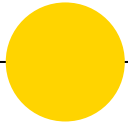


Suitability Matters Before & After Admission in Queensland





Overview

- Relevance
- Supreme Court's Jurisdiction
- Admission to the Profession
- Suitability for Practice
- Ongoing Conduct Issues
- Practical Matters



Relevance

- CLCs are a training ground for law students (clinical programs) and law graduates (PLT)
- CLC lawyers are often asked to move admissions for new solicitors
- Law schools seem to ignore the importance of law students understanding suitability issues from the beginning of their degree



Supreme Court's Jurisdiction

- Longstanding jurisdiction: *Re Costello* (1889)
- Early principles: repentance, openness, candour
- LPA refers jurisdiction for students and lawyers:
 - Eligibility for admission: s 30
 - Suitability for admission: ss 31-33
 - Admission process: ss 34-35
- Admission is determined by application and hearing



Admission Process

- 2 processes, tests of 'eligibility' and 'suitability'
 - Application for admission (The Court): s 31
 - Consideration of early suitability (The Board): s 32
- Applications must be in the approved form, manner and in accordance with the Rules: s 34
- Onus is on applicant to prove fitness

“... in deciding whether the applicant is a fit and proper person, the Supreme Court is required by statute to consider each of the suitability matters in relation to the applicant. The Supreme Court therefore must consider each of them in making its decision. It may not ignore, or diminish its consideration of, any of them by regarding it as more appropriate for consideration by the regulatory authority.”

“

Re Doolan [2016]



Early Suitability (s 32)

- Where a matter may adversely affect assessment
- Application for early suitability has 3 outcomes:
 - The LPAB makes the declaration (Board's assessment)
 - Referral to QCAT for a direction
 - Refuse to make the declaration
- Discretion remains with the Supreme Court
 - Court may rely on recommendation: sec 35
 - Appeal to Court from refusal to make declaration: sec 32

“The statutory status of the Board as decision-maker and contradictor does not transform it into a party in the ordinary sense. Its function remains, even when appearing before the court, “to help the Supreme Court by making a recommendation about each application for admission” in terms of s 39(1) of the Act.”

“

*KMB v Legal Practitioners
Admissions Board
(Queensland) [2017]*



Supreme Court

- Application to the Court: s 34
- Role of Court is to hear and decide applications: s 35
 - Court makes an order admitting the applicant if satisfied applicant is eligible and fit and proper person
 - Refuse the application if not satisfied
 - orders can be unconditional or conditional
- In determining application it may rely on the recommendation of the Board: s 39 (cf s 32)



Suitability Matters

- S 35(2)(a)(ii) is a wide-ranging enquiry: Mullins J
- S 31 'fit and proper person' by the Act
 - 14 separate 'suitability matters' (s 9) and other matters
 - Some are general, e.g. 'good fame and character'
 - Some are specific, e.g. Insolvency
- Law Admissions Consultative Committee Disclosure Guidelines (LACC Guidelines)
- Do the Guidelines apply post-admission suitability?



Post Admission?

- Become aware of pre-admission conduct after admission:
 - If disclosed no real issue: s 50
 - If not disclosed it may be refused: s 51
 - Might result in disciplinary proceedings



Suitability

- Suitability matters are very broad
 - Good Fame and Character: s 9(1)(a)
- Suitability reports can be obtained for police or health assessments: s 84
- Suitability matters do not occur in a vacuum
 - *Re Cohen v LPAB (No.2)* [2012] included criminal history, traffic history, bankruptcy and ASIC compliance history

“A person’s conduct may reveal the character, or aspects of the character, of the person. When an applicant for admission discloses past conduct, there are two sources of information about the applicant’s character: the past conduct itself, but also the extent and manner of the disclosure about the past conduct.”



“

Justice Mullins



General Principals

- Multiple Suitability Issues (esp. LACC Guidelines)
- Multiple Offending Conduct
 - *Re JY* [2016]: note Fraud – *Re Owen* [2005] (NZ)
- Effluxion of Time (ongoing flaw in character?)
 - cf *Re Borhani* [2013], *Re Liveri* [2006], *Re KMB* [2017]
- Candour
 - In *Re Davis* (1947) 75 CLR 409

“An understanding and acknowledgement of wrongdoing is vital to an assessment of rehabilitation.”



“

*Hilton v Legal Profession
Admission Board [2017]*



Specific Issues

- Criminal Conduct
 - Sec 9(1)(d)
 - LACC Guidelines 5(a)
 - Many cases: *Re Ziems* (1957), *Re Deo* [2005], *LSC v CBD* [2012], *Re Gadd* [2013], *Re MCF* [2015], *KMB v LPAB* [2017]
- Statutory condition to notify: s 57
 - Candour in disclosure is paramount post-admission also



Specific Issues

- Blending of traditional and contemporary tests
 - Fit and Proper Person: s 21
 - Good Fame and Character: s 9(1)(a)
 - Currently unable to satisfactorily carry out the inherent requirements of practice: s 9(1)(n)



Family Violence

- LACC Guidelines 5(b) but could be broader
- Key Issues
 - “Technical” v. Serious Breaches: *Re Hinds* [2003]
 - Full Court’s reasoning was antiquated – see para 7
 - Serious issue now: *Re Ayobi* [2017]
 - False allegations: *LSC v Rowe* [2017]
 - Sexual violence: *CBA (NSW) v Franklin* [2014]
 - Distinguish offences against minors: *cf A Solicitor* (2004); *Re Power* (2013)

“That a domestic violence order has been made against an applicant for admission is a serious issue.”

“

Douglas J in
Re Ayobi [2017] QSC 130

“Although the conduct giving rise to his convictions did not take place in the practice of law, or involve any dishonesty, the fact alone of the respondent's conviction of aggravated sexual assault was sufficient to justify disqualification from practice.”

“

*The Council of the New South
Wales Bar Association v Franklin
(No 2) [2014] NSWCA 428*

“The respondent's criminal conduct was inconsistent with qualities of integrity and willingness to comply with the law and revealed defects of character incompatible with the standards and behaviour required of a lawyer. As such it reflected adversely on his character and accordingly on his fitness to remain on the roll.”

“

The Council of the New South
Wales Bar Association v Franklin
(No 2) [2014] NSWCA 428



Academic Misconduct

- Suitability: s 9(1)(a)
- LACC Guidelines: 5(e)
- Strict approach of Chief Justice de Jersey
 - *Re AJG* [2004], *Re Liveri* [2006], *Re Humzy Hancock* [2007]
- Key Issues
 - Minor or major misconduct
 - What about student misconduct? AHRC Uni Report
- Applies to Practitioners also: *Re van Es* [2014]



Drug & Substance Use

- LACC Guidelines: 5(f)
- Multiple suitability issues, e.g. Criminal conduct with additional considerations
 - *Re L* [2015] (propensity to misuse alcohol)
 - *Re P* [2005] (importation of cocaine)
 - *Darveniza* [2000] (supply ice, ecstasy)
- Currently unable to satisfactorily carry out the inherent requirements of practice: s 9



Centrelink

- Suitability: s 9(1)(a)
- LACC Guidelines: 5(h)
- Key Issues:
 - Good fame and Character
 - *Re Valvo* [2014]; *Re Saunders* [2011]
 - cf *Investigation and Debt v Criminal Proceedings*



Capacity

- *Legal Profession Act*
 - Sec 9(1)(m),
- Guidelines
- Common Law
 - *LPAB v Doolan* [2016]
- Prospective

“...the symptoms exhibited by Mr Doolan rather than diagnosis itself of any condition that he had, as a key determinant of substantive suitability.”

“

Gotterson JA in
Re Doolan [2016] QCA 331



Link with Conduct Issues

- Unsatisfactory professional conduct (sec 418)
 - No express connection with sec 9, LPA
- Professional Misconduct (sec 419(2))
 - Express mention of sec 9, LPA
- Conduct capable of being UPC or PM (sec 420(1))



Practical Matters

- Understand the breadth of suitability matters
- Seek advice about options
- Make an early suitability application
- Full disclosure often involves evidence e.g RTI
- Written submissions on the law are helpful



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