



When suitability matters become a barrier to admission into the legal profession

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Admission to the legal profession in Queensland is not granted as a matter of course, even when an applicant has satisfied all academic and practical training requirements. The Supreme Court must also be persuaded that the applicant is a fit and proper person - a broad protective standard designed to preserve the integrity of the profession.

Applicants for admission to the legal profession are under a strict obligation to make full and frank disclosure of any matters that may bear upon their suitability. These are commonly referred to as "[suitability matters](#)". Suitability matters such as domestic violence orders, lengthy traffic histories, criminal conduct, academic misconduct or tax issues can, at times, pose significant obstacles.

Queensland case law makes clear that where suitability matters are not properly disclosed or addressed, an application for admission may be refused even where the applicant has otherwise satisfied all academic and practical legal training requirements.

In this blog, we break down what being "fit and proper" really means and explore Queensland cases where suitability issues presented hurdles for admission into the legal profession.

The phrase 'fit and proper person' for admission to the legal profession

When applying for admission into the legal profession, the Court must be satisfied that an applicant is "[a fit and proper person](#)" to be admitted to the legal profession. The Court also considers whether an applicant is currently of "of good fame and character". Each of these tests reflects the overarching requirements of the pre-existing common law.

There are many judicial explanations of what the phrase “fit and proper person” means in different contexts. The leading case, *Frugtniet v Board of Examiners [2002] VSC 140*, relevantly defines “fit and proper person” as follows:

“The requirement for admission to practice (sic) law that the applicant be a fit and proper person, means that the applicant must have the personal qualities of character which are necessary to discharge the important and grave responsibilities of being a barrister and solicitor. A legal practitioner, upon being admitted to practice, assumes duties to the courts, to fellow practitioners as well as to clients. At the heart of all of those duties is a commitment to honesty and, in those circumstances when it is required, to open candour and frankness, irrespective of self interest or embarrassment.

The entire administration of justice in any community which is governed by law depends upon the honest working of legal practitioners who can be relied upon to meet high standards of honesty and ethical behaviour. It is the legal practitioner who is effectively the daily minister and executor in the administration of justice when advising clients, acting for clients, certifying documents, and making presentations to courts, governments, other professionals, and so on. The level and extent of trust placed in what legal practitioners say or do is necessarily high and the need for honesty is self-evident and essential.”

Example cases that considered applications for admission to the legal profession

Re AJG [2004] QCA 88

In the matter of an application by AJG for admission to the legal profession, the Queensland Court of Appeal considered an applicant who had engaged in academic misconduct (plagiarism) during his practical legal training.

AJG copied substantial portions of another student’s work during his practical legal training. A letter from AJG’s practical legal training provider noted that the plagiarism was substantial. AJG was failed for the subject and was required to undertake the subject again. At the time AJG committed plagiarism, he was experiencing significant external stressors of a financial and domestic nature, including the loss of his employment.

Whilst AJG’s conduct occurred in an academic setting rather than in actual legal practice, the Court of Appeal held that such behaviour raised serious concerns about AJG’s honesty and integrity, which were fundamental qualities for lawyers. Specifically, the Court of Appeal held significant concerns that AJG had responded to stress by being dishonest for his own personal advancement.

The Court of Appeal did not permanently bar AJG from applying for admission but adjourned the application for a minimum period of six months.

In the matter of GBK [2022] QCA 129

The applicant, GBK, had a significant history of criminal offending committed between the ages of 20 and 24, including three counts of possessing child exploitation material, four counts of recording or observing a person in breach of privacy, and one Commonwealth offence of accessing child exploitation material online. These offences resulted in a suspended term of imprisonment, probation, and a period as a reportable offender under Queensland child protection legislation.

GBK was 30 years old at the time of their application for admission. Although GBK was remorseful and the offending had ceased several years earlier, the Court held that the seriousness of the conduct, the extended period over which it occurred, and GBK's explanation for it meant that he was not, at this time, a fit and proper person to be admitted.

Importantly, the Court emphasised that this did not amount to a permanent bar, but rather that more time and demonstrated rehabilitation would be required before admission could be reconsidered.

Re Liveri [2006] QCA 152

In the matter of an application by Liveri, the Queensland Court of Appeal considered an applicant who had engaged in repeated academic misconduct during her law degree, including plagiarism.

Liveri had committed three separate instances of plagiarism whilst completing her law degree. The first instance of academic misconduct occurred when Liveri submitted, as her own work, with only minor adjustments, an article published by a professor during the subject Law of Trusts. The second instance of academic misconduct occurred when Liveri quoted substantial commentary by a professor without attribution during an Administrative Law assignment. The third instance involved Liveri quoting verbatim from a government publication without acknowledgement.

The Court of Appeal refused to admit Liveri as a legal practitioner due to her repeated and serious instances of academic misconduct and instead resolved to adjourn Liveri's application for admission for a minimum period of six months.

Beyond Liveri's plagiarism, a significant factor in the Court's decision was Liveri's lack of genuine insight into her misconduct. Liveri's failure to acknowledge and properly take responsibility for her actions suggested that she did not appreciate how her previous misconduct reflected on her character as a legal practitioner.

In the matter of an application by Jashneel Prakash [2022] QCA 224

Mr Prakash disclosed a complex history of suitability matters, including a history of traffic infringements, SPER debts, Centrelink overpayments and a criminal history for convictions, including stealing, wilful damage, drug offences, breaches of bail and wounding. The criminal offences occurred at a time when Mr Prakash was aged between 17 to 19 years old. At the time of his application for admission, he was 34 years old.

The critical problem for Mr Prakash was his non-disclosure and lack of candour surrounding his suitability issues. In particular, in his affidavit of compliance Mr Prakash provided a simplified account of his wounding convictions but omitted key details which arose in the sentencing remarks.

When the Court of Appeal obtained and reviewed those sentencing remarks, it became clear that the circumstances of Mr Prakash's wounding offences were more serious and complex than he initially described, including his role in the incident, the number of victims and injuries caused.

The Court remarked that Mr Prakash had not met his duty to provide full and frank disclosure, which raised serious doubts about his insight and judgment. Due to these concerns, the Court held that Mr Prakash was not, at present, a fit and proper person to be admitted.

The Court left open the possibility of a fresh application in the future but made clear that the mere passage of time between the current application and any future application would not be enough; Mr Prakash was required to gain experience in the profession under supervision.

Other suitability issues

While many of the cases discussed above focus on criminal or academic misconduct, the Court of Appeal has also had to grapple with other kinds of suitability concerns, such as Centrelink overpayments and a failure to lodge tax returns.

In *Re Benchemam [2018] QCA 65*, the Court of Appeal considered whether Ms Benchemam could be admitted to the legal profession despite Centrelink overpayments and the late lodgement of income tax returns.

In allowing Ms Benchemam's admission, the Court had particular regard to the following:

1. Ms Benchemam identified her dealings with Centrelink as a suitability matter and disclosed it, and she promptly repaid the overpayment once the issue was identified;
2. Whilst the failure to lodge late tax returns, in some circumstances, can be a very serious matter, Ms Benchemam's circumstances were an example of a young person on a limited income misunderstanding her obligations. The Australian Taxation Office did not impose any penalties, and she had even received a refund; and

3. Since the incidents, Ms Benchemam had demonstrated exemplary professional conduct. A barrister for whom she worked for, provided an affidavit attesting to her honesty, diligence and suitability.

Key takeaways

Whilst there is no “one size fits all” approach, the above cases demonstrate that:

1. full and honest disclosure is essential;
2. time can heal - demonstrating sustained good conduct over time can demonstrate change;
3. evidence of rehabilitation, insight and accountability is important; and
4. credible referees or mentoring can strengthen admission applications.

Conclusion

While the presence of suitability matters does not automatically bar admission to the legal profession, it can impose additional requirements on applicants to demonstrate that they are currently fit and proper.

Gilshenan &Luton Legal Practice regularly assist applicants applying for admission into the legal profession. If you are concerned about your suitability matters or what to disclose in your application for admission, please contact our office.

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