

**JAMAICA**

**IN THE COURT OF APPEAL**

**BEFORE: THE HON MISS JUSTICE EDWARDS JA  
THE HON MRS JUSTICE DUNBAR GREEN JA  
THE HON MRS JUSTICE G FRASER JA (AG)**

**MISCELLANEOUS APPEAL NO COA2022MS00002**

<b>BETWEEN</b>	<b>ANTHONY ARMSTRONG</b>	<b>APPELLANT</b>
<b>AND</b>	<b>DISCIPLINARY COMMITTEE OF THE GENERAL LEGAL COUNCIL</b>	<b>RESPONDENT</b>

**Hugh Wildman instructed by Hugh Wildman & Company for the appellant**

**Mrs Sandra Minott-Phillips KC and Jamaiq Charles instructed by Myers Fletcher  
& Gordon**

**27 May 2024 and 1 May 2026**

**Legal profession – Disciplinary proceedings – Professional misconduct by attorney-at-law – Breach of Canon 1 (b) of the Legal Profession (Canons of Professional Ethics) Rules – False attestation by attorney-at-law that Instruments of Transfer were signed in his presence – Whether Disciplinary Committee erred in the absence of specific allegation of false attestation – Delay of disciplinary proceedings – Whether automatic stay warranted**

**Fair hearing – Right of attorney to be present during disciplinary hearing – Whether contact with potential witness by opposing counsel deprived attorney of a fair hearing – Bias – Whether actual or apparent bias where legal firm of member of panel of Disciplinary Committee acted in previous unrelated transaction – Whether requirement to hear complaint in private breached, sections 16(3), 16(4) of the Charter of Fundamental Rights and Freedom – Sections 12, 16, 17 of the Legal Profession Act - Fourth Schedule, Rules 3, 10, 14, Legal Profession (Disciplinary Proceedings) Rules**

**EDWARDS JA**

[1] I have read, in draft, the judgment of Dunbar Green JA. I agree with her reasoning and conclusion and have nothing to add.

## **DUNBAR GREEN JA**

### **Introduction and background**

[2] The General Legal Council ('the GLC') is the statutory body charged with regulating professional conduct within the legal profession in Jamaica. Pursuant to its mandate, the GLC appoints a Disciplinary Committee ('the Committee'), vested with jurisdiction to investigate, hear, and determine complaints of professional misconduct brought against attorneys-at-law by aggrieved persons.

[3] This is an appeal from the decision of a panel of the Committee which heard a complaint brought against attorney-at-law, Anthony Armstrong ('the appellant'). The Committee found the appellant guilty of professional misconduct contrary to Canon I(b) of the Legal Profession (Canons of Professional Ethics) Rules ('the Canons').

[4] On 27 June 2019, Michael Adams ('the complainant') lodged a complaint with the GLC against the appellant, alleging professional misconduct. The gravamen of the complaint was that the appellant had breached Canons I(b), III(f), and III(k) of the Canons, by facilitating the sale of three properties formerly owned by the complainant without his knowledge or authorisation.

[5] Between 14 December 2019 and 22 October 2021, the Committee convened a disciplinary hearing to consider the complaint. On 28 January 2022, the Committee determined that the allegations of fraudulent conduct were not proved to the requisite standard of proof beyond a reasonable doubt. Accordingly, no breach of Canons III(f) or III(k) was established. Nonetheless, the Committee concluded that the appellant was guilty of professional misconduct in breach of Canon I(b). This conclusion was predicated upon the appellant's admission, during the hearing, that he had signed the Instruments of Transfer ('the transfers') relating to the sale of the properties as a witness to the complainant's signature, notwithstanding that the complainant had not executed the documents in his presence.

[6] On 2 February 2022, following a sanction hearing, the Committee made the following orders:

- “1. [The appellant] is hereby reprimanded.
2. [The appellant] shall pay a fine of \$250,000.00 to the General Legal Council within thirty (30) days of the date hereof.
3. Costs of these proceedings in the amount of \$30,000.00 are to be paid by the [appellant] to the General Legal Council.”

[7] Dissatisfied with the Committee’s finding of professional misconduct, the appellant filed an amended notice of appeal, on 4 August 2022, seeking, among other things, to have this court set aside the orders of the Committee.

### **The governing statutory framework**

[8] Section 12(1) of the Legal Profession Act (‘the LPA’) empowers the Committee to entertain complaints from “[a]ny person alleging himself aggrieved by an act of professional misconduct (including any default) committed by an attorney,” in accordance with the rules of procedure made under section 14.

[9] Section 12(4) prescribes the sanctions that the Committee may impose “as it thinks fit”. These sanctions are imposed for non-compliance with canons promulgated pursuant to powers conferred upon the GLC by section 12(7) of the LPA. It is unnecessary to set out those provisions in detail, since the nature of the sanction imposed in this case was not specifically challenged.

[10] The canons relevant to this appeal are Canons I(b), III(f), and III(k), which provide as follows:

#### Canon I(b)

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

Canon III(f)

“[a]n Attorney shall not act contrary to the laws of the land, or aid, counsel or assist any man to break those laws.”

Canon III(k)(ii)

“[w]here an Attorney commits any criminal offence which in the opinion of the Disciplinary Committee is of a nature likely to bring the profession into disrepute, such commission of the offence shall constitute misconduct in a professional respect, if –

(i)...

(ii) although he has not been prosecuted the Committee is satisfied of the facts constituting such criminal offence; or

(iii)...”

### **The complaint**

[11] By application, dated 27 June 2019, the complainant lodged a complaint with the GLC, requiring the appellant to answer allegations that the “matters of fact stated [in his supporting affidavit] constitute conduct unbecoming [the appellant’s] profession ... in his capacity [as an] attorney-at-law”.

[12] In his supporting affidavit, filed on 27 June 2019, and in a further affidavit filed on 4 March 2020, the complainant alleged that the appellant: (a) sold three properties, previously owned by him, without his knowledge or authorization while he was incarcerated in the United States of America (‘the USA’); (b) admitted to doing so; (c) promised to make restitution; (d) commenced making payments; and (e) failed to make full restitution as promised.

The complainant further contended that, by fraudulently selling his properties, the appellant was in breach of Canons I(b), III(f), and III(k).

## **The appellant's response to the complaint**

[13] Briefly stated, the appellant denied that he sold the properties without the complainant's knowledge or consent. In advancing this contention, he relied on the report of a handwriting expert, asserting that the sales were carried out with the complainant's knowledge and authorisation, and that the proceeds were remitted to the complainant through his authorised agents.

[14] The appellant, however, admitted that after the transactions had long been completed and the proceeds turned over to the complainant's agents, he paid additional sums of money directly to the complainant. He explained that these payments were made out of concern for his family, fear of embarrassment, and the risk of reputational harm, as the complainant had threatened him and his family with death if he did not personally pay him for the properties.

## **Summary of proceedings before the Committee**

13] The Committee convened two hearings in the matter: a liability hearing and a sanction hearing. Given the narrow issue arising on this appeal, the evidence is summarised as follows.

### The liability hearing

#### *The evidence of the complainant*

[15] Between 1999 and 2003, the complainant purchased three properties in Jamaica ('the subject properties'). These were registered in the Register Book of Titles as follows:

- (i) Volume 1277 Folio 527, referred to as the Columbus Heights Property;
- (ii) Volume 1266 Folio 572, known as the Brompton Road Property (jointly registered in his name and that of his cousin, Shelly-Ann Peart Campbell); and

(iii) Volume 1188 Folio 347, referred to as the Fairview Court Property.

He stated that the appellant acted as his attorney in those transactions, and that the titles were entrusted to him for safekeeping.

[16] In describing the course of dealing, the complainant explained that he travelled to Jamaica whenever a payment was required, leaving funds with his cousin's husband, Hugh Campbell, who would then deliver them to the appellant. He recalled signing documents in the appellant's presence for two of the transactions, while for the third, he signed and left the papers with his cousin, Shelly-Ann Campbell, for delivery to the appellant.

[17] In 2003, while residing in the United States of America ('USA'), the complainant was convicted of drug-related offences and sentenced to 15 years' imprisonment, of which he served 12. Upon release, he claimed to have discovered that all three properties had been sold by the appellant, the first sale occurring on 4 January 2004, three months after his incarceration.

[18] According to his evidence, Mr Campbell was the first to alert him to the sales, having discovered that the Brompton Road Property had a new owner and that the purchase had been facilitated by the appellant.

[19] On returning to Jamaica, the complainant confronted the appellant. The complainant recounted that the appellant admitted selling the properties out of desperation, pleaded for leniency, and promised restitution. Partial payments amounting to US\$15,000.00 were said to have been made by the appellant.

[20] The complainant denied the allegations that he threatened the appellant, the appellant's mother, or the appellant's receptionist in Anguilla. He acknowledged visiting the appellant's home and taking photographs but explained that this was because the appellant had indicated an intention to sell his house to repay him. He also denied asking

the appellant to withdraw a complaint allegedly filed with his probation officer in the USA, stating, instead, that he reported the unauthorised sales to the Fraud Squad and the GLC after the appellant reneged on his promise of full restitution.

[21] The complainant also denied:

(a) signing the transfers or other documents relating to the sales;

(b) providing the appellant with a letter, signed "Bowser," confirming representation; and

(c) authorising family members to transport documents or collect the proceeds of sale on his behalf.

#### *The evidence of Hugh Campbell*

[22] Mr Campbell gave evidence in support of the complainant's case. He confirmed delivering monies to the appellant on the complainant's behalf but stated that he lacked specific knowledge of how those funds were utilised. He also indicated that he could not confirm whether the appellant had acted as the complainant's attorney in acquiring all three properties.

[23] Following the purchases, Mr Campbell stated that he visited the Brompton Road property regularly and occasionally stopped by the Fairview Court Property. These visits ceased after the complainant's arrest in the USA, when the appellant advised him to avoid the properties because of an alleged FBI investigation involving the complainant and Shelly-Ann Campbell.

[24] According to Mr Campbell, his last visit to the Brompton Road property was at the request of the complainant's father, Egbert Adams. On that occasion, he discovered that the property was occupied. Subsequent inquiries at the Office of Titles revealed that all three properties had been transferred from the complainant's name.

[25] Mr Campbell categorically denied receiving any proceeds from the sales. He maintained that neither he nor his wife, Shelly-Ann Campbell, had authorised the appellant to sell the properties. He further rejected allegations that he participated in a three-way telephone conversation with Shelly-Ann Campbell and Egbert Adams regarding the transactions. Mr Campbell recalled encountering the appellant only once after the complainant's arrest, when the appellant visited his home. On that occasion, the appellant allegedly admitted knowledge of the sales and expressed an intention to reimburse the complainant. Mr Campbell testified that he was disheartened by this admission and requested that the appellant leave his home.

[26] Under cross-examination, Mr Campbell acknowledged that he had contacted the appellant to assist the complainant in purchasing a single property. He clarified, however, that he had not discussed any specific property with the complainant. He admitted that on several occasions, he delivered monies from the complainant to the appellant to facilitate property purchases, and he was aware that the complainant would meet with the appellant at times.

[27] Mr Campbell denied that one of the signatures on the transfer for the sale of the Brompton Road property (co-owned by his wife and the complainant) was that of his wife. While he accepted that his wife had been charged with fraudulent conspiracy and forgery in connection with the sales, he asserted that he had not seen her sign any documents related to the transactions. He further admitted knowing Andrew James, a real estate agent, but denied that either he or his wife had communicated with him concerning the sales.

[28] Finally, Mr Campbell rejected the allegation that he, Shelly-Ann Campbell, and Egbert Adams conspired to obtain money fraudulently on the assumption that the complainant would remain imprisoned. He also refuted the claim that they were eager to sell and dispose of the properties before action was taken by the USA authorities.

### *No-case submission*

[29] At the close of the complainant's case, the Committee upheld the appellant's no-case submission in part. It ruled that there was a case to answer on all aspects of the complaint save in relation to the part of Canon III (F) which provides that an "attorney shall not aid, counsel or assist any man to break [the] laws", as it found no evidence to support any such allegation (see page 1 of the notes of hearing dated 11 June 2020).

### *The evidence of the appellant*

[30] The appellant disputed the assertion that he represented the complainant in all three transactions concerning the purchase of the properties. He maintained that his involvement was limited to a single transaction. He testified that Mr Campbell, who had grown up with him and introduced him to the complainant, informed him that a particular apartment had been identified for purchase. Approximately one week later, he received the agreement for sale from the vendor's attorney. After advising the complainant on the requisite procedural steps, the complainant, he said, reassured him that all arrangements were in place and that Mr Campbell would oversee the details. The complainant also indicated that he would travel to Jamaica with the necessary funds.

[31] The appellant further stated that Mr Campbell subsequently informed him that the complainant had visited, signed the relevant documents, and left a deposit. Upon reviewing the agreement, the appellant advised Shelly-Ann Campbell to deliver the deposit to the vendor's attorney. He testified that she and Mr Campbell, thereafter, paid the balance of the purchase price in full and collected the title from the vendor's attorney upon completion of the sale.

[32] With respect to the allegation that he sold the subject properties without the complainant's knowledge or authorisation, the appellant testified that several years later, he received a telephone call from Mr Campbell requesting that he visit his residence. On arrival, Mr Campbell informed him that the complainant was in New York and intended to sell one of the properties. Shelly-Ann Campbell then connected him, by telephone, with

the complainant and Egbert Adams. The appellant stated that he had a brief conversation with the complainant, during which the complainant explained that Egbert Adams, Shelly-Ann Campbell, and Mr Campbell were managing certain affairs on his behalf. The complainant asked him to serve as his legal representative in the sale of the property, further indicating that Shelly-Ann Campbell would act as his agent because he was preoccupied with important matters. The complainant also assured him that Egbert Adams would provide further clarification.

[33] According to the appellant, Egbert Adams confirmed the details communicated by the complainant and indicated that he would send a letter to substantiate their discussion. The appellant testified that he later collected this letter at the residence of Shelly-Ann Campbell. It bore the signature "Bowser," a name which he associated with the complainant. He stated that he sought clarification from Shelly-Ann Campbell as to the letter's origin, and she explained that it had been delivered to her by representatives from Air Jamaica on the complainant's behalf. Upon examining the letter, the appellant noted that it referred to multiple properties, despite his earlier awareness of only one. It was at this juncture that Shelly-Ann Campbell disclosed that the complainant owned two additional properties.

[34] The appellant asserted that he acted on the instructions of the complainant and Shelly-Ann Campbell as well as that of Egbert Adams in the sale of the three properties. He confirmed that the properties were sold between 2002 and 2005 through a real estate broker, Andrew James, who was engaged for each transaction. The legal documents, he said, were given to Shelly-Ann Campbell, who bore responsibility for ensuring their delivery to the complainant and their return following execution. The appellant explained that he had no difficulty with this arrangement, as he was familiar with the complainant's signature from his prior representation in the purchase of one of the properties. He stated that he turned over the proceeds of the sale to Egbert Adams, the complainant's father.

[35] The appellant further testified that, while employed in Antigua, he received telephone calls from the complainant in which threats were made to report him to the

GLC, the Fraud Squad, the media, and his employer. He stated that these threats were initially conveyed through his office telephone and later his cellular phone. The appellant added that the complainant not only threatened to kill him but also advised his staff that he was coming to Antigua for him and that he would leave his office in handcuffs. The appellant explained that, out of concern for his family, fear of embarrassment, and the risk of reputational harm, he began sending money to the complainant between September 2016 and July 2017. The payments were made by wire transfers, and at the end of each month, the complainant would call and renew his threats. The appellant stated that he eventually ceased sending money to the complainant on the advice of a friend.

[36] The appellant stated that after the cessation of payments, while on vacation in Jamaica, he received photographs of his home accompanied by a demand for \$50,000,000.00. He claimed that, in response to these threats, he engaged an armed bodyguard for the remainder of his stay, which he eventually curtailed, and retained an attorney in Antigua to report the complainant to the authorities in New York. A report was made to a United States Probation Service parole officer, but the complainant later called requesting that he withdraw the report. Believing that the complainant would desist from further threats, he took no further action regarding the complaint to the USA authorities. However, he was later informed by a senior police officer in Jamaica that a provisional warrant had been issued for him, but he would "make everything go away" if he paid \$40,000,000.00.

[37] The appellant denied selling the properties without authorisation. He presented evidence from Ms Beverley East, a handwriting expert, in support of his case that the complainant had signed the transfers and other documents pertaining to the sales. He further noted that the police had charged Shelly-Ann Campbell in connection with the transactions.

[38] The appellant refuted the suggestion that the complainant had never sent him a letter instructing him to sell the properties or that the letter bore the signature "Bowser".

He also rejected the suggestion that he had not spoken to the complainant, Egbert Adams, or Shelly-Ann Campbell on the telephone, or that he had presented Mr Campbell with a fake bench warrant. He maintained that he had no grounds to question the instructions he received, as all individuals involved were close family members, and the letter corroborated their prior discussions. He added that Shelly-Ann Campbell possessed all pertinent property titles and had already retained the services of Andrew James, the real estate broker, when he became involved.

[39] Critical to the Committee's finding of professional misconduct was the appellant's admission, during cross-examination, that he had witnessed the signing of the transfers by the complainant without the complainant being present. The appellant explained that he relied on the accounts of the complainant's family members and his familiarity with the complainant's signature, stemming from his prior representation in the purchase of one of the properties. He acknowledged that by stating that he witnessed the signing of the documents, he was representing that the complainant was present before him. However, he disagreed with the assertion that he had acted unethically.

*The evidence of Beverley East*

[40] Ms Beverley East, a handwriting expert, was called as a witness by the appellant. Her affidavit, sworn on 10 February 2020, together with a letter dated 25 June 2020 from Beverley East of Strokes and Slants to Mr Hugh Wildman, was tendered into evidence as her evidence-in-chief.

[41] Ms East testified that she was asked to examine the following legal documents.

1. Transfer dated 23 April 2001 – Volume 1266 Folio 572
2. Transfer dated 7 June 2004 – Volume 1266 Folio 572
3. Transfer dated 15 August 2004 – Volume 973 Folio 341
4. Transfer dated 7 November 2004 – Volume 1188 Folio 347

[42] Her task, she explained, was to determine whether the signatures purportedly belonging to the complainant were those of the same person and were in fact the complainant's. Ms East concluded that all the signatures, both "known" and "questioned", were authentic and belonged to the complainant.

[43] In cross-examination, Ms East was asked whether she had noted any differences between the known and questioned signatures. She acknowledged certain differences but explained that her work routinely involves differences and natural variations. She described a structural difference in the formation of an "s" in one of the signatures and noted three distinct writing patterns. However, she concluded that the similarities were numerous and significant, and the differences so minor and insignificant that they hardly warranted mention.

*The evidence of the appellant's staff member, Anique Williams*

[44] Ms Anique Williams' affidavit, sworn on 2 December 2019, was admitted as her evidence-in-chief. She was also cross-examined.

[45] Ms Williams testified that she was employed by the Government of Antigua and Barbuda as an assistant secretary in the Office of the Director of Public Prosecutions, with responsibilities that included answering telephone calls. Her evidence was that, in late July or early August 2016, she received a call from an unknown male who requested to speak with the appellant. When she asked for his name, he claimed to be a family member who needed to speak urgently with the appellant but refused to provide his name. On several subsequent occasions, she answered calls from the same person, who identified himself as a family member. Each time she asked for his name. On one occasion, he gave his name as "Adams," and she transferred the call to the appellant.

[46] Ms Williams stated that she distinctly remembered some of the calls from the person who identified himself as "Adams", as they were disrespectful and threatening. In

one exchange, he became very angry and told her to inform the appellant that he was going to kill him. She said she became frightened and went to the appellant's office to report the call. On another occasion, the caller said, "Me a go show up your boss". In response, she told him to stop calling the office and warned that she would report him to the authorities in New York. Later, she received another call in which the person became very angry, cursed, and shouted aggressively: "Listen to me, I know he is avoiding me, but tell him I know where he is. I will come to Antigua for him, and when I'm done, they are going to take me out in handcuffs".

### *Decision of the Committee*

[47] Given the narrow grounds advanced in this appeal, the findings need not be traversed in detail.

[48] The Committee found the appellant liable only in respect of his false representation regarding the transfers. It held that he had conducted himself in a manner "which may tend to discredit the profession in breach of Canon I(b)", by admittedly "witnessing" the complainant's signature without the complainant being present (para. 71 of the decision). As to the broader complaint, the Committee was not satisfied beyond a reasonable doubt that the appellant had acted without instructions to sell the properties, or that the signatures on the transfers were not those of the complainant. It, therefore, concluded that he "did not act contrary to the laws of the land nor commit a criminal offence which would bring the profession into disrepute... [para. 70]".

[49] The Committee further observed that the practice of an attorney "witnessing a signature" without the signatory being present constitutes extremely reckless conduct. By signing in such circumstances, the appellant conveyed the impression that he had personally witnessed the complainant executing the instruments. Relying on **Gresford Jones v The General Legal Council (ex parte Owen Ferron)** (unreported), Court of Appeal, Jamaica, Miscellaneous Appeal Nos 22/2002 and 27/2002, judgment delivered 18 March 2005, it concluded that such conduct was capable of discrediting the profession and, therefore, amounted to professional misconduct in breach of Canon I(b).

### *The sanction hearing*

[50] As noted earlier, the sanction hearing took place on 2 February 2022. In determining the appropriate sanction, the Committee considered **Bolton v Law Society** [1994] 2 ER 486, **Solicitors Regulation Authority v Sharma** [2010] EWHC 2022 (Admin), and The Sanctions Guidance: Breaches of the BSB Handbook Version 5 (15 October 2019), issued by the Bar Tribunals and Adjudication Service. It concluded that, although the appellant's attestation that the complainant had signed legal documents in his presence on four occasions amounted to dishonesty, the conduct did not justify the ultimate sanction of striking off or suspension. That conclusion was premised on the absence of personal gain to the appellant and the lack of any adverse impact resulting from his actions. The Committee was, however, mindful that any sanction imposed must serve the sentencing goal of deterrence, reflecting, as it were, the severity of the breach while aiming to prevent future occurrences both by the appellant and across the profession.

[51] In imposing the sanction, the Committee observed that, notwithstanding counsel's assertion that the appellant had learnt from the incident, his testimony revealed a failure to grasp the impropriety of his actions. Such conduct, it emphasised, cannot be condoned, as the public interest demands that legal practitioners act with absolute honesty and uphold the highest standards of integrity. The act of an attorney witnessing a signature on a legal document, the Committee opined, implies that the signature is authentic. Both the public and regulatory authorities, including the Registrar of Titles, must be able to rely on that assurance to ensure the validity of the instrument.

### **Grounds of appeal**

[52] The Committee's decision was challenged on both findings of fact and conclusions of law. In particular, the appellant disputed the Committee's determination that he was guilty of professional misconduct in breach of Canon I(b) of the LPA, and the further holding that his act of "witnessing" the signing of the transfers constituted such misconduct.

[53] Against that background, the following grounds of appeal were advanced:

"a. The Disciplinary Committee of the General Legal Council erred in law in concluding that the appellant was guilty of professional misconduct on the basis that he witnessed the signature of the complainant without being physically present, notwithstanding the fact that the appellant was very familiar with the signature of the complainant at the time of witnessing the signature and the evidence disclosed that the complainant did in fact sign the documents.

b. The Disciplinary Committee of the General Legal Council erred in law in failing to appreciate that, once the complainant signed, as in the instant case, it could not amount to professional misconduct on the part of the appellant, as the appellant would have acted on the basis of the existence of the signature of the complainant which in fact existed.

c. The Disciplinary Committee of the General Legal Council erred in law in failing to appreciate that there is no requirement under the Registrar of Titles Act that precluded the appellant from witnessing the signature of the complainant on a transfer document, where the appellant was in fact familiar with and satisfied that the signature he was witnessing was that of the complainant.

d. The Disciplinary Committee of the General Legal Council erred in law in failing to appreciate that the proceedings ought to have been struck out as an abuse of process, having regard to the length of time that elapsed between the alleged incident and the filing of the complaint, which deprived the appellant of a fair hearing in keeping with the principles enunciated by the Privy Council in **McCalla v Disciplinary Committee of the General Legal Council** [1998] 53 WIR.

e. The Disciplinary Committee of the General Legal Council erred in law in failing to appreciate that, during the course of the proceedings, on at least two occasions, the appellant was asked to leave the proceedings and allow matters to be dealt with in his absence, notwithstanding the protestations of his counsel that, that course of action was impermissible, as the appellant was entitled to be present throughout the proceedings.

f. The Disciplinary Committee of the General Legal Council erred in law in failing to appreciate that the conduct of the attorney-at-law representing the complainant, Mr Hadrian Christie, in contacting the witness of the appellant, Andrew James, resulting in the said witness not attending to give evidence on behalf of the appellant amounts to an act of improper conduct on the part of Mr Christie, resulting in the appellant being deprived of a fair hearing, which warranted the immediate intervention of the respondent.

g. The Disciplinary Committee of the General Legal Council erred in law in failing to appreciate that, the Chairman of the Panel, Mrs Danielle Gentles-Silvera, was automatically disqualified from presiding and participating in the proceedings, on the basis that at least one of the transfers in question was executed by the firm of Livingston, Alexander and Levy, of which she is a partner, thereby resulting in her having a direct financial interest in the proceedings.

h. The Disciplinary Committee of the General Legal Council erred in law, by conducting a hearing against the [appellant] in camera, in breach of section 16(3) of the Charter of Fundamental Rights and Freedoms (Constitution Amendment) Act 2011, which stipulates: 'All proceedings of every Court and proceedings relating to the determination of the existence or the extent of a person's civil rights or obligations before any court or other authority established, shall be held in public'."

### **This court's powers**

[54] Section 16(1) of the LPA empowers this court to hear, by way of rehearing, appeals from any order of the Committee. Such appeals may be brought by an attorney, the aggrieved person, the Registrar of the Supreme Court, or any member of the GLC, and must comply with the time and procedural requirements prescribed by the rules of court.

[55] Section 17(1) sets out the courses open to the court in disposing of such appeals:

"[It] may dismiss the appeal and confirm the order or may allow the appeal and set aside the order or may vary the order or may allow the appeal and direct that the application be reheard by the Committee and may make such order as to costs before the Committee and as to costs of the appeal, as the Court may think proper."

[56] It is well settled that this court will only disturb the Committee's decision if the findings were unsupported by the evidence adduced, or if the Committee failed to take into account relevant issues, or took into account irrelevant issues, or was misdirected in its application of the law, or was unmistakably or palpably wrong (see **Norman Samuels v General Legal Council** [2021] JMCA Civ 15; and **Hadmor Productions Ltd and Others v Hamilton and Others** [1982] 1 All ER 1042).

[57] The appellant's challenge to the Committee's findings and orders will now be addressed sequentially.

### **Grounds (a)–(c): Misconduct and evidential basis**

[58] Grounds (a) to (c) raise the central issue of whether the Committee was correct to find that the appellant's admitted conduct of "witnessing" the signing of the transfers, without seeing the complainant sign, constituted professional misconduct under Canon 1(b), notwithstanding the appellant's familiarity with the complainant's signature, the fact that the complainant did, in fact, sign the transfers, and the purported absence of any statutory prohibition. Accordingly, these grounds can conveniently be addressed together.

#### Summary of submissions for the appellant

[59] Mr Wildman, appearing on behalf of the appellant, submitted that, given the evidence of the handwriting expert, which discredited the complainant's testimony and established that the signatures on all the relevant documents were indeed those of the complainant, the appellant's attestation of the complainant's signature was not improper. Counsel argued that the appellant's conduct was grounded in his familiarity with the complainant's handwriting, acquired over the course of their prior dealings, and that such established familiarity rendered strict physical presence nonessential. In support of this position, counsel relied on **Carey v Pitt** [1797] 170 ER 219 and **Harrington v Fry** [1824] 171 ER 954.

[60] Counsel further contended that there was no requirement under the Registrar of Titles Act ('RTA') for a signatory on a transfer to sign in the witness's presence, provided the witness was familiar with the signatory's signature.

[61] Counsel also submitted, during oral argument, that it was improper for the Committee to have found the appellant guilty of professional misconduct based on an admission relating to a matter which had not been raised in the complaint.

#### Summary of submissions for the GLC

[62] King's Counsel, Mrs Minott-Phillips, appearing for the GLC, submitted that the Committee's finding of professional misconduct was unimpeachable, particularly in the light of the appellant's own admission of dishonest conduct. King's Counsel emphasised that the appellant not only certified that each of the transfers was "signed by the said vendor Michael Adams in [his] presence", but also conceded that he was never physically present when the complainant signed the documents. Such contradiction, she argued, rendered the appellant's certification a clear misrepresentation.

[63] King's Counsel further submitted that when an attorney attests to a signature, he does more than merely witness the act. Such attestation affirms its authenticity and carries with it an implicit assurance to any authority or third party relying on the document that the attorney personally observed the signature being affixed. A person receiving a legal document bearing an attorney's attestation is entitled to rely on the veracity of that representation. Where such representation is knowingly false, the potential for serious consequences is significant, and the conduct falls squarely within the ambit of professional misconduct. The appellant's conduct, she argued, constituted a breach of the trust reposed in attorneys by the public and the legal system, and the Committee was, therefore, correct in concluding that his actions were likely to bring the profession into disrepute.

[64] King's Counsel acknowledged that the allegations advanced by the complainant to ground professional misconduct did not concern the appellant's attestation of the legal

documents. She, nevertheless, submitted that the Committee was entitled to consider any evidence supporting that charge of professional misconduct. King's Counsel referred to **Gresford Jones v The General Legal Council** and argued that Canon I(b) operates as a stand-alone canon, with its application depending on the factual matrix and circumstances. In the instant case, she contended, determining whether and when the complainant signed the transfers for sale of the subject properties was rendered more difficult by the appellant's assertion that he had "witnessed" the complainant signing when, in fact, he had not.

#### Discussion and disposal of grounds (a)-(c)

[65] I turn first to the Committee's decision. At paras. 70 and 71 of its sanction decision, the Committee reasoned as follows:

"70. We are not satisfied beyond all reasonable doubt that the Complainant did not instruct the Attorney to sell his three properties and that the signatures on the transfers do not belong to the Complainant... Accordingly, the Attorney did not act contrary to the laws of the land nor commit a criminal offence which would bring the profession into disrepute although he was not prosecuted.

71. Notwithstanding the above, the Attorney has admitted that he did witness these Transfers without the Complainant being in his physical presence as he relied on the family members of the Complainant, and that he was somewhat familiar with the signature as he had represented him in the purchase of one of the apartments a couple years before. Witnessing the signature of someone on legal documents without them being present is the height of recklessness and had we found that the signature on the transfers were not that of the Complainant, the consequences could have been graver. By witnessing a legal document the witness is saying that he saw the person sign same which was not true. Such a witness in effect authenticates the person's signature and conveys this to the authority to whom the document is presented and to the public. By signing a document in circumstances where the witness does not in fact see the person actually sign, the Attorney is conveying to members of the public that as a lawyer he signed a legal document

purporting to give the impression that the person signed in their presence, which is false. The personal or familial relationship between the attorney and those he represents does not preclude the attorney from his professional obligations. This act by the Attorney is behaviour which may tend to discredit the profession in breach of Canon I(b) which is an act of professional misconduct. Given the fact however that we have found that the Complainant did in fact authorise the sales by signing the transfers, the consequences of witnessing the Complainant's signature without him being present or acknowledging to the Attorney that the signatures on the Transfers were his, were not as grave as they could have been."

[66] The primary issue is whether the Committee, having not found that the appellant sold the three properties without the complainant's authorisation, was nevertheless permitted to find him guilty of professional misconduct based on his admission of dishonesty surrounding the execution of the transfers.

[67] The Committee's finding of guilt was based on the appellant's admission that he certified the complainant's signature as having been affixed in his presence, when in fact this was not the case. The appellant's argument that his actions did not amount to professional misconduct because the complainant did, in fact, sign the transfers cannot be accepted. Not only is the argument wholly unpersuasive, but it is tantamount to saying that if one commits a dishonest act and no adverse consequence ensues, the act is justified. The fact that the complainant did sign the transfers could not cure the impropriety. The Committee was, therefore, correct to find that the appellant's attestation, being knowingly false, constituted a misrepresentation. The integrity of the attestation process is not predicated solely on the authenticity of the signature, but equally on the truthfulness of the certifier's representation regarding the circumstances of execution. A false attestation, even where the signature is genuine, undermines the reliability of legal documents and erodes public confidence in the profession.

[68] The appellant's asserted familiarity with the complainant's signature was also irrelevant to the issue of dishonesty. Whether the appellant had a reasonable basis for

recognising the complainant's signature was a different question, and, as the Committee found, carried its own evidentiary challenges. The Committee's finding that the appellant lacked such familiarity (see para. 54 of the decision) only underscores the recklessness of the attestation. Moreover, to accept that an attorney may falsely attest to having witnessed the execution of transfers for the sale of land, on the basis that he is familiar with the absentee's signature, would erode the very safeguards that attestation is designed to uphold. Attestation is not a speculative exercise in signature recognition; it is a solemn affirmation of presence and observation.

[69] King's Counsel is also correct that, had the appellant genuinely witnessed the execution of the transfers, the ensuing dispute and the necessity of expert handwriting analysis probably would have been avoided.

[70] Accordingly, the Committee was entitled to characterise the appellant's conduct as dishonest. Given the nature of transfers, the appellant's conduct could also properly be described as reckless, as the Committee did.

[71] Mr Wildman further submitted that there should have been no finding of professional misconduct because there is no requirement under the RTA that attestation of a transfer be done in the signatory's presence. That submission implies that the RTA would need to expressly prohibit false representations in the attestation of signatures for such conduct to carry legal consequences. That proposition is untenable. As the Committee correctly found, the attestation of a signature by an attorney without having witnessed the document being signed, strikes at the heart of the trust and confidence reposed in attorneys dealing with such matters, and any such false attestation compromises the integrity of legal transactions.

[72] The legal profession is entrusted with responsibilities that carry public consequences. Among these is the authority to attest to the execution of documents (see section 152 of the RTA, where an attorney is listed among a prescribed category of

persons as regards the attestation of transfers). This is a function that is not merely administrative but one that carries legal weight and significance.

[73] The authorities of **Carey v Pitt** and **Harrington v Fry**, cited by Mr Wildman, are inapplicable to the present matter. The factual matrix underpinning those decisions is materially distinct and does not assist in resolving the core issue before this court. **Carey v Pitt** concerns the admissibility of handwriting evidence based on prior correspondence, but it does not address the ethical obligations of attorneys when certifying documents. **Harrington v Fry** similarly does not address the professional standards governing legal attestations. Contrary to Mr Wildman's submissions, the instant case bears no factual similarity to either authority.

[74] I am, therefore, satisfied that the Committee was not plainly wrong in concluding that the appellant's conduct was discreditable to the legal profession and likely to bring the profession into disrepute. The public must be able to rely on the truth of an attorney's attestation without fear that it is based on assumption, convenience, or retrospective justification. One of the purposes of maintaining discipline within the body of attorneys is the protection of the public (see **General Legal Council v Jennes Vashti Anderson** [2024] JMCA Misc 3, para. [57]). This is a further basis for rejecting Mr Wildman's submission that the complaint was not about the witnessing of the appellant's signature.

[75] I turn next to the question of whether the Committee was justified in finding professional misconduct based on facts admitted by the appellant, as distinct from the direct allegations made by the complainant in his complaint to the GLC.

[76] The allegations made by the complainant against the appellant did not concern the attestation of the transfers. Rather, as indicated earlier, the allegations were substantially that the appellant had sold his properties without his knowledge or authorisation and was thereby guilty of professional misconduct. In my view, however, the evidentiary burden placed on the complainant necessarily brought into focus the question of attestation as much as the question of signing. Broadly, by denying

authorisation of the sales, any evidence surrounding the execution and attestation of the transfers became relevant. Equally relevant was expert handwriting evidence to establish whether the complainant did, in fact, sign the transfers. As matters unfolded, the attestation evidence was found wanting, but the Committee accepted the handwriting expert's testimony that the documents were signed by the complainant.

[77] The question, therefore, arises whether the execution and attestation of the transfers fell within the scope of the allegations embodied in the complainant's affidavits, given that his case was that he had no knowledge of the sales and had not authorised them. I believe they did.

[78] Rule 3 of the Fourth Schedule to the Legal Profession Act (The Legal Profession (Disciplinary Proceedings) Rules) ('the Rules') prescribes the requirements for an application to the GLC:

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

[79] Importantly, rule 17 recognises that allegations falling within the scope of those embodied in the affidavit supporting the complaint may also be relied upon in support of the application. It provides:

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

otherwise as to the Committee may appear just.” (Emphasis added)

[80] The allegations leading to the Committee’s finding of professional misconduct emerged during cross-examination, after the complainant testified that he had not signed any document for the sale of the subject properties. Counsel for the complainant, Mr Christie, then sought to elicit evidence on whether the transfers, allegedly signed by the complainant and witnessed by the appellant, had in fact been signed in the appellant’s presence.

[81] The appellant’s direct representation is captured in the following exchange, at pages 13 -15 of the notes of the proceedings dated 11 June 2020:

**Christie:** Would you say you did anything illegal in the sale of any of the three apartments that we are here about?

**Appellant:** No, Sir.

**Christie:** Did you do anything unethical in relation to these sales?

**Appellant:** No, Sir.

**Christie:** When these properties were being sold, did Mr Adams at any time sign an instrument of transfer in your presence?

**Appellant:** Mr Adams’ father –

**Christie:** Did he sign, did Mr Adams in front of you sign any documents in your presence?

**Appellant:** My lady, Mr Adams’ father –

...

**Panel:** Mr Armstrong, the question is very simple you know. He either signed it in your presence or he didn’t.

**Appellant:** No, my lady and I didn't expect him to because his father, himself and Shelly-Ann told me –

**Christie:** You have answered the question thank you.

**Appellant:** I'm not finished.

...

**Christie:** Mr Armstrong on the instruments of transfer in the sale where it said that you witnessed him signing, would that be an incorrect statement?

**Appellant:** In so far as he wasn't physically present –

**Christie:** It is incorrect or not?

**Appellant:** In so far as he wasn't physically in front of me, yes.

**Christie:** Did you witness him signing it virtually?

...

**Christie:** You witnessed his signature on three transfers, am I correct?

**Appellant:** Yes in so far as –

**Christie:** Answer the question that I have asked you Mr Armstrong. Three transfers you witnessed his signature in relation to the sale of the properties?

**Appellant:** In so far as he wasn't physically in front of me, yes but based on instructions-

**Christie:** Answer the question. Mr Armstrong I haven't asked whether he was in front of you or not. My simple question to you is, you witnessed his signature on three transfers in the sale, it is yes or no.

**Appellant:** I have answered you.

**Christie:** Your answer is yes, correct?

**Armstrong:** In so far as he wasn't physically in front of me, yes but based on instructions that I got, I didn't expect him to be in front of me.

**Christie:** You keep highlighting so far as he was not physically in front of me. In what way did you witness his signature? Did you witness it via video conference?

...

**Panel:** Mr Armstrong he asked if you witnessed the signature via video conference, that is the question.

**Appellant:** No, my lady. Video conference wasn't available then."[Emphasis added]

[82] Although there was no application to amend the allegations, as permitted by the Rules, the Committee retained the power to consider allegations within the scope of the complainant's affidavits, provided that the appellant was not taken by surprise or prejudiced in the conduct of his case. As the evidence demonstrates, the specific questions (or allegations) arose during cross-examination of the appellant. Therefore, the anticipated answers were intended to support the complainant's case that the sale of the subject properties was facilitated without his knowledge or authorisation. In those circumstances, the Committee was not precluded from considering that evidence, alongside all the other evidence, in determining whether the complainant was discredited. As it turned out, the Committee could not rely on the appellant's evidence of attestation in assessing whether the transfers were signed by the complainant. Instead, heavy reliance had to be placed on the handwriting expert's report and testimony.

[83] That said, the fact that the complainant was adjudged discredited did not mean the Committee was precluded from considering whether the appellant's admitted dishonest conduct in relation to the attestation of the legal documents, which came to light during the disciplinary hearing, amounted to professional misconduct. Based on the contents of the complaint and the evidence, the Committee was entitled to reach the decision it did. Although it is unclear from the record whether submissions were made on

this aspect of the evidence, ample opportunity existed, and any prejudice was inconsequential given the appellant's admission of misconduct. The guidance from this court is that the Committee is best suited to determine what constitutes professional misconduct (see **Oswest Senior-Smith v General Legal Council and anor** [2018] JMCA Civ 26).

[84] As the appeal takes the form of a rehearing under section 16 of the LPA, the court is entitled to make findings based on the complaint and the evidence. The allegations reveal that Canon I(b) was independently engaged. Further, the scope of the allegations was sufficiently wide to encompass the way the legal documents pertaining to the sales were executed. **Re a Solicitor** [1992] 2 All ER 335, at page 336, supports the view that:

“[t]he task of the [Committee] was to have regard to all the evidence which was adduced before it... and to ask whether it was satisfied to the requisite standard of proof that the charges were made out.”

[85] In reviewing the case, I am satisfied that the Committee considered the complaint in full, including the Canons invoked. Its conclusion of professional misconduct was one that it was entitled to draw from the appellant's admission in the context of the wider complaint and the evidence including the exhibited transfers. I accept, as correct, this court's observation, at page 22, in **Gresford Jones v General Legal Council**, that:

“[the] standard of conduct required to be maintained by members of the legal profession is easily understood and perceived as basic good, upright and acceptable behaviour. Any deviation from this legal code is subject to scrutiny as it relates to the requirement of a particular canon.”

[86] This statement affirms that any conduct by an attorney that undermines confidence in the legal profession may amount to professional misconduct. Given the Committee's role in upholding professional standards, it could not justifiably ignore evidence of dishonesty or other unethical conduct. The Committee was entitled to consider the appellant's admission in the context of Canon I(b), and its conclusion that such conduct amounted to professional misconduct was unimpeachable.

[87] This court is reluctant to disturb the Committee's determination of what constitutes professional misconduct (see **Re a Solicitor**) and as indicated above, will only interfere where the decision is plainly wrong. No such basis exists here.

[88] For those reasons, grounds (a) to (c) fail.

#### **Ground (d): Delay and abuse of process**

[89] The appellant next contended that the proceedings should have been struck out as an abuse of process, on account of the lengthy delay between the alleged incident and the filing of the complaint. He argued that this delay deprived him of a fair hearing. The submissions advanced in relation to this ground are set out below.

#### Summary of submissions for the appellant

[90] Mr Wildman submitted that the Committee erred in proceeding with the complaint, given the delay between the sale of the subject properties and the lodging of the complaint. He noted that the subject properties were sold from 2004, whereas the complaint was initiated in 2019, resulting in a 15-year delay. Counsel contended that such a delay was inordinate and fell well outside the parameters of what is legally acceptable. In support of this contention, he relied on the decision of the Privy Council in **McCalla v Disciplinary Committee of the General Legal Council** [1998] 53 WIR 272, particularly pages 286–287. Counsel further submitted that the fact of inordinate delay was sufficient to found prejudice without the need for the appellant to demonstrate actual prejudice. He relied on **Aubeeluck v State** [2010] UKPC 13, para. 40, and **McCalla v Disciplinary Committee of the General Legal Council**, page 285 H.

[91] Mr Wildman further submitted that prejudice to the appellant materialised during the proceedings, and despite raising the issue in his closing submissions, the Committee failed to stay the proceedings in the interest of fairness. Counsel contended that the passage of time immensely prejudiced the appellant in mounting an effective defence, as critical documentary evidence had by then become unavailable. He argued that it would have been either extremely difficult or altogether impossible for the appellant to obtain

contemporaneous banking records to verify his account of events, specifically that the cheques issued for the sale of the subject properties were cashed at the time of the transactions, and that the proceeds were disbursed to Shelly-Ann Campbell and Egbert Adams, consistent with his sworn testimony. Counsel maintained that the loss of such evidence, occasioned by the delay, amounted to clear and compelling prejudice warranting a stay of the proceedings.

[92] Additionally, Mr Wildman submitted that the appellant would have encountered significant obstacles in retrieving relevant correspondence from the complainant, Shelly-Ann Campbell, and Hugh Campbell.

#### Summary of submissions for the GLC

[93] Mrs Minott-Phillips submitted that the authority of **McCalla v Disciplinary Committee of the General Legal Council** lends support to, rather than detracts from, the GLC's position. Referring to page 289, King's Counsel emphasised that the Privy Council determined that the existence of documentary evidence capable of substantiating the allegation of false representation was sufficient to negate any finding of prejudice arising from delay. It was, therefore, submitted that the principle articulated therein applies squarely to the instant case, where the appellant, notwithstanding the passage of time, was able to produce relevant documentation, including transfer instruments, and recall key details surrounding the transactions in question.

[94] Further, King's Counsel argued that the appellant's own admission that he witnessed the complainant's signature on documents without being present when the complainant affixed his signature, fatally undermines any suggestion that he suffered prejudice due to the lapse of time. If the appellant had indeed been materially prejudiced by the delay, King's Counsel contended, it would be expected that he would have so asserted rather than offering such a concession in his evidence. The delay did not affect the proved charge, King's Counsel observed. Neither were cheques from the bank a relevant factor in this appeal, as they would pertain only to a finding that was made in the appellant's favour.

[95] It was, therefore, King's Counsel's submission that this ground of appeal is without merit, as the Committee's finding of a breach of Canon I(b) was not founded on inference but on the appellant's own evidence, including direct admissions.

Discussion and disposal of ground (d)

[96] At page 281 of **McCalla v Disciplinary Committee of the General Legal Council**, the Board affirmed the principle that "there is power under the common law to stay proceedings where there has been such delay in bringing a charge or complaint before a court or tribunal that a hearing of the matter would be likely to result in substantial prejudice to the person whom the charge or complaint is brought" against. Having so established, their Lordships considered it unnecessary to express an opinion on whether, in determining "a reasonable time" under section 20(2) of the Constitution, the court should have regard to any particular period.

[97] The headnote of that case offers sufficient guidance in the instant matter. Mr McCalla was called to the Bar in Jamaica in 1962. In 1977 he migrated to Canada, where he was admitted to practise in two provinces, though he never practised as a lawyer there. He worked instead as a lecturer, researcher, and writer on legal subjects. In 1985, he returned to Jamaica and resumed practice as an attorney-at-law. That same year, Canadian newspaper articles reported that Mr McCalla was being sought on a warrant for charges of fraud and breach of trust. The GLC was alerted and contacted the Law Society of Upper Canada. In 1986, following a hearing at which Mr McCalla did not appear, the Law Society of Upper Canada ordered him struck off the Roll of Solicitors. The GLC received a copy of the report, and in February 1987, the clerk to the Disciplinary Committee sent an affidavit to the GLC setting out the history of the Canadian proceedings.

[98] In January 1990, the chairman of the GLC issued a complaint against Mr McCalla under section 12(1) of the LPA, alleging professional misconduct. The complaint alleged, among other things, that while employed by a government agency in Canada in 1982, Mr

McCalla had submitted plagiarised work for commercial publication and had submitted a curriculum vitae containing false representations.

[99] The complaint was served on Mr McCalla, who promptly replied that he was severely embarrassed by the delay and that the information provided to the GLC amounted to a continuation of racial harassment. He denied the alleged plagiarism.

[100] A hearing date was fixed for November 1991 but vacated following a letter from Mr McCalla's attorney drawing attention to the delay and consequent prejudice. A new date was fixed for September 1992, but shortly before that hearing, Mr McCalla applied for an order of prohibition to prevent the Disciplinary Committee from proceeding. A constitutional motion was also filed alleging breach of Mr McCalla's right to a hearing within a reasonable time under section 20(2) of the Constitution.

[101] The Supreme Court held that there was power under the common law to stay proceedings where delay caused substantial prejudice but found that Mr McCalla had not been so prejudiced. The application was refused both on common law principles and under section 20(2) of the Constitution.

[102] The Court of Appeal dismissed his appeal, noting that Mr McCalla's personal knowledge of the facts obviated difficulties in locating witnesses and documents. Mr McCalla then appealed to the Privy Council. The Board, allowing the appeal in part, reasoned that the lower courts had applied the wrong test by considering only the delay between 1987 and 1992, rather than the entire period since the alleged misconduct. The Board, therefore, considered afresh whether the delay had caused substantial prejudice.

[103] Having done so, it found that the complexities of investigating the plagiarism allegation, the difficulties in marshalling witnesses and documents in Canada, and the passage of time since 1982 or 1983 were likely to substantially prejudice the fair hearing of that complaint. Accordingly, a stay was granted in respect of plagiarism, but not in respect of false representations, as the latter, it found, could be determined largely by documentary evidence and was unlikely to be prejudiced by delay.

[104] In the present case, the question of delay was raised for the first time on appeal by which time the appellant had already succeeded on the issue of unauthorised sales. Unlike **McCalla**, there was no prompt complaint about delay before the Committee. While it is conceivable that some documents or witnesses might no longer have been available, no cogent evidence was produced that the appellant was likely to have suffered or suffered undue prejudice. The primary factual dispute as to whether the complainant had authorised the appellant to sell the subject properties was addressed through expert evidence, which the Committee found credible, supported by the signed transfers which were exhibited in the case. The persons identified as privy to the alleged instructions were Shelly-Ann Campbell, Hugh Campbell, and Egbert Adams, all of whom were connected to the complainant. Mr Campbell gave evidence; Shelly-Ann Campbell was criminally charged in a related matter; and although the whereabouts of Mr Adams were not disclosed, there was no evidence that he or Mrs Campbell were unavailable. Andrew James, the real estate broker, was said to have been contacted by the appellant but chose not to participate.

[105] The narrow point on which the appellant failed was his dishonesty in certifying that he had witnessed the complainant's signature when he had not. Applying **McCalla v Disciplinary Committee of the General Legal Council**, the delay did not prevent the issue from being resolved based on documentary evidence and the appellant's admission, with no substantial prejudice arising. The relevant transfers were before the Committee, and the matter was determined on that admission.

[106] By way of conclusion, the delay was inordinate, but fairness was not compromised. The appellant suffered no prejudice, and no sustainable ground of appeal arose. Considering those reasons, I do not find it necessary to consider whether section 20 of the Constitution was breached. Accordingly, ground (d) fails.

#### **Ground (e): Exclusion from disciplinary hearing**

[107] Ground (e) concerns the occasions during the disciplinary proceedings when the appellant was directed to leave the Zoom platform. On these occasions, it was posited,

matters were dealt with in his absence notwithstanding his attorney's protest that such a course was impermissible and contrary to his entitlement to be present throughout. The parties' submissions follow.

#### Summary of submissions for the appellant

[108] Mr Wildman contended that on two occasions during the hearing on liability, despite objections from the appellant's attorney, the Committee directed the appellant to leave the Zoom platform, the medium by which he appeared, to address evidential matters. By so doing, counsel argued, the Committee effectively deprived the appellant of his right to a fair hearing.

[109] Counsel submitted that disciplinary proceedings are analogous to criminal trials, a position, he stated, was affirmed by their Lordships in **Campbell v Hamlett** [2005] UKPC 19. He emphasised, citing **Regina v Jones (Anthony)** [2003] 1 AC 1, that it is well established in law that an accused person has the right to be present throughout the entirety of proceedings, save in limited and specific circumstances such as voluntary absence or disruptive conduct, neither of which occurred in the instant case.

[110] Additionally, counsel submitted that there was no legal basis for the Committee to resort to the extraordinary measure of excluding the appellant from any part of the disciplinary hearing. Such an act, counsel argued, constituted an improper exercise of power and significantly impaired the appellant's ability to consult with counsel and participate meaningfully in his own defence. This act by the Committee, counsel contended, was yet another compelling ground for this court to set aside its decision.

#### Summary of submissions for the GLC

[111] Mrs Minott-Phillips contended that when the appellant was asked to withdraw from the hearing, it was solely for the purpose of allowing the Committee to consider questions of law. She argued that the Committee's action was permissible because, unlike a criminal trial court, it has the authority to regulate its own process, which includes the discretion to request the temporary withdrawal of a witness while deliberating on legal issues.

[112] King's Counsel further pointed out that the appellant's legal representative remained present throughout, ensuring that the appellant's representation before the Committee was uninterrupted and that his rights were protected. Moreover, as the appellant appeared as a witness, it was appropriate for him to be temporarily excused while points of law were being considered.

[113] It was further argued that **Regina v Jones (Anthony)** was of limited relevance, as it concerned an accused who had absconded and was unrepresented at trial. Even in such extreme circumstances, King's Counsel submitted, the House of Lords acknowledged that the trial judge retained a discretion to proceed in the absence of the accused, albeit with the utmost caution.

[114] King's Counsel added that there is no indication from the record that the appellant's brief exclusion resulted in any injustice or prejudice. Hence, she argued, the contention that the appellant was unfairly treated is without merit.

#### Discussion and disposal of ground (e)

[115] In order properly to situate the complaint, it is necessary to identify the instances and deliberations from which the appellant was excluded. The relevant material is contained in the notes of proceedings dated 2 July 2020, specifically at pages 3 to 8 and pages 35 to 36, which bear directly upon the matters in issue.

[116] The panel sought clarification concerning the paternity of the witness's child, observing that Mr. Christie's questions were framed in terms of hypothetical future events. Mr. Christie maintained that his inquiries were directed at the appellant's appreciation of the consequences of giving false evidence. Mr. Wildman objected repeatedly, contending that the line of questioning improperly required the witness to address matters of law rather than fact. A procedural dispute then arose, and the panel directed the appellant to withdraw during the discussion. Mr. Wildman objected, insisting that the appellant was entitled to be present throughout the proceedings. The panel disagreed.

[117] The record further discloses that the appellant was again asked to leave the virtual hearing room during questioning by Mr Christie concerning blackmail and extortion. Mr Christie pressed the appellant, in his capacity as a prosecutor, to opine on what constituted “strong evidence” of such offences, particularly whether a recorded conversation would suffice. The appellant responded cautiously, noting that the strength of the evidence depended on context and that blackmail and extortion were distinct offences.

[118] Mr Wildman objected, contending that Mr Christie’s line of questioning was irrelevant and amounted to a “frolic of his own”. He argued that the appellant had already explained that no recordings were made, and that the questions were speculative and bore no relevance to the complaint. The panel, however, entertained Mr Christie’s submission that the appellant’s professional experience was relevant to assessing his credibility and directed that the appellant be excused temporarily while the panel deliberated.

[119] Mr Wildman again objected strenuously, insisting that the appellant, as the respondent to the complaint, was entitled to be present throughout the hearing. He emphasised that disciplinary hearings are analogous to criminal trials, where the accused must hear all that transpires. The panel disagreed, stating that its understanding of the law permitted such temporary exclusions to avoid placing information in the mouth of the witness.

[120] Mr Christie then argued that the appellant’s failure to record threatening calls undermined his credibility, given his prosecutorial experience. Mr Wildman countered that such an assertion was unfounded, noting that many prosecutions proceed without recorded evidence and rely on *viva voce* testimony. He stressed that the appellant’s office did not have recording facilities, that the calls were random, and that Mr Christie’s line of questioning betrayed a lack of familiarity with criminal practice.

[121] The panel subsequently retired to a breakout room and later rejoined the disciplinary hearing.

[122] This sequence of events underscores the appellant's complaint that he was excluded from parts of the disciplinary hearing. The exclusions, however, were temporary and confined to discrete exchanges. For the most part, his attorney remained present and actively engaged in protecting his interests, save for a moment when the attorney appeared to have left the room without notice to the panel. No evidence was taken, nor were any findings made, in the appellant's absence. He was recalled and, thereafter, continued to participate fully in the hearing.

[123] Sections 14(1) and (2) of the LPA provide as follows.

“14. (1) The Disciplinary Committee may from time to time make rules for regulating the presentation, hearing and determination of applications to the Committee under this Act.

(2) Until varied or revoked by rules made by the Committee pursuant to subsection (1) the rules contained in the Fourth Schedule shall be in force...”

[124] Rules 10(1) and (2) allow for proceedings on evidence, given by affidavit, as stated below.

“(1) Subject to the provisions of this rule, the Committee may, in its discretion, either to the whole case or as to any particular fact or facts, proceed and act upon evidence given by affidavit.

(2) Any party to the proceedings may require the attendance upon subpoena of any deponent to any such affidavit for the purpose of giving oral evidence, unless the Committee is satisfied that the affidavit is purely formal and that the requirement of the attendance of the deponent is made with the sole object of causing delay...”

[125] These provisions, read together, underscore the view that the Committee is empowered to regulate its proceedings and affirm that disciplinary hearings are

characteristically dissimilar to criminal trials. Proceedings under the LPA, sometimes described as *sui generis* (of its own kind) (see **Gorstew Limited v The General Legal Council** [2023] JMCA Misc 3, paras. 169–173), admit of procedural flexibility. As Mrs Minott-Phillips correctly pointed out, disciplinary proceedings before the GLC are governed by their own statutory framework. Also, they are hearings in which the Committee may, subject to qualifications in the Rules, “act upon the evidence given by affidavit”. Criminal trials, by contrast, are not ordinarily receptive to such procedures. Witnesses are generally required to attend and give evidence *viva voce*, save where, pursuant to an exception under the Evidence Act or other legislation, a prior statement or deposition of an absent witness is admitted into evidence.

[126] While Mr Wildman is correct that in a criminal trial the accused is entitled to be present throughout, and only in exceptional circumstances will an appellate court uphold a judge’s discretion to proceed in the accused’s absence (see **Regina v Jones (Anthony)**), that rigid principle does not necessarily apply to every circumstance in which a respondent is asked to withdraw from a disciplinary hearing.

[127] Although not analogous, since it involved a defendant who absconded from his criminal trial, **Regina v Jones (Anthony)** is instructive. It is the right of any accused person to be present throughout proceedings determinative of his culpability, if he so wishes. I hasten to add that a disciplinary hearing is not akin to a criminal trial. Nevertheless, when a respondent (as here) is excused from a disciplinary hearing without his own volition, it must be shown to have been done with the utmost caution and with safeguards to alleviate undue prejudice.

[128] The first withdrawal arose when counsel debated whether certain questions were matters of fact or law. The second was when submissions were made on the relevance of a line of questioning not central to the issues in dispute. Both instances occurred during the appellant’s cross-examination, at which time his attorney remained present and actively engaged. The presence of counsel provided a safeguard against error or

oversight, in accordance with the observation in **Regina v Jones (Anthony)**, at para. 15:

“...But the presence throughout the trial of legal representatives, in receipt of instructions from the client at some earlier stage, and with no object other than to protect the interests of that client, does provide a valuable safeguard against the possibility of error and oversight...”

[129] The overriding concern is whether the hearing was fair and produced a just outcome. Even in disciplinary proceedings where the criminal standard of proof (beyond a reasonable doubt) applies (see **Campbell v Hamlet**), the attorney’s right is fundamentally a right to a fair hearing. That right encompasses knowing the case to be met, being present when evidence is led, cross-examining witnesses, and making submissions. The critical stages for procedural fairness are, therefore, the evidentiary stages and the opportunity to respond (see **B Surinder Singh Kanda v Government of the Federation of Malaya** [1962] AC 322). It is a long-established principle that tribunal deliberations are private: parties are not entitled to be present while the tribunal deliberates. This is the case in criminal trials, civil proceedings and professional disciplinary tribunals.

[130] In the instant case, the appellant’s withdrawals were temporary and limited to deliberations. He was present throughout the evidentiary process and during submissions and was continuously represented by counsel. His rights were safeguarded during brief exclusions, which were confined to narrow points of law. No prejudice was caused, nor was any procedural unfairness disclosed. Accordingly, the exclusion during deliberations did not infringe the appellant’s right to be present, did not compromise fairness, and provides no ground for appellate intervention.

[131] For those reasons, ground (e) fails.

## **Ground (f): Alleged witness interference**

[132] The appellant next challenged the proceedings on the basis that the complainant's attorney, Mr Hadrian Christie, improperly contacted his witness, Andrew James, thereby discouraging him from attending and giving evidence. It was contended that such conduct amounted to professional impropriety and deprived the appellant of a fair hearing, warranting intervention by the GLC. The parties' submissions follow.

### Summary of submissions for the appellant

[133] Mr Wildman submitted that Mr Andrew James, the alleged real estate agent, who purportedly facilitated the sale of the subject properties, had initially agreed to testify in support of the appellant's case. However, following a conversation with the complainant's attorney, later admitted by that attorney, Mr James became uncooperative, refused to provide testimony, and was ultimately unreachable.

[134] Counsel contended that this sequence of events gave rise to a prima facie case of witness tampering on the part of the complainant's attorney, who had engaged with the prospective witness during the pendency of the disciplinary hearing. Such interference, it was argued, amounted to an attempt to pervert the course of justice and materially hindered the appellant's ability to mount a robust defence. Counsel further asserted that this deprivation constituted a breach of the appellant's right to a fair hearing and contravened principles of procedural fairness. In support of this contention, reliance was placed on **McCalla v Disciplinary Committee of the General Legal Council**, as authority for the proposition that conduct of this nature so compromised the integrity of the hearing that it warranted discontinuance.

### Summary of submissions for the GLC

[135] Mrs Minott-Phillips submitted that the allegation regarding the complainant's attorney's contact with one of the appellant's potential witnesses does not arise from any error of law attributable to the Committee. It was further contended that no specific act

or omission by the Committee had been alleged in relation to this issue. As such, King's Counsel maintained that this ground of appeal is without merit and ought to be dismissed.

#### Discussion and disposal of ground (f)

[136] Mr Wildman's submissions focused on the Committee's failure to halt the disciplinary hearing after learning of Mr Christie's contact with a potential witness for the appellant. The relevant question for this court is whether, in those circumstances, the fairness of the proceedings was compromised by the Committee's decision to continue the disciplinary hearing. Put differently, did the Committee overlook a relevant factor that might properly have led to an early termination of the disciplinary hearing?

[137] The evidence concerning Mr Christie's engagement with the potential witness is recorded in the notes of proceedings dated 11 June 2020 (from page 7 onwards). During the amplification of his affidavit, the appellant was asked whether he knew Andrew James, whom his lawyer described as "playing a critical role in the transactions", as the complainant's real estate agent. The appellant confirmed that he did. In contrast, the complainant, in his testimony, denied any knowledge of Mr James. The witness for the complainant, Mr Campbell, acknowledged knowing Mr James but rejected the suggestion that he had any involvement in the transactions.

[138] In response to questions from his attorney, the appellant explained that he met Mr James in the context of the sale transactions. Following the complainant's accusations, the appellant sought out Mr James, who agreed to provide an affidavit in support. This information was reflected in an affidavit filed and served in the proceedings by the appellant.

[139] The evidence reveals that counsel, Mr Christie, contacted Mr James after becoming aware that the appellant's attorney had engaged him, and he had purportedly agreed to provide an affidavit in the case. On hearing Mr Christie's explanation, the Committee remarked that his conduct in contacting the potential witness "was concerning",

particularly because it created a disadvantage for the panel, whose role was to assess the veracity of the evidence.

[140] The Committee correctly, in my view, expressed no opinion as to whether the absence of Mr James' affidavit caused unfairness to the appellant. Such a conclusion would have been speculative, there being no evidence of what his testimony was likely to be. All that was shown to the panel was an unsigned draft affidavit. The only relevance of counsel's conduct, therefore, was whether it was improper and inconsistent with professional norms for an attorney to engage a witness for the opposing party, whether actual or potential, where such a relationship was known to the attorney.

[141] Mr Wildman is correct that had this been a criminal trial, wherein defence counsel contacted a named prosecution witness, such conduct could have led to a charge of attempting to pervert the course of justice, depending on counsel's intention. This being a disciplinary hearing, however, does not make counsel's conduct any less concerning, as the Committee itself observed. *Moreso*, because the appellant had averred that Mr James promised to swear an affidavit in the matter, which, if done, might have benefitted either side.

[142] From the perspective of the Canons, counsel's conduct, depending on its nature and intent (if to obstruct justice) could amount to a breach of Canon V(k), which provides that an attorney "shall not for the purpose of making any person unavailable as a witness, advise or cause that person to secrete himself or leave the jurisdiction of the Court". However, any such allegation would have had to be followed through with a separate complaint to the relevant body. That said, there was no evidence shown that Mr James was deterred or influenced because of Mr Christie's conduct. Additionally, there was no evidence disclosed as to the nature or content of the engagement between Mr Christie and Mr James since the Committee refrained from examining the purported record of the conversation and Mr Wildman also showed no interest in hearing it, though it was offered up by Mr Christie more than once.

[143] To support a finding of impropriety, it must be clearly demonstrated that the purpose or effect of counsel's contact was to deter the witness from giving evidence or to improperly influence the content of that evidence (see **R v Jales and another** [2007] EWCA Crim 393). Moreover, there was no evidence that the appellant's ability to present an effective defence was compromised in a manner that rendered the proceedings unfair. The appellant's case (which was substantially decided in his favour) was proved largely based on documents which were available. In the circumstances, there was no basis on which the Committee could conclude that there was unfairness to the appellant. Neither can this court.

[144] For those reasons, ground (f) fails.

#### **Ground (g): Alleged bias of the Committee's chairperson**

[145] Ground (g) alleges that the chairman of the panel of the Committee before which the disciplinary proceedings were conducted, Mrs Danielle Gentles Silvera (the chairman'), was automatically disqualified from presiding and participating in the disciplinary proceedings because at least one of the transfers pertaining to the purchase (by the complainant) of one of the subject properties carried the name of the law firm of Livingston, Alexander and Levy, of which she is a partner. It is said that this circumstance gave rise to a direct financial interest. The parties' submissions follow.

#### Summary of submissions for the appellant

[146] Mr Wildman submitted that the chairman ought to have recused herself on grounds of bias or conflict of interest. He pointed out that the firm of Livingston, Alexander & Levy, of which she is a partner, had been involved in the Brompton Road purchase by the complainant prior to the appellant's purported sale. In those circumstances, counsel argued, the chairman had a direct pecuniary interest in the outcome of the disciplinary proceedings.

[147] Counsel relied on **Dimes v Grand Junction Canal** [1852] 3 HLC 759, submitting that the House of Lords affirmed the principle that any pecuniary interest, however slight,

attributed to a judge in proceedings over which they preside, results in automatic disqualification. He also relied on **Allinson v General Council of Medical Education and Registration** [1894] 1 QB 750.

[148] Citing **R (on the application of Kaur) v Institute of Legal Executives Appeal Tribunal and another** [2012] 1 All ER 1435, and **Regina v Bow Street Metropolitan Stipendiary Magistrate and Others, Ex parte Pinochet Ugarte** (No 2) [2000] 1 AC 119, counsel further submitted that whether the disqualification was automatic, or based on apparent bias, was academic and, therefore, irrelevant to the discussion. He also referenced **Carrol Ann Lawrence-Austin v The Director of Public Prosecutions** [2020] JMCA Civ 47, arguing that this court found apparent bias due to a judge's prior affiliation with the prosecuting office, despite no direct involvement, and held that recusal was warranted.

#### Summary of submissions for the GLC

[149] Mrs Minott-Phillips submitted that the appellant's allegation of a direct pecuniary interest on the part of the chairman was untenable. She maintained that the Brompton Road purchase was not the subject of the complaint, which instead concerned the appellant's purported sale of that property. The chairman and the firm to which she is employed were not involved in that transaction, and the disciplinary proceedings could not, in any event, have affected their interests.

[150] King's Counsel contended that, even if the appellant's argument were otherwise tenable, it ought not to be entertained at this late stage, since at no point during the disciplinary proceedings did the appellant allege bias or seek the chairman's recusal. Further, the claim now advanced appears to be one of apparent bias, which was not pleaded in the notice of appeal, and no factual circumstances have been identified that would lead a fair-minded and informed observer to conclude there was a real possibility of bias. For these reasons, King's Counsel contended that this ground is without merit and should not succeed.

### Discussion and disposal of ground (g)

[151] The record establishes that neither the chairman nor her firm, Livingston, Alexander & Levy where she is a partner, was involved in the sale transactions that formed the basis of the complaint. The firm's only role was in the complainant's purchase of the Brompton Road property, several years earlier, when it acted for the vendor. That transaction bore no connection to the disciplinary proceedings and was relevant only insofar as it provided a "known signature" for handwriting analysis and assessing the complainant's credibility. Nothing in the record suggests that the outcome of the disciplinary proceedings could have impacted the chairman or her firm financially or otherwise.

[152] Alternatively, Mr Wildman contended that the chairman laboured under apparent bias or a conflict of interest, rendering the hearing unfair. However, as Mrs Minott -Phillips observed, apparent bias was not pleaded in the notice of appeal, nor were factual circumstances advanced that might lead a fair-minded and informed observer to conclude that bias existed. No such issues were raised before the Committee, and no application was made for recusal.

[153] The authorities, beginning with **Allinson v General Council of Medical Education and Registration**, reaffirmed that the assessment of bias must rest on substance and fact and that automatic disqualification arises where a pecuniary or substantive interest exists. Other forms of interests may likewise disqualify if they give rise to a reasonable apprehension of bias. The touchstone is whether "in substance and in fact" the relationship is such that bias may reasonably be suspected.

[154] The modern test, as articulated in **Porter v Magill** [2021] UKHL 67 and consistently applied in this jurisdiction, is whether a fair-minded and informed observer, apprised of the facts, would conclude that there was a real possibility of bias.

[155] Cases such as **Carrol Ann Lawrence-Austin v The Director of Public Prosecutions; R (on the application of Kaur) v Institute of Legal Executives**

**Appeal Tribunal and another;** and **Regina v Bow Street Metropolitan Stipendiary Magistrate and Others, Ex parte Pinochet Ugarte**, illustrate circumstances where prior affiliations or institutional connections gave rise to disqualification. Those cases, however, are factually and materially distinguishable from the present case. Here, there was no pecuniary interest, no institutional connection, and no prior involvement bearing upon the disciplinary complaint.

[156] In **R(on the application of Kaur) v Institute of Legal Executives Appeal Tribunal and another**, paras. 45-46, the English Court of Appeal emphasised that the principles of automatic disqualification and apparent bias are reconciled under a single overarching principle that adjudicators must recuse themselves where a fair-minded and informed observer would perceive a real possibility of bias. Applying the attributes of the fair-minded and informed observer, as described in **Helow v Secretary of State for the Home Department and another** [2008] 1 WLR 2416, this court is satisfied that neither the chairman's prior professional role nor her firm's earlier involvement in the Brompton Road purchase could reasonably give rise to a perception of bias.

[157] A case closely aligned with the instant matter is **Don O Foote v General Legal Council** [2021] JMCA Misc 2. In that case, the appellant alleged bias on the part of the chairman of the Committee, arising from his prior involvement as counsel in unrelated litigation against the complainant's spouse, and from his failure to ask the appellant, though he had asked the complainant and her spouse, whether they objected to his participation. It was argued that this omission constituted a grave departure from fairness and created a conflict of interest. The Committee, however, expressly stated that it did not consider it proper to rule on the issue of bias, whether actual or apparent, and instead referred to the modern law of apparent bias as set out in **Porter v Magill** and related authorities.

[158] On appeal, this court reaffirmed that the applicable test is whether a fair-minded and informed observer, apprised of all relevant circumstances, would conclude that there was a real possibility of bias. Applying that test, the court held that the chairman's prior

encounter with the complainant's spouse in unrelated proceedings bore no connection to the complaint before the Committee and disclosed no personal interest in the outcome. As to the failure to ask the appellant directly, while this could be viewed as an error, this court found that both the appellant and his counsel were present and had the opportunity to object but did not. In the circumstances, the court concluded that a fair-minded and informed observer, having considered the facts, would not regard the chairman's conduct as giving rise to a real possibility of bias, and the complaint was therefore without merit

[159] Applying these principles to the present appeal, there is no evidence that the chairman or her firm had any pecuniary or other interest in the disciplinary proceedings or its outcome, nor any involvement in the transactions under scrutiny that could rise to a reasonable apprehension of bias. No allegation of bias was raised at the hearing, no application for recusal was made, and no factual circumstances have been identified that could lead a fair-minded observer to apprehend bias. Furthermore, there was no allegation before this court that the chairman's conduct created any suspicion that she was not impartial.

[160] In these circumstances, there is no basis to impugn the chairman's participation in the appellant's hearing on grounds of actual or apparent bias or conflict of interest. Her continued involvement did not compromise the integrity or impartiality of the process. The appellant has, therefore, not demonstrated any infringement of the right to a fair hearing.

[161] Ground (g), therefore, fails.

### **Ground (h): Public versus private hearings**

[162] Ground (h) alleges that the Committee erred in law by conducting the hearing in private, contrary to section 16(3) of the Charter of Fundamental Rights and Freedoms (Constitution Amendment) Act 2011 ('the Charter'). That provision stipulates that all proceedings of every court, and proceedings relating to the determination of civil rights or obligations before any court or authority, shall be held in public.

[163] The appellant contends that the Committee's decision to exclude the public from the hearing infringed this constitutional guarantee.

#### Summary of submissions for the appellant

[164] Mr Wildman contended that the obligation to hold proceedings in public extended throughout the entire disciplinary proceedings, and that the mere presence of a member of the public at the delivery of judgment did not satisfy the requirement. Counsel submitted that rule 14 does not fall within any of the exceptions under section 16 of the Charter and is, therefore, unconstitutional. He contended that the failure to ensure public access rendered the proceedings a nullity.

[165] Counsel relied on **Hinds and Others v Director of Public Prosecutions** [2021] UKPC 10, which he submitted affirmed the mandatory nature of public hearings under section 16(3) of the Charter, and **Moses Hinds and Others v The Queen** [1977] AC 195, where the Privy Council struck down in camera trials under the Gun Court Act.

[166] Given these authorities, Mr Wildman submitted that the appellant's constitutional right to a fair hearing in public was breached. He described this ground of appeal as "unanswerable," asserting that the procedural irregularity was so fundamental that it invalidated the entire disciplinary proceedings.

#### Summary of submissions for the GLC

[167] In response, Mrs Minott-Phillips submitted that the appellant failed to consider section 16(4) of the Charter, which permits exclusion of the public in certain circumstances, including where publicity would prejudice the interests of justice, or to protect the private lives of those involved. She contended that these exceptions are applicable to disciplinary proceedings involving attorneys, complainants, and witnesses.

[168] King's Counsel drew attention to rule 14, which mandates that "[t]he Committee shall hear all applications in private, but shall pronounce their findings and orders in public". She argued that this procedure is prescribed by law and, therefore, not

discretionary. Accordingly, any challenge to the Committee's process must be framed as a constitutional challenge to rule 14 itself, which is not the case.

[169] King's Counsel also emphasised, citing **Gorstew Limited v General Legal Council**, that disciplinary proceedings under the GLC are *sui generis*, and are, therefore, governed by their own statutory framework.

#### Discussion and disposal of ground (h)

[170] The record confirms that the hearings were conducted privately, and that at least one member of the public was present when the decision was pronounced. Mr Wildman's submission also acknowledged this. There was no evidence that any member of the public was excluded, nor was it argued that notification of the decision was not given. The appellant was present and the decision was publicly pronounced.

[171] Sections 16(3) and (4) of the Charter provide:

"16 – (3) All proceedings of every court and proceedings relating to the determination of the existence or the extent of a person's civil rights or obligations before any court or other authority, including the announcement of the decision of the court or authority, shall be held in public.

(4) Nothing in subsection (3) shall prevent any court or any authority such as is mentioned in that subsection from excluding from the proceedings, persons other than the parties thereto and their legal representatives -

(a) in interlocutory proceedings;

(b) in appeal proceedings under any law relating to income tax; or

(c) to such extent as

(i) the court or other authority may consider necessary or expedient, in circumstances where publicity would prejudice the interests of justice; or

(ii) the court may decide to do so or, as the case may be, the authority may be empowered or required by law to do so, in the interests of defence, public safety, public order, public morality, the welfare of persons under the age of eighteen years, or the protection of the private lives of persons concerned in the proceedings.”

[172] Section 16(3) affirms the principle of public hearings in matters determining civil rights or obligations, but section 16(4) recognises exceptions where privacy or the interests of justice require. Rule 14 falls squarely within that framework, mandating private hearings but public pronouncement: “[t]he Committee shall hear all applications in private but shall pronounce their findings and orders in public”.

[173] While private hearings safeguard reputations, privilege, and privacy, public pronouncement of findings secures transparency. As Mrs Minott-Phillips observed, disciplinary enquiries into professional misconduct must often be held privately to protect the reputation of attorneys, particularly where allegations prove unfounded. Such privacy also preserves attorney–client privilege and shields complainants and witnesses. On the other hand, transparency is maintained by the public announcement of findings.

[174] These considerations explain the inclusion of section 16(4) in the Charter. Given the potential reputational harm to attorneys and the entire administration of justice where complaints are not substantiated, among other considerations, I believe rule 14 was contemplated by section 16(4) of the Charter and remains a lawful and constitutionally permissible regulation of the Committee’s procedure. More to the point, there is nothing in the rule that suggests an inconsistency with the Charter. Therefore, authorities such as **Hinds and Others v Director of Public Prosecutions** would not apply.

[175] In that case, unlike the instant case, none of the exceptions under section 16(4) of the Charter was relied upon. One of the questions for the Board was “whether proceedings under the Mutual Assistance (Criminal Matters) Act 1995 (MACMA) are proceedings under 16(3) of the Charter, and thereby compelling persons to give

testimony publicly, bearing in mind the fact that there are no regulations promulgated under it (MACMA), and with particular regard to the taking of evidence under section 20 of MACMA, whether a citizen can be compelled to give a witness statement in public under that legislation” (see para. 16 of the judgment).

[176] In the circumstances of the instant appeal, the contention that the disciplinary proceedings were a nullity cannot be sustained. Accordingly, ground (h) fails.

### **Conclusion**

[177] I am satisfied that the Committee considered the complaint in full, including the canons invoked. Its conclusion of professional misconduct was a finding it was entitled to make based on the appellant’s admission of dishonesty associated with a false attestation. Considering the foregoing, and there being no merit in any of the grounds of appeal, I would dismiss the appeal and affirm the orders of the Committee.

### **Costs**

[178] On the issue of costs, the general rule is that costs follow the event. There being no compelling reason to do otherwise, I propose that the costs of the appeal be awarded to the respondent, to be agreed or taxed.

### **G FRASER JA (AG)**

[179] I, too, have read the draft judgment of Dunbar-Green JA, and I agree with her reasoning and conclusions.

### **EDWARDS JA**

### **ORDER**

1. The appeal is dismissed.
2. The decision of the Disciplinary Committee that the appellant breached Canon I(b) is affirmed.

3. Costs of the appeal are awarded to the respondent, to be taxed if not agreed.