

SCHILLER v. CAPTAIN OF PORT OF GIBRALTAR

SUPREME COURT (Schofield, C.J.): June 24th, 1996

Legal Aid and Assistance—appeals to Judicial Committee—preparation of record—appellant’s preparation and related application under Gibraltar (Appeals to Privy Council) Order 1985, s.8(1) to Court of Appeal for directions are “steps preliminary or incidental to” proceedings in the Court of Appeal for purposes of allowing application under Legal Aid and Assistance Ordinance, s.12(2) and (3) and Schedule

The appellant applied to the Supreme Court for legal assistance for an appeal to the Judicial Committee of the Privy Council against a decision of the Court of Appeal.

The Judicial Committee of the Privy Council granted special leave to the appellant to appeal against a decision of the Court of Appeal. The order required that an authenticated copy of the Court of Appeal record be prepared in accordance with the Gibraltar (Appeals to Privy Council) Order 1985 and sent to the Registrar of the Privy Council.

The appellant applied for an extension to his existing legal assistance certificate to cover the preparation of the record and an application to the Court of Appeal for directions on such preparation. The registrar refused his application on the basis that legal assistance was not available under the Legal Aid and Assistance Ordinance, s.12(2) and Schedule, for proceedings before the Privy Council.

On appeal, the appellant submitted that (a) the preparation of the appeal to the Judicial Committee did not constitute proceedings before that court for the purposes of s.12(2) and the Schedule to the Ordinance, since the Court of Appeal retained jurisdiction of the matter until the record was received by the Registrar of the Privy Council; and (b) the compilation of the record and obtaining of directions from the Court of Appeal were “steps preliminary or incidental to any proceedings” within the meaning of s.12(3) of the Ordinance, and could therefore properly be covered by a legal assistance certificate.

Held, allowing the appeal:

(1) Under the Gibraltar (Appeals to the Privy Council) Order 1985, s.8(1) the Court of Appeal had a duty to supervise and give relevant directions on the preparation of the record of proceedings. Accordingly, although under the Legal Aid and Assistance Ordinance, s.12(3) and Schedule a legal assistance certificate could not be issued in respect of proceedings before the Judicial Committee, the Court of Appeal retained jurisdiction over work undertaken in furtherance of the appeal until

receipt of the record by the Registrar of the Privy Council (page 305, lines 24–39).

(2) The preparation of the record and the making of an application for directions from the court, for which the appellant would require legal advice and drafting skills, were clearly within the scope of s.12(3) of the Ordinance which defined legal assistance as “all such assistance as is usually given by solicitor or barrister in the steps preliminary or incidental to any proceedings.” The Registrar had therefore wrongly concluded that further legal assistance could not be made available to the appellant and the court would grant an extension to the existing certificate, provided all other conditions were met (page 305, line 40 – page 306, line 11).

Legislation construed:

Legal Aid and Assistance Ordinance (1984 Edition), s.12(2): The relevant terms of this sub-section are set out at page 305, lines 11–13.

s.12(3): The relevant terms of this sub-section are set out at page 305, line 44 – page 306, line 4.

Schedule, Part I, para. 1: The relevant terms of this paragraph are set out at page 305, lines 17–22.

Gibraltar (Appeals to Privy Council) Order 1985 (S.I. 1985/1199), s.8(1): The relevant terms of this rule are set out at page 304, lines 36–40.

K. Columbo for the Crown;
The appellant appeared in person.

SCHOFIELD, C.J.: This is an appeal by David Alexander Schiller (“the applicant”) against a decision of the Registrar of the Supreme Court denying him legal assistance in the pursuit of his appeal against a decision of our Court of Appeal to Her Majesty in Council. Special leave to appeal was granted to the applicant by order of the Privy Council dated February 10th, 1996 and by that order the Registrar was “directed to transmit to the Registrar of the Privy Council without delay an authenticated copy of the record proper to be laid before [Her] Majesty on the hearing of the Appeal.”

By s.8(1) of the Gibraltar (Appeals to Privy Council) Order 1985, “the preparation of the record shall be subject to the supervision of the Court, and the parties may submit any disputed question arising in connection therewith to the decision of the Court, and the Court shall give such directions thereon as the justice of the case may require.” “The Court” referred to in this sub-section is the Court of Appeal (see s.2 of the Order).

The preparation of such a record is a costly and onerous undertaking and the applicant seeks the assistance of Messrs. Phillips and Co., a firm of barristers and solicitors, to help him prepare it. Furthermore, matters

5 have arisen upon which the applicant seeks directions of the Court of Appeal on the preparation of the record. He has been legally aided thus far in the appeal and has sought an extension of such legal assistance for preparation of the record and for an application for directions. The Registrar has taken the view that, as legal assistance is not available to an appellant in an appeal before the Privy Council, he cannot sanction the legal assistance sought by the applicant. The matter has been referred to me on appeal.

10 Section 12 of our Legal Aid and Assistance Ordinance defines the scope and conditions of legal assistance in civil proceedings. Section 12(2) reads: "The proceedings in connection with which legal assistance may be given are any proceedings of a description mentioned in Part I of the Schedule except proceedings mentioned in Part II of the Schedule." Part II of the Schedule has no relevance to the applicant's application. 15 Part I of the Schedule lists the proceedings for which legal assistance may be given under s.12 as:

"Proceedings in any of the following courts—

- (a) Supreme Court;
- (b) Court of First Instance;
- 20 (c) magistrates' court in its civil jurisdiction in domestic proceedings;
- (d) Court of Appeal."

Missing from this list are proceedings before Her Majesty's Privy Council.

25 The first question in this appeal is: In which court does the preparation of the Court of Appeal record for an appeal to the Privy Council lie? The answer is succinctly stated in a letter from the Registrar of the Privy Council to Messrs. Phillips and Co., dated May 29th, 1996. This was written after the decision of our Registrar was made and he did not have the benefit of reading it. The letter refers to the certified record in the appeal to the Privy Council and its last paragraph reads: "I should perhaps 30 explain that until the certified record is lodged here, I am without jurisdiction."

If the Registrar of the Privy Council has no jurisdiction until the certified record of appeal is lodged with him, then the jurisdiction is still with the Registrar of our Court of Appeal. And that accords with the 35 provisions of s.8(1) of the Gibraltar (Appeals to Privy Council) Order 1985 that the preparation of the record is subject to the supervision of the Court of Appeal and any directions arising in connection therewith must be sought from that court.

40 Can legal assistance then be granted for the preparation of such a record and any directions sought thereon? That question is answered by reference to s.12(3) of the Legal Aid and Assistance Ordinance which reads:

45 "Legal assistance shall consist of representation, on the terms provided for by this Part, by a solicitor and, so far as necessary, by a

barrister including all such assistance as is usually given by solicitor or barrister in the steps preliminary or incidental to any proceedings or in arriving at or giving effect to a compromise to avoid or bring to an end any proceedings.”

The preparation under the supervision of the Court of Appeal of a record for purposes of an appeal to the Privy Council and any directions in connection therewith, being matters within the jurisdiction of the Court of Appeal, are, in my judgment, incidental to the Court of Appeal proceedings and come within the scope of s.12. If all other criteria are met then the applicant is entitled to Legal Assistance for the purposes for which it is sought.

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Order accordingly.