

CHAPTER 112

LEGAL AID

Law No. 27 of 1978.

A LAW TO PROVIDE FOR THE GRANT OF LEGAL ASSISTANCE TO DESERVING PERSONS AND FOR THAT PURPOSE TO ESTABLISH A LEGAL AID COMMISSION, AND A LEGAL AID FUND, FOR THE GRANT OF MONEYS TO THE FUND AND FOR THE DISBURSEMENT THEREOF, AND FOR MATTERS CONNECTED THEREWITH OR INCIDENTAL THERETO.

[6th July, 1978.]

Short title.

1. This Law may be cited as the Legal Aid Law.

(d) such other assistance as may be necessary for the conduct of such proceedings.

Establishment of Legal Aid Commission.

2. (1) There shall be established a commission which shall be called the Legal Aid Commission (hereinafter referred to as the " Commission") consisting of the persons who are for the time being members of the Commission under section 5.

4. For the purpose of carrying out its objects the Commission may exercise and perform all or any of the following powers and functions ;—

Powers and functions of the Commission.

(2) The Commission shall, by the name assigned to it by subsection (1), be a body corporate and shall have perpetual succession and a common seal and may sue and be sued in such name.

(a) ensure that legal aid is provided in the most effective, efficient and economical manner ;

(3) The seal of the Commission—

(b) establish such number of regional or district committees or clinics as it considers necessary, to make legal aid available to as many persons as possible ;

(a) shall be in the custody of such persons as the Commission may from time to time determine ;

(c) determine the matters or classes of matters in respect of which legal aid may be given ;

(b) may be altered in such manner as may be determined by the Commission ; and

(d) determine guide-lines for the administration of the Legal Aid Scheme and for the allocation of work and funds taking into consideration :—

(c) shall not be affixed to any document except with the sanction of the Commission and in the presence of two members of the Commission who shall sign the document in token of their presence.

(i) the need to maintain the independence of the legal profession ;

Objects of the Commission.

3. The objects of the Commission shall be to operate throughout Sri Lanka an efficient Legal Aid Scheme to provide to deserving persons—

(ii) the desirability of an assisted person being referred to an attorney-at-law of his choice ;

(a) legal advice ;

(iii) the desirability of the services of paid legal staff being made use of where appropriate in the -grant of legal aid and the policy and conditions in that regard ;

(b) funds for the conduct of legal and other proceedings for and on behalf of such persons ;

(c) the services of attorneys-at-law to represent them;

- (iv) the need for legal assistance to be readily available and easily accessible to deserving persons ;
  - (e) determine, having regard to the funds available and taking into account all relevant recommendations, guide-lines to be observed in respect of payment of costs and disbursement by assisted persons where proceedings are decided, compromised or resolved ;
  - (f) consult with Government and local authorities, educational institutions and community, neighbourhood, professional, social and other groups having an interest in any aspect of the provision of legal aid ;
  - (g) promote, establish, finance and supervise research in respect of legal aid;
  - (h) initiate and carry out educational programmes designed to promote the understanding—
    - (i) by the members of the legal profession in respect of the need for a scheme of legal aid and their obligations and duties in the maintenance thereof and participation therein ;
    - (ii) by the members of the public, who have special needs in that respect, of their rights, powers, privileges and duties under the laws of Sri Lanka ;
  - (i) establish, administer, develop and co-operate in experimental programmes, law clinics and projects respecting any aspect of the provision of legal aid and for such purposes employ staff necessary to initiate, develop and operate the programmes and projects ;
  - (j) receive and encourage proposals from the public for new programmes and projects ;
  - (k) co-operate with educational institutions and bodies respecting the education and training of persons providing legal aid ;
  - (l) provide information to the public on the availability of legal aid ;
  - (m) make submissions to Law Reform agencies, both in Sri Lanka and abroad and to the State ;
  - (n) make an annual report to the Government of the Republic of Sri Lanka and interim reports to the Minister and the Legal Aid Advisory Council of the work done by the Commission ;
  - (o) subject to the provisions of this Law employ such persons and do all such acts as may be necessary to carry out the objects and to exercise the powers of the Commission ;
  - (p) own, purchase, alienate or mortgage any movable or immovable property.
- 5.** The Commission shall consist of nine members of whom—
- (a) three members (hereinafter referred to as " appointed members ") shall be appointed by the Minister ; and
  - (b) six members (hereinafter referred to as " nominated members ") shall be nominated by the Bar Council of Sri Lanka from among its members.
- 6.** (1) Every appointed member shall hold office for a period of three years and shall be eligible for reappointment.
- (2) The Minister may appoint any person to fill any casual vacancy occurring among the appointed members and any person so appointed shall hold office for the unexpired period of the term of office of the member whom he succeeds.
- 7.** (1) Of the six members nominated by the Bar Council immediately after the establishment of the 'Commission two members shall vacate office at the end of the first year and two members at the end of the second year. The determination as to the two members to vacate office at the end of each such year shall be determined by lot to be drawn among the members other than the member appointed under section 12 as Administrator of the Legal Aid Scheme if he be a nominated member, in the manner

Constitution of the Commission.

Term of office of appointed members.

Terms of office of nominated members.

decided by the Bar Council and such determination shall be communicated forthwith by the Bar Council to the Commission. The remaining two members shall vacate office at the end of the third year.

(2) The Bar Council shall nominate two persons from among its members to fill the vacancies occurring at the end of each such year and every person so nominated shall thereafter hold office for a period of three years.

(3) Whenever a casual vacancy occurs among the nominated members, the Bar Council shall nominate a person from among its members to fill such vacancy. Any person nominated to fill any casual vacancy shall hold office for the unexpired period of the term of office of the member whom he succeeds and shall for the purpose of the application of the provisions of subsection (2) be deemed to be that member.

(4) Every nominated member who vacates office shall be eligible for re-nomination.

Commission may act despite vacancy.

**8.** The Commission may act notwithstanding any vacancy among the members thereof.

Chairman of Commission.

**9.** The Commission shall appoint a member who is an attorney-at-law of not less than five years' standing at the Bar to be the Chairman of the Commission for a period of one year, but such member shall be eligible for reappointment.

Quorum for meetings of the Commission and regulation of procedure.

**10.** (a) The quorum for any meeting of the Commission shall be five members.

(b) Subject to any regulations made in that behalf, the Commission shall regulate its own procedure in regard to its meetings and the transaction of business at such meetings.

Vacation of office by member.

**11.** (1) Any member may resign his office by letter addressed—

(a) in the case of an appointed member, to the Minister ; and

(b) in the case of a nominated member, to the President of the Bar Association of Sri Lanka.

(2) A nominated member shall be deemed to have vacated his office on his ceasing to be a member of the Bar Council.

(3) (a) The Minister may if he thinks it expedient to do so remove a member appointed by him.

(b) Any nominated member may be removed from office on a resolution to that effect after due notice being given and passed by a majority of two-thirds of the members present at a meeting of the Bar Council.

**12.** (1) The Commission shall from among its members appoint with the concurrence of the Minister a member as Administrator of the Legal Aid Scheme on such terms, hours of work, methods of supervision and other conditions as to the Commission may seem fit.

Administrator of the Legal Aid Scheme.

(2) Remuneration from the Legal Aid Fund at such rates as the Minister may determine in consultation with the Commission shall be paid to such Administrator.

(3) The Administrator shall be subject to such directives as may be given by the Commission from time to time.

(4) The Administrator shall remain in office as long as he is a member of the Commission unless not less than two-thirds of the remaining members of the Commission decide that another member shall be appointed in his place.

**13.** In the exercise, discharge and performance of its powers, functions and duties, the Commission shall be subject to and act in accordance with such advice as the Bar Council may from time to time give.

Bar Council may give advice to the Commission-

**14.** There shall be a Council called the Legal Aid Advisory Council (hereinafter referred to as the " Advisory Council ") consisting of the Chief Justice of Sri Lanka who shall be the Chairman and thirty other members, of whom—

Legal Aid Advisory Council.

(i) nine members shall be the members of the Commission ;

(ii) three members shall be nominated by the Bar Association of Sri Lanka ;

- (in) six members shall be nominated by the Chief Justice, to represent the judiciary ; and
- (iv) twelve members shall be nominated by the Minister to represent all or any of the following interests that is to say. Government and local authorities, educational institutions and community, neighbourhood, professional, social organizations and other groups having an interest in the provision of legal aid.

be voted by Parliament for the purpose, which sum shall be expended in accordance with such general or special directions as the Minister may from time to time give.

Powers and functions of Advisory Council.

**15.** The Advisory Council shall have the power—

- (a) to examine and comment on all reports submitted , by the Commission ;
- (b) to generally advise the Minister and the Commission on the provision of legal aid services, their nature, scope and extent;
- (c) to advise on such other matters as the Minister or the Commission may refer to the Council for advice.

19. There shall be paid into the Fund— Payments to the Fund.

- (a) any gifts or donations of money made to the Commission by any person, body or Government ;
- (b) any grant received from the Government under section 18 ;
- (c) any income from investments or any other moneys received by the Commission.

Meetings of Advisory Council

**16.** (1) The Advisory Council shall meet as often as may be necessary and at least once in every six months.

(2) The quorum for a meeting of the Council shall be fifteen members.

(3) The meetings of the Advisory Council shall be convened by the Administrator who shall function for all purposes as Secretary to the Council.

(4) Regulations may be made prescribing the procedure in regard to the conduct of the business of the Advisory Council. Subject to any such regulations as may be made in that regard, such Council may regulate its own procedure.

**20.** There shall be paid out of the Fund Payments out of the Fund.

- (a) all expenses incurred in the establishment, maintenance and working of the Commission ;
- (b) the salaries of officers and servants of the Commission ;
- (c) such sums as may be determined by the Commission as payments to be made to attorneys-at-law not being officers or servants of the Commission whose services are obtained by the Commission ;
- (d) such other payments as are approved by the Commission as being necessary for the purpose of carrying out the objects of the Commission.

**21.** (1) The Commission shall be exempt from any income tax, wealth tax or other tax payable under the Inland Revenue Act, No. 4 of 1963, or the Inland Revenue Act (No. 28 of 1979). Exemption of Commission and donors from certain duties and taxes.

(2) The Commission shall be exempt from the payment of any customs duty on any goods imported by the Commission if the Minister in consultation with the Minister in charge of the subject of Finance approves the importation of such goods,

(3) Any instrument containing any agreement between the Commission and any other person providing for the payment by

Legal Aid Fund.

**17.** There shall be established a fund to be called the Legal Aid Fund (hereinafter referred to as the " Fund ") which shall be managed, controlled and operated by the Commission in accordance with such directions as it may give from time to time.

Annual grant by the Government to the Commission.

**18.** The Government shall grant to the Commission out of the Consolidated Fund for the purpose of carrying out the aims and objects of the Commission such sum as may

such person to the Commission of any sum as a donation shall be exempt from the payment of stamp duty.

(4) The amount of any donation made to the Commission by any person in the year preceding any year of assessment shall, for the purpose of computing his taxable income for that year of assessment under the Inland Revenue Act, No. 4 of 1963, or the Inland Revenue Act (No. 28 of 1979), be deducted from his assessable income, and the making of such donation shall be deemed not to be a taxable gift for the purposes of that Act.

(5) The provisions of this section shall have effect notwithstanding anything to the contrary in the Inland Revenue Act, No. 4 of 1963, or the Inland Revenue Act (No. 29 of 1979) and the Customs Ordinance.

Staff of the Commission.

**22.** (1) The Commission shall in the exercise of its powers under section 4 employ such officers and servants as it considers necessary for the performance and discharge of its functions or powers and shall exercise disciplinary control over them.

(2) Any payment of a salary or other emoluments or both salary and other emoluments in excess of five hundred rupees per month to any person shall be subject to the approval of the Minister.

Accounts and audit thereof.

**23.** (1) The Commission shall cause its accounts to be kept in such form and in such manner as the Minister may direct.

(2) The Commission shall cause its books to be balanced as on the thirty-first day of December in each year and shall, before the thirty-first day of March of the next year, cause to be prepared an income and expenditure account and a balance sheet containing a summary of the assets and liabilities of the Commission made up to the first-mentioned date. The income and expenditure account and the balance sheet shall be signed by the Chairman of the Commission, and by such officer of the Commission as may be authorized by the Commission to do so.

(3) The Commission shall have its accounts audited each year by the Auditor-General. For the purpose of assisting him in the audit of such accounts, the Auditor-General may employ the services of any

qualified auditor who shall act under his direction and control.

(4) For the purpose of meeting the expenses incurred by him in auditing the accounts of the Commission the Auditor-General shall be paid from the funds of the Commission such remuneration as the Minister may determine with the concurrence of the Minister in charge of the subject of Finance. Any remuneration received from the Commission by the Auditor-General shall, after deduction of any sums paid by him to any qualified auditor employed by him for the purpose of such audit, be credited to the Consolidated Fund.

(5) For the purposes of this section, the expression " qualified auditor " means—

(a) an individual who, being a member of the Institute of Chartered Accountants of Sri Lanka, or of any other Institute established by law, possesses a certificate to practise as an Accountant issued by the Council of such Institute ; or

(b) a firm of Accountants each of the resident partners of which, being a member of the Institute of Chartered Accountants of Sri Lanka or of any other Institute established by law, possesses a certificate to practise as an Accountant issued by the Council of such Institute.

(6) The Auditor-General and any person assisting him in the audit of the accounts of the Commission shall have access to all such books, deeds, contracts, accounts, vouchers and other documents of the Commission, as the Auditor-General may consider necessary for the purpose of the audit, and shall be furnished by the members or officers of the Commission with such information within their knowledge as may be required for such purpose.

(7) The Auditor-General shall examine the accounts of the Commission and furnish a report—

(a) stating whether he has or has not obtained all the information and explanations required by him ;

- (b) stating whether the accounts referred to in the report are properly drawn up to as to exhibit a true and fair view of the affairs of the Commission ; and
- (c) drawing attention to any item in the accounts which in his opinion may be of interest to Parliament in any examination of the activities and accounts of the Commission.

(8) The Auditor-General shall transmit his report to the Commission.

Annual report.

**24.** (1) The Commission shall annually prepare a written report of the Commission's work and finances during the year completed, including any information furnished to, and directions given by, the Minister and shall transmit to the Minister and the Bar Council—

- (a) a copy of such report;
- (b) a copy of the income and expenditure account and balance sheet in respect of such year certified by the Auditor-General ; and
- (c) a copy of the Auditor-General's report.

(2) The Minister shall lay copies of the reports and statements referred to in subsection (1) before Parliament.

State land and State buildings,

**25.** Any State land or any State building may, subject to such conditions as may be determined by the Minister with the concurrence of the Minister for the time being in charge of the subject of State lands, be made available for the use of, or be alienated to, the Commission for the purpose of the Commission or for the residence of any officer or servant of the Commission.

Protection of members, &c., of the Commission for action taken under this Law or on the direction of the Commission.

**26.** (1) No suit or prosecution shall lie against any member, officer, servant or agent of the Commission for any act which in good faith is done or is purported to be done by him under this Law or on the direction of the Commission.

(2) Any expense incurred by the Commission in any suit, prosecution or proceeding brought by or against the Commission before any court, tribunal or institution shall be paid out of the funds of

the Commission, and any costs paid to, or recovered by, the Commission in any such suit, prosecution or proceeding shall be credited to the funds of the Commission.

(3) Any expenses incurred by any such person as is referred to in subsection (1) in any suit, prosecution or proceeding brought against him before any court, tribunal or institution in respect of any act which is done or is purported to be done by him under this Law or on the direction of the Commission shall, if the court, tribunal or institution holds that such act was done in good faith, be paid out of the funds of the Commission, unless such expense is recovered by him in such suit, prosecution or proceeding.

**27.** No writ against person or property shall be issued against a member of the Commission in any action brought against the Commission.

No writ to issue against person or property of a member of the Commission.

**28.** (1) The Commission may make regulations generally for the purpose of giving effect to the principles and provisions of this Law and particularly in respect of any matter which is stated or required by this Law to be prescribed, or in respect of which regulations are required or authorized by this Law to be made.

Regulations.

(2) No regulation made under this Law shall have effect until it is approved by the Minister, confirmed by Parliament, and published in the Gazette.

**29.** All officers and servants of the Commission shall be deemed to be public servants within the meaning and for the purposes of the Penal Code.

Officers and servants of the Commission deemed to be public servants.

**30.** The Commission shall be deemed to be a scheduled institution within the meaning of the Bribery Act and the provisions of that Act shall be construed accordingly.

The Commission deemed to be a scheduled institution within the meaning of Bribery Act.

**31.** In this Law, unless the context otherwise requires—

Interpretation.

: " Bar Council " means the Bar Council of the Bar Association of Sri Lanka ; and

" Bar Association of Sri Lanka " means the Association of attorneys-at-law of Sri Lanka formed and constituted on November 9, 1974, at the Law Library, Colombo.