

CHAPTER 220

STATUS OF CHILDREN REFORM

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SCHEDULE

CHAPTER 220**STATUS OF CHILDREN REFORM**

Act to reform the law relating to children by providing for their equal status. 1979-32.
2005-3.

[1st January, 1980] Commence-
ment.
1979/185.

PART I*Citation and Interpretation*

1. This Act may be cited as the *Status of Children Reform Act*. Short title.

2. In this Act, Definitions.

"court" means the High Court;

"parent", in relation to a father or mother, as the circumstances require, includes an adoptive father or mother;

"Registrar" means the Registrar of the Supreme Court.

PART II*Equal Status of Children*

3. For the purposes of the laws of Barbados, the distinction at common law between the status of children born within or outside of marriage is abolished, and all children shall, after 1st January, 1980, be of equal status; and a person is the child of his or her natural parents and his or her status as their child is independent of whether the child is born within or outside of marriage. Abolition of the common law status of illegitimacy.

ss.4-7

Kindred relationships.

4. The parent and child relationship as determined in accordance with section 3 shall for all purposes be followed in the determination of other kindred relationships flowing therefrom.

Rule of construction.

5. Unless a contrary intention appears, any reference in an enactment or instrument to a person or class of persons described in terms of relationships by blood or marriage to another person shall be construed to refer to or include a person who comes within the description by reason of the relationship of parent and child as determined in accordance with sections 3 and 4.

Application.

6. This Act applies to all children, whether born before or after 1st January, 1980, and to all dispositions and instruments made after that date.

PART III

Establishment of Paternity

Presumptions of paternity.

7. (1) Unless the contrary is proven on the balance of probabilities, there is a presumption that a male person is, and shall be recognised in law to be, the father of a child in any one of the following circumstances:

- (a) the person was married to the mother of the child at the time of its birth;
- (b) the person was married to the mother of the child and that marriage was terminated by death or judgment of nullity within 280 days before the birth of the child, or by divorce where the decree *nisi* was granted within 280 days before the birth of the child;
- (c) the person marries the mother of the child after the birth of the child and acknowledges that he is the natural father;

- (d) the person was cohabiting with the mother of the child in a relationship of some permanence at the time of the birth of the child, or the child is born within 280 days after they ceased to cohabit;
 - (e) the person has been adjudged or recognised in his lifetime by a court of competent jurisdiction to be the father of the child;
 - (f) the person has, by affidavit sworn before a Justice of the Peace or a notary public or by other document duly attested and sealed, together with a declaration by the mother of the child contained in the same instrument confirming that that person is the father of the child, admitted paternity, but such affidavit or other document shall be of no effect unless it has been recorded in the Registration Office;
 - (g) the person has acknowledged in proceedings for registration of the child, in accordance with the law relating to the registration of births, that he is the father of the child;
 - (h) the mother of the child and a person acknowledging that he is the father of the child have signed and executed a deed to this effect in the presence of an attorney-at-law, but such a deed shall be of no effect unless it is notarised and recorded in the Registration Office prior to the death of the person acknowledging himself to be the father;
 - (i) a 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 the change of name; or
 - (j) a 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 and no person is recognised in law to be the father.

Determina-
tion of
paternity in
void
marriages.

8. For the purposes of section 7, where a man and a woman, in good faith, go through a form of marriage that is void, they shall be deemed to be married for the period during which they cohabit, and the presumption referred to in paragraph (b) of section 7(1) applies accordingly.

Application
for
declaration
of paternity.

9. (1) Any person having an interest in a child may apply to the court for a declaration that a male or female person is recognised in law to be the father or mother, as the case may be, of that child.

(2) Where the court finds that a presumption of paternity exists under section 7, and unless it is established, on the balance of probabilities, that the presumed father is not the father of the child, the court shall make a declaratory order confirming that the paternity is recognised in law.

(3) Where the court finds on the balance of probabilities that the relationship of mother and child is established, the court may make a declaratory order to that effect.

(4) Subject to sections 13 and 14, an order made in accordance with this section shall be recognised for all purposes.

Application
for
declaration
of paternity
where no
presump-
tion.

10. (1) Where there is no person recognised under section 7 to be the father of a child, any person may apply to the court for a declaration that a male person is his father, or any male person may apply to the court for a declaration that a person is his child.

(2) An application may not be made under subsection (1) unless both persons with respect to whom the relationship is sought to be established are living.

(3) Where the court finds, on the balance of probabilities, that the relationship of father and child has been established, the court may make a declaratory order to that effect, and, subject to sections 13 and 14, that order shall be recognised for all purposes.

- 11.** Any person may file with the Registrar a declaration, in the form set out in the *Schedule*, affirming that he is the father of a child. Filing of declaration of paternity. Schedule.
- 12.** A written acknowledgement of parentage that is admitted in evidence in any civil proceeding against the interest of a person making the acknowledgement is *prima facie* proof of that fact. Admissibility in evidence of acknowledgement against interest.
- 13.** Where a declaration has been made under section 9 or 10 and evidence becomes available that was not available at the previous hearing, the court may, upon application for the variation or discharge of such declaration, vary or discharge that declaration or give such directions as are ancillary thereto. Effect of new evidence.
- 14.** An appeal lies from a declaration under section 9 or 10 or a decision under section 13 in accordance with the rules of the court. Appeals.
- 15.** (1) Where an application is made to the court to determine the parentage of a child, the court may give directions to the applicant to obtain blood tests of such persons as the court specifies and to submit the results in evidence. Blood tests.
- (2) Any directions given under subsection (1) may be given subject to such terms and conditions as the court determines.
- (3) Where directions are given under subsection (1) and a person named therein refuses to submit to the blood test, the court may draw such inferences as it thinks appropriate.
- (4) A person specified in directions granting leave to obtain blood tests under subsection (1) shall be deemed to have consented
- (a) where the person is a minor but
- (i) understands the nature and purpose of the blood tests and consents thereto; or
- (ii) the person having his charge consents; and

- (b) where the person is without capacity for any reason other than minority, if the person having his charge consents and a medical practitioner certifies that the giving of a blood sample would not be prejudicial to his proper care and treatment.

DNA
forensic
analysis.
2005-3.

15A. (1) Notwithstanding section 15, where in any civil proceedings the question of whether a person is the parent of a child or other person fails to be determined by the Court hearing the proceedings, the Court may, on an application by any party to the proceedings, give a direction for

- (a) the use of DNA forensic analysis to ascertain whether that analysis shows that a party to the proceedings is or is not the parent of that child or other person; and
- (b) the taking within a period to be specified in the direction, of a DNA sample from that child and from any person alleged to be the parent of that child or other person or from any of those persons.

(2) A forensic scientist of the Forensic Sciences Centre or a suitably qualified person from any agency approved by the Minister shall make a report to the Court by which the direction mentioned in subsection (1) was given, in which shall be stated

- (a) the results of the DNA forensic analysis; and
- (b) whether the person to whom the report relates is or is not the parent of the child or other person;

and the report shall be received by the Court as evidence in the proceedings of the matters stated in it.

PART IV

Miscellaneous

- 16.** The Judicial Advisory Council may make rules Rules.
- (a) respecting blood tests for which directions are given under section 15, including, without limiting the generality of the foregoing,
- (i) the method of taking blood samples and the handling, transportation and storage thereof;
 - (ii) the conditions under which a blood sample may be tested;
 - (iii) designating the persons who are authorised to conduct blood tests and the facilities that may be used in connection therewith;
 - (iv) the procedure in respect of the admission of reports of blood tests in evidence;
 - (v) the prescribed forms to be used for the purposes of section 15; and
- (b) requiring 2005-3.
- (i) the production, at the time when a DNA sample is to be taken pursuant to this Act, of the identity of the person from whom it is to be taken;
 - (ii) the person from whom a DNA sample is to be taken to state in writing whether the person from whom the sample is to be taken has, during such period as may be specified in the rules, suffered from any such illness as may be specified, or has received a blood transfusion;
- (c) prescribing the form of the report to be made to a Court under section 15A(2); and 2005-3.
- (d) generally to give effect to this Act. 2005-3.

PART V

Transitory Provisions

Transitory provisions regarding dispositions.

17. (1) All dispositions made before 1st January, 1980 shall be governed by the enactments and rules of law which would have applied to them if this Act had not been passed.

(2) Where any disposition to which subsection (1) applies creates a special power of appointment, nothing in this Act shall extend the class of persons in whose favour the appointment may be made, or 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 estates of all persons who have died intestate as to the whole or any part thereof before 1st January, 1980 shall be distributed in accordance with any enactments and rules of law which would have applied to them as if this Act had not been passed.

Cap. 249.

(4) In this section "disposition" means a disposition of real or personal property whether *inter vivos* or by will executed before 1st January, 1980 notwithstanding section 73 of the *Succession Act*.

Amendment of prior registration.

18. Nothing in this Act shall be construed to require the Registrar to amend any prior registration showing parentage otherwise than in recognition of an order made under section 9, 10 or 13.

SCHEDULE

(Section 11)

FORM A

Declaration of Paternity

I..... of.....
hereby declare that I am the father of.....
who was born to..... of.....
on.....

Dated this day of 20.....

(Signed).....