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SNL2009 CHAPTER M-1.02

MARRIAGE ACT

Amended:

[2009 c16 s9](#); [2009 c30 s10](#); 2018 cC-12.3 s124; [2019 c2 s1](#)

CHAPTER M-1.02

AN ACT RESPECTING MARRIAGE IN THE PROVINCE

Be it enacted by the Lieutenant-Governor and House of Assembly in Legislative Session convened, as follows:

Short title

1. This Act may be cited as the *Marriage Act*.

2009 cM-1.02 s1

Interpretation

2. (1) In this Act

- (a) "certificate" means a marriage certificate referred to in paragraph 23 (1)(b);
- (b) "clergy" means persons, other than marriage commissioners, authorized by this Act to perform a marriage, and includes a Salvation Army officer;
- (c) "issuer" means an issuer of marriage licences appointed under [section 14](#) ;
- (d) "judge" means a judge of the Provincial Court or the Trial Division, as the context requires;
- (e) "licence" means a marriage licence issued under this Act;
- (f) "marriage commissioner" means a person authorized under [section 11](#) to perform a marriage;
- (g) "minister" means the minister appointed under the *Executive Council Act* to administer this Act;
- (h) "registrar general" means the registrar general appointed under [section 3](#) of the *Vital Statistics Act, 2009*;
- (i) "religious body" means a church or a religious denomination, sect, congregation or society;
- (j) "required form" means a form required by the minister;
- (k) "Salvation Army officer" or "officer" means a commissioned officer, envoy or auxiliary captain of the religious society known as "The Salvation Army" and chosen or commissioned by that society to perform a marriage; and
- (l) "spouse" means either of 2 persons who are married to each other.

(2) Where the signature of the registrar general is required under this Act, it may be reproduced by photographic or electronic means.

2009 cM-1.02 s2; 2009 c16 s9

Labrador Inuit rights

3. This Act shall be read and applied in conjunction with the *Labrador Inuit Land Claims Agreement Act* and, where a provision of this Act is inconsistent or conflicts with a provision, term or condition of the *Labrador Inuit Lands Claims Agreement Act*, the provision, term or condition of the *Labrador Inuit Land Claims Agreement Act* shall have precedence over the provisions of this Act.

2009 cM-1.02 s3

Persons who may perform marriage

4. A person shall not perform a marriage unless he or she is

- (a) a member of the clergy registered under this Act; or
- (b) a marriage commissioner authorized under [section 11](#) to perform a marriage.

2009 cM-1.02 s4

Registration of clergy

5. (1) Upon application in the required form, the registrar general may register a member of the clergy to perform marriages.

(2) The application for registration may be made on behalf of the member of the clergy of the religious body or religious society to which he or she belongs having jurisdiction in the province.

(3) The registrar general shall issue a certificate of registration in respect of a person registered under this Act, or he or she may include in one certificate the names of a number of those persons who belong to the same religious body or religious society.

(4) The registrar general shall keep a register showing the names of members of the clergy registered under this Act, the name of the religious body or religious society to which a member belongs and the date of his or her registration.

2009 cM-1.02 s5

Requirements for registration

6. (1) A person shall not be registered under this Act unless the registrar general is satisfied that

- (a) the person is a member of the clergy ordained or appointed according to the rites and uses of the religious body or religious society to which he or she belongs, or is by the rules of that religious body or religious society considered ordained or appointed under some prior ordination or appointment;
- (b) the person is recognized by the religious body or religious society to which he or she belongs as authorized to perform a marriage according to its rites and uses;

(c) the religious body or religious society to which the person belongs is sufficiently well established both as to continuity of existence and as to recognized rites and uses respecting performing a marriage, to warrant, in the opinion of the registrar general, the registration of its clergy as members of the clergy authorized to perform a marriage; and

(d) the person is living in the province.

(2) Notwithstanding paragraph (1)(d), in the case of a member of the clergy who is in the province temporarily, and who, if living in the province, would be eligible to be registered under subsection (1), the registrar general may, with the approval of the minister, grant a temporary registration to that member of the clergy, and may register him or her as a member of the clergy authorized to perform a marriage during the period to be fixed by the minister and the certificate of registration issued shall state the period during which the authority to perform a marriage may be exercised.

(3) The governing authority of a religious body having jurisdiction in this province shall send to the minister by January 31 in a year a list of those members of the clergy that are registered under this Act.

2009 cM-1.02 s6

Marriage by the Baha'i Faith

7. (1) Notwithstanding [sections 4](#) , [5](#) and [6](#) , where

(a) an incorporated local Spiritual Assembly of the Baha'i Faith has received the approval of the National Spiritual Assembly of the Baha'i of Canada to appoint a marriage registrar; and

(b) a person is designated as a marriage registrar by that Assembly,

the registrar general may register that person under this section to exercise the powers conferred and to carry out the duties imposed by this Act and the *Vital Statistics Act, 2009* on a person authorized by this Act to perform a marriage.

(2) Notwithstanding [sections 4](#) , [5](#) and [6](#) , a marriage performed in accordance with the rites and uses of the Baha'i Faith and registered by a marriage registrar described in subsection (1) shall be considered to be valid.

(3) Nothing in this section requires the marriage to be celebrated or performed by the person designated as a marriage registrar and registered under this section.

2009 cM-1.02 s7

Inuit marriage

8. Notwithstanding [sections 4](#) , [5](#) and [6](#) , a marriage performed in accordance with Inuit Laws and Bylaws made in accordance with the *Labrador Inuit Land Claims Agreement Act* shall be considered to be valid.

2009 cM-1.02 s8

Minister may cancel authorization to perform marriages

9. (1) Where the minister is satisfied that a member of the clergy registered under this Act has stopped possessing, or does not possess the qualifications entitling him or her to be registered, the minister may, with or without a hearing, direct the registrar general to make an entry in the register kept by the registrar general under this Act cancelling the registration of that person, and the registrar general shall make that entry and shall publish a public notice of the cancellation in one issue of the *Gazette*, and, where he or she thinks appropriate, in one or more issues of a newspaper published in the province, and upon publication of the notice in the *Gazette*, the authority of that member of the clergy to perform a marriage ends.

(2) The registrar general shall immediately, by registered mail to his or her last known address, notify the member of the clergy whose registration is cancelled under subsection (1) of that cancellation.

2009 cM-1.02 s9

Appeal

10. Where

- (a) the application made by or on behalf of a person for registration under this Act is refused; or
- (b) the registration of a registered person is cancelled,

the applicant or person may appeal to a judge of the Trial Division and that judge may decide the appeal, and the minister and the registrar general shall be bound by and comply with that decision.

2009 cM-1.02 s10

Appointment of marriage commissioners

11. (1) The minister may, in accordance with criteria he or she may establish, appoint a person who has reached the age of majority living in the province as a marriage commissioner.

(2) The mayor of the City of St. John's , the mayor of the City of Corner Brook and the mayor of the City of Mount Pearl and Provincial Court judges are, by virtue of their office, marriage commissioners for the purposes of the Act.

(3) Notwithstanding subsection (1), where a person authorized to perform a marriage in another province is in the province temporarily, the person may apply to the minister to be authorized to perform a marriage in the province, and the minister may authorize that person to perform marriages in the province during the period to be fixed by the minister.

- (4) An issuer shall not be appointed or act as a marriage commissioner.

2009 cM-1.02 s11

Form of ceremony

12. (1) A particular form of ceremony is not required in a marriage that is performed by a marriage commissioner except that, in some part of the ceremony, in the presence of the marriage commissioner and witnesses, each of the parties to the marriage shall declare:

"I solemnly declare that I do not know of a lawful impediment why I, A.B., may not be joined in matrimony to C.D.",

and then each of the parties shall say to the other:

"I call upon persons present to witness that I, A.B., take you C.D., to be my lawful wedded spouse (or wife or husband)",

after which the marriage commissioner shall say:

"By the authority vested in me by the *Marriage Act*, I pronounce you, A.B. and C.D., to be spouses of each other (or husband and wife, or wife and wife, or husband and husband)."

(2) Where the marriage commissioner adds other words to the ceremony, other than those referred to in subsection (1), an expression shall not be used in the ceremony that means or implies that the marriage is not to the exclusion of other persons while both of the parties are alive.

(3) A marriage commissioner who performs a marriage may charge a fee for that service.

(4) [Section 24](#) of this Act and [section 21](#) of the *Vital Statistics Act, 2009* do not apply to a religious ceremony of marriage of persons that is performed after a marriage has been performed by a marriage commissioner under this section.

2009 cM-1.02 s12

Licence requirements

13. (1) A member of the clergy or marriage commissioner shall not perform a marriage unless he or she has received the licence issued in respect of the marriage not less than 4 days before the day of the intended marriage, but where a member of the clergy or marriage commissioner is provided with evidence satisfactory to him or her that exceptional and urgent circumstances exist which are sufficient in his or her discretion to justify the early performance of the marriage, the member of the clergy or marriage commissioner may perform the marriage without waiting for the expiration of that 4 day period.

(2) Notwithstanding subsection (1), where the death of one of the parties to an intended marriage is imminent in the opinion of a qualified medical practitioner, a member of the clergy or marriage commissioner may perform that marriage notwithstanding that a licence has not been issued in respect of the marriage.

(3) A member of the clergy or marriage commissioner shall not perform a marriage where either party to the intended marriage is under the age of 16 years.

(4) Where a member of the clergy or marriage commissioner has reason to believe that either party to an intended marriage is so under the influence of alcoholic liquor or a narcotic drug that the party may not be capable of fully understanding the significance of his or her actions, the member of the clergy or marriage commissioner shall not perform that marriage.

(5) A marriage shall be performed only in the presence of at least 2 witnesses, each of whom shall be 16 years of age or older.

(6) A marriage shall be performed only within a period of 30 days immediately following the date of the issue of the licence but for good cause an issuer may extend the licence, without fee, for a further period of not less than 30 nor more than 60 days in which case the marriage may be performed within that extended period.

(7) Where the parties to a marriage performed by a marriage commissioner wish a religious ceremony in addition, a certificate of the marriage commissioner that he or she has performed the marriage is sufficient authorization to a member of the clergy to perform a religious ceremony of marriage in respect of the parties.

(8) [Rep. by [2019 c2 s1](#)]

[2009 cM-1.02 s13](#); [2019 c2 s1](#)

Appointment of issuers

14. (1) The minister may, in accordance with criteria that he or she may establish, appoint persons to issue marriage licences.

(2) A member of the clergy or marriage commissioner shall not be appointed as an issuer.

[2009 cM-1.02 s14](#)

Form of marriage licence

15. (1) Marriage licences shall be in the required form.

(2) The signature of the registrar general shall appear on licences, and he or she may sign licences in blank, which shall then be provided to the issuers in numbers which the registrar general considers necessary, and a licence signed in blank shall remain valid, notwithstanding that the registrar general has ceased to hold office before the marriage licence is issued.

(3) An issuer shall give to the registrar general a receipt for blank licences received by him or her and shall account to the registrar general for those licences.

[2009 cM-1.02 s15](#)

Application requires affidavit

16. (1) The persons applying for a licence shall jointly make an affidavit containing

- (a) a statement setting out the full names of the parties to the intended marriage and their places of residence;
- (b) a statement whether each person is single, widowed or divorced;
- (c) a statement that each person believes there is no consanguinity or other lawful cause or legal impediment to bar or hinder the performance of an intended marriage; and
- (d) a statement of the age of each person making the affidavit and that the person is a party to the intended marriage.

(2) The affidavit made under subsection (1) shall further state the facts necessary to enable the issuer to determine whether or not the required consent has been given in the case of a party under the age of 19 years, or whether or not that consent is necessary, and where a written consent has been given, it shall be attached to the affidavit.

(3) The affidavit made under this section shall be in the required form and may be made before the issuer to whom the application is made or before a notary public, a justice of the peace or a commissioner for oaths appointed under the laws of the province.

2009 cM-1.02 s16

Issuer to state particulars

17. (1) Where the issuer has received the required fee and supporting affidavit, he or she shall

- (a) complete a licence with
 - (i) the names, residences and marital status of the parties to the intended marriage,
 - (ii) other information which may be required, and
 - (iii) the date on which the licence is issued; and
- (b) sign the licence,

and the licence shall then be considered to be issued.

(2) A licence shall not be used for a marriage other than for the marriage specified in it.

2009 cM-1.02 s17

Restrictions on issuing a licence

18. An issuer shall not issue a licence

- (a) to a person under the age of 16 years;
- (b) where he or she has reason to believe that either of the parties to the intended marriage is under the influence of alcoholic liquor or a narcotic drug; or
- (c) in respect of his or her own intended marriage.

Written consent required

19. (1) Where either party to an intended marriage is under the age of majority and is not widowed or divorced, an issuer shall not issue a licence unless there is filed with him or her the written consent of both parents of the party or in another case, the written consent of

(a) a parent of the party, unless the custody of the party has been granted to a person other than that parent or unless that parent has been found by a court to be mentally incompetent;

(b) the guardian of the party or the person having custody of the party under an order of a court, where both parents are dead or prevented by paragraph (a) from giving consent or where the surviving parent is so prevented; or

(c) a manager of child, youth and family services under the *Children, Youth and Families Act*, where the party is a person in the continuous care and custody of that manager,

and the issuer is satisfied as to the genuineness of the consent and the authority to give consent of the person giving it.

(2) Notwithstanding subsection (1), the issuer may issue a licence without the written consent required under that subsection where the issuer is satisfied that

(a) both parents of the party are dead;

(b) both parents of the party are prevented under subsection (1) from giving consent;

(c) a guardian of the party has not been appointed; or

(d) the party is not a person in the continuous care and custody of the director of child, youth and family services referred to in subsection (1).

(3) Notwithstanding subsection (2), the party requesting the issue of a licence without the consent referred to in subsection (1) shall make and give to the issuer concerned an affidavit containing a statement of the relevant circumstances under which that party claims to be entitled to the issue of a licence without that consent, and the affidavit may be made before a notary public, a justice of the peace or a commissioner for oaths appointed under the laws of the province.

(4) Where an issuer refuses to issue a licence on the ground that the necessary consent has not been given, either party in respect of whom the licence is sought may, without the intervention of a next friend, apply to a judge of the Trial Division for an order that the licence be issued.

(5) The judge of the Trial Division may hear the application and, where he or she is satisfied that

(a) consent to the proposed marriage is not required; or

(b) the person whose consent is required has given his or her written consent to the proposed marriage,

the judge may order that the licence be issued, and upon receipt of a certified copy of the order the issuer shall issue the licence.

(6) Where a person whose consent is required under subsection (1) is unable to give consent because of illness, refuses to give consent, or where it is uncertain whose consent is required, either party in respect of whom the licence is sought may, without the intervention of a next friend, apply to a judge of the Trial Division for an order dispensing with consent.

(7) The judge of the Trial Division may hear the application and, where he or she is of the opinion that the proposed marriage is an appropriate one and, where he or she is satisfied that

- (a) the person whose consent is required is unable because of illness to give consent;
- (b) the consent is unreasonably or arbitrarily refused;
- (c) the person whose consent is required is not interested in the maintenance or well-being of the party in respect of whom the licence is sought; or
- (d) it is uncertain whose consent is required,

the judge may order that the consent be dispensed with and, upon receipt of a certified copy of the order, the issuer shall issue the licence.

(8) A consent referred to in this section shall be signed in the presence of at least one person who has attained the age of majority who shall sign the consent as a witness to it.

2009 cM-1.02 s19; 2009 c30 s10; 2018 cC-12.3 s124

Evidence

20. (1) Where an issuer has reason to suspect that a statement in an affidavit made under [section 16](#) or [19](#) is not correct, he or she shall require a further affidavit, and that affidavit shall be forwarded to the registrar general.

- (2) An issuer may
- (a) require the production of witnesses to identify an applicant for a licence or party to an intended marriage; and
 - (b) examine under oath or affirmation an applicant or party referred to in paragraph (a) or other witnesses as to a matter concerning the issue of the licence.

2009 cM-1.02 s20

Powers of issuer

21. (1) An issuer has, for the purposes of this Act, the powers that are or may be conferred upon a commissioner under the *Public Inquiries Act, 2006*, including the power to administer oaths and affirmations and to take evidence under oath or affirmation.

(2) An issuer is, for the purposes of this Act, considered to be an investigating body referred to in the *Public Investigations Evidence Act*.

(3) The powers conferred on an issuer by subsections (1) and (2) are in addition to and not in derogation of a power conferred elsewhere in this Act upon an issuer or powers of an issuer arising under another Act or law.

2009 cM-1.02 s21

Person divorced in Canada

22. (1) An issuer shall not issue a licence to a person whose previous marriage has been dissolved or annulled in Canada unless the person files with the issuer

- (a) the final decree or divorce certificate; or
- (b) a copy of the final decree or divorce certificate certified by a proper officer dissolving or annulling the marriage.

(2) An issuer shall not issue a licence to a person whose previous marriage has been dissolved or annulled elsewhere than in Canada unless that person files with the issuer

- (a) a copy of his or her final divorce documents from the jurisdiction in which the documents were issued; and
- (b) a letter from a member in good standing of the bar of the province indicating that the member has examined the final divorce documents referred to in paragraph (a) and that the person is, in the opinion of that member, free to marry in the province.

(3) Where the final divorce documents referred to in subsection (2) have been issued in a language other than English or French, the person applying for a licence under this Act shall provide a certified translation of those documents completed by a certified translator, and the requirements of subsection (2) shall apply to those translated documents.

2009 cM-1.02 s22

Requirements after marriage performed

23. (1) Immediately after a marriage has been performed, the member of the clergy or the marriage commissioner performing it shall

- (a) complete the certificate endorsed upon the licence with
 - (i) the names of the parties to the marriage, and the residences and marital status of the parties,
 - (ii) the date and place of the marriage,
 - (iii) the religious body or denomination according to the rites of which the marriage was performed, where the marriage was performed by a member of the clergy,

(iv) the names and addresses of the witnesses to the marriage, and

(v) other information required in the form,

and the member of the clergy or marriage commissioner shall sign the licence and, where the marriage was performed by a member of the clergy, the religious denomination to which he or she belongs;

(b) complete the certificate attached to the licence with the particulars referred to in paragraph (a) and also with the date and place of issue of the licence under which the marriage was performed, and sign the certificate and, where the marriage was performed by a member of the clergy, the religious denomination to which he or she belongs, and the certificate when completed and signed shall be detached from the licence and given to one of the parties to the marriage; and

(c) complete a form, to be known as the "marriage register", with

(i) the date and place of the marriage,

(ii) the names, ages, marital status, religious denominations, places of residence and places of birth of the parties to the marriage,

(iii) the names of the parents of those parties, and

(iv) other information required in the form,

and the marriage register when completed shall be signed by the 2 witnesses to the marriage, with their addresses, by the parties to the marriage, and by the person who performed the marriage with, where he or she is a member of the clergy, the name of the religious denomination to which he or she belongs.

(2) Nothing in this section shall be construed to interfere with a member of the clergy keeping a marriage register which he or she is otherwise required to keep or thinks appropriate to keep.

(3) The marriage certificate and marriage register referred to in this section shall be in the required form.

2009 cM-1.02 s23

Return of marriage register to issuer

24. A person who performs a marriage shall, within 7 days of the marriage, return to the issuer by whom the licence was issued the marriage register in respect of the marriage, completed and signed under [section 23](#) together with the licence for the marriage with the certificate endorsed on the licence completed in accordance with that section.

2009 cM-1.02 s24

Record kept by issuer

25. An issuer shall keep a record in which he or she shall enter

(a) the date on which a licence was issued by him or her;

- (b) the parties to the intended marriage;
- (c) the date on which the licence was returned to him or her under [section 24](#) ; and
- (d) the particulars of the marriage as set out in the marriage register returned to him or her.

2009 cM-1.02 s25

Duties of issuers

26. (1) An issuer shall, where he or she receives documentation from the clergy or marriage commissioner, review that documentation and

- (a) if it is incomplete, return the documentation to the clergy or marriage commissioner who shall complete it as required; or
- (b) if it is complete, send the documentation to the registrar general within 7 days of receiving the documentation from the clergy or marriage commissioner.

(2) For the purpose of subsection (1), "documentation" means

- (a) the licences issued by the issuer and returned to him or her with the certificates of marriage endorsed on the licences during that period;
- (b) affidavits considered by the issuer on the issue of licences during that period;
- (c) consents and orders dispensing with consent filed with the issuer during that period;
- (d) documents and other material filed with the issuer under [section 23](#) during that period;
- (e) marriage registers returned to the issuer; and
- (f) a list of documents being returned to the registrar general under this section signed by the issuer.

(3) An issuer, or another person having the possession, power or control of unissued licences shall, upon the request of the registrar general, return to him or her every unissued licence and the property in all unissued licences shall be in and shall remain in the minister.

(4) Expenses incidental to providing licences shall be paid by the issuer of the licences.

(5) A marriage issuer who ceases to perform that function shall provide written notice to the registrar general of that fact, and shall return all issued and unissued licences in his or her possession at that time to the registrar general.

2009 cM-1.02 s26

Secrecy

27. (1) A marriage commissioner, a marriage licence issuer, or a person having access to information required by this Act shall not communicate or allow to be communicated to a person not entitled to it,

information obtained under this Act, or allow a person not so entitled to inspect or have access to a record containing information obtained under this Act.

(2) A person who wilfully violates this section is guilty of an offence and is liable on summary conviction to a fine not exceeding \$5,000.

2009 cM-1.02 s27

Error

28. Where an error is found to have been made in the entry of a marriage in a marriage register, the person discovering the error shall immediately give information of the error to the registrar general, and the registrar general shall investigate the circumstances of the case, and where he or she is satisfied that an error has been made in that entry, the registrar general may correct the erroneous entry according to the truth of the case by altering the original entry.

2009 cM-1.02 s28

Offence and penalty

29. A person who

- (a) performs or counsels a person to perform a marriage under a licence which has not been completed and signed by an issuer;
- (b) alters or counsels an alteration of a license after the license has been issued;
- (c) performs or helps in performing a marriage under a licence issued for another marriage;
- (d) issues a marriage license when he or she was not authorized by this Act to issue licences;
- (e) performs a marriage when he or she was not authorized by this Act to perform marriages;
- (f) knowing the statement to be false sends to a newspaper publisher or other person for publication in a newspaper a false statement of marriage; or
- (g) fails to comply with or otherwise contravenes this Act

is guilty of an offence and liable on summary conviction to a fine not exceeding \$1,000.

2009 cM-1.02 s29

Offence and penalty - issuer

30. An issuer who

- (a) parts with or allows to go out of his or her possession a marriage licence except as provided in this Act;

(b) loses or damages a licence, marriage register or other document in his or her possession under this Act;

(c) does not, within the relevant period prescribed by this Act, make the returns which by this Act he or she is required to make;

(d) neglects or refuses to make an entry or perform a duty which he or she is by the Act required to make or do; or

(e) knowingly makes a false return of licences sold by him or her

is guilty of an offence and liable on summary conviction to a fine not exceeding \$5,000.

2009 cM-1.02 s30

Consent required

31. (1) A prosecution under this Act shall not be taken except with the prior written consent of the minister.

(2) A prosecution under this Act shall not be started later than one year after the alleged offence was committed.

2009 cM-1.02 s31

Protection for action in good faith

32. (1) A person who performs or purports to perform a marriage is not subject to an action or liability because of there having been a legal impediment to the marriage unless, at the time he or she performed the marriage, he or she was aware, or should reasonably have been aware, of the impediment.

(2) Where the parties to a marriage performed in good faith and intended to be in compliance with this Act were not under a legal disqualification to contract the marriage and after that marriage have lived together and cohabited as spouses, the marriage shall be considered to have been validly performed, notwithstanding that the person who performed the marriage was not authorized to perform a marriage and notwithstanding an irregularity or insufficiency in the issue of the licence.

2009 cM-1.02 s32

Fees and forms

33. The minister may set fees and establish and require forms for the purpose and administration of this Act.

2009 cM-1.02 s33

RSNL1990 cS-19 Rep.

34. The *Solemnization of Marriage Act* is repealed.

2009 cM-1.02 s34

Commencement

35. This Act comes into force on October 1, 2009 .

2009 cM-1.02 s35