

# The Plagiarist



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*A lawyer who plagiarises invites disciplinary sanction.*

The issue of plagiarism in the legal sphere has burgeoned during the course of less than a decade. This is especially so in relation to admission of legal practitioners, which has spawned considerable commentary.<sup>1</sup> It is now accepted wisdom that a finding of plagiarism against an applicant, usually stemming from study at university, is of direct relevance to that person's character. Far from the notion of "good fame and character" functioning "primarily as a cultural showpiece";<sup>2</sup> courts in the 21st century treat seriously findings of plagiarism against applicants for admission.

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In a seminal case,<sup>3</sup> which occupies little more than a page and remains unreported, the Queensland Court of Appeal refused admission (albeit allowing the matter to be relisted on the expiry of at least six months) to an applicant who was found to have engaged in one act of plagiarism, even though he had made full disclosure and expressed contrition, and even though the application was not opposed by the (then) Solicitors' Admission Board. Taking the law a step further, the Supreme Court of Victoria some three years later revoked the admission of an applicant who had made incomplete disclosure of an allegation of plagiarism in a non-law subject while at university, which allegation had not been tested through any formal disciplinary committee.<sup>4</sup>

The Victorian Board of Examiners, via a 2009 practice direction,<sup>5</sup> responded by increasing the burden on applicants, requiring them to supply a report from each educational institution where they have undertaken tertiary studies, which must disclose, inter alia, any "circumstances where a student has received a warning, marks have been deducted, an allegation was made, or an investigation took place, even if the student was subsequently exonerated".

A finding of plagiarism against a person is of significance in assessing his or her character because, however defined, it

ostensibly involves an element of dishonesty, stemming from a misappropriation of another's work. And it is dishonesty, arguably more so than any other misdemeanour, that strikes at the heart of the lawyer's role. This explains why disciplinary tribunals and courts ordinarily reserve their most serious sanctions for lawyers proven to have engaged in dishonesty.<sup>6</sup>

If a finding of plagiarism challenges an assertion of good character on admission, it stands to reason that an equivalent finding against a lawyer, whether or not in the course of practice, should be cause for concern for his or her good standing in the profession. Interestingly, this was confirmed in a Victorian disciplinary decision predating those involving admission, delivered in February 1992.<sup>7</sup> In that ruling, the (then) Solicitors Board found a Victorian practitioner, a Dr Pickering, guilty of three charges of misconduct arising out of three papers he had written, one of which appeared in the *Law Institute Journal*, which had involved substantial copying from unattributed sources. Highlighting the seriousness with which the Board viewed Dr Pickering's conduct, it ordered that his practising certificate be cancelled for a period of 10 months, reasoning that:<sup>8</sup>

*" ... the copying of articles written by another without acknowledgement of that other's authorship is, in the ultimate, directed either to self aggrandisement or to the enlargement of the professional practice of the author by the holding out of learning and competence."*

Given that interest in plagiarism in the legal environment has heightened with the passage of time — as evidenced by allegations of plagiarism against a Federal Magistrate in her judgements<sup>9</sup> — it was only a matter of time before another disciplinary decision involving plagiarism would surface. In a ruling delivered on 3 February 2010, *Legal Services Commissioner v Keough*,<sup>10</sup> the Victorian Civil and Administrative Tribunal found that the respondent lawyer had engaged in professional misconduct, a finding that arose out of his plagiarism both in an assignment submitted as part of a law postgraduate degree and in a published article stemming from that assignment. Though the evidence revealed that the respondent had not set out to plagiarise, made admissions at an early stage and exhibited remorse, and that this was his first disciplinary offence since being admitted 25 years earlier, the need for general deterrence, according to the tribunal, outweighed the need for specific deterrence. As a result, it ordered that the respondent's practising certificate be suspended for six months.

Though it is obtuse to assume that plagiarism by lawyers is a purely recent phenomenon, nowadays the internet presents greater opportunities than ever, in the legal (and other) environments,

to access a wealth of information, and with it greater challenges for proper attribution. It also raises the prospect of “plagiarism checking” more effectively and efficiently than in the past. The decisions in *Pickering* and *Keough* should ultimately serve as a warning to the profession that plagiarism, in any form, is unethical.

## NOTES

1. See, for example, Corbin and Carter, “Is Plagiarism Indicative of Prospective Legal Practice?” (2007) 17 Leg Ed Rev 53; Bartlett, “Student Misconduct and Admission to Legal Practice — New Judicial Approaches” (2008) 34 Mon ULR 309; Wyburn, “Disclosure of Prior Student Academic Misconduct in Admission to Legal Practice: Lessons for Universities and the Courts” (2008) 8 QUTLJ 314.
2. Rhode, “Moral Character as a Professional Credential” (1985) 94 Yale LJ 491 at 493.
3. *Re AJG* [2004] QCA 88.
4. *Re OG (A Lawyer)* [2007] 18 VR 164.
5. Board of Examiners, Practice Direction No 3 of 2009, “Academic Misconduct Reports” (emphasis supplied).
6. See Dal Pont, *Lawyers’ Professional Responsibility*, 4th edn, Lawbook Co., 2010, pp 554–559.
7. Case against Michael Henry Pickering, Solicitors’ Board, No 746 of 1991, 6 February 1992.
8. *ibid.* p14.
9. Namely the allegations that Federal Magistrate Jennifer Rimmer had plagiarised some 2000 words from a judgement of a fellow Federal Magistrate. After an extended period of sick leave, Magistrate Rimmer resigned her position. See <[www.abc.gov.au/news/stories/2006/12/19/1814365.htm](http://www.abc.gov.au/news/stories/2006/12/19/1814365.htm)>.
10. [2010] VCAT 108.

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