

In the matter of an application by Joy Onyeledo [2015] NTSC 60

PARTIES: THE LEGAL PROFESSION ACT 2006

AND

IN THE MATTER OF AN
APPLICATION BY

ONYELED0, Joy

TITLE OF COURT: SUPREME COURT OF THE
NORTHERN TERRITORY

JURISDICTION: SUPREME COURT OF THE
TERRITORY EXERCISING
TERRITORY JURISDICTION

FILE NO: LP 10 of 2014 (21431542)

DELIVERED: 11 SEPTEMBER 2015

HEARING DATES: 10 APRIL 2015

JUDGMENT OF: KELLY J

CATCHWORDS:

LEGAL PRACTITIONERS (NORTHERN TERRITORY) – Application for admission – Referral from the Legal Practitioners Admission Board – Whether the applicant is a fit and proper person – Plagiarism – Intention to plagiarise – Full and frank disclosure of academic misconduct – Incomplete disclosure – Unintentional misrepresentation of conduct – Insight into academic misconduct – Application adjourned

Legal Profession Act 2006, ss 11; 25; 32; 35; 36

Wentworth v NSW Bar Association (1992) 176 CLR 239, applied

In the matter of an application by Thomas John Saunders [2011] NTSC 63; *Re: Hampton* [2002] QCA 129; *Re: Humzy-Hancock* [2007] QSC 34; *Re OG (a Lawyer)* (2007) 18 VR 164; *Re Liveri* [2006] QCA 152, followed

Incorporated Law Institute of New South Wales v Meagher (1901) 9 CLR 655; *Re: AJG* [2004] QCA 88, referred to

REPRESENTATION:

Counsel:

Applicant:	M Crawley
Law Society:	J Truman

Solicitors:

Applicant:	De Silva Hebron
Law Society:	Law Society Northern Territory

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

In the matter of an application by Joy Onyeledo [2015] NTSC 60
No. LP 10 of 2014 (21431542)

IN THE MATTER OF

THE LEGAL PROFESSION ACT 2006

AND:

IN THE MATTER OF AN APPLICATION
BY

JOY ONYELEDO

CORAM: KELLY J

REASONS FOR JUDGMENT

(Delivered 11 September 2015)

- [1] The Legal Practitioners Admission Board (the ‘Board’) has referred to this Court the question of whether Joy Onyeledo (the ‘Applicant’) is a fit and proper person to be admitted as a local lawyer of the Supreme Court.¹

Procedural History

- [2] On 8 July 2014, the Applicant applied to the Supreme Court to be admitted as a local lawyer.² Her application was supported by an affidavit sworn on the same day (the ‘8 July Affidavit’) in which she deposed that she had been found to have engaged in academic dishonesty in two subjects while a

¹ *Legal Profession Act 2006*, s 32(1)

² *Legal Profession Act 2006*, s 25

Bachelor of Laws student at Charles Darwin University (the 'University'):

Trusts and Indigenous Peoples and the Legal System.

- [3] In explanation, the Applicant swore the following in unnumbered paragraphs interpolated between paragraphs 19 and 20 of what is essentially a standard form affidavit:

For the Trust Unit, an answer to a particular question was posted on the students' discussion board by the lecturer, Geoffrey James as students were finding it difficult with that particular question. I consulted a colleague for assistance regarding that particular question, my colleague pointed me to the discussion board where the answer was posted and confirmed to me that she and some other students used the answer as posted on the discussion board. I was summoned by Charles Darwin University Faculty of Law Disciplinary Board, Professor Les McCrimmon, Associate Professor David Price and Geoffrey James. Mr. James alleged that I plagiarised by using the Answer he posted on the discussion Board. I told him that a colleague advised that the Answer was posted on the discussion board for students to use. My colleague also confirmed to me that she used the answer as posted on the discussion board. Mr. James confirmed that the answer was posted for students to use but he would have preferred I use my own words and not exactly his. I reminded Mr James that I could not reference him because he advised that we should not reference him whenever we use his material. After the meeting, the Board decided that it was an honest mistake and asked me to resubmit the assignment

For the Indigenous Legal System, I had problem with referencing and I was under pressure. The unit lecturer, Daniel Kelly summoned me for a meeting with the Faculty of Law Disciplinary Board for plagiarism. In the meeting, Mr. Kelly stated that most part of my assignment was based on the original Author's work and that I quoted directly from the original Author and did not use quotation marks. Mr. Kelly also stated that the quotations were too long, I was meant to paraphrase. I explained to the board that I wasn't familiar with the law referencing style, and that I was under pressure as the assignment was due to be submitted alongside other assignments.

However, the board decided that I should be awarded a zero mark for the assignment. The reason for their decision was that most part of my assignment was based on the original Author's work, incorrect paraphrasing, use of long quotation and failure to use quotation marks. Mr. Kelly advised I purchase the Australian Guide to Legal Citation (AGLC) and also consult the Academic Language and learning Success Program of the University for assistance on how to write essays and referencing, which I did. [*Spelling and grammar as original*]

[4] The 8 July Affidavit was deficient in other respects. It lacked:

- (a) evidence that the Applicant had completed a law degree;
- (b) a letter from the University certifying that the course the Applicant completed complied with the requirements of Rule 4 of the *Legal Profession Admission Rules* (though it did state that one would be filed before 15 July 2014);
- (c) a copy of the Applicant's Graduate Diploma in Legal Practice;³
- (d) a copy of her application for a criminal history check; and
- (e) evidence that the criminal history check had been conducted for the express purpose of Northern Territory Supreme Court proceedings for her admission as a lawyer.

Moreover, the two certificates of good fame and character did not comply with the requirements of Rule 3 of the *Legal Profession Admission Rules*.

³ The Applicant purported to attach a copy of her Graduate Diploma in Legal Practice as Annexure B to the 8 July Affidavit, yet Annexure B was instead a 'Letter of Completion' from the Australian National University certifying she had satisfied the requirements for the awarding of the Graduate Diploma. The Letter of Completion also stated that the Applicant demonstrated competency in the areas set out in Schedule 4 of the *Legal Profession Admission Rules*, however did not expressly state the course complied with the requirements in Rule 5 of those Rules.

[5] The Applicant filed a second affidavit two days later on 10 July 2014 (the ‘10 July Affidavit’) in which she further explained her conduct. That affidavit repeated most of the standard form paragraphs in the 8 July affidavit,⁴ including the mistakes in the annexures, and contained the following further explanation, again in unnumbered paragraphs interpolated between paragraphs 19 and 20:

Plagiarising in these two units was not intentional. It was a big mistake that I deeply regret. I did not do my research properly, I was ignorant of the law referencing style and, I also struggled a lot with paraphrasing as English is not my first language. I’m aware that ignorant is not an excuse in law, I have learnt my mistakes I promise it will never happen again.

I sought help from a tutor with the Academic Language and Learning Success Program of Charles Darwin University regarding referencing and paraphrasing. I had 2 tutorial lessons on referencing and paraphrasing. My referencing and paraphrasing skills have since improved tremendously. [*Spelling and grammar as original*]

[6] The Board first considered the Applicant’s application on 15 July 2014. The Board considered that the Applicant’s claim that she thought she was free to use Mr James’ model Trusts answer – which she said was confirmed to her by a colleague – “lacked credit”.⁵ The Board also considered that her explanation for her academic misconduct in Indigenous Peoples and the Legal System – namely that she was not familiar with the legal referencing

⁴ It also explained why she was unable to obtain a letter of completion of her degree and gave an undertaking to do so before 15 July 2014. (She had been advised that she had completed 140 credit point units at 100 level in breach of the rule which allowed only 120 100 point units and needed to apply for 20 credit points based on her GDLP studies.)

⁵ The reasons of the Board are set out in the memo from Master Luppino to Riley CJ, dated 9 December 2014, tendered at the hearing of this application.

style and was under pressure – could not justify her extensive copying.

Further, the Board was of the opinion that the Applicant's explanation in the 10 July Affidavit that she did not do her research properly was inconsistent with her claim that any plagiarism in that assignment was unintentional.

The Applicant's matter was adjourned to the next Board meeting on 14 October 2014.

[7] The Board subsequently made enquiries of the University and was provided with a confidential memorandum from Professor McCrimmon to Professor Ram Vemuri dated 24 May 2012; a copy of the Applicant's Indigenous Peoples and the Legal System assignment; the SafeAssign report⁶ for that assignment; and a copy of an article by Megan Davis entitled 'Indigenous Struggles in Standard-Setting: The United Nations Declaration on the Rights of Indigenous Peoples'⁷ from which the SafeAssign report revealed the Applicant's submission was, in large part, derived.

[8] The Applicant filed a third affidavit on 6 October 2014 (the '6 October Affidavit'). The 6 October Affidavit rectified the deficiencies in the 8 July Affidavit referred to at [4] above.

[9] On 9 December 2014, Master Luppino (on behalf of the Board) referred the Applicant's application to the Supreme Court. In the referral, the Master noted that the Board:

⁶ SafeAssign is software that is used by some universities to prevent plagiarism. It compares submitted documents against a database of sources and highlights areas of similarity.

⁷ (2008) 9(2) *Melbourne Journal of International Law* 439

... was concerned that the explanations given by the applicant were not entirely candid and that the second instance of academic dishonesty, occurring apparently after a warning about plagiarism following the first instance, was sufficiently serious to warrant referral of the matter to the Court ...

The Master also noted the Board's concerns set out in [6].

[10] At some time between swearing the 8 July Affidavit and 18 February 2015, the Applicant received from the University a number of documents including the Trusts Assignment and Indigenous Peoples and the Legal System assignment; a file note of a meeting on 23 September 2011 between Professor McCrimmon, Mr James, and the Applicant (the 'File Note') regarding the Applicant's Trusts assignment; and a confidential memorandum from Professor McCrimmon to Professor Ram Vemuri dated 24 May 2012 (the 'Confidential Memorandum'). The File Note, Confidential Memorandum, and a copy of the Applicant's Indigenous Peoples and the Legal System assignment were later annexed to an Affidavit of Professor McCrimmon, sworn on 11 March 2015.⁸

[11] The File Note contained the following account of the meeting on 23 September 2011 in relation to the Trusts Assignment.

Joy acknowledged that she had done a considerable amount of copying and pasting and copying from text books. She offered this explanation:- she would have acknowledged the copy and pastes and the copying but she had been told by the lecturer that it was inappropriate to 'reference' the lecturer's notes or text books.

⁸

Discussed at [17]

Her position appeared to be that she would normally have disclosed that she had taken material from those sources. Prof McCrimmon, and Geoff James, indicated a willingness to accept this explanation as evidence of a misunderstanding ...

Prof McCrimmon making a statement to the effect that it was accepted that Joy had made it an honest error and that the situation did not call for disciplinary action ...

- [12] Professor McCrimmon's Confidential Memorandum contained the following description of the Applicant's academic misconduct in relation to the Indigenous Peoples and the Legal System Assignment.

Briefly stated, significant portions of the student's assignment were taken directly from Davis's article. While the article was cited in the student's paper, the referencing was wholly inadequate. The student included text from the copied source verbatim in her assignment without any form of referencing on a number of occasions ...

Initially, the student indicated that she did not understand why her assignment was not referenced properly. Subsequently, she admitted that she was pressed for time and simply copied and pasted information from Davis's article. The student acknowledged that this was wrong.

... Given the nature of the deceptive conduct evident and the fact that this is the second time the student has submitted plagiarised and improperly referenced work, we are of the view that a grade of 0 should be ascribed to the assignment. ...

- [13] On 18 February 2015, the Applicant filed a fourth Affidavit (the '18 February Affidavit'). In the 18 February Affidavit, the Applicant further elaborated upon her understanding of the academic misconduct she had engaged in by reference to the documents she had been provided by the

University. Relevantly, the Applicant explained her understanding of plagiarism as follows:

5. Prior to commencing my university studies at CDU [Charles Darwin University], I had no real understanding of what the term 'academic plagiarism' entailed. I believed it was simply claiming someone else's work as your own.
6. As a result of my early legal studies, I further understood that quotations from cases should be in quotation marks, while other quotations were sufficiently identified if the source was acknowledged and referenced in footnotes and end references.
7. After that, I endeavoured to apply my understanding of plagiarism to all work I submitted during the course of my studies.⁹

[14] The Applicant also refreshed her memory from the File Note. She added the following information:

- a. I may have confused the nature of this meeting with that of the following. It appears from the file note that it was not a meeting of the Board, but rather a meeting solely with Professor McCrimmon and lecturer Mr Geoff James. I now recall that Mr James arranged a meeting with me. When I attended, Mr James immediately took me to Professor McCrimmon's office. I was unaware in advance that the meeting was happening with Professor McCrimmon as well. In any event, it was Professor McCrimmon who made the statement that he accepted I had made an honest error that did not call for disciplinary action;

...

[15] The Applicant also refreshed her memory from the Confidential Memorandum. She added the following information:

⁹ 18 February Affidavit, [5]-[7]

- a. at that time, I was undertaking 4 units and working part-time to partly support myself. Throughout my undergraduate time I was undertaking work with teenagers with challenging behaviour and people with disabilities for Life Without Barriers. That assignment was due at about the same time as a number of other assignments, putting significant pressure on me to complete them all. As a first draft of this assignment, I cut and pasted material from various sources, with the intention of then paraphrasing the content into my own words. However, I ran out of time, and was not very proficient with paraphrasing. Accordingly, I quickly added references which I thought would be adequate. It was never my intention to claim the work of the sources as my own. It was in that context that my plagiarism was unintentional. As was pointed out to me at the May 2012 meeting, and I can see now, it was wholly inadequate and I was wrong to have submitted an assignment in that form;
- b. When Mr Kelly by email dated 21 May 2012 informed me that my assignment may contain instances of plagiarism, I was confused as I thought I had referenced all materials used. ...
- ...
- f. I endeavoured to arrange an appointment with Academic Literacies on a number of occasions around that time. I called Academic Literacies in the mistaken belief that was what was meant by Academic Language and Learning Success Program ('ALLSP'). I was unsuccessful in obtaining an appointment as I only received an answering machine and I wished to speak to someone rather than leaving a message. I intended to ask for Marilyn Kell, as her name had been provided to me. Whilst I did ultimately consult with ALLSP, it was not until the following year that this was done;
- g. I did borrow from a friend who had completed her studies a copy of the Australian Guide to Legal Citation and used it whenever appropriate legal citations were required. Although I had previously bought a copy, I had lost it before reading it and not replaced it; [*Spelling and grammar as original*]

The Applicant also disclosed in this affidavit another incident of incorrect referencing in a subject on Global Sociology. However this did not appear to have resulted in any referral to the Board of Inquiry or to have amounted to intellectual dishonesty.

[16] The Applicant concluded the 18 February Affidavit with the following:

16. In summary I can say I have learned a very valuable lesson from these matters. My actions have cost me extra effort to complete my studies, and emotional pressure. I am ashamed that I have let down my family who have helped financially support me to complete my studies, and have failed to uphold the finer traditions of the law. Since that time, I have endeavoured to ensure that all my work has complied with all necessary legal and ethical guidelines, irrespective of what pressures I have been under to complete tasks

[17] On 11 March 2015, Law Society Northern Territory (the ‘Law Society’) filed an affidavit of Professor McCrimmon. Professor McCrimmon’s affidavit annexed the File Note, the Confidential Memorandum, and the University’s ‘Student Breach of Academic Integrity Procedure’ that was in force at the relevant times. Also included, and attached to the Confidential Memorandum, was a copy of the Applicant’s Indigenous Peoples and the Legal System assignment and the corresponding SafeAssign report indicating a 90% similarity between it and other sources.

[18] This application came before the Court for hearing on 10 April 2015.

The Applicant's Submissions

[19] Counsel for the Applicant submitted that she had not intended to pass off other people's work as her own. He relied on *Re: Humzy-Hancock*.¹⁰ In that case, Philip McMurdo J considered that plagiarism required an intention on the part of the Applicant "to represent that the work of others was his own work".¹¹ Counsel submitted that no such intention could be discerned on the part of the Applicant. The plagiarism evident in her Trusts assignment was due to a misunderstanding amounting to an honest error which did not call for disciplinary action; and her Indigenous Peoples and the Legal System assignment was inadequately referenced because she ran out of time. Her counsel submitted that her misconduct was the result of poor work rather than deliberate intent.

[20] Counsel for the Applicant further submitted that the three affidavits¹² satisfied her obligation of full and frank disclosure of her academic misconduct. Her description of the Trusts assignment as an honest mistake was confirmed by the File Note, and her initial explanation of her Indigenous Peoples and the Legal System assignment was elaborated upon to make her assertions clearer yet remained consistent with her initial disclosure. Ultimately, counsel submitted that, in light of her study and

¹⁰ [2007] QSC 34

¹¹ [2007] QSC 34, [14]

¹² While the Applicant actually filed four affidavits, the 8 July Affidavit and the 10 July Affidavit were essentially the same.

work since her academic misconduct, the Applicant is currently a fit and proper person to be admitted and a declaration should be made to that effect.

Law Society Northern Territory's Submissions

- [21] The Law Society accepted the Applicant's initial account of the Trusts assignment as being an honest mistake in light of the File Note annexed to Professor McCrimmon's affidavit¹³ and did not seek to be heard in relation to this first instance of academic misconduct.
- [22] In relation to the Indigenous Peoples and the Legal System assignment, the Law Society drew the Court's attention to a number of factors.
- (a) The Applicant had been undertaking a Bachelor of Laws for two and a half years at the time the assignment was submitted, and she had been required to understand and use correct legal citation in this period.
 - (b) The Applicant initially attributed the academic misconduct to her "problem with referencing"; her being "under pressure"; and her unfamiliarity with correct legal citation;¹⁴ and said that, as a consequence, she had made a "big mistake" that was "not intentional".¹⁵ In the 18 February Affidavit, however, the Applicant said that she had

¹³ The file note annexed to the affidavit of Professor McCrimmon shows that the Applicant's answer to Problem 2 is almost a direct copy of Mr James' "discussion board post – Lecturer's feedback problem 2". It is difficult to understand why there would, in effect, be a model answer posted by the lecturer before the assignment was due (as seems to have occurred here) and easy to see how this would not be conducive to the development of a proper understanding of the nature of plagiarism or an understanding of what is required academically of a student submitting an assignment. Indeed it seems to have contributed to the Applicant's continuing erroneous idea that she would not have been committing plagiarism by using someone else's work in the Indigenous Peoples and the Legal System assignment if she had completed her original intention of "paraphrasing the content into my own words".

¹⁴ 8 July Affidavit, [19]

¹⁵ 10 July Affidavit, [22]

copied material “with the intention of then paraphrasing the content into [her] own words” but ran out of time and was not proficient with paraphrasing; and that she “quickly added references which [she] thought would be adequate” and thought she had “referenced all materials used”. The Law Society submitted that these two explanations were not reconcilable.

- (c) In response to Mr Danial Kelly’s email regarding the Indigenous Peoples and the Legal System assignment, the Applicant said that she had “referenced every material that [she] used”, but in the 18 February Affidavit she said she “thought [she] had referenced all materials used”. The Law Society submitted that these two statements were likewise irreconcilable.
- (d) The Law Society contended that Professor McCrimmon’s Confidential Memorandum, indicating that the Applicant initially admitted that she was pressed for time and simply copied and pasted information, is inconsistent with her later explanation that she had the intention of “paraphrasing the content into [her] own words” and “was not very proficient with paraphrasing” and accordingly “quickly added references which [she] thought would be adequate”.
- (e) The Applicant did not initially explain that she had intended to paraphrase the quotes. The reasons the Applicant gave in the 8 July Affidavit that the Board of Inquiry awarded her zero marks because her assignment was “based on the original Author’s work, incorrect paraphrasing, use of long quotation and failure to use quotation marks” is not a full and frank disclosure, given that Professor McCrimmon in his Confidential Memorandum commented that there had been “deceptive conduct”.

- [23] The Law Society relied on *Re: AJG*,¹⁶ in which the court stated that it would be inappropriate to “accept as fit to practise an applicant who responds to stress by acting dishonestly to ensure [their] personal advancement”. The Law Society submitted that the Applicant had engaged in cutting and pasting on two occasions and had not learnt from her experience in Trusts.
- [24] The Law Society also drew the Court’s attention to *Re Liveri*,¹⁷ where it was stated that an “applicant’s subsequent attitude to the established misconduct” is relevant to determining whether they are a fit and proper person. The Law Society again highlighted that the Applicant had not been full and frank in her initial disclosure.
- [25] The Law Society agreed with counsel for the Applicant that the necessary test when determining whether plagiarism had occurred was one of intent,¹⁸ but submitted that, in relation to the Indigenous Peoples and the Legal System assignment, the Applicant had the requisite intent. On her own admission she made the decision not to credit the original author’s work because she had run out of time.
- [26] Ultimately, the Law Society submitted that the Applicant’s conduct was indicative of “reckless laxity of attention to necessary principles of

¹⁶ [2004] QCA 88

¹⁷ [2006] QCA 152

¹⁸ *Re: Humzy-Hancock* [2007] QSC 34

honesty”¹⁹ militating against a finding that she was a fit and proper person to be admitted as a local lawyer.

Applicable Law

[27] The Court must be satisfied that an applicant is a fit and proper person to be admitted to the legal profession.²⁰ The role of the Board is to advise the Court (inter alia) whether or not the Board considers an applicant for admission to the legal profession is a fit and proper person to be admitted.²¹ In considering whether an applicant for admission is a fit and proper person, the Board is to have regard to the “suitability matters” set out in s 11. These include whether the person has been found to have engaged in academic dishonesty (including plagiarism).²² If the Board finds that an applicant is a fit and proper person to be admitted (and is eligible for admission and the application complies with the rules), it issues a compliance certificate to that effect.²³

[28] As was stated in *Re: Hampton*:

An applicant for admission is obliged to approach the Board, and later the court, with the utmost good faith and candour,

¹⁹ *Incorporated Law Institute of New South Wales v Meagher* (1901) 9 CLR 655, 681

²⁰ *Legal Profession Act 2006*, s 25(2)(b)

²¹ *Legal Profession Act 2006*, s 35

²² *Legal Profession Act 2006*, s 11(1)(ga)

²³ *Legal Profession Act 2006*, s 36

comprehensively disclosing any matter which may reasonably be taken to bear on an assessment of fitness for practice.²⁴

The obligation of candour “does not permit deliberate or reckless misrepresentation pretending to be disclosure”.²⁵

[29] In this case, the Board has not issued a compliance certificate, but has referred the question of whether the Applicant is a fit and proper person to this Court under s 32.²⁶ In dealing with this application, the Court has the same powers as the Board, and its decision is considered to be that of the Board.²⁷ On a referral under s 32, the Court may make the order or declaration it considers appropriate.²⁸

Is the Applicant a fit and proper person?

[30] There are two issues that need to be determined: first, whether the Applicant intended to pass off the work of others as her own; and second, whether she made full and frank disclosure to the Board of the circumstances surrounding the finding of academic misconduct made against her for her Indigenous Peoples and the Legal System assignment.²⁹ The first matter affects the nature of the disclosure that needs to be made. The second

²⁴ *Re: Hampton* [2002] QCA 129, [26], quoted in *In the matter of an application by Thomas John Saunders* [2011] NTSC 63, [6]

²⁵ *Re OG (a Lawyer)* (2007) 18 VR 164, 203 [123]

²⁶ *Legal Profession Act 2006*, s 32(1)

²⁷ *Legal Profession Act 2006*, s 32(3)

²⁸ *Legal Profession Act 2006*, s 32(4)

²⁹ The parties accept that the academic misconduct evident in the Trusts assignment can be attributed to an honest mistake.

matter concerns whether the Applicant fulfilled her obligations to the Board and the Court.

Did the Applicant intend to pass off the work of others as her own?

[31] I do not think the Applicant intended to pass off the work of others as her own.³⁰ Upon inspection of the Applicant's Indigenous Peoples and the Legal System assignment, it became apparent that most of her paper was copied directly from Megan Davis's article 'Indigenous Struggles in Standard-Setting: The United Nations Declaration on the Rights of Indigenous Peoples'³¹ without any modification. Paragraphs were also copied directly from a number of other sources, including a United Nations General Assembly press release³² and an Australian Human Rights Commission FAQ website.³³ There was little, if any, of the Applicant's own work in the assignment, save for the fact she assembled various sources into a single document. Nevertheless, the Applicant's assignment *did* contain references to the multiple sources she had directly copied from, albeit woefully inadequate ones.

[32] I consider it more likely than not that the Applicant's academic misconduct is attributable to her poor grasp of essay writing and referencing skills and,

³⁰ *Re: Humzy-Hancock* [2007] QSC 34

³¹ (2008) 9(2) *Melbourne Journal of International Law* 439

³² 'General Assembly adopts Declaration on Rights of Indigenous Peoples; 'Major step forward' towards human rights for all, says President' (Press release, UN Doc GA/10612, 13 September 2007)

³³ Australian Human Rights Commission, *United Nations Declaration on the Rights of Indigenous Peoples: Frequently Asked Questions*, <<https://declaration.humanrights.gov.au/resources/frequently-asked-questions>>

as she deposed, to her running out of time and submitting an assignment that was essentially incomplete. It is unlikely that the Applicant would have intended to pass off the work of others as her own while citing (albeit poorly and inadequately) the sources from which she was directly copying.

Did the Applicant make full and frank disclosure to the Board of the circumstances surrounding the finding of academic misconduct made against her?

[33] I am not convinced, however, that the Applicant was full and frank in her disclosures to the Board and the Court in her 8 July Affidavit, 10 July Affidavit and 6 October Affidavit. While I do not agree with the contention of the Law Society that her explanations are inconsistent with each other, they were initially incomplete and, as a result, misrepresented the nature of her conduct.

[34] The Applicant's initial disclosures in the 8 July Affidavit and 10 July Affidavit focused on her "problem with referencing" and the pressure she was under. These explanations are not inconsistent with her disclosure in the 18 February Affidavit that she had the *intention* to paraphrase the quotes and she *thought* the citations she provided would be adequate, and I am therefore of the view that the Applicant's initial declaration was not intended to be misleading. Nevertheless, it is apparent that her initial explanation was incomplete when considered in light of the explanation provided in her 18 February Affidavit:

... As a first draft of this assignment, I cut and pasted material from various sources, with the intention of then paraphrasing the content into my own words. However, I ran out of time, and was not very proficient with paraphrasing. Accordingly, I quickly added references which I thought would be adequate. It was never my intention to claim the work of the sources as my own. It was in that context that my plagiarism was unintentional. As was pointed out to me at the May 2012 meeting, and I can see now, it was wholly inadequate and I was wrong to have submitted an assignment in that form;

[35] The Applicant's 8 July Affidavit, 10 July Affidavit and 6 October Affidavit do not refer to the Applicant copying multiple sources. The impression they give is the opposite. To some degree, this can be attributed to the Applicant simply recalling that Mr Kelly had told her the assignment was "based on the original *Author's* work", an impression seemingly shared by Professor McCrimmon in his Confidential Memorandum. Nevertheless, the Applicant did not take the opportunity to clarify that her Indigenous Peoples and the Legal System assignment was cut and pasted from multiple sources until the 18 February Affidavit.

[36] In both the 8 July Affidavit and 10 July Affidavit, the Applicant deposed that she purchased a copy of the Australian Guide to Legal Citation, as advised by Mr Kelly. In the 18 February Affidavit, however, she clarified that she merely borrowed a copy from a friend, because she had previously purchased a copy, but lost it before reading it and had not replaced it. While her initial and later declarations are consistent in that she *did* purchase the Australian Guide to Legal Citation, her initial declaration was misleading in that it gave the impression she purchased it *after* Mr Kelly advised her to.

[37] In my opinion, the Applicant has not made a deliberate attempt to conceal the specifics of her academic misconduct from the Board or the Court. Nonetheless, I do not think that the Applicant has satisfied the onus, which rests on her, to demonstrate that she is a fit and proper person to be admitted to the legal profession. The Applicant's initial disclosures, while consistent with her later disclosures, were incomplete and, as a consequence, misrepresented the nature of her conduct. In this respect, the Applicant did not initially give full and frank disclosure of her academic misconduct and the surrounding circumstances. The Applicant's initial disclosures were not comprehensive and lacked the candour required of applicants to this Court.³⁴ The Applicant's disclosures in the 18 February Affidavit were far more satisfactory but they came over seven months after the Applicant had filed her first affidavit on 8 July 2014. I consider it likely that the initial inadequacies in disclosure were not, as the Law Society submitted, indicative of "reckless laxity of attention to necessary principles of honesty", but rather reflect a lack of understanding of the stringent nature of her obligation of disclosure to the Board and to the Court.

[38] Further, the Applicant has not sufficiently demonstrated that she has gained the requisite insight into legal citation, referencing, and plagiarism. Her explanation for the lack of proper referencing in the Indigenous Peoples and the Law assignment seems to make the erroneous assumption that it would

³⁴ *Re: Hampton* [2002] QCA 129, [26], quoted in *In the matter of an application by Thomas John Saunders* [2011] NTSC 63, [6]

not have been academically dishonest to copy the work of the authors of the sources she used, provided she “paraphrased” them in her own words. The Applicant has attended two appointments with the University’s Academic Language and Learning Success Program and consulted the Australian Guide to Legal Citation, but I am not convinced she has demonstrated the necessary insight into her academic misconduct,³⁵ and, accordingly, I am not convinced that the Applicant is presently a fit and proper person to be admitted to the legal profession.

[39] Academic misconduct is a serious matter. As was stated in *Wentworth v NSW Bar Association*:

... the right to practice in the courts is such that, on application for admission, the court concerned must ensure, so far as possible, that the public is protected from those who are not properly qualified ...³⁶

Correct referencing is essential to the ability of courts and academic institutions to test arguments and verify sources, as well as demonstrate that people have honestly declared work that is not their own and attributed it to the original source. Students must familiarise themselves with, and utilise, appropriate referencing to demonstrate their qualifications and understanding of topics. If applicants were not required to demonstrate these skills, the ability of courts and academic institutions to function would be severely hindered. As such, the courts must guard against those who do

³⁵ *Re Liveri* [2006] QCA 152

³⁶ (1992) 176 CLR 239, 251

not demonstrate that they can appropriately and honestly reference their sources.

[40] It would be advisable that the Applicant undertake a further course in legal ethics, or other suitable course of study (or perhaps prepare a written dissertation), to demonstrate that she has acquired the requisite understanding of her ethical obligations in relation to plagiarism and in relation to making full and frank disclosure of relevant matters to the Court.

[41] I order that the application be adjourned for a period of not less than six months to enable the Applicant to demonstrate to the Court, by whatever means she deems appropriate, that she has acquired the necessary understanding of her ethical obligations in relation to these matters.