

IN THE SUPREME COURT OF FIJI
AT SUVA

CIVIL PETITION NO: CBV 0001 of 2015
[Court of Appeal No: ABU 0060 of 2012]

BETWEEN : RAJENDRA CHAUDHRY
Petitioner

AND : THE CHIEF REGISTRAR
Respondent

CIVIL PETITION NO: CBV 0002 of 2015
[Court of Appeal No: ABU 0060 of 2012]

BETWEEN : THE CHIEF REGISTRAR
Petitioner

AND : RAJENDRA CHAUDHRY
Respondent

Coram : The Hon. Chief Justice Anthony Gates,
President of the Supreme Court

The Hon. Justice Saleem Marsoof,
Justice of the Supreme Court

The Hon. Justice Brian Keith,
Justice of the Supreme Court

Counsel : Mr. A. Singh for the Petitioner in CBV 0001 of 2015 and
the Respondent in CBV 0002 of 2015.

Mr. A. Chand for the Petitioner in CBV 0002 of 2015 and
the Respondent in CBV 0001 of 2015.

Date of Hearing : 5 April 2016

Date of Judgment : 22 April 2016

J U D G M E N T

Hon. Anthony Gates, P

I have read in draft the judgment of Marsoof J. I agree with its reasoning and conclusions and also with the orders proposed.

Hon. Saleem Marsoof, JA

1. These are applications seeking leave to appeal from the unanimous decision of the Court of Appeal (Chandra JA, Guneratne JA and Amaratunga JA) dated 27th February 2015, which affirmed in part and set aside in part the findings of the Independent Legal Services Commission (ILSC) contained in its judgement dated 12th September 2012, and varied the sentence of suspension imposed by ILSC on Mr. Rajendra Chaudhry (hereinafter referred to as “RC”), who is the Petitioner in Civil Petition bearing No. 0001 of 2015 and the Respondent in Civil Petition bearing No. 0002 of 2015 lodged by the Chief Registrar.
2. RC, a legal practitioner, was charged by the Chief Registrar of professional misconduct and unsatisfactory professional conduct, contrary to respectively, sections 82(1)(b) and 83(1)(a) of the Legal Practitioners Decree 2009. In the proceedings before ILSC, another legal practitioner, Mr. Kini Marawai (hereinafter referred to as “KM”) was also charged on three counts of professional misconduct and unsatisfactory professional conduct. The first three counts related to KM, and the two counts upon which RC was charged were counts 4 and 5.
3. By its judgment of 12th September 2012, the Commissioner (Justice Paul K. Madigan) found that all counts against KM and RC have been established, and by his sentencing order dated 5th October 2012, KM was suspended from practice as a legal practitioner with immediate effect until 1st March 2016, and RC was suspended from practice as a legal practitioner until 1st March 2017. The order of the Commissioner also required that KM and RC be publicly reprimanded, that they pay costs to ILSC in a sum of Fiji \$1,000 each and only be re-certified as a legal practitioner by the Chief Registrar on

the proof of having undertaken 5 hours of training in Legal Ethics by an institution or tutor acceptable to the Chief Registrar.

4. RC appealed against the judgment and sentence of ILSC to the Court of Appeal, and by its judgment dated 27th February 2015, the Court of Appeal allowed the appeal in part, set aside the findings of ILSC on count 4 while affirming its findings on count 5. The Court of Appeal also varied the sentence of suspension from practice imposed on RC by two years, directing the period of suspension to end on 1st March 2015.
5. It is from this decision of the Court of Appeal that leave to appeal is sought by RC as well as the Chief Registrar in their respective applications.
6. For the purpose of better understanding the issues involved in dealing with these applications for leave to appeal, it might be useful to outline the factual circumstances material to the applications.

Factual Matrix

7. On the 26th January 2011, one Muskan Ballagan (hereinafter referred to as “MB”, an Indian national, was arrested at Nadi Airport when she was on route from Melbourne, Australia to India, and was charged with a drug trafficking offence.
8. She appeared in the Nadi Magistrates Court on 11th February 2011 in answer to the drug charge at which time, RC appeared for her and offered himself as a surety to fulfil her bail conditions. It is in evidence that he also offered to accommodate MB in his family home in Suva, and MB in fact moved into the home where RC lived with his wife and young son.
9. On 13th June 2011, MB attended at CID Headquarters, where she made a complaint against RC, the complaint being that RC had raped her and sexually abused her.
10. On 4th July 2011, MB swore an affidavit stating that the allegations she made on 13th June 2011 were untrue and that she would withdraw such allegations. MB explained that she made those allegations when she was in an unstable state of mind and was angry that RC had gone on a holiday to Australia with his family while the drug

trafficking charge against her was still pending. This affidavit was drawn by KM on the instructions of MB.

11. This resulted in MB being caution interviewed on or about 7th July 2011 at the Rakiraki Police Station, in the presence of KM.
12. Thereafter, MB was charged with the offence of “Giving false information to a Public Servant”, contrary to Section 201 (9) of the Crimes Decree 2009. The false information material to the charge was the allegation of rape and sexual abuse made by MB against RC on 13th June 2011.
13. On 12th July 2011, MB appeared in the Suva Magistrates Court for the first time on the false information charge. She was represented by Mr. A. Vakaloloma on the instructions of KM.
14. On 22nd July 2011, MB issued a statement explaining the circumstances in which she allegedly was coerced by certain prominent public officials to make the complaint against RC on 13th June 2011.
15. On 4th August, 2011 KM appeared for MB when a plea of guilty was taken. He appeared again on 5th August and the 22nd August 2011. When appearing for MB before the Magistrates Court on 5th September 2011, KM told the court that RC had written to MB’s former employer in Melbourne asking for a character reference.
16. On 15th September 2011, RC appeared in the Magistrates Court for MB when the false information case was taken up. His first submission was to ask the Court to request the accused if she consented to his appearance in order to advance mitigation. When MB indicated her consent, RC told the Court that he had prepared written submissions which he wished to submit and support with oral submissions. He then, while relying on the written submissions, advanced in some detail oral submissions in support, submissions which included an allegation that his client had instructed him that she was coerced by certain prominent public officials into making the original false complaint.

17. In appearing again on 29th September 2011, RC applied to the Court to have the guilty plea vacated and a new plea entered, on the basis that his client now realised that coercion was a defence. The Magistrate refused, adding that she was of the view that coercion was a point of mitigation and not to be advanced as a defence to the charge. MB was sentenced on that same day.
18. On 12th October 2011, RC filed an appeal against conviction and sentence on behalf of MB. When the matter came up in the High Court before Daniel Goundar J, RC was asked by court to state for the record that he had no conflict of interest in representing MB, whereupon RC immediately withdrew his appearance, and Ms. Vaniqi, another legal practitioner, appeared for MB on the appeal.
19. At a subsequent hearing at the appeal, Justice Goundar in his Ruling of 16th March 2012 expressed the view that RC was acting in conflict of interest in his representation of MB, and for this reason and others stated in the said Ruling, he referred the whole question to the Chief Registrar for an independent inquiry as to the professional conduct of KM, RC and another. This was within the power of the learned judge by Section 100 (2) of the Legal Practitioner's Decree.
20. In a response to the Chief Registrar asking by letter dated 2nd April 2012 for an explanation of his conduct, RC provided his explanations in his letter dated 15th April 2012 addressed to the Chief Registrar. However, in paragraphs 66 to 68 of the said letter, RC made some detailed and gratuitous remarks on the conduct of Justice Goundar, relating to the judge's integrity and impartiality.
21. It is noteworthy that RC was charged before ILSC on two counts, namely count 4 which was a charge of professional misconduct under section 82(1)(b) of the Legal Practitioner's Decree, 2009, founded on RC's alleged *conflict of interest* in representing MB before the Magistrates Court on 15th September 2011 and 29th September 2011, and count 5 which was a charge of unsatisfactory professional conduct contrary to section 83(1)(a) of the Legal Practitioner's Decree based on RC's alleged *discourtesy to court* arising from the contents of his letter to the Chief Registrar dated 15th April 2012.

22. As already noted, ILSC found both counts established, and amongst other sanctions, suspended RC with immediate effect until 1st March 2017. On an appeal by RC, the Court of Appeal set aside the finding of ILSC on count 4 but affirmed its finding on count 5, and reduced the period of suspension of RC by two years to end on 1st March 2015.

The issue of Conflict of Interest

23. The first matter that needs to be addressed for the purposes of dealing with these applications arises from the allegations of conflict of interest on the basis of which RC was charged for professional misconduct. Count 4, which relates to the charge of professional misconduct, was as follows:-

Count 4

PROFESSIONAL MISCONDUCT: Contrary to Section 82(1)(b) of the Legal Practitioners Decree 2009.

RAJENDRA CHAUDHRY, a legal practitioner between the 15th of September, 2011 to the 29th of September, 2011 agreed to act and did act as counsel for Ms. Balaggan in the matter *State v Muskan Balaggan* Criminal Case No. CF 1190 of 2011 a case in which he was the victim of a charge of giving false information to a public servant, which conduct occurred in connection with the said Rajendra Chaudhry's practice of law and would justify a finding that the said Rajendra Chaudhry is not a fit and proper person to engage in legal practice.

24. The particulars of the offence appended to the charge, were that: (i) on or around 14th of June 2011, MB made a police complaint against RC for rape; (ii) on 4th July 2011, MB swore an affidavit before KM withdrawing her complaint against RC, which affidavit was prepared and witnessed by KM; (iii) on or around 7th July 2011 KM was present at the Rakiraki Police Station on behalf of MB for her caution interview; (iv) on 8th July 2011, MB was charged with giving false information to a public servant in the matter of *State v Muskan Balaggan* Criminal Case No. CF 1190 of 2011; (v) MB then instructed KM to represent her in the said case, which he did and continued to act for her there being no record that he withdrew as MB's counsel; (vi) on 12th July 2011, MB appeared in the Suva Magistrates Court for first call, at which stage, Mr Vakaloloma appeared for MB on instruction from KM; (vii) on 4th August 2011, KM

appeared for MB when she entered a guilty plea; (viii) on 15th September 2011, the matter was called for mitigation, at which stage RC appeared for MB on instructions from KM, and submitted in the course of mitigation that MB was coerced to make the initial complaint of rape against the RC, regarding which the Counsel for the State then expressed concerns about a potential defence being raised in mitigation; and (ix) the matter was then adjourned to 29th September 2011 for the defence to confirm whether or not they would advance the defence of “coercion”, and on 29th September 2011 RC appeared for MB to vacate her “guilty” plea, which application was refused by the learned Magistrate, and MB was sentenced on the same day.

25. In this context, it may be useful to note that count 4 on the basis of which RC was charged for professional misconduct, corresponds with count 3 on the basis of which KM was charged for professional misconduct before the ILSC in the same proceedings. In substance, count 3 alleged that KM “failed to act in the best interest of his client” when he, on or around 15th September 2011, instructed RC to appear on 15th September 2011 for MB in *State v Muskan Balaggan* Criminal Case No. CF 1190 of 2011 for mitigation, being aware that RC was the victim of the false complaint made by MB and therefore was in conflict of interest.
26. Likewise, count 4 alleged that RC “agreed to act and did act as counsel for MB in the matter *State v Balaggan* a case in which he was the victim of a charge of giving false information to a public servant, which conduct occurred in connection with the said Rajendra Chaudhry’s practice of law and would justify a finding that the said Rajendra Chaudhry is not a fit and proper person to engage in legal practice.” It is noteworthy that count 3 expressly made reference to the concept of “conflict of interest”, but in count 4 the words “conflict of interest” are not used, but the allegation of conflict of interest is manifest.
27. At the hearing before the Commissioner, only one witness, namely Ms. Vika Vereivalu, who was attached to the Fiji Correction Service, testified on behalf of the Chief Registrar, and neither KM nor RC testified or called any witnesses on their behalf. As already noted, the Commissioner found that all counts against both legal practitioners had been established, and proceeded to impose certain sanctions including suspension from practice for certain periods of time.

28. In the course of his judgment dated 12th September 2012, the Commissioner very carefully examined the issue of conflict of interest in the context of count 3 against KM and count 4 against RC. Dealing with the question of conflict of interest in the context of the charge against KM (count 3), the Commissioner observed that:-

[27] When this matter was first called in the Magistrate's Court on the 12th July 2011 RC was away in Australia. KM having received MB's instructions to prepare the affidavit of withdrawal of complaint against RC, he was obviously well aware of RC's involvement in the original allegations of sexual abuse. To then instruct RC the victim to appear for MB on the 15th September was, taken at its lowest a gross dereliction of duty both to his client and to the Court and to so instruct in those circumstances was an inconceivably injudicious act.

[28] KM, in his written submissions, claims that he did not instruct RC of his own accord but was asked to do so by MB and moreover MB had given instructions to RC to appear on KM's behalf. First, this submission contradicts what KM said in his letter of explanation to the Chief Registrar, where he claims quite clearly that he instructed RC to appear on the 15th September. Secondly, his new submissions smack of recent invention and if correct would suggest that RC was continuing to advise MB, despite his vehement denials.

[29] Any practitioner who could not see the manifestly undeniable conflict of interest that RC faced is not a fit and proper person to engage in legal practice. The allegation as made in Count 3 is established.

29. The Commissioner then proceeded to examine the issue of conflict of interest in the context of the charge against RC (count 4), and noted that the facts were not in dispute, and that when MB appeared in the Magistrates Court on the 15th September 2011, KM was her counsel on record, but RC appeared. He also noted that although RC had submitted to the Commission that he had appeared on the instructions of KM,

he had failed to adduce any evidence in support of that position. The Commissioner further observed as follows:-

[32] Mr. Chaudhry submits that when he appeared on the 15th September, it was on the instructions of KM who was unable to appear. It was his firm of Gordon and Chaudhry that was instructed and not RC personally. MB had given written authority for the firm to represent her, that he asked in Court if the Magistrate could confirm from MB his appearance; neither the Magistrate nor the prosecutor objected to his appearance; and as a consequence there can have been no conflict of interest.

[33] Mr. Chaudhry's submissions on this part are far from convincing. There is nothing on the Court record that says RC is appearing on instructions of KM. KM's own letter of explanation says that he had instructed RC personally and not the firm to appear. At the hearing, the record reveals that RC says that he had prepared written submissions (and not that he was handing up KM submissions). He then proceeded to ventilate a long oral plea in mitigation (without reference to KM) and even suggested that 5 very senior government officials be called as defence witnesses. It is a matter of great concern to this Commission that what purports to be a copy of the submissions that were handed up to the Court below has been subsequently tampered with. In looking at the original in the Magistrate's Court file, it can be seen that the submissions are signed at the end with one single initial. The copy submitted by RC attached to his letter of explanation to the Chief Registrar, has the full signature of RC with the words written "for & on instructions of" Messrs Marawai Law. Whether RC has committed the forgery or not, the uttering of it as part of RC's explanation is at the very least an attempt to mislead both the Registrar and the Commission as to the true nature of his appearance on the 15th September, if not an attempt to pervert the course of justice. Such an act of dishonesty does not reflect well on RC.

[34] Mr. Marawai in his letter of explanation to the Chief Registrar quite glibly says he instructed RC to appear for him on September 15th.

- [35] However, instructed by KM or not, it is irrelevant to the charge of conflict of interest. RC appeared and whether he is appearing in his own right or as principal of his firm, by appearing he is acting for MB. RC in his submissions claims that appearing and advancing mitigation on somebody else's instructions is not acting as a practitioner for the accused. That cannot be so. He is acting and he is in conflict of interest. Every time a practitioner appears in Court representing a client, be it on instructions or not, he is acting for that client.
- [36] Mr. Chaudhry practises in Fiji which has a fused profession. A practitioner is both a solicitor and barrister. Mr. Chaudhry often appears in Court as a barrister arguing cases for his clients at all levels of the judiciary in this country.
- [37] Both barristers and solicitors have a duty to the court; they being officers of the Court. A solicitor's primary obligation is to his client; however a barrister's primary obligation is to the Court.
- [38] Anything that intervenes in that relationship almost certainly *per se* creates a conflict of interest. There can be instances where that conflict can be overridden in the case of a solicitor's client, properly advised, giving express authority to the solicitor to act despite the conflict; such a disclaimer can never apply in the case of a barrister; his duty to the court cannot be abrogated or diluted.
- [39] And so with Mr. Chaudhry, when appearing for MB both on the 15th and 29th September 2011, he has MB's signed authorities to act. On the 29th making the authority read: "the firm of Gordon & Chaudhry" and on the 15th "RC of Gordon and Chaudhry Lawyers". Such authorities not only being extraordinary contrived are again totally irrelevant. If there be a conflict of interest, it cannot be withdrawn by a carefully drafted authority, even if the authorities were actually written at the time they purport to have been.

30. Focussing specifically on the question of conflict of interest that ought to have confronted RC when he made his appearance for MB on 15th September 2011, the Commissioner made the following pertinent observation:-

[40] As soon as MB makes her allegations of rape against RC on 13 June 2011, he then becomes "*functus*" or "*hors de combat*". It matters not how many times she might withdraw the allegation or swear that it wasn't true, RC is tainted by the allegation. Only she and he know whether there is any truth in the allegation. *He therefore can never fulfil his duty either to the Court or to the client in respect of proceedings predicated on that allegation.* He is compromised; even after she pleads guilty to making a false statement with regard to the initial allegation. By that plea, she has proved herself to be mendacious and unreliable, and RC her counsel knowing that, is no longer in a position to assist the Court in his duty to the Court. It is not for the Court to permit him to appear, nor is it for the prosecution to raise objection. Once the conflict arises it is always there in the relationship between RC and his client and no "permission" or signed authority can ever remove it. It is the practitioner's duty to the court to present a case fairly and without favour in all honesty. That could never be achieved in this case. (*Emphasis added*)

31. There is no doubt that, as the Court of Appeal pointed out in paragraph 37 of its judgement, the term "*functus*" was not quite the right word to describe what the Commissioner had in mind, but the phrase "*hors de combat*" probably came more close to it as it refers to the state of a combatant rendered incapable of taking part in combat due to injury or damage. As the Court of Appeal observed, what the Commissioner had in mind was that RC had become "disabled".

32. Adverting to RC's appearance for MB on 29th September 2011, the Commissioner had the following observations to make:-

[43] RC appeared again for MB on the 29th September 2011 in the Magistrates Court, this time with no suggestion either from RC himself or KM that he

was appearing on behalf of KM who by this time had seemed to have faded from the legal picture, and without leave of the Court as should always be the case. RC made an application that day to have the plea of guilty vacated and a plea of not guilty entered. The application was refused, but what is more apparent is that RC is acting at least once in respect of this matter and in full knowledge of whether he was complicit or not in the initial allegation. The Court is at an extreme risk of being deceived.

[44] Mr Chaudhry submits that he appeared on the 29th September only on explicit instructions of MB and only after the prosecution had alerted MB and RC to a possible defence (coercion). He submits that as an “officer of the Court” he was bound to act for her to vacate the plea. To not so act would have caused prejudice to her and not in her best interests. “Explicit instruction” do not remove a conflict of interest, especially on a delicate factual matter such as change of plea and RC is not the only practitioner in town who could have seen that she was not being prejudiced in her proceedings.

[45] As discussed earlier, a conflict of interest arose in this case as early as the 15th June 2011, *vis-a-vis* MB v. RC; it could not be removed by authorisation of by appearing on instructions of another; it could not be removed by the consent of the Court or tacit approval of the DPP. There was an obvious and clear conflict of interest; Mr. Chaudhry appeared and acted for MB on 15 September and 29 September despite that clear conflict and therefore the charge as complained of in Count 4 on the application is established.

33. When the matter went on appeal to the Fiji Court of Appeal (Chandra JA, Guneratne JA and Amaratunga JA) by its unanimous judgment dated 27th February 2015, the Court of Appeal decided that the Commissioner had erred in concluding that the charge based on Count 4 was established. The reasons advanced by the Court of Appeal for holding that the Commissioner had erred in finding that charge against RC

contained in count 4 was established, are to be found in paragraphs 38 to 43 of the judgment of the Court of Appeal, which are reproduced below in full:-

[38] When the Commissioner was functioning as a High Court Judge, he had not expressed any views regarding any conflict when the Appellant appeared before him for Ms. Balaggan. Even though he was aware of the False Information charge case as was set out by him when he recused himself in the Drugs case, in his judgment he refers to paragraph 8 of Justice Goundar's ruling of 16th March 2012 where the reference to the Chief Registrar was made to have an inquiry, and states that "There is every likelihood and every incentive for either MB or the court to be manipulated in favour of RC. Therein lies the conflict of interest that RC is burdened with." In the proceedings before the ILSC of 31st July 2012 the Commissioner referring to the Appellant's contention that there was no evidence of what Justice Goundar had stated in the said paragraph 8 that there appeared to be collusion between counsel to get Ms. Balaggan to plead so that any investigation against him would be deflected, stated that it was "speculation". However, having stated that it was speculation, he has made use of Justice Goundar's observation to say there was every likelihood and every incentive for either MB or the Court to be manipulated in favour of RC and therein was the conflict that the Appellant was burdened with. This is not a satisfactory inference that could be drawn from the evidence that was before the Commissioner. It was more an endorsement of Justice Goundar's views regarding the Appellant.

[39] The inquiry before the Commissioner was not regarding possible collusion between counsel but regarding the specific charges against the Appellant. The Commissioner by coming to such a conclusion regarding the conflict of interest of the Appellant has erred in the absence of evidence to support such a charge. Such a conclusion is an endorsement of Justice Goundar's views regarding collusion. This is specially so as Ms. Balaggan had pleaded guilty to the charge of giving false information, at which stage the Appellant had not appeared for her. It

was thereafter that the Appellant appeared for her and sought to change the plea which was refused by the Magistrate. Ms. Balaggan was convicted and sentenced on her own plea of guilt. There was an appeal against her conviction and sentence, regarding which the appeal against conviction was dropped subsequently. In that situation the likelihood and speculation theories could not have arisen and consequently the conflict that he set out did not arise.

[40] It would appear that the Commissioner had been influenced by the findings of Justice Goundar in his Rulings and decision where Justice Goundar had concluded that there was a conflict of interest. The Commissioner had to assess the evidence before him in considering whether there was a conflict of interest which gave rise to the misconduct alleged with an independent mind and independently of the views of Justice Goundar. The manner in which the Commissioner has dealt with Justice Goundar's views gives the impression that his conclusions were based on those views and therefore not dealt with independently on the evidence placed before the Commission.

[41] During the course of the proceedings the Commissioner sought the Respondent's view regarding the conflict and the Respondent's view (at p.289) was that "the Appellant who was alleged to have raped Ms. Balaggan came back, played the upper hand in being her Counsel. She was the vulnerable party and it was possible that the original complaint of the rape might come up again in Court. He had not explained to her the risks involved in his representing her. If he could not explain the risks involved he should have asked her to find another lawyer which he did not and appeared for her". This basis of the conflict was therefore based on the speculation of the rape charge coming up again. There was no evidence of such a situation. The Commissioner of the ILSC has gone on a different basis and he has in his judgment arrived at the conclusion that acting for his client after she had made the initial allegation brought about the conflict. His conclusion is based on the relationship between the Appellant and the client which he states was always there. He states

further knowing that, by pleading guilty, she has proved herself to be mendacious and unreliable, the Appellant, her Counsel, is no longer in a position to assist the court in his duty to the Court. He therefore concludes that the Appellant could not achieve the duty to court of presenting a case fairly and without favour in all honesty. The conclusion of the Commissioner regarding the conflict of interest is different from what the Respondent had placed before the Commission regarding the charge against the Appellant. The Commissioner's conclusion that once an allegation is made against Counsel a conflict arises is not supported by any authority and would give rise to a situation which would create a precedent so that a Counsel will not be able to appear for a client who has lied about an allegation made regarding his or her counsel. It is well known that generally offenders would not be the most truthful persons before a Court of Law. Counsel do appear for them when instructed by such clients and can still carry out their duty to Court honestly. Further if a Court grants leave in such a situation where a Counsel seeks leave to appear that would show that there would be no appearance of any conflict. The Commissioner's view that a court granting permission to appear in such situations would not take away the conflict would be far reaching and would undermine the authority of the Court granting such leave.

- [42] There was no charge of dishonesty against the Appellant. However, the Commissioner adverting to the Appellant's appearance in the Magistrate's Court on 15th September 2011 stated that the Appellant had tampered with the written submissions and that was an act of dishonesty. The Commissioner had drawn his conclusion by comparing the written submissions filed in the Court and the copy appended to the Appellant's explanation to the Registrar, stating the one submitted to Court bore his initials and the one appended to the explanation was different because it said that it was prepared by Mr. Marawai. The Appellant had stated to Court "I have prepared written submissions" and on that basis the Commissioner has assumed that the written submissions were prepared by the Appellant. The recording in that manner can be ambiguous and

could mean “I have with me written submissions which have been prepared”, which may have been prepared by someone else and at that time Mr. Marawai was instructing the Appellant. This was the explanation given by the Appellant in his explanation to the Registrar. In these circumstances, when there was no charge of dishonesty, the Commissioner had gone beyond the scope of the inquiry in imputing dishonesty to the Appellant.

[43] The Commissioner at paragraph 43 of his judgment has stated that the Court was at an extreme risk of being deceived on the basis of the Appellant's appearance on the 29th of September 2011. He has formed the view that it was apparent that the Appellant was trying to achieve a favourable result for Ms. Balaggan while in full knowledge that she had lied at least once in respect of the matter and in full knowledge of whether he was complicit or not in the initial allegation. Ms. Balaggan had pleaded guilty to the charge before the Magistrate's Court which related to her making a false allegation regarding the Appellant, and all that the Appellant was trying to do was to see whether the plea could be changed, which attempt failed as the Magistrate refused to allow the accused to change her plea. It is for this conduct of the Appellant that the Commissioner has formed the view that the Court was at an extreme risk of being deceived which appears to be too farfetched and not a satisfactory conclusion.

34. The Chief Registrar, who is the Petitioner in Application bearing No. CBV 002 of 2015, has sought special leave to appeal against the impugned judgment of the Court of Appeal on the ground that it had erred in fact and in law:-

- (a) by placing undue emphasis on the fact that the Commissioner, when he functioned as a High Court Judge in relation to the Drugs case even after the allegation had been made regarding RC and withdrawn by MB, did not express any views regarding any conflict of interest, on the ground that the facts observed by the Court of Appeal did not absolve the RC from the alleged misconduct;

- (b) when it held that the Commissioner made an unsatisfactory inference that “there is every likelihood and every incentive for either MB or the court to be manipulated in favour of RC. Therein lies conflict of interest that RC is burdened with”, on the ground that according to the circumstances of the matter and the given evidence available to the Commissioner it was open to the Commissioner to make an adverse inference against RC, and further the findings of fact of the tribunal at first instance is set aside only in exceptional circumstance and that this was not a proper matter in which the findings of fact of the tribunal at first instance should have been set aside;
- (c) when it held that the conflict that was set out by the Commissioner did not arise, on the ground that the Respondent’s conduct of acting for MB in a matter the subject matter of which is with regard to an allegation of rape against the RC by MB gives rise to a situation of conflict of interest;
- (d) when it held that the Commissioner by coming to such a conclusion regarding the conflict of interest of the RC, had erred in the absence of evidence to support such a charge, on the ground that there was sufficient evidence before ILSC to establish the particulars of Charge 1 [count 4];
- (e) when it held that the Commissioner did not assess the evidence before him and that the Commissioner was influenced by the findings of Justice Goundar in his Rulings and decision where Justice Goundar could be used by the Commissioner as evidence to prove a fact in issue or in this instance the misconduct in itself;
- (f) when it put undue emphasis on the fact that the conclusion of the Commissioner regarding the conflict of interest was different from what the Petitioner had placed before the Commission regarding Charge 1 [count 4] against RC, on the ground that the Commissioner’s reasoning with regard to findings of professional misconduct in relation to Charge 1 [count 4] is not limited to the submissions and/or conclusions of the Petitioner;
- (g) when it held that the Commissioner’s view that a court granting permission to appear in such situations would not take away the conflict would be far

reaching and would undermine the authority of the Court granting such leave, on the ground that a conflict of interest cannot be waived by way of leave of the Court and that it would be against the interest of the proper administration of justice and integrity of the legal profession if the decision of the Fiji Court of Appeal is allowed to stand on this point;

- (h) in holding that the Commissioner's decision delivered on the 5th October 2012 was in error, on the ground that the Commissioner's decision was not clearly wrong and the decision did not result in any injustice being occasioned.

35. The Chief Registrar has sought special leave to appeal against the impugned judgment of the Court of Appeal pursuant to section 98(4) of the Constitution of the Republic of Fiji read with section 8(2)(b) of the Administration of Justice Decree of 2009 and section 7(1) and (3) of the Supreme Court Act of 1998. Mr. Chand, who represented the Chief Registrar before this Court, has submitted that his application for special leave involves complex questions relating to professional standards of legal practice which are matters of great general or public importance and affect the administration of justice.

36. Section 7(3) of the Supreme Court Act lays down stringent threshold criteria to be satisfied by an applicant for special leave to appeal, and provides that in relation to a civil matter, special leave to appeal should not be granted "unless the case raises-

- (a) a far reaching question of law;
- (b) a matter of great general or public importance;
- (c) a matter that is otherwise of substantial general interest to the administration of civil justice."

37. These criteria have been examined and applied by the Supreme Court of Fiji in decisions such as *Bulu v Housing Authority* [2005] FJSC 1 CBV0011.2004S (8 April 2005), *Dr. Ganesh Chand v Fiji Times Ltd.*, (31st March 2011), *Praveen's BP Service Station Ltd., v Fiji Gas Ltd.*, (6th April 2011), *Native Land Trust Board v Lal* [2012] FJSC 11; CBV0009.2011 (9 May 2012), *Star Amusement Ltd v Prasad* [2013] FJSC

8; CBV005.2012 (23rd August 2013), *Suva City Council v R B Patel Group Ltd* [2014] FJSC 7; CBV0006.2012 (17 April 2014), and *Shanaya & Jayesh Holdings Ltd v BP South West Pacific Ltd* [2015] FJSC 10; CBV0007.2014 (24 April 2015).

38. There can be no doubt that the grounds urged by the Chief Registrar in his petition seeking leave to appeal raise matters of great general or public importance which are of substantial general interest to the administration of justice. The integrity and credibility of the legal profession is of paramount importance to the wellbeing of society, and the relationship between the legal practitioner and the State is highlighted by the notion of a “regulative bargain” whereby the State confers on the practitioner the monopoly to represent litigants in court and provide other legal services, but trusts them to put the public interest and the interests of the clients they represent before their own. In exchange, the legal profession commits itself to the maintenance of professional standards and norms that would enable its members to provide a competent and ethical service. Special leave to appeal is therefore granted on the basis of grounds (a) to (h) pleaded by the Chief Registrar.
39. Part 9 of the Legal Practitioners Decree, 2009 deals with professional standards, which commences with definitions of “unsatisfactory professional conduct” and “professional misconduct”. It is important to note that these definitions are “inclusive”, and section 82(1) provides that for the purposes of the said Decree, “professional misconduct” includes –
- (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 a substantial or consistent failure to reach or maintain a *reasonable standard of competence and diligence*; or
 - (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 a 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. (*Emphasis added*)

40. It is noteworthy that section 82(1)(b) of the of the Legal Practitioners Decree, in terms of which RC was charged for professional misconduct, makes no explicit reference to the concept of conflict of interest, nor do any other provisions of the Decree or the Rules of Professional Conduct and Practice contained in the Schedule to the Decree seek to define the phrase “conflict of interest”. Rule 1.3 of the Schedule to the Decree which applies in regard to conflict of interest *between clients* of the practitioner may not apply to a situation where there is a conflict of interest *between the practitioner and his client*. It is only Rules 1.6 to 1.11 that impinge on the relationship between the practitioner and his client, and they clearly have no relevance to the issues arising in this case. Hence it is necessary to look elsewhere for the meaning of “conflict of interest” in the larger context of professional misconduct.

41. Conflicts of interest is not peculiar to law or legal practitioners, and can arise in any vocation or other situation. Perhaps the best exposition of the concept is found in the following passage in Mathew 6:24 :-

“No one can serve two masters. Either you will hate the one and love the other, or you will be devoted to the one and despise the other. You cannot serve both God and money.” (New International Version)

42. It is not easy to define the phrase “conflict of interest”, and I shall not attempt to do so in this judgment. In a general sense, a conflict is a struggle between opposing forces, but when referring to a legal practitioner’s conflict of interest, it may be articulated negatively, as a prohibition to participating in such clashes of opposing interests. Four major types of conflicts of interest may be identified in the context of a legal practice:

- (a) Conflicts between the practitioner’s personal interests and the interests of the client;
- (b) Conflicts between the interests of two or more clients the practitioner is currently representing;

- (c) Conflicts between the client’s interests and those of third parties to whom the practitioner owes obligations; and
 - (d) Conflicts between the practitioner’s duties to the present client and his continuing duties to a former client.
43. A legal practitioner owes ethical duties to his clients, to court and to the general public. The duties he owes to clients include duties of loyalty, diligence and confidentiality. Loyalty itself is said to encompass duties of zeal, integrity and independence. The obligation to avoid conflicts is an important aspect of loyalty.
44. A legal practitioner owes fiduciary duties to his client. As Millet LJ put it in *Bristol and West Building Society v Mothew* [1996] EWCA Civ 533; [1996] 4 All ER 698, [1998] Ch 1 at page 18:-
- “... A fiduciary is someone who has undertaken to act for or on behalf of another in a particular matter in circumstances which give rise to a relationship of trust and confidence. The distinguishing obligation of a fiduciary is the obligation of loyalty. The principal is entitled to the single-minded loyalty of his fiduciary. This core liability has several facets. *A fiduciary must act in good faith; he must not make a profit out of his trust; he must not place himself in a position where his duty and his interest may conflict; he may not act for his own benefit or the benefit of a third person without the informed consent of his principal.* This is not intended to be an exhaustive list, but it is sufficient to indicate the nature of fiduciary obligations. They are the defining characteristics of the fiduciary. As Dr Finn pointed out in his classic work *Fiduciary Obligations* (1977), p 2, he is not subject to fiduciary obligations because he is a fiduciary; it is because he is subject to them that he is a fiduciary.”(Emphasis added)
45. The question in this case is whether the Commissioner was justified in finding that RC was not a fit and proper person to engage in legal practice. It is noteworthy that RC was charged in terms of section 82(1)(b) of the Legal Practitioners Decree, and for agreeing and proceeding to act as counsel for MB between 15th September 2011 and 29th September 2011 in the case of *State v Muskan Balaggan* Criminal Case No.

CF 1190 of 2011, in which RC was the victim of a charge of giving false information to a public servant, contrary to 209(1) of the Crimes Decree, 2009.

46. The false information adverted to in the charge was the allegation of rape and sexual abuse made by MB against RC, which allegation constituted the subject matter of her statement to the police made on 13th June 2011. This allegation was withdrawn by MB in her affidavit of 4th July 2011, and it was after the withdrawal of the said allegation that resulted in MB being charged for giving false information to a public officer. When the matter came up in the Magistrates Court on 4th August 2011, MB pleaded guilty to the charge, and at that time she was represented by KM, who had also attested MB's affidavit of 4th July 2011. KM had also appeared for MB before the Magistrates Court on 5th August, 22nd August and 5th September 2011, and on the latter date informed court that RC had written to MB's former employer in Melbourne asking for a character reference.
47. It is in this backdrop that RC appearance on behalf of MB in the Magistrates Court on 15th September 2011 has to be viewed. On that date, RC not only appeared for MB, but also advanced submissions in mitigation after tendering to court written submissions that were presumably prepared by RC. It is significant that the said written submissions also contained an allegation that MB was coerced by certain prominent public officials into making the complaint against RC. *It is unthinkable that a legal practitioner would represent a person who had made and subsequently withdrawn a very serious allegation against him, in proceedings where such person is charged for the offence of giving false information to a public officer*, and there can be no doubt that in so appearing, RC acted imprudently and in conflict of interest, particularly where, as rightly observed by the Commissioner in paragraph 40 of his Judgment dated 12th September 2011, "only she and he know whether there is any truth in the allegation."
48. On 29th September 2011, RC once again appeared for MB, and on this occasion for the purpose of having her guilty plea vacated and a new plea entered on the basis that his client has now realised that coercion was a defence. In my view this was the height of temerity, and demonstrated that RC was actuated by his own self-interest as against the interest of his client MB. I have no difficulty in agreeing with the finding

of the Commissioner in paragraph [40] of his judgment, that RC in the predicament he had placed himself by appearing for MB on two dates in proceedings in which she is charged with the offence of giving false information to a public officer accusing RC of rape and sexual abuse could “never fulfil his duty either to the Court or to the client in respect of proceedings predicated on that allegation.”

49. Having said that, I shall proceed to examine the judgment of the Court of Appeal which set aside the findings of the Commissioner in regard to count 4 relating to professional misconduct. Firstly, I note that in paragraph 38 of its judgment, the Court of Appeal noted that when the Commissioner functioned as a High Court Judge, he had not expressed any views regarding any conflict when RC appeared before him on behalf of MB, despite him being aware of the false information charge. However, I find that the case in which RC had appeared before the Commissioner when he was a High Court Judge was the case involving the *drug trafficking* charge, and there can be no inconsistency between the Commissioner permitting RC to appear in that case and finding that it was inappropriate for RC to appear for MB in the *false information* case, for the simple reason that RC was personally involved in the latter case to the extent that he was the victim of the charge against MB for given false information.
50. In paragraph 39 of its judgment, the Court of Appeal has expressed the view that the Commissioner’s finding of conflict of interest on the part of RC was not supported by evidence, and that finding was nothing more than an endorsement of Justice Goundar’s views regarding possible collusion between RC and some other legal practitioners including KM. While I am of the opinion that there was an abundance of evidence before the Commissioner to support the finding of conflict of interest against RC, I am also of the view that the criticism of the Commissioner’s decision on the basis that it was influenced by Justice Gounder’s Ruling of 16th March 2012 on the question of collusion was altogether unjustified in view of the clarification in this regard found in paragraph 42 of the judgment of the Commissioner, which I quote below:-

[42] As RC points out in his submissions to this Commission there is not one scintilla of evidence of collusion which would substantiate Justice Goundar’s observation; I agree there is none, but the operative word is “appearance”.

There is every likelihood and every incentive for either MB or the Court to be manipulated in favour of RC. Therein lies the conflict of interest that RC is burdened with.

51. The Court of Appeal has also observed towards the end of paragraph 39 of its judgment that MB was convicted and sentenced on her own plea of guilt, and that although MB had appealed against the conviction and sentence, the appeal against sentence was dropped subsequently, and in “that situation the likelihood and speculation theories could not have arisen, and consequently, the conflict that he [presumably the Commissioner] set out did not arise.” In my opinion the question of conflict of interest has to be tested as on the dates material to count 4 on the basis of which RC was charged of professional misconduct, namely 15th to 29th September 2011. On those dates, not only the matters adverted to by the Court of Appeal were live issues, but also on the latter date RC had admittedly appeared in the Magistrates Court to have MB’s guilty plea vacated.
52. In paragraph 40 of its judgment the Court of Appeal has expressed the view that the Commissioner had failed to assess the evidence before him “with an independent mind and independently of the views of Justice Goundar”. I have carefully examined the judgment of the Commissioner, and am satisfied that the Commissioner has examined the evidence carefully and arrived at his conclusions objectively and without any bias. I cannot agree with the view expressed by the Court of Appeal in paragraph 41 of its judgment that the basis of the charge of conflict against RC was the “speculation of the rape charge coming up again” as it is clear as daylight that it was extremely imprudent and improper for RC to have appeared on 29th September 2011 in the Magistrates Court for vacating MB’s guilty plea to enable her to take up a defence based on coercion.
53. I find it difficult to agree with the observations of the Court of Appeal in paragraph 42 of its judgment relating to the remarks of the Commissioner that RC had been dishonest in tampering with the written submissions filed on 15th September 2011. I have carefully read through paragraphs [32] to [35] of the judgment of the Commissioner which I have reproduced in paragraph 29 of this judgment, and I find that the Commissioner’s remarks are legitimate in the circumstances of this case. It is

also difficult for me to agree with the views of the Court of Appeal expressed in paragraph 43 of its judgment in regard to the comment made by the Commissioner in paragraph 43 of his judgment wherein he states that “what is more apparent is that RC is acting at least once in respect of this matter and in full knowledge of whether he was complicit or not in the initial allegation.” I understand that this comment refers to the two appearances RC had entered in the Magistrates Court in the case involving the false complaint filed against MB, and the Commissioner was merely advertent to the impropriety of RC appearing in a case where he was the victim of the offence. Of course, I agree that the Commissioner may have overreached himself when he added that, “the Court is at an extreme risk of being deceived” but he had made his point.

54. For all these reasons, I am of the opinion that the appeal of the Chief Registrar in Application bearing No. CBV 002 of 2015 must be allowed, and the judgment of the Court of Appeal dated 27th February 2015 insofar as it relates to the charge in court 4 (referred to as the “First Charge” in the said judgment) is set aside. The Chief Registrar is awarded F\$2,500 as costs.

The issue of Discourtesy to Court

55. I now turn to the other matter that needs to be addressed for the purposes of dealing with the application bearing No. CBV 0001 of 2015 which arises from the allegation of discourtesy to court on the basis of which RC was charged for unsatisfactory professional conduct contrary to section 83(1)(a) of the Legal Practitioners Decree, 2009.
56. Count 5, which relates to the charge of discourtesy to court, was as follows:-

Count 5

UNSATISFACTORY PROFESSIONAL CONDUCT: Contrary to Section 83(1)(a) of the Legal Practitioners Decree 2009.

RAJENDRA CHAUDHRY, a legal practitioner on or about the 15th of April 2012 showed discourtesy to High Court namely to Honourable Justice Daniel Goundar in his response to the enquiry made by the Chief Registrar pursuant to Section 105 of the Legal Practitioners Decree 2009, such conduct being in breach of Rule

3.2 of the Rules of Professional Conduct and Practice of the Legal Practitioners Decree 2009, which was an act of unsatisfactory professional conduct.

57. It is apparent from section 82(1) of the Legal Practitioners Decree that “unsatisfactory professional conduct” is a species of “professional misconduct”, and the charge against RC explicitly refers to Rule 3.2 of the Rules of Professional Conduct and Practice found in the Schedule to the said Decree. Rule 3.2 is to the following effect:-

3.2 A practitioner shall at all times:-

- (i) act with due courtesy to the Court;
- (ii) take all reasonable steps to avoid unnecessary expense or waste of the Court's time.

58. In the case of RC, the charge is based on “discourtesy” which is dealt with in Rule 3.2(i). The circumstance that gave occasion to the framing of the above charge against RC occurred when RC responded to the Chief Registrar’s letter dated 2nd April 2012 by which RC was asked to explain his conduct in connection with the charge in count 4 relating to his conflict of interest. RC provided his explanation in his letter dated 15th April 2012 addressed to the Chief Registrar, and in paragraphs 66 and 68 of the said letter, RC made some detailed and gratuitous remarks on the conduct of Justice Goundar, impugning the judge’s integrity and impartiality.
59. Since the language used by RC in paragraphs 66 and 68 of the said letter formed the basis of the charge of discourtesy to court, I reproduce below these two paragraphs of RC’s response:-

66. Goundar J’s decision of 16th March 2012 is clearly *an anathema to accepted judicial practice*. The writer has yet to come across a circumstance where a judge goes beyond materials that constitute Court record to make very personal, unsubstantiated and disparaging comment about counsel. His decision of 16th March 2012 is *even more odious* when one considers the fact that at no time prior to 2nd March 2012 did he choose to raise the issues that he now raises in his decision of 16th March 2011.

68. The Magistrates Court record was prepared on 3rd November 2011 and filed in the High Court on 15th November 2011. It was thus quite clear that Goundar J raised the issue of conflict with the writer on or around 11th November 2011 without apprising himself of the Magistrate Court records and was *clearly acting with a preconceived opinion with the sole intention to embarrass the writer and to postulate that Ms Balaggan's statement was not false. Such an assumption without knowledge of the facts or based on the imprecise notes of Magistrates Court record is contrary to good judicial practice.*(Emphasis added)

60. It is noteworthy that the Commissioner in dealing with the charge of discourtesy to court, observed as follows:-

[49] Such assertions of impropriety, bias and vindictiveness against a Judge are totally unacceptable apart from being unethical. Mr. Chaudhry has been in practice long enough to know that any decision, ruling or Judgment of a Judge of the High Court is appealable and that his allegations could be aired on appeal, no doubt in more temperate and neutral terms.

[50] The words of Mr. Chaudhry used in his letter directly transgress the Rules of Professional Conduct and Practice set out in the Schedule to the Legal Practitioners Decree. Rule 3.2 states: "A Practitioner shall at all times (1) act with due courtesy to "the Court". The phraseology used by Mr. Chaudhry in his letter is discourteous to the extreme.

[51] In his submissions before me, Mr. Chaudhry claims first that the rule [3.2] applies only to a counsel's conduct in the Court, that is the court room. By that he means that the word "court" should be interpreted literally. Secondly, he submits that his comments were part of a private letter written to the Registrar with no reference to anyone else and therefore no one could possibly be privy to his "discourtesy".

[52] These submissions are as breathtakingly audacious as they are misconceived. *An elementary interpretation of the rule easily reveals that it proscribes discourtesy to the court and not in court. Mr. Chaudhry's submissions taken to its logical extent would mean that to insult or abuse a Judge in the street would not be a breach of the rule against discourtesy. Such a position is untenable.*

[53] The Chief Registrar, in writing asking for an explanation from RC for his behaviour and RC's reply are letters all becoming documents admissible in evidence before the Commission pursuant to the terms of the Legal Practitioners Decree. The proceedings of the Commission being public then any evidence which must include RC's letter, is in the public domain and it is therefore fallacious to claim that it is a private document.

[54] Mr. Chaudhry's letter to the Chief Registrar being discourteous in the extreme to Mr. Justice Goundar, and it being contained in a document for public consumption without doubt offends against Rule 3.2 of the Rules of Professional Conduct. The complaint of the Chief Registrar as particularised in Count 5 on the indictment is established. (*Emphasis added*)

61. The Court of Appeal considered the matters urged on behalf of RC in appeal, and observed as follows in its judgment of 27th February 2015:-

[49] The Appellant's arguments against this finding were that it was not made clear to him as to which statements were discourteous, that the Commissioner had erred in finding that there was a want of due courtesy and that the publication of the letter exclusively to the Chief Registrar did not amount to conduct which amounted to unsatisfactory professional conduct.

[50] It was made quite clear to the Appellant at the inquiry before the Commissioner as to the statements in his letter which showed that he was

discourteous to Justice Goundar. The two paragraphs cited at paragraph 42 above [reproduced in full in paragraph 59 of this judgment] were the paragraphs which contained the discourteous statement.

[51] The Commissioner's finding that the words used in the letter of the Appellant directly transgressed the Rules of Professional Conduct cited above is an appropriate finding when the two paragraphs in the Appellant's letter are taken into consideration.

[52] The Commissioner's finding that the Appellant's letter to the Chief Registrar was discourteous and offending Rule 3.2 of the Rules of Professional Conduct is a correct finding when considering the contents of the letter written by the Appellant to the Chief Registrar. Utmost respect has to be shown to Court and the members of the Judiciary and however unfavourable rulings, or decisions given by Judges of the Court would be, Practitioners have to be courteous to the Judges not only in Court but also in their writings regarding explanations called for by the Chief Registrar regarding any disciplinary procedures which was the case here.

62. In his petition, RC has urged the following grounds for seeking special leave to appeal against the impugned judgment of the Court of Appeal dated 27th February 2015:-

- (a) The Court of Appeal erred in its judgment in affirming the finding of unsatisfactory professional conduct, as established by the Independent Legal Services Commission (ILSC) on 12th September 2012, when the Respondent was required to refer the substance of the complaint or the investigation to the Petitioner as required under section 104 (a) of the Legal Practitioners Decree 2009 but had failed to do so and such act / omission denied the Petitioner a fair hearing;
- (b) The Court of Appeal erred in its judgement in affirming the charge of unsatisfactory professional conduct, as established by the ILSC on 12th September 2012 when the Respondent had failed to particularise the

allegation/s of unsatisfactory professional conduct which was subject to hearing under section 112 (1) of the Legal Practitioners Decree 2009 and such act / omission denied the Petitioner a fair hearing;

- (c) ILSC breached section 114 of the Legal Practitioners Decree 2009 and failed to act fairly when he proceeded to identify the complaint was to be particularised in the application by the Respondent pursuant to section 112 (1) of the Legal Practitioners Decree 2009;
 - (d) The Court of Appeal failed to consider the circumstances in which the Petitioner made the comments in his communication of 15th April 2012 to the Respondent and which subsequently gave rise to the unsatisfactory professional conduct charge;
 - (e) The finding of professional misconduct against the Petitioner, by the ILSC on 12th September 2012 and the ensuing penalty, for such misconduct, as prescribed in the sentence by the ILSC on 5th October 2012 being suspension from practice till 1st March 2017, has been set aside by the Court of Appeal in its judgment dated 27th February 2015 and that the three year suspension, \$1000 fine, public reprimand and 5 hours of ethics training for the charge of unsatisfactory professional conduct is disproportionate to the charge of unsatisfactory professional conduct.
63. Mr. Singh, who appeared for RC before this Court has submitted that his application seeking special leave to appeal raises far reaching questions of law, in particular the question whether RC was given a fair hearing by the Independent Legal Services Commission (ILSC). He has stressed that the failure to serve on RC the particulars relating to the charge of “discourtesy to court” as required by section 112 (1) of the Legal Practitioners Decree 2009 resulted in a breach of natural justice.
64. In this context, Mr. Singh invited the attention of Court to the decision of the Supreme Court of New South Wales in *Murray v Legal Services Commissioner & Anor* [1999] NSWCA 70 in which the court had emphasised, particularly in paragraph [90] of its judgment, that before the Commissioner completes the investigation into a complaint against a legal practitioner under section 155 of the NSW Legal Profession Act 1987, the legal practitioner should be given “the opportunity to see a copy of the complaint

and answer it and to advance argument against it". He submitted that RC was deprived of this opportunity in relation to count 5.

65. It must be remembered that in New South Wales, after the complaint against a legal practitioner is investigated by the Commissioner, who is the equivalent of the Chief Registrar in Fiji, disciplinary proceedings have to be instituted in the Legal Services Tribunal, which has powers similar to the Fiji Independent Legal Services Commission. Therefore, the omission to provide particulars and an opportunity to explain complained of in *Murray* was at the stage of investigation and institution of proceedings, and the legal practitioner in that case was successful in his application for a *declaration* that the decision to institute proceedings against the practitioner was void. Accordingly, the New South Wales Supreme Court issued *certiorari* quashing the said decision as well as an order of *prohibition* restraining the Legal Services Tribunal from conducting a hearing on the Information filed before it.
66. In my opinion, the decision in *Murray v Legal Services Commissioner & Anor, supra* is of little help to RC, who has while responding to particulars provided to him with respect to the charge in count 4 in the Chief Registrar's letter dated 2nd April 2012 been extremely discourteous to Mr. Justice Goundar in paragraphs 66 and 68 of his letter dated 15th April 2012 addressed to the Chief Registrar. As Mr. Chand put it during the hearing before this Court, the letter "speaks for itself". Indeed, if RC was aggrieved by the lack of particulars, he could have written to the Chief Registrar seeking particulars as the legal practitioner had done in *Murray*. Not only did RC fail to seek any clarification in regard to the charge on count 5, he also did not take up any objection in regard to the alleged procedural lapse or seek any clarification before ILSC throughout its proceedings.
67. In my view, both the ILSC and the Court of Appeal have arrived at their conclusions without any error of fact or law, and the other matters urged by Mr. Singh have adequately been dealt with by ILSC and the Court of Appeal. I therefore do not see any basis for granting special leave to appeal on the application of RC considering the stringent criteria contained in section 7(3) of the Supreme Court Act.

68. Accordingly, special leave to appeal is refused in application bearing No.CBV 0001 of 2015, with costs payable to the Chief Registrar in a sum of F\$2,500.00.

Hon. Brian Keith, JA

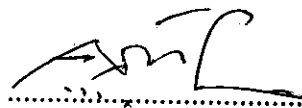
69. I have read a draft of the judgment of Marsoof JA. For the reasons which he gives, I agree with the orders he proposes, and I only add a few words of my own out of deference to the Court of Appeal's view on whether Mr. Chaudhry had a conflict of interest when he represented Ms. Balaggan on 15 and 29 September 2011.
70. If Ms. Balaggan had wanted to change her plea from guilty to not guilty on the charge of giving false information to a public servant, she would have had to say one of two things. Either she could have said that her original statement had been true, and that her retraction statement had been false – adding, perhaps, that the reason why she had retracted it had been because she had been pressurised into doing that by Mr. Chaudhry's supporters. Her defence in that event would have been that the information she had originally given had not been false. Or she could have said that her original statement had been false, and that her retraction statement had been true – adding that the reason why she had made her original statement had been because she had been pressurised into doing that by people who had a grudge against Mr. Chaudhry. Her defence in that event would have been that, although the information she had given had been false, she had given it under duress.
71. The crucial point is that even after Ms. Balaggan had decided to say that her original statement had been false and that her retraction statement had been true, Mr. Chaudhry still had a direct and obvious interest in her *maintaining* that account, because if she were subsequently to go back on that and say that her original statement had been true, she would have been resurrecting her allegation that Mr. Chaudhry had raped and abused her. It was his interest in her maintaining the account that her original statement had been false and her retraction statement true which gave rise to the conflict of interest, because although his *personal* interest was in her maintaining that account, his duty to her as *her lawyer* was not to encourage her to maintain or change her account, but simply to act on whatever her account was. In these circumstances, it is just not possible to say that he did not continue to have a

conflict of interest once she had retracted her original statement, which was, on its ultimate analysis, the basis on which the Court of Appeal partially allowed Mr. Chaudhry's appeal.

Orders of Court

The Court makes the following orders:-

- (1) The application for special leave to appeal in application bearing No. CBV 002/2015 is allowed;
- (2) The judgment of the Court of Appeal dated 27th February 2015 insofar as it relates to the charge in court 4 (referred to as the "First Charge" in the said judgment) is set aside;
- (3) The application for special leave to appeal in application bearing No. CBV 001/2015 is refused;
- (4) The judgment of the Court of Appeal dated 27th February 2015 insofar as it relates to the charge in court 5 (referred to as the "Second Charge" in the said judgment) is affirmed.
- (5) It is declared that the judgment of the Independent Legal Services Commission dated 12th September 2012 stands affirmed, and accordingly the sentence imposed on Mr. Rajendra Chaudhry by the said Commission on 5th October 2012 shall stand, and his period of suspension from legal practice will be up to 1st March 2017.
- (6) The Chief Registrar is awarded costs in a sum of F\$2,500 in application bearing Nos. CBV 001/2015 and a further sum of F\$2,500 in application No. CBV 002/2015, adding up to a sum of F\$5,000 with respect to both applications.



.....
Hon. Justice Anthony Gates, P
PRESIDENT OF THE SUPREME COURT



.....
Hon. Justice Saleem Marsoof, JA
JUSTICE OF THE SUPREME COURT



Brian Keith

.....
Hon. Justice Brian Keith, JA
JUSTICE OF THE SUPREME COURT