PARTIES:	Application for admission to practise as a legal practitioner - DAVID STANLEY LISSON
TITLE OF COURT:	SUPREME COURT (NT)
JURISDICTION:	ORIGINAL JURISDICTION
FILE NO:	LP 18 of 1995
DELIVERED:	1 November 1995
HEARING DATES:	14 July 1995
JUDGMENT OF:	Martin CJ, Kearney and Angel JJ

CATCHWORDS:

Legal Practitioners - Qualifications and admissions - Application to Full Court for direction - Requirements under the rules to be fulfilled for a successful application discussed -

Legal Practitioners Rules, rr8, 10, 16 and 17.

REPRESENTATION:

Counsel:

Applicant: T Pauling QC
Respondent: N Henwood

Solicitor:

Appellant: Solicitor for the NT
Respondent: Law Society of the NT:

JUDGMENT CATEGORY: B
JUDGMENT ID: mar95021
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IN THE SUPREME COURT
OF THE NORTHERN TERRITORY
OF AUSTRALIA

No. LP 18 of 1995

IN THE MATTER OF:
THE LEGAL PRACTITIONERS RULES

AND:
IN THE MATTER OF AN APPLICATION
BY DAVID STANLEY LISSON

FOR DIRECTIONS PURSUANT TO RULE
16 OF THE LEGAL PRACTITIONERS
RULES

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

CORAM: MARTIN CJ, KEARNEY and ANGEL JJ

REASONS FOR JUDGMENT

(Delivered 1 November 1995)

THE COURT: The applicant has qualifications obtained in Canada that are recognised as qualifying him to practise law in that country (r16(3) *Legal Practitioners Rules*). He applied to the Court for directions as to the requirements he must fulfil to satisfy the requirements on r8 of those rules dealing with the matters as to which the Court must be satisfied before admitting an applicant to practise as a legal practitioner of the Court and to have his name entered on the

Roll of Legal Practitioners. In the exceptional circumstances of the applicant's case, the Court directed that there were no requirements which he must fulfil to satisfy the requirements of r8 and he was successful in his application under that rule. These are the reasons for the Court making the direction.

The applicant obtained a degree of Bachelor of Arts from Queens University, Ontario, in May 1968. Having obtained that degree he was then entitled to proceed to enrol in the Faculty of Law, which he did, and obtained his degree of Bachelor of Laws in June 1971, after following the standard three year program conducted at that University. The subjects which he successfully studied to obtain that degree were Administrative Law, Legal Institutions, Contracts, Property, Civil Procedure, Torts, Constitutional Law, Remedies, Commercial Law, Family Law, Evidence, Psychiatry and the Law, Criminology, Law and Corrections, Administration of Criminal Justice, Consumer Protection, Landlord and Tennant, Jurisprudence, Computers and the Law, Accounting, Restitution, Human Rights, Legal Services for the Poor, Corporations, Personal Taxation, Advocacy, Criminal Procedure, Problems in International Law, Wills and Estate Planning and Personal Income Security. Those qualifications are to be considered against the requirements of r10 concerning academic requirements for admission which are now common throughout Australia. The Court was also conscious of the important fact

that a person admitted to practise in the Northern Territory

is entitled, under the legislative scheme of mutual recognition now operating through most of Australia, to be admitted to practise in all jurisdictions participating in that scheme. The responsibility of this Court, as the first Court considering an application for admission to practise law in this country, extends beyond the question of consumer protection within this jurisdiction and the fitness of the applicant to practise in its Courts. With these factors in mind, the Court has suggested that in the case of applicants, such as the applicant, the opinion of the Dean of the Faculty of Law at the Northern Territory University be sought with a view to assisting the Court in its consideration of its responsibility under r17(2) to give directions under r16 which ensure that "as far as is practicable, the applicant will, having complied with the directions, have the academic qualifications .... specified in rule 10(b)".

Rule 10(a) prescribes as one of the academic requirements, completion of a degree of Bachelor of Laws at the Northern Territory or another tertiary academic course in Australia, including not less than three years full time study of the law at an Australian tertiary institution recognised in at least one State or Territory of the Commonwealth as sufficient academic qualification for admission to practise as a legal practitioner. The applicant

does not have any such qualification. Subrule (b) of r10 imposes a further requirement, being completion of courses of study, whether as part of a course referred to in paragraph (a), or otherwise, which are recognised in at least one State or Territory of the Commonwealth for the purposes of meeting the academic qualifications to practise, as demonstrating understanding and competence in the prescribed areas of law.

Rule 16(3) recognises, however, that a person who has qualifications obtained in a country, other than Australia or New Zealand, may obtain a dispensation from the requirements of r10. The dispensing power is predicated upon the Court ensuring that "as far as is practicable" the applicant will, having complied with the directions, have the academic qualifications specified in r10(b), that is, qualifications demonstrating understanding and competence in the prescribed areas of law, notwithstanding that the applicant does not hold a degree of Bachelor of Laws as required under r10(a). Professor Aughterson's evidence, by way of a letter annexed to an affidavit addressed to Mr Peter Tiffin, a solicitor in the Office of the Solicitor for the Northern Territory, acting on behalf of the applicant, disclosed that he had taken into account, inter alia, guidelines used by admitting authorities in some of the States of the Commonwealth, particularly the more detailed guidelines adopted in New South Wales and Victoria. He asserts unequivocally that Queens University is recognised as offering a degree program equivalent to those

of Australian universities, but notes that no specific courses had been undertaken by Mr Lisson under the heading of "Equity" or "Professional Conduct" and concludes that no question of equivalence arises in regard to those subjects. As to this Territory's requirement as to Property Law, it was noted that the rules expressly refer to Torrens system land, which was not included in the subjects undertaken at Queens University. In relation to Constitutional Law, the Professor says that if that is interpreted as requiring a study of Australian Constitutional Law then there could never be an equivalence, but he notes that the Queens University course summary indicates that analogous constitutional issues to those referred to as "Federal, State and Territory Constitutional Law" are addressed. He says that the Faculty of Law at the Territory University would be inclined to recognise the course in Constitutional Law taken at Queens University. As to Property Law, it was noted that the applicant had completed a course which included both personal and real property law, but not as to Torrens System Land.

Although no particular course was taken at Queens University called "Equity (including Trusts)" it was noted that courses were taken called "Remedies", which included equitable remedies, and "Restitution" which included "an examination of legal and equitable remedies giving restitution from unjust enrichment". As to administrative law, Professor Aughterson said:

> "Given the assumptions that must be made in relation to any course offered by another recognised law school, and the fact that there will never be more than an equivalence in relation to the laws studied in any subject area, there appears to be no compelling reason for the Faculty to deny recognition of the course in Administrative Law undertaken at Queen's University".

There is no statutory administrative law scheme, other than under the Commonwealth, operating in the Northern Territory. There was no evidence that the applicant had completed a course in "Professional Conduct", at university, although he had successfully undertaken studies in the area of accounting.

The Law Society of the Northern Territory appeared, as is its right, to object to the application for admission of the applicant as a legal practitioner upon the ground appearing in the report of the Admission Board that the applicant had not completed the academic requirements for admission as prescribed by the rules. Since the applicant was seeking the exercise of the Court's discretion in relation to his academic qualifications, the Court permitted the Law Society to address it in regard to that matter. Taking into account the opinion of Professor Aughterson, and other material before the Court, the attitude of the Society was that in relation to the requirements as to Torrens system land and Constitutional Law, the evidence did not disclose that the Court could be satisfied, without giving directions as to

successful completion of further studies in those two areas, that the requirements of subr(2) of r17 could be met.

As to those two matters, there was evidence in addition to that put forward through Professor Aughterson. During the period in which the applicant served under articles, after obtaining his degree, he successfully completed the Bar program for admission as a solicitor of the Supreme Court of British Columbia, Canada. The program consisted of formal lectures and mandatory written examinations in subjects including conveyancing, corporations law, securities law, criminal procedure, civil procedure, ethics (professional conduct), trust accounting, taxation and evidence. The evidence is that British Columbia is a Torrens system jurisdiction. He was admitted to practise as a Solicitor of the Supreme Court of that province on 29 June 1972. As to Constitutional Law, Mr Tiffin deposed that the applicant had worked under his supervision since commencing employment in the Office of the Solicitor for the Northern Territory on 21 November 1994. Mr Tiffin is also employed by the Faculty of Law of the Northern Territory University as a part-time tutor in Constitutional and Administrative Law, and amongst other things, has settled a number of opinions drafted by the applicant, including approximately six which he says have involved a significant element of Australian Constitutional Law. He has also had many discussions with him concerning matters of practice, procedure and substantive law in Canada and the Northern

Territory and the similarities and differences between the two. Mr Tiffin expresses the opinion that the applicant has a knowledge of Australian Constitutional Law exceeding that of recent law graduates with which Mr Tiffin has worked, and significantly exceeding that of students that he tutors at the university. Mr Tiffin has been a legal practitioner of this Court since June 1971.

Bearing in mind the whole of this evidence, the Court was satisfied that no directions were necessary to ensure that, as far as practicable, the applicant would have the academic qualifications specified in r10(b). It was satisfied that, as far as practicable, he had those qualifications. It would have been open to the Court to give a direction requiring the applicant to undertake a formal course of study in each of the subject areas in contention, but given the evidence, the Court was satisfied that the applicant had demonstrated his understanding and competence in those areas of law, notwithstanding that he had not successfully undertaken university studies in those areas of law.

As to the other matters which the Court must take into account on an application for admission, it accepted the opinion of the Board that the applicant was of good fame and character and a fit and proper person to be admitted to practice. The Board pointed out that he had not complied with the practical requirements for admission. There do not appear

to be any specific rules dealing with those requirements in the circumstances of this case, and no argument was addressed on the point by either the applicant or on behalf of the Law Society. In so far as it may necessary, the Court is satisfied that taking into account the applicant's practical experience as a lawyer in Canada, and his experience since being employed in the Office of the Solicitor for the Northern Territory, there should be no further requirements upon the applicant in that regard.