

Fourth Session Fifth Parliament Republic of Trinidad
and Tobago



REPUBLIC OF TRINIDAD AND TOBAGO

Act No. 30 of 1998

[L.S.]

AN ACT to confer on cohabitants rights and obligations,
to give the courts jurisdiction to make orders with
respect to interests in property and maintenance,
to make provision for the enforcement of
agreements and for matters incidental thereto.

[Assented to 23rd November, 1998]

ENACTED by the Parliament of Trinidad and Tobago as Enactment
follows:—

PART I

PRELIMINARY

- Short title 1. This Act may be cited as the Cohabital Relationships Act, 1998.
- Interpretation and application 2. (1) In this Act—
- “adjustment order” means an order referred to in section 4(1)(a);
 - “applicant” includes a cross-applicant;
 - “cohabitant” means—
 - (a) in relation to a man, a woman who is living or has lived with a man as his wife in a cohabital relationship; and
 - (b) in relation to a woman, a man who is living with or has lived with a woman as her husband in a cohabital relationship;
 - “cohabital relationship” means the relationship between cohabitants, who not being married to each other are living or have lived together as husband and wife on a *bona fide* domestic basis;
 - “child” when used in relation to the parties of a cohabital relationship means a child of either party or both parties and includes an adopted child;
 - “court” means a court conferred with jurisdiction under Part II;
 - “High Court” means the High Court of Justice or a Judge thereof;
 - “Magistrate’s Court” means a court of summary jurisdiction within the meaning of the Summary Courts Act;
 - “maintenance order” means an order referred to in section 4(1)(b);

“property” includes real and personal property and any estate or interest whether present, future or contingent, in such property.

(2) This Act does not apply to or in respect of a cohabitational relationship which ceased before the coming into force of this Act.

(3) Nothing in this Act derogates from or affects the right of a person to apply for any remedy or relief under any other law.

PART II

JURISDICTION

3. (1) Subject to the provisions of this Act, a ^{Right to apply} cohabitant may apply to the court for an order or other relief.

(2) The court shall not make an order under this Act unless it is satisfied that—

(a) the parties to the application are or either of them is domiciled in Trinidad and Tobago; and

(b) both parties lived together in Trinidad and Tobago for at least one third the duration of their cohabitational relationship.

4. (1) The High Court shall have jurisdiction to ^{Jurisdiction} make any order or grant any relief under this Act, including—

(a) in relation to property, an order declaring a title or right, or adjusting an interest; or

(b) an order for—

(i) the periodical payment to a cohabitant of such sums of money and such term as may be specified; or

(ii) the payment to a cohabitant of such lump sum as may be specified.

(2) The Magistrate's Court shall have jurisdiction under this Act to make maintenance orders only.

Staying or transfer
of proceedings

5. (1) Where proceedings have been instituted under this Act in relation to a person, and it appears to the court that other proceedings have been instituted by, or in relation to, the same person in another court, the first mentioned court may—

- (a) stay the proceedings before it for such time as it thinks fit; or
- (b) dismiss the proceedings.

(2) Where there are pending in court, proceedings that have been instituted under this Act and it appears to the court, that it is in the interest of justice, that the proceedings be dealt with in another court having jurisdiction under this Act, the court may transfer the proceedings to that other court.

PART III

PROCEEDINGS FOR PROPERTY ADJUSTMENT AND MAINTENANCE

Applications

Application for
property
adjustments and
maintenance

6. Under this Part, a cohabitant may apply—

- (a) to the High Court for the granting of an adjustment order or for the granting of a maintenance order; or
- (b) to the Magistrate's Court for the granting of a maintenance order.

Prerequisites

7. The court shall not make an order under section 6 unless it is satisfied that—

- (a) the applicant lived in a cohabitational relationship with the respondent for a period of not less than five years; or

- (b) the applicant has a child arising out of the cohabitational relationship; or
- (c) the applicant has made substantial contributions of the kind referred to in section 10,

and that failure to make the order would result in grave injustice to the applicant.

8. (1) Where cohabitants have ceased to live together as husband and wife on a *bona fide* domestic basis, an application under this Part shall be made within two years after the day on which they so ceased to live. Time limit

(2) The court may grant leave to a cohabitant to apply for an order after the expiration of the period referred to in subsection (1), if the court is satisfied that not to do so would cause undue hardship to the cohabitant or a child of the cohabitational relationship.

9. In proceedings for an order under this Part, the court shall, so far as is practicable, make such order or orders as will end the financial relationship between the cohabitants and avoid further proceedings between them. End of financial relationship

Adjustment of Property Interests

10. (1) On an application for an adjustment order, the High Court may make any such order as is just and equitable, having regard to— Adjustment order

- (a) the financial contributions made directly or indirectly by or on behalf of the cohabitants to the acquisition or improvement of the property and the financial resources of the partners; and
- (b) any other contributions, including any contribution made in the capacity of homemaker or parent, made by either of the cohabitants to the welfare of the family constituted by them;

(c) the right, title, interest or claim of a legal spouse in the property.

(2) The court may make an order under subsection (1) as to the title or rights of a cohabitant in respect of the property of either or both cohabitants.

(3) An adjustment order made under this Part is binding on the parties to the proceedings, but not on any other person.

Adjournment, change
in circumstances

11. (1) Without limiting the power of the court to grant an adjournment in relation to any proceedings before it, where on an application by a cohabitant under this Part for an adjustment order, the court is of the opinion—

(a) that there is likely to be a significant change in the financial circumstances of the cohabitants, or either of them, and that having regard to the time when that change is likely to take place, it is reasonable to adjourn the proceedings; and

(b) that to make an order with respect to the property of the partners when the changed financial circumstances occur is more likely to do justice than an immediate order,

the court may, upon an application by either cohabitant, adjourn proceedings to such time as the court thinks fit.

(2) In forming an opinion as to whether there is likely to be a significant change in the financial circumstances of either or both the cohabitants the court may have regard to any change in the financial circumstances of a cohabitant that may occur by reason that the cohabitant—

(a) is a contributor to a deferred annuity plan or pension fund plan or participates in any plan or arrangement that is in the nature of an annuity;

(b) may become entitled to a superannuation benefit; or

(c) may become entitled to property, as the result of the exercise in his favour, by the trustee of a discretionary trust, of a power to distribute trust properties.

(3) For the purpose of subsection (2) a deferred annuity plan or pension fund plan has the meaning assigned to it by section 28(1)(b) and (c) of the Income Tax Act and superannuation benefit means any pension, gratuity or any allowance provided for under a written law. Chap. 75:01

12. Where the court is satisfied that a cohabitant in respect of whom an adjustment order is made is entitled or likely to become entitled to property which may be applied in satisfaction of the order, the court may defer the operation of the order until such date, or the occurrence of such event, as is specified in the order. Deferment of order

13. (1) Where, before an application for an adjustment order under section 6 is determined, either party to the application dies, the application may be continued by or against the legal personal representative of the deceased party. Effect of death on application

(2) Where the court is of the opinion—

(a) that it would have adjusted interest in respect of property if the deceased party had not died; and

(b) that, notwithstanding the death of the deceased party, it is still appropriate to adjust those interests,

the court may make an order in respect of that property.

(3) An order made under this section may be enforced on behalf of, or against the estate of the deceased party.

(4) Rules of court made under section 31 may provide for the substitution of the legal personal representative as a party to the application.

Maintenance

No general right to maintenance

14. Except as otherwise provided by this Act, one cohabitant is not liable to maintain the other cohabitant and a cohabitant is not entitled to claim maintenance from the other.

Order for maintenance

15. (1) A court may make a maintenance order, where it is satisfied as to one or more of the following matters:

- (a) that the applicant is unable to support himself adequately by reason of having the care and control of a child of the cohabitational relationship, or a child of the respondent, being in either case, a child who is—
 - (i) under the age of 12 years; or
 - (ii) in the case of a physically disabled or mentally ill child, under the age of 18 years.
- (b) that the applicant's earning capacity has been adversely affected by the circumstances of the relationship, and in the opinion of the court a maintenance order would increase the applicant's earning capacity by enabling the applicant to undertake a course or programme of training or education; and
- (c) having regard to all the circumstances of the case, it is reasonable to make the order.

(2) In determining whether to make a maintenance order and in fixing the amount to be paid pursuant to such an order, the court shall have regard to—

- (a) the age and state of health of each of the cohabitants including the physical and mental disability of each cohabitant;

- (b) the income, property and financial resources of each cohabitant;
- (c) the financial needs and obligations of each cohabitant;
- (d) the responsibilities of either cohabitant to support any other person;
- (e) the terms of any order made under section 10 with respect to the property of the cohabitants;
- (f) the duration of the relationship;
- (g) a standard of living, that in all the circumstances is reasonable;
- (h) the extent to which the applicant has contributed to the income, earning capacity, property and financial resources of the other cohabitant;
- (i) the terms of any order made by a court in respect of the maintenance of a child or children in the care and control of the applicant;
- (j) any fact or circumstance that, in the opinion of the court, the justice of the case requires to be taken into account.

(3) In subsection (1)(a), “mentally ill” has the same meaning assigned to it by section 2 of the Mental Health Act.

Chap. 28:02

16. Where it appears to the court that a cohabitant, Interim orders applying for a maintenance order, is in immediate need of financial assistance, the court may make an interim order for the payment of reasonable periodic sums until the application is finally determined.

Effect of subsequent relationship or marriage

17. (1) The court may not make a maintenance order in favour of a cohabitant who has entered into a subsequent cohabitational relationship or has married or remarried.

(2) A maintenance order shall cease to have effect on the marriage or remarriage of the cohabitant in whose favour the order was made.

Effect of death

18. (1) Where, before an application for maintenance is determined, either cohabitant dies, the application shall abate.

(2) A maintenance order shall cease to have effect on the death of either of the cohabitants.

Duration of orders

19. (1) A maintenance order may apply for such period as may be determined by the court, but shall not exceed three years from the date on which the order was made.

(2) Where the court makes a maintenance order, being an order made where the court is satisfied solely as to the matters specified in section 15(1)(a), the order shall cease to have effect on the day on which the cohabitant in whose favour the order was made, ceases to have the care and control of the child or children, as the case may be.

Variation, revocation or extension

20. (1) The court may, upon the application of either cohabitant, vary or revoke a maintenance order.

(2) Where the court makes a maintenance order for a period shorter than the period permissible under section 19(1), the cohabitant in whose favour the order was made may, at any time before the expiration of that order, apply to the court for an extension of the period.

Powers of Court

21. (1) The court, in exercising its powers under this ^{Orders etc., of the} Act may do any one or more of the following—_{court}

- (a) order the transfer of property;
- (b) order the sale of property and the distribution of proceeds of sale in such proportions as the court thinks fit;
- (c) order that any necessary deed or instrument be executed and that documents of title be produced or such other things be done as are necessary to enable an order to be carried out effectively;
- (d) order payment of a lump sum;
- (e) order payment of a weekly, monthly, yearly or other periodic sum;
- (f) appoint or remove trustees;
- (g) make an order or grant an injunction in relation to the use or occupancy of the home occupied by the cohabitants;
- (h) where one cohabitant is the lessee of the home occupied by both cohabitants, and upon separation, the other cohabitant wishes to remain in the home, the court may, with the consent of the lessor, order that the lease be assigned;
- (i) make any order or grant any injunction which it considers necessary and which it is empowered to make or grant under any other law.

22. Where, on the application by a person affected by ^{Variation and} an order made under section 10 or 15, the court is ^{setting aside of} satisfied that—_{orders}

- (a) there has been a miscarriage of justice by reason of fraud, duress, suppression of evidence, the giving of false evidence or any other circumstances;

- (b) in the circumstances that have arisen since the order was made, it is impracticable for the order or any part of the order to be carried out;
- (c) a person has defaulted in carrying out an obligation imposed on the person by the order and, in the circumstances that have arisen as a result of that default, it is just and equitable to vary the order or to set the order aside and make a new order in substitution thereof,

the court may, in its discretion, vary the order or set the order aside and, if it thinks fit, make another order in accordance with the provisions of this Act in substitution for the order set aside.

PART IV

COHABITATION AND SEPARATION AGREEMENTS

Interpretation

23. (1) In this Part—

“cohabitation agreement” means an agreement whether made before or after the commencement of this Act, which makes provision with respect to financial and other matters, and includes an agreement which varies a cohabitation agreement;

“separation agreement” means an agreement whether made before or after the commencement of this Act, which makes provision with respect to financial and other matters and includes an agreement which varies an earlier cohabitation agreement or separation agreement.

Entering into agreements

24. (1) A man and a woman who are not married to each other may enter into a cohabitation agreement or a separation agreement for the purpose of facilitating their affairs under this Act.

(2) Nothing in a cohabitation or separation agreement affects the power of a court to make an order with respect to the right to custody in relation to the children of the parties to the agreement.

25. (1) A man and a woman who intend to cohabit or ^{Cohabitation agreement} who are cohabiting partners, may enter into an agreement in which they agree on their respective rights and obligations during the period of cohabitation, or ceasing to cohabit, or on death, including—

- (a) their interests in or division of property;
- (b) their maintenance obligations;
- (c) the right to direct the education and moral training of their children; and
- (d) any other matter in the settlement of their affairs.

(2) If the parties to a cohabitation agreement marry each other, the agreement shall be unenforceable.

26. A man and a woman who are cohabitants or who ^{Separation agreement} were in a cohabitational relationship and are subsequently living separate and apart may enter into an agreement in which they agree on their respective rights and obligations, including—

- (a) their interests in or division of property;
- (b) their maintenance obligations;
- (c) the right to direct the education and training of their children; and
- (d) any other matter in the settlement of their affairs.

27. Except as otherwise provided by this Part any ^{Law of contract} agreement entered into under sections 25 and 26 shall be subject to and enforceable in accordance with the law of contract.

Effect of agreement

28. (1) Where on an application by a cohabitant for an order under Part III, a court is satisfied that—

- (a) there is a cohabitation agreement or separation agreement between the parties;
- (b) the agreement is in writing;
- (c) the agreement is signed by the parties and witnessed by an attorney-at-law;
- (d) each cohabitant was, before the time at which the agreement was signed, advised by an attorney-at-law as to the following matters:
 - (i) the effect of the agreement on the right of a cohabitant to apply for an order under Part III;
 - (ii) whether or not it was financially prudent to enter the agreement; and
 - (iii) whether or not the provisions of the agreement were fair and reasonable,

the court shall not, except as provided by section 29 make an order under Part III in so far as the order would be inconsistent with the terms of the agreement.

(2) Where, on an application by a cohabitant for an order under Part III, the court is satisfied that there is a cohabitation agreement or separation agreement between the parties, but the court is not satisfied as to any one or more of the matters referred to in subsection (1), the court may make such order as it could have made, if there was no such agreement in existence.

(3) The court may make an order referred to in subsection (2) notwithstanding that a cohabitation or separation agreement purports to exclude the jurisdiction of the court.

29. (1) On an application by a cohabitant for an order ^{Varying or setting} under Part III, the court may vary or set aside ^{aside} one or more of the provisions of a cohabitation agreement, where in the opinion of the court, the circumstances of the partners have so changed, that it would lead to a grave injustice, if the provisions of the agreement or any one of them were to be enforced.

(2) In the determination of a matter respecting the support, education, moral training or custody of, or access to a child, the court may disregard any provisions of a cohabitation or separation or agreement, where, in the opinion of the court, it is in the best interest of the child to do so.

(3) On an application under Parts II or III, the court may set aside a cohabitation or separation agreement or any provision in it, if one party failed to disclose to the other, significant assets, or debts or other liabilities existing when the contract was entered into.

30. (1) The provisions of a cohabitation or separation ^{Effect of death} agreement relating to the payment of periodic maintenance, shall on the death of the cohabitant who is required to make those payments, be unenforceable against the estate of the deceased.

(2) Unless the agreement provides otherwise, provisions relating to lump sum payments and property may be enforced against the estate of the deceased partner.

PART V

MISCELLANEOUS

31. The Rules Committee established by section 77 of ^{Rules of Court} the Supreme Court of Judicature Act may make rules ^{Chap. 4:01} prescribing any matter of procedure that is necessary or expedient for the purposes of any of the provisions of this Act and for conferring any appropriate powers ancillary to the exercise of any jurisdiction conferred by this Act.

Passed in the House of Representatives this 12th day of June, 1998.

J. SAMPSON
Clerk of the House

Passed in the Senate this 23rd day of September, 1998.

N. COX
Clerk of the Senate

Senate amendment agreed to by the House of Representatives this 24th day of September, 1998.

J. SAMPSON
Clerk of the House