

CAYMAN ISLANDS



LEGAL AID LAW, 2015

(Law 17 of 2015)

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LEGAL AID LAW, 2015

(Law 17 of 2015)

ENACTED by the Legislature of the Cayman Islands.

PART 1 - PRELIMINARY

Short title

1. This Law may be cited as the *Legal Aid Law, 2015*.

Interpretation

2. In this Law —

“**applicant**” means an applicant for the grant of legal aid;

“**assigned attorney-at-law**” means an attorney-at-law assigned pursuant to this Law to provide legal aid to an assisted person;

“**assisted person**” means a person to whom a legal aid certificate has been granted or a person who has been assisted by a duty counsel while detained at a police station, correctional institution or a similar place;

“**attorney-at-law**” means a person qualified to practise law in the Islands in accordance with the provisions of the *Legal Practitioners Law (2012 Revision)*;

“**Bill of Rights**” mean the Bill of Rights, Freedoms and Responsibilities contained in Part 1, Schedule 2 of the *Cayman Islands Constitution Order, 2009*;

“**certificate**” means a legal aid certificate granted under section 17;

“**Chief Officer**” means the Chief Officer of the Ministry or Portfolio responsible for legal aid;

“**Class A criminal offence**” means an offence for which the penalty includes imprisonment for a period of four years or more;

“**Class B criminal offence**” means an offence which is not a Class A offence;

“**complex legal aid case**” has the meaning assigned by section 24(2);

“**court**” means the Court of Appeal, the Grand Court or a court of summary jurisdiction;

“**Court Administrator**” means the Chief Officer of the Judicial Administration;

“**designated taxing officer**” means a person, other than the Clerk of the Court, who is designated by the Chief Justice in accordance with Rules of Court to tax costs;

“**Director**” means the Director of Legal Aid appointed under section 6;

“**disposable income**” has the meaning prescribed in regulations;

“**duty counsel**” means an attorney-at-law who performs any duty under section 7 and such other duties as may be prescribed;

“**financial year**” means a year commencing on 1 July and ending on 30 June;

“**firm**” means —

(a) an attorney-at-law practising as a sole practitioner or attorneys-at-law practising as a partnership or a limited liability partnership; or

(b) a recognised body;

“**legal aid**” means legal services comprising legal advice, assistance or representation provided pursuant to this Law;

“**legal aid counsel**” means an attorney-at-law appointed under section 6;

“**listed attorney-at-law**” means an attorney-at-law who is prepared to provide legal services, including services as duty counsel, in accordance with this Law and who is included in the list maintained by the Director pursuant to section 7;

“**Minister**” means the Minister or member of Cabinet responsible for legal aid;

“**recognised body**” means a corporate body carrying on business as attorneys-at-law in accordance with the *Legal Practitioners Law (2012 Revision)*;

“**regulations**” means regulations made under this Law; and

“**standard legal aid case**” means a case which is not a complex legal aid case.



Statement of purpose

3. The purpose of this Law is to provide legal aid to persons in respect of civil and criminal matters where those persons are financially unable to secure legal services from their own resources.

Scope of legal aid

4. (1) Legal aid may be granted in proceedings before a court in the following cases —
- (a) criminal proceedings on indictment;
 - (b) criminal summary proceedings;
 - (c) subject to subsections (3) and (5), civil proceedings in the Grand Court or a summary court; and
 - (d) appeals in criminal and, subject to subsections (3) and (5), civil cases.
- (2) For the purposes of subsection (1), legal aid in respect of proceedings before a court extends to any proceedings incidental to such proceedings, including bail proceedings, whether before that or another court.
- (3) Legal aid may be granted in family law proceedings but only if those proceedings involve questions of —
- (a) residence of a child,
 - (b) contact with a child;
 - (c) access to a child;
 - (d) adoption of a child; or
 - (e) maintenance of a child or other financial relief for the benefit a child.
- (4) In subsection (3), “family law proceedings” means proceedings brought under —
- (a) the *Adoption of Children Law (2003 Revision)*;
 - (b) the *Affiliation Law (1995 Revision)*;
 - (c) the *Children Law, (2012 Revision)*;
 - (d) the *Maintenance Law (1996 Revision)*;
 - (e) the *Matrimonial Causes Law (2005 Revision)*; and
 - (f) the *Succession Law (2006 Revision)*.
- (5) Legal aid shall not be granted in the following proceedings —
- (a) proceedings wholly or partly in respect of defamation;
 - (b) relator actions;
 - (c) proceedings relating to any election; or
 - (d) proceedings in respect of other prescribed areas of civil law.

- (6) Subject to sections 5, 17 and 19, legal aid may be granted to individual natural persons of the following categories —
 - (a) accused persons in criminal trials;
 - (b) persons who are questioned or detained at a police station, correctional institution and other similar place;
 - (c) persons who are bailed to attend at a police station;
 - (d) appellants (including applicants for leave to appeal) in appeals against conviction or sentence and respondents to criminal appeals by prosecutors; and
 - (e) parties in civil proceedings and civil appeals, including legal guardians, guardians *ad litem* or persons who have power of attorney to act on behalf of children and persons under a physical or mental disability.
- (7) Subject to sections 5, 17 and 19, legal aid may be granted in such special circumstances as appear sufficient to the Director, to any individual natural person for the purpose of enabling him to appeal, or to apply for leave or special leave to appeal, to Her Majesty in Council from a decision of the Court of Appeal or to respond to any such appeal or application by the prosecution.
- (8) Where legal aid is granted under subsection (7) it shall include the necessary disbursements made on behalf of the assisted person with the approval of the Director.

When legal aid certificate may be granted in civil cases

- 5. Legal aid in civil proceedings may only be granted if the Director is satisfied, after making inquiries under section 16, that the applicant appears to have a reasonable prospect of succeeding on the merits of the case.

PART 2 - APPOINTMENT AND FUNCTIONS OF THE DIRECTOR OF LEGAL AID AND OTHER STAFF; LIST OF LEGAL AID ATTORNEYS, ETC.

Appointment of the Director

- 6. (1) There continues to be established a legal aid office of the Judicial Administration and the Chief Officer, after consultation with the Court Administrator, shall appoint a Director of Legal Aid to manage such office, to administer legal aid services in the Islands and to carry out the functions and duties set out in this Law.
- (2) The Director shall be a public officer who is an attorney-at-law of five or more years call to the Bar and shall have such other qualifications as the Chief



Officer considers necessary for the performance of the Director's duties under this Law.

- (3) Nothing in this section shall prevent the appointment of a person who already holds another public office to be Director where the Chief Officer is of the opinion that that person can properly hold such offices together.
- (4) The Chief Officer may appoint one or more deputies to assist the Director, and a deputy so appointed shall —
 - (a) be a public officer who is an attorney-at-law of three or more years call to the Bar and shall have such other qualifications as the Chief Officer, after consultation with the Court Administrator, considers necessary for the performance of his functions under this Law;
 - (b) be subject to the control of the Director; and
 - (c) be competent to discharge any of the duties and exercise any of the powers of the Director,

and when discharging such duties or exercising such powers shall have the same privileges as the Director.

- (5) The Director shall also be assisted in the discharge of his duties by such other legal aid counsel and other public officers as the Chief Officer, after consultation with the Court Administrator, may appoint.
- (6) The Director shall be supervised in the performance of his duties by the Court Administrator.

Functions of the Director

7. (1) The Director shall continue to maintain a list of attorneys-at-law who are in active private practice in the Islands, and who have notified the Director that they are able and willing to represent applicants and assisted persons.
- (2) The Director may prepare rosters of such attorneys-at-law for the more efficient administration of this Law and such rosters shall also include rosters for attorneys-at-law who are willing to carry out services as duty counsel which services include —
 - (a) interviewing and advising persons being questioned or detained at police stations or who are charged with criminal offences in the circumstances set out in section 14; and
 - (b) carrying out other duties as are prescribed.
- (3) The Director shall receive and consider every application for legal aid made under section 15 and, subject to the following provisions of this Law and any regulations, shall grant a certificate to an applicant in any proper case, with or without provision for payment of contributions by the applicant.

- (4) The Director, deputy director and legal aid counsel shall provide legal representation and give legal advice in such civil matters and in such circumstances as are approved by the Court Administrator, after consultation with the Chief Justice.
- (5) Subject to the directions of the Court Administrator, the Director shall be responsible for the day to day administration of this Law.

Financial activities

- 8. (1) Subject to this Law and the regulations, the Director shall not, in relation to any one legal aid matter, without the prior written approval of the Court Administrator and the Clerk of the Court, authorise expenditure in excess of twenty thousand dollars.
- (2) The Director, the Court Administrator and the Chief Officer shall prepare and submit annually to the Minister in accordance with the timelines and other provisions set out in the *Public Management and Finance Law (2013 Revision)* a summary and estimate of the financial requirements for the provision of legal aid for the next following financial year.

Powers of the Director

- 9. Subject to this Law and the regulations, the Director may —
 - (a) establish guidelines, procedures and requirements pursuant to which legal and other services may be made available under this Law;
 - (b) make public, by means of advertising or otherwise, the nature and extent of the legal services that are available; and
 - (c) do all things that are necessary, incidental or conducive to the attainment of the purpose of this Law.

Minister may give policy directions

- 10. The Minister, after consultation with the Cabinet, may give such general directions as to the policy to be followed by the Director in the performance of his functions as appear to the Minister to be necessary in the public interest, and the Director shall give effect to any such directions.

Removal of attorney-at- law from list

- 11. (1) The Director may, after supplying an attorney-at-law with concerns which could result in his name being removed from the list and giving him a reasonable opportunity and time to respond to such concerns, remove an attorney-at-law from the list prepared pursuant to section 7.
- (2) Where the Director removes an attorney-at-law from the list under subsection (1), he shall provide him with written reasons for the removal.



- (3) When an attorney-at-law is removed from the list pursuant to subsection (1), he may appeal the removal to a Judge in Chambers, who may order the reinstatement of the attorney-at-law.
- (4) A decision under subsection (3) shall be final.

Listed attorney-at-law may decline to provide services

- 12.** (1) A listed attorney-at-law may decline a request by the Director to provide his services in respect of an assisted person on any of the following grounds —
- (a) the matter falls outside of his area of competence;
 - (b) there is a conflict of interest;
 - (c) impropriety; or
 - (d) impossibility.
- (2) A listed attorney-at-law who declines pursuant to subsection (1) shall give his reasons in writing for so doing to the Director.

Withdrawal of services by assigned attorney-at-law

- 13.** (1) An assigned attorney-at-law may, subject to subsection (3), withdraw his services by notifying the Director in writing of his intention to do so and he shall provide reasons for such withdrawal.
- (2) Subject to section 21(2), an assigned attorney-at-law may not secure another attorney-at-law to render such aid 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 aid is to be rendered to secure an adjournment in a trial or proceeding, or relates 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, the attorney-at-law or applicant has supplied the Director with a copy of the consent and the Director approves of such consent.
- (3) On the receipt of a notification under subsection (1), the Director may, if the circumstances so require, refer the matter to a judge for directions whether to grant or refuse permission to withdraw.
- (4) On a reference under subsection (3), the judge may give such directions to the Director as he thinks fit and the Director shall comply with those directions.
- (5) An assigned attorney-at-law who withdraws his services without giving notice to the Director commits an act of professional misconduct and is liable to be

disciplined in accordance with the provisions of the *Legal Practitioners Law (2012 Revision)*.

PART 3 - PROVISION OF LEGAL AID

Opportunity for legal advice in criminal proceedings

14. (1) Where an unrepresented accused person appears before a summary court charged with a Class A criminal offence, the magistrate shall, before requiring the accused person to plead to the charge or remanding him or otherwise dealing with him according to law —
- (a) inform him that he has the right to obtain legal advice from a duty counsel; and
 - (b) afford him, if he so requests, an opportunity to obtain such advice before he pleads to the charge or, where the charge is one in respect of which he has an election whether to be tried summarily, before he so elects or before any evidence is called.
- (2) Where —
- (a) an unrepresented accused person appears before a summary court charged with a Class B criminal offence; and
 - (b) it appears to the magistrate that the interests of justice require that the accused person should have legal advice made available to him,
- the magistrate shall, before requiring the accused person to plead to the charge or remanding him or otherwise dealing with him according to law —
- (c) inform him that such advice can be made available to him by a duty counsel; and
 - (d) afford him, if he so requests, an opportunity as is described in subsection (1)(b).
- (3) As soon as a decision has been made to detain a person at a police station, correctional institution or other similar place, the person in charge of the police station, correctional institution or other similar place, shall inform the person detained that he has a right to obtain advice and representation for the purpose of any interview from a duty counsel or a listed attorney-at-law.
- (4) A person who does not have sufficient means to pay for a legal representative in order to exercise his right under subsection (3), shall be informed by the person in charge of the place at which he is detained that he is entitled to legal representation at public expense.
- (5) In this section “**unrepresented**” means not represented by an attorney-at-law.



Method of application

- 15.** (1) Any person who wishes to be granted legal aid shall apply in writing to the Director.
- (2) Every application for legal aid shall be in such form and accompanied by a statutory declaration verifying the facts stated in the application as may be prescribed.
- (3) Notwithstanding subsection (1), a person who is detained at a police station, correctional institution or other similar place who has requested the assistance of a duty counsel or a listed attorney-at-law is not required to apply in writing for such assistance but the duty counsel or a listed attorney-at-law shall, as soon as possible after meeting with the person, advise the Director of the assistance given and Director shall make a written record of the details of such assistance.

Power to make inquiries

- 16.** (1) Where an application for legal aid is made, the Director —
- (a) may refer to such government entity as he considers appropriate, any question connected with the eligibility of the applicant for legal aid or as to his liability to make any contribution towards legal aid;
- (b) shall make such inquiries as to the means and condition of the applicant and as to the merits of his case;
- (c) shall require the applicant to furnish such information and documents as the Director may require for the purpose of considering his application; and
- (d) shall require the applicant to attend personally before the Director unless the Director considers this to be unnecessary or the circumstances of the applicant do not permit such attendance.
- (2) The Director shall, on each application for legal aid, certify in writing to the Court Administrator that action was taken pursuant to this section to evaluate the means of the applicant and shall specify the action taken; and no certificate shall be granted unless such certification has been given.

Grants of certificates generally

- 17.** (1) Subject to section 4, a legal aid certificate may be granted to an applicant by the Director if his disposable income is the prescribed amount or less.
- (2) An applicant who —
- (a) is charged before a court with any Class A criminal offence; or
- (b) is a party to a criminal appeal before a court in connection with any such charge and satisfies the Director that there are reasonable grounds of appeal,

shall, if he qualifies for the grant of a certificate under subsection (1), be entitled as of right to have a certificate granted to him by the Director.

- (3) An applicant eligible for legal aid under section 4, other than one entitled as of right under subsection (2) to the grant of a certificate, may, if he qualifies under subsection (1), be granted a certificate by the Director in his discretion and in the exercise of that discretion the Director shall, among other things, consider whether it is in the interests of justice to grant legal aid.
- (4) In considering whether it is in the interests of justice to grant legal aid under subsection (3) the Director shall consider the following —
 - (a) whether, if any matter arising in the proceedings is decided against the person, the person would be likely to lose his liberty or livelihood or to suffer serious damage to his reputation;
 - (b) whether the determination of any matter arising in the proceedings may involve consideration of a substantial question of law;
 - (c) whether the person may be unable to understand the proceedings or to state his own case;
 - (d) whether the proceedings may involve the tracing, interviewing or expert cross-examination of witnesses on behalf of the person; and
 - (e) whether it is in the interests of another person that the person be represented.
- (5) The Director may, in any case of urgency in any criminal proceedings, grant a certificate to an applicant for a temporary period not exceeding twenty-eight days at a time pending the exercise by the Director of his powers under section 16 and the consideration of the grant to the applicant of a certificate under either subsection (2) or subsection (3).

Disposable income

18. The Cabinet shall, after consultation with the Chief Justice, by regulations prescribe the calculation of the disposable income of an assisted person and the assessment of the amount of any contribution which he may be required to pay under section 19 having regard to the amount so calculated.

Contribution by assisted person

19. (1) Subject to subsection (2), the Director, on granting a certificate, shall require an assisted person to pay to the Government a contribution towards the sums payable on his account under the authority of the certificate.
- (2) If the Director requires an assisted person to pay a contribution, he shall either require him to pay the same forthwith or by way of such periodical instalments as may be specified in the certificate granted to him.



- (3) The amount of any contribution or instalment thereof which is due may be recovered by the Attorney General by civil action in a court of summary jurisdiction.
- (4) Notwithstanding the provisions of this section, where in the circumstances of a particular case the Director is satisfied that it is appropriate in the interest of justice so to do, the Director may disregard the disposable income of an assisted person and not require him to make any contribution in accordance with this section but the Director shall provide written reasons to the Court Administrator for so doing.
- (5) In making any arrangements under this section, the Director shall have regard to the principle that any debt that is to be paid from the assisted person's disposable income shall be paid by the assisted person within five years from when the debt arises.

Minister may decide not to recover debt in certain circumstances

- 20.** (1) The Minister, on the advice of the Attorney General, may decide not to recover any debt due to the Government under a grant of legal aid if —
- (a) the enforcement of the debt would cause serious hardship to the assisted person;
 - (b) the cost to the Government of enforcing the debt is likely to exceed the amount of the debt that is likely to be repaid; or
 - (c) the Director considers that it would be just and equitable not to recover the debt.
- (2) The Minister may make a decision under subsection (1) at any time after the legal aid is granted.
- (3) If the Minister decides not to recover a debt —
- (a) the debt shall be treated as being written off; and
 - (b) subsections (5) to (7) apply accordingly.
- (4) In subsection (1), “**serious hardship**” means significant financial difficulties that arise because of —
- (a) the assisted person's inability to meet minimum living expenses according to normal standards in the Islands;
 - (b) the cost of medical treatment of an illness or injury of the assisted person or the assisted person's child or other dependant; or
 - (c) a serious illness suffered by the assisted person or the assisted person's child or other dependant.
- (5) When a debt has been written off under this section, the Director shall give notice to the assisted person of the write-off; and the assisted person is, from the date of the write-off, no longer liable to pay the debt.

- (6) If, despite the write-off, an assisted person repays some or all of a written-off debt, the Director may return the amount that was written off.
- (7) The write-off of a debt does not affect the Director's obligation to pay any person who provided services under the relevant grant of legal aid.

PART 4 - SELECTION, REMUNERATION, ETC. OF ATTORNEY-AT- LAW

Roster of attorneys-at- law

- 21.** (1) The Director may, where he thinks it is necessary to do so, enter on the roster any limitation as to the number of proceedings per annum in which a listed attorney-at-law is prepared or allowed to act for assisted persons and shall give effect to such limitation.
- (2) Where a listed attorney-at-law is assigned for the purpose of any proceedings any other attorney-at-law in the same firm may act for the assisted person in the proceedings.
- (3) The Director shall not approve the engagement of foreign counsel to conduct any legal aid case unless such case is a complex one and it is not possible to assign the services of a generally admitted attorney-at-law because —
- (a) every reasonable effort has been made to obtain the services of a listed attorney-at-law for the assisted person; and
 - (b) there is no generally admitted attorney-at-law on the Islands who is willing and able to advise or represent that person.
- (4) For the purposes of this section, “**foreign counsel**” means an attorney-at-law of a Commonwealth jurisdiction who is engaged from outside of the Islands to undertake legal aid services in the Islands pursuant to this Law.

Choice of attorney-at- law, etc.

- 22.** (1) Subject to subsections (2) to (4), whenever a certificate is granted by the Director he shall assign to the assisted person a listed attorney-at-law who is chosen by the assisted person.
- (2) Subsection (1) does not apply where the attorney-at-law chosen by the assisted person —
- (a) refuses to be bound by the prescribed legal aid fees; or
 - (b) in accordance with section 13(1) for any other reason, refuses the assignment.



- (3) Where —
 - (a) an assisted person, for whatever reason, does not exercise his right to choose an attorney-at-law under subsection (1); or
 - (b) pursuant to subsection (2), subsection (1) does not apply,the Director shall assign to the assisted person a listed attorney-at-law or, in the case of a civil matter only, a listed attorney-at-law or a legal aid counsel.
- (4) For the purpose of subsection (3), the Director shall have regard to the principles that —
 - (a) the assignment of an attorney-at-law should be appropriate to the nature of the proceedings for which the certificate is granted; and
 - (b) so far as is practicable, the volume of legal aid work should be evenly distributed among listed attorneys-at-law on the roster.
- (5) The Cabinet, after consultation with the Chief Justice, may make regulations to carry out the purposes of this section.

Remuneration of assigned attorney-at-law in standard legal aid cases and remuneration of duty counsel

- 23.** (1) Subject to this Law, an assigned attorney-at-law in a standard legal aid case is entitled to remuneration at the rate of one hundred and sixty dollars per hour for work done on the instructions of an assisted person where —
- (a) the work done was authorised by the certificate;
 - (b) the work was reasonably necessary;
 - (c) the work was competently executed; and
 - (d) the attorney-at-law has complied with his duties under this Law and the regulations.
- (2) An attorney-at-law in a standard legal aid case is also entitled to reimbursement in respect of the following —
- (a) fees paid for the service of documents, provided that the amount recoverable shall not exceed that prescribed by the Court Fees Rules, 2009;
 - (b) photocopying and printing charges, charges incurred in respect of international telephone calls and facsimile transmissions and any costs or expenses which the certificate specifically authorises him to incur, provided that such costs and expenses have been reasonably and properly incurred; and
 - (c) such other costs and expenses as may be prescribed by regulations.
- (3) A duty counsel is entitled to remuneration at the rate of one hundred and sixty dollars per hour for work done on the instructions of an assisted person in

accordance with this Law and is also entitled to reimbursement for the costs and expenses specified in subsection (2).

Remuneration of assigned attorney-at-law in complex legal aid cases

- 24.** (1) The Director may procure, by contract, legal aid services on behalf of assisted persons in certain criminal cases which he determines, in accordance with subsection (2), to be complex legal aid cases.
- (2) In determining whether a matter is a complex legal aid case the Director shall take into account whether the case satisfies at least three of the following criteria —
- (a) the commission of the offence to which the case relates is likely to give rise to national publicity and widespread public concern;
 - (b) a successful defence to the charges requires highly specialist knowledge;
 - (c) the elements of the offence are of a technical nature and a successful defence requires an attorney-at-law with the relevant technical legal knowledge;
 - (d) the elements of the offence involve an international dimension;
 - (e) a successful defence against the charges requires a combination of legal, accountant, investigative and other expert skills;
 - (f) the charges are based on allegations of terrorism;
 - (g) the offence attracts a sentence exceeding ten years;
 - (h) the offence is of a violent or sexual nature involving multiple victims; or
 - (i) the offence involves complex financial or legal transactions or records.
- (3) The fees and costs attached to the proceedings in complex legal aid cases shall be paid in accordance with the terms of the legal aid contract negotiated between the listed attorney and the Court Administrator and granted under this section.
- (4) The Director, with the approval of the Court Administrator, may, on receiving a written request from the attorney-at-law assigned under the contract indicating the reasons, allow for an upward adjustment in the agreed fees and costs if, during the conduct of the criminal or civil proceedings, there is a material change of circumstances which is likely to prejudice the quality of the legal aid representation and which makes it unreasonable to enforce the terms of the original legal aid contract.
- (5) An attorney-at-law in a complex legal aid case shall, at such intervals as may be specified in the contract, provide the Director with such written evidence as the Director may reasonably require in order to permit the Director to ensure that the estimates of time and costs under the legal aid contract are being met.
- (6) Sections 25, 26 and 27 do not apply to complex legal aid cases.



Remuneration of attorney-at-law- fee limits

- 25.** (1) Subject to subsection (3), an assigned attorney-at-law shall not be paid for providing more than ten hours of services in one day.
- (2) References to an hour in this Law shall include references to part of an hour but the amount of the fee shall be prorated to the nearest completed quarter of an hour of the hearing or the preparatory work concerned.
- (3) The Clerk of the Court or a designated taxing officer may, in taxing any bill of costs under section 28, permit the payment of fees for more than ten hours in any one day, if the attorney-at-law provides evidence to the satisfaction of the Clerk of the Court or the designated taxing officer that he had provided legal aid services in respect of the relevant matter for any period of time in excess of ten hours in any one day.

Case management

- 26.** (1) An attorney-at-law who accepts a certificate shall promptly notify the Director if he is of the opinion that the total fees and disbursements may exceed twenty thousand dollars or, in a criminal case, that a preliminary inquiry is likely to take more than two weeks and, on receiving notice, the Director and the Court Administrator may hold a case management meeting to decide the budget for the matter.
- (2) The Director may request summaries and other materials about a case before a case management meeting and the assigned attorney-at-law shall comply with the request.
- (3) The Court Administrator, the Director and the assigned attorney-at-law shall attend the meeting and shall seek to agree to a budget but if they are unable to do so, the Court Administrator shall set one.
- (4) A budget shall —
- (a) in the case of a civil matter, list the steps in the proceedings that an applicant of modest means, acting under competent advice, might reasonably be expected to take having regard to the potential results and the costs involved; and
- (b) specify the amount of money that represents the anticipated total fees and disbursements for those steps.
- (5) An assigned attorney may appeal a budget set by the Court Administrator to a judge in chambers.
- (6) Where an assigned attorney-at-law refuses to accept a budget set under this section and he has not made an appeal under subsection (5) the Director, after receiving the approval of the Court Administrator, shall notify the attorney-at-law that the matter will be assigned to another attorney-at-law and the matter shall be so assigned.

Payment of all fees, expenses etc. by Treasury

- 27.** Where a bill of costs relating to services carried out in accordance with a certificate and expenses have been taxed and approved in accordance with section 28, the certificate, the bill of costs and expenses shall thereafter be submitted to the Treasury for payment to the assigned attorney-at-law of the amount to which he is so entitled.

Bill of costs; taxation

- 28.** (1) An assigned attorney-at-law shall in due course submit his bill of costs to the Clerk of the Court for taxation under subsection (7).
- (2) A bill of costs submitted in accordance with subsection (1) by an assigned attorney-at-law may be either a single bill covering the whole of the legal aid rendered by him or one of a series of bills.
- (3) Where an assigned attorney-at-law submits a series of bills, each bill in the series shall —
- (a) clearly indicate that it is one of a series;
 - (b) be accompanied by a report on the status of the proceedings as of the date of the bill;
 - (c) indicate the estimated time for completion of the proceedings;
 - (d) be in respect of an amount of two thousand dollars or more; and
 - (e) in the case of the final bill, indicate that fact and be accompanied by a report on the outcome of the proceedings which report shall indicate whether the assisted person has recovered any capital money or property.
- (4) Where costs are awarded in favour of an assisted person, the costs are due to the Government and to an assisted person who has contributed to the costs of his legal services; but the assisted person is only entitled to recover from such costs the amount by which the costs awarded exceed the actual amount of the legal aid assistance provided to him.
- (5) Costs referred to in subsection (4) which are due to the Government may be recovered by the Attorney General in any court of competent jurisdiction as a debt due to the Government.
- (6) A bill of costs submitted to the Clerk of the Court under this section shall be in such form as the Director may require.
- (7) The Clerk of the Court or a designated taxing officer shall tax every bill of costs submitted under this section —
- (a) in accordance with regulations made under section 42;
 - (b) on the basis of what is necessary and reasonable having regard to the difficulty of the case and, in particular —



- (i) in the case of criminal proceedings, the gravity of the charge and the complexity of the proceedings; and
 - (ii) in the case of civil proceedings, the amount at issue; and
- (c) in the case where the bill of costs exceeds twenty thousand dollars, after consultation with the Director and the Court Administrator.
- (8) Upon taxation under this section the Clerk of the Court shall issue a certificate of legal aid taxation to the assigned attorney-at-law.

Re-taxation by a judge

- 29.** (1) If an attorney-at-law is dissatisfied with the amount allowed to him on taxation under section 28 he may apply, within seven days of the issue of the certificate of legal aid taxation, for his bill of costs to be re-taxed by a Judge.
- (2) If an assisted person who is required to pay a contribution of at least three quarters of the cost of his representation, is dissatisfied with the amount allowed to his attorney-at-law on taxation under section 28 he may apply within seven days of the date upon which the certificate of legal aid taxation is served on him, for his attorney-at-law's bill of costs to be re-taxed by a judge.
- (3) Subsection (2) does apply to an assisted person who has been convicted of an offence and ordered to pay a contribution towards the cost of his representation pursuant to section 19.
- (4) If the Financial Secretary is dissatisfied with the amount allowed on any taxation under section 28, he may apply within seven days of the date upon which the certificate of legal aid taxation is presented to him for payment, for the attorney-at-law's bill of costs to be re-taxed by a Judge.
- (5) When an application is made for a bill of costs to be re-taxed, the certificate of legal aid taxation issued by the Clerk of the Court shall be revoked automatically and shall not be payable by the Government.
- (6) An application for re-taxation of a bill of costs shall be in writing and shall specify those items of the bill about which the applicant is dissatisfied.
- (7) The judge shall re-tax the entire bill of costs, without regard to the decision of the Clerk of the Court.
- (8) The judge may require the attorney-at-law to produce the whole or part of his files relating to the proceeding or any part thereof.
- (9) Having conducted an initial review of the bill of costs, the Judge shall invite the attorney-at-law, the assisted person or the Financial Secretary or his representative, to attend before him in Chambers for the purpose of addressing him upon those items of the bill of costs about which the applicant is dissatisfied and any other items about which the Judge is not satisfied.

- (10) When re-taxing a bill of costs the Judge shall act in an administrative capacity and his certificate of legal aid taxation shall be final and conclusive.

Money or property recovered in civil proceedings

- 30.** (1) If, upon conclusion of any proceedings, an assisted person succeeds in obtaining —
- (a) an order under section 13 of the *Married Women's Property Law (1997 Revision)* as to the beneficial ownership of any property;
 - (b) a money judgement; or
 - (c) an order for the recovery of any land or other property,
- the Director may order the assisted person to pay a contribution or an additional contribution towards the cost of his representation and such contribution shall constitute a debt payable to the Government.
- (2) Where any land is recovered as specified under subsection (1), the Director may direct that such land shall stand charged in favour of the Government with the full amount of the contribution the applicant is required to contribute under his certificate less the amount of any contribution paid by him in respect of that certificate at the date of the charge.
- (3) Where the Director imposes a charge pursuant to subsection (2) he shall, not less than seven days thereafter, lodge with the Registrar a notice (in a form approved by the Registrar) specifying the land to be charged and certifying that legal aid costs are to be charged on the land.
- (4) Where a notice is lodged under subsection (1), the Registrar shall register the notice by entering a charge in the Land Register.
- (5) Where a notice is registered in accordance with this section the Director shall inform the assisted person in writing of the action so taken.
- (6) If any default is made in the contributions owed by the assisted person, the Government has the same powers of sale over the land charged as are given by the *Registered Land Law (2004 Revision)* to a chargee under a charge in respect of which default has been made in the payment of principal.
- (7) Where the amount secured by a charge registered under this section is paid or recovered or the Director determines that such a charge is no longer required, the Director shall direct the Registrar to remove the charge.
- (8) The Registrar shall, on receipt of a request for the removal of a charge register a memorandum of the removal of the charge in the register.
- (9) No stamp duty or fee is payable in respect of any notice lodged or action of the Registrar pursuant to this section.
- (10) In this section —



“**Land Register**” means the Land Register compiled under Division 2 of Part II of the *Registered Land Law (2004 Revision)*; and

“**Registrar**” means the Registrar of Lands appointed under section 5 of the *Registered Land Law (2004 Revision)*.

Director may exempt property from charge

- 31.** (1) The Director may, on application by an assisted person, exempt any property that is part of the proceeds of proceedings from being subject to a charge under section 30.
- (2) The Director may exercise his power under subsection (1) if he considers that, having regard to the value or nature of the property and all other relevant circumstances, it would be just and equitable to do so.
- (3) An application for exemption shall be made within twenty working days, or such longer time as the Director, on application, allows, of the date of the judgment or out-of-court settlement giving rise to the proceeds.
- (4) On receipt of an application for exemption, the Director shall —
- (a) decide whether to exempt the whole or any part of the property specified in the application, or any other property;
 - (b) advise the assisted person of the decision, and of the assisted person’s right to apply for a reconsideration under 37 and to appeal under 38; and
 - (c) if a decision is made to exempt the whole or any part of the property, provide written reasons for such decision to the Minister.

Transfer of charge

- 32.** (1) If any property of an assisted person is subject to a charge, the Director may, if he considers that it would be unjust or unreasonable to require immediate payment of the amount charged, enter into an agreement with the assisted person for the release of all or part of the property from all or part of the charge.
- (2) The agreement may provide for all or part of the charge to attach to any other property of the assisted person, and may be subject to conditions.
- (3) The agreement has the effect of —
- (a) releasing from the charge any property agreed to be released from the charge; and
 - (b) subjecting any property agreed to be subject to a charge to the charge as agreed.

Prohibition against taking fees from assisted person

- 33.** (1) An assigned attorney-at-law shall not take or agree to take or seek from an assisted person or from any other person any fee, profit or reward, pecuniary or otherwise in respect of any work done for or on behalf of the assisted person after the issue of a certificate or contract and which is included within the scope of that certificate or contract.
- (2) An attorney-at-law who fails to comply with subsection (1) commits an offence against this Law and is liable to be disciplined under the *Legal Practitioners Law (2012 Revision)*.

PART 5 - GENERAL**False information**

- 34.** An applicant, an assisted person or an attorney-at-law who, for the purposes of this Law, knowingly makes a false statement or knowingly supplies false information commits an offence and is liable on summary conviction to a fine of three thousand dollars or imprisonment for a term of six months or to both.

Variation of grant of legal aid

- 35.** (1) The certificate of legal aid issued to a person in a civil case may, at any time, be varied by the Director so as to —
- (a) alter the nature or extent of the legal aid assistance;
 - (b) make the provision of the legal aid subject to a condition or an additional condition; or
 - (c) alter a condition to which the provision of the legal aid is subject.
- (2) In the exercise of its power to vary such a grant, the Director —
- (a) shall make such inquiries as he thinks fit as to the means and circumstances of the assisted person;
 - (b) shall require the assisted person to furnish such information, and to produce such books or documents, as the Director specifies;
 - (c) shall require the assisted person to attend personally unless the Director considers this to be unnecessary or the circumstances of the applicant do not permit such attendance; and
 - (d) may refer any matter relating to or arising from the legal services provided to the assisted person under the certificate to a person nominated by the Director for investigation, report or advice.
- (3) Where a certificate is varied under subsection (1), the Director shall forthwith give notice, in writing, to the assisted person and his assigned attorney-at-law



and also advise the assisted person of the decision and of the assisted person's right to apply for a reconsideration under 37 and to appeal under 38.

Revocation and discharge of legal aid certificate

- 36.** (1) Where the Director is satisfied that an assisted person has wilfully failed to comply with any provision of this Law or the regulations as to information to be supplied by him, or in furnishing such information has wilfully or recklessly made a false statement or false representation, he may, if he thinks fit —
- (a) where such act or omission took place prior to the grant of the certificate, revoke the certificate *ab initio*; or
 - (b) where the act or omission took place after the grant of the certificate, discharge the certificate with effect from the date when the act or omission occurred.
- (2) If on account of information received by him from any source an assigned attorney-at-law is at any time of the opinion that, by reason of a change in the circumstances of the assisted person, the continued extension of legal aid to the assisted person can or may no longer be justified, he shall —
- (a) inform the Director by notice in writing of the facts so far as they are known to him, specifying to the best of his ability the time when the change occurred; and
 - (b) give a copy of the notice to the assisted person.
- (3) Upon receipt of a notice under subsection (2), the Director may adjudge that such a change has occurred, determine the date on which it occurred and discharge the certificate.
- (4) The Director shall not exercise any of his powers under subsection (1) or (3) until the assisted person has been given an opportunity to show cause why the certificate should not be revoked or discharged.
- (5) Notwithstanding subsection (1), the revocation or discharge of a certificate shall not affect the right of an assigned attorney-at-law to receive remuneration under this Law in respect of any work done by him which is included within the scope of that certificate before the revocation or discharge thereof took effect.
- (6) Notice of revocation or discharge of a legal aid certificate shall forthwith be given in writing to the Clerk of the Court, the assisted person and the assigned attorney-at-law.
- (7) The Attorney General may, by action in any court of competent jurisdiction, recover from an assisted person whose certificate has been revoked or discharged, for the benefit of the Government, any amount which has been paid in consequence of the grant of that certificate, with effect, in the case of

revocation, from the date of the grant and, in the case of discharge, from the date of the discharge.

Reconsideration

- 37.** (1) The Director, when notifying an applicant or an assisted person of a decision made in relation to that person under this Law, shall, in such notice, advise the person of his right to apply for a reconsideration of the decision under this section.
- (2) An assisted person or an applicant, who is aggrieved by a decision of the Director that affects that person, may apply in the prescribed manner to the Director for a reconsideration of the decision.
- (3) The application shall, subject to subsection (4), be made within twenty working days after the date on which notice of the relevant decision is given to the person.
- (4) The Director may accept a late application no later than three months after the date on which notice of the relevant decision was given to the person if the Director is satisfied that exceptional circumstances prevented the application from being made within twenty working days after the date on which notice was given.
- (5) A failure by the Director to advise a person of his right to seek a reconsideration does not of itself establish exceptional circumstances for the purposes of subsection (4).
- (6) The Director may decline to reconsider a decision if he has already reconsidered that decision or a decision relating to substantially the same issue.
- (7) A person shall not appeal a decision of the Director unless the person has first sought and obtained a reconsideration of that decision under this section.

Appeal by applicant or assisted person to judge in chambers

- 38.** An applicant or an assisted person may appeal to a judge in chambers where —
- (a) he is refused a legal aid certificate;
- (b) legal aid is varied, suspended or withdrawn;
- (c) the Director makes an order under section 30(1) or a direction under section 30(2); or
- (d) the Director refuses an application for an exemption under section 31.

No costs payable if all parties assisted

- 39.** Notwithstanding any other law, no court shall, upon determining any cause or matter in which all parties are assisted persons, make any order as to the payment of costs by any such assisted person to any other party in the cause or matter.



Power to increase figures to maintain values

- 40.** (1) The Cabinet may by Order, whenever it appears to it to be necessary to do so by reason of changes in the value of money, amend the figure specified in section 23 and, upon the coming into effect of any such Order, the section shall be amended accordingly.
- (2) An Order under this section shall be subject to affirmative resolution.

Annual report

- 41.** (1) The Chief Officer, the Court Administrator and Director shall, by 30 June in every year, submit a report to the Minister on the work under this Law during the preceding year.
- (2) The Minister shall, as soon as practicable after receiving the report in accordance with subsection (1), lay a copy of the report before the Legislative Assembly.

Power to make regulations

- 42.** (1) The Cabinet, after consultation with the Chief Justice, may make regulations consistent with this Law prescribing anything which by this Law is to be or may be prescribed and generally for the better carrying out of its purposes and provisions.
- (2) Without prejudice to the generality of subsection (1), regulations may make provision —
- (a) as to the information to be supplied by an applicant to the Director;
 - (b) as to the cases in which a person may be refused legal aid including by reason of his conduct as an applicant or assisted person;
 - (c) generally regulating the grant of legal aid certificates;
 - (d) for the management of standard legal aid cases where the costs exceed twenty thousand dollars;
 - (e) for the recovery of contributions from assisted persons;
 - (f) the costs and expenses to be paid to attorneys-at-law;
 - (g) for the recovery in civil cases of costs awarded to an assisted person by order of the court and payable otherwise than by another assisted person;
 - (h) for taxation of bills of costs submitted by attorneys-at-law in legal aid cases and for review of and appeals from such taxation;
 - (i) to meet the special circumstances arising where —
 - (i) an applicant seeks legal aid in a matter of special urgency;
 - (ii) an assisted person is granted a certificate after having previously retained an attorney-at-law privately in regard to the same proceedings; and

- (iii) there is a relevant change in financial circumstances of an assisted person before proceedings are concluded; and
 - (j) for the recovery of costs from a successful party.
- (3) Regulations under this section are subject to the affirmative resolution procedure.

Repeal of the Legal Aid Law (1999 Revision)

43. The *Legal Aid Law (1999 Revision)* is repealed.

Commencement, savings and transitional provisions

- 44.** (1) This Law shall apply to —
- (a) every application for legal aid made on or after the date this Law comes into force (“the commencement date”); and
 - (b) all work done after the commencement date in respect of any certificate issued prior to the commencement date.
- (2) The duties imposed upon attorneys-at-law by this Law shall apply with effect from the commencement date in respect of every assisted person whether his certificate was issued before or after the commencement date.
- (3) Any certificate issued prior to the commencement date may be revoked or varied in accordance with this Law.
- (4) Until regulations are made under this Law to provide for a matter that may be prescribed, the rules made under the *Legal Aid Law (1999 Revision)* that are in force immediately before the commencement of this Law or the repeal of that Law shall have effect until expressly repealed by this Law or by regulations made under this Law.

Passed by the Legislative Assembly this 15th day of October, 2015

Juliana O’Connor-Connolly
Speaker.

Zena Merren-Chin
Clerk of the Legislative Assembly.

