

# SUPREME COURT OF QUEENSLAND

CITATION: *Re Ayobi* [2018] QCA 1

PARTIES: **LEGAL PRACTITIONERS ADMISSIONS BOARD (QUEENSLAND)**  
(applicant/respondent)  
v  
**WAHID AYOBI**  
(respondent/applicant)

FILE NO/S: Appeal No 917 of 2018  
SC No 2537 of 2016

DIVISION: Court of Appeal

PROCEEDING: Miscellaneous Application – Civil

DELIVERED ON: 30 January 2018

DELIVERED AT: Brisbane

HEARING DATE: 16 October 2017

JUDGES: Holmes CJ and Boddice and Jackson JJ

ORDER: **The applicant pay the Legal Practitioners Admissions Board’s costs fixed at \$7,000.**

CATCHWORDS: PROFESSIONS AND TRADES – LAWYERS – QUALIFICATIONS AND ADMISSION – OTHER MATTERS – where the respondent/applicant had applied for admission as a legal practitioner – where a finding was made that the respondent/applicant had not been candid in his disclosure – where the respondent/applicant’s application had been withdrawn – where the applicant/respondent applied for an order that the respondent/applicant pay its costs – whether an order should be made that the respondent/applicant pay the applicant/respondent’s costs fixed at an amount that is less than an indemnity for costs

*Legal Profession Act* 2007 (Qld), s 13(1)

*Barristers’ Board v Khan* [2001] QCA 92, cited

*Clyne v NSW Bar Association* (1960) 104 CLR 186; [1960] HCA 40, cited

*KMB v Legal Practitioners Admissions Board (Queensland)* [2017] QCA 146, cited

*Oshlack v Richmond River Council* (1998) 193 CLR 72; [1998] HCA 11, cited

*Re Ayobi* [2017] QSC 130, related

*Wentworth v NSW Bar Association* (1992) 176 CLR 239; [1992] HCA 24, cited

COUNSEL: K Wilson QC for the applicant/respondent

The respondent/applicant appeared on his own behalf

SOLICITORS: Jensen & Co for the applicant/respondent  
The respondent/applicant appeared on his own behalf

- [1] **HOLMES CJ:** I agree with the reasons of Jackson J and with the order he proposes.
- [2] **BODDICE J:** I agree with Jackson J.
- [3] **JACKSON J:** The applicant's application for admission as a legal practitioner has been withdrawn. The remaining question is as to costs. The Legal Practitioners' Admissions Board ("LPAB") applies for an order that the applicant pay its costs.
- [4] On 10 October 2016, the applicant's application for admission as a legal practitioner was adjourned for consideration of questions raised by his affidavit of disclosure of suitability matters.
- [5] On 23 June 2017, Douglas J found that the applicant had not been candid in his disclosure.<sup>1</sup>
- [6] On 30 October 2017, on the further consideration of the application for admission by this court, the application was withdrawn and the LPAB applied for costs.
- [7] The LBAP made a written submission and pressed orally for an order that the applicant pay the LPAB's costs fixed in an amount that would be a relatively full indemnity for the costs incurred before Douglas J.
- [8] The court expressed a provisional view that an order should be made that the applicant pay the LBAP's costs of the proceeding, fixed in the amount of \$7,000.
- [9] The applicant was unrepresented. The court reserved the question of costs on the basis that each of the applicant and the LPAB might make a further short submission in writing.
- [10] The applicant submits that he is unemployed and under financial stress as reasons why he should be ordered to pay the LPAB's costs fixed in the sum of \$1,500.
- [11] The LPAB submits that the amount of costs proposed by the court on 30 October 2017, being \$7,000, is less than the amount of the costs it incurred for counsel's fees before Douglas J.
- [12] It submits that it was put to expense fulfilling its statutory role in the costs it incurred. That much may be accepted. It further submits that the fixed amount of \$7,000 "does not reflect the proper purpose of an order for costs."
- [13] Lastly, it submits that any financial hardship to the applicant from an order for costs in an amount greater than \$7,000 may be met by the LPAB allowing payment by instalments, as it sees fit.
- [14] In my view, the discretion as to costs is appropriately exercised, in this case, by an order that the applicant pay a fixed amount towards the LPAB's costs that is less

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<sup>1</sup> *Re Ayobi* [2017] QSC 130, [39]-[42].

than and does not represent an indemnity for costs, whether assessed on either the standard basis or the indemnity basis. There are several reasons why.

- [15] First, the control of the admission of legal practitioners is ultimately a matter for this court, exercising original jurisdiction.<sup>2</sup> The applicant and the LPAB must observe the statutory requirements in making an application, but when the matter comes before this court it is no longer the parties who set the agenda for further inquiry. The court does.
- [16] Second, the court should be able to adopt appropriate procedures flexibly. Doing so may be onerous for an applicant. That is justified by the important privileges and responsibilities that attach to admission as a legal practitioner. However, where an applicant falls short, it is not just a matter of inter parties civil litigation.<sup>3</sup>
- [17] Third, the basis of an order for costs is that the court has a statutory discretionary power to award them<sup>4</sup> and as between parties to an issue or issues in a civil proceeding the order for costs in the exercise of that discretion usually follows the event.<sup>5</sup> However, in most civil litigation where the power to award costs applies, both sides of the dispute are exposed to the risk of an adverse order for costs. Significantly, in an application for admission as a legal practitioner, the LPAB is not itself exposed to an order for costs, absent misconduct.<sup>6</sup>
- [18] Fourth, although it is correct to say that the LPAB performs an important function in relation to an application for admission as a legal practitioner, the LPAB is not a party litigant.<sup>7</sup>
- [19] Fifth, where a person's application for admission is unsuccessful because an adverse view is taken upon the question whether they can satisfy the protective requirement that they are a fit and proper person, due to lack of candour in disclosure of a suitability matter, the applicant is not being punished.<sup>8</sup> Nor should the resolution of that question be seen to be vindicated by a costs order against the applicant, as the LPAB, in effect, submits, in the absence of "delinquency" in conduct of the proceeding.<sup>9</sup>
- [20] Sixth, notwithstanding these considerations, there is no doubt that the court may make an order that a person found not to have disclosed, or disclosed without true candour, a suitability matter should pay the costs of the LPAB in bringing or appearing on a proceeding where that question results in removal from the roll or a failure to be admitted.<sup>10</sup>
- [21] Seventh, the appropriate approach to the exercise of the discretion as to costs on an unsuccessful application for admission was considered in some depth in 1993 by Campbell J in *Wentworth v NSW Bar Association*,<sup>11</sup> where reference was made to

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<sup>2</sup> *Legal Profession Act 2007* (Qld), s 13(1) and *KMB v Legal Practitioners Admissions Board (Queensland)* [2017] QCA 146, [28]-[29] and [38].

<sup>3</sup> *Wentworth v NSW Bar Association* (1992) 176 CLR 239, 250-251.

<sup>4</sup> *Civil Proceedings Act 2011* (Qld), s 15.

<sup>5</sup> *Uniform Civil Procedure Rules 1999* (Qld), r 681(1).

<sup>6</sup> *KMB v Legal Practitioners Admissions Board (Queensland)* [2017] QCA 146, [52] and [54].

<sup>7</sup> *KMB v Legal Practitioners Admissions Board (Queensland)* [2017] QCA 146, [60].

<sup>8</sup> *Clyne v NSW Bar Association* (1960) 104 CLR 186, 201-202.

<sup>9</sup> *Oshlack v Richmond River Council* (1998) 193 CLR 72, 89 [44].

<sup>10</sup> *Barristers' Board v Khan* [2001] QCA 92.

<sup>11</sup> Unreported, Supreme Court of New South Wales, Common Law Division, Campbell J, 29 June 1993, at pp 5-10.

a number of cases where no order for costs was made. Ultimately, in that case no order for costs was made against an unsuccessful applicant whose application to be admitted as a barrister was refused on the ground that she was not a fit and proper person to be admitted.

- [22] Lastly, there is a question about whether it is appropriate for the LPAB to be represented by Queen's Counsel on an issue like the one decided by Douglas J in the present case.
- [23] For those reasons, I would order that the applicant pay the LPAB's costs fixed at \$7,000.