

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

3
4 LACR0073/2015: /CACR029/16

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6 IN THE MATTER OF AN APPEAL UNDER SECTION 4 AND SECTION 38 OF THE
7 LEGAL AID LAW 2015 REVISION

8 AND IN THE MATTER OF IND. Nos. 39/15, 91/14, 84/14, 69/13 & 58/16

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10 TAKEN ADMINISTRATIVELY "ON THE PAPERS" WITHOUT A HEARING

11
12 BETWEEN:

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14 PAUL ANTHONY EBANKS

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16 Applicant

17
18 AND:

19 THE CROWN

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21 APPLICANT/RESPONDENT

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25 Appearances:

26 No appearance required by, or on behalf of, the
27 Petitioner

28 No appearance required by, or on behalf of, the
29 Applicant/Respondent

30 Before:

Justice Marlene Carter (Actg.)

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33 HEADNOTE

34 *Legal Aid Law (2015 Revision) – Sections 38, 21(3) and 24(1) and (2) -*
35 *Reconsideration of Legal Aid application - Issues arising: complex legal aid case,*
36 *right to legal assistance*

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JUDGMENT

3 1. The Applicant applied for and obtained an extension of his Legal Aid Certificate
4 (LAC) to cover an appeal against his conviction and sentence on the 22nd December
5 2016.

6 2. On the 8th of May 2017 the Applicant, through his counsel sought an extension of the
7 LAC to cover Queen’s Counsel for the appeal. The Applicant related that Mr. Ebanks
8 had been convicted of 28 counts of obtaining property by deception after a trial in
9 which there were multiple complainants and five separate indictments that were joined
10 for the trial. The Applicant received a sentence which totaled 14 years’ imprisonment.
11 The application detailed that the sentence received was the highest sentence handed
12 down for dishonesty offences in this jurisdiction, or was at least amongst the highest
13 sentences, and that the proposed appeal was likely to involve some consideration of
14 complex legal issues.

15 3. The Acting Director refused the application on the 24th of May 2017 and gave as her
16 reason for the refusal that:

17 *“Defendant already has competent counsel.”*

18 4. The Applicant sought a reconsideration of the Acting Director’s decision on the 5th of
19 June 2017. This further request was refused.

20 5. The Applicant now appeals the Acting Director’s decision under s.38 of the Legal Aid
21 Law 2015 (“the Law”).
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1 9. The Applicant has not argued here that there was any evidence before the Acting Legal
2 Aid Director that it was impossible to find an attorney willing and able to represent the
3 applicant on the appeal. The applicant already had competent counsel through his
4 LAC. Additionally the Acting Legal Aid Director would have had to be satisfied that
5 this was a complex case.

6 10. Section 24 of the Law states:

7 “24. (1) *The Director may procure, by contract, legal aid services on behalf of*
8 *assisted persons in certain criminal cases which he determines, in*
9 *accordance with subsection 92), to e complex legal aid cases.*

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11 (2) *In determining whether a matter is a complex legal aid case the Director*
12 *shall take into account whether the case satisfies at least three of the*
13 *following criteria -*

- 14 (a) *the commission of the offence to which the case relates is likely to*
15 *give rise to national publicity and widespread public concern;*
16 (b) *a successful defence to the charges requires highly specialist*
17 *knowledge;*
18 (c) *the elements of the offence are of a technical nature and a*
19 *successful defence requires an attorney-at-law with the relevant*
20 *technical legal knowledge;*
21 (d) *the elements of the offence involve an international dimension;*
22 (e) *a successful defence against the charges requires a combination of*
23 *legal, accountant, investigative and other expert skills;*
24 (f) *the charges are based on allegations of terrorism;*
25 (g) *the offence attracts a sentence exceeding ten years;*
26 (h) *the offence is of a violent or sexual nature involving multiple*
27 *victims; or*
28 (i) *the offence involves complex financial or legal transactions or*
29 *records.”*
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32 11. It is evident that both s.21(3) and s.24(1) address the question of whether the
33 applicant’s case was a complex legal aid case.

34 12. I have considered the criteria listed at s.24(2).
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1 13. The Applicant states that his matter does meet the criteria listed at s.24(2) for it to be
2 dealt with as a complex legal aid case as it falls within the ambit of s.24(2)(a),
3 (b),(c),(g) and (i) of that section. The Applicant submitted that the basis of his
4 application for Legal Aid for a Queen’s Counsel is that there would be some
5 consideration of complex legal issues and/or complex legal grounds of appeal. There
6 was no elaboration provided as to what these may be.

7 14. The Applicant does assert on this appeal that the complex legal grounds of appeal in
8 his case:



9 “...includes examination of evidence related to the Honourable Speaker of the
10 Cayman Islands Legislative Assembly, Honourable, Mr. McKeeva Bush amongst
11 other points of law.”

12 This is suggestive of the publicity aspect of the criteria set out at s.24(2)(a) of the Law.
13 However, even if this Court were to accept that it does satisfy s.24(2)(a), none of the
14 other criteria required by s.24(2) to bring the matter within the realm of a complex
15 legal aid case are evident.

16 15. There is nothing to support the suggestion that this case requires highly specialist
17 knowledge or that the elements of the offence are of a technical nature such as to
18 require an attorney with relevant technical legal knowledge or further, that the offence
19 involves complex financial or legal transactions or records as the Applicant asserts.
20 Additionally, the offence in this case does not attract a sentence exceeding ten years.¹

¹ s.247(1) of the Penal Code provides that a person found guilty of the offence of Obtaining Property By Deception is liable to imprisonment for ten years

1 16. While the indictment upon which the Applicant was tried may have contained a long
2 list of counts, this, in and of itself, does not equate to it being a complex legal aid case
3 and I find that there is nothing shown to support the Applicant's assertion in that
4 regard.

5 17. I find that the Applicant's appeal cannot be classified as "a complex legal aid case".
6 This was the only basis upon which the Acting Legal Aid Director could move to
7 appoint foreign counsel pursuant to s.21(3), or to contract counsel, including Queen's
8 Counsel, pursuant to s.24(1) of the Law.

9 18. The Applicant has also sought this court's consideration of the provisions of Article
10 6(3)(c) of the *UN Convention for the Protection of Human Rights and Fundamental*
11 *Freedoms, 1950*, that "in order to meet the requirements of Article 6(3)(c)
12 *representation provided by the state must be effective.*" It appears that the Applicant
13 may have unwittingly referred to some other Article or Convention or possibly
14 commentary on the Convention.²

15 19. Article 6 of the Convention for the Protection of Human Rights and Fundamental
16 Freedoms is concerned with the Right to a Fair Trial. Article 6(3)(c) reads:

17 "3. *Everyone charged with a criminal offence has the following minimum rights:*

18 (a);

19 (b);

20 (c) *to defend himself in person or through legal assistance of his own*
21 *choosing or, if he has not sufficient means to pay for legal assistance, to be*
22 *given it free when the interests of justice so require;*

23 (d);

24 (e) ..."



² This appears to be the case as the "UN Convention for the Protection of Human Rights and Fundamental Freedom 1950" does not exist.

1 20. The principle encapsulated in the article is of course one that the Court will always pay
2 heed as Article 6(3)(c) corresponds to that which obtains under Article 7(2)(d) of
3 *The Cayman Islands Constitution Order 2009*. The Acting Legal Aid Director's
4 finding that the Applicant already had competent counsel, does not run afoul of this
5 article nor of any of the other provisions therein.

6 21. This court will not interfere with the decision of the Acting Legal Aid Director.

7 22. The appeal is accordingly refused.

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11 **Dated this the 2nd day of February 2018**



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**Carter J (Actg.)
Acting Judge of the Grand Court**

