

*Legal Supplement Part C to the "Trinidad and Tobago Gazette", Vol. 50,
No. 155, 17th November, 2011*

No. 5 of 2011

Second Session Tenth Parliament Republic of
Trinidad and Tobago

SENATE

BILL

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

THE LEGAL AID AND ADVICE (AMENDMENT)
BILL, 2011

Explanatory Note

(These notes form no part of the Bill but are intended only to indicate its general purport)

This Bill seeks to amend the Legal Aid and Advice Act, Chap 7:07.

Clause 1 of the Bill contains the short title.

Clause 2 contains the interpretation provision.

Clause 3 would amend section 3 of the Act to allow the inclusion in the Board of at least one Attorney-at-law from Tobago.

Clause 4 would amend section 4(3) by deleting the words “whose decision shall be final” in relation to a decision by a judge in adjudicating an appeal by an Attorney-at-law who was excluded from a panel prepared under section 4.

Clause 5 seeks to insert after section 4 a new section 4A that will, in addition to his existing duties, authorize the Director of Legal Aid to prepare and maintain panels of Attorneys-at-law who are willing to serve as Duty Counsel with the responsibility of providing legal representation for minors and persons who are detained on suspicion of having committed a capital offence, who are referred to as suspects.

Clause 6 would insert a new Part II A after section 15A which would provide for the procedure regarding legal representation by Duty Counsel for suspects.

Clause 7 seeks to amend section 17 which deals with applications for legal aid for the defence of persons before the High Court. Clause 7 would remove the time constraint of three months after committal for a person committed for trial to apply to the court for legal aid.

Clause 8 would amend section 23 to increase the quantum of the disposable capital and disposable income the parameters of which delimit the eligibility of an applicant for legal aid.

Clause 9 seeks to repeal section 24 and substitute a new section that would authorize the Director to approve an application for legal aid in extenuating circumstances where the applicant may not meet the necessary requirements.

Clause 10 seeks to amend section 25 to, *inter alia*, provide for the increase in the quantum of disposable income.

Clause 11 would amend section 26 to accord with the increase of the quantum of disposal income.

Clause 12 seeks to amend section 27(1) to remove the reference to section 24 which has been repealed.

Clause 13 seeks to amend section 29(1) to remove the reference to section 24 which has been repealed.

Clause 14 would amend section 31(1) to remove the reference to section 24 which has been repealed.

Clause 15 seeks to amend section 33(4) to increase the sum recovered above which an aided person will be required to pay costs.

Clause 16 would amend section 35(1) to remove the reference to section 24 which has been repealed.

Clause 17 seeks to amend section 37(1) to remove the period of six months residency required for a person to be eligible to receive legal advice in accordance with the Act. Clause 17 would also amend subsection (4) of section 37 to increase the fee that may be payable by a person seeking legal advice.

Clause 18 would amend section 39(1)(c) to remove the reference to section 24 which has been repealed.

Clause 19 seeks to amend section 40 to empower the Minister to make Regulations to govern the operation of the Duty Counsel scheme.

Clause 20 would amend the First Schedule to increase the quantum of fees and expenses to be paid to an Attorney-at-law assigned to a person in receipt of legal aid and advice under the Act.

Clause 21 seeks to amend the Second Schedule to add to proceedings for which legal aid may be given under the Act, proceedings before the Environmental Management Commission.

Clause 22 would amend the Third Schedule to include as Form 3 a Duty Counsel Certificate.

Clause 23 seeks to insert a Fourth Schedule by making provision for fees for Duty Counsel.

THE LEGAL AID AND ADVICE (AMENDMENT)
BILL, 2011

ARRANGEMENT OF CLAUSES

Clause

1. Short title
2. Interpretation
3. Section 3 amended
4. Section 4 amended
5. Section 4A inserted
6. Part IIA inserted
7. Section 17 amended
8. Section 23 amended
9. Section 24 repealed and substituted
10. Section 25 amended
11. Section 26 amended
12. Section 27 amended
13. Section 29 amended
14. Section 31 amended
15. Section 33 amended
16. Section 35 amended
17. Section 37 amended
18. Section 39 amended
19. Section 40 amended
20. First Schedule amended
21. Second Schedule amended
22. Third Schedule amended
23. Fourth Schedule inserted

BILL

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

[, 2011]

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

1. This Act may be cited as the Legal Aid and Advice Short title
(Amendment) Act, 2011.

Interpretation
Chap. 7:07

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

Section 3 amended

3. Section 3(2)(b) of the Act is amended by inserting after the words “Attorneys-at-law” the words “of whom at least one has a practice based in Tobago”.

Section 4 amended

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

Section 4A inserted

5. The Act is amended by renumbering section 4A as 4B 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.

(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.”.

6. The Act is amended by inserting after section 15A,^{Part IIA inserted} the following Part:

“PART IIA

LEGAL REPRESENTATION FOR SUSPECTS
BY DUTY COUNSEL

Legal Representation for suspects by Duty Counsel

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

- (a) the name and age of the suspect where he is a minor;
- (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, with the leave of the Director, discharges 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, the First Division Officer 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 the Duty Counsel may be represented by any other Attorney-at-law.

(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.”.

7. Section 17 of the Act is amended—

Section 17 amended

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

8. 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”.

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

Section 24 repealed and substituted

“Extenuating circumstances

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

10. Section 25 of the Act is amended—

(a) in subsection (1)—

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

(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.”.

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

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

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

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

15. 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”.

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

17. 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”.

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

19. 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”.

First Schedule
amended

20. The First Schedule to the Act is 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 are 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”.

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

“3. Proceedings before the Environmental Management Commission.”.

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

“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)

.....

I confirm the above.

President of the Senate

Passed in the House of Representatives this
day of _____, 2011.

Clerk of the House

I confirm the above.

Speaker

No. 5 of 2011

SECOND SESSION
TENTH PARLIAMENT
REPUBLIC OF
TRINIDAD AND TOBAGO

BILL

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

Received and read the

First time

Second time

Third time
