

ANTIGUA AND BARBUDA

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STATUS OF CHILDREN BILL

NO. OF 2015

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ANTIGUA & BARBUDA
STATUS OF CHILDREN BILL
No. of 2015

AN ACT to provide for the equal status of children in Antigua and Barbuda.
ENACTED by the Parliament of Antigua and Barbuda as follows-

PART I
PRELIMINARY

1. Short title and commencement

This Act may be cited as the Status of Children Act 2015

(2) The Minister may by Notice published in the Gazette appoint a date on which this Act comes into force.

2. Interpretation

In this Act, unless the context otherwise requires—

“attorney-at-law” means a person whose name has been ordered on the role of Attorney-at-Law maintained by the Registrar of pursuant to section 13 of the Legal Profession Act, 2008;

“child” includes a person who has attained the age of eighteen;

“cohabitant” means a person who is living or has lived with a person of the opposite sex as a husband or wife although not legally married to each other;

“Court” means the High Court;

“marriage” includes-

- (a) a void marriage; and
- (b) a voidable marriage that has been annulled by a court;

“Minister” means the Minister responsible for social services.

“nominated reporter” means a person nominated by an approved laboratory to prepare a report relating to the information obtained as a result of carrying out a parentage testing procedure at that approved laboratory.

“parentage testing procedure” includes-

- (a) the taking of tissue fluid or other bodily sample from a person and the scientific examination of the samples; and
- (b) any test carried out on a person involving the application of medical science;

for the purpose of obtaining evidence with respect to parentage;

“parent” means a natural father or natural mother of a child or an adoptive mother or father of a child;

“prescribed” means prescribed by Regulations made pursuant to this Act;

“Registrar” means the Registrar of the Family Division of the Court;

“Registry” means the Registry of the Family Division of the Court.

3. Application

This Act shall apply to a child, whether or not-

- (a) the child was born in Antigua and Barbuda;
- (b) the child was born before or after the commencement of this Act; or
- (c) the parents of the child have ever been domiciled in Antigua and Barbuda.

PART II

STATUS OF CHILDREN

4. Determination of relationship

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

(2) The rule of construction whereby in any instrument, in the absence of expression to the contrary, words of relationship signify only legitimate relationships, is abolished.

(3) For the purpose of construing any instrument with reference to the relationship of a person, the use of the words “legitimate” illegitimate”, “lawful” or “unlawful” shall not of itself prevent the relationship from being determined in accordance with subsection (1).

5. Presumptions of paternity

(1) Unless there is proof to the contrary, on a balance of probabilities, there is a presumption that a person is, and shall be recognised in law to be, 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 ten 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 ten 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 of competent jurisdiction 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 or a midwife, but such an instrument shall be of no effect unless it has been recorded in the Registry;

- (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.

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

(1) If-

- (a) 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; and
- (b) the procedure was carried out with their consent;

whether or not the child is biologically a child of the woman or of the man, the child is their child for the purposes of this Act.

(2) 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.

(3) If a child is born to a woman as a result of the carrying out of an artificial conception procedure to which took place while the woman was married to the intended father, or was a de facto partner of, another person (the intended father); and the woman and the intended father consented to the carrying out of the procedure, and any other person who provided genetic material used in the procedure consented to the use of the material in an artificial conception procedure; then whether or not the child is biologically a child of the intended father, the child of the intended father is his child for the purposes of this Act.

(4) Subsection (3) applies to cohabitants as if-

- (a) they were married to each other at the time of conception; and
- (b) neither person were married to any other person.

(5) For the purposes of subsection (3), 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.

7. Instruments filed in Registry of the Court

(1) An instrument referred to in section 5 (1) (f), (g) and (h) must, 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 such instrument or copy.

(3) If the Court makes a declaration under section 8-

- (a) the Registrar shall cause a copy of the declaration, to be filed in the Registry under this section; 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.

PART III

PARENTAGE

8. Declaration of parentage

(1) A person who-

- (a) alleges that any named person is a parent of a child;
- (b) alleges that the relationship of father and child exists between him and another named person;

- (c) alleges that the relationship of mother and child exists between her and another named person; or
- (d) having a proper interest in the result, wishes to have determined the question whether the relationship of parent and child exists between two named persons;

may apply to the Court for a declaration of parentage and the Court may, if it is satisfied that the relationship exists, make such declaration whether or not the mother, father or child or all of them are, living or dead.

(2) Where a declaration is made under subsection (1) and it is made to appear to the Court that new facts or circumstances have arisen that have not previously been disclosed to the Court and could not by the exercise of reasonable diligence have previously been known or if for any reason the Court thinks it desirable so to do, the Court may revoke the declaration and thereupon that declaration shall cease to have any effect.

(3) The Court shall not make or revoke a declaration under this section unless the Court is satisfied that, so far as is reasonably practicable, all persons whose interests are or may be affected by the declaration or revocation are represented before or have been given the opportunity of making representations to the Court with respect to the subject matter of the proceedings.

(4) In any proceedings in the Court, a declaration made pursuant to this section shall be conclusive evidence of the matters contained in the declaration.

9. Parentage testing procedure

(1) In any proceedings in which the parentage of a child is required to be determined by the Court, 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,

issue a direction requiring a parentage testing procedure to be carried out for the purpose of obtaining information to assist in determining the parentage of the child.

(2) The Court shall, before issuing a direction pursuant to 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 thirteen years of age or older, has been given an opportunity to express his view on the parentage testing procedure; and
 - (b) it is in the best interest of the child to issue a direction.
- (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, where the Court is of the opinion that the information that could be obtained if the parentage testing procedure were to be carried out in relation to the person may assist in determining the parentage of the child.
- (4) Where the Court issues a direction under subsection (1) the Court may-
- (a) issue such directions as it considers necessary or desirable-
 - (i) to enable the parentage testing procedure to be carried out; or
 - (ii) to make the parentage testing procedure more effective and reliable;
- including but not limited to, directions 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; and
- (b) issue such directions as it considers necessary in relation to costs incurred with respect to-
 - (i) the carrying out of the parentage testing procedure or other directions issued by the Court in relation to the parentage testing procedure; or
 - (ii) the preparation of reports in relation to the 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.
- (6) A person who fails to comply with a direction issued under subsection 4 (a), is not liable to any penalty in relation to the contravention but the Court may draw such inferences as it considers fit in the circumstances.

(7) If a direction under this section is to a child who has not attained the age of eighteen years, a medical procedure or other act shall not be carried out in relation to the child under the direction unless a guardian or other person who has the care and protection or 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 in the circumstances.

(8) If a direction under this section 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 in relation to that person under the direction 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.

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

10. Matters to be taken into account by Court in making determination

(1) Before making a determination under section 9, 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 9 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.

11. Reports of medical procedure

(1) The person responsible for carrying out a parentage testing procedure for the purpose of giving effect to a direction under section 9 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 pursuant to subsection (1) may be received in evidence in any proceedings under this Act.

(4) Where a report referred to in 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.

12. Approved laboratory and nominated reporter

(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 IV

DISPOSITION OF PROPERTY

13. Transitional provisions relating to instruments

(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.

14. Persons dealing with property after the commencement of this Act

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.

15. Protection of executors, administrators and trustees

- (1) An action shall not lie against-
 - (a) an executor;
 - (b) an administrator; or
 - (c) 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-

- (i) having made any distribution of the estate or of the property held on trust; or
- (ii) 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 V

MISCELLANEOUS

16. Hearings

(1) Unless the Court otherwise orders, the hearing of an application made pursuant to 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 five thousand dollars or to a term of imprisonment not exceeding three months.

17. Existing rights

(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.

18. Regulations

The Minister may make regulations under this Act for or with respect to the following-

- (a) forms;
- (b) the carrying out of parentage testing procedures under directions issued under section 9;
- (c) 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 9;
- (d) fees; and
- (e) providing for such matters as are required or necessary for giving full effect to this Act and for its due administration.

19. Amendment

Section 2 of the Intestates Estates Act, Cap 225 is amended by replacing in the correct alphabetical order the following definitions-

- (a) "child" or "issue" with ““child” includes a person who has attained the age of eighteen;”
- (b) "father" with” “parent” means a natural father or natural mother of a child as the circumstances require, and includes an adoptive mother or father;”

20. Repeal and savings

(1) The Status of Children Act Cap. 414 is repealed.

(2) Notwithstanding the repeal of the Status of Children Act Cap. 414, any Regulations or Orders made under the Repeal Act shall be construed with such changes as may be necessary to bring them in conformity with this Act.

EXPLANATORY MEMORANDUM

The purpose of this Bill is enunciated in its Long Title, which is to “to provide for the equal status of children”.

Part I, Clauses 1-3 of the Bill provide the preliminary and interpretation provisions. By virtue of **Clause 3**, the Bill applies to a child whether or not the child-

- (a) was born in Antigua and Barbuda;
- (b) was born before the commencement of the Bill; or
- (c) the parents of the child have ever been domiciled in Antigua and Barbuda.

Part II, Clauses 4-7 of the Bill provides for the Status of Children. **Clause 4 (1)** provides that all distinctions that exist as a result of the marital status of the parents of a child shall be abolished.

Clause 4 (2) maintains the provision as is present in the existing status of children legislation which abolishes the common law rule of construction. **Sub-clause (3)** provides that for the purpose of construing any instrument with reference to a relationship of a person, the words “legitimate” or “lawful” “illegitimate” or “unlawful” shall not of itself prevent the relationship from being determined in accordance with sub-clause (1).

Clause 5 provides for the expansion of the provisions of the existing status of children legislation with respect to the presumption of paternity. It states that unless there is proof to the contrary, on a balance of probabilities, there is a presumption that a person is and shall be recognised in law to be the natural father of a child, and lists the circumstances where the presumption will apply which includes the following-

- (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 death, judgement of nullity, within ten months before the birth of the child, or divorce where the decree nisi was granted within ten months before the birth of the child;
- (c) the person was a cohabitant with the mother of the child at the time of the birth of the child, if the child was born within ten months after they ceased to be cohabitants;

- (d) the person has been adjudged or recognised in his lifetime or after his death by a court of competent jurisdiction, to be the father of the child; and
- (e) the mother of the child or the person acknowledging that he is the natural father of the child have signed and executed an instrument to this effect in the presence of an attorney at law or both, 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.

Clause 5 (2) provides that where circumstances exist that give rise to presumptions of paternity in respect of more than one father, no presumption shall be made with respect to paternity.

Clause 6 provides for the presumptions of parentage, 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 and the procedure was carried out with their consent, 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 Bill. Clause 6 (4) extends this provision to cohabitants as if they were married to each other and neither person was married to any other person.

Clause 7 provides for the filing of instruments of acknowledgement by the Registrar. Under sub-clause (1), an instrument of acknowledgement must be filed in the Registry. Sub-clause (2) places an obligation on the Registrar on request made by any person, to cause a search of any record to be made, and to permit that person to inspect any such instrument or a copy where the Registrar is satisfied that the person has a proper interest in the matter.

Part III, Clauses 8 -12 of the Bill makes provision for the declaration of parentage.

Clause 8 provides for instances in which a declaration of parentage may be made to the Court. It provides that a person who-

- (a) alleges that a named person is the parent of a child;
- (b) alleges that the relationship of father and child exist between that person and any other named person;
- (c) alleges that the relationship of mother and child exist between that person and any other named person; or
- (d) having a proper interest in the result, wishes to have it determined whether the relationship of parent and child exists between two named persons;

may apply to the Court for a declaration with respect to the same.

Clause 9 provides for the medical procedures to be used to determine parentage and states that the Court may, on the request of a party to the proceedings, or on the request of

a person representing the child or of its own motion, make an order requiring a testing procedure to be carried out in relation to a person who applied to the Court for a declaration.

Clause 10 sets out the matters to be taken into account by the Court when making a determination under Clause 9, and the Court may, if it considers that to do so would be in the best interest of the child, appoint a fit and proper person to act as the litigation guardian of the child.

Clause 11 provides for reports with respect to any medical procedure carried out pursuant to the Bill.

Clause 12 provides for the approval of laboratories to undertake parental testing procedures and for reporters for the approved laboratories.

Part IV, Clauses 13-15 of the Bill provide for the disposition of property before and after the commencement of the Bill. **Clause 13** provides for transitional provisions relating to instruments that were executed and became effective prior to the commencement of the Bill, such as gifts inter vivos and a Will of a person who died before the commencement of the Bill. Such instruments are held, by virtue of **sub-clause (1)** to be governed by the enactments, rules of construction and law which would have applied to them if the Bill had not come into operation. **Sub-clause (2)** states that where an instrument to which sub-clause (1) applies creates a special power of appointment, nothing in the Bill shall extend the class of persons in whose favour the appointment may be made, or caused to be made, or cause the exercise of the power to be construed so as to include any person who is not a member of the class.

Clause 14 provides that for the purposes of administration or distribution of an estate or property, an executor, administrator, or trustee of an estate or property 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 reasons only of the provisions of the Bill. The executor, administrator or trustee is however not obliged to pursue such inquiries further than he or she honestly and reasonably believes to be necessary.

Clause 15 seek to protect an executor, administrator or trustee from an action being taken against them by a person who could claim an interest in property by virtue of the provisions of the Bill where that executor, administrator or trustee had no notice of the relationship on which the claim is based at the time when the distribution of the estate or property was made.

Part V, Clauses 16 – 19- contain miscellaneous provisions.

Clause 16 provides for the conduct of hearings.

Clause 17 seeks to protect rights acquired prior to the commencement of the Bill.

Clause 18 gives the Minister responsible for the administration of the Bill the power to make Regulations.

Clause 19 provides for the amendments to the Intestates Estates Act, Cap 225.

Clause 20 provides for the repeal of the Status of Children Act Cap. 414 and seeks to save Regulations and Orders made under the repealed Act.