CHAPTER 603

STATE ADVOCATE ACT

AN ACT to continue implementing reform in the Justice Sector (Attorney General).

29th July, 2019*
18th December, 2019†
1st October, 2020‡

ACT XXV of 2019.

Short title and commencement.

1. (1) The short title of this Act is the State Advocate Act.

(2) This Act shall come into force on such date as the Minister responsible for justice may by notice in the Gazette establish, and different dates may be so established for different provisions and different purposes of this Act.

(3) A notice under sub-article (2) may make such transitory provisions, without limitation, as appear to the Minister to be necessary or expedient in connection with the provisions thereby brought or to be brought into force.

The State Advocate.

2. (1) The State Advocate shall be the Chief Legal Advisor to the Government and shall have the judicial representation of the Government in judicial acts and actions where the law does not provide that such representation shall vest in some other person or authority.

(2) In giving legal advice the State Advocate shall act in the public interest and shall safeguard the legality of actions of the State.

(3) Where under any law the State Advocate is to act or exercise any power in his individual judgment he shall not be subject to the direction or control of any other person or authority.

(4) The officers of the State Advocate when acting under his direction in anything in which he is to act in his own individual judgment, shall have the same protection at law as if the action done or omitted to be done were an act done or omitted to be done by the State Advocate.

Procedure for appointment of State Advocate.

3. When a vacancy occurs in the office of State Advocate the procedure for the appointment of a State Advocate shall be the following:

(a) The Minister responsible for justice shall establish an Appointment Commission, consisting of a

*Legal Notice 174 of 2019.
†Legal Notice 329 of 2019.
‡Legal Notice 386 of 2020.

Chairperson and not less than two (2) and not more than four (4) members, to be composed of persons who in his opinion are respected and trusted by the public and are technically qualified to examine whether candidates for the office of State Advocate have the appropriate qualifications and other merit and suitability requirements to occupy the said office.

(b) The Appointment Commission shall issue a public call for applications open to persons who have the necessary qualifications and experience required to be appointed to the office of State Advocate.

(c) After examining the candidates the Appointment Commission shall submit a report to the Prime Minister through the Minister responsible for justice expressing its views on the eligibility, suitability and merit of the candidates. In the said report the Commission may either limit itself to giving an opinion on the candidates or it may rank them in order of preference.

(d) In deciding upon his recommendation to the President in terms of article 91A of the Constitution for the appointment of the State Advocate the Prime Minister shall give due consideration to the recommendations of the Appointment Commission.

Deputy State Advocate and other officers.

4. (1) There shall also be a Deputy State Advocate and other officers of the State Advocate, who shall exercise and perform all such powers, functions and duties as may be delegated or assigned to them by the State Advocate.

(2) In the exercise and performance of the powers, functions and duties delegated or assigned to them as aforesaid, the Deputy State Advocate and other officers of the State Advocate shall, unless the contrary intention appears, have the same obligations and enjoy the same protection and privileges as are by law imposed on or given to the State Advocate.

(3) The Office of the State Advocate is hereby designated as a Government agency and the provisions of sub-articles (5) to (9) shall apply to the said agency.

(4) The State Advocate may also act through such contractors as he may from time to time appoint:

Provided that such contractors shall at all times act in accordance with such instructions as may be given to them by the State Advocate.

(5) (a) The Office of the State Advocate shall as a Government agency be headed by the State Advocate and shall be the

medium through which the State Advocate carries out his functions according to law.

(b) The said agency shall be a body corporate having a distinct legal personality and shall be capable of entering into contracts, of employing personnel, of acquiring, holding and disposing of any kind of property for the purposes of its operations and of suing and of being sued.

(c) The legal and judicial representation of the Office of the State Advocate shall lie in the State Advocate or in any other person who he may designate.

(d) The said agency shall enter into an agency performance agreement with the Government whereby the funding of the agency as well as the tasks to be addressed and achieved by it are determined:

Provided that the Minister responsible for the agency shall, subject to the provisions of any law to the contrary, be entitled to give directions in writing to the agency and the agency and its head shall be bound to observe such directives:

Provided further that the provisions of the above proviso shall not apply where the State Advocate is in accordance with any law to act in accordance with his own individual judgement, in which case the agency is to act according to the sole directions of the State Advocate.

(6) The State Advocate and the employees of the said agency shall abide by any Code of Ethics applicable to public officers and shall, subject to any law to the contrary, have the same obligations thereunder:

Provided that the State Advocate shall with the concurrence of the Minister responsible for the agency draw up service values and Codes of Ethics in respect of the agency to supplement any public service Code of Ethics.

(7) (a) The State Advocate shall keep proper books of account in such manner as the Minister responsible for finance may from time to time direct. Such accounts shall be audited by an auditor appointed for the purpose by the State Advocate with the concurrence of the Minister responsible for finance and shall moreover be subject to audit by the Auditor General.

(b) The financial year of the Office of the State Advocate shall commence on the 1st January and shall end on the 31st December:

Provided that the first financial year shall commence upon

the coming into force of this sub-article and shall end on the 31st December of the following year.

(c) The State Advocate shall not later than six (6) weeks after the end of each financial year present to the Minister responsible for the agency the audited accounts together with a report on the workings of the agency, which report shall state the manner in which the agency has operated to fulfil its functions and its plans for the future.

(d) The accounts and report mentioned in paragraph (c) shall be laid on the Table of the House by the Minister not later than six (6) weeks after its receipt, or when the House is during the period not in session not later than the second week after the House resumes its sittings.

(8) (a) The Prime Minister may by direction detail a public officer for duty with the said agency for such term and under such conditions as may be established in relation to the officer so detailed.

(b) The Prime Minister may at any time revoke any such direction.

(c) Where any officer is detailed for duty with the agency such officer shall, during the time in which such direction is in force, be under the administrative direction and control of the State Advocate, but shall otherwise remain, and retain all rights and duties as, a public officer, and for the purposes of any law relating to government service pensions, service with the agency shall be deemed to be service with the Government:

Provided that no account shall be taken in assessing the pensionable emoluments of such officer for the purposes of any law relating to government service pensions of any allowances, bonuses or gratuities paid to such officer by the agency in excess to what he is entitled to as a public officer:

Provided further that during the time in respect of which such officer is so detailed to perform duties with the agency, the terms and conditions of his service shall not be less favourable than those which are attached to his appointment under the Government during the period aforesaid. Such terms and conditions shall not be deemed to be less favourable merely because they are not in all respects identical with or superior to those enjoyed by the officer concerned at the date of such direction, if such terms and conditions, taken as a whole, in the opinion of the Prime Minister offer substantially equivalent or greater benefits.

(9) Any public officer serving exclusively in the Civil, Constitutional and Administrative Law Unit or in the Legislation Unit of the Office of the Attorney General on the date of the coming into

force of this sub-article shall, from such date, be deemed to have been detailed for duty with the Office of the State Advocate as a government agency under the provisions of sub-article (8), and thereupon the provisions of the same sub-article shall apply to such officer who shall continue to be detailed for duty as aforesaid until such time as the Prime Minister may revoke such direction as provided in sub-article (8)(b):

Provided that where the Prime Minister revokes any direction as aforesaid the officer in whose respect the direction is revoked shall retain such grade in the public service which he held immediately before being detailed for duty with the Office of the State Advocate as a government agency by virtue of this article or shall occupy such other higher grade which he would have occupied had he not been detailed as aforesaid.

(10) On such day as may be appointed by order of the Minister responsible for justice, the Office of the State Advocate shall take over all employees, rights, duties, undertakings, contracts, causes, orders, judgements, documents and working arrangements which, immediately prior to the appointed day, shall pertain to the Office of the Attorney General Agency and relate to the Civil, Constitutional and Administrative Law Unit, or with the Legislation Unit of the Office of the Attorney General Agency, in such manner and according to such time-scale as the Minister may designate.

Power to administer oaths.

5. (1) The State Advocate and the Deputy State Advocate and other advocates or legal procurators, performing duties as officers of the State Advocate, shall have power to administer oaths.

(2) Wherever a law provides that an oath is to be taken before the State Advocate, that oath may also be taken before the Deputy State Advocate or before another officer of the State Advocate as delegated by the State Advocate.

Power to delegate authority.

6. No nullity or other legal defect shall ensue when a document relating to court proceedings which is to serve as evidence of any order, consent, approval or direction given by the State Advocate is signed by the Deputy State Advocate, or by an officer of the State Advocate on behalf of the State Advocate.

Interpretation and power to make regulations.

7. (1) Where any law, other than a law of a criminal nature, provides that any act may be done by the Attorney General, that act may also be done by the State Advocate with the authorisation of the Attorney General. Without prejudice to the validity of the said authorisation as from the time when it is given, notice of the authorisation shall be given in the Gazette.

(2) The Minister responsible for justice may make regulations providing for any matter relating to the better implementation of the provisions of this Act and, without prejudice to the generality of the

foregoing, may also by regulation amend any law, other than the Constitution and any other law of a criminal nature or relating to prosecution powers or a law which regulates the conditions of service particular to the holders of the offices of Attorney General or of State Advocate, for the purpose of substituting any reference to the Attorney General with a reference to the State Advocate or of adding any reference to the State Advocate to a reference to the Attorney General or vice-versa.

Applicability of the Members of the Judiciary (Pensions) Act to State Advocate. Cap. 564.

8. The expression "Attorney General", wherever it occurs in the Members of the Judiciary (Pensions) Act, shall for all intents and purposes of law, be deemed to also include a reference to the person holding the office of State Advocate appointed in terms of the provisions of article 91A(1) of the Constitution and any reference to the "Office of the Attorney General" shall also be deemed to include a reference to the Office of the State Advocate.