

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

3 LEGAL AID NO. LACV 0119/2016

4
5 IN THE MATTER OF THE LEGAL AID LAW 2015

6 IN THE MATTER OF AN APPLICATION FOR LEGAL AID BY THE APPLICANT ANI
7 SOBEYDA SCOTT

8
9 AND IN THE MATTER OF AN APPEAL OF THE DECISION OF THE DIRECTOR OF
10 LEGAL AID PURSUANT TO SECTIONS 4 AND 38 OF THE LEGAL AID LAW 2015
11 REVISION

12 TAKEN ADMINISTRATIVELY ON THE PAPERS WITHOUT A HEARING



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14
15 HEADNOTE

16 *Legal Aid Law (2015 Revision) – Sections 4, 5 and 16 – Legal Aid Regulations*
17 *(2016) –Appeal of refusal of grant of legal aid for the purpose of an appeal, the*
18 *discretion of the Director*

19
20 JUDGMENT

21
22 INTRODUCTION

- 23 1. By letter dated the 15th October 2019, the Applicant, Ani Sobeyda Scott appeals the
24 decision of the Legal Aid Director not to grant her legal aid for the purpose of an appeal
25 to the Cayman Islands Court of Appeal (CICA). The appeal against the decision of the
26 Director is made pursuant to s.38 of the *Legal Aid Law* which provides *inter alia* that an
27 applicant or assisted person may appeal to a judge in Chambers where he is refused a
28 legal aid certificate.

1 2. The appeal is made on four grounds as follows:

2 i) The Director's decision is unfair and arbitrary because it is not based on a
3 legal opinion on the merits of an appeal;

4 ii) The Director, having made the original decision to refuse the application for
5 an extension of the legal aid certificate, should not have reconsidered the
6 application without the benefit of an independent legal opinion on the merits
7 of an appeal;

8 iii) In reconsidering the application without the benefit of an independent legal
9 opinion, the Director removed any semblance of objectivity from her
10 reconsideration and therefore the decision, like the first one is arbitrary,
11 unfair and therefore 'undefendable' (sic); and

12 iv) If the Director imposed her own legal opinion in making her ultimate
13 decision, then that is plainly inappropriate and not in the overall interests of
14 justice.

15 **BACKGROUND**

16 3. The appeal arises following an initial grant of a legal aid certificate on the 26th July 2016.
17 By application made on the said date, the Applicant sought legal aid assistance to bring
18 Judicial Review proceedings, against the decisions of H.E. the Governor, the Chief
19 Officer of the Ministry of Home Affairs and the Director of Prisons, to terminate her
20 employment as a prison officer. She explained in her letter to the Court dated 15th July
21 2016, that she had been employed in that capacity for some 13 years between 2002 and
22 2015. Her employment was terminated on the 13th April 2015 by the Director of Prisons
23 following a disciplinary hearing. Her appeal to the Chief Officer of the Ministry of

1 Home Affairs made on the 22nd April 2015, was dismissed. She asserted that she
2 continued to be unemployed and required assistance because of her financial situation.

3
4 4. The certificate which was granted on that application was subsequently transferred from
5 local Counsel to a local Queen's Counsel on the 2nd August 2017.

6
7 5. The Grand Court judgment in her judicial review application was delivered on the 7th
8 June 2019. The background to the matter is set out in the opening paragraphs of the
9 judgment. Following the completion of the disciplinary hearing, the Director of Prisons
10 terminated her employment. The Applicant appealed first to the Chief Officer of the
11 Ministry of Home Affairs on the 22nd April 2015. This appeal was refused on the 4th May
12 2015. Secondly on the 9th July 2015 the Applicant appealed to H.E. the Governor. This
13 second appeal was dismissed on the 29th June 2016.

14
15 6. On the judicial review application, her application for review of the decisions of the
16 Prison Director, Chief Officer and H.E. the Governor was dismissed, with the Court
17 finding that none of the six grounds of challenge succeeded.

18
19 7. On the 17th June 2019, the Applicant wrote to the Director seeking an extension of her
20 legal aid in order to appeal the decision of the Grand Court to the Court of Appeal.

21
22 8. On the 20th June 2019, the Legal Aid Office advised the Applicant that an Attorney's
23 opinion on the merits of the appeal was required for the request to be considered.

24
25 9. On the 21st June 2019, the Applicant replied by e-mail advising that her Attorney, copied
26 in, was being asked to provide the requested opinion. On the 31st July 2019, the
27 Applicant advised that she had been informed by her Attorney that he could not represent

1 her on the appeal and therefore she was now seeking the assistance of the Legal Aid
2 Office, to change attorneys for her appeal and to have another attorney provide an
3 opinion on the merits of an appeal.

4
5 10. By certificate of refusal dated 9th August 2019, her application was refused. The reasons
6 given were as follows:

7 *"Having regard to all the issues in this case, the judgment of Carter J. and the costs*
8 *involved to date, we are not satisfied that the circumstances justify additional*
9 *funding to cover an opinion on an appeal as the prospect of succeeding at appeal*
10 *seems remote. The applicant should make her own arrangements to deal with this*
11 *matter."*

12
13 11. On the 12th August 2019, the Applicant applied for reconsideration of the Director's
14 decision pursuant to s.37 of the said Law, stating that the Director's decision should not
15 have been made to refuse the extension of legal aid without first soliciting a legal opinion
16 on the merits of her appeal.

17
18 12. On the 5th September 2019, her request for reconsideration was refused. The reason for
19 refusal was stated as follows:

20 *"Having considered the Applicant's email correspondence dated 12th August 2019*
21 *and reviewed this matter once again, the decision remains as previously noted.*

22
23 *Legal aid funding will not be advanced for an opinion or to cover the costs of an*
24 *appeal as it is determined that the prospects of success are remote at appeal and the*
25 *additional public funding is not justified."*

26
27
28 13. In her letter of 15th October 2019, the Applicant submits that her appeal has merit for a
29 number of reasons and highlighted six in particular. Three of these relate to alleged errors

1 of the judge. One relates to the conduct of her Attorney who it is alleged abandoned
2 some arguments supporting relief without consultation with her and that his decision to
3 do so was tantamount to negligence and unfair to her. Two relate to the actions of the
4 Third Respondent, the Director of Prisons as discussed in the Grand Court judgment.

5 THE STATUTORY PROVISIONS

6 14. By s.4 of the *Legal Aid Law*, 2015, legal aid may be granted for the purpose of appeals
7 in civil cases subject to subsections (3) and (5). Subsection 3 deals with family
8 proceedings and subsection 5 deals with certain specific exclusions which are not
9 applicable to the instant case. Section 4(6) is in the following terms:

10 “(6) Subject to sections 5, 17 and 19, legal aid may be granted to individual natural
11 persons of the following categories -

- 12 (a) accused persons in criminal trials;
13 (b) persons who are questioned or detained at a police station, correctional
14 institution and other similar place;
15 (c) persons who are bailed to attend at a police station;
16 (d) appellants (including applicants for leave to appeal) in appeals against
17 conviction or sentence and respondents to criminal appeals by
18 prosecutors; and
19 (e) parties in civil proceedings and civil appeals, including legal guardians,
20 guardians ad litem or persons who have power of attorney to act on behalf
21 of children and persons under a physical or mental disability.”
22



23 15. By s.5 which is central to the instant appeal, legal aid in civil proceedings may only be
24 granted if the Director is satisfied, after making inquiries under s.16 that the applicant
25 appears to have a reasonable prospect of succeeding on the merits of the case.
26

27 16. The power to make inquiries as set out in s.16 of the Law, is as follows:

- 28 “16. (1) Where an application for legal aid is made, the Director -
29 a. may refer to such government entity as he considers
30 appropriate, any question connected with the eligibility of



the applicant for legal aid or as to his liability to make any contribution towards legal aid;

- b. *shall make such inquiries as to the means and condition of the applicant and as to the merits of his case;*
- c. *shall require the applicant to furnish such information and documents as the Director may require for the purpose of considering his application; and*
- d. *shall require the applicant to attend personally before the Director unless the Director considers this to be unnecessary or the circumstances of the applicant do not permit such attendance.” (emphasis added.)”*

17. By s.17, subject to s.4, a legal aid certificate may be granted as of right to an applicant whose disposable income is in the prescribed amount or less, who is charged with a Class A criminal offence or is party to an appeal in connection with such charges. With respect to other applicants, who are not entitled as of right, the Director may in the exercise of her discretion consider whether it is in the interests of justice to grant legal aid. Section 17(4) details the matters which the Director is to consider:

“In considering whether it is in the interests of justice to grant legal aid under subsection (3) the Director shall consider the following -

- (a) whether, if any matter arising in the proceedings is decided against the person, the person would be likely to lose his liberty or livelihood or to suffer serious damage to his reputation;*
- (b) whether the determination of any matter arising in the proceedings may involve consideration of a substantial question of law;*
- (c) whether the person may be unable to understand the proceedings or to state his own case;*
- (d) whether the proceedings may involve the tracing, interviewing or expert cross-examination of witnesses on behalf of the person; and*
- (e) whether it is in the interests of another person that the person be represented.”*

18. Section 19 deals with contributions by assisted persons.

19. The ***Legal Aid Regulations*** provide in paragraphs 7 and 8, the application process for civil cases. By paragraph 7(2) :

1 “Every application for legal aid by a person who desires to take or defend
2 proceedings in the Grand Court shall be supported by the following documents -

- 3 (a) a statement of means and such documents as the Director may require for
4 the purpose of verifying its contents;
5 (b) in the case of an intended plaintiff, a statement of the facts giving rise to
6 his claim or the basis upon which he claims to be entitled to relief;
7 (c) in the case of an applicant who is the defendant or respondent in any
8 proceedings
9 (i) a copy of the originating process; and
10 (ii) a statement of the facts giving rise to a defence or the basis upon
11 which he opposes the relief sought against him; and
12 (d) a copy of any attorney-at-law's opinion on the merits of his case.”
13

14 20. By paragraph 8 of the Regulations:

- 15 “8. (1) A certificate shall be granted if the Director is satisfied that the
16 applicant appears to have a reasonable prospect of succeeding on
17 the merits of the case.
18 (2) In determining whether the applicant has the means to retain the
19 services of an attorney-at-law to represent him in any civil
20 proceedings the Director shall have regard to -
21 (a) the amount of the applicant's disposable income;
22 (b) the applicant's ability to obtain employment;
23 (c) the nature and complexity of the proceedings or intended
24 proceedings; and
25 (d) the likely cost of the proceedings.
26 (3) A certificate may be granted subject to the following conditions -
27 (a) the assisted person shall pay into the court a sum of money
28 as a contribution towards the cost of his representation;
29 (b) the assisted person shall be limited to taking certain steps
30 in the proceeding; or
31 (c) in any case where an opinion on the merits was not already
32 obtained, the assisted person's attorney-at-law shall
33 deliver to the Director a written opinion as to the merits of
34 his case.”



35 **ASSESSMENT**

36 21. The main complaint of the Applicant is that the Director failed to and should obtain an
37 independent legal opinion as to the merits of the case. However the Regulations place
38 the onus on applicants or their Attorneys to provide such an opinion.
39



1 22. Having regard to s.5 of the Law, the central question raised by this appeal is: Must the
2 Director, in every case, obtain an independent opinion on the merits of the case before
3 coming to a decision. What is the nature of the inquiry to be made by the Director?

4
5 23. Section 16 is the important responsive provision for the purpose of this appeal. As it
6 relates to the exercise of discretion by the Director, this section does not detail a specific
7 formulation as to the nature of the inquiry which requires to be made. The wording used
8 is that the Director shall make "*such inquiries*" as to the merits of the case. The inquiries
9 to be made on this are not circumscribed or delineated such that there is a mandatory
10 requirement in every case for the Director to obtain a legal opinion on the merits of a
11 case before making a decision. Indeed by the Regulations, the Director may make it a
12 condition on the grant of a certificate that same be provided if one has not already been
13 received. The clear implication from this is that decisions as to grants can be made in the
14 absence of such an opinion. It is also noteworthy that the Regulations which expand on
15 the nature of the inquiries to be made refer to cases to be taken or defended in the Grand
16 Court. What is the recourse of the Director where an applicant or his Attorney fails to
17 provide such an opinion and the Director is endeavoring to come to a decision?

18
19 24. There will be cases where the actions have not been filed or commenced and where very
20 little detail is known about the proposed litigation. In such circumstances it would no
21 doubt be regarded as capricious or unreasonable if the Director were to seek to arrive at
22 a conclusion before making very substantive inquiries as to the merits of the case.

23
24 25. The Regulations as referenced above appear to be aimed at just such circumstances
25 where proceedings are to be instituted and there is a clear need for information on the

1 case. The Director may in such cases consider, on the basis of the preliminary
2 information provided whether legal aid ought to be granted for the purpose of obtaining
3 a legal opinion if satisfied that the applicant has no means to obtain same.
4

5 26. There will be other cases in which there is a significant amount of information already
6 available from judgments issued or from material which has already been filed in the
7 case to include statements of witnesses. In my view, the Director, in those circumstances,
8 having made inquiry and having obtained relevant material, is not barred by the
9 Legislation from considering the material and arriving at a conclusion on the merits or
10 indeed from arriving at a decision that a grant of legal aid to obtain an opinion on the
11 merits is or is not appropriate.

12
13 27. The Law does appear to give the Director a discretion as to the nature of the inquiries to
14 be made. In my view it cannot be said that in the circumstances of this case where there
15 is significant material available to the Director for review and the Applicant herself has
16 set out in some detail her contentions as to the merits of her case, that the Director has
17 failed to make the necessary inquiry. In short there is a sufficiency of material before
18 the Director to enable her in the reasonable exercise of her discretion to come to a
19 decision. It does not appear that the obtaining of a legal opinion is a mandated
20 prerequisite in the particular circumstances of the instant case.

21
22 28. The Applicant also complains that the Director's decision on reconsideration is not
23 independent because the earlier decision to refuse the application was also made by the
24 Director. The discretion on reconsideration is specifically vested in the Director by the
25 legislation. By s.37(2), the Law provides that:

1 *“An assisted person or an applicant, who is aggrieved by a decision of the Director*
2 *that affects that person, may apply in the prescribed manner to the Director for a*
3 *reconsideration of the decision.”*
4



5 29. The wording of s.5 makes it clear that the Director must bring her own mind to bear
6 upon the matter and must be “satisfied” after making the appropriate inquiries. This must
7 mean that the Director may or may not be satisfied after inquiries are made. Indeed, the
8 Director could conceivably, if there is good and clear demonstrable reason to do so,
9 decide not to give weight to or differ from a legal opinion obtained.

10
11 30. Finally, the Applicant argues that it is in the interests of justice that legal aid be extended
12 to cover the cost of a legal opinion on the case. This does not appear to be a complex
13 matter involving a substantial question of law. It does not involve expert witnesses.
14 Neither is it in the interests of another person that the Applicant be represented. It does
15 not involve the loss of liberty of the subject. While it does involve loss of livelihood, it
16 is very clear from the correspondence of the Applicant that she is well able to understand
17 the proceedings and state her own case should she so choose. The Applicant made two
18 appeals prior to her judicial review hearing in the Grand Court. Before the Grand Court
19 she was legally aided and had the assistance of learned Queen’s Counsel. She would
20 have had the opportunity to articulate and present her best case.

21
22 31. Having considered the written application of the Applicant and the arguments made
23 therein, I conclude that there is no material before the Court to suggest that the Director’s
24 decision is unfair or arbitrary or lacks objectivity. The absence of a legal opinion, by
25 itself is not sufficient to lead to such a conclusion when there is other material available
26 for consideration. That material is extensive and detailed. In the overall circumstances

1 of this case, there is no material before this Court to suggest that the Director's
2 conclusion that she is not satisfied that the proposed appeal has a reasonable prospect of
3 succeeding on the merits of the case, is unreasonable, ill-considered or erroneous
4 because of the absence of an opinion from an independent attorney.

5
6 32. Consequently there is no basis to interfere with the decision of the Director. The appeal
7 is refused.
8
9

10 **Dated this the 22nd day of January 2020**

11 



12 **Honourable Justice Cheryll Richards Q.C.**
13 **Judge of the Grand Court**
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