

No. 5 of 1972

## AN ORDINANCE

### Relating to the Provision of Legal Aid in the Australian Capital Territory.

I, THE GOVERNOR-GENERAL in and over the Commonwealth of Australia, acting with the advice of the Federal Executive Council, hereby make the following Ordinance under the *Seat of Government (Administration) Act 1910-1970*.

Dated this third day of February, 1972.

PAUL HASLUCK  
Governor-General.

By His Excellency's Command,

IVOR J. GREENWOOD  
Attorney-General, acting for and on behalf of the  
Minister of State for the Interior.

#### LEGAL AID ORDINANCE 1972

##### PART I.—PRELIMINARY.

1. This Ordinance may be cited as the *Legal Aid Ordinance 1972*. \* Short title.
2. This Ordinance shall come into operation on a date to be fixed by the Minister of State for the Interior by notice in the *Gazette*. Commencement.
3. This Ordinance shall be administered by the Attorney-General. Administration.
4. This Ordinance is divided into Parts, as follows:— Parts.
  - Part I.—Preliminary (Sections 1-6).
  - Part II.—The Legal Aid Committee (Sections 7-18).
  - Part III.—The Legal Aid Fund (Sections 19-24).
  - Part IV.—Applications for Legal Aid (Sections 25-26).
  - Part V.—Legal Aid in Criminal Matters (Sections 27-31).
  - Part VI.—Legal Aid in Civil Matters.
    - Division 1.—General Provisions (Sections 32-36).
    - Division 2.—Special Provisions relating to the Grant of Legal Aid in respect of certain Civil Matters (Sections 37-42).
    - Division 3.—Estimated Disposable Income (Sections 43-49).
    - Division 4.—Disposable Assets (Sections 50-51).

\* Notified in the *Commonwealth Gazette* on 10 February 1972.

Part VII.—Legal Aid Certificates (Section 52).

Part VIII.—Variation or Cancellation of the Grant of Legal Aid (Sections 53-56).

Part IX.—Payments to Barristers and Solicitors acting for Legally Assisted Persons (Sections 57-60).

Part X.—Payment of Costs by Successful Legally Assisted Persons (Sections 61-62).

Part XI.—Miscellaneous (Sections 63-74).

**Interpretation.** 5.—(1.) In this Ordinance, unless the contrary intention appears—

“applicant” means a person who has made application for legal aid under this Ordinance;

“barrister and solicitor” has the same meaning as in the *Legal Practitioners Ordinance 1970-1972*;

“dependant”, in relation to an applicant for legal aid, means a person who is wholly or substantially dependent upon the applicant;

“dependent” means dependent for economic support;

“income” means income from all sources including income that is exempt from income tax under the *Income Tax Assessment Act 1936-1971* and income that is not assessable income within the meaning of that Act;

“legal aid” means legal aid under this Ordinance;

“legally assisted person” means a person to whom legal aid is granted;

“matter to which this Ordinance applies” means—

(a) a matter (not being a matter that, by the next succeeding sub-section, is an excepted matter) in respect of which proceedings, whether civil or criminal, are maintainable in a court having jurisdiction in the Territory;

(b) an inquest or inquiry under the *Coroners Ordinance 1956-1967*; and

(c) a proceeding before a tribunal, other than a court, constituted by or under a law in force in the Territory;

“member” means a member of the Committee;

“Statutory Interest Account” means an account maintained in accordance with sub-section (2.) of section 74A of the *Legal Practitioners Ordinance 1970-1972*;

“the Committee” means the Legal Aid Committee of the Australian Capital Territory established by section 7 of this Ordinance;

“the Fund” means the Legal Aid Fund of the Australian Capital Territory established by section 19 of this Ordinance;

“the Law Society” means The Law Society of the Australian Capital Territory.

(2.) Each of the following matters is, for the purpose of paragraph (a) of the definition of “matter to which this Ordinance applies” in the last preceding sub-section, an excepted matter:—

- (a) a matter in respect of which proceedings are maintainable only by way of a relator action;
- (b) a dispute regarding the validity of an election held under a law in force in the Territory;
- (c) a grant of probate or letters of administration;
- (d) a claim for loss of services of a female in consequence of her rape or seduction; and
- (e) a claim for enticement of one spouse to leave, or remain apart from, the other.

6. The Poor Prisoners Defence Act, 1907 of the State of New South Wales shall cease to be in force in the Territory. State Act to cease to apply.

## PART II.—THE LEGAL AID COMMITTEE.

7.—(1.) For the purposes of this Ordinance, there shall be a Committee to be known as the Legal Aid Committee of the Australian Capital Territory. Constitution of the Committee.

(2.) The Committee shall consist of three members who shall be appointed by the Attorney-General.

8.—(1.) The Attorney-General may appoint a person to be the deputy of a member. Deputies of members.

(2.) In the event of the absence of a member from a meeting of the Committee, the deputy of that member is entitled to attend that meeting and, while so attending, shall be deemed to be a member.

9. Two of the members and the deputies of those members shall be barristers and solicitors each of whom holds a current unrestricted practising certificate issued under Part IIIA. of the *Legal Practitioners Ordinance* 1970-1972 and is nominated, as occasion requires, by the Council of the Law Society. Eligibility for appointment.

10.—(1.) The Committee—

- (a) is a body corporate, with perpetual succession;
- (b) shall have a seal;
- (c) may acquire, hold and dispose of real and personal property; and
- (d) may sue and be sued in its corporate name.

Incorporation of the Committee.

(2.) All courts, judges and persons acting judicially shall take judicial notice of the seal of the Committee affixed to a document and shall presume that it was duly affixed.

**Tenure of office.**

**11.—**(1.) Each member shall hold office, subject to this Ordinance, for a period of one year, but he is eligible for re-appointment.

(2.) Each person who is the deputy of a member shall hold office, subject to this Ordinance, while that member holds office, but he is eligible for re-appointment as the deputy of any member.

**Chairman of Committee.**

**12.** The members of the Committee shall elect one of their members to be the Chairman of the Committee.

**Vacation of office.**

**13.** If a member or a deputy of a member—

- (a) ceases to be a person who is eligible for appointment as a member or deputy;
- (b) becomes for any reason incapable of performing the duties of his office;
- (c) is guilty of misbehaviour; or
- (d) becomes bankrupt,

the Attorney-General shall remove him from office.

**Resignation.**

**14.** A member or a deputy of a member may resign his office by writing under his hand delivered to the Attorney-General.

**Meetings of Committee.**

**15.—**(1.) The Committee shall meet as and when necessary.

(2.) Meetings of the Committee shall be convened by the Chairman or, if for any reason the Chairman is unavailable, by another member of the Committee.

(3.) At a meeting of the Committee, two members constitute a quorum.

(4.) The Chairman shall preside at a meeting of the Committee at which he is present.

(5.) At a meeting of the Committee at which the Chairman is not present, the member present who has precedence, by reason of section 6B of the *Legal Practitioners Ordinance 1970-1972*, over the other member present shall preside.

(6.) A question arising at a meeting shall be determined by a majority of votes of the members present and voting.

(7.) The member presiding at a meeting has a deliberative vote and, in the event of an equality of votes, also has a casting vote.

**Functions of Committee.**

**16.** The functions of the Committee are—

- (a) to provide, in accordance with this Ordinance, legal aid in respect of matters to which this Ordinance applies; and
- (b) to control and administer the Fund.

**17.—(1.)** The Committee has power—Powers of  
Committee.

- (a) to do all things necessary or convenient to be done in connexion with the performance of its functions and the exercise of its powers under this Ordinance; and
- (b) subject to the next succeeding sub-section, to invest moneys standing to the credit of the Fund.

(2.) Moneys standing to the credit of the Fund shall be invested by the Committee only in a manner in which trust funds may, for the time being, be invested under the *Trustee Ordinance* 1957-1968.

**18.—(1.)** There shall be a Secretary to the Committee and such other officers and employees as are necessary for the performance of its functions and the exercise of its powers under this Ordinance.

Staff of  
Committee.

(2.) The Secretary to the Committee shall be an employee or a member of the Law Society appointed by the Committee and the other officers and employees may be employees of the Law Society or persons employed by the Committee.

(3.) The Secretary and the other officers and employees referred to in sub-section (1.) of this section shall, when performing duties on behalf of the Committee, be subject to the direction and control of the Committee.

**PART III.—THE LEGAL AID FUND.**

**19.—(1.)** There is hereby established a fund to be known as the Legal Aid Fund of the Australian Capital Territory.

Establishment  
of Fund.

(2.) The Fund shall consist of—

- (a) moneys paid to the Committee under this Ordinance;
- (b) moneys paid to the Committee out of a Statutory Interest Account;
- (c) moneys paid to the Committee, being moneys appropriated by the Parliament for the purposes of legal aid in the Territory; and
- (d) income derived from the investment of moneys forming part of the Fund.

**20.—(1.)** The Committee shall open and maintain an account with a bank in the Territory.

Bank account.

(2.) Payment of moneys into the account shall be deemed to be payment of those moneys into the Fund.

**21.** Moneys in the Fund shall be applied only—

Payment  
out of Fund.

- (a) in the payment, in accordance with this Ordinance, of amounts payable in or in connexion with the provision of legal aid; and

- (b) in the payment of the administrative costs and expenses incurred by the Committee in the provision of legal aid, including—
- (i) payments to the Law Society for the services of the Secretary and other officers and employees of the Law Society; and
  - (ii) salary, wages and other payments to or in respect of persons employed by the Committee.

**Accounts and records.**

**22.—**(1.) The Committee shall cause to be kept proper accounts and records and shall do all things necessary to ensure that all payments out of the Fund are correct and are properly made and that adequate control is maintained over the assets of and under the custody of the Committee.

(2.) The Committee shall cause its accounts relating to moneys payable in respect of the provision of legal aid to be kept separate and distinct from its other accounts.

**Annual report and financial statements.**

**23.—**(1.) The Committee shall, as soon as practicable after each thirtieth day of June, prepare a report of its operations during the year that ended on that date, together with financial statements in respect of that year.

(2.) The Committee shall submit the financial statements to a registered company auditor who shall report to the Committee—

- (a) whether the statements are based on proper accounts and records;
- (b) whether the statements are in agreement with the accounts and records;
- (c) whether the receipt, expenditure and investment of money and the acquisition and disposal of assets by the Committee during the year have been in accordance with this Ordinance; and
- (d) on any other matters arising out of the statements that the registered company auditor considers should be reported to the Committee.

(3.) The Committee shall furnish its report, the financial statements and the auditor's report on those financial statements to the Attorney-General, who shall cause them to be laid before each House of the Parliament as soon as practicable after he has received them.

(4.) The registered company auditor is entitled at all reasonable times to full and free access to all accounts, records, documents and papers of the Committee relating directly or indirectly to the receipt of moneys, to the payment of moneys out of the Fund, to the acquisition, receipt or disposal of assets by the Committee and to the custody of assets of the Committee.

(5.) The registered company auditor may make copies of, or take extracts from, any such records, accounts, documents or papers.

(6.) The registered company auditor shall forthwith draw the attention of the Committee to any irregularity disclosed by his examination of the financial statements that is, in his opinion, of sufficient importance to justify his so doing.

**24.—(1.)** The Committee shall, whenever it considers it necessary so to do, arrange for a registered company auditor to inspect and audit the accounts and records of the Committee. Periodical audits.

(2.) The registered company auditor shall report in writing to the Committee the results of the inspection and audit.

(3.) The Committee shall cause a copy of each report furnished to it under this section to be forwarded to the Attorney-General.

(4.) Sub-sections (4.), (5.) and (6.) of the last preceding section apply to and in relation to an inspection and audit under this section in the same manner as they apply to and in relation to the financial statements of the Committee in respect of an audit.

#### PART IV.—APPLICATIONS FOR LEGAL AID.

**25.—(1.)** An application for legal aid shall be—

- (a) in writing in accordance with the appropriate form; and
- (b) lodged with the Secretary to the Committee.

Application for legal aid.

(2.) For the purposes of the last preceding sub-section, the appropriate form is the form approved by the Committee as the form applicable in relation to the matter in respect of which legal aid is sought.

(3.) Each form approved by the Committee for the purposes of this section—

- (a) shall require the applicant to state the grounds upon which the applicant relies for the grant of legal aid; and
- (b) shall make provision for the applicant to furnish—
  - (i) information with respect to the matter in respect of which the applicant applies for legal aid;
  - (ii) such information with respect to his income and assets as is necessary to enable his estimated disposable income, within the meaning of Division 3 of Part VI., in the period of twelve months commencing on the date of his application and the value of his disposable assets, within the meaning of Division 4 of that Part, at the date of his application to be determined; and
  - (iii) information with respect to his present and future financial commitments.

(4.) An application for legal aid shall be verified by statutory declaration.

(5.) If there is not a barrister and solicitor acting as a solicitor for the applicant in the matter in respect of which the applicant applies for legal aid, the Secretary to the Committee may refer the applicant to a barrister and solicitor selected by the applicant or, if the applicant does not wish to make his own selection, selected by the Secretary in accordance with the directions of the Committee.

Applicant to furnish any change in relation to his income, assets, &c.

26. Where, after an application for legal aid has been made and before a decision on the application is made by the Committee, there occurs a material change in the financial circumstances of the applicant, whether by reason of a change in his income or otherwise, the applicant shall, unless he withdraws his application for legal aid, furnish to the Committee particulars of the nature and extent of the change.

#### PART V.—LEGAL AID IN CRIMINAL MATTERS.

Grant of legal aid in criminal matters.

27. The Committee may grant legal aid to an applicant against whom proceedings for an offence against a law in force in the Territory have been instituted in a court having jurisdiction in the Territory if the Committee is satisfied that the applicant is without adequate means to pay the costs of his legal representation in the proceedings.

Condition subject to which legal aid is to be granted in criminal matters.

28.—(1.) Where the Committee grants legal aid to an applicant in respect of a matter referred to in the last preceding section, the Committee shall determine the nature and extent of the legal aid to be granted to the applicant and the amount of the contribution (if any) that the applicant should pay towards the costs of the matter.

(2.) In determining whether or not the applicant should pay a contribution towards the costs of the matter, the Committee shall have regard to his means and to his present and future financial commitments and shall determine as the amount of contribution such amount as it considers to be reasonable in the circumstances.

(3.) An amount referred to in this section is payable in such manner and at such times as the Committee determines.

Legal aid—defendants in criminal proceedings in the Court of Petty Sessions.

29.—(1.) The Committee shall not grant legal aid if the matter in respect of which legal aid is sought is an offence against a law in force in the Territory alleged to have been committed by the applicant, being an offence with which the Court of Petty Sessions may deal under Part VII. of the *Court of Petty Sessions Ordinance 1930-1970*, unless—

(a) the Committee is of the opinion that—

(i) having regard to the nature of the offence and of other relevant circumstances, there is a likelihood that, in the event of the applicant being convicted of the offence, he may be sentenced to imprisonment in respect of that offence; or

(ii) by reason of the conviction, the applicant may be imprisoned in respect of a previous conviction, whether for an offence against a law in force in the Territory or another law;



- (b) the Committee is satisfied that, in the event of the applicant being convicted of the offence, it is likely that the applicant will lose his livelihood or that his reputation will be seriously damaged;
- (c) the Committee is satisfied that the nature of the matter is or will be such as to raise substantial, complex or important questions of law or that the facts of the matter are complex; or
- (d) the Committee is satisfied that the applicant is, by reason of his inadequate knowledge of the English language or his physical or mental disability, likely to be prejudiced if he were to present his own case.

(2.) The Committee may, notwithstanding the last preceding sub-section, grant legal aid to an applicant in respect of a matter referred to in that sub-section if, in the circumstances, it is satisfied that it is in the interests of justice to grant legal aid in respect of that matter.

**30.—**(1.) The Committee may grant legal aid to an applicant in respect of proceedings instituted or to be instituted by the applicant—

Legal aid—  
informants  
in criminal  
cases.

- (a) for an assault alleged to have been committed against the applicant or a dependant of the applicant; or
- (b) under Part X. of the *Court of Petty Sessions Ordinance 1930-1970*.

(2.) Except as provided by the last preceding sub-section, the Committee shall not grant legal aid to an applicant if the matter in respect of which legal aid is sought is—

- (a) a matter in respect of which the applicant has instituted or proposes to institute proceedings for an offence against a law in force in the Territory; or
- (b) a matter that arises, whether by way of appeal or otherwise, out of the institution by the applicant of proceedings for an offence against a law in force in the Territory.

**31.—**(1.) The Committee shall not grant legal aid if the matter in respect of which legal aid is sought is—

Legal aid—  
appeals. &c., in  
criminal  
cases.

- (a) an appeal or an application for leave to appeal from a conviction or an order arising out of proceedings against the applicant for an offence against a law in force in the Territory; or
- (b) an application for a writ of, or for relief in the nature of, certiorari, mandamus, prohibition, injunction or habeas corpus arising out of proceedings against the applicant for such an offence,

unless the Committee is satisfied that there are reasonable prospects of the appeal or the application being successful.

(2.) The Committee may, whether or not the applicant has furnished an opinion from a barrister or solicitor with respect to the prospects of success of the appeal or the application, obtain an opinion or a further opinion from a barrister and solicitor with respect to the prospects of success of the appeal or the application.

## PART VI.—LEGAL AID IN CIVIL MATTERS.

*Division 1.—General Provisions.*

Definition.

**32.** In this Part, “civil matter” means a matter to which this Ordinance applies, not being a matter in respect of which legal aid may be granted under the last preceding Part.

General considerations to be applied by the Committee.

**33.** Subject to this Ordinance, the Committee may grant legal aid in respect of a civil matter if—

- (a) the applicant—
  - (i) in a case where proceedings arising out of the matter have been instituted—has reasonable grounds for taking, defending, or otherwise being a party to, the proceedings; or
  - (ii) in any other case—will, in the event of proceedings arising out of the matter being instituted, have reasonable grounds for taking, defending, or otherwise being a party to, the proceedings; and
- (b) the cost of taking, defending, or otherwise being a party to, the proceedings without legal aid will cause undue hardship to the applicant.

Committee to consider likely results of proceedings.

**34.—(1.)** The Committee may refuse to consider an application for legal aid in respect of a civil matter unless the barrister and solicitor acting as solicitor for the applicant in relation to the matter has endorsed on the application—

- (a) a statement setting out whether or not the applicant appears to have reasonable grounds for taking, defending, or otherwise being a party to, any proceedings arising out of the matter; or
- (b) a statement, in an appropriate case, that investigations are justified to enable the question whether the applicant has reasonable grounds for taking, defending or otherwise being a party to, any such proceedings to be determined.

**(2.)** The Committee may, before deciding whether to grant legal aid in respect of a civil matter, obtain—

- (a) from the barrister and solicitor acting for the applicant in the matter; or
  - (b) from another barrister and solicitor,
- an opinion with respect to the likely result of any proceedings arising out of the matter.

Conditions subject to which legal aid in civil matters is granted.

**35.—(1.)** Where the Committee grants legal aid to an applicant in respect of a civil matter, the Committee shall determine—

- (a) the nature and extent of the legal aid to be granted to the applicant; and
- (b) except in a case in relation to which sub-section (1.) or (2.) of the next succeeding section applies, the amount of the contribution that the applicant should pay towards the costs of the matter.

(2.) The amount of the contribution that the applicant should pay towards the costs of the matter shall be such amount as the Committee considers to be reasonable having regard to his estimated disposable income within the meaning of Division 3 of this Part, the amount of his disposable assets within the meaning of Division 4 of this Part at the date of the application and his present and future financial commitments.

(3.) An amount referred to in this section is payable in such manner and at such times as the Committee determines.

(4.) The grant of legal aid in respect of a civil matter is also subject to the condition that the barrister and solicitor acting as a solicitor for the legally assisted person in the matter, shall not, without the approval of the Committee, undertake any unusual work or incur any unusual expense in connexion with the matter.

**36.—**(1.) Where legal aid in respect of a civil matter is granted to an applicant who has dependants and—

- (a) his estimated disposable income within the meaning of Division 3 of this Part is less than One thousand five hundred dollars; and
- (b) the value of his disposable assets within the meaning of Division 4 of this Part at the date of his application was less than Two hundred and fifty dollars,

the Committee shall not make a determination that the applicant should pay any amount towards the costs of the matter.

(2.) Where legal aid in respect of a civil matter is granted to an applicant who has no dependants and—

- (a) his estimated disposable income within the meaning of Division 3 of this Part is less than One thousand dollars; and
- (b) the value of his disposable assets within the meaning of Division 4 of this Part at the date of his application was less than Two hundred and fifty dollars,

the Committee shall not make a determination that the applicant should pay any amount towards the costs of the matter.

(3.) This section does not apply in relation to a civil matter that is a matrimonial cause within the meaning of the *Matrimonial Causes Act 1959-1966*.

*Division 2.—Special Provisions relating to the Grant of Legal Aid in respect of certain Civil Matters.*

**37.** The provisions of this Division are in addition to the provisions of the last preceding Division.

**38.—**(1.) The Committee shall not grant legal aid if the matter in respect of which legal aid is sought is an appeal or an application for leave to appeal from a judgment or order of a court in a civil matter unless the Committee is satisfied that there are reasonable prospects of the appeal or the application being successful.

Circumstances when legal aid is granted without contribution.

Application of Division.

Special considerations in relation to appeals.

(2.) For the purpose of the last preceding sub-section, the Committee may obtain an opinion from a barrister and solicitor.

Special considerations in relation to proceedings for defamation.

**39.** The Committee shall not grant legal aid if the matter in respect of which legal aid is sought is a claim by or against the applicant for defamation unless the Committee is satisfied—

- (a) that it is likely to be established that the person defamed has suffered damage in his profession, trade, business or calling by reason of the defamation; or
- (b) that there are reasonable grounds for anticipating that exemplary damages will be awarded.

Special considerations in relation to proceedings for breach of promise of marriage.

**40.** The Committee shall not grant legal aid if the matter in respect of which legal aid is sought is a claim by or against the applicant for breach of promise of marriage unless the Committee is satisfied that there are reasonable grounds for anticipating that any amount awarded as damages to or against the applicant will include an amount to cover expenses incurred by the plaintiff in expectation of the marriage otherwise than in the acquisition of disposable goods or effects.

Special considerations in relation to coronial inquests.

**41.** The Committee shall not grant legal aid if the matter in respect of which legal aid is sought is an inquest or inquiry under the *Coroners Ordinance 1956-1967* unless—

- (a) by reason of allegations made or likely to be made at the inquest or inquiry, there is a likelihood that the applicant may be charged with, or committed to stand his trial for, an indictable offence; or
- (b) the evidence to be given at the inquest or inquiry may be such as to justify the institution of civil proceedings by or against the applicant.

Special considerations in relation to proceedings before tribunals.

**42.** The Committee shall not grant legal aid if the matter in respect of which legal aid is sought is a proceeding before a tribunal, other than a court, unless the Committee is satisfied—

- (a) that, having regard to the nature of the proceeding and the possible effect of the proceeding in relation to the applicant, the applicant should be represented by a barrister and solicitor; and
- (b) that, if legal aid were not granted to the applicant, substantial hardship could be caused to him.

### *Division 3.—Estimated Disposable Income.*

Definitions.

**43.** In this Division—

- “deductions” means deductions under the *Income Tax Assessment Act 1936-1971* other than concessional deductions under Subdivision B of Division 3 of Part III. of that Act;
- “estimated disposable income”, in relation to an applicant, means his estimated disposable income for the period of

twelve months commencing on the date of his application as ascertained in accordance with the next succeeding section;

“ the appropriate year ”, in relation to the income of an applicant or of his spouse, means the financial year preceding the date of his application.

**44.** In ascertaining the estimated disposable income of an applicant, the income of the applicant shall be taken as a basis and—

Basis for ascertaining estimated disposable income.

- (a) if his income in the appropriate year is not, for the purposes of this Ordinance, to be reduced or increased in accordance with any one or more of the succeeding provisions of this Part, the amount of his estimated disposable income is an amount equal to the amount of his income in the appropriate year;
- (b) if, in accordance with any one or more of the succeeding provisions of this Part, his income in the appropriate year is, for the purposes of this Ordinance, to be reduced, the amount of his estimated disposable income is an amount calculated by deducting from the amount of his income in the appropriate year an amount equal to the amount of the reduction or equal to the total of the amounts of the reductions, as the case requires; or
- (c) if, in accordance with any one or more of the succeeding provisions of this Part, his income in the appropriate year is, for the purposes of this Ordinance, to be increased, the amount of his estimated disposable income is an amount calculated by adding to—
  - (i) the amount of his income in the appropriate year; or
  - (ii) in a case where the last preceding paragraph is applicable, the amount of his income in the appropriate year as reduced in accordance with that paragraph,

an amount equal to the amount of the increase or equal to the total of the amounts of the increases, as the case requires.

**45.** Where, in calculating for the purposes of the *Income Tax Assessment Act 1936-1971*, the taxable income in the appropriate year of the applicant, amounts have been allowed, or are allowable, as deductions, his income in the appropriate year shall be reduced by an amount equal to the total of the amounts allowed or allowable as deductions.

Reduction for deductions.

**46.** Where—

- (a) in the appropriate year, amounts have been deducted from the salary or wages of an applicant in accordance with Division 2 of Part VI. of the *Income Tax Assessment Act 1936-1971*;

Reductions for income tax.

- (b) an applicant has, in respect of income to be derived by him in the appropriate year, paid an amount as provisional tax under Division 3 of that Part; or
- (c) amounts referred to in paragraph (a) of this sub-section have been deducted from the salary or wages of an applicant in the appropriate year and he has also paid an amount referred to in the last preceding paragraph in respect of income to be derived by him in the appropriate year,

his income in the appropriate year shall be reduced by an amount equal to the total of the amounts deducted or the amount paid, or both, as the case requires.

Reductions for dependants.

**47.**—(1.) The income of a married applicant in the appropriate year shall be reduced by an amount of Five hundred dollars in respect of the spouse of the applicant.

(2.) The income of an applicant in the appropriate year shall be reduced by an amount of Two hundred dollars in respect of each person who was a dependant of the applicant in the appropriate year.

Increase if spouse has income.

**48.**—(1.) Subject to the next succeeding sub-section, the income of an applicant in the appropriate year shall, if—

- (a) the applicant was a married person for the whole or any part of the appropriate year; and
- (b) the spouse of the applicant derived income in the appropriate year,

be increased by an amount equal to the amount that would have been the income of the spouse in the appropriate year ascertained in accordance with the preceding provisions of this Part on the basis that the spouse had been an applicant who was not married and had no dependants.

(2.) The last preceding sub-section does not apply in a case where the applicant satisfies the Committee—

- (a) that the spouse of the applicant has or may have a contrary interest to that of the applicant in the matter in respect of which legal aid is sought;
- (b) that the applicant and the spouse of the applicant are not living together and that there is no reasonable likelihood of cohabitation being resumed; or
- (c) that, in all the circumstances, it is not reasonable that the sub-section should apply.

Variation having regard to likely income.

**49.** Where, having regard to—

- (a) the income already derived by an applicant during the period, if any, between the end of the appropriate year and the date of his application (including, if the applicant is a married person, the income, if any, already derived by the spouse of the applicant during that period);

- (b) the likely income of the applicant for the period of twelve months commencing on the date of his application (including, if the applicant is a married person, the likely income, if any, of the spouse of the applicant for that period of twelve months); and
- (c) the amounts, if any, by which those likely incomes would be likely to be reduced or increased by reason of sections 45 to 48 (inclusive) of this Ordinance if the period of twelve months commencing on the date of the application were the appropriate year,

it is apparent that the income of the applicant in that period of twelve months is likely to be an amount greater or less than the amount of his income in the appropriate year, his income in the appropriate year shall be increased to that greater amount or reduced to that lesser amount, as the case requires.

#### *Division 4.—Disposable Assets.*

**50.**—(1.) The disposable assets of an applicant at the date of his application comprise, for the purposes of this Ordinance—

Disposable assets.

- (a) all property, both real and personal, whether within or outside the Territory, of the applicant on that date; and
- (b) subject to the next succeeding sub-section, if the applicant is a married person, all property, both real and personal, whether within or outside the Territory, of the spouse of the applicant on that date.

(2.) Paragraph (b) of the last preceding sub-section does not apply where a married applicant satisfies the Committee—

- (a) that the spouse of the applicant has or may have a contrary interest to that of the applicant in the matter in respect of which legal aid is sought;
- (b) that the applicant and the spouse of the applicant are not living together and that there is no reasonable likelihood of cohabitation being resumed; or
- (c) that, in all the circumstances, it is not reasonable that the paragraph should apply.

(3.) For the purposes of this section but subject to the last preceding sub-section, any goods that are let, hired or agreed to be sold under a hire-purchase agreement within the meaning of the *Hire-Purchase Ordinance 1961-1969* or of the law of a State or another Territory that corresponds to that Ordinance, entered into by the owner of the goods with the applicant or with his spouse shall be deemed to be the property of the applicant.

**51.** In determining the value, for the purposes of this Ordinance, of the disposable assets of an applicant—

Value of disposable assets.

- (a) the value of any of the following property comprised in those assets shall not be taken into account:—
  - (i) a dwelling house occupied by the applicant or, if he is married, by the applicant and his spouse and the

land on which the dwelling house is erected or, if the land on which the dwelling house is erected exceeds one acre in area, so much of that land immediately surrounding the dwelling house as does not exceed one acre in area;

- (ii) furniture, clothing and personal effects; and
- (iii) any motor vehicle used by the applicant or his spouse for purposes other than business purposes;
- (b) if the matter in respect of which legal aid is sought raises issues with respect to the ownership of any property, the value of that property shall not be taken into account;
- (c) if the value of any tools of trade comprised in those assets is less than Two hundred dollars, the value of those tools shall not be taken into account or, if the value of any tools of trade comprised in those assets exceeds Two hundred dollars, only so much of the value of those tools as exceeds Two hundred dollars shall be taken into account; and
- (d) the value of any goods that, by sub-section (3.) of the last preceding section, are to be deemed to be owned by the applicant shall be deemed to be reduced by the amount that remains to be paid by the applicant or his spouse before the applicant or his spouse is entitled to exercise the option, conferred by the agreement, to purchase the goods.

#### PART VII.—LEGAL AID CERTIFICATES.

Issue, and form, of legal aid certificates.

**52.—(1.)** Where the Committee has approved an application for the grant of legal aid, it shall determine the nature and extent of the legal aid that has been granted and shall cause to be issued a legal aid certificate.

(2.) One copy of the certificate shall be forwarded to the legally assisted person and one copy of the certificate shall be forwarded to the barrister and solicitor who is acting or is prepared to act for the legally assisted person in the matter.

(3.) A legal aid certificate shall specify—

- (a) the name of the legally assisted person;
- (b) the matter in respect of which legal aid has been granted;
- (c) the nature and extent of the legal aid that has been granted;
- (d) the conditions subject to which legal aid is granted;
- (e) in a case where legal aid is granted subject to the condition that the applicant pay an amount by way of contribution towards the costs of the matter, whether the amount is payable to the Committee or to the barrister and solicitor; and
- (f) the name of the barrister and solicitor who is acting or is prepared to act for the legally assisted person in the matter.



**PART VIII.—VARIATION OR CANCELLATION OF THE GRANT  
OF LEGAL AID.**

**53.—(1.)** The Committee may, at any time before the completion of the matter in respect of which legal aid has been granted, require the legally assisted person to furnish to the Committee such information with respect to—

Furnishing of information of changed circumstances.

- (a) his income during a specified period;
- (b) his assets; or
- (c) such of the other matters that were relevant to the determination by the Committee of the question—
  - (i) whether or not legal aid was to be granted to him; or
  - (ii) whether he was to be required to pay an amount by way of contribution towards the costs of the matter,
 as the Committee specifies.

(2.) Where, after legal aid has been granted and before the completion of the matter in respect of which legal aid has been granted, there occurs a material change in the financial circumstances of the legally assisted person, whether by reason of a change in his income or otherwise, he shall furnish to the Committee particulars of the reasons for, and the extent of, the change.

**54.—(1.)** The Committee may, having regard to information furnished to it, whether in pursuance of the last preceding section or otherwise—

Variation of grant of legal aid.

- (a) vary the nature and extent of the legal aid granted;
- (b) determine, in a case where by reason of section 36 of this Ordinance legal aid was granted without the legally assisted person being required to pay an amount by way of contribution towards the costs of the matter in respect of which legal aid was granted, that the continuance of the legal aid is subject to the condition that the legally assisted person will pay, in such manner and at such times as the Committee determines, such amount towards the costs of the matter as the Committee considers to be reasonable in the circumstances; or
- (c) determine, in a case where legal aid was granted subject to the condition that the legally assisted person pay an amount by way of contribution towards the costs of the matter in respect of which legal aid was granted, that—
  - (i) the amount of the contribution towards the costs of the matter be increased or decreased;
  - (ii) the legally assisted person should not make any contribution or any further contribution towards the costs of the matter; or
  - (iii) the legally assisted person is to have repaid to him the whole or any part of the amount paid by him by way of contribution towards the costs of the matter.

(2.) Upon a variation or determination being made under the last preceding sub-section, the Committee shall—

- (a) notify in writing accordingly the barrister and solicitor acting as solicitor for the legally assisted person in the matter in respect of which legal aid was granted; and
- (b) issue to the legally assisted person and to the barrister and solicitor acting for him an amended legal aid certificate.

Cancellation  
of grant of  
legal aid.

**55.—(1.)** The Committee may cancel the grant of legal aid and the relevant legal aid certificate if the legally assisted person—

- (a) fails to furnish information in pursuance of a requirement under sub-section (1.) of section 53 of this Ordinance or to comply with sub-section (2.) of that section;
- (b) fails to pay any amount that he is required to pay towards the costs of the matter or any part of such an amount in the manner or within the time determined by the Committee;
- (c) without the consent of the Committee, withdraws his retainer of the barrister and solicitor who is acting for him in the matter;
- (d) has, in his application for legal aid or in any other document furnished by him to the Committee, made a statement or supplied information that is false or misleading in a material particular or failed to disclose a material fact;
- (e) has, in the opinion of the Committee, unreasonably refused to act in accordance with, or otherwise accept, the advice, in relation to the matter in respect of which legal aid was granted, of the barrister and solicitor acting for him; or
- (f) becomes bankrupt.

(2.) The Committee shall cancel the grant of legal aid and the relevant legal aid certificate if the Committee considers that, as a consequence of a change in the financial circumstances of the legally assisted person, whether by reason of a change in his income otherwise, or a change in other circumstances relating to the matter in respect of which legal aid was granted, legal aid to the legally assisted person in respect of the matter should be discontinued.

(3.) Where a grant of legal aid is cancelled under either of the last two preceding sub-sections—

- (a) the person to whom it was granted ceases to be a legally assisted person; and
- (b) if the grant of legal aid was subject to the condition that the person to whom the legal aid was granted pay an amount towards the costs of the matter in respect of which the legal aid was granted, the person to whom the legal aid was granted continues to be liable to pay an amount equal to the amount, if any, of the contribution due and payable at the date on which the grant of legal aid was cancelled which has not been paid.

(4.) An amount payable by reason of paragraph (b) of the last preceding sub-section is, in default of payment, recoverable in a court of competent jurisdiction as a debt due and payable to the barrister and solicitor from the person by whom it is payable.

(5.) Where a grant of legal aid is cancelled under sub-section (1.) or (2.) of this section, the Committee may determine that a specified amount, not exceeding the amount or the total of the amounts already paid or payable out of the Fund towards the costs of the matter in respect of which the legal aid was granted, shall be paid to the Committee by the person to whom the legal aid was granted, and, if the amount so determined is not paid to the Committee, it is recoverable in a court of competent jurisdiction as a debt due and payable to the Committee by the person by whom it is payable.

(6.) Where a grant of legal aid is cancelled under sub-section (1.) or (2.) of this section, the Committee shall give to the person to whom legal aid was granted and to his barrister and solicitor notice of the cancellation.

56. Where, for any reason, a barrister and solicitor acting for a legally assisted person in a matter in respect of which legal aid was granted ceases to act, the Committee shall cancel the relevant legal aid certificate and may, if in all the circumstances it considers that such a course is justified, issue a new legal aid certificate for the continuance of legal aid in respect of the matter.

Fresh grant of legal aid where barrister and solicitor ceases to act.

#### PART IX.—PAYMENTS TO BARRISTERS AND SOLICITORS ACTING FOR LEGALLY ASSISTED PERSONS.

57.—(1.) Subject to the next succeeding sub-section, the barrister and solicitor acting as solicitor for a legally assisted person in criminal proceedings is entitled, and, if a barrister and solicitor is briefed to appear as a barrister for the legally assisted person in those proceedings, the barrister and solicitor briefed to appear and the first-mentioned barrister and solicitor are each entitled to be paid out of the Fund for work done in connexion with, and for appearances made in, those proceedings an amount ascertained in accordance with the scale of fees for the time being approved in writing by the Attorney-General for the purposes of this section.

Amounts payable to barristers and solicitors for work done in criminal proceedings.

(2.) Where the grant of legal aid to a legally assisted person in criminal proceedings was granted subject to the condition that the legally assisted person pay an amount by way of contribution towards the costs of the matter, the amount to which the barrister and solicitor acting as a solicitor is entitled shall be reduced by the amount of the contribution required to be paid by the legally assisted person.

(3.) The Attorney-General shall cause a copy of an instrument containing the scale of fees referred to in sub-section (1.) of this section to be published in the *Gazette*.

Amount payable to barrister and solicitor in respect of work performed as a solicitor in civil proceedings.

**58.—(1.)** For the purposes of this section—

“allowable costs”, in relation to a matter in respect of which legal aid has been granted, means an amount equal to seven-tenths, or such other fraction as is determined by the Committee and approved by the Attorney-General, of—

- (i) such amount as is assessed by the Committee as being the amount that would be allowable upon taxation on a solicitor and client basis by the Registrar of the Supreme Court; or
- (ii) if the barrister and solicitor does not accept the assessment made under the last preceding subparagraph or the Committee, without having made such an assessment, thinks fit to refer the matter for taxation, such amount as is allowed upon taxation on a solicitor and client basis by the Registrar of the Supreme Court,

for work the performance of which is authorized by the legal aid certificate issued in relation to the matter and that has been performed by the barrister and solicitor as a solicitor in the matter;

“allowable disbursements”, in relation to a matter in respect of which legal aid has been granted, means—

- (i) such amount as is assessed by the Committee as being the amount of disbursements properly incurred and paid or payable by the barrister and solicitor who acted as a solicitor in the matter; or
- (ii) if the barrister and solicitor does not accept the assessment made under the last preceding subparagraph or the Committee, without having made such an assessment, thinks fit to refer the matter for taxation, such amount as is allowed upon taxation by the Registrar of the Supreme Court as being the amount of disbursements properly incurred and paid or payable by the barrister and solicitor; and

“disbursements” do not include fees payable to a barrister and solicitor for work performed by him as a barrister for a legally assisted person.

(2.) Subject to the next succeeding sub-section, a barrister and solicitor is entitled to be paid out of the Fund in respect of work performed by him as a solicitor for a legally assisted person in a matter other than criminal proceedings an amount equal to the total of the allowable costs in relation to the matter and of the allowable disbursements in relation to the matter.

(3.) Where legal aid has been granted subject to the condition that the legally assisted person pay an amount by way of contribution towards the costs of the matter in respect of which the legal aid was granted, the amount referred to in the last preceding sub-section shall be reduced by an amount equal to the amount of the contribution that the legally assisted person was required to pay.

**59.** A barrister and solicitor who performs work as a barrister for a legally assisted person in proceedings other than criminal proceedings is entitled to be paid out of the Fund in respect of that work an amount equal to four-fifths of—

Fees in civil proceedings to barrister and solicitor for work performed as a barrister.

- (a) such amount as is assessed by the Committee as being the amount that would be allowable upon taxation by the Registrar of the Supreme Court; or
- (b) if the barrister and solicitor does not accept the assessment made under the last preceding paragraph or the Committee, without having made such an assessment, thinks fit to refer for taxation, such amount as is allowed upon taxation by the Registrar of the Supreme Court,

for the work performed by the barrister and solicitor as a barrister.

**60.—(1.)** A barrister and solicitor acting as solicitor for a legally assisted person in a matter in respect of which legal aid has been granted who receives, in respect of the work performed by him in the matter after the grant of legal aid, any payment exceeding the total of—

Limitation on entitlement of barrister and solicitor.

- (a) the amount payable to him out of the Fund in accordance with this Ordinance; and
- (b) the amount, if any, of the contribution which the legally assisted person pays towards the costs of the matter,

shall pay an amount equal to the amount of the excess to the Committee.

(2.) A barrister and solicitor who acts as a barrister for a legally assisted person is not entitled to any fees other than those referred to in the last preceding section.

#### PART X.—PAYMENT OF COSTS BY SUCCESSFUL LEGALLY ASSISTED PERSONS.

**61.—(1.)** Where, in proceedings arising out of a matter in respect of which legal aid has been granted, an order is made for the payment of costs to the legally assisted person, the legally assisted person is liable to pay to the Committee—

Payment of costs, &c., to Committee.

- (a) if the legal aid was granted without him being required to pay an amount by way of contribution towards the costs of the matter—an amount equal to the amount of costs paid to him; or
- (b) if the legal aid was granted subject to a condition that he pay an amount by way of contribution towards the costs of the matter—an amount equal to the amount (if any) by which the amount of the costs paid to him exceeds the amount of the contribution that he has paid.

(2.) Where—

- (a) under the judgment or verdict given in the proceedings arising out of the matter in respect of which legal aid has been granted or as a result of a settlement or compromise of the proceedings, the legally assisted person is entitled to the payment of a sum of money; and

- (b) the amount payable by the legally assisted person to the Committee under the last preceding sub-section is less than the amount payable out of the Fund by way of legal aid in respect of the matter,

the Committee may, having regard to the amount payable under the judgment, verdict, settlement or compromise, determine that the legally assisted person is liable to pay to the Committee an amount determined by the Committee, being an amount not exceeding the difference between the two amounts referred to in paragraph (b) of this sub-section.

(3.) Where a determination is made under the last preceding sub-section, the amount specified in the determination is payable by the legally assisted person to the Committee within such time as is specified in the determination and, in default of payment, is recoverable in a court of competent jurisdiction as a debt due to the Committee by the legally assisted person.

Directions with respect to recovery of verdicts, &c., given in favour of legally assisted person.

62. The Committee may give such directions to a legally assisted person and to the barrister and solicitor acting as a solicitor for such a person as are necessary to ensure that payment is made to the Committee of amounts payable under the last preceding section as the Committee considers necessary in the circumstances, and the legally assisted person and the barrister and solicitor to whom the directions are given shall comply with those directions.

#### PART XI.—MISCELLANEOUS.

Interim grant of legal aid.

63.—(1.) Where—

- (a) an application is made for the grant of legal aid; and  
(b) a member of the Committee is satisfied that—

- (i) it is appropriate in the circumstances that legal aid be granted to the applicant; and  
(ii) it is essential in order to avoid prejudice to the applicant that an interim grant of legal aid be made to him under this section,

the member of the Committee may approve the interim grant of legal aid to the applicant and cause to be issued a legal aid certificate.

(2.) An interim grant of legal aid made under the last preceding sub-section is subject to confirmation by the Committee at a meeting to be held as soon as practicable and, at the meeting, the Committee shall confirm or annul the grant of legal aid.

(3.) Where, at a meeting of the Committee referred to in the last preceding sub-section, an interim grant of legal aid is annulled, the annulment does not affect the entitlement of a barrister and solicitor who has acted for the person to whom legal aid was granted to receive payment out of the Fund for any work performed by him on and after the grant of legal aid and before the time at which he is notified of the annulment of the grant.

**64.** Where the Committee, in pursuance of this Ordinance, obtains an opinion or a further opinion from a barrister and solicitor, the barrister and solicitor is entitled to be paid out of the Fund for the opinion or the further opinion a fee of such amount as is agreed upon between the Committee and the barrister and solicitor.

Fee for opinion.

**65.—(1.)** A barrister and solicitor who has consented to act as solicitor for a legally assisted person in a matter in respect of which legal aid has been granted may withdraw that consent and, if he has commenced so to act, cease so to act only by giving the Secretary to the Committee at least seven days notice in writing of his intention to do so.

Termination of solicitor-client relationship.

(2.) A legally assisted person shall not, without the consent of the Committee, withdraw his retainer of the barrister and solicitor who is acting as solicitor for him in the matter in respect of which legal aid has been granted.

(3.) The Committee shall not withhold the consent referred to in the last preceding sub-section unless it is satisfied that there is good cause for doing so.

**66.** A barrister and solicitor who is acting, or has acted, as solicitor for a legally assisted person in the matter in respect of which legal aid has been granted shall—

Furnishing of information by solicitor to Committee.

- (a) furnish to the Committee such information in relation to the progress of any proceedings arising out of the matter as the Committee requires from time to time; and
- (b) inform the Committee of anything of which he becomes aware that is or may be relevant to the variation or cancellation of the grant of legal aid.

**67.** A barrister and solicitor acting as solicitor for a legally assisted person in a matter in respect of which legal aid has been granted shall not, without the approval of the Committee, entrust the carriage of the matter as a solicitor to a person other than—

Delegation by solicitor of carriage of matter.

- (a) his partner;
- (b) his employee; or
- (c) a barrister and solicitor or a solicitor practising outside the Territory who is his duly appointed agent.

**68.** Upon the completion of a matter in respect of which legal aid was granted, the barrister and solicitor who acted as solicitor for the legally assisted person in the matter shall furnish to the Committee a report in writing containing information with respect to—

Report by solicitor after proceedings.

- (a) the result of the matter;
- (b) any amount recovered, recoverable, paid or payable under any judgment, decree, rule, order, verdict, settlement or compromise in any proceedings arising out of the matter;
- (c) the work done by him;
- (d) the amount claimed by him by way of costs and disbursements in relation to any proceedings arising out of the matter; and

- (e) where applicable, the amounts paid by way of contribution by the legally assisted person.

Disclosure  
of legal aid  
information.

**69.**—(1.) A member, former member, the secretary or a former secretary of the Committee, employee or former employee of the Committee or a registered company auditor who has audited the books, accounts and records of the Committee shall not, without the consent of the Committee, communicate to a person other than a member of the Committee any information which has come to his knowledge by reason of his office or position.

Penalty: Two hundred dollars.

(2.) Subject to the next succeeding sub-section, a court or tribunal shall not require a member, former member, the secretary or a former secretary of the Committee, employee or former employee of the Committee to produce any document or give in evidence any information that has come to his knowledge by reason of his office or position unless—

- (a) the Committee has given its consent to the production or the giving of evidence; or
- (b) the court or tribunal in a case where the Committee has not given its consent considers that it is necessary in the interests of justice that the document be produced or the evidence be given.

(3.) This section does not apply in proceedings instituted for an offence against the *Statutory Declarations Act 1959-1966* against a person who has applied for legal aid in relation to the statutory declaration accompanied his application for legal aid.

(4.) The Committee shall not refuse its consent under this section—

- (a) where the applicant for the consent has requested the production of documents furnished by him to the Committee or the giving of the evidence;
- (b) where proceedings have been instituted for the recovery of an amount payable under this Ordinance; or
- (c) where the production or evidence is required for the purposes of a taxation by the Registrar of the Supreme Court under this Ordinance.

(5.) In this section, “member” includes a deputy of a member.

Disclosure  
by barrister  
or solicitor of  
legal aid case.

**70.** A barrister and solicitor who is acting, or has acted, as a solicitor or barrister for a legally assisted person in a matter in respect of which legal aid has been granted shall not, without the consent of the Committee, disclose to the court or tribunal before which proceedings arising out of the matter have been instituted that his client is or was a legally assisted person.

Unmarked  
briefs.

**71.** A barrister and solicitor acting as a solicitor for a legally assisted person in a matter in respect of which legal aid has been granted who instructs another barrister and solicitor to act as a barrister for the legally assisted person in the matter shall not mark any fee on the brief.



**72.**—(1.) Where a person who is or has been a legally assisted person has not paid the amount payable by him towards the costs of the matter in respect of which he was granted legal aid, the amount payable is recoverable in a court of competent jurisdiction as a debt due and payable to the barrister and solicitor who acted as solicitor for the legally assisted person. Recovery of contributions.

(2.) The last preceding sub-section applies whether the contribution was payable to the Committee or to the barrister and solicitor.

**73.**—(1.) A member, former member, secretary, employee or former employee of the Committee is not liable to be sued for any action taken in good faith in the performance of his functions under this Ordinance. Protection of members, &c.

(2.) In this section, “member” includes a deputy of a member.

**74.** The Attorney-General may make regulations, not inconsistent with this Ordinance, prescribing matters required or permitted to be prescribed, or necessary or convenient to be prescribed, for carrying out or giving effect to this Ordinance. Regulations.