



## THE HIGH COURT OF NEW ZEALAND TE KŌTI MATUA O AOTEAROA

*02 July 2021*

### **MEDIA RELEASE – FOR IMMEDIATE PUBLICATION**

*Jones & Anor v Teaching Council of New Zealand [2021] NZHC 1581*

**This summary is provided to assist in the understanding of the Court’s judgment. It does not comprise part of the reasons for that judgment. The full judgment with reasons is the only authoritative document. The full text of the judgment and reasons can be found at [www.courtsofnz.govt.nz](http://www.courtsofnz.govt.nz).**

#### *Summary*

Mr Jones (a teacher), and the New Zealand Post Primary Teachers’ Association | Te Wehengarua applied for a judicial review of three Teaching Council decisions, relating to a change from triennial to annual certification, increased fees for teachers’ practising certificates, and agreeing to a proposal to set up a Leadership Centre. The respondent (the Teaching Council) opposed the application. The application was brought on six grounds, and five of those grounds succeeded. Therefore, the fees and annual certification decisions were quashed *ab initio*.

#### *Background*

On 14 May 2020, the Teaching Council announced decisions that practising certificates for teachers would be valid for one year rather than three years, and that certification for all teachers trained in New Zealand would incur an annual fee of \$157 with various categories, including overseas-trained applicants, provisionally certified applicants, and applicants lodging renewal applications after the expiry of their current practising certificate, incurring higher or additional fees. Furthermore, on or about 6 March 2020, the Council decided to accept a

proposal to establish a professional development initiative known as the Leadership Centre (Leadership Centre Decision).

Importantly, the relevant legislation in force at the time of the impugned decisions was the Education Act 1989. The Act required that teachers employed in New Zealand needed to be both registered and the holders of a current practising certificate, and currently, there are some 140,000 registered teachers and some 105,000 holders of practising certificates.

### *Grounds of review*

The grounds of review were as follows:

- Ground One: That the Teaching Council failed to consult before imposing annual certification;
- Ground Two: That the Teaching Council failed to properly consider the merits of annual certification;
- Grounds Three and Four: That the Teaching Council misconstrued and misapplied key elements of the statutory regime relating to payment by instalment and the default three-year certification period;
- Ground Five: That the Teaching Council's decision to set a fee for issuing a practising certificate amounted to an unlawful tax; and
- Ground Six: That the Teaching Council failed to provide adequate information and options when consulting in relation to the practising certificate fee.

### *Result*

The applicants succeeded on all grounds but ground six. On grounds one and two, the Court found that the Teaching Council failed to give teachers the opportunity for meaningful input into the certification decision, and also did not properly consider the merits of annual certification, particularly by taking the position that payment could not legally be made through annual instalments

On grounds three and four, the Court found that the Teaching Council's mistaken view as to the merits of annual certification amounted to an error in law, as it denied itself the opportunity of receiving feedback on the option of continuing with triennial certification but paying fees

on an annual instalment basis. The Council also misconstrued elements of the statutory regime which empowered it to set a period of validity for practising certificates.

On ground five, the Teaching Council's decision to impose an omnibus, or bundled fee to cover other expenses was found to be *ultra vires* the Act, and amounting to an unlawful tax.

Finally, on ground six, the Court found that in the absence of any request for further information or assertion of inadequacies in the information provided, it could not be said that fairness required more of the Teaching Council in terms of providing information in relation to the practising certificate fee. Furthermore, the challenge to the Leadership Centre decision was not made out as a ground of review, as it appeared to be a situation where the government was prepared to separately fund a function that it wished the Teaching Council to undertake as an exception to its policy that the Teaching Council should be financially self-sufficient.

In terms of relief, the Court found that despite the applicants' suggestion that the quashing of the decision could be suspended by six months, its finding under ground four that the Teaching Council did not have a lawful power to set a blanket one-year expiry period for new graduates, if suspended for six months, would effectively amount to a judicial amendment to the Act, which was not something the Court could do. Therefore, the Court ordered that the fees and annual certification decisions were to be quashed *ab initio*.

Contact: Liz Kennedy – Senior Judicial Communications Advisor  
Phone (04) 466 3439  
Cell phone 027 369 6701 Email [liz.kennedy@justice.govt.nz](mailto:liz.kennedy@justice.govt.nz)