IN THE INDEPENDENT
LEGAL SERVICES COMMISSION

NO.001/2009

BETWEEN:	**CHIEF REGISTRAR**	**APPLICANT**
AND:	**ABHAY SINGH**	**RESPONDENT**

APPLICATION IN PERSON

RESPONDENT IN PERSON

DATE OF HEARING:	**4th November 2009, 7th December 2009, 8th December 2009, 11th December 2009**
DATE OF JUDGMENT:	**25th January 2010**

JUDGMENT

1. By applications filed on the 15th of October 2009, the Applicant brings four complaints before the Commission.
2. The Respondent appears and opposes each of the complaints. The complaints have been heard consecutively and this judgment relates to complaints 1, 3 and 4
3. The respondent is a barrister and solicitor practicing at Nasouri having initially been admitted to practice in New Zealand in 1994 and having returned to Fiji in 1996. He

holds a bachelor of laws degree from Waikato University in New Zealand and a master of laws degree from the University of Queensland in Australia

COMPLAINT NUMBER 1

4. It is alleged that the Respondent breached S.83 (1) (d) (i) of the Legal Practitioners Decree 2009 (" the decree") and is therefore guilty of unsatisfactory professional conduct or professional misconduct in that he was on the 25th of October 2006 convicted in the High Court of Fiji for attempting to pervert the course of justice . The conviction was on the 18th of December 2008 confirmed by the Supreme Court of Fiji – *Abhay Kumar Singh v State, Criminal Appeal CAV 205 of 2008S.*

5. The Respondent entered a plea of guilty after the trial judge ruled admissible the electronic recording of a secretly taped conversation. The subsequent appeals to the Fiji Court of Appeal and the Supreme Court of Fiji were on the ground that the recording was inadmissible.

6. The facts of the case established against the Respondent are summarized in the trial judge's remarks on sentence and are set forth in the judgment of the Supreme Court.

"On the 24th July 2003 the trial was due to start in the Magistrates Court at Suva of one Sahadat Attai Khan. He was charged with corruptly seeking, as a Land Transport Authority Officer, $200 for the registration of a second-hand vehicle. The owner of the car and the person from whom it was alleged he had sought the money was Rajendra Narayan. The Accused was Mr. Khan's defense counsel. Subsequently in February 2005 Mr. Khan was acquitted of that charge.

Prior to the Khan hearing, on 22nd July 2003, Mr. Narayan informed the investigating officer that he had been approached by the Accused. The police took advice from the Director of Public Prosecutions Officer. It was then agreed to give Mr. Narayan a digital recording device to record any further conversation with the Accused on the topic. Mr. Narayan agreed to this course.

On the next day, 23rd July 2003, a conversation took place between the Accused and Mr. Narayan. It started when they were in a vehicle traveling to the scene of an accident in which the Accused's son had been one of the drivers. In the course of the conversation the Accused mentioned the court case the next day. He advised Mr. Narayan to change his evidence to some extent, and the Accused told him what to say in its place.

The original evidence from Mr. Narayan was that Mr. Khan had taken the $200 from him and placed it under a book. Mr. Khan then pulled out a file pretending to read it in order to hide his actions from a woman who had come to the door of his office.

The accused told Mr. Narayan to keep to his original story which he need not lie about. But that when he came to describe handing over the money to Mr. Khan he should say that he hid it under a book or register because a woman came into the room. He was to say that he never actually handed the money over to Mr. Khan. He should add that Mr. Khan did not see him do any of this. The rest he could leave to the Accused.

The Accused promised that once his client was acquitted he would sue the police. He would not make Mr. Narayan a party to those proceedings. Instead he would pay Mr. Narayan an unspecified sum of money out of the lump sum obtained thereby in damages.

The Accused was interviewed by police under caution on 24th July 2003. He availed himself of his constitutional right to consult a lawyer, and did so before the main questioning commenced. He said he had been practicing as a barrister and solicitor since 1994, and was admitted as such in New Zealand, Fiji, Tasmania and Queensland. He was a commissioner for oaths and a notary public.

When it was suggested that he had met the complainant and asked him to change one part of his story in the corruption case against Attai Khan, the Accused said the allegation was false. More details of the conversation were put to him but he said they were false.

He asserted that he wanted to save Attai Khan in his court case because he believed he was innocent. He denied discussing anything to do with the case with Mr. Narayan. At least a part of the digital recording was played to the accused and he denied that one of the other voices was Mr. Narayan's. He was positive the voice was not his own. He said Mr. Narayan was lying in saying that it was his voice. He also alleged Mr. Narayan had offered him $45,000 if he could have Attai Khan convicted for corruption.

In these proceedings the Accused has accepted that the translation of the recording in Hindi is essentially correct save for a few inconsequential inaccuracies. He now accepts that it was indeed his voice in the recording, as well as that of Mr. Narayan. He admits the offence, and admits that he had made the approach to Mr. Narayan to change his evidence, what Mr. Raza called "one stupid act, " and "one act of madness."

Besides being a lawyer in private practice, the accused has no previous convictions."

7. The trial judge sentenced the Respondent to 12 months imprisonment which sentence was reduced by the Fiji Court of Appeal to one of 6 months. The sentence was served extra murally

8. The Respondent submits a chronology of events which is not disputed by the Applicant which shows that the Respondent applied to the Fiji Law Society for a renewal of his practicing certificate in about February 2007 and it was declined. The Fiji Court of Appeal in delivering judgment confirmed his conviction on the 9th of March 2007

9. In its judgment the Fiji Court of Appeal at paragraph 28 said:

"We realize that there will likely be proceedings against the appellant by the Law Society which could well result in his inability to practice in the jurisdiction in which he is admitted."

10. It would appear that after some correspondence with the Fiji Law Society the Respondent brought a motion before the High Court (HBM 90 of 2007), which motion was determined by Byrne J. on the 24th of July 2007. At page 3 of the judgment it states :

"..... he issued a motion now before me seeking an order that the Respondent immediately issue a practicing certificate to the Appellant pending the hearing and determination of the Appellant's appeal in the Supreme Court of Fiji or until further order of this court."

11. The motion appears to have been determine by the court making a recommendations to the disciplinary committee of the Fiji Law Society ***"that the appellant's practicing certificate be restored immediately"***

12. It appears that his practicing certificate was restored and no further action was taken by the Fiji Law Society pursuant to the Legal Practitioner's Act 1997.

13. By letter dated 6th January 2009 [Ex. A1] Aman Ravindra Singh complained to the Fiji Law Society pursuant to section 83 of the Legal Practitioners Act about the Respondent and highlighted that the Supreme Court of Fiji had delivered judgment on the 18th of December 2008 confirming the conviction of the Respondent

14. The Legal Practitioners Decree 2009 commenced on the 22nd of may 2009 (s.1). The decree most relevantly provides for the Chief Registrar to obtain from the Fiji Law Society any unresolved complaints (s.131) and s.101 provides that a complaint may be

made or investigation carried out with respect to alleged professional misconduct or unsatisfactory professional conduct arising before the commencement of the decree.

15. It is the Respondent's submission that the High Court by virtue of the decision in HBM 90/2007 has determined the issue of his alleged professional misconduct or unprofessional conduct and that therefore this Commission is unable to deal with the complaint now before it pursuant to the decree.

16. He further submit's that for this Commission to determine the complaint would result in a double jeopardy and that the doctrine of res judicata applies and that it would be an abuse of processes for the complaint to be found against him.

17. The application to the High Court, HBM 90/2007 is stated in the judgment to be an application that the Respondent be granted a practicing certificate pending the determination of his appeal to the Supreme Court of Fiji or further order of the court. The Supreme Court determined the Respondents appeal in December 2008 and therefore the recommendation of the High Court to the Fiji Law Society has run its term. The High Court was only moved for interim relief and that is what was granted.

18. In any event there is no order of the High Court but merely a recommendation to the Fiji Law Society. There was an unresolved complaint pending before the Fiji Law Society at the date of the decree and that complaint has been processed in accordance with the decree by the Chief Registrar and it now comes before the Commission for determination according to law and that is what is proposed to be done.

19. Lengthy submissions have been made by the Respondent as to the effect of his conviction for attempting to pervert the course of justice and whether such a conviction, being only a misdemeanor in Fiji, is sufficient to cause his name to be struck from the Roll.

20. Section 81 of the decree defines *"unsatisfactory professional conduct"* as including

"conduct of a legal practitioner or a law firm or an employee or agent of a legal practitioner or a law firm, appearing in connection with the practice of law that falls short of the standards of confidence and diligence that a member of the public is entitled to expect of a reasonably competent or professional legal practitioner or law firm".

21. Section 82 of the decree defines professional misconduct as including

"(a) unsatisfactory professional conduct of a legal practitioner, a law firm or an employee or agent of a legal practitioner or law firm, if the conduct involves substantial or consistent failure to reach or maintain a reasonable standard of confidence and diligence:

(b) conduct of a legal practitioner, a law firm or an employee or agent of a legal practitioner or law firm, whether occurring in connection with the practice of law or occurring otherwise than in connection with the practice of law, that would, if established, justify finding that the practitioner is not a fit and proper person to engage in legal practice, or that the law firm is not fit and proper to operate as a law firm."

22. Section 83 then provides that conduct on which there is a finding of guilt or a conviction for a criminal offence is capable of being unsatisfactory professional conduct or professional misconduct.

23. Section 83(2) provides that professional misconduct includes malpractice and unsatisfactory professional conduct includes unprofessional practice or conduct.

24. It is not disputed that there is a conviction for a criminal offence. The issues therefore are whether that conviction whilst being capable of amounting to unsatisfactory professional conduct or professional misconduct does in fact amount to such conduct and whether there is any substance in the submission of double jeopardy and res judicata

25. The New South Wales Court of Appeal considered what is the proper approach to matters such as this in *Law Society of NSW v Bannister* (1993) 4 LPDR 24 where Sheller JA at page 7 said

"It is sometimes said that the jurisdiction of the Tribunal and of this Court invoked by complaint against a solicitor is not to punish a solicitor but to protect the public. In New South Wales Bar Association v Evatt (1968) 117 CLR 177 at 183 to 184 the court referred to Clyne v New South Wales Bar Association (1960) 104 CLR 186 at 201 to 202 and said: "The power of the Court to discipline a barrister is, however, entirely

protective, and, notwithstanding that its exercise may involve a great deprivation to the person disciplined, there is no element of punishment involved." However the distinction between the two stated objectives of protection and punishment is blurred and can be misleading. Obviously where a barrister or solicitor has been convicted and punished for a serious offence the jurisdiction of the court to disbar the barrister or remove the name of the solicitor from the roll can be said to have nothing to do with punishment: see Ziems v Prothonotary (1957) 1997 and 97 CLR 279 at 286. In Ex parte Brounsall (778) 2 Cowp 89, 98 ER 1385 a solicitor had been convicted of stealing a guinea and had suffered imprisonment for 9 months and also branding on the hand. On an application to strike him off the role and in answer to an argument advanced on the solicitors behalf that he had already received sufficient punishment, Lord Mansfield at 830 and 1385 said that the defendant's having been burnt on the hand was no objection to his been struck off the roll. "And it is on this principle; that he is an unfit person to practice as an attorney. It is not by way of punishment: but the Court on such cases exercises the discretion, whether a man whom they have formally admitted, is a proper person to be continued on the roll or not. "See also Incorporated Law Institute of New South Wales v Meagher (1909) 9 CLR 655 at 680. Such cases illustrate that the supervisory jurisdiction of the court and statutory bodies such as the Tribunal is directed in part to ensuring that the requirement enshrined in the Charter of Justice that persons admitted to practice as solicitors be fit and proper persons or, in the language of s16 of the Legal Profession Act 1987, of good fame and character is maintained. It follows that if a solicitor is shown not to be a fit and proper person he or she should be removed from the roll. The order for removal is not punitive but protective. Accordingly it is no answer for the solicitor to say that he or she has already been punished for the conduct which shows unfitness.

But the supervisory jurisdiction of the Court and the Tribunal is also directed to protecting the public more generally by maintaining and encouraging appropriate standards of professional behaviour."

26. At page 8 his honor went on and said

"When the jurisdiction of the Tribunal is invoked under Pt 10 Division 7 of the Act to conduct a hearing into a complaint of professional misconduct by a legal practitioner, the primary consideration is to protect the public, by preventing a person unfit to practice from holding himself or herself out to the public as a legal practitioner in whom members of the public might repose confidence. But the tribunal must also act so as to deter the offender in the future and any other practitioner minded to behave

in like manner. In the case of a solicitor these elements together or separately may call for the removal of the solicitors name from the roll or the imposition of a substantial fine. Subjective considerations which would mitigate the sentence imposed by a criminal court may be significant if the protective exercise being undertaken by the tribunal requires that they be taken in to account"

27. When considering the purpose of the Court's jurisdiction in matters such as this the NSW Court of Appeal in *NSW Bar Association v Hamman* [1999] NSWCA 404 at 73 and onwards Mason P. said:

"The facts of Ziems are totally removed from the present case. Ziems undoubtedly establishes that conviction and sentence are not necessarily determinative. The court must look at the true fact. But nothing in the judgments cast dout upon the earlier decision of In re Davis (1947) 75 CLR 409, in which Dixon J, with whose reasons Williams J agreed, said (at 420):

> *"The Bar is no ordinary profession or occupation. The duties and privileges of advocacy are such that, for their proper exercise and effective performance, counsel must command the personal confidence, not only of lay and professional clients, but of other members of the bar and of judges. It would almost seem to go without saying that conviction for a crime of dishonesty of so grave a kind as housebreaking and stealing is incompatible with the existence in a candidate for admission to the bar of the reputation and the more enduring moral qualities denoted by the expression 'good frame and character', which describes the test of his ethical fitness for the profession".*

28. Later at paragraph 117 and onwards Davies AJA said:

"The objective of disciplinary proceedings is the protection of the public and the maintenance of proper standards in the legal profession. In the Southern Law Society v Westbrook (1910) 10 CLR 609 at 619, O'Connor J said that:

> *"... the court in maintaining a solicitor on the roll is holding out to the public that he is a fit and proper person to be entrusted by the public with those difficult and delicate duties and that absolute confidence which the public must repose in persons who fulfill the duties of solicitors."*

In Incorporated Law Institute of NSW v Meagher (1909) 9 CLR 655 at 681, Isaacs J said:

"There is therefore a serious responsibility on theCourt- a duty to itself, to the rest of the profession, to its suitors, and to the whole of the community to be careful not to accredit any person as worthy of public confidence who cannot satisfactorily establish his right to that credential. It is not a question of what he has suffered in the past, it is a question of his worthiness and reliability for the future."

At least in cases where the practitioner has undergone punishment under the criminal law, the function of the court is not to punish the practitioner but to protect the public by maintaining standards in the profession. In the New South Wales Bar Association v Evatt (1968) 177 CLR 177 at 183-4, the court said:

"The power of the court to discipline a barrister is, however, entirely protective, and not withstanding that its exercise may involve a great deprivation to the person disciplined, there is no element of punishment involved."

In Ziems v The Prothonotary of the Supreme Court of NSW (1957) 97 CLR 279 at 297-8, Kitto J summarized the approach in this way:

"The issue is whether the appellant is shown not to be fit and proper person to be a member of the Bar of New South Wales. It is not cable of more precise statement. The answer must depend upon one's conception of the minimum standards demanded by a due recognition of the peculiar position and functions of a barrister in a system which treats the bar as in fact, whether or not it is also in law, a separate and distinct branch of legal profession. It has been said before and in this case the Chief Justice of the Supreme Court has said again, that the bar is no ordinary profession or occupation. These are no empty words, nor is it their purpose to express or encourage professional pretensions. They should be understood as a reminder that a barrister is more than his clients confidant, adviser and advocate, and must therefore possess more than honesty, learning and forensic ability. He is, by virtue of a long tradition, in a relationship of intimate collaboration with the judges, as well as with his fellow-members of the bar, in the high task of endeavoring to make successful the service of the law to the community. That is a delicate relationship, and it carries exceptional privileges and exceptional obligations. If a barrister is found to be, for any reason, an unsuitable person to share in the enjoyment of those privileges and in the effective discharge of those responsibilities, he is not a fit and proper person to remain at the bar. Yes it cannot be that every proof which he may give of human frailty so disqualifies

him. The ends which he has to serve are lofty indeed, but it is with men and not with paragons that he is required to pursue them. It is not difficult to see in some forms of conduct, or in convictions of some kinds of offences, instant demonstration of unfitness for the bar. Conduct may show a defect of character incompatible with membership of a self-respecting profession; or, short of that, it may show unfitness to be joined with the bench and the bar in the daily co-operation which the satisfactory working of the courts demands. A conviction may of its own force carry such a stigma that judges and members of the profession may be expected to find it too much for their self-respect to share with the person convicted the kind and degree of association which membership of the bar entails. But it will be generally agreed that there are many kinds of conduct deserving of disapproval, and many kinds of convictions of breaches of the law, which did not spell unfitness for the bar; and to draw the dividing line is by no means always an easy task."

29. There is clearly no merit in the submissions of double jeopardy and res judicata and they are rejected.

30. Does the Respondent's conviction for attempting to pervert course of justice contrary to section 131(d) of the Penal Code amount to unsatisfactory professional conduct or professional misconduct?

31. To fall within the definition of unsatisfactory professional conduct in the decree it is necessary for the conduct complained of to be in connection with the practice of law and fall short of the standards of competence and diligence that a member of the public is entitled to expect of a reasonably competent and professional legal practitioner. This is a standard not from the professions point of view but from the perspective of the consumer of legal services.

32. Conviction for a criminal offence may, by virtue of section 83 of the decree amount to unsatisfactory professional conduct.

33. Professional misconduct is relevantly conduct of a legal practitioner occurring in connection with the practice of law that would justify a finding that the practitioner is not a fit and proper person to engage in legal practice. In determining fitness regard might be had to the matters enumerated in s. 44 of the decree .

34. Section 44 (b) of the decree relates to the conviction in the Fiji Islands or elsewhere for an offence which involves moral turpitude or fraud on the part of the legal practitioner.

35. The offence to which the Respondent pleaded guilty and for which he was sentenced to a term of imprisonment was attempting to pervert the course of justice. The facts as set forth in the judgment of the Supreme Court of Fiji in *Abhay Kumar Singh v The State* show a clear intent to cause a witness to change his evidence to the court. The offence relates directly to the Respondent's professional activities and his relationship with the court and other members of the profession.

36. The High Court of Australia in *In Re Davis* (1947) 75 CLR 489 at 420 said

"But the whole approach for a court to a case of personal misconduct must surely be very different from its approach to a case of professional misconduct. Generally speaking, the latter must have a much more direct bearing on the question of a man's fitness to practice than the former."

37. In Ziems Kitto J said at 298

"If a barrister is found to be, for any reason, an unsuitable person to share in the enjoyment of those privileges and the effective discharge of those responsibilities, he is not a fit and proper person to remain at the bar."

38. The conduct of the Respondent must therefore satisfy the definitions of unsatisfactory professional conduct and that of professional misconduct. He has been convicted of an offence which involves moral turpitude on his part; he has been convicted of a crime directly relating to his professional practice and his relationship with the court and his fellow practitioners. I find that the respondent is guilty of professional misconduct pursuant to section 82 of the Legal Practitioner's Decree 2009.

39. The authorities to which I have referred make it clear that when the conduct is of a professional as distinct from a personal nature that it must have a much more direct bearing on fitness to practice. There is an obligation to protect the public from practitioners found guilty of dishonesty in the face of the court. It is difficult to perceive of a more serious offence that a lawyer could commit in breach of his professional obligations than attempting to pervert the course of justice. It calls for the ultimate penalty, that the respondent's name be removed from the roll of legal practitioners.

STANDARD OF PROOF

40. The relevant standard of proof to be applied to disciplinary proceedings was considered at length by The Court of Final Appeal of the Hong Kong Special Administrative Region in

A Solicitor and The Law Society of Hong Kong Final Appeal No. 24 of 2007 (Civil). There the court considered inter alia relevant authorities from the Privy Council, the High Court of Australia and the High Court of New Zealand (whose decision in *Z and Dental Complaints Assessment Committee,[2007] NZAR 343,* was subsequently confirmed by the Supreme Court of New Zealand *[2008] NZSC 55).*

41. The Privy Council in *Campbell v Hamlet [2005] UKPC 19* held that the criminal standard of proof was to be applied in all disciplinary proceedings concerning the legal profession.

42. The High Court of Australia in *Rejfek v McElroy (1965) 112 CLR 517* held that the civil standard of proof applied but said at paragraph 10:

"The "clarity" of the proof required where so serious a matter as fraud is to be found, is an acknowledgment that the degree of satisfaction for which the civil standard of proof calls may vary according to the gravity of the fact to be proved: see Briginshaw v Briginshaw (1938) 60 CLR 336 per Dixon J.."

43. And at paragraph 11 the court said:

"No matter how grave the fact which is to be found in a civil case, the mind has only to be reasonably satisfied and has not with respect to any matter in issue in such a proceeding to attain that degree of certainty which is indispensable to the support of a conviction upon a criminal charge: see Helton v Allen (1940) 63 CLR 691 per Dixon, Evatt and McTiernan JJ."

44. The Supreme Court of New Zealand in *Z v Dental Complaints Assessment Committee [2008] NZSC 55* in applying the flexible application of the civil standard said at paragraph 116:

"We acknowledge the serious impact that adverse disciplinary decisions can have on the right of individuals to work in their occupation and on personal reputations. The flexible application of the civil standard will, however, give all due protection to persons who face such proceedings."

45. In *A Solicitor and The Law Society of Hong Kong* the Chief Justice at paragraph 116 said:

"In my view, the standard of proof for disciplinary proceedings in Honk Kong is a preponderance of probability under the Re H approach. The more serious the act or omission alleged, the more inherently improbable must it be regarded. And the more inherently improbable it is regarded, the more compelling will be the evidence needed

to prove it on a preponderance of probability. If that is properly appreciated and applied in a fair-minded manner, it will provide appropriate approach to proof in disciplinary proceedings. Such an approach will be duly conducive to serving the public interest by maintaining standards within the professions and the services while, at the same time, protecting their members from unjust condemnation."

46. I am therefore of the opinion that the appropriate standard of proof to be applied is the civil standard varied according to the gravity of the fact to be proved, that is the approach adopted in amongst other places, Australia, New Zealand and Hong Kong.

COMPLAINT NUMBER 3

47. This complaint was initially made to the Fiji Law Society by Nareendra Prasad and has four sub complaints to it. The facts are that Mr. Prasad engaged the Respondent to represent himself and another with respect to charges of manslaughter. The Respondent was engaged when Mr. Prasad was first spoken to by the police and the instructions related to the police investigation and ultimate charging of Mr. Prasad and another, the proceedings in the Magistrates' Court and in the High Court.

48. The evidence of the Respondent is that the terms of engagement included any appeal to the Fiji Court of Appeal.

49. The Respondent was engaged on the 15th of March 2004 and his retainer was terminated on the 7th of July 2006. A total of $10,500 dollars was paid by Mr. Prasad to the Respondent. The proceedings were finalized on the 5th of March 2008 when a Nolle Prosequi was filed by the Director of Public Prosecutions in the High Court. Mr. Raza represented Mr. Prasad after instructions to the Respondent were terminated.

50. On behalf of the Applicant evidence was given by Mr. Prasad and the Respondent gave evidence.

51. The first complaint by Mr. Prasad is that the Respondent in breach of s. 82 (1) (b) of the Legal Practitioners Decree placed undue pressure on him to transfer a parcel of land to the Respondent in payment of the balance of fees and further that in the event that the fees were not paid by the transfer of land the Respondent would not represent Mr. Prasad at his trial.

52. The evidence of Mr. Prasad was that the Respondent told him the total cost would be $22,000 dollars and that he had paid $10,500.00 by the 2nd of June 2005 after which no further payments were made to the Respondent.

53. Mr. Prasad says that shortly prior to Easter 2006 the Respondent advised him that his trial in the High Court could be listed one week after Easter and that all remaining fees were to be paid or he would not appear at the trial. Mr. Prasad says he did not have the money and at the request of the Respondent he entered into an agreement to transfer to him a piece of land once the plan of subdivision of that land was approved.

54. It is agreed that the land has never been transferred and the agreement has never been enforced.

55. Mr. Prasad says he inquired of a court clerk at the High Court Suva who advised that his trial was not listed as he says the respondent told him.

56. The Respondent in his evidence says he was contacted by the High Court registry and asked if the Prasad trial could be brought forward and that after inquiring he advised the registry that it could not. In support of his version of events the respondent tendered exhibit A 11 - a letter from the Chief Registrar High Court of Fiji dated 3rd July 2006.

57. The oral evidence of the respondent and the content of exhibit 11 are consistent with the practice of the court as it is known to me.

58. I am not satisfied that the evidence before me is sufficient to prove to the standard required that the Respondent mislead Mr. Prasad as alleged in complaint 3 of 3 and 4 of 3 nor am I satisfied that he placed "undue pressure on the complainant to transfer to himself the piece of land .... in substitution for the remaining fees .... "(as alleged in complaint 1 of 3) particularly as such land has never been transferred and the no demand has been made for such a transfer.

59. In complaint 2 of 3 it is alleged that the respondent charged an "excess fees of $3,500 on 15th March 2006 for an activity not related in any way whatsoever to the case of alleged manslaughter."

60. Exhibit A7 contains an entry:

> ***"15/3/06 Went to Sigatoka with Narendra to show land to a purchaser. Traveling cost, transport, fuel ($500 dollars) and 9 hours at $3,000 dollars - $3,500.00"***

61. Mr. Prasad acknowledges that all the court appearances and attendances referred to in the Bill of Costs took place but says there was no agreement as to the rate of charge. The respondent says on the 16th of March 2004 Mr. Prasad signed "Instructions to Act" – [ex R 8].

62. This document says that the respondent is retained and instructed in a criminal trial in the High Court of Fiji and shows the agreed fees as $30,000.00 to be paid on or before the trial.

63. Mr. Prasad denies signing the document and says the signature on the document is not his. He says he did not agree to this fee and that the trip to Sigatoka was for the benefit of the Respondent as he, the Respondent, introduced the prospective purchaser. The Respondent says it was for the benefit of Mr. Prasad but gives no evidence of any agreement as to the charge .

64. If the sum of $3,500.00 was removed from the Bill of Costs and the VAT adjusted accordingly there would still be the sum of $5,531.25 outstanding for work done up to the date instruction were withdrawn. This is work which Mr. Prasad acknowledges was preformed.

65. The outstanding costs have not been enforced by the Respondent.

66. It is acknowledged that the costs have not been taxed and have not been enforced .

67. If I were to accept that the agreement [exhibit R8] was executed by Mr. Prasad and that Mr. Raza was paid $11,000.00, as stated by Mr. Prasad in his evidence, then the total costs paid by Mr. Prasad up to and including the filing of the Nolle Prosequi and excluding the Sigatoka trip would be less than the agreed amount.

69. ***"The more serious the act or omission alleged, the more inherently improbable must it be regarded."*** *- A Solicitor and The Law Society of Hong Kong*

70. On that bases I am not satisfied that the Respondent is guilty of unprofessional conduct. Complaint number 3 must be dismissed in it's entirety.

COMPLAINT NUMBER 4

71. The complainant, Latchman, alleges that he entered into a sale and purchase agreement for the land in CT 3178 in return for the transfer of his taxi permit LT 1566 to the vendor of the land.

72. An agreement to this effect was drafted by the Respondent and executed by the parties. The agreement [exhibit A5] relates to lot 3 in CT 22714 DP 126 and provides that the date of settlement is to be ***"when the property is fully subdivided or properly marked and approved for development."***

73. The evidence before me is that the parties attended upon the Respondent on the 24th April 2006 and gave instructions [Ex R7] and on 26th April 2006 [Ex. R6] to execute the agreement.

74. On the 25th April 2006 the parties attended on the Land Transport Authority and application was made to transfer the taxi permit to Aman Prasad [Ex R5].

75. As a consequence of the applications made to the Land Transport Authority on the 25th of April 2006 the transfer of the taxi permit to Aman Prasad was approved by the Land Transport Authority on the 23rd of May 2006 and effected on 15th June 2006 [Ex. R5]. I have no evidence as to why Latchman transferred the taxi permit prior to execution of the agreement apart from his ill health.

76. The land has not been subdivided and accordingly no land has been transferred to Latchman in accordance with the agreement of the 27th April 2006. Latchman acknowledges that he had been advised by the Respondent to instruct another lawyer and sue for specific performance of the contract.

77. The Respondent was acting for both parties on the agreement.

78. Latchman says he did not take the advice of the Respondent and engage another lawyer as he had no money.

79. It would appear that to date no action has been taken to enforce the agreement despite the advice from the Respondent to Latchman .

80. On instructions from Latchman the Respondent wrote a letter of demand to Aman Prasad [Ex.A6]. The prudence of this when he held instructions from both parties is questionable.

81. The facts and circumstances highlight the imprudence of lawyers acting for multiple parties in what initially appears a simple property transfer. One can only conjecture if the agreement between Latchman and Aman Prasad would have been drafted differently if they were separately represented but surely action would have been taken to enforce the contract on behalf of Latchman in accordance with its terms.

82. CT 3178 is shown in Ex. A5 as the prior title reference to the subject land. The correct title reference is CT 22714.

83. The breach alleged in the complaint is a "breach of section 83 (1) (b) of the Legal Practitioners Decree 2009"

84. Section 83 (1) (b) of the decree would appear to have nothing to do with the complaint as it relates to the charging of excessive legal costs or fees. It would appear that the complaint should have been brought under section 82 (1) (b) or section 81.

85. The complaint urges me to find that the Respondent is not a fit and proper person to engage in legal practice. On the evidence before me and taking account of the gravity of the facts to be proved I cannot be satisfied that the Respondent is guilty of professional misconduct as defined in section 82 of the Legal Practitioners Decree, however I do consider the Respondent to be guilty of unsatisfactory professional conduct as defined in section 81 of the Legal Practitioners Decree.

86. The decree is silent as to my capacity to find the Respondent guilty of unsatisfactory professional conduct when the allegation calls for a finding of professional misconduct. The Commission is however not a court or tribunal of pleading and accordingly there would appear to be no impediment to such a finding, providing of course that the Respondent is afforded natural justice. The allegation is fully particularised and I see no prejudice to the Respondent.

87. I find therefore that the Respondent is guilty of unsatisfactory professional conduct.

COSTS

88. The Respondent submits that in the circumstances an order for costs should be made against the complainants as the complaints were on his submission quite unjustified.

89. The decree enables the making of orders for costs but precludes the making of an order for costs against the Chief Registrar or Attorney General. The Respondent has been unsuccessful in respect of complaints 1 and 4. I see no reason why the Respondent should not pay the Applicant's costs of these proceedings however I shall reserve making any order in that regard until all complaints against the Respondent are finalised.

ORDERS

1. **COMPLAINT NUMBER 1**

   That the name of Abhay Kumar Singh be struck from the Roll.

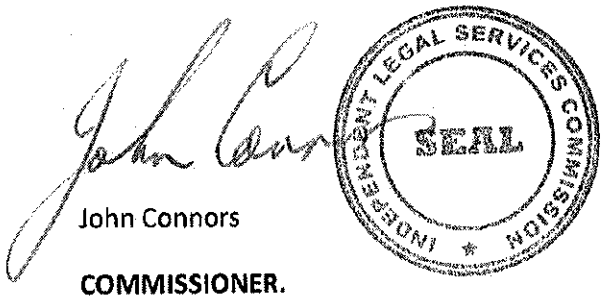
2. **COMPLAINT NUMBER 3**

   That the complaint be dismissed.

3. **COMPLAINT NUMBER 4**

   The respondent is fined the sum of $1,000.00 to be paid to the Commission within 14 days.

4. I order that a copy of these orders be forwarded to the relevant authorities in Australia and New Zealand.



John Connors

COMMISSIONER.

Dated: 25 January, 2010.