

JURISDICTION : STATE ADMINISTRATIVE TRIBUNAL

STREAM : VOCATIONAL REGULATION

ACT : LEGAL PRACTICE ACT 2003 (WA)

CITATION : LEGAL PRACTITIONERS COMPLAINTS
COMMITTEE and CAMP [2006] WASAT 355

MEMBER : HON. H WALLWORK QC (PRESIDING MEMBER)
MR I VINER QC (SENIOR SESSIONAL MEMBER)
DR K SPILLMAN (SENIOR SESSIONAL
MEMBER)
MS C THOMPSON (SENIOR SESSIONAL
MEMBER)

HEARD : 20 DECEMBER 2004, 20 AND 21 JULY 2006

DELIVERED : 6 DECEMBER 2006

FILE NO/S : VR 8 of 2003

BETWEEN : LEGAL PRACTITIONERS COMPLAINTS
COMMITTEE
Applicant

AND

ALAN JAMES CAMP
Respondent

Catchwords:

Unprofessional conduct - Practitioner breaking into client's desk to obtain client's will - Whether he had authority to obtain will - Offer to sell confidential information concerning clients to media - Giving chronology to journalists concerning proposed evidence in Coroner's Court which contained serious allegations.

Legislation:

Professional Conduct Rules, r 7.1, r 7.5

Result:

Submissions to be made concerning appropriate orders

Category: B

Representation:

Counsel:

Applicant : Mr MH Zilko SC and Ms C Coombs
Respondent : Mr J Gilmour QC and Mr R Butcher

Solicitors:

Applicant : Legal Practitioners Complaints Committee
Respondent : Butcher Paull & Calder

Case(s) referred to in decision(s):

Harrison v Schipp [1999] NSWCA 443

Re Coroner's Court of Western Australia Ex Parte Porteous [2002] WASCA 144

Case(s) also cited:

Nil

REASONS FOR DECISION OF THE TRIBUNAL:

Introduction

1 The practitioner was charged under four references.

Reference 22 (A)

2 With respect to reference 22(A) which is a charge of unprofessional conduct for breaking into the desk of the practitioner's employer at night and removing various documents and then photocopying them without the authority or consent of Hancock Prospecting Pty Ltd (HPPL) or Mr Hancock, it was advised in December 2004 that Mr Camp was prepared to plead guilty to this charge with the proviso that he had been given authority by the late Mr Hancock to obtain a copy of his Will. He accepted that it was an unprofessional way "of going about it".

3 The Legal Practitioners Complaints Committee (the Committee) does not accept that the practitioner had authority to obtain the Will. It was submitted for the practitioner that the question of his authority was a matter relevant to penalty.

4 Counsel for the complainant said that he had not been aware of any proposal to plead guilty prior to 20 December 2004. However, it was admitted that on 20 December 2004, counsel for the practitioner, Mr Gilmour, had said on more than one occasion that Mr Camp did not contend he had authority to break into the desk. It was submitted for the complainant that that matter would need to be considered in terms of penalty on the basis that if the practitioner did not have the authority to obtain the Will, it was obviously a more serious breach than if he did have authority.

5 With respect to the act of breaking into the desk, the complaint was amended to read that during the period from 1 November 1991 to 24 December 1991, a break-in occurred. Mr Camp said that he only took a copy of the Will away with him and returned the copies which had been made of the other documents to the drawer from which he had taken the originals. The copies were made by Mr Kristicevic.

6 Counsel for the complainant submits that Mr Camp took away copies of all of the documents and refers to the evidence in the Coronial Inquiry for that proposition.

7 Mr Camp has always said that Mr Hancock "told me to fetch the Will in late November or early December". That was sworn in a statutory

declaration which was submitted to the Coronial Inquiry. In his declaration, Mr Camp said he felt completely justified in getting the Will.

8 It was submitted by the complainant that although Mr Camp had said he understood he had to get the Will and read it prior to seeing Mr Hancock the next day, the evidence was that he had decided the night before, on the spur of the moment, to break into the office and get the Will. It was pointed out that when pressed and cross-examined at the Coronial Inquiry he had said that he had got the Will in that way because it was his sense of excitement and fun to do it like that. It was suggested that he knew before that night that the bottom of the drawer was stapled but that he would be able to slide it out. Therefore it was suggested he had a premeditated plan. In having observed the way in which the drawer was built and how it could be removed, he had decided to do it. He had said in his earlier statutory declaration that he had asked his friend if he could borrow a screwdriver. He had invited his friend to come along to the office.

9 We think it is obvious from the statutory declaration that Mr Camp had earlier examined the drawer in some detail to work out how he could get into it. He said in his declaration that the reason for going back after hours was to avoid the risk of Mrs Hancock threatening Mr Hancock. He said he had taken the copy which had been made of the Will to his office and left it there that evening and read it the next morning. He took it with him to Mr Hancock's bedside that day. It had never left the office at any time. After Mr Hancock's death in 1992, he had access to the drawer and the contents of it from about February 1992. He said in his declaration that he had no reason to keep a copy of the other documents after they had been photocopied at the time of the break-in late in 1991.

10 In his affidavit in the Coroner's Court, Mr Camp said that in the final stages of Mr Hancock's life he, (Mr Camp) was not practising as a barrister but was working for Mr Hancock in his office. His employer at that time was HPPL. He had become employed by that company in about October 1991. He had been engaged by Mr Hancock to liaise between him and Mrs Rinehart on a range of matters that involved the business of HPPL. He had known them both for about 20 years. He was retained until March 1992. He had been retained on an ad hoc basis in relation to the purchase of properties in the US through 1989 and 1990. In January 1991, he had been retained professionally to spend about a month looking through paperwork. In about October 1991, he was retained by Mr Hancock, having access to everything. He was working from the office. HPPL paid his salary. He said in his affidavit that from

August 1991, Mr Hancock had declared to him what the terms of Mr Hancock's Will were. He had received a letter from Mr Hancock in August 1991, which set out the terms of his Will. There was an issue as to whether the Will should honour an agreement which Mr Hancock had entered into in 1988, known as the 1988 Plan.

11 Mr Camp said in evidence that he had Mr Hancock's consent to get the Will. Mr Hancock had told him where it was. The reason he did not ask Mr Hancock's secretary to get it for him was that there was a difficulty in that Mr Hancock's secretary was close to Mr Martin Bennett and Mrs Porteous. Mr Hancock had told him where the Will was and said "you get it". He said he understood that Mr Hancock did not want his secretary to know that he had it. In answer to the Coroner, Mr Camp said that at that time Mr Hancock was two rooms away in bed.

12 Mr Camp said he did not discuss the Will with Mr Bennett nor was it discussed in the presence of Mr Bennett when he was there. Mr Hancock had gone from dealing with Mr Bennett to dealing with him.

13 A statement from Mr Bennett was marked exhibit 3. Mr Bennett said that Mr Camp had asked him on a number of occasions for a copy of the Will which he had prepared. That Will was dated 17 December 1991 and the codicils were added in January 1992.

14 Mr Bennett said that the requests by Mr Camp had been made on 27 February 1992, 19 February 1992 and one in January 1992. Also, two discussions had occurred in December 1991. That may have been during the time Mr Bennett was preparing the Will, before it was executed by Mr Hancock.

15 Mr Bennett said he had been questioned by Mr Camp as to whether the Will he was preparing, or had prepared, had been drafted in accordance with the June 1988 arrangement. Mr Bennett called it "an arrangement". He said Mr Camp called it "an agreement". Mr Bennett said that he had refused to discuss Mr Hancock's personal affairs with Mr Camp, consistent with what he had been instructed by Mr Hancock.

16 Mr Bennett said that Mr Hancock's health was quite good in December 1991 and January 1992. He was quite positive. However, Mr Hancock had deteriorated very badly in February 1992. He was walking and meeting his daughter on 1 January 1992 in HPPL House without a walking frame or assistance. He had some support but in February and March 1992 he was desperately ill. He had a problem with his foot in December 1991.

17 Mr Bennett said he first met Mrs Rinehart on New Year's Day in 1992. However she walked straight past him and ignored him. She referred to him as "that person Bennett" in front of him. She was pretty rude to him on that day. She knew he was acting for Mr Hancock. He had written her a letter threatening defamation proceedings. He had written that letter on behalf of her father. Mrs Rinehart had come back to Australia from America, where she had been living, sometime in August 1991 or thereabouts. Her father was spending some time talking to her. Mr Bennett said that they had had years of no discussion until that time. In 1991, Mr Hancock told Mr Bennett that Mr Camp was looking after Mrs Rinehart's interests. At that time Mr Camp was working in the Hancock offices.

18 Mr Bennett said he was considerably concerned to discover that Mr Camp had been dealing with BHP. That was the source of the problems in getting what was called the McCamey's transaction finalised. Mr Bennett said that he thought that Mr Camp's conduct in negotiating and signing a supplemental share sale agreement without reference to the solicitors acting for the company, was unprofessional. He was cross about that. That was in February 1992.

19 Mr Bennett said that he had refused to give Mr Camp the Will. This was about two nights after he had had the discussion about the McCamey's transaction at St John of God Hospital. He attributed the conduct in respect to the supplemental share sale agreement, which he thought was improper, to Mrs Rinehart more than he did to Mr Camp. Mr Bennett said that Mr Camp had raised with him at least three times prior to late January 1992, whether the Will Mr Bennett had drawn up was in accordance with the 1988 Plan.

20 Mr Bennett had prepared a second codicil about 23 January 1992 in which it was provided that if either Mrs Rinehart or Mrs Porteous disputed the validity of Mr Hancock's Will, they would be disinherited.

21 Mr Bennett said that Mr Camp had demanded a copy of the Will on 26-27 February 1992 after the St John's meeting. Mr Bennett said he had refused to do this. He also said Mr Camp had asked him about the Will prior to that. The two codicils had been prepared on 3 and 23 January 1992. The first codicil "bumps up Rose's entitlement to – from one million – cash payment, from 1 to 1.4... The second was the anti-disputation clause. It is a more substantial codicil reflecting quite a lot that had happened in January."

22 Mr Bennett said that when Mr Camp demanded a copy of the Will in February 1992, he was not sure how many people knew about the codicils. He said the codicils were something he had not heard Mr Hancock mention to anyone.

23 Mr Bennett said the first time he saw Mr Hancock unlocking a desk drawer and taking out the Will was in August 1991. Mr Bennett placed the two requests by Mr Camp for a copy of the Will at about 19 February 1992 and 26, 27 February 1992. He said that on 19 February 1992, it was more of a request than a demand. On the second occasion it was a demand. Mr Bennett said he had no instructions to give Mr Camp the Will and that he refused to give it.

24 Mr Bennett said that he "kept getting comments from Mr Camp, in November/December 1991, about 'have you done the Will yet?'" . He had been asked whether the Will gave effect to the Agreement. He said those enquiries had continued after the Will had been prepared, through to the meeting with Mrs Rinehart on 1 January 1992. After that meeting, there were demands that he give a written assurance that the Will gave effect to the Plan. There was a request in January and at least two in February and comments in December: "What was in the Will was a matter of great concern to Gina, it appeared". The effect of the request in February "was that Gina needed to be assured that the Will gave effect to the Plan".

25 Mr Camp's passport revealed that he had returned from America to Australia on 18 December 1991. Counsel for Mr Camp, Mr Gilmour, noted that 18 December 1991, when Mr Camp arrived back from the US, was the day after the date of the "Bennett Will". Mr Camp had pleaded guilty to obtaining a copy of the Will on about 24 December 1991.

26 Mr Camp said that Mr Hancock was to get his solicitor (Mr Bennett) to write him a letter confirming that the 1988 Agreement was adopted in the Will. Mrs Rinehart had asked him to follow that up with Mr Bennett. Mr Camp had said he had not wanted to do that because Mr Hancock did not want Mr Bennett to know that he, Mr Camp, was dealing so closely with Mr Hancock and Mrs Rinehart. Mr Camp said he did not talk to Mr Hancock about chasing up Martin Bennett about the letter. He had phoned Mr Bennett's office probably in mid-January 1992 because it did seem to him to be an awful long time and the letter still had not come. He said he rang twice. He could not get Mr Bennett himself but left a message with his secretary to the effect that: "Gina's waiting for a copy of the letter you promised her father about the Will". On the third occasion he spoke to Mr Craig Burton and was advised that Mr Bennett was away.

He said he told Mr Burton "Martin's promised this letter". Mr Burton had said "well I don't know anything about it". Mr Bennett said that "Ultimately, in a matter of the next week, speaking with Lang I was told not to send a letter, and I never sent a letter".

27 Mr Camp said that before the New Year's Day meeting in January 1992, he had seen the Will. The problem concerning the June 1998 agreement had still not been fixed. He said he had not boldly confronted Mr Hancock about this because he was too ill and he would not have been able to do that with him even if he was not ill, because of the nature of the man. Mr Hancock was saying to him "the '88 Agreement is honoured, is adopted in the Will". Mr Camp said we had to somehow get Hancock to confront the fact it was not. The shares were to go to the children but under the Will it said "but the children must enter into a covenant to give half of the profits from the company to Rose." Mr Camp said the company would not have been able to do that, but that was what was in the Will. That was the problem.

28 Mr Camp said Mrs Rinehart had spoken to him after the January 1992 meeting about pursuing the matter of the letter with Mr Bennett. On 14 February 1992, Mr Hancock had made a public announcement and Mrs Rinehart took over the management of the Hancock Group. She was ushered into the office and from that day "ran the show". Mr Camp said he had worked alongside her at the desk. That had persisted for about a year. From 14 February 1992 she had access to everything "and at that stage we had the Will out of the drawer". Mr Camp said that was when Mrs Rinehart saw the Will; after she was installed and after her father had fully accepted her. Prior to that, and at the meeting on the New Years Day, it was very difficult because "they could hardly talk to each other without screaming". Mr Camp said she was always protesting that Mr Hancock wasn't honouring agreements, or that he was taking money out of the company ... unfairly giving it to Rose.

29 Mr Camp said he had never asked Mr Bennett for a copy of the Will that he had drawn. Mr Camp also denied that he had tried to obtain information about the contents of the Will from Mr Bennett towards the end of 1991.

30 We note in passing that it would be surprising if Mr Camp would still have been asking or "demanding" a copy of the Will in early 1992, when he already had a copy of it, having taken it from the drawer before the end of December 1991.

31 Mr Camp said Mr Hancock gave him authority to look at the Will prior to when Mr Bennett drew the Will. Mr Camp said that Mr Hancock told him it was coming and he was going to see it. Mr Camp said that Mr Hancock told him that he was going to see the "Bennett Will". He obtained a copy of a memo from Mr Hancock to Mrs Rinehart on 28 November which alluded to that. He said that when he arrived back from the United States, Mr Hancock had told him to go and get the Will. Mr Camp said he thought it was probably 22, 23, 24 December 1991, just before Christmas. That was the day he had taken the sleeve out of the desk. Mr Camp said that Mr Hancock was then in his pyjamas in bed. He most definitely could not walk. He was in bed at the office.

32 Mr Camp said Mr Hancock had told him to get the Will. When he went to get it he did not know that the desk would be locked. When he found out it was locked and knowing that Mr Hancock was not able to get it himself, he realised that he would expose Mr Hancock to the potential for stress if he asked Mr Hancock's secretary to get it. That is what he was avoiding. He also said that "Reg", who was the person who helped Mr Hancock into the wheelchair and wheeled him around, was closer to Mrs Rinehart than anybody. "Miro" was the property manager who let him into the office.

33 Mr Camp said that at the time there was nothing he was doing for Mr Hancock as his solicitor. What he was doing was promoting a reconciliation or rapprochement between Mr Hancock and Mrs Rinehart. He did not draw the Will. He did not have instructions to change the Will or anything at all. Three months later he had drawn a codicil.

34 Mr Camp said that he could see now that his acquisition of the Will could have been done differently, and should have been done differently. Mr Camp said it was important in both his and Mrs Rinehart's mind that Mr Hancock honour the 1988 Agreement in the Will. He said he had told Mr Hancock that the Fieldhouse Will had not honoured the 1988 Agreement. Mr Hancock's attitude had been that it had.

35 Mr Camp said Mr Hancock was not hiding the Will. There was no secrecy. "Lang was not hiding anything." He said Mr Hancock told him to look at the Will after he had come back from the US. That was just after Mr Hancock had received the Will from Mr Bennett. Mr Camp said that Mr Hancock wanted him to persuade Mrs Rinehart that the Will had satisfied the 1988 Agreement. He had wanted the 1988 Agreement satisfied as well.

36 Mr Camp said that there was definitely "factionalism" within the office. The Will was not closely guarded by Mr Hancock. Mr Camp said that when he walked into the office and saw that the desk was locked, it was to his surprise. He had thought immediately "well Katherine has locked it". Mr Camp said he first went in when Mr Hancock's secretary was out, at lunchtime. That is when he found the drawer locked. He had to either come back that night or early the next morning before "Katherine" arrived.

37 Mr Camp said he needed to have the Will for the next day because Mr Hancock was hardly lucid. Mr Hancock was only available to talk properly 20 minutes out of every two hours; maybe 10 minutes out of every two hours. Other than that he was sleeping "and then when you were with him you had to wait for him to engage you ... He was that frail".

38 Mr Camp said that he had to be ready to talk about the Will when Mr Hancock raised it with him, which he anticipated would be the next day. Mr Camp said he could not go back to Mr Hancock's room, open the door and go into his room. If he wanted to see him he had to go through his secretary. He said that a meeting might not eventuate for another two or three days. He said that he hardly ever initiated a meeting, "I would get a message from Katherine, Mr Hancock wants to see you". He said he was not forcing the Will issue on him. He had not given a copy of the Will to Mrs Rinehart. She had independent access to it after 14 February 1992.

39 Mr Camp said part of his role was to keep Mr Hancock and Mrs Rinehart apart. The purpose of that was to enable the situation to work amicably somehow, because at that time if Mr Hancock and Mrs Rinehart were ever together, Mrs Rinehart would start screaming at him. He said he had told Mrs Rinehart that the Will was identical to the Fieldhouse Will. Mr Camp said he most definitely had authority to do that. That was part of the role he was in.

40 Mr Camp said he had been involved in the preparation of the deed which had the very long sentence in it, with Jeremy Curthoys and Frank Calloway in Melbourne. Mr Camp said he did not type it. It would have been somebody's secretary. Mr Camp said the deed definitely changed things. The deed put into place what Mr Hancock had announced on 25 February and told him to do on 24 and 26 February. He said he was referring back to Mr Hancock. He said he was also referring it to Craig Burton in Mr Bennett's office.

41 Mr Camp said that when Mr Hancock had told him to get the Will he had it in his mind that Mr Hancock would have assumed that if he had any problem he would get help. If Mr Hancock had known the desk was locked, he obviously would not have told him to go and get it. He said that how far Mr Hancock could think things through – what he could have had in his mind at the time given his state - he did not know. Mr Camp said that he knew what he had in his mind.

42 Mr Camp said that Mr Hancock had asked Mr Bennett to provide the letter to him. Then Mrs Rinehart had asked Mr Camp to pursue it. Mr Camp said he did not want to pursue it. Mr Hancock said he did not want Mr Bennett to know that he was getting that close to Mrs Rinehart. Mr Camp said that he had put the photos of the other documents that Miro had photocopied with the Will, back into the drawer because he did not know what they were. He said that when he moved into the office on 14 February 1992, he looked at them but he did not know what they were in December 1991. He had just put them back.

43 Mr Camp said that when he was at Mr Welch's place, his children and wife were going home early so he thought he would go and get the Will. He said that Mr Welch did not go into Mr Hancock's room. That he was in the office. He said that Mr Welch had said that he did definitely go into the room. He accepted that, which was different to the evidence he gave at the Coronial Inquiry.

44 Mr Camp said that he either had to go back that night or early the next morning. The reason Mr Welch came was because he would be going back to his place afterwards and he knew Miro. Mr Camp said that at the time, strange as it sounds, he did not see the obstacle in doing it the way he did. He said the only reason he decided to go back that night was because the dinner had finished early and there was plenty of time. He had asked Mr Welch if he could borrow a screwdriver. He had said to Mr Welch he would come back. Then he said "well come if you want to". "Mr Welch is a bookish sort of a fellow, a librarian". He had explained to Mr Welch that the only reason he was doing it was to avoid "Katherine" and to avoid the risk of Mrs Rinehart's wrath on Mr Hancock. He was to go back either that night or early the next morning before Mr Hancock's secretary had arrived. He explained that to Mr Welch.

45 At the Coroner's Inquest, Mr Camp had said that he had not asked Mr Hancock to get his secretary to get a copy of the Will "because he didn't want his secretary to know that he was giving me a copy of the Will". He had not asked Mr Hancock for a key to get the Will out of the

drawer. He said he had it in his mind that Mr Hancock did not have a key and that "Katherine" had the keys. Mr Camp said that by going to the office at night "I was making some excitement out of what was a fairly ordinary affair".

46 Before the Coroner, Mr Camp had said that he had kept a copy of all the documents which had been photocopied that evening. However, he denied that before the Tribunal. Before the Coroner he said it was definitely before Christmas that he had taken the Will. He told the Coroner he did not remember what he had done with the other documents. He said "I may have even put them back. I just don't remember". He said "I may have put them back right there and then. I don't recall".

47 We are not satisfied that Mr Camp did not have Mr Hancock's authority to get the Will from the drawer. There were deep rifts between Mr Hancock and his daughter, Mrs Rinehart, and between Mrs Rinehart and Mrs Hancock. There were also conflicting loyalties amongst the staff members of HPPL. There was a great deal of money at stake. Both Mr Camp and Mr Hancock were conscious of keeping from Mrs Hancock the full details of the dealings between Mr Hancock and his daughter. Mr Hancock's secretary was known to be sympathetic to Mrs Hancock.

48 The practitioner did not consider that the Fieldhouse Will reflected the 1988 Agreement between Mr Hancock and his daughter. Mr Camp had informed Mr Hancock of this view. Accordingly, Mr Hancock instructed his solicitor, Mr Bennett, to prepare another Will. Mr Bennett had acted for both Mr and Mrs Hancock. He had prepared a Will for Mrs Hancock in early 1991 in which it was said he had been named a beneficiary. He had acted for Mrs Hancock in other matters. Mrs Rinehart was concerned that the Will might not reflect the 1988 Agreement and that thereby significant benefit could be conferred on Mrs Hancock for whom Mr Bennett was acting.

49 We accept all those propositions.

50 The practitioner had a copy of the Will by no later than 24 December 1991. He had no obvious reason to ask for something he already had. Mr Bennett gave evidence that requests for a copy of the Will by Mr Camp were made on or about 19 and 27 February 1992. Mrs Rinehart had taken over the running of HPPL on 14 February 1992, at which time she was given access to all the documents in the office including the Will. There is undisputed evidence that Mr Hancock was concerned to ensure that the Will reflected the 1988 Agreement. He had

instructed Mr Bennett to prepare a letter stating that the Will achieved that objective. The reason why Mr Camp did not ask Mr Hancock's secretary for the keys to the desk was that Mr Camp thought that if he asked Mr Hancock's secretary for a copy of the Will Mr Hancock's secretary would then inform Mrs Hancock of what had happened. This could have caused unnecessary trouble in the family.

51 A submission was made by Mr Gilmour that, whilst preparing the Will, Mr Bennett was also the solicitor for Mrs Hancock. Mr Gilmour advanced the proposition that Mrs Rinehart and Mr Camp had every reason to think it was highly likely that the Will would not be in conformity with the 1988 Plan. Mr Gilmour made the point that there was plainly a dispute within the family which involved Mrs Hancock and Mrs Rinehart with Mr Hancock in the middle. The question was whether or not the Will was to give effect to the Plan of 1988 which made no provision for Mrs Hancock.

52 It was submitted that because Mr Bennett was acting for Mrs Hancock in drawing a Will for her and being named as a beneficiary, he was seen as being very close to Mrs Hancock. This had created a real concern in the minds of both Mrs Rinehart and Mr Camp. It was submitted that Mr Camp's evidence that he was asked by Mr Hancock to get a copy of the Will to discuss with him in the following days should be accepted. It was suggested that it was known in the office that Mr Hancock's secretary had threatened and attempted to bar Mr Camp from gaining access to certain information. That appears in Mr Schwab's statement. That attempt had been overruled by Mr Hancock, so there was a bizarre set of circumstances in existence. It was a very unusual case. Mr Hancock was asleep a lot of the time and essentially bedridden. Mr Camp had not thought the desk would be locked, but discovered that it was at lunchtime on the day of the evening on which he gained access. When he found it locked, he determined that he would come back and gain access to it later that day or early the following day.

53 It was submitted that Mr Hancock, who was not entirely lucid, was the reason Mr Camp had behaved as he did. The break-in to the desk was covert in the sense that Mr Camp had wanted to keep it from Mr Hancock's secretary. He had involved the property manager and Mr Welch. Mr Welch's evidence corroborated Mr Camp's that he was doing it because he did not want Mr Hancock's secretary to know he was getting access to the Will.

54 The complainant contends that Mr Camp had no authority to obtain the Will by any means; that Mr Hancock had never asked Mr Camp to obtain a copy of the Will. That was the evidence of Mr Bennett. It was suggested for Mr Camp that Mr Bennett was mistaken when he said that Mr Camp had asked him for a copy of the Will after the end of 1991. He had actually had a copy of it in his possession; that Mr Bennett was confused about questions concerning whether the 1988 Plan had been complied with in the Will. There was a reason for Mr Camp to ask Mr Bennett to confirm in writing that the Will did conform with the 1988 Plan because it was still the view of Mrs Rinehart and Mr Camp that it did not. Mrs Rinehart had wanted a letter stating that it was in conformity. It was suggested that Mr Bennett may have been told one thing by Mr Hancock, while Mr Camp was told something else.

55 We accept that the practitioner had been asked by Mr Hancock to obtain a copy of the Will before he acquired a copy of it from Mr Hancock's drawer. There is really no evidence which could be used to detract from the practitioner's assertions in this regard. Mr Bennett was not in a position to know what Mr Hancock said to the practitioner.

56 It was submitted for the complainant that Mr Bennett's evidence that Mr Camp had asked him for the Will on several occasions in January and February 1992, should be accepted because otherwise Mr Camp would be unable to explain how he had a copy of the Will. That does not overcome the fact that, as of 14 February 1992, prior to when Mr Bennett said Mr Camp had demanded a copy of the Will from him, both Mr Camp and Mrs Rinehart had access to the Will because she had taken over Mr Hancock's desk and business affairs on 14 February 1992.

57 The fact that Mr Bennett was told by Mr Hancock not to give a copy of the Will to Mr Camp is not conclusive either. Mr Hancock might have been telling Mr Bennett one thing and Mr Camp something else.

58 We accept Mr Camp's evidence that it was difficult to deal with Mr Hancock at that time due to his frail state of health. It was not put to Mr Camp that Mrs Rinehart and he had not had access to the desk and the Will after 14 February 1992, when Mrs Rinehart took over from Mr Hancock. It is inconsistent that Mr Camp would still be demanding the Will from Mr Bennett on the 26 and 27 February 1992 as Mr Bennett said he did.

59 Unprofessional conduct is established.

Reference 22 (B)

60 Reference 22(B) was withdrawn by leave, subject to the question of costs.

Reference 22 (C)

61 With respect to Complaint 22(C) which concerned an allegation that Mr Camp offered to divulge to certain media outlets confidential information relating to Mr Hancock and/or Mrs Rinehart and/or HPPL, which he had acquired whilst in their employ without first obtaining their authority or consent, it was said that sometime in about 1997, Mr Camp had spoken to representatives of Channel 7 and Channel 9. It was alleged that ultimately Mr Camp had asked for AU\$1 000 000 to be placed in an offshore account for him.

62 In his answer Mr Camp admitted that he had spoken to representatives of the media without first obtaining the authority of Mr Hancock before his death, or his estate, or Mrs Rinehart or HPPL. He says he spoke to the outlets in the certain knowledge that Mrs Rinehart, or the estate, or HPPL would authorise him to conduct such a factual interview.

63 Before the Coroner, Mr Camp was asked "Was part of what you were offering to sell them, the details of the break-in and other matters?" His answer was "No, it was probably the full story".

64 Before the Coroner, Mr Camp said it was in the period "where I had fallen out with Gina, and the bank was selling me up, and I was not travelling too well". He said "but if I said a million dollars, it would have been some sort of, you know, like, you know, either tongue in cheek or obviously no chance".

65 Before the Coroner, Mr Camp said "I have said nothing because they haven't offered enough". He said his attitude was "if you are going to pay me for my story, I will talk to you about ..." In answer to the Coroner he said he would have been prepared to speak to the media if they had offered enough money. He had no memory of mentioning a million dollars. If he had, it would have been tongue in cheek, or some sort of distress on his part.

66 Ms Fan, a journalist employed by Channel 7, said she had known Mr Camp for more than 20 years. He had called her and said that Mrs Rinehart "had cut him loose", or deserted him, or withdrawn some money in some way. That was after Mrs Rinehart had sued Channel 7.

Mr Camp said he could help Ms Fan with that litigation because he had some information and background which could "blow Gina out of the water".

67 Ms Fan said that Mr Camp had offered to give Channel 7 a story that he had broken into a filing cabinet and how he broke into it. He told her they had unscrewed a shelf so that the bottom file would fall out and they were able to get the Will, "and how Lang Hancock's hand was held to sign the codicil or some document, but he would be prepared to tell us. This had not become public knowledge but in return he would want some money because he was desperate for money".

68 Ms Fan said she had taped the initial conversation and said to Mr Camp that she would approach the Eastern States headquarters to find out whether "we could pay it". The tapes which Ms Fan had made were given to the Coroner. She said there were at least two tapes. She said Mr Camp was "really emotional and upset because he didn't think he could get through the weekend; that he couldn't feed the kids; he couldn't meet a mortgage; that Gina was threatening to take his car away from him ...".

69 Ms Fan said that they were prepared to pay \$50 000. Mr Camp had told her that 60 Minutes would pay him \$100 000 or more and that magazines would also pay more. She said she had wanted a witness, so she went to Mr Camp's office in London Court with Mr Roy Gibson from the West Australian Newspaper. Ms Fan said she thought she might have been set up so she wanted Mr Gibson there to hear what happened. She had also taped the conversation. She said the price being asked went up to like about \$1 000 000 "and then he was talking like he wanted it offshore. He wanted it in American dollars". Her contacts had said "We can't deal with offshore stuff and American dollars".

70 Ms Fan said the whole idea was that "he was just desperate for money and needed the money". Ms Fan said that the information about how the Will had been taken and the desk broken into, had come out – "they wanted him to put in a statement as well as the tape stuff". She said that at the time Mr Camp was quite emotional "and I think when we went up to him he was a bit emotional, because I asked him what was wrong with him and he just said that he just couldn't carry on because Gina was doing stuff". Later on he had told Ms Fan that Mrs Rinehart had changed her attitude and "I don't know if I will go through with it now because Gina has come good. She has given me some money, paid me some money, has not taken the car away from me now ...".

71 Ms Fan said "And then it just sort of went away. I don't think we followed it up. It started to get too bizarre with all this offshore money stuff, and he didn't follow through". Ms Fan said "The story was with Gina; that was going to blow her out of the water that we were interested in and it wasn't because she was suing us. We were interested in it as a story".

72 Ms Fan referred to "the frantic call that I got from him when he was very emotional". He needed the money immediately and "can you get it ... I need it like this weekend".

73 Ms Fan said "... but the one time that he was adamant was definitely over a weekend because he said he could not get through the weekend and he was – he wasn't sure. He sounded suicidal. He was talking about stuff that he – you know, life; life wasn't worth living at all, sort of stuff. He was very emotional".

74 It was put to Ms Fan that what Mr Camp had wanted to talk to her about was his knowledge of the personal relationships between Mr Hancock and Mrs Rinehart because he had known them as a family friend over 20 years. Ms Fan's answer was "Absolutely not. That wouldn't be worth a cent".

75 Mr Gilmour put a transcript of the telephone conversations to Ms Fan and then put it to her that the kind of information that Mr Camp was prepared to discuss and to consider giving, had related to personal relationships involving members of the Hancock Family. Ms Fan's answer was "No ..., part of, yes. Part of that with the break-in is the big story". She said "a night time, after hours break-in, was what he told me from the first time. It was the only thing that interested us. The other relationship was coming out everywhere. Rose was talking her head off. Nothing of that was new. What was new was that Alan said that he got some handyman to go in after hours, at night-time, to break-in and I said how did you do it?" Ms Fan then went on to say "... and then Lang Hancock's hand was held to – that was the crux of the story. That was the only story...".

76 When asked what Hancock's hand had to do with it, Ms Fan's answer was "to change the Will; to sign a change of the Will. They took it. They photocopied it and then he changed the Will. That was a big story".

77 Ms Fan said that Mr Camp had rang her and said "I have got a great story for you, the break-in story, night-time, break-in". That was his story. I was not interested in relationships. Ms Fan repeated that

Mr Camp had rung her and amongst other things said "I have had a falling out ... but I have got some information that will blow Gina out of the water" and I said "what's that?" and he said "It is to do with the break-in" and I said "what break-in". He said how he got a handyman etc. She knew the details about how Mr Camp had taken the Will from the filing cabinet. She said "I don't know how but he said Lang Hancock's hand was held to sign the codicil or whatever it was; the amendment". Ms Fan had said to Mr Camp "that is a fantastic story". He said "I want money for it because I need money". She said Mr Camp had said "This has never come out before. It's a good story". He had said "But I need money. I have got to be paid". Ms Fan said that Mr Camp had not asked for a million dollars first up but that "after he did, yes, that's why we all backed away. We were willing to pay the \$50 000".

78 It is our view that Ms Fan's evidence was straightforward and should be accepted. The fact that under cross-examination she remembered some of the things that were on the transcript is not surprising, given the kind of work she does and the number of interviews and stories she has been involved with.

79 Mr Gibson was also called to give evidence. He said that he had gone to Mr Camp's office in London Court and that Mr Camp had nominated a figure which he thought was a million dollars. Mr Gibson said "I think I made it pretty clear that the West just wouldn't be paying for any sort of story. I said it was of little interest or concern to me".

80 We accept Mr Gibson's evidence in its entirety.

81 Mr Camp denied that he told Ms Fan that he had information which would blow Gina out of the water. He was asked whether he had fallen out with Gina Rinehart at that point of time. Mr Camp said that he had. Mr Camp said he did not know that too much turned on that as from just after Lang had died, he was involved in speaking to the press on numerous occasions. In some respects he was angry with Mrs Rinehart because she had created a problem. Mr Camp was in serious financial difficulties at the time. He had a large mortgage to pay and he did not have any means of paying it. He owed more than \$300 000 on the mortgage.

82 With respect to him asking for a million dollars when Mr Gibson was there, Mr Camp said "I mean, well I may have, but I have no recollection of it. I would be very surprised if I said I wanted \$1 000 000 but I may have". If he had said it, it was most certainly "tongue in cheek". If he had

said it "tongue in cheek" he would have thought it would have been taken "tongue in cheek".

83 Mr Camp admitted that he had spoken to representatives of Channel 7 and 9. He thought that Ms Broderick was the representative of Channel 9 he had spoken to. She was representing the Witness programme. They were wanting to do the story. Mr Camp had wanted a little bit of assistance from Ms Fan, "sort of coaching assistance" as to what he might say and what might be something which would be a decent story that they would pay for, how much he should ask for, and so on. That had coincided with Ms Fan being a defendant in a defamation action of Ms Rinehart's. He said Ms Fan's attitude had been that Channel 7 might be interested too "but I think her attitude was that if Channel 9 were going to be paying, Channel 7 would not as well". He said "Witness" had telephoned him about a story, and possibly "60 Minutes". He would have thought it would be the same representative.

84 Mr Camp said the desk story was already the subject of two stories in The West Australian and it was already published. He told the counsel Mr Heliotis, at the Inquest that one of the specific matters he was going to give the media, was details of the breaking into Hancock's office. He told Mr Heliotis that he would have told the real story about the break-in. He would tell them the whole story. Mr Camp said that he was going to tell them that Mr Hancock had told him to go and get the Will, which took the sensation out of the story. That is why he knew he was not going to get paid for it. The only story he knew he might get paid for would be a general story.

85 Mr Camp remembered telling the Coroner that in his wildest imagination he would not get more than one quarter of a million in relation to the stories. Mr Camp said that there were about 30 points to his story, from right back to the early days of travel with Mr Hancock, "young politicians who are you know Deputy Prime Minister" and so on; "there is probably about 30 points that one might concoct a series of stories over, bearing in mind that there was some public interest in all this at the time". Mr Camp said that he had not on three separate occasions been prepared to sell a story about the desk incident for money.

86 In cross-examination, Mr Camp said "You have got to know that these discussions were very tentative. I never got anywhere. I never believed that they were ever going to get anywhere ... ". Mr Camp denied telling Ms Fan that Mr Hancock's hand was held. He also denied ever saying that he was desperate for money. He qualified that by saying

he did not think so. He said "I do not think I did." He said he definitely did not talk about how Mr Hancock's hand was held to sign a codicil or some document. He denied that he originally asked for \$50 000 but later sought a greater amount because other media outlets were prepared to pay for the story. He said "No, there was never any bidding going on".

87 We believe Ms Fan's evidence generally. We do not accept Mr Camp's evidence where it conflicts with hers in important respects.

88 When asked whether he had originally asked for \$50 000 but later sought a greater amount because other media outlets were prepared to pay him more for the story, he said "No, definitely not". He admitted that the bank was threatening to sell him up at the time. He said he had not asked Mrs Rinehart if he could go to the press but that they had talked about it previously. He said he did not talk to her regarding his approaches to Channel 7 and Channel 9 and said that he did not need to.

89 When Mr Heliotis was representing Mrs Rose Porteous (formerly Mrs Hancock) at the Coroner's Inquest he asked Mr Camp whether he had asked the media for \$1 000 000, Mr Heliotis said that a tape existed of it. Mr Gilmour asked Mr Camp whether a transcript of such a conversation was ever produced by Mr Heliotis or anyone representing Mrs Porteous to the Coroner. The answer was No.

90 It was put to Mr Camp that Mr Heliotis had said "Now I ask you again, did you ask for \$1 000 000 to be invested in an off-shore account". Mr Camp answered "Well, I will fall over if there is a tape of that because I have no recollection of it". He was then asked did he ask for US\$1 000 000 for his story. He said "No, I am positive". When he was asked if part of what he was offering to sell were the details of the break-in and other matters, he said "No, it was probably the full story".

91 Before the Tribunal, Mr Camp said "the full story was the full account of all the stories that Lang had given to him and all the interesting stories that went on". Mr Camp admitted that one of the specific matters he was going to give the media was details of the breaking in to Mr Hancock's desk. Mr Camp said that at the time he spoke to Mrs Fan, the desk incident was public knowledge. That was prior to Ms Fan ringing him about, amongst other things, that incident. Mr Camp said he knew Mrs Rinehart was quite happy for him to deal with the press in return for money or to be paid for any interviews that he had given. He said he had talked to her about it early on and there was also discussion about the possibility of him writing a book. A publishing company in

Sydney had been involved. He said he talked to Mrs Rinehart about that and she had said "Yes, you can do it". Mr Camp said it was too hard, in the sense that it was too time consuming. There was never any question that she was quite happy he was to write. The only things she would not want him to disclose were personal matters including the lives of her children or other intimacies.

92 A submission was made for the practitioner that this complaint cannot be sustained as there was no evidence that the practitioner was to publish material that was confidential or material which he did not have permission to publish. We do not accept that submission.

93 The practitioner was obviously desperate for money and intended to release confidential information concerning his clients and the Hancock family which information he had obtained whilst he was working for them as a practitioner.

94 Mr Gilmour submitted that the evidence of Ms Fan in chief was thoroughly discredited. We do not accept that submission. In our opinion Ms Fan answered as best she could when the transcript was put to her. It was not established that she was in any way making up her evidence.

95 The submission that there was no evidence that the practitioner intended to publish material which was in fact confidential and which he did not have permission to publish, was not established. The practitioner offered to publish much information about the family for whom he had been acting as a solicitor. In all the circumstances, in our opinion, that information was confidential .

96 Particular 3 of the complaint specifically says that the information was "relating to various matters including but not limited to legal proceedings then on foot between Mrs Rinehart or Hancock Prospecting Pty Ltd on the one hand and Mrs Rose Porteous or interests associated with her on the other".

97 It was put to the practitioner that he had offered to sell a story regarding the break-in and the signing of the codicil. He denied this. We accept the evidence of Ms Fan concerning that matter.

98 It was submitted that the practitioner was not cross-examined as to whether he had the permission of Mrs Rinehart to reveal the whole story and that the fact that he had such permission was confirmed in the statement of Mrs Rinehart; also that he had discussed writing a book on the Hancock family with Mrs Rinehart.

99 We do not accept that Mrs Rinehart's evidence exculpates the practitioner. We accept Ms Fan's evidence that at the time he first discussed the matter with her, the practitioner was obviously severely troubled and extremely worried about his financial position. He had allegedly been cut off by Mrs Rinehart.

100 The submission that the reference cannot be sustained, as there is no evidence the practitioner was to publish material which was in fact confidential which he did not have permission to publish, in our view is not substantiated. The opposite is the correct version.

101 Mr Camp admitted that he had approached Channel 7 and Channel 9. He admits that he did so without first obtaining the authority of his clients. Mr Zilko said the issue was that he denied that he had offered to speak in such interviews about matters of a confidential nature.

102 We would say that if Mr Camp offered "to blow Gina out of the water" as Ms Fan said he had done, then that speaks for itself. He was acting for Mrs Rinehart. He had known her and acted for her at times as a lawyer up to and including the period after her father's death. He had acted for her as a lawyer after she took over from her father in February 1992.

103 As already stated we do not agree that Ms Fan's evidence was "thoroughly discredited". We are satisfied that Mr Camp told Ms Fan that he would tell her about how he broke into Mr Hancock's desk and how Mr Hancock's hand was held to sign a codicil "or some document". We are also satisfied that he said he would do this for money because he was desperate for money.

104 Mr Camp agreed at the hearing that he had fallen out with Mrs Rinehart. He also said that in the Coronial proceedings. He admitted that he was angry with her. She had "cut off" his finances. He admitted he was in trouble financially. He offered to sell what we think is obviously confidential information about the family, both with respect to their private lives and legal affairs. He said that he did not know how much he had asked for but "I imagined it was tied to how much I owed the bank". He said that his mortgage was in excess of \$300 000.

105 We agree with Mr Zilko that the offer to tell about Mr Hancock's hand having to be held to sign a codicil or some document is a very important and serious matter.

106 Mr Gibson said he heard Mr Camp say that Mr Camp wanted a million dollars. We accept Mr Gibson's evidence in total. We accept that Mr Camp told Alison Fan that he was desperate for money. We also agree that he was in some sense talking about the money being placed offshore. Towards the end of the saga, he told Ms Fan that "Gina has come good" and that he did not know if he would go through with it because "Gina had come good". He told Ms Fan that Mrs Rinehart had given him some money and had not taken the car from him. We accept that he was quite detailed in his requests to Ms Fan concerning who would pay the most money to him for the story.

107 It was put to Ms Fan on a number of occasions that what Mr Camp really wanted to talk about were the personal relationships within the family. Her answer was "Absolutely not, that wouldn't be worth a cent". Ms Fan said that was not how the proposition was presented to her.

108 Ms Fan's attitude was that the break-in was the big story. Mr Camp told her how he had broken into the drawer. Ms Fan said that the information from Mr Camp that Mr Hancock's hand was held "was a big story".

109 We accept Ms Fan's evidence that when Mr Camp originally discussed the matter he told her he had a great story for her or words to that effect. We accept that Mr Camp said to Ms Fan words to the effect that "I want money for it because I need money".

110 We agree with Mr Zilko's submissions that when she was reminded of them by Mr Gilmour, Ms Fan was prepared to concede matters she had forgotten. We accept Mr Zilko's submission that Mr Camp had no authority express or implied to disclose the information about the office desk and the signing of the codicil or another document to a media outlet for payment. We agree that it is a breach of solicitor and client confidence for a solicitor without the permission of the client to offer this kind of information to the media for payment.

111 In this case, where it is alleged that the confidential information being offered to the media related to Mr Hancock and/or Mrs Rinehart and/or HPPL, we agree that it did. The three of those legal persons were involved with Mr Camp on a confidential basis and with what he did concerning the desk and the Will. Mr Camp was engaged in matters concerning the three of those persons. It was their business, or matters relating to their business, which he was prepared to reveal to the media for money.

112 *Professional Conduct Rules 7.1 and 7.5* are in point in this matter. They require a practitioner to give undivided fidelity to his client's interests unaffected by the practitioner's own. He is not to use information obtained against his client's interests.

113 We agree with Mr Zilko's proposition that if a practitioner learns something about his client which is adverse to the client's interests the practitioner does not have any right to tell anybody about it without the client's authority. That prohibition would include such things as the break-in to the desk and the alleged holding of Mr Hancock's hand in connection with the signing of the codicil to Will or some document - even if the client's hand was only shaking and had to be held. That type of matter should not be disclosed to the media for money. It does not matter whether the client was fully alert or not.

114 We agree that the confidential information would not have to amount to something that was said by or to the client. It could be general information concerning the client's affairs including his bad health or the turbulent relationships within the family which he acquired by reason of his professional relationship with Mr Hancock, Mrs Rinehart and/or HPPL.

115 The practitioner admitted that he spoke to representatives of Channel 7 and Channel 9 concerning selling his story to them. He admits doing it without first obtaining the authority of his clients to do so.

116 Mr Gilmour said that this Tribunal should rely on the transcript as to what really happened between Mr Camp and Ms Fan. However, we do not think that proposition should be upheld. Ms Fan was quite clear as to how she was approached and what was said to her. We accept that evidence.

117 We do not think the statement of Mrs Rinehart that Mr Camp had spoken to the media factually on the family's behalf and that she would have had no issue in certain circumstances if he could have persuaded the media to pay for factual information, legalises what he did. Moreover, the fact that Mr Hancock had died before the conversations with Ms Fan took place, in our view, is not fatal to the allegation of unprofessional conduct.

118 We do not think that the fact that Ms Fan was in litigation with Mrs Rinehart detracted from the obvious truth of what she was telling the Tribunal. There is also the supporting evidence from Mr Gibson.

119 This reference has been sustained.

Reference 22 (D)

120 In opening, counsel for the complainant, Mr Zilko, referred to the fact that the chronology, the subject of reference 22(D) had been presented to the Coroner at a directions hearing by Mrs Rinehart's senior counsel and marked as an exhibit. Senior counsel had wished to read from the chronology aloud and members of the press were present. An objection was taken to that course of conduct. It is common ground that the chronology contains sensational alleged material about Mrs Porteous. The Coroner refused to allow the chronology to be read aloud. He did not make a suppression order.

121 Mr Camp left the directions hearing with the chronology and handed it to members of the press a short time later. It was submitted that Mr Camp had no means of knowing whether the relevant journalists were in the hearing to hear the Coroner say that the chronology was not to be read aloud. One journalist who rang him later at his chambers was told to "come up to my chambers and I will give you a copy".

122 Counsel submitted that the Coronial Inquiry was held to determine whether Mr Hancock died by natural means or whether he died as a result of something done or omitted to be done by Mrs Porteous. It was suggested in opening by Mr Zilko that by handing out the chronology to members of the press, Mr Camp had sought to enhance his client's interests and to damage the interests of Mrs Porteous in relation to the Coronial Inquiry by either influencing people who might wish to come and give evidence, or by influencing the way in which the press and media portrayed the events in the Inquiry, or whatever. It was suggested that that conduct amounted to unprofessional conduct. It was submitted that particulars 1 to 4 would support the reference and that there was no need for par 5 to be there.

123 Mr Gilmour pointed out that Mr Zilko had said that the unfair means was by either influencing people who wished to give evidence or by influencing the way in which the press and the media portrayed the events in the inquiry. Mr Gilmour asked how a witness could in any way be influenced unless the material was published.

124 An amendment to par 5 to insert the words "in connection with the Coronial Inquest" after the second word in line two of particular 5 being "interests", and before the words "by unfair means" was allowed on 27 July 2006.

125 Mr Camp's statutory declaration together with a bundle of documents became exhibit 9. Amendments were made to the statutory declaration.

126 Mr Camp admitted that he had handed out four copies of the chronology to journalists and later invited another journalist to his chambers to give him a copy. He had then faxed a further copy to another journalist. Mr Camp said he thought that the journalist concerned had been at the hearing. This journalist, Mr Reardon, had used the chronology to write articles in an Eastern States newspaper.

127 Mr Camp said that all the journalists who were locals did not use it. He only gave the chronology to journalists whom he knew. He had promised Mr Reardon a summary in due course.

128 Mr Camp said Mrs Rinehart had invited journalists to read the evidence and that gave rise to the chronology. Mr Camp said he had not read the chronology at the time and still had not read it. Mr Camp was persistent that he had never read it. He said he had not read it before he handed it out and had not read it since.

129 Mr Camp said that the chronology had been prepared by senior counsel and junior counsel from Melbourne over a period of about a week. He had not been involved in the preparation of it. He said that "I knew that they'd thoroughly worked on it. I spoke to Peter Hayes after the Coroner's direction." Mr Camp said he didn't read it but he talked to Peter Hayes about it. Mr Camp said he knew it was a summary and Mr Hayes had described to the Coroner what it was. Mr Camp said he had not discussed the contents with Mr Hayes, only that it was a summary from witness statements given to the legal team. He said Mr Peter Hayes was the leader of that team and they had all the witness statements. They had compiled the chronology for the Coroner from the witness statements. It was a summary for the Coroner. The chronology was accepted as an exhibit before the Coroner.

130 Mr Camp said there had been no suppression order. The Coroner had said to senior counsel that he could not read it in open court. Mr Camp said that when he gave the chronology to the press it was on the understanding that it was not going to be published. No local journalist had published it. The reporter who published it in the Eastern States had not been in court that day. The summary had been handed to the Coroner but the witness statements were not handed in. Counsel had the witness statements and they had made a summary.

131 Mr Camp said he did not know what was in the witness statements. Mrs Rinehart had been inviting journalists to her office to read all the witness statements. He said the journalists were not going to read through the witness statements. A couple of them had said to him: "Have you got a summary of these?" That was four months before. Mr Camp said he had said "Look, whenever there is a summary available I will ring you. I will give it to you". He had said in his affidavit that he saw the role of the press as being important, so that is how this arose.

132 Mr Camp said he had never read the witness statements and neither did the journalists. A journalist was not going to sit down and read through it all. It was pretty sensational stuff in the statements but quite precisely what, he did not know. He said "it was always in the papers, this business". He had not discussed with Mrs Rinehart the contents of the witness statements, but he said that, for instance, the allegation that Mrs Hancock had hastened Lang's death had been in the newspapers on three or four occasions before it was published in the Eastern States on this occasion. There was nothing new in any of it, but even if there was he would not have known. He was interviewed that day by Mr Paul Murray and did not try to say anything against Mrs Porteous in any way, shape or form. He had been in the Coroner's Court when Mr Hayes was seeking to read the chronology and when the Coroner had said no. He had given it to the reporters as a summary to assist them to be prepared in due course when the Inquiry came on. The better prepared they were, the better they could do their job, and from Mrs Rinehart's perspective, not get things wrong. He said he had not at any point planned for it to be published. He did not give it to them on that basis. He sincerely believed that the journalists to whom he gave it knew that it was not going to be published. They had been in the Coroner's Court. It was not published in Western Australia. He had believed that Mr Reardon had been there. He assumed when Mr Reardon rang that he had been in the Court because how else could he have known straight away that it was available, if he had not been there. The legal team was led by Mr Peter Hayes QC and the junior counsel was from Melbourne. He has since been made a Queens Counsel.

133 Mr Camp said that he had not at any stage then or since read the chronology. He had not read the statements from which the chronology had been created. He had not read the statements and he did not sit through the hearing to listen to any of it.

134 In his affidavit to the Supreme Court Mr Camp stated "I did not read the chronology. I had read the witness statements and I knew there was a

statement by a Philippine witness briefed by a solicitor from the Sydney office ...". It was put to Mr Camp that he had read the witness statements. He said "No, I had not". He said he knew what the witness from the Philippines was going to say. That must at some point have been described to him but he had never sat down and read it for himself.

135 Mr Camp said he had not been briefed as counsel to appear at the Coroner's Inquest and he was not retained as a solicitor. He thinks he was engaged on the basis that he had a very broad overview of the events relating to the corporate structures and so on. He did not sit through all of the Coroner's Inquest. In fact he did not sit through any of it except his own evidence. He had been at the directions hearing which had been about six months before the Inquest commenced. He said that in the light of his affidavit, he may have read one witness statement but he most definitely had not read through all of the witness statements. Maybe that one was so sensational that someone had showed it to him but he did not remember reading it. He was referring to the Philippine witness' statement. He said he may have been shown that. He had no recollection of it but maybe when he had answered that affidavit he did remember. He had not been retained to have any input or involvement in the creation of anyone's statements. He had been completely against the whole Inquest idea. At the time of the handing out of the chronology he did not think he had any specific job. On 1 November 1991 he had moved into full-time work for the Hancock Group. He had worked there from 1 November 1991 to 1 November 1994.

136 Mr Camp said the junior counsel from Melbourne who was working with Mr Peter Hayes QC was Mr O'Brien and the instructing solicitor was Mr Steven Scott. The witness statements in due course were provided to the Coroner - not at the directions hearing. Mr Camp said the majority of the witnesses were called. Mr Camp said the seriously controversial stuff was all called. Some of the witness statements had been prepared by solicitors from Sydney as part of Mrs Rinehart's team. Mr Camp had not been involved in the preparation of the witness statements. Mr Peter Hayes had provided the chronology to him. The chronology was handed to him by Mr Hayes and was accepted as an exhibit. The Coroner would not let Mr Hayes read it out verbatim. He said "Mr Peter Hayes gave it to me". Mr Hayes knew that he had promised the journalists a copy of it.

137 Witness statements from Mr Michael Welch, Mr Gary Schwab and Mrs Gina Rinehart were submitted. It was agreed that matters crossed out should be disregarded. Those statements were received into evidence.

138 It was submitted that it would be very difficult for this Tribunal to
make findings of fact different from those made by the Full Court. That
can be accepted.

139 It is said that because Mr Camp had no intention that the matters be
published, his conduct did not have the tendency to interfere with the
administration of justice; that the way the reference is framed, there had to
be an intention on Mr Camp's part to do those things and by some unfair
means gain an advantage for his client in connection with the coronial
proceedings.

140 It was submitted that what Mr Camp did was distribute an
aide-memoire to enable the journalists to have a better understanding of
the evidence that was to be given; that the way the complainant was
putting it was that it was done with a view to, amongst other things,
interfering with the witnesses. It is not an open ended reference. It was
submitted that that was not Mr Camp's intention nor did it have that
tendency. It was submitted that Mr Camp thought that everyone who
obtained a copy of the *aide-memoire* had heard what the Coroner said, and
understood that they were getting it on that basis; that the one person who
used it did not happen to be in the Court but that Mr Camp thought he had
been there.

141 It was put on Mr Camp's behalf that to distribute the chronology so
called as he did, might be described as an error of judgment if it was done
to assist the reporters in knowing what was coming so they could attend;
but it would be different if he said, "Here are allegations concerning
Mrs Porteous and you can publish them". It was put that the particular
circumstances in which the distribution occurred are important; and that at
the highest it was an error of judgment on Mr Camp's part.

142 It was submitted that a reference against another practitioner had
been dismissed where a practitioner had disclosed to a journalist the
content of a without prejudice communication; that in that case the
reference had been dismissed on the basis that whilst it had been
unfortunate it had been no more than a misjudgment on the practitioner's
part.

143 It was submitted that the handout in this case had been given in
circumstances where the evidence was to be given, or where it was
understood that it was to be given. The document had been prepared by
senior and junior counsel from Melbourne and was a summary of the
proposed evidence of witnesses who were to be called by the Rinehart

interests; that there was no evidence that Mr Camp had considered it was unlikely that any of those persons would not give evidence. He did not give the information out with the intent that it would be published.

144 It was submitted that the reference was not about defamation. Further, that often the contents of a statement of claim appear in the press; also there was no suggestion that the hand out was to be used to advance Mr Camp's client's interests in the Coronial Inquiry in some unfair way; that if the journalist who was not in court had not published something, all that would have happened was that the journalists who were covering the Coroner's Inquest would have had advance knowledge of a summary of what was to be the position of various witnesses. There was no evidence as to who did or did not give evidence. It was pointed out that the information was given when the practitioner knew that the conduct was a matter to be considered by the Court; that the Tribunal had to be confined to the way the matter was put in the Reference; that the Tribunal was strictly bound by the Reference.

145 In the written submissions of the practitioner it is stated that the allegation amounts to a complaint that the actions referred to were designed to influence the outcome of the proceedings. It was said that this was added to by the opening of counsel for the complainant, who said that by handing out the chronology to members of the press, Mr Camp had sought to advance his client's interests and damage the interests of Mrs Porteous in relation to the Coronial Inquiry, which was then planned to take place sometime after the directions hearing, by either influencing people who wished to come and give evidence or by influencing the way in which the press and media portrayed the events in the inquiry, or whatever. It was submitted that Wheeler J and the other two Justices on the Full Court had held that Mr Camp did not intend that his actions in distributing the chronology would affect the proceedings before the Coroner. Further that his actions were not capable of affecting the proceedings. Therefore, neither of these elements were established.

146 It had been accepted by the Full Court that the practitioner had no intent that the chronology be immediately published. It was submitted that the reference required the Tribunal to be satisfied in effect of the same elements as the contempt alleged in *Re Coroner's Court of Western Australia Ex Parte Porteous* [2002] WASCA 144.

147 It was submitted that the reference by implication required that the practitioner's conduct be capable of affecting the proceedings and that the practitioner was aware that his conduct could affect the proceedings.

Reliance was placed on the reasons of Wheeler J in the judgment in the contempt proceedings at page 508. Wheeler J said that the published material had to be viewed against the background of ongoing sensational allegations already aired in Supreme Court proceedings concerning Mr Hancock's family and financial dealings. The chronology only purported to be a summary extracted by a third person.

148 It was submitted that there were a number of good reasons for the practitioner to distribute the summary, including those identified by Wheeler J, which included maintaining good relations with journalists for the future; knowledge of the whole thrust of the case which Mrs Rinehart might present to the Inquest which could influence the way in which those journalists might write about other aspects of proceedings so as to present greater fairness from Mrs Rinehart's point of view, and also to be of assistance to journalists when they were deciding whether it was worthwhile attending what were likely to be protracted proceedings.

149 It was submitted that the chronology had not been prepared by the practitioner but by senior and junior counsel. Nor were the witness statements prepared by the practitioner; further that the practitioner had no active role in the Rinehart legal team. It was said that nothing turned on the question of whether the practitioner had read the witness statements. His evidence was that he had not read the chronology and had provided it to journalists to assist them. He had assumed that all of the journalists provided with the chronology had been in Court when the Coroner had declined to read the chronology into evidence. There was, however, no suppression order made at that stage.

150 With respect to the question of the practitioner's intent, it was submitted that the complainant had invited the Tribunal to make a finding contrary to that made by the Full Court. That nothing had been published in Western Australia. Mr Camp had believed that the relevant journalist had been present in court when the Coroner had refused to read the chronology into evidence. The practitioner's assumption was not unreasonable in that the practitioner had received a telephone call from the journalist shortly after the hearing. The practitioner had deduced that the journalist was aware of what had happened in the Inquiry. There was no evidence to sustain a finding that the practitioner had intended to distribute the chronology in order to influence persons who might give evidence or influence in any unfair way the media to portray the Inquiry. It was submitted that the practitioner could not be guilty of the reference.

151 We note that the complaint, as opposed to the particulars of it, does not assert any intent to influence the proceedings and that particular 4 refers to allegations that Mrs Porteous was only interested in Mr Hancock for his money; allegations that she had behaved badly in the period leading up to his death. Particular 5 brings in the question of an intention to influence the proceedings by unfair means.

152 The complainant's counsel relied on the words of Mason P in *Harrison v Schipp* [1999] NSWCA 443 (para 27 where it was said:

" ... it is no part of a solicitor's proper function in acting for a litigant to organise a media attendance at proceedings in order to inflict political damage upon the opposite party, even political damage flowing as the natural and appropriate consequence of the proceedings taking place in public."

153 In our opinion it was unprofessional conduct for the practitioner to distribute to the press a summary or chronology of proposed witness statements, before any such evidence had been given, containing what can only be described as very damaging allegations against Mrs Porteous. We find that the complaint has been established.

154 We agree that in a case such as this, unless the facts decided by the Full Court in the contempt proceedings were decided in a manner inconsistent with the finding of facts by the Tribunal, the fact that a practitioner was not convicted in the contempt proceedings would not be a defence to the practitioner.

155 In our view, the Tribunal would not be able to find facts in a contradictory manner to that of the Full Court, but that is not this case. Also elements involved in the contempt proceedings were different to the elements involved in this charge of unprofessional conduct.

156 The practitioner has admitted that he handed out the chronology, and that chronology contains allegations of alleged serious misconduct. In our view, it is not necessary that the practitioner should have read the chronology. He knew the general nature of at least some of it from his knowledge of the statements from which it was taken. In the contempt proceedings, he submitted an affidavit to the effect that he had read the witness statements. The practitioner said that although he had not read the chronology, he had assumed it would accurately reflect the witness statements he had seen previously.

157 In the hearing before the Tribunal, Mr Camp denied that he read the witness statements. Mr Zilko said that when he was shown what he said in an affidavit and said he still had not read the statements, a serious issue concerning his credibility arose. There was a compelling difference of evidence on a very important matter. Both statements had been made on oath.

158 The fact that the chronology was prepared by senior and junior counsel in the East goes to penalty rather than proof of the charge. We are satisfied that even if Mr Camp had not read all the statements, he knew enough to know that he should not have handed out the chronology to the media in advance of the evidence being given.

159 It is important that the chronology contained most serious allegations against Mrs Porteous. They were terrible accusations. It was unprofessional in our view to hand them to the media in advance of any evidence of that nature having been given.

160 In our view it is not necessary for particular 5 to be established to constitute an offence of unprofessional conduct. We are satisfied that Mr Camp knew enough about what was in the chronology for him to be found guilty of unprofessional conduct as alleged in this charge.

161 We agree that it was not established that Mr Camp handed out the chronology in order to inflict damage on the opposite party, but what was important were the allegations about Mrs Porteous. It did not matter that he did not intend to do it to advance Mrs Rinehart's interests as alleged in particular 5.

Conclusion

162 For the reasons set out above, the Tribunal will hear submissions as to the orders to be made.

Interim Order

1. These reasons are not to be published, until further order.

I certify that this and the preceding [162] paragraphs comprise the reasons for decision of the State Administrative Tribunal.

HON. H WALLWORK QC, MEMBER