Concept of “Ethics”
- In common usage, many people equate ethics with morality, however morality has become a matter strictly for the individual.
- Conduct which we perceive as ethical, may be unethical by community standards e.g. confidentiality to a client may dictate non-disclosure of information in circumstances where the public would perceive the morally correct behaviour would be to disclose.
- Some see ethics as somewhere in between law and morality, while others equate ethics with a sense of honest and integrity and so consider that persons displaying greater honesty and integrity demonstrate higher standards of ethics.

- Utilitarianism, adherents to which contend that the consequences or results of a particular action dictate its “rightness” and should govern the outcome of an ethical dilemma. The action that engenders the greatest utility should prevail.
  - Many see lawyers this way, the favourable consequence for the client justifies conduct that some may perceive as unethical.

-Dentologists argue that the right action is independent of its consequences; “rightness” is to be assessed by reference to a system of rules that may need to ranked hierarchically to ensure consistency. What is ethical is in no way influenced by social norms of particular societies (relativism) or by each individual (subjectivism).

Concept of “Legal Ethics”
- Dal Pont argues legal ethics is an oxymoron to the extent that legal implies mandatory rules, whereas ethics for many connotes discretionary rules. In this latter sense, some use the term “ethics” to distinguish rules that are professionally binding (ethical rules) from rules that are legally binding (legal rules)

- The phrase “professional responsibility” is generally used in place of ethics, as it conveys the notion that professionalism carries with it responsibility and duty. This avoids the legitimate criticism that “the rules governing the conduct and working practices of lawyers, which come within the rubric of what lawyers, judges and legislatures term ‘legal ethics’, generally have little to do with the social construct that is ethics in the proper sense’

Confluence between ‘ethics’ and ‘legal ethics’
- Central to professional responsibility is honest in members of the legal profession. Unless lawyers display “the overriding duty of honest that they owe to the Courts, their clients and their fellow practitioners” [Chamberlain v Law Society of the Australian Capital Territory (1993) 43 FCR 148 at 155 per Black CJ] public confidence and judicial confidence in the proper administration of justice will be undermined.

Framework for ethical practice
- There is very much an interaction between ethics and law.
- The ‘ethical framework’ for lawyers is defined by a matrix of duties to:
  - Court
  - Client
  - Fellow practitioners/colleagues
  - Third parties and the public
  - Administration of justice
- Overlaying this duty matrix is the right to practice, which comes about as the result of admission and the privilege of becoming an “officer of the court”.
- Main sources of ethics are:
Professional Conduct legislation (2004 Act), regulations (2005 Reg) and rules (Practice Rules on Law Society and Bar Association website)

- The text book refers to the modern rules – the national proposed package reform. A set of national rules and a set of national conduct regulations.

- Social ethics – what does society expect lawyers to be or not to be?

- Personal and professional values

  - Framework for ethical practice – this is why we use the reflective journal. You plan what you do rather than wait until it happens. What will you do if an ethical dilemma comes your way? (Hopefully you’ll recognise one). How will you approach that? Say ‘no’ if something is wrong; seek help; approach colleagues; leave the job because of something you’ve been asked to do; etc. There are 4 approaches described by the textbook (not stand alone approaches, not the only approaches).

  - Expectations as to conduct and obligations placed on professionals have traditionally been different to attitudes and conduct expected of trades and business. However, this perception is changing with the commercialization of the law and technological changes. Are lawyers in private practice (including multi-disciplinary practices and incorporated legal practices) running a business ahead of a service? Is the description of lawyer a fancy word for legal technician?

  - Social ethics include personal philosophy and practice.

  - Preston in “Understanding Ethics” (Federation Press 1996) at 22 suggests that:

    1. the development of the law has been influenced by ethics but ethics is not necessarily based on law; (eg, the notion of contributory negligence is based on personal responsibility for actions and not a law of partial accountability)

    2. the reasons for significant laws governing human beings and their institutions are overwhelmingly ethical reasons; (eg, currently, there is general agreement that no person has a right to take another’s life. One example is a conviction for manslaughter and an accessory to manslaughter for the partner and friend of an Alzheimer’s sufferer)

    3. law is commonly a public expression of and sanction of social morality; (eg, laws in relation to domestic violence and the stolen generation provide examples of the expression of social morality)

    4. the law should be continually subject to the scrutiny of ethical critique. (eg, scrutiny includes recognition of the court’s power in NSW to make wills for persons who lack capacity (introduced in the Succession Act 2006) and the recognition of same sex relationships)

**Professionalism ➔ Three attributes**

**Special skill and Learning**

- Lawyers have a monopoly on legal work as persons who don’t meet educational and practical requirements are prohibited by statute from carrying out legal work.

- Entry restrictions on the practice of law function to foster public confidence that those who practise law are worthy of that confidence by virtue of their mastery of a subject beyond the understanding of the general public.

  - High cost of legal services, calls to deprive legal profession of its monopoly by permitting others to carry out legal tasks that are simple or routine. E.g. non-lawyer conveyancers may perform certain conveyancing services.

  - Trade Practices Commission (as it was previously) determined restrictive practices prevent vigorous competition and some areas of legal practice e.g. taxation, wills and probate should be opened up.

**Public service**

- Idea of public service as a hallmark of professionalism “it was the subordination of personal aims and ambitions to the services of a particular discipline and the promotion of its function in the community which marked out a profession”

  - “Accessibility, efficiency and costs are now days important considerations in the provision of legal services and they are properly at the forefront of any scrutiny of the legal profession. Nevertheless, the new emphasis upon the marketplace and marketing techniques is not just a shift in language… it is a shift from social trustee professionalism to expert professionalism which explains why the
practice of a profession is now regarded as a commercial activity. Thus, in the law, activities which were previously regarded as incompatible with professionalism are now seen as important in fostering the competition which is necessary in a free market.”

- Mega-firm is often cited as the single greatest threat to public service.
  • The Dean of Yale Law School in *The Lost Lawyer: Failing Ideals of the Legal Profession* expressed concern that the best graduates go to large firms where time charging is the rule coupled with a mercantile attitude that lets clients dictate the course of disputes. This led him to conclude that in the hands of today’s lawyers the stewardship of the legal institutions has been poor, and the profession of today will not bequeath the same profession of quality and integrity it inherited.
  • Calls for ethical infrastructure, or ethical auditing in large law firms. Raises the point whether professional associations can properly regulate and control the new corporate, professional service elite.

Self-regulation or autonomy

- Attribute that law be autonomous and independent of outside control doesn’t stand alone, a corollary of it supplying a public service and requiring special skill and learning. What’s in issue is “the belief that people who have the expertise to provide services ought to be entrusted with a substantial measure of control over these services and the working conditions in which they are provided”

- Profession resists attempts at external regulation, arguing that the government doesn’t understand the dynamics of legal process and so should not interfere with the mechanisms of justice. State control is feared to undermine the crucial independence of the adversarial system.
  • Counter argument: if autonomy chiefly serves the profession, external control is justified because autonomy without accountability spells absolute power and potential corruption, which then reduces public confidence in those institutions.

- Disciplinary proceedings have traditionally been the profession’s chief means of self-regulation.
  • NSW created the office of the Legal Services Commissioner, being an independent person of the profession who need not be a lawyer, but must be familiar with the nature of legal service and practice.

Impact on the Profession of Changes in the Legal Landscape

- Opening up legal or quasi-legal work to non-lawyers necessarily places the profession in direct competition, not only with its own members but others. However successive governments argue increased competition will promote public benefit (lower costs).

Impact of Competition Law

- Provisions of the CCA dealing with price fixing and third line forcing concern the practice of lawyers
  • Scales of costs were seen as a form of price fixing, being an understanding between lawyers in competition with one another as to the costs they will charge or the basis of charging
  • Third line forcing, being the insistence on the acquisition of other service from a third party as a condition of supply of services, was a concern in the context of a barrister who requires a particular junior to be briefed as a condition of accepting a brief. This is not generally prohibited by Barristers Rules (rule 23 in NSW)

- Rules requiring lawyers to practise as sole practitioners or in a partnership denied, it was argued, competitive advantages and the limitation of liability inherent in a corporate structure.
  • Coupled with the traditional rule prohibiting the sharing of receipts from legal practice, it was said to inhibit the formation of multi-disciplinary practices.
  • Lack of direct access to counsel criticised as adding cost and delay and duplication of services.
    o Traditional professional prohibition on direct access to counsel has been lifted in most jurisdictions.

Impact of Changes in Social Attitudes and Perceptions
- Rise in consumerism, no profession immune therefore have seen a marked decrease in client loyalty and willingness to question the once unquestionable.
  - Advice or service of professionals is less sacrosanct professionals greater knowledge and experience provides no shield against customer dissent
  - Consumerism carries with it the right to complain where the service doesn’t meet the standard expected by, usually, and uninformed client.
  - Translates into a more cynical view of the profession and its motives.

- Ironic that a society premised on greed decries that characteristic when it perceives it within the legal profession. “Of all traits the public dislikes in attorneys, greed is at the top of the pecking order”
  - Both the law and the public expect lawyers to exhibit basic ethical attributes of unselfishness and honesty, without necessarily reflecting these attributes themselves.
  - This ethical dichotomy cannot help but create tension.

- Regulators are enamoured with competition policy as the vehicle to maximise the public good, yet criticise the profession for adopting a mercantile attitude to the provision of legal services
  - Spigelman CJ “There may be an element of self-fulfilling prophecy in the application of competition principles to law. If lawyers are treated as if they are only conducting a business, then they will behave accordingly to an even greater degree than they do now. The ethic of service which emphasises honesty, fidelity, diligence and profession self-restrain may, progressively, be lost”
  - Competition policy is directed at ensuring that the profession delivers its services like any other business, so member seek to secure greater profit and market share. BUT at the same time the profession is subject to considerable regulation to NOT behave like other businesses.
    o Walking the tightrope of regulatory balance is unlikely to generate fewer client complains or a reduction in client expectation. Many of these regulatory endeavours play directly into the modern consumerism culture.

Sources of Lawyers Professional Responsibility

General Law
- Between a client and lawyer,
  - Relationship is contractual, also attracting a duty of care in tort.
  - Fiduciary law overlays the lawyer-client relationship, and impacts upon the retainers a lawyer can and cannot accept, the disclosure he or she must make, and the transactions in which he or she can engage.
  - Confidentiality (in contract or equity)
  - Legal professional privilege.

BUT overriding each of these duties, is the duty to the court.

Statute
- Legal Profession Act 2004 (AustLII)
- Legal Profession Regulation 2005 (AustLII)
- Professional Conduct Rules
  - Solicitors Rules, includes Advocacy Rules (Law Society website)
  - Barristers Rules (Bar Association website)
  - NOTE: proposed National Legal Profession Law & Rules
  - NOTE: Parker & Evans refer to Model Rules instead of Solicitors/Barristers Rules
- Case Law, in particular decisions of the NSW Administrative Decisions Tribunal (ADT) (AustLII)

- Case law is mostly from the legal services division. But those matters that go on appeal of course go to the Supreme Court, CA or HC.
• We are moving to a national legal profession – the move has been slow and, at times, bogged down by uncertainty and disagreement amongst federal and state and territory governments, the judiciary, the legislature and the profession.

• Some commentators would argue that the problem with these rules is that they are often seen by lawyers as being like legislation and, as such, there to be interpreted as they would other legislation. This then invites interpretations, which are most useful to the given situation. This is definitely not what was intended when they were originally drawn up but comes rather from the way in which lawyers have been taught law and how they practice it.

Professional Rules

The Role of Professional Rules

- Professional rules serve as a standard of conduct in disciplinary proceedings, as a guide for action in a specific case, and as a demonstration of the profession’s commitment to integrity and public service.

- Professional rules express the profession’s collective judgement as to the standards expected of its members.
  • “A reliable and important indicator of the accepted opinion of the members of the profession.”
  • Accordingly, they are of assistance in determining matters of misconduct before a court, although a court is not bound to apply them [Chamberlain v Australian Capital Territory Law Society (1993) 43 FCR 148 at 154-55 per Black CJ]
  • Rules “cannot supplant legal principles as set out in judicial decisions” or provide a private cause of action against the lawyer.

- Professional rules provide guidance on issues of professional responsibility, aiding lawyers to answer questions or resolve dilemmas of that kind.
  • Rules are of special utility to inexperienced lawyers.
  • Convey to lawyers an impression of the standard expected in their dealings.
  • Used by lawyers to justify their actions as the professionally correct approach, providing and element of security in that abiding by a rule is a defence to misconduct.
  • Professional rules recognise the importance that lawyers and the community share a common understanding of what is expected and permissible behaviour in the performance of a lawyer’s professional role.

- Profession rules are a public relations document that highlights the seriousness with which lawyers view their professional responsibilities. In turn, the community is invited to place trust and confidence in the profession.
  • Importantly, even if a rule is rarely employed, it is nonetheless a statement that the profession views the issue seriously, and that those who breach it fall short of the standards of professionalism that the public is entitled to demand of lawyers.
  • BUT ‘rules’ cannot be viewed as exhaustive of a lawyer’s ethical responsibilities, and so the absence of a rule directed at a specific form of misconduct doesn’t preclude a disciplinary finding.
  • AND important to recognise that professional rules are not legal rules.

Rules: Positive, Aspirational, Brief or Detailed?

- The purpose the rules serve must determine their nature or form
  • A purely aspirational set of rules may motive lawyers to higher standards of conduct and may indicate to the community the standards the profession aims to achieve
  • Positive rules risk being viewed as maximum standards of conduct, which lawyers may seek to find ways and means to circumvent
  • Rules that prescribed the impossible are apt to produce discouragement and disdain.
  • Aspirational rules are commonly phrased in broad terms, adopting concepts that are not objectively quantifiable such as “honourable” and “timely”.

5
Some argue that rules should be brief in the broadest terms, a ten commandments approach such that issues of professional responsibility are matters for a lawyer's individual judgement. Notably, professional conduct rules in all jurisdictions are predominantly black letter positive rules, and also rather lengthy.

**A Rule-Commentary Approach?**

- Comments do not add obligation to the Rules but provide guidance for practising in compliance with the rules.

- Concerns over the rule-commentary approach include that the commentary may:
  - Be inconsistent with the rule;
  - Be given less scrutiny than the rules in relation to its ethical implications;
  - Cause the rules to be excessively long;
  - Lead to litigation, time being spent on debating the application of the rule;
  - Encourage lawyers to adopt a legalistic rather than ethical approach; and
  - Quickly become out of date because without a body resourced to monitor and update commentary.

- Australian Law Reform Commission considers most of the fears to be unfounded. Rule-commentary approach would assist in developing a common service ideal, offer better guidance for lawyers in the application of the rule, be better suited to teaching legal ethics and clarify the rule in particular circumstances.

**THE LEGAL PROFESSION**

**ADMISSION TO PRACTICE**

**Requirements for Admission**

*Legal Profession Act 2004 (NSW)*

24 Eligibility for admission

(1) A person is eligible for admission only if the person is a natural person aged 18 years or over and:

(a) the person has attained:

(i) approved academic qualifications, or

(ii) corresponding academic qualifications, and

(b) the person has satisfactorily completed:

(i) approved practical legal training requirements, or

(ii) corresponding practical legal training requirements.

1.  Educational Requirements

*Legal Practitioners Admission Rules 2005 (NSW) rule 95:*

(1) The academic requirements for admission are:

(a) completion of a tertiary academic course, whether or not leading to a degree in law, which includes the equivalent of at least three years full-time study of law and which is recognised in at least one Australian jurisdiction as providing sufficient academic training for admission by the Supreme Court of that jurisdiction as a lawyer, and

(b) completion of courses of study, whether as part of (a) or otherwise, which are recognised in at least one Australian jurisdiction, for the purposes of academic requirements for admission by the Supreme Court of that jurisdiction as a lawyer, as providing sufficient academic training in the following areas of knowledge:

- Criminal Law and Procedure
- Torts
- Contracts
(2) A synopsis of the areas of knowledge referred to in sub-rule (1) (b) is set out in the Fifth Schedule.

(3) The academic courses conducted in New South Wales which are recognised as satisfying the requirements of sub-rule (1) are:

(a) the Board’s examinations set out in rule 53, and

(b) the courses listed in the Second Schedule.

- Academic requirements involve completion of a tertiary academic course in Australia, including the equivalent of at least three years full time study of law.
- Rules specify the areas of legal knowledge in which an applicant for admission must demonstrate understanding and competence via completing that academic course.

2. **Practical Legal Training Requirements**

*Legal Practitioners Admission Rules 2005 (NSW) rule 96:*

(1) The practical training requirement for admission is completion of a course of practical training or articles:

(a) which is recognized in at least one Australian jurisdiction as providing sufficient practical training for admission by the Supreme Court of that jurisdiction as a lawyer, and

(b) which includes evidence of the attainment of competencies in the following areas:

- Skills
- Lawyers’ Skills
- Problem Solving
- Work Management and Business Skills
- Trust and Office Accounting
- Practice Areas
- Civil Litigation Practice
- Commercial and Corporate Practice
- Property Law Practice
- One of the following:
  - Administrative Law Practice
  - Criminal Law Practice
- Family Law Practice
- One of the following:
  - Consumer Law Practice
  - Employment and Industrial Relations Practice
  - Planning and Environmental Law Practice
- Wills and Estates Practice
- Values
- Ethics and Professional Responsibility

(2) A synopsis of the competencies referred to in sub-rule (1) (b) is set out in the Sixth Schedule.

(3) The practical training courses conducted in New South Wales which are recognized as satisfying the requirement of sub-rule (1) are listed in the Fourth Schedule.

- Successful completion of at least one year’s articles of clerkship with a lawyer, a recognised PLT training course, or a combination.

3. **Character Based Requirements**
9 Suitability matters

(1) Each of the following is a suitability matter in relation to a natural person:

(a) whether the person is currently of good fame and character,

(b) whether the person is or has been an insolvent under administration,

(c) whether the person has been convicted of an offence in Australia or a foreign country, and if so:

(i) the nature of the offence, and

(ii) how long ago the offence was committed, and

(iii) the person’s age when the offence was committed,

Note: The rules may make provision for the convictions that must be disclosed by an applicant and those that need not be disclosed. Section 11 (References to convictions for offences) provides that reference to a conviction includes a finding of guilt, or the acceptance of a guilty plea, whether or not a conviction is recorded.

(d) whether the person engaged in legal practice in Australia:

(i) when not admitted, or not holding a practising certificate, as required under this Act or a previous law of this jurisdiction that corresponds to this Act or under a corresponding law, or

(ii) if admitted, in contravention of a condition on which admission was granted, or

(iii) if holding an Australian practising certificate, in contravention of a condition of the certificate or while the certificate was suspended,

(e) whether the person has practised law in a foreign country:

(i) when not permitted by or under a law of that country to do so, or

(ii) if permitted to do so, in contravention of a condition of the permission,

(f) whether the person is currently subject to an unresolved complaint, investigation, charge or order under any of the following:

(i) this Act or a previous law of this jurisdiction that corresponds to this Act, or

(ii) a corresponding law or corresponding foreign law,

(g) whether the person:

(i) is the subject of current disciplinary action, however expressed, in another profession or occupation in Australia or a foreign country, or

(ii) has been the subject of disciplinary action, however expressed, relating to another profession or occupation that involved a finding of guilt,

(h) whether the person’s name has been removed from:

(i) a local roll, and whether the person’s name has since been restored to or entered on a local roll, or

(ii) an interstate roll, and whether the person’s name has since been restored to or entered on an interstate roll, or

(iii) a foreign roll,

(i) whether the person’s right to engage in legal practice has at any time been suspended or cancelled in Australia or a foreign country,

(j) whether the person has contravened, in Australia or a foreign country, a law about trust money or trust accounts,

(k) whether, under this Act, a law of the Commonwealth or a corresponding law, a supervisor, manager or receiver, however described, is or has been appointed in relation to any legal practice engaged in by the person,

(l) whether the person is or has been subject to an order, under this Act, a law of the Commonwealth or a corresponding law, disqualifying the person from being employed by, or a partner of, an Australian legal practitioner or from managing a corporation that is an incorporated legal practice,

(m) whether the person is currently unable to satisfactorily carry out the inherent requirements of practice as an Australian legal practitioner.

(2) A matter is a suitability matter even if it happened before the commencement of this section.

25 Suitability for admission

(1) In deciding if an applicant is a fit and proper person to be admitted, the Admission Board:
(a) must consider each of the suitability matters in relation to the applicant to the extent a suitability matter is appropriate, and
(b) may consider any other matter it considers relevant.
(2) However, the Admission Board may consider a person to be a fit and proper person to be admitted despite a suitability matter because of the circumstances relating to the matter.

26 Early consideration of suitability

(1) A person may apply to the Admission Board for a declaration that matters disclosed by the person will not, without more, adversely affect an assessment by the Board as to whether the person is a fit and proper person to be admitted.
(2) The Admission Board is to consider each application under this section and make the declaration sought or refuse to do so.

- Basic character requirement is good fame and character; some jurisdictions also require the applicant be a fit and proper person to be admitted.

- Reason for the inquiry into fame and character is that a person admitted to the profession is held out as fit to be entrusted by the public with their affairs and confidences, in whose integrity the public can be confident.
  - Canadian professional rules: “integrity is the fundamental quality of any person who seeks to practise as a member of the legal profession. If the client is in any doubt about the lawyer’s trustworthiness, the essential element in the lawyer-client relationship will be missing. If personal integrity is lacking the lawyer’s usefulness to the client and reputation within the profession will be destroyed regardless of how competent the lawyer may be”

- The Supreme Court in each jurisdiction admits a person to practice, therefore the Court must be confident of an applicant’s good fame and character, and exercises a responsibility to the public and the profession not to accredit persons as worthy of that confidence who cannot establish the right to it [Wentworth v New South Wales Bar Association (1992) 176 CLR 239 at 251 per Deane, Dawson, Toohey and Gaudron JJ]
  - Protection of the public is “a significant feature of the admission proceedings”
  - An admission board must advise the Court as to an applicant’s fame and character:
    - There must be a compliance certificate provided in respect of the person, stating that the applicant has satisfied the Board that they have met the prescribed education requirements and is a fit and proper person

“Good Fame and Character”
- Bears no special to technical meaning, and assumes ordinary meaning: Health Care Complaints Commission v Karalasingham [2007] NSWCA 267 at [45] per Basten JA
  - Fame focuses on an applicant’s reputation in the public arena
  - Character involves a more objective evaluation relating to an applicant’s quality, judged by former acts and motives: Jackson v Legal Practitioners Admission Board [2006] NSWSC 1338 at [56] per Johnson J
    - A person “can only be judged by what he has done and what he has professed in the past and, properly judged, what he claims of himself when he makes an application for admission”
    - Particularly important is evidence going to an applicant’s honesty, give that “the demands of honesty and fair dealing are probably greater in the legal profession than any other profession” [Frugniet v Board of Examiners [2005] VSC 332 at [27] per Gillard J]

- Australian courts are wary of any insinuation that the concept of “good fame and character” could serve as a de facto discrimination tool.
  - “Being a radical in a political sense or being what might be regarded by some as an extremist in views on sex, religion or philosophy provides no bar to admission as a barrister, unless of course, the attitude…can be seen to render him not a fit and proper person because his character, reputation or
likely conduct fall short of the standard expected of a practising barrister” [Re B [1981] 2 NSWLR 372 at 380 per Moffitt P]


Factors Relevant to “Good Fame and Character”
Previous Criminal Behaviour
- Previous criminal convictions are clearly relevant to an applicant’s fame and character.
  - Thomas v Legal Practitioners Admission Board [2005] 1 Qd R 331: Applicant committed nine offences over a three month period involving misappropriation of $8,640 of employer’s money. Court ruled that fraudulent misappropriation on that scale “suggests present unsuitability for practice in a profession in which absolute trust must be of the essence”. Refused Admission.
  - Re Application by Saunders (2011) 29 NTLR 204: applicants conviction on five counts of breaching the Criminal Code Act 1995 (Cth) as a result of receiving two years of Austudy benefits while failing to declare employment earning to Centrelink, coupled with an attitude lacking candour to the court, led Riley CJ to refuse admission.
  - Re Owen [2005] NZLR 536: applicant had earlier in life been convicted of numerous offences, including burglary at ages 25 and 27. He turned over a new leaf at age 30, completed a law degree and sought admission at 38. Evidence of reformed character, in view of the intervening period of positive behaviour. Admitted.
  - Frugtniet v Board of Examiners [2005] VSC 332: over a period of 25 years leading up to admission been charged or convicted with offences relating to theft, perjury and fraud. According to Gillard J this placed a heavy burden on he applicant to persuade the Court of good character, which the applicant couldn’t discharge by evidence of rehab. His Honour said it would take “many years of blameless conduct” before one could have confidence the applicant had turned over a new lead. Refused admission.
  - Jarvis v Legal Practice Board [2012] VSC 332: convictions for stealing 10 and 20 years earlier. Recent finding of academic misconduct and convictions for defrauding Centrelink, against a backdrop of incomplete candour to the Court. Refused Admission.

Previous Improper Conduct in the Curial Process
- An applicant’s previous conduct in the course of litigation is relevant to fame and character, especially where that behaviour, had it been engaged in by a lawyer, would have attracted disciplinary action.
  - Jackson v Legal Practitioners Admission Board [2006] NSWSC 1338: applicant had a decade earlier knowingly made a false statutory declaration and knowingly given false evidence in related proceedings, even though she did not stand convicted of any criminal offence. Her persistence in an attitude of having been victimised, rather than displaying contrition, coupled with incomplete disclosure influenced finding of refusal of admission.
  - Wentworth v New South Wales Bar Association (1994): making of baseless and insupportable allegations of serious misconduct on the part of other prior to admission led to refusal of admission
  - Re Bell [2005] QCA 151: party to an acrimonious family law case, swore and filed affidavits threatening judicial officers, and had unresolved contempt proceedings for alleged breached of the Courts orders against him. According to the court, this revealed the applicant’s “inability to distinguish between vigorous but legitimate advocacy of a position and a reaction to an adverse decision of the courts which is entirely unacceptable in an officer of the court” in refusing admission, emphasised applicant’s should display respect for the court’s authority and vigilance in complying with its order.

Improper Conduct in the Course of a Profession or Employment
- Re Hampton [2002] QCA 129: applicant’s registration as a nurse had been cancelled for inappropriately dealing with females under his care, and in performing a nursing service while not registered. De Jersey CJ considered the applicants behaviour displayed a lack of “appropriate professional judgement and discretion”, and failed to candidly disclose these matters. Refused admission.