

*In the matter of an application by Andrew Hewitt Giles [2014] NTSC 30*

PARTIES:

IN THE MATTER OF:

THE LEGAL PROFESSION ACT 2006

AND

IN THE MATTER OF AN  
APPLICATION BY:

GILES, Andrew Hewitt

FOR ADMISSION AS A LEGAL  
PRACTITIONER OF THE SUPREME  
COURT OF THE NORTHERN  
TERRITORY

TITLE OF COURT:

SUPREME COURT OF THE  
NORTHERN TERRITORY

JURISDICTION:

SUPREME COURT OF THE  
TERRITORY EXERCISING  
TERRITORY JURISDICTION

FILE NO:

LP 2 of 2014 (21406711)

DELIVERED:

25 July 2014

HEARING DATES:

7 July 2014

DATE OF ORDERS:

10 July 2014

JUDGMENT OF:

MANSFIELD J

## **CATCHWORDS:**

LEGAL PRACTITIONERS (NORTHERN TERRITORY) – application for admission – referral from the Legal Practitioners Admission Board – application not opposed by the Law Society – whether the applicant is a fit and proper person – whether the applicant is currently of good fame and character – incident of academic dishonesty – candid disclosure to the Board – applicant genuinely contrite – applicant declared fit and proper person.

*Legal Profession Act* 2006 (NT), ss 11(1)(a), 11(1)(ga), 25(2), 30(1), 30(1)(b), 32, 34(3).

*In the matter of an application by Andrew Gadd* [2013] NTSC 13; *Thomas v Legal Practitioners Admission Board* [2005] 1 Qd R 331, referred to.

## **REPRESENTATION:**

### *Counsel:*

|             |             |
|-------------|-------------|
| Applicant:  | A Wyvill SC |
| Respondent: | G McMaster  |

### *Solicitors:*

|            |   |
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| Applicant: | De Silva Hebron                           |
| Defendant: | The Law Society of the Northern Territory |

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| Judgment category classification: | B       |
| Judgment ID Number:               | Man1401 |
| Number of pages:                  | 10      |

IN THE SUPREME COURT  
OF THE NORTHERN TERRITORY  
OF AUSTRALIA  
AT DARWIN

*In the matter of an application by Andrew Hewitt Giles* [2014] NTSC 30  
No. LP 2 of 2014 (21406711)

BETWEEN:

IN THE MATTER OF:

**THE LEGAL PROFESSION ACT 2006**

AND:

IN THE MATTER OF AN  
APPLICATION BY:

**ANDREW HEWITT GILES**

FOR ADMISSION AS A LEGAL  
PRACTITIONER OF THE SUPREME  
COURT OF THE NORTHERN  
TERRITORY

CORAM: MANSFIELD J

REASONS FOR JUDGMENT

(Delivered 25 July 2014)

- [1] These reasons for judgment are to explain why, on 10 July 2014, I made a declaration under s 32 of the *Legal Profession Act 2006* (the LP Act) that Andrew Hewitt Giles is a fit and proper person to be admitted as a legal practitioner of the Supreme Court.
- [2] Andrew Giles applied to this Court on 11 February 2014 for admission as a legal practitioner under the LP Act. The Legal Practitioners Admission

Board (the Board) has referred his application to the Court pursuant to s 32(1) of the LP Act to determine if Mr Giles is a fit and proper person to be admitted as a legal practitioner.<sup>1</sup>

- [3] The material indicates that he satisfied the requirements of the Legal Profession Admission Rules with one reservation.<sup>2</sup> It is whether Mr Giles fails to satisfy the suitability matters specified in s 11(1)(a) and s 11(1)(ga) of the LP Act. They are respectively whether he is “currently of good fame and character” and whether he has “been found to have engaged in academic dishonesty”. Consideration of the suitability matters in s 11 is mandated.<sup>3</sup> In determining whether a person is a fit and proper person, the Court may also consider any other matter it considers relevant.<sup>4</sup>
- [4] Mr Giles’ affidavit of 11 February 2014 (the first affidavit) disclosed that, in the course of completing his relevant degree, a Bachelor of Laws and Legal Practice at the Flinders University in South Australia (the University), he had been found to have engaged in an instance of academic dishonesty.
- [5] The first affidavit exhibited a letter from the relevant Senior Lecturer of 14 December 2010 and the attached Report of a Breach of the Requirements of Academic Integrity of that date. That notification was a determination of breach of the Requirements of Academic Integrity by collusion. Mr Giles was found to have submitted an assignment (Letter of Advice No 2) in the

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<sup>1</sup> s 25(2), LP Act.

<sup>2</sup> Memorandum of the Master on behalf of the Legal Practitioners Admission Board to the Chief Justice, 16 April 2014 (para 3).

<sup>3</sup> s 30(1), LP Act.

<sup>4</sup> s 30(1)(b), LP Act.

Corporate Law (Drafting) topic in breach of cl 4.1 of the Flinders University Academic Integrity policy by submitting work as if it had been done individually when it had been done jointly (without the approval of the topic coordinator). His assignment had significant and substantial similarities to an assignment submitted by another student for the same exercise, when he had declared that it was solely the product of his own work. Mr Giles was given a fail grade for the topic and required to re-enrol in it the following year.

[6] It is apparent that, when the potential collusion was identified, Mr Giles is noted as having said to the Senior Lecturer that he worked from a draft provided by the other student, and that he had done so because he was under time pressure due to work commitments and deadlines for other assignments.

[7] In an observation which has particular significance to the present application, the adjudicator recorded in her letter of notification:

You admitted that the similarities between your assignment and [the other student's] assignment were extensive but said that you had also conducted research of your own in preparing your answer. However your written assignment does not demonstrate that you had undertaken such independent research of your own.

[8] The Board requested further information relating to that matter, before determining whether to recommend to the Court that Mr Giles should be admitted as a legal practitioner.

[9] Mr Giles further deposed to being deeply embarrassed by, and sincerely remorseful for, his conduct, which he acknowledged to be incompatible with the standards which would be expected of him as a legal practitioner, if he were admitted. He explained that his academic work and other commitments at the time lead him to run short of time to complete the assignment, so he used another student's draft assignment, as well as his personal lecture notes and other research books to complete the assignment.

[10] In addition to the fact of that academic dishonesty, it appears that the Board, no doubt prompted by the passage in the notification letter quoted in [7] above, was also concerned that Mr Giles may not have been fully frank in his disclosure to the Board as he maintained that he had not copied the assignment of the other student, but had used it with other materials, to complete his own assignment. He was asked to further comment upon that aspect.

[11] By his further affidavit of 27 March 2014, he maintained that he had conducted his own research, as well as working from another student's draft assignment. He accepted that he gained an unfair advantage by doing so, and that there were substantial similarities between the two assignments. He said he had endeavoured to provide full and frank information to the Board.

[12] The exhibits to that affidavit included email correspondence with the relevant Manager at the University. On 17 October 2013, Mr Giles sought access to any entries on the "academic integrity confidentiality register" (the

Register). Mr Giles explained to the manager that he was seeking admission in the Supreme Court of the Northern Territory and that he wished to provide the Court with full disclosure, including any confidential correspondence. The material Mr Giles provided to the Board with his first affidavit, concerning his conduct, was that provided by the University with its email of 21 October 2013. That email said that material made up the entirety of the documentation maintained on the Register.

[13] As noted, the Memorandum of the Master on behalf of the Board to the Chief Justice of 16 April 2014 expressed some concern that Mr Giles may not satisfy the suitability matter specified in s 11(ga).

[14] As a result of enquiries by the Board, the University provided the Board and Mr Giles with copies of the assignment he had submitted, and the assignment of the other student (the draft of which he had used in the preparation of his assignment). It is clear that the draft of that assignment is not available. The two assignments are exhibited to the third affidavit of Mr Giles of 30 May 2014.

[15] The Board expressed its concern that Mr Giles was not being entirely candid. The Board compared the two assignments. It noted the passage in the letter referred to in [7] above, and said it too had the view that the comparison of the assignments did not demonstrate that Mr Giles had undertaken independent research for completing the assignment.

[16] The Board could not detect where Mr Giles may have “input anything independent to the assignment” of the other student and, therefore, it doubted the veracity of that claim. Indeed, the Board ultimately said it had concluded that Mr Giles had not been candid in his affidavits.

[17] The Board, in any event, considered it appropriate for the Court to determine the suitability of Mr Giles as his conduct in colluding in the production of the assignment was a serious and relatively proximate breach of a mandated suitability matter.

[18] The protection of the public underlies the suitability requirements.<sup>5</sup> I respectfully adopt the observations of Blokland J made in *In the matter of an application by Andrew Gadd*<sup>6</sup> explaining why that is so, including the earlier decisions to which her Honour has referred. I need not repeat those observations.

[19] On this application, I have had the benefit of the helpful submissions of both senior counsel for Mr Giles and counsel for the Law Society of the Northern Territory.<sup>7</sup> The Law Society did not oppose the Court concluding, on the whole of the relevant material, that Mr Giles is a fit and proper person to be admitted. The Law Society drew the Court’s attention to material touching on whether Mr Giles had fully and frankly disclosed to the Board the material relating to his academic dishonesty.

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<sup>5</sup> *In the matter of an application by Andrew Gadd* [2013] NTSC 13.

<sup>6</sup> [2013] NTSC 13 at [11]-[16].

<sup>7</sup> The Law Society is entitled to make such submissions by s 34(3) of the LP Act.

[20] In my view, it is clear that Mr Giles did not attempt to confine the material he provided to the Board. I do not think his initial request for information from the University was inappropriately worded. The reply was clear. It did not advert to the possibility that the two assignments may be available from the University archives. He consented on 26 March 2014 to the University providing direct to the Board such other information as it had available. He was told by email the following day that the assessments were being retrieved from the archives.

[21] The third affidavit of 30 May 2014 does go into more detail about how the assignment was prepared. Mr Giles says he prepared his assignment with the draft assignment of the other student, together with a copy of the legislation, Ford's Principles of Corporations Law (14 ed), and his Corporations Law lecture notes. He then worked from the draft assignment, checking and changing it as he considered necessary. Obviously and perhaps not surprisingly given the nature of the assignment, the changes are relatively few. Nevertheless, several changes or additions were made. It is not necessary to record them. They are not insignificant. Each of the changes is described in detail in the third affidavit. A comparison of the two assignments confirms that those changes or additions were made.

[22] In my view, there is no basis for concluding that Mr Giles had no independent input into his assignment. He clearly did so. That is the only

explanation for the changes and additions between the two assignments, putting aside Mr Giles' own evidence.

[23] I also consider that there is no basis for concluding that Mr Giles was less than candid in his affidavits presented to the Board. The email communications with the University expose the fact that he sought all the available documentary material (and was told by the University that that was the extent of its records) and that he provided what he received from the University to the Board. It was only when the Board, prompted by the adjudicator's observations referred to at [7] above, sought copies of the two assignments that the availability of those assignments came to light. Their comparison confirms what Mr Giles had already told the Board and, indeed, it appears to have reminded him in more detail of what material he referred to for the purposes of the assignment.

[24] It therefore remains to determine whether, notwithstanding the finding of collusion by Mr Giles in the preparation of his assignment and therefore his breach of academic integrity, he is a fit and proper person to be admitted as a legal practitioner.

[25] Neither senior counsel for Mr Giles nor counsel for the Law Society suggested that, in any relevant way, the content of the suitability matters in s 11(a) and s 11(ga) of the LP Act is different.

[26] In the first affidavit, there are annexed two certificates as to good fame and character. They are provided by persons aware of the breach of academic

integrity. Mr Giles' good fame and character is confirmed by the further affidavits of David de Silva and Alana Cox both of 30 May 2014; each has had the opportunity to work with him in the recent period leading up to the present application and also each is aware of his breach of academic integrity. It is also relevant that, as I have found, he sought to procure from the University all its records relating to the breach and to provide them to the Board.<sup>8</sup>

[27] The breach of academic integrity occurred in 2010, now almost four years ago. Both prior to that time and subsequently there is nothing to suggest that Mr Giles is anything other than a person of good fame and character. Moreover, I take into account that Mr Giles, both in his affidavit and oral evidence, recognised the gravity of his collusive conduct, its relevance to the assessment of his fitness to be admitted as a legal practitioner and the nature and extent of the relevant professional obligations of a legal practitioner. He did not use the circumstances of the breach as indicating that it was not an important matter. He is clearly genuinely contrite.

[28] The gravamen of his conduct is its dishonesty. He asserted that his assignment was all his own independent work. It was not. It was dishonest for him to say it was. He accepts that.

[29] Notwithstanding that incident of academic dishonesty, in my view, on the whole of the material and for the reasons given, I was satisfied that it is

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<sup>8</sup> *Thomas v Legal Practitioners Admission Board* [2005] 1 Qd R 331 at 334.

appropriate to make a declaration under s 32 of the Act that Mr Giles is a fit and proper person to be admitted as a legal practitioner of the Supreme Court.

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