

William & Lonsdale – Lives in The Law

Ep 26. Michelle Britbart QC.mp3

Presenter [00:00:04] 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 barrister Michelle Breitbart QC. Michelle practices primarily in common law, insurance law, public liability and personal injury litigation, running trials in both the supreme and county courts. For many years, Michelle grew her practice whilst also being a single mum to two young children. And on top of that, she managed to gain a graduate diploma of Genetic Counseling and a masters in health and medical law. Hearing Michelle's achievements, it seems a long way from the painfully shy, studious young girl that emigrated from Israel at four years old. And despite her parents, fierce work ethic and determination for the family to assimilate. Things didn't always go as planned.

Michelle Britbart QC [00:00:54] They gave my brother who was born in Australia just after we arrived, the name Barrie. Now it's as far from Hebrew name as you can get.

Michael Green [00:01:02] It's an Irish name, I think it's a nickname actually for Finbarr.

Michelle Britbart QC [00:01:06] Right. Well, all they knew is that they wanted him to be as Aussie as possible. I think Barrie McKenzie was well known at the time, so they thought that's a real Aussie name. Naming Barrie. And Barrie, my brother recently told us I didn't know this growing up that at school, despite the great aim of assimilation that my parents had, he was known as Barrie the Jew. So, we can't escape who we are. We.

Michael Green [00:01:55] Our guest this morning is Michelle Britbart QC, the chair of Green's List at the Victorian Bar.

Michelle Britbart QC [00:02:00] Morning, Michael. Very happy to be here.

Michael Green [00:02:03] Michelle, let's go back to the start. I love the story about how your family came to Australia from Israel when you were a baby or a toddler. I guess you were four. Why did your parents decide to come here?

Michelle Britbart QC [00:02:16] I think there were a number of reasons for them. They were very young when I was born. They were both 20 just out of the army because army service is mandatory in Israel for everybody. They had a baby and found it very, very difficult economically to survive with a family. They lived with my grandparents for the first year or so, and even when they moved out, had real trouble just with elementary things. Like my dad tells a story about having gone to a department store to buy a washing machine saying how much it cost and realizing that he needed to save up, went home, saved up for a few months, came back excitedly with the money in hand, and the washing machine had doubled in price because inflation at the time was enormous. So, he felt, I think, that he just could not get ahead in that kind of an economic situation. But combined with that was the fact that he was born just after World War Two to a Polish Jewish father, but a Russian Catholic mother. And because Judaism is determined by the religion of the mother, he wasn't considered Jewish. So, he grew up in Israel from the age of about five, hiding the fact that he wasn't officially Jewish. He grew up as if he was. And when it came to marrying my mother, he had to formally convert. And he found that process to be humiliating, I think. And I think that always stayed with him. And so, then when the economic issues were put on top of that, he wanted to get out and find a different life.

Michael Green [00:03:54] Being of that generation, and probably this still the same now, your dad would have done national service there for Israel and possibly fought in the war.

Michelle Britbart QC [00:04:02] That's one of the things he says. He says, you know, I lived in Israel all my life. I grew up here. I'm Israeli, I've fought for the country. And then when I want to marry the woman I love, I'm told that I'm not good enough.

Michael Green [00:04:13] And so they came to Australia as a land of opportunity. Did it turn out to be a land of opportunity for them?

Michelle Britbart QC [00:04:19] Very much, yeah, very much. I mean, when we arrived in Australia in the late seventies, there were some other Israelis here, mainly in Melbourne, I think some in Sydney. And what Israelis in Melbourne did was work in petrol stations and pump petrol.

Michael Green [00:04:36] And why was that? Why pump petrol?

Michelle Britbart QC [00:04:38] I think two Israeli guys had formed a service station sort of chain "Solo". I don't know if you remember. Not around anymore. And so, they would employ Israelis who came out here. So, Dad started pumping petrol, doing night shift, sitting on the driveway, waiting for cars to come in so he could fill them up. And he was able to work his way from being, you know, on the pumps to then being offered a station to manage himself and went on from there, then started his own company, then had a lot of service stations himself. And he was always, I think, really proud of the fact that he was able to really forge his own path just through hard work, working hard.

Michael Green [00:05:23] Were your parents bilingual in Hebrew and English when they got here?

Michelle Britbart QC [00:05:27] English was limited. They knew some English, not a lot. They had to learn on the job. They were a lot of, you know, miscommunications, Dad and his friends. He's my uncle. Came out a few years after we were here and another friend and, you know, they were all sort of pumping petrol without much English and tell us stories about the limited English they had, which was limited to things like "Fill Her Up", which is what they needed to know when pumping petrol or "20 bucks". They could understand those. But when it got to more complex things, miscommunications abounded. Dad on one occasion remembers fondly now because obviously his English is very good now. But he remembers standing at a pump because it was full service in those days and having to make awkward conversation which he couldn't make with the person whose car he was filling up. And the man said to him, "Oh, so Christmas is just around the corner", Dad not understanding he understood corner and sort of craned his neck around the corner to see what was coming around the corner. But so yeah, they had to learn. But I think they always felt that Australia was a place where if they accepted it, it would accept them.

Michael Green [00:06:41] And they worked hard and were successful. What about schooling? Where did you start your schooling? How did you work your way through the schooling system?

Michelle Britbart QC [00:06:49] Yeah. So, we always, my brother and I went to the local state school lived in Melbourne at first. Then we moved to Canberra and then back to Melbourne and we went to state schools all the way through, through secondary school as

well. My parents were really keen to ensure that we assimilated into the community. It was very, very important to them to really embrace Australia as our home, even though all of our family was still overseas and we were still, I guess, culturally Israeli. They didn't want my brother and I to have that feeling of being "other". Because I think my father had had that for a long time, feeling that otherness. So, they made sure to speak English to us at home.

Michael Green [00:07:30] Are you as fluent in Hebrew as you are in English?

Michelle Britbart QC [00:07:33] Not as fluent, but still fluent. We still speak at home, probably a mixture of English in Hebrew with my parents. So, my husband's good. My written Hebrew is not as good, but spoken is good.

Michael Green [00:07:47] Sorry you were talking about your schooling and then not wanting you to feel like you were the other?

Michelle Britbart QC [00:07:53] Yeah. I made a really big effort to make us feel that we were part of things. So, you know, whilst we did observe things like Jewish holidays, those sorts of cultural things, my parents were really keen to make sure we felt Australian.

Michael Green [00:08:08] You went to state schools here and in Canberra? Melbourne. In Canberra? Enjoyed school?

Michelle Britbart QC [00:08:14] Yeah, I loved school. I remember a school report that I still have from when I was seven. There weren't many comments from my primary school teacher for the year, but what she did say was loves writing stories, dislike of physical activity.

Michael Green [00:08:29] So a pretty good prediction for the future because of course, I've always thought barristers are storytellers, you're telling a story to a court and hoping that the court will accept your story as opposed to the other person's story.

Michelle Britbart QC [00:08:41] Absolutely.

Michael Green [00:08:41] Yeah.

Michelle Britbart QC [00:08:43] That's what I love most about being a barrister.

Michael Green [00:08:47] A prescient teacher! You go to McRoberts girls high. Is that a scholarship school? You need to get a scholarship to get in there.

Michelle Britbart QC [00:08:53] It's a select entry school and always has been. It was set up in that way, starts at year nine and our local primary school. I lived in Caulfield and my family happened to be a central school with I think there were about five or six of them at the time. This was in the mid-eighties. They went up to year 8 and those schools were allowed to recommend a handful of students directly into the McRib and Melbourne High without the need to do the exam. So that's how I got in there.

Michael Green [00:09:24] And so you had a teacher who recommended you to go to McRib Michelle, you do arts law at Monash and initially you like arts far more than law, especially the languages that you do in arts. You even were invited to do Spanish honors, which I think was going to take three years?

Michelle Britbart QC [00:09:38] I don't know how long would have taken. I didn't get, unfortunately, that far down the process because you're right, I did enjoy my arts subjects far more than my law. My law... I didn't really understand it. I didn't know anyone who was a lawyer. I didn't quite grasp the structure of it. I didn't have any understanding of the practicality of what it was all about. It was just a bit boring. And Spanish language and Spanish literature was far more exotic and it was interesting and I liked it and I did well in it. And I got a letter from the Spanish department saying, Oh, we'd like to invite you to do honors. I knew that that would mean I had to defer my law degree for a period, but I was on board with that and I went to the professor and said, you know, with the letter in my hands and I accept I accept honors. And he said, No. I said, what do you mean? He said, No, you're not doing it. I said, But, but I've got a letter. You want me to do it? And he said, No, that's just pro-forma that goes out, you know, if you get above a certain mark. But no, I know you're using this as an excuse to get away from your law degree. Go back and finish a law degree. I was dejected, but it turns out to have been the best advice I ever got because I don't think I would have at that stage gone back to it if I left.

Michael Green [00:10:53] So you remain grateful that professor to this day?

Michelle Britbart QC [00:10:55] I do.

Michael Green [00:11:00] In final year law actually grabs you. I think that's quite early. I've known people starting with myself who law hadn't grabbed them at ten years of practice. So, for you to get it in your final year, I think is really quite pretty early on, I reckon. Why did it grab you? What happened to turn you around to law actually to get hold of you and something you really liked?

Michelle Britbart QC [00:11:22] It was getting out of the books and into the practical aspects of what law can be. At Monash we had, and I believe it still exists, a subject called professional practice, where instead of sitting in a lecture theater and doing assignments, you actually work at a community legal service for six months and that is your course. I had a morning a week where I would be at the legal service and I would say clients who came in off the street, they could have a range of issues that they needed assistance with. They could have court appearances coming up. They could have documents they had received. They didn't understand that were of a legal nature. Within that program, there was the opportunity, if it arose in an appropriate case, to actually do a court appearance for a client. And these were all clients who couldn't afford otherwise....

Michael Green [00:12:14] And this is not it's not on a moot or a mock court. This is the real thing.

Michelle Britbart QC [00:12:18] Yeah. So, I did two court appearances as a student which arose out of cases that I'd taken on at Springvale Legal Service. We had to have a supervisor there with us in court. The supervisor had to, of course, beforehand assessed that we were capable and that would do a good enough job for the client, because that's obviously the overriding consideration. It was one of those cases, I think, that really gave me that first rush of excitement about what law could do. There was a client that had come in, an Argentinean man and his wife, probably in their fifties, who were really, really frightened and upset because the husband had to go to court and he produced the papers that he'd been sent and he'd been charged with assault. And he obviously was very worried about what the outcome might be. I represented him in the Magistrates Court, in the Melbourne Magistrates Court, which was quite intimidating. A lot of the appearances in

those days were at suburban magistrates' courts and the Melbourne Magistrates Court. Then in the old building.

Michael Green [00:13:24] The original Magistrates Court was out on the corner of Russell Street and Lonsdale?

Michelle Britbart QC [00:13:29] Yeah, that's the one. And it's an imposing building for a law student, like I was 21 and I was terrified and I was with my supervisor. I borrowed one of my mother's jackets with giant shoulder pads and went into the Magistrates Court with my supervisor. We had to approach the magistrate's clerk and the Deputy Chief Magistrate was sitting that day to let the magistrate know that I was a student. He no doubt was a bit concerned by this because of the serious nature of the assault charge and the fact that a jail term could have been imposed. He called the supervisor and I into his chambers before court started.

Michael Green [00:14:11] He was a law student being called into the magistrate's chambers. He would have been shaking, surely.

Michelle Britbart QC [00:14:16] Sweating, terrified. He basically, the magistrate said to my supervisor, who was a qualified lawyer, are you sure? Are you sure that this is the right thing? This is a serious charge. You're sure that a student is the right person to be doing this plea? And to his credit, my supervisor said, yep, absolutely. Absolutely. She's prepared. We've talked about it. Yes. Got up and did it. I had written every word, including allowances for little pauses, pregnant pauses to try and sound more conversational. But I had scripted it down to the last full stop and it was a really compelling case because my client had been at the Melbourne Magistrates Court when he'd committed this assault, which is seen as an aggravating factor, you know, on the hallowed ground of the court. But he had been there because he was there to support his daughter. His daughter had been raped and it was the committal of her alleged rapist. And he was sitting in the courtyard with his daughter during a break when the alleged rapist walked past her and made some awful, derogatory comment. And this man had gotten up and punched him. And to be able to put that story to contextualize it, because the magistrate had obviously approached this with a certain mindset in terms of the seriousness of committing assault, especially at the Magistrates Court, and to be able to put this man's story before the court for the court to understand it. And you know, he got off with a good behavior bond and the relief and the happiness and the gratitude that he and his wife felt. It was really the first time that I saw the law in action and understood, you know, that it's about. People are not just about books and cases.

Presenter [00:16:04] William and Lonsdale are brought to you by Green List, one of the leading multidisciplinary barristers lists in Australia. Green's list believes in promoting conversation around the ideas and issues that shape not only our legal system but our wider community.

Michael Green [00:16:24] What's interesting, and you haven't mentioned is that from childhood up until this time, basically you suffered from quite acute shyness.

Michelle Britbart QC [00:16:32] I did. I wasn't shy. One on one. I was okay.

Michael Green [00:16:37] Public speech....

Michelle Britbart QC [00:16:37] Could not speak in front of other people. Yeah. As a law student, I would sit nervously in every lecture, worried that I was going to be asked a question.

Michael Green [00:16:46] So did I. But I was worried that I didn't know the answer. Now, how did you overcome this, this acute shyness, this fear, really, of public speaking?

Michelle Britbart QC [00:16:56] I think by about third year uni, I started to see my fear and my dread of being asked a question as almost pathological. And when I was asked a question, you know, I'd my face would go red, and sweat. And I thought, this can't be right. If I want to be a lawyer, I can't have this sort of a fear. So, I found in the Good Weekend an advertisement for a public speaking course. And it changed my life. It really changed everything for me. It was such an effective course the first night of the course. There were maybe ten of us there. Each of us had to stand up in our seat and just say our name and why we were there. And the stammering, the stuttering paper was so nervous, they didn't want to get up. By the end of this course, they were getting up without notice, making a three-minute speech about a topic that had been given to them by the course leader on the spot. And I went on to do another couple of courses and it just completely removed the fear. And once that was gone, everything was different. Even if your job doesn't involve public speaking, a course like the course I did really forces you to exercise that muscle of thinking in a flexible and agile and reactive manner in every situation you're in without freezing up. And it's sort of almost open voice pathways. So, I think it could be useful in every aspect of life, really, every aspect of communication which most people need to do in their work.

Michael Green [00:18:29] So following along the legal pathway, Michelle, you finish your degree, you get your articles at a firm Madden, Butler, Elder Graham. Were they still called that then?

Michelle Britbart QC [00:18:39] No. by the time I got there, it was Dunhill Madden Butler.

Michael Green [00:18:41] Of course. And I'd like you to tell us about the mentoring you received. In the people we've spoken to in the podcasts. Good mentoring might be the most common thread that comes up and how important it's been in people's professional development. How were your articles and who mentored you?

Michelle Britbart QC [00:18:56] So I was articled to Pat McCabe. He was a partner at Dunhill, Madden Butler. He had been a barrister for a time, and he was, you know, one of the giants of insurance law. He'd worked in government. He was such a generous, generous person with his time, his experience, his wisdom. And he had this focus not only on doing excellent work, but he had a focus on creating a generation of lawyers behind him. And they were a number of generations behind him who he mentored. A lot of his article clerks have gone on to be barristers, and he was really one who encouraged people, you know, from the first day. And he encouraged me. He demanded almost that I had my own views of each case. I was given cases of my own to manage under his supervision, but managed and it really allowed me to develop. And he knew he did this very deliberately. It really allowed me to develop my own way of doing things. And he wanted each of his lawyers to have their own way of doing things because he really believed that a range of ideas were important in order to get the best outcomes for clients. And so, he would encourage us to do our own appearances. He'd encourage us to come along to any and every conference he had. And, you know, just seeing also an example of somebody who was intelligent, worked hard, but also loved life. He just took so much

enjoyment in what he did. It really presented such a positive and alluring picture of what being a lawyer could be. I wholeheartedly agree that mentoring was instrumental. If I think if I hadn't had someone who was determined to allow me to build my own confidence so early on, I might not have.

Michael Green [00:20:48] And yet, for all of the great work Pat McCabe did for you to become a good lawyer soon after articles you thought about becoming a genetic counselor?

Michelle Britbart QC [00:20:57] Yeah, I think I worked at Dunhill Madden Butler for a number of years and we had a fantastic team there. But then we lost a major client. We were all working on the TAC panel. The TAC went in-house, and so it was a period of a bit of change. And so, I started studying and through my studies and my master's at Melbourne, I met a genetic counselor and I'd always....

Michael Green [00:21:21] You better explain to us, Michel, what is a genetic counselor?

Michelle Britbart QC [00:21:24] So a genetic counselor is someone who assists patients who are either at risk of genetic disease or have genetic disease in the family or are having tests which might reveal a genetic condition, help them make decisions about the testing process, the results of the testing process, whether they want to be tested, what they might do with the information that they obtain, what that might mean in terms of the future for them and their family. So, having always had an interest in science because I was a math and science student at high school, so I thought it was very meaningful as well as being interesting and thought it might be, you know, given that my legal career was in a bit of a state of flux, something I might be interested in pursuing. So, I did a course through Melbourne Uni. It was actually at the Children's Hospital where we studied. We were taught by the geneticists at Genetic Health Services at the Murdoch Institute and it was amazing. I loved it. It was so interesting. I thought, right, I found the new career for me.

Michael Green [00:22:25] And what happened? Why didn't it become the new career for you?

Michelle Britbart QC [00:22:28] You know, by that stage I had two young children. I had been a lawyer for about eight or nine years. And I think this is where ego kicked in a little bit. Having been a lawyer of that seniority, I was used to having a certain amount of independence and I guess a certain amount of status in terms of a recognition of the fact that I knew something with the genetic counseling at the end of my two-year degree, and I just did a part time while I was working. At the end of the degree, I did a placement for a month at a hospital, and it's only then I realized that I was not going to be the top banana. The doctor, the geneticist was always going to be the boss. And I think that really, I struggled with that. And so, I thought, Oh, I don't know if I want to go back down to the bottom and then got a call from the bar, I had a place on the readers course.

Michael Green [00:23:21] You mentioned there that you had two children this time, and I think you may have been a single mum. What was the juggling act like there when you were thinking about genetic counseling, working as a lawyer, possibility of going to the bar? And you're a single mum.

Michelle Britbart QC [00:23:39] In retrospect, people say that I was crazy to undertake something that was less reliable in those circumstances, which the bar is. I guess I just thought I'd only just broken up with my husband. My kids were five and three, and I guess I

just felt like the whole pack of cards had been thrown up in the air anyway, and I didn't have a lot to lose. And I thought, you know, this is the time at which to take a risk. So, I did and came to the bar.

Michael Green [00:24:04] You come to the bar and again there's good mentoring crops up there. You do the readers course. We haven't heard much about the rate of course on Lives in the Law. Can you tell us a bit about that course and about the mentoring you received here at the bar?

Michelle Britbart QC [00:24:17] So it's changed a bit since I did the readers course. Now there is an exam that applicants need to pass before they're accepted into the course. So, the readers course, is always preceded by a long period of study now, when I came to the bar, it was just a first come, first serve. You put your name on the list and they didn't have the long waiting lists that there are now. And you know, once you were next on the list and a space came up and you went. So, the composition of my readers course, there were about 46 of us. It was very varied and not many people who were very young in the law, most people had had an amount of experience in the law already came from a very wide variety of backgrounds, a wide variety of areas of practice. And it was I thought I fantastic course, a great environment in which to firstly meet other young baristas young in terms of time at the bar because there are a lot of pressures early on that people who are down the track might not remember as well might not empathize with in the same way, you know, they're people, people you come through the readers course often remain close friends throughout your time at the bar. For example, my first couple of weeks at the bar after finishing the writer's course, I don't think I had a brief and I spent those two weeks with someone else from my course who I was good friends with, doing very important things like getting business cards, which I don't think I've ever used, getting a stamp which, all barristers have to have to stamp in the front of their book. But, you know, just to have someone to go through those things with you was really important. But the course itself, I think the hallmark of the readers course here at the bar is the generosity of barristers who are experts in their field giving up their time to really help people who just want to make their way, potentially as competitors with the barrister who's giving them all of this information and instruction. But it's one of the things that really stand out. I think about the Victorian bar, the interest that's taken in continuing all of the traditions of the bar, wanting the bar to flourish and knowing that the way to do that is to make sure we have good people coming through. In my course, Michelle Gordon came along to the course obviously before she was on the bench and gave each of us a giant lever arch folder of notes and cases in relation to injunctions. So, you know, we're done now if ever any of us ever came across the right case. So just that level of generosity I think is unusual.

Michael Green [00:26:55] So did you come out of the readers course confident about your advocacy skills and really hit the ground running? Or was there still a significant amount of learning to be done?

Michelle Britbart QC [00:27:05] A lot of learning. I found that the greatest amount of learning, once I signed the bar role was the procedural aspects of court. When you get there, what form do you fill in? When do you talk? When do you stand? When you know... When do you have to go and speak to the clerk before the judge comes in? All those sorts of things are things that can really knock you off your game and knock your confidence if you get there and you feel you don't belong when you look around and say everyone else knows what they're doing. And so yeah, there was still a lot of on the job learning.

Michael Green [00:27:37] And how did you do how do you acquire that learning?

Michelle Britbart QC [00:27:41] Watching really carefully. I was very fortunate, very early on to have a lot of junior briefs to silks and, you know, some amazing silks. And I got to sit in court day after day and just watch them. And I used to make little notes in my court book of phrases that they used. I'd print out transcripts of really good cross-examination just through watching different ways of doing those things up close, trying to form my own way of doing them. So of course, you know, you don't copy anybody because that comes off as disingenuous. But just to get ideas to try and get an understanding, I guess, of the effective way in which to do certain things was enormously beneficial.

Michael Green [00:28:25] How did you develop your own way of doing things now? Everyone's got their own way. I don't think I'd be wrong in saying traditionally common law injury law had been pretty blokey.

Michelle Britbart QC [00:28:36] Mhm.

Michael Green [00:28:37] And blokes had gotten up and establish a rapport with a jury or with a tribunal, a court. And in an Australian male way put their case. I doubt that it worked for you or for any other woman.

Michelle Britbart QC [00:28:52] Yeah, it worried me, I have to say, because coming to the bar I wanted to be good at it, but I looked around and didn't see women doing it. And when I saw how men who were at the bar and successful spoke to juries, spoke to each other, a lot of it was also the negotiation process. They used, you know, sorts of turns of phrase that had special meaning to them. But I didn't get as I was overhearing them. And I wondered whether I could ever be good at it, because I wondered if those things, those attributes I was observing were what it took. So, I started by making sure to listen carefully to the negotiation process, because I didn't have the established relationships with other barristers, often a lot older than me, in order to engage in the same sort of fruitful negotiations, which rely a lot on trust. And in fact, early on when I was in the Magistrates Court, I had occasions where some of the older men who had been there for a long time wouldn't really engage in negotiation with you because it was seen as a time when women were being given a bit of a leg up. There were government policies in place rewarding solicitors who did government work for briefing women. And I think there was a bit of a perception that if you were a young woman coming into this area, you were doing it A) not because you necessarily deserved it and B) at the expense of a man who had been doing it in the past. So, the first thing, I guess, was to try to learn the language that is spoken. And I think it's only once you understand that that you can try and move it in a direction that suits you more. So, I would make sure to really shadow my silks, my leaders, when they were speaking to their opponents and I've had one silk, told me that it was quite annoying because he had to actually go to the men's bathroom to talk to his opponent alone. It was the only place I wouldn't follow him, so I was just really keen to understand how it was done and to then assess whether I could do it too. Then looking at the way that common lawyers would speak to juries again, where I'd be, because as you say, there is an element of that blokey ness, a lot of, you know, allusions to footy and horse racing and stuff that I didn't know anything about and it would make jurors laugh. And I thought, well, if I don't make them laugh, how are they ever going to find for me? But I think that it coincided my time at the bar has coincided with a shift as well in the community. I think juries are different now. Juries are a lot smarter if they're sitting in a case for a week or two weeks or three weeks, I expect their time not to be wasted and they want to be treated as if they have a brain. And so, where my approach is not to make them laugh and not to tell

funny stories, it is to treat them with respect and speak directly to them on a level that I think jurors appreciate these days.

Michael Green [00:31:52] Michelle, you practice in what has traditionally been called common law. Maybe injury law is a more accurate description and all of the trials or most of the trials in the area before juries. Is there anything special or different in a jury trial as opposed to a trial before a judge alone?

Michelle Britbart QC [00:32:07] I think there's an enormous difference. My favorite part of being an advocate is talking to a jury, because what it brings into it is that added aspect of needing to package, I suppose, the information that you have to communicate to them in a way that's going to be succinct, not rely too heavily on documentation, which you do tend to do more of before a judge work out the psychology of the case and how best to present it in a way that is most logical, that still fits in with the law, but a way that is going to appeal to the logic of a clever person rather than to the legal brain of a judge. And I really like that aspect of trying to translate the legal side of things into something that is far more practical and easily understood by even by people who don't have a law degree. And I used to practice a lot around the dinner table on the kids as they were growing up. You know, I'd sort of run an argument past them and say, Well, you know, what do you think about this? And, you know, I sort of give them a pitch. And I thought, if they can understand it as high schoolers, then it's going to appeal to hopefully the average person. How different it is having really been emphasized for me and I think a lot of common lawyers over the last couple of years during COVID, when we have been doing trials that normally would be jury trials before judges alone, over Zoom, which of course is not anywhere near as good as being in person. But it really has changed the vibe, I suppose, of what we do. We don't have the same element of the unexpected, which you get with a jury. I don't think that there's that same ability to really bring your own personality and your own spin to things before a judge alone as well as before a jury.

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Michael Green [00:34:24] Michele I see your title is Michelle Britbart QC. I believe you have the choice of being a senior counsel or designating yourself as a senior counsel or Queen's counsel once you've been appointed. Why did you make the choice to be Queen's counsel?

Michelle Britbart QC [00:34:41] Traditionally, senior counsel was always Queen's Counsel - QC. Some years ago, it was changed to SC. SC or senior counsel has been they post nominal in New South Wales for some time and then they made it the same in Victoria. There was, I think, a recognition of the fact that to have a difference between QC's and SC's might result in unintended consequences. And quite a large group of QC in Victoria approached the Supreme Court to try to revive the QC post nominal, and that was successful in that. So now in Victoria, when you are appointed silk you are automatically SC senior counsel, but you can make the application to become a QC Queen's Counsel by applying to the Governor. The reason that I chose to make that application and to become a QC is really for parity reasons. Most other silks at the bar were QCs and I didn't want to be thought of as somehow different than or lesser than because I think QC so

recognizable in the wider community. Most people know what accuses, I don't know what an SC is and to have to explain that or have to be seen as coming later in time or somehow not being quite the same as accused, say I didn't want. And so, it was really for business reasons more than anything else.

Michael Green [00:36:10] You come to the bar as a single mum with two children. Being a barrister is a business. It's a standalone business. One of the supports of that business is what's called the Victorian bar clerking system, the list and the clerking system. And as I said at the start, you're the chair of the list, you're a member of Greens List. Can you explain that a bit to us? The clerking system, the business side of being a barrister.

Michelle Britbart QC [00:36:32] So coming to the bar, I had no idea about what Clerks did. I just knew I needed one. And I applied to a number of different lists and went for interviews, and I didn't know how to go about choosing a clerk. But I remember an interview with you, Michael, where I had raised with you. One of the things that I raised with each of the clerks that I spoke to, which was I'm a mum with two little kids by myself, how am I going to do this? Because I still want to be a mum. And everyone else I spoke to said, Oh yeah, no worries. Whereas you said to me, Well, that is an issue and that's an issue we're going to have to grapple with and we're going to have to make your business work with your personal life. And that sold up for me, and that was how I made the decision about the list that I wanted to be on, because I felt that there was a real understanding on the part of Greens list of the range of issues that a barrister may have to deal with in running their business. So as far as the clerking system, it goes back many years. We have people apply to a list to be part of a list and the list makes the decision about whether that person is invited to join. Different clerks offer different things, but most of them offer a core set of business-related activities for the barristers on their list, like mail services, like taking bookings for them when solicitors ring to make bookings, like doing invoices on their behalf and collecting the money and so on. But Greens list in particular I think stands out for providing a whole host of things. We've got a whole office and all clerks have a whole office of people working on the business side of the barrister's work. But there's a lot more that goes on in the clerk's office other than just those core things. And there is a real pride, I think, on our list about the way that the list is run, the things that the list is interested in promoting. I think to the outside world there are events like breakfasts that we can invite solicitors along to as a way of enhancing relationships with solicitors in a non-legal environment. There are professional development type sessions, run and seminars that are provided for solicitors as a way to value add to them, but at the same time highlight the skills of some of the barristers on our list. Also, there is a lot of assistance that the clerk that our clerk and you did I think you started this provides in terms of assisting each of the barristers on the list to come up with their own plan for the business that they want to be running. And it is a very personal thing. Every barrister wants to be a barrister in a different way and needs to go about it in a way that suits their lifestyle. And the clerk really does. The clerk's office really does help to. Define what someone wants out of their business as a barista. Brainstorm about ways to go about it and then assist with the actual implementation of those ideas. So, in terms of running a business, the client can be really instrumental in making sure that you have the best chance possible of the business that you want.

Michael Green [00:39:46] I want to take you back now to the young woman who's coming out of Monash and going to do her articles. If you could speak to her back then, what would you say to her?

Michelle Britbart QC [00:39:55] I tell her just not to rush. It's okay to take time because this is a long-term proposition, a career in the law. It doesn't all have to be perfect at the beginning. It's really good to have different experiences along the way and don't try to be at the end when you're just at the beginning, because everything that you do along the way is going to make such a difference to... It could make a difference to what you're interested in. Could make a difference to how you perform your role. And each of those things are so important in providing the base of skills that you'll be providing to your clients at some stage. But, you know, I think there is a real impatience, I guess, among young people, and I see it even more now than it was in my day because my son is currently studying law. A real impatience to get going, to succeed straight away, to do really well and just take off from the starting blocks. And I think it's important to understand that if you are going to be in this career for a long time, you have to give it time to unfold, time to evolve, stick in the moment, get as much experience as you can of things that you're interested in. Try lots of different things, but don't expect yourself to be a finished product. No one expects that of you, and you shouldn't either.

Michael Green [00:41:17] Michelle, thank you very much for taking us on a journey which started in Israel in the early 1950s and finishes in Melbourne in the early 2020's. It's been interesting and engrossing. Thanks very much.

Michelle Britbart QC [00:41:29] Thank you, Michael.

Presenter [00:41:37] Show notes from today's episode can be found at 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 Craigslist clerk Michael Green, 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, write 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.