[2010–12 Gib LR 141]

IN THE MATTER OF GONZALES

SUPREME COURT (Dudley, C.J.): January 17th, 2011

Legal Aid and Assistance—appeals to Judicial Committee—counsel's opinion on prospects—unreasonable applications for legal assistance to be rejected, e.g. costs of counsel's opinion on prospects of weak or academic appeal disproportionate to financial value of case—court to refuse assistance rather than cap it in proportion to value of claim

The appellant applied to the Registrar of the Supreme Court for legal assistance.

The appellant had claimed damages in the Supreme Court in respect of psychiatric injuries suffered by her as a result, she claimed, of intentional harassment with letters, criminal damage and assaults.

The Supreme Court (Pitto, Ag. J.) held that the limitation period for intentional torts in the Limitation Act 1960, s.4(1) was three years and that the appellant's action was therefore statute-barred. On appeal, she submitted that the limitation period for the claim was six years, as the three-year period for "negligence, nuisance and breach of duty" claims under s.4(1) did not include intentional injuries. The Court of Appeal dismissed her appeal on the grounds that the most recent English authority established a three-year limitation period, notwithstanding that the Gibraltar court did not share the English court's general discretion to exclude time limits in personal injury cases if it was equitable to do so (in proceedings reported at 2010–12 Gib LR 61). The appellant had been given legal assistance to pursue her claim and first appeal, but her application for further legal assistance, to obtain counsel's opinion on the prospects of successfully pursuing an appeal to the Privy Council, was refused by the Registrar on the ground of unreasonableness. The value of her claim was agreed to be £3,000 to £4,000.

On appeal, the appellant submitted that the Registrar had erred in refusing to grant legal assistance because (a) the appeal would raise matters of constitutional and general importance; and (b) alternatively, the amount of assistance could be capped to make it proportionate to the value of the claim.

The respondent submitted in reply that (a) granting legal assistance would be unreasonable because the appeal was of jurisprudential interest only, clearly had limited prospects of success, and had low financial value; and (b) it would be unreasonable to award even partial funding capped at the value of the claim, given the nature and prospects of the appeal.

Held, dismissing the appeal:

The Registrar was right to reject the appellant's application for legal assistance on the ground of unreasonableness. Unreasonable applications included, *inter alia*, those in respect of academic cases in which the costs involved would be disproportionate to their financial value and prospects of success. The court would not, in weak or academic cases, allow an application for partial funding, capped at the value of the claim (paras. 6–7).

Legislation construed:

Legal Aid and Assistance Act 1960, s.12(4):

> "A person shall not be given legal assistance in connection with any proceedings unless the Registrar is satisfied that such person has reasonable grounds for taking, defending or being a party thereto and may also be refused legal assistance if it appears to the Registrar unreasonable that he should receive it in the particular circumstances of the case."

Legal Aid and Assistance Rules 1960, r.16(1)(e):

> "If the Registrar refuses an application for a certificate he shall notify the applicant, stating that the application has been refused on one or more of the following grounds—
>
> . . .
>
> (e) that it appears unreasonable that he should receive legal aid in the particular circumstances of the case."

O. Smith for the appellant;
J.R. Triay for the respondent.

1 **DUDLEY. C.J.:** This is an appeal from a refusal by the Registrar to grant legal assistance, the application having been refused in reliance upon s.12(4) of the Legal Aid and Assistance Act 1960, in that the Registrar determined that, in all the circumstances of the case, it was unreasonable for the applicant to receive legal assistance. That provision is mirrored in r.16(1)(e) of the Legal Aid and Assistance Rules 1960 as a ground for refusing an application for legal assistance.

2 Ms. Gonzalez ("the appellant"), with the benefit of a legal assistance certificate, instituted proceedings against Mr. Jonathan Gracia alleging that she had suffered personal injury in the nature of psychiatric illness as a consequence of diverse letters written and delivered to her and by certain acts of criminal damage. The appellant's solicitors concede that the value of the claim is relatively low, namely in the order of £3,000 to £4,000.

3 Pitto, Ag. J., on September 4th, 2009, ruled that the claim was statute-barred. His decision was upheld by the Court of Appeal for the reasons set out by Aldous, J.A., with which Parker and Tuckey, JJ.A. agreed (reported at 2010–12 Gib LR 61).

4 The appellant now seeks legal assistance to obtain counsel's opinion on the prospects of successfully pursuing an appeal to the Privy Council. It is suggested that at this juncture funding could be capped in an amount in the region of £2,000 to £4,000. I need not deal with the possible grounds of appeal, but fundamentally what is said is that the issues which may be raised on appeal touch upon the interpretation of the Limitation Act and raise matters of constitutional and general public importance which have application beyond the present case.

5 Although the purpose of the Legal Aid and Assistance Act may appear to be self-evident, it is nonetheless useful to turn to the long title as a guide to the intention of the legislature:

> "An Act to make better provision for the granting of free legal aid and assistance to persons of small means. To enable the cost of such legal aid and assistance for such persons to be defrayed out of the consolidated fund, and for purposes connected therewith."

6 The purpose of the Act, as regards legal assistance, therefore, is to allow individuals of limited means access to the courts where otherwise their financial circumstances would make it prohibitive for them to institute or defend civil proceedings. It is, however, no part of the Act that the consolidated fund, which ultimately means the tax-payer, should defray the cost of jurisprudential development. Affording those of limited means access to justice does not mean that the mere existence of a possible cause of action or arguable proposition must of itself inexorably lead to the grant of a certificate. That much is clear from s.12(4) and r.16(1)(e). The effect of those provisions is, in my view, best understood by borrowing a concept from the Civil Procedure Rules, namely "proportionality."

7 In the present case, the cost of pursuing the claim wholly outstrips its financial value, and whilst on one view it may be somewhat surprising that legal assistance was granted in the first instance, and thereafter maintained for the purposes of the appeal, what is to my mind clear beyond doubt is that to continue to afford the appellant legal assistance would amount to an abuse of the legal assistance fund. The argument could of course be made that the appellant wishes to pursue the action as a matter of principle. Principles are undoubtedly important, but where potential success is patently at too high a financial cost in relation to the value of the claim it is unreasonable for an applicant to pursue these at the tax-payers' expense.

8 For these reasons the appeal is dismissed.

Appeal dismissed.