

16 ELIZABETH II

CHAP. 24

An Act respecting Divorce

[Assented to 1st February, 1968]

HER Majesty, by and with the advice and consent of the Senate and House of Commons of Canada, enacts as follows:

SHORT TITLE

1. This Act may be cited as the *Divorce Act*. Short title

INTERPRETATION

2. In this Act,
- (a) "child" of a husband and wife includes any person to whom the husband and wife stand *in loco parentis* and any person of whom either of the husband or the wife is a parent and to whom the other of them stands *in loco parentis*; Definitions
"Child"
 - (b) "children of the marriage" means each child of a husband and wife who at the material time is "Children of
the
marriage"
 - (i) under the age of sixteen years, or
 - (ii) sixteen years of age or over and under their charge but unable, by reason of illness, disability or other cause, to withdraw himself from their charge or to provide himself with necessaries of life;
 - (c) "collusion" means an agreement or conspiracy to which a petitioner 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 "Collusion"

extent that it provides for separation between the parties, financial support, division of property interests or the custody, care or upbringing of children of the marriage;

"Condonation"

(d) "condonation" does not include the continuation or resumption of cohabitation during any single period of not more than ninety days, where such cohabitation is continued or resumed with reconciliation as its primary purpose;

"Court"

(e) "court" for any province means,
(i) for the Province of Ontario, Nova Scotia, New Brunswick or Alberta, the trial division or branch of the Supreme Court of the Province,
(ii) for the Province of Quebec,
(A) where no proclamation has been issued under subsection (1) of section 22, the Divorce Division of the Exchequer Court, or
(B) where a proclamation has been issued under subsection (1) of section 22, the Superior Court of the Province,
(iii) for the Province of Newfoundland,
(A) where no proclamation has been issued under subsection (2) of section 22, the Divorce Division of the Exchequer Court, or
(B) where a proclamation has been issued under subsection (2) of section 22, the Supreme Court of the Province,
(iv) for the Province of British Columbia or Prince Edward Island, the Supreme Court of the Province,
(v) for the Province of Manitoba or Saskatchewan, the Court of Queen's Bench for the Province, and
(vi) for the Yukon Territory or the Northwest Territories, the Territorial Court thereof;

"Court of appeal"

(f) "court of appeal" means
(i) with respect to an appeal from a court other than the Divorce Division of the Exchequer Court, the court exercising general appellate jurisdiction with respect to appeals from that court, and
(ii) with respect to an appeal from the Divorce Division of the Exchequer Court, the Exchequer Court of Canada; and

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- (g) "petition" for divorce means a petition or "Petition"
motion for a decree of divorce, either with or
without corollary relief by way of an order
under section 10 or 11.

GROUNDS FOR DIVORCE

- 3. Subject to section 5, a petition for divorce may Grounds
be presented to a court by a husband or wife, on the ground
that the respondent, since the celebration of the marriage,
 - (a) has committed adultery;
 - (b) has been guilty of sodomy, bestiality or rape,
or has engaged in a homosexual act;
 - (c) has gone through a form of marriage with
another person; or
 - (d) has treated the petitioner with physical or
mental cruelty of such a kind as to render
intolerable the continued cohabitation of the
spouses.

- 4. (1) In addition to the grounds specified in Additional
grounds
section 3, and subject to section 5, a petition for divorce
may be presented to a court by a husband or wife where the
husband and wife are living separate and apart, on the
ground that there has been a permanent breakdown of their
marriage by reason of one or more of the following circum-
stances as specified in the petition, namely:
 - (a) the respondent
 - (i) has been imprisoned, pursuant to his
conviction for one or more offences, for a
period or an aggregate period of not less
than three years during the five year
period immediately preceding the pres-
entation of the petition, or
 - (ii) has been imprisoned for a period of not
less than two years immediately preceding
the presentation of the petition pursuant
to his conviction for an offence for which
he was sentenced to death or to imprison-
ment for a term of ten years or more,
against which conviction or sentence all
rights of the respondent to appeal to a
court having jurisdiction to hear such an
appeal have been exhausted;
 - (b) the respondent has, for a period of not less than
three years immediately preceding the pres-
entation of the petition, been grossly addicted
to alcohol, or a narcotic as defined in the
Narcotic Control Act, and there is no reasonable

was first presented has exclusive jurisdiction to grant relief between the parties and the other petition shall be deemed to be discontinued; and

- (b) if the petitions were presented on the same day and neither of them is discontinued within thirty days after that day, the Divorce Division of the Exchequer Court has exclusive jurisdiction to grant relief between the parties and the petition or petitions pending before the other court or courts shall be removed, by direction of the Divorce Division of the Exchequer Court, into that Court for adjudication.

(3) Where a husband or wife opposes a petition for divorce, the court may grant to such spouse the relief that might have been granted to him or to her if he or she had presented a petition to the court seeking that relief and the court had had jurisdiction to entertain the petition under this Act.

Where petition opposed

DOMICILE

6. (1) For all purposes of establishing the jurisdiction of a court to grant a decree of divorce under this Act, the domicile of a married woman shall be determined as if she were unmarried and, if she is a minor, as if she had attained her majority.

Rule for determining domicile

(2) For all purposes of determining the marital status in Canada of any person and without limiting or restricting any existing rule of law applicable to the recognition of decrees of divorce granted otherwise than under this Act, recognition shall be given to a decree of divorce, granted after the coming into force of this Act under a law of a country or subdivision of a country other than Canada by a tribunal or other competent authority that had jurisdiction under that law to grant the decree, on the basis of the domicile of the wife in that country or subdivision determined as if she were unmarried and, if she was a minor, as if she had attained her majority.

Recognition of foreign decrees based on wife's domicile

PRESENTATION AND HEARING OF PETITIONS:
SPECIAL DUTIES

7. (1) It shall be the duty of every barrister, solicitor, lawyer or advocate who undertakes to act on behalf of a petitioner or a respondent on a petition for divorce under this Act, except where the circumstances of the case are of such a nature that it would clearly not be appropriate to do so,

Duty of legal adviser respecting possibility of reconciliation

- (a) to draw to the attention of his client those provisions of this Act that have as their object

after a trial which shall be by a judge, without a jury;

- (b) to satisfy itself that there has been no collusion in relation to the petition and to dismiss the petition if it finds that there was collusion in presenting or prosecuting it;
- (c) where a decree is sought under section 3, to satisfy itself that there has been no condonation or connivance on the part of the petitioner, and to dismiss the petition if the petitioner 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 granting the decree;
- (d) where a decree is sought under section 4, to refuse the decree if there is a reasonable expectation that cohabitation will occur or be resumed within a reasonably foreseeable period;
- (e) where a decree is sought under section 4, to refuse the decree if there are children of the marriage and the granting of the decree would prejudicially affect the making of reasonable arrangements for their maintenance; and
- (f) where a decree is sought under section 4 by reason of circumstances described in paragraph (e) of subsection (1) of that section, to refuse the decree if the granting of the decree would be unduly harsh or unjust to either spouse or would prejudicially affect the making of such reasonable arrangements for the maintenance of either spouse as are necessary in the circumstances.

(2) Any act or conduct that has been condoned is not capable of being revived so as to constitute a ground for divorce described in section 3. Revival

(3) For the purposes of paragraph (e) of subsection (1) of section 4, a period during which a husband and wife have been living separate and apart shall not be considered to have been interrupted or terminated Calculation of period of separation

- (a) by reason only that either spouse has become incapable of forming or having an intention to continue to live so separate and apart or of continuing to live so separate and apart of his or her own volition, if it appears to the court that the separation would probably have continued if such spouse had not become so incapable; or

- (a) direct that any alimony, alimentary pension or maintenance be paid either to the husband or wife, as the case may be, or to a trustee or administrator approved by the court; and
- (b) impose such terms, conditions or restrictions as the court thinks fit and just.

DECREES AND ORDERS

13. (1) Every decree of divorce shall in the first instance be a decree nisi and no such decree shall be made absolute until three months have elapsed from the granting of the decree and the court is satisfied that every right to appeal from the judgment granting the decree has been exhausted.

Decree nisi

(2) Notwithstanding subsection (1), where, upon or after the granting of a decree nisi of divorce,

Special circumstances

- (a) the court is of opinion that by reason of special circumstances it would be in the public interest for the decree to be made absolute before the time when it could be made absolute under subsection (1), and
- (b) the parties agree and undertake that no appeal will be taken, or any appeal that has been taken has been abandoned,

the court may fix a shorter time after which the decree may be made absolute or, in its discretion, may then make the decree absolute.

(3) Where a decree nisi of divorce has been granted but not made absolute, any person may show cause to the court why the decree should not be made absolute, by reason of its having been obtained by collusion, by reason of the reconciliation of the parties or by reason of any other material facts, and in any such case the court may by order,

Cause may be shown

- (a) rescind the decree nisi;
- (b) require further inquiry to be made; or
- (c) make such further order as the court thinks fit.

(4) Where a decree nisi of divorce has been granted by a court and no application has been made by the party to whom the decree was granted to have it made absolute, then, at any time after the expiration of one month from the earliest date on which that party could have made such an application, the party against whom it was granted may apply to the court to have the decree made absolute and, subject to any order made under subsection (3), the court may then make the decree absolute.

Where decree not made absolute

14. A decree of divorce granted under this Act or an order made under section 10 or 11 has legal effect throughout Canada.

Effect of decree or order

RULES OF COURT

19. (1) A court or court of appeal may make rules of court applicable to any proceedings under this Act within the jurisdiction of that court, including, without restricting the generality of the foregoing, rules of court

Rules of court

- (a) regulating the pleading, practice and procedure in the court, including the addition of persons as parties to the proceedings;
- (b) regulating the sittings of the court;
- (c) respecting the fixing and awarding of costs;
- (d) providing for the registration and enforcement of orders made under this Act including their enforcement after death; and
- (e) prescribing and regulating the duties of officers of the court and any other matter considered expedient to attain the ends of justice and carry into effect the purposes and provisions of this Act.

(2) Notwithstanding subsection (1), the Governor in Council may make such regulations as he considers proper to assure uniformity in the rules of court made under this Act, and any regulations made under this subsection prevail over rules of court made under subsection (1).

Regulations

(3) The provisions of any law or of any rule of court, regulation or other instrument made thereunder respecting any matter in relation to which rules of court may be made under subsection (1), that were in force in Canada or any province immediately before the coming into force of this Act and that are not inconsistent with this Act, continue in force as though enacted or made by or under this Act until such time as they are altered by rules of court or regulations made under this section or are, by virtue of the making of any rules of court or regulations under this section, rendered inconsistent with those rules or regulations.

Continuation of procedural laws

EVIDENCE

20. (1) Subject to this or any other Act of the Parliament of Canada, the laws of evidence of the province in which any proceedings under this Act are taken, including the laws of proof of service of any petition or other document, apply to such proceedings.

Provincial laws of evidence

(2) For the purposes of this section,

- (a) where any proceedings under this Act are taken before the Divorce Division of the Exchequer Court as the court for any province, the proceedings shall be deemed to be taken in that province; and

Where proceedings deemed taken

(3) Subject to subsection (4) but notwithstanding any other provision of this Act, where a proclamation has been issued under subsection (1) or (2) a petition for divorce presented to the Divorce Division of the Exchequer Court before the proclamation was issued shall be dealt with and disposed of as if the proclamation had not been issued.

Petition
previously
presented to
Divorce
Division of
Exchequer
Court

(4) Where a decree of divorce has been granted by the Divorce Division of the Exchequer Court

Variation
of order made
by Divorce
Division of
Exchequer
Court

(a) after the coming into force of this Act but before the issue of a proclamation referred to in subsection (3), or

(b) pursuant to subsection (3),

any order made pursuant to subsection (1) of section 11 may be varied from time to time or rescinded pursuant to subsection (2) of that section by the court that would have had jurisdiction to grant the decree of divorce corollary to which the order was made if the proclamation had been issued at the time when the petition for the decree was presented and that court had made the order by way of corollary relief in respect of a petition presented to it.

CONSEQUENTIAL AMENDMENTS

23. (1) The *Exchequer Court Act* is amended by adding thereto, immediately after section 4 thereof, the following sections:

R.S., c. 98

"4A. (1) A division of the Exchequer Court called the Divorce Division is hereby established.

Divorce
Division

(2) The Divorce Division shall consist of the following regular judges:

Constitution
of Divorce
Division

(a) the judge of the Court who was designated under section 6A to exercise and perform the powers, duties and functions of the officer of the Senate referred to in section 3 of the *Dissolution and Annulment of Marriages Act*, and

(b) such other judges of the Court as may, in the instruments authorizing their appointment, be designated as judges of the Divorce Division.

(3) Notwithstanding subsection (2), the President of the Court is *ex officio* President of the Divorce Division and each of the puisne judges is *ex officio* a judge of the Divorce Division, and as such have and may exercise in all respects the same jurisdiction as regular judges of the Divorce Division.

Ex officio
judges

24. (1) The long title to the *Marriage and Divorce Act* is repealed and the following substituted therefor:

“An Act respecting Marriage”

(2) Section 1 of the said Act is repealed and the following substituted therefor:

“1. This Act may be cited as the *Marriage Act*.” Short title

(3) The heading preceding section 4 and sections 4 to 6 of the said Act are repealed.

TRANSITIONAL AND REPEAL

25. (1) A petition for divorce presented in Canada after the coming into force of this Act shall be governed and regulated by this Act, whether or not the material facts or circumstances giving rise to the petition occurred wholly or partly before the coming into force of this Act. Petition presented after commencement of Act

(2) Notwithstanding the repeal by section 26 of the Acts and laws referred to in that section but subject to subsection (3) of this section, Where proceedings or petition previously commenced

(a) any proceedings for divorce commenced in any court in Canada of competent jurisdiction before the coming into force of this Act and not finally disposed of when this Act comes into force, shall be dealt with and disposed of in accordance with the law as it was immediately before the coming into force of this Act, as though that law had not been repealed; and

(b) any petition for the dissolution or annulment of a marriage filed under the *Dissolution and Annulment of Marriages Act* before the coming into force of this Act and not finally disposed of when this Act comes into force, shall be dealt with and disposed of in accordance with that Act, as though that Act had not been repealed.

(3) Where a decree of divorce has been granted before the coming into force of this Act or pursuant to subsection (2), any order to the effect described in subsection (1) of section 11 may be varied from time to time or rescinded in accordance with subsection (2) of that section by the court that would have had jurisdiction to grant the decree of divorce corollary to which the order was made if this Act had been in force at the time when the petition for the decree was presented and that court had made the order by way of corollary relief in respect of a petition presented to it. Variation of order previously made

Repeal

26. (1) The *Dissolution and Annulment of Marriages Act*, the *Divorce Jurisdiction Act*, the *Divorce Act (Ontario)* in so far as it relates to the dissolution of marriage, and the *British Columbia Divorce Appeals Act* are repealed.

Idem

(2) Subject to subsection (3) of section 19, all other laws respecting divorce that were in force in Canada or any province immediately before the coming into force of this Act are repealed, but nothing in this Act shall be construed as repealing any such law to the extent that it constitutes authority for any other matrimonial cause.

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COMMENCEMENT

Coming into force

27. This Act shall come into force on such day not earlier than three months after the date this Act is assented to as may be fixed by proclamation.

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ROGER DUHAMEL *Queen's Printer*
OTTAWA, 1968

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