



# **BILL NO. 227**

*Government Bill*

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*2nd Session, 63rd General Assembly  
Nova Scotia  
69 Elizabeth II, 2020*

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## **An Act to Amend Chapter 252 of the Revised Statutes, 1989, the Legal Aid Act**

CHAPTER 15  
ACTS OF 2020

**AS ASSENTED TO BY THE LIEUTENANT GOVERNOR  
MARCH 10, 2020**

The Honourable Mark Furey  
*Attorney General and Minister of Justice*

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*Halifax, Nova Scotia  
Printed by Authority of the Speaker of the House of Assembly*

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**An Act to Amend Chapter 252  
of the Revised Statutes, 1989,  
the Legal Aid Act**

Be it enacted by the Governor and Assembly as follows:

**1 Section 2 of Chapter 252 of the Revised Statutes, 1989, the *Legal Aid Act*, is amended by**

- (a) relettering clause (a) as (aa);**
- (b) adding immediately before clause (aa) the following clause:**

(a) “Chief Executive Officer” means the person appointed as the Chief Executive Officer of the Commission pursuant to this Act;

**and**

- (c) striking out clause (b) and substituting the following clause:**

(b) “lawyer” has the same meaning as in the *Legal Profession Act*;

**2 (1) Subsection 3(2) of Chapter 252 is amended by striking out “fifteen” in the first line of clause (a) and substituting “nine”.**

**(2) Subsection 3(3) of Chapter 252 is amended by striking out “Seven” in the first line and substituting “Four”.**

**(3) Subsection 3(6) of Chapter 252 is repealed.**

**(4) Subsection 3(7) of Chapter 252 is amended by adding “not more than” immediately after “of” in the third line.**

**(5) Subsection 3(8) of Chapter 252 is amended by striking out “his term” in the last line and substituting “the director’s term, to a maximum of three consecutive terms”.**

**(6) Section 3 of Chapter 252 is further amended by adding immediately after subsection (8) the following subsection:**

(8A) Where the term of office of a director expires, that director may continue to act as a director until the director is re-appointed, a successor is appointed or the appointment of the director is revoked.

**(7) Subsection 3(9) of Chapter 252 is amended by**

**(a) striking out “member” in the second and in the fifth lines and substituting in each case “director”;**

**(b) striking out “his” in the third line and substituting “the director’s”;**  
**and**

**(b) striking out “he” in the sixth line and substituting “the director”.**

**(8) Section 3 of Chapter 252 is further amended by adding immediately after subsection (10) the following subsection:**

(11) When making recommendations or nominations, as the case may be, the Attorney General and the Nova Scotia Barristers' Society shall consider a potential director's knowledge of and skills and experience in

- (a) business, management and financial matters;
- (b) law and the operation of courts, tribunals and alternative dispute-resolution processes;
- (c) the provision of legal aid;
- (d) familiarity with the Province's Indigenous Black and Mi'kmaq communities;
- (e) urban and rural areas;
- (f) the cultural, linguistic and geographic diversity of the Province; and
- (g) the social and economic circumstances associated with the special legal needs of low-income individuals.

**3 (1) Subsection 4(1) of Chapter 252 is amended by striking out "Chairman" in the second line and substituting "Chair".**

**(2) Subsection 4(3) of Chapter 252 is amended by striking out "his" both times it appears in the second line and substituting in each case "the director's".**

**(3) Subsection 4(5) of Chapter 252 is amended by striking out "him" in the second line and substituting "the director".**

**4 Subsection 5(1) of Chapter 252 is amended by striking out "seven" in the second line and substituting "five".**

**5 Chapter 252 is further amended by adding immediately after Section 5 the following Sections:**

5A Subject to this Act and the regulations, the Commission controls and directs the business of the Commission and may, by resolution or by-law, determine its own practices and procedures.

5B The objects of the Commission are to

- (a) deliver quality legal services in accordance with this Act;
- (b) improve access to justice for Nova Scotians; and
- (c) provide such other legal services as the Attorney General may direct the Commission to provide to individuals or groups.

**6 (1) Subsection 6(1) of Chapter 252 is repealed and the following subsection substituted:**

(1) The Commission is responsible for all matters relating to legal aid in the Province and for persons employed by the Commission and has all the powers and shall perform all the duties conferred and imposed upon it by this Act, any other Act, the Governor in Council or the Attorney General, including

- (a) determining the legal needs of low-income individuals and of disadvantaged communities;
- (b) establishing priorities for the areas of law, types of cases and types of proceedings for which it will provide legal aid;
- (c) establishing policies for the kinds of legal aid to be provided in different areas of law, types of cases and types of proceedings;
- (d) establishing procedures for applying for legal aid;
- (e) establishing guidelines, procedures and requirements for lawyers and other persons providing services under this Act;
- (f) establishing offices and maintaining facilities;
- (g) establishing strategic policy and plans to meet the objectives of the Commission by
  - (i) assessing current and future needs for legal aid,
  - (ii) formulating strategies to meet those needs, and
  - (iii) setting performance measures to determine if the objectives have been met;
- (h) developing the Commission's capacity to participate in the development of an integrated justice system in collaboration with other partners in the justice system;
- (i) facilitating coordination among the different methods and different persons and entities by which legal aid is provided;
- (j) informing the public respecting the nature and extent of services available under this Act;
- (k) initiating, conducting and participating in public legal education and other programs that advance the purpose of this Act;
- (l) reviewing and approving investment policies;
- (m) developing and maintaining an information-technology strategy;
- (n) establishing policies for the retention, preservation and destruction of records;
- (o) establishing and implementing quality-control mechanisms;
- (p) evaluating the programs of the Commission;
- (q) undertaking inquiries and investigations in relation to the functions of the Commission;

(r) making payments for services rendered by lawyers in accordance with this Act and the regulations; and

(s) doing any other thing that is necessary, incidental or conducive for the carrying out of the purpose of this Act.

**(2) Section 6 of Chapter 252 is further amended by adding immediately after subsection (2) the following subsection:**

(2A) The Commission shall advise the Attorney General respecting legal aid and access to justice for individuals.

**(3) Subsection 6(3) of Chapter 252 is repealed and the following subsection substituted:**

(3) Subject to this Act and the regulations, the Commission may delegate, in writing, any of its powers or duties to a committee of the Commission, a member of a committee or an officer or employee of the Commission.

**7 Subsection 7(5) of Chapter 252 is amended by striking out “he” in the eighth and in the eleventh lines and substituting in each case “the person”.**

**8 (1) Subsection 9(3) of Chapter 252 is amended by adding “and shall comply with Public Sector Accounting Board principles” immediately after “records” in the second line.**

**(2) Subsection 9(4) of Chapter 252 is amended by striking out clause (a) and substituting the following clause:**

(a) statements of operations, changes in net financial assets and cash flows;

**9 Section 10 of Chapter 252 is amended by adding “or a qualified independent auditor” immediately after “General” in the second line.**

**10 (1) Subsection 14(1) of Chapter 252 is repealed and the following subsection substituted:**

(1) The Commission shall appoint a Chief Executive Officer.

**(2) Subsection 14(2) of Chapter 252 is amended by striking out “Executive Director” and substituting “Chief Executive Officer”.**

**11 Section 15 of Chapter 252 is repealed and the following Section substituted:**

15 (1) The Commission may grant legal aid in any area of law involving the liberty or civil rights of an individual and for matters involving the integrity and protection of an individual’s family, including

(a) criminal law;

(b) family law;

(c) social justice or administrative matters, if the matter affects the individual's income, housing, entitlement to benefits, ability to earn a livelihood, family integrity or mental health; and

(d) any other matter as directed by the Attorney General.

(2) In determining whether to grant legal aid and which services to grant, the Commission shall consider

(a) the need to achieve an effective balance among the different methods of providing legal aid;

(b) the needs of low-income individuals and of disadvantaged communities;

(c) the cost of providing such services; and

(d) the Commission's resources.

(3) Subject to subsections (1) and (2), the Commission may provide legal aid by any method it considers appropriate, including

(a) by providing services ordinarily provided by a lawyer;

(b) by providing services other than those referred to in clause (a);

(c) by providing duty counsel;

(d) by assisting individuals representing themselves, including providing those individuals with summary advice, legal information packages, self-help kits and assistance in preparing documents;

(e) by providing alternative dispute-resolution services;

(f) by providing public legal education and information.

(4) The Commission may provide legal aid through lawyers or other persons, whether or not those lawyers or other persons are employed by the Commission.

(5) Except as otherwise provided in this Act or the regulations, a lawyer providing legal aid may prepare documents, negotiate settlements or give legal advice necessary to carry out the lawyer's duties under this Act.

**12 Subsection 16(1) of Chapter 252 is repealed and the following subsection substituted:**

(1) Legal aid may be granted at any stage of proceeding, proposed proceeding or at any other time determined by the Commission.

**13 (1) Subsection 17(1) of Chapter 252 is amended by**

**(a) striking out "prescribed in the regulations" in the second line and substituting "determined by the Commission"; and**

**(b) striking out "Executive Director" in the first line of clause (b) and substituting "Chief Executive Officer".**

**(2) Subsection 17(2) of Chapter 252 is amended by**

**(a) striking out “prescribed by the regulations” in the second line of clause (b) and substituting “required by the Commission”; and**

**(b) relettering clause (d) as clause (c).**

**(3) Subsection 17(3) of Chapter 252 is amended by**

**(a) striking out “Executive Director” in the second line and substituting “Chief Executive Officer”;**

**(b) striking out “solicitor” in the third line and substituting “lawyer”;**

**(c) striking out “his” in the third line and substituting “the applicant’s or recipient’s”; and**

**(d) striking out “him” in the fourth line and substituting “the applicant or recipient”.**

**14 Subsection 18(1) of Chapter 252 is amended by**

**(a) striking out “Executive Director” in the second line and substituting “Chief Executive Officer”; and**

**(b) striking out “barrister” in the third line and substituting “lawyer”.**

**15 Section 19 of Chapter 252 is amended by**

**(a) striking out “his” in the second line of clause (a) and substituting “the person’s”;**

**(b) striking out “his” in the second line of clause (c) and substituting “the person’s”;**

**(c) striking out “solicitor” in the first and in the third lines of clause (d) and substituting in each case “lawyer”;**

**(d) striking out “him” in the second line of clause (d) and substituting “the person”;**

**(e) striking out “his” in the last line of clause (d) and substituting “a”; and**

**(f) striking out “he” in the second line of clause (f) and substituting “the person”.**

**16 Section 20 of Chapter 252 is amended by striking out “partial charge” in the first line of clause (b) and substituting “contribution agreement”.**

**17 Chapter 252 is further amended by adding immediately after Section 20 the following Section:**

20A (1) The Commission may, in accordance with the regulations, appoint panels of lawyers who may provide legal aid.

(2) The Commission may establish minimum standards that a lawyer must meet to be appointed to a panel.



**18 Section 21 of Chapter 252 is amended by**

**(a) adding “(1)” immediately after the Section number; and**

**(b) adding immediately after subsection (1) the following subsections:**

(2) The amount that an applicant or person responsible for an applicant agrees to contribute towards the costs of the legal aid given to the applicant

(a) must be paid to the Commission by the applicant or person responsible for the applicant;

(b) is a debt owing to the Commission; and

(c) may be recovered in any court of competent jurisdiction.

(3) Where a person does not pay an amount that the person agreed to contribute when it becomes due, the Commission may issue the person with a notice stating that the person is in default under this Act and setting out the amount owed to the Commission.

(4) The Commission may file a notice issued under subsection (3) with the Supreme Court of Nova Scotia or with the Small Claims Court and that Court shall treat it in the same way as an order of the Court and it is enforceable as such.

(5) Notwithstanding any rule of court, the Commission may file the notice with a court by mail.

**19 Subsection 22(2) of Chapter 252 is amended by adding “unless prior written agreement exists between the recipient and the Commission” immediately after “Commission” in the third line.**

**20 (1) Section 23 of Chapter 252 is amended by adding “(1)” immediately after the Section number.**

**(2) Subsection 23(1) is amended by striking out “solicitor” in the sixth line and substituting “lawyer”.**

**(3) Section 23 of Chapter 252 is further amended by adding immediately after subsection (1) the following subsections:**

(2) Costs awarded in any order made in favour of an individual who has received legal aid are recoverable in the same manner and to the same extent as though awarded to an individual who has not received legal aid.

(3) Subsection (2) applies even if no part of the costs of the legal aid received by the individual in whose favour the order is made was or will be contributed to the Commission by the individual or by a person responsible for the individual.

(4) Subsection (2) applies even if the costs are in excess of the total amount contributed or to be contributed to the Commission by the individual, or by a person responsible for the individual, for the costs of the legal aid received by the individual.

(5) All costs ordered by a court to be paid to an individual who has received legal aid are the property of the Commission and must be paid to the Commission.

**21 Chapter 252 is further amended by adding immediately after Section 23 the following Section:**

23A (1) Where an applicant recovers any sum in respect of a matter for which the applicant received legal aid under a judgment, order, settlement or otherwise, the amount of the costs of the legal aid provided to the applicant is a charge against the sum so recovered and must be deducted from the sum recovered and paid to the Commission.

(2) Where an applicant who has been given legal aid in any matter recovers property other than money, the Commission has a charge against the property so recovered for the amount of the costs of the legal aid provided to the applicant and may enforce such a charge.

(3) Where the recovered property is personal property, the charge is deemed to be a financing statement as prescribed by the regulations made under the *Personal Property Security Act*.

(4) The charge is not invalidated nor its effect impaired by reason only of an error or omission in the charge or in its execution or registration, unless a reasonable person would be likely to be materially misled by the error or omission.

(5) Where the recovered property is real property, the Commission may register the charge against it in the land registry office for the county in which the property is located and the Commission may enforce the charge by sale of the real property against which it is registered in the same manner as a sale to realize on a mortgage.

(6) Where a person who owns or has any interest in real property in the Province has agreed to contribute towards the costs of legal aid given to the person or to a person for whom the person is responsible, the Commission may register a notice of lien for an amount equal to the amount that the person agreed to contribute against the person's land in the land registry office for the area in which the interest is located.

(7) Where the person fails to pay the Commission an amount the person agreed to contribute, the Commission may enforce a lien made under subsection (6) by sale of the real property against which it is registered in the same manner as a sale to realize on a mortgage.

(8) The Commission is not required to enforce the charge or lien immediately upon default occurring, but may delay enforcing the charge or lien to a later date or, in accordance with the terms of the agreement entered into by the person and the Commission, to the occurrence of an event.

(9) A charge or lien against real property under this Section must be in a form approved by the Attorney General.

(10) The Commission may, in accordance with the regulations, waive any of its rights under this Section to collect amounts due to it and may accept pay-

ment from an applicant or person responsible for an applicant in a lesser amount than that owed by the applicant or person to the Commission.

(11) This Section does not apply in respect of legal aid provided by a legal aid clinic or any other entity that is not the Commission.

**22 Section 25 of Chapter 252 is amended by**

**(a) striking out “he” in the first line of clause (a), in the first line of clause (b) and in the first line of clause (c) and substituting in each case “the applicant or client”; and**

**(b) striking out “his” in the first line of clause (c) and substituting “the applicant’s or client’s”.**

**23 Section 26A of Chapter 252, as enacted by Chapter 8 of the Acts of 1999 (Second Session), is amended by striking out “barrister” in the first and in the sixth lines and substituting in each case “lawyer”.**

**24 Chapter 252 is further amended by adding immediately after Section 26A the following Sections:**

26B (1) Information disclosed by a client or an applicant for legal aid to a director, employee or officer of the Commission is privileged and must be kept confidential in the same manner and to the same extent as if it had been disclosed to a lawyer under a lawyer and client relationship.

(2) Where a civil or criminal proceeding is or may be brought against a person respecting the person’s eligibility for legal aid, subsection (1) does not apply to information respecting eligibility.

26C (1) A director, officer or employee of the Commission is not personally liable for anything done or omitted to be done or for any neglect or default in

(a) the exercise or purported exercise of a power conferred upon that director, officer or employee pursuant to this Act or the regulations; or

(b) the performance of a duty under this Act or the regulations.

(2) Subsection (1) does not apply if the act or omission was

(a) done in bad faith;

(b) fraudulent; or

(c) criminal.

(3) Subsection (1) does not protect the Commission from vicarious liability arising out of anything done or omitted by a person referred to in that subsection for which the Commission would be vicariously liable if this Section were not in effect.

**25 Subsection 27(1) of Chapter 252 is amended by**

- (a) striking out “he” in the third line and substituting “the Governor in Council”;**
- (b) striking out clause (b) and substituting the following clause:**
  - (b) respecting the delegation by the Commission of any of its powers or duties;
- (c) striking out “Executive Director” in the third line of clause (c) and substituting “Chief Executive Officer”;**
- (d) adding immediately after clause (k) the following clause:**
  - (ka) respecting the waiver or reduction by the Commission of amounts owed to it by an applicant or recipient of legal aid;
- (e) striking out “barristers” in the first line of clause (l) and substituting “lawyers”;**
- (f) adding immediately after clause (l) the following clause:**
  - (la) respecting panels of lawyers who may provide legal aid, including establishing minimum standards those lawyers must meet;
- (g) striking out clause (p);**
- (h) striking out “barristers” in the first and second lines of clause (u) and substituting “lawyers”;**
- (i) striking out “barrister’s” in the third line of clause (v) and substituting “lawyer’s”;**
- (j) striking out “barristers” in the first line of clause (y) and substituting “lawyers”; and**
- (k) striking out “barristers” in the second line of clause (z) and substituting “lawyers”.**

**26** Notwithstanding Section 2, a person who was a director of the Nova Scotia Legal Aid Commission at the time that this Section comes into force continues as a director until that person’s term expires, the person is re-appointed, a successor is appointed or the person’s appointment is revoked.

**27** Subsection 2(5) comes into force on such day as the Governor in Council orders and declares by proclamation.

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