

**IN THE HIGH COURT OF FIJI
AT SUVA
CIVIL JURISDICTION**

LPU Complaint File # 148/2015

Barry Atkinson

Applicant/Complainant

v.

Peter Lowing

Respondent

Representation:

Complainant: Mr. Richard S Prakash (Brown & Prakash Attorneys)

Legal Practitioner: Ms. Salote T. Seru (Lowing Lawyers)

Date of Hearing: 10th December 2025.

Ruling

A. Introduction

[1] The matter has been forwarded for taxation pursuant to Section 109 (2) of the Legal Practitioners Act (LPA) 2009. On the hearing date, Ms. Seru raised a preliminary issue. This ruling deals with the issues raised on behalf of the Respondent.

B. The Submissions

(a) **For the Respondent**

[2] The issue that is being raised on behalf of the legal practitioner is that the complainant's application is being disguised as an application for an assessment of costs and therefore it should be struck out and/or dismissed.

[3] For the Respondent it is also submitted that the complainant is statute barred under section 4 of the Limitations Act on the basis that he has failed to file the necessary civil action within the legislated limitation of 6 years from the date on which the cause of action accrued including actions founded on simple contract or in tort.

[4] The argument for the Respondent is that the complainant's application goes beyond the scope of Section 109 of the LPA and challenges the conduct of the Respondent. The

entire bill of costs and seeks a full refund. It is argued that this is statute barred and must be dismissed and/or struck out.

(b) **For the Applicant/Complainant**

- [5] For the Applicant/Complainant the submission is that the application before this court does not go beyond Section 109 (2) of the LPA. It is an application for taxation and assessment of the fees under the LPA.
- [6] They further submit that the argument on the limitation period is not applicable and that the objections and issues should have been raised at the earliest and not when set down for hearing.

C. **Determination**

- [7] The Legal Practitioners Unit (LPU) on 12th August 2015 received a complaint from the Applicant/Complainant. It was forwarded to the Respondent for his response. The LPU assessed the complaint. They identified the issues. One of which was whether the Respondent charged reasonable fees. They considered whether taxation was an option.
- [8] In line with Section 109 (2) of the Legal Practitioner Act 2009 the complainant consented to the matter to be taken up for taxation.
- [9] The issues that are being raised for the Respondent are twofold. The first is that the application by the Complainant is an assessment of costs. I would like to place Section 109 (2) of the Legal Practitioners Act in its entirety to show that costs and fees are assessed by a Master of a Judge when there is a dispute between a complainant and practitioner. It is as follows:

(2) The Registrar, with the consent of the complainant, may refer any complaint made under section 99, or an investigation under section 100, in relation to—

(a) charging of excessive legal costs or fees in connection with the practice of law; or

(b) charging legal costs or fees for work not carried out by the legal practitioner or legal practice or for incomplete work,

to a Master of the High Court or to a Judge of the High Court for taxation or assessment of costs or fees.

- [10] What is before me is not any disguise about assessment of costs. It relates to a complaint about charging of fees by the Practitioner. These are within the realms of the Legal Practitioners Act. The Registrar accordingly forwarded the file for taxation. There were certain issues and agreements being mentioned by the Practitioner. They will all need to be scrutinized and evaluated in the taxation process. Once in progress during the taxation process, the court will deal with all the issues raised by the parties.
- [11] The second issue is that the complainant is bound by the statute of Limitations on the basis of not filing a civil claim within 6 years. The complainant for his part through a

complaint to the LPU was seeking detailed breakdown of the legal costs. It was a complaint within the Legal Practitioners Act 200. His complaint was dealt with by LPU. He did not file an action. He did not initiate any other legal action against the Respondent. He relied on the complaint to the LPU. The Limitation act relies to action filed in Court. This was a complaint under the Legal Practitioners Act 2009 relating to fees. The Limitation Act is not applicable in this matter.

- [12] The point by Mr. Prakash (for the Applicant/Complainant) that issues should have been raised well before the day of the Hearing is pertinent. Such preliminary and frivolous issues before the Court delay matters. Preliminary issues should be raised with the Court prior to Hearing or Trial. They would be dealt with accordingly. Lawyers should raise issues well in advance and have them determined before a hearing is set. Raising issues on the day of Hearing or Trial which should have been dealt with earlier are a complete waste of time and resources. Lawyers should now this better. Costs need to compensate adequately such laxity and time waste mechanism. In this matter the Complainant had made his way over for the hearing. He should be compensated for the costs that he incurred. The Respondent is to pay the complainant \$5000.00 as costs within 7 days.
- [13] The preliminary issues raised by and for the Respondent are dismissed. The \$5000.00 costs are to be paid by the Respondent within 14 days.



A handwritten signature in blue ink, appearing to be "Chaitanya S. C. A. Lakshman".

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Hon Justice Chaitanya S. C. A. Lakshman
Puisne Judge

30th January 2026