DECISION OF THE DISCIPLINARY COMMITTEE
OF THE GENERAL LEGAL COUNCIL

COMPLAINT No. 110/2005

BETWEEN	**C. DENNIS MORRISON Q.C.**	**COMPLAINANT**
AND	**DORCAS WHITE**	**RESPONDENT**

THE PANEL: Pamela Benka-Coker Q.C.
Allan S Wood
Daniella Gentles

Appearing for the Respondent: Mr. Maurice Saunders

Date of hearing: 29th April 2006

1. This Complaint was laid by C. Dennis Morrison Q.C., who deposed in an Affidavit dated 9th June 2005:-
   i) that he was a member of the General Legal Council (the Council);
   ii) that he was authorised to lay the Complaint by virtue of s 12(1) of the Legal Profession Act;
   iii) that the Respondent had been admitted to practice as an attorney on 18th October 1979;
   iv) that in each of the years 1999, 2000, 2001, 2002 and 2003 (the relevant years) the Respondent had applied for and had been granted a practising certificate pursuant to the Legal Profession Act;
   v) that for each of the aforesaid years the Respondent had failed to deliver to the Secretary of the Council an accountant's report in respect of the financial years contrary to Rule 16 of the Legal Profession (Accounts and Records) Regulations 1999, (the Regulations).

2. The Complainant's evidence was supplemented by Althea Richards, the Secretary of the General Legal Council, in an Affidavit sworn on 9th June 2005 who deponed that she had responsibility to receive the accountant's reports and that the Respondent had not delivered to her or to the office of the General Legal Council any reports for the relevant years, nor had the Respondent filed a declaration in the form of the First Schedule of the Regulations.

3. In response to this Complaint, the Respondent filed an Affidavit sworn on the 19th July 2005 as well as statutory declarations respectively dated 8th August 2005 and 23rd September 2005 for each of the years. In her Affidavit, at paragraph 7, the Respondent admitted the failure to deliver accountant's reports in respect of the financial years but denied that this constituted misconduct in that: "Although I have applied for practising certificates for the relevant years I do not have or operate a law practice as such and do not receive trust money in respect of any legal work I may do on an ad hoc basis." In the statutory declarations the Respondent elaborated that she was employed to the Council of Legal Education as a full time teacher of

law at the Norman Manley Law School and that she did not operate a law practice, but practised on an ad hoc basis; however she did not receive trust money as defined by the Legal Profession (Accounts and Records) Regulations 1999, by reason of the fact that any legal work done was either done on a pro bono basis or where fees were accepted such fees were paid after the services were rendered and it was therefore unnecessary and impractical to deliver an accountant's report. The Respondent also explained that her failure to file and deliver the required declaration for the relevant years was due to pressure of work.

4. It is clear from the tenor of the Respondent's statutory declarations and particularly at paragraph 4 where she stated that, "My failure to file and deliver the required declarations was due to pressure of work and not out of any disregard or contempt for the Regulations or the office of the General Legal Council..." that she implicitly accepted that the Regulations imposed on her an obligation to file the declarations where the nature of the practice carried on did not make it necessary to file an accountant's report for the relevant years.

5. However, at the hearing of the Complaint on 29th April 2006, Counsel for the Respondent made radically different submissions both by way of taking preliminary objections on the basis that the Panel had no jurisdiction to hear the matter, much of which was repeated by way of his closing submissions made immediately after the preliminary objections were dismissed by the Panel. However, before launching into the preliminary objections, Counsel for the Respondent invited the Panel to embark on hearing the Complaint despite the Panel's indication that due to pressure of other urgent complaints to be heard on that day, and the absence of the Complainant, it was inclined to adjourn the matter. Having declined the opportunity of an adjournment with the prospect of the Complaint coming before a differently composed panel, and thereby having elected to proceed in the absence of the Complainant, among the objections taken by Counsel was that the Panel should disqualify itself due to the close relationship of the Disciplinary Committee to the General Legal Council and also due to the fact that members of the Panel would have participated when the Disciplinary Committee in general meeting decided that there was a prima facie case to warrant the Complaint being fixed for hearing. It is readily apparent that having elected to proceed in such circumstances when the hearing could have been adjourned at the invitation of the Panel, such objection subsequently taken to the composition of the Panel must be treated as waived and not raised as a matter of substance but as a side wind to the Respondent's principal objection.

6. The Respondent's principal objection was that by virtue of s 37 of the Legal Profession Act (the Act) and Reg. 18(1) of the Regulations, the Attorney being in the employment of the Council of Legal Education, a statutory authority was exempt from the Regulations and was not required either to file an accountant's report or the declarations and accordingly the Disciplinary Committee had no jurisdiction to hear the matter. Reg. 18 provides:-

> "(1) Nothing in these Regulations shall apply to any attorney employed by the Government or by any local or statutory authority in relation to his or her practice as an attorney in that employment or to any attorney who files a declaration in the form of the First Schedule which satisfies the Council that he or she does not receive trust money.
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> (2) Nothing in these Regulations affects an attorney-at-law's right to lien, set-off, counter-claim, charge or any other right against moneys standing to

the credit of a client account or trust bank account.

(3) Excepting for Regulations 1, 2, 3 and 4 which shall come into operation on the publication of these Regulations, nothing in these Regulations shall apply to any trust money received by an attorney before the first day of September 1999, or to any book, record or account relating to any such money".

Section 37 provides: -

"Regulations made under section 35 shall not apply to any person who is in full-time employment as an officer of Government or a local authority."

7. Counsel elaborated that as an employee of the Council of Legal Education, the Respondent was exempt from the Regulations by virtue of s 37 and Reg. 18(1) and it was not necessary for her to file a statutory declaration. Further, that the Complainant and the Council should have taken judicial notice of the Respondent's employment to the Council of Legal Education. At the end of his preliminary objections, Counsel for the Respondent recommended that the Complaint should either be withdrawn or an opinion sought from the Attorney General's Department or by way of case stated to the Court of Appeal. Counsel for the Respondent obviously over sighted that as a creature of statute the procedure and powers of the Disciplinary Committee are governed by the Legal Profession Act and the suggestion that the Disciplinary Committee could take advice from the Attorney General's Department or state a case is not to be found anywhere in the Act.

8. We turn to deal with the principal objection that the Respondent being an employee of the Council of Legal Education did not have to file an accountant's report or a statutory declaration for the relevant years and in that regard, the other provisions of the Legal Profession Act must be read with the Regulations. Hereafter the term "public employment" will be used to comprehend the employment of an attorney-at-law to Government, a local or statutory authority as used in the exemption granted by Reg. 18 and s 37 of the Act. It is to be noted however that the exemption given by s 37 is limited to persons employed to Government or to a local authority. The exemption granted by Reg. 18 (1) may well be wider as it extends the exemption to persons employed to a statutory authority.

9. Section 35 of the Legal Profession Act empowers the General Legal Council to make regulations concerning the opening and keeping of client bank accounts and the keeping of accounts containing particulars and information as to money received. The Regulations were made pursuant to the powers conferred by section 35. Section 36 of the Act gives a general power to lay complaint where there is failure to comply with the Regulations. Section 37 of the Act provides that Regulations made under s 35 shall not apply to any person who is in full time employment as an officer of government or a local authority. This exemption does not stand alone for most importantly s 38 provides: -

"Where a person is employed as an officer of Government or a local authority and at the same time engages in private practice as a lawyer the regulations under section 35 shall only apply to him so far as regards moneys received, held or paid by him in the course of his private practice".

10. So it is clear from s 38 that the exemption from the statutory obligations to comply with the Regulations given by s 37 to attorneys in full time public employment does not extend where that attorney goes outside of that employment and receives client or trust money in the course of such practice as an attorney. The Panel believes that the Regulations were intended to give effect to the provisions of sections 37 and 38 of the Act, so that where the Attorney is in public employment and carries on no private practice involving receipt of trust money, that attorney is entitled to exemption because he does not handle trust money. However, where the Attorney carries on any form of practice outside of the public employment and which involves receipt of trust money, even though the attorney is in public employment, an accountant's report must be filed in compliance with the Regulations. So much is clear.

11. The question then arises whether the attorney holding a practising certificate is entitled to exemption pursuant to section 37 and Reg. 18 (1) where no statutory declaration is filed? The answer to this question turns on the proper construction to be placed on Regs. 18 and 16 to determine whether it is incumbent on an attorney who holds a practising certificate but is entitled to exemption from filing the accountant's report to file in lieu of the accountant's report a statutory declaration.

12. Regulation 16 provides: -

> "(1) Every attorney shall, not later than six months after the commencement of any financial year (**unless he or she files a declaration in the form of the First Schedule which satisfied the Council that owing to the circumstances of his or her case it is unnecessary or impractical for him or her to do so**), deliver to the Secretary of the Council an accountant's report in respect of the financial year next preceding that year".
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> (2) Every attorney shall produce or cause to be produced to the accountant whose accountant's report he or she proposes to deliver to the Secretary of the Council pursuant to paragraph (1) all books, records and accounts required by Regulation 6 to be kept by him or her and, in addition, any files or other documents connected with, or related to, or explaining or throwing any light on, anything in those books, records and accounts.
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> (3) In this regulation: -
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> "accountant" means a chartered accountant who is the holder of a valid practising certificate from the Institute of Chartered Accountants or a public accountant entitled to practise as such under the Public Accountancy Act.
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> "accountant's report means a report made by an accountant in the form in the Second Schedule and signed by him and the attorney in the places respectively provided in that form of their signatures". (*emphasis added*)

13. An important point should be made at this juncture which is that attorneys who are in public employment are permitted to function as an attorney in the course of that employment without the necessity of obtaining a practising certificate. This is so because s 7 of the Act permits every law officer of the Crown or legal officer of Government to practise in all courts of justice of Jamaica without the necessity for holding a practising certificate from the General Legal Council. For all practical purposes therefore such legal practitioners in public

employment need not hold a practising certificate and where they do not, such persons for all practical purposes do not fall within the disciplinary jurisdiction of the Disciplinary Committee. What gives the Disciplinary Committee jurisdiction over attorneys in public employment is the grant to such persons of an annual practising certificate to which they may be entitled but the grant of which is not necessary for the discharge of their duties as a law officer in the employment of the Crown. The issue of the application of the Regulations can only arise because the attorney in public employment has sought and obtained from the Council an annual practising certificate. Where the Regulations do apply to attorneys issued with a annual practising certificate, by Reg. 16 the obligation is in our view quite clearly imposed on the attorney to deliver to the Secretary of the General Legal Council an accountant's report for the preceding financial year and the only exception to that is where a declaration is filed in the form of the First Schedule. The accountant's report filed pursuant to Reg. 16(1) relates to the preceding year and equally the declaration which may be filed in lieu where it is unnecessary or impractical to file an accountant's report must relate to the preceding year and must be filed in the time prescribed by Reg. 16(1). The form of declaration in the First Schedule supports such a construction by specifically referring in its heading to Regulations 16 (1) and 18(1).

14. It would be impossible for the General Legal Council to take judicial notice of the fact whether an attorney holding a practising certificate which is issued annually is in full time public employment or whether that person does or does not also carry on private practice as contended by Counsel for the Respondent. The General Legal Council would have no means of knowing whether an attorney is in public employment and if so whether the attorney is in fact also carrying on private practice and handling trust money and it would be an impossible task for the Council or any member of the Council to come knocking on the door of each attorney holding a practising certificate while in public employment to query whether in any relevant year that attorney was or was not also engaged in private practice handling trust money while so employed.

15. The issue of a practising certificate to such a person permits him to engage in private practice outside of or on the side with the public employment at anytime. Therefore it must follow that it is only reasonable for the General Legal Council to assume that the persons who are holders of a practising certificate are engaged in private practice as under the Act there is no restriction upon them from so doing. Such persons have the privilege and right to represent members of the public and to accept trust money as defined by the Regulations which would include advances of fees paid on account of services to be rendered.

16. Counsel for the Respondent further submitted that a blanket declaration sufficed and that once such a declaration was filed by an attorney stating that he is in the employment of government or a statutory authority, no further declaration need be filed in future years. The Panel rejects that submission. The Declaration and the Accountant's Report stipulated by Regulations 16(1) and 18 relate to a past period where the Attorney must either file for that period of activity an accountant's report or the statutory declaration substantiating that the accountant's report for the period is unnecessary. These documents speak to the past, not to the future, and this has to be so because the attorney holding a practising certificate can as previously stated engage in practice and handle trust money whether or not that attorney remains in

public employment.

17. A construction such as contended for by the Respondent's Counsel would, in our view produce an absurd result where the object for which the Regulations were enacted would be defeated. That object is to protect the public by measures designed to ensure that attorneys who engage in practice and handle trust money conduct their practice in such manner that proper trust accounts and records are certified by a public or chartered accountant's report as having been maintained in accordance with the Regulations. If attorneys in public employment who also hold a practising certificate could simply gain exemption from the Regulations without periodically filing the requisite declaration as stipulated by Reg. 16, such attorneys would for all practical purposes remain unregulated and the public left to the whims of the unscrupulous attorney in public employment who could simply file a blanket statutory declaration or indeed no declaration at all. The Panel believes that it must adopt a purposive construction to avoid such an absurdity and to avoid the mischief which the Regulations were intended to address. It is our view that any attorney who holds a practising certificate conferring on that attorney the right at any time to engage in private practice and to handle client's trust money, must comply with the Reg. 16 (1) by filing for each preceding year the accountant's report or a statutory declaration substantiating that it is unnecessary to file such a report and also such accountant's report or statutory declaration must in our view be filed within the time stipulated by Reg. 16(1). Any other construction would render the Regulations unworkable in respect of holders of practising certificates who are in public employment and thereby the object of the Regulations and the provisions of the Legal Profession Act to which we have referred would be defeated. .

18. The Respondent in her affidavit and statutory declarations appreciated that it was incumbent on her to have filed either a statutory declaration or the accountant's report for each of the relevant years as she explained that her failure to deliver the declarations was due to pressure of work. Her Affidavit and the Declarations have not been challenged.

19. As to the Respondent's objections to the Panel on the ground of bias, we again make the point that we take the view that by inviting the Panel to proceed with the hearing of the Complaint and dispensing with the attendance of the Complainant when the Panel was minded to adjourn the matter, the Respondent waived any objection to the composition of the Panel hearing the Complaint. In any event, we find that there is no merit to the objections made to the composition of the Panel for the additional reasons set out below.

20. The first objection to the composition of the Panel was based on the close relationship between the Disciplinary Committee and the General Legal Council and the Complainant a member of Council who laid the Complaint. However, any such relationship largely arises by reason of the scheme of the Legal Profession Act, section 3 of which creates the General Legal Council as a body established to uphold standards of professional conduct, while pursuant to section 11 it is the Council which appoints the Disciplinary Committee. Again, section 12(1) permits complaints concerning professional misconduct to be made by any member of the Council. However, the General Legal Council is a separate and distinct entity from the Disciplinary Committee, as can be seen from the constitution of the General Legal Council which is set out in the First Schedule of the Act and which is separate and distinct

from that of the Disciplinary Committee which is set out in the Third Schedule of the Act.

21. As was noted by the Court of Appeal in the case of **McCalla v The General Legal Council (1993) 49 WIR 213,** affirmed by the Judicial Committee on this aspect **(1998) 53 WIR 272**, independence and impartiality connotes freedom on the part of the court or tribunal to come to a just conclusion . In that case it was found that although there may be some overlap in respect of membership of the respective bodies, that did not mean that an attorney could not be afforded a fair hearing where a complaint is made by a member of Council. However since the decision in the ***McCalla Case***, as an additional safeguard to guarantee impartiality in the determination of complaints, the members of the Disciplinary Committee who are members of the Council do not in fact participate in the investigation or laying of complaints. The adoption of such a practice of abstaining from participation in the laying of complaints by members of the Disciplinary Committee who are also members of Council has been deliberately adopted by both the Council and the Disciplinary Committee as a matter of policy in order to preserve separation of the judicial functions of the Disciplinary Committee from the prosecutorial role that has to be performed by members of Council. Therefore the only concern in the present case is with the possibility of bias arising from the fact that two members of the Committee are members of Council as is the Complainant and not that any member of the Committee in any way participated or was involved in the laying of the Complaint.

22. Since the ***McCalla Case*** the test of bias has been restated by the House of Lords in **Porter v Magil [2002] 1 ALL ER 465** as whether a fair minded informed observer having considered the facts would conclude that there is a possibility of bias. The fair minded informed observer can be assumed to be aware of the practices and traditions of the legal profession: see **Taylor v Lawrence [2002] 2 ALL ER 354**. The issue as to whether a member of a tribunal ought to be ipso facto disqualified because he is also a member of the body initiating the complaint or proceedings on an application of the restated test of bias recently arose in the case of **Meerabux v Attorney General of Belize (2005) UK PC 12** which affirmed as applicable the restated test of bias laid in **Porter v Magil [2002] 1 ALL ER 465**. However in the final result the Judicial Committee came to the same conclusion and result as in the ***McCalla Case***.

23. It is our view that the decision of the Judicial Committee in the ***Meerabux Case*** completely answers the point that there can be no apprehension of the possibility of bias on the part of a fair minded observer reasonably informed as to the system of regulation of the legal profession as contained in the Legal Profession Act. In that case, complaint was made against the appellant, a justice of the Supreme Court of Belize by the Bar Association of Belize. In accordance with the Constitution of Belize, the appellant was removed from office by the Governor General on advice by the Belize Advisory Council. The Chairman of the Belize Advisory Council was also a member of the Bar Association of Belize but had not participated in the bringing of the complaint. The appellant instituted proceedings alleging that his constitutional right to a fair hearing had been infringed. This claim was dismissed at first instance and on appeal and the decision of the Court of Appeal of Belize was affirmed by the Privy Council. On the issue of bias arising by reason of the Chairman's membership of the Bar Association of Belize, in delivering the opinion of the Privy Council Lord Hope, stated:

"The question is whether it can be said, simply because of his membership of the Bar Association, that Mr. Arnold could be identified in some way with the prosecution of the complaints that the Association was presenting the tribunal so that it could be said that he was in effect acting as a judge in his own cause. Only if that proposition could be made good could it be said, on this highly technical ground, that he was automatically disqualified. Their Lordships are not persuaded that the facts lead to this conclusion. Leaving the bare fact of his membership on one side, it is clear that Mr. Arnold's detachment from the cause that the Bar Association was seeking to promote was complete. He had taken no part in the decisions which had led to the making of the complaints, and he had no power to influence the decision either way as to whether or not they should be brought. In that situation his membership of the Bar Association was in reality of no consequence. It did not connect him in any substantial or meaningful way with the issues that the tribunal had to decide. As professor David Feldman has observed, the normal approach to automatic disqualification is that mere membership of an association by which proceedings are brought does not disqualify, but active involvement in the institution of the particular proceedings does: *English Public Law (2004), para 15-76*, citing *Leeson v Council of Medical Education and Registration (1889) 43 Ch D 366* where mere membership of the Medical Defence Union was held not to be sufficient to disqualify and *Allinson v General Council of Medical Education and Registration [1894] 1 QB 750* where mere ex officio membership of the committee of the Medical Defence Union too was held to be insufficient. The same contrast between active involvement in the affairs of an association and mere membership is drawn by *Shetreet, Judges on Trial (1976), p 310*. Their Lordships are of the opinion that the principle of automatic disqualification does not apply in this case.

The issue of apparent bias having been raised, it is nevertheless right that it should be thoroughly and carefully tested. Now that law on this issue has been settled, the appropriate way of doing this in a case such as this, where there is no suggestion that there was a personal or pecuniary interest, is to apply the *Porter v Magil* test. The question is what the fair-minded and informed observer would think. The man in the street, or those assembled on Battlefield Park to adopt Blackman J's analogy, must be assumed to possess these qualities. The observer would of course consider all the facts which put Mr. Arnold's membership of the Bar Association into its proper context. But the facts which he would take into account go further than those described in the previous paragraph. They include the nature and composition of the tribunal, the qualifications which a person must possess to be appointed Chairman, the fact that the first proviso to section 54(11) of the Constitution directs the Chairman to preside where the BAC is convened to discharge its duties under section 98 and the fact that this direction is subject only to the special provision which the second proviso makes for what is to happen if the BAC is convened to consider the Chairman's removal. Their Lordships are inclined to agree with Carey JA that, if he had taken these facts into account,

the fair-minded and informed observer would not have concluded that Mr. Arnold was biased..."

24. A similar point also arose and was recently rejected in **Gilles v Secretary of State for Work and Pensions [2006] UKHL 2**. In that case it was alleged that there was an apprehension of bias because the medical member of a disability appeal tribunal was also a member of the panel of Examining Medical Practitioners, whose report was in issue and had to be evaluated by the tribunal. A finding that there was in the circumstances a reasonable apprehension of bias was rejected by the House of Lords and we find instructive and applicable the speech of Lord Hope which stated:

> " 17. The critical issue is whether the fair-minded and informed observer would conclude, having considered the facts, that there was a real possibility that Dr Armstrong would not evaluate reports by other doctors who acted as EMPs objectively and impartially against the other evidence. The fair-minded and informed observer can be assumed to have access to all the facts that are capable of being known by members of the public generally, bearing in mind that it is the appearance that these facts give rise to that matters, not what is in the mind of the particular judge or tribunal member who is under scrutiny. It is to be assumed, as Kirby J put it in *Johnson v Johnson* (2000) 201 CLR 488, 509, para 53, that the observer is neither complacent nor unduly sensitive or suspicious when he examines the facts that he can look at. It is to be assumed too that he is able to distinguish between what is relevant and what is irrelevant, and that he is able when exercising his judgment to decide what weight should be given to the facts that are relevant.....
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> 19. The question then is whether there were grounds for thinking that Dr Armstrong was likely to be unconsciously biased when she was examining the medical evidence because of a predisposition to prefer the EMP report as against any contrary evidence due simply to her current involvement in providing reports as an EMP. Doctors holding current engagements to provide these reports can be assumed, no doubt, to have a special interest and experience in this kind of work. The group of doctors to which they belong can also be distinguished from NHS doctors generally, as was pointed out by the tribunal of commissioners. But why should these facts be said to lead to the conclusion that there was a real possibility that she was biased in favour of the views expressed by the EMP?
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> 20. The weakness of the argument that this was a real possibility is exposed as soon as the task that Dr Armstrong was performing as an EMP is compared with the task which she was performing on the tribunal. In each of these two roles she was being called upon to exercise an independent professional judgment, drawing upon her medical knowledge and her experience. The fair-minded observer would understand that there is a crucial difference between approaching the issues which the tribunal had to decide with a predisposition in favour of the views of the EMP, and drawing upon her medical knowledge and experience when testing those views against the other evidence. He would

> appreciate, looking at the matter objectively, that her knowledge and experience could cut both ways as she would be just as well placed to spot weaknesses in these reports as to spot their strengths. He would have no reason to think, in the absence of any other facts indicating the contrary, that she would not apply her medical knowledge and experience in just the same impartial way when she was sitting as a tribunal member as she would when she was acting as an EMP."

25. The second point for disqualification of the Panel was on the basis that members of the Panel had participated in the general meeting of the Disciplinary Committee which had determined that the Complaint raised a prima facie case for hearing. Counsel for the Respondent drew the analogy to a judge giving a judgment and then sitting on the appeal from that decision. This is not in our view a correct analogy. The use of the term "prima facie case" derives from the Legal Profession Act, Fourth Schedule Reg. 4 which provides: -

> "Before fixing a day for the hearing, the Committee, may require the applicant to supply such further information and documents relating to the allegations as they think fit, and in any case where, in the opinion of the Committee, no *prima facie* case is shown the Committee may, without requiring the attorney to answer the allegations, dismiss the application. If required so to do, either by the applicant or the attorney, the Committee shall make a formal order dismissing such application".

26. When the Disciplinary Committee in general meeting decides that complaint ought to be set down for hearing, no decision is taken on the merits of the complaint. No determination on the merits of a complaint is made when complaints are reviewed and listed for hearing. Reg. 4 places a duty of the Disciplinary Committee in general meeting to dismiss any complaint which fails to show a prima facie case. This sifting at the general meeting was fully discussed and endorsed by the judgment of Wright JA in the Court of Appeal in the ***McCalla Case at 239*** and as found in that Case the expression "prima facie case" means no more than a case serious enough to require a response. We find no merit in that objection.

27. Further Counsel for the Respondent submitted that in the decision of the Judicial Committee in **Campbell v Hamlet [2005] UKPC 19**, on appeal from Trinidad and Tobago, it was found that the burden of proof to be applied in disciplinary proceedings was the same as the burden in criminal proceedings. Thus Counsel's argument was that it followed that by applying the criminal burden of proof to disciplinary proceedings, such proceedings were in the nature criminal proceedings and the rules as to the laying of complaint were the same as applicable to an indictment in criminal proceedings. He contended that the complaint as set out in the Affidavit of the Complainant failed to proffer the charges with the particularity required of an indictment and ought on that ground to be dismissed.

28. We find no merit in this objection. In the decision of the Judicial Committee in **Stubbs v Gonzales [2005] UKPC 22**, the contention that bankruptcy proceedings were not civil proceedings because the proceedings carried quasi-penal consequences was rejected. Disciplinary proceedings are not criminal proceedings. As held in the ***McCalla Case*** by the

also be a disincentive to lecturers at the Norman Manley Law School engaging in practise. We take a contrary view. Persons employed to the Council of Legal Education in capacity as lecturers at the Norman Manley Law School are expected to comply with the law. Rather than giving special dispensation from compliance with the Legal Profession Act and the Regulations, it is reasonable to expect that such persons, who are also holders of practising certificates, would adhere strictly to the law conscious of the fact that by their conduct, they are setting an example which ought to be emulated by their students who will in a short time be members of the profession.

31. In the final result after the commencement of the Complaint, the Respondent has filed statutory declarations deposing that although she did carry on practise in each of the relevant years, it is unnecessary and impractical for her to file accountant's reports for the reason that insofar as she collected fees, the fees were paid after her services were rendered. We understand the Respondent to be saying that insofar as fees were collected in each of the relevant years, such fees were always paid for services already rendered and billed and in no case did she receive fees paid in advance of services to be rendered. In the former case the fees paid for services already rendered and billed would not be trust money but the money of the attorney for which the attorney would not have to account and therefore no accountant's report would be necessary where an attorney carries on practice strictly on such a basis

handling no client's money. However in the latter example where fees are paid in advance of services rendered by the attorney or in advance of a bill, such payment remains trust money and as a general rule it would be incumbent on the attorney in such a case to file an accountant's report.

32. The Respondent's statutory declarations for each of the relevant years have not been challenged. In the circumstances it is sufficient we believe to reprimand the Respondent for having failed to file the requisite statutory declarations within the time prescribed by Reg. 16(1) for the years 1999, 2000, 2001, 2002 and 2003 and thereby rendering it necessary for this Complaint to have been made. We also order the Respondent to pay the costs of these proceedings to the General Legal Council in the sum of $20,000.00.

Dated 29th day of July 2006

PAMELA BENKA-COKER Q.C.

ALLAN S WOOD

DANIELLA GENTLES