

Brendan Schwab - Lawyer to the (sports) Stars

Ross Becroft

It's 8.20 am at a ground floor cafe located within 333 Collins Street. Brendan introduces himself and begins by telling me that he does not see himself as a sports lawyer. "I'm an industrial relations and employment lawyer who mainly advises sporting people" he says. "It is important to distinguish between the industry I work in from the legal discipline I have to apply".

Despite this fairly rudimentary description of his work, Brendan Schwab is in the process of forging a relatively unique career path. The vast majority of Brendan Schwab's practice involves acting for professional sportsmen and women or their representatives and negotiating with a sport's governing body to achieve better salaries, terms and conditions and a better "work environment" for those athletes.

Schwab gives the impression that acceptance by sporting bodies of his clients' inclusion in the negotiation process is (to say the least) not always welcome.

"With most sports there is a prevailing attitude within the clubs or associations that the players selected are lucky to get a game." He adds "there is a perception that my clients and I are militant in our approach. This disappoints me as the ultimate objective of my work is to ensure my clients contribute to the profitability and attractiveness of their sport. That is a precondition to their own well-being".

Schwab's sporting clientele is fairly diverse. He has acted for the Australian Soccer Players' Association, the Australian Professional Ironmen, the AFL umpires association and various players and player managers. As far as good clients go, Schwab (despite my amazement) lists the Ironmen at the top of the table of sporting professionals. "Despite Ironman being a minor sport in Australia, it gets a huge amount of publicity and sponsorship compared with sports like soccer which have a much bigger grass roots

following. I mean who is better known: Trevor Hendy or Alex Tobin?" Schwab adds "Ironmen are very astute about what makes their sport profitable and attractive."

Schwab spends much of his time negotiating collective agreements on behalf of his clients. Successful negotiation in a sporting context according to Schwab involves certain fundamentals including trust between the parties, an understanding by management of the athletes and the athletes of management (rather than an adversarial approach) and a capacity to deal with change. He sees collective agreements and negotiated outcomes as the best way of resolving the many real legal issues which face sport and athletes.

Schwab admits that his end of the market is tough but exciting. "Sporting organisations are very conservative and like to restrict individual rights. However, things are freeing up gradually".

Testimony to this is the development of collective agreements and standard employment agreements for athletes. The negotiation of such documents involves legal skills in areas such as Industrial Relations, Intellectual Property and commercial drafting and often many of these agreements are complex and are made on a tripartite basis between the association, the club and the player. All this sounds good for the up and coming lawyer with the new sporting professional increasingly seemingly in need of legal advice to deal with these issues.

One of Schwab's successes to date is the striking of a collective agreement between the Australian Soccer Players' Association and Soccer Australia in 1996 whereby the practice of paying transfer fees upon players changing clubs was removed for players over the age of 26 or for players who had been playing for more than 6 years. The abolition of these payments,

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according to Schwab, helped to develop the clubs and the sport generally by removing an unnecessary financial burden. The collective agreement in this case provides for the introduction of a player benevolent programme to support the players who are increasingly full-time professionals. The programme is funded from key income streams sourced from television and overseas transfer fees.

The Collective Agreement was negotiated following protracted proceedings before a Full Bench of the Australian Industrial Relations Commission. Schwab advocated the Players' case consistent with the many varied demands placed upon the skills of sports lawyers.

As one would expect, Schwab has developed some fairly polemic views about sport and the law. Schwab sees the AFL player rules as being "largely untested" and unique in terms of their fetters of employee rights. Schwab is adamant, however, that no concessions should be made solely because the client is an athlete. Schwab's attitudes certainly fit in with the increasing professionalism seen in sport.

There is however an interesting nexus between rules in sport and the law.

Schwab sees the issue of players being eligible to play in major matches such as the Grand Final as being unresolved and somewhat contentious. "If a player is suspended for say one week in the week before a Grand Final, there is an increasing propensity for the player to seek to obtain injunctive relief to delay the suspension until after the Grand Final." Such conduct although within the limits of the law is not necessarily in the spirit of the rules of sport. The Greg Williams case of last year is a poignant example of how the legal process can be utilised to distort the intended outcome under the rules of a sport.

One further issue that is seen by many as a contentious issue is that of the right of athletes to retain some sort of proprietary interest in their images. Sporting clubs and associations are built largely on the reputations of the individual athletes. Inevitably this will lead to negotiations as to who controls the image of say a sporting superstar for the purpose of obtaining endorsements and sponsorship. Schwab raised an interesting point about the ever-valuable

sporting image. "If a footballer retires from a club and is no longer participating in the sport, then why should the sport continue to have the rights over that player's image? The player concerned should be entitled to control the use of the image or at worst receive a lasting financial benefit.

Brendan's own background in part has enabled the development of his distinct practice. The son of the late AFL Commissioner Alan Schwab and brother of the Chief Executive Officer of Melbourne Football Club, Cameron Schwab, it would seem he naturally grew into his current role. Brendan started legal practice with Holding Redlich before working for the ACTU as a legal officer. A couple of years ago he set up his own practice before recently forging an alliance with Gadens Lawyers (formerly J.M. Smith & Emmerton).



Schwab believes the image rights of athletes are unsatisfactorily protected by the law. "It is difficult to justify the legal position where the rights of the venue owners prevail over the rights of the very people who put the show on. The absence of the players' perspective in the recent AFL/MCC dispute is indicative of the need for change."

From a young lawyer's perspective it would seem that a keen interest in sport and being a lawyer can lead on to other assignments. Schwab has recently done considerable work for the organisations he represents to improve their revenue base and the services they provide to their members. He also has been involved with a strategic review of the future directions of particular sports. There is no question that there will be more consulting type work being commissioned over the next few years as sports gradually become more professional and, conflicts aside, it would be possible to combine both marketing and legal skills. The marketing phrase "value adding" seems to come to mind.

The law isn't often very creative, but certainly developing a practice of that nature is in itself a creative exercise. One wonders whether sports law will become an area of practice in its own right or whether it will remain a niche area where certainly Brendan Schwab would appear to be a key "player".