

William & Lonsdale – Lives in the Law

Ep. 24. Emma Dunlevie

Presenter [00:00:05] This is William and Lonsdale, a podcast about the legal ecosystem in Victoria and the fascinating people and stories that make it tick. Today, your host, Michael Green speaks with Emma Dunlevie, lawyer and principal at Russell Kennedy. Emma's career is split fairly evenly between her work as a commercial lawyer and managing the pro-bono practice within the firm. She's worked on many fascinating cases throughout her life in the law, including a case in the Tasmanian Supreme Court during her articles and the relatively new and absolutely fascinating area of climate law. But her pro-bono work had more humble origins when, as a young lawyer, she volunteered her services one night a week for five years at the Asylum Seeker Resource Center, including a groundbreaking case that began when a disheveled man showed up unannounced at Russell Kennedy's offices back in 2012.

Emma Dunlevie [00:00:55] So, yeah, this man turned up at our reception. One day he was disheveled. He'd clearly been living, living rough. He spoke no English at all, but he was clearly determined and he told us that he was to be deported to Afghanistan in the next couple of days or so. So, with the assistance of Matthew Albert, who at that point was a young barrister at the bar, we worked with him and we were successful, successful in obtaining an injunction to prevent his removal over a weekend. So, we were able to show the court that his claims needed to be properly considered according to the rule of law and principles of natural justice. I think what's happened over the years with Refugee law is that the government is constantly shifting the goalposts, and when they do that, often errors are made. Often the law can be challenged because things have been done for political ends rather than focusing on the law. And that was the matter of, SZQRB and the Minister for Immigration and Citizenship. So, it was ended up being a groundbreaking decision which found that the department had been systematically denying a cohort of asylum seekers procedural fairness when reviewing their protection claims, and it ultimately led to the reconsideration by the Department of several hundred Refugee decisions. So, a lot of lives were affected and I think saved at the end of the day.

Michael Green [00:02:38] This morning our guest is Emma Dunlevie, a partner at Russell Kennedy and manager of their pro-bono practice, as well as having her own commercial practice. So, she brings an interesting mix of the law to our conversation.

Emma Dunlevie [00:02:51] Morning, Michael. Thanks for having me.

Michael Green [00:02:54] Emma you did your law degree at Monash, but you weren't particularly drawn to law. More interested in politics major and your arts degree. Did you enjoy university? And when did the law become the thing for you?

Emma Dunlevie [00:03:06] I loved university. I loved the diversity of the people and the interesting people that I had met. I was certainly interested in law, but I didn't really know about it as a career at that point. I was 17 years old. I didn't know many lawyers, you know, family network. We didn't have any lawyers in the family, so it was a bit still a bit of a mystery to me. But I was certainly drawn to the public policy aspect of law. I knew that law had a role in effecting change in society and supporting those that needed support. But beyond that, I didn't know much, much else. I loved history, politics. I was always interested in the humanities, and that was perhaps more my focus at that point. I was doing a double degree in in politics and law.

Michael Green [00:03:58] You did your articles at Russell Kennedy, and articles can sometimes be quite trivial sort of work in some ways. But it wasn't for you because you're immediately involved in a major piece of litigation in the Supreme Court of Tasmania. Could you tell us what that was about?

Emma Dunlevie [00:04:14] Yeah, sure. Look, it's really a matter of timing. I just happened to be at the right place, right time, this litigation arose, we were acting for the appointed administrator of a lady by the name of Louise Crockett, and she had an acquired brain injury which resulted from an abscess she developed in her brain following a partial lobotomy, and that surgery was carried out as treatment for post-natal depression. So, the proceeding was conducted in the Supreme Court of Tasmania, and the defendants were the State of Tasmania as a representative of the Royal Hobart Hospital, as well as her medical practitioner. So, through that litigation, I dealt with her friends and family. Her medical advisers and carers took statements from them and really loved to get to know these people and to fit all the various pieces of the puzzle together. Build those relationships. And I really enjoyed that. As well as enjoying learning about the elements of a large litigation matter and the complexity and number of the parties involved great risks that come with litigation, understanding that only one side can win and it'll be all or nothing sometimes. But it was a great experience. It did take up my entire articles here, so I came back after that and did a further six months of training in our commercial team so that I was able to get an experience in both litigation and commercial practice.

Michael Green [00:05:40] After being involved in such an important piece of litigation, an interesting piece of litigation and litigation which helped someone who needed help. You then went into commercial law, not into litigation. Why was that?

Emma Dunlevie [00:05:52] Look, I think two key things. Firstly, I at that point felt that the commercial work was perhaps a little more academic for want of a better word. I enjoyed spotting the legal issues and working through them with research and resolving issues without too much distress. I enjoyed building the relationships with clients and the commercial practice. You know, you'd have repeat clients and I enjoyed that. I enjoyed building up those relationships, getting to know people, helping them through their problems. And it also means that we still do dispute resolution work through our commercial practice and we work closely with our litigators, but just not all the time. I perhaps felt I wasn't really robust enough at that point in time. And then I guess the other key factor was the mentoring. So, I just really clicked with the senior practitioners in our commercial practice at that time. And really, the people you work with is so important in your career decisions and just your enjoyment of your day to day work.

Michael Green [00:07:00] You mentioned mentors and it's interesting. It's been a theme which has come up in many of our podcasts where people have spoken with gratitude about good mentors in their professional life. You particularly mentioned a couple in Michael Redfern and John Corcoran. What advice would you give to young lawyers about seeking mentors, and are you aware of trying to be a mentor yourself?

Emma Dunlevie [00:07:23] Yeah, at that time, and this is going way back to 2002 to 2005 thereabouts. I don't think the mentoring programs were as formal as they are now. They weren't really those clear opportunities to seek out formal mentoring. So, I think I just had the good fortune of having those people in the firm who showed an interest in me in my career development and that I just got along with. So, I do think I was just simply fortunate at that point. Now it's different. There are more established mentoring programs through

Victorian Women Lawyers and Law Institute and also within our firm. We have a structured mentoring program. I have been a mentor for several young lawyers.

Michael Green [00:08:04] Male and female?

Emma Dunlevie [00:08:06] Actually, no. Just female. Yeah. So, through Victorian women lawyers, I don't think that says anything. I just think it's just been a matter of circumstance that I've been approached by young female lawyers for guidance. But it is absolutely crucial to have that mentoring in place. And I do think that that is one area that suffered a bit through the pandemic for young lawyers to not have people that they can just knock on the door of and have those informal, spontaneous discussions in the hallway and in kitchens. And it's absolutely crucial for young lawyers.

Michael Green [00:08:39] And you have said that through one of those mentors, Michael Redfern, you saw how you could do good through the practice of commercial law and normally in doing good. I might have thought of injury law like your Tasmanian Supreme Court case or criminal law, but you have found a way that and through good mentoring commercial also can be a way of doing good for people.

Emma Dunlevie [00:09:02] Yeah, so certainly Michael was an exceptional lawyer and human being. He was a tenancy specialist, an academic who sadly passed away in 2012, but he was certainly a key mentor and key influence on me. He was the epitome of a legal professional an utter gentleman and a scholar. You don't really come across people like that much these days, but he taught me a lot about the technical aspects of litigation and common law to never argue based on principle to just get straight to the issues. Avoid unnecessary bluster and to just be effective in what you do. We would often have morning briefings and talk about world politics and US Supreme Court decisions, which of course I hadn't read. But he had, yeah, it was a really fantastic grounding for me. And I think just building up those general legal skills that you can apply to anything, really, you know, and the networking skills that you develop as a commercial lawyer at the networking, particularly with the pro bono practice, has been has been key. I feel I've been able to develop those networking skills and just the confidence of being a legal practitioner through the commercial practice and just the diversity of what I do means that I am constantly dealing with people across all areas of law, which has really helped build our pro-bono practice.

Michael Green [00:10:23] And yet for all of that, after a couple of years, you resigned from Russell Kennedy and go and do a masters at Melbourne University. Was this a strategic career decision?

Emma Dunlevie [00:10:35] No, nothing strategic about it. I just felt I needed a bit of time out. I felt I'd started law straight after school, finished uni, did my articles and a year later just felt I needed a bit of time out to think about where I was heading, what sort of a career I wanted. I also wanted to explore academia a little further to find out if that was for me and also do a bit of traveling. I felt I hadn't done enough traveling and I wanted to get that out of my system.

Michael Green [00:11:09] And what did that traveling entail?

Emma Dunlevie [00:11:10] So I well, actually, I had deferred a year of uni and spent a year backpacking on my own and then went back to uni. And then, after resigning from Russell Kennedy, I started my master's at Melbourne Uni in public policy and

management, as you mentioned. And then I applied to Uppsala University in Sweden to do a master's of development studies. So, I was doing two masters at the same time.

Michael Green [00:11:36] What is development study?

Emma Dunlevie [00:11:38] It's a mixture of, I guess, economics and law aspects of law and politics, mainly focused on developing countries and aid programs and combination of things. But when I was studying that, I was mainly focusing on Refugee issues and I completed a thesis which focused on Refugee issues. So. So that was in Sweden. I was there for a year, but look, I was open to whatever came along. I thought I might do a bit of fieldwork, but I actually met my future husband, who is Spanish, and we traveled for a bit. I eventually returned to Australia.

Michael Green [00:12:12] You returned and you come back to Russell Kennedy, but I'll get back to that in a moment. I think even prior to that, maybe when you were at uni, first up, you're volunteering at the Asylum Seeker Resource Center?

Emma Dunlevie [00:12:23] I started volunteering there when I returned from Sweden, so I was back in Australia. So, it was early 2005 and I had returned to Russell Kennedy at that point. So, I was doing volunteer voluntary work as part of their evening legal clinic.

Michael Green [00:12:38] And what did that entail?

Emma Dunlevie [00:12:40] Working in a legal clinic and assisting asylum seekers to complete Refugee visa applications or applications to the then Refugee Review Tribunal for Merits review of a departmental decision refusing the visa. Yeah, that was a weekly clinic. Rather grueling at times, but a fantastic, fantastic organization, the largest organization in Australia, assisting asylum seekers and refugees in Australia. You know, it gave me the opportunity to meet some brilliant lawyers, human rights advocates and to really get great results for people who needed assistance.

Michael Green [00:13:13] You kept at it for five years and only stopped when you had your first child, Javier. You must have felt a strong commitment to it that you were doing worthwhile work.

Emma Dunlevie [00:13:24] Absolutely. I think my interest in Refugee policy and law goes back to university, probably earlier than that. I think I always felt from a very young age that there seemed to be an attitude and unfortunately, I think a prevalent attitude in the Australian community that, you know, if we're okay, we're not really going to stick our neck out for others. We might be charitable for those around us who we understand and who we relate to. But for people who might be outside of our understanding outside of our social network, perhaps or might look different or have different religious beliefs, I think there has been a reluctance to help those people. And I think unfortunately, we can see that or it's resulted in certain government policy in place in Australia today.

Michael Green [00:14:16] In 2009, your first child is born and you go on maternity leave and you return to work a year later. Was that a seamless transition coming back to work? Did you just look back in your old position or was there a lot of juggling involved to cover many bases?

Emma Dunlevie [00:14:31] I'd have to say it most certainly was not seamless. I'd like to pretend it was, but I can't. Javier was a ridiculously charming little guy and not a good

sleeper. I went to sleep school twice with him and had a really beautiful first year with him, but it was difficult. I was really sleep deprived and I wanted to do some work, but my brain couldn't cope. I certainly needed a full year of maternity leave before returning to work. My daughter Lucia, was born four years after that and that was a totally different experience. Everyone has a different experience with their children and trying to return to work.

Michael Green [00:15:05] When you come back to work, you become involved in Russell Kennedy Pro Bono Program. Why did you do that?

Emma Dunlevie [00:15:11] As I mentioned, I had been doing quite a lot of research and academic work on Refugee law and policy. So, look, I just approached some partners at Russell Kennedy to see if they would be happy for me to do some of that work within the firm. And I already had built up some connections with lawyers and advocates through the work at the ASRC. And there was certainly plenty of work to be done so. And it also happened at that time that there was a young lawyer who had started at the firm, Sophie McNamara, and she had a strong interest in the area and she'd done a placement at Pilch, which is now called Justice Connect. And so, the two of us took on some Refugee files together and we went from there. So, the pro-bono program had existed at Russell Kennedy since around 2003, and we had a pro-bono committee. And then since then, it's grown significantly. And, particularly in the area of the Refugee law,

Michael Green [00:16:13] Why does a firm like Russell Kennedy and other first and second tier firms have structured pro-bono programs?

Emma Dunlevie [00:16:20] It comes from the interests and passions of the lawyers within the firm. I think first and foremost, there's also, I think, a recognition of pro-bono being an ethic of service to the legal system and democracy and the public good. We have an ethical duty to use our specialist skills to respond to serious needs in the community for access to affordable legal services and to fulfill an unmet legal need. So pro-bono assistance marks us as professionals rather than just practitioners and business people. So certainly, the ethical aspect is very important. But I guess you do need people within the firm that recognize that strongly and will support that. And certainly, Russell Kennedy had that during my time as a junior lawyer where I was building up the practice. I think secondly, although related to that, is that pro bono is a part of our commitment to the rule of law. So, we're acting as gatekeepers of the justice system and making sure that the rule of law, which we all study through university, is a reality in our society. And I guess again, related to that, it's part of recognizing our privilege, the privilege that we have in having acquired skills at university and the networks that we have and the lack of barriers that other people experience that we don't experience. And I firmly believe we should use that privilege to get stuff done and to be a little bit subversive at the same time to chip away and ensure that the disadvantaged members of our society are given a bit of a leg up. So, yeah, they're the two key elements. And then I think thirdly, from a business perspective, the Victorian government and Commonwealth government have, if you want to be part of the group of law firms that are awarded government work, then you need to commit to carrying out a certain amount of pro-bono work per year. So, I think that incentive from government has also ensured that law firms like Russell Kennedy and others have got organized and ensure that their pro-bono work is managed properly and properly resourced and staffed. I think another key reason is that our lawyers love it, it really helps for attrition, attracting good junior lawyers to our firm. It helps us and them improve engagement with legal practice and lift morale. I think it promotes a notion of meaningfulness at work so you can bring your whole self to work because you're doing your commercial work and also other work that's truly meaningful to you. So, you know,

work that's meaningful is often understood by employees, not just in the context of their work, but also in the wider context of their life experiences. So, yeah, I think that is becoming increasingly important to new lawyers, and it gives us a competitive edge when recruiting and motivating our staff.

Presenter [00:19:11] Lives in the Law is proudly sponsored by City Maps illustrated their recent publication, The Melbourne Map, is a celebration of our wonderful city. This stunning hand-drawn illustration, which took more than three years to create, is available as an art print, jigsaw puzzle and calendar the perfect acquisition for your home office or corporate gifting. More information can be found on their website themelbournemap.com.au

Michael Green [00:19:38] A large impact upon your pro-bono practice or maybe even help start your pro-bono practice. Russell Kennedy was disheveled man who walked in off the street. Who was he and why did it have such a large impact?

Emma Dunlevie [00:19:49] So he was an Afghan Hazara men. And at that point, this was around 2011 or so. We had already been doing a lot of work within our pro-bono practice at Russell Kennedy for unaccompanied refugee minors. So, we'd been assisting young Afghan boys or men, as well as young Sudanese people with family reunion applications working with Victorian Legal Aid and community legal centers, legal clinics and strategic litigation. So, we had, I guess, built up a reputation as a meaty commercial firm that was able to resource and carry out that work. And so of course, word gets around. And there was such a demand for legal assistance for refugees at that time that people were really quite desperate for assistance and there was certainly little, if any, legal funding from the government. So, so yeah, this man turned up at our reception one day he was disheveled, he'd clearly been living, living rough. He was softly spoken and very gentle manner. He spoke no English at all, but he was clearly determined. And so, we arranged to see him and determine what his legal claims were, and he told us that he was to be deported to Afghanistan in the next couple of days or so. So, with the assistance of Matthew Albert, who at that point was a young barrister at the bar and continues to this day to do some amazing work for refugees. We worked with him and we were successful, successful in obtaining an injunction to prevent his removal over a weekend, and then we were ultimately...

Michael Green [00:21:23] Can I just say, you say quite blithely, we obtained an injunction over a weekend. It's not quite as simple as that.

Emma Dunlevie [00:21:30] No, it's not.

Michael Green [00:21:31] Getting a federal court judge available and to present to prepare and present the material to that judge to get an injunction. What did it entail?

Emma Dunlevie [00:21:43] It was compelling because his claims hadn't been properly considered. So, we were able to show the court that his claims needed to be properly considered according to the rule of law and principles of natural justice. But I would have to give full credit to Matthew Albert. He was able to identify these issues and prepare submissions. And as the solicitors, we just ran around and did what we were told by him. And he's a fantastic advocate back then and he still is. So, the barristers at the bar just do amazing pro-bono work, and especially in this field, I think what's happened over the years with Refugee law is that the government is constantly shifting the goalposts.

Michael Green [00:22:25] Is that to make it harder for the refugees to kick a goal?

Emma Dunlevie [00:22:29] That's right. And when they do that, often errors are made. Often the law can be challenged because things have been done for political ends, rather than focusing on the law and how we should be protecting the rule of law and human rights and our international obligations and so forth. So that focus on political ends has meant that there's often been scope for successful legal arguments.

Michael Green [00:22:53] How did this Hazara man, how did that matter finish up?

Emma Dunlevie [00:22:56] So we got the injunction and then ultimately, we were successful in proceedings in the full federal court. And then in the High Court. And that was over 2012, 2013. And that was the matter of SZQRB and the Minister for Immigration and Citizenship. So, it ended up being a ground breaking decision which found that the department had been systematically denying a cohort of asylum seekers procedural fairness when reviewing their protection claims, and it ultimately led to the reconsideration by the Department of several hundred Refugee decisions. So, a lot of lives were affected and I think saved at the end of the day.

Michael Green [00:23:32] Can I just clarify so in taking a case to the High Court, which is the pinnacle of legal work and litigation, certainly in our society, is a huge amount of work involved with a large number of people, countless hours. All that's done pro-bono? Not one cent came from any outside source to help fund Russell Kennedy to help fund the barristers. Everybody did it for free.

Emma Dunlevie [00:23:58] That's right. So, in taking on those matters, of course, you need to be aware of that and you need to be ready to tackle a lot of expenses along the way. Application fees, disbursements, interpreters, translators. All of that requires a lot of support funding, let alone the time hundreds of hours.

Michael Green [00:24:14] And I guess we all should say thank you to firms like Russell Kennedy for doing it and members of the bar, not just the Victorian bar. I'm sure all of the bars around Australia and firms all around Australia. Keeping on with the pro bono work, Russell can never rewarded the Children Law Award. I've got that title correct. Who makes the award and what did Russell Kennedy do to receive it?

Emma Dunlevie [00:24:37] Yes. So, it was the National Children's Law Award for Outstanding Legal Representation. We were given that award as part of a consortium, so it was called the Unaccompanied Humanitarian Minor Consortium. That was a group of organizations, including Russell Kennedy, Community Legal Centers such as Flemington Kensington and Springvale Monash. The Refugee minor program at the then DHS and Justice Connect of course, other migration lawyers such as Corina Ford Migration, who's a leading migration lawyer. So, we had all been working together over many years to help young, mainly Afghan, refugees in Australia to reunite with their families. So Australian refugee policy had been very deliberate over the years, ensuring that families were kept apart. So often, a young male in the family would take the dangerous journey by sea through Asia and to Australia. They'd be granted a refugee visa in Australia, and then they would seek to sponsor their family to join them in Australia. That because of their mode of arrival to Australia and they classification as so-called irregular maritime arrivals, legal barriers were placed in their way. So, the consortium worked together to engage in advocacy strategies and pool diminishing resources to obtain the best possible outcomes for those young refugees and their families. So, we created legal templates and

submission templates and country information to build the capacity of lawyers and migration agents working with that client group. We coordinated and staffed legal clinics to assist the young people who were without legal representation, and as a result of the consortium's work, we assisted well over 400 people with family reunion applications, and many family families as a result were reunited in Australia despite initially receiving wrongful rejections of their applications by the Department of Immigration. So, it was really important work. Everyone working in this field, understand the separation of refugee families, especially when protracted, can prolong existing traumas and can have an enormous impact on the health and wellbeing of all of the men, women and children at the center.

Presenter [00:26:51] William and Lonsdale are brought to you by Greens List, one of the leading multi-disciplinary 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 [00:27:12] Emma, I find your pro-bono work fascinating and inspiring, in fact, for helping people who need help. But you're a partner at a mid-tier firm, Russell Kennedy. Your responsibilities to other members of the firm, you've got responsibilities to your own family. So apart from the pro bono work, what does the rest of your practice involve?

Emma Dunlevie [00:27:31] Sure. So, I would say it's split roughly 50-50, although that changes every day. So, it's split between the commercial work that I do within the property development team at Russell Kennedy and the pro bono practice. So, within the property development team, I focused mainly on commercial leasing, licensing and contractual matters and disputes. We work across various sectors, including health and aged care, local, state and Commonwealth governments, markets, we work for the Queen Victoria Market and Melbourne Market Authority, and we also do a lot of work for not for profit organizations. So, yeah, look, I really enjoy that work. The satisfaction of finding solutions for clients and working through legislative interpretation, crown land law, retail leasing legislation and disputes. And as I mentioned earlier, just building up relationships with clients and our connections in that space. I also enjoy the contrast between the two. So, within a day I can be doing the commercial work and then flip over to assisting with a protection visa application. So just in the last few days I was I was assisting, Mr. SZQRB.

Michael Green [00:28:42] Mr. SZQRB is the Hazara man.

Emma Dunlevie [00:28:43] He's the Afghan Hazara man who we assisted many years ago, so he's still needing to apply for a temporary protection visa every few years. So, his Refugee claims were recognized, but because of the government policy of not granting permanent protection to asylum seekers who arrive by boat, he's unable to get a permanent protection visa. So, every few years he needs to reapply. And so, I was assisting him just last week to put in his latest application. D

Michael Green [00:29:15] Do you think that you do a better job in each area of your practice, the pro area and the commercial leasing area property area because of the other? Do you find you get a break in going and doing pro-bono work in a break in the commercial work and then vice versa? And when you come back to either one of them, you are more refreshed. You are you bring different skills or better skills.

Emma Dunlevie [00:29:37] I think so. Yeah, I think the balance is really beneficial because the pro-bono work can be extremely stressful. A lot of us have been dealing with traumatized clients for many, many years, and I think we as lawyers suffer vicariously as a result of that, and we often don't recognize that or seek the assistance that we need to continue to work in that area. So, and there's a very high incidence of burnout and stress among lawyers. So again, I think I'm just fortunate that I can do that work, but also have a bit of a break and also be supported by the firm in doing that work. So, we have we have other staff, we have the resources, we get psychologists in to speak to our lawyers who are working in that space and to assist them. You've really got to look after yourself to be able to get results for clients and to continue working in this space.

Michael Green [00:30:30] In preparing for today, I read about the fact that you're breaking new ground in the area of climate justice. What is climate justice and what role does the legal profession have to play in the area of climate justice?

Emma Dunlevie [00:30:44] Addressing climate justice involves recognizing the impacts of climate change will not be borne equally or fairly among us all, so impacts will differ between the rich and poor. Older and younger generations, indigenous and non-Indigenous people and the poor and vulnerable will suffer first and be worst hit. And often they will be the ones who have disproportionately low responsibility for causing the emissions responsible for climate change. They also have less resources to protect themselves from the impact of climate change. So, because the climate crisis will impact those already experiencing disadvantage and vulnerability and often state violence first and hardest, it has to be within our ambit of work as public interest lawyers to focus on the climate crisis. And so, yeah, our firm came to be involved in in climate justice for several reasons. First and foremost, a lot of us were really concerned about policy inaction and failures of our politicians to address the issue. Australia was clearly a laggard when it comes to climate action and we see ourselves as being, you know, in a good position to fill the gaps and take the lead on climate justice. It's part of our ethical duty, which I mentioned before, to use our specialized skills to respond to the systemic issues and needs in the community in this era of climate change. Yeah, we had a number of lawyers and including partners who were really passionate about the issue. John Corcoran, one of our senior partners, attended an International Bar Association international conference several years ago and met Mary Robinson,

Michael Green [00:32:27] Mary Robinson, who was president of Ireland.

Emma Dunlevie [00:32:30] That's right.

Michael Green [00:32:31] Yes, and had a role with the U.N. as well I think?

Emma Dunlevie [00:32:33] That's right. Yeah. And she has her own task force and organization, and she's been leading the way in this space and so on. John's return to Australia after these high bar conference, he and I had a chat and the networking continued and we ended up setting up a strategic litigation against Climate Change Working Group, and that was made up of lawyers from Russell Kennedy and Monash University, as well as climate activists and Environmental Justice Australia, which is the major NGO in the sector in Victoria. And together, we explored opportunities for strategic litigation in combating climate change, and we would meet regularly, attend workshops and so forth. And then some of the group's ideas led to the design and development of a new legal clinic. So, the pro-bono practice at Russell Kennedy partnered with Monash Law School's clinical program in running a new climate justice clinic where Russell Kennedy,

second supervising lawyers and assisting in preparing the reading and seminar program for that clinic. So, the clinic gives students the opportunity to expand and apply their knowledge of climate law and contribute to legal interventions that mitigate climate change.

Michael Green [00:33:51] So we move now as a part of the law degree provided by Monash. There is a climate justice clinic so students can be involved in climate justice issues at a practical level during their law degree?

Emma Dunlevie [00:34:03] Yep, that's right. So, we have partnered with Monash Law School in running the clinic and we second supervising lawyers to the clinic and also assist in preparing the reading and seminar program. So, the students that attend the clinic obviously are very passionate and interested in climate justice and the environment. So, at present, the clinic is comprised of nine students, although we anticipate that will probably increase over time. Those students are divided into project teams and they're assigned real client. So that might be an environmental NGO or a grassroots organization or an indigenous led organization, and they prepare advice and research for those clients. It gives them an opportunity to expand and apply their knowledge of climate law.

Michael Green [00:34:50] Can I just clarify Emma; might those clients have some sort of a case against a government department or some sort of some sort of dispute? With an arm of the government?

Emma Dunlevie [00:35:03] That's right. Yeah. So obviously, I can't talk about the actual matters we're working on, they are confidential. But yeah, the clinic's a great vehicle for developing potential causes of action beyond the embryonic form or developing specific statutory or regulatory arguments on behalf of clients such as NGO's. So, it's often works that, you know, those NGOs are often under-resourced, they just don't have the time or resources to put into developing legal arguments, particularly legal arguments that may not ultimately be successful, so we have the time and expertise to explore those arguments and hopefully pass on the results of research on the student's work to those organizations. So, look, I think also a spin-off is that it's a great means of targeting future lawyers to ensure that they bring additional skills and passion for climate justice into the legal profession.

Michael Green [00:36:01] Emma, climate change or climate justice, should I say, is such a new area of the law, are you actually trying to establish new causes of action in the way that the Mabo case established a new cause of action all those years ago?

Emma Dunlevie [00:36:15] Absolutely. Yeah, that analogy has been recognized among my colleagues and particularly Professor Adrian Evans at Monash Law School, who has led the way with this clinic. He often refers to Mabo and, you know, I think we'd all like to see an equivalent decision being made in the climate justice space. But we are certainly wanting to develop new legal arguments and successful legal arguments. And have, you know, firms like Russell Kennedy or other firms taking on these matters to court and getting some results and setting some good precedents. Just recently, a landmark judgment was made in the matter of Sharma and Minister for Environment, where the federal court found that the environment minister has a duty of care to young people. So, this class action case involving I think eight children was brought on behalf of all Australian children and teenagers against Minister Susan Lay. The aim here was to prevent a coal mine extension project and you're going to do in New South Wales. Notably, the court accepted expert evidence, which has always been very challenging to get this evidence

together and accepted by a court. The federal court accepted the expert evidence regarding the catastrophic impact of climate change in Australia, and the court found a new duty that the minister owes a duty of care not to cause children personal injury from climate change. And it's expected to lead to government decision makers having a stronger focus on climate change when undertaking environmental impact assessments. So yeah, that's really been groundbreaking, and some quite extraordinary statements were made by the court that we haven't really seen before. Justice Bromberg, for example, stated that I'll quote him. It's difficult to characterize in a single phrase the devastation that the plausible evidence presented in this proceeding forecasts for the children lives will be cut short. Trauma will be far more common and good health harder to hold and maintain. He says none of this will be the fault of nature itself. It will largely be inflicted by the inaction of this generation of adults in what might fairly be described as the greatest intergenerational injustice ever inflicted by one generation of humans upon the next. To say that the children are vulnerable is to understate their predicament. So, I think that quite extraordinary statements by a court.

Michael Green [00:38:41] Emma, thanks for coming in today and speaking to us. It's been fascinating, interesting, inspiring, I think, particularly to young lawyers to hear how you balance your professional life between being a partner of a large commercial firm, doing commercial work, but also doing community pro-bono work. And it's probably the most attractive side of the legal profession. And such work he's done has always been done, has always been the hallmark of a profession to do such work, and the fact that you continue on to die is a great credit to you and a credit to your firm. Thanks very much.

Emma Dunlevie [00:39:14] Thank you Michael.

Presenter [00:39:21] Show notes from today's episode can be found at [Greenslist.com.au/podcast](https://greenslist.com.au/podcast). There you'll find links of things talked about in this episode. A transcript of the show and some wonderful photos of our guests. Your host is former lawyer and Greens List clerk Michael Green. Our show is produced by me, Catherine Green, mixed and mastered by Windmill Audio and recorded by Alex Macfarlane, who also wrote and performed all the music for the series. If you're enjoying Lives in the Law, please tell your networks, subscribe rate and review the show. 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 this discussion here today.