

# LEGAL AID ACT, 2013

No. 18



of 2013

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**An Act to provide for the establishment of Legal Aid Botswana for the purpose of providing access to justice by indigent persons in Botswana; to define the functions of Legal Aid Botswana; to provide for infrastructure and resources of Legal Aid Botswana; and for matters incidental thereto.**

*Date of Assent:* 04.10.2013

*Date of Commencement:* ON NOTICE

ENACTED by the Parliament of Botswana.

Short title and commencement

1. This Act may be cited as the Legal Aid Act, 2013, and shall come into operation on such date as the Minister may, by Order published in the *Gazette*, appoint.

Interpretation

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

“Attorney-General” means the Attorney-General of the Republic of Botswana appointed in terms of section 51 of the Constitution;

“Board” means the Board of Directors of Legal Aid Botswana;

“Chief Executive Officer” means the Chief Executive Officer of Legal Aid Botswana appointed as such under section 19;

“indigent person” means a natural person who qualifies for legal aid in terms of such means test as may be prescribed;

“Law Clinic” means a Law Clinic under the control and management of a legal practitioner, certified by the Council of the Law Society of Botswana and which provides legal services to indigent persons;

“Law Society of Botswana” means the Law Society of Botswana established under section 55 of the Legal Practitioners Act;

“Legal Aid Botswana” means the body established under section 3;

“legal practitioner” means an attorney or advocate admitted to practice under the Legal Practitioners Act; and

“member” means a member of the Board appointed under section 6.

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PART II — *Establishment and Functions of Legal Aid Botswana*

**3.** (1) There is hereby established a body to be known as Legal Aid Botswana.

Establishment  
of Legal Aid  
Botswana

(2) Legal Aid Botswana shall be a body corporate with perpetual succession and a common seal, capable of suing and being sued in its own name and, subject to the provisions of this Act, performing such acts as bodies corporate, may by law, do or perform.

**4.** The objectives of Legal Aid Botswana are to provide legal advice, legal representation and public education on legal matters to indigent persons.

Objectives  
of Legal Aid  
Botswana

**5.** Legal Aid Botswana shall do all that is necessary or expedient to achieve its objectives under section 4, and without derogating from the generality of those objectives, Legal Aid Botswana shall —

General  
functions  
and powers  
of Legal Aid  
Botswana

- (a) provide legal advice, legal representation and public education on legal matters;
- (b) purchase or otherwise acquire or to hold or alienate any movable or immovable property;
- (c) hire or let any movable or immovable property;
- (d) exercise the duty of utmost care to ensure reasonable protection of the assets and records of Legal Aid Botswana;
- (e) act with fidelity, honesty, integrity and in the best interests of Legal Aid Botswana in managing the financial affairs of Legal Aid Botswana;
- (f) on request, disclose to the Minister or Parliament, all material facts, including those reasonably discoverable, which in any way may influence the decisions or actions of the Minister or Parliament;
- (g) seek, within the sphere of influence of the Board, to prevent any prejudice to the financial interests of the state;
- (h) fix conditions subject to which legal aid is to be rendered;
- (i) fix conditions relating to the payment of contributions to Legal Aid Botswana by persons to whom legal aid is rendered;
- (j) conduct public awareness programmes to promote public understanding of the objectives, role and activities of Legal Aid Botswana and the public's legal rights; and
- (k) do all such things and perform all such functions as may be necessary for, or incidental to, the attainment of the objectives of Legal Aid Botswana.

### PART III — *Constitution and Qualifications of Board*

Board of  
Directors

**6.** (1) There shall be a Board of Directors for Legal Aid Botswana, which shall be the governing body of Legal Aid Botswana.

(2) The Board shall consist of the following members, appointed by the Minister —

- (a) two legal practitioners, appointed in consultation with the Law Society of Botswana;
- (b) a person who sits in the *Ntlo ya Dikgosi*, established by section 77 (1) of the Constitution, appointed in consultation with *Ntlo ya Dikgosi*;
- (c) a person having knowledge and experience in non-government organisations and special interest groups; and
- (d) three independent non-executive directors, who have knowledge of, and experience in —
  - (i) business management,
  - (ii) information technology, or
  - (iii) accounting or auditing.

(3) The Attorney-General and the Chief Executive Officer shall be ex-officio members of the Board.

(4) The Minister may appoint other persons to sit on the Board as alternates to the substantive members of the Board appointed under subsection (2).

(5) The alternate members appointed under subsection (4) shall be appointed by the Minister, if the Minister is satisfied that such persons meet the requirements for qualifications for members set out under section 9.

(6) The Minister shall, by notice in the *Gazette*, publish the appointment of members and their alternates, specifying the dates of their appointment and the period for which they are appointed to the office of the Board.

Powers and  
functions of  
Board

**7.** (1) The Board shall —

- (a) be the governing body of Legal Aid Botswana;
- (b) ensure that Legal Aid Botswana has and maintains —
  - (i) effective, efficient and transparent systems of financial and risk management and internal control,
  - (ii) a system of internal audit under the control and direction of an audit committee, and
  - (iii) a system for properly evaluating all major capital projects prior to a final decision on the project;
- (iv) effective and appropriate steps to —
  - (aa) collect all revenue due to Legal Aid Botswana,
  - (bb) prevent irregular expenditure, wasteful expenditure, losses, and expenditure not complying with the operational policies of Legal Aid Botswana, and
  - (cc) manage available working capital efficiently and economically;

- (v) effective and appropriate disciplinary steps against any employee of Legal Aid Botswana who —
  - (aa) commits an act which undermines the financial management and internal control system of Legal Aid Botswana, or
  - (bb) makes or permits any irregular expenditure or any fruitless and wasteful expenditure;
- (c) be responsible for the submission of all reports, returns, notices and other information as may be required by the Public Finance Management Act or any other legislation;
- (d) be responsible for the management, including the safeguarding, of the assets and for the management of the revenue, expenditure and liabilities of the Board;
- (e) ensure that Legal Aid Botswana complies with any tax, levy, duty, pension and audit commitment as required by legislation; and
- (f) comply and ensure compliance with the provisions of the Public Finance Management Act or any other legislation.

Act No. 17 of  
2011

(2) The Minister may, after consultation with the Board, give the Board directions of a general or specific nature regarding the exercise of its powers and the performance of its functions, which directions shall not be inconsistent with this Act or with the contractual or other obligations of Legal Aid Botswana, and the Board shall give effect to any such direction.

**8.** A member shall hold office for a period not exceeding three years, and shall be eligible for re-appointment, for a further term of three years.

Tenure of  
office

**9.** (1) A person shall not be appointed as a member or be qualified to continue to hold office where the person —

Qualifications,  
removal and  
suspension of  
members

- (a) has in terms of a law in force in any country —
  - (i) been adjudged or otherwise declared bankrupt and has not been discharged, or
  - (ii) made an assignment to, arrangement or composition with his or her creditors, which has not been rescinded or set aside; or
- (b) has within the period of 10 years immediately preceding the date of his or her appointment, been convicted —
  - (i) of a criminal offence within Botswana, or
  - (ii) outside Botswana, of an offence which if committed in Botswana, would have been a criminal offence,

and sentenced by a court of competent jurisdiction to imprisonment for six months or more without the option of a fine, whether that sentence has been suspended or not, and for which he or she has not received a free pardon.

(2) The Minister may, in writing, suspend from office, a member against whom criminal proceedings are instituted for an offence in respect of which a sentence of imprisonment without the option of a fine may be imposed, and whilst that member is so suspended, he or she shall not carry out any duties under this Act or be entitled to any remuneration or allowances as a member.

- (3) The Minister shall remove a member from office, if the member —
  - (a) is absent without reasonable cause from three consecutive meetings of the Board of which he or she has had notice;
  - (b) has been found to be physically or mentally incapable of performing his or her duties efficiently, and a medical doctor has issued a certificate to that effect;
  - (c) contravenes the provisions of this Act or otherwise misconducts himself or herself to the detriment of the objectives of the Board;
  - (d) has been convicted of an offence under this Act, or under any other Act for which he or she is sentenced to imprisonment for a term of six months or more without an option of a fine.

Vacation of office by members

**10.** A member shall vacate his or her office and his or her office shall become vacant —

- (a) if he or she becomes disqualified in terms of section 9 to hold office as a member;
- (b) if he or she is adjudged bankrupt or insolvent;
- (c) if he or she is absent from three consecutive meetings of the Board without reasonable excuse;
- (d) upon his or her death;
- (e) upon the expiry of such time as the Minister may specify in writing, notifying the member of his or her removal from office by the Minister;
- (f) upon the expiry of one month's notice, in writing to the Chairperson, of his or her intention to resign from office;
- (g) if he or she becomes mentally or physically incapable of performing his or her duties efficiently, and a medical doctor has issued a certificate to that effect;
- (h) if he or she is convicted of an offence under this Act for which he or she is sentenced to imprisonment for a term of six months or more without the option of a fine; or
- (i) if he or she is summarily dismissed by the Minister on the grounds of contravening the provisions of this Act.

Filling of vacancy

**11.** (1) Where the office of a member becomes vacant before the expiry of the member's term of office, the Minister shall appoint the alternate of that member in place of the member who vacates office, until the expiry of a period during which such member would have otherwise continued in office.

(2) Subsection (1) shall not apply where the remainder of the period for which the member whose office has been vacated would otherwise have held office is less than six months.

Remuneration and allowances

**12.** A member shall be paid such remuneration, travelling expenses and other expenses, incurred in connection with his or her services on the Board, if any, as the Minister may from time to time determine.

PART IV — *Meetings and Proceedings of Board*

**13.** (1) The Minister shall appoint a Chairperson of the Board from among the members.

Election of  
Chairperson  
and Vice  
Chairperson

(2) The members shall elect from among their number, a Vice Chairperson, at the first meeting of the Board.

(3) The Chairperson and Vice Chairperson shall hold office for a period of not more than three years.

(4) The Minister shall appoint a new Chairperson from among the members, on the expiry of the term of office of the Chairperson, or where the Chairperson vacates office.

(5) The members shall, from among their number, elect a Vice Chairperson, where the term of office of the Vice Chairperson has expired or where the Vice Chairperson vacates office.

(6) The Chairperson or Vice Chairperson may vacate his or her office as such even though he or she remains a member.

(7) The Vice Chairperson shall exercise the functions of the Chairperson during the period that the Chairperson is absent or unable to act as Chairperson.

**14.** (1) Subject to the provisions of this Act, the Board may regulate its own proceedings.

Meetings of  
Board

(2) The Board shall meet for the transaction of business at least four times a year.

(3) Upon giving notice in writing, of not less than 14 days, a meeting of the Board may be called by the Chairperson, but if the urgency of any particular matter does not permit the giving of such notice, a special meeting may be called upon the giving of a shorter notice.

(4) The notice referred to under subsection (3) shall state —

(a) the place and time for the meeting; and

(b) the agenda for the meeting.

(5) There shall preside at any meeting of the Board —

(a) the Chairperson;

(b) in the absence of the Chairperson, the Vice Chairperson; or

(c) in the absence of the Chairperson and Vice Chairperson, such member as the members present may elect from amongst themselves for the purpose of that meeting.

(6) The Secretary shall cause to be recorded and kept minutes of all proceedings of meetings of the Board.

**15.** (1) The quorum at any meeting of the Board shall be a simple majority of the members.

Quorum and  
procedure of  
meetings of  
Board

(2) A decision of the Board on any question shall be by the majority of the members present and voting at the meeting and, in the event of an equality of votes, the member presiding shall have a casting vote in addition to that member's deliberative vote.

(3) A decision of the Board shall not be rendered invalid by reason of a vacancy on the Board or the fact that a person who was not entitled to sit as a member did so sit.

(4) Where an alternate member is appointed by the Minister under section 6 (4), such alternate member shall attend and take part in the voting at meetings whenever the member to whom he or she is alternate is absent from such meeting.

(5) The Board may invite any person whose presence it deems necessary, to attend and participate in the deliberations of a meeting of the Board, but such person shall have no vote.

Committees of  
Board

**16.** (1) The Board may, for the purpose of performing its functions, establish such committees as it considers appropriate and may delegate to any such committee such of its functions as it considers necessary.

(2) The Board may appoint, to the committees established under subsection (1), such number of persons from the members and such number of persons with specialised skills, not being members, as it considers appropriate, to be members of such committees and such persons shall hold office for such period as the Board may determine.

(3) The Board shall appoint a Chairperson and Vice Chairperson for any of its committees from amongst its members.

(4) An officer of Legal Aid Botswana appointed in writing by the Chief Executive Officer shall be secretary to any committee and shall on the instructions of the Chairperson of the committee convene meetings of the committee.

(5) Subject to the specific or general directions of the Board, a committee may regulate its own procedure and the Board may attach any conditions to the delegation of any of its powers to such committees.

(6) The Board may confirm, vary or revoke any decision of a committee taken in consequence of a delegation or assignment, but no variation or revocation of a decision may detract from any rights that may have accrued as a result of the decision.

(7) Meetings of a committee shall be held at such times and places as the committee may determine, or as the Board may direct.

Disclosure of  
interest

**17.** (1) If a member is present at a meeting of the Board or any committee of the Board at which any matter in which the member or immediate family member of the member is directly or indirectly interested in a private capacity is the subject of consideration, the member shall, as soon as practicable after the commencement of the meeting, disclose such interest and shall not, unless the Board otherwise directs, take part in any consideration or discussion of, or vote on, any question touching on the matter.

(2) A disclosure of interest made under subsection (1) shall be recorded in the minutes of the meeting at which it is made.

(3) Where a member fails to disclose his or her interest in accordance with subsection (1) and a decision by the Board is made benefitting such member, or an immediate family member of the member, such decision shall be null and void to the extent that it benefits such member or family member.

(4) A member who fails to comply with the provisions of subsection (1) commits an offence and is liable to a fine not exceeding P2 000, or to imprisonment for a term not exceeding six months, or to both.

(5) For the purposes of this section “immediate member of the family” means the spouse, son, daughter, sibling or parent of the member.

**18.** (1) A member and any other person assisting the Board shall observe and preserve the confidentiality of matters coming before the Board on the rendering of legal aid, and such confidentiality shall subsist even after the termination of their terms of office or their mandates.

Confidentiality

(2) Any member or any person to whom confidential information is revealed through working with the Board shall not disclose that information to any other person unless he or she is required to do so in terms of any written law or for purposes of any judicial proceedings.

(3) Any member or any other person who contravenes the provisions of this section commits an offence and is liable to a fine not exceeding P2 000, or to imprisonment for a term not exceeding six months, or to both, and for a second or subsequent offence to a fine not exceeding P5 000, or to imprisonment for a term not exceeding 12 months, or to both.

#### *PART V — Chief Executive Officer and Other Staff of Legal Aid Botswana*

**19.** (1) The Minister shall, in consultation with the Board, appoint a Chief Executive Officer on such terms and conditions as shall be determined by the Board, for a fixed contract period not exceeding five years.

Chief  
Executive  
Officer

(2) A person shall not be appointed as Chief Executive Officer unless he or she possesses experience and training in the legal area and is qualified to be admitted as a legal practitioner.

(3) The Chief Executive Officer shall, subject to such directions on matters of policy as may be given by the Board, be responsible for the day-to-day management of the affairs of Legal Aid Botswana.

(4) The Chief Executive Officer may resign from office by giving three months’ notice in writing, to the Minister and the Board.

(5) The Minister may, on the recommendation of the Board, remove the Chief Executive Officer from office by giving him or her three months’ notice in writing, or by paying him or her three months’ salary in lieu of notice.

(6) The Chief Executive Officer may delegate, in writing, to any senior officer of Legal Aid Botswana, the exercise of any powers which he or she is authorised to exercise under this Act.

(7) The Chief Executive Officer shall, unless otherwise excused by the Board, attend every meeting of the Board.

- (8) The Chief Executive Officer shall be responsible for —
- (a) the appointment, formation and development of an efficient administration of Legal Aid Botswana;
  - (b) the organisation, control and management of all staff, including persons seconded to Legal Aid Botswana;
  - (c) the maintenance of discipline in respect of the staff of Legal Aid Botswana;
  - (d) the carrying out of the decisions of the Board;
  - (e) the management of the support structure of Legal Aid Botswana;
  - (f) all income and expenditure of Legal Aid Botswana; and
  - (g) all Legal Aid Botswana's assets and the discharge of all the liabilities of Legal Aid Botswana.

(9) The Chief Executive Officer shall receive such remuneration, allowances and other service benefits, as the Board, in consultation with the Minister, may determine.

Appointment  
of Secretary  
of Board

**20.** (1) The Board shall, appoint a Secretary, who shall be suitably qualified and experienced.

(2) The Secretary of the Board shall attend meetings of the Board but shall have no right to vote, and shall be responsible for the recording of the Board's proceedings and decisions.

(3) The Secretary of the Board shall be accountable to the Board for his or her functions and responsibilities.

(4) The conditions of service, including the remuneration package of the Secretary, shall be set by the Board, with the concurrence of the Minister.

Appointment  
of staff and  
agents of  
Legal Aid  
Botswana

**21.** (1) The Board shall, on the recommendation of the Chief Executive Officer appoint the senior staff of Legal Aid Botswana.

(2) The senior staff shall, under the direction of the Chief Executive Officer, assist the Chief Executive Officer in the proper administration and management of the functions and affairs of Legal Aid Botswana, in accordance with the policies laid down by the Board.

(3) The Chief Executive Officer shall appoint such other staff and agents, as may be necessary for the proper discharge of the functions of Legal Aid Botswana.

Conditions of  
employment of  
staff of Legal  
Aid Botswana

**22.** The terms and conditions of employment of the members of staff of Legal Aid Botswana shall be as determined by the Board in consultation with the Minister, in their respective contracts of employment and the benefits, gratuities and allowances of the members of staff shall be paid from the revenues of Legal Aid Botswana.

PART VI — *Financial provisions*

- 23.** (1) The funds of Legal Aid Botswana shall consist of —
- (a) such moneys as may be appropriated by Parliament;
  - (b) contributions paid to Legal Aid Botswana by persons to whom legal aid is rendered;
  - (c) any costs recovered in any legal proceedings or in any dispute in respect of which legal aid is rendered;
  - (d) such grants and donations as Legal Aid Botswana may receive from any other source; and
  - (e) interest earned from monies deposited in the account of Legal Aid Botswana from any source.

Funds of  
Legal Aid  
Botswana

(2) Legal Aid Botswana shall utilise the funds acquired under subsection (1) to meet the costs incurred for its operations and any surplus accrued shall be used for such purposes as are consistent with the provisions of this Act.

(3) Legal Aid Botswana shall deposit all monies received by it in an account opened by it with a bank licensed under the Banking Act.

Cap. 46:04

(4) Legal Aid Botswana shall invest any monies not required for immediate use, or as a reasonable operating balance.

(5) Legal Aid Botswana may utilise any balance of its monies remaining at the end of the financial year of Legal Aid Botswana concerned, for any expenses in connection with the performance of its functions, including the retention of unutilised funds at the end of a financial year to provide for the contingent liability of Legal Aid Botswana.

**24.** The financial year of Legal Aid Botswana shall be a period of 12 months, beginning on 1st April of each year and ending on 31st March of the subsequent year.

Financial year

**25.** (1) Legal Aid Botswana shall keep and maintain proper accounts and records of accounts in respect of each financial year, and shall prepare, in each financial year, a statement of such accounts showing —

Accounts and  
audit

- (a) an income and expenditure statement, showing all moneys that were received by and had accrued to Legal Aid Botswana during the financial year, and all the expenditure incurred and payments made by Legal Aid Botswana, during that year;
- (b) a balance sheet, showing Legal Aid Botswana's financial position and the state of its assets and liabilities as at the end of the previous financial year; and
- (c) a cash flow statement for the previous year.

(2) The accounts of Legal Aid Botswana in respect of each financial year shall, within three months of the end of the financial year, be audited by an auditor appointed by Legal Aid Botswana.

(3) The auditor shall report in respect of the accounts for each financial year, in addition to any other matter on which the auditor deems it necessary to comment on, whether or not —

- (a) the auditor has received all the information and explanations which, to the best of the auditor's knowledge and belief, were necessary for the performance of the auditor's duties;
- (b) the accounts and related records of Legal Aid Botswana have been properly kept;
- (c) Legal Aid Botswana has complied with all the financial provisions of the Act with which it is its duty to comply with; and
- (d) the statement of accounts prepared by Legal Aid Botswana was prepared on a basis consistent with that of the preceding year and represents a true and fair view of the transactions and financial affairs of Legal Aid Botswana.

(4) The auditor's report and a copy of the audited accounts shall, within 14 days of completion, be forwarded to Legal Aid Botswana by the auditor.

(5) Legal Aid Botswana shall, within 30 days of receipt of the auditor's report, submit its audited financial statements and the auditor's report to the Minister, who shall lay the auditor's report in Parliament.

Pension and other funds

**26.** (1) Legal Aid Botswana may, out of its revenues, establish and maintain such pension, superannuation, provident or other funds as it may consider desirable or necessary for the payment of benefits or other allowances on the death, sickness, injury, superannuation, resignation, retirement or discharge of its staff and may, make rules providing for the payment of money out of its revenues to such funds and providing for contributions to such funds by its staff.

(2) Legal Aid Botswana may contract with insurance companies or such other bodies as may be appropriate for the maintenance and administration of the funds authorised under subsection (1).

Annual report

**27.** (1) Legal Aid Botswana shall, within a period of six months after the financial year or within such longer period as the Minister may approve, submit, to the Minister, a comprehensive report of its operations during that year, together with the auditor's report and the audited accounts as provided for in section 25 and the report shall be published in such manner as the Minister may require.

(2) The Minister shall lay the annual report of Legal Aid Botswana in Parliament, within three months of its receipt.

#### PART VII — *Miscellaneous provisions*

Indemnity

**28.** (1) No matter or thing done or omitted to be done by a member, employee or agent of Legal Aid Botswana shall, if the matter or thing is done or omitted to be done *bona fide* in the course of the operations of Legal Aid Botswana, render a member, employee or agent of Legal Aid Botswana personally liable to an action, claim or demand.

(2) A legal practitioner shall not be deemed to have committed an act of misconduct by virtue of any action taken to provide members of the public with education and information concerning legal rights and obligations and the availability of legal aid to indigent persons through Legal Aid Botswana or a Law Clinic.

**29.** (1) An employee of Legal Aid Botswana shall not be competent to give evidence against any person to whom legal aid has been granted, without the consent of that person, as to any fact, matter or thing, disclosed to that employee or any other employee of Legal Aid Botswana by such legal aid recipient after the grant of legal aid, unless such fact, matter or thing has come to the knowledge of such employee before legal aid was granted to such person.

Privileged  
communication

(2) The privilege granted under subsection (1) shall continue after the termination of the legal aid granted to a recipient, and the termination of employment of any employee to whom any privileged communication was made:

Provided that if —

- (a) the legal aid recipient or former legal aid recipient gives evidence in any legal proceedings of any such privileged communications, the Chief Executive Officer may authorise the person who received such privileged communication to give evidence thereof; or
- (b) the legal aid recipient communicates to an employee or agent of Legal Aid Botswana of an attempt to commit any of the crimes referred to in the Second Schedule to the Criminal Procedure and Evidence Act, the Chief Executive Officer may authorise the person who received such privileged communication to disclose such to an appropriate public officer responsible for the prevention of such crimes.

Cap. 08:02

(3) Any evidence of any privileged communication tendered to any judge, magistrate, arbitrator, assessor or a member of any administrative tribunal in contravention of this section shall be inadmissible.

(4) Where Legal Aid Botswana acts for two or more legal aid recipients, the Chief Executive Officer shall ensure that any privileged communication received on behalf of any litigant or accused are not disclosed to any employees or agents of Legal Aid Botswana instructed to represent any other litigant or accused with whom there is a conflict of interest.

**30.** (1) A court may direct that a person be granted legal aid by Legal Aid Botswana if the court has taken into account —

Direction for  
legal aid by  
court

- (a) the personal circumstances of the person concerned;
- (b) the nature and gravity of the matter;
- (c) whether any other legal representation at State expense is available or has been provided;
- (d) any report submitted by Legal Aid Botswana; or
- (e) any other factor which in the opinion of the court should be taken into account.

(2) Before directing that a person be provided with legal aid by Legal Aid Botswana, the court shall refer the matter, together with any documents the court may consider necessary for the attention of Legal Aid Botswana, for evaluation and report by Legal Aid Botswana.

(3) Where the court refers a matter under subsection (2), Legal Aid Botswana, shall report on the matter to the Registrar or the clerk of the court, as the case may be, who shall make a copy thereof available to the court and the person concerned.

(4) The report referred to in subsection (3) shall include —

- (a) a recommendation as to whether the person concerned qualifies for legal representation by Legal Aid Botswana;
- (b) particulars relating to the factors referred to in subsection (1); and
- (c) any other factor which in the opinion of Legal Aid Botswana should be taken into account.

(5) A court may only refer a matter under subsection (2) if the person concerned —

- (a) has previously applied to Legal Aid Botswana for legal aid; and
- (b) has been refused legal aid by Legal Aid Botswana; and
- (c) has exhausted his or her internal right to appeal within the structures of Legal Aid Botswana against the refusal for legal aid; or
- (d) has applied to Legal Aid Botswana for legal representation and has not received any response to such application within a reasonable time; or
- (e) has been refused legal aid by Legal Aid Botswana and the court is of the opinion that there are particular circumstances that need to be brought to the attention of Legal Aid Botswana in its adjudication of that person's appeal against the refusal of legal aid.

(6) Any decision by Legal Aid Botswana in any proceedings relating to —

- (a) the particular legal practitioner to be assigned to any person;
- (b) the fees to be paid by the Board to a particular practitioner;
- (c) the number of legal practitioners to be assigned to a particular person or group of persons; or
- (d) the contribution, if any, to be paid to Legal Aid Botswana by the person in question and when, and the manner in which such fees are to be paid,

shall be subject to review by the High Court at the instance of the affected person.

(7) A court may not make any order relating to the matters referred to in subsection (6), except consequent upon a review contemplated in subsection (6).

**31.** (1) Where in any judicial proceedings in respect of which legal aid is rendered to a litigant —

Costs, security  
for costs and  
court fees

- (a) the legal practitioner representing the litigant shall give notice, in writing, to all other parties to the judicial proceedings of the grant of legal aid to the litigant and shall file a copy of such notice with the Registrar or clerk of the court;
- (b) such legal aid is suspended or terminated, the legal practitioner representing the litigant shall give notice, in writing, to all other parties to the said judicial proceedings of the suspension or termination of legal aid and shall file a copy of such notice with the Registrar or clerk of the court; and
- (c) no order for costs shall be made in favour of or against the litigant in respect of fees or disbursements incurred during the period for which legal aid was granted solely by reason of the litigant being successful or unsuccessful in such judicial proceedings.

(2) The provisions of subsection (1) shall apply *mutatis mutandis* to any proceedings before any administrative board or arbitrator.

(3) Notwithstanding any provision contained in any other law, a person to whom legal aid has been granted shall not be required —

- (a) to pay any court fees during the period for which legal aid is granted; or
- (b) to provide any security for costs during the period for which legal aid is granted.

**32.** The Minister, in consultation with the Board, may make regulations —

Regulations

- (a) for anything which may be prescribed; and
- (b) for the better carrying out of the provisions of the Act.

PASSED by the National Assembly this 5th day of August, 2013.

BARBARA N. DITHAPO,  
*Clerk of the National Assembly.*