

**JAMAICA**

**IN THE COURT OF APPEAL**

**SUPREME COURT CIVIL APPEAL NO 41/2011**

**MOTION NO 12/2016**

**BEFORE: THE HON MISS JUSTICE PHILLIPS JA  
THE HON MRS JUSTICE MCDONALD-BISHOP JA  
THE HON MISS JUSTICE P WILLIAMS JA**

**BETWEEN THE GENERAL LEGAL COUNCIL APPLICANT  
(ex parte ELIZABETH HARTLEY)**

**AND JANICE CAUSWELL RESPONDENT**

**Michael Hylton QC and Miss Carlene Larmond instructed by Rattray Patterson  
Rattray for the applicant**

**John Vassell QC and Courtney Bailey instructed by DunnCox for the  
respondent**

**27 February, 7 April and 29 June 2017**

**PHILLIPS JA**

[1] I have read, in draft, the reasons for judgment of my learned sister McDonald-Bishop JA. I agree with her reasoning and conclusion and I have nothing useful to add.

## **MCDONALD-BISHOP JA**

[2] This is a notice of motion brought by the applicant, the General Legal Council, for conditional leave to appeal to Her Majesty in Council from the decision and order of the court made on 15 July 2016 in favour of the respondent, Janice Causwell. The respondent had brought an appeal from a decision of the applicant's Disciplinary Committee ("the Committee") made on 3 February 2011, during the course of the hearing of disciplinary proceedings instituted against her at the instance of Mrs Elizabeth Hartley who filed a complaint to the applicant on 21 March 2002. The appeal was allowed and the decision of the Committee was set aside with costs to the respondent.

[3] On 27 February 2017, we heard the arguments of counsel on the motion and on 7 April, we gave our decision as follows:

"The motion for conditional leave to appeal to Her Majesty in Council, filed by the applicant on 2 August 2016, is refused with costs to the respondent to be agreed or taxed."

We promised then to produce written reasons for the decision at a later date. This is in fulfilment of that promise.

### **The motion**

[4] The leave to appeal to Her Majesty in Council was sought pursuant to section 3 of the Jamaica (Procedure in Appeals to Privy Council) Order in Council 1962, and

section 110(2)(a) of the Constitution of Jamaica ("the Constitution"). By way of reminder, section 110(2)(a) of the Constitution reads:

"(2) An appeal shall lie from decisions of the Court of Appeal to Her Majesty in Council with the leave of the Court of Appeal in the following cases-

(a) where in the opinion of the Court of Appeal the question involved in the appeal is one that, by reason of its great general or public importance or otherwise, ought to be submitted to Her Majesty in Council, decisions in any civil proceedings; ..."

[5] The motion was supported by the affidavit of Allan S Wood QC, chairman of the applicant, sworn to on 29 July 2016. Mr Wood deponed that the questions that are involved in the appeal concern the nature of disciplinary proceedings and the interpretation of the provisions of the Legal Profession Act ("the LPA") as it relates to the categories of persons by whom complaints can be filed and pursued. He identified four questions, which he said he "verily" believes that by reason of their great general or public importance or otherwise, ought to be submitted to Her Majesty in Council. The questions are:

- "a. Whether disciplinary proceedings are of such a nature that as a matter of public law the doctrine of ratification that would have applied to proceedings in private law is inapplicable.
- b. Whether disciplinary proceedings before the Disciplinary Committee of the General Legal Council are quasi criminal in nature so that public law does not permit ratification of the proceedings.
- c. Is the requirement to meet the criminal standard of proof in the substantive disposal of disciplinary proceedings:

- i. a factor to consider in determining whether a flaw in the commencement of those proceedings is capable of being cured?
  - ii. a sufficient basis on which to conclude that those proceedings are criminal in nature or are not civil?
- d. Whether the finding of the Court of Appeal that disciplinary proceedings **'are clearly distinguishable from ordinary civil proceedings'** is consistent with or is a departure from the conclusion of the Judicial Committee in **General Legal Council ex parte Basil Whitter (at the instance of Monica Whitter) v Barrington Earl Frankson** [2006] UKPC 42."

[6] The fundamental issue which arose for consideration on this motion, therefore, was whether the questions identified by Mr Wood, as arising from the decision of this court, have satisfied the criterion of being of "great general or public importance or otherwise" for conditional leave to be granted for an appeal to be made to Her Majesty in Council.

### **The background**

[7] It is considered useful to provide an insight into the circumstances that have led to the filing of the motion. For a much greater appreciation of the circumstances leading to these proceedings, attention is directed to the factual background comprehensively set out by Phillips JA at paragraphs [2]- [25] in the judgment of the court in **Janice Causwell v The General Legal Council (ex parte ELIZABETH HARTLEY)** [2016] JMCA Civ 42. For present purposes, however, a synopsis of the salient facts will suffice.

[8] The facts are as follows: The respondent is an attorney-at-law and was at all material times a partner in the firm of attorneys-at-law, DunnCox. Disciplinary proceedings were instituted against her by the applicant on the basis of a complaint of professional misconduct made by Mrs Elizabeth Hartley on 20 March 2002. The affidavit of Mrs Hartley in support of the complaint stated that she was acting as agent for Mr Lester deCordova, who was the client of the respondent but who lived overseas. Mrs Hartley had been dealing with the respondent on behalf of Mr deCordova in relation to an application for grant of probate in the estate of his late father, Mr Altamont deCordova. In her affidavit, Mrs Hartley set out the facts constituting the basis of the complaint against the appellant. Subsequent to the filing of the complaint, the respondent, on 5 May 2003, communicated with Mr deCordova concerning developments in his matter and made certain requests of him in order for the matter to proceed in the light of those new developments. She also referred to earlier correspondence to Mr deCordova dated 19 May 2000, in which she had indicated that the firm no longer wished to act for him in circumstances in which they no longer enjoyed his confidence.

[9] On 5 March 2004, Mr deCordova, by letter, sought to remind the respondent that he had previously informed her that Mrs Hartley was acting on his behalf and had his full confidence. He queried why the respondent had written to him and not Mrs Hartley and he instructed the respondent to communicate with Mrs Hartley and their attorney-at-law, Miss Aisha Mulendwe, who was acting for him in respect of the complaint to the applicant and that they would inform her what was to be done. He ended the letter by

instructing the respondent to write to Mrs Hartley and Miss Mulendwe and not to write to him again.

[10] On 29 November 2004, Mr deCordova wrote to the respondent again, reprimanding her for communicating with him directly and ignoring Mrs Hartley, who he said was his appointed agent. He then indicated to the respondent that he was copying the applicant on the letter "so that they can be further informed of [the respondent's] persistent unprofessional conduct".

[11] On 12 September 2006, Mrs Hartley collected the file relating to Mr deCordova's matter from the respondent and DunnCox.

[12] On 29 March 2008, the disciplinary hearing before the Committee commenced and Mrs Hartley was cross-examined. The matter was adjourned and at the resumption of the hearing on 10 April 2010, Mr Vassell QC, representing the respondent at the hearing, made a query as to whether the panel had been provided with the authority by Mrs Hartley to make the complaint. He took a preliminary objection on the basis that there was no evidence that the agency of Mrs Hartley to lay the complaint existed at the material time. It was established as an incontrovertible fact, following the evidence of Mrs Hartley and the production of a power of attorney given by Mr deCordova to Mrs Hartley, that at the time Mrs Hartley had filed the complaint against the respondent, she did not have the authority of Mr deCordova to do so.

[13] The hearing continued until 6 November 2010 and on 3 February 2011, the Committee ruled on the preliminary point. It held that the preliminary point failed. The

Committee, after reviewing the law on agency and ratification, the provisions of section 12 of the LPA, and the relevant dicta from several authorities, opined that although there was no evidence to support the position that Mrs Hartley had been authorised by Mr deCordova to bring the complaint at the time it was laid, Mr deCordova by the two letters he had written in March and November 2004, had ratified the conduct of Mrs Hartley in filing and pursuing the complaint and so, the proceedings before it were not a nullity. The Committee ruled that the hearing should continue.

[14] The gravamen of the Committee's opinion was recorded as follows at paragraph 15 of the decision (reproduced at paragraph [23] of the judgment of this court in

**Janice Causwell v The General Legal Council):**

“If an aggrieved person can authorize someone else to bring a complaint against an Attorney on his behalf and the actual aggrieved person could have lawfully brought the claim, we cannot see why an authority given after the complaint is laid cannot ratify the agency. Ratification relates back to the very unauthorised act of the agent. The filing of a complaint against an Attorney under the **Legal Profession Act** is similar to filing suit as in the case of **Danish Mercantile** where the Solicitor had no authority to file suit. It is not in the nature of a criminal offence which can never be made right and therefore must be a true nullity, but more akin to a civil action which can be made good as was recognised by Kelly C.B. in **Brook v Hook** supra when he distinguished a criminal offence from a civil act and stated that a civil act was '**capable of being made good by subsequent recognition or declaration; but no authority is to be found that an act which is itself a criminal offence is capable of ratification.**' (page 100). From this statement it can be inferred that civil acts can be subsequently ratified unlike criminal acts which by its various nature could never be made acceptable by ratification. In the same case Martin J., who gave the dissenting judgment, made an important observation which we adopt and which is that:

**'if a contract be void upon the ground of it being of itself and in its own nature illegal and void, no ratification of it by the party in whose name it was made by another will render it a valid contract; but if a contract be void upon the ground that the party who made it in the name of another had no authority to make it, this is the very thing which the ratification cures and to which the maxim applies *omnis rati habitio retrotrahitur et mandato a equiparature.*'**

**No words can be more expressive. The ratification is dragged back as it were, and is made equipollent to a prior command."** (Emphasis as stated in the decision)

### **The respondent's appeal from the decision of the Committee**

[15] The respondent appealed against that decision on four grounds but only three were pursued at the hearing. The three grounds were:

- i. The learned panel erred in failing to appreciate the difference between cases where a principal's authority is required by an agent in order to validly initiate disciplinary proceedings under the Legal Profession Act, and cases where that authority is required to commence *inter partes* civil proceedings.
- ii. The learned panel accordingly fell into error by applying cases from the general Law of Contract, and cases in relation to the commencement of civil actions to the facts of the present case, in determining the question whether the unauthorized initiation of disciplinary proceedings by the Complainant could be subsequently ratified, and in so doing failed to properly consider and recognize that the present case involves the initiation of disciplinary proceedings pursuant to a limited statutory power conferred by section 12 of the Legal [Profession] Act.

- iii. The learned members of the panel erred in forming the view that only a criminal act, which can never be made right and / or made acceptable by ratification and is therefore a true nullity, could not be subsequently ratified."

[16] Phillips JA, with whom the other members of the court (Sinclair-Haynes and P Williams JJA) agreed, distilled three questions at paragraph [27] of the judgment that she saw as constituting the real questions in controversy between the parties. The three questions are as follows:

- "1. Can a complaint initiated by an agent in respect of disciplinary proceedings under section 12 of [the] LPA be subsequently ratified by the principal, if commenced without the principal's authority?
2. Would the position be the same or different if the action were commenced without the principal's authority in *inter partes* civil proceedings? and
3. Is it only a criminal act which can never be made right, and which is not therefore amenable to ratification that is a nullity?"

[17] At paragraph [47], Phillips JA set out the crux of the issue between the parties in these terms:

"As indicated, in my view the real question of controversy between the parties is set out in paragraph [27] herein. In short- Was the complaint a nullity? Can it be subsequently ratified?"

[18] Further at paragraph [54], she again stated:

"The real question therefore is whether the application which was filed by Mrs Hartley, without any mention of her acting as the agent of the client, Mr deCordova, with its accompanying affidavit, which did mention that she was so acting, both having been filed without authority at the time

of filing, were simply void, and a nullity, to which life could not be given by ratification.”

[19] Having treated exhaustively with the submissions of counsel, the provisions of section 12 of the LPA, and various authorities, to include: **General Legal Council ex parte Basil Whitter (at the instance of Monica Whitter) v Barrington Earl Frankson** [2006] UKPC 42; **Bowyer, Philpott & Payne Limited v Mather** [1919] 1 KB 419; **Re Pritchard (deceased)** [1963] 1 All ER 873; **Leymon Strachan v The Gleaner Company Limited and another** [2005] UKPC 33; **Right d Fisher, Nash and Hyrons v Cuthell** (1804) 5 East 491; **Shanks v Central Regional Council** (1987) SLT 410; and **Danish Mercantile Co Ltd and others v Beaumont and another** [1951] Ch 680, Phillips JA opined that the Committee erred in concluding that in the circumstances of the case the complaint could be later ratified, having been commenced unauthorisedly (paragraph [67] of the judgment).

[20] Phillips JA, having extracted the issues that required resolution, concluded that the *rationes decidendi* of the four cases relied on by Mr Vassell for the respondent, were dispositive of the appeal. Those cases were **Bowyer, Philpott & Payne Limited v Mather; Re Pritchard; Right v Cuthell** and **Shanks v Central Regional Council**.

[21] She then provided the *ratio decidendi* of the instant case at paragraph [65] in these terms:

“[65] So, in keeping with these authorities, as Mrs Hartley is not an aggrieved person, she could not therefore lay a complaint under section 12 of the LPA. Filing the complaint

as she did, would result in the proceedings being as though they had never been started at all due to a fundamental defect in issuing the application, namely, it had not complied with the category of persons that could lay the complaint. Thus, even if the proceedings appeared to have been duly issued, they would fail as having been in breach of a statutory requirement, Mrs Hartley not being an aggrieved person as stated aforesaid, and there being no evidence that she had the authority to act as agent at the time of the issuing of the complaint, which the respondent cannot deny as a fact. The proceedings would therefore be a nullity as described by Upjohn LJ in **Re Pritchard**, and the subsequent letters could not cure the defect."

[22] She then continued at paragraph [66]:

"[66] The eminent author and professor of law, Edwin Peel, at Fellow of Keble College, Oxford, in his text "The Law of Contract," 13<sup>th</sup> edition, paragraph, 16-049, made this statement on the subject:

'Although ratification is not confined to lawful acts, an act which is simply void in law cannot be validated by ratification. Similarly, a principal cannot become liable if the unauthorised contract is prohibited by statute: "life cannot be given by ratification to prohibited transactions". This is an additional reason for saying that a forgery cannot be ratified.'

The proceedings therefore, before the Committee are clearly distinguishable from ordinary civil proceedings and are governed specifically by the LPA and in fact matters before the Committee require the criminal standard of proof (see **Campbell v Hamlet** [2005] UKPC 19). I accept that if they were civil proceedings simpliciter, then an unauthorised act could be subsequently ratified, and if it were possible in the instant case it would have related back to the date of filing, and embraced the prima facie decision which had been made later. However, I am not of that view, and based on all that I have stated, the proceedings

were void as initiated and therefore ineffectual *ab initio*, and could not be subsequently ratified.”

[23] The fundamental plank or the heart of the decision of the court was that the complaint from the very outset was a nullity, it being commenced by an unauthorised person under the LPA and, therefore, as a nullity, it could not have been subsequently ratified.

### **The applicant's contention**

[24] The major aspects of the applicant’s contention in support of the motion for leave to appeal to Her Majesty in Council may be summarised thus:

- i. The issues involved in the questions to be submitted to Her Majesty in Council are of great general or public importance because they raise important questions of law that affect the rights of persons other than the parties to this appeal. See **Rosh Marketing Limited v Capital Solutions Limited** (unreported), Court of Appeal, Jamaica, Supreme Court Civil Appeal No 63/2008, judgment delivered 10 December 2009.
- ii. The applicant is an entity with statutory authority and responsibility to discipline attorneys-at-law. The answers to the questions raised on this appeal will apply to every other disciplinary proceeding. Few issues can be more

important than the nature of disciplinary proceedings. The resolution of this appeal will require a consideration of both the extent to which public law or private law principles apply, and the consequence of disciplinary proceedings being "*quasi* criminal" in nature. The answers will plainly affect the rights of other complainants and attorneys-at-law.

- iii. The issues are of great general and public importance because this is the first time these specific questions have been judicially considered. Neither party in this appeal was able to direct the court's attention to a previous decision by a Jamaican court or, indeed, any court on these issues vis-à-vis disciplinary proceedings. The issue in this case took a novel shape when one looks at the four cases relied on by the respondent. None involved a disciplinary proceeding and none was tried under the rubric of "quasi-criminal". The parties and the court were forced to reason by analogy and reference to cases dealing with different legislation and circumstances. It is therefore a new question being decided by the court for the first time and there is lack of direct authority to guide the court.

- iv. In **Vehicles and Supplies Limited and another v The Minister of Foreign Affairs, Trade and Industry** (1989) 26 JLR 390, this court granted leave to appeal to her Majesty in Council for a similar reason. Rowe P, speaking for the court, formed the view that since the statutory provision in that case was being interpreted for the first time and so no authority existed, the grant of leave to appeal to Her Majesty in Council was justifiable. Rowe P's reasoning in **Vehicles and Supplies** is equally applicable to the instant case and so the court should grant leave on this basis.
- v. Even if the court does not accept that these issues are of great general or public importance, the court should still grant leave to appeal to Her Majesty in Council under the "or otherwise" rubric of section 110(2)(a). The case would fall within this provision because the decision of the court, although it is technically interlocutory, is final, in that, the court has declared that the proceedings were void *ab initio*. The decision would therefore be "conclusive of the action". The issues also require a definitive statement of law from Her Majesty in Council, the highest judicial authority. See dicta of Downer JA and Wolfe JA (as he

then was) in **Olasemo v Barnett Limited** (1995) 51 WIR 191.

- vi. The statutory requirements for conditional leave to Her Majesty in Council are satisfied by the applicants on both limbs. Accordingly, the motion should be granted.

### **The respondent's response**

[25] The respondent strongly opposed the motion, and relied on her affidavit sworn to on 29 July 2016. She contended, through learned Queen's Counsel, Mr Vassell, as follows:

- i. The questions involved in the proposed appeal do not raise difficult questions of law or questions in relation to which there could be serious debate before Her Majesty in Council. As such, they are of no great general or public importance. Also, no ground exists to grant leave on the basis of the "or otherwise" rubric in the section.
- ii. The court identified the issues that were before it on appeal and deploying relevant authorities answered these questions in a way which was clear and correct and as such could not reasonably be the subject of controversy on a further appeal.

- iii. It is correct that a nullity cannot be subsequently ratified and no issue was taken by the applicant with this aspect of the finding and there is nothing to suggest from the affidavit in support of the motion that it is proposed to contend to the contrary at the Privy Council, if leave is granted.
  
- iv. In relation to the issue whether the complaint was a nullity, incapable of ratification, on which issue was joined in the appeal and which leave is sought to argue in the Privy Council, there is really no scope for any reasonable argument that the court's analysis and conclusion on this issue are open to reasonable challenge.
  
- v. No question arises on the judgment of the court with respect to the nature of disciplinary proceedings nor with respect to the categories of persons by whom complaints can be filed and pursued. It is unarguable that the category of persons is set out in section 12 of the LPA. What was in issue on appeal was whether a complaint filed by someone who is neither an aggrieved person nor someone authorized by an aggrieved person at the time of filing is a nullity. Once it is found to be a nullity, there was no issue arising on appeal and ratification was not possible.

- vi. The decision of the court did not flow from its observation on the issues raised by the applicant's proposed questions. The court's decision was based on the interpretation of the LPA and the application of well-known and settled principles regarding nullity and ratification in that context. The observation of the court on the matters raised by the applicant's questions arose from the issues in controversy between the parties and on which the decision of the Committee was based, but did not form the basis of the court's decision. In any event, the reasoning of the court in relation to those matters was reasonable and unassailable as a matter of law.
  
- vii. Although the issues in the appeal were being determined for the first time under the specific statute involved, the case is different from that with which the court was concerned in **Vehicles and Supplies**, and so the approach taken by the court in that case is not applicable to the circumstances of this case.
  
- viii. The motion should therefore be refused.

## Discussion

[26] The motion for leave to appeal stood for determination on the application of section 110(2)(a) of the Constitution, which clearly establishes the requirements that must be satisfied for leave to appeal to Her Majesty in Council to be granted. This has been made absolutely clear in several authorities from this court, some of which have been cited by the parties in this case. See, for instance: **Georgette Scott v The General Legal Council (Ex-Parte Errol Cunningham)** (unreported), Court of Appeal, Jamaica, Supreme Court Civil Appeal No /2008, Motion No 15/2009, judgment delivered 18 December 2009; **Viralee Bailey-Latibeaudiere v The Minister of Finance and Planning and the Public Service and others** [2015] JMCA App 7; **National Commercial Bank Jamaica Limited v The Industrial Disputes Tribunal and Peter Jennings** [2016] JMCA App 27 and **Sagicor Bank Jamaica Limited (formerly known as RBC Royal Bank (Jamaica) Ltd formerly known as RBTT Bank Jamaica Ltd) v Marvalyn Taylor-Wright** [2016] JMCA App 34.

[27] The principles distilled from the relevant authorities may be summarised thus:

- i. Section 110(2) involves the exercise of the court's discretion. For the section to be triggered, the court must be of the opinion that the questions, by reason of their great general or public importance or otherwise, ought to be submitted to Her Majesty in Council.

- ii. There must first be the identification of the question involved. The question identified must arise from the decision of the Court of Appeal, and must be a question, the answer to which is determinative of the appeal.
- iii. Secondly, it must be demonstrated that the identified question is one of which it can be properly said, raises an issue, which requires debate before Her Majesty in Council. If the question involved cannot be regarded as subject to serious debate, it cannot be considered one of great general or public importance.
- iv. Thirdly, it is for the applicant to persuade the court that the question identified is of great general or public importance or otherwise.
- v. It is not enough for the question to give rise to a difficult question of law; it must be an important question of law or involve a serious issue of law.
- vi. The question must be one which goes beyond the rights of the particular litigants and is apt to guide and bind others in their commercial, domestic and other relations.

- vii. The question should be one of general importance to some aspect of the practice, procedure or administration of the law and the public interest.
- viii. Leave ought not be granted merely for a matter to be taken to the Privy Council to see if it is going to agree with the court.
- ix. It is for the applicant to persuade the court that the question is of great general or public importance or otherwise.

[28] Having considered the facts of the instant case, the decision of the court in respect of which leave to appeal to Her Majesty in Council is being sought, the helpful submissions of counsel on both sides as well as the applicable law, I was propelled to the view that the respondent is, indeed, correct in her contention that the questions formulated by the applicant as being involved in the proposed appeal do not satisfy the requirements for leave to be granted for an appeal to Her Majesty in Council.

[29] The issue before the Committee, as a preliminary point, was simply whether Mrs Hartley was a person who could have brought the complaint against the respondent at the time she did, having not been clothed with the necessary authority to act as agent for Mr deCordova at the material time. The issue required a consideration and interpretation of section 12 of the LPA that sets out who can file a complaint under the Act. The court, upon a careful and detailed analysis of the relevant law, concluded that

on a literal reading of section 12, Mrs Hartley was not a person who could have lawfully filed a complaint at the time she did. The plain fact, as found by the court, is that she did not have the necessary locus standi in accordance with section 12 of the LPA to bring the complaint against the respondent. It follows logically then, based on the several authorities examined and accepted by the court, that the complaint she made without the requisite legal authority was a nullity.

[30] The law is well settled that a nullity cannot be revived by any subsequent act. It means then that a purported ratification cannot validate an act that is a nullity. Phillips JA's reasoning and conclusion, therefore, made it abundantly clear that the pivotal finding on which the decision stands is that that there had been a fundamental defect in the commencement of the proceedings because there was a failure to comply with the requirements of the statute relating to the commencement of disciplinary proceedings against the respondent. That failure, she concluded, did not constitute a mere irregularity but rendered the whole proceedings a nullity as described by Upjohn LJ in **Re Pritchard** and therefore, Mr deCordova's letters could not cure the defect (see paragraph [65] of the judgment).

[31] That was the core finding of the court, which was dispositive of the appeal. As Mr Vassell pointed out, and which is accepted, even if the applicant were to succeed on the questions proposed, the decision of the court would remain untouched because no challenge can be successfully posed, and none has been posed on this motion, to the conclusion that the complaint brought by Mrs Hartley was a nullity and that as a nullity, it could not be subsequently ratified by Mr deCordova.

[32] The learned judge of appeal had laid down that critical finding that was dispositive of the appeal before going on to observe that (i) the proceedings are clearly distinguishable from ordinary civil proceedings; (ii) they are governed specifically by the LPA; and (iii) they require the criminal standard of proof. The assertions do accurately reflect the law relating to these proceedings and seem quite unobjectionable in and of themselves. It seems, however, that the issue is being taken with what Phillips JA subsequently said after making the foregoing observations about the nature of the proceedings that:

“I accept that if they were civil proceedings simpliciter, then an unauthorised act could be subsequently ratified, and if it were possible in the instant case it would have related back to the date of filing, and embraced the prima facie decision which had been made later. However, I am not of that view...”

[33] This view expressed by the learned judge of appeal has evidently informed the questions raised by the applicant as to whether the proceedings are quasi-criminal and for that reason, ratification would not apply. Her pronouncement, however, as to whether the proceedings are civil proceedings simpliciter or not, cannot reasonably be said to have given rise to any question arising from the decision of the court that would justify an appeal to Her Majesty in Council. The observations were evidently made concerning the nature of the proceedings because of the issues Phillips JA had identified at the outset as being in controversy between the parties on the appeal as well as based on the reasoning of the Committee in arriving at its ruling that the action of Mrs Hartley was ratified by Mr deCordova.

[34] The Committee, in concluding that ratification applied to validate the complaint of Mrs Hartley, had clearly followed the line of reasoning that the principles applicable to ordinary civil proceedings were applicable to the proceedings before them. Phillips JA deferred from that view but that was by no means determinative of the question the court had to resolve and was not the fulcrum of the decision. This is quite evident from what Phillips JA went on to further explain, after commenting on the special features of the proceedings before the Committee, that: "... B]ased on all that I have stated, the proceedings were void as initiated and therefore ineffectual *ab initio* and could not be subsequently ratified". The reason for her conclusion, which was what formed the basis of the decision of the court, was that there was a fundamental defect in the commencement of the proceedings, resulting from non compliance with the provisions of the statute in the laying of the complaint by Mrs Hartley. The problem she identified that rendered the proceedings a nullity and ratification as being inapplicable did not result from the nature of the proceedings.

[35] Similarly, in paragraph [57], Phillips JA, having reviewed the relevant authorities, proceeded to make the point that it is clear from the *ratio decidendi* of the case of **Bowyer, Philpott & Payne Limited v Mather** that the doctrine of ratification operates differently in public law than in private law. She then stated:

"In my view, in disciplinary proceedings which have as their *raison d'être* the protection of the interests of members of the public, while maintaining standards in the legal profession, the intention of the legislature is made manifest that initiation of proceedings should not be lightly undertaken as the statute mandates that only certain persons can do so."

[36] Again, this comment by Phillips JA seems to be what has given rise to some of the questions proposed by the applicant concerning the private law/ public law dichotomy and the question of ratification. However, it is difficult to see how it could seriously be argued that the comment the learned judge of appeal made in the context she did, is objectionable as a matter of law, so as to give rise to a serious issue worthy of debate before Her Majesty in Council. In addition, the view she expressed that disciplinary proceedings of the type before the Committee sound in public law because of the public interest component in such proceedings, does not constitute the basis of the decision arrived at that the complaint could not be ratified. The questions formulated by the applicant for the purpose of determining the applicability of ratification to public law, as distinct from private law, cannot fairly be said to have arisen from the decision of the court.

[37] It therefore means that the questions posed by the applicant are merely tangential to the decision of the court and would only be, at the highest, of passing academic interest, were they to be allowed to be submitted to the Privy Council. The response to them, even if most favourable to the applicant, would certainly not be determinative of the appeal on the merits.

[38] The argument advanced on behalf of the applicant that the circumstances in this case are similar to what obtained in **Vehicles and Supplies** in which this court granted leave to appeal to Her Majesty in Council is not accepted. There is no question arising from the decision, and which has been proposed by the applicant, that seeks to bring into focus the proper interpretation of section 12 of the LPA. The court's

interpretation of the relevant provision of the LPA as to who may bring a complaint within the statute is not challenged, and is, indeed, unchallengeable. The court, in resolving the single question for determination before it, paid due regard to clear and compelling authorities, even though those authorities did not specifically involve disciplinary proceedings. Although the court may have been deciding the question in issue for the first time, and so there was no direct authority on the subject that was available to it, the decision has not given rise to any issue of great general or public importance that warrants debate before Her Majesty in Council.

[39] Accordingly, the contention of the applicant that conditional leave to appeal to Her Majesty in Council should be granted, on the basis that the decision of the court has given rise to questions of great general or public importance, is rejected.

**Whether the questions ought 'otherwise' to be submitted to Her Majesty in Council**

[40] Another legitimate basis for leave to be granted for an appeal to Her Majesty in Council is under the rubric of "or otherwise" contained in section 110(2)(a). See, for instance, **Olasemo v Barnett Limited** and **Sagicor Bank Jamaica Limited v Marvalyn Taylor-Wright**. Wolfe JA (as he then was) explained in **Olasemo v Barnett Limited** at page 201 that the phrase "or otherwise" was included by the legislature "to enlarge the discretion of the court to include matters which were not necessarily of great general or public importance, but which in the opinion of the court may require some definitive statement of the law from the highest judicial authority of the land". The phrase, he continued, "does not per se refer to interlocutory matters.

The phrase 'or otherwise' is a means whereby the Court of Appeal can, in effect, refer a matter to their lordships' Board for guidance on the law".

[41] Having given due consideration to the submissions made on behalf of the applicant on this limb of the provision, as well as the counter-arguments of the respondent, I have found it difficult to accept that there is anything in the decision of the court that has raised any issue "which requires some definitive statement of the law from the highest judicial authority of the land" or which requires guidance from Her Majesty in Council.

[42] Accordingly, there is nothing in all the circumstances to bring the case within the rubric of "or otherwise" so that conditional leave may be granted on this alternative basis as contended by Mr Hylton QC, on the applicant's behalf.

### **Conclusion**

[43] The applicant has failed to demonstrate to the satisfaction of this court that there is any question of great general or public importance or otherwise that has arisen from the decision of this court that should be referred to Her Majesty in Council. Accordingly, the criterion laid down by section 110(2)(a) of the Constitution for conditional leave to be granted was not satisfied by the applicant. For the foregoing reasons, I concur with the views of my sisters that the motion should be refused and that the order detailed at paragraph [3] be made.

**P WILLIAMS JA**

[44] I too have read in draft the reasons for judgment of McDonald-Bishop JA. I agree with her reasoning and conclusion and have nothing useful to add.