Strictly Confidential

Independent Report

Australian Intervention
In Schapelle Corby's Appeal

The Expendable Project
www.expendable.tv

CONTENTS

1. INTRODUCTION

1.1 THE BACKGROUND

The Australian government's efforts to exert a degree of control over Schapelle Corby's legal team in Indonesia manifested themselves well before the verdict at the Bali trial.

The relationship with her original defence team was, at best, tense. This created a series of ongoing confrontations, as the lawyers recognised that the government's actions did not match the rhetoric they were using in Australia.

Their frustration was particularly evident with respect to Justice & Customs Minister Christopher Ellison, whose role is heavily documented throughout *The Expendable Project* reports. In April 2005, for Example, the following cable was sent from the Bali Consulate to Canberra:

CONSULAR-IN-CONFIDENCE

Exported by Simeon R Gilding · 08:03 PM Wednesday, 13 April 2005

BL5101801

Title: CONSULAR - CAT 1 - ARREST, CORBY, SCHAPELLE

MRN: BL5101801 13-04-2005 04:54 PM ZES

To: PP : Canberra

Cc: PP : Jakarta

From: Bali

From File:

References:

CONSULAR-IN-CONFIDENCE

Lawyer for Schapelle Corby, Lili Lubis contacted that Consul General on 13 April at 1610 and pleaded for the Australian Government to do more to assist Ms Corby.

2. She said that the local press are reporting that Minister Ellison asked the Indonesian Attorney General not to invoke the death penalty and, if this was all he asked for, it was not enough to save Schapelle.

3. She said that this was a crime that took place in Australia and the Australian Government and Qantas had to take responsibility for the mistakes which allowed the marijuana to be put into Schapelle's bag. She pleaded that there must be something the Australian Government can do quote without being proud or arrogant unquote. She said that this could have happened to anybody.

This was, however, just the tip of a very large iceberg, which spanned a whole range of aspects, as the defence team became acutely aware of a number of the issues documented by the project.

In March 2005, in addition to engaging in *background briefing* against the defence lawyers, the Australian government began to press the services of two Australian QCs, Mark Trowell and Tom Percy. Initially, this was through Schapelle Corby's Queensland based representatives.

Subsequently, the government increased the pressure through a variety of means, including direct media commentary:

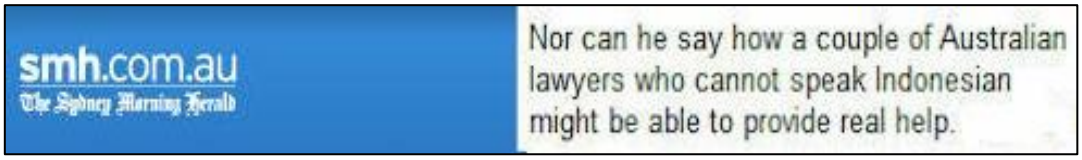
"*I'm not getting into the business of criticising the defence. People make their own judgements about how they will go about seeking representation. That is matter for them. All I have endeavoured to do is to ensure that they are aware there were other people who'd had experience, were senior legal practitioners, prepared to assist pro-bono and it's really a matter for them as to whether they take that up.*"
~ Attorney General Philip Ruddock

Foreign Minister Alexander Downer's position was described as follows:
"*Mr Downer came closer to revealing the Government's dismay saying he thought it would have been "wise" to take up the offer*".

The media reported that DFAT were pressing the issue directly to Schapelle Corby within days of the verdict:
"*When Australia's acting consul-general in Bali, Ross Tysoe, visited Corby on Friday at Kerobokan prison, he told her about the two Perth silks.*"

Pressure on the Corby family intensified to the point where they eventually succumbed to it, believing that they were, in effect, being told by the government to accept this *assistance*.

However, the actual role of the two remained a mystery, not only to the Corby family, but also to the media, who commented as follows, having challenged Trowell directly:



1.2 MARK TROWELL & CHRISTOPHER ELLISON

The role of Justice & Customs Minister Christopher Ellison is documented throughout *The Expendable Project*. He is referenced in many of the core reports, with respect to a range of contentious issues, and Schapelle Corby's lawyers had serious reservations regarding his conduct and motives.

It emerged that Trowell and Ellison had a long standing relationship. Indeed, the media were aware of their friendship, and referred to it accordingly:

theage.com.au
THE AGE

jobs @ mycareer
cars @ drive
homes @ domain
news
breaking
national
world
business
technology
sport
realfooty
entertainment
science
video
photo galleries
commentary
opinion

Home > World > Corby Case > Article

The offers of help fell on deaf ears

May 29, 2005

"Senator Ellison contacted an old mate from his pre-politics days as a criminal lawyer in Perth, Mark Trowell"

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Monday, 6 June 2005

Chris Ellison's old mate Mark Trowell

Lawyers acting for Australians in trouble abroad tend to have an

EMAIL

It is, therefore, not unreasonable to suggest that Ellison, at the very least, had some input into Trowell's briefing on the case.

Regardless, the government had finally succeeded in placing the QC's into the heart of Schapelle Corby's legal representation in Indonesia.

What subsequently transpired was shocking.

2. TROWELL & THE APPEAL

Mark Trowell's impact on Schapelle Corby's appeal was swift and devastating. *The Daily Telegraph* reported it in simple and direct terms:

> In May 2005, Mr Trowell told reporters that Corby's then legal team wanted the Government to hand over a large sum of money for the purpose of bribery. The legal team quickly denied the claim.

It should be emphasized that every other party vigorously disputed his allegation.

But, with Schapelle Corby's life in the balance, her desperate family sought to limit the damage, by dismissing members of her legal team.

Even this, however, was seized upon immediately by the Australian government, with Foreign Minister Alexander Downer, for example, making the following hostile public remark:

"*They're all becoming characters in a sort of soap opera aren't they?*"

Many international observers were well aware of the inevitable impact of the statement in Indonesia, but even in Australia, a number of media outlets reported the fallout:

smh.com.au
The Sydney Morning Herald

Questions over role of Perth QC in Corby team

June 27, 2005

Mr Trowell's hotly contested comments could hardly have been more provocative, more damaging or more calculating. In less than two days, predictably, they caused the demise of Corby's legal team, swiftly followed by its partial reinstatement.

However, Mr Trowell was not about to explain his extraordinary attack half-way through Corby's appeal, despite being warned in advance by Corby's Jakarta lawyer, Hotman Paris Hutapea, that it would be extremely damaging to her case. "There are reasons for it," he said.

As with nearly everything Mr Trowell has done since he offered to help Corby the day after she was convicted, his comments focused criticism on her Indonesian lawyers and her financial backers as opposed to the Federal Government.

Trowell did not expand upon those "*reasons*".

The media at the time further highlighted Trowell's relationship with Ellison, as well as their political affiliation:

> Mr Hutapea and the rest of Corby's original legal team say that instead of helping, Mr Trowell's comments have harmed Corby's appeal and diverted criticism from the Federal Government. Because of his friendship with the Minister for Justice, Chris Ellison, and his former role in the West Australian Liberal Party, they see him as a wrecker.

Schapelle Corby's legal team complained bitterly to the Australian government:

This was sent to Justice and Customs Minister Christopher Ellison, and Prime Minister John Howard, on 28 June 2005. The transcribed text follows:

Your Excellencies

Please find enclosed the Corby family statement dated 27 June 2005 on the Corby case.

I need to draw to your attention that Mr Mark Trowell's remarks on ATTEMPT FOR BRIBERY is a 'disaster' and caused al problems for the last week including our legal terms temporary dismissal.

Negative publicity of Mr Mark Trowell's remarks caused Schapelle wish to make a fresh start by dismissing al her Indonesian Legal Team. The other negative affect of THE IRRESPONSIBLE REMARKS BY MR. MARK TROWELL is that the judges that may increase the penalty to prove that they are not susceptible to corruption.

Therefore it is very clear that contrary to Mr. Alexander Downer's remarks, it is the Australian QC (appointed by the Australian Minister of Justice) and Australian "Senior Government Officials" and not Indonesian legal team, who made the Corby case become a SOAP OPERA.

Schapelle Leigh Corby HAS BEEN "ABANDONED" by her own government despite our several requests sent to the Australian Minister of Justice and Customs for cooperation.

We do not ask the Australian Government to intervene in the judicial process. What we ask is The Australian Government's assistance to facilitate to get witnesses and evidence especially to talk to witnesses, to encourage witnesses, and to pay their travel expenses and to give us the name and address of al witnesses, or TO APPOINT 'SOLICITOR' OR "LAW SOCIETY" IN AUSTRALIAN TO GET THESE EVIDENCE. If the witnesses agree voluntarily to give testimony, we do not need any approval from the Indonesian Government as required by the Minister of Justice and Customs of Australia.

We are handling this case on pro bono basis free of charge and therefore it is very unrealistic if Corby's own government asks us to do our own investigation in Australia. It is very unlikely the Brisbane custom officer will help us because on the same time "their boss", who is the Minister of Justice and Customs, say 'no' to our request.

My understanding is that any citizen is entitled to political and legal protection, but unfortunately Schapelle Leigh Corby doesn't enjoy that citizen's right.

We also would like to ask to the Australian Government's to officially apology to the Indonesian Government and to the Indonesian court including to our client, Ms. Schapelle Leigh Corby and her family, for weak control and lack of supervision of the Australian legal enforcer especially custom officers and Australian police at Brisbane Airport and Sidney Airport which enable mafia and baggage handler put the drugs in passenger's bag. (Please read article on "Bag Handler in Court for Drug Tip-Off' reported in the Sidney Morning Herald dated 10 June 2005 copy attached).

Thank you for your kind attention.

Yours Sincerely

Signature

Hotman Paris Hutapea. S.H., M.Hum.
Advocate

No such apology was forthcoming from the Australian government, and no explanation was given, despite the fact that they had actually pressed Trowell on to Schapelle Corby's family.

Trowell himself openly stated that he was working for the government, and that he "*had no intention whatsoever in assisting with the appeal*":

WAtoday.com.au

WA News

I never acted for Corby: Perth QC tells disciplinary hearing

September 18, 2008

But Mr Trowell today told the disciplinary hearing that he had never acted in any legal capacity for Corby, who is serving a 20-year jail term for smuggling 4.1kg of marijuana into Bali in October 2004.

"I was never asked to join the legal team nor would I do so," Mr Trowell told the hearing.

"I had no intention whatsoever in assisting in the appeal."

Whilst we can only speculate on the full gravity of the impact of Trowell's intervention on the Indonesian judiciary, the clear cut nature of his misconduct, not least the open breach of client confidentiality, forced the *West Australian State Administrative Tribunal* to take subsequent action against him.

3. THE STATE TRIBUNAL

In its report, published almost four years after the event, the *West Australian State Administrative Tribunal* made many direct comments regarding Trowell's conduct. The following provides a random flavour.

Note that the '*practitioner*' referred to throughout is Mark Trowell:

> [The practitioner then said he had "never mentioned the bribe" as such. The difficulty with this evidence is that there was never a prospect of the government paying money for bribes nor any evidence of Mr Rasiah "teeing up the judges". For all these reasons we find that the practitioner never turned his mind to the consequences for Ms Corby. We think it was detrimental to Ms Corby's interests to reveal these matters at all and particularly to hint at a suggestion of impropriety in relation to a request for financial assistance by a member of her Bali team.]
>
> [We think his motivation generally in making the statements to the media was the interests of the government and (regrettably) publicising his own personal role and conducting his dispute with Mr Rasiah. At one point the practitioner was asked in cross-examination whether before making a media comment he had made any attempt to contact Ms Corby or her Queensland solicitors. The response was "She wasn't my client … I was entitled to make any comments I chose. There was no reason to consult her." At a later point in his evidence, when questioned by the Tribunal about this statement in his evidence, the practitioner said in effect that in the event of a conflict between what he regarded as the interests of the government and of Ms Corby's interests, the government's interests had to prevail.]
>
> [We do not think any of the disclosures were made in Ms Corby's best interests. Exposing delays on the part of the Bali legal team in getting out the appeal grounds could not assist her. Publishing statements criticising the performance of the Bali legal team was more likely to have distracted them from their task and provided encouragement to the prosecution defending her appeal.]
>
> [It is nonsense to suggest it helped Ms Corby by distancing her from the work of her Bali lawyers. Nor do we see any advantage to Ms Corby in the practitioner publishing the existence and content of the draft and final letters. These requests for finance and assistance with the evidence were matters for private consideration by the Bali legal team, the Perth lawyers assisting them and the government. Further, in his letter to Mr Rasiah dated 8 June 2005, the practitioner stated that the question of obtaining funding was extremely sensitive and was required to be handled quietly and in confidence. It ought not, he believed, be played out in public. Yet the practitioner was here publishing the existence of letters requesting financial assistance]
>
> [The draft letter had been received by the practitioner and an explanation sought of its contents before the figures were to be put forward to the government. It was treated by the practitioner, as he explained in evidence, as a draft, unsigned and undated letter. The final letter, signed and dated, did not pursue the request for an amount for lobbying. That is where the matter might have rested.]

> [This supports the inference we make that there was a measure of reconstruction in the practitioner's evidence concerning his conversation with Ms Munro.]
>
> [We do not think any of the disclosures were made in Ms Corby's best interests or that the practitioner believed they were.]
>
> [We reject the practitioner's assertion that these statements were in Ms Corby's interests or were not detrimental to her. We think they were detrimental to her interests.]
>
> [Worse, he conducted his personal dispute with Mr Rasiah through the press in a manner that was highly prejudicial to Ms Corby's interests.]
>
> [The starting point in considering this issue must be the situation of Ms Corby, suffering both physical deprivation and the prospect of life in an Indonesian jail and dependent, for some possible relief, upon the success of her appeal. We think that a responsible barrister would have been acutely aware of these facts and conducted themselves accordingly.]

It should also be noted that many of Trowell's media comments were made to a particular journalist, Steve Pennells. Pennells' long term record, with respect to Schapelle Corby related stories, is considered by many observers to be extremely hostile, and he has been referred to in letters of complaint to the Press Council.

The tribunal commented on Pennells as follows:

> [Mr Pennells' witness statement on the subject is difficult to follow. He gives a generalised account of his conversation with the practitioner (at [15]) followed by a more detailed and rather different version (at [18] - [24])]

In all cases, the full findings, produced in Appendix B, should be read for correct context.

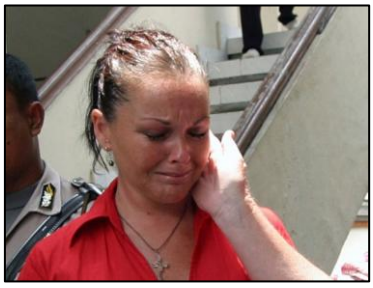
Appendix A provides an independent insight into the proceedings by a highly respected barrister, Stephen Warne.

4. THE OUTCOME

MARK TROWELL
Given the potential impact upon the welfare of a human being, it would be reasonable to expect that the *West Australian State Administrative Tribunal* would use the full extent of its powers in terms of sanction. This is particularly the case given some of the damning statements they made above.

However, in view of his "*impressive array of references*", and similar, he was simply "*reprimanded*".

SCHAPELLE CORBY
Schapelle Corby is more than seven years into her twenty year sentence in an Indonesian prison.



She is now seriously mentally ill.

THE AUSTRALIAN GOVERNMENT
Throughout the appeal process, the government successfully avoided fresh scrutiny of the situation at Australian airports, including the wide scale corruption, and the role of the Australian Federal Police.

Through proactive management, they also prevented a re-occurrence of the destabilization of their relationship with Indonesia.

APPENDIX A

Another Case About One Of Schapelle Corby's Lawyers

Stephen Warne, Barrister

5th May 2009

From The Australian Professional Liability Blog
(www.lawyerslawyer.net)

I have previously expressed my disquiet about the Western Australian QC who told the Australian media that Schapelle Corby's lawyers were trying to bribe the judges hearing her case. It seems the Bureau de Spanque de l'Australie de l'Ouest had in fact got right onto it, initiating an own motion investigation. The resultant prosecution has only just now, almost four years later, ground to a successful halt, with a 60,000 word decision crafted by WA's State Administrative Tribunal over the six months during which the decision was reserved. The case is *Legal Practitioners Complaints Committee v Mark T QC* [2009] WASAT 42. The QC does not come out of it well.

In barest outline, the facts (not all of which I have taken from the reasons) were as follows. The QC had links with the Liberal party which was, of course, in government throughout the Schapelle Corby affair. He had contacts with the Indonesian legal system. In March 2005, the Attorney-General asked the QC if he could do what he could to assist Ms Corby whose legal team was already being paid for by the Australian government. She already had Queensland solicitors acting for her, or holding themselves out as acting for her. In particular, Robyn Tampoe of Hoolihans, who would later refer to the Corbys as 'the biggest pile of trash I have ever come across in my life', and a Balinese firm, Lily Sri Rahayu Lubis S H & Associates. Irwin Siregar, who did a lot of the advocacy, was not of the firm; he was seconded to it. One member of her Indonesian legal team was a non-lawyer, Vasu Rasiah, styled as 'case coordinator'.

The timing of the government's request to the QC is fascinating. Robin Tampoe and that other great character who passed through Camp Corby, Ron Bakir, met with Alexander Downer on 5 March 2005. Perhaps, having met with Tampoe and Bakir, Downer could see into the future and thought that Schapelle, and the government, and Australia, needed help.

According to Tony Wilson's book *Schapelle; The Facts, the Evidence, the Truth*(New Holland, 2008), the QC was responsible for the introduction of Sydney-educated Paris Hotman Hutapea to Camp Corby, but the State Administrative Tribunal found that the Hotman had volunteered his services pro bono, having heard the Australian government had enlisted two top QCs. Hotman has a refreshingly direct appraisal of the world's lawyers, telling the '7.30 Report':

'So I'm not Mr Clean, but for this case temporarily I am clean. ... There is no lawyer in the world is clean. All the lawyer usually hypocrisy help and I try to reduce my hypocrisy a little bit. If you keep saying Australian lawyer, American lawyer they are all clean, that's totally bullshit.'

The QC enlisted another QC and a junior. The Balinese lawyers did not provide the kind of welcome the Australians were expecting, and did not provide the relevant papers in a timely fashion. In frustration, the QC turned to the Australian media, and made various statements, and therein lies the controversy. He told a journalist that had Ms Corby been assisted by 'better quality people', he and they might have been able to get some evidence from the Australian government which would have helped Ms Corby's appeal. But most significantly, in June 2005 (just a couple of months after delivering a paper to the 19th Biennial Conference of LAWASIA on 'The Media and the Criminal Law'), he told the *West Australian*'s Steve Pennells that the Balinese lawyers were unprepared for the appeal, should have spent more time preparing and (ironically) less time holding press conferences, and that Rasiah had approached him several times with a view to procuring a half million dollar bribe for the judges from the Australian government (a more precise version of the statements is at para 431 of the decision).

The result was that:

> '433 The allegation of the possible use of bribery in the Corby proceedings caused something of a sensation in the Australian media and, as there reported, in Indonesia. Over the following week the story with various follow-up comments was published in various media outlets in Australia. These included reports in which Mr Rasiah denied that the request for $500,000 was for bribery, [Jakarta advocate Paris Hotman] Hutapea said that he had warned the [QC] against making the allegation and (separately) the allegation might result in an increase in Ms Corby's punishment, Ms Corby had 'sacked' her Bali legal team although subsequently reinstating part of the team and Ms Corby's mother said that rather than helping her daughter, the practitioner was making things worse.'

Whether or not a result of the comments of the QC, Ms Corby would go on to criticise Mr Rasiah in her autobiography, leading to threats of yet more confidences being spilt.

The QC's evidence, described on one occasion by the Tribunal as 'incredible', was that he was no more than a messenger between the federal government and Camp Corby. Indeed, the QC 'said in effect that in the event of a conflict between what he regarded as the interests of the government and of Ms Corby's interests, the government's interests had to prevail.' The other Western Australian barristers involved adopted similar positions. The Tribunal was critical of all of the barristers' evidence. For example, it said:

> ’131 We make some general observations on the reliability of the practitioner’s evidence. The practitioner has had three years to reflect on the events. As a senior barrister closely involved in the preparation of his defence, as we infer, and the tactics of defending the application (some evidence of which was revealed in Mr Percy’s interview with the LPCC’s principal legal officer mentioned below), the practitioner knew precisely the ‘critical path’ of the LPCC’s case as formulated and the points at which his evidence would be critical to its outcome. It is noticeable that the changes between his response letter and his later pleadings and witness statement are almost uniformly directed at diminishing the prospect of Ms Corby being his client rather than simply providing a fuller account of the events. There is support for our view, albeit subtle, in the difference in tone, as well as content, between the practitioner’s response letter, which reflects a measure of concern as to his conduct, and his witness statement, being his revised version of events, which does not. Further, as the practitioner himself expressed, he ultimately felt aggrieved and galled at the outcome of his involvement in the Corby matter. We think that whilst initially the practitioner was flattered to be involved in this high profile case at the request of the Commonwealth government and, to an extent, sought out and enjoyed the media attention, the end result was he was trenchantly criticised by Ms Corby’s family and in the media generally and faced an inquiry from the LPCC. This sense of being badly treated was reflected in a number of outbursts in his evidence, for example in answers in relation to his press release and as to the costs he bore himself in visiting Ms Corby in Bali. We think these considerations may well have, in a subtle way, affected his evidence.’

The Tribunal found that, from the outset, he was, as the QC well knew, no mere go between, and that, consistently with what the government was saying about the task it had given him at the time,

> ‘there was an informal arrangement reached between the practitioner and the government. This included, so far as the practitioner understood, that the practitioner in his capacity as a Queen’s Counsel specialising in criminal law would, at the government’s request, on a pro bono basis, offer legal advice and assistance to Ms Corby directly or by her Bali legal team, including (after her conviction) in relation to her appeal. It was understood that the services would include facilitating the provision of evidence that might be requested of the government.’

In fact, the Tribunal found it significant that the QC had complained to the press about being treated like nothing more than a conduit to the government. As a Steve Pennells article quoted him:

'"They've never really given us any part to play in their appeal other than being a conduit to the government," he said. "I'm disappointed for Schapelle Corby. "There is an expectation in the Australian community that Australian lawyers would have some part to play. And that was the government's expectation as well. That's obviously why they approached us." Mr [T QC] and fellow Perth QC Tom Percy had offered to work on Corby's case pro bono after being asked to lend their expertise on the appeal. Mr [T QC] said yesterday that the pair had not played much of a role so far and questioned what more they could do when they were not being included in the legal discussions. ... "But at no time have we seen any draft appeal grounds. More importantly, we haven't seen any transcript of proceedings, in English or Indonesian." Mr [T QC] criticised the legal team's handling of its request last Friday for information from the Australian government to help the case, saying it was made at the last minute and was a rehash of a former request which Corby's lawyers knew the government could not deliver. "My criticism is of not being prepared," he said. "They should be spending more time preparing the appeal than holding press conferences in Jakarta with soapie starlets."

The Tribunal found that a lawyer client relationship arose when the QC met Ms Corby on 6 June 2005:

1. *'Ms Corby requested to see the practitioner or Mr Percy in their capacity as Queen's Counsel;*
2. *the practitioner and Mr Laskaris attended in their capacity as Queen's Counsel and junior at Ms Corby's specific request, and pursuant also to a request from the Attorney General for the practitioner to offer whatever legal assistance to Ms Corby he could including in relation to her appeal;*
3. *given the presence of the Australian barristers and their 'client', the Australian Vice-Consul deemed it appropriate to and did wait outside during the conference;*
4. *the meeting took a substantial time, in the order of two hours;*
5. *the practitioner advised Ms Corby that he and Mr Laskaris had met with the Bali legal team on the Friday to discuss her appeal and with her family on the Saturday and had conveyed to the family the practitioner's offer to assist Ms Corby;*
6. *there was a discussion and an acknowledgment that the practitioner could not represent her in an Indonesian court in relation to her appeal – that is, in Indonesia;*
7. *the practitioner in effect agreed to provide his legal services on a pro bono basis generally to the extent he was able to assist in relation to the grounds of appeal and specifically with respect to requests from the Bali legal team as to evidence that the Australian government might provide;*

8. the practitioner discussed the various anti-Indonesian incidents which had taken place in Australia and the potential for this to damage her prospects on appeal;

9. the practitioner provided specific advice in relation to her appeal in respect of not dismissing her Bali legal team, engaging counsel from Jakarta and as to an appropriate public message to her supporters;

10. Ms Corby discussed with the practitioner that she felt pressured and under duress by the Bali legal team in signing media rights in relation to her story;

11. the practitioner otherwise agreed in effect to provide his legal services generally on a pro bono basis to do anything which he thought might protect and advance her interests; and

12. the practitioner made no statement to the effect that he could not offer legal advice or assistance.

354 On that basis we find on the balance of probabilities, having regard to***Briginshaw***, that in the course of the meeting on 6 June 2005 there came into existence between the practitioner and Ms Corby the relationship of barrister and client. In that respect, Ms Corby retained the practitioner both in respect of the advice and assistance he gave at the meeting and in respect of the ongoing advice he offered generally and in relation to her appeal.'

The Tribunal found that the QC had engaged in 'unprofessional conduct' (the sole species of conduct warranting discipline in Western Australia) in making the disclosures. The Tribunal's exposition of the law of professional confidentiality is set out separately in this post. According to the media, however, the QC was reprimanded and not fined. Its reasons for finding that the QC's media statements amounted to unprofessional conduct were:

'**Ms Corby's informed consent**

393 The LPCC's case is that Ms Corby did not give her informed consent to disclosure of any of the identified statements for the purposes either of the confidence rule or the statements to the media rule.

394 ... the consent required under both rules is 'informed consent'. ... That does not preclude the possibility of an implied authorisation by the client, for instance, in relation to the Bali legal team discussing the grounds of appeal with the Perth barristers or the Perth barristers discussing the appeal between themselves.

395 The practitioner submits that each of the statements complained of was made with Ms Corby's implied consent. This is on the basis that at their meeting on 6 June 2005, Ms Corby requested of the practitioner that he do whatever he judged to be in her best interests, and in particular anything which he thought might prevent her from being prejudiced by the actions of, in particular, Mr Rasiah. Specifically, the practitioner says he disclosed certain information because he thought it was in her best interests that he do so:

> 1. *his criticism of delays in her appeal was made with the object of these being more expeditiously prosecuted and to make clear that the delay was not her fault, and*
> 2. *to publicly distance Ms Corby from the bribery allegation.*

...

397 It is not obvious that Ms Corby's instruction to the practitioner authorised in advance statements to the media about her appeal. Statements to the public at large are not generally regarded as the appropriate way of protecting a person's interests. In any event, the notion of informed consent requires or suggests that the client know in advance the content of the proposed disclosure. Here that was not the case.

398 In considering this issue, it is to be remembered that on his evidence the practitioner, in error, on our finding, did not regard Ms Corby as his client. We think his motivation generally in making the statements to the media was the interests of the government and (regrettably) publicising his own personal role and conducting his dispute with Mr Rasiah. At one point the practitioner was asked in cross-examination whether before making a media comment he had made any attempt to contact Ms Corby or her Queensland solicitors. The response was 'She wasn't my client ... I was entitled to make any comments I chose. There was no reason to consult her.' At a later point in his evidence, when questioned by the Tribunal about this statement in his evidence, the practitioner said in effect that in the event of a conflict between what he regarded as the interests of the government and of Ms Corby's interests, the government's interests had to prevail.

399 We bear this evidence in mind in our approach to the issue whether the practitioner, in making the disclosures, believed he was acting in Ms Corby's interests.

Approach to the issue

…

401 We consider each of the statements the subject of these disclosures. We address in turn:

> 1. *whether the practitioner made the statement or the substance of the statement to the media;*
> 2. *whether the statement was otherwise in the public domain (relevant only to the gravity of the disclosure);*
> 3. *whether the statement comprised information confidential to Ms Corby; and*
> 4. *whether the statement was made with Ms Corby's informed consent (as being in her best interests).*

… [the fourth statement was discussed]

412 We do not think any of the disclosures were made in Ms Corby's best interests. Exposing delays on the part of the Bali legal team in getting out the appeal grounds could not assist her. Publishing statements criticising the performance of the Bali legal team was more likely to have distracted them from their task and provided encouragement to the prosecution defending her appeal. In his evidence concerning expressions of support for Ms Corby's legal team made immediately after his visit on 6 June 2005, the practitioner admitted as much. In explaining that no one else was in a position to conduct her appeal, he said there was therefore a need to 'keep up appearances'. To the extent the practitioner was concerned at the Bali legal team's delay, the appropriate course was to write privately to them about this. Conducting an argument with, or as he said 'putting pressure on', the Bali legal team through the medium of the press appeared to us ineffectual (given the previous public dispute between Mr Rasiah and the practitioner it was unlikely to be productive), inappropriate and improper. It is nonsense to suggest it helped Ms Corby by distancing her from the work of her Bali lawyers. Nor do we see any advantage to Ms Corby in the practitioner publishing the existence and content of the draft and final letters. These requests for finance and assistance with the evidence were matters for private consideration by the Bali legal team, the Perth lawyers assisting them and the government. Further, in his letter to Mr Rasiah dated 8 June 2005, the practitioner stated that the question of obtaining funding was extremely sensitive and was required to be handled quietly and in confidence. It ought not, he believed, be played out in public. Yet the practitioner was here publishing the existence of letters requesting financial assistance.

As was put to the practitioner in cross-examination, the reference to the draft letter including a request for financial assistance which was subsequently omitted, was likely to arouse the suspicion of the media. The draft letter had been received by the practitioner and an explanation sought of its contents before the figures were to be put forward to the government. It was treated by the practitioner, as he explained in evidence, as a draft, unsigned and undated letter. The final letter, signed and dated, did not pursue the request for an amount for lobbying. That is where the matter might have rested. At this point, there was no evidence, beyond the practitioner's faint suggestion, that the journalists at the time were aware of Mr Rasiah's request for bribe money. Neither was there any credible evidence that Mr Rasiah was continuing to pursue a claim for bribe moneys from the government. The practitioner's stated concerns about Mr Rasiah 'teeing up' bribes with the High Court judges had not been mentioned in his response letter nor his witness statement and appeared speculative. This supports the inference we make that there was a measure of reconstruction in the practitioner's evidence concerning his conversation with Ms Munro.

413 To the extent the practitioner claims he believed that these disclosures were in Ms Corby's best interests or were not detrimental to her interests, we reject that evidence. When asked whether the practitioner considered the effect on Ms Corby of his disclosing the draft letter and the suggestion from Mr Rasiah, the practitioner answered by reference to the consequences if it had been disclosed that bribes had been paid or that Mr Rasiah had approached the High Court with that in mind. The practitioner then said he had 'never mentioned the bribe' as such. The difficulty with this evidence is that there was never a prospect of the government paying money for bribes nor any evidence of Mr Rasiah 'teeing up the judges'. For all these reasons we find that the practitioner never turned his mind to the consequences for Ms Corby. We think it was detrimental to Ms Corby's interests to reveal these matters at all and particularly to hint at a suggestion of impropriety in relation to a request for financial assistance by a member of her Bali team.

414 We find that this disclosure and the statements to the media were made by the practitioner without Ms Corby's informed consent.

... [the fifth diclosure was discussed]

We make similar findings as for the previous disclosure. There is no evidence that any of the matters the subject of these statements was (except through the practitioner) in the public domain. We regard each of these statements as comprising matters confidential to Ms Corby. We do not think any of the disclosures were made in Ms Corby's best interests or that the practitioner believed they were. Neither do we accept, as the practitioner claimed in re-examination that, as he believed, they were not detrimental to her interests. The reference to the draft letter being 'not appropriate' could only continue to arouse suspicion. We do not think the practitioner turned his mind to whether these disclosures affected Ms Corby's interests.

419 We find that this disclosure and the statements to the media were made by the practitioner without Ms Corby's informed consent.

... [the sixth disclosure was discussed]

423 As before, our findings are that there is no evidence that any of the matters referred to in these statements was in the public domain, other than through the practitioner. We regard each of these statements as being confidential to Ms Corby. We reject the practitioner's assertion that these statements were in Ms Corby's interests or were not detrimental to her. We think they were detrimental to her interests. We do not think the practitioner turned his mind to whether these disclosures affected Ms Corby's interests. We think the inference to be drawn from the fact that the practitioner was making the same or similar statements to the press on a near daily basis was that, to some extent at least, as the LPCC contended, he courted media attention for its own sake.

424 Having regard to the content of the statements and generally we again do not think this disclosure and statements to the media were relevantly made with Ms Corby's informed consent.

Seventh disclosure: statements published on 14 June 2005 – journalist Steve Pennells

425 The complaint is that on about 13 June 2005 the practitioner made the following statements to journalist Steve Pennells which were published on 14 June 2005:

1. The Indonesian legal team were unprepared for the appeal;
2. They [Mr Percy and the practitioner] still had not seen a draft of the appeal grounds or been given any indication of what arguments might be presented;

3. He had not been provided with a transcript of the proceedings;

[He had not seen a transcript of the proceedings.]

1. The Indonesian legal team request for information from the Australian government was made at the last moment and was a rehash of a former request which the Indonesian lawyers knew the government could not deliver; and
2. The Indonesian lawyers should have spent more time preparing the appeal and had wasted time holding press conferences.

426 … The practitioner explained in re-examination that the last statement concerned Mr Hutapea holding a press conference with a 'soapie starlet.' This was apparently a television exercise with a view to encouraging public support for Ms Corby's case in Indonesia.

…

429 As before, our findings are that there is no evidence that any of the matters referred to in these statements was in the public domain, other than through the practitioner. We regard each of these statements as being confidential to Ms Corby and their disclosure detrimental to her interests. We do not think the practitioner turned his mind to whether these disclosures were in Ms Corby's best interests. The view concerning how the Bali legal team had wasted time seems to us unconstructive and provocative.

430 We find this disclosure and the statements to the media were made by the practitioner without Ms Corby's informed consent.

Eighth disclosure: statements published on 23 June 2005 – journalist Steve Pennells

431 On 22 June 2005, the practitioner had a further conversation with journalist Steve Pennells. The following statements were reported in an article on 23 June 2005:

1. the practitioner believed that Ms Corby's Indonesian legal team had given consideration to using bribery to attempt to secure success in Ms Corby's appeal;

[Mr Rasiah had given consideration to using bribery and Ms Corby had no knowledge of that, or of any request for money for a bribe, or any proposal to attempt to bribe];

1. Mr Rasiah had provided a draft letter for the Australian government which included a request for an amount of $500,000 for lobbying;
[Mr Rasiah had produced a draft letter which included a request for the Australian government to provide $500,000];

1. the practitioner was of the view that the request in the draft letter for $500,000 was for bribes for judges; and
2. when Mr Rasiah passed the final version of the request to the practitioner for on-forwarding to the Australian government the request for $500,000 had been removed.

432 The statements are admitted except, with respect to the first two paragraphs, that they were in the form in brackets. We accept the practitioner's evidence in this respect.

433 The allegation of the possible use of bribery in the Corby proceedings caused something of a sensation in the Australian media and, as there reported, in Indonesia. Over the following week the story with various follow-up comments was published in various media outlets in Australia. These included reports in which Mr Rasiah denied that the request for $500,000 was for bribery, Mr Hutapea said that he had warned the practitioner against making the allegation and (separately) the allegation might result in an increase in Ms Corby's punishment, Ms Corby had 'sacked' her Bali legal team although subsequently reinstating part of the team and Ms Corby's mother said that rather than helping her daughter, the practitioner was making things worse.

434 In his witness statement and response letter, the practitioner states that on the same day but prior to his conversation with Mr Pennells, he had spoken to another journalist Nick Butterly. Mr Butterly had telephoned to advise that he had written a story to appear in his newspaper based on a conversation with Mr Rasiah, in which Mr Rasiah had admitted asking for $500,000 for lobbying but denied that it was to bribe judges. The practitioner says he made no response. It was however clear to him that Mr Butterly was aware of the contents of the draft letter. It followed that, in the practitioner's view, other members of the media might also be aware of the draft letter.

435 The practitioner says his views were confirmed when Mr Pennells spoke to him later in the evening of 22 June 2005. As described in his response letter the practitioner says that Mr Pennells told him that Mr Rasiah had asserted that he had never made any request of the Australian government through the practitioner for money to bribe judges. Mr Pennells asked the practitioner to confirm whether Mr Rasiah's explanation was true. The practitioner said that he was not prepared to be untruthful about the matter and to be involved in any cover-up in respect of what he believed to be a criminal enterprise to bribe judges of the High Court of Bali. The practitioner told Mr Pennells that Mr Rasiah's assertion was untrue and relayed briefly the substance of his conversations with Mr Rasiah. He also told Mr Pennells that these activities of Mr Rasiah were not undertaken with the knowledge of Ms Corby, nor were they countenanced by Ms Corby's legal team. In his response letter the practitioner acknowledged that the substance of his comments to Mr Pennells were reflected in the article.

436 Mr Pennells' witness statement on the subject is difficult to follow. He gives a generalised account of his conversation with the practitioner (at [15]) followed by a more detailed and rather different version (at [18] - [24]). The explanation for the variance is no doubt because, as he acknowledges, after this length of time his recollection of events surrounding the story was not good. He says he cannot recall how much information he had before the phone call to the practitioner and how much he got from the practitioner, but if the practitioner did not provide the information then he at least confirmed it. He is confident however that the words in the article he put in quotations were those of the practitioner, with the possible exception of the word 'lobbying'. Mr Pennells says that he rang the practitioner once or possibly twice on the evening. Adopting his generalised account, his evidence was that he had some knowledge involving Mr Percy and the practitioner to the effect that the Indonesian lawyers, 'especially Vasu Rasiah' asked for money from the Australian government for bribes. He put to the practitioner something along the lines that he understood there was a bribe or two made, he understood the practitioner was party to it or a conduit to it and was that correct. Mr Pennells says that the practitioner 'confirmed it' and he quoted 'pretty much what [the practitioner] said' in the article. He 'used pretty much every quote he gave me'. Mr Pennells says he also spoke to Mr Rasiah and put the allegation to him and that 'he denied it flatly and said the money was requested for a public relations campaign'.

437 There was tendered also a transcript of the LPCC interview of Mr Pennells. This is broadly consistent with his witness statement. What emerges additionally from this document is that prior to his conversation, Mr Pennells was aware of a request for $500,000 and that there was a suspicion that this was for bribes. He believed he had learned from Mr Rasiah of Mr Rasiah's request for $500,000. He had learnt from the practitioner that there was a draft letter. He told the practitioner they were running the story anyway that the government had been approached for money, and he could confirm or deny this. When he put the allegation to Mr Rasiah he had denied this and said the amount sought was for public relations or something like that. He may have rung the practitioner back after that. He believed from his conversation with the practitioner he had now got 'hard evidence' of a request for bribe money as opposed to rumour.

438 The practitioner … acknowledged that in fact no request for bribe money had been made to the Australian government by way of the draft letter because he had not passed on the draft letter. He was asked why he did not tell that to Mr Pennells or why he did not do as Senator Ellison had done and confirm that the government had not received a request for lobbying or for other purposes and would have rejected such a request. The practitioner quarrelled with the question and did not answer it. As regards the Minister, what the Minister said was literally true but he was aware of the request (because the practitioner had orally advised his staff of it) and he could not speak for him. He emphasised that Mr Pennells had said he was going to run the story with or without the practitioner's version. The practitioner disclosed what he did in order to protect his own position, the government's position and Ms Corby's position. He could not be 'untruthful' and needed to make the disclosure to protect the integrity of the government, himself and Ms Corby who knew nothing about it. He was asked by the Tribunal whether the effect of what he said was to convert a possible rumour of a bribe attempt into the fact of that. The practitioner said he believed that Mr Pennells had sufficient material to run with the story of a bribe attempt. It was put by Mr Hall that what he had told Mr Pennells became the story. The practitioner thought the journalist may have bluffed him but he had a fair idea what the situation was. He said he had made it a pre-condition to agreeing to talk to Mr Pennells that he report that Ms Corby was not involved in the attempt. As the LPCC points out, that evidence of a condition was not part of either his response letter nor his witness statement, both of which deal specifically with the subject of Ms Corby's lack of knowledge. He referred to Mr Davies' account of his conversation with Mr Rasiah at the bar on 10 June 2005 and his fear that Mr Rasiah would approach the judges and 'tee them up' for the bribes and then ask the government for the money.

We think that evidence of both these matters is unsatisfactory for reasons given. Then, 'that would have been fatal to her because the money would not have been forthcoming'. This is a curious suggestion given the practitioner's assertion that the Bali judges were not open to corruption. He said Mr Pennells had put to him that the bribe had taken place and that the practitioner was party to it. He regarded himself as in an enormous dilemma and that he had to think quickly about how he was going to respond. He was not going to be untruthful about it because that would have been a disaster for everybody.

439 When asked about a subsequent report disclosing that Ms Corby had sacked her Bali legal team, the practitioner said in evidence he welcomed the news that she had got rid of the 'crooks and charlatans' that surrounded her. Asked whether he saw this as a potential benefit of his statements to Mr Pennells, the practitioner said: 'I don't know now. I just don't know.' He then said he did not think he made his decision because of an objective to damage Mr Rasiah or to attack the Bali legal team. It was clear from his answers that the practitioner could not say with any conviction that this was not his motive at the time. When asked by the Deputy President whether the disclosure was an escalation of his disagreement with Mr Rasiah, the practitioner answered by reference to the informal conversation between Mr Davies and Mr Rasiah on 10 June 2005. We consider this issue of motive below.

440 We accept that the practitioner felt himself under some pressure when confronted by the journalists about whether there had been a bribe attempt. We also note that the practitioner, questioned by the Deputy President, acknowledged that he did not know whether he made the right decision or not in making the disclosure to Mr Pennells. We are conscious also of Mr McCusker's caution that, with the benefit of hindsight, we categorise as unprofessional conduct that which may have been an understandable error of judgment.

441 Our sympathies are limited however. [I have altered the formatting of this paragraph.]

First, we think much of the practitioner's dilemma as to how to answer was of his own making. He had generally made himself available to the media to discuss the Corby matter. More directly, he had put out that there was an inappropriate draft letter from Mr Rasiah which had made a claim for an item of money which was subsequently omitted.

Second, by this date the appeal had been lodged. Any further assistance the practitioner could give was, it appears, in relation to assisting in obtaining additional evidence. The government had apparently decided not to take Mr Rasiah's suggestion of a bribe any further. There seems to us no obvious reason why the practitioner needed to contribute to the subject.

Third, a related point, we think that in the circumstances there was no imperative to provide a detailed account to Mr Pennells of Mr Rasiah's suggestion of payment of bribe money. To the extent he was pressed on the matter he could simply have declined to comment as he did with Mr Butterly or answered briefly as the Minister subsequently did (ABC interview on 23 June 2005). At another point in his evidence the practitioner claimed he was 'no stranger' to dealing with the media. Whatever rumours were circulating amongst journalists would have remained just that, particularly given Mr Rasiah's emphatic denial of any claim by him for money for bribery. Mr Pennells' evidence suggests that it was the practitioner's detailed account refuting the denials of Mr Rasiah's which made the matter newsworthy. This supports the LPCC's submission that the better characterisation of the matter was the practitioner exposing the story rather than, as the practitioner claimed in evidence, having to defend the charge of being involved in a cover-up of it. Fourth, having reviewed the whole of the evidence it is apparent that the practitioner had formed an extremely hostile attitude toward Mr Rasiah. The manner in which the practitioner spoke about Mr Rasiah both at the time (for instance in his letter to Mr Hutapea) and before us (we have mentioned some only of these references) suggests he felt an intense personal animosity which coloured his decisions. The basis for that hostility as indicated by the practitioner's own statements was not just the suggestion of the government paying money for bribes but was Mr Rasiah keeping control of the case and excluding the Perth 'team'. See again his letter to Mr Huapea and his statements to the media to this effect. We have formed the view that the practitioner's decision progressively to disclose the bribery claim was motivated, at least in part, because of his intense dislike of Mr Rasiah. That explains why the revelation about the bribery claim went into such detail – covering the initial request, the draft letter, his refusal to convey the draft letter to the government and the subsequent omission of the request from the final letter. It also explains why instead of setting out his concerns in private correspondence with Mr Rasiah or Ms Lubis, or advising the government to take the matter up with the Indonesian authorities, the practitioner made his revelations through the press where it would have maximum impact.

Finally, the practitioner had earlier been extremely critical of a Corby supporter (Mr Bakir) for his making bribery allegations. He said these might generate anti-Indonesian sentiment which could affect the mind of an Indonesian judge. The practitioner sought to distinguish those circumstances, they being false allegations, but at the least he must have known that the consequences of his disclosure would cause significant problems for the Bali legal team which could not assist Ms Corby awaiting the completion and outcome of her appeal.

442 We reject the practitioner's evidence that when questioned by Mr Pennells, the only options open to the practitioner were to tell him what had happened or to deceive him. We reject also his evidence that his disclosures were necessary to protect his interests, the interests of the government and Ms Corby. The practitioner might have declined to comment in relation to the matter. It is not as if he or the government had anything to hide. The practitioner had rejected the suggestion of money for bribery from the outset and acting on his belief of the real nature of the claim for lobbying and the status of the draft letter had refrained from passing it on. There is no evidence that Ms Corby knew of the suggestion. No-one, not the Bali legal team nor the government, had any interest in revealing Mr Rasiah's suggestion, but had the issue somehow opened up or been investigated, those facts would have emerged. As regards the written records, the facts were that the practitioner had received a draft letter making a request for funds including an amount for lobbying. This had not been passed on to the government pending clarification. When the final letter was received it had omitted the request for an amount for lobbying. To the extent it was necessary to mention any of this (and we do not think it was) the practitioner might have confined himself to that. There could be no criticism of his conduct or that of the government or Ms Corby in these circumstances. We think that position would have best served Ms Corby's interests.

443 We reject also the assertion that the practitioner was under a professional duty to 'tell the truth' concerning the bribe allegations. To the extent the government or the practitioner had thought it necessary to reveal Mr Rasiah's suggestion, there were appropriate ways the practitioner might have gone about this. Publication to the press was not one of them.

444 The only redeeming feature of the incident is that the practitioner did at least endeavour to protect Ms Corby and her family by stating that they were unaware of the bribery allegations.

445 We find that these statements were not in the public domain. We find further that they did comprise matters confidential to Ms Corby and that disclosure was contrary to her interests. That she may not have known about Mr Rasiah's suggestion that the government provide money for bribing the judges is not to the point. Lawyers for a client will often discuss matters and tactics relating to the case without the client's express knowledge or involvement, acknowledging that these strategies will rarely involve that under consideration. However misconceived the bribery proposal may have been, it was one on its face made to the knowledge of the Bali legal team and pursued by Mr Rasiah on behalf of and in the interests of Ms Corby. We reject the practitioner's suggestion at one point in his evidence that the suggestion was made for Mr Rasiah's own purposes; that is the money would not have been used for Ms Corby's benefit. There was no evidence to support that suggestion and, given the source of the funds, it seems inherently unlikely. We find the statements were not made in Ms Corby's best interests and neither was this the practitioner's motivation in making the disclosure.

446 We find that the practitioner made this disclosure and the statements to the media without Ms Corby's informed consent.

Unprofessional conduct

447 The remaining issue is whether the making of the statements in the circumstances constituted unprofessional conduct. That is, whether the practitioner's conduct, as found, to a substantial degree fell short of the standard of professional conduct observed or approved by members of the legal profession of good repute and competence.

448 The findings we have made concerning the making of the statements and the circumstances of and motivation for their making, leads irresistibly to our finding that the practitioner was guilty of unprofessional conduct in relation both to the disclosure of confidential information and in making statements to the media. Whilst it may have been the case that the making of an individual statement might not have constituted unprofessional conduct, when the statements are taken as a whole and the circumstances of their making is considered it is clear that the practitioner was guilty of a serious breach of professional conduct.

449 The circumstances relevant to this finding in summary are as follows:

1. Ms Corby was from 6 June 2005 the client of the practitioner. He ought to have appreciated this fact given the circumstances of their meeting as we have found. To the extent he did not, he should at the least have considered this possibility and refrained from making statements to the media or sought her informed consent to do so if satisfied they were otherwise in her best interests;

2. in their meeting of 6 June 2005, the practitioner and Ms Corby agreed a form of words for release to the media of matters which were of direct and immediate concern to Ms Corby and which, because they were of a general nature and intended for the Australian public, were justifiably made through the media. The practitioner ought to have sought her agreement before proposing to make further statements to the media. To the extent there were practical difficulties in directly doing so, he might have sought her approval through her Bali legal team or through her family who were in constant touch with her. It is of interest that in his letter dated 21 June 2005 to Mr Hutapea, the practitioner in effect sought his permission to the practitioner making a further media statement relating to the appeal (that only Mr Hutapea and Mr Siregar handle the appeal);

3. the statements made fall into two main groups. The first group comprise criticism of the Bali legal team for:

4. a. delays in providing a transcript of the trial and reasons, the draft grounds of appeal and requests for (inappropriate) evidence;

b. not making the best use of the experience and skills offered; and

c. spending insufficient time on the appeal.

The appropriate course for a responsible barrister in the practitioner's position believing there were these problems which were capable of redress was to have written to the Bali legal team and made known these concerns. If there were difficulties in doing so because the criticism was directed at the Bali legal team, he might have sought to raise them with Ms Corby or her family. To publish these statements to the media was detrimental to Ms Corby because it appeared to demonstrate a failure on the part of her Bali lawyers and a weakness in their preparation of her appeal. As the practitioner said in effect in his evidence, there was little point in criticising the Bali legal team because no-one else was in a position to take over and prepare the appeal. These statements may have provided comfort to the prosecutors defending the appeal. It was likely to distract the Bali legal team from their task and make it less likely they would include the Perth

team in assisting with the grounds of appeal. It is far from clear that the statements promoted the government's interests, although the practitioner claimed they did by anticipating the Bali legal team's attack on the government. We think the motivation for these public statements was in part the pursuit of the practitioner's dispute with the Bali legal team and in particular Mr Rasiah, and the practitioner's interest in promoting himself in the media as an expert, approached by the government, whose pro bono services were not being availed of;

1. the second group of statements either foreshadowed or constituted the bribery claim. For reasons given above, we reject the practitioner's claim that this was disclosure made in Ms Corby's interests. We do not think there was any credible evidence that after 10 June 2005 (the delivery of the final letter to the government) Mr Rasiah was seriously pursuing money for bribery from the government. We do not think the journalists' possible story of a bribery claim, rejected by Mr Rasiah, would have had any or sufficient foundation but for the practitioner's progressive revelation of the details of Mr Rasiah's suggestion. Again, we have doubts whether they promoted the government's interests, although the practitioner claimed they did by anticipating a suggestion that the government was the recipient of a request for money for bribery. We again think the motivation for these public statements was in part the pursuit of the practitioner's dispute with Mr Rasiah; and

2. in the space of about 11 days the practitioner made five disclosures to the media of statements which directly concerned Ms Corby's appeal. They were statements as we find which were not merely of no benefit but were detrimental to the interests of a person who was in an extraordinarily vulnerable situation, and where there was no obvious benefit to the government.

450 The practitioner argued that he did not breach the requisite professional standard to the extent he believed Ms Corby was not his client and further that he made the statements believing them to be in her interests. We have dealt with the second argument. We do not accept it. As to the first, we accept the practitioner's evidence that he did not regard Ms Corby as his client. The basis for the practitioner's position appears from his evidence to have been based in part, on the fact that the government was his client and its interests may have conflicted with Ms Corby's. He was so certain Ms Corby was not his client he felt no need to analyse or discuss or seek advice on whether that belief was sound.

451 The starting point in considering this issue must be the situation of Ms Corby, suffering both physical deprivation and the prospect of life in an Indonesian jail and dependent, for some possible relief, upon the success of her appeal. We think that a responsible barrister would have been acutely aware of these facts and conducted themself accordingly. That would require that the barrister pay very careful attention to whether they owed Ms Corby duties of confidentiality. Given that possibility existed, the practitioner ought to have erred on the side of caution and exercised great restraint in making any disclosures or, where necessary, saying anything to the media. He might have made efforts to clear any statements with Ms Corby in the manner suggested, if they were otherwise not detrimental to her position. We think the practitioner manifestly failed to exercise that level of care and restraint. Rather, he sought out media attention and disclosed confidential matters and expressed his personal opinions about her appeal with no or little regard to the consequences for Ms Corby. Worse, he conducted his personal dispute with Mr Rasiah through the press in a manner that was highly prejudicial to Ms Corby's interests. In these circumstances, we do not think the practitioner's belief that Ms Corby was not his client excuses his conduct.

452 Neither do we think that the disclosures and statements were justified to the extent the practitioner believed they were in the government's interest or served a political purpose for which he had been retained and were not inimical to Ms Corby's interests. We leave to one side the propriety of the practitioner, in the circumstances, undertaking what he called a semi-political role. In our judgment the practitioner was under an obligation to Ms Corby as his client to protect her confidences, ensure any disclosures were in her interests, and obtain her authority to make statements to the press. Put another way, whatever political or other service the practitioner regarded himself as rendering to the government, from Ms Corby's point of view we think she was entitled to expect that a senior counsel advising and assisting her in relation to her appeal against a life sentence would scrupulously comply with his professional obligations to protect matters confidential to her appeal and obtain her informed consent to statements made to the media.

Conclusion

453 For these reasons we find that the charge of unprofessional conduct in respect of both the disclosure of confidential information and statements to the media without the informed consent of Ms Corby as the practitioner's client have been made out.'

APPENDIX B

The State Administrative Tribunal report can be viewed from the *Expendable Library*:
http://www.expendable.tv/p/library.html

Or, alternatively, directly from Google Docs:
http://www.expendable.tv/p/library.html

www.hiddenworldresearch.com

The Expendable Project
www.expendable.tv