

re: **ALFRED MARTIN DAUBNEY**

[HIGH COURT, 1993 (Tuivaga CJ) 8 September]

Civil Jurisdiction

*Legal Practitioners- pre-admission residency requirement- whether appropriate to waive- Legal Practitioners Act (Cap 254) Section 4 (d).*

Upon hearing a petition for admission the High Court examined the reasons for the pre-admission residency requirement in the Act and HELD that no sufficient grounds had been advanced to waive the requirement.

No cases were cited.

Petition for admission to the Bar.

*J. Howard* for the Petitioner

*S. Parshotam* for the interested party

**Tuivaga CJ:**

This is an application by way of petition under section 9(1) of the Legal Practitioners' Act ("the Act") for admission to practise as a barrister and solicitor. The application is opposed by the Fiji Law Society.

The power to admit a person to practise as a Barrister and Solicitor is vested in the Chief Justice by section 3 (1) of the Act which provides:

"The Chief Justice shall have power to admit to practise as a Barrister and Solicitor any person duly qualified for admission in accordance with the provisions of this Act: provided that the Chief Justice may, upon cause shown, refuse to admit any person as a Barrister and Solicitor notwithstanding he may have the qualifications aforesaid".

Section 4 of the Act sets out the necessary qualifications for admission by providing that every person shall be qualified for admission as a Barrister and Solicitor who fulfils all the qualifications provided for in the section and in addition has such legal experience required under the provisions of section 5 of the Act as is applicable in his case. The qualifications set out in section 4 of the Act which are relevant to this application are:

- (a) that the Applicant is a citizen of a Commonwealth country;
- (b) that the Applicant has attained the age of 21 years;
- (c) that the Applicant has been admitted as a Barrister in Australia;

- A (d) that, before making his application for admission as a Barrister and Solicitor in Fiji, the Applicant has resided in Fiji for a period of at least three months immediately prior to making his application for admission unless the Chief Justice for good reason shall dispense with such residential requirement (emphasis added).

B By section 5(1) of the Act the legal experience required of a person for admission is satisfied by the Applicant having practised on his own account in any of the prescribed countries for a period of not less than one year. Australia is one of the prescribed countries under the provisions of the Act.

Section 9 of the Act sets out the manner of making application and the method of dealing with such application in the following terms:

- C “9(1) Every application for admission shall be by Petition to the Chief Justice in such form and manner as may be prescribed by rules and forthwith upon the filling hereof the Registrar shall deliver a copy to the Council which may require the Applicant to appear before it for the purpose of an interview.

D The Council shall, after making or causing to be made such enquiries into the character, qualification and experience of the Applicant as it shall deem necessary, forward to the Chief Justice a confidential report regarding the suitability or otherwise of such Applicant for admission as a Barrister and Solicitor and, if such confidential report is adverse to the Applicant, communicate the substance thereof to him.

E (2) Upon application for admission being made under the provisions of subsection (1) and after considering the confidential report of the Council and upon proof to his satisfaction of qualification and suitability of the Applicant and upon production of such testimonials as to character as he may require, the Chief Justice shall, unless cause to the contrary is shown to his satisfaction by the said confidential report or otherwise, by writing under his hand and in such manner and form as he may from time to time think fit, admit the applicant to be a Barrister and Solicitor (emphasis added).

F (3) All reports and communications under this section shall be absolutely privileged.

G (4) The Chief Justice may, on special grounds and upon

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such terms as he may think reasonable, exempt any such person from complying with the formalities prescribed by this section either absolutely or for any specified period".

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The Applicant graduated from the University of Queensland with a Bachelor of Laws in 1985 having previously obtained a Bachelor of Arts. The Applicant is currently completing a Masters in Commercial Law at the University of Queensland. In April, 1987 the Applicant was admitted as a Solicitor of the Supreme Court of Queensland and he practised as such with Messrs McCafferty Waters & Ward, Solicitors of Brisbane. In January, 1988 he was appointed an Associate of this firm.

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In September, 1988 the Applicant was admitted as a Barrister of the Supreme Court of Queensland and commenced practise at the Bar on his own account.

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The Applicant is the author of the Butterworth's publication titled "The Company Secretaries Handbook", and he is a contributing author to the Butterworth's publication titled "Australian Corporations Practice (1993)".

It is common ground that the papers filed on behalf of Applicant are in order and that he is a citizen of a Commonwealth country, namely Australia. Applicant is aged 21 years. He is a barrister of an approved country, namely Australia.

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At the hearing of this application on 5th July, 1993 the Law Society, by its Counsel, conceded that the Applicant was suitable in terms of qualifications, experience, and character to be admitted as a barrister and solicitor but submitted that the Applicant has not complied and ought to comply with the residency qualification.

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There being no issue as to the suitability of Applicant for admission, the only remaining question now is whether dispensation from the residency requirement prescribed under section 4 (d) of the Act which Applicant is also seeking in this petition ought to be granted.

Counsel for Applicant has contended that considerable personal hardship and inconvenience would be suffered by Applicant and his family if he were required to comply with the residency qualification stipulated in section 4 (d) of the Act. Applicant would not be able to obtain gainful employment in the law firm in Fiji with which he was planning to work if he did not get a practising certificate. It is submitted that it would be an unreasonable condition for Applicant who is an established barrister in Queensland to have to wait through a period of three months without being gainfully employed.

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In its written submissions the Law Society contended that the residency requirement should be the rule, not the exception and it is only in very exceptional circumstances that the requirement should be dispensed with, otherwise there would be no point in having the requirement in the first place.

According to the Law Society the residency requirement was prescribed by law for good reasons. Two such reasons were:

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(i) To test the bona fides of the Applicant i.e. that the Applicant genuinely intends to reside and practise law in Fiji.

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(ii) To ensure that the Applicant had before admission adequate understanding of the laws of Fiji, and the code of conduct that governs legal practitioners in Fiji. This should be a necessary pre-requisite for non-residents who would not be familiar with the legal culture of Fiji.

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Section 4(d) of the Act stipulates a residency qualification of three months immediately prior to the filling of a petition for admission unless the Chief Justice for good reason dispenses with the residential requirement. It is a matter of discretion for the Chief Justice whether or not to dispense with the residency requirement. The discretion must of course be exercised judicially, that is, according to the rules of justice as applied to the circumstances of particular case or situation. The question as to whether or not I should in the exercise of my discretion dispense with the residency qualification must turn on the proper construction of the words "good reason". The question that must be posed and answered is whether the explanation given by the Applicant for seeking dispensation from the residency requirement can properly be characterised as "good reason" in the context of the law on admissions in Fiji. The onus is on the Application to show on the balance of probabilities that his explanation for seeking dispensation constitutes "good reason" for the purpose of the section.

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Having considered the whole circumstances of this case so far as they pertain to Applicant's explanation constitutes "good reason" within the meaning of section 4(d) of the Act. It is clear that if I accepted his explanation as constituting "good reason", I would be opening a floodgate, so to speak, and could not properly refuse admission to any barristers or solicitors from designated countries on the ground of non-compliance with the residency requirement. Indeed I accept that to grant Applicant dispensation from the residency qualification in this case would render section 4 (d) of the Act entirely inoperative. I do not think that was the intention behind the enactment. There is nothing in the explanation given for Applicant that could be said as special to him alone as opposed to all other similarly placed potential candidates for admission. In my view the residency requirement was intended to operate as a device against unrestricted entry of lawyers from designated countries who are not Fiji residents. In any case in order that Fiji may not be denied the services of legal experts from designated countries the scheme of the Legal Practitioners' Act provides for specialist lawyers to come and argue cases in Fiji on the basis

of temporary admission. This indicates to my mind that unless "good reason" is shown in any particular case full legal effect should be given to the residency qualification stipulated in section 4 (d) of the Act.

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For the reasons I have given I am not satisfied that "good reason" has been shown why my discretion should be exercised in favour of the Applicant. In these circumstances, I have no alternative but to refuse this petition on the ground of non-compliance of the residency qualification. There will be no order as to costs.

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*(Petition dismissed)*

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