



PRINCE EDWARD ISLAND
ÎLE-DU-PRINCE-ÉDOUARD

MARRIAGE ACT

PLEASE NOTE

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For more information concerning the history of this Act, please see the *Table of Public Acts* on the Prince Edward Island Government web site (www.princeedwardisland.ca).

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MARRIAGE ACT

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MARRIAGE ACT

CHAPTER M-3

1. Definitions

In this Act

- (a) “**designated justice of the peace**” means a justice of the peace who is designated under the *Provincial Court Act* as a justice of the peace who may solemnize marriages under this Act;
- (a.1) “**Director**” means the Director of Vital Statistics appointed under the *Vital Statistics Act* R.S.P.E.I. 1988, Cap. V-4.1;
- (b) “**issuer**” means an issuer of marriage licenses appointed under section 12;
- (b.1) “**marriage commissioner**” means a person who holds a marriage commissioner’s license that is in effect;
- (b.2) “**marriage commissioner’s license**” means a marriage commissioner’s license issued under subsection 8.1(1);
- (c) “**member of the clergy**” means a person who is authorized by a religious body, to which he or she belongs, to solemnize marriages according to its rites and usages;
- (d) “**Minister**” means Minister of Justice and Public Safety and Attorney General;
- (e) “**registered member of the clergy**” means a member of the clergy registered under this Act to solemnize marriage;
- (f) “**spouse**” means a spouse as defined in clause 1(1)(g) of the *Family Law Act*. R.S.P.E.I. 1974, Cap. M-5, s.2; 1980, c.2, s.3; 1990, c.34, s.1; 1991, c.26, s.1; 2005,c.40,s.19; 2005,c.12,s.1; 2008,c.8,s.18(2); 2010,c.31,s.3; 2015,c.28,s.3.

2. Administration of Act

The Minister shall administer this Act. R.S.P.E.I. 1974, Cap. M-5, s.26.

3. Marriage by

No person may solemnize a marriage except

- (a) a registered member of the clergy;
- (b) a judge of the Court of Appeal, the Supreme Court or the Provincial Court;
- (c) a designated justice of the peace;
- (d) the Prothonotary; or
- (e) a marriage commissioner; 1975,c.27,s.3; 2005,c.12,s.2; 2008,c.20,s.72(58); 2012,c.26,s.1.

4. Registration of clergy

- (1) Subject to this section, the Director may register as a member of the clergy authorized to solemnize marriage under this Act a member of the clergy whose name is submitted to the Director by the governing authority of the religious body to which the member belongs.

Religious body, requirements for

- (2) No member of the clergy shall be registered unless the religious body to which he or she belongs is sufficiently well established, both as to continuity of existence and as to rites and usages respecting the solemnization of marriage to warrant, in the opinion of the Director, the registration of its members authorized to solemnize marriage under this Act.

Qualification of clergy

- (3) No member of the clergy shall be registered unless it appears to the Director that
- (a) the member is eighteen years of age or over and resident in the province;
 - (b) the member has been ordained or appointed according to the rites and usages of the religious body to which he or she belongs or is, by the rules of that religious body, deemed ordained or appointed. *R.S.P.E.I. 1974, Cap. M-5, s.4; 2016, c.14, s.1.*

5. Temporary registration

The Director may grant temporary registration to a member of the clergy who is not a resident of this province but who if resident in this province might be registered as authorized to solemnize marriage under this Act and may thereby register such member as a person authorized to solemnize marriage in this province during a period to be fixed by the Director and any certificate of registration issued thereon shall state the period so fixed during which the authority to solemnize marriage thereunder may be exercised. *R.S.P.E.I. 1974, Cap. M-5, s.5.*

6. Certificate

- (1) The Director shall issue a certificate of registration to each registered member of the clergy.

Clergy, list of members

- (2) The Director shall keep a record showing
- (a) the name of each registered member of the clergy;
 - (b) the name of the religious body to which the member belongs;
 - (c) the date of registration; and
 - (d) the registration number. *R.S.P.E.I. 1974, Cap. M-5, s.6.*

7. Governing body

- (1) The governing authority of every religious body
- (a) shall notify the Director when one of its registered members of the clergy dies or ceases to reside in the province or in any other way ceases to possess the qualifications entitling the member to be registered; and
 - (b) shall send to the Director at least once every year or oftener as required by the Director, a list of all the members of the clergy in the province of that religious body.



Cancellation of registration

- (2) Where it appears to the Director that any registered member of the clergy has ceased to possess the qualifications entitling the member to be registered, the Director may cancel the registration. *R.S.P.E.I. 1974, Cap. M-5, s.7.*

8. Publication of registration

- (1) When a member of the clergy is registered under this Act as authorized to solemnize marriage or when any such registration is cancelled the Director shall publish notice of such registration or cancellation in the Gazette.

Publication as evidence

- (2) Publication in the Gazette of a notice purporting to be by the Director that any member of the clergy named therein has been registered as authorized to solemnize marriage shall in all courts be conclusive evidence of the registration and of the authorization and qualification of the member to solemnize marriage thereafter or until it appears by notice published in the Gazette as aforesaid that the registration has been cancelled and the authority thereby revoked.

Publication of notice of registration, effect

- (3) Publication in the Gazette of a notice purporting to be by the Director that any member of the clergy named therein has been registered as authorized to solemnize marriage during a period fixed in the notice shall in all courts be conclusive evidence of such registration and of the authorization and qualification of the member to solemnize marriage during the period so fixed. *R.S.P.E.I. 1974, Cap. M-5, s.8.*

8.1 Marriage commissioner

- (1) The Director may, on application, issue a marriage commissioner's license to any person authorizing that person to act as a marriage commissioner for the province, if
- (a) the application is submitted to the Director in the form, and containing the information, required by the Director;
 - (b) the person pays the fees required by the regulations; and
 - (c) the Director is satisfied that the person
 - (i) is 18 years of age or over, and
 - (ii) meets any other qualifications or requirements established by the regulations.

Term of license

- (2) A marriage commissioner's license shall specify the date on which it commences to have effect.

Idem

- (2.1) A marriage commissioner's license expires on March 31.

Transitional

- (2.2) Notwithstanding subsection (2.1), a marriage commissioner's license that is valid and subsisting on the coming into force of that subsection expires on March 31 immediately following the expiry date stated on the marriage commissioner's license.

Renewal

- (3) A marriage commissioner may, prior to the expiry of his or her marriage commissioner's license, apply to the Director for the renewal thereof, and if the Director has no reason to believe that the marriage commissioner is in violation of this Act or the regulations the Director shall renew the marriage commissioner's license upon payment of the prescribed fee.

Lapse

- (4) A person who fails to renew his or her marriage commissioner's license on or before the date of its expiry, ceases, upon the expiry of the marriage commissioner's license, to be entitled to solemnize a marriage under this Act.

Reapplication

- (5) A person whose marriage commissioner's license has expired may apply under subsection (1) for a new marriage commissioner's license.

Cancellation

- (6) The Director may, at any time, cancel a marriage commissioner's license where the Director is satisfied that
- (a) the marriage commissioner has failed to comply with a provision of this Act or the regulations; or
 - (b) the cancellation is otherwise in the public interest.

Fee

- (7) A marriage commissioner who solemnizes a ceremony of marriage is entitled to receive from the parties to the marriage any fee for his or her services as may be agreed upon by the marriage commissioner and the parties to the marriage. *2005,c.12,s.3; 2016,c.14,s.2.*

9. Requirements for solemnization

- (1) No registered member of the clergy, justice or marriage commissioner shall solemnize a marriage except
- (a) under the authority of a marriage license issued to the parties pursuant to this Act for the solemnization of the marriage by the member, justice or marriage commissioner;
 - (b) within three months after the date of issuance of the marriage license; and
 - (c) in the presence of the parties and at least two credible adult witnesses.

Interpreter required, where

- (2) No registered member of the clergy, justice or marriage commissioner shall solemnize a marriage where one or both of the parties do not understand the language in which the marriage ceremony is to be performed unless an interpreter is present to interpret and explain clearly to the party or parties the meaning of the ceremony.

Justice

- (3) In this section and section 10, "**justice**" means
- (a) a judge of the Court of Appeal, the Supreme Court or the Provincial Court;
 - (b) a designated justice of the peace; and
 - (c) the Prothonotary. *R.S.P.E.I. 1974, Cap. M-5, s.9; 1975,c.27,s.3; 2005,c.12,s.4; 2008,c.20,s.72(58); 2012,c.26,s.2; 2016,c.14,s.3.*



10. Civil ceremony -form, procedure

- (1) No particular form of ceremony is required in the solemnization of a marriage by a justice or a marriage commissioner except that
- (a) in some part of the ceremony, in the presence of the justice or the marriage commissioner who is solemnizing the marriage and the witnesses,
- (i) each of the parties shall declare: “I do solemnly declare that I do not know of any lawful impediment why I,....., (full name of party), may not be joined in matrimony to(full name of other party).”, and
- (ii) each of the parties shall say to the other: “I call on those persons present to witness that I, , (full name of party) do take you, , (full name of other party) to be my lawful wedded “husband”, “wife” or “spouse” (as the parties may prefer).”; and
- (b) after the declarations and statements required by clause (a) have been made, the justice or the marriage commissioner solemnizing the marriage shall say: “I, , (full name of the justice or the marriage commissioner), by virtue of the powers vested in me by the Marriage Act, do hereby pronounce you (full name of party) and (full name of other party) to be “husband and wife”, “married” or “married spouses” (as the parties may prefer).”

Religious ceremony after civil ceremony

- (2) Where the parties to a marriage solemnized by a justice or a marriage commissioner desire a religious ceremony in addition to the civil ceremony conducted by the justice or marriage commissioner, a certificate of solemnization of marriage given by the justice or marriage commissioner is sufficient authority for a member of the clergy to perform the religious ceremony.

Effect

- (3) A religious ceremony performed as mentioned in subsection (2) is in addition to and does not supersede the solemnization of the marriage by the justice or marriage commissioner and this Act does not apply to such a religious ceremony, nor shall it be registered under the *Vital Statistics Act* as a marriage. *R.S.P.E.I. 1974, Cap. M-5, s.10; 1975,c.27,s.3; 2005,c.12,s.5.*

11. Compliance with Vital Statistics Act

Immediately after the solemnization of a marriage, the person who solemnized the marriage shall comply with the requirements and provisions of the *Vital Statistics Act* respecting the registration of the marriage. *R.S.P.E.I. 1974, Cap. M-5, s.11; 2005,c.12,s.6; 2016,c.14,s.4.*

11.1 Refusal to solemnize

For greater certainty, a person who is authorized to solemnize a marriage under this Act may refuse to solemnize a marriage that is not in accordance with that person’s religious beliefs. *2005,c.12,s.7.*

12. Issuers of marriage licenses

- (1) The Director may appoint issuers of marriage licenses.

Deputy issuer, powers

- (2) Repealed by 2016, c.14, s.5(2).

Idem

- (3) An issuer is, by virtue of the issuer's office, a commissioner empowered to administer oaths and may take and receive the affidavits, declarations or affirmations required under this Act and the regulations.

Limitation of action

- (4) No action lies against an issuer of marriage licenses for any act done or performed by the issuer in pursuance of the provisions of this Act or the regulations. *R.S.P.E.I. 1974, Cap. M-5, s.12; 2016, c.14, s.5.*

13. Application for marriage license

An application for a marriage license shall be made by both parties to an intended marriage and subject to the provisions

- (a) of sections 14 to 21; and
 (b) of any other law in force in the province,

the issuer to whom the application is made shall issue the license applied for. *R.S.P.E.I. 1974, Cap. M-5, s.13.*

14. Issuance

- (1) An issuer shall not issue a marriage license until
- (a) the prescribed license fee is paid to the issuer;
- (b) repealed by 1993, c.16, s.1;
- (c) each of the applicants for the license delivers to him
- (i) an affidavit of particulars in the prescribed form,
- (ii) repealed by 2005, c.12, s.8, and
- (iii) either
- (A) a birth certificate of the applicant issued by the proper authority of the place where the applicant was born, or
- (B) a valid and subsisting passport of the applicant issued by the proper authority of the applicant's country of residence, and
- (iv) one additional form of identification that bears the applicant's signature.

Affidavit to be sworn before issuer; exceptions

- (2) The affidavit referred to in subsection (1) shall be sworn to by the applicant before the issuer, except that where either of the applicants is unable to swear to the affidavit before the issuer, the issuer may permit the affidavit to be made before a commissioner for taking affidavits or a notary public, in which case the affidavit shall state the reason relied upon to excuse personal attendance before the issuer. *R.S.P.E.I. 1974, Cap. M-5, s.14; 1993, c.16, s.1; 2005, c.12, s.8; 2016, c.14, s.6.*

15. Incorrect statement, further affidavit

- (1) If an issuer has reason to suspect that any statement in an affidavit for a marriage license is not correct, he may require a further affidavit or affidavits, or other evidence of the truth of



the statement, and all the affidavits and a minute of the evidence shall be forwarded to the Director.

Investigation

- (2) An issuer
- (a) may require the production of witnesses to identify any applicant for a license; and
 - (b) may examine under oath or otherwise the applicant or other witnesses as to any matter pertaining to the issue of the license. *R.S.P.E.I. 1974, Cap. M-5, s.15.*

16. Proof of termination of previous marriage

- (1) Where an applicant has been previously married, an issuer shall not issue a license unless the applicant provides
- (a) an original divorce certificate or decree absolute or an order of a court declaring the marriage a nullity, or an original document issued by a government or court in the jurisdiction where the applicant was previously married that states that the marriage has been dissolved by divorce or declared a nullity; or
 - (b) with respect to the applicant's previous spouse, either
 - (i) a certificate of death issued under the *Vital Statistics Act*, or the equivalent legislation in the jurisdiction where the applicant was previously married, or
 - (ii) an order of a court of competent jurisdiction that declares the applicant's previous spouse to be dead.

Costs of translation

- (2) Where a document required to be provided to an issuer by an applicant for the purposes of this section is in a language other than English or French, the applicant shall, at the applicant's expense, provide a certified translation for the use of the issuer. *R.S.P.E.I. 1974, Cap. M-5, s.16; 1993, c.16, s.2; 2016, c.14, s.7.*

17. Age limitation

- (1) Notwithstanding any other provisions of this Act except subsection (2), no person shall
- (a) issue a marriage license to; or
 - (b) solemnize the marriage of
- any person under the full age of sixteen years.

Application of subsection (1)

- (2) Repealed by *2016, c.14, s.8. R.S.P.E.I. 1974, Cap. M-5, s.17; 2016, c.14, s.8.*

18. Definitions

- (1) In this section and in sections 19 and 20
- (a) "applicant" means a person under eighteen years of age who has applied for a marriage license; and
 - (b) "consent" means consent to the marriage of the applicant.

Consent before issuance

- (2) An issuer shall not issue a marriage license to an applicant until, with respect to that applicant, there is deposited with the issuer every consent, if any, that is required or may be given under section 19, or an order under section 20 dispensing with the consent.

Consent required, notification of interested persons

- (3) In a case to which subsection (2) applies, the issuer shall send, by mail, a notice to all persons who may give the required consent stating that a marriage license has been applied for, the name and address of each of the applicants and the requirements of this Act with respect to consent, unless
- (a) every consent required to be given or an order dispensing with any such consent, has been deposited with the issuer; or
 - (b) other arrangements, satisfactory to the issuer, are made to obtain the required consent.

Form of documents, defects

- (4) The Director, in the Director's discretion, may authorize an issuer to accept and act upon any document that does not comply with the requirements of the regulations with respect to the form and content of the consent, but which, in the circumstances, shows to the satisfaction of the Director that consent to the marriage is given. *R.S.P.E.I. 1974, Cap. M-5, s.18; 2016, c.14, s.9.*

19. Consent required of

- (1) The persons whose consents are required are the parents of the applicants.

Consent, special cases

- (2) Notwithstanding subsection (1)
- (a) where the parents of an applicant are divorced or separated under a decree of judicial separation or separation agreement, the consent may be given by the parent or other person who has legal custody of the applicant;
 - (b) where one of the parents of an applicant is dead, or mentally incompetent, the consent may be given by the other parent;
 - (c) where both parents of an applicant are dead or mentally incompetent, the consent may be given by
 - (i) a lawfully appointed guardian, or
 - (ii) an acknowledged guardian who brought up or who for three years immediately preceding the application for a license has supported the applicant; or,
 - (d) where the applicant is a person of whom the Director of Child Protection has permanent guardianship under the *Child Protection Act R.S.P.E.I. 1988, Cap. C-5.1* the consent may be given by the Director of Child Protection and no other consents are required in respect of that applicant; or
 - (e) where both the parents of an applicant are dead or mentally incompetent and there is no guardian of the applicant, the consent of a judge of the Supreme Court may be given in respect of that applicant.

Proof of facts

- (3) The exemptions set out in subsection (2) only apply with respect to an applicant who deposits with the issuer such proof of the facts as the issuer may require. *R.S.P.E.I. 1974, Cap. M-5, s.19; 1975, c.27, s.3; 1981, c.12, s.53; 2000(2nd), c.3, s.62; 2010, c.28, s.40.*

20. Judge of Supreme Court may dispense with consent

- (1) Subject to subsection (2), an applicant who is unable to obtain the consent of a parent or guardian required under section 19, may, upon notice to the parent or guardian, apply to a



judge of the Supreme Court, and the judge may in his discretion grant an order dispensing with the consent.

Prohibition

- (2) No order shall be made under this section in respect of an applicant under the age of sixteen years. *R.S.P.E.I. 1974, Cap. M-5, s.20; 1975,c.27,s.3; 2016,c.14,s.10.*

21. Presumption of death

- (1) A married person whose spouse is missing and who alleges
- (a) that his or her spouse has been continuously absent for at least seven years immediately preceding the application;
 - (b) that his or her 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 or her spouse is living,

may apply to a judge of the Supreme Court for an order under this section.

Order declaring

- (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.

Order to be deposited with application

- (3) Where an order has been obtained under this section, the person in whose favour the order was made may subject to this Act, obtain a license upon depositing a copy of the order with the person issuing the license together with the affidavit in the prescribed form.

Effect of order

- (4) Except for the purposes of subsection (3) the order has no effect. *R.S.P.E.I. 1974, Cap. M-5, s.21; 2008,c.8,s.18(3); 2016,c.14,s.11.*

22. Offence

Every person who

- (a) issues a marriage license; or
- (b) solemnizes a marriage,

contrary to this Act is guilty of an offence and liable on summary conviction to a fine of not more than \$100. *R.S.P.E.I. 1974, Cap. M-5, s.22; 1994,c.58,s.6.*

23. Offence

Every person who

- (a) issues a license; or
- (b) solemnizes a marriage,

knowing or having reason to believe that either of the parties to the intended marriage or to the marriage is mentally incompetent, is guilty of an offence and liable on summary conviction to a fine of not more than \$500. *R.S.P.E.I. 1974, Cap. M-5, s.23; 1994,c.58,s.6.*

24. Offence, false statements

Every person who knowingly makes any false statement in any document required under this Act, for which the person is not otherwise punishable on conviction, is guilty of an offence and liable on summary conviction to a fine of not more than \$100. *R.S.P.E.I. 1974, Cap. M-5, s.24; 1994, c.58, s.6; 2016, c.14, s.12.*

25. Regulations

The Lieutenant Governor in Council may make regulations

- (a) prescribing the fees to be paid for marriage licenses;
- (a.1) respecting the necessary qualifications, training and other requirements for applicants for a marriage commissioner's license, and establishing the fees to be paid by an applicant for the required training;
- (a.2) respecting the fees payable in respect of an application for or the issuance or renewal of a marriage commissioner's license;
- (b) prescribing the forms to be used in carrying out the provisions of this Act;
- (c) prescribing the duties of, the procedures to be followed by, and the fees payable to issuers of marriage licenses;
- (d) for the purpose of effectively securing the due observance of this Act, and generally for the better carrying out of the provisions hereof and obtaining the information required hereby. *R.S.P.E.I. 1974, Cap. M-5, s.25; 2005, c.12, s.9; 2016, c.14, s.13.*

