

## Promoting academic integrity in legal education: 'Unanswered questions' on disclosure

*Dr Colin James*

The University of Newcastle

[Colin.James@newcastle.edu.au](mailto:Colin.James@newcastle.edu.au)

*Dr Saadia Mahmud*

Business School, University of South Australia

[saadiamahmud@gmail.com](mailto:saadiamahmud@gmail.com)

**Keywords:** legal education, academic integrity, professional integrity, plagiarism, admission to practise law

### Abstract

Law students are a special case in academic integrity. If a law student breaches academic integrity policy, such as by plagiarism or collusion during their legal education, it may have long-term consequences for their reputation and their future in the legal profession. Graduating law students applying for admission to practise as a lawyer are advised to disclose mere investigations, whether or not they were found to have breached the rules, as failure to disclose may lead to their admission being refused or delayed. This paper analyses the views of 28 academic integrity stakeholders across six Australian universities, interviewed by the Academic Integrity Standards Project, with a specific focus on the 12 interviewees that were associated with legal education in their own institution. While the broader understanding of academic integrity among participants associated with legal education was similar to that of the overall participants interviewed in the study, legal academics raised the issue of disclosure requirements for a breach of academic integrity policy by students, given the significant professional consequences for a law student. Based on our findings, we propose a need for clarity and uniformity in the rules of disclosure as part of the emerging national legal profession. We also propose an approach that promotes academic integrity as an emergent professional integrity among law students, rather than focusing resources on identification and punishing students who breach academic integrity policy.

### Introduction

The unique relevance of academic integrity to legal education has fuelled a growing discourse examining Australian court cases on refusal of applications for admission to practise law based on alleged student breaches of academic integrity (Cumming, 2007; Wyburn, 2008, 2009), related legal issues of copyright (Wyburn & MacPhail, 2005-2006), evidential issues of intention (Lindsay, 2011), and related developments in other jurisdictions (Birmingham, Watson, & Jones, 2010; Freckelton, 2010; Joy & McMunigal, 2011; Larkham & Manns, 2002; Mawdsley & Joy, 2008; Webley, 2012). Several authors have examined the cases and disclosed different approaches to the relevance of breaches and the failure to disclose breaches of academic integrity between the Australian states and territories. Mortensen for example examined three cases to reveal how judges determine the 'intrinsic character' of applicants based on their prior conduct and their attitude to the proceedings (Mortensen, 2002). Wyburn

has published several articles examining the diversity of courts' attitudes towards disclosed incidents of plagiarism (Wyburn, 2008, 2009; Wyburn & MacPhail, 2005-2006), and in a more extensive paper, Bartlett (2008) examined cases on whether allegations of student misconduct determined if an applicant was a 'fit and proper' person to be admitted to legal practice. Bartlett found a lack of consistency between the states, although she identified a line of authority where courts undertook "an extensive review of the facts surrounding incidents of student misconduct and the university processes for determining the nature of the incident" (Bartlett, 2008, p. 327)<sup>1</sup>. Bartlett concluded that several cases confirmed that dishonesty is a key indicator of 'unfitness' for legal practice, that any instance of student misconduct should be disclosed, and asked whether some decisions represented a new incursion into academic decision-making (Bartlett, 2008, p. 330).

In a subsequent paper Evans examined the different legislative provisions for admission to practise law in the various Australian states, as well as the case law illustrating the serious consequences for individuals found to have committed academic misconduct in undergraduate studies (Evans, 2012). More recently, Bartlett and Haller examined both the legislation and case law in New South Wales, Queensland and Victoria which together include 85% of Australian lawyers (Bartlett & Haller, 2013). They analysed cases on the broader test of an applicant's 'suitability' for legal practice, which includes student misconduct and failure to disclose student misconduct. They also examined data from the Legal Admissions Consultative Committee which revealed significant differences between the states on rates of disclosure by applicants for admission to practise law, indicating Victorian applicants were 17 times more likely than NSW applicants to disclose matters they thought might impact their fitness to practise law (LACC, 2010; Bartlett & Haller, 2013, at n.173). Bartlett and Haller concluded with concerns that the diverse admission processes discriminate so dramatically between applicants subject to the state in which they apply, there is a risk of forum shopping (Bartlett & Haller, 2013, p. 263).

Historically, the legal profession has a vested interest in ensuring applicants do not have histories of questionable behaviour that may indicate as lawyers they would be prone to unprofessional conduct. The reason was put succinctly by Justice Pagone in the Victorian case of *Frugtniet* (2002):

The level and extent of trust placed in what legal practitioners say or do is necessarily high and the need for honesty is self-evident and essential.  
(*Frugtniet v Board of Examiners [2002] VSC 140* per Pagone, J)

While discussions about creating a national legal profession have begun, for the foreseeable future, admission to the legal profession in Australia is a matter for the various states and territories (NLPR, 2011). Each jurisdiction has its own rules that govern not only eligibility, the minimum legal education and practical training requirements, but also suitability of the applicant's 'character' to be a lawyer. The admitting authorities in all Australian states and territories require disclosures by applicants of situations that go to establishing whether or not the applicant is 'currently of good fame and character'<sup>2</sup> to be a member of the legal profession. Occasionally courts articulate reasons for the need of applicants to prove their character and often refer to concepts like 'the protection of the public' and 'the standing of the profession'. Both phrases were used in the judgment of *Law Society of Tasmania v Richardson* [2003] TASSC 9.

The 'fit and proper' person test, otherwise known as the 'character', 'good fame and character' or 'suitability' test, that has been adopted into the state legislations governing admission to legal practice derives from case law. The original case was *Meagher*, in 1909 where the High Court of Australia expressed the requirement to assess the character of those wishing to practice law because of the need to protect the public (*Incorporated Law Institute of New South Wales v Meagher* (1909) 9 CLR

655, 681). The current *Disclosure guidelines* published by the Legal Admissions Consultative Committee of the Law Council of Australia (LACC, 2013) specifically state these 'character' requirements are part of the common law, that they place "a duty and onus squarely on each applicant to disclose to the admitting authority any matter that could influence the admitting authority's decision", and that "failure to do so, if subsequently discovered, can have catastrophic [sic] consequences for an applicant" (LACC, 2013, p. 1). At the same time, however, the Law Admissions Consultative Committee (LACC) offers no assistance to applicants in deciding what they need to disclose:

Unfortunately it is not possible to provide applicants with an exhaustive list of all matters which can turn out to be relevant to assessing whether an applicant is currently of good fame and character, or a fit and proper person for admission, and which therefore should be disclosed. (LACC, 2013, p. 3)

The LACC cautions applicants that the *Disclosure guidelines* refer to Victorian legislation and applicants need to check with the version provided by the admitting authority in their own state. However, the guidelines also refer to most of the relevant legislation in the other states and territories, as well as many of the relevant cases coming from the different state and commonwealth courts including a list of Australian case law on the meaning of 'fit and proper person' in different contexts (LACC, 2013, at n.4). It is apparent the guidelines are drafted with a view to the proposed national legal profession which may impose uniform rules of admission including procedures for disclosure. Yet while the LACC claims the admitting authorities in the states and territories had reached agreement on most issues relating to admission, it was still not possible to be clear on what matters need to be disclosed, even though 'catastrophic consequences' may follow if a court or admitting authority subsequently considers an applicant's disclosures to be inadequate.

In some states, applicants for admission must obtain a certificate from their former university certifying they have not breached academic integrity, and in other places an applicant must consent for the law society or the admitting authority to make enquiries with the applicant's former university about their history as a law student. For example, in Victoria see *Legal Profession Act 2004 (Vic) s.2.3.3(3)*, in Queensland: *Supreme Court (Admission) Rules 2004, r.13(2j)* and Form 7 and in the Northern Territory: *Rules of the Legal Practitioners Education and Admissions Council 2004 (SA) Rule 7.6(b)* and *Legal Practitioners Admission Rules (NT) s.8(1)(b)*.

Several incidents have led to court cases in Australian states with inconsistent results, leaving law students, legal academics, law schools, policy-makers and academic integrity officers in a quandary as to how policies should be developed and applied in particular cases<sup>3</sup>. Some researchers have observed that "on academic grounds, matters arising from plagiarism are among the most frequent in Australian education law cases" (Mawdsley & Joy, 2008, p. 218). The reasons for this development include the rising influence of the internet, diverse forms of social media and communications, and the increasing use of electronic modes of teaching, learning and assessment. It is therefore timely to re-examine our methods of promoting academic integrity, specifically as part of legal education. As Anita Stuhmcke observed, "the old way of doing things does not seem to be working" (Stuhmcke, 2011, p. 138).

There are unique challenges for legal education in achieving good practice in the application of academic integrity policies while seeking to motivate students to not only comply with the rules but to actively research, write and reference in ways that will demonstrate their character is sound and they are suited for legal practice. Consequently, while the rules of academic integrity at universities apply in all disciplines, law schools have tended to adopt a stricter application of the rules to minimise the risk of breaches and to help prepare students for the emphasis on character and honesty in the legal profession (Stuhmcke, 2011). Discussion has

begun on the priority of preventing law student breaches over detection (Evans, 2012), and this paper contributes to that discourse. This research is part of the Academic Integrity Standards Project 2010-2012 (AISP), a Priority Project funded by the Australian Office for Learning and Teaching.

The following sections focus mainly on interviews of legal academics and senior professional staff with responsibility for academic integrity in legal education in the six Australian universities that participated in the AISP project. Based on our study, we argue for clarity and uniformity in the requirements for disclosure of academic integrity breaches by law students and propose that law schools emphasise the importance of academic integrity to their students not as rule-compliance, but as emergent professional integrity, representing the beginning of their professional character and their reputation as a lawyer.

## **Research method**

### *Data collection and analysis*

Several outcomes of the AISP include recommendations for core elements of an exemplary academic integrity policy (Bretag et al., 2011), and analysis of student awareness of and attitudes towards academic integrity policy at their universities (Bretag et al., 2013). In addition, the data collected by this project included online academic integrity policies of 39 Australian universities, 28 interviews with academic integrity stakeholders in the six Australian universities participating in the project and a survey of students in all faculties on academic integrity.

This paper reports on findings from the interviews with legal academic integrity stakeholders. While the research did not target any specific discipline, of the 28 interviews conducted, 12 involved academics or professional staff directly engaged in legal education and/or responding to breaches by law students, and several more had either occasional or prior experience responding to breach allegations involving law students.

Participants were recruited at the six participating universities by invitations to academic staff and senior professional staff involved in academic integrity policy and practice. The participating universities included four based in capital cities and two in regional centres. Two universities were members of the 'Group of Eight', two members of the 'Australian Innovative Research Universities' and one a member of the 'Australian University Technology Network'. The sixth university was not aligned with an existing group.

Following a standard interview protocol participants were asked about their understandings of academic integrity, their experiences with academic integrity policy and practice and their recommendations for improving academic integrity policy and practice. All interviews were taped and transcribed. The qualitative data was analysed using NVivo 8 and thematic analysis (Braun & Clarke, 2006).

### *Limitations*

Given the relatively small sample size, findings from this study are not generalisable. The possibility of a self-selection bias also exists as the participants chose to be interviewed. However, the study offers new insights into the unique challenges faced by legal education with regard to the recording and disclosure of breaches of academic integrity.

## Findings

### *Understandings of academic integrity in legal education*

All interview participants were asked initially to describe their understanding of academic integrity. Based on analysis of responses from all 28 participants in the AISP, Bretag concluded that academic integrity is understood as grounded in action, underpinned by values, multifaceted and applicable to multiple stakeholders, understood by many in terms of what it is *not* (misconduct); and important for universities as a means of assuring the quality and credibility of the educational process (Bretag, 2012).

The interview data confirmed that academics associated with legal education (n=12) understood academic integrity similarly to other academic integrity stakeholders (n=28). One legal academic, for example, understood academic integrity as grounded in action and felt law schools should rely on the inherent meaning of the words to provide the best interpretation of the concept:

*...you have an integrity in the formulation of the actual question. Once you own that question; once it's something that you are so deeply curious about then I think from that – from the owning of the question naturally flows through an authenticity ... It doesn't make sense to well recycle your own work or to think to appropriate or whatever or even to seek to fudge the answer because you want to know the answer so for me academic integrity is coming up with your true question. (Law Academic, Interview 2, University F)*

Another legal academic emphasised that academic integrity is underpinned by values:

*My understanding of academic integrity is that it encompasses a number of values and ideals that should be upheld in an institution that is of an academic nature. So, within the academy there's fundamental obligation to exercise integrity. What I consider to be integrity is honesty, trustworthiness, respect; those values I think are very much part and parcel of what integrity is all about, and within an academy structure I think that those values must be within the research, the teaching and learning activities of the institution. (Law Academic, Interview 6, University A)*

While another respondent understood academic integrity as what it is *not*:

*I guess there's a number of different threads to academic integrity particularly ... if students [commit] fraud, in the sense of academic fraud, in the sense of students passing off work as their own which is really the work of others. You know your classic sort of scenario is cutting and pasting material from the internet or general articles and ... when they're doing essays and other work they're handing in. So that sort of academic fraud, passing others work off as one's own. The other aspect, or another thread of academic integrity when we're looking at students is the idea of collusion of students in producing work and swapping information, swapping drafts, swapping pieces of work between years, you know there's this sort of behaviour. (Law Academic, Interview 4, University A)*

The following sections draw on participants' experiences concerning the objective approach, where the student's intention is irrelevant, after an incident has been detected. Usually two steps are involved, firstly in regard to the academic's decision to 'breach' a student by finding they have not complied with the rules, followed by recording that breach on a university database. The second step relates to the decision to disclose a breach to the admitting authority when the student applies for admission to practise law, including counselling students on whether and how to disclose.

### *Recording breaches of academic integrity*

Participants diverged on the issue of administrative recording of breaches of academic integrity. Some participants believed that minor breaches by law students should be recorded so that their future teachers are informed and the students have incentive to improve their practices.

According to one participant failure to record any breach is a kind of corruption, and law schools need to act and be seen to take appropriate action with every allegation.

*(About not recording minor breaches) I think that's corrupt ... (and) contrary to the notion of scholarship... doing the student a disservice anyway... I think it's wrong. (Law Academic, Interview 3, University F)*

Other participants emphasised a more nuanced approach:

*And so we need to be careful not to be overly harsh ... in terms of the way we report, or ... in terms of the way we decide which matters need to be reported or ... recorded as a part of the formal referral .... You know other disciplines I guess might not have that concern. (Law Academic, Interview 4, University A)*

*... because in some cases I find that the plagiarism or the academic misconduct is ultimately one of the signs that there is actually an underlying problem... I've had it happen in so many cases, that I see it now they're really in some ways; I've almost seen it as a cry for help. (Law Academic, Interview 4, University E)*

The reluctance to breach and tendency to under-record incidents comes from sensitivity about the consequences for a law student which can be long-term and damaging, not only for the student but if the case is reported, potentially also for the law school and the university. Some respondents expressed concern that other staff in their school used discretion to minimise student breaches by not recording an investigation or the finding of a breach, or choosing instead to deal with a significant case informally such as by issuing a caution. For example, one interviewee was circumspect on what needed disclosure:

*Now the area that I'm concerned about is where it's unintentional and you counsel the student okay – and in that context [do] you know what happens there? Is there a record of the counselling? Do you have to declare that? These are unanswered questions for me and just generally we're working it out. (Law Academic, Interview 4, University F)*

Others argued for strict recording of student breaches and maintaining the record for many years. They argued former students may cross state boundaries, travel overseas, and apply for admission to practise law in another jurisdiction many years after leaving law school. Consequently, they claim, academic breaches should remain on the record indefinitely, a practice that for others created an onerous responsibility:

*These cases are putting me in a situation where what I do next can be extremely damaging for the life of a person. (Law Academic, Interview 5, University F)*

Further, legal academics are aware that a future court may decide to re-examine their procedures and intervene to overturn their decision based on a different interpretation of the facts, the rules or the student's intention, as in the case of *Re Humzy-Hancock* [2007] QSC 034. According to Cumming "...there are circumstances where the courts will now intervene and make judgments of an academic nature, that is, educational decisions, contrary to previous policy statements and dicta" (Cumming, 2007, p. 105).

Despite a common belief that admitting authorities rely on an objective determination of plagiarism, not requiring an assessment of student intention, legal academics in this project showed a diversity of opinions on what should be disclosed based on the assumed intention of the student. In addition, academics differed regarding the kinds of breaches that are in fact recorded by their respective universities, as well as how their graduates are advised on what they should disclose when applying for admission to practise law.

*What should students disclose when applying for admission to legal practice?*

One legal academic was definitive about the need to disclose, even if there was a doubt:

*My role is very much to front and centre say to students, their fundamental obligation is to disclose. ... there are usually four or five students in every cohort that approach me asking for clarification or support in terms of providing that to the admitting authority. ... assisting them in drafting that submission.... I see that as a very important role and something that I take very seriously, because students are often quite distressed and confronted. (Law Academic, Interview 6, University A)*

Some participants argued that graduates should be risk-averse and disclose mere investigations of alleged breaches, whether or not they are recorded, because it is 'safe'. They believed an insignificant matter is likely to be ignored by the admitting authorities and disclosure would do the student no reputational harm. Others were unsure that disclosures would be adequately or accurately assessed by admitting authorities. According to one legal academic it is becoming increasingly important to get the disclosure right:

*In recent years the academic issue has become very very important, because basically the Law Society and the judges in the Supreme Court – they look at this as a dishonest practice. It's about dishonesty and when you look at the rules of the solicitors it's about being honest and having integrity is right up there and so it's absolutely vital that they're honest, but of course we make it clear that people do make mistakes. (Law Academic, Interview 1, University D)*

Some participants were unsure about disclosure of breaches where the role of the student's intention was not clear. They believed university policies did not always clarify that process and seemed confused about what the various courts expect in terms of disclosure. One interviewee referred to 'excessive disclosure':

*I think there need to be clear guidelines ... Law is a special case in terms of the overriding and exacting, and onerous obligation to disclose. Sometimes it's referred to as excessive disclosure, and I think that's a good term; it is excessive disclosure, and that's important that we get that message out. (Law Academic, Interview 6, University A)*

The same participant thought that the presence of a student's intention, determined administratively at the law school level, could be useful to categorise breaches and determine whether subsequent disclosure was warranted.

*It would be helpful to have a category of what a minor transgression is and what a major transgression is, and that the minor ones, such as sloppy referencing don't have to be disclosed, but major ones do. (Law Academic, Interview 6, University A)*

### *Emergent professional integrity*

Most participants considered a focus on the character of lawyers in the admission procedure to be justified due to the social power, professional privilege and trust imbued in lawyers by our society and the legal system. It is possible that how law schools teach academic integrity and how legal academics respond to allegations of breaches of the rules provide a model to assist law students envisage themselves as lawyers in society.

*We're trying to develop this idea that students think of themselves as trainee professionals and what's required in the profession is this [honesty] – okay I need to replicate that here. I need to start being that person. (Senior Law Academic, Interview 1, University D)*

Arguably the restrictive admission process is useful in helping to identify individuals who if they became lawyers might be a problem to themselves, their clients, the legal profession and society. Accordingly, law schools have an important social role in identifying student behaviour that might pose a risk of unprofessional behaviour after admission.

*It is very important for students to realise that the conduct that they're exhibiting here is probably indicative of the conduct that they will exhibit when they become professionals. (Senior Law Academic, Interview 1, University D)*

In particular, this project identified a tension between two important concepts: an awareness of the special importance that academic integrity *could have* as a guiding principle in the professional development of law students, and a sensitivity about the professional risk to law students who had breached the rules, creating the perception they might not be suitable for the legal profession because their character might in some way be flawed.

*We, particularly in law have to be mindful of that because there are requirements of our students when they finish their law degree... And a part of the admission process ... involves certain ... matters to do with their character. (Law Academic, Interview 4, University A)*

### **Discussion**

It is only in the discipline of law that students have to make declarations and prove the quality of their character before they can practise in their profession. A breach of university rules as a student might be considered evidence of a character flaw, making the student unsuited to practise law. There are some views in the discourse which dispute whether conduct as a student reveals 'character' likely to be reflected later as an adult professional (Rhode, 1984-85). However, the majority of court decisions adopt a stricter view, and on their application of the current rules, a breach must be disclosed to admitting authorities and if possible explained and mitigated by other character references. The burden on students is increasing as the role of the student's intention diminishes and academics are encouraged to determine a breach using 'objective' assessments.

The meaning academics ascribe to academic integrity is crucial, according to Lindsay, because "in plagiarism cases, the fact-finding process may be rendered problematic by definitional uncertainties as to the proper scope of the decision-maker's authority" (Lindsay, 2011, p. 37). Without more cogent guidelines to assist, it is not surprising that participants in this project preferred a broader view of academic integrity, one that specifically focused on values rather than rule compliance. It is understandable that some participants struggled to know how best to advise



graduating students in making disclosures for the purpose of admission, and why there have been significant inconsistencies in rates and types of disclosures by graduates from different universities and in the different states (Beckingham & Humble, 2012). Inconsistency does not breed respect and while law students have much to lose if caught breaching the rules of academic integrity, fear of a possible consequence of breaching alone may not motivate the majority of students to comply with the rules.

Specifically, what might have been excused in the past as 'sloppy referencing' by a law student, under current practice in many cases will lead to a finding of breach of the rules by plagiarism. There has been a rise in 'objectivity' and a downward shift in the relevance of a student's intention in a case of alleged breach. There is also an increased willingness by academics to identify plagiarism and respond to it with disciplinary action. As one researcher commented: "The distinction is important because once a decision goes beyond the limits of academic judgment, into the field of disciplinary action, the consequence, subject-matter and nature of decision-making changes. Not least, it becomes more serious" (Lindsay, 2011, p. 29). We would add for law students it can become very serious, potentially impacting on their reputation and future careers.

In the Victorian case of *Frugtniet*, regarding full disclosure of academic breach by applicants, the court said:

Revealing more than might strictly be necessary counts in favour of an applicant - especially where the disclosure still carries embarrassment or discomfort. Revealing less than may be necessary distorts the proper assessment of the applicant and may itself show an inappropriate desire to distort by selecting and screening relevant facts. (*Frugtniet v Board of Examiners* [2002] VSC 140, per Pagone J.)

The LACC *Disclosure guidelines* refer to the decision in *Frugtniet* and it appears to have impacted on attitudes, policy and procedures in legal academia beyond the Victorian borders. Concerning academic misconduct, the guidelines suggest: "It will generally be prudent to disclose such conduct whether or not a formal finding was made or a record of the incident retained by the relevant organisation" (LACC, 2013, p. 4). However, there is no clarification on what might amount to 'academic misconduct' when there is no finding of such conduct.

The default position of declaring every alleged incident that could be construed as relevant would be untenable, although it appears to be advised by Pagone J. in *Frugtniet* and suggested in the guidelines, and it may have led to the situation in 2009 when applicants in Victoria were responsible for 95% of all "disclosures going to suitability" in Australian jurisdictions (LACC, 2010, p. 5). Further, legal academics advising applicants on what to disclose appear not only to have different views on disclosable matters, but also on what amounts to a significant issue. The LACC data from 2009 shows that only 4% of disclosures in Victoria were found to be serious, compared with over 16% of disclosures in Queensland (LACC, 2010, p. 5; Beckingham & Humble, 2012). It is unlikely the difference in reported seriousness of disclosures reflects the actual differences in the character of applicants in the various states or their relative suitability for the legal profession.

The Australian experience of students challenging decisions refusing admission to the legal profession is related to the issues of disclosure of breaches of academic integrity raised in our study. In the UK Martin Jones observed significant diversity of policies in defining academic dishonesty and of practices in responding to breaches, including the standard of proof required for a breach and the penalties applied (Jones, 2006). Specifically, he cautioned that divergent policies and practices could lead to more

frequent legal challenges by students unwilling to accept the lawfulness of decisions made against them by universities, especially where those decisions may have enduring effects on the students' professional future (Jones, 2006). Jones noted that law student breaches relating to dishonesty can serve as a barrier for entering the legal profession, and refers to one case in Ireland where the judge indicated that university disciplinary procedures should 'approach' those of a court hearing (*Flanagan v University College Dublin* [1988] L.R. 724).

The inconsistency in the Australian states' rules and court cases has led many legal academics to be cautionary, and follow *Frugtniet* by telling students to disclose relatively minor issues rather than risk a later allegation that they attempted to conceal something. The court cases have also encouraged universities to maximise administrative recording of allegations and incidents, whether or not a breach has resulted, in order to minimise risks from a subsequent investigation of their policies and practices by a court wanting to determine events in a particular case. In addition, the reported Australian cases appear to have influenced universities adopting a more objective approach to allegations of breaching academic integrity (*In the Matter of OG, a Lawyer* [2007] VSC 520,18 and *Re Livieri* [2006] QCA 152,3). An exception was *Re Humzy-Hancock* [2007] QSC 034, in which case Michelle Evans referred to the successful appellant as "remarkably fortunate" (Evans, 2012, p. 107). Despite the inconsistency in judicial decisions and between the states, Mary Wyburn concluded there was "a toughening of the attitude of the state courts to disclosure" and called on law schools to communicate this to students as soon as possible (Wyburn, 2008, p. 341). Indeed, law schools appear to have leveraged court cases in trying to motivate students using the fear of reputational damage and the risks of denied admission or delayed opportunity to practise law should they breach the rules by plagiarising or colluding.

The increased focus on potential challenges of legal academic decisions in court is consistent with recent ideas about the need to extend lawyers' role in society beyond their duty to their client, towards a broader responsibility as 'public citizens' (Corbin, 2013). An analogous practice could be adopted by law schools through introducing the concept of academic integrity to first-year students and thereafter, as not merely a rule, but part of their nascent professional integrity which they must nurture and develop. Similarly, graduating students could be encouraged to demonstrate a civic responsibility, based on their imminent professional role in society, when deciding what to disclose of their academic history when applying for admission to practise law.

Some participants in this project displayed a 'growth mindset' perspective (Dweck, 2007), believing disclosures were not disastrous, and that students could learn from their experiences, including the consequences imposed by their law school for breaching the rules of academic integrity. It is likely many students can develop a sense of integrity by learning, applying and reflecting on the conventions around appropriate referencing, especially if they understand and accept the ethical principles of academia behind the rules. Students would be better equipped to eventually adopt 'professional integrity' in their practice as new lawyers if their early teaching programs on correct referencing practice incorporated the reasons for academic integrity as a kind of professional ethics, followed by firm and consistent responses to breaches of the rules, as there are in legal practice. In this view, the integrity would shift from relying on proper citation of sources in discourse as students, to the ethics of duties to the court and to the client as lawyers, including preserving confidentiality and the myriad duties expected of lawyers by legal ethics and professional responsibility. Legal education can incorporate academic integrity in ways that support students to develop their 'professional selves' by adopting practices of integrity that lead to not just good referencing skills and other forms of rule compliance, but seeing themselves as having a professional identity and reputation to be proud of.

In this project several participants stressed the importance of intentionally teaching law students to understand and adopt principles of academic integrity at the beginning of their first year in law school. Ideally that initial teaching would integrate the 'ethics' of academic integrity with the beginnings of professional integrity within each student who aspires to enter the profession. In other words, the first year introduction to academic integrity could be articulated not as rule compliance, but as an opportunity to exhibit 'best practice' because each law student wanting to become a lawyer has already commenced building their professional identity and reputation. That notion of professional integrity, incorporating academic integrity whilst at law school, can be reinforced in the curricula of subsequent core subjects of legal ethics or professional responsibility, as well as other substantive law subjects. Understanding academic integrity as a part of professional integrity may help not only guide the student in making difficult choices during law school, but in building a professional identity based on an emerging idea within the student of the fundamental role of ethical behaviour in the legal profession.

The emphasis on prevention is laudable for all tertiary students, but for law students who have more at stake, academic integrity holds promise as a vehicle for the transition into a professional identity. There is no doubt about the important role lawyers have in society, not only in the interpretation of the law, the resolution of legal disputes and the representation of clients (Longstaff, 1995). Much depends on how well law schools can motivate students to realise the potential and embrace the opportunities that academic integrity holds as a way of demonstrating how they engage with the material of others in a professional way.

Pedagogic practice that relies on rule compliance and teaches through fear misses the unique chance that academic integrity offers as a seed for developing professional integrity in the prospective lawyer. Law schools can clarify that it is 'integrity' that the rules are designed to teach; that dishonest behaviour as students might not only damage their reputation in the future, but hinder and delay development of their own professional integrity. That integrity, like their reputation, starts at the beginning of law school and deserves protection and nourishment beyond graduation; it becomes part of the person as a professional and is incorporated into their practice for life.

## Conclusion

Law students are a special case in academic integrity where a failure to disclose a breach of academic integrity can damage a graduate's reputation and prevent or delay admission into the legal profession. Our findings indicate legal academic staff are concerned about recording of academic integrity breaches by students and unclear about the handling of disclosure of breaches. There is an obvious need for clarification and uniformity in the rules of disclosure by admitting authorities as part of the proposed national legal profession. In legal education academic integrity may be fostered as emergent professional integrity among law students by incorporating it into the curriculum of legal ethics and professional responsibility. From the beginning of their first year each student should have the opportunity to demonstrate how they would model professional integrity by applying academic integrity in their legal studies and assessment practices. In this way, a problem unique for law students can be converted by design into a resource to assist development of a positive characteristic fundamental to legal practice.

## Endnotes

<sup>1</sup> Bartlett refers specifically to referring to *Law Society of Tasmania v Richardson (No.2)* [2003] TASSC 71, *Re AJG* [2004] QCA 88. *Re Liveri* [2006] QCA 152 and *Re Humzy-Hancock* [2007] VSC 520. *Re Legal Profession Act 2004: re OG, a lawyer (re OG)* [2007] VSC 520)

<sup>2</sup> *Legal Profession Act 2006 (ACT) s.11(1)(a); Legal Profession Act 2004 (NSW) s.9(1)(a); Legal Profession Act (NT) s.11(1)(a); Legal Profession Act 2007 (Qld) s.9 (1)(a); Legal Practice Act 1981 (SA) s.15(1)(a); Legal Profession Act 2007 (Tas) s.9(1)(a); Legal Profession Act 2004 (Vic) s.1.2.6(1)(a); Legal Profession Act 2008 (WA) s.8(1)(a)* as well as being a 'fit and proper person' (*Legal Profession Act 2006 (ACT) s.26(2)(b) Legal Profession Act 2004 (NSW) s.31(2)(b); Legal Profession Act (NT) s.25(2)(b); Legal Profession Act 2007 (Qld) s.35(2)(a); Legal Profession Act 2007 (Tas) s.31(6)(b); Legal Profession Act 2004 (Vic) s.2.3.6(1)(a) (ii); Legal Profession Act 2008 (WA) s.26(1)(a)(ii)*)

<sup>3</sup> *Frugtniet v Board of Examiners [2002] VSC 140. Law Society of Tasmania v Richardson [2003] TASSC 9. Law Society of Tasmania v Richardson (No.2) [2003] TASSC 71. Re AJG [2004] QCA 88. Re Liveri [2006] QCA 152. Re Humzy-Hancock [2007] VSC 520. Re Legal Profession Act 2004: re OG, a lawyer (re OG) [2007] VSC 520)*

## References

- AISP (2013). Academic Integrity Standards Project 2010-2012. Retrieved <http://www.aisp.apfei.edu.au/>
- Bartlett, F. (2008). Student misconduct and admission to legal practice: New judicial approaches. *Monash University Law Review*, 34(2), 309-330.
- Bartlett, F., & Haller, L. (2013). Disclosing lawyers: Questioning law and process in the admission of Australian lawyers. *Federal Law Review*, 41, 227-264.
- Beckingham, A., & Humble, C. (2012). National disclosure guidelines? What state are you in? Paper presented at the *Australasian Professional Legal Education Council Conference*, University of Tasmania, Hobart, 9-10 November 2012.
- Bermingham, V., Watson, S., & Jones, M. (2010). Plagiarism in UK law schools: Is there a postcode lottery? *Assessment & Evaluation in Higher Education*, 35 (1), 1-15.
- Braun, V., & Clarke, V. (2006). Using thematic analysis in psychology. *Qualitative Research in Psychology*, 3, 77-101.
- Bretag, T. (2012). The 'Big Five' of academic integrity. Paper presented at the *5th International Plagiarism Conference*, Sage Gateshead, Newcastle upon Tyne, UK, 16-18 July 2012.
- Bretag, T., Mahmud, S., Wallace, M., Walker, R., McGowan, U., East, J., James, C., Green, M., & Partridge, L. (2011). Core elements of exemplary academic integrity policy in Australian higher education. *International Journal for Educational Integrity*, 7(2), 3-12.
- Bretag, T., Mahmud, S., Wallace, M., Walker, R., McGowan, U., East, J., James, C., Green, M., & Partridge, L. (2013). 'Teach us how to do it properly!' An Australian academic integrity student survey. *Studies in Higher Education*, 39 (7), 1150-1169.
- Corbin, L. (2013). Australian lawyers as public citizens. *Legal Ethics*, 16(1), 58-72.
- Cumming, J. J. (2007). Where courts and academe converge: Findings of fact or academic judgment. *Australian and New Zealand Journal of Law and Education*, 12(1), 97-108.
- Dweck, C. S. (2007). *Mindset: The new psychology of success*. Ballantine.
- Evans, M. (2012). Plagiarism and academic misconduct by law students: The importance of prevention over detection. *International Journal of Law & Education*, 17(2), 99-121.
- Freckelton, I. (2010). Plagiarism in law and medicine: Challenges for scholarship, academia, publishers and regulators. *Journal of Law and Medicine*, 17, 645-659.

- Jones, M. (2006). Plagiarism proceedings in higher education - Quality assured? Paper presented at the *2nd International Plagiarism Conference*, Newcastle upon Tyne. Retrieved September 1, 2014, from <http://www.plagiarismadvice.org/research-papers/item/plagiarism-proceedings-in-higher-education-quality-assured>
- Joy, P. A., & McMunigal, K. C. (2011). The problem of plagiarism as an ethics offence. *Washington University in St. Louis Legal Studies Research Paper Series*, 12-05-13(Summer), 56-59.
- LACC. (2010). *Submission to taskforce on National Legal Profession Reform*. Law Admissions Consultative Committee. Retrieved September 1, 2014, from <http://www1.lawcouncil.asn.au/LACC/images/pdfs/NationalLegalProfessionReform.pdf>
- LACC. (2013). *Disclosure guidelines for applicants for admission to the legal profession*. Law Admissions Consultative Committee. Retrieved September 1, 2014, from <http://www1.lawcouncil.asn.au/LACC/images/pdfs/DisclosureGuidelinesforApplicantsforAdmissiontotheLegalProfession.pdf>
- Larkham, P. J., & Manns, S. (2002). Plagiarism and its treatment in higher education. *Journal of Further and Higher Education*, 26(4), 339-349.
- Lindsay, B. (2011). Student plagiarism in universities: The scope of disciplinary rules and the question of evidentiary standards. *International Journal of Law and Education*, 16(1), 27-45.
- Longstaff, S. (1995). *The lawyer's duty to the community*. St James Ethics Centre. Retrieved September 1, 2014, from <http://www.ethics.org.au/on-ethics/our-articles/before-2014/the-lawyers-duty-to-the-community>
- Mawdsley, R. D., & Joy, C. J. (2008). Plagiarism litigation trends in the USA and Australia. *Education and the Law*, 20(3), 208-234.
- Mortensen, R. (2002). Lawyers' character, moral insight and ethical blindness. *Queensland Lawyer*, 22, 166-179.
- NLPR. (2011). National Legal Profession Reform. Retrieved September 1, 2014, from <http://www.lawcouncil.asn.au/lawcouncil/index.php/divisions/rpr/coag-national-legal-profession-reform>
- Rhode, D. L. (1984-85). Moral character as professional credential. *Yale Law Journal*, 94.
- Stuhmcke, A. (2011). Teaching plagiarism: Law students really are that special. *Journal of the Australasian Law Teachers Association*, 4(1&2), 137-146.
- Webley, L. (2012). Legal ethics and the legal education training review: Correspondent's report from the United Kingdom. *Legal Ethics*, 15(2), 402-404.
- Wyburn, M. (2008). Disclosure of prior student academic misconduct in admission to legal practice: Lessons for universities and the courts. *Queensland University of Technology Law and Justice Journal*, 8(2), 314-341.
- Wyburn, M. (2009). The confusion in defining plagiarism in legal education and legal practice in Australia. *Journal of Commonwealth Law and Legal Education*, 7(1), 37-63.
- Wyburn, M., & MacPhail, J. (2005-2006). The intersection of copyright and plagiarism and the monitoring of student work by educational institutions. *Australian and New Zealand Journal of Law and Education*, 11(2), 73-92.

### Acknowledgements

Support for this research was provided by the Australian Government Office for Learning and Teaching. The views expressed in this publication do not necessarily reflect the views of the Australian Government Office for Learning and Teaching.

### **About the authors**

Dr Colin James is a Senior Lecturer at the Newcastle Law School Australia, and a solicitor at the University of Newcastle Legal Centre. He has a PhD in history and his research interests include academic integrity, professional development, coaching psychology, family law practice and domestic violence.

Dr Saadia Mahmud was a Research Fellow at the University of South Australia until February 2014. She has a PhD in management and her research interests include integrity, higher education and complexity.