

CHAPTER 30

PUBLIC SOLICITOR

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CHAPTER 30

PUBLIC SOLICITOR

AN ACT TO MAKE PROVISIONS IN RESPECT OF THE GRANTING OF LEGAL AID BY THE PUBLIC SOLICITOR; AND FOR OTHER MATTERS CONNECTED THEREWITH OR INCIDENTAL THERETO

25 of 1987

[28th March 1989]

1. This Act may be cited as the Public Solicitor Act.

Short title

2. In this Act-

Interpretation

"aided person" means a person to whom legal aid has been or is being provided;

"child" means a person under the age of eighteen years;

"costs" in relation to proceedings, includes court fees and fees payable for the service of process or in connection with the execution of process;

"guardian", in relation to a child, includes (without prejudice to the generality of the expression) such person as the Public Solicitor considers might properly be appointed by the Court to be the next friend or guardian *ad litem* of the child;

"legal aid" means legal aid provided under this Act;

"legal officer" means a legal practitioner employed in the office of the Public Solicitor;
and

"legal practitioner" shall have the meaning assigned thereto by section 2 of the Legal Practitioners Act.

Cap. 16

3. Legal aid-

Scope of legal aid

(a) consists of representation of persons in proceedings, including all such assistance as are usually given in the steps preliminary or incidental to the proceedings or in arriving at, or giving effect to, a compromise to avoid or bring an end to the proceedings; and

(b) includes the providing of legal advice and assistance to persons in need of such advice and assistance.

4. For the purposes of this Act, legal aid shall be available-

Persons entitled to legal aid

(a) to any person who qualifies for such aid in terms of section 92(4) of the Constitution; and

(b) to such other persons whose income does not exceed such amount as the Minister may by order prescribe.

5. (1) Any person who, whether in his own right or in a representative or fiduciary capacity, wishes to be provided legal aid shall apply therefor to the Public Solicitor.

Application for legal aid

(2) An application under subsection (1) shall be-

(a) made in such form as may be prescribed; and

(b) accompanied by a statutory declaration verifying the facts stated in the application.

(3) If the person in need of legal aid is a child, the application shall be made by his guardian, but for the purposes of this Act, the child shall be deemed to be the applicant.

6. (1) Where an application is made under section 5, the Public Solicitor may-

Power to make enquiries

(a) make such enquiries as he thinks fit as to the means of the applicant and the merits of the case;

(b) require the applicant to furnish such information and documents as the Public Solicitor may require in respect of the application; and

(c) take or cause to be taken such steps as may be necessary to conserve the interests of the applicant pending determination of the application.

(2) The requirements of paragraphs (a) and (b) of subsection (1) may be dispensed with by the Public Solicitor to such extent as he considers appropriate, in the circumstances of a particular case.

7. (1) Subject to subsections (2), (3) and (4), the Public Solicitor shall provide legal aid to any person entitled thereto in accordance with section 4.

Grant of legal aid

(2) The Public Solicitor may refuse legal aid, although satisfied that the applicant is entitled thereto in accordance with paragraph (b) of section 4, if, in his opinion the applicant has disposed of any income for the purpose of satisfying the criteria set out in that section.

(3) An applicant may be refused legal aid where it appears to the Public Solicitor that-

(a) only a trivial advantage would be gained by the applicant from the proceedings or the matter in respect of which legal aid is sought;

(b) on account of the simple nature of the proceedings or the matter, a legal practitioner would not ordinarily be employed; or

(c) in the particular circumstances of the case, it would be unreasonable for the applicant to be provided legal aid.

(4) The Public Solicitor may refuse to provide, or may discontinue providing, legal aid to any applicant who-

(a) fails without reasonable excuse to comply with any request made by the Public Solicitor under paragraph (b) of subsection (1) of section 6; or

(b) in furnishing any information or document requested by the Public Solicitor under paragraph (b) of subsection (1) of section 6, knowingly makes any false statement or knowingly furnishes any false document.

8. If, in relation to any proceedings or matter to which a person who has made an application for legal aid is a party, any other party makes application for legal aid, the provisions of this Act shall apply to both parties:

Application for legal aid by more than one party

Provided that the Public Solicitor may assign a separate legal officer to act for each party in connection with the proceedings or the matter.

9. Where it appears to the Court that an aided person-

Payment of costs by aided person in certain events

(a) has obtained legal aid by fraud or misrepresentation; or

(b) has acted improperly in bringing or defending the legal proceedings or in the conduct of them,

the Court may order the aided person to pay the costs of the Public Solicitor and where appropriate, the costs of the other party to the proceedings.

10. (1) Subject to subsections (3), (4) and (5), where a person is provided legal aid under this Act and is successful, either in whole or in part, in the proceedings brought by him with the assistance of such legal aid, a contribution shall be payable by him to the Public Solicitor in an amount equivalent to such percentage as may be prescribed of the total sum of moneys recovered or preserved for the aided person in the proceedings whether on his own behalf or on behalf of another.

Contributions by successful aided persons

(2) All contributions paid to the Public Solicitor under subsection (1) shall be paid by the Public Solicitor into the Consolidated Fund.

(3) No contribution shall be payable under subsection (1), unless the total sum of

moneys recovered or preserved for the aided person in the proceedings exceed such sum as may be prescribed.

(4) No contribution payable under subsection (1) shall exceed half of the total sum recovered or preserved for the aided person in the proceedings.

(5) The Public Solicitor may by notice in writing to the aided person waive, either in whole or in part, his rights to a contribution under subsection (1) where he is satisfied that it would cause serious hardship to the aided person if such rights are enforced and in all the circumstances it is just and equitable not to enforce the rights.

(6) For the purposes of this section, proceedings shall be deemed to be successful where sums of moneys are recovered or preserved for the aided person either under a court order or under a compromise arrived at to avoid or bring to an end the proceedings.

11. The Minister may make regulations-

Regulations

(a) prescribing any matter which, by this Act, is or may be required to be prescribed;

(b) in the case where a person seeks legal aid in a matter of urgency, making provision necessary to meet the special circumstances;

(c) making provision as to the manner in which the rate of a person's disposable income is to be computed for the purposes of this Act;

(d) prescribing any forms to be used under this Act; and

(e) generally for the better carrying out of all or any of the provisions of this Act.

CHAPTER 30

PUBLIC SOLICITOR

Subsidiary Legislation

(Section 4(b))

[23rd March 1989]

1. This Order may be cited as the Legal Aid (Income Limit) Order.

2. Legal aid in Solomon Islands shall be available only to persons whose net income per year does not exceed \$12,000.00

THE LEGAL AID (APPLICATION FORM) REGULATIONS

LN. 31/1989

(Section 11)

[23rd March 1989]

1. These Regulations may be cited as the Legal Aid (Application Form) Regulations.

2. An application for legal aid pursuant to section 5(1) of the Public Solicitor Act shall be made in the form set out in the Schedule.

ACKNOWLEDGMENT OF GENERAL CONDITIONS OF ASSISTANCE

1. I understand that:-

- (a) If legal assistance is granted, it is subject to conditions of the Public Solicitor, and any other conditions of which my Solicitor may be advised.
- (b) I shall immediately inform the Public Solicitor of any change in my financial or other circumstances and I understand that as a result of any change the Public Solicitor may vary the conditions of my assistance.
- (c) If I do not comply with any of the conditions of my grant of assistance, the Public Solicitor may withdraw legal assistance.
- (d) I may be required to pay an initial contribution towards my legal costs as determined by the Public Solicitor and subject to the recovery of money or property I may be required to pay a further contribution towards my legal costs and/or to refund all or part of the costs and outlays incurred on my behalf.
- (e) If a Court orders me to pay the costs of any other party, I may be responsible for those costs.
- (f) If I do not accept the advice of my Solicitor engaged to act for me, the Public Solicitor may cancel the grant of legal assistance.
- (g) It is my responsibility to pay any legal costs I have incurred up to the date my legal assistance starts.
- (h) If I wish to change my Solicitor, I must first obtain permission to do so from the Public Solicitor. If permission is granted, I may be required to pay any costs associated with the change of Solicitor.

2. I irrevocably authorise any Solicitor appointed to act for me to:-

- (a) receive and hold in the Solicitor's Trust Account all moneys which become payable to me as a result of the work done on my behalf;
- (b) hold all such moneys in the Solicitor's Trust Account until a decision has been made concerning what contribution I will be required to pay towards my legal costs;
- (c) deduct from such moneys and to pay to the Public Solicitor the amount of contribution so determined.

3. I consent to any lawyer acting for me or who has acted for me in the past giving to the Public Solicitor any information relevant to the grant of legal assistance.

4. I declare that the statements in this form are true and correct.
5. I declare that I have read and understand the above conditions.

Signature: (Applicant for legal aid)

Date

PUBLIC SOLICITOR'S CERTIFICATE

I certify that I am of the opinion that the Applicant has reasonable grounds to be granted legal aid for the purpose of investigating/ instituting/defending/becoming a party to the above proceedings. (cross out whichever is inapplicable).

I undertake to hold in my Trust Account all moneys received as a result of any Order(s), settlement or compromises made in the proceedings for which legal assistance has been sought and not to disperse such moneys except to the Applicant and on the manner allowed by section 10 of the Public Solicitor Act.

Public Solicitor Date

(Signature)