

William and Lonsdale – Lives in The Law

Ep 62. Judge Sara Hinchey

Voiceover [00:00:08] This is William and Lonsdale, a podcast about the legal ecosystem and the fascinating people who make it tick. Today, your host, Michael Green, speaks with county court judge, Sarah Hinchey. A passion for travel and cooking almost drew Sarah away from a life in the law. And although the relative stability of a legal career won out in the end, she has worked hard to maintain a work-life balance that includes running cooking classes and bringing produce from her garden to the county court. Sarah is also passionate about the collegiality of the profession. In her days as a barrister she was a committed and active member of the Bar Council and the Essoign Club as she believes that both institutions are imperative to fostering community, mentoring and the incidental education that comes from running into a colleague at a seminar or getting a coffee. From her time as a judges associate to conversations in the hallways of chambers, Sarah learnt as much from experienced and generous practitioners as she did from any textbook.

Sarah Hinchey [00:01:10] And I remember one time I was up on the 10th floor as a junior barrister, that's where I had chambers and Brian Bourke was there and he saw me photocopying and he said, that's a lot of books. And I said, yeah, he said, you're a bit weak on the facts, are you? You know, from that moment he would say to me, do you need any help? And he was so generous with his time.

Michael Green [00:01:57] Our guest this morning in Lars in the Law is Judge Sarah Hinchey of the County Court of Victoria. Sarah, good morning. Sarah, we might as well start at the beginning, it's not a bad place to start. Tell us about your upbringing, your mum and dad, because it seems to me that, like most people, your parents are very influential on you and your life.

Sarah Hinchey [00:02:16] Good morning Michael. Yeah, they really were. I had what I suppose I would call an idyllic upbringing. It started off living in the Dandenongs in what seemed to me to be a fairy land. I look back on it now as an adult. It was a one acre block, but with tree camellias and rhododendrons everywhere, beautiful fernery and all of those things. And so for you can imagine for a four or five year old, this was the most beautiful place. And my parents took every opportunity they could to educate you about everything. So it started off with stuff to do with the environment and gardening, flowers. I was always out helping my dad and we would talk about things and he always wants to teach you things. So we had a really close relationship, both my parents and me, and also my siblings. I have two siblings, a brother and a sister. And we're a really idyllic, close-knit family unit. And we really looked up to our parents, and I still do.

Michael Green [00:03:17] And there's no greater gift in life than to have good parents.

Sarah Hinchey [00:03:19] Absolutely. And education was paramount as far as they were concerned. A lot of the stories as we got older turned to university education, tertiary education. Dad had been to uni and mum was a nurse so they'd both done a tertiary education qualification and they always talked to us about that and how much fun they had. And of course as a kid you only hear the bits that you think sound good to you, you know, going to university and living in college or whatever it might be, but in course they were actually instilling in us from a really young age the desire to go further and to do more and look at learning opportunities which was invaluable.

Michael Green [00:03:55] And on top of that some influential teachers, nuns in maybe one or two different orders of the Catholic Church who also had an influence upon you.

Sarah Hinchey [00:04:03] Yes, absolutely. So when I was seven, we moved to Ballarat from the Dandenongs and I started going to Catholic schools there and I ended up at Loretto College in, known as Marysmount, which was the main, the original Loretto seat in Australia. And the nuns were incredibly influential because they were all still there. You know, these days I think it's a lot of lay teachers and perhaps the old nun figurehead. But back in those days, the nuns were there and they were incredibly highly educated women. And again, completely obsessed with ensuring you got the best education. They told us we could do anything and they really encouraged us to go far. And so, you know, I met some really influential people including the headmaster was a nun called Bernadette Zyzyngier and she is still alive. But, you know, they were quite tough on you, they really wanted you to do the best you could do. And you didn't get free passes, but they also gently encouraged you, it was fantastic.

Michael Green [00:05:01] You mainly did maths and sciences at school and maybe, well, maybe because that was where you were most gifted and your dad was a doctor so it was filling in well there, but you didn't choose to do medicine.

Sarah Hinchey [00:05:12] No, I did think about it, but I have to say, having seen how hard my father worked and especially in the middle of the night, I mean, being a country GP, sometimes you'd get up in the morning and find dad was already up and sitting in the lounge room, but it's because he'd been out on a house call or something like that in the middle of the night. And you know, when he came home, he didn't want to wake up everyone. So he just sat and read a book or something. And you know, it really emphasised to me what a commitment to medicine was from a personal point of view of all hours of the day and night. And it wasn't that I shied away from the idea of commitment, but as a teenager that it didn't seem that appealing to me. And also, and ridiculously, I saw Carson's Law when I was about 13 or 14. And I thought that seemed like a pretty good career. Lorraine Bailey seemed pretty impressive to me. She was a feisty woman in a man's world and I thought, I reckon I can do that, so. That's where I turned my attention to, not for any good reason, but that's why.

Michael Green [00:06:14] I should confess, Sarah, that at the same age I saw Perry Mason on TV, so these things can be influential. So You go to Monash and you live in Monash College to do law. Did you study hard?

Sarah Hinchey [00:06:28] I didn't. Well, I did at the end. So it's interesting. So I'm sure we'll get to this. But when I was interviewed to be a judge's associate, my judge looked at my marks and said to me in the interview, your marks weren't very good up until fourth year. And I told him this story, which is the absolute truth. And I look back now and think I was a bit naive, but you know, anyway, it's what happened. I worked so hard in school to get into university. I made a pact with myself that once I got in, I would just do whatever needed to happen to pass. And it was only in about third or perhaps the beginning of fourth year I thought to myself, you've cruised enough now, you really need to do a bit better. And I think also they were the subjects that appealed to me more as we got further into the course. And so, you know, it's the evidence and the crime, the trial advocacy, forensic medicine, those types of things appealed to me a lot more than the stuff that had been the most basic building blocks, which of course, you know, at 18, 19, it's hard for you to understand where they fit in.

Michael Green [00:07:30] Exactly, it can take a long time in my view. I was interested, Sarah, to read that in your final year, you knew absolutely you wanted to be a barrister. Coincidentally, or maybe not coincidentally, you mooted successfully in that final year. Were those two things connected?

Sarah Hinchey [00:07:48] I think the fact that I wanted to be a barrister was because by then I'd worked out that I really enjoyed mooting and I seemed to be good at it, like we did well, but also so there's the moot competition but also a subject which is moot court. and I got into the prize moot in that subject. So the final four of being the top four in the year, which was my only top anything at university. So I think it probably tells you that they are linked, but probably mostly because I was quite good at it. But of course, what you're good at, you then do, you work harder at. I absolutely loved mooting. I think it instilled in me early the discipline of the research. They need to be agile and to anticipate all the arguments. Those things are things that I've then gone on to still love even now. So they must have been something that peaked my interest at that point in time.

Michael Green [00:08:43] In view of that, why did you take a gap year before you did your articles?

Sarah Hinchey [00:08:47] I'd always wanted to travel, so I travelled when I was with my parents, obviously not as a five -year -old on my own, but with my parents we went to Europe. That was a really defining trip for me, even though I was so young. We went away for, I think it was about 15 months, it might have been only a year, no it was longer than a year. And even now, as a 55 -year -old, that is one of my defining moments was that trip. We lived in Canada. Dad worked there. We lived on the prairies. It was an extraordinary thing. The contrast between that and the Dandenongs was amazing. Saw snow for the first time, but we travelled around Europe. And because my parents love art and music and all of those things, as a little girl, and my siblings too, obviously, we were taken everywhere. We went to Florence, we went to Rome, we went all over France. We went to Germany, we, you know, I look back now and realise how privileged I was and I had always wanted to go back. So that was a not negotiable.

Michael Green [00:09:49] And what did you do during that gap year?

Sarah Hinchey [00:09:51] Well, I had a lovely time. I travelled with a girlfriend and we travelled for three months together. I had, so the whole year, my trip was only four or five months, but the whole year I took off because I did a ski season at Mount Hotham. I was a chalet girl and I learnt to ski at 18, 19 years of age, which was a little bit dangerous. I was pretty lucky not to hurt myself early, but I got to be quite good at skiing without injury, which was good. And then I went and because of course you meet that whole ski subculture and they told me about the people that go backwards and forwards to Europe, six months here, six months there. And I thought that sounded pretty good. So I was already going to Europe, but it helped to crystallise what I wanted to do. So I travelled with my girlfriend and went to all those, revisited those places from my childhood. Plus went to a few other places. Then I stayed on and did a European ski season. And I came, I had articles already organised. So I felt like. this was a time where I could just indulge myself knowing I had a job to come back to. In hindsight, do you think it was a valuable experience to do that at that time? Oh yes, absolutely. Because I did come back to my job. I toyed with the idea of never coming back, but I'm a fundamentally pretty sensible person and that again has been instilled in me by my parents. I could just feel my parents' voice ringing in my ears. Don't throw it all away. You've worked so hard, you got through it all, you've got a job lined up, get the qualification, and if you really still want to go back, then

you can. But don't stay here now and ruin everything by never getting formally qualified. So I went home.

Michael Green [00:11:30] Articles of Purvis Clark Richards, 1993. Yes. What did you do in your articles year and what did you learn from articles?

Sarah Hinchey [00:11:38] What it taught me was it consolidated what I'd already learned as a teenager about attention to detail. So you remember I referred to Sister Bernadette, but here it was in practise. So that was about your studies, but here it was as part of the job, the attention to detail. And it's a classic thing about the nuns is of course they're all professional women, so they really understood what the outside world was about and they weren't about instilling that in us from a very young age. and I got to see why there had been so much emphasis on it at that point in time. Doesn't mean I was particularly good at it, but I was starting to develop as an adult and use some of the lessons that I had learned as a school girl in the workforce. You know, it was a tough time because. You've come from being a student and having fun and everything's kind of, it's not terribly serious. Your studies are, but you know, as long as you pass and you do quite well, there's not much in the way of consequences. I'd gotten a job, but here I was and these were real people's files with real problems and they needed proper attention and you were not allowed to not do things properly and they would make you stay until it was done.

Michael Green [00:12:50] You got thrown into family law I think and that's the area which to me always seems you're dealing with people that they're rawest and most vulnerable and therefore you've got to get it right for them.

Sarah Hinchey [00:12:59] Absolutely. And I was very lucky to meet a practitioner, Deborah Bannister, who I've remained friends with all these years. And I look back now, she was probably not even as old as I am now, but I was very scared of her, but I liked her very much. And she instilled in me that commitment to the client, understanding that people's lives are being affected by the that you make, her natural empathy and concern. for the client, but also maintaining your rational mind, not getting too involved in the fight, keeping the objectivity that will mean that you act in the best way for your client. And these were all valuable lessons, at the tender age of 21 or 22. And I have maintained and used those skills for the rest of my legal career.

Michael Green [00:13:56] After articles, you apply for and become associate to Justice Hanson on the Supreme Court. I assume this was because you had an eye to becoming a barrister?

Sarah Hinchey [00:14:04] Yes, I'd always wanted to be a barrister. I didn't really want to be a solicitor. And by the time I finished at Purvis Clark Richards, I toyed with the idea of staying on as a solicitor for a bit longer. But I had friends who were barristers and they said something to me, which I think was important and which I've said to others since, and that is with the bar, seniority is everything. So just get there. If you know you want to do it, get there and get your seniority cemented in. So I decided I would do that. I had heard about this thing called being a judge's associate, I didn't really know what it was. Well can you please tell us

Michael Green [00:14:38] That's what it is, because we see judges associates sitting in front of judges in the courtroom and sometimes someone whispering in their ear, the judge or someone else, what else do they do?

Sarah Hinchey [00:14:49] Well, being a judge's associate, if you want to go to the bar, being the judge's associate is the very best training you can get. as an introduction. So you're effectively the judge's right -hand person. And you know, the best of the associates with the best relationships with the judge, they will do everything from research and making sure the lists run well to helping to write draught judgements and discussing the legal points with the judge. So it is a really broad job. You get as much out of it as you want to put in. And the judges, I think, the ones I've seen and certainly my experience and me now as a judge. that they are really keen to invest in that young person's future and help them be a better lawyer. So you can't imagine a better start to going to the bar.

Michael Green [00:15:35] You come to the bar after two years as associate to Justice Hanson, it's 1996, you say you've got no money and no contacts. That's right. And you read with Paul Santa Maria. That was my contact. So with no money and no contacts. How did you survive? How did you build a practise?

Sarah Hinchey [00:15:51] I was brave, wasn't I? Well, the answer is I took the advice of my clerk, who is Glenda McNaught, and I had been an associate with my judge in the commercial list. So I had seen all of the very, very top commercial silks in action for two years. And all of them had said to me, when you get to the bar, let us know and we'll, you know, if you need help, et cetera, et cetera, don't hesitate to contact us. So that was partly the basis for my decision to go on Glenda's list because a lot of those people were on that list. And then I took her, so I did use those small contacts that I had to contact people if I needed assistance. Sometimes I got deviling work, which is work where the barrister's been briefed and then they give it to you, subcontract it out to you. Give it to you. and they will pay you to do the work. So that was very helpful. And then of course, if you do a good job that can lead on to junior briefs. But the other thing I did was take Glenda's advice which is to take every brief that was offered to me no matter what it was. And I remember saying to her very early on, look, I'll probably do most work but I'm not interested in crime or children's court. And she said to me, you'll do whatever comes in the door, darling. And so I did. And we'll see you in the next one.

Michael Green [00:17:07] Good advice. And so you took whatever came along. What shape did your practise begin to take? I mean, it can't be just a general amorphous sort of lump of work coming in. I'm assuming after time it starts to develop in a certain way, maybe more commercial, more crime, more personal injuries, whatever. Did that happen?

Sarah Hinchey [00:17:26] Yes, but it was started off almost completely commercial, despite what Glenda said. We didn't get much children's court work on the Glenda's list. And also because I had been a commercial list associate, I think that's how I was being marketed. And that was fine by me. So what happened was I had a really solid junior commercial practise, and what people should be aware of, which I wasn't, but it turned out to be the case that you do a lot of paperwork. There's not a lot of appearance work. You might go and appear within the master's court or for directions, hearings and things, but the appearance work is to do with fighting about things like interrogatories or timetabling. Whatever, which is fine when you start off, but it's not going to turn you into a fantastic This is particularly with a commercial practise. That's right. Yes, exactly. And so I thought to myself, this is not what I imagined being a barrister would be. I had a lot of work and I was getting, I was earning a reasonable amount of money, although back in those days, I thought 40 grand was pretty good. This is pretty You know, when I say reasonable amount, it was for the times and by comparison to what I had been earning. But I also really needed to get into court and to deal with witnesses and to deal with trials. And so I made a deliberate decision to start trying to pursue personal injuries work. And the way I

did that was by taking pro bono cases. And the ship turns around pro bono not No win, no fee. No, no pro bono to start because the ship turns around pretty slowly and you have to create a space in your diary to be able to do it, but I thought it was worth it and it did work.

Michael Green [00:19:02] From that background, it's interesting that you developed a practise or part of a practise doing tort work against the Victoria Police.

Sarah Hinchey [00:19:11] Yes, that's right. I did. So again, it's interesting the way things work out. Some of the pro bono cases I did at the start of what turned out to be a pretty solid personal injuries practise, and I always maintained commercial. So I just got broader. I never eliminated anything,

Michael Green [00:19:31] You might have eliminated sleep from your daily routine here.

Sarah Hinchey [00:19:33] Yeah, that's right. But I met Dyson Horlacy very early on and then Dyson Police Talks was his specialty. So as my practise grew a bit and he needed juniors in some of his work, he asked me if I'd like to do it and I was brought in as his junior. And then we did a lot of those police talk cases together.

Michael Green [00:19:55] I'd like to comment that you have made, which was that Dyson said he loved having his pleading struck out because that somehow made it better.

Sarah Hinchey [00:20:03] Well, I'm not sure he loved it if they were struck out, but if bits of them were struck out, not the whole thing, because he said to me, you know, they don't understand every time they tell me what's wrong with my pleading, it just gets better and better. And so I understood what he meant. Obviously it's better to get things right at the beginning, but it wasn't that the pleading was wrong. It's just that sometimes big institutional litigants will take smart points and that's fine and there's arguments that become the flavour of the month. But as Dyson said, every time they taught him a new thing about what was or was not the right way to do something or to plead the way in which documents had to be produced or I don't know, whatever it might be. So discovery notices, et cetera, every single aspect of it, his practise and his approach to the case has got more and more and more refined. And by the end, he was, and even when I first met him, a formidable opponent. And he ran those cases really.

Michael Green [00:21:03] Take off on a tangent a bit here, you've mentioned, or I mentioned, and you've responded about pleadings. Now pleadings are where you set out the bones of your case or the structure of your case. Is there something mathematical about pleading?

Sarah Hinchey [00:21:15] Absolutely, and I was going to say pleadings really appealed to my maths brain, if I can call it that, and that is because it is literally a step -by -step approach to the case where you are working towards what the conclusion is, which of course is exactly how you do big complicated maths problems. And Paul Santamaria, when I started reading with him, said to me, If nothing else, you'll come out of these chambers, an expert in pleadings. And I really did. He was great, is great at pleadings and he took the time and had the patience to teach me, but I noticed immediately it was very similar to the same approach to big maths problems, especially with complicated commercial cases that you really had to nut it out and say, how am I going to prove this, what's the conclusion, what are the steps to get there? And so I really enjoyed that aspect of analysing cases.

Michael Green [00:22:10] A lot of this work, and in fact most plaintiff work nowadays, is no win no fee. Personal injuries work is no win no fee. I have wondered over the years whether no win no fee puts a bit of pressure on a barrister to settle, because if they run the case and lose, they don't get a fee. Does it create some sort of pressure, no win no fee?

Sarah Hinchey [00:22:28] It didn't for me. I think that I took the bar rules very seriously and my obligation as a practitioner. And, you know, sometimes we had cases that lost, but I fought those cases just as hard. And sometimes we had cases that ran all the way through and some that settled. And so I just took the swings and the roundabouts. I think people who have a mostly no win, no fee practise, it's very high volume. And so what you get is... two-thirds of the cases will succeed and a third don't. And so it's again, the swings and roundabouts works out. I was told very early on in my no win, no fee practise. So you know, there's stages at the bar where you're junior and then you step up at about five years and you probably step up again at about 10. So between five and 10 years, I was complaining to someone about the fact that the no win, no fee work was. what would happen was you'd hear nothing for ages and it would just land back on your desk again. And I found that hard because I like planning for things. And I was just advised that if I was gonna do no win no fee, I should do lots of it or none of it. But to have two or three no win no fees hanging around was always going to be something would cause you grief. And so I was told the next time I was asked to take a step, bundle it up and say, if you felt that way. I'm not prepared to act in this case no in no fee anymore and it'll just go to another barrister and what I did was gradually change over my practise to only bigger cases with that were paying and where you stayed in control of the case the whole time you became the architect and the project manager if I could put it that way and I liked that.

Michael Green [00:24:06] much better. You mentioned big cases, maybe the biggest case you were involved in, I don't know, was a big commercial case that went to the high court.

Sarah Hinchey [00:24:14] Yes, that was the Melway's litigation. I was in that from the very beginning, from the pleading stage. Were you led by a silk? Yes. So initially Rodney Garrett and then in the High Court, Jeff Nettle. It was a great experience because I knew the case so well and it was just a highlight of my legal career really to go to the High Court with Jeff Nettle. I was absolutely terrified because I thought, please don't die. I'm not sure I can do this if you die. GI learnt a lot and to have the privilege of having been involved in the case from the very beginning was a really magnificent experience.

Michael Green [00:24:54] Sarah, I remember the name, the Melways case, but I don't remember anything about it. What was it about? Melways being the street directory.

Sarah Hinchey [00:25:01] That's right, yes. So it's a trade practises case, and it was to do with misuse of market power. That's what was being alleged. It was one of those.

Michael Green [00:25:09] It's being alleged against your client.

Sarah Hinchey [00:25:11] Yes, that's right, that they were misusing their market power in the way they sold and distributed their street directories. It was a fascinating case because we had to get evidence from all over Australia about the way the system operated. I met the man, a single man, not a company that owned that business. He was an extraordinary fellow. There probably was a company involved, but it was Mr. Pawsey. It was just every aspect of it was wonderful. I learnt a lot. We did the very first ever experts, they used to be called hot tubs, no one would call them hot tubs anymore, but the expert conclave I think they're called now, the first one ever was in my case, in the mellways case.

Michael Green [00:25:49] So just reminders, how did they work? So I've heard them called hot tub, never conclaves.

Sarah Hinchey [00:25:56] Sort of religious overtones, isn't it? So it's where all of the experts in a case give evidence at once. The way it should work, and sometimes people don't adhere to this, but they work best if all of the lay evidence has come out. So it's all settled, the cross-examination has taken place. So the experts have already given their reports, but on the basis of the evidence as it actually emerged, they're then asked to revisit their opinions to see whether or not there's any areas they now agree on. and they are then sworn in together or affirmed and they're in the witness box at the same time and they're only cross-examined on their areas of difference. And it's a very useful process. People think it's a bit cumbersome because of the way it works, but in fact, of course, what it means is you narrow the area of dispute quite dramatically usually. And if you've got a good expert, it'll be great for you. If you've got a kind of not so good expert, it might not work so well, but maybe that's justice in action, isn't it? Speaking of justice, did you win in the High Court? the greatest injustice of my whole life. I'd still like to speak to Murray Gleeson about that.

Michael Green [00:27:01] Maybe you'll get a chance one day.

Sarah Hinchey [00:27:03] Hehehe.

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Michael Green [00:27:33] Sarah, I find it interesting that you are able to maintain a broad practise. You're doing police taught work. You're also doing commercial work, trade practises work, going up to the high court. At the time, to my observation, and still, the profession was becoming more and more specialised and the ability to run a broad practise was very, very difficult. How were you able to do it?

Sarah Hinchey [00:27:54] It was a deliberate decision that I made. As I said, I never got rid of any area of practise. I just branched out and did more. But if you just sit down and look at it all, they all had a type of theme running through them. They were either scientific cases or they had a whole lot of analysis that needed to be done. There was something about all of the cases that appealed to me. and those areas of law all made sense to me. So I never felt like I had an incongruous practise where, I mean, I did do a murder trial, I did some rape trials. So they were a bit different, but the rest of the trials were all scientifically sort of an analytical stuff, just under the auspices of Oh &S or trade practises or, you know, forensic stuff to do with coronial work or common law, but they all had the elements of. sciencey sort of stuff in them, which really appealed to me. So I never felt I was torn in all directions.

Michael Green [00:28:53] So that first love of yours being maths and science, you were using that all the time. That way of thinking remains central to your practise.

Sarah Hinchey [00:29:02] Yeah, it really did. So for instance, I did a trade practises case, but it was about the powder on latex gloves. And so that was all about the medical and

scientific evidence of the way in which these gloves then would cause people to become allergic. So it was a really fascinating case. There was, I did stuff to do with peanut allergy, again, trade practises, but all to do with the medical scientific. sort of thing. Obviously, OH &S, they were all very high -level engineering and maths -types problems because it's to do with remediating systems. Personal injuries obviously has a medical slash scientific element to it. And then even the crime, you know, as I say, the murder trial, it was very interesting stuff to do with the forensic analysis. of what had gone on, blood staining or injury patterns, those types of things. And I really enjoyed that aspect of all of that work. Were you a junior in the murder trial? Yes, I was, to Colin Lovett. It was a fascinating experience and we were appearing before Jeff Nettle, who had been my former leader, in the Banco court. So you can't get a better setting to, as a junior, to be really living out your dream. Yes, in, yeah, the Banco. that really living out your dream.

Michael Green [00:30:15] So, working with leaders in the field, Jeff Nettle, Dyson Hore - Lacey, Colin Lovett, what did you take away? Were there learnings there which have stayed with you to this day?

Sarah Hinchey [00:30:24] Absolutely. There's too many to mention. You've talked about three of them, but Will Horton, Sue Crennan, Phil Priest, all of these people. Back to basics, I guess, might be a theme. In the sense of starting, Will Horton used to have a saying, read the words of the Acts of Parliament, and he always used to say it with a smile on his face. But it's right. If you don't start with what the law is and what Parliament says the and you go off. thinking you know what it is, but you've never actually looked at the words. You might start down a track that's completely wrong and then it has to be fixed later. So start with the basics, go back to fundamentals. What are you trying to achieve? What's the wrong that you're trying to write? And work that out from the very beginning. And if you get that right, then everything you do moving forward will be a natural building block. You can't try to start. halfway through a case, you can't plop in and think you'll be able to fix everything if you don't know where it came from and you're not clear on where you're going to. And I think that's a mistake a lot of people make, especially if they're brought into a case that's already running. The temptation is to just go with the flow, but sometimes you need to stop and take a step back and make sure.

Michael Green [00:31:42] I guess if you're brought into a case that's already running, a fresh pair of eyes that doesn't go with the flow, so to speak, is maybe the most valuable thing you can do.

Sarah Hinchey [00:31:50] Yes, but you've got to be careful not to cause trouble.

Michael Green [00:31:55] Not to step on toes.

Sarah Hinchey [00:31:56] Yeah, you've got to do it in a way that is empathic and with respect for the fact that the money has already been spent in a certain way and then work out how to gently give your view about what might need to be done.

Michael Green [00:32:09] I remember being in conferences with barristers where I was the solicitor and the very good barristers did that, made me look good in front of the client even if I had got it wrong and got the case onto the right path without embarrassing me.

Sarah Hinchey [00:32:23] I heard Philip Mandy, apparently when he was a barrister, once said to a solicitor, this case is misconceived. And I never ever had to say that to anybody, but that always rang in my ears, start from the beginning.

Michael Green [00:32:43] Why don't we move on to the culture of the bar? Because you were on the bar council for six or seven years, late 90s, early 2000s. So what did you do on the bar council? Maybe the bar council has changed, hasn't it, because it's no longer got a disciplinary power. That's right, yes. I don't think it has. I think that's all gone to the Legal Services Commission and the Commissioner. What did you do on the bar council and what did it do? Did you learn things there which otherwise you wouldn't have known about the bar except that you were actually right in the heart of it?

Sarah Hinchey [00:33:11] Yeah, I think I did. I went on it at a very, very junior point in my career. I went on it because I was part of the Essoign Club committee and Michael Colbran decided we needed someone from the Essoign on the Bar Council and he said to me, you should run. So again, without even really understanding why or what, I did it and I got on. And the junior category is very big, so it's much easier to get on. I learnt a lot by watching the senior barristers. in action and I was there from about the time of David Curtin onwards with Ross Ray and Robert Redlich and Peter Reardon, Jack Rush, John Digby. So I was there for a lot of chairman and I got to see all the different styles. I started understanding politics. I'm a pretty sort of straightforward, somewhat naive person I guess, but I got to see politics in action. I understood the, started understanding the interface between the bar and BCL and sometimes the tension between those two.

Michael Green [00:34:09] BCL being Barristers Chambers Limited. Which is the Barristers Landlord.

Sarah Hinchey [00:34:13] Yeah, well, it owns all of the bar's assets and the bar is the single shareholder in that company. So there's sometimes a tension between the two of them. I got to see the way the Essogin has gone in and out of favour at times. I always loved it. But I was also part of rejuvenating the Essoign because it went from being a place where a lot of very senior, what some people might call the old blokes used to go to, to something that needed to be rejuvenated and renewed. to ensure that it could keep going and that young people would want to go there. And so that's when it moved to the first floor. Can I just butt in for a sec, please?

Michael Green [00:34:48] Sarah, maybe for those who aren't at the bar, or maybe those who are students studying or whatever, what is the Essoign?

Sarah Hinchey [00:34:54] So the Essoign is a barrister's club, and Essoign is a word that means a barrister's excuse for not appearing in court, and I always love that detail about it. So it's clever, but also the club is really well done. And it's interesting for those who don't know, this club is admired by the rest of the bars around Australia. No one else has a club like this. And when they come down from Sydney or Brisbane or over from Adelaide, apparently a lot of the barristers are intrigued to come and they want to see what it is that we've got. So we've got this unique resource. It's a space you can go where only barristers will be there. And it's a really collegiate place. It certainly enhances the collegiality of the bar and a place to wind down, to ask questions and to generally get to know your fellow barristers. It's a great thing. and having brought it to the first floor. is wonderful because it's right on the floor where the readers are, which means all the new readers, it's the natural place that they go for coffee and get to know each other.

Michael Green [00:35:55] And they're maybe not intimidated by more senior barristers. Or learn to be less intimidated.

Sarah Hinchey [00:36:00] When I first started, it was on the 13th floor and you had to walk in past the bar and the same people would be there and the space was very narrow and getting past them to the rest of it was a bit intimidating. So I think things have changed for the better.

Michael Green [00:36:17] You mentioned the word there collegiality and I think, please correct me if I'm wrong, that that may be a description of the culture of the bar. It's collegial. It's a culture which people have called unique. Do you think that's an accurate description and if so what is unique about it?

Sarah Hinchey [00:36:31] Yeah, I do think it's an accurate description. I think it's an amazing institution, especially given that it's a collection of soul practitioners. But as a collective, there is a shared philosophy of nurturing and assisting anyone who's a member of that institution. So in other words, other barristers, there's an open door policy, which I'm sure still exists. It extends so far as coming in to take a book as long as you leave a note saying you know, I've got whatever it might be, and that you're welcome to use those resources. Also to ask questions of senior barristers. And I was always told and made sure that I did this, that you had to have really tried hard to solve the problem yourself first. Don't come in and just expect to be spoon-fed. But of course, it meant you got a lot more out of the conversation, because you were that much further down the track with your question. You could come in and have an intellectual, interesting discussion. a thing that you faced or that you had to argue the next day or whenever it might be and really get some valuable input. And I remember one time I was up on the 10th floor as a junior barrister, that's where I had chambers and Brian Burke was there and he saw me photocopying and he said, That's a lot of books, and I said, yeah, you're a bit weak on the facts, are you?

Michael Green [00:37:57] I should say to people, Brian Burke was A, the doyen of the liquor licensing bar, and also a criminal barrister.

Sarah Hinchey [00:38:04] he was, and a charming man and a really good lawyer and tactician. But I love that characterisation, which I've heard lots of times since. Are you a bit weak on the facts if you're going to have to resort to the law? And from that moment, he would say to me, do you need any help? And he was so generous with his time.

Voiceover [00:38:36] 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 [00:38:55] Sarah, in 2015, you became a judge of the county court. Had it ever been on your mind that you might become a judge? Had you wished for that sort of position, judicial position?

Sarah Hinchey [00:39:06] No, I never had. I was happy being a barrister, but I must say, as I got more and more senior, I found the work increasingly took a toll on just my enjoyment of life. Work took over everything, and of course it has to when you're busy. You made a joke about me not sleeping or maybe not getting much sleep. That was what was starting to happen. I would prefer to stay up all night than to not know a fact about a case. you know, because you had to plan for the worst. And that takes its toll after a while. You know, I'd gotten married and I can remember my husband, who's also a barrister, saying to me one day, and when I was obviously being pretty awful, what are you gonna

do when we're both busy? Because he was a junior barrister at that time. And it made me stop. And I've seen my dogs stop when I shout at them, you know, and I did the same thing. It was like, ooh. yeah good question and I thought to myself gee I'm not sure I can keep doing this forever so that sowed the seed of I've got to find something else but I had never thought about being a judge but when I was rung up about it because one of the things when I was thinking about what else I could do as. a sinking feeling that I was not qualified for anything else, you know, I was so embedded in being a barrister. And I looked into doing scientific sort of things, but you always had to go back to uni to follow the things that I thought of. And then I was rung up and asked if I would like to be a judge and I thought, well I am qualified for that and I think it won't be as stressful. I was starting to get to where I used to my dad, you know, burning the midnight oil. and not that he was always stressed, but it was taking over my life. And being a judge, I thought perhaps would restore a bit of predictability to practise of the law.

Michael Green [00:40:59] Pretty well within the first year of you being on the county court bench, you're appointed state coroner. Yes, that's right. It appears to me that coroner's court is a different sort of court. You haven't got winners and losers. No. It's not like, yeah, we're coming to the county court, I'm charged with some crime and I hope I'm going to beat it. It's not that. It's a different role and I suspect it's a role that changes. What the court does is not always the same. Sometimes you're sort of sitting out. Maybe policy changes should be made by the government to improve some situation that's dangerous. Other times it's possibly saying that maybe some legal action should be taken against a person arising out of a death.

Sarah Hinchey [00:41:40] You're right, it's all based on or all aimed at ensuring that any systemic change that needs to occur takes place and when I say it's all the cases that run, but what I learnt about the Coroner's Court, because I had done that work, quite a lot of that work as a barrister, but of course as a barrister you only see the cases that run because they're the cases that you're in and I had no idea, so it was a huge eye -opener for me that That's about 1 % of the coroner's court work, and the rest of it is done. on the papers in chambers and the majority of cases do not get to a hearing and that's because they don't need one. It doesn't mean that the issues aren't considered in chambers and the Act sets out what the coroner's function is, which is at its most basic to determine who died and what was the cause of death and the other details that are needing to be discovered for the purposes of the Act in a reportable death situation. But of course, then there's that whole. approach of ensuring so far as possible that preventable deaths are prevented in the future and that's the very important work of making recommendations and working with different parties to find solutions. So the very best work is done where you involve the parties who have been involved in the death one way or another in crafting the solution that is going to work rather than coming in and imposing yourself on it. I found it fascinating. The work is incredibly varied and broad. And as I say, the hearings are just a tiny little portion. Most of the work's done behind the scenes on the papers. Now.

Michael Green [00:43:19] As we sit here today, you're back on the county court bench where you never left the bench but officially at the county court, I can use that phrase, within the common law division. My first question is, can you explain to us the structure of the county court? Yes, of course. The various lists and, I mean, to me, from looking from afar, it seems to me the majority of the county court work is crime, but there are other lists as well with heads of list and things like that.

Sarah Hinchey [00:43:44] So within the court, there are three divisions. There's criminal division, common law division, and the commercial division. Increasingly, commercial is

expanding. It used to be a very small part of the work. Your right crime is most of the work, but the common law division's really very big. I think there's 25 common law judges. And from a commercial point of view, I'm not entirely sure of the numbers, but let's say there's five or six judges and several JRs. So that's expanding, there used to be one judge or two judges. So you'll see that that has expanded and it will because of the way in which some of the building work is going. But within each of the divisions, there are then sub -lists, if I can call it that. So an obvious sub -list within the criminal division is the Koori Court, but there are other things, the drug court and those sorts of things. Within common law, there's a lot of different lists. So there's the confiscations, which I'm in charge of, there's a work cover list. There's family property, which is to do with disputed wills. There's stuff to do with institutional sexual abuse and all sorts of other lists. There's something called the appeals and post -sentence list. So there's some quasi -crime as well. Confiscations, which is what I do also, is quasi -crime. So it's a really broad division. And within commercial, commercial is commercial. But they might do building cases or they might do. recovery or whatever it might be, but they're big and they're more complex than things that go to the magistrates court.

Michael Green [00:45:16] When you say confiscations, I know what a confiscation is, in what context is a confiscation taking place?

Sarah Hinchey [00:45:23] So these cases are nearly always associated with someone who's either been accused of or charged with a crime of certain description and then if there are any assets that are suspected to be the proceeds of crime, those cases are all about that, what happens with those assets. So in the first instance, the prosecuting authority or the authorised authority, which will be the DPP or the Commissioner of the AFP, can apply for what's called a restraining order and the purpose of that is to preserve the property and then after that you can imagine there's a lot of litigation that arises over whether or not the property should be restrained or whether there's certain parts of it that should be released because someone's got an interest. So for instance, if I had bought a house based on false information to the bank. So I'd obtained by financial deception a mortgage over a house. The house might be restrained, but if you had made mortgage payments because you were trying to help me out and that was from your own money, you would have an argument that some of that asset should be excluded, your interest in it should be excluded from the operation of the restraining order. And in those circumstances, Let's say you'd paid \$100 ,000. The property might then be sold, your 100 ,000 is paid to you and the rest of the money then is held in respect of the criminal activity. So it's a very interesting area of law.

Michael Green [00:46:47] When you say it's held, Sarah, is it going to consolidate a revenue of the governments or is it held for people to make claim on it, members of the public who had a crime committed against them say, well, this person assaulted me and I want damages.

Sarah Hinchey [00:47:00] Yes, so that's one aspect of it. So when you make a restraining order, a declaration is always made about the purpose for which the restraining order is being put in place. So it might be to satisfy a compensation order under the Sentencing Act, which is what you've just talked about, or it might be to satisfy the forfeiture provisions under the Confiscation Act. So in certain circumstances, if someone's found guilty of a crime and is sentenced. then property automatically forfeits after a certain amount of time. And so if there's automatic forfeiture, the reason the property's been restrained is to take account of the fact that that might occur. And there's other reasons why the property might be restrained, but the system is quite complicated, it's all set out in the Act. And the

property, at the beginning, let's say we're talking about a house, the restraining order sits effectively on the title as a restraint from dealing. And it's only if you get to a certain situation that the property is then forfeited to the minister and that then gets sold and goes into consolidated revenue as I understand it.

Michael Green [00:48:08] Sarah, I understand over at the county court there's a thing called the third floor produce stool. It's a strange thing to have in a court. What is the third floor produce store?

Sarah Hinchey [00:48:18] Well it's kind of ad hoc and I have to confess we haven't done it for a while but I absolutely love gardening and have always since I was a little girl and now Tom and I have several vegetable gardens and so we always end up with too much produce for ourselves. And so what I do when I can is bring in the excess and have it all, I try to set it up like a little mini market stall and just have the produce there for people to take at work. We send out an email saying this week the third floor produce store has, and we list it off. And then people just come and help themselves to things. And it's been a wonderful way to get to know people and some other people, which I had hoped, and it did happen for a while pre -COVID. started bringing in their produce too, so it became more of a group effort. And I understand.

Michael Green [00:49:10] And I assume this comes under the heading of work -life balance. Absolutely, yes. Which has been important to you, maybe you learnt through your time as a barrister when you were burning the candle, well maybe not at both ends because it was all work, that it's very important to have balance in your life.

Sarah Hinchey [00:49:25] Yes, I think it's really important. I mean, it's a cliché, isn't it, your work to live, not live to work. But I really think if you don't take time to do things you enjoy, you won't perform as well as you could. And you know, more recently, I've become much more focused on meditation and sleeping and those sorts of things, not sleeping on the job, but getting enough sleep, I mean. But I do think it always comes back to enjoying your life and making sure you're doing things that give you great satisfaction and to me there is nothing better than going out and being in the garden and you know I'll find a plant that's popping up underneath something I didn't know was there or the lovely smell which I've had recently of tomatoes on my fingers or even just the joy of seeing worms in a place where I know there never used to be any and knowing that I had a hand and that we... worked hard together, Tom and me, to get that to that point and to see then what happens in the environment. Ladybirds come in, snails move in of course, birds start coming back, all of those things. It's delightful. Are we allowed to crush snails? Not that I'll admit to.

Michael Green [00:50:43] Now, a bit more highfalutin than getting your hands dirty in the garden is cooking truffles.

Sarah Hinchey [00:50:50] Well, this was part of, so I just circle back to, you'll remember, I said to you, I realised there was, I had to do something, maybe do something else, I needed to find something else I could do. So I was reading a book about a woman who started a French cooking school. And again, you'll recall, I mentioned everything I thought of seemed to me to need to go back to university. But when I was working in Europe, I was a chalet girl. So I used to cook for people. I've always loved cooking. And I learned from my mum, who's an excellent cook. And it suddenly dawned on me that running a cooking school is exactly the sort of thing I could do. And I make it a business and that sort of thing. So I got very enthusiastic about this. And someone very unkindly said to me, why would anyone want to learn cooking from you? This was in the days of the early days of

MasterChef where cooking was becoming a thing. And I did think to myself, I try not to take much offence at people, but I thought to myself, oh, that's a good question. What's my selling point effectively? And it suddenly dawned on me I needed to have a topic that would cause people to want to learn because I was not the draw card. And so I had I had bought a truffle or instead of taking flowers, I'd bought a truffle for a friend. And instead of it being a small little truffle, I got a big truffle accidentally. And because the fellow had dug it up for me, I felt obliged to buy it. So I got it and I gave my friend part of it, but I kept this massive thing, the rest of it for myself. And then of course I had to learn what to do with it. So that was my introduction to truffles. And I realised that I had had no idea what to do with it. I'd had to learn a lot about it. and that might be the hook of teaching people how to cook with truffles, which again was new in Australia. It's not so new now, but it was back then. Are you still cooking truffles? Yeah, absolutely, but only for pleasure these days. But I did run a cooking school for five years, not full time. We'd do it each truffle season. And what I learnt about that was, cause it was terribly enjoyable, but mostly what I learnt was nobody really wanted to cook, they wanted to eat. They wanted me to clean up, which was fine, except that wasn't what it was meant to be. And at the end of a whole weekend's work, I might have made \$200. And so suddenly being a barrister looked pretty good, actually.

Michael Green [00:53:14] This is just out of personal curiosity. Where do you buy truffles in Melbourne? I can't remember seeing them anywhere.

Sarah Hinchey [00:53:20] Oh yes, absolutely. So every winter, so the truffle season for people who are interested runs from June to August every year and there are sometimes pop-up shops but they'll be at various markets. And the really good thing about Australian truffles, just to give a plug to the industry, is that our truffle industry is unadulterated by truffles that are not culinary in nature. In France, for instance, you've got to be really careful because you can get sold a truffle that looks like a truffle but it's not what you think it is and you cut it open, there's no smell, et cetera. The only truffles in Australia are the ones that are worth using in a culinary sense. And so we're really lucky to have such a high quality industry. The prices are pretty low because there's actually now quite a lot of truffles being grown here. and they're all derived from France, so they're identical to the good French ones. So I think it's a pretty good industry to actually be associated with and I loved my time working with all of those people.

Michael Green [00:54:23] To wrap this up Sarah, looking back at your life including your time as a cook, running cooking classes and as a judge and as a barrister, judge as associate, what would you say to people, particularly I always think about young people listening to experienced practitioners like yourself, what would young people learn, young practitioners, even students?

Sarah Hinchey [00:54:43] Well, I think you should follow your dreams, but also be prepared to change course if that's what happens. And by that I don't mean chopping and changing randomly. I always plan everything probably irritatingly, but from my point of view, meticulously, but I'm always willing to change course if it's quite clear that that needs to happen or that something's popped up that looks really interesting. So I did the study, but I was prepared to travel overseas and that - gave me other opportunities. I went to the bar and I loved it, but when it became apparent that it was starting to cause me more stress than it was worth, I had a look at doing a cooking school and I gave it a go. And then it gave me a renewed enthusiasm for the bar. And then when I'd never wanted to be a judge, but when I was offered it, it did seem like a good idea. And I thought to myself,

why wouldn't I take that opportunity that's presented itself. So I think taking opportunities. But keeping an open mind is really important.

Michael Green [00:55:44] Thank you very much for coming in and talking to us this morning about your very fascinating life both inside and outside the law. We've thoroughly enjoyed it. Thanks Michael.