THE IMPACT OF PLAGIARISM ON ADMISSION TO THE BAR: *RE LIVERI* [2006] QCA 152

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This case arises out of Liveri's (the applicant's) application to be admitted as a legal practitioner in Queensland. The issue was whether she could be considered to be fit for admission, given that she had been caught plagiarising whilst she was a law student.

FACTS

On 29 November 2004 the applicant applied to the Legal Practitioners Admissions Board (the Board) for a declaration of suitability of admission. Such a declaration could be made under section 36 of the *Legal Profession Act 2004* (Qld),[1] which allows for early consideration of the suitability of people who may, in the future, be intending to apply for admission. The Board declined the application on the basis that the applicant had been detected plagiarising in 3 assignments during her time as a law student. On 14 October 2005 the applicant applied for admission, but this application was withdrawn. On 11 April 2006 the applicant again applied for admission, and it is this application that gives rise to the present judgment. The Board opposed her application on 'the basis that the applicant has not demonstrated she is fit for admission.'[2]

There was no dispute that plagiarism had occurred. Instead the question was whether the plagiarism was significant enough to make the applicant unfit for admission. As a result the court[3] was required to consider the nature and extent of the plagiarism that had occurred.

The first instance of detected plagiarism occurred in a law of trusts assignment submitted in semester 2 of 2002. There the applicant has almost entirely copied an article that had been published online. Although the applicant swore on oath that she had inadvertently submitted the wrong assignment the University's delegate, who investigated the plagiarism, did not believe this claim, stating that:

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[1] This Act has since been repealed and replaced by the *Legal Profession Act 2007*. This amendment was done in order to implement 'national model laws for the regulation of the legal profession (the model laws) being developed through the Standing Committee of Attorneys-General (SCAG).' (Explanatory Notes to the Legal Profession Bill 2007, http://www.austlii.edu.au/au/legis/qld/bill_en/lpb2007189/lpb2007189.html (Accessed 20 December 2007)). The new Act does not alter the requirement that an applicant be fit for admission or the role of the Board in determining fitness.

[2] *Re Liveri* [2006] QCA 152 http://www.austlii.edu.au [1].

[3] Under section 34(1) of the *Legal Profession Act 2004* 'the Supreme Court must hear and decide each application for admission.' However, for the purposes of chapter 2 part 3 of the *Legal Profession Act 2004* (admission of legal practitioners) the Supreme Court is defined by section 28 to be the Court of Appeal, unless the Act expressly allows for the power of the Supreme Court to be exercised by a single Supreme Court judge. This decision was therefore made by the Queensland Court of Appeal.

> I do not believe that Ms Liveri did not intend to submit Professor Davies' article as her own. The fact that the document was a single word document (and not an html file), containing as page one a cover sheet specifically created for the purpose and containing her own name as author, the fact that where a couple of paragraphs had been omitted the sentence immediately following the omitted passage had been altered so that it now appeared to flow on from the previous paragraph, and the fact that all references to its original authorship and publication had been removed, point to the conclusion that Ms Liveri's assertions are false.[4]

A further concern was that, four days after the applicant had been notified of the allegation of plagiarism she asked to 'submit her "original" assignment'.[5] This assignment was examined by one of the course lecturers, who found it to be very poor. The University's delegate believed 'that this "assignment" could easily have been written by Ms Liveri after she has been notified of the allegation of misconduct.'[6] The court agreed with the University delegate's finding that the originally submitted assignment was 'a blatant case of Academic Misconduct'[7] and also considered that the submission of the second assignment 'comes close to a finding of further dishonesty.'[8]

The University then reviewed other assignments that had been submitted and found plagiarism in two further assignments, one submitted in 2000 and one submitted in 2002.

As a result of this academic misconduct the applicant was suspended from her job with a law firm. She also had an application to be admitted in New South Wales refused, due to concerns about her fitness for practice. Particular concerns of the New South Wales court involved the applicant's 'lack of insight into the nature and gravity of the findings against her'[9] and concerns about 'the conduct of the applicant in relation to the [law of trusts assignment].'[10]

Arguments for the Board and the applicant

Counsel for the Board argued that the applicant appeared not to appreciate that her conduct was unacceptable, and that this made her unfit for admission.[11]

Counsel for the applicant argued that the instances were several years in the past, that she had completed two legal practice training courses since the instances of plagiarism, that she was currently employed in a legally related job and that she had references supporting her application.[12] Another argument was that at the time the plagiarism occurred the court

[4] Ibid, [8].
[5] Ibid, [9].
[6] Ibid.
[7] Ibid [10].
[8] Ibid [9].
[9] Ibid [13].
[10] Ibid.
[11] Ibid [17].
[12] Ibid [18].

had not expressly established that a finding of academic misconduct in an applicant's history may result in admission being declined.[13]

FINDINGS

The Court of Appeal rejected that argument that the lack of an explicit statement that academic misconduct may result in a finding that a person is unfit for admission should prevent such misconduct from being used as a bar to fitness, stating 'it should go without saying that an applicant seeking admission to the legal profession should not have to be warned about the unacceptability of cheating in the course of securing the prerequisite academic qualification.'[14]

In deciding whether this particular applicant's history of academic misconduct should lead to a decision that the applicant was unfit to be admitted to the bar, the court considered:

- the seriousness of the plagiarism;
- the number of times that plagiarism had occurred;
- the age of the applicant; and
- the applicant's unwillingness to acknowledge the seriousness of her misconduct.[15]

In relation to the last point, the court considered that 'lack of genuine insight into its gravity and significance… is at least as significant as the academic dishonesty itself.'[16]

Whilst the court found that 'comparison with other persons ad other submissions is not particularly helpful'[17] it did make reference to the decision in *Re AJG*.[18]

The application was adjourned for a period of at least 6 months.[19] The court emphasised that in future hearings

> the Court will need to be persuaded on appropriately cogent material that a finding of fitness is warranted. The mere lapse of time would not, without more, in a case of this overall concern, warrant the Court's concluding that fitness has been demonstrated. It is especially the applicant's subsequent attitude to the established misconduct which warrants a circumspect approach.[20]

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[13] Ibid [19].
[14] Ibid [19].
[15] Ibid [20].
[16] Ibid [20].
[17] Ibid [20].
[18] [2004] QCA 88. In this case the applicant had been caught copying another student's assignment during the Practical Legal Training course. This was a one off incident. The student demonstrated remorse and the Solicitor's Board did not oppose his admission. His admission was delayed for 6 months. It was noted that the student who allowed the copying to occur was admitted without delay, but that that was no grounds for allowing the current applicant to be admitted.
[19] Ibid [25].
[20] Ibid [24].

DISCUSSION

This case should serve as a warning to law students everywhere that plagiarism can have serious consequences. Pacific law students reading this might think that as this decision is from Queensland it is of little relevance to them, however that is not so. An examination of the laws from around the region that govern admission indicate that the requirement that an applicant for admission be a fit and proper person to practice law is fairly standard.[21]

In Fiji there is even the power for any person to object to an application for admission.[22] The Chief Justice can also require testimonials as to character.[23] In order to allow for objections and to facilitate the provision of testimonials the University of the South Pacific School of Law revised its plagiarism and dishonest practice policy in 2007. It now maintains a database of plagiarism by law students. 'Information from the database… can be released to Law Societies or admissions boards that decide whether individuals are fit to be admitted to the practice of law on their request.'[24]

The fact that the various laws throughout the Pacific do not expressly specify that plagiarism or other forms of academic misconduct may lead to a finding that an applicant is unfit for admission should not be a bar to considering such instances in determining whether a person is fit to be a lawyer. The legislation does not need to comprehensively list the sorts of behaviour that may be unacceptable. Instead the court needs to consider the conduct of the applicant as a whole, and make a value judgment as to the applicant's fitness to practice. As the *Liveri* case made clear, 'it should go without saying that an applicant seeking admission to the legal profession should not have to be warned about the unacceptability of cheating in the course of securing the prerequisite academic qualification.'[25] An applicant's prior history of cheating, may clearly be relevant in making a value judgement as to fitness to practice, particularly as '[l]egal practitioners must exhibit a degree of integrity which engenders in the Court and in clients unquestioning confidence in the completely honest discharge of their professional commitments.'[26]

Of course, not every instance of detected plagiarism indicates lack of fitness to practice. A single instance of plagiarism in which only a small amount of material is copied may

[21] See, for example, s 3(b) *Law Practitioners Act 1993* -1994 (Cook Islands); s 19(c) *Law Practitioners Act 1976* (Samoa); Reg 4(3)(b)*Vanuatu Legal Practitioners (Qualifications) Regulations Act 1996* (Vanuatu); s 35 *Legal Practitioners Act 1997* (Fiji); s 5(1)(b) *Legal Practitioners Act* [Cap 16] (Solomon Islands); s 5(b) *Law Practitioners Act 1989* (Tonga).
[22] *Legal Practitioners Act 1997* (Fiji) s 37.
[23] *Legal Practitioners Act 1997* (Fiji) s 38. A similar provision exists in Samoa. Section 20(3) of the *Law Practitioners Act 1976* (Samoa) allows the Council of the Law Society to make 'other inquiries as it thinks proper' before certifying and applicant is of good character.
[24] University of the South Pacific School of Law, Plagiarism and Dishonest Practice Policy, 6 September 2007, clause 7.
[25] *Re Liveri* [2006] QCA 152 http://www.austlii.edu.au [19].
[26] *Re AJG* [2004] QCA 88.

well be an honest oversight, or may indicate a lack of understanding of how to reference. However, it is hard to imagine how repeated instances of plagiarism, or single instances in which large amounts of material are copied, could be honest mistakes. *Liveri* also indicates that the reaction to being caught plagiarising is another important factor in deciding whether academic misconduct leads to lack of fitness to practice.

As well as being a cautionary tale for all law students, the decision in *Liveri* should give law societies, admissions boards and courts around the Pacific region something to consider. An important part of exercising control over the legal profession is regulating admission in order to ensure standards are maintained, however it can be difficult to determine whether someone is "of good character", or "a fit and proper person". A person's history of academic misconduct during the submission of assignments provides something of a measure of the extent of dishonesty in a person's academic career[27] and would be useful information in making a decision as to an applicant's overall suitability to practice.

Further, if an applicant chooses not to disclose wrongdoing, decisions as to fitness to practice will be made with incomplete information. A failure to disclose a history of academic misconduct in itself is dishonesty which may render someone unfit to practice. As records of academic dishonesty are usually easily accessible from a third party (the academic institution the person attended), it may be possible to identify issues that the applicant has chosen not to disclose.[28]

It is to be hoped that, in the future, law societies, admissions boards and courts around the Pacific region begin to consider using an applicant's history of academic misconduct as a law student as a source of information and that this enables them to make more rigorous decisions as to an individual's fitness to be admitted to the practice of law.

[27] This measure is not perfect. Not all plagiarism is detected, and there may also be other forms of dishonesty a student could engage in.
[28] See, for example *Thomas v Legal Practitioners Admission Board* [2004] QCA 407 http://www.austlii.edu.au.