
PARTICIPANTS' PAPERS

LEGAL AID FOR OFFENDERS IN BRUNEI DARUSSALAM

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I. INTRODUCTION

Legal aid serves the purpose of aiding defendants who cannot afford to engage counsel and of facilitating access to legal representation. The Legal Aid Committee was set up by the Supreme Court of Brunei Darussalam to oversee and assess legal aid applications and appoint qualified counsel to eligible defendants. The Committee, which consists of Judicial Officers and staff members of the Supreme Court of Brunei Darussalam, upholds the following vision and mission statements, reflecting the core principle of legal aid:

- Vision:** To uphold the rule of law by ensuring access to justice for capital cases.
Mission:
- a. To provide independent, expeditious and transparent legal aid services.
 - b. To ensure the rights of defendants or people of limited means are met.
 - c. To secure public trust and confidence in the criminal justice system.

This paper summarizes the rules and procedures for legal aid applications for offenders in Brunei Darussalam.

II. LEGISLATION

Currently, there is no legislation that governs legal aid in Brunei Darussalam. However, the principles of legal aid are provided for under the Chief Justice's Practice Direction No. 10 of 1997 issued on 2 October 1997.

Practice Direction No. 10 of 1997
<ol style="list-style-type: none">1. An appointment by the Chief Registrar to defend in a capital case is personal to the person appointed and should not be assumed by other persons in the firm.2. An appointment will not usually be made of a person with less than five years of practice, whether in Brunei or elsewhere.3. No member of the legal profession should refuse an appointment to defend in a capital case, except for good reason to the satisfaction of the Chief Registrar.4. If a defendant is committed on a capital charge, the person appointed will continue to represent the defendant (and receive the appropriate fee therefor) even if the charge is reduced to one which is not capital.5. Appointment to defend in a capital charge will include any charges which are tried with it.6. A list will be published every year or so, specifying those who have been appointed in recent years and also those who may be appointed in the future.

III. ELIGIBILITY

A. General

Legal aid is only available for proceedings in the High Court and appeals to the Court of Appeal. The grant of legal aid will be decided by the Legal Aid Committee. The decision of the Committee is final. The

* Senior Magistrate, Magistrates' Court, Judiciary, Supreme Court, Brunei Darussalam.

Committee further reserves the right to discharge or revoke legal aid.

B. Charged with a Capital Offence

Defendants must have been charged with a capital offence to be eligible for Government legal aid. Capital punishment is imposed for certain capital offences under the Penal Code, the Misuse of Drugs Act, the Internal Security Act, the Public Order Act and the Anti-Terrorism Order 2011.

C. Applicants Must Pass the Means Test

In order to be eligible for legal aid, the applicant must pass the means test. The means test is an assessment tool to determine whether the applicant has sufficient funds to engage a lawyer to represent them. An applicant will only be eligible for legal aid if he earns less than an amount that has been set by the Legal Aid Committee. This test reviews the applicant's disposable income¹ and assets.² Applicants who fall outside the means test or can afford the cost of engaging a defence counsel will not be provided with legal aid.

The value of disposable income and assets is calculated by adding the gross monthly income and assets of the applicant, less the allowable deduction. Allowable deductions include rent and maintenance cost or living expenses. Applicant's debts are not included as allowable deductions. An applicant is eligible for legal aid if he earns less than an amount set by the Legal Aid committee. This amount is determined by the average salary earned by a person in Brunei and is subject to review by the Legal Aid Committee.

The Committee reserves the discretion to discharge legal aid if the financial circumstances of the applicant change. The Committee can revoke legal aid if the aided person fails to make full disclosure of his or her financial resources, made a false statement of his financial status and/or fails to report change in financial circumstances.

IV. PROCEDURE

Applicants may only apply for legal aid once charged with a capital offence and once the matter has been referred to the High Court. The applicant or his or her family members may apply for legal aid to the Chief Registrar via the High Court Registry. Applicants who are in prison may apply through the Prison Department. The High Court Judge hearing the matter may also refer the applicant to the Chief Registrar for legal aid to be considered. Applicants or their family members must fill in the legal aid forms available at the High Court Registry, and must submit the form within four weeks of the first mention in the High Court. The applicant will then be interviewed by legal assistants within one month of the application to assess the applicant's eligibility for legal aid. The Committee will then decide on the defendant's means not more than one month after submission.

If the applicant is eligible for legal aid, the Committee will nominate a qualified defence counsel to represent the applicant throughout the duration of the court proceedings until judgment and, in the event of a conviction, sentence is passed. If the applicant is unsatisfied with the nomination and request for a different counsel, the Committee has discretion to consider his application after hearing both the applicant and the appointed counsel.

If there is a conviction and the sentence passed is death, applicants that wish to appeal against the Judge's decision may apply for the legal aid to continue. The same counsel who represented the applicant during the trial may represent the applicant at the appeal. Applicants that wish to change counsel for the purpose of appeal shall provide satisfactory reasons to the Committee. Applicants who previously engaged a defence counsel, but subsequently discharged the counsel, may apply for legal aid provided that there are good

¹ Income includes salary, overtime pay, commissions, allowances, benefits, pensions, insurance payments and maintenance received.

² Assets include business, land, shares, cars, debentures and inheritance, but does not include the land on which the applicant built his or her house, tools of trade and household furniture. Assets in dispute are also not included, such as assets where legal ownership is undetermined and assets that are subject to a legal suit.

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reasons in discharging the counsel in the first place. The grant of legal aid will be decided by the Legal Aid Committee. The decision of the Committee is final. The Committee further reserves the right to discharge or revoke legal aid.

V. APPOINTMENT OF COUNSEL

A. Guidelines

If legal aid is granted, the Committee will then assign a qualified defence counsel to represent the applicant. As stated in the Chief Justice's Practice Direction No. 10 of 1997, counsel must have at least five (5) years' experience in practice. Additionally, counsel must have at least conducted two capital trials or one capital trial and five criminal appeals either in the High Court or the Court of Appeal or five non-capital criminal trials, of which at least three must be in the High Court or Intermediate Court. Previous experiences of counsel from the bench or as deputy public prosecutor may be taken into account.

B. Remuneration

Guidelines on remuneration can be found in the Chief Justice's Circular No. 3 of 2001 as outlined below:

Chief Justice's Circular No. 3 of 2001	
I am pleased to inform you that, as from 1st January 2001, the following scale of fees, in place of the present one, will be payable to anyone assigned to defend in a capital case.	
<u>High Court</u>	
Getting up fee	- \$7,000
Attending pre-trial reviews	- \$300
Brief fee for the first day of trial	- \$1,300
Refresher for each day or part of day after the first	- \$700
<u>Court of Appeal</u>	
Getting up fee	- \$2,500
First day of appeal	- \$1,300
Refresher for each day after the first	- \$1,300
Petition for clemency	- \$700

Outlays reasonably incurred will also be refunded. These will include notes of evidence in a Magistrate's Court, photo charges for a bundle of authorities, visits to the defendant (in prison or elsewhere) fees payable to expert witnesses; the list is intended only to be a guide and is not comprehensive.

Counsel will only be paid for work undertaken after the granting of the legal aid. Work done before authorization of the committee, such as representing the application for appeal without prior confirmation from the committee that the legal aid is continued, will not be compensated. Counsel may not discharge themselves without good reason, failing which counsel will not be paid for work done.

VI. CASES

Between 2016 and October 2022, legal aid has been awarded in 29 cases. These cases were largely composed of drug-related cases (19 cases are under section 3A of Misuse of Drugs Act). Ten of the cases are defendants charged for murder under section 302 of the Penal Code.

VII. LEGAL ADVICE CLINIC

Defendants may also seek assistance from the Legal Advice Clinic. The Legal Advice Clinic was “established by the Law Society of Brunei Darussalam to assist members of the public who are unable to afford legal representation with free legal advice. It is part of the Law Society’s mission to ensure equal access to justice for all.”³

The Clinic functions to provide professional advice to parties engaged in legal proceedings where capital punishment does not apply.

The following requirements are imposed by the Law Society for eligibility to seek advice under the Legal Advice Clinic:

- a. The applicant must not be represented by any legal firm.
- b. The applicant must produce his or her current Brunei identity card at the Clinic.
- c. The applicant must provide proof of his or her present residential address at the Clinic.
- d. The applicant must be in receipt of income or allowance less than B\$1,500 a month and provide proof of such fact.

VIII. CURRENT CHALLENGES

The Legal Aid committee are limited to a small pool of counsel who are willing to accept legal aid cases. This can cause conflict in schedules if counsel has more than one legal aid defendant or several cases in his portfolio.

³ <https://www.bruneilawsociety.com/legal-advice-clinic/>