IN THE FULL COURT
OF THE SUPREME COURT
OF THE NORTHERN TERRITORY

No. LP7 of 1999 (9904663)

NTSCFC136

IN THE MATTER OF AN APPLICATION BY DAVID ANTHONY HOFFMAN FOR THE GRANT OF AN EXEMPTION PURSUANT TO RULE 11(3) OF THE LEGAL PRACTITIONERS RULES

CORAM: MARTIN CJ, MILDREN & BAILEY JJ

REASONS FOR JUDGMENT

(Delivered 22 June 1999)

MARTIN CJ

BAILEY J:

We have had the benefit of reading the draft judgement of Mildren J. We agree with the reasons for judgement and the proposal that the matter be adjourned for further submissions as to the precise form of the orders.

MILDREN J*:*

[1] This is an application pursuant to r11(3) of the *Legal Practitioners Rules* for the grant of an exemption from the practical requirements of the Rules relating to the admission of legal practitioners.

[2] The applicant is a resident of the State of Queensland. On 25 October 1990, after what he describes in his affidavit as "twenty years experience in the industrial relations field", the applicant was appointed a Commissioner of

the Australian Industrial Relations Commission. Prior to this time, the applicant deposes that he practised extensively as an industrial advocate and negotiator. The applicant does not otherwise depose to his qualifications and experience prior to 1990 in any detail. In an affidavit sworn by John Norman West, one of Her Majesty's Counsel in and for the States of New South Wales, Victoria, South Australia, and Western Australia, and for the Australian Capital Territory, the deponent states that he has worked with the applicant as a colleague in matters before the Industrial Tribunal, now known as the Australian Industrial Relations Commission, for four years, commencing some twenty-eight years ago. In a letter addressed to the Secretary of the Legal Practitioners Admission Board written by Ms Catherine Arnold, Barrister-at-law, of Brisbane, which is exhibit I to the applicant's affidavit of 31 December 1998, Ms Arnold advises the Board that she has known the applicant since 1987, that at that time she practised as a solicitor in private practice in Queensland, and until his appointment, she briefed the applicant regularly to appear in matters before the Australian and Queensland Industrial Relations Commissions. It appears from Ms Arnold's letter that from 1976 until his appointment to the Commission, the applicant lectured in industrial relations and advocacy on a part time basis at Universities, Colleges of Advanced Education and TAFE Colleges, (she does not say where); that the applicant obtained a Bachelor of Arts degree majoring in Industrial Relations and Economics conferred, apparently in 1988 (she does not say by which institution); that from 1980 – 1990, the

applicant had served as a committee member, President and National Vice President, of the Industrial Relations Society of Queensland; that, since 1976, the applicant has been a fellow of the National Institute of Accountants and Chairman of the National Investigation Committee, (but it does not appear what those bodies may be), and that he was formerly National and Divisional Counsellor and State President of "the Institute" (which institute is not explained). It is a pity that little of what appears to be an extensive background in industrial advocacy and practice, including teaching experience and professional recognition by his peers, is sworn to by the applicant himself, but for these purposes, and bearing in mind the attitude of the Law Society, I consider that it is open for me to find that the applicant has had, prior to 1990, some twenty years' experience as an industrial advocate and/or as someone briefing others, including solicitors and barristers, in contested industrial matters, and that he was sufficiently experienced and well regarded to be appointed a Commissioner in 1990.

[3] On 12 March 1992 the applicant was appointed as an Industrial Commissioner of the Queensland Industrial Relations Commission, and on 22 November 1992, he was appointed Chairman of the Police Arbitral Tribunal of the Northern Territory. In January 1992, the applicant was appointed Chairman of the Prison Officers Arbitral Tribunal, and of the Senior Prison Officers Arbitral Tribunal, of the Northern Territory. In January 1996, the applicant was appointed Chairman of the National

Investigation Committee of the National Institute of Accountants. (This may be "the Institute" to which Ms Arnold refers in her letter).

[4] In July 1998 the applicant qualified for admission to the Degree of Bachelor of Laws at the Queensland University of Technology. The Legal Practitioners Admission Board has certified that the applicant has completed the academic requirements for admission as prescribed by the Rules, but that, because the applicant has not complied with the practical requirements for admission, he is not entitled to be admitted to practice unless he were to obtain an exemption under rule 11(3).

[5] The evidence submitted on behalf of the applicant shows that the applicant has had to advise on and deal with a wide range of legal issues both as an advocate and a Commissioner, and that he is familiar with the rules of evidence and procedure. Mr Paul Robert Munro, a Senior Deputy President of the Australian Industrial Relations Commission, has deposed to the fact that he has known the applicant since his appointment in 1990; that he has worked closely with the applicant on a number of cases in which they have both been engaged, and that the applicant has conducted many public hearings and produced numerous written decisions and determinations, many of which have required detailed consideration of a diverse range of legal issues. Mr Munro says, in para 8 of his affidavit, that he has in mind:

> … the relatively wide range of statutory interpretation issues concerned with employment law matters including contracts of employment, with the admission, exclusion or production of evidence, with the construction of Commonwealth or local

> government statutes, with administrative law and about the jurisdictional basis of the tribunal's exercise of function.

Mr Munro concludes in para 9 of his affidavit that:

> … the work Mr Hoffman has undertaken on a regular basis since 1990 is sufficiently akin to legal professional practice to justify a finding that his work has called for the application of a significant and an ever increasing level of practical legal skill and a professional standard of competence.

[6] The applicant has not undertaken articles of clerkship, has never worked in a legal office, and has not undertaken a course of practical training of a kind recognised as sufficient under the admission rules of any other jurisdiction such as to enable him to be admitted as of right, either in this jurisdiction or elsewhere. The applicant is not eligible to be admitted to practice in Queensland, although he could apply to the Supreme Court of Queensland for exemption from the practical requirements for admission in that State. Were he to do so, he may be able to rely upon, by way of analogy, s58 of the *Legal Practitioners Act (QLD)* which enables lengthy periods of service as a clerk (or a position of a higher grade) in a registry of a Supreme Court or District Court, (for example) to qualify as sufficient service for admission purposes, and to argue that his experience as a Commissioner since 1990 should be regarded as being, certainly not less sufficient than that of such a clerk.

[7] The applicant has also explained why he has chosen to seek admission to this Court, rather than to the Supreme Court of Queensland. The President

of the Queensland Industrial Relations Commission is required by law to be a Judge of the Supreme Court of Queensland, and the current President, as well as a number of past Presidents, are still serving Judges of that Court. The applicant has had both a professional and personal association with those Judges over a number of years. I am satisfied that the applicant's application to this Court is bona fide, and that no attempt is being made to seek any improper advantage by applying to this Court rather than to the Supreme Court of Queensland. Were it otherwise, the Court could in the exercise of its discretion, refuse the application.

[8] Rule 11(3) empowers the Court, if it is of the opinion that the applicant has had experience in the practice of law in Australia other than that specified in Rule 11(1), to grant such exemption from rule 11 as it considers proper in the circumstances. There is no longer any need for the applicant to show "special circumstances": c.f. s11(5) of the *Legal Practitioners Act* (now repealed), and *Re Mallett* (1989) 95 FLR 63; *Re McLaren* (1992) 107 FLR 398. The approach to be adopted under the present rule has not been authoritatively considered by this Court. The only instance of an application under this rule is *Re Nelson* (1994) 116 FLR 104. It is plain from that case that the concern of the rules is to ensure that the public interest is met in only having properly qualified and experienced persons admitted to practice as legal practitioners.

[9] The applicant has made it clear to this Court that his purpose in seeking admission is to advance his career prospects in his chosen field. Further

promotion to a position in the Australian Industrial Relations Commission is impossible for the applicant unless he is admitted as a practitioner. This shows that the applicant does not in fact intend to practice as a legal practitioner in this Territory, a factor which I consider is relevant to the exercise of the Court's discretion. As Miles CJ put it, in *Re Kavanagh* (1995) 125 FLR 138, at 139, it is not only relevant but necessary for the Court to consider how it is that the purposes of the *Legal Practitioners Act* might be achieved by allowing the application. In that case, the applicant had no intention of practising as a legal practitioner either. His purpose in seeking admission was to enhance his prospects as an arbitrator and mediator. Miles CJ was of the view that the purposes of the Act were not served by enhancing those prospects. Miles CJ was in dissent. The majority of the Court, Gallop and Higgins JJ, did not comment on that aspect of the case, but, with respect, it seems to me to be relevant to the exercise of the Court's discretion, as it may, for example, be appropriate in some cases for the Court to extract certain undertakings before granting the application: c.f. the matters considered by Higgins J at 149. In this case, I have no doubt that the applicant is genuine and that there would be no need to extract any form of undertaking from him.

[10] On the material placed before this Court, there is no doubt that the applicant's experience and training as an industrial advocate and as a Commissioner warrants a conclusion that within the areas described the applicant has achieved a depth of training and experience well beyond that

of the average newly admitted practitioner. Although that training and experience is in a narrow field, the applicant has also had experience in briefing counsel, judgment writing, and evidence and procedure which leads me to conclude also that he is suitably qualified as a barrister. However, in this jurisdiction applicants when admitted may practice as either barristers or solicitors or both. What is also apparent is that the applicant has had no practical experience, or virtually no practical experience, suitable to qualify him as a solicitor: c.f. the applicant in *Re Kavanagh*, who had undertaken a PLT course in Tasmania. I bear in mind that the attitude of the Law Society is that the application is not opposed. I take it from that, that the Law Society considers that the applicant's experience and training is such, that the application should not be opposed – which is perhaps a different thing from saying that the application should be supported. The attitude of the Law Society is a matter to which great weight is usually given, but the fact is that the applicant does not assert that he has had any experience at all in such matters as conveyancing, will preparation, the drafting of commercial documents or the drafting of pleadings and other court documents which are the basic tools of trade of a solicitor. It cannot assist the applicant that he presently does not intend to practice; the fact is that he may one day change his mind. Nor is it enough that the applicant would not be able, in any event, to obtain an unrestricted practising certificate. This consideration was referred to and rejected by this Court in *Re McLaren* (1992) 107 FLR 398 at 406, and although the legislation has changed then, I consider that the

principle is correct and should be applied to the present scheme constituted by the Act and the Rules.

[11] In my opinion the application, in so far as it is for a complete exemption, should be refused, but I consider that the applicant should be granted a partial exemption, which would require the applicant to serve either six months articles or attend and satisfactorily complete those parts of a suitable PLT course which will provide him with the experience and training he lacks. I would assume that the applicant may prefer to undertake PLT rather than articles, but there is no material before us which would enable us to specify what particular parts of a suitable PLT course should be undertaken. I would therefore suggest that the application be adjourned to enable the applicant to put before the Court such further information as he may be advised and to hear further submissions on the precise form of the orders.