

CHAPTER 214

FAMILY LAW 1981-29

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2004-10

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The following Law Revision Order or Orders authorized the insertion and removal of pages as the case may be under the Law Revision Act Cap.2 now repealed:

1985

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Guide to symbols in historical notes:

- indicates an amendment made by an Act

/ indicates an amendment made by statutory instrument

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**BARBADOS****FAMILY LAW
1981-29**

An Act to reform the law relating to the dissolution and nullity of marriage, judicial separation and restitution of conjugal rights and to certain other related matters, and to provide for counselling with a view to facilitating reconciliation in matrimonial causes; and, in relation thereto, for matters connected with the parental rights and the custody and guardianship of children.

[Commencement: 1st February, 1982]

CITATION**Short title**

1. This Act may be cited as the *Family Law Act*.

INTERPRETATION**Definitions**

- 2.(1) In this Act,
“adopted”, in relation to a child, means adopted under the law of any place, whether in or outside of Barbados, relating to the adoption of children;

“approved marriage counselling organisation” means a marriage counselling organisation approved by the Attorney General under section 7, and includes the Family Services Division;

“cohabitation agreement” has the meaning given to that expression for the purposes of Part VI;

“court”, in relation to any proceedings, means the court exercising jurisdiction in those proceedings by virtue of this Act;

“decree” means a decree, judgment or order, and includes a *decree nisi* and an order dismissing an application or refusing to make a decree or order;

“Family Services Division” means the division of the Welfare Department responsible for providing social work services to the family;

“financial matters”, in relation to the parties to a marriage or a union other than a marriage, means matters in respect of

- (a) the maintenance of one of the parties;
- (b) the property of those parties or of either of them; or
- (c) the maintenance of the children of the marriage or of the union other than a marriage;

“financial or custodial proceedings” means proceedings of a kind mentioned in paragraphs (d) to (i) and (k) of the definition “matrimonial cause”;

“former Act” means the *Matrimonial Causes Act*, Cap. 221;

“made”, in relation to a decree, being a judgment, means given;

“maintenance” means the provision of money, property and services, and includes

- (a) in respect of a child, provision for the child’s education and training to the extent of the child’s ability and talents; and
- (b) in respect of a deceased person, the cost of the deceased person’s funeral;

“maintenance agreement” means an agreement in writing made, whether before or after 1st February, 1982, between the parties to a marriage, being an agreement in respect of financial matters, whether or not there are other parties to the agreement, and whether or not it provides for other matters, and includes any such agreement that varies an earlier maintenance agreement;

“marriage counsellor” means

- (a) an officer attached to the Family Services Division;
- (b) a person authorised by an approved marriage counselling organisation to offer marriage counselling services on behalf of that organisation;
- (c) a person authorised under the rules to offer marriage counselling services;

“matrimonial cause” means

- (a) proceedings between the parties to a marriage for a decree of
 - (i) dissolution of marriage, or
 - (ii) nullity of marriage;
- (b) proceedings for a declaration as to the validity of a marriage or of the dissolution or annulment of a marriage by decree or otherwise;
- (c) proceedings for a declaration of presumption of death;
- (d) proceedings between the parties to a marriage in respect of
 - (i) the maintenance of one of the parties to a marriage, or
 - (ii) the custody, guardianship or maintenance of, or access to, a child of the marriage;
- (e) proceedings between the parties to a marriage in respect of the property of those parties, or either of them, being proceedings in relation to concurrent, pending or completed proceedings for principal relief between the parties;

- (f) proceedings by or on behalf of a child of a marriage against one or both of the parties in respect of the maintenance of the child;
- (g) proceedings between the parties to a marriage for the approval by the court of a maintenance agreement or for the revocation of such an approval, or for the registration of a maintenance agreement;
- (h) proceedings between the parties to a marriage for an order or injunction in circumstances arising out of the marital relationship;
- (i) proceedings by or on behalf of a child of a union other than a marriage against one or both of the parties to such a union in respect of the maintenance of the child; or
- (j) any other proceedings, including proceedings in respect of the enforcement of a decree or the service of process, in relation to concurrent, pending, or completed proceedings of a kind mentioned in paragraphs (a) to (i) and (k) of this definition, including proceedings of such a kind pending at, or completed before 1st February, 1982;

and includes the following:

- (k) proceedings between the parties to a union other than a marriage in respect of
 - (i) the maintenance of one of the parties;
 - (ii) the custody, guardianship or maintenance of, or access to, a child of such a union;
 - (iii) the approval by the court of a cohabitation or separation agreement or of the revocation of such an approval or of the registration of such an agreement; or
 - (iv) an order or injunction in circumstances arising out of their relationship.

“overseas maintenance agreement” means a maintenance agreement that has force and effect in a prescribed overseas country by reason of the registration

of the agreement, or the taking of any other action in relation to the agreement, under the law of that country, and includes a cohabitation agreement or separation agreement;

“prescribed overseas country” means a country that is declared by an order made by the Attorney-General to be a prescribed overseas country for the purposes of this Act;

“proceedings” means a proceeding in court, whether between parties to a marriage or not, and includes cross-proceedings or an incidental proceeding in the course of or in connection with a proceeding;

“proceedings for principal relief” means proceedings under this Act of a kind mentioned in paragraph (a), (b) or (c) of the definition “matrimonial cause”;

“property”, in relation to the parties to a marriage or union other than a marriage or either of them, means property to which those parties are, or that party is, as the case may be, entitled in possession or reversion;

“Registrar” means the Registrar of the Supreme Court;

“separation agreement” has the meaning given to that expression for the purposes of Part VI;

“separation order” means a decree, not being a decree of dissolution or of nullity of marriage or for a judicial separation, having the effect of relieving a party to a marriage from any obligation to cohabit with the other party to the marriage;

“union other than a marriage” or “union” has the meaning given to that expression for the purposes of Part V.

(2) A reference in this Act to a party to a marriage includes a reference to a person who was a party to a marriage that has been dissolved or annulled in Barbados or elsewhere.

Children of the marriage

3.(1) For the purposes of the application of this Act in relation to a marriage

- (a) a child adopted since the marriage by the husband and wife; or
- (b) a child of the husband and wife born before the marriage,

is deemed to be a child of the marriage, and a child of the husband and wife (including a child born before the marriage) who has been adopted by another person or other persons is deemed not to be a child of the marriage.

(2) For the purposes of the application of section 42 in relation to a marriage

- (a) a child adopted since the marriage by the husband or wife with the consent of the other; or
- (b) a child of either the husband or wife (including an ex-nuptial child of either of them) if, at the relevant time, the child was ordinarily a member of the household of the husband and wife,

is deemed to be a child of the marriage.

(3) Relevant time means for the purposes of paragraph (b) of subsection (2),

- (a) the time immediately preceding the time when the husband and wife separated; or
- (b) if they have separated on more than 1 occasion, the time immediately preceding the time when they last separated before the institution of the proceedings for dissolution of the marriage.

(4) Subsection (1) applies in relation to a purported marriage that is void as if the purported marriage were a marriage.

Polygamous marriages

4. For the purpose of proceedings under this Act, a union in the nature of a marriage that is, or has at any time, been polygamous, being a union entered into in a place outside Barbados, is deemed to be a marriage.

Application

5. This Act applies, except as otherwise provided, to proceedings instituted on or after 1st February, 1982.

PART I

MARRIAGE COUNSELLING ORGANISATIONS

Family Services Division

6. Marriage counselling services as a facility for reconciliation in matrimonial causes shall continue to be provided by the Family Services Division of the Welfare Department under the direction of the Chief Welfare Officer for the purposes of this Act.

Approval of marriage counselling organisation

7.(1) Notwithstanding section 6, any voluntary organisation may apply to the Attorney-General to be registered as an approved marriage counselling organisation.

(2) The Attorney-General may, after consultation with the appropriate Ministry, approve the registration of any voluntary organisation as a marriage counselling organisation where he is satisfied that

(a) the organisation is willing and able to engage in marriage counselling;
and

(b) marriage counselling constitutes or will constitute the whole or a substantial part of its activities.

(3) The Attorney-General may attach such conditions to the approval for the registration of a voluntary organisation under this section as he thinks fit, and may vary or revoke such conditions accordingly.

(4) For the purposes of subsection (2), “appropriate Ministry” means the Ministry that is charged with the responsibility of providing Social Work Services to the family.

Grounds for revocation

8. The Attorney-General may revoke the registration of an approved marriage counselling organisation where

- (a) the organisation has not complied with any of the conditions attaching to the grant of the approval for registration;
- (b) the organisation has not furnished a statement or report as required by section 10; or
- (c) he is satisfied that the organisation is not adequately carrying out marriage counselling.

List of approved organisations to be published

9. Notice of the approval for registration of an organisation, and any revocation of that approval, must be published in the *Official Gazette*.

Financial aid to approved marriage counselling organisations

10.(1) The Attorney-General may, upon such conditions as he thinks fit, grant to an approved marriage counselling organisation in respect of its marriage counselling services such financial assistance as he may determine, out of moneys voted for the purpose by Parliament.

(2) An approved marriage counselling organisation shall, not later than 31st December in each calendar year, furnish to the Attorney-General

- (a) an audited financial statement in respect of any financial assistance granted under this section; and
- (b) a report on its marriage counselling activities, including information as to the number of cases dealt with by the organisation during the year.

(3) Where the Attorney-General is satisfied that it would be impracticable for an organisation to comply with the requirements of subsection (2), or that the application of these requirements to an organisation would be unduly onerous, he may by writing under his hand exempt the organisation, wholly or in part, from those requirements.

PART II COUNSELLING AND RECONCILIATION

Definition

- 11.** In this Part, “appropriate officer” means
- (a) a probation officer or welfare officer, as the circumstances require, or
 - (b) in relation to a court of summary jurisdiction, a person performing the functions of clerk of court.

Conciliation

12.(1) Where proceedings for a dissolution of marriage have been instituted, or financial or custodial proceedings have been instituted by a party to a subsisting marriage, it is the duty of the Judge or magistrate constituting the court to give consideration, from time to time, to the possibility of a reconciliation of the parties.

- (2) If at any time during the proceedings it appears to the Judge or magistrate from the evidence, or the attitude of the parties, or either of them, that there is a reasonable possibility of a reconciliation, the Judge or magistrate may
- (a) adjourn the proceedings to afford the parties an opportunity of considering a reconciliation; or
 - (b) with the consent of the parties, interview them in chambers, with a view to effecting a reconciliation.

- (3) Where a Judge or magistrate adjourns proceedings in accordance with subsection 2(a), he may, if he thinks it desirable to do so, advise the parties
- (a) to attend upon a marriage counsellor or an approved marriage counselling organisation; or
 - (b) to request the Registrar or other appropriate officer to nominate some suitable person or organisation to assist them in considering a reconciliation.
- (4) If, after an adjournment has been granted under subsection (2), either of the parties requests that the hearing be proceeded with, the Judge or magistrate shall resume the hearing as soon as practicable.
- (5) Where the court makes an order or grants an injunction under section 91, in respect of the parties to a marriage, the court shall, if in its opinion it is in the interests of the parties or of the children of the marriage to do so, direct or advise either or both of the parties to consult a marriage counsellor.
- (6) A failure to comply with any direction or advice given under subsection (5) does not constitute a contempt of court.
- (7) Where a court is of the opinion that counselling may assist the parties to a marriage to improve their relationship to each other and to any child of the marriage, it may advise the parties to consult a marriage counsellor or an approved marriage counselling organisation, and if it thinks it desirable to do so, adjourn the proceedings before it for the purpose.
- (8) Where an application for the dissolution of a marriage discloses that the parties have been married for less than 2 years preceding the date of the filing of the application, the court shall not hear the proceedings unless the court is satisfied that
- (a) the parties have considered a reconciliation with the assistance of a marriage counsellor, an approved marriage counselling organisation, or some suitable person or organisation nominated by the Registrar or other appropriate officer; or

- (b) that there are special circumstances requiring the hearing to proceed.

Duty of attorneys-at-law to promote reconciliation

13.(1) In all matters in issue between the parties to a marriage that are likely to become or are the subject of proceedings, every attorney-at-law representing a party in those proceedings shall give consideration, from time to time, to the possibility of a reconciliation of the parties; and every such attorney-at-law shall

- (a) ensure that the party for whom he is acting is aware of the facilities that exist for promoting a reconciliation; and
- (b) take such steps as in the opinion of the attorney-at-law may assist in promoting a reconciliation.

(2) An attorney-at-law who

- (a) is acting for a party; and
- (b) applies to the court to have set down for hearing any matter in issue under this Act, or any other Act, or any other Act relating to the custody or guardianship of minors,

shall certify on the application that he or she has carried out the responsibilities imposed by subsection (1).

Notice seeking counselling facilities

14.(1) A party to a marriage may file in the court a notice stating that he or she intends to seek the assistance of the counselling facilities of the court.

(2) Where a notice is filed under subsection (1), the Registrar or other appropriate officer, as the case may be, may arrange for the parties to be interviewed by a marriage counsellor for the purpose of assisting the parties with a view to a reconciliation or the improvement of their relationship to each other and to the children of the marriage.

Power to advertise counselling facilities

15.(1) The Registrar or other appropriate officer may advertise the existence and availability of the counselling and welfare facilities of the court.

(2) A party to a marriage may seek the assistance of the counselling facilities of the court, and the Registrar, or other appropriate officer, as the case may be, shall, as far as practicable, make those facilities available.

Certain documents to be provided

16. The rules may provide for the furnishing to a person proposing to institute proceedings under this Act, and in appropriate cases to the other party to the marriage, of documents setting out

- (a) the legal and possible social effects of the proposed proceedings (including the consequences for the children of the marriage); and
- (b) the counselling and welfare facilities available within the Family Services Division and elsewhere.

Admissions made to marriage counsellors

17.(1) No evidence of anything said or of any admission made at a conference with a person to whom this section applies acting in the capacity referred to in subsection (4) is admissible in any court.

(2) Subject to subsection (3), any person who discloses to any other person anything said or any admission made at a conference with that first-mentioned person acting in the capacity referred to in subsection (4) is guilty of an offence and liable on summary conviction to a fine of \$1 000.

(3) Nothing in subsection (2) shall be construed as applying to any disclosure by a person to whom this section applies that is necessary for the proper discharge of the functions of that person.

- (4) This section applies to
- (a) a marriage counsellor;
 - (b) a person nominated, or acting on behalf of an organisation nominated, in accordance with paragraph (b) of section 12(3) or paragraph (a) of section 12(8); or
 - (c) a person to whom a party to a marriage has been referred by a marriage counsellor, or by a person referred to in paragraph (b), for medical or other professional consultation.

Oath or affirmation of secrecy

18. Before entering upon the performance of his functions, a marriage counsellor shall make, before a person authorised by law to take affidavits, an oath or affirmation of secrecy in accordance with the form prescribed in the First Schedule.

PART III

JURISDICTION IN MATRIMONIAL CAUSES

Jurisdiction of High Court

- 19.(1)** The High Court has jurisdiction in
- (a) matrimonial causes instituted or continued under this Act;
 - (b) matters concerning
 - (i) the adoption of children, or
 - (ii) the guardianship, custody or maintenance of children; and
 - (c) matters in respect of which jurisdiction is conferred on it by any other enactment.

(2) Subject to such restrictions and conditions, (if any) as are contained in the rules, the jurisdiction of the High Court may be exercised in relation to persons or things outside Barbados.

Jurisdiction in matrimonial causes

20.(1) Subject to this Part, a person may institute

- (a) a matrimonial cause under this Act in the High Court; or
- (b) a matrimonial cause under this Act, not being proceedings for principal relief, in a court of summary jurisdiction.

(2) Proceedings for a decree of dissolution of marriage may be instituted under this Act by a party to the marriage if, at the date on which the application for the decree is filed in the court, either party to the marriage

- (a) is a citizen of Barbados;
- (b) is domiciled in Barbados;
- (c) is a permanent resident of Barbados within the meaning of the *Immigration Act*, Cap. 190; or
- (d) is an immigrant of Barbados within the meaning of the *Immigration Act*, Cap. 190, and has resided in Barbados continuously for 1 year immediately preceding that date.

(3) Proceedings within paragraphs (a) to (i) and (k) of the definition of “matrimonial cause” in section 2(1), other than proceedings for a decree of dissolution of marriage, may be instituted under this Act, if

- (a) either party to the proceedings is a citizen of Barbados at the date on which the proceedings are instituted in the court;
- (b) either party to the proceedings is present in Barbados at that date; or
- (c) the proceedings relate to a child of the parties and the child is present in Barbados at that date.

- (4) Subject to this Part, a court of summary jurisdiction is invested with jurisdiction to hear and determine
- (a) matrimonial causes, not being proceedings for principal relief nor proceedings within paragraphs (h) or (k) (iv) of the definition “matrimonial cause” in section 2(1), instituted under this Act;
 - (b) matrimonial causes, not being proceedings for principal relief, continued in accordance with section 100; and
 - (c) proceedings instituted under rules made for the purposes of section 87.

Law to be applied

- 21.(1)** The jurisdiction conferred on a court, or with which a court is invested by this Act, is exercisable in accordance with this Act.
- (2) Where it would be in accordance with the common law rules of private international law to apply the law of any country or place (including a State or Territory), the court shall apply the laws of that country or place.

Principles to be applied by the court in relation to marriages

- 22.** In the exercise of its jurisdiction under this Act or any other enactment, the court shall have regard to the following principles:
- (a) the need to preserve and protect the institution of marriage as the union of a man and a woman to the exclusion of all others voluntarily entered into for life;
 - (b) the need to give the widest possible protection and assistance to the family as the natural and fundamental group unit of society, particularly while it is responsible for the care and education of dependent children;
 - (c) the need to protect the rights of children and to promote their welfare;
- and

- (d) the means available for assisting parties to a marriage to consider reconciliation or the improvement of their relationship to each other and to the children of the marriage.

Institution of proceedings

23.(1) Except as otherwise prescribed, proceedings under this Act shall be instituted by application.

(2) A respondent may, in answer to an application, include an application for any decree or declaration under this Act.

(3) Where a decree *nisi* of dissolution of marriage or a decree of nullity of marriage has been made, proceedings within paragraph (d) (i) or paragraph (e) of the definition of “matrimonial cause” (not being proceedings seeking the discharge, suspension, revival or variation of an order previously made in proceedings in respect of the maintenance of a party) shall not be instituted after the expiration of 12 months after the date of the making of the decree, except by leave of the court in which the proceedings are to be instituted.

(4) The court shall not grant leave under subsection (3) unless it is satisfied that hardship would be caused to a party to a marriage or to a child of the marriage if leave were not granted.

Staying and transfer of proceedings

24.(1) Where there are pending, in a court of summary jurisdiction, proceedings that have been instituted under this Act or the rules, and it appears to that court that other proceedings that have been so instituted, or are being so continued, in relation to the same marriage or void marriage, or the same matters are pending in the High Court, the court of summary jurisdiction may stay the first-mentioned proceedings for such time as it thinks fit, or may dismiss the proceedings.

(2) Where there are pending in a court of summary jurisdiction proceedings that have been instituted under this Act or the rules, and it appears to that court that it is in the interests of justice that the proceedings be dealt with in another

court having jurisdiction under this Act, that court may transfer the proceedings to the other court.

Transfer of proceedings from courts of summary jurisdiction

25.(1) Where proceedings are instituted in a court of summary jurisdiction in respect of

- (a) the custody or guardianship of, or access to, a child of a marriage or of a union; or
 - (b) property of a value exceeding \$2 500, and the respondent, in an answer to the application by which the proceedings were instituted, seeks an order different from that sought in the application, the court shall, unless the parties agree to the court hearing and determining the proceedings, transfer the proceedings to the High Court.
- (2) Where proceedings referred to in subsection (1) are before it, the court may transfer the proceedings of its own motion, notwithstanding that the parties would be willing for the court to hear and determine the proceedings.
- (3) Before transferring proceedings under subsection (1), the court may make such orders, including an order under section 41, as it considers necessary, pending the disposal of the proceedings by the court to which they are to be transferred.
- (4) Where proceedings are transferred to a court in pursuance of this section, that court shall proceed as if the proceedings had been originally instituted in that court.
- (5) Without affecting the duty of a court of summary jurisdiction to comply with this section, failure by such a court so to comply does not invalidate any order of the court in the proceedings.

Courts to act in aid of each other

26. All courts having jurisdiction under this Act shall severally act in aid of, and be auxiliary to, each other in all matters under this Act.

PART IV

DISSOLUTION AND NULLITY OF MARRIAGE

Dissolution of marriage

27.(1) An application by a party to a marriage for a decree of dissolution of marriage shall be based on the ground that the marriage has broken down irretrievably.

(2) Subject to subsection (3), on an application for a decree of dissolution of marriage, the ground shall be held to have been established, and the decree shall be made, if, and only if, the court is satisfied that the parties separated and thereafter lived separately and apart for a continuous period of not less than 12 months immediately preceding the date of the filing of the application for dissolution of marriage.

(3) A decree of dissolution of marriage shall not be made if the court is satisfied that there is a reasonable likelihood of cohabitation being resumed.

Meaning of separation

28.(1) The parties to a marriage may be held to have separated, notwithstanding that cohabitation was brought to an end by the action or conduct of only one of the parties.

(2) The parties to a marriage may be held to have separated and to have lived separately and apart, notwithstanding that they have continued to reside in the same residence, or that either party has rendered some household services to the other.

Effect of resumption of cohabitation

29. For the purposes of proceedings for a decree of dissolution of marriage, where, after the parties to the marriage separated, they resumed cohabitation on one occasion, but, within a period of 3 months after the resumption of cohabitation, they again separated and thereafter lived separately

and apart up to the date of the filing of the application, the periods of living separately and apart before and after the period of cohabitation may be aggregated as if they were one continuous period, but the period of cohabitation shall not be deemed to be part of the period of living separately and apart.

Effect of interruption of cohabitation

30. For the purposes of section 29, a period of cohabitation shall be deemed to have continued during any interruption of cohabitation that in the opinion of the court, was not substantial.

Nullity of marriage

31. An application for a decree of nullity of marriage may be presented to the court on the ground that the marriage is void within the provisions of the *Marriage Act*, Cap. 218A.

Court not to make decree of dissolution where application nullity before it

32. Where both an application for a decree of nullity of marriage and an application for a decree of dissolution of that marriage are before the court, the court shall not make a decree of dissolution of the marriage unless it has dismissed the application for a decree of nullity of the marriage.

Facts and circumstances occurring before 1st, February, 1982 or outside Barbados

33. A decree under this Part may be made or refused by the court on facts and circumstances, notwithstanding that those facts and circumstances, or some of them, occurred before 1st February, 1982; or outside Barbados.

Decree *nisi* in first instance

34. A decree of dissolution of marriage under this Act shall, in the first instance, be a decree *nisi*.

When decree becomes absolute

35.(1) Subject to this section, a decree *nisi* becomes absolute at the expiration of 1 month from the making of the decree or from the making of an order under section 42, whichever is later.

(2) Where a decree *nisi* has been made in any proceedings, the court of first instance (whether or not it made the decree), or a court in which an appeal has been instituted, may, either before or after it has disposed of the proceedings or appeal, and whether or not a previous order has been made under this subsection,

- (a) having regard to the possibility of an appeal or further appeal, make an order extending the time within which the decree *nisi* will become absolute; or
- (b) make an order reducing the period at the expiration of which the decree *nisi* will become absolute, if it is satisfied that there are special circumstances that justify the making of such an order.

(3) Where an appeal is instituted (whether or not it is the first appeal) before a decree *nisi* has become absolute, then, notwithstanding that an order is in force under subsection (2) at the time of the institution of the appeal, but subject to any such order made after the institution of the appeal, the decree *nisi*, unless reversed or rescinded, becomes absolute

- (a) at the expiration of 1 month from the day on which the appeal is determined or discontinued; or
- (b) on the day on which the decree *nisi* would have become absolute under subsection (1) if no appeal had been instituted,

whichever is the later.

(4) A decree *nisi* shall not become absolute under this section where a party to the marriage has died.

(5) In this section

“appeal” in relation to a decree *nisi* means

- (a) an appeal or application for leave to appeal against, or an intervention or application for a re-hearing relating to
 - (i) the decree *nisi*; or
 - (ii) an order under section 42 in relation to the proceedings in which the decree *nisi* was made; or
 - (b) an application under section 37 or 38 for the rescission of the decree or an appeal or application for leave to appeal arising out of such an application.
- (6) For the purposes of this section, where an application for leave to appeal, or for a re-hearing is granted, the application shall be deemed not to have been determined or discontinued so long as
- (a) the leave granted remains capable of being exercised; or
 - (b) an appeal or re-hearing instituted pursuant to the leave is pending.

Certificate of decree absolute and re-marriage of either of the parties

36.(1) When a decree *nisi* becomes absolute, the Registrar shall prepare and file a memorandum of the fact and of the date upon which the decree *nisi* became absolute.

(2) Where a decree *nisi* has become absolute, any person is entitled, on application to the Registrar and upon payment of the prescribed fee, to receive a certificate signed by the Registrar that the decree *nisi* has become absolute.

(3) When a decree of dissolution of marriage has become absolute, a party to the marriage may marry again.

(4) A certificate given under subsection (2) is *prima facie* evidence for all purposes of the matters stated in the certificate.

Recission of decree on reconciliation

37. Notwithstanding anything contained in this Part, where a decree *nisi* has been made in proceedings for a decree of dissolution of marriage, the court may, at any time before the decree becomes absolute, on the application of the parties to the marriage, rescind the decree on the ground that the parties have become reconciled.

Recission of decree for miscarriage of justice

38. Where a decree *nisi* has been made, but has not become absolute, the court may, on the application of a party to the proceedings, or on the intervention of the Attorney-General, if it is satisfied that there has been a miscarriage of justice by reason of fraud, perjury, suppression of evidence, or of any other circumstance, rescind the decree, and, if it thinks fit, order the re-hearing of the proceedings.

PART V

WELFARE AND CUSTODY OF CHILDREN

Definitions

39. In this Part,

“marriage” includes a void marriage;

“overseas custody order” means an order made by a court in a prescribed overseas country, being

- (a) an order for custody of, or access to, a child who has not attained the age of 18 years; or
- (b) an order varying or discharging an order as described in paragraph (a), including any such order made under this Act;

“union other than marriage” or “union” means the relationship that is established when a man and a woman who, not being married to each other, have cohabited continuously for a period of 5 years or more

and have so cohabited within the year immediately preceding the institution of the proceedings.

Rights of guardianship and custody of children

40.(1) Each of the parties to a marriage or union is a guardian of every child of the marriage or union who has not attained the age of 18 years; and the parties to the marriage or union have the joint custody of each child.

(2) Subsection (1) is subject to any order that the court may make in respect of proceedings relating to guardianship or custody.

(3) An order in respect of the guardianship or custody of, or access to, a child

(a) shall not be made in respect of a child who has attained the age of 18 years, or is or has been married;

(b) ceases to be in force

(i) when the child attains the age of 18 years or marries, or

(ii) if the child is adopted by a person who is not a party to the marriage or union.

(4) On the death of a party to a marriage or union in whose favour a custody order has been made in respect of a child of the marriage or union,

(a) the other party to the marriage or union is entitled to the custody of the child only if the court so orders;

(b) the other party to the marriage or union or any other person may make an application to the court for an order placing the child in the custody of the applicant; and

- (c) in an application under paragraph (b) by a person who does not at the time of the application have the care and control of the child, any person who, at that time, has the care and control of the child is entitled to be a party to the proceedings.

Court may order conference with welfare officer

41.(1) Where in any proceedings under this Act the welfare of a child who has not attained the age of 18 years is relevant, the court may, at any stage of the proceedings, of its own motion or upon the request of a party to the proceedings, make an order directing the parties to attend a conference with the Chief Welfare Officer or Chief Probation Officer, as the circumstances require, to discuss the welfare of the child, and, if there are any differences between the parties as to matters affecting the welfare of the child, to endeavour to resolve those differences.

(2) The court may in any order made under subsection (1) fix a place and time for the conference to take place, or direct that the conference shall take place at a place and time to be fixed by the Chief Welfare Officer or Chief Probation Officer, as the case may be.

(3) The Chief Welfare Officer or Chief Probation Officer shall report to the court any failure by a party to attend a conference in accordance with an order made under subsection (1).

(4) In any proceedings referred to in subsection (1), the court may obtain from the Chief Welfare Officer or Chief Probation Officer a report on such matters relevant to the proceedings as the court considers desirable, and may receive the report in evidence, and the court may, if it thinks necessary, adjourn the proceedings for the purpose of obtaining such a report.

(5) Evidence of anything said or of any admission made at a conference that takes place in accordance with an order made under subsection (1) is, subject to subsection (4), not admissible in any court.

Decree absolute where children

42.(1) A decree *nisi* of dissolution of marriage does not become absolute unless the court by order declares that it is satisfied

- (a) that there are no children of the marriage who have not attained the age of 18 years; or
- (b) that the only children of the marriage who have not attained the age of 18 years are the children specified in the order, and
 - (i) that proper arrangements in all the circumstances have been made for the welfare of those children, or
 - (ii) that there are circumstances by reason of which the decree *nisi* should become absolute notwithstanding that the court is not satisfied that the arrangements described in subparagraph (1) have been made.

(2) Where, in relation to proceedings for a dissolution of marriage, the court is in doubt whether the arrangements made for the welfare of a child of the marriage are proper in all the circumstances, the court may adjourn the proceedings until a report has been obtained from the Chief Welfare Officer or Chief Probation Officer, as the case may be, regarding those arrangements.

Power of court in custodial proceedings

43.(1) In proceedings in respect of the guardianship or custody of, or access to, children of a marriage or union,

- (a) the court shall regard the welfare of the children as the first and paramount consideration;
- (b) the court shall not make an order under this Part contrary to the wishes of a child who has attained the age of 16 years unless the court is satisfied that, having regard to special circumstances, it is necessary to do so; and

- (c) the court may, subject to paragraphs (a) and (b), make such order in respect of those matters as it thinks fit, including an order until further order.
- (2) In proceedings in respect of the custody of a child of a marriage or of a union, the court may, if it is satisfied that it is desirable to do so, make an order placing the child in the custody of a person other than a party to the marriage or union.
- (3) Where the court makes an order placing a child of a marriage or of a union in the custody of a party to the marriage or union, or of a person other than a party to the marriage or union, it may include in the order such provision as it thinks fit for access to the child by any person.
- (4) Where the court makes an order for joint custody of a child of a marriage or of a union, or declines to make an order for the sole custody of the child, it may make orders as to access, or such other orders as it thinks fit.
- (5) Where the court makes an order under this Part in respect of a child, the court may also, if it thinks the welfare of the child so requires, include in the order that compliance with the provisions of the order shall, as far as practicable, be supervised by the Chief Welfare Officer or Chief Probation Officer, as the circumstances require.
- (6) The court may, in any proceedings under this Act, order the passport of the child and of any person concerned to be delivered up to the court upon such conditions as the court thinks fit, if it is of the opinion that there is a possibility or threat that a child will be removed from Barbados.
- (7) The court may discharge or vary an order under this section, or may suspend any part of the order, and may revive the operation of any part so suspended.
- (8) On an application for the discharge or variation of an order under this section in respect of a child who has attained the age of 16 years, the court shall discharge or vary the order if it is satisfied that the discharge or variation of the order would be in accordance with the wishes of the child; but the court may

refuse the application if it is satisfied that it is undesirable to discharge or vary the order by reason of special circumstances.

(9) Where an order made by a court (including a court of a prescribed overseas country) in respect of the custody of a child is in force, a court having jurisdiction under this Act may issue a warrant authorising or directing the person, or any of the persons, to whom it is addressed, for the purpose of giving effect to the order,

- (a) at any time with such assistance as is required, and if necessary by force,
 - (i) to stop and search any vehicle, vessel or aircraft, and to enter and search any premises or place, named or described in the warrant, and
 - (ii) to take possession of the child;
- (b) to deliver the child to the person entitled to custody or to some other person or authority (including a person or authority in or from a prescribed overseas country) named in the order on behalf of the person entitled to custody.

(10) Where an order made by a court (including a court of a prescribed overseas country) entitling a person to access to a child is in force, a court having jurisdiction under this Act may issue a warrant authorising or directing the person, or any of the persons, to whom it is addressed, for the purpose of giving effect to the order,

- (a) at any time with such assistance as is required and if necessary by force,
 - (i) to stop and search any vehicle, vessel or aircraft, and to enter and search any premises or place named or described in the warrant, and
 - (ii) to take possession of the child; and
- (b) to deliver the child to the person so entitled to access.

- (11) A warrant under subsection (9) or (10) may be addressed to
- (a) a named person or named persons; or
 - (b) every person from time to time holding or acting in a specified office.
- (12) Without limiting the generality of subsection (11), a warrant under subsection (9) or (10) may be addressed to
- (a) a named person being a person who holds an appointment as an enforcement officer under subsection (15); or
 - (b) every person from time to time holding or acting in an office of enforcement officer.
- (13) Without limiting the power of the court issuing a warrant under subsection (9) or (10) to name or describe specifically any vehicle, vessel, aircraft, premises or place in respect of which the warrant is to apply, the court may express the warrant to apply in respect of any vehicle, vessel, aircraft, premises or place in which there is at any time reasonable cause to believe that the child concerned may be found.
- (14) Where there is an order in force entitling more than 1 person to the custody of a child, a warrant shall not be issued under this section for the removal of the child from the possession of one of those persons and the delivery of the child to another of them.
- (15) The Attorney-General may designate persons to be enforcement officers for the purposes of this Part.
- (16) A designation under subsection (15) may be in respect of
- (a) a named person only; or
 - (b) every person from time to time holding or acting in a specified office.

Separate representation of child

44. Where in proceedings in respect of the custody, guardianship or maintenance of, or access to, a child of a marriage or of a union, it appears to the

court that the child ought to be separately represented, the court may, of its own motion, or on the application of the child or of the Chief Welfare Officer or Chief Probation Officer, as the case may be, or of any other person, order that the child be separately represented; and the court may make such other orders as it thinks necessary for the purpose of securing separate representation.

Where applicant in contempt

45. The court may proceed with the hearing of proceedings in relation to a child notwithstanding that the person by whom the proceedings were instituted has failed to comply with an order of the court or of another court of competent jurisdiction.

Overseas custody orders

46.(1) The rules may make provision for and in relation to the registration in the courts of Barbados of overseas custody orders.

(2) Where an overseas custody order is registered in Barbados under this section, the order has the same force and effect as if it were an order made by a court under this Act.

(3) Where an overseas custody order is so registered, the court in Barbados shall not, where it becomes aware of the order, exercise jurisdiction in proceedings for the custody of, or access to, the child the subject of the overseas custody order unless

- (a) every person having rights of custody or access in relation to the child under the overseas custody order consents to the exercise of jurisdiction by the court in the proceedings; or
- (b) the court is satisfied that there are substantial grounds for believing that the welfare of the child will be adversely affected if the court does not exercise jurisdiction in the proceedings.

(4) Where the court exercises jurisdiction in proceedings for the custody of, or access to, a child who is the subject of an overseas custody order, the court

shall not make an order in respect of the custody of, or access to, the child unless the person who instituted the proceedings satisfied the court that

- (a) the welfare of the child is likely to be adversely affected if the order is not made; or
- (b) there has been such a change in the circumstances of the child that the order ought to be made.

Transmission of Barbadian custody orders to overseas country

47.(1) Where an order made by the court in Barbados in respect of the custody of, or access to, a child who has not attained the age of 18 years may be enforced in a prescribed overseas country under provisions corresponding to the provisions of section 46, the Registrar or other appropriate officer shall, if so requested in writing by a person having rights of custody or access in relation to the child under the order, send to an appropriate court or authority in that country such documents and information as are necessary for securing the enforcement of the order in the overseas country.

(2) The rules may make provision for and in relation to the transmission to a prescribed overseas country of copies of, and documents relating to, an order made by the court in Barbados in respect of the custody of, or access to, a child who is the subject of an overseas custody order.

Interfering with child subject to custody order

48.(1) Where an order is made under this Act granting to a person named in the order the custody of a child of the marriage or of the union, no person shall remove the child from the care and control of the person so named, contrary to the order, or interfere with the exercise of that person's rights under the order in respect of the child.

(2) Where an order is made under this Act granting to a person the custody of a child of the marriage or of the union, being a child that is in the care and control of another person, that other person shall, upon demand by the person entitled to custody of the child under the order, deliver the child to that person.

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- (3) Where an order under this Act provides for a person to have access to a child of the marriage or of the union, no person shall, without just cause or excuse, hinder or prevent the person entitled to access under the order from obtaining access to the child in accordance with the order, or interfere with the access to the child that that person is entitled to in accordance with the order.
- (4) Subsections (1), (2), and (3) apply to an order registered in a court under section 46 as if the order were an order made under this Act.
- (5) A person shall not prevent or hinder the execution of a warrant issued under section 43.
- (6) Where the court is satisfied that a person has knowingly and without reasonable cause contravened or failed to comply with a provision of this section, it may
- (a) order that person to pay a fine not exceeding \$5 000;
 - (b) require that person to enter into a recognizance with or without sureties, in such reasonable amount as the court thinks fit, that that person will comply with the relevant order, or order that person to be imprisoned until that person enters into such a recognizance or until the expiration of 3 months, whichever first occurs;
 - (c) order that person to deliver up to the court that person's passport and such other documents as the court thinks fit; and
 - (d) make such other orders as the court considers necessary to enforce compliance with this section.
- (7) Where an act or omission referred to in subsection (6) is an offence against any other law, the person committing the offence may be prosecuted and convicted under that law, but nothing in this section shall render any person liable to be punished twice in respect of the same offence.
- (8) Nothing in subsection (6) shall prejudice the power of the court to punish a person for contempt of court.

PART VI
MAINTENANCE AND PROPERTY

Definitions

49. In this Part,

“cohabitation agreement” means an agreement in writing made after 1st February, 1982, between the parties to a union, being an agreement that makes provision in respect of the rights and obligations of the parties during cohabitation, or upon ceasing to cohabit other than by reason of death, and includes provisions in respect of

- (a) financial matters;
- (b) the right to direct the education and moral training of their children, but not the right to custody of or access to the children;
- (c) any other matter in the settlement of the affairs of the parties, including an agreement that varies an earlier cohabitation agreement;

“marriage” includes a void marriage;

“re-marriage”, in relation to a person who was a party to a purported marriage that is void, means marriage;

“separation agreement” means an agreement in writing made after 1st February, 1982, between a man and a woman who are living separate and apart and prior to the agreement had been parties to a union, being an agreement that makes provision in respect of the rights and obligations of the parties after cohabitation, other than by reason of death, and includes provisions in respect of

- (a) financial matters;
- (b) the right to direct the education and moral training of their children;
- (c) the right to custody of and access to their children; and

(d) any other matter in the settlement of the affairs of the parties.

Right of maintenance

50.(1) A party to a marriage or union other than a marriage is, subject to subsection (2), liable to maintain the other party, to the extent that the first-mentioned party is reasonably able to do so.

(2) The liability of a party under subsection (1) arises only where the other party is unable to support herself or himself adequately, whether by reason of having the care or control of a child of the marriage or union who has not attained the age of 18 years, or by reason of age or physical or mental incapacity for appropriate gainful employment, or for any other adequate reason, having regard to any relevant matter set out in section 53(2).

Maintenance of children

51. The parties to a marriage, or union other than a marriage, are liable, according to their respective financial resources, to maintain the children of the marriage or of the union who are unmarried and have not attained the age of 18 years.

Powers of court in maintenance proceedings

52. In proceedings with respect to the maintenance of a party to a marriage or union, or of a child of a marriage, or of a union, the court may make such orders as it thinks fit for the provision of maintenance in accordance with this Part.

Matters to be taken into consideration in proceedings with respect to maintenance

53.(1) In determining the amount of maintenance, if any, under section 52, the court shall take into account only the matters set out in subsection (2).

(2) The matters to be taken into account for the purposes of this section are as follows:

- (a) the age and state of health of each of the parties;
- (b) the income, property and financial resources of each of the parties and the physical and mental capacity of each of them for appropriate gainful employment;
- (c) whether either party has the care or control of a child of the marriage or union other than a marriage, who has not attained the age of 18 years;
- (d) the financial needs and obligations of each of the parties;
- (e) the responsibilities of either party to support any other person;
- (f) the eligibility of either party for a pension, allowance, or benefit under any Act or rule, or under any superannuation fund or scheme, or the rate of any such pension, allowance, or benefit being paid to either party;
- (g) where the parties have separated or the marriage has been dissolved, a standard of living that in all the circumstances is reasonable;
- (h) the extent to which the payment of maintenance to the party whose maintenance is under consideration would increase the earning capacity of that party by enabling that party to undertake a course of education or training or to establish himself or herself in a business or otherwise to obtain an adequate income;
- (i) the extent to which the party whose maintenance is under consideration has contributed to the income, earning capacity, property and financial resources of the other party;
- (j) the duration of the marriage or union other than a marriage, and the extent to which it has affected the earning capacity of the party whose maintenance is under consideration;

- (k) the need to protect the position of a woman who wishes only to continue her role as a wife and mother;
 - (l) if the party whose maintenance is under consideration is cohabiting with another person, the financial circumstances relating to the cohabitation;
 - (m) the terms of any order made or proposed to be made under section 57 in relation to the property of the parties; and
 - (n) any fact or circumstance that, in the opinion of the court, the justice of the case requires to be taken into account.
- (3) The obligation to maintain the other party to the marriage or union exists without regard to the conduct of either party, but the court may in determining the amount of maintenance have regard to a course of conduct that is so unconscionable as to constitute an obvious and gross repudiation of their relationship.

Maintenance of children

54.(1) In determining

- (a) whether to make an order for the maintenance of a child of a marriage or of a union; or
- (b) the period for which such an order should continue in force or the amount of any payment to be made under such an order,

the court shall take into account, in addition to the matters set out in section 53(2), the following:

- (i) the income, earning capacity, property and other financial resources of the child,
- (ii) the financial needs of the child; and
- (iii) the manner in which the child is being, and in which the parties to the marriage or union expected the child to be, educated or trained.

- (2) Subject to subsection (3), an order for maintenance
- (a) shall not be made where the child has attained the age of 18 years; and
 - (b) ceases to be in force when the child attains the age of 18 years.
- (3) The court may
- (a) provide in an order for the maintenance of a child who has not attained the age of 18 years that the order shall continue in force until a day that is later than, or for a period that extends beyond, the day on which the child will attain that age; or
 - (b) make an order for the maintenance of a child who has attained the age of 18 years, being an order that is expressed to continue in force until a day, or for a period, specified in the order,

if the court is satisfied that the provision of the maintenance is necessary to enable the child to complete his education (including vocational training or apprenticeship) or because he is mentally or physically handicapped, and, in that case, the order continues in force until that day or the expiration of that period, as the case may be.

Urgent maintenance cases

55. Where, in proceedings in respect of the maintenance of a party to a marriage or union, or of a child of a marriage or union, it appears to the court that the party or child is in immediate need of financial assistance, but it is not practicable in the circumstances to determine immediately what order, if any, should be made, the court may order the payment, pending the disposal of the proceedings, of such periodic sum or other sums as the court considers reasonable.

Declaration of interests in property

56.(1) In proceedings between the parties to a marriage or union in respect of the existing title or rights to property, the court may declare the title or rights, if any, that a party has in respect of the property.

(2) Where a court makes a declaration under subsection (1), it may make consequential orders to give effect to the declaration, including orders as to sale or partition, and interim or permanent orders as to possession.

(3) An order under this section is binding on the parties to the marriage or union, but not on any other person.

Alteration of property interests

57.(1) In proceedings in respect of the property of the parties to a marriage or union, or of either of them, the court may make such order as it thinks fit altering the interests of the parties in the property, including

- (a) an order for a settlement of property in substitution for any interest in the property; and
- (b) an order requiring either or both of the parties to make, for the benefit of either or both of the parties or a child of the marriage or union, such settlement or transfer of property as the court determines.

(2) The court shall not make an order under this section unless it is satisfied that, in all the circumstances, it is just and equitable to make the order.

(3) In considering what order should be made under this section, the court shall take into account the following:

- (a) the financial contribution made directly or indirectly by or on behalf of a party or a child to the acquisition, conservation or improvement of the property, or otherwise in relation to the property;
- (b) the contribution made directly or indirectly to the acquisition, conservation or improvement of the property by either party, including any contribution made in the capacity of homemaker or parent;
- (c) the effect of any proposed order upon the earning capacity of either party;
- (d) the matters referred to in section 53(2) in so far as they are relevant; and

- (e) any other order that has been made under this Act in respect of a party.

Power to set aside orders altering property interest

58.(1) Where the court is satisfied on an application by a person affected by an order made under section 57 that the order was obtained by fraud, duress, the giving of false evidence or by the suppression of evidence, the court may, in its discretion, set aside the order, and, if it thinks fit, but subject to section 57(2) and (3), make another order under section 57 in substitution for the order so set aside.

(2) In exercising its powers under this section, the court shall have regard to the interest of, and shall make an appropriate order for the protection of, a purchaser in good faith or other interested person.

General powers of court

59. The court, in exercising its powers under this Part, may do any or all of the following:

- (a) order payment of a lump sum, whether in 1 amount or by instalments;
- (b) order payment of a weekly, monthly, yearly or other periodic sum;
- (c) order that payment of any sum ordered to be paid be wholly or partly secured in such manner as the court directs;
- (d) order that any necessary deed or instrument be executed, and that such documents of title be produced or such other things be done as are necessary to enable an order to be carried out effectively or to provide security for the due performance of an order;
- (e) on or at any time after making an order for maintenance, order the person by whom maintenance is payable under the order, or the legal personal representative of that person, as the case may be, to give such security as it specifies for the payment of any sum that is to be paid under the order; and for that purpose may direct the Registrar to settle and approve a proper deed or instrument, to be executed by all the necessary parties;

- (f) appoint or remove trustees;
- (g) order that payments be made direct to a party to the marriage or union, to a trustee to be appointed, or into court or an account standing in the name of the party at a commercial bank or to such public authority as the court specifies in the order, for the benefit of a party to the marriage or union;
- (h) order that payment of maintenance in respect of a child be made to such person or public authority as the court specifies;
- (i) make a permanent order, an order pending the disposal of proceedings or an order for a fixed term or for a life or during joint lives or until further order;
- (j) impose terms and conditions;
- (k) make an order by consent;
- (l) make any other like or dissimilar order as those mentioned in paragraphs (a) to (k) that the court thinks it necessary to make to do justice; and
- (m) subject to this Act, make an order under this Part at any time before or after the making of a decree under another Part.

Duty of court to end financial relations

60. In proceedings under this Part, other than proceedings under section 56 or proceedings in respect of maintenance payable during the subsistence of a marriage, the court shall, as far as practicable, make such orders as will finally determine the financial relationships between the parties to the marriage and avoid further proceedings between them.

Cessation of orders

61.(1) An order in respect of the maintenance of a party to a marriage or union, or of a child of a marriage or union, ceases to have effect upon the death of the party or child.

(2) An order in respect of the maintenance of a party to a marriage or union or of a child of a marriage or a union ceases, subject to subsection (3), to have effect upon the death of the person liable to make payments under the order.

(3) Subsection (2) does not apply in relation to an order if the order is expressed to continue in force throughout the life of the person for whose benefit the order was made or for a period that had not expired at the time of the death of the person liable to make payments under the order, and, in that case, the order is binding upon the legal personal representative of the deceased person.

(4) Subject to any agreement by the parties to the contrary, an order in respect of the maintenance of a party to a marriage or union ceases to have effect upon the re-marriage or marriage of the party in whose favour the order is made.

(5) Subject to section 54(3), an order in respect of the maintenance of a child of a marriage or union ceases to have effect upon the adoption or marriage of the child.

(6) It is the duty of the person for whose benefit the order was made to inform without delay the person liable to make payments under the order of the date that a re-marriage or marriage, as the case may be, takes place as referred to in subsection (4) or (5).

(7) Any moneys paid in respect of a period after the date of a marriage or re-marriage, as the case may be, under subsection (4) or (5) may be recovered in a court having jurisdiction under this Act.

(8) Nothing in this section affects the recovery of arrears due under an order at the time when the order ceased to have effect.

Modification of maintenance orders

62.(1) In proceedings in respect of the maintenance of a party to a marriage or union other than a marriage or of a child of a marriage or of such a union, if there is in force an order (whether made before or after 1st February, 1982) in respect of the maintenance of that party or child by the other party to the marriage or union,

- (a) made by the court; or
- (b) made by another court and registered in the court referred to in paragraph (a) in accordance with the rules;

the court may

- (c) discharge the order if there is any just cause for so doing;
- (d) suspend its operation wholly or in part and either until further order or until a fixed time or the happening of some future event;
- (e) revive wholly or in part an order suspended under paragraph (d); or
- (f) subject to subsection (2), vary the order so as to increase or decrease any amount ordered to be paid or in any other manner.

(2) The court shall not make an order increasing or decreasing an amount ordered to be paid under a previous order unless it is satisfied

- (a) that, since the order was made or last varied,
 - (i) the circumstances of the person for whose benefit the order was made have so changed;
 - (ii) the circumstances of the person liable to make payments under the order have so changed; or
 - (iii) in the case of an order that is binding on a legal personal representative, the circumstances of the estate are such,

as to justify its so doing;

- (b) that since that order was made, or last varied, the cost of living has changed to such an extent as to justify its so doing; or
 - (c) that material facts were withheld from the court that made or varied the order, or material evidence previously given before the court was false.
- (3) Nothing in subsection (2) prevents the court from making an order varying an order made before 1st February, 1982, if the subsequent order is made for the purpose of giving effect to this Part.
- (4) In satisfying itself for the purposes of subsection (2)(b), the court shall have regard to any changes that have occurred in the price index published by the Department of Statistical Service.
- (5) In considering the variation of an order, the court shall not have regard to a change in the cost of living unless at least 12 months have elapsed since the order was made or last varied, having regard to a change in the cost of living.
- (6) An order decreasing the amount of a periodic sum payable under an order or discharging an order may be expressed to be retrospective to such date as the court thinks fit.
- (7) For the purposes of this section, the court shall have regard to the provisions of sections 50, 51, 53 and 54.
- (8) The discharge of an order does not affect the recovery of arrears due under the order at the time at which the discharge takes effect.

Execution of instruments by order of court

63.(1) Where

- (a) an order under this Part has directed a person to execute a deed or instrument; and

- (b) that person has refused or neglected to comply with the direction or, for any other reason, the court thinks it necessary to exercise the powers of the court under this subsection,

the court may direct the Registrar or such other person as the court thinks fit to execute the deed or instrument in the name of the person to whom the direction was given and to do all acts and things necessary to give validity and operation to the deed or instrument.

- (2) The execution of the deed or instrument by the person so appointed has the same force and validity as if it had been executed by the person directed by the order to execute it.
- (3) The court may make such order as it thinks just as to the payment of the costs and expenses of and incidental to the preparation of the deed or instrument and its execution.

Transactions to defeat claims

64.(1) The court may set aside or restrain the making of an instrument or disposition by or on behalf of, or by direction or in the interest of, a party, which is made or proposed to be made to defeat an existing or anticipated order in any proceedings under this Part for costs, maintenance or the declaration or alteration of any interest in property or which, irrespective of intention, is likely to defeat any such order.

- (2) The court may order that any money or real or personal property dealt with by any such instrument or disposition may be taken in execution or charged with the payment of such sums for costs or maintenance as the court directs, or that the proceeds of a sale shall be paid into court pending an order of the court.
- (3) The court shall have regard to the interests of, and shall make an appropriate order for the protection of, a purchaser in good faith or other interested person.
- (4) A party or a person acting in collusion with a party may be ordered to pay the costs of any other party, or of a purchaser in good faith or other interested

person of and incidental to any such instrument or disposition and the setting aside or restraining of the instrument or disposition.

(5) In this section, “disposition” includes a sale and a gift.

Cohabitation and separation agreements

65.(1) From and after 1st February, 1982,

- (a) a party to a union other than a marriage may enter into a cohabitation agreement with the other party to the union;
- (b) a man and woman who had been parties to a union other than a marriage may enter into a separation agreement with each other,

for the purpose of facilitating the settlement of their affairs under this Act.

(2) An agreement made pursuant to subsection (1) must be in writing and signed by the parties and by 2 witnesses.

Registration of maintenance agreements etc.

66.(1) Except an agreement to which section 67 applies, a maintenance agreement, cohabitation agreement or separation agreement may be registered in the manner prescribed under this Act.

(2) Where a maintenance agreement, cohabitation agreement or separation agreement is so registered, the court may, in relation to the agreement, exercise any of the powers conferred on it by section 62 as if the agreement were an order of the court.

(3) The court may set aside any maintenance agreement, cohabitation agreement or separation agreement that is registered pursuant to this section where it is satisfied that the concurrence of a party to the agreement was obtained by fraud or undue influence, or that the parties desire the agreement to be set aside.

(4) Subject to section 69, this section does not apply to overseas maintenance agreements, cohabitation agreements or separation agreements.

Approval of maintenance agreements, etc. entered into in substitution for rights under Act

67.(1) Subject to this section, a maintenance agreement, cohabitation agreement or separation agreement may provide that the agreement shall operate, in relation to the financial matters dealt with in the agreement, in substitution for the rights (if any) of the parties to the agreement under this Part.

(2) A maintenance agreement, cohabitation agreement or separation agreement that makes provision as mentioned in subsection (1) does not have any effect unless it is approved by the court.

(3) If a maintenance agreement, cohabitation agreement or separation agreement makes provision as mentioned in subsection (1) and the agreement has been approved by the court and the approval has not been revoked, any order having effect under this Part, or any order made under the former Act and continued in force by virtue of this Act, ceases to have effect in so far as it relates to the financial matters dealt with in the agreement, and, subject to subsection (8), no court having jurisdiction under this Act may make an order in respect of those financial matters.

(4) In proceedings for the approval of a maintenance agreement, cohabitation agreement or separation agreement, if the court is satisfied that the provisions of the agreement in respect of financial matters are proper, the court shall, by order, approve the agreement, but, if the court is not so satisfied, it shall, by order, refuse to approve the agreement.

(5) A maintenance agreement, cohabitation agreement or separation agreement that is approved under this section ceases to be in force upon the death of a party to the agreement, unless the agreement otherwise provides.

(6) The court may by order revoke its approval of a maintenance agreement, cohabitation agreement, or separation agreement where the agreement is registered or deemed to be registered in the court and the court is satisfied

(a) that its approval was obtained by fraud;

(b) that the concurrence of a party was obtained by fraud or undue influence; or

(c) that the parties to the agreement desire the revocation of the approval, and, where an approval is so revoked, the agreement ceases to be in force.

(7) Where the court approves a maintenance agreement, cohabitation agreement or separation agreement, the agreement shall be deemed to be registered in the court.

(8) Where the court is satisfied that the arrangements in a maintenance agreement, cohabitation agreement or separation agreement that is approved in relation to a child of the marriage or union who has not attained the age of 18 years are no longer adequate in the circumstances, it may make an order under this Part.

(9) Except as otherwise provided by this Act and the rules, this section does not apply to overseas maintenance agreements, cohabitation agreements or separation agreements.

Enforcement of maintenance agreements, etc.

68. A maintenance agreement, cohabitation agreement or separation agreement that is registered, or is deemed to be registered in the court may be enforced as if it were an order of the court.

Overseas maintenance agreements and the institution of maintenance proceedings by authorised authorities or persons

69. The rules may make provision in respect of

(a) the applications of sections 66 and 67, with such additions, exceptions and modifications as may be prescribed, to overseas maintenance agreements;

(b) the transmission to appropriate courts or authorities of prescribed overseas countries of, or copies of, maintenance agreements,

- cohabitation agreements or separation agreements for the purpose of securing the enforcement of those agreements in those countries; and
- (c) the institution and prosecution of maintenance proceedings by an authorised authority or person with respect to the maintenance of a party to a marriage or union other than a marriage or of a child of a marriage or union on behalf of that party or child.

PART VII INTERVENTIONS

Intervention by Attorney-General

70.(1) The Attorney-General may intervene in, and contest or argue any question arising in

- (a) any proceedings under this Act where the court requests him to do so or, a matter arises that affects the public interest; or
- (b) any proceedings under this Act with respect to the custody or guardianship of, or access to, children.

(2) At any time after a decree *nisi* is made in any proceedings and before it becomes absolute, the Attorney-General may intervene in the proceedings for the purpose of bringing to the notice of the court matters relevant to the exercise of its powers under section 38.

(3) Where the Attorney-General intervenes in any proceedings, he shall be deemed to be a party to the proceedings with all the rights, duties and liabilities of a party.

Intervention by other persons

71.(1) In proceedings other than proceedings for principal relief, any person may apply for leave to intervene in the proceedings, and the court may make an order entitling that person to intervene in the proceedings.

- (2) An order under this section may be made upon such conditions as the court thinks fit.
- (3) Where a person intervenes in any proceedings by leave of the court, he shall, unless the court otherwise orders, be deemed to be a party to the proceedings with all the rights, duties and liabilities of a party.

PART VIII

APPEALS

No appeal after decree absolute

72. No appeal lies from a decree of dissolution of marriage after the decree has become absolute.

Appeals from and case stated by, court exercising original jurisdiction

73.(1) A person aggrieved by a decision of the High Court or of a court of summary jurisdiction exercising jurisdiction under this Act may appeal to the Court of Appeal or Divisional Court, as the case may be, in accordance with the rules applicable to appeals from such a decision.

(2) Upon an appeal under subsection (1), the Court of Appeal or Divisional Court may affirm, reverse or vary the decree, and may make such decree as, in the opinion of that court, ought to have been made in the first instance, or may, if it thinks fit, order a re-hearing, on such terms and conditions, if any, as it thinks fit.

(3) If, in proceedings in a court, being proceedings in which a decree to which subsection (1) applies could be made, a question of law arises which the Judge or magistrate and at least 1 of the parties wish to have determined by the Court of Appeal before the proceedings are further dealt with, the Judge or magistrate, as the case may be, shall state the facts and question for the opinion of the Court of Appeal, and the Court of Appeal shall hear and determine the question.

(4) For the purpose of the determination of a question under this section, the statement of the facts shall be conclusive, and the Court of Appeal may draw from the facts and the documents any inference, whether of fact or of law, that could have been drawn from them by the Judge or magistrate, as the case may be.

PART IX PROCEDURE AND EVIDENCE

Procedure

74.(1) Subject to this section and the rules, all proceedings in the court shall be heard in closed court.

(2) Subject to the rules, relatives or friends of either party, marriage counsellors, welfare officers and legal practitioners may be present in court unless in a particular case the court otherwise orders.

(3) In proceedings under this Act, the court shall proceed without undue formality and shall endeavour to ensure that the proceedings are not protracted.

Evidence by affidavit

75. The rules may provide for evidence of any material matter to be given on affidavit at the hearing of

- (a) proceedings for principal relief that are undefended at the time of the hearing; and
- (b) proceedings other than proceedings for principal relief.

Evidence as to paternity

76. Where the paternity of a child is a question in issue in proceedings under this Act, the court may make an order requiring either party or any other person to give such evidence as is material to the question.

Offensive or scandalous questions

77. The court shall forbid the asking of, or excuse a witness from answering, a question that it regards as offensive, scandalous, insulting or humiliating, unless it is satisfied that it is essential in the interest of justice that the question be answered.

Proof of birth, marriage or death

78. In proceedings under this Act, the court may receive as evidence of the facts the matters stated in a document purporting to be either the original or a certified copy of a certificate, entry or record of a birth, marriage or death alleged to have taken place, whether in Barbados or elsewhere.

PART X**RECOGNITION OF DECREES****Overseas decrees**

79.(1) In this Part,

“applicant”, in relation to the dissolution or annulment of a marriage, means the party at whose instance the dissolution or annulment was effected;

“marriage” includes a purported marriage that is void;

“overseas country” means a country, or part of a country, outside Barbados;

“relevant date”, in relation to a dissolution or annulment of a marriage, means the date of the institution of the proceedings that resulted in the dissolution or annulment;

“respondent”, in relation to the dissolution or annulment of a marriage, means a party to the marriage not being the party at whose instance the dissolution or annulment was effected.

(2) For the purposes of this Part, a person who is a national of a country of which an overseas country forms part shall be deemed to be a national of that overseas country.

(3) For the purposes of this Part, a dissolution or annulment of a marriage shall be deemed to have been effected in accordance with the law of an overseas country if it was effected in another overseas country in circumstances in which, at the relevant date, it would have been recognised as valid by the law of the first-mentioned overseas country.

Recognition

80. A dissolution or annulment of a marriage effected in accordance with the law of an overseas country shall be recognised as valid in Barbados where

- (a) the respondent was ordinarily resident in the overseas country at the relevant date;
- (b) the applicant was ordinarily resident in the overseas country at the relevant date and either
 - (i) the ordinary residence of the applicant had continued for not less than 1 year immediately before the relevant date; or
 - (ii) the last place of cohabitation of the parties to the marriage was in that country;
- (c) the applicant or the respondent was domiciled in the overseas country at the relevant date;
- (d) the respondent was a national of the overseas country at the relevant date;
- (e) the applicant was a national of the overseas country at the relevant date and either
 - (i) the applicant was ordinarily resident in that country at that date; or

- (ii) the applicant had been ordinarily resident in that country for a continuous period of 1 year falling at least in part, within the 2 years immediately before the relevant date; or
- (f) the applicant was a national of, and present in, the overseas country at the relevant date and the last place of cohabitation of the parties to the marriage was in an overseas country the law of which, at the relevant date, did not provide for dissolution of marriage or annulment of marriage, as the case may be.

Non-recognition

81. A dissolution or annulment of a marriage shall not be recognised as valid under section 80 where

- (a) under the common law rules of private international law, recognition of its validity would be refused on the ground that a party to the marriage had been denied natural justice or that the dissolution or annulment was obtained by fraud; or
- (b) recognition would manifestly be contrary to public policy.

Common-law rules of recognition

82. Any dissolution or annulment of a marriage that would be recognised as valid under the common law rules of private international law but to which none of the provisions of this Part applies shall be recognised as valid in Barbados, and the operation of this section shall not be limited by any implication from those provisions.

Power to treat facts as proved

83. In considering the validity of a dissolution or annulment effected under the law of an overseas country, the court may treat as proved any facts found by a court of the overseas country or otherwise established for the purposes of the law of the overseas country.

Capacity to re-marry not affected

84. Where a dissolution or annulment of a marriage is to be recognised as valid in accordance with this Part, the capacity of a party to that marriage to re-marry in accordance with the law of Barbados is not affected by the fact that the validity of the dissolution or annulment is not recognised under the law of some other country.

Application of this Part

85. This Part applies in relation to dissolutions and annulments effected whether by decree, legislation or otherwise, whether before or after 1st February, 1982, and, for the purposes of this Part, any decree, legislation or other process by which it is established that a purported marriage was, or is to become void shall be deemed to be an annulment of the marriage.

PART XI

ENFORCEMENT OF DECREES

Enforcement generally

86.(1) Subject to this Part and to the rules, all decrees made under this Act may be enforced by any court having jurisdiction under this Act.

(2) Except as prescribed, a court shall not entertain any proceedings under this Act for the enforcement of a decree made by another court unless the decree is registered in the first-mentioned court in accordance with the rules.

(3) Where a person bound by a decree made under this Act has died, the decree may, with the leave of the court by which it was made and on such terms and conditions as the court thinks fit, be enforced against the estate of that person in respect of liabilities that arose under the decree before that person's death.

Methods of enforcement

87. The rules may make provision for and in relation to the enforcement of decrees made under this Act, including provisions in respect of

- (a) the attachment of earnings for the purpose of ensuring payment under an order of the court;
- (b) the persons or public authorities that may apply to the court for an order for the attachment of earnings of the person by whom payment is required to be made;
- (c) the enforcement of arrears of maintenance;
- (d) the practice and procedure to be followed for the purpose of attachment of earnings under this Act.

Deduction from salary or wages

88.(1) Subject to the *Protection of Wages Act*, Cap. 351, an employer may

- (a) with the consent in writing of a worker make deductions from any salary or wages payable to the employee for the payment of maintenance in respect of an order made under this Act; or
- (b) on the written request of a worker, agree to make deductions for the purpose described in paragraph (a).

(2) In this section, “worker” has the meaning given to that expression by section 2 of the *Protection of Wages Act*.

PART XII
DECLARATIONS AND INJUNCTIONS

Proceeding for declarations

89. In proceedings referred to in section 2(*b*) of the definition “matrimonial cause”, the court may make such declaration as is justified.

Declaration of presumption of death

90.(1) Any married person who is domiciled in Barbados may apply to the High Court for a decree declaring that the other party to the marriage is presumed to be dead and that the marriage is therefore at an end.

(2) The High Court, if satisfied on an application under subsection (1), that reasonable grounds exist for supposing that the party to the marriage in respect of whom the application is made is dead, may make the decree applied for.

(3) In proceedings under subsection (1), the fact that for a period of not less than 5 years the other party to the marriage has been continuously absent from the applicant, and that nothing has happened within that time to give the applicant reason to believe that the other party was then living, shall be evidence that the other party is dead in the absence of proof to the contrary.

(4) The provisions of this Act apply to an application and a decree under this section as they apply to an application for dissolution of marriage and a decree of dissolution respectively.

Injunctions

91.(1) In proceedings referred to in paragraph (*h*) or (*k*) (iv) of the definition “matrimonial cause” in section 2(1), the court may make such order or grant such injunction as it thinks proper in respect of the matter to which the proceedings relate, including an injunction for the personal protection of a party to the marriage or union other than a marriage or of a child of the marriage or union or for the protection of the marital or other relationship or in relation to the property

of a party to the marriage or union or relating to the use or occupancy of the family residence.

(2) In exercising its powers under subsection (1), the court may make an order relieving a party to a marriage from any obligation to perform marital services or render conjugal rights.

(3) In proceedings other than proceedings to which subsection (1) applies, the court may grant an injunction, by interlocutory order or otherwise (including an injunction in aid of the enforcement of a decree), in any case in which it appears to the court to be just or convenient to do so, and either unconditionally or upon such terms and conditions as the court thinks fit.

(4) Where the court is satisfied that a person has knowingly and without reasonable cause contravened or failed to comply with an injunction or order under this section, the court may

- (a) order that person to pay a fine not exceeding \$1 000;
- (b) require that person to enter into a recognizance, with or without sureties, in such reasonable amount as the court thinks fit, that he will comply with the injunction or order, or order him to be imprisoned until he enters into such a recognizance or until the expiration of 3 months, whichever first occurs;
- (c) order that person to deliver up to the court such documents as the court thinks fit; and
- (d) make such other orders as the court considers necessary to enforce compliance with the injunction or order;

(5) Subsection (4) is in addition to the power of the court to punish a person for contempt of court.

PART XIII
ESTABLISHMENT OF FAMILY COUNCIL

Family Law Council

92.(1) The Attorney-General may establish a council to be known as the Family Law Council.

(2) The Second Schedule has effect with respect to the constitution of the council and otherwise in relation thereto.

Functions of the Council

93. The functions of the council are to advise and make recommendations to the Attorney-General, either of its own motion or upon request made to it by the Attorney-General, in respect of

- (a) the operation of this Act and other legislation relating to family law;
- (b) the provision of legal aid in proceedings relating to family law; and
- (c) any other matters relating to family law.

PART XIV
MISCELLANEOUS

Costs

94.(1) Each party to proceedings under this Act shall, subject to subsection (2) and section 95, bear his or her own costs.

(2) Where the court is of the opinion that the circumstances in any case are such as to justify it in so doing, it may, subject to the rules of court, make such orders as to costs and security for costs, whether by way of interlocutory order or otherwise, as it thinks fit.

Frivolous or vexatious proceedings

95. At any stage of the proceedings, the court may, if it is satisfied that the proceedings are frivolous or vexatious, dismiss the proceedings and make such order as to costs as it thinks fit.

No action for damages for adultery, etc.

96. After 1st February, 1982 no action lies for damages for adultery or for enticement or harbouring of a party to a marriage.

Restriction on publication of evidence

97.(1) No person may print or publish, or cause or procure to be printed or published, in relation to any proceedings under this Act any particulars of the proceedings other than the following:

- (a) the names, addresses and occupation of the parties and witnesses;
 - (b) a concise statement of the proceedings;
 - (c) submissions on any points of law arising in the course of the proceedings and the court's decision on these points; and
 - (d) the decree of the court and any observations made by the court in giving its decree.
- (2) Nothing in this section permits the publication of any indecent matter or indecent medical, surgical or physiological details, being matter or details the publication of which would be calculated to injure public morals.
- (3) A person who contravenes this section is guilty of an offence and liable on summary conviction to a fine of \$1 000 or imprisonment for 6 months, or both.
- (4) No person, other than a proprietor, editor, master printer or publisher is liable to be convicted under this Act.
- (5) No prosecution under this section may be instituted without the written consent of the Director of Public Prosecutions.

- (6) This section does not apply to
- (a) the printing of any pleadings, transcript of evidence or other document for use in connection with proceedings or the communication of any such documents to persons concerned in the proceedings;
 - (b) the printing or publishing of a notice or report in pursuance of the directions of the court;
 - (c) the printing or publishing of law courts lists; or
 - (d) the printing or publishing in good faith of any publication intended primarily for the use of members of the legal or medical profession, being
 - (i) a separate volume or part of a series of law reports; or
 - (ii) any other publication of a technical character.

Rules

98.(1) The Judicial Advisory Council may make rules

- (a) prescribing all matters that are by this Act required to be prescribed; and
- (b) generally for carrying out or giving effect to the purposes of this Act.

(2) Rules under subsection (1) may make provision for or in relation to the practice and procedure to be followed in the court, and for the conduct of the business of the court; and, without limiting the generality of this subsection, the rules may make provision for or in relation to

- (a) the attendance of witnesses;
- (b) providing for the manner of service of process of the court and for dispensing with such service;
- (c) the enforcement and execution of the decrees of the court;
- (d) the time and manner of instituting appeals;

- (e) the duties of officers of the court;
- (f) prescribing matters relating to the cost of proceedings and the assessment or taxation of those costs;
- (g) authorising the court to refer to an officer of the court for investigation, report and recommendation claims or applications for or relating to any matters before the court;
- (h) authorising an officer making an investigation referred to in paragraph (g) to take evidence on oath or affirmation, and to obtain and receive in evidence a report from a welfare or probation officer, and enabling the summoning of witness before an officer making such an investigation for the purpose of giving evidence or producing books and documents;
- (i) regulating the procedure of the court upon receiving a report of an officer who has made an investigation referred to in paragraph (g); and
- (j) prescribing matters incidental to the matters specified in the preceding paragraphs.

FIRST SCHEDULE*Oath or Affirmation of Secrecy*

I,.....do swear (or solemnly, sincerely and truly declare and affirm) that I will to the best of my judgment, at all times when so required, freely give my counsel and advice to the parties to a marriage (or a party to a marriage) for the reconciliation of their marriage; and I do further swear that I will not, except with lawful authority, directly or indirectly disclose to any other person anything said or any admission made at a conference with me in my capacity as a marriage counsellor, and that in all things I will be a true and faithful marriage counsellor. *So help me God.

**[To be omitted in the case of an affirmation]*

SECOND SCHEDULE*(Section 92)**Constitution of Family Council***Composition**

1. The Family Council shall consist of the following:
 - (a) a Judge of the High Court and a Magistrate designated by the Chief Justice;
 - (b) the Chief Welfare Officer, *ex officio*;
 - (c) the Chief Probation Officer, *ex officio*; and
 - (d) such other persons not exceeding 9 as the Attorney-General may appoint.
- [2004-10]

Chairman

2. The Judge shall be the Chairman of the Council, and in his absence the members present at any meeting of the Council may elect one of their number to be Chairman of that meeting.

Meetings

3. Meetings of the Council shall be convened by the Chairman and shall be held at least 4 times in each year.

Quorum

4. Seven members form a quorum.

[2004-10]

Committees

5. The Council may establish such committees composed of members of the Council as it considers necessary, and may delegate to such committees any of its functions.

Tenure of office

6. Except in the case of *ex officio* members, no member of the Council shall hold office for more than 3 years, but such member is eligible for reappointment.

Resignation

7. Any member of the Council may resign his office by writing signed by him and delivered to the Attorney-General.

Records

8. The Council shall cause records to be kept of its meetings and for the purpose may appoint a person to be Secretary to the Council.

Report

9. The Council shall within 3 months after the end of each year furnish a report of its operations to the Attorney-General for laying in Parliament.

Expenses

10. The expenses of the Council shall be defrayed out of moneys voted for the purpose by Parliament.