



1980

c 234 Legal Aid Act

Ontario

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Bibliographic Citation

Legal Aid Act, RSO 1980, c 234

Repository Citation

Ontario (1980) "c 234 Legal Aid Act," *Ontario: Revised Statutes*: Vol. 1980: Iss. 4, Article 9.

Available at: <http://digitalcommons.osgoode.yorku.ca/rso/vol1980/iss4/9>

CHAPTER 234

Legal Aid Act

1. In this Act,

Interpre-
tation

- (a) "area" means a part of Ontario designated by the regulations as an area for the purposes of this Act;
- (b) "area director" means an area director appointed under this Act;
- (c) "assessment officer" means an officer of the Ministry of Community and Social Services who is designated by the Minister of Community and Social Services as an assessment officer for the purposes of this Act;
- (d) "barrister and solicitor" means a member of the Law Society other than an honorary member or a student member thereof;
- (e) "certificate" means a legal aid certificate or a provisional legal aid certificate issued under this Act;
- (f) "Director" means the Director of Legal Aid appointed under this Act;
- (g) "Fund" means the Legal Aid Fund under this Act;
- (h) "Law Society" means The Law Society of Upper Canada;
- (i) "legal aid" means professional services provided under this Act and the regulations;
- (j) "person" means an individual;
- (k) "regulations" means the regulations made under this Act;
- (l) "student" means a person enrolled in the Bar Admission Course or in any law course approved by the Law Society;
- (m) "student legal aid society" means a student legal aid society established in accordance with the regulations;

(n) "Treasurer" means the Treasurer of the Law Society. R.S.O. 1970, c. 239, s. 1; 1972, c. 1, s. 19 (3).

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. R.S.O. 1970, c. 239, s. 2; 1972, c. 1, s. 9 (7).

Appoint-
ment of
Director,
area
directors,
and staff

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

(a) appoint a Director of Legal Aid;

(b) appoint an area director for each area; and

(c) employ such other persons as it considers necessary. R.S.O. 1970, c. 239, s. 3 (1); 1972, c. 1, s. 9 (7).

Accommoda-
tion, etc.

(2) The Law Society shall provide such office accommodation, furniture, equipment and supplies as it considers necessary. R.S.O. 1970, c. 239, s. 3 (2).

Area
legal aid
committees

4.—(1) The Law Society may appoint a legal aid committee for an area.

Composition,
etc.

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

Secretary

(3) The area director shall act as secretary of the area committee. R.S.O. 1970, c. 239, s. 4.

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 Ontario, all costs awarded to recipients of legal aid, and all contributions made by recipients of legal aid who are required to pay any part of its cost; and

(b) keep such accounts and records of the transactions of the Fund as the regulations prescribe. R.S.O. 1970, c. 239, s. 5 (1), *revised*.

(2) The Law Society shall, subject to the regulations, pay ^{payments} out of the Fund, _{out}

- (a) its expenses attributable to the administration of this Act and the regulations, including,
 - (i) the expenses of the Treasurer and benchers and the expenses and allowances of members of committees,
 - (ii) the cost of office accommodation, furniture, equipment and supplies,
 - (iii) the salaries and expenses of the Director, area directors and other persons employed by the Law Society in the administration of this Act, and
 - (iv) the employer's contributions to any superannuation or pension plan that benefits the persons employed by the Law Society in the administration of this Act or to which such persons may contribute;
- (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. R.S.O. 1970, c. 239, s. 5 (2).

6. The Law Society shall, at least once in every fiscal ^{Estimates} year of the Government of Ontario 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 of the Government of Ontario after making allowance for the moneys that are estimated will be received from other sources. R.S.O. 1970, c. 239, s. 6; 1972, c. 1, s. 9 (7).

7.—(1) The moneys required for the purposes of this Act ^{Moneys} shall be paid out of moneys appropriated by the Legislature for the purposes of this Act. R.S.O. 1970, c. 239, s. 7 (1).

(2) The moneys required for the purposes of this Act shall be paid to the Law Society by the Treasurer of Ontario and Minister of Economics from time to time upon the requisition of the Law Society. ^{Payment of appropriated moneys} R.S.O. 1970, c. 239, s. 7 (2); 1972, c. 3, s. 17 (1).

Auditor

8. The Provincial Auditor shall examine and report upon the accounts and financial transactions of the Fund. R.S.O. 1970, c. 239, s. 8.

Advisory committee

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

- (a) a judge of the Supreme Court;
- (b) a judge of a county or district court;
- (c) a provincial judge;
- (d) two members of the bar of Ontario;
- (e) a person holding a responsible position in the field of public welfare; and
- (f) such other persons,

as the Attorney General may appoint. R.S.O. 1970, c. 239, s. 9 (1); 1972, c. 1, s. 9 (7).

Term of office

(2) Each member of the committee shall serve for a term of one, two or three years and may be reappointed on the expiry of the period for which he was appointed. R.S.O. 1970, c. 239, s. 9 (2).

Report

(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. R.S.O. 1970, c. 239, s. 9 (3); 1972, c. 1, s. 9 (7).

Annual report

10. The Law Society shall make a report annually to the Attorney General for the twelve 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 as the Attorney General requests. R.S.O. 1970, c. 239, s. 10; 1972, c. 1, s. 9 (7).

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. R.S.O. 1970, c. 239, s. 11; 1972, c. 1, s. 9 (7).

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, Where legal aid may be given

- (a) in the Supreme Court;
- (b) in a county or district court;
- (c) in a 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.

R.S.C. 1970,
c. C-34

R.S.C. 1970,
cc. E-21, F-32

(2) For the purpose of clause (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. R.S.O. 1970, c. 239, s. 12.

13. Subject to the discretion of the area director, a certificate may be issued to a person otherwise entitled thereto, Certificate, subject to discretion of area director

- (a) in any summary conviction proceeding under an Act of the Parliament of Canada;
- (b) in any proceeding under the *Provincial Offences Act*,

R.S.O. 1980,
c. 400

if upon conviction there is likelihood of imprisonment or loss of means of earning a livelihood;

- (c) in any proceeding,
- (i) in a provincial court (family division),
 - (ii) in a small claims 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. R.S.O. 1970, c. 239, s. 13; 1972, c. 1, s. 104 (6), *revised*.

Certificate,
with approval
of area
legal aid
committee

14.—(1) Subject to the approval of the area legal aid committee, a certificate may be issued to a person otherwise entitled thereto,

- (a) in an appeal,
- (i) to the Supreme Court of Canada,
 - (ii) to the Federal Court of Canada,
 - (iii) to the Court of Appeal for Ontario,
 - (iv) to the Divisional Court,
 - (v) to a judge sitting in court,
 - (vi) under Part XXIV of the *Criminal Code* (Canada) or the *Provincial Offences Act*,
 - (vii) to the Assessment Review Court from a municipal assessment of a property that is the residence of the applicant and by way of appeal from the decision of the Assessment Review Court thereon to the judge

R.S.C. 1970,
c. C-34

R.S.O. 1980,
c. 400

of a county or district court and by way of appeal from the decision of such judge to the Ontario Municipal Board, or

(viii) to a quasi-judicial or administrative board or commission; or

(b) in a proceeding by way of mandamus, quo warranto, certiorari, motion to quash, habeas corpus, or prohibition; and

(c) in any matter referred by the area director to the area committee.

(2) An application for legal aid in a proceeding under this section shall be made to the area director in the prescribed form, and the area director shall submit the application and supporting material to the area legal aid committee. Procedure

(3) The area legal aid committee shall consider the application and the supporting material and provide legal aid only if in the opinion of the committee the issue of a certificate is justified. Idem

(4) An appeal lies to the Director from a decision of the area legal aid committee dismissing an application under this section. Appeal

(5) Failure to apply for legal aid in the first instance does not bar an application for legal aid under this section. Later applications not barred
R.S.O. 1970, c. 239, s. 14.

15. A certificate shall not be issued to a person,

Where
legal aid
not to be
given

(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 any election. R.S.O. 1970, c. 239, s. 15, *revised*.

Applications

16.—(1) Every application for legal aid shall be made in the prescribed form addressed to the area director of the area in which the applicant resides at the time the application is made or in which the occurrence for which legal aid is required took place.

Reference to assessment officer

(2) Except where the legal aid for which an application is made is estimated by the area director to whom the application is made to cost not more than \$60 and he after investigation is satisfied that the applicant can pay no part thereof, every application for legal aid shall be referred by the area director to an assessment officer for a report as to whether the applicant can pay no part, some part, or the whole of the cost of the legal aid applied for.

Function of assessment officer

(3) The assessment officer to whom an application is referred shall consider the income, disposable capital, indebtedness, requirements of persons dependent on the applicant, and such other circumstances as he considers to be relevant that are disclosed in the application or that he ascertains after investigation, and he shall report to the area director as to whether the applicant can pay no part, some part or the whole of the cost of the legal aid applied for and the sum, if any, the applicant is able to contribute towards the cost thereof.

Oaths

R.S.O. 1980,
c. 75

(4) Every assessment officer in the performance of his duties under this Act a commissioner for taking affidavits within the meaning of the *Commissioners for taking Affidavits Act*.

When certificate may issue

(5) Subject to subsections (2) and (6) and whether or not a provisional certificate has been issued, the area director may issue a certificate only when he has received the report of the assessment officer and only where in the opinion of the area director the issue of a certificate is justified.

Provisional certificate in exceptional cases

(6) Where in the opinion of the area director the circumstances of an application require the issue of a certificate immediately, he may issue a provisional certificate without having first received the report of the assessment officer.

Terms and conditions

(7) An area director in issuing a certificate or provisional certificate may impose such terms and conditions as he deems proper.

Cancellation

(8) An area director may at any time cancel any certificate or provisional certificate issued by him.

(9) An application for legal aid by a person not ordinarily resident in Ontario shall be disposed of by the Director. Applications of non-residents

(10) An appeal lies to the area committee from the refusal of the area director to issue a certificate or from a cancellation of a certificate and a further appeal lies to the Director at the instance of the area director from the decision of the area committee allowing an appeal under this subsection. Appeals

(11) The Director may issue a certificate to an appellant or respondent in a criminal appeal where the Supreme Court of Canada or the Court of Appeal for Ontario is of the opinion that it is desirable in the interests of justice that the appellant or respondent should be represented and has requested that counsel be appointed and the Director is satisfied that the appellant or respondent has not sufficient means to employ counsel. R.S.O. 1970, c. 239, s. 16. Certificate upon request of court

17.—(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. Recovery of contributions

(2) Where a person who has been given legal aid in any matter recovers any sum in respect of such matter under a 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. Charge on sum recovered

(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. Charge on property recovered

(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. R.S.O. 1970, c. 239, s. 17. Refunds

18.—(1) Where a person who owns or has any interest in any land in Ontario has agreed to contribute towards the cost of legal aid given to him as set out in his certificate, the area director who issued the certificate may deliver or transmit a certificate of lien in duplicate in the form prescribed by the regulations to the sheriff of the county or district in which the land mentioned therein is situate and, if the area director does so, he shall also deliver or transmit a copy thereof to the Director. Delivery of certificate of lien to sheriff

Endorsement
and entry in
index book

(2) Upon receipt of a certificate of lien under subsection (1), the sheriff shall, without fee, endorse thereon the day of the year, the month, the hour and the minute of its receipt and shall enter in an alphabetically-arranged index book kept for the purpose the name of the contributor shown on the certificate.

Lien on
land,
registry
system

(3) As soon as the endorsement and entry have been made under subsection (2) and the land mentioned in the certificate is in the registry system, the Law Society on behalf of the Fund has a lien against the contributor's land mentioned in the certificate for an amount equal to the amount that he agreed to contribute towards the cost of the legal aid given to him as shown in the certificate, to the extent that such amount remains unpaid from time to time.

Delivery
of copy
to land
registrar

(4) As soon as the endorsement and entry have been made under subsection (2) and the land mentioned in the certificate is in the land titles system, the sheriff shall deliver or transmit to the proper land registrar a copy of the certificate, and the land registrar, upon receipt of the copy of the certificate, shall, without fee, endorse thereon the day of the year, the month, the hour and the minute of its receipt and shall enter in an alphabetically-arranged index book kept for the purpose the name of the contributor shown on the certificate.

Lien on
land,
land titles
system

(5) As soon as the endorsement and entry have been made under subsection (4), the Law Society on behalf of the Fund has a lien against the contributor's land mentioned in the certificate for an amount equal to the amount that he agreed to contribute towards the cost of the legal aid given to him as shown in the certificate, to the extent that such amount remains unpaid from time to time.

Execution
certificates

(6) Where a certificate respecting execution against land is required from a sheriff or land registrar, he shall, without additional fee, include in the execution certificate a statement as to whether there is a name shown in the index book mentioned in subsection (2) or (4), as the case may be, that is the same as the name shown on the certificate.

Discharge
of lien

(7) As soon as a contributor has discharged his obligation to contribute towards the cost of the legal aid given to him, the lien mentioned in this section is discharged, and the Director shall deliver or transmit a certificate of discharge in duplicate in the form prescribed by the regulations to the sheriff to whom the certificate of lien was delivered or transmitted.

(8) Upon receipt of a certificate of discharge, the sheriff ^{Duty of sheriff} shall attach the certificate of discharge to the proper certificate of lien and strike the name of the contributor from the index book kept pursuant to subsection (2).

(9) Where the land mentioned in a certificate of discharge ^{Duty of land registrar} is under the land titles system, the sheriff, upon receipt of a certificate of discharge, shall deliver or transmit to the proper land registrar a copy of the certificate of discharge and, upon receipt of the copy of the certificate of discharge, the land registrar shall attach the copy of the certificate of discharge to the proper certificate of lien and strike the name of the contributor from the index book kept pursuant to subsection (4). R.S.O. 1970, c. 239, s. 18.

19. The costs awarded in any order heretofore or hereafter ^{Costs} 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, and all costs paid or payable to such legally-aided person pursuant to any such order are the property of the Law Society and shall be paid into the Fund. R.S.O. 1970, c. 239, s. 19.

20. Except as to the professional services provided by ^{No legal aid without certificate} 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. R.S.O. 1970, c. 239, s. 20.

21. There may be established in accordance with the ^{Legal panels} 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. R.S.O. 1970, c. 239, s. 21.

Payment for
professional
services

22.—(1) Every barrister and solicitor who provides professional services under this Act shall be paid out of the Fund an amount equal to three-fourths 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.

Appeals

(2) An appeal lies in accordance with the regulations to the Taxing Officer at Toronto from the certificate of a person designated for the purposes of clause 26 (1) (l).

Further
appeal

(3) A further appeal lies in accordance with the regulations to a judge of the High Court from the decision of the Taxing Officer and the order of the judge disposing of the appeal is final. R.S.O. 1970, c. 239, s. 22.

Authorized
payments
only

23.—(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.

Members of
the Assembly
R.S.O. 1980,
c. 235

(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. R.S.O. 1970, c. 239, s. 23.

Law Society
not liable

24. 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. R.S.O. 1970, c. 239, s. 24.

Privileged
communica-
tions

25. All communications between the Director, an area director, a member of an area legal aid committee or an assessment officer, on the one hand, 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. R.S.O. 1970, c. 239, s. 25.

Regulations

26.—(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, the area directors 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) designating parts of Ontario as areas for the purposes of this Act;
- (e) providing for committees, their composition and organization, and prescribing their functions;
- (f) respecting the establishment and functions of the panels and societies mentioned in section 21;
- (g) respecting the participation of students in legal aid;
- (h) respecting applications for legal aid;
- (i) respecting entitlement to legal aid;
- (j) respecting certificates and provisional certificates;
- (k) respecting the fees to be paid to barristers and solicitors for professional services under this Act or the regulations;
- (l) providing for the settlement of accounts for professional services under this Act or the regulations;
- (m) respecting appeals under sections 14, 16 and 22;
- (n) 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;
- (o) respecting the non-disclosure of information furnished by or about an applicant for or recipient of legal aid;
- (p) providing for the settlement, recovery and payment into the Fund of costs and other moneys due to the Fund;
- (q) providing for the payment out of the Fund of costs awarded against a person to whom legal aid has been given;

(r) prescribing forms and providing for their use. R.S.O. 1970, c. 239, s. 26 (1).

Designation
by Attorney
General

(2) The Attorney General may designate persons for the purposes of clause (1) (l). R.S.O. 1970, c. 239, s. 26 (2); 1972, c. 1, s. 9 (7).

Application
of regulation

(3) A regulation may be limited in its scope and may be retroactive in its operation. R.S.O. 1970, c. 239, s. 26 (3).