

[AS REPORTED FROM THE STATUTES REVISION COMMITTEE]

House of Representatives, 27 August 1969.

Words struck out by the Committee are shown in italics within bold round brackets, or with black rule at beginning and after last line; words inserted are shown in roman underlined with a double rule, or with double rule before first line and after last line.

Right Hon. Mr Marshall

LEGAL AID

ANALYSIS

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No. 13—2

Price 20c

A BILL INTITULED

An Act to make legal aid more readily available for persons of small or moderate means

BE IT ENACTED by the General Assembly of New Zealand in Parliament assembled, and by the authority of the same, as follows: 5

1. Short Title and commencement—(1) This Act may be cited as the Legal Aid Act 1969.

(2) This Act shall come into force on the first day of April, nineteen hundred and seventy. 10

2. Interpretation—In this Act, unless the context otherwise requires,—

“Disposable capital”, in relation to any person, means that person’s disposable capital as assessed under section 19 of this Act: 15

“Disposable income”, in relation to any person, means that person’s disposable income as assessed under section 19 of this Act:

“District Legal Aid Committee” or “District Committee” or “Committee” means a District Legal Aid Committee constituted under section 9 of this Act: 20

“Home”, in relation to any person, means the dwelling that is his principal place of permanent residence:

“Legal aid” means legal aid under this Act:

“Legal Aid Appeal Authority” or “Appeal Authority” or “Authority” means the Legal Aid Appeal Authority constituted under section 6 of this Act: 25

“Legal Aid Board” means the Legal Aid Board constituted under section 4 of this Act:

“Legal aid district” means a legal aid district constituted by or under section 8 of this Act: 30

“Legal aid scheme” means the scheme provided by this Act for the grant of legal aid in any of the proceedings in connection with which it may be granted in accordance with subsection (1) of section 15 of this Act: 35

“Minister” means the Minister of Justice:

“Person” does not include a body of persons corporate or unincorporate so as to authorise legal aid to be given to such a body. 40

3. Act to bind Crown—This Act shall bind the Crown.

Cf. Legal Aid and Advice Act 1949, s. 25 (U.K.)

Legal Aid Board, Appeal Authority, and District Committees

4. Constitution of Legal Aid Board—(1) There shall be
5 a Board to be known as the Legal Aid Board.

(2) The Board shall consist of:

(a) One person who is engaged in practice as a barrister
or solicitor on his own account to be appointed as
Chairman by the Minister after consultation with
10 the Council of the New Zealand Law Society:

(b) The Secretary to the Treasury:

(c) The Secretary for Justice:

(d) The Chairman of the Social Security Commission:

(e) Two other members (each being a barrister or solicitor)
15 to be appointed by the Minister on the nomination
of the Council of the New Zealand Law Society.

(3) In order to provide for the event of the absence from
any meeting of the Legal Aid Board of the Chairman or any
other member of that Board,—

20 (a) In the case of the Chairman or any other appointed
member of that Board, some person who is eligible
to be appointed as the Chairman or member may be
so appointed as his deputy:

25 (b) In any other case, the member may appoint an officer
of his Department as his deputy.

(4) Any such deputy may attend any such meeting in
the place of the Chairman or member of the Board whose
deputy he is; and, while so attending, shall be deemed to be
the Chairman or a member of the Board, as the case may be.

30 The fact that any person so attends shall be sufficient evidence
of his authority to do so.

(5) At any meeting of the Board a quorum shall consist
of three members of the Board, and no business shall be
transacted unless a quorum is present.

35 (6) The appointed members of the Board (including those
appointed to fill casual vacancies) shall hold office for a
term of three years, and may from time to time be reappointed.

5. Functions of Board—(1) The principal functions of
the Board shall be—

40 (a) To administer the legal aid scheme:

(b) To supervise and coordinate the work of District Legal
Aid Committees:

- (c) To ensure that the operation of the legal aid scheme is as inexpensive, expeditious, and efficient as is consistent with the spirit of this Act:
 - (d) To make such recommendations as it thinks fit to the Minister on any matter touching on or relating to legal aid, and for the amendment of this Act and any regulations made thereunder: 5
 - (e) To exercise such other functions as are conferred on the Board by this Act or any other enactment.
- (2) For the purposes of carrying out its functions the Board may from time to time issue instructions to District Legal Aid Committees concerning— 10
- (a) The general administration of the legal aid scheme:
 - (b) The policy to be followed by District Legal Aid Committees in carrying out their functions: 15
- Provided that the Board shall not issue any instructions in respect of an individual application.
- (3) Every District Legal Aid Committee shall observe every such instruction until it is revoked by the Board.

6. Constitution of Legal Aid Appeal Authority—(1) There shall be an Authority to be known as the Legal Aid Appeal Authority. 20

(2) The Legal Aid Appeal Authority shall consist of seven members to be appointed by the Governor-General, each member being a barrister or solicitor of not less than seven years' practice of the Supreme Court, whether or not he holds or has held any judicial office. 25

(3) The Governor-General may from time to time appoint a member of the Legal Aid Appeal Authority to be the Chairman of that Authority. Any Chairman so appointed shall hold that office for the period or the remainder of the period during which he remains a member of the Authority by virtue of the appointment under which he became qualified for appointment as Chairman of the Authority. Any member of the Authority may from time to time be reappointed as Chairman thereof. 30 35

(4) At any meeting of the Authority a quorum shall consist of three members of the Authority, and no business shall be transacted unless a quorum is present.

(5) The members of the Authority who are appointed under (paragraph (b) of) subsection (2) of this section (including those appointed to fill casual vacancies) shall hold office under that paragraph for a term of five years, and may from time to time be reappointed: 40

Provided that the term of office under that paragraph of any such member shall expire upon his becoming a member of the Legal Aid Board.

7. **Proceedings of Appeal Authority**—(1) All proceedings
5 of the Appeal Authority shall be held in private.

(2) On the hearing by the Appeal Authority of any appeal, the appellant may himself appear (*or*) and may be represented by counsel.

(3) In any proceedings under this Act the Appeal Authority
10 may, if it thinks fit, appoint any barrister or solicitor of the Supreme Court to assist the Appeal Authority in the proceedings.

(4) The Appeal Authority shall have full power to hear and receive such further evidence as it thinks fit in any case.

15 (5) On any appeal to the Appeal Authority against the decision of a District Legal Aid Committee—

(a) The Committee may if it thinks fit, and shall if the
20 Authority so directs, file in the office of the Authority a report setting out the considerations to which it had regard in coming to its decision, including any matters relevant to the decision or to the general administration of this Act to which it wishes to draw the attention of the Authority:

(b) The Committee shall make all information in its
25 possession available to the appellant:

(c) The Appeal Authority shall have all the powers of a District Committee:

30 Provided that nothing in this paragraph shall restrict any other powers conferred on that Authority by this Act or any other enactment.

(6) On any appeal to the Appeal Authority, that Authority may receive in evidence any statement, document, information, or matter that may in its opinion assist it to deal effectually with the matter before it, whether or not the same would be
35 admissible in a Court of law.

(7) The Appeal Authority may in any case, instead of determining any appeal, direct the Committee whose decision is appealed against to reconsider, either generally or in respect of any specified matters, the whole or any part of the matter to
40 which the appeal relates.

(8) In giving any direction under subsection (7) of this section the Appeal Authority shall—

(a) Advise the Committee whose decision is appealed against of its reasons for so doing; and

(b) Give to that Committee such directions as it thinks just as to the whole or any part of the matter that is referred back for reconsideration.

(9) In reconsidering the matter so referred back the Committee shall have regard to the Appeal Authority's reasons for giving a direction under subsection (7) of this section and to the Appeal Authority's directions under subsection (8) of this section. 5

(10) In giving its decision on any appeal, the Authority shall state the reasons for the decision unless, in its discretion, it considers this to be unnecessary, and may confirm, modify, or reverse the decision appealed against. 10

(11) Where the appellant is dissatisfied with any decision of the Appeal Authority as being erroneous in point of law, he may appeal to the Supreme Court by way of case stated for the opinion of that Court on a question of law only. 15

(12) The provisions of Part IV of the Summary Proceedings Act 1957, so far as they relate to appeals by way of case stated on questions of law only, shall apply, so far as they are applicable, to every appeal under this section. In the application of those provisions, they shall be read as if— 20

(a) References to the Magistrate's Court or to the Magistrate or Justice or Justices were references to the Appeal Authority:

(b) References to the Registrar of the Magistrate's Court were references to the Chairman of the Appeal Authority. 25

8. Legal aid districts—(1) The district as it for the time being exists of each District Law Society (except so much thereof as is included in any legal aid district established under subsection (2) of this section) shall be a legal aid district. 30

(2) The Minister may from time to time, by notice in the *Gazette*,—

(a) Declare that any part of the district of any District Law Society shall be a legal aid district: 35

(b) Vary the boundaries of any legal aid district established under this subsection or abolish any such district.

9. District Legal Aid Committees—(1) For each legal aid district there shall be a District Legal Aid Committee. 40

(2) The District Legal Aid Committee for each legal aid district shall consist of:

- (a) Not fewer than five or more than ten members (each being a barrister or solicitor) to be appointed by the Council of the District Law Society whose district comprises or includes the legal aid district:
- 5 (b) A Registrar of the Supreme Court to be appointed by the Secretary for Justice, which Registrar (or a person for the time being nominated by him) shall be the secretary to the Committee:
- 10 (c) An officer of the Social Security Department to be appointed by the Chairman of the Social Security Commission.
- (3) Each District Legal Aid Committee shall from time to time appoint one of its members to be the Chairman of that Committee for such term not exceeding two years as the
- 15 Committee may specify.
- (4) At any meeting of any District Committee a quorum shall consist of three members of the Committee, including at least two appointed under paragraph (a) of subsection (2) of this section; and no business shall be transacted unless a
- 20 quorum is present.
- (5) Every member appointed by the Council of the District Law Society shall hold office at the pleasure of that Council.
- (6) Every member appointed by the Secretary for Justice
- 25 shall hold office at the pleasure of the Secretary for Justice; and every member appointed by the Chairman of the Social Security Commission shall hold office at the pleasure of the Chairman of the Social Security Commission.

10. Proceedings of District Committees—(1) Every

30 District Legal Aid Committee in the exercise of its functions shall act administratively rather than judicially.

(2) Every investigation by any Committee of any application for legal aid shall be conducted in private; and (subject to the provisions of this Act) the members of the Committee

35 and the secretary thereto shall maintain and aid in maintaining the secrecy of all matters coming to their knowledge in connection with any application or investigation.

(3) Every Committee may, in connection with any such application, hear or obtain information from such persons

40 as it thinks fit, and make such inquiries as it thinks fit. It shall not be necessary for the Committee that is considering any application to hold any hearing, and no person shall be entitled as of right to be heard by the Committee or to receive any information from the Committee.

11. Membership of Board, Authority, and Committees—

(1) Notwithstanding anything to the contrary in this Act, every appointed member of the Board or the Appeal Authority or any District Committee, other than a member of a District Committee appointed under paragraph (b) or paragraph (c) of subsection (2) of section 9 of this Act, unless he vacates office under subsection (2) or subsection (3) of this section, shall continue to hold office until his successor is appointed. 5

(2) Any member of the Board who has been appointed as such by the Minister may at any time be removed from office by the Minister for disability, bankruptcy, neglect of duty, or misconduct, or may at any time resign his office by writing addressed to the Minister. 10

(3) Any member of the Appeal Authority may at any time be removed from office by the Governor-General for disability, bankruptcy, neglect of duty, or misconduct, or may at any time resign his office by writing addressed to the Minister. 15

(4) If any appointed member of the Board or the Appeal Authority or any District Committee dies, resigns, or otherwise vacates his office as a member thereof, the vacancy shall be filled in the manner in which the appointment to the vacant office was originally made. 20

(5) No act or proceeding of the Board, or of the Appeal Authority, or of any District Committee, or of any person acting as a member of any of those bodies, shall be invalidated in consequence of there being a vacancy in the number of the body at the time of that act or proceeding or of the subsequent discovery that there was some defect in the appointment of any person so acting, or that he was incapable of being or had ceased to be such a member. 25 30

12. Meetings of Board, Appeal Authority, and District Committees—

(1) At every meeting of the Board, the Appeal Authority, or any District Committee, the Chairman of the body (if he is present) shall preside. If at any meeting of any such body the Chairman thereof is not present or there is no Chairman, the body shall appoint some member present to preside at that meeting; and the person so appointed shall have and may exercise in any such case all the powers and functions of the Chairman for the purposes of the meeting. 35 40

(2) At any such meeting the person presiding at the meeting shall have a deliberative vote, and, in the case of an equality of votes, shall also have a casting vote.

(3) Every question before any such meeting shall be determined by a majority of the votes of the members present and voting thereon.

5 (4) Save as expressly provided in this Act and in any regulations made under this Act, the Board, the Appeal Authority, and every District Committee may each regulate its procedure in such manner as it thinks fit.

13. Fees and travelling allowances—(1) There may be paid to the members of the Board and the members of the
10 Appeal Authority, remuneration by way of fees, salary, or allowances and travelling allowances and expenses in accordance with the Fees and Travelling Allowances Act 1951, and the provisions of that Act shall apply accordingly.

15 (2) There may be paid to the members of every District Committee travelling allowances and expenses in accordance with the Fees and Travelling Allowances Act 1951, and the provisions of that Act shall apply accordingly.

20 (3) For the purposes of subsections (1) and (2) of this section, the Board, the Appeal Authority, and every District Committee is hereby declared to be a statutory Board within the meaning of the Fees and Travelling Allowances Act 1951.

14. Board and Appeal Authority to have powers of Commission of Inquiry—For the purposes of this Act, the Board and the Appeal Authority shall each be deemed to be a
25 Commission of Inquiry under the Commissions of Inquiry Act 1908, and all the provisions of that Act shall apply accordingly.

Provision for Legal Aid

15. Scope of legal aid—(1) Except as provided in sub-
30 sections (2) and (3) of this section, legal aid may be given in accordance with this Act in any of the following proceedings:

(a) All proceedings in any Magistrate's Court other than proceedings in respect of an offence:

35 (b) All proceedings by way of complaint in any Children's Court:

(c) All proceedings in the Compensation Court:

40 (d) All original civil proceedings in the Supreme Court other than proceedings under the Matrimonial Proceedings Act 1963:

- (e) Proceedings that are exclusively for ancillary relief under the Matrimonial Proceedings Act 1963, being applications for interim maintenance and for any relief authorised by Parts VI, VII, and VIII of that Act, and other proceedings under that Act so far as they are in respect of such ancillary relief: 5
- (f) Appeals to the Supreme Court or the Court of Appeal in civil and domestic proceedings other than appeals to the Court of Appeal in proceedings under the Matrimonial Proceedings Act 1963 in respect of which legal aid may not be given in the Supreme Court: 10
- (g) Proceedings in the Maori Land Court, the Maori Appellate Court, or any administrative tribunal or judicial authority, in any case where the District Committee considering the application is of the opinion— 15
- (i) That the case is one that requires legal representation having regard to the nature of the proceedings and to the applicant's personal interest; 20
and
- (ii) That the applicant would suffer substantial hardship if aid were not granted.
- (2) Legal aid may not be given in any of the following proceedings: 25
- (a) Relator actions:
- (b) Election petitions under the Electoral Act 1956:
- (c) Petitions for inquiry under the Local Elections and Polls Act 1966:
- (d) Proceedings for breach of promise of marriage, seduction, or enticement: 30
- (e) Proceedings incidental to any proceedings mentioned in the foregoing paragraphs of this subsection:
- (f) Proceedings under the Matrimonial Proceedings Act 1963, except so far as legal aid may be given in respect of any such proceedings under paragraph (e) or paragraph (f) of subsection (1) of this section. 35
- (3) Separate application shall be made in each case for legal aid in respect of any appeal to which paragraph (f) or paragraph (g) of subsection (1) of this section applies. 40

Cf. Legal Aid and Advice Act 1949, s. 1 (U.K.)

16. **Nature of legal aid**—(1) Legal aid shall consist of representation, on the terms provided for by this Act, by a solicitor and so far as necessary by counsel, including all such assistance as is usually given by a solicitor or counsel in the
5 steps preliminary or incidental to any proceedings or in arriving at or giving effect to a compromise to avoid or bring to an end any proceedings.

(2) Save as expressly provided by this Act or by regulations made thereunder,—

10 (a) The fact that the services of a counsel or a solicitor are given by way of legal aid shall not affect the relationship between, or the rights of, counsel, solicitor, and client, or any privilege arising out of the relationship; and

15 (b) The rights conferred by this Act on a person receiving legal aid shall not affect the rights or liabilities of other parties to the proceedings or the principles on which the discretion of any Court or Tribunal is normally exercised.

20 Cf. Legal Aid and Advice Act 1949, s. 1 (5), (7) (U.K.)

17. **Financial conditions of legal aid**—(1) Subject to the provisions of this Act, legal aid shall be available for any person whose disposable income does not exceed two thousand dollars a year or such greater amount as a District Committee
25 may in any special circumstances approve:

Provided that a person may be refused legal aid if he has a disposable capital of more than two thousand dollars and it appears that he can afford to proceed without legal aid.

30 (2) Where a person receives legal aid in connection with any proceedings—

(a) The expenses incurred in connection with the proceedings, so far as they would ordinarily be paid in the first instance by or on behalf of the solicitor or counsel acting for him, shall be so paid except in
35 the case of those paid direct by the Crown as provided by this Act:

(b) His solicitor and counsel shall not take any payment or any other benefit in respect of that aid except such payment as is directed or authorised by this Act to be
40 made:

(c) In respect of the sums payable by the Crown under this Act on his behalf, he shall be required to make to the Crown a contribution of thirty dollars unless

in the opinion of the District Committee the making of such a contribution would cause him substantial hardship, and he may be required to make to the Crown a further contribution up to the limit specified in section 18 of this Act: 5

(d) Any sums recovered by virtue of an order or agreement for costs made in his favour with respect to the proceedings shall be paid to the Crown:

(e) His liability by virtue of an order for costs made against him with respect to the proceedings shall not exceed the amount (if any) which is a reasonable one for him to pay having regard to all the circumstances, including the means of all the parties and their conduct in connection with the dispute: 10

Provided that, except in exceptional circumstances, the said amount shall not exceed the amount of the contribution which he is required to make to the Crown under paragraph (c) of this subsection: 15

Provided also that any order for costs made against the aided person may specify also the amount which he would have been ordered to pay if this paragraph had not affected his liability; and where no order for costs is made against the aided person because of this paragraph an order may be made specifying what order for costs would have been made against him with respect to the proceedings if this paragraph had not excluded his liability. 20 25

Cf. Legal Aid and Advice Act 1949, s. 2 (U.K.)

18. Contributions from aided person and charge on property recovered—(1) A person's contribution to the Crown under paragraph (c) of subsection (2) of section 17 of this Act in respect of any proceedings may include— 30

(a) A contribution in respect of income not greater than the total of the following amounts: 35

(i) One dollar for each complete two dollars of the first thousand dollars of his disposable income:

(ii) Two dollars for each complete three dollars of his disposable income that is in excess of one thousand dollars but is not in excess of two thousand dollars: 40

(iii) All of his disposable income that is in excess of two thousand dollars:

(b) A contribution in respect of capital not greater than the total of the following amounts:

- 5 (i) Two dollars for each complete three dollars of his disposable capital that is not in excess of two thousand dollars:
- (ii) All of his disposable capital that is in excess of two thousand dollars.

(2) A person may be required to make any contribution to the Crown under this Act in one sum or by instalments.

10 (3) If the total contribution to the Crown under this Act by a person in respect of any proceedings is more than the net liability of the Crown under this Act on his account, the excess shall be repaid to him.

(4) Except so far as regulations made under this Act otherwise provide, any sums remaining unpaid on account of a person's contribution to the Crown under this Act in respect of any proceedings and, if the total contribution is less than the net liability of the Crown under this Act on his account, a sum equal to the amount of the deficiency shall be a charge 20 for the benefit of the Crown on any property (wherever situate) which is recovered or preserved for him in the proceedings, and may be registered against any land to which it relates in accordance with the provisions of the Statutory Land Charges Registration Act 1928.

25 (5) The reference in subsection (4) of this section to property recovered or preserved for any person shall include his rights under any compromise arrived at to avoid or bring to an end the proceedings and any sums recovered by virtue of an order for costs made in his favour in the proceedings 30 (not being sums payable to the Crown under section 17 of this Act).

(6) The charge created by subsection (4) of this section on any damages or costs shall not prevent a Court from allowing them to be set off against other damages or costs 35 in any case where a solicitor's lien for costs would not prevent it.

(7) References in this section to the net liability of the Crown under this Act on any person's account in relation to any proceedings refer to the aggregate amount of the sums 40 paid or payable by the Crown under this Act, on his account in respect of those proceedings, to any solicitor or counsel and not recouped to the Crown by sums which are recovered by virtue of an order or agreement for costs made in his favour with respect to those proceedings.

45 Cf. Legal Aid and Advice Act 1949, s. 3 (U.K.)

19. Assessment of disposable income and capital and of maximum contributions—(1) References in this Act to a person's disposable income shall be taken as referring to his total income during the twelve months immediately preceding the application for legal aid, or during such other prior period of twelve months as the Social Security Commission may in the circumstances consider appropriate, after deducting the amount mentioned in subsection (2) of this section. 5

(2) The amounts to be so deducted shall be:

(a) The amount of the income tax on that income: 10

(b) The amount of the following outgoings (where payable) in respect of the person's home, namely, rent, rates, insurance premiums, regular mortgage payments, including regular repayments of principal (whether under a table mortgage or otherwise) where the regular repayments are required by the terms of the mortgage, and premiums on any policy of life insurance that has been assigned as collateral security in respect of a mortgage of the home where payment of the premiums is required in terms of the mortgage: 15 20

Provided that, if in the opinion of the Committee the amount paid by the applicant in respect of those outgoings is unduly large having regard to the applicant's total income and resources, the Committee may direct that only such part of those outgoings as it thinks fit shall be so deducted, and the amount of the applicant's disposable income shall be varied accordingly: 25

(c) The amount (where payable) of insurance premiums in respect of the person's motor vehicle to which paragraph (b) of subsection (3) of this section applies and the contents of his home: 30

(d) So much of the person's income as represents a family benefit payable to the person under the Social Security Act 1964: 35

(e) Five hundred and twenty dollars in respect of the person's maintenance and expenses:

Struck Out

(f) A further three hundred and twelve dollars in respect of the wife or husband of the person, if the wife or husband is supported by the person: 40

New

- (f) A further amount where appropriate in respect of the support of the wife or husband of the person, being—
- 5 (i) Three hundred and twelve dollars if the wife or husband is wholly or substantially supported by the person; or
- (ii) Such lesser amount (if any) as the Committee may direct in any other case where the wife or husband is partly supported by the person:
- 10 (g) A further one hundred and fifty-six dollars for each dependent child or other dependent relative of the person (not being the person's wife or husband):
- 15 (h) Such additional amount as may be reasonable by reason of the cost of living in the locality of the person's home being greater than normal.
- (3) References in this Act to a person's disposable capital shall be taken as referring to his total assets after deducting the amount of any debts secured against those assets and
- 20 after deducting,—
- (a) Where the person has any interest in a home, the amount of the value of that interest or the sum of eight thousand dollars whichever is the lesser amount:
- 25 (b) Where the person has any interest in a motor vehicle, such amount (not exceeding one thousand dollars) in respect of that interest as the District Committee thinks reasonable:
- (c) Such amount (not exceeding one thousand five hundred
- 30 dollars) in respect of the person's household furniture, household appliances, personal clothing, and tools of trade, as the District Committee thinks reasonable:
- (d) The amount of his contingent liabilities which may
- 35 mature within the next six months:
- (e) The amount of the actual debts of the applicant, other than those that are secured and have been taken into account in determining the amount of his capital:
- 40 (f) The sum of five hundred dollars if—
- (i) The person has a dependent child or a dependent wife or husband or any other dependent relative; or

(ii) In accordance with subsection (6) or subsection (7) of this section, any resources of the person's wife or husband are treated for the purposes of this section as that person's resources.

(4) Regulations made under this Act may make provision **5**
for determining whether any resources are to be treated as income or capital and for taking into account fluctuations of income and for determining the value of any property.

(5) For the purposes of this section the resources of a person seeking or receiving legal aid shall be treated as not **10**
including the subject matter of the dispute.

(6) Except as otherwise provided in any regulations made under this Act, any resources of a person's wife or husband shall be treated for the purposes of this section as that person's **15**
resources if they are living together unless they have contrary interests in the dispute to which the proceedings relate.

(7) Any resources of the parents of a minor who is under sixteen years of age shall be treated for the purposes of this section as that minor's resources unless the minor and either of his parents have contrary interests in the dispute to which **20**
the proceedings relate.

(8) Regulations made under this Act may make provision—

(a) For taking into account any benefit to which an applicant for legal aid is or may become entitled in connection with any property that is held upon trust: **25**

(b) In relation to minors and other special cases, and subject to subsection (7) of this section, for taking into account the resources of other persons.

(9) Subject to the provisions of this section, a person's disposable income and disposable capital shall be assessed by **30**
the Social Security Commission, which shall furnish a report thereon to the District Committee. The report may state such facts and contain such information and such comments as may in the opinion of the Commission assist the Committee in deciding what contribution (if any) should be made by **35**
the person and the manner in which any contributions should be made. In particular the report may call attention to any circumstances which may affect the amount of any deductions to be allowed under paragraph (b) of subsection (2) and subsection (3) of this section, and to any likely fluctua- **40**
tions of the applicant's income or capital. The Commission shall also bring to the notice of the committee any case where the person has disposed of any property for no

consideration or for a grossly inadequate consideration during any period during which he has asserted or disputed the action in respect of which he has applied for legal aid; and where any such disposition has been made the committee may
5 if it thinks fit treat any property so disposed of as disposable capital for the purposes of this section.

(10) Nothing in subsection (9) of this section shall restrict the right of any applicant who has a right of appeal under
10 section 27 of this Act against a decision of a District Committee in respect of his application from challenging any matter in the report of the Social Security Commission which may have affected the decision of the District Committee.

Cf. Legal Aid and Advice Act 1949, s. 4 (U.K.)

15

Applications for Legal Aid

20. Applications for legal aid—Every application for legal aid shall be made in the prescribed manner to the secretary to the District Committee for the legal aid district in which the applicant is resident, and shall be dealt with by that
20 secretary and District Committee in the prescribed manner.

21. Opinion of counsel or an expert—(1) Where any person has applied for legal aid and the District Committee that is considering the application is in doubt as to the merits of the applicant's case, it may defer consideration of the applica-
25 tion and authorise the grant of a sum by way of interim aid in order to obtain the opinion of counsel or of an expert thereon.

(2) The District Committee may, if it thinks fit, direct that the applicant shall not be required to make any contri-
30 bution in respect of the cost of that opinion, or that the contribution of the applicant in respect of the cost of that opinion shall be less than that which he would normally be required to make.

(3) Upon the District Committee receiving any opinion
35 of counsel or any expert that has been sought in accordance with this section, the Committee shall proceed to consider the application to which that opinion relates in the light thereof.

22. Decisions of District Committees—(1) After the District Committee has given due consideration to an
40 application for legal aid, it shall decide—

(a) Whether to grant or refuse aid to the applicant; and

(b) Where aid is granted, the amount of the contribution (if any) that must be paid by the applicant to the Crown.

(2) Where the District Committee grants legal aid to any applicant in respect of any proceedings, the Committee may fix the maximum sum that shall be paid by the Crown for legal aid in respect of the proceedings or of any stage of the proceedings; and, except with the approval of the Committee, the Crown shall not be liable to make any payment in respect of that aid in excess of the amounts so fixed. In any such case nothing in this subsection or in paragraph (b) of subsection (2) of section 17 of this Act shall prevent the solicitor or counsel for the applicant, with the approval of the District Committee, from taking any additional payment from the applicant in respect of that aid.

23. Circumstances in which grant of legal aid may be refused—(1) A person shall not be given legal aid in connection with any proceedings, unless he shows that he has reasonable grounds for taking or defending the proceedings or being a party thereto.

(2) An applicant may be refused a grant of legal aid under this Act in any of the following circumstances:

- (a) If the grant of legal aid in respect of the proceedings is not authorised by or under section 15 of this Act:
- (b) If the applicant is not eligible for aid by reason of the amount of his disposable income; or if he has a disposable capital of more than two thousand dollars and it appears to the District Committee that he can afford to proceed without legal aid:
- (c) If by reason of any default or failure by the applicant the District Committee is unable to obtain full information concerning his financial affairs:
- (d) If in the opinion of the District Committee the amount of the contribution which the applicant should be required to make is greater than the likely cost of the proceedings in respect of which the aid is sought:
- (e) If, in the case of original proceedings,—
 - (i) The applicant's prospects of success are not sufficient to justify the grant of aid; or
 - (ii) Having regard to the nature of the proceedings and the applicant's interest in them (financially or otherwise), in relation to the likely cost of the proceedings the grant of aid is not justified; or

(iii) For any other cause it appears unreasonable or undesirable that he should receive it in the particular circumstances of the case:

5 (f) If, in the case of any appeal (whether or not in respect of proceedings in which the applicant has received aid), the District Committee is of the opinion that for any reason the grant of aid or of further aid is not justified.

10 (3) In any case where a grant of legal aid is refused under paragraph (d) of subsection (2) of this section, the applicant may apply to the District Committee to review its decision if the cost of the proceedings in respect of which the aid was sought is greater than the amount of the contribution which the applicant should be required to make.

15 **24. Withdrawal of legal aid—**(1) Where legal aid has been granted to any person in respect of any proceedings, it may be withdrawn by the District Committee—

- (a) At any time at the request of the person to whom it was granted; or
- 20 (b) If the Committee is satisfied that the proceedings in respect of which the aid was granted have been disposed of; or
- (c) If the aided person has died, or has been adjudged bankrupt; or
- 25 (d) Where the aided person has been required to make a contribution, if any payment in respect thereof is more than twenty-one days in arrear; or
- (e) If the Committee is satisfied that the aided person has required the proceedings to be conducted unreasonably so as to incur an unjustifiable expense to the Crown or has required unreasonably that the proceedings be continued; or
- 30 (f) If it appears to the Committee that (whether by reason of a change in the financial circumstances of the aided person or otherwise) the disposable income or the disposable capital of the aided person exceeds the maximum amount up to which legal aid may be made available to the person, or would increase his contribution to an amount greater than
- 35 that of the aid granted; or
- 40

- (g) If, as a result of any information coming to the knowledge of the Committee, it considers that the aided person no longer has reasonable grounds for taking, defending, or being a party to the proceedings, or that it is unreasonable or undesirable in the particular circumstances for him to continue to receive legal aid; or 5
- (h) If the Committee is satisfied that the aided person has, in relation to his application for aid, wilfully or negligently made an untrue statement as to his resources, or has failed to disclose any material fact concerning them, whether the statement was made or the failure occurred before or after the aid was granted; or 10
- (i) If the Committee is satisfied that the aided person has, in relation to his application for aid, wilfully contravened or failed to comply in any respect with this Act or any regulations made under this Act. 15
- (2) For the purposes of paragraph (g) of subsection (1) of this section, any person may disclose to the District Committee communications relating to the proceedings sent to or by the aided person's solicitor or counsel, whether or not the communications are marked as being without prejudice; and, where the Committee has considered the withdrawal of aid in consequence of information brought to its knowledge by any person, it may (if it thinks fit) inform that person whether or not aid has been withdrawn. 20 25
- (3) Where during the hearing of any proceedings to which an aided person is a party the Court is of the opinion that the aided person has wilfully failed to comply in any respect with this Act or with any regulations made under this Act, it may report the matter to the District Committee. 30
- (4) Aid shall not be withdrawn under any of the provisions of paragraphs (d) to (i) of subsection (1) of this section until notice of the intention to do so has been served on the aided person and he has been given a reasonable opportunity of showing cause why it should not be withdrawn. 35
- (5) In any case where a District Committee decides to withdraw legal aid, it shall forthwith advise the solicitor to the aided person, and shall also advise the aided person unless he has died or his whereabouts is unknown. Upon the solicitor to any aided person being advised of any decision to withdraw legal aid from that person, the solicitor shall forthwith inform any counsel instructed by him in the proceedings. 40

(6) Where any District Committee decides to withdraw legal aid from any person under any of the provisions of paragraphs (d) to (i) of subsection (1) of this section, the person may appeal to the Appeal Authority against the decision at any time before the expiration of twenty-eight days after the date on which he is advised thereof.

(7) Upon receipt by the solicitor or counsel acting on behalf of any aided person of advice of the decision of the District Committee to withdraw legal aid from that person in respect of any proceedings, the retainer of that solicitor or counsel on behalf of that person in respect of the proceedings shall forthwith determine; and, upon that retainer so determining,—

(a) The costs of the proceedings incurred by or on behalf of that person shall as soon as practicable thereafter be ascertained; and

(b) The Crown shall remain liable, subject to section 32 of this Act, in respect of those costs.

(8) Where legal aid is withdrawn under this section from any person in respect of any proceedings, those provisions of section 18 of this Act which provide for a charge upon property recovered or preserved for an aided person shall apply to any property recovered or preserved as a result of any steps to take, defend, or be a party to the proceedings which may be taken after the withdrawal of legal aid by the previously aided person or his personal representatives or by the Official Assignee of his property.

(9) Where legal aid is withdrawn under this section, the Crown shall have the right to recover from the aided person costs paid or payable by the Crown under this Act on his behalf, less any amount received from him by way of contribution; and the solicitor who has acted for him shall have the right to recover from the aided person the difference between the amount paid or payable by the Crown under this Act and the full amount of his solicitor and client costs.

(10) Where legal aid is withdrawn under this section the aided person shall remain liable for the payment of his maximum contribution or such lesser amount thereof as may be required to meet his liability under subsection (9) of this section, and where he continues to assert or dispute the action for which aid was granted those provisions of this Act which relate to sums recovered by virtue of an order for costs made in favour of an assisted person shall apply in so far as the costs

were incurred while he was an aided person, and those provisions of this Act which relate to an aided person's liability by virtue of an order for costs made against him shall apply in so far as the costs were incurred while he was an aided person.

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25. Applicant to be advised of Committee's decision—Upon any District Committee deciding to grant or refuse legal aid or any payment under section 33 of this Act in respect of costs to any person, or to withdraw legal aid from any person, it shall cause that person to be advised in writing—

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(a) Of the decision:

(b) In the case of a grant of legal aid, of the amount of the contribution which that person is required to make to the Crown in respect of that aid:

(c) In a case where legal aid is granted and the maximum sum that shall be paid by the Crown by way of aid in respect of the proceedings or any stage of the proceedings is fixed, of that maximum sum:

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(d) In the case of the refusal of legal aid, of the general ground of refusal:

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(e) In the case of the refusal of legal aid or of any payment in respect of costs, or where the person is required to make to the Crown a contribution in excess of thirty dollars in respect of the sums payable by the Crown under this Act on his behalf, of his right to appeal.

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26. Secretary for Justice to be notified—Where legal aid, or any payment under section 33 of this Act in respect of costs, is granted to any person, either by a District Committee or by the Appeal Authority, the body granting the aid or payment shall forthwith advise the Secretary for Justice in writing of the grant, and of any maximum fixed in respect thereof, and of the amount of the contribution (if any) that the aided person is required to make, and of such other particulars as may be prescribed by regulations made under this Act.

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27. Appeals against decisions of District Committee—Any person who is aggrieved by any decision of a District Committee to refuse to grant him legal aid, or any payment in respect of costs, or to require him to make to the Crown a

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contribution in excess of thirty dollars in respect of the sums payable by the Crown under this Act on his behalf, may appeal to the Appeal Authority against that decision at any time within twenty-eight days after the date on which he is notified in writing of that decision in accordance with section 25 of this Act.

Special Types of Application

28. **Minors and persons of unsound mind**—(1) Save as provided in this section, an application for legal aid for a person who is under sixteen years of age, or of unsound mind, shall be made on his behalf by a person of full age and capacity and, where the application relates to proceedings which are required by rules of Court to be brought or defended by a next friend or guardian *ad litem*, that person shall be the next friend or guardian *ad litem*, or, where the application is on behalf of the defendant in any proceedings or relates to proceedings that have not actually begun, a person who (subject to any contrary order of the Court) intends to act in either capacity (*when the proceedings begin*) in the proceedings.

(2) A District Committee shall not grant legal aid that is applied for by any person on behalf of another person who is under sixteen years of age or of unsound mind unless the applicant has signed an undertaking to pay to the Crown (if called upon to do so) any sum by way of contribution which, by virtue of any provision of this Act, an aided person of full age and capacity may be required to pay.

(3) The District Committee may, where the circumstances appear to make it desirable, waive all or any of the requirements of the foregoing provisions of this section.

(4) Where a person who is not of full age is an assisted person, his means for the purpose of determining his liability for costs under paragraph (e) of subsection (2) of section 17 of this Act shall be taken as including the means of any person whose disposable income and disposable capital has, by virtue of subsection (7) of section 19 of this Act or of any regulations made under this Act, been included in compiling the minor's rate of income and amount of capital.

(5) Where an order for costs is made against a next friend or guardian *ad litem* of an aided person who is not of full age or is of unsound mind, he shall have the benefit of paragraph (e) of subsection (2) of section 17 of this Act in like manner as it applies to an aided person, and the means of the next friend or guardian *ad litem* shall be taken as being the means of the person who is not of full age as determined under subsection (4) of this section or of the person of unsound mind, as the case may be. 5

29. Minors over sixteen—A minor who has attained the age of sixteen years may apply for legal aid in his own right; and, notwithstanding any enactment or rule of law, any such minor who is granted legal aid under this Act— 10

- (a) Shall be personally liable for any contribution which the District Committee orders him to make and any costs which the Court orders him to pay: 15
- (b) May, unless the Court otherwise directs, sue or be sued without a guardian *ad litem* or next friend.

30. Applications in a representative, fiduciary, or official capacity—(1) Where a person applies for legal aid in connection with any proceedings in which he is concerned in a representative, fiduciary, or official capacity and it appears to the District Committee that in the circumstances the Court would, if proceedings were brought, order the costs of the proceedings to be paid out of any property, estate, or fund, the Committee shall not grant the application unless it appears that the property, estate, or fund would be diminished or exhausted by that order and that hardship would be caused thereby to any person beneficially interested. 20 25

(2) Where an application is made by a person who is concerned in the proceedings only in a representative, fiduciary, or official capacity, then, for the purposes of determining any contribution to be made to the Crown under this Act, the personal resources of the applicant shall not be taken into account, but the District Committee may, in its discretion, have regard to the value of the property or estate, or the amount of the fund, out of which the applicant is entitled to be indemnified, and to the resources of the persons (if any) who are beneficially interested. 30 35

31. Multiple applications—(1) Where an application for legal aid is made by or on behalf of a person in connection with a cause or matter in which numerous persons have the same interest and, in accordance with rules of Court, one or
5 more persons may sue or be sued, or may be authorised by a Court to defend any such cause or matter on behalf of or for the benefit of all persons so interested, the District Committee shall refuse to grant the application if it is satisfied—

10 (a) That the refusal would not seriously prejudice the right of the applicant; or

(b) That it would be reasonable and proper for the other persons having the same interest in the matter as the applicant to defray so much of the costs as would be payable on behalf of the applicant by the Crown in respect of the proceedings if aid were granted.

15 (2) Where an application for legal aid is made by or on behalf of a person who has the right, in accordance with rules of Court, to be joined in one action as plaintiff with others in whom any right to relief in respect of or arising out of the
20 same transaction or series of transactions is alleged to exist, whether jointly or severally or in the alternative, because (if these persons brought separate actions) a common question of law or fact would arise, the District Committee may grant aid limited to such proceedings as may be necessary to pre-
25 serve the applicant's right to relief.

Miscellaneous Provisions

32. Remuneration of persons giving legal aid—(1) The sums allowed by the District Committee to counsel and a solicitor in connection with any proceedings in respect of
30 which legal aid is granted under this Act shall be—

(a) The full amount of the costs on account of disbursements:

(b) Eighty-five percent of the amount of profit costs and counsel's fee:

35 Provided that, if the Registrar of the Supreme Court who is a member of the District Committee to which the application for legal aid was made so requires, the said amounts shall be taxed by a Registrar of the Supreme Court, in which case the foregoing provisions of this section shall be read as
40 if the said amounts were—

(a) The amounts allowed by the Registrar on taxation; or

(b) Where the Registrar's decision in respect thereof is reviewed by the Supreme Court, the amounts allowed by the Supreme Court.

(2) Subject to subsection (2) of section 22 of this Act, all sums so allowed shall be paid by the Crown.

33. Costs of successful opponent of aided person—(1) In any case where an order has been made under paragraph (e) of subsection (2) of section 17 of this Act specifying that an aided person would have incurred a liability or a greater liability for costs in some proceedings if that paragraph had not excluded or affected his liability, the party to the proceedings who is prejudiced by the operation of that paragraph may apply in the prescribed manner, to the secretary to the District Committee for the legal aid district in which that party is resident, for payment by the Crown of the whole or part of the difference between the costs (if any) actually awarded to him against the aided person in respect of the proceedings and those to which he would have been entitled if that paragraph had not excluded or affected the liability of the aided person for costs; and the application shall be dealt with by that secretary and District Committee in the prescribed manner.

(2) In considering any such application, the District Committee shall have regard to:

- (a) The conduct of the parties in the dispute:
- (b) Whether the costs of the action were unnecessarily increased by the conduct of the applicant or his solicitor or counsel:
- (c) The hardship that would be caused to the applicant if the costs were not paid by the Crown.

(3) For the purposes of paragraph (c) of subsection (2) of this section, the District Committee may request the Social Security Commission to furnish a report as to the financial circumstances and needs of any such applicant.

(4) If, having regard to the matters specified in subsection (2) of this section and to any report which it may receive under subsection (3) of this section and to all relevant circumstances, the Committee considers that any payment should be made by the Crown pursuant to the application, it may order accordingly, and the payment shall be so made.

34. Payments by and to the Crown—(1) All amounts to be paid by the Crown under this Act, and all amounts payable for such other purposes as may be necessary to give effect to the provisions of this Act, shall be paid out of money from time to time appropriated by Parliament for the purpose.

(2) All amounts received by the Crown under this Act shall be paid into the Consolidated Revenue Account.

35. Disclosure of information by third parties—(1) Subject to the provisions of this section, every person shall have, in relation to any application for legal aid, or for the payment of costs under section 33 of this Act, the same privileges in relation to the giving of information, the answering of questions, and the production of documents and papers and things as witnesses have in any Court.

10 (2) Subject to the provisions of subsection (3) of this section, no person who is bound or privileged by the provisions of any enactment, or by any rule of law, to maintain secrecy in relation to, or not to disclose, any matter shall be required to supply any information or to answer any question
15 put by a District Committee or the Appeal Authority or the Social Security Commission in relation to that matter, or to produce to any District Committee or the Appeal Authority or the Social Security Commission any document or paper or thing relating to it, if compliance with that requirement
20 would be in breach of the obligation or privilege of secrecy or non-disclosure.

(3) With the previous consent in writing of any applicant for legal aid, or for the payment of costs under section 33 of this Act, any person to whom subsection (2) of this section
25 applies may be required by the District Committee which is considering the application or by the Appeal Authority or the Social Security Commission to supply information or answer any question or produce any document or paper or thing relating only to the applicant, and it shall be the duty
30 of the person to comply with that requirement.

36. Proceedings for misrepresentation, etc.—(1) If any person—

35 (a) Wilfully fails to comply with any provision of this Act or of any regulations made under this Act requiring him to furnish any information or answer any question or produce any paper or document; or

(b) In furnishing any information or answering any question so required to be furnished or answered by him, knowingly makes any false statement or false representation,—

40 he commits an offence and is liable on summary conviction to a fine not exceeding four hundred dollars or to imprisonment for a term not exceeding three months.

(2) Where any person is convicted of an offence against subsection (1) of this section, the Crown may recover from that person any amount paid in respect of legal aid granted to him as a debt due to the Crown, and the provisions of section 18 of this Act (which provide for a charge on property recovered or preserved for him in the proceedings) shall apply in respect of the amount. 5

Cf. Legal Aid and Advice Act 1949, s. 15 (U.K.)

37. Adaptation of rights of indemnity—(1) This section shall have effect for the purpose of adapting in relation to this Act any right (however and whenever created or arising) which a person may have to be indemnified against expenses incurred by him. 10

(2) In determining for the purposes of any such right the reasonableness of any expenses, the possibility of avoiding them or part of them by taking advantage of this Act shall be disregarded. 15

(3) Where a person having any such right to be indemnified against expenses incurred in connection with any proceedings receives legal aid in connection with those proceedings, then (without prejudice to the effect of the indemnity in relation to his contribution, if any, to the Crown under this Act) the right shall inure also for the benefit of the Crown as if the expenses incurred by the Crown on behalf of the said person in connection with the proceedings had been incurred by him. 20 25

(4) Where—

(a) A person's right to be indemnified against expenses incurred in connection with any proceedings arises by virtue of any agreement and is subject to any express condition conferring on those liable thereunder any right with respect to the bringing or conduct of the proceedings; and 30

(b) Those liable have been given a reasonable opportunity of exercising the right so conferred and have not availed themselves of that opportunity,— 35

the right to be indemnified shall be treated for the purposes of subsection (3) of this section as not being subject to that condition.

(5) Nothing in subsections (3) and (4) of this section shall be taken as depriving any person or body of persons of the protection of any enactment or, save as provided in the said subsection (4), as conferring any larger right to
 5 recover money for the benefit of the Crown under this Act in respect of any expenses than the person receiving legal aid would have had if the expenses had been incurred by him.

(6) Where under subsection (3) of this section a person's right to be indemnified against expenses incurred in con-
 10 nection with any proceedings inures for the benefit of the Crown under this Act, then for the purposes of section 18 of this Act the net liability of the Crown under this Act on his account shall be treated as reduced by the amount of any sums recovered for the benefit of the Crown by virtue of the
 15 said right.

Cf. Legal Aid and Advice Act 1949, s. 16 (U.K.)

38. Regulations—The Governor-General may from time to time, by Order in Council, make regulations for all or any of the following purposes:

- 20 (a) Prescribing the procedure in respect of applications and appeals under this Act:
- (b) Providing for the grant of emergency aid in appropriate cases:
- 25 (c) Providing a scheme for the grant of legal aid up to an amount of fifty dollars in respect of small claims, and prescribing the procedure in relation thereto:
- (d) Providing for the recovery of sums due to the Crown under this Act and for making effective the charge created by this Act on property recovered or pre-
 30 served for a person receiving legal aid, including provision—
 - (i) For the enforcement for the benefit of the Crown of any order or agreement for costs made in favour of a person who has received legal aid; and
 - 35 (ii) For making the right of a solicitor or counsel to payment by the Crown under this Act wholly or partly dependent on his performance of any duties imposed on him by regulations made for the purposes of this paragraph:

- (e) Relieving any applicant or any class of applicants from the obligation under paragraph (c) of subsection (2) of section 17 of this Act to make to the Crown a contribution of thirty dollars in respect of the sums payable by the Crown under this Act on his behalf: 5
 Provided that nothing in this paragraph or in any regulations made thereunder shall restrict the discretion of any District Committee under that paragraph, nor restrict the power of the Legal Aid Board to issue instructions in other cases: 10
- (f) Providing for the disclosure of any change in the resources of any person who is or has been an applicant for legal aid and of the resources of any person whose resources may be taken into account in computing the resources of any applicant for legal aid, and for the alteration of the amount of the person's contribution accordingly: 15
- (g) Providing for such matters as are contemplated by or necessary for giving full effect to the provisions of this Act and for the due administration thereof. 20

39. Annual report of Board—(1) The Legal Aid Board shall, (*during the month of April*) in every year, furnish to the Minister a report with respect to the operation of this Act; and every such report shall indicate, in relation to the previous year ending with the thirty-first day of March, the total amount paid by the Crown during that year in respect of the provision of legal aid under this Act, the total of all other amounts paid during that year to give effect to the provisions of this Act out of money appropriated by Parliament, and the total of all amounts received under this Act by the Crown during that year in respect of contributions by persons who receive legal aid under this Act or otherwise. 25 30

(2) A copy of the report shall be laid before Parliament within twenty-eight days after the date on which it is furnished to the Minister if Parliament is then in session, and, if not, shall be laid before Parliament within twenty-eight days after the date of the commencement of the next ensuing session. 35

40. Revocations and repeal—(1) Rules 50 to 68 of the Court of Appeal Rules 1955 are hereby revoked. 40
 (2) The Legal Aid Act 1939 is hereby repealed.