

IN THE SUPREME COURT OF JUDICATURE OF JAMAICA

IN EQUITY

SUIT NO. A/L 4 OF 1978

IN THE MATTER of an Application
by JOHN ARCHIBALD JUNOR of the
parish of Saint Andrew to be
entered on the Roll as an
Attorney-at-law

AND

IN THE MATTER of the Legal Pro-
fession Act

June 15, July 6, September 29, 1978

Mr. J. Sinclair for applicant

CAREY, J:

At the adjourned hearing on the 6th July, when counsel moved for an order that John Archibald Junor, Esq., be enrolled to practise as an Attorney-at-law in the several courts of the Island, I made the order in the terms sought and intimated that as it might be helpful, I would record my reasons for so doing. I am now fulfilling that undertaking.

The legal position in this regard is governed by two Acts of Parliament viz: The Legal Profession Act and the Council of Legal Education Act. The former was an enactment which came into force on 3rd January, 1972; the latter on 1st April, 1974. Prior to the passing of the latter Act, the qualification for enrolment, was to be found wholly in Section 6 of the Legal Profession Act, which provided as follows:

Section: "6. - (1) A person shall be qualified for enrolment if he holds a qualifying certificate and satisfies the Council that he has attained the age of twenty-one years, is not an alien, and is of good character.

(2) A person may, at the discretion of the Council, and subject to such conditions as may be prescribed by regulations made under section 10, be enrolled if he satisfies the Council -

- (a) that he has attained the age of twenty-one years, is not an alien, and is of good character; and
- (b) that he is qualified to practise law in any country having a sufficiently analogous system of law and that his qualifications are such as to render him suitable for enrolment."

Section 6 thus contemplated two broad categories. In the one, Section 6 (1), were persons who held a "qualifying certificate" issued by the Legal Education Authority, that is, a Jamaican or a Commonwealth Citizen who having attended one of the Law Schools then being set up, had obtained the certificate issued pursuant to Section 9(3) of the Act, had shown to the Council that he was at least 21 years and provided proof of his good character. The Act was guaranteeing that Jamaicans educated under the aegis of the Legal Education Authority were thereby automatically entitled to practise.

Under the other broad category, Section 6 (2), would fall Jamaicans or Commonwealth Citizens of the appropriate age and character, who had satisfied legal educational requirements in a country outside Jamaica in which the system of law was sufficiently analogous to the Jamaican. The Council in this event was called upon to exercise its discretion whether or not to allow enrolment. Many Jamaicans or Commonwealth Citizens who had passed the English Bar Examinations or Law finals after 3rd January, 1972, would come within these provisions, and were duly enrolled to practise, the Council certifying "that the applicant (was) qualified to practise Law in a country having a sufficiently analogous system of Law to Jamaica".

Although I have stated that Jamaicans or Commonwealth Citizens are the persons who come within these categories, this is not strictly accurate nor exhaustive. The list should be understood as including a British Protected Person and also a citizen of the Republic of Ireland. See the definition of "alien" in the Jamaican Nationality Act. These were omitted in the interest of brevity and because very few if any of such person have ever sought enrolment.

The enactment of the Council of Legal Education Act has in my view modified the provisions of Section 6 of the Legal Profession Act. That Act embodies an agreement between a number of West Indian Countries for the establishment of a Council of Legal Education for the Caribbean region. By virtue of Section 3 of the Act, Articles 5 and 6, which are concerned with admission to practise, have the force of law in this country. They are in the following form:

ARTICLE 5

Admission to Practise

1. "The Government of each of the participating territories undertakes that it will recognise that any person holding a Legal Education certificate fulfills the requirements for practice in its territory so far as institutional training and education are concerned and that (subject to the transitional provisions herein-after contained and to any reciprocal arrangements that any of the said territories may hereafter make with any other country) no person shall be admitted to practise in that territory who does not hold such certificate. But nothing herein contained shall prevent any territory from imposing additional qualifications as a condition of admission to practise therein.
2. The foregoing provisions of this article shall be subject to the terms of the Protocols to this Agreement which shall have effect for the purposes specified therein".

ARTICLE 6

Saving and Transitional Provision

1. "The Government of each of the participating territories agrees that the following persons shall be recognised as professionally qualified for admission to practise in its territory, namely:
 - (a) any national who is on 1st October, 1972 qualified to be admitted to practise as a Solicitor or a Barrister in that territory;
 - (b) any national who, prior to 1st October, 1972, was undergoing or had been accepted for a Course of legal training leading to any present qualification to practise and who satisfied the requirements of such course on or before 31st December, 1980.

In this Article "national" means a person who -

- (a) is a citizen of any participating territory; or
- (b) is regarded as belonging to any participating territory under any law in force in that territory."

The purpose of these provisions, is obvious. English speaking Caribbean lawyers of the future would be trained in the region. These persons, for the most part educated at public expense, would be the only professional lawyers entitled to be enrolled to practise as such. Article 6 (1) (b) recognising the hardship involved, where persons had already embarked on legal training courses abroad, which had hitherto entitled persons thus qualified to practise, prescribes a time reference, beyond which, persons holding such qualifications would no longer be entitled to be admitted to practise. Article 6 (1) (a) speaks for itself. It would protect those professional persons, for example, who were employed as Law Officers of the Crown or Legal Officers of Government who had omitted to, or refrained from, applying for admission to practise before 1st October, 1972. Section 6 (2) of the Legal Profession Act would provide the basis of their qualification for enrolment.

The effect, therefore, of these provisions in my judgement is that since 1st April, 1974 the following persons are qualified for enrolment as Attorneys in this country:

1. A Jamaican, Commonwealth Citizen, British Protected Person or a Citizen of the Republic of Ireland over 21, of good character who holds the Legal Education Certificate. Section 6 (1) of the Legal Profession Act.
2. Any 'national' as defined in Article 6 (2) who at 1st October, 1972 was a barrister or a solicitor or qualified to be admitted to practise as such. Article 6 (1) (a) of the Council of Legal Education Act and Section 6 (2) of the Legal Profession Act.
3. Any 'national' as defined in Article 6(2) who prior to 1st October, 1972, was a student in one of the Inns of Court reading for the Bar or undergoing training to be a Solicitor and who, in the respective case, qualified on or before 31st December, 1980. Article 6 (1) (b).

I would add that the Treaty provisions allow participating countries to make reciprocal arrangements with other countries as regards admission to practise of Attorneys in their respective countries. Section 6 (2) does not expressly permit the making of reciprocal arrangements between Jamaica and a country with an analogous system of Law. An express provision would be required to achieve this purpose. So far, there has been no amendment of the Act to permit this course.

I return to the application before me. In paragraphs 2 and 3 of the affidavit filed in support of his motion, the applicant deposed as follows:

2. "That on the 17th day of July, 1976 (sic) I was called to the Degree of an Utter Barrister by the Honourable Society of Grays' Inn.
3. That on the 23rd day of September, 1976, the General Legal Council issued me with a certificate stating that pursuant to Section 6 (2) of the Legal Profession Act by motion passed on the 22nd day of September, 1976, resolved that it is satisfied that I JOHN ARCHIBALD JUNOR ~~am~~ qualified to practise in a court having a sufficiently analogous system of Law of Jamaica and that my qualifications are such as to render me suitable for enrolment as an Attorney-at-law and further certifying that I have obtained the age of twenty-one years, am not alien and of good character, which certificate I exhibit hereto marked with the letter 'A'."

A supplemental affidavit required to be filed by the court, showed that the applicant had been admitted as a student of the Honourable Society of Grays' Inn on 14th July, 1970, and was called to the degree of an Utter Barrister on 17th July, 1975. The conditions prescribed in Article 6 (1) (b) have thus been fulfilled. Accordingly, Mr. Junor is entitled to be admitted to practise. What must be emphasised is that his qualification for enrolment is not to be discovered by any reference to Section 6 (2) of the Legal Profession Act because Article 6 (1) (b) of the Council of Legal Education Act has limited the effect of Section 6 (2) to the extent I have demonstrated above. It was for this reason that the application had, perforce, to be adjourned to allow the applicant to supply the appropriate information.

Before leaving this matter, it should be noted that the Legal Profession Act does not confer any jurisdiction on any court to admit attorneys to practise. The Court is not required by any provision of the Act to be satisfied that the qualifications for enrolment are fulfilled. By Section 6, it is plain that the General Legal Council determines who is, or is not, entitled to practise. Indeed, the disciplining of members of the Bar is another of the duties placed on the Council. Again where an Attorney wishes to have his name removed as such, from the Roll, it is the Council which grants approval. Whatever be its concern or interest, the Court has no power under the Act to function in these matters. The Court's only definitive power is to hear appeals by Attorneys against orders made by the disciplinary Committee (Section 16 Legal Profession Act).

The present practise for enrolment in this court derives from the Legal Profession (Enrolment and Practising Certificate Fees) Rules 1971.

Rule 3. "The application for enrolment shall be by notice of motion supported by affidavit and the motion may be heard by a single Judge".

These Rules were made by the Rules Committee of the Supreme Court acting under Section 4 of the Legal Profession Act. The relevant sub-section is 6 (a) and ordains as follows:

- 6. Rules of Court may be made prescribing
 - (a) the form of the certificate of enrolment, the procedure for the enrolment of qualified persons and the fees to be paid in relation thereto;

These three matters expressly stated, relate to a common genus; all are concerned with form, none with matters of substance; they are 'ejusdem generis'. On the true construction of this sub-section, the Rules Committee is competent to prescribe the mechanics to enable a duly qualified person to become a practising member of the Bar. In fine, the rule making power relates to administration, a matter of form, not

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to jurisdiction, a matter of substance. By providing enrolment by notice of motion, the Rules Committee was dealing with administration, but it could properly do so only if the jurisdiction to hear and determine such matters already existed in virtue of some statute. It is acknowledged that this aspect of the case was not argued before me, and as a consequence I have not had the advantage of cases cited to me. Nonetheless so far as my researches go, I have been quite unable to discover the existence of any such jurisdiction.

It may be noted, en passant, that a court appearance is not a "sine qua non" for admission. Many Bar students up to 1960 may recollect that following call to the Bar, it was customary to present themselves at the Law Courts in the Strand before a functionary who bore the impressive title of "Queen's Coroner and Attorney and Master of the Crown Office", in whose presence they affixed their signature to the Rolls of the court as a Barrister.

There can be little doubt that unless the Legal Profession Act itself conferred such a jurisdiction or delegated the power to do so on the Rules Committee, the Supreme Court is without power to act. In my judgment, these Rules so far as they purport to confer a jurisdiction to enroll, are ultra vires and therefore void.

Finally, it is important to note that the present enrolment procedure involves no exercise of the judicial function. The present exercise is cosmetic. It is ritualistic farce and therefore unnecessary. More particularly, it is wasteful of judicial time and therefore public money.