

[2017 Gib LR 289]

## IN THE MATTER OF X

SUPREME COURT (Dudley, C.J.): October 11th, 2017

*Legal Aid and Assistance—qualification for legal assistance—capital—under Legal Aid and Assistance Act 1960, s.13(1), no legal assistance if applicant’s capital exceeds £350, unless cannot afford to proceed without legal assistance—applicant owning property with net value of £110,000 refused legal assistance even if, after sale of property, she might struggle to rehouse herself and children*

The appellant applied for legal assistance.

The appellant applied to the Registrar for legal assistance for the purpose of a review of an existing contact order in respect of the children of her former marriage. Her application was refused. Section 13(1) of the Legal Aid and Assistance Act 1960 provided that “a person shall be refused legal assistance if he has a capital of more than £350 or such other figure . . . as the Government may specify by notice in the Gazette unless it appears that he cannot afford to proceed without legal assistance.” The appellant owned a three-bedroom apartment, subject to a 50% equitable interest and a mortgage. Applying a conservative resale price, the balance that would be available to the appellant if the apartment were sold would amount to some £110,000. The Registrar stated that the value of the appellant’s interest in the property far exceeded the threshold in the Act and would undoubtedly enable her to fund the proceedings. He recognized that selling the property would bring about hardship in terms of rehousing but he was precluded from considering it as a factor under the Legal Assistance (Assessment of Resources and Scale of Contribution) Rules.

The appellant appealed against the Registrar’s decision, claiming that she had twice been granted legal assistance in the same circumstances.

**Held**, dismissing the appeal:

The Registrar had properly found that the appellant did not qualify for legal assistance as the value of her interest in her home exceeded the £350 capital threshold in s.13(1) of the Act. The Registrar had identified that the Legal Assistance (Assessment of Resources and Scale of Contribution) Rules provided that the first £2,000 of the value of an interest in a dwelling house, after deduction of encumbrances, was to be deducted for the purpose of computing capital, but in the present case that deduction was of no consequence. The court sympathized with the appellant’s predicament that if she were to sell the property she might thereafter face

difficulties in rehousing herself and her children, but she did not meet the financial criteria for legal assistance. The fact that she might have been erroneously granted legal aid previously, in the same circumstances, was not a sufficient reason to perpetuate such an error (para. 3; paras. 6–8).

**Legislation construed:**

Legal Aid and Assistance Act 1960, s.13(1): The relevant terms of this sub-section are set out at para. 6.

Legal Aid and Assistance Rules 1960, r.16(3):

“Any applicant considering himself aggrieved by the decision of the Registrar as to his entitlement to receive legal assistance or as to the amount of contribution or as to the discharge or revocation by the Registrar of his legal assistance certificate may within fourteen days of receipt of the decision appeal in writing to the Chief Justice.”

Legal Assistance (Assessment of Resources and Scale of Contribution) Rules 1960, r.4:

“(1) Subject to the provisions of subrule (3), there shall be included in the computation of the capital of a person seeking or receiving legal assistance the amount or value of every resource ascertained as on the date of application for legal assistance.

...  
 (3) There shall not be taken into account in computing the capital of a person seeking or receiving legal assistance—

...  
 (c) the first £2,000 of the value of his interest in his dwelling house after deduction of encumbrances thereon . . .”

1 **DUDLEY, C.J.:** This is an appeal from a refusal by the Registrar to grant legal assistance. The application for the issue of a certificate is essentially for the purposes of having an existing contact order, in respect of the children of her former marriage, reviewed.

2 The learned Registrar communicated the refusal of legal assistance to the appellant’s solicitors by email dated May 30th, 2017. Rule 16(3) of the Legal Aid and Assistance Rules provides that an applicant may appeal a refusal of a certificate within 14 days of receipt of the decision. In the event, this appeal was filed on September 20th, 2017, evidently well beyond the 14 days, with no reason provided for the late filing of the appeal. That of itself is a sufficient basis upon which to dismiss the appeal. However, cognizant of the fact that a fresh application for legal assistance could be filed I shall deal with the appeal substantively.

3 The appeal has been lodged by the appellant personally and not through solicitors. There is only one ground of appeal, namely: “I appeal on the grounds that I have previously been granted legal aid on two occasions under exactly the same circumstances.” I am not aware of the

circumstances in which previous applications were granted and if, as asserted, her financial circumstances are identical, I can sympathize with the appellant's consternation. However, if in the past legal assistance was granted in error, that does not afford a good reason to perpetuate any such error.

4 The information provided to the Registrar was to the effect that the appellant owns a three-bedroom apartment at Waterport Terraces, subject to a 50% equitable interest by GRP Ltd. and to a £40,000 mortgage. The appellant also received a loan of £15,000 from her parents to assist her in the purchase of the property. There is nothing to suggest that it is a secured loan which reduces her equity in the property, although given the sums involved that issue does not require further consideration. Applying the conservative resale price suggested by the appellant's solicitors, after discounting the mortgage, the amount that would be due to GRP Ltd. (and indeed the parents' loan), the balance that would be available to the appellant amounts to some £110,000.

5 The Registrar explained the basis for his decision in the aforesaid email as follows:

"The discretion that I am able to exercise is limited to that conferred on me by the Legal Assistance (Assessment of Resources and Scale of Contribution) Rules. With regards to the computation of capital, you will note from rule 4(3)(c) of these rules that as concerns value of interest in a dwelling house, I am only able to deduct the sum of £2,000. In the circumstances of your client's case, the value of her interest in the property far exceeds the threshold set out in the Act and would undoubtedly enable her to fund these proceedings. I do not ignore that selling her property would bring about hardship in terms of re-housing but unfortunately I am precluded from considering this as a factor under the rules."

6 The statutory framework is as follows. Section 13(1) of the Legal Aid and Assistance Act 1960 provides:

"Subject to this Part legal assistance shall be available for any person whose income does not exceed £5,000 a year or such other figure, which may be calculated by means of a formula, as the Government may specify by notice in the Gazette:

Provided that a person shall be refused legal assistance if he has a capital of more than £350 or such other figure, which may be calculated by means of a formula, as the Government may specify by notice in the Gazette unless it appears that he cannot afford to proceed without legal assistance."

That capital sum has not been increased by the Government and the appellant clearly falls within the proviso. Right to say that, as was

properly identified by the Registrar, the Legal Assistance (Assessment of Resources and Scale of Contribution) Rules provide that the first £2,000 of the value of an interest in a dwelling house, after deduction of encumbrances, is to be deducted for the purposes of computing capital but it is evident that in the circumstances of this case that deduction is of no consequence.

7 At the time of the application, it was said for the appellant that, upon the sale of the property, she would not be entitled to apply for government housing and that the remaining equity would be insufficient for her to rehouse herself and her two children or to fund a private rental. I sympathize with her predicament but the short point is that given the value of her home, the appellant does not meet the financial criteria so as to qualify for legal assistance.

8 The upshot is that the Registrar's reasoning is well founded and the appeal is dismissed.

*Appeal dismissed.*

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