

**IN THE GRAND COURT OF THE CAYMAN ISLANDS
CIVIL DIVISION**

CAUSE NO. G169 OF 2020

BETWEEN: KATTINA ANGLIN

Appellant

AND THE DIRECTOR OF LEGAL AID

Respondent

**Appearances: Mr. Rupert Wheeler on behalf of KSG Attorneys-At-Law for the Plaintiff
Ms. Darlene Oko, Legal Counsel for Legal Aid for the Respondent**

Before: Hon. Justice Richard Williams

Hearing: 19 October 2021

Draft Judgment

Circulated: 25 October 2021

Judgment: 29 October 2021

HEADNOTE

Legal Aid Act (2015 Revision) – Legal Aid Regulations (2016) – Appeal against the decision of the Director of Legal Aid under s.38 of the Legal Aid Act with respect to a condition requiring contribution of funds to the grant of Civil Legal Aid - Jurisdiction to appeal contribution condition

JUDGMENT



The Parties, the Application and the Procedural Background

1. The Appellant is Kattina Anglin. The Respondent is the Director of Legal Aid (“the Director”). This appeal concerns a contribution condition attached to a grant of legal aid to the Appellant in judicial review proceedings which she has brought to challenge His Excellency the Governor of the Cayman Islands’ (“the Governor”) use of his powers under s.81 of Schedule 2 of the Cayman Islands Constitution Order 2009 (“the Constitution”) in the enactment of the Civil Partnership Act 2020 (“CPA”). As the relevant details of those

proceedings are contained in my Judgment dated 20 November 2020¹, in which I granted the Appellant leave to apply for judicial review, I need not set out the same again herein.

2. This appeal was brought by way of a Summons dated 12 August 2021. In the Summons the following relief is requested:

- (i) The reversal of the decision of the Director which requires that Ms. Anglin pay a contribution to the costs of her representation in these proceedings.
- (ii) A declaration that, in the circumstances of this claim, it is in the interests of justice that the Director does not require Ms. Anglin to make any contribution pursuant to s.19(4) of the Legal Aid Act (2015 Revision) (“the Act”).
- (iii) A declaration that Ms. Anglin need not pay any contribution.
- (iv) Any other relief that the Court finds appropriate.



3. Ms. Anglin submits that the relief should be granted relief on the following grounds:

- (i) The Director should have exercised her discretion to disapply the contribution under s.19(4) of the Act.
- (ii) The Director erred in the calculation of Ms. Anglin’s contribution based on disposable income.

4. The Summons wrongly referred to Ms. Anglin as the Plaintiff and named the Defendant in the appeal as the Governor. Ordinarily one would expect the parties named in the Summons to be listed as the Director of Legal Aid and the Assisted Person (i.e. Ms. Anglin). The Director does not take issue with this procedural irregularity.

¹ *Ex parte* application was heard on 17 November 2020.
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5. The Summons was shown to me on or around the 31 August 2020 by the Listing Officer. I advised her that the 30 minute time estimate for the hearing in the Summons was unrealistic. On 31 August 2021, the Listing Officer advised Ms. Anglin about the time estimate and she indicated that I was unavailable to hear the appeal until October, but if an earlier date was required by the parties then the appeal could come on before any other Judge. On 15 September 2021, Ms. Anglin’s attorney wrote to the Listing Officer acknowledging receipt of that email and indicating that he had copied in the Attorney General’s Office in the event that they wished to participate at the appeal hearing². What he did not do was serve the Summons on or even notify the Director. He provided his dates to avoid in October and asked whether I would be able to accommodate a hearing in October 2021.

6. On 29 September 2021, on my instructions, my Personal Assistant wrote to the Director setting out my belief that the Director should have been put on notice about the application and that she should appear at the hearing. On the same day, the Director replied indicating that she would have to review the position about availability and representation at the hearing. The Director stated that she had reviewed the Summons and commented:

“While appeals under section 38 of the Legal Aid Act are to the Grand Court, the Parties named in the Summons would typically be listed as the Director of Legal Aid vs. The Assisted Person e.g. Kattina Anglin and is not part of the substantive action.”

.....

Kindly to confirm the hearing date to us and we shall ensure that the director is represented at the legal aid appeal.”



² Crown Counsel Heather Walker indicated by email on 15 September 2021 that the Defendant in the substantive proceedings “takes a neutral stance in relation to the legal aid application”.

7. On 4 October 2021, Ms. Anglin’s attorneys sent a follow-up email to the Listing Officer and to my Personal Assistant requesting an October hearing date for her “*application to reverse the legal aid decision*”. Upon reviewing that email, on 4 October 2021 I instructed my Personal Assistant to write to Ms. Anglin’s attorneys and to the Listing Officer (copying in the Director) in the following terms:

“.... the Judge has confirmed that this is a matter for the Listing Officer (who should then consult with the judge.

The judge has already indicated that the Director of Legal Aid should be informed as this is....., an appeal against her decision. The Judge’s understanding is that the parties named in that Summons should be the Director of Legal Aid and the Assisted Person.

Therefore, any correspondence concerning this matter should be copied into the Director of Legal Aid, who will need to make a decision about availability and representation for the hearing.”

8. On 6 October 2021, despite having legal representation, Ms. Anglin wrote directly to the Court Administrator, the Listing Officer, and my Personal Assistant. I note that she copied her attorney into the email. She sought an explanation as to how the hearing date for the application by proposed interveners to proceedings could be set for her legal aid hearing “*pushing my legal aid hearing date aside*”. If Ms. Anglin had spoken to her Counsel prior to writing to the Court she would have understood that the reasons for the delay were partly caused by the initial 15 day delay in her Counsel getting back to the Listing Officer and partly by the failure to properly plead the Summons and notify the Director.

9. On 6 October 2021, Ms. Anglin’s attorney again provided his dates to avoid to the Listing Officer who had already written to the Director to obtain her dates to avoid. On 8 October



2021, the parties were offered 19 October 2021 or 21 October 2021 as hearing dates. On 11 October 2021, Counsel for the Director (“Ms. Oko”) confirmed her availability on either of those two dates. On 12 October 2021, the Listing Officer (Ag) sent an email to the attorneys to inform them that the hearing had been set for 19 October 2021 and requested their confirmation of availability for that date. The parties confirmed and on 12 October 2021 the Summons, albeit with the wrong named parties, was issued.

10. I heard the appeal on 19 October 2021. At that hearing I received oral submissions from Counsel on behalf of Ms. Anglin and the Director and I have considered all of the material in the filed Submission Bundles. At the end of the hearing I reserved my decision and this is the reserved judgment containing the same.

Background - The Grant of Legal Aid

11. In their Written Submissions, the parties very helpfully set out the chronology as it relates to the application for granting of legal aid. Therefore, to put the appeal into context, I repeat a great deal of that detail herein.
12. On 31 August 2020, Ms. Anglin filed her application for legal aid for an application for leave to appeal. On 1 September 2020, the application for legal aid was initially refused by the Director and the reasons for that decision were set out in a detailed email sent by Kimberly Dixon to Ms. Anglin and in the Refusal Certificate signed by the Director. On 3 September 2020, Ms. Anglin’s attorneys requested the Director to reconsider her decision, indicating that they would be prepared to take the case on with a capped certificate



of \$8,500³ to enable them to issue proceedings, obtain any necessary injunctive relief, and receive and consider the defence. On the same day, the Director, after reviewing Counsel’s correspondence as well as a Written Opinion on the merits of the application⁴, granted legal aid to cover the work outlined by the attorneys, on the basis set out in the Certificate dated 3 September 2020. A cap of \$8,000 was placed on the grant and a condition was imposed requiring Ms. Anglin to pay a contribution of \$4,000 into Legal Aid Funds by or on 7 September 2020. The conditions attached that grant were apparently accepted by Ms. Anglin as no appeal was lodged.

13. On 9 September 2020, the application for leave to apply for judicial review was brought by Ms. Anglin.
14. On 23 September 2020, Ms. Anglin made a request for an extension of her legal aid. On 25 September 2021, Ms. Dixon communicated the Director’s decision to defer any legal aid extension, as she sought from Ms. Anglin a projection of the anticipated costs of the action and disclosure from her of all funds solicited by her from the public to fund the action. It is evident that, from around 4 September 2020, Ms. Anglin had organised events and initiated a public plea for financial assistance by way of donations towards legal costs to the account for the “Christian Association for Civics and Political Education” (the “CACPE”). At the hearing, the Court was told that Ms. Anglin is a “*Director*” of that body and the impression was given that she has some control of its finances. In a public statement issued by the Public Service Department at CACPE on 5 September 2020 to solicit



³ Any reference to \$ in this Judgment is C\$.

⁴ Dated 3 September 2020 and prepared by Mr. James Kennedy at KSG Attorneys.
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donations for the legal fees, Ms. Anglin was referred to as being CACPE's Public Relations Officer. The Court was also told at the hearing that the bank account into which donations were paid was opened at the same time. It is therefore evident that the account was established to receive these donations. The Court was informed at the hearing that the initial legal aid contribution was paid from the funds in the CACPE bank account.

15. On 7 October 2020, following the receipt of a declaration from Ms. Anglin relating to donations into the CACPE account, the Director granted an extension in the amount of \$8,000. At the time there was \$8,181.79 in the CACPE account, and a further \$4,000 contribution from Ms. Anglin. The amount of \$4,000 was assessed by the Director, which could be paid in monthly installments of \$500. In the Extension Certificate, Ms. Anglin was informed that there was a condition that the contribution terms would be reviewed at the end of these proceedings and that she must keep a record of all sums received from the donations and those sums must be put towards the legal aid Fund to cover costs. On 13 October 2020, the conditions attached to the extension were clearly accepted by Ms. Anglin as no appeal was lodged and the Court was informed at the hearing that the contribution was paid from the funds in the CACPE account. In fact, Ms. Anglin signed the Acceptance of Legal Aid Contribution Order Agreement on 13 October 2020.

16. Following an *ex parte* hearing held on 17 November 2020, as set out in my Judgment dated 20 November 2020, Ms. Anglin was granted leave to apply for judicial review on the single ground of the Governor's use of his power under s.81 of the Constitution Order.



17. On 23 March 2021, Ms. Anglin’s attorneys made an application for a further extension of her legal aid to cover their ongoing work and to allow for the instruction of Queen’s Counsel.⁵ In that detailed written application, in which great emphasis was placed on the complexity of the issue and its “*significant public importance*” no mention was made about the appropriateness of the contribution condition. On 31 March 2020, the Director granted approval to engage Leading Counsel and granted a further extension of the Legal Aid Certificate in the amount of \$5,000 for Lead Counsel to review the matter and provide an opinion as to the merits and practical effect of any remedy likely to be ordered by the Court if the application succeeded. The assessment of any further contribution amount was deferred pending further review of the means of Ms. Anglin, including confirmation (with supporting documentation) from her of any further publically donated funds received to go towards legal fees.
18. On 27 April 2021, Ms. Anglin’s attorneys attached the CACPE’s bank statement for the period 30 October 2020 to 19 April 2021 to an email sent to the Legal Aid Office, and they reported therein that they had been informed by their client that:

“I have not made a new appeal for donations nor have I received new donations for this purpose, although I have received donations for “education purposes. However, at the time of the last payment, I was refunded CI\$53.00 from the draft payment of \$3,553.00, as the CI\$53.00 exceeded the cost contribution order; this is still on reserve the Legal Aid. I have attached the bank statement here; the draft referred to above is cited as “Draft Legal Aid Funds 0952626” on 9 Dec 20.”



⁵ On 12 March 2021 Ms. Anglin’s attorneys were informed that the Governor had instructed a named Queen’s Counsel. *211029 Kattina Anglin vs The Director of Legal Aid - Appeal - Judgment*

19. As highlighted by Ms. Oko at the hearing, examination of the CACPE bank account statement appended showed a balance of \$4,887.93 as of 19 April 2021. Ms. Oko asserted at the hearing that, in late April 2021, one could still see on social media an ongoing request for public funds by way of donation into the account towards legal fees for the purposes of funding the judicial review. This assertion was not challenged and in the statement I note that there are a number of credit entries marked “donation”. Despite Ms. Anglin’s assertion that the account served other educational purposes, no meaningful breakdown as to the nature of the credit payments was provided at the time or has been provided since. Putting aside the potential inappropriateness of the alleged intermingling of the funds in such an account, there was a reasonable expectation on Ms. Anglin to fully explain the entries on her statements with supporting documentation if her assertion was to be given weight by the Director, especially as the Director had already directed that there was a condition requiring the ongoing accounting of the donation funds in the 7 October 2020 Legal Aid Certificate.

20. In the Civil Legal Aid Certificate dated 10 May 2021, the Director granted a further extension of legal aid to engage foreign Queen’s Counsel, still with a cap of \$5,000. She also granted an overall cap of \$20,000 for Junior Counsel. The contribution amount was \$5,000 and was to be paid by Ms. Anglin by or on May 14 2021. Ms. Oko highlighted that, apart from the funds in the CACPE, the Director has assessed that Ms. Anglin had \$55,000 on deposit at the Cayman Islands Credit Union from the sale of a property and two sources of employment income and was receiving the tourism stipend. Ms. Oko suggested that the Director had likely assessed the income to be over the \$20,000 threshold in Regulation 22



Schedule⁶, but there is no documentation. However, there is nothing before me to enable me to deduce in an informed manner how the disposable income was calculated.

21. On 11 May 2021, by email, Ms. Anglin requested a reconsideration of the requirement for her to pay a contribution. On review of the material placed before me, this is the first time that the appropriateness of the contribution condition was formally raised by Ms. Anglin. It was the first time that, in the context of a contribution, any of the contentions that have been raised at this hearing had been made to the Director. This is the first time that Ms. Anglin had asked for the reconsideration of the contribution condition appearing in a Legal Aid Certificate. Mr. Wheeler conceded that on behalf of Ms. Anglin at the hearing and he sensibly indicated that the appeal now related only to the 10 May 2021 Legal Aid Certificate and to the approach to any future certificates. I should add that if one seeks to appeal a decision contained in a Legal Aid Certificate, although the Act contains no timeline for doing so, the expectation is that the Director's decision must be properly challenged in a timely fashion and without delay.

22. On 25 May 2021, the Director, following reconsideration of the contribution amount, reduced the contribution from \$5,000 to \$4,000. The Legal Aid Certificate made reference to the \$4,887.93 balance in the CACPE account and stated that funds were still available in the account and that it was "*deemed to account specifically related for the purpose of this litigation and other related matters*" and that "*Donors deposited funds to this account, to assist with the assistant person's legal fees*". The Director concluded that "*Ms. Anglin is deemed capable to contribute towards these costs.*"



⁶ The Legal Aid Regulations (2016) ("the Regulations").
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23. On 26 May 2021, Ms. Anglin’s attorneys wrote to the Director exhibiting a short opinion on the merits of the case, as well as the public importance of the matter being heard. They indicated that they supported Ms. Anglin’s application that “*the Director should disregard the assisted person’s disposable income in this case, given the interest of justice in the matter being litigated (18(4)⁷ Legal Aid Act*”. On the same day Ms. Anglin stated, in an email sent to the Director, that the Director’s approach to the CACPE account was “*completely wrong*”, as the account was not set up specifically for legal aid funding and that it received funding for other purposes. She referred to s.19(4) of the Act in support of a contention that it was in the interests of justice that she not be required to make a contribution. On 14 June 2021 Ms. Anglin sent a chasing email to Ms. Dixon.
24. On 17 June 2021, Ms. Dixon informed Ms. Anglin that the contribution issue had been reconsidered and that there would be no further reconsideration of the matter. As a consequence of that indication, Ms. Anglin filed the present Summons.
25. On 4 October 2021 Ms. Anglin’s attorneys wrote to the Director to seek an extension in respect of Lead Counsel. On 14 October 2021, Ms. Dixon informed the attorneys that the legal aid extension had been deferred, as further documentation was required and also noting that the certificate had not been complied with, due to the non-payment of a contribution, which was an issue under appeal.

The Law - Jurisdiction

26. Section 38 of the Act provides:

⁷ Incorrect reference, it should be s.19(4).



“An applicant or an assisted person may appeal to a judge in chambers where-
(a) he is refused a legal aid certificate;
(b) legal aid is varied, suspended or withdrawn;
(c) the Director makes an order under section 30(1) or a direction under section 30(2);
or
(d) the Director refuses an application for an exemption under section 31.”

27. Ms. Anglin contends that the 26 May 2021 Certificate (which was produced following the request from Ms. Anglin to reconsider the contribution terms made on 6 May 2021) in which the contribution figure was reduced from \$5,000 to \$4,000 is a variation of legal aid and therefore jurisdiction to appeal is grounded on s.38(b) of the Act. The Director contends that legal aid has not been varied, as the assessment for a contribution to the Legal Aid Fund was required from Ms. Anglin from the first grant of legal aid. The contention appears to be that the adding of a contribution condition to an extension of a Legal Aid Certificate in circumstances where there was previously no such condition for that assisted person might amount to a variation, but that the change of the amount of the contribution (particularly as it followed a reconsideration request) does not. Therefore, the Director contends that none of the circumstances set out in s.38 apply and the Court does not have the jurisdiction to review a contribution by means of an appeal.

28. The question was posed by the Court whether the imposition of a contribution condition is something that an assisted person may appeal pursuant to s.38 and what would have been the position if the contribution had remained at \$5,000 and had not been set at \$4,000 following the request to the Director to reconsider. Mr. Wheeler indicated that, even if he were not able to persuade the Court that the legal aid had been varied on 4 October 2021,



there was clearly an omission in s.38 of the Act by the Legislature and the Court should read the section as still providing that jurisdiction. It was accepted by Mr. Wheeler that if s.38 did not provide an avenue to challenge a decision imposing a contribution condition, then that decision may potentially be judicially reviewed, but he added that it would be far more expedient for all such issues to be dealt with by the appeal route.

Conclusion

29. I prefer the submissions made on behalf of the Director in regard to the jurisdiction issue relating to contribution conditions. When one reads s.18 and s.20 of the Act and Regulations 8, 11, 22 of the Legal Aid Regulations (2016), it is clear that contributions form an integral important part of the granting of legal aid process and were very much in the minds of the Legislature. If the Legislature had intended a decision by the Director to impose a contribution condition to be open to appeal, then, as with the claw-back related provisions (s.30 and s.31 of the Act), one would have expected it to have been specifically set out in s.38 of the Act. Therefore, if a contribution order is made and no other provision of s.38 of the Act applies, there is no avenue to appeal that decision under the Act.

30. In relation to the variation contention, in the circumstances of this case as outlined in detail above, I do not regard the \$4,000 contribution condition to be a variation. The Director has indicated throughout that a contribution was required. This is not a case where she has, on granting an extension, varied the grant to introduce for the first time such a condition. All she did was, upon reviewing a request to reconsider the imposition of the condition, reduce the amount of the contribution in favour of Ms. Anglin. I do not accept that this would open



up ‘by the back door’ a way to appeal a decision to impose a contribution condition which would not have otherwise existed.

31. Accordingly, I dismiss the appeal and do not deem it appropriate to make the declarations sought.

Observations

32. Having reached the above decision, I need not go on to consider the other arguments raised. I have considered doing so, but due to the requirement for an urgent decision to be provided to the parties, I restrict myself to brief observations on the same which may be open to review at another time.

33. Section 3 of the Act provides that the purpose of the Act is to provide legal aid to a person in respect of a civil matter where that person is financially unable to secure legal services for their own resources. As it is public money that is being used for legal aid, there is a balance to be struck, on a case by case basis, between providing this means of access to legal representation against the limited funds available. This is an important and understandably often problematic task for the Director. Section 19(1) of the Act⁸, clearly in recognition of the limited public funds, provides that there is a requirement for an Assisted Person to pay a contribution to those sums.

34. However, s.19(2) of the Act does enable the Director, in the circumstances of a particular case, if she is satisfied that it is appropriate and in the interests of justice to do so, to exercise

⁸ See also Regulation 8(3)(a).
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her discretion to disregard the disposable income of the Assisted Person and not require him to make any contribution. The parties have differing views as to how this section should be applied. It is submitted on behalf of the Director that the interests of justice relates to financial considerations and that, if there is a public importance element in the issues to be resolved in the case, that is not a significant consideration. On the other hand, it is submitted on behalf of Ms. Anglin, that the interests of justice is not a financial consideration, but it relates to cases of public importance.

35. I am satisfied that the interests of justice primarily relates to matters of public importance, although one should also consider a party's financial position, especially if he is a person of reasonably substantial means. As stated in my leave for judicial review Judgment, this is a case of significant public interest and concerns an issue of significant constitutional importance. One would, in such circumstances, expect the Director to carefully consider whether she should exercise her discretion under s.19(4) of the Act. Although, from the material before me and the submissions of Ms. Oko, the Court can see that the public interest element was considered in relation to the granting of legal aid and extensions of the grant especially for the engagement of Lead Counsel, I am unable to deduce what consideration was given to exercising the discretion under s.19(4) of the Act.

36. The Director, when assessing the amount of contribution, shall have regard to the probable cost of the proceedings.⁹ The Director must also calculate the disposable income of an assisted person when assessing the amount of contribution, applying the content of the

⁹ Regulation 11(5).



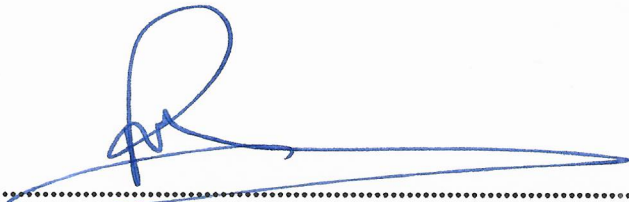
Regulation 22 Schedule.¹⁰ In the circumstances of this case, unless Ms. Anglin was to return all the donations received, I am satisfied that the sums received in the CACPE bank account as contributions to her legal aid contribution should be regarded as part of her income. It would be wrong for her to have access to such funds if they exist and retain them in the CACPE account rather than contributing those funds as intended by the donors to the publicly funded Legal Aid Fund.

37. In circumstances where a challenge to the contribution condition may possibly have to be by applying for leave to judicially review the Director's decision, which would cause delay and increase costs, in light of my above observations, I respectfully suggest that the Director be invited to further review the contribution condition ordered on 25 May 2021. However, if such a review is to be conducted meaningfully, the Director would understandably require a full and frank accounting of the funds in the CACPE bank account, especially if it is being contended by Ms. Anglin that some of those funds were not donations towards her legal aid costs. It might also helpful if the application to open the bank account was provided, as this would show when the account was opened and possibly the purpose of the account. I wish to make it clear that I do not seek to fetter the Director's exercise of her discretion by suggesting that she be invited to further consider the 25 May 2021 extension of legal aid. However, I do hope that the observations and guidance will be of assistance to the Director and Ms. Anglin especially if there is an application for any further extensions to her legal aid.

¹⁰ Section 18 of the Act.
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38. I trust that all parties recognise the importance of the substantive judicial review hearing remaining in a position to proceed on the dates set in December 2021.



.....
The Honourable Mr. Justice Richard Williams
JUDGE OF THE GRAND COURT