



ST. CHRISTOPHER AND NEVIS

CHAPTER 12.03 **DIVORCE ACT**

Revised Edition
showing the law as at 31 December 2009

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This edition contains a consolidation of the following laws—

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CHAPTER 12.03

DIVORCE ACT

AN ACT TO PROVIDE FOR THE DISSOLUTION AND NULLITY OF MARRIAGES; AND TO PROVIDE FOR RELATED OR INCIDENTAL MATTERS.

PART I

PRELIMINARY

Short title.

1. This Act may be cited as the Divorce Act.

Interpretation.

2. (1) In this Act, unless the context otherwise requires—

“child of the marriage” means a child of two spouses or former spouses who, at the material time—

- (a) is under the age of sixteen years; or
- (b) is sixteen years of age or over and under their charge but unable, by reason of sickness, disability or other cause, to withdraw from their charge or to obtain the necessaries of life;

“corollary relief proceedings” means a proceeding in a court in which either or both former spouses seek a support order or a custody order or both such orders;

“court”, in relation to any proceedings, means the High Court of Justice;

“custody” includes care, upbringing and any other incident of custody;

“custody order” means an order made under section 14(1) of this Act;

“divorce proceedings” means proceedings in a court in which either or both spouses seek a divorce alone or together with a support order or a custody order or both such orders;

“Minister” means the Minister with responsibility for Legal Affairs;

(Inserted by Act 5 of 2006)

“spouse” means either of a man or woman who are married to each other;

“support order” means an order made under section 13(2) of this Act;

“variation order” means an order made under section 15(1) of this Act;

“variation proceedings” mean proceedings in a court in which either or both spouses seek a variation order;

- (2) For the purposes of the definition of “child of the marriage” referred to in subsection (1), a child of two spouses or former spouses includes—

- (a) any child for whom they both stand in the place of parents; and
- (b) any child of whom one is the parent and for whom the other stands in the place of a parent.

(3) The use of the term “application” to describe proceedings under this Act in a Court shall not be construed as limiting the name under which and the form and manner in which the proceedings may be taken in the Court, and the name, manner and form of the proceedings in the Court shall be such as is provided for by the Matrimonial Causes Rules 1937 or such rules that the Chief Justice may make regulating the practice and procedure in the Court.

(Amended by Act 5 of 2006)

PART II

JURISDICTION OF THE COURT

Jurisdiction of the Court in divorce proceedings.

3. The Court may hear and determine any divorce or nullity proceedings if either spouse has been ordinarily resident in Saint Christopher and Nevis for at least one year immediately preceding the commencement of the divorce or nullity proceedings.

(Amended by Act 14 of 2006)

Jurisdiction of the Court in corollary relief proceedings.

4. The Court may hear and determine corollary relief proceedings where—

- (a) either a former spouse is ordinarily resident in Saint Christopher and Nevis at the commencement of the corollary relief proceedings; or
- (b) both spouses accept the jurisdiction of the court.

Jurisdiction of the Court in variation proceedings.

5. The Court may hear and determine any variation proceedings where—

- (a) either a former spouse is ordinarily resident in Saint Christopher and Nevis at the commencement of the variation proceedings; or
- (b) both spouses accept the jurisdiction of the Court.

Exercise of jurisdiction by a judge.

6. The jurisdiction conferred on the court by this Act to grant divorce shall be exercised by a judge of the court without a jury.

PART III

DIVORCE PROCEEDINGS

Grounds for Divorce and Divorce Procedure

Grounds for divorce.

7. (1) The court may, upon application by either or both spouses, grant a divorce to the spouse or spouses on the ground that there has been an irretrievable breakdown of their marriage.

(2) For the purposes of subsection (1), irretrievable breakdown in marriage shall be established if the following is proved, that is to say—

- (a) that the spouses have lived separate and apart for at least two years immediately preceding the commencement of the divorce proceedings and both spouses have made a statement that each of them believes that the marriage has broken down and both parties consent to the divorce;

(Amended by Act 5 of 2006)

- (b) that the spouses have lived separate and apart for at least five years immediately preceding the commencement of the divorce proceedings; or
- (c) that the spouse against whom the divorce proceedings are brought has since the celebration of the marriage—
 - (i) committed adultery;
 - (ii) treated the other spouse with physical or mental cruelty or other behaviour of such a kind as to render intolerable the continued habitation of the spouses; or
 - (iii) deserted the other spouse without cause for a period of one year or more.

(3) Before the court grants a divorce to a spouse in accordance with the provisions of this Act it shall first ensure that the provisions of sections 8 and 9 of this Act are complied with.

(4) For the purposes of subsection (2)(a)—

- (a) spouses shall be deemed to have lived separate and apart for any period during which they lived apart and either of them had the intention to live separate and apart from the other;
- (b) a period during which the spouses have lived apart shall not be considered to have been interrupted or terminated by reason only that—
 - (i) either spouse has become incapable of forming or having an intention to continue to live separate and apart or of continuing to live separate and apart of the spouse's own volition, if it appears to the Court that the separation would probably have continued if the spouse had not become so incapable; or
 - (ii) the spouses have resumed cohabitation during a period of, or periods totalling, not more than ninety days with reconciliation as its primary purpose.

Voidable Marriages.

8. (1) In addition to any other grounds on which a marriage is by law void or voidable, a marriage shall be voidable on the ground that—

- (a) the marriage has not been consummated as a result of either—
 - (i) the wilful refusal of the respondent spouse to consummate the marriage;
 - (ii) the existing impotence of the respondent spouse at the time of the marriage, where such impotence is apparent and manifest;
- (b) either spouse to the marriage was at the time of the marriage suffering from venereal disease in a communicable form;

- (c) that the respondent spouse was at the time of the marriage pregnant by some other person other than the applicant spouse; or
 - (d) in the case of marriages celebrated on or after the 1st day of December, 2005, that the consent of either of the spouses to the marriage was not a valid consent because—
 - (i) it was obtained by duress or fraud;
 - (ii) one spouse was mistaken as to the identity of the other spouse or as to the nature of the ceremony performed; or
 - (iii) the spouses to the marriage were, at the time of the marriage, of the same sex.
- (2) The Court shall not grant a decree of nullity in a case falling within subsection (1) paragraphs (a)(ii), (b) and (c), unless it is satisfied that—
- (a) the applicant spouse was at the time of the marriage ignorant of the facts alleged;
 - (b) proceedings were instituted within a year from the date of the marriage; and
 - (c) that sexual intercourse with the consent of the applicant spouse has not taken place since the discovery by the applicant spouse of the existence of the grounds for a decree.
- (3) Nothing in this section shall be construed as validating any marriage which is by law void, but with respect to which a decree of nullity has not been granted.
- (4) Any child born of a marriage avoided pursuant to paragraphs (b) or (c) of section (1) shall be a legitimate child of the parties thereto notwithstanding that the marriage is so avoided.

RECONCILIATION

Presumption of death of spouse.

9. (1) A spouse who alleges that reasonable grounds exist for supposing that the other spouse to the marriage is dead may present a petition to the Court to have it presumed that the other spouse is dead and to have the marriage dissolved, and the Court, if satisfied that such reasonable grounds exist, may make a decree of presumption of death and of dissolution of the marriage.

(2) In any such proceedings the fact that for a period of seven years or upwards the other spouse to the marriage has been continually absent from the applicant spouse, and the applicant spouse has no reason to believe that the other spouse has been living within that time, shall be evidence that he or she is dead until the contrary is proved.

(3) Section 13 shall apply to a decree under this section as it applies to a decree of divorce or nullity.

Duty of attorney-at-law.

10. (1) An attorney-at-law who undertakes to act on behalf of a spouse in any divorce proceedings shall—

- (a) draw to the attention of the spouse the provisions of this Act that have as their object the reconciliation of the spouses; and
- (b) discuss with the spouse the possibility of the reconciliation of the spouses and inform the spouse of the marriage counselling or guidance facilities known to him or her that might be able to assist the spouses to achieve a reconciliation, unless the circumstances of the case are of such nature that it would clearly not be appropriate to do so.

(2) An attorney-at-law who undertakes to act on behalf of a spouse in any divorce proceedings shall discuss with the spouse the advisability of negotiating the matters that may be the subject of a support order or a custody order and to inform the spouse of the mediation facilities known to him or her that might be able to assist the spouses in negotiating those matters.

(3) Every document presented to a court by an attorney-at-law that formally commences any divorce proceedings shall contain a statement by him or her certifying that he or she has complied with the provisions of this section.

Duty of Court to take into account the possibility of reconciliation.

11. (1) The Court shall, before considering any evidence in divorce proceedings, satisfy itself that there is no possibility of the reconciliation of the spouses, unless the circumstances of the case are of such a nature that it would clearly not be appropriate to do so.

(2) Where it appears to the court from the nature of the case, the evidence or attitude of either or both spouses, at any stage in the divorce proceedings, that there is a possibility of the reconciliation of the spouses, the court shall adjourn the proceedings to afford the spouses an opportunity to achieve reconciliation.

(3) The Court shall, where divorce proceedings are adjourned by virtue of subsection (2), with the consent of the spouses or in the discretion of the court, nominate—

- (a) a person with experience or training in marriage counselling or guidance; or
- (b) in special circumstances, some suitable person to assist the spouses to achieve a reconciliation.

Matters over which Court must be satisfied before granting divorce.

12. (1) The Court shall, in any divorce proceedings, do the following, that is to say—

- (a) satisfy itself that there has been no collusion in relation to the application for divorce, and to dismiss the application if it finds that there was collusion in presenting it;
- (b) satisfy itself that reasonable arrangements have been made for the support of any children of the marriage and, if such arrangements have not been made, to stay the granting of the divorce until such arrangements are made; and
- (c) where a divorce is sought in circumstances described in section 7(2)(c) satisfy itself that there has been no condonation or connivance on the part of the spouse bringing the proceedings, and to dismiss the application for divorce if that spouse has condoned or connived at the

act or conduct complained of unless, in the opinion of the Court, the public interest would be better served by the divorce.

(Amended by Act 18 of 2007)

(2) Any act or conduct that has been condoned is not capable of being revived so as to constitute a circumstance described in section 7(2)(b).

(3) For the purposes of this section, a continuation or resumption of cohabitation during a period of, or periods totalling, not more than ninety days with reconciliation as its primary purpose shall not be considered to constitute condonation.

(4) Subject to subsection (5), in this section, “collusion” means—

- (a) an agreement or conspiracy to which an applicant for divorce is either directly or indirectly a party for the purpose of subverting the administration of justice; and
- (b) any agreement, understanding or arrangement to fabricate or suppress evidence to deceive the Court.

(5) The agreement referred to in subsection (4) shall not include an agreement which provides for separation between the spouses, financial support, division of property or the custody of any child of the marriage.

DISSOLUTION OF MARRIAGE

Date on which divorce takes effect.

13. (1) Subject to the provisions of this section, a divorce or annulment granted by the Court shall become effective on the thirty-first day after the day on which the judgment granting the divorce or annulment is delivered.

(Amended by Act 14 of 2006)

(2) Where, on or after delivering the judgment granting the divorce or annulment—

- (a) the Court is of the opinion that by reason of special circumstances the divorce or annulment should take effect earlier than the date specified in subsection (1); and
- (b) the spouses agree and undertake that no appeal from the judgment will be made, or any appeal that was made has been abandoned,

the Court may order that the divorce or annulment becomes effective at such earlier time as it considers appropriate.

(Amended by Act 14 of 2006)

(3) A divorce or annulment in respect of which an appeal is pending at the end of the period referred to in subsection (1), unless made void on appeal, becomes effective on the expiration of the time fixed by law for instituting an appeal from the decision on that appeal or any subsequent appeal, if no appeal has been instituted within that time.

(Amended by Act 14 of 2006)

(4) For the purposes of subsection (3), the time fixed by law for instituting an appeal from a decision on an appeal includes any extension thereof fixed pursuant to law before the expiration of that time or fixed thereafter on an application instituted before the expiration of that time.

(5) Notwithstanding any other law, the time fixed by law for instituting an appeal from a decision referred to in subsection (3) may not be extended after the expiration of that time except on an application instituted before the expiration of that time.

(6) A divorce or annulment in respect of which an appeal is made to the appellate court, becomes effective on the day on which the judgment on appeal is delivered unless the decision of that court is to the contrary.

(Amended by Act 14 of 2006)

(7) Where a divorce or annulment becomes effective in accordance with the provisions of this section, a judge or officer of the Court that delivered the judgment granting the divorce or annulment or, where that judgment was appealed, of the appellate Court that delivered the judgment on final appeal, shall, on request, issue to any person a certificate in the form specified in the schedule that a divorce or annulment granted under this Act dissolved the marriage of the specified persons effective as of a specified date.

(Amended by Acts 14 of 2006 and 18 of 2007)

(8) A certificate referred to in subsection (7), or a certified copy of that certificate is conclusive proof of the facts so certified without proof of the signature or authority of the person appearing to have signed the certificate.

(Amended by Act 14 of 2006)

Dissolution of marriage.

14. When a divorce or annulment granted under this Act becomes effective in accordance with the provisions of section 13, the marriage of the spouses shall stand dissolved or annulled, as the case may be,

(Amended by Act 14 of 2006)

PART IV

PROTECTION OF RESPONDENT AND CHILDREN

Order for support.

15. (1) A court of competent jurisdiction may, upon an application by either or both spouses, make an order requiring one spouse to secure or pay, or to secure and pay, such lump sum or periodic sums, or such lump sum and periodic sums as the court thinks reasonable for the support of—

- (a) the other spouse;
- (b) any or all children of the marriage;
- (c) the other spouse and any or all children of the marriage.

(2) Where an application is made under subsection (1), the court may, upon an application by either or both spouses, make an interim order requiring one spouse to secure or pay, or to secure and pay, such lump sum or periodic sums, or such lump sum and periodic sums as the court thinks reasonable for the support of—

- (a) the other spouse;
- (b) any or all children of the marriage;

- (c) the other spouse and any or all children of the marriage pending determination of the application under subsection (1).
- (3) The Court may make an order under this section for a definite or indefinite period or until the happening of a specified event, and may impose such other terms, conditions or restrictions in connection with the order as the Court deems fit and just.
- (4) The Court shall, in making an order under this section, take into consideration the condition, means, needs and other circumstances of each spouse and of any child of the marriage for whom support is sought, including—
 - (a) the length of time the spouses cohabited;
 - (b) the functions performed by the spouse during cohabitation;
 - (c) any order, agreement or arrangement relating to support of the spouse or child.
- (5) In making an order under this section, the Court shall not take into consideration any misconduct of a spouse in relation to the marriage.
- (6) An order made under this section that provides for the support of a spouse shall—
 - (a) recognise any economic advantages or disadvantages to the spouses arising from the marriage or its breakdown;
 - (b) apportion between the spouses any financial consequences arising from the care of any child of the marriage over and above the obligation apportioned between the spouses pursuant to subsection (7);
 - (c) relieve any economic hardship of the spouses arising from the breakdown of marriage; and
 - (d) in so far as practicable, promote the economic self-sufficiency of each spouse within a reasonable time.
- (7) An order made under this section that provides for the support of a child of the marriage should—
 - (a) recognise that the spouses have a joint financial obligation to maintain the child; and
 - (b) apportion that obligation between the spouses according to their relative abilities to contribute to the performance of the obligation.

(Inserted by Act 18 of 2007)

Order for custody.

- 16.** (1) A Court may, on application by either or both spouses or by any person, make an order respecting the custody of or access to, or the custody of and access to, any or all children of the marriage.
- (2) The Court may, upon application by either or both spouses or by any person, where an application is made under subsection (1), make an interim order respecting the custody of or the access to, or the custody of and access to, any or all the children of the marriage pending determination of the application under subsection (1).
- (3) Notwithstanding subsections (1) and (2), a person, other than a spouse, shall not make an application under any of those subsections without leave of the Court.

(4) The Court may make an order under this section granting custody of, or access, to, any or all children of the marriage to any one or more persons.

(5) Unless the Court otherwise orders, a spouse who is granted access to a child of the marriage has the right to make inquiries, and to be given information, as to the health, education and welfare of the child.

(6) The Court may make an order under this section for a definite or indefinite period or until the happening of a specified event, and may impose such other terms, conditions or restrictions in connection with the order as the Court thinks fit and just.

(7) Without limiting the generality of subsection (6), the Court may include in an order made under this section a term or condition requiring any person who has custody of the child of the marriage and who intends to change the place of residence of the child to notify, at least thirty days before the change or within such other period before the change as the Court may specify, any person who is granted access to the child of the change, the time at which the change will be made and the new place of residence of the child.

(8) The Court shall, in making an order under this section, take into consideration only the best interests of the child of the marriage as determined by reference to the condition, means, needs and other circumstances of the child.

(9) The Court shall not, in making an order under this section, take into consideration the past conduct of any person unless the conduct is relevant to the ability of that person to act as a parent of a child.

(10) In making an order under this section, the Court shall give effect to the principle that a child of the marriage should have as much contact with each spouse as is consistent with the best interests of the child and, for that purpose, shall take into consideration the willingness of the person for whom custody is sought to facilitate such contact.

Order for variation, etc.

17. (1) The Court may make an order varying, rescinding or suspending, prospectively or retroactively—

- (a) a support or any provision of the order on application by either or both former spouses; or
- (b) a custody order or any provision of the order on application by either or both former spouses or by any other person.

(2) A person, other than a former spouse, shall not make an application under subsection (1)(b) without leave of the Court.

(3) The Court may include in a variation order any provision that could, under this Act, have been included in the order in respect of which the variation order is sought.

(4) The Court shall, before it makes a variation order in respect of a support order, satisfy itself that there has been a change in the condition, means, needs or other circumstances of either former spouse or of any child of the marriage for whom support is or was sought occurring since the making of the support order or the last variation order made in respect of that order, as the case may be, and, in making the variation order, the Court shall take into consideration that change.

(5) The Court shall, before it makes a variation order in respect of a custody order, satisfy itself that there has been a change in the condition, means, needs or other circumstances of the child of the marriage occurring since the making of the

custody order or the last variation order made in respect of that order, as the case may be, and, in making the variation order, the Court shall take into consideration only the best interests of the child as determined by reference to the change.

(6) In making a variation order under this section, the Court shall not take into consideration any conduct that could, under this Act, have been considered in making the order in respect of which the variation order is sought.

(7) A variation order varying a support order that provides for the support of a former spouse shall—

- (a) recognise any economic advantages or disadvantages to the spouses arising from the marriage or its breakdown;
- (b) apportion between the former spouses any financial consequences arising from the care of any child of the marriage over and above the obligation apportioned between the spouses pursuant to subsection (8);
- (c) relieve any economic hardship of the former spouses arising from the breakdown of marriage; and
- (d) in so far as practicable, promote the economic self-sufficiency of each spouse within a reasonable time.

(8) A variation order varying a support order that provides for the support of a child of the marriage shall—

- (a) recognise that the former have a joint financial obligation to maintain the child;
- (b) apportion that obligation between the former spouses according to their relative abilities to contribute to the performance of the obligation.

(9) In making a variation order varying a custody order, the Court shall give effect to the principle that a child of the marriage should have as much contact with each former spouse as is consistent with the best interests of the child and, for that purpose, where the variation order would grant custody of the child to a person who does not currently have custody, the Court shall take into consideration the willingness of the person for whom custody is sought to facilitate such contact.

(10) Notwithstanding subsection (1), where a support order provides for support for a definite period or until the happening of a specified event, the Court may not, on an application instituted after the expiration of that period or happening of the event, grant a variation order for the purpose of resuming that support unless the Court is satisfied that—

- (a) a variation order is necessary to relieve economic hardship arising from a change described in subsection (4) that is related to the marriage; and
- (b) the changed circumstances, had they existed at the time of making the support order or the last variation order made in respect of that order, as the case may be, would likely have resulted in a different order.

(11) Where the Court makes a variation order in respect of a support order or a custody order made by another Court, it shall send a copy of the variation order, certified by a judge or officer of the Court, to that other Court.

Enforcement of orders.

18. An order made under sections 13, 14, and 15 may be enforced in like manner as an order of the Court or in any other manner provided for by the laws of Saint Christopher and Nevis.

PART V

GENERAL PROVISIONS

Appeals.

19. (1) Subject to subsections (2) and (3), an appeal shall lie to the Court of Appeal from any judgment or order, whether final or interim, rendered or made by the Court under this Act.

(2) No appeal shall lie from the judgment of the Court granting a divorce on or after the day on which the divorce takes effect.

(3) No appeal shall lie from an order made under this Act if the appeal is made after thirty days from the day on which the order was made, except that the appellate court or a judge of that court may, on special grounds, either before or after the expiration of that time, by order extend that time.

(4) Except as otherwise provided by this Act or the rules or regulations, an appeal under this section shall be asserted, heard and decided according to the ordinary procedure governing appeals to the Court of Appeal from Court rendering the judgment or making the order being appealed from.

Powers of appellate court.

20. The appellate court may—

(a) dismiss the appeal; or

(b) allow the appeal and—

(i) render the judgment or make the order that ought to have been made, including such order or such further order or other order as it deems just; or

(ii) order a new hearing where it deems it necessary to do so in order to correct a substantial wrong or miscarriage of justice.

Proof of signature or office.

21. A document offered in any proceedings under this Act that purports to be certified or sworn by a judge or an officer of the Court shall, unless the contrary is proved, be proof of the appointment, signature or authority of the judge or officer and, in case of a document purporting to be sworn, of the appointment, signature or authority of the person before whom the document purports to be sworn.

Rules.

22. The Chief Justice may generally make rules relating to any proceedings that may be brought under this Act in the Court or Court of Appeal, and without prejudice to the generality of the foregoing he or she may make rules—

- (a) regulating the practice of and procedure in the Court, including the addition of persons as parties to the proceedings;
- (b) respecting the conduct and disposition of any proceedings under this Act without oral hearing;
- (c) regulating the sittings of the Court;
- (d) respecting the fixing and awarding of costs;
- (e) prescribing and regulating the duties of officers of the Court; and
- (f) prescribing and regulating any other matter considered expedient to attain the ends of justice and carry into effect the provisions of this Act.

Fees.

23. The Minister responsible for Legal Affairs may, by Order, prescribe fees to be paid by any person to whom services are provided under this Act.

Savings.

24. (1) Notwithstanding the repeal of the Matrimonial Causes Act, Cap. 50, the Matrimonial Causes Rules (1937 No.1113) shall continue in force with such modifications as are necessary to bring the rules in conformity with the provisions of this Act until new rules are made under section 20 of this Act.

(2) Notwithstanding the repeal of the Matrimonial Causes Act, proceedings that were commenced under that Act, prior to the coming into force of this Act shall continue under the provisions of that Act.

(Inserted by Act 5 of 2006)

Transitional provisions.

25. Proceedings may be commenced under this Act notwithstanding that the material facts giving rise to the proceedings or to jurisdiction over the proceedings occurred wholly or partly before the coming into force of this Act.

SCHEDULE

(Section 11)

CERTIFICATE OF DIVORCE

(Court seal)

(Court file No.)

This is to certify that the marriage solemnised or celebrated on the.....
day of atbetween
..... andwas
dissolved by a judgment of this court dated the.....
which became effective on

Date

Registrar

at

(Schedule Inserted by Act 18 of 2007)
