SUPREME COURT OF QUEENSLAND

CITATION:	*Re Petroulias* [2004] QCA 261
PARTIES:	**IN THE MATTER OF THE *MUTUAL RECOGNITION ACT* 1992 (CTH)** **and** **IN THE MATTER OF AN APPLICATION TO BE REGISTERED AS A SOLICITOR IN THE SUPREME COURT OF QUEENSLAND BY NIKYTAS NICHOLAS PETROULIAS** **QUEENSLAND LAW SOCIETY**
FILE NO/S:	SC No 6412 of 2003
DIVISION:	Court of Appeal
PROCEEDING:	Reference by Principal Registrar
ORIGINATING COURT:	Supreme Court at Brisbane
DELIVERED ON:	30 July 2004
DELIVERED AT:	Brisbane
HEARING DATE:	22 July 2004
JUDGES:	de Jersey CJ, McMurdo P and Davies JA Separate reasons for judgment of each member of the Court, de Jersey CJ and Davies JA concurring as to the order made, McMurdo P dissenting in part
ORDER:	**Remit the matter to the Principal Registrar with the Court's advice that the registration of Mr Petroulias as a solicitor in Queensland under the *Mutual Recognition Act* 1992 (Cth) should be set aside with effect from 21 July 2003**
CATCHWORDS:	PROFESSIONS AND TRADES – LAWYERS – PRACTISING CERTIFICATES – QUEENSLAND – where the applicant applied for registration in Queensland as a solicitor under the *Mutual Recognition Act* 1992 (Cth) – where the applicant failed to disclose that he was charged with indictable offences under the *Crimes Act* 1914 (Cth) – whether the failure of the applicant to disclose the charges affects his entitlement to be registered in Queensland under the *Mutual Recognition Act* 1992 (Cth) *Crimes Act* 1914 (Cth), s 29D, s 30, s 70, s 73(2) *Legal Practice Act* 1996 (Vic), s 146(2)

Legal Profession Act 2004 (Qld), s 6(3), s 78, s 579
Mutual Recognition Act 1992 (Cth), s 6(2), s 17(2), s 19(2)(d), s 19(2)(h), s 19(5), s 19(6), s 20(1), s 20(4), s 22(1)(a), s 22(1)(c), s 23, s 30, s 33(1), s 34, s 39(2)
Solicitors' Admission Rules 1968 (Qld), r 76K, r 76Q
Supreme Court (Legal Practitioners) Admission Rules 2004 (Qld), r 24
Uniform Civil Procedure Rules 1999 (Qld), r 982(3)

A Solicitor v Council of Law Society of New South Wales (2004) 78 ALJR 310, cited
Barristers' Board v Khan [2001] QCA 92; Appeal No 11225 of 2000, 13 March 2001, cited
In Re Davis (1947) 75 CLR 409, considered
Project Blue Sky Inc and Anor v Australian Broadcasting Authority (1998) 194 CLR 355, distinguished
Queensland Heritage Council v Corporation of the Trustees of the Roman Catholic Archdiocese of Brisbane [2000] QCA 378; Appeal No 11528 of 1999, 15 September 2000; (2000) 110 LGERA 193, distinguished
Re Evatt (1987) 92 FLR 380, considered
Wills v Petroulias (2003) 204 ALR 162, cited

COUNSEL: A J Glynn SC for Mr Petroulias
M J Burns for the Queensland Law Society
M V Timmins (*sol*) appeared for the Solicitors' Board

SOLICITORS: Robertson O'Gorman for Mr Petroulias
McCullough Robertson for the Queensland Law Society
Solicitors' Board appeared on its own behalf

[1] **de JERSEY CJ:** Mr Nikytas Petroulias applied for registration in Queensland as a solicitor under the *Mutual Recognition Act* 1992 (Cth) ("the Act"), on the basis of his current registration as a solicitor in Victoria. By letter dated 20 August 2003, the Acting Registrar notified Mr Petroulias that he was registered as a solicitor in Queensland, as from 21 July 2003 which was the date of his application.

[2] The Principal Registrar has referred to the Court the standing of that registration, in view of the failure of Mr Petroulias to disclose the following matters when he made his application.

[3] On 2 June 2000 Mr Petroulias was charged with indictable offences under the *Crimes Act* 1914 (Cth): unauthorised disclosure, and corruption (s 70, s 73(2)). In October that year, he was charged with a third indictable offence, defrauding the Commonwealth (s 29D). As at the time of his application on 21 July 2003, those charges were pending, together with a charge of a summary offence, unlawfully taking property (s 30). In March 2002, he was committed for trial. His committal on one charge was subsequently quashed, but later reinstated on appeal. The charges have been listed for trial commencing 7 February 2005.

[4] The background to the charges is covered in *Wills v Petroulias* (2003) 58 NSWLR 598. It suffices for the present to note that the charges are of a serious character,

and would, if established, bear materially on an assessment of his probity. Mr Glynn SC, who appeared before us for Mr Petroulias, accepted that a person seeking admission in Queensland, otherwise than pursuant to the Act, would be obliged to disclose such matters.

[5] Mr Glynn submitted, however, that the failure of Mr Petroulias to disclose the matters did not affect his entitlement to be registered in Queensland under that legislation because of s 20(1) of the Act, which provides:

> "A person who lodges a notice under section 19 with a local registration authority of the second State is entitled to be registered in the equivalent occupation, as if the law of the State that deals with registration expressly provided that registration in the first State is a sufficient ground of entitlement to registration."

Mr Glynn emphasized the use of the word "entitled".

[6] The notice under s 19 must (s 19(2)(d)):

> "state that the person is not the subject of disciplinary proceedings in any State (including any preliminary investigations or action that might lead to disciplinary proceedings) in relation to those occupations;"

The contents of the notice must be verified by statutory declaration (s 19(5)).

[7] In his notice, Mr Petroulias stated:

> "6. My conduct as a solicitor is not the subject of disciplinary proceedings in any State or Territory (including any preliminary investigations or action that might lead to disciplinary proceedings)."

In saying his "conduct as a solicitor" was not the subject of investigation etc, he did not comply with s 19(2)(d), although in fairness to him, it must be acknowledged the approved form included paragraph six in those terms. The terms of his paragraph are more limiting than the sub-section envisages, in that the sub-section embraces an investigation into any conduct, not just as a solicitor, provided it might lead to his being disciplined in his role as solicitor. The sub-section contemplated his saying, if true (and as relevant):

> "I am not the subject of … any preliminary investigations … that might lead to … disciplinary proceedings … in relation to my occupation as solicitor."

Mr Petroulias accepted, when giving evidence, that he had read s 19(2) prior to making his application.

[8] In fact, Mr Petroulias was the subject of "preliminary investigations…that might lead to disciplinary proceedings" in relation to his profession of solicitor.

[9] The Law Institute of Victoria (previously named Victorian Lawyers RPA Ltd) is the body statutorily obliged to investigate the conduct of a legal practitioner if it has reason to believe that conduct may amount to misconduct or unsatisfactory conduct (*Legal Practice Act* 1996 (Vic), s 146(2)). On 27 March 2000, its Professional Standards Division opened a "complaint file" concerning Mr Petroulias, after

becoming aware of the criminal charges brought against him. That Division then commenced an investigation. See the affidavit of Ms Kathryn Meyers filed on 5 July 2004, which was not the subject of cross-examination.

[10] Mr Petroulias was made aware of the investigation, by letter of 14 April 2000 which was headed "Investigation by Victorian Lawyers RPA Ltd" and stated:

> "You will be aware that Victorian Lawyers RPA Ltd has a statutory mandate to investigate issues concerning legal practitioners which may involve misconduct or unsatisfactory conduct.
>
> Because of the charges laid against you under Section 29(D) of the Crimes Act 1914, a file has been opened.
>
> At this stage I do not require a written response pursuant to Section 149 of the Legal Practice Act 1996. However I will be in touch with you in due course."

Mr Petroulias forwarded a copy of that letter back to the author, adding the note:

> "Thank you for the above. You will note that the charge relates to my position at the A.T.O. <u>not</u> to any matter concerning professional practice either <u>before</u> or <u>after</u> the A.T.O."

and signing it.

[11] The investigation has been suspended pending the outcome of the criminal charges (affidavit of Ms Meyers paragraph eight). The Professional Standards Division has not at any stage advised Mr Petroulias to the contrary, as, for example, that the complaint file has been closed or the investigation concluded.

[12] Mr Petroulias was provided by the General Manager of the Professional Standards Division with a certificate dated 7 July 2003, which he lodged in support of his application in Queensland. It included the paragraphs:

> "No proceedings are now pending to strike the legal practitioner's name from the roll of practitioners of the Supreme Court of Victoria or to suspend the legal practitioner from practice, nor have any complaints been receiving requiring disciplinary action.
>
> I am not aware of any reason why the legal practitioner should not be admitted to practise as a legal practitioner elsewhere than in Victoria."

[13] The first of those paragraphs was factually accurate, although as the Manager of the Complaints Department (the General Manager being on leave) observes, the certificate ought to have referred to the unresolved investigation. Further, that circumstance should have led to the deletion of the last paragraph, which was based on a pro forma certificate.

[14] Be that as it may, however, Mr Petroulias must be taken, as at the time of his application in Queensland, to have been aware that the investigation had been begun, and not concluded. As well as the circumstances in paragraphs [10] and [11]

above, he appreciated that the criminal charges were still outstanding, and that the investigation related to the subject matter of those charges.

[15] But in any case, it is the circumstance that a relevant preliminary investigation was outstanding which precluded Mr Petroulias's making the declaration required by s 19(2)(d).

[16] Mr Glynn submitted that what had occurred was no more than "the mere opening of a file based on a newspaper report", and Mr Petroulias in his oral evidence expressed a similar view. In fact it went beyond that, as the sworn material shows, with the commencement of an investigation by the Professional Standards Division of the Law Institute of Victoria, then suspended pending the outcome of the criminal proceedings.

[17] Mr Glynn also submitted that it was not Mr Petroulias's conduct as a solicitor which was the subject of any such investigation. Under s 19(2)(d), the notice lodged with the local registration authority must state, as relevant here, that the applicant for registration "is not the subject of … any preliminary investigations … that might lead to disciplinary proceedings … in relation to" the occupation (defined by s 4(1) to include profession) of solicitor. Reference has been made above to textual disconformity between paragraph six of the notice and s 19(2)(d).

[18] An investigation into these charges of criminal offences which allege dishonesty on the part of Mr Petroulias while acting as an officer of the Australian Taxation Office, including agreeing to take a bribe, amounts to an investigation in relation to the occupation of solicitor which might lead to disciplinary proceedings, because of its potential to disclose unfitness on the part of Mr Petroulias to practise that profession. The circumstance that the conduct allegedly occurred while he was engaged in another occupation does not of itself render the investigation irrelevant for these purposes, because that conduct is impugned in an aspect fundamental to the question of fitness to practise as a solicitor. See *A Solicitor v Council of Law Society of New South Wales* (2004) 216 CLR 253, 267-268, [20]. The investigation with that possible disciplinary consequence, is therefore "in relation to" the profession of solicitor, acknowledging the breadth of those words (cf *Project Blue Sky Inc and Anor v Australian Broadcasting Authority* (1998) 194 CLR 355, 387, *Queensland Heritage Council v The Corporation of the Trustees of the Roman Catholic Archdiocese of Brisbane* [2001] 2 Qd.R. 504, 506).

[19] In view of these circumstances, Mr Petroulias could not make the declaration required by s 19(2)(d) of the Act, because he was in fact subject to a "preliminary investigation … that might lead to disciplinary proceedings" in relation to his registration as a solicitor in Victoria. By statutory declaration, he verified the inaccurate paragraph six of the form he submitted. Because of that inaccuracy, which relates to matters of serious potential relevance to his being registered as a solicitor, the notice did not accord with s 19, and the notice was consequently not apt to crystallize the entitlement to registration in Queensland provided for by s 20.

[20] Mr Glynn submitted that in those circumstances Mr Petroulias should be permitted to amend the notice (cf. s 19(6) of the Act). That would be pointless, because he could not make the declaration required under s 19(2)(d).

[21] The reference raises another matter. The guidelines approved by the Judges of the Supreme Court, promulgated as required by s 39(2) of the Act, as applicable at the time of the application made by Mr Petroulias, required the lodgement of a form including a declaration in these terms:

> "10. I know of no other matter which might bear witness on my fitness to be registered in Queensland as a solicitor or to practise in Queensland as such."

The Judges amended the form on 14 August 2001, to include that paragraph, in response to the decision of the Court in *Barristers' Board v Khan* [2001] QCA 92.

[22] Mr Petroulias submitted a form which did not include the current paragraph 10, and he has set out circumstances explaining that. Because of the position taken with respect to compliance with s 19(2)(d), it is not necessary to deal with the circumstances surrounding the lodging of a form which did not include paragraph 10.

[23] Mr Glynn did however separately submit that requiring a declaration in terms of paragraph 10 cannot amount to "a lawful requirement under the Act", and it is convenient to address that submission, notwithstanding the reference is sufficiently answered by dealing with s 19(2)(d) and paragraph six of the notice. Mr Glynn's submission as to paragraph 10 was in these terms:

> "The Act identifies those matters, and only those matters, which may be required to be disclosed, and if that information is provided and is not materially false or misleading, the Applicant cannot be bound to provide additional material. A failure to provide additional material is thus of no consequence. To provide otherwise defeats the purpose of the legislation which, it is submitted, is to require the registration of a person in an occupation which requires registration in one state, where the person has registration in an equivalent occupation in another state subject to the provision of identified information and documentation."

[24] It would follow, on that submission, that even were a solicitor, registered in Victoria, convicted of a criminal offence involving very serious dishonesty, he would be entitled to registration in Queensland under this legislation while ever he remained on the Victorian roll.

[25] On the other hand, Mr Burns, who appeared for the Queensland Law Society, submitted that "an applicant does not have an absolute entitlement to registration merely by reason of the fact of his or her entitlement to practise in another State. If that were so, all that would be required to be notified in order to obtain registration would be that fact." He submitted that having received a notice under s 19, the local registration authority must embark on a "process of assessment", in the course of which it may exercise certain discretions (for example, to postpone (s 22) or refuse (s 23) registration), and be informed through the independent enquiries authorized by the notice as envisaged under s 19(2)(h).

[26] That provision obliges an applicant, via the notice, to

> "give consent to the making of inquiries of, and the exchange of information with, the authorities of any State regarding the person's

> activities in the relevant occupation or occupations or otherwise regarding matters relevant to the notice."

That licence assumes the relevance of matters which may fall outside the strict confines of s 19(2)(d) for example. The expression "information … regarding the person's activities in the relevant occupation … or otherwise regarding matters relevant to the notice" is broad, and would embrace the pendency of serious criminal charges alleging among other things dishonesty. See *Re Evatt* (1987) 92 FLR 380, 383.

[27] Compliance with the requirement introduced by the current paragraph 10 of the form merely facilitates the gathering of information as contemplated by s 19(2)(h), albeit from the applicant directly rather than the authorities of the other State.

[28] Mr Glynn submitted that the mechanism to deal with this sort of situation is reconsideration of the admission elsewhere which enlivens the right to apply here under s 19, as by disciplinary proceedings under s 33. Were, for argument's sake, Mr Petroulias's registration in Victoria to be suspended, then his registration here would suffer the same fate by force of s 33(1).

[29] But the local registration authority is not so hamstrung. It is difficult to conceive the legislatures intended a local authority would be obliged to register a person in Mr Petroulias's situation if made aware of the pendency of such charges. Consistently, by s 19(2)(h), they contemplated independent inquiries, by that authority, "regarding the person's activities in the relevant occupation …".

[30] It would be detrimental to the public interest, and untenably inconvenient, were the legislation to require the local authority to register an applicant in that case, and thereby hold him out as fit to practise in this jurisdiction, pending separate proceedings in the other State to determine, for example, whether his registration should be suspended. That is why the local authority is not by the legislation denied all discretion, and is equipped with a capacity for independent inquiry the results of which may inform the exercise of that discretion.

[31] It was presumably because of a perceived need to address circumstances peculiar to particular occupations and professions, that the legislatures considered necessary the promulgation of guidelines under s 39(2). Imposing the requirement under paragraph 10 of the current notice does not trespass impermissibly beyond the confines of the scheme established by Division 2of the Act. It is a requirement properly seen as appropriate to the case of an application for registration as a solicitor in particular, and complementary to and supportive of what the legislatures contemplated by s 19(2)(h).

[32] Mr Glynn also drew attention to r 76Q of the *Solicitors' Admission Rules* 1968, which provides as follows:

> "A decision of the Registrar in relation to the admission, under the *Mutual Recognition Act*, of an interstate practitioner as a solicitor is not subject to appeal or review by the Court or Court of Appeal."

(Compare r 24 of the S*upreme Court (Legal Practitioner) Admission Rules* 2004.)

The term "the Court" is used there as meaning the Supreme Court constituted by a single Judge, and distinctly from the Registrar, as Mr Glynn accepted.

Mr Glynn submitted this Court therefore has no power to conduct this hearing, or to review or revoke the Registrar's decision to register Mr Petroulias.

[33] Rule 76Q was introduced into the *Solicitors' Admission Rules* to recognize the mechanism for review of decisions of local registration authorities under the *Administrative Appeals Tribunal Act* 1975 (Cth), set up by s 34 of the Act.

[34] Rule 76K of the *Solicitors' Admission Rules* provides as follows:

> "The Registrar may exercise the powers and perform the functions of the Court of Appeal in relation to the admission, under the *Mutual Recognition Act*, of interstate practitioners as solicitors."

That is a delegation to the Registrar of the authority of the Court of Appeal as the "local registration authority", a delegation duly made as part of the facilitation contemplated by s 30 of the Act.

[35] If the Court of Appeal had admitted Mr Petroulias, by registering him as a solicitor in Queensland under the Act, then that Court would retain the inherent capacity to set aside that registration if effected irregularly, as where premised on a circumstance shown not to have existed. This is especially so bearing in mind the strength of the inherent jurisdiction of the court in relation to the legal profession, which is a pervasive jurisdiction not readily diminished or displaced. (I am indebted to Davies JA for reference to the statement by Dixon J, as he then was, in *In re Davis* (1947) 75 CLR 409, 424, set out in para [60] of the reasons of Davies JA.) That inherent power would exist notwithstanding the avenue for "review" as such, under the *Administrative Appeals Tribunal Act*. Section 34 should not be read as excluding that inherent jurisdiction: they comfortably, and workably, co-exist. Likewise, therefore, because of r 76K, the Registrar – as the delegate of the Court of Appeal – must be seen to retain that residual authority. Critical to that conclusion is the delegation effected by r 76K. Exercising that authority would not, in terms of r 76Q, involve "appeal (against) or review by the court or Court of Appeal" of the Registrar's decision: he would be revisiting it himself.

[36] The proceeding before this Court is a reference from the Registrar. The Registrar's power to refer matters to a Judge is confirmed by r 982 of the *Uniform Civil Procedure Rules* 1999.

[37] The Court may, on the hearing of a reference, determine the proceeding itself, or remit the proceeding for determination by the Registrar. Rule 982(3) refers to remitting the matter to the Registrar "with the directions the judge or magistrate considers appropriate". In a case of remission in that way, the decision is then made, not by the court, but by the Registrar. (The predecessor provisions in relation to the Supreme Court, Order 67, r 18 and r 15 of the *Supreme Court Rules*, referred to taking "the opinion" of a Judge.)

[38] In this case, the appropriate course is for the Court to remit the matter to the Registrar with its advice that for the above reasons, the registration of Mr Petroulias

as a solicitor in Queensland under the Act should be set aside with effect from 21 July 2003.

[39] Since the court on this reference is advising the Registrar in that way, it is not itself conducting an appeal or review of the Registrar's decision within the meaning of Rule 76Q of the *Solicitors' Admission Rules*. The decision in the matter falls to be made by the Registrar, following his receipt of the Court's advice given upon the reference.

[40] Mr Burns submitted that in any case, the Court on this reference is being asked to consider the "continuance" of Mr Petroulias's registration, which is different from a challenge to the validity of the registration. By s 20(4), "continuance of registration" is subject to "the laws" of Queensland. See also s 6(2) and s 17(2), and *Queensland Law Society Inc v Sande* [1996] 1 Qd R 622, 629. If "the laws" of Queensland, as that expression is used in the Act, are not confined to legislation, and extend to a practitioner's continuing duty under the law of candid disclosure, then the Court's jurisdiction to determine whether the registration should in these circumstances be continued, could be enlivened. But it is not necessary to determine those issues, because of the approach dealt with in paras [32] to [39] above, but in any case, it is difficult to characterize the issue as other than the validity of the Registrar's original decision.

[41] The Court should advise the Principal Registrar in accordance with para [38] above.

[42] **McMURDO P:** The Chief Justice in his reasons has set out the relevant facts and issues. I will repeat or expand on those only as necessary to explain my reasons for reaching a slightly different conclusion.

[43] I agree with the Chief Justice's observations as to the lawfulness of paragraph 10 of the current form of the notice required for registration under the *Mutual Recognition Act* 1992 (Cth) ("the Act") as adopted by the *Mutual Recognition (Queensland) Act* 1992 ("the Queensland Act"). The Queensland Act is "… to enable the enactment of legislation applying uniformly throughout Australia for the recognition of regulatory standards adopted in Australia regarding goods and occupations".[1]

[44] The principal purpose stated in the Act is:

> "to enact legislation authorised by the Parliaments of States under paragraph (xxxvii) of section 51 of the Commonwealth Constitution, … for the purpose of promoting the goal of freedom of movement of goods and service providers in a national market in Australia."[2]

[45] Part 3 of the Act provides for mutual recognition of a person's occupation where the person is registered in one State and wishes to be registered in another.

[46] Mr Petroulias was represented and gave evidence in this reference. As he was registered as a solicitor in Victoria he was entitled to lodge a written notice with the

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1 The Queensland Act, Long title.

2 The Act, s 3. The Act replicates the provisions set out in the Schedule to the *Mutual Recognition Act* 1992 (Qld).

Registrar of the Supreme Court[3] seeking registration as a solicitor in Queensland.[4] The mandatory requirements of that notice are set out in s 19(2) of the Act. Once Mr Petroulias lodged the notice under the Act on 21 July 2003 he was entitled to be registered as a solicitor in Queensland[5] and the Registrar may grant him registration.[6]

[47] The Acting Registrar entered Mr Petroulias's name on the Roll of Solicitors for the State of Queensland with effect from 21 July 2003[7] and notified Mr Petroulias of this in a letter dated 20 August 2003.

[48] The form "A" Notice for Registration as a solicitor which Mr Petroulias completed, verified and filed did not in its paragraph 6 accurately state the requirements of s 19(2)(d) of the Act so that in completing and verifying that form he did not comply with s 19 of the Act and was not entitled to be registered. As the Chief Justice has explained in his reasons, the material before this Court now makes clear that the issue is one of substance, not just form. Mr Petroulias did not and cannot meet the requirements of s 19(2) of the Act because Victorian Lawyers RPA Ltd (now the Law Institute of Victoria) had commenced an investigation, which remains current, as to whether Mr Petroulias has misconducted himself or conducted himself unsatisfactorily because of charges brought against him under the *Crimes Act* 1914 (Cth). When the Acting Registrar entered Mr Petroulias's name on the Roll of Solicitors he mistakenly believed Mr Petroulias was entitled to be registered as a solicitor in Queensland.

[49] Although the Registrar's power to register Mr Petroulias under the Act is delegated to him by the Court of Appeal, the entry of Mr Petroulias's name on the Roll of Solicitors for the State of Queensland under the Act is administrative. That is why the review of the decision to register is to the Administrative Appeals Tribunal.[8]

[50] With very limited exceptions such as fraud or clear statutory statements, administrative decisions, once given effect by communication to the affected party, are irrevocable: *Goulding v Chief Executive Ministry of Fisheries*.[9] This is because the decision-making power is spent.[10] There are also strong policy considerations supporting the desirability for finality in administrative decision-making. It is nevertheless arguable that, because the Acting Registrar's decision to register Mr Petroulias as a solicitor under the Act was based on mistaken facts, the Registrar could review and re-exercise that discretion[11] in the light of the facts now known: *Rootkin v Kent County Council*[12] and see also s 24AA, *Acts Interpretation Act* 1954 (Qld); *Thomson v Minister for Education*,[13] Campbell, E *Revocation and Variation*

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3 The Court of Appeal is the "local registration authority" as explained in s 4(1) of the Act and the Registrar of the Supreme Court is the Court of Appeal's delegate under r 76K *Solicitors' Admission Rules* 1968.

4 The Act, s 19(1).

5 The Act, s 20(1).

6 The Act, s 20(2).

7 The Act, s 25.

8 The Act, s 34.

9 [2003] NZCA 244, 24 October 2003, para 30, paras 42-43.

10 *Minister for Immigration Local Government and Ethnic Affairs v Kurtovic* (1990) 21 FCR 193, 92 ALR 93, Gummow J at 112.

11 The Act, s 20(2).

12 [1981] 2 All ER 227.

13 [1994] 1 Qd R 83, Williams J (as he then was) 90.

of Administrative Decisions[14] and Allars, M *Perfected judgments and inherently angelical administrative decisions: The powers of courts and administrators to re-open or re-consider their decisions.*[15] Any power to review the decision in this way would not be diminished by the review procedure provided for in s 34 of the Act or by r 76Q *Solicitors' Admission Rules* 1968. If the Registrar was entitled to and did reconsider his decision in this manner so that Mr Petroulias was never on the Roll of Solicitors for the State of Queensland, there could be possible ramifications affecting third parties.

[51] Mr Petroulias claims an entitlement to registration in Queensland as a solicitor only under the Act. As the Chief Justice observes and as Mr Burns for the Queensland Law Society Inc submitted in the reference, this Court plainly retains the inherent capacity to set aside registration of a solicitor under the Act effected by mistake where the true facts show the solicitor was not entitled to be registered under the Act. The Act does not affect this Court's inherent jurisdiction as to the legal profession: see s 20(4) of the Act and s 6(3), s 78 and s 579 *Legal Profession Act* 2004 (Qld). Were this not so, the public would be at risk from people registered as solicitors without the legal entitlement to be so registered. The Court's exercise of that inherent power is not a review of the Acting Registrar's decision under the Act; it is a fresh exercise of a quite different power. The Court's inherent power is not a power exercised under the Act and cannot be delegated to the Registrar by r 76K *Solicitors' Admission Rules* 1968.

[52] Because the facts now establish that Mr Petroulias was never and is still not entitled to be registered as a solicitor in Queensland under the Act, the preferable course is for this Court, under its inherent power, to now order that Mr Petroulias's name be removed forthwith from the Roll of Solicitors for the State of Queensland.

[53] **DAVIES JA:** I agree that this Court should give the Principal Registrar the advice stated by the Chief Justice and I also agree with his reasons for that conclusion. I wish to add only a few remarks.

[54] It is true that s 20(1) of the *Mutual Recognition Act* 1992 (Cth) provides that a person who lodges a notice under s 19 with a local registration authority of the second State is entitled to be registered in the equivalent occupation in that State. But s 20 takes effect subject to Part 3 of the Act in which it is situated. One of the sections to which it is subject is s 22 which provides that a local registration authority (here the Principal Registrar as the delegate of this Court) may postpone and, in due course, refuse registration if:

> "(a) any of the statements or information in the notice as required by section 19 are materially false or misleading; or
>
> …
>
> (c) the circumstances of the person lodging the notice have materially changed since the date of the notice or the date it was lodged;
>
> … "

[55] In this case the statement required in the notice by s 19(2)(d) was materially false for the reasons stated by the Chief Justice. A statement in the terms of s 19(2)(d)

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14 (1996) 22 Monash Law Review, pp 30-68, esp 63-64.

15 (2001) 21 Aust Bar Review, 50 at 62 ff but compare *Firearm Distributors Pty Ltd v Carson & Ors* [2001] 2 Qd R 26, 28-32, [30]-[42].

would, in my opinion, be materially misleading, within the meaning of s 22(1)(a), if, notwithstanding that it was literally true, the person knew of matters affecting him which, if they were known by the registration authority in the first State, would have been the subject of disciplinary proceedings against him in that State or of preliminary investigations or action that might lead to such disciplinary proceedings.

[56] Moreover if, after the date of the notice or the date on which it was lodged, some such disciplinary proceedings or preliminary investigation or action that might lead to disciplinary proceedings commenced against the applicant in the first State or if, after the date of the notice or the date on which it was lodged, circumstances arose which, had they arisen before the date of notice or lodgement would have resulted in a misleading statement made in terms of s 19(2)(d), in either case this would be a material change of circumstances within the meaning of s 22(1)(c).

[57] In any of the cases of a false statement or a misleading statement made in terms of s 19(2)(d) or a material change of circumstances as described, a discretion to postpone and refuse registration was enlivened under s 22. It was enlivened here because a statement required by the notice under s 19(2)(d) was materially false. But because the registration authority was not aware of the falsity it failed to exercise that discretion.

[58] The power of the local registration authority to postpone and refuse registration in the circumstances which arose here was, in my opinion, analogous to the power of a superior court to admit a barrister or a solicitor. That latter power is one conferred on superior courts by Clause X of the *Charter of Justice*[16] and is part of the supervisory power which a superior court has over solicitors and barristers who seek to be or are admitted to practice before it. And "whatever be the nature of the mere formal act of admission and enrolment, once fitness and propriety are established, the determination by the Court of the question whether an applicant is a fit and proper person - which is a legal condition of the exercise of the power to admit - is undoubtedly one of its judicial functions … ".[17]

[59] A similar distinction may be made here between, on the one hand, the obligation of a local registration authority to register an applicant who has complied in all respects with s 19 in circumstances in which, also, none of the events stated in s 22(1) have occurred; and, on the other, the power of the local registration authority to postpone and refuse registration where s 19 has not been complied with or where one or more of the events stated in s 22 have occurred. The act of registration in the former case is an administrative or perhaps even a ministerial act. The power in the latter case is a judicial or quasi judicial power.

[60] Even the power of a Barristers' Admission Board to approve an applicant for admission as a person of good fame and character was described by Sir Owen Dixon in *In re Davis*[18] as a judicial or quasi judicial power. His Honour said:

> "The Board's approval is a judicial or quasi-judicial determination and like every other ex-parte judicial determination may be recalled

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16 *In re Davis* (1947) 75 CLR 409 at 414, 423.

17 *Incorporated Law Institute of New South Wales v Meagher* (1909) 9 CLR 655 at 678; see also at 661.

18 Supra at 424.

> if it has been obtained by misrepresentation, non-disclosure or other invalidating means or is based even on a misapprehension or error."

[61] It must follow, in my opinion, that the power which the principal registrar had in this case under s 22 was a judicial or quasi judicial one. It is irrelevant to the determination, for present purposes, of that question that an application may be made to the Administrative Appeals Tribunal for review of a decision of a local registration authority.

[62] The decision of the principal registrar here, like that of the Barristers' Admission Board in *In re Davis* was made ex parte. It follows from what I have said that, like the approval of the Barristers' Admission Board in *Davis*, the decision of the principal registrar, which was made in the exercise of a power which he had under s 22, was capable of recall by him. The registration authority may and should recall a decision which it made based on a materially false statement.

[63] I should, however, add a brief comment upon Mr Burns' alternative submission, referred to by the Chief Justice at [40] of his reasons, for it appears to have been accepted by the President. It may well be the case that this Court could deal with the continuance of Mr Petroulias' registration under its inherent power to deal with admitted practitioners.[19] But, having been registered, Mr Petroulias' right to remain in practice would, it seems to me, depend on considerations wider than merely the material falsity in his notice lodged pursuant to s 19. Moreover if the Court had in mind striking him off the roll of solicitors it would, it also seems to me, be required to call upon him to show cause why that should not be done. For those reasons I do not think that this Court can, in this proceeding, order that Mr Petroulias' name be removed from the roll of solicitors.

[19] But s 20(4) preserves the operation of State law only with respect to continuance of registration.