

LEGAL PROFESSION

Admission as *Syarie* lawyer – Qualifications – Non-Muslim Advocate and Solicitor – Whether a non-Muslim Advocate and Solicitor may be admitted as *Syarie* lawyer – Administration of Islamic Law (Federal Territories) Act 1993, sections 59(1) & (2) – Peguam *Syarie* Rules 1993, rule 10 – Federal Constitution, articles 5, 8, and 10

Majlis Agama Islam Wilayah Persekutuan v Victoria Jayaseele Martin

[2016] 1 LNS 131, Federal Court

Facts The appellant, a body incorporated under the Administration of Islamic Law (Federal Territories) Act 1993 (“the Act”), was empowered to admit *Syarie* lawyers. The respondent was a non-Muslim Advocate and Solicitor of the High Court of Malaya holding a Diploma in Syariah Law and Practice, who had applied to the appellant for admission as a *Syarie* lawyer. Her application was rejected on the ground that she was not a Muslim, a condition provided in rule 10 of the Peguam *Syarie* Rules 1993 (“the Rules”). She, therefore, sought judicial review at the High Court and contended that rule 10 was *ultra vires* the Act and that it contravened articles 5¹, 8², and 10(1)(c)³ of the Federal Constitution. The judicial review application was dismissed. Upon appeal, the Court of Appeal overruled the decision of the High Court. Aggrieved, the appellant appealed to the Federal Court.

Issues The issues for consideration were whether the condition that only a Muslim may practise as a *Syarie* lawyer imposed in rule 10 is *ultra vires* section 59(1) of the Act and whether it contravened articles 5, 8 and 10(1)(c) of the Federal Constitution.

Held In allowing the appeal, it was held that since the application of section 59(1) was read subject to section 59(2) of the Act and the word “qualifications” in section 59(2) of the Act was deemed wide enough, rule 10 of the Rules mandating that only Muslims may practise as a *Syarie* lawyer is not *ultra vires* the Act. It was also held that Rule 10 of the Rules did not contravene articles 5, 8, and 10(1)(c) of the Federal Constitution as the respondent was not deprived to practise as an Advocate and Solicitor in the Civil Court, the condition was deemed necessary in achieving the object of the Act and that the respondent could not force her application to be accepted. Further it was held that a *Syarie* lawyer who professed the religion of Islam was important to achieve the object of the Act.

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¹ Right to life

² Right to equality

³ Freedom of association