



ANGUILLA

A BILL FOR
**STATUS OF CHILDREN AND PARENTAGE TESTING ACT,
2016**

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STATUS OF CHILDREN AND PARENTAGE ACT, 2016

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WORKING DRAFT 1

I Assent

Christina Scott
Governor

Date

A BILL FOR

STATUS OF CHILDREN AND PARENTAGE ACT, 2016

No. /2016

AN ACT to provide for the equal status of all children and to determine the parentage of a person and to provide for connected and incidental matters.

[Gazette Dated: , 2016][Commencement: Assent under section 57 of the Constitution]

ENACTED by the Legislature of Anguilla.

PART 1

PRELIMINARY PROVISIONS

Interpretation

1. In this Act—

“cohabiting” means a person who is living or has lived with a person as a husband or wife although not legally married to that person;

“Commissioner” means the Commissioner of Social Development;

“Court” means the Magistrate’s Court or the High Court unless the context provides otherwise;

“custodian” means a person granted custody of a child under law;

“custody” means the physical or legal control and responsibility for a child whether joint or individual, including providing for the normal daily requirements relating to the care and development of a child;

“guardianship” means the legal responsibility and authority for making decisions with respect to a child;

“Judicial Officer” means a magistrate or a judge;

“parent” means the biological parent or a person who adopts a child.

Application

2. This Act applies to a person, whether or not—
- (a) the person is a belonger of Anguilla; or
 - (b) the person’s father or mother has ever been domiciled in Anguilla.

Equal status of children

3. (1) The legal distinction in the status of children born within or outside of marriage is abolished and all children shall from the date of commencement of this Act be of equal status.

(2) All references made to the word “child” shall, from the date of commencement of this Act, be interpreted to include a child whose father and mother were not married to each other when the child was conceived and have not later married each other.

[Note: the Law Reform (Illegitimacy) Act R.S.A. c. L30 in relation to succession on intestacy, abolished the legal distinction between children born inside and outside of wedlock for dispositions made from 1 January, 1983.]

PART 2

ESTABLISHING PARENTAGE

Division 1

Presumptions of paternity

4. (1) There is a presumption that a person is the natural father of a child in any one of the following circumstances—
- (a) the person was married to the mother of the child at the birth of the child;
 - (b) the person was married to the mother of the child and that marriage was terminated by—
 - (i) death,
 - (ii) judgement of nullity, or
 - (iii) divorce where the *decree nisi* was granted within 10 months before the birth of the child;
 - (c) the person marries the mother of the child after the birth of the child and acknowledges by word or conduct that he is the natural father of the child;
 - (d) the person was a cohabitant with the mother of the child at the time of the birth of the child, or the child was born within 10 months after they ceased to be cohabitants;

- (e) the person has been adjudged or recognised in his lifetime or after his death by a court to be the father of the child;
- (f) the person has signed an instrument with the mother of the child acknowledging that he is the father and that instrument was executed as a deed or by each of them in the presence of an attorney-at-law, a Justice of the Peace, a registered medical practitioner, a minister of religion, a marriage officer, a notary public or a midwife;
- (g) the mother of the child or the person acknowledging that he is the natural father of the child or both, have signed and executed an instrument to this effect in the presence of an attorney-at-law, but that instrument shall be of no effect unless it is notarised and recorded in the Registry during the lifetime of the person acknowledging himself to be the father;
- (h) the person has acknowledged in the process of the registration of the child, in accordance with the law relating to the registration of births, that he is the father of the child;
- (i) the person who is alleged to be the father of the child has given written consent to that child adopting his name in accordance with the law relating to change of name; or
- (j) the person who is alleged to be the father of the child has by his conduct implicitly and consistently acknowledged that he is the father of the child.

(2) Where circumstances exist that give rise to presumptions of paternity in respect of more than one father, no presumption shall be made as to paternity.

Presumptions where child is born as a result of artificial conception procedures

5. (1) Artificial conception procedures include—

- (a) artificial insemination;
- (b) the procedure of transferring into the uterus of a woman an embryo derived from an ovum fertilised outside her body; or
- (c) any other way (whether medically assisted or not) by which a woman can become pregnant other than by having sexual intercourse with a man.

(2) Where a child is born to a woman as a result of the carrying out of an artificial conception procedure while the woman was married to a man or while the woman cohabited with a man and whether or not the child is biologically a child of the woman and of the man, the child is their child for the purposes of this Act.

(3) If a child is born to a woman as a result of the carrying out of an artificial conception procedure, whether or not the child is biologically a child of the woman, the child is her child for the purposes of this Act.

(4) If the woman undergoes an artificial conception procedure with the consent of her husband or cohabiting partner at the time of the procedure, the husband or cohabiting partner is presumed to be the father of any child born as a result of the pregnancy.

(5) If the ovum used in the artificial conception procedure was produced by another woman, that other woman is conclusively presumed not to be the mother of any child born as a result of the pregnancy.

(6) If semen used in the artificial conception procedure was produced by a man other than the woman's husband or cohabiting partner at the time of the procedure, the man who produced the semen is conclusively presumed not to be the father of any child born as a result of the pregnancy.

(7) Where a woman carries a child as a result of any surrogacy arrangement that woman is conclusively presumed not to be the mother of that child whether or not the child is biologically a child of the woman and under such circumstances the intended mother or father or both shall be parents of that child.

Presumptions generally

6. (1) The standard of proof for presumptions in this part is proof on a balance of probabilities and all presumptions except those made under section (5), (6), (7) may be rebutted by proof on a balance of probabilities.

(2) A conclusive presumption is not rebuttable.

(3) Where 2 or more presumptions about the parentage of a child arise in proceedings and the presumptions conflict with each other the Court must decide which presumption prevails having regard first to the best interest of the child and then to the interest of justice.

(4) A child shall not have more than 2 parents, one mother and one father, at any one time.

(5) For the purposes of section 5, a person is to be presumed to have consented to an artificial conception procedure being carried out unless it is proved, on the balance of probabilities, that the person did not consent.

Division 2

Instruments at Registry

Instruments filed in registry of the Court

7. (1) An instrument referred to in section 5 shall be filed in the Registry.

(2) The registrar shall cause records of all instruments and copies filed under subsection (1) to be made and kept in the registry and shall, on request made by any person who the registrar is satisfied has a proper interest in the matter, cause a search of any record to be made and shall permit that person to inspect any instrument or copy.

(3) If the Court makes a declaration under section 9—

- (a) the registrar shall cause a copy of the declaration to be filed in the registry; and
- (b) on receipt of the declaration, the registrar shall amend the birth certificate of the child by inserting the name of the natural father on the birth certificate with such words to the effect that parentage has been established by a declaration of the Court and shall file a copy of the declaration in the registry as if it were an instrument referred to in section 5.

Division 3

Parentage Declaration and Annulment of Parentage Declaration

Application for parentage declaration

- 8.** An application for a parentage declaration may be made to the Court by—
- (a) a parent of a child who claims that another particular person is also a parent of the child;
 - (b) a person who claims that he or she is a parent of a particular child;
 - (c) a person who claims that a particular person is his or her parent; or
 - (d) the Commissioner, a custodian or guardian of a child; or
 - (e) a person who demonstrates that he or she has a proper interest in the matter where a decision is sought about whether a particular person is a parent of a particular child.

Parentage declaration

- 9.** (1) On an application under section 8, the Court may declare that a particular person is a parent of a particular child.
- (2) A parentage declaration may be made about a child whether or not—
- (a) the child is born; or
 - (b) the parent or child is alive.
- (3) A declaration made under this section shall be conclusive evidence of the matters contained in the declaration.

Refusal to hear application

- 10.** The Court may refuse to hear an application under section 8 and 11 if the Court considers it would not be in the best interests of the child to hear the application.

Application for annulment of parentage declaration

- 11.** (1) An application for an order annulling a parentage declaration may only be made to the High Court.

(2) An application for an order annulling a parentage declaration may be made to the Court by—

- (a) a person who applied for the declaration;
- (b) a person named in the declaration; or
- (c) a person who would, before the declaration was made, have been entitled to apply for a parentage declaration about a person named in the declaration.

Annulment of parentage declaration

12. (1) The Court may, by order, annul a parentage declaration if—

- (a) the Court considers that facts exist, or circumstances have arisen, that—
 - (i) were not disclosed to the Court before the declaration was made,
 - (ii) could not, by the exercise of reasonable diligence, have been disclosed to the Court by the applicant when the application for the declaration was heard, and
 - (iii) are material to the question whether the relationship stated in the declaration exists; and
- (b) after considering those facts or circumstances the Court is not satisfied that the relationship is established.

(2) However, subsection (1) (a) (ii) does not apply if the applicant for the order is—

- (a) a person who was a child when the declaration was made; or
- (b) the Commissioner.

(3) If the Court makes an order annulling a declaration—

- (a) the declaration ceases to have effect; and
- (b) the annulment does not affect anything done relying on the declaration before the order was made.

(4) Where the Court makes an order annulling a declaration, it may make the ancillary orders (including orders varying property rights) that it considers just and equitable to place everyone affected by the annulment as far as practicable in the position he or she would have been in if the declaration had not been made.

Adjournment of hearing

13. (1) This section applies if—

- (a) a person whose interests would, in the Court's opinion, be affected by making an order making a parentage declaration or annulling a parentage declaration—

- (i) is not present or represented at the hearing of the application for the order, and
 - (ii) has not been given an opportunity to be present or represented; and
- (b) the Court considers the person ought to be given the opportunity to be present or represented.
- (2) The Court may adjourn the hearing so the person can be given the opportunity.

Division 4

Parentage Testing

Parentage testing procedure

14. (1) In any Court proceedings in which the parentage of a child is required to be determined the Court may issue a direction requiring a parentage testing procedure to be carried out—

- (a) on the request of a party to the proceedings;
 - (b) on the request of a person representing the child;
 - (c) if the child is not a party—on the application of the child; or
 - (d) of its own initiative.
- (2) The Court shall, before issuing a direction under subsection (1), ensure that—
- (a) the child to whom the direction relates—
 - (i) if sufficiently mature, has been counselled about the effects of the parentage testing procedure, and
 - (ii) if 12 years of age or older, has given consent to the parentage testing procedure; and
 - (b) it is in the best interest of the child to do so.
- (3) A direction under subsection (1) may be issued in relation to—
- (a) the child;
 - (b) a person believed by the Court to be a parent of the child; or
 - (c) any other person that may assist in determining the parentage of the child.
- (4) To support any direction issued under subsection (1), the Court may issue further directions as it considers necessary including directions—

- (i) requiring a person to submit to a medical procedure, to provide a bodily sample or to furnish information relevant to the medical or family history of a person,
- (i) to enable the parentage testing procedure to be carried out,
- (iii) to make the parentage testing procedure more effective and reliable,
- (iv) relating to the payment of costs to carry out the parentage testing procedure, or
- (v) relating to the costs for the preparation of reports for information obtained as a result of the carrying out of the parentage testing procedure.

(5) The Court may at any time revoke or vary a direction previously given by it under this section.

Effects of failure to comply with parentage testing order

15. (1) If, without reasonable excuse, a parentage testing direction is not complied with the Court may draw the inferences from the failure to comply that it considers appropriate.

(2) In particular, the Court may treat the failure—

- (a) as evidence corroborating the evidence of a party to the proceeding; or
- (b) as evidence rebutting the presumption where the stated person is a party to the proceeding and is relying on a rebuttable presumption.

(3) Without limiting subsection (1) or (2), if a parentage testing direction is not complied with the court may—

- (a) dismiss the proceeding; or
- (b) allow the proceeding to continue on the conditions it considers appropriate.

Parentage testing in relation to a child etc.

16. (1) If a direction under section 14 is to a child who is under 18 years, a medical procedure or other act shall not be carried out unless a guardian, custodian or other person who has parental responsibility of the child consents to the medical procedure or act being carried out, but the Court may draw such inferences from a failure or refusal to consent as the Court considers fit.

(2) If a direction under section 14 is to a person who is suffering from a mental disorder and is incapable of understanding the nature and purposes of the parentage testing procedure or other act, that procedure or other act shall not be carried out unless the person who has the care and control of that person consents and the medical practitioner in whose care the person is, has certified that the parentage testing procedure will not be prejudicial to the person's proper care and treatment.

(3) A person who properly carries out, or assists in the proper carrying out of, the medical procedure or other act under section 14 is not liable in any civil or criminal action in relation to the medical procedure or other act.

Matters to be taken into account by Court in making determination

17. (1) Before making a determination under section 14, the Court may, if it is of the view that to do so would be in the best interest of the child, appoint a guardian *ad litem* for the child.

(2) In deciding whether to issue a direction under section 14 the Court shall—

- (a) consider and determine all objections made by a party to the proceedings on account of medical, religious or other grounds; and
- (b) if it determines that an objection is valid, take the objection into account in arriving at its decision.

Reports of medical procedure

18. (1) The person responsible for carrying out a parentage testing procedure for the purpose of giving effect to a direction under section 17 shall provide the Court with a report in the prescribed form in which the person shall state—

- (a) the results of the tests;
- (b) whether the person to whom the report relates is or is not excluded by the results from being the parent of the child; and
- (c) if that person is not so excluded, the value, if any, of the results in determining whether that person is the parent of the child.

(2) Where a report has been made to the Court under subsection (1), any party to the proceedings may, with the leave of the Court, or shall, if the Court so directs, obtain from the person who made the report a written statement explaining or amplifying any statement made in the report, and that statement shall form part of the report made to the Court.

(3) A report made under subsection (1) may be received in evidence in any proceedings under this Act.

(4) Where a report referred to under subsection (1) is received in evidence in proceedings under this Act, the Court may—

- (a) on the request of a party to the proceedings;
- (b) on the request of a person representing the child; or
- (c) of its own motion;

make an order requiring the person who made the report, or any person whose evidence may be relevant in relation to the report, to appear before the Court and give evidence in relation to the report.

Approved laboratory and nominated reporter

19. (1) The Minister shall approve a laboratory for the purpose of carrying out a parentage testing procedure under this Act and may nominate a reporter for the approved laboratory.

(2) The Minister shall publish in the *Gazette* the name of the approved laboratory and the nominated reporter for the approved laboratory.

PART 3

DISPOSITION OF PROPERTY

Transitional provisions relating to instruments

20. (1) The following dispositions are to be construed as if this Act had not come into operation—

- (a) dispositions made *inter vivos* before the commencement of this Act; and
- (b) dispositions made by a will or codicil executed by a person who died before the commencement of this Act.

(2) If a disposition referred to in subsection (1) contains a special power of appointment, this Act shall not—

- (a) extend the class of persons in whose favour the appointment may be made; or
- (b) cause the exercise of the power to be construed so as to include any person who is not a member of that class.

(3) The estate of a person who dies intestate as to the whole or any part of his estate before the commencement of this Act shall be distributed in accordance with the enactments and rules of law which would have applied to the estate if this Act had not come into operation.

Persons dealing with property after the commencement of this Act

21. For the purposes of the administration or distribution of any estate or property, an executor, administrator or a trustee shall, whenever it is material in the circumstances, make honest and reasonable inquiries as to the existence of any person who could claim an interest in the estate or property by reason only of this Act, but shall not be obliged to pursue such inquiries further than he honestly and reasonably believes to be necessary.

Protection of executors, administrators and trustees

22. (1) An action shall not lie against an executor, an administrator, or the trustee under any instrument in relation to any estate or property, by any person who could claim an interest in the estate or the property by reason only of this Act, to enforce any claim arising by reason of the executor, administrator or trustee—

- (a) having made any distribution of the estate or of the property held on trust; or
- (b) having otherwise acted in the administration of the estate or property held on trust;

so as to disregard the claims where, at the time of making the distribution or otherwise so acting, the executor, administrator or trustee had no notice of the relationship on which the claim is based.

(2) This section shall not prejudice the right of any person claiming an interest in the estate or property referred to under subsection (1), which interest is alleged by the claimant to have existed at the time the executor, administrator or trustee made the distribution or otherwise acted aforesaid, to follow such estate or any property representing it into the hands of any person, other than the purchaser, who may have received it.

PART 4

MISCELLANEOUS

Hearings

23. (1) Unless the Court otherwise orders, the hearing of an application made under this Act shall be in closed Court.

(2) A person shall not publish, whether by newspaper, or by radio or television or otherwise, the name of or any particulars relating to the identity of any person by, or in relation to, whom proceedings are taken under this Act without the authority of the Court before which such proceedings are taken.

(3) A person who contravenes subsection (2) commits an offence and is liable on summary conviction, to a fine not exceeding \$5,000 or to a term of imprisonment not exceeding 3 months, or to both.

Existing rights

24. This Act does not affect rights which became vested before its commencement.

Regulations

25. (1) The Minister may make Regulations for giving effect to any of the provisions of this Act.

(2) Without prejudice to the generality of subsection (1), the Minister may make regulations—

- (a) providing for all forms;
- (b) providing for all Rules required to be made under the Act;
- (c) providing for the service of all notices, forms or other documents;
- (d) providing for parentage testing procedures for directions issued under section 14;
- (e) providing for the preparation of reports in relation to the information obtained as the result of the carrying out of medical procedures or other acts under directions issued under section 14;
- (f) prescribing matters required or permitted to be prescribed by this Act;
- (g) providing for matters as may be—

(i) contemplated by or necessary for giving full effect to this Act and for its administration, or

(ii) incidental to or consequential upon any provision of this Act; and

(h) providing for fees and penalties.

(3) The Judicial Officer may make minor adjustments to all court forms to meet the justice of the case.

Citation

26. This Act may be cited as the Status of Children and Parentage Testing Act, 2016.

Leroy C. Rogers

Speaker

Passed by the House of Assembly this day of , 2016

Lenox J. Proctor

Clerk of the House of Assembly
