

IN THE INDEPENDENT LEGAL SERVICE COMMISSION

AT SUVA

ILSC CASE NO. 006 OF 2019

BETWEEN : THE CHIEF REGISTRAR
APPLICANT

AND : MEHBOOB RAZA
RESPONDENT

Counsel : Ms J Sharma for the Applicant
Mr S Parshotam for the Respondent

Date of Decision : 31 December 2021

DECISION

Introduction

- [1] The legal practitioner is charged with one count of professional misconduct contrary to section 82 (1) (a) of the Legal Practitioners Act. The allegation is that he failed to respond to a notice of complaint against him by one of his clients even after he was reminded to do so by the Chief Registrar pursuant to section 108 (2) of the Legal Practitioners Act.

Investigative powers

- [2] The powers of the Chief Registrar to investigate the conduct of a legal practitioner are set out in section 100 of the Legal Practitioners Act. Section 111 of the Legal Practitioners Act provides the Chief Registrar power to commence disciplinary proceedings before the Commission following an investigation of the conduct of a legal practitioner.

Professional misconduct - elements

- [3] In this case, the conduct subject of the allegation is professional misconduct. Section 82 (1) (a) of the Legal Practitioners Act defines professional misconduct as follows:

- (1) For the purposes of this Act, '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

- [4] A consistent failure to respond to notice of complaint is deemed to be professional misconduct pursuant to section 108 of the Legal Practitioners Act. Section 108 states:

- (1) Where any legal practitioner or law firm fails to comply with any notice issued under section 105 or section 106, the Registrar may notify the legal practitioner or law firm in writing that if such failure continues for a period of fourteen days from the date of receipt of such notice, the legal practitioner or law firm will be liable to be dealt with for professional misconduct.

- (2) If such failure referred to in subsection (1) continues for a period of fourteen days from the date of such notification to the practitioner, such failure shall be deemed to be professional misconduct, unless the legal practitioner or law firm furnishes a reasonable explanation for such failure. In any proceedings before the Commission, the tendering of a communication or requirement from the Registrar with which the legal practitioner or law firm has failed to comply, together with proof of service of such communication or requirement, shall be prima facie evidence of the truth of the matters contained in such communication and any enclosures or annexures accompanying such communication.

Onus and burden of proof

- [5] To prove the allegation, the Chief Registrar must prove on the balance of probabilities (more likely than not) that the practitioner did not respond to Section 108 Notice within 14 days from the date of receipt of such notice. If the Chief Registrar proves that the practitioner did not respond to Section 108 Notice within 14 days from the date of receipt of such notice, the burden of proof shifts on the practitioner to prove on the balance of probabilities that he had a reasonable explanation for such failure. If the practitioner fails to furnish a reasonable explanation for not responding to Section 108 Notice, the failure is deemed to be a professional misconduct.

Evidence led at the hearing

- [6] At the hearing, the Chief Registrar called two witnesses and a rebuttal witness after the practitioner gave evidence. Both parties have filed detailed closing submissions. It is not necessary to repeat every piece of evidence or every submission made by the parties. I will only refer to the salient features as they relate to the allegation.
- [7] It is not in dispute that in 2018 the legal practitioner was the principal practitioner of Mehboob Raza & Associates. His law firm was situated at 176-184 Renwick Road, Suva.
- [8] The first witness for the Chief Registrar was Mr Melvin Kumar. Mr Kumar was employed as a Clerical Officer at the Legal Practitioners Unit in 2018. Mr Kumar said that on 26 September 2018, he prepared and issued notices to the legal practitioner after the Chief Registrar received a complaint in writing against the practitioner by one of his clients pursuant to section 99 of the Legal Practitioners Act.
- [9] The first notice was issued pursuant to section 104 of the Legal Practitioners Act, to inform the practitioner of the complaint and the investigation by the Chief Registrar (Applicant's Exhibit 1 – Section 104 Notice).

- [10] The second notice was issued pursuant to section 105 of the Legal Practitioners Act, to require the practitioner to furnish a response to the complaint within 21 days from the date of receipt of the notice (Applicant's Exhibit 2 – Section 105 Notice).
- [11] Mr Kumar's evidence is that on the same date (26/09/18) he emailed both notices to the practitioner on an email address provided by the practitioner in his 2018 application for renewal of his practising certificate. The practitioner's 2018 application for renewal of his practising certificate is marked Applicant's Exhibit 3 and Mr Kumar's email to the practitioner is marked Applicant's Exhibit 4. In cross-examination Mr Kumar accepted that there was no acknowledgment of receipt of the email he had sent to the practitioner.
- [12] Mr Kumar said that when the Chief Registrar did not receive a response to Section 105 Notice from the legal practitioner within 21 days, he issued a third notice on 31 October 2018 pursuant to section 108 of the Legal Practitioners Act to grant the practitioner a further 14 days to furnish a written response to the complaint. Section 108 Notice is marked Applicant's Exhibit 5. In that Notice, section 108 (2) of the Legal Practitioners Act was brought to the attention of the practitioner.
- [13] Mr Kumar said that on 1 November 2018 he emailed Section 108 Notice to the practitioner but to his knowledge there was no acknowledgement of receipt of his email which is marked Applicant's Exhibit 6.
- [14] Mr Kumar said that the practitioner did not respond to Section 108 Notice within the statutory period of 14 days to respond. In cross-examination, Mr Kumar accepted that the practitioner was not personally served with the notices at any time. In re-examination Mr Kumar clarified that the practitioner had not notified them that the notices were to be served at his home and not at his office.
- [15] The second witness was Mr Tevita Cagina. Mr Cagina was employed as a 'Messenger' at the Legal Practitioners Unit in 2018.

- [16] Mr Cagina's evidence is that he personally delivered Section 104, Section 105 and Section 108 Notices at the practitioner's law firm and got an acknowledgement of receipt from the practitioner's clerk, Mr Hemant Kumar.
- [17] Mr Cagina tendered two documents titled "Delivery Document" as proof of an acknowledgment of receipt of the notices by Mr Hemant Kumar.
- [18] The first delivery document is marked Applicant's Exhibit 7. Mr Cagina said that Mr Hemant Kumar acknowledged receipt of Section 104 and Section 105 Notices on 27 September 2018 by placing his signature and affixing the practitioner's Commissioner for Oaths stamp on the document.
- [19] The second delivery document is marked Applicant's Exhibit 8. Mr Cagina said that Mr Hemant Kumar acknowledged receipt of Section 108 Notice on 2 November 2018 by placing his signature on the document but not the company stamp. Mr Cagina explained that Mr Hemant Kumar informed him that Mr Raza kept the stamp and that he was not available.
- [20] Mr Cagina said that on both occasions Mr Hemant Kumar acknowledged receipt of the notices because he was the only employee present in the office at the time.
- [21] The practitioner in his evidence gave a detailed account about his professional background. He is 76 years of age and have been practising law for 46 years. He said that by 2018 he had reduced the size of his law practice due to his medical condition. He said that he relied upon his trusted employee, Mr Hemant Kumar on the operational matters, hoping that one day Mr Kumar would take over the firm after completing his law studies. He said that he was disappointed when he learnt that Mr Hemant Kumar had mismanaged the affairs of his law firm including not informing him of the notices received by him personally or via email. The practitioner said that he was computer illiterate and that he totally relied on Mr Kumar for the use of computer to receive or to send correspondences. He said that Mr Kumar had not brought to his attention the notices that were sent to his official email address in this case by the Legal Practitioners Unit.

- [22] The legal practitioner said that on 10 April 2019 he was served with a notice of hearing on a charge of professional misconduct at the Holiday Inn where he was attending a workshop organized by the Chief Registrar. He said that he was surprised to learn about the allegation against him. He said that if the complaint was brought to his attention by his clerk he would have responded immediately.
- [23] The next witness was Mr Hemant Kumar. He did not deny that he used to receive complaint notices from the Chief Registrar while he was working for the practitioner.
- [24] Mr Hemant Kumar said that he has no recollection of the emails of the complaint notices sent to the practitioner's email address. However, he confirmed that he did receive Section 104 and Section 105 Notices and that he signed the acknowledgment of receipt on the delivery document, Applicant's Exhibit 7.
- [25] When Mr Hemant Kumar was shown the second delivery document, Applicant's Exhibit 8, he denied the signature on the acknowledgment of receipt as his, suggesting his signature had been forged.

Analysis

- [26] The practitioner's principal defence to the charge is that he was not personally served with the notices as required by section 145 the Legal Practitioners Act for him to respond to the complaint against him.
- [27] Section 145 of the Legal Practitioners Act reads:

Any notice or other document whatsoever required under this Act to be given or served on a practitioner or former practitioner may, unless otherwise provided, be given or served by delivering such notice or document personally to that person, or posting such notice or document by pre-paid post to that person at his or her usual or last known place of business or abode or the place of business or abode last notified by that person to the Society.

- [28] Counsel for the practitioner concedes that 'the service mechanisms provided in section 145 are directory rather than mandatory'. However, he submits that the Chief Registrar 'cannot escape the fact that if personal service is to be effected, then it must be done so on the legal practitioner'.
- [29] The statutory provisions regarding the notifications are clear.
- [30] The Chief Registrar is obliged to refer 'the substance of the complaint or the investigation against a legal practitioner, to the legal practitioner' (section 104). It is not mandatory for the Chief Registrar to call for an explanation from the legal practitioner regarding the complaint. Section 105 (1) states that the 'the Registrar may require the legal practitioner by written notice to furnish within the time specified in that notice a sufficient and satisfactory explanation in writing of the matters referred to in the complaint'.
- [31] In the event the Chief Registrar invokes his discretion to call for an explanation to the complaint from the legal practitioner, the practitioner is required to provide to the Registrar a sufficient and satisfactory explanation to the complaint within the time specified in the notice. If the legal practitioner fails to provide a sufficient and satisfactory explanation to the complaint within the time specified in the notice, the Chief Registrar has a discretion to notify the legal practitioner that 'if such failure continues for a period of 14 days from the date of receipt of such notice, the legal practitioner will be liable to be dealt with for professional misconduct' (section 108).
- [32] Section 108 (2) is a deeming provision. If the failure to provide an explanation continues for a period of 14 days after receipt of the written notice under subsection (1), such failure shall be deemed to be professional misconduct, unless the legal practitioner furnishes a reasonable explanation for such failure.
- [33] The evidence led at the hearing establishes that both Section 105 and Section 108 Notices were forwarded to the legal practitioner electronically via the email contact that the practitioner had provided in his application for renewal of his practising certificate in 2018.


- [34] The same notices were served on the law firm by Mr Cagina. I accept Mr Cagina's evidence that the notices were received by Mr Hemant Kumar who at the time was an employee of the legal practitioner.
- [35] Mr Hemant Kumar admits his signature on the acknowledgment receipt of Section 105 Notice but he denies his signature on the acknowledgement receipt of Section 108 Notice. When giving evidence, Mr Kumar gave me an impression that he was reluctant and evasive. He was not an entirely truthful witness. I accept Mr Cagina's evidence over his evidence. I find both Section 105 and Section 108 Notices in this case were received by Mr Hemant Kumar, who at the time was an employee and an agent of the legal practitioner. In his evidence, Mr Kumar did not suggest that he did not have authority to receive notices on behalf of his employer.
- [36] Section 145 of Legal Practitioners Act sets out the methods for service of notices under the Act. But the methods are not mandatory. The section does not expressly excludes other methods such as electronic service or service on the agents of the legal practitioner.
- [37] Where there is a failure to respond to a complaint within a period of 14 days after receiving Section 108 Notice, the legal practitioner is deemed to be guilty of professional misconduct, unless the legal practitioner furnishes a reasonable explanation for such failure.
- [38] The legal practitioner's evidence is that he only came to know about the notices calling for an explanation from him regarding a complaint against him when the notice of proceedings was personally served on him on 10 April 2019. He responded to the complaint in writing on 16 April 2019.
- [39] I believe and accept the evidence of the legal practitioner that the notices sent to him via his official email contact and received by his employee, Mr Hemant Kumar, were not brought to his attention. Further, I believe and accept the evidence of the legal practitioner that Mr Hemant Kumar withheld the same notices from him that he received in person as an agent of the practitioner and were served on the

practitioner's law firm by Mr Cagina. I believe and accept the evidence of the legal practitioner that he only came to know about the notices calling for an explanation from him regarding a complaint against him after he received the notice of proceedings that was served on him in person on 10 April 2019. He responded to the complaint shortly after he came to know about it.

- [40] I am satisfied that it is more likely than not that the legal practitioner did not know about the notices that were received on his behalf by his employee, Mr Hemant Kumar. The legal practitioner has discharged the burden for his failure to respond to Section 108 Notice by offering a reasonable explanation.

Result

- [41] The allegation of professional misconduct against the legal practitioner has not been made out.
- [42] The proceedings against the legal practitioner are dismissed.



The seal of the Independent Legal Services Commission is circular with the text "INDEPENDENT LEGAL SERVICES COMMISSION" around the perimeter. In the center, there is a signature in cursive script over the word "SEAL". A horizontal line extends from the right side of the seal.

Hon. Mr Justice Daniel Goundar
COMMISSIONER

Solicitors:

Legal Practitioners Unit for the Applicant.
Parshotam Lawyers for the Respondent.