IN THE SUPREME COURT OF NEW ZEALAND

I TE KŌTI MANA NUI O AOTEAROA

SC 40/2022
[2022] NZSC 78

BETWEEN	TIMOTHY GRAEME LITTLE Applicant
AND	NEW ZEALAND LAW SOCIETY Respondent

Court: O'Regan, Ellen France and Williams JJ

Counsel: G F Little and A R Nicholls for Applicant
P N Collins for Respondent

Judgment: 23 June 2022

JUDGMENT OF THE COURT

A The application for leave to appeal is dismissed.

B The applicant must pay the respondent costs of $2,500.

REASONS

Background

[1] The applicant practised law in New South Wales as a solicitor (from 1999) and as a barrister (from 2011 until his departure to the United Kingdom in 2015). In 2012, he applied under the Trans-Tasman Mutual Recognition Act 1997 (TTMRA) to be admitted to the roll of barristers and solicitors of the High Court of New Zealand. He was duly admitted in August of that year, but did not, at the same time, seek or obtain a practising certificate to practise on his own account from The New Zealand Law Society | Te Kāhui Ture o Aotearoa (NZLS).

[2] In 2020, he moved to New Zealand and applied to NZLS for a practising certificate to practise on his own account as a barrister. By that stage, his New South Wales practising certificate had lapsed. NZLS refused the application because Mr Little no longer held a current practising certificate in an Australian state as required by the TTMRA.

[3] Mr Little sought judicial review of that decision.[1] He argued essentially that, properly understood, the combined effect of the Lawyers and Conveyancers Act 2006 (LCA) and the TTMRA was that once he had been admitted in New Zealand, he was entitled without further action on his part to a New Zealand practising certificate. This is for two reasons: first, in 2012 he confirmed by notice of application to the Registrar of the High Court in the form prescribed by s 19 of the TTMRA, that he held a relevant Australian practising certificate; and second, because reg 2(4) of the Trans-Tasman Mutual Recognition Admission Regulations 2008 directed the Registrar of the High Court to send a duplicate of that notice to NZLS.[2] In fact, NZLS was sent formal notice of Mr Little's entry onto the roll and eligibility for a practising certificate in 2012. Indeed, NZLS acknowledged his name was entered in the NZLS database and allocated a unique identification number. On this basis Mr Little argued he was entitled to a practising certificate then and there is no reason to refuse him one now.

[4] The Courts below did not accept that analysis. They held that the LCA and TTMRA requires all applicants to complete two steps in order to practise law in New Zealand: to be admitted to the roll of barristers and solicitors of the High Court of New Zealand; and (separately) to obtain from NZLS, on payment of the necessary fee, a practising certificate. In terms of the right to practice, the reciprocal benefits of the TTMRA only accrue to those who hold a current Australian practising certificate at the time the second step is taken. Mr Little did not complete the second step in 2012, though he could have if he wished to. By the time he did, he no longer held a relevant Australian practising certificate, so did not qualify for the benefits of the TTMRA. The Court of Appeal noted that, although the Registrar of the High Court forwarded Mr Little's s 19 notice to the NZLS as required by reg 2(4), this was not an

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1 *Little v New Zealand Law Society* [2021] NZHC 929 (Powell J).

2 *Little v New Zealand Law Society* [2022] NZCA 121 (Kós P, Brown and Goddard JJ) [CA judgment]. Mr Little did not raise reg 2(4) in his arguments until the appeal to the Court of Appeal.

application to NZLS in form, and did not come from Mr Little. Further it did not contain all relevant information, or the required fees and levies. The Court noted that it is not uncommon for qualified lawyers (including those normally resident in Australia) to seek admission only in New Zealand and to obtain a practising certificate later if and when they begin legal practice in this country — this to avoid incurring unnecessary annual fees and levies.

Submissions

[5] Mr Little now seeks leave to reprise his argument in this Court. The thrust of his argument is encapsulated in these propositions:

(a) registration in New Zealand is not a two-step process;

(b) the duplicate s19 notice sent by the Registrar of the High Court to NZLS served as notice to that authority for the purposes of registration under the TTRMA and is a purely administrative function; and

(c) the steps taken in August 2012 (including that of the Registrar of the High Court in sending a duplicate notice to NZLS) meant that the applicant was registered in the occupation from that date. As such, he was entitled to obtain a practising certificate as a barrister on his own account any time after notice was served in 2012 (within the 10-year period prescribed by both LCA and TTMRA).

[6] The applicant submits that the these matters raise questions of general or public importance and commercial significance,[3] because the case is "in an area where there is already public discussion of the administration of the TTMRA by registration authorities".

[7] NZLS opposes on the basis that the decisions below are plainly correct and none of the requirements of s 74 of the Senior Courts Act 2016 are satisfied.

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3 Senior Courts Act 2016, s 74(2)(a).

[8] By memorandum of 27 May 2022 Mr Little sought to reply to matters raised in NZLS' submissions. The first matter related to Mr Little's reliance (contrary, he says, to the submissions of NZLS) on the Registrar's provision to NZLS of the duplicate notice. This seems to be a misreading of those submissions at 2.4(a). The second matter relates to his (extant) application for an employed barrister practising certificate — a matter addressed by the Court of Appeal at the end of its judgment.[4] It is unnecessary to comment on this matter. It is not relevant to the application.

Analysis

[9] We accept that the interpretation of the TTMRA may in some circumstances give rise to questions of general or public importance, but we are not satisfied that this is such a case.[5] The Courts below interpreted and applied the words of the legislation in an orthodox way. The TTMRA proceeds on the basis a person in Mr Little's position would be entitled to be registered in New Zealand as a lawyer after giving notice to NZLS. The meaning of registration in s 4 of the TTMRA contemplates that more than one form of authorisation may be required and, if so, s 4(2) provides that "registration" includes each form of authorisation. The TTMRA also contemplates an application being made in respect of each of the two forms of authorisation. These two forms of authorisation must go to the relevant local registration authority, provided for in s 2.[6] The merits of the arguments advanced by the applicant are not such that we see a real risk that a substantial miscarriage may occur if the appeal is not heard.[7]

[10] The application for leave to appeal is dismissed.

[11] The applicant must pay the respondent costs of $2,500.

Solicitors:
Nicholls Law Ltd, Auckland for Applicant
New Zealand Law Society, Wellington for Respondent

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4 CA judgment, above n 2, at [78].
5 Senior Courts Act, s 74(2)(a).
6 See Trans-Tasman Mutual Recognition Act 1997, ss 2(1)(i) and (ii), 15 and 19; and Lawyers and Conveyancers Act 2006, s 39.
7 Senior Courts Act, s 74(2)(b).