In the matter of an application by Julian Valvo [2014] NTSC 27

PARTIES:	THE LEGAL PROFESSION ACT 2006 AND IN THE MATTER OF AN APPLICATION BY VALVO, Julian
TITLE OF COURT:	SUPREME COURT OF THE NORTHERN TERRITORY
JURISDICTION:	SUPREME COURT OF THE NORTHERN TERRITORY EXERCISING TERRITORY JURISDICTION
FILE NO:	LP 31 of 2012 (21245062)
DELIVERED:	4 July 2014
HEARING DATE:	23 May 2014
JUDGMENT OF:	BARR J

CATCHWORDS:

LEGAL PRACTITIONERS (NORTHERN TERRITORY) – application for admission to practise – Admission Board referred the question of the applicant's fitness to the Court for decision – suitability matters – prior convictions – fraud charges – failure to initially comprehensively disclose details of offending conduct – unsatisfactory nature of applicant's evidence at the hearing – applicant failed to establish he is a fit and proper person.

Legal Profession Act, s (11)(1)(a),(c), 25(1), s 25(2), s25(2)(b), s 30(1), s 32(1),(3).

In the matter of an application by Thomas John Saunders [2011] NTSC 63, *Incorporated Law Institute of New South Wales v Meagher* (1909) 9 CLR 655, referred to.

REPRESENTATION:

Counsel:

Applicant:	N Aughterson
Law Society:	J Truman

Solicitors:

Applicant:	Ward Keller
Law Society:	Law Society Northern Territory

Judgment category classification:	B
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IN THE SUPREME COURT
OF THE NORTHERN TERRITORY
OF AUSTRALIA
AT DARWIN

In the matter of an application by Julian Valvo [2014] NTSC 27
No. LP 31 of 2012 (21245062)

IN THE MATTER OF

THE LEGAL PROFESSION ACT 2006

AND:

IN THE MATTER OF AN APPLICATION BY

JULIAN VALVO

CORAM: BARR J

REASONS FOR JUDGMENT

(Delivered 4 July 2014)

[1] The applicant has applied to the Supreme Court for admission to the legal profession.[1] His application was considered by the Admission Board which referred the question of the applicant's fitness to this Court for decision.[2] The Court has the same powers as the Board and the decision of the Court is taken to be a decision of the Board for the purposes of the *Legal Profession Act*.[3]

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1 *Legal Profession Act* s 25(1).
2 *Legal Profession Act* s 32(1).
3 *Legal Profession Act* s 32(3).

[2] The Court must be satisfied that the applicant is a fit and proper person to be admitted to the legal profession.[4] In deciding whether a person is a fit and proper person to be admitted, the Court must consider each of the 'suitability matters' in relation to the applicant, to the extent that they are relevant, and any other matter which the Court considers relevant.[5] As Riley CJ explained in *Saunders*,[6] the Court's role is to ensure, as far as possible, the protection of the public from persons who are not suitable for admission.

[3] The suitability matters which caused concern to the Admission Board in this case are whether the applicant is "currently of good fame and character",[7] and whether he has been convicted of an offence in Australia; if so, the nature of the offence, how long ago the offence was committed and his age when the offence was committed.[8]

[4] At the hearing in this Court, Mr Aughterson of counsel appeared for the applicant. Ms Truman of counsel appeared for the Northern Territory Law Society. The Law Society did not oppose the application for admission, but sought to be heard and to make submissions pursuant to s 25(2) *Legal Profession Act*. The applicant gave oral evidence in chief to supplement his affidavit evidence, and was cross examined by Ms Truman.

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4 *Legal Profession Act* s 25(2)(b).
5 *Legal Profession Act* s 30(1).
6 *In the matter of an application by Thomas John Saunders* [2011] NTSC 63 at [5].
7 *Legal Profession Act* s 11(1)(a).
8 *Legal Profession Act* s 11(1)(c).

[5] The applicant was born on 6 April 1974. He completed studies in Arts and Law at Charles Darwin University, and was awarded the degrees of Bachelor of Arts and Bachelor of Laws on 21 May 2009. He satisfactorily completed the Australian National University Legal Workshop on 19 October 2012 and obtained a Graduate Diploma in Legal Practice. He then filed an application for admission to the legal profession.[9]

[6] In his affidavit sworn 27 November 2012 ("the first affidavit"), the applicant disclosed a 1988 theft charge (which, because of his age at the time, is not presently relevant) and also convictions for failing to declare income to Centrelink. The applicant deposed as follows in relation to the Centrelink charges:

> 16. In or about 1998 I began studying at TAFE part time.
>
> 17. I was receiving social security payments from Centrelink, but I was also working casually in part time employment.
>
> 18. I know I had a duty to declare my fortnightly earnings to Centrelink.
>
> 19. I incorrectly believed I could tell Centrelink that I was working 15 hours per work, and they would adjust my payments on an ongoing basis.
>
> 20. Instead I was required by law to have completed and lodged fortnightly forms with Centrelink.
>
> 21. As a result of not completing the forms, I failed to declare my fortnightly earnings from 1995 to 1999.

[9] Originating motion filed 27 November 2012.

22. In or about 2001, I was told that I owed the Department $17,500 and that I would be prosecuted.

23. That amount of money was equivalent to an average of about 15 hours per week.

24. In or about April 2002 at the Ringwood Magistrates Court I pleaded guilty to fraud charges under the Social Security legislation for failing to declare my income.

25. I was convicted, received a suspended sentence for five years and ordered to pay back the money owed.

26. I accept that what I did was illegal, and I do not seek to excuse my failure to disclose because of a mistaken belief.

27. I understand that theft deprives owners of property, and causes hardship, loss and burden to society.

28. I also understand that social security fraud is theft from the revenue of the Government and is an imposition on every taxpayer in the Commonwealth of Australia.

29. I know what I did was wrong, and am ashamed of my history and truly regret my actions.

30. I cannot change the past, but I have learned from my mistakes.

31. I am a different person today than I was at those times.

32. I have not engaged in any criminal activity since.

33. I have since worked hard for various employers in various employment positions.

34. I have since repaid Centrelink the money owed.

35. I have since worked hard to complete my under graduate and post graduate studies.

36. Since my conviction in 2002 I have worked hard at rebuilding my character and reputation and I believe I am of good fame and character.

[7] In a subsequent affidavit sworn 9 April 2013 ("the second affidavit"), the applicant corrected some of the information contained in the first affidavit: (1) that the period of offending was 1997 to 2001, not 1995 to 1999; and (2) that the amount owed (and repaid) to Centrelink was $18,953.54, and not $17,500. The date of the convictions was 28 March 2002.

[8] The applicant annexed to the first affidavit an official document issued on behalf of the Commissioner of Police (NT) headed "National Police Certificate" in which it was certified that there were "no disclosable court outcomes or outstanding matters" recorded in relation to the applicant. I assume that the convictions for the Centrelink offending were not referred to because they were spent convictions. The applicant nonetheless appreciated the need to disclose such matters to the Admission Board and to the Court, and did so.

[9] Although the applicant disclosed the Centrelink offending in the first affidavit, the applicant oversimplified the facts and circumstances of that offending in paragraphs 18, 19, 20 and 21 of the first affidavit. His disclosure was not a "candid, comprehensive disclosure".[10] A more complete picture was given in a document annexed to the second affidavit, dated

[10] *Re Hampton* [2002] QCA 129 at [26] – [27].

5 December 2001 and described as “Draft Prosecution Summary”, which set out in detail the facts of the offending.[11]

[10] In brief, whilst in receipt of social security payments, the applicant was employed on a casual basis by a number of employers at various times between 24 April 1997 and 10 May 2001. He was casually employed on a long term basis with a nightclub between July 1997 and December 1999 and again between May 2000 and May 2001. Between those dates he earned a total gross of $48,287.54 at an average fortnightly gross of $540.74. He informed Centrelink of some of his earnings in his employment with the nightclub, but not all. He thus under-declared his earnings. In the later part of his employment with the nightclub (post August 1998) he simply did not declare his ongoing casual employment.

[11] The applicant was also employed by a recruitment firm between 5 October 1999 and 30 January 2000. During that period he earned a total gross of $4,014.06 at an average fortnightly gross of $250.88. That employment partly overlapped with employment by another human resources firm between 27 December 1999 and 30 June 2000. From that employment the applicant earned a total gross of $1,284.00 at an average fortnightly gross of $107.00.

[12] In addition to the employment mentioned in the previous paragraphs, the applicant was casually employed by Stimsonite (Australia) Pty Limited

[11] The applicant confirmed in giving evidence on 23 May 2014 that he agreed with the contents of the draft prosecution summary: transcript p.12.9.

between 9 February 2000 and 19 April 2000 and again from 22 November 2000 until at least 23 May 2001. During those periods he earned a total gross of $7,292.33 at an average fortnightly gross of $476.83. He did not declare that employment when he claimed Austudy.

[13] The applicant earned $56,265.26 between 7 March 1997 and 10 May 2001, but declared earnings totalling only $4,993 during this period. As a result, he obtained a substantial amount in Newstart Allowance and Austudy to which he was not entitled. His offending was detected on 13 August 2001 as a result of data matching between the computer records of Centrelink and the Australian Taxation Office.

[14] On 5 October 2001 the applicant took part in a tape recorded interview with Centrelink investigators. He was co-operative to an extent, and made admissions as to his undisclosed employment, but denied knowingly obtaining the payments to which he was not entitled. He claimed that the Centrelink office at Ringwood had provided him with a form on which he declared income of $200 per week on average and that, as a result, he believed that he would only have to declare amounts earned above the pre-declared $200.

[15] The prosecution précis made clear that the applicant did not keep a copy of the alleged form and Centrelink had no knowledge of such a form.

[16] The applicant in giving evidence in this Court maintained that he had completed the alleged Centrelink form, and that was the basis for his belief

and understanding of the alleged arrangement with Centrelink in March or April 1997.[12] Although I am satisfied that there was no such form, the applicant seems to have persuaded himself over a period of many years that there was, and I do not consider that he was being deliberately untruthful in his evidence about that.

[17] In an affidavit sworn 10 July 2013 ("the third affidavit"), the applicant claimed that he mistakenly thought he did not have to report his income fortnightly:

> I do not disagree with the prosecution summary, save and except to confirm that at the relevant times I mistakenly thought I did not have to report fortnightly."[13]

[18] That statement suggests (by the use of the words "at the relevant times") that the applicant operated under the alleged mistaken belief for the whole of the four-year period of his offending. In his final affidavit sworn 20 March 2014 ("the fourth affidavit"), the applicant asserted that he operated in that belief "for an extended period".[14] He did not say for how long. The applicant's evidence further evolved at the hearing. He conceded in cross examination that he had laboured under his initial mistaken belief for a relatively short time only: "It might have been the first few months", after which, he conceded, he had defrauded the Commonwealth. The applicant explained that he realized by the end of the initial period that there had been no reduction or adjustment in his Centrelink payments to take

[12] Transcript 23 May 2014 p.13.2.
[13] Third affidavit paragraph 11; transcript 23 May 2014 p.15.4.
[14] Fourth affidavit, paragraph 23.

account of his alleged pre-declared earnings, and that he needed to report his full earnings on a regular basis. He acknowledged in evidence that, in not doing so, he was dishonest for the next three years and nine months.[15]

[19] It can thus be seen that, when the applicant deposed to the belief in paragraph 19 of the first affidavit, extracted in [6] above; in paragraph 11 of the third affidavit, extracted in [17], and even at paragraph 23 of the fourth affidavit, he avoided making a concession as to the full extent of his intention to defraud. It is difficult to know whether he did so deliberately; or through ignorance as to what was required of him; or whether, for example, he had not carefully considered his state of mind over the whole of the period of the Centrelink offending.[16]

[20] In making the assessments I need to make, I bear in mind that the Centrelink offending commenced in April 1997, more than 15 years before the applicant swore the first affidavit, and now more than 17 years ago. The Centrelink offending ended in May 2001, 11 years before the applicant swore the first affidavit. Allowance has to be made for this significant passage of time.

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[15] Transcript 23 May 2014 p.16.9.

[16] Another example of the applicant not conceding the full extent of his intention to defraud was in paragraph 18 of the first affidavit, extracted in [6], where the applicant said, "I know I had a duty to declare my fortnightly earnings to Centrelink", rather than "I knew I had a duty to declare my fortnightly earnings to Centrelink". The use of the present tense, "I know …", suggests that the applicant now knows, but did not know at the time. That untrue or only partly true suggestion was reinforced by paragraph 18 of the first affidavit, in which he deposed, "I incorrectly believed I could tell Centrelink that I was working 15 hours per week, and they would adjust my payments on an ongoing basis."

[21] In his final affidavit sworn 20 March 2014 ("the fourth affidavit"), the applicant attempted to draw together and explain anomalies and inconsistencies which had emerged from the Admission Board's comparison of information deposed to in the applicant's earlier affidavits with the facts contained in documents which had been obtained or provided in response to its requests for further information.

[22] Before swearing the fourth affidavit, the applicant had received two letters from the Admission Board[17] and a copy of the Chairman's memorandum dated 13 December 2013.[18] The Chairman's memorandum included an observation with respect to the applicant's first affidavit that it was odd that he could have built up so much in arrears if he thought, as he claimed in paragraph 19 thereof, that Centrelink would make ongoing deductions; and a further observation that the applicant must have realised that something was wrong because no deductions were being made. The memorandum made reference also to the second affidavit, and contained a conclusion that the partial declaration of earnings was inconsistent with the applicant's claimed belief that Centrelink would adjust his benefits based on the asserted agreement. The memorandum finally stated:

> It therefore appears he was not truthful with Centrelink investigators, and that he has maintained that state of affairs in his application.

[17] Exhibit "LS1", December 2012; exhibit "LS2", April 2013.
[18] Exhibit "LS3", 13 December 2013.

> The Board therefore thought that he has not been fully candid in his application and thought that his application should be the subject of viva voce evidence and cross examination by a contradictor.

[23] In that context, the applicant had a lot of ground to make up when he came to swear the fourth affidavit. He understood the situation he was in, and he acknowledged in that affidavit the fact that "piecemeal and disjointed information" had been supplied in support of his application. He said that he had not intentionally lacked candour or sought to downplay his earlier offending, but that he had tried "perhaps awkwardly" to take full responsibility for his past. The fourth affidavit read impressively and contained quite persuasive explanations and insights apparently advanced by the applicant. I set out below some relevant extracts (with paragraph numbering reflecting that of the fourth affidavit):

> 1. The purpose of this affidavit is to, first, address in more detail the facts concerning my offending of Centrelink fraud between 1997 and 2001 and, second, to respond to the conclusions of the Report from the Legal Practitioners Admission Board ('Board'), 13 December 2013. I will do my best to complete the first task in the process of addressing the second.
>
> 2. In introduction, I must clearly re-state that I did the wrong thing in the period I took overpayments from Centrelink. I was and remain responsible for my wrong-doing. I say also that I demonstrated a lack of understanding of that which was required by the way of disclosure in the process of making my current application to this Court. I have reviewed prior statements and understand why parts of those are of concern to the Board.
>
> 3. In the process of making this application, it has been necessary to review my offending relating to Centrelink fraud and how that conduct relates to my suitability to obtain admission as a legal practitioner. Further, I have reviewed my initial attempt

to gain admission and acknowledge that I have been required to honestly examine my values today.

4. I ask the Court to accept, that at the time I make this statement, I have castigated my own actions and have improved my appreciation of the character and values that must be demonstrated to the Court to be granted admission.

5. I ask the Court to accept that I am committed to honestly acknowledging my past and to ensure that my conduct in the future upholds standards of utmost candour and honesty. I do however state that in the course of this application and the making of statements to accompany my application, I have not intentionally lacked candour, nor have I sought to downplay my earlier offending; I have tried, perhaps awkwardly, to take full responsibility for my past.

6. My disclosure in my affidavit, 27 November 2012, was from my memory at that time of matters 12 to 16 years earlier. I thought that because these matters were not recorded in my National Police Checks, I would be given credit for disclosing them and I did not pay sufficient attention to the detail of my disclosure. I believed I was doing my best to make frank admissions, to the extent of my recollection; but, in retrospect, I should have taken more care to procure and review the necessary documents to substantiate events and improve my memory of them.

7. Only in the course of my application for admission, have I properly pieced together a more complete account of my actions in relation to the Centrelink fraud. …

8. I now find myself in the position of having to explain not only my previous criminal offences but the piecemeal and disjointed information supplied in support of my application.

9. In my affidavit, 27 November 2012, I disclosed two offences namely the social security fraud and a theft. I fully understand the Board's concern that the Centrelink offending is a serious offence. In the view of the Board, … the Centrelink offending, along with my apparent lack of candour in the course of my application, constitutes the current barrier to my admission.

10. I have previously accepted responsibility for the Centrelink fraud and did not intend to rely on my mistaken belief of a standing advice to Centrelink that I was working 15 hours or earning $200 per week. I expressed this at paragraph 26, p 4, in my affidavit, 27 November 2012… *'I accept that what I did was illegal, and I do not seek to excuse my failure to disclose because of a mistaken belief'*. … On reflection, in making this statement, I should have stated more clearly that I knowingly did not declare income. It was not only, in fact not mainly, because of mistake that I defrauded Centrelink. At the time, I intentionally desired to have more than I was entitled to and was driven by indifference, laziness and a combination of unattractive traits at that younger age, of which I am now ashamed. ….

17. Putting that confusion to the side, I address the inconsistency as follows:

17.1 At paragraph 19 in my affidavit, 27 November 2012, I did state *"I incorrectly believed I could tell Centrelink that I was working 15 hours per week and that they would adjust my payments"*. It is my memory still that I had spoken communication, without any written record, with an officer of the Box Hill Centrelink office around 1997. I do have a recollection that I filled out a form to this effect (stating $200 rather than 15 hours per week) …

17.2 I did not keep a record of this form and Centrelink claimed they had no knowledge of such a form. I do not remember who I spoke to; it was in or around 1997. My understanding of the 'arrangement' may have been based on my mistake or misconception at the time, but it is my truthful recollection that it happened. This memory was retained both when I made the ROI in December 2001 and when I swore my first affidavit, 27 November 2012.

17.3 When I was prosecuted in the Ringwood Magistrates Court in 2002, I did not challenge any clerical mistake by Centrelink; I admitted that I did the wrong thing in line with the facts of the DPS.

17.4 In piecing facts together now, I say that I did not mean to lack candour on this issue but not having conducted sufficient research, I simplified my account based on my dominant memory of the ‘arrangement’. The effect of this is the reasonable conclusion by the Board that I tried to gloss-over the detail of the events and was not candid. This was not my intention.

17.5 A detailed account of events cannot be simplified; it was too long ago, extending over too long a period, and, insufficient records exist, for me to provide an accurate and detailed history. In the first instance, I should have stated that a combination of factors were a part of my conduct; not just my belief of the ‘arrangement’, in the first instance. Later, I was also guilty of sporadic reporting, some of which was false, and, extended periods when I did not report at all. This is reflected in the DPS.

17.6 It was not until I received the Board’s report that I realised that I should have tried to be much more precise in the detail of my disclosure.

17.7 In the past, I relied on an excuse that it was difficult to get to the Centrelink office during office hours to declare my income and that it was convenient, at the time, to continue to rely on that standing 15 hour weekly average. Such an excuse was and is not valid. At the relevant time, I had the benefit of receiving public money to support me and I did not uphold my legal obligation to accurately report my other income. As a consequence, I was overpaid and took money from the system that I was not entitled to. In my naivety, that was not repugnant to me at the time; it should have been. It is repugnant to me now.

23. It is my recollection that I operated for an extended period in the belief that Centrelink was advised I was working 15 hours of $200 per week. This arrangement was not an accurate reflection of my income as I often earned more money but I continued receiving full benefits. At times I also earned less.

24. There is the obvious problem; there is no record of the arrangement as I remember it. The next issue, where I have led the Board to reach the conclusion of my 'self-serving' assertion is that I did not explain the periods of non-declaration and false declarations.

25. I ask the Court to accept that it is only on my closer attention to detail and the gathering of the few documents now before the Court that I am now more apprised of the chain of events. My memory is refreshed and I did not have the benefit of that when I made my first affidavit.

26. It was 'self-serving' in the way that I expressed this but as a means of trying to keep my disclosure simple and it was not an attempt to mislead the Court. I have now reviewed the documents obtained and tried to fill in the blanks as best I can and provide more detail.

27. At the time of my offending, I was criminally irresponsible and did not think my actions through. As I stated at paragraph 29 of my affidavit, 27 November 2012, *'I am ashamed of my history and truly regret my actions'*. Further in paragraph 30, *'I cannot change the past, but I have learnt from my mistakes'*. My focus in making these disclosures when I commenced this application was attempting to show the Court that I take responsibility for my actions. I was remiss in not fleshing out a more accurate account of events.

31. I chose a path of criminal action and this was neither clever nor admirable. My wish now is that I had risen to the challenge and sorted out my affairs and worked harder or smarter. I should have been honest with Centrelink as my benefactor and demonstrated traits befitting of a legal practitioner; but that was not in my mind at the time.

32. I admit that there are anomalies appearing in my affidavit, 27 November 2012, and these are more apparent in light of the later information provided in the second affidavit, 9 April 2013. The second affidavit was my attempt to provide more information sought by the Board. I was unaware that the Board considered that I needed to correct anomalies from the first affidavit. ….

41. In informing the Court in the course of my application for admission, I have not tried to hide my prior conviction nor shirk responsibility for my past. The process of my application has led me to examine the course of events in relation to my offending. I regret that, before I filed my application, I did not gather the documents that have been disclosed as a result of the Board's request for more information. Had I done this, I would have been in a position to give a complete account of my offending and not caused the Board to find fault with the way that I have represented my disclosure. I apologise to the Court and the Board for causing my application to be more convoluted than it should have been.

42. I trust that, if it is required of me, my oral evidence will assist to assure the Court of my good character and suitability for admission.

[underline added to extracted paragraphs 4, 10, and 17.7]

[24] I now turn to consider the evidence given at the hearing. I have referred at [19] to the applicant's apparent reluctance to frankly acknowledge that he had been dishonest for most of the period of the Centrelink offending. My concerns in relation to the applicant were not resolved by his evidence in cross examination. The applicant's concession referred to in [18] above was made only in cross-examination. Further, although he insisted that the affidavits sworn by him were "all his own words", he clearly did not understand the meaning of some key words in significant parts of the fourth affidavit on which he was cross-examined.

[25] As the applicant gave evidence, it was unclear whether the fourth affidavit expressed the applicant's true insights, beliefs and views, as distinct from those which his legal advisors considered were necessary for the applicant to express.

[26] I set out below some passages of cross-examination of the applicant. I start with Ms Truman's introduction:

> MS TRUMAN: Now Mr Valvo, as you've just gone through with Mr Aughterson, you've completed four affidavits all told for this matter?--- Yes.
>
> You carefully read each of those affidavits?---Yes.
>
> You ensured you understood them before you signed them?---Yes.
>
> They were your words in them?---Yes.
>
> Yes. Your evidence?---Yes.
>
> And you read each of them before you swore them, knowing that you were swearing to the truth of their contents, correct?---Correct.
>
> And you understand the importance of affidavits, don't you?---Yes.
>
> Now when you subsequently and you have subsequently realised that there have been errors, you've then come along and filed another affidavit, sought to correct that, haven't you?---Yes.
>
> So when you've realised an error, you've come along and done another affidavit and made sure you corrected it, is that right?---Yes.
>
> So other than those errors that you've subsequently identified, you still swear to the truth of those documents, is that right?---Yes.
>
> And the annexures that you attached to each of your affidavits, you read through those?---Yes.
>
> You checked the contents of those?---Yes.
>
> And you made sure they accorded with your recollection of events?---Yes.

[27] The next passage was in relation to a statement made by the applicant in paragraph 4 of the fourth affidavit that he had "castigated his own actions":[19]

> You then also say within your affidavit that – and this is in paragraph 4, you have castigated your own actions. Do you see that there?---Yes.
>
> What do you mean by castigated?---Reviewed what I've done.
>
> Pardon me?---Reviewed what I've done.
>
> Reviewed, that's what you mean by castigate?---And assessed, yes.
>
> Okay. Is that your word?---Yes.
>
> That's you've used that word yourself? It's not been suggested to you?---No.
>
> So when you say: 'I ask the court to accept that at the time I make this statement I have castigated my actions', you're saying reviewed and what? What have you done?-Re-evaluated.
>
> Re-evaluated. What are the actions that you've reviewed and re-evaluated?---My personal values.

[28] The next passage was in relation to a statement made by the applicant in paragraph 6 of the fourth affidavit that he "should have taken more care to procure and review the necessary documents to substantiate events and improve his memory of them":

---

[19] The word "castigate" means to punish, but also to severely criticize. It is a transitive verb. Its 'object' is normally a person.

> In your final affidavit, the one of 20 March 2014 back to paragraph 6 again, you say: 'I should have taken more care to procure and review the necessary documents'. What do you mean by the word 'procure'?---To take care.
>
> Pardon me?---To take care.
>
> To take care. That's what you understand the word procure means, is that right?---Yes.
>
> Is that your word in there, procure?---Yes.

[29] The next passage of cross-examination arose from a statement made by the applicant in paragraph 17.7 of the fourth affidavit that obtaining money he was not entitled to had not been repugnant to him at the time he offended, but that it was now. The word "repugnant" is a strong word, and the applicant's statement was arguably strong evidence in his favour that he had gained the significant insight that his past conduct had been morally reprehensible:

> I'm going to take you to paragraph 17.7 of that final affidavit please sir. Do you have that before you, it's page 6 of your affidavit?---Yes.
>
> You refer to the fact that in paragraph 17.7 that you were overpaid and received money that you were not entitled to, okay. And you say: 'In my naivety that was not repugnant to me at the time. It should have been. It is repugnant to me now'. What do you mean by 'in my naivety'?---The gravity of the disclosure.
>
> Well when were you being naïve?---I believe in the way the affidavit was worded.
>
> The very first affidavit or the second or the third?---The first, second and third.

Were you naïve when you were committing the offences?---Yes.

You certainly weren't young though, were you?---No.

Because you were 23 in 1997 when you commenced this offending, weren't you?---Yes.

And you were 27 when you finally put a stop to it – or in fact you didn't put a stop to it, you were investigated, isn't that right?---Yes.

That's how it came to an end, isn't that right?---Yes.

You didn't go to Centrelink and say 'I'm very sorry, I've been receiving money I shouldn't have been receiving'. They investigated you?---That's correct.

What do you mean by the word repugnant?---How I feel about the situation, how I realise what I've done.

What does repugnant mean? When you use it, what does that word mean to you?---It's a reminder.

You see, Mr Valvo, this affidavit and the words used in it is, I suggest to you, dramatically different to the kinds of words you used in your first three affidavits. What do you say about that suggestion? ---I can say I've taken more care in writing the affidavit.

Have you? That's what you say the explanation is, you've just taken more care?---And reviewed the necessary documentation.

Is repugnant a word you know?---Yes.

What does it mean?---I just told you.

I want you to tell me again?---It's my review of a situation.

[30] The applicant did not appreciate that the naivety referred to in the fourth affidavit was naivety at the time of the Centrelink offending, not naivety in the way his earlier affidavits had been drafted. That is probably not significant, except as an indication that his understanding of the fourth affidavit was deficient. Of greater significance, for reasons explained in [29], he did not know the meaning of the word "repugnant". However, he was not prepared to admit that; he tried to bluff his way through, and in doing so, gave two somewhat different meanings. When he was pressed to repeat what the word meant, he appeared to have forgotten the meaning he had given a very short time before. The cross-examination on this issue left me wondering whether the applicant had overstated the extent of his insight into his moral culpability for the Centrelink offending. I was also concerned that he was not being truthful in his answers to Ms Truman's questions.

[31] Things did not get better for the applicant. The next passage of cross examination arose from a statement made by the applicant that the Centrelink offending had been "driven by indifference, laziness and a combination of unattractive traits …":

> You say that you intentionally desired to have 'more than I was entitled to and was driven by indifference, laziness and a combination of unattractive traits at that younger age of which I am now ashamed'. You see that? That younger age being a reference to when you were 23 to 27 years old?---Yes.
>
> What are the unattractive traits that you referred to, in addition to indifference, laziness?---Dishonesty.

Dishonesty. Yes. Anything else?---Fraud.

Anything else?---Just – and also the values I was taught growing up.

Anything else?---That's all.

Why aren't those words in there? Why aren't you actually saying those words in that affidavit?---In other areas I do say those words.

Pardon me?---In other areas of the affidavit.

But here you are, you're describing what you were driven by?---Yep.

You say indifference. What's indifference? What do you say indifference means?---At that time a number of factors were resolved.

Were what?---A number of factors were resolved of the fraud.

Tell me please, Mr Valvo, what you understand the word indifference means?---Myself compared to somebody else in the same situation.

Tell me please, Mr Valvo, what you understand the word indifference means?---In relation to me now.

Do you know what indifference actually means?---I do. I don't know why you're asking me that for.

You don't know why. Because you've described it being yourself in comparison to somebody else. That's what you understand indifference means?---And - - -

And you understand procure to mean take care, is that right? Is that right?---Yes.

And you understand repugnant to mean review of the situation, is that right?---Yes.

> I'll tell you the reason why I'm asking you those questions, sir, is because I don't think that they're your words at all, because I don't think that you understand what they mean?---That's your opinion.

[32] It was clear that the applicant did not know the meaning of the word "indifference", even though in the fourth affidavit he had attributed his offending to indifference, and mentioned it first as one of the driving factors.

[33] The next passage arose from the use by the applicant of the word "apprised" in paragraph 20 of the fourth affidavit, not reproduced in [22]:

> You say at paragraph 20 over page 7 please, sir. And you're talking about that there's more to it than that, continue to repeat what the board has said in its report about it being unnecessary for you to declare income. You say: 'It is my error that the board reached this conclusion. Had I explained the combination of circumstances the board would have been apprised that the arrangement was one fact amongst others of failure to declare and incorrect declarations'. What do you mean by the word apprised?---That it was more than one factor in that arrangement.
>
> What does the word apprised mean to you? When you use it in that sentence what do you mean by it?---Apprised.
>
> What does it mean? What does it mean?---(inaudible) explain more than that – if I explained myself so that more than one reasoning behind the arrangement.
>
> Is this affidavit your words, sir?---They are.
>
> Really?---Yep.

[34] I consider it probable that the applicant unwittingly painted himself into a corner when he said, early in the cross-examination, that his affidavits were

‘his words’ and ‘his evidence’, and that he then felt that he had to defend every inclusion in his affidavits, that is pretend to understand every word, in order to justify his earlier statement and not appear untruthful. As mentioned in [23], he was aware that he had a lot of ground to make up after his staged disclosure of relevant details of his intent to defraud Centrelink. The applicant no doubt hoped that the fourth affidavit and his viva voce evidence would be his redemption, but they proved to be a significant stumbling block in his application.

[35] The witness box is a lonely and difficult place for a witness who is subjected to cross-examination by experienced counsel about shortcomings in that witness’s prior conduct and inconsistencies in affidavit evidence. If the witness is giving evidence for the first time, and is also a party in a very important application, allowance has to be made for that witness’s nervousness and unfamiliarity with the court room and its procedures. However, I have come to the conclusion that, in giving evidence, the applicant lacked judgment and also lacked candour: (1) in not conceding obvious things, for example, that his lawyer had drafted the fourth affidavit using language that the applicant did not fully understand, and hence not the applicant’s own words; and (2) in persisting, defiantly at times, with his assertions that he understood the meaning of words when he clearly did not, in particular the words “castigate”, “repugnant”, and “indifference”. I do not discount the possibility that the applicant was stubbornly mistaken as to the meaning of those key words (and other less significant words) contained in

the fourth affidavit, but I do not think that was particularly likely, and it was unlikely in the case of three key words, particularly given that the applicant said in evidence that he had taken "more care in writing" the fourth affidavit.

[36] The applicant is in many ways a model of rehabilitation. He started to engage in the Centrelink offending when he was only 23 years old. He offended over a period of four years, and was sentenced by the summary court in March 2002, when he was almost 28 years old. He subsequently repaid all monies to which he was not entitled. He has not re-offended in any way. He has worked in various occupations to rebuild his life and has studied hard to complete his undergraduate degrees and postgraduate diploma. He is now 40 years old. A well-respected retired senior Northern Territory legal practitioner has provided a certificate stating that he is "firmly of the view that [the applicant] is now of good fame and character and a fit and proper person to be admitted". The applicant has obtained a similar certificate of good fame and character from a solicitor practising in Perth, Western Australia.

[37] Notwithstanding the seriousness of the Centrelink offending, I would have been prepared to make a finding that he is currently of good fame and character and a fit and proper person to be admitted, but for the following matters:

1. The applicant's failure to candidly and comprehensively disclose, and acknowledge (until pressed in cross-examination), the full extent of his moral culpability in the Centrelink offending.

2. The applicant's failure to positively satisfy me, in relation to the Centrelink offending, that the insights, beliefs and views expressed in his affidavits and in particular his fourth affidavit were his own views, truly held by him.

3. The unsatisfactory aspects of the applicant's evidence at the hearing, as explained in these reasons.

[38] Because of the three matters referred to in [37] I am not satisfied as to the applicant's "worthiness and reliability for the future".[20] I am not satisfied that he has yet achieved the necessary level of principle to enable this Court to rely on his frankness and candour and thus credit him as worthy of public confidence. In summary, I am not satisfied that the applicant is a fit and proper person to be admitted to the legal profession.

[39] The application must be dismissed.

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[20] *Incorporated Law Institute of New South Wales v Meagher* (1909) 9 CLR 655 at 681 per Isaacs J (in an application for re-admission).