

1988 BILL 249

Third Session, 21st Legislature, 37 Elizabeth II

THE LEGISLATIVE ASSEMBLY OF ALBERTA

BILL 249

LEGAL AID ACT

MR. TAYLOR

First Reading

Second Reading

Committee of the Whole

Third Reading

Royal Assent

Bill 249
Mr. Taylor

BILL 249

1988

LEGAL AID ACT

(Assented to , 1988)

HER MAJESTY, by and with the advice and consent of the
Legislative Assembly of Alberta, enacts as follows:

Definitions

1 In this Act,

- (a) "assessment officer" means an officer of the Ministry Social Services who is designated by the Minister of Social Services as an assessment officer for the purposes of this Act;
- (b) "barrister and solicitor" means a member of the Law Society other than an honorary member or a student-at-law thereof;
- (c) "certificate" means a legal aid certificate or a provisional legal aid certificate issued under this Act;
- (d) "Director" means the Director of Legal Aid appointed under this Act;
- (e) "Fund" means the Legal Aid Fund under this Act;
- (f) "Law Society" means the Law Society of Alberta;
- (g) "legal aid" means professional services provided under this Act and the regulations;
- (h) "person" means an individual;

- (i) "regulations" means the regulations made under this Act;
- (j) "student" means a student-at-law or a person enrolled in any law course approved by the Law Society;
- (k) "student legal aid society" means a student legal aid society established in accordance with the regulations;
- (l) "Treasurer" means the Treasurer of the Law Society.

Operation of plan

2 Subject to the approval of the Attorney General, the Law Society is hereby empowered to establish and administer a legal aid plan in accordance with this Act and the regulations.

Appointment of Director and staff

3(1) Subject to the approval of the Attorney General, the Law Society shall,

- (a) appoint a Director of Legal Aid;
- (b) employ such other persons as it considers necessary for the operation of a legal aid plan.

(2) The Law Society shall provide such office accommodation, furniture, equipment and supplies as it considers necessary.

Legal aid committees

4(1) The Law Society may appoint one or more legal aid committees.

(2) The committee shall be composed of such number of members, shall be organized, and shall perform such functions, as the regulations prescribe.

Legal Aid Fund, payments in

5(1) The Law Society shall,

- (a) establish and maintain a fund to be known as the Legal Aid Fund into which shall be paid all moneys appropriated by the Legislature for the Fund, all moneys payable by the Law Foundation of Alberta, all costs awarded to recipients of legal aid, and all contributions may by recipients of legal aid who are required to pay any part of its costs, and
- (b) keep such accounts and records of transactions of the Fund as the regulations prescribe.

(2) The Law Society shall, subject to the regulations, pay out of the Fund,

- (a) its expenses attributable to the administration of this Act and the regulations,
- (b) the fees and proper out-of-pocket disbursements of barristers and solicitors for legal aid,
- (c) any refund authorized by this Act of any contribution to the Fund,
- (d) the fees and proper out-of-pocket disbursements of duty counsel, and
- (e) audit fees.

Estimates

6 The Law Society shall, at least once in every fiscal year at such time as the Attorney General directs, submit to him an estimate of the sum required to meet the payments out of the Fund during the next succeeding fiscal year after making allowance for the moneys that are estimated will be received from other sources.

Moneys

7 The moneys required for the purposes of this Act shall be paid out of moneys appropriated by the Legislature for the purpose.

Auditor

8 The Auditor General shall examine and report upon the accounts and financial transactions of the Fund.

Advisory
committee

9(1) There shall be an advisory committee on legal aid composed of,

- (a) a judge of the Court of Queen's Bench,
- (b) a judge of the Provincial Court,
- (c) 2 members of the Law Society of Alberta,
- (d) a person holding a responsible position in the field of public welfare, and
- (e) such other persons,

as the Attorney General may appoint.

(2) Each member of the committee may be appointed to serve for a term of 1, 2 or 3 years and may be reappointed on the expiry of the period for which he was appointed.

(3) The committee shall report at least once in every year to the Attorney General,

(a) on the operation of the legal aid plan, and

(b) on the annual report of the Law Society to the Attorney General mentioned in section 10.

Annual report

10 The Law Society shall make a report annually to the Attorney for the 12 months ending on the 31st day of March of the year in which the report is made containing,

(a) a statement of the nature and amount of legal aid given during the year,

(b) a statement of the receipts and disbursements of the Fund during the year,

(c) a copy of the auditor's report for the year,

(d) general information as to the working of this Act and the regulations, and

(e) such other information at the Attorney General requests.

Idem

11 The Attorney General shall submit the reports mentioned in sections 9 and 10 to the Lieutenant Governor in Council and shall then lay such reports before the Assembly if it is in session or, if not, at the next ensuing session.

Where legal aid may be given

12(1) Except as otherwise provided in this Act or the regulations, a certificate shall be issued to a person otherwise entitled thereto in respect of any proceeding or proposed proceeding,

(a) in the Court of Queen's Bench,

(b) in the Provincial Court,

(c) in The Surrogate Court,

- (d) where the applicant is charged with an indictable offence or where an application is made for a sentence of preventive detention under Part XXI of the *Criminal Code* (Canada),
- (e) under the *Extradition Act* (Canada) or the *Fugitive Offenders Act* (Canada), and
- (f) in the Federal Court of Canada,

and, with the approval of the Director, to be at his sole discretion, in respect of an appeal therefrom.

(2) For the purpose of subsection (1)(d), an offence that may be tried on indictment or on summary conviction shall be deemed to be an offence triable on summary conviction until such time as the prosecution elects to proceed on indictment.

Certificate,
subject to
discretion of
Director

13 Subject to the discretion of the Director, a certificate may be issued to a person otherwise entitled thereto,

- (a) in any summary conviction proceeding under an Act of the Parliament of Canada,
- (b) in any proceeding under the *Summary Convictions Act*, if upon conviction there is likelihood of imprisonment or loss of means of earning a livelihood,
- (c) in any proceeding,
 - (i) in the Family Division of the Provincial Court,
 - (ii) in the Small Claims Division of the Provincial Court,
 - (iii) before a quasi-judicial or administrative board or commission otherwise than in an appeal thereto,
 - (iv) in bankruptcy subsequent to a receiving order or an authorized assignment, or
 - (v) for contempt of court, or

(d) for drawing documents, negotiating settlements or giving legal advice wherever the subject matter or nature thereof is properly or customarily within the scope of the professional duties of a barrister and solicitor.

Where legal aid
not to be given

14 A certificate shall not be issued to a person,

(a) in proceedings wholly or partly in respect of defamation or loss of service of a female in consequence of rape,

(b) in relator actions,

(c) in proceedings for the recovery of a penalty where the proceedings may be taken by any person and the penalty in whole or in part may be payable to the person instituting the proceedings, or

(d) in proceedings relating to an election.

Applications

15 Every application for legal aid shall be made in the prescribed form addressed to the Director.

Recovery of
contributions

16(1) The sum that a person is able to contribute towards the cost of legal aid given to him as set out in his certificate shall be paid by him and is a debt owing to the Law Society and may be recovered in any court of competent jurisdiction.

(2) Where a person who has been given legal aid in any matter recovers any sum in respect of such matter under the judgment, order, settlement or otherwise, the costs payable under this Act and the regulations are a charge against the sum so recovered and shall be deducted therefrom and paid into the Fund.

(3) Where a person who has been given legal aid in any matter recovers property other than money, the Law Society has a charge against the property so recovered for the costs payable under this Act and the regulations and may enforce such charge.

(4) A person who has been given legal aid in any matter shall be refunded any money received or recovered by the Fund for costs in excess of such costs.

Delivery of
certificate of lien
to sheriff

17 Where a person who owns or has any interest in any land in Alberta has agreed to contribute towards the cost of legal aid given to him as set out in his certificate, the Director may cause a lien to be filed on the land in respect of the outstanding amount of the cost.

Costs

18 The costs awarded in any order heretofore or hereafter made in favour of a person to whom legal aid has been given are recoverable in the same manner and to the same extent as though awarded to a person to whom legal aid has not been given notwithstanding that no amount has been paid or is or will be payable for costs by such legally-aided person in whose favour the order is made or that costs so ordered are in excess of the total amount paid or payable for costs by such legally-aided person pursuant to any such order are the property of the Law Society and shall be paid into the Fund.

No legal aid
without
certificate

19 Except as to the professional services provided by duty counsel, no person is entitled to legal aid in any matter unless he holds a certificate or a provisional certificate respecting such matter that has been issued to him in accordance with this Act and the regulations.

Legal panels

20(1) There may be established in accordance with the regulations,

- (a) panels of barristers and solicitors who agree to give legal aid,
- (b) panels of barristers and solicitors who agree to provide professional services as duty counsel,
- (c) panels of barristers and solicitors who agree to give legal advice, and
- (d) student legal aid societies.

(2) A barrister and solicitor who agrees to be included in a panel under subsection (1) may specify the areas of law in which the services will be offered.

(3) The Director shall provide a person who applies and to whom a certificate has been issued, with a list of names of 6 or more barristers and solicitors who are included in a panel and who have specified the area of law involved.

(4) The person seeking legal aid may elect which of the barristers and solicitors on the list to retain.

Payment for
professional
services

21 Every barrister and solicitor who provides professional services under this Act shall be paid out of the Fund an amount equal to 3/4 of the fees for services rendered as determined by the regulations and an amount equal to his proper out-of-pocket disbursements in the matter in which legal aid was given.

Authorized
payments only

22(1) Except in accordance with this Act and the regulations, no barrister and solicitor or student shall take or receive any payment or other benefit in respect of any professional services provided by him under this Act or the regulations.

(2) Notwithstanding the *Legislative Assembly Act*, the receipt of fees by a member of the Assembly for providing professional services under this Act does not affect his eligibility as a member of the Assembly or his right to sit or vote therein.

Law Society not
liable

23 The Law Society is not liable for any act or omission of any barrister and solicitor who provides professional services under this Act or the regulations.

Privileged
communications

24 All communications between the Director or those employed by him for the administration of this Act, and an applicant for or a recipient of legal aid, on the other hand, are privileged for the purposes of the rules of evidence in the same manner and to the same extent as solicitor-client communications.

Regulations

25(1) Subject to the approval of the Lieutenant Governor in Council, the Law Society may make regulations respecting the establishment and administration of a legal aid plan and, without limiting the generality of the foregoing, may make regulations,

(a) prescribing the functions of the Director and other persons employed for the purposes of this Act;

(b) prescribing the accounts and records that shall be kept of the transactions of the Fund;

(c) respecting the payment out of the Fund of the expenses of the Law Society attributable to the administration of this Act and the regulations;

- (d) respecting the participation of students in legal aid;
 - (e) respecting applications for legal aid;
 - (f) respecting entitlement to legal aid;
 - (g) respecting certificates and provisional certificates;
 - (h) respecting the fees to be paid to barristers and solicitors for professional services under this Act or the regulations;
 - (i) providing for the settlement of accounts for professional services under this Act;
 - (j) prescribing oaths of office and secrecy and requiring persons, or any class thereof, engaged in the administration of this Act to take and subscribe such oaths or either of them;
 - (k) respecting the non-disclosure of information furnished by or about an applicant for or recipient of legal aid;
 - (l) providing for the settlement, recovery and payment into the Fund of costs and other moneys due to the Fund;
 - (m) providing for the payment out of the Fund of costs awarded against a person to whom legal aid has been given;
 - (n) prescribing forms and providing for their use.
- (2) A regulation may be limited in its scope and may be retroactive in its operation.