

CITATION: *Bradshaw v Bar Association of Queensland*
[2016] QCAT 93

PARTIES: James Todd Bradshaw
(Applicant/Appellant)
v
Bar Association of Queensland
(Respondent)

APPLICATION NUMBER: OCR221-14

MATTER TYPE: Occupational Regulation matters

HEARING DATE: 4 February 2016

HEARD AT: Brisbane

DECISION OF: **Justice DG Thomas, President**

DELIVERED ON: 22 February 2016

DELIVERED AT: Brisbane

ORDERS MADE: **1. The application for review by the Applicant is dismissed.**

CATCHWORDS: PROFESSIONS AND TRADES – LAWYERS – PRACTISING CERTIFICATES – REFUSAL TO ISSUE – where the applicant sought review of a decision of the Bar Association to refuse to grant him a Practising Certificate – where the reasons for refusal included non-compliance with the Administration Rules of the Bar Association under the *Legal Profession Act* 2007 (Qld) – where the applicant had not completed the prescribed form for the application under the Rules – where the applicant did not provide proof of professional indemnity insurance – where the applicant admits he did not complete the form – whether the decision of the Bar Association to refuse to grant the applicant a Practising Certificate was correct

Association’s Administration Rules 2011 (Qld) r 1.1, 2.1
Legal Profession Act 2007 (Qld) ss 49, 51(3)(b), 51(8), 221(1), 231, 231(2)

APPEARANCES and REPRESENTATION (if any):

APPLICANT: No appearance for, or by, James Todd Bradshaw

RESPONDENT: Mr PJ McCafferty of Counsel on behalf of the Bar Association of Queensland

REASONS FOR DECISION

[1] The application made by James Bradshaw relates to a refusal by the Bar Association of Queensland ('the Association') to issue him with a local Practising Certificate.

Background

[2] The Association received a letter from Mr Bradshaw dated 18 August 2014, which enclosed an undated and unsigned application to the Association for a local Practising Certificate.¹

[3] By letter dated 22 October 2014, the Association wrote to Mr Bradshaw informing him that his application had been refused pursuant to section 51(3)(b) of the *Legal Profession Act 2007* (Qld) ('the Act'). The letter enclosed an Information Notice as required by s 51(8) of the Act.²

[4] The reasons identified in both the letter to Mr Bradshaw dated 22 October 2014, and also the Information Notice were that Mr Bradshaw had not:

- Completed, or executed, the statutory declaration contained in the approved form.
- Provided any particulars in relation to the proposed disclosure at question 7 of the approved form.
- Provided any particulars in relation to the purported disclosure at question 8 of the approved form or
- Provided evidence of professional indemnity insurance.³

[5] The Information Notice informed Mr Bradshaw of his right to review including that any application was required to be filed within 28 days after the date upon which he was notified of the decision.⁴

Proceedings to date

[6] In September 2014, Mr Bradshaw lodged an application to review the decision made by the Association.

¹ Affidavit of Cameron Stuart McLeod sworn 20 November 2015, paragraph 3.

² Ibid, paragraph 5.

³ Ibid, exhibit 'A', pages 9-11.

⁴ Ibid, exhibit 'A', pages 10, 11.

- [7] These documents were served on the Association on 23 September 2014.
- [8] Of course, at that stage, no decision had been made by the Association concerning Mr Bradshaw's application for a local Practising Certificate.⁵
- [9] The submissions on appeal filed by Mr Bradshaw with the application, set out submissions which do not appear to relate to the decision which was taken by the Association on 20 October 2014, and which was the subject of the Information Notice.
- [10] Due to procedural issues, it was sometime before the documents were accepted by the Tribunal.
- [11] After the documents were accepted, a number of Directions Hearings took place. At one of the Directions Hearings, Mr Bradshaw made applications that the appeal be transferred to Cairns, that he be given leave to call witnesses, that the Association make Mr Davis available for cross-examination and that the Association file submissions within 21 days.
- [12] In the submissions which were filed in support of the application, Mr Bradshaw referred to matters which had occurred in relation to previous proceedings. Concerning the review of the decision which was the subject of the Information Notice, Mr Bradshaw appears to state (in the "summary" section of his submission):
- I submitted incomplete application.
 - The Association chose to reject the application which falsely implied a fresh consideration and some prospect and expense of Practising Certificate was not throwing away money on procedural basis.
 - Insurance confirmed. No problem (I am on a pension).⁶
- [13] Further, he submitted:
- The respondent rejected the application because of formal defects which implied that it will consider another application on its merits. It is confirmed by the insistence that Mr Bradshaw pay for a current Practising Certificate.
 - The Bar Association says that appeals have been exhausted.
 - If leave is refused Mr Bradshaw's only remedy is to reapply and waste approximately \$2,000.00 on a Practising Certificate as Bar Association stated to Justice Wilson that Mr Bradshaw would not get a Certificate.⁷

⁵ The decision was taken on 20 October 2014 – see Affidavit of Cameron Stuart McLeod sworn 20 November 2015 exhibit 'A', page 10, Information Notice.

⁶ Affidavit of Cameron Stuart McLeod sworn 20 November 2015, exhibit 'A', page 16.

⁷ Ibid, exhibit 'A', page 18; Appellant's submissions at directions hearing, filed 2 March 2015, paragraph 1(a), (b) and (c).

- [14] Mr Bradshaw also argued that bias was relevant which, he submitted “if established gets to the very core of the judicial system”.⁸
- [15] The submissions on that occasion did not address the matters raised in the Information Notice.
- [16] The matter was canvassed again at the Directions Hearing on 10 March 2015.
- [17] Relevant exchanges were as follows:
- “Mr Bradshaw: Your Honour, I have been around a bit and I know what’s going on. The fact of the matter is – the bottom line is that the Bar Association has stated that they will never give me a Certificate. So what does it matter how they dolly it up, what reasons they do? In this case they took advantage of the fact that I deliberately didn’t fill out the form correctly...”⁹
- [18] Following that statement, when asked whether his submission was that he deliberately did not comply he responded “no, I just said that I did not fill out the form correctly”.¹⁰
- [19] Later, Mr Bradshaw again conceded that he did not “fill out the form correctly” and that he was “going to concede that” but wanted the opportunity to “open up the argument as a whole”.¹¹
- [20] Mr Bradshaw was allowed the opportunity to amend his Notice of Review but has not done so.
- [21] Mr Bradshaw filed submissions on 27 January 2016, apparently to be considered in the context of the application heard on 4 February 2016.
- [22] As to matters which Mr Bradshaw describes as “current reasons” he says:
- Insurance – at 73 I have lost my house, unit, super, car and savings etc. Justice Fryberg set a precedent ignored by the Bar Association “when Mr Bradshaw next practices” the Judge in his reprimand he said he detested me as a person and as an advocate but then acted judicially.¹²
 - What is unreasonable to suggest that BAQ could make a similar order that I be granted a certificate subject to me satisfying them that I am insured.
 - BAQ requires Mr Bradshaw to waste money as BAQ will never issue a Certificate.

⁸ Ibid, exhibit ‘A’, page 18; Appellants submissions at directions hearing, filed 2 March 2015, paragraph 2(a).

⁹ Transcript of Directions Hearing held 10 March 2015, page 1-10 lines 33 -38.

¹⁰ Ibid, page 1-11 line 6.

¹¹ Ibid, page 1-15 lines 34 -38.

¹² Submissions on behalf of the applicant filed 27 January 2016, at “current reasons”.

- The documentation is a formality and reasons for rejection should be recanvassed in the current circumstance.¹³
- I am never going to success unless this Court or an appeal Court reconsiders Bar Association's unjudicial approach.

Discussion

- [23] Section 49 of the Act allows an Australian lawyer to apply (as occurred in this case) to the Association for the grant of a local Practising Certificate.
- [24] Section 51 of the Act requires the Association to consider the application. They may then grant or refuse to grant the Practising Certificate.¹⁴
- [25] The Association may refuse to consider an application if it is not made under the Act.¹⁵ They may also refuse to grant a local Practising Certificate if the applicant has not complied with the Administration Rules of the Association relating to the application.
- [26] Pursuant to section 221(1) of the Act, the Association of Queensland makes rules about legal practice in Queensland engaged in by Australian legal practitioners as barristers.
- [27] The Act provides the Association with power to make rules about matters mentioned in section 231(2) of the Act, which include rules relating to approved forms to be used for an application to the Association, the way an approved form is to be given to the Association, and any timeframe for submitting the form.
- [28] Administration Rules were made by the Association of Queensland pursuant to section 231 of the Act.
- [29] Rule 1.1 provides that "an application for a Practising Certificate by a legal practitioner shall be made on such form and containing such information as the Bar Council may from time to time prescribe (schedule 1)".¹⁶
- [30] Rule 2.1 provides that "no barrister shall engage in practice unless insured against claims for professional negligence in accordance with the Act".
- [31] Schedule 1 contains the form which is headed "Application for Practising Certificate".
- [32] Questions 7 & 8 of that form require that, if the person applying for the Practising Certificate answers yes to those questions, full details must be attached.

¹³ Ibid, at "summary".

¹⁴ *Legal Profession Act 2007* (Qld) s 51(1)(a).

¹⁵ *Legal Profession Act 2007* (Qld) s 51(3)(a)(i).

¹⁶ *Association's Administration Rules 2011* (Qld) made pursuant to the *Legal Profession Act 2007* (Qld) s 231.

- [33] The application process also requires that documentation be submitted with the application for a Practising Certificate containing proof as to the applicant holding current, approved and paid professional indemnity insurance to the value of \$1.5 million dollars, which is valid from the date the applicant wishes to commence practice until the following 30th of June.
- [34] The form requires that the applicant complete a statutory declaration declaring that the application is “true in substance”.
- [35] From the provisions of the Act outlined above, it is clear that, in order to comply with the provisions of the Act, it is necessary for the applicant of a Practising Certificate to complete, in full, the prescribed form.
- [36] In this case, the Association refused to grant the local Practising Certificate on the basis that Mr Bradshaw did not comply with the Association’s Administration Rules relating to the application. The Association provided details of that non-compliance namely:
- Failure to complete or execute the statutory declaration.
 - Failure to provide any particulars as to the purported disclosure at question 7 of the approved form.
 - Failure to provide any particulars as to the purported disclosure at question 8 of the approved form.
 - Failure to provide evidence of professional indemnity insurance.¹⁷
- [37] As to those issues, Mr Bradshaw has conceded that he did not complete the application as required. He said this both in submissions and also to the Tribunal at the Directions Hearing held on 10 March 2015.
- [38] Mr Bradshaw also concedes that he did not make any arrangements with respect to professional indemnity insurance. His explanation about that seems to be that there should be “no problem” as he is “on a pension”.¹⁸
- [39] Mr Bradshaw does not substantively address any of the issues raised by the Association.
- [40] The fact of non-compliance with the Administration Rules is a sufficient basis upon which it was open to the Association to refuse the application for a Practising Certificate.
- [41] It should be noted that the questions which were not answered were of some significance to the Bar Association in maintaining standards in the profession. Question 7 related to whether complaints had been lodged against Mr Bradshaw and question 8 related to whether Mr Bradshaw had been the subject of any disclosable events including events relating to

¹⁷ Affidavit of Cameron Stuart McLeod sworn 20 November 2015, exhibit ‘A’, page 10.

¹⁸ Ibid, exhibit ‘A’, page 16; Directions Hearing (orders and argument in support) on behalf of the applicant, paragraph 40 at “summary”.

bankruptcy and convictions. There was an affirmative response to each of these questions but no further details were provided.

- [42] The provision of professional indemnity insurance is also of central importance to protection of the public and is a matter which would be of concern to the Association if not complied with.
- [43] Finally, Mr Bradshaw failed to make the declaration that the information and particulars set forth in the application were true in substance and fact. Again, this is a matter of significance.
- [44] In the circumstances, it was open to the Association to respond in the way it did to refuse to grant the Practising Certificate.
- [45] The application for review by Mr Bradshaw is dismissed.