

BALANCE

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Territory's New Judge to be Welcomed at Opening of Legal Year

Judge Steven Bailey will arrive in Darwin to take up his post as Justice of the Supreme Court of the Northern Territory in early January.

Judge Bailey, currently District Court Judge in Hong Kong, is also no stranger to the legal fraternity in the Northern Territory. Following his admission as a barrister and solicitor of the High Court of Australia, he was admitted in the NT in April 1979 and held a number of posts in the Department of Law, culminating in a period of time as the Director of the Executive and Policy Unit.

During his time in the NT, Judge Bailey was a member of the Northern Territory Law Reform Committee, a Councillor of the Law Society of the NT, Chairman of the Classification of Publications Board and a member of the Juvenile Justice Review Committee.

In late 1985, Judge Bailey was appointed Senior Crown Counsel in the Policy and Administration Division of the Attorney-General's Chambers in Hong Kong and went on to become District Court Judge in 1994.

British-born, Judge Bailey received his legal qualifications in London and also spent some years teaching law at both the University of Western Australia and the University of Newcastle.

The Attorney-General, Mr Denis Burke, in announcing Judge Bailey's appointment said that his "extensive experience in criminal law, his wide advisory experience in civil, constitutional and international law, and his background in the Northern Territory legal system, meant that he was ideally suited for the appointment."

Judge Bailey will be welcomed at a special sitting of the Supreme Court, scheduled for 9.15 am Monday 3 February, preceding functions to mark the Opening of the 1997 Legal Year in Darwin.

The Hon Justice Catherine Branson –
Speaker at OLY



The Hon Catherine Branson - Federal Court of Australia

Arrangements for these functions are now underway and the Law Society is pleased to advise that Judge Catherine Branson, of the Federal Court of Australia has agreed to be guest speaker at the lunch to celebrate the Opening of the Legal Year for 1997.

continued on page 4

Dreadlocks No Impediment to Admission

Zimbabwe

Legal practitioner –registration– "fit and proper person"– embraces personal qualities not appearance– question of fact not court's discretion

The applicant was a citizen of Zimbabwe and a devout follower of the Rastafari movement. On 17 November 1992 he lodged an application in the High Court for registration as a legal practitioner, notary public and conveyancer. He possessed the necessary qualifications prescribed in the Legal Practitioners (General) Regulations 1983, as read with the Legal Practitioners' (Council for Legal Education)(Transitional Provisions)(No 2) Rules 1992 and satisfied the additional requirements laid down in s.5(10) of the Legal Practitioners' Act 1981. Accompanying the application was the affidavit of a Mr J Z, a registered legal practitioner and lecturer at the Faculty of Law at the University of Zimbabwe. It stated that the applicant was known to him personally and considered to be a fit and proper person to be registered. The Law Society also notified that it did not oppose the application. On the face of it, there was no impediment to the applicant's admission as a legal practitioner, notary public and conveyancer.

However, when the applicant appeared in person before the High Court on 29 July 1993, the learned judge presiding considered him to be "unkempt" and not properly "dressed". The deep felt objection concerned the applicant's hair which, as a Rastafarian, he habitually wore in the style commonly known as "dreadlocks". In consequence the learned judge declined to permit the applicant to take the oath of loyalty and of office, in terms of s. 63 of the Legal Practitioners' Act, as a preliminary to registration.

Dismayed at the attitude of the learned judge, counsel who appeared immediately submitted that the refusal to grant the applicant registration, by reason only of his chosen hairstyle, infringed his

right under the Constitution of Zimbabwe to:

- (a) freedom of conscience (s.19(1));
- (b) freedom of expression (s.20(1)); and
- (c) protection from discriminatory treatment (s.23(1)(b)).

The applicant deposed that the wearing of dreadlocks is a symbolic expression of his religious and philosophical world outlook which is inspired by Rastafarianism.

Thereupon, the learned judge complied with the request that the matter be referred to the Supreme Court for determination in accordance with s.24(2) of the Constitution.

The Supreme Court, accepting the status of Rastafarianism as a religion in the wide and non-technical sense referred to, held that the applicant's manifestation of his religion by the wearing of dreadlocks fell within the protection afforded by s.19(1) of the Constitution. The reference in s.19(1) to freedom of conscience is intended to encompass and protect systems of belief which are not centred on a deity or religiously motivated, but are founded on personal morality. The requirement in s.5 of the Legal Practitioners Act 1981, that an applicant must be a fit and proper person alludes to his personal qualities not physical characteristics; to being a person of honesty and reliability; appearance bears no rational connection with the object of maintaining the integrity and honour of the profession. Applicant could not be refused registration under the section because of his dreadlocks.

The question of whether an applicant is a fit and proper person is a question of fact and not simply left to the discretion of the court.

In re, Enock Munyaradzi Chikweche,
Supreme Court, 13 and 27 March 1995
(SC 38/95; Civ App No:626/93).

Commonwealth Law Bulletin,
April 1995

Opening of the Legal Year 1997

continued from page 1

Judge Branson has been a Federal Court judge since May 1994 and is a former Crown solicitor and CEO in the Attorney-General's Department of South Australia.

She took silk in 1992 and in addition to her legal achievements has an impressive record of community service, including membership of the National Womens' Advisory Council, a term as Governor of the State Theatre Company of SA, board membership of a number of South Australian medical institutions and involvement with several South Australian universities.

In addition, she is currently the Deputy President of the Australian Institute for Judicial Administration.

1997 OLY functions will take place on Monday 3 February in Darwin and Wednesday 5th February in Alice Springs.

St Mary's Cathedral will be the venue for the church service in Darwin and in Alice Springs, Pastor Colin Crago of the Assemblies of God will conduct the service at Our Lady of the Sacred Heart Catholic Church.

Invitations to the OLY lunch in both Alice Springs and Darwin will be issued early in the New Year and all members of the profession are encouraged to attend these functions.

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