

ACT 555

STATE PROCEEDINGS ACT, 1998

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Liability of the Republic

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ACT 555

STATE PROCEEDINGS ACT, 1998¹

AN ACT to provide for proceedings against the Republic in conformity with the Constitution and for related matters.

*Liability of the Republic***1. Claims against the Republic**

Where a person has a claim against the Republic, the claim may be enforced as of right by proceedings taken against the Republic for that purpose without the grant of a fiat or the use of the process known as petition of right.

2. Liability of the Republic in contract

The liability of the Republic is the same as that of a private person of full age and capacity in respect of

- (a) claims arising out of an express or implied contract with the Republic,
- (b) claims for liquidated or unliquidated damages in cases not arising in tort, and
- (c) claims for the recovery of taxes or duties wrongly paid or overpaid.

3. Liability of the Republic in tort

(1) The Republic is subject to the liabilities in tort to which, if it were a private person of full age and capacity, it would be subject, in respect of

- (a) torts committed by its employee or agent while acting within the scope of the office or employment of the employee or agent,
- (b) a breach of duty which an employer owes to the employee or agent of that employer at common law or under any other law by reason of being the employer, and
- (c) a breach of the duty at common law or under any other law attached to the ownership, occupation, possession or control of property.

(2) Proceedings do not lie against the Republic by virtue of paragraph (a) of subsection (1) in respect of an act or omission of an employee or agent of the Republic unless the act or omission would, apart from this section, have given rise to a cause of action in tort against that employee or the estate of the employee.

(3) Where the Republic is bound by a statutory duty which is binding also on persons other than the Republic and its officers, the Republic shall, in respect of a failure to comply with that duty, be subject to the liabilities in tort to which it would be so subject if the Republic were a private person of full age and capacity.

(4) Where functions are conferred or imposed on an officer of the Republic in that capacity by a rule of the common law or by statute and that officer commits a tort while performing or purporting to perform those functions, the liabilities of the Republic in

1. The Act was assented to on 19th August, 1998.

respect of the tort shall be what they would have been if the functions had been conferred or imposed solely by virtue of instructions lawfully given by the Republic.

4. Non-liability of the Republic

Proceedings do not lie against the Republic under this Act in respect of

- (a) anything done or omitted to be done by a person while discharging or purporting to discharge responsibilities of a judicial nature vested in that person;
- (b) an act, neglect or a default of an officer of the Republic unless that officer
 - (i) has been directly or indirectly appointed by the Republic and was, at the material time, paid in respect of duties as an officer of the Republic wholly out of public funds or out of money provided by Parliament; or
 - (ii) was, at the material time, holding an office in respect of which the Public Services Commission certifies that the holder of that office would normally be so paid.

5. Application of law relating to indemnity

Where the Republic is subject to liability by virtue of this Act, the law relating to indemnity and contribution is enforceable, as if the Republic were a private person of full age and capacity

- (a) against the Republic by an employee of the Republic who is acting in the proper execution of duties in respect of the liability or by any other person in respect of the liability to which that person is subject, or
- (b) by the Republic against a person, other than an employee of the Republic, in respect of the liability to which it is subject.

Intellectual and Other Property

6. Provision as to intellectual or industrial property

Where an employee or agent of the Republic infringes a patent, a registered trade mark or a copyright and the infringement is committed under the authority of the Republic, then subject to this Act, civil proceedings in respect of the infringement lie against the Republic.

7. Provisions relating to the Armed Forces

(1) Subject to subsection (2), a thing done or omitted to be done by a member of the Armed Forces while on duty shall not subject the member or the Republic to liability in tort for causing death or personal injury where the death or injury is to another member of the Armed Forces where,

- (a) at the time when the death or injury is suffered by that other person the member is on duty as a member of the Armed Forces or though not on duty, the member is on a land, ship or an aircraft or a vehicle which is being used for the purpose of the Armed Forces, and

- (b) the Minister responsible for Defence certifies that the death or injury is attributable to service for the entitlement of an award under a law relating to the grant of awards to members of the Armed Forces for disablement or death.

(2) Subsection (1) does not exempt a member of the Armed Forces from liability in tort in an action in which the Court is satisfied that the act or omission was not connected with the execution of duties as a member of the Armed Forces.

(3) Proceedings in tort do not lie against the Republic for death or personal injury due to anything suffered by a member of the Armed Forces where,

- (a) the death or personal injury is suffered by the member in consequence of the nature or condition of a land, ship, an aircraft or a vehicle or in consequence of the nature or condition of an equipment or the supplies used for the purposes of the Armed Forces, and
- (b) the Minister certifies as provided under paragraph (b) of subsection (1).

(4) An act or omission of a public officer shall not subject the public officer to liability in tort for death or personal injury, to a member of the Armed Forces in circumstances where paragraphs (a) and (b) of subsection (3) apply.

(5) Where the Minister is satisfied that

- (a) a person was or was not on a particular occasion on duty as a member of the Armed Forces, or
- (b) at a particular time, land, premises, a ship, an aircraft, a vehicle, an equipment or a supply was or was not used for the purposes of the Armed Forces,

the Minister may issue a certificate to that effect and the certificate is, for the purpose of this section, *prima facie* evidence as to the fact it certifies.

8. Civil proceedings by or against the Republic

Civil proceedings by or against the Republic shall as far as is practicable be instituted and proceeded with in a Court in accordance with the Rules of Court applicable to proceedings between private persons.

9. Parties to proceedings

(1) In accordance with article 88 of the Constitution, civil proceedings

- (a) by the Republic shall be instituted and conducted on behalf of the Republic by the Attorney-General or a person authorised by the Attorney-General;
- (b) against the Republic shall be instituted against the Attorney-General as defendant.

(2) Proceedings instituted in accordance with this Act by or against the Attorney-General or any other officer shall not abate or be affected by a change in the person holding the office.

10. Notice of civil action to Attorney-General

(1) A person who intends to institute civil action against the Republic shall serve on the Attorney-General a written notice of that intention at least thirty days before the commencement of the action.

(2) The notice under subsection (1) shall be served by the claimant or by the lawyer or agent of the claimant

- (a) on the Attorney-General or an officer of the Attorney-General's Department, or
- (b) in a case where action is to be commenced in a Region, on an officer of the Attorney-General's Department in that Region.

(3) The notice shall indicate the cause of action, the name and address of the intended claimant and the relief sought.

11. Interpleader

The Republic may obtain relief by way of interpleader proceedings and may be made a party to those proceedings in the same manner in which a private person may obtain relief by way of those proceedings or may be made a party and the Rules of Court relating to interpleader proceedings shall, subject to this Act, apply.

12. Service of documents

Documents required to be served on the Republic for the purpose of or in connection with civil proceedings by or against the Republic shall be delivered at the office of the Attorney-General or to a representative of the Attorney-General in the Region or to an officer specified under any other enactment.

*Reliefs***13. Nature of relief against the Republic**

In civil proceedings by or against the Republic, the Court may make the orders which it has power to make in proceedings between private persons and may give the relief that the case requires.

14. Appeals and stay of execution

Enactments and Rules of Court relating to appeals and stay of execution shall, with the modifications that are necessary, apply to civil proceedings by or against the Republic as they apply to proceedings between private persons.

15. Satisfaction of orders

(1) Where in civil proceedings by or against the Republic or in connection with an arbitration to which the Republic is a party, an order including an order for costs is made by a Court in favour of a person against

- (a) the Republic,
- (b) a department of the Republic, or
- (c) an employee of the Republic,

the Court shall issue to that person a certificate containing particulars of the order on an application made by or on behalf of that person, at any time after the expiration of twenty-one days from the date of the order where the order provides for the payment of costs and the costs are required to be taxed, at any time after the costs have been taxed, whichever is later.

(2) A copy of a certificate issued under subsection (1) may be served by or on behalf of the person in whose favour the certificate is made

- (a) on the Accountant-General, if the certificate contains an order for the payment of money, and
- (b) on the Attorney-General in any other case.

(3) Where the order provides for the payment of an amount of money, the certificate shall specify the amount of money payable and the amount together with the interest on it shall be paid to the person entitled or the lawyer of that person.

16. Enforcement of orders

An order made in favour of the Republic against a person in civil proceedings to which the Republic is a party may be enforced in the same manner as an order made in an action between private persons.

17. Attachment of money

(1) Where a sum of money is payable by the Republic to a person who is under a court order to pay money to another person, that later person is entitled to obtain an order for the attachment of the money as a debt due or accrued under the Rules of Court to that other person.

(2) The Court may, subject to this Act and in accordance with the Rules of Court, make an order restraining a person to whom the Republic is liable to pay money from receiving that money and directing payment of it to any other person.

(3) A Court shall not make an order under subsection (2) in respect of

- (a) the wages or salary payable to an employee of the Republic, or
- (b) pension or social security, or
- (c) the money which, by an enactment, is prohibited or restricted from attachment or the execution of a debt.

Miscellaneous

18. Discovery and interrogatories

(1) Subject to article 135 of the Constitution and to subsections (2) and (4), enactments relating to the discovery and production of documents and answering interrogatories by an order of a Court shall apply to civil proceedings by or against the Republic to the same extent and in the same manner as the enactments apply to civil proceedings between private persons.

(2) Subsection (1) applies without limiting the right to withhold a document or refuse to answer a question on the grounds that disclosing the document or answering the question would be injurious to the public interest.

(3) An order of a Court relating to answering interrogatories shall direct which person is to answer the interrogatories.

(4) A certificate from the Supreme Court that it is satisfied that the disclosure of a document is injurious to the public interest is conclusive evidence for the purposes of this section.

19. Notice of proceedings *in rem*

Proceedings *in rem* shall not be brought in respect of a claim against the Republic, or the arrest, detention or sale of a ship, an aircraft, a cargo or any other property belonging to the Republic or give to a person a lien on the aircraft, cargo or other property unless there has been served on the Attorney-General a written notice of the intention to bring the action at least thirty days before the commencement of the action.

20. Exceptions to notice of action

(1) The notice before institution of civil action against the Republic does not apply to

- (a) an action to invoke the original jurisdiction of the Supreme Court under articles 2 and 130 of the Constitution, and
- (b) an action where a person alleges that a provision of the Constitution on the fundamental human rights and freedoms has been, or is being or is likely to be contravened under article 33 of the Constitution.

(2) Where in an action against the Republic there is a failure to give the notice required to the Attorney-General, the Court shall not dismiss the action but direct the plaintiff to give the Attorney-General the requisite notice and adjourn the case accordingly.

21. Application of certain enactments

This Act does not limit the right of the Republic to take advantage of an enactment although not named in it and in civil proceedings against the Republic, an enactment may be relied on by the Republic subject to an express provision to the contrary.

22. Costs in proceedings

In civil proceedings to which the Republic is a party, costs including those incidental to the proceedings are at the discretion of the Court or arbitrator and the discretion shall be exercised in the same manner and on the same principles as in cases between private persons but

- (a) in proceedings to which the Republic is required to be made a party, the Court or arbitrator shall consider the nature of the proceedings and the character and circumstances in which the Republic appears as a party and may in the exercise of discretion order any other party to the proceedings to pay the costs of the Republic whatever may be the result of the proceeding; and

- (b) this section does not affect,
 - (i) the power of the Court or arbitrator to order the payment of costs out of a particular fund or property, or
 - (ii) an enactment providing for the payment.

23. Rules of Court

Despite section 8 the Rules Committee may where it considers it necessary make the modifications that are necessary to the Rules of Court in respect of proceedings by or against the Republic.

24. Non-application of Act

Except as otherwise expressly provided, this Act does not

- (a) apply to criminal proceedings, or
- (b) subject the Republic to any greater liabilities in respect of the acts or omissions of an independent contractor employed by the Republic other than those to which a private person would be subject in respect of an act or omission.

25. Pending proceedings

(1) This Act does not affect proceedings commenced before the coming into force of this Act and for the purposes of this section, proceedings shall be regarded as commenced if the statement of claim has been delivered at the office of the Attorney-General or to an authorised officer before the coming into force of this Act.

(2) Proceedings commenced before the coming into force of this Act may be continued and concluded under the law under which they were commenced.

26. Interpretation

In this Act, unless the context otherwise requires,

“agent” when used in relation to the Republic includes an independent contractor employed by the Republic;

“Armed Forces” means the Army, the Navy and the Air Force;

“civil proceedings” includes proceedings for the recovery of fines or penalties;

“Court” means a court of competent jurisdiction;

“employee” in relation to the Republic, includes a public officer, a member of the Armed Forces, but not an employee of a public corporation set up for commercial purpose despite a provision to the contrary in this section;

“Minister” means the Minister responsible for Defence;

“private person” means an individual person of twenty-one years or above and of sound mind;

“proceedings against the Republic” includes a claim by way of set-off or counter claim raised in proceedings by the Republic;

“public officer” means a person who holds a public office, the emoluments attached to which are paid directly from the Consolidated Fund or directly out of money provided by Parliament and an office in a public corporation established entirely out of public funds or money provided by Parliament;

“Region” means a Region within the meaning of the Chapter Two of the Constitution.

27. Repeals

*Spent.*²

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2. The section provided for the repeal of
- (a) the Republic Proceedings Act, 1961 (Act 51);
 - (b) the Republic Proceedings (Amendment) Decree, 1969 (N.L.C.D. 352);
 - (c) the Republic Proceedings Decree, 1972 (N.R.C.D. 59);
 - (d) the Statutory Corporations Act, (Amendment) Decree, 1972 (N.R.C.D. 120)."

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