SUPREME COURT OF THE AUSTRALIAN CAPITAL TERRITORY
FULL COURT

Case Title:	**An Application for Admission by B as a Legal Practitioner**
Citation:	**[2016] ACTSCFC 2**
Hearing Date:	17 June 2016
Decision Date:	14 November 2016
Before:	Refshauge, Penfold and Burns JJ
Decision:	Upon B making the required affirmation:

1. The Court orders that B be admitted as a lawyer of this Court on the following conditions:

   (a) That, for the next 12 months, he submit to random urinalysis at his own expense when directed to do so by the ACT Law Society on no more than 8 occasions, the results of such urinalysis to be submitted at B's direction directly to the Chief Executive Officer of the ACT Law Society;

   (b) That for the next 2 years B consult every 6 months with a consultant psychiatrist, at his own expense, as to his mental health and fitness for legal practice;

   (c) If the consultant psychiatrist is not Dr Ingrid Butterfield, B supply to the psychiatrist a copy of Dr Butterfield's report of 12 August 2016 and the report of Dr Joe Garside dated 30 March 2016;

   (d) That B authorise the psychiatrist he consults in accordance with condition (c) to provide a report on his mental health and fitness for legal practice to the Chief Executive Officer of the ACT Law Society;

   (e) That B ensure that each psychiatrist he consults in accordance with condition (c) have access to a copy of each report that has previously been prepared in accordance with these conditions;

   (f) That B not apply within the next 2 years for admission as a lawyer to any other jurisdiction without giving the relevant admitting authority a copy of these conditions;

   (g) That, if B seeks employment within the next 2 years in any position for which his admission as a lawyer is a necessary or desirable qualification, he give a copy of these conditions to the prospective employer.

2. The Court directs that the name of B be entered on the Roll of Practitioners.

Catchwords: **PROFESSIONS AND TRADES –** LAWYERS – Qualifications and admissions – legal practitioner – application for admission to practice – suitability matters – matters relevant to good fame and character of the applicant – disclosure of mental illness – disclosure of an offence committed in the United States of America – disclosure of deportation and ban from the United States of America – disclosure of past illicit drug use – fit and proper person – admission to practice subject to conditions – *Legal Profession Act 2006* (ACT)

Legislation Cited: *Legal Profession Act 2006* (ACT), ss 11, 20, 21(1)(a), 21(1)(b), 22, 29, 30, 558

Court Procedures Rules 2006 (ACT), rr 3605, 3607D

Cases Cited: *Dixon v Legal Practice Board of Western Australia* [2012] WASC 79
Doolan v Legal Practitioner's Admission Board [2013] QCA 43
Ex parte Lenehan (1948) 77 CLR 403
Law Society of New South Wales v CQS [2016] NSWCATOD 100
Re an Application by L for Admission as a Legal Practitioner [2015] ACTSCFC 1
Re Application for Admission as a Legal Practitioner (2004) 90 SASR 551
Re Del Castillo (1998) 136 ACTR 1
Watts v Legal Services Commissioner [2016] QCA 224

Parties: B (Applicant)

Law Society of the Australian Capital Territory (Respondent)

Representation: **Counsel**

Mr R Barnett (Applicant)

Mr R Reis (Respondent)

Solicitors

In person (Applicant)

Law Society of the Australian Capital Territory (Respondent)

File Number: A 11001 of 2016

THE COURT:

1. The applicant made application for admission as a legal practitioner under the *Legal Profession Act 2006* (ACT). Ordinarily, the name of an applicant for admission would be published. In this case, however, because of mental health issues involved in this application, the Court has taken the step of anonymising the applicant's name. As the

New South Wales Civil and Administrative Tribunal said in *Law Society of New South Wales v CQS* [2016] NSWCATOD 100 at [5], anonymisation may be appropriate as:

> there remains a real risk that stereotypical negative attitudes may hinder the employment by firms or engagement by clients of lawyers who have mental health conditions such as depression or bipolar disorders.

2. As required under s 21(1)(a) and (b) of the *Legal Profession Act*, the applicant is over the age of 18 years, has attained the approved academic qualifications specified in the Act and the *Court Procedures Rules 2006* (ACT), and has satisfactorily completed the approved practical legal training requirements.

3. In his application for admission, however, he very properly made disclosure of certain matters described as "suitability matters" under s 11 of the *Legal Profession Act*. These are matters which the Court is required to consider under s 22 of that Act when deciding whether an applicant for admission is a fit and proper person to be admitted to the legal profession.

4. As explained by the Full Court in *Re Del Castillo* (1998) 136 ACTR 1 at 5; [20]:

> The applicant's duty is to place before the court any matter that might reasonably be regarded by the court as touching on the question of fitness to practise.

5. Failure to disclose such matters is usually evidence of such a lack of candour and frankness that it would disentitle the applicant to be admitted.

6. The applicant made a number of disclosures. That is not uncommon. A number of them were of traffic offences, which are, of course, breaches of the criminal law. The applicant also disclosed a debt to Centrelink which he accrued. Finally, the applicant had been made bankrupt as a result of debts he had accrued on credit cards and for utility bills but had been discharged a number of years ago. The applicant explained details of each matter disclosed.

7. In view of the facts and circumstances disclosed, however, the Court did not consider that, by themselves or in combination, they warranted a finding that the applicant was not now a fit and proper person to be admitted to practise.

8. The applicant, however, disclosed some other offences which were attributed or related to a mental illness with which he had been diagnosed. The most concerning of these was an offence committed in 2010.

9. The applicant has a long-term psychiatric history, starting at age 22. He has been diagnosed with a schizoaffective disorder or, alternatively, a bipolar affective disorder with psychotic symptoms when manic. He has had a substance abuse disorder, which probably exacerbated his condition in the past.

10. He has been known to Mental Health Services since 1998 and has had various admissions to a psychiatric unit variously since 2004 until as recently as 2013.

11. The 2010 offence arose out of the applicant accepting involvement in a University Exchange Program where he was to attend a university in the United States of America (the USA) for six months.

12. The applicant booked his flight to the USA to depart on 1 January 2010. He also applied for a student visa and attended the US Consulate in Sydney on 20 December 2009 for that purpose. He completed a form he was given but answered "no" to a

question as to whether he had ever been diagnosed with a mental illness. He gave the following explanations for this answer:

i. I had been told by [my] original psychiatrist that I did not have to disclose my mental health status.

ii. I was intending on seeking a second opinion of my mental health in the USA.

iii. I was not in a financial position to do a return trip to Sydney with further documentation should it be requested.

iv. The mental illness I have has a characteristic of denial of belief that I have a mental illness.

v. I felt that I would be discriminated against for having a mental illness based on the stigma I had experienced when disclosing my mental illness in the past.

13. He was then granted a visa and travelled to the USA, commencing his university studies there apparently successfully. He was compliant with treatment which involved fortnightly injections of anti-psychotic medication.

14. Apparently someone made the authorities aware of his mental health status. He considers it may have been a former girlfriend with whom he had a "toxic relationship" and to whom he made some apparently unwelcome approaches by email.

15. In any event, he was arrested by US Federal authorities and charged with being "inadmissible of entry or adjustment seeking admission or other benefit by fraud". This offence apparently carries a maximum penalty of 25 years imprisonment and a fine of $250 000. He was remanded in custody and ultimately pleaded guilty.

16. He was sentenced to imprisonment for the time he had been in custody and was deported with a ban on re-entering the USA for 10 years.

17. Clearly, the lapse of judgement, deception, and the part played by his mental illness in these events caused the Court some concern.

18. The applicant disclosed that, since 1993, he had consumed various illicit drugs. He had used cannabis daily from 1993 until 1998, after which he used it on a "casual" basis until ceasing to use after 2000. He had used "magic mushrooms" in 1993 and 1996, a total of five doses of LSD (Lysergic Acid Diethylamide) in 1996 and 1998, doses of cocaine on seven occasions in 1998, 2000 and 2008-9, one dose of GHB (gamma-Hydroxybutyric acid) in 1998, one dose of heroin in each of 2000, 2003 and between 2004 and 2007, weekend use of ecstasy (3, 4-methylenedioxy methylamphetamine) and, in 2008-9, two doses of Ice (methamphetamine).

19. There was some concern about this prior use of drugs, even though that seemed to have abated recently.

Fit and proper person

20. Section 20 of the *Legal Profession Act* provides that, in addition to the academic and practical legal training qualifications, a person is only suitable for admission to the legal profession if they are a fit and proper person to be admitted.

21. The reason for this is not difficult to understand. As Doyle CJ said in *Re Application for Admission as a Legal Practitioner* (2004) 90 SASR 551 at 555-6; [29]:

> A practitioner is an officer of the court. The public would expect, and the public interest requires, that only persons of good character be given that status. By admitting a person

> as a legal practitioner the court holds that person out to the public as a fit person to be entrusted by the public with their affairs and confidences, and as a person in whose integrity the public can be confident. As well, the role of the legal profession in the administration of justice requires that it be comprised of persons whose conduct would not undermine confidence of the ordinary member of the public in the profession or the administration of justice.

22. As Rich J remarked in *Ex parte Lenehan* (1948) 77 CLR 403 at 426:

> The fact that a person is a solicitor of the court gives him a stamp of trustworthiness and marks him as a person in whom confidence may be reposed.

23. Past misconduct does not necessarily disentitle a person from being admitted so long as the court can be satisfied that, despite the past misconduct, the person is, in fact, of good character. Indeed, the fact that a person has been able to overcome difficulties that have caused or contributed to conduct in the past may be a measure of the underlying character of the person.

24. It also needs to be said that a mental illness or impairment is not of itself a bar to admission as a legal practitioner. That is not the test. The test is whether the applicant is able satisfactorily to carry out the inherent requirements of practice as a legal practitioner. This, of course, must be assessed in the light of the applicant's mental health: *Doolan v Legal Practitioner's Admission Board* [2013] QCA 43 at [22].

25. Regrettably, there are cases where professional misconduct by a legal practitioner has been caused or contributed to by mental impairment. See, for example, *Watts v Legal Services Commissioner* [2016] QCA 224, where the deterioration of Mr Watts' mental health in highly stressful circumstances led to him misusing trust account moneys.

26. This is particularly relevant to professional practice, such as legal practice which can be very stressful from time to time.

27. A recognition by the person that he or she has a mental impairment which needs to be addressed can be important in ensuring that it does not create problems in conducting legal practice. See, for example, *Dixon v Legal Practice Board of Western Australia* [2012] WASC 79 at [83].

Present application

28. Since the offence committed in the USA, the applicant has completed his law degree including each of the courses prescribed by r 3605 of the *Court Procedures Rules* and completed an approved court of practical legal training required under r 3607D. That he has done so successfully is relevant to an assessment of his character.

29. In addition, he disclosed no further offences since that date. He had, as well as completing his qualifications, been employed in various government instrumentalities during this time.

30. The applicant deposed that he had not used any illicit drugs since 2009. This was supported by the results of urinalysis conducted on 27 June 2016.

31. The applicant relied on the affidavits of persons who had known him for five, 25 and 33 years respectively. Each deposed to being aware of the suitability matters that the applicant had disclosed but nevertheless expressed the view that he was a person of honesty and integrity and that this view was shared by others. They expressed the opinion that he was a person of good fame and character.

32. On the other hand, the course of his mental condition since 2010 has caused the Court some concern.

33. The applicant provided two medical reports. The first was authored by a medical officer (with a diploma of the Board of Psychiatry and Neurology) from the Detention Centre where he was held in custody in the USA. She said in the report, dated 3 March 2010, that he told her he had been taking his medication as required, and she described him, on the last evaluation, to be pleasant and co-operative, without suicidal or homicidal ideations or any psychotic symptoms.

34. The second report dated 30 March 2016 was from the applicant's treating doctor whom he had been seeing since June 2014. He reported that, when he saw him in 2014, he was mildly thought disordered with vague, persistent delusional ideas.

35. He reported, however, that there had, since early 2015, been progressive improvement with resolution of his psychotic symptoms over the previous 12 months, so that he was no longer being disorganised, he was able to reflect with insight on his past psychotic symptoms, and he was compliant with oral medication to which his treatment regime had been changed.

36. The report also referred to some "excellent prognostic factors" which included excellent response to medication, cessation of drug use (which had contributed to the psychotic illness), willingness to engage in psychiatric treatment and compliance with such treatment, excellent pre-morbid level of function and success in obtaining a law degree, and excellent insight.

37. The report said that the applicant's psychotic illness had been "in remission for over 12 months" and expressed the opinion that he "does not have any ongoing features of a mental illness that would interfere with his capacity to work as a solicitor".

38. While the author of the report was described as a "Senior Career Medical Officer, Psychiatry", and while the Court found the report helpful, it considered that a report from a consultant psychiatrist was required in the circumstances, especially given the relative recency of relevant symptoms.

39. Accordingly, the admission proceedings were adjourned for the purpose of obtaining such a report. A report was then provided dated 12 August 2016 by a psychiatrist, Dr Ingrid Butterfield.

40. Dr Butterfield examined the applicant and had access to his psychiatric history which she summarised. She noted his regular attendance at appointments with his usual treating doctor, his adherence to oral medication and his demonstrated good insight into the need for medication and the benefits of taking it.

41. She then reported on a review of his symptoms which were "consistent with current mental health" and that there were "no indications that there are likely to be any difficulties with treatment adherence in the future".

42. The author then reported and opined:

> On review, [the applicant] had an unremarkable mental state examination aside from some understandable and normal anxiety. He presented as having a normal rate, rhythm and tone of speech with an organized thought form and good insight into his illness.
>
> At this stage he does not have any features which are suggestive of an incapacity to work as a solicitor. I understand from talking to [the applicant] that he will be subject to initial

ongoing conditions of his registration and this would be prudent in the short to medium term but I have no hesitation at this time in confirming he has no psychiatric symptoms which would cause me concern were he admitted to the Bar.

The Admission Board

43. The Legal Practitioners Admission Board (the Board) is established under s 558 of the *Legal Profession Act*. Section 29 of that Act sets out the purposes of the Board, which include that it advise this Court of whether an applicant is eligible for admission and a fit and proper person to be admitted having regard to all the suitability matters in relation to the applicant to the extent appropriate.

44. The role of the Board is essential and, indeed, the burden on the Court were it required to undertake that task itself without such assistance would be impossible.

45. In this case, after requiring detailed further affidavit material about the matters the applicant disclosed, the Board issued a compliance certificate under s 30 of the *Legal Profession Act* that the applicant was eligible for admission, a fit and proper person to be admitted, that the application was in accordance with the admission rules and that there were no grounds for refusing to give a compliance certificate.

46. The certificate is significant and important. The decision, however, rests with the Court. This Court said in *Re an Application by L for Admission as a Legal Practitioner* [2015] ACTSCFC 1 at [17]-[19]:

> 17. ... The Board plays an important part in the governance of the legal profession and its views derived from the accumulated experience of its members deserves respect and due consideration. The significant place of such a Board is described by Stawell CJ in *Re Shaw* [1878] VicLawRp 199; (1878) 4 VLR (L) 509 at 511. It is an approach that has been since followed. See *Re Warren* [1976] VicRp 38; [1976] VR 406 at 409; *Re Miller* [1979] VicRp 40; [1979] VR 381 at 384; *Victorian Lawyers RPA Ltd v X* [2001] VSC 429 at [37] and XY v *Board of Examiners* [2005] VSC 250 at [25].
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> 18. Nevertheless, as Doyle CJ pointed out in *In the Matter of an Application for Admission as a Legal Practitioner* (1997) 195 LSJS 482 at 482:
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> > 'it remains the function of the Court to decide for itself whether the statutory requirements for admission are satisfied'. See also *Re B* [1981] 2 NSWLR 372 at 378.
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> 19. The ultimate issue in this case is whether L has satisfied the Court of his good character and fitness for admission ...

47. The Court takes seriously the compliance certificate issued by the Board and, of course, takes it into account.

Consideration

48. It appears from the material before the Court that, despite relatively recent mental ill health, the applicant has now reached a stage where his mental health is under control and relatively stable. Importantly, not only is the applicant compliant with his relevant treatment regime but he is showing insight into his condition and the need for the treatment, including insight into the benefits of treatment.

49. The opinion of appropriate medical experts is positive, though there is some residual cause for hesitation in that the description of his situation in March 2010 was more positive than that described by his treating doctor at the beginning of 2014. That calls for some caution in the Court's approach.

50. Nevertheless, the most recent psychiatric opinion is positive and optimistic. It justifies admission but with some conditions to monitor the applicant for a period of time after admission.

51. While the use of illicit drugs has been modest and there has been no use for more than five years, the risk of use again should the stress of legal practice lead to a reversion to their use cannot be entirely discounted. This is especially so because of the deleterious effect such use had had on the applicant's mental health.

52. In *Re an Application by L for Admission as a Legal Practitioner* at [29]-[32], this Court concluded that it had power to impose conditions on admission.

53. Given that the Court has some concerns that the immediate post-admission period may provide some risk to the applicant and, therefore, to the public, and that some further period of stability and continuing improvement in the applicant's condition is required, the Court considers that the applicant's admission as a legal practitioner should be subject to conditions.

54. The Court prepared draft conditions which it circulated to the applicant and the Law Society of the ACT. Both agreed that the conditions were appropriate.

55. Accordingly, the Court will admit the applicant on conditions substantially in accordance with the draft conditions.

I certify that the preceding fifty-five [55] numbered paragraphs are a true copy of the Reasons for Judgment of their Honours Refshauge, Penfold and Burns.

Associate:

Date: 14 November 2016