

**IN THE DISTRICT COURT
AT WELLINGTON**

**I TE KŌTI-Ā-ROHE
KI TE WHANGANUI-A-TARA**

**CIV 2021-085-066
[2022] NZDC 17460**

UNDER	Section 106(1)(b) of the Health Practitioners Competence Assurance Act 2003
IN THE MATTER OF	An appeal against a decision of the Medical Council of New Zealand declining to grant an application for registration within the vocational scope of neurosurgery
BETWEEN	MR LUCAS RAKASZ Appellant
AND	MEDICAL COUNCIL OF NEW ZEALAND Respondent

Hearing: 13 September 2022

Appearances: Mr M McClelland KC and Ms R Thomson for Appellant
Mr J Coates and Mr T Morrison for Respondent

Judgment: 28 September 2022

RESERVED JUDGMENT OF JUDGE K D KELLY

Introduction

[1] On 21 December 2020 the Medical Council of New Zealand (the Council) declined an application by Mr Rakasz, an overseas trained surgeon, to be registered as a neurosurgeon in New Zealand. Mr Rakasz appeals that decision.

[2] When Mr Rakasz served his Notice of Appeal, the Council recognised that Mr Rakasz raised legitimate questions about how his application was processed. As a result, the Council rescinded its decision. The Council also resolved to ask a new panel of the Royal Australasian College of Surgeons (RACS), on the Council's behalf, to undertake a fresh assessment of Mr Rakasz's qualifications.

[3] The Council's offer of a fresh assessment has not been taken up by Mr Rakasz. Mr Rakasz instead asks that the Court determine that he be registered as a neurosurgeon in New Zealand based on the documentation he provided to the Council.

Summary of Result

[4] The appeal is allowed. Pursuant to s 109(3) of the Act, however, Mr Rakasz's application for registration is remitted back to the Council for reconsideration.

Background

[5] Mr Rakasz qualified with a Doctor of Medicine from the Medical University of Warsaw, Poland in 2005. Mr Rakasz then enrolled in Hungary's Neurosurgical training programme where he was permitted, and encouraged, to complete some of his subspeciality placements in Poland, the UK, and New Zealand. These placements were coordinated and overseen by the Semmelweis University Deanery in Budapest.

[6] In 2017, Mr Rakasz was awarded Fellowship to the European Board of Neurological Surgery (EBNS) in the Czech Republic. In 2018 he was awarded his specialist title from Hungary's National Institute of Neurosurgery where he also obtained an advanced certificate in spinal surgery.

[7] Between August 2013 and October 2015 Mr Rakasz worked as a Neurosurgical Registrar in Hamilton. After satisfying the Council that his knowledge, surgical ability and cultural competency met New Zealand standards, Mr Rakasz was granted general registration (i.e. he was no longer subject to supervision).

[8] In 2017 Mr Rakasz took up the position of Locum Neurosurgical Consultant and Senior Spinal Fellow at the Queen Elizabeth Hospital in Birmingham where he

was subsequently appointed as a Consultant Neurosurgeon in May 2019. Mr Rakasz continued practising as a Consultant without restriction in the UK until October 2020.

[9] On 1 January 2019, after deciding to return to New Zealand to live in Dunedin with his young family, Mr Rakasz applied for registration within the vocational scope of Neurosurgery in New Zealand.

[10] The Council's policy on registration for doctors who do not hold the approved New Zealand or Australian post-graduate medical qualifications is to seek advice from a Vocational Education and Advisory Body (VEAB) on whether that 'international medical graduate' (IMG) holds the prescribed qualification, and whether their proposed employment and supervision plan is appropriate. In the case of neurosurgery, the relevant VEAB is the RACS and the prescribed qualification is Fellowship of the Royal Australasian College of Surgeons (FRACS).

[11] On 22 July 2019 the Council sought preliminary advice about Mr Rakasz's eligibility for registration. On 6 September 2019 the RACS advised, for a variety of reasons that the RACS did not consider Mr Rakasz was eligible for registration. The Council communicated this to Mr Rakasz on 12 September 2019 and invited him to provide additional evidence to assist the Council to determine whether he held the appropriate qualifications.

[12] On 25 September 2019 Mr Rakasz sent further documentation to the Council confirming, amongst other things, that he was enrolled in a formal training program in Hungary coordinated by Semmelweis University Deanery; that he chose to undertake his subspeciality placements outside Hungary to deepen his knowledge of neurosurgery; and that these placements were scrutinised by the Deanery.

[13] An accompanying letter from Professor Banczerowski of Semmelweis University confirmed that it was agreed that Mr Rakasz could undertake his placements overseas. Professor Banczerowski said that while this is not a usual practice for Hungarian training, Mr Rakasz was sufficiently trained to the standards required by the Hungarian National Neurosurgical Training Committee. It was also

confirmed that Mr Rakasz passed his exit exams and was granted the title of Neurosurgeon.

[14] A further accompanying letter from Queen Elizabeth University Hospital confirmed details of the training program for neurosurgery trainees in the UK, and that Mr Rakasz possessed the necessary skills and knowledge in Neuropathology and Neuro-Oncology to sit the Intercollegiate Specialty Board exam in Neurosurgery.

[15] A further email dated 25 September 2019 from Mr Otto Major, Consultant Neurosurgeon in both Hungary and the UK advised that he saw very little difference between the UK and Hungarian training schemes including standards and expectations. Mr Major confirmed his mentorship of Mr Rakasz saying that while the Hungarian evaluations of training differ from the UK system, his questioning and assessment of Mr Rakasz's training and knowledge was very thorough and comprehensive.

[16] In light of this information, on 30 October 2019 the Council advised the RACS that it was satisfied that Mr Rakasz held postgraduate medical qualifications such that he was eligible to apply for registration. On 6 November 2019, the Council requested that the RACS interview Mr Rakasz with a view to then determining whether his qualifications, training and experience were equivalent to, or as satisfactory as, those of a New Zealand trained doctor.

[17] Mr Rakasz was interviewed by a RACS panel of four on 24 February 2022 (of whom one member represented New Zealand on the Australasian Board of Neurosurgery). During this interview Mr Rakasz said it became apparent that not all of the documents that he had submitted to the Council were available to the panel.

[18] On 13 March 2020, the RACS advised the Council that:

- (a) Mr Rakasz's medical experience before entering specialist training was 'equivalent' to a New Zealand vocationally trained medical practitioner; and

- (b) his professional experience and continuing medical education since completion of his training was ‘as satisfactory as’ a New Zealand vocationally trained medical practitioner.

[19] However, as regards Mr Rakasz’s:

- (a) advanced component of specialist training;
- (b) clinical examinations; and
- (c) in-training assessments—

the RACS advised that these were ‘neither equivalent to, nor as satisfactory as’, a New Zealand trained practitioner.

[20] In relation to Mr Rakasz’s advanced component of specialist training the RACS specifically said that the rotation requirements of the Hungarian specialist qualification in neurosurgery appeared to be based only on completion of time, and noted that Mr Rakasz’s documentation did not include a syllabus or curriculum. The letter from Professor Banczerowski was also cited as stating that Mr Rakasz chose his placements and that “this is not usual practice for Hungarian training”.

[21] The RACS also noted that in New Zealand at the time, trainees were selected by a competitive entry process including a scored CV, scored references and a multi-station interview, and were required to rotate through posts accredited by the RACS. Allocations to these posts were made by the speciality board and were not chosen by the trainee. Trainees were required to demonstrate core competencies. In contrast, the RACS said that Mr Rakasz described his neurosurgical programme as his own “bespoke tailored training”. While completed in both the UK and New Zealand under remote oversight from Hungary, the RACS said that this cannot be compared to the formal, structured, and documented training programme overseen by approved RACS Supervisors and Trainers in Australasia.

[22] As regards his Clinical Examinations, the RACS said that the earlier part of Mr Rakasz’s neurosurgical experience did not include a clinical examination with

patients/mock patients as was required in New Zealand, and that this is neither equivalent to, nor as satisfactory, as the clinical examination requirements in the New Zealand programme.

[23] In terms of other examinations, the RACS advised the Council that the European Board Examination Dr Rakasz passed did not include short and long answer questions or clinicals with patients. Accordingly, RACS considered this was neither equivalent to, nor as satisfactory as the RACS Fellowship Examination in Neurosurgery. The RACS determined that: “Dr Rakasz’s hospital-based examination is so different in format as to be incomparable.”

[24] In relation to in-training assessments, the RACS advised that the single Annual Review of Competence Progression (ARCP) provided by Mr Rakasz, along with the letters from supervising consultants, cannot be compared to the number, variety, and scope of contemporaneous assessments in the New Zealand programme.

[25] While the RACS scored Mr Rakasz’s professional experience since completion of training to be ‘as satisfactory as’ that of a New Zealand trained doctor, the RACS also noted that: “... his post-training experience has not addressed the differences in his training compared to that of the New Zealand programme.”

[26] In light of these matters, the RACS concluded that the combination of Mr Rakasz’s qualifications, training and experience is not equivalent to, nor as satisfactory as, a New Zealand vocationally qualified medical practitioner in the same vocational scope of neurosurgery. The reasons as summarised by the RACS were that:

- (a) Mr Rakasz’ experience as a locum at training in the UK and his non-training registrar experience in New Zealand, while under remote oversight from Hungary, cannot be compared to the rigours, structure and continuous assessment of a specialist training programme;
- (b) Mr Rakasz’s training did not include examinations comparable to those sat by New Zealand graduates and he was not assessed contemporaneously during training by selected members of the training

organisation and there were no assessment documents provided of his onsite practice in Hungary during his annual leave periods;

- (c) Dr Rakasz's experience since obtaining specialist registration from the General Medical Council (UK) (GMC) did not address the deficits of his locum in training experience; and
- (d) the GMC's award of specialist registration is applicable to the United Kingdom, but in New Zealand the standard against which IMG applications are compared is the qualifications, training and experience of a doctor who is a FRACS in Neurosurgery awarded after satisfactory completion of formal training which Mr Rakasz has not undergone.

[27] On 26 March 2020 the Council relayed this advice to Mr Rakasz and advised that while it had not yet made a decision on his application: "Council policy on the basis of receiving such advice from the RACS is to propose to decline the application for vocational registration". The Council advised, however, that before it made a decision Mr Rakasz could request a re-evaluation, providing new information not previously provided.

[28] On 3 April 2020 Mr Rakasz responded by providing further documentation. Mr Rakasz also raised a concern that the Council had not provided the RACS with all of the information relevant to his application and that the information that was provided was not received by the RACS until after his interview took place.

[29] On 21 April 2020, the Team Leader for Vocational Registration for the Council responded to Mr Rakasz saying that all the information that he had sent, with one exception, was provided to the RACS. That exception was an email sent on 14 February 2020 with attachments relating to Mr Rakasz completing several courses relating to non-clinical knowledge. Nevertheless, Mr Rakasz was advised that because he provided these documents shortly after his interview it was possible for the RACS to fully consider them before coming to a conclusion about his qualifications, training, and experience.

[30] Upon receipt of this advice, on 24 April 2020 Mr Rakasz emailed the Council asking that the RACS reconsider its decision. Mr Rakasz said that he believed that the RACS panel could not have asked appropriate questions at his interview, and said that any doubts raised about his qualifications could have been easily addressed if the panel had the opportunity beforehand to familiarise themselves with the documents he had submitted. Mr Rakasz also provided further documentation and letters in support.

[31] On 1 May 2020 the Council requested that the RACS re-evaluate Mr Rakasz's qualifications. On 11 August 2020, the RACS replied advising the Council that following its re-evaluation, its recommendation remained unchanged. The Council advised Mr Rakasz of this on 2 September 2020 and said that, as a consequence, the Council was proposing to decline his application.

[32] Before it made its final decision, however, the Council advised Mr Rakasz that he was entitled under s 20(4)(b) of the Act to make a written submission or otherwise to be heard on the proposal to decline. In response to this, on 21 September 2020 Mr Rakasz filed submissions with the Council along with further references from former colleagues vouching that his training and experience was equivalent to that of a UK trainee.

[33] This documentation was sent by the Council to the RACS for comment. On 24 November 2020 the RACS replied again confirming that Mr Rakasz's submissions did not change its assessment.

[34] Subsequently, on 9 December 2020 the Council met to make a final decision on Mr Rakasz's application. A briefing paper was prepared and circulated in advance of the meeting, which Mr Rakasz attended via *Zoom*, making further oral submissions. Mr Rakasz says it became evident to him during this meeting that again only limited documents were available to the Council and that he voiced his concern about this during the meeting. Mr Rakasz was not provided a formal record of this meeting.

[35] Finally, almost two years after making his application, on 21 December 2020 the Council emailed Mr Rakasz confirming its decision to decline his application for registration.

Notice of Appeal and decision to rescind

[36] On 26 January 2021, Mr Rakasz filed this appeal against the decision of the Council.

[37] Subsequently, in an email dated 9 March 2021, the Council's Manager of Registration advised Mr Rakasz that the Council had resolved to rescind its decision of December 2020 and to request that the RACS undertake a fresh assessment of his application by a panel not previously involved. No reasons were initially provided for this change in position and nor did the Council explain what powers it was exercising when it made this decision. On 17 March 2021, however, the Council advised Mr Rakasz's counsel that Mr Rakasz's Notice of Appeal raised a number of issues relating to the process which led to the Council's original decision. While the Council did not agree with all the points made by Mr Rakasz, it accepted that there were legitimate questions being raised about some of the procedural issues although: "The extent to which any possible procedural issues might be said to have tainted the Council's substantive decision is a technical and complex matter."

[38] The Council recognised that an appeal would take many months to proceed through the Court and it was anticipated that the best outcome that would be achieved would be that the Court would direct the Council to reconsider the matter afresh. In the circumstances, the Council concluded that the fair and proper approach was to rescind its decision and reconsider the application.

[39] On 1 April 2021, the Council subsequently advised that its decision to rescind of 9 March 2021 was made by electronic resolution in accordance with the Council's powers under cl 1, sch 3 of the Act in order to minimise the delay for Mr Rakasz. That electronic resolution process meant that the Council did not prepare any briefing paper in relation to this decision to rescind, and nor were any formal minutes taken.

Legal Framework

[40] Section 15 of the Act reads:

15 Requirements for registration of practitioners

- (1) The authority appointed in respect of a health profession 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.
- (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.

...

[41] In *Manglicmot v Nursing Council of New Zealand*,¹ Judge Broadmore held that the word “may” in s 15(1) is used in a permissive sense so that the applicant who fulfils the requirements is entitled to registration. While this interpretation is not in dispute, for completeness I agree with this for the reasons given by Judge Broadmore.²

[42] For the purposes of s 15(2), pursuant to s 12 the Council must by notice published in the Gazette prescribe the qualification for every scope of practice within its authority (which may include one or more qualifications or experience of the kinds described in that section).

[43] As noted by Judge Tuohy in *Zanicotti v Medical Council of New Zealand*³ (albeit in respect of psychiatry), in respect of specialist medical fields there are two applicable scopes of practice, ‘vocational’ and ‘provisional vocational’. As already noted, the vocational scope of practice in Neurosurgery is FRACS.⁴ The route to vocational registration available to an applicant who has earned his or her medical qualifications overseas (and thus is unlikely to have acquired a FRACS), is by first obtaining provisional vocational registration.

¹ *Manglicmot v Nursing Council of New Zealand* District Court Wellington CIV 2010-085-053 [28 July 2010].

² at paragraphs [62]- [67]; see too *Zanicotti v Medical Council of New Zealand* [2016] NZDC 14809.

³ *Zanicotti v Medical Council of New Zealand*, above n 2 at [15].

⁴ *New Zealand Gazette*, 11 May 2018, 2018-GS2124 which came into effect on 30 June 2018.

[44] The prescribed qualification for provisional vocational registration in neurosurgery as set out in the relevant Gazette Notice reads:⁵

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 post graduate 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.

[45] There is no dispute that Mr Rakasz holds overseas post graduate medical qualifications this being established by the Council as a requirement of eligibility. What is in dispute is whether these qualifications (and Mr Rakasz's training and experience), are equivalent to, or as satisfactory as, those of a New Zealand vocationally trained neurosurgeon.

[46] For completeness, the Council's "*Policy on registration within a vocational scope of practice – Doctors who do not hold the approved New Zealand or Australasian postgraduate qualification*"⁶ states, repeating the Gazette Notice, that: "The prescribed qualification for this pathway is qualifications, training and experience considered by Council to be "equivalent to, or as satisfactory as" the approved New Zealand or Australasian Fellowship, Diploma or Certificate (depending on the relevant vocational scope)."⁷ This Policy also expressly states that the Council will request advice from the relevant VEAB as the specialist New Zealand or Australasian college responsible for advising Council about matters related to a particular vocational scope.⁸ It is this policy that the Council followed in seeking the

⁵ Above, n 7.

⁶ approved in October 2006 and updated in August 2022

⁷ At [2]

⁸ At [5] –[6]

advice of the RACS. Step 1 in the policy for assessing provisional vocational registration is that the Council sends all information related to the applicant's qualifications, training, and experience to the appropriate VEAB for advice on: "the relative equivalence of the IMG's qualifications, training and experience" to the prescribed qualification.

Mr Rakasz's Case

Grounds of appeal

[47] The Decision of the Council is appealed on the following grounds:

1. the Council failed to provide full reasons;
2. the Council failed to follow a fair process;
3. the Council failed to take into account relevant considerations and took into account irrelevant considerations;
4. the Council failed to exercise its discretion to assess and consider Mr Rakasz's application, relying wholly or placing too much weight on, the advice of the RACS;
5. Mr Rakasz was denied the right to appeal the decision of the RACS; the review conducted by the RACS was not objective; and its advice should not have been relied on by the Council; and
6. the Council's decision is unreasonable.

[48] In relation to the first ground, contrary to natural justice and the dictates of fairness, Mr Rakasz submits that the Council failed to provide reasons for its decision and simply reiterated the advice of the RACS. That is, the Council failed to adequately engage with the question of whether Mr Rakasz's qualifications, training and experience were 'satisfactory' in terms of s 15(2). Considering the correspondence,

documentation and references provided, Mr Rakasz submits that the Council's justification for its decision is wholly lacking in detail.

[49] In relation to the second ground, Mr Rakasz submits that the Council has accepted that there were procedural issues in the way that it reached its decision. Hence its decision to rescind.

[50] Mr Rakasz submits that the RACS formed views without the benefit of reviewing his supporting documentation which it did not have prior to interviewing him, as well as documentation he provided to the Council on 25 October 2019. The same, it is submitted, is true of his subsequent *Zoom* interview with the Council. As a result, Mr Rakasz submits that he was denied the opportunity to speak to or clarify any of the concerns or perceived deficiencies in his training which the RACS subsequently commented on in its advice to the Council.

[51] Mr Rakasz submits that it appears that the RACS took an unfavourable view of his application because his qualification was from Hungary and that his training was "interesting" and unfamiliar. Mr Rakasz submits that the weight attached to his training documents and supporting letters was not the same as that which would have been given to applicants trained elsewhere.

[52] While Mr Rakasz says that he was given the opportunity to provide comment on the advice of the RACS, he submits that the Council further erred by not engaging with his explanations, including about questions of fact,⁹ and did not require further information from him given those explanations. As Mr Rakasz's counsel put it, there is nothing in the decision to the effect that: 'RACS says this..., Mr Rakasz says that..., and we say...'. Nor, Mr Rakasz submits, was he provided with any minutes or notes from the Council and RACS meetings enabling him to understand why the Council accepted the advice of the RACS over his detailed submissions.

[53] In relation to the third ground of appeal, Mr Rakasz submits that the Council and RACS erred by failing to consider or give sufficient weight to his training, referee

⁹ e.g. whether the European Board Examination included short and long answer questions and clinicals with patients, or whether Mr Rakasz had a logbook documenting surgical procedures conducted.

reports and letters of support (confirming the high standard of his training and competency), his experience as a Consultant in the UK (including his supervision of trainees), and that he carried out surgical procedures above and beyond what would be required of a New Zealand trainee. Conversely it is submitted that the Council and RACS, being tasked with assessing his training, instead gave weight to such things as entry into the New Zealand training programme for surgery being highly competitive; that he was permitted and encouraged to select his own neurosurgical placements in the UK (without any reason as to why this ought to have counted against him); and that his compliance with Hungarian training standards was determined by the person who sits as the Chair for Hungary's National Neurosurgical Training Programme (without elaborating on why this was not satisfactory).

[54] Rather than looking at the similarities and benefits of the training that he underwent, Mr Rakasz submits that the Council appears to have approached his application by picking out differences between his pathway to registration overseas compared to that of a New Zealand qualified and trained neurosurgeon.

[55] The fourth ground of appeal is that Council failed to assess and consider Mr Rakasz's application relying instead on the advice of the RACS. Mr Rakasz submits that s 15 of the Act states that it is for the Council to determine whether or not an applicant is fit for registration, rather than the RACS or any other agency. Despite this, the Council's policy is to propose to decline an application if that is the advice it receives from the RACS.

[56] The fifth ground of appeal is that by relying on the advice of the RACS without question or justification, knowing that advice was given without all of the information relevant to his application being before the RACS, he was not given a fair opportunity to address the concerns raised and he was unable to appeal the advice of the RACS. His only option was to make repeated requests to the Council for reassessment.

[57] Finally, it is submitted that the Council's decision is substantively unreasonable. While Mr Rakasz accepts that his training is different to that of a New Zealand trained vocationally registered neurosurgeon, Mr Rakasz submits that his training was comprehensive, thorough, and detailed and that it exceeds the threshold

of being ‘satisfactory’ in terms of s 15 of the Act. Given these factors and that his colleagues speak nothing but highly of his competency and professionalism (and against the backdrop of Otago’s Neurosurgical Unit being understaffed), Mr Rakasz submits that it is remarkable that the Council has seen fit to deny his application.

[58] In summary, Mr Rakasz’s case as set out in Mr McClelland’s detailed submissions is that:

- (a) the Council failed to assess his application against the correct test in s 15(2) of the Act; and
- (b) failed to consider whether his qualifications are ‘as satisfactory as’ a New Zealand trained neurosurgeon.

[59] Notwithstanding that he has not followed an orthodox path to obtaining his qualifications, training and experience, Mr Rakasz says that the Council failed to engage with the wealth of documentation, supportive references and other material provided to it. Nor was all this information put by the Council to the RACS when seeking its advice. That is, Mr Rakasz submits, the Council effectively ‘rubber-stamped’ the RACS advice without properly turning its mind to his application. While the Council says that his qualifications, experience, and training are different it fails to say why this difference matters in substance. But for these errors Mr Rakasz submits that his application should have been accepted for registration in New Zealand as nothing has been identified by the Council as to why, for example, he can be vocationally registered in the UK but not in New Zealand.

[60] By way of relief, Mr Rakasz seeks that the Court exercise its powers under s 109(3)(a) to reverse the decision of the Council and to approve his application for vocational registration, being a decision the Council could have made (s 109(3)(b)).

[61] Mr Rakasz submits that the application should not be remitted back to the Council for reconsideration as his grounds of appeal call into question the Council’s ability to make any further decision with an open mind and in an objective and independent way. Mr Rakasz submits that the Council’s advice to him that: “the extent

to which any possible procedural issues might be said to have tainted the Council's substantive decision is a technical and complex matter,"¹⁰ means that the Council has accepted that it was tainted by the RACS and it is only unknown as to what extent. In so far as the Council appears to simply adopt whatever recommendation the RACS might make, it is submitted that there is no reason to think that Council will not do so again.

The Council's Case

[62] The Council submits that as it has already decided to rescind the decision that is the subject of Mr Rakasz's appeal, an order quashing the Council's decision has been rendered moot.

[63] Without making concessions as to whether any procedural irregularities have tainted its substantive decision, the Council submits that it was appropriate for it to rescind its decision and that because of this the Court is not required to rule on the procedural grounds of appeal. As a result, it is submitted, the sole question for the Court is whether it should direct the Council to approve Mr Rakasz's application.

[64] The Council submits that the assessment of whether an applicant who has qualified and trained in Hungary, Poland, and the UK has qualifications, training and experience that are "equivalent to, or as satisfactory as" a neurosurgeon who is qualified and trained in New Zealand, is highly technical. This, it is submitted, is not an assessment that the Court is well placed to make despite s 109(3)(b) of the Act providing that the Court may make any decision that the Council could have made.

[65] It is submitted that the Council has already resolved to undertake a fresh assessment of Mr Rakasz's qualifications by an entirely different RACS panel than that which assessed his qualifications in the first instance. Following this, the Council has said it will issue a new decision. In the circumstances, it is submitted that the Court should defer to the expertise of the Council and RACS as specialist bodies, and decline to order that Mr Rakasz be registered in preference to remitting the decision back to the Council. The Council submits that the decision to rescind was an exercise

¹⁰ 17 March 2021

of judgement by it as a reasonable and responsible statutory decision-maker seeking to take a fair and proper approach, and to enable the reconsideration of Mr Rakasz's application without further delay.

[66] While the decision to rescind is not itself the subject of this appeal, the Council submits that power to rescind may be considered to be incidental to its express statutory powers. Further, reference to cl 15, sch 3 of the Act in correspondence was simply to clarify the authority by which it made its decision by electronic resolution.

[67] In terms of the grounds of appeal, it is submitted that the reasons in the Council's letter of 21 December 2020 are sufficient to convey its rationale for declining the application. That letter, it is submitted, must be read in conjunction with all the other correspondence between Mr Rakasz and the Council. However, to the extent that there is any deficiency in the reasons provided by the Council, it is submitted that the appropriate remedy would be to refer the decision back to the Council for reconsideration. The Council submits that for the Court to register Mr Rakasz based on a deficiency in the Council's provision of reasons would be inconsistent with the purposes of the Act.

[68] The process followed by the Council, it is submitted, was fair. While there was an administrative error resulting in some information only being provided to the RACS, it is submitted that this information was provided and considered by the RACS panel prior to it providing its advice to the Council. At this point too, it is submitted that Mr Rakasz had an opportunity to provide submissions and further information, which he did. These were considered as part of the RACS re-evaluation of the application. It is submitted that there is no evidence to suggest that the advice provided by RACS was not impartial and objective but again, the appropriate remedy for a procedural error, it is submitted, is to refer the decision back for reconsideration.

[69] The Council submits further that it is factually incorrect to say that the Council delegated its decision-making powers under s 15 to the RACS. Rather, it is submitted that the Council engaged RACS to provide advice to assist it with assessing Mr Rakasz's application. As the specialist college responsible for administering the

FRACS, the Council submits that the RACS is well placed to provide advice on Mr Rakasz's international qualifications.

[70] If Mr Rakasz considers that he has any procedural right to challenge the recommendations of the RACS under its rules for members or candidates for membership, it is submitted that is a matter for Mr Rakasz to address with RACS and not the Council. In any event, it is submitted that any procedural concerns associated with an inability to appeal the advice provided by RACS cannot possibly warrant the relief sought. The Council notes that it was at Mr Rakasz's request that the Council arranged for RACS to re-evaluate his application taking into account any additional information that Mr Rakasz provided.

[71] In terms of the reasonableness of the Council's decision, the Council submits that the matters raised by Mr Rakasz do not meet the very high threshold for establishing substantive unreasonableness.

[72] Finally, it is submitted that for the Court to approve Mr Rakasz's application for registration within the vocational scope of practice of neurosurgery, the Court must be satisfied that Mr Rakasz is entitled to be registered and this requires the Court to find that Mr Rakasz meets the criteria in s 15(1) of the Act. Aside from this involving a specialist and technical assessment, it is submitted that on the evidence, the Court cannot be assured that Mr Rakasz holds the necessary qualifications, training, and experience, this being the very matter on which the Council itself sought specialist advice from the RACS. The Council submits that the Court has recognised that it is appropriate to defer to the views of specialist decision-making bodies on matters within their area of expertise such as this.¹¹

[73] Moreover, notwithstanding that the Council revoked its decision to decline Mr Rakasz's application, it is submitted that the Court should not ignore the advice of the RACS on which its decision was initially based. The Council submits that when this advice is considered, the Court cannot be satisfied that Mr Rakasz's qualifications, training and experience are "equivalent to, or as satisfactory as" those of a New Zealand trained neurosurgeon, given that the opinion of the relevant specialist body is

¹¹ Above n 2, at [77]

that they are not. In these circumstances, the Council submits that the Court should exercise caution.

[74] Further, by ordering Mr Rakasz's vocational registration as a neurosurgeon, the Court would, in effect, be deciding that Mr Rakasz is competent to practice as a neurosurgeon in addition to him being appropriately qualified (s 15(1)(c)).

[75] The Council submits that the appropriate pathway for Mr Rakasz to achieve his objective of registration in the provisional vocational scope of practice of neurosurgery as quickly as possible is to participate in a further RACS process.

Decision and Reasons

Approach on appeal

[76] This appeal is brought pursuant to s 106(1)(b) of the Act which gives a general right of appeal to the District Court against decisions of the Council. As noted by Judge Tuohy in *Zanicotti*,¹² under s 109(2) the appeal is by way of rehearing and the principles set out in *Austin, Nichols & Co Inc v Stichting Lodestar*¹³ apply. That is, this Court is required to come to its own view of the merits of the case 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 Council, however, is a matter for the Court's judgment. Nevertheless, Mr Rakasz 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 Council's decision is wrong that it is justified in interfering with it. Where the Court is satisfied that the decision is wrong, pursuant to s 109(3) the Court may reverse or modify the Council's decision and make any other decision or order that the Council could have made.

[77] There can be no dispute that if the Court considers that the Council's decision is wrong, the Court can also remit the decision back to the Council for re-consideration. Inherent in the concept of reversal is the ability to revoke or nullify a

¹² *Above n 2*, at [20] - [21]

¹³ *Austin, Nichols & Co Inc v Stichting Lodestar* [2007] NZSC 103.

decision under appeal. A natural corollary of this is that there is the power to refer the matter back for rehearing should the Court consider that necessary.¹⁴

Issues

[78] The issues that I am required to decide are:

- (a) was the Council's decision of December 2020 wrong such that this Court is justified in revoking it;
- (b) if so, in revoking the decision, should the application be remitted back to the Council as a specialist body for reconsideration, or should this Court order registration directly; and
- (c) if registration is granted directly by this Court, should Mr Rakasz be afforded full vocational registration or provisional vocational registration (i.e. subject to a period of supervision)?

Was the Council's decision wrong?

[79] It is important at the outset to clarify the scope of this appeal. The grounds of appeal do not include the processes and advice of the RACS leading up to the Council's decision of 21 December 2020 except by implication. The RACS is not a party to this appeal. The focus for this Court is on the Council's decision notwithstanding that decision was informed by the advice of the RACS. What this Court is required to do is to evaluate the decision made by the Council in light of that information that was before it.

[80] This means that the ground of appeal that Mr Rakasz was denied the right to appeal the 'decision' of the RACS and that the RACS was not objective, cannot succeed.

¹⁴ *Christchurch Medical Officer of Health v J & G Vaudrey Ltd* [2015] NZHC 2749 at [22].

[81] Nor do the grounds of appeal challenge the separate decision by the Council to rescind its decision. This Court is not therefore required to determine whether that decision was lawfully made. In any event, the Council's decision to rescind its decision has no bearing on the question that this Court has to determine, as just articulated. While one might be tempted to read the Council's decision to rescind as indicating that the Council agrees that its decision of December 2020 was wrong, to do so would result in this Court falling into error by not coming to its own view of the merits of the case. In any event, the Council does not go so far as to agree that its decision was wrong. Rather, I accept that the Council was seeking to respond to Mr Rakasz's notice of appeal in a pragmatic way which the Council considered would assist Mr Rakasz to achieve his objective of registration as quickly as possible. There is no evidence of any other ulterior motive in this regard. In short, the decision to rescind is not a matter that has any bearing on the appeal before me. It follows too, that how the decision to rescind was made (i.e. by electronic resolution) is not a matter I need to consider.

[82] Turning to the grounds of appeal, given that I am required to come to my own view of the merits of all the matters before me, as Judge Tuohy said in *Zanicotti*, this Court does not strictly speaking need to address each matter separately, the nature of a general appeal providing a cure for any defects.¹⁵

Are Mr Rakasz's qualifications as satisfactory as the prescribed qualifications?

[83] As already noted, the essence of Mr Rakasz's appeal is that the Council failed to assess his application against the test in s 15(2) as it did not consider whether his qualifications are 'as satisfactory as' a New Zealand trained neurosurgeon.

[84] What the Council, and this Court on appeal, is required to do under s 15 is to assess whether Mr Rakasz:

- (a) is fit for registration;
- (b) meets the prescribed qualifications; and

¹⁵ Above n 2, at [32]

(c) is competent to practise.

[85] There appears to be no question about Mr Rakasz's fitness or competence. The briefing paper put before the Council by the Vocational Registration Coordinator for the Council dated 10 November 2020 makes no mention of Mr Rakasz's fitness or competence. Rather, the Executive Summary to this briefing paper is solely focused on Mr Rakasz's qualifications. The Executive Summary reads:¹⁶

Council is asked whether:

1. to resolve to decline Dr Rakasz's application, noting that the advice of the RACS is that he does not have qualifications, training and experience *equivalent to or as satisfactory as* a New Zealand vocationally-trained doctor registered in the vocational scope of neurosurgery; or
2. to approve his application, if Council is satisfied that Dr Rakasz's qualifications, training and experience is *as satisfactory as* a New Zealand vocationally-trained doctor registered in the vocational scope of neurosurgery

If Council is minded to approve his application, then the rationale and additional information that has persuaded Council should be clearly articulated as part of the Council's decision.

[86] The paper then sets out Mr Rakasz's registration history, qualifications and employment history. The advice of the RACS is summarised as are Mr Rakasz's submissions.

[87] In particular, the briefing paper put to the Council says that:¹⁷

In his submission, Dr Rakasz noted the following:

- a. He believes he is a well-trained neurosurgeon, who has gone above and beyond the requirements for training in his home country.
- b. He has gained considerable experience in every neurological subspecialty in carefully selected units in the UK, and New Zealand.
- c. He believes he has fulfilled the training criteria in Hungary, the UK and for the European Association of Neurological Societies.
- d. He has passed two board examinations proving his knowledge and that is familiar with both the British and New Zealand health care systems.
- e. He has held GMC registration since 2009 and New Zealand registration since 2012. During this time he says that he has worked consistently between the UK and New Zealand and taken part in the GMC revalidation process.
- f. He believes he is a safe, patient oriented neurosurgeon who is working in one of the biggest and busiest tertiary referral university teaching hospitals in the UK. During this time, he has seen more than 1,100 patients in an outpatient setting and has a logbook with nearly 1,900 procedures.

¹⁶ At [8] and [9]

¹⁷ At [21]

- g. He has been appointed to a locum consultant neurological post at the hospital for more than one year, during which time he believes that he has had more than amply demonstrated his ability to assume the responsibilities of a consultant neurosurgeon.
- h. He continues to say that consultant colleagues have written letters confirming that his knowledge, surgical skills, non-clinical skills and patient rapport are equal to consultant trained wholly in the UK. He says that he has the full support of the Society of British Neurological Surgeons, confirming that his training and clinical experience are equivalent to the training offered in the UK and that his current standard practice is very high.
- i. He says that although he has followed a slightly unconventional path he is a highly trained neurosurgeon was working a consultant level in the UK with support of senior colleagues.

[88] The paper then summarises the RACS advice as follows:¹⁸

- a. Dr Rakasz is well regarded by his colleagues in the United Kingdom and has met the U.K.'s requirement for registration. Dr Rakasz's eligibility to work as a neurosurgeon in the UK, however, does not mean that he qualifies in New Zealand.
- b. Dr Rakasz's rotations in the UK as registrar were not within the U.K.'s formal surgical training and his year as registrar in New Zealand was in a non-training neurosurgery unit.
Dr Rakasz has not provided any information about his experience that would support a change in the RACS' recommendation.

[89] The briefing paper continues:¹⁹

In cases where the college has advised an applicant does not have qualifications, training and experience either *equivalent to, or as satisfactory as*, in New Zealand vocationally trained doctor registered in the same vocational scope of practice, it is still open to the Council to find otherwise. That is, it can decide based on its own analysis that the applicant does have qualifications, training and experience at least *as satisfactory as* a New Zealand vocationally trained doctor registered and seen vocational scope of practice.

If Council were to decide that Dr Rakasz had qualifications, training and experience either *equivalent to, or as satisfactory as*, in New Zealand vocationally-trained doctor, registered in the vocational scope of neurosurgery, then Council could decide not to proceed with proposal to decline his application. It would need, in that case, to decide for itself the pathway on which you should be registered: either the supervision pathway or the assessment pathway. In light of RACS' advice, this paper presents just the assessment pathway option.

[90] The resolutions in the paper are then framed, reflecting this, as a choice between two options:

- (a) that Council remains not satisfied that the standard is met for the prescribed qualification; and

¹⁸ At 23

¹⁹ At [26] – [27]

- (b) that Council is satisfied that the standard is met for the prescribed qualification resolve to approve application.

[91] In the case of the first option the resolution reads:

Council resolves that it is *not* satisfied that Dr Rakasz has qualifications, training and experience established to the Council's satisfaction to be *equivalent to, or as satisfactory as*, a New Zealand vocationally-trained doctor, registered in the same vocational scope of practice.

AND

Council resolves to decline Dr Rakasz's application for registration within the provisional vocational scope of neurosurgery.

[92] In the case of the second option the resolution reads:

Council resolves that it *is* satisfied that Dr Rakasz has qualifications, training and experience established to the Council's satisfaction to be *as satisfactory as*, a New Zealand vocationally-trained doctor, registered in the same vocational scope of practice.

AND

Council resolves that to be eligible to apply for vocational registration, Dr Rakasz must satisfy the following requirements, while working under the assessment pathway Council to confirm he requirement

[93] Beyond this, there is no discussion about why the advice of the RACS is to be preferred to the submissions of Mr Rakasz, or why one option might be preferable to the other. Despite the to-ing and fro-ing between the Council, the RACS and Mr Rakasz about Mr Rakasz's qualifications, the points of difference between the RACS and Mr Rakasz are not compared for the Council's consideration. That is, there is nothing in the paper to indicate that the Council had the benefit of any substantive comparative analysis before it made its decision.

[94] The Council's reasons are then outlined in its email of 21 December 2020. These are set out in full:

Reasons for Council's decision

- (a) Having considered the advice of the Royal Australasian College of Surgeons (RACS) and the written and oral submissions you have made, Council found no compelling reason to change its proposed decision.
- (b) Council accepts the advice of the RACS that:
- i. Your qualifications, training and experience are *neither equivalent to, nor as satisfactory as*, those of a New Zealand vocationally-trained doctor registered in the vocational scope of neurosurgery.

- ii. Your specialist training is *neither equivalent to, nor as satisfactory as*, the contemporary training of a New Zealand neurosurgical trainee; it was under remote oversight from Hungary and cannot be compared to the rigours, structure and continuous assessment of the New Zealand neurosurgical specialist training programme.
 - iii. Your training did not include comparable clinical examinations, and the examination you did sit is so different in format to be incomparable to the New Zealand examinations.
- (c) Council has sought to establish whether your subsequent experience as a locum consultant in the UK was sufficient to address the deficiencies in your training however, was not persuaded it mitigated the significant structural deficiencies identified by the RACS.

[95] I am satisfied that these reasons effectively adopt the RACS reasons without explanation or reference to Mr Rakasz's submissions.

[96] That said, it is accepted that these reasons need to be considered in the context of the Council's preliminary reasons, which were as follows:

Proposed decision on your application

Council is therefore proposing to decline your application for registration within the vocational scope of neurosurgery for the following reasons:

- Based on the advice of the RACS, Council is not satisfied that you have qualifications, training and experience equivalent to, or as satisfactory as that of a New Zealand vocationally-trained doctor registered in the vocational scope of neurosurgery.
- The RACS notes that:
 - Your specialist training is neither equivalent to, nor as satisfactory as, the contemporary training of a New Zealand neurosurgical trainee. Your experience as a locum appointment for training (LAT) in the United Kingdom, and non-training registrar experience in New Zealand under remote oversight from Hungary, cannot be compared to the rigorous, structure and continuous assessment of the New Zealand specialist training programme in neurosurgery.
 - You are not assessed contemporaneously during training by selected members of the training organisation. While you have explained that the rotation requirements of the Hungarian specialist qualification in neurosurgery are based on more than just completion of time, the documentation provided did not include a curricular, syllabus or the standards for the Hungarian programme. The New Zealand programme is competency based, with training required to demonstrate competence in the nine core competencies of RACS to progress.
 - Your training did not include comparable clinical examinations to those sat by New Zealand graduates, which included a clinical exam with patients/mock patients.
 - The hospital based examination you sat is so different in format to be incomparable to New Zealand examinations.
 - You are not awarded a Certificate of Completion of Training by the UK General Medical Council (GMC) and you did not provide evidence of completing the Intercollegiate Examination in Neurosurgery.
 - Your experience in obtaining specialist registration from the UK GMC has not addressed the differences in your training.

- While you hold specialist registration in the UK, this has no bearing on the assessment of equivalence in New Zealand to a New Zealand vocationally trained neurosurgeon, as they are different jurisdictions with different regulatory frameworks.

Information considered

The information taken into account in making this proposal was:

- The advice of the RACS following interview and re-evaluation; and
- All documentation submitted in support of your application for vocational registration, including references from your nominated referees and your re-evaluation application.

[97] These preliminary reasons, however, are subject to a number of factual errors. For example, the RACS evaluation of Mr Rakasz’s subspecialty placements characterises those as being based only on time. While Mr Rakasz’s application documentation did not initially include a syllabus or curriculum, in his letter dated 24 September 2019 Professor Banczerowski said that Mr Rakasz met the standards required by the National College of Neurological Surgeons in Hungary such that he was permitted to attempt his exit exams which he subsequently passed. It is difficult to understand why these placements were seen to be based only on time and why the standards required by the National College of Neurological Surgeons were unsatisfactory. What competencies Mr Rakasz has failed to demonstrate is not apparent.

[98] By saying that Mr Rakasz’s own “bespoke tailored training” could not be compared to the “formal, structured and documented training programme” in accredited posts overseen by approved RACS Supervisors and Trainers in Australasia, the RACS also failed to then explain why Mr Rakasz’s training under the scrutiny of Professor Banczerowski was different in substance so as to make it unsatisfactory. In highlighting that Professor Banczerowski said that Mr Rakasz’s choice of placements was unusual, the RACS appears to imply a deficit as regards Mr Rakasz’s training which is not what Professor Banczerowski said.

[99] While the structure and form of the training programme is undoubtedly different, it is not apparent how the RACS itself compared the two programs and why Mr Rakasz’s training is deficient. Given this, it is hardly surprising that the briefing paper to the Council did not include similar analysis.

[100] The RACs also formed the view that Mr Rakasz’s experience did not include a clinical examination with patients/mock patients, as was a requirement in New Zealand. Mr Rakasz responded by providing a number of references that indicated that he had met the Hungarian training curriculum requirements and this included observational assessment, clinical work, assessments and knowledge, problem based discussions, surgical expertise, patient interaction and bedside manners, amongst other things.²⁰ This information, which was available to the Council, does not appear to have been considered in any meaningful way against the advice of the RACS.

[101] The Council also said that Mr Rakasz’s rotations in the UK as registrar were not within the U.K.’s formal surgical training. An undated letter from Mr Major at the Royal Victoria Infirmary in Newcastle upon Tyne to the Council, however, confirms that Mr Rakasz was treated in each of his placements on an equal level to UK trainees with equal exposure to clinics, theatres, educational programs (both clinical and non-clinical), M&Ms²¹ as well as multisource feedback. Mr Otto confirmed that Mr Rakasz was assessed by consultants in the UK based on the British Curriculum requirements – the Surgical Intercollegiate Standards, which Mr Otto provided to the Council. Mr Major also confirmed that Mr Rakasz underwent “a lot more scrutiny than any of the trainees who undergo training in the UK or Hungary.”

[102] I am satisfied that the Council failed to inquire into the differences between Mr Rakasz’s qualifications and the FRACS, in its own right. As a result, the Council could not be satisfied there was a real difference in qualifications. By failing to do so, the Council failed to apply the s 15 test as to whether Mr Rakasz’s qualifications were ‘as satisfactory as’ a New Zealand trained doctor.

[103] The lack of discussion about these issues in the briefing paper put to the Council reflects that the Council failed to engage with the positions of Mr Rakasz and of the RACS in a meaningful way. There does not appear to be any attempt by the RACS, and therefore the Council, to reconcile these positions or to explain what would

²⁰ See for example, letter from Dr F Imre, Head of Oncology Neurosurgery, National Institute of Neuroscience Budapest, dated 18 September 2019; letter from Dr L Eross, Head of the Dept of Functional Neurosurgery and Center of Neuromodulation, National Institute of Neuroscience Budapest, dated 23 September 2019; and letter from Dr M Balazs, Head of Pediatric Neurosurgery, National Institute of Neuroscience Budapest, dated 19 September 2019

²¹ morbidity and mortality

be required for this to be possible. The consequence is that Mr Rakasz is left unsure about what more he needs to do.

[104] I note too that if the Council followed the decision-making flowchart in its own policy, the option of Council undertaking its own analysis and approving the application notwithstanding the advice of the RACS, does not seem to be available. Rather, the flowchart appears to say that after the VEAB (i.e. RACS) provides advice to the Council, then there are only two options:

- (a) to agree with the RACS that the qualifications are equivalent to, or as satisfactory as a New Zealand trained doctor (in which case the IMG is eligible for registration); or
- (b) to disagree with the RACS in which case the proposal ought to be to decline the application.

[105] While there is no evidence that this flowchart was used by the Council in making its decision, and I heard no submissions on the issue, the flowchart does not appear to countenance the possibility of the RACS advising that Mr Rakasz's qualifications are not equivalent to, or as satisfactory as a New Zealand trained doctor (as was the case here), but if the Council disagrees, registration is still open to the Council on its own assessment. Curiously, the only option presented if the Council disagrees with the RACS is to decline the application.

[106] While it may be difficult for the Council to disagree with the RACS as regards the issue of qualifications, this will likely be impossible if the RACS is not asked to advise on why the apparent differences in qualifications matter in substance. Again, without this, Mr Rakasz is left unsure about what more he needs to do.

[107] I hasten to add that there can be no criticism of the Council engaging the RACS to provide advice to it in order to assist it in its assessments of Mr Rakasz's qualifications given that the RACS is the specialist college responsible for administering the FRACS. The RACS is likely to be in the best position to understand the qualifications of an IMG against the FRACS. In light of an opposing view by an

applicant, however, it would seem necessary for the Council to expect the RACS to articulate why its views are to be preferred in terms of substance, and not just form.

[108] The decision of the Council is also expressed as being “Based on the advice of the RACS”. Elsewhere it says that “the RAC notes” without any reflection that it, or the RACS, considered or evaluated Mr Rakasz’s submissions in relation to that advice. The same applies to the Council’s preliminary advice. This leads to the inevitable impression that Mr Rakasz was not heard, although this is mitigated to some extent by the repeated requests for further information. What is missing is an explanation as to why this information was not sufficient.

[109] On balance I am satisfied that the RACS advice to the Council did not articulate why, in substantive terms, Mr Rakasz’s qualifications and training are not ‘comparable’ to the formal, structured and documented training programme in accredited posts overseen by approved RACS Supervisors and Trainers in Australasia, or why these differences are important. The Council, in turn, did not address whether, notwithstanding the advice of the RACS, it might be satisfied that Mr Rakasz has qualifications, training and experience as satisfactory as those of a New Zealand vocationally-trained doctor, registered in the same vocational scope of practice. In this regard, the Council has erred.

Remission back to the Council?

[110] I now consider whether Mr Rakasz ought to be registered as a neurosurgeon. This requires me, however, to undertake the very analysis that was missing in the advice provided to the Council.

[111] I am minded of the need for caution. As Judge Tuohy said in *Zanicotti*, it is appropriate to give considerable weight to specialist decision-making bodies which have intimate knowledge and experience of the education and practice of the profession as regards the equivalence of an applicant’s qualifications, training and experience.²²

²² *Zanicotti v Medical Council of New Zealand* [2016] NZDC 14809 at [53].

[112] As Mr Coates for the Council has rightly said, even if the Court were to put the advice of the RACS to one side, the Court would still require evidence as to the requirements of the prescribed qualifications (i.e. FRACS) against which Mr Rakasz's qualifications would need to be evaluated. Given that this evidence is not before the Court, it is not possible for this Court to find Mr Rakasz's qualifications to be as satisfactory as those prescribed qualifications. The only evidence would be of Mr Rakasz's qualifications which is, of itself, insufficient for such an evaluation.

[113] I consider that the appropriate course of action is for the Council to reassess the application taking further advice from the RACS as to the substantive differences between Mr Rakasz's qualifications, training and experience and those of FRACS, and why these differences are important or relevant to the practice of neurosurgery in New Zealand. Armed with this advice the Council is then able to consider whether the application ought to be approved.

[114] I also agree with Mr Coates that for the Court to direct the registration of Mr Rakasz as a neurosurgeon based on a deficiency in the provision of reasons by the Council would be illogical and inconsistent with the purposes of the Act which includes the power to restrict specified activities to particular classes of health practitioner to protect members of the public from the risk of serious or permanent harm.

[115] I do not accept that it is beyond the Council to reconsider the matter afresh. The Council appears seized of prior procedural irregularities and there is no reason to believe that armed with this decision, and the concerns of Mr Rakasz, it cannot make an objective decision, standing back and having regard the further advice of the RACs and Mr Rakasz's submissions and supporting documentation.

Full vocational registration or provisional registration?

[116] In light of my preceding decision, whether the Court should order registration under the 'vocational scope of practice' or only under the 'provisional vocational scope of practice' (as for any other IMG) is not a matter which I need to determine.

Result

[117] The appeal is allowed.

[118] Pursuant to s 109(3) of the Act, Mr Rakasz's application for registration is remitted back to the Council for reconsideration.

Costs

[119] Costs are reserved. Should these not be agreed between the parties, the parties have 21 days to file any submissions regarding the issue of costs and a decision will be made on the papers.

K D Kelly
District Court Judge