

CAYMAN ISLANDS



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THE STATUS OF CHILDREN LAW, 2003

(LAW 23 OF 2003)

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CAYMAN ISLANDS

Law 23 of 2003.

I Assent

Bruce Dinwiddy

Governor.

Date: 5th January, 2004

**A LAW TO REFORM THE LAW RELATING TO CHILDREN BY
PROVIDING FOR THEIR EQUAL STATUS; AND FOR INCIDENTAL
AND CONNECTED PURPOSES**

ENACTED by the Legislature of the Cayman Islands.

PART I

PRELIMINARY

1. (1) This Law may be cited as the Status of Children Law, 2003.

Short title and
commencement

(2) This Law shall come into force on such date as may be appointed by order made by the Governor in Cabinet.

2. In this Law, unless the context otherwise requires –

Interpretation

"bodily sample" includes any one or more of the following–

- (a) a blood sample;
- (b) a tissue sample;
- (c) a sperm sample; or
- (d) any other sample of material obtained from a human body;

“court” means the Grand Court;

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

"parentage testing order" means an order made under section 15;

"parentage testing procedure" means a medical procedure prescribed, or included in a class of medical procedures prescribed, by regulations for the purposes of this Law;

“Registrar-General” means the holder of the office established by section 4 of the Births and Deaths Registration Law (1996 Revision); and

“registered medical practitioner” means a medical doctor or nurse registered under the Health Practice Law, 2002.

PART II

EQUAL STATUS OF CHILDREN

All children of equal status

3. (1) Subject to subsection (2) for all of the purposes of the Laws of the Islands a person is the child of his natural parents and his status as their child is independent of whether he is born inside or outside of marriage and all other relationships shall be determined accordingly.

(2) Where an adoption order has been made under the Adoption of Children Law (1996 Revision) or the law of any other jurisdiction the child is in law the child of the adopting parents as is they were his natural parents.

(3) The rule of construction whereby in any instrument words of relationship signify only legitimate relationship in the absence of a contrary expression of intention is hereby abolished.

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.

Rules 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 section 3 and 4.

6. This Law applies in respect of every person, whether born before or after the commencement of this Law, and whether born in the Islands or not, and whether or not his father or mother has ever been domiciled in the Islands. Application

PART III

ESTABLISHMENT OF PATERNITY

7. (1) Unless the contrary is proven on a 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 – Presumptions of paternity

- (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 judgement 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 the 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 with the Registrar General;
- (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 with the Registrar General 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.

Presumption of parentage arising out of the use of fertilisation procedures

8. (1) Where a married woman has undergone a fertilisation procedure as a result of which she becomes pregnant-

- (a) her husband is presumed to be the father of any child born as a result of the pregnancy even if he did not provide any or all of the sperm used in the procedure, but only if he consented to the procedure, and
- (b) the woman is presumed to be the mother of any child born as a result of the pregnancy even if she did not provide the ovum used in the procedure.

(2) Where a woman (whether married or unmarried) becomes pregnant by means of a fertilisation procedure using any sperm obtained from a man who is not her husband, that man is presumed not to be the father of any child born as a result of the pregnancy.

(3) Where a woman (whether married or unmarried) becomes pregnant by means of a fertilisation procedure using an ovum obtained from another woman, that other woman is presumed not to be the mother of any child born as a result of the pregnancy.

(4) Any presumption arising under subsections (1) to (3) is irrebuttable.

(5) In any proceedings in which the operation of subsection (1) is relevant, a husband's consent to the carrying out of the fertilisation procedure is presumed.

Determination of paternity in void marriages

9. 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 section 7(1) (b) applies accordingly.

Application for declaration of paternity

10. (1) Any person who –

- (a) being a woman, alleges that any person is the father of the child;

- (b) alleges that the relationship of father and child exists between himself and any other person; or
- (c) being a person having a proper interest in the result, wished 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 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 declaration of paternity whether or not the father or the child or both of them are living or dead.

(2) Where a declaration of paternity under subsection (1) is made after the death of the father or of the child, the court may at the same or any subsequent time make a declaration determining, for the purposes of section 7(1) (f), whether any of the requirements of that paragraph have been satisfied.

11. (1) Where there is no person presumed 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.

Application for
declaration of paternity
where no presumption

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

(3) Where the court finds, on a 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.

12. A written acknowledgement of parentage that is admitted in evidence in any civil proceeding against the interest of a person making acknowledgement is *prime facie* proof of that fact.

Acknowledgement
against interest

13. Where a declaration has been made under section 10 or 11 and evidence becomes available that was not available at the previous hearing, the court may upon an 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 10 or 11 or a decision under section 13 to the Court of Appeal.

Appeals

15. (1) In proceedings where the parentage of a child is in issue the court may make a parentage testing order requiring a parentage testing procedure to be

Parentage testing orders

carried out on any of the following persons for the purpose of obtaining information to assist in determining the parentage of the child-

- (a) the child;
- (b) a person known to be a parent of the child; or
- (c) any other person, if 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 might assist in determining the parentage of the child.

(2) A parentage testing order may be made by the court on the application of a party to the proceedings or of its own motion.

(3) A parentage testing order may be made subject to such terms and conditions as the court determines.

(4) In deciding whether to make a parentage testing order, the court shall-

- (a) consider and determine any objection 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 deciding whether to make the order.

(5) Where the court makes an order under this section and a person over the age of 18 named therein refuses to submit to the parentage testing procedure, the person is not liable to a penalty in relation to the refusal to comply with the order but the court may draw such inferences as it thinks appropriate.

(6) A person specified in a parentage testing order under this section 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 registered medical practitioner certifies that the giving of a bodily sample would not be prejudicial to his proper care and treatment.

Orders associated with
parentage testing orders

16. (1) Where the court makes a parentage testing order it may make such other orders as it considers necessary or desirable-

- (a) to enable the parentage testing procedure to be carried out; or
- (b) to make the parentage testing procedure more effective or reliable.

(2) The court, pursuant to subsection (1), may make any of the following orders-

- (a) an order requiring a person to submit to a medical procedure;
- (b) an order requiring a person to provide a bodily sample;
- (c) an order requiring a person to surrender a bodily sample previously obtained from that person or from another person (regardless of whether that other person is still living) that has been stored or otherwise preserved; or
- (d) an order requiring a person to furnish information relevant to the person's medical or family history.

(3) The court may also make such orders as to costs as it considers just in relation to costs incurred in relation to-

- (a) the carrying out of the parentage testing procedure or other orders made by the court in relation to the parentage testing procedure, or
- (b) the preparation of reports in relation to the information obtained as a result of the carrying out of the parentage testing procedure.

(4) In deciding whether to make an order under this section, the court shall-

- (a) consider and determine any objection 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 deciding whether to make the order.

17. In any proceedings in which the parentage of a child is an issue the court may take into account any test taken by a relevant party pursuant to the Immigration Law, 2003 which establishes or rejects paternity of that child.

Parentage tests under the
Immigration Law, 2003

18. The Rules Committee of the Grand Court may make rules –

Rules

- (a) respecting parentage testing procedures for which an order or orders are given under section 15 and section 16, including without limiting the generality of the foregoing –
 - (i) the method of taking bodily samples and the handling, transportation and storage thereof;
 - (ii) the conditions under which a bodily sample may be tested;
 - (iii) designating the persons who are authorised to conduct parentage testing procedures and the facilities that may be used in connection therewith;
 - (iv) the procedure in respect of the admission of reports of parentage testing procedures in evidence;

(v) the prescribed forms to be used for the purpose of section 15 and section 16; and

(b) generally to give effect to this Law.

Taking of bodily samples by unqualified persons

19. (1) A person shall not take any bodily sample purportedly for the purpose of giving effect to a parentage testing order or an order under section 16 unless the person is a qualified person.

(2) A person who contravenes subsection (1) commits an offence and is liable on summary conviction to imprisonment for one year and to a fine of \$5,000.

(3) For the purposes of this section, "qualified person" means a registered medical practitioner or any other person belonging to a class of persons prescribed by the regulations for the purposes of this section.

PART IV

TRANSITIONAL PROVISIONS

Transitional provisions regarding dispositions

20. (1) All dispositions made before the commencement of this Law shall be governed by the enactments and rules of law, which would have applied to them if this Law had not been passed.

(2) Where any disposition to which subsection (1) applies creates a special power of appointment, nothing in this Law shall extend the class of person 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 the commencement of this Law shall be distributed in accordance with any enactments and rules of law which would have applied to them as if this Law had not been passed.

(4) In this section "disposition" means a disposition of real or personal property whether inter vivos or by codicil executed before the commencement of this Law.

Amendment of prior registration

21. Nothing in this Law shall be construed to require the Registrar- General to amend any prior registration showing parentage other than in recognition of an order made under section 10, 11 or 13.

Repeals

22. (1) Section 35 of the Succession Law (1995 Revision) is repealed.

(2) The Legitimation Law (1997 Revision) is repealed.

(3) Section 21 of the Matrimonial Causes Law (1997 Revision) is repealed.

23. Nothing in any provision of this Law affects any determination concerning the parentage of a child made by a court before the commencement of the provision.

Previous court
determinations

Passed by the Legislative Assembly this 3rd day of December, 2003.

LINFORD A. PIERSON

Speaker.

WENDY LAUER EBANKS

Clerk of the Legislative Assembly.