

Admission to Practice

Suitability

<i>Re B</i> [1981] 2 NSWLR 372	
Facts	<ul style="list-style-type: none"> Applicant convicted of numerous offences in her university days; obscene publication, trespass, damage to property and using obscene words Evidence that she published material expressing defiance with the law, courts and general authority Later involved in dummy bail agreement where she pledged money of a prisoner as her own Reynolds JA → Constituted lack of improvement from her previous indiscretions Moffatt P → As long as an individual meets the admission requirements, no other “discretionary bar to admission, whether on the basis of race, colour, religion, sex, political outlook” should stand in their way.
Held	Admission denied
KLP	If an applicant’s subsequent actions provide no evidence that past discretions have stopped, then admission must be denied

Dishonesty

<i>Frugtniet v Board of Examiners</i> [2002] VSC 140 and [2005] VSC 332	
Facts	<ul style="list-style-type: none"> For a period of 25 years – including shortly before applying for admission – Applicant had been charged with offences relating to theft, perjury and fraud Unable to discharge evidence of rehabilitation Gillard J → It would take “many years of blameless conduct” before any confidence that the Applicant had “turned over a new leaf... to pursue a blameless and honest career” Gillard J → “The appellant carries with him a massive bag of dishonest conduct...he is one of those witnesses who, when asked a question, thinks how he should answer the question rather than answering it truthfully and accurately.” Pagone J → the obligation of disclosure “was not an obligation merely to list convictions or charges but ... to inform the decision maker of everything that could bear upon the decision to admit.... His (F) task was not to select or edit from his life experiences... but to disclose every matter that might fairly assist in deciding whether the applicant was a fit and proper person at the time of admission.”
Held	Admission denied
KLP	The charges reflected dishonesty and were incompatible with admission.

<i>Council of the NSW Bar Association v Einfeld</i> [2009] NSWCA 255	
Facts	<ul style="list-style-type: none"> Einfeld was a retired judge Contested a \$77 speeding ticket by claiming he had lent his car to an old friend, Teresa Brennan (who was in fact, dead) He gave evidence under oath in the Local Court and he also signed a statutory declaration to that effect When challenged by a journalist concerning Brennan's death, Einfeld claimed that he had lent his car on that day to a different Teresa Brennan, whom he claimed also lived in the USA, and who had also died In August 2006, Einfeld produced a detailed 20-page statement describing the fictitious second Teresa Brennan and his supposed dealings with her <ul style="list-style-type: none"> <i>Perjured Evidence</i> <ul style="list-style-type: none"> “Studied, careful and premeditated attempt through a series of direct lies to influence the outcome of the administration of justice” Einfeld arrested and sentenced to two years imprisonment Bar Association sought to have his name removed from the roll
Held	Guilty of professional misconduct; not a fit and proper person to remain on the roll; name removed

KLP	The court should deal with the totality of the alleged matters even in circumstances where admissions have been made in relation to some matters, which taken alone, would be sufficient to support the declaration and orders
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<i>Re Davis (1947) 75 CLR 409</i>	
Facts	<ul style="list-style-type: none"> Discovered a year after he was admitted as a barrister that Davis had not revealed in his application that he had been convicted of breaking, entering, and stealing when he was 21 years old The conviction had occurred 12 years before he applied for admission Since that time, Davis had no other breaches of conduct that affected his good fame and character Latham CJ → “A conviction for housebreaking is so obviously a relevant matter when character is under consideration that there can be no room for doubt in the present case as to the duty to disclose it” Latham CJ → “If the appellant had frankly disclosed to the Board the fact of his conviction, that disclosure would have greatly assisted him in an endeavour to show that he had retrieved his character. But his failure to do so excludes any possibility of holding that he had become a man of good character.” Dixon J → “The Bar is no ordinary profession or occupation. The duties and privileges of advocacy are such that for their proper exercise and effective performance, counsel must command the personal confidence, not only of lay and professional clients but of other members of the Bar and Judges.”
Held	Name struck from Admissions roll
KLP	Convictions involving dishonesty are particularly relevant in determining whether a person is ‘fit and proper’. Concealment of previous convictions is incompatible with admission.

<i>Ex Parte Lenehan (1948) 77 CLR 403</i>	
Facts	<ul style="list-style-type: none"> The Applicant, while in his 20s, worked as a legal clerk in a practice where bad and dishonest practices were commonly undertaken Whilst working there, he failed to account for money received, retained sums of money more than he was owed, and paid himself without authority from trust funds He then went on and worked in respectable vocations including in the armed forces.
Held	Admission allowed. “The false steps of youth’ are not always final proof of defective character and unfitness. The presumption of unfitness which they raise may be overcome by a subsequent blameless career.
KLP	Latham CJ → An unsatisfactory beginning may be displaced by a completely satisfactory subsequent career sustained over a lengthy period of time

<i>Hinds [2003] ACTSC 11</i>	
Facts	<ul style="list-style-type: none"> An Aboriginal applicant was admitted even though he had a history of criminal convictions These included two for drunken driving’ making a false complaint, and convictions for breaching five domestic violence orders He admitted all his convictions and fully cooperated with the court He had a record of community activities and had no convictions since 1996
Held	Admission allowed.
KLP	Remorse, understanding and contrition regarding the offence can overcome barriers to admission.

Academic Misconduct

<i>Re OG (A Lawyer) (2007) 18 VR 164</i>	
Facts	<ul style="list-style-type: none"> OG failed a non-law subject due to suspected collusion with another class mate, GL OG maintained that no collusion occurred Beyond receiving a 0 mark, no further action was taken by the University Both OG and GL completed training at Leo Cussen together OG deliberately omitted the collusion before the Admissions Board

Held	Admission revoked
KLP	Applicant MUST disclose all instances of academic misconduct; deliberate failure to disclose instances of previous academic misconduct is fatal to admission

<i>Law Soc Tas v Richardson</i> [2003] TASSC 9	
Facts	<p>UNUSUAL CIRCUMSTANCES</p> <ul style="list-style-type: none"> Richardson failed to disclose academic misconduct He had sought advice from his parents (both lawyers) and the law school Richardson was advised that disclosure was not required
Held	Admission allowed
KLP	That the Defendant failed to disclose a finding of academic misconduct did not, adversely affect his fitness to practise, or his honesty and trustworthiness; an Applicant need not disclose “all aspects of his or her past life that might be open to criticism or arguably amount to examples of imperfections of character or performance”
<i>Re Liveri</i> [2006] QCA 152	
Facts	<ul style="list-style-type: none"> Between 25 and 27, the Applicant had committed serious plagiarism on more than one occasion, and displayed an unwillingness to subsequently acknowledge that misconduct The latter aspect was “at least as significant as the academic dishonesty itself”
KLP	Repeated instances of plagiarism, which are not candidly disclosed, speak against the requisite of good fame and character

<i>Re AJG</i> [2004] QCA 88	
Facts	<ul style="list-style-type: none"> An applicant disclosed an incident during a Griffith University PLT course which involved substantial copying of another student’s work De Jersey CJ → It would be inappropriate to “accept as fit to practise an applicant who responds to stress by acting dishonestly to ensure his personal enhancement... Cheating in the academic course which leads to qualification central to practice and at a time so close to the application for admission must preclude our presently being satisfied of this applicant’s fitness” NB: The fact that the admissions board did not oppose admission did little to effect the court’s decision
Held	Admission denied
KLP	Failure to disclose academic dishonesty is especially serious if the conduct occurred close to the time of admission

Crimes

<i>Ziems v Prothonotary of the Supreme Court of NSW</i> (1957) 97 CLR 279	
Facts	<ul style="list-style-type: none"> Ziems was a barrister in his 40’s Ziems was voluntarily intervened in a pub fight where a patron was verbally and physically abusive to two women Ziems was struck to the head and incurred a concussion He had consumed alcohol but by eyewitness accounts – including the barman - was not drunk A policeman believed that Ziems had indeed incurred a concussion and told him he would take him to the hospital once he had sorted out the violent patron The policeman forgot to come back and Ziems drove himself home He collided with a motorbike and killed the rider Ziems argued that he was impaired not by the alcohol in his system, but by his concussion He was charged with manslaughter The Prothonotary of the Supreme Court called on the barrister to show cause why his name should not be removed from the roll of barristers
Held	Wasn’t disbarred, but Practising Certificate suspended until after he was released from jail
KLP	Dixon CJ, Fullagar and Taylor JJ → The Court should look beyond the fact of conviction to assess the nature of the conduct which gave rise to the conviction

<i>Re Del Castillo</i> [1999] FCA 626	
Facts	<ul style="list-style-type: none"> • Applicant stood trial for murder and was acquitted six years before he applied for admission • On the advice of his instructors at ANU Legal Practice Workshop, he didn't disclose this to the Board • Applicant had a duty of frankness
Held	Admission allowed
KLP	<p>Case law recognises that charges for criminal offences are relevant to an applicant's good fame and character and should be disclosed, even those that did not lead to conviction, or those for which the applicant had been acquitted</p> <p>Acquittal on serious charges may be relevant to an assessment of fitness because (logically or not) some people will consider the reputation or character of the accused to be defective.</p>

<i>Legal Services Board v McGrath</i> [2010] VSC 266	
Facts	<ul style="list-style-type: none"> • Applicant possessed child pornography • Warren CJ → Conviction for any serious breach raises questions about the lawyer's willingness to obey the law • Warren CJ → Legal profession demands both empathy and insight into the victims of criminal behaviour
Held	Admission denied
KLP	"Incompatible with the judgement and understanding required of members of the legal profession"

<i>In the Matter of An Application By Thomas John Saunders</i> [2011] NTSC 63	
Facts	<ul style="list-style-type: none"> • Applicant is a lawyer • Convicted of offences of dishonesty and gave a misleading account of the circumstances of the facts surrounding the commission of the offences to the Court (sworn affidavit)
Held	Admission revoked
KLP	Relatively recent occurrence of the crimes meant that Applicant is not a fit and proper person for admission

<i>KMB v Legal Practitioners Board (Queensland)</i> [2017] QCA 76	
Facts	<ul style="list-style-type: none"> • 34-year-old male Applicant disclosed prior convictions; (1) unlawful sodomy and (2) indecent treatment of a child under 16 • At the time of these offences, Applicant was 24 and working as a male escort • After his arrest, Applicant never worked as a male escort again • Applicant had been "cooperative and candid" with authorities
Held	Admission allowed
KLP	The circumstances relating to the Appellant's offences do not demonstrate such an "ongoing flaw in the Appellant's character" that the Appellant could not be considered a fit and proper person to be admitted

Mental Illness and Substance Abuse

<i>S v Legal Practice Board of WA</i> (2004) 29 WAR 173	
Facts	<ul style="list-style-type: none"> • Applicant had depression • Court questioned whether Applicant's depression affected their fitness to practice • Depression is not of itself a matter which would preclude the fulfilment of duties in an honest and competent way; expert evidence would be required if it was alleged that it did
Held	Admission allowed
KLP	Mental health issues need not be a bar to admission, but they may warrant inquiry if they have the potential to bear on the applicant's fitness to practice

<i>Victorian Lawyers RPA Ltd v X</i> [2001] 3 VR 601	
Facts	<ul style="list-style-type: none"> • X pleaded guilty to six counts of making false accusations of sexual assault • Didn't appreciate her actions

	<ul style="list-style-type: none"> Failed to inform the Board of Examiners of the relevant circumstances surrounding the charges she had made and thus seriously misled the Board Was otherwise of good character and reputation
Held	Admission refused
KLP	“One who is not capable of dealing appropriately with awkward facts of this kind in one’s own life (i.e. that she has or may have caused great harm to others) cannot be entrusted appropriately to advise clients who are similarly placed”

Skeritt v LPB of WA, 2004	
KLP	<ul style="list-style-type: none"> If an applicant’s depression is sufficiently severe and long-standing as to potentially lead to the neglect of client affairs, it is relevant to fitness to practise Depression per se does not necessarily detract from a person’s capacity to perform the duties required of a practitioner Many people in the community suffer from depression and yet are able to fill the duties of an honest and competent way.