JAMAICA

IN THE COURT OF APPEAL

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

MISCELLANEOUS APPEAL NO COA2019MS00008

BETWEEN	**DEBAYO AYODELE ADEDIPE**	**APPELLANT**
AND	**KEMISHA GREGORY**	**RESPONDENT**
	EX PARTE GENERAL LEGAL COUNCIL	

Ravil Golding for the appellant

Mrs Denise Kitson QC and Russell Cooper instructed by Grant, Stewart, Phillips & Co for the respondent

26 October 2021 and 8 April 2022

F WILLIAMS JA

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

EDWARDS JA

Introduction

[2] This is an appeal brought by Debayo Ayodele Adedipe ('the appellant'), in which he seeks to challenge the decision of the Disciplinary Committee of the General Legal Council ('the Committee'), made on 23 October 2019, to strike him off the roll of attorneys entitled to practice in this jurisdiction. He was struck off pursuant to a complaint brought by his client, Ms Kemisha Gregory, to whom I will refer, hereinafter, as 'the complainant'.

Following the hearing of the complaint, the Committee found the appellant guilty of professional misconduct as per Canon VIII (d) in that:

> "(a) he has failed to account to the Complainant for money due to her credit; and
>
> (b) he has breached Canon I (b) of the Legal Profession (Canons of Professional Ethics) Rules which provides:
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> "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."

At the sanction hearing, in addition to striking off the roll, the Committee ordered the appellant to pay restitution to the complainant in the sum of $630,000.00, with interest at a rate of 12% per annum from 30 July 2019 until the date of payment, as well as costs in the amount of $300,000.00.

Background

[3] The background facts, which I will outline below, are taken from the decision of the Committee, the documents before this court and the written submissions from counsel on both sides. The lead up to this unfortunate situation is quite a sad one. On 21 August 2004, the complainant was negligently shot and injured by members of the security forces. At that time, she was a minor. She brought a claim in the Supreme Court in 2005, by her mother as her next friend, for negligence against the State to recover damages for the injuries she suffered. The appellant was retained by the complainant's mother to represent her in the personal injury claim. She was ably represented in that claim by the appellant.

[4] The claim was tried in November and December of 2009. Judgment was delivered in the complainant's favour on 28 September 2011. She was awarded the sum of $1,950,000.00 for general damages, $250,000.00 for exemplary damages, as well as costs to be agreed or taxed. Interest was also awarded at a rate of 6% per annum on the general damages from 28 January to 21 June 2006, and thereafter, at a rate of 3%

per annum up to 28 September 2011. The appellant duly advised the complainant of the said judgment by letter dated 30 September 2011.

[5] However, although the Attorney General remitted the judgment sums to the appellant, he failed to pay them over to the complainant. In 2014, the complainant was advised by a representative of the Attorney General's Chambers that payment of the judgment sums had been made to her attorney. Despite several attempts to contact the appellant for payment to be disbursed to her, the complainant did not hear from the appellant until 17 July 2017, when she received an email promising that payment would be made on 31 July 2017. In response to that promise, the complainant provided the attorney with her banking details. The money was never remitted to the complainant's account. As a result of the attorney's failure to pay over the judgment sums he held on her behalf, the complainant retained another lawyer to assist her in recovering those monies. That attorney wrote to the appellant on 7 August 2017 demanding payment and an accounting. The appellant still failed to pay, notwithstanding that he had advised the complainant's attorney, by email dated 15 August 2017, to expect a letter from him in a few days.

[6] That avenue having yielded no success, the complainant made a complaint to the General Legal Council, supported by affidavit evidence, outlining her grievance. The appellant was served with the complaint and the supporting affidavit and was instructed, by the Committee, to file an affidavit in response to the complaint but he failed to do so. The Committee proceeded to set a date for hearing. After hearing oral evidence from the complainant, and before any cross-examination of the complainant could take place on any of the dates set for that to take place, the appellant made a full admission of the complainant's case to the Committee. In particular, he admitted receiving the sums from the Attorney General's Chambers in satisfaction of the judgment on the complainant's behalf, and admitted that he had failed to pay them over. In the presence of the Committee, he made arrangements with the complainant to pay the sums over to her, and did, in fact, pay over the sums into her account. As a result of this full admission and

restitution to the complainant, made by the appellant, the Committee found him guilty of professional misconduct. A hearing date was set for the Committee to determine the appropriate sanction to impose in the circumstances. The appellant was asked to make written submissions in that regard.

[7] However, on the date set for the sanction hearing, the attorney for the appellant submitted that the Committee could not properly proceed to sanction the appellant as he had not been afforded the opportunity to cross-examine the complainant or to give evidence on his own behalf. The Committee took the view that, in the light of fact that the appellant had made admissions and restitution, and had shown no desire to cross-examine, even when questioned regarding that intent, there had been no need to continue hearing evidence on the appellant's culpability.

[8] The appellant filed no affidavit or written submissions, and made no oral submissions at the sanctions hearing. He was sanctioned as indicated.

The proceedings before the Committee

[9] The complaint before the Committee was that the appellant:

> "(a) has not accounted for all monies in his hands for his account or credit, although [the complainant] has reasonably required him to do so;
>
> (b) is in breach of Canon I (b) which states that "An Attorney shall at all times maintain the honour and dignity of the profession."

[10] The form of application and affidavit sworn by the complainant, dated 27 October 2017 and 25 January 2018, respectively, and filed 7 February 2018, were admitted as Exhibits 1 and 2. The exhibits to the complainant's affidavit were numbered KG1-KG6. The appellant filed no affidavits.

[11] Importantly, the following pieces of correspondence were exhibited to the complainant's affidavit:

(a) **Exhibit KG3** — Letter dated 17 July 2017 from the appellant to the complainant in which he said he would pay all sums due to her by 31 July 2017; and

(b) **Exhibit KG6** — Email dated 15 August 2017 from the appellant to Mr. Alimi Banjoko, the complainant's attorney-at-law, stating that he should expect a letter in a few days, in response to Mr. Banjoko's correspondence demanding payment by 10 August 2017.

[12] On 16 March 2019, the complaint came before the Committee for hearing. The complainant appeared by way of Skype and the appellant appeared by way of his attorney, Mr Ravil Golding. Mr Golding informed the Committee that he did not have sufficient instructions, and that the appellant was ill and unable to appear. The hearing was adjourned to 25 May 2019. The appellant was requested to file an affidavit in response to the complainant's affidavit by 14 April 2019. The adjourned hearing was further postponed to 29 June 2019 and a notice of postponement was sent to the appellant and his attorney. However, neither of them attended the hearing on 29 June 2019.

[13] The complainant being present, the Committee commenced the hearing of this matter on 29 June 2019. Having satisfied itself that the appellant had been duly served with notice of the hearing, pursuant to rules 5 and 21 of the Legal Profession (Disciplinary Proceedings) Rules ('the Rules') set out in the Fourth Schedule to the Legal Profession Act ('the LPA'), and in exercise of its discretion under rule 8 of the Rules, the Committee proceeded with the hearing in the absence of the appellant.

[14] The Committee took the complainant's oral evidence and admitted into evidence her complaint and affidavit in support of the complaint, with the attached exhibits. The appellant, up to that time, had not filed any affidavit as he was requested to do. The evidence of the complainant having been taken, the matter was adjourned to 13 July

2019, to allow the appellant an opportunity to cross-examine the complainant. By letter dated 8 July 2019, the secretary of the Committee informed the appellant of the Committee's order and enclosed the notes of evidence.

[15] On 13 July 2019, Mr Golding appeared for the appellant and advised the Committee that he had received information that the appellant had suffered what was thought to be a minor heart attack, and was confined to bed. However, Mr Golding had no medical report or information as to who was the attending physician or the period for which the appellant was to be confined. The Committee informed Mr Golding that the complainant had given her evidence and was to be cross-examined. When asked whether he intended to cross-examine the complainant, he replied that he was only holding for the appellant with the limited instructions to seek an adjournment. The Committee brought to Mr Golding's attention the fact that the appellant had not complied with the requirement to file an affidavit in response, nor with the Committee's order for him to do so, and asked Mr Golding whether the appellant intended to do so. Mr Golding repeated that he had no instructions. The Committee granted an adjournment to 22 July 2019.

[16] On 22 July 2019, the appellant was present. The Committee began the proceedings by informing him that the complainant's evidence had been taken and that he was to cross-examine her that day. The Committee also enquired whether he had filed his affidavit. He still had not filed any affidavit, but indicated to the Committee that he had retained Mr Golding, however, Mr Golding was unable to be present that day. He indicated that it was his desire to have Mr Golding represent him, "if it is possible."

[17] The appellant admitted that on the previous occasion when Mr Golding appeared before the Committee, Mr Golding had no instructions to act for him. He also admitted that he had not complied with the instructions to file an affidavit, and that he had no good reason for not doing so. When the Committee inquired whether he was in a position to cross-examine the complainant that day, the appellant said he was not. The Committee retired to consider the appellant's request for an adjournment to the 29 July 2019, to allow for Mr Golding to be present.

[18] The Committee, having been left in the dark as to the appellant's position because of his failure to file an affidavit in the matter, used the opportunity, whilst awaiting Mr Golding's confirmation that he was available for 29 July, to ask the appellant to identify what factual assertions made by the complainant were in dispute. In response, the appellant admitted that he was not disputing the fact that he had received the payment of the judgment sums and had not paid over any part of the monies to the complainant. The Committee, at this point, explained to the complainant that it was attempting to narrow the issues, in the light of the planned adjournment and the fact that the appellant had filed no affidavit. The Committee then confirmed with the appellant that he had said he had instructed his attorney that payment would be made, in full, by Monday, 29 July. The appellant noted that Mr Golding had been instructed that payment would be made to the complainant within the next few days, and by the next hearing date. He requested the complainant's bank information so that the arrangements could be made. The complainant, who was present throughout, agreed to send her bank details to the appellant and the secretary of the Committee, by email. The following exchange then took place:

> "Panel: Mr. Adedipe is saying that payment will be effected by Monday the 29th July, so when we come on the 29th it will simply be to confirm receipt of funds, is that correct Mr. Adedipe?
>
> Adedipe: Yes.
>
> Panel: Mr. Adedipe are you saying that the claim is not in dispute, you [sic] not contesting the claim?
>
> Adedipe: I am not contesting that:
>
> 1. Money has been received; &
>
> 2. Money has not been paid.
>
> Panel: The complaint is that you have not accounted to Ms. Gregory for all monies in your hand and that you are in breach of Canon 1(b) failing to

maintain the honour and dignity of the profession.

Adedipe: What I am saying is not in dispute is the fact that money has been received and the fact that money has not been paid.

Panel: We are clear on that. The total money was received?

Adedipe: There is a little issue about the total monies that have been received.

Panel: Monies have been received and no payment to the complainant, not in dispute?

Adedipe: That's correct."

[19] Having ascertained from the appellant that he was finalising instructions as to how the payment to the complainant was to take place, the Committee explained the position to the complainant and the matter was adjourned to 29 July 2019.

[20] On 29 July 2019, the appellant and Mr Golding were both present. Mr Golding indicated that unsuccessful attempts had been made by the appellant to transfer the funds that morning, and that it would be done that day. When asked how much was due to the complainant and how much money the appellant had received on her behalf, Mr Golding stated that $2,555,875.00 was received from the Attorney General, and that interest on that sum up to 29 September 2019 amounted to $1,226,820, resulting in a total sum of $3,782,695.00. Once legal fees of 25%, amounting to $945,673.75, were deducted, the balance due to the complainant was $2,837,021.25, which Mr Golding said would be sent to the complainant's account on that day.

[21] The complainant disagreed with the figure outlined by Mr Golding and agreed to procure an accounting to be sent to the Committee and the appellant. The appellant also agreed to prepare a statement of account setting out the interest rates applied on the judgment sum after 28 September 2011, the amount of interest the Attorney General had

paid and whether the Attorney General had agreed to pay all the interest sought. The matter was adjourned to 30 July 2019.

[22] On 30 July 2019, the appellant was present but Mr Golding was not. The appellant submitted a statement of account in which the total due to the complainant was represented as $3,030,327.99. The appellant informed the Committee that he had wired the equivalent of that sum, which he said was US$22,104.66, to the complainant's bank account that day. The complainant presented a statement of account which showed that the amount due to her was $3,869,042.47. It was generally agreed that the main differences between the two accounts were the interest rate applied and the period upon which it was applied. The appellant had claimed that the relevant period was 99 days from June to September 2011, however, the Committee accepted that the complainant's account more closely reflected what was accurate, as the judgment was handed down in 2011, over five years prior. Further discussions regarding the interest rate to be applied ensued.

[23] It was at this point that the event which caused the controversy before this court occurred. The Committee, noting that the matter of restitution was a matter going to mitigation, indicated to the appellant and the complainant that it would formally deliver its judgment and all other matters could be dealt with in mitigation. The appellant indicated his desire to consult his attorney. The appellant contacted Mr Golding by telephone, at which time the Committee informed Mr Golding of its intention and that he would be allowed an opportunity to file submissions in mitigation by 30 August 2019. Mr Golding said "Okay". Neither the appellant nor his attorney objected to the Committee's expressed intention at that time.

[24] The Committee then delivered an oral judgment finding the appellant guilty of professional misconduct, having considered the complainant's unchallenged evidence and the appellant's admissions. They then invited the appellant to file submissions in mitigation by the 30 August 2019. The matter was adjourned to 24 September 2019 for the sanction hearing. Again, Mr Golding's response was, "Okay". The appellant was asked

if he heard what was said by the Committee and he responded in the affirmative. The Committee repeated its finding of guilt for professional misconduct and adjourned for the sanction hearing. The appellant's only response, then, was, "Okay".

[25] On 24 September 2019, at the sanction hearing, both the appellant and his attorney were present. Mr Golding confirmed to the Committee that no submissions in mitigation had been filed on behalf of the appellant, neither had the appellant filed any affidavit. Mr Golding, instead, challenged the Committee's judgment on the basis that the complainant had not been cross-examined and that the appellant had not given evidence. This, despite the appellant's admissions, and even though neither he nor Mr Golding had given any indication of an intention to cross-examine. The Committee reminded Mr Golding that: (a) they had accepted the complainant's evidence; (b) the appellant did not file any affidavit; (c) the appellant had indicated that he did not wish to cross-examine the complainant and would prefer to have his attorney present; (d) that adjournments had been granted for that to occur but nothing was forthcoming from the appellant or any attorney on his behalf; and (e) the appellant had admitted to the substance of the complaint and had made arrangements to pay the complainant.

[26] The Committee noted that opportunities were presented to the appellant to cross-examine and he had declined to do so, but had, instead, indicated that his instructions to his attorney were in regard to payment to the complainant. Mr Golding claimed that the appellant had wanted him to cross-examine the complainant but that he had been ill. The Committee reminded Mr Golding that they had no record of that, and that on the occasion when he did appear, he had indicated that he had no instructions in the matter beyond dealing with the payment, which the appellant had wished to make to the complainant. The Committee also reminded Mr Golding that, on 22 July, he had indicated that his instructions were limited to asking for an adjournment, that he did not seek an adjournment to cross-examine, and that, at no time after 13 July did he indicate orally or in writing any desire to cross-examine. Mr Golding's response was that he did not know that he would have had to communicate to the panel that he wished to cross-examine,

and that at the time he had indicated to the Committee that he was now representing the appellant, it meant that he was representing him fully. He did, however, agree that he had made no indication that he wished to cross-examine. The issue was traversed repeatedly, with the Committee reminding Mr Golding of the history of the matter, including of a date being set for cross-examination, of the appellant being informed in writing of the date set for cross-examination, and of both he and the appellant declining to cross-examine. The Committee also pointed out that at no time between 13 July and 24 September 2019 did Mr Golding communicate, orally or in writing, any desire to cross-examine the complainant. Mr Golding, nonetheless, remained steadfast to the claim that cross-examination had not been waived and that the appellant had not given evidence.

[27] It was enquired of Mr Golding what he wished to do, and whether he wished to cross-examine at that stage, but he retorted that there would be no point in cross-examining at that stage, the appellant having already been found guilty. The Committee also pointed out that, the appellant having admitted that he had failed to pay over the judgment sums, now had the opportunity, at the sanctions hearing, to explain why he did not do so. Mr Golding agreed that that could be done, but maintained that the appellant had already been found guilty. Mr Golding applied for an adjournment. The Committee refused. Mr Golding then declined to make any submissions in mitigation. The matter was adjourned to 23 October 2019 for a decision on sanction, and on that date, notwithstanding the objections of Mr Golding, the Committee gave its decision.

Findings of the Committee

[28] The Committee carefully considered the evidence, bearing in mind that the burden of proof rested on the complainant, and that the standard of proof was beyond a reasonable doubt. The Committee noted that the appellant had failed to file an affidavit in response to the complaint, despite rule 4(a) of the Rules, the letter dated March 2018 from the secretary of the Committee informing him of the requirement to file an affidavit in response within 42 days, and the order made by the Committee on 16 March 2019 requiring him to do same. The Committee also considered that Mr Golding had declined

to cross-examine the complainant on 13 July 2019, on the basis that he had only limited instructions to seek an adjournment and no instructions at all about the complaint, and that the appellant had also declined to cross-examine the complainant on 22 July 2019. The Committee also took into account the appellant's inability to identify any area of dispute with the complainant's evidence when invited to do so, the absence of any affidavit challenging the complainant's evidence, and his admission that he had received the judgment debt and had not paid over any part of it to the complainant.

[29] Having considered the complainant's evidence, the Committee found that it had been established beyond a reasonable doubt, that:

> "a. The Attorney received payment of the judgment debt from the Attorney General;
>
> b. The Attorney failed to pay the money received on trust for the Complainant to her, although she has reasonably required him to do so and despite his representation to her that he would pay her in full by 31 July 2017."

The notice and grounds of appeal

[30] The appellant filed grounds of appeal as follows:

> "a. That the panel of the General Legal Council that adjudicated the matter erred in law in that it failed to afford the Appellant a fair hearing in breach of the rules of Natural Justice by proceeding to judgment on July 30, 2019 without the Appellant or his Counsel being afforded the opportunity to cross examine the complainant or without the right of cross examination being waived.
>
> b. That the panel of the General Legal Council that adjudicated the matter erred in law in that it proceeded to judgment on July 30, 2019 without affording the Appellant the right to give evidence on his own behalf or to call witnesses to give evidence on his behalf or without him waiving such rights.
>
> c. That on September 24, 2019 when it was pointed out to the said panel by Counsel for the Appellant that the

> proceedings would be a nullity in that the Appellant had not cross examined the complaint [sic] or had not given evidence before their decision was arrived, [sic] at the chair of the panel pronounced firmly that cross examination would not make any difference thereby indicating that the matter was pre-determined."

[31] The appellant asked that the decision of the Committee, made on 23 October 2019, be set aside on the bases that the principles of natural justice were breached on the 30 July 2019, when the Committee found him guilty of professional misconduct, without affording him the opportunity to cross-examine the complainant, and that, as a result, the proceedings were a nullity. He did not request a new hearing.

Discussion

[32] Mr Golding's main complaint was that the appellant was denied natural justice when the Committee found him guilty without affording him the right to cross-examine the complainant. Counsel argued that the right to cross-examine had not been waived and that the appellant should have been allowed to exercise that right. In support of his contentions, counsel relied on extracts from Administrative Law by Sir William Wade and Christopher Forsyth, 11th edition pages 422 to 439, **General Council of Medical Education and Registration of the United Kingdom v Spackman** [1943] 2 All ER 337 and **Anisminic Ltd v The Foreign Compensation Commission and another** [1969] 1 All ER 208.

[33] Counsel for the Committee asserted that based on the facts, as disclosed in the notes of proceedings, it was patently clear that the appellant was afforded a fair hearing. In support of its contentions the Committee relied on the case of **Constantinides v Law Society** [2006] EWHC 725 and the case of **University of Ceylon v E.F.W. Fernando** [1960] 1 WLR 223.

[34] The sole issue for this court in reviewing this case is whether the appellant was afforded a fair hearing and, if not, whether the proceedings were nullified.

[35] Disciplinary proceedings against attorneys are instituted pursuant to the LPA and the Rules. Sections 12 to 19 of the LPA set out the scope of the Committee's powers when hearing a complaint brought against attorneys-at-law enrolled to practice in this jurisdiction for various breaches of the Canons governing the profession.

[36] Section 14 permits the Committee to make rules for regulating the hearing of such complaints. The Fourth Schedule to the LPA sets out the Rules, which have been amended from time to time. The Rules provide for a complaint to be made to the GLC in the form of an application and affidavit. This is to be served on the attorney who is the subject of the complaint, and he or she is required to file an affidavit in answer to the complaint. The Committee will then consider the application and the response, if any is received, and if a *prima facie* case is shown it will proceed in accordance with rule 5. Rule 5 provides for a date of hearing to be fixed and for notice to be given to the attorney and the complainant. Rule 8 provides for the Committee to proceed with the hearing in the absence of one or both parties who have been served to appear but fail to do so.

[37] By virtue of rule 10, the Committee is empowered to act on affidavit evidence only. It also has the power to call a person to give oral evidence and to be cross-examined.

[38] The appellant took no issue with the Rules, but only with the failure of the Committee to afford him the opportunity to cross-examine the complainant and to give evidence before arriving at its decision on guilt.

Was the appellant afforded the opportunity to cross-examine the complainant and provide evidence and, if not, were the proceedings nullified?

[39] It is important to note that the appellant did not challenge the complaint, nor the assertions that the complainant made in her affidavit and oral evidence before the Committee. The appellant, in fact, admitted to the assertions and to having no good reason for failing to pay over the judgment sums he received on the complainant's behalf years before. Importantly, neither the appellant nor his attorney, who himself was aware of the appellant's admissions, indicated to the Committee, at that time, that they,

nevertheless, would have liked the opportunity to cross-examine the complainant on any further issues still joined between the parties.

[40] The admissions by the appellant were made on 22 July 2019 and he further appeared on 29 July 2019. On neither of those two dates did the appellant or his attorney indicate that, despite his admissions, he still wished to cross-examine the complainant on some disputed issue, and to give evidence himself. All the oral statements from the appellant to the Committee surrounded the issue of restitution. Even when the appellant indicated that he wished to consult his attorney, his indication was that it was with regard to the amount he was liable to repay the complainant. On his appearance, on 30 July 2019, the appellant confirmed that he had made a payment into the complainant's account and had provided a statement of account. On that date, when the issue of mitigation was mentioned by the Committee, the appellant claimed that he wished to sort out the issue of repayment first and to discuss it with his attorney. He did speak with his attorney by telephone on that date, and the attorney joined the proceedings by telephone. Neither of them mentioned the matter of cross-examination of the complainant, who was present. The matter was adjourned to 30 August 2019 for submissions on mitigation.

[41] On 24 September 2019, during what was supposed to be the sanction hearing, the appellant, through his attorney, objected to the hearing on the basis that there was no cross-examination of the complainant. However, no plea in mitigation, no affidavit, no application to withdraw the admissions, and no objection were filed. No oral application to withdraw the admissions was made at the sanction hearing. Even when the appellant was asked, on 24 September, if there was a dispute as to facts, he gave no answer. Therefore, there was then, as there is now, only the mere assertion that there was a failure of natural justice because there was no cross-examination, and that the appellant was not given the opportunity to give evidence.

[42] In our system of advocacy, particularly in court proceedings, a trial involves the thrashing out of issues joined between the parties to see which side's account will

succeed. In a criminal trial, a person accused, by a plea of not guilty, puts into issue all the facts necessary to ground the charge made against him. Therefore, witnesses must be called to give evidence to support all the elements necessary to prove the case against him. A witness called by one party may be cross-examined by any other party in the case. Unless the accused makes a formal admission as to one or all of the elements in the charge against him, each element must be proved to the requisite standard. Where there is a formal admission to the charge or to any element necessary to be proved, the need to prove the charge or that element is removed and there is no longer any issue joined. In both civil and criminal cases, the right to cross-examine is automatic (except in criminal cases where a judge calls a witness not called by either side and that witness can only be cross-examined with the leave of the judge). That right does not depend on whether the witness has given evidence adverse to the party seeking to cross-examine (see Andrews & Hirst on Criminal Evidence by Michael Hirst, 3rd edition, at para. 7-063-4 at pages 222 to 223).

[43] What a witness says in cross-examination is as much evidence as what the witness says in examination-in-chief. One of the purposes of cross-examination is to discredit the witness and to show that what he or she has said in examination-in-chief is not capable of belief on a particular issue or at all. The result of it is that the general credibility of the witness may be impugned, so that, what he or she has said in evidence cannot be relied on at all, or can only be relied on in respect of a particular issue. Cross-examination may also be used to adduce additional evidence more favourable to the cross-examiner. The rules regarding admissibility and relevance are applicable to cross-examination (see Andrews & Hirst on Criminal Evidence, at para. 7-066, at page 224 and 7-068, at page 225). A failure to cross-examine may amount to an implied acceptance of the evidence.

[44] In a civil case, a defendant may make admissions to all the claim or part of the claim or the issues in the claim, which would make it unnecessary to have a trial on that part, or issue or even on the whole claim. Judgment on admission may then be entered against that defendant (see Part 14 of the Civil Procedure Rules). In a criminal trial, either

at the start of, or during a trial, a defendant can make a formal admission of guilt on the general issue or admit facts which might otherwise be proved against him, thus obviating the need for a trial at all or for any evidence to be called to prove the fact so admitted. If an admission is made on the general issue, that is, a formal plea of guilty is made to the charge, there is no need for any evidence to be called concerning the charge. In other words, the court will proceed directly to sentence, without the need for any evidence to be called. Even if the defendant makes an unequivocal plea but outlines facts surrounding the committal of the offence, which are different from those in the possession of the prosecution, there will still be no need to call evidence of guilt, but the court may hold a Newton hearing regarding the facts on which the defendant is to be sentenced (see **R v Newton** (1982) 77 Cr App Rep 13; 4 Cr App Rep (S) 388; [1983] Crim LR 198).

[45] Therefore, although a defendant has the right to cross-examine a witness called to give evidence in proof of the claim or the charge against him and to impeach the credit of that witness, where there is a formal admission or plea of guilty at the trial of the case, then there is no requirement for any further evidence to be called, including through cross-examination. The court must proceed to judgment or sentence (see A Practical Approach to Criminal Procedure by John Sprack, 13th edition, at para 17.13, page 277).

[46] These are all trite statements of procedure, in both civil and criminal trials, that can be found in any reputable text on civil or criminal law and procedure.

[47] In this case, the hearing was conducted by an inferior tribunal on an issue involving liability to pay and a refusal and/or failure to do so. The hearing was not conducted in a court of law but by the inferior tribunal which is bound by law, its own rules and regulations, and stated practices. One of the rules it is bound by is the common law rule of natural justice. Although hearings by the Committee are not criminal trials, the criminal standard of proof prevails.

[48] The hearings conducted by the Committee are conducted in the same manner as in a civil or criminal trial as it relates to the taking of evidence, in that, the complainant

gives evidence and is cross-examined and the attorney gives evidence if he so chooses and is subject to cross-examination. There are no witness statements and no arraignment. Evidence is adduced by way of affidavits and documentary proof of assertions made in those affidavits. The burden of proof rests on the complainant to prove the facts alleged beyond a reasonable doubt. In that regard, the disciplinary hearings before the Committee are analogous to criminal proceedings. By virtue of section 14 of the LPA, the Committee has the power to administer oaths for the purpose of any application made to them and to issue writs of subpoena. Pursuant to section 14 (4), any application to, or an enquiry or proceeding before the Committee shall be "deemed to be a legal proceeding within the meaning of that expression as used in Part II of the Evidence Act". Part II of the Evidence Act deals with evidence in Bankers Books, and section 32 of that Part describes legal proceedings as any "civil or criminal proceeding or inquiry in which evidence is or may be given, and includes arbitration."

[49] In a hearing conducted by a disciplinary tribunal, the basic requirements of natural justice must be present. The person 'accused' should know the nature of the accusation made against him, he should be given an opportunity to state his case, and, the tribunal should act in good faith. All of these elements were present in this case. I do accept the force of the argument that if an accused is not allowed to cross-examine his accuser to get at the truth of the case, it may be a breach of natural justice, although it may not be so in all cases, depending on the particular tribunal, its procedures, and the general circumstances of the case. Each case must be determined on its own facts (see **University of Ceylon v E F W Fernando** [1960] 1 WLR 223). However, where the truth of the case is no longer in dispute, as when the accused condemns himself out of his own mouth at the trial, then there will be no need for cross-examination (see A Practical Approach to Criminal Procedure by John Sprack, para. 17.13, at page 277). Nothing said in the authorities cited by the appellant conflicts with this view.

[50] In the case of **Solicitors Regulation Authority v Farrimond** [2018] EWHC 321 (Admin) (which was not cited by either side but which I believe is instructive), Mr

Farrimond, a solicitor, pleaded guilty to attempted murder of his wife and was sentenced to six years in prison. As a result of his conviction, the Solicitors Disciplinary Tribunal ('the Tribunal') considered allegations made against him of breaches of the Solicitors Regulation Authority ('SRA') Principles regarding standards of professional ethics. The allegations were admitted before the Tribunal and Mr Farrimond declined to appear at the hearing by video link from prison. The matter was considered by the Tribunal in his absence. In light of the conviction and the admissions made before the Tribunal, it was satisfied that Mr Farrimond had failed to act with integrity. Without contest, it found that all the allegations had been proven. It considered newspaper articles on the conviction and concluded that Mr Farrimond had failed to maintain the trust of the public placed in him for the provision of legal services. The Tribunal imposed a sanction of indefinite suspension. The SRA, pursuant to section 49 of the Solicitors Act of 1974, successfully appealed that decision on sanction, to the High Court, Queen's Bench Division, which held that the sanction of indefinite suspension was inappropriate and a sanction of striking off the roll ought to be substituted. Although Mr Farrimond had filed submissions in mitigation, the court found that the seriousness of the criminality involved was "wholly incompatible with remaining on the Roll of Solicitors".

[51] Although the case of **Farrimond** is wholly different on the facts from the instant case, I have cited it to show that, where admissions are made before a tribunal, there may be no need for witnesses to be called and for cross-examination to take place. That case was decided without contest, based on Mr Farrimond's admission of the allegations. All that was necessary for him to do, thereafter, was to file submissions in mitigation of the sanctions which were within the power of the Tribunal to impose.

[52] In the instant case, during the hearing, the appellant admitted to his liability to pay and that he had failed to do so. Despite the fact that proceedings before the Committee are deemed to be legal proceedings for some purposes, it is not a court of law. Although it may administer oaths, it has no power to arraign and to take a plea of guilt. Therefore, admissions before the Committee must, of necessity, be made either in

an affidavit or orally. The appellant made the admissions as set out above and voluntarily began making restitution before the Committee. Any reasonable person would be forgiven for thinking that, in such a case, the issue of culpability was thereby settled. Was there any other outstanding issue joined between the parties? Inquiries were made of the appellant and he could point to none. Neither did his attorney indicate any area in which there was an outstanding dispute as to liability.

[53] Mr Golding complained that the Committee predetermined the case, having taken the view, as was expressed by the Chair of the Committee, that "cross-examination would have made no difference". However, this is not strictly true. It was pointed out by the Committee that admissions had been made with regard to the substance of the complaint and that a great deal of the Committee's time had been spent working out what was to be paid in accordance with the complaint. It was in that context that the question was posed by the Committee Chair as to what would be asked if counsel were to cross-examine. Asking what questions would be asked in cross-examination is a different thing from saying cross-examination would make no difference. I agree with the Committee's take on the comment from the Chairperson, as expressed to Mr Golding, that the comment from the Chair was made in the context of the admissions to the complaint made by the appellant, and the absence of any identified or identifiable outstanding disputed issue which would be the subject of cross-examination. This complaint is unmeritorious.

[54] Mrs Kitson QC, posed a question as to what occurs when an accused person pleads guilty to a charge at his trial with his attorney present, confirms that he has made restitution, and is thereafter formally found guilty. Would that accused, she asked, be thereafter entitled to complain that he did not have the opportunity to cross-examine the victim? She further asked whether the failure to continue the trial, in those circumstances, would be a breach of natural justice. To both questions, she submitted the answer could only be in the negative. I fear that I can do nothing other than agree with her.

[55] The appellant, despite repeated requests to do so, filed no affidavit as required by rule 4. The Committee would, therefore, have been left in the dark as to his defence, if any, up to the point at which the complainant gave evidence. The Committee was forced to make enquiries of the appellant as to his position regarding the case. His response was to admit to the allegations in the complaint. Natural justice demands that the Committee's decision be based on evidence of probative value. The complainant gave evidence, the substance of which was admitted to by the appellant. The evidence was, therefore, of probative value. In those circumstances there was no breach of natural justice. If it is accepted that a tribunal, like a court, may admit statements agreed between the parties without violating natural justice (see **R v Oxford Local Valuation Panel *ex p Oxford* CC** (1981) 79 LGR 432 as cited in Administrative Law, by Sir William Wade & Christopher Forsyth, 11th edition, at page 439, footnote 263), then I see no reason why a tribunal should not be able to accept a clear admission as to the commission of the offence, and make a decision on it, without being said to have violated the rules of natural justice.

[56] The appellant was served with the complaint and affidavit in support. He was served with the notes of evidence of the complainant's oral testimony and was granted adjournments so he that could adequately respond and have his attorney present. He was given adequate opportunity to meet the case and to state his defence, if any. In the face of clear admissions to the complaint made by the appellant, who is an attorney-at-law and who, in that regard, cannot complain that he did not know or understand what he was doing, the Committee cannot be said to have fallen short of the requirements of natural justice.

[57] Furthermore, the complainant was present at each and every hearing date before the Committee, should the appellant have needed to cross-examine her. He had every opportunity to correct or contradict any relevant portion of the complaint or the evidence which he thought was not true. Having made his admissions in precise and unequivocal language, the appellant expressed no desire or intention to challenge the evidence of the complainant on any further or outstanding issues.

[58] With regard to the question whether there were any further issues joined between the parties in light of the clear admissions by the appellant, Mrs Kitson pointed out, and I agree, that the question of whether the actions of the appellant, to which he admitted, amounted to a breach of the Canons and professional misconduct, was one for the Committee and not the complainant. The appellant could, therefore, not have been allowed to ask the complainant any questions regarding whether his actions amounted to a breach of the Canons.

[59] I conclude, therefore, that the proceedings before the Committee were not conducted in breach of natural justice and were not nullified. As a result, there is no basis to set aside the Committee's decisions.

[60] On those premises, the submissions made by the appellant are unsustainable and the grounds of appeal have no merit. I would, therefore, dismiss the appeal with costs to the respondent to be agreed or taxed.

E BROWN JA (AG)

[61] I, too, have read the judgment of Edwards JA and agree with her reasoning and conclusion.

F WILLIAMS JA

ORDER

1. The appeal is dismissed.

2. The decision and orders of the Disciplinary Committee of the General Legal Council, made on 30 July 2019 and 23 October 2019, are affirmed.

3. Costs to the respondent to be agreed or taxed.