

**IN THE SUPREME COURT OF**  
**THE REPUBLIC OF VANUATU**  
*(Civil Jurisdiction)*

**Judicial Review Case No. 01 of 2011**

**BETWEEN:**            **DIDIER HAMEL-LANDRY**  
*Claimant*

**AND:**    **THE LAW COUNCIL**  
*First Defendant*

**THE ATTORNEY GENERAL**  
*Second Defendant*

*Hearing:*            *15 June 2012*

*Before:*            *Justice Robert Spear*

*Appearances:*    *The Claimant in Person*  
*Fredrick Gilu for the First and Second Defendants*

*Decision:*           *27 June 2012*

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**RESERVED DECISION**

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- 1) On 20 January 2011, Mr Didier Hamel-Landry applied to the Law Council for a certificate of registered legal practitioner pursuant to Section 1J of the Legal Practitioners Act [CAP 119]. The grant of such a certificate of a registered legal practitioner is a necessary pre-requisite to applying under the Act to be admitted as a barrister and solicitor.
- 2) On 9 June 2011, the Law Council considered Mr Landry’s application and determined to refuse it. The sole, stated basis for the Law Council’s decision to refuse to grant the certificate was that Mr Landry did not meet the “*two years post- graduate supervised practical legal experience*” requirement by Regulation 2(b)(ii) of the Legal Practitioners (Qualifications) Regulations (Order 22 of 1996).
- 3) Mr Landry seeks a review of the Law Council’s decision on the grounds that it is based upon a regulatory provision (Regulation 2(b)) that is “*ultra vires and void*”.

**The claimant, Didier Hammel- Landry**

- 4) Mr Landry was born on 26 July 1985 (he is currently 26) in Quebec, Canada. He graduated LL.B. from Laval University, Quebec on 31 May 2008. He was called to the *Barreau du Quebec* (The Quebec Bar) on 24 July 2009 and admitted as a practising advocate. There is no dispute that this is the equivalent of being admitted as a barrister sole as it is understood in New Zealand and Australia.
- 5) Mr Landry explained his employment history:

<i>Time Period</i>	<i>Position</i>	<i>Location</i>
January 2008- April 2008	Law Clerk	Superior Court, Quebec
May 2008- August 2009	“Articling student”	Phillion Leblanc Beaudry, S.A, Quebec
December 2009- Present	“Jurist, Foreign Lawyer”	AJC, Port Vila, Vanuatu

### *The path to legal practice in Vanuatu*

- 6) Before dealing further with the challenge to the validity of Reg. 2 (b), it is necessary to examine the legislative scheme that applies to those seeking to be admitted in Vanuatu as a barrister and solicitor pursuant to the Legal Practitioners Act and additionally their ability to practise law in Vanuatu.
- 7) The scheme essentially has a three stage process:-
  - (a) First, the grant of a certificate of registered legal practitioner by the Law Council (s.1K of the Act);
  - (b) Secondly, admission as a barrister and solicitor by the Chief Justice (s. 1A of the Act);
  - (c) Finally, the grant of a practising certificate by the Registrar of this Court (s. 1E of the Act).
- 8) The Law Council is established pursuant to s. 2 of the Act and it consists of the Chief Justice (as Chairman), the Attorney General and a legal petitioner appointed by the Minister responsible for Justice.
- 9) The functions of the Law Council are set out in s. 5 of the Act. It has general responsibility for the control and supervision of legal practitioners. It has specific responsibility to prescribe the qualifications for legal practitioners - s.5(2)(a).

#### ***5. Functions of Law Council***

*(1) The Law Council shall have general responsibility for the control and supervision of legal practitioners.*

*(2) Without derogating from the generality of subsection (1) **the Law Council shall –***

- (a) **prescribe the qualifications for legal practitioners;***
- (b) **keep a Register of Legal Practitioners;***

- (c) *be responsible generally for the discipline of legal practitioners;*
- (d) *be responsible for the etiquette and conduct of legal practitioners;*
- (e) *provide for the legal education and training of legal practitioners;*
- (f) *control the registration of notaries public.*

(emphasis mine)

- 10) The Law Council is also empowered to, “*make rules and regulations not inconsistent with the provisions of (the) Act and for the better carrying out of its provisions*” and, more specifically, (and germane to this case) regulations that, “*may provide for the qualifications required for applicants for registration as legal practitioners*” - s.15.

### **15. Regulations**

(1) *The Law Council may make rules and regulations not inconsistent with the provisions of this Act and for the better carrying out of its provisions.*

(2) *Without derogating from the generality of subsection (1), **regulations made pursuant to this section may provide for –***

- (a) ***the qualifications required for applicants for registration as legal practitioners;***
- (b) *...;*
- (c) *the postgraduate training of persons desiring to become legal practitioners;*
- (d) – (l) *...;*
- (m) *any other matter that shall or may be prescribed under this Act.*

(3) *...”*

- 11) The Legal Practitioners (Qualifications) Regulations (Order 22 of 1996) came in to force on 9 December 1996. Those regulations are entitled, “*To provide for the qualifications required for applicants for registration as legal practitioners*”. The only entity empowered under the Act to make such regulations is the Law Council pursuant to its delegated responsibility and attendant powers by ss. 5 and 15 of the Act. This has, indeed, been recognised in another decision of this court, *Hurley v Law Council of the Republic of Vanuatu*<sup>1</sup> which will be considered in greater detail later in this decision. Von Doussa J determined, “*The Legal Practitioners (Qualifications) Regulations 1996 were made pursuant to Section 15.*”

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<sup>1</sup> [1999] VUSC 39; SC 098-99 (12 October 1999)

- 12) The regulations essentially prescribe the respective qualifications for a two stage certification regime - conditional registration and unconditional registration. This case concerns only the qualifications for conditional registration although the conclusions reached here are likely to apply equally to the provisions relating to unconditional registration as well.
- 13) As mentioned, the first step towards being able to practise as a barrister and solicitor in Vanuatu is to obtain from the Law Council a certificate of registered legal practitioner. As will be addressed later in more detail, when dealing with the qualifications required for admission as a barrister and solicitor, the Act does not differentiate between the two types of certificates of registered legal practitioner (conditional and unconditional) that can be issued by the Law Council under the Regulations. In this case, Mr Landry applied for conditional registration and the focus of this decision is confined accordingly.
- 14) Regulation 2 prescribes three criteria for qualification to be registered as a legal practitioner (the order is altered slightly):-
- a) The applicant holds a Law degree or similar approved qualification- Reg 2(a);
  - b) The applicant is a resident of Vanuatu- Reg 2(c);
  - c) The applicant has at least, “two years post- graduate supervised practical legal experience acceptable to the Law Council” (Reg 2(b)(ii)) or is a “Ni-Vanuatu citizen who is admitted as a barrister and/or solicitor in a Commonwealth jurisdiction” (Reg 2(b)(i)).

## **2. Conditional registration**

*No person shall be qualified to be registered as a legal practitioner unless he or she*

*(a) holds a law degree or similar qualification from a University or such other appropriate institution recognised by the Law Council; and*

*(b) (i) is a Ni-Vanuatu citizen who is admitted as a barrister and/or solicitor in a Commonwealth jurisdiction; or*

*(ii) not being a Ni-Vanuatu citizen admitted in a Commonwealth jurisdiction, has at least two years post-graduate supervised practical legal experience acceptable to the Law Council;*

*(c) is resident in Vanuatu.*

- 15) It is timely to note that there is no dispute that Mr Landry meets the requirements in respect of the holding of a Law degree (Reg 2 (a)) and that he is also a resident of Vanuatu (Reg 2 (c)).
- 16) The Law Council found, however, that he did not have the necessary two years' practical legal experience; which is defined more exactly in Regulation 1. There is no dispute that the Law Council was quite correct in finding that Mr Landry did not meet that practical legal experience requirement as defined. For completeness, the applicable definitions of "practical legal experience" and "supervised practical legal experience" appearing in Reg. 1 are as follows:

**1. Definitions**

*In these regulations, unless the context otherwise requires –*

*"practical legal experience" means working as a barrister, solicitor, advocate, legal advisor, government law officer, or judicial officer, in private practice, commerce, industry, government or the courts, or trainee of one of the above, doing work of a legal nature on a daily basis but may include a period spent undertaking a course in practical legal training provided that such course does not take up more than 50% or one year (whichever is the lesser) of the relevant period of practical legal experience required under these regulations;*

*"supervised practical legal experience" means practical legal experience undertaken as an employee, junior, colleague or other associate of an unconditionally registered legal practitioner who is substantially present on a daily basis in the same office or other premises with the person being supervised;*

- 17) Mr Landry falls short (by my calculations) by approximately 9 months of the required "two years post-graduate supervised legal experience" that would be acceptable to the Law Council. Mr Landry accepts that to be so. However, he submits that he should qualify in any event under the Commonwealth admission exemption. He argues that

Reg. 2 (b) illegally discriminates between those who are Ni-Vanuatu citizen and those who are not Ni- Vanuatu citizens.

***The challenge to Regulation 2(b).***

18) Mr Landry's essential submissions are as follows:

*“1. [The] parts of subsection 2(b) of the Regulations referring to being ‘a Ni-Vanuatu citizen’ are discriminatory and ultra vires and that they are not within the power of the Law Council under the Legal Practitioners Act*

*2. [The] provisions in issue are also discriminatory and ultra vires within the meaning of Article 5 (1)(k) of the Constitution, Article 26 of the International Covenant on Civil and Political Rights<sup>2</sup> and Article 1(a) of the International Labour Organisation Convention (No. 111) Discrimination (Employment and Occupation )”<sup>3</sup>*

19) The challenge is that Reg. 2(b) initially provides a practical requirement (i.e. 2 years post-graduate supervision legal experience) but then makes an exception for Ni-Vanuatu citizens who have been admitted as a barrister and/or solicitor in a Commonwealth jurisdiction. It is noted that the admission requirement is in respect of “*a barrister and/or solicitor*” which includes, of course, someone who has been admitted as a barrister sole or just as a solicitor. There are many countries within the Commonwealth that maintain the separation of barristers from solicitors. As mentioned, Mr Landry is admitted as a barrister in the province of Quebec, Canada and he meets the requirements of Reg. 2(b)(i) except for the fact that he is not a Ni-Vanuatu citizen.

20) Mr Landry's challenge is that Reg. 2(b) is illegal as it discriminates on the basis of citizenship and it was, in any event, outside the power of the Law Council to make such a discriminatory provision as to the required qualifications. In this respect, Mr Landry's argument examined the regulation making powers of the Law Council and referred also to high authority from the United States and Canada all in support of his initial submission

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<sup>2</sup> International Covenant on Civil and Political Rights (Ratification) Act 2008

<sup>3</sup> Discrimination (Employment and Occupation) Convention (Ratification) Act 2005

that classifications based on citizenship provide, “*an inherently irrational basis for differentiation between candidates to the legal profession*”.

21) The power of the Law Council to make regulations is found in s.15 of the Act. The Law Council is empowered to make rules and regulations “*not inconsistent with the provisions of this Act and for the better carrying out of its provisions*”. The Law Council is specifically empowered to make regulations that provide for, “*the qualifications required for applicants for registration as legal practitioners*” and that is, of course, exactly what the Law Council purported to do by Reg. 2.

22) Mr Landry argues that the Law Council was never empowered to make regulations that defined the qualifications required for registration as a legal practitioner based on the distinction as to whether or not an applicant was a Ni-Vanuatu citizen. Mr Landry argued,

“*in the present case, the provisions of the regulations clearly disclose a differential treatment between two classes of candidate to the legal profession:-*

- *Persons of Ni-Vanuatu citizenship, and*
- *Persons of other citizenship*

23) Mr Landry argues that there is no “*legitimate objective justifying this differential treatment in the context of the Legal Practitioners Act*” and “*the provisions in issue disproportionately disqualify non-Ni-Vanuatu citizens and deny them equal treatment under the law and administrative action.*”

24) Mr Gilu for the Law Council and the Attorney General argued that Regulation 2(b) was within the regulatory making power of the Law Council and furthermore in conformity with Article 5 of the Constitution.



## *Consideration*

- 25) This is a claim as to the legality of the Law Council's decision to decline Mr Landry's application for a certificate of registered legal practitioner. By necessary extension, it challenges the legality of that part of Reg. 2(b) that provides for special treatment (discrimination, as argued) for Ni-Vanuatu citizens as against non-Ni-Vanuatu citizens.
- 26) Clearly, if Reg. 2(b) is illegal in this particular respect, the decision of the Law Council must similarly be illegal even though the decision is based on Reg. 2(b)(ii) rather than Reg. 2(b)(i). Reg. 2(b) must be read in its entirety as defining the qualifications required outside a law degree and residency.
- 27) Put another way, Mr Landry would have had to have been seen as qualified for admission if he was a Ni-Vanuatu citizen notwithstanding that he did not have the necessary 2 years' practical experience. The decision to decline a certificate in his case must be seen as a reflection of the fact that he is not a Ni-Vanuatu citizen.
- 28) Accordingly, the initial focus must be on the legality of Reg 2(b) in so far as it differentiates between Ni-Vanuatu citizens and non-Ni-Vanuatu citizens.
- 29) The starting point is ss. 5 & 15 of the Act which define the functions of the Law Council (s. 5) and empower it to "*make rules and regulations not inconsistent with the provisions of this Act and for the better carrying out of its provisions*" (s.15 (1)). The Law Council was required to work within the scope of the power reposed in it by s.15 which, in this case, required it to make regulations providing for the qualifications of applicants for registration as legal practitioners.
- 30) The Act does not expressly permit the Law Council to differentiate between Ni-Vanuatu and non-Ni-Vanuatu when prescribing the qualifications for registration as a legal practitioner.
- 31) Mr Gilu referred to Article 5 of the Constitution as providing a sound basis for the Law Council's decision apropos of Reg. 2(b). That Article provides:

## ***PART I – Fundamental Rights***

### ***5. Fundamental rights and freedoms of the individual***

*(1) The Republic of Vanuatu recognises, that, subject to any restrictions imposed by law on non-citizens, all persons are entitled to the following fundamental rights and freedoms of the individual without discrimination on the grounds of race, place of origin, religious or traditional beliefs, political opinions, language or sex but subject to respect for the rights and freedoms of others and to the legitimate public interest in defence, safety, public order, welfare and health –*

*(a) – (j)*

*(k) equal treatment under the law or administrative action, except that no law shall be inconsistent with this sub-paragraph insofar as it makes provision for the special benefit, welfare, protection or advancement of females, children and young persons, members of under-privileged groups or inhabitants of less developed areas.*

*(2) ...”*

*(emphasis mine)*

- 32) However, while the Constitution by Article 5 authorises restrictions to be imposed on non-citizens (which for present purposes can be accepted as non-Ni-Vanuatu citizens), any such restrictions must be imposed by law. It is important to appreciate that this is an exception to the guarantee of certain fundamental rights and freedoms as applying to all and that includes the freedom from discrimination on the grounds of place of origin. Any departure or exception to those rights must be in accordance with the obvious and clear intention of Parliament within laws passed by it.
- 33) Parliament, by the Legal Practitioners Act, did not empower the Law Council to make regulations that departed from its guarantee (or recognition) of those fundamental rights and freedoms and the Law Council cannot assume that power. The Law Council was restricted to making regulations that are not inconsistent with the Act and for the better carrying out of the objects and purpose of the Act.
- 34) The long title of the Act neatly summarises its objects and purpose:

***To provide for the admission and registration of legal practitioners, their qualifications, discipline and other matters connected therewith***

- 35) The regulations themselves are entitled:

***To provide for the qualifications required for applicants for registration as legal practitioners***

- 36) Clearly, s.15 provides an apparently wide discretion on the Law Council in respect of its regulation making powers. However, that is not an unfettered discretion. Even where the exercise of a statutory discretion is not limited by the express provisions of the Act, it is necessary to identify the objects and purposes of the statute in order to identify the limitation to which the discretion is subject. Even if a statute went so far as to say that the decision maker had an “unfettered discretion”, that is still subject to the constraints identified by the objects and purpose of the statute as determined by the courts. Lord Upjohn addressed this in ***Padfield v Minister of Agriculture Fisheries and Food***<sup>4</sup>,

*“[T]he use of that adjective [unfettered], even in an Act of Parliament, can do nothing to unfetter the control which the judiciary have over the executive, namely, that in exercising their powers the latter must act lawfully and that is a matter to be determined by looking at the Act and its scope and object in conferring a discretion upon the minister rather than by the use of adjectives.”*

- 37) The constraints on the Law Council were addressed in an earlier decision of this court, ***Hurley v Law Council of the Republic of Vanuatu***<sup>5</sup>. That case had dealt with a decision of the Law Council not to grant unconditional registration to the applicant. While that case dealt more exactly with the Law Council’s exercise of its discretion not to grant unconditional registration, it also addresses the objects and purpose of the Act in this way

*“Whilst sub-section 1K (2) and (3) by their terms vest the Law Council with a discretion which is unlimited, the breadth of such a discretion must be interpreted so as to fulfil the purpose and policy of the Act, and must be understood as limited accordingly. In the leading case of ***Padfield –v- Minister of Agriculture, Fisheries and Food and others****

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<sup>4</sup> [1968] A.C. 997

<sup>5</sup> (supra)

*[1968] AC 997 Lord Reid at 1030 said in relation to a discretion which provided “if the Minister ... directs”*

*“...Parliament must have conferred the discretion with the intention that it should be used to promote the policy and objects of the Act; the policy and objects of the Act must be determined by construing the Act as a whole and construction is always a matter of law for the court. In a matter of this kind it is not possible to draw a hard and fast line, but if the Minister, by reason of his having misconstrued the Act or for any other reasons, so uses his discretion as to thwart or run counter to the policy and objects of the Act, then our law would be very defective if persons aggrieved were not entitled to the protection of the court. So it is necessary first to construe the Act.”*

*Barristers and solicitors who have the right to pursue their profession for reward hold a privilege position of trust in the community. By legislation they are given a monopoly to perform legal work (see part IV of the Act). The object and purpose of requiring and prescribing qualifications (see Section 1L) and of requiring the formal registration and admission of people as barristers and solicitors is to ensure that only people suitable to be entrusted with that privilege by reason of their character and skills act as barristers and solicitors. The provisions in Section 5 and Part III relating to educate, control, and discipline have the same purpose.*

*This general purpose has been eloquently stated in relation to similar legislation in Australia. In Ex Parte Meagher (1919) 19 SR (NSW) 433 Gordon J. at 442 said:*

*“...By s. 10 of the Charter of Justice, this Court is only entitled to admit to practice as solicitors men who are “fit and proper persons”. By the words “fit and proper persons” it meant persons who have been proved to the satisfaction of the Court not only to be possessed of the requisite knowledge of law, but above all to be possessed of a moral integrity and rectitude of character, so that they may safely be accredited by the Court to the public as fit, without further inquiry to be entrusted by that public with their most intimate and confidential affairs without fear that the trust will be abused.”*

*The discretions given to the respondent in sub-section 1K (2) and (3) must be exercised consistently with those objects and the purpose of the Act, and not for extraneous or irrelevant purposes. Moreover as the discretions from part of s. 1K, they must be exercised for a purpose related to the subject matter of s. 1K. “*

- 38) The objects and purpose of the Act, in so far as this case is concerned, is for the Law Council to prescribe the qualifications for a registered legal practitioner. The Law Council was not empowered to prefer Ni-Vanuatu citizens to non-Ni-Vanuatu citizens when devising those qualifications. By doing so, it appears to have sought to achieve an ulterior purpose which was outside its powers.

- 39) Regulation 2(b) clearly discriminates against non-Ni-Vanuatu citizens. Reg. 2(b)(1) provides an exemption to the “*two year post- graduate supervised practical legal experience*” requirement but only for Ni-Vanuatu citizens who have been admitted as a barrister and/or solicitor in a Commonwealth jurisdiction. Accordingly, it discriminates against non-Ni- Vanuatu citizens who otherwise qualify under Reg. 2(a) and (c) and who have been admitted as a barrister and/ or solicitor in a Commonwealth jurisdiction but do not have the required practical experience. As such, not only does that distinction arise as a result of the Law Council exceeding its powers, it is also contrary to the right of those in Vanuatu to be free from discrimination on the basis of place of origin (Article 5 (1)).
- 40) Mr Gilu was unable to explain why the distinction between a Ni- Vanuatu citizen and a non-Ni-Vanuatu citizen in this context could be understood much less justified if Reg. 2(b) was required to be part of the prescription of qualifications for “... *people suitable to be entrusted with that privilege by reason of their character and skills act as barristers and solicitors*”<sup>6</sup>.
- 41) Classifications based on citizenship have been recognised by the highest courts in the United States<sup>7</sup> and Canada<sup>8</sup> as an inherently irrational basis for differentiation between candidates to the legal profession. The principal reason behind those decisions is that citizenship is not an aptitude or qualification rationally connected to the practice of law and bears no correlation with a person’s professional skills or competence.
- 42) It is clear that the Law Council, in making Reg. 2(b), attempted to provide an advantage to Ni-Vanuatu citizens who had been admitted in a Commonwealth jurisdiction as against non-Ni-Vanuatu citizens who had a similar qualification. They can certainly be no legitimate justification for such a distinction if the task entrusted to the Law Council by the Act was to prescribe the qualifications required for those applying for registration as a

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<sup>6</sup> Hurley (supra)

<sup>7</sup> In re Griffiths [1973] USSC 174

<sup>8</sup> Andrews v Law Society of British Columbia [1989] 1 S.C.R. 143

legal practitioner. Such a distinction does not advance the objects and purpose of the Legal Practitioners Act and, furthermore, it is contrary to Article 5 of the Constitution.

### ***Conclusion***

43) For these reasons, I find that the special treatment accorded to Ni- Vanuatu citizens under Reg. 2(b) was ultra vires the regulation making power of the Law Council and accordingly illegal.

44) The issue then arises as to whether all of Reg. 2(b) should be considered to be illegal or whether the offending part of it can be excised to leave that part of the qualification requirement in a form that does not offend the objects and purpose of the Act. That is, should Reg. 2(b) survive in this form:

#### ***2. Conditional registration***

*No person shall be qualified to be registered as a legal practitioner unless he or she*

*(a) holds a law degree or similar qualification from a University or such other appropriate institution recognised by the Law Council; and*

*(b) (i) is admitted as a barrister and/or solicitor in a Commonwealth jurisdiction; or*

*(ii) not being admitted in a Commonwealth jurisdiction, has at least two years post-graduate supervised practical legal experience acceptable to the Law Council;*

*(c) is resident in Vanuatu.*

45) Clearly, the Law Council, when it caused Reg. 2(b) to be made, accepted that if a Ni- Vanuatu citizen had been admitted as barrister and/ solicitor in a Commonwealth jurisdiction then that was sufficient to avoid the need to have two years post- graduate supervised legal practical experience. It is difficult to see why that should not have general application. Once a person has been admitted in a Commonwealth jurisdiction, he or she can be taken as having fulfilled the practical requirements of that jurisdiction such that they can be admitted. In some countries, New Zealand and Australia for example, a person can be admitted without any practical experience but after having sat and passed an

approved course of practical study. In the United States of America there are the “Bar Examinations” which are to much the same effect.

- 46) There can be no rational basis for suggesting that this exemption from the practical experience requirement by Reg. 2(b) should not apply to any person who has been admitted as barrister and/ or solicitor in a Commonwealth jurisdiction
- 47) There is no risk in this approach for Vanuatu as the certificate of registered legal practitioner can be made subject to certain conditions which would usually, if not invariably, prohibit practice on the person’s own account until they have gained sufficient experience. That is, indeed, provided for by Reg. 6 although Reg. 6(2) is likely to be subject to the same conclusions as to illegality as have been reached here (as is the case with Reg. 4(1)).

**“6. Practice on own account**

*(1) No legal practitioner or other person shall be entitled to practice on his or her own account unless*

*(a) he or she has unconditional registration as a legal practitioner; and*

*(b) subject to subregulation (2) of this regulation he or she has not less than 5 years practical legal experience.*

*(2) The Law Council may waive the requirement of 5 years practical legal experience in the case of a Ni-Vanuatu legal practitioner provided that it is in the public interest to do so.*

*(3) ...”*

- 48) Accordingly, Reg. 2(b) is to be read as set out in para. 44 above which excises the offending part of the qualification requirement.
- 49) It follows that Mr Landry succeeds in his claim and that the decision of the Law Council to refuse his application for a certificate of registration as a legal practitioner must be quashed.

- 50) Mr Landry is admitted as a barrister in the province of Quebec, Canada which is part of the Commonwealth of Nations. He has the appropriate academic qualification and he has residency in Vanuatu. As mentioned earlier, if he was Ni-Vanuatu, he would be qualified for a certificate of registered legal practitioner. Be that as it may, it is appropriate that the Law Council now re-consider Mr Landry's application to be certified as a registered legal practitioner as the Law Council is likely to impose conditions on the certificate and in line with its general policy relating to new legal practitioners.

***The current path toward legal practice***

- 51) This case has, however, raised an interesting point about the approach taken in Vanuatu to those seeking to practice law in the Republic and the processes employed.
- 52) As previously mentioned, once a person is granted a "certificate of a registered legal practitioner" by the Law Council pursuant to s. 1K, (with or without conditions (s. 1K (3)) then the person may apply to the Chief Justice for admission as a barrister and/or solicitor- (s1A).
- 53) A person is qualified for admission if they have a certificate of registered legal practitioner – s. 1B

***1B. Qualification of Barristers and Solicitors***

*Subject to the other provisions of this Act, every person who holds a valid certificate of Registered Legal Practitioner, shall be qualified for admission as Barrister and Solicitor under this Act.*

- 54) The practice that has been adopted in Vanuatu for some years is for the holders of a certificate of registered legal practitioner with conditions to be "*conditionally admitted*" as a barrister and solicitor. At some later time, if the Law Council removes the conditions, there is a second "admission" which is generally described as "*unconditional admission*". With the greatest respect, that does not appear to be accordance with the scheme of the Act. In short, once a person has obtained a certificate of registered legal petitioner, with



or without conditions, he or she is thereby qualified for admission as a barrister and solicitor under the Act and he or she may apply to the Chief Justice to be admitted as a barrister and/ or solicitor - s.1A. Once admitted as a barrister and solicitor, the Registrar of this Court is required to enter the name of the legal practitioner on the Rolls of Barrister and Solicitors kept by the Registrar - s. 1D.

- 55) There is no lawful basis for a legal practitioner to be “conditionally admitted” or “unconditionally admitted”. A person is either admitted as a barrister and solicitor and entered on to the Rolls kept by the Registrar or he or she is not so admitted.
- 56) Once a person is admitted as a barrister and solicitor, the next step is for the practitioner to apply to the Registrar of this Court for a practising certificate which is required to be granted on payment of the prescribed fee – s. 1E. The Registrar is then to grant (issue) a practising certificate subject to any conditions imposed by the Law Council pursuant to s.1K(3). That grant of the practising certificate gives the barrister and solicitor the lawful authority to practise law in Vanuatu subject, however, to any conditions endorsed on the certificate.
- 57) When a legal practitioner, who holds a certificate of registered legal practitioner that is subject to conditions, seeks to move to unconditional registration, he or she then applies to the Law Council for the removal of the conditions which, if successful, will result in a new certificate of registered legal practitioner without conditions. That would enable the legal practitioner to then apply to the Registrar for the grant of a new practising certificate without conditions.
- 58) The two tiered admission process undertaken in Vanuatu with a registered legal practitioner being admitted either conditionally or unconditionally has no proper basis in law. A legal practitioner is admitted once and once only and his or her name is entered on to the Rolls without any qualification against his or her name. Any condition(s) imposed by the Law Council apply initially to the certificate of registered legal practitioner and subsequently to the practising certificate.

- 59) That statutory scheme is, indeed, broadly akin to the schemes that apply in both Australia and New Zealand.

*Finally*

- 60) Returning finally to Mr Landry's case and the formal orders required:

- a) Regulation 2(b) of the Legal Practitioners (Qualifications) Regulations (Order 22 of 1996), in so far as it purports to discriminate against non-Ni-Vanuatu citizens, is declared illegal and void. Reg. 2 is to be read and applied as follows (which is without the illegal aspects):**

**2. Conditional registration**

*No person shall be qualified to be registered as a legal practitioner unless he or she:*

*(a) holds a law degree or similar qualification from a University or such other appropriate institution recognised by the Law Council; and*

*(b) (i) is admitted as a barrister and/or solicitor in a Commonwealth jurisdiction;*

*or*

*(ii) not being admitted in a Commonwealth jurisdiction, has at least two years post-graduate supervised practical legal experience acceptable to the Law Council;*

*(c) is resident in Vanuatu.*

- b) The decision of the Law Council of 9 June 2011 to decline the claimant's application for a certificate of registered legal practitioner is quashed.**

- c) The Law Counsel is to reconsider the claimant's application.**

- 61) I decline to set a time for the Law Council to meet and reconsider the claimants' application although it can be hoped that this will be achieved within a short period of time given the time that has passed since the application was made.
- 62) In respect of costs, the claimant was at one time initially represented by a local legal practitioner (Mrs Marie-Noelle Ferrieux Patterson) although it is clear that the vast majority of the work has been undertaken by the claimant himself. For such legal expenses that the claimant may have incurred earlier in respect of Mrs Patterson, the claimant is entitled to costs on a standard basis. He is also entitled to all disbursements and other reasonable expenses incurred by him incidental to this proceeding. Leave to apply further in this respect is reserved.
- 63) Finally, I wish to express my appreciation to the claimant for his very clear and helpful presentation of his case. I am also grateful to Mr Gilu for his measured and most responsible submissions. Mr Landry and Mr Gilu have provided great assistance indeed in respect of what are the rather novel issues raised by this case.

**BY THE COURT**

A handwritten signature in black ink, appearing to read "M. J. Gilu", written in a cursive style.