

**IN THE INDEPENDENT LEGAL SERVICES COMMISSION  
AT SUVA**

ILSC No: 002 of 2012

BETWEEN:

**RAJENDRA CHAUDHRY**  
Applicant

AND:

**CHIEF REGISTRAR**  
Respondent

Applicant in person  
Ms L. Vateitei for the Respondent

Dates of hearing: 12, 19, 26 October 2012  
Date of ruling: 4 December 2012

**RULING**  
**STAY APPLICATION**

1. The applicant seeks a stay of the orders of this Commission made on 5th October 2012 in which the following orders were given:

- 1) That he be suspended from practice as a practitioner in Fiji until March 2017.
- 2) That he be publicly reprimanded.
- 3) That he pay costs to the Commission of \$1000 such costs to be shared equally between the Commission and the Legal Practitioners Unit of the Chief Registrar's office.
- 4) That he be allowed to remain in practice for 21 days to wind up his affairs.
- 5) That he undertake 5 hours of legal ethics training before re-certification.

2. The applicant asks that the orders be stayed pending appeal of the judgment and sentence.

3. The notice of appeal (Civil Appeal No. ABU 0060 of 2012) was filed on the 8th October, 2012. By section 25(1) of the Court of Appeal rules, no appeal shall operate as a stay of proceedings from the court of first instance and section 26(3) of the Rules provides that an application be first made to that court of first instance, namely this Commission.

4. The respondent now does so by way of Notice of Motion dated 8th October 2012 and

accompanying affidavit of the applicant himself. He has made and filed a supplementary affidavit in support dated 11th October 2012.

### **The Law**

5. In the ruling on stay in **Haroon Ali Shah** (ILSC 7/2010) I set out the law applicable to stay applications and I rehearse those dicta here.

"The principles applicable to stay applications generally are found in the decision of the Court of Appeal in **Natural Waters of Viti Limited v Crystal Clear Mineral Water (Fiji) Ltd.** (ABU 11/2004) where the Court said (at para 7):

- (a) *Whether if no stay is granted, the applicant's right of appeal will be rendered nugatory (this is not determinative).*
- (b) *Whether the successful party will be injuriously affected by the stay.*
- (c) *The bona fides of the applicant as to the prosecution of the appeal.*
- (d) *The effect on third parties.*
- (e) *Novelty and importance of questions involved.*
- (f) *The public interest in the proceedings.*
- (g) *The overall balance of convenience and the status quo.*

These general principles have to be considered however taking account of the nature of the orders sought to be stayed:

*"The overriding principle in an application for stay is to ask what the interests of justice require. Where such an application involves professional rights to practice, the public interest is entitled to significant weight in the exercise of the Court's discretion." **NSW Bar Association v Stevens** [2003] NSWCA 95.*

Again in **Stevens** (supra) Spiegeman C.J said (at para 91):

*"The relevant authorities indicate that the protection of the public is a matter entitled to significant weight on an application for a stay once it appears that a professional person has acted improperly to a substantial degree."*

In **Bryant v Commonwealth Bank of Australia** (1996) 70 ALJR306 at 309, Kirby J said:

*"In the exercise of the jurisdiction to provide a stay, it has often been emphasized that cases involving a stay of the operation of the criminal law or laws designed to protect the public (eg deregistration of a professional lawyer or medical practitioner) are in a class*

*different from cases involving no more than the suspension of the operation of orders affecting two private litigants only."*

Again in *Stevens*, Spiegeman C.J said (para 104):

*"The fact that the issues involved in professional rights to practice concern the protection of the public means that the public interest is always entitled to significant weight"*

and later (para 150)

*"Where as here there are proceedings on foot to permanently remove a legal practitioner from the Roll of Legal Practitioners, which proceedings can be seen to have substantial prospects of success, the court should be very slow to exercise its discretion in such a way as permits the practitioner to continue in practice pending the determination of such proceedings. This Court must be anxious to protect public confidence in the legal profession. Such confidence is likely to be undermined if a practitioner whose right to practice is the subject of serious challenge is able to successfully call upon the Court to exercise a discretion in his or her favour permitting him or her to continue in practice pending the ultimate determination."*

In viewing these remarks of Spiegeman C.J the Court of Appeal (Supreme Court) of Queensland said in *Legal Services Commissioner v Baker* [2005] QCA 482:

*"These last remarks carry even greater force in a case, such as this, in which there has actually been a hearing and the tribunal has found that a practitioner is unfit to practice."*

Later the Court said:

*"In particular it should be accepted that an applicant for stay of a recommendation that his name be removed from the role (sic) of Legal Practitioners should show a cogent reason for the stay, and he will not do so merely by showing that he will be unable to practice his profession until his appeal is heard and allowed. Each practitioner who is suspended from practice or whose name is removed from the roll suffers that prejudice but it is clearly not right that a stay is, or should be, granted as a matter of course. Something more must be shown than "prejudice" of this kind. The additional factors which would justify a stay must be such as outweigh the public interest in having unfit practitioners debarred from practice. That interest is to be afforded particular significance"."*

6. That rehearsal of the law applicable to practitioners who have been removed, either temporarily or permanently from the roll of practitioners is totally applicable to the within application.

### **The respondent's application**

7. In his original affidavit in support of the motion to stay the applicant devotes much of his deposition to points of appeal against the judgment and sentence of this Commission in his disciplinary proceedings. By way of a supplementary affidavit the applicant prays that I as Commissioner had previously as a Judge of the High Court presided over proceedings where the applicant appeared for Ms Balaggan without denying him the right to appear because of a conflict of interest.

8. In the original affidavit and in his oral submissions, the applicant prays that there are "strong prospects of success" in his appeal and that he has a family and a retinue of staff to support with mortgage repayments, living expenses and salaries to staff. He prays that he has cases pending, some of which are matters in which he is appearing *pro bono*.

9. In written submissions placed before the Commission the applicant again refers in detail to his grounds of appeal against judgment and once more iterates that his personal life and the lives of his legal staff would be affected if he were not permitted to remain in practice.

10. In his oral submissions before the Commission, the applicant spent a long time arguing that there were procedural irregularities pertaining to his hearing and arguing questions of semantics, none of his arguments taking his application any further.

11. The respondent (Chief Registrar) has filed written submissions in response to the application. The Registrar submits that much of the material submitted as grounds for stay by the applicant is material never raised at the hearing or at mitigation and that his evident refusal to appreciate the nature of his wrong-doing is in itself evidence of his being unfit to practice and to therefore he should be denied a stay of the orders.

12. The respondent reminds the Commission of the Court of Appeal's decision in *Dorsami Naidu v Chief Registrar* (ABU 38 of 2010) in which William Marshall J.A said:

*"I have no doubt that the simple rules that govern the application in this case come down to two. These are:*

*(1) Is there proven a special circumstance which stands in the way of the regulator successful at first instance, whose position is strengthened by representing an important public interest, from enforcing the fruits of his judgment?*

*(2) Are there special or exceptional chances of success with regard to the practitioner's appeal?"*

13. In the Supreme Court case of *Stephen Patrick Ward v Chandra* CBV0010.10 (20 April 2011), Gates C.J as President of the Court referred to the Court's previous findings that grounds of appeal had to have "every chance of success" and cited with approval the case of *Winchester Cigarette Machinery Ltd. v Payne (No.2)* (1993) TLR 647 in which the Court had said that for an application for stay "*the appellant had to show some special circumstances which took the case out of the ordinary.*"

**Analysis**

14. The bulk of the applicant's submissions, both written and oral, in support of stay of orders, rely on his perceived grounds of appeal against the final judgment of this Commission. It is not for me to delve into the grounds of appeal in this application save as to cursorily gauge their chance of success. The applicant raises points that were never raised at the hearing of his matter and the grounds appear to be based on his continuing misunderstanding of the concepts of conflict of interest and discourtesy to the Court. To think that a Court tacitly allowing his appearance is condoning his conflict is an astonishing failure to understand what a conflict of interest is. Nor do grounds of appeal that attack the tribunal making the orders appealed from carry much weight.

15. The applicant in maintaining that his conflict was a matter between him and his client to resolve, clearly displays a misconception which is not tenable for a fit and proper person to be practicing law. The authorities (cited *supra*) are clear in that protection of society (which must include the Courts) is the paramount consideration in assessing an application for stay of the suspension or striking off of a legal practitioner.

16. The applicant's personal misfortune and that of his former staff members is a situation to be faced by any practitioner being found in default by his or her regulatory body and again the authorities are clear that the public interest must outweigh consideration of personal hardship.

17. There being no exceptional circumstances in existence nor compelling grounds of appeal, the application for stay is refused.

**Justice Paul K. Madigan**  
**Commissioner**

At Suva  
4 December 2012