

**LEGAL ETHICS AND  
PROFESSIONAL  
CONDUCT  
CASE NOTES**



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## O G (a Lawyer), Re (2007) 18 VR 164

### - Court details

Full Court of the Supreme Court of Victoria

### - Procedural history

The case originated from a hearing of the Board of Examiners as to whether GL should be admitted to practice. Following that hearing the Board of Examiners filed a report with the Supreme Court as to whether OG should be struck off the roll due to his lack of disclosure and candour in his admission to practice.<sup>1</sup>

### - Facts

In the first semester of 2005 OG failed a university assignment. He was given a zero grade for collusion on an individual assignment. It was alleged that he colluded with GL. OG always denied any collusion had occurred.<sup>2</sup> Both GL and OG received a zero mark for the assignment but the matter was taken no further and was not placed on the University record.<sup>3</sup>

Both OG and GL completed practical legal training at Leo Cussen in early 2006 where they were informed of the need to disclose any academic misconduct issues arising from their university studies. GL alleges that he told OG that he would be disclosing the fact that he was caught colluding in a university assignment.<sup>4</sup>

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<sup>1</sup> *Re Og (A Lawyer)* (2007) 18 VR 164 at 67.

<sup>2</sup> *Ibid* at 11.

<sup>3</sup> *Ibid* at 27.

<sup>4</sup> *Ibid* at 39.

Both OG and GL applied for admission in August 2006. GL disclosed the matter to the Board of Examiners.<sup>5</sup> GL alleges that he told OG that he disclosed the matter to the Board of Examiners. OG denies this.<sup>6</sup>

OG failed to disclose full details of alleged collusion, stating that he had received a zero mark for an assignment but denying the fact that he was ever accused of plagiarism or collusion.<sup>7</sup>

OG was admitted to practice in November 2006 whilst GL was called before the Board of Examiners. Eventually GL was forced to identify OG as the student he had colluded with. OG was called before the Board of Examiners but failed to give evidence.<sup>8</sup>

GL was given a practicing certificate after the hearing with the Board due to his candour and the full and frank disclosure he made.<sup>9</sup> The Board then sent a report to the Supreme Court of Victoria asking them to look in to whether OG should be struck off the roll for his lack of disclosure and candour in his admission.<sup>10</sup>

### **- Issues**

The principal question is whether OG adequately disclosed to the Board of Examiners the circumstances in which he came to be awarded a zero grade for an assignment that he was required to submit while studying for a Bachelor of Business degree at Victoria University.<sup>11</sup>

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5 Ibid at 45.

6 Ibid at 48.

7 Ibid at 50.

8 Ibid at 62.

9 Ibid at 66.

10 Ibid at 67.

11 Ibid at 2.

The Supreme Court was asked to decide whether in denying that plagiarism or collusion occurred whether OG had failed in his duty of disclosure and candour when applying for admission.<sup>12</sup>

If he had he would be struck off the role.

### **- Reasoning / Decision (commentary)**

The court found that due to the similarities in the assignment there is no doubt that either OG or GL copied the assignment of the other.<sup>13</sup>

The court found that either OG copied GL's second assignment, with or without GL's permission; or, alternatively, GL and OG colluded in the composition of the second assignment. On the evidence before the court they were unable to say that either of the possibilities is necessarily more probable than the other. But the court was inclined to believe the latter.<sup>14</sup>

Court found that the errors in OG's disclosure letter of 9 September 2006 were deliberate and made in an effort to mislead the Board.<sup>15</sup>

The Court accepted the contention of the Legal Services Board that OG made each of his misrepresentations deliberately or recklessly and thereby deliberately or recklessly failed to make full and frank disclosure of the true circumstances in which he was awarded a zero mark for the second assignment. At [119]



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<sup>12</sup> Ibid at 67.

<sup>13</sup> Ibid at 84.

<sup>14</sup> Ibid at 93-94.

<sup>15</sup> Ibid at 110.