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## **MAINTENANCE ACT, CAP. 180**

### **MAINTENANCE ACT**

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## CHAPTER 180

### **Cap. 180 – 1958; Act 24 of 1972**

AN ACT relating to the maintenance of certain classes of persons and for connected purposes  
[1st October, 1938]

## PART I

### PRELIMINARY

#### **Short Title**

1. This Act may be cited as the MAINTENANCE ACT

#### **Interpretation**

2. In this Act-

"court", where the context admits, means a magistrate's court;

"illegitimate child" means a child not born in lawful wedlock;

"single woman" includes-

- (a) a widow;
- (b) a married woman living apart from her husband whether under a decree of judicial separation or otherwise;

- (c) a woman whose marriage has been dissolved or annulled; and
- (d) an unmarried woman.

### **Duty to maintain dependants**

3. (1) It shall be the duty of every man to provide reasonable maintenance for-

- (a) his wife, and children (legitimate or otherwise) under the age of fourteen years; and
- (b) his father, mother, and children (legitimate or otherwise) over the age of fourteen years, if any such persons are by reason of old age or mental or physical disability unable to maintain themselves.

(2) It shall be the duty of every married woman having separate property to provide reasonable maintenance for-

- (a) her husband, and children (legitimate or otherwise) under the age of fourteen years; and
- (b) her father, mother, and children (legitimate or otherwise) over the age of fourteen years, if any such persons are by reason of old age or physical or mental disability unable to maintain themselves.

(3) It shall be the duty of every single woman to provide reasonable maintenance for-

- (a) her children (legitimate or otherwise) under the age of fourteen years; and
- (b) her father, mother, and children (legitimate or otherwise) over the age of fourteen years, if any such persons are by reason of old age or physical or mental disability unable to maintain themselves.

(4) It shall be the duty of a man who marries a woman having children (legitimate or otherwise) under the age of fourteen years to provide reasonable maintenance for such children until they have attained that age or until the death of the mother, whichever event shall occur earlier:

Provided that nothing herein shall be held to absolve-

- (a) a married woman, having separate property, from her duty to provide reasonable maintenance for her children (legitimate or otherwise); and
- (b) a person against whom a paternity order has been made to provide reasonable maintenance for such child.

### **Maintenance order**

4. Whoever fails to provide reasonable maintenance for any person whom it is his duty to maintain may be summoned before the court in the manner hereinafter provided to show cause why an order (in this Act referred to as a "maintenance order") should not be made against him to provide reasonable maintenance for such person:

Provided always that no such order shall be made unless the court is satisfied that the defendant is possessed of sufficient means to provide reasonable maintenance in whole or in part for the person in respect of whom he is summoned.

### **Amount of maintenance order**

5. No maintenance order shall require the payment of any amount of maintenance sum less than

- (a) in the case of a husband or wife, ten dollars per week;
- (b) in the case of a parent, ten dollars per week;
- (c) in the case of a child (legitimate or otherwise), seven dollars per week.

### **Variation discharge and revival of maintenance order**

6. Subject to the provisions of this Act, the court by which any maintenance order has been made may at any time vary, discharge or revive such order:

Provided that the amount payable by such order shall not be increased beyond the limits set forth in the preceding section.

## **PART II**

### **PARENTS AND CHILDREN**

7. A maintenance order may be made in respect of any child under the age of fourteen years upon proof-

- (a) if the child is legitimate, that the father or mother, as the case may be, being possessed of sufficient means to provide reasonable maintenance for such child, wilfully neglects or refuses to do so; or
- (b) if the child is illegitimate-
  - (i) in the case of a summons against the mother, upon proof that she, being possessed of sufficient means to provide reasonable maintenance for such child, wilfully neglects or refuses to do so; or.
  - (ii) in the case of a summons against the person alleged to be the father, upon proof that he is the father and that he is possessed of sufficient means to provide reasonable maintenance for such child.

### **Who may apply on behalf of the child**

8. Any of the following persons may apply to the court for a maintenance order on behalf of any child, namely-

- (a) the father or mother of the child; or
- (b) the lawfully appointed guardian of the child; or
- (c) the Chief of Police or other person for the time being charged with the relief of destitute persons.

### **Proof of the paternity of an illegitimate child**

9. (1) No maintenance order shall be made against any person alleged to be the father of an illegitimate child unless the court has made an order (in this Act referred to as a “paternity order”) adjudging such person to be the father of the child.

(2) No paternity order shall be made against any person alleged to be the father of an illegitimate child, unless-

- (a) the mother of the child applies for an order-
  - (i) before the birth of the child; or
  - (ii) at any time within twelve months from the birth of the child; or
  - (iii) at any time within twelve months next after the return to Grenada of the man alleged to be the father of such child, upon proof that he ceased to reside in Grenada within twelve months next after the birth of such child; or
- (b) it is proved that the alleged father of the child-
  - (i) at any time within twelve months of the birth of the child paid money for its maintenance under such

circumstances as to raise a presumption that he was the father of such child; or

(ii) has admitted that he is the father of the child.

(3) No paternity order shall be made against any person alleged to be the father of an illegitimate child unless, if the mother be alive and of sound mind, she gives evidence that he is the father and such evidence is corroborated in some material particular by other evidence to the satisfaction of the court.

(4) An application for a maintenance order and an application for a paternity order in respect of an illegitimate child may be made at one and the same time.

### **Custody of child**

10. (1) At the time of making a separation order or a paternity or maintenance order in respect of any child under the age of fourteen years the court shall make a further order (called a "custody order") providing that the custody of the child shall be given to such person as is named therein who may, if a maintenance order is made, be the same person who is thereby entitled to receive maintenance on behalf of the child.

(2) The court, in deciding the question of the custody of any child (legitimate or otherwise), shall regard the welfare of the child as the first and paramount consideration, and shall not take into consideration whether from any other point of view the claim of the father, or any right at common law possessed by the father, in respect of such custody is superior to that of the mother, or the claim of the mother is superior to that of the father.

### **Maintenance orders in respect of persons over fourteen**

11. A maintenance order may be granted by the court in respect of any person over the age of fourteen years who by reason of old age or physical or mental disability is unable to provide for his own maintenance, on proof that the father or mother or child, as the case may be, being possessed of sufficient means to provide for the reasonable maintenance of such person, wilfully neglects or refuses to do so.

### **Duration and commencement of maintenance order**

12. (1) Every maintenance order in respect of any child under the age of fourteen years shall, unless the court otherwise directs, remain in force until such child attains that age.

(2) Payments made under such maintenance order may be directed to commence from the date of the child's birth if application is made within two months after the birth of such child.

## **PART III MARRIED WOMEN**

### **Maintenance order in respect of husbands and wives**

13. (1) A maintenance order may be granted by the court on the application of any married person whose husband or wife as the case may be-

(a) has been convicted of an offence against him or her under sections 81(2), 82(1), 179, 180, 187, 209 to 214 or 235 of the Criminal Code; or

**Cap. 76-1958**

- (b) being under a duty to provide reasonable maintenance for his wife or her husband as the case may be and her children, has wilfully neglected or refused to do so; or
  - (c) has been guilty of persistent cruelty to his wife or her husband as the case may be or to her children;
  - (d) has deserted his wife or her husband as the case may be; or
  - (e) is an habitual drunkard.
- (2) A maintenance order may also be granted on the application of any married woman whose husband-
- (a) has compelled her to submit herself to prostitution; or
  - (b) while suffering from venereal disease and knowing that he was so suffering has insisted on having sexual intercourse with her.
- (3) For the purposes of this section
- (a) where the husband has, in the opinion of the court, been guilty of such conduct as was likely to result and has resulted in his wife submitting herself to prostitution he shall be deemed to have compelled her so to submit herself; and

**Cap. 196**

- (b) an habitual drunkard shall be deemed to be a person who by reason of habitual intemperate drinking of intoxicating liquors or habitual taking or using, except on medical advice, of controlled drugs within the meaning of the Misuse of Drugs Act, is at times dangerous to himself or herself or to others or incapable of managing himself or herself or his or her affairs.

**Separation orders in respect of husbands and wives**

14. It shall be lawful for the court, in addition to or in lieu of granting a maintenance order against a husband or wife on any of the grounds set forth in the preceding section and whether on the same occasion as the granting or refusing of a maintenance order or on any previous or subsequent occasion, to make an order in this Act referred to as a "separation order") that the applicant be no longer bound to cohabit with her husband or his wife as the case may be, which order while in force shall have the effect of a decree of judicial separation on the ground of cruelty.

**Adultery of husband or wife**

15. No maintenance order or separation order shall be made by the court where it is proved that the applicant has committed an act of adultery:

Provided that the husband or wife as the case may be has not condoned, or connived at, or by his or her wilful neglect or misconduct conducted to such act of adultery.

**Discharge of order**

16. If any person on whose application a maintenance or separation order has been made under section 13 or 14,

shall voluntarily resume cohabitation with her husband or his wife as the case may be, or shall commit an act of adultery, such order shall on proof thereof be discharged:

Provided that the court may, if it thinks fit, refuse to discharge such order in the case of a wife who has committed adultery if in the opinion of the court such act of adultery as aforesaid was conducted to by the failure of the husband to make such payments as in the opinion of the court he was able to make under a maintenance order.

#### PART IV PRACTICE AND PROCEDURE

##### **Practice; Cap. 55; Cap. 177; Cap. 178**

17. All proceedings under this Act shall be commenced in the court of the district in which the applicant resides and the provisions of the Civil Procedure Act, and of the Magistrates Act, and of the Magistrates Judgments (Appeals) Act, shall apply to cases under this Act as they apply to civil cases in magistrates courts:

Provided that-

- (a) no order dismissing an application for any order under the provisions of this Act shall be a bar to a further application unless in the opinion of the court such further application is frivolous or vexatious or an abuse of the process of the court;

##### **Cap. 55**

- (b) on any application for a committal order under section 65 of the Civil Procedure Act the court shall commit the defendant to prison unless the debtor satisfies the court that his failure to pay the judgment debt was due neither to his wilful refusal nor to his culpable neglect; and
- (c) on any application under this Act the court may remit the payment of any sum due under any order of the court or any part of such sum; and
- (d) all payments due under this Act shall be paid into court.

##### **Appointment of collecting officer**

18. (1) It shall be lawful for the Governor-General to appoint in respect of any court an officer who shall be called a collecting officer and who shall perform such duties as are hereinafter provided.

(2) Wherever such an appointment is made any maintenance order made under the provisions of this Act may direct that all payments to be made under such order shall be paid to the collecting officer in lieu of being paid into court in the manner provided by section 17(d).

(3) It shall be the duty of the collecting officer to receive all payments as may be directed to be made to him under this Act and to pay forthwith to the person named in the order the sum directed to be paid thereunder, or such part thereof as he receives, without making any deduction therefrom and, where any such payment or any part thereof is in arrear for seven days, the collecting officer shall give notice in writing to the person who is entitled under the maintenance order to receive that payment, stating the particulars of the arrears.

(4) Nothing in this section shall affect the right of the person entitled to receive payments under any maintenance order to proceed against the person on whom such order has been made to enforce any payments due under such order



but, on the request in writing of the person entitled to receive payments under the maintenance order, it shall be lawful for the collecting officer to proceed in his name as such officer on behalf of such person against the person on whom such order has been made for the recovery of any payments due thereunder, and in any such case the liability of the person on whose behalf the proceedings are taken for all costs properly incurred in or about the proceedings shall be the same as if the proceedings had been taken by that person.

(5) The person on whom a maintenance order has been made shall, if he changes his address, give notice thereof to the collecting officer, if payment has been ordered to be made to him, and if he fails to do so without reasonable excuse, he shall be guilty of an offence and liable to a fine of one hundred dollars.

### **Birth and funeral expenses**

19. It shall be lawful for the court to order that the person liable under any maintenance order do pay to the person named in such order-

(a) the reasonable expenses attendant on the birth of any child whom the defendant is under a duty to maintain:

Provided that an application therefor be made within two months of the birth of such child; and

(b) the reasonable expenses attendant on the funeral of any person whom the defendant is liable to maintain:

Provided that the Chief of Police or other person for the time being charged with the maintenance of destitute persons shall be entitled to apply in the case of the death of the person named in the application.

## **PART V**

### **RECIPROCAL ENFORCEMENT OF MAINTENANCE ORDERS**

#### **Interpretation of Part**

20. For the purposes of this Part, the expression "maintenance order" means an order other than an order of affiliation for the periodical payment of sums of money towards the maintenance of the wife or other dependants of the person against whom the order is made, and the expression "dependants" means such persons as that person is, according to the law in force in the part of Her Majesty's dominions in which the maintenance order was made, liable to maintain; the expression "certified copy" in relation to an order of a court means a copy of the order certified by the proper officer of the court to be a true copy; and the expression "prescribed" means prescribed by rules made under this Act.

#### **Enforcement in Grenada of maintenance orders made in England or Northern Ireland**

21. (1) Where a maintenance order has been made against any person by any Court of competent jurisdiction in England or Northern Ireland and a certified copy of the order has been transmitted by the appropriate authority to the Governor-General, the Governor-General shall send a copy of the order to the prescribed officer of a court in Grenada for registration; and on receipt thereof the order shall be registered in the pre-scribed manner and shall, from the date of such registration, be of the same force and effect, and, subject to the provisions of this Act, all proceedings may be taken on such order as if it had been an order originally obtained in the court in which it is so registered, and that court shall have power to enforce the order accordingly.

(2) The court in Grenada in which an order is to be so registered as aforesaid shall, if the Court overseas by which

the order was made is one of superior jurisdiction, be the High Court, and, if the Court overseas was not one of superior jurisdiction, be a magistrate's court.

### **Transmission of maintenance orders made in Grenada**

22. Where any court in Grenada has made a maintenance order against a person, and it is proved to that court that the person against whom the order was made is resident in England or Northern Ireland, such court shall send to the Governor-General for transmission to the appropriate authority a certified copy of the order.

### **Power to make provisional orders of maintenance against persons resident in Grenada**

23. (1) Where an application is made to a magistrate's court in Grenada for a maintenance order against any person, and it is proved that that person is resident in England or Northern Ireland the court may, in the absence of the person, if after hearing the evidence it is satisfied of the justice of the application, make any such order as it might have made if a summons had been duly served on that person and he had failed to appear at the hearing, but in such case the order shall be provisional only, and shall have no effect unless and until confirmed by a Court of competent jurisdiction in England or Northern Ireland.

(2) The evidence of any witness who is examined on any such application shall be put into writing, and such deposition shall be read over to and signed by him.

(3) Where such an order is made, the magistrate's court shall send to the Governor-General for transmission to the appropriate authority the depositions so taken and a certified copy of the order, together with a statement of the grounds on which the making of the order might have been opposed if the person against whom the order is made had been duly served with a summons and had appeared at the hearing, and such information as the court possesses for facilitating the identification of that person, and ascertaining his whereabouts.

(4) Where any such provisional order has come before a Court in England or Northern Ireland for confirmation, and the order has by that Court been remitted to the magistrate's court which made the order for the purpose of taking further evidence, that court or any other magistrate's court sitting and acting for the same place shall, after giving the prescribed notice, proceed to take the evidence in like manner and subject to the like conditions as the evidence in support of the original application.

If upon the hearing of such evidence it appears to the court that the order ought not to have been made, the court may rescind the order, but in any other case the depositions shall be sent to the Governor-General and dealt with in like manner as the original depositions.

(5) The confirmation of an order made under this section shall not affect any power of a magistrate's court to vary or rescind that order:

Provided that on the making of a varying or rescinding order the court shall send a certified copy thereof to the Governor-General for transmission to the appropriate authority, and that in the case of an order varying the original order the order shall not have any effect unless and until confirmed in like manner as the original order.

(6) The applicant shall have the same right of appeal, if any, against a refusal to make a provisional order as he would have had against a refusal to make the order had a summons been duly served on the person against whom the

order is sought to be made.

#### **Power of magistrate's court to confirm maintenance order made in England or Northern Ireland**

24. (1) Where a maintenance order has been made by a Court in England or Northern Ireland, and the order is provisional only and has no effect unless and until confirmed by a magistrate's court in Grenada, and a certified copy of the order, together with the depositions of witnesses and a statement of the grounds on which the order might have been opposed has been transmitted to the Governor-General and it appears to the Governor-General that the person against whom the order was made is resident in Grenada, the Governor-General may send the said documents to the prescribed officer of a magistrate's court, with a requisition that a summons be issued calling upon the person to show cause why that order should not be confirmed, and upon receipt of such documents and requisition the court shall issue such a summons and cause it to be served upon such person.

(2) A summons so issued may be served in Grenada in the same manner as if it had been originally issued by a Magistrate's Court having jurisdiction in the place where the person happens to be.

(3) At the hearing it shall be open to the person on whom the summons was served to raise any defence which he might have raised in the original proceedings had he been a party thereto, but no other defence, and the certificate from the Court which made the provisional order stating the grounds on which the making of the order might have been opposed if the person against whom the order was made had been a party to the proceedings shall be conclusive evidence that those grounds are grounds on which objection may be taken.

(4) If at the hearing the person served with the summons does not appear or, on appearing, fails to satisfy the court that the order ought not to be confirmed the court may confirm the order either without modification or with such modifications as to the court after hearing the evidence may seem just.

(5) If the person against whom the summons was issued appears at the hearing and satisfies the court that for the purpose of any defence it is necessary to remit the case to the overseas Court which made the provisional order for the taking of any further evidence, the court may so remit the case and adjourn the proceedings for the purpose.

(6) Where a provisional order has been confirmed under this section, it may be varied or rescinded in like manner as if it had originally been made by the confirming court, and where on an application for rescission or variation the court is satisfied that it is necessary to remit the case to the overseas Court which made the order for the purpose of taking any further evidence, the court may so remit the case and adjourn the proceedings for the purpose.

(7) Where an order has been so confirmed, the person bound thereby shall have the same right of appeal, if any, against the confirmation of the order as he would have had against the making of the order had the order been an order made by the court confirming the order.

#### **Power of the Governor General to make regulations for facilitating communication between Courts**

25. The Governor-General may make regulations as to the manner in which a case can be remitted by a court authorized to confirm a provisional order to the overseas Court which made the provisional order, and generally for facilitating communications between such Courts.

### **Mode of enforcing orders**

26. (1) A magistrate's court in which an order has been registered under this Act or by which an order has been confirmed under this Act, and the officers of such court, shall take all such steps for enforcing the order as may be prescribed.

(2) Every such order shall be enforceable in like manner as if the order were for the payment of a civil debt recoverable summarily.

(3) A warrant of distress or commitment issued by a magistrate's court for the purpose of enforcing any order so registered or confirmed may be executed in any part of Grenada in the same manner as if the warrant had been originally issued by a magistrate's court having jurisdiction in the place where the warrant is executed.

### **Proof of documents signed by officer of overseas Court**

27. Any document purporting to be signed by a Judge or officer of a Court outside Grenada shall, until the contrary is proved, be deemed to have been so signed without proof of the signature or judicial or official character of the person appearing to have signed it, and the officer of such a Court by whom a document is signed shall, until the contrary is proved, be deemed to have been the proper officer of that Court to sign the document.

### **Depositions to be evidence**

28. Depositions taken in a Court in England or Northern Ireland for the purposes of this Act may be received in evidence in proceedings before magistrates' courts.

### **Power to extend provisions to British Possessions and Protectorates**

29. Where the Governor-General is satisfied that reciprocal provisions have been made by the Legislature of any British Possession or any territory under Her Majesty's protection for the enforcement within such possession or territory of maintenance orders made by courts in Grenada, the Governor-General may by Proclamation extend this Part of this Act to such possession or territory, and this Part shall thereupon apply in respect of such possession or territory as though the references to England and Northern Ireland were references to such possession or territory and the references to the appropriate authority were references to the Governor of such possession or territory.

## **PART VI MISCELLANEOUS**

### **Interim orders**

30. Where, on the hearing of an application for a maintenance order (save where such application is accompanied by an application for a paternity order), the application is adjourned for any period exceeding one week, the court may order that the defendant do pay into court on behalf of the person in respect of whom the order is sought to be made a weekly sum not exceeding the sum which might be ordered to be paid under a final order, which interim order shall be enforced in like manner as if it were a final order of the court;

Provided that the order directing such payment shall not remain in operation for more than three months after the

order was made.

### **Offences**

31. Whoever-

- (a) having the lawful custody of any child misapplies any money paid for its support; or
- (b) being able to work to provide reasonable maintenance for any person whom it is his duty to maintain, wilfully neglects or refuses to take any opportunity of doing so; or
- (c) makes default in complying with any order of the court under this Act in relation to any matter other than the payment of money,

shall be guilty of an offence and liable to imprisonment for three months.

### **Rules**

32. (1) Rules for regulating the procedure and prescribing the forms to be adopted and used for the purpose of carrying the provisions of this Act into effect may be made by the Chief Justice. The rules so made shall not come into force until they have been approved by the Governor-General and published in the Gazette.

### **Cap. 58 – 1958; S.R.O. Nos. 139 and 140/1958**

(2) Until any such rules are made, and so far as such rules do not extend, the rules made for the purposes of this Act under section 419 (repealed) of the Civil Procedure Act shall remain in force.