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CHAPTER 414

THE STATUS OF CHILDREN ACT

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STATUS OF CHILDREN

An Act to remove the legal disabilities of Children born out of wedlock.

36/1986.

(1st February, 1987.)

PRELIMINARY

Short title

1. This Act may be cited as the Status of Children Act.

Interpretation.

2. (1) In this Act-

"child" includes a person who has attained the age of sixteen years;

"child born in wedlock" means a child whose parents were married to each other when the child was conceived or born or between those times, and "child not born in wedlock" means any other child;

"marriage" includes a void or voidable marriage, and

"married" has a corresponding meaning;

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"Registrar-General" means the person for the time being holding office as Registrar-General under the Births and Deaths (Registration) Act and includes any person for the time being discharging the duties of that office.

- (2) For the purposes of sections 13 to 17 inclusive-

"blood samples" means blood taken for the purpose of blood tests;

"blood tests" means blood tests carried out and includes any test made with the object of ascertaining the inheritable characteristics of blood;

"excluded" means excluded subject to the occurrence of mutation;

"tester" means a medical practitioner designated by the Minister to carry out blood tests.

All children of equal status.

3. (1) Notwithstanding any other written law or rule of law to the contrary for all the purposes of the law of Antigua and Barbuda,

- (a) the status and the rights, privileges and obligations of a child born out of wedlock are identical in all respects to those of a child born in wedlock;
- (b) save as provided in this Act, the status and the rights and obligations of the parents and all kindred of a child born out of wedlock are the same as if the child were born in wedlock but this provision does not affect the status, rights or obligations of the parents as between themselves.

(2) The rule of construction whereby in any will, deed, or other instrument words or relationship, in the absence of a contrary expression of intention, signify relationship derived only from wedlock is abolished.

(3) For the purpose of construing any instrument words denoting a family relationship shall, in the absence of a contrary expression of intention, cease to be presumed to refer only to relationship by marriage; and for the purpose of construing any instrument, in the absence of a contrary expression of intention, reference to a child or children includes a child or children whether or not born in wedlock.

(4) Subsections (1) to (3) apply with respect to every person, whether born before or after the commencement of this Act, and whether born in Antigua and Barbuda or not, and whether or not his father or mother has ever been domiciled in Antigua and Barbuda.

Application of this Act

4. (1) This Act does not affect rights which became vested before its commencement.

(2) Save as provided in subsection (1), this Act applies to persons born and instruments executed before as well as after its commencement.

(3) The estate of all persons who have died intestate as to the whole or any part thereof before the commencement of this Act shall be distributed in accordance with enactments and rules of law which would have applied to them if this Act had not been passed.

Protection of personal representatives and trustees.

5. For the purposes of the administration of distribution of the estate of any deceased person or any property held upon trust-

- (a) a person born out of wedlock shall be presumed not to have been survived by his father or any other paternal relative unless the contrary is shown;
- (b) a person born in wedlock shall be presumed not to have been survived by a child of his father, father's mother, grandfather or mother born out of wedlock unless the contrary is shown.

and no trustee or personal representative shall be liable to any such person of whose claim he has not had notice of the time of the conveyance or distribution, but nothing in this section shall prejudice the right of any person to follow the property or any property representing it, into the hands of any person other than a *bona fide* purchaser without notice who may have received it.

EVIDENCE AS TO PARENTHOOD

Presumption as to parenthood of child born during marriage

6. (1) Subject to subsections (2) and (3), a child born to a woman during her marriage, or within ten months after the marriage has been dissolved by death or otherwise, shall, in the absence of evidence to the contrary, be presumed to be the child of his mother and her husband, or former husband, as the case may be.

(2) Subsection (1) does not apply if, during the whole of the time within which the child must have been conceived, the mother and her husband were living apart from each other whether as a matter of fact or under a decree or order of separation, or decree nisi of divorce, made by a competent court or authority in Antigua and Barbuda or elsewhere.

(3) Subsection (1) does not apply where a child is born within ten months after the 'dissolution of the marriage of his mother by death or otherwise, and after she has been married again, and in such case there shall be no presumptions as between the husband of the mother and her former husband that either is the father of the child, and the question shall be determined on the balance of the probabilities in each case.

Recognition of paternity.

7. The relationship of father and child, and any other relationship traced in any degree through that relationship shall be recognised only if-

- (a) the father and the mother of the child were married to each other at the time of his conception or birth or between the times; or
- (b) paternity has been registered in a register of births pursuant to the Births and Deaths (Registration) Act or established by any of the modes specified in section 8 or 10.

Evidence and proof of paternity.

8. If, pursuant to section 26 of the Births and Deaths (Registration) Act the name of the father of the child to whom the entry relates has been entered in the register book of births (whether before or after the commencement of this Act) a certified copy of the entry made or given and purporting to be signed in accordance with section 11 of that enactment is *prima facie* evidence that the person named as the father is the father of the child.

Acknowledgements may be filed with Registrar-General

9. (1) Any statutory declaration made by the mother of a child and by any person acknowledging that he is the father of the child and further declaring that such persons exhibited evidence of identification together with a statement specifying the nature of such evidence or a duplicate or attested copy of any such statutory declaration may, in the prescribed manner and on payment of the prescribed fee, if any, be filed in the office of the Registrar-General.

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(2) In the case of a person who is in Antigua and Barbuda the authorities before whom a statutory declaration for the purposes of subsection (1) may be made are a notary public, a magistrate or some other person lawfully authorised under the Oaths Act to administer oaths.

(3) In the case of a person who is not in Antigua and Barbuda the authorities before whom a statutory declaration for the purposes of subsection (1) may be made are an Antigua and Barbuda diplomatic agent or a consular officer or a notary public or some other person lawfully authorised to administer oaths in the country or place where the declaration is made.

(4) The Registrar-General shall upon the request of any person who he is satisfied has a proper interest in the matter and, on receipt of the prescribed fee, if any, cause a search of any index of statutory declarations filed with him under subsection (1) to be made, and shall permit any such person to inspect any such declaration or any duplicate or copy thereof.

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(5) Where the High Court makes a paternity order under section 10 or where a Magistrate's Court makes a judgment of paternity under section 126 of the Magistrate's Code of Procedure Act, the Registrar of the High Court or the Clerk of the Registrar, as the case may be, shall forward a copy of such order to the Registrar-General for filing in his office under this section, and on his receipt of any such copy the Registrar-General shall file it accordingly as if it were an instrument of the kind prescribed in subsection (1).

Power of Court to make paternity order.

10. (1) Any person who -

- (a) being a woman, alleges that any named person is the father of her child; or
- (b) alleges that the relationship of father and child exists between himself and any other person; or
- (c) alleges that he is the father of an unborn child; or
- (d) being a person having a proper interest in the result, wishes to have it determined whether the relationship of father and child exists between two named persons,

may apply in such manner as may be prescribed by rules of court to the High Court for a declaration of paternity, and if it is proved to the satisfaction of the court that the relationship exists the court may make a paternity order whether or not the father or child or both of them are living or dead.

(2) An application under this section may be brought on behalf of the child by any person acting on his behalf.

(3) The High Court has jurisdiction under this section if at the date of the making of any application under this section-

- (a) the child to whom the application relates is actually present in Antigua and Barbuda or, if deceased, was born in Antigua and Barbuda or was domiciled in Antigua and Barbuda at the date of his death; or
- (b) the alleged parent of the child against whom the application is brought is actually present in Antigua and Barbuda or, if deceased, was born in Antigua and Barbuda or domiciled in Antigua and Barbuda at the date of his death,

and the High Court also has jurisdiction under this section where-

- (a) the child though absent from Antigua and Barbuda at the time of the proceedings, is a citizen of Antigua and Barbuda; or
- (b) the alleged parent of the child against whom the application is brought, though absent from Antigua and Barbuda at the time of the proceedings, is a citizen of Antigua and Barbuda.

(4) No proceeding under this section shall affect any final judgment or decree already pronounced or made by a court of competent jurisdiction.

(5) Where on an application to the High Court under this section the Court has made or has refused to make an order, there shall be the same rights of appeal as are in force or exist for the time being in respect of civil proceedings in the High Court.

Notice of application for paternity order

11. (1) Unless the Court otherwise directs, notice of an application for a paternity order shall be given to-

- (a) the person claimed to be a child or any person named by law to be served on his behalf, and
- (b) the person alleged to be the father or mother, as the case may be, of the child, and the person having custody of the child, or
- (c) any person claiming to be a parent.

(2) Upon application the Court shall-

- (a) consider whether or not any other person should receive notice; and
- (b) direct that notice be given to any person who in its opinion should have an opportunity to be heard.

(3) Notice of the application shall be give to the person specified in section 11.

Duration of paternity order

12. (1) A paternity order remains in force until it is set aside under this section.

(2) An application to set aside a paternity order may be made with leave of the Court to the Court by which the order was made.

(4) The Court may confirm the order or set it aside.

(5) The setting aside of a paternity order shall not, unless the Court otherwise directs, affect rights which vested while the order was in force.

BLOOD TESTS

Power of court to require use of blood tests.

13. (1) In any civil proceedings in which the paternity of any person (hereinafter referred to as "the subject") falls to be determined by a court hearing the proceedings, the court may, on an application by any party to the proceedings, give a direction for the use of blood tests to ascertain whether such tests show that a party to the proceedings is or is not thereby excluded from being the father of the subject and for the taking, within a period to be specified in the direction, of blood samples from the subject, the mother of the subject and any party alleged to be the father of the subject or from any, or any two, of those persons.

(2) A court may at any time revoke or vary a direction previously given by it under this section.

(3) The person responsible for carrying out blood tests taken for the purpose of giving effect to a direction under this section shall make to the court by which the direction was given a report in which he 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 father of the subject; and
- (c) if that person is not so excluded, the value if any, of the results in determining whether that person is the subject's father,

and the report shall be received by the court as evidence in the proceedings of the matters stated therein.

(4) Where a report has been made to a court under subsection (3), 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 be deemed for the purposes of this section to form part of the report made to the court.

(5) Where a direction is given under this section in any proceedings, a party to the proceedings shall not be entitled to call as a witness the person responsible for carrying out the tests taken for the purpose of giving effect to the direction, or any person by whom anything necessary for the purpose of enabling these tests to be carried out was done, unless-

- (a) within fourteen days after receiving a copy of the report he serves notice on the other parties to the proceedings, or on such of them as the court may direct, of his intention to call that person; or
- (b) the court otherwise directs,

and where any such person is called as a witness the party who called him is entitled to cross-examine him.

(6) Where a direction is given under this section the party on whose application the direction is given shall pay the cost of taking and testing blood samples for the purposes of giving effect to the direction (including any expenses reasonably incurred by any person in taking any steps required of him for the purpose), and of making a report to the court under this section, but the amount paid shall be treated as costs incurred by him in the proceedings.

(7) In this section "civil proceedings" include any proceedings under Part V of the Magistrate's Code of Procedure Act.

Consents, etc. required for the taking of blood samples

14. (1) Subject to the provisions of subsections (3) and (4), a blood sample which is required to be taken from any person for the purposes of giving effect to a direction under section 13 shall not be taken from that person except with his consent.

(2) The consent of a minor who has attained the age of sixteen years to the taking from himself of a blood sample is as effective as it would be if he were of full age; and where a minor has by virtue of this subsection given an effective consent to the taking of a blood sample, it shall not be necessary to obtain any consent for it from any other person.

(3) A blood sample may be taken from a person under the age of sixteen years, not being such a person as is referred to in subsection (4), if the person who has the care and control of him consents or, in the absence of such consent, or, where that consent is unreasonably withheld, if the court so directs.

(4) A blood sample may be taken from a person who is suffering from mental disorder and is incapable of understanding the nature and purpose of blood tests if the person who has the care and control of him consents and the medical practitioner in whose care he is has certified that the taking of a blood sample from him will not be prejudicial to his proper care and treatment.

(5) The foregoing provisions of this section are without prejudice to section 15.

Failure to comply with direction for blood tests.

15. (1) Where a court gives a direction under section 13 and any person fails to take any step required of him for the purpose of giving effect to the direction, the court may draw such inferences, if any, from that fact as appear proper in the circumstances.

(2) Where in any proceedings in which the paternity of any person falls to be determined by a court hearing the proceedings there is a presumption of law that that person is the child of another, then if-

- (a) a direction is given under section 13 in those proceedings; and
- (b) any party who is claiming relief in the proceedings and who for the purpose of obtaining that relief is entitled to rely on the presumption fails to take any steps required of him for the purpose of giving effect to the direction,

the court may adjourn the hearing for such period as it thinks fit to enable that party to take that step, and if at the end of that period he has failed without reasonable cause to take it the court may, without prejudice to subsection (1), dismiss his claim for relief notwithstanding the absence of evidence to rebut the presumption.

(3) Where any person named in a direction under section 13 fails to consent to the taking of a blood sample from himself or from any person named in the direction of whom he has the care and control, he is deemed for the purposes of this section to have failed to take a step required of him for the purposes of giving effect to the direction.

Penalties for personating another re: blood test and for tampering with blood sample.

16. (1) If for the purpose of providing a blood sample For a test required to give effect to a direction under section 13 any person personates another, or proffers a child knowing that it is not the child named in the direction, he is guilty of an offence and is liable-

- (a) on conviction on indictment, to imprisonment for two years; or
- (b) on summary conviction, to a fine of one thousand dollars and imprisonment for six months.

(2) If a person wilfully and maliciously-

- (a) breaks the seal of or opens or causes to be opened any container with a blood sample which is to be delivered to a tester; or
- (b) does any act or thing whereby the due delivery of such container to the tester is prevented or impeded; or
- (c) in any manner tampers with such container, he is guilty of an offence and is liable on summary conviction to a fine of one thousand dollars and to imprisonment for six months.

Regulations re: blood tests.

17. The Minister may by regulations make provision as to the manner for giving effect to directions under section 13 and, in particular, any such regulations may-

- (a) provided that blood samples shall not be taken except by such medical practitioners as may be designated by the Minister;
- (b) regulate the taking, identification and transport of blood samples;
- (c) require the production at the time when a blood sample is to be taken of such evidence of the identity of the person from whom it is to be taken as may be prescribed by the regulation;
- (d) require any person from whom a blood sample is to be taken, or in such cases as may be prescribed by the regulations, such other person as may be so prescribed to state in writing whether he or the person from whom the sample is to be taken, as the case may be, has during such period as may be specified in the regulations suffered from any such illness as may be so specified or received a blood transfusion of blood;
- (e) provide that blood tests shall not be carried out except by such persons, and at such places, as may be appointed by the Minister;
- (f) prescribe the blood tests to be carried out and the manner in which they are to be carried out;
- (g) regulate the charges that may be made for the taking and testing of blood samples and for the making of a report to a court under section 13;
- (h) make provision for securing that so far as practicable the blood samples to be tested for the purpose of giving effect to a direction under section 13 are tested by the same person;
- (i) prescribe the form of the report to be made to a court under section 13.

GENERAL**Regulations.**

18. The Minister may, from time to time, make regulations for all or any of the following purposes-

- (a) prescribing fees and forms for the purposes of this Act;
- (b) providing for such other matters as are contemplated by or necessary for giving full effect to this Act, and for its due administration.

Power of Registrar-General re fees.

19. Where the Registrar-General is empowered to do any act for which a fee is payable, he may refuse to do the act until the fee is paid.

Existing laws

20. (1) The existing laws shall, as from the date of commencement of this Act, be construed with such adaptations as may be necessary to bring them into conformity with this Act.

(2) For the purposes of this section, the expression "existing law" means any Act, Ordinance, Rule, Regulation, Order or other instrument which has effect as part of the law of Antigua and Barbuda immediately before the commencement of this Act.