

PARTIES: IN THE MATTER OF AN APPLICATION BY  
NIGEL ANTHONY THOMSON

TITLE OF COURT: SUPREME COURT

JURISDICTION: SUPREME COURT

FILE NO: No 56 of 1992

DELIVERED: Darwin 10 September 1992

HEARING DATES: 1, 10 September 1992

JUDGMENT OF: Martin, Angel & Thomas JJ

**CATCHWORDS:**

Legal Practitioners - Qualifications and admissions - Provision that period of articles diminished where service rendered as Judge's Associate - applying only to Judge of this Court - Exercise of discretion to take account of service rendered as Associate to Judge of another Court - Applicant served as Associate to Judge of Supreme Court of South Australia

Interpretation Act, s31 -  
Legal Practitioners Act (NT), ss11, 14 and 39 -

*In the matter of the application of Belinda Lillian Eyers*, unreported, 6 August 1991, followed.

Legal Practitioners - Qualifications and admissions - Admissions Board - Report in writing from Board to be furnished as necessary prerequisite to Court's consideration of application - Court not bound by conclusions of Board

Legal Practitioners Act (NT), ss11, 14 and 39

*In the matter of the application of Belinda Lillian Eyers*, unreported, 6 August 1991, distinguished.

**REPRESENTATION:**

*Counsel:*  
Applicant: D J Crowe  
Law Society: R Coates

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IN THE SUPREME COURT  
OF THE NORTHERN TERRITORY  
OF AUSTRALIA

No. 56 of 1992

IN THE MATTER OF:  
THE LEGAL PRACTITIONERS ACT

AND:

IN THE MATTER OF AN APPLICATION  
BY NIGEL ANTHONY THOMSON

FOR AN ADMISSION AS A LEGAL  
PRACTITIONER OF THE SUPREME COURT  
OF THE NORTHERN TERRITORY

CORAM: MARTIN, ANGEL and THOMAS JJ

REASONS FOR JUDGMENT

(Delivered 10 September 1992)

MARTIN, ANGEL & THOMAS JJ

By originating motion dated the 21st day of July 1992, the applicant sought an order that he be admitted to practise as a legal practitioner of the Court pursuant to the provisions of the *Legal Practitioners Act* NT.

At the time the matter came on for hearing the appellant was not qualified to be so admitted because he had not served the twelve month period of articles of clerkship prescribed by s39(1) of the *Act*. An oral

application was made pursuant to s39(2) of the *Act* for an order that the period for which he be required to render service in accordance with articles be less than the prescribed period.

Prior to entering into articles in accordance with the *Act*, the applicant had served as an associate to a Judge of the Supreme Court of South Australia for a period of 342 days. Section 39(4) provides that where a person has rendered service as a Judge's Associate the period of articles is diminished by a period equal to one-half of the period of his service as an associate or by a period of 6 months whichever is the lesser. However, that provision does not avail the applicant here since it applies only to an associate to a Judge of this Court (*Interpretation Act* s31). Notwithstanding that, the Court may take into account service with a Judge of another Court in the exercise of discretion upon an application to reduce the period of articles. In the matter of the application of *Belinda Lillian Eyers*, the Court accepted that service as an associate to a Judge of the District Court of New South Wales could be taken into account for that purpose and did so. There is no reason why that approach should not be followed in this case. The applicant's articles to Mr Crowe, a Territory practitioner, had been for 207 days at the time of the hearing. By analogy, an allowance of one half of the period spent as an associate, plus the period served under articles, produces a total period in excess of one year.

We consider that the period for which the applicant is required to render service in accordance with articles of clerkship be from the date of commencement of his articles until the date of an order for his admission.

We are satisfied that special circumstances exist that justify the

making of an order under s11(5) of the *Act* and order that the applicant be regarded as a person entitled to apply, under s11, to be admitted to practise.

The applicant proceeded with the application for admission on the basis that both aspects of the matter would be dealt with at the one time. There is evidence to show that the applicant has the necessary educational qualifications for admission, he holds a degree of Bachelor of Laws from the University of Adelaide and has successfully completed the prescribed course in legal ethics and trust accounting. His intention to apply for admission was properly advertised. There is nothing before the Court to suggest that he is not a fit and proper person to be admitted.

The only question which caused us to pause before proceeding to determine the application for admission was that there was not available to the Court, as is usual, a report in writing of the Legal Practitioner's Admission Board under s14 of the *Act* stating whether, in its opinion, the applicant is entitled to be admitted and whether there are any grounds upon which the Court might be satisfied that the applicant is not of good fame and character. The Board is obliged by that section to make a report in writing to the Court in respect of each application for admission under ss11, 12 or 13. Those sections set out the qualifications required of an applicant for admission upon original application to this Court, or based upon admission elsewhere in Australia or overseas. In each case it is provided that if the applicant has the required qualifications he or she is entitled to apply to be admitted. If on such an application the Court is satisfied as to the applicant's qualifications and, inter alia, that he or she is of good fame and character, it is provided that the Court shall admit the applicant to

practise as a legal practitioner of the Court. No express reference is made to any obligation on the Court to have regard to the report of the Board. The Court is not bound by the conclusions of the Board. The two matters, that is, the Court's satisfaction as to the prescribed matters, and the Board's report thereon, stand in apparent isolation from each other. A copy of the report is required to be furnished to the applicant before the application for admission is heard.

The Board's function extends to all applications for admission, whether with or without any element of doubt. It has an obligation to report in writing to the Court as to the applicant's good fame and character, in respect of which matters may come to its notice independently of the applicant's material filed in support of the application for admission. That a copy of the report must be furnished to the applicant before the application is heard indicates that the Board's report to the Court is a necessary prerequisite to the Court's consideration of the application. Given the obvious importance of the Board's function in assisting the Court in such an important matter as the admission of legal practitioners, it would be wrong to construe the legislation as a whole in such a way as to effectually dispense with the need for the Board's report in all cases. That would necessarily be the result if the Court was to proceed without a report in this case. This matter is not to be distinguished from any other application simply because it is dependent upon the Court first exercising a discretion in favour of the applicant. The exercise of that discretion does not alter the circumstances under which an obligation is imposed upon the Court to admit an applicant, an obligation which can only arise after the Court receives the report in writing which is required to be made to it by the

Board.

It was suggested in argument that in the matter of *Eyers* no such report was available and yet the Court proceeded to make an order for admission. That is not correct. Perusal of the transcript of proceedings in that matter shows that the Court had before it what was called a "provisional certificate" of the Board indicating conditions to be met before it would become unconditional. Those conditions were met and the Court was satisfied to proceed on that basis. Here, there is no report, provisional or otherwise, and we are not able to make an order for admission without it, even with the consent of the Law Society.

We adjourn the application to a date to be fixed.