

# the pro-active chris maxwell, qc

By Alex Mathey, Crown Limited

Chris Maxwell is a successful lawyer, and more.

Mr Maxwell is a Queen's Counsel.

As well as maintaining a busy practice, he is currently the President of Liberty Victoria. This time-consuming position demands that he be ready to speak to the press about a variety of civil liberty issues without the luxury of lengthy preparation time. He has also spent time as a member of the Victorian Legal Aid Commission. In addition, he has been a political adviser, private secretary and solicitor. He also happens to be a Rhodes Scholar.

I recently conducted an interview with Mr Maxwell<sup>1</sup>, who had some interesting things to say about the influences on his own career, civil rights issues, Legal Aid, advocates' immunity and the high attrition rate among young lawyers.

This is an edited excerpt of the interview.

## How would you describe your current practice?

*"My practice ... roughly breaks up into three sections. The first is taxation law, both substantive and procedural tax appeal work, administrative law challenges and injunctive relief. Another third is general public law, administrative, constitutional, judicial review and tribunal merits review. The other third is general commercial, trade practices and competition law."*

Mr Maxwell completed Arts and Law degrees at Melbourne University in 1975. After being awarded a Rhodes Scholarship to study at Oxford University from 1975 to 1977, he practised at the London Bar until returning to Australia in 1979 to work in private practice. After some two years, he left the law altogether to work in politics.

## Why did you leave the law?

*"I was plucked out of [private practice] to be an adviser to Senator Gareth Evans who was then the Shadow Attorney-General. I worked as his adviser and speech writer through 1981 and 1982 because I was then and still am a member of the Labor Party and thought it would be a terrific opportunity to work in government."*

## Did you have a clear plan for your career?

*"I didn't know where [my career] would lead ... but at that early stage in my legal career I didn't mind taking time out and I was open-minded about whether I would come back to it or not. I enrolled at the Bar for March 1983 but ... Malcolm Fraser called an early election at the beginning of 1983, the Labor leadership changed ... Labor won the election and I found myself working for the Attorney-General. So I deferred coming to the Bar and I spent another year and a quarter as Senior Private Secretary to Senator Evans when he was the Commonwealth Attorney-General."*

## Did you enjoy being part of the political process?

*"It was one of the most exhilarating periods of my life because instead of writing beautifully turned press releases and speeches from the opposition benches, which no-one took much notice of, we were all of a sudden in a position where the legislative program could be implemented and we had legions of keen, competent public servants ... Some of the things that I was involved in then are still issues that I'm interested in as President of Liberty; notably, a legislative bill of rights."*

Mr Maxwell was a Commissioner of the Legal Aid Commission of Victoria from 1986 to 1992.

## How did you become involved in Legal Aid?

*"I worked with Senator Evans in Legal Aid. He was responsible as Minister for the Commonwealth's contribution to Legal Aid and made it a top priority to fund and promote Community Legal Centres. Many of your readers will have worked as volunteers in Community Legal Centres and will know what remarkably effective bodies ... and ... how cost-effective they are. ... It is of great concern to me that Community Legal Centres have under the Federal Government since 1996 been under pressure to consolidate or close ... [T]he young lawyers of Victoria would do well to campaign strongly on [this issue]."*

## What did you take away from your experience as Legal Aid Commissioner?

*"[T]he ever-present limits on funding and the ever-growing demand for assistance."*

## Is pro bono work a legitimate component of Legal Aid?

*"I see a lot of pro bono work being done ... [T]he growing tradition of pro bono work is a vital component of Legal Aid at its broadest but it is so ad hoc that it can't be regarded in my view as any satisfactory substitute for systematic provision of Legal Aid on a coherent needs and merits basis which is what Legal Aid administration was set up to do. So for government to look to the private profession to paper over the cracks in the Legal Aid system seems to me to be a fraud on*



the public interest in properly delivered Legal Aid.”

Mr Maxwell is the current President of Liberty Victoria and has been serving in that capacity since October 2000.

### **Is Liberty Victoria effective?**

“One of the things that has struck me since taking over [from Felicity Hampel as President] ... is the extent to which Liberty Victoria’s opinion is sought ... .

For a shoe-string organisation, Liberty appears to have established a reputation for thoughtful, constructive comment on matters of public policy. I’m entirely convinced of the vital importance of an organisation like Liberty to keep proclaiming the importance of attending to civil liberties and human rights questions in the face of populist demands ...[for example] for tougher laws or greater restrictions on our freedom ... .”

### **What about Liberty Victoria’s relationships with law enforcement agencies?**

“We have a constructive but at times robust relationship with the Victoria Police for example. But they have recognised that we are not wreckers, we are not knee-jerk opponents of things.”

### **What are the current “hotspots” for civil liberties?**

“I think one particular hotspot concerns privacy issues. For example, we have ... heard reports of extensive release to police of telephone records of individuals reportedly for law enforcement purposes, but ... vast amounts of private information have been made available. .... We’ve got ... issues about the monitoring by employers of ... Internet, email and computer systems. We recently have had insistence by some employers on

the provision by employees of fingerprints, blood samples and urine samples as a condition of employment. All of those ... things ... raise squarely the question of the extent to which private interests can intrude into matters which are peculiarly private. With the police access to telephone records, there is also the question of government intrusion into essentially private matters. We think that the community needs to be even more vigilant about the steady erosion of privacy.

Another issue that is very important and one that has arisen in the last couple of weeks [concerns] police media relations and the maintenance of the presumption of innocence. Liberty Victoria has a very strong position on the publication of details which tended to identify the suspect in the Tynong North murders which led inevitably to the Herald-Sun publishing the photograph and name of the person and identifying him for all the world to see. Given that he has never been charged that seemed to us to be a gross breach of the presumption of innocence.

Liberty Victoria is supporting the call ... for defamation law reform to prevent powerful interests threatening defamation litigation in order to stifle bona fide protest and public comment. The ordinary citizen or community group may be easily scared off by the threat of an expensive proceeding.”

Mr Maxwell was appointed a Queen’s Counsel in 1998.

### **What do you think about the mooted abolition of advocates’ immunity for appearance work? Will lawyers fear the “spectre of litigation”?**

“I think it’s anomalous myself. I just don’t accept the argument that it’s

going to make a difference to what you do in court. ... [T]he possibility of being sued for negligence is entirely fanciful because it must be axiomatic that different approaches may be equally good. Who is to say that one approach was better than another ...? [L]et’s be realistic, we are all under that threat when we write our opinions and that’s exactly the same situation. You do the research and you apply your judgement and your experience and if you’ve done that you mightn’t get it right but you can’t be sued.”

### **What do you think about the numbers of young lawyers leaving the law?**

“From what I understand there is a very high attrition rate among young lawyers. It seems to me that there is an urgent need for investigation of the reasons for that given the extraordinary efforts that students now have to go through to get good enough results to get into law and given the cost to the community and to students and their families.”

### **What advice can you offer to young lawyers?**

“It seems to me the challenge for law firms, who have the responsibility to young lawyers in the first instance, is to give them the opportunity to explore what it is that they do enjoy in the practice of law ... [F]or each of us it’s a bit different from the next person. What has surprised me is that in my own experience the longer I practise the more I enjoy it.

... I wish that some of these young lawyers who are pulling out had had a chance to enjoy it and that the public had a chance to benefit from their involvement.”

#### **NOTES**

- 1 The interview was conducted at Mr Maxwell’s chambers on 5 April 2001.