
LAW REFORM COMMISSION

Report

Towards the setting up of a Family Court in Mauritius

August 2004

Port Louis - Mauritius

LAW REFORM COMMISSION

The Law Reform Commission is an independent body established by the Law Reform Commission Act 1992 to undertake the systematic review and reform of the law of Mauritius.

The Chairman and members of the Commission are:

Dr. Daniel Fok kan – Chairman

Mr. Yusuf Aboobaker, S.C.

Mr. Satyajit Boolell

Mr. Bernard d’Hotman

Mr. Sunil Lutchmun

Mr. Pierre Rosario Domingue

Mr. Hambyrajen Narsinghen

Mr. Shaukatally Oozeer

Mr. Theyvarajen Ponambalum

Ms. Vijaya Sumputh

The Secretary is Ms. Rosemary Anodin

CONTENTS

Preliminaries

Recommendations

I – Family Court and Family Proceedings

The Family Court

Mediation Organisation

Counselling and Mediation

Divorce and Judicial Separation Proceedings

Determining the Best Interest of a Child and
its Separate Representation

II – Divorce by Consent

III – Family District Court

Concluding Remarks

Annex I – The Family Court and Family Proceedings Bill

Annex II – The Civil Code (Amendment) Bill

Annex III – Discussion Paper No. I, Towards the setting up
of a Family Court in Mauritius

PRELIMINARIES

In January of this year, the Law Reform Commission submitted to the Attorney-General a Discussion Paper on the setting up of a Family Court in Mauritius. Members of the public were invited through press notice in the issue of L'Express of the 15, 16 and 17 February 2004, of Le Mauricien of the 16 and 17 February 2004 and of Week-End of the 15 February 2004 to take cognizance of the Discussion Paper and make submissions thereon. The Discussion Paper was also made available through the internet on the website of the Attorney-General's Office (<http://attorneygeneral.gov.mu/>). The closing date for forwarding submissions to the Commission was 31 March 2004.

Copies were issued to members of the public who requested for them from the Secretary of the Commission. In addition the Commission took the initiative of forwarding copies to various stakeholders and officials dealing with family matters.

The Chairman of the Commission received 'promises' from various persons/institutions/quarters that they would make their views known to the Commission. In spite of being extremely flexible on the closing date, the Commission received submissions only from Mr. Kamirl F.D.M. Atchia, the Ombudsperson for Children and the Ministry of Women's Rights, Child Development and Family Welfare.

The submission of Mr Atchia related essentially to the circumstances of his particular case which he felt could have been better taken into account had it been decided by a dedicated Family Court.

The Ministry of Women's Rights, Child Development and Family Welfare generally welcomed the proposals of the Commission save that it wanted to have a greater involvement in the process of mediation more particularly in the context of child protection.

The Ombudsperson for Children made many thought provoking points.

After having examined the various submissions and reconsidered its own Discussion Paper, the Commission hereby submits its recommendations in accordance with the terms of reference of the Attorney-General. The present report has to be read in conjunction with the Discussion Paper.

Recommendations

The Commission has prepared two draft bills which incorporates most of its recommendations. The first deals with the creation of a Family Court as a division of the Supreme Court, the Family Court and Family Proceedings Bill. The second amends the Civil Code in order to introduce divorce by consent. In addition a third bill will have to be prepared for which the Commission is providing guide lines in this report

I - The Family Court and Family Proceedings

Part I - The Family Court

Part I starts with the principles upon which the whole Bill is founded and firmly states the commitment of the legislature to the preservation of the institution of marriage. It then goes on to provide for the creation of the Family Court as a division of the Supreme Court.

Considering that it is a division of the Supreme Court, it is expected that judges of the Supreme Court will rotate a Family Court Judge. However as stated in the Discussion Paper, it should be a matter of choice whether a judge wants to sit as a Family Court Judge or not. How long a judge will stay as a Family Court Judge is eventually an administrative matter for the Chief Justice to decide upon. However in order to ensure a certain amount of specialization, it is expected that that any judge sitting as a Family Court Judge will do so for some time while, should he wish to do so, devoting a small amount of his time, which the Commission has put at 20%, to other matters. At the end of the day, however; whether a Family Court Judge will devote some of his time to other cases or not, is a matter to be determined by the judiciary itself. While the Commission believes in the virtue of specialisation, it is also mindful of the comments of Prof. Michèle-Laure Rassat in her report to the French Garde Des Sceaux to the effect that ‘quand un juge d’instruction est en poste dans le même tribunal depuis vingt-deux ans comme l’exemple nous en a été récemment donné, il est clair qu’il consacre toute son

activité et son intelligence, s'il lui en reste, à plier toute les réformes susceptibles d'intervenir à sa propre pratique professionnelle et non l'inverse. ... Nous croyons même qu'il y a une fâcheuse confusion sur la notion de juridiction officiellement spécialisée notamment dans les domaines du terrorisme et de la délinquance économique et financière. Un parquet et des cabinets d'instruction spécialisés se distinguent des autres en ce qu'ils ne traitent que ce type d'affaires. Cela n'implique nullement que les magistrats qui y sont affectés le soient à vie, le risque de routine, nonobstant les connaissances particulières, se manifestent ici de la même façon que partout ailleurs'¹. The Commission is of the view that these comments are equally applicable in this context. Between these two positions, the right balance will have to be struck and this is a matter that cannot be prescribed by law.

This Part also provides for the appointment of Family Court Co-ordinators, whom the Commission considers to be a key person in the proper functioning of the Family Court.

At the Discussion Paper stage, the Commission considered the possibility of the appointment of assessors sitting with judges and magistrates. The Commission, however, considered that there may be difficulties in its application in the Mauritian context. On the other hand, it does have its attraction and the Commission is proposing that the Court be given the option of having assessors to help it. Eventually regulations will have to be drawn up for the modalities of appointment of the assessors.

The Commission believes that proceedings in the Family Court should be as informal as possible and has so provided in Part I of the Bill.

Part II – Mediation Organisations

Part Two deals with the approval of mediation organizations. In the Discussion Paper, the Commission commented that it was of the view that such organizations did not exist in

¹ Proposition de la réforme de la procédure pénale, Prof. Michèle-Laure Rassat, Documentation Française, 1995, p.XI-XII

Mauritius at the moment so that mediation will have to be done by the judges themselves. A contrary view has been expressed. Should that be the case, it is clear that this profession will have to be regulated, hence Part II. In addition, the Commission reflected that even if such organizations did not exist, providing a framework for its existence will eventually encourage stakeholders to set them up. Until such time when there is an adequate pool of mediators, the mediation work will have to be effected by the Family Court Judge.

Part III – Counselling and Mediation

Part III provides for the various steps that must be undertaken in order to ensure that family matters be dealt with by way of counselling and mediation before a judicial decision is envisaged. As stated above, it is expected that for the moment, the mediation process will be undertaken by the Family Court Judge within what has been termed as the Settlement Conference. However, as mentioned in the Discussion Paper, it is expected that the Settlement Conference will continue to have a role to play even where mediation has been attempted by a mediation organisation.

The Commission wishes to reiterate that it is expecting the Probation Office to set up a separate team of officers to act as counsellors.

Part IV – Divorce and Judicial Separation Proceedings

This Part preserves the main provisions of the Divorce and Judicial Separation Act. These have been amended to allow the counselling and mediation process to take place. In addition the procedure to follow in case of divorce by consent has also been provided for.

Part V and VI – Determining the Best Interest of a Child and its Separate Representation

Though the Divorce and Judicial Separation Act and the Civil Code do at the moment provide that the court is to take into account the best interest of a child, in the light of suggestions made, the Commission considered that it would be fit that this notion be elaborated upon.

II - Divorce By Consent

Divorce by consent was introduced in France in 1975. These provisions have, however, just been amended by the Loi du 26 mai 2004. While taking into account the new law, the Commission does not recommend at this stage of our development that we go down this somewhat more adventurous road.

There are basically two forms of divorce by consent. In the first one, provided for by the new Art.238-1 of the Civil Code, the parties agree not only on the principle of divorce but also on its consequences. The parties will prepare a draft agreement which will be submitted for the approval of the Family Court Judge. The latter will be entitled to refuse to grant the divorce if he is of the view that the agreement does not adequately take into account the interest of the children or of one of the spouses. Further the parties will not obtain a divorce straightaway but will have to renew the request after three months, thereby providing the parties with a further opportunity to reflect upon the matter.

The second form of divorce by consent is where the parties agree on the principle of divorce but cannot agree on the consequences. This is provided for in the new Art.238-4 of the Civil Code. In this case, failing an agreement between the parties during the divorce proceedings, the judge will decide the matter. The same reflection period as provided for under the first form of divorce by consent is provided for in this case.

In order to impress upon one and all the importance of conciliation, the Commission is proposing to insert in the Civil Code as well an article dealing with conciliation.

With regard to the provisional measures, the Commission is proposing that the power of the District Court Magistrate to take urgent measures be removed. The Commission understands that parties to a divorce have practically never made use of the District Court Magistrate in these circumstances. Under the scheme proposed by the Commission, the Family Court Judge will decide upon such measures.

III – The Family District Court

In the scheme proposed by the Commission, the Family District Court will have a very important role to play. They will deal with matters under the Child Protection Act the Protection from Domestic Violence Act, the Civil Status Act, the Lunacy Act and also be the Juvenile Court. In their dealing with child protection and domestic violence cases, it should be made clear that these are not ‘normal civil cases’ but that the magistrate should take on an investigative role.

In its relationship with the Family Court, they will act as the first port of call for couples and children with difficulties. In that respect, the Commission proposes that the Family District Court Magistrate be formally invested with the role s/he is already performing in the context of what is now known as Chamber cases, with eventual reference to the Family Court where appropriate. The role of the Probation Office in helping the Family District Court Magistrate to deal with such matters should also be formally stated.

In line with its Discussion Paper, the Commission recommends that a Family District Court be created in Mapou for Pamplémousses and Rivière du Rempart, in Flacq for Centre de Flacq and Moka, in Mahébourg for Grand Port and Savanne; in Rose Hill for Plaine Wilhems and Black River and in Port Louis.

As far as the Family District Court Magistrates are concerned, the comments made above in relation to the Family Court Judge will apply.

Concluding Remarks

The above recommendations are in principle to be taken as a whole. However, the Commission realizes that their implementation may present certain practical difficulties, for example in terms of infrastructure or recruitment and training of staff. From this perspective, a staged implementation may eventually be envisaged.

Annex I

NEW ACT TO PROVIDE FOR THE ESTABLISHMENT OF THE FAMILY COURT AS A DIVISION OF THE SUPREME COURT AND FOR DIVORCE PROCEEDINGS INCORPORATING A CONCILIATION PROCESS

The Family Court and Family Proceedings Bill

PART 1 – PRELIMINARY

1. Short title

This Act may be cited as the Family Court and Family Proceedings Act.

2 Interpretation

In this Act -

approved mediation organisation means an organisation in relation to which an approval under section 9 is in force.

decree means a decree of divorce or judicial separation;

property means movable or immovable property or part of property and includes money;

child means a child of the parties to a marriage;

Court means the Family Court established under section 3;

Family Court Coordinator means a person appointed as Family Court Coordinator under S.7

judge means the Family Court Judge

party means party to a marriage.

PART 2 – THE FAMILY COURT

3. Principles to be applied the Court

(This is the Australian version) The Court shall, in the exercise of its jurisdiction under this Act, have regard to the following general principles:

(a) the need to preserve and protect the institution of marriage as the union of a man and a woman to the exclusion of all others voluntarily entered into for life;

(b) the need to give the widest possible protection and assistance to the family as the natural and fundamental group unit of society, particularly while it is responsible for the care and education of dependent children;

(c) the need to protect the rights of children and to promote their welfare;

(d) the need to ensure safety from family violence; and

(e) the means available for assisting parties to a marriage to consider reconciliation or the improvement of their relationship to each other and to their children.

(This is the English wording –)

The Court shall, in the exercise of its jurisdiction under this Act, have regard to the following general principles-

(a) that the institution of marriage is to be supported;

(b) that the parties to a marriage which may have broken down are to be encouraged to take all practicable steps, whether by marriage counselling or otherwise, to save the marriage;

(c) that a marriage which has irretrievably broken down and is being brought to an end should be brought to an end-

(i) with minimum distress to the parties and to the children affected;

(ii) with questions dealt with in a manner designed to promote as good a continuing relationship between the parties and any children affected as is possible in the circumstances; and

(iii) without costs being unreasonably incurred in connection with the procedures to be followed in bringing the marriage to an end; and

(d) that any risk to one of the parties to a marriage, and to any children, of violence from the other party should, so far as reasonably practicable, be removed or diminished.

4. Establishment of the Family Court

There is hereby established as a division of the Supreme Court a court to be known as the Family Court.

5 Jurisdiction of the Court

Except where it is expressly otherwise provided; the Court shall have exclusive jurisdiction in all matters relating to

- (a) absentees;
- (b) marriage, divorce, judicial separation and their consequences;
- (c) , filiations;
- (d) adoption;
- (e) the exercise of parental authority;
- (f) guardianship of minors; and
- (g) judicial supervision, guardianship and curatorship of adults.

6 The Family Court Judge

A judge sitting on the Family Court shall be known as the Family Court Judge.

7 The Family Court Co-ordinator

There shall be appointed, as an officer of the Court, one or more persons, to be known as Family Court co-ordinators, whose principal responsibility shall be to perform the duties assigned to them under this Act, such duties as may be prescribed and such other duties as the Judge may direct to facilitate the proper functioning of the Court, of mediation, of counselling and related services

8 Assessors

In any proceedings before it, the Court may be assisted by an assessor to help it in the hearing and determination of the proceedings, or any part of them or any matter arising under them.

9 Avoidance of Unnecessary Formality

(1) Proceedings in the Court shall be conducted in such a way as to avoid unnecessary formality.

(2) A Judge may adjourn a hearing of an application from Court to Chambers (that is, a venue the Judge considers more private than Court), and from Chambers to Court, in order to do justice between parties to the proceedings and any other persons affected, or likely to be affected, by the proceedings.

(3) A Judge may adjourn a hearing under subsection (1) on his or her own initiative or on the application of a party to the proceedings or a person affected or likely to be affected by the proceedings.

Part 3—MEDIATION ORGANISATIONS

10. Approval of mediation organisations

(1) A voluntary organisation may apply to the Court for approval as a mediation organisation.

(2) The Court may, in writing, approve the organisation as a mediation organisation if, and only if, the Court is satisfied that:

(a) the organisation is willing and able to engage in family and child mediation;
and

(b) the whole, or a substantial part, of the organisation's activities consist, or will consist, of family and child mediation.

(3) If the Court decides to refuse to approve the organisation, the Court must give written notice of that decision to the organisation.

11. Approvals subject to conditions

(1) An approval under section 10 is subject to such conditions (if any) as are specified in the instrument of approval.

(2) If an approval is subject to conditions specified in the instrument of approval, the Court may, from time to time, revoke or vary all or any of those conditions or add further conditions.

(3) The Court's power to revoke, vary or add conditions must be exercised by notice in writing to the organisation concerned.

12. Revocation of approvals

(1) The Court may, at any time, revoke the approval of an organisation under section 10 if:

(a) the organisation has failed to comply with a condition of the approval; or

(b) the organisation has failed to comply with its obligations as an approved mediation organisation under section 14; or

-
- (c) a person authorised by the organisation to offer family and child mediation on behalf of the organisation has failed to comply with a requirement of this Act or a direction made by the Court under this Act; or
 - (d) the Court is no longer satisfied as mentioned in section 10(2)(b) in relation to the organisation; or
 - (e) the Court is satisfied that the organisation is not adequately carrying out family and child mediation.
- (2) The Court's power to revoke an approval must be exercised by notice in writing to the organisation concerned.

13. Court to publish lists of approved mediation organisations

The Court must publish annually, in such manner as the Court thinks appropriate a list of all approved mediation organisations.

14. Reports and financial statements of approved organisations

- (1) An approved mediation organisation must, in respect of each financial year, give the Court:
- (a) an audited financial statement of the receipts and payments of the organisation, in which receipts and payments in respect of its family and child mediation activities are shown separately from other receipts and payments; and
 - (b) a report on its family and child mediation activities, including information about the number of cases dealt with by the organisation during the year.
- (2) A report under subsection (1) in relation to a financial year must be given to the Court by 30 September in the next financial year.
- (3) The Court may, in writing, exempt an organisation from complying with some or all of the requirements of subsection 1 if the Court is satisfied that:
- (a) it would be impracticable for the organisation to comply with those requirements; or
 - (b) it would be unduly onerous to require the organisation to comply with those requirements.

15. Protection of mediators

A mediator, in performing the functions of such a mediator under this Act, has the same protection and immunity as a judge has in performing the functions of such a judge.

PART III – COUNSELLING AND MEDIATION

16. Duty of legal advisers to promote reconciliation

In all matters in issue between a husband and wife that are or may become the subject of proceedings under the provisions of the Civil Code, every barrister or attorney acting for the parties shall –

- (a) ensure that the party for whom the barrister or attorney is acting is aware of facilities that exist for promoting reconciliation; and
- (b) take such further steps as in the opinion of the barrister or attorney may assist in promoting reconciliation.

17. Requests for counseling (*to be removed – this is to be done at District Court level*)

- (1) Either party to a marriage may request a Family Court Co-ordinator to arrange counselling in respect of the marriage.
- (2) Where a request has been made to a Family Court Co-ordinator under subsection (1) of this section, the Family Court Co-ordinator shall, on the completion by the person making the request of the prescribed form, if any, arrange for the matter to be referred to a Family counsellor.

18. Counselling and mediation where proceedings commenced

- (1) On the filing of a petition for a divorce, for a judicial separation, for a maintenance order or for a custody or access order, where the Registrar has entered the application on the Registrar's list under S.30, the Family Court Co-ordinator shall arrange for the matter to be referred to a Family Counsellor, or a mediator or successively to a Family Counsellor and a mediator.
- (2) Subsection (1) of this section shall not apply if the Judge gives direction that the matter be not referred under subsection (1) of this section.
- (3) A direction may be given under subsection (2) of this section if the Judge is satisfied, that-
 - (a) a party to the marriage has committed an act of domestic violence, within the meaning of the Protection from Domestic Violence Act against the other party to the marriage or a child of the marriage or caused harm, within the meaning of the Child Protection Act, to a child of the marriage, or
 - (b) delay in hearing the application would be undesirable or unlikely to serve a useful purpose; or

-
- (c) other reasonable cause exists to dispense with a reference under subsection (1).

19. Circumstances when attendance at counselling not required

(1) Notwithstanding anything in this Part of this Act, a party to a marriage shall not be required, under any provision of this Part of this Act, to attend counselling at which the other party to the marriage is also present, in any case where the other party to the marriage has committed an act of domestic violence, within the meaning of the Protection from Domestic Violence Act against the first-mentioned party or caused harm, within the meaning of the Child Protection Act, to a child of the marriage.

(2) Nothing in this section prevents the provision of counselling in the circumstances referred to in this section with the agreement of the first-mentioned party.

20. Reference to Family counsellor

(1) A Family counsellor to whom a matter is referred under section 17 or section 18 of this Act shall forthwith arrange to meet the husband or wife, or both of them, at such times and places (including the home of either party) as the counsellor thinks fit for the purpose of counselling, including any or all of the following purposes (to the extent that the purposes are relevant).

- (a) assisting the parties with a view to a reconciliation;
- (b) improving the parties' relationship to each other or to any of their children;
- (c) assisting the parties and their children to adjust to the consequences of the breakdown of the marriage;
- (d) undertaking any other family and child counselling in order to assist the parties to resolve any matter in dispute between them.

(2) As soon as reasonably practicable after the matter has been referred to the counsellor, the counsellor shall submit a written report to the Family Court Co-ordinator stating-

- (a) whether or not the husband and wife wish to resume or continue the marriage;
- (b) what are the matters in issue;
- (c) whether any understandings have been reached between them on the matters in issue; and
- (d) any other matters on which the counsellor thinks fit to report.

(3) On receipt of the written report, the Family Court Co-ordinator shall give a copy of the report to each party.

21. Settlement Conference

(1) Where any of the following applications has been made to the Court, either party to the proceedings, or a Judge, may ask the Registrar to arrange for a settlement conference to be convened:

(a) an application for a divorce or a judicial separation;

(b) an application for a maintenance order;

(c) an application by one parent of a child against the other parent for an order for the custody of, or access to, the child.

(2) At each settlement conference a Judge shall be the Chairperson.

(3) The objectives of the settlement conference shall be

(a) to identify the matters in issue between the parties;

(b) to try to obtain agreement between the parties on the resolution of those matters.

(4) Any barrister or attorney representing a party may, at the request of that party, be present at the settlement conference to assist and advise that party.

(5) Where the custody of, or access to, a child is in issue at the settlement conference, any barrister or attorney appointed to represent the child may be present.

(6) Subject to subsections (4) and (5) of this section, every settlement conference shall, unless the Chairperson otherwise directs, be held in private.

(7) In conciliating the parties, the Chairperson shall, as s/he deems fit meet all the parties in joint meetings and/or each party separately in side-meetings.

(8) The Chairperson may from time to time adjourn the settlement conference to a time and place to be appointed by the Chairperson.

(9) The Chairperson shall record in writing the matters in issue at the settlement conference, showing separately-

(a) those matters on which agreement is reached between the parties;

(b) those matters on which no agreement is reached between the parties.

(10) In case there is no agreement, the Chairperson shall also record in writing whether he proposes to preside at the hearing of the proceedings:

(11) In case there is no agreement between the parties, the Chairperson shall consider the application of Art. 240 of the Civil Code.

(12) Where the person against whom an application has been made is not in a state or position to express his/her will, the Chairperson shall nevertheless have a talk with the applicant and urge him/her to give further consideration to the matter.

22. Power of Chairperson to make consent orders

(1) Subject to subsection (2) of this section, the Chairperson presiding at a settlement conference may, by consent of the parties, make any orders that could have been made by the Court and that relate to an application by either party for-

- (a) a divorce or judicial separation; or
- (b) the custody of any child of the parties, or any rights of access to that child; or
- (c) a maintenance order;
- (d) or the possession or disposition of property .

(2) An order made under this section shall for all purposes have the same effect as if it were made by the consent of the parties in proceedings before the Court.

23. Proceedings after settlement conference

The judge who presides over a settlement conference between the parties to an application shall be entitled to hear any subsequent proceedings between those parties under that application unless in all the circumstances s/he decides, on his/her own motion or on the application of any party-

- (a) that it would be inappropriate for him/her to do so; or
- (b) that there is some other sufficient reason for the application to be heard by another judge.

24. Power to require attendance for counselling, mediation or settlement conference

Subject to section 19, where a person fails to comply with a request to attend before a counsellor or a mediator under S.18 of this Act or a Judge under S.21 of this Act, a Judge may, on request of the other party, issue an order requiring the person to attend

before the counsellor, mediator or to attend a settlement conference at a time and place to be specified in the summons.

25. Privilege

(1) No evidence shall be admissible in any court or in any proceedings before a person authorised by a law, or by the consent of the parties, to hear evidence, of any information, statement, or admission disclosed or made to a counsellor or mediator exercising his functions under this Part of this Act or in the course of a settlement conference.

(2) Nothing in subsection (1) of this section shall apply to a record made by a Judge under S.21 (9) of this Act, or to any consent order made under S.22 of this Act.

(3) Except to the extent that it is necessary for a counsellor or mediator to do so in the proper discharge of that counsellor's or mediator's functions, every counsellor or mediator commits an offence and is liable on summary conviction to a fine not exceedingrupees who discloses to any other person any information, statement or admission received by or made to the counsellor or to the mediator in the exercise of the counsellor's or mediator's functions under this Part of this Act.

(4) This section does not apply to the following:

(a) an admission by an adult that indicates that a child has been harmed or is at risk of being harmed within the meaning of the Child Protection Act;

(b) a disclosure by a child that indicates that the child has been harmed or is at risk of harmed within the meaning of the Child Protection Act;

unless, in the opinion of the court, there is sufficient evidence of the admission or disclosure available to the court from other sources.

26. Duty of Judge as to Reconciliation

(1) In all proceedings between a husband and wife relating to divorce, judicial separation, maintenance, custody of or access to children of the parties, the Judge shall-

(a) consider from time to time the possibility of a reconciliation of the parties on any matter in issue; and

(b) take such further steps as in his/her opinion may assist in promoting reconciliation.

(2) Where in proceedings referred to in subsection (1) of this section, it appears to the Judge from the nature of the case, the evidence in the proceedings, or the attitude of the parties, that there is a reasonable possibility of reconciliation between them on any matter in issue, the Judge may-

(a) adjourn the proceedings to afford the parties an opportunity for reconciliation;
or

(b) with the consent of the parties, interview them in chambers, with or without counsel, as the judge thinks proper, to assist in a possible reconciliation.

(3) If the judge adjourns the proceedings under subsection (2) (a) of this section, the judge may advise the parties:

(a) to make use of the services of a counsellor or a mediator to assist in a possible reconciliation; or

(b) to nominate a counsellor or a mediator or, in special circumstances, any other suitable person to explore the possibility of reconciliation

(4) Where, not less than 28 days after any proceedings have been adjourned, the husband or wife so requests, the hearing shall, unless the Court otherwise directs, be resumed.

(5) Where the Court considers that special circumstances exist, the Court may, on the application of the husband or wife, resume the hearing before the expiration of the period of 28 days mentioned in subsection 4 of this section.

PART IV – DIVORCE AND JUDICIAL SEPARATION PROCEEDINGS

27. Institution of proceedings

No person shall institute any proceedings under this Part of this Act, unless –

(a) he is a citizen of Mauritius;

(b) he was a citizen of Mauritius at the time of his marriage;

(c) he is married to a citizen of Mauritius;

(d) he was married in Mauritius; or

(e) he is a resident of Mauritius and has resided in Mauritius for a continuous period of at least one year.

28. Proceedings to be by petition or motion

- (1) Any proceedings for the grant of a decree shall be entered by way of petition
- (2) Any application incidental to or consequential upon a petition for a decree shall be made by way of motion.
- (3) A petition shall be lodged with the Registrar.

29. Contents of petition

- (1) Subject to subsection (2), a petition for divorce or judicial separation under Art.230, Art.231 or Art.235 of the Civil Code shall set out all the facts on which the petitioner relies to satisfy the Court that he is entitled to a decree and no facts other than those set out in the petition, shall be admitted in evidence.
- (2) Where new facts arise or come to the knowledge of the petitioner after the presentation of the petition, the petitioner may, with the leave of the Court, adduce in evidence the new facts and thereupon the new facts shall be deemed to form part of the petition.
- (3) A petition for divorce or judicial separation under Art.238-1 of the Civil Code shall be accompanied by a copy of the draft agreement agreed upon by the parties.
- (4) A petition for divorce or judicial separation under Art.238-4 of the Civil Code shall be accompanied by a statement that the parties accept that the marriage has broken down.
- (5) There shall be annexed to every petition –
 - (a) a copy of the marriage certificate of the parties; or
 - (b) where the marriage certificate is not available, an affidavit containing –
 - (i) the names of the parties;
 - (ii) the date on which and the place where the marriage was celebrated;
 - (iii) the matrimonial regime under which the parties are married; and
 - (c) where appropriate, a list of the witnesses which the petitioner intends to call;

(d) where any agreement under section 39 has been reached between the parties, a copy of the agreement;

(e) where the petitioner is willing to make arrangements for the welfare of the children, a copy of the proposed arrangements.

30. Petition for Divorce or Judicial Separation under Art. 230, Art.231, or Art.235

(1) On receipt of a petition for divorce or judicial separation under Art. 230, Art.231, or Art.235 of the Civil Code, the Registrar shall either -

(a) immediately fix a date and time for the preliminary hearing of the application; or

(b) enter the application on the Registrar's list, so that it is regularly monitored, and managed and progressed either—

(i) to resolution without a hearing; or

(ii) to a point where the Registrar is permitted or required to fix a date and time for the preliminary hearing of the application, and does so under this subparagraph.

(2) When a date and time is fixed for the preliminary hearing of an application under subsection (1(a) or (b)(ii), subject to subsection (3), the petitioner shall cause a copy of the petition to be served on the respondent in person and shall give at least 15 days notice to the respondent of the date of the preliminary hearing.

(3) Where the respondent is in Mauritius and personal service cannot be effected, and the judge in Chambers is satisfied that the respondent is avoiding service of process, he may order that service be effected at the respondent's last known place of residence.

31. Petition for Divorce or Judicial Separation under Art.238-1

(1) On receipt of a petition for Divorce or Judicial Separation under Art.238-1 of the Civil Code, the Registrar shall immediately fix a date and time for its examination by the judge.

(2) Pending the renewal of the petition in accordance with Art. 238-2 of the Civil Code, the judge may request the Family Court Co-ordinator to arrange for the parties to be referred to a counsellor.

32. Petition for Divorce or Judicial Separation under Art.238-4

(1) On receipt of a petition for Divorce or Judicial Separation under Art.238-4 of the Civil Code, the Registrar shall immediately fix a date and time for the hearing of the application.

(2) Pending the renewal of the petition in accordance with Art. 238-5 of the Civil Code, the judge may request the Family Court Co-ordinator to arrange for the parties to be referred to a counsellor and/or mediator.

33. Preliminary hearing

(1) On the day fixed for the preliminary hearing of the petition, the respondent may-

- (a) file a cross-petition; or
- (b) admit the contents of the petition,

and the Court shall fix the case for trial to the earliest possible date but not before one month.

(2) Where the respondent intends to defend the petition, he shall, not later than 15 days before the date fixed for the trial of the case, give notice to the petitioner of his objections and a list of the witnesses he intends to call.

34. Provisional decree

At the trial of the case, where the Court is satisfied that the petitioner has established his case, the Court shall, in the first instance, grant a provisional decree.

35. Permanent decree

(1) Subject to subsection (2) and section 36, any party may apply to the Court for a provisional decree to be made permanent.

(2) No decree shall be made permanent, except after the expiry of 3 months from the date on which the provisional decree was made.

36. Restrictions on permanent decree

The Court shall not make permanent a provisional decree unless the Court is satisfied-

- (a) that there is no child in relation to whom financial arrangements ought to be made; or

(b) that financial arrangements have been made for every child in relation to whom such arrangements should be made and that the arrangements made are satisfactory or the best that can be devised in the circumstances; or

(c) it is impracticable for the party or parties appearing before the Court to make such arrangements.

(What follows is an alternative for an automatic permanent decree)

??. When decree becomes permanent

(1) Subject to this section, a provisional decree made under this Act becomes permanent by force of this section at the expiration of a period of three month from the making of the decree.

(2) Where an appeal is instituted before a provisional decree has become permanent, then, the provisional decree, unless reversed or rescinded, becomes permanent by force of this section at the expiration of a period of 3 month from the day on which the appeal is determined or discontinued.

(3) A provisional decree shall not become absolute by force of this section where either of the parties to the marriage has died.

??. Permanent Decree where children

(1) A provisional decree of dissolution of marriage does not become permanent unless the Court has, by order, declared that it is satisfied:

(a) that there are no children of the marriage who have not attained 18 years of age; or

(b) that the only children of the marriage who have not attained 18 years of age are the children specified in the order and that:

(i) proper arrangements in all the circumstances have been made for the care, welfare and development of those children;

(ii) there are circumstances by reason of which the provisional decree should become permanent even though the Court is not satisfied that such arrangements have been made.

(2) Where, in proceedings for a decree of dissolution of marriage, the Court doubts whether the arrangements made for the care, welfare and development of a child of the marriage are proper in all the circumstances, the Court may adjourn the proceedings until a report has been obtained from a family and child counsellor or welfare officer regarding those arrangements.

?? Certificate as to decree absolute

(1) Where a provisional decree becomes permanent, the Registrar shall prepare and file a memorandum of the fact and of the date upon which the decree became permanent.

(2) Where a provisional decree has become absolute, any person is entitled, on application to the Registrar, to receive a certificate signed by the Registrar that the provisional decree has become permanent.

(3) A certificate given under subsection (2) is, in all courts and for all purposes, evidence of the matters specified in the certificate.

?? Rescission of provisional decree where parties reconciled

Notwithstanding anything contained in this Part, where a provisional decree has been made in proceedings for a decree of dissolution of marriage, the Court may, at any time before the decree becomes permanent, upon the application of the parties to the marriage, rescind the decree on the ground that the parties have become reconciled.

37. Judicial separation

(1) A petitioner who has been granted a decree of judicial separation may at any time apply to the Court for the conversion of the decree into a decree of divorce.

(2) The respondent to a decree of judicial separation may, not earlier than 3 years after the date of the decree, apply to the Court for the conversion of the decree into a decree of divorce.

(3) The Court shall, upon an application being made under subsection (1) or (2), grant the application unless good cause is shown against the grant of the application.

38. Periodical payments orders

(1) On granting a decree or at any time thereafter the Court may make one or both of the following orders -

(a) an order that either party shall make to the other party periodical payments;

(b) an order that either party shall make to any person for the benefit of any child periodical payments,

for such term and on such conditions as the Court may specify.

(2) An order for periodical payments under subsection (1) (a) shall lapse on the remarriage of the party in whose favour the order was made.

(3) Subject to subsection (4), no order shall be made under subsection (1) (b) –

(a) in favour of a child who has attained the age of 18;

(b) so as to extend beyond the 18th birthday of a child.

(4) Notwithstanding any other enactment, the Court may make an order under subsection (1) (b) in favour of a child who has attained the age of 18 or make an order extending beyond a child's 18th birthday, if the Court is satisfied that -

(a) the child is or will be receiving instruction at an educational establishment; or

(b) there are special circumstances which justify the making of the order.

(5) Any party against whom an order to make any periodical payment has been made and who, without lawful excuse or justification, fails to comply with the order, shall without prejudice to any other proceedings which may be instituted against him, commit an offence and shall, on conviction, be liable to a fine not exceeding 2,000 rupees and to imprisonment for a term not exceeding one year.

39. Maintenance agreements

(1) Subject to subsection (2), the parties may at any time make an agreement in writing that -

(a) either party shall make to the other party periodical payments;

(b) either party shall make to any person for the benefit of any child periodical payments, for such term and on such conditions as they think fit.

(2) Any provision in an agreement made under subsection (1) which purports to restrict the right of any party to apply to the Court for the variation or discharge of the agreement shall be void.

40. Amendment of orders and agreements

The Court may at any time on application made by either party amend or discharge an order made under section 38 or an agreement under section 39, or an agreement under Art.238-1 of the Civil Code if it appears necessary to do so, having regard to any material change in the circumstances relating to either of the parties or to any child.

41. Property transfer orders

(1) On granting a decree the Court may order a party to transfer to the other party such property as may be specified in the order within such time and on such conditions as the Court thinks fit.

(2) Any party against whom an order under subsection (1) is made who, without reasonable excuse or justification, fails to comply with the order shall, without prejudice to any other proceedings which may be instituted against him, commit an offence and shall, on conviction, be liable to a fine not exceeding 2,000 rupees and to imprisonment for a term not exceeding one year.

42. Exercise of powers on orders

In the exercise of its powers under sections 38 and 41 the Court shall have regard to all the circumstances of the case, and in particular the following matters, where appropriate -

- (a) the income, earning capacity, property and other financial resources which each of the parties has or is likely to have in the foreseeable future;
- (b) the financial needs, obligations and responsibilities of each party, as well as those of the children;
- (c) the responsibilities of either party to support any other person;
- (d) the age of the parties and that of any child;
- (e) any physical or mental disability of either of the parties-and of any child;
- (f) the standard of living enjoyed by the family before the dissolution of the marriage;
- (g) the value to either of the parties of any present or future benefit which, by reason of the dissolution of the marriage, that party will lose;
- (h) the eligibility of either party for a pension, allowance or benefit under any enactment or under any superannuation fund or scheme;
- (i) the manner in which any child was or in which the parties expected him to be educated or brought up;
- (j) the financial position in which any child would have been if the marriage had not broken down and each of the parties had properly discharged his or her financial obligations and responsibilities towards him;

(k) the duration of the marriage and the extent to which it has affected the earning capacity of the party whose maintenance is under consideration;

(1) the need to protect the position of a woman who wishes to continue her role as a wife and mother.

43. Orders for custody of children

(1) On granting a decree, the Court shall make such order for the custody of any minor child as it thinks fit.

(2) An order made under subsection (1) may be made in favour of either party or of any other person (whether or not related to the child) who consents to the order being made in his favour.

(3) In making an order under subsection (1), the Court shall have regard to the interests of the child concerned as the first and paramount consideration.

(4) In determining the interests of the child under subsection (3), the Court shall inquire into all the circumstances of the case and shall for that purpose hear the child if the child is above the age of 10 and capable of discernment.

(5) The party to whom custody of a child has not been granted shall be granted a right of visit to the child on such conditions as the Court thinks fit.

44. Supervision of or assistance in the compliance with custody and right of visit orders

(1) If the Court makes an order under section 43 in relation to a child, the Court may also, subject to subsection (2), make either or both of the following orders:

(a) an order requiring compliance with the order under section 43, as far as practicable, to be supervised by an officer from the Ministry to whom the responsibility for the welfare of children has been assigned ;

(b) an order requiring an officer from the Ministry to whom the responsibility for the welfare of children has been assigned to give any party to the order under section 43 such assistance as is reasonably requested by that party in relation to compliance with, and the carrying out of, the order under Section 43.

(2) In deciding whether to make a particular order under subsection (1) in relation to a child, the Court must regard the best interests of the child as the paramount consideration.

45. Provisional orders

On a petition for a decree any party may apply to the Court for one or more of the following orders -

- (a) an order for maintenance pending the hearing of the petition requiring any party to make to the other such periodical payments for his maintenance for such term beginning not earlier than the date of the presentation of the petition and ending with the final determination of the petition, as the Court thinks reasonable;
- (b) an order for provisional custody of any minor child for such term beginning with the date of the making of the order and ending with the date of the final determination of the petition, as the Court thinks reasonable; or
- (c) an order for payment of litigation money, requiring any party to pay to the other such sum of money as is specified in the order to cover the reasonable costs incurred or likely to be incurred in connection with any proceedings under this Act.

Part V - Determining the best interests of a child

46. Proceedings to which Part applies

This Part applies to any proceedings before the Court in which the best interests of a child are the paramount consideration.

47. How Court determines what is in a child's best interests

- (1) Subject to subsection (3), in determining what is in the child's best interests, the court must consider the matters set out in subsection (2).
- (2) The court must consider:
 - (a) any wishes expressed by the child and any factors (such as the child's maturity or level of understanding) that the court thinks are relevant to the weight it should give to the child's wishes;
 - (b) the nature of the relationship of the child with each of the child's parents and with other persons;
 - (c) the likely effect of any changes in the child's circumstances, including the likely effect on the child of any separation from:
 - (i) either of his or her parents; or

-
- (ii) any other child, or other person, with whom he or she has been living;
 - (d) the practical difficulty and expense of a child having contact with a parent and whether that difficulty or expense will substantially affect the child's right to maintain personal relations and direct contact with both parents on a regular basis;
 - (e) the capacity of each parent, or of any other person, to provide for the needs of the child, including emotional and intellectual needs;
 - (f) the child's maturity, sex and background and any other characteristics of the child that the court thinks are relevant;
 - (g) the need to protect the child from physical or psychological harm caused, or that may be caused, by:
 - (i) being subjected or exposed to abuse, ill-treatment, violence or other behaviour; or
 - (ii) being directly or indirectly exposed to abuse, ill-treatment, violence or other behaviour that is directed towards, or may affect, another person;
 - (h) the attitude to the child, and to the responsibilities of parenthood, demonstrated by each of the child's parents;
 - (i) any family violence involving the child or a member of the child's family;
 - (j) any family violence order that applies to the child or a member of the child's family;
 - (k) whether it would be preferable to make the order that would be least likely to lead to the institution of further proceedings in relation to the child;
 - (l) any other fact or circumstance that the court thinks is relevant.

(Consider the English wording)

In making that decision, the court shall also have particular regard, on the evidence before it, to-

- (a) the wishes and feelings of the child considered in the light of his age and understanding and the circumstances in which those wishes were expressed;
- (b) the conduct of the parties in relation to the upbringing of the child;
- (c) the general principle that, in the absence of evidence to the contrary, the welfare of the child will be best served by-

-
- (i) his having regular contact with those who have parental responsibility for him and with other members of his family; and
 - (ii) the maintenance of as good a continuing relationship with his parents as is possible; and
- (d) any risk to the child attributable to-
- (i) where the person with whom the child will reside is living or proposes to live;
 - (ii) any person with whom that person is living or with whom he proposes to live; or
 - (iii) any other arrangements for his care and upbringing.

48. How the wishes of a child are expressed

- (1) The Court may inform itself of wishes expressed by a child:
- (a) by having regard to anything contained in a report asked for by the Court; or
 - (b) by such other means as the Court thinks appropriate, including hearing the child.
- (2) If a Court is required, or considers it necessary or desirable, to ascertain the wishes of a child or young person at any hearing of any application, the Court may—
- (a) order that any party to the proceedings, and the lawyers or other persons representing a party or the child or young person, be excluded from the hearing for so long as may be necessary to ascertain those wishes; or
 - (b) direct when and where the Judge will ascertain those wishes.

49. Children not required to express wishes

Nothing in this Part permits the Court or any person to require the child to express his or her wishes in relation to any matter.

Part VI - Separate representation of children

50. Court orders for separate representation

- (1) This section applies to proceedings before the Court in which a child's best interests are, or a child's welfare is, the paramount, or a relevant, consideration.
- (2) If it appears to the Court that the child ought to be separately represented, the Court may order that the child is to be separately represented, and may also make such other orders as it considers necessary to secure that separate representation.
- (3) A Court may make an order for separate representation:
- (a) on its own initiative; or

(b) on the application of:

(i) the child; or

(ii) an organisation concerned with the welfare of children; or

(iii) any other person

51. Order that child be made available for examination

(1) This section applies if, in proceedings under this Act, a child is separately represented by a person (the child's representative) under an order under section 48.

(2) The Court may, on application by the child's representative, order a person mentioned in subsection(3) to make the child available, as specified in the order, for a psychiatric or psychological examination to be made for the purpose of preparing a report about the child for use by the child's representative in connection with the proceedings.

(3) The order may be directed to:

(a) a parent of the child; or

(b) a person who has a residence order or a contact order in relation to the child;
or

(c) a person who has a specific issues order in relation to the child under which the person is responsible for the child's long-term or day-to-day care, welfare and development.

Part VII– Miscellaneous Provisions

52. Application of Act

(1) This Act shall not apply to a religious marriage governed by the Code Napoléon Book I Title 5 Chapter IX.

(2) Notwithstanding subsection (1), no court shall have jurisdiction in any action for damages for adultery or enticement

(3) This Act shall be in addition to and not in derogation from the Code Napoléon.

53. Suits entered outside the Island of Mauritius

Notwithstanding anything in this Act or any other enactment, in relation to any action for divorce or judicial separation entered outside the Island of Mauritius, the functions exercisable by a judge or the Court pursuant to this Act or to articles 239 to 243 of the CodeNapoléon shall be performed -

- (a) in Rodrigues, by the Magistrate of Rodrigues;
- (b) in any other island, by the visiting Magistrate.

54. Regulations

- (1) The Court may make such regulations as it thinks fit for the purposes of this Act.
- (2) Without prejudice to the generality of the power conferred under subsection (1), the Court may -
 - (a) in relation to any respondent who is absent from Mauritius, make regulations –
 - (i) for the service of process on the respondent;
 - (ii) for the appearance of the respondent by proxy;
 - (b) in relation to any action for divorce or judicial separation entered outside the Island of Mauritius, make regulations for the procedure to be followed and the exemption from compliance with any formality prescribed by this Act or any other enactment.
- (3) Where no regulations have been made for the purposes set out in subsection (2), the Courts (Civil Procedure) Act shall apply to absent respondents as they apply to absent defendants, subject to such adaptations or modifications as may be necessary.

55. Transitional provisions

- (1) Any petition for divorce or judicial separation or any application connected with it pending before the Court at the commencement of this Act shall be deemed to have been made under this Act.
- (2) This Act and the provisions of the Code Napoléon in force at the commencement of this Act shall apply to such petition.

56. Repeal

The Divorce and Judicial Separation Act is repealed –

57. Commencement

This Act shall come into operation

ANNEX II

CIVIL CODE (AMENDMENT) BILL

(Note French law was very recently amended by the Loi du 26 mai 2004 which will come into effect in January 2005. Some of the amendments proposed here come from this law, others from the 1975 amendment which introduced the divorce by consent in French law)

Chapitre Premier

Du divorce

SECTION PREMIERE

Des cas de divorce

Article 229

Le divorce peut être prononcé en cas:

- soit de consentement mutuel;
- soit d'acceptation du principe de la rupture du mariage;
- soit de rupture de la vie commune;
- soit de faute.

III : Du divorce par consentement mutuel

Article 238 - 1

Le divorce peut être demandé conjointement par les époux lorsqu'ils s'entendent sur la rupture du mariage et ses effets en soumettant à l'approbation du juge une convention réglant les conséquences du divorce.

La demande peut être présentée, soit par les avoués respectifs des parties, soit par un avoué choisi d'un commun accord.

Le divorce par consentement mutuel ne peut être demandé au cours des vingt-quatre premiers mois de mariage.

Article 238 - 2

Le juge examine la demande avec chacun des époux, puis les réunit. Il appelle ensuite le ou les avoués.

Si les époux persistent en leur intention de divorcer, le juge leur indique que leur demande doit être renouvelée après un délai de réflexion de trois mois.

A défaut de renouvellement dans les six mois qui suivent l'expiration de ce délai de réflexion, la demande conjointe sera caduque.

Article 238 – 3

Le juge prononce le divorce s'il a acquis la conviction que la volonté de chacun des époux est réelle et que chacun d'eux a donné librement son accord. Il homologue, par la même décision, la convention réglant les conséquences du divorce.

Il peut refuser l'homologation et ne pas prononcer le divorce s'il constate que la convention préserve insuffisamment les intérêts des enfants ou de l'un des époux.

IV : Du divorce par acceptation du principe de la rupture du mariage

Article 238 - 4

Le divorce peut être demandé par l'un ou l'autre des époux ou par les deux lorsqu'ils acceptent le principe de la rupture du mariage sans considération des faits à l'origine de celle-ci.

Cette acceptation n'est pas susceptible de rétractation, même par la voie de l'appel

Article 238 – 5

Le juge examine la demande avec chacun des époux, puis les réunit. Il appelle ensuite le ou les avoués.

Si les époux persistent en leur intention de divorcer, le juge leur indique que leur demande doit être renouvelée après un délai de réflexion de trois mois.

A défaut de renouvellement dans les six mois qui suivent l'expiration de ce délai de réflexion, la demande conjointe sera caduque.

S'il a acquis la conviction que chacun des époux a donné librement son accord, le juge prononce le divorce et statue sur ses conséquences.

V : Des modifications du fondement d'une demande en divorce

Article 238 - 6

Les époux peuvent, à tout moment de la procédure, demander au juge de constater leur accord pour voir prononcer leur divorce par consentement mutuel en lui présentant une convention réglant les conséquences de celui-ci.

Article 238 - 7

Les époux peuvent également, à tout moment de la procédure, lorsque le divorce aura été demandé pour faute ou pour rupture de la vie commune, demander au juge de constater leur accord pour voir prononcer le divorce pour acceptation du principe de la rupture du mariage

SECTION PREMIERE –A

De la conciliation

Article 238 - 8

Une tentative de conciliation est obligatoire avant l'instance judiciaire. Elle peut être renouvelée pendant l'instance.

Elle est faite conformément aux dispositions du Family Court and Family Proceedings Act.

Le juge cherche à concilier les époux tant sur le principe du divorce que sur ses conséquences.

SECTION DEUXIEME

Des mesures provisoires

Article 239

En cas de divorce par consentement mutuel, les époux règlent eux-mêmes les mesures provisoires dans la convention temporaire qui doit être annexée à leur requête initiale.

Toutefois, le juge pourra faire supprimer ou modifier les clauses de cette convention qui lui paraîtraient contraires à l'intérêt des enfants

Article 240

Dans les autres cas de divorce, en cas d'ordonnance de non-conciliation, le juge prescrit les mesures qui sont nécessaires pour assurer l'existence des époux et celle des enfants jusqu'à la date à laquelle le jugement prend force de chose jugée.

Le juge peut notamment:

1. Statuer sur les modalités de la résidence séparée des époux;
2. Attribuer à l'un d'eux la jouissance du logement et du mobilier du ménage ou partager entre eux cette jouissance, en précisant son caractère gratuit ou non et, le

-
- cas échéant, en constatant l'accord des époux sur le montant d'une indemnité d'occupation;
3. Ordonner la remise des vêtements et objets personnels;
 4. Fixer la pension alimentaire et la provision pour frais d'instance que l'un des époux devra verser à son conjoint, désigner celui ou ceux des époux qui devront assurer le règlement provisoire de tout ou partie des dettes;
 5. Accorder à l'un des époux des provisions à valoir sur ses droits dans la liquidation du régime matrimonial si la situation le rend nécessaire;
 6. Statuer sur l'attribution de la jouissance ou de la gestion des biens communs ou indivis autres que ceux visés au 2 ci-dessus, sous réserve des droits de chacun des époux dans la liquidation du régime matrimonial;
 7. Désigner tout professionnel qualifié en vue de dresser un inventaire estimatif ou de faire des propositions quant au règlement des intérêts pécuniaires des époux;
 8. Désigner un notaire en vue d'élaborer un projet de liquidation du régime matrimonial et de formation des lots à partager.

Article 241

Note: Present Art.242. 'Juge en Chambre' to read 'juge'

Article 242

Note: Present Art. 243 'Juge en Chambre' to read 'juge'

Article 243

Le juge peut prendre, dès la requête initiale, des mesures d'urgence.

Il peut, à ce titre, autoriser l'époux demandeur à résider séparément, s'il y a lieu avec ses enfants mineurs.

Il peut aussi, pour la garantie des droits d'un époux, ordonner toutes mesures conservatoires telles que l'apposition de scellés sur les biens communs.

SECTION TROISIEME

Des conséquences du divorce

I – De la date à laquelle se produisent les effets du divorce

Note: Present Art. 244 and 245 stay the same

Article 246

Le jugement de divorce prend effet dans les rapports entre les époux, en ce qui concerne leurs biens:

- lorsqu'il est prononcé par consentement mutuel, à la date de l'homologation de la convention réglant l'ensemble des conséquences du divorce, à moins que celle-ci n'en dispose autrement;
- lorsqu'il est prononcé pour acceptation du principe de la rupture du mariage, pour rupture de la vie commune ou pour faute, à la date de l'ordonnance de non-conciliation.

A la demande de l'un des époux, le juge peut fixer les effets du jugement à la date à laquelle ils ont cessé cohabiter et de collaborer. Cette demande ne peut être formée qu'à l'occasion de l'action en divorce. La jouissance du logement conjugal par un seul des époux conserve un caractère gratuit jusqu'à l'ordonnance de non-conciliation, sauf décision contraire du juge.

Note: Present Art. 247 stays the same

II – Des conséquences du divorce pour les époux

Note: Present Art. 248 to 253 stay the same

Article 253-1

Quand le divorce est prononcé par consentement mutuel, les époux décident eux-mêmes du sort des donations et avantages qu'ils s'étaient consentis; s'ils n'ont rien décidé à cet égard, ils sont censés les avoir maintenus.

Article 253-2

Quand le divorce est prononcé par acceptation du principe de la rupture du mariage, chacun des époux peut révoquer tout ou partie des donations et avantages qu'il avait consentis à l'autre.

Note: Present Art. 254 to 260 stay the same

Article 261

The word ‘La Cour Supreme’ amended to read ‘Le Family Court’.

Note: Present Art. 262 stays the same

Article 262-1

En cas de divorce par consentement mutuel, les dispositions de la convention homologuée par le juge relatives à l’exercice de l’autorité parentale peuvent être révisées, pour des motifs graves, à la demande de l’un des époux ou du ministère public.

Note: Present Art. 263 to 268 stay the same

Chapitre Deuxième

De la séparation de corps

Note: Present Art. 269 to 278 stay the same

Article 280

Dans tous les cas de séparation de corps, celle-ci peut être convertie en divorce par consentement mutuel.

Quand la séparation de corps a été prononcée par consentement mutuel, elle ne peut être convertie en divorce que par consentement mutuel.

Article 281

Du fait de la conversion, la cause de la séparation de corps devient la cause du divorce; l’attribution des torts n’est pas modifiée.

Le juge fixe les conséquences du divorce. Les prestations et pensions entre époux sont déterminées selon les règles propres au divorce.