

What is the Constitution?

The Constitution is the highest law in St. Vincent and the Grenadines. It is a set of rules that sets out what the branches of the government are, what powers they have, and how they work. It also states the fundamental rights and freedoms of every individual in the country.

What are Fundamental Rights and Freedoms?

- These are rights and freedoms which everyone should be able to enjoy.
- They apply to all persons regardless of race, place of origin, political opinions or affiliations, colour, creed or sex.
- Fundamental rights and freedoms are subject to respect for the rights and freedoms of others and for the public interest.
- They are set out in the part of the Constitution commonly referred to as the Bill of Rights.

What should you do if you think your fundamental rights and freedoms have been breached?

- If you believe any of your fundamental rights and freedoms has been, or is likely to be, breached you can apply to the High Court for relief.
- The High Court will hear and determine your application, and may make appropriate orders for enforcing your rights.

THINGS TO REMEMBER

- No right is absolute. Rights are subject to the rights and freedoms of others and to considerations of public safety, defence, public order, public morality and public health.
- The rights contained in the Bill of Rights are only enforceable against the State. You cannot enforce these rights against private individuals.
- In periods of public emergency, laws may be passed for dealing with any situation existing in St. Vincent and the Grenadines during that period. These laws and any actions done under their authority may not be held to be in contravention of fundamental rights and freedoms.

What is IMPACT Justice?

IMPACT Justice is a project which is being funded by the Canadian Government. It is being implemented by the University of the West Indies Cave Hill Campus. The reach of the Project is 13 CARICOM Member States: Antigua & Barbuda, Barbados, Belize, Dominica, Grenada, Guyana, Jamaica, Montserrat, St. Kitts & Nevis, St. Lucia, St. Vincent & the Grenadines, Suriname and Trinidad & Tobago.

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**St. Vincent and the
Grenadines**

**Know Your
Constitutional
Rights!**

Your Constitutional Rights

Life

- You should not be deprived of your life intentionally unless you have been convicted in a court of law for a criminal offence and sentenced to death.

Personal Liberty

You should not be deprived of your freedom unless:

- you are lawfully arrested;
- the court has ordered your detention;
- your detention is necessary to stop the spread of a contagious disease;
- your detention is for your well-being, e.g., provision of care to vagrants or drug addicts;
- your presence in St. Vincent and the Grenadines is unlawful.



What if I'm arrested?

If you are arrested or detained:

- you should be told the reason for your arrest and detention as soon as possible, within 24 hours of your arrest, in a language you understand; and
- you have the right to retain a lawyer of your choice and to communicate privately with him or her.

If you have been unlawfully arrested you are entitled to compensation.

Protection from Slavery and Forced Labour

- You should not be held in slavery or servitude.
- You should not be made to perform forced labour.

Protection from Inhuman Treatment

You should not be tortured, nor should you be subjected to inhuman or degrading punishment or treatment.

Protection of Freedom of Movement

If you are a citizen of St. Vincent and the Grenadines:

- You have the right to move freely throughout St. Vincent and the Grenadines.
- You have the right to enter and leave St. Vincent and the Grenadines.
- You may reside in any part of St. Vincent and the Grenadines.

Protection from Deprivation of Property

- Your property should not be compulsorily taken possession of except for a public purpose and under authority of the law.
- If your property is compulsorily taken, you are entitled to adequate compensation within a reasonable time.
- The High Court can determine your right in the property and the amount of compensation to which you are entitled.

Protection from Arbitrary Search or Entry

Unless you consent, you should not be subjected to:

- the search of your person;
- the search of your property; or
- the entry by others onto your premises.

However your consent is not required where the

search is done with lawful authority, e.g., under a search warrant or for protection of rights and freedoms of other persons.

Freedom of Conscience

- You have freedom of thought and of religion.
- You have the right to manifest your religion or belief in worship, teaching, practice and observance, whether in private or in public.
- No one should compel you to take any oath which is contrary to your religion or belief.
- You cannot be compelled to receive religious instruction or attend any religious ceremony relating to a religion that is not your own.

Freedom of Expression

You have the freedom to:

- hold your own opinions; and
 - receive and communicate information and ideas.
- You have the right to be free from interference with your correspondence.

Freedom of Assembly and Association

You can assemble freely and associate with other persons. This means you can form or belong to trade unions and other associations.

Protection from Discrimination

- You should not be treated in a discriminatory manner.
- This means you should not be treated differently because of your sex, race, place of origin, political opinions, colour or creed.

Protection of the Law

If you are charged with an offence, you have a right to a fair hearing within a reasonable time by an independent and impartial court of law.

If you are charged with a criminal offence:

- You are presumed innocent until proven guilty.
- You must be informed as soon as possible of the nature of the offence with which you have been charged.
- You should be given adequate time and facilities to prepare your defence.
- You can defend yourself before the court in person or by an attorney-at-law of your choice.
- You should have the opportunity to examine any witnesses called by the prosecution before the court.
- You can have witnesses testify on your behalf before the court.
- If you cannot understand the language used at trial, you are entitled to the assistance of an interpreter at no cost to you.
- You may obtain a copy of the record of proceedings once you pay the relevant fees.
- The court cannot impose a penalty more severe than the maximum penalty prescribed by law at the time the offence was committed.
- You cannot be tried for a criminal offence if you can show that you have already been pardoned for that offence.
- You cannot be compelled to give evidence at your trial.

Redundancy and Severance Pay

Redundancy occurs where there is a reduction in the employer's business due to modernization or automation of all or part of the business or the reorganization, discontinuance or sale of the business.

Where an employer intends to lay off an employee for a period of at least six weeks, the employee may request his or her employer by notice in writing to treat the employment as permanently terminated. Such an employee is entitled to severance pay unless the employee is able to offer substantially similar employment to the terms and place of the previous employment for a period of at least 13 weeks.

If a medical practitioner certifies that the employee is incapable of performing his or her duties due to physical or mental illness which has been for a protracted period of six months and is likely to be permanent, then the employer may terminate the employee's service but must pay severance.

Where the services of an employee is terminated on the ground of redundancy and the employer within a period of three months from the date of such termination seeks to employ persons to

perform the same or similar duties as those formerly performed by the employee who was made redundant, the employer shall give preference to the former employee if he or she is available.

If the employer intends to make 5 or more employees redundant, the employer must notify the employees and their representatives at least one month before of the numbers likely to be affected. The employer must notify the Labour Commissioner about the results of the consultations.

An employee is entitled to terminate his or her employment contract where the employer's conduct has made it unreasonable to expect the employee to continue. Such an employee is entitled to severance pay.

Severance pay is payable only to those employees who have worked for the employer for more than 2 years. It is:

2 week's basic pay for each completed year of service from 2 to 10 years

3 weeks' pay for each further year between 11 and 25 years

4 weeks' pay for each further year after 25 years.

A half-year or more counts as a full year, and less than a half year is to be excluded from the calculations

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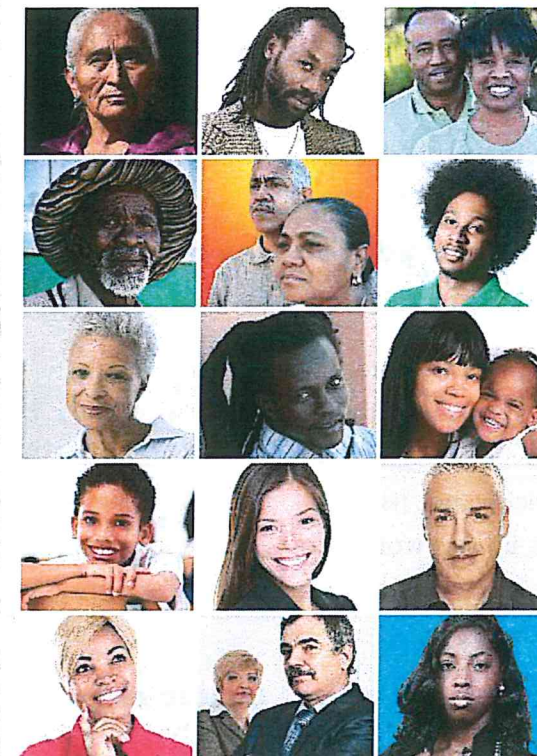
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Employment Rights



St. Vincent

Who is an employee?

The St. Vincent & the Grenadines Protection of Employment Act of 2003 defines “employee” as any person who works under an employment contract, whether written or oral.

Within 7 days of the start of the employment, the employer must provide the employee with a written statement of the terms and conditions of employment.

What are your duties to your employer?

The employee must obey all lawful and reasonable orders, not commit misconduct, give faithful and honest service, and use reasonable skill and care in the work. The employee must use safety equipment and follow safety procedures.

What are your employer's duties to you?

The employer must pay the employee's social insurance and taxes. The employer must also maintain a safe and clean place of work, and provide safety equipment.

Unions

Employees have the Constitutional right to associate with each other or with a trade union. Employees also have the right not to join a union if they so choose.

Termination of employment

Employment may not be terminated by the employer unless there is good cause. “Good cause” includes situations where the employee has been found guilty of misconduct in relation to his or her employment that is of such a nature that it would be unreasonable to expect the employment relationship to continue. The employee must be provided with an opportunity to defend himself or herself.

Where an employee commits an act of gross misconduct that does not merit dismissal, the employer should give a written warning or a verbal warning in the presence of two credible witnesses. The employer should in particular warn the employee of the action that the employer intends to take. If the employee must be warned twice more in a six month period, then the employer may summarily dismiss the employee if there is no improvement. The same should occur if the employee's performance is unsatisfactory and there is no improvement within 3

months.

If the employer wishes to terminate for any other reason besides “good cause”, he or she must seek the permission of the Labour Commissioner.

A dismissal may be considered unfair if it is for a personal reason such as the employee's race, colour, sex, marital status, pregnancy, religion, political opinion, nationality or social origin, reasonable absence from work due to family emergencies or responsibilities, absence due to maternity leave or certified illness, participation in union action or participation in proceedings against the employer for alleged violations of the law.

Except for cases of summary dismissal, the employer must give the following minimum notice periods in writing. He or she can pay the employee in lieu of notice.

Weekly Paid Employees:

- Under 1 year - 1 week
- 1 year and under 3 years - 2 weeks
- 3 years and under 6 years - 2 weeks
- 6 years and over - 4 weeks

Fortnightly Paid Employees:

- Under 2 years - 2 weeks
- 2 years and under 6 years - 3 weeks

- 6 years and over - 4 weeks

Monthly Paid Employees:

- All - 4 weeks

When the services of an employee have been terminated, the employer must provide him or her with the following information in writing: the date and duration of employment, category of employment or office held, and the reason for the termination.

Settlement of Disputes

An employee, employer or a representative of either may bring complaints in writing before the Labour Commission. If the Commissioner fails to bring about a settlement within 14 days, he or she must refer the matter to the Minister who in turn refers the matter to a Hearing Officer. The Hearing Officer must hold a hearing and give a written decision within 14 days of the close of the hearing. Any appeal must be made to the Labour Tribunal within 21 days.

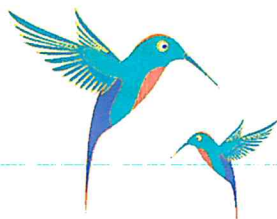
The Commissioner and the Tribunal may give orders for reinstatement of the employee, compensation in accordance with the Code, and/or payment of damages.

"I give the mother money and she spends it on her own hair."

Maintenance is meant to be used for the children's living expenses such as their share of the electricity. If the recipient has already paid the electricity bill and chooses to use the maintenance for something else then this is not misuse but rather a matter of budgeting and accounting. The paying parent's main concern should be that the children are healthy and well cared for. If this is not the case, then the paying parent should raise the issue with recipient and, if necessary, seek the intervention of the children's authorities or the court.

Can I withhold maintenance if I don't have access? / Can I withhold access if I don't get the maintenance?

No. Neither parent should ever withhold maintenance or access for any reason. If you have concerns you should seek the help of the children's authorities or of the court.



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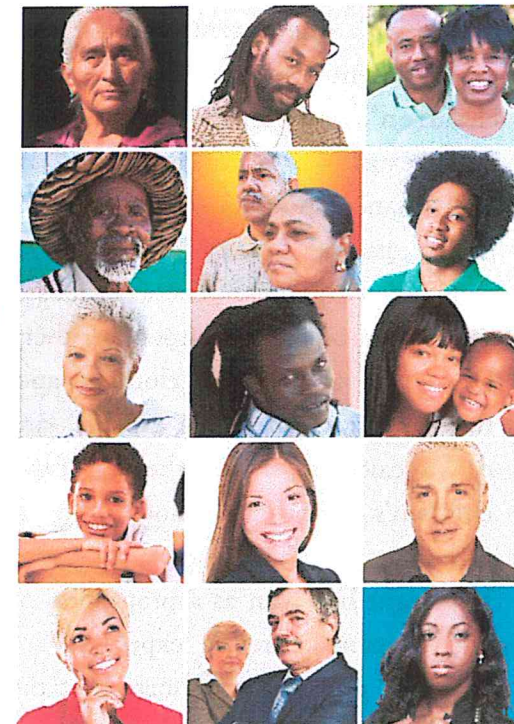
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**Children's
Maintenance
and Access**

What is child maintenance?

Both parents are required to support their children whether those children are born in or out of marriage.

When the parents are separated, the usual arrangement is for the children to live with one parent, and for the other parent to contribute to the children's expenses by paying maintenance. The amount of maintenance should be based on the paying parent's salary and on the children's expenses. These expenses are the cost of keeping a roof over their head and of feeding, clothing and transporting them. Some expenses are easy to calculate, such as the cost of the children's clothes or school supplies. Others are more difficult to calculate, but might be taken as a proportion of the recipient parent's expenses. For example, one might estimate that the children account for 1/2 of the electricity bill.

The usual order is for a set sum every month and the equal sharing of educational and medical expenses.

How does a parent apply for maintenance?

Ideally, when parents separate they make their own arrangements for reasonable maintenance. Where this does not happen, then an application may be made to the court. Married persons will usually include maintenance as part of their divorce proceedings. If the parents are not married, they will usually have to proceed in the Magistrate's Court.

When asked to make an order, the court may first ask whether paternity is accepted. This issue may involve its own trial with a blood test or DNA test.

The court will then consider the children's expenses and the parents' incomes and expenses.

How can maintenance be enforced?

Where the paying parent defaults without good reason, the recipient parent can apply for an order for arrears. This may be enforced in the same way as any other debt, such as by selling the defaulter's personal possessions. The judicial officer might also have the paying parent jailed for contempt of court.

One method which can prevent problems is for the paying parent to arrange for an automatic salary deduction.

What is access?

A child has a right to know and spend time with both parents. If non-resident parents feel that they are being prevented from spending enough time with their children, they can ask the children's authority or welfare department to intervene or they may apply to the court.

The court will usually make the order for weekend access with time during the vacations as access during the school week may be a little disruptive to the children. However, there is no one-size-fits-all arrangement and each family should decide what works best for them.

It is important to note that maintenance does not stop simply because the children are temporarily spending time with the paying parent (such as during the vacation). If the time is extended, however, that parent may apply for a suspension or discharge of the maintenance order.

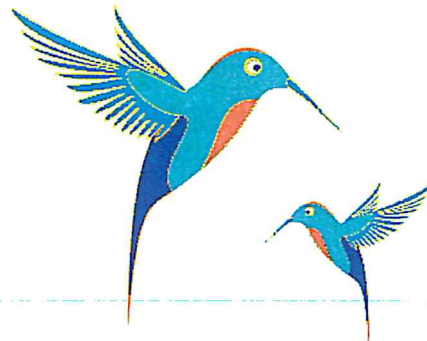
Child abuse can have serious effects on a person's life. You can make a difference!

Sometimes people are afraid to report their suspicions because they don't want to interfere or because they fear that the abusers will retaliate. A child abuse report does not mean a child is automatically removed from the home. Unless the child is clearly in danger there may first be interventions such as parenting classes, anger management classes, or counselling.

If you think that something is wrong, it is better to be safe than sorry. Even if you don't see the whole picture, others may have noticed as well, and a pattern can help identify child abuse that might otherwise slip through the cracks.

If a Child Tells You About Abuse

- Stay calm and reassure the child that he or she did nothing wrong.
- Find a quiet place to talk
- Listen
- Say that you are glad the child told you
- Say that you will do your best to protect and support the child
- If necessary, seek medical help and contact the police or social services



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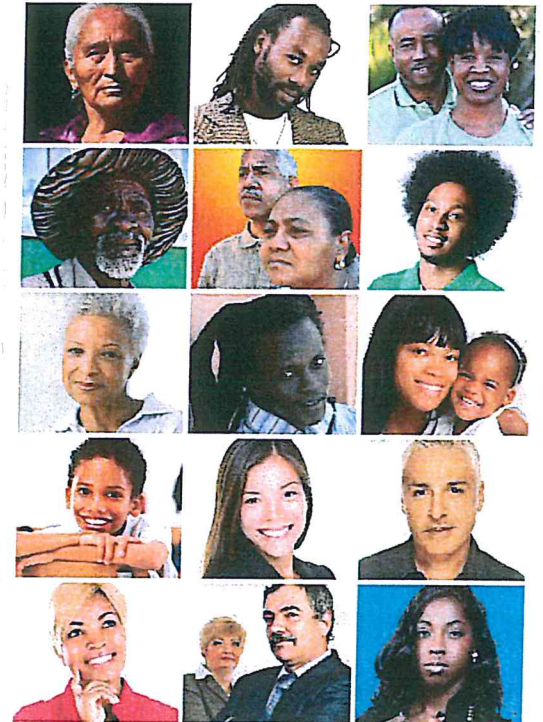
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Child Abuse

What are the types of child abuse?

Physical abuse

Physical abuse includes beating, beating with objects, biting, burning, and tying up. In the Caribbean punishment is too often seen as a normal part of childhood, and actions that would be crimes if committed by adults against each other may be seen as acceptable when committed against children. However, one indicator of abuse is that it is unpredictable and the 'punishment' is connected more to the abuser's state of mind than to the actual offence. Another indicator is that it is extreme and disproportionate.

According to an Australian support group, characteristics of physical child abusers include emotional impairment, substance abuse, lack of social support, presence of domestic violence and a history of childhood abuse. Adults physically abused in childhood are at increased risk of

either aggressive and violent behaviour, or shy and avoidant behaviour leading to rejection or re-victimisation. Men with a history of physical abuse in childhood seem to be more prone to violent behaviour than those who were not abused, and physically abused men are over-represented amongst violent and sexual offenders.

Emotional Abuse

This is one of the most common forms of abuse. It can involve parents who are overly aggressive to their children (without being violent) or who use emotional blackmail. It can include excessive criticism and humiliation. Emotional abuse can result in learned helplessness, and overly passive behaviour. Adults with emotionally abusive parents are at a disadvantage as they try to form personal, professional and romantic relationships, since they may have trouble understanding other people's social cues, or may wrongly apply the rules that governed their abusive relationship with their parents to everyday social situations.

Neglect

Neglect occurs when a parent or guardian fails to adequately provide for the child's needs. This does not simply include the child's physical needs such as food, shelter and clothing, but also the child's emotional needs such as care, love or support. While there is a stereotype that neglect is linked to socioeconomic status, it is important to remember that it can happen in any household, and that there are many poor people who look after their children properly.

Sexual Abuse

Sexual abuse describes any incident in which an adult engages a minor in a sexual act, or exposes the minor to inappropriate sexual behaviour or material. It may involve violence, but more often involves manipulation, in which the child is coerced into believing that the activity is an expression of love, or that someone else will be harmed if the child fails to comply. Whilst all children are vulnerable, girls are more likely to be sexually abused than boys, and children

with disabilities are up to seven times more likely to be abused than their peers.

Warning Signs

Warning signs of emotional abuse include extremes of behaviour (extremely passive, demanding, etc), anxiety and fear, and inappropriately adult or infantile behaviour.

Warning signs of physical abuse include frequent or unexplained injuries, and the child being afraid of touch.

Warning signs of neglect in children include consistently bad hygiene, the child being frequently left alone or allowed to play in unsafe situations and the child being frequently late or missing from school.

Warning signs of sexual abuse in children include trouble walking or sitting, displaying knowledge or interest in sexual acts inappropriate to his or her age, displaying seductive behaviour, running away from home, and withdrawn or suicidal behaviour.

Does your partner:

- Insult you in public and /or private?
- Call you ugly or stupid?
- Treat you disrespectfully?
- Check up on where you've been and who you've talked to?
- Limit where you go and what you do?
- Try to control your money?
- Destroy your things?
- Threaten to hurt you, your family, or your pet?
- Physically hurt you?
- Make you have sex in ways or at times that are uncomfortable to you?
- Blame you for the abuse?

Abusive relationships do not usually start with violence, but with disrespect. Know the warning signs, and watch for them in your own and your loved ones' relationships before they escalate. The law offers help and protection.

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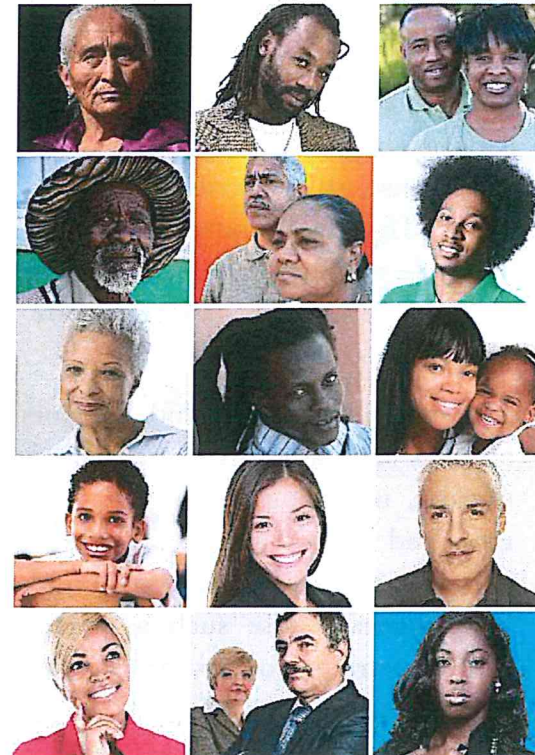
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Domestic Violence Protection Orders in St. Vincent & The Grenadines



What is Domestic Violence?

Domestic violence is any act of violence perpetrated by one member of the household on another which is likely to cause physical, mental or emotional harm.

There are many types: spousal or partner abuse (including same sex), child abuse, sibling abuse and elder abuse. The most common type is partner abuse. Both men and women can be victims or perpetrators.

Abusive acts can include major offences such as murder, attempted murder, manslaughter, assault, and rape and sexual assault. Domestic violence can also include verbal and psychological abuse such as where the perpetrator follows or harasses the victim.

Persons who have been threatened or abused can obtain a Domestic Violence Protection Order. The person who applies for the Order is called the applicant. The person against whom the applicant is seeking the Order is called the respondent.

The Domestic Violence Protection Order

- The Order can stop the respondent from threatening, striking, stalking or harassing the applicant.
- The Order can also stop the respondent from entering or remaining in the home, school, workplace or any other place where the applicant is present.
- If the parties live together, an Occupation Order allows the applicant to remain in the residence while the respondent must leave. The respondent may be ordered to continue making the usual payments towards household expenses such as rent, mortgage and utilities.
- A Tenancy Order allows the applicant to become the sole tenant of a rented property. Notice is served on the landlord.
- If the parties have minor children, the Court has the power to make temporary Orders for maintenance and access.
- A respondent may be fined or otherwise penalized for breaching the Order.

Who Can Apply

The applicant can be the current or former spouse or common law spouse of the respondent or a member of the household.

The Procedure

- To obtain an Order, go to the Family Court or the Magistrate's Court for your area (you can ask at your nearest police station to find out where it is).
- You will be given a form to fill out which you will swear in front of the Magistrate.
- You will be given the date and time to attend Court. You can bring a lawyer, but you do not need to.

Once the Order has been granted, take other steps to protect yourself, especially if you are still in the same residence as the respondent. Consult a lawyer about your rights to family property and what will happen in the event of a separation or divorce.

Landlords and tenants often have disputes about who should repair the premises. In general, tenants are expected to keep the property in good condition and repair minor problems before they escalate.

However, it is in the landlord's interest to ensure that the property remains in good condition, and the tenant may not want to invest in someone else's property.

If the tenant reports a problem to the landlord, and the landlord does not fix it, then the tenant may be entitled to make the repair and deduct the cost from the rent.

Tenants are not usually responsible for "fair wear and tear" which is damage caused by ordinary use or by natural forces. Defining this can be another source of problems, but for any damage one can ask whether it is expected, e.g., carpet worn by walking, or whether it has been caused by the tenant's carelessness, e.g., holes in walls from hammering nails.

Tip: Avoid controversy — write a clause into your lease outlining what repairs the tenant is responsible for, e.g., all repairs under \$250. Take pictures of the property before tenants enter, and when they leave.

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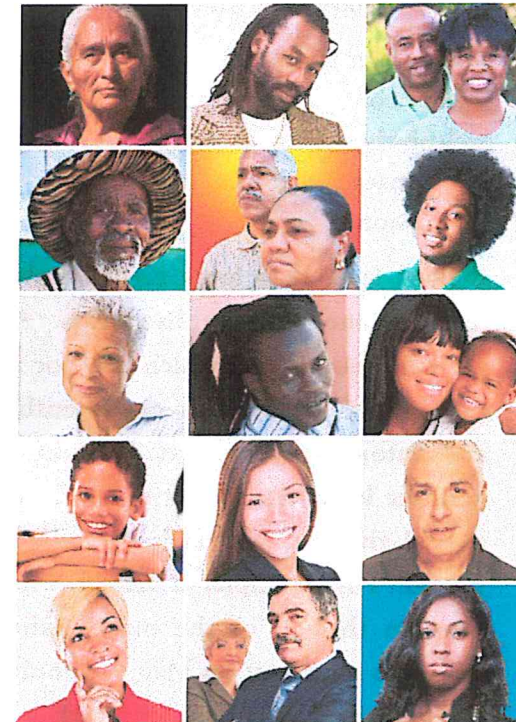
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**Are you a
Landlord?**

What is a lease?

A lease is an agreement between a landowner and a tenant for the tenant to occupy the landowner's premises. The agreement usually specifies a time frame and rent payable. While a lease can be verbal, it is better for both parties to have it in writing.

During the lease, the tenant has the right to occupy the property exclusively — even the landlord should not enter without the tenant's permission.

A fixed lease lasts for a certain time such as one year or five years. A periodic lease is one which lasts for a certain period, such as one month, and automatically renews. To end a periodic lease, the tenant or landlord should give notice of at least one full period. For example, a tenant who pays on the 1st of the month who wishes to move out on May 1st should give notice on or before April 1st.

Landlords should only end the lease if they require the property for repair or for their own use, if the property is being sold, or if the tenant has breached the lease.

Landlord Dos and Don'ts

Do ensure that the premises are fit for habitation. Make sure that there is running water, an indoor toilet, electricity, proper ventilation and a fire escape route.

Do request that the tenant pay a deposit. Keep this money in a separate account to return to the tenant at the end of the lease.

Do make it clear at the beginning of the lease what costs will be deducted from the security deposit. For example, if the apartment is furnished, give the tenant a list of all the furnishings and appliances.

Do make sure that the lease provides that the tenant should not sublet or assign (give someone else) the property.

Do keep proper records and make sure that you use a duplicate receipt book so you can have copies of all receipts.

Never interfere with your tenant's locks, access, utilities or personal items — the tenant may be able to sue you for trespass or assault. If you have a disagreement with the tenant, seek the help of the Court.

When the tenant does not pay

Try to resolve the issue amicably, starting with a friendly phone call. Some leases provide that a penalty applies if the rent is more than a few days late.

Once the rent is overdue, you can send a notice to quit. You can also send this notice if the tenant has breached another term of the lease, such as subletting without your permission. However, not all breaches give you the right to terminate the tenancy — consult a lawyer to be on the safe side.

When you give the tenant a notice to quit, you must calculate the time carefully. Where the tenancy is monthly (tenant pays per month), then you must give at least a month's notice. If it is yearly, then you must give six months' notice. In all cases, you should carefully examine the tenancy agreement to see how much notice you must give. If you accept rent during this time, or if you give the wrong notice, then you might have to start the process all over again.

The amount of rent payable will determine whether you start proceedings in the High Court or the Magistrate's Court for your district.

Where should I store my Will?

You should file the original Will in the Registry where it will remain sealed (closed) until needed. You should also give a copy to your Executor and let your closest relatives know who that Executor is.

What are the Executor's Duties?

Your Executor is responsible for paying your funeral expenses. The money comes out of your Estate in priority over all other gifts so it may be a good idea to set aside a sum of money for this in a designated account.

Your Executor will then gather in all money owed to you and pay all the bills that you owe. Once this process is complete, the Executor will distribute your property according to your Will.

What is IMPACT Justice?

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Improved Access to Justice in the Caribbean (IMPACT Justice Project)

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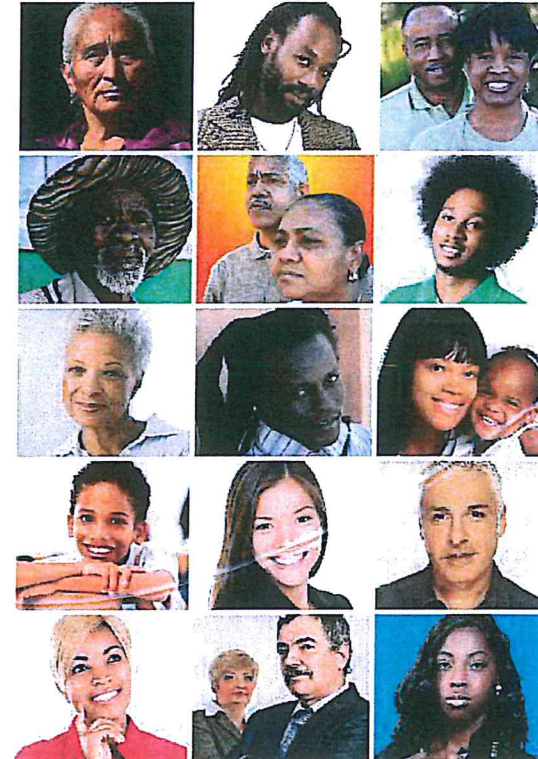
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**Making a Will
in
St. Vincent &
The Grenadines**



Why do I need a Will?

A Will lets you say exactly how you want to distribute your possessions. If you do not write a Will, then your property will be distributed according to the laws of intestacy — divided among your children or other relatives in equal shares, no matter how close (or not) you were to them in life.

A Will is especially important where you have persons (such as step-children) who are close to you that are not blood relations, since they are not entitled to benefit under the laws of intestacy.

What do I need?

Make sure you have the full names and, if possible, the addresses of the persons that you want to mention in your Will.

If you are over 70 or have been unwell, then you should obtain a medical certificate to show that you are mentally competent (of sound mind).

You will need two people to witness your signature. They do not need to read the Will but they do need to watch you sign and to watch each other sign. Neither your witnesses nor their spouses can

receive gifts in your Will, and any gift you leave them will then be invalid. Make sure that your witnesses write their full names and addresses along with their signatures so that they may be easily found when the time comes.

If your Will has more than one page, then you should number each page and sign at the bottom.

Can I change my Will?

Yes. You are free to change your mind at any time. You can dispose of your property during your life time, or change your mind about who you want to leave it to. Your Will does not take effect until after your death.

You must write a new Will when you marry because, except in very rare circumstances, your old Will becomes automatically void on marriage. Your Will does not become automatically void on divorce, however, and if your relationship breaks down, you should review your Will to ensure that it still reflects your wishes.

In fact, you should review your Will regularly, and especially if a beneficiary or executor dies, or if you part with any of the property mentioned in the Will or acquire new property.

You can cancel your Will by destroying all

copies, or by writing a new Will and using the words “I revoke all previous Wills”.

Once your Will has been signed and witnessed, you must never attempt to change it by crossing out words or writing on it. Instead, you can create a Codicil (supplemental Will), or simply create a new Will. Both the Codicil and the new Will must be properly signed and witnessed. The witnesses do not have to be the same as before.

How can I provide for my minor children?

You should appoint a Guardian for your minor children. This could be their other parent, or it could be a godparent or grandparent. This is especially important where you are worried that the children might lose contact with your family and friends after your death.

Since minors cannot own property, you should also appoint a Trustee who will hold and manage any money or property that you leave for your children. The Trustee will be responsible for using the money to pay for the children’s education and maintenance if necessary.

What are your rights?

- You are presumed innocent until proven guilty.
- You must be informed as soon as possible of the nature of the offence with which you have been charged.
- You must be given the opportunity to hire a lawyer and to speak to that lawyer privately.
- A person under 16 must be permitted to communicate with a parent or guardian.
- You should be given adequate time and facilities to prepare your defence.
- You must be brought before the court in a timely fashion.
- You cannot be forced to give a statement to the police, to answer questions, or to give evidence to the court.
- You can defend yourself before the court, either by yourself or with an attorney-at-law of your choice.
- You should have the opportunity to cross-examine any witnesses.
- You can have witnesses testify on your behalf before the court.
- If you cannot understand the language used at trial, you are entitled to the assistance of an interpreter at no cost to you.
- You may obtain a copy of the record of proceedings once you pay the relevant fees.
- The court cannot impose a penalty more severe than the maximum penalty prescribed by law.
- You cannot be tried for a criminal offence if you can show that you have already been pardoned for that offence.

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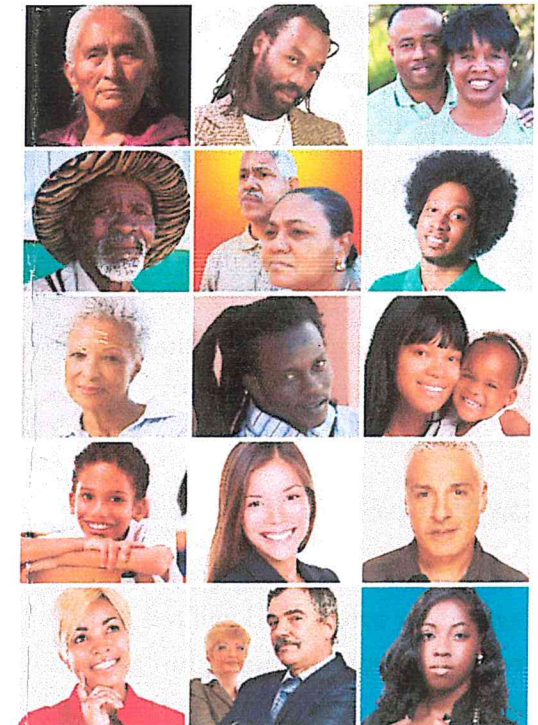
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What if you are Arrested?

When can I be arrested?

The police can arrest you if they have a warrant to do so. However, they can also arrest you without a warrant:

- if they have good reason to suspect that you have just committed an offence
- to stop you completing or repeating an offence
- to protect you or another person
- to stop you running away or
- because you have disobeyed a police direction, or assaulted or obstructed a police officer.

What happens on arrest?

The police officers will tell you that you are under arrest, and will tell you the reason. If you do not voluntarily accompany the officers, you may be physically subdued. However, the officers should only use such force as is reasonably necessary.

Force will not be justified if you do not resist arrest. Handcuffing is only

justified if it is reasonably necessary to stop you escaping or to prevent violence.

If you cannot hear or understand what the police are telling you, you should say so. You are entitled to an interpreter.

What happens next?

After your arrest, the police may:

- release you without charging you
- charge you and issue you with a notice to appear in the Magistrates Court
- charge you and release you on bail or
- hold you until you go to court

Once you are in custody, police can search you and your belongings and take property from you. They can also take 'identifying particulars' including fingerprints, handwriting samples, voiceprints, footprints, photos of tattoos and scars, body measurements and DNA samples.

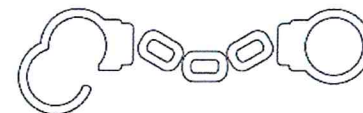
How long I can be held in custody?

The police can hold you for up to 24 hours before they have to charge you with a crime or release you. The police must release you if they don't have enough evidence to charge you.

If you are charged, the police may release you on station bail. Otherwise, they must take you to court as soon as possible which is usually as soon as the court opens after your arrest.

Receiving visitors or a change of clothes

Generally, you will not be allowed visitors other than a lawyer at the station, though someone may bring clothes for you, if agreed by the officers.

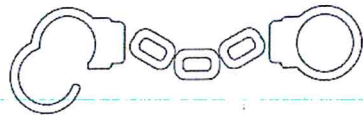


If you think your rights have been violated

- Remember: police misconduct cannot be challenged on the spot!
- Stay calm and be polite.
- Do not physically resist the officers.
- It is an offence to assault or obstruct police officers when they are carrying out their duties. The courts treat assault, or even attempted assault, of police officers very seriously. Just touching an officer could be considered a threat.
- Write down everything you remember, including officers' badge numbers, and police station. Get contact information for any witnesses. If you are injured, take photographs of your injuries and seek medical attention.
- Complain to the senior officer at the station and file a written complaint with the Police Complaints Commission.

What are your rights on being arrested?

- You are presumed innocent until proven guilty.
- You must be given an opportunity to consult a lawyer.
- You cannot be forced to give a statement to the police, to answer questions, or to give evidence to the court.
- You must be brought before the court in a timely fashion.
- You must be given adequate time and facilities to prepare your defence.
- You can defend yourself before the court, either by yourself or with an attorney-at-law of your choice.



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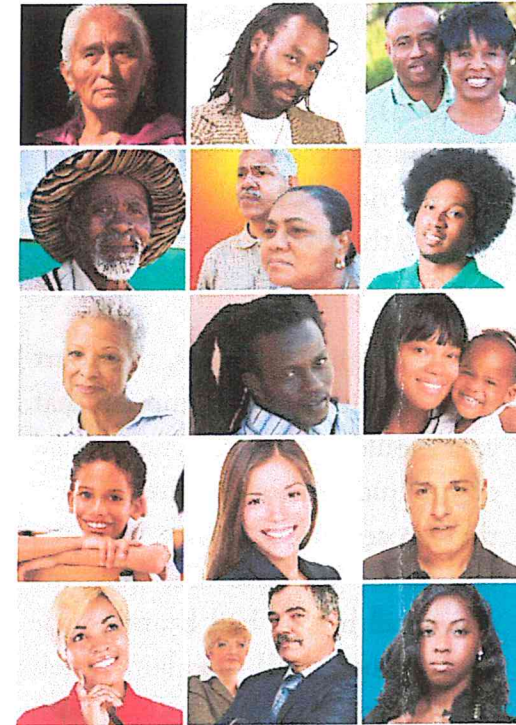
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WHAT IS BAIL?

What is Bail?

If you have been charged with a criminal offence, you can sometimes be released on the condition that you return to court at a later date. This is called being released on bail. For less serious offences (called 'summary' offences), you apply to the Magistrate's Court for bail. For more serious offences, you must apply to the High Court.

How it works

For non-capital offences, the court will start with the presumption that you should have bail. The judicial officer (judge or magistrate) will ask the prosecutor if there are any objections. If there are, then the court will hold a bail hearing. The prosecutors will explain their objections, and you and/or your lawyer will explain why you should be released.

The court considers the following factors:

- The seriousness of the crime

- The amount of evidence against you
- Whether you have had any previous charges
- Whether you are currently on bail and
- Whether you are in steady employment.

The court tries to form an impression of whether you are a "flight risk", that is, whether you are likely to run away and how easy it is for you to leave the country. The court will also try to determine whether you are likely to commit a crime while on bail.

If the judicial officer decides to grant bail, then he or she will decide on the amount and will ask you for a surety. Your surety can be a relative, friend or even a stranger. The surety signs a bond or pays a sum of money guaranteeing that you will return to court on the next date of hearing. If you fail to appear on that date, the surety will forfeit the sum of money.

In granting bail, the court can set conditions. For example, the judicial officer might make you hand in your passport or put you under a curfew. You might have to report to a police station

every day or a few times a week. You might have to stay away from a certain area or from certain people. If you do not stick to these conditions, you can be arrested again and "remanded" — taken to prison to wait for your court hearing. The surety can also withdraw, in which case you will have to go through the process again.

It is important to realize that the bail hearing is different from the hearing of the actual case. The judicial officer will not consider at this stage whether you are innocent or guilty. All that is being considered is whether you will appear on the next date of hearing, and whether you are likely to commit a crime if you are released on bail. If the judicial officer is not satisfied, then you will be remanded. You will have the opportunity to re-apply for bail as the case continues.

If you are refused bail by a magistrate, you are entitled to apply to the High Court judge for bail. The considerations will be the same.