

**IN THE INDEPENDENT LEGAL SERVICES COMMISSION**

**AT SUVA**

**ILSC CASE NO. 009 OF 2019**

**BETWEEN** : **CHIEF REGISTRAR**

**APPLICANT**

**AND** : **RAJENDRA CHAUDHARY**

**RESPONDENT**

**Counsel** : **Mr T Laqekoro, Ms R Wati and Ms L Malani for the  
Chief Registrar  
Respondent in Person**

**Date of Hearing** : **9 July 2025**

**Date of Decision** : **3 March 2026**

**JUDGMENT**

**INTRODUCTION**

- [1] The Respondent, Rajendra Chaudhry, has been charged with two counts of professional misconduct arising from a Facebook post he made on 9 March 2018. The charges allege that the Respondent, whilst admitted to the Roll of Barristers and Solicitors in Fiji, posted or allowed the posting of a message from his Facebook account which unfairly denigrated three Justices of the Fiji Court of Appeal in relation to their written judgment in *Anand Kumar Singh v The Chief Registrar* (ABU 058 of 2013), and that the post in its entirety unfairly denigrated the Fiji Judiciary, in breach of Rule 3.2(i) of the Rules of Professional Conduct and Practice, constituting professional misconduct contrary to sections 83(1)(a) and 82(1)(a) of the Legal Practitioners Act 2009.

- [2] The Respondent opposes the charges on several grounds, primarily contending that this Commission lacks jurisdiction because he did not hold a valid practising certificate at the relevant time, and that Rule 3.2(i) does not apply to him in these circumstances. Alternatively, he argues that his comments constituted fair comment based on reliable evidence and did not amount to professional misconduct.
- [3] Having carefully considered the submissions of both parties, the agreed facts, the documentary evidence, and the applicable law, I now deliver my judgment on whether the allegations of professional misconduct have been proven to the required standard.

#### **THE CHARGES**

- [4] **Count 1** alleges professional misconduct pursuant to Rule 3.2(i) of the Rules of Professional Conduct and Practice, section 83(1)(a), and section 82(1)(a) of the Legal Practitioners Act 2009. The particulars allege that the Respondent, a legal practitioner duly admitted in the Roll of Barristers and Solicitors of Fiji, on or about 9 March 2018 posted or allowed the posting of a message from his Facebook account, the contents of which in its entirety unfairly denigrated three Justices of the Fiji Court of Appeal in relation to their written judgment in *Anand Kumar Singh v The Chief Registrar* (ABU 058 of 2013), in breach of Rule 3.2(i) of the Rules of Professional Conduct and Practice.
- [5] **Count 2** alleges professional misconduct on the same legal basis, with particulars alleging that the same Facebook post, in its entirety, unfairly denigrated the Fiji Judiciary in breach of Rule 3.2(i) of the Rules of Professional Conduct and Practice.

## **AGREED FACTS**

- [6] The parties filed Pre-Trial Conference Minutes dated 17 July 2024, setting out the following agreed facts:
- (a) The Legal Practitioners Act 2009 was promulgated by Presidential Decree on 22 May 2009 (Decree 16 of 2009).
  - (b) The Applicant commenced a section 111(a) application dated 10 June 2019 against the Respondent in respect of a Facebook post dated 9 March 2018, alleging two counts of professional misconduct.
  - (c) The Respondent was admitted to the High Court of Fiji in 2005.
  - (d) The Respondent has not held a valid practising certificate in Fiji since 5 October 2012.
  - (e) The Respondent was admitted to the High Court of Auckland, New Zealand in 2015.
  - (f) The Respondent posted on his Facebook page "Rajendra Chaudhry" on 9 March 2018 a post with the heading "2018 - When 3 judges of the Fiji Court of Appeal get it so wrong!!!!".
  - (g) The Respondent received the Chief Registrar's notices dated 21 March 2018 pursuant to sections 104 and 105 of the Legal Practitioners Act 2009 with a printout of the Respondent's Facebook post.
  - (h) The Respondent does not dispute the ownership or authorship of the Facebook post.

## **ISSUES IN DISPUTE**

- [7] The central issue in dispute is whether the Applicant has jurisdiction to lay or make allegations against the Respondent pursuant to sections 82(1)(a) and 83(1)(a) of the Act and the Rules of Professional Conduct and Practice when the Respondent, at the relevant date, was admitted as a legal practitioner in Fiji under the Act but did not hold a valid practising certificate.

## ISSUES FOR DETERMINATION

[8] The issues for determination in this inquiry are:

- (a) Whether the Act has application and jurisdiction over the Respondent given that at the relevant time he was not the holder of a valid practising certificate and was not continuing in practice in Fiji, and whether the acts complained of are connected to any practice matters within the ambit of the Act.
- (b) When and in what circumstances does a legal practitioner's duty to the Court arise?
- (c) What is the applicable section of the Act which governs such duty?
- (d) Whether the Respondent breached section 82(1)(a) of the Act in that his conduct involved a substantial or consistent failure to reach or maintain a reasonable standard of competence or diligence.
- (e) Whether the Respondent breached section 83(1)(a) of the Act in that the acts and/or omissions constituted conduct consisting of a contravention of the Act, the regulations and rules made under the Act, or the Rules of Professional Conduct and Practice.
- (f) Whether sections 82(1)(a) and 83(1)(a) have any relevance and application to the charges against the Respondent.
- (g) Whether Rule 3.2(i) of the Rules of Professional Conduct has any relevance and application to the charges against the Respondent.
- (h) Whether the acts and/or omissions complained of were fair comment, premised on reliable evidence, and did not amount to professional misconduct.
- (i) Whether the acts and/or omissions complained of in their entirety unfairly denigrated three judges of the Fiji Court of Appeal in relation to their written judgment in *Anand Kumar Singh v Chief Registrar*.
- (j) Whether the then Chief Registrar brought a fair mind when issuing proceedings given the subject matter of the post was also highly relevant to his appointment and performance of duties.

## **APPLICABLE LEGISLATIVE FRAMEWORK**

### **Definition of Legal Practitioner**

- [9] Section 2 of the Legal Practitioners Act 2009 defines "practitioner" or "legal practitioner" as:

"a person admitted to practice as a legal practitioner under the provisions of this Act and includes a person who before the commencement of this Act was admitted as a legal practitioner in Fiji."

- [10] It is undisputed that the Respondent was admitted to the High Court of Fiji in 2005 and therefore falls within the definition of a "legal practitioner" under section 2 of the Act.

### **Officer of the Court**

- [11] Section 51 of the Act provides:

"Every person practising as a practitioner and being the holder of a current practising certificate shall be deemed to be an officer of the Court."

- [12] This provision is central to the jurisdictional dispute. The Respondent contends that because he did not hold a current practising certificate at the time of the Facebook post, he was not an officer of the Court and therefore not subject to the duties prescribed in Rule 3.2(i) of the Rules of Professional Conduct and Practice.

### **Application to Legal Practitioners**

[13] Section 101(1) of the Act is of critical importance. It provides:

"(1) A complaint under section 99 may be made, or an investigation under section 100 may be carried out, against the conduct of any legal practitioner or law firm or any employee or agent of any practitioner or any law firm, whether or not—

- (a) the legal practitioner is a local legal practitioner;
- (b) the legal practitioner holds a practising certificate;
- (c) the legal practitioner has ceased practising as a legal practitioner;
- (d) the practitioner resides or operates a law firm, or is employed by a law firm in Fiji;
- (e) the person making the complaint resides or works in Fiji."

[14] The plain language of section 101(1) is clear and unambiguous. The use of "whether or not" in conjunction with subsection (b) explicitly provides that a complaint or investigation can be made against the conduct of a legal practitioner regardless of whether that practitioner holds a practising certificate. This provision deliberately casts a wide net over the conduct of all admitted legal practitioners, irrespective of their current practising status.

### **Professional Misconduct**

[15] Section 82(1)(a) of the Act defines professional misconduct to include:

"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."

[16] Section 83(1)(a) provides that professional misconduct includes:

"conduct consisting of a contravention of this Act, the regulations and rules made under this Act, or the Rules of Professional Conduct and Practice."

[17] Section 83(2) further provides:

"For the purposes of this Part, 'professional misconduct' includes malpractice, and 'unsatisfactory professional conduct' includes unprofessional practice or conduct."

#### **Rules of Professional Conduct and Practice**

[18] Rule 3.2(i) of the Rules of Professional Conduct and Practice provides:

"A practitioner shall at all times act with due courtesy to the court."

[19] The Rules define "practitioner" as:

"(a) any person admitted as a legal practitioner in the Fiji Islands; and  
(b) unless the context otherwise requires in the case of a practitioner practising on his or her own account or employed by a practitioner so practising, includes any partner, employee or employer of a practitioner."

## **THE STANDARD OF PROOF**

- [20] The standard of proof in disciplinary proceedings was established in *A Solicitor and The Law Society of Hong Kong 2* HKLRD and endorsed by this Commission in *Chief Registrar v Adish Kumar Narayan* (ILSC No. 09 of 2013). The evidentiary test is as follows:

“The test is not proof beyond reasonable doubt, but a varying standard of the civil standard referred to at times as the preponderance of probabilities. The more serious an act or omission alleged the more improbable it must be regarded and in proportion to the improbability the evidence will need to be more compelling.”

- [21] The allegations in this case involve serious charges of professional misconduct which allege that the Respondent publicly denigrated judicial officers and the judiciary itself. Given the seriousness of these allegations, the evidence must be compelling and cogent to satisfy the requisite standard of proof.

## **PRELIMINARY PROCEDURAL ISSUE: THE HEARING**

- [22] The Respondent raises a preliminary objection that there was no proper hearing under section 112 of the Act before the Commission was directed to file closing submissions. Section 112(1) provides that “upon receipt of the application to commence disciplinary proceedings under section 111, the Commission shall conduct a hearing into each allegation particularised in the application.”
- [23] The Respondent argues that no witnesses were called by the Applicant to tender documents, and that while he acknowledged not disputing the contents of the Facebook post, this does not absolve the Commission from its statutory duty to conduct a hearing.

- [24] I accept that the Commission has a statutory obligation under section 112 to conduct a hearing. However, in the circumstances of this case, where the Respondent has admitted the heading of the Facebook post in the Agreed Facts and has not denied ownership or authorship of the post's contents, and where both parties agreed that calling witnesses was unnecessary, the Commission proceeded on the basis of written submissions and documentary evidence.
- [25] The Applicant tendered Exhibit 1 (the printout of the Facebook post) which was admitted into evidence. While the Respondent correctly notes that ideally documents should be tendered through a sworn witness, in the unique circumstances of this case where the Respondent does not dispute the authenticity of the document or his authorship of the post, I am satisfied that the evidentiary foundation is sufficient to proceed with the inquiry. The Respondent has not been prejudiced by this procedure, as he has had full opportunity to respond to the allegations through comprehensive written submissions.
- [26] That said, I note for future guidance that best practice requires the Applicant to call at least one witness to formally tender documentary evidence, even where authenticity is not disputed, to ensure compliance with section 112's requirement of a "hearing."

## **JURISDICTION: THE CRITICAL ISSUE**

### **The Interlocutory Ruling**

- [27] On 22 June 2022, this Commission delivered an interlocutory ruling on the Respondent's application to dismiss the charges on jurisdictional grounds.
- [28] The Respondent had argued that disciplinary proceedings under section 111(1) of the Act can only be instituted against a practitioner who holds a current practising certificate, and as he was not practising and did not hold a current practising certificate, he was not amenable to proceedings under section 111(1).

[29] In that ruling, at paragraphs 10 and 11, this Commission held:

"Section 101(1) is couched in both positive and in the negative form by the use of the words 'whether or not'. Strictly speaking, adding 'or not' to a whether-clause is superfluous or redundant as the conjunction 'whether' already implies a binary choice per se. However, using 'whether or not' explicitly would be necessary if we want to convey the meaning 'regardless of whether,' which means that an act is possible despite any given circumstances. The effect of which is that the LPA will apply to a practitioner whether he is a local legal practitioner or not, whether the practitioner holds a practicing certificate or not and whether the practitioner has ceased to practice as a legal practitioner or not and also whether the practitioner resides in Fiji or not. This provision demarcates and determines the scope of the application of the LPA in respect of disciplinary investigations against practitioners. As explained above the fact that the practitioner does not have a valid practising certificate and residing outside Fiji does not prevent the investigation and institution of disciplinary proceedings against any person whose name remains in the role as a practitioner. The plain meaning of Section 101(1) is clear and unambiguous and does not require further interpretation. As such I hold that the Respondent's argument without considering and adverting to the primary provision determining the application of the LPA is thus misconceived."

[30] The Commission dismissed the Respondent's application in that interlocutory ruling. The Respondent has now raised the jurisdictional issue again in his substantive submissions.

### **The Respondent's Jurisdictional Arguments**

- [31] The Respondent advances a sophisticated argument regarding the relationship between section 101, section 51, and the definition of "practitioner" in the Rules of Professional Conduct and Practice. He contends that:
- (a) Section 101 may provide jurisdiction to investigate any admitted practitioner regardless of whether they hold a practising certificate;
  - (b) However, the charges have been brought under Rule 3.2(i) which requires a practitioner to "act with due courtesy to the court";
  - (c) The definition of "practitioner" in the Rules includes "a practitioner practising on his or her own account";
  - (d) Section 51 provides that only "every person practising as a practitioner and being the holder of a current practising certificate shall be deemed to be an officer of the Court";
  - (e) Rule 3.2(i) concerns a practitioner's duties as an officer of the court;
  - (f) Therefore, the duty under Rule 3.2(i) only applies to practitioners who are both admitted and hold a current practising certificate;
  - (g) Since the Respondent did not hold a practising certificate at the time, he was not an officer of the court and the duty under Rule 3.2(i) did not apply to him.
- [32] The Respondent relies on the case of *Chief Registrar v Meru* FJILSC 1, where I stated at paragraph 6 that a practising certificate is required for a person to be deemed an officer of the court under section 51.
- [33] The Respondent also argues that all previous ILSC cases involving Rule 3.2 concerned practitioners who were in practice with valid practising certificates at the time of the alleged misconduct.

### **Analysis of the Jurisdictional Issue**

- [34] This is a question of statutory interpretation requiring careful analysis of the interplay between different provisions of the Act and the Rules. The issue is whether Rule 3.2(i), which requires a practitioner to act with courtesy to the court, applies only to practitioners who hold current practising certificates or applies to all admitted practitioners regardless of their practising status.
- [35] I begin with the fundamental principle that the Legal Practitioners Act 2009 establishes a comprehensive regulatory framework for the legal profession. The objects of this framework include maintaining public confidence in the legal profession and ensuring the proper administration of justice. These objectives are furthered by holding legal practitioners to high standards of conduct, not only in their professional practice but also in their public statements about the judiciary.
- [36] Section 101(1) must be given full effect. Parliament has deliberately and explicitly provided that complaints and investigations can be made "whether or not" a practitioner "holds a practising certificate." This language is unambiguous. It means that the fact a practitioner does not hold a current practising certificate is no bar to disciplinary proceedings.
- [37] The question then becomes: if section 101 provides jurisdiction over non-practising certificate holders, what conduct standards apply to them? The Respondent argues that without a practising certificate, a practitioner is not an officer of the court under section 51 and therefore the duties in Rule 3.2(i) do not apply.
- [38] I do not accept this narrow construction. The relationship between admission, practising certificates, and professional obligations must be understood in context.

- [39] First, admission to practice as a legal practitioner is not temporary or conditional. Once admitted under section 38 of the Act, a person becomes a member of the legal profession. That status continues unless and until the person is struck off the roll. The Legal Practitioners Act does not provide for automatic removal from the roll upon expiry of a practising certificate.
- [40] Second, the definition of "practitioner" in the Rules includes at paragraph (a) "any person admitted as a legal practitioner in the Fiji Islands" without qualification. Paragraph (b) then extends the definition in certain employment contexts. The primary definition in paragraph (a) is not limited to those holding practising certificates.
- [41] Third, Rule 3.2 states that "a practitioner shall **at all times** act with due courtesy to the court" (emphasis added). The phrase "at all times" is significant. It does not say "while practising" or "while holding a practising certificate." The obligation is continuous and applies at all times, not just during active practice.
- [42] Fourth, the duty of courtesy to the court reflects a fundamental obligation that flows from being a member of the legal profession, not merely from holding a practising certificate. Legal practitioners, by virtue of their training, admission, and special status in the administration of justice, owe duties to the court that extend beyond their active practice. The duty not to publicly denigrate judges and undermine public confidence in the judiciary is such a fundamental obligation.
- [43] The Respondent's interpretation would produce an anomalous result: a legal practitioner could maintain their admission to the roll, allow their practising certificate to lapse, and then engage in conduct that grossly denigrates the judiciary, all while claiming immunity from disciplinary proceedings under the

very Rules that govern professional conduct. This cannot be the intention of the legislation.

- [44] I note the Respondent's reliance on section 51, which provides that a practitioner must hold a current practising certificate to be "deemed to be an officer of the Court." However, section 51 is concerned with the formal status of being an officer of the court for the purposes of practice rights and court appearances. It does not mean that admitted practitioners who do not hold current practising certificates owe no duties whatsoever in relation to the court and the administration of justice.
- [45] The distinction is important. Section 51 defines who has the formal status of an officer of the court for practice purposes. Rule 3.2(i) imposes a duty of courtesy to the court on all practitioners. While active practitioners who are officers of the court under section 51 have heightened duties and responsibilities, this does not mean that admitted practitioners without current practising certificates can publicly denigrate the judiciary with impunity.
- [46] The Respondent argues that the charges allege breach of Rule 3.2(i) and therefore the Applicant must prove that the Respondent met the definition of "practitioner" in the Rules. I agree that the Applicant must prove the Respondent was a "practitioner" as defined in the Rules. However, for the reasons explained, the Respondent did meet that definition. He was "a person admitted as a legal practitioner in the Fiji Islands" within the meaning of the Rules.
- [47] The Respondent's alternative argument is that even if section 101 provides jurisdiction, sections 82(1)(a) and 83(1)(a) require conduct connected to practice matters. Section 82(1)(a) refers to "a substantial or consistent failure to reach or maintain a reasonable standard of competence and diligence." The Respondent

argues this provision concerns practice competence and does not apply to his Facebook post.

[48] While section 82(1)(a) may primarily concern practice competence, section 83(1)(a) has broader application. It provides that professional misconduct includes "conduct consisting of a contravention of this Act, the regulations and rules made under this Act, or the Rules of Professional Conduct and Practice." The charges in this case rely on section 83(1)(a) - contravention of Rule 3.2(i). This is conduct-based rather than competence-based.

[49] Furthermore, section 83(2) provides that professional misconduct "includes malpractice, and 'unsatisfactory professional conduct' includes unprofessional practice **or conduct**" (emphasis added). The use of "or conduct" makes clear that professional misconduct is not limited to acts performed in the course of active practice, but extends to conduct more broadly.

[50] The case law supports a broad interpretation. In *Law Society of N.S.W. v Marando* NSWADT267, endorsed by this Commission in *Chief Registrar v Adish Kumar Narayan* (ILSC No. 09 of 2013) and *Chief Registrar v Tuituku* FJILSC 5, it was held that professional misconduct includes "conduct which would reasonably be regarded as disgraceful or dishonorable by professional colleagues of good repute and competency." This definition is not limited to conduct during active practice. It encompasses any conduct by a legal practitioner that would be regarded as disgraceful or dishonorable by the profession.

#### **Conclusion on Jurisdiction**

[51] For these reasons, I conclude that this Commission has jurisdiction to inquire into the allegations against the Respondent notwithstanding that he did not hold a current practising certificate at the time of the Facebook post. The combined effect of:

- (a) Section 101(1) which explicitly provides for complaints against practitioners "whether or not" they hold a practising certificate;
- (b) The definition of "practitioner" in the Rules which includes any person admitted as a legal practitioner;
- (c) Rule 3.2(i) which requires practitioners to act with courtesy to the court "at all times";
- (d) Section 83(1)(a) which encompasses contraventions of the Rules of Professional Conduct; and
- (e) Section 83(2) which defines professional misconduct to include unprofessional "conduct"

is that the Act and Rules apply to the conduct of all admitted legal practitioners, including those not currently holding practising certificates, where that conduct relates to fundamental professional obligations such as the duty of courtesy to the court and respect for the administration of justice.

#### **THE FACEBOOK POST: CONTENT AND CONTEXT**

[52] Having determined that this Commission has jurisdiction, I turn to examine the Facebook post that forms the subject of both charges.

[53] The Facebook post dated 9 March 2018 was titled "2018 - When 3 judges of the Fiji Court of Appeal get it so wrong!!!!". The post commented on the Court of Appeal's judgment in *Anand Kumar Singh v The Chief Registrar* (ABU 058 of 2013).

[54] The Applicant relies on the following passages from the Facebook post for Count 1:

"The 3 Sri Lankan judges proved beyond any doubt that they are lackeys of the regime who would ignore basic facts so as not to upset the regime."

"How can 3 judges not get it right about a law which is so fundamental to the practice of law?"

"These judges have no clue what they are talking about."

"Further, do you know the difference between decree and an Act?"

[55] For Count 2, the Applicant relies on the following passages:

"The LPD 2009 was foisted on the lawyers in Fiji after the purported abrogation of the 1997 Constitution - an act of treason which saw lawfully appointed judges under the 1997 Constitution sacked and replaced in large part by Sri Lankans. The LPD was never passed by a duly constituted parliament as there was no Parliament at that time!"

"And you say the intention of the legislature (para 77 of judgment) as reflected in the Legal Practitioners Act 2009 - which should read the Legal Practitioner's Decree 2009 - as there was no Parliament at this time so how can the intention of the legislature be gleaned with respect to the LPD 2009?"

## **COUNT 1: UNFAIR DENIGRATION OF THREE JUSTICES**

### **The Nature of the Conduct**

[56] Count 1 alleges that the contents of the Facebook post in its entirety unfairly denigrated three Justices of the Fiji Court of Appeal in relation to their written judgment.

[57] The language used by the Respondent is strong and accusatory. He described the judges as "lackeys of the regime who would ignore basic facts so as not to upset the regime." The term "lackey" is defined as "a servant or someone who behaves like one by obeying someone else's orders or by doing unpleasant work for them."

- [58] To describe judges as "lackeys of the regime" is to accuse them of being subservient, of abandoning judicial independence, and of rendering decisions not based on law but on the dictates of the executive government. This is a serious accusation that strikes at the heart of judicial integrity.
- [59] The Respondent's statement that "these judges have no clue what they are talking about" is a direct attack on the competence and knowledge of the judicial officers. It suggests that the judges were incompetent and did not understand fundamental legal principles.
- [60] The rhetorical question "How can 3 judges not get it right about a law which is so fundamental to the practice of law?" compounds the attack by implying that the judges' alleged errors were so basic that any competent lawyer would have avoided them.

**The Respondent's Defence: Fair Comment**

- [61] The Respondent argues that his comments constituted fair comment based on reliable evidence. He submits extensive documentary evidence including:
- (a) A 2010 Human Rights Watch Report raising concerns about independence of the judiciary;
  - (b) A petition by former President of the Fiji Court of Appeal, Sir William Marshall, dated 21 June 2012, alleging progressive inroads into judicial independence;
  - (c) A 2014 Human Rights Watch Report noting failure to uphold the rule of law;
  - (d) A 2017 Australian Foreign Affairs and Trade (DFAT) Report observing close government control over judicial appointments;
  - (e) US Department of State Country Reports on Human Rights Practices for 2017 and 2018 stating that judicial independence was compromised.

[62] These documents raise serious concerns about judicial independence in Fiji during the period 2009-2018, particularly regarding the appointment of foreign judges and allegations of executive interference in the judiciary.

[63] The question is whether these concerns, even if well-founded, justify or excuse the language used by the Respondent in his Facebook post.

#### **Legal Principles: Criticism of Judges**

[64] It is well-established that judges and courts are not immune from criticism. In a democratic society, public confidence in the administration of justice is maintained not by prohibiting criticism, but by ensuring that criticism is reasoned, fair, and responsible.

[65] Legal practitioners have rights to freedom of expression, including the right to comment on judicial decisions and the administration of justice. However, these rights are not absolute. Legal practitioners, by virtue of their special role in the administration of justice, have heightened responsibilities.

[66] In *Chaudhry v Chief Registrar* FJCA 28 (27 February 2015), a case involving disciplinary proceedings against this same Respondent for discourteous communication with the Chief Registrar, the Court of Appeal stated:

"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 unfavorable 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."

- [67] This passage makes clear that the duty of courtesy extends to writings about judges, not just oral submissions in court. It also makes clear that the duty applies even where the practitioner disagrees with judicial decisions.
- [68] The line between permissible criticism and impermissible denigration must be drawn with care. Factors to consider include:
- (a) Whether the criticism is directed at the reasoning in a judgment or at the personal character and integrity of the judges;
  - (b) Whether the criticism is based on reasoned analysis or consists of intemperate personal attacks;
  - (c) Whether the language used is measured and respectful or inflammatory and insulting;
  - (d) Whether the criticism contributes to legitimate public discourse about legal issues or serves primarily to undermine public confidence in the judiciary;
  - (e) Whether the practitioner has advanced their criticism through appropriate professional channels or has resorted to public attacks.

#### **Application to the Present Case**

- [69] Applying these principles to the present case, I find that the Respondent's Facebook post crossed the line from permissible criticism into impermissible denigration.
- [70] First, the language used was not directed at the reasoning in the judgment but at the character and integrity of the judges. Describing judges as "lackeys of the regime" is not legal analysis; it is a personal attack alleging that the judges

abandoned their judicial independence and rendered decisions to please the government.

- [71] Second, the statement that "these judges have no clue what they are talking about" is not reasoned criticism of legal reasoning; it is an intemperate assertion of judicial incompetence.
- [72] Third, the language was inflammatory and designed to provoke rather than to illuminate. The use of multiple exclamation marks in the title ("get it so wrong!!!!") and the rhetorical questions designed to ridicule the judges demonstrate that the post was intended to inflame rather than inform.
- [73] Fourth, while the Respondent may have had genuine concerns about judicial independence based on the documentary evidence he has produced, this does not justify the personal nature of his attack. If the Respondent believed that the judgment in *Singh v Chief Registrar* was wrong, he could have:
- (a) Written a reasoned article or blog post analyzing the judgment and explaining why, in his view, the Court's interpretation was incorrect;
  - (b) Submitted his concerns through appropriate professional channels;
  - (c) Engaged in public commentary that criticized the reasoning without attacking the character and competence of the judges.
- [74] Instead, the Respondent chose to publicly describe the judges as "lackeys" who "have no clue what they are talking about." This language goes far beyond fair comment.
- [75] The Respondent's documentary evidence about concerns regarding judicial independence in Fiji during this period does not excuse his conduct. Even if there were systemic concerns about judicial independence (which is not for me to

determine in these proceedings), this does not give individual legal practitioners license to personally attack and denigrate judges in intemperate language.

[76] The proper response to concerns about judicial independence is through appropriate institutional mechanisms, reasoned public discourse, and if necessary, appeals to higher courts. It is not through Facebook posts describing judges as incompetent lackeys.

[77] I note that the Respondent's concerns about the Court of Appeal's reference to "the intention of the legislature" in relation to the Legal Practitioners Decree 2009 may have had some technical merit. The Decree was promulgated by the executive rather than passed by a legislature. However, this technical point, even if valid, does not justify the language used by the Respondent.

[78] A legal practitioner could have made this point by stating: "With respect, the Court's reference to 'the intention of the legislature' in paragraph 77 appears problematic given that the Legal Practitioners Decree 2009 was promulgated by decree rather than enacted by a legislature." Such criticism would be measured, respectful, and focused on legal analysis.

[79] The Respondent instead chose language designed to ridicule and demean: describing the judges as having "no clue," asking rhetorical questions implying their incompetence, and accusing them of being "lackeys" who deliberately "ignore basic facts."

#### **Conclusion on Count 1**

[80] I am satisfied to the requisite standard that the Respondent's Facebook post unfairly denigrated three Justices of the Fiji Court of Appeal. The language used constituted a personal attack on their character, integrity, and competence. This

conduct breached Rule 3.2(i) of the Rules of Professional Conduct and Practice, which requires practitioners to act with due courtesy to the court at all times.

[81] The charge is that the Respondent breached Rule 3.2(i) by failing to act with due courtesy to the court. That charge has been proven. As to whether this conduct constitutes professional misconduct under sections 82(1)(a) and 83(1)(a), I find that it does. The conduct constituted a contravention of Rule 3.2(i) and thus falls within section 83(1)(a). It was also unprofessional conduct within the meaning of section 83(2).

[82] In *Re A (Barrister and Solicitor of Auckland)* HC Auckland AP 59-SWO1 (10 December 2001), adopted by this Commission in *Chief Registrar v Robinson Kamal Prasad* (ILSC No. 012 of 2020), it was stated:

"Both in law and in ordinary speech the term 'misconduct' usually implies an act done willfully with a wrong intention, and conveys the idea of intentional wrongdoing. The term implies fault beyond the error of judgment; a wrongful intention, and not a mere error of judgment."

[83] The Respondent's Facebook post was not an error of judgment. It was a deliberate decision to publicly denigrate judges using intemperate and disrespectful language. The wrong intention is evident from the language itself, which was designed to attack and undermine rather than to engage in reasoned discourse.

[84] Count 1 has been proven to the requisite standard.

## **COUNT 2: UNFAIR DENIGRATION OF THE FIJI JUDICIARY**

### **The Nature of the Conduct**

- [85] Count 2 alleges that the Facebook post, in its entirety, unfairly denigrated the Fiji Judiciary.
- [86] This count is broader than Count 1. It alleges that the post attacked not just the three judges who decided the case, but the judiciary as an institution.
- [87] The Applicant relies on passages such as:

"The LPD 2009 was foisted on the lawyers in Fiji after the purported abrogation of the 1997 Constitution - an act of treason which saw lawfully appointed judges under the 1997 Constitution sacked and replaced in large part by Sri Lankans."

- [88] This passage attacks the legitimacy of judicial appointments following the 2009 constitutional changes. While the passage does not specifically attack the competence of judges, it suggests that judges appointed after 2009 (particularly Sri Lankan judges) lack legitimacy.

### **Analysis**

- [89] Count 2 raises more difficult issues than Count 1. The passages relied upon by the Applicant relate to broader political and constitutional issues: the abrogation of the 1997 Constitution, the reconstitution of the judiciary, and the appointment of foreign judges.
- [90] These are matters of legitimate public concern and debate. Citizens, including legal practitioners, have the right to comment on constitutional developments, the composition of the judiciary, and related political matters.

[91] The Respondent's characterization of the constitutional changes as "an act of treason" reflects his view about the legality of those events. While this language is strong, it relates to political and constitutional matters rather than to the conduct of individual judges.

[92] The reference to judges being "sacked and replaced in large part by Sri Lankans" is a factual statement about what occurred following the constitutional changes. While the Respondent's language suggests disapproval, describing what happened is not the same as denigrating the judiciary as an institution.

[93] The more problematic aspect of Count 2 is that it must be read in conjunction with Count 1. The Facebook post is a single document. The passages that clearly denigrate the three judges (addressed under Count 1) form part of the same post that makes broader comments about the judiciary.

[94] Read as a whole, the post does undermine public confidence in the judiciary. The combination of:

- (a) Attacking the three judges as incompetent lackeys;
- (b) Questioning the legitimacy of judicial appointments; and
- (c) Suggesting that judges appointed after 2009 lack independence  
creates an overall impression that the Fiji judiciary cannot be trusted to adjudicate cases fairly and competently.

[95] However, I must be careful to distinguish between:

- (a) Legitimate political and constitutional commentary, even if controversial or disapproved of by others; and
- (b) Unprofessional denigration of the judiciary that crosses the line into professional misconduct.

### **Conclusion on Count 2**

- [96] I find that Count 2 has been proven, but with important qualifications.
- [97] The problematic aspects of the Facebook post in relation to Count 2 are primarily those passages that attack the three judges personally (which are the subject of Count 1). Those passages, by describing sitting judges as incompetent lackeys, inevitably undermine public confidence in the judiciary as an institution.
- [98] The broader political and constitutional commentary in the post, while controversial, is closer to the line of legitimate public discourse. However, when combined with the personal attacks on the judges, the overall effect of the post was to denigrate the judiciary.
- [99] A legal practitioner is entitled to hold and express views about constitutional history, judicial appointments, and related political matters. However, when those views are combined with personal attacks on sitting judges using intemperate language, the combination crosses the line into unprofessional conduct.
- [100] The Respondent could have expressed concerns about judicial appointments and constitutional legitimacy without combining those concerns with personal attacks on judges. By combining the two, the Respondent created a post that, taken in its entirety, unfairly denigrated the Fiji Judiciary.
- [101] I emphasize that my finding on Count 2 is based on the overall effect of the post, including the passages that personally attack the judges. If the post had been limited to political and constitutional commentary without the personal attacks, the result on Count 2 might well have been different.
- [102] Count 2 has been proven to the requisite standard.

## **ADDITIONAL ISSUES**

### **Freedom of Expression**

- [103] The Respondent has not expressly raised freedom of expression as a defence, but it is implicit in his submissions. Section 17(3)(d) and (e) of the 2013 Constitution provide that freedom of expression may be limited by law to the extent necessary in a democratic society, including to maintain the authority and independence of the courts.
- [104] Legal practitioners, like all citizens, have rights to freedom of expression. However, those rights are not absolute. The limitations imposed by Rule 3.2(i) and the disciplinary regime in the Legal Practitioners Act are justified limitations designed to maintain public confidence in the judiciary and the proper administration of justice.
- [105] The limitations are proportionate. Legal practitioners remain free to:
- (a) Criticize judicial decisions through reasoned analysis;
  - (b) Engage in public debate about constitutional and legal issues;
  - (c) Express concerns about systemic issues in the justice system;
  - (d) Advocate for legal reform.
- [106] What legal practitioners cannot do is personally attack and denigrate judges using intemperate language designed to undermine public confidence in the judiciary. This is a reasonable and proportionate limitation that serves the legitimate objective of maintaining the authority and independence of the courts.

### **The Chief Registrar's Standing**

- [107] The Respondent raises an issue about whether the then Chief Registrar brought a fair mind to the proceedings given that the subject matter of the Facebook post related to the Chief Registrar's appointment and performance of duties.

[108] This argument does not affect the findings on the charges. The Chief Registrar's role is to bring complaints before the Commission. It is this Commission, not the Chief Registrar, that determines whether the charges are proven. Whether the Chief Registrar had personal motivations in bringing the complaint is irrelevant to whether the conduct complained of actually occurred and whether it constitutes professional misconduct.

[109] In any event, I note that the complaint was based on a public Facebook post that was visible to anyone. The Chief Registrar's decision to refer the matter to the Commission was within his statutory powers under section 111 of the Act.

### **FINDINGS**

[110] For the reasons set out in this judgment, I make the following findings:

- (a) This Commission has jurisdiction to inquire into the allegations against the Respondent notwithstanding that he did not hold a current practising certificate at the time of the Facebook post. Section 101(1) of the Act explicitly provides for complaints against practitioners whether or not they hold a practising certificate. Rule 3.2(i) requires practitioners to act with courtesy to the court "at all times." These provisions apply to all admitted legal practitioners, including those not currently holding practising certificates.
- (b) The Respondent's Facebook post dated 9 March 2018 breached Rule 3.2(i) of the Rules of Professional Conduct and Practice by failing to act with due courtesy to the court. The post unfairly denigrated three Justices of the Fiji Court of Appeal through personal attacks on their character, integrity, and competence using intemperate and disrespectful language.
- (c) The Facebook post, taken in its entirety, also unfairly denigrated the Fiji Judiciary by combining personal attacks on sitting judges with broader

commentary in a manner that undermined public confidence in the judiciary as an institution.

- (d) This conduct constitutes professional misconduct within the meaning of section 83(1)(a) of the Legal Practitioners Act 2009, being conduct consisting of a contravention of the Rules of Professional Conduct and Practice. It also constitutes unprofessional conduct within the meaning of section 83(2).
- (e) The Respondent's arguments about fair comment do not excuse the conduct. While the Respondent may have had legitimate concerns about judicial independence, these concerns did not justify the intemperate and personally denigrating language used in the Facebook post.

### **CONCLUSION**

- [111] Both charges of professional misconduct against the Respondent, Rajendra Chaudhry, have been proven beyond the preponderance of probabilities.
- [112] The matter will now proceed to the sanctions phase. The parties shall file submissions on mitigation and sanction within 14 days of the date of this judgment.



.....  
**Justice Daniel Goundar**  
**COMMISSIONER**

### **Solicitors:**

Legal Practitioners Unit for the Applicant  
Respondent in Person