



Interview with the Attorney General Christian Porter MLA

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On 4 February 2009, Brief interviewed the Attorney General Christian Porter MLA at the offices of the Attorney General, Level 29 Allendale Square.

Brief: We are coming up to your first anniversary in parliament [winning the seat of Bateman in a by-election on 23 February 2008] and 4 months as Attorney General [having been sworn in on 23 September 2008]. How are you finding life as a politician, particularly as compared to practising as a lawyer?

AG: I don't want to understate how difficult practice is as a lawyer. I think it's the hardest profession in the world. The one thing I've noticed with politicians is that they often haven't had the professional schooling in love of detail and that kind of ruthless requirement to be accurate with facts and with law or intellectual concepts, so I think that there is nothing that I can say that diminishes the fact that the practice of the law is very difficult. This job though has different difficulties and some of the practice of the law helps you overcome the difficulties that you find in practising as a politician. Others are particularly unhelpful.

For example, I had my first-ever media training the other morning. In effect you're told to unlearn what you've learnt in 10 years of legal practice because you're not trying to convince an audience of a factual or legal matter. You are trying to create an impression and put across a very simple and understandable view succinctly. You're not required to answer questions and you're not even expected to answer a question. You're expected to put across a message. So how am I finding it? Very different from the practice of the law. Some things that I have learnt as a lawyer are of great assistance and

other things are positively unhelpful and have to be unlearned. But I'm enjoying it!

How much of the change has come about because of the public face of being a politician?

Well I've got nothing to compare it to. I've been a politician for 12 months but I presume that in the age of mobile phones and blogs and emails and internet news services that all the difficulties associated with constantly being in front of the media, and therefore the public eye, are now increasing almost exponentially. So I think that that part of it means that it's more difficult perhaps than it was 10 years ago, but that's like complaining that it's wet when you swim in the sea! That's the nature of it. But it does create some peculiar difficulties.

We've heard people say before that more lawyers should consider becoming politicians. Would you agree with that?

Yes. Please. If there are any readers out there who are considering becoming a politician, do so. I think lawyers add something completely unique to the legislative process and also to being elected representatives. Parliament is about passing laws, and understanding how laws have effect is a very helpful thing but even down to just simple things like every Friday I go out to my electorate office and it runs pretty much like a shop front lawyer, a doctor's surgery. I just have constituent after constituent come in with this or that problem and often because they know that I am a lawyer and there aren't many around who are local members, I get people from outside my electorate coming to see me about removing caveats or disputes with insurance payments and I'm probably a better shop front lawyer now than I ever was because of the fact that you have this ability to actually help people. At lot of people's problems



often come down to questions of law so I think that, as a profession, politics is crying out for more lawyers.

On 23 September 2008, you were sworn into the positions of Attorney General and Minister for Corrective Services as part of the new Liberal/National government. What do you see is the role of an Attorney General?

I think that an Attorney General is two things. In one significant and primary sense you are the guardian of systems that you inherit from previous generations of Attorneys General, legal systems, criminal justice systems, systems of civil law, systems of courts, and you have to maintain the integrity of those systems. The second part of the job is about understanding the public's desires with respect to those systems and engaging in law reform and doing so in a cautious and scholarly fashion. Keeping in mind that the systems that you've inherited have served us very well for a long period of time and, even given their imperfections, it calls for wholesale change of systems are often not particularly well thought through. So you have to have an eye on what you've inherited and have an eye on the future and what people want to see as improvements in the systems that you've inherited. Thus it is twofold.

How much of that is an educative role for the public in terms of what the legal system actually is?

I would like to see greater understanding and knowledge on the part of the public as to how legal systems, civil and criminal, work. I don't know whether the Attorney General is necessarily the best placed person to provide that education. If I appear on television news I will be given 7 seconds. That is a particularly difficult period of time in which to explain the operations of criminal and civil justice in Western Australia.

The best way in which our legal systems can be understood by the general public is by individual lawyers talking to the general public. I detect that there has been a way in which the legal profession has somewhat withdrawn from high levels of interaction with the general public. I think that there once was perhaps a time when more lawyers would volunteer their time to committees or involvements in clubs and organisations where their legal skills were always going to be helpful and there's no better way than breaking down prejudices against lawyers and misunderstandings of the legal system than to know a lawyer and to hear what they have to say about a legal system. So I think that that's the responsibility of the entire profession and the forum that I'm provided for educative purposes is unfortunately fairly slim pickings.

Do lawyers have to stop thinking that members of the public 'just don't get it' when the public reacts negatively to something that's happened in the legal system?

Well I think it becomes a little bit too easy to dismiss a concern that arises on behalf of the public through the media as just ignorance, ignorance of the system – "if they knew what I knew they would see things differently". That may be true in some instances but I think more often than not, where there is an impression which is left in the public about a legal matter, a concept or a legal system, and they communicate that impression, we'd better think very long and hard about why it is that they've come to that impression.

We need to have a good look at the system or the service that we're offering and work out whether or not they've got a good and solid and reasonable dissatisfaction. Quite often when you actually drill down the impression they've got, it has got some kind of fundamental accuracy to it. So I think that we, as a profession, ignore disquiet at matters legal on the part of the general public as ignorant at our own peril.

What does a typical day for you look like?

I wish there were typical days! I read a speech by the Tory Shadow AG in the UK and he said that the overwhelming difference in his days as a politician and a political lawyer in the Shadow AG's position and as a lawyer is the speed in which you have to respond to things that arise. If an issue comes in through a client as a lawyer, even in injunctive proceedings, you'll have at least 24 hours without numerous phone calls a day to consider the matter and make a decision and then argue a point of view.

I'm finding that on occasions things happen where the demands through the media for an immediate response is so overwhelming that it becomes irresistible and you have to give an immediate response based on limited information in limited time, with other things going on, and then it's a response that gets pored over for months afterwards.

If I can give this example, with the two prisoners [Jessica] Stasinowsky and [Valerie] Parashumti who were domiciled together in Bandyup, there was a very strong and I think understandable public outcry and demands for their separation. Now I said that I'd deal with this as quickly as possible and I did it in three days. Even in that context there were significant components in the media who criticised that decision as having taken too long. I just think that that was the time I needed to get across all of the problems and possibilities of separating the two so that it could be done safely for both their own safety and for the public's safety. But you still come under criticism and pressure to do things quickly. So I guess that the typical day, if there's one thing that's typical about a day,

it is the pace at which it is conducted. Issues come in and out and you just have to deal with them swiftly.

Is it a 24-hour, 7-day-a-week job?

Pretty much... I mean typically the beginning and the end of the day is often to do with media so you are dealing with whatever issues of the day come up and at the end of the day what issues have occurred and what may come up tomorrow. So that first conversation may occur at quarter to 7 and the last one may occur at 11.30pm.

And that applies similarly on weekends. But then during the course of the day you might meet with six or seven people or groups, you might deal with eight or ten issues that have come up through your departments that need decisions, that require your thought and agreement or disagreement and then you might on top of that have a 3-day week where there's parliament. So they're very busy days.

Who are the types of people you have been meeting with?

Over the first four months I think I've met with about 98% of the people who asked for a meeting. And that will have to slow down because there is business of government which just needs to occur and which requires reading time and some thinking time and preparation time and decision making time. What I intended to do was deal I guess first with people who have got a legitimate ongoing role in criminal or civil justice in WA and to hear what they've got to say.

For example, I've met victims of crimes groups; I've met individual victims of crime. The different experience that I've had as a lawyer is that I'm a lawyer who over the last 12 months would have spoken to 50,000 people. I'm sure of it. If you go and hand out how to vote cards at a suburban shopping centre on a Saturday you will meet 1500 people in a day. And 20 of those will want to talk to you about their perceptions of the law, justice, criminal justice, so you get to meet a whole range of people. But then it will be judges, heads of department, heads

of interest groups, lobby groups, victims of crime, victims of crime groups, people who run voluntary organisations associated with prisons. I mean the list of people who have a legitimate interest in putting their view to the relevant minister is a very long list.

Do the roles of being Attorney General and Minister for Corrective Services sit well together?

I think that they do. I mean historically there's been coalescence and then separation. Jo Berinson all those years ago in the '80s was both Minister for Corrective Services and AG. In some jurisdictions they're traditionally together. We've had separations and now they've been rejoined. But they are fundamentally different in that the AG's portfolio is, as I said initially, basically about issues and concepts and constructs. The Minister for Corrective Services is in charge of a service delivery business where there are 4,000-odd full-time employees delivering services to about 4,000 prisoners in a system built for 3,200. In addition to which, I'm delivering services to people in the community who are on one or either type of court order or required to do community work. So one of them is very issues-based and the other is

very service/delivery-based. So they're quite different management tasks I think.

Do the roles balance each other?

I don't think that you can make decisions in one area predicate upon what the outcomes in the other area might be. I consistently steel myself to keep the two sides of my job intellectually separate. If you think that there is a real reason to undertake a certain piece of law reform, I don't consider necessarily how it's going to impact on prisoners.

Do the five ideas you mentioned in your inaugural speech to the Legislative Assembly on 12 March 2008 (market liberal, social individualist, federalist, legal conservative, imperfectionist) still form the core of your world view and motivate you?

Yes they do. I'm 38 and those kinds of concepts that I raised in my inaugural speech are the product of 0-38; and from certain things that I've read over that period of time; and certain views that I've had time to formulate; and certain life experiences. Is it impossible that those views might change into the future? I don't think it's impossible but I think that they're relatively well-settled in my own mind. I've had any number of

issues or ideas upon which I've changed my mind but not as fundamental as those ones.

What would you like to achieve as Attorney General?

People talk constantly in the media about fixing a problem, I think I've said a couple of times that there's this conception that problems in social relations are just like mathematical problems that you just apply a formula to and fix. That there's some perfect solution you can come up with just by the sheer dint of intellect, whether it be rates of incarceration of Indigenous people or difficulty in criminal trials and outcomes and sentencing. They're not problems which are amenable to fixing like mathematical problems and amenable to solution so I guess that I am a meliorist. I believe in progressive improvement and I guess in terms of what I'd like to achieve over this term is to identify areas that I think can be improved and embark on the process of aggressive improvement in those areas. I'd like to leave the fundamentals of the criminal justice system and its outcomes better than the state in which I inherited them.

What legislative agenda will the government be pursuing in the short- and long-term?

I think many areas for improvement were identified before we took government but there have also been some further ones that have arisen since we've taken government that will need to be addressed. The legislative reform agenda from the perspective of our policy platform was to remove the one third discount on sentences, which we've done, and to then make parole eligibility more stringent and to change the ongoing constitution of the Prisoners Review Board. To also have a look at the manner in which discounts for early pleas on sentencing are administered, and to make that system more stringent. So parts two and three of that are yet to come.

We've also said that we will enact a system of prohibitive behaviour orders based on criminal convictions, similar to that part of the UK system. Then we've had things come up

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in terms of law reform on the issue of double jeopardy; on the issue of the right to silence; and on the issue of manslaughter and the available penalties there; but then there are things which seem to be perennial problems in our criminal justice system that I think are able to be improved. I want to make the system of community work more stringent. I detect that there's a substantial lack of confidence on the part of the community in the idea that someone is being brought to a consequence of criminal behaviour by being allocated community work. People have lost confidence in that concept and that needs to be improved.

I think that this is a perfect example of where there is disquiet in the public on this issue and there might be a tendency for lawyers who spend lots of time in courts on criminal matters to think well 'you don't get it, you don't understand'. But when you drill down, as I have done, in to the way in which we administer community work there is actually some truth in the impressions the public are left with. And we've also had judicial officers such as magistrates say that they find that the giving of community work is not really a penalty. Now when magistrates start saying that, that's an indication that the public might have had it right 8 years ago. So I think that things like that can be improved.

Also, I like to look at the way in which we deliver programmes to prisoners. Over the last eight years we've had significant deterioration in our performance in programme delivery to prisoners. The mix between offender treatment programmes and employment programmes, I think that we should start reinvigorating our focus on employment programmes.

The fact that we have \$220 million worth of fines outstanding in the jurisdiction is another big issue that needs to be dealt with. So there are issues of law reform and then there are issues of the management of criminal and civil justice. We would always like to have improved waiting lists in both the criminal and civil lists. I didn't wake up on election day thinking what are we going to do? I woke

up thinking we've got a lot to do. And we fairly much know what those matters are that we want to achieve.

They're all focused on the criminal justice system and there might be good reason for that, but you recognise that criminal matters are going to be taking the government's attention?

I think that this first term of government will be more heavily weighted in terms of policy to the criminal justice system and that is recognition of where the more significant improvements are being demanded by the public. They're always ways in which you can improve a civil justice system, that's unquestionable. But at the moment it seems that the public have identified greater need for improvement in the delivery of criminal justice. And I think by and large our civil justice system works relatively well. There's always improvement that you might desire but it's not been a matter of urgent need for radical change so it will be a criminal law heavy first term of government.

What is your view on a Bill of Rights for the state of Western Australia?

Absolutely not.

And the reason?

Well my philosophical, theoretical and academic interest is in concepts of rights and my view is that people who advocate very strongly in favour of bills of rights are interested in certain outcomes. Outcomes that have not been able to be achieved through the legislative process but which they consider might be able to be achieved by mandating very loosely drafted rights and having non-elected representatives decide on what are ultimately matters of public policy.

My view, when I said in my maiden speech that I was an imperfectionist, I'm very interested in the work of Isaiah Berlin and in the idea that rights, the good things in life, are incommensurate. Whenever someone argues in favour of a quality, that will necessarily mean a decrease in liberty and vice versa. Rights can't be simply delineated as between each right and it's about outcomes. So when

we talk about rights we're really talking about people's views about desirable public policy outcomes and that is a decision making process that is best handled by elected representatives in parliament and not by courts based on necessarily vaguely worded concepts or notions of rights.

His Honour Justice Kirby has said that an Attorney General, as the traditional leader of the legal profession, should speak up where judges are unfairly criticised by politicians and others for doing their independent duty in appropriate cases (see his paper American Bar Association, Winter Leadership Meeting, Maui Hawaii, 5 January 1998, "Attacks on Judges – A Universal Phenomenon", available on the High Court of Australia website). What is your view on this and the relationship between the Attorney General and judges generally?

I think in appropriate cases the Attorney General would always give consideration as to whether or not there needs to be a statement made publicly in defence of a judicial decision but I think that we should not lose sight also of the fact that judges have one very important forum in which to justify their decisions and its called the judgment.

There might be instances where an attorney general uses his abilities to gain media airtime to provide explanation if he thinks that explanation of the position is warranted, yes. Although again, it is often very difficult to explain any judgment in the 7 seconds afforded to you by television news. So your options to do so are limited. Even in print you will be given 2½ sentences so your options again, to explain complicated judgements are limited. Judges need to explain their position as clearly as possible in judgments, which, I think in this jurisdiction, we do very well. The process of placing judgments on websites so that people can actually access them is important.

As to very unfortunate situations where there is unfounded personal criticism of a judge, would it be the Attorney General's role to come to a judge's defence publicly? I think that you'd treat that on a case by case basis

but of course in appropriate cases my answer would be yes.

Having said that, I think there are instances in which judges, on occasions, and I'm not commenting on anything specific here, feel the need to weigh in to public policy debate and I think that that is sometimes an unhelpful trend.

Would you say Attorneys General and judges should each stick to their roles?

Well I think so. We've got a very clear delineation of powers and responsibilities in our system of government and I think that both judges and politicians fundamentally understand what the delineation is but both sides of the fence often feel the need to jump across the line – the judges to speak publicly on public policy matters and for politicians to speak publicly on individual judgments in civil law or criminal matters. You'll never get perfection but the more either side can resist encroaching on the other's territory I think the better the system functions.

In your inaugural speech you mentioned about peak legal bodies and individual lawyers responding to the media for public opinion about legal decisions or processes [however, one noticeable trend that in my view individual lawyers should question is the readiness to allow their peak legal bodies to voice an opinion on an issue of public importance]. Can you just explain that again?

Well often it's the case that the way in which, if an issue arises of public interest and importance, the journalists who are under time pressure to produce a story will engage in sort of Rolodex journalism. They will go through the list of people who either regularly comment or bodies which are placed to comment. Now individuals, subject to the restrictions on barristers commenting on individual cases in which they are involved of course, have an ability to comment and that will be ongoing.

My concern is where in engaging that Rolodex

journalism, a journalist will contact a body which is a peak body, which represents a broad membership and ask them for their view on an issue and the view given is a view which doesn't emanate over time and over consultation with the membership but is a view from the executive about what they think their membership's view might be. I think that many lawyers will have divergent views on a single issue and I will give the example with respect to a bill of rights. A peak legal body might be asked 'what's your view on a bill of rights' and I would think that it would be impossible for a body like that to give a view (other than an executive view) because the views of its membership might be equally divided on the issue. I think there is a need for peak legal bodies to engage in caution when they are called upon by journalists to say what lawyers think about x. When you speak on behalf of a peak legal body the impression that is given over to the audience is that all lawyers share this view and I think that is sometimes a highly inaccurate impression.

In regard to individual lawyers, what would you encourage them to do?

Individual lawyers should join the public policy debate. But again individual lawyers should also engage as often as they can

and whenever they can with non-lawyers in their community and with community groups and serve the community because they've got unique skills to offer the community. So I would say to lawyers interested in sailing, join the committee of your club; to lawyers who have any kind of interest in any body or sporting group or ideas or clubs or community library, join and participate in those groups and share what you know about administration by virtue of your legal skills with the community at large.

I have a very strong sense that there's been so much commercial pressure placed on lawyers that we've withdrawn from the community and our spare time has become so sacred that we don't share it. I think that leads to a misunderstanding in the community about what lawyers do and who they are and I think it can be repaired only by individuals breaking down barriers between lawyers and non-lawyers.

What are your views about the likely increase in the demand for legal aid, community legal centres etc?

Community legal centres are very important and lawyers should, whenever they have any spare time, think about volunteering time to them. They're also funded in large part by government through a number of means and you always have to review the demand for those services against the funding that you're given. Legal Aid is obviously the big one. The bottom line here is that we are comparatively underfunded in terms of our demand in comparison to other states by the Federal government on legal aid. We are out there arguing the case and in fact it is a matter which is going to be hot on the next SCAG agenda in April and my job as Attorney General on that issue is to lobby and lobby hard for our fair share of the pie from the Federal government.

I can assure you that's what I'll be doing as a good federalist. Being the only conservative Attorney General in the nation, I can actually speak on behalf of Western Australia very,





firmly, because I have no masters in Canberra, in my party, and it's very much a matter of hard lobbying.

Is there any prospect of a new Supreme Court building in the foreseeable future?

I think that there is. But again we're in very tight economic circumstances. And at the moment we're at the stage where money will have to be given over for the planning of a new facility, but I'd very much like to see that happen but I'll be competing against all of the other 17 cabinet ministers again for my share of that pie.

The number of indigenous men in prisons is significantly disproportionate; do you have any views as to the causes of this and any plans for addressing it?

Well again this is one of those problems that people think can be fixed like a mathematical problem. The rates of indigenous imprisonment are far too high and undesirably high, but to say that they are too high is to say in effect that the rates of aboriginal offending are too high. Now the causes of that run into the hundreds rather than the one or two separate causes that we can address. We're talking about welfare, education, health and generations of failed public policy which have left a disadvantaged class of West Australians who have a greater propensity to offend and thereby be jailed. As Attorney General, I aim to improve aboriginal employment opportunities for prisoners who are already in the system with a view of trying to decrease rates of re-offending. I think that will be a big part of any improvement, but the improvement has to happen across government and no one person has one solution for that problem.

While the cost of justice can be beyond the means of many, do you have concerns that access to the courts to resolve disputes is limited to large companies and the very wealthy?

The types of disputes that large companies involve themselves in are not usually the

types of disputes that ordinary West Australian suburban citizens will involve themselves in. I will say that the previous government's reforms at the Magistrates Court level have, I think, made justice at that level considerably more available to average suburban wage earning West Australians. But I think we need to have a look into the future as to how we conduct mega-litigation in Western Australia and the cost associated with it. I don't have any strong view that, at the moment, at the level at which most people seek to engage the courts, for instance reclaiming debts owed, that our justice system is dysfunctional. I think that it is functioning rather well at that level.

Can I thank you for your time this morning.

My pleasure.



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