

IN THE INDEPENDENT LEGAL SERVICE COMMISSION
AT SUVA

ILSC Application No 12 of 2021

BETWEEN : **CHIEF REGISTRAR** of Government Buildings

APPLICANT

AND : **HARRY ROBINSON** of Ritova Street, Naodamu
Labasa

RESPONDENT

Counsels : A. Malani and T. Laqekoro,
Legal Practice Unit for the Applicant
No Appearance for the Respondent.

Date of Hearing : 2 December 2024

Date of Submissions : 3 March 2025

Date of Determination : 15 December 2025

DETERMINATION

A. Introduction:

1. The charges laid against the Respondent, Harry Robinson, legal practitioner of Labasa were as follows;

Count 1

Professional Misconduct: Contrary to section 82(1)(a) of the *Legal Practitioners Act 2009*

Particulars

HARRY ROBINSON, a legal practitioner between 1 January, 2016 and 2 April 2017, whilst not being a holder of a valid practicing certificate, had received a total sum of \$2,500.00 for the purpose of legal fees to carry out the instructions of Shakuntala Singh, which is contrary to section 52(1)(a) of the *Legal Practitioners Act 2009* , which conduct was a contravention of section 82(1)(a) of the *Legal Practitioners Act 2009* and was an act of Professional Misconduct.

Count 2

Professional Misconduct: Contrary to section 83(1)(a) of the *Legal Practitioners Act 2009*

Particulars

HARRY ROBINSON, a legal practitioner from or about 30 June 2016 to date, failed to complete Shakuntala Devi's instructions despite having obtained legal fees in the sum of \$5,200, which conduct was a contravention of section 82(1) of the *Legal Practitioners Act 2009* and was an act of Professional Misconduct.

Count 3

Professional Misconduct: Contrary to section 82(1)(a) of the *Legal Practitioners Act 2009*.

Particulars

HARRY ROBINSON, a legal practitioner on 5 July 2018, in the matter of *Shakuntala Singh v Dharam Singh*-Labasa High Court Civil Action No. HBC 24 of 2018, made an application to have the said matter withdrawn without having the requisite authority or instructions of Shakuntala Singh which lead to the matter being struck out of the cause list which was contrary to Rule 3.6 of the Rules of Professional Conduct & Practice and which conduct was a contravention of section 82(1)(a) of the *Legal Practitioners Act 2009*, and was an act of Professional Misconduct.

Count 4

Professional Misconduct; Contrary to section 82(1)(a) of the *Legal Practitioners Act 2009*.

Particulars

HARRY ROBINSON, a legal practitioner between 19 September 2018 and 28 November 2018, in the matter of *Shakuntala Singh v Dharam Singh* –Labasa High Court Civil Action No HBC 30 of 2018, failed to act in the best interest of Shakuntala Singh by not complying with the direction of the Master given on 19 September 2018 to file a Supplementary Affidavit annexing a copy of the intended writ and claim within the given time frame which eventually lead to the matter being dismissed and which is contrary to rule 3.7 of the Rules of Professional Conduct and Practice and which conduct was a contravention of section 82(1)(a) of the *Legal Practitioners Act 2009* and was an act of Professional Misconduct.

Count 5

Professional Misconduct: Contrary to section 82(1)(a) of the *Legal Practitioners Act 2009*

Particulars

HARRY ROBINSON, a legal practitioner, from on or about 30 June 2016 to date having received instructions from Shakuntala Singh, failed to provide the said Shakuntala Singh with an explanation of the unreasonable delay in carrying out Shakuntala Devi's instructions which is contrary to rule 8.1 (c) of the Rules of Professional Conduct and Practice, which conduct was a contravention of section

82(1)(a) of the *Legal Practitioners Act 2009* and was an act of Professional Misconduct.

Count 6

Professional Misconduct: Contrary to section 82(1)(a) of the *Legal Practitioners Act 2009*.

Particulars

HARRY ROBINSON, a legal practitioner between 19th September 2018 and 19 October 2018, in the matter of *Shakuntala Singh v Dharam Singh* –Labasa High Court Action HBC No 30 of 2018, failed to comply with the direction of the Master of the High Court given on the 19 September 2018 to file a supplementary affidavit annexing a copy of the intended writ and claim within the given time frame which resulted in unnecessary waste of the Court's time which is contrary to rule 3.2(ii) of the Rules of Professional Conduct and Practice, and which conduct was a contravention of section 82(1) of the *Legal Practitioners Act 2009*, and was an act of Unsatisfactory Professional Conduct.

B. SUMMARY OF EVIDENCE:

2. The complainant engaged the Respondent in 1997, who was then employed as a solicitor with Sam Matawalu & Associates, based at Labasa, to handle a property transaction namely the purchase of an undivided half share in Lot 1, SO Plan 3289, situated at Vunitavola, Labasa, (the subject property) registered in the name of Dharam Singh. The complainant was unable to recall whether a written agreement was drawn up for the retention of the Respondent's service, however recalls that she was assured by the Respondent that it could be done for a fee of \$3,000.00. Payments were done in instalments, and in total an amount of \$3,400.00 was paid, which were receipted, but copies of which have been misplaced. Matters went into abeyance as Dharam Singh migrated to New Zealand, without completing his part of the transaction
3. Sometime in 2016, matters were revived with the complainant approaching the Respondent to re-look at the property transaction, and to initiate civil proceedings against Dharam Singh for renegeing on the agreement to sell his half share in the subject property, despite the complainant withdrawing part of her superannuation funds to fund the purchase of the subject property.

4. The Respondent requested the sum of \$5,000.00, to be paid in instalments, with a first payment of \$2,500.00 made without a receipt being provided by the Respondent. Another payment of \$2,500.00 was made in late 2017, to the Respondent in Australia, again without a receipt being provided. The Respondent did not attend to the matter despite being paid and providing assurances that he would do so. When the complainant approached the Respondent in 2018, and asked about the progress of the case, she was asked to make an additional payment of \$400.00, again without a receipt being provided.

Receipts were later provided in 2018 for the amount of \$5,000.00, (Receipt No. 32212 backdated to 30/6/16)¹ and for an additional amount of \$400.00 (\$200.00 claimed as disbursement). No documents were served however on Dharam Singh in New Zealand, and the Complainant was not informed of the progress in the matter until she was asked by the Respondent to sign a legal document in relation to 2 civil cases – Civil Cases HBC 24 of 2018 and HBC 30 of 2018. The application filed by the Respondent on behalf of the Complainant to serve the Writ out of the Jurisdiction was dismissed by the Master of the High Court on 28 November 2018. The gist of the complaint lodged by the Complainant was that the Respondent did little to complete the work required of him despite being paid the full amount of \$5,000.00 sought as retainer for his services and constant reminders and follow up requests for updates being made.

5. The related complaint was that when further instruction were issued and payments were sought by the Respondent and made on or about June 2016 the Respondent did not hold a valid practicing certificate in contravention of section 52(1)(a) of the *Legal Practitioners Act* ²[2009].
6. The Respondent did not turn up at the hearing of the complaint before the Commission in December 2024, despite the availability of audio-visual facility, to facilitate on-line attendance, if actual attendance was an issue. The complainant rather, made use of the on-line facility to provide evidence from Australia. The Commission was given no explanation by the Respondent for his absence, however the Commission decided to proceed with the hearing pursuant to section 112(4) of the *Legal Practitioners Act* 2009,³ given adequate notice had been provided to the Respondent about the hearing.

¹ Exhibit D

² 52-(1) A person shall not, unless that person is the holder of a current practicing certificate –
(a) practice or act as a legal practitioner of Fiji or as a Notary Public.

³ (4) If the legal practitioner or partner of the law firm against whom an application under section 111 for disciplinary proceedings is made and to whom notice has been given pursuant to this section, does not attend at

7. The Commission has taken note of the Respondent's response as provided to the Notices Ref 168 of 2019,⁴ and 163 of 2016⁵ dated 15 October 2019 and 30 March 2021, respectively, issued by the Chief Registrar pursuant to section 104 of the *Legal Practitioners Act 2009*.

a. Response of 15 October 2019-Ref 168 of 2019.

In relation to the complaint about delay, the lack of communication, accountability, competence and diligence the Respondent states;

(i) that he had informed the Complainant that he was required to act through a firm of solicitors Tadrau Legal of Nadi , as its agent in Labasa.

(ii) the claim, by its nature,⁶ had to be litigated in Fiji but served on the Defendant, Dharam Singh in New Zealand. An application had to be made for service out of the jurisdiction, for this purpose, to be supported by an affidavit deposed by the complainant , which was done in 2019. When called however, before the Master of the High Court in Labasa, a direction was issued that a supplementary affidavit be filed pursuant to Orders 11, rule 1(1) and (2) of the *High Court Rules 1988*⁷. The Respondent sent an email to the complainant in Australia on 21 September 2018, seeking an address for documents to be sent to, however the address sent did not have a postcode. When the matter was called on 23 October 2018, the Court was informed that the complainant would not be filing a supplementary affidavit and that the Court could make an appropriate ruling in the circumstance. The Master informed the Respondent that a ruling would be issued on 28 November 2018. On 28 November 2018 the Master refused the Application to serve the Writ out of the Jurisdiction, on the basis that no good cause of action to warrant the granting of leave had been made out by the complainant. This matter will be revisited

the time and place mentioned in the notice the Commission may determine the reference in the absence of the legal practitioner or partner of the law firm, as the case may be.

⁴ Exhibit B

⁵ Exhibit C

⁶ enforcement of contract

⁷ (1) An affidavit stating:

- a. the grounds which the application is made,
- b. that in the deponent's belief the plaintiff has a good cause of action.
- c. in what place or country the defendant is, or probably may be found. And
- d.

(2) No

C. ANALYSIS

8. The initial complaint against the Respondent was lodged with the Chief Registrar on or about 12 August 2019 by filling out a **Complaint Form -Legal Practitioners Act 2009—Section 99.**⁸ A written response was received by the Chief Registrar from the Respondent dated 15 October 2019, which the Commission had alluded to at paragraph 7.
9. Despite the response the Chief Registrar decided to lay charges on 6 counts for professional misconduct.
10. 'Professional Misconduct' is defined in sections 82(1)(a), (b) and 83(1)(a) and (c) of the *Legal Practitioners Act [2009]* as follows;

82-(1) *For the purposes of this 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 a fit and proper person to operate a law firm.*

83-(1) *Without limiting sections 81 and 82, the following conduct is capable of Being 'unsatisfactory professional conduct' or 'professional misconduct for the purposes of this Decree:*

- (a) *Conduct consisting of a contravention of this Decree, the regulations and rules made under this Decree or the Rules of Professional Conduct;*
- (b) *.....*
- (c) *Charging of legal costs or fees for work not carried out by the legal practitioner or legal practice or for incomplete work.*

⁸ Complaint against Legal Practitioners, Law firm or any employee or agent of any Practitioner or any Law Form-Tab B-ILSC Application No 02 of 2021

11. The basis for the laying of charges against the Respondent are two-fold, firstly the failure to hold a valid practicing certificate between 1 January 2016 and 2 April 2017, contrary to section 52(1)(a) and 82(1)(a) of the *Legal Practitioners Act* [2009], secondly, under the general rubric governing 'client relationship' in Chapter 1 and 8 of the *Rules of Professional Conduct and Practice*.⁹

Count 1 –Section 52(1) and 82(1)(a) –Legal Practitioners Act [2009]

12. The primary evidence lead against the Defendant for not holding a valid practicing certificate pursuant to section 52(1)(a) of the *Legal Practitioners Act* was provided by Elenoa Waqatairewa, at the relevant time, a Secretary with the Legal Practice Unit, whose duties included the processing of applications for practicing certificates, who attested that the Respondent had not applied for practicing certificates over the period 1 March 2015 to 28 February 2016 and 1 March 2016 to 28 February 2017. This was confirmed by a letter dated 8 August 2024 from the Chief Registrar.¹⁰
13. The relevant period is important because the complainant attested that on or about June 2016, she contacted the Respondent about reactivating matters by issuing proceedings against Dharam Singh for failing to fulfil his part of the agreement to sell his half share of Lot 1, SO Plan 3289 situate at Vunitavola, Labasa.
14. During that period the Respondent did not hold a practicing certificate as he held the appointment of Master of the High Court based at Labasa. In accepting instructions from the complainant he was acting though as a legal practitioner under the *Legal Practitioners Act* 2009, however as he did not hold a practicing certificate he contravened section 52(1)(a) of the Act which states;

Practicing without a certificate

52-(1) A person shall not, unless that person is the holder of a current practicing certificate

(a) practice or act as a legal practitioner of Fiji or as a notary Public.

⁹ Rules made by the Registrar with the approval of the Minister pursuant to section 129(1) of the *Legal Practitioners Act*. Pursuant to section 129(3), a failure by a practitioner to comply with any of the provisions of these rules may amount to professional misconduct on the part of that practitioner subject to the provisions of the rule in question and the circumstances of the matter.

¹⁰ Exhibit I

15. Consequently, the Respondent has been charged with one count of professional misconduct pursuant to section 52(1) and 82(1)(a) of the *Legal Practitioners Act* [2009].
16. The onus is on the Chief Registrar to prove the allegations on the balance of probabilities or establish that it is more likely than not, that the practitioner engaged in the illegal conduct that justify a finding that the practitioner is not a fit and proper person to operate a law firm.
17. The Respondent does not contest the allegation that he did not hold a practicing certificate, at the relevant time between 1 January 2016 and 2 April 2017, and on this basis the Commission makes a finding of professional misconduct on Count 1 against the Respondent.

Count 2-Rule 8.1(1)(c)-Rules of Professional Conduct and Practice and section 82(1)(a) Legal Practitioners Act [2009]

18. The conduct which resulted in this charge against the Respondent arises from the repeated delay in carrying out instructions of the complainant, despite being paid the requisite fees to initiate proceedings against Dharam Singh, for breaching his contractual commitments, and for failing to explain to the complainant the cause of the delay contrary to r.8.1-(1)(c) which states;

8.1-(1) Subject to paragraph (2) of this rule, every principal in private practice shall:

(c) During the course of the matter, if unreasonable delay occurs, provide the client with an explanation of such delay including whether or not it is within the control of the person responsible for the matter to resolve the delay.

19. The complainant gave evidence that the Respondent requested fees of \$5,000.00 to institute civil proceedings against Dharam Singh. These sums were paid in instalments in 2016 and in 2017. No receipts were issued at the relevant time when fees were paid. Whilst the Respondent was not charged with this issue, the neglect by the practitioner to issue a proper receipt for fees or disbursements portends a breach of an important rule of practice mandating that proper books of account be kept in respect of all moneys received by the practitioner in the course of practice.¹¹

¹¹ Rule 7.1

The Respondent did not update the complainant about the initiation of proceedings until 2018 when she was asked to make a further payment of \$400 which was done, again without a receipt being provided. Receipts were later provided by the Respondent in 2018 for the sum of \$5,000 paid in 2016 (Receipt No 32212 back dated 30/6/16).¹²The receipt issued did not have the name of a law firm on it.

The complainant testified that despite sending emails and making phone calls to the Respondent she was not satisfied with the response received. The Respondent stated that he had emailed the complainant asking that the complainant send an address in Australia for a draft supplementary affidavit to be sent to her, without a satisfactory response received. The complainant testified in response that the Respondent knew her address and phone contact and that of her children in Australia, and this would have enabled contact if there was a need to do so urgently.

In *Legal Provisional Board of Tasmania v Barclay* [2022] TASSC 14, it was stated that a failure to maintain reasonable standard of competence and diligence *not only related to the conduct of the case but also involved lengthy and persistent failure to communicate and respond to enquiries for and on behalf of the complainant*.¹³

20. On the balance of probabilities, the Commission finds that the failure by the Respondent to communicate and respond to queries from the complainant in a timely manner affirms his inability to maintain a reasonable standard of competence and diligence in his professional practice, and a finding of professional misconduct pursuant to Count 2 is warranted.

Count 3 – Rule 3.6 –Rules of Professional Conduct and Practice and section 82(1)(a) - Legal Practitioners Act [2009]

21. The conduct which resulted in this charge against the Respondent is said to have arisen from the action of the Respondent withdrawing the matter of *Shakuntala Singh v Dharam Singh –Civil Action No HBC 24 of 2018*, without the requisite authority or instruction of the complainant which lead to the matter being withdrawn before the Master in the Labasa High Court on 5 July 2018.

¹² Exhibit No 2

¹³ Considered in *CR v Goundar* [2022] FJILSC 11

22. Evidence was provided by Elia Niubalavu, the Senior Court Officer at the High Court Labasa that this matter was withdrawn with consent by the Respondent.

Rule 3.6 states;

3.6 A practitioner shall not maintain any issue, compromise any matter or consent to any order, save on the client's instruction

23. It is clear from Mr Niubalavu's evidence¹⁴ that the **Civil Action HBC 24 of 2018** was withdrawn by consent of the Respondent on 5 July 2018 and affirmed by the complainant, as done without her consent, thereby breaching rule 3.6 of the *Rules of Professional Conduct and Practice*, amounting to professional misconduct given it is a clear departure from a reasonable standard of competence and diligence, as governed by section 82(1)(a) of the *Legal Practitioners Act [2009]*.

Count 4-Rule 3.7 Rules of Professional Conduct and Practice and section 82(1)(a) Legal Practitioners Act [2009]

24. The conduct which resulted in this charge being laid arose from the failure of the Respondent to annex a copy of a Writ of Summons to a Supplementary Affidavit used to support an Application to serve a Writ of Summons out of the Jurisdiction.
25. Evidence was again provided by Mr Niubalavu, Senior Court Officer of the High Court, Labasa, that despite the Respondent assuring the Court on 13 July 2018 that he would file the supplementary affidavit on or before 19 July 2018,¹⁵ he retracted this assurance on 23 October 2018 and invited the Court to make a ruling in the absence of a proposed Writ.
26. On 28 November 2018 the Court dismissed the application for leave to issue the writ of service out of the jurisdiction, primarily because the Respondent had indicated to the Court earlier that he would not file a supplementary affidavit that complied with Order 11 rule 2 of the *High Court Rules 1988*.¹⁶ The decision of the Respondent not to file a supplementary affidavit prejudiced the interest of his

¹⁴ Tab HI P 35-36 ILSC Application

¹⁵ Tab HI p40-49

¹⁶ (1) An affidavit stating;

- a. the grounds on which the application is made.
- b. that in the deponent's belief the plaintiff has a good cause of action.
- c. in what place or country the defendant is, or probably may be found

client (the complainant) and breached rule 3.7 of the *Rules of Professional Conduct and Practice*;

Pursuant to rule 3.7...a *practitioner shall conduct each case in such manner as the practitioner considers will be the most advantageous to his client.*

27. The Respondent's decision not to file a supplementary affidavit lead to the application for service out of the jurisdiction being struck off which amounted to professional misconduct pursuant to section 82(1)(a) of the *Legal Practitioners Act* [2009].

Count 5-Rule 8.1 (c)-Rules of Professional Conduct and Practice and section 82(1)(a) of the Legal Practitioners Act [2009]

28. This charge appears repetitive and matters arising under it has been dealt with under Count 2.

Count 6-Rule 3.2(ii)-Rules of Professional Conduct and Practice and section 82(1)(a) of the Legal Practitioners Act [2009]

29. The conduct which lead to this charge is said to have arisen from the action of the Respondent in failing to comply with the direction of the Master in *Shakuntala Singh v Dharam Singh* – Civil Action No HBC 30 of 2018, given on 19 September 2018, to file a Supplementary Affidavit annexing a copy of the Writ of Summons within the given time frame resulting in a waste of the Court's time contrary to Rule 3.2 (ii) of the *Rules of Professional Conduct and Practice* and section 91 of the *Legal Practitioners Act* [2009]

30. The Court does not, on the balance of probabilities, find that this charge is made out against the Respondent. Whilst the Master of the High Court had directed on 19 September 2018 that a Supplementary Affidavit be filed on behalf of the complainant, the Respondent had subsequently on 23rd October 2018¹⁷ informed the Master that the supplementary affidavit would not be filed and *that the Court could make an appropriate ruling in the absence of the supplementary affidavit* (and attached writ) in her ruling, which was then delivered on 28 November 2018.

¹⁷ Tab HI, page 47

FINDINGS:

- (i) Allegations of Professional Misconduct as per Counts 1-4 are established.
- (ii) Allegation of Professional Misconduct under Count 5 and Unprofessional Conduct under Count 6 are not established.

I will hear the parties on orders for the filing of submissions on penalty on a hearing date to be set.

Dated this 15th day of December, 2025.


.....
Savenaca Banuve
Acting Commissioner, LSC



The seal is circular with a blue border. The outer ring contains the text "INDEPENDENT LEGAL SERVICES COMMISSION" at the top and "LSC" at the bottom, separated by a small asterisk. The inner circle contains the word "SEAL" in the center.