IN THE SUPREME COURT OF FIJI
[APPELLATE JURISDICTION]

CIVIL PETITION NO. CBV 0018 of 2024
[Court of Appeal No. ABU 0045 of 2023]

BETWEEN : **SURESH CHANDRA**

Petitioner

AND : **THE CHIEF REGISTRAR**

Respondent

Coram : **The Hon Mr. Justice Salesi Temo**
President of the Supreme Court

The Hon Mr. Justice Anthony Gates
Judge of the Supreme Court

The Hon Mr. Justice Brian Keith
Judge of the Supreme Court

Counsel : **Mr. A. Radojev and Dr. T.V. Hickie for the Petitioner**
: **Mr. A. Chand and Ms. A. Vikash for the Respondent**

Date of Hearing : **9 April 2025**

Date of Judgment : **30 April 2025**

JUDGMENT

Temo, P

1. I agree with His Lordship Mr. Justice Brian Keith's judgment and conclusions.

Gates, J

2. I agree with the following judgment of Keith J, its reasons and orders.

Keith, J

Introduction

3. The legal profession is highly regulated in Fiji, as it is in most parts of the world. That is not surprising. Legal practitioners are expected to demonstrate high standards of integrity and professionalism at all times, and it is important for those standards to be monitored and seen to be maintained. That is why Part 9 of the Legal Practitioners Act 2009 ("the Act") is devoted to the topic of professional standards In this case, it is alleged that the conduct of a particular legal practitioner fell below the high standards expected of him.

4. The practitioner is Suresh Chandra. He was a sole practitioner practicing in Suva under the style of M C Lawyers. He faced six charges of professional misconduct. The Independent Legal Services Commission ("the Commission") found five of those chargers proved. It ordered that his name be removed from the Roll of Legal Practitioners, that M C Lawyers should cease to practice or engage in legal practice with immediate effect, that he should pay a fine of $500,000 to be paid to the credit of his practice's trust account or otherwise be used to meet and settle the sums due to the practice's clients, and to pay $2,000 towards the costs of the Chief Registrar in whose name the proceedings were brought. An appeal to the Court of Appeal against both the findings of guilt and the sanctions imposed was dismissed, and Mr Chandra now applies for leave to appeal to the Supreme Court. His application for leave to appeal is limited to the sanctions imposed. He does not seek to challenge the Court of Appeal's dismissal of his appeal against the findings of guilt.

The statutory framework

5. The Act creates two categories of professional wrongdoing: "professional misconduct" and "unsatisfactory professional conduct". Mr Chandra faced charges of professional misconduct. "Professional misconduct", in relation to a legal practitioner, is defined by section 82(1)(b) of the Act as including "conduct ... that would, if established, justify a finding that the practitioner is not a fit and proper person to engage in legal practice ... ." It is more serious than unsatisfactory professional conduct, and by defining "professional misconduct" as including the conduct specified, the draftsman was not intending the definition to be exhaustive.

6. Section 83(1) of the Act set out examples of conduct which is capable of amounting to "professional misconduct". Since this case is all about Mr Chandra's supervision of the practice's trust account, it is important to note that section 83(1)(h) provides that "professional misconduct" includes "conduct of a legal practitioner … consisting of a contravention of the Trust Accounts Act 1996 (as amended from time to time)". The provisions of the Trust Accounts Act which are relevant for the purposes of this case are sections 4 and 6. They provide (so far as is material):

> *"**4 Accounts and other records to be kept by trustees***
>
> *(1) A trustee shall keep or cause to be kept displayed in the English language such accounting and other records of all trust moneys as–*
>
> *(a) sufficiently explain the transaction recorded therein;*
>
> *(b) disclose at all times the true position regarding all trust moneys held and the application of trust moneys received;*
>
> *(c) are prescribed; and*
>
> *(d) enable the accounting records to be conveniently and properly audited.*

(2) A trustee shall keep all accounting and other records relating to trust moneys at the trustee's sole or principal place of business or at such other places as may be approved in writing by the Registrar except where for the purpose of audit under this Act the accounting and other records are in the possession of an auditor for such time as may be reasonably necessary for that purpose. Copies of such accounting and other records may be kept elsewhere. Paid cheques may be left with the bank that has obtained possession of them.

***(**3) The accounting and other records referred to in this section shall be retained for a period of not less than 6 years by the trustee ... .*

6 Withdrawals of moneys from trust account

(1) A trustee shall not withdraw moneys from a trust account except for the following purposes—

(a) payment to the person on whose behalf the moneys are held or in accordance with that person's directions;

(b) payment to the trustee of disbursements properly paid by the trustee on behalf of the client in question ... ;

(c) payment to the trustee for professional costs in the following circumstances—

(i) where the payment is supported by authorisation in writing by the person on whose behalf the moneys are held ... ."

Mr Chandra was the sole trustee of the practice's trust account.

7. Section 121 0f the Act identifies a number of sanctions which the Commission may impose on a practitioner found to have engaged in professional misconduct or unsatisfactory professional conduct. They include orders that the legal practitioner's name be struck from

the Roll of Legal Practitioners, or that the legal practitioner's practising certificate be cancelled or suspended for such period, or be subject to such conditions, as the Commission deems fit. Alternatively, the legal practitioner may be reprimanded. Whichever of these sanctions are imposed, the legal practitioner may also be ordered to pay a fine or penalty not exceeding $500,000. Finally, the legal practitioner can be ordered to pay compensation to any complainant. There is no limit on the amount of compensation which the legal practitioner may be ordered to pay. Similar sanctions may be imposed on a law firm or its partners if they are found to have engaged in professional misconduct or unsatisfactory professional conduct.

The need for probity

8. There is a passage in the judgment of Sir Thomas Bingham MR (as he then was) in the Court of Appeal of England and Wales in *Bolton v The Law Society* [1994] 2 All ER 486 which echoes down the years. Sir Thomas was explaining why the Solicitors Disciplinary Tribunal in England and Wales sometimes made orders which might otherwise appear harsh. At page 492e, he said "the most fundamental purpose" of those orders was

> *" ... to maintain the reputation of the solicitors' profession as one in which every member of whatever standing, may be trusted to the ends of the earth."*

These are strong words, and they have occasionally enlivened the debate about the levels of probity to which legal practitioners should aspire.

9. Sir Thomas went on to justify his words as follows at pages 492e-g:

> *"To maintain this reputation and sustain public confidence in the integrity of the profession it is often necessary that those guilty of serious lapses are not only expelled but denied readmission. If a member of the public sells his house, very often his largest asset, and entrusts the proceeds to his solicitor, pending re-investment in another house, he is ordinarily entitled to expect that the solicitor will be a person whose trustworthiness is not, and never has been, seriously in question. Otherwise, the whole profession, and the public,*

as a whole, is injured. A profession's most valuable asset is its collective reputation and the confidence which it inspires."

10. The "serious lapses" to which Sir Thomas was referring did not necessarily involve dishonesty on the part of the practitioner. As Sir Thomas said at pages 491h-492a:

> *"Lapses from the required high standard may, of course, take different forms and be of varying degrees. The most serious involves proven dishonesty, whether or not leading to criminal proceedings and criminal penalties. In such cases the tribunal has almost invariably, no matter how strong the mitigation advanced for the solicitor, ordered that he be struck off the Roll of Solicitors. Only infrequently, particularly in recent years, has it been willing to order the restoration to the Roll of a solicitor against whom serious dishonesty has been established, even after a passage of years, and even where the solicitor had made every effort to re-establish himself and redeem his reputation. If a solicitor is not shown to have acted dishonestly, but is shown to have fallen below the required standards of integrity, probity and trustworthiness, his lapse is less serious but it remains very serious indeed in a member of a profession whose reputation depends on trust."*

11. That does not mean that an order that the practitioner be struck off from the Roll of Legal Practitioners should not be made in cases other than dishonesty. As Sir Thomas continued at page 492a:

> *"A striking-off order will not necessarily follow in such a case, but it may well. The decision whether to strike off or to suspend will often involve a fine and difficult exercise of judgment, to be made by the tribunal as an informed and expert body on all the facts of the case."*

That is important in the present case because the Commission did not think that Mr Chandra had acted dishonestly. The professional misconduct in his case amounted to serious negligence on his part.

12. There is one other important point which Sir Thomas made. The purpose of imposing disciplinary sanctions on practitioners who fail to uphold the high standards required of them is not to punish them. That is for the criminal law if their misconduct warrants prosecution. The primary function of disciplinary sanctions is to ensure that the confidence of members of the public in the probity of legal practitioners is maintained. It was in that context that Sir Thomas referred to the need for legal practitioners to "be trusted to the ends of the earth". There is a secondary function of disciplinary sanctions as well – namely to deter the practitioner concerned, as well as other practitioners, from misconducting themselves in the future.

The facts

13. Mr Chandra was 69 years old when the Commission ordered his striking-off. He had joined the Civil Service in Fiji in 1973 and had held a number of responsible positions including becoming the Registrar of Titles in 1985. He qualified as a legal practitioner in 1993, and remained in private practice as a sole practitioner until the events which gave rise to the present case. During that time he also served in a number of important offices, including Chairperson of the Electoral Boundaries Commission and Chairperson of the Electoral Commission. His was on any view a distinguished career.

14. Andrews JA gave the only substantive judgment in the Court of Appeal. She outlined the discovery that the firm's trust account had been misused, and she summarized the investigation which followed. I cannot improve on what she said, and I set it out here. References to the Appellant and the Respondent in what follows are references to Mr Chandra and the Chief Registrar respectively:

> *"[6] As at the time of the events which led to the charges against the Appellant, Mr Arun Kumar Narsey had been the auditor of the trust account for some 20 years. Mr Narsey gave evidence before the Commissioner that the firm had generally been compliant with the provisions of the TAA, and he had not detected any irregularity. In particular, he did not pick up any irregularity in his audit for the*

financial year ending 30 September 2017, as the records provided to him for the purposes of that audit indicated that the firm's bank balance and trust account ledger balanced.

[7] In January 2018, the Appellant informed Mr Narsey that he had discovered that Ms Ashwini Prasad, who was employed by the firm as cashier/clerk, had admitted stealing from the trust account. Her employment had been terminated immediately. On 21 January 2018, Ms Prasad admitted in writing to having taken $435,306 from the trust account, and on 29 January 2018, she made a written admission to having taken a further $700,000. The firm reported the matter to the police. A report was also made to the Minister of Justice and the Respondent.

[8] The Appellant instructed Mr Narsey to investigate in order to determine the extent of any breaches of the trust account for the financial years ending 30 September 2017, 2018, and 2019. Mr Narsey was also directed to re-audit the firm's trust account for those three years. In the course of his inspection of available records, Mr Narsey noted that some records had been tampered with, mutilated, manipulated and/or destroyed.

[9] The Appellant also engaged Mr Gyaneshwar Prasad, an accountant, to reconstruct the firm's trust account ledgers, to ascertain balances in individual clients' trust accounts, and to report any anomalies. Mr Prasad said in evidence before the Commissioner that he was not able to complete a reconstruction, as the firm's records were incomplete.

[10] On 30 July 2020, Mr Narsey provided the Minister of Justice and the Respondent with a preliminary report. He recorded that the report was on the basis of 'accounting from incomplete records'. Having reviewed bank statements, receipts, payments, the firm's general ledger, client

balance listings, and monthly bank account reconciliations, Mr Narsey concluded that preliminary indications were that there was a discrepancy in excess of $1.1million, details of which were yet to be determined.

[11] On 4 August 2020, the Respondent directed the Bank to freeze the firm's trust account. The Respondent also placed the firm in receivership, appointing himself as Receiver.

[12] Mr Narsey provided audit reports for the financial years ending 30 September 2017, 2018, and 2019 on 7 October 2020. His Audit Opinion in the 2017 report was qualified on the grounds that the trustee had not kept proper accounting and other records, and that he had not been able to obtain all the information and explanations necessary for the audit. He recorded that the trustee had estimated an 'unreconciled amount' of $2 million, which was being investigated. Mr Narsey explained the 'unreconciled amount' as being the variance between the balance of the trust account according to its bank statements, and the total balance of all the clients' trust ledger listings. The amount of the variance is 'unreconciled' because it has not been ascertained how the variance is made up or constituted.

[13] In respect of the audit report for the year ending 30 September 2018 (which was also qualified), Mr Narsey noted that except for the period from 1 October 2017 to 31 January 2018, he had obtained all necessary information and explanations. He also noted that the unreconciled amount had increased to $2.139 million. In the report for the year ending 30 September 2019 (again qualified), he recorded that the unreconciled amount of $2.139 million was still being investigated.

[14] On 27 October 2020, Mr Meli Laliqavoka, an investigator/inspector at the Legal Practitioners Unit of the Judicial Department, was instructed

to conduct an investigation into allegations of breaches of trust moneys at the firm. Mr Laliqavoka reviewed the Respondent's complaint file, took statements from Mr Narsey and Mr Prasad, and examined bank statements, correspondence and trust account documents (sourced from both the firm and the Bank).

[15] Mr Laliqavoka examined all trust account cheques from 2014 to 2019. He found 'incomplete cheques', which had been signed although the narration of the amount of the cheque in words had not been completed. He gave evidence to the Commissioner of 38 cheques dated between 14 July 2016 and 19 September 2016 (of which 25 were signed by the Appellant), where the amount in numerals had been altered and increased, and narration of the amount in words had been added after the cheques were signed, to tally with the increased amount in numerals. For example, one cheque referred to by him in evidence was signed as being for $1,300, with no narration of the amount in words, but was altered by changing the numeral '1' to '7', and inserting the narration 'seven thousand three hundred dollars only'.

[16] Correspondence between the Appellant and the Attorney-General and the Respondent was produced at the hearing. On 30 October 2020, the Appellant wrote to the Attorney-General requesting an extension of time to lodge trust account audit reports for the financial years ending 30 September 2017, 2018 and 2019. In support of his request, he referred to his statement to the Police that 'all Trust records' (listed as 'all cheque books for the last 3 years', 'all cheques butts for both the office and trust accounts'), were missing, having been 'removed/stolen' by Ms Prasad.

[17] On 6 November 2020, the Respondent gave notice to the Appellant under s 104 of the LPA that he had instituted an investigation. The Respondent also gave the Appellant notice under s 105 of the LPA that

he had seven days to furnish a sufficient and satisfactory explanation in writing of the matters referred to in the s 104 notice.

[18] The Appellant provided his written response in a letter of explanation dated 13 November 2020. He said that he had learned on 18 January 2018 that a trust account cheque for $500 had been forged to $5,000 by the firm's employee, Ms Prasad. He said that:

> *'... immediately after that I discovered a number of forgeries of cheques and short banking by [Ms Prasad]. Upon interrogation she admitted that the forgeries and manipulation of records before independent witnesses ...*

As the next step, I immediately attempted to secure all the books and records but found that they were all missing for the relevant period. The period 2015, 2016 and 2017 records had been removed by [Ms Prasad]. The only records that were for the bank statements for the period and a ledger book where all the relevant pages of the records for the period in question had been torn off. Only some cheque butts could be recovered. ...

[Ms Prasad] had used the Office Account in some cases to deplete the Trust Account as follows:-

(a) When by authorities from clients who had some monies in the Trust Account gave authorities to [the firm] to deduct professional fees and disbursements

(b) A cheque was written from the Trust Account fees and disbursements to deposit in the Office Account was forged by adding one or two zeros.

(c) *The extra money ending up in the Office Account had again been withdrawn by forging the cash cheque adding again one or two zeros to the original cheque amount.'*

[19] *The Appellant gave examples of trust account cheques having been forged: one for $600 having been altered so that the amount received into the firm's office account was $16,000, and one for $1,912.50 having been altered to $11,912.50. Further, receipts were altered to tally: a receipt was issued for $23,500 where the amount deposited into the cash account was $2,350, and a receipt for $3000 was altered to $30.*

[20] *The Appellant said that it had been established that the following records had been physically removed from the firm:*

(a) *<u>All receipts books</u> for the last 3 years to January 2018 (2015, 2016 & 2017);*

(b) *<u>All cheque books</u> (butts) for both accounts for the last 3 years to January 2018;*

(c) *<u>2 ledger books</u> missing and one had some pages torn off from the book;*

(d) *<u>All deposit book banking record</u> missing for 3 years 2015 to 2017; and*

(e) *<u>All account records</u> correspondence in [Ms Prasad's] computer system had been deleted.*

[21] *The Appellant referred to Mr Narsey's conclusion that 'the sum of $2.139 million was unreconciled'. He also referred to Mr Gyaneshwar Prasad's reconstruction of the trust account, and said that Mr Prasad's report:*

> *'...would include balances if any of each of the client accounts totalling a short fall of $2.139 million. Currently it is not established how much each of the accounts are affected.'*

[22] On 14 March 2021, the Respondent gave the Appellant notice pursuant to s 106 of the LPA that he required him to provide, for the period 1 October 2014 to 30 September 2018:

1. *Cheque Butts,*
2. *Receipt Books,*
3. *Payment Vouchers,*
4. *Receipts and Payment journal,*
5. *Bank Deposit Book with Bank of Baroda,*
6. *Clients Ledger Book,*
7. *Bank/Ledger Monthly Reconciliation*
8. *Office Account Bank Statements*

[23] The Appellant responded to the Respondent by a letter 15 April 2021. He attached copies of trust account cheque butts for November 2015 to September 2018, trust account receipts for April 2016 to September 2018, trust account payment vouchers for September 2015 to September 2018, the receipts and payment journal for the trust account for January 2015 to September 2018, client ledger book from October 2014 to September 2018, monthly bank/ledger reconciliations for January 2016 to December 2016 and February 2018 to September 2018, and office account bank statements for October 2014 to September 2018. He said that documents for other periods had been removed from the office and/or destroyed by Ms Prasad or (in the case of the clients' ledger book) pages 1 to 29 had been torn off and were missing.

[24] Prior to the hearing of this appeal, an order was made, by consent, that fresh evidence could be provided to the Court, comprising an audit

report for the financial year ending 30 September 2020 (on instructions from the Respondent) and details of claims made by former clients of the firm to the Respondent's office and/or the Fidelity Fund (via the ILSC). As at March 2024, those claims amounted to $3,074,272.89."

The charges

15. The five charges which the Commission found established were accurately summarized by Andrews JA as follows – namely, that as the sole practitioner of the practice and the sole trustee of the practice's trust account Mr Chandra:

- between 1 October 2016 and 30 September 2019 failed to ensure that trust moneys kept in the trust account were not used for unauthorised purposes (charge 1)
- between 1 October 2016 and 30 September 2017 failed to supervise and monitor properly all transactions made from the trust account, and as a result of that failure the trust account had an unreconciled amount of $2,000,000 (charge 2)
- between 1 October 2017 and 30 September 2019 failed to supervise and monitor properly all transactions made from the trust account, and as a result of that failure the trust account had an unreconciled amount of $2,139,000 (charge 3)
- between 1 October 2016 and 30 September 2017 failed to maintain and/or keep proper accounting records (charge 4)
- between 14 July 2016 and 19 September 2017 authorised withdrawals from the trust account by signing 25 cheques which had been incompletely drawn, which resulted in unauthorised withdrawals being made from the trust account (charge 5).

Each of these charges alleged that Mr Chandra's conduct constituted professional misconduct of such a kind which, if established, would justify a finding that he was not a fit and proper person to engage in the practice of law in Fiji.

The gravity of Mr Chandra's misconduct

16. The Commission took a grave view of Mr Chandra's misconduct. In its opinion, Mr Chandra had enabled Ms Prasad to embezzle funds from the practice's trust account by failing to supervise her, by failing to ensure that the rules relating to trust accounts were adhered to strictly, and by providing her with a series of incomplete unsigned cheques. This had gone on for a long time, and the sums which were missing were very substantial indeed. This was not simply the delegation of responsibility of the management for the trust account to an employee in whom too much faith had been entrusted but who it turned out had betrayed that trust. Rather it was "a serious abdication" of Mr Chandra's obligation to supervise Ms Prasad's management of the trust account. It was that which had created the environment in which Ms Prasad's fraud had flourished.

17. All of this was encapsulated in the core passage in the Commission's judgment on the appropriate sanction (para 16):

> *"I find that the nature and gravity of the Respondent's misconduct viewed objectively calls for a severe sanction. As discussed earlier, the Respondent's misconduct included the failure to properly supervise his staff and amongst other things, providing a large number of unsigned incomplete trust cheques to the employee. In many ways, it is this foundational and fundamental failure that led to the other matters described in the allegation. It is clear that a trust reconciliation, if properly and randomly … conducted within the two-year period would have alerted and revealed the fraudulent manipulation of the trust account balance. A timely discovery should have interrupted the scheme of the employee. Essentially, unsupervised staff and the failure to reconcile the trust account on a monthly basis for almost two-years provided the environment for the fraud. The Respondent is responsible through his own casual, careless and cavalier approach in managing the trust account, signing incomplete cheques and his failure to supervise."*

18. When it came to determining what the severe sanction which the case called for should be, the Commission noted that Mr Chandra had consistently failed to accept responsibility for his failure to supervise the management of the trust account to the required standard. The Commission referred to what it described as Mr Chandra's "persistent attempt[s]" to shift the blame for what happened to others – to Ms Prasad, of course, but also to the auditors for their failure to pick up the discrepancies for the two relevant years. It was only after the charges had been found proved that Mr Chandra belatedly accepted that he could have acted with greater diligence in his supervision of Ms Prasad. All in all, the Commission concluded that the ultimate sanction of striking-off was both "appropriate and necessary … to protect the public confidence in the legal profession".

Mr Chandra's case in the Supreme Court

19. A number of factors are said to warrant a different view being taken of Mr Chandra's case from that of the Commission. They are:

- Mr Chandra's conduct did not amount to dishonesty: it was negligent, albeit negligence of a most serious kind.
- On discovering Ms Prasad's fraud, Mr Chandra dismissed her from her employment immediately.
- Mr Chandra had an otherwise unblemished record as a practitioner.
- Mr Chandra was a person of previous good character, who had in the past held a variety of public roles of trust and confidence which he had performed honestly and diligently.
- Mr Chandra admitted his culpability in his failure properly to supervise Ms Prasad's management of the trust accounts.
- The loss of Mr Chandra's career, the public disgrace and the continuing stress which he was under as a result of the proceedings brought against him had had a salutary effect on him.
- Mr Chandra is in poor health with significant heart and urology problems. It is said that the decline in his health may have contributed to the errors of judgment he made.

Mr Chandra's legal team acknowledge that, with the exception of Mr Chandra's health, the Commission took all these factors into account. The evidence about his ill-health was not before either the Commission or the Court of Appeal. I have nevertheless taken it into account.

The approach of an appellate court

20. The challenge to the order striking Mr Chandra from the Roll of Legal Practitioners is on the basis that it was "disproportionate and manifestly excessive". By "disproportionate" what is alleged is that the sanction of striking-off in Mr Chandra's case was not a proportionate response to the level of his misconduct. And the phrase "manifestly excessive" has been imported from those jurisdictions in which one of the circumstances in which appellate courts will allow an appeal against sentence in a criminal case is where the sentence was "manifestly excessive". I understand entirely what Mr Chandra's advisers are saying, but I prefer to use language which is consistent with a more conventional approach. In what follows I attempt to state that approach.

21. It is important to remember that the appeal to the Court of Appeal was not a rehearing. Nor is the proposed appeal to the Supreme Court. It is a review of the decision of the Commission, as was the appeal to the Court of Appeal. That means that it is not for the Supreme Court to consider what the appropriate sanctions should have been in this case or to substitute its own view for that of the Commission. Its function a narrower one. As Asquith LJ said in a memorable passage his judgment in the Court of Appeal of England and Wales in *Bellenden (formerly Satterthwaite) v Satterthwaite* [1948] 1 All ER 343 at page 345:

> *"We are here concerned with a judicial discretion, and it is of the essence of such a discretion that on the same evidence two different minds might reach widely different decisions without either being appealable. It is only where the decision exceeds the generous ambit within which reasonable disagreement is possible, and is, in fact, plainly wrong, that an appellate body is entitled to interfere."*

So the issue for the Supreme Court is whether the Commission's decision to order that Mr Chandra's name be struck from the Roll of Legal Practitioners was outside the generous ambit within which reasonable disagreement is possible. Putting it in another way, the Supreme Court can only interfere with the sanction of striking-off which the Commission thought appropriate if the Commission exercised such discretion as it had in a way which was not reasonably open to it.

22. Nor should it be overlooked that the Commission is a specialist body. The Commission consists of a Commissioner, and the person appointed to that office has to satisfy the Attorney-General, among other things, that he or she "is familiar with the nature of the legal system and legal practice in Fiji": see section 85(3) of the Act. The Commissioner for the time being determines all the cases brought to the Commission during his tenure of office. That means that the Commissioner for the time being acquires considerable experience in determining the appropriate sanction in disciplinary proceedings involving legal practitioners: he or she gets a "feel" for what the appropriate sanction in a particular kind of case should be.

23. That is not to say that the appellate courts should always defer to the views of the Commissioner, but it does mean that the Commissioner's view about the appropriate sanction deserves respect. After all, the legislature has entrusted to the Commission the determination of the appropriate sanction in disciplinary proceedings involving legal practitioners, and the decisions of specialist bodies should not be readily overturned. As Baroness Hale of Richmond said in the English House of Lords in *AH (Sudan) v The Home Secretary* [2008] 1 AC 678 at para 30 in an appeal which had come to the courts from the Asylum and Immigration Tribunal:

> *" ... This is an expert tribunal charged with administering a complex area of law in challenging circumstances. ... the ordinary courts should approach appeals from ... [such expert tribunals] ... with an appropriate degree of caution; it is probable that in understanding and applying the law in their specialised field the tribunal will have got it right ... They and they alone are the judges of the facts. It is not enough that their decision on those facts may*

seem harsh to people who have not heard and read the evidence and arguments which they have heard and read. Their decisions should be respected unless it is quite clear that they have misdirected themselves in law. Appellate courts should not rush to find such misdirections simply because they might have reached a different conclusion on the facts or expressed themselves differently."

24. The relevant authorities were considered at length by Gross LJ in the Court of Appeal of England and Wales in *The Criminal Injuries Compensation Authority v Hutton and ors* [2016] EWCA (Civ) 1305. At para 57 he said that they showed that the Court of Appeal:

> *" ... should exercise restraint and proceed with caution before interfering with decisions of specialist tribunals. Not only do such tribunals have the expertise which the 'ordinary' courts may not have but when a specialised statutory scheme has been entrusted by Parliament to tribunals, the Court should not venture too readily into their field."*

For these reasons, rather than asking whether the sanction of striking-off in this case was disproportionate and manifestly excessive, I prefer to ask whether the sanction of striking-off could reasonably be said to be within the range of sanctions which were appropriate for the level of Mr Chandra's misconduct or whether it was outside the generous ambit within which reasonable disagreement is possible.

The "maximum" sanction

25. One of the submissions advanced on behalf of Mr Chandra was that the maximum sanction – that of striking-off – should be reserved for the most serious cases. Since Mr Chandra's case could not be said to come within the most serious category of cases because he had not acted dishonestly, the maximum sanction of striking-off was inappropriate. That was said to apply particularly in this case because Mr Chandra was also fined the maximum amount. That submission echoed what has sometimes been said in criminal cases – namely that the maximum sentence permitted by statute for a particular offence should be reserved for the very worst form of that offence.

26. I do not believe that the analogy with criminal cases is an apt one. The most serious punishment which the court can impose in a criminal case is a sentence of imprisonment. Such a sentence will be appropriate for offences of varying degrees of gravity. A short sentence of imprisonment will be appropriate for a case which crosses the threshold for imprisonment by a relatively small margin, whereas a longer sentence of imprisonment will be imposed for a more serious case, right up to a sentence of imprisonment of the maximum length permitted for the offence. I accept entirely that a sentence of imprisonment of the maximum length is reserved for the most serious example of the offence, but the feature of sentencing in criminal cases which is relevant for present purposes is that there are a wide range of options for the sentencing court when it comes to a sentence of imprisonment – ranging from a short sentence of imprisonment to a sentence of imprisonment of the maximum length permitted.

27. That is to be contrasted with the maximum sanction of striking-off in disciplinary proceedings involving legal practitioners. There is no range of options within that sanction. The legal practitioner is either struck off or is not. It follows that that there may be a number of cases of varying degrees of gravity for which an order for striking-off may be appropriate, and that includes cases which are not within the most serious category of cases.

28. For the reasons which the Commission gave, I have concluded that the sanction of striking-off could reasonably be said to be within the range of sanctions which were appropriate for the level of Mr Chandra's misconduct. It was open to the Commission to conclude that public confidence in the honesty and integrity of legal practitioners was liable to be eroded if so serious a failure by a sole practitioner to supervise the member of staff solely responsible for the management of the practice's trust account was met with any sanction less than the striking off of the practitioner concerned. Notwithstanding Mr Chandra's personal mitigation, the commission was entitled to conclude, to use the words of the Court of Appeal, that the sanction of striking-off was the only "commensurate response" to misconduct of this kind which lasted for so long and which had such serious consequences for the practice's clients.

The police investigation

29. In the interests of completeness, I should add that in the course of the hearing in the Supreme Court, Mr Chandra's legal team was asked whether Ms Prasad had been prosecuted. We were told that she had not been. Since the hearing, Mr Chandra has sworn two further affidavits which show that in January 2020 he gave a detailed statement to the police about what Ms Prasad had done and what was then known about the sums she had embezzled, and that since the beginning of 2025 he has been seeking progress reports about the investigation from the police. In case it should be thought otherwise, the court's inquiry was made as a matter of curiosity only, and we have not taken it into account in determining whether the sanction of striking-off was within or outside the generous ambit within which reasonable disagreement is possible.

The fine

30. The Commission thought that a "substantial" fine should be imposed which could be used to repay – at least in part – those of Mr Chandra's clients who had lost money as a result of the misuse of the trust account. That was not an appropriate reason for fining Mr Chandra. As I have said, the purpose of imposing sanctions on legal practitioners is to restore public confidence in the profession and to deter practitioners from misconducting themselves in the future. *That applies just as much to fines as it does to the other sanctions available to the Commission*. That needs to be stated as it is apparent from this case that the Commission thought otherwise. It follows that the imposition of a fine is not for the purpose of compensating those of a legal practitioner's clients who have been adversely affected by the practitioner's misconduct. The course which the Commission should have taken – to the extent that it wanted to compensate Mr Chandra's clients – was to order him to pay them such compensation as it thought appropriate.

31. In my opinion, we should respect the Commission's view that the appropriate sum which Mr Chandra should have to pay was $500,000, but in requiring such a payment to be made I think that we should reflect the Commission's wish that the money be used to compensate

Mr Chandra's clients. For my part, I would set aside the fine of $500.000, but I would substitute for it a fine of $100,000 and an order of compensation in the sum of $400,000.

Conclusion

32. For these reasons, I have concluded that this appeal has raised a matter of substantial general interest to the administration of civil justice – namely whether it is proper for the Commission to impose a fine on a legal practitioner under section 121 of the Act for the purposes of compensating any of the legal practitioner's clients who have been adversely affected by the legal practitioner's misconduct. I would therefore grant Mr Chandra leave to appeal. In accordance with the usual practice of the Supreme Court, I would treat the hearing of the application for leave to appeal as the hearing of the appeal, but I would dismiss the appeal, save that I would set aside the fine of $500,000, I would substitute for it a fine of $100,000 and I would order Mr Chandra to pay compensation of $400,000. I would leave it to the Chief Registrar, acting through the Legal Practitioners Unit, to determine which of the various complainants should be paid compensation from this sum and in what amount.

33. I deal finally with the question of costs and expenses. The investigation onto the firm's trust account took a great deal of time. It would have involved very many hours' work. That would have been at considerable expense. The Commission may make such orders for costs and expenses as it thinks fit against a legal practitioner: see section 124 (1) of the Act. In this case, the Commission ordered Mr Chandra to pay $2,000 towards the legal costs of the Chief Registrar. I doubt whether that was sufficient in view of the complexity of the investigation into what had happened, but there was no cross-appeal against that award by the Chief Registrar, and I say no more about it.

34. The Court of Appeal ordered Mr Chandra to pay $5,000 towards the Chief Registrar's costs of the appeal to the Court of Appeal. There was a considerable body of fresh evidence relied on by the Chief Registrar in the Court of Appeal, and it may be that the Court of Appeal's order did not sufficiently reflect that. Again, there has not been any cross-appeal by the Chief Registrar, and I likewise say no more on the topic. In my opinion, the appropriate sum to order Mr Chandra to pay towards the Chief Registrar's costs of the appeal to the Supreme

Court – bearing in mind that there has been some fresh evidence and submissions filed in the light of issues and questions raised by the court – is the sum of $8,000.

Orders:

(1) Leave to appeal granted.

(2) The appeal be dismissed, save that the fine of $500,000 be set aside, that a fine of $100,000 be substituted for it, and that the petitioner must pay the sum of $400,000 as compensation, with the Respondent determining which of the complainants should be compensated from that sum and in what amount.

(3) The Petitioner to pay $8,000 towards the Respondent's costs of the appeal to the Supreme Court.

The Hon Mr. Justice Salesi Temo
President of the Supreme Court

The Hon Mr. Justice Anthony Gates
Judge of the Supreme Court

The Hon Mr. Justice Brian Keith
Judge of the Supreme Court

Solicitors:

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Legal Petitioners Unit for the Respondent