

IN THE COURT OF APPEAL, FIJI
[On Appeal from the High Court]

CIVIL APPEAL NO. ABU0013 OF 2022
[Suva Civil Action No: HBM 109 of 2020]

BETWEEN

HAROON ALI SHAH

Appellant

THE CHIEF REGISTRAR

Respondent

Coram

Jitoko, P
Morgan, JA
Clark, JA

Counsel

Mr N. R. Padarath for the Appellant
Mr A. Chand and Mr N. Narayan for the Respondent

Date of Hearing

6 November, 2023

Date of Judgment

30 November, 2023

JUDGMENT

Jitoko, P

1. I have had the advantage of reading in draft the judgment of Clark, JA. I agree with her, and for reasons which she gave, I too would dismiss the appeal.

Morgan, JA

2. I have read and concur with the reasoning and conclusion of the Judgment of Clark, JA.

Clark, JA

Background

3. On 22 June 2012, Haroon Ali Shah, the appellant and a legal practitioner with some 30 years' experience at the time, was struck from the Roll of Legal Practitioners.¹ Complaints of professional misconduct had been brought against him and established by the Independent Legal Services Commission (ILSC).
4. In August 2020, Mr Shah petitioned the Chief Justice to be re-admitted as a legal practitioner. In his decision delivered on 14 January 2020, the Hon Chief Justice Kamal Kumar struck out Mr Shah's petition for restoration to the Roll.²
5. Mr Shah appeals. He seeks to have the Chief Justice's decision set aside. Although Mr Shah advances eight grounds of appeal, the preliminary issue that arises is whether this Court has jurisdiction to hear the appeal.

Does the Court of Appeal have jurisdiction to hear the appeal?

6. Section 3(3) of the Court of Appeal Act 1949 provides:

Appeals lie to the court as of right from final judgments of the High Court given in the exercise of the original jurisdiction of the High Court.

7. Section 3(3) gives rise to a subsidiary question, whether the decision of the Chief Justice striking out Mr Shah's petition for re-admission is "a final judgment of the High Court given in the exercise of the original jurisdiction of the High Court".

¹ *Chief Registrar v Haroon Ali Shah*; ILSC No. 007 of 2011 (1 June 2012).

² *In the Matter of an Application by Haroon Ali Shah for Re-admission as a Barrister and Solicitor* HBM 109 of 2020 (14 January 2022).

8. After a detailed analysis of the Legal Practitioners Act 2009 (the Act) and the Legal Practitioners (Admission) Rules 2014 (the Rules) I have come to the conclusion that no appeal lies to this Court from decisions of the Chief Justice given pursuant to his statutory powers under Part 4 of the Act. My reasons follow.

Analysis

9. A reference to a decision of the High Court given in the exercise of its original jurisdiction is a reference to the High Court's authority to hear and decide a case for the first time — as opposed to a decision given in its appellate jurisdiction. That distinction is reflected in s 3 of the Court of Appeal Act itself. Where subs (3) refers to appeals from a High Court decision given in the exercise of its original jurisdiction, subs (4) provides for appeals from decisions of the High Court in the exercise of its appellate jurisdiction.
10. Was the Chief Justice's decision to strike out Mr Shah's petition given in the exercise of the High Court's original jurisdiction or was he exercising a distinct jurisdiction? To answer that question it is necessary to examine the nature of the powers conferred on the Chief Justice by the Act and the Rules. I begin with Part 4 of the Act. (The bolded words are my emphasis).

Legal Practitioners Act

11. Part 4 of the Act, broadly speaking, regulates the admission of legal practitioners. The Chief Justice is given the sole power to admit practitioners. Section 34(1) provides:

*34. (1) **The Chief Justice shall have power to admit to practice as a practitioner any person duly qualified in accordance with the provisions of this Decree. The Chief Justice may, upon cause being shown refuse to admit any person as a practitioner notwithstanding that he or she may have these qualifications.***

12. The Hon AHCT Gates, Chief Justice, said of s 34(1) of the Legal Practitioners Decree (which was worded identically to s 34(1) of the Act):³

In this jurisdiction the power to admit to practice is given to a single person, not a Court or a Bench. He or she is the person designata or person designated to decide the matter of admission.

³ *Singh v Chief Registrar* Miscellaneous Jurisdiction HBM 33 of 2016 (16 May 2016).

13. The s 34 power to admit a practitioner cannot be delegated. In that regard, it contrasts with s 3 which establishes a Board of Legal Education one of whose members is the Chief Justice. The Solicitor-General and Registrar are also statutory members of the Board. All three office-holders are given a power to delegate their membership to another person from their office.
14. In addition to satisfying the qualifications and the “fit and proper person” criterion, all applicants for admission must have resided in Fiji for 3 months immediately prior to making their application **unless the Chief Justice dispenses** with the residential requirements: s 35(c). This statutory power cannot be delegated.
15. Every application for admission shall be **by petition to the Chief Justice**: s36.
16. **A person seeking temporary admission may apply to the Chief Justice who**, upon considering the application and any accompanying submissions **may refuse** the application; **grant** the application with conditions; **adjourn the application for hearing — before the Chief Justice —** or require further information before considering the application further: s 39(1)-(4). Any applicant dissatisfied with the decision may require the Registrar to **list it for hearing in person before the Chief Justice**: s 39(2) and (5). None of the powers conferred on the Chief Justice under s 39 can be delegated.
17. **The Chief Justice may grant exemptions** to any person from complying with the formalities set out in Part 4 and may enlarge or abridge any period of time referred to in Part 4: s 40. The s 40 powers conferred on the Chief Justice cannot be delegated.
18. Finally, under Part 4, **the Chief Justice may make rules** to give effect to Part 4 including as to the form and manner of applications; time and manner for service and public notice; fees to be paid and prescribing anything which is required or permitted to be prescribed: s 41. Again, the s 41 power is non-delegable.
19. The Chief Justice is given other powers under the Act but they have no bearing on the regulation of admissions of practitioners. For example, the Chief Justice may appoint Notaries Public under s 136. Section 136 is in Part 11 all of which is directed to Notaries Public.

20. The Act does contain appeal provisions but not from any decision of the Chief Justice. For example, where the registrar has refused or neglected to issue a certificate or cancelled or suspended a certificate the applicant or holder may apply to the High Court or a judge of the High Court who may make any order including an award of damages or costs against the registrar: s 46. And, under s 128, an appeal lies to the Court of Appeal from any order of the Commission, in the circumstances set out in s 128(1).
21. From my review of Fiji's legislative database it is apparent that numerous statutes confer powers and functions on the Chief Justice. By way of example:
- 33.1 Under s 293 of the Criminal Procedure Act, the Chief Justice may make rules of Criminal Procedure and issue Practice Directions.
- 33.2 Under s 64 of the Income Tax Act the Chief Justice has the power to make rules for any matter relating to the practice and procedure of the Court of Review (established by s 63).
- 33.3 Under s 18(2) of the Maintenance Orders (Reciprocal Enforcement) Act, the Chief Justice has power to make separate rules unless in relation to matters in s 18(1).
22. I have been unable to locate in any Act any conferral of statutory power on the Chief Justice comparable to the broad discretions and exclusive powers of decision-making conferred on the Chief Justice by the Legal Practitioners Act and Rules. Nor were counsel able to refer this Court to any such statutory power.
23. I turn next to examine the various powers which the Rules confer on the Chief Justice.
- Legal Practitioners (Admission) Rules
24. Every petition for admission must be filed at least 14 days before the date of admission **unless the Chief Justice**, for good reason, **allows a shorter period**: r 3(b).
25. Every petition must be in Form 1 or **in a similar form, as approved by the Chief Justice**: r 3(2).

26. A person, other than the Chief Registrar, who wishes to show cause why a petition for admission should not be granted must file within a prescribed time **or any further period the Chief Justice may allow**: r 5(2).
27. Every petition for temporary admission must be filed **within a prescribed time unless the Chief Justice**, for a special reason, **allows a shorter period**: r 7(2).
28. **Every petition for temporary admission** is to be in Form 2 or **in a similar form approved by the Chief Justice**: r 9(1).
29. If an objection to temporary admission is filed under r 14, the applicant for admission **must appear before the Chief Justice** for consideration of the petition for temporary admission: r 13(3).
30. Where the Chief Registrar or others have filed notices of objection, the **notices must be served** on the resident legal practitioner **within 4 days** after filing **unless the Chief Justice allows a longer period**: r 14(2).
31. Objectors and the petitioner are **entitled to appear and be heard — before the Chief Justice**. After consulting the Chief Justice, the Chief Registrar sets a date for the hearing before the Chief Justice: r 15(1) and (2).
32. Irrespective of whether or not the Chief Justice has referred the matter to the Independent Legal Services Commission, the **Chief Justice may at any time suspend or cancel the temporary admission of any person granted temporary admission**: r 16.
33. In part 4 of the Rules headed “GENERAL”, further broad powers are conferred on the Chief Justice. The **Chief Justice may**, in the interests of justice, **extend or abbreviate any period of time specified in the Rules**: r 17. And the **powers and duties of the Chief Registrar** under the Rules are **exercisable subject to the directions of the Chief Justice**, given generally or with respect to a particular case. 20(1).

Conclusion

34. From this analysis of the Act and Rules, it is evident that the legislature has committed matters relating to the admission of legal practitioners exclusively to the Chief Justice, thereby putting those matters beyond the original jurisdiction of the High Court.
35. In Part 4 of the Act we see a statutory devolution of jurisdiction, on an exclusive basis, to the Chief Justice. The jurisdiction, while exclusive to the Chief Justice, is to be exercised on the limited basis set out in Part 4 and the relevant rules.⁴
36. This conclusion is bolstered by the fact the Act gives to the Chief Justice no power to delegate any of the decisions, discretions or functions the Act expressly confers on the Chief Justice. Nor does the Act provide for any appeal from the exercise of those decisions, discretions or functions.
37. I have considered whether s 130 of the Act derogates from the conclusion that decisions of the Chief Justice under the powers I have set out above, are not decisions in the exercise of the original jurisdiction of the High Court. Section 130 of the Act provides:
- Nothing in this Part shall affect the jurisdiction exercisable by any court or Judge thereof, over practitioners.*
38. Section 130 appears at the end of Part 9 which itself is in 5 divisions. Part 9 is headed Professional Standards and deals with unsatisfactory professional conduct, professional standards, complaints and investigations and disciplinary proceedings before the Independent Legal Services Commission which is established under Part 9. The Chief Justice has no function or decision-making power under Part 9. Section 130 is in clear terms. Any jurisdiction the courts or judges have in relation to practitioners, is unaffected by anything in Part 9 and Part 9 has no bearing on the Chief Justice's statutory powers under the Act.
39. For the foregoing reasons, I conclude that the Court of Appeal has no jurisdiction to hear the appeal or otherwise intervene. The Court of Appeal has no inherent jurisdiction. It is a creature of statute and able to exercise only the powers conferred on it by statute. Section 3(3) of the Court of Appeal Act permits appeals to the Court

⁴ See for examples *K.W. Investment Funds ICAV v Lorgan Leisure Ltd* [2020] IEHC 132.

of Appeal from final judgments of the High Court given in the exercise of its original jurisdiction. The decision of the Chief Justice which Mr Shah seeks to appeal was not a decision given by the High Court in the exercise of its original jurisdiction.

Outcome

40. For want of jurisdiction, this Court is unable to entertain Mr Shah's appeal.

But for lack of jurisdiction would this Court grant the orders Mr Shah seeks?

41. The conclusion at [40] is sufficient to dispose of the appeal. I have gone on, however, to explain why, even if there were jurisdiction to entertain the appeal, this Court would not have granted the relief Mr Shah seeks. The reasons are provided in the remainder of this judgment. The remainder of the judgment also sets out the necessary background and addresses the authorities and evidence which the Chief Justice relied upon. It is important to add that, in light of the "want of jurisdiction" conclusion, only two grounds of appeal are addressed (because these are the grounds upon which the appeal would fail) and only those aspects of the Chief Justice's decision relevant to those grounds of appeal are discussed.
42. In his Notice and Grounds of Appeal Mr Shah asks this Court to wholly set aside and revoke the Chief Justice's decision and grant any other order the Court "deems just and expedient" to make. Before discussing the merits of Mr Shah's position it is helpful to set out the pertinent factual background.
43. The Chief Registrar brought before the ILSC the following nine complaints, or counts, against Mr Shah.

COUNT 1

Haroon Ali Shah, a legal practitioner and trustee of the bank account held with the Colonial National Bank, between the 31st day of May 2001 and the 20th day of November 2003, failed to ensure that the trust monies received on behalf of one Sashi Lata were not utilized for unauthorized purposes, which conduct constitutes Professional Misconduct pursuant to section 82(1)(a) of the Legal Practitioners Decree 2009.

COUNT 2

Haroon Ali Shah, a legal practitioner and trustee of the bank account 'Mr. Haroon Ali Shah' between the 19th day of October 2001 and the 16th day of February 2004, through the trustee's Reports for the periods, 1st October 2000 to the 30th September 2001, 1st October 2001 to the 30th September 2002 and 1st October 2002 to the 30th September 2003, made misrepresentations to the Minister for Justice and the Fiji

Law Society, which conduct constitutes Professional Misconduct pursuant to section 82(1)(a) of the Legal Practitioners Decree 2009.

COUNT 3

Haroon Ali Shah, a legal practitioner, between the 31st day of May 2001 and the 20th day of November 2003, having been instructed by one Bal ram on behalf of the said Bal Ram's daughter Sashi Lata, failed to keep the said Bal Ram reasonably informed of matters relating to the instructions given, which conduct constitutes Professional Misconduct pursuant to section 82(1) (a) of the Legal Practitioners Decree 2009.

COUNT 4

Haroon Ali Shah, a legal practitioner and trustee of the bank account on the 21st of November 2003, failed to obtain written authorization from either Bal Ram or Sashi Lata for the deduction of the sum of \$20,000 (twenty thousand dollars) as professional costs, which the said Haroon Ali Shah was required to do pursuant to section 6(1)(c) of the Trust Account Act 1996, which conduct constitutes Professional Misconduct pursuant to section 83(1)(h) of the Legal Practitioners Decree.

COUNT 5

Haroon Ali Shah, a legal practitioner and trustee of the bank account 'Mr. Haroon Ali Shah', on the 28th day of February 2006 and the 16th day of June, 2006, failed to keep all accounting records relating to trust monies at the said Haroon Ali Shah's place of business which he was required to do, pursuant to section 14 (12) of the Trust Account Act 1996, which conduct constituted Professional Misconduct pursuant to section 83(1)(h) of the Legal Practitioners Decree 2009.

COUNT 6

Haroon Ali Shah, a legal practitioner and trustee of the bank account 'Mr. Haroon Ali Shah', on the 18th day of May 2001 and the 20th day of August 2001, failed to ensure that all payments made from the said account were made through trust account cheques that were crossed and marked on its fact "not negotiable", which he was required to do, pursuant to section 7(1) and (2) of the Trust Account Act 1996, which conduct constituted Professional Misconduct pursuant to section 83(1)(h) of the Legal Practitioners Decree 2009.

COUNT 7

Haroon Ali Shah, a legal practitioner and trustee of the bank account 'Mr. Haroon Ali Shah', on the 30th day of April 2003 failed to ensure that the said trust account was not overdrawn, which conduct constitute Professional Misconduct pursuant to section 82(1)(a) of the Legal Practitioners Decree 2009.

COUNT 8

Haroon Ali Shah, a legal practitioner and trustee of the bank account, 'Mr. Haroon Ali Shah' between the 28th day of February 2006 and the 16th day of June 2006, failed to keep displayed accounting records which disclosed at all times the true position regarding all trust money held and the application of those moneys, which the said Haroon Ali Shah was required to do pursuant to section 4(1)(b) of Trust Accounts Act 1996, which conduct constitutes Professional Misconduct pursuant to section 83(1)(h) of the Legal Practitioners Decree 2009.

COUNT 9

Haroon Ali Shah, a legal practitioner and trustee of the account, 'Mr. Haroon Ali Shah' between the 1st day of January 2001 to 20th day of January 2004, by failing to establish and keep in a bank in Fiji one trust account designated or evidenced as such which he

was required to do pursuant to section 5(1) of the Trust Account 1996, which conduct constitutes Professional Misconduct pursuant to section 83(1)(h) of the Legal Practitioners Decree 2009.

44. Having pleaded guilty to counts one, six and seven, and after four days of hearings over January 2011 and May 2012, the Commission found seven charges of professional misconduct and two charges of unsatisfactory professional misconduct were established against Mr Shah.
45. In sentencing Mr Shah, the Commission decided against suspension as striking off remained the penalty for the most serious departures from accepted professional standards practised over a sustained period. The Commission regarded the fact Mr Shah had been in practice for 30 years as an aggravating rather than a mitigating factor:⁵
- He is very well known (if not famous) in the jurisdiction in which he practises; he has a large number of clients and can claim notable successes in both criminal and civil proceedings. These count for nothing if he is unable to keep his fiduciary affairs in order.*
46. Accordingly, Mr Shah was struck from the Roll. He was permitted to practice for up to 28 days for the limited purpose of winding up his practice. During that period he was not allowed to make any court appearances or accept new instructions whether from new or existing clients.
47. Mr Shah's firm went into receivership. The final report of Krishna & Co, the appointed receiver, was dated 15 September 2014. The receiver noted there were no assets arising from the receivership to be able to refund clients or other creditors. The receiver envisaged "there will certainly be a lot of disgruntled former clients, rightly so, as they paid for a service which was not performed or delivered" by Mr Shah.
48. Further, the receiver reported, there were no books of accounts, cheque books, receipts, journals, payment vouchers or any other documents or instruments of an accounting nature. Mr Shah had advised that the majority of his files and other documents were blown away during Cyclone Evan in 2012.

⁵ *Chief Registrar v Haroon Ali Shah*; ILSC No. 007 of 2011 (22 June 2012) at [42] and [45].

49. In March 2016, Fazilat Shah Legal applied to the Chief Registrar for his consent under s 54 of the Legal Practitioners Act to engage Mr Shah as a legal consultant to the firm. The Chief Registrar declined consent. In June 2016 Fazilat Shah wrote again to the Chief Registrar bringing to his attention the discretion available to him in s 54. The Chief Registrar maintained his original position and again declined.
50. The other relevant activity subsequent to Mr Shah being struck from the Roll was his filing of a petition for re-admission on 16 October 2019. As it happened leave was given to withdraw the petition due to non-compliance with the Rules.

The Chief Justice's decision

51. As there was no dispute that Mr Shah had the necessary qualifications for admission, was a Fiji resident and had complied with the Rules for admission, the Chief Justice stated:⁶

The only contention is whether the Petitioner is a fit and proper person to be re-admitted as a Legal Practitioner as provided for in s 35 of the LPA.

52. After referring to several authorities on the approach to be taken to a practitioner's application for re-instatement the Chief Justice turned to the evidence before him. Mr Shah had filed an affidavit in support of his petition. The Chief Registrar had filed an objection in accordance with r 5 of the Rules. In his statement of grounds for objection the Chief Registrar listed four affidavits that would be relied upon. They were the affidavits of:

- (i) Tui Kilakila, Legal Officer, Legal Practitioners Unit;
- (ii) Lalini Ranjana Devi Sharma, Businesswoman;
- (iii) Sanjay Prakash Singh, Investigator, Legal Practitioners Unit; and
- (iv) Ravneel Chand, Legal Officer, Legal Practitioners Unit.

6 At [25].

53. Mr Singh’s affidavit was ruled inadmissible because, in breach of the Rules, it did not bear the signature of the Commissioner of Oaths before whom Mr Singh took the oath. Consequently, the Chief Justice did not take the affidavit “into consideration in any respect”.⁷
54. Beyond the Chief Registrar there was one other objector. However, the Chief Justice disallowed the objection because it was filed one day outside the 14-day period within which r 5(2) of the Rules requires objections to be filed.
55. The Chief Justice reproduced portions of the evidence of the three remaining deponents. His Honour then discussed the authorities Mr Shah relied upon and contrasted with Mr Shah’s position the mitigating factors which led to reinstatement in those cases. The Chief Justice said:

[42] In this instance the Petitioner:

- (i) Acted dishonestly by misappropriating funds held in his Trust Account on behalf of Sashi Lata, made misrepresentation to Minister for Justice and Fiji Law Society, deducted his fees from Trust Account without authority from his client, and failed to comply with his obligations pursuant to Trust Account 1996;*
- (ii) The Petitioner being very experienced Legal Practitioner at the time of engaging in such conduct should have known or deemed to have known the seriousness of his actions and the consequences that would follow from such misconduct;*
- (iii) Failed to show any remorse for his wrong doing;*
- (iv) Did not provide any evidence to show that he reconciled or make any attempt to reconcile with the complainant in any manner whatsoever;*
- (v) Failed to accept his wrong doing and failed to acknowledge that his conduct amounted to professional misconduct and unprofessional conduct;*
- (vi) Vigorously defended himself in ILSC even to the extent of filing appeal against ILSC decision which appeal was deemed abandoned due to non-compliance with the Order of President of Court of Appeal;*
- (vii) Failed to provide any evidence to show that after being struck off he provided any community service as was in Kennedy’s case;*
- (viii) Continued providing Legal advise through the law firm of Fazilat Shah Lawyers, when Fazilat Shah Lawyers’ application to employ the Petitioner as a Consultant was twice refused by the Chief Registrar.*

7 At [11]-[12].

56. The Chief Justice also reproduced the particulars of the first count noting that the other counts were just as serious. Then His Honour concluded:

45. It is obvious that the Petitioner misappropriated funds held on behalf of Sashi Lata and in simple terms means he stole Sashi Lata's money.

46. Producing particulars of Count 1 does not in any way mean that conduct subject to other Counts are less serious. They are equally serious as Count 1.

47. Members of the community who entrusts the Legal Practitioner, do so on the understanding that the Legal Practitioner is an honourable person who would act honestly for his/her client's benefit and interest.

48. Legal Practitioners who receive money in their Trust Account on behalf of their client are required to pay out the money for the purpose it was received and not otherwise unless and until the person on whom behalf moneys are held instruct the Legal Practitioner to do so. Provision of Trust Account Act 1996 makes this obligation very clear.

49. An act of dishonesty as in the present case brings the nobility of the profession and the justice system into question.

50. In this instant, the misconduct on the part of the Petitioner which he failed to acknowledge or for which he failed to show remorse has certainly affected the confidence of the public and brought disrepute to the nobility of the profession and the integrity/dignity of our justice system.

51. After analysing the evidence, this Court has no hesitation in holding that the Petitioner has failed to satisfy this Court that he is a fit and proper person to be re-admitted as a Legal Practitioner.

57. Mr Shah asserts many errors of law and fact in the Chief Justice's approach. For Mr Shah, Mr Padarath submitted the majority of facts the Chief Justice found were facts relating to the appellant's past wrongdoings for which he was duly sanctioned by being disbarred. Counsel submitted the Chief Justice should have taken a prospective approach.

58. For the purpose of this judgment it is not necessary to analyse the many authorities and their various formulations of the test for establishing whether a candidate for admission meets the "fit and proper" person criterion. That is because the Chief Justice was aware of and relied upon authorities that acknowledged it was necessary for the courts to assess whether the conduct, since removal of an applicant for re-

admission, was such as to satisfy the court the applicant no longer possessed the disqualifying character that previously justified his or her removal from the roll.

59. At [32] of his judgment, the Chief Justice expressly adopted the following statement from *Edward Poulter Leary v New Zealand Law Practitioners Tribunal*, a decision of the full Court of the High Court of New Zealand:⁸

An applicant for admission, or readmission, to the legal profession must persuade this court that he or she "is of good character and a fit and proper person to be admitted" (s 46(2)(a)(ii)) and, in the case of a restoration application, we accept the observation in L (at 473) that "the greater the fall from grace the more the ground to recover before reinstatement". The gist of the Court of Appeal's observations in Re Landon [1923] NZLR 236, 242-243, remains apposite:

It is well settled by authority that a solicitor is not so dealt with by way of punishment. He is removed from the rolls because he is deemed unfit to be further trusted with the powers, rights, and duties attached to the responsible position of a solicitor of the Supreme Court. He is deprived of that position not by way of penal discipline in respect of offences committed by him, but for the purpose of protecting the public and the administration of justice from the danger involved in the continued authority of a solicitor who by his conduct has shown that he is not fit to be trusted with the possession of such an office. On an application for readmission, therefore, the question whether the period of his deprivation of office has been long enough to constitute an adequate punishment for his offence is wholly irrelevant. The true question is not whether he has been sufficiently punished, but whether his conduct since his removal has been such as to demonstrate to the satisfaction of the Court that he is now a fit and proper person to be admitted as a solicitor, and that he no longer possesses that disqualifying character which was formerly held to exist and to justify his removal from the rolls." (Chief Justice's emphasis).

60. Finally, citing *Ex-Parte Leneman*, the Chief Justice stated at [33]:⁹

In exercise of the discretion to re-admit the Practitioner who was struck off the Roll of Legal Practitioners, the entire conduct of the particular Practitioner from the time the Practitioner became aware of the wrongdoing to the date of the hearing of the Petition for re-admission should be considered.

61. As the Chief Justice expressly adopted the above statement from the High Court of New Zealand in *Edward Poulter*, inferentially His Honour also approved the Court of Appeal's observation in *Re Landon* which the High Court considered remained

8 *Edward Poulter Leary v New Zealand Law Practitioners Tribunal* HC AK CIV 2006-404-7227 (21 August 2007).

9 *Ex-Parte Leneman* (1949) 77 CLR 403 at 430-431.

apposite.¹⁰ Indeed (as can be seen from the above quotation from *Edward Poulter*) the Chief Justice emphasised a part of the quotation from *Re Lundon*.

62. I pause at this point to note that the Supreme Court of New Zealand recently considered *Re Lundon* in the context of an appeal involving an application for re-admission to the bar. In its discussion about the need to protect the public, in particular by ensuring that those whose admission is approved can be entrusted with their clients' business and fulfil their fundamental obligations, the Supreme Court touched on *Re Lundon*:¹¹

[36] While some of the language is outdated, the essence of the first aspect is reflected in the judgment of Skerrett CJ in Re Lundon:

The relations between a solicitor and his client are so close and confidential, and the influence acquired over the client is so great, and so open to abuse, that the Court ought to be satisfied that the person applying for admission is possessed of such integrity and moral rectitude of character that he may be safely accredited by the Court to the public to be entrusted with their business and private affairs.

The Chief Justice's findings and the grounds of appeal

63. In considering the entirety of the applicant's conduct to the date of hearing (consistent with the approach in *Ex-Parte Leneman*) it is evident that the Chief Justice had regard to the historical wrong-doings leading to Mr Shah's disbarment.
64. Critically, however, His Honour also had regard to events since disbarment namely the assertions by the Chief Registrar and one Lalini Sharma, a businesswoman from (at the time) Nadi. Ms Sharma deposed to engaging Mr Shah in 2018 to assist her with a conveyancing matter and a criminal matter. She deposed to paying for the legal services.
65. The Chief Justice quoted extensively from Ms Sharma's affidavit. In fact passages of Ms Sharma's evidence are reproduced over nearly three pages of His Honour's judgment.¹² Ms Sharma's affidavit is the subject of Mr Shah's second and eighth

10 *Re Lundon* [1923] NZLR 236, at 242-243.

11 *New Zealand Law Society v John Llewyn Stanley* [2020] NZSC 83 at [36] citing *Re Lundon* [1926] NZLR 656 (CA) at 658.

12 At pp9 – 12.

grounds of appeal, (which are the only grounds addressed by this Court). Grounds two and eight state:

2. *The Honorable Chief Justice erred in law in relying on the Affidavit of Lalini Ranjana Devi Sharma when he had previously refused to admit the said affidavit into evidence because the Affidavit had not been properly read into evidence and the Appellant was not given time to file rebuttal evidence.*
8. *The Learned Chief Justice erred in fact when he concluded that the appellant continued to provide legal advice for the law firm of Messrs Fazilat Shah Lawyers when there was no credible or admissible evidence that the Appellant was either providing legal advice or acting as a consultant.*

66. Addressing ground two which is a complaint that the Chief Justice wrongly read Ms Sharma's evidence when he had previously refused to admit it:

66.1 There is nothing in the Record to show the Chief Justice disallowed Ms Sharma's affidavit before issuing his judgment. Moreover, in the hearing before us, there was no dispute that the Chief Justice allowed the affidavit and did so in the course of his judgment.

66.2 As to Mr Shah's contention that he was given no time to file rebuttal evidence, the Record shows that to be incorrect. Ms Sharma's affidavit, along with the other affidavits relied upon by the Chief Registrar, was served on Mr Shah eight days prior to the hearing and, as the Chief Justice recorded at [35] of his judgment, Mr Shah chose not to file any affidavit in response.

66.3 At [36] of his judgment, the Chief Justice had no hesitation in accepting Ms Sharma's evidence "as true and correct". As the acceptance of the affidavit immediately follows His Honour's recording of service on Mr Shah, and the lack of any response from him, it is evident that the Chief Justice accepted Ms Sharma's evidence as true and correct because there was no evidence disputing hers.

67. Turning to ground two, the gravamen of the complaint under this ground, as elaborated by counsel in the Court of Appeal, is that Ms Sharma's affidavit should have been filed pursuant to the objection process. (I note that in the hearing before the Chief

Justice, however, the objection to Ms Sharma's affidavit was because "it lacks merit or does not have a direct bearing on the petitioner's application for re-admission".¹³)

68. Rules 5 and 6 of the Rules provide the procedure to be followed for objectors. Under r 5 any person is entitled to "object" that is, to show cause why a petition should not be granted. The objector must file with the Chief Registrar a written statement of grounds for objection and an affidavit verifying the grounds in the written statement. The Chief Registrar must serve copies of the objector's documents on the petitioner. As noted above, the Chief Justice disallowed one objector because her written statement had been filed out of time.
69. Rule 6 applies to the Chief Registrar. If the Chief Registrar wishes to show cause why a petition for admission should not be granted, the Chief Registrar must, within 14 days of the notice of petition given under r 2, file a written statement with grounds of objection and an affidavit verifying the facts contained in the written statement. There was no dispute about the Chief Registrar's compliance with r 6.
70. Mr Padarath argued Ms Sharma's affidavit was wrongly admitted because she should have objected, followed the objection procedure and filed and served a written statement of grounds for her objection.
71. I do not agree.
72. The Chief Registrar's written grounds of objection included two specific matters that, in the Chief Registrar's view, not only told against Mr Shah's re-admission but warranted investigation:
- 72.1 There was evidence that after being struck off the Roll Mr Shah "continued to provide legal services unlawfully".
- 72.2 There was evidence that Mr Shah "unlawfully provided legal advice, received monies and drafted documents after being struck off the Roll ..."
73. The Chief Registrar also stated in his grounds of objection that there was written evidence Mr Shah "occupied a room/office at the office of Fazilat Shah Legal in

13 Transcript of Hearing, p 713.

Lautoka for the purpose of providing legal services while being struck off the Roll ...”

74. Importantly, the Chief Registrar did not simply assert that there was evidence of these matters. His staff arranged for Ms Sharma to swear an affidavit in support of this aspect of the Chief Registrar’s grounds of objection. The process by which Ms Sharma’s affidavit was obtained is set out in the affidavits of Ravneel Chand and Tui Kilakila (to which I have referred at [52] above). On 3 August 2020, Mr Chand accompanied Sanjay Singh, an investigator with the Legal Practitioners Unit, to Ms Sharma’s for the purpose of obtaining an affidavit from her.¹⁴
75. Accordingly, Ms Sharma’s affidavit and the matters to which she deposed were properly before the Chief Justice for the purpose of Mr Shah’s hearing.
76. Tui Kilakila, a legal officer with the Legal Practitioners Unit, exhibited to his affidavit the correspondence from Fazilat Shah Legal in April and June 2016 seeking the Chief Registrar’s consent to employ Mr Shah as a legal consultant. Mr Kilakila then deposed:¹⁵

Through investigations by the Registrar’s office and the LPU, it has been identified that the Petitioner continued to provide legal services and receive monies from clients after being struck off the Roll of Barristers and Solicitors. As such, reference is made to the affidavits of the following persons to support this contention:

(a) *Affidavit of Lalini Devi Sharma, Businesswoman;*

...

77. Mr Padarath submitted (although not until his reply) that Ms Sharma’s evidence was objectionable because it contained hearsay evidence and was admitted contrary to the High Court Rules and the Civil Evidence Act 2002.
78. In examining these objections it is important to understand the purpose that Ms Sharma’s affidavit served in the proceeding before the Chief Justice. Instead of merely asserting in his grounds of objection that Mr Shah had provided legal services unlawfully, the Chief Registrar took the step of obtaining an affidavit from Ms Sharma who could depose to her personal engagement of Mr Shah for the purpose of providing legal services. Thus, Ms Sharma’s affidavit served as the evidential plank by which

¹⁴ Affidavit of Ravneel Chand affirmed 5 August 2020, at [5].

¹⁵ Affidavit of Tui Kilakila, sworn 5 August 2020, at [11]—[13].

the Chief Registrar could demonstrate the legitimacy of this ground of objection and why an investigation was warranted.

79. When considering what weight is to be given to hearsay evidence, s 6 of the Evidence Act requires the court to have regard to any circumstances from which any inference can reasonably be drawn as to the reliability or otherwise of the evidence. In this case, Mr Shah elected not to file rebuttal evidence. Thus, Ms Sharma's affidavit stood uncontested leading the Chief Justice to accept her evidence as true and correct. Accordingly, His Honour found:

[37] It is apparent from Lalini Sharma's Affidavit that the Petitioner continued to provide legal advice, prepared Legal documents and obtained fees under the name of Fazilat Shah Lawyers where he had an office and an assistant.

80. Even without that finding of fact, there was a sufficient evidential basis before the Chief Justice to warrant his refusal to restore Mr Shah to the Roll.

81. Relying on *Bax v Legal Practitioners Admission Board* a decision of the Supreme Court of Queensland, Mr Chand submitted it was important to place before the Court any allegation against the applicant that was the subject of investigation by the Chief Registrar.¹⁶ The Legal Services Commission had received a complaint that Mr Bax was engaging unlawfully in legal practice. The Commission was investigating the complaint and disclosed the fact of its investigation to the Board which was considering Mr Bax's application for re-admission. Of that disclosure, the Supreme Court said:

[26]...For any person seeking eventual admission as a legal practitioner, the details of any complaint made against the person alleging unlawful engagement in legal practice is a matter that must be disclosed fully to the Board and to the court. It is therefore relevant to recite the progress of that investigation and what was conveyed to the Board.

¹⁶ *Bax v Legal Practitioners Admission Board* [2020] QCA 71.

Bringing the threads together ...

82. From the foregoing analysis, four key points emerge:

82.1 The Chief Justice had regard to matters that preceded and led to Mr Shah being struck from the Roll. As well, His Honour had regard to conduct subsequent to Mr Shah's disbarment.

82.2 Ms Sharma deposed to engaging Mr Shah in 2018, for the purpose of providing legal services and she deposed to paying for those legal services. Mr Shah had the opportunity to contest that evidence but did not do so.

82.3 Mr Shah's activities post disbarment warranted investigation by the Chief Registrar's Office and this fact was properly before the Court.

82.4 While the Chief Justice found as a fact that Mr Shah wrongfully provided legal services, the fact of the Chief Registrar's proposed investigation would of itself have provided a proper basis for refusing Mr Shah's re-admission at that time.

83. For these reasons, even if there were jurisdiction to entertain Mr Shah's appeal, I would have refused the orders he seeks and dismissed the appeal.

Final observation

84. A refusal to re-admit a practitioner does not debar the practitioner from applying for re-admission at an appropriate future time. A lack of success on previous occasions should not be seen as pre-judging a future application.

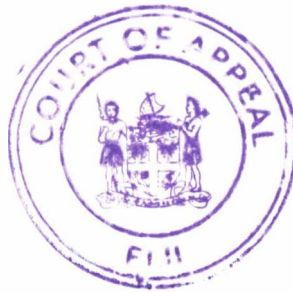
85. Whether or not the ability to re-apply is regarded as an adequate remedy in the absence of an ability to appeal is a matter for Parliament. It may be that in the course of the current review of the Legal Practitioners Act it is considered desirable to assess this aspect of the admissions framework. That, of course is a matter for the Legislature.

Orders:

1. *For want of jurisdiction the appeal is dismissed.*
2. *Costs for the respondent in this court of \$3,000.00.*



Hon Mr Justice Filimone Jitoko
PRESIDENT, COURT OF APPEAL



Hon Mr Justice Walton Morgan
JUSTICE OF APPEAL



Hon Madam Justice Karen Clark
JUSTICE OF APPEAL