

SUPREME COURT OF QUEENSLAND

CITATION: *Borhani v Legal Practitioners Admissions Board*
[2013] QCA 14

PARTIES: **IN THE MATTER of the *Legal Profession Act 2004 (Qld)*,
the Solicitors' Admission Rules 1968, *the Barristers' Admission Rules 1975* and *the Supreme Court (Legal Practitioner Admission) Rules 2004*
and
IN THE MATTER of an Application by BORHAN BORHANI (also known as BORHAN BORHANI-SHIDANI) for Admission as a Legal Practitioner under the said Act and Rules**

FILE NO/S: SC No 10789 of 2011

DIVISION: Court of Appeal

PROCEEDING: Application for Admission

DELIVERED ON: 12 February 2013

DELIVERED AT: Brisbane

HEARING DATE: 29 January 2013

JUDGES: Chief Justice and Fraser JA and Dalton J
Separate reasons for judgment of each member of the Court, each concurring as to the order made

ORDER: **Application for admission as a legal practitioner refused.**

CATCHWORDS: PROFESSIONS AND TRADES – LAWYERS – QUALIFICATIONS AND ADMISSION – FIT AND PROPER PERSONS – where applicant was granted advanced standing for previous legal studies – where application opposed on basis of applicant's conduct as to his academic record – need for high standards of integrity and honesty in legal practitioners – where applicant was older and had more commercial and business experience than the average applicant for admission – whether applicant should be admitted as a legal practitioner
Re AJG [\[2004\] QCA 88](#), cited

COUNSEL: T Sullivan SC for the applicant
K N Wilson SC for the Legal Practitioners Admissions Board

SOLICITORS: Norton Rose for the applicant
Legal Practitioners Admissions Board

- [1] **CHIEF JUSTICE:** I have had the advantage of reading the reasons for judgment of Dalton J. I agree that the application should be refused, for those reasons.
- [2] **FRASER JA:** I have had the advantage of reading the reasons for judgment of Dalton J. I agree with those reasons and with the order proposed by her Honour.
- [3] **DALTON J:** By application filed 23 November 2011 Mr Borhani applied for admission to the legal profession. The Legal Practitioners Admissions Board opposes his admission on the grounds that he is not a fit and proper person due to his conduct in relation to his academic qualifications.
- [4] In an affidavit filed on 2 December 2011 in support of his application Mr Borhani affirmed, "I completed a Bachelor of Laws degree with First Class Honours at the Queensland University of Technology in April 2010, ...". He exhibited a copy of the degree issued by the Queensland University of Technology ("QUT") which shows him to have been admitted to the degree of Bachelor of Laws with First Class Honours. He also exhibited a certified copy of his academic record. It is unusual. It shows 28 subjects under the heading "Granted Advanced Standing Unit". Each of these subjects bears a notation showing it as worth 12 credit points, but none bears any notation as to the grade achieved for it. Neither is there any information as to when these 28 subjects were completed. The list of 28 subjects is followed by a list of four subjects, each shown to have been completed in 2009, and each worth 12 credit points. In fact the last of these subjects was completed in January 2010, described as the 2009 Summer on the record. Against these four subjects are the grades: 5, 7, 6 and 6. Immediately under that list of four subjects is the notation, "Course GPA: 6.000".
- [5] Mr Borhani began his legal studies in 1999 at the James Cook University. In 1999, 2000 and 2001 he completed subjects at that university towards the dual degrees of Bachelor of Commerce and Bachelor of Laws. At the end of those three years he had an overall grade point average of 4.658. In the years 2001, 2002, 2003 and 2004 Mr Borhani was enrolled as a student of QUT studying towards the dual degrees of Bachelor of Business and Bachelor of Laws. In those years he enrolled in 34 subjects, of which he failed nine. At the end of 2004 his course grade point average at QUT was 3.563. In 2003 Mr Borhani undertook one subject at the University of Queensland for which he was awarded a grade of 6. Between 2004 and 2009 Mr Borhani undertook no legal studies. He then completed the four subjects at QUT referred to above, for which he was awarded grades of 5, 7, 6 and 6.
- [6] QUT introduced a new Bachelor of Laws course with a new course code in 2009. Mr Borhani says that in December 2008, in a conversation preparatory to his resuming his studies in 2009, he was told by employees of QUT that he would be granted "advanced standing" for the subjects he had previously studied, and that if he wished to "migrate" results from his previous studies into the new Bachelor of Laws course, it was necessary to make a formal application. Mr Borhani did not make such an application, and this seems to account for the fact that 28 of the subjects listed on his academic record (described above) appear as subjects for which he has been granted standing, but without a grade.
- [7] Having completed two subjects at QUT in the first semester of 2009, for which he received grades of 7 and 5, Mr Borhani found that QUT accorded him a grade point average of 6. This was displayed on QUT Virtual, a computer site for students, and on paper records.

- [8] In January 2010 Mr Borhani found that QUT had cancelled his enrolment in the Bachelor of Laws course because he had not paid a required fee. He paid the fee and was re-enrolled. Upon his re-enrolment, in February 2010, Mr Borhani found that QUT Virtual now listed his GPA as 4.73 and listed a transcript of the grades for all the subjects he had completed prior to 2009. By this time, having only one subject to complete in the summer semester 2009/2010, Mr Borhani had applied to various law firms for employment, telling them that he had a GPA of 6 for his Bachelor of Laws course. When he saw the results and GPA of 4.73 displayed on QUT Virtual, he affirms: “I was concerned that such a transcript would mean that I had not been truthful to the people to whom I had made the Representations [as to his having a GPA of 6]”. He further affirms, “I decided that the way out of my predicament was to get my academic transcript corrected back to what it was when I made the Representations”. Mr Borhani set about doing so.
- [9] At first he met with resistance, an employee of the QUT Faculty of Law emailed him saying:

“Looking at your academic history you will notice that under LW34 you have both ‘completed’ units and ‘duplicate’ units. The completed units are the units you studied under LW34 prior to the law units being transferred across from IF41. These 3 units you gained a grade of a 7, 6, & 5 which is where your GPA of 6 came from. On crediting you with your units from IF41 this then captured the entire picture and calculating your true GPA of 4.73 of all the units you have studied. ...”

- [10] Mr Borhani emailed back:

“I now see how my new GPA has been calculated, however, this method does not accord with the way my GPA has been represented since the inception of the LW34 course and my discussions with yourself and Cathy when I met with you both late 2008 when sorting out[t] my course. Attached is an official academic record I requested 19/11/2009 which carries over my previous subjects from IF41 as ‘Granted Advanced Standing’. This is the way I was told the course would flash out and the respective GPA calculated. When discussing this with yourself and Cathy, I asked specifically if previous course Grades are calculated in the new course, and Cathy mentioned that this would happen only if the student has requested it – otherwise, the GPA is calculated from new subjects taken in LW34.

In relying on this, I have subsequently advertised my GPA for LW34 as that presented in my official academic record – to both my references [presumably referees] ... and a number of firms to whom I have made application for employment. These were all before the new GPA became apparent to me (the day I call you). I have delayed my interviews with them until this issue is worked out. There is a proviso on the official academic record itself which reads: ‘*This is an official record of the student achievement in this course only. The student has enrolled in, and received results, in another course or courses at QUT or in predecessor institutions.*’ Of course, if my references [presumably referees] or other firms wish to see that information, I would provide the academic record for IF41.

As you can appreciate, the current status puts me in a disadvantaged position in respect of the representations I have made – all of which have been on reliance of the above. It would be very difficult to recover from this as I am certain it will potentially impeach the whole interview process (given the GPA is a major factor leading to the granting of an interview). It is not that 4.73 is a bad GPA and would not have otherwise been granted an interview, but that the representation I have made is significantly different. Given I live in Toowoomba and have applied to most firms here, I would need to move my family elsewhere if this does have an impact.

...”

- [11] In the middle of March 2010 Mr Borhani complained to the ombudsman at QUT as part of a formal student grievance procedure to achieve his aim of reinstating his academic record as it appeared prior to January 2010. His pursuit of this grievance procedure was, surprisingly and disconcertingly given the true facts of the matter, successful, and his academic record was returned to its pre-January 2010 state so that it showed the information described at paragraph [4] above. It is undoubtedly the case that QUT did issue a degree with First Class Honours to Mr Borhani. The evidence was that with a grade point average of 4.73 Mr Borhani was not entitled to a degree with honours of any kind from the QUT, much less a degree with First Class Honours.
- [12] The progress of Mr Borhani’s application for admission as a legal practitioner was not straightforward. His admission was delayed due to investigation of complaints and objections made after he advertised for admission. After investigation, the Legal Practitioners Admissions Board does not rely on these matters to oppose his application and they need not trouble this Court. However, during the period of delay these objections caused, the Board investigated the unusual appearance of Mr Borhani’s academic record. The Board’s inquiries as to this matter commenced in November 2011 and Mr Borhani responded during November and December 2011 and through January and February 2012.
- [13] On 19 April 2012 Mr Borhani filed an affidavit in which he acknowledged that it was misleading to have relied upon his degree and academic transcript as he did in his affidavit filed 2 December 2011 without “adequately explaining their context”. His 19 April 2012 affidavit goes on to say, “I now appreciate that the Representations, and reliance upon the Degree and the Academic Transcript was misleading because they did not provide a complete narrative of the events that led to their final form. I now understand that they were a ‘half-truth’, and that such statements were misleading.”
- [14] Mr Borhani has caused the QUT to alter its records so that his academic transcript now shows the grades for all the subjects he completed towards his law degree and his correct grade point average for the entirety of his law course. He has surrendered the degree awarded to him showing the award of First Class Honours.
- [15] It was remarkable that QUT was prepared to issue the academic transcript in the form which was exhibited to Mr Borhani’s affidavit of 2 December 2011, and to award Mr Borhani a law degree with First Class Honours. It cannot be imagined that a student in Mr Borhani’s position could reasonably have understood that he or she was entitled to a degree with First Class Honours, or had a grade point average

of 6 over the entirety of their law degree. Mr Borhani correctly recognises in his April 2012 affidavit that his reliance upon the degree showing an award of First Class Honours, and a transcript showing a course GPA of 6, without explanation, was misleading. It is apparent from the email correspondence from Mr Borhani to the QUT in February 2010, extracted at paragraph [10] above, that Mr Borhani was aware of the significance of his grade point average to his employment prospects, and aware that untruthfulness in relation to his academic results would be regarded in the legal profession as a very serious matter.

- [16] Mr Borhani accepts that his applications for employment did not properly explain matters as to the grade point average recorded in his academic transcript. He says that he assumes he sent his award of First Class Honours to those law firms to whom he applied for employment, but as the applications were electronic he cannot now be certain of this. He does recall that he took certified copies of the academic transcript and honours award to interviews which he was granted, although he does not recall that he was asked for them at interviews. This state of recollection is consistent with copies of Mr Borhani's letters containing representations about his course GPA which are in the material.
- [17] Against the foregoing history, I am of the view that Mr Borhani is not a fit and proper person for admission to the legal profession at this time. As the Chief Justice stated in *Re AJG*:¹

“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.”

- [18] It is relevant in assessing these matters that Mr Borhani was born on 20 January 1981 and was thus 29 in January 2010, and nearly 30 when he made his application for admission. He was therefore some years older than the average applicant for admission. It is also relevant that between 2004 and 2010 he worked as a land developer and as a consultant to land developers so that he had more commercial and business experience in the real world than the average university graduate at the time of the events in question.
- [19] I am not of the view that the matters canvassed above should forever preclude Mr Borhani from being admitted as a legal practitioner. However, I consider that a substantial time will need to elapse before Mr Borhani renews his application. In this respect I note that since February 2011 Mr Borhani has been working as a law graduate in two law firms in Brisbane, and that he relies upon affidavits sworn by a partner, consultant, and a senior associate of those firms, all of whom swear favourably to his professional character in this role. While these affidavits no doubt assist Mr Borhani, it must be noted that all the deponents have sworn to a professional association with Mr Borhani over a relatively short period of time. I do not overlook a further brief affidavit from a partner of another law firm swearing that Mr Borhani dealt with him with “honesty and with integrity” through a substantial period during which he acted for Mr Borhani in a land developing business.
- [20] I would refuse the application for admission.

¹ [2004] QCA 88, p 3; see also *Frugtniet v Board of Examiners* [2002] VSC 140, [10], *Jackson (previously known as Subramaniam) v Legal Practitioners Admission Board* [2006] NSWSC 1338, [50]-[64].