



MONTSERRAT

## CHAPTER 5.02

# MATRIMONIAL PROCEEDINGS ACT

### Revised Edition

showing the law as at 1 January 2013

This is a revised edition of the law, prepared by the Law Revision Commissioner under the authority of the Revised Edition of the Laws Act.

This edition contains a consolidation of the following laws—

### MATRIMONIAL PROCEEDINGS ACT

Act 16 of 2012 .. in force 13 November 2012

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**CHAPTER 5.02**

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## CHAPTER 5.02

### MATRIMONIAL CAUSES ACT

*(Act 16 of 2012)*

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

#### Commencement

*[13 November 2012]*

#### PART 1

#### PRELIMINARY

#### Short title

1. This Act may be cited as the Matrimonial Proceedings Act.

#### Interpretation

2. (1) In this Act—

“**attorney-at-law**” means an individual who has been admitted to practice as a solicitor or barrister in Montserrat under the provisions of the Supreme Court Act;

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

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

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

“**Court**” means the High Court;

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

“**custody order**” means an order made under section 16(1);

“**dissolution proceedings**” means proceedings in which either or both spouses seek—

- (a) a divorce;

(b) to dissolve a marriage on the presumption of the death of a spouse; or

(c) an annulment,

without or together with a support order, a custody order or both orders;

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

“**support order**” means an order made under section 15(1);

“**variation order**” means an order made under section 17(1);

“**variation proceedings**” means proceedings in a Court in which either or both spouses seek a variation order.

(2) For the purposes of the definition of “**child of the marriage**” 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,

whether by operation of law or by order of a Court.

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

## PART 2

### JURISDICTION OF THE COURT

#### **Jurisdiction of the Court in dissolution proceedings**

3. The Court may hear and determine any dissolution proceedings if either spouse has been ordinarily resident in Montserrat for at least one year immediately preceding the commencement of the dissolution proceedings.

#### **Jurisdiction of the Court in corollary relief proceedings**

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

(a) either a former spouse is ordinarily resident in Montserrat at the commencement of the corollary relief proceedings; or

(b) both spouses accept the jurisdiction of the Court.

### **Jurisdiction of the Court in variation proceedings**

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

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

### **Exercise of jurisdiction by a judge**

6. The jurisdiction conferred on the Court by this Act is exercisable by a judge of the Court without a jury.

## **PART 3**

### **DISSOLUTION PROCEEDINGS**

#### **Grounds for divorce**

7. (1) A Court may, on petition 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.

(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 commencement of the divorce proceedings;
- (b) the spouse against whom the divorce proceedings are brought has since the celebration of the marriage—
  - (i) committed adultery; or
  - (ii) treated the other spouse with physical or mental cruelty or other behaviour of such a kind as to render intolerable the continued habitation of the spouses.

(3) Before the Court grants a divorce to a spouse, it shall first ensure that the provisions of sections 10 and 11 are complied with.

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

- (a) spouses are 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 the spouses have lived apart shall not be considered to have been interrupted or terminated by reason only that—
  - (i) either spouse has become incapable of forming or having an intention to either continue to live separate and apart or of continuing to live separate and apart of the

spouse's own volition, if it appears to the Court that the separation would probably have continued if the spouse had not become so incapable, or

- (ii) the spouses have resumed cohabitation during a period of, or periods totalling, not more than ninety days with reconciliation as its primary purpose.

### **Annulment of Marriage**

**8. (1)** A Court may, on petition by either or both spouses, grant an annulment to the spouse or spouses on the ground that their marriage is void or voidable.

**(2)** In addition to any other grounds on which a marriage is by law void or voidable, a marriage is voidable on the ground that—

- (a) the marriage has not been consummated as a result of either—
  - (i) the wilful refusal of the respondent spouse to consummate the marriage;
  - (ii) the existing inability of the respondent spouse to have sexual intercourse at the time of the marriage, where the inability is apparent and manifest;
- (b) either spouse to the marriage was at the time of the marriage suffering from a sexual transmitted disease in a communicable form;
- (c) the respondent spouse was at the time of the marriage pregnant by some person other than the petitioner; or
- (d) the consent of either of the spouses to the marriage was not a valid consent because—
  - (i) it was obtained by duress or fraud;
  - (ii) one spouse was mistaken as to the identity of the other spouse or as to the nature of the ceremony performed; or
  - (iii) the spouses to the marriage were, at the time of the marriage, of the same sex.

**(3)** The Court shall not grant an annulment in a case falling within subsection (2)(b) and (c), unless it is satisfied that—

- (a) the petitioner was at the time of the marriage ignorant of the facts alleged;
- (b) proceedings were instituted within a year from the date of the marriage; and
- (c) that sexual intercourse with the consent of the petitioner has not taken place since the discovery by the petitioner of the existence of the grounds for a decree.

(4) Nothing in this section shall be construed as validating any marriage which is by law void, but with respect to which an annulment has not been granted.

(5) A child born of a marriage avoided under subsection (2)(b), (d)(i) and (ii) is a child of the parties, despite that the marriage is avoided, unless a Court declares otherwise.

### **Presumption of death of spouse**

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

(2) In any proceeding under subsection (1) and until the contrary is proved, the fact that—

- (a) for a period of at least five years the other spouse to the marriage has been continually absent from the petitioner, and
- (b) the petitioner has no reason to believe that the other spouse has been alive within that time,

is evidence that the other spouse is dead.

### *Division 1 – Reconciliation*

#### **Duty of attorney-at-law**

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

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

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

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

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

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

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

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

- (a)* a person with experience or training in marriage counselling or guidance; or
- (b)* in special circumstances, some suitable person,

to assist the spouses to achieve a reconciliation.

**(4)** Where 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.

**(5)** No person nominated by the Court under this section to assist spouses to achieve 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.

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

**Matters over which Court must be satisfied before granting dissolution of marriage**

**12. (1)** The Court shall, in any dissolution proceedings,—

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

spouse has condoned or connived in 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 section 7(2)(b).

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

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

(a) an agreement or conspiracy to which petitioner for dissolution of marriage is either directly or indirectly a party for the purpose of subverting the administration of justice; and

(b) any agreement, understanding or arrangement to fabricate or suppress evidence to deceive the Court.

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

### *Division 2 – Dissolution of marriage*

#### **Date on which dissolution of marriage takes effect**

**13. (1)** Subject to this section, a dissolution of marriage granted by the Court becomes effective on the thirty-first day after the day on which the judgment granting the dissolution is delivered.

(2) Where, on or after delivering the judgment granting the dissolution of marriage,—

(a) the Court is of the opinion that by reason of special circumstances the dissolution should take effect earlier than the date specified in subsection (1); and

(b) the spouses agree and undertake that no appeal from the judgment will be made, or any appeal that was made has been abandoned,

the Court may order that the dissolution becomes effective at an earlier time, as it considers appropriate.

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

(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 fixed by law before the expiration of that time or fixed thereafter on an application instituted before the expiration of that time.

(5) Despite 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 dissolution of marriage in respect of which an appeal is made to the appellate Court, becomes effective on the day on which the judgment on appeal is delivered unless the decision of the appellate Court is to the contrary.

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

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

### **Dissolution of marriage**

14. When a dissolution of marriage becomes effective under section 13, the marriage of the spouses is dissolved.

## **PART 4**

### **COROLLARY RELIEF**

#### **Support order**

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

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

(2) Where an application is made under subsection (1), the court may, upon an application by either or both spouses, make an interim order

requiring one spouse to secure or pay, or to secure and pay, such lump sum or periodic sums, or such lump sum and periodic sums as the court thinks reasonable for the support of—

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

pending determination of the application under subsection (1).

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

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

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

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

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

- (a) 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 under subsection (7);
- (c) relieve any economic hardship of the spouses arising from the breakdown of marriage; and
- (d) in so far as practicable, promote the economic self-sufficiency of each spouse within a reasonable time.

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

- (a) recognise that the spouses have a joint financial obligation to maintain the child; and

(b) apportion that obligation between the spouses according to their relative abilities to contribute to the performance of the obligation.

(8) Where a Court is considering an application for the support of a child of the marriage and an application for the support of a spouse, the Court shall give priority to the support of the child of the marriage in determining the applications.

(9) Where, under this section, a person is ordered by the Court to make a payment to another party or on that party's behalf, the Court may order the person's employer to garnish the wages of the person against whom the order is made.

(10) The employer must pay the amount deducted into the office of the Court unless the Court orders otherwise.

### **Custody order**

**16. (1)** A Court may, on application by either or both spouses or by any person having an interest, make an order respecting the custody of or access to, any or all children of the marriage.

(2) The Court may, upon application by a party to an application made under subsection (1), make an interim order respecting the custody of or the access to, any or all the children of the marriage pending determination of the application under subsection (1).

(3) A person, other than a spouse, shall 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 person.

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

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

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

(8) The Court shall, in making an order under this section, take into consideration only the best interests of the child of the marriage as

determined by reference to the condition, means, needs and other circumstances of the child.

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

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

### **Variation order, etc.**

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

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

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

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

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

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

(6) For the purposes of subsection (5), a former spouse's terminal illness or critical condition is considered a change of circumstances of the child of the marriage, and the court shall make a variation order in respect of access that is in the best interests of the child.

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

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

- (a) recognize any economic advantages or disadvantages to the spouses arising from the marriage or its breakdown;
- (b) apportion between the former spouses any financial consequences arising from the care of any child of the marriage over and above the obligation apportioned between the spouses under subsection (9);
- (c) relieve any economic hardship of the former spouses arising from the breakdown of marriage; and
- (d) in so far as practicable, promote the economic self-sufficiency of each spouse within a reasonable time.

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

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

(10) 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 the contact.

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

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

(12) In making a variation order, the Court may take into consideration any fresh evidence not considered in making the order in respect of which the variation order is sought.

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

## PART 5

### GENERAL PROVISIONS

#### **Appeals**

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

(2) No appeal lies from the judgment of the Court granting a dissolution of marriage on or after the day on which the dissolution takes effect.

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

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

#### **Powers of appellate Court**

19. The appellate Court may—

(a) dismiss the appeal; or

(b) allow the appeal and—

(i) deliver the judgment or make the order that ought to have been made; or

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

#### **Proof of signature or office**

20. A document offered in any proceedings under this Act that purports to be certified or sworn by a judge or an officer of the Court is, unless the contrary is proved, proof of the appointment, signature or authority of the

judge or officer and, in case of a document purporting to be sworn, of the appointment, signature or authority of the person before whom the document purports to be sworn.

### Rules

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

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

### Fees

22. The Governor acting on the advice of Cabinet may, by Order, prescribe fees to be paid by any person to whom services are provided under this Act.

### Repeal

23. The Matrimonial Causes Act, (Cap. 05.02) is repealed.

### Savings

24. (1) Despite the repeal of the Matrimonial Causes Act, (Cap. 05.02), the Matrimonial Causes Rules (1937 No. 1113) continue in force with the necessary modifications to bring the rules in conformity with the provisions of this Act until new rules are made under section 21 of this Act.

(2) Despite the repeal of the Matrimonial Causes Act (Cap. 05.02), proceedings that were commenced under that Act, prior to the commencement of this Act continue under the provisions of that Act.

### Transitional provisions

25. Proceedings may be commenced under this Act despite that the material facts giving rising to the proceedings or to jurisdiction over the

proceedings occurred wholly or partly before the commencement of this Act.

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