinformation. I had clients saying, look, I've just been received this text from my husband, ex-husband, who's been violent, saying, I can do whatever I want, I'm 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 talk about cyber safety with Vince Papaleo, try 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 really was terrific.

Michael Green [00:40:44] 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 [00:40:55] Oh, they're fabulous. They they've been around for a long time, they have a phone service where they have trained counselors 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 in vocation work as well as 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 the CEOs retired to say the North Melbourne Legal Service was closing. That actually provided financial and probably family advice, which we consider helping set up a clinic, 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 victims, survivors as well.

Michael Green [00:41:42] And 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 and 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 [00:42:02] We do. We do. But it's it's interesting, I think, that our ability to be agile helps us with your standard cases. You need to have the empathy you need to be... Every case is different. It turns differently. So I think that it's really important and we do 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 [00:42:31] 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 [00:42:38] Equal.

Michael Green [00:42:39] So if I'm a male who's going through a relationship breakdown, I might tactically think, Oh, I'll use Nicole family lawyers, because it's a firm of women. Have you got male partners?

Sally Nicholes [00:42:50] 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 associate and we do have male employees and associates and accounts clerk, my CFO is male, but we don't. We don't. But it's not deliberate. We get the best person for the job that.

Presenter [00:43:20] 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 [00:43:47] And how do you juggle if you grew up in a generation 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 do you juggle it within your own firm.

Sally Nicholes [00:44:09] Had to walk the talk. I was very passionate about part time partnership back in Milkman's Days, 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 actually there needed to be, I felt, running on the spot whilst they were on maternity leave. And if anyone was to look at their performance, just 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 was in a small 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 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 [00:45:05] Appointed a partner when the baby was three months old? Great.

Sally Nicholes [00:45:09] She's just she's fabulous and on the merits and 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 [00:45:31] 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 [00:45:39] Well, I think the delivery for every single part or every employee is to actually 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 Katherine, 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 to 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 of 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 option 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 put that to the hilt in terms of what more can we do to help you on that day?

Michael Green [00:46:49] 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 has been a wonderful time. Thanks, Helen.

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 Dickson 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.

