

DISCLOSURE OF PRIOR STUDENT ACADEMIC MISCONDUCT IN ADMISSION TO LEGAL PRACTICE: LESSONS FOR UNIVERSITIES AND THE COURTS

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Universities are faced with an apparent increase in incidents of student academic misconduct, in particular allegations of plagiarism. An adverse finding may have significant consequences for a student in their academic progression. A plagiarism incident, with or without an adverse finding, may have longer term consequences for some students. These include students seeking admission to legal practice. This paper examines a number of key cases illustrating how the admitting courts are dealing with such applicants and the recent changes to admission disclosure rules implemented to meet the problem. The paper discusses the implications of these developments for the higher education community and the courts.

I INTRODUCTION

An adverse finding of academic misconduct made against a student while at university is a serious matter and may have consequences beyond their graduation. One example of this is where the student later seeks admission to practice as a legal practitioner. This paper examines a number of cases illustrating how the admitting courts are dealing with such applicants and recent changes to admission disclosure rules made in response to the problem. The first section of the article provides a brief background discussion of academic misconduct at universities and the disclosure requirements of an applicant for admission to legal practice. The second section discusses several key cases on the issue. The final section explores some of the consequences of the current position taken by the courts in relation to the matter.

When these cases are placed against a background of larger numbers of higher education students, the increasing complexity of higher education teaching and learning models and of the accompanying administrative procedures, as well as the apparent

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increasing levels of plagiarism in the academic community, it would appear the courts may not have realised the full implications of their current approach to the issue. Although admission to practice comes after legal studies at university have been completed, the cases also have implications for universities in how they respond to the initial allegations. Some of the matters the article highlights include the importance of the proper handling of the allegation at all stages in the process and the consequences of choices made by the student during this time. Recent clarification of the disclosure rules has sought to reduce the potential for confusion about the obligations of disclosure of plagiarism incidents on admission to legal practice. These issues are significant for law students and law schools.¹ They are also important for the wider higher education community in which will be found numbers of potential legal practitioners undertaking a first degree other than law, who are generally unaware that plagiarism incidents may have an impact on their eligibility to be admitted to practice.

II BACKGROUND

A *Plagiarism as Academic Misconduct at University*

Much has been written in the press and the academic literature about the observed increase in plagiarism by university students.² The more obvious reasons for the increase include: an Internet full of easily downloadable information; a developed ‘cut and paste’³ and ‘share’ online culture; increasing numbers of students who are time poor because they must undertake paid work but still find time to attend class, complete assignments and study for exams; and increasing class sizes where the odds of being caught may look to be in the copyist’s favour. Part of the rise in reported incidents of plagiarism may be a result of the Internet providing electronic detection tools (from the

¹ Especially in light of the Council of Law Deans’ consideration of proposed agreed national standards for law schools covering matters like curriculum (including ‘the values of ethical legal practice and professional responsibility’): L Slattery, ‘Law Deans Divided on Standards Proposal for Accreditation’ (2008) 46(4) *NSW Law Society Journal* 22; M Pelly, ‘Law Schools Set Standards to Raise Legal Bar’, *The Australian* (Sydney), 18 July 2008, 35. Professional conduct is part of the 11 ‘areas of knowledge,’ (the ‘Priestley 11’) which grew out of the work of the Consultative Committee of State and Territory Law Admitting Authorities: M Keyes and R Johnstone, ‘Changing Legal Education: Rhetoric, Reality, and Prospects for the Future’ (2004) 4 *Sydney Law Review* 537, 544.

² H Alexander, ‘Black Marks: Plagiarists Swarm Unis’, *Sydney Morning Herald* (Sydney), 20 November 2006, 1; C Allen, ‘Taste: Their Cheatin’ Hearts’, *The Wall Street Journal* (New York), 11 May 2007, W11; D Atkinson and S Yeoh, ‘Student and Staff Perceptions of the Effectiveness of Plagiarism Detection Software’ (2008) 24(2) *Australasian Journal of Educational Technology* 222; A Frean, ‘Students Cheated of Adventure’, *The Australian* (Sydney), 25 October 2006, 36; X Kleinig, ‘Unis Crack Down on Cheats’, *The Advertiser* (Adelaide), 8 October 2007, 15. Plagiarism allegations are not limited to the students. Academics have also come under scrutiny for such conduct, especially for self plagiarism eg recycling earlier material: B O’Keefe, ‘Work, So Nice, They Used it Twice’, *The Australian* (Sydney), 6 June 2007, 29; and for plagiarism in an administrative context: M Sainsbury, ‘Uni Chief Lifted Islam Text from Wikipedia’, *The Australian* (Sydney), 26/27 April 2008, 1; H Alexander, ‘Silence Persists in Halls of Music’, *The Sydney Morning Herald* (Sydney), 8 October 2007, 17. Plagiarism has been referred to as a ‘worldwide problem’: V Johnson, ‘Corruption in Education: A Global Legal Challenge’ (2008) 48 *Santa Clara Law Review* 1, 73.

³ Some argue the cut and paste culture of students is encouraged by the way education is ‘packaged and delivered,’ with lecturers ‘spoonfeeding [their students] a diet of handouts and PowerPoint presentations’: Frean, above n 2, 36, referring to comments by Baronness R Deech, head of the Office of the Independent Adjudicator for Higher Education in the UK. Others argue cut and paste by students is ‘just part of the way students learn’; ‘a new and fast and obviously digital way of synthesizing information’: A Trounson, ‘Cut and Paste not Plagiarism’, *The Australian* (Sydney), 16 July 2008, 24 (referring to comments by Dr Dale Spender).

basic Google search to the more sophisticated plagiarism detection software such as Turnitin) and from the increased academic interest in the issue.

In the past, instances of such misconduct might generally have been handled on an informal basis, usually by the course co-ordinator. The student might be punished with a zero grade for the assignment or in more serious circumstances, a subject failure, but such incidents rarely became part of the student's permanent record. Nowadays the picture is far more complicated. Students tend to see themselves as paying customers for services delivered by universities and are far more appeal procedure-literate. This has resulted in the development of detailed administrative rules for the handling of allegations of student academic misconduct.⁴

The term 'academic misconduct' is used here in the generic sense. There are various terms adopted in university rules such as 'academic misconduct' or 'academic dishonesty' but whatever the particular term used, the conduct generally includes matters such as plagiarism, recycling of work, fabricating data and contracting others to write assignments or sit examinations.⁵ Some of the particular forms of academic misconduct are further defined in university rules. An example of this is plagiarism.

There are various definitions of plagiarism but it is generally understood to mean the appropriation of the work (the words or ideas) of another without attribution.⁶ It is a breach of ethical principles rather than legal rules.⁷ There appears to be genuine widespread confusion about the precise parameters of the term.⁸ The definition of plagiarism adopted in university rules therefore tends to be detailed; for instance it may distinguish between intentional acts (eg dishonest plagiarism) and those acts done carelessly or recklessly (eg negligent plagiarism).⁹ The failure to clearly define plagiarism, in particular whether it requires intent, can create confusion.¹⁰

⁴ Academic misconduct is usually dealt with as an 'administrative matter': R Billings, 'Plagiarism in Academia and Beyond: What is the Role of the Courts?' (2003-4) 38 *University of San Francisco Law Review* 391, 409.

⁵ For example: University of Sydney, *Academic Board Resolutions: Academic Honesty in Coursework* (5 April 2006) 5.

⁶ M Wyburn and J MacPhail, 'The Intersection of Copyright and Plagiarism and the Monitoring of Student Work By Educational Institutions' (2006) 11(2) *Australia & New Zealand Journal of Law & Education* 73, 74-5.

⁷ In some circumstances plagiarism may also amount to a breach of legal rules, for example infringement of copyright, see *ibid* 75-81.

⁸ Recent examples include controversies about whether the more formal rules of attributing sources apply to the administrative as well as to the academic side of university activities and to academics in their writings for the press as opposed to scholarly publications: Sainsbury, above n 2, 1; Alexander, above n 2, 17; R Manne, 'I am Totally Innocent' (Letter to the editor) (2008) LII(6) *Quadrant* 5; J Topsfield, 'Copycat Barbs Ignite New Front in Culture War', *The Age* (Melbourne), 6 June 2008, 5.

⁹ For example University of Sydney, *Policy and Procedure Student Plagiarism: Course Work* (15 February 2005) 2-3, under which negligent plagiarism attracts counselling and a warning, while dishonest plagiarism attracts more serious penalties.

¹⁰ LeClercq gives an example of conflicting definitions of plagiarism in various publications at the same university discussed in an unreported case (*Wait v University of Vermont*) referred to by R Mawdsley, 'Plagiarism Problems in Higher Education' (1986) 13 *Journal of College and University Law* 65, 69; T LeClercq, 'Failure to Teach: Due Process and Law School Plagiarism?' (1999) 49(2) *Journal of Legal Education* 236, 244. LeClercq also refers to the confusion that arises with rules attempting to draw lines between acceptable collaboration and collaboration that falls foul of plagiarism rules: at 247.

At the same time as the rules about academic misconduct have become more complicated, the practice of teaching, including the varieties of assessment tasks students are required to undertake, has also grown in complexity. The university environment is no longer the relatively simple world of individual assignments and examinations that it once was; for instance, employer demand for the development of skills of communication and collaboration, as well as stretched teaching resources, have increased the popularity of group assignments. This means students must undertake a greater number of assessment tasks where the academic rules of plagiarism may be misunderstood or deliberately breached.

Students newly arriving at university are exposed to far more formal academic rules of acknowledgement of sources across a greater range of assessment tasks than they have been used to in their previous high school studies. These formal rules are also worlds away from the mashup¹¹ culture students experience everyday on the Internet. Some commentators have been critical of the quality of the teaching of these rules of academic behaviour by the universities. While the universities ensure there are detailed rules in place, the question is whether adequate time is taken in the curriculum to explain the reasons behind the rules and explore their practical application across the variety of assessment tasks students will meet in their studies.¹² For example universities take various measures to draw students' attention to their obligations in relation to avoiding plagiarism. These often include requirements for an assignment coversheet containing declarations (hardcopy or online) as to the originality of the student work and knowledge of the university rules about plagiarism. But the question is whether this 'tick the box' on the assignment coversheet approach is effective in alerting students to their responsibilities to comply with the relevant academic rules and the consequences of their failure to do so.

B *Disclosure of Academic Misconduct on Admission to Legal Practice*

A breach of the increasingly more complex rules dealing with academic misconduct at university may have serious consequences for the student even after they have graduated. One example of this is when a student later seeks admission to legal practice. In order to be admitted to practice as a legal practitioner,¹³ apart from certain academic and practical legal training requirements, the applicant must be a 'fit and proper person to be admitted.'¹⁴ When applying for admission, the applicant is obliged to disclose matters having a bearing on this issue.

¹¹ Mashup 'originally referred to the practice in pop music (notably hip-hop) of producing a new song by mixing two or more existing pieces' but it also refers to 'a web application that combines data from more than one source into a single integrated tool', *Wikipedia* <<http://en.wikipedia.org>> at 20 February 2008.

¹² LeClercq, above n 10, 237.

¹³ Essentially a state matter but increasingly based on model national rules: Law Council of Australia, *National Practice - The Model Laws Project and National Legal Profession Model Bill & Model Regulations* <<http://www.lawcouncil.asn.au/natpractice/modellawproject.html>> at 11 February 2008. Admission to practice is administered by state legal profession admission boards eg NSW Legal Profession Admission Board, Board of Examiners in Victoria and South Australia, WA Legal Practice Board.

¹⁴ For example under the *Legal Profession Act 2004* (NSW) s 31 the Supreme Court may admit an applicant as a lawyer if the Legal Profession Admission Board advises the Court the applicant 'is eligible for admission' and 'is a fit and proper person to be admitted.' In deciding whether the applicant is a fit and proper person to be admitted, the Board must consider the 'suitability matters' set out in s 9 (eg 'whether the person is currently of good fame and character') and it may consider

An adverse finding of academic misconduct is a matter that must be considered by the applicant for admission when he or she decides whether any disclosure is necessary.¹⁵ For example under the *Legal Profession Admission Rules 2005* (NSW) the application for admission (Form 10) makes provision for the following declaration: ‘6.8 I am not and have never been the subject of disciplinary action in a tertiary education institution in Australia or in a foreign country that involved an adverse finding.’ If the declaration cannot be made, the applicant must attach a signed and dated disclosure of the matter (at 6.12). The application form requires all applicants to grant the following authorisation: ‘6.13 I authorise the Board to obtain from any relevant institution at which I have pursued any course of study or training, such documents as the Board considers necessary for the purpose of its determination of whether I am a fit and proper person to be admitted as a lawyer.’

The issue of disclosure of plagiarism incidents is not only relevant to law students who are likely to be alerted to the potential problem when they enter the law faculty and reminded of it throughout their degree programme.¹⁶ It is also relevant to the numbers of university students who undertake studies other than law and later decide to study law at graduate level. Until they arrive at the law faculty, these students generally would be unaware of the potential significant effect of an adverse finding of academic misconduct on their later entry into legal practice. The matter also has potential to impact on those lawyers already admitted to practice. The courts not only admit lawyers to practice but also have an inherent power to discipline them.¹⁷ This means a failure to make an appropriate disclosure when being admitted may later form the basis for an application to strike the lawyer from the roll of legal practitioners.

‘any other matter it considers relevant’ (s 25). Section 38 enables the Board to make admission rules under the Act (see the *Legal Profession Admission Rules 2005* (NSW)). Members of professions other than law may also be subject to scrutiny as ‘otherwise a fit and proper person’ prior to registration by regulatory agencies. Examples of this are auditors and liquidators, both of whom are registered under the *Corporations Act 2001* (Cth) (see ss 1280, 1282) but academic misconduct does not appear to be part of the considerations on their registration: Australian Securities and Investments Commission, *Regulatory Guides* 180 and 186.

¹⁵ A similar position exists in many states in the US: C Jacobson, ‘Academic Misconduct and Bar Admissions: A Proposal for a Revised Standard’ (2007) 20 *Georgetown Journal of Legal Ethics* 739, 739, referring to the inclusion in the *Code of Recommended Standards for Bar Examiners* and state rules of ‘academic misconduct’ as a relevant factor for evaluating ‘Moral Character and Fitness’ for admission to practice. Like Australia, admission to practice is a state court matter in the US. The courts are assisted by state Boards of Bar Examiners whose decision to admit or reject an application for admission is advisory: E McCulley, ‘School of Sharks? Bar Fitness Requirements of Good Moral Character and the Role of Law Schools’ (2000-2001) 14 *Georgetown Journal of Legal Ethics* 839, 842. In the US students may also face questions as to their character and fitness to practice at the earlier stage of application to the law school: McCulley, 851. Disclosure requirements on admission to practice apply in Pacific region countries and findings of academic misconduct, although not expressly referred to in the relevant rules, would appear to be relevant to the question of fitness to practice: A Jowitt, ‘The Impact of Plagiarism on Admission to the Bar: Re Liveri [2006] QCA 152’ (2007) 11(2) *Journal of South Pacific Law* 213, 216.

¹⁶ See, eg: The University of Adelaide, *Law School Policies and Procedures - Assessment, Plagiarism, Cheating and Other Forms of Academic Dishonesty* <<http://www.law.adelaide.edu.au/student/assessment/>> at 12 February 2008.

¹⁷ *In the matter of OG* [2007] VSC 520. According to Le Mire, the inherent power of the superior courts to discipline lawyers can be traced to the *Charter of Justice 1823* (UK): S Le Mire, ‘Striking off: Criminal Lawyers and Disclosure of their Convictions’ (2005) 79 *Australian Law Journal* 641, 643.

III THE CASES

The recent introduction of more detailed requirements as to disclosure of incidents arising during an applicant's tertiary studies appears to be a response to a series of cases involving earlier allegations of plagiarism made against students at several Australian universities. The legal principles governing the nature of the disclosure required by an applicant for admission to legal practice revealed in the cases are not controversial. However, commentators have generally chosen not to examine in any detail how the legal principles have been applied to controversial facts arising in the environment of the modern university. Consequently the discussion has so far failed to draw attention to important aspects of the issue: the potential for genuine student confusion about their obligations in relation to plagiarism (especially as it relates to collaborative work), the consequences of inadequate record keeping when events are revisited some time later by the courts and the apparent willingness of the admitting court, when considering the appropriateness of the disclosures made, to re-examine the earlier events and to make findings about the earlier allegations of plagiarism. This is illustrated by the first case discussed below. Several commentators see the outcome of the case as anomalous in terms of the basic legal principles but its outcome makes more sense in light of a closer examination of its facts.

No doubt the universities have handled successfully, or at least without controversy, a greater number of claims of student misconduct than these few cases that have made it to court. A detailed discussion of the cases nevertheless provides useful examples of where the processes broke down and therefore where the universities might improve in the future.

While the legal principles applied in the cases concentrate on the disclosure to be made, inevitably this requires the courts to revisit the original circumstances of the student misconduct. Reflecting on the details of these cases should provide the courts with a greater understanding of the challenges facing the students, academics and administrators of the modern university when such incidents occur. At the same time it may provide a warning; as experienced by the universities, the courts may also find themselves having to provide significant additional administrative resources in order to deal appropriately with this issue.

An outside observer reviewing the cases cannot help but feel sympathy at times for students caught up in these incidents, as well as for the academic and administrative staff involved. Some commentators appear to very quickly assume guilty intention on the part of some of these students¹⁸ but in some instances there is cause for criticism of the academic staff involved. In these circumstances the discussion below does not include details of the students (other than as revealed in the case names), academics and others identified in some of the cases.

¹⁸ Especially in relation to the case of *Law Society of Tasmania v Richardson* [2003] TASSC 9. See, eg, Y Ross, 'The Case for Candour: Assignment Collusion Plagues Would-be Lawyers', *The Australian* (Sydney) 11 April 2008, 3 ('I feel that it was obvious that Richardson had the intention not to disclose a serious matter'). Some feedback received by the author on an earlier version of this paper appeared to condemn the student in that case in light of the named academics involved; apparently because of the academics' seniority and the area of academic interest (ethics) of one. The evidence in the case was that the academics' 'had difficulty' recalling the events. The court 'found all witnesses to be doing their best to give accurate and truthful evidence': *The Law Society of Tasmania v Richardson* [2003] TASSC 9, [3].

A *Law Society of Tasmania v Richardson*¹⁹

The first case to be discussed was extraordinary in a number of respects. It was an application by a state law society to have three legal practitioners removed from the roll; the son who had been involved in a plagiarism incident at law school and his legal practitioner parents who had been involved in his admission to practice.

In 1999 R was a fifth year arts/law student at the University of Tasmania. His Equity & Trusts assignment that year was a drafting exercise involving a superannuation trust deed. The assignment attracted no marks; it was to be judged on a pass/fail basis only but a pass for the assignment was a prerequisite for sitting the final three hour closed book exam for the subject.²⁰ The submission procedures for the assignment involved a signed coversheet including statements that the assignment ‘contains no material previously published or written by another person except where due reference is made in the text’ and the submitting student is ‘aware that plagiarism is serious academic misconduct.’²¹

R and seven other members of the class later faced allegations of academic misconduct²² in respect of the assignment.²³ The allegation made against R was originally described as ‘copying’ amounting to academic misconduct;²⁴ R’s assignment answers were alleged to be ‘near identical’ to those of another student.²⁵ At the relevant time the university rules required all allegations (serious and less serious) to be referred to the university Academic Misconduct Committee.²⁶ But there was a problem; the committee was not due to meet until after the date scheduled for the final exam (9 June). It was decided the students would be permitted to sit the exam pending the outcome of the committee’s deliberations.

When the committee later conducted hearings in relation to the various allegations, most of the eight students had either one or both parents present. The university rules prohibited a legal practitioner from appearing before the committee. As both R’s parents were legal practitioners, he was accompanied instead by a fellow law student.²⁷ R was

¹⁹ [2003] TASSC 9.

²⁰ Ibid [8].

²¹ Ibid [11].

²² Defined in cl 1.2.1 of the *Ordinance of Student Discipline* made by the Council of the University of Tasmania under the *University of Tasmania Act 1992*: ibid [5].

²³ Ibid [10]. Allegations of academic misconduct relating to the same assignment were found established not only against R but also against six of the other students: ibid [21]. There was no relationship between the allegations made against R and those made against the other students but the number of allegations arising in relation to the one assignment lends support to the view that such conduct is a more general problem.

²⁴ Letter by the Head of School to R dated 3 June 1999: ibid [13]. Under the relevant ordinance copying would amount to academic misconduct if it constituted ‘other conduct by which a student-(a) seeks to gain, for themselves or any other person, any academic advantage or advancement to which they or that other person are not entitled’: *The Ordinance of Student Discipline* cl 1.2.1.

²⁵ *Law Society of Tasmania v Richardson* [2003] TASSC 9, [10].

²⁶ The judgment indicates the policy was later changed so that less serious allegations of academic misconduct are now dealt with at the local level ie by the Head of School: ibid [6].

²⁷ Although at the time of the original assignment his mother helped R locate information sources that could assist with the assignment and knew about the work he had done for it, she was overseas when the hearings took place. The committee rejected R’s application for an adjournment of the hearing until his mother could appear as a witness but a statement from her was tendered at the committee hearing: ibid [37], [38], [43].

not permitted to be present when the three other witnesses (two lecturers and the other student involved) gave evidence to the committee.²⁸ In response to the allegation that his assignment was ‘near identical’ to that of the other student, R admitted he had worked on the assignment with the other student but claimed this co-operative approach was accepted by the law school and in acting in this way he had not intended to obtain ‘an academic advantage to which he was not entitled’ within the relevant university ordinance’s definition of academic misconduct.²⁹

On 29 June, 1999 the university Academic Misconduct Committee found the allegation of academic misconduct against R established.³⁰ However its decision failed to disclose the nature of the academic misconduct found to be proven against R ie what part of the definition of academic misconduct was being relied upon. In its decision the committee acknowledged R’s belief he had engaged in acceptable co-operative conduct but decided ‘working co-operatively does not absolve a student from taking individual responsibility for the originality of his or her work.’³¹ The committee determined the penalty would be a reprimand and no credit for the assignment.³² In its decision the committee mentioned that when later seeking admission to practice, ‘there would be an expectation’ that R disclose the reprimand to the court³³ and it referred to the case of *The New South Wales Bar Association v Davis*, a case that on its face does not appear to be relevant to R’s circumstances.³⁴

Because the students involved in the allegations of academic misconduct had already sat the exam that was dependant on the satisfactory completion of the assignment, understandably there was some confusion about how the committee’s penalty of ‘no credit’ for the assignment would now be imposed. The matter was referred back to the committee. On 16 August it recommended the students be required to submit additional work, the penalty of failure in the course being regarded by the committee as an ‘excessive response to the level of misconduct of the students.’³⁵ In the end the law school chose not to follow this second recommendation. Those students who had passed the exam were not required to submit further work.³⁶ R failed the exam but he was granted a supplementary exam later in the year, which he passed.³⁷

²⁸ R was given a copy of the other student’s written statement to the committee near the end of the making of his own submissions to the committee: *ibid* [44].

²⁹ *Ibid* [14].

³⁰ *Ibid*.

³¹ *Ibid* [15].

³² *Ibid*.

³³ *Ibid* [19].

³⁴ (1963) 109 CLR 428. It was an appeal in relation to an order granting the restoration of a barrister’s name on the Roll of Barristers after he failed to disclose prior convictions when he was admitted to practice and was also involved in ‘unseemly conduct’ after he was struck from the roll. The appeal was upheld because the court had failed to consider properly the applicant’s fitness to act as a barrister despite his past conduct and his readmission was not justified in the circumstances. The committee’s reference to the issue of disclosure on admission might suggest it took account of this consequence when it determined the penalty to be imposed on the student, although later in the Supreme Court of Tasmania Crawford J ‘suspect[ed]’ that all the committee was doing was giving R its opinion on the matter: *ibid* [19], [20].

³⁵ *Ibid* [23].

³⁶ *Ibid*.

³⁷ *Ibid* [24]. The mother’s evidence indicated the further test had been granted because R had failed ‘by only a few marks’: *ibid* [53].

On 13 July R appealed the committee's finding of academic misconduct to the Discipline Appeals Committee³⁸ on grounds that included denial of natural justice. He argued that he had been denied an adequate opportunity to respond to the evidence of other witnesses at the committee hearing ie the lecturers and the other student whose work was alleged to be the same as his.³⁹ At the time his father was of the view that R should apply to the Supreme Court instead of appealing the committee's finding to the Appeals Committee but he left the decision to R and his mother. The hearing of the appeal was not conducted within the period set out in the rules (within 21 days of the appeal being lodged).⁴⁰ R did not initially persist with the appeal when the hearing did not occur as required because by this time he had formed the view he would be able to complete his degree, commence the legal practice course and he need not disclose the adverse finding on his admission.⁴¹

R undertook a legal practice course in the first half of 2000 and applied for admission to practice in July that same year. According to his evidence, R believed he was not obliged to disclose the academic misconduct matter on his admission and so his application for admission made no reference to it. As part of the admission process his father supplied an affidavit attesting to his son's 'good fame and character' and that he was a 'fit and proper person' to be admitted.⁴²

There was conflicting evidence about how R and his parents formed the view that disclosure of the incident was unnecessary. R and his mother gave evidence that from their meetings with law school staff, they understood disclosure was not needed. Various members of the law school, including its head who met with R and with his mother during the relevant time, could not recall details of these meetings,⁴³ in particular their advice about the effect of the committee's adverse finding of academic misconduct on R's application for admission to practice.

R was admitted to practice in August 2000.⁴⁴ At the hearing of the application for admission, his father moved his admission and his mother also appeared at the bar table.⁴⁵

In 2001 the Law Society of Tasmania formed the view that R should have disclosed to the admitting court the finding of academic misconduct.⁴⁶ Faced with the Law Society's stance, R decided to proceed with his appeal from the determination of the Academic Misconduct Committee. On 29 November, 2001 the university Discipline Appeals Committee allowed the appeal and set aside the first committee's decision because the

³⁸ Clause 3.3.1 *The Ordinance of Student Discipline*: *ibid* [7], [25].

³⁹ *Ibid* [26].

⁴⁰ The evidence did not indicate why this failure occurred: *ibid* [25].

⁴¹ *Ibid*.

⁴² *Ibid* [28]. Crawford J in the Supreme Court criticised the admitting court for its reliance on the father's affidavit: 'The evidence [of good fame and character and fitness for admission] should come from an appropriately impartial observer, and if necessary from more than one, and not one wearing rose-coloured spectacles': *ibid* [29]. The evidence suggested that prior to the admission hearing the admitting judge 'had learned privately' of the academic misconduct issue: *ibid* [59].

⁴³ *Ibid* [52].

⁴⁴ *Ibid* [2].

⁴⁵ *Ibid* [30], [64].

⁴⁶ *Ibid* [26]. There is no information in the judgment about how the Law Society became aware of the incident.

earlier committee had ‘failed to comply with the rules of natural justice by failing to give [R] an opportunity to respond to statements and comments received by the committee from three witnesses, being the lecturers in the Equity and Trusts unit and [the other student involved in the incident].’⁴⁷ After the appeal was allowed, the university did not pursue the original allegation of academic misconduct against R.

In 2002 the Law Society sought orders that R and both his parents be removed from the roll of legal practitioners of the Supreme Court of Tasmania.⁴⁸ In relation to R it argued that he failed to disclose the academic misconduct incident to the court, to make sufficient enquiries about his disclosure obligations and to instruct counsel to make the disclosure and therefore he should be struck off the roll as not being a fit and proper person to act as a legal practitioner.⁴⁹ Its argument was based not on the act of academic misconduct as such, but rather on R’s failure to disclose the committee’s findings to the court on his admission.⁵⁰ At the time it brought the application, the Law Society knew the Academic Misconduct Committee’s decision had been set aside by the Discipline Appeals Committee on the ground of failure to comply with the rules of natural justice.⁵¹

The principles applicable to disclosure by an applicant for admission to practice were not in dispute in the case before Crawford J in the Tasmanian Supreme Court.⁵² The court was to admit only those applicants who were ‘fit and proper’ persons to be admitted to practice (*Legal Profession Act 1993* (Tas) s 33).⁵³ ‘Protection of the public’ was a major consideration, along with ‘the standing of the profession’⁵⁴ and it was for the applicant to satisfy the court he or she was a fit and proper person to be admitted.⁵⁵ While at the relevant time some states had very detailed rules about what must be disclosed on admission, the Tasmanian jurisdiction did not.⁵⁶ In these circumstances the applicant’s duty was to ‘place before the Court any matter that might reasonably be regarded by the Court as touching on the question of fitness to practice’ (quoting from *Re Evatt*).⁵⁷

In relation to the Law Society’s application to strike R off the roll based on his failure to disclose the finding of academic misconduct made against him, the onus was on the Law Society to establish R was not a fit and proper person to remain on the roll.⁵⁸ The court found the Law Society had failed to establish this.⁵⁹ In its view the findings of the Academic Misconduct Committee were not sufficient alone to justify the court’s refusal

⁴⁷ Ibid.

⁴⁸ The closing address of senior counsel for the Law Society did not seek particular orders but ‘maintained that the conduct was capable of supporting orders removing the respondents’ names from the roll’: *ibid* [1].

⁴⁹ *Ibid* [74].

⁵⁰ *Ibid* [82].

⁵¹ *Ibid* [96].

⁵² *Ibid* [75].

⁵³ See now the *Legal Profession Act 1993* (Tas) s 31.

⁵⁴ *The Law Society of Tasmania* [2003] TASSC 9, [76].

⁵⁵ *Ibid* [77].

⁵⁶ The South Australian rules (*Supreme Court Admission Rules 1999* (SA)), for instance, referred expressly to disclosure where the applicant ‘has been found to have engaged in academic dishonesty such as plagiarism.’ *Ibid* [77].

⁵⁷ (1987) 92 FLR 380; *ibid* [78].

⁵⁸ *Law Society of Tasmania v Richardson* [2003] TASSC 9, [83].

⁵⁹ *Ibid* [84].

to admit R. The problem was the committee had not made clear what the behaviour was that attracted the finding of academic misconduct and so the matter would need to have been considered further by the admitting court.⁶⁰ Crawford J took into account that at the relevant time R was a 22 year old student and his legal knowledge was ‘limited.’⁶¹ R had sought the advice of his parents who were both experienced legal practitioners and of senior academics at the law school, although according to the incomplete evidence of the law school staff, R and his mother may both have misinterpreted the latter advice. The court found the Law Society had failed to satisfy it that at the time of his admission, in forming the view he need not disclose, R was not a fit and proper person to be admitted and should now be removed from the roll. In the court’s view ‘[t]he most severe criticism that arguably may be made against [R] is that he made an error of judgment, a mistake, based largely on the advice of two experienced practitioners who were his parents.’⁶²

Somewhat surprisingly, without any evidence from the other student involved in the matter, the court considered it was arguable that R had not been guilty of academic misconduct and it could ‘only conclude’ the other student had plagiarised R’s assignment.⁶³ However the court was reluctant to make any findings against the other student when it had not heard the other student’s ‘version of the events.’⁶⁴

Claims by the Law Society against R’s parents for professional misconduct based on their failure, during the admission of their son, to disclose the findings of the Academic Misconduct Committee, were also rejected by the court. The test was ‘whether the behaviour would reasonably be regarded by legal practitioners of good repute and competency, as disgraceful or dishonourable.’⁶⁵ The father had been very much involved in his son’s admission but his failure in relation to the issue of disclosure was ‘at worst an error of judgment’ and did not amount to professional misconduct.⁶⁶ His mother’s role in the admission process was merely as ‘proud parent’ and not legal counsel and the bringing of claims against her by the Law Society ‘shocked’ the court.⁶⁷

In *Law Society of Tasmania v Richardson (No 2)*⁶⁸ a costs order was made in favour of the three respondents.⁶⁹ The court was critical of the Law Society in that it continued its application against the three respondents when it knew the Academic Misconduct Committee’s determination had been overturned on appeal by the Discipline Appeals Committee, the original determination ‘had been reached by a process that was apparently unfair’ and it was unclear.⁷⁰ In the court’s view the proceedings against the respondents should not have been brought.

⁶⁰ Ibid.

⁶¹ Ibid [85].

⁶² Ibid [88].

⁶³ Ibid [18], [31], [36].

⁶⁴ Ibid [18], [36].

⁶⁵ Ibid [91].

⁶⁶ Ibid [94].

⁶⁷ Ibid [96], [98].

⁶⁸ *The Law Society of Tasmania v Richardson (No 2)* [2003] TASSC 71.

⁶⁹ Costs were awarded in favour of the respondents; for Richardson and his father on a party and party basis and for his mother on a solicitor and client basis. Ibid.

⁷⁰ Ibid [6].

The decision in Richardson's Case has been criticised, for example by Le Mire who commented:

The result of the decision is to undermine the standard procedure for admission which relies on the candour of applicants. The finding that the applicant could shift responsibility to his advisors due, in part, to his age and inexperience also seems undesirable ... Allowing the applicant, because of his youth and inexperience, to escape the usual consequences of a failure to disclose and then allowing him to engage in legal practice seems puzzling. If, as the court stated, he was unable to assess his own duties as an applicant, how could he be expected to carry out the more onerous duties that would be imposed upon him in practice?⁷¹

But she goes on to offer an explanation for the decision:

It is possible to view the decision as reflecting the court's unease about the initial finding of academic misconduct. The court considered the finding and the procedures of the academic misconduct committee in some detail. In addition, the court noted the applicant's successful appeal against the finding on the grounds that [the] hearing had failed to follow the rules of natural justice.⁷²

As mentioned earlier, Le Mire is not alone in her criticism. Several commentators have been quick to condemn the student but they do not criticise the role of academic staff who were unable to recall the events in detail and obviously had not retained written records sufficient to assist their recollection. The case highlights the potential for cascading procedural flaws on the part of the university: a final exam dependant on satisfactory completion of the disputed assessment task was held prior to the first committee's decision; the decision failed to properly identify the nature of the misconduct found established; the decision also failed to take account of the fact the exam had been held in the meantime and therefore the sanction given was inappropriate; the committee's procedures did not offer the student the appropriate opportunity to meet the claims made against him; and there was insufficient evidence maintained of meetings held and advice given to the student and his parent. The court seemed quite willing to turn its mind to the question of whether or not there had been an act of academic misconduct in the first place. It recognised that the student believed he had been involved in acceptable collaboration with another student. The evidence indicated that it was permitted for students to work together on assignments, provided the submitted assignments were the original work of each student.⁷³

B *Re AJG*⁷⁴

While the first case in the series stands out as remarkable, the second case, *Re AJG*, better illustrates what appears now to be the usual response of the state courts (led by the Queensland courts) to disclosure by applicants for admission of incidents of prior academic misconduct ie to require disclosure of the matter and to respond by holding

⁷¹ Le Mire, above n 17, 647. Le Mire's article does not seek to distinguish between the kinds of cases she is primarily concerned with, ie disclosures by lawyers of serious criminal convictions and the non-disclosure in Richardson's Case of what are breaches of the ethical rules of plagiarism.

⁷² Ibid.

⁷³ *The Law Society of Tasmania* [2003] TASSC 9, [18].

⁷⁴ [2004] QCA 88.

over the application to a later time. There was no controversy over the factual matters before the court and the *ex tempore* decision is brief.

The Queensland Court of Appeal was faced with an applicant for admission who had disclosed he had been found guilty of copying the work of another student while enrolled in the Practical Legal Training course at Griffith University in 2003. The penalty that had been imposed was failure in the subject.⁷⁵ The student's application was not opposed by the Solicitors Board as the incident appeared to be an isolated one and at the time, the applicant had been suffering from 'financial and domestic' stresses.⁷⁶

The court decided to adjourn the application for admission and not have it re-listed for six months. The court referred to its own emphasis over the last two years on the 'unacceptability of this conduct on the part of an applicant for admission to the legal profession.'⁷⁷ At the previous admission sitting, the court had 'indicated a strengthening of its response to situations like this on the basis of adequate warning having been given.'⁷⁸ The court was less prepared than the Solicitors Board to take into account the stresses the applicant had been subject to at the time of the relevant conduct. In its view it was 'inappropriate that we should, without pause, accept as fit to practise an applicant who responds to stress by acting dishonestly to ensure his personal advancement.'⁷⁹

Nor was the court to be swayed in its decision about AJG's admission by the fact the fellow student who had provided AJG with the work to be copied, and who had similarly been subject to a finding of academic dishonesty, had been admitted to practice a few months earlier. In the court's view

Legal 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. Cheating in the academic course which leads to the qualification central to practice and at a time so close to the application for admission must preclude our presently being satisfied of this applicant's fitness.⁸⁰

The decision indicates that misconduct in the period immediately prior to admission will be a factor in the court's decision to delay the application for admission to practice. For many law students this means academic misconduct during the practical legal training workshop may have a more drastic effect on their application than similar misconduct in the very early stages of their university studies. There is no indication in the decision as to what the applicant might do in the period between applications in order to convince the court of his or her suitability for admission.

C *Re Liveri*⁸¹

The third case, in 2006, was also before the Queensland Supreme Court.⁸² It illustrates the need for uniformity in the approach of the state courts, as the applicant had

⁷⁵ Ibid.

⁷⁶ Ibid.

⁷⁷ Ibid.

⁷⁸ Ibid.

⁷⁹ Ibid.

⁸⁰ Ibid.

⁸¹ [2006] QCA 152.

undertaken two practical legal training courses and had already applied unsuccessfully for admission to practice in another state.

The problem for the applicant was that while she was studying commerce and law at James Cook University three findings of academic misconduct were made against her. The first adverse finding involved an optional assignment in The Law of Trusts course in 2002. Her assignment response turned out to be a copy of a published article available from the Internet, with only relatively minor changes.⁸³ L's claim her use of the article was 'inadvertent' was rejected by the university.⁸⁴ Four days after being notified of the allegation of academic misconduct, L sought to submit what she claimed to be her original assignment. She was given the opportunity to submit the assignment that day and to have it taken into account in relation to the allegation. The 'poor standard' of this submitted material suggested to the university it could have been written after L received notification of the allegation.⁸⁵ The university found the original assignment submission to be 'a blatant case of Academic Misconduct.'⁸⁶ The penalty imposed on L does not appear in the decision.

Because of this finding against her, the university reviewed other assignments submitted by L. As a result of these further inquiries, two other findings of academic misconduct were made in relation to earlier assignments. The first involved Administrative Law in 2000 where L's assignment contained 'substantial commentary' by an academic without proper attribution.⁸⁷ The university reduced L's grade for the course from a credit to pass. The second was an assignment for the Law of the Sea in 2002 which quoted from a government publication without identification of the source.⁸⁸ The assignment was given a zero grade.

The Queensland decision revealed that L had undertaken a practical legal training course and sought admission to practice in NSW in 2004.⁸⁹ In her NSW application she disclosed the three earlier findings of academic misconduct but it was rejected by the Legal Practitioners Admission Board in September 2004 on the ground that the Board had not been satisfied as to her fitness to practice.⁹⁰ In its decision the Board had referred to its concerns about the applicant's 'lack of insight into the nature and gravity of the findings against her' in relation to two of the incidents, 'insufficient explanation' of the third incident and her conduct and 'the frankness' of her disclosure in relation to the third incident.⁹¹

In November 2004 L applied to the Queensland Legal Practitioners Admission Board for a declaration of suitability for admission to practice under s 36 of the *Legal Profession Act 2004* (Qld).⁹² She disclosed the earlier findings of academic misconduct in her application but claimed the offending Trusts assignment had been submitted by

⁸² Jowitt, above n 15.

⁸³ *Re Liveri* [2006] QCA 152, [6].

⁸⁴ *Ibid* [7].

⁸⁵ *Ibid* [9].

⁸⁶ *Ibid* [10].

⁸⁷ *Ibid* [12].

⁸⁸ *Ibid*.

⁸⁹ *Ibid* [18].

⁹⁰ *Ibid* [13].

⁹¹ *Ibid*.

⁹² *Ibid* [3].

mistake.⁹³ The application to the Board was unsuccessful and L did not appeal its decision.⁹⁴

In October 2005 L applied for admission to the Supreme Court of Queensland. She disclosed in a limited form the earlier findings of academic misconduct against her but referred to the incidents as the James Cook University Law School ‘levelling’ allegations against her.⁹⁵ The Queensland Legal Practitioners Admission Board opposed the application. As part of its consideration of her application, the Queensland Court of Appeal remitted some questions of fact for determination by the court’s trial division.⁹⁶ While she was before Atkinson J on these matters, L was warned by the judge in relation to self-incrimination and the matter was stood down so she could obtain legal advice. Her application was withdrawn later that day.⁹⁷

In April 2006 L brought a second application for admission in Queensland. Again she disclosed the earlier findings of academic misconduct but this time she admitted the copying and accepted ‘full responsibility’ for her actions.’⁹⁸ The issue for the Queensland Court of Appeal was L’s fitness for admission. The court considered it was not satisfied she was fit to practice. Its view was:

The findings against the respondent involve serious plagiarism, committed more than once. At relevant times, she was a person of mature years – 25 and 27 years old. Her unwillingness, subsequently, to acknowledge that misconduct, establishes a lack of genuine insight into its gravity and significance: for present purposes, where the Court is concerned with fitness to practise, that aspect is at least as significant as the academic dishonesty itself.⁹⁹

The court referred to its earlier approach in *Re AJG*. It ordered the application be adjourned to a date to be fixed but it was not to be re-listed for at least six months. Anticipating that L would make another application for admission in the future, the court warned:

If and when the application does again come before the Court, 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 that warrants a circumspect approach.¹⁰⁰

This third case in the series again illustrates the likely response of the court ie to have the application for admission delayed for a period. It also indicates the harsher stance of the court where the academic misconduct is by a more mature student. This contrasts with the willingness of the court in the first decision to take into account the youth of the applicant at the time of the incident.

⁹³ Ibid [14].

⁹⁴ Ibid [3].

⁹⁵ Ibid [16].

⁹⁶ Ibid [2].

⁹⁷ Ibid.

⁹⁸ Ibid [15].

⁹⁹ Ibid [21].

¹⁰⁰ Ibid [24].

The decision also indicates that more will have to occur in the period between applications than the mere passage of time. One matter the courts will be looking at when the applicant comes before them again seeking admission, is whether there has been any change in the applicant's view of his or her prior conduct. The case suggests one way to provide evidence of this:

[The applicant] may be well advised to seek counselling from senior practitioners, who may eventually find themselves able to confirm to the Court their conclusion that the applicant genuinely accepts the inappropriateness of her relevant conduct to date, and her true understanding and acceptance of the large ethical commitment to which she would, if admitted, be subject.¹⁰¹

D *Re Humzy-Hancock*¹⁰²

The fourth case, again in Queensland, was in the following year. It shows that a court, faced with disclosure of prior adverse findings of academic misconduct by an applicant for admission to practice, is willing to re-examine the allegations of misconduct and if appropriate, come to very different conclusions.

The Queensland Court of Appeal had before it an application for admission disclosing earlier allegations of academic misconduct while the applicant, H, had been studying law and commerce at Griffith University. Again, factual issues ie whether H was guilty of plagiarism or other relevant misconduct, were referred to the trial division for determination.¹⁰³

Three instances of academic misconduct were examined. The first, in 2003, concerned an assignment in the Torts and Accident Compensation course in which it was alleged wrongful collaboration occurred between H and another student ie that parts of his assignment were copied into the other student's assignment.¹⁰⁴ At the time H admitted collaborating with the other student but argued it was within the normal practices accepted by the law school. A hearing of the Law Faculty Assessment Board was held in February 2004. Both students gave evidence to the Board. The Board found both students guilty of academic misconduct,¹⁰⁵ H had made available an electronic version of part or all of his assignment to the other student who then cut and pasted some of the material in breach of the law school's Assessment Policy & Procedures.¹⁰⁶ The penalty imposed by the Board was to fail H in the subject.¹⁰⁷ H had a right of appeal to the University's Appeal Committee but he did not pursue it. Nevertheless, H continued to assert he had not permitted the other student to copy his work and he did not know his work had been used in this way.¹⁰⁸

¹⁰¹ Ibid [23].

¹⁰² [2007] QSC 34. The case is discussed by J Cumming, 'Where Courts and Academe Converge: Findings of Fact or Academic Judgment' (2007) 12(1) *Australia & New Zealand Journal of Law & Education* 97, in particular in relation to the court intervening in academic decisions.

¹⁰³ *Re Humzy-Hancock* [2007] QSC 34, [1].

¹⁰⁴ Ibid [3].

¹⁰⁵ Ibid [7].

¹⁰⁶ Ibid.

¹⁰⁷ Ibid [11].

¹⁰⁸ Ibid [12].

The second incident, in the following year, involved plagiarism in an assignment for International Trade Law. The subject was undertaken in intensive mode over three week-ends in October. At the time, H was enrolled as a full time student but was working four days a week at an accounting firm.¹⁰⁹ The submitted assignment drew heavily on material from an article. The article was acknowledged in the assignment bibliography and in some parts of the assignment but there were several instances of inadequate attribution of the material.¹¹⁰

The third incident related to the same subject, International Trade Law, but this time a take-home exam in October 2005. After he had submitted the take-home exam, H became aware there was an allegation of plagiarism in relation to the earlier assignment in the same course and that the matter had been referred to the Chair of the Law School Misconduct Committee. He wrote to the chair admitting some ‘referencing errors or mistakes’ in the assignment and then on a later occasion wrote again, this time admitting he had made similar errors in the take-home exam.¹¹¹ H was then informed of the complaint of academic misconduct relating to the assignment and within a month of this was informed the complaint had been made out.¹¹² In this same communication he was advised that, based on his disclosure to the committee about the take-home exam, the university had also found plagiarism in the take-home exam and it would be treated together with that in the assignment, as a single charge of academic misconduct.¹¹³ The penalty was failure in the subject and exclusion from the degree programme for six months.¹¹⁴

McMurdo J in the Queensland Supreme Court found all the allegations of academic misconduct not established on the facts. It was not a matter of the court reinterpreting the relevant university rules; the rules required an intention that had not been established in the circumstances.¹¹⁵ In relation the first incident the court accepted H’s evidence he did not knowingly give the other student a copy of his assignment.¹¹⁶ McMurdo J rejected the Board’s finding of plagiarism in relation to the second incident and instead found the instances represented ‘carelessness’ and a ‘misunderstanding of what was required.’¹¹⁷ There was no evidence of H having acted knowingly or with any intention to pass off the work of the article’s author as his own.¹¹⁸ In relation to the third incident, McMurdo J found the allegations of plagiarism not proved.¹¹⁹ The inadequate attribution was the result of ‘carelessness’ and ‘poor work’ and did not reflect ‘an intention to pass off the work of another’ as his work.¹²⁰

¹⁰⁹ Ibid [15].

¹¹⁰ Ibid [18].

¹¹¹ Ibid [32].

¹¹² Ibid [33].

¹¹³ Ibid [34].

¹¹⁴ Ibid.

¹¹⁵ Ibid [43].

¹¹⁶ Ibid.

¹¹⁷ Ibid [30].

¹¹⁸ Ibid [33]. The Griffith Law School *Assessment Policy and Procedures*, para 4.0, defined plagiarism as ‘the knowing presentation of the work or property of another person as if it were the student’s own.’ Ibid [14].

¹¹⁹ Ibid [42].

¹²⁰ Ibid [38], [42].

The decision is an example of an applicant who has not only done the right thing by disclosing the prior adverse findings of academic misconduct against him, but also now enjoys the benefit of having the earlier findings determined by the court to be incorrect. But the decision is not without its critics. Corbin and Carter have argued that in the circumstances the court should have used its inherent jurisdiction to reject the application or at least to delay it:

The conduct alleged and ultimately found to have occurred nonetheless amounts to conduct that ought to be unacceptable to the Supreme Court on the basis discussed above insofar as the conduct in question demonstrated a disregard for the legal and ethical norms of the academic community. These are not characteristics becoming of a prospective legal practitioner.¹²¹

E *In the Matter of OG, a Lawyer*¹²²

The final case to be discussed came before the Victorian Supreme Court in 2007. It arose because two applicants for admission to practice took very different views about their obligation to disclose a prior incident of academic misconduct.

The decisions in the Queensland court discussed above appear to have involved relatively little controversy over the main facts. The final case, like the first case, presented a far more controversial factual background from which the court had to determine an applicant's suitability for admission to practice. In a similar fashion to the first case, there were disputes about what had occurred at key meetings, academic staff were unable to recall important details and they did not appear to have records setting out the full details of the incident. Unlike some of the earlier cases where the court saw only one of a pair of student collaborators, this time the court had before it, at different times, both students involved in the earlier allegations of academic misconduct. However, each student had a very different recollection of the events, especially in relation to what they had said to one another. The case also stands out from the others discussed above because it concerned academic misconduct in a business subject rather than a law subject.

In 2005 OG and GL were studying business and law at Victoria University.¹²³ One of the courses they had in common was Strategic Marketing and Planning. As part of their assessment they teamed up together to undertake a group assignment. The second assignment for the same course was an individual assignment but it drew upon the material covered in the first group assignment; the task for the second assignment involved applying one of the two marketing strategies identified in the first assignment. The individual assignments of OG and GL were referred to the faculty of business Topic Co-ordinator (K) because marketing staff suspected the students of collusion in preparing the second assignment. Academic staff identified a considerable number of similarities (26 were highlighted on a marked up copy of the papers) between the two submitted assignments. Both students were asked to attend a meeting with two business

¹²¹ L Corbin and J Carter, 'Is Plagiarism Indicative of Prospective Legal Practice?' (2007) 17(1 & 2) *Legal Education Review* 53, 66.

¹²² [2007] VSC 520.

¹²³ *Re OG* [2007] VSC 197, [1], [3].

faculty staff. In June 2005 GL met with K and H. In August, after OG returned from an overseas trip, OG met with K and P.¹²⁴

There was considerable dispute about what occurred at these two meetings. In relation to both meetings, the academic staff who gave evidence (H and P), were unable to recall details of the events. The two students claimed to have a better recollection of the meetings. GL recalled he was told at the meeting that he would receive a zero grade for the assignment because of the collusion. He claimed he was informed he could appeal the adverse finding to the University Board, but if he chose to do so, the matter would appear in his permanent record.¹²⁵ OG's recollection of his meeting was that P claimed OG had 'misunderstood' what was required for the assignment and as the material submitted was 'not what had been expected,' no marks would be awarded.¹²⁶ OG claimed he was told at the meeting the matter was an 'internal issue' and 'would not be recorded.'¹²⁷

The outcome of the two meetings was that both students received a zero grade for the assignment. For GL, this meant he failed and had to re-take the course the following semester.¹²⁸ OG had enough other marks to scrape through the course with a pass grade (51 marks).¹²⁹

Both students later undertook the same practical legal training course in 2006, although OG was able to take leave near the end of the programme in order to commence the Bar reader's course. As part of the practical legal training course they were advised about admission procedures, including the obligation for disclosure to the Board of Examiners of matters relevant to establishing they were a 'fit and proper person' to be admitted to practice.¹³⁰ Among the materials given to them was a document giving examples of the matters to be disclosed. It included the following: 'You are obliged to disclose to the Board all criminal charges or charges of a similar nature (eg a charge before a university disciplinary board for stealing books from the library, plagiarism and the like).'¹³¹ The two students disputed what occurred next, but the evidence pointed to discussions between OG and GL about whether the marketing subject incident should be disclosed. GL took the view he was obliged to disclose the matter. OG was of the opinion that as there was no formal finding against them and no formal reference to a university disciplinary board, there was no obligation to disclose.¹³²

In August 2006, as part of his application for admission to practice, GL disclosed the matter to the Board of Examiners.¹³³ In his letter to the Board he explained the

¹²⁴ The status of the staff members involved is not entirely clear. K is referred to as the Faculty of Business Topic Co-ordinator, H as the subject co-ordinator for the marketing course and P as the acting course co-ordinator while H was on long-service leave. At the time P was also Head of the Marketing Discipline in the School of Hospitality, Tourism and Marketing, in the Faculty of Business: *In the matter of OG, a Lawyer* [2007] VSC 520, [12]-[32].

¹²⁵ Ibid [21].

¹²⁶ Ibid [27].

¹²⁷ Ibid.

¹²⁸ Ibid [35].

¹²⁹ Ibid [34].

¹³⁰ Ibid [38].

¹³¹ Ibid.

¹³² Ibid [39].

¹³³ Ibid [45].

similarity between the two assignments giving rise to the allegation of collusion was merely a coincidence but this explanation had been rejected by the university and he had been told that if he wished to appeal the matter to the University Board, it would appear on his student record.¹³⁴ In response, the Board convened a special hearing to consider GL's disclosure.

In September 2006 OG also made a disclosure to the Board about the zero mark he received in the marketing course. In his letter to the Board he explained the mark as arising because of a misunderstanding; he had a timetable clash and was unable to attend tutorials in which a fuller explanation of the assessment task was given. OG asserted that 'at no time was it suggested to be plagiarism or the like', nor did the matter go before a university board or lead to failure in the subject.¹³⁵ The secretary of the Board noted the disclosure as 'minor', did not refer it to the Board and OG received the necessary certificate from the Board under the rules for admission to legal practice.¹³⁶

In October GL provided the Board with more details about the academic misconduct and appeared before a full hearing of the Board.¹³⁷ In November further information was provided by him, including a copy of the first group assignment and the marked up copies of the two second assignments given to him during the meeting with university staff.¹³⁸ On 14 November OG was admitted to practice.¹³⁹ On 27 November GL's Board hearing reconvened. During the hearing OG was identified to the Board as the other student involved in the matter and as having been admitted to practice earlier that month.¹⁴⁰ In December the Board requested OG to attend the special hearing into GL's admission application.¹⁴¹ OG attended the hearing but indicated he had received legal advice and therefore declined to give evidence or answer questions unless they concerned his own disclosure on admission.¹⁴²

In December, at the final hearing in relation to GL's disclosure, the Board refused to grant the required certificate to GL.¹⁴³ In its decision the Board noted the problem as not the alleged academic misconduct but rather the quality ('candour') of GL's disclosure on admission.¹⁴⁴

In February 2007 the Board of Examiners reported to the Supreme Court of Victoria that it appeared OG's earlier disclosure was 'inadequate' and involved 'a lack of candour.'¹⁴⁵ In June the Board applied for the Full Court of the Supreme Court to consider its February report.¹⁴⁶ The court convened a mention and orders were made, including an order that the Legal Services Board be involved as contradictor in the

¹³⁴ Ibid.

¹³⁵ Ibid [50].

¹³⁶ Ibid [51].

¹³⁷ Ibid [53].

¹³⁸ Ibid [54].

¹³⁹ Ibid [55].

¹⁴⁰ Ibid [57].

¹⁴¹ Ibid [58].

¹⁴² Ibid [63].

¹⁴³ Ibid [64].

¹⁴⁴ Ibid [66].

¹⁴⁵ Ibid [67].

¹⁴⁶ Ibid [1].

proceedings to assist the court.¹⁴⁷ The Board of Examiners appeared in the proceedings but its role was limited to submissions on matters of law.¹⁴⁸

The question for the Full Court of the Victorian Supreme Court was whether OG had made an appropriate disclosure when he was admitted to practice. During these proceedings OG made claims that GL had copied from his assignment. OG claimed GL used his password, given to GL so he could undertake re-enrolment on OG's behalf while OG was overseas, to access OG's assignment or that GL deliberately changed OG's assignment after he had copied it, to make it look as though it had been copied from GL.

The court found these claims were false and it was likely OG copied from GL or both students colluded on the assignment.¹⁴⁹ It further found that at the meeting held between OG and university staff, contrary to his evidence, OG understood the two students were suspected of colluding on the assignment and they would receive a zero mark.¹⁵⁰ The court agreed with the Board's contentions that in his letter of disclosure to the Board, OG 'deliberately or recklessly' misrepresented the circumstances in which he received the mark of zero for the assignment.¹⁵¹ In circumstances where OG had already been admitted to practice, the court held that it had inherent jurisdiction to revoke the admission where it was discovered the Board's certificate ought not to have been granted because the applicant had not complied with the disclosure rules governing admission to practice. The court explained:

[T]hat obligation of disclosure requires that an applicant be frank and honest with the Board of Examiners, and so with the court, about anything which might reflect adversely on the fitness and propriety of the applicant to be admitted to practise ... An Applicant must at least disclose anything which he or she honestly believes should not be left out. Plainly candour does not permit of deliberate or reckless misrepresentation pretending to be disclosure.¹⁵²

The court revoked the order admitting OG to practice and it ordered OG be struck off the roll of persons admitted to the legal profession.¹⁵³ In order for OG to once again be admitted to practice, the onus would be on him to persuade the Board he was a fit and proper person.¹⁵⁴

IV IMPLICATIONS

The five cases discussed above illustrate the very serious consequences that arise from a finding of academic misconduct against a student during their university studies when they later seek to apply for admission to legal practice. They highlight the current strict approach of various state courts, especially those in Queensland, to disclosures of such

¹⁴⁷ *Re OG* [2007] VSC 197, [9].

¹⁴⁸ *In the matter of OG, a Lawyer* [2007] VSC 520, [1].

¹⁴⁹ *Ibid* [82], [83], [87], [93].

¹⁵⁰ *Ibid* [98], [100].

¹⁵¹ *Ibid* [120].

¹⁵² *Ibid* [123].

¹⁵³ *Ibid* [125], [126]; *Legal Profession Act 2004* (Vic) ss 2.3.7, 4.4.39.

¹⁵⁴ *In the matter of OG, a Lawyer* [2007] VSC 520, [128].

incidents in the academic history of an applicant.¹⁵⁵ The strict approach is not to deny admission for all time but to have the applicant re-apply so that his or her fitness to practice can be appraised at a later date.

That strict approach to disclosure is reflected in the current forms and accompanying information about admission to practice. For example, as mentioned above, the NSW Legal Profession Admission Board application form contains various declarations including the following: ‘I am not and have never been the subject of disciplinary action in a tertiary education institution in Australia or in a foreign country that involved an adverse finding.’¹⁵⁶ Recent changes in Victoria mirror the developments in other states as well as take account of recommendations from an expert review of legal education in the state.¹⁵⁷ An amendment to the *Legal Profession Act 2004* permits the Board of Examiners to obtain information from tertiary institutions about any earlier ‘disciplinary action’ involving the applicant for admission to practice and requires the tertiary institution to make the relevant ‘documents’ available to the Board, the ‘reasonable costs’ of compliance by the tertiary institution to be recoverable from the applicant.¹⁵⁸ Under the *Legal Profession (Admission) Rules 2008* which commenced 1 July 2008, among the documents applicants for admission are required to provide, is an Academic Conduct Report from their university (and practical legal training provider) disclosing the details of ‘any incident of academic misconduct involving the applicant that was investigated by the academic institution or PLT provider.’¹⁵⁹

Now the courts are expecting a very high standard of disclosure from those seeking admission to practice as a lawyer, there are many challenges for the higher education community as well as for the courts.

A *For the Higher Education Community*

One challenge for the higher education community is the potential for problems arising from the manner in which the allegations of academic misconduct were originally handled by the academic institution. One of the main problems illustrated by the cases was the failure to adequately document meetings and decisions. For instance in R’s Case some of the key witnesses were unable to recall the earlier events in any detail, including crucial conversations involving law school senior staff about whether the student would later be obliged to disclose the matter in his application for admission to practice. In the same case, the university committee that made the adverse findings

¹⁵⁵ The position is somewhat different in the US. According to Jacobson, above n 15, 739 ‘few applicants’ admission to the bar are questioned and denied due to academic misconduct in law school.’

¹⁵⁶ *Legal Profession Admission Rules 2005* (NSW) 6.8, first sch, form 10.

¹⁵⁷ *Legal Profession Amendment (Education) Bill 2007* (Vic) Second Reading, Victorian Parliamentary Hansard, 19 July 2007, 2455 (Hulls Attorney-General); S Campbell, *Review of Legal Education Report: Pre-Admission and Continuing Legal Education* (Department of Justice, 2006).

¹⁵⁸ *Legal Profession Amendment (Education) Act 2007* (Vic) s 4 amending s 2.3 of the *Legal Profession Act 2004* (Vic).

¹⁵⁹ Board of Examiners, *New Requirements for Admission and Academic Conduct Report*, Supreme Court of Victoria <<http://www.supremecourt.vic.gov.au>> at 18 June 2008. The report relates to disciplinary action ‘arising out of the applicant’s conduct in attaining the applicant’s approved academic qualifications or completing the applicant’s approved practical legal training requirements at that academic institution or PLT provider’: *Legal Profession (Admission) Rules 2008* (Vic) r 5.02(1)(c)(v). This would appear to limit the report to misconduct relating to the applicant’s law subjects only.

against the student failed to particularise the nature of the misconduct involved even when, as part of its decision, it turned its mind to the potential for the matter to be disclosed for the purposes of admission to practice. The procedural flaws in the way the original allegations were handled and the failure of witnesses to recall the events in detail took the court far from what was otherwise the central issue ie fitness for admission to practice.

The cases illustrate the lengths the court will go to in order to discern the nature of the academic conduct so it can investigate whether the applicant for admission was guilty of any blameworthy conduct not candidly disclosed as part of the admission process. In the decisions relating to the admission of L and H, factual matters were referred to the court's trial division for determination before the court could otherwise address the issue of fitness for admission. In the latter case, all three allegations of academic misconduct were found to be not proven on the facts. In OG's Case the court reviewed the facts in great detail. This means that universities will be under pressure to create and maintain the necessary records so staff are in a position to provide appropriate evidence when the events are re-examined by the courts. No doubt this task will be made more difficult in the future with the continuing growth, not only of student numbers but also of reported instances of alleged academic misconduct.

Another challenge for higher education is to ensure the protection of the interests of the students involved. Students may be in a vulnerable position when it comes to understanding the rules of engagement in the academic field. Many students must undertake paid work in competition with their scholarly endeavours, increasing the pressure on them and the temptation to cut corners in their academic work. Although there are exceptions, such as in R's case where the student was able to rely for advice on both parents who were experienced legal practitioners, a student faced with two staff members in a meeting such as those in OG's Case, will be at some disadvantage.¹⁶⁰

The cases show the courts take into account mitigating factors where the student is concerned.¹⁶¹ In R's Case the court looked to his age and the limited state of his legal knowledge. But in L's Case age counted against her because she was 'of mature years' (25-27) when the events occurred, as did the fact there was more than one instance of academic misconduct.

A student faced with the offer of a zero mark as penalty with no formal inclusion of the incident on the student's academic record, might be tempted to forgo a more formal appeal that would be recorded.¹⁶² Faculty staff, faced with the potential of drawn out

¹⁶⁰ See, eg, University of Sydney, *Academic Board Resolutions: Academic Honesty in Coursework* (5 April 2006) 3.3.2 Fair Hearing; 3.3.2.4 provides for a student to have a support person or student representative present at the meeting with the academic when concerns about academic misconduct are being discussed.

¹⁶¹ In the US, the *Code of Recommended Standards for Bar Examiners* provides that certain factors should be considered in looking at prior conduct ie 'in assigning weight and significance' to the conduct. These include: the applicant's age when the conduct occurred, whether the conduct is recent, 'the seriousness of the conduct', 'evidence of rehabilitation' and 'the applicant's candor in the admissions process': Jacobson, above n 15, 744.

¹⁶² There are several reasons why a student may choose not to dispute an allegation of academic misconduct. The formal processes involved in taking the allegation further will involve time and effort on the part of the student and will inevitably add to what is often a fairly stressful period of combined study and paid work. McCulley refers to a US case in which a law school student, faced

formal discipline procedures, might see the informal resolution of the matter as far more efficient. There is another option for faculty staff, ie to ignore the incident, and some may be tempted to do so when the formal notification system requires considerable time and effort.¹⁶³ For the student, these choices carry potential disclosure consequences if the student later seeks to enter legal practice. As OG's Case illustrates, the obligation of disclosure is not limited to circumstances where there has been a formal university committee determination of academic misconduct. If a student is aware of these consequences, he or she may be more likely to use the appeal procedures to have the finding overturned, as in R's Case. That decision shows the benefit of doing so, even where the finding is overturned on procedural grounds rather than on matters going to the nature of the alleged conduct.

The courts have referred to the need to disclose academic misconduct that occurs in relation to the very subjects that form the basis of the applicant's legal knowledge in practice.¹⁶⁴ It is now more than likely a student will be undertaking the study of law either in combination with another degree (eg commerce or arts) or as a graduate of another degree. In OG's Case, it was a marketing subject rather than a law subject that created the disclosure problem. In that case the court did not seek to distinguish between academic misconduct in the law subjects and in other subjects; rather the same consequences in relation to non-disclosure were seen to apply. Therefore it is important for the wider higher education community to be aware of these issues and not merely the law faculties.

It is doubtful the courts are fully aware of the scope of the issue of academic misconduct in the higher education community; the task of inculcating appropriate academic behaviour is difficult, there is a serious drain on resources resulting from the increasing complexity of academic misconduct complaints handling processes and the universities are being subjected to ever greater demands and closer scrutiny in relation to their teaching, research and administrative activities. In this environment the universities are understandably sensitive to criticism of their practices, including the level of student compliance with recognised rules of academic conduct.

Universities closely guard their national and international reputations¹⁶⁵ and this closer scrutiny of their former students by the courts will be a significant matter for them to consider. A US commentator has pointed to the important relationship between the law schools and the courts in respect of the disclosure of information about the academic misconduct of applicants for admission to practice. She highlights the understandable reluctance of the law schools to report such incidents 'fearing that students' denial to the bar will negatively affect the law school's ranking' and the consequent unevenness of

with an allegation of cheating in an exam, agreed to receive a fail mark for the course without admitting wrongdoing. Her application for admission to the bar disclosed this settlement and her continued denial of the cheating allegation. The court found she met the obligation of disclosure: McCulley, above n 15, 849 referring to *Florida Board of Bar Examiners re MCA* 650 So 2d 34, 35 (Fla 1995).

¹⁶³ LeClercq, above n 10, 238.

¹⁶⁴ See, eg, *Re AJG* [2004] QCA 88.

¹⁶⁵ A competitive international environment makes these sensitive issues; for example a recent article in a US law journal refers to a plagiarism incident involving 15 students at a 'partner institution' (in Malaysia) of an Australian university: Johnson, above n 2, 10.

reporting of such conduct by law schools to bar examiners.¹⁶⁶ The same considerations would apply to Australian law faculties as well as the other faculties from which law students may emerge to undertake graduate legal studies.

B *For the Courts*

The need for disclosure of academic misconduct to admitting courts, especially if not limited to serious acts brought before formal university committees (eg in OG's Case) will undoubtedly increase the workload of the court agencies administering the admissions process. While the courts are increasing their scrutiny of academic misconduct incidents in the academic history of applicants for admission, they are not finally shutting the door to these applicants. Depending upon the quality of the applicant's disclosure of the incidents and the nature of the academic misconduct, the courts are sometimes denying the applicant immediate admission and requiring them to apply once again at a later date, at which time they will again have to attempt to convince the court of their fitness to practice. This means that some applications will be scrutinised not only more closely but also more than once.

There will inevitably be an increase in the administrative burden on admitting authorities. This is particularly the case when extended disclosure obligations could result in all manner of incidents of disciplinary investigation being potentially scrutinised. In some jurisdictions there have been suggestions to limit the incidents to be disclosed. For instance, in the US, Jacobson suggests amending the bar rules to provide for disclosure only of more serious academic misconduct; what she refers to as 'aggravated academic misconduct' (rather than minor acts) and 'patterns' of misconduct.¹⁶⁷ In this way 'isolated minor incidents' would be 'left to the law school community to address.'¹⁶⁸ This would obviously reduce the level of disclosure required. However, the increasingly more complex rules about academic misconduct at university would suggest this distinction would be difficult to apply and when the courts revisit the allegations, as they did at length in some of the cases discussed above, they may take a different view of the conduct than was taken by the university in the first instance.

For the courts, there is also the question of revisiting the original academic misconduct allegations. The primary issue for the court will always be the nature of the disclosure by the applicant rather than the academic misconduct itself. However it is clear from the cases discussed above, the courts will often wish to have the facts of the academic misconduct clarified before considering whether the disclosure or non-disclosure has been appropriate. In R's Case the court was critical of the Law Society for pursuing the action against R and his parents where the finding of academic misconduct had been overturned on appeal to the University Appeals Committee. But it was overturned on grounds going to natural justice matters (ie procedures) rather than on grounds going to the nature of alleged misconduct. In that case and in others, the court was willing to draw conclusions about who had actually been the blameworthy party ie who copied from whom. In H's Case the court was asked to determine whether the academic

¹⁶⁶ Jacobson, above n 15, 750. It is an issue also discussed by McCulley, above n 15, 856. Jowitt, above n 15, 216 refers to a database of student plagiarism maintained by the South Pacific School of Law, information from which may be made available to law societies and admissions boards. It is not clear on what basis the release of information occurs.

¹⁶⁷ Jacobson, above n 15, 752.

¹⁶⁸ Ibid 754.

misconduct was proven and it found it was not, for example in the two allegations of plagiarism, the necessary intention had not been established.¹⁶⁹

At the same time as the courts are drawing conclusions from the evidence presented in relation to the application for admission, it is often the case that other students involved in the original allegations do not give evidence, for example in R's Case. The court must then be careful while coming to its conclusions about the misconduct, not to draw adverse inferences against the absent other student who will likely be either applying for admission or already admitted to legal practice if the misconduct occurred in a law faculty context. This was made clear by the court in R's Case. OG's Case was the exception, where the court had the benefit of evidence from both students involved.

Another issue is the appropriate degree and onus of proof required when the matter is before the court. The court in OG's Case turned its mind to this issue as follows:

In coming to those conclusions [about what OG understood from his meeting with university staff] we bear in mind that these are in effect professional disciplinary proceedings [OG had already been admitted to practice] and that, while the standard of proof is the civil standard, the degree of satisfaction for which that standard calls in this context is proportionate to the gravity of the facts to be proved. We have also given weight to the presumption of innocence and the exactness of proof expected in matters of this kind.¹⁷⁰

The courts might also bear in mind that there is a difference between the very strict academic rules of plagiarism and what these newly admitted students will observe in commercial legal practice. US commentators have argued that there is a significant gap between the academic rules such as those relating to plagiarism expected to be complied with by students and the common practices of the general legal community, for example Billings comments:

Perhaps the greatest wordsmiths of all, lawyers and judges, are the biggest plagiarizers. Though they exceed all others in footnoting what they use, they are sometimes caught not footnoting when they should have. In failing to footnote, they pass off someone else's ideas as their own. A plaintiff's lawyer in a class action suit might borrow a complaint from another attorney and use it successfully in another state's courts. A judge might use materials written by law clerks to prepare opinions.¹⁷¹

There are different conventions operating in both environments. The community of practising lawyers relies upon published compilations of forms and precedents. This community also makes use of documents and letters as precedents, some generated from within the law firm and some of which have been received from other firms during the

¹⁶⁹ A review of the earlier evidence of academic misconduct can have the opposite effect. In one US case the law school had 'exonerated' the student in relation to claims of plagiarism but the board deciding on the applicant's fitness to be admitted to the bar, determined there was evidence to support a finding of plagiarism and denied the application: McCulley, above n 15, 848 citing *In re KSL*, 495 SE2d 276, 278 (Ga 1998).

¹⁷⁰ *In the matter of OG* [2007] VSC 520, [99], referring to cases including *Briginshaw v Briginshaw* (1938) 60 CLR 336, 350 (Rich J); *Re a Barrister and Solicitor* (1972) 20 FLR 234, 246; *New South Wales Bar Association v Livesy* [1982] 2 NSWLR 231, 238.

¹⁷¹ Billings, above n 4, 396. See also J Schroeder, 'Copy Cats: Plagiarism and Precedent' (Working Paper No 185, Benjamin N Cardozo School of Law, Jacob Burns Institute for Advanced Legal Studies, 2007).

general conduct of legal matters (eg pleadings in litigation). Junior lawyers in effect undertake an apprenticeship and their early work in drafting documents, including letters of advice, is sent out under the name of the partner responsible for that client's work. In this particular context, attribution is less about authorship and more about signalling responsibility for the legal advice given. A brief look at many law firms' professionally produced publications such as the now very common recent developments bulletins, directed at present and potential clients, shows they do not generally adopt the very detailed attribution rules of the academy. There have been some exceptions where a party has sought to assert copyright rights in the commercial documents created, for example as part of a particular tax scheme.¹⁷²

As indicated above, US commentators have also pointed to the bench and practices such as the unattributed use of the pleadings of other parties and the work of the judges' legal clerks or associates in judgments.¹⁷³ In Australia in recent times there has been a noticeable increase in the more detailed attribution of sources in legal judgments. At the same time there has been increased sensitivity to allegations of plagiarism in the courts in response to two recent incidents involving judges.¹⁷⁴ One of these is of particular interest to the matters raised by this paper. The circumstances concerned a federal magistrate who was alleged to have plagiarised parts of the judgments of her fellow magistrates. The magistrate resigned but then returned to legal practice. A practising certificate was issued to her by the state law society.¹⁷⁵ It appears a complaint was made to the Legal Services Commission that the former federal magistrate had brought 'the judiciary and the legal profession into disrepute because of her plagiarism.'¹⁷⁶ The press reports indicate the complaint was unable to be investigated because the incidents occurred while she was a federal magistrate and therefore were matters beyond the Commission's jurisdiction.¹⁷⁷

It is clear disclosure must be made of academic misconduct incidents occurring at university, and as appropriate, regret shown or explanation given. But once disclosure has been made and the court denies the application for admission, it is not clear what the applicant may do between that date and a later application for admission, in order to convince the court of his or her suitability the second time around. In L's Case the court indicated it would be looking at whether the applicant's attitude to the prior academic misconduct findings had changed. In order to be in a position to seek admission, the applicant will already have completed the necessary legal studies and practical legal training, so there will not generally be evidence of further academic study free of any incidents of academic misconduct. If the applicant is employed during this interim period in a professional legal context, perhaps as a paralegal, as discussed above the conventions in this context are very different from the academic conventions the

¹⁷² See, eg, *O'Brien v Komesaroff* (1982) 56 ALJR 681 concerning a claim to copyright in unit trust deeds and articles of association.

¹⁷³ See, eg, J Dursht, 'Judicial Plagiarism: It may be Fair Use but is it Ethical?' (1996-7) 18 *Cardoza Law Review* 1253; Billings, above n 4, 396.

¹⁷⁴ One allegation involved a federal magistrate and the other a federal court judge: M Priest, 'Plagiarism Row Draws in Williams', *Australian Financial Review* (Melbourne), 7 April 2006, 62; and M Priest (ed), 'Hearsay: Inside the World of Legal Affairs', *Australian Financial Review* (Melbourne), 24 March 2006, 59.

¹⁷⁵ H Thomas, 'Plagiarising Magistrate can Practise', *The Australian* (Sydney), 7 November 2007, 10; D Houghton, 'PS-Legal Fight', *The Courier-Mail* (Brisbane), 8 December 2007, 60.

¹⁷⁶ C Merritt, 'Prejudice', *The Australian* (Sydney), 7 December 2007, 30.

¹⁷⁷ *Ibid.*

applicant fell foul of in their earlier university studies. In L's Case the court indicated that the lapse of time alone will not be sufficient to convince it of the applicant's suitability for admission on his or her second application.

V CONCLUSION

The five cases discussed in this paper reflect a toughening of the attitude of the state courts to disclosure of incidents involving allegations of academic misconduct by applicants seeking admission to legal practice. This position has been enhanced by the adoption of more detailed disclosure rules allowing the courts to seek further information, when necessary, from the universities.

If this tougher stance is to continue, it will be important for the law schools to communicate this to their students from a very early stage in their academic careers. It is also something the wider higher education community should be made aware of, as many new recruits to law come at a graduate level from non-law faculties and these numbers may increase if new models providing for law at graduate level only become popular. The same would also apply to organisations other than universities that offer non-degree programmes in law and practical legal training courses. It will be important for the universities and those organisations to establish and maintain clear and robust procedures for handling, including properly recording, any incidents of academic misconduct and to provide appropriate safeguards to ensure any student faced with such allegations is fully aware of the disclosure implications of any adverse findings.