

Legal Aid Act

SAINT LUCIA

No. of 2007

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Legal Aid Act
SAINT LUCIA

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No. of 2007

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BILL

ENTITLED

AN ACT to provide for the grant by the State of Legal Aid and Advice to persons of insufficient means in civil and criminal cases.

BE IT ENACTED by the Queen’s Most Excellent Majesty, by and with the advice and consent of the House of Assembly and the Senate of Saint Lucia, and by the authority of the same, as follows:

PRELIMINARY

Short title and commencement

1. (1) This Act may be cited as the Legal Aid Act 2007.

 (2) This Act shall come into force on a day to be fixed by the Minister by Order published in the *Gazette*.

Interpretation

2. In this Act –

 “Appeals Tribunal” means the Appeals Tribunal established pursuant to section 42;

 “applicant” means a person who applies for legal aid under this Act;

 “Authority” means The Saint Lucia Legal Aid Authority established pursuant to section 3;

 “Board” means the Board of the Authority appointed pursuant to section 3;

 “Chairperson” means the Chairperson of the Board;

“disposable capital” means the property which an applicant for legal aid is possessed of or to which he or she is entitled to excluding –

- (a) the subject-matter of the proceedings;
- (b) the wearing apparel of the applicant;
- (c) the tools of trade of the applicant;
- (d) household furniture used by the applicant in his or her house;
- (e) a dwelling-house owned and exclusively used by the applicant and his or her family as their home assessed at an annual value of not more than ten thousand dollars;
- (f) savings of the applicant of up to thirty thousand dollars, if he or she is of the age of sixty years and above;
- (g) moneys standing to the credit of the applicant;

“disposable income” means the income of the applicant together with the income, if any, of the spouse of the applicant, during the period of twelve months immediately preceding the date of the application, after deducting –

- (a) an amount of two thousand dollars per annum for each person totally or partially dependent on the applicant or spouse;
- (b) an amount of three thousand dollars per annum for the applicant;
- (c) an amount not exceeding one thousand dollars per annum for rent;

“Fund” means the Legal Aid Fund established under section 24;

“legal advice” means advice on matters of law given by an attorney-at-law and includes assistance in preparing an application for legal assistance and in furnishing information required for that purpose;

“legal aid” means –

- (a) education, advice or information in or about the law;
- (b) any legal services that may be provided by a law practice or an attorney-at-law;

“legal service” means advice or representation;

“Minister” means the Minister responsible for justice.

PART 1
SAINT LUCIA LEGAL AID AUTHORITY

Establishment of Authority

3. (1) There is hereby established the Saint Lucia Legal Aid Authority which shall be a body corporate to which section 19 of the Interpretation Act 1968, No. 18 applies.

(2) The affairs of the Authority shall be administered by a Board that subject to subsections (3) and (4) shall comprise the following seven members –

- (a) a Chairperson;
- (b) a Deputy Chairperson; and
- (c) five other members;

appointed by the Minister.

(3) The persons eligible for appointment pursuant to subsection (2) shall have high professional integrity and experience in at least one of the following areas –

- (a) law;
- (b) practice and procedure of the Courts;
- (c) business;
- (d) finance;
- (e) management and administration;
- (f) consumer or social affairs; or
- (g) any other subject, which would, in the opinion of the Minister, be of assistance to the Board in the performance of its functions.

(4) A person shall be disqualified from being a member of the Board if that person –

- (a) is declared by a court to be a bankrupt;
- (b) is declared by a court to be physically or mentally incapacitated by reason of unsoundness of mind;

(c) has been convicted of a criminal offence except where the offence is a minor traffic offence or has been spent in accordance with the Criminal Records (Rehabilitation of Offenders) Act 2004, No. 2; or

(d) is a member of Parliament.

(5) Where pursuant to section 19 a vacancy exists in the membership of the Board, the Minister shall in accordance with this section appoint a person to fill the vacancy.

(6) The Minister shall by Order published in the *Gazette* give notice of the names of the members of the Board as first constituted and every change in the membership of the Board.

Functions and powers of Authority

4. (1) The Authority shall provide legal aid in civil and criminal cases to persons who satisfy the requirements of this Act.

(2) The Authority shall, to such extent and in such manner as it considers appropriate, disseminate, for the benefit of those for whom its services are made available, information in relation to those services and their availability.

(3) The Authority may perform any of its functions through any of its members or any member of its staff duly authorized by the Authority in that behalf.

Committees

5. (1) The Board may for the purpose of carrying out its functions pursuant to this Act establish committees and delegate to such committees such of its functions as it considers necessary or expedient.

(2) The Board may appoint or arrange for the appointment of advisory committees to give advice to the Board on such matters relating to the Authority's functions as the Board may determine.

(3) The Board may appoint persons as members of a committee who are not members of the Board or who are not employees of the Authority and such persons shall hold office for such period as the Board may determine.

(4) Each committee shall keep minutes of its meetings and report to the Board.

Authority to regulate own procedure

6. (1) Subject to this Act and to the Regulations, the Authority shall regulate its own procedure.

(2) The Board shall cause to be kept minutes of the proceedings of its meetings and of meetings of any of the committees established by it.

Seal

7. (1) The Authority shall have an Official Seal.

(2) The affixing of the Official Seal of the Authority shall be in the presence of and witnessed by –

- (a) the signature of the Chairperson or the Deputy Chairperson; and
- (b) the Executive Director.

(3) All documents, other than those required by law to be under seal which are executed by the Board and all decisions of the Board shall be signed by –

- (a) the Chairperson or any other member duly authorized in writing by the Chairperson to act on behalf of the Chairperson; and
- (b) the Executive Director.

Executive Director

8. (1) The affairs of the Authority shall be managed by an Executive Director who shall be appointed by the Board upon such terms and conditions as it may determine.

(2) The Executive Director shall perform all the functions entrusted to him or her under this Act and shall attend all meetings of the Board unless –

- (a) the Executive Director is instructed by the Chairperson of a meeting to withdraw; or
- (b) the Executive Director has obtained leave of absence or is prevented from attending for good cause.

(3) The Board may, during the absence of the Executive Director, appoint a person to act as Executive Director upon such terms and conditions as the Board may determine.

Meetings of Board

9. (1) The Board shall meet at such times as may be necessary or expedient for the transaction of business and such meetings shall be held at such places and times as the Chairperson shall determine.

(2) The Chairperson of the Board may at any time call a special meeting of the Board and shall call a special meeting to be held within seven days of a written request for that purpose addressed to the Chairperson by any other member of the Board.

(3) The Chairperson and any other member of the Board shall be deemed to be present at a meeting of the Board if that Chairperson or the member participates by telephone, video link or satellite, and all members participating in the meeting are able to hear and to speak to each other.

- (4) At a meeting of the Board –
- (a) the Chairperson shall preside;
 - (b) if the Chairperson is not present the Deputy Chairperson shall preside;
 - (c) if neither the Chairperson nor the Deputy Chairperson is present, the members present shall choose one of their number to preside.

Quorum

10. A meeting of the Board is duly constituted for all purposes if at the commencement of the meeting there is a quorum of not less than three members of the Board participating in the meeting.

Voting

11. (1) Decisions of the Board shall be taken by a majority of votes of members present and voting at the meeting.

(2) The Chairperson shall have the right to vote and in cases of equal division the Chairperson shall have the casting vote.

Additional person to attend meetings

12. The Board may co-opt any person to attend any particular meeting of the Board at which it is proposed to deal with a particular matter, for the purpose of assisting or advising the Board, but no such co-opted person shall have the right to vote.

Confidentiality and oath of secrecy

13.(1) A member, officer or employee of the Authority shall at all times preserve and aid in preserving confidentiality with regard to all matters coming to his or her knowledge in the performance of his or her duty.

(2) Except with the written consent of the Authority or for the performance of his or her duties or under legal obligation, a member, officer or employee of the Authority shall not communicate any confidential matter to any person nor permit any person to have access to any records in the possession, custody or control of the Authority.

(3) Every member, officer or employee of the Authority shall be required to take the prescribed oath of secrecy.

Protection from liability

14. No action or other proceeding shall lie against any member, officer or employee of the Authority for or in respect of an act done or omitted to be done in good faith in the exercise or purported exercise of his or her functions under this Act.

Declaration of interest and abstention from voting

15. (1) A member of the Board who is in any way, either directly or indirectly, interested in a matter before the Authority shall declare the nature of his or her interest at the first meeting of the Board at which it is practicable to do so and shall leave the meeting upon the matter coming up for discussion.

(2) A declaration and the departure of a member of the Board from the meeting in accordance with subsection (1) shall be noted in the minutes of the meeting.

- (3) A member of the Board shall not-
- (a) vote in respect of a matter before the Board in which he or she is in any way interested, whether directly or indirectly; or
 - (b) seek to influence the vote of any other member of the Board in relation to the matter.

(4) A member of the Board who fails to comply with subsection (3) commits an offence and upon summary conviction is liable to a fine not exceeding ten thousand dollars or to imprisonment for a term not exceeding two years or to both.

(5) Notwithstanding subsection (4), where a member of the Board fails to comply with subsection (3), the failure to comply amounts to misconduct in which case section 18 shall apply.

Duration of appointment

16. (1) The appointment of a member of the Board shall, subject to subsection (2), be for a period of not less than three years and no more than seven years and the person so appointed shall be eligible for reappointment.

(2) The appointments of the members of the Board shall be staggered in accordance with the Regulations.

Revocation

17. (1) Cabinet may at any time, in writing, revoke the appointment of any member of the Board if, upon evidence, Cabinet is satisfied that the member is-

- (a) disqualified from being a member of the Board pursuant to section 4(4) and has failed to comply with section 19(1).
- (b) guilty of neglect of duty, misconduct or malfeasance; or
- (c) has failed to act in the best interests of the Authority.

Resignation

18. (1) Where a member of the Board becomes disqualified by virtue of section 4(4), that member shall in writing submitted to Cabinet, immediately resign from the membership of the Board.

(2) A member of the Board who fails to comply with subsection (1), commits an offence and upon summary conviction is liable-

- (a) in the case of disqualification pursuant to section 4(4)(a) or (b) to a fine which amounts to twice the financial gain which he or she would reasonably be expected to receive and to revocation of his or her appointment as a member of the Board;
- (b) in any other case to a fine not exceeding one thousand dollars or to imprisonment for a term not exceeding three months and to revocation of his or her appointment as a member of the Board.

(3) A member of the Board may, for any reason other than disqualification pursuant to section 4(4), resign from the membership of the Board by giving at least three months notice in writing to Cabinet of his or her resignation.

Vacancy

19. The office of a member of the Board is vacated-

- (a) upon the death of the member;
- (b) if the member becomes disqualified pursuant to section 4(4);
- (c) if the member resigns from membership pursuant to section 19;

- (d) if Cabinet revokes the appointment of that member pursuant to section 18;
- (e) if the member's appointment is not renewed by Cabinet as of the date of expiry of the members term of appointment; or
- (f) if the member fails to attend three consecutive meetings of the Board without presenting a medical certificate or without being excused by Cabinet in writing.

Decisions not invalidated

20. (1) A vacancy in the membership of the Board shall not invalidate a decision of the Board made at a meeting with the quorum required pursuant to section 11.

(2) Where a disqualified member sits at a meeting of the Board, the Board may review and amend its decision within two months of that decision being made.

Secretary and staff

21. (1) The Board shall appoint a person at such salary and upon such terms and conditions as it may determine to perform the functions of Secretary to the Board.

(2) The Secretary shall perform all the functions entrusted to him or her pursuant to this Act and shall perform such additional duties as may be assigned to him or her by the Executive Director.

(3) The Board may appoint such staff as it may require for the proper carrying out of its functions pursuant to this Act.

(4) A person appointed pursuant to subsection (1) shall perform the duties assigned to him or her by the Executive Director.

List of attorneys-at-law

22. (1) The Board shall prepare and maintain a list of attorneys-at-law who are willing to provide legal aid under this Act.

(2) An attorney-at-law who is desirous of providing legal aid and who –

(a) holds a valid practicing certificate;

(b) has at least four years experience as an attorney-at-law;

(c) is a member in good financial standing of the Bar Association; may, with his or her consent, be registered by the Board as a member of the list maintained under subsection (1).

(3) The Board may, for good reasons, remove an attorney-at-law from the panel.

Remuneration

23. The members of the Board shall be remunerated, for each meeting attended, from funds allocated by Parliament for that purpose.

Fund for use by Authority

24. (1) There is hereby established a fund to be known as the Legal Aid Fund to be used by the Authority as revenue for the execution of its functions and discharge of its obligations pursuant to this Act.

(2) The Fund shall consist of —

(a) sums received by the Authority in respect of application fees and licence fees and other charges imposed by the Authority under this Act;

(b) sums allocated to the Authority by Parliament;

(c) revenue raised by the Authority in the form of loans, grants, investments or other means; and

(d) all other sums that may become payable to or vested in the Authority in respect of matters incidental to its powers and duties.

(3) The Authority may establish a Reserve Fund into which may be paid any surplus funds of the Authority.

(4) The Authority may withdraw any funds from the Reserve Fund in cases of a shortfall for the purpose of exercising its functions or discharging its duties pursuant to this Act.

(5) Subject to any general or specific direction of Cabinet, the funds in the Reserve Fund may be invested in securities by the Authority on such terms and conditions determined by the Authority except that the Authority shall not invest its funds in securities offered by any person under its supervision.

Financial year of Authority

25. The financial year of the Authority shall begin on 1st January and shall end on 31st December in each year.

Budget and plan of action of Authority

26. The Board shall not later than October 31st in each year cause to be prepared and shall adopt and submit to Cabinet-

- (a) a budget with the estimates of its income and expenditure; and
- (b) a plan of action;

for the Authority in respect of the next financial year.

Accounts

27. The Authority shall keep proper records of accounts in accordance with generally accepted international accounting standards and principles and shall prepare and retain financial statements in respect of each financial year.

Audit

28. (1) The Authority shall as soon as is practicable after each financial year have its accounts audited annually by an independent auditor appointed by the Board, who shall conduct the audit in accordance with generally accepted international auditing standards.

(2) The Board, the Executive Director, officers and employees of the Authority shall grant to the auditor appointed pursuant to subsection (1) access to all books, deeds, contracts, accounts, vouchers, or other documents which the auditor may deem necessary and the auditor may require the person holding or accountable for such document to appear, make a signed statement or provide such information in relation to the document as the auditor deems necessary.

(3) A person required to appear, make a signed statement or to provide information under subsection (2) and who fails to comply commits an offence and upon summary conviction is liable to a fine not exceeding one thousand dollars or to imprisonment for a term not exceeding three months or to both and to revocation of his or her appointment as a member of the Board, the Executive Director or a member of staff of the Authority in accordance with this Act.

Auditor's report

29. An independent auditor appointed pursuant to section 28 shall as soon as practicable and not later than two months after the end of each financial year submit copies of the audited financial statement of the Authority and a report on the financial statement to the Board.

Annual report

30. (1) Not later than three months after the end of each financial year and in accordance with subsection (2), the Authority shall submit to Cabinet an annual report on

the work and activities of the Authority for that financial year and Cabinet shall not later than one month after the submission lay the same in Parliament.

(2) An annual report pursuant to subsection (1) shall be accompanied by the auditor's report pursuant to section 28.

(3) A summary of an annual report pursuant to subsection (1) shall be published in the *Gazette* and at least two newspapers in general and at least weekly circulation in Saint Lucia and the entire annual report shall be available to the public on payment of the prescribed fee to the Authority.

PART II PROVISION OF LEGAL AID

Legal aid

31. A person who cannot afford to obtain legal services from a private attorney-at-law may apply to the Board for legal aid.

Application for legal aid

32. (1) In order to obtain legal aid, a person may, in accordance with subsection (2), apply to the Authority for legal aid.

(2) An application pursuant to subsection (1) shall be submitted to the Authority in the prescribed form and shall be accompanied by –

- (a) an application fee of one dollar or such other fee as may be prescribed; and
- (b) such information or particulars as may be prescribed or required by the Authority.

(3) A person shall not –

- (a) in relation to any application submitted pursuant to this section; or
- (b) in relation to any information or particulars that the person is required to furnish pursuant to this section;

make any representation or statement that the person knows is false or misleading in a material particular.

(4) A person who contravenes subsection (3) commits an offence and on summary conviction is liable to a fine not exceeding five thousand dollars or to imprisonment for a term not exceeding one year or to both.

Investigation by Authority

33. (1) Upon receipt of an application by the Authority, the Authority may cause investigations to be carried out to verify any statement contained in the application.

(2) A person who refuses to answer any question for the purposes of an investigation under this Act, or who knowingly gives any information which is false or inaccurate commits an offence and is liable on summary conviction to a fine of .

Authority may require further information

34. (1) The Authority may, by notice in writing, require a person who is an applicant or who in the opinion of the Authority has some association or connection with the applicant that is relevant to the application, to do any one or more of the following things –

- (a) to provide in accordance with the directions in the notice, such information verified by statutory declaration as is relevant to the investigation of the application and which is specified in the notice;
- (b) to produce in accordance with the directions in the notice such records relevant to the investigation of the application as are specified in the notice and to permit examination of the records, the taking of extracts from the records and the making of copies from the records;
- (c) to authorize a person described in the notice to comply with a specified requirement of the kind referred to in paragraph (a) or (b);
- (d) to furnish to the Authority such authorities and consents as the Authority directs for the purpose of enabling the Authority to obtain information, including financial and other confidential information, from other persons concerning the person and his or her relations.

(2) If a requirement made under this section is not complied with, the Authority may refuse to consider the application concerned.

(3) A person who complies with a requirement of a notice under this section does not on that account incur a liability to another person.

Grant or refusal of legal aid

35. (1) The Authority may provide legal aid to an applicant if –

- (a) in its opinion the applicant is in need of that legal aid by reason that he or she is unable to afford the costs of obtaining from a private attorney-at-law the legal services in respect of which the legal aid is sought; and
 - (b) it is reasonable having regard to all relevant matters to provide the legal aid;
 - (c) the applicant is not possessed of or entitled to disposable capital of a total value exceeding seven thousand dollars; or
 - (d) the disposable income of the applicant does not exceed ten thousand dollars per annum.
- (2) The Authority may refuse legal aid if -
- (a) the applicant is not a citizen, permanent resident or immigrant of Saint Lucia; or
 - (b) it appears that the applicant should not receive it in the particular circumstances of the case.

(3) The Authority shall notify the applicant of the grant or refusal and shall give the reasons in writing for a refusal.

(4) A person aggrieved by the decision of the Authority shall have the right to appeal in accordance with section 42.

Endorsement on certificate

36. Where a certificate is granted pursuant to section 35, the Authority may assign an attorney-at-law to be selected by the aided person, if he or she so desires, or otherwise by the Authority from the list of attorney-at-laws maintained pursuant to section 22 so to act and in such case shall endorse on the legal aid certificate the name of the attorney-at-law so assigned.

Issuance and form of certificate

37. Where the Authority grants an application pursuant to section 35, it shall issue a legal certificate in the prescribed form.

Cancellation of certificate

38. (1) Where an aided person fails to comply with any direction given by the Authority, the Authority may cancel the certificate.

(2) Prior to the cancellation of a certificate pursuant to subsection (1), the Authority shall give the aided person concerned notice in writing of its intention to do so, specifying the ground on which the Authority considers that the certificate ought to be cancelled and shall require the aided person to submit to it within a specified period being not less than fourteen days a written statement of objections to the cancellation.

(3) A notice issued pursuant to subsection (2) must be served on the aided person personally or at his or her address.

(4) Having considered a statement of objection submitted pursuant to subsection (2), the Authority shall, by notice issued after the period specified in subsection (2) in accordance with subsection (3), inform the aided person of its decision and in the case of a decision to cancel shall include the reasons for the decision.

(5) A certificate that is cancelled is invalid.

Contributions

39. (1) Where the Authority is satisfied –

(a) that an applicant for legal aid is possessed of or entitled to disposable capital of a total value of more than two thousand dollars; and

(b) that the disposable income of the applicant exceeds the amount of two thousand dollars per annum;

the Authority may require the applicant to make a contribution in one sum or by instalments in respect of sums payable on his or her account in respect of the proceedings in which a legal aid certificate is granted to the applicant.

(2) If the total contribution made by a person in respect of any proceedings is more than the net liability of the Authority, the excess shall be repaid to him or her.

(3) Any sums remaining unpaid on account of a person's contribution in respect of any proceedings and, if the total contribution is less than the net liability of the Board on his or her account, a sum equal to the deficiency shall be a first charge on any property which is recovered or preserved for that person in the proceedings.

(4) The reference in subsection (3) to property recovered or preserved for any person shall include his or her rights under any settlement or compromise arrived at to avoid or to bring to an end the proceedings and any sums recovered by virtue of an order for costs made in his favour in the proceedings, not being sums payable to the Board.

(5) The charge created by subsection (4) on any damages or costs does not prevent a court allowing them to be set off against other damages or costs in any case where an attorney-at-law's lien for costs would not prevent it.

(6) References in this section to the net liability of the Board on any person's account in relation to any proceedings refer to the aggregate amount of the sums paid or payable by the Board on his or her account and, where the person has been represented in the proceedings by the Board, such sums as would in the opinion of the Board have been payable on that person's account had he been represented by a solicitor assigned to him in respect of those proceedings, and not recouped by sums which are recovered by virtue of an order or agreement for costs made in his or her favour with respect to those proceedings.

Deposit in respect of out-of-pocket expenses

40. (1) The Authority may require any applicant or aided person who is not liable to make a contribution to deposit with it such amounts at such times as the Authority may think fit to be used in or towards meeting out-of-pocket expenses, not including office expenses, incurred in connection with the application or with any proceedings to which the application or the certificate relates.

(2) Any amounts so deposited shall be used only for the payment of such out-of-pocket expenses and any part of any such amount not so expended shall be refunded.

(3) In any case where the Authority is satisfied that the making of a deposit under subsection (1) would occasion hardship, the Authority may, out of any funds in its control which are available for the purpose, from time to time, meet any out-of-pocket expenses, not including office expenses, or make such advances to meet such out-of-pocket expenses as it may consider necessary.

(4) Any advance made pursuant to subsection (3) shall be used only for payment of such out-of-pocket expenses and any part of such amount not so expended shall be refunded to the Authority.

PART III MISCELLANEOUS

Register

41. (1) The Authority shall subject to subsection (2), in the prescribed form, keep and maintain a register of all aided persons.

(2) The Authority shall ensure that the register contains the following particulars that must be recorded for each aided person –

- (a) the name of the aided person;

- (b) the address of the aided person;
- (c) the nature of the legal services provided.

Appeal

42. (1) There is hereby established an Appeals Tribunal for the purpose of hearing appeals against decisions of the Authority.

(2) Subject to subsection (3), the Appeals Tribunal shall consist of the following members and shall be appointed by the Minister –

- (a) an attorney-at-law with at least fifteen years experience who shall be the Chairperson;
- (b) one person having expertise in practice and procedure of the Courts;
- (c) one person having expertise in business;
- (d) one person having expertise in consumer or social affairs.

(3) A person shall not be appointed as a member of the Appeals Tribunal if the person –

- (a) has been convicted of a criminal offence except where the offence is a minor traffic offence or has been spent in accordance with the Criminal Records (Rehabilitation of Offenders) Act 2004, No. 2; or
- (b) is a member of Parliament.

(4) An appeal from a decision of the Authority pursuant to this Act lies to the Appeals Tribunal.

(5) A person may, within fourteen days of notice of a decision of the Authority, apply in writing to the Appeals Tribunal against that decision.

(6) An appeal from a decision of the Appeals Tribunal under this Act lies to the High Court.

Regulations

43. The Minister may, after consultation with the Authority, make Regulations generally for the purposes of this Act.

