

CHAPTER 112A

COMMUNITY LEGAL SERVICES

1981-33

This Act came into operation on 1st November, 1981 by Proclamation (S.I. 1981 No. 180).

Amended by:

1990-5

1991/7

2000-13

Law Revision Orders

The following Law Revision Order or Orders authorized the insertion and removal of pages as the case may be under the Law Revision Act Cap.2 now repealed:

1985

1997

1991

2002

Guide to symbols in historical notes:

- indicates an amendment made by an Act

/ indicates an amendment made by statutory instrument

CHAPTER 112A

**COMMUNITY LEGAL SERVICES
1981-33**

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**BARBADOS**

COMMUNITY LEGAL SERVICES

1981-33

An Act to provide for a system of free legal services to persons of insufficient means.

[Commencement: 1st November, 1981]

CITATION

Short title

1. This Act may be cited as the *Community Legal Services Act*.

INTERPRETATION

Definitions

2. In this Act
“applicant” means an applicant for legal services under this Act;
“certified offence” means an offence specified in paragraph (g) or paragraph (h) of Part I of the *First Schedule*;
“Commission” means the Community Legal Services Commission;

“Director” means the Director of Community Legal Services;

“law student” means a person undergoing a course of study in law with the Faculty of Law of the University of the West Indies or with the Council of Legal Education;

“legal aid certificate” mean a legal aid certificate issued under section 21;
[1990-5]

“legal services” means such services as the Minister may by order designate for the purposes of this Act;

“Minister” means the Attorney-General;

“panel” means the panel of attorneys-at-law maintained by the Commission who are prepared to provide legal services in accordance with this Act;

“scheduled offence” means an offence specified in Part I of the *First Schedule*;

“scheduled matter” means a matter specified in Part II of the *First Schedule*.

STATEMENT OF PURPOSES

Purposes of Act

3.(1) The purposes of this Act are to provide legal services to persons in respect of civil and criminal matters where those persons are financially unable to secure legal services from their own resources.

(2) All legal services shall, except as otherwise provided by this Act, be rendered by employees of the Commission.

PART I
ESTABLISHMENT AND FUNCTIONS OF COMMISSION

Establishment and Constitution of Commission

- 4.(1) A body corporate to be known as the Community Legal Services Commission is hereby established for the purposes of this Act.
- (2) Subject to this Act, section 21 of the *Interpretation Act*, Cap. 1 applies to the Commission.
- (3) The *Second Schedule* applies with respect to the Constitution of the Commission and otherwise in relation thereto.

Duties of Commission

5. The Commission shall
- (a) receive
 - (i) sums appropriated by Parliament, and
 - (ii) grants made to the Commission for the purposes of the Commission and for the purpose of the administration of this Act;
 - (b) after consultation with the Bar Association and the Judicial Advisory Council, establish with the approval of the Minister a tariff of fees pursuant to which attorneys-at-law rendering their services under this Act shall receive remuneration for such services;
 - (c) administer and make the required payments under the tariff of fees established under paragraph (b);
 - (d) prepare and submit annually to the Minister a summary and estimate of the financial requirements of the Commission for the next following fiscal year;

- (e) evaluate the legal services rendered pursuant to this Act.

[1990-5]

Powers of Commission

6. Subject to this Act and the regulations, the Commission may
- (a) establish procedures to determine eligibility of applicants for the services of an attorney-at-law under this Act;
 - (b) establish guidelines, procedures and requirements pursuant to which legal and other services may be made available under this Act;
 - (c) retain attorneys-at-law or other persons for the purpose of providing legal services under this Act;
 - (d) encourage, and assist by means of grants or otherwise, the programme of any full-time law student where the programme has objects consistent with the objects of this Act;
[1990-5]
 - (e) utilise full-time law students in providing legal services; but any such students shall be supervised by an attorney-at-law and shall not appear as counsel in any court;
[1990-5]
 - (f) make public by means of advertising or otherwise the nature and extent of the legal services that are available;
 - (g) establish and conduct such programmes as the Commission considers advisable to provide services to persons to prevent legal problems arising in connection with their affairs, and generally to carry out the purposes of this Act;
 - (h) retain persons to administer the provisions of this Act, and where the Commission considers it advisable, any such persons shall, subject to such terms and conditions as may be prescribed by the Commission, become employees of the Commission;

- (i) advise its employees respecting the legal needs of the applicants;
- (j) establish committees to which applicants who have been denied legal services may appeal such denial;
[1990-5]
- (k) establish programmes providing information and counselling in legal and related matters;
- (l) make all necessary arrangements including the acquisition of premises, supplies and furnishings as are required to provide legal services;
- (m) do all things that are necessary, incidental or conducive to the attainment of the purposes of this Act.

Director of Community Legal Services

7.(1) Subject to subsection (2), the Commission may appoint for the purposes of this Act an attorney-at-law to be known as the Director of Community Legal Services.

(2) The first Director of Community Legal Services shall be appointed by the Minister on the recommendation of the Chief Justice.

(3) The Director shall hold office for a term of 3 years and is eligible for re-appointment, but may be removed from office by a majority vote of the members of the Commission.

[1990-5]

Duties of Director

8. The Director shall

- (a) act as secretary to the Commission;
- (b) employ with the approval of the Commission such staff as may be required for the purposes of the Commission;
- (c) negotiate contracts for legal services;

- (d) perform such other duties as may be assigned to him by the Commission.

General counsel

9.(1) Subject to subsection (2), the Commission may, on the recommendation of the Director, appoint an attorney-at-law to act as general counsel to the Commission.

- (2) The first general counsel shall be appointed by the Minister.

Acquisition and disposal of property

10.(1) The Commission may acquire by purchase, lease or otherwise any real or personal property that it considers necessary for the efficient operation of its business, and may sell, lease or otherwise dispose of any of its property, real or personal, that it considers to be no longer necessary for its purposes.

- (2) Where the purchase price or sale price of real or personal property included in one transaction exceeds \$25 000, the transaction shall not be concluded without the prior approval of the Minister.

Panel

11.(1) The Commission shall maintain a panel of attorneys-at-law who are prepared to provide legal services.

- (2) The Commission may, upon supplying him with just reasons therefor, remove an attorney-at-law from the panel.

(3) When an attorney-at-law is removed from the panel pursuant to subsection (2), he may appeal the removal to a Judge in Chambers, who may order the reinstatement of the attorney-at-law.

[1990-5]

Appointment of attorneys-at-law from panel

12. The Director, or such person as he might designate in writing for the purpose, may appoint a member of the panel to provide legal services for an eligible applicant in any case referred to in section 11.

Appointment to panel

13. Any attorney-at-law, including an attorney-at-law who is a member of the Commission, or an employee of the Commission who is desirous of providing legal services may be registered by the Commission as a member of the panel.

Choice of providing services

14.(1) A member of the panel may decline to provide his services in respect of any applicant for whom the member was appointed on the ground of conflict of interest, impropriety or impossibility.

(2) A member of the panel who declines pursuant to subsection (1) shall give his reasons in writing for so doing.

[1990-5]

Services to be provided on appointment; withdrawal of services

15.(1) An attorney-at-law who has accepted an appointment to act for an applicant may, subject to subsection (3), withdraw his services by notifying the Chairman in writing, or such person as the Chairman may designate, of his intention to do so.

(2) No attorney-at-law who has accepted an appointment to provide legal services may secure another attorney-at-law to render such services unless

- (a) exceptional circumstances exist in respect of the matter for which he was appointed, and the Director approves of such action by the attorney-at-law;

- (b) the services are to be rendered to secure an adjournment in a trial or proceeding, or relate to a matter in respect of such an adjournment or motion therefor; or
- (c) the applicant in respect of whom the attorney-at-law was appointed consents in writing to such action by the attorney-at-law, and the attorney-at-law or applicant has supplied the Director with a copy of the consent.
- (3) On the receipt of a notification under subsection (1), the Chairman may, if the circumstances so require, refer the matter to the Chief Justice for directions whether to grant or refuse permission to withdraw.
[1990-5]
- (4) On a reference under subsection (3), the Chief Justice may give such directions to the Commission as he thinks fit and the Commission shall comply with those directions.
[1990-5]
- (5) For the purposes of this Act, “Chairman” means the Chairman of the Commission.
[1990-5]
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- [1990-5]*

PART II

PROVISION FOR LEGAL SERVICES

Power to provide legal services

16. Legal services under this Act may be provided to any person in accordance with this Part.

Applications for legal aid certificate by persons charged

17. Notwithstanding anything contained in this Act or the regulations, but subject to section 20, an application for a legal aid certificate may be made by or on behalf of a person charged with a scheduled offence to

- (a) a magistrate before whom, and at such time as, he is charged or may appear upon remand;
- (b) the examining magistrate by whom the preliminary enquiry in relation to that offence is held,
 - (i) at the commencement of the preliminary inquiry, or
 - (ii) where the person charged is committed for trial, at the conclusion of the preliminary inquiry,
- (c) a Judge at any time between committal for trial and the appearance of the person charged before the High Court to plead to the indictment;
- (d) the trial Judge in relation to a certified offence at any time during the hearing.

Applications for legal aid certificate by persons convicted

18. Notwithstanding anything contained in this Act or the regulations, but subject to section 20, an application for a legal aid certificate may be made by or on behalf of a person convicted for a scheduled offence to

- (a) a Judge at any time after conviction and before an appeal by the person convicted is set down for hearing before the Court of Appeal;
- (b) a Judge in relation to a certified offence at any time during the hearing;
- (c) a Judge at any time after the appeal by the person convicted is determined by the Court of Appeal and before the time for applying for leave to appeal to Her Majesty in Council has expired.

Duty of magistrate to inform persons of right to apply for legal services

19. Where any person who has not made an application for the provision of legal services appears before a magistrate charged with a scheduled offence or as a party to a scheduled matter, or where any such person is committed for trial, the magistrate shall inform the person so charged, appearing or committed of his right to make such an application.

Proceedings to be adjourned

20. Where it appears to the Magistrate or Judge that

- (a) the means of a person charged with, or convicted for, a scheduled offence, or appearing as a party to a scheduled matter, as the case may be, are insufficient to enable that person to obtain legal services; or
- (b) the person charged or convicted for a scheduled offence appears to be a person of unsound mind and is unrepresented by an attorney-at-law,

the Magistrate or Judge shall adjourn the proceedings for inquiries to be made by the Director into the financial circumstances of that person.

Grant of legal aid certificate qualification for, etc.

21.(1) Where the Director is satisfied that an applicant or that the person referred to under section 20, as the case may be, is eligible for legal services he shall issue a legal aid certificate to the applicant or to that person.

(2) A legal aid certificate may be issued only where the person is a citizen, permanent resident or immigrant of Barbados.

(3) Where the Director is of opinion that the interests of justice demand that legal services be provided in respect of any scheduled offence or scheduled matter, he may, notwithstanding that the person is not within the category of persons specified in subsection (2), issue a legal aid certificate to that person.

(4) A legal aid certificate entitles the person to whom it is issued to such free legal services as the Director specifies in the certificate.

(5) Where the person mentioned in subsection (2) is refused a legal aid certificate the person or some other person acting on the person's behalf may appeal to the Commission.

[1990-5]

Choice of an attorney-at-law from panel

22. An applicant who is eligible to receive the services of an attorney-at-law under this Act may with the approval of the Director select any attorney-at-law from the panel to render the legal services in respect of which the legal aid certificate relates.

Provision of services by student at law

23.(1) Notwithstanding section 22 and anything contained in the *Legal Profession Act*, Cap. 370A, a law student may, subject to subsection (2) provide such legal services to any person who is being provided legal services by an attorney-at-law under this Act as the attorney-at-law may assign to the student.

(2) Where an attorney-at-law assigns legal services under subsection (1) to be performed by a student, the attorney-at-law shall supervise the provision of the services by the student.

[1990-5]

Power of court to recommend new appointment

24. Where the court is satisfied that in the interests of justice another member of the panel ought to be appointed to provide the legal services for the person to whom a legal aid certificate is issued, it shall so direct.

Cancellation of legal aid certificate

25.(1) The Director may cancel a legal aid certificate where he is satisfied that

- (a) the legal aid certificate ought not to have been issued;

- (b) the applicant has made a false statement or has concealed material information in applying for legal services; or
- (c) because of changed circumstances since the date of the issue of the certificate, the benefits of this Act ought not to be provided to the applicant.

(2) Where the Director cancels a legal aid certificate, the applicant shall, unless exempted from this provision by the Commission on the ground that its application would create a hardship to the applicant, reimburse the Commission for the cost of providing legal services to the applicant up to the time at which the certificate is cancelled, and the amount payable is a debt due by the applicant and owing to the Commission.

PART III GENERAL

Contribution by applicants

26.(1) The Director may require an applicant whom the Director considers to be financially able to contribute towards the cost of the services to be provided to him to pay such portion of those costs as the Director may specify.

(2) Any amount determined to be paid by an applicant under subsection (1) shall be paid to the Commission, and until it is paid it is a debt due and owing by the applicant to the Commission.

Sums received by attorney-at-law, etc., to be paid to Commission

27.(1) Any remuneration, other than remuneration from the Commission, received by an attorney-at-law from or on behalf of an applicant in connection with legal services which the attorney-at-law is providing to the applicant under this Act shall be paid by the attorney-at-law to the Commission.

(2) Costs that are awarded in favour of an applicant in any matter in respect of which the services of an attorney-at-law were provided under this Act shall be paid to, and become the property of the Commission.

(3) The Commission may retain out of the costs awarded under subsection (2) an amount equivalent to the cost and expense incurred under this Act in respect of the applicant, and may pay the balance of the cost, if any, to the applicant.

Costs

28.(1) Cost awarded against an applicant in any matter in respect of which legal services were provided under this Act may be paid on behalf of the applicant by the Commission.

(2) Subsection (1) shall not be construed as making the Commission liable for costs in any matter.

Bill for services

29. An attorney-at-law who has provided legal services under this Act may submit a bill of costs for such services to the Commission in the prescribed form, claiming sums for those services in accordance with the tariff of fees established by the Commission under this Act.

Non-liability of Commission or members

30. Neither the Commission nor any member thereof is liable for anything done or omitted to be done by an attorney-at-law in the course of providing legal services under this Act.

Privilege

31. Any information disclosed by an applicant to any member of the Commission or employee thereof that would be privileged if disclosed to an attorney-at-law pursuant to an attorney-at-law and client relationship shall be privileged to the same extent as if it had been disclosed to an attorney-at-law pursuant to an attorney-at-law and client relationship.

Act deemed not to contravene *Legal Profession Act*

32. Nothing done by the Commission or by any person pursuant to the provisions of section 23 or 33 of this Act shall be deemed to contravene any of the provisions of the *Legal Profession Act*, Cap. 370A.

Persons to provide certain legal services

33. The Commission may employ any person who is not an attorney-at-law to provide services under this Act, provided the person is supervised by an attorney-at-law; but such employee shall not appear as counsel in any court.

Trust account

34. Every attorney-at-law rendering his services under this Act shall establish and maintain a trust account for moneys that come into his hands from or on behalf of eligible applicants for whom services are being or are to be provided under this Act.

Audit

35. The Auditor-General shall annually audit or cause to be audited the books, records and accounts of the Commission and submit a report thereof to the Minister.

Fiscal year

36. The fiscal year of the Commission is the period commencing on 1st April in one calendar year and ending on 31st March in the next calendar year.

Annual report

37.(1) The Commission shall prepare and submit to the Minister for tabling in both Houses of Parliament

- (a) a report respecting the conduct of the business and affairs of the Commission for its immediately preceding fiscal year; and

- (b) a financial statement showing the business of the Commission for such fiscal year, in such form as may be required by the Auditor-General.
- (2) The Minister shall, without undue delay, cause the report and statement received by him under subsection (1) to be laid before both Houses of Parliament.

Regulations

38.(1) For the purpose of carrying out the provisions of this Act, the Commission may with the approval of the Minister make regulations

- (a) prescribing the qualifications of applicants to be eligible for legal services under this Act;
- (b) classifying legal services for the purposes of this Act and prescribing the class or classes of legal services that may be provided under this Act; and
[2000-13]
- (c) prescribing a tariff of fees in respect of the classes of legal services to be provided under this Act.
[2000-13]
- (2) Regulations made under this section are subject to negative resolution.

Power of Minister to amend First Schedule

39. The Minister on the recommendation of the Commission may by order amend the *First Schedule* by the addition thereto or the deletion therefrom of any offence or other matter.

Penalty for false or misleading statements

40. A person who, for the purpose of obtaining legal services under this Act, whether for himself or some other person, knowingly makes a false statement or false representation, either verbally or in writing, or knowingly conceals any material fact, is guilty of an offence, and, in addition to any other remedy provided

by this Act, is liable on summary conviction to a fine of \$1 000 or to imprisonment for 12 months, or both.

FIRST SCHEDULE*(Section 2)****Matters in respect of which legal services may be provided on the grant of a legal aid certificate***

PART I

Criminal

- (a) Any capital offence;
 - (b) Manslaughter;
 - (c) Infanticide;
 - (d) Concealment of birth;
 - (e) rape;
 - (f) all offences where the person charged is a minor;
- [1991/7]
- (g) any indictable offence the trial of which is certified by the trial Judge to be, or as likely to be, of difficulty and to require the assistance of an attorney-at-law on behalf of the person charged therewith for its proper determination;
 - (h) any indictable offence the trial of which or an appeal from the conviction of which is certified by the trial Judge or the Court of Appeal, as the case may be, to involve, or as likely to involve, a point of law of public importance and require the assistance of an attorney-at-law on behalf of the person charged or convicted, as the case may be, for its proper determination.

PART II

CIVIL

Family Law

All family law matters except divorce.

[1991/7]

Other matters involving

- (a) minors;
- (b) tenants and tenancies within the meaning of the *Security of Tenure of Small Holdings Act, Cap. 237*, *Tenancies Control Act, Cap. 239* and the *Tenancies Freehold Purchase Act, Cap. 239B*;
- (c) an application under section 24 of the *Constitution*;
- (d) an application for a Writ of *habeas corpus ad subjiciendum*.

SECOND SCHEDULE*(Section 4)**Constitution of the Commission and related matters***Composition of Commission of appointment of members**

- 1.(1) The Commission shall consist of
- (a) two members appointed by the Chief Justice on the nomination of the Council of the Bar Association;
 - (b) one member appointed by the Chief Justice on the nomination of the Dean of the Faculty of Law of the University of the West Indies;
 - (c) two members appointed by the Chief Justice in his absolute discretion;
 - (d) one member selected from among the public and appointed by the Minister; and
[1990-5]
 - (e) the Solicitor-General *ex officio* or his nominee.
- (2) Where the required number of members has not been appointed under paragraph 1(1)(a), or no member has been appointed under paragraph 1(1)(b) or (d) within 30 days after 1st November, 1981, the Chief Justice may make such appointments to the membership of the Commission as the case requires.
- (3) The members must be appointed by instrument in writing, and shall, subject to this Schedule, hold office for such period, not exceeding 3 years, as is specified in the instrument of appointment.
- (4) Each member is eligible for re-appointment.

Appointment of chairman and deputy chairman

2. The Chief Justice shall designate 2 members, other than the Solicitor-General and the Director, to be chairman and deputy chairman of the Commission.

Meetings

- 3.(1)** The Commission shall meet at least once every 4 months at such times and places as are necessary or expedient for the transaction of its business.
- (2) The chairman, or, in the event of his absence from Barbados or inability to act as such, the deputy chairman, may at any time call a special meeting of the Commission.
- (3) Subject to sub-paragraph (4), the chairman, or in his absence the deputy chairman, shall preside at all meetings of the Commission.
- (4) In the absence of both the chairman and the deputy chairman, the members present and constituting a quorum shall elect a chairman from among their number to preside at that meeting.
- (5) Three members shall form a quorum.
- (6) The decisions of the Commission must be by a majority of votes, and in any case in which the voting is equal, the chairman, in addition to having an original vote, has and may exercise a casting vote.
- (7) Minutes in proper form of each meeting of the Commission must be kept by the secretary or by such other officer as the Commission appoints for the purpose, and must be confirmed by the Commission at the next meeting, and signed by the chairman of that meeting.

Committees

- 4.** The members of the Commission may establish committees of members of the Commission and may delegate any powers of the Commission to such committees.

Resignation of members

- 5.(1)** A member other than the chairman or deputy chairman may at any time resign his office by instrument in writing addressed to the Chief Justice and

transmitted through the chairman, and from the date of receipt by the Chief Justice of such instrument, that person ceases to be a member.

(2) The chairman or deputy chairman may at any time resign his office by instrument in writing addressed to the Chief Justice, and from the date of receipt by the Chief Justice of such instrument, ceases to be chairman or deputy chairman, as the case may be, and a member of the Commission.

Vacancies in membership of Commission

6.(1) The office of a member of the Commission is vacated on

- (a) his death or resignation;
- (b) the revocation of his appointment as a member;
- (c) his absence from 3 consecutive meetings of the Commission unless his absence is approved,
 - (i) in the case of a member other than the chairman or deputy chairman, by the chairman, or
 - (ii) in the case of the chairman or deputy chairman, by the Chief Justice; or
- (d) the expiration of the term of his appointment as specified in his instrument of appointment.

(2) Where a vacancy occurs under subsection (1) it may be filled in the nanner provided in paragraph (1).

Notification of appointment etc.

7. The appointment, removal, resignation or death of a member must be notified in the *Official Gazette*.

Protection of members

8.(1) No act done or proceedings taken by the Commission may be questioned on the ground of

(a) the existence of any vacancy in the membership of, or any defect in the Constitution of, the Commission;

(b) any omission, defect or irregularity not affecting the merits of the case.

(2) A member is not personally liable for any act or default of the Commission, done or omitted to be done in good faith in the course of its functions under the Act.

Fees and allowances etc.

9. There shall be paid to the chairman, the deputy chairman and other members of the Commission out of the moneys provided by Parliament for the purposes of this Act, such remuneration, whether by way of honorarium, salary or fees, and allowances as may be approved by the Minister.