

SAINT LUCIA

No. 31 of 2006

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I ASSENT

[L.S.]

PEARLETTE LOUISY,
Governor-General.

16th November, 2006.

SAINT LUCIA

No. 31 of 2006

AN ACT to provide for the payment of compensation in respect of officers of the protective services who suffer injury or die in circumstances arising out of and in the course of employment with the State and for related matters:

[ON ORDER]

BE IT ENACTED by the Queen's Most Excellent Majesty, by and with the advice and consent of the House of Assembly and the Senate of Saint Lucia, and by the authority of the same, as follows :

Short title and commencement

1.— (1) This Act may be cited as the Protective Services (Compensation) Act 2006.

(2) This Act shall come into force on a date to be fixed by the Minister by Order published in the *Gazette*.

Interpretation

2. In this Act —

“attorney-at-law” has the meaning given to it pursuant to the Legal Profession Act, Cap 2.04;

“claim” means an application for compensation made under this Act and “claimant” has the corresponding meaning;

“Chairperson” means the Chairperson of the Commission appointed pursuant to section 7;

“Commission” means the Compensation Commission established pursuant to section 7;

“Deputy Chairperson” means the Deputy Chairperson of the Commission elected pursuant to section 12;

“meeting” of the Commission includes a sitting of the Commission to hear or determine a claim;

“Minister” means the Minister responsible for National Security;

“officer” means a person who holds an office in a protective service;

“permanent partial disablement” means such disablement of a permanent nature as reduces the earning capacity of an officer in the service in which he was employed at the time the disablement was sustained;

“permanent total disablement” means such disablement of a permanent nature as incapacitates an officer for all work which he was capable of performing at the time the disablement was sustained;

“personal injury” means permanent partial disablement or permanent total disablement;

“Protective Service” means a service declared to be a Protective Service pursuant to section 4;

“Regulations” means Regulations made pursuant to section 40.

Application

3.— (1) This Act applies to personal injury or death occurring after the commencement of this Act.

(2) This Act shall not apply to personal injury or death occurring prior to the commencement of this Act.

Protective Services

4.— (1) The services specified in the Schedule are hereby declared to be Protective Services for the purposes of this Act.

(2) The Minister may amend the Schedule by Order published in the *Gazette*.

Liability to pay compensation

5. — (1) Where, after the commencement of this Act, an officer—

- (a) suffers personal injury; or
- (b) dies as a result of personal injury sustained;

in circumstances arising out of and in the course of his or her employment in a Protective Service, the State shall be liable to pay compensation in accordance with this Act.

(2) An award of compensation pursuant to this Act shall be a charge on the Consolidated Fund.

Claims for compensation

6.— (1) The following persons are, subject to subsections (2) and (3), entitled to make a claim for compensation pursuant to this Act —

- (a) an officer who suffers personal injury;
- (b) a person entitled under any written law to make a claim on behalf of an officer who is so incapacitated by reason of personal injury that he or she is unable to make a claim himself or herself;
- (c) a named beneficiary of an officer who died in circumstances set out in subsection 5(1)(b); or
- (d) in the absence of the named beneficiary referred to in paragraph (c), the holder of a grant of probate or a grant of letters of administration of the deceased officer.

(2) A claim made in respect of personal injury or death occurring after the coming into force of this Act shall be made in accordance with the rules made pursuant to section 21.

(3) The time during which a claim may be made shall be as follows —

- (a) in respect of death, within four years of the date on which the death of the officer occurred; or
- (b) in respect of personal injury, within two years of the date on which such personal injury was sustained.

(4) In all proceedings for compensation pursuant to this Act, the claimant may appear in person or may be represented by any named person or an attorney-at-law.

Commission

7.— (1) There is hereby established a Commission to be known as the Compensation Commission for the purposes of performing the functions specified in this Act.

(2) The Commission shall comprise the following persons appointed by Cabinet —

- (a) an attorney-at-law having at least seven years experience and who shall be the Chairperson;
- (b) a representative of the association of which the claimant is a member;
- (c) a medical practitioner with at least seven years experience;
- (d) a person with at least four years experience in the field of occupational health and safety; and
- (e) a person with at least three years experience in the business of insurance for accident and health claims.

(3) A person is disqualified and shall not become or continue to be a member of the Commission if the person is or has been —

- (a) declared a bankrupt pursuant to Chapter 9 of the Commercial Code, Cap 244, Revised Laws of Saint Lucia 1957;
- (b) declared by a court to be physically or mentally incapacitated by reason of unsoundness of mind;

- (c) convicted of a criminal offence except where the offence is a minor traffic offence or has been spent in accordance with the Criminal Records (Rehabilitation of Offenders) Act 2004, No.2;
- (d) convicted of an offence pursuant to this Act; or
- (e) a member of Parliament.

(4) Where a member of the Commission is unable to perform his or her duties by reason of —

- (a) illness;
- (b) absence from Saint Lucia; or
- (c) any other circumstances;

Cabinet may appoint another person to act in place of such a member during the period of his or her inability to perform his or her duties, and such acting member shall hold the qualifications required by subsection (2).

(5) A person appointed to act under this section shall perform all the functions of the absent member and shall do so under the same terms and conditions as those by the said absent member.

(6) The appointment of members to the Commission and any change in membership, including acting appointments, and resignation and revocation of appointments shall be published in the *Gazette*.

Functions and jurisdiction of the Commission

8. — (1) The functions of the Commission shall be —

- (a) to receive, investigate, hear and determine claims for compensation filed in accordance with this Act and the rules of the Commission made pursuant to section 21 and to make such order for compensation in the manner prescribed;
- (b) to discharge any other responsibility that is required by this Act.

(2) Where it is proved that an officer suffered personal injury or died in circumstances arising out of and in the course of his or her employment with the State, the Commission shall, subject to subsections

(3) and (4), make an order for the award of compensation in accordance with the Regulations and shall give reasons in writing for the award of, or the refusal to award compensation.

(3) In hearing a claim, the Commission shall determine —

- (a) whether the injury to the officer or death of the officer was caused, and to what extent, by his or her participation in any type of illegal activity and whether any compensation is payable under the circumstances; and
- (b) the proportion of contributory negligence, if any, on the part of the officer and shall apportion any compensation payable accordingly.

(4) For the purpose of undertaking its functions, the Commission shall have the same powers as a court having summary jurisdiction in civil matters.

Independence of the Commission

9. In performing its functions and exercising its powers, the Commission shall subject to this Act, act independently, impartially and in the public interest.

Delegation by the Commission

10.— (1) Subject to subsection (2), the Commission may delegate its functions pursuant to this Act to —

- (a) a member of the Commission; or
- (b) a committee appointed pursuant to section 26 .

(2) The Commission shall not delegate its power pursuant to this Act to hear and determine a claim.

Seal

11.— (1) The Commission shall have an Official Seal.

(2) The affixing of the Official Seal of the Commission shall be in the presence, and witnessed by the signature, of —

- (a) the Chairperson or the Deputy Chairperson; and
- (b) any other member of the Commission.

(3) All documents, other than those required by law to be under seal, which are executed by, and all decisions of, the Commission shall be signed by —

- (a) the Chairperson or any other member duly authorized in writing by the Chairperson to act on behalf of the Chairperson; and
- (b) the Secretary.

Deputy Chairperson

12. — (1) At the first meeting of the Commission, the members of the Commission shall elect a Deputy Chairperson from among its membership.

(2) The Deputy Chairperson shall act as Chairperson of the Commission —

- (a) during a vacancy in the office of Chairperson; or
- (b) during all periods when the Chairperson is absent from duty or, for any other reason, is unable to perform the functions of his or her office.

Terms of appointment

13. A member of the Commission shall, subject to sections 14 and 15, hold office for a period not exceeding three years to be determined by Cabinet and shall be eligible for reappointment.

Resignation

14. A member of the Commission may resign from membership of the Commission by submitting a notice of resignation in writing to Cabinet.

Revocation

15. Cabinet may at any time in writing revoke the appointment of a member of the Commission if, upon evidence, the Minister is satisfied that the member —

- (a) is disqualified from being a member of the Commission pursuant to section 7(3);

- (b) is guilty of neglect of duty, misconduct or malfeasance; or
- (c) has failed to act in the best interests of the Commission.

Vacation

16. A member of the Commission is taken to have vacated his or her office if the —

- (a) member resigns pursuant to section 14;
- (b) member's appointment is revoked pursuant to section 15;
- (c) member is disqualified pursuant to section 7; or
- (d) member is absent without the permission of the Chairperson from three consecutive meetings of the Commission of which due notice has been given.

Leave of absence for a member

17.— (1) Cabinet may approve leave of absence for a member of the Commission for a period not exceeding three months.

(2) Cabinet may appoint an alternate member to act in the office of the member of the Commission while the member is absent on approved leave pursuant to subsection (1).

(3) A person appointed pursuant to subsection (2) shall belong to the same category of persons to which the member of the Commission who has been granted leave belongs.

Effect of vacancy in membership

18. The validity of any proceedings of the Commission shall not be affected by any vacancy amongst the members of the Commission or by any defect in the appointment of a member of the Commission.

Remuneration

19. A member of the Commission shall be entitled to be paid such fees and allowances as prescribed.

Secretary and staff

20.— (1) The Commission shall appoint a person to perform the functions of the Secretary to the Commission.

(2) The Commission may appoint such staff as it may require for the proper carrying out of the functions of the Commission pursuant to this Act.

(3) A person appointed pursuant to this section shall perform the duties assigned to him or her by the Commission and pursuant to this Act.

(4) An appointment pursuant to this section shall be at such salary and upon such terms and conditions as the Commissioner may determine.

Rules and procedures of the Commission

21.— (1) Subject to subsections (2), (3) and (4) and to this Act and the Regulations, the Commission shall regulate its own procedure.

(2) The Commission shall after consultation with the associations specified in the Schedule, make and publish its own rules for procedure to be followed —

- (a) for the initiation of claims; and
- (b) the conduct of its business;

and shall publish the location and time of its sittings in the *Gazette* and in at least one newspaper in general circulation in Saint Lucia.

(3) Notwithstanding subsections (1) and (2), in hearing a claim pursuant to this Act, the Commission shall not be bound by rules of evidence applicable to a court having summary jurisdiction in civil matters.

(4) The Commission shall cause to be kept minutes of the proceedings of its meetings and of meetings of any of the committees established by it.

Meetings

22.— (1) Meetings of the Commission shall be held at such times and at such places as the Chairperson shall decide.

(2) Notwithstanding subsection (1), the Chairperson shall call a meeting if asked to do so, in writing, by three members of the Commission.

Quorum

23. The quorum for a meeting of the Commission shall be three.

Presiding at meetings

24.— (1) The Chairperson shall preside at all meetings of the Commission at which he or she is present.

(2) If the Chairperson is absent from a meeting of the Commission, but the Deputy Chairperson is present, the Deputy Chairperson shall preside.

(3) If the Chairperson and the Deputy Chairperson are both absent from a meeting of the Commission, the members shall select a member present at the said meeting to preside.

Conduct of meetings of the Commission

25.— (1) All decisions of the Commission shall be decided by a majority of members present and voting at the meeting and, in the event of an equality of votes, the Chairperson shall have a casting vote.

(2) A resolution is validly made by the Commission even if it is not passed at a meeting of the Commission, where —

- (a) a majority of the members give written agreement of the resolution; and
- (b) notice of the resolution is given under the procedures approved by the Commission.

(3) The Commission shall keep in the minutes of its meetings, a record of any resolution made pursuant to subsection (2).

Committees

26.— (1) The Commission may establish committees of the Commission for effectively and efficiently performing its functions.

(2) The chairperson of a committee established pursuant to subsection (1) shall be a member of the Commission.

(3) The Commission shall decide the terms of reference of a committee established pursuant to subsection (1).

(4) The functions of a committee established pursuant to subsection (1) shall be —

- (a) to advise and make recommendations to the Commission with respect to matters, within the scope of the functions of the Commission, referred by the Commission to the committee; and
- (b) subject to section 10, to exercise the powers delegated to it by the Commission.

(5) A committee appointed pursuant to subsection (1) shall keep a record of any decision it makes when exercising a power delegated to it by the Commission.

(6) A member of a committee appointed pursuant to subsection (1) shall be entitled to be paid such fees and allowances as determined by the Commission.

Co-opting

27. The Commission may co-opt any person to attend any particular meeting of the Commission at which it is proposed to deal with a particular matter, for the purpose of assisting or advising the Commission, but no such co-opted persons shall have the right to vote.

Oath of secrecy

28.— (1) Every member of the Commission, the Secretary to the Commission, or an officer or a member of staff of the Commission, shall at all times preserve and aid in preserving confidentiality with regard to all matters coming to his or her knowledge in the performance of his or her duty pursuant to the provisions of this Act.

(2) Except with the written consent of the Commission or for the performance of his or her duties or pursuant to a legal obligation, a member of the Commission, the Secretary to the Commission, or an officer or a member of staff of the Commission, shall not communicate any confidential matter to any person nor permit any person to have access to any records in the possession, custody or control of the Commission.

(3) Every member of the Commission, the Secretary to the Commission, or an officer or a member of staff of the Commission, shall be required to take the prescribed oath.

Declaration of interest

29.— (1) A member of the Commission who is in any way, either directly or indirectly, interested in a matter before the Commission, shall declare the nature of his or her interest at the first meeting of the Commission at which it is practicable to do so and shall leave the meeting upon the matter coming up for discussion.

(2) A declaration and the departure of a member of the Commission from the meeting in accordance with subsection (1) shall be noted in the minutes of the meeting.

Abstention from voting

30.— (1) A member of the Commission shall not —

- (a) vote in respect of a matter before the Commission in which he or she is in any way interested, whether directly or indirectly; or
- (b) seek to influence the vote of any other member of the Commission in relation to the matter.

(2) A member of the Commission who fails to comply with subsection (1) commits an offence and upon summary conviction is liable to a fine not exceeding five thousand dollars or to imprisonment for a term not exceeding one year or to both

(3) Notwithstanding subsection (2), where a member of the Commission fails to comply with subsection (1), the failure to comply amounts to misconduct in which case section 15 shall apply.

Directions by Cabinet

31.— (1) Subject to subsection (3), Cabinet may give the Commission a written direction in relation to a matter relevant to the performance of its functions pursuant to this Act, if Cabinet is satisfied that it is necessary to give the direction in the public interest.

(2) Without limiting subsection (1), the direction may be to —

- (a) give reports and information; or

(b) apply to the Commission a policy, standard or other instrument applying to a public sector unit.

(3) A direction issued pursuant to subsection (1) shall not be in relation to the investigation, hearing or determination of a claim for compensation pursuant to this Act.

Funds of the Commission

32. The Funds of the Commission shall consist of —

- (a) such monies as may, from time to time, be placed at its disposal for the purpose of this Act by Parliament; or
- (b) fees and such other monies as may be lawfully paid to the Commission.

Accounts

33. The Commission shall keep proper records of its accounts in accordance with generally accepted international accounting standards and principles and shall prepare and retain financial statements in respect of each financial year.

Audit

34.— (1) The Commission shall, as soon as is practicable after each financial year, have its accounts in respect of the financial year audited by an independent auditor, appointed by the Commission, who shall conduct the audit in accordance with generally accepted international audit standards and principles.

(2) The staff of the Commission shall submit to the auditor appointed pursuant to subsection (1) all books, deeds, contracts, accounts, vouchers and other documents which the auditor deems necessary and the auditor may require the person holding or accountable for such documents to appear, make a signed statement or provide such information in relation to the document as the auditor deems necessary.

(3) A person who is required to appear, make a signed statement or to provide information pursuant to subsection (2) and who fails to comply, commits an offence and upon summary conviction is liable to a fine not exceeding five thousand dollars or to a term of imprisonment not exceeding two months or to both, and to revocation of his or her

appointment as a member of the Commission, the Secretary to the Commission, or an officer or a member of staff of the Commission.

Auditor's report

35. An auditor appointed pursuant to section 34 shall, as soon as practicable and not later than two months after the end of each financial year, submit copies of the audited financial statement of the Commission.

Annual report

36.— (1) Subject to subsection (2) and not later than three months after the end of each financial year, the Commission shall submit to Cabinet an annual report on the work and activities of the Commission for that financial year and the Minister shall lay the same at the next sitting of Parliament after receipt of the report.

(2) An annual report pursuant to subsection (1) shall be accompanied by the auditor's report made pursuant to section 35.

Right of appeal

37.— (1) A party who is aggrieved by a determination of the Commission pursuant to this Act is entitled to appeal to the Court of Appeal, within twenty-eight days of that determination.

(2) On hearing an appeal under subsection (1), the Court of Appeal has power —

- (a) if it appears to it that a new hearing should be held, to set aside the order appealed against and to order that a new hearing be held; or
- (b) to order a new hearing on any question without interfering with the finding or decision upon any other question; and
- (c) to make such finding or other order as the circumstances of the case require.

Compensation otherwise awarded

38.— (1) In awarding compensation for injury or death under this Act, the Commission shall take into account any compensation awarded to the officer or his or her beneficiary including any payment gratuitously made by the State in respect of the same injury or death.

(2) Notwithstanding any other provision of this Act, the Commission may stay the grant of an award or give an interim award pending the conclusion of any existing civil action.

Other entitlements

39. Nothing in this Act shall be construed in a manner that would disentitle or disqualify an officer from making a claim in respect of personal injury or death in accordance with the —

- (a) National Insurance Corporation Act, Cap16.01;
- (b) Police Act, Cap. 14.01;
- (c) Fire Service Act, Cap. 14.04;
- (d) Correctional Service Act 2003, No. 24;
- (e) Pensions Act, Cap. 15.26; or
- (f) any other legislation that may confer benefits relating to personal injury or death of an officer.

Regulations

40. The Minister may make Regulations for the purpose of giving effect to the provisions of this Act.

No. 31] *Protective Services (Compensation) Act* [2006.

SCHEDULE

(Section 4)

- (a) The Royal Saint Lucia Police Force pursuant to the Police Act, Cap. 14:01.
- (b) The Fire Service pursuant to the Fire Service Act, Cap. 14:04.
- (c) The Correctional Service pursuant to the Correctional Services Act 2003, No. 24.
- (d) Enforcement Unit of the Customs and Excise Department or the successive unit.

Passed in the House of Assembly this 10th day of October, 2006.

J. BADEN ALLAIN,
Speaker of the House of Assembly.

Passed in the Senate this 9th day of November, 2006.

HILFORD DETERVILLE,
President of the Senate.