

Chief Registrar v Nacolawa
ILSCJ05/2016; [2016] FJILSC 4 (21 September 2016)

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 Saimoni Nacolowa, a legal practitioner and the principal of the law firm Nacolowa & Co, while presenting the law firm's trust account audit report to the Office of the Attorney General and the Chief Registrar for the period dating 1 October 2013 to 30 September 2014, did not make a proper enquiry as to Mr Rohit Prasad's status as a registered auditor. Furthermore, he had improperly engaged Mr Prasad to prepare the law firm's trust account audit report, who did not contemporaneously hold a Certificate of Public Practice issued by the Fiji Institute of Accountants, as mandated by section 11(3)(a) of the *Trust Accounts Act 1996* ('TAA'). It was alleged that Mr Nakalowa's conduct amounted to professional misconduct under section 82(1)(a) of the *Legal Practitioners Act 2009* ('LPA').

This case raised two main issues, namely:

1. Whether the onus falls upon a legal practitioner, when appointing an auditor to audit the legal practitioner's trust account, to make further 'proper enquiry' about whether the auditor is the current holder of a Certificate of Public Practice issued by the Fiji Institute of Accountants; and
2. Whether a legal practitioner should be liable for a charge of professional misconduct on the basis of a failure to make such enquiries.

Judgment

The outcome of this matter turned upon the interpretation of section 11(3)(a) of the *TAA*:

- (3) A person shall not accept appointment as nor act as auditor under this Act unless that person -
- (a) is the current holder of a Certificate of Public Practice issued by the Fiji Institute of Accountants (this provision shall not apply to a person or class of persons approved by the Minister)

The Commissioner applied the 'golden rule' of statutory interpretation, through reference to the case of *Suva City Council v R B Patel Group Ltd (Unreported, Supreme Court of Fiji, Supreme Court Appeal: CBV0006 of 2012, 17 April 2014, Marsoof, Hettige and Wati JJSC)*. According to the Commissioner, the golden rule requires that the words of a statute be given their ordinary meaning, unless doing so would produce a manifestly absurd outcome.

The Commissioner thus found that section 11(3)(a) of the *TAA* places an obligation on the auditor not the legal practitioner, as the trustee. Additionally, it was noted that the Chief Registrar had produced no material to compel the Commissioner of an alternative, purposive interpretation of the legislation. As such, the Chief Registrar's application was struck out.