In the matter of an application for admission as a Legal Practitioner by

Christopher Thomas Pryde

At Suva, Fiji
29th February, 5th March, 7th May 2008

Gates, Acting CJ

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Case No.: HBM30.08S

RULING

Application by Petitioner for admission as a Legal Practitioner s.36 Legal Practitioners Act [No. 19 of 1997]; objection by Fiji Law Society s.37(1); on ground petitioner's appointment as Solicitor-General alleged to be unconstitutional; application for recusal of Acting Chief Justice on ground he was Chairman of appointing body, the Judicial Service Commission, which appointed the petitioner; role of persona designata in admitting legal practitioners; whether admission role can be assigned to another judge; ministerial role rather than judicial section 34(1); qualifications for admission s.35; fit and proper person; role of the Society in making inquiries; qualifications and suitability; Chief Justice shall admit unless cause to the contrary is shown to his or her satisfaction s.38(1); wide discretion; relevant considerations for exercise of; judicial not fanciful approach; distinction between admission and practice; division of roles by legislature between Chief Justice and the Society; what matters are irrelevant to the discretion.

Mr Devanesh Sharma with Mr Isireli Fa [President] for the Objector [Fiji Law Society]
Mr A. Sayed-Khaiyum [Attorney-General] with Mr Sharvada Sharma
and Ms Rakuita for Petitioner

[1] The Petitioner seeks admission as a Legal Practitioner. He has filed a petition with a verifying affidavit. The Fiji Law Society objects to his admission.

[2] The Society originally filed a notice of objection on 21st February 2008. By virtue of section 37(1) of the Legal Practitioners Act [No. 19 of 1997] any person including the Society and the Registrar is entitled to show cause why an application for admission should not be granted. The Society has complied with section 37(2) by sending a copy of its notice of objection to the applicant [Rule 8(1) Legal Practitioners (Admission) Rules 2000]. Having done so, the Society thereafter can appear at the hearing, as it has done [s.37(2), and Rule 8(2)].

[3] The Society initially objected on the ground that the applicant's appointment as Solicitor-General was unconstitutional. It went on to claim that the determination of that issue impacted on the determination as to whether the applicant was a fit and proper person to be admitted.

[4] Leave was given to amplify this notice of objection. Amended grounds were filed on 25th February 2008, to which I shall refer further on.

[5] The Society objects to the petition being heard by me as Acting Chief Justice, since it says I was a member of the Judicial Services Commission which appointed the applicant to the position of Solictor-General. Its objection is worded:

> "Since this objection is based on the legality of the JSC, the employing authority, the Fiji Law Society respectfully requests his lordship to recuse himself from hearing this petition on the ground that there is a perceived conflict of interest."

[6] Counsel for the Society argues the employment of the applicant is relevant to a consideration of his petition. Mr D. Sharma went on to say it was the applicant's alleged illegal appointment as S-G that was the source for saying he was not a fit and proper person for admission.

[7] The recusal application was put back for continuation to enable earlier authority to be cited on the relevance of employment issues to admission criteria.

Persona Designata

[8] The duty is cast upon the person occupying the office of Chief Justice to admit to practice as a practitioner a person duly qualified in accordance with the provisions of the Act. The wording of the empowering section, section 34(1) is very similar to that of earlier legislation, section 3(1) of the Legal Practitioners Act Cap 254.

[9] This duty is cast upon the office holder personally, and not upon the bench of judges of the High Court. In *Coulam v The Fiji Law Society* [1972] 18 Fiji LR 175 at p.178A the Court of Appeal said:

> "The provisions as to admission to which we have referred place that matter in the hands of the Chief Justice personally. We have found no provisions either in the Constitution or any other law whereby the function so entrusted can be performed by any other judge."

[10] The court noted that the power to restore to the roll was described in the earlier Act as an "absolute discretion". Section 74(1) gave the Chief Justice power, if he thought fit, to authorise another judge or acting judge to perform all or any of the powers exercisable by him under the provisions of the section, that is in petitions for restoration.

[11] Unfortunately there is no such statutory power remaining to refer a specific petition for admission to another judge. I had considered so referring an application for admission which was factually similar to an application for restoration to the roll, that was in the matter of *Michael Desmond Benefield* HBM42.07S, 18th September 2007. My embarrassment in dealing with that application was that I had previously been counsel for one of the objectors.

[12] In *Benefield* I had approached the matter this way:

> "[4] I had informed counsel that I was prepared to appoint another judge to hear this matter if there were objection to my hearing the petition. This indication was made on the basis that principles of natural justice might prevail over the lack of specific legislative provision for referral to another judge. This is not a matter before the High Court but an application made to a designated person under the Legal Practitioners Act 1997 (with similar procedure to the old ordinance of 1965). Such application by way of petition has to be made to the Chief Justice in his admissions function which is akin to that placed with the Master of the Rolls in England. The Chief Justice as persona designata, and not as a judge of the High Court, was the person who was charged with the discretionary function of deciding who was a fit and proper person to be admitted to the roll of barristers and solicitors of Fiji. Barristers and solicitors are now known as legal practitioners. It is an application which must be made to the Chief Justice only. In this procedure the decision of the Chief Justice is a ministerial act rather than a judicial one; *Incorporated Law Institute of New South Wales v Meagher* [1909] 9 CLR 655 at p.678.
>
> [5] The 1965 ordinance permitted delegation by the Chief Justice of his appellate role in disciplinary matters to another judge [section 74[1] Legal Practitioners Act Cap 254]. But the

admission to practice function of the Chief Justice appears not to have been one which can be delegated in either the old Act or the new. It was a discretionary function reposed solely in the Chief Justice. Additionally the decision is not one that is capable of appeal to the Court of Appeal *Benefield v Fiji Law Society and Others* [1998] ABU0056.97S 22nd November 1998; *Coulam v Fiji Law Society [1972] 18 Fiji LR 175*. In view of the stance taken by the objector, the Fiji Law Society, and the petitioner, not to take objection, I do not have to consider whether in a case of such embarrassment the proper order would be to leave the discretion entirely with another judge, or whether I should appoint another judge to hear the petition for him or her to advise me whether I should admit, or not admit, the petitioner."

[13] Section 31 of the Interpretation Act Cap 7 provides:

" **31.** Where, by or under the provisions of any Act, an appeal against the decision of any person or authority is made to the Governor-General, the Cabinet or any Minister, it shall be lawful for the Governor-General, the Cabinet or the Minister, as the case may be, to appoint any fit and proper person for the purposes of hearing such an appeal and of advising as to the decision that should be made thereon."

[14] There is no such equivalent for the Chief Justice. Fiji's legislation has confined the function to the Chief Justice rather than to the Bench of Judges. The duty here is cast personally on the office holder, the persona designata, and it would need an extreme instance to make it imperative to avoid the clear words of the statute, the Legal Practitioners Act.

Qualifications for admission

[15] The Chief Justice has power to admit to practice as a practitioner persons duly qualified in accordance with the provisions of the Act [section 34(1)].

[16] These provisions are contained in section 35 which reads:

" A person shall be qualified for admission as a practitioner if that person is a fit and proper person to be admitted to practice as a practitioner in Fiji, and—

> *(a)* has satisfactorily completed a course in the study of law approved by the Board and a programme or course of practical legal instruction and training approved by the Board; or
>
> *(b)* that person has obtained from the Board a certificate that his or her educational qualifications are sufficient to qualify him or her for admission as a practitioner;
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> *(c)* in addition to the requirements specified under paragraph *(a)* or *(b)*, before making his or her application for admission as a practitioner in Fiji that person has resided in Fiji for a period of at least three months immediately prior to making his or her application for admission unless the Chief Justice for good reasons shall dispense with such residential requirements; and
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> *(d)* in the exercise of his discretion under paragraph *(c)*, the Chief Justice shall take into account the views of the Society."

[17] First the Chief Justice must be sure the petitioner is a fit and proper person. Second the petitioner must have satisfactorily completed a course of study of law approved by the Board of Legal Education. This educational requirement must include the completion of a course of practical legal instruction and training as approved by the Board.

[18] Third, the petitioner must show he or she has obtained from the Board a certificate that his or her educational qualifications are sufficient to qualify him or her for admission as a practitioner.

[19] Fourth, a residential requirement is imposed that the petitioner must have resided in Fiji for at least 3 months prior to making the application. For good reason, the Chief Justice can waive this requirement.

[20] Mr D. Sharma said in making the application for recusal the Society was not objecting to the petitioner's qualifications. The objection was to his alleged illegal appointment as Solicitor-General.

[21] Before leaving the issues for consideration imposed by the Act when considering a petition for admission, it should be mentioned that the Society may (not 'shall') "make such enquiries into the character, qualification(s) and experience of the applicant as it shall deem necessary" [section 36(2)]. This section allows the Society to bring to the attention of the Chief Justice any facts that address those matters going to the 'fit and proper' consideration.

[22] Section 38(1) refers to proof of qualifications and suitability of the applicant, and production of such testimonials as to character as the Chief Justice may require. Following which, the Chief Justice shall admit the applicant to be a legal practitioner "unless cause to the contrary is shown to his or her satisfaction".

[23] Into suitability can be imported from the oath to be taken at admission, the promise of true and honest conduct to which the admittee swears adherence. The question arises, is the petitioner a person likely to carry out legal practice to this standard?

Fit and proper person

[24] The affidavits in support of the run of the mill petitions for admission tend to be short and confine themselves to the essentials. If a person is not a fit and proper person the watchdog role of the Society may bring to light conduct as evidence of character that would indicate unsuitability.

[25] The concept of fit and proper may entail possession of a modicum of attributes and qualities. The noblest in the profession may be recognised as having them in full measure. That is not the requirement however.

[26] From the cases, it can be expected of a petitioner that he or she will possess honesty and candour, be a trustworthy person in whom the public could have confidence, and whom the judges can expect to act as an officer of the court, ethically and with professional standards. When enrolled as a legal practitioner of the court, that person should be able "to stand in the ranks of an honourable profession to whom the public might resort for assistance in the conduct and management of their affairs with confidence and security". *Ex parte Lenehan* [1948] 77 CLR 403 at p.431.

The procedure for objections

[27] Parliament has provided that legal practitioners as a profession are to be self-governing. There are separate arrangements for trust account funds, and for disciplinary proceedings where for instance one layperson must sit on the 3 person disciplinary committees. Lastly admissions into the profession are not controlled by the Society but placed in the hands of the Chief Justice.

[28] Besides making inquiries into the character, qualifications and experience of the petitioner, the Society is "entitled to show cause why an application for admission should not be granted" [section 37(1)]. The burden is cast on the Society to show the necessary defect to the satisfaction of the Chief Justice [section 38(1)]. It is clear from the statute that the admission scrutiny must relate to the personal character, qualifications and suitability of the applicant.

[29] In the matter of *Tevita Akamini Vakalalabure* [2002] FJHC 91; HBM0016D.02S 18th October 2002 the Society made a procedurally flawed objection. Eventually in its amended objection it claimed that the petitioner had failed to make a full and frank disclosure in his petition for admission, of the serious criminal charges pending against him and of the disciplinary proceedings that had been taken against him in his law student days.

[30] Fatiaki CJ said (at p.6):

> "The Society's application for a short adjournment to file a written ***'notice of objection'*** was refused and in the absence of the requisite ***'notice of objection'*** the Society lacked the necessary ***'locus standi'*** to appear at the hearing of the petition which was accordingly granted."

[31] Fatiaki CJ gave his opinion on the objection:

> "Furthermore non-disclosure of a petitioner's past or even present misdeeds is not a requirement of the **Act** **<u>or</u>** the **Rules** made thereunder **<u>or</u>** in the prescribed form of petition and verifying affidavit, and, given the wide inquisitorial powers of the Society I am disinclined to treat a petition under the Act as a document which imposes on a petitioner a positive duty of ***'uberrima fides'***. A ground of objection based on such an assumption without more is therefore, at best, of doubtful merit."

[32] In *Allan Charles Coulam* Misc. Proceedings No. of 1972, 9th June 1972 (unreported). Nimmo CJ found the petitioner to be fully qualified. His lordship also found that the Chief Justice held a wide discretion in the matter.

[33] Nimmo CJ eventually refused the application. The Society had objected on the basis that "the applicant should not be permitted to practice his profession in Fiji under an arrangement tantamount to his conducting here a branch office of the New Zealand firm in which he is a partner."

[34] Nimmo CJ concluded (at p.5):

> "I consider that it would be wrong in principle to admit a person to practice in Fiji on such a basis until such time, if ever, as there are mutually advantageous arrangements between New Zealand and Fiji. It would be detrimental to the interests of the citizens of Fiji who practise the profession of law here and unfair to subject the Fiji Law Society to a unilateral procedure of such a prejudicial nature."

[35] In *Michael Desmond Benefield* Misc. Proceedings No. 12 of 1972 (unreported) 21st July 1972 the Society objected to the admission on the ground the profession would be overcrowded. It also submitted that in the absence of reciprocity with New Zealand it would be detrimental to lawyers in Fiji to admit the petitioner.

[36] Nimmo CJ said (at pp.2-3):

> " In dealing with the grounds of objection raised by the Law Society, I think I should point out at the outset that although my discretion to refuse an application "upon cause shown" is a wide one, it must nevertheless be exercised within the context of the provisions of the Ordinance relating to admissions to practice. It would be wrong on my part in exercising my discretion to concern myself with extraneous considerations no matter how important they appear to be to the Council of the Law Society. The matters for me to take into consideration must be germane to the grounds envisaged by the Ordinance as those upon which an applicant may be refused admission notwithstanding that he has the necessary qualifications."

[37] The problem of overcrowding his lordship considered would need to be met with legislation if it were to be addressed and to have effect. The Society had passed a resolution:

> "That no person holding a New Zealand or Australian Passport be admitted as a member of the Fiji Law Society unless the Governments of Australia and New Zealand do extend to the members of the Fiji Law Society irrespective of the colour of their skin a reciprocal permission to enter and practice their profession in these countries."

[38] Nimmo CJ went on (p.3):

> "As Mr. Ramrakha readily conceded, the resolution has not the force of law and is in no way binding on me. If, however, it did contain material that in itself constituted cause upon which an admission may be refused, that cause could be shown independently of the resolution. I find no such material in it. The objection based on the resolution raises matters of a political nature outside the context of the revisions of the Ordinance relating to admissions to practice."

[39] His lordship (at p.4) distinguished this decision with his earlier one in *Coulam*:

> "In the instant case the position is very different; the applicant intends to reside and practise exclusively in Fiji, he has no interest in or right to receive a share of the profits of a firm of barristers and solicitors in another contrary and no person outside Fiji, who is not qualified to practice in Fiji, will derive any pecuniary benefit from the earnings of the Applicant in this country."

[40] *In Re Handley [1974] 20 Fiji LR* 58 Tuivaga Acting CJ had granted a petition for temporary admission. The President of the Society himself had appeared for the Society and raised again the question of lack of reciprocal rights, this time with the Bar of New South Wales. He urged that special circumstances must exist before a temporary admission could be granted. The Society considered that temporary admissions should be confined to three circumstances. They were constitutional cases, political cases, and those requiring special expertise of counsel such as in town planning or tax.

[41] The Chief Justice considered the applicant properly qualified in all relevant respects and concluded:

> "It seems to me that when those matters have been satisfied I would be perfectly justified as a matter of discretion notwithstanding any contrary advice from the Council of the Law Society to admit a petitioner on a temporary basis."

[42] His lordship was also loath to lay down any rules about it. To enforce reciprocity "would be tantamount to judicial legislation to which courts have not always been favourably disposed." Before leaving the case his lordship observed—"I am also as much concerned with the interests of the litigants in a case." This was of course only an application for temporary admission confined to a specific case. The petition was granted.

[43] In *Franz Georg Keil* a case referred to me without reference, a decision of Grant CJ on 8th January 1975 the Society first objected to the matter being heard in chambers. The Chief Justice pointed out that in hearing the petition he was not sitting as a court. His lordship said:

> "It is an independent jurisdiction which has nothing to do with a court, and there is no more reason for the Chief Justice to sit in court on an application for admission as a barrister and solicitor than for the Medical Council to do so on considering the registration of a medical practitioner under the Medical and Dental Practitioners Act 1971."

[44] As in the instant case, the papers filed by the Petitioner were on their face in order and unobjectionable. His lordship heard from the parties and also heard evidence from the Principal Immigration Officer. He then commented:

> "I do not propose to recite the addresses in full, but it has been suggested on behalf of the Objector and I quote: "Once an allegation is made – no matter how frivolous – your Lordship must adjudicate on it"; and that; "Once the petition is challenged the Petitioner's affidavit is not enough. He must go into the box and be cross-examined on it". It has also been suggested on behalf of the Objector, and I paraphrase, that the Chief Justice should set himself up as a general inquisitor and court of inquiry and investigate all or any matters raised by the Law Society or any objector, however far-reaching or far-fetched, including the activities of the immigration authorities. I have also been asked to read into the Legal Practitioners Ordinance non-existent provisions regarding localisation, citizenship and reciprocity, thereby unsurping the functions of the legislature."

[45] The exercise of the discretion of the Chief Justice necessitated a focused judicial act. Grant CJ dismissed the Society's submissions saying:

> "I consider these suggestions preposterous, incompatible with the discretion vested in the Chief Justice which must be exercised judicially and not fancifully, and contrary to the rules of natural justice, which require that the Chief Justice fairly listens to the contentions of all persons who are entitled to be represented on the hearing of the petition and must base his decision upon material which tends logically to show the existence or non-existence of facts relevant to the issue to be determined; and I underline for emphasis the world "relevant". The Legal Practitioners Ordinance is a self-contained statute, is to be construed according to its context (Ex antecedentibus et consequentibus fit optima interpretatio), and I shall give effect to it as it stands."

[46] His lordship said immigration matters were for the Immigration authorities to raise and personal grievances between practitioners had no place in such applications.

[47] Finally his lordship said:

> " "Enrolment" is not synonymous with admission (vide the Fiji Court of Appeal in Civil Appeal No. 24 of 1972) and likewise "practice" is not synonymous with admission. The rights and restrictions to practice are governed by section 13 of the Legal Practitioners Ordinance with which the Chief Justice is not concerned on an application for admission."

Recusal application

[48] I have traversed the procedure and criteria of admission petitions in order to ascertain whether the objection raises a relevant ground. I await further argument on the merits of the objection itself. But at this stage I consider the appointment of the petitioner to a position in the public service to be irrelevant to the question of whether he is a fit and proper person for admission as a legal practitioner.

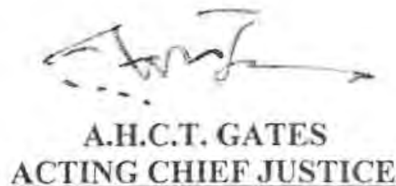
[49] Whether the petitioner retains his position as Solicitor-General following court proceedings is equally irrelevant to the question of admission. There has been in the notice of

objection no suggestion upon the petitioner's part that he has been guilty of misconduct or impropriety.

[50] Though the discretion given to the persona designata is a wide one, I believe Grant CJ was correct in the distinction he drew between admission and other matters with which he, as Chief Justice controlling admissions, was not concerned. It follows that I must respectfully disagree with Nimmo CJ when he considered relevant in *Coulam* whether the applicant was to open a branch office in Suva for a New Zealand firm of solicitors. Branch offices are professional matters which are the concern of the Society when issuing practicing certificates and in the Society's role of protecting the public under the Branch Office Rules. The Chief Justice is not concerned with such policing matters of professional practice. The legislature gave that function to the Society alone.

[51] The wide discretion given by the legislature to the Chief Justice in his admissions role relates to admission not practice, to suitability for admission not suitability for appointment to an office of State. This would mean that matters to do with Branch office rules, citizenship, immigration status, reciprocity between overseas Bars and the Fiji Bar, overcrowding of the profession, politics, religion, personal grievances or appointments to specific posts or positions are all irrelevant considerations in deciding petitions for admission.

[52] Whilst the Chief Justice hearing admission petitions is not a court the admission proceedings must be conducted fairly. But the imperative for recusal is not demanded here since the objection relates to an irrelevant consideration on the matter of admission. The application is declined. I will now hear submissions on the notice of objection in which the Society must show cause.



A.H.C.T. GATES
ACTING CHIEF JUSTICE

Solicitors for the Objector : Fiji Law Society, Suva
Solicitors for the Petitioner : Office of the Attorney-General, Suva

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