

The Accused Persons Legal Aid Regulations, 1933.

BLEDISLOE, Governor-General.

ORDER IN COUNCIL.

At the Government House at Wellington, this 28th day of February, 1933.

Present :

HIS EXCELLENCY THE GOVERNOR-GENERAL IN COUNCIL.

PURSUANT to section one hundred and eighty-five of the Justices of the Peace Act, 1927 (hereinafter called "the said Act"), His Excellency the Governor-General, acting by and with the advice and consent of the Executive Council, and with the concurrence therein so far as the regulations hereinafter mentioned amount to rules of procedure in relation to proceedings in the Supreme Court of the Right Honourable the Chief Justice and of seven other members of the Rules Committee constituted under the Judicature Amendment Act, 1930 (three of such other members being Judges of the Supreme Court), doth hereby make the following regulations.

REGULATIONS.

I. PRELIMINARY.

1. THESE regulations may be cited as "The Accused Persons Legal Aid Regulations, 1933."

2. These regulations shall come into force from the last day of March next.

3. On the coming into force of these regulations the regulations made under section 5 of the Justices of the Peace Amendment Act, 1912, on the 29th day of April, 1913, and published in the *Gazette* on the 15th day of May, 1913, at page 1606, and now enuring under the said Act, shall be revoked.

4. In these regulations, if not inconsistent with the context—

"Judge" means a Judge of the Supreme Court ordinarily exercising the powers of the Court in the place where any sittings for the trial of criminal cases are held at which an accused person is committed to appear or held to bail in that behalf;

"Minister" means the Minister of Justice.

II. CERTIFICATE OF JUSTICES.

5. Every application for a certificate under section 182 of the said Act shall be made to the Justices immediately after they have intimated to the accused person their determination to commit him for trial.

6. Such application may, if the accused person so desires and the Justices think fit, be wholly heard in private; and such part thereof as involves an inquiry into the means of the accused person shall in all cases be heard in private.

7. Before a certificate under section 182 of the said Act is given the Justices shall satisfy themselves as to the following matters:—

(a) That the accused appears to have a defence which he may reasonably and properly set up upon his trial;

(b) That having regard to the nature of the defence proposed to be set up by such accused person it is desirable in the interests of justice that he should have legal aid in the preparation and conduct of his defence;

(c) That the means of the accused are insufficient to enable him to obtain legal aid in the preparation and conduct of his defence.

8. The Justices may be satisfied that the accused appears to have a defence which he may reasonably and properly set up upon his trial—

(a) By statements made by the accused on the hearing of the charge or on the application made immediately after such hearing for a certificate under the said section 182; or

(b) By evidence called by the accused on the hearing of the charge; or

(c) By questions asked by or on behalf of the accused person upon cross-examination of witnesses for the prosecution; or

(d) Where the interests of justice seem so to require (as in the case of doubtful identification of the accused person, or absence of corroboration, or insufficient corroboration of material evidence for the prosecution) by matter appearing upon the face of the depositions of witnesses for the prosecution.

9. The fact that an accused person has been represented by a barrister or solicitor in the proceedings before the Justices shall be taken as *prima facie* evidence that the means of the accused are not insufficient to enable him to obtain legal aid in the preparation and conduct of his defence.

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10. The means of an accused person are not insufficient to enable him to obtain legal aid in the preparation and conduct of his defence—

(a) If for that purpose he is able to borrow money or obtain money from his relatives or friends; or

(b) If he is able to obtain such legal aid without prepayment of the cost thereof.

11. If the Justices are satisfied of the matters of which by the said Act they are required to be satisfied, then before a certificate under section 182 of the said Act is given, the grounds upon which the Justices are so satisfied shall be set out in writing by the Justices, and such writing shall be signed by the accused person and enclosed in a sealed envelope addressed by the Justices to the Judge. The said sealed envelope shall be transmitted to the Registrar of the Court with the certificate of the Justices. The grounds aforesaid shall not, except as hereinbefore provided, be disclosed before the trial of the accused person, but at the trial shall be disclosed to counsel for the Crown and may with the leave of the Judge presiding at the trial be used as evidence against such accused person.

12. Every certificate of the Justices under the said section 182 shall be in the form set out in the Schedule hereto and shall be given in duplicate.

13. One of such duplicate copies shall be forthwith transmitted by the Justices to the Minister and the other to the Registrar of the Court at the place to which the accused person is committed for trial.

III. DIRECTION BY JUDGE.

14. Every application for the direction of a Judge under section 183 of the said Act shall be in writing signed by the accused person making the application and addressed to the Judge, and shall be delivered to the Registrar of the Court, and if the accused person so desires may be enclosed in a sealed envelope addressed and delivered as aforesaid.

15. Each such application shall state fully and clearly the following matters:—

(a) The nature of the defence which the accused person intends to set up upon his trial;

(b) Whether such defence was or was not disclosed in accordance with these regulations to the Justices by whom the accused person was committed for trial;

(c) Whether the accused person did or did not apply to such Justices for a certificate under the said section 182 in accordance with the foregoing regulations;

(d) If such defence was not so disclosed the reason why it was not so disclosed;

(e) If the accused person did not apply to the Justices for such certificate the reason why he did not so apply;

(f) That the means of the accused are insufficient to enable him to obtain legal aid in the preparation and conduct of his defence.

16. The Judge receiving such application as aforesaid may if he thinks fit refer the same to the committing Justices or to any other Justices to make the same inquiries as the committing Justices would have been required to make under these regulations if an application for a certificate under the said section 182 had been made in the first instance to the committing Justices.

17. If the accused person is in the custody of a Gaoler then the Gaoler shall when required so to do by the Justices to whom the application is referred and with the consent of the accused person, produce the accused person at the time and place appointed by such Justices to enable him to be present at the making of such inquiries as aforesaid.

18. The Justices to whom any application is referred by a Judge shall with all due dispatch report to the Judge in writing the result of the inquiries made as aforesaid.

19. The Registrar shall immediately notify the Minister of any directions given by a Judge under section 183 of the said Act.

IV. LIST OF PRACTITIONERS.

20. Every Registrar of the Supreme Court shall from time to time request the District Law Society of the district in which the Registry is situate to ascertain and forward to him the names of persons who, in the opinion of the Society, are fit and proper persons to act and who are qualified and willing to act under these regulations in the defence of accused persons to be tried at sittings of the Court held at the place in which such Registry is situate.

21. The District Law Society may at any time notify names for addition to or removal from such list and the name of any person may be removed from the list on his own written request to the Registrar.

22. Every such list shall be approved by a Judge ordinarily exercising the powers of the Court in the district in which such Registry is situate, and any such Judge may at any time remove any name therefrom or add any name thereto.