IN THE INDEPENDENT
LEGAL SERVICES COMMISSION

No. 003 of 2015

BETWEEN:

CHIEF REGISTRAR

Applicant

AND:

RAMAN PRATAP SINGH

Respondent

Coram: Dr. T.V. Hickie, Commissioner

Applicant: Mr. A. Chand
Respondent: In Person with Mr A. Nand

Date of Hearing: 11th April 2017
Date of Judgment: 18th April 2017

JUDGMENT ON SANCTIONS

1. A finding of professional misconduct

[1] This is a judgment as to the sanctions to be imposed in a matter whereby a solicitor commenced acting over 18 years ago in relation to the completion of a sale and purchase agreement that has never been finalised for which the Respondent legal practitioner had been facing two counts of professional misconduct. In my judgment of 13th February 2017, I dismissed Count 1. In relation to Count 2, I confirmed the Respondent legal practitioner's plea of guilty, that is, as he had breached Rules 8.1(1)(b) and (d) of the *Rules of Professional Conduct and Practice*, he was guilty of professional misconduct contrary to section 83(1)(a) of the *Legal Practitioners Decree 2009.*

[2] For the record, Count 2 stated:

'Count 2

Allegation of Professional Misconduct: Contrary to Section 83(1)(a) of the Legal Practitioners Decree 2009 and Rule 8.1(1)(b) and (d) of the Rules of Professional Conduct and Practice (Schedule of the Legal Practitioners Decree 2009)

PARTICULARS

***RAMAN PRATAP SINGH**, a Legal Practitioner, since around April 1999 to September 2013 whilst acting for one Mani Lal, **failed to inform the said Mani Lal by providing written confirmation both at the outset and during the course of the matter** between Mani Lal v Mike Cadigan Labasa High Court Civil Action No.16 of 1999 **as to the issues raised by the said matter, the steps which were likely to be required, how long it was likely to be before the matter be concluded and progress from time to time**, which conduct was contrary to section 83(1)(a) and Rule 8.1(1)(b) and (d) of the Legal Practitioners Decree 2009 and was an act of professional misconduct.'*
[My emphasis]

[3] I note that there was a typographical error in my judgment of 13th February 2017. It was stated that the Respondent legal practitioner had breached **Rule 8.1(1)** (without any mention that the breach was of Rule 8.1(1)(b)) **and Rule 8.1(d)** of the *Rules of Professional Conduct and Practice*. I apologise for the typographical error. **I hereby confirm that the Respondent legal practitioner breached Rules 8.1(1)(b) and 8.1(1)(d) of the *Rules of Professional Conduct and Practice*. By breaching those two rules, he is guilty of professional misconduct contrary to section 83(1)(a) of the *Legal Practitioners Decree 2009.***

[4] Rules 8.1(1)(b) and (d) of the *Rules of Professional Conduct and Practice* state:

'CHAPTER 8—CLIENT CARE

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

...

*(b) **Both at the outset and during the course of the matter cause the client to be informed**, where appropriate, as to the issues raised by the matter, the steps which are likely to be required, how long it is likely to be before it is concluded, **and progress from time to time.***

...

*(d) At the earliest reasonable opportunity **provide the client with written confirmation** of the matters set out in paragraphs (a) **and (b) above**.'*
[My emphasis]

[5] In my judgment of 13th February 2017, I found that a breach of Rules 8.1(1)(b) and (d) of the *Rules of Professional Conduct and Practice* had been established, not only by it having been admitted by the Respondent in his change in plea during the second day of a final hearing before the Commission

on 7th February 2017, but, also, in my view, having been satisfied on the balance of probabilities by the evidence that had been placed before the Commission. That is, by the evidence of the complainant given on 29th March 2016, as well as the evidence of the Respondent on 7th February 2017, together with the documents filed before the Commission. **Accordingly, the Respondent has been found guilty of professional misconduct contrary to section 83(1)(a) of the *Legal Practitioners Decree 2009.***

[6] Section 83(1)(a) of the *Legal Practitioners Decree 2009* states:

> *'Conduct capable of constituting unsatisfactory professional conduct or professional misconduct*
>
> *83.—(1) Without limiting sections 81 and 82, the following conduct is capable of being "unsatisfactory professional conduct" or "professional misconduct" for the purposes of this Decree:*
>
> *(a)* ***conduct consisting of a contravention*** *of this Decree, the regulations and rules made under this Decree, or* ***the Rules of Professional Conduct****.'*
>
> [My emphasis]

[7] In my judgment of 13th February 2017, I stated at paragraph [42] as follows:

> *'As for penalty, I note that the Respondent legal practitioner stated in his evidence and in his written submissions (page 3): 'Since we are unable to bring this matter to finality, I agree to refund the fees and pay for reasonable costs to the Complainant.' I am not sure that it is that simple.* ***This is a serious finding of professional misconduct that has been admitted by the Respondent legal practitioner. I am also satisfied that it has been established on the evidence before me.*** *Further, apart from the penalty that I now have to consider to be imposed for the protection of the public, I note that the complainant made very clear in his evidence that he still wants to have the land transferred. Since he made his first payment to the Respondent legal practitioner on Friday, 26th June 1998 in the sum of $300.00 up to and including today, Monday, 13th February 2017,* ***the complainant has been waiting (on my calculations) some 6808 days, that is, 18 years, 7 months and 19 days for the land to be transferred. As I said above, and I can only emphasise it again, what has occurred is a disgrace.'***

[8] **Following the handing down of my judgment, I made Orders for the parties to file written submissions noting that I would be considering the *'Guidance Note on Sanctions'* published by the Solicitors Disciplinary Tribunal of England and Wales as a basis for what sanction/s should be**

imposed in this matter. A copy of the 4th edition of that publication was provided to each of the parties by the Acting Secretary of the Commission. I also noted that I expected that the respective submissions would include suggestions as to how I should proceed in providing compensation to the complainant together with what Orders, if any, I could make to assist the complainant in finally obtaining the transfer of the land. I then set the matter down for "sanctions" hearing on 11th April 2017. The Respondent legal practitioner indicated that, in the meantime, (and I stand to be corrected) he would be using his best endeavours to arrange for a survey of the land to be undertaken before the sanctions hearing.

[9] I later became aware that a 5th edition of the ***'Guidance Note on Sanctions'*** had been published by the Solicitors Disciplinary Tribunal of England and Wales on 8th December 2016. (See <http://www.solicitorstribunal.org.uk/sites/default/files-sdt/GUIDANCE%20NOTE%20ON%20SANCTIONS%20-%205TH%20EDITION%20-%20DECEMBER%202016.pdf>.) **Thus, I had the Acting Secretary contact both of the parties in writing and advise them accordingly.** In that 5th edition, the Tribunal has explained (page 6, paragraph 7) that its 'approach to sanction' is based upon the three stages set out in ***Fuglers and Others v Solicitors Regulation Authority*** **[2014] EWHC 179 Admin** (per The Honourable Mr Justice Popplewell, at paragraph [28]) (see <http://www.bailii.org/ew/cases/EWHC/Admin/2014/179.html>). That is:

> *'The first stage is* ***to assess the seriousness of the misconduct****. The second stage is* ***to keep in mind the purpose for which sanctions are imposed by such a tribunal****. The third stage is* ***to choose the sanction which most appropriately fulfils that purpose for the seriousness of the conduct in question****.'*
> *[My Emphasis]*

[10] **The parties were advised in writing by the Acting Secretary that I would be using the above *'as a guide in deciding upon the appropriate sanction in this matter'*. The parties were invited to submit any written submissions they wished to make addressing those criteria.** In addition, the attention of the parties was drawn to section 124(2)(b) of the of the *Legal Practitioners Decree 2009* in relation to costs and that I was of the view that I should consider the question of costs, however, before making an Order in that regard, I would be

allowing both parties to address me further on this issue in their written submissions as well as at the sanctions hearing on 11th April 2017.

[11] This judgment, therefore, has taken into account the written submissions submitted by each party as well as the further oral submissions they each made before me on 11th April 2017.

2. Applying the approach to sanction based upon the three stages in *Fuglers*

(1) THE FIRST STAGE – 'to assess the seriousness of the misconduct'

[12] In assessing the seriousness of the misconduct, the 5th edition of the *Guidance Note on Sanctions* has explained at paragraph [16] as follows:

> *'The Tribunal will assess the seriousness of the misconduct in order to determine which sanction to impose.* ***Seriousness is determined by a combination of factors****, including:*
> - *the respondent's* ***level of culpability*** *for their misconduct.*
> - ***the harm caused*** *by the respondent's misconduct.*
> - *the existence of* ***any aggravating factors****.*
> - *the existence of* ***any mitigating factors****.'*
>
> [My emphasis]

(a) 'The respondent's level of culpability for their misconduct'

[13] According to Counsel for the Applicant (*'Submissions on Penalty'*, 7th March 2017, paragraph [9] page 3):

> *'9. The Respondent had full direct control or responsibility of updating, informing and communicating with the client ... A clerk in the firm ... would not be expected to know and update on the issues in the matter and the steps that would be taken. It is entirely the responsibility of the Respondent.'*

[14] According to the Respondent legal practitioner ('*Mitigation Submission'*, 28th March 2017, page 7):

> *'However, the charge against me is one of not giving a report in writing. It is to be noted that Mani Lal had not complained of this i.e. of getting any reports in writing. Mani Lal's complaint was that he had seen the lawyers and wanted his Certificate of Title. The charge against me is one of that has been prepared by the prosecution after the investigation, and them finding out that there was no report in writing.'*

[15] Applying the criteria set out in the 5th edition of the '*Guidance Note on Sanctions'*, I have assessed the Respondent legal practitioner's level of culpability as follows:

(i) 'The respondent's motivation for the misconduct' -

- In my view, the Respondent legal practitioner's motivation for his misconduct was that he attempted to shift the blame to his client (and the surveyor) for the legal practitioner's many years of inaction when, clearly, the client had come to the legal practitioner for assistance, as the police advised him to do, after encountering alleged problems with the removing of pegs placed for the survey to take place;

(ii) 'Whether the misconduct arose from actions which were planned or spontaneous'

- The Respondent legal practitioner's misconduct arose from action or in this case inaction which was deliberate of '*not providing written confirmation both at the outset and during the course of a matter as to the issues raised by the said matter, the steps which were likely to be required, how long it was likely to be before the matter be concluded and progress from time to time'* as, according to the Respondent in his written submissions, *'it was a usual practice to advise the clients orally when they call[ed] into the office'*;

(iii) The extent to which the respondent acted in breach of a position of trust

- The Respondent legal practitioner has acted in breach of a position of trust in that the client relied upon his expertise to resolve the impasse with the vendor;

(iv) 'The extent to which the respondent had direct control of or responsibility for the circumstances giving rise to the misconduct'

- The Respondent legal practitioner had direct control of or responsibility for the circumstances giving rise to the misconduct. I agree with the submission of Counsel for the Applicant that '*The Respondent had full direct control or responsibility of updating, informing and communicating with the client'*;

(v) 'The respondent's level of experience'

- The Respondent legal practitioner was admitted to the Fiji Bar on 17th January 1978. Therefore, he is a solicitor with nearly four decades of experience;

(vi) 'The harm caused by the misconduct'

- The client has been waiting over 18 years for the land to be transferred, **a significant harm**. According to Counsel for the Applicant (*'Submissions on Penalty'*, 7th March 2017, paragraph [13] page 3), *'the Respondent's misconduct continued over* ***a period of more than 14 years****'*. That statement is in accordance with the particulars set out in Count 2 and also with the 'Draft Agreed Facts' filed with the Commission on 24th March 2016, that is, that *'The Respondent legal practitioner acted as counsel for one Mani Lal ... from around April 1999 to September 2013.'*
- **It is clear from the evidence presented, however, (including the Respondent's own admissions), that the misconduct began probably some 10 months earlier than April 1999**, that is, when the first instalment of $300 was paid by the client on 26th June 1998 (even if '*Labasa High Court Civil Action No.16 of 1999'* was not filed until April of the following year).
- Further, **the misconduct continued past September 2013** (even if the Respondent had ceased to act at that time) as, apart from filing '*Labasa High Court Civil Action No.16 of 1999'*, the Respondent legal practitioner never returned to the client the $1,100 that had been paid by the client in various instalments, nor was anything further done to advance the matter until the judgment in relation to the present complaint was handed down by this Commission on 14th February 2017, that is, some 18 years since the first instalment of $300 was paid by the client on 26th June 1998.
- **I do accept, however, that Count 2 (to which the Respondent has pleaded guilty and to which I have also independently found proven), has particualrised that the misconduct began** ***'around April***

1999 to September 2013' **(<u>some 14 years and five months</u>) <u>for which he is now being sanctioned.</u> I also accept that the 'Draft Agreed Facts' filed with the Commission on 24th March 2016, stated that *'The Respondent legal practitioner acted ... from around April 1999 to September 2013'*;**

(vii) 'Whether the respondent deliberately misled the regulator (Solicitors Regulation Authority v Spence [2012] EWHC 2977 (Admin))'

- Although it cannot be said that the Respondent legal practitioner '*deliberately misled the regulator',* the Respondent did try to shift the blame for his own ineptitude to the client (and the surveyor) in that the delay was the fault of the client (and perhaps the surveyor) in the survey not being carried out.

(b) 'the harm caused by the respondent's misconduct'

[16] According to Counsel for the Applicant (*'Submissions on Penalty'*, 7th March 2017, paragraph [10] page 3):

> '*10. As a result of the Respondent's culpability, the complainant has to date not been able to acquire the land that he was entitled to ...* ***The said harm to the complainant continues to date***.
> *11. As a result of such harm, the members of [the] public would lose confidence in the legal profession as members of [the] public engage the services of a law firm or legal practitioner with the expectation that the legal practitioner or firm would solve their issues rather than have them kept in [the] dark and keep the issue pending for a prolonged period with no results.'*

[17] According to the Respondent legal practitioner ('Mitigation Submission, 28th March 2017, page 7):

> '*I had explained in the evidence that I could not proceed in the matter because the survey work was not completed. As at today, the land is still there and no further land has been alienated since 1999.*
> *I humbly submit that no damage has been done to Mani Lal ...'*

[18] Applying the criteria set out in the 5th edition of the *'Guidance Note on Sanctions'*, I have assessed *'the harm caused by the misconduct'* of the Respondent legal practitioner as follows:

(i) 'the impact of the respondent's misconduct upon those directly or indirectly affected by the misconduct, the public, and the reputation of the legal profession. The greater the extent of the respondent's departure from

the "complete integrity, probity and trustworthiness" expected of a solicitor, the greater the harm to the legal profession's reputation' –
[My emphasis]

In my view, although there has been no allegation or finding of dishonesty against the Respondent legal practitioner, '*the impact of the respondent's misconduct'* has been considerable –

- the complainant has been waiting over 18 years for the land to be transferred (though I note that Count 2 to which the Respondent legal practitioner has pleaded guilty is for 14 years and five months);
- **I agree with the submission of Counsel for the Applicant that** as a result of the conduct of the Respondent legal practitioner in this case '*members of [the] public would lose confidence in the legal profession'* and that **such conduct must significantly harm '*the reputation of the legal profession'*.**

(ii) 'the extent of the harm that was intended or might reasonably have been foreseen to be caused by the respondent's misconduct' –

- Again, in my view, although there has been no allegation or finding of dishonesty against the Respondent legal practitioner, '***the extent of the harm that … might reasonably have been foreseen*** *to be caused by the respondent's misconduct'* **was considerable**.

(c) 'The existence of <u>any aggravating factors'</u>

[19] According to Counsel for the Applicant (*'Submissions on Penalty'*, 7th March 2017, paragraphs [13]-[15] page 3):

> *'13. The Respondent's* ***misconduct continued over a period of more than 14 years****.*
> *14. The* ***complainant was a vulnerable person*** *in that he was not well educated and was ignorant of court procedures.*
> *15. The* ***Respondent was previously prosecuted before the ILSC****. ILSC Application No.11 is relevant. In that matter, all three counts against the Respondent were established. In the said matter, the Respondent was publicly reprimanded, fined a sum of $3000, ordered to pay costs of $2000 and to pay the vendor the sum of $3000.'*
> [My emphasis]

[20] The Respondent legal practitioner did not mention any aggravating factors in his *'Mitigation Submission'* dated 28th March 2017. **Indeed, he initially disputed** (page 2, paragraph g) **the relevance of his previous offence before the Commission**:

> *'The Respondent being previously prosecuted before the ILSC Application No. 11 of 2013 is irrelevant as* ***the charges were different from the case on hand and*** *ILSC Application No. 11 of 2013* ***is currently on appeal*** *being Civil Appeal No. ABU0001 of 2014. This case involved the conveyancing of a state lease in which the consent of the Lands Department was an issue. Since the consent was not granted by the Director of Lands, the complainant wanted the balance sum of $3,000 paid to him. The Tribunal ordered that it should be paid, nevertheless together with the fine.'*
> [My emphasis]

[21] At the hearing on 11th April 2017, the Respondent legal practitioner conceded that the previous matter was relevant. In addition, Counsel who was appearing with him explained to the Commission that the error was his, as when assisting in drafting the written submissions, he had meant to differentiate as to the type of matter.

[22] The 5th edition of the *'Guidance Note on Sanctions'* includes some nine criteria (though not an exhaustive list) of *'aggravating factors'*. I have found five of them applicable as follows:

(i) 'misconduct continuing over a period of time'

- As I have set out above, the misconduct (in my view) began when the first instalment of $300 was paid by the client on 26th June 1998 (even if '*Labasa High Court Civil Action No.16 of 1999'* was not filed until April of the following year) and continued past September 2013. I have accepted, however, that Count 2 (for which the Respondent is now being sanctioned) particualrised that the misconduct began *'around April 1999 to September 2013'*. I have also accepted that the 'Draft Agreed Facts' filed with the Commission on 24th March 2016, stated that *'The Respondent legal practitioner acted ... from around April 1999 to September 2013'*. **Hence, the misconduct for which the Respondent has pleaded**

guilty is <u>14 years and five months</u>*;*

(ii) 'taking advantage of a vulnerable person'

- In my view, the client was clearly a vulnerable person. He was a cane farmer who, as I have noted above, came to the Respondent legal practitioner for assistance, as the police advised him to do, after encountering alleged problems with the removing of pegs placed for the survey to take place.

(iii) 'misconduct where the respondent knew or ought reasonably to have known that the conduct complained of was in material breach of obligations to protect the public and the reputation of the legal profession'

- In my view, the Respondent legal practitioner ought reasonably to have known that allowing such misconduct to continue for over 14 years and five months '*was in material breach of obligations to protect the public and the reputation of the legal profession';*

(iv) 'previous disciplinary matter(s) before the Tribunal where allegations were found proved'

- As noted above, according to Counsel for the Applicant, the previous disciplinary matter is relevant as '*all three counts against the Respondent were established*'. By contrast, the Respondent legal practitioner, initially submitted that it '*is irrelevant as the charges were different from the case on hand and ... [it] is currently on appeal'.*
- In my view, it does not matter that the outcome of the previous disciplinary proceedings is on appeal. No stay has been granted by the Court of Appeal. Until overturned by the Court of Appeal or Supreme Court, **the three findings of professional misconduct have been established, are Orders of the High Court and have been entered into the Commission's Discipline Register. In my view, <u>they are relevant</u>.**

(v) 'the extent of the impact on those affected by the misconduct'

- Again, I am faced with contrasting submissions. On the one hand, Counsel for the Applicant notes the harm to the complainant who *'has to date not been able to acquire the* land' to which he was entitled and such harm continued over 14 years. In addition '*members of [the] public would lose confidence in the legal profession'.* On the other hand, the Respondent legal practitioner has stated '*I humbly submit that no damage has been done to Mani Lal'.* **I reject the submission of the Respondent legal practitioner**. Indeed, in my view, it shows a lack of appreciation as to the harm both to the complainant as well as the legal profession.

(d) 'The existence of any mitigating factors'

[23] Counsel for the Applicant did not mention any mitigating factors in his *'Submissions on Penalty'* dated 7th March 2017.

[24] The Respondent legal practitioner in his *'Mitigation Submission'* dated 28th March 2017, listed 13 'mitigating factors'.

[25] According to the 5th edition of the *'Guidance Note on Sanctions'* (page 10), '***matters of purely personal mitigation are of no relevance in determining the seriousness of the misconduct'***. Such matters, however, ***'will be considered*** ... ***when determining the fair and proportionate sanction'*** to be applied. I agree and will do so later in this judgment.

[26] Applying then the criteria discussed in the 5th edition of the *'Guidance Note on Sanctions'*, I have assessed *'the existence of any mitigating factors'* as follows:

(i) 'misconduct resulting from deception or otherwise by a third party (including the client)'

Not applicable.

(ii) 'the timing of and extent to which any loss arising from the misconduct is made good by the respondent'

(1) In his '*Mitigation Submission'*, dated 28th March 2017 (at page 2, paragraphs (c), (d) and (f)), the Respondent legal practitioner offered to:

- Engage the Surveyor to have the land surveyed at the Respondent's cost and have a separate certificate of title issued under the complainant's name;
- If there is a dispute with the vendor, then to institute proceedings (at the Respondent's cost) compelling the vendor to grant access;
- Compensate the total fees paid by the complainant together with such interest as the Commission deems just.

(2) On 11th April 2017, the Respondent filed a 'Supplementary Submission' (with the consent of the Applicant and permission of the Commission), wherein he confirmed: *'I agree to attend to the following and in the interim complete the matter before the next sitting in December session, wherein the substantive decision would be reviewed.'* He has then listed 13 steps (as well as five items necessary to carry out the survey) that he will undertake to do (at his personal cost) between April and December 2017 so as to try and complete the transfer for the complainant.

(iii) 'whether the respondent voluntarily notified the regulator of the facts and circumstances giving rise to misconduct'

No.

(iv) 'whether the misconduct was either a single episode, or one of very brief duration in a previously unblemished career'

The misconduct has continued for some 14 years and five months.

(v) 'genuine insight, assessed by the Tribunal on the basis of facts found proved and the respondent's evidence

The Commission has been concerned at the Respondent's initial lack of insight displayed both on the facts proven and through the respondent's evidence. It was heartening (albeit at the 11th hour) that the Respondent finally told the Commission at the hearing on 11th April 2017 that he accepted responsibility and wished to rectify what had occurred.

(vi) ***'open and frank admissions at an early stage and/or degree of cooperation with the investigating body'*** -

It could not be said that there were '*open and frank admissions at an early stage'* in this matter. Whilst there has been cooperation with the investigating body, it must be remembered that the Respondent disputed for a number of years his responsibility. Indeed, it is important that I set out the history of these proceedings (that I have taken from my Ruling of 7th June 2016 in relation to the 'Respondent's Oral Application for Dismissal' and my subsequent judgment of 13th February 2017 in relation to the substantive application, the subject of this sanction judgment):

(1) When the matter was first called on 15th September 2015, before the previous Commissioner, Justice P.K. Madigan, the Respondent denied both of the allegations and said that he was of the view that the matter was a breakdown of communications and he was hoping that it could be resolved by mediation. It was then adjourned twice to allow possible mediation to take place. It was then listed for a defended hearing;

(2) At the commencement of the hearing on 29th March 2016, the Respondent appeared on his own behalf and raised two preliminary objections to the hearing proceeding despite neither of these objections having been raised by the Respondent or through his agent who appeared on his behalf at the five previous mentions of this matter, that is, 15th September, 22nd October and 17th November 2015, 10th February and 24th March 2016. To say that both the Applicant and the Commission were caught completely by surprise is an understatement;

(3) I resolved that I would take the complainant's evidence and then adjourn the matter part-heard so to allow Mr Singh to file written submissions on his preliminary objections and set down for hearing on 21st April 2016, his application for dismissal;

(4) A hearing then took place on 21st April 2016, followed by my judgment delivered on 6th June 2016 ruling that the Respondent's oral application for dismissal of both counts was refused, however, the part-heard hearing of the substantive Application was stayed pending the hearing and handing down of judgment by the Court of Appeal in *Amrit Sen v Chief Registrar* (which the Respondent had argued was relevant to his case). This was also despite my expressing the view

that the Respondent's constitutional argument was misconceived for the reasons set out by Madigan J in *Sen*;

(5) The appeal in *Sen* was heard by the Court of Appeal on 9th November 2016 with judgment being handed down on 29th November 2015. The appeal was dismissed with costs;

(6) Following the Court of Appeal's judgment in *Sen*, the present matter was relisted before me in the Commission on 8th December 2016, to allocate a date for the continuation of the part-heard hearing of the substantive Application, which took place on 7th February 2017.

(7) Initially, the Respondent legal practitioner had pleaded not guilty to both Count 1 and Count 2. During his evidence-in-chief on 7th February 2017, he conceded that he was in breach of Rule 8.1(b) and (d) of the *Rules of Professional Conduct and Practice* and advised that he now wished to change his plea on Count 2 to one of guilty. Count 1 was later dismissed by the Commission;

(8) As for Count 2, (as also noted at the beginning of this judgment), I found that such a breach was established not only having been admitted by the Respondent in his change in plea during the hearing on 7th February 2017, but, also, by my being satisfied on the evidence, in particular, the evidence of the complainant given on 29th March 2016, as well as having heard the evidence of the Respondent on 7th February 2017, together with the documents filed before the Commission.

(2) <u>THE SECOND STAGE</u> – 'to keep in mind the purpose for which sanctions are imposed'

[27] The 5th edition of the *'Guidance Note on Sanctions'* does not explicitly discuss this stage. An insight, however, has been provided by Popplewell J in *Fuglers* at paragraphs [30]-[32], part of which it is important that I set out below:

> *'30.* ***At the second stage, the tribunal must have in mind that by <u>far the most important purpose of imposing disciplinary sanctions</u> <u>is addressed to other members of the profession, the reputation of the profession as a whole, and the general public</u> who use the services of the profession****, <u>rather than the particular solicitors whose misconduct is being sanctioned</u>. In* ***Bolton v The Law Society*** *[1994] 1 WLR 512 Sir Thomas Bingham MR stated the guiding principles as follows, at pp 518-519:*

"*... Lapses from the required high standard may, of course, take different forms and be of varying degrees ...* ***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 upon trust.*** *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*** *...* ***Only in a very unusual and venial case of this kind would the tribunal be likely to regard as appropriate any order less severe than one of suspension****. It is important that there should be full understanding of the reasons why the tribunal makes orders which might otherwise seem harsh. There is, in some of these orders, a punitive element: a penalty may be visited on a solicitor who has fallen below the standards required of his profession in order to punish him for what he has done and to deter any other solicitor tempted to behave in the same way. Those are traditional objects of punishment.* ***But often the order is not punitive in intention.*** *...* ***In most cases the order of the tribunal will be primarily directed to one or other or both of two other purposes. One is to be sure that the offender does not have the opportunity to repeat the offence.*** *This purpose is achieved for a limited period by an order of suspension; plainly* ***it is hoped that experience of suspension will make the offender meticulous in his future compliance with the required standards … The second purpose is the most fundamental of all: 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*** *...* ***A profession's most valuable asset is its collective reputation and the confidence which that inspires.*** *Because orders made by the tribunal are not primarily punitive, it follows that considerations which would ordinarily weigh in mitigation of punishment have less effect on the exercise of this jurisdiction than on the ordinary run of sentences imposed in criminal cases. It often happens that a solicitor appearing before the tribunal can adduce a wealth of glowing tributes from his professional brethren. He can often show that for him and his family the consequences of striking off or suspension would be little short of tragic. Often he will say, convincingly, that he has learned his lesson and will not offend again…* ***All these matters are relevant and should be considered. But none of them touches the essential issue, which is the need to maintain among members of the public a well founded confidence that any solicitor whom they instruct will be a person of unquestionable integrity, probity and trustworthiness.*** *Thus it can never be an objection to an order of suspension in an appropriate case that the solicitor may be unable to re-establish his practice when the period of suspension is past. If that proves, or appears likely, to be so the consequence for the individual and his family may be deeply unfortunate and unintended.* ***But it does not make suspension the wrong order if it is otherwise right****.* ***The reputation***

> ***of the profession is more important than the fortunes of any individual member. Membership of a profession brings many benefits, but that is part of the price."***
>
> …
>
> *32. As this and other authorities make clear, although two elements of the sanction's purpose may be to punish the solicitor in question and to deter repetition of similar or other misconduct by him, these are not the main purposes.* ***The primary purpose of the sanction is to deter others and uphold the reputation of the profession*** *(see e.g.* ***Solicitors Regulation Authority v Anderson*** *[2013] EWHC 4021 (Admin) per Treacy LJ at [72]). In determining sanction the tribunal will properly have in mind* ***the message which the sanction will send to other solicitors for the purposes of promoting and maintaining the highest standards by members of the profession, and the high standing of the profession itself in its reputation with the public at large****. This latter aspect engages not only the public's confidence in the standards maintained by practising solicitors, but also its confidence in the organs of a self regulating body to conduct effective and fair disciplinary regulation.'*
> [My emphasis]

[28] I have taken note of the above discussion by Popplewell J in *Fuglers* as to '*the purpose for which sanctions are imposed'* and, in particular, his citation of *'the guiding principles'* as outlined by Sir Thomas Bingham MR in *Bolton v The Law Society* (as also cited in Bailii: [1993] EWCA Civ 32 (6 December 1993), <*http://www.bailii.org/ew/cases/EWCA/Civ/1993/32.html*>, paragraphs [13]-[16].) Whilst I note that in *Bolton*, Bingham MR provided a guide '*about the principles which underlie cases such as this',* that is, where a solicitor wrongly uses funds held in trust, much of the principles can similarly apply here where a practitioner has accepted $1,100 from a client and then little has been done since October 1998 (other than filing a doomed to fail application for specific performance that was allowed to lapse through want of prosecution in 2005) and no formal written reports having been provided to the client since.

(3) <u>THE THIRD STAGE</u> – 'choose the sanction which most appropriately fulfils that purpose for the seriousness of the conduct in question'

(i) The Applicant : Suspension of 12-18 months

[29] Counsel for the Applicant in his *' Submissions on Penalty'* dated 7th March 2017, has submitted, in summary, as follows:

(1) He has cited ***Legal Services Commissioner v Mugford*** [2016] QCAT 78 (14 June 2016) (AustLII: <http://www.austlii.edu.au/au/cases/qld/QCAT/2016/78.html>.)
(2) He has also cited ***Legal Services Commissioner v Burgess*** [2013] VCAT 350 (28 March 2013) (AustLII: <http://www.austlii.edu.au/au/cases/vic/VCAT/2013/350.html>) *'whereby two charges were in relation to the practitioner failing to communicate effectively and promptly with his clients'* to which the practitioner pleaded guilty. In the first matter, *'there had been consistent failure on the part of the Respondent practitioner to communicate with his client; the period being **8 years**'.* In the second matter, '*the practitioner had failed to communicate with his client for a period of **4 years'**.* In addition, *'the Respondent practitioner had previous findings made against him by the Tribunal'*. Counsel for the Applicant has cited, in particular, paragraph [79] where it was stated:

> *'The Tribunal also accepts that general deterrence is a particularly important objective in this case. The misconduct committed by the Respondent strikes at the very essence of a competent solicitor's practice. While there is no suggestion that the Respondent misappropriated client moneys or otherwise acted dishonestly, his conduct caused gross delay in the conduct and finalisation of numerous files, coupled with a serious failure to communicate with clients and act upon their instructions. There is no doubt that such behaviour caused serious anxiety, frustration and stress to clients as well as direct and indirect additional costs. **In addition, such behaviour inevitably and deservedly brings the profession into disrepute and warrants sanctions sufficiently severe to reflect appropriate condemnation and send the clearest message to the legal profession that such conduct will not be tolerated.**'*
> [My emphasis in bold]

Counsel for the Applicant has noted that **in *Burgess 'the practitioner was suspended for 9 months*** *and upon completion of suspension he was to practice under an employee [practising certificate only] for a period of 12 months'.*
(3) Counsel for the Applicant has submitted, *'In light of the aggravating factors and case laws*[sic], *that this is not a case where a fine and public reprimand would be sufficient'* and *'that **a suspension between 12 months to 18 months would be suitable as a deterrent** to other practitioners as 14 years of failure is a matter of serious concern'*. [My emphasis]

(ii) The Respondent: Reprimand, fine of $1,000.00 and/or compensation

[30] The Respondent legal practitioner has submitted in response in his '*Mitigation Submission'*, 28th March 2017):

(1) *Mugford 'is somewhat different from the case on hand and is distinguishable'* in that the practitioner was found guilty of nine charges, the sentenced imposed was for the totality of offending, the practice was failing and hence, during the period of suspension, the practitioner was required to complete a practice management course;

(2) *Burgess* is *'also different from the case on hand'* as the practitioner's misconduct was *'over [a] prolonged period affecting multiple clients',* he was found guilty of eight charges, was *'sentenced … in totality'*, was suspended for nine months whereas the Applicant is seeking in the present case in '*seeking suspension … for a period of 12 to 18 months is unsubstantiated as [the Respondent] … is only guilty of one count';*

(3) The Commission should consider the cases of ***Legal Services Commission v Bussa*** [2011] QCAT 388 (11 August 2011) (AustLII: <http://www.austlii.edu.au/au/cases/qld/QCAT/2011/388.html>) and ***Legal Services Commission v Morgan (Legal Practice)*** [2009] VCAT 2080 (28 September 2009) (AustLII: <http://www.austlii.edu.au/au/cases/vic/VCAT/2009/2080.html>.)

(4) In *Bussa,* according to the Respondent's summary, the legal practitioner, *'faced 3 charges of delay and failure to prosecute a criminal compensation claim, failure to respond to … the Law Society and failure to respond to requests of the Legal Services Commission'* and *'had previously been disciplined for much the same conduct in 2005'.* The practitioner '*was publicly reprimanded, required to pay [a] penalty … of $10,000.00 within 90 days and … pay … $7,500.00 by way of compensation to the Complainant';*

(5) In *Morgan*, also according to the Respondent's summary, two charges were found proven against the legal practitioner *'… failing … to complete legal work … [and] failing to communicate effectively and promptly with his client'* and *'had in previous years been charged and found guilty of many [findings of] misconduct and satisfactory misconduct'.* The Applicant *'had sought a suspension of nine months'*. The practitioner '*was ordered to pay [a] fine … of $2,500.00 … and pay [the] Commissioner['s] fixed costs … of $3,350.00';*

(6) The Respondent should be reprimanded, pay a fine of $1,000.00 and/or

ordered to pay compensation by reimbursing the total amount of legal fees paid with such interest up to the date of Judgment being the 13th February 2017.

[31] In relation to the above, I note that the Tribunal said in *Morgan* that the reason that he was not suspended was that the offences pre-dated the previous disciplinary proceedings as the Tribunal explained:

> *[32]* ***The findings*** *of professional misconduct is [sic]* ***this matter relate to the conduct of Mr. Morgan from the end of 2006 to the middle of 2007****.* ***The findings*** *of professional misconduct and unsatisfactory professional conduct* ***in the previous matters related to the conduct of Mr. Morgan in 2007 and 2008****.*
>
> *...*
>
> *[35]* ***The unacceptable conduct in this matter tended to predate the unacceptable conduct in the matters previously dealt with by the Tribunal****. In those circumstances, I do not intend to cancel the practising certificate held by Mr. Morgan. However, any unacceptable conduct on the part of Mr. Morgan in the future is likely to lead to the loss of his right to practise.'*
> *[My emphasis]*

[32] In *Bussa,* the reason that he was not suspended was that it was not sought. Instead, he was made the subject of a supervision order as follows:

> *'[14] The Commissioner does not seek a finding, or submit that the solicitor's conduct demonstrates unfitness to practise. Rather, it is submitted that he ought be made the subject of supervision, and reprimanded and fined. The supervision would involve, it is suggested,* ***engaging the services of a nominated practitioner for advice about the improvement and implementation of appropriate management systems in his practice, with a report to the Legal Services Commissioner within six months.***
>
> *...*
>
> *[19] It is also accepted that supervision is called for but in light, again, of the fact that this is an instance of, in effect, re-offending a report ... within 12 rather than 6 months is likely to be more effective.'*
> *[My emphasis]*

(iii) What about the complainant?

[33] It was indicated to both the Applicant and Respondent at the hearing on 11th April 2017 that I was considering a period of suspension in line with that suggested by the Applicant, however, I wanted to know how this was going to assist the complainant.

[34] I should mention at this point, that the Respondent legal practitioner, had at the beginning of his oral submissions on 11th April 2017, had a surveyor, Mr Samuela R. Tawake, give evidence. Mr Tawake estimated that there were 2-3 days work required for the initial survey to be completed and it would take 4-6 months altogether to have it passed by the Surveyor General and the Department of Town and Country Planning. He later confirmed through the Respondent's submissions from the Bar Table that the cost would be approximately $4,000 for the surveyor including disbursements.

[35] The Respondent submitted that to complete the transfer would require him writing to Mr Cadigan to obtain access for the surveyor and if he refused then proceedings would need to be issued in the High Court at Labasa to get access to the land to complete the surveying work. In addition, the Respondent noted that a caveat would need to be lodged on behalf of the complainant via a court order as the complainant was prohibited from lodging a second caveat by virtue of the *Land Transfer Act*.

[36] Mr Nand, who appeared as Counsel assisting the Respondent, indicated to the Commission from the Bar Table, that he was a 5th year law graduate and would need the supervision of the Respondent to complete the transfer as there were some complexities involved.

[37] Counsel for the Applicant Chief Registrar indicated that a suspension between 12 months to 18 months could be suspended whilst the Respondent completed the matter with all associated costs to be paid for by the Respondent including any legal proceedings that may have to be instituted against the vendor. It could then be reviewed in the December 2017 Sittings and if, at that time the transfer was completed, then the proposed period of suspension could be reduced.

[38] Counsel for the Applicant Chief Registrar also indicated that he was seeking witness expenses of $155.00 (and tendered a page detailing the amounts claimed). The sum was not opposed by the Respondent.

[39] The Respondent legal practitioner then indicated that his preferred sanction was to undertake to get the transfer completed at his personal cost, for the complainant to be compensated and to pay a fine. In the alternative, he sought that the suspension be suspended to enable him to complete the transfer and having to have the matter called in the December 2017 Sittings of the Commission to see if the full suspension is to be imposed or can be reduced.

[40] The matter was then stood down to enable the Respondent together with Mr Nand to draft supplementary written submissions detailing what was actually proposed. I have taken that document into account when considering the particular sanctions to be imposed in this matter.

(iv) Particular sanctions

[41] The 5th edition of the *'Guidance Note on Sanctions'* (paragraph [23], page 11) has explained that a **reprimand** *'justifies a sanction at the lowest level'*. Clearly, a reprimand is not appropriate in this case and I will not waste everyone's time is discussing the relevant factors appropriate for imposing a reprimand.

[42] The *'Guidance Note on Sanctions'* then explains (paragraph [25], page 11) that in relation to a **fine**:

> *'A Fine will be imposed where the Tribunal has determined that the seriousness of the misconduct is such that a Reprimand will not be a sufficient sanction, but neither the protection of the public nor the protection of the reputation of the legal profession justifies Suspension or Strike Off.'*

It further notes (at paragraph [27], page 12):

> *'In the absence of evidence of limited means, the Tribunal is entitled to assume that the respondent's means are such that they can pay the Fine which the Tribunal decides is appropriate.'*

[43] Neither party has suggested imposing a **restriction order** (that is, in the form of a condition upon the way in which a solicitor continues to practise), and I do not see that as an appropriate sanction in the circumstances.

[44] In relation to **suspension**, the *'Guidance Note on Sanctions'* explains when it

should be imposed as follows (paragraphs [35]-[37], page 14):

> *'35. Suspension from the Roll will be the appropriate penalty where the Tribunal has determined that:*
>
> - *the seriousness of the misconduct is such that* ***neither a Restriction Order, Reprimand nor a Fine is a sufficient sanction*** *or in all the circumstances appropriate.*
> - *there is a need to protect both the public and the reputation of the legal profession from future harm from the respondent by removing their ability to practise, but*
> - *neither the protection of the public nor the protection of the reputation of the legal profession justifies striking off the Roll.*
>
> - ***public confidence in the legal profession demands no lesser sanction.***
> - ***professional performance, including a lack of sufficient insight by the respondent*** *(judged by the Tribunal on the basis of facts found proved and the respondent's evidence),* ***is such as to call into question the continued ability to practise appropriately.***
>
> *36. Suspension from the Roll, and thereby from practice,* ***reflects serious misconduct****.*
>
> ***37.*** *Suspension can be for a fixed term or for an indefinite period.* ***A term of suspension can itself be temporarily suspended.'***
> [My emphasis]

(v) Personal mitigation

[45] The 5th edition of *The Solicitors Disciplinary Tribunal of England and Wales 'Guidance Note on Sanctions'* has noted at paragraphs [53]-[54] in relation to personal mitigation as follows:

> *'53.* ***Before finalising sanction, consideration will be given to any particular personal mitigation advanced by or on behalf of the respondent.*** *The Tribunal will have regard to the following principles*:
> *"****Because orders made by the tribunal are not primarily punitive****, it follows that considerations which would ordinarily weigh in* ***mitigation of punishment have less effect on the exercise of this jurisdiction than on the ordinary run of sentences imposed in criminal cases****. It often happens that a solicitor appearing before the tribunal can adduce a wealth of glowing tributes from his professional brethren. He can often show that for him and his family the consequences of striking off or suspension would be little short of tragic. Often he will say, convincingly, that he has learned his lesson and will not offend again. .... All these matters are relevant and should be considered. But none of them touches the essential issue, which is* ***the need to maintain among members of the public***

a well-founded confidence that any solicitor whom they instruct will be a person of unquestionable integrity, probity and trustworthiness. *Thus it can never be an objection to an order of suspension in an appropriate case that the solicitor may be unable to re-establish his practice when the period of suspension is past*. *If that proves, or appears, likely to be so the consequence for the individual and his family may be deeply unfortunate and unintended.* ***But it does not make suspension the wrong order if it is otherwise right. The reputation of the profession is more important than the fortunes of any individual member***. *Membership of a profession brings many benefits, but that is a part of the price." (Bolton above* [at paragraph [16] in Bailii]*).*

54. ***Particular matters of personal mitigation that may be relevant and may serve to reduce the nature of the sanction****, and/or its severity include that:*

- ***the misconduct arose at a time when the respondent was affected by physical or mental ill-health*** *that affected his ability to conduct himself to the standards of the reasonable solicitor. Such mitigation must be supported by medical evidence from a suitably qualified practitioner.*
- ***the respondent was an inexperienced practitioner*** *and was inadequately supervised by his employer.*
- ***the respondent made prompt admissions and demonstrated full cooperation*** *with the regulator.'*
  [My emphasis]

[46] Applying the above criteria to the present case, I have assessed personal mitigation as follows:

(i) '*the misconduct arose at a time when the respondent was affected by physical or mental ill-health that affected his ability to conduct himself to the standards of the reasonable solicitor'* **– not applicable;**

(ii) '*the respondent was an inexperienced practitioner and was inadequately supervised by his employer'* **– not applicable;**

(iii) '*the respondent made prompt admissions and demonstrated full cooperation with the regulator'* **– *not applicable***. The Respondent legal practitioner only changed his plea late on the second day of the hearing.

[47] Unfortunately, none of the 13 'mitigating factors' submitted by the Respondent legal practitioner in personal mitigation satisfies any of the above criteria.

[48] Taking into account the above, I am of the view:

(1) The Respondent legal practitioner is guilty of ***Professional Misconduct***. The misconduct began around April 1999 until September 2013, some 14 years and five months;

(2) As set out in detail at the beginning of the judgment **the level of culpability is high and the harm caused has been significant both to the client and the legal profession;**

(3) Neither a reprimand nor a fine are appropriate or adequate in the circumstances. **The practitioner must be suspended**.

[49] In relation to the period of suspension, it should reflect the level of culpability of the practitioner for his professional misconduct as well as the level of harm that he has caused including, in my view, by what the 5th edition of the *'Guidance Note on Sanctions'* has termed '***a lack of sufficient insight by the respondent'.***

[50] Balanced against this, I have noted that the Respondent legal practitioner is finally prepared to take responsibility for this disgraceful episode and to make amends - even though this was only first mentioned at the end of the hearing on 11th February 2017, followed by some mention in his written submissions of 28th March 2017, and then formalised in specific details in his 'Supplementary Submission' of 11th April 2017.

[51] Obviously, the public must have faith that in making a meritorious complaint to the Chief Registrar not only will the complaint be investigated and, where appropriate, disciplinary proceedings instituted, such that if the complaint is found proven that the practitioner will be sanctioned accordingly and the public protected. That, however, in my view, is only one aspect of the disciplinary proceedings. **The public must also have faith that the Commission will use its powers to "rectify the wrong".** That is, where appropriate, the Commission will ensure that not only that is the complainant compensated, but where possible that the legal work for which the practitioner has been sanctioned is completed.

[52] Taking into account the above, I am prepared to consider suspending the period of suspension that I will be imposing upon the Respondent legal practitioner in

this case. I am doing so to allow the Respondent to show his remorse in a practical way. That is, to rectify (as best that he can) what has occurred, such that the complainant might, after 18 years, finally obtain his block of land and the public may have some of their faith in the profession restored.

[53] Hence my Orders will be that the Respondent legal practitioner is to be suspended for a period of 15 months as from today, but that suspension is suspended until Monday, 28th November 2017, upon the Respondent legal practitioner signing a formal undertaking that he will at his own expense (and through instructing Mr Nand of his firm to undertake all of the required legal work associated with the matter), complete all of the steps that he has set out in his 'Supplementary Submission' dated 11th April 2017 (to be filed as a Consent Order with the Commission and then with High Court Civil Registry so as to become an Order of the High Court that can be enforced accordingly).

[54] The matter will then be listed in the Commission at 10.00am on Monday, 28th November 2017, at which time should the Respondent satisfy the Commission that he has completed all of the steps set out in his 'Supplementary Submission' dated 11th April 2017, or that he has used his best endeavours to do so, the Commission will consider reducing the period of suspension but to no less than 8 months to take effect from that date.

[55] One of the 13 steps proposed by the Respondent in his 'Supplementary Submission' dated 11th April 2017, was that he would *'reimburse a sum of $1,100.00 to the complainant being the legal fee[s] paid to the Respondent'*. I agree that this must be done. It does not, however, mention interest. This was mentioned in the Respondent's initial 'Mitigation Submission' dated 28th March 2017 (page 2, paragraph f). As I noted in my judgment of 13th February 2017 (at paragraph [42]) and have cited part of it again earlier in this judgment: '*Since he made his first payment to the Respondent legal practitioner on Friday, 26th June 1998 in the sum of $300.00 up to and including today, Monday, 13th February 2017,* ***the complainant has been waiting (on my calculations) some 6808 days, that is, 18 years, 7 months and 19 days for the land to be transferred.'***

[56] I note that in my judgment of 13th February 2017, I found (at paragraph [20]), that the complainant *'paid the Respondent legal practitioner the following amounts:*

(1) 26/06/1998 - $300.00
(2) 05/09/1998 - $200.00
(3) 09/09/1998 - $100.00
(4) 03/03/1999 - $300.00
(5) 09/10/1999 - $100.00
(6) 10/10/1999 - $100.00
Total = $1100.00'

[57] I do not intend at this late stage to attempt to calculate the interest rate applicable in Fiji on various sums since 26th June 1998, 5th and 9th September 1998, 3rd March 1999 or on a sum of $1,100.00 from 10th October 1998. Instead, I have summarily assessed a figure of $1,000.00 to be paid by the Respondent to the complainant as compensation for foregone interest.

3. Costs

[58] Counsel for the Applicant in his *' Submissions on Penalty'* dated 7th March 2017, has submitted, in summary, as follows:

(1) *'The Respondent pay the witness expenses in the sum of $65 and refund the entire sum of fee[s] received from the complainant'*, that is, $1,100;

(2) *'The Respondent pay the costs of the Applicant for bringing the proceedings in the sum of $1000. It is submitted that although the Respondent admitted to Count 2, such admission was quite late in the day when the Applicant had already closed the prosecution case.'*

[59] At the hearing on 11th April 2017, the Respondent legal practitioner agreed to pay the costs of the complainant in bring the complaint in the sum of $155.00. No submissions were made in relation to the costs of the Applicant or the Commission.

[60] I have taken note of what the 5th edition of the *'Guidance Note on Sanctions'* has stated (at page 19, paragraphs [57]-[58]):

'Costs against Respondent: allegations admitted/proved

General considerations

57. The Tribunal, in considering the respondent's liability for the costs of the applicant, will have regard to the following principles, drawn from ***R v Northallerton Magistrates Court, ex parte Dove (1999) 163 JP 894:***

- *it is not the purpose of an order for costs to serve as an additional punishment for the respondent,* ***but to compensate the applicant for the costs incurred by it in bringing the proceedings*** *and*
- *any order imposed* ***must never exceed the costs actually and reasonably incurred*** *by the applicant.*

58. Before making any order as to costs, the Tribunal will give the respondent the opportunity to adduce financial information and make submissions …'

[61] In assessing costs, I am of the view that the sums quoted by Counsel for the Applicant for both witness expenses ($155.00) and the costs of bringing the application ($1,000.00) are more than reasonable.

[61] In addition, I note that this matter has taken a considerable amount of the Commission's time. As such, I am of the view that a similar sum of $1,000 should be paid to the Commission.

[63] Accordingly, pursuant to section 124 of the *Legal Practitioners Decree 2009,* I have summarily assessed the costs payable by the Respondent to the Applicant in the sum of $1,155.00 comprising as follows:

(1) witness expenses in the sum of $155.00; and

(2) the costs of the Applicant for bringing the proceedings in the sum of $1,000.00.

[64] Similarly, pursuant to section 124 of the *Legal Practitioners Decree 2009,* I have summarily assessed that the Respondent is to pay to the Commission the sum of $1,000.00 towards the reasonable costs incurred by the Commission in this matter.

[65] Both of the above sums are sum to be paid within 28 days of today, that is, by 12 noon on 15th May 2017.

ORDERS

[66] The formal Orders of the Commission are:

1. In the Application filed before the Commission in Case No. 003 of 2015, *Chief Registrar v Raman Pratap Singh,* it is hereby ordered that the practising certificate of Raman Pratap Singh be suspended for a period of 15 months commencing as from today, 18th April 2017.
2. Order 1 is suspended forthwith conditional upon the Respondent, Raman Pratap Singh, signing and filing today with the Commission to then be filed forthwith with the High Court Civil Registry, a consent order undertaking to complete (and setting out in specific details) the first 11 steps (ie. a to j) set out in his Supplementary Submission filed with the Commission on 11th April 2017.
3. The matter is adjourned for further further hearing at 10.00 am on Monday, 27th November 2017.
4. Should the Commission be satisfied at the adjourned hearing on 27th November 2017, that the Respondent has completed all of the steps set out in his 'Supplementary Submission' dated 11th April 2017, or that he has used his best endeavours to do so, the Commission will consider reducing the period of suspension but to no less than 8 months to take effect from that date.
5. Pursuant to section 124 of the *Legal Practitioners Decree 2009,* the costs payable by the Respondent to the Applicant are summarily assessed in the sum of $1,155.00 comprising as follows:

   (1) witness expenses in the sum of $155.00; and

   (2) the costs of the Applicant for bringing the proceedings in the sum of $1000.00.
6. Pursuant to section 124 of the *Legal Practitioners Decree 2009,* the costs payable by the Respondent towards the reasonable costs incurred by the Commission in this matter are summarily assessed in the sum of $1,000.00.
7. Both of the above sums set out in Orders 5 and 6 above are to be paid within 28 days of today, that is, by 12 noon on 15th May 2017, $1,000.00 is to be paid to the Chief Registrar and $1,000.00 is to be paid to the Commission.

8. Pursuant to sections 12(j) and (q) of the *Legal Practitioners Decree 2009*, the Respondent is to reimburse a sum of $1,100 to the complainant, Mani Lal, (plus $1,000 summarily assessed as compensation in lost interest), making a total of $2,100.00 to be paid within 28 days of today, that is, by 12 noon on 15th May 2017, to be paid to the Chief Registrar for payment out to the complainant, Mani Lal.

Dated this day of 18th April 2017.

Dr. Thomas V. Hickie
COMMISSIONER