

IN THE INDEPENDENT LEGAL SERVICES COMMISSION
AT SUVA

ILSC NO. 019 of 2021

BETWEEN: CHIEF REGISTRAR
APPLICANT

AND: SURESH CHANDRA
FIRST RESPONDENT

AND: MC LAWYERS
SECOND RESPONDENT

Counsel: Ms. V. Prasad & Mr. A. Chand for the Applicant
Mr. D. Sharma & Ms. G Fatima for the Respondents

Date of Hearing (Pleading) : 22nd August, 2022, 28th & 30th September 2022

Written submissions : 28th October 2022 & 29th December 2022

Date of Determination : 3rd March 2023

DETERMINATION

Introduction

1. The Chief Registrar had by this application preferred 6 Counts with allegations of Professional Misconduct pursuant to Section 82 (1) (b) of the Legal Practitioners Act 2009 [**“the Act”**] against the practitioner Mr. Suresh Chandra. The said allegations are as follows;

COUNT 1

Professional Misconduct: pursuant to Section 82 (1) (b) of the Legal Practitioners Act of 2009.

Particulars of Offence

SURESH CHANDRA, being the Principal of the Law firm MC Lawyers and the Trustee of MC Lawyers Trust Account 9101000000175 kept at Bank of Baroda, Suva Branch, between the 1st day of **October 2016** and **30th day of September 2019** failed to ensure that trust monies kept in MC Lawyers Trust Account No. 9101000000175 were not used for unauthorized purposes, which conduct constitutes professional misconduct pursuant **Section 82(1) (b) of the Legal Practitioners Act of 2009**, which if established, would justify a finding that the Legal Practitioner is not a fit and proper person to engage in the practice of law in Fiji.

COUNT 2

Professional Misconduct: pursuant to Section 82 (1) (b) of the Legal Practitioners Act of 2009.

Particulars of Offence

SURESH CHANDRA, being the Principal of the Law firm MC Lawyers and the Trustee of MC Lawyers Trust Account 9101000000175 kept at Bank of Baroda, Suva Branch, between the 1st day of October 2016 and 30th day of September 2017 failed to properly supervise and monitor all transactions made from MC Lawyers Trust Account and by reason of such failure the said trust account had an unreconciled amount of \$2 million, which conduct constitutes professional misconduct pursuant **Section 82(1) (b) of the Legal Practitioners Act of 2009**, which if established, would justify a finding that the Legal Practitioner is not a fit and proper person to engage in the practice of law in Fiji.

COUNT 3

Professional Misconduct: pursuant to Section 82 (1) (b) of the Legal Practitioners Act of 2009.

Particulars of Offence

SURESH CHANDRA, being the Principal of the Law firm MC Lawyers and the Trustee of MC Lawyers Trust Account 9101000000175 kept at Bank of Baroda, Suva Branch, between the 1st day of October 2017 and 30th day of September 2019 failed to properly supervise and monitor all transactions made from MC Lawyers Trust account and by reason of such failure the said trust account had an unreconciled amount of \$2, 139 million, which conduct constitutes professional misconduct pursuant **Section 82(1) (b) of the Legal Practitioners Act of 2009**, which if established, would justify a finding that the Legal Practitioner is not a fit and proper person to engage in the practice of law in Fiji.

COUNT 4

Professional Misconduct: pursuant to Section 82 (1) (b) of the Legal Practitioners Act of 2009.

Particulars of Offence

SURESH CHANDRA, being the Principal of the Law firm MC Lawyers and the Trustee of MC Lawyers Trust Account 9101000000175 kept at Bank of Baroda, Suva Branch, between the 1st day of October 2016 and 30th day of September 2017 failed to maintain and/or keep proper accounting records, which conduct constitutes professional misconduct pursuant **Section 82(1) (b) of the Legal Practitioners Act of 2009**, which if established, would justify a finding that the Legal Practitioner is not a fit and proper person to engage in the practice of law in Fiji.

COUNT 5

Professional Misconduct: pursuant to Section 82 (1) (b) of the Legal Practitioners Act of 2009.

Particulars of Offence

SURESH CHANDRA, being the Principal of the Law firm MC Lawyers and the Trustee of MC Lawyers Trust Account 9101000000175 kept at Bank of Baroda, Suva

Branch, between the 1st day of October 2017 and 31st day of January 2018 failed to maintain and/or keep proper accounting records, which conduct constitutes professional misconduct pursuant **Section 82(1) (b) of the Legal Practitioners Act of 2009**, which if established, would justify a finding that the Legal Practitioner is not a fit and proper person to engage in the practice of law in Fiji.

COUNT 6

Professional Misconduct: pursuant to Section 82 (1) (b) of the Legal Practitioners Act of 2009.

Particulars of Offence

SURESH CHANDRA, being the trustee and signatory of MC Lawyers Trust Account No. 9101000000175 kept at Bank of Baroda, Suva Branch, between the 14th day of July 2016 and 19th day of September 2017 authorised withdrawals from MC Lawyers Trust Account No. 9101000000175 by signing on the following incomplete drawn cheques:

1. Cheque no. 1058836
2. Cheque no. 1058954
3. Cheque no. 1058961
4. Cheque no. 1058981
5. Cheque no. 1058983
6. Cheque no. 1058987
7. Cheque no. 1058997
8. Cheque no. 1058002
9. Cheque no. 1058006
10. Cheque no. 1059018
11. Cheque no. 1105579
12. Cheque no. 1105614
13. Cheque no. 1105627
14. Cheque no. 1105641
15. Cheque no. 1105666
16. Cheque no. 1105747
17. Cheque no. 1105750
18. Cheque no. 1105752
19. Cheque no. 1105755
20. Cheque no. 1105768
21. Cheque no. 1105771
22. Cheque no. 1165854
23. Cheque no. 1165866
24. Cheque no. 1165869
25. Cheque no. 1165883

which resulted in unauthorized withdrawals to be made from the said trust account, which conduct constitutes professional misconduct pursuant **Section 82(1) (b) of the Legal Practitioners Act of 2009**, which if established, would justify a finding that the Legal Practitioner is not a fit and proper person to engage in the practice of law in Fiji.

2. The Respondent, Mr. Suresh Chandra was a partner of MC Lawyers and the trustee of the MC Lawyers Trust Account No. 9101000000175 kept at Bank of Baroda, Suva Branch.

Professional misconduct contrary to Section 82 (1) (b)

3. All six allegations preferred against the Respondent are that of **Professional misconduct** contrary to Section 82 (1) (b) of the Legal Practitioners Act. As to what constitutes **Professional misconduct** within the meaning section 82 (1) (b) will be requires to be considered in detail in view of matters raised by the Respondent in the final written submissions as to the legality and lawfulness of preferring charges under the LPA.
4. Sections 81, 82 and 83 of the LPA specifies Professional standards. The types of professional wrongs that may be preferred are of two types. They are either *Unsatisfactory Professional Conduct in terms of section 81* or *Professional Misconduct in terms of section 82(1) which has two forms as specified in sub sections (a) and (b)*.
5. The LPA does not have an exhaustive definition of the term “*Professional Misconduct*”, but an inclusive definition is found in a descriptive form in sections 82 (1)(a), 82(1)(b), 83(1) and 83(2) of the LPA as follows;

“Professional misconduct

82.—(1) For the purposes of this Decree, 'professional misconduct' includes

- (a) unsatisfactory professional conduct of a legal practitioner, a law firm or an employee or agent of a legal practitioner or law firm, if the conduct involves a substantial or consistent failure to reach or maintain a reasonable standard of competence and diligence;*
- (b) conduct of a legal practitioner, whether occurring in connection with the practice of law or occurring otherwise than in connection with the practice of law, that would justify a finding that the practitioner is not a fit and proper person to engage in legal practice.”*

and,

“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).....

(h) conduct of a legal practitioner or law firm consisting of a contravention of the provisions of the Trust Accounts Act 1996” (emphasis added);

and,

“83.—(2) ‘professional misconduct’ includes malpractice, and ‘unsatisfactory professional conduct’ includes unprofessional practice or conduct.”

6. Thus, section 82 of the LPA defines ‘professional misconduct’ inter alia to include;
 - (a) unsatisfactory professional conduct of a legal practitioner, if the conduct involves a *substantial or consistent failure to reach or maintain* a reasonable standard of competence and diligence (an aggravated form of unsatisfactory professional conduct as defined in section 81); or
 - (b) conduct of a legal practitioner, whether occurring in connection with the practice of law or occurring otherwise than in connection with the practice of law, that would justify a finding that the practitioner is *not a fit and proper person* to engage in legal practice.
7. Section 83(1)(a) to (h) of the LPA further elaborates and specify certain conduct and violations capable of constituting ‘professional misconduct’ or ‘unsatisfactory professional conduct’ which *inter alia* include *contravention of the provisions of the Trust Accounts Act 1996*, the contravention of the provisions of the LPA, the regulations and rules made thereunder, or *the Rules of Professional Conduct*. The said list is not exhaustive but is inclusive and descriptive.
8. Further section 83(2) of the LPA provides that, “malpractice” is included to be ‘Professional misconduct’ whilst “unprofessional practice or conduct” is included to be ‘unsatisfactory professional conduct’. However, ‘malpractice’ and ‘unprofessional practice or conduct’ are not defined.

9. In **Chief Registrar V. Adish Kumar Narayan** [ILSC No. 009 / 2013] (25th September 2013), the scope and import of sections 81-83 was considered and it was expounded thus;

“30. The practitioner submits that section 83 which lists 8 examples of conduct which could be seen to be 'unsatisfactory professional conduct' or 'professional misconduct' cannot apply to him because in June 2000 he was merely acting for a mortgagee trying to enforce his security. That being the case, he submits then the conduct has to fall back on the s 82 definitions ('competence and diligence' or 'not being a fit and proper person') which he argues are two limbs that do not apply to his conduct either. Therefore, he concludes, there is no offence made out against him.

31. These submissions again ignore the very wide terms of sections 81, 82 and 83. Section 82 plainly provides that professional misconduct includes the conduct stated thereon which assume that other conduct might will be misconduct if the Commission finds it to be so. Section 83 with its 8 examples of misconduct (subsections (a) to (h)) specifically says that they do not limit the definitions in s.82. All three sections provide very wide parameters within which the Commission could find any particular conduct to be either unsatisfactory professional conduct or to be professional misconduct. Such conduct need not be confined to competence, fitness to practise, nor to any of the examples set out in section 83”.

10. Also, in **Chief Registrar V. Adish Kumar Narayan** ILSC No. 009/2013 (2nd October 2014) the scope of sections 82 and 83 was farther expanded where it was held that that the statutory definition of professional misconduct does not exclude the common law definition thus;

“9. As a preliminary point the Practitioner by his Counsel argues that that the mischief complained of does not come within the purview of either section 82 or 83 of the Decree. In effect he submits that the particulars of the complaint against him do not state any offence.

(10) This argument was dealt with in some detail by the Commission in a ruling on the practitioner's Application for Stay, (Ruling 009 of 2013 dated 25 September 2013) in which it was held that the examples of misconduct listed in section 83 of the Decree are not exhaustive and in any event any conduct undertaken by the Practitioner need not necessarily be confined to competence or fitness to practice but it may include any conduct that the Commission might find to be professionally blameworthy, dishonourable or unethical.

In the case of Law Society of N.S.W. v Marando [2013]NSWADT267, it was said:

"However it is well settled that the statutory definition of professional misconduct does not exclude the common law definition emerging from the

oft-cited case of Allison v Gen Council of Medical Education and Registration [1894] 1KB 750; that is "conduct which would reasonably be regarded as disgraceful or dishonorable by professional [colleagues] of good repute and competency".

11. In *Complaints Committee No. 1 of the Auckland District Law Society v C* [2008] 3 NZLR 105 (HC) it was said;

"[33] ... While intentional wrongdoing by a practitioner may well be sufficient to constitute professional misconduct, it is not a necessary ingredient of such conduct ... [A] range of conduct may amount to professional misconduct, from actual dishonesty through to serious negligence of a type that evidences an indifference to and an abuse of the privileges which accompany registration as a legal practitioner."

12. Neither of the 'definition' sections 81 or 82 in fact defines or gives any precise content to the principal concepts of 'unsatisfactory professional conduct' and 'professional misconduct'. Hence, the inclusive definitions merely provide that the (undefined) concept includes the conduct described therein and also others. The definitions in the inclusive and descriptive form thus provide a gateway to lawfully bring other forms of conduct within the meaning to *unsatisfactory professional conduct* and *professional misconduct*.

13. Sections (a)-(h) of section 83(1) provides in common and without distinction, instances of conduct capable of being either unsatisfactory professional conduct or professional misconduct. Neither of the 'definition' sections in fact defines nor gives precise content to the principal concepts of 'unsatisfactory professional conduct' and 'professional misconduct'. Therefore, these inclusive definitions enable and permit other forms of unsatisfactory professional conduct and professional misconduct conduct to be brought in. This is how the common law definitions are able to lawfully find its way in to the definitions of unsatisfactory professional conduct and professional misconduct within the meaning of the LPA.

14. 'Professional misconduct' as defined in section 82(1)(a) includes the concept of 'unsatisfactory professional conduct'. If the same acts come within both definitions, then, what is the distinguishing and determining factor? To come within the meaning of Professional Misconduct it should be of '*a substantial or consistent*' nature. This

appears to be one of the distinguishing and determining factor between unsatisfactory professional conduct and professional misconduct.

15. In contrast, Professional misconduct under section 82(1)(b) of the LPA includes conduct that would, if established, justify a finding that the practitioner is *not a fit and proper person* to engage in legal practice. The statutory provision also includes the situation where the conduct occurred otherwise than in connection with the practice of the law. Conduct which does not involve ‘professional’ misconduct in the strict and literal sense but is such as to support the conclusion that the person is not a fit and proper person to be in practice, has been brought within the definition of professional misconduct by section 82(1)(b).
16. As the said definitions are couched in the inclusive form, the matters and conduct as identified and specified in section 83 comes within the scope of unsatisfactory professional conduct as well as professional misconduct and will similarly amount to contraventions of 81 and 82 as the case may be. However, as these definitions are inclusive, and because these or similar expressions were in common use before the LP Act was enacted, common law tests for the assessment of such conduct continues to be relevant. In **Adamson v Queensland Law Society Inc**, (1990) 1 Qd R 498, 507; Thomas J. said, with respect to professional misconduct:

“...the test to be applied is whether the conduct violates or falls short of, to a substantial degree, the standard of professional conduct observed or approved by members of the profession of good repute and competency.”

The Statutory Basis of the Allegations in Counts 1 -6

17. As for the charges of the failure to ensure that trust funds were not utilized for unauthorized purposes (count 1), the failure to supervise and monitor the trust account (counts 2 and 3) and the failure to maintain and/or keep proper accounting records of the trust account (counts 4 and 5) and causing unauthorized withdrawals from the trust Account (count 6) they are based on the contraventions of the provision of section 4 and 6 of the Trust Account Act.
18. Section 4 of the **Trust Accounts Act 1996** provides that:
 - (1) *A trustee shall keep or cause to be kept displayed in the English language such accounting and other records of all trusts moneys as—*
 - (a) *sufficiently explain the transaction recorded therein;*

(b) disclose at all times the true position regarding all trust moneys held and the application of trust moneys received;

(c) are prescribed; and

(d) enable the accounting records to be conveniently and properly audited.

(2) A trustee shall keep all accounting and other records relating to trust moneys at the trustee's sole or principal place of business or at such other places as may be approved in writing by the Registrar except where for the purpose of audit under this Act the accounting and other records are in the possession of an auditor for such time as may be reasonably necessary for that purpose. Copies of such accounting and other records may be kept elsewhere. Paid cheques may be left with the bank that has obtained possession of them.

(3) The accounting and other records referred to in this section shall be retained for a period of not less than 6 years

(4)

(5)

(6)

19. Section 6 of the **Trust Accounts Act 1996** provides that:

6 (1) A trustee shall not withdraw moneys from a **trust account** except for the following purposes:-

(a) payment to the person on whose behalf the moneys are held with that person's directions;

(b) payment to the trustee of disbursements properly paid by the trustee on behalf of the client in question. Disbursements shall be deemed to have been paid on the day the cheque in payment of the disbursement has left the possession and control of the trustee, and the trustee has no reason to believe that the cheque will not be paid on presentation;

(c) payment to the trust for professional costs in the following circumstances:-

(i) where the payment is supported by authorisation in writing by the person on whose behalf the moneys are held. Where the authorisation is not specific as to the amount to be paid, the trustees shall forward an account to the client in question prior to making such payment;

(ii)

(iii)

(d) payment that is otherwise authorised by statute or made pursuant to an order of the Court.

20. Thus said 6 allegations in counts 1-6 are of professional misconduct pursuant to sections 82(1)(b) read with 83(1)(h) of the LPA and section 4 or 6 of the **Trust Accounts Act**. The allegations in the charges do not refer to section 83 (1) (h) and to the Trust Account Act Provisions. There is only a reference to section 82 (1) (b). It would have been complete if there was a reference to section 83 and the relevant section of the Trust Account Act in the allegations/counts. However, as the particulars specify the offending conduct in detail and the definition of professional misconduct in

section 82 (1) (b) is in the inclusive form it also encompass the conduct as described in section 83 even in the absence of a specific reference to section 83. Further, as the particulars in each of the counts spell out and state in detail with clearly the offending conduct it conveys to the Respondent with sufficient clarity and certainty the nature of the violation he is alleged to have committed. These are not charges of a criminal nature but allegations of professional wrongs or transgressions in disciplinary proceedings. What is necessary is to specify if it is, unprofessional conduct under section 81 or if it is professional misconduct under section 82(1)(a) or 82(1)(b) of the LPA. Accordingly, the allegations (counts) presented in the present form are not irregular and has not misled or caused any prejudice to the Respondent.

21. The common law has recognises the duty of a solicitor/practitioner, qua trustee, to account for how money received on trust has been dealt with. [**Re Simersall** (1992) 108 ALR 375 at 379 per Gummow J]. It has also been considered by the common law to be a necessary consequence of this duty that practitioners set up and maintain an accurate and transparent accounting system to track and deal with this money, and for partners to exercise personal responsibility and vigilance in monitoring it. It is now settled in Fiji that the statutory definition of professional misconduct does not exclude the common law definitions. [vide- **Chief Registrar V. Adish Kumar Narayan** ILSC No. 009/2013 (2nd October 2014)]. As the relevant conduct with its consequence is spelt out in detail in each of the counts the absence of an express reference to the Trust Account Act and/or section 83 in the allegations (charges) is of no significance or consequence to the legality or propriety of these allegations.

Fit and proper person

22. Allegations of professional misconduct in all the counts are based on section 82(1)(b) of the LPA which requires proof that the alleged conduct is such that the practitioner *is not a fit and proper person* to engage in legal practice. Thus, professional misconduct under section 82(1)(b) of the LPA includes conduct that would, if established, justify a finding that the practitioner is not a fit and proper person to engage in legal practice. This provision also includes the conduct otherwise than in connection with the practice of law as well. Section 82(2) provides that, regard may be had to the suitability matters governing admission or the grant or renewal of the practising certificate including section 44 of the LPA, in determining if a practitioner is not a fit and proper person.

The suitability matters as defined in section 44(1) *inter alia includes the failure to comply with any law relating to Trust funds [vide section 44(1)(c)].*

The standard of proof

23. As set out in the Hong Kong case of **A Solicitor v Law Society of H.K.** [2008]2HKLRD and endorsed in **Chief Registrar V Adish Kumar Narayan**, ILS NO. 009 of 2013 (2nd October 2014) and adopted by this Commission in **Haroon Ali Shah** [007 of 2011] evidentiary test in professional disciplinary matters is as follows;

"The test is not proof beyond reasonable doubt, but a varying standard of the civil standard referred to at times as the preponderance of probabilities. The more serious an act or omission alleged the more improbable it must be regarded and in proportion to the improbability the evidence will need to be more compelling". (emphasis added)

Elements of the Allegations

24. All the allegations are of professional misconduct pursuant to section 82 (1) (b) of the Legal Practitioners Act. Count 1 is based on the failure to ensure that the Trust Account was not used for unauthorized purposes during the period 1st October, 2016 to 30th September, 2019. This allegation of misconduct is based on the non-compliance with section 6 of the Trust Accounts Act.
25. Counts 2 and 3 are based on the failure to supervise and monitor all transactions made from the Trust Account. This is the alleged conduct and the consequence is the unreconciled amount of \$2 million in count No. 2 and \$2.139 million in count No. 3.
26. These figures are obtained from the audit reports prepared by witness, Mr. Arun Narsey (exhibits A10 and A9). As explained by Mr. Narsey, an unreconciled amount means the variance between the bank account reconciled balance of the Trust Account and the total balance of all the clients trust ledger listings (exhibit A13). The gross variance is identified but as to how this figure is made-up or constituted within the said gross sum is yet to be ascertained. That's why it is referred to as an unreconciled amount. Therefore, to prove counts 2 and 3 it is not necessary to prove how this unreconciled amount is constituted within the gross sum. What is required to be proved is the fact of the variance and that it has so arisen due to the failure to properly supervise and monitor all transactions from the Trust Account.

27. As for counts 4 and 5 the allegations are based on the failure to maintain and/or keep proper accounting records which is an obligation under section 4 of the Trust Account Act as well as a common law obligation which amounts to professional misconduct by virtue of section 82 (1) (b) of the Legal Practitioners Act as discussed above.
28. As for Count No. 6 the allegation is that the Respondent has signed 25 incomplete cheques of the Trust Account in an incomplete form. This is the alleged conduct and the consequence is that unauthorized withdrawals were made from the Trust Account. The culpable act is the signing of incomplete cheques before all necessary details have been entered. The wrong alleged is professional misconduct as defined by the section 82 (1) (b) the basis is the violation of section 6 of the Trust Account Act and is also a common law obligation.

Summary of Evidence

29. The inquiry commenced on 22nd August, 2022 and proceeded on the 28th September and the 30th September, 2022. Chief Registrar called 4 witnesses namely Mr. Asit Kumar, Mr. Gyneshwar Prasad, and Mr. Meli Laliqavoka. The Respondent opted to remain silent and did not wish to give evidence or call any witnesses.
30. Witness **Mr. Arun Narsey** an Auditor was called by of the Chief Registrar whose Audit firm A.M Narsey & Co., had been auditing the Trust Account of MC Lawyers from around 1990 to date and has conducted at least 17 such audits. The Respondent Mr. Suresh Chandra was known to him and was the sole trustee of the Trust Account of MC Lawyers. In January 2018 Mr. Chandra has informed him of a fraud/misappropriation committed by an employee named Ashwini Prasad and that her services were terminated 18th January 2018.
31. He said that MC Lawyers has been generally compliant with the Trust Account Act and the Trust Account was never over drawn but during the period between 1st September 2017 to 18th January 2018 when certain records were missing, tampered with, mutilated, manipulated or destroyed and was not properly maintained (vide-his letter A7). He admitted conducting an audit for this period in the normal course but has not detected any irregularity and it was only in the re audit in July 2020 that an unreconciled amount of 2.139 million was seen. He also admits that he did not pick up

the discrepancy when he first audited in 2017, as the records provided to him at that stage indicated that the Bank Balance and the Trust Account Ledger did balance. Mr. Narsey admitted that he failed and did not check the cheque butts or every withdrawal or deposit, but only did a check on a random sample. The records maintained by MC Lawyers after detecting the fraud by Ashwini and her termination have been duly kept and maintained but due the 2017 irregularity the variance or the unreconciled amount still has not been resolved and as such his reports were qualified Audit Reports.

32. The unreconciled amount has been carried through to 2018 and 2019 and Mr. Narsey was unable to explain as to how the variance or the unreconciled amount has arisen or calculated. He expressed the opinion that that it could be either due to the failure to deposit monies in the Trust Account or due to unauthorized withdrawals from the Trust Account or a combination of both. He said that the figure of \$2,139 million was reached on the records provided by MC Lawyers to him when he conducted a reaudit in 2020.
33. Mr. Narsey did say that in previous years when clients' accounts did not balance, Mr. Chandra as Trustee put in funds to ensure and balance the accounts and ensured that clients trust accounts had no shortfall. Mr. Narsey also said that the Attorney General did not accept the re-audit reports for 2017, 2018 and 2019 declined to extend further time to MC Lawyers to file the Audit Reports. The evidence of the Bank of Baroda Manager Asit Kumar confirmed that the Bank considered all cheques and authorities presented to them to be proper. The cheques that were presented to the Bank had all relevant details completed.
34. Witness **Mr. Meli B Laliqavoka** is an Investigator of the LPU with over 15 years' experience and has performed over 200 investigations on Trust Account matters. He has called for and obtained documents and information from MC Lawyers, Auditor Narsey and the Bank of Baroda and studied all Trust Account Cheques from 2014 to 2019. He has observed that copies of cheques attached to the vouches amount in writing was in the blank and incomplete but signed, he refers to them as **incomplete cheques**. Out of 82 such cheques, he had positively identified 38 to have been signed by Mr.Suresh Chandra (25) and Mr.Maharaj (7). He had observed that the 38 cheques had different amounts that were written on the incomplete cheques to the amount that was

written on the presented cheques in numerals and the amount in words tallied with the altered and increased amount.

35. The summary of these 38 cheques was prepared by this witness in a schedule form with all corresponding information of the cheques as well as trust account documents and the observations and remarks which is at Page 207 to 229 of Volume 2 of the disclosures. Copies of cheques annexed to the voucher and obtained from the bank, their payment vouchers, bank statements, cheque butts and the relevant ledger are all annexed to the said summary. All these documents are compiled in Volume 2 of the disclosures from page 207 to 521. This entire volume was marked and produced in evidence as exhibit A16 which the Respondent admitted without objection. These cheques are written out between 14th July 2016 and 19th September 2017. Mr. Laliqavoka has in the last column under the heading remarks and observations in respect each of these cheques separately. Mr. Laliqavoka's summary has tabulated the total amount fraudulently withdrawn from the Trust Account of MC Lawyers Trust and banked into the Office Account of MC Lawyers using the altered amount cheques to be \$231,985.00.
36. **Mr. Asit Kumar** is attached to the Bank of Baroda Suva Branch. He had provided a statements and documents of the Trust Account of MC Lawyers explained the procedure in issuing the cheque books and honoring of cheques when presented for payment. They check the signature with the signature card in the system and in respect of large transactions they require a letter confirmation. A bank statement is issued every month and in respect of the Trust Account the said statement is sent to the Law firm. He confirms that the account number of MC Lawyer's Trust Account is 9101000000175 which was at the Bank of Baroda branch Suva. The Respondent Mr. Suresh Chandra was one of the signatories and the Trustee. The said account is currently frozen and the following documents are marked and produced as exhibits through him; Exhibit 1 letter by the Chief Registrar requesting that the account be frozen, Exhibit 2 letter issued by the bank to Chief Registrar. Exhibit 3 bank statement provided to Chief Registrar of the Trust Account from 01/01/2020 to August 2020, Exhibit 4 letter dated 27/10/2020 requesting details by the Chief Registrar, Exhibit 5 letter issuing the bank statements along with the statements from October 2014 to August 2020. In cross-examination he admitted that the cheques were all complete when it was received for payment.

37. **Mr. Gyneshwar Prasad** was engaged by Mr. Chandra to reconstruct the account transactions and payment journals for the period 2016 to 2017, 2017 to 2018 and also 2015 to 2016. He had observed that the amounts in the cheque butts were different from the statement of the Trust Account. He had attended to the receipt journal, payment journal and found that the receipts were posted to the individual account journal. In the normal course only, the cheque is signed and not the butt. Upon perusing volume 1 he pointed out and identified that the bank reconciliation is at page 143. He confirmed that he received all cheque butts for the period October 2016 to September 2017, October 2017 to September 2018 and the period he was called to reconstruct was from 1st October 2016 to 30th October 2017 and 1st October 2017 to 30th October 2018.
38. Since the Trust Account had gone into Receivership on 4th August 2020, they were not able to continue with their work. And could not get access the cheques or other records held by Bank of Baroda also as he was relying on incomplete records of MC Lawyers, he was reluctant to express a firm opinion.
39. The complainant marked and produced the following 21 documents as exhibits in the course of the evidence. The Respondent has no objection and in fact he admitted these documents. They are:

LIST OF EXHIBITS

EXHIBIT	DOCUMENT	DATE
A1.	Chief Registrar's letter (page 522 of Volume Three Bundle)	04/08/2020
A2.	Bank of Baroda letter (pages 523 of Volume Three Bundle)	05/05/2020
A3.	Bank of Baroda Statement (pages 524-528 of Volume Three Bundle)	01/01/2020 - 04/08/2020
A4.	Chief Registrar's letter (Page 529 of Volume Three Bundle)	27/10/2020
A5.	Bank of Baroda letter the bank statement of account No. 9101020000175 (Pages 530-565 of Volume Three Bundle)	27/10/2020
A6.	Audited report as at 30 September 2016 (Pages 35-174 of Volume One Bundle)	30/09/2016
A7.	Letter from A M Narsey & Co to the Honourable Attorney General & Minister for Justice with enclosures (Pages 607-629 of Volume Three of the Bundle)	30/07/2020

A8.	MC Lawyers Trust Account Audit Report for year ended 30 September 2017 (Pages 201-206 of Volume One Bundle)	30/09/2017
A9.	MC Lawyers Trust Account Audit Report for year ended 30 September 2018 (Pages 192-200 of Volume One Bundle)	30/09/2018
A10.	MC Lawyers Trust Account Audit Report for year ended 30 September 2019 (Pages 183-191 of Volume One Bundle)	30/09/2019
A11.	Section 104 Notice (page 1 of Volume One Bundle)	6/11/2020
A12.	MC Lawyers Response (Pages 4-16 of Volume One Bundle) sent by Mr. Suresh Chandra to LPU	13/11/2020
A13.	Queries and Response of Mr. Narsey, Auditor (Pages 585-594 of Volume Three Bundle)	
A14.	Section 106 Notice (Page 17 of Volume One Bundle)	24/03/2021
A15.	Response to the Section 106 Notice sent by the Respondent (Pages 23-26 of Volume One Bundle)	15/04/2021
A16.	Entire bundle of Volume Two – schedule of incomplete cheques and the supporting documents	14/09/2021
A17.	Chief Registrar's letter enclosing a List of cheques paid from the Trust Account from October 2014 – 2020 (Pages 571-581 of Volume Three Bundle)	09/12/2020
A18.	Letter from AG to Respondent (Pages 636-639 of Volume Three Bundle)	26/11/2018
A19.	Letter from AG to Respondent (Page 640 of Volume Three Bundle)	11/08/2020
A20.	Letter from AG to the Respondent (Page 641 of Volume Three Bundle)	29/10/2020
A21.	Letter from Respondent to AG for extension of time (Pages 642-648 of Volume Three Bundle)	30/10/2020

Evidence emanating from documents

40. The above documents were produced and led in evidence without objection and the Respondent admitted the same without challenge. A significant portion of the evidence is contained in the above documents which I will now endeavour to summarise. Of these documents especially the audit reports (exhibits A8, A9 and A10), the letter of explanation sent by the Respondent to the Chief Registrar dated 13th November, 2020 (exhibit A12), letter sent by the Respondent to the Attorney General (Exhibit A21) and the schedule of incomplete cheques and the supporting documents entire Volume Two of the bundle of documents (exhibit A16) provide the bulk of the evidence relevant to these allegations.

Audit Reports

41. The said audit reports (exhibits A8, A9 and A10) were admitted by the Respondent. These are reports prepared by A M Narsey & Co in respect of which Mr. Arun Narsey gave evidence. All these audit reports have been prepared and certified by the auditors on the 7th October, 2020. The Respondent by his letter dated 13th November, 2020 (exhibit A12) admits preparation of said audit reports and the lodging with the Attorney General. It is also admitted that these audit reports concluded that a sum of \$2.139 million was unreconciled. (vide – exhibits A12 and A21).
42. According to exhibit A8, the Audit Report for the year ending 30th September, 2017, an estimated unreconciled amount of \$2 million is reported. It is also reported that the Trustee has not kept proper accounting and other reports required to be kept by the trustee pursuant to Trust Account Act. As such, the auditors are unable to state if all monies received have been lodged to the credit of the Trust Account.
43. It is also reported that the trustee informed of a staff member defrauding the Trust Account by various means, such as not depositing funds, withdrawal of funds on altered or forged cheques and said the staff has destroyed some Trust Account records. This matter had been reported to the police and the said staff has been terminated on the 18th January, 2018. The Trustee has estimated the unreconciled amount to be \$2 million as at 30th September 2017.
44. According to the audit report for the year ending on 30th September, 2018 (exhibit A9) the auditors have noted that the unreconciled amount has increased to \$2.139 million. The said qualification as follows:
- “Following from the audit opinion expressed and the explanations sought from the Trustee for the audit period ended 30th September, 2017, and except for the period from 1st October 2017 to 31st January 2018, (which is part of the current audit period) we have obtained all the information and explanation relating to the transactions for the period 1st February 2018 to 30th September 2018 which, to the best of our knowledge and belief were necessary for the purpose of our audit. We also noted that the unreconciled amount increased to \$2.139 million. Accordingly, we are unable to express our opinion for the 4 months period noted above as required by the Trust Account Act”.*
45. The auditor has also reported that:

- i. *During the audit, for the period from 1 February 2018 to 30 September 2018, we noted no significant breaches of the Trustee's obligation under the Act, except as noted below.*
- ii. *According to the bank statements, the trust bank account was not overdrawn during the period under review.*
- iii. *Subject to the impact the unreconciled amount as noted above on the period 1 February 2018 to 30 September 2018, to the best of our knowledge, a trust ledger account balance was overdrawn by \$11341.27. This was subsequently reimbursed by the Trustee.*
- iv. *Subject to the impact of the unreconciled amount as noted above, the trust account cashbook was reconciled with the bank balance and Trust Ledgers each month for the period under review.*

46. Further, according to the audit report for the year ended 30th September, 2019 (exhibit A10) the unreconciled amount \$2.13 million is said to be under investigation. The auditors have reported as follows:

- i. *During the audit, for the year from 1 October 2018 to 30 September 2019, we noted no significant breaches of the Trustee's obligation under the Act, except as noted below.*
- ii. *According to the bank statements, the trust bank account was not overdrawn during the year under review.*
- iii. *Subject to the impact the unreconciled amount as noted above on the period 1 October 2018 to 30 September 2019, to the best of our knowledge, six trust ledger account balances was overdrawn totaling \$44291.47 (which includes the 2018 one overdrawn account of \$11341.27). These were subsequently reimbursed by the Trustee.*
- iv. *Subject to the impact of the unreconciled amount as noted above, the trust account cashbook was reconciled with the bank balance and Trust Ledgers each month for the year under review.*

47. These audit reports were led in evidence through Mr. Narsey. According to him, his audit firm A M Narsey & Co has been auditing MC Lawyers' Trust Account from 1990 to 2000, and that up until the 30th September, 2016 the annual audits were in order and there were no issues or irregularities observed. However, it is only when he prepared the audit reports A8, A9, and A10 for the years ending 30th September, 2016, 30th September, 2017, and 30th September, 2019 that he could not reconcile. As at September 2017 the unreconciled amount has been \$2 million and the following year it had increased to \$2.139 million. Therefore, the unreconciled amount of \$2 million as at 30th September, 2017 has increased by \$139,000 to a total of \$2.139 million. The audit report for the year ended on 30th September 2018 specifically states that between the

period of 1st February, 2018 to 30 September, 2018 they have not noted any significant breaches of the Trustee's obligations under the Trust Account Act. In other words, the auditors finding is that they have observed breaches from the 1st October, 2017 to February 2018.

Letter of Explanation (Exhibit A12)

48. According to the letter of explanation (exhibit A12) the Respondent, states that he detected an employee named Ms. Ashwini Rachana Prasad altering the cheque dated 18th January, 2018 of \$500 to read as \$5000 of the Trust Account. He admits having detected a number of such similar alterations and also the manipulation of certain records she had been summarily dismissed. The Respondent also admits that the said Ashwini has tampered with and even destroyed certain ledgers by tearing pages off when this was detected. The Respondent has then employed G Prasad & Co., the Accountant to reconstruct their books of accounts. The Respondent admits further that;

“ Ashwini had used the office account in some cases to deplete the Trust Account as follows:

- 2. When the authorities from clients who had some monies in the Trust Account have authorities to MC Lawyers to deduct professional fees and disbursements*
- 3. A cheque was written from the Trust Account fees and disbursements to deposit in the Office Account was forged by adding one or two zeros.*
- 4. The extra money ending up in the Office Account had been again withdrawn by forging the cash cheque adding again one or two zeros to the original cheque amount.”*

49. The Respondent further states that Ashwini after forging and depositing the Trust Account cheque in the office account then forges an office account cheque knowing almost the exact surplus and withdraw cash from the office account. Upon the discovery of the alleged fraud the Respondent has obtained two documents in which Ashwini has admitted manipulating the Trust Account and personally utilizing a sum of \$435,306.08 from January 2017 to January 2018 and also admitted utilizing a sum of \$700,000 between 2015 and 2017. (Annexures A and B of exhibit A12).

50. The Respondent further admits that he received bank reconciliations from Ashwini on a monthly basis over the years and continued to do so until she was dismissed from service. Further, he also admits that in the period in question the bank reconciliations

were prepared by Ashwini and he has seen and acknowledged all such reconciliations. The Respondent in his letter goes further and admits that auditor, Narsey's audit report did conclude that the sum of \$2.139 million remained unreconciled.

Unreconciled Amount

51. The above documents which are undisputed and admitted in conjunction with Mr. Narsey's evidence establish the following. That up to the 30th September, 2016 the Trust Account had been operated without any issue. This is confirmed by the auditor Mr. Arun Narsey from October 2016 to the 30th September, 2019 there have been an unreconciled amount of \$2.139 million as per the audit reports. Respondent admits this in his letter to the AG (Exhibit A21) too. It appears that Ashwini had been terminated by the end of January 2018 and between the 1st October, 2016 and February 2018 the said employee had been manipulating and misappropriating funds from the Trust Account. As discovered and admitted by the Respondent the primary modus operandi of misappropriating was by altering the amount in the cheques and withdrawing excess amounts from the Trust Account through the office account. Thus, the fact of there being an unreconciled amount and the apparent reason thus established.

Incomplete Cheques

52. According to the evidence of the witness, LPU Investigator Meli B Laliqavoka, he had investigated the aspect of withdrawals made by altered cheques. He had obtained documents from the auditor, the audit reports and also uplifted documents of the trust and MC Lawyers from the Respondent. He had received a large number of documents and the said documents include payment vouchers, cheque butts and photocopies of cheques attached to the vouchers. The Respondent has by his letter dated 15/4/2021 addressed to the CR (Exhibit A15-Vol. 1 page 23) admitted that he was in possession of and provided the LPU with the following documents or copies thereof:

1. Cheque Butts of the Trust Account from November 2015 to September 2018;
2. Receipts of Trust Account from April 2016 to September 2018;
3. Payment Vouchers of the Trust Account from September 2015 to September 2018;

4. Receipts and Payment Journals of Trust Account from January 2015 to September 2018;
 5. Bank Deposit Book had been handed over to the CID;
 6. Client's Ledger Books from 1st October 2014 to September 2018;
 7. Bank Ledger and monthly reconciliation from January 2016 to December 2016 and from February 2018 to September 2018;
 8. Copies of all office account bank statements from 1st October 2014 to 30 September 2018.
53. These photocopies of cheques which he received from the Respondent were incomplete meaning they were not fully drawn up, only the date, amount in figures were there. The amount in words in the blank and incomplete. He had received 82 such cheques out of which he has identified the signature of the Respondent and Mr. Maharaj (another partner) in 38 such cheques of which 25 are of the Respondent's. Apart from obtaining these documents from the Respondent he had also obtained a complete list of cheques issued from the Trust Account and also obtained bank statements along with the copies of the cheques presented to the bank (Exhibit A17 and A16). After considering the said documents he had made a detail analysis in respect of the 38 incomplete cheques of which 25 were signed by the Respondent. The summary of analysis with copies of all 38 cheques, their payment vouchers, bank statements, cheque butts and the relevant ledger are all annexed to the said summary. All these documents are compiled in Volume 2 of the disclosures from page 207 to 521. This entire volume was marked and produced in evidence as exhibit A16. The Respondent admitted the entirety without reservation.
54. The summary in schedule form consisting of 22 pages is at pages 207-229 which I consider as part and parcel of this determination, but for practical convenience the first and the last pages (pages 1 and 22) are reproduced below. This contains similar information as seen in respect of all 38 cheques and the remarks in similar form subject to the differences in the amounts.

MC LAWYERS (TRUST ACCOUNT) INCOMPLETE DRAWN CHECKS SUMMARY

S/N	CHEQUE NO.	BANKED CHEQUE DETAILS				TRUST ACCOUNT DOCUMENTS AMOUNT (\$)					TRUST BANK STATEMENT	FRAUDULENT AMOUNT (\$)	REMARKS
		Date	Paid To	Amount (\$)	Signed By	Incomplete Signed Cheques	Cheque Butt	Payment Voucher	Payment Journal	Trust Ledger			
1	1058836	14-07-16	MC Lawyers	7,900.00	Suresh Chandra	1,300.00	1,300.00	1,800.00	1,300.00	103	7,300.00	6,000.00	<ul style="list-style-type: none"> As stated in all the trust account documents, including the incomplete signed cheques, the sum to be paid out was \$1,300. According to the Banked cheque and the Trust Bank Statement, the total sum paid out was \$7,300. According to the banked cheque and the advice letter from MC Lawyers (MCL) to Bank of Baroda (BOB), dated 14th July 2016, the sum narration in figures (\$1,300) stated in both documents was altered by changing the figure one (1) to figure seven (7) of the sum to be paid out. The sum narration in words (seven thousand three hundred dollars only), was then written on the cheque to confirm its validity. Cheque is believed to be signed by the signatory/trustee without verifying the full details on the cheque (amount in words was not entered).
2	1058954	23-11-16	MC Lawyers	6,000.00	Suresh Chandra	600.00	600.00	600.00	600.00		6,000.00	5,400.00	<ul style="list-style-type: none"> As stated in all the trust account documents, including the incomplete signed cheques, the sum to be paid out was \$600. According to the Banked cheque and the Trust Bank Statement, the total sum paid out was \$6,000.

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Unclear and/or unreadable ledger entries. Missing ledger pages were front pages 1, 29, 102, 103

1/ Page

38	1165883	18-09-17	MC Lawyers	4,500.00	Suresh Chandra	150.00	150.00	150.00	150.00		1,500.00	1,350.00	<ul style="list-style-type: none"> documents was altered by adding a figure three (3). The sum narration in words (three thousand one hundred seventy four dollars and 40/100 only), was then written on the cheque to confirm its validity. Cheque is believed to be signed by the signatory/trustee without verifying the full details on the cheque (amount in words was not entered). As stated in all the trust account documents, including the incomplete signed cheques, the sum to be paid out was \$350. According to the copy of the Banked cheque and the Trust Bank Statement, the total sum paid out was \$1,500. According to the banked cheque and the advice letter from MC Lawyers (MCL) to Bank of Baroda (BOB), dated 19th September 2017, the sum narration in figures (\$150) stated in both documents was altered by adding a figure zero (0). The sum narration in words (one thousand five hundred dollars only), was then written on the cheque to confirm its validity. Cheque is believed to be signed by the signatory/trustee without verifying the full details on the cheque (amount in words was not entered).
						\$319,178.57	\$87,186.57				\$319,178.57	\$231,985.00	

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55. I perused volume 2 in its entirety (exhibit A16) and I find that the remarks and observations made as well as the facts and figures stated in the said summary are correct and in accordance with the supporting documents annexed thereto. In respect of all the 38 cheques I observe the following. Of the said 38 cheques, 25 correspond with cheque numbers of the List of cheques in Count No. 6 and are identified as been signed by the Respondent Suresh Chandra as Trustee. This fact is not disputed. The Respondent in his letter of explanation A12 and letter A21 and in the written submission indirectly admit signing these cheques. The beneficiary is MC Lawyers, the date and the amount in figures /numerals and the Respondent's signature appears in all the said cheques. However, the amount in letters/words is not written, incomplete and blank.
56. There are also copies of these cheques obtained from the bank depicting how it appeared when they were presented to the bank along with the letter of confirmation given to the bank signed by the Respondent. In these copies of the cheques obtained from the bank the amounts in writing are written, inserted and complete. There are two copies of the same cheque; one attached to the vouches and the other obtained from the bank. On the comparison of these two copies of the cheques it is obvious and apparent that the respondent has signed incomplete cheques. This had effectively provided the occasion and the opportunity to Ashwini to alter the amount in numbers by adding a zero or digit and then insert that sum in writing.
57. On a perusal of the bank statements in all these instances the increased amount has been credited and withdrawn from the Trust Account. However, the payment voucher, the cheque butt and the entry in the relevant ledger remains unaltered and depicts the original correct and the lesser amount. The said excess amount is certainly an unauthorized withdrawal.
58. In the summary (schedule) exhibit A16 (pages 207-229), the first column indicates the *cheque No.*, then it contains the cheque details as obtained from the bank (*banked cheque details*) and then the *Trust Account document amounts*, as stated in the *incomplete signed cheque, cheque butt, payment voucher, payment journal*. It is stated that the trust ledger was not clear or pages were missing. Then the next column is the actual amount debited as per the Trust Account bank statement. This is followed by the

amount which was overdrawn or fraudulently withdrawn in excess of the original amount stated in the cheque and other supporting documents.

59. These 38 cheques are dated between 14th July, 2016 and 19th September, 2017. According to the said summary the total amount fraudulently withdrawn and misappropriated is \$231,985. As per my calculation the amount in respect of the 25 cheques signed by the Respondent is \$179,025.
60. Count No. 6 is primarily based on this evidence and signing of the 25 incomplete cheques and the admissions in A12 and A15. The said documentation considered with the evidence of the witnesses as narrated above clearly establish the following:
- (a) The Respondent, Mr. Suresh Chandra as the Trustee has signed 25 cheques referred to in count 6 with the amounts in writing incomplete and when it was blank. This is the starting point. It is improper and imprudent to sign a cheque unless all details are complete particularly if it is then handed over to another. Secondly, this had continued at least for almost for one year and two months from 14.07.2006 and the only inference is that the Respondent, Mr. Suresh Chandra has as a matter of course being in the habit of signing such incomplete cheques. It is not a one-off occurrence but has happened at least 25 times during 14 months.;
 - (b) Mr. Suresh Chandra does not directly deny nor does he admit signing these cheques and neither does he explain the circumstances under which he happened to so sign. In the plethora of documents, correspondence and during this inquiry he maintained a stark silence. When evidence was led that it was his signature, neither was it assailed in cross examination nor did the Respondent make any suggestion to the contrary. Thus, the only conclusion is that he had habitually signed these incomplete cheques may be due to his imprudent and reckless confidence reposed on a longstanding employee.
 - (c) The Respondent in his letter of explanation A12 admits that the bank reconciliation of the Trust Account was submitted to him on a monthly basis by Ashwini. Respondent admits the receipt and acknowledgement of the bank reconciliation statements (vide A12). According to witness Laliqavoka, he has obtained the copies of cheque butts, copies of payment vouchers and copies of payment journals from the Respondent during the course of the investigation by the LPU (vide A15). That been so, if the Respondent, Mr. Suresh Chandra has received the bank

reconciliations at the end of each month. The documents to check the correctness at least in respect of these 38 cheques had been and was in his possession. The bank statements necessarily would have been with him. Thus, even upon a cursory glance and the exercise of minimum due diligence he would have spontaneously and effortlessly noticed the discrepancy. He appears to have not made any effort to supervise and monitor the administration of the Trust Account;

- (d) The final effect of these payments on the altered cheques have been that at least an amount of \$179,925 have been paid out of the Trust Account which is unauthorized. This amount is tabulated in the said summary under the column fraudulent amount;
- (e) On the consideration of documents A21, the letter dated 30th October 2020 written by the Respondent to the Attorney General requesting for extension of time for 2016/2017 Audit Report, I observe that the Respondent had stated as follows:

“by the letter dated 28th day of November 2017 I first time requested for extension of time and it is during this period 2016/2017 the Trust monies were stolen by Ashwini and I could not by end of November 2017 comply with section 12 of the Trust Account for an Audit Report. The reason at the time was that not only I discovered the missing funds but missing of all Trust records and I was not able to compile records for Audit Reports for that period.

I made statement to the police also that the following documents were either removed/stolen by Ashwini. I reported that:-

- (a) All cheque books for the last 3 years from January (2015, 2016, 2017) were missing (Police still investigating that;*
- (b) All cheque butts for both office and Trust Account had been missing;*
- (c) Both ledger books went missing for the same period;*
- (d) All deposit banking books record went missing;*
- (e) All account computer/staff copy had been deleted and went missing.”*
- (f) The sum total of this is that he claims that the afore mentioned documents were not available and missing by his letter dated 30th October, 2020. However, the Respondent has by his letter dated 15/04/2021 (A15) provided copies of many of the said documents to the Chief Registrar (A15) referred to as missing. Witness Laliqavoka confirms the receipts of these documents. Thus, it appears the Respondent for reasons best known to him has at one point incorrectly stated that supporting documents were not available. However, a few months thereafter he hands over copies of a large number of the said documents to the Chief Registrar with A15. There are two possible inferences that arise from these contradictory positions of the Respondent. Either he was extremely careless, negligent and has

not been supervising the books of accounts and the bank reconciliations as required by the Trust Account Act. If not, he is been untruthful and he is attempting to conceal or cover up his negligence.

Matters Raised in the Respondent's Written Submissions

61. In the written submissions the Respondent has broadly raised the following 4 issues:
 - a. The chief Registrar did not have jurisdiction to "prosecute" the Respondent under the LPA and
 - b. The alleged act does not come within the Legal Practitioner's Act but action should be filed under section 28 of the Trust Account Act;
 - c. The LPU has failed to investigate and identify how and why the unreconciled sum was tabulated;
 - d. As the 38 cheques when presented to the bank were complete the withdrawals cannot be considered as being on incomplete cheques and unauthorized withdrawals;
 - e. The Respondent has advanced several grounds on the mistaken premise that some counts are under section 81 of the Legal Practitioner's Act however as all charges are under section 82 (1) (b) it is not necessary to consider the same.

62. Some of the above matters have been already dealt with and I will now consider the matters hitherto not considered. The Respondent in his written submissions has repeatedly taken up the position that no investigation was conducted to ascertain as to how the funds from the altered cheques were used. In Mr. Suresh Chandra's explanation (A12) he admits that his clerk Ashwini has withdrawn these excess funds from the office account. This is at page 4 at paragraph 5 under the heading "*Process*". Apart from this the Respondent had obtained two documents signed by Ashwini admitting that she had manipulated the Trust Account and obtained a total sum of \$1,135,306.08. This explains a part of unreconciled amount which explanation emanates from the Respondent himself. This is also admitted in exhibit A21 by the Respondent. To prove these allegations, it is not necessary to prove the exact composition of the or how the sum of \$2.139 million is constituted. The charges as preferred do not allege that the Respondent misappropriated that sum. What is alleged by both counts 2 and 3 is that his failure to properly supervise and monitor all transactions and the said failure resulted in the Trust Account having an unreconciled amount of \$2 million and \$2.139 million respectively. According to Mr. Narsey, *unreconciled amount* is the variance between the bank account reconciled balance and

the total of balances for all the clients. (vide- Mr. Narsey's letter dated 2nd February 2021; item No. 10 annexed to A13).

63. The allegations or the inquiry in this matter does not require prove with precision as to how exactly the unreconciled amount of \$2.139 million is made up. What is required for the purposes of prove counts 2 and 3 is to establish the fact of their being an unreconciled amount of that nature. The proof required is only of the fact of such composite unreconciled amounts and not the details of such amount. These are proved by the audit reports. The reasons partly have been admitted by the Respondent as being the manipulation and misappropriation of the Trust Account by altered cheques as admitted by Ashvini, failure to deposit total receipts may be the loss of documents (vide A12 and A21). The said submission is thus misconceived
64. The Respondent also submits that these transgressions are matters in respect of which criminal action should be filed under section 28 of the Trust Account Act. These may be violations attracting penal sanction and criminal action may be instituted against either Ashwini and or the Respondent. That being so the law does not prohibit disciplinary proceedings against the practitioner under the Legal Practitioner's Act, either simultaneously or separately.

Position of the respondent

65. Though the Respondent opted to remain silent, as I gather from the documents and infer from the cross examination his position is that the unauthorised withdrawals and misappropriation was committed not by him but by his office clerk, Ashwini who employed *inter alia* to manage the Trust Account. Mr. Chandra's position is that she was a long-standing trusted employee on whom he reposed confidence and entrusted the management of the trust account and maintaining its accounts to her. That Mr. Vijaya Maharaj was also a signatory of the Trust Account and signed 11 of the 38 cheques in the schedule.
66. Firstly, although the Respondent as the principal may delegate the administrative function of keeping accounts and records and managing the trust account to another party or parties, the responsibility to ensure that the deputised functions are carried out

correctly, always remains with the principal. The Respondent was the principal managing partner. The nature and extent of this responsibility and liability of partners of a law firm was explained by the Full Australian Capital Territory Supreme Court in *Re Somes* [(1979) 32 ACTR53 at 70] as follows;

“Each partner has a responsibility for the safeguarding of the trust account. This calls for some active participation by each partner in the system of control... The correct approach of partners to trust account affairs is that they should regard themselves as a group whose members are individually and collectively determined to safeguard the trust account. With that outlook we would expect that each partner would not only not resent his dealings with the trust account being overseen by other partners, but would actively seek and gratefully accept such supervision.”

67. In the above premises the cavalier attitude and the total indifference in the performance of the Respondent’s statutory as well as common law obligations in relation to the trust account in my view is sufficient to make the Respondent guilty of professional misconduct. The mismanagement of funds by the Practitioner’s law firm is directly attributable to the Respondent’s own conduct. The general law has long held that when an agent is entrusted with money for the benefit of another, such agent then becomes a trustee of that money. The common law has recognised the duty of a practitioner/solicitor, as a trustee, to account for how money received on trust has been dealt with. (*Re Simersall* (1992) 108 ALR 375 at 379 per Gummow J). In such circumstances personal vigilance has always been a requirement in the sense that the general law has recognised that Practitioners will be liable for the acts and omissions of their employees. (*Lloyd v Grace Smith & Co* [1912] AC 716.). Thus, a Practitioner’s failure to supervise his employees, adequately in the management of the trust account amounts to a serious abdication of his professional responsibilities. [*Law Society of N S W v Simpson*, [2011] NSWADT 242].

Fit and proper person

68. In *The Law Society of New South Wales v Jones* (NSW Court of Appeal, decision dated 24 July 1978) in which Street CJ stated:

“Reliability and integrity in the handling of trust funds are fundamental prerequisites in determining whether an individual is a fit and proper person to be entrusted with the responsibilities belonging to a solicitor.

Members of the public, many of them wholly inexperienced and unskilled in matters of business or of law, inevitably must put great faith and trust in the honesty of solicitors in the handling of monies on their behalf. The Court must ensure that this trust is not misplaced. It is in recognition of this duty upon the Court that I have reached the conclusion that the finding of the Statutory Committee in this case fell short of what was required in the light of the repeated and long-standing defalcations and the subsequent conduct of the present respondent.”

69. There is ample judicial authority that trust account matters are amongst those most damaging to public confidence. Reliability and integrity in the handling of trust funds are fundamental prerequisites in determining whether an individual **is a fit and proper person** to be entrusted with the responsibilities belonging to a solicitor. Members of the public, many of them wholly inexperienced and unskilled in matters of business or of law, inevitably must put great faith and trust in the honesty of solicitors in the handling of moneys on their behalf. The Court must ensure that this trust is not misplaced. (Law Society of New South Wales v Jones).
70. In the said premises, I am satisfied that on the evidence that the Respondent was at least grossly negligent with regards to compliance with and in maintaining the trust account of which he was the trustee. It is this lapse that has resulted in the existence of unreconciled sums and the unauthorized withdrawals from the trust account over a period of time. This certainly put members of the public at risk. These transgressions, objectively viewed, justify the conclusion and I am satisfied that the Respondent is not a fit and proper person to engage in legal practice or operate a law firm.

Conclusion

71. On the consideration and evaluation of the totality of the evidence, I conclude as follows:
- a. That between 1st October 2016 and 30th September, 2019, unauthorised payments have been made by the 38 cheques as (exhibit A16). Further, the audit report A10 clearly proves that six trust ledger accounts of the clients were overdrawn in a total of \$44,291.47 which includes an overdrawn of \$11,341.27 in 2018. This is stated at paragraph 8 of the supplementary report at the end of the audit report A10. This

proves that the clients' Account have been overdrawn. It is evidenced that Trust Account Ledger cannot be overdrawn and this happens only when an unauthorized payment is made. This is a situation in which Trust monies kept in the Trust Account is used for an unauthorized purpose. These two items of evidence *inter alia* with other evidence establish and prove the allegation in count No. 1.

- b. As narrated above according to the audit reports, A8 and A9 as at the end of financial years ending on 30th September 2017 and 30th September 2019 there have been unreconciled amount of \$2 million and \$2.139 million respectively. The Respondent had not supervised and monitored the monthly bank reconciliation which was submitted to him. If he had exercised the minimum due diligence and vigilance the unauthorized withdrawals on altered cheques should have certainly been detected and could not have prolonged and continued for almost 14 months. Ashwini has admitted misappropriating Trust funds during 2015 to 2017 and January 2017 to January 2018. There had been overdrawn of client trust ledger accounts during this period as observed in the Audit report A10. Thus, these unreconciled amounts have resulted as the Respondent not supervising and monitoring the payments made by cheques in the first instances. These items *inter alia* with other evidence establish and prove the allegations in counts No. 2 and 3.
- c. That the trustee had not kept proper accounting records of the Trust Account between 1st October 2016 and 30th September 2017. As per Audit report for the period ended on 30th September 2017 (A9), the Auditor observes that the trustee had not kept proper accounting and other records of the Trust Account. The actual amounts withdrawn by the 32 cheques are not reflected in the accounting and other records, i.e., payment journals (vide-A16 annexed documents). The auditor confirms that his first audit for the period 1st October 2016 to 30th September 2017 did not reveal any discrepancy as the irregular withdrawals or and that account balances tallied. But on the Audit performed in 2020 the unreconciled amount of \$2million had been observed. Thus, the only inference is that the accounting and other records kept during 1st October 2016 and 30th September 2017 were not proper. However, except for material creating general suspicion that proper accounting and other records may have not been kept during 1st October 2017 and 31st January 2018 specific evidence of not keeping proper accounting records was

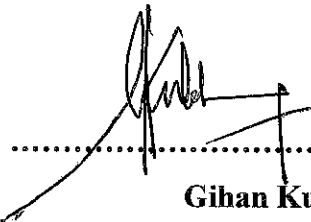
not observed. These items *inter alia* with other evidence establish and prove the allegation in count No. 4, but the evidence is not sufficient to prove the allegation in count 5.

d. It is proved that irregular excess payments were made by the 25 incomplete cheques signed by the Respondent (vide-A16 annexed documents). This item *inter alia* with other evidence establish and prove the allegation in count No 6.

72. In the above circumstances, I am satisfied that allegations of professional misconduct made in counts 1, 2, 3, 4 and 6 have been proved on the required high civil standard. Thus, the Commission after reviewing the evidence presented by counsel for the Chief Registrar finds that the said allegations in in counts 1, 2, 3, 4 and 6 are established and find the Respondent liable. However, the Respondent is discharged from the allegation made by count 5 due to the lack of evidence.

Dated the 3rd day of March, 2023.




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Gihan Kulatunga
Commissioner