

CITATION: *In the matter of an application by Tanzil Rahman* [2024] NTSC 7

PARTIES: IN THE MATTER OF

THE LEGAL PROFESSION ACT 2006
(NT)

AND

IN THE MATTER OF AN APPLICATION
BY

RAHMAN, Tanzil

TITLE OF COURT: SUPREME COURT OF THE NORTHERN
TERRITORY

JURISDICTION: SUPREME COURT exercising Territory
jurisdiction

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DELIVERED: 5 February 2024

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JUDGMENT OF: Burns J

Legal Profession Act 2006 (NT) s 25, 29, 31
Legal Profession Admission Guidelines
Legal Profession Admission Rules 2007 (NT) s 4, 5

REPRESENTATION:

Counsel:

Applicant:	Self-represented
Law Society:	G Kalyniuk

Solicitor:

Applicant:	Self-represented
Law Society:	Law Society Northern Territory

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IN THE SUPREME COURT
OF THE NORTHERN TERRITORY
OF AUSTRALIA
AT DARWIN

In the matter of an application by Tanzil Rahman [2024] NTSC 7
No. 2023-01402-SC

IN THE MATTER OF

**THE LEGAL PROFESSION ACT 2006
(NT)**

AND:

IN THE MATTER OF AN APPLICATION
BY

TANZIL RAHMAN

CORAM: BURNS J

REASONS FOR DECISION

(Delivered 5 February 2024)

- [1] Dr Tanzil Rahman proposes applying for admission to the legal profession as a local lawyer under the provisions of the *Legal Profession Act 2006* (NT) (the ‘LPA’). In relation to that proposed application, Dr Rahman sought directions from the Legal Practitioners Admission Board (‘the Board’) as to whether his academic qualifications satisfy the requirements for admission to the legal profession as a local practitioner.
- [2] The Board considered the application for directions and determined that it has no power to consider and make an early declaration in relation to

Dr Rahman's *eligibility* for admission based on academic qualifications, albeit that the Board has power to consider and make an early declaration in relation to an applicant's suitability for admission.¹

- [3] The Board determined to refer the matter of Dr Rahman's eligibility for admission to this Court for directions under s 37(3) of the *LPA*. For the reasons that follow, the Board did not have jurisdiction to refer the matter to this Court.
- [4] The distinction between an applicant's eligibility for admission and their suitability for admission is one which is found within s 25 of the *LPA*, which is in the following terms:

25 ADMISSION

- (1) A person may apply to the Supreme Court to be admitted as a local lawyer.
- (2) The Court may, after considering a recommendation of the Admission Board and any representations made by the Law Society, admit the person as a local lawyer if:
 - (a) the Court is satisfied:
 - (i) the person is eligible for admission to the legal profession; or
 - (ii) if the recommendation is made under section 29(2) – it is reasonable the person be admitted because the person has sufficient academic qualifications or sufficient relevant experience in legal practice or relevant service with an Agency; and
 - (b) the Court is satisfied the person is a fit and proper person to be admitted to the legal profession.
- (3) A recommendation of the Board may be contained in a compliance certificate.

¹ Section 31 *LPA*.

- (4) The Court may refuse:
 - (a) to consider the application if it is not made in accordance with the admission rules; or
 - (b) to admit the person if the person has not complied with the admission rules.

[5] Section 25 of the *LPA* makes no reference to suitability of an applicant for admission, instead referring in s 25(2)(b) to the Court being satisfied that an applicant is a ‘fit and proper person’ to be admitted to the legal profession. Section 30(1) of the *LPA* requires the Court in deciding if a person is a fit and proper person to be admitted to the legal profession to consider the ‘suitability matters’ relevant to that person. The suitability matters are found in s 11 of the *LPA*.² In the present application, it is unnecessary to consider the suitability matters as the present proceeding is not concerned with the applicant’s suitability for admission, but rather with his eligibility for admission.

[6] The role of the Board in the process of an application for admission is to advise this Court whether or not the *LPA* considers an applicant for admission to be eligible for admission and is a fit and proper person to be admitted.³ The Board also advises the Court whether an application for admission conforms to the requirements of the admission rules.

[7] It is clear from the terms of s 35 of the *LPA* that the role of the Board is confined to advising the Court about ‘an applicant for admission’.

² See the definition of ‘suitability matter’ in s 5 of the *LPA*.

³ Section 35 *LPA*.

An applicant for admission is a person who has applied to the Court to be admitted.⁴

- [8] The Board is empowered by s 37 of the *LPA* to require an applicant to give the Board specified documents or information and to require an applicant to cooperate with any enquiries the Board considers necessary. In that context, s 37(3) provides that the Board ‘may refer a matter to the Supreme Court for directions’. It is implicit in the context of s 37 that ‘a matter’ means an issue regarding an applicant for admission which, in turn, requires the existence of an application for admission.
- [9] The absence of any application for admission by Dr Rahman is sufficient to dispose of the present proceeding. In the absence of an application by Dr Rahman for admission, the Board had no jurisdiction to refer a matter relating to Dr Rahman’s circumstances to this Court for directions. Dr Rahman’s circumstances will need to be considered by the Board after he makes an application for admission.
- [10] I will nevertheless make some comments which I hope may be of assistance to the Board in considering any future application by Dr Rahman.
- [11] The eligibility of a person for admission to the legal profession under the *LPA* is addressed in s 29 of that Act, which provides:

29 ELIGIBILITY FOR ADMISSION

4 See s 25(1) *LPA*.

- (1) A person is eligible for admission to the legal profession under this Act only if:
 - (a) the person is an individual aged 18 years or over; and
 - (b) the person has attained:
 - (i) approved academic qualifications; or
 - (ii) corresponding academic qualifications; and
 - (c) the person has satisfactorily completed:
 - (i) approved practical legal training requirements; or
 - (ii) corresponding practical legal training requirements.
- (2) However, the Admission Board may recommend the Supreme Court admit a person even if the person does not satisfy the requirements of subsection (1)(b) or (c), or both of those requirements, if the Board is satisfied it is reasonable that the person be admitted because the person has sufficient academic qualifications or sufficient relevant experience in legal practice or relevant service with an Agency.
- (3) The Board may recommend the person be admitted unconditionally or subject to conditions relating to the obtaining of further academic qualifications or further legal training.

[12] Approved academic qualifications are academic qualifications approved, under the *Legal Profession Admission Rules 2007* (NT) ('the *Rules*'), for admission to the legal profession in the Northern Territory.⁵ Pursuant to s 4 of the *Rules*, the approved academic qualifications for admission is the completion of a tertiary academic course in Australia, whether or not leading to a degree in law, that:

- (a) includes the equivalent of at least 3 years full-time study of law; and

⁵ Section 10(1) *LPA*.

- (b) requires a satisfactory level of knowledge and understanding of the areas of knowledge specified in Schedule 3 of the *Rules*.

[13] The areas of knowledge specified in Schedule 3 of the *Rules* are:

- a) criminal law and procedure;
- b) torts;
- c) contracts;
- d) property;
- e) equity;
- f) company law;
- g) administrative law;
- h) Commonwealth, State and Territory constitutional law;
- i) civil procedure;
- j) evidence; and
- k) ethics and professional responsibility.

[14] Dr Rahman was awarded the degree of Bachelor of Laws (Honours Class 1)

by the University of Sydney. The degree was conferred on 19 May 2006.

There can be no doubt that the degree awarded to Dr Rahman satisfies the requirements of s 4 of the *Rules*. The difficulty which the Board perceived regarding Dr Rahman's proposed application for admission is the length of time which has passed between the academic qualifications being awarded to the applicant and any commencement of his application for admission to the legal profession. A period of approximately 17 years has passed between

Dr Rahman completing his academic qualifications and the proposed commencement of his application for admission to the legal profession.

- [15] Neither the *LPA* nor the *Rules* require an applicant for admission to the legal profession to commence their application within any specified period of attaining their academic qualifications. The Board has published Legal Profession Admission Guidelines ('the Guidelines') which, inter-alia, address this issue. The relevant part of the Guidelines is Clause 2.3, dealing with stale qualifications, which states:

If either the "approved academic qualifications" and/or the "approved practical legal training requirements" have been obtained more than five years before the filing of the application for admission, additional details are required in the pro forma affidavit. Those details are to include the reason for the delay in applying for admission and should include details of any relevant experience in legal practice or relevant service with an Agency or study undertaken by the applicant in the interim. The five years runs from the date of completion of the degree or equivalent qualification, not from the completion of an individual subject.

In cases of long delay the Board may require further information such as course outlines relating to Schedule 3... areas of knowledge as they were at the time of study together with current course outlines for the same or corresponding units from the same institution.

If the delay is extensive and/or major changes have occurred in the relevant areas of law since the study was undertaken, the Board may refer the matter to the Court for directions under section 37(3) of the Act, or recommended that the applicant be admitted subject to conditions relating to obtaining further academic qualifications or further legal training under section 29(3) of the Act.

- [16] While holding approved academic qualifications and satisfying the Court that an applicant is a fit and proper person to be admitted to the legal profession are necessary prerequisites to admission to the legal profession as

a local lawyer, they may not in all cases be sufficient. Admission to the legal profession is always within the discretion of the Court. Undoubtedly, the Court is obliged to exercise that discretion reasonably and fairly in all the circumstances. There may, however, be rare cases where an applicant satisfies the requirements for admission to the legal profession found in the *LPA* and the *Rules* but nevertheless it is not in the public interest for the person to be admitted to the legal profession. One example may be where the applicant's academic qualifications are so stale as to render the applicant effectively uneducated in the law as it currently stands. Other examples may undoubtedly be hypothesised.

[17] It is important to recollect that one of the main purposes of the *LPA* as set out in s 3 of that Act is to provide for the protection of consumers of legal services and the public generally. The legislative purposes of Part 2.1 of the *LPA* dealing with reservation of legal work to persons admitted as legal practitioners are stated in s 17 of the *LPA* as:

- (a) to protect the public interest in the proper administration of justice by ensuring legal work is carried out only by those who are properly qualified to do so;
- (b) to protect consumers by ensuring persons carrying out legal work are entitled to do so.

[18] The provisions of the Guidelines dealing with stale academic qualifications are intended to protect the public interest in the proper administration of justice, and to protect consumers by ensuring that those admitted as legal practitioners have a sufficient, contemporary knowledge of those areas of

the law set out in Schedule 3 of the *Rules*. The formulation and publication of the *Rules* regarding stale qualifications is an exercise by the Board in informing potential applicants of the likely approach of the Board to applications where there may be questions about the adequacy of the applicant's knowledge of contemporary legal principles or statutes.

- [19] The Guidelines are just that; they provide guidance to those proposing to apply for admission to the legal profession. They are not intended to be proscriptive. With regard to stale qualifications, in an individual case, where it is appropriate to do so, the Board (or the Court) may dispense with compliance with the Guidelines. The Court may also give directions to the Board as to how the Guidelines are to apply to an individual applicant or may determine for itself the question of an applicant's eligibility for admission.
- [20] Dr Rahman provided an affidavit in support of his application for directions by the Board. Dr Rahman is now 45 years old. He was awarded the degree of Bachelor of Laws to which I have referred by the University of Sydney in 2006. He was previously awarded a Diploma of Jazz Studies in 1998 and a Bachelor of Economics (Social Science) Honours Class 1 with University Medal in June 2003, both being conferred by the University of Sydney.
- [21] Dr Rahman had not, as at the date he completed his affidavit, undertaken the 'approved practical legal training requirements' for admission as provided by s 5 of the *Rules*, but he deposed to his intention to commence such a

course in the second half of 2023. I am unaware whether he has completed such a program.

[22] In his affidavit, Dr Rahman states that he intends to submit an application for admission to the legal profession to the Board in 2024 with the intention of conducting legal practice in the Northern Territory thereafter. It is with that intention in mind, that the applicant sought directions from the Board regarding whether his academic qualifications satisfied the eligibility requirements found in the *LPA*. In his affidavit, Dr Rahman does not state that he intends restricting the areas of law in which he would practice if admitted as a legal practitioner so that it would be necessary to ensure that he has sufficient contemporary knowledge of all of the areas of knowledge set out in Schedule 3 to the *Rules* to enable him to properly undertake legal practice in this Territory.

[23] Pursuant to Clause 2.3 of the Guidelines, Dr Rahman provided the following additional information relating to his qualifications and experience:

- a) from December 2003 to March 2004 he completed a summer clerkship with Gilbert + Tobin lawyers in Sydney;
- b) from 2005 to 2009, and then from 2016 to 2020 he completed a Doctor of Philosophy in Geography and the Environment at the University of Oxford;

- c) from October 2007 to April 2009 he was employed in the Commonwealth Parliament as an advisor to the Chair of the Senate Standing Committee on Legal and Constitutional Affairs;
- d) from April 2012 to December 2012 he was employed as a Director and Senior Project Manager in the Northern Territory Department of Health working on the design and delivery of enterprise software to manage grants funding for all Northern Territory Government Health services;
- e) from July 2013 to October 2014 he was employed as a consultant by the Department of Correctional Services in the Northern Territory to create and deliver a custom management solution and service model, to guide program staff and stakeholders into a new best-practice business environment for grants;
- f) from January 2013 to February 2015 he held the office of Executive Director of Da Capo Solutions which provided management consultancy services to government and private institutions within Australia and overseas;
- g) from January 2021 to March 2021 he was employed under a grant from the Economic and Social Research Council (UK) to work in partnership with Fragomen LLP on ‘thought-leadership in immigration, exploring preferential pathways to facilitate economic/skilled labour movement in the post-COVID-19 era’;

h) from August 2022 to July 2023 he was a Visiting Research Fellow at the Oxford Centre for Islamic Studies in Oxford in the United Kingdom where his role was to contribute to a project on ‘Public Health, Science and Technology in Muslim Societies.’

[24] In its referral of this matter to the Court, the Board stated that it was not of the view that it is reasonable that Dr Rahman be admitted by virtue of s 25 (2)(a)(ii) of the *LPA* . The Board also questioned whether the Court has jurisdiction pursuant to s 37(3) of the *LPA* to give directions which are an early determination of eligibility, particularly when the *LPA* specifically provides in s 31 that the Board may give an early declaration of suitability, or refer that issue to the Court (s 32), but no such specific provision exists regarding determination of an applicant’s eligibility.

[25] The Supreme Courts of the Australian States and Territories as superior courts of unlimited jurisdiction have extremely wide powers regarding the admission to practice of legal practitioners and supervision of legal practice. I have little doubt that this Court has jurisdiction to consider and determine an applicant’s eligibility in connection with an application for admission to the legal profession as a local lawyer on a referral by the Board. The Court has the ultimate responsibility of satisfying itself that an applicant is eligible for admission, so that it is a determination which the Court must inevitably make. In addition, while courts have been historically adverse to give what amounts to an advisory opinion, the Court’s role in admitting applicants to the legal profession should not be seen as simply weeding out

the unqualified and /or unsuitable candidates. The Court should not only be the guardian at the gates of the profession, it should also assist apparently worthy candidates to understand what they need to do in order to be eligible for admission where the Board is in some doubt how to proceed. This will likely lead to greater diversity in the profession.

[26] It is apparent from Dr Rahman's academic qualifications that he is a highly intelligent man. It may readily be inferred from him being awarded a Bachelor of Laws with Honours Class 1 that in 2006 he possessed a high degree of knowledge of those areas of the law listed in Schedule 3 of the *Rules*, certainly greater than that of the average law graduate. It is also fair to say, however, that there is little in his subsequent educational or work history to suggest that he has maintained and updated that knowledge. It is also important to note that the Board raised whether the individual courses completed by Dr Rahman in his undergraduate law degree covered the same range of material that would be covered by a contemporary course, and suggested that it may be necessary for the applicant to obtain course outlines of the courses completed in his undergraduate degree.

[27] The applicant has a sound academic foundation in the areas of legal knowledge set out in Schedule 3 of the *Rules*. On the material presented to this Court, however, it is understandable that the Board was concerned that Dr Rahman's knowledge was, by reason of the period of time that has passed since he attained those qualifications, not demonstrated to be such as to allow him to competently practice as a legal practitioner. Before the Court

can determine him to be eligible to be admitted to the legal profession as a local lawyer, he must demonstrate that he has attained a satisfactory understanding of developments in the areas of the law set out in Schedule 3 which have occurred since 2006, if any, that would be required to enable him to competently engage in legal practice as a local lawyer in the Northern Territory. This may be achieved by requiring the applicant to undertake a course of reading or coursework determined in consultation with the Board by the Dean of the Faculty of Law at the University of Sydney, or some other appropriate body, accompanied by written or oral testing of his knowledge. I suggest the University of Sydney as the appropriate institution for two reasons. First, it would have a copy of the various course outlines for the courses completed by Dr Rahman in his undergraduate degree in law, which will assist the Board and the Dean in determining what areas of knowledge may need to be the subject of further study. Secondly, as a graduate of the University of Sydney that institution may be more inclined to assist Dr Rahman in this process. The University may, of course, charge a fee for its services but that is a matter between the University and Dr Rahman.

- [28] If the University of Sydney is unwilling to engage in this process of liaising with the Board to determine in what areas of knowledge Dr Rahman needs to undertake further study, prescribing the course of study and testing Dr Rahman on the material, then the onus falls on Dr Rahman to identify an appropriate institution which would be willing to undertake that role to the

satisfaction of the Board. I presume that the University of Sydney will at least be willing to provide Dr Rahman with course outlines for his undergraduate studies.

[29] As the effective decision of the Court is that the Board lacked jurisdiction to refer this matter to the Court for directions under s 37(3) of the *LPA*, I will not make an order remitting the matter to the Board. I will make no further orders.
