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FEDERAL COURT OF AUSTRALIA

CROWLEY and ORS v MURPHY

Northrop, Franki and Lockhart JJ

19 March 1981 — [1981] FCA 31; (1981) 52 FLR 123; 34 ALR 496

PRACTICE AND PROCEDURE – SEARCH WARRANT - WARRANT AUTHORISING SEARCH OF SOLICITOR'S OFFICE – NATURE AND EXTENT OF SEARCH AUTHORISED – LEGAL PROFESSIONAL PRIVILEGE – CONTRACTUAL RELATIONSHIP BETWEEN SOLICITOR AND CLIENT: *CRIMES ACT 1914* (CTH), S10.

HELD: *per curiam*: The appeal would be dismissed because:

(i) *Per curiam*, the warrant by implication authorised a search.

R v Tillett; ex parte Newton (1969) 14 FLR 101, applied.

(ii) (a) *Per curiam*: Legal professional privilege did not protect the appellants from withholding from the respondent their files relating to the affairs of their clients, nor did it prevent the respondent from searching these files and, if they fell within the terms of the warrant, seizing them.

(b) *Per Lockhart J* (Northrop J agreeing): The doctrine of legal professional privilege applies only to judicial or quasi-judicial proceedings and is a rule of evidence.

(c) *Per Lockhart J* (Northrop J agreeing): If a solicitor is required by statute or the common law to disclose confidential information his contractual duty of confidence is overridden by the general law, and he must do so.

(d) *Per Franki J*: Where a statute provides for access to documents to be available to a person the fact that those documents are held by a solicitor and were entrusted to him by a client does not provide a ground for the solicitor to refuse access to the documents.

(iii) *Per curiam*:

(a) The respondent was entitled to conduct a "negative search";

(b) A search must be reasonable, but it is impossible to lay down the limits of a reasonable search.

(c) On the evidence it could not be concluded that the respondent had conducted the search in an unreasonable manner.