[2018] JMCA Civ 22

JAMAICA

IN THE COURT OF APPEAL

CIVIL APPEAL NO 94/2012

BEFORE: THE HON MRS JUSTICE MCDONALD-BISHOP JA
THE HON MRS JUSTICE SINCLAIR-HAYNES JA
THE HON MISS JUSTICE EDWARDS JA (AG)

BETWEEN	**JENNES ANDERSON**	**APPELLANT**
AND	**EILEEN BOXILL (A member of the General Legal Council)**	**RESPONDENT**

CONSOLIDATED WITH

MISCELLANEOUS APPEAL NO 3/2014

BETWEEN	**JENNES ANDERSON**	**APPELLANT**
AND	**EILEEN BOXILL (A member of the General Legal Council)**	**RESPONDENT**

Mrs Rachel S Dibbs for the appellant

Mrs Denise Kitson QC and Miss Khian Lamey instructed by Grant Stewart Phillips & Co for the respondent

13, 14 October 2016 and 31 July 2018

MCDONALD-BISHOP JA

[1] I have read in draft the comprehensive judgment of Edwards JA (Ag). I agree with her reasoning and conclusion and have nothing useful to add.

SINCLAIR-HAYNES JA

[2] I too have read in draft the judgment of Edwards JA (Ag). I agree with her reasoning and conclusion and I have nothing further to add.

EDWARDS JA (AG)

Introduction

[3] This proceeding concerns two appeals from the decisions of the Disciplinary Committee of the General Legal Council ("the Committee") made against Ms Jennes Anderson ("the appellant") where, following the hearing of a complaint against the appellant for failing to comply with regulation 16(1) of the Legal Profession (Accounts and Records) Regulations ("the Regulations"), she was reprimanded and ordered to pay costs, amounting to $350,000.00. By order of Brooks JA made on 24 March 2015, both appeals were consolidated.

[4] The General Legal Council ("the GLC") is a statutory body created under and by virtue of the Legal Profession Act ("the LPA") whose mandate includes, inter alia, upholding the standards of professional conduct amongst attorneys-at-law. As part of its mandate, the GLC may make an application to the Committee in respect of allegations concerning any misconduct by an attorney-at-law in any professional respect. Having received a complaint against an attorney-at-law, the Committee may then institute disciplinary proceedings but is also at liberty to exercise its discretion to allow its withdrawal.

[5] These appeals have their genesis in a complaint brought against the appellant by Ms Eileen Boxill ("Ms Boxill"), a member of the GLC. The complaint was issued to the GLC on 27 July 2006. It was supported by an affidavit of Ms Boxill, in which it was alleged that the appellant, who was admitted to practice as an attorney-at-law on 21 May 1987, had been involved in conduct which may be in breach of the Legal Profession (Canons of Professional Ethics) Rules ("the Canons") as well as the Regulations.

[6] The issues raised for determination in this appeal are quite novel to this jurisdiction. They essentially concern the power of the Committee to hear disciplinary proceedings against a sitting judge of the Parish Court (formerly Resident Magistrate's Court) for acts of professional misconduct, committed whilst an attorney-at-law. This appeal also explores the circumstances under which the Committee may exercise its discretion not to allow the withdrawal of a complaint made to it, as well as the question of the effect of the delay in the institution of proceedings against the appellant.

The history of the complaint to the GLC

[7] On 5 May 2003, a notice of default was served on the appellant by the GLC. This notice of default concerned the appellant's failure to file an accountant's report or declarations for the years 2000 and 2001, in keeping with regulation 16(1) of the Regulations. The appellant was, at the time, an attorney-at-law employed to a company and was never engaged in private practice for the years stated in the default notice. However, practicing certificates were sought and paid for, on her behalf, by her employer.

[8] On 1 March 2005, the appellant was appointed as a Resident Magistrate, now referred to as judge of the Parish Court ("parish court judge"). This appointment was made by the Judicial Service Commission ("the Commission"). Complaint no 123 of 2006 was filed at the GLC by Ms Boxill, one year and four months later. She alleged in her complaint that the appellant had failed to deliver to the Secretary of the GLC an accountant's report in respect of the financial years 2000, 2001, 2002, 2003 and 2004 ("the relevant years"), contrary to regulation 16(1) of the Regulations.

[9] On 3 August 2006, Ms Althea Richards, secretary of the GLC, filed an affidavit in support of the complaint. In the said affidavit, Ms Richards deponed that as the secretary of the GLC, it was her responsibility to receive the accountant's report from attorneys-at-law. She averred that the appellant had not delivered to her or to the office of the GLC, any accountant's report for the relevant years and had not, for any of those years, filed a declaration in the form of the first schedule to the Regulations.

[10] On 6 September 2006, the appellant filed a single consolidated statutory declaration for the relevant years. She was advised that individual statutory declarations had to be filed for each year and as such, on 11 May 2007, the appellant filed individual statutory declarations. In light of this, on 13 October 2009, Ms Richards amended her affidavit in support of complaint no 123 of 2006. The amendment confirmed that she had received declarations from the appellant for the relevant years.

[11] During that period, the validity of the regulation under which the complaint against the appellant was brought, was challenged in the courts in the case of

Antonnette Haughton-Cardenas v The General Legal Council (unreported), Court of Appeal, Jamaica, Supreme Court Civil Appeal No 82/2006, judgment delivered 20 December 2007. In that case, this court ruled that the GLC was not generally authorized to request attorneys-at-law to produce an accountant's report each year in accordance with regulation 16 (1) of the Regulations, in a situation where there was no allegation by, or complaint from a client. The GLC appealed this court's decision to the Privy Council, in **The General Legal Council v Antonnette Haughton-Cardenas**, [2009] UKPC 20. The Board held that the GLC's general powers under section 35(2) of the LPA, included a power to make regulations, embodying the specific requirements that it intended to make in the exercise of its general powers, and so ensuring that failure to comply amounted to professional misconduct. Regulations 16 and 17 were, therefore, deemed to be not *ultra vires.*

[12] All matters concerning the exercise of the powers of the GLC under regulation 16 of the Regulations were suspended during the period of this legal challenge, including the complaint against the appellant.

[13] On 17 July 2010, following on the heels of the decision by the Privy Council, the complaint against the appellant was relisted for hearing before the Committee. However, on 8 October 2011, Ms Boxill filed an application to withdraw the complaint, stating among other things, that her reasons for so doing were: (i) the appellant had since filed declarations indicating that she was a salaried employee and did not collect trust money; (ii) the situation having been rectified, there was no useful purpose in pursuing the matter, as the appellant had by then been appointed a parish court judge;

and (iii) in that capacity, she would not be dealing with trust monies. Having heard the submissions of the respective parties, on 25 February 2012, the Committee handed down its decision, refusing the application to withdraw the complaint.

[14] The appellant also made an application to dismiss the complaint on the basis of a preliminary objection. The application was supported by her affidavit of 15 June 2012, where she indicated that the bases for her preliminary objection were, among other things, the fact that:

a) It was unfair for her to be exposed to a duality of jurisdictions, as she was subject not only to the disciplinary jurisdiction of the GLC, but was also exposed to the possibility of being disciplined by the Commission in relation to the same allegations.

b) The prosecution of the complaint had been suspended for 22 months without explanation. No reason could be gleaned for the delay in bringing the allegations to her attention prior to her appointment.

c) She ceased being a member of the Bar once she was appointed to judicial office. Now that she was a parish court judge, she was no longer subject to being disciplined as an attorney-at-law.

d) There was no public policy requirement for the GLC or the Committee to have disciplinary jurisdiction over judicial officers for breaches of

professional conduct allegedly committed as an attorney-at-law, prior to being appointed to judicial office.

e) She had already complied with the requirements of the Regulations.

f) The Committee should exercise its discretion under section 4 of the Fourth Schedule of the LPA which gives it the power to dismiss the application without requiring the attorney to answer the allegations.

[15] Ms Boxill filed submissions in opposition and on 16 June 2012, the Committee refused to uphold the preliminary objection and again ruled that the hearing should proceed. As a result, on 3 July 2012, the appellant filed an appeal against the Committee's refusal to withdraw or dismiss the complaint. The content of this appeal is contained in Civil Appeal No 94 of 2012.

[16] The Committee went on to hear the substantive complaint on 3 March 2013 and 4 May 2013. At the hearing, Ms Boxill averred that the appellant, having failed to comply with regulation 16, was guilty of misconduct in a professional capacity having regard to the provisions of regulation 17 of the Regulations. On 26 April 2014, the Committee found the appellant guilty of professional misconduct pursuant to regulation 17. The appellant was reprimanded and costs were awarded against her. This decision is the subject of the appeal in Miscellaneous Appeal No 3 of 2014.

Civil Appeal No 94 of 2012

[17] In Civil Appeal No 94 of 2012, the appellant challenged the Committee's findings of fact and law in relation to the ruling on the application to withdraw the complaint, as well as on the preliminary objection, as follows:

> 1. "...
>
> 2. The following findings of fact and law are challenged [sic] [appellant] was at the private bar and prior to the appointment [sic].
>
> 3. The panel misdirected itself when it ruled that in the circumstances of this complaint there is no duality of jurisdiction or that there is any danger that the [appellant] would be subject to the disciplinary jurisdiction of the Judicial Services Commission in relation to issues that arose when she was a practitioner at the private bar.
>
> 4. The Panel misdirected itself when it ruled that it was not satisfied that a recommendation from the Jamaican Bar Association and the General Legal Council did or can reasonably have created a legitimate expectation that the respondent believed that the recommendations meant that there was no outstanding matters between herself and the General Legal Council.
>
> 5. The Panel misdirected itself in not appreciating that when it stated that Regulation 16(1) must be interpreted to include a 'six month after the commencement of any financial year' time limitation for the filing of a declaration in the form of the First Schedule is not expressly stating [sic] in the law.
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> 6. The Panel misdirected itself when it failed to see the relevance of the Canadian case of *Maurice v. Priel* [1989] 1 S.C.R. 1023 to the complaint and ruled that the ratio decidendi of the case on a proper interpretation of legislation in Canada does not exist

in this jurisdiction and was not [relevant] to the matter at hand.

7. The Panel acted ultra vires when it commenced hearing the allegations which, if brought at all, should have been properly brought before The Judicial Service Commission.

8. The Panel misdirected itself when it cited **only** 22 months as the delay in this matter and then ruled that the [appellant] was not prejudiced by this delay.

9. The panel failed to appreciate that the [appellant] was no longer an attorney-at-law within the meaning of the Legal Profession Act in that section 5 of the Legal Profession Act defines attorney-at-law as:

   (1) Every person whose name is entered on the Roll shall be known as an attorney-at-law (hereinafter in this Act referred to as an attorney) and –

   (a) subject to subsection (2), be entitled to practise as a lawyer and to sue for and recover his fees for services rendered as such;

   (b) be an officer of the Supreme Court except for purpose of section 23 of the Judicature (Supreme Court) Act; and

   (c) when acting as a lawyer be subject to all such liabilities attached by law to a solicitor'

and the Judicature (Resident Magistrates) Act, s 25 states

No Magistrate or Clerk of the Courts shall practice at the Bar, or be directly or indirectly concerned as a solicitor, or in mercantile pursuits.

10. The [appellant] having complied, all be it [sic] late, the panel failed to consider that the [appellant] was now compliant and there was no useful purpose in continuing the prosecution and that trust funds were never in jeopardy nor any member of the public."

[18] The orders sought by the appellant with respect to this appeal were as follows:

> "(a) That the orders, ruling, hearing date be set aside and the matter be brought to an end.
>
> (b) That the matter be referred to the Judicial Service Commission if necessary.
>
> (c) Cost [sic] of this appeal to the Appellants/interveners to be agreed or taxed."

[19] At the hearing of this appeal, counsel for the appellant, Mrs Dibbs, indicated that the appellant would not abandon that appeal but that she is no longer pursuing the orders originally sought in her notice and grounds of appeal, except for the order for costs given that those orders would now be superseded by the orders being sought on Miscellaneous Appeal No 3 of 2014. Counsel, therefore, sought and obtained leave to abandon the orders which were being sought at paragraphs (a) and (b). Counsel indicated that she would rely on the grounds of appeal in pursuing her order for costs because there had been a delay in prosecuting this appeal, due to the difficulty experienced in obtaining the relevant records from the GLC.

Miscellaneous Appeal No 3 of 2014

[20] In giving its decision on the substantive complaint, the Committee imposed the following sanctions on the appellant:

> "i. The Respondent, Jennes Vashti Anderson has breached Regulation 16(1) of the Legal Profession (Accounts and Records) Regulations, 1999 by having failed to file declarations for the years 2000, 2001, 2002, 2003 and 2004 as required and has thereby committed acts of misconduct in a professional respect pursuant to Regulation 17 of the said Regulations;

ii. Pursuant to section 12(4)(d) of the Legal Profession Act, as amended, we reprimand the Respondent for the said breaches.

iii. Pursuant to section 12(4)(e) of the Legal Profession Act, as amended, we order that the Respondent pay the sum of $350,000.00 for costs, of which $150,000.00 is to be paid to the Attorneys-at-Law for the Complainant and the sum of $200,000.00 is to be paid to the General Legal Council."

[21] Dissatisfied with the Committee's decision, the appellant filed notice and grounds of appeal on 6 June 2014, appealing the decision and orders of the Committee. A total of 17 grounds of appeal were filed. These were as follows:

"1. The complaint was laid in July 2006. The [appellant] was appointed a Resident Magistrate on or about March 1 2005. The [appellant]was no longer under/subject to the jurisdiction of the General Legal Council at the time of the Complaint

Jamaica Constitution Order in Council 1962 states at Chapter VII section 112 [sic]

"(1) Power to make appointments to the offices to which this section applies and, subject to the provisions of subsections (3) and (4) of this section to remove and exercise disciplinary control over persons holding or acting in such offices is hereby vested in the Governor General acting on the advice of the Judicial Service Commission.

(2) This section applies to the offices of the Resident Magistrate, Judge of the Traffic Court, Registrar of the Supreme Court, Registrar of the Court of Appeal and to other such offices connected with the courts of Jamaica as, subject to the provisions of this Constitution, may be prescribed by Parliament.

(3) Before the Governor-General acts in accordance with the advice of the Judicial Service Commission that any officer holding or acting in any office to which this section applies should be removed or that any penalty should be imposed on him by way of disciplinary control

he shall inform the officer of that advice and, if the officer then applies for the case to be referred to the Privy Council, the Governor-General shall not act in accordance with the advice but shall refer the case to the Privy Council accordingly:

Provided that the Governor-General, acting on the advice of the Commission, may nevertheless suspend that officer from the exercise of his office pending the determination of the reference to the Privy Council."

2. The Panel failed to appreciate that the [appellant] was no longer an attorney-at-law in July 2006, within the meaning of the Legal Profession Act in that section 5(1) of The **Legal Profession Act** defines attorney-at-law as:

    1. *'Every person whose name is entered on the Roll shall be known as an attorney-at-law (hereinafter in this Act referred to as an attorney) and –*

        [a] subject to subsection (2), be entitled to practice as a lawyer and to sue for and recover his fees for services rendered as such;

        [b] be an officer of the Supreme Court except for the purpose of section 23 of the Judicature (Supreme Court) Act; and

        [c] when acting as a lawyer be subject to all such liabilities as attached by law to a solicitor'.

3. **The Judicature [Parish Court's] Act, s25** states

    '*No [Parish Court Judge] or Clerk of the Courts shall practice at the Bar, or be directly concerned as a solicitor, or in mercantile pursuits'*.

4. The Panel acted ultra vires on April 26 2014 when it imposed the sanctions contained in its decision. The [appellant] was no longer within its disciplinary jurisdiction or otherwise. The [appellant] was a judicial officer as defined by the Judicial Service Regulations as of March 2005, prior to the date of the complaint and prior to the date of sentencing in April 2014. The [appellant] repeats paragraph 1, 2 and 3 aforesaid and

further relies on the [sic] **The Constitution of Jamaica, Regulations, Judicial Service Regulations 1961** which defines

'judicial office' means the office of the [Parish Court Judge]…'

Part IV – Discipline (17) (1) 'The Commission shall deal with disciplinary proceedings against judicial officers.'

5. The Court of Appeal of Jamaica delivered its decision in the case of **Michael Hylton (A member of the General Legal Council) v Antonnette Haughton Cardenas** Civil Appeal No 82 of 2006 on December 20 2007. The decision of the Court of Appeal was binding on the General Legal Council and decisive of the case against the Appellant.

6. The Panel wrongly exercised the discretion afforded to it in section 12(4) of the Legal Profession Act to grant an exorbitant, oppressive and excessive fine as well as to reprimand the [appellant] in circumstances where the Panel found as a fact that the [appellant] did not practice outside the source of her salaried employment, received no trust funds and [sic] nor has she exposed the public to actual or potential financial loss (paragraph 37 of the decision).

7. The Panel wrongly considered that it continues to have jurisdiction over the [appellant], an appointed [Parish Court Judge] since 2005 because the alleged complaints arose while the [appellant] was at the private bar and prior to her appointment as a [Parish Court Judge].

8. The Panel misdirected itself when it overruled the preliminary objection raised by the [appellant] in June 2012, that in the circumstances of this complaint there is a duality of jurisdiction and/or that there is danger that the [appellant] would be subject to the disciplinary jurisdiction of the Judicial Service Commission in relation to issues that arose when she was a practitioner at the private bar.

9. The Panel further misdirected itself when it made an order in 2014 under its jurisdiction conferred by the Legal

Profession Act and its Regulations, in exercising its disciplinary authority against the [appellant], a sitting [Parish Court Judge], a judicial officer as defined in the Constitution of Jamaica, appointed in 2005.

10. The Panel acted ultra vires when it commenced hearing the allegations which, if brought at all, should have been properly brought before The Judicial Service Commission.

11. The Legal Profession Act at section 11(3) states

(3)It is hereby declared, for the avoidance of doubt, that the Committee shall have jurisdiction to hear and determine or continue to hear and determine or otherwise deal with the following allegations made under section 12, that is to say –

(a) in the case of attorneys who are suspended from practice, allegations of misconduct committed prior to or during suspension; and (b) in the case of persons whose names are struck off the Roll, allegations of misconduct committed prior to such striking off.

The Legislature did not go further to make an exception for judicial officers to fall within the disciplinary jurisdiction of the Complainant.

12. The Panel misdirected itself in its ruling of June 2012, against a preliminary objection by the [appellant], when it failed to see the relevance of the Canadian case of **Maurice v. Priel** [sic] [1989] 1 S.C.R. 1023 to the complaint and ruled that the ratio decidendi of the case on a proper interpretation of legislation in Canada does not exist in this jurisdiction and was of no relevance to the matter at hand.

13. That the sanction of costs in the sum of $350,000.00 is manifestly excessive in light of the application by the Complainant to withdraw the Complaint and the refusal by the panel to permit the withdrawal from as early as January 2012 in the circumstances where the [appellant] had complied with the relevant regulation 16(1) of the Legal Profession (Accounts and Records) Regulations.

14. In complaint No 110/2005 **C Dennis Morrison Q.C. v Dorcas White** delivered July 29 2006, a similar

complaint to 123/2006 the Respondent Dorcas White was fined $20,000.00 for failing to comply with Regulation 16(1) for the years 1999 to 2003. When the Consumer Price Index is applied to the $20,000.00 sanction imposed in that case in July 2006, the April 2014 sanction amounts to $43,195.14.

15. The Panel needlessly and punitively continued the hearing of the complaint after the [appellant] had complied and filed declarations for the relevant years, and after the Complainant applied to withdraw the Complaint. The costs of the proceedings do not justly fall to the [appellant].

16. The ultra vires imposition of a reprimand on the [appellant] by the Panel will tend to bring the administration of justice into disrepute where the [appellant] is a judicial officer, a [Parish Court Judge] for the parish of Saint Thomas.

17. The conduct of the complaint 123/2006 against the [appellant] was oppressive and prejudicial due to the self-serving delay arising from/ occasioned by the decision of the Court of Appeal of Jamaica aforesaid."

[22] The orders sought by the appellant in light of the above were:

"1. That the Panel of the Disciplinary Committee established under the Legal Profession Act is not authorised to make an order against a person who no longer operates under the jurisdiction of that Act.

2. That the complaint against the [appellant] should have been brought through the Judicial Service Commission.

3. A stay of execution of the decision of April 26 2014 and the sanctions contained therein.

4. That the payment of the sum of $350,000.00 be reduced or quashed.

> 5. That the Order for the payment of cost of $150,000.00 to the Attorneys-at-law for the Complainant was wrong and unjust in the circumstances.
>
> 6. Costs of this Appeal to the appellant to be agreed or taxed."

[23] The jurisdiction of this court with respect to appeals from a decision of the Committee is set out in section 16(1) of the LPA, which provides:

> "16.-(1) 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."

[24] In addition, rule 1.16(1) of the Court of Appeal Rules ("CAR") also stipulates that an appeal to this court shall be by way of a rehearing. When read together, both the CAR and the LPA confirm that appeals from the Committee shall be by way of a rehearing. As such, this court is empowered to undertake a full analysis of all the evidence, documentary materials and submissions that were before the Committee.

[25] The findings of fact and law being challenged in both appeals raise substantially the same issues and being consolidated, they will be dealt with accordingly. All the evidence and submissions before the Committee have been considered in order to determine whether the Committee erred in its decision.

The issues

[26] The principal issues to be determined in both appeals are as follows:

1. Whether, pursuant to the provisions of the LPA, the Committee had the jurisdiction to conduct disciplinary proceedings against the appellant, a parish court judge, for alleged acts of misconduct committed whilst she was practising as an attorney-at-law (grounds 1-4, 7-12 and 16 of Miscellaneous Appeal No 3 of 2014 as well as grounds 2, 3, 6, 7 and 9 of Civil Appeal No 94 of 2012);

2. Whether the Committee improperly exercised its discretion when it refused to permit the withdrawal of the complaint against the appellant (ground 15 of Miscellaneous Appeal No 3 of 2014 as well as ground 10 of Civil Appeal No 94 of 2012);

3. Whether, in any event, the sanctions imposed on the appellant by the Committee were excessive (grounds 6, 13, 14, 15 and 16 Miscellaneous Appeal No 3 of 2014);

4. Whether the appellant was prejudiced by the delay in the GLC bringing proceedings against her (grounds 5 and 17 of Miscellaneous Appeal No 3 of 2014 as well as ground 8 of Civil Appeal No 94 of 2012);

5. Whether the appellant had a legitimate expectation from the recommendation of the Jamaican Bar Association and the

GLC, that there were no outstanding issues between herself and the GLC and it was thereby estopped from bringing proceedings against her (ground 4 of Civil Appeal No 94 of 2012); and

6. Whether the GLC was wrong in its interpretation of regulation 16(1) (ground 5 of Civil Appeal No 94 of 2012).

Issue 1

Whether, pursuant to the provisions of the LPA, the Committee had the jurisdiction to conduct disciplinary proceedings against the appellant, a parish court judge, for alleged acts of misconduct committed whilst she was practising as an attorney-at-law (grounds 1-4, 7-12 and 16 of Miscellaneous Appeal No 3 of 2014 as well as grounds 2, 3, 6, 7 and 9 of Civil Appeal No 94 of 2012).

[27] At the heart of this first issue is the question whether the Committee had any jurisdiction, pursuant to the LPA, to take disciplinary action against the appellant, who was a parish court judge at the time of the commencement of the proceedings, for breaches of the Regulation committed whilst she was practising as an attorney-at-law.

[28] Counsel Mrs Dibbs argued that the Committee had no jurisdiction over the appellant after she became a parish court judge. In support of this contention, counsel relied on section 25 of the Judicature (Parish Courts) Act; her interpretation of sections of the Jamaica (Constitution) Order in Council 1962 ("the Constitution"); The Judicial Service Regulations, 1961; the Canons, as well as provisions in the LPA.

[29] Counsel also emphasised the constitutional protection afforded to judicial officers in the interests of judicial independence and in the preservation of the integrity of the judiciary.

[30] Queen's Counsel, Mrs Kitson, submitted on behalf of the GLC that the Committee which was established under section 11(1) of the LPA, had the jurisdiction by virtue of sections 5 and 12, to conduct disciplinary proceedings against the appellant, which was not lost when the appellant was appointed to the bench. Queen's Counsel also pointed out that the appellant had submitted to the jurisdiction of the GLC in two respects, firstly when she filed the declarations in 2006, and again in 2007, and secondly, when she participated fully in the disciplinary proceedings.

[31] Queen's Counsel argued that the fact that the appellant was a parish court judge at the time of the disciplinary hearing did not give her immunity from disciplinary proceedings by the Committee, as the fact of her appointment did not result in her ceasing to be an attorney-at-law. In support of this argument, Queen's Counsel pointed out that, whereas judges of the Supreme Court and the Court of Appeal are prohibited by Canon V(g) of the Canons from appearing as attorneys-at-law in any court in this country after demitting office, there was no such prohibition with respect to a parish court judge. Therefore, she argued, many parish court judges returned to practise as attorneys-at-law after demitting judicial office. She further argued that Canon V(g) of the Canons recognizes that even after a person is appointed a judge, he or she still remains an attorney-at-law although not appearing in court.

[32] Queen's Counsel therefore, took the view that the Committee had jurisdiction over the appellant at the time the offence was committed and did not misdirect itself in exercising that disciplinary control after her appointment to the bench.

Discussion and ruling on issue one

[33] It is my view that the arguments put forward by Queen's Counsel, on behalf of the respondent, are unsustainable for reasons which I will now outline. I will begin the discourse with the provisions in the LPA which were relied on by the GLC to ground the disciplinary jurisdiction of the Committee over the appellant. Before I do so, however, I should first state that I do not accept Queen's Counsel's contention that the fact that the appellant filed the declarations and participated in the proceedings before the Committee, it is to be viewed as a submission to the disciplinary jurisdiction of the Committee. For although the appellant filed the declarations in 2006 and in 2007, she made two sets of submissions to the GLC at the time she did so, to which the GLC made no response. (See the appellant's affidavit dated 15 June 2012, paragraph 25.) In any event, filing a declaration at the GLC as a requirement of the Regulations is an entirely different notion from submitting to the disciplinary jurisdiction of the Committee. At the first hearing of the complaint, the appellant challenged the jurisdiction of the Committee as a preliminary issue, which was not upheld. I cannot agree therefore, that she had submitted herself to the jurisdiction of the Committee.

[34] Section 3 of the LPA provides for the establishment of the GLC and lists its functions, to include, organizing the structure of legal education as well as upholding standards of professional conduct within the legal profession. The section reads:

> "3.-(1)There shall be established for the purposes of this Act a body to be called the General Legal Council which shall be concerned with the legal profession and, in particular –
>
> (a) subject to the provisions of Part III, with the organization of legal education; and
>
> (b) with upholding standards of professional conduct."

[35] One of the main concerns of the GLC therefore, as set out in the LPA, is to uphold the standards of professional conduct of attorneys-at-law. One of the ways in which the GLC upholds those standards is by disciplining attorneys-at-law who have breached those standards and does so through the operations of the Committee.

[36] Sections 4 and 5 of the LPA empowers the GLC to keep an alphabetical list of attorneys-at-law referred to as a Roll and all legally qualified persons are entitled to have their names entered on that Roll. Each person, whose name appears on the Roll, is to be known as an attorney-at-law. Section 4 reads as follows -

> "4. -(1) The Registrar shall keep, in accordance with the provisions of this Act and any regulations made thereunder, an alphabetical list of attorneys-at-law (in this Act referred to as the Roll) and subject to the provisions of this Act and regulations made thereunder and to the payment to the Registrar of the prescribed fees, every qualified person shall be entitled to have his name entered on the Roll and to receive a certificate of enrolment in the prescribed form from the Registrar.
>
> (2) (a) Forthwith upon the appointed day the Registrar shall cause to be entered on the Roll the name of every person who immediately prior thereto was a barrister or a solicitor and shall issue to every such person a certificate of enrolment..."

[37] Section 5 describes the status of an attorney-at-law as follows-

> "5. -(1) Every person whose name is entered on the Roll shall be known as an attorney-at-law (hereinafter in this Act referred to as an attorney) and-
>
> (a) subject to subsection (2), be entitled to practise as a lawyer and to sue for and recover his fees for services rendered as such;
>
> (b) be an officer of the Supreme Court except for the purposes of section 23 of the Judicature (Supreme Court) Act; and
>
> (c) when acting as a lawyer, be subject to all such liabilities as attach by law to a solicitor."

[38] Section 5(2) prohibits the practise of law without a practising certificate issued by the GLC. Section 5(8) makes it clear that a person on the Roll known as an attorney-at-law does not bear that designation in perpetuity and provides that the name may be removed by an application process. It states that:

> "(8) An application by an attorney to procure the removal of his name from the Roll shall be made to the Registrar and such application shall be granted if the Council gives its approval."

[39] The practical effect of section 5(8) is that where a person is permitted by the GLC to voluntarily remove his or her name from the Roll, that person will no longer be entitled to be known or be entitled to practise as an attorney-at-law and the GLC will cease to have jurisdiction over that person.

[40] The authority of the GLC to appoint members of the Committee is found in section 11 (1) of the LPA. Section 11(3) provides that the Committee retains jurisdiction over attorneys-at-law who have been suspended and those who have been struck off, to hear allegations made pursuant to section 12, for acts committed before they were suspended or struck off the Roll. Significantly, there is no mention in section 11(3) of

any retention of jurisdiction over attorneys-at-law who have been appointed to the bench, to hear allegations for acts committed before their appointment.

[41] Section 12 of the LPA confers jurisdiction on the Committee to hear complaints brought by persons against attorneys-at-law of alleged professional misconduct. After hearing the complaint, the Committee is empowered to impose sanctions against the attorneys-at-law, if found guilty of misconduct. These sanctions may include, being struck off the Roll, suspended from practice, reprimanded, as well as being ordered to pay costs or restitution. That this jurisdiction exists is not in question. What is in dispute, is whether the appellant is one such person, over whom, the Committee had the jurisdiction to exercise discipline at the time it did.

[42] Mrs Dibbs, in support of her contentions, relied on the prohibition from the practise of law, found in section 25 of the Judicature (Parish Courts) Act which states that :

> "No [Parish Court Judge] or Clerk of the Courts shall practice at the Bar, or be directly or indirectly concerned as a solicitor, or in mercantile pursuits."

In my view, she was correct to do so.

[43] The correct answer as to whether the Committee had the disciplinary jurisdiction over the appellant is bound up in the interpretation of the relevant provisions of these two pieces of legislation that is, the LPA and the Judicature (Parish Courts) Act. When the relevant provisions of these two pieces of legislation are read together, it is clear that the Committee would have had no jurisdiction over the appellant, once she was

appointed to judicial office. In view of the description of the status of an attorney-at-law in section 5(1)(a) of the LPA and the exclusionary and prohibitive nature of section 25 of the Judicature (Parish Courts) Act, it is clear that the LPA does not give jurisdiction to the Committee, to exercise disciplinary control over parish court judges. This is so because a sitting parish court judge cannot practice as an attorney-at-law, solicitor or be concerned in any mercantile pursuits and is, therefore, not entitled to sue for fees and recover fees for services rendered as such. I would venture to go further to state, that based on the prohibition in section 25 of the Judicature (Parish Courts) Act, the GLC cannot lawfully issue a practising certificate to a sitting parish court judge.

[44] The inference to be drawn from section 5 of the LPA and section 25 of the Judicature (Parish Courts) Act is that, once so qualified and having paid the requisite fees, an attorney-at-law is entitled to be registered on the Roll. Every person on this Roll is known as an attorney-at-law. Being registered on the Roll entitles the individual to practise as an attorney-at-law, and to sue for fees. A fee for a practising certificate has to be paid. The Committee has disciplinary jurisdiction over the conduct of such attorneys-at-law.

[45] An attorney-at-law may voluntarily remove himself from the jurisdiction of the GLC by ceasing to be on the Roll. An attorney-at-law may apply to be removed under section 5(8) of the LPA and the GLC may consider it and remove him. It is clear that the reason why the GLC has to consider an application for voluntary removal of name from the Roll is to ensure that it does not lose jurisdiction over an attorney-at-law against whom there may be existing or pending complaint of misconduct, which will be

the inevitable result once his name is removed from the Roll. In that regard, having so removed his or her name from the Roll, he or she ceases to be an attorney-at-law over whom the Committee has jurisdiction. It is also the reason for the expressed extension of jurisdiction over attorneys-at-law who have been suspended or struck off the Roll in section 11(3).

[46] Section 12 of the Judicature (Parish Courts) Act provides that:

> "No person shall be appointed a [parish court judge] unless he is-
>
> (a) a member of the Bar of Jamaica or of England or of Northern Ireland or of the Faculty of Advocates of Scotland, or a writer to the Signet, or a solicitor of the Supreme Court or of the Supreme Court of Judicature of England, Scotland or Northern Ireland, or a Law Agent admitted to practise in Scotland; and
>
> (b) either he
>
> (i) has actually practised in one or other of the capacities specified in paragraph (a) of this section for; or
>
> (ii) after he became qualified so to practise, has served in the judicial or legal department of any Commonwealth country for; or
>
> (iii) has so practised and has so served for periods which together amount to; or
>
> (iv) has so served for a period which, together with one-half of any period during which he held the office of Clerk of Courts in Jamaica before he became qualified so to practise, amounts to,
>
> not less than five years."

[47] Therefore, even though parish court judges are taken from the ranks of attorneys-at-law entitled to practise, upon the appointment to judicial office, by virtue of section 25 of the Judicature (Parish Courts) Act, that parish court judge is prohibited

from acting as an attorney-at-law and therefore the jurisdiction of the Committee, over such a person, ceases so long as that person remains in that judicial post.

[48] This does not mean that an attorney-at-law who has been appointed to the bench must escape the consequences of any prior misconduct. The body constitutionally charged with appointing and disciplining parish court judges is the Commission, as provided by regulation 17(1) of the Judicial Service Regulations, 1961. Regulation 17(1) provides that the Commission shall deal with disciplinary proceedings against judicial officers.

[49] Section 112 of the Constitution outlines that the regulatory body, tasked with the duty to advise the Governor-General on all issues relating to the appointment, removal and the exercise of disciplinary control over parish court judges is the Commission. The section reads:

> "112. -(1) **Power to make appointments to the offices to which this section applies** and, subject to the provisions of subsections (3) and (4) of this section, **to remove and to exercise disciplinary control over persons holding or acting in such offices is hereby vested in the Governor-General acting on the advice of the Judicial Service Commission.**
>
> (2) **This section applies to the offices of [parish court judge]**, Judge of the Traffic Court, Registrar of the Supreme Court, Registrar of the Court of Appeal and to such other offices connected with the courts of Jamaica as, subject to the provisions of this Constitution, may be prescribed by Parliament.
>
> (3) Before the Governor-General acts in accordance with the advice of the Judicial Service Commission that any officer holding or acting in any office to which this section applies should be removed or that any penalty should be imposed on him by way of disciplinary control he shall inform the officer of that advice and, if

> the officer then applies for the case to be referred to the Privy Council, the Governor-General shall not act in accordance with the advice but shall refer the case to the Privy Council accordingly:
>
> Provided that the Governor-General, acting on the advice of the Commission, may nevertheless suspend that officer from the exercise of his office pending the determination of the reference to the Privy Council." (Emphasis added)

[50] The moment the appellant became a judicial officer, she also became accountable to the Commission. Section 13 of the Constitution outlines the criteria that must be satisfied for an appointment to judicial office by the Commission, it reads:

> "13. For the purpose of making recommendations in relation to appointments to vacancies in any relative offices the Commission shall consider the eligibility of all officers for promotion, may interview candidates for such appointments and shall in respect of each candidate consider, amongst others, the following matters -
>
> (a) his qualifications;
>
> (b) his general fitness;
>
> (c) any previous employment of the candidate in the public service or in private practice."

[51] Section 4(2) of the Judicature (Parish Courts) Act reads –

> "4(2). **Every [parish court judge] so appointed shall be Judge of such one or more of the [Parish Courts]** as shall at the time of his appointment or thereafter be assigned to him, shall have and exercise the jurisdiction or jurisdiction thereof, and shall be styled the [parish court judge] for the parish or parishes of." (Emphasis added)

[52] The Judicial Service Regulations 1961, regulation 2 defines "Judicial office" to include office of the parish court judge and "judicial officer" as holder of a judicial office and regulation 18 provides for any report of judicial misconduct on the part of a judicial

officer to be made to the secretary of the Commission. It also provides for the Commission to deal with any case of misconduct reported to it which was not covered by the Judicial Service Regulations. It is comprehensive and covers reports of misconduct as well as reports of criminal conduct.

[53] As at March 2005, when the appellant was appointed to the bench, the Commission assumed disciplinary jurisdiction over her pursuant to section 112 of the Constitution. The sanctions which the Commission is empowered to make includes some of the very same which the Committee is empowered to make against an attorney-at-law. The Commission in appointing a candidate to the bench is duty bound to consider whether that person is fit and proper to hold such a post. The fit and proper criteria would extend to any conduct of the candidate prior to the appointment.

[54] Prior to March 2005, there is no doubt that the Committee had disciplinary jurisdiction over the appellant but although the conduct occurred before March 2005, the Committee no longer had the jurisdiction to hear the allegations against nor to discipline the appellant with regards to that conduct, after March 2005. That jurisdiction over the appellant now rested with the Commission.

[55] Queen's Counsel had argued that whilst there may have been duality of jurisdiction in the Committee and the Commission over the appellant, there was no complaint in respect of the appellant's actions whilst she was a judicial officer. However, account must be taken of the fact that jurisdiction is twofold; it involves the action and the actor. Although the Committee had jurisdiction over the conduct of the

appellant whilst she was an attorney-at-law, when the appellant became a judge, the GLC lost its disciplinary jurisdiction over the person of the appellant (the actor). Once she became a parish court judge, the Commission assumed jurisdiction over her person and over her conduct past, present and future, which could affect her suitability as a candidate for judicial office or which may bring her judicial office into disrepute.

[56] It is clear therefore that as far as the Roll and the GLC were concerned the designation attorney-at-law with respect to the appellant, was in a state of "suspended animation" (see the discussion in the case of **Maurice v Priel** [1989] 1 RCS 1023, below). It was in fact a useless designation, as she could not use it.

[57] Upon being made aware of the fact that the appellant had ascended to the bench, the Committee should have realized that it no longer retained disciplinary jurisdiction over her. If the GLC was still then of the view that the conduct was so egregious that disciplinary action was imperative, it should have taken the requisite steps to have any alleged breaches of the LPA by the appellant reported to the Commission for it to consider whether the appellant, in those circumstances, was suitable for appointment to the bench or whether it should impose any sanction it may consider necessary and appropriate, in all the circumstances.

The relevant case law

[58] Mrs Dibbs drew the court's attention to the Canadian authority of **Maurice v Priel**, which she submitted this court ought to treat as persuasive authority as the

issues are similar in all respects to the case at Bar. She submitted that the Committee wrongly rejected that case as being irrelevant.

[59] Mrs Kitson argued, however, that the Committee was correct to reject this case on the basis that it was inapplicable and irrelevant as it was decided on provisions in the Canadian statutes, which are wholly different from those in the LPA and the Judicature (Parish Courts) Act. I, however, do not agree with the submissions of learned Queen's Counsel. I accept the arguments of Mrs Dibbs that this case provides authoritative and persuasive guidance on how the question of jurisdiction should be considered in the instant case.

[60] The facts in that case are as follows: Some years after the respondent's appointment to the Bench, the Law Society of Saskatchewan received a complaint concerning his conduct whilst he had been a practising attorney-at-law. The appellant in that case was appointed as a Committee to hear the complaint alleging conduct unbecoming of a barrister and solicitor against the respondent, who was now a sitting judge. The respondent applied directly to the Court of Appeal for, and was granted, an order prohibiting the appellant from proceeding with the hearing.

[61] Not unlike the instant case, the principal issue in **Maurice v Priel** was whether or not the Law Society of Saskatchewan had jurisdiction to proceed with disciplinary proceedings against a judge for breaches of its Code of Professional Conduct which allegedly occurred while he was a practising attorney. In dismissing the appeal, the

reasoning of the learned judges of the Canadian Supreme Court was succinctly outlined in the head notes, which read as follows:

> "The Law Society did not have jurisdiction to conduct discipline hearings pertaining to [the] respondent because its jurisdiction extended only to those who were members. The wording of *The Legal Profession Act* and the *Judges Act* precluded respondents being a member. The word 'member' was not specifically defined in *The Legal Profession Act* but s.3 provided that 'barristers and solicitors of Saskatchewan and persons admitted to the Society as students at law shall be members'. The provisions of the *Judges Act* prohibited a judge from acting as a barrister and solicitor. Upon appointment a judge, in so far as the Law Society was concerned, became relegated to a state of suspended animation."

[62] It is clear therefore, that the learned judges of the Canadian Supreme Court considered the applicable legislation and found that by virtue of the relevant provisions of the Saskatchewan Legal Profession Act and the Judges Act, RSC 1970, c J-1 ("the Judges Act"):

a) disciplinary hearings could only be undertaken against members of the Law Society; and

b) the respondent, being a judge, was not a member of the Law Society.

[63] The judges of the Supreme Court found that the respondent was not a member of the Law Society on the basis of the provisions in the Saskatchewan Legal Profession Act and the Judges Act. Section 3 of that Legal Profession Act reads that:

> "3. Barristers and solicitors of Saskatchewan and persons admitted to the society as students at law shall be members of the society."

[64] In addition, section 36 of the Judges Act provides that:

> "36. No judge shall, either directly or indirectly, as director or manager of any corporation, company or firm, or in any other manner whatever, for himself or others, engage in any occupation or business other than his judicial duties, but every judge shall devote himself exclusively to his judicial duties, except that a district judge in Admiralty may continue to perform the duties of a public office under Her Majesty in right of Canada or of a province held by him at the time of his appointment as district judge in Admiralty."

[65] The judges of the Supreme Court held that the Judges Act prohibited a judge from engaging in any occupation other than his judicial duties, therefore, a judge could not carry on duties as a barrister or solicitor. The Supreme Court concluded, therefore, that being prohibited from being a barrister or a solicitor under the Judges Act, the respondent could not be a member of the Law Society, therefore, the Law Society had no jurisdiction over him.

[66] The Supreme Court of Canada also considered the case of **Re Law Society of Upper Canada and Robinette** [1954] 2 DLR 692 which examined whether Mr Robinette continued to be a member of the Law Society after he was nominated to the bench, but not yet sworn in. It was held, after considering similar provisions to the membership provisions in the case of **Maurice v Priel** that, upon his appointment to the Court of Appeal of Ontario, Mr Robinette ceased to be a member of the Bar. It was held that to say otherwise would be to hold that a judge could still practise before the courts as an attorney-at-law whilst he was still a judge.

[67] Having established in the instant case that the Committee has jurisdiction over attorneys-at-law, taking a similar approach to that taken by the Supreme Court of Canada in **Maurice v Priel**, it is clear to me that as the appellant was prohibited from practising as an attorney-at-law by statute, the Committee could not have had disciplinary jurisdiction over her. To accept the GLC's arguments that the appellant was still an attorney-at-law, over whom the Committee continued to have jurisdiction, would not only mean that the appellant would still be able to practise as an attorney-at-law, despite the prohibition in the Judicature (Parish Courts) Act, even more alarming, it would mean she still would be obliged to comply with the Regulations by filing declarations even after March 2005. But even the Committee, in its ruling, recognised the absurdity of that, when it stated that the complaint "did not and could not refer to any period during which the [appellant] was a [parish court judge]".

[68] Queen's Counsel, in her submissions, has attempted to discredit the applicability of **Maurice v Priel** to the case at Bar. She submitted that the Law Society of Saskatchewan did not have jurisdiction to conduct the disciplinary hearing pertaining to the judge, as the wording of their Legal Profession Act and their Judges Act, excluded a judge from being a "member" of the Law Society. Queen's Counsel argued that the tribunal in Canada had jurisdiction over "members" only and that under the Saskatchewan Legal Profession Act the word "member" was not specifically defined, but that section 3 provided that "barristers and solicitors of Saskatchewan and persons admitted to the society as students at law shall be members of the society". Queen's Counsel highlighted that in relation to the Judges Act, the Supreme Court highlighted at

paragraph 13 that the provisions of the Judges Act prohibits a judge from acting as a barrister and solicitor.

[69] Queen's Counsel also posited that the language of the LPA is readily distinguishable from that of the relevant sections of the Saskatchewan Legal Profession Act in **Maurice v Priel**. In her view, section 5 of the LPA, by expressly defining the group of persons over which it exercises disciplinary control as 'attorneys-at-law', would include the appellant who is an attorney-at-law. This, Queen's Counsel said, is a significant difference from the Canadian legislation, which impliedly excludes a judge from being a "member" of the Law Society of Saskatchewan. For this reason, she maintained that the appellant's appointment to the office of parish court judge, did not render her immune from disciplinary proceedings in respect of offences committed while she practised at the private bar, as she was still an attorney-at-law.

[70] It is clear, however, from the reasoning in the decision in **Maurice v Priel** and the case cited therein of **Robinette**, that this argument cannot be accepted. While I agree that the language is different in the provisions of the Canadian legislations, the purpose and intent are the same. Though the provisions in the Legal Profession Act applicable to Saskatchewan, use the word 'members', membership is defined as comprising barristers and solicitors along with students of law. To say that the Judges Act prohibits a judge from being a barrister and solicitor but the Jamaican legislation does not, is also not accurate, as seen from section 25 of the Judicature (Parish Courts) Act, which does exactly that.

[71] I, therefore, cannot see the difference between having the jurisdiction over members who are comprised of barristers and solicitors and having the jurisdiction over attorneys-at-law inclusive of barristers and solicitors. They are both inclusive of jurisdiction over the actors. Neither do I see the difference between a judge being prohibited from acting as a barrister and solicitor and as a result is excluded from being a member of the Law Society (which is comprised of barristers, solicitors and students of law), and a judge being prohibited by law from practising as an attorney-at-law or solicitor, the result of which is that such a judge is excluded from acting as an attorney-at-law entitled to practice, over whom the Committee can exercise jurisdiction. It is the same thing. The only difference is that the Legal Profession Act applicable to Saskatchewan expressly uses the word 'member' to describe the barristers and solicitors over whom it has jurisdiction.

[72] The case of **Maurice v Priel** provides support for the proposition that a judge who is prohibited from practising as a barrister or solicitor cannot come under the jurisdiction of the Law Society, whose members include barristers and solicitors. Like the provisions in the Canadian Judges Act, section 25 of the Judicature (Parish Courts) Act, prohibits a parish court judge from practising as an attorney-at-law. The Committee of the GLC cannot, therefore, exercise jurisdiction over a parish court judge, as an attorney-at-law. It does not matter whether the word member is used or attorney-at-law, the effect is the same. It is the exclusionary provision which wrests the jurisdiction from the clutches of the Committee. Any other interpretation would result in the preposterous notion that a judge could enter a court room and practise his

craft as an attorney-at-law whilst still being a judge. If he is prohibited from doing so by law for whatever period, then the Committee has no jurisdiction over him during that period.

[73] Furthermore, Queen's Counsel appeared to have accepted that the Committee has no jurisdiction over Supreme Court and Court of Appeal judges whilst they are in office, it is therefore difficult to see why the Committee was reluctant to accept that it has no jurisdiction over a parish court judge, whose prohibition to practice whilst sitting as a judge, is legislated.

[74] Canon V(g) provides that –

> "An attorney who previously held a substantive appointment as a Judge of the Supreme Court or the Court of Appeal shall not appear as an Attorney in any of the Courts of the island, after demitting such office."

[75] It seems to me that the Canon accepts that once an attorney-at-law is appointed to the higher judiciary, his status as an attorney-at-law ceases and can only be revived in a very limited way after demitting office.

[76] Although a parish court judge may return to practising law after demitting office, during his or her tenure as a judge, he or she is not an attorney-at-law, as defined in section 5 of the LPA. I find that **Maurice v Priel** is, indeed, persuasive authority and provides support for the interpretation which I have placed on the relevant provisions in the two pieces of legislation referred to. Mrs Dibbs is therefore correct in her contention

that, the Committee was wrong to have dismissed this case as inapplicable and irrelevant.

[77] Mrs Dibbs also relied on the Canadian authority of **Re Therrien** [2001] 2 RCS 3. This was a case in which the appellant filed appeal in the Supreme Court of Canada challenging the jurisdiction of Quebec's Conseilde la magistrature ("the Conseil") and its committee of inquiry to investigate his conduct, since the complaint was based on facts prior to his appointment as a judge. The Conseil had found that it had the jurisdiction to review his past conduct, where that conduct may affect his capacity to perform his judicial function.

[78] For the purpose of this discussion, it is necessary to give a brief summary of the facts. In 1970, the appellant, Richard Therrien, a law student at the time, was sentenced to imprisonment for one year for unlawfully giving assistance to four members of the Front de liberartion du Quebec. After serving his sentence, he continued his legal studies and thereafter became a legal practitioner for several years. In 1987 upon his request, the Governor in Council granted him pardon under the Criminal Records Act. Between 1989 and 1996, the appellant submitted his candidacy in five selection procedures for judicial appointments. However, his candidacy was rejected after he revealed his criminal record. In the last selection procedures, he did not disclose his criminal record, or even that he had been pardoned, and as a result, the Minister of Justice recommended that he be appointed as a judge of the Court of Quebec. Shortly afterwards, the Associate Chief Judge of the Court of Quebec and chairman of the selection committee which had recommended the appellant's

candidacy, learned that he had been convicted and pardoned but had failed to disclose these facts. Upon becoming aware of this, the Minister of Justice lodged a complaint to the Conseil.

[79] The Conseil found that the complaint was justified and recommended that removal procedures be initiated. The appellant in his challenge to the jurisdiction of the Conseil argued that it had no jurisdiction to review his conduct, since the ethical breach occurred before he was appointed. He was of the view that the misconduct, that is the source of the proceedings against him, fell under the jurisdiction of the disciplinary committee of the Barreau du Quebec.

[80] In its ruling, the Canadian Court of Appeal highlighted that the Courts of Justice Act imposed two conditions in order for the Conseil to have jurisdiction. Firstly, it must have jurisdiction over the person who is the subject of the complaint and secondly, the Conseil must have jurisdiction over the subject matter of the complaint. They held that, the Conseil, by virtue of the provisions in sections 256c and 263 of the Courts of Justice Act, had jurisdiction over the person who is the subject of the complaint and over the subject matter of the complaint. This was so, whether or not the actions were prior to the appellant's appointment or not. The Supreme Court of Canada agreed.

[81] In the case of Quebec, a committee on discipline is constituted within each professional order and section 116 of the Professional Code describes the extent of the jurisdiction within each order as follows:

> "The committee shall be seized of every complaint made against a professional for an offence against this Code, the Act constituting the order of which he is a member or the regulations made under this Code or that Act.
>
> The committee shall also be seized of every complaint made against a former member of an order for an offence referred to in the second paragraph that was committed while he was a member of the order. In such a case, every reference to a professional or a member of the order in the provisions of this Code, the Act constituting the order of which he was a member or a regulation under this Code or the said Act shall be a reference to the former member. [Emphasis added]"

[82] The Supreme Court also held that the Barreau de Quebec had no jurisdiction over the actions which the judge was accused of. It found that under section 116 of the Professional Code of Quebec, the actions of the judge did not relate to any offence against the code and therefore there was no subject matter jurisdiction.

[83] The language used in section 116, extending jurisdiction over former members, is not the language used in **Maurice v Priel**, and is not the language used in our LPA. The only extension of jurisdiction in the LPA is in the amendment to section 11, which extends the jurisdiction to those suspended from or struck off the Roll.

[84] The Conseil had also accepted that apart from the statutory provisions, it had jurisdiction for other reasons; those reasons were referred to with approval by the Supreme Court of Canada. The reason highlighted with approval by the Supreme Court was the fact that, in the interests of judicial independence, it was important that discipline be dealt with in the first place by peers. At page 45 of the judgment, the Supreme Court also expressed agreement with the remarks made by Professor HP

Glenn in his article, “Inde’pendance et deo’ntologie judiciaires” (1995), 55 R du B295, at p 308 where he stated that:

> "[TRANSLATION] If we take as our starting point the principle of judicial independence -- and I emphasize the need for this starting point in our historical, cultural and institutional context -- I believe that it must be concluded that the primary responsibility for the exercise of disciplinary authority lies with the judges at the same level. To place the real disciplinary authority outside that level would call judicial independence into question."

[85] The Supreme Court of Canada, therefore, upheld the Conseil's ruling on the basis that it had jurisdiction over the person who was the subject of the complaint and over the subject matter of the complaint. Even though the actions took place before the appellant became a judge, the Conseil was held to have had jurisdiction to enquire into his past conduct where that past conduct could affect his capacity to perform his judicial function. It was also necessary to determine whether that past conduct could undermine public confidence in the office of the judge. It highlighted the fact that the appointment of a judge was a sign of confidence in him or her personally, so that any conduct of such a person, may be adjudged as to whether the conduct betrays that confidence.

[86] The Supreme Court of Canada also considered that the complaint in that case, was made for breaches of sections 2, 4, 5, and 10 of the Judicial Code of Ethics. The Conseil was mandated, by section 263 of the Courts of Justice Act, to receive and examine complaints lodged by any person against a judge alleging he has failed to comply with any provision in the Judicial Code of Ethics.

[87] The Supreme Court of Canada also cited **Maurice v Priel** as authority on how it was to proceed to determine the question of jurisdiction. It quoted with approval, the statement by the court at paragraph 1033 of the judgment where it was said that:

> "Rather [the case at bar] is concerned with the narrow issue as to whether pursuant to the provisions of *The Legal Profession Act* of Saskatchewan the Law Society of that province can institute discipline proceedings against a judge for alleged misconduct committed while still a lawyer. The resolution of the issue turns solely upon the wording of *The Legal Profession Act* and the Judges Act."

[88] The Supreme Court in **Re Therrien** also grounded the decision partly on the basis of the philosophical underpinnings of the role of a judge. In that case, it was said that:

> "108. The judicial function is absolutely unique. Our society assigns important powers and responsibilities to members of its judiciary... Accordingly, from the point of view of the individual who appears before them, judges are first and foremost the ones who state the law, grant the person rights or impose obligations on him or her.
>
> ...
>
> The judge is the pillar of our entire justice system, and of the rights and freedoms which that system is designed to promote and protect.
>
> ...
>
> 110. Accordingly, the personal qualities, conduct and image that a judge projects affect those of the judicial system as a whole and, therefore, the confidence that the public places in it. Maintaining confidence on the part of the public in its justice system ensures its effectiveness and proper functioning. But beyond that, public confidence promotes the general welfare and social peace by maintaining the rule of law. In a paper written for its members, the Canadian Judicial Council explains:

> `*Public confidence in and respect for the judiciary are essential to an effective judicial system and, ultimately, to democracy founded on the rule of law. Many factors, including unfair or uninformed criticism, or simple misunderstanding of the judicial role, can adversely influence public confidence in and respect for the judiciary. Another factor which is capable of undermining public respect and confidence is any conduct of judges, in and out of court, demonstrating a lack of integrity. Judges should, therefore, strive to conduct themselves in a way that will sustain and contribute to public respect and confidence in their integrity, impartiality, and good judgment.'*
>
> (Canadian Judicial Council, *Ethical Principles for Judges* (1998), p. 14)

111. The public will therefore demand virtually irreproachable conduct from anyone performing a judicial function. It will at least demand that they give the appearance of that kind of conduct. They must be and must give the appearance of being an example of impartiality, independence and integrity. What is demanded of them is something far above what is demanded of their fellow citizens. This is eloquently expressed by Professor Y M Morissette:

> *[Translation] [T]he vulnerability of judges is clearly greater than that of the mass of humanity or of "elites" in general: it is rather as if his or her function, which is to judge others, imposed a requirement that he or she remain beyond the judgment of others.*
>
> ("Figure actuelle du jugedans la cite" (1999), 30 R.D.U.S. 1, at pp. 11-12)

In *The Canadian Legal System (1977),* Professor G. Gall goes even further, at p. 167:

> *The dictates of tradition require the greatest restraint, the greatest propriety and the greatest decorum from the members of our judiciary. We expect our judges to be almost superhuman in wisdom, in propriety, in decorum and in humanity. There must be no other group in society which must fulfil this standard of public expectation and, at the same time, accept numerous constraints. At any rate, there is no question that a certain loss of freedom accompanies the acceptance of an appointment to the judiciary.*

> 112. ...The judge is in 'a place apart' in our society and must conform to the demands of this exceptional status ([M L Friedland, *A Place Apart: Judicial Independence and Accountability in Canada* (1995)])."

[89] To my mind, **Re Therrien** highlights the requirement that the Committee must establish jurisdiction in a twofold manner. It must establish that it has not only jurisdiction over the conduct of the person (the action) but over the person himself (the actor). It also establishes that in the case of a judicial officer, discipline lies in the body established for that purpose and that body will have jurisdiction not only over the person of that judicial officer but also his conduct regardless, of whether that conduct occurred prior to appointment. This is so where such conduct may impact the ability of the judicial officer to carry out the office of a judge and may impact the administration of justice as a whole. It also establishes that the determination as to jurisdiction can be found in the relevant legislation.

[90] Though counsel for the appellant made extensive submissions on the question of judicial independence, this case need not be determined on the application of the principle of judicial independence, for the legislative framework is clear and unambiguous. However, it seems to me that the framework of the legislation gives due regard to the principle of judicial independence and it is for this reason that an attorney-at-law, appointed to judicial office, is not only prohibited from practising as an attorney-at-law, but immediately upon appointment, becomes subject to the jurisdiction of the Commission.

[91] Canon V provides that an "attorney has a duty to assist in maintaining the dignity of the Courts and the integrity of the administration of justice". The Canons provide that respect for the courts and judges should be encouraged not for the sake of the holder of the office but for the maintenance of its supreme importance. The Canons also provide for complaints against a judicial officer to be made by an attorney-at-law to the proper authorities. It seems to me, that implicit in the legislation and the Canons, is the acceptance of the need for a separation of roles, as to do otherwise would not only '*call judicial independence into question*' but may bring the administration of justice into disrepute.

[92] Counsel Mrs Dibbs also relied on the dicta in the Privy Council decision of **Moses Hinds and others v The Queen; Director of Public Prosecutions v Jackson; Attorney General of Jamaica (intervener)** [1977] AC 195. In that judgment, the Board recognised that the judiciary of Jamaica was comprised of two categories; the higher judiciary, which consist of the judges of the Supreme Court and the Court of Appeal, and the lower judiciary, comprising parish court judges. They also recognized that the only difference between the two categories is the greater degree of independence afforded the higher judiciary based on their security of tenure. However, the Board noted the protection afforded the lower judiciary in section 112 of the Constitution, wherein or by virtue of which, they "cannot be removed or disciplined except on the recommendation of the Commission with a right of appeal to the Privy Council". The Board also noted that the higher judiciary is not subject to any disciplinary control whilst in office and can only be removed on the advice of the Privy

Council, given after a reference is made on the recommendation of a tribunal of inquiry consisting of persons who hold or have held high judicial office in some part of the Commonwealth.

[93] What all this really means is that the appellant's appointment to judicial office placed her in a peculiar position, one wholly different from that of an attorney-at-law, and as such, at the time of her appointment, she was no longer accountable to the GLC, neither did the Committee have the power to execute disciplinary actions against her. Most importantly, there is no public interest necessity nor is it desirable in the public interest for the Committee to retain or exercise such a jurisdiction. I, therefore, find that counsel for the appellant was correct when she argued that the Committee had no jurisdiction over the appellant at the time it commenced hearing disciplinary proceedings against her, as by then, she had been appointed a judicial officer. These grounds therefore succeed.

Issue 2

Whether the Committee improperly exercised its discretion when it refused to permit the withdrawal of the complaint against the appellant (ground 15 of Miscellaneous Appeal No 3 of 2014 and ground 10 of Civil Appeal No 94 of 2012)

[94] The failure of the Committee to accede to the request to withdraw the complaint is also being challenged by the appellant. That application to withdraw the complaint was heard by the Committee on written submissions only. The Committee refused to permit the withdrawal of the complaint, effectively on the basis that there was no valid ground on which to do so. In coming to its decision, the Committee considered the

relevant regulations, the seriousness of the breach, as well as the sufficiency of the grounds advanced in support of the application.

[95] Mrs Dibbs made no oral arguments on this ground but relied on all written submissions filed in this court.

[96] Queen's Counsel, in her written submissions, pointed out that the complaint could only be withdrawn with the leave of the Committee. She argued that the reasons given by the panel for refusing to allow the withdrawal of the complaint were sound in law and ought to be upheld by this court. Queen's Counsel further argued that the Committee, based on its reasons given, did not needlessly and punitively continue hearing the complaint after the appellant had complied and filed the declarations for the relevant years. In addition, she said, because the offence was not cured when the appellant filed the declarations after the complaint had been laid, it was within the discretion of the Committee to rule that the matter be ventilated. In doing so, Queen's Counsel claimed, the Committee was acting in accordance with the dicta of Panton P in the case of **Georgette Scott v The General Legal Council Ex p Errol Cunningham** (unreported), Court of Appeal, Jamaica, Supreme Court Civil Appeal No 118/2008, judgment delivered 30 July 2009.

Discussion and ruling on issue two

[97] Rule 15 of the Fourth Schedule of the LPA, (The Legal Profession (Disciplinary Proceedings) Rules ("the Rules"), states that:

> "No application shall be withdrawn after it has been sent to the Secretary, except by leave of the Committee. Application for leave to withdraw shall be made on the day fixed for the hearing unless the Committee otherwise direct. The Committee may grant leave subject to such terms as to costs or otherwise as they think fit, or they may adjourn the matter under rule 16 of these rules."

[98] I agree that the complaint could only have been withdrawn with the leave of the Committee. The decision to withdraw lies solely within the Committee's discretion. However, the Rules fail to outline the grounds or circumstances under which the Committee may yield to a request for a complaint to be withdrawn or what factors it ought to take into account in making that determination. What is plain to me, however, is that, like any other discretionary power, it must be properly and judicially exercised.

[99] Queen's Counsel argued that the Committee acted in accordance with the dicta of Panton P in the case of **Georgette Scott v The General Legal Council Ex p Errol Cunningham**, which it considered as part of its ruling. In that case, an application to withdraw a complaint was also refused by the Committee. On appeal to this court against the decision of the Committee to strike the appellant off the Roll of attorneys-at-law entitled to practise, this court held that in exercising the discretion to grant leave to withdraw a complaint, the Panel must examine the nature/seriousness of the allegations and the role of the Committee.

[100] In that case, the complainant had retained Ms Scott to sell an apartment. He received a letter, from Ms Scott stating that the sum of $2,105,272.41 was due to him as a consequence of the transaction. He subsequently received a cheque from Ms Scott for this amount. The cheque was lodged to his account but it was later returned

dishonoured. During the hearing, counsel for Ms Scott outlined to the Committee, that she had structured her practice to facilitate a payment schedule with the complainant. The complainant thereafter requested that the complaint be withdrawn. The Committee refused to accede to this request and ruled that the appellant used the proceeds of sale entrusted to her for and on behalf of the complainant to her own use and benefit or to the benefit of others.

[101] On appeal, Panton P, noted at paragraph 23 that:

> "…**In refusing to allow the withdrawal of the complaint, the panel was exercising a right which it had to hear the complaint**. Bearing in mind the nature of the allegations, and the role of the Committee, the panel was entitled to say: 'this is not a matter which should be withdrawn, let us hear it'." (Emphasis added)

[102] Harrison JA at paragraphs 49 and 50 of that case also said:

> "It is abundantly clear that the Committee has a duty under section 3(1) of the Act to uphold the standards of professional conduct of attorneys at law. Barwick CJ stated in **Harvey v Law Society of New South Wales** (1975) 49 ALJ 362 at page 364:
>
> > 'The court's duty is to ensure that those standards of the profession are fully maintained particularly in relation to the **proper relationship of practitioner with practitioner, practitioner with the court and practitioner with the members of the public who find need to use the services of the profession.**'" (Emphasis added)

[103] In the instant case, the question for this court is, given the special circumstances surrounding this matter, and the duty of the GLC, did the Committee, taking into account all the circumstances of this particular case, properly exercise its discretion in

not allowing the withdrawal of the complaint against the appellant, who, at the time, was not a practicing attorney-at-law?

[104] Regulation 16 under which the complaint was made provides that:

> "(1)...[E]very attorney shall, not later than six months after the commencement of any financial year, deliver to the Secretary of the Council an accountant's report in respect of the financial year next preceding that year.
>
> (2) An accountant's report need not be delivered pursuant to paragraph (1) where the attorney satisfies the Council, by delivering a declaration in the form shown in the First Schedule, evidencing that owing to the circumstances of his or her case it is unnecessary or impractical for him or her to do so. Such a declaration must be delivered to the Secretary of the Council not later than six months after the commencement of any financial year, in respect of the financial year next preceding that year."

[105] Regulation 17 also provides that:

> "Failure by an attorney to comply with any of the provisions of these Regulations shall constitute misconduct in a professional respect for the purposes of section 12 of the principal Act."

The principal Act referred to in regulation 17, is the LPA.

[106] In the instant case, the Committee took the view, that the breach of which the appellant was accused had been serious and, in the circumstance, very good reasons had to be advanced, to justify a withdrawal of the complaint. The Committee in its ruling held, in summary, that:

a) Its decision was premised on an indication given in paragraph [23] of the judgment of Panton P, in **Georgette Scott v The General Legal Council Ex Parte Errol Cunningham**, as to the

considerations which the Committee ought to have in mind when dealing with applications to withdraw, namely, the nature of the allegations and its role.

b) The complaint related to the period the attorney-at-law was in practice employed to a company and did not relate to any period during which she was a parish court judge.

c) Delivery of the reports or declaration after the prescribed time did not absolve the attorney-at-law who had failed to comply, within the prescribed time, and what was done subsequent to the complaint, was not a proper basis for granting leave for the complaint to be withdrawn.

d) The issue was whether there has been compliance and not whether trust funds were in jeopardy.

e) Several complaints have been initiated and prosecuted by the Committee and it would be an inappropriate exercise of their discretion to grant leave to withdraw this complaint on any of the grounds given.

[107] In my view, the Committee wrongly exercised its discretion not to allow the complaint to be withdrawn. Firstly, the evidence presented is that at all material times,

the appellant was a salaried employee at a private company. No evidence has been provided that she engaged in any legal work outside of her duties at this company.

[108] It has been commended to this court many times that the Committee is not only concerned with the interests of the complainant, but that it also has a duty to protect the public and ensure that the standards and integrity of the legal profession are maintained. In this case, the appellant's non-engagement in work outside those duties she performed on behalf of her employers strongly suggests that the public was never in jeopardy from her failure to comply with regulation 16 of the Regulations, neither, it seems to me, did it jeopardize the standards and integrity of the legal profession, although the Committee considered these factors to be irrelevant.

[109] Secondly, the appellant had already complied with regulation 16 of the Regulations by the time the matter was heard, approximately 11 years after the notice of breach was sent. The Regulations themselves were new and their validity was being tested in the courts. The explanation given by the appellant for her breach was that she was unaware that she needed to comply, as she did not handle trust money and was a salaried employee. Ms Boxill, the member who brought the complaint, clearly felt that the circumstances warranted the withdrawal. In her submissions to the Committee for leave to withdraw, Ms Boxill highlighted that there were no client's funds in jeopardy. She also pointed out that the role of the panel was to ensure that the standard of the profession was maintained in order to protect the public. She further pointed out that the case of **Georgette Scott v The General Legal Council Ex Parte Errol Cunningham** was distinguishable, as in that case, client's funds were in

jeopardy and there had been an admission that funds belonging to other clients were in similar jeopardy. That case was, therefore, a much more serious one. This, the Committee also considered to be irrelevant.

[110] Mrs Boxill also pointed out to the Committee, that no useful purpose would be served in pursuing the matter, especially since the appellant was now a parish court judge and would not be dealing with trust monies. She also indicated that there was no issue involving any question that the appellant acted with or was guilty of any dishonesty actual or constructive. Again, the Committee considered this to be irrelevant. The Committee in their ruling on the question of whether to permit a withdrawal stated, at paragraph 21, inter alia that:

> "As we understand it the complaint relates to a period when the Respondent was in practice as an Attorney-at-Law and as an employee of a company. **It does not and cannot relate to any period after she was appointed [parish court judge]**. We observe that, subsequent to the coming into effect of the Regulations the Council, by its members, has initiated and prosecuted several complaints in the nature of that which is before us. In our view, it would be an inappropriate exercise of our discretion if we were to grant leave to withdraw this complaint on any of the grounds which have been advanced. Accordingly, we decline to do so." (Emphasis added)

[111] Although this court is in no way condoning the failure of any attorney-at-law to comply with the Regulations, each case must be determined on its own merit. In my view, in the circumstances of this case, where at the time the request for withdrawal was made the complaint was fully complied with and the breach fully explained, and in circumstances where the appellant had long been appointed to judicial office, the

Committee ought to have exercised its discretion to permit the withdrawal of the complaint.

[112] Most importantly however, and indeed most decidedly, in considering its role, the Committee, was required to consider whether, at the time the request for withdrawal was made, they still had jurisdiction over the appellant. The Committee stated it acted in accordance with the dicta of Panton P in **Georgette Scott v The General Legal Council Ex Parte Errol Cunningham**. I find, however, that whilst the Committee did refer in its ruling to the statements of Panton P with regards to the nature of the allegations and their role, it failed to have regard to the question of whether the appellant was a person over whom it still had jurisdiction. It was duty bound to consider whether it was exercising jurisdiction over a matter it had a right to hear or whether it was "exercising a right it had to hear the complainant", as Panton P put it.

[113] In **Georgette Scott v The General Legal Council Ex Parte Errol Cunningham**, the question of jurisdiction was not an issue and it was accepted that the matter was one the Committee had a right to hear. In this instant case, however, the question whether the matter was one the Committee had a right to hear was a live issue, as the Committee's jurisdiction over the person of the appellant, as opposed to her conduct, ought to have been considered, once it was made clear that the appellant was now a parish court judge. The Committee failed to consider that issue.

[114] It is clear, therefore, that the Committee failed to take into account a relevant consideration, which was whether they had jurisdiction over the appellant and

therefore, whether the matter was one which it had a right to hear. It took into account only the fact that the offence occurred whilst the appellant was an attorney-at-law, but failed to consider whether it still retained jurisdiction after March 2005, when the appellant was appointed to judicial office. The Committee, therefore, had more than ample grounds on which it could have reasonably exercised its discretion and permitted the withdrawal of the complaint. In my view, its failure to do so was an unreasonable and improper exercise of its discretion. These grounds therefore, succeed.

Issues 3

Whether in any event, the sanctions imposed on the appellant by the Committee were excessive (grounds 6, 13, 14, 15 and 16 of Miscellaneous Appeal No 3 of 2014)

[115] Mrs Dibbs argued that the Committee was wrong to impose such an exorbitant, oppressive and excessive fine as well as to reprimand the appellant in circumstances where it found, as a fact, that the appellant did not practise, had no trust funds and had not exposed the public to any actual or potential financial loss.

[116] Counsel also submitted that costs should not have been visited on the appellant as there had been a request that the matter be withdrawn and the appellant had also complied with the requirements of the Regulations by the time of the hearing. The costs, counsel asserted, were also not in keeping with other cases heard and determined by the Committee.

[117] Queen's Counsel argued that the sanction of a reprimand was well within that which the Committee was empowered to impose and that the costs awarded against the appellant were not excessive but appropriate and reasonable in the circumstances. Mrs Kitson also pointed out that costs follow the event as a normal rule and, therefore, costs of the proceedings were properly due to the Committee. Queen's Counsel also argued that costs should not be comparable with the costs awarded in **C Dennis Morrison QC v Dorcas White** (unreported), decision of the Disciplinary Committee of Jamaica, Complaint No 110/2005, judgment delivered 29 July 2006, as argued by counsel for the appellant, as that hearing took one day whilst the hearing in the appellant's case took five days, inclusive of two interlocutory applications. Queen's Counsel submitted that in those circumstances, the costs award of $350,000.00 was appropriate.

Discussion and ruling on issue three

[118] Having found that the Committee had no disciplinary jurisdiction over the appellant and that the complaint against her should have been withdrawn, it is not necessary to give a discourse as to whether the sanctions imposed on the appellant were excessive. However, in light of the submissions made, I will just say a few words on the issue.

[119] The powers of the Committee with reference to punishment are set out in section 12(4) of the LPA, as amended by the Legal Profession (Amendment) Act 2007. That section provides that the Committee may make such order as it thinks fit, including striking off the attorneys' name off the Roll of attorneys entitled to practice in

the jurisdiction; suspension; a fine; reprimand; and awarding the payment of costs to the complainant.

[120] In this case, the appellant was reprimanded and ordered to pay costs in the sum of $350,000.00, of which $200,000.00 was to be paid to the GLC and $150,000.00 to the Ms Boxill's attorneys-at-law. In support of her argument that such an order was excessive, the appellant relied on the decision on costs made in **Dorcas White**. In that decision, the Committee awarded costs of $20,000.00 and a reprimand. Miss White was a teacher at the Norman Manley Law School at the time (and still is) and had not complied with the Regulations for similar reasons raised by the appellant, that is, she was not in practice. For the years 1999 to 2003, she had failed to submit to the secretary of the GLC, an accountant's report or a declaration. After a complaint was laid, she complied with the Regulations. Miss White challenged the Committee's jurisdiction to hear the complaint on the basis that, as an employee of the Council of Legal Education, she was exempt by virtue of section 37 of the LPA and regulation 18(1) of the Regulations. The disciplinary hearing took one day, unlike the appellant's, which took five days. It is for this reason, that Queen's Counsel submitted that the costs in the proceedings in **Dorcas White** should not be used as a comparison.

[121] In **Dorcas White,** the Committee found that failing to file the accountant's report or declaration in time, rendered the complaint necessary and a reprimand was sufficient in those circumstances. In the case of the appellant, the situation was the same and it was not disputed that she was compliant before the hearing begun.

Notwithstanding, the appellant was ordered to pay the costs of the GLC as well as the costs of counsel for the complainant. No such order was made in **Dorcas White**.

[122] It seems to me, that when it comes to the issue of punishment, like cases should be treated alike; the principles of sentencing being applicable to the Committee. In deciding what sentence is to be meted out and what costs to apply, the Committee ought to be guided by principles and consistency and ought not to be arbitrary in its approach. In the appellant's case, compliance had taken place almost six years before the hearing began. The Committee chose to proceed nevertheless. One of the interlocutory hearings it relied on to justify the award of costs was initiated by a member of the GLC to withdraw the complaint. That application was heard on paper, but the costs associated with it were visited on the appellant.

[123] Although the Committee was entitled to award costs against the appellant as the losing party, such award ought not to be disproportionate and arbitrary. The LPA provides at section 12(4)(e) that the Committee could order the payment of a sum it considers a reasonable contribution towards costs. The question is whether the costs order, for such comparably exorbitant sums, was reasonable.

[124] Counsel for the appellant, for the purpose of comparison, also pointed to costs awards made by the Committee in other cases. Apart from **Dorcas White**, counsel referred to the case of **Patrick Stephens v Evol Lyn Cook** (unreported), decision of the Disciplinary Committee of Jamaica, Complaint No 162/2002, judgment delivered 28 March 2015, which took place over 11 days between 2 February 2008 and 28 March

2015. The complaint in that case was of professional misconduct arising from "inexcusable and deplorable negligence or neglect" in how the attorney-at-law dealt with his client's business. However, in this case, the order was made in 2015 for the attorney-at-law to pay the sum of $350,000.00 as a fine to the client for compensation for the delay and costs. There was no order for costs to be paid to the Committee or to their attorney-at-law, despite the case taking place over 11 days.

[125] I take the view, therefore, that the costs in the appellant's case cannot be justified on the basis of the length of the proceedings.

[126] In **Indra Bahadur v Donald Gittens**, (unreported), decision of the Disciplinary Committee of Jamaica, Complaint No 8/2013, judgment delivered 23 June 2015, there were four hearing dates, the last being 23 June 2015. The attorney-at-law was found guilty of professional misconduct for failing to advise his client of the progress of her matter. After four hearing dates, an order for costs of $40,000.00 was made. Significantly, in that case, the Committee paid lip service to the need for consistency and to follow precedence in the award of costs. There it said that "as there has to be some jurisprudence in consistency" it would impose the same sanction as that imposed in a case of similar circumstances.

[127] It seems to me that there appears to be no basis or principle in the order for costs made by the Committee against the appellant. In the light of the cases cited by counsel for the appellant, this court would agree that the order for costs made was not

reasonable. There is therefore merit in these grounds of appeal relating to the costs sanction.

Issue 4

Whether the appellant was prejudiced by the delay in the GLC bringing proceedings against her (grounds 5 and 17 of Miscellaneous Appeal No 3 of 2014 as well as ground 8 of Civil Appeal No 94 of 2012)

[128] The complaint to the GLC against the appellant was laid in 2006. At that time, as I have already ruled, the GLC had no disciplinary jurisdiction over the appellant, she having been appointed to the bench in 2005. The challenge to the validity of the Regulations was heard by this court which delivered judgment striking down the Regulations in the case of **Antonnette Haughton-Cardenas v The General Legal Council**, in December 2007. The complaint was not, however, dismissed against the appellant after the ruling of this court but was adjourned pending an appeal to the Privy Council by the GLC.

[129] Counsel for the appellant submitted that the judgment of this court in the case of **Antonnette Haughton-Cardenas v The General Legal Council** was binding on the GLC and the appellant had been entitled to the benefit of the law as it was declared by this court in December 2007. Counsel submitted that the delay in dealing with the matter was thereby prejudicial to the appellant.

[130] Queen's Counsel argued that after the decision of this court, the law was then not settled and the Privy Council was being asked to interpret the same provision. Queen's Counsel argued that the conduct of the GLC was, therefore, not oppressive or

prejudicial in deciding to hear the complaint against the appellant subsequent to the decision of the Privy Council. Queen's Counsel argued further that it was proper for the GLC to reserve the right to await the decision of the higher court before proceeding.

Discussion and ruling on issue four

[131] The timeline involving this unfortunate matter is very long. The GLC sent a notice of default to the appellant in 2003. Neither the appellant nor the GLC did anything further. In 2005, the appellant was appointed a parish court judge. The complaint to the GLC was filed in 2006. It is unclear whether at the time it was known that the appellant had been appointed to the bench. Nothing occurred with respect to the complaint against the appellant but a then attorney-at-law, Antoinette Haughton-Cardenas, challenged the jurisdiction of the GLC to pass the Regulations under which it required attorneys-at-law to file an accountant's report or declarations. This court ruled in favour of Antoinette Haughton-Cardenas in 2007. The GLC appealed this court's ruling to the Privy Council, which gave its decision in 2009, in favour of the GLC. The complaint against the appellant was not relisted until 17 July 2010. The complainant applied to withdraw the complaint against the appellant in October 2011. The Committee delivered its decision refusing the withdrawal in February 2012. The Committee did not commence hearing the substance of the complaint until 2013. The complaint against the appellant was therefore before the Committee for approximately seven years. The appellant had already been a judge for approximately eight years by that time. The notice of default had been served on the appellant approximately 10 years before the hearing commenced. At the time the appellant complied in 2007, a

judgment favourable to her situation was delivered by this court. Despite the appellant's compliance and this court's judgment being in her favour, for two years subsequent the GLC persisted, ultimately relisting the matter in 2010.

[132] It seems to me, that there can be no doubt that the appellant was prejudiced by the delay. The GLC knew of the non-compliance from 2003, but did nothing until 2006 by which time the appellant had become a judicial officer. Nevertheless, having been served with notice of the complaint, the appellant fully complied with the Regulations by 2007. By 2010 when the matter was relisted, she was entitled to assume the complaint against her had been laid to rest. There was no other basis for the complaint to be pursued other than to reprimand the appellant for failing to comply and causing the complaint to have been laid in the first place. It was nevertheless, highly prejudicial, so many years later, to revive what should have been by then a dead horse.

[133] Prejudice can be actual or potential. See **Vashti Wood v HG Liquors Ltd and another** (1995) 48 WIR 240, per Wolfe JA (as he then was), referring to the judgment of Forte JA (as he then was), in **West Indies Sugar v Stanley Minnell** (1993) 30 JLR 542, which was cited by the appellant. Forte JA was of the view that the length of delay, is in itself, evidence that there is a substantial risk that a fair trial was not possible. Prejudice, which results from delay, entitles the innocent party to have the matter against him dismissed on that basis. In **Biss v Lambeth, Southwark and Lewisham Health Authority** [1978] 2 ALL ER 125, also cited by the appellant, it was said that, "there comes a time when it (the defendant) is entitled to have some peace of mind and to regard the incident as closed".

[134] I accept the general notion that where there is an appeal in relation to a case which will directly impact the outcome of one that is before it, a tribunal may properly reserve the right to await the decision of the higher court in a similar matter on appeal, before proceeding. However, where that delay will result in a fair hearing being impossible, that delay will be fatal. In the instant case, the delay resulting in the appellant being reprimanded in 2014 for a breach for which a notice of default had been issued from 2003 and the complaint laid 2006, after the appellant became a judicial officer in 2005, was clearly prejudicial.

[135] Furthermore, the delay accruing from the filing of the matter in 2006, the GLC relisting the matter in 2010, after the decision of the Privy Council in 2009, and only finally determining the matter in 2014, was prejudicial to the appellant, who, by that time, was a judicial officer for almost 9 years. This delay may well have affected her standing in the judicial community and her scope for advancement amongst the ranks of the judiciary. As Mrs Dibbs submitted, to have the name of the appellant called out at the various hearings of the Committee in the full hearing and view of other attorneys-at-law and members of the public at the Supreme Court on Saturday mornings was not in the contemplation of the framers of the Constitution and the relevant legislations and to have done so, was also highly prejudicial to the appellant, when the GLC, as I have said, had no jurisdiction to do so.

[136] There is merit in these grounds of appeal.

Issue 6

Whether the GLC was wrong in its interpretation of regulation 16(1) (ground 5 of Civil Appeal No 94 of 2012)

[137] Counsel for the appellant also argued that the GLC failed to understand that the declaration was not required to be filed in the same prescribed time as the accountant's report and that in filing the declaration in 2007, the appellant had complied with the Regulations.

[138] In light of the conclusion I have arrived at with respect to the other grounds, I do not find it necessary to decide this point. In any event, in the decision of **Dorcas White** the Committee interpreted regulation 16(1) as follows:

> "Where the Regulations do apply to attorneys issued with a annual practising certificate, by Reg. 16 the obligation is in our view quite clearly imposed on the attorney to deliver to the Secretary of the General Legal Council an accountant's report for the preceding financial year and the only exception to that is where a declaration is filed in the form of the First Schedule. The accountant's report filed pursuant to Reg. 16(1) relates to the preceding year and equally the declaration which may be filed in lieu where it is unnecessary or impractical to file an accountant's report must relate to the preceding year and must be filed in the time prescribed by Reg. 16(1). The form of declaration in the First Schedule supports such a construction by specifically referring in its heading to Regulations 16 (1) and 18(1)."

[139] There is no reason given to this court for me to find, nor is this the proper case in which this court ought to determine whether the conclusions arrived at by the Committee in the above, with regard to the interpretation to be placed on the operations of regulation 16(1), are incorrect.

Issue 5

Whether the appellant had a legitimate expectation from the recommendation of the Jamaican Bar Association and the GLC, that there were no outstanding issues between herself and the GLC and it was thereby estopped from bringing proceedings against her (ground 4 of Civil Appeal No 94 of 2012)

[140] Again, I do not believe it necessary for this court to determine the issue of whether the recommendation by the GLC or the Jamaican Bar Association (if indeed there was such) of the appellant's general fitness to serve as a judicial officer gives her any legitimate expectations that the GLC would not bring, or is estopped from bringing, a complaint against her.

Disposition

[141] Having given due consideration to this matter, I take the view that the appeal should be allowed and the decision and orders of the Committee be set aside on the basis that it had no disciplinary jurisdiction over the appellant, who was a judicial officer at the time of the proceedings. I would also recommend that the costs of both appeals and costs of the proceedings before the Committee be awarded to the appellant to be taxed, if not agreed.

[142] I regret the additional delay in this matter caused by the failure to deliver this decision in a more timely fashion.

McDONALD-BISHOP JA

ORDER

i. The appeal is allowed.

ii. The decision and orders made by the Disciplinary Committee of the General Legal Council on 26 April 2014 are set aside.

iii. Costs of both appeals and costs of the proceedings before the Disciplinary Committee of the General Legal Council, to the appellant, to be taxed, if not agreed.