

# SUPREME COURT OF QUEENSLAND

CITATION: *Bax v Legal Practitioners Admission Board* [2020] QCA 71

PARTIES: **CRAIG STEPHEN BAX**  
(appellant)  
v  
**LEGAL PRACTITIONERS ADMISSION BOARD**  
(respondent)

FILE NO: Appeal No 7696 of 2019

DIVISION: Court of Appeal

PROCEEDING: General Civil Appeal

DELIVERED ON: 15 April 2020

DELIVERED AT: Brisbane

HEARING DATE: 25 November 2019

JUDGES: Morrison and McMurdo JJA and Mullins AJA

ORDER: **1. Appeal dismissed.**  
**2. No order as to costs.**

CATCHWORDS: PROFESSIONS AND TRADES – LAWYERS – QUALIFICATIONS AND ADMISSION – FIT AND PROPER PERSONS – where the appellant previously struck off the roll of solicitors for professional misconduct for backdating documents and persistent dishonesty – where over 20 years later the appellant applied to the Legal Practitioners Admissions Board for a declaration under s 32 of the *Legal Profession Act 2007* (Qld) that without more, the striking off would not adversely affect the assessment of whether he is a fit and proper person for admission as a legal practitioner – where the appellant held a number of licences and registrations in connection with debt collecting, taxation advice, administration of Commonwealth debt agreements, superannuation advice and as a real estate agent – where the appellant expressed remorse for the misconduct that resulted in his striking off – where the Board refused to make the declaration – whether the Board erred in refusing to make the declaration – whether application for early consideration of suitability was appropriate for a person seeking re-admission after being struck off as a legal practitioner

*Legal Profession Act 2007* (Qld), s 9, s 10, s 31, s 32, s 33, s 35, s 39

*Attorney-General v Bax* [1999] 2 Qd R 9; [\[1998\] QCA 89](#), related

*Attorney-General of the State of Queensland v Legal Services Commissioner & Anor* [2018] QCA 66, cited  
*Dempsey v Legal Practitioners Admissions Board* [2013] QCA 193, cited  
*Gregory v Queensland Law Society Incorporated* [2002] 2 Qd R 583; [2001] QCA 499, cited  
*KMB v Legal Practitioners Admissions Board (No 1)* [2018] 1 Qd R 94; [2017] QCA 76, considered  
*KMB v Legal Practitioners Admissions Board (No 2)* [2018] 1 Qd R 500; [2017] QCA 146, considered  
*Ex parte Lenehan* (1948) 77 CLR 403; [1948] HCA 45, considered

COUNSEL: G J Radcliff for the appellant  
 L K Crowley QC for the respondent

SOLICITORS: Legacy Legal for the appellant  
 Bennett & Philp for the respondent

- [1] **MORRISON JA:** I have read the reasons of Mullins AJA and agree with those reasons and the orders her Honour proposes.
- [2] **McMURDO JA:** I agree with Mullins AJA.
- [3] **MULLINS AJA:** On 9 July 2018 Mr Bax applied to the Legal Practitioners Admissions Board pursuant to s 32 of the *Legal Profession Act* 2007 (Qld) (the Act) for a declaration that the suitability matters relevant to him, as detailed in his affidavit sworn on 9 July 2018 would not, without more, adversely affect the Board’s assessment of his suitability for admission. The suitability matter that was the primary focus of the application to the Board was the fact that Mr Bax had been struck off as a solicitor by the Court of Appeal on 12 May 1998: *Attorney-General v Bax* [1999] 2 Qd R 9 (the reasons for striking off).
- [4] By letter dated 28 June 2019 the Board informed Mr Bax that it “resolved to refuse to make the declaration under section 32(3)(c) of the Act that the suitability matters the substance of Mr Bax’s application, i.e. his earlier strike off in May 1998 by itself, will not, without more, adversely affect the Board’s assessment of his suitability for admission to the legal profession”. Mr Bax appeals to this court pursuant to s 32(5)(b) of the Act against the refusal.

#### **The statutory scheme for early consideration of suitability**

- [5] Under s 31(1) of the Act, a person is suitable for admission to the legal profession only if the person is a fit and proper person to be admitted. Under s 31(2), in deciding if the person is a fit and proper person to be admitted, the Supreme Court must consider each of the suitability matters in relation to the person to the extent a suitability matter is appropriate. The definition of “suitability matter” is found in s 9(1) of the Act. Whether the person is currently of good fame and character is a suitability matter under s 9(1)(a).
- [6] Section 32 of the Act provides:

- “(1) This section applies if a person considers a matter may adversely affect an assessment as to whether the person is a fit and proper person to be admitted to the legal profession under this Act.
- (2) The person may apply, in the approved form, to the board for a declaration that a matter stated in the application, including, for example, a suitability matter, will not, without more, adversely affect the board’s assessment as to whether the person is a fit and proper person to be admitted to the legal profession under this Act.
- (3) The board must consider the application and do 1 of the following—
- (a) make the declaration;
  - (b) refer the application to the tribunal for a direction if the board considers a direction would be appropriate;
  - (c) refuse to make the declaration.
- (4) A declaration made under subsection (3)(a), or under a direction mentioned in subsection (3)(b), is binding on the board unless the applicant failed to make a full and fair disclosure of all matters relevant to the declaration sought.
- (5) If the board decides to refuse to make the declaration sought—
- (a) the board must give the applicant an information notice about the refusal; and
  - (b) the applicant may appeal to the Supreme Court against the refusal within 28 days after the day the information notice is given to the applicant.”

[7] Under s 33(2) of the Act, the appeal to this court is by way of rehearing, and fresh evidence or evidence in addition to, or in substitution for, the evidence before the Board may be given on the appeal. Under s 33(3), the court may make an order as it considers appropriate.

[8] The requirements for an information notice are set out in s 10(1) of the Act. The notice must include the decision and the reasons for the decision.

[9] The jurisdiction of the court under s 32(5)(b) of the Act is to review the refusal of the Board to make the declaration that was sought by Mr Bax in relation to the effect of his striking off on whether he is a fit and proper person to be admitted to the legal profession. The court is not exercising the jurisdiction conferred on the court under s 35 of the Act in relation to an application for admission.

#### **The reasons for the Board’s decision**

[10] The reasons the Board gave for its decision were set out in the letter dated 28 June 2019 as follows:

- “(1) the nature of the acts and conduct that led to the finding of professional misconduct and subsequent removal of Mr Bax’s name from the Roll of Solicitors were serious;
- (2) the persistent dishonesty inherent in the conduct and behaviour that led to Mr Bax’s initial strike off in 1998 is contrary to the high standards of integrity, honesty and candour expected of a member of the legal profession and demonstrates fundamental character flaws.
- ...
- (3) There is nothing in the material currently to persuade the Board that Mr Bax’s character has changed over the intervening years.”

- [11] The reference in the reasons to persistent dishonesty inherent in the conduct that led to the striking off is taken from passages in the reasons for striking off (at 20). The Board also noted in its letter that it had reached its resolution on the basis of consideration only of the suitability matters disclosed to the Board by Mr Bax in his original application under s 32 of the Act.

#### **The reasons for striking off**

- [12] The Statutory Committee established under the *Queensland Law Society Act 1952* (Qld) considered charges brought by the Council of the Queensland Law Society (QLS) against Mr Bax and found them proven and to constitute professional misconduct. The Statutory Committee found Mr Bax guilty of professional misconduct and fined him \$15,000. The Minister for Justice and Attorney-General and the QLS successfully appealed to the Court of Appeal against the penalty.
- [13] The conduct of Mr Bax that resulted in his being struck off can be summarised from the reasons for striking off as follows. Mr Bax was an equity partner in the solicitors’ firm which acted for Mr Douglas Staples. Mr Bax made a note to file dated 20 August 1993 regarding an advance from Mr Staples to his son Bryan to the effect the firm was to prepare a second bill of mortgage to be collateral to a deed of loan also to be prepared by the firm to secure the sum of about \$500,000. Mr Bax prepared a mortgage in registrable form in favour of Mr Douglas Staples relating to the half interest of Bryan in certain land. The mortgage secured past and future advances. It was not dated when executed, but the date was inserted by Mr Bax in April 1994 as 30 March 1993. About the same time, Mr Bax prepared a deed of loan which had its date typed in as “the 30<sup>th</sup> day of March 1993”. The lender named in the loan deed was Mr Douglas Staples and the borrowers were Bryan and his wife Susan. It recited an agreement on the part of the lender to lend \$500,000 and included a promise on the part of the borrowers to give a mortgage over the subject property. The second mortgage and the deed of loan were executed at sometime between 20 September 1993 and 14 October 1993. On various dates in May 1994, a meeting of the creditors of Bryan and Susan was held. Mr Bax was elected chairman of the meeting. Proofs of debt totalling amounts in excess of \$1.1m had been lodged. The meeting considered and passed a resolution accepting a proposal that a sum of \$60,000 be accepted in full and final satisfaction of all creditors’ claims. Bryan was asked during the meeting when the second mortgage in favour of his father was executed. According to the minutes, Mr Bax replied the mortgage was executed “on March 1993”.

[14] It was not in issue before the Statutory Committee that the deed of loan and bill of mortgage were backdated by Mr Bax or at his direction. The question before both the Statutory Committee and the Court of Appeal was why Mr Bax had backdated the documents and why he misinformed the creditors' meeting about the date of execution of the mortgage.

[15] Mr Bax was asked to explain relevant events on three occasions: in evidence before the Federal Court on 9 July 1996, by letter from the QLS of 14 January 1997, and in the proceedings before the Statutory Committee on 29 July 1997. In the Federal Court Mr Bax was asked about the file note dated 20 August 1993 and the expressions used in it. He responded:

“Well it deals with a second mortgage. I would have thought something to do with advances from one to the other. There's from Doug Staples to Brian Staples, but I can only say that by reading the terms of the memo.”

When asked whether Bryan was unable to tell him what sum the advance was for, Mr Bax answered “Well I don't know. I can't remember.”

[16] Solicitors acting on Mr Bax' behalf answered the QLS's letter dated 14 January 1997 seeking explanations. The response referred to the statutory declaration of Mr Douglas Staples that he and Bryan executed an agreement on 22 February 1993 regarding certain loans made between them. In summary, the explanation was that Mr Bax advised Mr Douglas Staples and Bryan that the charge created by the February documents was not in registrable form and the purpose of the documents then prepared was to effect that. The solicitors were instructed by Mr Bax that the documents ought properly to have been dated 22 February 1993 and he was unable to say, without reviewing the files, why the date 30 March 1993 was inserted rather than 22 February 1993. With respect to the allegation of misleading the creditors, the explanation was that Mr Bax “would have been referring to the original document creating the charge”, meaning the document of 22 February 1993.

[17] Another difficulty was that the deed of loan covered only future advances and Mr Bax said, in effect, that this was a mistake and did not accord with his instructions.

[18] Pincus JA (with whom McPherson JA and Shepherdson J agreed) stated in the reasons for striking off at 20:

“It is not, in my opinion, every proved act of dishonesty on the part of a practitioner which justifies a substantial penalty; dishonesty, like other forms of misbehaviour, has grades of seriousness. The present is by no means the worst imaginable case; it appears that what the solicitor did was unwisely to succumb to the temptation to assist, by fraudulent means, a client facing bankruptcy. It was not suggested against him that he derived any personal benefit — except such general benefit as may be obtained from achieving a satisfactory result for a client. On the other hand, there are aspects of the matter which justify the view that what was done was rather serious. The amounts of money involved were considerable; that is so, although on the figures presented to the creditors' meeting, it seems that the value of Bryan's equity in the mortgaged property was much less than the amount secured by the second mortgage. Then it must be

said against the solicitor that, when what had occurred was revealed, he did not attempt to assist the Federal Court towards discovery of the whole truth. Further, his equivocation about the matter continued, in my opinion, as reflected in the letter his solicitors Messrs Ebsworth & Ebsworth wrote on his instructions, and in the evidence he gave before the Statutory Committee.

The same theme — persistence in the deception — is seen in his having initially misdated the deed of loan, following that up by misdating the mortgage and misleading the creditors at the meeting some months later. A momentary or at least temporary lapse from proper standards of honest behaviour is one thing; persistence in such conduct over a substantial period is another.”

### **The matters disclosed in the application**

- [19] Mr Bax was 32 years old when he was struck off.
- [20] After being struck off, Mr Bax suffered from depression. He sold his home and used the proceeds to fund the acquisition of the Normanton Hotel that he operated with his brother and with the assistance of their parents from about September 1998. Whilst operating the hotel, Mr Bax contracted transverse myelitis. He was hospitalised for over a year. He now suffers from paraplegia and uses a wheelchair. The Normanton Hotel was leased and then Mr Bax and his brother through a company acquired another hotel in Townsville which his brother operated and for which Mr Bax did the accounts and paperwork. The company sold the lease of the hotel in 2002 and Mr Bax relied upon his disability insurer to provide income for his daily needs until May 2009, when the disability insurer ceased making payments. In 2009 Mr Bax joined a friend as a partner in a debt collection business for which he obtained a licence as a commercial agent. Mr Bax continued in that business until it was taken over in 2012 by the Options Group. Mr Bax commenced a proceeding in the Supreme Court against the disability insurer which was settled in 2016. Mr Bax swore affidavits in which he made frank admissions that his conduct leading to his striking off was inappropriate and improper for the purpose of two interlocutory proceedings involving the disability insurer that were heard by de Jersey CJ.
- [21] Mr Bax holds a number of licences and appointments through companies with the Options Group or on his own behalf. When the *Debt Collectors (Field Agents and Collection Agents) Act 2014 (Qld)* commenced, Mr Bax became a licensed field agent. Mr Bax is a Commissioner for Declarations and a justice of the peace (qualified). He is the nominee of Collection & Recovery Options Pty Ltd and Debt Options Pty Ltd which are licensed debt collectors. He is a licensed real estate agent as a principal and one of the joint nominees of Property & Asset Options Pty Ltd which is a licensed real estate agent. He is a registered tax practitioner and the nominee of Tax & Accounting Options Pty Ltd which is a registered tax practitioner. He is the nominee of Debt Options (Admin) Pty Ltd which is a Commonwealth Debt Agreement Administrator. He holds a personal appointment to provide superannuation advice and also as the nominee of Tax & Accounting Options Pty Ltd which is a provider of superannuation advice.
- [22] Mr Bax deposed to the fact that, with one exception, he had not been the subject of any substantiated complaint or investigation by the regulators of the legislation

under which he has held or holds licences. The exception is a fine of \$400 by the Office of Fair Trading for failing to lodge an audit report on time in 2011 which Mr Bax explains arose due to a computer programming error. When the report was lodged, it was clear and contained no compliance issues, difficulties or qualifications.

- [23] Mr Bax exhibited to his affidavit that he provided to the Board supporting his application a number of personal references that were positive about Mr Bax's good character, despite knowing about the reason why Mr Bax was struck off, and professional and business references from those who have dealt with Mr Bax through his businesses. For the purpose of the application to this court, affidavits were filed from some of the referees who were extremely positive about Mr Bax's remorse for the misconduct that resulted in his striking off and the honesty and integrity which those deponents have observed in their dealings with Mr Bax.
- [24] For the purpose of the application to this court, Mr Bax underwent a psychological assessment by psychologist Mr Stoker who prepared a report dated 29 August 2019. Mr Stoker tested Mr Bax on the Beck Depression Inventory which indicated Mr Bax to be suffering moderate to severe depression. Mr Stoker expresses the opinion that the depression is secondary to Mr Bax's paraplegia, his inability to practise as a lawyer and his need for mental stimulation. Mr Stoker considers that Mr Bax is highly remorseful for his misconduct that resulted in his being struck off as a solicitor and that he has worked hard, led an exemplary life and been a productive member of society since that happened. Mr Stoker did not identify any personality traits that indicated Mr Bax would re-offend. Mr Stoker considers that Mr Bax "is highly motivated to be a good practitioner and ... would benefit from the mental stimulation from being a solicitor again".

### **The complaint that Mr Bax was engaging in legal practice**

- [25] After Mr Bax made the application to the Board, he was notified by the Legal Services Commissioner (LSC) by letter dated 20 August 2018 that a complaint had been made against him by Mr Martoo and Mr Hodges that he was engaging unlawfully in legal practice in relation to a matter before the District Court of *Capital Options (Aust) Pty Ltd v Hodges and Others* and the LSC was investigating the complaint. Mr Bax forwarded the letter he received from the LSC to the Board on 29 August 2018.
- [26] Although the Board in its letter dated 28 June 2019 noted that it only considered the suitability matters disclosed to the Board by Mr Bax in his original application under s 32 of the Act, the decision on that application was delayed by the fact that the Board had been notified by Mr Bax of the LSC's investigation of his complaint. For any person seeking eventual admission as a legal practitioner, the details of any complaint made against the person alleging unlawful engagement in legal practice is a matter that must be disclosed fully to the Board and to the court. It is therefore relevant to recite the progress of that investigation and what was conveyed to the Board.
- [27] Mr Bax was advised on 3 September 2018 the Board had decided to hold over consideration of the suitability application to obtain advice from counsel, including in relation to the complaint made to the LSC against him.

- [28] On 10 September 2018, Mr Bax provided to the Board a copy of his detailed letter of the same date to the LSC in response to the complaint which can be summarised as follows. Mr Bax was a director and shareholder of Capital Options (Aust) Pty Ltd (Capital Options) which was represented by its directors, namely Mr McGrath and Mr Bax, in the District Court proceeding at Southport in which Mr Hodges and Mr Martoo were defendants. Capital Options carried on the business of a debt and chose in action purchaser and was pursuing the District Court proceeding as an assignee from Mr and Mrs Boe and Boe Australia Pty Ltd ATF The Boe Australian Superannuation Fund (Boe Australia) in respect of their assigned claims for damages for misrepresentation and misleading and deceptive conduct. A related company to Capital Options, Collection & Recovery Options Pty Ltd, had assisted Mr and Mrs Boe in proceedings in Queensland Civil and Administrative Tribunal which resulted in a judgment against Mr Hodges for \$23,000. That judgment was registered in the Magistrates Court and Collection & Recovery Options Pty Ltd served an examination hearing summons on Mr Hodges that was adjourned on the basis of an undertaking given by Mr Hodges to assist in foreshadowed District Court proceedings against another named person. When Mr Hodges refused to provide the statement and was informed the examination hearing would be relisted and recovery proceedings for the QCAT judgment restarted, Mr Hodges made the complaint against Mr Bax to the LSC. Mr Martoo's complaint was identical to that of Mr Hodges in relation to Capital Options' District Court proceeding.
- [29] When Mr Hodges and Mr Martoo defended the proceeding brought against them by Capital Options, they counterclaimed against Mr and Mrs Boe and Boe Australia and another couple Mr and Mrs Fraser. As Capital Options was also a party to the counterclaim, but some of the allegations in the counterclaim were outside Capital Options' knowledge as the assignee of the claims, Mr Bax met with Mr and Mrs Boe and Mr Fraser to obtain the requisite information from them to prepare a reply and answer to the counterclaim for Capital Options. When Mr Fraser for himself and his wife and Mr and Mrs Boe inquired of Mr Bax, whether he could act for them in respect of the counterclaim, he advised them that it was not possible, as he was not a lawyer and not permitted to do so. He did remind Mr Fraser of what Capital Options had told Mr Hodges about Mr and Mrs Fraser being bankrupt after the cause of action pleaded in the District Court proceeding had arisen. Mr Bax allowed Mrs Boe to access the reply and answer that Mr Bax prepared for Capital Options, so that she could prepare a reply and answer for Boe Australia, her husband and herself.
- [30] Mr Bax expressly stated in his letter dated 10 September 2018 that he was cognisant of his obligations and the prohibitions under s 24 of the Act and that at no time had he told Mr and Mrs Boe or Mr Fraser that he would act for them as a lawyer, acted for them or gave them legal advice.
- [31] On 8 October 2018, the secretary to the Board advised Mr Bax that the Board would prefer the LSC matters to be finalised before the Board considered his application further. Mr Bax did not demur from that proposed course.
- [32] On 11 December 2018 Mr Bax forwarded to the Board the letter he received from the LSC dated 29 November 2018 and his reply dated 11 December 2018.
- [33] The LSC's letter of 29 November 2018 advised that the ASIC search for Capital Options showed that Mr Bax had ceased to be a director on 23 April 2015 and did

not become a director of Capital Options again until 1 July 2018. The letter noted the District Court proceeding that was the subject of the complaints against Mr Bax commenced in February 2018.

[34] Mr Bax advised the LSC in his letter in reply that at all material times he was a director of Capital Options and to the extent the ASIC records showed otherwise, they were incorrect. Mr Bax submitted that, even if he were wrong about being a director, he had at all times an honest and reasonable, but mistaken, belief for the relevant time to which the complaint related that he was a director of Capital Options and, during the relevant time, he acted as if he were a director based on that belief. Mr Bax also advised that as soon as it came to his attention on 1 July 2018 that the ASIC register was erroneous, he took steps to rectify the register to have it updated to note him as a director. Mr Bax referred the LSC to a number of authorities to submit that the company search relied upon by the LSC was not determinative as to whether Mr Bax was a director of Capital Options at the relevant time, but the objective evidence demonstrated he was a de facto and/or shadow director of Capital Options during the relevant period.

[35] By February 2019, Mr Bax had retained a firm of solicitors to act on his behalf in respect of the investigation of the complaints by the LSC. The LSC emailed Mr Bax's solicitor on 18 February 2019 advising that the LSC was of the view that Mr Bax had engaged in legal practice for the period from February 2018 and described the answer provided by Mr Bax to the LSC's letter of 29 November 2018 that sought information as to Mr Bax being a director of Capital Options for the period until mid-2018 as evasive. The email noted:

“How he came to not be a Director in 2015 and then became one again in 2018 with or without his knowledge was never explained.”

A request was made for “a more direct answer” in respect of the issues outlined in the email. It is not apparent from the material before the Board what response was made on Mr Bax's behalf to that request.

[36] The LSC's determination in relation to the complaint was communicated to the solicitors acting for Mr Bax by letter dated 6 March 2019 and advised that the LSC remained of the view that Mr Bax had engaged in unlawful operation contrary to s 24 of the Act, but decided, in the exercise of his discretion, not to prosecute Mr Bax for unlawful operation, after taking into account that the conduct took place only over a period of five months, Mr Bax was now a director again of Capital Options, the litigation undertaken “was not on the face of it remarkable or inappropriate” and the firm of solicitors who were now acting for Mr Bax also had the conduct of the litigation on behalf of Capital Options.

[37] On 8 March 2019 Mr Bax's solicitor advised the Board that the LSC had confirmed on 7 March 2019 that he would not take any further action in respect of the complaints made against Mr Bax and requested that Mr Bax's application be considered at the Board's next meeting. Mr Bax's solicitor provided an affidavit in support of the appeal that explained that on his receiving the LSC's letter, he was instructed by Mr Bax to request the Board to proceed with his application for early consideration of his suitability. The solicitor notified the Board in the terms he did, as he anticipated all that the Board required was confirmation that there was to be no further action by the LSC. Mr Bax also explained in a further affidavit that he

was eager to advise the Board of the notification of the LSC which he knew was holding up consideration of his application for early consideration.

- [38] In response to a request from the secretary of the Board for a copy of the documentation from the LSC, Mr Bax's solicitor provided the LSC's letter dated 6 March 2019 to the Board on 13 March 2019, noting that there were many aspects of the letter which Mr Bax took issue with, but given that the LSC decided to take no further action in respect of the complaints, Mr Bax saw no utility in responding. The Board sought from Mr Bax's solicitor by letter dated 22 March 2019 more information about the work undertaken by Mr Bax's companies and, in particular, whether they sought to recover costs and expenses from debtors in performing the debt collection activity or costs and expenses relating to any litigation, other process or mediations. Mr Bax's solicitor responded to the queries by letter dated 17 April 2019. A request was made on behalf of the Board on 23 April 2019 for a copy of the LSC's email of 18 February 2019 that was referred to in the LSC's letter of 6 March 2019. That was provided by Mr Bax's solicitor on 7 May 2019.

### **Mr Bax's submissions**

- [39] Mr Radcliff of counsel who appeared for Mr Bax submitted that Mr Bax was 28 years old and had been admitted as a solicitor for only four to five years when the conduct that resulted in Mr Bax's striking off was committed. There was no financial advantage for Mr Bax arising from his conduct and it occurred over 25 years ago. It could not be said that the conduct was such that Mr Bax's character remained so "indelibly marked by the misconduct that he cannot be regarded as a fit and proper person to be upon the Roll", which was applied by McMurdo JA (with whom the other members of the court agreed) in *Attorney-General of the State of Queensland v Legal Services Commissioner & Anor* [2018] QCA 66 at [57] as the test of probable permanent unfitness.
- [40] Mr Bax accepted that as a person who seeks re-admission after having been struck off, he must acknowledge his past misconduct and demonstrate genuine remorse which, it is submitted, is shown by the express acknowledgements in his affidavit that supported his application to the Board, in his achievements in business after he was struck off and the confirmation from friends and those with whom he has dealt with in the course of business that Mr Bax has expressed remorse for the misconduct that resulted in his being struck off.
- [41] It was conceded the Board was entitled to take into consideration the events which caused Mr Bax to be removed from the roll, but not to the exclusion of all other present indicia of fitness or otherwise. The Board was required to consider for the purpose of the application under s 32 of the Act whether Mr Bax was currently a fit and proper person to be admitted to the legal profession. The Board's decision gave "lip service" to Mr Bax's current character and demeanour, disposing of the significant material provided to the Board with the one sentence set out in paragraph (3) of the reasons. Even though there was a complaint to the LSC about Mr Bax, it was resolved when the LSC determined, with full knowledge of the application to the Board, that he would not take any action in relation to prosecuting Mr Bax for the subject matter of the complaint.
- [42] In light of the high standing with which Mr Bax is regarded by those who provided current references for him, his good business record and the numerous licences and

registrations he holds for which the requirement that he be a fit and proper person is applicable, the Board should have been satisfied that the conduct that resulted in his being struck off would no longer, without more, adversely affect the Board's assessment as to whether Mr Bax was a fit and proper person for re-admission.

### **The Board's submissions**

[43] The Board submitted that a distinction must be drawn between the role of the court as the admitting authority under s 35 of the Act and the role of the court to review the decision of the Board on an application for early consideration of a suitability matter under s 32(3) of the Act. The Board also has a role under s 39 of the Act relating to applications for admission. Under s 39(1) the Board's role is to help the court by making a recommendation about each application for admission. What the Board must consider in relation to each application is set out in s 39(2) of the Act. The Board's function in considering an application for a declaration as to early suitability pursuant to s 32(1) of the Act has been described as "*quasi-judicial* in some respects": *KMB v Legal Practitioners Admissions Board (No 2)* [2018] 1 Qd R 500 at [46]. The Board therefore should apply principles applicable to the court's consideration of an application for re-admission after removal from the roll in determining an application pursuant to s 32 of the Act by a person who was struck off the roll of legal practitioners.

[44] The Board's written submissions summarised the relevant principles applicable to the court's consideration of an application for re-admission after removal from the roll taken from a number of authorities, including *Gregory v Queensland Law Society Incorporated* [2002] 2 Qd R 583 at [17]-[18] and *Dempsey v Legal Practitioners Admissions Board* [2013] QCA 193 at [25]-[26], as:

- “(1) the Court exercises a protective, not a punitive role, having primary regard to the protection of the public interest and the interest of the profession;
- (2) the applicant bears the burden of establishing that he or she should be readmitted;
- (3) an applicant for reinstatement is in a more disadvantageous position than an original applicant because he must displace the decision as to probable permanent unfitness which was the basis of his removal;
- (4) the basic question for the Court is whether the applicant has shown that he is now a fit and proper person to practice;
- (5) the issue may be addressed by the Court considering whether in all the circumstances the Court is justified in putting the applicant before the public as a fit and proper person to follow the honourable calling of a solicitor;
- (6) one consideration is whether public confidence in the legal profession would be eroded if the individual in question, despite his or her past conduct, were admitted again to practice;
- (7) the power to reinstate should be exercised with considerable caution and only upon solid and substantial grounds;

- (8) there is no set period which must elapse before such an application can be successfully made; the question is whether there has been rehabilitation of an applicant to an extent which allows the court to be satisfied of his or her fitness;
- (9) the Court must focus its inquiry upon the applicant's intrinsic character and not be unduly distracted by his good fame, whether within the legal tradition or the wider community;
- (10) the question to be decided is not one of law to be determined by reference to previous decisions. The duty of the court is to determine in what manner the court should exercise its discretion in the particular circumstances of each case.”  
(*footnotes omitted*)

[45] As the information notice stipulated, the Board maintains that the persistent dishonesty inherent in the conduct and behaviour in connection with the investigation and proceedings arising out of that conduct that resulted in Mr Bax's striking off demonstrated the fundamental character flaws in respect of which the Board was not persuaded that the intervening years had changed.

[46] Mr Crowley of Queen's Counsel who appeared for the Board put the decision of the Board on a narrower basis than the reasons in the information notice suggested it was made. Mr Crowley submitted that the question the Board had to answer in respect of Mr Bax for the purpose of s 32(2) of the Act was confined to whether his conduct that resulted in his being struck off in 1998 would not, without more, adversely affect the Board's assessment in the future as to whether he is a fit and proper person to be admitted to the legal profession. Because of the seriousness of the conduct that resulted in the striking off in the first place which persuaded the court at the time that Mr Bax was probably permanently unfit to practise as a lawyer, Mr Bax bears a heavy burden to show that the conduct resulting in his striking off is no longer relevant. It is therefore submitted that it was unremarkable that the Board reached the decision that it did to refuse to make the declaration as to suitability.

[47] Mr Crowley did concede that the fact that the Board concluded that the striking off remained a matter that would adversely affect the Board's recommendation did not mean that it would determine the recommendation that the Board may make, if Mr Bax were to apply for re-admission.

### **Did the Board err in refusing to make the s 32 declaration?**

[48] The Board's decision-making pursuant to s 32 of the Act is not the same as for the role it exercises in making a recommendation to the court on an admission application. Section 32 of the Act can be used in a whole range of circumstances, such as a prospective law student making an application about the effect of a suitability matter before the student even embarks on undertaking legal studies. The procedure was used in *KMB v Legal Practitioners Admissions Board (No 1)* [2018] 1 Qd R 94 where a prospective applicant for admission disclosed that he had previously pleaded guilty to two counts of unlawful sodomy and two counts of indecent treatment of a child under 16 years that had been committed when he believed the victim was 16 years old and was mistaken about the age of consent at that time in Queensland (believing it to be 16 years old at a time when it was 18

years old). Although the Board had refused to make the declaration that was sought under s 32(2) of the Act, this court on appeal did make the declaration for the reason set out at [22] that 10 years after the relevant conduct, there was no basis on which either the conduct which constituted the offences or the fact of his guilt of a criminal offence should affect the judgment that he was a fit and proper person to be admitted to the legal profession.

- [49] Where a person has been struck off as a legal practitioner, because of the court's determination that the person's conduct marked him or her as probably permanently unfit to practise law, it is obvious that the question for re-admission will be a matter of serious consideration for the court under s 35 of the Act: *Ex parte Lenehan* (1948) 77 CLR 403, 422.
- [50] What the course of the Board's dealing with Mr Bax's application under s 32 of the Act suggests is it is not appropriate for an applicant for re-admission to seek to deal with the effect of the misconduct that resulted in the striking off by way of an application under s 32 of the Act. It would be an exceptional case for the misconduct that resulted in a striking off not to remain relevant on an application for re-admission. It is unfortunate that the Board did not give an early indication that it was not appropriate for the procedure under s 32 of the Act to be used in Mr Bax's situation and kept open the possibility that it would deal with the application after the outcome of the LSC's investigation of the complaints made against Mr Bax were known. On any view, the seriousness of the misconduct that resulted in the striking off of Mr Bax would remain a matter that would affect adversely the application for re-admission, even if the court before which the application for re-admission were made could be satisfied that, notwithstanding that misconduct, the applicant for re-admission were now a fit and proper person for admission.
- [51] In the course of oral submissions, Mr Radcliff suggested that if Mr Bax were unsuccessful in this appeal, it was unlikely he would be able to bring another application of this kind within the foreseeable future. That submission was made in the context of the mistaken belief by Mr Bax (as a person who had been struck off) and those advising him that applying to the Board under s 32 of the Act was the appropriate course, rather than proceeding to apply for admission.
- [52] In the circumstances, Mr Bax cannot show that the Board's refusal to make the declaration under s 32(2) of the Act was in error, but that does not preclude Mr Bax from applying for re-admission and making a full and frank disclosure in relation to all matters that may have a bearing on his suitability for re-admission as a legal practitioner. His lack of success in his appeal to this court in respect of his application for early consideration of suitability does not pre-judge any re-admission application.

### **Orders**

- [53] The appeal must be dismissed. The Board did not seek an order for costs in either written or oral submissions. There should therefore be no order as to costs.