

***Chief Registrar v Bulisea***  
**ILSCJ17/2017; [2017] FJILSC 17 (30 November 2017)**

*This summary is not intended to be a substitute for the reasons of the Independent Legal Services Commission or to be used in any later consideration of the Commission's reasons*

### **Facts**

Mr Nacanieli Bulisea was charged with one count of professional misconduct under sections 83(1)(a) and 82 (1)(a) of the *Legal Practitioners Act 2009* ('LPA'). It was alleged that Mr Bulisea had breached rule 3.1 of the *Rules of Professional Conduct and Practice*: namely, '[a] practitioner shall not knowingly deceive or mislead the Court'.

The misconduct was said to have occurred during proceedings in the High Court, during which Mr Bulisea made five separate misleading statements to the effect that his and his principal employer Mr Aseri Vakaloloma's, applications for practising certificates had been lodged on that same day (28 February 2017). In reality however, they were in fact lodged the following day, on 1 March 2017. At the time of making the statements, Mr Bulisea had only provided the applications to the firm's administrator, who was instructed to lodge the applications.

### **Judgment**

The Commissioner identified that the burden of proof is on the 'applicant to prove the charge to the civil standard', the balance of probabilities, which is varied 'according to the gravity of the fact to be proved' (*Chief Registrar v Cevalawa* [2011] FJILSC (5 December 2011), citing *In A Solicitor and The Law Society of Hong Kong* [2008] HKCFA 15).

It was not disputed that the actus reus of the offence had been proven, as the court transcript from 28 February 2017 clearly included the five statements made by Mr Bulisea to the effect that his application for a practising certificate had been lodged that day.

What was disputed however was the applicable standard of mens rea. The Commissioner stated that the focus should be upon determining the meaning and scope of the term 'knowingly', as it appears in rule 3.1 of the *Rules of Professional Conduct and Practice*. Ultimately, it was held that the offence required proof of full mens rea was required, and that notwithstanding Mr Bulisea's submissions to the contrary, neither the standards of strict nor absolute liability were applicable. This was because the inclusion of a qualifying adverb such as 'knowingly' clearly provides for guilty intent as an element of the offence (see *He Kaw Teh v The Queen* (1985) 157 CLR 523, 594 (Dawson J)). In the present case, the Commissioner held that Mr Bulisea 'knowingly' made the five misleading statements. He had not inadvertently made the statements, nor had there been a "slip of the tongue". He had made the first statement of his own volition knowing well that he could not confirm at that time that, as a matter of fact, the applications had been lodged. Nevertheless, he continued to insist through four further statements that the applications had been lodged, without so much as even speaking to the firm's administrator about the status of the applications.