



ANALYSIS

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2000, No. 7

An Act to amend the Criminal Procedure Act 1980-81 to provide for further enforcement of penalties

(10 April 2000)

BE IT ENACTED by the Parliament of the Cook Islands in Session assembled, and by authority of the same, as follows:

1. Short Title - This Act may be cited as the Criminal Procedure Amendment Act 2000 and shall be read together with and deemed part of the Criminal Procedure Act 1980-81 ("the principal Act").

Price \$3.00

2. Registrar may prohibit publication of names – The principal Act is amended by inserting the following new section –

"79B. Registrar may prohibit publication of names - (1) Notwithstanding section 25 of the Criminal Justice Act 1967 and subject to subsections (2) and (3) of this section, where the Registrar –

- (a) adjourns a hearing in accordance with section 79A; and
- (b) grants a defendant bail under section 83; or
- (c) remands the defendant in custody under section 81A,

the Registrar may, upon application being made by either the defendant or the informant, grant an order prohibiting the publication of the name of the defendant in any report relating to the proceedings against the defendant.

(2) Upon receiving an application under subsection (1) of this section, the Registrar shall not grant an order unless the defendant and the informant both agree to such order being made.

(3) Where the Registrar grants an order under this section –

- (a) the order shall have effect for a limited period of up to 28 days from the date on which the order is made, unless such order is vacated earlier by the Court; and
- (b) the Registrar shall not consider any subsequent application being made under this section in relation to the same proceedings."

3. When defendant may be remanded in custody – Section 81 of the principal Act is amended by –

- (a) inserting before the existing provision, the subsection designation "(1)";
- (b) inserting after subsection (1), the following new subsections -

"(2) Subject to subsection (3) of this section, the Registrar may exercise the power conferred by subsection (1) of this section.

(3) Where the Registrar remands a defendant in custody, the following provisions shall apply -

- (a) a single period of remand shall not exceed 8 days;
- (b) not more than two consecutive periods of remand may be imposed and neither of those periods shall exceed 8 days;
- (c) the defendant shall be brought before a Judge or Justice or three Justices sitting together at the earliest opportunity after the expiration of the period of remand and the Judge or Justice or three Justices sitting together shall determine what action (if any) under subsection (1) of this section should be taken in respect of the defendant."

4. Enforcement of penalties – Section 117 of the principal Act is amended by –

- (a) repealing subsection (5) and substituting the following subsection -

"(5) If the Court which adjudges any sum to be paid by a defendant on a conviction is of the opinion –

- (a) that the defendant has sufficient means to pay the sum adjudged forthwith; or

(b) that the defendant has no fixed place of residence; or
 (c) that for any other reason, having reference to the gravity of the offence, the character of the defendant, or other special circumstances, the fine should be paid forthwith,
 the Court may order the defendant to pay the fine forthwith.”

(b) inserting after subsection (5), the following new subsection -

“(5A) Where any order under subsection (5) of this section is not complied with, a Judge or Justice may –

- (a) direct that a warrant to seize property be issued; or
- (b) direct that an attachment order be made; or
- (c) direct that a warrant of commitment determined in accordance with subsection (8) of this section be issued forthwith.”

(c) repealing subsection (7) and substituting the following subsection -

“(7) Where any sum of money adjudged to be paid by a defendant on a conviction is not paid within 28 days thereafter, or within such time as may be allowed by the Court for payment thereof, a Judge or Justice may do all or any of the things set out in subsection (5A) of this section.”

5. New sections inserted – The principal Act is amended by inserting, after section 117, the following new sections -

“117A. Execution of warrant to seize property – (1) Every warrant to seize property issued under section 117(5A)(a) of this Act shall be directed either to any constable or bailiff by name or generally to every constable or bailiff and any such warrant may be executed by any constable or bailiff.

(2) For the purpose of executing any warrant to seize property, the constable or bailiff executing it may, after producing the warrant to any person in apparent charge of the premises, enter on any premises occupied by or under the control of the defendant, by force if necessary, if that constable or bailiff has reasonable cause to believe that property in respect of which the warrant is issued is on the premises.

(3) Where the fine is paid on the production of a warrant to seize property, the payment shall be recorded on the warrant and the warrant shall be of no further effect.

(4) Any constable or bailiff seizing a motor vehicle under a warrant to seize property may in the first place immobilise the vehicle by attaching to the vehicle any device for that purpose.

(5) Where property is seized under a warrant to seize property, the constable or bailiff shall forthwith deliver to the defendant, or leave for the defendant in a conspicuous place at the premises from which the property is seized, a notice –

- (a) listing all of the property seized; and
- (b) directing the defendant to notify the Registrar, within 7 days after the date of the seizure, whether the property listed is the property of the defendant and the name and address of any other person who has an interest in the property as owner or otherwise.

(6) All property seized under a warrant to seize property shall be delivered by the constable or bailiff to the Registrar who shall retain the property until the fine is paid, or the property is sold, or a Judge or Justice determines otherwise upon the hearing of a claim in respect of the property.

117B. Sale of property seized – Any property seized under a warrant to seize property may, after the expiration of 7 days from the date of seizure, if the fine remains unpaid and no claim has been made by a person other than the defendant in respect of the property, be sold at public auction on the orders of a Judge or Justice, and the purchaser of any property sold shall, by virtue of this section, obtain good title to the property notwithstanding the interests of the owner or any other person in the property prior to the sale.

117C. Claims to property seized – (1) Where a claim is made by a person other than the defendant in respect of property seized under a warrant to seize property, the claimant may –

- (a) deposit with the Registrar the amount determined by the Registrar as being the value of the property claimed; or
- (b) give the Registrar such security as the Registrar may require for the value of the property claimed,

pending the decision of a Judge or Justice upon the claim.

(2) Where a claimant fails to comply with paragraph (a) or paragraph (b) of subsection (1) of this section, the property may be sold as if no such claim had been made and the proceeds of the sale shall be held to abide the decision of a Judge or Justice upon the claim.

(3) Where a person other than the defendant has made a claim in respect of property seized under a warrant to seize property, or in respect of the value of the property or the proceeds of the sale, the Registrar shall issue a summons calling the defendant and the claimant before a Judge or Justice and, in that event, any action brought in respect of the claim shall be stayed.

(4) On the hearing of the summons, the Judge or Justice shall adjudicate upon the claim and shall make such order in respect of the claim and the costs of the proceedings as the Judge or Justice thinks fit.

117D. Procedure where property seized subject to hire purchase agreement, bill of sale, etc. – (1) Where any property is seized under a warrant to seize property and, before the sale of the property under section 117B of this Act, any person who (other than the defendant) claims an interest in the property –

- (a) as owner under a hire purchase agreement; or
- (b) under a bill of sale or otherwise as a security for a debt,

a Judge or Justice may order the sale of all or part of the property in such manner and on such terms as the Judge or Justice thinks fit, and may direct the application of the proceeds of the sale in such manner and on such terms as the Judge or Justice thinks fit.

(2) Where any property is sold under section 117B of this Act and a claim of the kind referred to in subsection (1) of this section is made before the proceeds of the sale are fully applied or distributed, a Judge or Justice may direct the application of the proceeds of the sale in such manner and on such terms as the Judge or Justice thinks fit where the Judge or Justice is satisfied that it would have been appropriate to have made an order under subsection (1) of this section before the sale.

117E. Application of proceeds of sale – Except as provided in any order made by a Judge or Justice under section 117D of this Act, any surplus from the sale of any property under section 117B of this Act after payment of the fine shall be paid to the defendant.

117F. Compensation to third party with interest in property sold – (1) Where –

- (a) a person (other than the defendant) suffers loss through the sale under section 117B of this Act of property in which the person had an interest; and
- (b) the defendant had not before the sale notified the Registrar of the person's interest in the property,

the Court may, on application of that person, order the defendant to pay to the person compensation in respect of the loss.

(2) Subsection (1) of this section shall not limit or affect any other remedy that a person may have in respect of loss referred to in that subsection.

117G. Return of property on payment of fine – Where any property is seized under a warrant to seize property and not sold, it shall, on payment of the fine, be returned to the person from whom it was seized or to the person apparently lawfully entitled to it.

117H. Offence to interfere with or rescue property seized – Every person commits an offence who interferes with, or rescues or attempts to rescue, any property knowing it to be seized under a warrant to seize property and is liable on conviction to imprisonment for a period not exceeding 3 months or to a fine not exceeding \$200, and may be arrested without warrant by any constable or bailiff.

117I. Protection of Registrar, Constable, etc. – No Registrar and no constable, bailiff or other officer shall be personally liable for any act done or omitted in good faith in the performance or purported performance of any power or function under this Act relating to the seizure of property or its subsequent disposal.

117J. Effect of attachment order – An attachment order under section 117(5A)(b) of this Act shall be dealt with and have effect as provided in sections 117K to 117N of this Act.

117K. Attachment order to be served on employer – (1) Where an attachment order is made, a copy of the order shall be served on the employer to whom it relates, either personally or by leaving it at the employer's place of residence or business, or by sending it by letter addressed to the employer at the employer's place of residence or business.

(2) Where service of an attachment order is effected by letter, then, in the absence of proof to the contrary, the order shall be deemed to have been served when it would have been delivered in the ordinary course of post, and in proving service it shall be sufficient to prove that the letter was properly addressed and posted.

(3) Every attachment order shall take effect when a copy of the order is served on the employer in accordance with this section.

117L. Operation of attachment order – (1) An attachment order shall direct that the money due and payable under the fine, by way of weekly payments of such amount as is specified in the attachment order, be a charge on any salary or wages that from time to time while the attachment order remains in force become due and payable by the employer to the defendant.

(2) The charge so created –

(a) shall accrue from week to week, and on such day of the week as is specified in the attachment order; and

(b) shall attach to all salary or wages that become due by the employer to the defendant at any time while the attachment order is in force, whether or not the contract of employment in respect of which the salary or wages so become due existed at the date of the attachment order; and

(c) shall prevail over and have priority to any assignment or charge created by the defendant (whether before or after the making of the attachment order against the defendant), and so that the attachment order shall have the same effect as if no such assignment or charge had been made or created.

(3) Every attachment order shall specify an amount below which the net earnings paid to the defendant shall not be reduced by reason of compliance with the order.

(4) Every attachment order shall apply for a fixed period stated in the order, and shall not apply for a period of more than 12 months after the date on which the fine was imposed.

117M. Liability of employer – (1) As long as an attachment order remains in force, the employer to whom it relates shall from time to time, whenever any money becomes due and payable by the employer to the defendant by way of salary or wages

(a) deduct from that money such sum as is sufficient to satisfy the charge on the money so far as the same has accrued before the day on which the salary or wages becomes due and payable; and

(b) not later than the 20th day of the month next after the month in which the deduction is made pay the amount so deducted to the Registrar specified in the attachment order.

(2) All sums so deducted are deemed to have been paid by the employer in satisfaction of the salary or wages payable by the employer to the defendant.

(3) All sums so deducted are deemed to have been paid by the defendant in satisfaction of the defendant's liability to pay the fine.

(4) Where a defendant in respect of whom an attachment order is in force leaves or is dismissed from the employment of the employer, the employer shall within 7 days notify the Registrar of the Court in which the attachment order was issued.

(5) Where the employer makes default in the payment of any money in satisfaction of any such charge, that money shall become a debt due by the employer to the Crown, and may be recovered by the Crown by action in any Court of competent jurisdiction.

(6) Every employer commits an offence and is liable on conviction to a fine not exceeding \$500 who fails without reasonable excuse to comply with subsection (1) of this section.

117N. Wrongful treatment of employee – (1) Every employer commits an offence and is liable to a fine not exceeding \$500 who dismisses any employee or alters any employee's position in the employer's business or undertaking to the employee's prejudice by reason of an attachment order having been served on the employer.

(2) In the prosecution for an offence against subsection (1) of this section in which it is proved that the employer, within 6 months after service on the employer of an attachment in respect of an employee, dismissed the employee or altered the employee's position in the employer's business or undertaking to the employee's prejudice, it shall be deemed to be proved that the action was taken by reason of the order having been served on the employer unless the employer proves to the contrary.

117O. Extent to which attachment orders bind the Crown – (1) In this section –

"Employing department" means –

- (a) a Government Department as defined in section 2 of the Ministry of Finance and Economic Management Act 1995-96;
- (b) in relation to a person to whom any retiring allowance or pension or other payment of a similar nature is payable out of the Government Superannuation Fund, the Ministry of Finance and Economic Management;

"Servant of the Crown" includes any person who is an employee of the Crown, or a director, member or employee of any agency of the Crown or any statutory or other body or corporation substantially owned or controlled by the Crown, or a member of an Island Council, but does not include a person who holds office by virtue of his being a member of Parliament or a Minister.

(2) Sections 117K to 117N of this Act shall bind the Crown to the extent of and subject to subsection (3) of this section.

(3) Where the defendant liable to pay a fine or related costs is a servant of the Crown, an attachment order may be made against the Crown as employer, and –

- (a) the employing department shall be named in the order as the employer; and
- (b) service of the order shall be effected on the permanent head of the employing department, and also on any officer of the Crown (described by the name of the office, the name of the department, and the place where the officer is stationed) specified in the order; and

- (c) service of the order shall be effected in accordance with section 117K of this Act, and, where service is effected by post, it shall be sufficient if the letter is addressed to the person to be served by that person's official title or any sufficient description without that person's personal name.

117P. Statement of salary or wages paid – For the purpose of determining the means of any defendant for the purpose of this part of this Act, a statutory declaration given by or on behalf of any person stating that the person paid a stated amount of salary or wages to the defendant or in respect of a stated period as the defendant's employer shall, in the absence of evidence to the contrary, be sufficient evidence of the facts stated in the declaration.

117Q. Restriction on imprisonment – (1) A Judge or Justice shall not direct the issue of a warrant of commitment or sentence a defendant to periodic detention under this part of this Act for non-payment of a fine unless an examination has been held into the means of the defendant to pay the fine, and the Judge or Justice is satisfied that all other methods of enforcing the fine have been considered or tried and that they are inappropriate or unsuccessful.

- (2) Nothing in subsection (1) of this section shall apply –
- (a) in the case of a warrant of commitment issued under section 117 of this Act imposing a period of imprisonment; or
 - (b) in the case of a defendant who, at the time of the sentence being imposed, is already undergoing a sentence of detention in a penal institution.

117R. Publication of name of fines defaulters – (1) This section applies if –

- (a) a defendant has been ordered by a Court (other than the Children's Court) to pay any fine; and
- (b) the defendant has not made any payment in respect of the fine for at least 14 days from the date in which the fine was imposed; and
- (c) either the fine is not subject to any arrangement under section 117(3) of this Act allowing payment of fine over a specified period or the fine is subject to such an arrangement but the defendant is not for the time being observing the terms of the arrangement; and
- (d) no name suppression order was made in respect of the defendant in the proceedings in which the fine was imposed; and
- (e) the Registrar has no reason to suspect that the defendant has died.

(2) If this section applies, the Registrar may cause notice of the fine defaulters to be published in a newspaper that is predominantly circulating in the country and the notice may include one or more of the following details -

- (a) the name of the defendant;
- (b) the defendant's current or last known address;
- (c) the total amount of fine outstanding.

(3) The Registrar shall take all reasonable steps to ensure that the particulars published are accurate and current.

117S. Remission of fine – The Registrar may make an order remitting any fine if –

- (a) the fine was imposed not less than 3 years before the date on which the Registrar makes the order remitting the fine; and
- (b) all steps necessary to recover the fine have been tried but have not been successful; and
- (c) in the case of a fine that includes reparation or compensation to another person, the Registrar has –
 - (i) obtained the consent of the other person to remit the fine; or
 - (ii) made reasonable efforts to find the other person and obtain his or her consent, and has not been able to find that person and obtain his or her consent.

117T. Review of Registrar's decision – (1) Any defendant or other person affected by any order or decision made by the Registrar under this Act may apply to a Judge or Justice for a review of the order or decision.

(2) On any such review the Judge or Justice may confirm, rescind, or vary the Registrar's order or decision and the order or decision shall have effect, or cease to have effect, accordingly."

This Act is administered by the Ministry of Justice