

Women's Rights Handbook



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RESOURCES:

**Compendium of Women's Rights Legislation
Substantive Laws of Belize (www.belizelaw.org)
Supreme Court Library
Women's Department Resource Center**

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IMPORTANT NOTE:

This handbook is intended to offer a basic guide to the rights of Belizean women.

If you wish to know more about your rights you should speak to an Officer of the Women's Department, or better still, an Attorney.

While every reasonable effort has been taken to ensure the accuracy of this handbook, neither the Women's Department, nor any person associated with it, guarantees the accuracy of the information contained inside the handbook or accepts any liability for any inaccuracies in the information given. Information contained herein is based on legislative and literature review and research.

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FOREWORD

The mission of the Women's Department in the Ministry of Human Development is to promote gender equality and equity thereby enabling women to be actively involved in and enjoy all benefits of development. However, over the years, we have realized that the ability of women to enjoy certain benefits is hindered by that fact they are unaware of their legal rights.

This ignorance of the law has often resulted in, among other things, women:

- dismissing court cases in fear of defeat
- remaining in abusive relationships
- involuntarily relinquishing property or other assets at the dissolution/termination of a marriage or common-law-union
- tolerating sexual harassment and other unwelcome gestures or actions in fear of losing her job
- accepting unequal pay for work in comparison to her male counterparts
- remaining in an unhappy relationship for fear that her spouse will receive sole custody of the children if she decides to leave the marriage or relationship

This Women's Rights Handbook will provide Belizean women with basic information about their legal rights as it pertains to a number of issues including, among others: domestic

violence, divorce, child custody, labour rights, sexual harassment and maintenance rights.

This Handbook will help women to answer many questions as it pertains to their private and professional lives, such as:



I am in a common-law union. Although I contributed money to purchasing our house and land, the papers are in his name. If we separate, do I have any rights to the house and land?



My husband has kicked me and his children out of his house. Do I have any right to continue to live in the house with my children?



I have been dependent on my husband to provide for me and my children throughout my marriage as I am a housewife. Now that we are legally separated, do I have the right to receive maintenance from him for both me and the children?



Will all my years of housewife duties such as taking care of the family and the house, be considered unpaid work when the judge is deciding on the division of property during our divorce case in the Supreme Court?



I am supposed to be going on maternity leave, but my employer says that there is no one to hold over for me right now so I must stay on for another two weeks. Can I still go on maternity leave without losing my job?

Remember, it is always best to seek legal advice from an attorney of law. While there are legal provisions in place with respect to your rights, there is also the issue of judicial discretion of the magistrate or justice. Consequently, women are advised that when a matter is before the court, the presiding magistrate or justice will utilize existing legislation to guide his/her decision, but he/she may also use his/her discretion in the making of a decision.

It is the hope of the Women's Department that this Handbook will help to enrich the lives of Belizean Women by empowering them to make more informed decisions in their lives.

Icilda Humes
Ag. Director
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Ministry of Human Development
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FAMILY LAW

CHILD CUSTODY

Which Court deals with Child Custody Arrangements?

Usually Child Custody Cases will be heard in the Family Court in Belize City, and in the local Magistrates Court in the districts.

However, if the Parents of the Child are getting a judicial separation or divorce, matters relating to Custody can also be heard in the Supreme Court.

How does the Court work out who should be given Custody?

The main guidance for magistrates on how to award custody is given in the Families and Children Act, Schedule 1. It gives a list of things that the magistrate should consider.

This is binding on magistrates, but not judges in the Supreme Court. However, it provides a helpful summary of the factors that judges will

take into account before making an order with regard to the custody of the child.

What does Schedule 1 of the Families and Children Act actually say?

These are the factors that the Court will consider:

- **The welfare of the Child should always be the most important consideration**
- Matters related to custody need to be handled as quickly as possible
- The wishes of the child. As the child gets older, the Court will put more weight on who he or she wishes to live with
- The Child's Physical needs
- The Child's Emotional needs
- The Child's Educational needs
- The Age and Sex of the Child

- Any harm the Child has suffered, or is at risk of suffering if he/she goes to live in a particular place/with a particular person
- The right of a Child to participate in sporting or cultural activities
- The right of a Child to leisure
- A Child's right to resources in the event of a natural disaster

How does the Court get the information on these Points?

In cases in the Family Court, the Court's Intake Officer will prepare a custody report for the Magistrate to use.

The Intake Officer will observe the Child in the home environment, and try to speak to anyone who comes into contact with the Child, such as relatives, friends, babysitters and teachers. The officer will also check things like whether the Child is going

to school, and whether its vaccinations are up to date.

In the districts, the Magistrate will usually ask an officer in the Ministry of Human Development to prepare the report. However, due to their limited resources, such a report will probably be less detailed than one prepared in Belize City, so the magistrate will probably depend more on evidence from any witnesses brought to the Custody hearing.

The Supreme Court will also make use of reports prepared by Social services.

Custody of Children Born to Single Women

If the Parents of the Child are not married, there is a further assumption that the mother is entitled to custody, unless a person seeking to take custody from her can prove one of the following things:

- The mother has abandoned the child

- The mother is unfit to have custody of the child due to her immoral habits, for example, drunkenness or prostitution
- The mother does not exercise proper care or control of the child
- A social services practitioner is prepared to confirm that the person seeking custody of the child would be a better guardian than the mother
- The father of the child can prove to the Court that it is in the Child's best interests for him to be given custody instead

However, before the father of a child born to a single woman can take custody of the child away from the mother, he must be able to prove that he really is the father of the child. This may involve taking a blood or DNA test.

Altering a Custody Order

Either parent may apply to the Family Court, or Magistrates Court in the districts, to have an order varied.

Right of Access (Visiting Rights)

If either parent either fails to be awarded custody, or does not want custody, but does want to be involved in the Child's life, then the Court will usually grant him or her a Right of Access to see the Child at specific times. The terms of the order will vary depending on the circumstances of the case.

However, before the father of a Child by an unmarried woman can seek access he must be able to prove that he is the father of the child, in one of the ways set out above.

CHILD MAINTENANCE

Duty of a Man to maintain his Children

A Man has a legal duty to maintain:

- His Children
- His Children's Children
- Any other Children his wife had living with her at the time of the marriage

Duty of a Woman to Maintain her Children

If a man fails to fulfill his legal duty to maintain his children, the mother of the children becomes legally responsible for maintaining them.

Which Court deals with Child Maintenance Issues

Normally, Child Maintenance is dealt with by the Family Court in Belize City, and by the Magistrates Court in the districts. A mother has the right to bring a claim for maintenance against the father of the child in this Court.

However, if the Parents of the Children are seeking a judicial separation or divorce in the Supreme Court, one or both of them can also ask the judge to make an order for Child Maintenance to be paid.

How does the Court investigate how much maintenance should be awarded?

In the Family Court, the Intake Officer will encourage the parents of the Child to agree between them how much should be paid as maintenance. A voluntary agreement can be for any amount, but it cannot be enforced by the Courts if the parent refuses to pay. It is therefore a good idea to go to the Court once the terms of the voluntary agreement have been reached, to get a Court order reflecting those terms.

If the parties are unable to agree the rate of maintenance between themselves, the Magistrate will ask the intake officers to prepare a means test to determine how much the person with the duty to maintain the child can afford to pay. This will look at things like bank statements, and they will try

to check with friends and colleagues to determine how much he or she actually earns.

In the districts, the Magistrates Courts are more likely to depend on the evidence of witnesses to work out the financial status of the person in question.

The Supreme Court will usually obtain a report on the means of the person from Social Services.

Level of Maintenance Awarded in the Family Court and Magistrates Court to the Children of Unmarried Women (including Common Law)

There is no fixed level of maintenance, the Court will award as much as seems fair to all the people involved, subject to a limit imposed by how much the person in question is able to pay.

Level of Maintenance Awarded in the Family Court and Magistrates Court to the Children of Married Parents

Some magistrates feel bound by an old law (The Married Person's Protection Act) which states that they can only award \$50 a week per child per week.

In fact, this has been superseded by the Families and Children Act, which states that the Court can award all children as much as it thinks just (having regard to all circumstances of the case including the financial means of the person against whom a complaint is made).

In practice, it would be dangerous to assume that the Court will award more than this. But if the parent of the child believes that a higher amount would be fair, and the parents intend to seek a formal separation or divorce in the Supreme Court, it would be advisable to ask the Court to review the level of child maintenance awarded at the same time.

Duration of Maintenance Payments

Normally, a Child is eligible for maintenance payments up until the age of 18, or 21 if he/she remains in full-time education.

Altering Maintenance Payments

A person against whom a maintenance order has been made can apply to have it reduced or cancelled on one of the following grounds:

- Illness
- Physical Disability
- Mental Disability
- A change in financial circumstances
- Because he/she is unable to support him/herself for some other reason

Enforcing Maintenance Payments

If a maintenance payment is more than 14 days overdue, the person to whom it should have been paid can return to the Family Court, and ask to have the order enforced.

If the person who ought to have paid cannot give a reasonable explanation for his failure to do so, the magistrate can order that the money be taken directly from his/her salary to meet the payments. If he/she has no regular salary, the Court can order that his possessions be sold to meet the payment.

Where the money from the sale of the possessions is not sufficient to meet the payment, then the person can be sent to prison for up to 3 months. Whilst the person is in prison no maintenance payments will accumulate but the original debt remains.

If a person runs away to try to avoid paying maintenance, they can be fined up to \$3000, or sent to prison for up to 6 months.

MAINTENANCE PAYMENTS TO WOMEN

Women with a Right to Maintenance Payments

- Legally Married Women abandoned by their Husbands
- Women Getting Divorced
- Women Seeking to have their Marriage Declared Invalid
- Women Seeking a judicial Separation from their Husbands
- Women at the end of a Common Law Union that has lasted for at least 5 years

Relevant Court for obtaining Maintenance Payments

Women getting divorced, or at the end of a Common Law Union that has lasted for at least 5 years, should go to the Supreme Court to obtain maintenance.

Women seeking a Judicial Separation can apply for maintenance to either the Supreme Court or the Family Court.

Women in one of the other categories should apply for maintenance to the Family Court in Belize City, or one of the Magistrate Courts in the Districts.

Determining Maintenance: Procedure

All Courts will wish to know how much a man earns before they decide how much maintenance he should pay.

In the Family Court, the intake officer will investigate the man's financial position.

In the Supreme Court and the districts, judges and magistrates are more likely to rely heavily on evidence directly presented to the Court by the parties to work out the man's financial position. Things like sworn testimony from the wife, husband and his employer, or old bank statements would be useful.

Determining Maintenance Payments in the Supreme Court

Maintenance Payments awarded to a woman by the Supreme Court will usually be one part of a bigger settlement. This means that the judge will not make the award for maintenance in isolation, but will also consider whether the woman should be given any property outright. This means, in effect, that maintenance payments are decided on the same basis as that used to determine a new division of property (see below).

Determining Maintenance Payments in the Family/Magistrate Court

Most awards of maintenance to women in the Family Court are based on the rule that a man has a legal duty to support his wife. (It is worth noting that a wife does **not** have a legal duty to support her husband!)

A married woman can only apply to the Family/Magistrate Court for Maintenance on one of the following grounds:

- Her husband has been convicted of aggravated assault on her
- Her husband has been convicted of assaulting her, and has been fined more than \$50 or sentenced to more than two months in prison
- Her husband has deserted her
- Her husband has been guilty of persistent cruelty to her or her children
- Her husband has been guilty of willful neglect to provide reasonable maintenance for her or her infant children
- Her husband uses alcohol or drugs so much that he is unable to manage his own affairs

- Her husband had sexual intercourse with her when he knew that he was suffering from a Sexually Transmitted Infection (STI)
- Her husband has forced her into prostitution
- Her husband has committed adultery

Maintenance awarded in the Family/Magistrate Court cannot be more than \$100 per week.

RIGHT OF A WOMAN TO REMAIN IN THE JOINT HOME AT THE END OF A RELATIONSHIP

Just because a woman has been abandoned by the man she is living with, she does not have an automatic right to remain in the home they shared. There are a few exceptions, however. These are discussed below:

Right of a Wife Against Her Estranged Husband

A legally married woman (so not a party to a Common Law Union), who has been deserted by her husband, has a right to ask the Court to let her remain in the matrimonial home. She holds this right against her husband, and not against third parties (so, for instance, it cannot protect her if her husband sells the property on to someone else, or fails to pay the mortgage, and the bank seeks to have its money repaid), and loses it on divorce.

Right of a Woman Against Third Parties

However, if a woman actually owns a share of the property (and the section below on **Property Rights of Women Leaving a Relationship** should make it clear whether or not a woman does), she may be entitled to remain in it, even if a third party seeks to remove her.

This right is called an 'overriding interest.' If she owned that share before the mortgage was created, or before the man sold the house to a third party, and the third party did not make enquiries as to whether she had a share, then this third party will be bound to let her remain. To get around this rule, the lender or the purchaser will normally make sure that they get the woman's explicit agreement to the terms of the loan/sale.

The only exception occurs where the third person in question does make enquires and the woman fails to disclose her interest. In this case, the third party will not be bound.

Right of a Woman Owner Against Another Joint Owner

When a relationship breaks down between a man and a woman who own a house together, it is very common for one of the couple to wish to sell the house, and for the other to wish to remain in it.

In these circumstances, the Court will look at the original purpose for which the couple bought the house. If the original purpose no longer exists, the Court is likely to order a sale; if the original purpose is still relevant, the Court is unlikely to order a sale. For instance, if the couple bought the property as a joint home for them both, then obviously it can no longer serve this purpose, and the Court is likely to order it to be sold. If however the purpose, or a significant part of the purpose, of the purchase was to provide a home for the couples' children, then the Court is likely to refuse to order a sale while it is still providing for that purpose, and while the children remain dependant on their parents.

DOMESTIC VIOLENCE

Meaning of Domestic Violence

In Belizean law, Domestic Violence means:

- **Physical Abuse:** this covers anything that causes a physical injury
- **Sexual Abuse:** meaning any sexual activity brought about by force, or the threat of force
- **Emotional/ Psychological Abuse:** behaviour which is intended to undermine the emotional or mental well-being of the person
- **Financial Abuse:** a pattern of behaviour intended to make sure that the victim of the abuse is financially dependent on the abuser

Domestic Violence can occur in a number of ways, and covers far more than physical injuries.

People Against whom Domestic Violence can be Committed

- A Spouse
- A Partner
- A Child
- Any other person living with a potential victim of domestic violence, or with a person who has committed, or threatened to commit, Domestic Violence (an 'abuser')

Duty of Police to assist a person complaining of Domestic Violence

All police officers have a legal duty to respond to every complaint of domestic violence.

They must also:

- Assist the victim to obtain medical treatment for any injuries
- Assist the victim to get to a place of safety

- If the victim requests it, accompany the victim to the place where the abuser lives to allow the victim to collect his/her property
- Advise the victim as to his/her rights, and any services that may be available to assist him/her

People Entitled to Apply to the Court for an Order Preventing Domestic Violence

- The Spouse of the abuser ('Spouse' includes a former spouse and a partner, whether or not such abuser and partner live together or have a child together)
- A member of the abuser's household
- A Child who usually or sometimes lives with the abuser or a Child who is a family member of the abuser or the Spouse

- A person over the age of 18 with a mental or physical disability that makes him or her dependent on the care of the abuser or a person applying for an Order
- A parent or guardian
- A person who has a child in common with the abuser
- A Police Officer
- A Social Worker
- An Officer of the Women's Department

The Courts that deal with Domestic Violence and procedure

In Belize City, the Family Court has powers to deal with cases of domestic violence. In the districts, the same powers are exercised by the Magistrate Court.

Applications are held *in camera*. This means that members of the public or the media will not be allowed to attend

unless the magistrate decides otherwise.

Powers of the Court to prevent Domestic Violence

By granting an Order the Court may prevent a person who has previously committed domestic violence from:

- Doing anything, or threatening to do anything, that would count as domestic violence against the person mentioned in the Order
- Going to certain places specified in the Order. i.e. the victim's place of work
- Being in an area specified in the Order
- Communicating directly or indirectly with the person mentioned in the Order
- Taking possession or damaging the property of the person named in the Order, or property used by him/her

- Coming within a specific distance of the person named in the Order
- Causing or encouraging another person to do any of these things.

The Court may also order an abuser to:

- Return any property mentioned in the Order to the person named in the Order
- Pay financial compensation to the person named in the Order. This will be calculated as the amount by which domestic violence has been responsible for loss of earnings, dental or medical expenses, the cost of moving, accommodation expenses, and any reasonable legal costs of applying for the Order
- Pay child maintenance until a permanent arrangement can be put into place
- Leave the place where he and the person named in the Order

lived, for a period of between three months and three years

- Pay the rent, or part of the rent, or the mortgage, or part of the mortgage, on the place he has been ordered to leave
- Ensure that a child or dependant is reasonably cared for and supported
- Take any weapons which were used in domestic violence to the Police
- Seek therapy or professional counseling

Factors the Court must consider when granting an Order

- The nature, history or pattern of the domestic violence
- The need to protect the person applying for the Order or the person named in the Order
- The bests interests and welfare of any child

- The accommodation needs of the person applying for the Order or named in the Order
- Any hardship that may be caused to either the abuser or the person applying for the Order
- The income, assets and financial obligations of the abuser, the person applying for the Order and any person affected by the Order
- The need to preserve the institution of marriage but also to give protection
- Any other matter which the Court considers relevant to the particular case

Breach of Orders

It is a Criminal Offence to breach a Court Order designed to prevent domestic violence.

If a person does breach an Order, they may be punished in one of the following ways:

- On a first conviction, to a fine of no more than nine thousand dollars, or up to twelve months in prison, or to both a fine and prison sentence
- On a second conviction, to a fine of up to fifteen thousand dollars but not less than twelve thousand dollars, or up to twenty-four months in prison, or to both a fine and prison sentence
- On any subsequent conviction, to up to 5 years in prison

For a first-time offence, the magistrate has the right to make a **rehabilitation order** instead of sending the offender to prison. This means that the offender must attend a program of counseling or re-education to stop him/her from committing domestic violence in the future. The offender will also be obliged to do community service every weekend for a year.

RAPE

In Belize, there are two rape offences:

- Rape
- Marital Rape

Meaning of Rape

Rape occurs when a man intentionally penetrates a woman with his penis, and she does not consent.

Meaning of Marital Rape

Marital Rape can only occur between a man and a woman who are legally married. Women in a Common Law union are covered by the conventional definition of rape.

'Marital Rape' Occurs in one of the following circumstances:

- The spouses have separated and are living apart
- There is a written separation agreement between the two spouses

- The spouses have begun divorce proceedings
- A Court Order has been issued to keep the spouses apart
- The husband has committed an act of violence against his wife either just before, or at the same time as, the sexual intercourse took place

And

- The Wife does not consent

And

- The Husband knows that the Wife does not consent

Penalties for Rape

A Person who commits rape is liable to at least eight years in prison, with the Judge having the power to extend the sentence all the way up to life imprisonment.

However, a man who rapes a woman who is under the age of fourteen can expect to be sentenced to at least twelve years in prison.

A man who is convicted of rape for a second time will automatically be sentenced to life imprisonment.

A man who has sex with a woman who is mentally incapable of giving proper consent in circumstances that do not amount to rape will be sentenced to between five and ten years in prison.

It must be noted that the consent of the Director of Public Prosecutions is required to proceed with a claim for marital rape.

(JUDICIAL) SEPARATION

Applications for a Judicial Separation from a Spouse can be made in either the Supreme Court, or the Family Court in Belize City, or the Magistrate Court in the Districts.

The grounds on which an application can be made differ between the Supreme Court and the Family/Magistrate Court.

Grounds on which a Married Woman may Apply to the Family/Magistrate Court for a Judicial Separation

- Her husband has been convicted of aggravated assault on her
- Her husband has been convicted of assaulting her, and has been fined more than \$50 or sentenced to more than two months in prison
- Her husband has deserted her

- Her husband has been guilty of persistent cruelty to her or her children
- Her husband has been guilty of willful neglect to provide reasonable maintenance for her or her infant children
- Her husband uses alcohol or drugs so much that he is unable to manage his own affairs
- Her husband had sexual intercourse with her when he knew that he was suffering from a Sexually Transmitted Infection (STI)
- Her husband has forced her into prostitution
- Her husband has committed adultery

Grounds on which a Married Man may Apply to the Magistrate Court for a Judicial Separation

- His wife uses alcohol or drugs so much that she is unable to manage her own affairs
- His wife is guilty to persistent cruelty towards him or his children
- His wife has committed adultery
- His wife has deserted him

Grounds on which either a Husband or Wife May Seek a Judicial Separation from the Supreme Court

- The other spouse (the 'respondent') has committed adultery
- The respondent has deserted the spouse applying for the separation (the 'petitioner') without cause for a period of at least 3 years before the application

- The respondent has treated the petitioner with cruelty
- The respondent is suffering from an incurable mental illness, and has been for the last 5 years, and has been detained for it
- The marriage has irretrievably broken down, and the parties have been living separately for at least 3 years

DIVORCE

Matters related to divorce are handled in the Supreme Court. In certain cases the Court can also declare a marriage invalid.

Grounds for Declaring a Marriage Invalid

- The marriage has not been consummated
- At the time of the marriage either party was of unsound mind or mentally deficient
- The other person was suffering from a communicable Sexually Transmitted Infection (STI)

Grounds for Divorce

Normally, a couple must have been married for at least 3 years before they can divorce. However, judges have a discretion to allow a couple to divorce earlier if the person applying for the divorce (the 'petitioner') has suffered exceptional

hardship at the hands of the person against whom the divorce is sought (the 'respondent'), or the respondent has been exceptionally deprived.

Either a husband or a wife may petition the Court on one of the following grounds:

- The respondent has committed adultery
- The respondent has deserted the petitioner without sufficient cause for at least three years before the petitioner sought the divorce
- The respondent has treated the petitioner with cruelty
- The respondent is insane, and has been so for at least five years
- The marriage has irretrievably broken down, and the spouses have been living apart for at

least three years before
seeking a divorce

The wife only may apply for a divorce
on the grounds that since the marriage
the husband has committed:

- Rape
- Sodomy
- Bestiality

PROPERTY RIGHTS OF WOMEN LEAVING A RELATIONSHIP

Different Types of Women Affected

- Women getting divorced
- Women leaving a Common Law Union (For this to apply, the woman must have been living with the same man continually for 5 years)
- Women leaving men with whom they have been living for less than 5 continuous years

Declaration of Property Rights

All the women above are entitled to seek a declaration from the Supreme Court on their ownership of property following the break-up of a relationship.

Such a declaration does not change ownership rights between a man and a woman, but only makes clear what those rights actually are.

Working out Pre-Existing Property Rights

If the man and the woman purchased property in their joint names, and contributed jointly to the purchase (for example from a joint bank account), then they will each be entitled to half of the property, unless it can be proved that they intended otherwise.

If the man and woman each made a separate cash contribution to the purchase price, they will own shares in the property in proportion to the amount each of them paid, unless they agreed, and can prove that they agreed otherwise. The Court will take a broad view of what counts as a contribution to the purchase price, for instance a woman who paid the household bills while the man paid the mortgage will probably be entitled to a share of the house - what matters is not the form of the contributions, but that the property could not have been acquired without them.

If the property is owned in the name of the man only, then the woman may still be entitled to a share in proportion to the amount of money she contributed, provided she made a financial contribution to the acquisition.

Often these ways of dividing property favour the man. The Court has a further right to divide the property along the lines of a 'common intention' of the parties. This means that the man and the woman must have agreed, even if only very vaguely, that they should both be entitled to a share of the property. Normally, this common intention should be formed before the property has been acquired, but in a few rare cases it has been recognized even if formed afterwards. Once the existence of the common intention has been proved, the person using it to claim a share of the property must also show that he/she relied on it, and altered his/her position because of it.

New Divisions of Property

People who are legally married and getting divorced, or Common Law Spouses who lived together continuously for at least 5 years and have now broken up, have the right to ask the Supreme Court to make a new division of property between the spouses. Women often get far more benefit from this than they would from just a declaration of their property rights as they were at the time of the break-up.

These are the factors that the Court will consider in deciding whether to make any new division of property:

- The financial contributions of the man and the woman to the purchase of the property
- The contribution made by the woman in her role as a housewife or homemaker
- The effect of any division on the earning power of the man and the woman

- The age and state of health of the man and the woman and any children born to them
- The non-financial contribution of the woman through her role as a companion to the man and as a mother to their children
- The duration of the marriage/Common Law Union
- The extent to which the marriage/Common Law Union has affected either the man or the woman's opportunities for education, training or development
- The need to protect the position of the woman, especially a woman who wants to continue in her role as a mother
- Anything else that the Court needs to consider to make sure that the division of property between the man and the woman is fair

LEGAL AID

LEGAL AID

For persons accused of murder, Legal Aid is provided free of charge through the Registrar of the Supreme Court.

In most other circumstances, Legal Aid is provided by the Legal Advice & Services Centre at 25 Gabourel Lane, Belize City.

Cases Undertaken by the Legal Aid Centre

- Divorce
- Legal Separation
- Custody
- Maintenance
- Paternity
- Adoption
- Criminal Matters in Magistrate Court (*Theft and Related Offences, Assault & Wounding, Drug Possession*)
- Civil Matters in Magistrate Court (*Breach of Contract, Unfair Dismissal, Landlord and Tenant*)
- Criminal Cases in the Supreme Court

Cases Not Usually Undertaken by the Legal Aid Centre

- Murder
- Personal Injury above \$10,000
- Civil Appeals (Court of Appeal)
- Drug Trafficking Offences
- Breach of Contract above \$10,000
- Domestic Violence

Funding of Cases Undertaken by the Legal Aid Centre

The Centre provides legal advice and mediation services free of charge.

A table of fees charged for cases actually undertaken is available from the Centre. These are typically between 10-25% of what an attorney in private practice would charge to handle the same matter. These fees are discretionary; at times the centre may charge a little more, and at others do the work for free, or for a voluntary contribution of \$20, depending on what the person can afford.

CONSTITUTIONAL LAW

CONSTITUTIONAL RIGHTS

The Belize Constitution Act is the highest law of the land. If any other law conflicts with it, the part of the law in conflict is void.

Part II of the Constitution contains the **Fundamental Rights and Freedoms** of the People of Belize.

What are your Fundamental Rights and Freedoms?

- **The Right to Life:** this means that the state can only kill people if they are sentenced to death after being convicted of a crime for which the penalty is death
- **The Right to Personal Liberty:** people can only be locked up if they have been convicted of a crime, or in some cases if they have been accused of a crime

- **The Protection of the Law:** Anyone accused of a crime is entitled to a fair hearing within a reasonable time. Anyone accused of a crime is innocent until proven guilty. If an accused person cannot understand the language used at his/her trial, he/she is entitled to a translator free of charge
- **Protection from Torture or Inhuman or Degrading Treatment**
- **Protection from Slavery and Forced Labour:** Nobody should be required to do forced labour, except if they are a member of a 'disciplined force' (for example the BDF or the Police), or it is a Court-ordered punishment, or during a national emergency
- **Protection from Arbitrary Search or Entry:** Nobody can be searched, or have their house entered without their permission, except where it is authorized by law or in the public interest

- **Protection of Freedom of Movement:** People who are citizens of Belize are allowed to travel freely around Belize, and to choose the area in which they want to live, and cannot be stopped from leaving or entering the country unless they have committed a crime, or are accused of having committed a crime, or it is in the public interest
- **Protection of Freedom of Conscience:** This means that people are entitled to have, and to demonstrate their opinions and beliefs (including religious beliefs)
- **Protection of Freedom of Expression:** People have the right to freely express their beliefs opinions and views
- **Protection of Freedom of Association:** People have a right to form associations and organizations among themselves,

including trade unions and political parties. This right can only be limited in the public interest, or to prevent organizations that restrict membership on the grounds of race or colour

- **Protection of the Right to Privacy:** This right includes protection of a person's private life, home, family and letters from arbitrary attacks
- **The Right to Work:** this means that people can choose the way they earn their living, providing it is legal, and they have the necessary qualifications and pay any fees required of them
- **Protection From Deprivation of Property:** Except where a person has broken the law, the government can only take property from people without their consent if it has that power under a law that also forces the government to give the owner reasonable compensation for the

property within a reasonable time, and which gives the owner the right to raise the matter in Court

- **Protection From Discrimination:** This is a very important right

In Belize, discrimination means treating a person better or worse than another person mainly or wholly on the grounds of:

1. **Sex.** *This includes treating a woman differently because she is pregnant.*
2. **Race**
3. **Place of Origin**
4. **Political Opinions**
5. **Colour**
6. **Creed**

There are a few exceptions to this rule, but these are largely a matter of common sense.

Enforcement of the Fundamental Rights and Freedoms

If anybody believes that his/her fundamental rights and freedoms are being breached, then he/she has the right to complain to the Supreme Court. The Court has the power to do whatever it thinks fit to enforce that person's rights. This includes making awards of financial compensation.

However, the Court has the right to refuse to exercise these powers, if the person claiming the breach has a different remedy available under another law.

LABOUR LAW

EQUAL PAY FOR WOMEN

What does 'Equal Pay for Women' mean?

That a woman has a legal right to receive as much pay as a man doing the same job.

If a woman is employed under a contract that provides that she should not be paid as much as a man doing the same work, this does not alter her legal right to claim the same salary as the man.

How to claim equal pay

If a woman feels she is not being paid the same as her male colleagues who do the same job, she should complain to the Labour Commissioner.

The Labour Commissioner will then appoint someone to investigate the claim. This person should report back to the Commissioner within sixty days on whether the claim is justified.

If the investigator feels unable to decide whether or not the claim has succeeded within the sixty-day time-limit, the Labour Commissioner should then hand the matter over to a referee who will conduct a formal inquiry, and then report back his recommendations to the Commissioner.

Once the Labour Commissioner has received a report from either source, confirming that the complaint is justified he may make one or both of the following orders:

- That the employer should pay the employee the equal salary to which she is legally entitled
- That the employer pay the employee a sum of money equivalent to the difference between what she received in pay, and what she would have received in pay during the time when these things were different

If this procedure is not followed, or if the employer refuses to abide by the order, then the employee can go to Court to enforce the right to equal pay.

Failure to Offer Equal Pay

It is a criminal offence to fail to offer equal pay to men and women.

An employer who discriminates between the pay of male and female employees is liable to a fine of up to one thousand dollars, or up to six months in prison for a single offence.

If the employer is convicted, but continues to commit the offence, the penalty is a fine of up to fifty dollars a day for each day on which the offence continued after conviction.

MATERNITY RIGHTS

Right to Maternity Leave and Maternity Pay

Any woman is entitled to maternity leave and pay, provided she has been employed continually by the same employer for a period of 150 days in the 12 months before giving birth. Any woman is entitled to unpaid maternity leave if she has not been employed continually by the same employer for a period of 150 days in the 12 months before giving birth.

Nature of Maternity Leave

Women have a right not to be compelled to return to work during the seven weeks after they have given birth.

A pregnant woman is entitled to take a temporary leave of absence from work once she produces a certificate from a doctor stating that will probably go into labour within the next seven weeks.

If a doctor declares that she is suffering from an illness as a result of giving birth, she does not have to return to work for another 30 days after this seven week period.

While a woman is in receipt of a maternity allowance from the Social Security Board (these normally cover a period of fourteen weeks, the Board can advise a woman on whether she is eligible), she does not have to return to work.

Maternity Pay

If a woman is entitled to a maternity allowance from the Social Security Board, she will get this instead of maternity pay.

Otherwise, if a woman has worked for the same employer continually for 150 days, she is entitled to receive during her Maternity Leave the full pay she would have earned during this period had she not been absent.

If the full pay is more than the maternity allowance that she is entitled

to from the Social Security Board, the employer has to pay to the woman the difference between the maternity allowance and the full pay.

SEXUAL HARASSMENT

In Belize, Sexual Harassment is illegal in relation to:

- Employment
- People Attending Institutions
- Accommodation

Definition of Sexual Harassment in Employment

Sexual Harassment in employment means doing one of the following things to another person:

- making an unwelcome advance
- making an unwelcome request for sexual favors
- engaging in unwelcome sexual conduct

If either:

- the other person suffers any form of disadvantage as a result of the harasser's employment or

work, or possible employment or work; or

- an unwelcome request for sexual favors has the effect of interfering unreasonably with the other person's work or performance or has the effect of creating a hostile or intimidating working environment

Prohibitions on Sexual Harassment in Employment

No employee is allowed to sexually harass a co-worker.

No employer and no other person in a position of authority over an employee is allowed to:

- Make it appear to the employee that her career prospects or current working conditions depend on her accepting or putting up with sexual advances from her employer/supervisor
- Make it appear to a prospective employee that either an offer of

employment or the length of a period of employment depends on her accepting or tolerating sexual suggestions or hints from the prospective employer

Duty of an Employer to Deal with Cases of Sexual Harassment

An employer has a responsibility to prevent any act of sexual harassment towards an employee. If the employer, his representatives, or supervisors know or are informed about the sexual harassment, and fail to stop it immediately, then the employer can be held liable for sexual harassment.

For this reason, it is important that a person suffering sexual harassment at work makes one of these persons aware of that the harassment is taking place.

Liability of an Employer where one person has benefited over another by submitting to Sexual Harassment

Where one person has received opportunities for career advancement

(such as a job offer, or a promotion, or a higher salary) by submitting to sexual harassment, and another person has been denied such an opportunity or benefit by not submitting to sexual harassment, then the person denied the benefit can hold the employer liable for the sexual harassment of the employer, persons acting for the employer, or a person holding a supervisory position with the employer, provided that the employer knows or is made aware of such acts.

Sexual Harassment at Institutions

No member of staff at an institution (such as a school or mental institution) is allowed to sexually harass a student, or resident of that institution.

In relation to institutions, Sexual Harassment means:

- Unwelcome verbal or physical conduct of a sexual nature for instance deliberately making gestures or comments or unwelcome sexual advances or requests for sexual favors, or

deliberately displaying sexually graphic material when it is not necessary for institutional purposes

Every person in charge of an institution has a duty to keep that institution free from sexual harassment or intimidation and to clearly express a policy against sexual harassment to the staff, students or inmates of that institution.

Sexual Harassment in Relation to Accommodation

It is illegal to commit sexual harassment in relation to accommodation.

A person commits this form of sexual harassment if he or she gives somebody else a reason to think that any of the following depend on the second person's toleration of sexual suggestions or innuendos:

- The terms on which the first-named person offers the other accommodation

- The success of his or her application for accommodation
- The time it will take to process his or her application for accommodation
- The order in which applications will be considered
- The other person's access, or the extent of such access to a benefit connected with the accommodation
- The failure to evict the other person or to subject that other person to any loss of the right to accommodation

Complaints Procedure in Cases of Alleged Sexual Harassment

If anybody believes that she has been sexually harassed in one of the ways set out above, then she should make a complaint to the Magistrates Court in writing.

The Court will then conduct an investigation into the offence, and may attempt to mediate between the parties.

When the Court investigates a case of alleged sexual harassment, it is held *in camera*. This means that members of the public are not allowed to attend, and nobody is allowed to report what happens in court, so the procedure is very private and discrete.

If mediation is not appropriate, or fails, the Court will either dismiss or uphold the complaint.

If the Court upholds the complaint it has the power to make one or more of the following orders:

- The person against whom the complaint is made (the 'respondent') has engaged in conduct amounting to sexual harassment and should not repeat or continue such conduct

- The respondent should do such things as are necessary to correct the harm in question
- That if the respondent repeats the conduct complained of he will be in 'contempt of court.' This means that he risks going to prison
- That the respondent should pay the person making the complaint (the 'complainant') damages to compensate for any loss or damage suffered by the complainant as a result of the sexually harassing conduct
- That the respondent stop doing the behaviour complained of
- That the employer take appropriate steps to make sure that the harassment ceases if it is caused by a fellow worker, and should report to the court on what he has done to ensure that it ceases

Victimization

Victimization occurs when a person treats another person or threatens to treat another person badly if that person has:

- Made, or intends to make, a complaint under the Sexual Harassment Act against any person
- Provided, or intends to provide, information to assist somebody else in making a complaint
- Attended, or proposes to attend, an inquiry into Sexual Harassment as a witness
- Made an allegation that somebody has committed sexual harassment

or when a person is treated badly because it is believed that he has done, or is going to do, one of the things mentioned above.

The penalty for victimization is a fine of no more than \$500, or up to 3 months in prison, or both.

WORKING HOURS/ HOLIDAY ENTITLEMENTS

Restrictions on Women Working at Night:

Except in exceptional circumstances, no Woman who works in an 'industrial undertaking' should be made to work between 10 pm and 5 am.

An 'industrial undertaking' means:

- a workplace for extracting materials from the earth
- a place where articles are made or altered, or which generates electricity
- a building or engineering work
- transportation of passengers or goods by road or inland waterways.

This restriction does not apply to women who:

- are managers
- have responsible jobs of a technical character
- work in health and social welfare and who do not normally do manual work
- work in an 'industrial undertaking' which only employs members of the same family
- work in an industry, or in special circumstances, where the Labour Commissioner has waived the rule

Time at Work and Entitlement to Extra Pay

Workers have the right to one day off from work every week. If the employer and employee have not agreed on the day, the worker is entitled to take Sunday off.

Nobody is obliged to work on a Public Holiday.

Nobody should be obliged to work for more than nine hours a day, or for more than forty-five hours in a week.

If employees do not work on a public holiday that falls on a day when they would normally have been at work, then they are entitled to be paid their usual wages for that day.

If employees work on a public holiday they are entitled to receive their rate of pay for that day **plus**:

- Double Pay on Easter Day, Christmas Day, and Good Friday
- Half as much as their usual rates of pay on all other public holidays

On Sundays, or other agreed Rest Days, employees who agree to work are entitled to be paid at a rate of one and one-half times their usual rate of pay.

People who work for more than nine hours in one day, or more than forty-five hours in one week are entitled to be paid for any time beyond these limits at a rate of one and a half times their usual rate of pay.

The following people do not have the rights listed above under the heading Time at Work:

- managers and supervisors
- shop assistants
- workers responsible for watching over agricultural property which covers one hundred acres or less, and who live on the site
- workers who are paid by the piece or task, and are not subject to continuous supervision
- any organization exempted from the requirements by the Government.

Lunch Break

Everybody who works for more than six hours in a day is entitled to a one-hour break in the middle of the day.

Annual Holiday Entitlements

Except for members of the employer's family who live in his house, people whose job involves making or adapting things not in places not operated by the person who gave out the items ('outworkers'), and shop assistants, people who work have the following annual holiday entitlements:

- For every full year that she works, two weeks annual holiday to be taken as one period, or, if both the employer and the employee agree, as two one week periods of rest within six months of the end of that full year of employment
- For every public holiday, or Sunday/other agreed Rest Day on which the employee works, she is entitled to another day of annual holiday

- An employee taking her annual holiday is entitled to be paid the average of her wage over the past year equivalent to the period of time which she is taking as holiday. The money should be paid to her no later than the day preceding the start of this holiday period or if she is taking the annual holiday in two separate portions, half of it should be paid no later than the day preceding each of the two periods of holiday

Consequences of Breaching these Rights

It is illegal for an employer to refuse to grant an employee any of the rights above to which she is entitled.

An employer who refuses to grant these rights can be fined up to five hundred dollars, or up to 12 months in prison, or both.

If the employer refuses to pay the employee money to which she is

entitled under one of the rights given above, and he is convicted of breaking employment law, then the Court has the power to order the employer to pay the employee the money to which she was entitled.

DISMISSAL/LEAVING EMPLOYMENT

The rules governing the dismissal of employees/leaving employment vary depending on the type of contract the employee has. The law recognizes the existence of two types of contract:

- Oral Contracts
- Written Contracts

Terminating an Oral Contract

If the employer and employee have agreed a date on which the contract ends, they will be bound by that date. A worker can also be dismissed for negligence, incompetence or absence from work without permission/sufficient excuse.

Otherwise, the following periods of notice must be given before it becomes possible to terminate the contract:

- If the employee has worked for the same employer for more

than 2 weeks, but less than 6 months - 3 days notice

- More than 6 months but not more than 1 year - 1 weeks notice
- More than 1 year, but not more than 2 years - 2 weeks notice
- More than 2 years - 4 weeks notice

If an employer terminates an employee's employment without following the required notice period, it will be liable to pay the employee the money he or she would have earned by working out the correct notice period.

If an employee leaves her employment without serving out her correct notice period, she will be liable to pay half the money she would have earned by serving out the full notice period.

Terminating a Written Contract

A properly written contract ought to include sections covering the termination of employment.

Notice periods for termination of the contract should be at least seven days if the contract is for less than a month, and otherwise fourteen days.

In the event of an early termination, the employer and employee have a legal duty to settle monetary affairs between themselves. If they are unable to do so, the matter should be referred to the Labour Commissioner for arbitration.

IMMIGRATION LAW

IMMIGRATION RIGHTS

Dependent's Permits

A Belizean resident can apply for a Dependent's Permit. As long as they remain dependent on that person, this gives the dependent the right to remain in Belize for as long as the resident on whom the person depends.

People who qualify as 'dependents' include:

- The wife of a Belizean resident, provided she and her husband are not living apart under a written separation agreement or a Court Order (for instance, a judicial separation)
- The Children or step-children under the age of 16 of a Belizean resident

Women's Citizenship

Every woman born in Belize before Independence Day or who became a citizen of the United Kingdom and Colonies in Belize before Independence Day, became a citizen of Belize on independence Day.

A person born in Belize after Independence Day is automatically a citizen of Belize.

A person born outside Belize to a mother or father who is a citizen of Belize is automatically born a citizen of Belize.

Citizenship Status of a Spouse/Widow of a Belizean Citizen

A Woman married to a Belizean prior to Independence Day automatically became a citizen of Belize on Independence Day.

A Woman married to a Belizean after Independence Day is entitled to apply for citizenship of Belize on the following conditions. The applicant:

- Must be of full age and sound mind
- Must have not done anything either inside or outside Belize which in the opinion of the Minister is harmful to the safety of Belize
- Must have been resident in Belize for one year prior to the application
- Must be the spouse or widow of a citizen of Belize

Applications for citizenship from Women not legally Married to/Widows of Belizean Citizens

A Person may apply for citizenship subject to the following requirements:

- the applicant is over 18 and of sound mind
- the applicant is a person who is ordinarily resident in Belize and has been resident for 5 years prior to making the application

- the applicant is, and intends to continue to be, ordinarily in Belize

The Minister can refuse the application on one or more of the following grounds:

- the applicant is not of good character
- the applicant has been convicted of a criminal offence and sentenced to at least 12 months in prison
- the applicant has done things either inside or outside of Belize, which in the opinion of the minister are dangerous for the safety of Belize or for public order in Belize
- the applicant has been declared bankrupt
- the applicant is neither a dependant of a citizen of Belize, nor has the means to support herself/himself

RESOURCE LIST

The legal information contained in this Handbook was derived from the following Legislation:

- Domestic Violence Act (2007)
- The Criminal Code [CAP 101]
- Summary Jurisdiction (Offences) Act [CAP 98]
- Indictable Procedure Act [CAP 96]
- Summary Jurisdiction (Procedure) Act [CAP 99]
- Statutory Instrument (SI) 82/80 Reg 61
- Labour Act [CAP 297]
- Families and Children Act [CAP 173]
- Supreme Court of Judicature Act [CAP 91]
- Belize Constitution Act [CAP 4]
- Labour Act [CAP 297]
- Matrimonial Causes Rules [CAP 91]
- Equal Pay Act [No 8/2003]
- Immigration Act [CAP 156]
- Belize Nationality Act [CAP 161]
- Passport Act [CAP 164]
- Supreme Court of Judicature (Amendment) Act 2001 (No 8 of 2001)
- Married Women's Property Act [CAP 176]
- Registered Land Act [CAP 194]
- Married Persons (Protection) Act [CAP 175]
- Protection Against Sexual Harassment Act [CAP 107]
- Labour (Amendment) Act 2005 (No 42 of 2005)



United Nations Population Fund



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