

I assent.

(L.S.)

GEORGE ABELA
President

30th March, 2012

ACT No. II of 2012*An Act to amend various laws related to Disability*

BE IT ENACTED by the President, by and with the advice and consent of the House of Representatives, in this present Parliament assembled, and by the authority of the same, as follows:-

1. (1) The short title of this Act is the Various Laws (Disability Matters) (Amendment) Act, 2012. Short title.

PART I

2. This Part amends the Code of Organization and Civil Procedure and it shall be read and construed as one with the Code of Organization and Civil Procedure, hereinafter in this Part referred to as “the Code”. Amendment of the Code of Organization and Civil Procedure. Cap. 12.

3. In the first proviso to sub-article (1) of article 187 of the Code for the words “any person who, on account of infirmity of mind, is unable to give evidence of such service” there shall be substituted the words “any person who, at the time of the service, has a mental disorder or other condition, which renders him incapable of giving evidence of such service”. Amendment of article 187 of the Code.

4. In the Maltese text of article 491 of the Code, for the words “hija minuri, jew moħħha marid, jew interdetta” there Amendment of article 491 of the Code.

shall be substituted the words “hija minuri, jew mignuna, jew interdetta”.

Amendment of article
519 of the Code.

5. In the Maltese text of sub-article (2) of article 519 of the Code, for the words “l-inkapaċità ġejja minn mard tal-moħħ jew raġunijiet oħra” there shall be substituted the words “l-inkapaċità ġejja minn ġenn jew raġunijiet oħra”.

Amendment of article
520 of the Code.

6. Article 520 of the Code shall be amended as follows:

(a) in sub-article (1) thereof, for the words ““persons who are habitual idiots, insane, frenzied or prodigal”, there shall be substituted the words “persons who have a mental disorder or other condition, which renders them incapable of managing their own affairs, or who are insane or prodigal”; and

(b) immediately after sub-article (3) thereof, there shall be added the following new sub-article:

“(4) For the purposes of this Title, and for the purposes of the provisions of articles 187, 747, 781 and 929 of this Code:

(a) “other condition”, where used in the context of a condition that renders a person incapable of managing his own affairs, means a long-term physical, mental, intellectual or sensory impairment which in interaction with various barriers may hinder one’s full and effective participation in society on an equal basis with others; and

(b) “mental disorder” shall have the meaning assigned to it in the Mental Health Act:

Provided that any reference in such definitions to “disability of mind” or “arrested or incomplete development of mind” shall not be construed to mean a mental disorder for the purposes of this Title and of such provisions.”.

Amendment of article
521 of the Code.

7. In paragraph (d) of article 521 of the Code, for the words “in case of idiocy or other mental infirmity” there shall be substituted the words “in case of a mental disorder or other

condition, which renders a person incapable of managing his own affairs”.

8. Article 523 of the Code shall be amended as follows:

Amendment of article
523 of the Code.

(a) immediately after sub-article (1) thereof, there shall be added the following new paragraph:

“A curator shall be appointed for a period not exceeding three years. Such appointment can be renewed, where the court considers it so appropriate, after evaluating the reports submitted by the curator in accordance with sub-article (4)”; and

(b) immediately after sub-article (3) thereof, there shall be added the following new sub-article:

“(4) (a) During the term of his appointment, the curator shall submit a yearly sworn report to the court declaring the circumstances relating to his curatorship and the general state of the person interdicted or incapacitated, and shall also comply with the other duties of curators as may be provided in accordance with the requirements of any other law.

(b) The court, after taking cognizance of the report, shall hear the curator and any other person it may deem fit to ensure the well-being of the person interdicted or incapacitated and the fulfilment of the rights and duties of the curator.”.

9. Paragraph (b) of sub-article (2) of article 747 of the Code shall be amended as follows:

Amendment of article
747 of the Code.

(a) in the English text, for the words “incapacitation of lunatics, imbeciles or persons insane or prodigal” there shall be substituted the words “incapacitation of persons with a mental disorder or other condition, which renders them incapable of managing their own affairs, or persons insane or prodigal”; and

(b) in the Maltese text, for the words “inabilitazzjoni ta’ persuni furjużi, imbecilli, moħħhom marid jew berbieqa” there shall be substituted the words “inabilitazzjoni ta’ persuni

b'dizordni mentali jew kundizzjoni oħra, li tagħmilhom inkapaċi li jieħdu ħsieb hwejjighom, imġienen jew berbieqa”.

Amendment of article 781 of the Code.

10. Paragraph (b) of article 781 of the Code shall be amended as follows:

(a) in the English text, for the words “a lunatic or insane person, and any other person” there shall be substituted the words “an insane person, a person with a mental disorder or other condition, which renders him incapable of managing his own affairs, and any other person”; and

(b) in the Maltese text, for the words “il-persuni furjużi jew moħħhom marid u kull persuna oħra” there shall be substituted the words “il-persuni b'dizordni mentali jew kundizzjoni oħra, li tagħmilhom inkapaċi li jieħdu ħsieb hwejjighom, jew imġienen, u kull persuna oħra”.

Amendment of article 929 of the Code.

11. In paragraph (a) of article 929 of the Code, for the words “not legally represented or imbecile or person interdicted” there shall be substituted the words “not legally represented, or person with a mental disorder or other condition, which renders him incapable of managing his own affairs, or person interdicted”.

PART II

Amendment of the Civil Code.
Cap. 16.

12. This Part amends the Civil Code, and it shall be read and construed as one with the Civil Code, hereinafter in this part referred to as “the Code”.

Amendment of article 189 of the Code.

13. Article 189 of the Code shall be amended as follows:

(a) in sub-article (1) thereof, for the words “who is in a state of imbecility or other mental infirmity or is prodigal” there shall be substituted the words “who is a person with a mental disorder or other condition, which renders him incapable of managing his own affairs, or who is insane or prodigal”;

(b) in sub-article (3) thereof, for the words “person who is imbecile, mentally infirm, or prodigal” there shall be substituted the words “person who has a mental disorder or other condition, which renders him incapable of managing his own affairs, or is insane or prodigal.” and

(c) immediately after sub-article (3) thereof, there shall be added the following new sub-article:

“(4) For the purposes of this Title, and for the purposes of the provisions of articles 597, 752, 1034, 1035, 1036 and 1241 of this Code:

(a) “other condition”, where used in the context of a condition that renders a person incapable of managing his own affairs, means a long-term physical, mental, intellectual or sensory impairment which in interaction with various barriers may hinder one’s full and effective participation in society on an equal basis with others; and

(b) “mental disorder” shall have the meaning assigned to it in the Mental Health Act:

Provided that any reference in such definitions to “disability of mind” or “arrested or incomplete development of mind” shall not be construed to mean a mental disorder for the purposes of this Title and such provisions.”.

14. Article 190 of the Code shall be deleted.

Deletion of article 190 of the Code.

15. Article 597 of the Code shall be amended as follows:

Amendment of article 597 of the Code.

(a) in paragraph (c) thereof, for the words “interdicted on the ground of insanity” there shall be substituted the words “interdicted on the ground of insanity or of mental disorder”; and

(b) in paragraph (d) thereof, for the words “are not of sound mind at the time of the will” there shall be substituted “are persons with a mental disorder or other condition, which renders them incapable of managing their own affairs at the time of the will”.

16. For article 752 of the Code, there shall be substituted the following:

Substitution of article 752 of the Code.

“Substitution in the case of minors, of persons with a mental disorder or other condition, which renders them incapable of managing their own affairs, or insane persons.

752. (1) It shall be lawful for the father, the mother, the other ascendants, the uncle or aunt, brother or sister, to substitute a third party in the place of a minor in the event of the latter dying without issue,

before attaining the age of eighteen years, but only with regard to the property in which such minor shall have been instituted heir or appointed legatee.

(2) It shall also be lawful for any of the said persons to substitute a third party in the place of any person with a mental disorder or other condition, which renders him incapable of managing his own affairs or insane person, in regard to such property only as they shall have devised to him, in the event of his dying with the mental disorder or other condition, whilst still incapable of managing his own affairs, or in a state of insanity, without issue.

(3) Any substitution referred to in this article, if made by the father, the mother or any other ascendant by whom a share of the reserved portion is due to the heir-institute or legatee, may only include such portion of the property as the minor, on attaining majority, or the insane person, or person with a mental disorder or other condition, if of sound mind at the time of his death, could dispose of.”.

Substitution of article 1034 of the Code.

17. For article 1034 of the Code, there shall be substituted the following:

“Liability of person having charge of minor, or person with a mental disorder or other condition, which renders him incapable of managing his own affairs. 1034. Any person having the charge of a minor, or of a person with a mental disorder or other condition, which renders him incapable of managing his own affairs, shall be liable for any damage caused by such minor or such person, if he fails to exercise the care of a *bonus paterfamilias* in order to prevent the act.”.

Amendment of article 1035 of the Code.

18. In article 1035 of the Code, for the words “Persons of unsound mind” there shall be substituted the words “Persons with a mental disorder or other condition, which renders them incapable of managing their own affairs.”.

Amendment of article 1036 of the Code.

19. In article 1036 of the Code, for the words “the person of unsound mind referred to in the last preceding article.” there shall be substituted the words “the person with a mental disorder or other condition referred to in the last preceding article.”.

20. In article 1241 of the Code, for the words “interdicted or of unsound mind, with the authority of the court” there shall be substituted the words “interdicted, or have a mental disorder or other condition, which renders them incapable of managing their own affairs, with the authority of the court”.

Amendment of article 1241 of the Code.

PART III

21. This Part amends the Equal Opportunities (Persons with Disability) Act, and it shall be read and construed as one with the Equal Opportunities (Persons with Disability) Act, hereinafter in this Part referred to as “the principal Act”.

Amendment of the Equal Opportunities (Persons with Disability) Act. Cap. 413.

22. Article 2 of the principal Act shall be amended as follows:

Amendment of article 2 of the principal Act.

(a) for the definition “accommodation”, there shall be substituted the following:

“ “accommodation” includes residential or business accommodation;”;

(b) immediately after the definition “accommodation” there shall be added the following new definition:

“ “alteration” means necessary and appropriate modifications and adjustments;”;

(c) the definition “auxiliary aid” shall be deleted;

(d) immediately after the new definition “alteration” there shall be added the following new definition:

“ “assistive means” includes any palliative or therapeutic device, any prosthetic apparatus, or any other apparatus or means, including trained animals, that may be required by a person with a disability specifically because of that disability;”.

(e) for the definition “disability”, there shall be substituted the following new definition:

“ “disability” means a long-term physical, mental, intellectual or sensory impairment which in interaction with various barriers may hinder one’s full and effective participation in society on an equal basis with others;”;

(f) immediately after the definition “family member” there shall be added the following new definition:

“ “harassment” means subjecting a person to any unwelcome act, request, conduct, including spoken words, gestures or the production, display or circulation by any means of written words, pictures or other material which could reasonably be regarded as offensive, humiliating, hostile, degrading or intimidating to such person;”;

(g) immediately after the definition “pensionable age” there shall be added the following new definition:

“ “property” includes all existing and new buildings and outdoor areas such as streets, pavements, public paths, beaches and gardens;”;

(h) the definition “qualified person with a disability” shall be amended as follows:

(i) in paragraph (a) thereof, for the words “with or without any accommodation” there shall be substituted the words “with or without any reasonable accommodation”; and

(ii) in paragraph (b) thereof, for the words “provision of goods, facilities” there shall be substituted the words “provision and use of goods, facilities” and for the words “provision of such goods, facilities or services” there shall be substituted the words “provision and use of such goods, facilities or services”;

(i) immediately after the definition “qualified person with a disability” there shall be added the following new definition:

“ “reasonable accommodation” means alterations not imposing a disproportionate or unjustifiable burden, where needed in a particular case, to ensure to persons with disability the enjoyment or exercise on an equal basis with others of all human rights and fundamental freedoms;”;

(j) immediately after the new definition “reasonable

accommodation” there shall be added the following new definition:

“ “voluntary organisation” shall have the same meaning assigned to it by article 2 of the Voluntary Organisations Act.”. Cap. 492.

23. Article 5 of the principal Act shall be amended as follows: Amendment of article 5 of the principal Act.

(a) the whole article 5 shall be re-numbered as sub-article (1) thereof;

(b) in sub-article (1) thereof as renumbered, for the words “is accompanied by or possesses an auxiliary aid” there shall be substituted the words “is accompanied by or possesses any assistive means” and for the words “is in possession of such auxiliary aid” there shall be added the words “is in possession of such assistive means”; and

(c) immediately after sub-article (1) thereof as re-numbered, there shall be added the following new sub-articles:

“(2) A person shall be discriminating against another person on the grounds of disability if he subjects such other person to harassment in any circumstances relevant for the purposes of any provision of this Act:

Provided that any person who harasses another person as provided in this sub-article shall be guilty of an offence against this article and shall, without prejudice to any greater liability under any other law, be liable on conviction to a fine (*multa*) of not more than two thousand and five hundred euro (2,500) or to imprisonment for not more than six months or to both such fine and imprisonment.

(3) It shall not be lawful to victimise any person for having made a complaint to the lawful authorities or for having initiated or participated in the proceedings for redress on grounds of an alleged breach of any of the provisions of this Act, or for having disclosed any information, confidential or otherwise, to a lawful authority regarding alleged discriminatory behaviour, activities or practices.

(4) A person shall be discriminating against another person on the grounds of disability if he subjects such other person to a particular disadvantage through an apparently neutral provision, criterion or practice.

(5) A person shall be discriminating against another person on the grounds of disability if he fails to publicise, in an effective manner, those goods, facilities and services provided by him to persons with disability, in order to eliminate discrimination prohibited under this Act.”.

Amendment of article 7 of the principal Act.

24. Article 7 of the principal Act shall be amended as follows:

(a) sub-article (2) thereof shall be amended as follows:

(i) in paragraph (d) thereof, in the Maltese text thereof, for the words “jonqos milli jipprovdi bdil raġonevoli” there shall be substituted the words “jonqos milli jipprovdi akkomodazzjoni raġonevoli” and for the words “unless the employer can prove that the required accommodation would unduly prejudice the operation” there shall be substituted the words “ unless the employer can prove that the required alterations would unduly prejudice the operation”; and

(ii) in paragraph (e) thereof, for the words “the need of the employer to make reasonable accommodation for the disability of such a person” there shall be substituted the words “the need of the employer to make alterations for the disability of such a person”;

(b) the English text of sub-article (4) thereof shall be amended as follows:

(i) for the words “determining whether an accommodation would unduly prejudice the operation of the trade” there shall be substituted the words “determining whether any alterations would unduly prejudice the operation of the trade;

(ii) in paragraph (a) thereof, for the words “cost of the accommodation” there shall be substituted the words “cost of the alterations”;

(iii) in paragraph (b) thereof, for the words “making of the accommodation” there shall be substituted the words “making of the alterations”;

(iv) in paragraph (c) thereof, for the words “the workplace requiring accommodation” there shall be substituted the words “the workplace requiring alterations”;

(v) in paragraph (d) thereof, for the words “impact of the required accommodation” there shall be substituted the words “impact of the the required alterations”; and

(vi) in paragraph (h) thereof, for the words “to defray the expense of any accommodation” there shall be substituted the words “to defray the expense of any alterations”; and

(c) sub-article (5) thereof, shall be amended as follows:

(i) for the words “For the purposes of this article, the term “make reasonable accommodation” includes - ” there shall be substituted the words “For the purposes of this article, and without prejudice to the generality of article 2 of this Act, the term “make reasonable accommodation” includes - ”; and

(ii) in the English text of paragraph (b) thereof, for the words “similar accommodation for a person with a disability” there shall be substituted the words “similar alterations for a person with a disability”.

25. In paragraph (a) of sub-article (4) of article 8 of the principal Act, for the words “any necessary accommodations that may be required” there shall be substituted the words “any alterations that may be required”.

Amendment of article 8 of the principal Act.

26. Article 11 of the principal Act shall be amended as follows:

Amendment of article 11 of the principal Act.

(a) sub-article (1) thereof shall be amended as follows:

(i) for the words “in sub-articles (2) and (3), it

shall be unlawful” there shall be substituted the words “in sub-articles (2) and (3), and without prejudice to the generality of Part II of this Act, it shall be unlawful”; and

(ii) in sub-paragraph (i) of paragraph (b) thereof, for the words “benefit provided by such educational authority” there shall be substituted the words “benefit, facility or service provided by such educational authority”; and

(b) in sub-article (3) thereof for the word “admission” there shall be substituted the words “admission or continued participation” wherever this occurs.

Amendment of article
12 of the principal
Act.

27. Article 12 of the principal Act shall be amended as follows:

(a) for the marginal note thereof, there shall be substituted the words “Access to property.”;

(b) sub-article (1) thereof shall be amended as follows:

(i) for the words “in sub-article (2), it shall be unlawful” there shall be substituted the words “in sub-article (2), and without prejudice to the generality of Part II of this Act, it shall be unlawful”;

(ii) in paragraph (a) thereof, for the words “use of any premises” there shall be substituted the words “use of any property”, and in the English text for the words “a article of the public,” there shall be substituted the words “a sector of the public”;

(iii) in paragraph (b) thereof, for the words “such premises or facilities” there shall be substituted the words “such property or facilities”;

(iv) in paragraph (c) thereof, for the words “means of access to such premises” there shall be substituted the words “means of access to such property”, and for the words “any necessary alterations to such premises” there shall be substituted the words “any alterations to such property”; and

(v) in paragraph (d) thereof, for the words “to leave such premises” there shall be substituted the words “to leave such property”; and

(c) for sub-article (2) thereof there shall be substituted the following:

“(2) Where –

(a) such property or facilities as aforesaid in this article are designed or constructed in such a way as to render them inaccessible to a person with a disability; and

(b) the alteration of such property or facilities would be unreasonable in the circumstances,

then such a person may refuse a person with disability such access to or use of any property or facilities as are referred in paragraph (a) of sub-article (1) or refuse to carry out any alterations to such property or facilities that would otherwise render such property or facilities accessible to a person with a disability.”

28. Article 13 of the principal Act shall be amended as follows:

Amendment of article 13 of the principal Act.

(a) in sub-article (1) thereof, for the words “in sub-article (3), no qualified person with a disability shall” there shall be substituted the words “in sub-article (3), and without prejudice to the generality of Part II of this Act, no qualified person with a disability shall”;

(b) the English text of sub-article (2) shall be amended as follows:

(i) for the words “any article of the public” there shall be substituted the words “any sector of the public”; and

(ii) in the English text of paragraph (a) thereof, for the words “a section of the public,” there shall be substituted the words “a sector of the public”; and

(c) in sub-article (3) thereof, for the words “reasonable modification to rules” there shall be substituted the words “reasonable changes to rules”.

Amendment of article
14 of the principal
Act.

29. Article 14 of the principal Act shall be amended as follows:

(a) sub-article (1) thereof shall be amended as follows:

(i) for the words “in sub-articles (2) and (3) article no person, whether as principal or agent, shall discriminate” there shall be substituted the words “in sub-articles (2) and (3), and without prejudice to the generality of Part II of this Act, no person shall discriminate”; and

(ii) in paragraph (g) thereof, for the words “to make reasonable alterations to accommodation” there shall be substituted the words “to make alterations to accomodation”, and in sub-paragraph (ii) thereof, for the words “the alteration of premises occupied” there shall be substituted the words “the alteration of property occupied”;

(b) sub-article (2) thereof shall be amended as follows:

(i) in paragraph (a) thereof, for the words “reside on those premises” there shall be substituted the words “reside in that property”; and

(ii) in paragraph (b) thereof, for the words “provided in those premises” there shall be substituted the words “provided in that property”; and

(c) for sub-article (3) thereof, there shall be substituted the following:

“(3) The provisions of sub-article (1) shall also not apply if the provision of accommodation in properties where special the services or facilities that would be required by the person with a disability would be unreasonable in the circumstances.”.

Amendment of article
15 of the principal
Act.

30. Article 15 of the principal Act shall be amended as follows:

(a) in the English text, for the word “be constructed as prohibiting” there shall be substituted the words “be construed as prohibiting”; and

(b) for the words “the provision of goods” there shall be substituted the words “the provision and use of goods”.

31. Sub-article (1) of Article 20 of the principal Act shall be substituted by the following:

Amendment of article 20 of the principal Act.

“(1) For the purposes of this Act, in determining the reasonableness of any action to be undertaken by any person in the fulfilment of the provisions of this Act, including any alteration, change, and, or provision of services, facilities or assistive means, regard shall be had as to whether such actions could be undertaken without unjustifiable hardship.”;

32. Article 21 of the principal Act shall be amended as follows

Amendment of article 21 of the principal Act.

(a) sub-article (1) thereof shall be amended as follows:

(i) for the words “Housing and Economic Planning.” there shall be substituted the words “Housing and Economic Planning, as well as any other Ministries that he may deem relevant.”; and

(ii) for the words “in the field of disability issues.” there shall be substituted the words “in the field of disability issues, after consultation with such voluntary organisations.”;

(b) for sub-article (2) thereof, there shall be substituted the following new paragraph:

“(2) At least one half of the total number of the members of the Commission shall themselves be persons with a disability or family members of persons with a disability who cannot represent themselves. Such members shall be representative of different types of disability:

Provided that, where possible, there shall be a balanced representation of women and men.”; and

(c) in sub-article (3) thereof, for the words “family member of a person with a mental disability” there shall be substituted the words “family member of a person with a disability who cannot represent himself”.

Amendment of article 22 of the principal Act.

33. Immediately after paragraph (o) of article 22 of the principal Act, there shall be added the following new paragraphs:

“(p) have the power to take any appropriate action, including proportionate administrative measures and judicial action, to eliminate discrimination on the basis of disability as defined in this Act; and for the purpose of pursuing any judicial action as aforesaid the Commission shall in all cases be deemed to have the necessary judicial interest to pursue such action in its own name;

(q) raise awareness and foster respect for the rights and dignity of persons with disabilities, to combat stereotypes, prejudices and harmful practices relating to persons with disabilities, including those based on gender and age, in all areas of life;

(r) raise awareness about the capabilities and contributions of persons with disabilities; and

(s) provide the independent mechanism to promote, protect and monitor the implementation of the United Nations Convention on the Rights of Persons with Disability and any of its Optional Protocols as ratified by Malta.”.

Addition of new article 33A to the principal Act.

34. Immediately after article 33 of the principal Act, there shall be added the following new article:

“Proceedings instituted by third parties.

33A. Any association, organisation or any legal entity which has a legitimate interest in ensuring that the provisions of this Act are complied with, may institute, on behalf or in support of the person against whom an unlawful act of discrimination has been committed under this Act, with his or her approval, proceedings for redress before the competent Court.”.

Amendment of article 34 of the principal Act.

35. Article 34 of the principal Act shall be amended as follows:

(a) in the Maltese text thereof, for the words

“diskriminazzjoni kontrih jew kontrieha” there shall be substituted the words “diskriminazzjoni kontrih jew kontrieha”;

(b) for the words “shall be subject to civil action in like manner as any other claim for damages” there shall be substituted the words “shall be made by means of a civil action and may include a claim for damages”; and

(c) for the words “up to a maximum of four hundred and sixty-five euro and eighty-seven cents (465.87) as the court may declare” there shall be substituted the words “two thousand and five hundred euro (2,500), as the court may declare”.

36. Immediately after article 34 of the principal Act there shall be added the following new article:

Addition of new article 34A to the principal Act.

“Defendant to prove that there has been no breach of Act.

34A. Where, in any judicial proceedings, other than criminal proceedings, taken in terms of this Act for redress following an unlawful act of discrimination, the person commencing the proceedings establishes before the Court facts from which it may be presumed that there has been discrimination, it shall be for the defendant to prove that there has been no breach of the provisions of this Act.”.

37. Article 35 of the principal Act shall be amended as follows:

Amendment of article 35 of the principal Act.

(a) sub-article (2) thereof shall be renumbered as sub-article (3) thereof;

(b) immediately after sub-article (1) thereof, there shall be inserted the following new sub-article:

“(2) The Minister may also make regulations as he may deem appropriate for the implementation of the provisions of any international treaty relating to persons with disability, to which Malta is a party.”; and

(c) in paragraph (a) of sub-article (3) as renumbered for the words “the provision of different goods” there shall be substituted the words “the provision and use of different goods”.

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Addition of new article 36 to the principal Act.

38. Immediately after article 35 of the principal Act there shall be added the following new article:

“Power of Minister to designate focal point. 36. The Minister may designate by means of notice in the Gazette the Competent Authority to act as the focal point for matters related to the implementation of the United Nations Convention on the Rights of Persons with Disability and any of its Optional Protocols as may be ratified by Malta.”.

Passed by the House of Representatives at Sitting No. 460 of 26th March, 2012.

MICHAEL FRENDU
Speaker

Raymond Scicluna
Clerk to the House of Representatives

