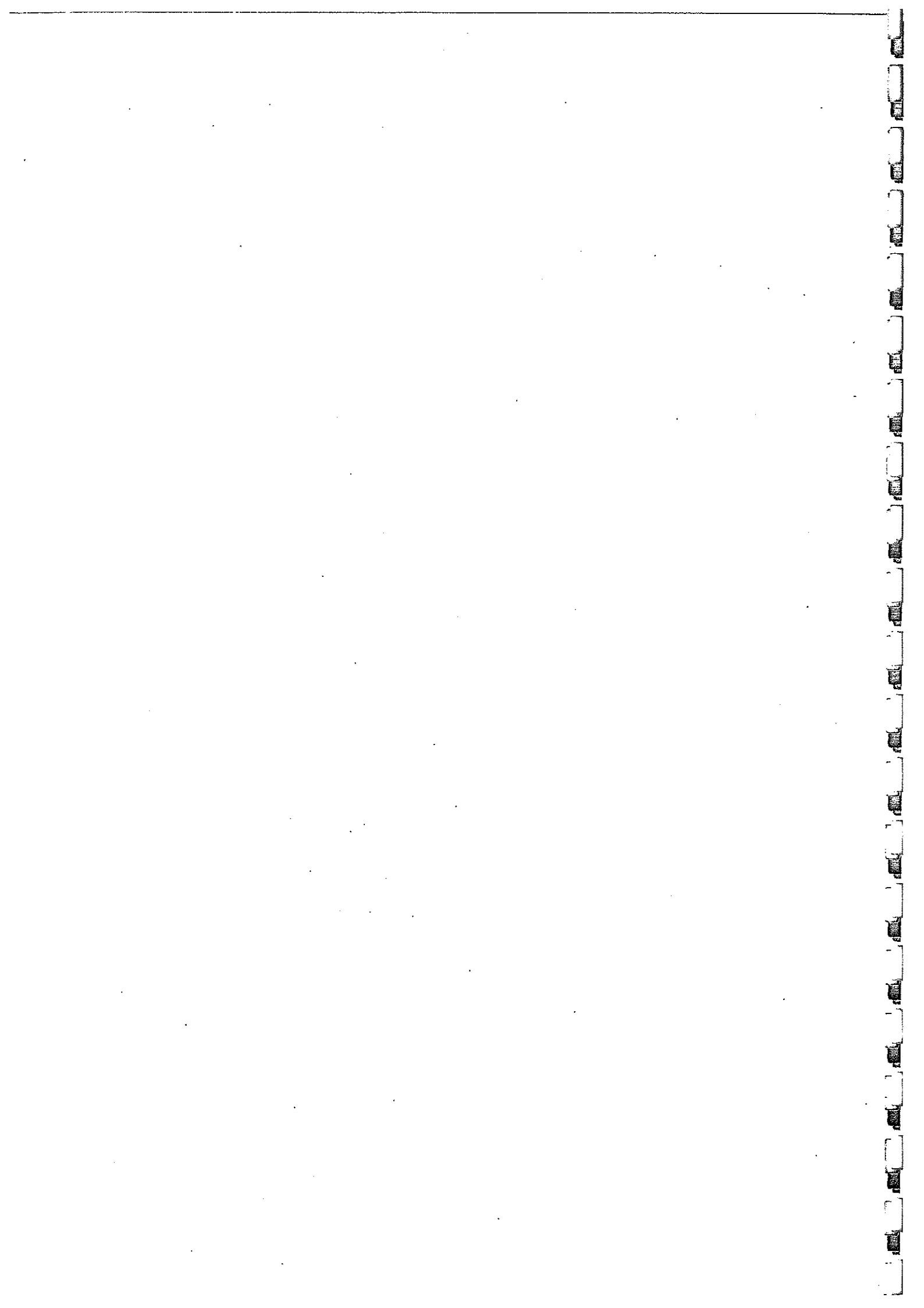


Amendment to the Partition Act

Briefing Note:

- a. There are over 500 to 6000 pending cases held in abeyance which would proceed if this amendment is adopted
- b. In the circumstances, 3000 litigants would be helped.
- c. 500 cases are kept abeyance due to this issue
- d. Several important temples owning thousands of acres desires this amendment
- e. These temples include:
 1. The Sri Pada temple
 2. Nadun Viharaya
 3. Almost all the Rajamaha Viharya's belonging to the Asgiriya and the Matwatte chapters
- f. The purpose of this amendment is to recognize the right of paraveni nilakaraya's right to partition the land



Draft Amendment to the Partition Act

S.2 of the Partition Law No. 21 of 1977 as amended states as follows :

"Where any land belongs in common to two or more owners, any one or more of them, whether or not his or their ownership is subject to any life interest in any other person, may institute an action for the partition or sale of the land in accordance with the provisions of this Law." (emphasis added)

2. "Right of praveninilakaraya to institute partition action" (marginal note)

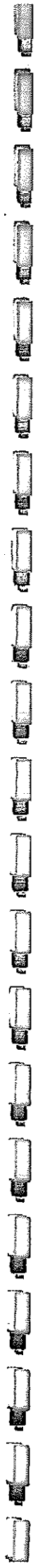
" – Every praveninilakaraya shall, for the purposes of this Act, be deemed to be a co-owner of the pravenipanguwa of which he is a shareholder and shall be entitled to institute a partition action to obtain a decree for the partition or sale of that panguwa or of any of the lands in that panguwa.

(2) The rights of the proprietor of a nindagama shall in no way be affected by the partition or sale under this Act of a panguwa or of any of the lands in a panguwa, and that proprietor shall be entitled to exercise those rights as though that partition or sale had not occurred.

(3) In this section, the expressions "praveninilakaraya" and "pravenipanguwa" have the meanings respectively assigned to them in section 2 of the Service Tenures Ordinance."

3. S.48(1) of the Partition Law No. 21 of 1977 by the inclusion of the following words at the end of S.48(1);

"and the rights of a proprietor of a nindagama" after the words "not exceeding one month".



2016

**Proposed Amendments to the Supreme Court
Rules 1990**

Proposed by
Law Commission of Sri Lanka

Proposed Amendments to the Supreme Court Rules 1990

1. Amendment of the Supreme Court Rules 1990 by the addition of PART III (A)

PART III (A)

APPLICATION TO WHICH OFFICERS OF THE STATE ARE RESPONDENTS

(1) This rule shall apply to all applications made to the Supreme court, in which an officer of the state has been made a respondent in his official capacity, (whether on account of an act or omission in such official capacity, or otherwise).

(2) A officer of state may be made a respondent to any such application by reference to his official designation only (and not by name), and it shall accordingly be sufficient to describe such public officer in the caption by reference to his official designation or the office held by him, omitting reference to his name. If a respondent cannot be *sufficiently* identified in the manner, it shall be sufficient if his name is disclosed in the averments in the petition.

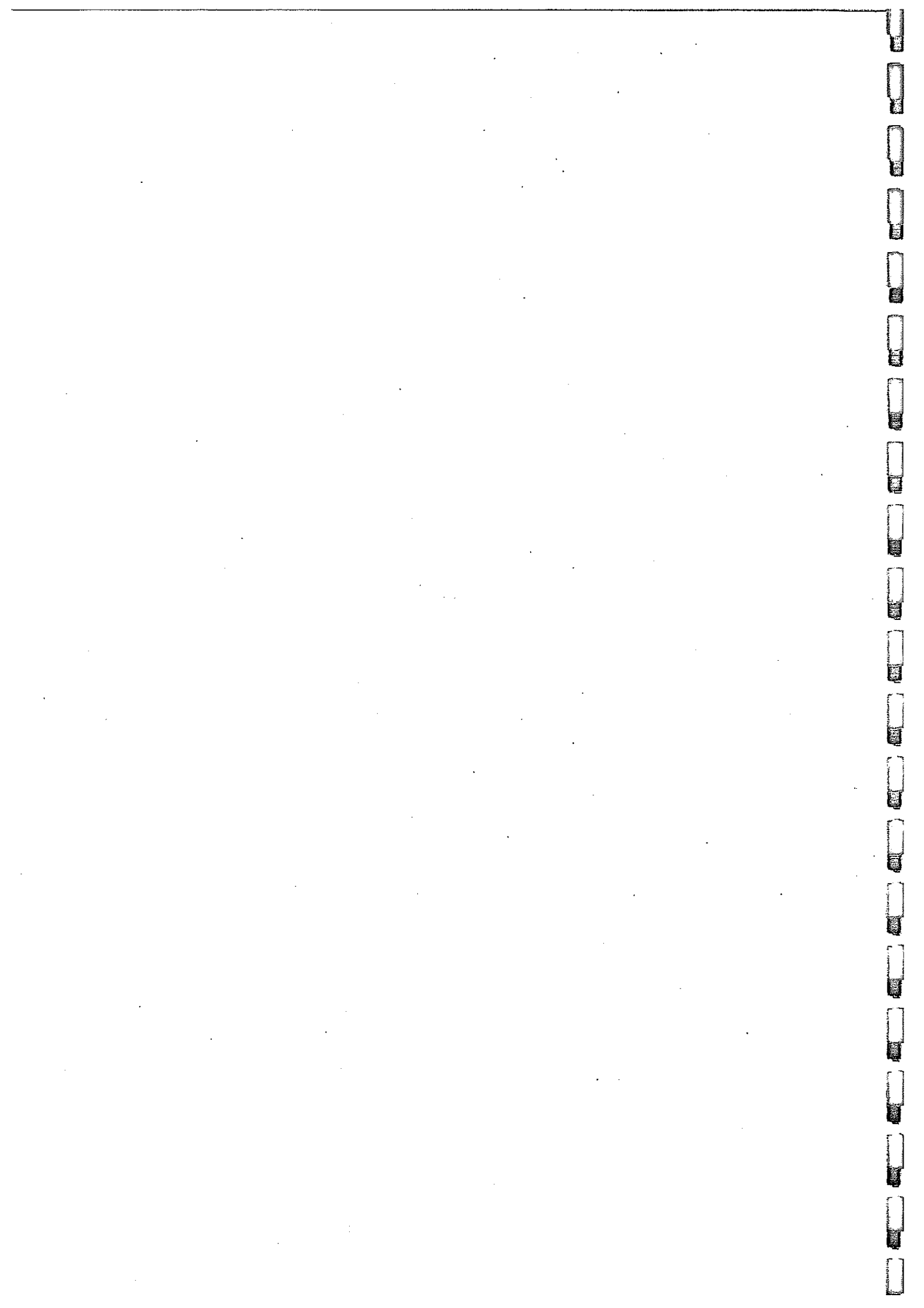
(3) No such application shall be dismissed on account of any omission, defect or irregularity in regard to the name, designation, description, or address of such respondent, if the Court is satisfied that such respondent has been sufficiently identified and described, and has not been misled or prejudiced by such omission, defect or irregularity. The court may make such order as it thinks fit in the interests of justice, for amendment of pleadings, fresh or further notice, costs, of otherwise, in respect of any omission, defect or irregularity.

(4) (a) In respect of an act or omission done in official capacity by an officer of the state who has thereafter ceased to hold such office, such application may be made and proceeded with against his successor, for the time being, in such office, such successor being made a respondent, by reference to his official designation only, in terms of sub-rule (2).

(b) If such an application has been made against an officer of the state, who has been made a respondent by reference to his official designation (and not by name) , in respect of an act or omission in his official capacity and such public officer ceases to hold such office, during the pendency of such application, such application may be proceeded with against his successor, for the time being, in such office, without any addition or substitution of respondent afresh, proxy, or the issue of any notice, to be necessary in the interests of justice. Such successor will be bound, in his official capacity, by any order made, or direction given, by the Court against, or in respect of such original respondent.

(c) Where such an application has been made against an officer of the state, who has been made a respondent by reference to his official designation (and not by name) , and such public officer ceases to hold such office after the final determination of such application, but before complying with the order made or direction given therein, his successor, for the time being, in such office will be bound by and shall comply with such order or direction.

(5) The provisions of sub-rules (4) (b) and (4) (c) shall apply to all applications filed in the Supreme Court before such date as may be specified by the Chief Justice by direction, against an officer of the state, in respect of an act or omission in his official capacity, even if such officer of the state is described in the caption both by name and by reference to his official designation.



(6) Nothing in this rule shall be constructed as imposing any personal liability upon an officer of the state in respect of the act or omission of any predecessor in office.

(7) In this rule, "ceases to hold office" means "dies, or retires or resigns from, or in any other manner ceases to hold, office".

(8) for the purposes of this rule "Officer of the State" shall mean, "a person who holds any paid office under the Republic other than a Judicial Officer and shall include,

- (i) a person holding any office in any public corporation,
- (ii) a Minister of the Government or a Provincial minister of any province,
- (iii) a member of a commission referred to in the schedule to Article 41B of the constitution
- (iv) A member of a Commission appointed under and in terms of the provisions of the Commission of Inquiry Act as amended
- (v) A member of a Commission appointed under the Special Presidential Commission of Inquiry Act no 7 of 1978 as amended and/or any member of a commission appointed under any other law other than the Commission of Inquiry Act as amended

2. Amendment to PART II of the Supreme Court Rules 1990 by the addition of Rule 41A

"In any Motion in respect of an application filed under Art 138, 140 & 141 it shall be sufficient to have a short caption consisting only the name of the First Petitioner and the First Respondent if there are more than one Petitioner or one Respondent

3. Amendment to PART II of the Supreme Court Rules 1990 by the addition of Rule 41B

"It shall be sufficient compliance of the following rules :

- i) PART II rule 3(b) of the Court of Appeal (Appellate Procedure) Rules 1990
- ii) PART I A Special Leave to Appeal of the Supreme Court Rules 1990
- iii) PART I B Leave to Appeal of the Supreme Court Rules 1990
- iv) PART I C Other Appeals of the Supreme Court Rules 1990
- v) PART IV Application under Article 126 of the Supreme Court Rules 1990

when and if applicable if the petition and /or application contains and averment stating ;

- a. I swear/affirm that the averments contained in the Petition are true or I am advised to swear/ affirm that the contents of the Petition are true
- b. I hereby affirm/swear from my own knowledge and upon perusing the documents available to me that the contents of the Petition are true



4. Amendment to PART II of the Supreme Court Rules 1990 by the addition of Rule 41C

1. Every Petitioner who files any application and/or appeal inclusive of applications under Article 126 of the Constitution, to the Supreme Court shall file together with such application, a memorandum as set out in the schedule of these rules nominating at least one person and not more than three persons in order of preference to be his legal representative for the purpose of prosecuting his application in the event of the Applicant's death and/or change of status in cases where the application and/ or appeal survives the death and/or change of status of the petitioner .
2. Every Respondent when tendering an appearance shall file a memorandum as set out in the schedule of these rules nominating at least one person and not more than three persons in order of preference to be his legal representative for the purpose of prosecuting his application in the event of the Respondent's death and/or change of status.
3. If the Petitioner does not file such a memorandum the court may dismiss the application in the event of the death of the Petitioner or the change of status of the Petitioner
4. If the Respondent does not so file a memorandum, the court may proceed to hear and determine the application without substituting a legal representative in the place of the Respondent
5. Every Petitioner and/or Respondent within three months from filling any application and/or appeal to the Supreme Court file a document which expresses written consent of the person and/or persons nominated to be the legal representative of the Petitioner or the Respondent in the event of the death or the change of status of the Petitioner or the Respondent
6. Every Petitioner and/or respondent who does not do so may face the consequences set out about.
7. The Petitioner/Applicant shall within one month of change to the caption being necessitated amend the caption
8. If the Petitioner/Applicant fails to do so the court may dismiss the application/petition

5. Amendment to the Court of Appeal Rules by the insertion of Rule 1A

“ These rules will *mutatis mutandis* apply to proceeding an application before the High Court of the Provinces exercising Civil Appellate powers.”



2016

**Proposed Amendments to the Court of Appeal
(Appellate Procedure) Rules 1990**

Proposed by

Law Commission of Sri Lanka

From : Manohara R. de Silva

Proposed amendments to the Court of Appeal (Appellate Procedure) Rules 1990

APPLICATIONS TO WHICH PUBLIC OFFICERS ARE RESPONDENTS.

5. (1) This rule shall apply to all applications made to the supreme court, in which a state officer has been made a respondent in his official capacity, (whether on account of an act or omission in such official capacity, or otherwise).

(2) A state officer may be made a respondent to any such application by reference to his official designation only (and not by name), and it shall accordingly be sufficient to describe such public officer in the caption by reference to his official designation or the office held by him, omitting reference to his name. If a respondent cannot be *sufficiently* identified in the manner, it shall be sufficient if his name is disclosed in the averments in the petition.

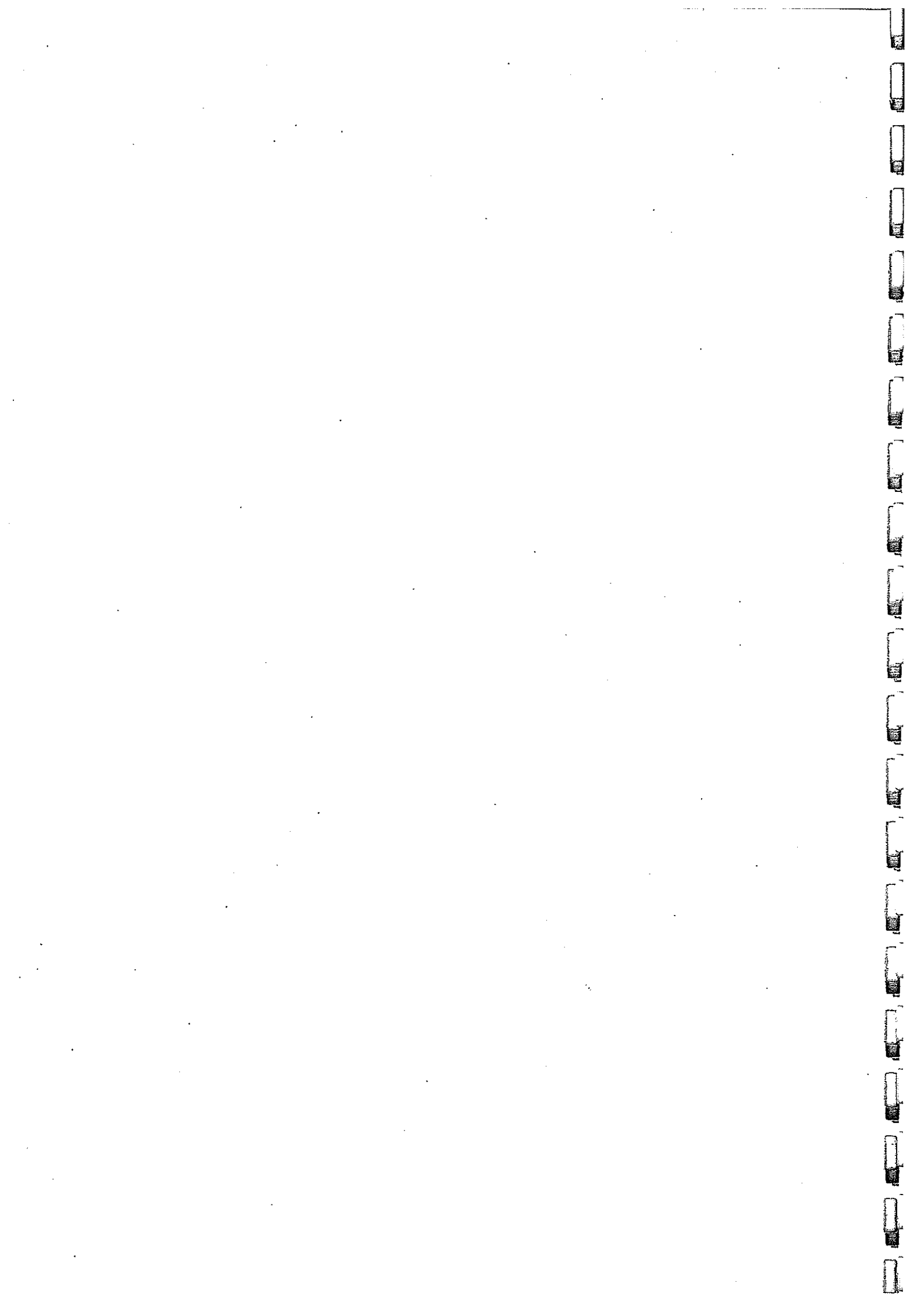
(3) No such application shall be dismissed on account of any omission, defect or irregularity in regard to the name, designation, description, or address of such respondent, if the Court is satisfied that such respondent has been sufficiently identified and described, and has not been misled or prejudiced by such omission, defect or irregularity. The court may make such order as it thinks fit in the interests of justice, for amendment of pleadings, fresh or further notice, costs, or otherwise, in respect of any omission, defect or irregularity.

(4) (a) In respect of an act or omission done in official capacity by a state officer who has thereafter ceased to hold such office, such application may be made and proceeded with against his successor, for the time being, in such office, such successor being made a respondent, by reference to his official designation only, in terms of sub-rule (2).

(b) If such an application has been made against a state officer, who has been made a respondent by reference to his official designation (and not by name) , in respect of an act or omission in his official capacity and such public officer ceases to hold such office, during the pendency of such application, such application may be proceeded with against his successor, for the time being, in such office, without any addition or substitution of respondent afresh, proxy, or the issue of any notice, to be necessary in the interests of justice. Such successor will be bound, in his official capacity, by any order made, or direction given, by the Court against, or in respect of such original respondent.

(c) Where such an application has been made against a state officer, who has been made a respondent by reference to his official designation (and not by name) , and such public officer ceases to hold such office after the final determination of such application, but before complying with the order made or direction given therein, his successor, for the time being, in such office will be bound by and shall comply with such order or direction.

(5) The provisions of sub-rules (4) (b) and (4) (c) shall apply to all applications filed in the supreme court before such date as may be specified by the Chief Justice by direction, against a state officer, in respect of an act or omission in his official capacity, even if such state officer is described in the caption both by name and by reference to his official designation.



(6) Nothing in this rule shall be constructed as imposing any personal liability upon a public officer in respect of the act or omission of any predecessor in office.

(7) In this rule, "ceases to hold office" means "dies, or retires or resigns from, or in any other manner ceases to hold, office".

(8) for the purposes of this rule "Officer of the State" shall mean, "a person who holds any paid office under the Republic other than a Judicial Officer and shall include,

- (i) a person holding any office in any public corporation,
- (ii) a Minister of the Government or a Provincial minister of any province,
- (iii) a member of a commission referred to in the schedule to Article 41B of the constitution

- 1) The following shall be inserted as part vi of the rules immediately after part v.

Part vi

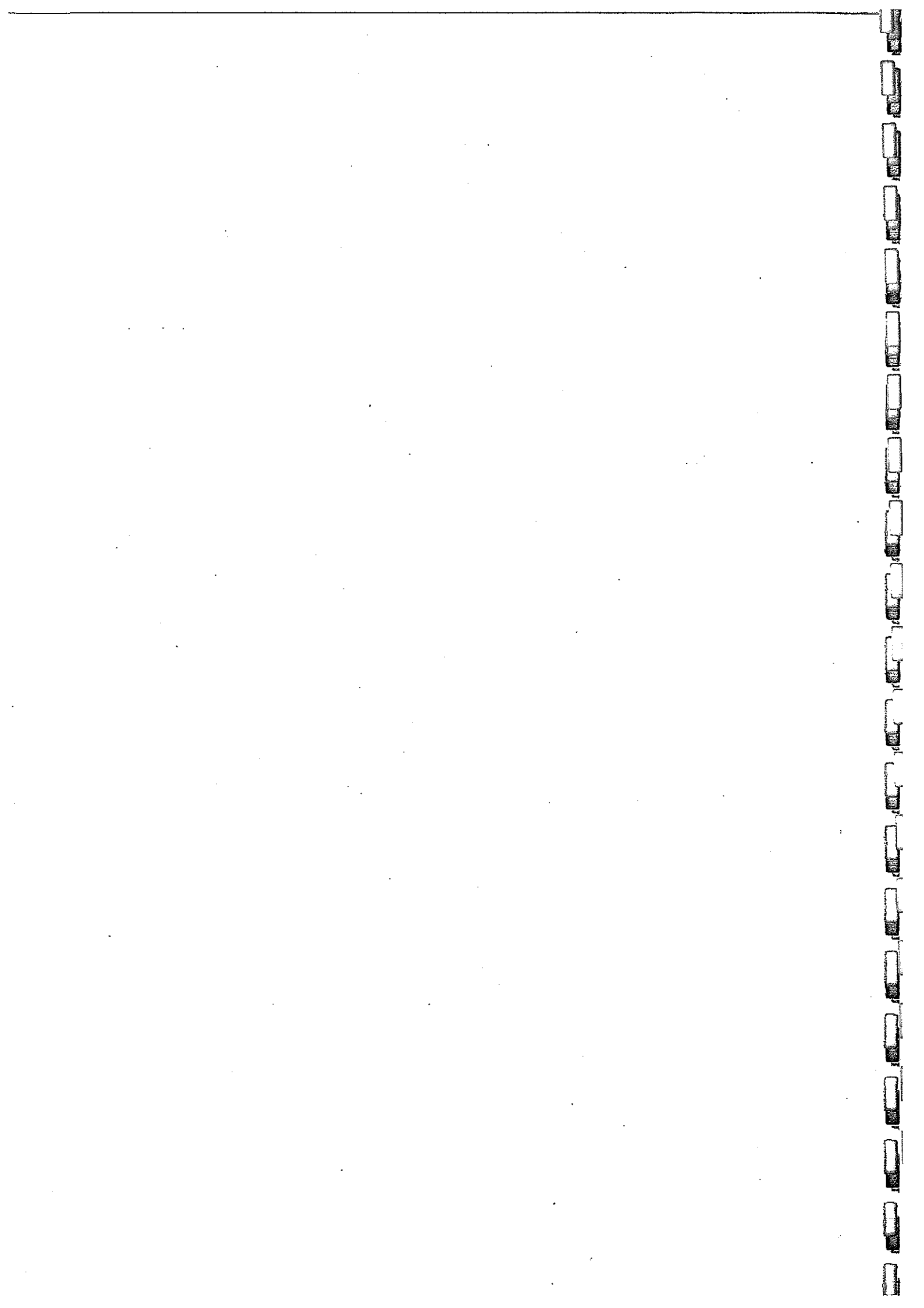
Rule 7-in any motion in respect of an application filed under Art 138, 140 & 141 It shall be sufficient to have a short caption consisting only the name of the First Petitioner and the First Respondent if there are more than one Petitioner or one Respondent

- 2) Insert a new rule immediately after rule 3 (b),

"it shall be sufficient compliance of this rule if the averments in the Petition are verified on affirmation or Oath that the statements in the Petition are true from own his knowledge and upon perusing the documents available to him."

(5) Every Petitioner to an application in terms of article 128 of the constitution to the Supreme Court shall at the time of filing the application file or cause of to be filed, where the rights claimed by the Petitioner in the application survives the death of the Petitioner, a memorandum as set out in the schedule of these rules nominating at least one person, and not more than three persons in order of preference, to be his legal representative for the purpose of prosecuting the application in the event of the Petitioner's death pending the death of the Petitioner and the person and/or persons so nominated shall be deemed to be the legal representative of the Petitioner for purpose of prosecuting the application

(6) A Petitioner to any application in terms of the 128 of the Constitution to the Supreme Court shall not be obliged to make substitute a respondent in the event of the death or dissolution of a respondent if the respondent has not filed a caveat in opposition and the Petitioner shall be entitled to prosecute the application notwithstanding the death or dissolution of such a respondent and in such an instance the Petitioner shall be entitled to enforce reliefs granted by the Supreme Court notwithstanding the non-substitution



Every Respondent to any application in terms of Article 128 shall file with his caveat nominating at least one person and not more than three persons in order of preference, to be his legal representative for the purpose of prosecuting the application in the event of the Respondent's death.

If the Petitioner does not file such a memorandum the court may dismiss the application in the event of the death of the Petitioner

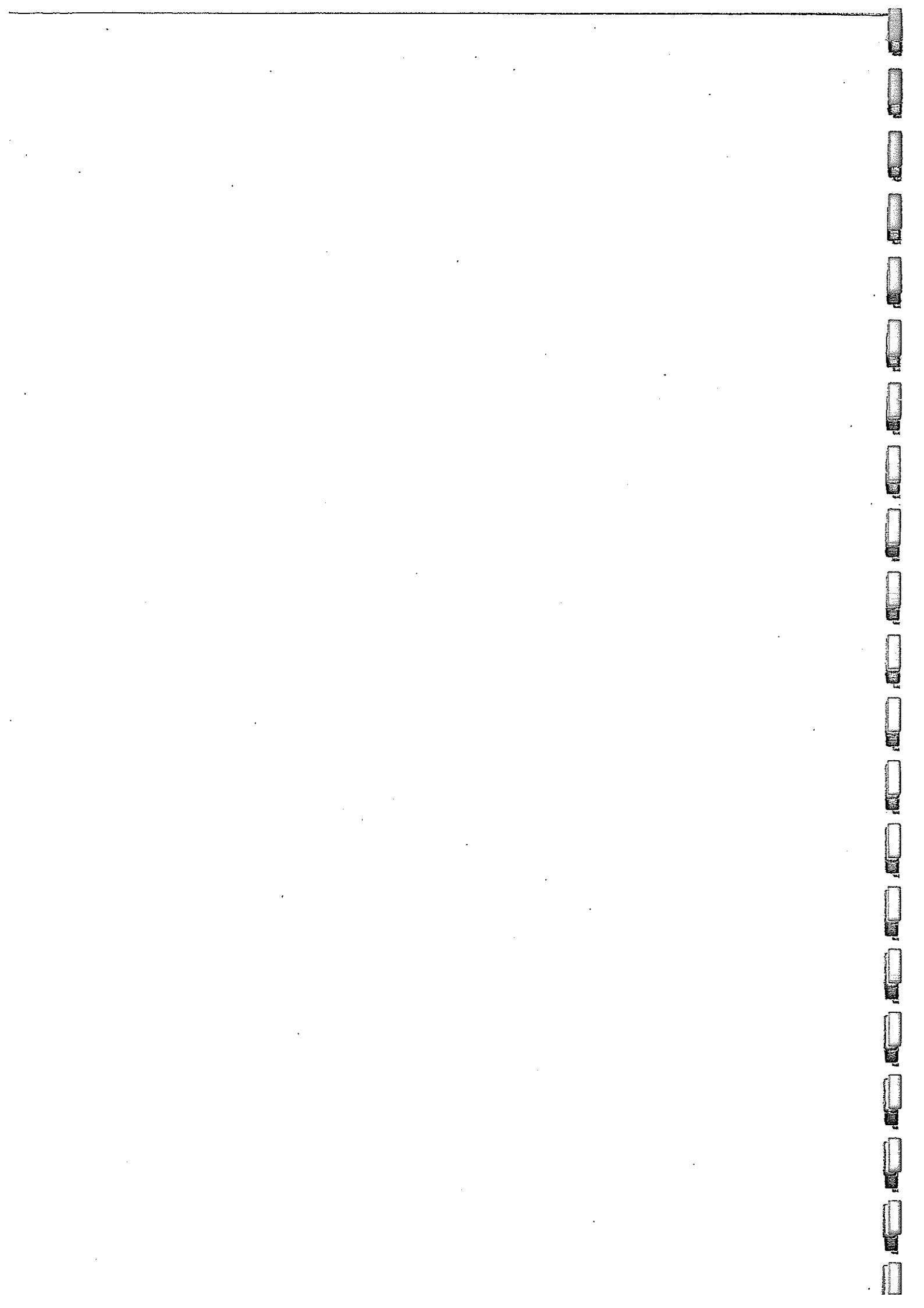
If the Respondent does not so file a memorandum, the court may proceed to hear and determine the application without substituting a legal representative in the place of the Respondent

Every Petitioner who files any application to the Supreme Court shall file together with such application, memorandum as set out in the schedule of these rules nominating at least one person and not more than three persons in order of preference to be his legal representative for the purpose of prosecuting his application in the event of the Applicant's death.

Every Respondent when tendering an appearance shall file a memorandum as set out in the schedule of these rules nominating atleast one person and not more than three persons in order of preference to be his legal representative for the purpose of prosecuting his application in the event of the Respondent's death.

If the Petitioner does not file such a memorandum the court may dismiss the application in the event of the death of the Petitioner

If the Respondent does not so file a memorandum, the court may proceed to hear and determine the application without substituting a legal representative in the place of the Respondent



2016

Proposed Amendment to Motor Traffic

Proposed by

Law Commission of Sri Lanka

CHAPTER 528

MOTOR TRAFFIC

Detention of drivers. **232E.** A police officer may detain, for such time as is reasonably necessary for purposes of inquiry and investigation, the driver of a motor vehicle at a police station-

[68, 8 of 2009]

[68, 8 of 2009] (a) who, on being requested to give his name and address refuses or fails to do so, or gives a name and address which the police officer reasonably suspects to be false;

[68, 8 of 2009] (b) who is involved in an accident resulting in death or grievous injury;

[68, 8 of 2009] (c) who, he reasonably suspects has consumed alcohol or drugs;

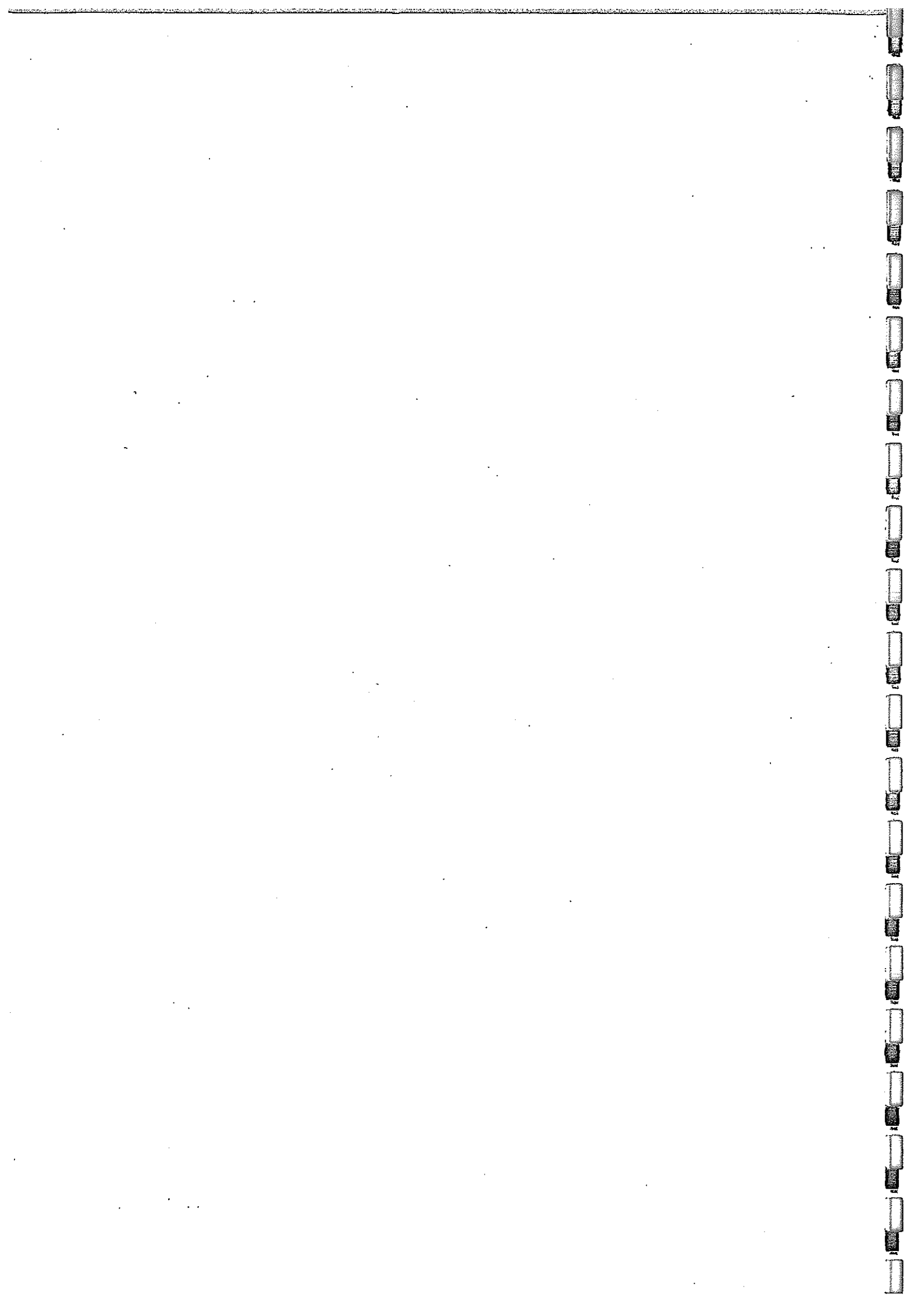
[68, 8 of 2009] (d) who, in his opinion is in possession of false or forged documents or false identification number plates;

[68, 8 of 2009] (e) who, in his opinion is in possession of a motor vehicle with a forged or altered chassis and engine number; or

[68, 8 of 2009] (f) whom he reasonably suspects is in possession of a stolen vehicle.

Proviso to be included -

Provided that a driver of a Motor vehicle who is involved in an accident resulting death or grievous injury unless detained as set out aforesaid shall not be arrested if the Police Officer is satisfied that the driver will not impede the investigation inclusive of interfering with the witnesses and/or will properly attend all sittings of court and will report to the police when necessary.



2016

**Revocation of Irrevocable Deeds of Gifts
(Special Provisions) Act**

Proposed by

Law Commission of Sri Lanka

DRAFT RE: REVOCATION OF IRREVOCABLE DEEDS OF GIFTS

Other conveyances not made out of pure liberality like a conveyance propter nuptias (Gifts made in consideration of a marriage) are irrevocable on account of the donee's ingratitude or on account of the appearance of progeny by birth or legitimization.

Under the Roman Dutch Law if a Donor of an irrevocable gift wishes to revoke it, he must file action in a Court of Law to have the Deed of Gift revoked on the grounds recognized by RDL. He cannot unilaterally by another Deed seek to revoke an irrevocable gift. *Fernando vs. Perera* 63 NLR 236, and *Podinona Ranaweera Menike vs. Rohini Senanayake* (1992) 2 SLR 181, where Justice Amarasinghe has held, "The donee-daughter by assaulting her donor-parents was guilty of the foul offence of ingratitude. Revocation is not however automatic. It requires a decision of the court."

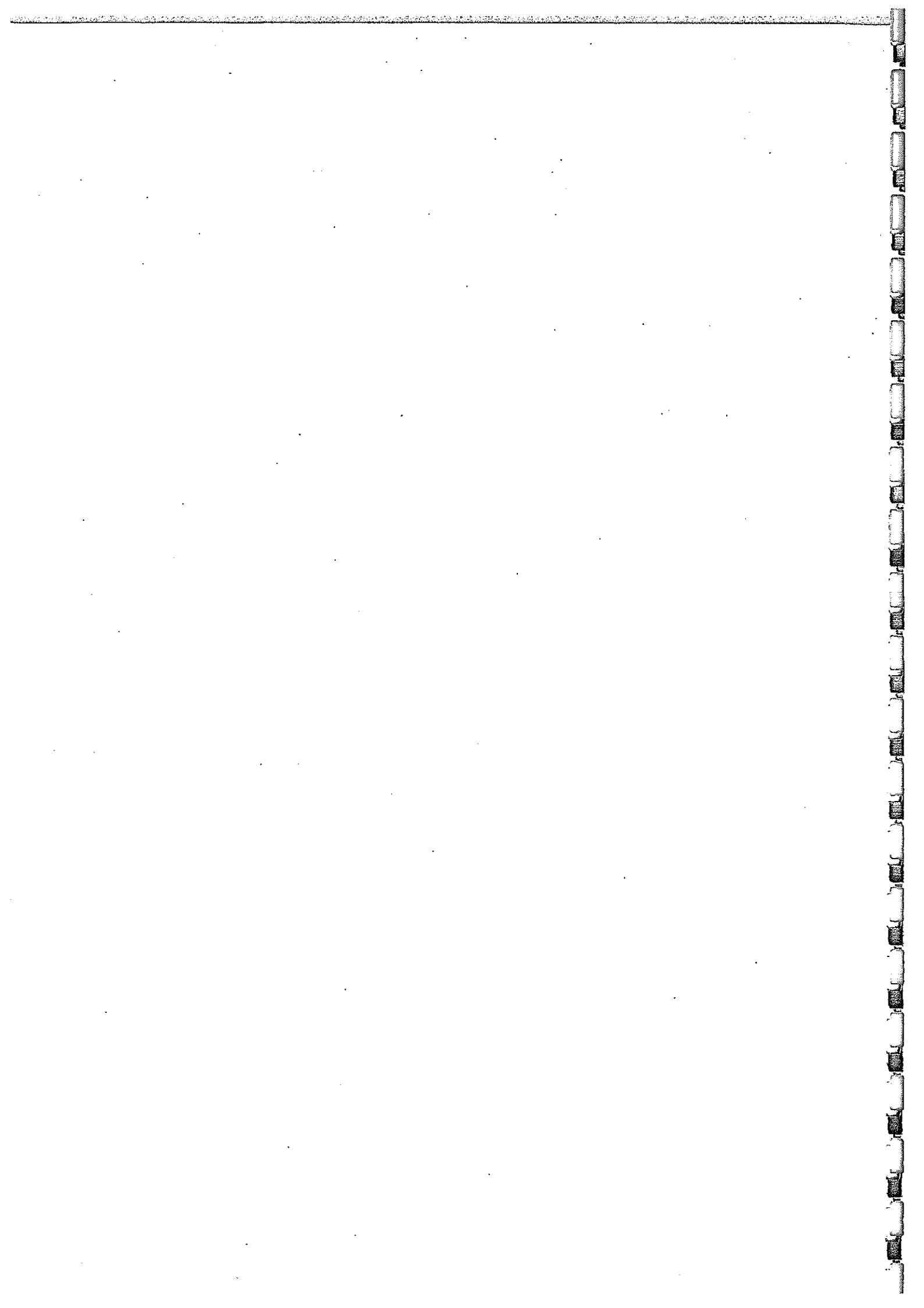
Therefore it is conclusive that an irrevocable Deed of Gift cannot be revoked unless the donor files an action in Court to have the Deed revoked on specific grounds recognize by the Roman Dutch Law. The Donor in such an action must plead and prove the grounds and get a judgment in his favour against the Donee, setting aside the Deed.

In a case decided on 13.07.2007 D.B. *Wilson vs. Sumanawathie & others* - CA 535/95(F) - DC Kalutara 348/L - the Court of Appeal upheld a judgment of a District Judge wherein the Court had held that a Donor can revoke an irrevocable Deed of Gift by executing a Deed of Revocation without filing action and obtaining a decision of Court. This judgment had also considered the application of Kandyan Law to revocation of Deeds of Gifts, the case of *Dullawe vs. Dullawe* 71 NLR 289 which was a case under the Kandyan Law had been cited in the Court of Appeal Judgment.

In view of this judgment the title, of a Donee in whose favour there is an irrevocable Deed of Gift has been put in jeopardy and in a state of uncertainty as the Donor may now at any time unilaterally execute a deed of revocation setting out reasons for revoking the irrevocable deed of gift. Thus the reasons given in such a deed by the Donor for revoking the deed are to be accepted without challenge by the Donee in a court of Law. In these circumstances such title cannot be recommended, and the Donee will be unfairly placed as he cannot improve the land or use it as collateral to obtain financing for building or commercial purposes or even dispose of it. Thus impacting on his as well as the country's economic development and welfare. This case has given rise to a situation where lending institutions who had prior to this judgment accepted title of the Donee and taken the land as collateral in granting loans is now placed in a disadvantaged position as on unilateral revocation by the donor they will lose the security on which the loan was granted. There is also the possibility that the Donee in connivance with the Donor for the purpose of defrauding the lending institutions can now execute deeds of revocations without going to Court.

This judgment has also added to the serious issue in this country of uncertainty of title to land which has seriously affected the development of the Country. Thus another segment of valuable collateral which was hitherto available to the people to obtain funds for development or in times of financial need, has been lost to them as title to such property has now been placed in the category of "unacceptable and uncertain title".

It is in these circumstances, and in view of concerns expressed by Lawyers and Lending Institutions that the Law Commission proposes the Revocation of Irrevocable Deeds of Gifts (Special Provisions) Act.



DRAFT RE: REVOCATION OF IRREVOCABLE DEEDS OF GIFTS

REVOCATION OF IRREVOCABLE DEEDS OF GIFTS (SPECIAL PROVISIONS) ACT

EXPLANATORY NOTE TO THE PROPOSED REVOCATION OF IRREVOCABLE DEEDS OF GIFTS (SPECIAL PROVISIONS) ACT

The common law which is applicable to 'Gifts' and to matters arising thereof is the Roman Dutch Law. Under the Roman Dutch Law (RDL), there are several categories of gifts. A gift is a contract whereby the owner of property (Donor) gifts such property to a person (Donee) with or without conditions. A Donor may gift a property with a specific condition that he reserves to himself the right to revoke. The Donor may also gift a property wherein it is expressly stated that it is absolute and irrevocable. It is incumbent on the Donee to accept the gift for it to become operative. A Donee by accepting the deed binds himself to all the conditions in the deed so does the Donor by executing it.

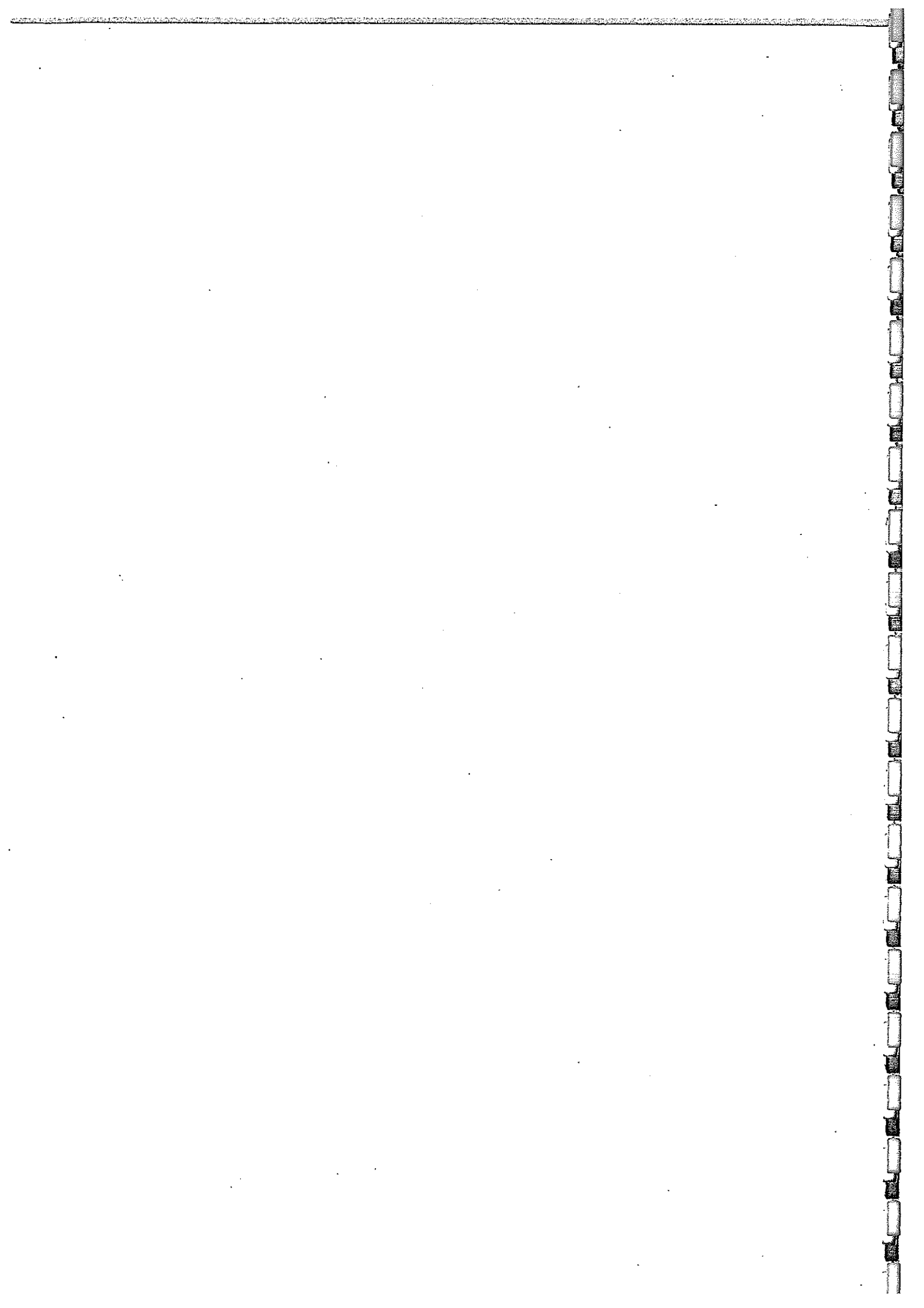
The proposed act only deals with irrevocable deeds of gifts to which the RDL applies.

Under the RDL even an irrevocable deed of gift is revocable by the Donor under certain circumstances. Such as:

- (i) if the donee failed to give effect to a direction as to its application (donatio sub modo),
or
- (ii) on the ground of the donee's ingratitude or
- (iii) if at the time of the gift the donor was childless but afterwards became the father of a legitimate child by birth or legitimation.

A donor is entitled to revoke a donation on account of ingratitude.

- (i) if the donee lays manus impias (impious hands) on the donor.
- (ii) if he does him an atrocious injury
- (iii) if he willfully causes him great loss of property
- (iv) if he makes an attempt on his life
- (v) if he does not fulfil the conditions attached to the gift
- (vi) other equally grave causes.



DRAFT RE: REVOCATION OF IRREVOCABLE DEEDS OF GIFTS

It was also brought to the notice of the commission that when actions are filed to revoke such deeds the public should be given notice of such action by requiring the Plaintiff to register a *lis pendens*. Thus the Law Commission has provided for such a registration in this proposed act. The proposed act will apply only to revocation of irrevocable deeds of gifts by a Donor on grounds recognized by common law.

The Law Commission recommends that these proposals be passed into Law as early as possible.

Note:

The law on the revocation of deeds was clear in this country in that the Donor had to obtain a judgment of court that the donee was ungrateful and the deed could be revoked under the common law. However, Justice Anil Goonerathne's in D.B. Wilson vs. Sumanawathie & others - CA 535/95(F) - DC Kalutara 348/L held that a donor without doing to court to revoke a deed of gift.

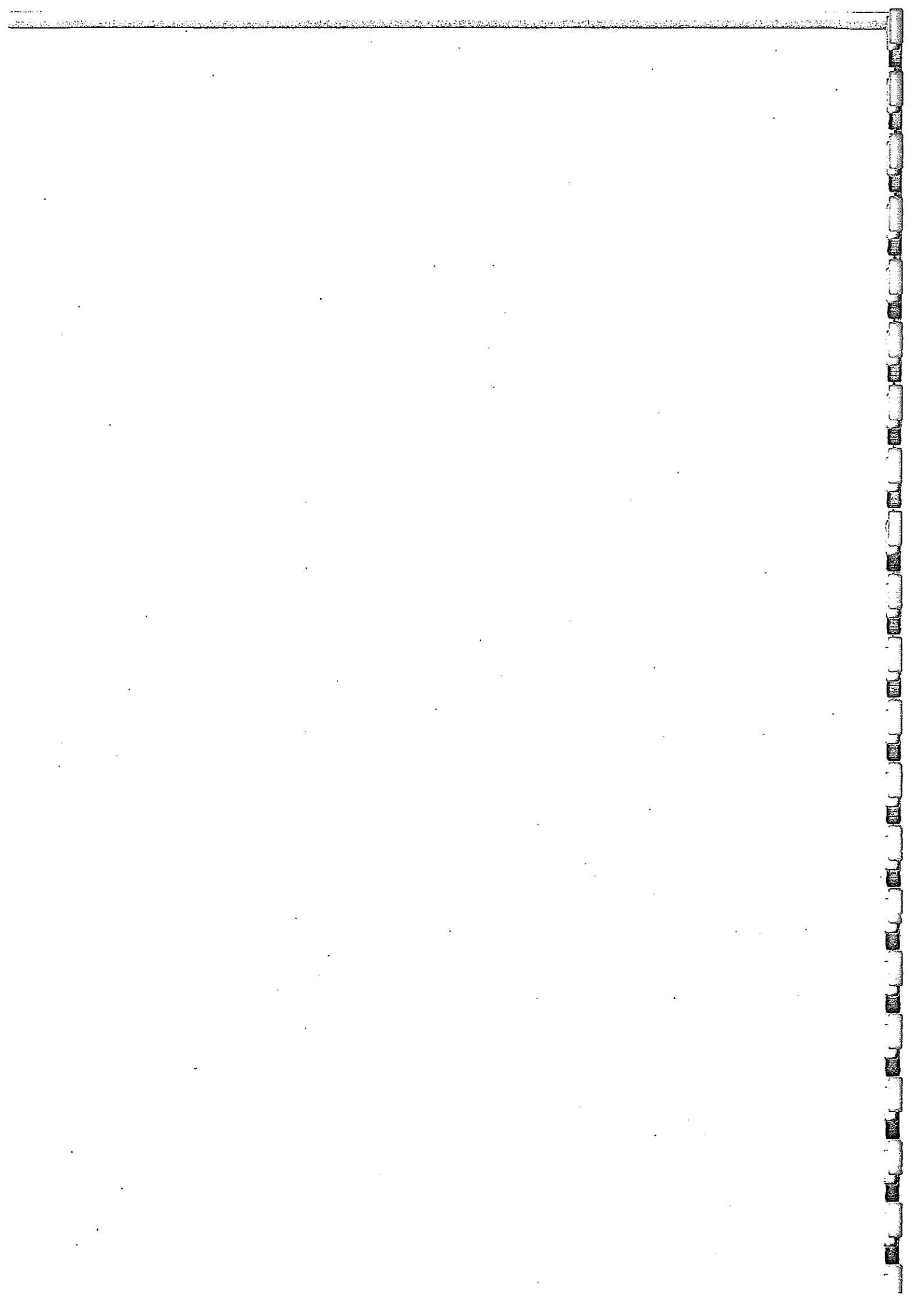
The Supreme Court in that case refused special leave to appeal.

The law is therefore uncertain. Because of Anil Goonertane's judgment lending intuitions have refused to lend.

Thus, that Law Commission feels that the law prior to Justice Anil Goonerathne's judgment should be brought back; namely only if court of law find a donee guilty of ingratitude.

The Law Commission also feels that some gifts should not under any circumstances be allowed to be revoked if it is expressly stated in the deed that it cannot be revoked on any grounds whatsoever and notary in the attestation clause has stated that he explained to the Donor the effect of such a condition prior to the deed being signed.

However, since this is a matter of extreme important policy, the Law Commission leaves it to the Hon. Minister to decide on it.



2016

**Protection of National Security from terrorism
Act**

Proposed by

Law Commission of Sri Lanka

Protection of National Security from Terrorism Act

1. This Act may be cited as the Protection of National Security from Terrorism Act.

Acts of Terrorism

2. (1) Any person who commits an act of terrorism shall commit an offence under this Act.

(2) An act of terrorism shall mean;

(a) committing or threatening to commit any action that falls within subsection (3) with intent to threaten the unity, territorial integrity, security or sovereignty of Sri Lanka; or

(b) any action that falls within subsection (3); where the action or the threat of such action is designed and made to compel the government to do or abstain from doing any act or to intimidate the public or a section of the public;

(3) Action falls within this subsection if it—

(a) involves violence against a person;

(b) involves damage to property;

(c) endangers a person's life, other than that of the person committing the action;

(d) creates a risk to the health or safety of the public or a section of the public;

(e) is designed to interfere with or to seriously disrupt an electronic system.

(4) Any person guilty of an offence specified in this section shall on conviction be liable to imprisonment of either description for a period not exceeding twenty years, except where such person intentionally causes death, in which event such person shall on conviction be liable to a sentence of death.

Types of liability

3. Any person who

(1) attempts to commit;



(2) abets, conspires, exhorts or incites the commission of; or

(3) prepares to commit;

(4) is an accessory after the fact to:

an offence under section (2) shall be guilty of an offence under this Act and shall on conviction be liable to imprisonment of either description for a period not exceeding twenty years.

Powers of arrest, entry, search and seizure.

4. (1) Any police officer not below the rank of Superintendent or any other police officer not below the rank of Sub-Inspector authorized in writing by any police officer not below the rank of superintendent in that regard may, without a warrant and with or without assistance and notwithstanding anything in any other law to the contrary (a) arrest any person; (b) enter and search any premises; (c) stop and search any individual or any vehicle, train, aircraft or other vessel; and (d) seize any document or thing, connected with or concerned in or reasonably suspected of being connected with or concerned in any act of terrorism.

(2) A person arrested in terms of subsection (1) may be kept in custody for a period not exceeding seventy-two hours and shall be produced before a Magistrate before the expiry of such period.

(3) A person not produced before a Magistrate within a period of seventy-two hours shall be released forthwith.

(4) Where a person arrested in terms of subsection 1 is produced before a Magistrate, the Magistrate shall make an order releasing such person forthwith, unless an application is made in writing in that behalf by a police officer not below the rank of Superintendent that such person has committed or is reasonably suspected of having committed an offence under Section 2 of this Act, upon which the Magistrate may make order releasing such person, or order that such person be remanded or be granted bail on such terms as the Magistrate may deem fit.

(5) Any person who obstructs or hinders any police officer lawfully exercising any power conferred on him by or under subsection (1), shall be guilty of an offence and shall on conviction be liable to imprisonment of either description for a period not exceeding five years.

(6) Upon the arrest of any person under the provisions of this section, the police officer carrying out such arrest shall, within twenty-four hours of such arrest, issue a notice of arrest to an adult member of the immediate family of the person arrested, or if such



person cannot be identified or is absent, the Grama Niladhari of the division in which the person arrested resides. Such notice shall also be issued to the Officer in Charge of the Police Station nearest to where the arrested person resides, who shall on request by an immediate family member of the arrested person or an Attorney-at-Law, forthwith provide a copy of a notice of arrest in his possession to the person making such request.

(7) A notice of arrest in terms of subsection (6) shall specify the name of the person arrested, the fact that such arrest was in terms of this Act, and the name and rank of the police officer issuing such notice. The notice shall be signed by such police officer.¹

Order of Custody

5. (1) The Minister may, on reasonable grounds, issue an order of custody in respect of any person who he reasonably suspects of being involved in or connected with any act of terrorism where in his opinion the detention of such person is necessary to prevent or investigate such or other acts of terrorism. The order of custody issued by the Minister shall specify the number of days for which a person in respect of whom such order is made shall be detained in custody, provided that such period shall not exceed thirty days and may be upon such conditions as may be prescribed by the Minister.
- (2) A person named in an order of custody issued in terms of subsection (1) shall be taken into custody forthwith by a police officer.
- (3) The order of the Minister under subsection (1) shall be subject to judicial review including the writ jurisdiction in terms of Article 140 and Article 141 of the Constitution.
- (4) The order of the Minister under subsection (1) shall also be subject to review by way of the jurisdiction of the Supreme Court in terms of Article 126 of the Constitution.
- (5) At the expiry of the said 30 days such person shall be released unless produced before a Judge of the High Court.
- (6) A person taken into custody in terms of preceding sub section may be released prior to expiry of 30 days
- (7) A person taken into custody under the preceding subsections of this section may be produced before a Judge of the High Court prior to the lapse of the period specified in the order of custody issued by the Minister.

¹ Subsections 6 and 7 were inserted at the request of the Hon Attorney General's Department.



(8) The Judge of the High Court shall make an order releasing such person forthwith, unless an application is made in writing in that behalf by a police officer not below the rank of Inspector that such person has committed or is reasonably suspected of having committed an offence, upon which the Judge may make order releasing such person or order that such person be remanded or granted bail on such terms as the High Court Judge may deem fit.

(9) Where the Judge of the High Court remands a person in terms of subsection 8, he may, if he is satisfied that it is necessary in the circumstances to do so for the purposes of investigating or preventing the commission of a terrorist act or acts, order that the person remanded be held in the custody of the police for the period of remand, such period not exceeding two weeks at a time, provided that the entire period a person is remanded to police custody in terms of this subsection shall not exceed twenty-eight days.

(10) Upon any person being taken into custody by a police officer under the provisions of this section, the police officer taking such person into custody shall, within twenty-four hours of the person being taken into custody, issue a notice of detention to an adult member of the immediate family of the person arrested, or if such person cannot be identified or is absent, the Grama Niladhari of the division in which the person taken into custody resides. Such notice shall also be issued to the Officer in Charge of the Police Station nearest to where the person taken into custody resides, who shall on request by an immediate family member of the person taken into custody or an Attorney-at-Law, forthwith provide a copy of a notice of detention in his possession to the person making such request.²

(11) A notice of detention in terms of subsection (10) shall specify the name of the person taken into custody, the fact that such arrest was in terms of this Act, and the name and rank of the police officer issuing such notice. The notice shall be signed by such police officer.

Trial

6. (1) Every person who is accused of committing an offence under Section 2 of this Act shall be tried without a preliminary inquiry, upon an indictment by the Attorney General before a Judge of the High Court sitting alone without a jury or before the High Court at Bar by three Judges without a jury, if so decided by the Chief Justice. The provisions of sections 450 and 451 of the Code of Criminal Procedure Act, No. 15 of 1979, shall, *mutatis mutandis*, apply to the trial of offences under this Act by the High Court at Bar

² Inserted at the request of the Hon Attorney General's Department.



and to appeals from judgments, sentences and orders pronounced at any such trial held by the High Court at Bar.

(2) Upon the indictment being received in the High Court against any person in respect of any offence under this Act, the court may remand such person or release him on bail pending the conclusion of the trial;

Provided that the Attorney General shall be entitled to be heard in any application by a person for bail after his indictment for any offence under this Act.

Confessions

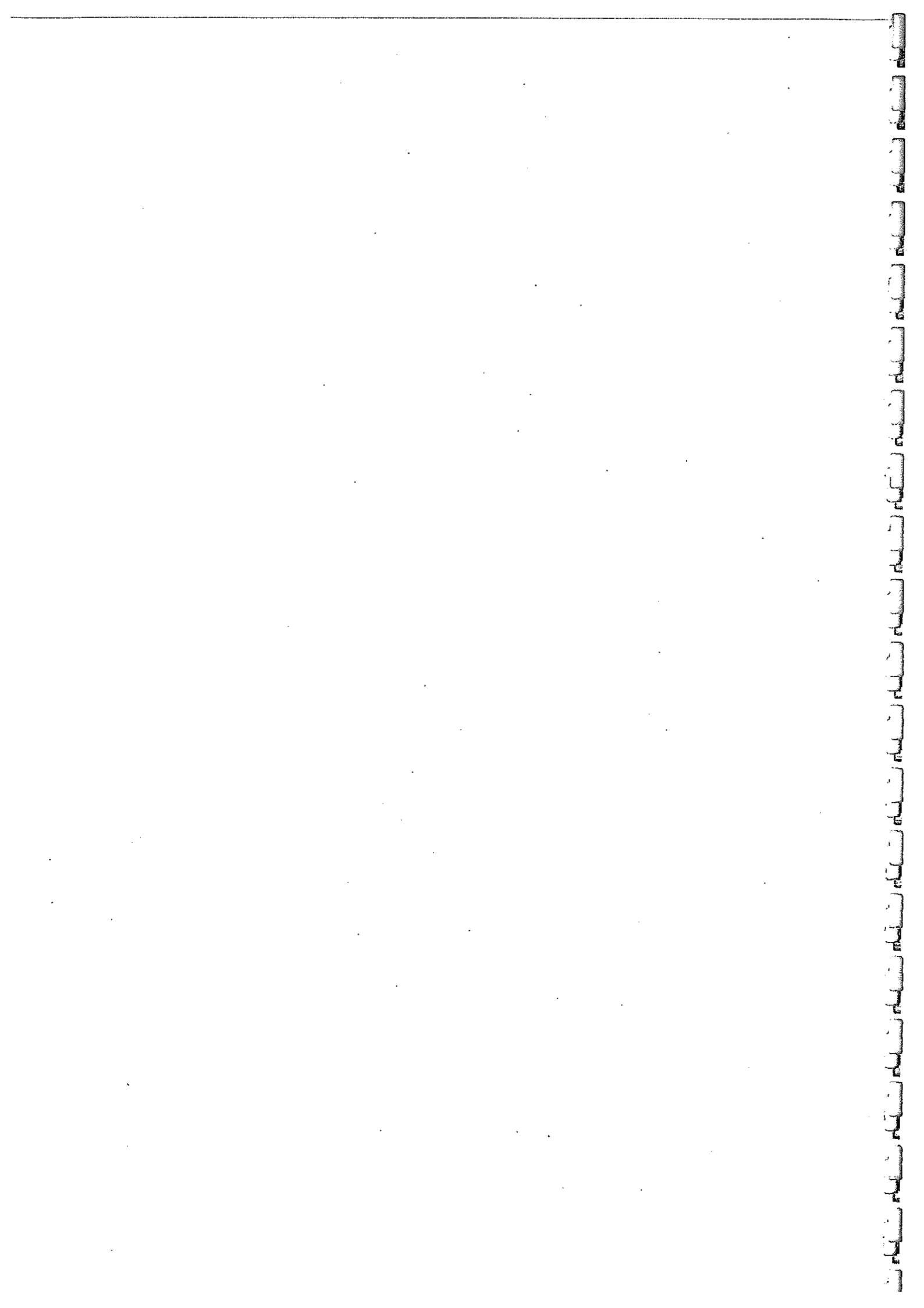
7. (1) Any person subject to the process of Section 4 of Section 5 of this Act who is desirous of making a confession shall be produced before a Magistrate forthwith. Such Magistrate shall question such person in camera with a view to satisfying himself that the desire to make a confession is voluntary and is not made out of compulsion, force or threat.

(2) Prior to recording the confession of a person, the Magistrate shall explain to such person that a confession made in terms of this section shall be admissible in any judicial proceeding including criminal proceedings under the provisions of this Act notwithstanding any contrary provisions in any other law. The Magistrate shall in the recording of the confession also record that the Magistrate provided such explanations as required by this subsection and whether such person having heard such explanation, appeared to understand it.

(3) Upon satisfying himself that the desire to make a confession is voluntary and not made out of compulsion, force or threat, the Magistrate shall record his reasons for doing so and record the confession. Where the Magistrate does not satisfy himself that the confession must be recorded, the Magistrate shall record his reasons for not recording the confession. At the conclusion of such recording, the Magistrate shall read and explain the contents of the recording to the person concerned, who shall if he has made a confession, sign the document on which the recording is made.

(4) A confession recorded in terms of subsection (2) shall be admissible in any judicial proceeding notwithstanding any contrary provisions in any other law, provided the Magistrate recording the confession acted in terms of subsection (2) of this section and was of the view of that the person making the confession understood the explanation of the Magistrate provided under subsection (2).

(5) Notwithstanding the provisions of subsection (1) of section 5, the Magistrate shall transfer to judicial custody any person who has made a confession in the manner set out above while such person is subject to an order of custody under subsection (1) of section



5 for the remainder of the period specified in such order, prior to the expiration of which such person shall be produced before a Judge of the High Court for the making of an order in terms of subsection (8) of section 5.

(6) Notwithstanding the provisions of subsection (9) of section 5, the Magistrate shall transfer to judicial custody any person who has made a confession in the manner set out above while such person is subject to an order of remand in police custody under subsection (9) of section 5 for the remainder of the period specified in such order, prior to the expiration of which such person shall be produced before a Judge of the High Court, upon which the Judge of the High Court may make order releasing such person or order that such person be remanded or granted bail on such terms as the High Court Judge may deem fit.

Priority for trials and appeals under this Act.

8. Every court shall give priority to the trial of any person charged with, or indicted for, any offence under this Act and to the hearing of any appeal from the conviction of any such offence and sentence imposed on such conviction.

Corporate liability

9. Where an offence under this Act is committed by a body of persons, then if that body of persons is (a) a body corporate, every director and officer of that body corporate; or (b) a firm, every partner of that firm; or (c) a body unincorporate other than a firm, every officer of that body responsible for its management and control, shall be deemed to be guilty of such offence:

Provided that no such person shall be deemed to be guilty of such offence if he proves that such offence was committed without his knowledge or that he exercised all due diligence to prevent the commission of such offence.

Protection of officers

10. Subject to the provisions of this Act, no suit, prosecution or other proceeding, civil or criminal, shall lie against any officer or person for any act or thing done in good faith in pursuance of this Act.



Attorneys-at-Law

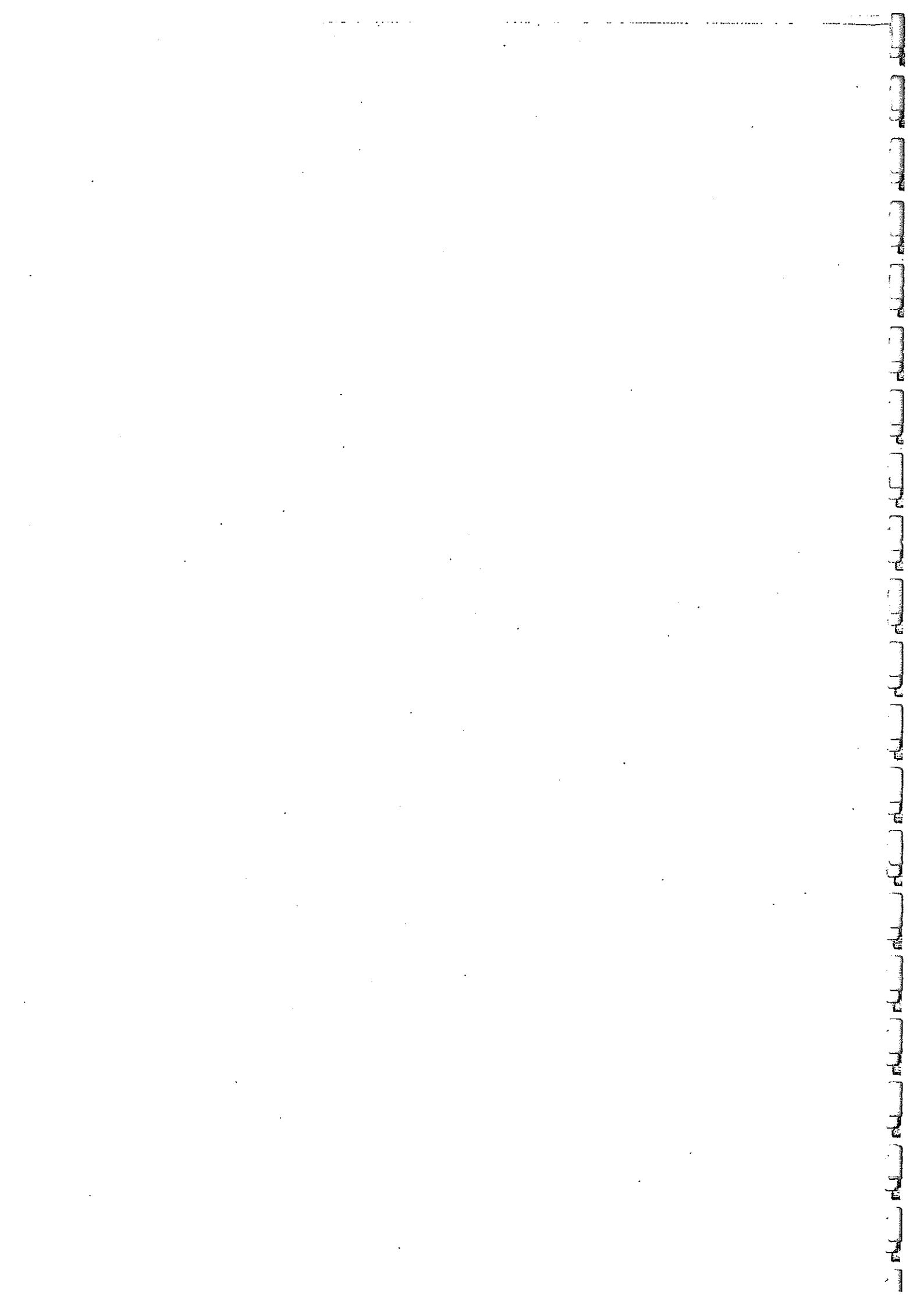
11. No person arrested and detained in terms of this Act shall be denied the advice and counsel of an Attorney-at-Law.

Proscription

12. (1) The Minister may, if he is satisfied that an organization is involved in or otherwise concerned in acts of terrorism, proscribe such organization.
- (2) Any organization proscribed in terms of subsection (1) shall not be permitted to carry out its activities or functions.
- (3) A person who works for an organization proscribed under subsection (1) after it is proscribed shall be guilty of an offence, and shall on conviction be liable to imprisonment for a period not exceeding twenty years.
- (4) The provisions of subsections (3) and (4) of section 5 shall mutatis mutandis apply to any order made in terms of the preceding provisions of this section.

Regulations.

13. (1) The Minister may make regulations under this Act for the purpose of carrying out or giving effect to the principles and provisions of this Act.
- (2) Every regulation made by the Minister shall be published in the Gazette and shall come into operation on the date of such publication or on such later date as may be specified in the regulation.
- (3) Every regulation made by the Minister shall within thirty days after its publication in the Gazette be brought before Parliament for its approval. Any regulation which is not so approved shall be deemed to be rescinded as from the date of disapproval but without prejudice to anything previously done thereunder. Notification of the date on which a regulation is deemed to be rescinded shall be published in the Gazette.
- (4) Every regulation so made if not brought before parliament as aforesaid within thirty days shall have no force or effect of law as from the lapse of such thirty days, but without prejudice to anything previously done thereunder



Withholding Information

14. Whoever wilfully withholds and fails to report to a police officer any information relating to the commission of or preparation to commit an act of terrorism, or having any information relating to the movements or whereabouts of any person who has committed or is making preparations to commit an act of terrorism shall be guilty of an offence and shall, upon conviction be liable to imprisonment of either description for a period not exceeding seven years.

15. The Prevention of Terrorism (Temporary Provisions) Act No 48 of 1979 as amended is hereby repealed.

16. In this Act, unless the context requires, all words and expressions used herein and defined in the Penal Code and not hereinbefore defined shall be deemed to have the meanings respectively attributed to them by that Code:

"High Court" shall mean a High Court established in terms of the Constitution holden in Colombo.

"Minister" means the Minister to whom the subject of Defence is assigned.

"organization " includes any movement, society, party, association or body or group of persons;

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