

BILL No. 28 of 2009

Thursday 11th June, 2009

PARLIAMENT OFFICE
Public Buildings,
Georgetown,
Guyana.

11th June, 2009.

The following Bill which will be introduced in the National Assembly is published for general information.

S.E. Isaacs,
Clerk of the National Assembly.



GUYANA

BILL No. 28 of 2009

SUMMARY JURISDICTION (LAY MAGISTRATES) BILL 2009

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SCHEDULE

A BILL
Intituled

AN ACT to provide for the constitution of lay magistrates' courts; for the appointment of lay magistrates; for the regulation of their jurisdiction, practice and procedure and for other like purposes.

A.D. 2009 Enacted by the Parliament of Guyana:-

Short title. 1. The Act may be cited as the Summary Jurisdiction (Lay Magistrates) Act 2009.

Lay magistrates' courts. 2. (1) There shall be established such member of lay magistrates' courts as the Minister, after consultation with the Chancellor, may determine.

(2) A lay magistrates' court shall be presided over by a person to be called a lay magistrate and shall, in accordance with the provisions of this Act, exercise both criminal and civil jurisdiction.

Assignment of lay magistrates. 3. Every lay magistrate shall have jurisdiction throughout Guyana and may be assigned to any magisterial district by the Chancellor.

Qualification for appointment as a lay magistrate. 4. A person shall be qualified to be appointed a lay magistrate if he is a fit and proper person with at least seven years' experience in a senior position in a public sector or private sector field of activity.

Protection of lay magistrates. 5. A lay magistrate acting judicially shall not be liable to be sued in any civil court for any act done or ordered by him to be done in the performance of his judicial functions whether or not within the limits of his jurisdiction, if at the time, he in good faith believed himself to have jurisdiction to do or order to do the act complained of.

Clerk. 6. (1) There shall be appointed for every lay magistrates' court a fit and proper person to be or to act as clerk of that court.

(2) The clerk shall have such functions as may be prescribed by the Chancellor.

(3) The clerk shall be subject to the general supervision and control of the Chancellor, but shall be under the immediate supervision of the lay magistrate presiding over the court of which he is the clerk.

Qualifications for appointment as a Clerk. 7. No person shall be appointed as a clerk to a lay magistrates' court unless at the time of appointment he holds a Bachelor of Laws degree of a university of any Commonwealth country or any equivalent qualification or in the opinion of the Chancellor is a fit and proper person to be appointed as a clerk.

Powers and duties of a clerk. 8. (1) It is hereby declared that the functions of a clerk include the giving to the lay magistrate to whom he is clerk, as and when required by the lay magistrate, such advice within his competence about law, practice or procedure on questions

arising in connection with the discharge of his functions, and it shall be the duty of the clerk to bring to the attention of the lay magistrate any point of law, practice or procedure that is or may be involved in any questions so arising.

(2) Without prejudice to subsection (1) the duties of the clerk, shall be such as may be assigned by the Chancellor and, where appropriate, shall include those duties specified under section 23 of the Summary Jurisdiction (Magistrates) Act so far as those duties apply to the aforesaid clerk.

Cap. 3:05

Criminal jurisdiction of a lay magistrates' courts. Schedule

9. (1) A lay magistrates' court may try any offence, the punishment for which does not exceed a fine of ten thousand dollars and such offence shall include those mentioned in the Schedule.

(2) A lay magistrates' court may on conviction for an offence impose a punishment within the limits of its jurisdiction, but shall have no power to impose a custodial sentence.

Summary trial of case.

10. Where a person charged with committing an offence stated by the enactment creating the offence to be triable summarily, a lay magistrates' court, presided over by a lay magistrate, may try such offence if the monetary punishment therefor does not exceed the punishment mentioned in section 9 (1).

Civil jurisdiction of a lay magistrates' courts.

11. A lay magistrates' court may hear and determine civil cases or matters where the subject matter in dispute, if capable of being estimated at a money value, does not exceed twenty-five thousand dollars.

Area of jurisdiction.

12. The jurisdiction of a lay magistrates' court shall extend only to cases and matters arising within the magisterial area of its jurisdiction.

Jurisdiction of a magistrates' court unaffected. Cap. 3:05

13. Nothing in this Act shall affect or be deemed to affect the jurisdiction of a magistrates' court under the Summary Jurisdiction (Magistrates) Act.

Promotion of Reconciliation in criminal cases.

14. In all cases a lay magistrates' court shall promote reconciliation, and encourage and facilitate the settlement in an amicable way, of proceedings for common assault or for any other offence of a personal or private nature not amounting to felony and not aggravated in degree, on terms of payment of compensation or other terms approved by the court and may thereupon order the proceedings to be stayed.

Transfer of case in course of inquiry or trial.

Cap. 3:05

15. If in the course of any inquiry or trial before a lay magistrates' court, the evidence appears to warrant a presumption that the case is one which should be tried or committed for trial by a magistrate, under the Summary Jurisdiction (Magistrates) Act he shall stay proceedings and submit the case with a brief report thereon to any magistrate holding a magistrates' court, the said magisterial district in which the lay magistrate is holding court and the said magistrate shall hear the case submitting unless he makes objection to the Chancellor giving reasons therefor.

Adjournments.

16. (1) Before or during the hearing of any case, lay magistrate may in his discretion adjourn the hearing subject to the provisions of this section, to a time and place appointed by him in the presence and hearing of the parties or of their counsel.

(2) If a lay magistrate is not present at the time and place of hearing, the clerk may, by public notice, written or oral, adjourn the sitting until such time and to such place as may be stated in the notice and all persons bound to be present at the sitting so adjourned shall be equally bound to be present at the time and place appointed by such notice.

(3) In the absence of a notice under subsection (2) all persons bound to be present at the sitting shall be bound to be present at the next succeeding time appointed for the sitting of the court at the same place.

(4) No adjournments under this section shall be for more than seven clear days.

Sundays or public holidays.

17. When any day appointed for the sitting or adjourned sitting of the court falls on a Sunday or a public holiday, the court may if practicable sit on the day (not being a public holiday) next after the day appointed for such sitting.

Promotion of reconciliation in civil causes.

18. (1) In civil case or matters a lay magistrate shall, as far as there is proper opportunity, promote reconciliation among persons over whom he has jurisdiction, and encourage and facilitate the settlement in an amicable way and without recourse to litigation in the matters in dispute between them.

Part heard proceedings.

19. Where a lay magistrate who has commenced any proceedings, whether civil or criminal, ceases to act as a lay magistrate, any lay magistrate who succeeds him or acts in his place may hear and determine the proceeding de novo

Enforcement.

20. (1) Where a lay magistrates' court imposes a fine or gives judgement in a civil case but the fine is not paid within the time allowed by the lay magistrate or the civil judgement is not complied with, the lay magistrate shall transfer the record of the proceedings to any magistrate holding a magistrates' court in the said magisterial district in which the lay magistrate is holding court.

(2) Upon receipt of the record of the proceedings, the magistrate shall instruct his clerk to stamp with stamp of the magistrates' court, initial and enter a note of the record in a book kept for that purpose and thereupon the decision of the lay magistrate shall be deemed to be the decision of the magistrate and subsequent proceedings may accordingly be taken to enforce such fine or judgement.

Rules of court.

21. (1) The Chancellor may make rules of court to regulate the practice and procedure to be followed in lay magistrates' courts in both criminal and civil matters, and without prejudice to the generality of foregoing, rules of court made under this section may regulate all or any of the following matters, that is to say –

- (a) the duties of clerks;
- (b) the distribution of business between lay magistrates and between lay magistrates' courts;
- (c) the forms to be used and matters connected therewith;
- (d) the receipt of money paid into court received or recovered under this Act or by virtue of any process;
- (e) the records and returns of cases of the lay magistrates' court;
- (f) the fees, cost and matters connected therewith;
- (g) the payment out of court of all monies to the persons entitled thereto;
- (h) the service and execution of process;
- (i) the enforcement of judgement debt;
- (j) any other matters for the purposes of the better carrying into effect of this Act.

2. Until rules under subsection (1) are made, the practice and procedure to be followed by a lay magistrates' court shall be regulated -

- (a) in its criminal jurisdiction in respect of summary conviction offences, by the Summary Jurisdiction (Procedure) Act and by any other written law relating thereto;
- (b) in its civil jurisdiction, by Summary Jurisdiction (Petty Debt) Act and by any other written law relating thereto including the Summary Jurisdiction (Magistrates) Money Regulation and the Summary Jurisdiction (Civil Procedure) Rules,

subject to such modifications as the Chancellor may deem necessary or expedient.

SCHEDULE

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SUMMARY JURISDICTION OFFENCES**OFFENCES INVOLVING BREACH OF THE PEACE**

profane language
 indecent language
 abusive language
 disorderly behaviour
 threatening behaviour
 fighting in public
 indecent exposure
 drunkenness in public
 provoking a breach of the peace
 malicious damage to property
 placing goods over the public way in town and those other offences referred to in section 153 of the Summary Jurisdiction (Offences) Act Cap. 8:02.

TRAFFIC OFFENCES

Mini-bus overloading
 Hire-car overloading
 Failure to conform to traffic sign
 Defective motor vehicles including motor cycles
 Unlicensed drivers or riders of motor cycles
 Uncertified vehicles as the fitness, roadworthiness
 Unkempt drivers of hire cars and mini-buses

LICENCE AND REVENUE OFFENCES

Offences relating to weights and measures in Georgetown and the towns and their environs other than in their municipal markets.
 Unlicensed radio and other transmitting devices

OFFENCES AGAINST THE CITY AND TOWN COUNCILS

public health offences with respect to restaurants and eating houses
littering parapets, sidewalks, alleyways, etc.
untidy yards and surroundings
incorrect weights and measure in the municipal markets
Encumbering parapets.

CRUELTY TO ANIMALS

Offences relating to cruelty to animals.

EXPLANATORY MEMORANDUM

This Bill, as the long title states, provides for the constitution of Lay Magistrates' Courts, the appointments of such magistrates and for the regulation of their jurisdiction, practice and procedure.

The law as regards the present magistrates remains unchanged and magistrates and lay magistrates will work side by side in the magisterial districts.

A lay magistrate shall have jurisdiction throughout Guyana. Fit and proper persons with certain experience may be appointed as lay magistrates, who would be protected when acting judicially (clauses 3, 4 and 5).

A lay magistrate shall be assisted by a clerk, preferably with legal qualifications (clauses 6, 7 and 8).

A lay magistrate may try any criminal offence triable summarily if the punishment does not exceed ten thousand dollars. He may try a civil case where the dispute does not exceed twenty-five thousand dollars (clauses 9, 10 and 11).

It is the duty of a lay magistrate to promote reconciliation and encourage and facilitate the settlement in an amicable way of proceedings of common assault and nonfelonious offences. Likewise in civil cases he should promote reconciliation and encourage and facilitate the settlement of disputes without recourse to litigation (clauses 14 and 18).

A lay magistrate may transfer a case to a magistrate in the same magisterial district where from the nature of the case, the evidence warrants this. A lay magistrate may also adjourn a case as he sees fit (clauses 15 and 16).

The Chancellor is empowered to make rules of court to regulate the practice and procedure to be followed by lay magistrates. Until such rules are made the practice and procedure to be followed by lay magistrates' courts in their criminal jurisdiction shall be regulated by the Summary Jurisdiction Procedure Act, Cap. 10:02, and in their civil jurisdiction by the Summary Jurisdiction (Petty Debt) Act, Cap 7:01, the Summary Jurisdiction (Magistrates) Money Regulations and the Summary Jurisdiction Rules.



Attorney General and
Minister of Legal Affairs.