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IN THE SUPREME COURT
OF THE NORTHERN TERRITORY
OF AUSTRALIA

No. 4 of 1994

BETWEEN:

THE LEGAL PRACTITIONERS ACT (NT)

AND:

STEPHEN JOHN WALSH

CORAM: KEARNEY J

REASONS FOR JUDGMENT

(Delivered 2 February 1994)

By Originating Motion filed on 19 January 1994 Stephen John Walsh sought an order under r31 of the Legal Practitioners Rules that an academic qualification for admission, namely, the completion of a recognized course of study in "Civil Procedure" prescribed by r10(b)(ix) of those Rules, be dispensed with, and a consequent order that he be admitted to practice as a legal practitioner.

Mr Morris of counsel for the applicant has referred the Court to the affidavit material filed in support. It is clear that in all respects save one the applicant meets the requirements of r8 for admission to practice as a legal practitioner.

He successfully completed his course of studies in Law at the University of Adelaide in December 1992.

Unfortunately, as it turns out, at that time the subject of Civil Procedure was not taught at that University as part of the course of studies leading to a degree in Law.

The applicant entered his Articles of Clerkship on 1 February 1993. On 1 October 1993 the Legal Practitioners Rules came into force; they reflected new Australia-wide arrangements involving uniform requirements for the admission of legal practitioners in the various jurisdictions of Australia.

Rule 10 sets out a new academic requirements required for admission to practice of persons who have obtained their qualifications and experience in Australia. It requires, inter alia, the completion of 11 specified and recognised courses of study designed to demonstrate an understanding and competence in the areas of law covered by those courses. One of them is Civil Procedure.

The practical difficulties caused to persons such as the applicant by the introduction of the new Rules were speedily recognized. Rule 31, the transitional provision, was amended with effect from 1 November 1993. Rule 31(3) thereafter enabled a person who considered that he or she had suffered special prejudice as a result of the commencement of the Legal Practitioners Rules, to apply to the Court for relief of that special prejudice. Inter alia, r31(3) is clearly intended to apply to persons such as the applicant who

were proceeding to meet the pre-October requirements for admission, only to be faced with a new requirement thereafter.

Mr Morris submitted that the Admission Board had power to grant an exemption from the requirements of r10(b)(ix), but that is clearly not the case. The prejudice did not relate to the requirements for Article of Clerkship in Part 4 of the Rules. The Board's original unqualified Certificate of 1/2/94 that the applicant was entitled to apply for admission was incorrect, and was in fact followed by a qualified certificate later that day when the Board realized its error.

In par23 of his affidavit of 19 January 1994 the applicant has set out the experience he has gained over the last 12 months in the course of his Articles of Clerkship, relating to Civil Procedure. Fortunately, his master solicitor is involved primarily in civil litigation. As a consequence, the applicant has been involved in many different areas of civil litigation, and has gained experience in drafting pleadings, and in the other "nuts and bolts" involved in preparing cases for hearing or trial. He has gained quite extensive practical experience in matters preliminary to hearings and trials, and in proceedings thereafter. He has also attended relevant Law Society lectures, and informal weekly lectures organized by his master solicitor, relating to Civil Procedure. He has also read widely in the relevant practical text books.

There is no doubt in my mind that the applicant has suffered special prejudice as a result of the new Rules

requirement that an applicant for admission must have completed a recognized course of study in Civil Procedure.

This Court is empowered by r31(4) to make such orders as it thinks fit to relieve any such special prejudice. That wide and discretionary power is directed to alleviating problems now encountered by persons, that as a result of the requirements of the new Rules, when those persons had already met the previous academic requirements and were in the course of completing the necessary period of articles.

In all the circumstances of this case, I consider the appropriate order which should be made to relieve the applicant's special prejudice should be as follows:-

The applicant's practical experience and studies in Civil Procedure since 1 February 1993, outlined earlier, are such that he be deemed by this Court to have sufficiently complied with the requirements of r10(b)(ix).

Flowing from that order, and in light of the other affidavit material placed before the Court and relied on by the applicant, I consider that the Court should rule that it is satisfied that the requirements of r8 of the Legal Practitioners Rules have been met and the applicant should be admitted to practice as a legal practitioner.

Those are the orders which I propose.
