[2026] JMCA Misc 3

JAMAICA

IN THE COURT OF APPEAL

BEFORE: THE HON MISS JUSTICE P WILLIAMS JA
THE HON MRS JUSTICE DUNBAR GREEN JA
THE HON MR JUSTICE BROWN JA

MISCELLANEOUS APPEAL NO COA2022MS00013

BETWEEN	**ISAT BUCHANAN**	**APPELLANT**
AND	**THE DISCIPLINARY COMMITTEE OF THE GENERAL LEGAL COUNCIL**	**RESPONDENT**

John Clarke for the appellant

Maurice Manning KC and Miss Allyandra Thompson instructed by Nunes Scholefield Deleon & Co for the respondent

5, 6 May 2024 and 29 May 2026

Disciplinary proceedings – Professional misconduct by attorney-at-law – Whether the findings of fact made by the Disciplinary Committee of the General Legal Council were supported by evidence – Whether the findings by the Disciplinary Committee of General Legal Council were made in breach of the rules of natural justice – Whether it was appropriate for the Disciplinary Committee of the General Legal Council to consider the *sub judice* rule – Legal Profession Act and Legal Profession (Canon of Professional Ethics) Rules, 1978

P WILLIAMS JA

Introduction

[1] Mr Isat Buchanan ('the appellant'), an attorney-at-law, was reported as saying in an interview with the Loop News, among other things, that the Director of Public Prosecutions ('the DPP') was being "very dodgy", "shady" and "very deliberate in their action to continue to violate the constitutional rights" of his then client Mr Adidjah Palmer ('Mr Palmer'), also known as Vybz Kartel. The DPP at the time was Miss Paula Llewelyn KC ('the complainant'), and she lodged a complaint with the Disciplinary Committee of

the General Legal Council ('the Committee') alleging that this was conduct unbecoming of his profession on the part of the appellant in his capacity as an attorney-at-law.

[2] On 1 October 2022, the Committee found the appellant guilty of professional misconduct. The Committee found that the appellant breached Canon I(b) of the Legal Profession (Canons of Professional Ethics) Rules, 1978 ('the Canons'). Canon I(b) reads as follows:

> "An Attorney shall at all times maintain the honour and dignity of the profession and shall abstain from behaviour which may tend to discredit the profession of which he is a member."

[3] As a sanction for this breach, on 22 October 2022, the Committee ordered that the appellant be reprimanded and made no order as to costs.

[4] On 28 November 2022, the appellant filed an appeal challenging the findings of professional misconduct by the Committee. The appellant contends that the Committee erred when it held that there was a breach of the *sub judice* rule and that, consequently, there was a breach of Canon I(b). Furthermore, he complains that he was not afforded adequate notice or an opportunity to respond to the issue of an alleged breach of the *sub judice* rule, which was raised by and relied upon adversely against him by the Committee. Accordingly, the appellant seeks orders that the Committee's decisions and resultant sanction be set aside.

Background

[5] It is useful to first provide a brief background to the criminal matter involving Mr Palmer to properly put in context when and how the appellant became involved. Mr Palmer was jointly charged with three other men for the murder of Mr Clive "Lizard" Williams, who the prosecution alleged was killed on 16 August 2011. Following a lengthy trial spanning 64 days before a judge and jury in the Home Circuit Court, the men were convicted on 13 March 2014. On 3 April 2014, they were sentenced to life imprisonment

and ordered to serve different minimum terms before eligibility for parole. Mr Palmer was to serve 35 years.

[6] On 13 March 2017, Mr Palmer and the other convicts appealed against their convictions and sentences. Relevant to this instant case, one of the multiple issues raised in the grounds of appeal concerned the admissibility of evidence derived from telephone data and video recordings. The appeal was heard in July 2018. In April 2020, the appeal against conviction was dismissed, and the appeal against sentence was allowed to the limited extent of crediting time spent in custody before the trial.

[7] In that same month, April 2020, the appellant was retained by Mr Palmer, as evidenced by email correspondence between the appellant and the complainant. Also in April 2020, a motion for leave to appeal to Her Majesty in Council was filed in this court. It must be noted that in its decision, the Committee set out what it described as "the chronology of the subject matter giving rise to the comments" of the appellant at para. 31. I adopt this helpful chronology with modification to provide a summary of the sequence of events that followed the appellant's appearance on behalf of Mr Palmer.

[8] By way of a letter dated 14 April 2020, the appellant wrote to the complainant. He commenced the letter by stating that he was writing in accordance with the Privy Council's guidance in **Hamilton v The Queen** [2012] 1 WLR 2875 (referred to as **Hamilton v R** in the letter) and advised of his client's intention to appeal to Her Majesty in Council. He also put the complainant on notice that all the exhibits were to be preserved and made available for inspection by independent experts, as may be necessary. This was followed on 20 April 2020 by a letter from Mr David Hislop KC ('Mr Hislop'), who was the solicitor in England appearing along with the appellant in the appeal to Her Majesty in Council. In that letter, he sought confirmation of receipt of the letter of 14 April 2020, along with the assurance of the preservation of the exhibits. He also requested disclosure. In May and June 2020, two other letters were sent by Mr Hislop to the complainant, making further requests for disclosure.

[9] In a letter dated 7 September 2020, Mr Hislop wrote to the complainant, referencing the letter of 14 April 2020 and advised that they would soon be instructing an expert to travel to Jamaica to inspect and examine exhibits with the data relating to downloads from Mr Palmer's telephones and one other mobile telephone. He sought the DPP's undertaking that, subject to the setting up of a mutually convenient time, the inspection could proceed. It was noted that "to date [the complainant] has ignored all requests for disclosure" and sought to "respectfully invite co-operation or otherwise the reasons [she] feel[s] justify [her] refusal to co-operate". He reminded her of her obligations on appeal and referred to **Hamilton v The Queen**.

[10] On 15 September 2020, Mr Jeremy Taylor KC ('Mr Taylor'), Senior Deputy DPP, sent an email to Mr Hislop apologising for the delay, advising that there was disruption due to Covid-19 and that they were awaiting the decision of this court on the leave application to Her Majesty in Council before they began making arrangements to facilitate disclosure on any application for special leave. In subsequent correspondence, the complainant identified Mr Taylor as counsel who had conduct of the prosecution of the matter against Mr Palmer at trial as also in this court.

[11] In an email sent to Mr Taylor on the following day, Mr Hislop indicated that his patience was running out. He advised that if he did not receive a satisfactory response, he would take the unusual step of placing the matter and the "deliberate delaying tactics" before the Privy Council. He pointed out that, while the requests of 20 April 2020 and 1 May 2020 related to the prospective application for leave to appeal, they were "in no way contingent upon the present proceedings" before the court. He further stated that the request for inspection was within the "same category as was for shadowed [sic]" as early as the notice of 14 April 2020. Mr Hislop requested a response in relation to the undertaking referenced in the letter of 7 September 2020 regarding independent inspection and examination. He also requested the necessary disclosure so that they could proceed with the leave petition. He stated that the contents of the email would be put in letter form and hand-delivered to Mr Taylor. Mr Hislop indicated that if there was no

response within 14 days, they would "proceed to put the matter before the Judicial Committee of the Privy Council together with your email of yesterday's date".

[12] Later that same day, 16 September, Mr Taylor responded. He countered that he viewed Mr Hislop's email as angry, upset and condescending. He acknowledged awareness of the responsibility to render assistance, given the decision of **Hamilton v The Queen**. Mr Taylor then proceeded to address each matter previously raised, including advising that one of the matters relating to a member of the jury in the murder matter, for which disclosure was sought, was the subject of an ongoing trial. Mr Hislop responded thereafter, apologising for upsetting Mr Taylor and for the perception of being condescending. Mr Taylor next forwarded some of the material requested relating to the ongoing trial.

[13] On 19 September 2020, Mr Hislop acknowledged receipt of the disclosures and requested additional documents and records. He also requested agreement for the inspection and examination of the exhibits and telephones to occur as soon as possible, subject to Covid-19 difficulties. This was followed up in an email from Mr Hislop to Mr Taylor on 21 September 2020, requesting that he address their need to inspect and examine, as they were anxious to instruct their expert. Mr Taylor responded to this on 22 September 2020, indicating that he had sent a memorandum to the complainant regarding the undertaking that was being requested and was awaiting her instructions.

[14] On 25 September 2020, this court granted the convicts, including Mr Palmer, conditional leave to appeal to Her Majesty in Council pursuant to section 110(2)(b) of the Constitution of Jamaica. On that same day, Mr Taylor emailed Mr Hislop advising that he had discussed the matter with the complainant, who had not yet made a decision on the undertaking. He indicated that in the interim, a request had been made of the Registrar of the Criminal Division of the Supreme Court to confirm that the exhibits were still in their possession. He further indicated that the complainant was requesting the expert's name and curriculum vitae ('CV') as well as a list of the equipment to be used to examine the items, if there was agreement on the undertaking.

[15] On 30 September 2020, Mr Hislop emailed Mr Taylor advising that he had that morning requested the particulars sought by the complainant and would revert when the information was received. Mr Hislop enquired as to whether there was any response from the Registrar of the Supreme Court. On 2 October 2020, Mr Taylor responded by email, indicating that the items at the Supreme Court had been located and set aside.

[16] The next communication from Mr Hislop to Mr Taylor concerning the expert was in an email on 27 October in which he advised that the expert previously selected had taken ill. A new expert with whom he was having discussions, whose CV was attached, was unwilling to travel to Jamaica. Mr Hislop indicated that, before he formally instructed the expert, he needed to ascertain whether it was possible for the exhibit to be sent to the proposed expert for examination and to facilitate the re-extraction of data. Mr Hislop proposed that this expert and the technical representatives, on behalf of Mr Taylor, be in direct contact regarding the nature of the extraction, so as to ensure that no data would be lost or destroyed. The suggestion from the expert was that the evidence could be sent by secured FedEx. Mr Taylor responded indicating the need to take instructions.

[17] Receiving no further response, Mr Hislop emailed Mr Taylor on 10 November 2020, seeking an update on the complainant's position regarding the proposed methods of examining the exhibits. He expressed his client's anxiety to progress the matter.

[18] On 20 November 2020, an application for permission to appeal against conviction was lodged with the Privy Council. On 23 November 2020, a letter was sent to Mr John Almeda of Charles Russell Speechlys Solicitors LLP, who were the solicitors on record for the Office of the DPP ('ODPP'), from Simons Muirhead & Burton LLP regarding the application. The writers noted that there had been "ongoing correspondence" between Mr Hislop and Mr Taylor in relation to a proposed examination of the items in the exhibit. It was further noted that, since the proposal made by Mr Hislop in the email of 27 October, to which Mr Taylor had indicated he would take instructions and revert, there had been no substantive response to Mr Hislop's request for an update. The letter concluded with a request for any assistance that Mr Almeda could provide in following up on this issue

directly with his client, in order to avoid any delays that may potentially impact the filing of the notice of appeal.

[19] It was on that day, 23 November 2020, that Loop News published the article which became the subject of the complaint.

[20] On 25 February 2021, the complainant initiated a complaint against the appellant by way of an affidavit sworn on the same date. In that affidavit, the complainant referred to the article, titled 'VYBZ KARTEL LAWYERS MOVE TO GAIN ACCESS TO THE ENTERTAINER'S PHONE". In the article, the appellant was quoted as stating:

> "The DPP is being very dodgy and shady, and very deliberate in their action to continue to violate the constitutional rights of Adidja Palmer. Despite the attempts of myself and the Queen's Counsel, we have been unable to get access to the cell phone, which we believe has evidence of tampering."

[21] The article continued that the appellant "had voiced concerns that the Office of the DPP was acting as 'authors of further delay' in the matter, seeking to frustrate the defence's bid to gain access to the infamous phone". It quoted the appellant as saying:

> "We have represented our concerns by writing to agents in England, and we hope that this activity will move the Privy Council to force their hand to release the phone so we can confirm whether it was tampered with."

<u>The complaint to the Committee</u>

[22] The particulars of the complaint, as set out in the supporting affidavit dated 25 February 2021, may be summarised as follows:

1) The appellant's assertions and mischaracterisation of the ODPP as "dodgy" and "shady" and as having breached Mr Palmer's constitutional rights were malicious, defamatory and untrue. The words "dodgy" and "shady" were usually used to describe persons of dishonest character and

lacking moral integrity, such as thieves or fraudsters, and was behaviour highly unbecoming of any attorney-at-law. The untrue statements not only brought the ODPP into disrepute but also posed a risk to the safety and security of the complainant and the staff. Thus, the mischaracterisation of the ODPP by the appellant of being "dodgy" and "shady" and breaching Mr Palmer's constitutional rights were deemed as being reckless, dangerous and a possible violation of Canons I(b) and V(o).

2) The actions of the appellant contravened Canons VIII(a) and (b), in that he acted in a manner that degrades the public's confidence in the ODPP and its prosecuting attorneys.

3) Such conduct has the potential to bring the legal profession into disrepute and is inconsistent with the high traditions of the profession. It ought not to be condoned or countenanced in any way.

Accompanying the affidavit, the complainant exhibited the article itself, as well as what she described as an official statement in the form of a press release dated 26 November 2020, detailing the background of the case and previous communications with Mr Palmer's defence team.

The appellant's response to the complaint

[23] The appellant filed an affidavit in response dated 2 June 2021, denying the allegations of professional misconduct. He asserted that the comments in question were not directed at any individual attorney-at-law, but rather at the ODPP. He asserted that even if a panel were to find that he characterised the ODPP as being dodgy, shady and breaching Mr Palmer's constitutional rights, this type of conduct in the full circumstances

of this case, after a complete reading of all the relevant emails in this matter, could not be viewed as a violation of Canon I(b) or Canon V(o).

[24] The following are among the reasons the appellant set out why his conduct could not be viewed as being in breach of any of the Canons:

1. He did not make any false statement of law or fact in relation to the matter. Moreover, he emphasised that Canon V(o) requires proof that the statement was made knowingly, which was not established in this case.
2. There was no comment or act, supported by evidentiary material, that could lead to a finding that he failed to maintain the honour and dignity of the legal profession. Nor was there any objective basis in law to conclude that his conduct tended to discredit the profession.
3. The comments allegedly made by him were within the permissible boundary of his constitutional rights guaranteed under section 13(3)(c), (d), (g), and section 16(2) of the Constitution.
4. There was no evidence in the complainant's affidavit to support a finding that the Committee, mindful of its duties under section 13(2) of the Constitution, could lawfully abrogate, abridge, or infringe upon his constitutional rights, especially in light of the paucity of information provided by the ODPP.

<u>The proceedings before the Committee</u>

[25] When the matter came before the Committee on 9 April 2022, upon enquiry from it and extensive discussion between the Committee and counsel appearing for the parties, agreements were reached, and decisions were made as to the manner in which the matter

would proceed. In the report sheet of the hearing for that day, prepared by the Committee, the following results are recorded:

> "1 …
>
> 2. Parties agree that there is no factual dispute that the words were used.
>
> 3. Issues before the panel are what is the meaning of the words and whether the words [which] were uttered are protected by the Constitution.
>
> 4. Parties agree that the factual circumstances are embodied in the affidavits and the issues to be determined in relation to the meaning of the words and the effects of the Constitution can be dealt with in legal submissions.
>
> 5. Complainant to particularise grounds [the word charges crossed out and replaced with grounds] of the complainant [sic] in an affidavit on or before 14th April 2022.
>
> 6. The [appellant] is at liberty to file an affidavit in response, if so advised, on or before 22nd April 2022.
>
> 7. The parties to file and exchange written submissions with authorities on or before 28 May 2022.
>
> 8. Matter set for trial on Friday, 3rd June at 2:00 pm for response to submissions.
>
> 9. Parties have the option to respond in writing."

Further affidavits

[26] It is to be noted that the Committee, at the time of making the request of the complainant to particularise the charges, instructed her to confine her response to particularising the facts and not to introduce any new material. In her further affidavit dated 14 April 2022, the complainant, in her opening paragraphs, acknowledged this in asserting that in the further affidavit she was giving further and better particulars of her complaint as requested by the appellant's attorneys-at-law. She reiterated that, as a

member of the legal profession, the appellant's utterances in the article were "singularly and cumulatively contrary to the rules and ethics/canons of the legal profession" and had the potential to and did bring the ODPP and herself into disrepute.

[27] The particulars now identified as the acts of professional misconduct committed by the appellant, which required adjudication by the Committee, can be summarised as follows:

> a. In breach of Canon V(o), the appellant made misrepresentations of fact and law. The telephone sought for examination as an exhibit remained in the custody of the Registrar of the Supreme Court, and there is no principle of law that empowered the ODPP to hand over such items to any person requesting access to them. The onus was on the defence to apply to the Registrar for access to the exhibit, which could be achieved by obtaining the relevant court orders. Accordingly, the assertion that the ODPP are authors of delay is completely false and erroneous.
>
> b. In breach of Canons I(b), VI(a), and VIII(b), having failed to secure the requisite order for the exhibits to be released by the Registrar, the appellant went to the media with the allegations of the ODPP being dodgy and shady and the authors of further delay, leaving the general public with the impression that the ODPP was responsible for withholding or frustrating the defence's bid to gain access to the said telephone. Further, by asserting that the DPP was continuing to violate the constitutional rights of Mr Palmer by preventing access to the telephone, the appellant was indirectly accusing

the DPP of professional misconduct, as she is expected to uphold the Constitution and laws of Jamaica.

c. In breach of Canon VI(g), the appellant was breaching time-honoured customs that include courtesy to members of the legal profession by both his utterances and conduct.

d. In breach of Canon IV(s), the appellant was grossly negligent in seeking to speak to the media on what he perceived as issues where the ODPP was concerned. Cumulatively, the lack of knowledge in relation to the proper procedure and the adequate avenues for him to seek a remedy if he so desired amounted to inexcusable negligence. The appellant had not done his due diligence so that he could be properly seized of the law and facts necessary for the resolution of his need to examine the exhibit.

[28] In response to the further affidavit from the complainant, the appellant reiterated his denial of all allegations of professional misconduct. He maintained that, at all relevant times, his actions were taken solely to advance his client's position, and that he had sought to do so in a respectful and accurate manner. The appellant further asserted that he did not make any false statement of law or fact, contrary to Canon V(o). In support of this assertion, he pointed out that he had never indicated publicly or otherwise that the DPP or anyone was in custody of the telephone. Further, he highlighted that he received no response from the DPP, which, he contended, contributed to the delay in making the application. He further stated that he remained unaware of the procedure that the complainant now asserted he ought to have followed and that she could have shared with him in his initial notice. The appellant maintained that he did not knowingly engage in any conduct that would tend to discredit the legal profession, in breach of

Canon I(b); and that he did not contravene any of the Canons in the manner alleged by the complainant.

[29] The appellant objected to the introduction of alleged breaches to additional Canons, namely Canons VI(g) and IV(s), on the grounds that it was improper for the complainant to seek to introduce breaches which had not been referred to the Committee for adjudication, thereby failing to follow the appropriate procedure. He further submitted that the Committee should disregard those new charges and that the matter should be decided on the breaches which were initially referred to it. The appellant contended that his right to a fair hearing would be infringed if the Committee were to find him guilty of unparticularised allegations, particularly where he was not given sufficient notice to mount an adequate defence due to the complainant's failure to clearly articulate the charges.

[30] On 18 June 2022, when the matter was next before the Committee, it invited the parties to make submissions on the following issue: "Since Canon V is titled 'AN ATTORNEY HAS A DUTY TO ASSIST IN MAINTAINING THE DIGNITY OF THE COURTS AND THE INTEGRITY OF THE ADMINISTRATION OF JUSTICE' and the Canons under this heading relate primarily to matters in court is Canon V(o) restricted in its application to the court setting or is it of general application?". The parties were given until 9 July 2022 for the completion of filing all their submissions. The matter was set for 1 October 2022 for a decision.

The decision of the Committee

[31] In the decision, the Committee commenced by noting that the parties agreed that there was no factual dispute that the words, the subject matter of the complaint, were said. Two issues were also identified and agreed upon by the parties before the Committee, namely: "(1) what was the meaning of the words spoken; and (2) were the words spoken protected by constitutional provisions relating to the freedom of expression".

[32] After reviewing what was described as the factual context of the complaint, the Committee addressed the particulars in relation to Canons VIII(a) and VIII(b). It noted that in response to the request from counsel for the appellant that she elaborate on the specific breaches sought to be covered by these two canons, the complainant was directed that this request be confined to particularising the facts which formed the basis for the complaint relative to them. The Committee found that the complainant's approach to particularising the alleged breaches of these canons was contrary to the specific instructions issued by it. In addition to introducing new factual material, the complainant also introduced breaches of other canons which were not originally the subject matter of the complaint, namely Canons VI(a), VI(g) and IV(s), and the panel further noted that the complainant omitted any reference to Canon VIII(a), which had been part of the original complaint.

[33] The Committee ruled that the newly introduced breaches could not be considered, as they fell outside the scope of the initial complaint. Furthermore, since Canon VIII(a) was neither addressed in the complainant's further affidavit nor explained as to whether its omission was an error, the Committee found itself in some doubt as to whether it was being pursued.

[34] With respect to Canon VIII(b), the Committee observed that it had been "lumped" together with Canons I(b) and VI(a). It noted that Canons VIII(a) and (b) were used when the behaviour of the attorney did not fall within the scope of any other canon. The Committee found that for the complainant to make reference to other applicable canons and not or not sufficiently elaborate on the factual basis of Canons VIII (a) and (b) led to the inevitable conclusion that breaches of those canons were not supported by any facts and, therefore, could not be supported in the complaint. Additionally, no application had been made to amend the complaint to include the new canons or correct the omissions. Accordingly, the complaints in relation to Canons VIII(a) and VIII(b) were dismissed.

[35] The Committee proceeded to consider the alleged breaches of Canons I(b) and V(o). Canon I(b) has been set out above at para. [2]. Canon V(o) provides the following:

> "An attorney shall not knowingly make a false statement of law or fact."

[36] The Committee considered the preliminary issue it had raised of "whether Canon V(o) should be restricted to in court matters or should it have a wider application". This it considered necessary given what is described as the rubric or preamble of Canon V(o), which is as follows:

> "An attorney has a duty to assist in maintaining the dignity of the courts and the integrity of the administration of justice."

Following a summary of the parties' submissions and a review of the relevant legal authorities, most notably the Privy Council decision in **Hosein v Ramnarine-Hill** [2021] UKPC 28, the Committee accepted that Canon V(o) should not be restrictively interpreted to the extent that it only relates to matters in court.

[37] Having resolved that issue, the Committee then turned to the substance of the complaint as it related to Canon V(o), namely: whether the appellant knowingly made a false statement of law or fact, in stating that, "The DPP is being very dodgy and shady, and very deliberate in their action to continue to violate the constitutional rights of [his client]. Despite the attempts of myself and the Queen's Counsel, we have been unable to get access to the cell phone, which we believe has evidence of tampering".

[38] In evaluating the actions attributed to the complainant, the Committee reviewed the sequence of events that led to the comments in question. This included examining the timeline of key developments, to include the date the appellant's client was convicted of murder, the date the conviction was appealed, the date the appellant was retained by the client, and the date of the letter sent to the complainant indicating the client's intention to appeal, which also had put the complainant on notice to preserve all exhibits related to the case. The Committee also took into account letters and emails after the article in Loop News was published. Included in this consideration was the complainant's letter, dated 4 December 2020, to Mr Hislop, in which she stated that the exhibits were

in the custody of the Registrar and that she had no objection to his expert examining the exhibit, provided the examination occurred under the supervision of their expert.

[39] The Committee placed considerable reliance on the authority of **Carlos Hamilton and Jason Lewis v R** [2012] UKPC 31. In that case, the Judicial Committee (General Appellate Jurisdiction) Rules Order, 1982, was reviewed, and recommendations were made regarding steps to minimise the risk of unreasonable delays in the prosecution of appeals before the Board. In its subsequent analysis, the Committee stated that a fundamental misunderstanding existed between the parties regarding the procedural steps for examining the cell phone. It observed that it was not until 4 December 2020, that the complainant provided any substantive response clarifying her position on this issue. The Committee also noted that importantly, this communication occurred after the statements made by the appellant, which formed the basis of the complaint. The Committee further noted that it was "unfortunate" that this letter was not sent until after the issue created by the comments of the appellant, which gave rise to this complaint.

[40] The Committee was satisfied that the assessment of whether the appellant's conduct constituted a breach of Canon V(o) must be based on the facts as the appellant believed them to be, provided that, as the tribunal of fact, it found his account to be credible. Upon review of the evidence, including the recorded interviews of both the complainant and the appellant following the publication of the article, as well as the submissions advanced, the Committee concluded that both the appellant and Mr Hislop were of the *bona fide* belief that the complainant's prolonged delay, spanning more than six months, in providing a meaningful response to urgent requests was a deliberate delaying tactic and that she was acting in a manner that the appellant perceived would affect the constitutional rights of his client with respect to delaying the prosecution of the appeal before the Privy Council. Ultimately, the Committee found that the view by the appellant was entirely reasonable and, therefore, was not a false statement of law or fact. Accordingly, he could not have knowingly made a false statement of law or fact.

[41] Ultimately, in those circumstances, the Committee determined that the complainant had failed to prove that the words spoken by the appellant were, to the appellant's certain knowledge, false. Consequently, the Committee held that a breach of Canon V(o) had not been proved and dismissed this aspect of the complaint.

[42] The next issue the Committee identified to be determined concerned the breach of Canon I(b), which it articulated as follows: "whether the words actually used contravened that canon or whether the application of the Constitutional provisions relating to freedom of expression would protect the [appellant's] use of these words and[,] in addition, whether these words contravened the *sub judice* rule". The Committee expressly reminded itself of the guidance of this court in **Gresford Jones v The General Legal Council (Ex parte Owen Ferron)** (unreported), Court of Appeal, Jamaica, Miscellaneous Appeal No 22/2002 and Cross Appeal No 27/2002, judgment delivered 18 March 2005.

[43] The Committee disagreed with submissions made on behalf of the complainant that the issue was a constitutional one and that it was not fit and proper for the Committee to deal with. It appreciated that the appellant had raised in his defence essentially that the constitutional right of freedom of expression entitled him to vigorously criticise the complainant's action and, in so doing, he could not be in breach of the specified canon. The Committee noted that the authorities cited included **Groia v Law Society of Upper Canada** [2018] 1 SCR 772 and **Dore v Barreau du Quebec** [2012] 1 SCR 395. These were described as cases in which an attorney-at-law had forcefully criticised a judge in matters before the court and which were found to cover the issue of the right of freedom of expression and whether or not the expressions contravened disciplinary rules governing the profession.

[44] The Committee commenced by considering the use of the words "dodgy" and "shady" and the assertions of the ODPP breaching the constitutional rights of the appellant's client and being authors of delay. In relation to the complaint about the words "dodgy" and "shady", the Committee recognised that they were open to more than one

interpretation, even if the same could not be said in relation to the assertion that the complainant continued to violate an accused person's constitutional rights. It concluded that there was no proper basis on which only the interpretation most unfavourable to the appellant was to be adopted. Further, it found that on an objective assessment of the words spoken, the context to which they referred, and the expansive explanation given in the interview, it was difficult to understand why the complainant thought the words only conveyed elements of dishonesty.

[45] The Committee noted that in relation to the cases cited, the criticisms made by the defendants far exceeded the comments made by the appellant in the instant case. It further quoted extensively from **Groia v Law Society of Upper Canada**, highlighting in particular the passage at page 775, which provides as follows:

> "With respect to what the lawyer said, while not a standalone 'test', the Appeal Panel determined that prosecutorial misconduct allegations, or other challenges to opposing counsel's integrity, **cross the line into professional misconduct unless they are made in good faith and have a reasonable basis. Requiring a reasonable basis for allegations protects against unsupportable attacks that tarnish opposing counsel's reputation without chilling resolute advocacy.** However, the reasonable basis requirement is not an exacting standard. **It is not professional misconduct on account of incivility to challenge opposing counsel's integrity based on a sincerely held but incorrect legal position so long as the challenge has a sufficient factual foundation, such that if the legal position were correct, the challenge would be warranted**…" (Emphasis as in the original)

[46] The Committee concluded that, in applying the principles from that case to the instant matter, criticism of the complainant was made in good faith based on the appellant's view of the circumstances, and it had a degree of factual foundation to be considered reasonable. Further, it found that the words used could not be described as having an excess of vituperation in context and tone.

[47] The Committee next addressed an issue which it said was raised in submissions filed on 27 May 2022 on behalf of the complainant. It was contended that the appellant had engaged the media in a manner that conveyed to the public and left the impression that the complainant was acting in an unconstitutional manner in withholding access to the exhibit and that this amounted to an indirect allegation of professional misconduct contrary to Canon III(f). The Committee further noted the submission that the matter ought to have progressed through the courts rather than through the media and the court of public opinion, and that dealings with public officials should be conducted in a manner that promotes public confidence in both the officials and the operation of the offices. Significantly, the Committee expressly accepted that "this particular issue was not pursued in the same manner as the breaches of other Canons nevertheless [it] considered this to be an extremely important issue".

[48] The Committee noted that, at the time the appellant made the remarks to the Loop News, this court had already granted leave to appeal to the Privy Council. Additionally, the appellant himself had informed the complainant that an application for special leave had also been filed by his legal team in the Privy Council. Thus, the Committee found that the remarks were made while an appeal was still before the court for determination, and it was on this basis that the panel went on to consider the *sub judice* principle.

[49] In so doing, at para. 67 of the decision, the Committee stated:

> "67) The principle of *sub judice* in Jamaica is based on common law principles as there is no specific legislation relating to it. Sub judice is a Latin Term which refers to matters under or before a judge or court; or matters under judicial consideration. In essence, the sub judice rule restricts comments and disclosures pertaining to pending judicial proceedings. The restriction applies to litigants and witnesses, the public in general, and most especially to members of the Bar and Bench. Any such conduct is punishable as contempt of court. One of the main aims of the rule is to protect the administration of justice. In relation to the Disciplinary Committee of the General Legal

> Council, there is no power to punish by way of contempt proceedings, accordingly, in any examination of the specified conduct, it is necessary to determine whether that conduct is in breach of any of the Canons of professional responsibility of Attorneys."

[50] The Committee then referred to and relied on observations of the Supreme Court of the Philippines in the decision of **Republic of the Philippines, represented by Solicitor General Jose C Calida v Maria Lourdes PA Sereno** ('**Calida v Soreno'**) GR No 237428, decision dated 11 May 2018 (the particular extracts relied on by the Committee, however, are from the show cause order promulgated on 17 July 2018 flowing from this decision). The Committee found that this case "was authority for the proposition that whereas *sub judice* can lead to contempt of court proceedings, in relation to administrative tribunals, some of the requirements required to prove criminal contempt have no relation to these tribunals as tribunals have no power to punish for contempt".

[51] The Committee continued at paras. 70 to 74:

> "70) Based on these observations as to what the Canons of professional conduct require of Attorneys and, in light of the *sub judice* requirement of administrative bodies, it can be seen that when matters are *sub judice* the duties that are placed on the conduct of Attorneys require them to act in a manner which promotes the public respect for judicial institutions and the participants therein thereby complying with the requirements of the Canons… As stated before, administrative bodies do not have powers of punishing for contempt so the application of the *sub judice* rule to the administrative body is whether the words comply with statutory requirements that the body is created to protect. The Court when dealing with *sub judice* therefore has a different parameter in which to operate than the administrative body. In consequence therefore, the Disciplinary Committee with respect to matters of *sub judice* can only apply a test to see if beyond reasonable doubt the words maintain the honour and dignity of the profession and avoid behaviour which may tend to discredit the profession of which he is a member.

71) In this context the words used by [the appellant] cannot be said to promote public respect for judicial institutions and the participants therein as they impute the continued deliberate violation of the constitutional rights of [the appellant's] client which would be contrary to law and diametrically opposed to the functions of the Complainant as a minister of justice. The effect of which would be to cause the public to have less respect for the prosecutorial institution and correspondingly the administration of justice clearly this does not maintain the honour and dignity of the profession.

…

73) The panel further notes that in e-mail correspondence sent by the [appellant] to his team in the United Kingdom on 24th November he states '**the [complainant] and her deputy are being deliberate and unreasonable with their position and would not have responded but for the article and the response to it on social media**'. The inescapable inference to be drawn from this is that social media was deliberately used to bring public pressure to bear on the Complainant instead of using the mechanism alluded to by Mr. Hislop, KC, in his letter of 16 December 2020...Again, in the context of what was being sought by the [appellant] with regard to disclousure [sic] and the position of the complainant these were matters which quite properly should have been ventilated before the Court not the public by way of social media. As they provided a legal basis for subsequent applications instead or [sic] seeking to tarnish the behaviour of the Complainant and thereby cause the public to have an unfavourable view of the administration of justice and the legal profession.

74) Again, it is in this context that the Panel has to take into account that the prosecutorial body during the trial of [the appellant's] client because of the status of the client in the eyes of the public had to contend with public animosity and threatening behaviour. In [sic] the light of this [sic] words designed to appeal to that very public could not enhance any respect for the legal institutions involved the administration of justice as a whole and maintain the honour and dignity of the profession." (Emphasis as in the original)

[52] The Committee appropriately reminded itself that, as a matter of law, the burden of proof was on the complainant, and the standard of proof in cases of professional misconduct is beyond a reasonable doubt. This, it accepted, was the standard that must be applied when evaluating the evidence presented. The Committee then made the findings, some of which are reproduced below given their relevance to the grounds of appeal:

> "…
>
> xix) That criticisms of persons concerned in the administration of justice based on a sincerely held belief will be reasonably based as long as they are based on a sufficient factual foundation accordingly words spoken pursuant to the constitutional freedom of expression will not necessarily contravene the Canons notwithstanding that the criticism is robustly expressed.
>
> xx) The responsibility of the Disciplinary Committee of the General Legal Council is to balance the fundamental importance of open, and even forceful, criticism of our public institutions with the need to ensure civility in the profession. We must therefore demonstrate that we have given due regard to the importance of the expressive rights at issue, both in light of an individual lawyer's right to expression and the public's interest in open discussion. As with all disciplinary decisions, this balancing is a fact-dependent and discretionary exercise.
>
> xxi) That the words spoken by the [appellant] to the Loop News while there was a continuing matter before the Privy Council needed to be considered under the *sub judice* rule.
>
> xxii) That the *sub judice* rule restricts comments and disclosure pertaining to pending judicial proceedings. The restriction applies to litigants and witnesses, the public in general, and most especially to members of the Bar and Bench.
>
> xxiii) That the Disciplinary Committee of the General Legal Council has no power to cite Attorneys for contempt, accordingly the principles relating to contempt proceedings

are not the basis upon which disciplinary proceedings are to be determined. The test is therefore whether or not to the standard of beyond a reasonable doubt the comments made maintain the honour and dignity of the profession and avoid behaviour which may tend to discredit the profession thereby acting in a manner which promotes the public respect for judicial institutions and the participants therein."

[53] The Committee, at para. 78 of its decision, set out the following:

"**CONCLUSIONS**

78. Based on the above findings of fact the panel concludes as follows:-

a) The Complaint concerning the breaches of Canons VIII (a) and VIII(b) were not particularized to enable the [appellant] to know in what way they were breached. In addition, the complainant's reply to the request for clarification of the breaches sought to introduce Canons outside the original complaint contrary to the specific instructions of the Panel and failed to state the basis upon which these canons were breached. There was also no application for an amendment of the complaint. Accordingly, the breaches of these Canons were dismissed.

b) The complaint concerning the breach of Canon V(o) did not establish to the required standard of proof beyond reasonable doubt that the statement of the [appellant] was false and that he made it knowing that it was false. To the contrary, based on the information that was available there was in fact an inexcusable refusal by the Complainant to respond to the inquiries of the [appellant's] solicitors thereby causing an unnecessary delay and this made the statement essentially true. Accordingly, the breach of Canon V(o) was dismissed.

c) Part of the Complaint concerning the breach of Canon I(b) was, in the light of the trilogy of Canadian cases and the constitutional right to freedom of expression, not of the required standard to cause the Panel in these circumstances to be able to say that they were not made

> in good faith, that they had no actual foundation and they were not reasonable.
>
> d) The issue in relation to the words being uttered while the matter is before the Privy Council was *sub judice* and leads us to the conclusion that the comments made by the [appellant] did not maintain the honour and dignity of the profession thereby promoting the public respect for judicial institutions and the participants therein. As a consequence, we conclude that Canon I(b) has been breached by the comments as being in breach of the *sub judice* rule."

The appeal

[54] Dissatisfied with the panel's finding of professional misconduct and the sanction imposed, on 28 November 2022, the appellant filed a notice and grounds of appeal, setting out three grounds. At the commencement of the hearing, Mr John Clarke, on behalf of the appellant, indicated that ground I would not be pursued. The remaining grounds of appeal are set out below:

> "II. The Disciplinary Committee erred in law and/or misdirected itself and/or wrongly exercised its discretion and/or acted on a wrong principle of law when it held in finding that there was a breach of *sub judice* rule and that, consequently, the appellant breached Canon [I](b) of the Legal Profession (Canons of Professional Ethics) Rules.
>
> III. The Disciplinary Committee acted improperly and unfairly in finding that there was a breach of the *sub judice* rule and that, consequently, the appellant breached Canon [I](b) of the Legal Profession (Canons of Professional Ethics) Rules, as the appellant received no, or no sufficient, prior notice that this was an allegation that he was required to meet in the disciplinary hearing."

Preliminary matters

[55] At the commencement of the hearing of this appeal, counsel for the Committee, Mr Maurice Manning KC, by way of a notice of application, applied for an extension of time to file written submissions and relief from sanctions for non-compliance with the

applicable timelines. Mr Clarke, having filed his submissions out of time, also made an oral application for an extension of time. This court granted leave for both parties to rely on their respective written submissions as if they had been filed within the prescribed period.

The applicable legal framework and standards of review

[56] In **Re a Solicitor** [1974] 3 All ER 853, at pages 859 to 860, the following statement was made, which has provided guidance for this court concerning how this court should approach appeals from the Disciplinary Committee:

> "It has been laid down over and over again that the decision as to what is professional misconduct is primarily a matter for the profession expressed through its own channels, including the disciplinary committee. I do not, therefore, for one moment question that if a properly constituted disciplinary committee says that this is the standard now required of solicitors that this court ought to accept that that is so and not endeavour to substitute any views of its own on the subject."

[57] This position was further explored in **General Legal Council v Michael Lorne** [2024] UKPC 12, a recent decision from the Privy Council on appeal from this court. In that case, the Privy Council endorsed the approach taken by this court when handling appeals from the Disciplinary Committee and also clarified the scope of the court's authority under sections 16 and 17 of the Legal Profession Act ('LPA'). Although the Privy Council's comments were specifically related to a challenge against a disciplinary sanction, the legal principles they outlined are considered also relevant to appeals that deal with findings of professional misconduct.

[58] In **Donald Gittens v The General Legal Council** [2025] JMCA Misc 5 ('**Gittens v GLC**') McDonald-Bishop JA (as she then was), writing on behalf of the court, succinctly articulated the principles at para. [24] as follows:

> "The applicable principles were set out in para. 38–56 of the Privy Council's judgment. In sum, the principles are

> that an appeal from the decision of the Committee is by way of rehearing, and so the court may substitute its own decision for that of the Committee in appropriate cases. However, the court is required to approach the findings of professional misconduct and the sanctions imposed by the Committee with some diffidence, given the Committee's expertise in determining the types of conduct which ought to attract disapproval and the appropriate sanctions to be applied. This does not mean that the court is to be blindly deferential to the Committee's findings and sanctions. It instead means that the court may intervene in a decision of the Committee, both regarding liability for professional misconduct and the sanction, where there is an error of law or principle. Importantly, this court's jurisdiction on a rehearing is not restricted to overturning the Committee's findings where there is an error of law or principle. In the absence of such errors, the court must exercise caution before overturning a decision of the Committee, and mere disagreement with the decision of the Committee is insufficient. The appellate court is permitted to disturb a sanction of the Committee which it finds to be excessive or inappropriate. In all cases, however, the court must be guided by the principles which govern the appellate jurisdiction in cases where there is an appeal from a discretionary and/or evaluative judgment."

[59] The standard of review applicable to challenges against the findings of fact of a first-instance court or quasi-judicial tribunal is relevant to the assessment of the impugned aspects of the Committee's decision concerning factual matters. Authoritative guidance is provided by the Privy Council's often-cited decision in **Beacon Insurance Company Limited v Maharaj Bookstore Limited** [2014] UKPC 21, an appeal from Trinidad and Tobago. As their Lordships explained in para. 12 of the Board's judgment:

> "It has often been said that the appeal court must be satisfied that the judge at first instance has gone 'plainly wrong'…This phrase does not address the degree of certainty of the appellate judges that they would have reached a different conclusion on the facts…Rather it directs the appellate court to consider whether it was permissible for the judge at first instance to make the findings of fact which he did in the face of the evidence as a whole. That is a judgment that the appellate court has to

> make in the knowledge that it has only the printed record of the evidence. The court is required to identify a mistake in the judge's evaluation of the evidence that is sufficiently material to undermine his conclusions. Occasions meriting appellate intervention would include when a trial judge failed to analyse properly the entirety of the evidence…"

[60] In **Gittens v GLC,** McDonald Bishop JA, in addressing this issue, stated at para. [27]:

> "Therefore, for this court to interfere with the Committee's factual findings and conclusions based on them, it has to identify a mistake in the Committee's evaluation of the evidence that is sufficiently material to undermine its conclusions. This court cannot disturb the Committee's findings merely because it would have reached a different decision based on the proven facts and inferences drawn from them."

[61] The two grounds relate to the issue of the *sub judice* rule. In ground II, the challenge is to the finding that there was a breach of the rule, and in ground III, the challenge is to the making of that finding without giving the appellant the requisite notice that this was the allegation he was to meet. I find it convenient to deal with ground III first.

Ground III- The Disciplinary Committee acted improperly and unfairly in finding that there was a breach of the *sub judice* rule and that consequently, the appellant breached Canon I(b) of the Legal Profession (Canons of Professional Ethics) Rules, as the appellant received no, or no sufficient, prior notice that this was an allegation that he was required to meet in the disciplinary hearing.

Submissions on behalf of the appellant

[62] Mr Clarke's complaint under this ground is rooted in his contention that the Committee erred in seeking to add the issue of the breach of the *sub judice* rule in its particularisation of Canon I(b) without any amendment to the complaint lodged by the complainant. He further complained that upon an examination of the complainant's affidavits, there is no mention of a breach of the *sub judice* rule. Counsel pointed out that

section 12(1) LPA stipulates that the allegations of misconduct being made against an attorney must be contained in the affidavit such that the attorney will be required to answer those allegations. He contended that the Committee failed to appreciate that the breach of the *sub judice* rule was not a charge made by the complainant in this matter and that basic fairness would require it to allow the appellant to make representation, whether orally or in writing, on this point before it made an adverse finding against him.

[63] Mr Clarke submitted that the appellant's right to a fair hearing was breached by how the Committee conducted its hearing on the *sub judice* issue in breach of the principles of natural justice. Counsel relied on **Bryne v Kinematograph Renters Society Ltd** [1958] 1 WLR 762 at 784, **Michael Reid v Real Estate Board** [2024] JMCA Misc 1 and **Owen K Clunie v The General Legal Council** [2014] JMCA Civ 31 in examining the three requirements of natural justice. Reliance was placed on **University of Ceylon v EFW Fernando** [1960] 1 WLR 223, in that the Committee must comply with the "elementary and essential principles of fairness, which must as a matter of necessary implication be treated as applicable to the discharge of [the committee]'s admittedly quasi-judicial functions". Mr Clarke submitted that the issue of natural justice is compounded when reference is made to sections 13(2)(b) and 16(2) of the Constitution.

[64] Mr Clarke contended that the duty to act fairly in this case would mandate the Committee, if it were minded to find that the *sub judice* rule was applicable under Canon I(b), to inform the parties that it needed to be addressed on that issue. Accordingly, the Committee did not act fairly when it made adverse decisions on the *sub judice* issue without hearing from the appellant in this case. Also, the appellant, on the facts of this case, was deprived of the three requirements of natural justice: firstly, the person accused should know of the nature of the accusation made; secondly, he should be given an opportunity to state his case; and thirdly, the tribunal should act in good faith.

[65] He concluded that, based on the failure of the Committee to follow the principles of natural justice on the *sub judice* issue, the requirements of natural justice having been

breached meant that the finding of professional misconduct based on the *sub judice* rule is a nullity.

Submissions on behalf of the Committee

[66] Mr Manning, in his written submission, acknowledged that administrative bodies are required to adhere to the rules of natural justice in disciplinary hearings. He referenced the case of **Derrick Wilson v The Board of Management of Maldon High School and The Ministry of Education** [2013] JMCA Civ 21 in support of this principle. However, he submitted that not every allegation of a breach of natural justice will necessarily render a decision unsound. In support of this proposition, reliance was placed on **Debayo Ayodele Adedipe v Kemisha Gregory Ex parte General Legal Council**, [2020] JMCA App 19, which considered the Privy Council decision in **University of Ceylon v EFW Fernando**. Mr Manning submitted that the issue of *sub judice* rule was squarely raised by the complainant in submissions filed on 27 May 2022. While he accepted that the specific word *sub judice* may not have been expressly used, Mr Manning contended that its substance was clearly articulated, and as such, no injustice could be said to have arisen from the omission of the exact phrase. The appellant would have had an opportunity to respond in oral submissions or request an opportunity to put further submissions and authorities before the panel on that issue.

Discussion and analysis

[67] It seems to me that the central issue raised in this ground by the appellant is whether the proceedings before the Committee were conducted in accordance with the principles of natural justice, in particular whether, in failing to give notice of the intention to consider the *sub judice* rule, the appellant was denied a proper opportunity to be heard on the issue.

[68] It is a well-established principle of common law that the rules of natural justice, or procedural fairness, require a person subject to a tribunal or other adjudicative body to be made aware of the case against them and given a fair opportunity to respond. The decision in **Ridge v Baldwin** [1964] AC 40 is particularly instructive in this regard. At

pages 113–114 of the judgment, Lord Morris of Borth-y-Gest affirmed the fundamental nature of the principles of natural justice, stating the following:

> "It is well established that the essential requirements of natural justice at least include that before someone is condemned he is to have an opportunity of defending himself, and in order that he may do so that he is to be made aware of the charges or allegations or suggestions which he has to meet: see *Kanda v. Government of Malaya* [1962] A.C. 322, 337. My Lords, here is something which is basic to our system: the importance of upholding it far transcends the significance of any particular case."

[69] It is accepted that the right to be heard, while fundamental, is not absolute in its application and is subject to a degree of flexibility. In **Gittens v GLC,** McDonald-Bishop JA, at para. [46], stated:

> "The right to be heard is however, flexible and not absolute, and its dictates will depend on (i) the circumstances of the case; (ii) the nature of the enquiry; (iii) the rules under which the tribunal is acting; and (iv) the subject matter that is being dealt with (see **Rees v Crane** [1994] 2 AC 173 at 191–192 and **Russell v Duke of Norfolk** [1949] 1 All ER 109 at 117–118)." (Emphasis as in the original)

[70] There can be no dispute that the Committee's proceedings are governed by the rules of procedural fairness and natural justice, as confirmed in **Gittens v GLC** and **Owen K Clunie v The General Legal Council** at para. [56].

[71] It is recognised that the requirements of natural justice in disciplinary proceedings before the Committee are expressly codified by statute through the LPA and the Legal Profession (Disciplinary Proceedings) Rules ('the LPA Rules'), which govern the process for lodging complaints with the Committee. As Mr Clarke correctly noted, section 12 of the LPA provides the framework for initiating a complaint, which is made by way of an application requiring the attorney to respond to specified allegations. It makes the following provision:

> "Any person alleging himself aggrieved by an act of professional misconduct (including any default) committed by an attorney may apply to the Committee to require the attorney to answer allegations contained in an affidavit made by such person…"

[72] The nature and form of the application are explained and specified in rule 3 of the LPA Rules, which states:

> "An application to the Committee to require an attorney to answer allegations contained in an affidavit shall be in writing under the hand of the applicant in Form 1 of the Schedule to these Rules and shall be sent to the secretary, together with an affidavit by the applicant in Form 2 of the Schedule to these Rules stating the matters of fact on which he relies in support of his application."

[73] The Judicial Committee of the Privy Council in **General Legal Council ex parte Basil Whitter v Barrington Frankson** [2006] UKPC 42, in considering the requirements of an application brought pursuant to section 12 of the LPA, characterised the supporting affidavit as being "in the nature of a pleading", which "has to contain the allegations which the attorney must answer but no more". This formulation underscores the principle that such an affidavit must be confined to the material allegations relevant to the complaint, without the inclusion of extraneous matter.

[74] Where, in the course of its consideration of a complaint, the Committee identifies additional matters which it considers require a response from the attorney, the LPA Rules provide a mechanism for addressing such circumstances. Specifically, rule 4 of the LPA Rules empowers the Committee, prior to fixing a date for the hearing of the application, to require the applicant to furnish further information relating to the complaint and, correspondingly, to afford the attorney an opportunity to respond to that additional material. Rule 4 provides, in part, as follows:

> "(1) Before fixing a day for the hearing of any application under rule 3, the Committee –

> (a) may require the applicant to supply such further documents or information relating to the allegations as the Committee thinks fit; and
>
> (b) shall serve on the attorney against whom the application is made a copy of the application and the affidavit in support thereof, together with all other relevant documents and information.
>
> (2) An attorney who is served under paragraph (I)(b) shall, within forty-two days of such service, respond, in the form of an affidavit, to the application."

[75] Further, rule 17 goes on to make provision for amendments and additions to an affidavit. Rule 17 states that:

> "If upon the hearing it appears to the Committee that the allegations in the affidavit require to be amended or added to, the Committee may permit such amendment or addition, and may require the same to be embodied in a further affidavit, if in the judgment of the Committee such amendment or addition is not within the scope of the original affidavit, so, however, that if such amendment or addition be such as to take the attorney by surprise or prejudice the conduct of his case, the Committee shall grant an adjournment of the hearing upon such terms as to costs or otherwise as to the Committee may appear just."

[76] Ultimately, pursuant to the LPA and the LPA Rules, the supporting affidavit must, therefore, contain all material facts forming the basis of the complaint. In the event that the Committee identifies additional matters requiring clarification or a response from the attorney, the appropriate procedure is for the Committee to invoke rule 4 of the LPA Rules, prior to the fixing of a hearing date, or rule 17 during the hearing, to request further information or particulars from the complainant and to afford the attorney a corresponding opportunity to reply.

[77] It follows, as a matter of fairness and procedural propriety, that the attorney is required to answer only those allegations that are clearly set out in the affidavit in support of the application. An attorney cannot properly be called upon to respond to matters falling outside the scope of that affidavit.

[78] Notably, in the instant case, the Committee demonstrated an awareness of these provisions when it adjourned the matter to allow the complainant an opportunity to give further and better particulars in support of the breaches alleged. The appellant was afforded an opportunity to respond. Also of note is that upon receipt of the further affidavits, the Committee identified non-compliance with its instructions in the complainant's attempt to introduce new factual material and breaches of canons which were not originally included in the complaint. In recognising that no application had been made to amend the complaint to include the new breaches of the Canons identified or to correct the omissions, the Committee declined to consider them.

[79] The Judicial Committee of the Privy Council, in **General Legal Council v Michael Lorne**, affirmed beyond dispute that the right to a fair hearing, as enshrined in section 16(2) of the Constitution, is fully engaged in disciplinary proceedings before the General Legal Council. At para. 40 of the judgment, their Lordships observed:

> "As the Court of Appeal has recognised in this case, an appellate court in exercising its jurisdiction to rehear a case must have regard to the appellant's rights under section 16(2) of the Constitution as amended in 2011. This section contains the relevant provision of the Charter, conferring on the appellant the right to a fair hearing within a reasonable time by an independent and impartial court or authority established by law."

[80] In light of the foregoing analysis, this court is duty-bound to give full effect to the principles of natural justice, the applicable statutory provisions, and the procedural rules established under the LPA. The appellant's right to know the allegations he is required to meet, and to be afforded an opportunity to answer them is not only grounded in the common law and in statute but is also constitutionally protected by virtue of section 16(2) of the Constitution. These procedural safeguards, which are described as being at the heart of the appellant's entitlement to due process, must inform and guide the court's assessment of the Committee's handling of the complaint and the appellant's challenge to the manner in which that complaint was adjudicated.

[81] In an earlier decision of the Privy Council, **Lau Liat Meng v Disciplinary Committee** [1968] AC 391, on appeal from the High Court of Singapore, the Board expressly acknowledged the requirement for adherence to principles of natural justice in hearings before a disciplinary tribunal. The appellant, who was called to the Bar in 1962, initially worked at a law firm before establishing his own practice in late 1963. Following a fatal bus accident in August 1963 in which a boy was killed, the father of the deceased authorised the appellant's firm, and later the appellant personally, to handle probate and to claim damages arising from the loss of this son. There was an offer for settlement of the claim for S$4,000.00 without a formal lawsuit. The appellant wrote to the solicitors for the bus company involved in the accident, indicating that he had received instructions from the father to accept the offer and S$500.00 towards the agreed party and party costs. The statement regarding the party and party costs was untrue. The appellant subsequently received a separate amount of S$705.50 following taxation of a solicitor and client bill and S$700.00 from the father directly to attend the coroner's inquest and the criminal prosecution of the driver involved in the accident (he, however, subsequently returned S$350.00, as he did not attend that prosecution). The father knew nothing about the S$500.00 the appellant had accepted directly from the solicitors for the bus company, although he had authorised the appellant to pay himself all party and party costs received.

[82] A disciplinary committee was appointed to investigate a complaint of grossly improper conduct made against the appellant. The charges brought against the appellant related to matters other than the undisclosed amount of S$500.00 improperly retained by him, which was only revealed during his evidence before the Committee.

[83] Despite this, the disciplinary committee found against the appellant on grounds which included that he had received the S$500.00 over and above the solicitor and client costs recoverable by him, whereas it should have formed part of those costs and should have been disclosed. The High Court, in upholding the findings, stressed the non-disclosure of the S$500.00 and highlighted the fact that the appellant had received two separate sets of taxed costs.

[84] On appeal to the Privy Council, the Board held that while the appellant's admission regarding the S$500.00 was serious, he had not been charged with any misconduct in relation to it, nor with making excessive charges or committing fraud. The failure to give proper notice and an opportunity to respond to any such adverse allegation constituted a breach of natural justice. As a result, the finding relating to the S$500.00 payment was set aside, and the matter was remitted to the High Court for reconsideration of sentence, if thought appropriate.

[85] Lord Hodson, in delivering the judgment of the court on this issue, at page 404, explained that:

> "While acknowledging the gravity of the admission made by the appellant as to his $500 which he put into his own pocket without disclosure to his client and as to which he gave no satisfactory explanation, it must be recognised that he was not charged either with having made excessive charges for professional work or having committed any specific fraudulent act. The case against him was contained in the statement quoted above which was made pursuant to rule 2 of the Advocates and Solicitors (Disciplinary Proceedings Rules), 1963. It was once amended but no amendment was made or sought to be made after the appellant had made his admission (see r. 10 of the same rules, which expressly provide for amendment of or addition to the case). **Formal amendment might have been dispensed with provided adequate notice of the charge had been given, but natural justice requires adequate notice of charges and also the provision of opportunity to meet them.** This requirement was not met." (Emphasis mine)

[86] Ultimately, the requirements of natural justice include providing adequate notice of the case to be met and a meaningful opportunity to respond. To permit a tribunal to introduce a new and distinct basis of liability at the 'adjudicative' stage, without notice and without giving the party against whom the allegation is made an opportunity to answer it, would undermine the integrity of the disciplinary process and erode the procedural protections guaranteed by both statute and the Constitution. In the instant

case, the appellant ought to have been given notice of the fact that the Committee would have been considering the resolution of the complaint before it by reliance on the *sub judice* rule.

[87] Mr Manning contended that the *sub judice* point was raised in submissions filed by the complainant, following which the appellant would have had an opportunity to respond. The Committee, in its decision, also noted that the issue was raised in the submissions and acknowledged that the matter was not pursued in the same manner as the other breaches. The Committee was satisfied that it was enough that this was considered to be an extremely important issue, and thus went on to deal with the issue. However, the requirement that allegations be clearly pleaded is not a matter of mere procedural formality; it is a substantive safeguard designed to ensure fairness in disciplinary proceedings. The disciplinary process must therefore be confined to the issues properly raised by the complainant's affidavits, unless those issues are amended or supplemented in accordance with the governing statutory framework.

[88] Thus, the Committee acted unfairly and in breach of natural justice when it proceeded to consider the *sub judice* rule in circumstances where the appellant had received no proper prior notice that it would form part of the charges he would have to meet. Accordingly, I am satisfied that there is merit to ground III, which therefore succeeds.

Ground II – The Disciplinary Committee erred in law and/or misdirected itself and/or wrongly exercised its direction and/or acted on a wrong principle of law when it held in finding that there was a breach of *sub judice* rule and that, consequently, the appellant breached Canon I(b) of the Legal Profession (Canon of Professional Ethics) Rules

Submissions on behalf of the appellant

[89] The appellant submits that the *sub judice* rule was not engaged on the facts of this case. The conduct in question concerned statements made regarding the complainant, and not statements concerning any court or ongoing judicial proceedings.

In this regard, counsel contended that the Committee erred in finding that Canon I(b) had been breached by the comments as being in breach of the *sub judice* rule.

[90] Counsel relied on **The King v Parke** [1903] 2 KB 432, for an explanation of the rationale underlying the law of contempt in respect of breaches of the *sub judice* rule, namely, to prevent interference with the court "doing that which is the end for which it exists-namely, to administer justice duly, impartially, and with reference solely to the facts judicially brought before it".

[91] Mr Clarke contended that the Committee erred in finding a breach of the *sub judice* rule solely on the basis that the statements were made, which does not accord with the correct legal standard for establishing such a breach. He submitted that the proper standard requires a finding that the impugned publication was calculated to interfere with the administration of justice, namely, that it was likely or had a tendency to do so. Further, the statements affected and restricted by the *sub judice* rule are those statements which present the 'real and substantial risk of an unfair trial'. Reliance was placed on **Dagenais v Canadian Broadcasting Corporation** [1994] 3 RCS 835.

[92] Counsel further submitted that the issue of the *sub judice* rule was neither raised in the original complaint nor addressed in the submissions before the Committee and, therefore, did not form a part of the factual or legal matrix of the complaint. It was also contended that it would be incongruous for the complainant to issue a public press release on the issue without consequence, while the appellant was sanctioned for engaging in essentially the same conduct.

[93] Mr Clarke also contended that the Committee's finding, that the words were uttered while the matter was before the Privy Council and were, therefore, "*sub judice* in and of itself", was an error of fact and law. He argued that the panel lacked both the statutory authority and the factual basis to punish by way of contempt proceedings or to find that there was a breach of the *sub judice* rule. This argument was primarily because the *sub judice* rule is not incorporated in the LPA Rules. Thus, counsel maintained that

the issue falls within the exclusive purview of a court of law. In concluding that the appellant had breached the *sub judice* rule, the Committee acted outside of its jurisdiction. Further, it was contended that the Committee, as an administrative body, improperly formulated its test for the breach of the *sub judice* rule without proper regard to the stage the matter was at when it did so.

[94] In his submissions, counsel took the court through the differing approaches adopted in the United Kingdom, Canada and South Africa in seeking to demonstrate the threshold for finding a breach of the *sub judice* rule. In those jurisdictions, the applicable test was whether there exists a "real and substantial risk of unfair trial". In that regard, counsel relied on a number of authorities, including **Re Lonrho Plc** [1990] 2 AC 154, **Dagenais v Canadian Broadcasting Corporation**, **R v Edmonton Sun 2000 ABQB 283** [2000] AJ No 1600 (QL), **Regina v Kopyto** [1987] OJ No 1052, **Midi Television (Pty) Ltd v Director of Public Prosecutions** [2007] SCA 56 and **Holomisa v Argus Newspapers Limited** 1996 (2) SA 588 (W).

[95] Mr Clarke submitted that the Committee further erred by misapplying the decision of **Calida v Soreno,** since in that jurisdiction, its Code for Professional Responsibility of Attorneys-at-Law (the 'CPR') expressly incorporates the *sub judice* rule in two of its canons. Counsel pointed out that this decision concerned comments made by a Chief Justice after a petition questioning her eligibility for the position was filed with the court. Thus, her comments were found to be also in breach of the National Code of Judicial Conduct ('NCJC') for the Philippine Judiciary which specifically prohibited judges from making comments "that might reasonably be expected to affect the outcome of proceedings or impair manifest fairness…or that might affect the fair trial of any person or issue". Counsel also pointed out that it was the Supreme Court that dealt with the matter and not an administrative body. Counsel's conclusion from this was that the case did not provide any authority for the Committee, in the absence of a clear statutory provision, rule or canon to incorporate the jurisdiction of the court over its own process and find that the *sub judice* rule was violated by the appellant.

[96] Lastly, counsel advanced that, in any event, the decision to find that Canon I(b) incorporates the *sub judice* rule raises a constitutional question of whether Canon I(b) is vague, uncertain, irrational and discriminatory.

Submissions on behalf of the Committee

[97] Mr Manning began his submissions by asserting that, although *the sub judice* rule originated in the context of contempt proceedings in criminal and civil courts, its application is not confined to those proceedings. He further argued that, given the underlying purpose of the rule, namely, to safeguard the administration of justice, a responsibility in which attorneys play a vital role, it would be unduly narrow to interpret the rule as preventing the Committee from examining whether attorneys' conduct in the public domain contravenes its principles. King's Counsel pointed out that in the context within which the comments were made, there can be no dispute that court proceedings were in train. The matter at the time was pending before the Court of Appeal, where leave was being sought to go to the Privy Council. It was therefore a matter in court in which the complainant viewed the comments as an interference with the administration of justice based on how she and her office had been characterised by the appellant's language to the media.

[98] King's Counsel argued that in determining whether the Committee has the authority to invoke the *sub judice* rule, the court must consider the role and function of the General Legal Council ('the Council'). Under section 3(1)(b) of the LPA, the Council is tasked with upholding standards of professional conduct. The Disciplinary Committee, established under section 11 of the LPA, is empowered to prescribe standards of professional conduct for attorneys and may, by rules made for this purpose, direct that any specified breach of the rules, for the purposes of section 12 of the LPA, constitutes misconduct in a professional respect.

[99] Since the complaint before the Council related specifically to an alleged breach of Canon I(b), King's Counsel made reference to **Gresford Jones v The General Legal Council (Ex parte Owen Ferron)** in which, he submitted, the effect of Canon I(b) was

considered. He noted that this court, at pages 22-23 of that judgment, stated that Canon I(b) "is specifically widely drafted in order to emphasize the ever prevailing high standard of conduct demanded by the profession and re-enforced by all the Canons in the Rules". Thus, this Canon governs attorneys' conduct not only in relation to the court, but also with respect to the regulatory body, legal practice, clients, colleagues, and others.

[100] Mr Manning submitted that the fact that the actual words '*sub judice'* do not appear in the complainant's affidavit does no violence to the complaint. He maintained that the allegations were sufficiently raised for the Committee to properly address and deal with them.

[101] King's Counsel noted that the Committee, in its findings, accepted that it had no power to punish by way of contempt proceedings. However, in light of the Committee's function, it was empowered to consider the appellant's conduct in relation to the *sub judice* rule . That was what the Committee did in applying Canon I(b) with what was pleaded by the complainant. The Committee was, therefore, clear that the appellant was not found to be in contempt but in breach of Canon I(b).

[102] Mr Manning contended that the Committee was best placed to weigh the seriousness of the allegations made by the appellant, as well as the effect those utterances would have on the public and public trust in the ODPP and the prosecution of this high-profile matter. King's Counsel further argued that the Committee exercised its function judiciously, that its findings were appropriate in the circumstances, and that the sanction imposed was proportionate. Mr Manning acknowledged that some of the statements by the Committee in its summary were not in complete alignment with the rest of its ruling. However, he maintained that some of the findings made may have been correct in relation to the particular charge which was dismissed but were, nonetheless, supportive of the finding in relation to the *sub judice* rule.

[103] King's Counsel went on to submit that even if this court found that it was unnecessary for the Committee to have engaged with the *sub judice* rule in concluding

that the appellant was in breach of Canon I(b), the words used did, in fact, tend to discredit the complainant. He urged that, in any event, if this court is not minded to dismiss the appeal and confirm the order, we should direct that the application be reheard before another panel limited to a breach of Canon I(b).

Response on behalf of the appellant

[104] MrClarke was permitted to respond to the request that if the appeal was not dismissed, the matter should be sent back for rehearing. He submitted that the complaint on which the Committee made the finding of a breach of Canon I(b) was not contained in any affidavit; as such, it cannot be fair to allow the matter "to go back for the [Committee] to get a second bite of the cherry".

Discussion and disposal

[105] In my view, the Committee's appreciation of the *sub judice* rule as set out at the commencement of para. 67 is sufficiently accurate. It stated:

> "The principle of *sub judice* in Jamaica is based on common law principles as there is no specific legislation relating to it. *Sub judice* is a Latin term which refers to matters under or before a judge or court; or matters under judicial consideration. In essence, the *sub judice* rule restricts comments and disclousures pertaining to pending judicial proceedings."

[106] It is established that the *sub judice* rule has its greatest significance in contempt proceedings and, at common law, prohibits publications that may tend to prejudice matters which are before the court. The Committee relied on **Calida v Sereno** in resolving the complaint, and while accepting that it is not of any binding authority in this jurisdiction, I will adopt the following definition of the *sub judice* rule found in the decision of 11 May 2018, which is, to my mind, useful for the purposes of this discussion:

> "The *sub judice* rule restricts comments and disclosures pertaining to the judicial proceedings in order to avoid prejudging the issue, influencing the court or obstructing the administration of justice. The rationale for this rule is

> for the courts, in the decision of issues of fact and law, to be immune from every extraneous influence; for the case to be decided upon evidence produced in court; and for the determination of such facts be uninfluenced by bias, prejudice or sympathies. In fine, what is sought to be protected is the primary duty of the courts to administer justice in the resolution of cases before them."

[107] I also think it necessary, given this reliance of the Committee, to come to a proper appreciation of this case. Firstly, it must be noted that there were two hearings relative to it. In the first, the Supreme Court of the Philippines was tasked with determining the matter of the eligibility of that country's Chief Justice for office following an impeachment complaint against her that was lodged before the Committee on Justice of the House of Representatives for culpable violation of the Constitution, corruption, high crimes, and betrayal of trust. While those matters were pending before the House, the Chief Justice embarked on what the court described as a "nationwide campaign, conducting speeches and accepting interviews, discussing the merits of the case and making comments thereon to vilify the members of congress, cast aspersions on the impartiality of the members of the Court, degrade the faith of the people to the judiciary…". The court ultimately ordered that the Chief Justice should show cause why she should not be sanctioned for violating the CPR and NCJC for transgressing the *sub judice* rule and for casting aspersions and ill motives on the members of the Supreme Court.

[108] The second hearing was, therefore, in relation to this order for her to show cause, and the court described it as an administrative matter, which was an offshoot of the previous matter. The court expressly stated that it was not a contempt proceeding but was an administrative matter in which the court was discharging its constitutionally mandated duty to discipline members of the Bar and judicial officers. It was also expressly acknowledged that actions in breach of the *sub judice* rule could not only be dealt with through contempt proceedings but also through administrative action. The court went on to state that the provisions which applied in such an administrative matter were "the CPR and NCJC, which mandates the strict observance of the *sub judice* rule both upon

members of the Bar and the Bench…". They identified the provisions of the CPR and NCJC which were relevant. Thus, in this matter the Supreme Court was empowered to deal with judicial officers and attorneys-at-law who were found to breach the *sub judice* rule as it was incorporated in the relevant codes governing the profession.

[109] The Committee found this case "authority for the proposition that whereas *sub judice* can lead to contempt of court proceedings, in relation to administrative tribunals some of the requirements required to prove criminal contempt have no relation to these tribunals as tribunals have no power to punish for contempt". Notably, nowhere in the case was there any reference to administrative tribunals dealing with the *sub judice* rule, and it bears repeating that the case was an administrative matter before a court conferred with the jurisdiction to deal with such matters.

[110] The Committee went on to find that the court when dealing with the *sub judice* rule, had a different parameter in which to operate than the administrative body. It concluded that with respect to matters that are *sub judice*, it could "only apply a test to see if beyond reasonable doubt the words maintain the honour and dignity of the profession and avoid behaviour which may tend to discredit the profession".

[111] The Committee correctly recognised that it had no jurisdiction as an administrative tribunal to punish by way of contempt proceedings, but found that in the examination of specified conduct, it was necessary to determine whether that conduct was in breach of any of the Canons. Thus, it seems the Committee determined that it was able to deal with comments, which were made *sub judice,* without dealing directly with questions of contempt. I am satisfied that **Calida v Sereno** could not be properly viewed as providing authority for the Committee finding that, as an administrative tribunal, it could deal with the breaches of the *sub judice* rule, given that the remit of that court was to deal with the matter before it in accordance with the law and statutory provisions governing the exercise of its jurisdiction. It certainly could not be viewed as authority for the Committee to apply a perceived breach of the *sub judice* rule to the Canons in the absence of the express incorporation of the rule.

[112] In any event, it is indisputable that the rule is concerned with preventing publications or statements that pose a real risk of prejudice to the fair administration of justice in pending proceedings. The Committee, in seeking to rely on the rule, formulated its own novel test, which was

> "whether or not to the standard of beyond reasonable doubt the comments made maintain the honour and dignity of the profession and avoid behaviour which may tend to discredit the profession thereby acting in a manner which promotes the public respect for judicial institutions and the participants therein."

It stopped short of acknowledging the important plank of the rule: that it seeks to prevent interference with the course of justice in particular legal proceedings. Taken to its logical conclusion, an assertion that the words were uttered in breach of the *sub judice* rule in this case would raise the issue of whether the words presented a real or substantial risk of an unfair hearing before the Privy Council.

[113] Significantly, the Committee had already determined that the criticism of the complainant was made in good faith based on the appellant's view of the circumstances, had a degree of factual foundation, was reasonable, and did not, in itself, constitute a breach of Canon I(b). It then proceeded to find that the same words were uttered while the matter was *sub judice* and concluded that "the comments made by [the appellant]did not maintain the honour and dignity of the profession and avoid behaviour which may tend to discredit the profession, thereby promoting the public respect for judicial institutions and the participants therein." In effect, the Committee, having found that the words in and of themselves were not in breach of the Canon, nevertheless found that Canon I(b) had been breached due to the comments as they violated the *sub judice* rule. This seemed to have been a conclusion reached solely because the comments were made by the appellant in his capacity as an attorney-at-law while the matter was pending before the court.

[114] Against that background, it is useful to bear in mind the well-established principle that criticism of judicial proceedings, when made in good faith and without improper

motive, is not only permissible but forms part of the ordinary rights of the public. This principle was authoritatively articulated in **Ambard v Attorney-General for Trinidad and Tobago** [1936] AC 322, where Lord Atkin, delivering the judgment of the Board at page 335, stated:

> "But whether the authority and position of an individual judge, or the due administration of justice, is concerned, no wrong is committed by any member of the public who exercises the ordinary right of criticising, in good faith, in private or public, the public act done in the seat of justice. The path of criticism is a public way: the wrong headed are permitted to err therein: provided that members of the public abstain from imputing improper motives to those taking part in the administration of justice, and are genuinely exercising a right of criticism, and not acting in malice or attempting to impair the administration of justice, they are immune. Justice is not a cloistered virtue: she must be allowed to suffer the scrutiny and respectful, even though outspoken, comments of ordinary men."

[115] Even if it is accepted that a somewhat higher standard is expected of members of the legal profession, in the circumstances of this case, the comments by the appellant cannot be viewed as being likely to interfere with the proper and unfettered course of justice.

[116] The Committee correctly found that it had no power to cite attorneys-at-law for contempt but erred in determining that it had jurisdiction to consider the applicability of the *sub judice* rule in the context of disciplinary proceedings within its remit. If it had, one of the issues it was obliged to demonstrably consider was in what way the comments could be viewed as being capable of impacting the proceedings before the court and not just how, it could have impacted the complainant. To my mind, the Committee erred in law and principle, which justifies the intervention of this court in setting aside the decision that the appellant was guilty of professional misconduct in breach of Canon I(b). As such, I find that there is also merit in ground II, and this ground therefore succeeds.

Disposal

[117] The jurisdiction of this court to hear and determine appeals from decisions of the Committee is conferred by sections 16 and 17 of the LPA. Those provisions stipulate that an appeal to this court is by way of rehearing and empower the court to dismiss the appeal and affirm or vary the orders of the Committee, or to allow the appeal and set aside those orders, or to direct a rehearing before the Committee. This position is reinforced by rule 1.16(1) of the Court of Appeal Rules, 2002, which similarly provides that an appeal to this court shall be by way of rehearing.

[118] On enquiry from the court as to how the court should dispose of the matter, Mr Manning relied on section 17 of the LPA, which gives the court the power to dismiss an appeal and confirm the orders of the Disciplinary Committee and also the power to remit the matter for rehearing. In the instant case, the finding of a breach of Canon I(b) was founded on a complaint, which, as Mr Clarke correctly submitted, was not pleaded in any affidavit before the Committee. The appellant was, therefore, not placed on proper notice of the case; he was required to meet in relation to that particular issue. Notably, all the other allegations that were complained of were addressed by the Committee. There is, therefore, no allegation raised in the affidavit that was unanswered by the Committee. In those circumstances, to remit the matter for rehearing would be to permit the Committee to remedy a fundamental procedural deficiency and would indeed amount to affording a second bite of the cherry.

[119] Accordingly, while I accept that this court has the jurisdiction to order a rehearing, the circumstances of this case do not warrant the exercise of that power. I see no basis for setting aside the findings of the Committee relating to whether the appellant breached the Canons properly identified by the complainant, even if I may have a differing opinion and disagree with the conclusion.

[120] In the premises, therefore, this appeal ought to be allowed, and the orders of the Committee ought to be set aside. Both parties asked for their costs. The appellant, being

the successful party, is entitled to its costs to be taxed, if not agreed. This is in keeping with the principle that costs follow the event.

DUNBAR GREEN JA

[121] I have read, in draft, the judgment of P Williams JA and agree with her reasoning and conclusion. There is nothing that I wish to add.

BROWN JA

[122] I, too, have read the draft judgment of my sister, P Williams JA and agree with her reasoning and conclusion.

P WILLIAMS JA

ORDER

1. The appeal is allowed.

2. The decision of the Disciplinary Committee of the General Legal Council made on 1 October 2022, that the appellant breached Canon I(b) of the Legal Profession (Canons of Professional Ethics) Rules, is set aside.

3. The orders of the Disciplinary Committee of the General Legal Council, made at the sanction hearing on 22 October 2022, are set aside.

4. Costs of the appeal to the appellant to be agreed or taxed.