JAMAICA

IN THE COURT OF APPEAL

BEFORE: THE HON MR JUSTICE F WILLIAMS JA
THE HON MISS JUSTICE EDWARDS JA
THE HON MR JUSTICE BROWN JA (AG)

MISCELLANEOUS APPEAL NO COA2020MS0005

BETWEEN	**JEROME DIXON**	**APPELLANT**
AND	**THE DISCIPLINARY COMMITTEE OF THE GENERAL LEGAL COUNCIL**	**RESPONDENT**

CONSOLIDATED WITH

MISCELLANEOUS APPEAL NO COA2020MS0006

BETWEEN	**KHADINE DIXON**	**APPELLANT**
AND	**THE DISCIPLINARY COMMITTEE OF THE GENERAL LEGAL COUNCIL**	**RESPONDENT**

Keith Bishop and Miss Roxanne Bailey for Mrs Khadine Dixon

Jerome Dixon in person

Mrs Symone Mayhew QC and Miss Ashley Mair for the Disciplinary Committee of the General Legal Council

27, 28, 29 October 2021 and 1 April 2022

F WILLIAMS JA

[1] In this matter, the appellants are attorneys-at-law in private practice. The respondent is the body established pursuant to section 11 of the Legal Professional Act ('the Act') to, among other things, deal with complaints against attorneys-at-law, and, where necessary, to impose appropriate sanctions. On 27 October 2021, the appellants' consolidated appeals filed on 16 October 2020 (and, in the case of Mrs Dixon, amended and refiled on 20 September 2021) came before us for hearing. By those appeals, the appellants sought to set aside the respondent's refusal, dated 5 September 2020, to stay disciplinary complaints instituted against them in their capacities as attorneys-at-law. The stay was sought pending the conclusion of criminal matters instituted against the appellants by the same complainant as in the disciplinary proceedings against them. The following extract from the respondent's decision in the disciplinary hearing sets out the respondent's orders in refusing to stay the complaint:

> "The panel therefore comes to the following conclusions: -
>
> 1. There is in the documentation available to the Panel provided by the parties hereto nothing which is of a grave nature involving complicated issues of fact and of law.
>
> 2. The threshold which is necessary to be reached to deny the Complainant his right to have his complaint decided has not been reached.
>
> 3. There are no strong and compelling reasons presented by the Attorneys to justify a stay.
>
> 4. The issues in the criminal court have a completely different set of considerations to the issues to be decided in the disciplinary proceedings.
>
> 5. Based on the preceding the application is therefore refused and the matter will be set for trial at the earliest opportunity that the hearing list will permit."

The preliminary objection

[2] At the commencement of these proceedings, Mrs Mayhew QC referred to a notice of preliminary objection filed by the respondent on 4 October 2021. By that notice, the respondent objected to the hearing of the appeals on the basis that the notices and grounds of appeal had been filed out of time. Prompted by the filing of that notice of objection, Mrs Dixon and Mr Dixon had filed, on 14 and 27 October 2021, respectively, applications to extend the time for filing the appeals and thereby regularising the late filing of their appeals.

[3] In seeking to make the most economical use of its time, the court, with the consent of the parties, treated the hearing of the applications for extension of time to file notice and grounds of appeal as the hearing of the appeals against the respondent's refusal to stay the disciplinary proceedings. This course was thought best, as, in the applications to extend time, the appellants would have needed to demonstrate that their appeals had merit, which would have been the focal point also in the appeals themselves. At the conclusion of the hearing on 29 October 2021, the court made the following orders:

> "1. That the applications for extension of time to file notice and grounds of appeal filed by the applicants on 14 October 2021 and 27 October 2021 are granted.
>
> 2. That the notice and grounds of appeal filed on 16 October 2020 and subsequently amended on 20 September 2021 by Khadine Dixon are allowed to stand as properly filed.
>
> 3. That the notice and grounds of appeal filed on 16 October 2020 by Jerome Dixon are allowed to stand as properly filed.
>
> 4. That, by the consent of the parties, the hearing of the applications for extension of time to file notice and grounds of appeal is treated as the hearing of the appeals.
>
> 5. The appeals against the order of the Disciplinary Committee of the General Legal Council, refusing the grant of a stay of proceedings, are dismissed.

> 6. The decision of the Disciplinary Committee of the General Legal Council made on 5 September 2020 refusing the grant of a stay of proceedings is affirmed.
>
> 7. Costs to the respondent to be agreed or taxed."

We now fulfil our promise to provide brief reasons for our decision.

[4] The grounds of both applications for extension of time to file notice and grounds of appeal were substantially the same. They were stated as being (as set out in Mrs Dixon's notice of application):

> "1. That the failure to comply by the Appellant has not been intentional;
>
> 2. That Appellant has a good reason for [the] failure to comply with the rules;
>
> 3. That the Appellant has applied as soon as reasonably practicable having been notified by the Respondent's Attorneys-at-Law about the appeal being out of time;
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> 4. Although the oral decision was given on the 5th September 2020, the written decision was not given until the 17th September 2020.
>
> 5. The respondent will not be unduly prejudiced since the matter has proceeded beyond Case Management Conference and the date for the Appeal is now fixed."

[5] Further, the appellants, through affidavit evidence, averred that the delay in filing their appeals was unintentional and caused by the written reasons not having been made available until some time after the delivery of the respondent's oral decision; and the impact of the COVID-19 pandemic, which had restricted the opportunity to seek legal advice. The appellants further averred that the respondent was not unduly prejudiced, having served its written reasons late and not having raised an objection to the late filing of the notice and grounds of appeal at the case management conference.

[6] In addition to written submissions, oral arguments were advanced by the parties.

Summary of submissions

For the appellants

[7] In support of the application, Mr Bishop argued that Mrs Dixon had a right of appeal against the respondent's refusal, pursuant to section 16(1) of the Act and, further, that she had satisfied the criteria to be granted an extension of time to regularise her late filing. Counsel also noted that, while Mrs Dixon's appeal was filed outside the periods stipulated in both rule 5(1) of the Disciplinary Committee (Appeal Rules) 1972 ('the Appeal Rules') and rule 1.11(1)(a) of the Court of Appeal Rules ('the CAR'), the delay was not lengthy and that the application for extension of time was filed as soon as was reasonably practicable. He also posited that Mrs Dixon's affidavit demonstrated that good reason existed for the delay in filing the appeal. Counsel further submitted that the grounds of the appeal were arguable because the respondent had erred in several respects in arriving at its decision to refuse the stay. He also contended that the balance of convenience and prejudice to the parties rested in Mrs Dixon's favour.

[8] In support of his case, Mr Dixon relied on the submissions advanced on behalf of Mrs Dixon.

For the respondent

[9] Mrs Mayhew submitted that, in keeping with the guidance emanating from this court, in its approval of the single judge's decision in **Jade Hollis v The Disciplinary Committee of the General Legal Council** [2015] JMCA App 46, the appeals were procedural in nature and invalid as being filed out of time, unless the court extended the time for their filing. Queen's Counsel also argued that the court in **Jade Hollis v The Disciplinary Committee of the General Legal Council** did not consider the Appeal Rules but had determined that the appeal was out of time based on the CAR

and in doing so fell into error. Queen's Counsel averred that the applicable time limit would be that set out in the Appeal Rules.

Discussion

[10] As submitted by Queen's Counsel, the case of **Jade Hollis v The Disciplinary Committee of the General Legal Council** did not consider the provisions of the Appeal Rules. Those rules stipulate the period within which appeals from the Disciplinary Committee ought to be filed. Instead, in that case, reliance was placed on rule 1.11(1) of the CAR, which sets out time periods in which appeals to this court generally are to be filed.

[11] Rule 1.11(1), which was amended in 2015 (subsequent to the delivery of the judgment in **Jade Hollis v The Disciplinary Committee of the General Legal Council**), stipulates 14 days for the filing of interlocutory appeals which do not require permission to appeal. The provision governing the requirement for obtaining permission to file an appeal generally relates only to some interlocutory matters coming from the Supreme Court to this court. The relevant provision is section 11(f) of the Judicature (Appellate Jurisdiction) Act, which reads as follows:

> "11. (1) .. No appeal shall lie-
>
> …
>
> (f) without the leave of the Judge or of the Court of Appeal from any interlocutory judgment or any interlocutory order given or made by a Judge …"

In the instant case, although the ruling would qualify as an interlocutory one, it is not one coming from a judge; therefore, the appellants would not have required permission to file their appeal.

[12] Rule 1.11(1)(a) of the CAR provides that:

> "(11) Except for appeals under section 256 of the Judicature (Resident Magistrate) Act, the notice of appeal

must be filed at the registry and served in compliance with rule 1.15 -

(a) in the case of an interlocutory appeal where permission is not required, within 14 days of the date on which the decision appealed against was made." (Emphasis added)

[13] In comparison, rule 5(1) of the Appeal Rules states that:

"5. (1) The notice of appeal shall be filed with the Registrar and a copy thereof shall be served on the Secretary of the Committee or Council as the case may be and on every party directly affected by the appeal within 28 days from the date of the pronouncement of the order, findings or decision appealed against." (Emphasis added)

[14] The effect of this provision of the Appeal Rules is that a party has 28 days from the date of the order of the Committee to file an appeal, whereas the CAR stipulate 14 days from the date that the order was made for filing the appeal. Thus, if the Appeal Rules contain the relevant provision, the appellants would have had up to 3 October 2020 to file their appeal; and, if the CAR were the relevant rules, 19 September 2020 would have been the final date.

[15] However, in any event, these appeals, not having been filed until 16 October 2020, would have been filed outside the period contemplated by both rules.

[16] Pursuant to the court's general power of management, and with specific reference to rule 1.7 (2)(b) of the CAR, the court has the power to extend the time stipulated for the filing of an appeal. That rule reads as follows:

"1.7 (1) ….

(2) Except where these Rules provide otherwise, the court may-

(a) consolidate appeals;

(b) extend or shorten the time for compliance with any rule, practice

> direction, order or direction of the court even if the application for an extension is made after the time for compliance has passed;"

[17] The case of **Leymon Strachan v Gleaner Company and Dudley Stokes** (unreported), Court of Appeal, Jamaica, Motion No 12/1999, judgment delivered on 6 December 1999, is accepted as setting out the criteria to be satisfied for the court to grant an extension of time. The following principles, distilled by Panton JA (as he then was) at page 20 of the judgment, are relevant:

> "The legal position may therefore be summarised thus:
>
> (1) Rules of court providing a time-table for the conduct of litigation must, prima facie, be obeyed.
>
> (2) Where there has been a non-compliance with a timetable, the Court has a discretion to extend time.
>
> (3) In exercising its discretion, the Court will consider-
>
> (i) the length of the delay;
>
> (ii) the reasons for the delay;
>
> (iii) whether there is an arguable case for an appeal and;
>
> (iv) the degree of prejudice to the other parties if time is extended.
>
> (4) Notwithstanding the absence of a good reason for delay, the Court is not bound to reject an application for an extension of time, as the overriding principle is that justice has to be done."

Length of delay

[18] In the court's view, if we have regard to the Appeal Rules, which has a longer time period (and which we consider to be the applicable rules), the delay, at the most, would be 13 days (that is, counting from the final date for filing, 3 October 2020, to 16

October 2020, when the appeals were filed). In fairness, 13 days could not reasonably be deemed to be inordinate.

Reasons for the delay

[19] Having regard to the reason put forward by the appellants, as to the effect of COVID-19, this court, in taking judicial notice of this pandemic and its far-reaching effects, is not ignorant of the widespread restrictions due to lockdowns and curfews imposed in an effort to control and limit the spread of COVID-19. It is not an unsatisfactory reason. However, even if it were, it is important to note that the court is not bound to reject an application merely because it deems the reason advanced for the delay to be poor or unsatisfactory.

Arguable case

[20] In addressing whether the appeals were arguable, we concluded that the appeals met this criterion. The primary contention of the appellants was that the respondent erroneously applied the principles from several cases to the facts of this case, in addressing the real risk of injustice and the question of whether there was a distinction between the issues to be decided in the disciplinary proceedings, on the one hand, and the criminal proceedings, on the other. This issue seemed to us to have been arguable and deserving of further exploration by this court. Additionally, it called for an exploration of the merits of the appeals.

Prejudice

[21] There is no record of any objection to the late filing of the notices and grounds of appeal, prior to 4 October 2021. At that date, the matters would have proceeded past the case management conference stage and the date for the hearing of the appeals would already have been set. As such, we could discern no real prejudice to the respondent, if the extension of time was granted.

[22] Therefore, as indicated in the orders made at paragraph [3] herein, the court exercised its discretion to grant the applications for extension of time to regularise the late filing of the notice and grounds of appeal.

[23] The court now proceeds to consider the substantive appeals.

Proceedings before the respondent

[24] On 14 July 2020, the appellants applied to the respondent to stay the hearing of complaints numbered 13 of 2019 and 74 of 2019 filed against them by Dr Otegbola Ojo ('the complainant'). By form of affidavit, sworn on 25 April 2019, the complainant alleged that he had engaged the legal services of the appellants to represent his company, Atlantis Caribbean Healthcare Group (Jamaica) Limited, in the purchase of a property in Harmony Hall, Saint Mary. He further averred that, due to the refusal of the vendors to complete the transaction, litigation had ensued, which ended prematurely on procedural grounds. The complainant further claimed that he had settled all associated costs, as advised by his attorneys-at-law and had received a certificate of title for the said property but had subsequently found it not to be genuine. He also averred that he discovered that a new title was issued to the vendors without cognisance having been taken of the caveat that he had placed on the property.

[25] In the light of the foregoing, the complainant asserted that the appellants had breached canon I(b) of the Legal Profession (Canons of Professional Ethics) Rules, in that they had failed to maintain the honour and dignity of the profession and had failed to abstain from behaviour which may tend to discredit the profession. He also stated that they had demonstrated inexcusable and deplorable negligence in the performance of their duties and had failed to account to him for all monies paid to them by him or on his behalf, they having been reasonably required so to do.

[26] Set out below are the grounds of the application on which the respondent was invited to exercise its discretion to stay the disciplinary complaints:

"1. There is a pending criminal matter currently in the Half Way Tree Parish Court and it touches and concerns the complaint.

2. That the complaint touches and concerns matters in pending criminal proceedings in which the Respondent is a Defendant and the criminal proceedings arise out of facts and circumstances forming the basis of the Complainant's application.

3. Pursuant to section 12B (1) of the Legal Profession Act, 1972 if there are pending criminal proceedings arising out of the facts and circumstances which form the basis of the pending application, the Committee may choose not to hear and determine the Complainant's application if in the opinion of the Committee, it would be prejudicial to the fair hearing of the pending criminal proceedings."

[27] Mrs Dixon provided evidence in support of her application for a stay by way of her affidavit filed 15 July 2020. In it, she acknowledged that there was a lawyer/client relationship between herself and the complainant in relation to a civil suit concerning the purchase of a property in Saint Mary. She further deposed that in June 2019 she was arrested for the offences of conspiracy to defraud and obtaining money by false pretences and brought before the Corporate Area Parish Court (Criminal Division). Additionally, she averred that her attorneys-at-law informed her that the complainant in the disciplinary proceedings is a witness and also the virtual complainant in the criminal matter.

[28] Mrs Dixon further averred that the disciplinary proceedings and the criminal matters are related, as the details of both matters are the same. She then stated that the criminal matter was at the mention stage, and a case management hearing was set for September 2020. She contended that the hearing of the disciplinary complaint would severely prejudice her defence in the criminal matter, as she would be forced, in answering the disciplinary complaint, to reveal facts that form part of her defence in the criminal matter.

[29] Mr Dixon, by affidavit filed 14 July 2020, stated that he had had conduct of the registration of the complainant's prior-mentioned property but denied any wrongdoing or impropriety. He averred that the complaint had become the subject of criminal proceedings, wherein he was charged for forgery. He also deposed that his attorneys had informed him that the complainant is a witness in the criminal matter. In that regard, he further posited that the details of the complaint in the disciplinary matter form part of the allegations against him in the criminal courts. He indicated that he stood to be severely prejudiced if made to reveal in the disciplinary hearing, facts that would form a part of his defence in the criminal matter.

[30] On 20 and 25 July 2020, the respondent heard the application for a stay and adjourned the matter for written submissions to be filed by the parties. On 5 September 2020, the respondent delivered its oral decision, which was made available in writing on 17 September 2020.

The respondent's ruling

[31] The respondent considered section 12B of the Legal Profession Act and several cases, amongst which were **Omar Guyah v Commissioner of Customs et al** [2015] JMCA Civ 16, **Jade Hollis v The Disciplinary Committee of the General Legal Council** and **Donald Panton and Others v Financial Institutions Services Ltd** [2003] UKPC 86. From its assessment of the authorities, the respondent concluded that the decision to grant or refuse a stay of disciplinary proceedings is discretionary and that, in discharging its function, it must seek to balance the competing interests of the parties with the aim of doing justice. Additionally, the respondent observed that the threshold for the exercise of such discretion to grant a stay is high, as strong and compelling reasons must exist to do so, pointing to a real risk of injustice, as a stay could not be granted merely to secure a tactical advantage.

[32] The respondent noted that the appellants had merely named the charges laid against them but had provided no details of the charges. Additionally, it was observed by the respondent that the only other information provided by the appellants was: (i)

that the complainant in the disciplinary proceedings is a witness in the criminal matters; (ii) that the disciplinary complaint forms the basis of the criminal matters and (iii) that the criminal matter was to proceed to case management.

[33] The essence of the respondent's considerations in the disposal of the applications is reflected at paragraphs 5 to 7 (pages 5-6) of its decision as follows:

> "5. It is to be noted that the Complainant in his complaint does not pursue the issues of the forgery but instead speaks to the deplorable negligence of the Attorneys and the failure to account as well as bringing the profession into disrepute. He has therefore constrained himself to concentrate on the issues relating to the maintaining [of] the honour and dignity of the profession. The criminal matter that is before the Parish Court has therefore been confined to the issue as to whether the Attorneys are in breach of the laws of Jamaica.
>
> 6. The consequence of this approach by the Complainant is that in pursuing the complaint a Panel need not address its considerations as to whether there was in fact a forgery or not the Panel only needs to determine whether the conduct of the Attorneys is inexcusable and [sic] deplorable negligence in causing the Complainant to be placed in his present legal position with regard to the property in question. Also the Panel has to look at whether the money paid over by the Complainant and acknowledged as received was properly accounted for and whether this type of behaviour of the attorneys maintains the honour and dignity of the legal profession. The issue of whether or not the Attorneys committed forgery, conspired to defraud or simple larceny are therefore outside the main issues to be determined in the disciplinary hearing.
>
> 7. From this it can be concluded that although the same parties are involved in both the disciplinary matters and the criminal matters the issues which the Panel will be required to determine are separate and distinct from those the Parish Court will have to decide."

The issues on appeal

[34] Initially, both appellants filed 16 identical grounds of appeal. Mrs Dixon later amended her notice of appeal, which had the effect of reducing the issues. However, to a significant extent, the issues still overlap in both appeals. Accordingly, the court is of the view that these appeals can justly be disposed of by having regard to the following issues that arise in both appeals:

(1) Did the respondent fail to properly apply the relevant legal principles when it concluded that disclosure of the appellants' defence in the disciplinary hearing would not result in real injustice to the appellants in the criminal proceedings?

(2) Did the respondent err in its conclusion that there are no strong and compelling reasons presented by the appellants to justify a stay?

(3) Did the respondent err in its conclusion that the issues in the criminal court have a completely different set of considerations from the issues to be decided in the disciplinary proceedings?

[35] In addition, regard was had to the issues stated below that arise in Mr Dixon's appeal. These were as follows:

(4) Did the respondent err in failing to consider the constitutional rights of the appellants in refusing to grant a stay?

(5) Did the respondent err in its reference to "forge title" so as to demonstrate a bias against the appellant?

(6) Did the respondent err in failing to consider and apply the rules of natural justice?

Issue (1): did the respondent fail to properly apply the relevant legal principles when it concluded that disclosure of the appellants' defence in the disciplinary hearing would not result in real injustice to the appellants in the criminal proceedings?

Issue (2): did the respondent err in its conclusion that there are no strong and compelling reasons presented by the appellants to justify a stay?

Submissions for the appellants

[36] Counsel argued that the respondent had correctly stated the law but had failed to properly apply the principles derived therefrom to the facts of the case, in its determination of the application for a stay of the disciplinary proceedings. It was argued that, in exercising its discretion, the respondent had failed to consider all the competing interests, in particular: (i) any delay to the criminal proceedings that would result from the effects of the COVID-19 pandemic; (ii) the elements of the offences laid against the appellants; (iii) the associated punishment and (iv) the procedure for disclosure in criminal proceedings. It was also stressed that the respondent had slavishly relied on the test for determining 'real prejudice', erroneously raising the standard to a level of importance that was higher than it actually was. Accordingly, there was, in fact, sufficient information before the respondent to find prejudice against the appellants. Ultimately, it was submitted that the respondent ought to have found that the appellants would have been prejudiced in the criminal proceedings by any disclosure of a response to the respondent in the disciplinary proceedings.

[37] It was also submitted that the respondent had failed to consider the processes involved in a criminal matter and had wrongly limited its consideration to the affidavit filed by Mrs Dixon. In that regard, it was argued that the respondent ought to have gone further to take judicial notice of the procedures surrounding the process of disclosure in criminal matters and the complex and serious nature of the offences with which the appellants were charged, having regard to the gravity of the punishment that the offences carry.

Submissions for the respondent

[38] Queen's Counsel submitted that, in accordance with the principles derived from the cases of **Panton and Others v Financial Institutions Services** and **Omar Guyah v Commissioner of Customs and Anor**, the respondent was correct in its approach, which recognised that the bar to be attained for obtaining a stay of civil proceedings is a high one. Further, it was argued that the respondent correctly exercised its discretion, as the appellants failed to put before it any evidence of any potential prejudice arising from there being concurrent criminal and disciplinary proceedings. In that regard, it was further submitted that, although the right to remain silent in criminal proceedings was a relevant factor, it did not, as a matter of right, give the same protection in contemporaneous disciplinary proceedings.

[39] It was also submitted that the respondent had considered the case of **M Paul Anthony v Bharat Gold Mines** (1999) 3 SCC 679 and correctly concluded that, as in the case of a departmental enquiry, there is no general bar to the simultaneous conduct of a disciplinary hearing and a criminal trial; unless the criminal charge is grave and involves complicated issues. Queen's Counsel submitted that that principle is one factor which the respondent was required to, and did, in fact, consider, along with weighing the respective prejudices to the parties. It was also argued that the respondent had iterated that that factor ought not to be considered in isolation.

[40] In relation to the issue of possible delay in the criminal proceedings, Queen's Counsel argued that its effect on the parties, if the disciplinary proceedings are not stayed, could be a relevant consideration but that no such issue was presented to the respondent in an effort to justify a stay of the complaint. Therefore, Queen's Counsel posited, potential delay could not have been a relevant factor in weighing the prejudice in this case; thus, the matter of delay would more appropriately be addressed in the criminal proceedings.

[41] Queen's Counsel also submitted that the court ought to reject the appellants' argument that the very nature of the charges, without more, should have led the

respondent to conclude that the criminal case was complex. In that regard, it was submitted, there is no automatic right to a stay, as the burden of proof rests with an applicant.

[42] Accordingly, it was argued, there was a duty on the appellants to have presented relevant evidence to the respondent to establish that they were prejudiced by the grave nature of the offences charged. As such, a naming of the offences was inadequate; real information was required to be presented to the respondent, it was submitted, which the appellants failed to present.

Discussion

[43] By virtue of section 16(1) of the Act, an aggrieved party has standing to appeal against any order made by the respondent. The said rule reads as follows:

> "An appeal against any order made by the Committee under this act shall lie to the Court of Appeal by way of rehearing at the instance of the attorney or the person aggrieved to whom the application relates, including the Registrar of the Supreme Court or any member of the Council, and every such appeal shall be made within such time and in such form and shall be heard in such manner as may be prescribed by rules of court."

Accordingly, the appellants would have been within their rights to appeal any order of the respondent with which they disagree, such as a refusal to grant a stay, as in this case.

[44] In relation to the specific application filed by the appellants for a stay, section 12B of the Act permits the respondent generally to hear and determine an application where criminal proceedings arising from the same facts are pending. That authority is only precluded in limited circumstances. Section 12B provides that:

> "(1) It is hereby declared for the avoidance of doubt that where-
>
> (a) an application made in respect of an attorney pursuant to section 12 is pending; and

(b) criminal proceedings arising out of the facts or circumstances which form the basis of the application are also pending,

the Committee may proceed to hear and determine the application, unless to do so would, in the opinion of the Committee, be prejudicial to the fair hearing of the pending criminal proceedings." (Emphasis added)

[45] Critically, the wording of the above provision clearly demonstrates that the respondent's jurisdiction to proceed with a disciplinary hearing, in the face of contemporaneous criminal proceedings, arising out of the same facts, is only restricted where, in the opinion of the respondent, doing so would be prejudicial to the fair hearing of the criminal proceedings. Thus, it is the respondent, based on the evidence presented to it, that makes a determination whether sufficient prejudice exists so as to warrant a stay.

[46] In its written decision, the respondent relied on the cases of **Jade Hollis v The Disciplinary Committee of the General Legal Council**, **Omar Guyah v Commissioner of Customs** and **Panton and others v Financial Institutions Services Ltd** to guide its interpretation of section 12B of the Act. The appellants complained that the respondent, though correctly reciting the principles emanating from those cases, incorrectly applied those principles to the facts of the instant case and raised the threshold for the test for a stay much higher than it ought to be.

[47] The authority of **Jade Hollis v The Disciplinary Committee of the General Legal Council** confirms the fundamental principle that the decision of the panel in relation to the exercise of its discretion under section 12B of the Act ought to be upheld, unless the panel failed to consider, or misapplied a principle of law or the facts of the case. In respect of **Omar Guyah v Commissioner of Customs** and its reference to the case of **Jefferson Ltd v Belcha** [1979] 2 All ER 1108, the principle is stated that there must be a real and not a mere potential danger that the disclosure of the defence in the civil action would lead to a potential miscarriage of justice in the criminal proceedings. In that case, it was further opined that strong and compelling

reasons must exist for the exercise of the discretion to grant a stay in the civil proceedings. In relation to the Privy Council decision of **Panton and others v Financial Institutions Services Ltd**, the respondent rightly observed that the courts must balance justice between the parties, in that, as the plaintiff has a right to have the matter decided, it is for the defendants to show why that right should be delayed. Thus, a real and not a mere notional risk of injustice must be identified.

[48] What is evident from the above authorities is that, in assessing whether to exercise its discretion under section 12B of the Act, the Committee must be satisfied that there is a real risk of prejudice if the civil proceedings are not stayed. The test is indeed a high one, which the court must consider in balancing the prejudice and risk of injustice to the parties, as a stay is not granted in the ordinary course. As noted by the respondent, the evidence presented before it lacked substance so as to enable it to discern any real prejudice posed by embarking on the disciplinary hearings concurrently with the criminal proceedings. The evidence, it found (in our view, correctly), amounted to a mere allegation that disclosing the defence in the disciplinary hearing would prejudice the fairness of the criminal hearing. The requirements for satisfying this test require more than an allegation of the risk of prejudice. The appellants have failed to show that the respondent wrongly applied principles of law or findings of fact so as to render its decision unfair or unsafe.

Issue 3: did the respondent err in its conclusion that the issues in the criminal court have a completely different set of considerations from the issues to be decided in the disciplinary proceedings?

Submissions for the appellants

[49] It was posited that the scope of the retainer between the appellants and the complainant was a common ground of investigation in both the disciplinary hearing and the criminal trial. Further, it was argued that it would be impossible not to use the same evidence in both the disciplinary proceedings and the criminal trial. Accordingly, counsel argued that the respondent had erred in its conclusion that the issues before the respondent were different from those in the Parish Court.

Submissions for the respondent

[50] It was submitted that the respondent had considered the differences between the nature and purpose of the disciplinary hearing and those of the criminal hearing and concluded that the matters raised in the disciplinary complaint related to professional misconduct and did not require proof of the same matters raised on the criminal charges. Queen's Counsel submitted that the onus of proof and evidence required to satisfy the complaint were different from what was required to satisfy the criminal charge. In that regard, Queen's Counsel submitted, it was unnecessary to prove forgery in order to establish: (i) negligence or (ii) failure to maintain the honour and dignity of the profession or (iii) failing to account for funds when reasonably required to do so. Therefore, the respondent was correct in its conclusion that the issues in the criminal court have a completely different set of considerations from those in the disciplinary proceedings.

Discussion

[51] It is acknowledged that the legal standard to determine culpability in the criminal arena is the same as that in disciplinary proceedings before the respondent: they both require proof beyond a reasonable doubt.

[52] The respondent functions to uphold the standards of professional conduct of attorneys-at-law and to enforce discipline in the legal profession so as to protect the public and the legal profession from disreputable conduct by attorneys-at-law. The criminal courts of our land also perform a very important function and are more effective when justice is dispensed in a timely manner. Lord Steyn sitting in the House of Lords in **Attorney-General's Reference (No 3 of 1999)** [2001] 1 All ER 577 at 584, in addressing the issue of the importance of a criminal trial, observed that:

> "The purpose of the criminal law is to permit everyone to go about their daily lives without fear of harm to person or

> property. And it is in the interests of everyone that serious crime should be effectively investigated and prosecuted."

[53] It is evident that both the criminal and disciplinary proceedings flow from the same factual matrix. In the court's view, however, the respondent could not reasonably be faulted for concluding that the criminal and disciplinary proceedings would not necessarily touch and concern each other. The elements of the breaches of the canons identified in the disciplinary complaint are different from the elements of the offences in the criminal matter laid against the appellants. On the one hand, in the disciplinary hearing, the allegations include, negligence, failure to maintain the honour and dignity of the profession and failure to account for funds when reasonably required to do so. On the other hand, the offences before the criminal court are forgery, conspiracy to defraud and obtaining money by false pretences.

[54] In the court's view, it is quite possible (as the respondent found) for both proceedings to be fairly conducted by considering the differences between the issues in each case. If we consider the offence of forgery, for example, its definition helps us to see some of the differences with clarity. Section 3(1) of the Forgery Act defines "forgery" as follows:

> "3.-(1) For the purposes of this Act, "forgery" is the making of a false document in order that it may be used as genuine, and, in the case of the seals and dies mentioned in this Act, the counterfeiting of a seal or die; and forgery with intent to defraud or deceive, as the case may be, is punishable as in this Act provided."

[55] None of these ingredients needs to be proved in disciplinary proceedings grounded in negligence, failing to give an account when reasonably required to do so, or failing to maintain the honour and dignity of the profession. Additionally, in the court's experience, the prosecution usually attempts to establish a case of forgery by seeking, through the leading of expert evidence as to handwriting and the genuineness or otherwise of documents, that a document presented is not genuine. No evidence of

that sort is required in the disciplinary proceedings in respect of the particular cannons of which the appellants are accused of having been in breach.

[56] It can clearly be seen, therefore, that the respondent's conclusion on this issue cannot reasonably be faulted.

Issue (4): did the respondent err in failing to consider the constitutional rights of the appellants in refusing to grant a stay?

Submissions for Mr Dixon

[57] It was argued that, by refusing the application to stay the disciplinary hearing, the respondent had breached Mr Dixon's constitutional right to a fair hearing in the criminal proceedings, which right ought to entitle him to a fair and unbiased hearing.

Discussion

[58] Section 19(1) of the Charter of Rights and Fundamental Freedoms ('the Charter') grants to persons aggrieved, the right to mount a challenge in the Supreme Court to any alleged contravention of their constitutional rights, as outlined in Chapter III of the Charter. The section reads as follows:

> "19.-(1) If any person alleges that any of the provisions of this Chapter has been, is being or is likely to be contravened in relation to him, then, without prejudice to any other action with respect to the same matter which is lawfully available, that person may apply to the Supreme Court for redress."

[59] The short answer to this challenge is that Mr Dixon has failed to demonstrate how the refusal of the stay by the respondent would have breached his constitutional right to a fair hearing. Further, in the instant case, Mr Dixon's appeal flows from the decision of the disciplinary committee and not from a claim for constitutional redress in the Supreme Court. This court, therefore, has not been properly placed in a position to make any pronouncement in Mr Dixon's favour on the alleged breach of a constitutional right flowing from the refusal of the stay by the respondent.

Issue (5): did the respondent err in their reference to "forged title" so as to demonstrate a bias against the appellant?

Issue (6): did the respondent err in failing to consider and apply the rules of natural justice?

Submissions for Mr Dixon

[60] It was posited that the respondent's reference to a forged title in the ruling, without the use of the word "alleged", demonstrated bias on the part of the respondent and pre-determined the issue of whether the title was forged.

Discussion

[61] The respondent, in its decision, in setting out the factual circumstances of the case, made a reference to the relationship among the parties, stating that "[a]t some stage during the relationship of attorney client between the parties hereto a duplicate certificate of title was presented to the Complainant which turned out to be forged". This statement, when viewed in isolation, could possibly give the impression that the issue of forgery had already been decided. However, when the decision is viewed in its entirety, the respondent's further comments recorded at page 7 (item 6) of the decision show that the respondent was cognisant that the issue had yet to be decided, when it averred that "a Panel need not address its considerations as to whether there was in fact a forgery or not". As such, in all the circumstances of the case we find that though undesirable, the initial reference to "forged", by itself, could not operate to impugn the respondent's decision.

[62] Additionally, the appellants did not demonstrate any manner in which it could fairly be contended that the respondent committed any breach of any natural-justice right to which they were entitled. In the result, the appellants' contentions on these issues also were not made out.

[63] It was in the light of the failure of the appellants to make good any of the grounds of their appeal, that we made the orders that are reflected at paragraph [3] of this judgment.