

WHERE COURTS AND ACADEME CONVERGE: FINDINGS OF FACT OR ACADEMIC JUDGMENT

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When matters relating to general education decisions arise, courts from many jurisdictions are reluctant to engage with arguments that they see as the professional domain of educational authorities, schools and teachers. Matters that raise procedural issues, including those encompassed within principles of natural justice, will be considered by the courts if they can be detached from the educational decisions. In general, the courts abstain from comment on the educational decision that was made, either in terms of endorsing or negating the decision. This paper considers the judgment in Humzy-Hancock, regarding a university decision about student plagiarism, in this context. The findings in Humzy-Hancock suggest that universities should consider the wording of their policies around plagiarism with great care.

I INTRODUCTION

Following completion of the necessary academic and training requirements, Mr Nicolas Humzy-Hancock sought admission to the Supreme Court of Queensland as a Solicitor. While there are a number of paths to admission as a legal practitioner, the most common path in Queensland is the completion of a recognised law degree at a higher education institution, followed by a traineeship in a law firm or the completion of a full-time practical training program. On successful completion of these, admission is then sought to the Roll of Legal Practitioners through an appropriate court. The Queensland Legal Practitioners Admissions Board issues a supportive certificate endorsing suitability.¹

Mr Humzy-Hancock's application for admission was not endorsed by the Legal Practitioners Admissions Board of Queensland. Mr Humzy-Hancock appealed to the Queensland Court of Appeal. The issue was whether Mr Humzy-Hancock was a suitable person for admission. He had disclosed on his admission form that he had been disciplined during his law degree by Griffith University for academic misconduct (including plagiarism) on three occasions. Mr Humzy-Hancock claimed that 'for the most part at least, he was not guilty of any misconduct'.² The Court of Appeal referred the matter to the Queensland Supreme Court for determination of the 'factual issues', that is, to determine whether the applicant 'was guilty of plagiarism' and the academic misconduct findings by the University were appropriate.³

It is not uncommon for a court, in the absence of a jury, to undertake further enquiries or to direct to another body for a determination of information specific to a case, where insufficient information is available.⁴ In cases where juries are present, it is the juries who determine whether the weight of evidence of the facts, as presented, establishes a charge, and whether in criminal

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Although a staff member at Griffith University, the author has had no involvement in the decision in the main case under discussion.

cases a party is ‘guilty’ or ‘not guilty’, or in civil cases the responsibility of one party to another has been established. The burden of proof for determination of the outcome is ‘beyond reasonable doubt’ in criminal law, but ‘on the balance of probabilities’ for civil law, with the principle operating that a sliding scale exists in such determinations according to the seriousness of the charge and the impact of the decision — for example, a decision that would affect employment and capacity to earn (the Briginshaw principle). In *Humzy-Hancock*, the Court of Appeal directed a Supreme Court Judge to determine ‘guilt’ or innocence on the facts of instances of alleged plagiarism, that is the judge was to examine the evidence and make a decision as to whether plagiarism had occurred. If the judge determined the student had not committed plagiarism, then the student had not committed plagiarism.

As noted, applicants for admission to legal practice in Australia must provide undertakings that in addition to eligibility, that is, having met the previously noted legal training requirements, they are also suitable,⁵ that is, a ‘fit and proper person’⁶ of ‘good fame and character’⁷ to practise the legal profession. In general, when applying for admission, applicants must disclose information about any matters that may impact on their character and suitability for admission.⁸

Previous academic plagiarism is considered a serious matter for entry to the legal profession and comes under the suitability matters that an applicant must disclose. In some states, academic misconduct and plagiarism are specifically noted as matters that may indicate inappropriate character to practise in law. In South Australia, an applicant has to agree that the Board of Examiners may inquire from a teaching institution as to whether the applicant has been ‘guilty of any dishonest conduct, including plagiarism’ that would affect the determination about their fitness to be admitted;⁹ the Northern Territory Legal Practitioners Admission Rules allow the Admissions Board to make enquiries as to an applicant’s ‘academic honesty’.¹⁰

As the Queensland Court of Appeal has noted,

Over the last couple of years, the Court has, in strong terms, emphasised the unacceptability of this conduct (plagiarism) on the part of an applicant for admission to the legal profession.

... 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.¹¹

Therefore, the academic misconduct charges against Mr Humzy-Hancock were matters to which the courts would give serious attention with respect to his suitability for admission to the legal profession.

A Humzy-Hancock¹²: The Facts

The first instance of alleged academic misconduct by Mr Humzy-Hancock was inappropriate collaboration on an assignment with another student, with the result that their two submitted assignments had considerable content in common. The Law Faculty Dean noted that ‘there was an identical paragraph in the assignments, and that the conclusions in each assignment were “virtually identical”’.¹³ Mr Humzy-Hancock had admitted considerable collaboration in preparation of the assignment but not collusion in writing. He indicated that he was not aware that collaboration on an individual assignment constituted academic misconduct but that he took full responsibility for the consequences of this action.

The Griffith University Faculty of Law Assessment Board determined that academic misconduct had occurred through provision of an electronic copy of his assignment to another student. As a result, the Queensland Legal Practitioners Admissions Board alleged that knowingly allowing another student to copy an assignment was behaviour inappropriate for legal admission.¹⁴

The second allegation of academic misconduct concerned an assignment submission where Mr Humzy-Hancock was alleged to have committed plagiarism, defined in the Griffith University Law School Assessment Policy as ‘the knowing presentation of the work or property of another person as if it were the student’s own’, . Mr Humzy-Hancock was working nearly full-time, studying full-time, and had family disturbances. He said that ‘in consequence he prepared this assignment “hurriedly and without the proper care and attention for which was required”’ and hence failed to give proper attributions, including acknowledgements of direct quotes.¹⁵ In general, the works that Mr Humzy-Hancock failed to cite appropriately were listed within the Bibliography for the assignment. He also cited work or ascribed authorship inappropriately.

The third incident of alleged academic misconduct related to a take-home examination in the same subject. On determining that matters related to his assignment and plagiarism were being considered by the Law School of the University, Mr Humzy-Hancock ‘volunteered’ that references in his take-home exam may also have been limited. One source, consisting of approximately one-sixth of an answer to an examination question,¹⁶ was not cited in the paper at all; another was insufficiently referenced in five places.

In these five instances complained of, the applicant either repeated Dr Burton’s words or closely paraphrased them, without attribution. These allegations are similar to the Cebon matters, in that the alleged plagiarism is of a work which was not only identified by the plagiarist, but frequently cited in nearby passages of the applicant’s work.¹⁷

It was noted in the evidence that the applicant had not exhausted University appeal processes as a student. Whether the University itself would have upheld the academic misconduct charges on appeal is not known.

Justice P. McMurdo, the Supreme Court judge appointed to determine the facts, considered that the question that had to be addressed was whether Mr Humzy-Hancock had ‘knowingly’ represented the work of others as his own work, that is, with ‘intention’. He concluded that he had not and that none of the instances of academic misconduct were proved.¹⁸ Mr Humzy-Hancock had not committed plagiarism as a student under the Griffith University policy.

II TRADITIONAL COURT RELUCTANCE TO ENGAGE IN EDUCATIONAL DECISIONS

Courts internationally have continued to express reluctance in engagement with matters of academic judgment, both in schools and universities.¹⁹ The general sense is that it would be inappropriate for the courts to determine academic grades, as that is a matter for the professional judgment of the institutions. This was reinforced recently in the dissenting opinion of Justice Kirby in *Tang*²⁰

I recognise that universities are in many ways peculiar public institutions. They have special responsibilities ... to uphold high academic standards about which members of the academic staff will often be more cognisant than judges. There are issues pertaining to the intimate life of every independent academic institution that, sensibly, courts decline to review: the marking of an examination paper; the academic merit of a thesis;... As Sedley LJ noted in *Clark v University of Lincolnshire and Humberside*, such matters

are ‘unsuitable for adjudication in the courts ... because there are issues of academic or pastoral judgment which the university is equipped to consider in breadth and in depth, but on which any judgment of the courts would be jejune and inappropriate’. Judges are well aware of such peculiarities. The law, in common law countries, has consistently respected them and fashioned its remedies accordingly.²¹

The statement by Lord Justice Sedley cited by Justice Kirby occurred in a case of alleged plagiarism that affected the class of Honours awarded with a degree to the student. Clark. Lord Sedley’s principle was reinforced by Lord Woolf in Clark’s subsequent appeal,

[t]he court, for reasons which have been explained, will not involve itself with issues that involve making academic judgments. Summary judgment dismissing a claim, which if it were to be entertained, would require the court to make academic judgments should be capable of being obtained in the majority of situations.^{22,23}

However, courts have ‘no difficulty in deciding whether principles of natural justice have been observed’.²⁴ Kamvounias and Varnham have noted that while judicial reluctance to intervene in educational academic decisions has been expressed frequently, more recent cases indicate that the context of the case will affect the court’s willingness to intervene, but generally where the decision is perceived as an outcome due to a lack of procedural fairness and natural justice.²⁵ The analyses by Kamvounias and Varnham of cases involving grading outcomes for students alleged to have committed academic misconduct, that is, plagiarism, indicate that procedural unfairness was the most significant factor in court involvement.²⁶

This then, places the direction to the Supreme Court judge to determine the facts about guilt in academic plagiarism into a slight quandary. The direction to the Court to determine ‘guilt’ could indicate several directions to take. The judge could have determined: whether the allegation had been established to a satisfactory level by the University, that is, it is suggested, given the potential significance of the impact for future employment, using a standard approaching the criminal standard of proof (but noting that the student had not exhausted all University levels of appeal);²⁷ whether the evidence was sufficient to establish guilt; whether procedural fairness and natural justice had applied in the decision; or, as implied, by an examination of the facts make a decision of innocence of guilt in the act of plagiarism. The further question if the last option holds, is whether this judicial reasoning has a different approach to the ‘marking’ of an examination paper, that Lords Sedley and Woolf, and Justice Kirby have held is beyond the scope of the courts.

III PREVIOUS COURT CONSIDERATIONS OF PLAGIARISM AND LEGAL ADMISSION

Following disclosure by an applicant for legal practice admission that a complaint of academic misconduct and plagiarism occurs on their record, the Board governing admission in each state may determine whether the conduct is such as to make the applicant an inappropriate person to practise law, or seek such a determination by the court, as occurred in *Humzy-Hancock*. If practice admission is denied, the applicant may appeal the outcome.

As noted earlier, the courts consider such an action very seriously, as indicative of lack of integrity. In *Liveri*,²⁸ an applicant appealed to the Queensland Court of Appeal against the decision by the Legal Practitioners Admissions Board that she should not be proposed to practise based on disclosed academic misconduct. Again a determination of facts was referred to the Supreme Court, but during the process, following advice from the presiding judge about care in self-incrimination,²⁹ the applicant decided to withdraw that application. She then reapplied. It

was noted that the applicant accepted three findings of academic misconduct against her by her university.³⁰ In one instance, as a student, she had submitted a document obtained online as her own work, although later claiming this was inadvertent, despite evidence that some editing of the original source had occurred. The second offence involved quoting substantial work without attribution or acknowledgement. For the third offence, although the details are not clear, it would appear that plagiarism was found as no marks were given for an assignment.³¹ The applicant had been denied admission in New South Wales based on her academic misconduct record. In the Queensland appeal, the applicant accepted responsibility for her actions, but noted ‘external pressures’ at the time.³² However, despite her subsequent study and work experience, the seriousness of the offences and the conduct of and statements by the applicant in the intervening years, in conjunction with the documentation for her first Queensland application, led the Court to determine that the application should not yet be approved, but deferred for a further six months.

Another applicant disclosing academic misconduct (plagiarism) that appeared to be of a much lesser academic nature also had an application deferred for six months.³³ The applicant had copied the work of another student to a substantial degree and consequently failed a subject on a finding of plagiarism, but passed the subject subsequently on reenrolment. The Solicitors’ Board did not oppose admission, considering the action a ‘one-off aberration’ possibly due to external ‘stressors of a financial and domestic nature’.³⁴ However, the Queensland Court of Appeal considered it inappropriate ‘without pause’ to ‘accept as fit to practise an applicant who responds to stress by acting dishonestly to ensure his personal advancement’.³⁵ While this applicant had committed only one offence, the fact that it had occurred during his professional preparation legal practice course increased the seriousness of the matter.

Failure to disclose academic misconduct on application for admission to practice is also a major concern. Alleged collaboration with another student and presentation of work that was not independent led to a charge of academic misconduct against a law student which he subsequently failed to disclose in seeking admission to practice.³⁶ It was noted that the student had signed an assignment cover sheet, as required by the Law School, that ‘this assignment, to the best of my knowledge, contains no material previously published or written by another person except where due reference is made in the text’ and ‘I am aware that plagiarism is serious academic misconduct’, while the student with whom the applicant was alleged to have collaborated, or copied, had not.³⁷ The allegation of the university, based on its policy at the time and ‘definition of academic misconduct’, was that the student had committed the offence of ‘copying and therefore of academic misconduct because it involved the seeking to obtain for oneself an academic advantage to which he was not entitled’.³⁸ The student did not appeal the outcome at the university level at the time as he was not aware of the potential impact of the offence and finding on his admission to practise law. When the impact on his admission application was realised, a belated appeal was made to the university. This led to the decision being overturned by the university due to a lack of natural justice, as several procedural matters relating to the charge and penalty were not clear. The university itself through its appeal procedures established that elements of natural justice, including disclosure of the nature of the alleged offence, had not been followed. Therefore at the time the applicant was being challenged by the Law Society for failure to disclose the academic misconduct finding, the finding had been set aside by the university.³⁹ However, it was noted by the Court that the argument made against admission was not the act of academic misconduct, but the failure to disclose. Nevertheless, in this case, the Court determined that the Law Society had not established that the applicant was not a fit person to practise.

These three cases are indicative of the extent to which student misconduct and subsequent behaviour are indeed regarded as serious integrity matters by the courts.

A The Defence to Plagiarism of Mitigating Factors

Stress and work demands have been cited as reasons why students are turning to plagiarism as a way to cope. Applicants in most of the discussed cases indicated these were the reasons for taking actions that they acknowledged were inappropriate.⁴⁰ The courts appear to have considered these factors by determining that the applications for admission should be delayed, rather than completely denied. However, the courts confirm that such actions are not only *not* excused by personal circumstances but are indicative of a lack of integrity if used as a solution to personal problems.⁴¹ Such considerations go beyond those seeking admission to those practising the law.

A Federal Magistrate, Ms Jennifer Rimmer was alleged to have copied components of her decisions in three judgments from other decisions, although initially only one copied judgment was identified. The Magistrate argued that ill health and heavy workload had led to the actions, initially refused to resign, and was placed on ‘full pay for two months to be mentored and counselled about the dangers of plagiarism’. However, considerable public commentary about the judgments resulted, with suggestions from the legal community that her previous decisions may be challengeable. Ms Rimmer eventually resigned from her position.⁴² High standards and integrity in the legal profession are not only the expectations of the courts but also those of the general public.

IV DETERMINATION OF PLAGIARISM: THE ISSUE OF INTENTIONALITY

The following discussion focuses on the findings of fact by the Supreme Court of Queensland with respect to the second act of plagiarism allegedly committed by Humzy-Hancock — the submission of an assignment with inadequate referencing, referencing errors and direct quotations without appropriate acknowledgement — within the context of how plagiarism may be defined and considered.

A Intent and ‘Knowing’

The Griffith University policy on plagiarism defines plagiarism as ‘knowingly presenting the work or property of another person as if it were one’s own’.⁴³ An interesting aspect of this definition may be different constructions of the word ‘knowingly’ as in ‘knowing’ or ‘with knowledge’. Courts will construe words through their common meaning if no other definition is available. A simple dictionary meaning of ‘knowing’ is ‘deliberate’ or ‘intentional’.⁴⁴ A legal definition of ‘knowing’ is ‘with knowledge, conscious’, while ‘knowledge’ itself is defined as ‘cognisance of facts or truth ... In all statutory offences, knowledge of the circumstances which make the doing of the act an offence will be presumed to be an element of the offence unless there is clear intention displayed by the legislature that it should not be an element of the offence’.⁴⁵ Thus there is a semantic distinction possible as to whether ‘knowingly’ is intended to imply ‘intentionality’ in the doing of an act, or that such an act was completed by the individual with ‘knowledge’ of what constitutes plagiarism. In the latter case, the law might apply an ‘objective test’, where the behaviour of a person is assessed by reference ‘to a standard external to the person’,⁴⁶ the ‘reasonable person’ test whereby a state of ‘knowledge’ can be assumed, as for example, in the often-cited phrase ‘a reasonable man knew, or should have known’.⁴⁷ By contrast,

the action could be considered by a subjective test, where ‘the culpability of a person’s conduct’ is based on ‘what the person actually believed or knew at the time of conduct’.⁴⁸

An objective versus subjective test in determining matters of academic plagiarism has been considered. Plagiarism committed by an academic staff member of a university, through representation of the work of colleagues as her own in publications and presentations, led to her dismissal from the university.⁴⁹ She challenged the termination decision in the Industrial Relations Commission on the grounds that the dismissal was harsh or unreasonable.⁵⁰ Her defence was that the acts were not ‘deliberate or wilful’.⁵¹ However, the Commission found that the termination was reasonable. The definition of ‘plagiarism’ used by her university was ‘the act of taking and using another’s work as one’s own’, with Commissioner Roberts noting that this was a common sense meaning similar to that in a dictionary.⁵² Further Commissioner Roberts rejected the complainant’s ‘contention that plagiarism is not an objective standard but ... needs to be “operationalised”’.⁵³ Counsel for the university had argued that an objective standard should be used, referring to previous Industrial Relations’ decisions. ‘What the Commission has to do is look objectively and not subjectively as to whether in fact a person has used work of others as one’s own. It is not merely exploring what a person says was their mental intent at the time but is an objective intent to be determined by the Commission ...’.^{54,55}

B *The Determination in Humzy-Hancock*

Justice McMurdo examined ‘knowingly’ in consideration of the facts in *Humzy-Hancock* using the test ‘did the applicant mean to represent that the work of others was his own work?’.⁵⁶ From the overview of the submission by the University, and the applicant’s defence, this appears to have been the common perspective — that the question was whether the applicant ‘intended to pass off the work of others as his own’ (emphasis added).⁵⁷

Justice McMurdo determined that the student did not commit plagiarism. He considered the established acts by the student in submitting the second assignment, noting first the applicant’s defence that he had completed the work “hurriedly and without the proper care and attention for which was required”, given that he was working almost full-time, and, in addition to work demands, studying full-time, with ‘distractions’ also through family matters, that is, personal pressures.⁵⁸ Justice McMurdo noted:

It was poor work for the applicant simply to copy it without due attribution. But it does not follow that he intended to pass off this sentence as entirely his own.⁵⁹

The mistake in attributing these things to Mr Zoellick fortifies the impression that the failure to give attribution to the Cebon article was poor work, not plagiarism.⁶⁰

One possibility is that the applicant knew what he was doing, and intending to avoid the impression that he had heavily borrowed and indeed quoted from Cebon’s work, he decided to pass off Mr Cebon’s work as that of someone else. Another possibility is that this was simply careless work. In considering these possibilities, of course, all of the evidence has to be kept in mind. One instance of sloppy work might be easier to explain than several.⁶¹

With reference to the direct copying of 11 lines

The more likely explanation is that the attribution to another publication was a mistake: that the applicant intended to attribute this paragraph to Cebon and that he had not appreciated that the passage should be shown as a direct quotation.⁶²

As to that last complaint, I am not persuaded that there is, even on an objective basis, any misrepresentation.⁶³ (only reference to objective basis)

I conclude that in none of these instances did the applicant intend to pass off the work of another, Mr Cebon, as his own. I accept the applicant's evidence that these failures to give proper attribution to the Cebon article were the result of carelessness and his misunderstanding of what was required. I find that there was no plagiarism in this assignment.⁶⁴

None of the allegations of plagiarism is proved. I find that in each case the failure to give proper attribution was the result of poor work and not an intention to pass off the work of another as the applicant's work.⁶⁵

The determination of facts thus led to a court judgment of academic quality, with repeated reference to 'poor work', carelessness and sloppiness. Perhaps, as in *Clark v University of Lincolnshire and Humberside*,⁶⁶ if the student's assignment had been assessed by Griffith University on these terms, it would have received a poor, possibly failing, grade.

V CONCLUSION

Australian universities publicise policies of plagiarism and the seriousness of plagiarism to all students, usually from commencement of studies, in subject outlines, and on assessment submission sheets, as in the Law School at Griffith University. The factor in the Griffith University policy that led to the Court consideration of the quality of assignment work was the use of the word 'knowingly'.

Why would a university use the term 'knowingly' in a plagiarism policy? Universities in Australia and New Zealand enrol large numbers of international students from many cultures. Academics in universities working from a Western tradition recognise that, in many cultures, what we consider plagiarism is regarded as good educational practice. Australian universities emphasise student critical engagement with issues, with expression of students' own ideas drawing together in a coherent argument the arguments of others. However, in some cultures, critical appraisal of those who must be respected, that is the academic community of more senior scholars, is considered inappropriate. Further, repeating the work of these scholars is seen as showing esteem.⁶⁷

It has been a considerable haul for universities in Australia, and abroad, to ensure that international students understand that not only is this not expected academic activity in studies in Australia, but that also in our culture and policies it is wrongful academic behaviour. Therefore, the term 'knowingly' may have meaning for a student who still is coming to terms with changed cultural expectations in assessment, while universities may not wish to penalise cultural differences as students learn different ways of academic work at the commencement of their studies. However universities are now developing considerable orientation activities to address matters such as appropriate academic citation early with such students. In the interests of maintaining strong academic standards for all students, cultural ignorance may no longer be allowable as a defence. Of course, cultural difference is only one source of student plagiarism behaviours. There are many other factors and influences.⁶⁸ Clearly, in order to reduce incidents, more effort needs to be made to educate all students about what constitutes plagiarism and what is acceptable academic behaviour in our universities.

Wyburn and MacPhail⁶⁹ note that definitions of plagiarism are broad, and encompass both 'deliberate copying' and 'the unintended failure of students to appreciate appropriate referencing

conventions'. As they note, the University of Sydney Policy and Procedure on student plagiarism indicates that plagiarism can be 'negligent ... or dishonest'.⁷⁰ While this view is not shared in all considerations of plagiarism, Wyburn and MacPhail indicate that there is a public readiness to

encompass a wider definition that includes 'Negligent Plagiarism', that is, 'innocently, recklessly or carelessly' using the unacknowledged work of others as well as 'Dishonest Plagiarism', that is, 'knowingly' so doing.⁷¹

The determination in *Humzy-Hancock* has two implications for future educational law challenges in Australia, and possibly internationally. Firstly, the language used in the determination and judicial pronouncements about the quality of academic work, rather than an arguments about the establishment of findings beyond a reasonable standard of doubt or lack of procedural fairness, indicate that there are circumstances where the courts will now intervene and make judgments of an academic nature, that is, educational decisions, contrary to previous policy statements and dicta. With an absence of a clear legal framework of reference in this decision, either objective or subjective, the determination of facts became a judgment of academic quality and behaviour, not of an expected standard of behaviour.

The second implication of the determination in *Humzy-Hancock* is that universities, and other educational institutions, must ensure that the terminology in their policies is clear and reflects their intended meaning. Overall, it would seem that policies on academic misconduct, especially for plagiarism, should ensure that the distinction between negligent and dishonest conduct, and resultant procedures and penalties, are clear, as established by the University of Sydney policies. Alternatively, given the more knowing state of students, and availability of resources, policies could reflect the plain meaning definition of 'plagiarism' that omits issues of intentionality, as endorsed by Commissioner Roberts.⁷²

If either of these definitions had been in place at Griffith University, Justice McMurdo would have had to conclude that Mr Humzy-Hancock did commit plagiarism. Indeed the matter may not have been referred to the Court for determination. The major issue would have been for the Queensland Supreme Court to determine whether the offence of at least negligent plagiarism affected suitability of character to practise law.

A student or employee who copies work without due recognition may be considered to gain unfair advantage. Stress or other work or personal demands that lead to such actions are not regarded by the courts as an acceptable defence. Plagiarism is not considered an appropriate recourse for an individual to take to resolve their immediate problems. While appropriate academic behaviour is especially important for those seeking to practise the legal profession, it is also important for all professions that train in universities. Universities may wish to consider their current definitions of academic misconduct and plagiarism to ensure both meeting their commitments to the professions —and to keep academic and educational decision making from the purview of the courts.

ENDNOTES

1. For Admission information for Queensland see <<http://www.qls.com.au/content/lwp/wcm/connect/QLS/For+the+Profession/>> at 14 June 2007.
2. *Humzy-Hancock, Re* [2007] QSC 34, [1].
3. Ibid.
4. See, for example, *Uniform Civil Procedures Rules 1999* (Qld) r 769 'Insufficient Material'.
5. See, for example, *Legal Profession Act 2004* (Qld) s 30; *Legal Profession Act 2004* (NSW) s 25; *Legal*

- Profession Act 1993* (Tas) s 31; *Legal Profession Act 2004* (Vic) s 2.3.3; *Legal Practice Act 2003* (WA) s 28(1)(b).
6. *Legal Profession Bill 2006* (ACT) s 26(2)(b).
 7. *Legal Profession Act 2004* (Qld) s 13(1)(a).
 8. For example, in Queensland, an applicant for admission must complete Form 7 *Supreme Court (Legal Practitioner Admission) Rules 2004* [Rule 13(2)(j)] Statement of Eligibility and Suitability and indicate under Question 5 whether they 'are aware of any matters which may bear adversely on my suitability' and advise details, with documentation, of the same.
 9. *Rules of the Legal Practitioners Education and Admissions Council 2004* (SA) Rule 7.6(b).
 10. *Legal Practitioners Admission Rules* (NT) s 8(1)(b).
 11. *AJG, Re* [2004] QCA 88, unparagraphed.
 12. *Humzy-Hancock, Re* [2007] QSC 34.
 13. *Ibid* [6].
 14. *Ibid* [8].
 15. *Ibid* [15].
 16. *Ibid* [37].
 17. *Ibid* [38]. Dr Burton and Cebon are references to works from which Mr Humzy-Hancock had extensively quoted and included in the Bibliography. At issue was the degree to which appropriate attribution was made to quotes from these authors, either through identifying the words as the work of these authors, or attribution of quotes to the wrong author, as later extracts from the judgment note.
 18. *Ibid* [42].
 19. See, for example, Andrew Hopkins 'Liability for Careless Teaching: Should Australians Follow the Americans or the British' (1996) 34(4) *Journal of Educational Administration* 39; J. Joy Cumming, 'Establishing a Professional Standard for Teachers' Duty of Care' (2000) *Proceedings of the Australian & New Zealand Education Law Annual Conference*, Adelaide, 12-14 July; Sally Varnham, 'Decisions of Academic Judgement and Discipline in New Zealand Tertiary Institutions: Do Cheats Prosper' (2001) 13 *Education and the Law* 390.
 20. *Griffith University v Tang* [2005] HCA 7 [165]; A student Tang had challenged a decision by Griffith University regarding academic misconduct under its policies. The High Court Appeal examined whether a decision by Griffith University could be considered 'under an enactment' for the purposes of the *Judicial Review Act* (Qld), and hence could be subject to review in the courts. The determination of Tang, with Kirby J dissenting, was a narrow reading of the term 'under an enactment', and that the decisions made were in accord with internal policy of the institution, not statute. The case did not determine the nature of the decision made about the student's conduct and it was not able to proceed to judicial hearing.
 21. *Griffith University v Tang* [2005] HCA 7, [165].
 22. *Clark v University of Lincolnshire and Humberside* [2000] EWCA Civ 129; here, a student at a university failed to back up a major assignment and submitted materials from another source, the student was charged with plagiarism, appealed, was allowed to have the submitted work marked, was awarded '0', appealed, was to be remarked, awarded '0', argued by the Academic Board of the university as 'permissible so long as the examiners had treated the paper as a failure rather than as plagiarism' [2]-[3]. The student obtained a third class degree due to policy [4]-[5]. The case was argued under contract law. As the House of Lords noted, as plagiarism was no longer an issue, the issue became one of academic judgment. However, the appeal was based on procedural grounds on contract law, not the arguments of the outcome, and the student's appeal was allowed to proceed. In the earlier decision noted by Justice Kirby, where the student's application was denied, *Clark v University of Lincolnshire and Humberside* [2000] 3 All ER 752, Lord Sedley had noted 'there are issues of academic or pastoral judgment which the university is equipped to consider in breadth and in depth, but on which any judgment of the courts would be jejune and inappropriate' [12].
 23. *Clark v University of Lincolnshire and Humberside* [2000] EWCA Civ 129 [29].
 24. *Hines v Birkbeck College* [1985] 3 All ER 156, 164. In this case regarding academic employment, the context of the comment is 'The marking of examination papers, as in Thomson and Thorne or the

- question in *Patel* of whether Mr Patel was sufficiently qualified to enter for a degree in mathematics were obviously matters in which the courts declined jurisdiction with relief. But the courts have no difficulty in deciding whether principles of natural justice have been observed ...’.
25. Patty Kamvounias and Sally Varnham, ‘In-House or In Court? Legal Challenges to University Decisions’ (2006) 18 *Education and the Law* 1, 2.
 26. *Ibid* 7.
 27. Varnham, above n 19, 389. Varnham indicated that a criminal standard should apply as the allegation is one of ‘dishonesty’ (at 394); endorsed by the principle applied by Sinclair J in *Al-Bakkal v De Vries* (2003) MBQB 198 that ‘a high standard of justice’ was applicable when employment was likely to be affected, an outcome for most university students, as cited in Kamvounias and Varnham, above n 24, 5.
 28. *Liveri, Re* [2006] QCA 152.
 29. *Ibid* [2].
 30. *Ibid* [3].
 31. *Ibid* [12].
 32. *Ibid* [15].
 33. *AJG, Re* [2004] QCA 88.
 34. *Ibid* (unparagraphed).
 35. *Ibid*.
 36. *Law Society of Tasmania v Richardson* [2003] TASSC 9.
 37. *Ibid* [11]. The other student did not appear to have been penalised.
 38. *Ibid* [13].
 39. *Ibid* [25]-[27].
 40. T LeClercq, ‘Failure To Teach. Due Process and Law School Plagiarism’ (1999) 49 *Journal of Legal Education* 236, cited in Varnham, above n 19, 392.
 41. *AJG, Re* [2004] QCA 88, unparagraphed.
 42. ‘“Plagiarist” Magistrate Refuses to Quit’, Reports the Courier-Mail <<http://www.basalquestions.org/weblog/2006/03/index.html>> at 5 March 2007; ‘Carbon Copy Magistrate Quits’ (2006) <<http://www.abc.net.au/news/newsitems/200612/s1814365.htm>> at 5 March 2007.
 43. Griffith University, *Policy on Academic Misconduct* (2007) [1.0] <<http://www.griffith.edu.au/ua/aa/sta/policies/>> at 5 March 2007.
 44. Patrick Hanks (ed), *Collins Dictionary of the English Language* (2001), 813.
 45. Peter Nygh and Peter Butt (eds), *Butterworths Concise Australian Legal Dictionary* (2nd ed, 1998), 256.
 46. *Ibid* 312.
 47. Consider, for example, a recent example of this in an education decision, discussing the responsibility on a ‘reasonable dyslexic’ to seek help to address their problems (*Adams v Bracknell Forest Borough Council* [2004] 3 WLR 89, [31]).
 48. Nygh and Butt, above n 45, 415.
 49. *Petrina Maria Quinn v Charles Sturt University* - PR968580 [2006] AIRC 96
 50. *Ibid* [1].
 51. *Ibid* [11].
 52. *Ibid* [59].
 53. *Ibid* [60].
 54. *Ibid* [52].
 55. The seriousness of the outcome for the academic reflected the multiple occasions, and public forums, in which the representation of the work of a group of academics as her work occurred. However, as an anonymous reviewer of this article noted, the case does raise an interesting question as to whether a different standard should apply for university staff and students.
 56. *Humzy-Hancock, Re* [2007] QSC 34, [14].
 57. *Ibid*, for example, [14], [28]-[29], [36].
 58. *Ibid* [15].

59. Ibid [17].
60. Ibid [18], this was an instance of wrongful attribution to work by Mr Zoellick.
61. Ibid [19].
62. Ibid [21].
63. Ibid [25].
64. Ibid [30].
65. Ibid [42].
66. [2000] 3 All ER 752.
67. See, for example, Chris Park, 'In Other (People's) Words: Plagiarism by University Students — Literature and Lessons' (2003) 28 *Assessment & Evaluation in Higher Education*, 471, 473, 480. This is not to assert the superiority of Western educational traditions over those of other cultures, but to note that students studying in our environments are expected to conform with our standards.
68. Ibid.
69. Mary Wyburn and John MacPhail, 'The Intersection of Copyright and Plagiarism and the Monitoring of Student Work by Educational Institutions' (2006) 11(2) *Australia and New Zealand Journal of Law and Education* 73, 74.
70. Ibid.
71. Ibid 75.
72. *Petrina Maria Quinn v Charles Sturt University* - PR968580 [2006] AIRC 96, [59].