

THE HIGH COURT

JUDICIAL REVIEW

[2006 No. 57 JR]

BETWEEN

DOLORES MANNION

APPLICANT

AND

THE LEGAL AID BOARD, AND

THE MINISTER FOR JUSTICE, EQUALITY AND LAW REFORM, IRELAND AND THE ATTORNEY GENERAL

RESPONDENTS

Judgment delivered by Mr. Justice McGovern on the 7th. day of December 2007

1. On 23rd January, 2006 the applicant obtained leave to apply by way of judicial review in respect of the following reliefs:

- (i) A declaration that in failing to assign a solicitor to interview the applicant to process her application for free legal services, other than a solicitor employed by the first named Respondent, the first named Respondent was acting contrary to the principles of constitutional justice and fair procedures, contrary to the provisions of the Legal Aid Act 1995, and was acting contrary to the Applicant's constitutional rights and rights enjoyed pursuant to articles 13 and 14 of the European Convention on Human Rights and was acting contrary to its statutory duty.
- (ii) An order by way of *certiorari* of the decision of the Respondent on 19th May, 2005 which was conveyed to the Applicant by way of letter of 26th May, 2005.
- (iii) An order of *mandamus* directing the first named respondent to forthwith assign to the Applicant a solicitor other than one employed by the first named respondent for the purposes of processing her application for free legal services.
- (iv) A declaration that in so processing the Applicant's application for free legal services as referred in the proceedings herein, the first named Respondent is not entitled to any information on the legal proceedings giving rise to the application for free legal services from the solicitor so assigned to deal with the application referred to in the preceding paragraph herein.
- (v) Further or in the alternative, a declaration that sections 24, 25, 26, 28 and 32(2) of the Civil Legal Aid Act, 1995 would, if applied in these proceedings, to the application made by the applicant herein, constitute a breach of her rights under the Constitution and under the European Convention on Human Rights.
- (vi) A declaration that the first named Respondent in these proceedings has, in dealing with the Applicant and her application for free legal services, failed to perform its functions in a manner compatible with the State's obligations pursuant to the European Convention on Human Rights, contrary to the provisions of s. 3(1) of the European Convention on Human Rights Act, 2003.
- (vii) An order of *certiorari* of the memorandum dated 3rd November, 2005 issued by the first named Respondent, and signed F.J. Brady Director of Legal Aid, entitled "*note re provision of legal aid in cases where the Board is considering applications for legal aid to take proceedings against the Board*".
- (viii) A declaration that the Civil Legal Aid Act, 1995 fails to satisfy the constitutional obligations of the second and third named Respondents in relation to the provisions of free legal aid for civil cases and is in breach of the State's obligations pursuant to article 6 of the European Convention on Human Rights as applied in this jurisdiction by virtue of the European Convention on Human Rights Act, 2003.
- (ix) If necessary, a declaration that the Civil Legal Aid Act, 1995 is incompatible with the European Convention on Human Rights.
- (x) Alternatively, or in the alternative, an order of *mandamus* directing the second and third named Respondents to grant free legal aid and advice for the purposes of further processing the proceedings "*The High Court, Record Number 2001/3145 P, between Dolores Mannion, plaintiff and Padraic Brennan and Padraic Colm Ferry, practising under the style and title of Ferrys and the Legal Aid Board*".
- (xi) Damages for breach of the Applicant's right to fair procedures, breach of statutory duty, negligence by the first named Respondent in or about the exercise of its statutory powers, functions and duties and breach of the Applicant's right enjoyed under the European Convention on Human Rights.
- (xii) If necessary, an order extending the time within which this application can be made.
- (xiii) Such further or other relief as to the court may seem fit.
- (xiv) Costs.

2. At the commencement of the hearing the court was informed that the applicant was no longer seeking an order of *mandamus* as set out in para. (iii) above.

Facts

3. In 1989 the applicant purchased an apartment in Tralee, Co. Kerry and instructed Messrs. Hudson and Browne, Solicitors, to act on her behalf. She claims there were some problems relating to the apartment and the management company. Accordingly, she retained another firm of solicitors, namely, Messrs. Ferrys to commence proceedings against the vendor of the apartment and her former solicitors Hudson and Browne. Those proceedings were instituted in 1994 but the applicant was unhappy with the manner in which Messrs. Ferrys dealt with these proceedings and she then sought the services of the first named respondent. But the applicant felt that the first named respondent also acted negligently so she sued the first respondent and Messrs. Ferrys and for that purpose retained the services of Messrs. Brophys Solicitors. The proceedings were commenced by plenary summons on 1st March, 2001.

Shortly after the statement of claim was delivered Messrs. Brophys solicitors sought to come off record in the proceedings and were permitted to do so. On 11th January, 2002 Messrs. Dockrell Farrell solicitors came on record on her behalf but some time later they too sought to come off record and were eventually permitted to do so.

4. At this point the applicant contacted the Law Centre in Tallaght for the purpose of seeking legal services in her action against the first named respondent and Messrs. Ferrys. That action has been adjourned because her application for legal aid has been delayed for reasons which are apparent in the course of this application.

5. In 2005 the applicant met with Mr. Liam de Feu, a solicitor employed by the first respondent at its Tallaght Law Centre. The applicant felt that it was inappropriate for the first respondent to assign a solicitor employed by it to her for the purpose of prosecuting her negligence action against the first respondent and the firm of solicitors. She set out her concerns in a letter of 18th March, 2005 to Mr. Roling Ryan, Chief Executive Officer of the Legal Aid Board. The text of the letter reads as follows:

"Re: *Mannion v. Legal Aid Board and Ferrys Solicitors*

Dear Mr. Ryan,

Further to my November 2004 application to the Legal Aid Board for financial support in the above legal action, my meeting with your solicitor, Mr. de Feu and our telephone conversation this morning, it is entirely out of the question that a L.A.B. employed solicitor be proposed to represent me: it would be a clear conflict of interest.

My case comes up for listing on 7th April. In terms of financial support from the Board, I would appreciate authorisation and clarification of my position before that date. My case ought to have been heard last November: the delay is causing severe distress to both my family and me. I might add that I am fully aware of my rights under the European Convention.

I would greatly appreciate a reply at your convenience."

6. In subsequent correspondence the applicant requested the first named respondent to appoint a solicitor from private practice to represent her but she was advised by the first named respondent that they could only do so in circumstances where a panel of solicitors has been established for that purpose under the Civil Legal Aid Act, 1995. She was informed that no such panel has been established and that the first respondent had no plans to do so at present. She was also told that if such a panel existed the first respondent would be paying the private solicitor and perceptions of conflict of interest could still arise. The applicant for her part believes that a distinction should be drawn between a situation where the first respondent is merely paying the fees of the private solicitor and a situation where the solicitor is actually employed by the first respondent and takes instructions from the Board and has promotional prospects from the Board and is generally answerable to the Board as his or her employer.

The applicant lodged an appeal against the decision of the first named respondent not to appoint a private solicitor. The appeal was considered by the Board at a meeting of 19th May, 2005 and the applicant's appeal was rejected. The first respondent wrote to the applicant on 26th May, 2005 stating:

"The applicant should be informed that no panel of solicitors has been established under the Act for the purpose of such proceedings and therefore at this time the Board is only in a position to provide the applicant with a salaried solicitor who is employed by the Board".

The applicant re-attended with Mr. de Feu for the purpose of discussing whether or not she could bring a judicial review of the decision of the respondent. On 8th June, 2005 she submitted an application for a legal aid certificate to procure the opinion of counsel as to whether or not there were grounds for judicial review. On 20th July, 2005 the first named respondent wrote to the applicant refusing her application for counsel's opinion on the possibility of a judicial review on the grounds that her application and subsequent correspondence from her solicitor had not, despite a specific request, given details of what aspects of the processing of her application was to be the subject of judicial review. The letter went on to state:

"Section 28(4)(d) of the 1995 Act provides that the Board may refuse to grant a legal aid certificate if it is of the opinion that such information as is reasonably required by the Board from the applicant to enable it to make a decision on whether to grant a legal aid certificate or not has been provided by him or her".

A letter in similar terms had been sent by the first named respondent to Mr. de Feu on 19th July, 2005.

On 21st July, 2005 Mr. de Feu replied to the first named respondent on behalf of the applicant. In his letter he stated:

"Kindly note that I am not at liberty to discuss details of this client's application. As you will note the subject of Judicial Review would be the flaws in process by the Legal Aid Board. It was for this reason that my application was for a Legal Aid Certificate for the opinion of counsel as to whether there were grounds for a Judicial Review or not. The view of my client is that it would be improper and indeed a perceived injustice and at variance with one of the two principles of natural justice viz. the principle of 'Nemo Iudex', that the Legal Aid Board should make a decision on this matter in the circumstances.

I was specifically instructed to seek a legal aid certificate for the purposes of seeking the opinion of counsel and therefore to seek information as to the flaws in your process as grounds for judicial review was unnecessary. I am instructed that what in fact you are seeking are details which would be given to the said counsel."

After further consideration of the matter the first named respondent gave approval on 20th September, 2005 for counsel's opinion to be given to the Board on "prospects of success" in the matter. Mr. de Feu was directed to forward counsel's opinion to the Board with his recommendations as to whether or not a legal aid certificate should be granted or refused in the matter. Counsel was retained but had misgivings about the procedure. Counsel wrote to Mr. de Feu on 18th October, 2005 indicating that in his view it would be "entirely inappropriate" for Mr. de Feu to furnish counsel's opinion to the first respondent in view of the fact that any potential proceedings would be against the Board. The applicant maintains that she consented to counsel's opinion being released to Mr. de Feu on the grounds that she urgently required advice on how to progress the matter. She was concerned at that time with any delay in making a judicial review application. The question remained as to whether or not the opinion should be disclosed to the Board.

7. On 28th October, 2005 the Board wrote to Mr. de Feu and stated *inter alia*:

"The opinion was sought to indicate if there were grounds for Ms. Mannion to institute a judicial review of a decision of the appeal committee of the Board.

It will be necessary to assess the merits of the case in the event that an application is made to institute a judicial review. The criteria are outlined in s. 28(2) of the Civil Legal Aid Act, 1995. The opinion is likely to be part of the application if it supports Ms. Mannion's view that a judicial review is required.

The bottom line in all of this is that without the opinion we can make no determination relating to a legal aid certificate. Counsel and Ms. Mannion can of course be assured that none of the parties involved in the case will have any input into the determination of whether or not to grant a certificate".

On 14th November, 2005 the first named respondent informed the applicant that it would not object to the extension of the Statute of Limitations in the matter to the 16th December, 2005. On the same date the first named respondent, under cover of a separate letter, enclosed a copy of provisions relating to the granting of legal aid where the application for legal aid is in anticipation of taking proceedings against the Legal Aid Board. The letter expressed the view that it appeared that the guidelines had been drafted in the light of the experiences of the applicant's application for legal aid.

I think it is useful to set out in full the guidelines:

"Note re provision of legal aid in cases where the Board is considering applications for legal aid to take proceedings against the Board

The Board has in place a system whereby applicants for legal aid in such cases are dealt with by staff at Assistant Director level in Legal Services Section in its Head Office in Cahirciveen, under the direction of the Director of Operations.

The defence of actions against the Board are dealt with by the Director of Legal Aid through the Board's Dublin Office.

Any person may approach a law centre and apply for legal services in the context of seeking to take legal proceedings against the Board. Any such application is forwarded to Head office in the normal manner. Once received in Head Office, the file is referred to the appropriate Assistant Director and the file is clearly marked as one to be handled on a restricted circulation basis.

Having regard to the material supplied by the applicant's solicitor, a decision is usually taken to approve the engaging of a barrister to consider the matter. The application is progressed in the normal manner, subject to a very liberal interpretation of the merits criteria in the Act. The purpose of this approach is to ensure that the Board gives every opportunity to an applicant who has to rely on it for legal services particularly where it relates to potential proceedings against the Board.

In order to further develop this approach, and to respond to concerns about the provision of opinions from barristers to Head Office, and to deal with what is an exceptional set of circumstances, the following approach is to be adopted:

- The applicant's solicitor should obtain from the barrister a statement as to, for example, the likelihood of obtaining leave from the High Court to issue judicial review proceedings;
- Assuming that the response to the issue of leave is favourable, the barrister should express an opinion on the prospects of an applicant being successful in the actual judicial review proceedings, indicating, in particular, an indication of the likelihood of success. For example, applicant has a fifty-fifty chance of succeeding in the proceedings;
- The applicant's solicitor should then prepare a formal application for a legal aid certificate, in accordance with standard practice, and express an opinion on the granting of legal aid with specific reference to the provisions of section 24(a) and (b) of the Act;
- The application should be submitted to the Managing Solicitor of the law centre;
- The Managing Solicitor should review all the papers, in particular the opinion from the barrister and the opinion of the applicant's solicitor;
- The Managing Solicitor should then form his/her own professional opinion on the application and forward that opinion with the application to Head Office.

If the Managing Solicitor expresses an opinion that legal aid should be granted with specific reference to the provisions of Section 24 of the Act, then a legal aid certificate should be issued for the appropriate proceedings.

I am satisfied that this arrangement would be in keeping with the obligations to consider all applications for legal aid certificates provided for in the Act.

F.J.Brady

Director of Legal Aid

3 November 2005

The applicant objected to the revised procedures and took counsel's opinion on the matter. She was advised that the revised guidelines were flawed and that the Managing Solicitor, being an employee of the first named respondent, would have full access to counsel's opinion which, in turn, would set out all the risks and difficulties that may be associated with any proceedings she might wish to bring. Mr. de Feu wrote on 2nd December, 2005 to the first named respondent asking them to withdraw the requirement that the Managing Solicitor be furnished with counsel's opinion. On 7th December, 2005 the respondent wrote to Mr. de Feu pointing out that the Managing Solicitor only gives an opinion as to whether or not a legal aid certificate should be granted. He was not asked for

or expected to provide any detail of the content of counsel's opinion when advising head office if a certificate should be granted.

The applicant maintained her objection to the procedures being adopted by the first respondent. In the meantime, however, she obtained the services of solicitors who were prepared to act for her in the judicial review application. Accordingly, there remains her proceedings in negligence against the first named respondent and Messrs. Ferrys in respect of which she seeks free legal aid.

This is the background to the application.

8. The First Named Respondent

The first named respondent says that the applicant was informed that guidelines had been put in place to ensure that where the applicant applies for legal services in respect of proceedings that she wishes to bring against the first respondent itself, persons within the first named respondent who would be involved in the defence of such proceedings on behalf of the Board would have no involvement in, or become privy to, any information that was confidential or related to the proceedings that the applicant is bringing against the first named respondent. When one looks at the revised provisions of 3rd November, 2005 it is clear that applications for legal aid in cases against the Board are dealt with by staff at Assistant Director level in the Legal Services Section in its head office in Cahirciveen, Co. Kerry. The defence of the actions against the Board are dealt with by the Director of Legal Aid through the Board's Dublin office. The respondent points out that once an application for legal aid in proceedings against the Board is forwarded to the head office the file is referred to the appropriate Assistant Director and the file is clearly marked as one to be handled " ... on a restricted circulation basis". The respondent argues that the first named respondent can only act within the confines of the Civil Legal Aid Act, 1995 and that the procedures which have been put in place in respect of the applicant are fair and reasonable having regard to the assurances given, (a) by statute and, (b) by the protocol which has been put in place.

9. The Second, Third and Fourth Named Respondents

These respondents maintain that there has been no proper attack on the constitutionality of the Act. They argue that the Act sets out the criteria to be satisfied by an applicant for legal aid and it also sets out a scheme and that both the criteria and the scheme which has been established are reasonable and not in breach of the applicant's rights either under the Constitution or the European Convention on Human Rights. The applicant accepts that the right to legal aid is not an absolute right. The scheme and guidelines set out in the legislation and Regulations have set out reasonable limits to the right of an applicant to legal aid. These respondents also argue that there is a presumption of constitutionality and that the applicant has nothing more than a "niggling doubt" about the procedures and that this is not sufficient to show that the Act or regulations made thereunder offend against the plaintiff's constitutional rights. The applicant seeks to impose unduly onerous conditions on the first named respondent.

10. The Law

Section 28 of the Civil Legal Aid Act 1995 "The Act" sets out the criteria for obtaining legal aid. Section 28(1) provides:

"A person shall not be granted legal aid unless the person is granted a legal aid certificate under this section in respect of the legal aid sought".

The section goes on to deal with the circumstances in which a legal aid certificate shall be given.

Section 31 of the Act provides for the selection of a solicitor or barrister to act on behalf of an applicant. Section 31(1) states:

"The Board shall, upon deciding to grant legal aid or advice to a person, nominate a solicitor of the Board for the purpose of providing such person with legal aid or advice, or refer the person to the solicitors' panel to select a solicitor therefrom, which solicitor shall, upon selection, be engaged by the Board for the said purpose under s. 11."

Section 32 of the Act sets out the nature of the relationship between the lawyer assigned and the person in receipt of legal aid and establishes that the relationship has the rights and privileges which are the same as those arising out of the relationship between a solicitor or a barrister and his or her client who is not an applicant for legal aid or advice. In other words the rights and privileges operating between lawyers and their clients operate equally in the case of legal aid lawyers and the recipients of legal aid.

11. Civil legal aid regulations for the purpose of giving effect to the Act have been brought into effect by various statutory instruments made pursuant to the provisions of s. 37 of the Act.

The requirements of the Act make it clear that the first named respondent's function is to provide legal services to persons "who satisfy the requirements of" the Act. The prerequisites to the granting of legal advice and/or legal aid include the following:

(a) in respect of legal services the Board must opine that a solicitor or barrister acting reasonably would be likely to advise the person seeking the legal services to obtain these services at his or her own expense. (s. 24)

(b) in respect of legal advice, the Board must opine that the person seeking legal advice satisfies the financial eligibility criteria specified by the Act and any regulations made thereunder. (s. 26(1)).

(c) in respect of legal aid, the Board cannot grant a legal aid certificate to a person unless it opines, *inter alia*, that:

- the applicant satisfies the financial eligibility criteria specified by the Act and regulations;
- the applicant has, as a matter of law, reasonable grounds for instituting, defending, or, as may be the case, been a party to, the proceedings the subject matter of the application; and
- the applicant is reasonably likely to be successful in the proceedings assuming the facts put forward by him/her in relation to the proceedings are proved before the court concerned. (s. 28(2)(a)).

Section 28(1) of the Act requires that a person who wishes to obtain legal aid must apply for a legal aid certificate. The procedure through which this application is made is set out in the 1996 regulations as amended by the Regulations of 2002 and 2006. The application must be made in writing to the Board and be accompanied, *inter alia*, by:

(a) such information (including information as to the applicant's means) as the Board deems necessary to enable it to decide whether a certificate should be granted, and

(b) an opinion signed by a member of staff of the Board as to whether a certificate should be granted.

(Regulation 5(5) of the 1996 Regulations as amended by Regulation 3(a) of the 2002 Regulations.)

In *Martin and Doorley v. Legal Aid Board*, (Unreported, High Court 23rd February, 2007) Laffoy J. dismissed the plaintiffs' claim for a declaration that s. 32(2) of the Act was unconstitutional. She stated at p. 14:

"The legislative purpose to be gleaned from s. 32 as a whole is that the ordinary solicitor/client relationship should apply to the Board's solicitor and his legally-aided client subject to clearly defined exceptions. The objective of the exception provided for in sub-s. (2) is to arm the Board with the information it requires to discharge its function under the Act ...".

It is clear that the Act requires a solicitor employed by the first named respondent to discharge his/her professional and legal duties with independence and confidentiality and to act in the client's best interest. The question to be considered in these proceedings is whether or not the provisions of the Act and Regulations and the provisions put in place by the first named respondent on 3rd November, 2005 adequately protect the applicant. There is no absolute right to legal aid. See *Airey v. Ireland* [1980] 2 EHRR 305; *Sahil v. General Fire and Life Assurance Company* [1987] I.R. 628; and *M.C. v. The Legal Aid Board and Others* [1991] 2 I.R. 43.

In *M. C. v. The Legal Aid Board* [1991] 2 I.R. 43 at p. 55 Gannon J. said:-

"By adopting the scheme for funding legal aid and advice to impecunious litigants the State provides resources to enable such persons to obtain the services of skills adequate to that of an adversary in civil litigation. In my opinion, the adoption of that scheme does not impose any duty on the State or on the Legal Aid Board to any litigant involved in civil litigation other than to ensure that the scheme is implemented fairly to all persons and in a manner which fulfils its declared purpose."

It seems to me that although that decision was made prior to the Act coming into force the principles set out above apply to this case.

This case is somewhat unusual in that the applicant is seeking legal aid in order to sue the Legal Aid Board and a firm of solicitors. In considering whether the Legal Aid scheme is been implemented fairly and in a manner which fulfils its declared purpose it is relevant to look at the safeguards which were put in place. On the one hand there are statutory safeguards put in place by ensuring that the ordinary solicitor/client relationship should apply which requires the solicitor to discharge both his professional and legal duties in the clients best interests and acting with independence and on the basis of confidentiality.

In addition, the first defendant has put in place provisions in relation to legal aid cases where the Board is considering applications for legal aid to take proceedings against the Board. In the case of *Watkinson v. Legal Aid Board* [1991] 2 All E.R. 953 Lord Donaldson M.R. stated at p. 959, obiter dictum,

"In cases where people seek to sue the Legal Aid Board, the Board has very properly instituted a system of Chinese walls, and they are real Chinese walls as opposed to the artificial variety which we sometimes experience. There has accordingly, and very properly, been absolutely no communication between the central administration who were the respondents to the appeal and the area or sub-division which was responsible for giving legal aid to Mrs. Watkinson."

Donaldson MR stated at p. 957

"It may strike some as surprising that the Law Society or the Legal Aid Board as its successor is prepared to grant legal aid to a plaintiff in a suit in which it is the defendant, but, if the statutory criteria for granting legal aid are met, it is only right that they should do so and they always do. Indeed, if any general criticism is to be made of their conduct in relation to cases of that type, it is that they lean over backwards in favour of the applicant for legal aid".

The first named respondent has a discretion as to the means by which it may provide legal services. Section 30(1) of the Act gives the first named respondent a discretion to provide legal services through law centres established by it or through solicitors or barristers whose names are entered on panels established by it under s. 30(3). Once the first named respondent makes a decision to grant a person legal aid or legal advice it must nominate a solicitor of the Board to provide it, or refer the person to the solicitors panel in order that he/she might select a solicitor to provide same. The first named respondent's power to establish and maintain a panel of solicitors to provide legal services is entirely discretionary. In *Martin and Doorley v. Legal Aid Board* Laffoy J. stated at p. 8

"The provisions of ss. 24 – 29 inclusive, coupled with the regulations, justify the generalisation that the Oireachtas has imposed a strict regime in relation to providing and continuing legal advice and legal aid.

The Act empowers the Board to provide legal aid and advice through solicitors employed by the Board in law centres or it may outsource the provisions of the service to a solicitor on a panel (ss. 30 and 31). The expression "solicitor of the Board" is defined in s. 1 of the Act as meaning a solicitor employed by the Board".

The first named respondent has established and maintained a panel of solicitors to provide legal services in relation to certain District Court cases and in divorce and judicial separation proceedings in the Circuit Court. The first named respondent has not exercised its discretion to establish a panel of solicitors to provide legal services in the High Court and/or to provide legal services of the nature sought by the applicant in this case. The first respondent argues that the establishment of such a panel (or the amendment of the existing one) would require the determination of terms and conditions upon which the first named respondent might wish to engage such solicitors, the consent of the relevant Ministers being forthcoming, and agreement been reached with solicitors in private practice to provide the relevant legal services. This is a discretionary power. Since the first named defendant has not exercised its discretion in that regard there is no High Court panel and it would be acting *ultra vires* if it were to accede to the applicant's request that a selected private solicitor be engaged by the first named respondent to act on behalf of the applicant in the proceedings. In the circumstances, the only way in which legal services of the nature sought by the applicant can be provided to her by the first named respondent is by that Board nominating a "nominated Board solicitor" to provide these services.

The plaintiff relies on the European Convention on Human Rights Act, 2003 and claims that in failing to assign a solicitor to interview her to process her application for legal services other than a solicitor employed by the first named respondent, the first named respondent was acting contrary to the applicant's rights enjoyed pursuant to articles 13 and 14 of the European Convention on Human Rights.

I reject this contention. I do not accept that the provisions of the Act or the Regulations made thereunder or the manner in which the first respondent is implementing the Legal Aid Scheme is in breach of the applicant's rights under article 6 of the European Convention on Human Rights or articles 13 and 14. I find nothing in the Act or Regulations which would warrant this Court making a declaration that the Act or Regulations are incompatible with the State's obligations under the European Convention on Human Rights.

In view of the statutory and procedural safeguards which are in place I do not consider that there is any failure on the part of the respondents to meet the requirements of natural or constitutional justice nor do I believe that the principle of *nemo iudex in causa sua* has been breached.

So far as the applicant's claims against the second, third and fourth named defendants are concerned, no case has been made out to show that the provisions of the Act are repugnant to the Constitution or that the applicant's constitutional rights have been violated in anyway by any of the respondents.

I am satisfied that in this case there are sufficient safeguards for the applicant to ensure that the legal aid lawyers who are dealing with the application for legal aid will not have contact with those legal aid lawyers who are conducting the defence of the action against the first named respondent. It seems to me that the applicant's apprehension is unnecessary and unreasonable in the light of the safeguards which have been put in place. I agree with the submission made on behalf of the second third and fourth named respondents that to require the Civil Legal Aid Scheme to fund a system proposed by the applicant is unreasonable and unjustifiably onerous. I also hold that it is not necessary in order to achieve fairness, as sufficient safeguards have been built into the Legal Aid Scheme both on a statutory basis and having regard to the guidelines which have been promulgated by the first named respondent.

I refuse the relief sought.