



MINISTERIAL STATEMENT
To the House of Assembly

by

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Constitutional Reform

A Bill entitled the “Matrimonial Causes (Faultless Divorce)
Amendment Act 2022”

Friday, February 4th, 2022

Mr. Speaker, I am pleased to lay before this Honourable House the Bill entitled “*Matrimonial Causes (Faultless Divorce) Amendment Act 2022*”. This Bill amends the **Matrimonial Causes Act 1974**, to reform the current legal process for obtaining a divorce, nullity of marriage or judicial separation; and for related matters.

The Bill represents the first part of a raft of reforms aimed to modernize matrimonial law in Bermuda. The amendments proposed in this Bill are aim at reducing conflict between persons petitioning the court or applying for divorce, nullity of marriage or judicial separation, by reframing the prescribed

procedures and formalities affecting the most contentious parts of the court process.

This Bill, **Mr. Speaker**, will principally usher in a new—and much needed—legal process which replaces the requirement for persons seeking a divorce to satisfy the court of ‘irretrievable breakdown’ of the marriage by proving ‘evidence of conduct’, sometimes referred to as ‘separation facts’ during the divorce proceedings. The proposed amendments will allow, instead, either party to a marriage to apply for a divorce and provide a ‘statement of irretrievable breakdown’ as conclusive evidence that the marriage has broken down irreversibly.

Mr. Speaker, these kinds of reforms to matrimonial laws are commonly referred to as “no-fault” or “faultless” divorce regimes. They are so-called because they remove the unhelpful blaming and shaming associated with having to prove, in court, that the conduct of one of the parties is the cause of breakdown of the marriage.

Mr. Speaker, to contextualize where the current law stands, the legal process for divorce can be initiated by one party to the

marriage (the “petitioner”). The other party (the “respondent”) must then acknowledge that they have received (been “served with”) the petition, and state whether they disagree with the divorce and intend to contest (“defend”) it. The current law requires a person seeking a divorce to satisfy the court that the legal test of irretrievable breakdown is met by citing in the divorce petition one or more of five “facts”, as referred to in the statute. Three facts are based on conduct (adultery, behavior—commonly referred to as “unreasonable behavior”—and desertion). Two of the prescribed divorce facts are based on a period of separation prior to filing the petition for divorce (two years if both parties consent to the divorce, or five years otherwise). Under existing law, the court can hold that the marriage has broken down irretrievably **only** if it is satisfied, on the evidence presented, that one of the five divorce facts is proved. If one of the five facts is determined, the court will grant a decree of divorce.

Mr. Speaker, now that I’ve laid out the technical requirements of the existing processes, it is easy to see that it is not at all straightforward. The process can be quite intimidating for lay persons to navigate. For this, and other commendable reasons,

faultless divorce regimes have been implemented in several countries within the Commonwealth to modernize and streamline the legal processes for divorce, judicial separation and nullity of marriage. The amendments proposed in this Bill are modelled after the United Kingdom's '**Divorce, Dissolution and Separation Act 2020**'.

Mr. Speaker, faultless divorce proceedings substantially reduce the possibility of one of the parties contesting the divorce. This is because the newly proposed 'statement of irreparable breakdown' will be taken as conclusive evidence by the courts that the marriage has broken down irretrievably, without having to delve into the personal indiscretions or behavior of the parties. Divorce proceedings will still be able to be challenged for reasons such as jurisdiction, validity of the marriage, fraud and procedural compliance.

Mr. Speaker, the stress, effort and cost for persons to show fault is thought to be unnecessary, as it often conceals the real reason for the breakdown in the marriage, and can be a factor which discourages spouses suffering under domestic abuse from filing for divorce or separation in the first place.

Mr. Speaker, socially, we are all too familiar with the associated stressors within divorce proceedings which can cause angst, conflict and disagreement in families. The parties tend to become embroiled in the contentious, partisan features of the proceedings, often demonstrating an inability to look at matters objectively in the interests of all parties concerned, especially the children. This means that at an already stressful time in their lives, the current process incentivizes parties to focus on negative conduct and make allegations about past events, potentially introducing or aggravating ongoing conflict.

As a result, divorce proceedings can become drawn out, overly contentious and painful, producing indifference and acrimony within the family. The resulting impact often strains a family's finances and health, and prejudices any hopes to maintain amicable relationships moving forward.

Mr. Speaker, the amendments provided for in this Bill remove some of the structural hurdles for applying for, and obtaining, a divorce, nullity of marriage or judicial separation. For example, by introducing new minimum time periods into the divorce

processes and updating archaic terminology with modern, plain-English terms that are easily understandable such as: “applicant”, “divorce order” and “divorce order final”.

Mr. Speaker, the Bill revises statutory timelines for the procedural steps required to obtain a divorce or nullity of marriage. Revised timelines will help streamline processes and prevent case backlogs as well as unnecessarily protracted proceedings. Adjusting the time periods will not reduce the accessibility for parties to reconsider, or change course during divorce, nullity of marriage or separation proceedings.

Under the revised time periods, an application for divorce will take a minimum of twenty (20) weeks, which equates to five (5) months, to obtain a final divorce order from the courts.

Applicants seeking nullity of marriage will have between four (4) and twelve (12) week time period before a nullity of marriage order is made final.

Mr. Speaker, provision is made in the Bill for the Minister, after consulting the Chief Justice, to shorten or lengthen these statutory time periods in the divorce process by way of an order. The courts will also be empowered to shorten the time periods in a particular case, by applying its judicial discretion.

Mr. Speaker, reducing the legal and procedural complexities directly translates into a reduction in legal costs for parties, and simplifies the process for ‘litigants-in-person’ who may not be able to afford legal representation. Such savings may then be used towards sustaining the family members and children in the post-divorce environment.

Mr. Speaker, the Government is mindful that the present Bill prescribes measures that are expected to reduce conflict between parties, and by doing so will reduce harm and trauma caused to children who live through a parental divorce. Other areas where we are instituting practical changes to the process include establishing an easily accessible online platform to facilitate divorce and separation filings. This platform will have

informational content to assist parties with understanding their rights, obligations and the judicial process.

Mr. Speaker, should these amendments become law, there will indeed be space for more amicable outcomes for families facing marriage breakdown and divorce. The legal process—in and of itself—will no longer contribute to amplifying or adding to the conflict between the parties, in the ways we know that the existing court process may cause.

Mr. Speaker, I am confident that the proposed Bill is timely, and sufficiently fulsome to garner cross-aisle support. The provisions of the Bill have been seen by the Matrimonial Bar Sub-Committee of the Bermuda Bar Association and the Family Court, who provided meaningful, constructive comments on an illustrative draft of the Bill. Overall, the Bill accomplishes an improved framework for faultless divorce in Bermuda that can be further developed, as we monitor and evaluate the emerging trends after implementation. Whilst this Bill goes a long way in intended outcomes, as indicated at the onset, this is the first part of a raft of reforms aimed to modernize matrimonial law in Bermuda. Ensuing phases are expected soon in this continuum.

Mr. Speaker, I look forward to debating the provisions of the Bill, and its benefits, as the Bill advances through the legislative process.

Thank you, **Mr. Speaker.**