

1 IN THE GRAND COURT OF THE CAYMAN ISLANDS
2 CIVIL DIVISION

3 LEGAL AID NO. LACV 30/2020
4 (Affiliated file LACV 130/2019)
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6
7 IN THE MATTER OF THE LEGAL AID LAW 2015
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9 AND IN THE MATTER OF AN APPLICATION FOR LEGAL AID BY THE APPLICANT
10 RICK L. LEE
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12 AND IN THE MATTER OF AN APPEAL AGAINST THE DECISION OF THE
13 DIRECTOR OF LEGAL AID PURSUANT TO SECTIONS 4, 5 AND 38 OF THE LEGAL
14 AID LAW (2015 REVISION)
15

16 TAKEN ADMINISTRATIVELY ON THE PAPERS WITHOUT A HEARING
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20 HEADNOTE

21 *Legal Aid Law (2015 Revision) – Sections 4, 5 and 38 – Section 5 of the Law:*
22 *Reasonable prospect of succeeding on the merits of the case, examined.*
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25 JUDGMENT
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1 INTRODUCTION

2 1. By a letter dated 31st March 2020, the Applicant Rick L Lee appeals against the
3 decision of the Legal Aid Director dated 20th March 2020 to refuse the grant of legal
4 aid. The matter was reconsidered by the Director, under s.37 of the *Legal Aid Law*,
5 who issued her decision dated 1st June 2020 which is now challenged.

6 2. Mr. Lee is, according to him, the only naturopath in the Cayman Islands. It is this fact
7 in particular that causes him to characterise his applications as being of “public
8 interest”. He has been in front of the Health Appeals Tribunal (HAT) due to his licence
9 not being renewed in 2018. His appeals were unsuccessful. He is still awaiting a
10 hearing before the Tribunal.

11 THE APPLICATION

12 3. There were two applications submitted to the Legal Aid Director from Mr. Lee.

13 i. There was an earlier application **LACV0130/19** where the Legal Aid Director
14 granted a limited certificate for the advice of counsel to be sought before deciding
15 whether a full Legal Aid certificate should be granted. Counsel, in a detailed
16 opinion, advised that the merits of the case were poor. As a consequence, Legal
17 Aid was refused.

18 He states that the application relating to LACV130/2019 was concerned with a
19 charge of false statement or representation in relation to his original application for
20 registration, which he denies. The appeal is still outstanding.

21 ii. The application under appeal, the second application, is **LACV0030/2020**.



1 4. This second application is made by Mr. Lee on the basis of his right as a Caymanian
2 citizen to have the Court consider whether the Council for Professionals Allied with
3 Medicine (CPAM) deliberately or accidentally did not fulfil its mandate under the
4 *Health Practice Law* (2017 Revision).

5 5. The essence of Mr. Lee's complaint is that the way the CPAM has written the current
6 Naturopathic scope of practice eliminates Doctors of Naturopathy from qualifying to
7 be registered and decimates what Naturopathic Medicine doctors are allowed to do.
8 This is procedurally unfair he contends.

9 **THE LEGAL AID DECISION**

10 6. In the decision dated 23rd March 2020, in relation to LACV0030/2020, the reasons
11 given for refusal were that the matter was the same as the application LACV130/2019.
12 The opinion of counsel was referenced for the Legal Aid Director concluding that the
13 circumstances did not justify that expenditure of public funds.

14 7. The reasons given in the reconsideration decision of 1st June 2020 were significantly
15 longer. The essence of the refusal is as follows:

16 i. A review of both files (LACV130/2019 and LACV 0030/2020) and subsequent
17 documentation show that the issues appear affiliated – with some of the same
18 material being produced in both applications;

19 ii. It is noted that there is no automatic right to legal aid as a citizen of the Cayman
20 Islands under s.5 of the Law;

21 iii. The opinion of counsel substantially addressed the current matter;

22 iv. The prospects of success are remote;



v. There are no exceptional circumstances for the Director to exercise her discretion.

THE LEGAL AID LAW: THE CRITERIA

8. Legal Aid in civil proceedings is governed by s.5 of the *Legal Aid Law* which states:

“5. *Legal aid in civil proceedings may only be granted if the Director is satisfied, after making inquiries under section 16, that the applicant appears to have a reasonable prospect of succeeding on the merits of the case.*”

9. The Legal Aid Director has a discretion in suitably exceptional cases to grant legal aid.

This is a discretion which is to be used sparingly and in meritorious cases only.

DECISION

10. In my judgment, the Legal Aid Director was entitled to come to the decision she did.

11. The first principle to note is that the Appellant is not entitled to legal aid as of right.

12. Section 5 is quite clear about the merits-based test which applies. Dressing up an application as being of public interest, without more, does not make it so.

13. The Director had to consider the merits of the case which she did, relying, *inter alia*, on the opinion of Mr. Joshi who received instruction following an approach by Mr. Lee for advice. That opinion was in relation to LACV130/2019. The instructions were to advise on what, if any, cause of action was available to Mr. Lee in light of the background history which was set out in the opinion. It was also to advise on the merits of the case and, if successful, the likely damages.



1 14. Counsel examined in excess of 600 pages of documents. The background history was
2 set out and it was noted that one case remained extant. It was noted that there were
3 grounds for criticism of CPAM, especially due to delay, but no grounds in relation to
4 the issues under consideration. Counsel came to the conclusion that the merits were
5 poor and noted that, even if the application had been justified on the merits, there was
6 considerable risk with launching such a case against CPAM in light of the outstanding
7 allegations of misrepresentation in relation to Mr. Lee's original application for
8 registration.

9 15. Mr. Lee, in recent correspondence, said this of the opinion provided by Mr. Joshi:

10 *"His opinion was speculation and assumptions based upon him being pressured by*
11 *Legal Aid for an opinion".*

12 Mr. Lee contends that Mr. Joshi gave his opinion *"based upon the facts at the time and*
13 *not because there was no merit."*

14 16. Having read the opinion, and all the other papers I have received in this case, I can see
15 no basis for this criticism of Mr. Joshi. Subsequent events do not materially change the
16 factual matrix upon which the opinion was based. There is still an outstanding matter
17 as confirmed by Mr. Lee. The Legal Aid Director was entitled to have regard to the
18 opinion therefore.

19 17. The main point made by Mr. Lee is that he says the two applications are different and
20 that the Legal Aid Director has erred in stating that they are essentially the same.



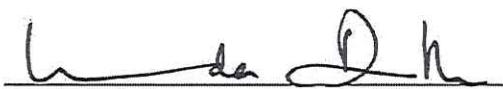
1 18. He contends in his letter of 31st March 2020 that the first application was in relation to
2 a charge of false statement or representation, which he denies. Whilst Counsel did note
3 the fact of the charge of false statement or representation as I have set out above, Mr.
4 Lee's assertion is not supported by the opinion which sets out the questions counsel
5 was asked to advise on.

6 19. Whilst it is correct that the stated aim of this application reads differently to the
7 previous application, on close analysis, the obstacles to mounting such a challenge are
8 manifold. Mr. Lee would be bound to invoke his own history. This would be a
9 rehearsal of the background as set out in the opinion of counsel and against the
10 backdrop that there is still an outstanding matter before the HAT. The Legal Aid
11 Director did not err in finding that essentially it was similar to the previous application.

12 20. It should be noted that this is not a class action case. There is no public interest and no
13 reason for the Director to exercise her discretion in the Appellant's favour. She did not
14 err, therefore, in declining to exercise her discretion.

15 21. It follows from the above, that this appeal against the decision of the Legal Aid
16 Director has failed and is dismissed.

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19 **Dated this the 14th day of August 2020**

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23 **Dame Linda Dobbs**
24 **Acting Judge of the Grand Court**
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