

**Fourth Session Fifth Parliament Republic of Trinidad
and Tobago**



REPUBLIC OF TRINIDAD AND TOBAGO

Act No. 18 of 1999

[L.S.]

AN ACT to amend the Legal Aid and Advice Act,
Chap. 7:07

[Assented to 17th September, 1999]

ENACTED by the Parliament of Trinidad and Tobago as Enactment
follows:—

1. (1) This Act may be cited as the Legal Aid and Short title and
commencement
Advice (Amendment) Act, 1999.

(2) This Act comes into force on such day as is fixed by the President by Proclamation.

Interpretation
Chap. 7:07

2. In this Act, "the Act" means the Legal Aid and Advice Act.

Act amended

3. The Act is amended by deleting the words "child", "infant", "an infant" and "young person" wherever they occur and substituting the word "minor" or "a minor" as the case may be.

Section 2 amended

4. Section 2 of the Act is amended by—

(a) inserting in appropriate alphabetical sequence, the following definitions:

"attorney-at-law" means a person whose name is entered on the Roll in accordance with the Legal Profession Act;

"mediation" means a voluntary dispute resolving process in which a third party, the mediator, facilitates and co-ordinates the negotiations of disputing parties, in order to develop options, consider alternatives and reach a consensual settlement to accommodate the needs of the disputing parties;

"minor" means a person who is under the age of eighteen years;

"Secretary" means the Secretary to the Authority appointed under section 3A.;

(b) deleting the definition of the word "guardian" and substituting as follows:

"guardian" in relation to a minor includes any person who, in the

Act No. 21 of 1996

opinion of the Director, having cognisance of any case in relation to the minor or in which the minor is concerned, has for the time being the charge or control over the minor;"; and

(c) deleting the definition of the word "Minister" and substituting as follows:

" "Minister" means the Minister to whom responsibility for the Legal Aid and Advisory Authority is assigned;".

5. Section 3 of the Act is amended in subsection (2) Section 3 amended by—

(a) deleting the words "a barrister or solicitor" occurring in paragraph (a) and substituting the words "an attorney-at-law";

(b) deleting paragraphs (b) and (c) and substituting as follows:

"(b) four attorneys-at-law nominated by the Law Association of Trinidad and Tobago, established under the Legal Profession Act, or Act No. 21 of 1986 in default of such nomination, by the Chief Justice;";

(c) renumbering paragraphs (d) to (f) as paragraphs (c) to (e) respectively; and

(d) by adding immediately after subsection (2) the following subsection:

" (2A) In nominating persons for appointments to the Authority due regard shall be given to regional representation."

Section 3A inserted

6. The Act is amended by inserting immediately after section 3 the following new section:

“Appointment
of Secretary

3A. The Authority shall appoint a suitably qualified person to be its Secretary.”.

Section 4 amended

7. Section 4 of the Act is amended—

- (a) in subsection (1), by deleting the words “barristers and solicitors” and substituting the words “attorneys-at-law”;
- (b) in subsection (2), by deleting the words “barrister and solicitor” and substituting the words “attorney-at-law”;
- (c) in subsection (3), by deleting the words “a barrister or solicitor” and substituting the words “an attorney-at-law”;
- (d) in subsection (4), by deleting the words “barrister or solicitor” and substituting the words “attorney-at-law”; and
- (e) by deleting subsection (5) and substituting as follows:

“ (5) Subject to this Act, the Director shall pay to an attorney-at-law, investigating and reporting or giving an opinion upon application for the grant of legal aid or acting for a person receiving legal aid or giving legal advice under this Act, such fees as the Director in his discretion may determine.”.

Section 4A inserted

8. The Act is amended by inserting immediately after section 4 the following new section:

“Panel of
mediators

4A. The Director shall establish and maintain a panel of skilled mediators.”.

9. The Act is amended by inserting immediately after Section 5A inserted section 5 the following new section:

“Exemption
from tax

5A. (1) The Authority is exempt from all taxes, duties, fees, charges, assessments, levies and imposts on its profit or on assets which it acquires for its own use.

(2) Where—

(a) goods are imported by the Authority for and on behalf of the Authority; or

(b) the commercial sale of goods or services to the Authority is in the opinion of the Board of Inland Revenue, required for the purposes of the Authority,

the goods and services shall be exempt from Value Added Tax.”.

10. The Act is amended by inserting immediately after section 13 the following new section: Section 13A inserted

“Transfer and
secondment
of officers

13A. (1) An officer in the Public Service or in the Authority may, with the approval of the appropriate Service Commission and the Authority, consent to be appointed on transfer or consent to be seconded to the service of the Authority or the Public Service as the case may be.

(2) The officer shall, upon transfer, have preserved his superannuation and pension rights accruing at the time of transfer.

(3) The provisions of Regulation 31 of the Civil Service Regulations apply to officers on secondment. Chap. 23:01

(4) A period of secondment shall not exceed five years.”.

Section 15A inserted

11. The Act is amended by inserting immediately after section 15, the following new section:

“Power of
Authority to
set up
programmes

15A. (1) The Authority may develop and operate programmes for the purpose of improving its efficiency.

(2) A programme made under this section may be varied or revoked by a subsequent programme.

(3) The Authority, may with the approval of the Minister and subject to negative resolution of Parliament, make regulations for the purpose of administering any programme made pursuant to this section.”.

Part III amended

12. Part III of the Act is amended by inserting below the words “PART III” the following words: “LEGAL AID IN SUMMARY MATTERS”.

Section 16 amended

13. Section 16 of the Act is amended—

(a) by deleting subsection (4) and substituting the following subsection:

“ (4) Where a party desires to appeal to the Court of Appeal against the Order of a Court of Summary Jurisdiction, that Court or the Court of Appeal may order that either party to the proceedings be given legal aid for the purpose of the appeal.”;

(b) by deleting subsection (5) and substituting the following:

“ (5) Where a Court of Summary Jurisdiction is of the opinion, on the facts brought before it, which may

include a report by the Director, that the person making the application is without adequate means to obtain legal aid and that it is desirable in the interest of justice that such legal aid should be supplied, it shall certify this to the Director, who may thereupon cause arrangements to be made for the representation of that person and payment for the preparation and conduct of the trial or appeal and, where necessary for the payment of the expenses of all material witnesses.

(5A) Any doubt whether the means of an applicant sufficient to enable him to obtain legal aid or whether it is desirable in the interest of justice that he should have free legal aid shall be resolved in favour of the applicant.”;

(c) in subsection (6) by deleting the words “counsel or solicitor” and substituting the words “an attorney-at-law”.

14. The Act is amended by inserting immediately after section 16, the following new section: Section 16A
inserted

“Emergency
certificate for
domestic
violence
applications

Act No. 10 of
1991

16A. (1) Where a person desires legal aid as a matter of urgency in respect of proceedings for and in relation to an application made under the Domestic Violence Act, the Director shall have power without reference to the Court or the Authority to issue an Emergency Certificate.

(2) An applicant for an Emergency Certificate shall give such information as

may be required to enable the Director to determine whether—

- (a) the applicant is likely to fulfill the conditions under which legal aid may be granted under the Act and these Regulations; and
- (b) it is in the interest of justice that the applicant should, as a matter of urgency, be granted legal aid,

and shall furnish such additional information and documents as may be sufficient to constitute an application for a legal aid certificate under the Act.

(3) Where it appears to the Director that an applicant cannot at the time of the application reasonably furnish the information, or any part of it, the Director shall nevertheless have power to issue an Emergency Certificate subject to such conditions as to the furnishing of additional information as he thinks reasonable.

(4) An application for an Emergency Certificate shall be in the form set out as Form 1 in the Third Schedule and the said certificate shall be in the form set out as Form 2 of the Third Schedule.

Third
Schedule

(5) An Emergency Certificate shall have the same effect in all respects as a legal aid certificate.

(6) An Emergency Certificate shall remain in force for a minimum period of six weeks and a maximum period of three months, as the Director in his discretion shall decide, and unless a legal aid

certificate is issued within that period in respect of the said proceedings the Emergency Certificate shall be deemed to have been revoked.

(7) Notwithstanding subsection (6), where it appears to the Authority that the circumstances of any particular application so warrant, the Authority may extend an Emergency Certificate for such further period as it thinks fit.

(8) If within any period during which an Emergency Certificate is in force the magistrate refuses the application for a legal aid certificate the Director shall forthwith revoke the Emergency Certificate.

(9) Upon an Emergency Certificate being extended or being deemed to be revoked under subsection (8), the Director shall forthwith issue a notification to the Court and to the applicant to that effect.”.

15. Section 17 of the Act is amended in subsection (1), Section 17 amended by deleting the words “fourteen days” and substituting the words “three months”.

16. Section 18 of the Act is amended in subsection (1), Section 18 amended by deleting the words “the Judge by whom he was sentenced” and substituting the words “a Judge of the High Court or a Judge of the Court of Appeal”.

17. Section 19 of the Act is amended—

Section 19 amended

(a) in subsection (2) by deleting the words “including any” and substitute with the words “which may include a”; and

(b) by deleting subsection (4) and substituting as follows:

“ (4) The fees and expenses payable to an attorney-at-law assigned to any applicant in the High Court of Justice or the Court of Appeal are those set out in Part III of the First Schedule.”.

Section 19A amended

18. The Act is amended by inserting immediately after section 19 the following new section:

“Amendment
to First
Schedule

19A. (1) The Minister may, by Order, amend Parts I, II and III of the First Schedule and such Order shall be subject to negative resolution of Parliament.”.

Part IV amended

19. Part IV of the Act is amended by deleting the words “LEGAL AID IN CIVIL ACTIONS” and substituting the words “LEGAL AID IN CIVIL ACTIONS IN THE SUPREME COURT”.

Section 20 amended

20. Section 20 of the Act is amended—

(a) by deleting subsection (2) and substituting as follows:

“ (2) The Minister may, by Order, amend the Second Schedule and such Order shall be subject to negative resolution of Parliament.”;

(b) in subsection (3) by—

(i) deleting the word “Regulations” and substituting the words “An Order”; and

(ii) deleting the words “a solicitor” and substituting the words “an attorney-at-law”.

21. Section 21 of the Act is amended—

Section 21 amended

(a) in subsection (2) by adding immediately after the word “infant” wherever it occurs the words “or a person under disability”;

(b) by deleting subsection (4) and substituting as follows:

“ (4) In subsection (3) the expression “near relative” means—

(a) in the case of a minor other than an adopted minor, the father, mother or guardian;

(b) in the case of an adopted minor, an adopted parent.”;

(c) by adding immediately after subsection (4) as amended, the following subsections:

“ (5) Where an application is made on behalf of a person under disability under subsection (2) then a reference in—

(a) section 22 to an applicant shall be construed as a reference to the person under disability;

(b) section 23(2)(a) or section 24(1)(a) to an applicant shall be construed as a reference to the person under disability;

(c) sections 23(2)(b), 24(1)(b) and 25 to an applicant shall be construed as a reference to the person under disability.

(6) In this section “person under disability” means a person not being an infant who is a person under disability pursuant to Order 77 of the Supreme Court of Judicature Rules.”.

Section 23 amended

22. Section 23 of the Act is amended—

(a) by adding immediately after subsection (1), the following new subsections:

“ (1A) Where a legal aid certificate is granted the Director may require the applicant to submit to mediation as a means of resolving the matter, if, in the opinion of the Director, mediation is considered to be appropriate, in the circumstances.

(1B) The cost of mediation shall be paid for by the Authority.”;

(b) In subsection (2)—

(i) by deleting the word “one” occurring in subparagraph (i) and substituting the word “two”; and

(ii) by deleting the word “two” occurring in subparagraph (ii) and substituting the word “three”;

(c) by adding the following:

“ (3) The Minister may, by Order, amend subsection (2) and such Order shall be subject to negative resolution of Parliament.”.

Section 24 amended

23. Section 24 of the Act is amended—

(a) in subsection (1)—

(i) by deleting the words “four thousand five hundred” occurring in subparagraph (i) and substituting the words “five thousand”; and

(ii) by deleting the words “two” and “four thousand five hundred” occurring in subparagraph (ii) and

substituting the words "three" and "seven thousand" respectively; and

(b) by adding the following:

" (3) The Minister may, by Order, amend subsection (1) and such Order shall be subject to negative resolution of Parliament."

24. Section 25 of the Act is amended in—

Section 25 amended

(a) subsection (1) by repealing the term "disposable income" and its definition and replacing it as follows:

" "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 next preceding the making of the application, after deducting therefrom—

(a) an amount equal to six hundred dollars a year for each person totally or partially dependent on the applicant or spouse up to a maximum of eighteen hundred dollars;

(b) an amount equal to one thousand and eighty dollars a year for the applicant;

(c) rent not exceeding two thousand four hundred dollars a year;

(d) contributions being made to the National Insurance Board;

- (e) any income tax payments;
 - (f) National Insurance Board pensions;
 - (g) old age pensions;
 - (h) public assistance benefits; and
 - (i) disability benefits.”; and
- (b) subsection (2) by deleting the words “separate and apart from” and substituting the words “in the same property with, or separate and apart from,”.

Section 29 amended

25. Section 29 of the Act is amended—

- (a) by deleting subsection (1) and substituting as follows:

“ (1) Where a legal aid certificate is granted pursuant to section 23 or 24 the Director may act for the aided person or may assign an attorney-at-law from the appropriate panel, maintained pursuant to section 4, so to act and the Director may, in assigning as attorney-at-law, take into account the wishes of the aided person and in such a case shall endorse on the legal aid certificate the name of the attorney-at-law so assigned.

(1A) In any case where an attorney-at-law is assigned to act after the certificate is filed in court, or in any case where a new assignment is made in lieu of an attorney-at-law assigned previously, the Director shall not be required to endorse on the certificate the name of the attorney-at-law so

assigned or newly assigned as the case may be, but may, instead, give notice of the assignment or new assignment by letter to the proper officer of the Court in which proceedings are pending.”;

(b) in subsection (2) by deleting the word “solicitor” and substituting the words “attorney-at-law”;

(c) by adding immediately after subsection (4) the following subsection:

“ (5) Any person who contravenes the provisions of subsection (4) shall be liable, in the case of an attorney-at-law to have his name removed from the panel by the Authority, and in the case of an employee shall be subject to such disciplinary action as the Authority deems fit.”.

26. Section 31 of the Act is amended in—

Section 31 amended

(a) subsection (1), by inserting the words “so declare and” between the words “may” and “order”;

(b) subsection (3), by inserting the words “so declare and” between the words “may” and “order”.

27. Section 32 of the Act is amended by—

Section 32 amended

(a) renumbering subsection (2) as subsection (3); and

(b) inserting a new subsection (2) as follows:

“ (2) Where an aided person discharges the attorney-at-law assigned to act for him the Director may in his discretion revoke the legal aid certificate granted pursuant to section 23.”.

Section 33 amended

28. Section 33 of the Act is amended—

(a) by deleting subsection (2) and substituting as follows:

“ (2) Subject to subsection (2A) where any money is recovered by an aided person (whether in proceedings or by virtue of a settlement or compromise) he is liable to pay to the Authority so much of the money as is recovered in respect of costs.

(2A) Where, however, the Authority has paid or is liable to pay sums greater than the monies recovered in respect of costs the Authority may retain money from the judgement sum, such amount to be limited to that which the Authority has expended over and above the award of costs or the formula in subsection (4), whichever is the smaller.”;

(b) by deleting subsection (4) and renumbering all subsequent subsections accordingly;

(c) in subsection (4) as renumbered, by deleting the word “(4)” and substituting the word “(2)”;

(d) in subsection (5) as renumbered, by deleting the word “(5)” and substituting the word “(4)”;

(e) in subsection (6) as renumbered, by deleting the word “(6)” and substituting the word “(5)”.

Section 37 amended

29. Section 37 of the Act is amended in subsection (4)—

(a) by deleting the word “shall” where it occurs the second time and substitute the word “may”;

(b) in paragraph (b) by—

- (i) deleting the words “of one dollar” and substituting the words “not exceeding ten dollars”; and
- (ii) deleting the words “or such other fee as may be prescribed”;

(c) by adding the following subsection:

“ (5) The Minister may, by Order, amend the fee prescribed in subsection (4)(b) and such Order shall be subject to negative resolution of Parliament.”.

30. Section 38 of the Act is amended by deleting the words “five hundred dollars” and substituting the words “one thousand dollars and imprisonment for six months”. Section 38 amended

31. Section 39 of the Act is amended in subsection (1), by deleting the words “counsel or solicitor” and “barrister or solicitor” wherever they occur and substituting the words “attorney-at-law”. Section 39 amended

32. The First Schedule to the Act is amended— First Schedule amended

(a) in Part I—

(i) by deleting subparagraph (b) of paragraph 1 and substituting as follows:

“(b) all offences, except motor vehicles offences charged in a Court of Summary Jurisdiction”; and

(ii) by adding immediately after subparagraph (b), the following subparagraph:

“(c) contempt proceedings in the Magistrates Court.”;

(iii) by deleting paragraph 2 and substituting as follows:

“ (2) Proceedings for and in relation to an application under the Status of Children Act, 1981, the Family Law (Guardianship of Minors, Domicile and Maintenance) Act, 1981, the Domestic Violence Act, 1991 the Attachment of Earnings (Maintenance) Act, 1988 and the Cohabitional Relationships Act, 1998.”;

(iv) in paragraph 3 by inserting immediately after the words “(1950 Ed.)”, the words “and the Rent Restriction (Dwelling Houses) Act, 1981, Chap. 59:55”;

(b) in Part II—

- (i) in paragraph 1, by deleting the words “one hundred and twenty-five” and substituting the words “five hundred”;
- (ii) in the first paragraph of paragraph 2, by deleting the words “five hundred” and substituting the words “one thousand” and by deleting the second sentence;
- (iii) in the second paragraph of paragraph 2 by deleting the word “three hundred” and substituting the words “seven hundred and fifty”;
- (iv) by deleting the words “counsel and solicitor” and “counsel or solicitor” wherever they occur and substituting the words “an attorney-at-law”;

(c) in Part III—

(i) in the first paragraph by—

(A) deleting the words “counsel and solicitor” and substituting the word “an attorney-at law”; and

(B) deleting the word “prisoner” and substituting the word “applicant”; and

(ii) by deleting the second paragraph and substituting as follows:

“ The Authority shall pay to an attorney in respect of non-capital offences a fee of two thousand five hundred dollars; but the presiding Judge after the conclusion of the trial, may, if he thinks fit, certify that the case was of unusual length or difficulty and increase the fee of the attorney to a sum not exceeding five thousand dollars.

In respect of capital offences the Authority shall pay a fee of seven thousand five hundred dollars; but the presiding Judge after the conclusion of the trial, may, if he thinks fit, certify that the case was of unusual length or difficulty and increase the fee of the attorney to a sum not exceeding ten thousand dollars.

These sums become due and payable by the Director on the written authority of the presiding Judge.”

Second Schedule
amended

33. The Second Schedule to the Act is amended—

(a) in Part I by—

- (i) deleting the words “High Court of Justice” and “High Court” and substituting in each case, the word “Supreme Court”;
- (ii) adding immediately after paragraph 2 the following paragraphs:

“ 3. Proceedings falling within the jurisdiction of the Petty Civil Court in which the liquidated damages claimed are not less than two hundred and forty dollars but the applicant shall be required to make a contribution unless he can show that payment of such contribution shall cause him hardship.

4. Applications for the Grant of Probate and Letters of Administration where the value of the Estate is more than four thousand eight hundred dollars but does not exceed one hundred thousand dollars; the applicant shall be required to pay to the Director a fee, not exceeding 0.5 per cent of the value of the Estate.”; and

(b) in Part II by deleting the word “High” occurring in item 4 and substituting the word “Supreme”.

Third Schedule
inserted

34. The Act is amended by inserting immediately after the Second Schedule, the Third Schedule, as follows:

“THIRD SCHEDULE

[Section 16A(4)]

FORM 1

APPLICATION FOR EMERGENCY CERTIFICATE IN RESPECT OF PROCEEDINGS FOR AND IN RELATION TO AN APPLICATION MADE UNDER THE DOMESTIC VIOLENCE ACT, NO. 10 OF 1991

I, [Mr., Mrs. or Miss] of (address in block letters)

(whose permanent address is [as above or (address)]), apply for an Emergency Certificate for the purpose of

(State briefly the kind of claim to be made or resisted, making quite clear if it be the case that court proceedings have begun or that an appeal is involved).

I [enclose or have already lodged] an Application Form for an ordinary Certificate for Legal Aid in respect of this matter.

2. The reason why my case is urgent necessitating an Emergency Certificate is

3. The Attorney-at-law whom I wish to act for me is named in the Application Form [I submit herewith or have already submitted], and she/he has agreed to act for me in this matter.

4. I agree that if I am granted an Emergency Certificate which is revoked by the Authority, or becomes revoked because I do not take the steps necessary to obtain an ordinary certificate to replace it, I may become liable—

(i) to pay the Authority the expense to which the Legal Aid Fund has been put as a consequence of the work done by my Attorney-at-law; and

(ii) to pay such Attorney-at-law the difference between what they receive from the Fund and the costs and fees to which they would have been entitled if I had been a private client without a Certificate.

5. I understand that if, after an Emergency Certificate has been issued to me I am offered an ordinary certificate to replace it, the offer will set out the financial terms upon which I can obtain such a certificate, those terms being based upon an assessment of my resources of income and capital by the Authority. I shall have an opportunity of making up my mind whether to accept a certificate on those terms and if I do not accept the offer my Emergency Certificate will be revoked with the consequences explained in the preceding paragraph.

6. I undertake without delay to give any further information needed by the Authority in respect of my application, and understand, clearly that the failure to comply will result in the revocation of my Emergency Certificate.

.....
Signature of Applicant

FORM 2

[Section 16A(3)]

EMERGENCY CERTIFICATE

THIS IS TO CERTIFY that.....

of
(address)

(hereinafter called "the assisted person") is entitled, in accordance with the Legal Aid and Advice Act, Chap. 7:07 made thereunder, to Legal Aid as (plaintiff, defendant, petitioner or intervener or as the case may be) in connection with the following proceedings:

.....
(describe the proceedings)

THIS IS TO FURTHER CERTIFY that:

The assisted person's Attorney-at-law is

.....of
(address)

2. This certificate, being an Emergency Certificate, remains in force for a period of three months from the date hereof, or such other period not exceeding three months as the Authority may allow, unless it is previously revoked or is replaced by an ordinary certificate.

3. Add any special conditions, including one limiting the certificate to part of the proceedings. ”.

Passed in the Senate this 2nd day of March, 1999.

N. COX
Clerk of the Senate

Passed in the House of Representatives this 26th day of July, 1999.

J. SAMPSON-JACENT
Clerk of the House