

EG4A: Burns Judgment

CARE3060

IN THE HIGH COURT OF JUSTICE IN NORTHERN IRELAND

QUEEN'S BENCH DIVISION

IN THE MATTER OF GEORGE BURNS

and

IN THE MATTER OF THE SOLICITORS (NORTHERN IRELAND)
ORDER 1976

CARSWELL LCJ

This is an appeal from a decision of the Law Society of Northern Ireland (the Society) made on 2 September 1998 under Article 6 of the Solicitors (Northern Ireland) Order 1976, as substituted by Article 9 of the Solicitors (Amendment) (Northern Ireland) Order 1989, whereby the Society acting by its Council declined to reverse the refusal by the Education Committee of the Society of the appellant's application for registration as a student.

The appellant has brought this appeal before me under the substituted Article 6(4) of the 1976 Order. In my recent decision in *Re C H* (1999, unreported) I discussed the statutory provisions relating to such appeals and the approach which I should take to deciding them. I confirm the views which I expressed in that case, and I need not repeat them in this judgment.

The registration of persons as students is governed by the Solicitors Admission and Training Regulations 1988, made under the authority of the substituted Article 6 of the 1976 Order. By Regulation 5 a person who intends to seek admission as a solicitor must apply to the Society for registration as a student. Under Regulation 8 registration is conditional upon the registered student satisfying one of the requirements set out in

paragraphs (1) to (5) of the Regulation. The most common route of entry is under paragraph (1), by possession of an acceptable law degree and being offered a place in the Institute of Professional Legal Studies. Paragraph (2) makes provision for holders of degrees in other disciplines, who again must be offered a place in the Institute. Paragraphs (3) and (4) make provision for law clerks and persons admitted or called in other jurisdictions, neither of which applies to the appellant. Regulation 8(5) then confers upon the Committee an overriding discretion to allow registration if the applicant -

"has satisfied the Committee that, being a person of not less than 30 years of age, he has acquired such special qualifications and/or experience as to render him suitable to be accepted as a registered student."

Regulation 18 permits the Council of the Society to dispense with requirements of the Regulations, in the following terms:

"Without prejudice to any of the powers contained in these Regulations, the Council may, in any case (including a case of non-compliance with the Regulations) in which it considers that the circumstances justify such a course, relax or dispense with any particular requirement of these Regulations on such terms as they may deem appropriate".

The appellant is 43 years of age. He is married, with four children, and presently lives with his family in Belfast, where his wife is employed. He is a native of Northern Ireland, but taught for some years in England, where he obtained teaching qualifications, a Bachelor of Education degree and an Open University Bachelor of Arts degree. He subsequently commenced to study law, with the object of qualifying eventually to practise in Northern Ireland as a solicitor. He attended De Montfort University in Leicester, where he studied a number of core legal subjects, and passed the Common Professional Examination. He then pursued a part-time course at Nottingham Trent University Law School and was awarded the Diploma in Legal Practice.

These qualifications entitled him to be accepted as a trainee solicitor in England. Under the English regulations he would be entitled to be admitted as a solicitor after completion of a two-year period of training. If so admitted, he would then be entitled under reciprocal arrangements to be admitted as a solicitor in Northern Ireland.

Instead of becoming a trainee with a firm of solicitors in England, the appellant took up employment in August 1997 as a law clerk with Messrs McClure & Company, a well-known Belfast firm of solicitors, who express themselves very satisfied with his work. He applied to the Education Committee of the Society in April 1998 for admission as a student, asking it to permit him to complete two years' training in Northern Ireland and then to admit him as a solicitor. The appellant appears to have obtained an indication from the Law Society in England that it would look favourably on an application to allow a year spent with McClure & Company to count as one year of his training period (in February 1999 the Law Society did grant an application in these terms), which he used in support of his application. He pointed out that he could return to England and complete his training, become admitted and come back to Northern Ireland, where he would be entitled to admission as a solicitor. If his application were allowed he would have more experience of Northern Ireland law and practice and would be rather better qualified to practise in this jurisdiction.

The Education Committee at its meeting held on 23 April 1998 refused the appellant's application, and in the Society's letter of 14 May informing him of this decision he was told that "This Society, in common with the other UK and Irish Law Societies, does not allow split training." The appellant wished to appeal to the Council of the Society and when asked by the Education Committee to specify which of the Regulations he wished to have relaxed, he referred to Regulation 8(5) and Regulation 8(3) - the latter is clearly an

error for Regulation 8(2). He submitted that he could be regarded as suitable to be accepted as registered student under Regulation 8(5), and in the alternative that the Council could waive the requirement in Regulation 8(2) of acceptance into the Institute of Professional Legal Studies. At its meeting on 2 September 1998 the Council refused to grant the application. The Society informed the appellant by letter dated 9 September 1998 that –

"the Council reached the conclusion that it would not be appropriate to exercise the discretion available to the Council under Regulation 18 of the 1988 Regulations, whether in respect of the requirements imposed by Regulation 8(2) or Regulation 8(5)."

The Council was exercising different functions in considering the matter under the two provisions. The appellant could not bring himself within Regulation 8(2), not having been offered a place at the Institute, but it would in principle be open to the Council to dispense with that requirement. The Council has not seen fit to do so, and in view of the importance which is attached to students following an Institute course – which Professor Bromley recommended should be an essential qualification – I would not differ from them in their conclusion.

When it considered the application under Regulation 8(5), the Council was not concerned with Regulation 18, since, apart from the age qualification, there is no specific requirement with which it could be asked to dispense. It was in effect acting as an appellate capacity, reviewing the decision of the Education Committee, in order to form its own judgment whether the appellant had acquired such special qualifications and/or experience as to render him suitable to be accepted as a registered student. The Society may under the substituted Article 6(3)(b) of the 1976 Order review any decision taken by the Society with respect to a person seeking to be admitted as a student under the 1988 Regulations. I consider that Mr Simpson was correct in submitting that this provision gives power to the

Society acting through its Council to review decisions taken by the Society's Education Committee.

The strength of the appellant's case is that if he went to England to complete his period of training, he could be admitted there and seek automatic admission in Northern Ireland under the reciprocal arrangements now operating, where as if he stayed in Belfast and completed another period as a law clerk he would obtain more relevant experience and training. That may be so, but the Society had to consider his application for admission as a student in the light of the policy which it has followed and the effect which allowing it might have upon other cases.

The Validation Committee of the Council of Legal Education (Northern Ireland) made a recommendation as recently as 21 November 1997 in relation to the Common Professional Examination and similar conversion courses:

"As the Common Professional Examination and similar conversion courses are conducted over only one year and provide tuition in only the six traditional core subjects, the Committee recommends that the Council of Legal Education (Northern Ireland) should continue not to recognise this qualification and should require candidates who have taken this course to take further studies in the Faculty of Law (the BA in Legal Science) before being eligible for admission to the Institute."

As Mr Donnelly, the Chairman of the Society's Education Committee, stated in paragraph 9 of his affidavit sworn on 28 July 1999, any decision of the Committee would be in line with that recommendation, and it would probably require the appellant, if he were admitted as a student, to complete the professional vocational course at the Institute.

The major ground upon which the society relied was that set out in paragraph 11 of Mr Donnelly's affidavit of 28 July 1999:

"While the Law Societies of England and Wales, Northern Ireland and Ireland allow for mutual recognition of qualified

Solicitors none of the Law Societies recognise the Student of another Society. The effect of this is that as regards England and Wales and Northern Ireland part qualified Students cannot move between jurisdictions to complete their training.

This has been the position for many years. The matter was last reviewed by the Law Societies of England, Wales, Northern Ireland and Ireland in 1994 and no change was made."

A reason which weighs heavily with the Society is that if persons such as the appellant were to be admitted as students, they could follow courses in legal education in England or elsewhere, commence their training there, come to Northern Ireland to complete it, then seek admission as solicitors. In this way they would not have to attend the Institute, by reason of which their legal education might not be of the nature or standard which the Society regards as necessary for solicitors to practise in this jurisdiction. It is true to say that such persons could complete their training in England and become admitted there, whereupon they would be entitled without more to be admitted in Northern Ireland. Such reciprocity was felt to be necessary in order to comply with European legislation, but the Society feels strongly that it should not allow further inroads into the requirement that solicitors should obtain recognised legal qualifications and follow the full-time vocational course at the Institute before being admitted to practice in this jurisdiction.

As I stated in *Re C H*, I see considerable merit in this policy, and the Society is in my opinion correct in insisting with some strictness on the requirements of Regulation 8(2) being satisfied and in being slow to accept special cases under the powers contained in Regulation 8(5). I consider that it should require a truly exceptional case to be established before it should allow registration under Regulation 8(5). Although the appellant's commitment to his chosen profession is manifest, and it will undoubtedly involve expense and the hardship of separation from his family for him to complete his training in England,

I am unable to differ from the conclusion reached by the Society. In my judgment it was correct in deciding that it should not accept his application for registration as a student.

I accordingly must dismiss the appeal.