

Second Session Tenth Parliament Republic of
Trinidad and Tobago



REPUBLIC OF TRINIDAD AND TOBAGO

Act No. 3 of 2012

[L.S.]

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

[Assented to 3rd May, 2012]

Whereas it is enacted inter alia by subsection (1) of ^{Preamble} section 13 of the Constitution that an Act of Parliament to which that section applies may expressly declare that

it shall have effect even though inconsistent with sections 4 and 5 of the Constitution and, if any Act does so declare, it shall have effect accordingly:

And whereas it is provided in subsection (2) of the said section 13 of the Constitution that an Act of Parliament to which that section applies is one the Bill for which has been passed by both Houses of Parliament and at the final vote thereon in each House has been supported by the votes of not less than three-fifths of all the members of that House:

And whereas it is necessary and expedient that the provisions of this Act shall have effect even though inconsistent with sections 4 and 5 of the Constitution.

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

Short title 1. This Act may be cited as the Legal Aid and Advice (Amendment) Act, 2012.

Act inconsistent with Constitution 2. This Act shall have effect even though inconsistent with sections 4 and 5 of the Constitution.

Interpretation Chap. 7:07 3. In this Act, “the Act” means the Legal Aid and Advice Act.

Section 3 amended 4. Section 3(2)(b) of the Act is amended by inserting after the words “Chief Justice” the words “, and at least one of whom has a resident practice in Tobago and is also nominated by the Tobago House of Assembly”.”.

Section 4 amended 5. Section 4(3) of the Act is amended by deleting the words “(whose decision shall be final)”.

6. The Act is amended by renumbering section 4A as 4B Section 4A inserted and inserting after section 4 the following section:

“Duty
Counsel

4A.(1) The Director shall prepare and maintain panels of Attorneys-at-law to be known as Duty Counsel who are willing to—

- (a) provide legal representation for a minor as soon as possible after the minor is detained on suspicion of having committed an offence; or
- (b) provide legal representation for persons detained on suspicion of having committed a capital offence or such other indictable offence as the Minister may, by Order, subject to negative resolution of Parliament, specify”.

(2) Every Duty Counsel shall be entitled to have his name on the panels or any of them unless there is good reason for excluding him arising out of his conduct when acting or assigned to act for persons receiving legal representation or his professional conduct generally.

(3) Where a Duty Counsel is aggrieved by any decision excluding him, whether permanently or temporarily, from the panels or any of them, he may appeal against the decision to a Judge and the Judge may confirm or quash the decision appealed against or may substitute such decision as he thinks fit.

(4) A Duty Counsel may, at any time, request the Director to remove his name from the panels or any of them and the Director shall comply with the request.”.

Section 12
amended

7. Section 12(1) of the Act is amended by deleting the words “31st December” and substituting the words “30th September”.

Part IIA inserted

8. The Act is amended by inserting after section 15A, the following Part:

“PART IIA

LEGAL REPRESENTATION FOR SUSPECTS
BY DUTY COUNSEL

Legal Repre-
sentation for
suspects by
Duty Counsel

15B. (1) Where a suspect is detained, the senior officer in charge of the police station or other place of detention shall, as soon as possible inform the authority of—

- (a) the name of the suspect and, where the suspect is a minor, the age of the suspect.
- (b) the nature of the offence; and
- (c) the location where the suspect is being detained.

(2) Immediately upon being informed under subsection (1), the Director shall, without reference to the Court or the Authority, make arrangements for an Attorney-at-law referred to in section 4A (“the Duty Counsel”) to provide legal representation for the suspect until such time as—

- (a) the suspect, or his parent or guardian, has appointed an Attorney-at-law and has signed in the appropriate place the Duty Counsel Certificate in Form 3 of the Third Schedule to signify that he has discharged the Duty Counsel.

- (b) the Duty Counsel, with the leave of the Director, discontinues his services to the suspect;
- (c) the suspect is released without being charged; or
- (d) the suspect is charged with an offence and, where applicable, legal aid is granted to him under this Act.

(3) Where arrangements are made under subsection (2), the Director shall forthwith inform the police officer referred to in subsection (1) of the name of the Duty Counsel assigned to the suspect.

(4) As soon as practicable after making arrangements under subsection (2), the Director shall, without reference to the Court or the Authority, issue a Duty Counsel Certificate in the form set out as Form 3 in the Third Schedule.

Form 3 Third Schedule

(5) The Director shall establish and maintain a register of all Duty Counsel Certificates issued under subsection (4).

(6) The Director shall forward a copy of each Duty Counsel Certificate to the suspect, the Duty Counsel, a First Division Officer of the relevant police station and to the Commissioner of Police.

(7) A Duty Counsel may commence the provision of legal representation for a suspect before the issuance of a Duty Counsel Certificate.

(8) A Duty Counsel Certificate shall remain in force until the occurrence of an event referred to in subsection (2)(a) to (d).

(9) A Duty Counsel shall notify the Director in writing of the date on which he ceased to provide legal representation for a suspect under this section and the Director shall endorse the date on the relevant Duty Counsel Certificate.

(10) A Duty Counsel shall not, without the leave of the Director, discontinue his provision of legal representation for a suspect while the relevant Duty Counsel Certificate is in force, but any other Attorney-at-law may appear on behalf of the Duty Counsel.

(11) The fees payable to a Duty Counsel are those set out in the Fourth Schedule.

Fourth Schedule

(12) In this section, “suspect” means a person required to be provided with legal representation under section 4A.”.

(13) The Minister may by Order, subject to negative resolution of Parliament, amend the Fourth Schedule.

Section 17 amended

9. Section 17 of the Act is amended—

- (a) in subsection (1), by deleting the words “within three months”; and
- (b) by repealing subsection (2).

Section 21 amended

10. Section 21 of the Act is amended—

- (a) in subsection (3)—
 - (i) in paragraph (a), by deleting the words “or section 24(1)(a)”; and
 - (ii) in paragraph (b), by deleting the words “or section 24(1)(b)”; and
- (b) in subsection (4)—
 - (i) in paragraph (b), by deleting the semi-colon and substituting a full stop; and

(ii) by deleting paragraph (c).”; and

(c) in subsection (5)—

(i) in paragraph (b), by deleting the words
“or section 24(1)(a)”; and

(ii) in paragraph (c), by deleting the words
“, 24(1)(b)”.’.

11. Section 23(2)(b) of the Act is amended—

Section 23 amended

(a) in subparagraph (i), by deleting the words
“two thousand dollars” and substituting the
words “twenty thousand dollars”; and

(b) in subparagraph (ii), by deleting the words
“three thousand five hundred dollars” and
substituting the words “thirty-six thousand
dollars”.

12. Section 24 of the Act is repealed and the following
section is substituted:

Section 24 repealed
and substituted

“Extenu-
ating cir-
cumstances

24.(1) Where there are extenuating
circumstances, the Director may approve an
application for legal aid even though the
applicant does not meet the necessary
requirements.

(2) An approval given by the Director
under subsection (1) shall be ratified by the
Authority at its next meeting.”

13. Section 25 of the Act is amended—

Section 25 amended

(a) in subsection (1)—

(i) by deleting the words “sections 23 and 24”
and substituting the words “section 23”; and

(ii) in the definition of “disposable income”—

(A) in paragraph (a), by deleting the
words “six hundred dollars” and
“eighteen hundred dollars” and

substituting the words “two thousand, four hundred dollars” and “seven thousand, two hundred dollars”, respectively;

(B) in paragraph (b), by deleting the words “one thousand and eighty dollars” and substituting the words “four thousand, three hundred and twenty dollars”; and

(C) in paragraph (c), by deleting the words “two thousand four hundred dollars” and substituting the words “nine thousand, six hundred dollars”;

(b) in subsection (2), by deleting the words “and section 24(1)(b)”;

(c) in subsection (3), by deleting the words “sections 23 and 24” and substituting the words “section 23”; and

(d) by inserting after subsection (3), the following subsection:

“ (4) For the purposes of this section, “spouse” includes a cohabitant as defined in the Cohabital Relationships Act.”.

Chap. 45:55

Section 26 amended

14. Section 26(1) of the Act is amended—

(a) in paragraph (a), by deleting the words “five hundred dollars” and substituting the words “fifteen thousand dollars”; and

(b) in paragraph (b), by deleting the words “one thousand dollars” and substituting the words “thirty thousand dollars”.

Section 27 amended

15. Section 27(1) of the Act is amended by deleting the words “or 24”.

16. Section 29(1) of the Act is amended by deleting the Section 29 amended words “or 24”.

17. Section 31(1) of the Act is amended by deleting the Section 31 amended words “or 24”.

18. Section 33(4) of the Act is amended by deleting the Section 33 amended words “one thousand dollars” wherever they occur and substituting the words “four thousand dollars”.

19. Section 35(1) of the Act is amended by deleting the Section 35 amended words “or 24”.

20. Section 37 of the Act is amended— Section 37 amended

- (a) in subsection (1), by deleting the words “for a period of at least six months”; and
- (b) in subsection (4)(b), by deleting the words “ten dollars” and substituting the words “five hundred dollars, except where the Director is satisfied that the person is unable to afford the payment”.

21. Section 39(1)(c) of the Act is amended by deleting Section 39 amended the words “or 24”.

22. Section 40 of the Act is amended by renumbering Section 40 amended paragraph (g) of subsection (2) as paragraph (h), deleting the word “and” occurring after paragraph (f) and inserting after paragraph (f) the following paragraph:

“(g) provide for all matters that are required to give effect to sections 4 and 15B; and”.

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

- (a) in Part I, by inserting after paragraph 1, the following paragraph:

“ 1A. Proceedings falling within the jurisdiction of the Petty Civil Court in which the liquidated damages claimed is

not less than two thousand five hundred dollars so, however, that the applicant shall be required to make a contribution unless he can show that payment of such contribution shall cause him hardship.”;

(b) in Part II—

- (i) in paragraph 1, by deleting the words “five hundred dollars” and substituting the words “one thousand, five hundred dollars”;
- (ii) in paragraph 2, by deleting the words “one thousand dollars” and substituting the words “three thousand dollars”;
- (iii) in the last paragraph, by deleting the words “seven hundred and fifty dollars” and substituting the words “two thousand dollars”;

(c) in Part III, by deleting the words—

- (i) “of two thousand five hundred dollars” and substituting the words “not exceeding five thousand dollars”;
- (ii) “five thousand dollars” and substituting the words “ten thousand dollars”;
- (iii) “of seven thousand five hundred dollars” and substituting the words “not exceeding fifteen thousand dollars”; and
- (iv) “ten thousand dollars” and substituting the words “twenty thousand dollars and, in exceptional circumstances, allow the Attorney-at-law an additional fee not exceeding ten thousand dollars”.

24. The Second Schedule to the Act is amended in Part I by deleting paragraph 3 and substituting the following paragraph: ^{Second Schedule amended}

“ 3. Proceedings before the Environmental Commission.”.

25. The Third Schedule to the Act is amended by inserting after Form 2, the following form: ^{Third Schedule amended}

“FORM 3

[Section 15B(4)]

DUTY COUNSEL CERTIFICATE

THIS IS TO CERTIFY that of

.....
(*address*)

(hereinafter called “the suspect”) is entitled, in accordance with the Legal Aid and Advice Act, Chap. 7:07, to legal representation by Duty Counsel in connection with the following:

.....
(*describe the circumstances*)

THIS IS TO CERTIFY that:

1. The suspect’s Duty Counsel is
.....
of
(*address*)

2. This Certificate, being a Duty Counsel Certificate, remains in force until such time as—

(a) the suspect, or his parent or guardian, as the case may be, has appointed an Attorney-at-law and has

signed in the appropriate place below to signify that he has discharged the Duty Counsel;

- (b) the Duty Counsel, with the leave of the Director, discontinues his services to the suspect;
- (c) the suspect is released without being charged; or
- (d) the suspect is charged with an offence and legal aid is granted to him under this Act.

Issued this day of , 20 .

Director

This is to certify that I, , the suspect/parent or guardian of the suspect have appointed an Attorney-at-law and hereby discharge the Duty Counsel named in this Certificate.

Dated this day of , 20 .

.....
Signature

Fourth Schedule
inserted

26. The Act is amended by inserting after the Third Schedule, the following Schedule:

“FOURTH SCHEDULE

[Section 15B(11)]

DUTY COUNSEL FEES

The fees and expenses payable to a Duty Counsel assigned to a suspect under section 15B shall be not less than one thousand dollars and not more than two thousand five hundred dollars.

Passed in the Senate this 6th day of December, 2011.

N. ATIBA-DILCHAN
Clerk of the Senate

IT IS HEREBY CERTIFIED that this Act is one the Bill for which has been passed by the Senate and at the final vote thereon in the Senate has been supported by the votes of not less than three-fifths of all the members of the Senate, that is to say by the votes of 25 Senators.

N. ATIBA-DILCHAN

Clerk of the Senate

Passed in the House of Representatives this 25th day of April, 2012.

J. SAMPSON-MEIGUEL

Clerk of the House

IT IS HEREBY CERTIFIED that this Act is one the Bill for which has been passed by the House of Representatives and at the final vote thereon in the House has been supported by the votes of not less than three-fifths of all the members of the House, that is to say by the votes of 37 members of the House.

J. SAMPSON-MEIGUEL

Clerk of the House