



1980

## c 256 Marriage Act

Ontario

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## CHAPTER 256

## Marriage Act

1.—(1) In this Act,

Interpre-  
tation

- (a) “band” means a band as defined in the *Indian Act* (Canada); R.S.C. 1970,  
c. I-6
- (b) “church” includes chapel, meeting-house or place set aside for religious worship;
- (c) “Indian” means a person who is registered as an Indian or entitled to be registered as an Indian under the *Indian Act* (Canada);
- (d) “issuer” means a person authorized under this Act to issue marriage licences;
- (e) “judge” means a provincial judge or a judge of a county or district court;
- (f) “licence” means a marriage licence issued under this Act;
- (g) “Minister” means the Minister of Consumer and Commercial Relations;
- (h) “prescribed” means prescribed by the regulations;
- (i) “regulations” means the regulations made under this Act;
- (j) “reserve” means a reserve as defined in the *Indian Act* (Canada).

(2) This Act does not apply in respect of any ceremony or form of marriage gone through by two persons who are married to each other by a marriage previously solemnized Application  
of Act to  
subsequent  
ceremonies

in accordance with this Act or recognized as valid in Ontario. 1977, c. 42, s. 1.

Administra-  
tion

2. The administration of this Act is under the direction of the Minister. 1977, c. 42, s. 2.

Delegation  
of powers  
and duties

3. Where, under this Act, a power or duty is granted to or vested in the Minister, he may in writing, subject to the approval of the Lieutenant Governor in Council, delegate that power or duty to the Deputy Minister of Consumer and Commercial Relations, or to any officer or officers of the Ministry of Consumer and Commercial Relations, subject to such limitations, restrictions, conditions and requirements as the Minister may set out in his delegation. 1977, c. 42, s. 3.

Authority  
to marry

4. No marriage may be solemnized except under the authority of a licence issued in accordance with this Act or the publication of banns. 1977, c. 42, s. 4.

Who may  
marry

5.—(1) Any person who is of the age of majority may obtain a licence or be married under the authority of the publication of banns, provided no lawful cause exists to hinder the solemnization.

Idem

(2) No person shall issue a licence to a minor, or solemnize the marriage of a minor under the authority of the publication of banns, except where the minor is of the age of sixteen years or more and has the consent in writing of both parents in the form prescribed by the regulations.

Giving of  
consent

(3) The consent referred to in subsection (2) is not required in respect of a person who is a widow, a widower or divorced.

Idem

(4) Where one of the parents of a minor is dead or both parents are living apart, the consent required by subsection (2) may be given by the parent having actual or legal custody of the minor.

Idem

(5) Where both parents of a minor are dead or are voluntary or involuntary patients in a psychiatric facility, or are residents of a facility under the *Developmental Services Act*, the consent required by subsection (2) may be given by a lawfully appointed guardian or an acknowledged guardian who has brought up or who for the three years immediately preceding the intended marriage has supported the minor.

(6) Where a minor is made a ward of someone other than a parent by order of a court or under any Act, the consent required by subsection (2) may be given by the lawful guardian of the minor or person responsible for exercising the rights and duties of a guardian of the minor. 1977, c. 42, s. 5. Idem

6.—(1) Where a person whose consent is required by section 5 is not available or unreasonably or arbitrarily withholds his consent, the person in respect of whose marriage the consent is required may apply to a judge without the intervention of a next friend for an order dispensing with the consent. Application to dispense with consent

(2) The judge shall hear the application in a summary manner and may, in his discretion, make an order dispensing with the consent required by section 5. 1977, c. 42, s. 6. Powers of judge

7. No person shall issue a licence to or solemnize the marriage of any person whom he knows or has reasonable grounds to believe lacks capacity to marry by reason of being mentally ill or mentally defective or under the influence of intoxicating liquor or drugs. 1977, c. 42, s. 7. Persons mentally ill or under influence

8.—(1) An applicant for a licence who has been previously married is entitled to be issued a licence if such marriage has been dissolved or annulled and such dissolution or annulment is recognized under the law of Ontario and the applicant otherwise complies with the requirements of this Act. Where dissolution of former marriage recognized in Ontario

(2) Subject to subsection (6), no issuer shall issue a licence to a person whose previous marriage has been dissolved or annulled in Canada unless such person deposits with the issuer, Material to be filed with issuer where dissolution in Canada

(a) the final decree or judgment dissolving or annulling the marriage or a copy of the final decree or judgment or Act dissolving or annulling the marriage, certified by the proper officer; and

(b) such other material as the issuer may require.

(3) Subject to subsection (6), no issuer shall issue a licence to a person whose previous marriage has been dissolved or annulled elsewhere than in Canada, unless the authorization in writing of the Minister is obtained upon the deposit of such material as he may require. Where dissolution, etc., outside Canada

Review of  
refusal to  
issue  
licence

(4) Where an issuer refuses to issue a licence, or the Minister refuses to issue an authorization under subsection (3), the applicant may apply to the Divisional Court for judicial review under the *Judicial Review Procedure Act* and for an order directing that a licence be issued to him and if the court finds that he is so entitled it may make such an order.

R.S.O. 1980,  
c. 224

Parties

(5) The applicant, the Minister and such other persons as the court may order are parties to an application under subsection (4).

Issue of  
licence  
under court  
order

(6) Where an applicant for a licence files with an issuer, together with his application, an order of the Divisional Court made on an application under subsection (4) directing that a licence be issued to him, the issuer shall issue the licence. 1977, c. 42, s. 8.

Application  
for presump-  
tion of death

9.—(1) A married person whose spouse is missing and who alleges,

- (a) that his spouse has been continuously absent for at least seven years immediately preceding the application;
- (b) that his spouse has not been heard from or heard of during such period by the applicant or to the knowledge of the applicant by any other person; and
- (c) that the applicant has made reasonable inquiries and has no reason to believe that his spouse is living,

may apply to the judge of a county or district court for an order under this section.

Order

(2) Upon being satisfied as to the truth of the matters alleged, the judge may, in his discretion, make an order declaring that the spouse shall be presumed dead.

Remarriage  
authorized

(3) Where an order has been obtained under this section, the person in whose favour the order was made may, subject to the provisions of this Act, obtain a licence or be married under the authority of the publication of banns upon depositing a copy of the order with the person issuing the licence or solemnizing the marriage together with an affidavit in the prescribed form.

(4) The order has no effect for any purpose other than the issuance of a licence under subsection (3). 1977, c. 42, s. 9. <sup>Effect of order</sup>

**10.** Notwithstanding anything in this Act, if the Minister considers that circumstances justify the issue of a licence in any particular case, he may, in his absolute discretion, authorize the issue of the licence. 1977, c. 42, s. 10. <sup>Discretionary power of Minister</sup>

**11.—(1)** Marriage licences may be issued by the clerk of every city, town and village. <sup>Issuers</sup>

(2) Where it is considered expedient for the public convenience, the Lieutenant Governor in Council may appoint as an issuer the clerk of any township, or any person resident in a county, or in a township adjacent thereto, or in a provisional judicial district, or a member of a band upon the recommendation of the council of the band. <sup>In townships and unorganized territory</sup>

(3) An issuer may, with the approval in writing of the Minister or of the head of the council of the municipality of which he is clerk, appoint in writing one or more deputies to act for him; and any such deputy while so acting has the power of the issuer appointing him. <sup>Deputy issuers</sup>

(4) The issuer shall, upon appointing a deputy, forthwith transmit to the Minister a notice of the appointment, and of the name and official position of the person by whom the appointment has been approved, and the Minister may at any time cancel the appointment. <sup>Notice of appointment of deputy</sup>

(5) The deputy shall sign each licence issued by him with the name of the issuer as well as his own name in the following manner: <sup>Signature of licences by deputy</sup>

AB, Issuer of Marriage Licences, per CD, Deputy Issuer.

1977, c. 42, s. 11.

**12.—(1)** An issuer or the Minister may require evidence to identify any applicant or to establish his status and may examine, under oath if required, any applicant or other person as to any matter pertaining to the issue of a licence. <sup>Evidence on applications</sup>

(2) Where an issuer has reason to believe that any information set out in an application for a licence is untrue, he shall not issue the licence unless, on the production of such further evidence as he may require, he is satisfied as to the truth of the information. 1977, c. 42, s. 12. <sup>Untrue information</sup>

Record of  
licences

**13.**—(1) Every issuer shall keep in his office a record of the serial number and the date of issue of every licence issued by him, and the names and addresses of the parties to the intended marriage.

Searches

(2) Any person is entitled, upon application, to have a search made respecting any licence issued within three months immediately preceding the date of application. 1977, c. 42, s. 13.

Material to be  
forwarded to  
Registrar  
General

**14.** Every issuer immediately upon issuing a licence and every person registered as authorized to solemnize marriage upon publishing banns shall forward to the Registrar General,

- (a) any consent under section 5;
- (b) any judge's order under section 6;
- (c) any affidavit or judge's order under section 9;
- (d) any documentary or other material filed on the application for a licence under section 8;
- (e) any affidavit as to age;
- (f) any documentary material obtained under section 12. 1977, c. 42, s. 14.

Oaths

**15.** Issuers may administer oaths for the purposes of this Act. 1977, c. 42, s. 15.

Indians

**16.** Where both parties to an intended marriage are Indians ordinarily resident on a reserve in Ontario or on Crown lands in Ontario, no fee shall be charged for the licence. 1977, c. 42, s. 16.

Publication  
of banns

**17.**—(1) Where a marriage is to be solemnized under the authority of the publication of banns, the intention to marry shall be proclaimed openly in an audible voice during divine service,

- (a) where the parties are in the habit of attending worship at the same church, being within Canada, at that church; or
- (b) where the parties are in the habit of attending worship in different churches, being within Canada, in each such church.

Method and  
time of  
publication

(2) The banns shall be published according to the usage of the denomination, faith or creed of the church in which they are published and during divine Sunday service.

(3) Where the usage of any denomination, faith or creed <sup>Exception</sup> substitutes any other day as the usual and principal day of the week for the celebration of divine service, the banns shall be published on such other day.

(4) The person or persons who publish banns shall certify <sup>Proof</sup> proof thereof in the prescribed form. 1977, c. 42, s. 17.

**18.** Banns shall not be published where either of the parties to the intended marriage has been married and the marriage has been dissolved or annulled. <sup>Where banns not to be published</sup> 1977, c. 42, s. 18.

**19.** Form 1 respecting the prohibited degrees of affinity and consanguinity shall be endorsed on the licence and on the proof of publication of banns. <sup>Prohibited degrees to be endorsed</sup> 1977, c. 42, s. 19.

**20.—(1)** No person shall solemnize a marriage unless he is authorized by or under section 24 or is registered under this section as a person authorized to solemnize marriage. <sup>Who may solemnize marriage</sup>

(2) Upon application the Minister may, subject to subsection (3), register any person as a person authorized to solemnize marriage. <sup>Application for registration</sup>

(3) No person shall be registered unless it appears to the Minister, <sup>Who may be registered</sup>

(a) that the person has been ordained or appointed according to the rites and usages of the religious body to which he belongs, or is, by the rules of that religious body, deemed ordained or appointed;

(b) that the person is duly recognized by the religious body to which he belongs as entitled to solemnize marriage according to its rites and usages;

(c) that the religious body to which the person belongs is permanently established both as to the continuity of its existence and as to its rites and ceremonies; and

(d) that the person is resident in Ontario or has his parish or pastoral charge in whole or in part in Ontario; provided that in the case of a person who is in Ontario temporarily and who, if resident in Ontario, might be registered under this section, the Minister may register him as authorized to solemnize marriage during a period to be fixed by the Minister.



- Where no person authorized to solemnize marriage (4) Notwithstanding subsection (1), where it appears to the Minister that the doctrines of a religious body described in clause (3) (c) do not recognize any person as authorized to solemnize marriage, the Minister may register a person duly designated by the governing authority of the religious body who shall, in respect of marriages performed according to the rites, usages and customs of the religious body, perform all the duties imposed by this Act upon a person solemnizing a marriage, other than solemnizing the marriage.
- Idem (5) Where a person registered under subsection (4) performs the duties imposed by subsection (4), every marriage solemnized according to the rites, usages and customs of the religious body is valid. 1977, c. 42, s. 20.
- Register **21.**—(1) The Minister shall keep a register of the name of every person registered as a person authorized to solemnize marriage, the date of such registration, and such other particulars as he considers advisable.
- Certificate of registration (2) The Minister may issue a certificate of registration under this section in the prescribed form. 1977, c. 42, s. 21.
- Cancellation of registration **22.**—(1) Where it appears to the Minister that any person registered as authorized to solemnize marriage has ceased to possess the qualifications entitling him to be so registered, or for any other cause, the Minister may cancel the registration.
- Notice of change (2) Every religious body, members of which are registered under this Act, shall notify the Minister of the name of every such member so registered who has died or has ceased to reside in Ontario or has ceased to be associated with such religious body. 1977, c. 42, s. 22.
- Publication of registration and cancellation **23.** When a person is registered under this Act as authorized to solemnize marriage, and when any such registration is cancelled, the Minister shall publish notice thereof in *The Ontario Gazette*. 1977, c. 42, s. 23.
- Civil marriage **24.**—(1) A judge, a justice of the peace or any other person of a class designated by the regulations may solemnize marriages under the authority of a licence.
- Time and place (2) The solemnization of a marriage by a judge shall take place in the judge's office and shall be performed between the hours of 9 o'clock in the morning and 5 o'clock in the afternoon.
- Form of ceremony (3) No particular form of ceremony is required except that in some part of the ceremony, in the presence of the person

solemnizing the marriage and witnesses, each of the parties shall declare:

I do solemnly declare that I do not know of any lawful impediment why I, AB, may not be joined in matrimony to CD,

and each of the parties shall say to the other:

I call upon these persons here present to witness that I, AB, do take you, CD, to be my lawful wedded wife (or husband),

after which the person solemnizing the marriage shall say:

I, EF, by virtue of the powers vested in me by the *Marriage Act*, do hereby pronounce you AB and CD to be husband and wife.

1977, c. 42, s. 24.

**25.** Every marriage shall be solemnized in the presence of the parties and at least two witnesses who shall affix their names as witnesses to the entry in the register made under section 28. 1977, c. 42, s. 25. Attendance of parties and witnesses

**26.** No marriage shall be solemnized under the authority of the publication of banns unless proof of publication by the person or persons publishing the banns has been deposited with the person solemnizing the marriage. 1977, c. 42, s. 26. Proof of publication

**27.**—(1) A marriage shall not be solemnized under the authority of a licence earlier than the third day after the date of the issue of the licence, but the Minister in his absolute discretion may authorize the solemnization of the marriage earlier than such third day. Waiting period: under licence

(2) A marriage shall not be solemnized under the authority of the publication of banns, earlier than the fifth day after the date of the publication of banns. Idem: under banns

(3) A marriage shall be solemnized only within the three months immediately following the issue of the licence or the publication of banns, as the case may be. 1977, c. 42, s. 27. Time within which marriage to be solemnized

**28.**—(1) Every person shall immediately after he has solemnized a marriage, Entry in marriage register

(a) where the marriage was solemnized in a church, enter in the church register kept for the purpose; or

- (b) where the marriage was solemnized elsewhere than in the church, enter in a register kept by him for the purpose,

the particulars prescribed by the regulations, and the entry shall be authenticated by his signature and those of the parties and witnesses.

Marriage certificate

(2) Every person who solemnizes a marriage shall, at the time of the marriage, if required by either of the parties thereto, give a certificate of the marriage specifying the names of the parties, the date of the marriage, the names of the witnesses, and whether the marriage was solemnized under the authority of a licence or publication of banns. 1977, c. 42, s. 28.

Supply of marriage registers

**29.**—(1) Every person or religious body authorized to solemnize marriages may apply to the Minister for a marriage register, and the Minister shall thereupon supply the register.

Property of Crown

(2) Every register supplied by the Minister is the property of the Crown. 1977, c. 42, s. 29.

Protection of persons solemnizing marriage in good faith

**30.** No person who solemnizes or purports to solemnize a marriage is subject to any action or liability by reason of there having been any legal impediment to the marriage unless, at the time he performed the ceremony, he was aware of the impediment. 1977, c. 42, s. 30.

Marriages solemnized in good faith

**31.** If the parties to a marriage solemnized in good faith and intended to be in compliance with this Act are not under a legal disqualification to contract such marriage and after such solemnization have lived together and cohabited as man and wife, such marriage shall be deemed a valid marriage, notwithstanding that the person who solemnized the marriage was not authorized to solemnize marriage, and notwithstanding the absence of or any irregularity or insufficiency in the publication of banns or the issue of the licence. 1977, c. 42, s. 31.

Breach of promise of marriage abolished

**32.**—(1) No action shall be brought for a breach of a promise to marry or for any damages resulting therefrom.

Application of subs. (1)

(2) Subsection (1) does not apply in respect of actions for breach of promise to marry or damages resulting therefrom commenced before the 1st day of August, 1978. 1977, c. 42, s. 32.

Recovery of gifts made in contemplation of marriage

**33.** Where one person makes a gift to another in contemplation of or conditional upon their marriage to each

other and the marriage fails to take place or is abandoned, the question of whether or not the failure or abandonment was caused by or was the fault of the donor shall not be considered in determining the right of the donor to recover the gift. 1977, c. 42, s. 33.

**34.** The Lieutenant Governor in Council may make regulations, <sup>Regulations</sup>

- (a) prescribing forms for the purposes of this Act and providing for their use, and requiring any matter therein to be verified by affidavit;
- (b) prescribing any matter required by this Act to be prescribed by the regulations;
- (c) requiring the payment of fees in respect of any matter required or authorized to be done under this Act, and providing for the retention of fees or any portion thereof by issuers and persons solemnizing marriages or any class of them and for the commutation of such fees;
- (d) prescribing the duties of issuers;
- (e) requiring persons authorized to solemnize marriages to furnish such information and returns as are prescribed;
- (f) amending Form 1 to make it conform to the law for the time being;
- (g) designating classes of persons authorized to solemnize marriages under section 24. 1977, c. 42, s. 34.

**35.—(1)** Every person who knowingly makes any false <sup>Penalty:</sup> statement in any document required under this Act, in addition to any other penalty or punishment to which he may be liable, is guilty of an offence and on conviction is liable to a fine of not more than \$1,000 or to imprisonment for a term of not more than one year, or to both. <sup>false statements</sup>

(2) Every person who contravenes any provision of this Act for which no other penalty is provided is guilty of an offence and on conviction is liable to a fine of not more than \$500. 1977, c. 42, s. 35. <sup>Idem: general</sup>

## FORM 1

(Section 19)

Degrees of affinity and consanguinity which, under the statutes in that behalf, bar the lawful solemnization of marriage.

A man may not marry his

1. Grandmother
2. Grandfather's wife
3. Wife's grandmother
4. Aunt
5. Wife's aunt
6. Mother
7. Step mother
8. Wife's mother
9. Daughter
10. Wife's daughter
11. Son's wife
12. Sister
13. Granddaughter
14. Grandson's wife
15. Wife's granddaughter
16. Niece
17. Nephew's wife

A woman may not marry her

1. Grandfather
2. Grandmother's husband
3. Husband's grandfather
4. Uncle
5. Husband's uncle
6. Father
7. Step father
8. Husband's father
9. Son
10. Husband's son
11. Daughter's husband
12. Brother
13. Grandson
14. Granddaughter's husband
15. Husband's grandson
16. Nephew
17. Niece's husband

The relationships set forth in this table include all such relationships, whether by the whole or half blood.

1977, c. 42, Form 1.