Post Street and Robertson - Admission in Queensland

On 16 November 1989 the High Court held that the Rules Relating to the Admission of Barristers of the Supreme Court of Queensland were unconstitutional. Those who flocked across the dingo fence to be admitted found that admission was not unconditional. David Jackson QC explains.

I have been asked to provide this Note on the present position concerning admission of interstate barristers to practice in Queensland. In essence the position is that interstate barristers may be admitted to practice, but admission in the first instance is conditional for one year. The relevant condition is that between conditional admission and application for the order absolute, the applicant has not pursued any occupation or business other than that proper for a barrister.

The provisions for conditional admission derive from rr. 15B(1) and 15B(2) of the Rules Relating to the Admission of Barristers of the Supreme Court of Queensland. They are of recent origin and were inserted into the Rules on 2 July 1987 after the plaintiff in Street v. Bar Association of Queensland (1989) 63 A.L.J.R. 715 had applied for special leave to appeal from the decision of the Full Court of the Supreme Court refusing his application for admission.

Rule 15B(2) provides that the applicant may be granted absolute admission on satisfying the Court that between the date of conditional admission and the date of the application for the order absolute:

> "... he has practised principally in Queensland and has not pursued any occupation or business other than that proper for a barrister."

The first condition of the rule, namely that the applicant has practised principally in Queensland since conditional admission, will ordinarily be inapplicable to residents of other States because of the decisions in Street v. Bar Association of Queensland and Re Robertson (1989) 63 A.L.J.R. 769. The second - that the person admitted conditionally has not pursued any unsuitable occupation - has been applied by the Full Court of the Supreme Court with some rigour, notwithstanding that r.55 gives the Court power to dispense with the requirements of r. 15D(2), or to abridge the time fixed by it.

Thus on 14 December 1989 D.M.J. Bennett Q.C., a barrister for years and a silk in every other Australian jurisdiction, was admitted only conditionally [1]. The Full Court, per Macrossen C.J., said:

> "As to the further matter of conditional admission which is provided for under rule 15B we note that the validity of this rule has not been attacked and that the special circumstances of the applicant are what are relied upon again asking for a dispensation in that respect. The Court is not prepared to dispense with the requirement of conditional admission in the first place which is imposed....".

On the same day G.K. Downes Q.C., again a barrister for years and a silk in many jurisdictions, was refused absolute admission, the same Full Court's reasons being:

> "Once again the validity of Rule 15B is not attacked. Perhaps at some time its continued application will need to be looked at, but the Court is of the view that the application should, in the first instance, be conditional only, notwithstanding the suggestion that we should waive that requirement under rule 55."

On 12 March 1990 the Commonwealth Solicitor-General's application suffered a similar fate, with the Full Court, again per the Chief Justice, saying:

> "Submissions were made to us in December that there were other special cases and I suppose whatever we do today, we will hear similar submissions. We do not purport to look into the future when bringing any particular skill to bear but the fact, of course, that Mr. Griffith is Solicitor General now does not necessarily mean that he will be for all of the ensuing twelve months. The Court is of the view that the applicant should, of course, be admitted but that his admission should be conditional in accordance with the procedures which under the Rules currently apply to interstate admission."

The case of the Commonwealth Solicitor-General highlights the absurdity of retention of the requirement of conditional admission. The result of its operation is to pervert the probabilities, because residents of Queensland with no "track record" as barristers are admitted unconditionally, but non-residents must be admitted conditionally even if they have practised exclusively as barristers for decades, and have given no hint of straying from that path [2].

The validity of the relevant condition must be very doubtful in the light of s.117 of the Constitution and the decisions earlier referred to [3]. The rule should be altered to abolish the requirement for conditional admission, however, without the need for a case to be mounted challenging it. The concept of conditional admission was introduced for reasons which were transparent, and unattractive. They failed to achieve those aims and that fact should be recognised. ❑

[1] Bennett Q.C., it may be noted, had been the successful leader appearing for Street in Street v. Bar Association of Queensland, and both Bennett and Street were admitted in Queensland on 14 December 1989. Yet, because Street's application came under the "old" rules, Street was admitted unconditionally and Bennett conditionally.

[3] On the day when Griffith Q.C., S-G was admitted conditionally, a very new Queensland graduate was admitted unconditionally.

[3] Section 117 would not assist residents of the Territories.