

**IN THE DISTRICT COURT
AT WELLINGTON**

**CIV-2015-085-000670
[2016] NZDC 14809**

IN THE MATTER OF An appeal under Section 106 of the Health
Practitioners Competence Assurance Act
2003 (the Act)

BETWEEN CLAUDIA GROTT ZANICOTTI
Appellant

AND MEDICAL COUNCIL OF NEW
ZEALAND
Respondent

Hearing: 15 July 2016

Appearances: Ms L McKeown for Appellant
Ms H Brown for Respondent

Judgment: 29 August 2016

RESERVED JUDGMENT OF JUDGE C N TUOHY

Introduction

[1] This is an appeal against a decision of the Medical Council (the Council) dated 20 August 2015 which declined Dr Grott Zanicotti's application for registration within a vocational scope of practice as a psychiatrist.

Background

[2] Dr Grott Zanicotti completed her medical degree, an MD from the Pontifical Catholic University of Parana in Curitiba, Brazil at the end of 2007. In 2012, she was licensed as a specialist in psychiatry by the Brazilian Medical Association. She moved to New Zealand in 2011 and obtained a Master of Medical Sciences degree from the University of Otago in 2012.

[3] In June 2012, Dr Grott Zanicotti applied to the Medical Council to be registered as a psychiatrist in New Zealand. Her application was declined on 19 June 2013. The reason the application was declined was because the Council was not satisfied that her qualifications, training and experience were equivalent to, or as satisfactory as, those required to obtain a Fellowship of the Royal Australian and New Zealand College of Psychiatrists (FRANZCP), the qualification required for a New Zealand vocationally-trained practitioner. Specific inadequacies in her training and experience were identified in the Council's decision.

[4] In October 2014, Dr Grott Zanicotti submitted a second application to the Council for registration in New Zealand as a psychiatrist. It is the decision on this application which is the subject of this appeal.

[5] Her post-graduate training and work experience both in Brazil and in New Zealand up to that time is briefly summarised below:

- In 2008 and 2009, after completing her MD, she worked on weekends in 12 or 24 hour shifts for a total of 564 hours at an accident and emergency clinic in Pontal do Parana.
- Between 2008 and her move to New Zealand in early 2011 she completed a specialist training programme through the Clinical Hospital of the Federal University of Parana. This consisted of six semesters of six months each on a 0.5 FTE (full time equivalent) basis. This programme included both clinical and non-clinical elements.
- Throughout the duration of her specialist training (which was mainly undertaken on weekday mornings but also included night and weekend shifts), Dr Grott Zanicotti was employed at the Dr Helio Rotenberg Clinic which, although a substantial and well regarded hospital, was not then an accredited training institution. Dr Grott Zanicotti's hours of work at the Clinic were virtually FTE, involving attendance at the day clinic in the afternoons and in the evenings and sometimes overnight in the clinic's psychiatric emergency department.

- From March 2012 to December 2012, Dr Grott Zanicotti was employed at the University of Otago as a professional practice fellow in psychiatry. This role involved lecturing, teaching and research, but did not involve a clinical element.
- Since then Dr Grott Zanicotti has been employed as a lecturer and research fellow in psychiatry at the University of Otago. Starting in October 2014, she has undertaken a voluntary clinical observership in an acute psychiatric ward for initially 16 hours a week, reduced to 8 hours from February 2015 as a result of increased teaching hours at the University.

The Council's Decision

[6] The Council has authorised Vocational Education and Advisory Bodies (VEABs) to act as its agents to assess the eligibility of applicants for vocational registration who are international medical graduate specialists, holding a relevant (but not New Zealand or Australian) post graduate medical qualification. These are generally the colleges responsible for assessing and awarding the qualifications required for vocational registration of New Zealand trained specialists, in the case of psychiatry, the Royal Australian and New Zealand College of Psychiatrists (the RANZCP).

[7] In accordance with that practice, the Council sought advice about Dr Grott Zanicotti's application from the RANZCP which appointed two of its members as a VEAB panel. The VEAB provided its advice to the Council on the standard form accompanied by a detailed report dated 27 May 2015. That advice was that Dr Grott Zanicotti's qualifications, training and experience were not considered to be equivalent to those of a doctor who is registered in the same vocational scope of practice and holding the prescribed New Zealand/Australian post-graduate medical qualification.

[8] On 3 June 2015, the Council wrote to Dr Grott Zanicotti advising her that it proposed under s 20 of the Act to decline her application on the basis of the advice of

the RANZCP that she did not hold qualifications, training and experience equivalent to, or as satisfactory as, the prescribed Fellowship qualification for eligibility for provisional vocational registration.

[9] The Council's letter included specific points noted by the VEAB as follows:

- You completed 874 hours of clinical experience in general psychiatry as a basic trainee. New Zealand trainees are required to complete 12 months (equating to 1728 hours) of clinical experience.
- New Zealand trainees must complete 6 months (864 hours) of child and adolescent psychiatry experience. You completed 550 hours.
- Your consultant-liaison experience is not equivalent.
- Your training experience with patients with substance addiction, and elderly patients exceeds the NZ training requirement.
- Your psychotherapy training experience is considered nearly equivalent.
- Your training in ECT at Middlemore hospital can be considered equivalent to that of a local trainee.
- Your experience since achieving specialist registration in Brazil has not included any autonomous clinical responsibility for patients.
- Your experience since qualifying as a psychiatrist does not make up for the deficits in your training.

[10] Dr Grott Zanicotti provided a detailed written response addressing the VEAB advice and her response was in turn addressed by the VEAB which maintained its original position. Dr Grott Zanicotti provided a further submission for the Council's meeting on 12 August at which a final decision on her application was to be made by the Council.

[11] At that meeting, which Dr Grott Zanicotti attended in person, the Council resolved to decline her application. The decision was conveyed to her in a letter dated 20 August 2015. The reasons for the Council’s decision were set out:

- You have no experience of working as a clinical psychiatrist after gaining your specialist qualification.
- You have been out of psychiatric medical practice for nearly 5 years.
- You have been unable to prescribe or been able to practise at any level in psychiatry in New Zealand for a period for more than 4 years.
- The RANZCP was unable to provide confirmation that your qualifications, training and experience from Brazil should be considered equivalent to, or as satisfactory as the FRANZCP.
- Council was consequently not persuaded that you would be able to practise safely in New Zealand in the provisional vocational scope of psychiatry.

The Legal Framework - Registration

[12] Section 15(1) of the Act provides:

15 Requirements for registration of practitioners

(1) The authority appointed in respect of a health profession¹ may register an applicant as a health practitioner permitted to practise within a scope of practice if the applicant—

- (a) is fit for registration in accordance with section 16; and
- (b) has the qualifications that are prescribed, under section 12, for that scope of practice; and
- (c) is competent to practise within that scope of practice.

[13] In *Manglicmot v Nursing Council of New Zealand*², Broadmore DCJ held that the word “*may*” in s 15(1) is used in a permissive sense so that an applicant who

¹ The Council is the appointed authority in respect of the medical profession.

fulfils the requirements is entitled to registration. I respectfully agree with that conclusion for the reasons he expressed so clearly in his decision.

[14] Section 15(2) provides:

(2) An authority may, for the purposes of subsection (1)(b), treat any overseas qualification as a prescribed qualification if, in the opinion of the authority, that qualification is equivalent to, or as satisfactory as, a prescribed qualification

[15] Under s 12(1), the Council must, by notice published in the Gazette, prescribe the qualification or qualifications for every scope of practice within its authority. In respect of specialties like psychiatry there are two applicable scopes of practice, vocational and provisional vocational. The prescribed qualification for vocational registration in psychiatry is a FRANZCP. The route to vocational registration available to an applicant who has earned their medical qualifications overseas (and thus unlikely to have acquired a FRANZCP) is by first obtaining provisional vocational registration.

[16] The prescribed qualification for provisional vocational registration in psychiatry is set out in a notice in the Gazette of 21 November 2014:

Provisional Vocational scope of practice

A medical practitioner must hold a primary medical degree from a university medical school approved from time to time and published on the Council's website. The medical practitioner must also hold an overseas postgraduate medical qualification and this medical qualification must have been awarded at the end of a period of specialist training and be in a recognised vocational scope, approved by the Council. The medical practitioner must have been assessed as:

1. having qualifications, training and experience established to the Council's satisfaction to be equivalent to, or as satisfactory as, that of a New Zealand vocationally-trained medical practitioner registered in the same vocational scope of practice; and
2. being able to achieve registration in a vocational scope of practice within no more than 18 months (full-time equivalent) of obtaining registration in a provisional vocational scope of practice.

² (District Court Wellington, CIV-2010-085-000053, 28 July 2010)

[17] There is no dispute that Dr Grott Zanicotti holds the required primary medical degree and overseas post graduate medical qualification. What is in dispute is whether she has the qualifications, training and experience equivalent to, or as satisfactory as, that of a registered New Zealand vocationally trained specialist, ie. a FRANZCP.

[18] The Court was provided with two sources setting out the requirements for obtaining the FRANZCP. One is a webpage from the Council's website³:

To obtain the FRANZCP, the trainee completes 6 years of training:

- at least 1 year of general medical experience
- a minimum of 3 years basic psychiatry training
 - 2 case histories and written and clinical examinations must be completed at the end of basic psychiatric training
- a minimum of 2 years advanced psychiatry training
 - summative assessments, a review of training documentation and reports, a research project and a final report must be completed by the end of advanced psychiatry training
- in the 5 years of training, the applicant must complete rotations in adult general psychiatry, child/adolescent psychiatry, consultation/liaison, rural psychiatry, indigenous mental health, psychiatry of old age, additional, ECT and psychotherapy.
- FRANZC awarded on satisfactory completion of examination and training requirements
- Advanced certificates awarded on satisfactory completion of further subspecialty training
- Participation required in the RANZCP continuing professional development programme.

[19] The other is taken from the VEAB report where there is a section in the standard form headed "*Description of the New Zealand/Australasian standard (a doctor who is registered in the same vocational scope of practice and holds the prescribed New Zealand/Australasian postgraduate medical qualification)*":

³ www.mcnz.org.nz/get-registered/scopes_of_practice/vocational-registration/types_of_vocational-scope/psychiatry

RANZCP Fellowship involves a minimum of 5 years of supervised training in approved positions. This comprises 3 years of Basic Training followed by 2 years of Advanced Training. Before transitioning to Advanced Training, trainees must pass external examinations including written and clinical components, the latter involving an observed interview with a live patient.

During Basic training, trainees are required to complete mandatory rotations in general and subspecialty areas. These include at least 12 months (full time) in general psychiatry, at least 6 months of which is in acute general adult psychiatry. Mandatory subspecialty experiences include a minimum of 6 months in child and adolescent psychiatry and 6 months in consultation-liaison psychiatry, with some experience in old age (managing at least 10 patients) and addictions (managing at least 9 patients) psychiatry also being required. There is a requirement for supervised experience in psychotherapy, including at least 40 sessions with one patient treated with psychodynamic psychotherapy over at least 6 months. Trainees are also required to participate in the delivery of at least 10 ECT treatments.

Advanced Training involves a further 2 years of supervised experience with an appropriately increased level of clinical responsibility and an emphasis on transitioning to a consultant, such as developing skills in leadership and administration.

This is a more detailed prescription than that given on the Council's website.

The Legal Principles – Appeals

[20] This appeal is brought pursuant to s 106(1)(a) of the Act which gives a general right of appeal to the District Court against decisions of the Council. Under s 109(2) the appeal is by way of rehearing. There is no dispute that the principles set out in *Austin, Nichols & Co Inc v Stichting Lodestar*⁴ are applicable. This Court is required to come to its own view on the merits of the case. That is so even where the case involves an assessment of fact and degree and entails a value judgment. The weight which the Court gives to the decision of the tribunal appealed from is a matter for its judgment. Nevertheless the appellant bears the onus of satisfying the Court that it should differ from the decision under appeal. It is only if this Court considers that the decision is wrong that it is justified in interfering with it.

[21] Under s 109(3) of the Act, the Court may confirm, reverse or modify the Council's decision and make any other decision or order that the Council could have made.

⁴ [2007] NZSC 103

Dr Grott Zanicotti's Case

[22] In her cogent and detailed submissions, Ms McKeown identified three specific grounds of appeal:

1. The Council failed to adequately take into account Dr Grott Zanicotti's qualifications, training and experience in both Brazil and New Zealand.
2. The Council made findings adverse to Dr Grott Zanicotti and took into account matters which were not open to it, plainly wrong and/or irrelevant.
3. The Council failed to adequately take into account and/or misapplied the principles of the Act, particularly ss 3, 13 and 15.

[23] In relation to the first ground, she submitted that the VEAB reports on which the Council relied focussed on whether Dr Grott Zanicotti's training was equivalent to that required for a FRANZCP rather than considering whether her "*qualifications, training and experience*" in combination are either equivalent to **or** as satisfactory as those required for a Fellowship. In other words, she submitted that a lack of equivalence in training might be counter-balanced by extensive experience so that, looked at as a whole, the doctor's qualifications, training and experience may be as satisfactory as those of a Fellow.

[24] She further submitted that her experience and training at the Dr Helio Rotenberg Clinic were given no or insufficient weight simply because it was not a formally accredited training institution and that her clinical, academic and research experience in New Zealand were also undervalued.

[25] The second ground of appeal was directed to the reasons for declining this application which related to Dr Grott Zanicotti's lack of clinical experience in psychiatric medical practice since her arrival in New Zealand and since her acquisition of her Brazilian specialist qualification.

[26] Ms McKeown made the following specific points about this ground:

- The stated reason “*no experience of working as a clinical psychiatrist after gaining your specialist qualification*” is not recorded in that way in the minutes of the Council meeting at which the decision was made. Rather the minutes stated the reason as “*Dr Grott Zanicotti has never practised as a consultant*”. In any event, nor do New Zealand qualified applicants practise as consultants (i.e. specialists) before they obtain vocational registration. Further, Dr Grott Zanicotti has in fact practised for four years in a specialist area of practice viz. research/academic psychiatry.
- As to the other reasons relating to lack of recent clinical practice experience, the point is made that those reasons were not given in the letter proposing to decline the application, so Dr Grott Zanicotti was deprived of the opportunity to make submissions and be heard about them as mandated by s 20(4) of the Act.
- In any event her work in academic and research psychiatry and her observership have kept her in touch with clinical practice.

[27] As to Ground 3, Ms McKeown submitted that the Council should be guided by the principles set out in s 13 of the Act when deciding whether an overseas qualification is equivalent to, or as satisfactory as, the prescribed qualification. She referred in particular to the principles that the qualifications may not unnecessarily restrict registration and may not impose undue costs on health practitioners. In this regard she drew attention to the difficult remaining route to vocational registration available to Dr Grott Zanicotti and submitted this would unduly restrict registration and impose an undue cost on her in both time and money. She also pointed to the safeguards built into the requirements for provisional vocational registration by the requirement to impose either a supervision or an assessment “*pathway*” to full vocational registration and the Council’s additional power to limit the scope of the doctor’s practice.

[28] The outcome sought by Dr Grott Zanicotti is an order reversing the Council's decision and an order approving provisional vocational registration on the supervision pathway or, alternatively, on the assessment pathway.

The Council's Case

[29] The basis of the Council's opposition to the appeal was helpfully summarised in Ms Brown's submissions as follows:

- (a) Dr Grott Zanicotti's qualifications, training and experience are not equivalent to, or as satisfactory as, that of a FRANZCP. The evidence before the Council on this fundamental issue was overwhelmingly in support of that conclusion.
- (b) On considering all of the information before it, the Council determined that the training and experience relied on by Dr Grott Zanicvotti's does not mitigate against the shortcomings identified by the Council.
- (c) In particular, the Council was correct in finding that her experience at the Dr Helio Rotenberg clinic could not be given any weight because it is not an accredited training institution.
- (d) The experience gained by Dr Grott Zanicotti after she gained her post-graduate qualification is not adequate because it is not of a clinical nature and does not include any autonomous clinical responsibility for patients.
- (e) The Council correctly applied the principles of the Act relevant to its exercise of decision-making power in respect of the application and followed a fair and robust decision-making process.

[30] Reliance was also placed upon the principal purpose of the Act as set out in s 3, viz. to protect the health and safety of members of the public by providing for mechanisms to ensure that health practitioners are competent and fit to practise their

professions. It was submitted that this purpose must necessarily underpin the Council's decision on her application.

Discussion

[31] Section 15 of the Act prescribes the three criteria for registration. Neither Dr Grott Zanicotti's fitness for registration nor her competence have been challenged, either in the Council's decision or in the VEAB reports on which it was based. The decision was based squarely on her lack of the prescribed qualifications. Thus the essential issue on this appeal is whether the Council was wrong to decide that she had not established that her qualifications, training and experience were equivalent to, or as satisfactory as, those required to achieve a FRANZCP. That is the issue which is addressed in the first ground of appeal.

[32] That second ground of appeal relates to alleged errors on the Council's part in the way its decision was reached, i.e. the variance between the reasons given in the decision itself and those recorded in the minutes of the Council's decision and in the letter advising of the proposal to decline. It is strictly unnecessary to address those matters separately because the nature of a general appeal by way of rehearing itself provides a cure for any such defects. The Court is required to come to its own view of the merits with all these matters now before it.

[33] As to the third ground of appeal, I do not agree with Ms McKeown's submission. Section 13 is directed towards the prescribing of qualifications under s 12 not to the assessment of whether an applicant possesses those qualifications. It seems to me wrong in principle to allow that assessment to be influenced by how difficult and expensive any remaining route to registration may be for an applicant.

[34] I turn then to the essential issue identified above. I have considered whether there is any significance in the fact that s15 and s 12 of the Act speak only of "*qualifications*" whereas the phrase in the Gazette notice is "*qualifications, training and experience*". However I am satisfied there is none. While in the realm of education, the word "*qualifications*" is usually understood to mean formal qualifications conferred by an educational body such as a diploma or university

degree, the word is also commonly used to mean the qualities and accomplishments that make someone suitable for a particular job or activity. In the case of a profession that includes not just diplomas and degrees but also training and experience. I consider that it is in that broader sense that the word is used in ss 15 and 12. That interpretation is supported by the wording of s 11(2) of the Act which makes it clear that the “*qualifications*” prescribed under s 12 can include things like the successful completion of an accredited programme or experience in the provision of health services of a particular kind.

[35] In the Gazette notice “*qualifications, training and experience*” are treated as distinct concepts. A common sense interpretation of the phrase is that “*qualifications*” refers to formal qualifications, “*training*” refers to formal training and “*experience*” relates to work experience of one sort or another, all of which help to qualify a person to safely practise a profession.

[36] The meaning of the phrase “*equivalent to or as satisfactory as*” used in both s 15(2) and in the Gazette notice was the subject of some discussion at the hearing. Neither counsel was able to find any case law in which the phrase had been considered. At my request, after the hearing both counsel investigated the legislative history of the phrase in a fruitless effort to assist in its interpretation⁵.

[37] It is a standard canon of statutory interpretation that Parliament has used words for a reason. So every word or phrase in an enactment should be given a meaning⁶. Thus the phrase “*as satisfactory as*” should be interpreted, if possible, as adding something to the phrase “*equivalent to*”. I consider that the use of the additional phrase indicates that equivalence in all three respects will not always be necessary provided that an applicant’s qualifications, training and experience as a whole are as satisfactory as those required for a New Zealand trained specialist to obtain the prescribed qualification for vocational registration. Thus I accept Ms McKeown’s submission that qualifications, training and experience are to be viewed in combination so that, for example, a lack of equivalence in formal

⁵ I am nevertheless grateful for their efforts.

⁶ *Attorney-General’s Reference (No 1 of 1975)* [1975] QB 773, 778

qualifications might be compensated by more extensive training and experience. I note also that the Council's published *Policy on registration within a vocational scope of practice – Doctors who do not hold the approved New Zealand or Australasian postgraduate qualification*⁷ makes it clear that qualifications, training and experience are to be viewed in combination.

[38] Nevertheless, they must as a whole be measured against the requirements for a FRANZCP. That requires a detailed comparison. That was carried out by the VEAB and has been also by both counsel in their written submissions.

[39] The primary areas of difference between the VEAB's assessment and Dr Grott Zanicotti's position relate to the value or weight to be given to the experience gained by the doctor while employed at Dr Helio Rotenberg Clinic in Curitiba and while employed as a teaching and research fellow at the University of Otago. There are smaller differences relating to the equivalence of aspects of the specialist training in Brazil and the weight, if any, which is to be given to the clinical observer experience in Otago. It is necessary to address as well the significance of the absence of clinical practice since the completion of specialist training in Brazil as this gained prominence in the Council's decision.

[40] It is clear from its report of 27 May 2015 that the VEAB considered Dr Grott Zanicotti's work experience at the Clinic in the context of its assessment of the equivalence of her formal training. Because it was not part of a formal training programme, it was given no weight in terms of that assessment. I see no reason to disagree with the VEAB's approach in that respect.

[41] However, it does not follow that Dr Grott Zanicotti's clinical experience at the Clinic should be given no weight in the overall assessment, even though that experience was gained prior to the acquisition of her Brazilian specialist qualification. All work experience in a profession involves the acquisition of knowledge and skill both by practice and by observation of the practice of more experienced or qualified colleagues and often informal advice and training from

⁷ BOD Vol 2 p 579

them. The conclusion that it was given no weight could fairly be drawn from the VEAB report of 27 May 2015 and was drawn by her.

[42] Dr Grott Zanicotti's detailed response to the Council's proposal to decline her application ensured that at least from that time the VEAB and the Council were fully aware of the extent and nature of her work experience at the Clinic. It was considerable. In terms of time, it equates to 3336 hours including both four and a half hours daily at the day hospital and in the evenings and sometimes on night and weekend shifts in the psychiatric emergency service. In the former she was involved in general psychiatry including psychotherapy and shared the care of patients with a psychiatrist. Her responsibilities included patient management including prescriptions. In the emergency service she was responsible for the assessment and initial management of urgent patients presenting a variety of disorders.

[43] There was some difficulty in clearly categorising her position in terms of the job description of a New Zealand practitioner carrying out similar work. The descriptions senior house officer, medical officer, MOSS and non training registrar were all mentioned. None of these are used to apply to a formal training position.

[44] In its reply to Dr Grott Zanicotti's response, the VEAB stated that it had considered her experience in psychiatry spanning the period beginning in 2008 when she entered psychiatric training until the date of her assessment interview in April 2015. However it maintained its initial view that that experience (which included also her academic experience and clinical observership) were insufficient to make up for the non-equivalence of her training.

[45] In her submissions, Ms McKeown sought to directly equate Dr Grott Zanicotti's work experience at the Dr Helio Rotenberg Clinic to specific components of the FRANZCP training programme. I do not agree with that approach. Practical experience does not equate to the discipline, structure, oversight and review provided by formal training although it might to a degree compensate for its absence.

[46] It is proper to acknowledge that, apart from that difference in principle, it is beyond the competence of the Court to resolve the detailed differences between Dr

Grott Zanicotti and the VEAB about how closely her Brazilian specialist training programme compares with the FRANZCP programme (e.g. the equivalence of the Brazilian “*interconsulta*” training with the FRANZCP consultation/liaison rotation). It is clear, however, that prior to the Council’s final decision being made Dr Grott Zanicotti’s position about each aspect was very clearly presented.

[47] The scope and extent of Dr Grott Zanicotti’s academic and research work at the University of Otago since her arrival in New Zealand was also well explained to the VEAB as is apparent from their reports and her responses. Although it does not directly involve clinical experience, she explained that it is based in case discussions relating to current patients under psychiatric care in Otago and that history, diagnosis, differentials, formulation and management were all routinely addressed. The detail of her clinical observership was also clarified.

[48] The Court was also provided from the Bar with some hard copy pages taken from a RANZCP publication entitled “*2012 Fellowship Program (Regulation, Policies and Procedures : Training)*”. The Court was advised that this programme was being phased in and was not the earlier Fellowship Program with which Dr Grott Zanicotti’s qualifications, training and experience were compared. The pages were handed to the Court to illustrate the explicit provision under that programme for advanced trainees to undertake non-clinical training in research and medical education posts that are accredited by Branch Training Committees for that purpose.

[49] Nevertheless, although obviously valuable experience, Dr Grott Zanicotti’s academic and research work is not formal training which can be directly equated with any aspect of the relevant FRANZCP programme.

[50] The final matter to discuss before addressing the ultimate issue is the emphasis in the Council’s decision on her lack of recent clinical psychiatric experience either as a specialist or at any level as expressed in the first three reasons for its decision.⁸ That may have appeared to her as, at least in part, a classic “Catch 22” response. Until she obtains the vocational registration she is applying for, she is

⁸ See Para [11] above.

not entitled to practise as a specialist in New Zealand where she has lived for the past four or five years so, obviously, is unable to acquire any such experience.

[51] However, what I think the Council was intending to convey was that in its view Dr Grott Zanicotti had not acquired the sort of experience which might have compensated for any lack of equivalence in her training or the value of her qualification. It is true that she could have acquired experience of working as a consultant clinical psychiatrist *in Brazil* after gaining her specialist qualification but has not. It is also true that she could have acquired clinical experience in psychiatry in New Zealand at a level below specialist had she obtained the necessary general registration in New Zealand and an appropriate post. The result is that for whatever reason she cannot point to any clinical experience in psychiatry which is either recent or at specialist level to strengthen her qualification for registration (using the word in its wider sense).

[52] In the end the Court must decide whether it has been shown that the Council's decision that Dr Grott Zanicotti's qualifications, training and experience was wrong. In making that decision, the Court must give the weight it sees fit to the Council's decision. In this case, I give it considerable weight.

[53] Appeals regularly come before this Court from the Council and other specialist decision making bodies on a variety of different issues. In some cases the issue is one where the specialist body's expertise gives it no great advantage over the Court, for example, when the issue is the moral fitness of an applicant for registration. This case is at the other end of the spectrum. The issue is one where intimate knowledge and experience of the education and practice of the profession of psychiatry held by the members of the VEAB on which the Council relied is a great advantage.

[54] I accept the Council's view that Dr Grott Zanicotti's formal training is not equivalent to that required for a FRANZCP for the reasons explained by the VEAB. I acknowledge, however, that she has a formal qualification additional to her Brazilian specialist training viz. her Masters in Medical Science. I also acknowledge the considerable work experience that she has acquired, both the clinical experience at

the Dr Helio Rosenberg Clinic before the completion of her specialist training and since then in her academic and research work at the University of Otago including the observership. However I am not persuaded that that experience and additional qualification are sufficient to compensate for the lack of equivalency in training.

[55] Overall I am not persuaded that Dr Grott Zanicotti's qualifications, training and experience in combination are either equivalent to or as satisfactory as those required for a registered New Zealand vocationally trained specialist in psychiatry.

Result

[56] The appeal is dismissed and the decision of the Council confirmed. The parties have leave to file any submissions regarding costs within 21 days.

C N Tuohy
District Court Judge