

No. 10 of 1997.

Divorce Act 1997

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ANTIGUA
AND
BARBUDA



[L.S.]

I Assent,

Joseph Myers,
Governor-General's Deputy.

11th March, 1997.

ANTIGUA AND BARBUDA

No. 10 of 1997

An Act for the reform relating to the dissolution and nullity of marriage and for matters connected thereto.

[*1st May, 1997*]

ENACTED by the Parliament of **Antigua and Barbuda** as follows—

- 1.** This Act may be cited as the Divorce Act 1997. Short title.
- 2.** (1) In this Act, Interpretation.
- "child of the marriage" means a child of two spouses or former spouses who, at the material time,
- (a) is under the age of sixteen years, or
 - (b) is sixteen years of age or over and under their charge but unable, by reason of illness, disability or other cause, to withdraw from their charge or to obtain the necessaries of life;

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

"court", in relation to any **proceedings**, means the High Court of Justice;

"custody" includes care, upbringing and any other incident of custody;

"custody order" means an order made under subsection **14 (1)**;

"divorce **proceeding**" means a **proceeding** in a **court** in which either or both spouses seek a divorce alone or together with a support order or a custody order or both such orders;

"spouse" means either of a man or woman who are married to each other,

"support order" means an order made under subsection **13 (2)**;

"**variation** order" means an order made under subsection **15 (1)**;

"variation proceeding" means a **proceeding** in a court in which either or both former spouses seek a variation order.

(2) For the purposes of the definition "child of the marriage" in subsection (1), a child of two spouses or **former** spouses includes

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

(3) **The** use of **the** term "application" to describe a **proceeding** under this Act in a **court** shall not be construed as limiting the name under which and the form and manner in which **that proceeding** may be taken in that court, and the name, manner and **form** of the

proceeding in that court shall be such as is provided for by the rules regulating the practice and procedure in that court.

3. (1) The High Court has jurisdiction to hear and determine a divorce proceeding if either spouse has been **ordinarily resident** in Antigua and Barbuda for at least one year immediately **preceding** the commencement of the **proceeding**. **Jurisdiction in divorce proceedings.**

4. (1) The High Court has jurisdiction to hear and determine a **corollary relief proceeding** if — **Jurisdiction in corollary relief proceedings.**

(a) either **former** spouse is ordinarily resident in Antigua and Barbuda at the commencement of the proceeding;
or

(b) both former spouses accept the jurisdiction of the court.

5. (1) A court **has** jurisdiction to hear and determine a variation **proceeding** if — **Jurisdiction in variation proceedings.**

(a) either **former** spouse is ordinarily resident in Antigua and Barbuda province at the commencement of the **proceeding**; or

(b) both former spouses **accept** the jurisdiction of the court.

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

7. (1) A court may, on application by either or both spouses, grant a divorce to the spouse or spouses on the ground that there has been a breakdown of their marriage. **Divorce — ground.**

(2) Breakdown of a marriage is established only if —

(a) the spouses have lived separate and apart for at least one year immediately preceding the determination of the divorce proceeding and were living separate and apart at the commencement of the **proceeding**;

- (b) the spouse against whom the divorce proceeding is brought has, since celebration of the marriage,
- (i) committed adultery, or
 - (ii) treated the other spouse with physical or mental cruelty of such a kind as to render intolerable the continued cohabitation of the spouses.

(3) ~~For~~ the purposes of paragraph (2)(a),

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

Duty of legal
advisor.

8. (1) It is the duty of every attorney-at-law, barrister, solicitor, lawyer or advocate who undertakes to act on behalf of a spouse in a divorce proceeding —

- (a) to draw to the attention of the spouse the provisions of this Act that have as their object the reconciliation of spouses, and

- (b) to discuss with the spouse the possibility of the reconciliation of the spouses and to inform the spouse of the marriage counselling or guidance facilities known to **him** that might be able to assist the spouses to achieve a reconciliation, unless the circumstances of the **case** are of such a nature that it would clearly not be appropriate to do so.

(2) It is the duty of every **attorney-at law**, barrister, solicitor, lawyer or advocate who undertakes to act on behalf of a spouse in a divorce proceeding to **discuss** with the spouse the advisability of negotiating the **matters** that may be the subject of a support order or a custody order and to inform the spouse of the mediation facilities known to him that might be able to assist the spouses in negotiating those matters.

(3) Every document presented to a court by an attorney-at-law, barrister, solicitor, lawyer or advocate **that** formally commences a divorce proceeding shall contain a statement by him certifying that he **has** complied with this section.

9. (1) In a divorce **proceeding**, it is the duty of the court, before considering the evidence, to satisfy itself that there is no **possibility** of the reconciliation of the spouses, unless the circumstances of the **case** are of such a nature that it would clearly not **be** appropriate to do so.

Duty of court —
Reconciliation.

(2) Where at any stage in a divorce proceeding it appears to the court from the nature of the case, the evidence or the attitude of either or both spouses that there is a **possibility** of the reconciliation of the spouses, the court shall —

- (a) adjourn the proceeding to afford the spouses an opportunity to achieve a reconciliation; and
- (b) with the consent of the spouses or in the discretion of the court, nominate
- (i) **a person** with experience or **training** in marriage counselling or guidance, or

- (ii) in special circumstances, some other suitable person, to assist the spouses to achieve a reconciliation.

(3) When **fourteen** days have elapsed from the date of any adjournment under subsection (2), the court shall resume the **proceeding** on the application of either **or** both spouses.

(4) No person nominated by a court under this section to assist spouses to achieve a **reconciliation** is competent or compellable in any legal **proceedings** to disclose any admission **or** communication made to that person in his or her capacity as a nominee of the court for that purpose.

(5) Evidence of anything said or of any admission or communication made in the **course** of assisting spouses to achieve a reconciliation is not admissible in any legal proceedings.

Duty of court —
Bars.

10. (1) In a divorce **proceeding**, it is the duty of the court,

- (a) to satisfy itself that there has been no collusion in relation to the application for a divorce and to dismiss the application if it finds that there was collusion in presenting it;
- (b) **to satisfy itself that reasonable arrangements have been** made for the support of any children of the marriage and, if such arrangements have not been made, to stay the granting of the divorce until such arrangements are made; and
- (c) where a divorce is sought in circumstances described in paragraph 7 (2) (b), to satisfy itself that there has been no condonation or connivance on the part of the spouse bringing the proceeding, and to dismiss the application for a divorce if that spouse has condoned or connived at the act or conduct complained of unless, in the opinion of the court, the public interest would be better served by the divorce.

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

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

(4) In this section, **“collusion” means an agreement or conspiracy to which an applicant for a divorce is either directly or indirectly a party for the purpose of subverting the administration of justice, and includes any agreement, understanding or arrangement to fabricate or suppress evidence or to deceive the court, but does not include an agreement to the extent that it provides for separation between the parties, financial support, division of property or the custody of any child of the marriage.**

11. (1) Subject to this section, a divorce takes effect on the thirty-first day after the day on which the judgment granting the divorce is rendered. **Effective date generally.**

(2) Where, on or after rendering a judgment granting a divorce,

- (a) the court is of the opinion that by reason of special circumstances the divorce should take effect earlier than the thirty-first day after the day on which the judgment is rendered, and
- (b) the spouses agree and undertake that no appeal from the judgment will be taken, or any appeal from the judgment that was taken has been abandoned, the court may order that the divorce takes effect at such earlier time as it considers appropriate.

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

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

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

(6) A divorce in respect of which an appeal has been taken to the Judicial Committee of the Privy Council, unless voided on the appeal, takes effect on the day on which the judgment on the appeal is rendered.

(7) Where a divorce takes effect in accordance with this section, a judge or officer of the court that rendered the judgment granting the divorce or, where that judgment ~~has~~ been appealed, of the appellate court that rendered the judgment on the final appeal, shall, on request, issue to any person a certificate that a divorce granted under this Act dissolved the marriage of the specified persons effective ~~as~~ of a specified date.

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

Marriage dissolved.

12. On taking effect, a divorce granted under this Act dissolves the marriage of the spouses.

Order for support.

13. (1) In this section and section 14, "spouse" has the meaning assigned by subsection 2 (1) and includes a **former** spouse.

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

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

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

- (a) the other spouse;
- (b) any or all children of the marriage; or
- (c) the other spouse and any or all children of the marriage, pending determination of the application under subsection (2).

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

(5) In making an order under this section, the court shall take into consideration the condition, means, needs and other circumstances of each spouse and of any child of the marriage for whom support is sought, including

- (a) the length of time the spouses cohabited;
- (b) the functions performed by the spouse during the cohabitation: and
- (c) any order, agreement or arrangement relating to support of the spouse or child.

(6) In making an order under this section, the court shall not take into consideration any misconduct of a spouse in relation to the marriage.

(7) An order made under this section that provides for the support of a spouse should —

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

(8) An order made under this section that provides for the support of a child of the marriage should

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

Order for custody.

14. (1) A court may, on application by either or both spouses or by any other person, make an order respecting the custody of or the access to, or the custody of and access to, any or all children of the marriage.

(2) Where an application is made under subsection (1), the court may, on application by either or both spouses or by any other person, make an interim order respecting the custody of or the access to, or

the custody of and access to, any or **all** children of the marriage pending determination of the application under subsection (1).

(3) A person, other **than** a spouse, may not make an application under subsection (1) or (2) without leave of the court.

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

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

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

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

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

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

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

willingness of the person for whom custody is sought to facilitate such contact.

Order for variation
rescission or
suspension.

15. (1) A court of competent jurisdiction may make an order varying, rescinding or suspending, prospectively or retroactively,

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

(2) A person, other than a former spouse, may not make an application under paragraph 1 (b) without leave of the court.

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

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

(5) Before the court makes a variation order in respect of a custody order, the court shall satisfy itself that there has been a change in the condition means, needs or other circumstances of the child of the marriage occurring since in the making of the custody order or the last variation order made in respect of that order, as the case may be, and, in making the variation order, the court shall take into consideration only the best interests of the child as determined by reference to that change.

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

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

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

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

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

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

(10) Notwithstanding subsection (1), where a support order provides for support for a definite period or until the happening of

a specified event, a court may not, on an application instituted after the expiration of that period or happening of that event, make a variation order for the purpose of resuming that support unless the court is satisfied that

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

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

Enforcement.

16. An order made under section 13, 14 or 15 may be enforced in like manner as an order of the court or in any other manner provided for by the laws of Antigua and Barbuda.

APPEALS

Appeal to Court of Appeal.

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

(2) No appeal lies from a judgment granting a divorce on or after the day on which the divorce takes effect.

(3) No appeal lies from an order made under this Act more than thirty days after the day on which the order was made.

(4) An appellate court or a judge thereof may, on special grounds, either before or after the expiration of the time fixed by subsection (3) for instituting an appeal, by order extend that time.

(5) The appellate court may

- (a) **dismiss** the appeal; or
- (b) allow the appeal and
 - (i) render the judgment or make the order that ought to have been rendered or made, including such order or such further or other order as it deems just, or
 - (ii) order a new hearing where it deems it necessary to do so to correct a **substantial** wrong or miscarriage of justice.

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

GENERAL

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

Proof of **signature**
or **office**.

19. (1) The Chief Justice may **make rules applicable to my** **proceedings** under **this** Act in a court or **appellate court**, including without limiting the generality of the foregoing **rules**

Rules

- (a) regulating **the** practice and procedure in the court, including **the** addition of persons as parties to the **proceedings**;
- (b) respecting the conduct and disposition of any **proceedings** under this Act without an oral hearing;
- (c) regulating the sittings of the court;

- (d) respecting the fixing and awarding of costs;
- (e) prescribing and regulating the duties of officers of the court; and
- (f) prescribing and regulating any other matter considered expedient to attain the ends of justice and carry into effect the purposes and provisions of this Act.

Fees.

20. (1) The Minister responsible for legal affairs may by Order prescribe a fee to be paid by any person to whom a service is provided under this Act

Repeals.

21. The Matrimonial Causes Act is repealed.

Cap 268.

TRANSITIONAL PROVISIONS

Proceedings based on facts arising before commencement of Act.

22. Proceedings may be commenced under this Act notwithstanding that the material facts or circumstances giving rise to the proceedings or to jurisdiction over the proceedings occurred wholly or partly before the day on which this Act comes into force.

Proceedings commenced before commencement of Act.

23. Proceedings commenced under the Matrimonial Causes Act (Cap 268) before the day on which this Act comes into force and not finally disposed of before that day shall be dealt with and disposed of in accordance with that Act as it read immediately before that day; as though it had not been repealed.

Variation and enforcement of orders previously made.

24. Any order made under the Matrimonial Causes Act including any such order made pursuant to section 23 of this Act, and any order to the like effect made corollary to a decree of divorce granted in Antigua and Barbuda before the coming into force of this Act, may be varied, rescinded, suspended or enforced in accordance with section 15 of this Act as if the order were a support order or custody order, as the case may require.

Commencement.

25. This Act shall come into force on a day to be fixed by the Governor-General by proclamation.

No. 10 of 1997.

Divorce Act 1997

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ANTIGUA
AND
BARBUDA

Passed the House of Representatives this
26th day of February, 1997.

Passed the Senate this 5th day of
March, 1997.

B. Harris,
Speaker.

M. Percival,
President.

S. Walker,
Clerk to the House of Representatives.

S. Walker,
Clerk to the Senate.

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