



**REPORT TO HIS EXCELLENCY
THE PRESIDENT FROM THE
INVESTIGATING TRIBUNAL
INTO THE ALLEGATIONS
AGAINST THE SUSPENDED
DIRECTOR OF PUBLIC
PROSECUTIONS -
MR. CHRISTOPHER PRYDE**



**HEREWITH PRESENTED TO HIS EXCELLENCY THE
PRESIDENT OF THE REPUBLIC OF FIJI THE FULL
REPORT OF THE TRIBUNAL INVESTIGATIONS INTO
ALLEGATIONS OF MISBEHAVIOUR OF THE
SUSPENDED DIRECTOR OF PUBLIC PROSECUTIONS,
MR. CHRISTOPHER PRYDE.**

Dated at Suva this 23rd day of December 2024.

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.....
Honourable Justice Anare Tuilevuka
Chairperson

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.....
Honourable Justice Chaitanya Lakshman
Member

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.....
Honourable Justice Samuela Qica
Member

**IN THE MATTER OF THE TRIBUNAL APPOINTED BY HIS EXCELLENCY THE
PRESIDENT OF THE REPUBLIC OF FIJI UNDER SECTION 112(3) & (4) OF THE
CONSTITUTION**

IN THE MATTER of the Constitution of the
Republic of Fiji 2013

AND

IN THE MATTER of the Tribunal appointed
pursuant to Section 112(3) & (4) of the Constitution.

AND

IN THE MATTER of an inquiry into allegation of
misbehaviour against suspended Director of Public
Prosecutions, Mr. Christopher Pryde.

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A. BACKGROUND

1. On 13 April 2023, the Director of Public Prosecutions, Mr. Christopher Pryde (“**Mr. Pryde**”), was suspended by the President pursuant to section 112 (4) of the 2013 Constitution¹.
2. The decision to suspend was made on the advice of the Judicial Services Commission (“**JSC**”), following a complaint by the then Attorney General and Minister for Justice, Hon. Mr. Siromi Dokonivalu Turaga.
3. The complaint was that Mr. Pryde was seen talking at length to the former Attorney-General, Mr. Aiyaz Sayed-Khaiyum on the evening of 28 February 2023 at a social function hosted by the Japanese Ambassador at his official residence.
4. At the time of the said conversation, a police investigation file on Mr. Sayed- Khaiyum, had already been received at the Office of the Director Public Prosecutions (“**ODPP**”) for an opinion.

B. JSC’s ADVICE TO THE PRESIDENT

5. The JSC wrote to the President pursuant to section 112(3) of the Constitution recommending the appointment of a Tribunal to investigate the allegation and to consider the question of whether or not Mr. Pryde ought to be removed from office.

C. APPOINTMENT OF TRIBUNAL

6. The President appointed the Tribunal on the advice of the JSC pursuant to section 112 (3) and (4) of the Constitution.
7. The allegation to be investigated by the Tribunal was:

That on the evening of 28 February 2023, Mr. Pryde was seen to be engaged at length in a conversation with the former Attorney-General, Mr. Aiyaz Sayed- Khaiyum, at a social function hosted by the Japanese Embassy at the Japanese Ambassador’s official residence at a time when there was an ongoing police investigation against Mr. Sayed-Khaiyum, and when the relevant Police investigation file was pending review at the Office of the Director of Public Prosecutions.

8. Three sitting Judges of the High Court of Fiji namely:
 - (i) Justice Mr. Anare Tuilevuka, (“**Chairperson**”),
 - (ii) Mr. Justice Chaitanya Lakshman (“**Member**”) and
 - (iii) Mr. Justice Samuela Qica and (“**Member**”)

were appointed as the Tribunal.

D. REQUESTS FOR EXTENSION

9. The members were sworn in before His Excellency Ratu Wiliame Katonivere on the 5 March 2024. The members' initial appointment was for three (3) months. This was extended twice. This first extension was sought on 10 May 2024 to which His Excellency gave a three month extension. The second extension was sought after His Excellency referred the following allegation to the Tribunal for investigation following a section 112 (3) advice from the JSC:

That Mr. Pryde, between March 2012 and July 2023, was receiving the sum of US\$1,000 per month in superannuation without the approval of the Judicial Services Commission, the Attorney-General and the President's Office.

10. On 19 September 2024, His Excellency extended the Tribunal's mandate to 23 December 2024.
11. Notably, there were some inconsistencies in the time period to be reviewed with regards to the second allegation. These are to be found in the various correspondences from JSC to Mr. Pryde and to the President.

E. TRIBUNAL'S MANDATE

The Constitution

12. Section 112 (3) (a) (i) of the Constitution provides that:

"If the President, acting on the advice of the Judicial Services Commission, considers the question of removing [the Director of Public Prosecutions ... from office ought to be investigated, then the President, acting on the advice of the Judicial Services Commission, shall appoint ... a tribunal

13. Section 112 (3)(b) of the Constitution provides in its relevant part that:

"...the tribunal ... [must enquire] into the matter [and furnish] a written report of the facts to the President [and advise] the President of its recommendation whether or not the ... [Director of Public Prosecutions] ... should be removed from office.

14. The Tribunal's mandate is to:

- (i) investigate and enquire into the two allegations, and
- (ii) after its investigation (s) and enquiry (ies), make findings of facts, and then
- (iii) provide a written report to the President with a recommendation on whether or not Mr. Pryde should be removed from office.

Hearing within a Reasonable Time

15. Section 15 (1), (2) and (3) of the Constitution provides for the right to a fair hearing within a reasonable time.
16. The Tribunal hearing was conducted between **2 December 2024** and **6 December 2024** (i.e. some nine (9) months or so after the appointment of the Tribunal). The two main reasons why the hearing could not proceed any earlier are:
 - (i) the second allegation was only referred to the Tribunal in September 2024 at the time when the Tribunal was about to complete its investigations into the first allegation.
 - (ii) the Tribunal's investigating officers had some difficulty in accessing some official records and extracting relevant information from some key stakeholders.
17. The information gathered by the Investigating Officers has allowed the Tribunal a broader perspective into the second allegation.

Independence

18. Section 138 (5) of the Constitution provides that the Tribunal shall be an independent body.

In the performance of its functions or the exercise of its powers, the Tribunal is not subject to the direction or control of any person or authority, except as otherwise provided under the Constitution.

F. OPERATIONS OF THE TRIBUNAL

19. In order for the Tribunal to function effectively and efficiently, the Tribunal appointed counsel, investigators and a secretariat staff to assist it (see further discussion below under Terms of Reference).
20. Section 138 (2) of the Constitution gives the Tribunal powers to regulate the performance of its functions. Section 138 (4) gives the Tribunal power to regulate its own procedures.
21. The Tribunal, at the outset, decided that it would not strictly follow the rules of evidence in its proceedings. It took this position for the following reasons:
 - (i) its main purpose is to enquire into and investigate the two allegations against Mr. Pryde. The Tribunal does not sit as a Court of law. It performs a *quasi-judicial* role. This role requires the Tribunal to embark on an independent fact-finding investigation and inform itself of all the facts relevant to the two allegations. The

manner in which the Tribunal conducts its investigation and inquiry is entirely at the discretion of the Tribunal.

- (ii) to strictly follow the rules of evidence would have restricted the Tribunal's fact-finding role. The Tribunal was flexible in receiving evidence. However, when it came to assessing and evaluating the probative value of these, the Tribunal was strict.

Amicus

22. The Tribunal wrote to the **Fiji Law Society** on 8 November 2024 to appoint a member to assist the Tribunal as *amicus*. The President, Mr. William Wylie Clarke, emailed the Tribunal on 15 November accepting the Tribunal's invitation. The role of the *amicus* was clarified at the outset on the first day of the hearing on 2 December 2024.
23. The Fiji Law Society ("FLS") was represented at the hearing by the following counsel:

Name	Day
Mr. Roopesh Singh	Monday 2 December 2024
Mr. W.W. Clarke	Tuesday 3 December 2024
Ms. Laurel Vaurasi	Wednesday 4 December 2024
Mr. Viren Kapadia	Thursday 5 December 2024 (Morning)
Mr. Ritesh K. Naidu	Thursday 5 December 2024 (Afternoon)
Mr. W.W. Clarke	Friday 6 December 2024

24. Following the hearing, the Tribunal gave the FLS a week to file written submissions. The FLS filed written submissions on 13 December 2024 which the Tribunal has considered.

Open Hearing

25. The hearing from 2 to 6 December 2024 was open to the public in accordance with section 15 (4) of the Constitution which provides:

The hearings of courts (other than military courts) and tribunals established by law must be open to the public unless the interests of justice require otherwise.

26. In the Tribunal's view, section 15 (4) implies that a witness who desired to give evidence on camera ought to apply formally and satisfy the Tribunal that the interests of justice warrants it. No such application was filed before the Tribunal.

Majority Decision

27. A decision of the Tribunal requires the concurrence of a majority of its members. However, the Tribunal may act despite the absence of a member. If a vote is to be taken to decide a question and the votes cast are equally divided, the Chair will exercise the casting vote".

Summoning of Witnesses

28. Witnesses were summoned by the Tribunal to attend the hearing at specific allocated dates and time for examination. The summons were issued pursuant to the Tribunal's powers under section 138 (9) of the Constitutionⁱⁱⁱ.

G. MISCELLANEOUS

29. Mr. Pryde initially retained Messrs. A. K Lawyers. At the outset, Mr. Narayan pointed out that the letter(s) of appointment from the President did not set out any allegation for the Tribunal to investigate and enquire into. He argued that the Tribunal could not lawfully proceed with any investigation or enquiry. To proceed would mean that the Tribunal would be creating its own mandate. The Tribunal delivered its Opinion on 14 June 2024.

H. TERMS OF REFERENCE

30. A Terms of Reference was formulated by the Tribunal. The document was intended to guide the Tribunal in its investigation and enquiry. The Terms of Reference outlines the Tribunal's duty to :
- (i) investigate and enquire.
 - (ii) make sufficient investigation and enquiry.
 - (iii) make a well-informed finding of facts.
 - (iv) observe and accord procedural fairness.
 - (v) render a rational and lawful advice to the President.

Duty to Investigate & Enquire

31. The Tribunal's mandate under section 112 (3) was to investigate and enquire. On 05 March 2024, the Tribunal appointed two investigating officers to assist in its work. They were Mr. Sanjay Singh and Mr. Inoke Cokanasiga. The Tribunal also appointed Mr. Avneel Chand from the Legal Practitioners Unit as Counsel Assisting, two Associate Counsel namely Ms. Losana Malani and Mr. Nikhil Narayan. Ms. Miriama Qionibaravi (from February- July 2024) and Ms. Esther Croker (from July- December 2024) provided Secretariat support to the Tribunal.

Sufficient Investigation & Enquiry

32. While the Tribunal had a duty to investigate and inquire, these musts still be carried out with sufficient diligence. To this end, the Tribunal gave regular directions and guidance to Mr. Singh and Mr. Cokanasiga on who to interview and pursue information from.

Duty to Make Findings of Fact

33. The Tribunal must be fully informed and acquainted with all information and relevant perspectives. Only then will it be able to make a rational assessment and evaluation of the information gathered.
34. The Tribunal continuously reminded itself, and also regularly assured Mr. Pryde and his counsel, that the purpose of its investigations and enquiries was not to vindicate the complainant or to exculpate Mr. Pryde. Rather, the aim was to enable the Tribunal to better inform itself in order to make a rational finding of facts and informed recommendation.
35. The investigators interviewed people. They would then compile a Report which they placed before the Tribunal at our regular briefings. These briefings were attended by the Tribunal members, the counsel assisting, the two associate counsel as well as the two investigating officers. At these briefings, the Tribunal evaluated and balanced out all information gathered. The Tribunal would then make directions for the filing of affidavits and/or the gathering of more information, including the particular line of questioning to be pursued with each targeted interviewee.
36. There were twenty-nine (29) briefings altogether held from 5 March 2024 to 25 November 2024. Below is a record of all meetings with the Investigating Officers, Counsel Assisting and Associate Counsels.

No.	Date/Time	Venue	In Attendance
1.	05.03.24	Judges Common Room	Panel Judges, Investigating Officers, Counsel Assisting, Associate Counsels and Tribunal Secretary
2.	08.03.24	Chief Registrar's Boardroom	As above.
3.	14.03.24	Judges Common Room	Panel Judges and Tribunal Secretary
4.	15.03.24	Chief Registrar's Boardroom	Panel Judges, Investigating Officers, Counsel Assisting, Associate Counsels and Tribunal Secretary
5.	21.03.24	Judges Common Room	As above
6.	22.03.24	Veiuto Training Room	As above.
7.	04.04.24	Judges Common Room	As above.
8.	05.04.24	Veiuto Training Room	As above.
9.	18.04.24	As above.	As above.
10.	25.04.24	Judges Common Room	As above.
11.	09.05.24	As above.	As above.
12.	07.06.24	Veiuto Training Room	As above.
13.	14.06.24	Fiji Mediation Center	As above plus Respondents Counsel.
14.	11.07.24	Veiuto Training Room	Panel Judges, Investigating Officers, Counsel Assisting, Associate Counsels, DR- Legal and Tribunal Secretary

No.	Date/Time	Venue	In Attendance
15.	12.07.24	As above.	Panel Judges, DR- Legal, Counsel Assisting, Associate Counsels, Tribunal Secretary and Respondents Counsel via Skype.
16.	25.07.24	Veitoto Training Room	Panel Judges, Investigating Officers, Counsel Assisting, Associate Counsels and Tribunal Secretary
17.	26/07/24	Veitoto Training Room	Chairperson, Tribunal Members, Counsels Assisting, Tribunal Secretary and Respondents' Counsel on Skype
18.	19.08.24	Chief Registrar's Boardroom	As above plus Respondents' Counsel on Skype
19.	17.09.27	Judges Common Room	Chairperson, Tribunal Members, Counsels Assisting, Tribunal Secretary.
20.	18.09.24	Judges Common Room	Chairperson, Tribunal Members, Counsels Assisting, Tribunal Secretary and Investigating Officers.
21.	19.09.24	Judges Common Room	Chairperson, Tribunal Members, Counsels Assisting, Tribunal Secretary and Investigating Officers.
22.	20.09.24	Judges Common Room	Chairperson, Tribunal Members, Counsels Assisting, Tribunal Secretary and Investigating Officers.
23.	27.09.24	Chief Registrar's Boardroom	Chairperson, Tribunal Members, Counsels Assisting, Tribunal Secretary and Investigating Officers.
24.	01.10.24	Training Room, Veitoto	Chairperson, Tribunal Members, Counsels Assisting, Tribunal Secretary and Investigating Officers.
25.	07.10.24	Training Room, Veitoto	Chairperson, Tribunal Members, Counsels Assisting, Tribunal Secretary, Investigating Officers and Respondents Counsel on Skype
26.	21.10.24	Crowne Plaza, Nadi/ Chief Registrar's Boardroom	Chairperson, Tribunal Members and Tribunal Secretary via Skype from Nadi and Investigating Officers, Counsels Assisting from CR's boardroom, Suva and Respondents Counsel on Skype
27.	30.10.24	Training Room, Veitoto	Chairperson, Tribunal Members, Counsels Assisting, Tribunal Secretary, Investigating Officers.
28.	15.11.24	Training Room, Veitoto	Chairperson, Tribunal Members, Counsels Assisting, Tribunal Secretary, Investigating Officers.
29.	25.11.24	Training Room, Veitoto	Chairperson, Tribunal Members, Counsels Assisting, Tribunal Secretary, Investigating Officers.

Affidavits

37. Information gathered by the investigators were converted into affidavits. The table below sets out the affidavits compiled and the date each was served on Mr. Narayan:

1st Allegation

No.	Deponent	Date sworn	Date Served	Place of Service
1.	Mr. Naipote Matakotoga	26.03.24	28.03.24	AK Lawyers, Port Denarau, Nadi
2.	Mr. Parmesh Chand	27.03.24	28.03.24	As above
3.	Ms. Farisha Ahmed	27.03.24 27.06.24	28.03.24 28.06.24	As above
4.	Hon. Charan Jeeth Singh	02.04.24	04.04.24	Veitoto Training Room
	Mr. Peni Matasuka	03.04.24	05.04.24	As above
5.	Mr. Ronald Kumar	04.04.24	05.04.24	As above
6.	Ms. Moira Konrote	05.04.24	11.04.24	AK Lawyers, Port Denarau, Nadi
7.	Justice Lee Burney	05.04.24	12.04.24	As above
8.	Ms. Loraini Seru	09.04.24	12.04.24	As above

No.	Deponent	Date sworn	Date Served	Place of Service
9.	Mr. Aiyaz Sayed-Khaiyum	09.04.24	17.04.24	As above
10.	Ms. Pauline Madanavosa	11.04.24	12.04.24	As above
11.	Ms. Susana Vuniani	12.04.24	12.04.24	As above
12.	Hon. Siromi Turaga	26.06.24	28.06.24	As above
13.	Mr. Tomasi Tunabuna	27.06.24	28.06.24	As above

2nd Allegation

No.	Deponent	Date sworn	Date Served	Place of Service
1.	Ms. Charlotte Nambiar	15.08.24	16.08.24	AK Lawyers, Port Denarau, Nadi
2.	Mr. Tomasi Bainivalu	06.09.24	11.09.24	As above
3.	Ms. Maureen Kumar	09.09.24	11.09.24	As above
4.	Ms. Zarina B.	02.10.24	07.10.24	As above
5.	Ms. Sharon Prasad	04.10.24	07.10.24	As above
6.	Mr. Paula Naitoko	14.10.24	18.10.24	As above
7.	Ms. Finau Nagera	15.10.24	18.10.24	As above
8.	Mr. Shiri Krishna Gounder	16.10.24	18.10.24	As above

Procedural Fairness – “Cards all face up on the Table”

38. Mr. Pryde and his counsel had a right to know and challenge whatever information that was gathered by the Investigating Officers. As the above tables show, the last affidavit for the first allegation was served on 27 June 2024 (i.e. nearly **six months before the hearing commenced on 2 December 2024**). The last three affidavits in relation to the second allegation were served on 18 October 2024 (i.e. more than **six weeks before the hearing date**).
39. In addition to the above, the Tribunal made sure that all Pre-Hearing Conferences (“PHCs”) held with Mr. Narayan were recorded and transcribed and that the transcripts were made available to Mr. AK Narayan/Pryde.
40. In one of the initial PHCs, Mr. Narayan was given an opportunity to make written submissions on procedure. While Mr. Narayan did discuss generally about the importance of maintaining an adversarial approach to the hearing, he never filed any written submissions. The Tribunal favoured an **inquisitorial hearing by adversarial means**.

Invitation to Participate at Hearing

41. The JSC decided on 9 July 2024 to suspend Mr. Pryde’s salary. From then on, Mr. Pryde took the position that, unless the JSC reinstated his salary, he would no longer afford counsel. Accordingly, he would not be able to participate at the hearing.

42. The JSC did not reinstate his salary. Mr. Pryde stood his ground.
43. The Tribunal's Secretariat sent Mr. Pryde an email (his preferred mode of communication) daily from 2 to 6 December 2024 to alert him that the Judicial Department's IT Team was on standby. These emails were sent at least an hour before the commencement of the hearing proper. The Tribunal's Secretariat also sent Mr. Pryde the schedule of witnesses and the order of their appearance before the hearing commenced on 2 December 2024.

I. CESSATION OF MR. PRYDE'S SALARY

44. As stated above, the JSC decided on 9 July 2024 to suspend Mr. Pryde's salary. The Tribunal only learnt of this fact from media reports and from communication from Mr. Pryde and his counsel at various PHC's and by letters. Notably, Mr. Pryde's salary was suspended some sixteen (16) months after he was suspended from office and after the Tribunal had begun its investigation into the second allegation.

Pryde's Position

45. Mr. Pryde's position is that the JSC's decision disabled him from defending himself and challenging the JSC in the Tribunal proceedings in the following manner:
- (i) it placed a financial strain on him. This rendered it impossible for him to continue to afford legal representation.
 - (ii) his inability to continue to afford legal representation limited his ability to put forward a formidable defence.
 - (iii) this means that it would be unfair for the Tribunal to proceed to a hearing.
 - (iv) thus, the Tribunal should write to the JSC and stay proceedings until the JSC restored Mr. Pryde's salary.

Settlement Talks Between JSC & Pryde

46. Shortly after the cessation of Mr. Pryde's salary, the JSC and Mr. Pryde entered into negotiations about settling the matter. The Tribunal was informed by Mr. Pryde's counsel during a PHC that the JSC and Mr. Pryde were negotiating around an offer and a counter-offer.

The Tribunal's Position

47. The Tribunal's position is set out in various letters it sent to Mr. Pryde between 6 November 2024 and 27 November 2024 as attached. Also attached is Mr. Pryde's letter to the Tribunal dated 5 November 2024. The Tribunal's position is as follows:
- (i) the Tribunal has a constitutional mandate from His Excellency.

- (ii) as such, the Tribunal cannot be involved in brokering any settlement negotiation between the JSC and Mr. Pryde.
 - (iii) the Tribunal cannot just stay its proceedings on account of the decision of the JSC to suspend Mr. Pryde's salary.
 - (iv) rather, the Tribunal's mandate is to conduct due investigation and enquiry. Public interest demands this.
 - (v) if the Tribunal were to become involved in their settlement negotiations, its involvement as such would obfuscate and compromise its constitutional mandate.
48. The demand for transparency and accountability informs the public interest to hold due inquiry. *A fortiori*, that inquiry must be conducted fairly and justly.
49. The ideal way for the Tribunal to balance this public interest proportionately against Mr. Pryde's interest, is to proceed with the hearing and accord him all the rights which any court would render an unrepresented party. Eventually, the hearing took place, but Mr. Pryde chose not to participate.
50. However, the media would, on a daily basis publish Mr. Pryde's views on evidence given whilst the hearing was on foot. **The Tribunal denounces this disrespectful and contemptuous conduct on his part.** The issues were *sub-judice*. Mr. Pryde should have known better!
51. While the Tribunal accepted that Mr. Pryde had a right to be represented by counsel of his choice, the Tribunal was not obliged to stay proceedings on account of his alleged inability to afford a *Rolls Royce* representation^{iv}.
52. All was not lost for Mr. Pryde. He could still have appeared on his own, or applied for Legal Aid representation. The Tribunal's hearing was to be an *inquisitorial hearing*. All that was required of him was to give his account of events to the best of his recollection. Given his professional standing, and the fact that English is his first language, there was no reason to believe that he would be handicapped in any particular way.
53. Notably, Mr. Pryde also refused to participate in the pre-hearing conferences (PHC) leading up to the hearing, after Mr. Narayan had withdrawn. However, he would comment occasionally through the media about Tribunal proceedings.
54. Even before the hearing began, the media would report comments from Mr. Pryde which appear to scandalize the Tribunal and undermine public confidence in it. While the Tribunal is not in a position at this time to ascertain Mr. Pryde's involvement in these publications, it is hoped that, as holder of a high constitutional office in Fiji, he would know the implications and consequences of such conduct.

J. THE HEARING

55. The hearing was conducted over five days from **2 to 6 December 2024**. The following witnesses gave evidence (in the order of their appearance):

No.	Date	Name	Designation (as at date of hearing)
1	Monday 2.12.2024	Honorable Mr. Siromi Turaga	Minister for Justice
2	Monday 2.12.2024	Honorable Mr. Tomasi Tunabuna	A/Minister for Agriculture and Waterways
3	Monday 2.12.2024	Mr. Parmesh Chand	Permanent Secretary for Civil Service & Public Enterprises
4	Monday 2.12.2024	Mr. Aiyaz Sayed - Khaiyum	Legal Practitioner
5	Monday 2.12.2024	Ms. Pauline Koro Madanavosa	Assistant Director of Public Prosecutions
6	Tuesday 3.12.2024	Mr. Peni Matasuka	IT Support Officer - ODPP
7	Tuesday 3.12.2024	Ms. Susana Raseru Vuniani	Administrator Litigation & Registry Officer - ODPP
8	Tuesday 3.12.2024	Justice Mr. Lee Burney	Judge of the High Court of Fiji
9	Tuesday 3.12.2024	Ms. Farisha Ahmed	Media Liaison Officer
10	Tuesday 3.12.2024	Mr. Naipote Matakiloga	Driver - ODPP
11	Tuesday 3.12.2024	Ms. Moira Konrote	Principal Legal Officer - ODPP
12	Wednesday 4.12.2024	Honorable Mr. Charan Jeath Singh	Minister for Sugar & Multi-Ethnic Affairs
13	Wednesday 4.12.2024	Ms. Zarina Bi	Deputy Registrar, Judicial Department
14	Wednesday 4.12.2024	Mr. Ronald Kumar	Manager IT - Judicial Department
15	Wednesday 4.12.2024	Honorable Mr. Justice Salesi Temo	Acting Chief Justice
16	Thursday 5.12.2024	Ms. Charlotte Nambiar	Manager Human Resources/ Personnel
17	Thursday 5.12.2024	Ms. Maureen Kumar	Assistant Director Human Resources Corporate Services
18	Thursday 5.12.2024	Ms. Sharon Prasad	Accountant - ODPP
19	Thursday 5.12.2024	Mr. Sanjay Prakash Singh	Investigating Officer - LPU
20	Friday 6.12.2024	Mr. Shiri Krishna Gounder	Permanent Secretary - Ministry for Finance
21	Friday 6.12.2024	Ms. Finay Nagera	Auditor- General
22	Friday 6.12.2024	Ms. Loraini Seru	Director - Criminal Investigation Department (Fiji Police)
23	Friday 6.12.2024	Mr. Paula Naitoko	Principal Accounts Officer - Attorney-General's Office
24	Friday 6.12.2024	Mr. Inoke Cokanasiga	Investigating Officer - LPU

56. As stated, Mr. Pryde chose not to participate at the hearing.

Standard of Proof

57. The Tribunal is grateful for the assistance given by counsel of the Fiji Law Society who appeared as *amicus* at the hearing. The Tribunal is of the view that the civil standard is the appropriate one to apply in this case.
58. Most of the facts with regards to the two allegations are either not disputed or are readily ascertainable from official records. That said, the Tribunal's findings and recommendations (see below) have not turned on any contentious question of fact.

59. The Tribunal favours the approach of the Privy Council's advice delivered on 12 November 2009 in **The Hearing on the Report of the Chief Justice of Gibraltar [2009] UKPC 43 Privy Council No 0016 of 2009** at paragraphs 15 and 16:

"15. The Tribunal applied the civil standard of proof when resolving issues of fact. It gave its reasons for applying this standard in the Fifth Schedule to its Report. It held that the proceedings before the Tribunal were not to be equated with disciplinary proceedings where the criminal burden of proof was applicable. They were concerned with the public interest that called, on the one hand, for the protection of a judge against unfounded or illegitimate interference with his tenure of office and, on the other, for his removal should he show unfitness for office that need not necessarily be based on misbehaviour. In these circumstances it was appropriate to apply the civil standard of proof.

16. We have not found the issue of standard of proof an easy one. Judicial independence is of cardinal importance. There is a case for saying that a judge should not be removed for misconduct unless this is proved to the criminal standard – see the comments of Lord Mustill at paragraphs 81 to 83 of the Report of the Tribunal of 14 December 2007 into the question of removing from office the Chief Justice of Trinidad and Tobago pursuant to provisions of the Constitution of the Republic of Trinidad and Tobago that are similar to section 64 of the 2006 Order. The present proceedings are not, however, concerned with disciplining the Chief Justice for misconduct but with deciding whether he is fit to perform his office and the Committee has decided, as did the Tribunal, that issues of fact that bear on that question should be determined according to the civil standard of proof. That said, this is not a case where our advice is going to turn on the standard of proof applied to fact finding. Most of the primary facts are a matter of record and not disputed. The challenge made by Mr Beloff is to the inferences drawn by the Tribunal from the primary facts and to the Tribunal's conclusion that the Chief Justice's conduct amounted to impropriety and that it justified his removal on the ground of his inability to perform the functions of his office. The latter is not a question of fact subject to a standard of proof but a matter for judicial assessment."

K. DUTY TO ADVISE THE PRESIDENT

60. As stated, section 112 (3) (b) of the Constitution requires the Tribunal to enquire into the two allegations, and furnish a written Report of the facts to the President. This is the Tribunal's Report. It contains the Tribunal's findings of fact, and the Tribunal's recommendation as to whether or not the Director of Public Prosecutions should be removed from office.
61. The findings of fact have been formulated from all the evidence received in the affidavits, statutory declarations, and also oral evidence presented at the hearing. From its findings of fact (see below), the Tribunal has formed an opinion as to whether or not Mr. Pryde's conduct (*vis a vis* each of the two allegations), amount to an act of misbehaviour. This opinion is premised upon a definition of the term "misbehaviour" which the Tribunal believes, accords with the purpose of the relevant constitutional provisions under consideration, and in terms of the constitution's broader context.

L. **FACTS**

First Allegation

62. The evidence from the witnesses confirm the following facts with regards to the first allegation:

Fact 1 - Pryde & Sayed-Khaiyum are long time family friends

63. This fact is confirmed by Mr. Sayed-Khaiyum. Mr. Pryde himself had said so in his letter dated 6 March 2023 to Mr. Siromi D. Turaga and 3 April 2023 to the Chief Registrar. The Tribunal sees no reason not to believe this.

Fact 2 -There had been a Police Investigation on Mr. Sayed-Khaiyum

64. This fact is confirmed by Ms. Loraini Seru while giving evidence on 6 December 2024.

Fact 3-The relevant Police Investigation File was sent by Police to the ODPP and received at ODPP on 17 February 2023.

65. This was confirmed by Ms. Susana Vuniani and also by Ms. Loraini Seru. Ms. Vuniani referred to the CID Headquarters Dispatch Book which confirmed that she received the file on 17 February 2023 at 4.33 pm.

Fact 4- Pryde has known since 17 February 2023 that the Police file in question had been received at the ODPP.

66. Ms. Susana Vuniani said that she immediately emailed Mr. Pryde on 17 February 2023 to alert him of the fact that the ODPP had received the relevant Police file. According to Ms. Vuniani, Mr. Pryde had informed her a week earlier that she should inform him as soon as she received the file from the police.
67. Mr. Pryde, in his letter dated 3 April 2023 to the Chief Registrar (Annexure SDT 9 in Mr. Siromi Turaga's Affidavit sworn on 26 June 2024), asserted that Mr. Turaga had misinformed the Acting Chief Justice that the ODPP was already in receipt of the police file at the time Mr. Pryde talked to Mr. Sayed-Khaiyum. This is contrary to the evidence of the witnesses (Ms. Vuniani, Ms. Ahmed and Ms. Seru). According to these witnesses, the file was received at the ODPP on 17 February 2023 which Mr. Pryde was aware of.
68. Also Ms. Vuniani's evidence showed that she had emailed Pryde informing him on the receipt of file and he acknowledged via email on 17 February 2023 and instructed Ms. Vuniani to forward the file to Mr. Burney on the following Monday for allocation.
69. According to Ms. Ahmed, she first received a query from Fiji Times on 16 February 2023. The query was whether the ODPP had received the Police investigation file on

Mr. Bainimarama and Mr. Sayed-Khaiyum. Ms. Ahmed said that she checked with Ms. Vuniani on the same day who told her that they had not received the file.

70. Ms. Ahmed said she received similar queries from other media organizations a few days later. She then checked with Ms. Vuniani. Ms. Vuniani confirmed that they had received the file on 17 February 2023. Ms. Ahmed then consulted Mr. Pryde on 21 February 2023 for instructions on drafting a media release. They had a brief discussion on the same day. Following that discussion, she then produced a draft. Mr. Pryde vetted the draft, made some amendments, and approved it.
71. The media release was posted on the ODPP website on 21 February 2023. Ms. Ahmed said she emailed the media release to Mr. Pryde on the same day.

Fact 5 - Pryde & Khaiyum attended the function at the Japanese Embassy on 23 February 2023.

72. This was confirmed by Mr. Sayed-Khaiyum, Mr. Siromi Turaga, Mr. Tomasi Tunabuna, Mr. Parmesh Chand and Mr. Charan Jeath Singh.

Fact 6- Pryde & Khaiyum spent some time talking with each other.

73. This is not in dispute. Mr. Sayed-Khaiyum confirmed this. This was also confirmed by Mr. Siromi Turaga, Mr. Tomasi Tunabuna, Mr. Parmesh Chand and Mr. Charan Jeath Singh. Witnesses' account as to the length of the conversation range from 30 to 40 minutes. Sayed-Khaiyum said he did not recall the length of the conversation. However, he did not deny that he spent some time talking to Pryde.

Fact 7- The contents of the conversation between Pryde and Sayed-Khaiyum

74. All the witnesses who observed the conversation between Pryde and Sayed-Khaiyum informed the Tribunal that they did not hear the contents of the conversation. The Tribunal accepts the witnesses' version of events. As for Sayed-Khaiyum, he said they talked about family.

Fact 8- At the time of their conversation, Pryde knew that the relevant Police file had been received at the ODPP.

75. As discussed under Fact 4, the weight of the evidence suggests the following timeline:
- i. that the police file was delivered at, and received by the ODPP on 17 February 2023;
 - ii. that Pryde received an email on 17 February 2023 at 4.40pm from Ms. Vuniani informing him on the receipt of the police file;

- iii. that Pryde acknowledged the update via email of even date and instructed Ms. Vuniani to forward file to Mr. Burney on the following Monday for allocation;
- iv. that on 21 February 2023, Mr. Pryde was involved in discussions with Ms. Ahmed on the preparation and finalization of media release on the relevant police file;
- v. that on or around 23 February 2023, the file was allocated to Ms. Moira Konrote to formulate a legal opinion;
- vi. that on 28 February 2023, Mr. Pryde and Mr. Sayed-Khaiyum met at the function and conversed for some time.

Second Allegation

Fact 1 - Pryde was appointed Solicitor-General on 3 October 2007 on a salary of FJD\$140,000. His five year contract entitled him to superannuation as follows in Clause 2 (d):

"The officer may opt to continue contributions to home superannuation, or contribute to the local FNPF subject to Fiji National Provident Fund terms and conditions or contribute to such other superannuation fund at the officer's discretion."

76. This is confirmed by Pryde's employment contract.

Fact 2 - Pryde chose to continue contributions to home superannuation.

77. This fact is confirmed from the evidence of Ms. Charlotte Nambiar and Ms. Sharon Shivani Prasad.

Fact 3 - There are currently no records from 2007-2010 superannuation deductions at the Office of the Solicitor General. There were some records for the 2011 superannuation deductions. There was no record of any approval from JSC.

78. Mr. Paula Naitoko said that he and a few other staff members searched through all records kept at the Office of the Solicitor General. They could not find any records of the 2007 superannuation deductions. He also said that they could not find any record of approval from JSC.

Fact 4 - Superannuation paid to Pryde as the Solicitor General in 2011 was calculated on the basis of the FNPF scheme, although the amount was paid to his choice of fund abroad.

79. The Tribunal picked this from the payment voucher dated January, 2011. (Annexure PN1 of Paula Naitoko's affidavit sworn on 14 October 2024)

Fact 5-

- a) Pryde was appointed DPP on 25 November 2011 to 24 November 2016.
 b) Pryde's contract was extended by the President by way of letter dated 19 December 2016 for a period of four (4) months with effect from 25 November 2016.
 c) Undated Addendum to the original contract signed by the Chair, JSC and Attorney General. This came into effect on 25 November 2016 and expiring on 25 November 2018.
 d) Pryde's Agreement of Service dated 4 September 2019 extended for seven (7) years with effect from 25 March 2019 to 24 March 2026

80. There was no evidence before the Tribunal to explain the four (4) month gap between (c) and (d) above. The Tribunal assumes there may have been an addendum to cover the period 26 November 2018 to 24 March 2019 as was done in (b) above.

Fact 6 – The progression of Pryde's salary as DPP is tabulated below. However, the superannuation deduction remained at USD\$1,000 per month. (Reproduced from the affidavit of Ms. Sharon S. Prasad)

Year	Annual salary (FJD)	FNPF Employee rate (%)	FNPF Employer rate (%)	Employee (FJD)	Employer (FJD)
2011	180000	8	8	14400	14400
2012	180000	8	8	14400	14400
2013	180000	8	8	14400	14400
2014	180000	8	8	14400	14400
2015	180000	8	10	14400	18000
2016	180000	8	10	14400	18000
2017	250000	8	10	20000	25000
2018	250000	8	10	20000	25000
2019	250000	8	10	20000	25000
2020	225000	5	5	11250	11250
2021	225000	5	5	11250	11250
2022	225000	6	6	13500	13500
2023	250000	7	7	17500	17500
2024	250000	8	10	20000	25000

Fact 7 - The entire sum of USD\$1,000 per month paid to Pryde as superannuation under his last contract was paid out of the ODPP funds as contribution by the ODPP as Employer. The said sum of USD\$1,000 per month does not include a component paid by Pryde himself as Employee (i.e. no portion of it is deducted out of his salary) as would be required of a local paying superannuation under the FNPF scheme.

81. This is confirmed by Ms. Sharon Shivani Prasad in her evidence.

Fact 8 – Under the FNPF Contribution scheme since 2019 has fluctuated as follows:

Year	Annual salary (FJD)	FNPF Employee rate (%)	FNPF Employer rate (%)	Employee	Employer
2019	250000	8	10	20000	25000
2020	225000	5	5	11250	11250
2021	225000	5	5	11250	11250
2022	225000	6	6	13500	13500
2023	250000	7	7	17500	17500
2024	250000	8	10	20000	25000

82. This is confirmed by Ms. Sharon Shivani Prasad in her evidence.

Fact 9- The deduction, in that sense, was not a “loss” to the State – nor did it give Pryde an unfair windfall!

83. The Tribunal notes that the Hon. Acting Chief Justice said in his evidence as follows:

“So when a constitutional officer takes that money without proper authorization that is tantamount to stealing. It is simple theft, per se. However, he was of the view that he was entitled to that. I told him yes, you are entitled to it under the terms of your contract, but the figures have to be authorized through the JSC and the AG consulted and the President writes it down. But that process was not complied with.”

84. The Tribunal finds that the superannuation deductions made was not a loss to the State. The Tribunal says this because any other person on the same pay level as Mr. Pryde who was contributing to the FNPF scheme at all relevant times, would have been paid about the same amount or more. This was confirmed by the Permanent Secretary for Finance, Mr. Shiri Gounder, Ms. Sharon Prasad

Fact 10- Pryde did not seek the approval of the JSC for the superannuation deductions.

85. This is established by the evidence of Ms. Bi, Mr. Naitoko, Ms. Sharon Prasad and Ms. Charlotte Nambiar that Mr. Pryde did not seek the approval of the JSC. Pryde through his letter of response to the Acting Chief Justice dated 5 January 2024 on the second allegation said that it was not necessary to obtain further approval/sanction from JSC.
86. The questions are: should Mr. Pryde have sought that prior approval of the JSC on the amount to be paid in superannuation? If so, why did he not seek that approval?
87. According to Ms. Charlotte Nambiar, Mr. Pryde informed her that there was no need for further approval from JSC. He also told her to process the payments anyway and that he would update the Chief Justice on this matter later. There is no record that Mr. Pryde did talk to the Chief Justice later.

88. The evidence of the Acting Chief Justice, Ms. Charlotte, Ms. Zarina Bi, and Ms. Sharon Nambiar, is that Mr. Pryde ought to have sought the approval of the JSC because:
- (i) the superannuation clause gives him three options. He ought to have informed the JSC as to what his choice was.
 - (ii) the superannuation clause does not specify an amount. He ought to have sought the approval of the JSC before any specific amount is deducted.
89. At the hearing, Mr. Clarke (amicus) stated that, if Mr. Pryde was a local, he would not have been required to seek the prior approval of the JSC because the amount being deducted (USD\$1,000 per month), when converted into Fijian dollars, would be equivalent to what the ODPP would have to pay as employer contribution towards the FNP Fund.

M. DEFINITION OF "MISBEHAVIOUR"

90. Section 117 (6) of the Constitution, in its relevant part, provides that the Director of Public Prosecutions may be removed from office for misbehaviour and may not otherwise be removed:
- “The Director of Public Prosecutions may be removed from office for inability to perform the functions of his or her office (whether arising from infirmity of body or mind or any other cause) or for misbehaviour, and may not otherwise be removed”.
91. Does Mr. Pryde’s conduct amount to “*misbehaviour*”? To answer the question, the Tribunal must interpret the word in terms of the principles of constitutional interpretation.
92. The Supreme Court of Fiji in its opinion In the Matter of a reference by Cabinet for an opinion from the Supreme Court concerning the interpretation and application of Sections 105(2) (b), 114(2), 116(4) and 117(2) of the Constitution of the Republic of Fiji [2024] FJSC 20; Miscellaneous Action 0001 of 2024 (28 June 2024), said that:
- (i) in interpreting the constitution, the starting point is the natural and ordinary meaning, and a plain reading of the text.
 - (ii) in addition, the interpretive directions contained in the constitution, the purpose of the provision under consideration, and the constitution’s broader context, must also be taken into account”.
 - (iii) taking context into account is a must, regardless of whether or not there is an ambiguity in the being interpreted.

- (iv) this means that the Court must not take a narrow literalistic approach to interpreting the Constitution. The Court must always consider the overall purpose and context and of the constitutionally mandated principles of interpretation.

Natural & Ordinary Meaning of Misbehaviour

93. The word “misbehaviour” ordinarily refers to behaviour that is not acceptable to a certain standard. What standard should the Tribunal use to determine whether Mr. Pryde’s conduct is tantamount to “*misbehaviour*”?
94. To answer the question, the Tribunal first consulted the ODPP’s Code of Conduct 2014. This Code outlines the ethical standards to guide ODPP officers. It also binds Mr. Pryde.
95. The Code espouses a “*basic standard of conduct*” which states that an ODPP officer must strive to avoid even the appearance of impropriety in his or her conduct, both at work and elsewhere.
96. Amongst the key principles which the Code sets out, is the need to “*avoid outside activity that could reasonably be perceived as a conflict of interest.*”
97. Generally, a conflict of interest arises when an officer’s personal interests or relationships interferes with any aspect of their professional duties or responsibilities.
98. If it was to be found that Mr. Pryde did breach the above Code, the Tribunal would still have to consider whether the circumstances of the breach was serious enough to warrant his removal under section 117 (6) of the Constitution. This is a matter of identifying what the correct standard should be, to distinguish behaviour which warrants a removal from office. This raises a question of proportionality.
99. To pitch the standard too high or too low, may not serve the purpose for which section 117 (6) is intended. This would constitute an error of law. What then is the correct constitutional standard?

Constitutional Context - Purpose of Section 117 (6)

100. Fiji is a constitutional democracy. The rule of law is fundamental in our system of governance. This means that every action must be taken within the four corners of the law. This applies equally to all - whether a private individual, a public body or official, or even a political process.
101. The Constitution, therefore, establishes certain key offices and agencies and then tasks them with the role of upholding the rule of law. The Office of the Director of Public Prosecutions is one of those agencies.

102. Hence, whether or not a person holding the office of DPP at any given time has committed an act of "*misbehaviour*" so as to warrant his/her removal, depends on:

- (i) whether the person has done something which compromises his/her role in upholding the rule of law, and
- (ii) whether the level of compromise is sufficiently serious to warrant a removal.

103. This is a mixed question of fact and degree. It is a matter of constitutional construction. The first step is section 3 (1) of the Constitution which provides:

Any person interpreting or applying this Constitution must promote the spirit, purpose and objects of this Constitution as a whole, and the values that underlie a democratic society based on human dignity, equality and freedom.

104. From the above interpretive direction, the Tribunal poses the following questions:

- (i) what is the constitutional role of the ODPP?
- (ii) what is the *spirit, purpose and objects* of the Constitution?
- (iii) what democratic values are engaged when it comes to the performance of that role?
- (iv) what democratic values are engaged whenever the question of the removal of the DPP arises?

Constitutional Role of the DPP

105. The ODPP is established under section 117(1) of the Constitution. Its role and responsibilities are set out in section 117(8)^{vi}. The Constitution demands that:

- (i) the ODPP will exercise his/her powers impartially, fairly and independently.
- (ii) the ODPP should hold every person and institution equally accountable under the law without fear or favour.

106. Amongst other things, the above means that the DPP cannot be subject to political control or have any political association, or be subject to the control of other branches of government (except a court of law), or to public opinion, or to any other form of external influence^{vii}.

107. These are standards by which the DPP serves his/her constitutional purpose of being an effective check and balance within our democratic system of government. In adhering to these standards, the DPP fosters and secures public trust and confidence in his/her constitutional role as such *vis a vis* the criminal justice system.

Independence & Security of Tenure

108. To maintain public trust and confidence in his/her constitutional role, the DPP must execute his decisions and actions with integrity, impartiality and fairness. To maintain integrity, impartiality and fairness, the DPP must be fully independent as an institution.

109. The Constitution demands that institutional independence through section 117 (10) as follows:

117 - (10) In the exercise of the powers conferred under this section, the Director of Public Prosecutions **shall not be subject to the direction or control of any other person or authority**, except by a court of law or as otherwise prescribed by this Constitution or a written law (our emphasis)

110. The Constitution recognises that institutional independence would be a mere tokenism if the DPP is easily removed from office. Accordingly, in section 117 subsections (5) and (6), the Constitution reinforces the institutional independence by providing a safeguard for the DPP's tenure:

(5) The Director of Public Prosecutions shall be appointed for a term of 7 years and is eligible for re-appointment, and shall be paid such remuneration as determined by the Judicial Services Commission in consultation with the Attorney-General provided however that such remuneration shall not be less than that payable to a Judge of the High Court and any such remuneration must not be varied to his or her disadvantage, except as part of an overall austerity reduction similarly applicable to all officers of the State.

(6) The Director of Public Prosecutions may be removed from office for inability to perform the functions of his or her office (whether arising from infirmity of body or mind or any other cause) or for misbehaviour, and may not otherwise be removed.

111. The Tribunal emphasises that the constitutional demand for independence and security of tenure, is founded ultimately on the principles of good democratic governance. These principles provide the constitutional context within which the word "misbehaviour" is to be interpreted.

Other Common Law Countries

112. The Tribunal has looked at various cases from around the common law world to see how they have defined the word "misbehaviour":

(see Wilson v Attorney-General & Ors (High Court, Wellington CIV-2010-485-1147, 28 Sep 2010, Justices Wild, Miller, and Lang); Parliamentary Commission of Inquiry Re The Honourable Mr. Justice Murphy: Ruling on Meaning of "Misbehaviour" (1996) 2 Aust Bar Rev 203; Hearing on the Report of the Tribunal to the Governor of The Cayman Islands – Madam Justice Levers (Judge of the Grand Court of The Cayman Islands [2010] UKPC 24; Hearing on the Report of the Chief Justice of Gibraltar, Re [2009] UKPC 43))

113. The Tribunal acknowledges that the way "misbehaviour" is defined in each country is moulded to the peculiar facts of each case, as well as the particular constitutional and legislative context in which the word is defined. Admittedly, the context in which the above cases approached the definition may differ a little from ours. However, the Tribunal identifies a common thread resonating from the above cases. This common thread is a valuable guide.

114. We set this out below:

- (i) there is a public interest which demands the highest standard of behaviour from the DPP.
- (ii) however, the institutional independence of the DPP must also be protected.
- (iii) the need to protect that institutional independence demands that the DPP shall only be removed if the behaviour has fallen far short of that standard as to demonstrate that he/she is not fit to remain in office.
- (iv) the point where a particular behaviour becomes "misbehaviour" worthy of removal, is a question of degree and fact.
- (v) it would not be prudent to attempt a strict definition of misbehaviour, however any behaviour which destroys public confidence in the DPP's ability to perform his/her duties under the Constitution and fulfill his/her constitutional role – should qualify as such.

Proportionality

115. Section 117 (6) of the Constitution only lists "removal" as the ultimate sanction for misbehaviour. There are no other sanctions provided. This raises the following:

- (i) should the definition of "*misbehaviour*" be pitched so low as to catch every behaviour within the definition? This would increase accountability of the DPP.
- (ii) if so, would it be disproportionate to recommend removal in cases where the level of "*misbehaviour*" is lower?
- (iii) is it open to the Tribunal to recommend a less harsher sanction in a case where the level of "*misbehaviour*" is low and where removal would be disproportionate a sanction?

116. Pitching the definition of "misbehaviour" too high, may insulate the DPP from any accountability for less serious acts of "*misbehaviour*". While this may reinforce his independence, it may still affect public confidence in the office. This is because the Constitution also holds the DPP accountable to ensure that he does not abuse his independent powers.

117. Pitching the definition too low, and holding the DPP accountable to even the slightest act of "misbehaviour", will compromise the institutional independence of the office. It will become too easy to remove the DPP from office. Accordingly, the office will become susceptible to frequent changes. This, in turn, will undermine the security of tenure in section 117 (6). Such a situation would be undesirable. It will be fodder for public speculation that every incumbent is a political appointee rather than an independent person.

118. **Every change of government will usher in a new DPP!**
119. There would be uncertainties and inconsistencies as successive office holders apply the law differently according to political allegiance. It would sow seeds of doubt in the public that the incumbent is incapable of upholding of the rule of law in the criminal justice system.
120. Flowing from all of the above, the question of proportionality arises. Where should the balance be struck between the competing interests?
121. The Supreme Court **In the Matter of a reference by Cabinet for an opinion from the Supreme Court concerning the interpretation and application of Sections 105(2) (b), 114(2), 116(4) and 117(2) of the Constitution of the Republic of Fiji [2024] FJSC 20; Miscellaneous Action 0001 of 2024 (28 June 2024)**, said, in its opinion, that proportionality is a value embedded in the Constitution. It is a core value underlying a democratic society and in Fiji's constitution. As such, the Court must seek to promote it or, avoid disproportionality to the extent possible.

N. FINDINGS

First Allegation

122. The facts presented to the tribunal indicate that Mr. Pryde did engage in an extensive discussion with Mr. Sayed-Khaiyum at a social event held at the Japanese Ambassador's official residence on 28 February 2023. At the time of their discussion, a police investigation file on Mr. Sayed-Khaiyum was open and awaiting a decision at the ODPP. Mr. Pryde had knowledge of the fact that the file had been allocated to Ms. Moira Konrote for advice.
123. The decision on whether or not to prosecute Mr. Sayed-Khaiyum rested with Mr. Pryde. He was the ultimate prosecutorial authority in his office. His decisions impact the lives of people. The integrity of the criminal justice system depends to a large degree on the level of fairness, impartiality and independence by which he applies himself to his work. Accordingly, he is expected to maintain a high level of professionalism, ethical behaviour, and wisdom in his decision-making and conduct.
124. Like other employees in the ODPP, Mr. Pryde is bound by DPP's Code of Conduct 2014. The Code outlines ethical standards to guide officers.
125. The "*basic standard of conduct*" demands that ODPP staff must strive to avoid even the appearance of impropriety in their conduct both at work and elsewhere. The key principles include a caution for officers to "*avoid[e] outside activity that could reasonably be perceived as a conflict of interest.*" The Tribunal finds that Mr. Pryde violated this principle.
126. However, section 117 (6) of the Constitution, in its relevant part, states that the DPP can only be removed from office for "*misbehaviour*" and not otherwise.

127. Does Mr. Pryde's conversation with Mr. Sayed-Khaiyum warrant his removal? There is no clear evidence that they were talking about the file. If there was such evidence, as happened in the Takiveikata^{viii} case, then there would be cause for a finding of misbehaviour.
128. In the absence of such evidence, the question is whether the conversation between Mr. Pryde and Mr. Sayed-Khaiyum is enough to raise in the mind of a reasonably informed observer that Mr. Pryde would have compromised his impartiality in relation to the police file that was awaiting a decision at the ODPP?
129. The Tribunal notes that the complaint relates to a one-off conversation. While this may raise some concerns within certain sections of the community, it is not enough to amount to "misbehaviour".
130. Mr. Clarke (amicus), in paragraphs 31 to 34 of his submissions, highlighted the following:

"31. The Society notes that, while the cocktail conversation was witnessed by many people present at the cocktail, only the former Attorney General gave evidence of what was said between him and Mr Pryde. That evidence was not challenged nor has it been suggested that it is untrue. On that basis, the Tribunal must accept the former Attorney General's evidence.

32. The Society also notes that none of the evidence given by current and former officers of the DPP's office suggested that the former Attorney General's file was treated any differently to other cases, of public interest or not. That said, the Society is of the view that the cocktail conversation can be perceived as inappropriate and ill-advised given the fact the DPP's office was in the process of dealing with the former Attorney General's file at the time.

33. Furthermore, the Society urges caution against placing too much weight on appearances and speculation on what may or may not have been said and what Mr Pryde may or may not have done as a result of his relationship with the former Attorney General. Similar to the Gibraltar and Lawrence cases, Fiji is a small jurisdiction with an especially small community of people who attend cocktails such as that at which the cocktail conversation was held.

34. There can be no dispute that the former Attorney General and Mr Pryde worked together for many years. That too, if viewed with a suspicious and speculative mind, could also create a perception that would render Mr Pryde unable to properly discharge the duties of the DPP in relation to the former Attorney General. The point made is that

while perception is important, the tribunal must avoid placing much, if any, weight in relation to views and assumptions that can best be described as conjecture."

131. Endorsing the above, and after considering the law as stated above, the Tribunal finds that Mr. Pryde has not committed an act of misbehaviour in terms section 117 (6) of the Constitution in relation to the first allegation.

Second Allegation

132. There was no written approval from the JSC that Mr Pryde was to be paid US\$1000.00 per month in superannuation.
133. Mr. Pryde had a choice under his contract between home superannuation (New Zealand), Fiji National Provident Fund or such other superannuation fund at his discretion.
134. He opted for his superannuation to be paid to an offshore fund. However, the contract did not specify an amount or a formula for his superannuation entitlement.
135. When he was Solicitor General, his superannuation entitlement was paid monthly to an offshore fund in accordance with the FNPF mandated contributions as specified under the FNPF Act. These contributions were converted to US dollars per month and then transferred to the offshore fund.
136. The Fiji Law Society submits at paragraph 35 subparagraphs (a), (b) and (c) as follows:

"35. The tribunal is urged to first consider whether a further approval of the JSC, President and Attorney-General was necessary for the payment of Mr Pryde's superannuation. This issue naturally arises for three reasons:

- (a) His right to receive superannuation is contained in his contract of employment as is his discretion as to whether it should be paid to the FNPF or to an overseas fund (see clause 2(2) of his contract of employment.*
- (b) The president of the Republic of Fiji signed the agreement so it is open to the tribunal to find that the approval was in fact given.*
- (c) As was discussed in the tribunal hearing on 6 December 2024, there is no dispute that the payments of superannuation to the overseas fund were roughly equivalent to what would have been paid to the FNPF had Mr Pryde made that election."*

137. The Tribunal endorses the above view and after considering the law as stated above, the Tribunal finds that Mr. Pryde has not committed an act of misbehaviour in terms section 117 (6) of the Constitution in relation to the second allegation.

O. EXPENSES

138. The Tribunal tabulates below a statement of the total expenses to date in carrying out its investigations and enquiry:

Description	Amount
Sitting Allowance	\$ 59,400.00
Accommodation	\$ 14,253.24
Mileage Claim	\$ 891.45
Investigators Allowance	\$ 8,132.44
Investigators Meals	\$ 4,515.00
Refreshments	\$ 1,405.32
TOTAL	\$ 88,597.45

P. OBSERVATIONS

139. The current constitutional arrangement for investigating complaints against Judicial Officers, and other constitutional office holders who are appointed through the Judicial Services Commission "procedure" (such as the DPP and the Solicitor-General), is not as elaborate as some other common law jurisdictions.
140. In New Zealand for example, the *Judicial Conduct and Judicial Conduct Panel Act 2004* sets out a scheme for a robust investigation process. It enables an informed decision to be made about the removal of Judges from office (see discussion in Wilson v Attorney-General & Ors (High Court, Wellington CIV-2010-485-1147, 28 Sep 2010, Justices Wild, Miller, and Lang).
141. A similar legislation exists in New South Wales.
142. An elaborate process such as the one exemplified by the New Zealand and New South Wales model, if adopted in Fiji, would set a clear guideline on a lot of procedural questions. Some of these are:
- (i) how the JSC may receive complaints against relevant constitutional office holders.
 - (ii) the type of "preliminary examination or information gathering" which the JSC must make.
 - (iii) the type of assessment which the JSC should make based on information available to it following its preliminary examination.
 - (iv) when may the JSC recommend to the President that Tribunal be appointed to consider the question of removal.
 - (a) should it first formulate an opinion based on a legal standard based on facts available from its preliminary examination?

- (b) must there be sufficient substance to the complaint to warrant a referral to the President?
 - (c) can the JSC still recommend a Tribunal even where it is unable to form an opinion?
 - (v) giving sufficient opportunity to the Judge or Office Holder in question to show cause why no recommendation should be made to the President (considering that the appointment of a Tribunal to conduct a public enquiry into the conduct of the Judge or Office Holder, is a serious matter)
143. An elaborate process is desirable in order to protect the independence of the constitutional office holders in question while maintaining their accountability. It will also ensure that they are treated fairly.
144. From the evidence given at the hearing, it appears to the Tribunal that the JSC does not have a clear policy on how it should handle complaints against the constitutional office holders under its management.
145. Policies are useful. They provide a framework for executive action and, in that way, they ensure that decisions are consistent, transparent and accountable. Without a clear policy, any executive decision may seem arbitrary.
146. The Tribunal would recommend that the JSC develops a clear policy pursuant to section 138 subsections (2) to (9) of the Constitution.

Q. ADVICE TO THE PRESIDENT

147. **In the Tribunal's unanimous opinion, the two allegations that were made against Mr. Christopher Pryde, have not been made out.**
148. **The Tribunal hereby advises His Excellency the President that Mr. Pryde, for the reasons stated above, ought not to be removed.**

¹ Section 112 (4), read together with Section 117 (7), provides as follows:

112. - (4) The President may, acting on the advice of the Judicial Services Commission, suspend the ... [Director of Public Prosecutions] ... from office pending investigation and pending referral to and appointment of a tribunal ... and may at any time, revoke the suspension.

² see section 138 (3) of the Constitution.

³ section 138 (9) provides

The Tribunal has the same powers as the High Court in respect of attendance and examination of witnesses (including the administration of oaths and the examination of witnesses abroad) and in respect of production of documents.

⁴ see *South Pacific Recording Ltd v Yates* Civil Appeal ABU 0039 u.96S [1997] FJCA 43 (14 November 1997).

⁵ see paragraphs 28 (a) to (d) of the Opinion.

⁶ section 117 (8) provides:

(8) The Director of Public Prosecutions may—
(a) institute and conduct criminal proceedings;

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- (b) take over criminal proceedings that have been instituted by another person or authority (except proceedings instituted by the Fiji Independent Commission Against Corruption);
 - (c) discontinue, at any stage before judgment is delivered, criminal proceedings instituted or conducted by the Director of Public Prosecutions or another person or authority (except proceedings instituted or conducted by the Fiji Independent Commission Against Corruption); and
 - (d) intervene in proceedings that raise a question of public interest that may affect the conduct of criminal proceedings or criminal investigations.

^{vi} see paragraph 8 of the Fiji Law Society's submissions which the Tribunal endorses wholeheartedly in making this point.

^{vii} *Gates v Takiveikata*; *State v Takiveikata* [2008] FJSC; CAV 0015.2007S & CAV 0016.2007S (24 July 2008)

<https://www.paclii.org/cg-bin/sinodisp/fj/cases/FJSC/2008/16.html?stem=&synonyms=&query=Takiveikata>