

**IN THE INDEPENDENT  
LEGAL SERVICES COMMISSION**

NO. 009 of 2009

BETWEEN :

**CHIEF REGISTRAR**  
Applicant

AND :

**IFTAKHAR IQBAL AHMAD KHAN**  
Respondent

**Applicant :** Ms L Vateitei

**Respondent :** Mr A Naco for absent Respondent

**Dates of Hearing:** 11th November 2013

**Date of Judgment:** 11th December 2013

**JUDGMENT**

1. On the 1st of December 2009, the applicant filed 25 charges against the Respondent ("practitioner") which did not proceed. The practitioner had made a recusal application to the then Commissioner Connors, an application which did not succeed. The practitioner thereafter appealed the Commissioner's ruling and that appeal was before the Court of Appeal until 19th of February 2013 when the practitioner indicated to the Commission that he was no longer prosecuting his appeal.
2. The complaints were then again brought before the Commission on 11th of March 2013 and hearing dates of 5th to 15th of November 2013 were fixed. Three days before that hearing, the practitioner filed an application for me to recuse myself, an application which again failed [Ruling, dated 5th of November 2013].
3. For this adjourned hearing, the Registrar proceeded on an amended application in that he relied on four of the 2009 allegations for hearing. At the practitioners request the hearing was adjourned for a few days until 11th of November 2013.
4. On the 8th November 2013 (one working day before hearing) the practitioner applied to the Chief Registrar to have the hearing dates vacated on the grounds of ill health. The Registrar quite properly passed the decision to vacate to the Commission. The application to vacate was refused on the grounds that it was not properly founded and quite clearly a further delay tactic [Extempore Ruling, dated 11th of November 2013].

5. The practitioner failed to appear at the hearing but sent counsel now appearing to press the ill health vacation of trial issue. This Commission decided to proceed on the amended application and counsel instructed on the vacation of trial represented the absent practitioner at that hearing.

6. The Registrar then decided to proceed on only two of the four allegations made in the amended application. These two allegations read as follows:

#### **COMPLAINT 1A**

*On 28th of January 2009, Mr. Iqbal Khan failed to conduct himself in a professional manner when he appeared on Fiji One News at 6pm and made open derogatory remarks saying ".....the police officers grabbed him from his house, drag him, take him to police station, keep him there, and assault him..." and he added "we are suing the police officers individually, so they'll have to sell their underwear to pay the damages, because this report speaks for itself, this is a police medical report where they confirm that this person was assaulted in police custody.. ", which comments were against the Police officers who were involved in a matter concerning his client on National Television, which conduct was an act of professional misconduct.*

#### **COMPLAINT 1B**

*On 28th of January 2009, Mr. Iqbal Khan failed to conduct himself in a professional manner when he appeared on Fiji One News at 6pm and openly talked about the proceedings in the High Court matter no. 31 of 2009 of Faiyaz Khan v Inspector Abdul whilst the proceedings were still pending which conduct was an act of professional misconduct.*

#### **COMPLAINT 4**

*IQBAL KHAN a legal practitioner, between the 28th of March 2008 and the 29th of March 2008 in his capacity as principal of Iqbal Khan & Associates, having received the sum of \$500 from Mohammed Yunus Hussain, failed to disclose to Mohammed Yunus Hussain that he was also acting for Alvin Raj the co-accused who had conflicting defences in the criminal matter the said Mohammed Yunus Hussain was charged thereof, falling short of the standards of competence and diligence that a member of the public is entitled to expect of a reasonably competent or professional legal practitioner, which conduct was an act of professional misconduct.*

7. The matters proceeding and the practitioner not being represented, the Commission entered pleas of not guilty to both counts on behalf of the practitioner.

#### **EVIDENCE ON THE FIRST ALLEGATION**

8. Assistant Superintendent of Police, Abdul, gave sworn evidence that on 27th of January 2009 when watching the national news on TV1, he was astonished to see the practitioner

appearing on television carrying in his hand a writ which the camera clearly showed with his (Abdul's) name on it as an acting Inspector of the Criminal Investigation Department (CID). In an interview on camera, the practitioner said he was suing this Police officer and showed the name of the witness quite clearly on the writ, suing him for assaulting his client. The witness said that at that time the writ had never been served on him and that was the first time he was aware of the writ. As a result of this telecast, the witness said that he had calls from his superiors asking what it was about and complaining that they had not been briefed beforehand. On the following day (28th of January 2009) he was served with the writ.

9. In the news on the 2nd day (28th of January) Mr Khan, the practitioner, appeared again saying that the writ had been served on the police officer. The witness then produced a transcript of that 2nd telecast, and made brief quotes from it. The witness read the following quotes attributed to the practitioner, quotes which are clearly stated in the exhibit.

*"He is a first time offender; never appeared in a court of law, the police officers grabbed him from his house, drag him, take him to the police station, keep him there, and assault him."*

*"The police legal report confirms that the injuries he suffered was in police custody, its their own report, and there they describes injuries; that he got a black eye, injuries on his left leg, knee, bum. All black clots, if one could only see the photographs, it's shocking, and this must stop."*

*"The Commissioner told us that he had warned the police officers, that don't do these things but if you do, you'll take the full brunt of the law, so therefore we are not suing the commissioner, we are suing the police officers individually, so they'll have to sell their underwear to pay damages, because this report speaks for itself, this is a police medical report where they confirm that this person was assaulted in police custody, now somebody must explain."*

10. In cross examination ASP Abdul admitted that the quotes of the practitioner did not refer to him personally and he also admitted that he had filed a complaint initially to the Fiji Law Society on his own behalf and not on behalf of the police force. He was granted leave by the Commissioner of Police to do so.

11. ASP wrote to the Fiji Law Society ("FLS") complaining about the practitioner's interview on television. The FLS wrote to the practitioner requesting an explanation and the practitioner replied by way of a nasty and abusive letter of 17th of April 2009 in which he refused to comment because the matter was now "sub judice". When the Chief Registrar became seized of the FLS complaints on enactment of the Legal Practitioners Decree 2009 ("the Decree") she again wrote asking for an explanation of the complaint. The practitioner replied on 15th of September 2009, enclosing a copy of the letter to the FLS claiming the matter to be "sub judice."

## **ANALYSIS**

12. By writing a very aggressive and unhelpful letter of "explanation" to both the Fiji Law Society and to the Acting Chief Registrar in 2009, and by choosing not to appear at the hearing

(the date to which he had personally requested), there is no evidence from the practitioner to counter or explain the complaints of ASP Abdul Khan.

13. It was an exercise of poor judgment on the part of the practitioner to appear on a program that he knew was being viewed "nationwide" and in the course of that programme over two consecutive days proceeded in very strong language to attack the actions of certain police officers, and in particular of ASP Abdul Khan (by having the camera show Khan's name on a writ of summons he was about to file).

14. Although the quotes attributed to the practitioner in the telecast of 28th of January 2009 do not specifically name Abdul Khan as the perpetrator of the assaults, the practitioner's words are highly critical of the police officers concerned and he even goes so far as to tell the general public what the Commissioner of Police has concluded about the alleged assaults.

15. It was most ironical that the practitioner should in his abusive letter to the FLS (dated 12th of April 2009) claim that proceedings were "sub judice" and therefore he was unable to comment. By drafting a statement of claim and preparing a writ for filing, the practitioner should have considered that these matters were about to become "sub judice" and therefore it was totally inappropriate for him to discuss those matters and to endeavour to influence the public on public television the day before he was to file them. It is not for the practitioner to pre-empt any future finding of a court on this summons, it was certainly not a matter for open discussion **at that stage**.

16. In addition to the absolute impropriety of publicly discussing legal actions he was about to launch, the practitioner has when doing so breached section 3.5 of the Rules of Professional Conduct and Practice incorporated into the Legal Practitioners Decree.

Section 3.5 reads:

*"A practitioner shall not on behalf of a client attack a person's reputation without good cause".*

17. By showing ASP Abdul Khan's name on the writ and by then going on to complain of violent assaults by the police, the practitioner is, on behalf of his client, in a very public arena attacking the reputation of ASP Khan without the matter having been decided by determination of a court of law.

18. This Commission finds that the allegation in complaint 1A and 1B are both made out and a finding of professional misconduct in respect of each count is **established**.

#### **EVIDENCE ON ALLEGATION NO 4**

19. The complainant, Mohammed Yunus Hussain, gave evidence under oath before the Commission. The witness ("YH") said that in 2008 he found himself implicated in allegations of obtaining money by deception with a co-accused a Mr Alvin Singh. He had been held in custody for a short while and on his release he discussed legal representation with his family. They told

him that they had already approached the practitioner's firm and had seen a Mr Prem (the practitioner's Suva clerk). He was told to pay a deposit of \$500 which he did on the 28th of March 2008 at the practitioners Suva office. He produced a receipt issued by a secretary/administrator. Mr Prem was not in, so YH called him and an arrangement was made for YH and Prem to meet that evening. YH took his cousin with him and they collected Prem from his home in Nadera and took him back to YH's home in Nakasi. At that meeting Prem took down all details of YH's instructions and his defence. He specially told Prem that he was "fighting" Alvin (his co-accused) – it was because of Alvin's deeds that YH had been charged.

20. The next day YH saw on the TV news that Iqbal Khan was defending his co-accused Alvin in the same case. He went to see Prem, when collecting his receipt, and told them that he didn't want to be represented by the practitioner because he was acting for Alvin. Prem then told him he didn't have to go anywhere else because he could tell lies in Court and save both of them. YH refused that course of action and asked for his money back. About 2 weeks later he met the practitioner at the Suva Court house. He told the practitioner that he didn't want him to appear for him and he wanted a refund of his deposit. The practitioner promised to refund it. The case was adjourned and YH has never had his money back as at the date of the hearing.

21. In cross examination YH denied that the practitioner was appearing for Alvin on instructions of another lawyer. He said that the practitioner was acting for Alvin and moreover he saw Mr Khan appearing for Alvin at a special Saturday court sitting. He said, also in cross examination, that it was Prem who told him to lie, not the practitioner.

22. In the bundle is an unsigned letter from the practitioner to the Fiji Law Society, dated 21st August 2009, purporting to give an explanation to YH's complaint. The practitioner obviously was at pains to explain the non return of the \$500 more than the conflict of interest. He gives reasons of unjustified expenses incurred on behalf of the client in coming to Suva and hiring a hotel room all in order to appear for hearing before he was "sacked" at the court room door. He denies, on his own and on Prem's behalf, telling YH to tell lies in court. He ends his letter of explanation by again being highly critical of the FLS for sending the complaint to him 9 months after it was received.

## **ANALYSIS**

23. The witness gave a frank and honest account of his dealings with the practitioner in March and April 2008. He had every intention to have the practitioner represent him on his deception charge and to that end he attended at the Suva office and gave his instructions to the clerk Mr Prem. The clerk even made arrangements to obtain a full briefing of those instructions and the defence of the complaints.

24. There can be no doubt that the clerk was acting on behalf of the practitioner, he being the only person of authority in the practitioner's branch office in Suva. That those instructions were conveyed to the practitioner himself is borne out by the letter of 21st April 2009 to the FLS in which he acknowledges receiving a deposit of \$500.

25. I believe the witness when he says that he saw the practitioner on TV defending Alvin

(the co accused). It was then that the complainant realised that he could not be fairly and independently represented by the practitioner on the same charge, given the nature of his defence. It was suggested in cross examination of the witness that the practitioner was only representing Alvin "on instructions" but there is no evidence of that before the Commission. By making that proposition to the witness it means that the practitioner accepts that he was appearing for Alvin.

26. Even if the practitioner appears "on instructions" he is still in conflict of interest vis a vis his original client.

27. Section 1.2 and 1.3 of the Rules of Professional Conduct and Practice [strictly] restrict a practitioner from acting for more than one party in the same matter. Whilst it may be acceptable, in the most limited of circumstances, for a practitioner to act for both parties in a commercial or conveyancing transaction, it can never be acceptable in a criminal case where the practitioner has independent and conflicting instructions from his two clients. The practitioner is clearly in breach of Rule 1 of the Code of Conduct for practitioners.

28. I find that the allegation of the Chief Registrar in count No 4 has been **established** and the practitioner is found guilty of a second independent allegation of professional misconduct.

### **PENALTIES**

29. As a very senior and very experienced counsel in this jurisdiction, the practitioner should have known how improper it was of him to appear on national television making allegations against police officers who were about to become Respondents in a writ he was filing in High Court. It was not for him, nor for the general public, to judge the actions of the policemen the day before the writ was filed. These allegations of the practitioner were aggravated by his reference to ASP Khan, such reference being made by allowing the camera to pan the backing sheet of the writ with the name of ASP Khan as Respondent noted thereon. This was before the officer (ASP) had even been served with the writ or notice of the complaint against him. The officer was being denied his rights to natural justice by these actions of the practitioner.

30. Also as a very experienced counsel, and especially in the field of criminal advocacy, the practitioner must have been acutely aware of the inherent dangers, if not absolute unfairness, in agreeing to act for opposing parties in a joint criminal case. The complainant YH had given instructions that impinged on the defence of his co-accused and those instructions were noted in some detail by Mr Prem, the practitioner's clerk.

31. This Commission finds that both allegations which have been found established against the practitioner are very serious matters. As the Commission found in **ILSC v Rajendra Chaudhry** (Matter No 002 of 2012) acting in conflict of interest will incur very harsh penalties against a practitioner. In the instant case the complainant ("YH") was not only going to be prejudiced in his defence, he was going to be taken advantage of by the practitioner acting for the party that YH was implicating in his defence.

32. Having found proved a clear conflict of interest, it is not necessary for the Commission to

make a finding on whether the complainant was told to lie in court or not.

33. In assessing penalties against the practitioner the Commission takes the following matters into consideration:

- i) He has never before appeared in this Commission charged with disciplinary offences;
- ii) It is a matter of public record that the practitioner was struck off the Roll of Practitioners in Queensland on the 13th of March 2001 for failing to report to the Queensland Barrister's Board that he had been suspended earlier by the Queensland Law Society (see Barristers' Board v Khan [2001] QCA 92 (13th March 2001));
- iii) The practitioner has been disclosing this Queensland removal from the Rolls since 2009 to consecutive Chief Registrars when applying for annual practising certificate.

34. The professional history of the practitioner and his two convictions for professional misconduct would seriously call into question whether the practitioner is a fit and proper person to engage in legal practice. However given that he is convicted on only two matters dating back to 2009; matters which do not reflect on his present or recent conduct, this Commission does not consider removal from the Roll is yet an appropriate sanction. These serious acts of professional misconduct are best dealt with by a suspension of his practising certificate, pending any future matters which may be alleged against him which would reflect on his current professional conduct.

## **ORDERS**

1. The practitioner is found guilty of two distinct counts of professional misconduct, as alleged by the Chief Registrar.
2. On the first count (acting sub judice) his practising certificate is suspended for a period of 15 months with immediate effect.
3. On the second count (conflict of interest) his practising certificate is suspended for a period of 15 months with immediate effect.
4. The two suspensions are obviously to be served concurrently. The practitioner is not eligible to apply for a practising certificate until March 2015.
5. The practitioner is to pay costs to this Commission of \$1,500 by 10th of January 2014.
6. The practitioner is publicly reprimanded.

**11 DECEMBER 2013**

**JUSTICE PAUL MADIGAN  
COMMISSIONER**