

# Legal Aid Act

CHAPTER 110

**LEGAL AID ACT**

Act 21 of 1985

*[1st February, 1986]*

## ARRANGEMENT OF SECTIONS

### Section

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Short title        1. This Act may be cited as the Legal Aid Act.

Interpretation    2. In this Act-

"civil proceeding" means a proceeding before any court in the exercise of its jurisdiction, both original and appellate, in civil matters;

"disposable capital or disposable income" means the capital or income computed in accordance with rules made under this Act;

"Fund" means the Legal Aid Fund established under section 10;

"Judge" means a judge of the Supreme Court;

"Registrar" means the Registrar of the Supreme Court.

Civil                3.(1) Subject to this Act, legal aid shall be available to any person-  
proceedings

(a) in any civil proceeding, not being a civil proceeding exempted by rules made under this Act; and

(b) in taking any steps to assert or dispute a claim which may give rise to a civil proceeding for which legal aid shall be available under paragraph (a) but where the question of instituting, defending or being a party to such civil proceeding has not yet arisen.

(2) Legal Aid shall consist of -

(a) in relation to subsection (1)(a), representation by legal practitioner including such assistance as is usually given by a legal practitioner in the steps preliminary or incidental to a civil proceeding or in arriving or giving effect to a settlement to bring an end to such proceeding;

(b) in relation to subsection (1) (b), the assistance of the legal practitioner in advising on the steps necessary to assert or dispute the claim.

Financial limitation      4.(1) For the purpose of section 3, legal aid shall be granted to any person whose disposable income does not exceed the level of subsistence declared for the time being under section 23 of the Social Security Act.

Provided that where the value of his disposable capital exceeds the amount fixed by rules made under this Act, he may be refused legal aid if it appears that he is capable of prosecuting or defending the civil proceeding or taking steps to assert or dispute the claim without legal aid under this Act.

(2) Subject to section 5, a person who is granted legal aid under subsection (1) shall not be liable to pay any contributions to the Fund and may be exempted from paying any fees or court.

(3) For the purposes of section 3, legal aid may, subject to subsection (4), be granted to any person whose disposable income or disposable capital exceeds the amount specified in subsection (1).

(4) A person granted legal aid under subsection (3) shall make such contributions to the Fund as he may, having regard to the expenses likely to be incurred by the Fund in granting legal aid to him, be required to make.

Costs. 5.(1) Where any person who has been granted legal aid under section 4(1) in a civil proceeding is awarded costs in that proceeding, the court awarding the costs may, of its own motion or on application, direct that the costs when recovered shall be paid to the Fund.

(2) Where any person who has been granted legal aid under section 4(1) in a civil proceeding is ordered by court to pay the costs of any other party to that proceeding, not being a party who has been granted legal aid under this Act, such costs shall be paid from the Fund.

Criminal 6.(1) Subject to this Act, legal aid shall be available to any person charged with an offence and shall relate to proceedings in any court in the exercise of original or appellate jurisdiction in criminal matters in respect of that offence.

(2) For the purposes of subsection (1), legal aid shall consist of representation by a legal practitioner in the preparation and conduct of the defence in respect of the offence and, in relation to proceedings by way of appeal, in the preparation and conduct of the appeal.

Financial 7. Where the financial circumstances of a person charged with an offence are such that he is unable without undue hardship to himself or his dependants to meet the expenses of proceedings in relation to that offence-

(a) he shall, where the offence is murder or any other capital offence, be granted legal aid;

(b) he may, in any other case, having regard to the gravity of the offence or other exceptional circumstances, be granted legal aid.

Application 8.(1) An application for legal aid shall be made to a Judge by or on behalf of the person seeking legal aid.

(2) Rules made under this Act may provide for matters in relation to an application under subsection (1).

Certificate 9.(1) Where a Judge to whom an application is made under section 8 is satisfied that a person seeking legal aid is qualified to receive legal aid under this Act, he shall grant him a certificate.

(2) Where a Judge refuses to grant a certificate in respect of any proceedings before the Court of Appeal, a Justice of Appeal may, on a consideration of the facts placed before him, grant such certificate.

(3) A certificate granted under this section shall be authority -

(a) for the person to whom it is granted, to receive legal aid; and

(b) for the Registrar, to meet out of the moneys of the Fund the expenses of legal aid.

Fund 10.(1) There shall be a fund to be called the Legal Aid Fund.

(2) The Fund shall consist of -

(a) moneys provided by Government;

(b) moneys paid by way of contributions and costs under this Act.

(3) Moneys of the Fund shall be applied in meeting the expenses of legal aid under this Act or in making any payments authorised by this Act.

(4) The Registrar shall keep proper accounts of the Fund and shall before the 30th January each year prepare, in respect of the immediately preceding year, a statement of accounts.

(5) The accounts and the statement of accounts of the Fund shall be audited by the Auditor-General.

Rules 11.(1) The Chief Justice may make rules for carrying into effect the purposes and provisions of this Act.

(2) Without prejudice to the generality of subsection (1), rules may provide for -

(a) the procedure for making and determining applications for legal aid;

(b) manner of computation of disposable income and disposable capital;

(c) the civil proceedings to be exempted from the application of this Act;

(d) the preparation of lists of legal practitioners to be assigned for legal aid and the manner in which they are to be assigned;

(e) the fees to be paid to legal practitioners assigned for legal aid;

(f) the contributions payable to the Fund;

(g) matters which by this Act are required or permitted to be prescribed.

Offences 12.(1) If any person applying for or receiving legal aid under this Act -

(a) knowingly makes a false statement in any application made under section 8; or

(b) knowingly makes a false statement before a judge or the Registrar in connection with such application,

he is guilty of an offence and liable on conviction to a fine of R.2,000.

(2) A court in convicting a person for an offence under subsection (1) may, in addition to any penalty imposed under that subsection, direct such person to pay any expenses incurred by the Fund in granting legal aid to him to the Fund.

Application 13. Notwithstanding anything in any other written law, this Act

of this Act shall apply to or in respect of the provision of legal aid for the purposes stated in this Act.

LAWS OF SEYCHELLES

LEGAL AID ACT

CHAPTER 110

SUBSIDIARY LEGISLATION

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BY

SECTION 11

**LEGAL AID RULES**

SI. 22 of 1986

*[3rd March, 1986]*

SI. 39 of 1990

ARRANGEMENT OF RULES

Rule

1. Citation
2. Exempted civil proceedings
3. Disposable capital
4. Disposable income
5. Assets and income of spouse
6. Financial limits
7. Application for legal aid
8. Oral application
9. Duties of the Registrar
10. Powers of judge
11. Records of applications
12. List of legal practitioners
13. Fees

Schedule          Legal Aid Certificate

Citation          1. These Rules may be cited as the Legal Aid Rules.

Exempted          2. Civil proceedings in respect of the following matters are  
civil                exempted from the application of the Act -  
proceedings

(a) defamation;

(b) breach of promise of marriage.

Disposal 3. For the purpose of the Act, the disposable capital of a person

capital means the aggregate value of the capital assets owned by him in the month preceding the month in which the application for legal aid is made, reduced by -

(a) the value of his dwelling house and household furniture;

(b) the value of his tools of trade; and

(c) the value of any other assets which may be exempted by the judge in the computation of the disposable capital.

Disposable 4. For the purposes of this Act, the disposable income of a person

income means the aggregate income of that person for the month preceding

SI. 39/1990 the month in which the application for legal aid is made, reduced by the following payments (if any) made by him in that month -

(a) tax on income or profits;

(b) rent;

Cap. 225 (c) contributions under the Social Security Act;

(d) life insurance premiums;

(e) repayment of capital of and interest on loans;

(f) maintenance of dependants;

(g) payment in respect of any court order; and

(h) any other disbursement which may be allowed by the judge.

Assets and income of spouse      5. In computing the disposable capital or disposable income of a person, the judge may take into consideration the assets and the income of that person's spouse.

Financial limits      6. Legal aid may be refused under section 4(1) of the Act if the disposable capital of the person seeking legal aid exceeds R.1500 in value.

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Application for legal aid      7.(1) An application for legal aid may be made in writing or orally by or on behalf of the person seeking legal aid.

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(2) An application for legal aid shall contain the following particulars -

- (a) the name and address of the person seeking legal aid;
- (b) whether the person is single, married, a widow or a widower;
- (c) the person's occupation;
- (d) the income of the person and that of the person's spouse, for the month preceding the month in which the application is made;
- (e) particulars of payments listed under rule 4;
- (f) name, age and relationship of the person's dependents;
- (g) list of the person's assets and those of the person's spouse and their value;
- (h) where the person is under 18 years in age, whether the person's parents or guardian would be willing to provide or could provide the person legal aid at their expense;
- (i) nature of the matter for which legal aid is sought;
- (j) particulars of previous legal aid granted, if any.

Oral                    8.(1)    A person making an application for legal aid orally may do  
application        so by furnishing to the Registrar the particulars required to be contained in the  
application by rule 7.

(2) Where the application is made orally, the Registrar shall record the particulars furnished under sub-rule (1) and obtain the signature of the person making the application.

Duties of the Registrar 9.(1) The Registrar may require a person applying for legal aid to

furnish documentary evidence in support of the particulars contained in his application. This may take the form of a report from the SPPF District Branch Office in the case of unemployed or self-employed applicants or a statement of wages from the applicant's employers.

(2) Where the application conforms to rule 7 or rule 8 and after obtaining documentary evidence (if any) under sub-rule (1), the Registrar shall submit the application to a judge.

Powers of judge 10.(1) An application for legal aid shall be considered by a judge in Chambers.

(2) A judge may require the person seeking legal aid to appear before him and furnish such other information as he may require in connection with the application.

(3) A judge may call for and receive any report from any person concerning the means of the person seeking legal aid:

Provided that where such report discloses matters adverse to the application, he shall give the person seeking legal aid an opportunity of contradicting such report.

(4) Where a judge is satisfied that the person seeking legal aid is eligible for such aid under the Act he shall grant that person a certificate.

(5) A certificate granted under sub-rule (4) shall be in the Form in the Schedule.

(6) Where a judge is not satisfied that the person seeking legal aid is eligible for such aid under the Act, he shall refuse the application and state the reasons in writing for the refusal.

(7) Where a certificate is granted under sub-rule (4) to any person, the judge shall, having regard to any representations made by that person, assign out of the list prepared under rule 12 a legal practitioner whose services that person shall be entitled to.

(8) Where a certificate is granted to a person in the circumstances set out in section 4(3) of the Act, the judge shall determine the amount of contribution payable to the Fund by that person.

Records of      11. The Registrar shall keep a record of-  
applications

(a) each application for legal aid made under the Act;

(b) the determination of the judge on that application;

(c) the nature of the proceedings in respect of which the application is made;

(d) the number of the certificate;

(e) the name of the legal practitioner assigned and the fees paid to him;

(f) any contributions recovered in respect of the certificate;

(g) any moneys by way of costs paid to or paid out of the fund in respect of the certificate.

List of legal practitioners 12.(1) The Registrar shall keep a list of legal practitioners who shall be requested in order of rotation to provide their services for persons seeking legal aid under the Act.

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(2) The name of any legal practitioner may be removed from the list prepared under sub-rule (1) by the direction of the Chief Justice.

(3) The list kept under sub-rule (1) shall be available for inspection by any person to whom a certificate has been granted under this Act.

Fees 13.(1) The fees payable out of the Fund to any legal practitioner assigned under rule 10(7) shall be-

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(a) for steps preliminary to institution of civil proceedings-

(i) in the Supreme court - R.500;

(ii) in the Magistrates' Court - R.350;

(b) where the legal practitioner does not appear at the hearing of civil proceedings before court but only takes care of the procedure-

(i) in the Supreme Court - R.500;

(ii) in the Magistrates' Court - R.350;

(c) where the legal practitioner appears at the hearing of the civil proceedings before court and takes care of the procedure -

(i) in the Supreme Court R.1500 and if the hearing lasts more than one day R.500 for every additional morning or part thereof and a fee of R.350 for every additional afternoon or part thereof, in which the proceedings continue;

(ii) in the Magistrates' Court R.750 and if the hearing lasts more than one day R.350 for every additional morning or afternoon or part thereof, in which the proceedings continue;

(d) for preparation and conduct of an appeal in civil proceeding -

(i) from a Magistrates' Court -R 1500

(ii) from the Supreme Court -R2000

for the first day or part thereof and R1000 for each additional day or part thereof in which the proceeding continue;

(e) advice for asserting or disputing a claim in the circumstances set out in section 3(1)(b) of the Act - R.750;

(f) for the defence of a person charged with murder or other capital offence - R.2000 for the first day of part thereof and R1000 for every additional morning or part thereof and R.750 for every additional afternoon or part thereof, in which the proceedings continue;

(g) for the defence of the person charged with any other

offence in the Supreme Court or an offence under the

Cap. 133 Misuse of Drugs Act in any Court and the defence of a person in a preliminary enquiry before a Magistrates' Court - R.1500 for the first day or part thereof and R750 for any additional morning or afternoon or part thereof in which the proceedings continue;

(h) for the defence of a person charged with any other offence in a Magistrates' Court - R.1000 for the first day and R.750 for every additional day or part thereof;

(i) for the preparation and conduct of an appeal from the Supreme Court -

(i) where the offence is murder or other capital offence - R.3000 for the first day or part thereof and R.2000 for every additional day or part thereof;

(ii) in any other offence - R.1500 for the first day or part thereof and R.750 for every additional day or part thereof;

(j) for the preparation and conduct of an appeal from a Magistrates' Court in respect of any offence - R.750;

(k) for a legal opinion on an intended appeal from the Supreme Court or Magistrates' Court in any criminal matter - R.750;

1. for a hearing relating to an application in criminal matter by either the prosecution or the defence for a remand or as to bail - R500.

(2) No fees shall be payable in respect of a hearing relating to an application in a criminal matter by either the prosecution or the defence for an adjournment, or a remand or as to bail.

(3) There shall be a displacement fee in respect of legally assisted cases held at -

- |                |       |
|----------------|-------|
| 1. Anse Royale | R300  |
| 2. Praslin     | R400  |
| 3. La Digue    | R450. |

## **SCHEDULE**

### LEGAL AID ACT

(Cap 110)

### LEGAL AID CERTIFICATE      Rule 10(5)

Upon considering the application made by ..... of  
..... for legal aid under the Act, I certify that  
..... is entitled to legal aid under the Act.

Legal aid is granted for the purpose of .....  
..... legal practitioners is assigned to provide legal aid under this  
certificate.

Dated this                      day of                      19

.....

JUDGE