REVIEW AUTHORITY NEW ZEALAND **2012 NZRA 000012**

Applicant **AI**

Respondent **Secretary for Justice**

Date of Decision: **10 August 2012**

DECISION

INTRODUCTION

1. On the 17th May 2012 The Secretary for Justice ('the Secretary') signed a decision declining approval of the Applicant as Lead Provider for proceedings before the Maori Land Court, Maori Appellate Court and the Waitangi Tribunal.

2. The Secretary communicated advice of that decision to the applicant by letter dated 25 May 2012.

3. The reasons for declining approval were:

    a. that the Applicant had not demonstrated experience and competence in Maori Land Court, Maori Appellate Court and Waitangi Tribunal in that she had not demonstrated active involvement in leading evidence and cross-examination before the Maori Land Court or the Waitangi Tribunal which were considered integral aspects of proceedings in those areas.

    b. A number of the Applicant's case examples were from negotiations, rather than from proceedings before the Maori Land Court or Waitangi Tribunal.

    c. That the Applicant had not provided sufficient evidence to show that she had experience in the skill required to take a proceeding from start to finish as a Lead Provider.

d. That the information that the Applicant supplied relating to experience in civil and family matters intended to support and supplement the application for approval did not evidence active and substantial involvement in Waitangi Tribunal or Maori Land Courts having regard to the criteria in the Regulations. The Secretary considered that the approval areas are intentionally separated and require evidence of the particular area applied for.

4. The Applicant seeks a review of that decision

BACKGROUND

5. The Applicant was admitted as a barrister and solicitor in New Zealand in December 1999. She has held employment in the areas of criminal, civil and family litigation including overseas experience with the London Borough of Richmond upon Thames. More recently she held employment where she has concentrated on issues arising in historical and potential claims to the Waitangi Tribunal.

6. She established her specialist legal Practice in 2011 specialising in both historical and contemporary Treaty of Waitangi claims before the Waitangi Tribunal and in settlement negotiations.

7. The Applicant's application for approval to provide legal aid services in the areas of Maori Land Court and Maori Appellate Courts and Waitangi Tribunal is dated 19 December 2011 and was received by the Secretary on 23 December 2011.

8. The Applicant provided work samples in respect of in respect of claims before the Waitangi Tribunal being Wai 45, and Wai 262. Work samples are required by reg 9A of the Legal Services (Quality Assurance) Regulations 2011 ('the Regulations'). The Applicant's work samples were copies of lengthy memoranda one of which included an appendix.

9. The Applicant emphasised in her application for approval that she had been involved in the preparation of submissions in at least three relevant court or tribunal proceedings. She said that a significant proportion of the Treaty of Waitangi claims related work involved settlement negotiations which she undertook. She gave comprehensive detail of her involvement.

10. Arising out of an assessment of the application for approval, the Applicant was asked to provide further information demonstrating her active involvement in any Hui, Judicial Conferences or hearings in respect for the cases the Applicant had mentioned.

11. The Applicant advised that she had attended in respect of three cases but had not attended judicial conferences because she was not a lead provider.

12. The Selection Committee ('Committee') considered the application for approval on 15 March 2012. It issued a note on 20 March expressing concern that the Applicant had not demonstrated substantial and active involvement at trials. It requested further case examples demonstrating involvement at the Waitangi Tribunal with emphasis on leading evidence, cross-examination and appearing before the Tribunal in an active way. The Committee advised her that it considered that settlement negotiations are considered as part only of Waitangi Tribunal proceedings and were not alone sufficient to show active and substantial involvement in proceedings.

13. The Applicant responded on 30 March 2012 and gave further case examples which I summarise as follows:

    a. Wai 45 – Te Runanga Nui o Te Aupouri Trust. The Applicant describes active and substantive role as being preparing her client's response including the drafting of five memoranda, which included substantial review of all documents filed by other parties. She attended judicial conferences in regard to the matter but took no part in making submissions.

    b. Wai 613 – te Runanga Nui o Te Aupouri trust – application for urgent hearing. The Applicant reviewed all documents filed by all interested parties, drafted memorandum in response to the application and represented the client on a Judicial telephone conference.

    c. Wai 2360 – te Runanga Nui o Te Aupouri Trust – application for urgent hearing. The applicant again reviewed relevant documents filed by interested parties, drafted a memorandum in response

and attended the judicial conference although oral submissions were made by Lead Counsel, Mr Powell.

d. Wai 2344 – Te Runanga Nui o Te Aupouri Trust – application for urgent hearing. The Applicant was similarly involved as in the matters listed above and attended the judicial conference where oral submissions were not required.

e. Wai 1146 – Nga Maunga Whakahii o Kaipara Development Trust – application for urgent hearing. In this matter the Applicant drafted a memorandum in response to the application for urgency and attended the judicial telephone conference which considered the grant of urgency.

14. The Applicant also gave information "*relating to involvement in settlement negotiations"* in respect of the other case examples which she had previously provided. The essential elements of the information provided were:

a. Acting as Junior Counsel in a post hearing phase and preparation of submissions

b. Work as Junior Counsel in 3 matters which included (inter alia) preparation of various memoranda, reviewing material of relevance, drafting briefings, preparing statement of claim, briefs of evidence and submissions in support of an application to challenge a ratification process undertaken by Ngati Porou.

15. The Applicant emphasised that she had a number of years' experience appearing in courts with stricter rules of evidence than the Waitangi Tribunal or the Maori Land Court and which experience included leading evidence in chief and cross examination of lay and expert witness.

16. She said that it should be noted that the Regulations do not specifically require experience leading evidence or cross examining witnesses. The criteria are that an applicant must have substantial and active involvement in at least three substantial Maori Land Court or Waitangi Tribunal proceedings. She considered that her experience before the Tribunal and in other jurisdictions qualified her for approval as a lead provider for Waitangi Tribunal and Maori Land Court Proceedings.

17. On 12 April 2012, The Committee considered all the information provided by the Applicant up to that date. The Committee recommended that the Secretary decline approval as lead provider for Maori Land Court, Maori Appellate Courts and Waitangi Tribunal. It expressed the opinion that because the applicant had not met the requirement of clause 10(b) of the Schedule to the Regulations, she did not meet the competence and experience requirements of reg 6 The Committee considered that the additional information supplied by the Applicant did not advance her case for approval as a lead provider.

18. The Applicant received advice of the Committee's recommendation to the Secretary and wrote a letter on 27 April 2012 in which she addressed the issues of leading evidence and cross-examination, and the nature of her case examples.

19. She acknowledged that leading evidence and cross examination are an important part of Waitangi Tribunal proceedings and thus the validity of the issue raise by the selection committee. She then set out details of her experience of leading evidence and cross examination in other jurisdictions while acknowledging that she had not done so in the Waitangi Tribunal or the Maori Land Court.

20. She wished to persuade the Secretary that the combination of her skill in respect of leading evidence and cross-examination gained elsewhere with the experience in the environment of the Waitangi Tribunal and formal hui on marae showed that she had the experience and competence to be a lead provider.

21. The Applicant then argued that the case examples provided which displayed experience in settlement negotiation, also referred to active and substantial involvement in other separate proceedings before the Waitangi Tribunal.

22. The Secretary considered the Committee's recommendation and the Applicant's letter of 27 April. He declined to approve her as a lead provider for Treaty of Waitangi, Maori Land Court and Maori Appellate Courts for the reasons set out at the beginning of this decision

THE APPLICATION FOR REVIEW

23. The Applicant advances the following grounds in support of her application for a review of the Secretary's decision which are that the Secretary's decision:

    a. was made on the basis of an error of law

    b. failed to take into account relevant considerations; and

    c. was manifestly unreasonable.

24. In relation to the alleged error of law the Applicant has submitted:

    a. The Secretary was wrong to consider applicants must be assessed against their experience in the particular area of law applied for rather than taking into account experience gained in a different area of the law.

    b. The Regulations in relation to Maori Land/Appellate Court or Waitangi Tribunal do not specify that the experience must be at hearing stage of the proceedings or that an applicant must have experience in cross examination and leading evidence. The regulation refers simply to *"substantial and active involvement"* in proceedings. (see Schedule cl 10(b)

    c. The requirement in cl 10(b) differs significantly from equivalent criteria for civil and family provider status where in the case of civil legal aid an applicant must have appeared as Counsel. In respect of Family legal aid the relevant clause refers to interlocutory hearings, mediation conferences, judicial conference and proceedings where witnesses gave oral evidence.

    d. There is no specific requirement in cl 10 (b) for a provider to have been involved in leading evidence and cross examination. In the absence of a specific requirement the Secretary has fettered his discretion and made an error of law by requiring such experience.

    e. That general litigation skills are important parts of advocacy which can be more properly considered in an overall assessment under reg 6(1) and when applying regs 6(2)(b) and (c).

f. That reg 6(2)(c) does not limit what the Secretary can take into account in determining whether a provider has the appropriate level of knowledge and skill. The Secretary should have therefore determined the application by taking into account the combination of experience in the Waitangi Tribunal, Treating of Waitangi settlement negotiations and in advocacy in a wide range of other jurisdictions.

25. As to failure to take into account relevant considerations the Applicant has submitted:

a. That as a result of the error of law, the Secretary failed to take into account the information supplied relating to the Applicant's experience in leading evidence and cross examination in other jurisdictions or how that experience coupled with her experience in other aspects of Tribunal proceedings and in Treaty of Waitangi settlement negotiations, demonstrated that she had the requisite skills and experience to act as a lead provider, including a comprehensive understanding of the overall claim and settlement framework which many lead providers do not have.

b. That the experience detailed in her letter of 20 March 2012 was evidence of substantial and active involvement in a range of proceedings before the Waitangi Tribunal. She referred to 8 examples of different cases of involvement in front of the Waitangi Tribunal as opposed to engagement in settlement negotiations and which she argues were not referred to by the Secretary in his decision. She says that the Secretary referred only to her experience in settlement negotiations.

26. As to manifest unreasonableness the Applicant argues that she is an experienced litigator with substantial experience in Treaty of Waitangi Jurisprudence, good understanding of tikanga and cultural issues in the course of acting for claimants, both before the Waitangi Tribunal and through the settlement process, and with significant contested hearing experience and advocacy skills. It was therefore manifestly unreasonable for the Secretary to determine that she did not meet the criteria for a lead provider taking into account the combination of her skills and experience.

27. The Secretary's response to the application for review is set out in writing dated 16 July 2012. The Secretary summarised his position by accepting that the Applicant has litigation skills which are reflected in her other approvals. He emphasised that such skills are only one element of the requirements, saying that she has insufficient experience in the Waitangi Tribunal to satisfy him that she is ready to take a lead provider role, including managing a case through all the stages of the claims to the Waitangi Tribunal process. He said this was because of her limited involvement in Waitangi Tribunal proceedings other than settlement negotiations.

28. He annexed as Appendix 1 a chart detailing the process for claims to the Waitangi Tribunal. The chart sets out fifteen steps that are taken in reaching resolution of a claim. Nine of those steps relate to the filing and hearing of the claim and the tenth relates to the Tribunal issuing its report on the claim(s). The remaining five steps relate to negotiations towards settlement following the release of the report.

29. The Secretary's submission in response to having made an error of law is:

    a. There is limited ability in the Regulations to take into account the Applicant's other experience as evidence of her experience and competence in the area of law applied for because:

        i. Regulation 4 cites the Schedule as a source of the criteria for approval. The Schedule contains mandatory requirements.

        ii. Regulation 6(2) sets out three sources, (a) – (c) which the Secretary must consider in deciding whether the applicant meets the experience and competence criteria.

        iii. In reg 6(2)(a) the Secretary *must apply* the requirements in the Schedule. The application of the requirements in the Schedule is mandatory not discretionary. This is demonstrated by the use of the word '*must*' in reg 6 and also in the Schedule.

        iv. This applies equally to regs 6(2)(b) and (c), where the Secretary may decline approval if the Secretary is not

satisfied, despite having met the requirements in the Schedule and reg 6(2)(a) that the Applicant has the appropriate level of knowledge and experience.

v. That the word '*and'* between regs 6(2)(a), (b) and (c) supports the view that the requirements are not mutually exclusive, and must all be considered to grant approval; and

vi. It follows therefore that a person would not meet the requirements of reg 6, by merely meeting reg 6 (2)(b) based on his/her history as a lawyer alone.

30. The Secretary has addressed the meaning of the word *'proceedings'* in cl 10 of the Schedule by making the following submissions:

a. The word "proceeding" is not defined in the Regulations or in the Legal Services Act 2011 ('the Act'), nor was it defined in the Legal Services Act 2000 ('the 2000 Act').

b. Butterworth's New Zealand Law Dictionary defines *'proceedings'* as *'an action commenced in a Court'.*

c. '*Proceeding'* is defined in the High Court Rules as *'any application to the court for the exercise of the civil jurisdiction of the court...'* It is similarly defined in the District Court Rules 2009.

d. This indicates that a proceeding is limited to a court proceeding and does not include legal steps taken outside the court process, such as out-of-court negotiations.

e. The purpose of the Act is to promote access to justice by setting up a system that provides legal services to people of insufficient means and delivers those services in the most effective and efficient manner.

f. That, therefore, the purpose of the Regulations is to ensure that the providers of legal services have the experience and competence to deliver those legal services in accordance with the purpose of the Act.

g. That s 4(1) of the Act includes in the definition of '*legal services'* in relation to legal aid,

   i. assistance with resolving disputes other than by legal proceedings,

   ii. taking steps that are preliminary to any proceedings,

   iii. taking steps that are incidental to any proceedings, and

   iv. Arriving at or giving effect to any out-of-court settlement that avoids or brings to an end any proceedings.

h. Section 4(2) of the Act excludes (i), (iii) and (iv) above from the definition of '*legal services'* in relation to legal aid for proceedings before the Waitangi Tribunal, so that legal aid includes only assistance with taking steps that are prior to any settlement negotiations. This would exclude Treaty settlement negotiations from the definition of legal services for which legal aid is available.

i. That as Treaty settlement negotiations are not legal services for which aid is available, involvement in such negotiations would not be relevant to an application to provide legal aid services for the purpose of cl 10 of the Schedule.

j. The commentary to the Legal Services Bill states that the key features of the Bill include *"clarifying that legal aid can be obtained for Waitangi Tribunal proceedings but not for negotiating settlements with the Crown"*.

k. That s 133 of the Act expressly provides for the expiry of grants of legal aid made prior to the commencement of the Act for Waitangi Tribunal proceedings that do not come within the definition of "legal services". Under the Act, treaty settlement negotiations have their own separate public funding under the responsibility of the Ministry's Office of Treaty Settlements.

l. That it follows that "*proceeding"* means a court proceeding and does not include treaty settlement negotiations.

m. That the evidence which the applicant has provided relating to settlement negotiations and to leading evidence and cross

examining in other jurisdictions is not relevant in terms of demonstrating active and substantial experience in a Waitangi Tribunal, Maori Land Court or Maori Appellate Court proceeding.

31. The Secretary submits that his decision was not manifestly unreasonable as the applicant asserts because:

    a. Experience and competence is demonstrated through verifiable facts provided in the application

    b. The onus is on the Applicant to provide information to prove his/her competence and experience and meet the criteria in the schedule; and

    c. The Applicant submitted case examples that primarily demonstrate her experience and competence in settlement negotiations and in other jurisdictions, not Waitangi Tribunal, Maori Land Court or Maori Appellate Court proceedings

32. The Secretary acknowledges that substantial and active involvement is not defined in the Act or Regulations, but has addressed the interpretation of the requirement by referring to the Ministry of Justice Legal Aid Application Guidelines which refers to active and substantial as: '*preparation and participation in particular cases, demonstrating a significant contribution to legal proceedings ....considerable input into the court or informal proceedings (such as mediation, negotiation, examination or cross examination of witness leading evidence, delivering opening and/or closing address and presenting submissions'*

33. He notes that the interpretation set out was the same interpretation adopted under the previous listing criteria for approval under the 2000 Act.

34. He says that it has long been accepted that to be approved to undertake Waitangi Tribunal, Maori Land Court or Maori appellate Court work, lawyers must have experience in key tasks in order to ensure they can deliver legal services of appropriate quality.

35. *Active and substantial involvement* encompasses participation at two levels;

a. ‘Pre-tribunal’ or ‘preparation’ research, client contact, liaising with the opposing counsel, drafting submissions and court documents: and

b. ‘tribunal/court’ or ‘proceedings’ which include hearings where relevant – experience and attendance at court hui and judicial conferences, leading evidence, examining and cross-examining witness and experts, addressing the Court/Tribunal, opening and closing addresses and presenting submissions.

36. The Secretary explained that in assessing cases in the application process, the tasks completed in the proceedings are considered. An applicant is not required to demonstrate all the tasks in every case example but together the case examples must demonstrate active and substantial experience.

37. He argues that the approach to assessment as described is aimed at ensuring that applicants are capable of managing a case by themselves from start to finish and be able to provide effective and efficient legal aid services. The approach is consistent with the purpose of the Act and the Secretary’s function.

38. The Secretary’s position is reinforced by the framework for assigning cases to approved providers being that only lead providers are assigned cases, thus ensuring that the assigned lawyer has experience and competence demonstrated through a high degree of involvement in case examples submitted with the application.

39. The Secretary argues that the Applicant acknowledged a lack of extensive experience in Waitangi Tribunal hearings or proceedings. She has observed proceedings and participated in hearings in other jurisdictions where she has led evidence and cross-examined. His submission is that there is a large difference between the observation of proceedings and active participation. He emphasises that litigation skills particularly in a discrete area of law, particularly cross-examination are not theoretical and thus mere observation and study will not demonstrate competence.

40. The Secretary points out that the Applicant had approval as a lead provider in the Waitangi Tribunal under the previous listing criteria and the

2000 Act. At that time she advised that a significant proportion of the Treaty of Waitangi claims related to work undertaken in settlement negotiations. Under the 2000 Act that was a relevant criterion as was funding. Under the new Act proficiency in settlement negotiations and funding for such is no longer the case. The new criteria emphasise competence and experience at the Waitangi Tribunal, Maori Land and Maori Appellate Courts.

41. The Applicant responded to the Secretary's submissions on 1 August 2012. Her response is prolix and somewhat repetitive of her submissions in support of her application for review. I have distilled the essence of her response under separate headings and have concentrated on satisfying myself that her response contains answers to the Secretary's submissions and is not simply a repetition of her application or an expanded version of it.

Errors of Law

42. In paragraphs 1 – 9 of her response the Applicant sets out her position as being that the Secretary's response highlight flaws in the process of considering her application for approval and shows further errors of law that were not previously apparent.

43. The Applicant argues that the response sets out numerous points that were not put to her during the process of consideration. The statements complained of, she says, make it clear that the Secretary incorrectly interpreted the Act and Regulations and as well misunderstood the Tribunal process and her involvement in the proceedings examples of which she included in her application.

44. The Applicant then sets out matters that were not previously put to her namely:

    a. That the Secretary's test of substantial and active involvement in ....proceedings whereby he requires

        i. Experience at hearings in the Maori Land Courts or Waitangi Tribunal where witnesses are giving oral evidence;

ii. Experience at leading evidence and cross examining witness in the Maori Land Court or Waitangi Tribunal: and

iii. Experience managing a claim through all of the stages, either cumulatively or in aggregate.

45. The Applicant's argument is that the factors applied by the Secretary are significantly more onerous than the test in the Regulation itself and that the Secretary should not develop his own distinct test. Therefore, the Applicant submits that the Secretary acted *ultra vires* and his imposition of the requirements set out was an error of law.

46. The Applicant argues that the Secretary's view of substantial and active involvement was not put to her at any stage of the application process. She referred to the examples that she included in her letter of 30 March 2012, which she asserts that the Secretary failed to take into account when considering the requirement in the regulations for *active and substantial involvement.*

47. She submits that the Regulations do not require participation at hearings where witnesses are giving oral evidence for good reason. Tribunal hearings can be very lengthy and may take years before reaching a conclusion. Her argument is that involvement in a hearing where witnesses are examined is not essential to the concept of active and substantial involvement because in many cases the best outcome for claimants is the avoidance of evidence at a hearing primarily because the Tribunal can only make a recommendation.

48. The Applicant argues that in the context of reaching a result, the examples provided showed that she had considerable experience before the Tribunal including the hearings.

49. I have not found it necessary to set out the submissions the Applicant has made in paragraphs 24 to 29 of her response because I consider them to be a sub-set of her earlier submissions and are repetitive of what she has already put forward.

50. The Applicant has argued that the Secretary's refusal to consider her experience of leading evidence and undertaking cross-examination in other jurisdictions confirms that he was not genuinely interested in her

litigation skills and that was an arbitrary reason to decline her application based on an error of law.

51. The Applicant submits that there is no requirement in the Act or Regulations that *"substantial and active involvement"* requires that she has managed a case through all the stages of the Waitangi Tribunal process and that it was an error of law for the Secretary to require this.

Failure to take into account relevant considerations

52. The Applicant goes on to submit that because the Secretary acted *ultra vires* his authority, he had closed his mind to her application and did not undertake a proper consideration of the facts in support of her application. As a result he failed to take into account relevant considerations, evidenced by her settlement negotiation experience, litigation skills in other jurisdictions and that she had the support of two senior practitioners in the area of law applied for.

Manifest unreasonableness

53. The Applicant expresses concern that the Secretary's view would mean that she would not be able to achieve lead provider status if the claims on which she has involvement did not reach a hearing with witnesses giving oral evidence.

54. The Applicant takes issue with what she perceives is the Secretary's suggestion that she could undertake private legal work as an alternative to legal aid.

55. Her submission is that these matters lead to the conclusion that the Secretary's decision to decline her application for approval as a lead provider was manifestly unreasonable

Discussion

56. The essence of the Applicant's case for review of the Secretary's decision to decline approval of her application to be a lead provider in respect of Waitangi Tribunal and Maori Land and Maori Appellate Court proceedings is that he has made an error of law by applying an unduly restrictive interpretation of the relevant section of the Act and the relevant regulations. The result of that error is that he has acted *ultra vires,*

leading to failure to take into account relevant considerations and being manifestly unreasonable in making the resulting decision.

57. At the heart of this matter then is the interpretation of cl 10 in the Schedule to the Regulations, sub-clause (b) of which requires an applicant to have "*had substantial and active involvement in at least 3 substantial Maori Land Court or Waitangi Tribunal proceedings, where at least 1 proceeding is a Waitangi Tribunal proceeding".*

58. That sub-clause prescribes 2 requirements namely;

    a. Substantial and active involvement in at least 3 substantial proceedings.

    b. That one of those substantial proceedings must be a Waitangi Tribunal proceeding.

59. Regulation 6 provides that an applicant applying to be a lead provider or to provide specified legal services , must be experienced and competent in each area of law and category of proceedings in which the applicant intends to provide legal aid services or specified legal services.

60. Regulation 6(4) provides that an applicant *must* provide work samples of the applicant's recent experience in each area of law or category of proceedings to which the application relates. Sub clause 5 states that work samples includes any –

    a. Correspondence to or on behalf of a client

    b. Research notes

    c. Affidavits

    d. Opening and closing addresses

    e. Examination notes.

61. Regulation 6(2)(a) specifies that the Secretary *must* apply the relevant experience and competence requirements set out in the Schedule.

62. The Act and Regulations do not define substantial and active involvement. "*Substantial and active"* are strong words which must be applied in the context of a robust application of the criteria. I have set out

in paragraph 31 above the interpretation applied by the Secretary in considering applications for approval which is the same interpretation adopted under the previous listing criteria for approval under the 2000 Act.

63. I have already discussed the requirement of substantial and active involvement in my decisions under **RA005/2012, RA006/12 and RA009/2012.** I have held that the interpretation applied by the Secretary was compatible with the views I have expressed on the interpretation of those relevant words.

64. I find therefore that the Secretary has not acted under an error of law in the application of the interpretation contained in the Ministry of Justice Legal Aid Application Guidelines. Those Guidelines are published in column form. The first column sets out the requirements that an applicant must comply with and the second column contains explanations of the requirements and suggestions. The Applicant had those Guidelines with her at the time of completing her application for approval. She cannot be heard to complain that the Secretary had considered her application in a way that was outside the Guidelines and of which she was not aware.

65. The Act and Regulations contain mandatory requirements that the Secretary must apply and which an applicant must display. There is, therefore, limited discretion available to the Secretary in reaching a decision about any particular applicant.

66. There is a discretion provided for in Regs 6(3) 10 in respect of matters the Secretary may take into account and the imposition of conditions on approval which do not have application to this matter under Review.

67. The Applicant has argued that the Secretary was wrong to disregard her litigation skills in other jurisdictions when considering cl 10(b) of the Schedule. The Schedule sets out specific experience and competence requirements applicable to each area of law applied for. It is the case that experience in other jurisdictions does not meet the requirements of cl 10(b) but may be a relevant consideration under reg 6(2)(b). There is a simple analogy which demonstrates the issue. A cardiothoracic surgeon will have surgical skills in respect of that speciality but those skills do not necessarily qualify the surgeon to be a specialist in skeletal or other

surgery although the surgical skill will assist in gaining the skill in the latter discipline.

68. I find that the Secretary has not erred in declining to take into account the Applicant's litigation skills in other areas of law when he considered whether or not she has met the requirements of cl 10(b) of the Schedule.

69. The final matter which the Applicant raises is that the Secretary did not put to her various matters taken into account in reaching a decision about her application. She is not correct in that assertion. After receiving the application, the Secretary asked the Applicant for further information to demonstrate her active involvement at hearing/trial stage which she supplied in a lengthy response of 30 March2012. The Applicant then received advice that the Selection Committee had recommended that her application be declined. The Applicant replied to the Secretary with further submissions in a letter of 27 April 2012. The Secretary's decision of 17 May 2012 communicated to the Applicant makes it clear that the Secretary considered the additional information before making a decision.

70. I find that it is not necessary for the Secretary to discuss with an applicant every matter being taken into account in the decision making process.

Decision

71. I have carefully considered all the material supplied by the Applicant in support of her application. I find that the Secretary, in reaching a decision in respect of her application for approval as a lead provider in respect of Maori Land and Appellate Courts and the Waitangi Tribunal, has not acted under error of law.

72. Because of the finding I have made about substantial and active involvement, I find that the Secretary has not failed to take into account relevant considerations. He afforded the applicant the opportunity to respond to concerns he raised about her application which she responded to on two occasions.

73. I find that he has not acted with manifest unreasonableness.

74. Accordingly, under s 86(1) I confirm the Secretary's decision under review.

BJ Kendall

Review Authority.