

IN THE COURT OF APPEAL, FIJI
On Appeal from the Independent Legal Services Commission

CIVIL APPEAL NO. ABU 045 of 2023
ILSC Case No. 019 of 2021

BETWEEN : **SURESH CHANDRA**
Appellant

AND : **CHIEF REGISTRAR OF THE HIGH COURT OF FIJI**
Respondent

Coram : Prematilaka, RJA
Andrews, JA
Andrée Wiltens, JA

Counsel : Mr F Haniff, on behalf of the Appellant
Mr A Chand and Ms A Vikash, on behalf of the Respondent

Date of Hearing : 3 September 2024

Date of Judgment : 27 September 2024

JUDGMENT

Prematilaka, RJA

[1] I had the benefit of reading in draft the judgment of Andrews, JA. I fully agree with the reasons, conclusions and orders.

Andrews, JA

Introduction

- [2] The legal profession in Fiji is regulated by way of the Legal Practitioners Act 2009 (“the LPA”). Provisions for the maintenance of professional standards (including by way of the disciplinary process) are set out in Part 9 of the LPA. The objective of the disciplinary process is to ensure the maintenance of proper standards in the legal profession, to protect the public in their dealings with legal practitioners, and to preserve the standing and reputation of the legal profession in the eyes of the community. The appeal before this Court concerns a legal practitioner’s responsibilities as trustee and signatory of the trust account which law firms in Fiji are required to maintain, pursuant to s 3A of the Trust Accounts Act 1996 (“the TAA”).
- [3] The Appellant, Mr Chandra, was the Principal of MC Lawyers, in Suva (“the firm”). He was the sole trustee of the MC Lawyers trust account (“the trust account”), held at the Bank of Baroda in Suva (“the Bank”). On 8 December 2021, six charges of professional misconduct under s 82(1)(b) of the LPA were brought against the Appellant by the Respondent, the Chief Registrar of the High Court of Fiji, pursuant to s 100(1) of the LPA. The charges were heard and determined by the Commissioner of the Independent Legal Services Commission (“the ILSC”).
- [4] On 3 March 2023, the Commissioner determined that the allegations of professional misconduct in five of the six charges had been established (“the determination”).¹ The Commissioner issued a sanctions ruling on 25 April 2023, in which he ordered that the Appellant’s name be removed from the roll of legal practitioners, that the firm immediately cease to operate as or engage in legal practice, that the Appellant pay a fine of \$500,000 (to be paid to the credit of the trust account or be otherwise utilised to meet and settle the sums due to the firm’s clients), and that the Appellant pay costs of \$2,000 (“the sanctions ruling”).²
- [5] The Appellant has appealed against the Commissioner’s determination and the sanctions ruling.

¹ *Chief Registrar v Suresh Chandra* ILSC No. 019 of 2021 (3 March 2023).

² *Chief Registrar v Suresh Chandra* [2023] FJILSC 13; ILSC No. 019 of 2021 (25 April 2023).

Background facts

- [6] As at the time of the events which led to the charges against the Appellant, Mr Arun Kumar Narsey had been the auditor of the trust account for some 20 years. Mr Narsey gave evidence before the Commissioner that the firm had generally been compliant with the provisions of the TAA, and he had not detected any irregularity. In particular, he did not pick up any irregularity in his audit for the financial year ending 30 September 2017, as the records provided to him for the purposes of that audit indicated that the firm's bank balance and trust account ledger balanced.
- [7] In January 2018, the Appellant informed Mr Narsey that he had discovered that Ms Ashwini Prasad, who was employed by the firm as cashier/clerk, had admitted stealing from the trust account. Her employment had been terminated immediately. On 21 January 2018, Ms Prasad admitted in writing to having taken \$435,306 from the trust account, and on 29 January 2018, she made a written admission to having taken a further \$700,000. The firm reported the matter to the police. A report was also made to the Minister of Justice and the Respondent.
- [8] The Appellant instructed Mr Narsey to investigate in order to determine the extent of any breaches of the trust account for the financial years ending 30 September 2017, 2018, and 2019. Mr Narsey was also directed to re-audit the firm's trust account for those three years. In the course of his inspection of available records, Mr Narsey noted that some records had been tampered with, mutilated, manipulated and/or destroyed.
- [9] The Appellant also engaged Mr Gyaneshwar Prasad, an accountant, to reconstruct the firm's trust account ledgers, to ascertain balances in individual clients' trust accounts, and to report any anomalies. Mr Prasad said in evidence before the Commissioner that he was not able to complete a reconstruction, as the firm's records were incomplete.
- [10] On 30 July 2020, Mr Narsey provided the Minister of Justice and the Respondent with a preliminary report. He recorded that the report was on the basis of "accounting from incomplete records". Having reviewed bank statements, receipts, payments, the firm's general ledger, client balance listings, and monthly bank account reconciliations, Mr Narsey concluded that

preliminary indications were that there was a discrepancy in excess of \$1.1million, details of which were yet to be determined.

- [11] On 4 August 2020, the Respondent directed the Bank to freeze the firm’s trust account. The Respondent also placed the firm in receivership, appointing himself as Receiver.
- [12] Mr Narsey provided audit reports for the financial years ending 30 September 2017, 2018, and 2019 on 7 October 2020. His Audit Opinion in the 2017 report was qualified on the grounds that the trustee had not kept proper accounting and other records, and that he had not been able to obtain all the information and explanations necessary for the audit. He recorded that the trustee had estimated an “unreconciled amount” of \$2 million, which was being investigated. Mr Narsey explained the “unreconciled amount” as being the variance between the balance of the trust account according to its bank statements, and the total balance of all the clients’ trust ledger listings. The amount of the variance is “unreconciled” because it has not been ascertained how the variance is made up or constituted.
- [13] In respect of the audit report for the year ending 30 September 2018 (which was also qualified), Mr Narsey noted that except for the period from 1 October 2017 to 31 January 2018, he had obtained all necessary information and explanations. He also noted that the unreconciled amount had increased to \$2.139 million. In the report for the year ending 30 September 2019 (again qualified), he recorded that the unreconciled amount of \$2.139 million was still being investigated.
- [14] On 27 October 2020, Mr Meli Laliqavoka, an investigator/inspector at the Legal Practitioners Unit of the Judicial Department, was instructed to conduct an investigation into allegations of breaches of trust moneys at the firm. Mr Laliqavoka reviewed the Respondent’s complaint file, took statements from Mr Narsey and Mr Prasad, and examined bank statements, correspondence and trust account documents (sourced from both the firm and the Bank).
- [15] Mr Laliqavoka examined all trust account cheques from 2014 to 2019. He found “incomplete cheques”, which had been signed although the narration of the amount of the cheque in words had not been completed. He gave evidence to the Commissioner of 38 cheques dated between

14 July 2016 and 19 September 2016 (of which 25 were signed by the Appellant), where the amount in numerals had been altered and increased, and narration of the amount in words had been added after the cheques were signed, to tally with the increased amount in numerals. For example, one cheque referred to by him in evidence was signed as being for \$1,300, with no narration of the amount in words, but was altered by changing the numeral “1” to “7”, and inserting the narration “seven thousand three hundred dollars only”.

[16] Correspondence between the Appellant and the Attorney-General and the Respondent was produced at the hearing. On 30 October 2020, the Appellant wrote to the Attorney-General requesting an extension of time to lodge trust account audit reports for the financial years ending 30 September 2017, 2018 and 2019. In support of his request, he referred to his statement to the Police that “all Trust records” (listed as “all cheque books for the last 3 years”, “all cheque butts for both the office and trust accounts, were missing, having been “removed/stolen” by Ms Prasad.

[17] On 6 November 2020, the Respondent gave notice to the Appellant under s 104 of the LPA that he had instituted an investigation. The Respondent also gave the Appellant notice under s 105 of the LPA that he had seven days to furnish a sufficient and satisfactory explanation in writing of the matters referred to in the s 104 notice.

[18] The Appellant provided his written response in a letter of explanation dated 13 November 2020. He said that he had learned on 18 January 2018 that a trust account cheque for \$500 had been forged to \$5,000 by the firm’s employee, Ms Prasad. He said that:

... immediately after that I discovered a number of forgeries of cheques and short banking by [Ms Prasad]. Upon interrogation she admitted that the forgeries and manipulation of records before independent witnesses. ...

As the next step, I immediately attempted to secure all the books and records but found that they were all missing for the relevant period. The period 2015, 2016 and 2017 records had been removed by [Ms Prasad]. The only records that were for the bank statements for the period and a ledger book where all the relevant pages of the records for the period in question had been torn off. Only some cheque butts could be recovered. ...

[Ms Prasad] had used the Office Account in some cases to deplete the Trust Account as follows:-

(a) When by authorities from clients who had some monies in the Trust Account gave authorities to [the firm] to deduct professional fees and disbursements.

(b) A cheque was written from the Trust Account fees and disbursements to deposit in the Office Account was forged by adding one or two zeros.

(c) The extra money ending up in the Office Account had again been withdrawn by forging the cash cheque adding again one or two zeros to the original cheque amount.

[19] The Appellant gave examples of trust account cheques having been forged: one for \$600 having been altered so that the amount received into the firm's office account was \$16,000, and one for \$1912.50 having been altered to \$11912.50. Further, receipts were altered to tally: a receipt was issued for \$23,500 where the amount deposited into the cash account was \$2,350, and a receipt for \$3000 was altered to \$30.

[20] The Appellant said that it had been established that the following records had been physically removed from the firm:

(a) All receipts books for the last 3 years to January 2018 (2015, 2016 & 2017);

(b) All cheque books (butts) for both accounts for the last 3 years to January 2018;

(c) 2 ledger books missing and one had some pages torn off from the book;

(d) All deposit book banking record missing for 3 years 2015 to 2017; and

(d) All account records correspondence in [Ms Prasad's] computer system had been deleted.

[21] The Appellant referred to Mr Narsey's conclusion that "the sum of \$2.139 million was unreconciled". He also referred to Mr Gyaneshwar Prasad's reconstruction of the trust account, and said that Mr Prasad's report:

... would include balances if any of each of the client accounts totalling a short fall of \$2.139 million. Currently it is not established how much each of the accounts are affected.

[22] On 14 March 2021, the Respondent gave the Appellant notice pursuant to s 106 of the LPA that he required him to provide, for the period 1 October 2014 to 30 September 2018:

1. *Cheque Butts,*
2. *Receipt Books,*

3. *Payment Vouchers,*
4. *Receipts and Payment journal,*
5. *Bank Deposit Book with Bank of Baroda,*
6. *Clients Ledger Book,*
7. *Bank/Ledger Monthly Reconciliation*
8. *Office Account Bank Statements*

[23] The Appellant responded to the Respondent by a letter 15 April 2021. He attached copies of trust account cheque butts for November 2015 to September 2018, trust account receipts for April 2016 to September 2018, trust account payment vouchers for September 2015 to September 2018, the receipts and payment journal for the trust account for January 2015 to September 2018, client ledger book from October 2014 to September 2018, monthly bank/ledger reconciliations for January 2016 to December 2016 and February 2018 to September 2018, and office account bank statements for October 2014 to September 2018. He said that documents for other periods had been removed from the office and/or destroyed by Ms Prasad or (in the case of the clients' ledger book) pages 1 to 29 had been torn off and were missing.

[24] Prior to the hearing of this appeal, an order was made, by consent, that fresh evidence could be provided to the Court, comprising an audit report for the financial year ending 30 September 2020 (on instructions from the Respondent) and details of claims made by former clients of the firm to the Respondent's office and/or the Fidelity Fund (via the ILSC). As at March 2024, those claims amounted to \$3,074,272.89.

Relevant statutory provisions

[25] The disciplinary provisions of the LPA provide for two categories of professional wrongdoing. Section 81 of the LPA sets out provisions as to "unsatisfactory professional conduct" and s 82 sets out provisions as to "professional misconduct". The appellant was charged with professional misconduct, which is defined in s 82(1)(b) (as relevant to this appeal) as:

82 Professional misconduct

(1) For the purposes of this Act, "professional misconduct" includes–

...
(b) *conduct of a legal practitioner, ... that would, if established, justify a finding that the practitioner is not a fit and proper person to engage in legal practice ...*

[26] Section 83 of the Act extends the definition of professional misconduct, as relevant to the present case:

83 Conduct capable of constituting unsatisfactory professional or professional misconduct

(1) *Without limiting sections 81 and 82, the following conduct is capable of being “unsatisfactory professional conduct” or “professional misconduct” under this Act—*

...

(h) *conduct of a legal practitioner ... consisting of a contravention of the provisions of the Trust Accounts Act 1996 ...*

[27] Also relevant to this appeal, ss 4 and 6 of the Trust Accounts Act provide:

4 Accounts and other records to be kept by trustees

(1) *A trustee shall keep or cause to be kept displayed in the English language such accounting and other records of all trust moneys as—*

(a) *sufficiently explain the transaction recorded therein;*

(b) *disclose at all times the true position regarding all trust moneys held and the application of trust moneys received;*

(c) *are prescribed; and*

(d) *enable the accounting records to be conveniently and properly audited.*

(2) *A trustee shall keep all accounting and other records relating to trust moneys at the trustee's sole or principal place of business or at such other places as may be approved in writing by the Registrar except where for the purpose of audit under this Act the accounting and other records are in the possession of an auditor for such time as may be reasonably necessary for that purpose. Copies of such accounting and other records may be kept elsewhere. Paid cheques may be left with the bank that has obtained possession of them.*

(3) *The accounting and other records referred to in this section shall be retained for a period of not less than 6 years by the trustee...*

6 Withdrawals of moneys from trust account

(1) *A trustee shall not withdraw moneys from a trust account except for the following purposes—*

- (a) *payment to the person on whose behalf the moneys are held or in accordance with that person's directions;*
- (b) *payment to the trustee of disbursements properly paid by the trustee on behalf of the client in question. ...*
- (c) *payment to the trustee for professional costs in the following circumstances—*
 - (i) *where the payment is supported by authorisation in writing by the person on whose behalf the moneys are held. ...*
- ...
- (d) *payment that is otherwise authorised by statute or made pursuant to an order of the court.*

The charges

[28] The charges which the Commissioner found to have been established may be summarised as being that as Principal of the firm and trustee of the trust account the Appellant:³

1. Count 1: between 1 October 2016 and 30 September 2019, failed to ensure that trust moneys kept in the trust account were not used for unauthorised purposes;
2. Count 2: between 1 October 2016 and 30 September 2017, failed to properly supervise and monitor all transactions made from the trust account, and by reason of such failure the trust account had an unreconciled amount of \$2 million;
3. Count 3: between 1 October 2017 and 30 September 2019, failed to properly supervise and monitor all transactions made from the trust account, and by reason of such failure the trust account had an unreconciled amount of \$2.139 million;
4. Count 4: between 1 October 2016 and 30 September 2017, failed to maintain and/or keep proper accounting records; and

³ The Commissioner found that the evidence before him was not sufficient to prove the allegations in Count 5. Count 5 alleged that the appellant had failed to maintain and/or keep proper accounting records for the period from 1 October 2017 and 31 January 2018.

5. Count 6: between 14 July 2016 and 19 September 2017, authorised withdrawals from the trust account by signing 25 specified incompletely drawn cheques, which resulted in unauthorised withdrawals being made from the trust account.

[29] In each Count, it was alleged that the alleged conduct constituted professional misconduct pursuant to s 82(1)(b) of the LPA which, if established, would justify a finding that the appellant was not a fit and proper person to engage in the practice of law in Fiji.

Appeal against the Commissioner's determination

The determination

[30] After setting out the charges, the Commissioner referred to the relevant statutory provisions. He considered an argument raised on behalf of the Appellant, that the Respondent did not have jurisdiction to "prosecute" him under the LPA, and that the conduct alleged against the Appellant did not come within the LPA, but should have been dealt with by way of an action under s 28 of the TAA. Regarding this argument, the Commissioner noted that:⁴

The LPA does not have an exhaustive definition of the term "Professional Misconduct", but an inclusive definition is found in a descriptive form in sections 82(1)(a), 82(1)(b), 83(1) and 83(2) of the LPA.

[31] After setting out s 82(1)(a) and (b), the Commissioner said with respect to s 83(1) of the LPA:⁵

*Section 83(1)(a) to (h) of the LPA further elaborates and specify certain conduct and violations capable of constituting 'professional misconduct' or 'unsatisfactory professional conduct' which inter alia include **contravention of the provisions of the provisions of the Trust Accounts Act 1996**, the contraventions of the provisions of the LPA, the regulations and rules made thereunder, or the Rules of Professional Conduct. The said list is not exhaustive but is inclusive and descriptive.*

[Emphasis as in the determination]

[32] The Commissioner went on to say:⁶

⁴ Determination, at paragraph 5.

⁵ Determination, at paragraph 7.

⁶ Determination, at paragraphs 12, 13 and 16.

12 Neither of the 'definition' sections 81 or 82 in fact defines or gives any precise content to the principal concepts of 'unsatisfactory professional conduct' and 'professional misconduct'. Hence, the inclusive definitions merely provide that the (undefined) concept includes the conduct described therein and also others. The definitions in the inclusive and descriptive form thus provide a gateway to lawfully bring other forms of conduct within the meaning of unsatisfactory professional conduct and professional misconduct.

13 Sections (a)-(h) of section 83(1) provides in common and without distinction, instances of conduct capable of being either unsatisfactory professional conduct or professional misconduct. Neither of the 'definition' sections in fact defines nor gives precise content to the principal concepts of 'unsatisfactory professional conduct' and 'professional misconduct'. Therefore, these inclusive definitions enable and permit other forms of unsatisfactory professional conduct and professional misconduct to be brought in. ...

16 As the said definitions are couched in the inclusive form, the matters and conduct as identified and specified in s 83 comes within the scope of unsatisfactory professional conduct as well as professional misconduct and will similarly amount to contraventions of [ss] 81 and 82 as the case may be. However, as these definitions are inclusive, and because these or similar expressions were in common use before the [LPA] was enacted, common law tests for the for the assessment of such conduct continues to be relevant. ...

[Citation omitted]

[33] The Commissioner rejected the Appellant's submission that as the charges against him were based on contraventions of ss 4 and 6 of the TAA and s 83(1)(h) of the LPA, the Respondent had wrongly laid charges under s 82(1)(b) of the LPA. The Commissioner said:⁷

20 Thus said 6 allegations in counts 1-6 are of professional misconduct pursuant to sections 82(1)(b) read with 83(1)(h) of the [LPA] and section 4 or 6 of the [TAA]. The allegations in the charges do not refer to section 83(1)(h) and to the [TAA] Provisions. There is only a reference to section 82(1)(b). It would have been complete if there was a reference to section 83 and the relevant section of the [TAA] in the allegations/counts. However, as the particulars specify the offending conduct in detail and the definition of professional misconduct in section 82(1)(b) is in the inclusive form it also [encompasses] the conduct as described in section 83 even in the absence of a specific reference to section 83. Further, as the particulars in each of the counts spell out and state in detail with clearly the offending conduct it conveys to [the Appellant] with sufficient clarity and certainty the nature of the violation he is alleged to have committed. These are not charges of a criminal nature but allegations of professional wrongs or transgressions in disciplinary proceedings. What is necessary is to specify if it is unprofessional conduct under section 81 or if it is professional misconduct under section 82(1)(a) or 82(1)(b) of

⁷ Determination, at paragraphs 20,21.

the LPA. Accordingly, the allegations (counts) presented in the present form are not irregular and [have] not misled or caused any prejudice to [the Appellant].

21 The common law has [recognised] the duty of a solicitor/practitioner, qua trustee, to account for how money received on trust has been dealt with. It has also been considered by the common law to be a necessary consequence of this duty that practitioners set up and maintain an accurate and transparent accounting system to track and deal with this money, and for partners to exercise personal responsibility and vigilance in monitoring it. It is now settled in Fiji that the statutory definition of professional misconduct does not exclude the common law definitions. As the relevant conduct with its consequence is spelt out in detail in each of the counts the absence of an express reference to the [TAA] and/or section 83 in the allegations (charges) is of no significance or consequence to the legality or propriety of these allegations.

[Citations omitted]

- [34] The Commissioner dealt with the Appellant's submission that the allegations against him were matters in respect of which criminal action should be filed under s 28 of the TAA later in the determination. The Commissioner said:⁸

... These may be violations attracting penal sanction and criminal action may be instituted against either [Ms Prasad] or [the Appellant]. That being so, the law does not prohibit disciplinary proceedings against the practitioner under the [LPA], either simultaneously or separately.

- [35] The Commissioner then referred to the documents led in evidence. He recorded that the audit reports, the Appellant's letters to the Respondent and the Attorney-General, and the schedule of incomplete cheques provided the bulk of the evidence relevant to the allegations.⁹ The Commissioner referred to the unreconciled amount disclosed in Mr Narsey's audit reports for the periods ending 30 September 2016 (\$2 million) and 30 September 2017 (\$2.139 million), but recorded that no significant breaches of the trustee's obligations had been noted in the period from 1 February to 30 September 2018.¹⁰

- [36] The Commissioner also referred to the Appellant's letter of explanation of 13 November 2020. He concluded from the audit reports and the Appellant's explanation that the trust account had been operated without any issue up to 30 September 2016, but that the audit reports showed an

⁸ Determination, at paragraph 64.

⁹ Determination, at paragraph 40.

¹⁰ Determination, at paragraph 47.

unreconciled amount \$2.139 million as at 30 September 2019. The Commissioner concluded that the fact of there being an unreconciled amount, and the apparent reason for it, was established:¹¹

... It appears that... between the 1st October 2016 and February 2018 [Ms Prasad] had been manipulating and misappropriating funds from the Trust Account. As discovered and admitted by [the Appellant] the primary modus operandi of misappropriating was by altering the amount in the cheque and withdrawing excess amounts from the Trust Account through the office account.

[37] The Commissioner then referred to Mr Laliqavoka’s report on his investigation of the altered cheques, which was produced at the hearing. The Commissioner recorded that the “entirety” of Mr Laliqavoka’s summary of his analysis, with copies of all 38 “incomplete” cheques examined by him (of which 25 were signed by the Appellant), their payment vouchers, bank statements, cheque butts and the relevant ledger, had been admitted by the Appellant, “without reservation”.¹²

[38] The Commissioner also referred to copies of the 25 cheques obtained from the bank, and found that they were complete, with the amount of the cheques written, inserted, and complete. The Commissioner said:¹³

56 ... There are two copies of the same cheque; one attached to the vouchers and the other obtained from the bank. On the comparison of these two copies of the cheques it is obvious and apparent that [the Appellant] has signed incomplete cheques. This had effectively provided the occasion and opportunity to [Ms Prasad] to alter the amount in numbers by adding a zero or digit then insert that sum in writing.

57 On a perusal of the bank statements in all these instances the increased amount has been credited and withdrawn from the Trust Account. However, the payment voucher, the cheque butt, and the entry in the relevant ledger remains unaltered and depicts the original correct and the lesser amount, the said excess amount is certainly an unauthorised withdrawal.

¹¹ Determination, at paragraph 51.

¹² Determination, at paragraph 53-55.

¹³ Determination, at paragraphs 56-57.

[39] The Commissioner found that it was established that the Appellant had signed the 25 cheques referred to in Count 6, when the amount of the cheques in writing was blank. He found that:¹⁴

... It is improper and imprudent to sign a cheque unless all details are complete particularly if it is then handed over to another. Secondly, this had continued at least for almost one year and two months ... It is not a one-off occurrence but has happened at least 25 times during 14 months. ... the only conclusion is that [the Appellant] had habitually signed these incomplete cheques ... due to his imprudent and reckless confidence reposed on a longstanding employee.

[40] The Commissioner also rejected a submission by Counsel for the Appellant that the Respondent had failed to investigate and identify how and why the unreconciled sum was tabulated. He recorded that in his letter of explanation on 13 November 2020, the Appellant set out how Ms Prasad had withdrawn the excess funds from the firm's office account, and had obtained written statements from her admitting that she had manipulated the trust account and obtained a total sum of \$1,135,306.08. The Commissioner went on to say:¹⁵

62 ... To prove these allegations, it is not necessary to prove the exact composition of, or how the sum of \$2.139 million is constituted. The charges as preferred do not allege that [the Appellant] misappropriated that sum. What is alleged by both counts 2 and 3 is ... his failure to properly supervise and monitor all transactions and that the said failure resulted in the Trust Account having an unreconciled amount of \$2 million and \$2.139 million respectively. ...

63 The allegations or the inquiry in this matter [do] not require [proof] with precision as to how exactly the unreconciled amount of \$2.139 million is made up. What is required for the purposes of [proving] counts 2 and 3 is to establish the fact of such composite unreconciled amounts and not the details of such amount. These are proved by the audit reports. ...

[41] Counsel for the Appellant also submitted to the Commissioner that the unauthorised withdrawals and misappropriation were committed not by him, but by Ms Prasad, a longstanding employee in whom he reposed confidence and to whom he entrusted the management and maintenance of the trust account. The Commissioner rejected this submission:¹⁶

¹⁴ Determination, at paragraph 60(a).

¹⁵ Determination, at paragraphs 62.-63

¹⁶ Determination, at paragraphs 66-67.

66 *Firstly, although [the Appellant] as the principal may delegate the administrative function of keeping accounts and records and managing the trust account to another party or parties, the responsibility to ensure that the deputised functions are carried out correctly always remains with the principal. The [Appellant] was the principal managing partner. ...*

67 *In the above premises the cavalier attitude and total indifference in the performance of the [Appellant's] statutory as well as common law obligations in relation to the trust account in my view is sufficient to make the [Appellant] guilty of professional misconduct. The mismanagement of funds by the Practitioner's law firm is directly attributable to the [Appellant's] own conduct. The general law has long held that when an agent is entrusted with money for the benefit of another, such agent then becomes a trustee of the money. The common law has recognised the duty of a practitioner/solicitor, as a trustee, to account for how money received on trust has been dealt with. ... In such circumstances personal vigilance has always been a requirement in the sense that the general law has recognised that Practitioners will be liable for the acts and omissions of their employees. ... Thus, a Practitioner's failure to supervise his employees adequately in the management of his trust account amounts to a serious abdication of his professional responsibilities.*

[Citations omitted]

[42] The Commissioner went on to say:¹⁷

69 *There is ample judicial authority that trust account matters are amongst those most damaging to public confidence. Reliability and integrity in the handling of trust funds are fundamental principles in determining whether an individual is a **fit and proper person** to be entrusted with the responsibilities belonging to a solicitor. Members of the public, many of them wholly inexperienced and unskilled in matters of business or of law, inevitably must put great faith and trust in the honesty of solicitors in the handling of moneys on their behalf. The Court must ensure that this trust is not misplaced. ...*

70 *In the said premises, I am satisfied that on the evidence that the [Appellant] was at least grossly negligent with regards to compliance with and in maintaining the trust account of which he was the trustee, it is this lapse that has resulted in the existence of unreconciled sums and the unauthorised withdrawals from the trust account over a period of time. This certainly put members of the public at risk. These transgressions, objectively viewed, justify the conclusion and I am satisfied that the [Appellant] is not a fit and proper person to engage in legal practice or operate a law firm.*

[Emphasis as in the determination, citation omitted]

¹⁷ Determination, at paragraphs 69-70.

[43] The Commissioner concluded, on his consideration and evaluation of the totality of the evidence, that the allegations that the Appellant had failed to ensure that trust moneys were not used for unauthorised purposes (Count 1), had failed to properly supervise and monitor transactions made in the trust account (by reason of which there were unreconciled amounts in the trust account) (Counts 2 and 3), had failed to maintain and/or keep proper accounting records between 1 October 2016 and 30 September 2017 (Count 4), and had authorised withdrawals from the trust account between 14 July 2016 and 19 September 2017 by signing incompletely drawn cheques (Count 6) were established against the Appellant.¹⁸

Appellant's appeal grounds

[44] The Appellant's notice of appeal set out, in all, 24 grounds of appeal. At the appeal hearing, Mr Haniff, on behalf of the Appellant, advised that the appeal against conviction would be pursued on the following grounds, only:

1. That the charges against the Appellant had not been properly brought under the LPA, but should have been brought under the TAA, and therefore were doomed to fail from the outset; and
2. That the Respondent had failed to conduct a proper investigation and had failed to reconstruct the trust account, and had therefore failed to establish the quantum of the unreconciled amount.

Were the charges against Mr Chandra properly brought under the LPA?

(a) Appellant's submissions

[45] Mr Haniff submitted that the Appellant should have been charged under the provisions of the TAA. He submitted that all of the six charges against the Appellant were framed as charges of professional misconduct under s 82(1)(b) of the LPA, but related to allegations of breaches of ss 4 to 6 the TAA (not monitoring and supervising the trust account, not keeping proper

¹⁸ Determination, at paragraph 71.

accounting records, and using moneys from the trust account for unauthorised purposes), and required evidence as to each of those elements.

[46] He submitted that none of the elements of the charges directly related to s 82(1)(b) of the LPA which, he submitted, directly relates to the offence of professional misconduct. He submitted that a charge under s 82(1)(b) of the LPA could not be established because the elements of the TAA are not provided for under s 82(1)(b). He submitted that any charge against the Appellant should have been brought under s 28 of the TAA, which creates the offence of contravening or failing to comply with any provision of the TAA and specifies the penalty that may be imposed upon conviction.

[47] He further submitted that in light of the provisions of the TAA and s 83 of the LPA, none of the charges against the Appellant falls within the ambit of ss 81 or 82 of the LPA, and must be dismissed. He further submitted that “it is quite obvious” that once charges are successful under the TAA, then s 83(1)(h) of the LPA could be invoked to support a charge of professional misconduct.

[48] He submitted that the recent Reference by Cabinet for an Opinion from the Supreme Court (“the Supreme Court Opinion”)¹⁹ supported the Appellant’s submission. In particular, it was submitted that the Supreme Court suggested that the provisions of the TAA and s 83(1)(h) of the LPA go hand in hand and that ss 81 and 82 of the LPA are totally different independent provisions for professional misconduct and unsatisfactory professional conduct. Counsel also sought support from the judgment of the ILSC in *Chief Registrar v Khan*.²⁰

[49] In the alternative, he submitted that the specific provisions of the TAA should prevail over the general provisions of the LPA. It was submitted that the LPA came into effect in 2009, and did not specifically repeal the TAA in respect of the disciplinary scheme and did not in any way amend the penalty provisions of the TAA, but recognised its continued existence by

¹⁹ *In the matter of a reference by Cabinet for an opinion from the Supreme Court concerning the interpretation and application of Sections 105(2)(b), 114(2), 116(4) and 117(2) of the Constitution of the Republic of Fiji* [2024] FJSC 20; Miscellaneous Action 0001 of 2024 (28 June 2024).

²⁰ *Chief Registrar v Khan* [2011] FJILSC 3; ILSC Action No 001 of 2011 (27 September 2024).

incorporating it in s 83(1)(h). Thus, it was submitted, ss 4 to 6 of the TAA continue to remain effective and operative.

[50] He submitted that as ss 4 to 6 of the TAA remain valid, the Appellant should have been charged first under the provisions of the TAA then (if convicted) the Respondent could have proceeded further with a charge of professional misconduct under s 83(1)(h) of the LPA. He submitted that the Respondent had pre-empted the provisions of the LPA and the TAA, failed to charge the Appellant under the appropriate provisions of the TAA, and wrongly filed charges under s 82(1)(b). He submitted that the Commissioner should have dismissed the charges against the Appellant forthwith on this ground alone.

(b) Respondent's submissions

[51] For the Respondent, Mr Chand submitted that the Appellant's submission as to jurisdiction was misconceived. He referred to the relevant provisions of the LPA and the TAA and submitted that s 28 of the TAA provides for criminal sanctions, which can only be ordered by a criminal court, and while the Respondent has a role in the disciplinary process under the LPA (including to commence disciplinary proceedings after a complaint or an investigation) he does not have the power to commence criminal proceedings against legal practitioners. Such jurisdiction lies with the Director of Public Prosecutions and the criminal courts.

[52] He also submitted that the Commission is not a criminal court, and the powers of the Commission after hearing disciplinary proceedings (as set out in s 121 of the LPA) are restricted to penalties akin to disciplinary proceedings as opposed to criminal proceedings. He further submitted that disciplinary proceedings under the LPA can only be brought before the Commission and, as provided in ss 81, 82, and 83, the only allegations that may be made are those of unsatisfactory professional conduct under s 81 and professional misconduct under s 82. He submitted that s 83 is an extension of ss 81 and 82, which provides some examples of conduct that is capable of constituting unsatisfactory professional conduct or professional misconduct, but is not exhaustive as to what constitutes either unsatisfactory professional conduct or professional misconduct.

[53] Mr Chand further submitted that it was correct for there to be no reference to ss 4 to 6 of the TAA in the charges, because the allegations arose from the audit reports of the trust account, and related to breaches of the Appellant’s obligations as trustee of the trust account, rather than alleging breaches of specific provisions of the TAA.

[54] Accordingly, he submitted, the Respondent had properly brought the charges of professional misconduct against the Appellant under s 82(1)(b) of the LPA, and the Appellant was properly found liable. He further submitted that any challenge to the statutory basis of the charges against the appellant ought properly to have been made by way of an application to strike out the disciplinary proceeding before it went to trial, and no such application had been made. He submitted that the appeal against conviction should be dismissed.

(c) *Discussion*

[55] Neither of the authorities referred to for the Appellant (the Supreme Court Opinion and *Chief Registrar v Khan*) support his submission that the Appellant should have been charged with an offence (or offences) under the provisions of the TAA in the first instance and (in the event that he were convicted) then charged under the disciplinary provisions of the LPA.

[56] The Supreme Court Opinion states:²¹

66 ... Section (83)(1)(h) provides that without limiting sections 81 and 82, a legal practitioner’s conduct that contravenes the Trust Accounts Act 1996 is capable of being “unsatisfactory professional conduct” or “professional misconduct”.

68 We should emphasise that a legal practitioner’s contravention of a provision of the Trust Accounts Act 1996 does not automatically amount to professional misconduct. The effect of the opening words of section 83(1) is that such a contravention is only capable of amounting to professional misconduct. Whether such a contravention does indeed amount to professional misconduct depends on the particular circumstances of the case. Section 82(1) places the bar relatively high. It gives two examples of the kind of conduct which would amount to professional misconduct, namely conduct which “involves a substantial or consistent failure to reach or maintain a reasonable standard of competence and diligence” and conduct which would “justify a finding that the practitioner is not a fit and proper person to engage in legal practice”.

[Emphasis as in the Supreme Court Opinion]

²¹ Supreme Court Opinion, at paragraphs 66-67.

- [57] The Supreme Court went on to address the disciplinary proceedings in respect of which it was required to provide its Opinion. Nowhere does the Supreme Court state that a breach of the provisions of the TAA must first be the subject of a criminal finding of an offence pursuant to s 28 of the TAA before disciplinary proceedings could be issued, nor can any inference to that effect be drawn from the Opinion.
- [58] The Commission’s judgment in *Chief Registrar v Khan* was given by Commissioner J Connors, and was concerned with 12 charges of professional misconduct and unsatisfactory professional conduct against a practitioner. Although it was submitted for the Appellant in this Court that Commissioner Connors had “attempted to interpret the provisions of the LPA and considered whether this later enacted law LPA prevailed over the inconsistent earlier laws of TAA”, none of the charges appear to have raised issues relating to the TAA, and there is no reference to the TAA in the judgment. The judgment appears not to have any relevance to this appeal.
- [59] As in every appeal, the Appellant bears the onus of establishing his case. For present purposes, the Appellant must establish that the charges were brought on the wrong statutory basis, and that charges of professional misconduct could only have been brought after he had been charged and convicted of offences under ss 4 to 6 of the TAA, pursuant to s 28 of the TAA.
- [60] Counsel for the Respondent correctly submitted that the Respondent’s powers under the LPA are restricted to the provisions of the LPA. There is no provision giving the Respondent the power to institute criminal proceedings, or even to make a complaint of criminal offending. The Respondent’s powers are limited to receiving and responding to complaints, instituting investigations following complaints or on his own initiative, and issuing disciplinary proceedings under the LPA. The Respondent could not bring criminal proceedings against the appellant. The Appellant’s contention that he should have done so is unsustainable.
- [61] Further, the Appellant has not established that the Commissioner was wrong in his analysis of ss 81, 82, and 83 of the LPA (in paragraphs 12 to 16 of the determination, set out in paragraph [32] above), or that the Commissioner erred in his reasoning leading to his rejection of the Appellant’s contention that the charges were wrongly brought under s 82(1)(b) of the LPA (in paragraphs 20, 21 and 64 of the determination, set out in paragraphs [33] and [34], above).

- [62] It is evident of the face of the LPA that ss 81 and 82 establish “unsatisfactory professional conduct” and “professional misconduct”, in respect of which the Respondent may commence disciplinary proceedings pursuant to s 111 of the LPA. As the opening words of both s 81 and s 82 state, the definition is inclusive, not exhaustive. Section 83 of the LPA expressly does not limit ss 81 and 82, but sets out categories of conduct that are “capable of being ‘unsatisfactory professional conduct’ or ‘professional misconduct’” for the purposes of the Act. Section 83 provides an extension of ss 81 and 82 (without limiting those sections) by describing certain types of conduct which may constitute unsatisfactory professional conduct or professional conduct.
- [63] In the disciplinary proceedings against the Appellant under s 82(1)(b) of the LPA, the Respondent was required to establish that he engaged in “conduct that would, if established, justify a conclusion that he is not a fit and proper person to engage in legal practice”. The conduct relied on by the Respondent was correctly specified in the particulars of the charges. The Commissioner was entitled to look at the Appellant’s conduct and omissions that he found to be established on the evidence, and then determine whether that conduct and those omissions amounted to conduct that justified a finding that the Appellant was a fit and proper person to engage in legal practice.
- [64] The Appellant has not established that the Commissioner was wrong in his summary (in paragraph 21 of the determination) of the nature and detail of the obligations under the common law of a practitioner, as trustee of money held on trust, or to find that the omission of a reference to the TAA or s 83 of the LPA in the charges did not affect the validity of the charges.
- [65] This ground of appeal against the Commissioner’s determination cannot succeed and must be dismissed.

Did the Chief Registrar fail to conduct a proper investigation and fail to reconstruct the trust account, and therefore fail to establish the quantum of the unreconciled amount?

(a) *Appellant's submissions*

[66] Mr Haniff submitted that the Commissioner erred in referring to the unreconciled amount of \$2.139 million. He submitted that the only established shortfall was \$239,985.00, which was the discrepancy found by Mr Laliqavoka in his examination of 38 cheques. He further referred to Mr Laliqavoka's evidence that he was not in a position to comment on a ledger balance of \$2.139 million, as he had not been provided with all documents, and the trust account had still not been reconstructed.

(b) *Respondent's submissions*

[67] Mr Chand submitted that the amount of the unreconciled balance was provided by the Appellant in his letter of explanation to the Respondent on 13 November 2020, and the Respondent was entitled to rely on that for the purposes of the proceeding. He referred to the affidavit of Nikhil Raj Narayan, sworn on 7 March 2024 and filed in support of the Respondent's application (consented to by the appellant) to file fresh evidence. Mr Narayan said in his affidavit that the firm had failed to file a trust account audit report for the financial year ending 30 September 2020, and the Respondent's office had facilitated an audit of the trust account. Mr Chand referred the Court to the "variance" of \$2,088,248.88 between the trust account balance as recorded in the firm's trust ledger (\$2,949,213), and as recorded in the bank statement for the account (\$860,964.16) revealed in the audit report. Mr Chand also submitted that the fresh evidence establishes that as at the date of the affidavit, claims against the trust fund had increased to \$3,074,272.89.

[68] Mr Chand submitted that the trust account will remain unreconciled and transactions unverified until such time as all records are reconstructed – if that is in fact possible. He submitted that the Commissioner was not wrong to refer to the findings in the audit reports.

(c) *Discussion*

[69] A similar submission was made to the Commissioner by counsel for the Appellant. The Commissioner referred to this submission at paragraphs 62 and 63 of the determination, which

are set out in paragraph [40], above. The Appellant has not provided any basis on which this Court should conclude that the Commissioner erred in his approach.

[70] This ground of appeal cannot succeed and should be dismissed.

Appeal against the sanctions ruling

The sanctions ruling

[71] The Commissioner summarised the charges against the Appellant and his findings:²²

3 ... It was proved that [the Appellant] facilitated [Ms Prasad's] fraud or misappropriation by (a) failing to appropriately supervise [Ms Prasad] (b) failing to ensure strict compliance with trust accounting laws/rules (c) providing [Ms Prasad] a series of incomplete signed cheques, which were also used in the embezzlement of trust funds. It was also proved that there is an unreconciled amount of [\$2.139 million].

4 [The Appellant] was culpable as he was grossly negligent and remiss with regards to supervision and maintaining the trust of which he was the trustee. The common law recognises duty of a practitioner/solicitor, as a trustee, to account for how money received on trust is dealt with. ... Thus [the Appellant's] failure to supervise [Ms Prasad] adequately in the management of the trust account amounts to a serious abdication of his professional responsibilities.

5 It is this lapse in conjunction with the signing of incomplete cheques that has resulted in, and enabled the unauthorised withdrawals from the trust account over a period of time which gave rise to the unreconciled amount of [\$2.139 million]. This misconduct put members of the public at risk and it was proved that [the Appellant] is not a fit and proper person to engage in legal practice or operate a law firm.

[72] The Commissioner set out the purpose of disciplinary proceedings and sanctions as being to protect the public interest, then summarised the submissions on behalf of the Appellant and the Respondent. In his analysis of the submissions, the Commissioner noted (at paragraph 15 of the sanctions ruling) that maintaining with due diligence clients' funds held in the trust account is a primary obligation of a practitioner who is trustee, and that any irregularity or deflection will directly impact upon the confidence and trust reposed on the practitioner as well as the

²² Sanctions ruling, at paragraphs 3 to 5.

legal profession in general. For that reason, trust account violations are viewed with extreme seriousness.

[73] The Commissioner recorded (at paragraphs 16 and 17 of the sanctions ruling) that the Appellant had not directly accepted his responsibility and had attempted to place blame on Ms Prasad, the auditors (for failing to pick up the discrepancies) and the Respondent (for failing to issue his practising certificate after 2021). However, the Commissioner recorded that the Appellant had finally accepted that his culpability lay in the fact that he failed to properly supervise the trust account, including supervision of Ms Prasad.

[74] The Commissioner further recorded that the Appellant had handed over the entire management and operation of the trust account and the office account to Ms Prasad, together with maintenance of accounts and ledgers, preparation of bank reconciliations, withdrawals and deposits. The Commissioner described this as “an extremely negligent and imprudent act on his part and seriously [falls] short of the minimum standard of conduct and due diligence expected of a practitioner vis a vis the trust funds and the trust account.”²³

[75] The Commissioner concluded that the Appellant had not only placed “too much faith in a trusted employee, who betrayed it, but he had abdicated rather than delegating his responsibilities of the management and operation of the trust account to an employee”.²⁴ The Commissioner recorded (at paragraph 33 of the sanctions ruling) his finding that the only proper and possible conclusion he could arrive at was that the Appellant is not a fit and proper person to be a practitioner. He noted the Appellant’s lack of remorse, failure to appreciate his basic responsibility and “blaming all and sundry for his lapse” and the failure to bring in any funds to ameliorate the consequences of the defalcation, such that the appropriate sanction was that the Appellant should be subject to an order for striking off. He considered that this was “the most appropriate and necessary order in the circumstances to protect the public confidence in the legal profession, including the disciplinary process.

²³ Sanctions ruling, at paragraph 18.

²⁴ Sanctions ruling, at paragraph 31.

Submissions

- [76] Mr Haniff submitted that the Commissioner had failed to take into account that the Appellant had not been accused of any dishonesty, and was himself a victim of Ms Prasad's forgery, tampering and manipulation of documents. He also submitted that the Commissioner had over-emphasised the quantum of the unreconciled amount, leading to a sanction that was excessive, harsh, and deprived the Appellant of his livelihood. He also submitted that the fine of \$500,000 imposed was excessive and out of all proportion to fines imposed in other cases.
- [77] Mr Haniff further submitted that the Commissioner had failed to turn his mind to any possible alternative outcome: for example, that the Appellant should be permitted to practise law, but not as a principal of a firm, and under supervision. He submitted that the Appellant should have been allowed to complete his legal career.
- [78] Mr Chand submitted that the Commissioner had not erred in imposing the sanction of striking off, and ordering the Appellant to pay a substantial fine. While acknowledging that \$500,000 is the maximum fine able to be imposed,²⁵ he submitted that it was open to the Commissioner to order the Appellant to pay compensation as well as a fine, and the losses to clients of the firm are vastly more than \$500,000.
- [79] He also submitted that striking off was proportionate to the severity of the Appellant's negligence as to his obligations as trustee of the trust account, and loss to clients. He submitted that the Appellant's negligence was so serious that he should not be allowed to practise law, in any manner. He further submitted that he had not before seen a case that was as serious as the present one, and "a message needed to be sent".

Discussion

- [80] As the Commissioner found, the Appellant's conduct in signing trust account cheques which were incomplete, and his failure to supervise and monitor the operation of the trust account

²⁵ As provided by s 121(1)(i) of the LPA.

provided the opportunity and enabled Ms Prasad to tamper with the cheques by altering the amount in numerals and add the narration of the (altered) amount in words to fit, can only be categorised as gross negligence. As the Commissioner found, it was not delegation of the Appellant's obligations as trustee of the trust account, it was a complete abdication of the Appellant's obligations. It required a serious response.

[81] It does not assist the Appellant to say (as was submitted on his behalf) that the cheques were made out to the office account, not Ms Prasad. The cheques were drawn on the trust account, which holds clients' moneys. Therefore, whatever or whoever the payee, the funds came from clients' moneys. The current total claims show the extent of the losses claimed by clients.

[82] The Appellant's breaches of his obligations in relation to the trust account were not a one-off event, nor did they occur over only a brief period of time. As the Commissioner found, they were ongoing. The Appellant's breaches can only be described as being at an extremely serious level, requiring a commensurate response.

[83] The Appellant has not established that the Commissioner was wrong to find that the Appellant's conduct and omissions were so serious that the sanction of striking-off was justified, and the order for striking off cannot be described as disproportionate.

[84] As Mr Chand acknowledged, the fine of \$500,000 was the maximum prescribed fine. However, it must be noted that the Commissioner directed that it be applied for the purpose of payment to clients who had suffered loss. Mr Chand correctly submitted that the Commissioner could have ordered the Appellant to pay compensation in that (or any other) amount.²⁶ This Court further takes into account that the Appellant has been found to have misconducted himself professionally in respect of five separate and distinct areas of his legal practice.

[85] The Appellant has not established that the Commission erred in imposing the sanctions of striking off and a fine of \$500,000. The appeal against the sanctions ruling must be dismissed.

²⁶ Pursuant to s 121(1)(h) of the LPA.

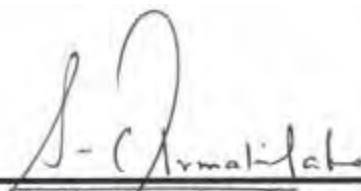
Andrée Wiltens, JA

[86] I agree with the decision and the reasons of Andrews, JA.

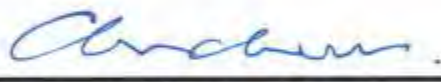
ORDERS

- (1) *The appeal against the Commissioner's determination is dismissed.*
- (2) *The appeal against the Commissioner's sanctions ruling is dismissed*
- (3) *The Appellant is to pay costs to the Respondent in the sum of \$5,000.00, within 14 days of the date of this judgment.*






Hon. Justice Chandana Prematilaka
RESIDENT JUSTICE OF APPEAL



Hon. Justice Pamela Andrews
JUSTICE OF APPEAL



Hon. Justice Gus Andrée Wiltens
JUSTICE OF APPEAL