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CHAPTER C-6
CHILD STATUS ACT

PART I
EQUAL STATUS OF CHILDREN

1. (1) Subject to subsection (2), for all purposes of the law of Prince Edward Island 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 marriage. Person is child of natural parents

(2) Where an adoption order has been made under the *Adoption Act* R.S.P.E.I. 1988, Cap. A-4 or the law of any other jurisdiction, the child is in law the child of the adopting parents as if they were the natural parents. Effect of adoption

(3) Kindred relationships shall be determined according to the relationships described in subsection (1) or (2). Kindred relationships

(4) Any distinction between the status of a child born inside marriage and a child born outside marriage is abolished and the relationship of parent and child and kindred relationship flowing from that relationship shall be determined in accordance with this section. Abolition of distinction based on legitimacy

(5) This section applies in respect of every person whether born before or after this Act comes into force and whether born in the province or not and whether or not his father or mother has ever been domiciled in the province. 1987, c.8, s.1. Application

2. (1) For the purpose of construing an instrument or enactment, a reference to a person or group or class of persons described in terms of relationship to another person by blood or marriage shall be construed to refer to and include a person who comes within the description by reason of the relationship of parent and child as determined under section 1. Rule of construction

(2) The use of the words “legitimate” or “lawful” shall not prevent the relationship being determined in accordance with section 1. 1987, c.8, s.2. “Legitimate” or “lawful”

3. This Part applies to Application

- (a) any enactment made before, on or after the day this Act comes into force;
- (b) any instrument made on or after the day this Act comes into force,

but does not affect

- (c) any instrument made before this Act comes into force;
 - (d) a disposition of property made before this Act comes into force.
- 1987, c.8, s.3.

Purpose **4.** The purpose of this Part is to ensure that the rights of a child are not affected by the fact that his parents were not married. 1987, c.8, s.4.

PART II ESTABLISHMENT OF PARENTAGE

Application for declaration **5.** (1) Any person having an interest may apply to the Supreme Court (in this Part referred to as the “court”) for a declaration that a male person is recognized in law to be the father of a child or that a female person is the mother of a child.

Declaration of paternity recognized at law (2) Where the court finds that a presumption of paternity exists under section 9, the court shall make a declaratory order confirming that the paternity is recognized in law unless it is established, on the balance of probabilities, that the presumed father is not the father of the child.

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

Idem (4) Subject to section 7, an order made under this section shall be recognized for all purposes. 1987, c.8, s.6.

Application for declaration of paternity where no presumption **6.** (1) Where there is no person recognized in law under section 9 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.

Limitation (2) An application shall not be made under subsection (1) unless both the persons whose relationship is sought to be established are living.

Declaratory order (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 section 7, the order shall be recognized for all purposes. 1987, c.8, s.7.

Reopening on new evidence **7.** Where a declaration has been made under section 5 or 6 and evidence becomes available that was not available at the previous hearing, the court may, upon application, discharge or vary the order and make such other orders or directions as are ancillary thereto. 1987, c.8, s.8.

Acknowledgment against interest **8.** A written acknowledgement of parentage that is admitted in evidence in any civil proceeding against the interest of the person making the acknowledgement is *prima facie* proof of the fact. 1987, c.8, s.9.

- 9.** (1) Unless the contrary is proven on a balance of probabilities, there is a presumption that a male person is, and he shall be recognized in law to be, the father of a child in any one of the following circumstances: Recognition in law of parentage
- (a) the person is married to the mother of the child at the time of the birth of the child;
 - (b) the person was married to the mother of the child by a marriage that was terminated by death or judgment of nullity within 300 days before the birth of the child or by divorce where the divorce was granted within 300 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 300 days after they ceased to cohabit;
 - (e) the person has filed a statement pursuant to clause 3(1) or an application for amendment pursuant to clause 3(5) of the *Vital Statistics Act* R.S.P.E.I. 1988, Cap. V-4.1, or a document under a similar provision of a corresponding Act in any jurisdiction in Canada;
 - (f) the person has been found or recognized in his lifetime by a court of competent jurisdiction in Canada to be the father of the child.
- (2) For the purpose of subsection (1), where a man and woman go through a form of marriage with each other, in good faith, that is void and cohabit, they shall be deemed to be married during the time they cohabit and the marriage shall be deemed to be terminated when they cease to cohabit. Where marriage void
- (3) Where circumstances exist that give rise to a presumption or presumptions of paternity by more than one father under subsection (1), no presumption shall be made as to paternity and no person is recognized in law to be the father. 1987, c.8, s.10; 1996, c.48, s.42 *{eff.}* July 29/00; 1999, c.48, s.3 *{eff.}* July 29/00. Conflicting presumptions
- 10.** (1) Upon the application of a party in a civil proceeding in which the court is called upon to determine the parentage of a child, the court may give the party leave to obtain blood tests of such persons as are named in the order granting leave and to submit the results in evidence. Approved blood tests
- (2) Leave under subsection (1) may be given subject to such terms and conditions as the court thinks proper. Conditions attached
- (3) Where leave is 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. Inference from refusal

- Consent where incapacity (4) Where a person named in an order granting leave under subsection (1) is not capable of consenting to having a blood test taken, the consent shall be deemed to be sufficient
- (a) where the person is a minor of the age of sixteen years or more, if the minor consents;
 - (b) where the person is a minor under the age of sixteen years, if the person having the charge of the minor consents; and
 - (c) where the person is without capacity for any reason other than minority, if the person having his charge consents and a legally qualified medical practitioner certifies that the giving of a blood sample would not be prejudicial to his proper care and treatment. 1987, c.8, s.11.
- Regulations for blood tests **11.** The Lieutenant Governor in Council may make regulations governing blood tests for which leave is given by a court under section 10 including
- (a) the method of taking blood samples and the handling, transportation and storage thereof;
 - (b) the conditions under which a blood sample may be tested;
 - (c) designating persons or facilities or classes thereof who are authorized to conduct blood tests for the purposes of section 10;
 - (d) prescribing procedures respecting the admission of reports of blood tests in evidence;
 - (e) prescribing forms for the purpose of section 10 and this section and providing for their use. 1987, c.8, s.12.
- Statutory declaration of paternity **12.** (1) Any person may file in the office of the Director of Vital Statistics a statutory declaration, in the form prescribed by the regulations, affirming that he is the father of a child.
- Inspection and copies (2) Upon application and upon payment of the fee prescribed under the *Vital Statistics Act*, any person having an interest may inspect any relevant statutory declaration filed under subsection (1) and obtain a certified copy thereof from the Director. 1987, c.8, s.13.
- Inspection of filings under s. 5(2) or(4) **13.** Upon application and upon payment of the fee prescribed under the *Vital Statistics Act*, any person who has an interest, furnishes substantially accurate particulars and satisfies the Director of Vital Statistics as to his reason for requiring it may inspect a statement filed pursuant to subsection 3(1) or an application for amendment filed pursuant to subsection 3(5) of that Act and obtain a certified copy thereof from the Director. 1987, c.8, s.14; 1996, c.48, s.42 *{eff.}* July 29/00; 1999, c.48, s.3 *{eff.}* July 29/00.

14. (1) The prothonotary shall furnish the Director of Vital Statistics with a statement respecting each order or judgment of the court that confirms or makes a finding of parentage. Filing of court decisions respecting parentage

(2) Upon application and upon payment of the fee prescribed under the *Vital Statistics Act*, any person may inspect an order or judgment filed under subsection (1) and obtain a certified copy thereof from the Director. 1987, c.8, s.15. Inspection by public

15. A certificate certifying a copy of a document to be a true copy, obtained under section 12, 13 or 14, purporting to be signed by the Director of Vital Statistics or on which the signature is lithographed, printed or stamped is, without proof of the office or signature of the Director, receivable in evidence as *prima facie* proof of the filing and contents of the document for all purposes in any action or proceeding. 1987, c.8, s.16. Certified copies as evidence

16. Nothing in this Act shall be construed to require the Director of Vital Statistics to amend a registration showing parentage other than in recognition of an order made under section 5. 1987, c.8, s.17. Director

PART III RECOGNITION OF EXTRA-PROVINCIAL DETERMINATION OF PATERNITY

17. In sections 18 to 27, Interpretation

(a) “extra-provincial declaratory order” means an order in the nature of a declaration provided for in section 5 but made by a court outside of Prince Edward Island;

(b) “extra-provincial finding of paternity” means a judicial finding of paternity that is made incidentally in the determination of another issue by a court outside of Prince Edward Island and that is not an extra-provincial declaratory order. 1987, c.8, s.18.

18. An extra-provincial declaratory order that is made in Canada shall be recognized and have the same effect as if made in Prince Edward Island. 1987, c.8, s.19. Recognition of orders elsewhere in Canada

19. An extra-provincial declaratory order that was made outside Canada shall be recognized and have the same effect as if made in Prince Edward Island if Recognition of orders made outside Canada

(a) at the time the proceeding was commenced or the order was made, either parent was domiciled,

(i) in the territorial jurisdiction of the court making the order, or

(ii) in a territorial jurisdiction in which the order is recognized;

- (b) the court that made the order would have had jurisdiction to do so under the rules that are applicable in Prince Edward Island;
- (c) the child was habitually resident in the territorial jurisdiction of the court making the order at the time the proceeding was commenced or the order was made; or
- (d) the child or either parent had a real and substantial connection with the territorial jurisdiction in which the order was made at the time the proceeding was commenced or the order was made. 1987, c.8, s.20.

- Exceptions **20.** A court may decline to recognize an extra-provincial declaratory order and may make a declaratory order under this Act where
- (a) new evidence that was not available at the hearing becomes available; or
 - (b) the court is satisfied that the extra-provincial declaratory order was obtained by fraud or duress. 1987, c.8, s.21.
- Filing with Director **21.** (1) A copy of an extra-provincial declaratory order, certified under the seal of the court that made it, may be filed in the office of the Director of Vital Statistics but where the extra-provincial declaratory order is made outside of Canada, the copy shall be accompanied by
- (a) the opinion of a lawyer in Prince Edward Island that the declaratory order is entitled to recognition under the law of Prince Edward Island;
 - (b) a sworn statement by a lawyer or public official in the extra-provincial territorial jurisdiction as to the effect of the declaratory order; and
 - (c) such translation, verified by affidavit, as the Director requires.
- Amendment of record (2) Upon the filing of an extra-provincial declaratory order under this section, the Director shall, in accordance with section 43 of the *Vital Statistics Act*, amend the register of births accordingly, but where the extra-provincial declaratory order contradicts paternity found by an order already filed, the Director shall restore the original record and disregard that order and previous orders.
- Liability of Director (3) The Director is not liable for any consequences resulting from filing under this section material that is apparently regular on its face. 1987, c.8, s.22.
- Evidence **22.** A copy of an extra-provincial declaratory order, certified under the seal of the court that made it, is admissible in evidence without proof of the signatures or office of any person executing the certificate. 1987, c.8, s.23.

- 23.** An extra-provincial finding of paternity that is made in Canada shall be recognized and have the same effect as if made in Prince Edward Island under the same circumstances. 1987, c.8, s.24. Findings of paternity elsewhere in Canada
- 24.** An extra-provincial finding of paternity that is made outside Canada by a court that has jurisdiction to determine the matter in which the finding was made as determined by the conflict of laws rules of Prince Edward Island shall be recognized and have the same effect as if made in Prince Edward Island under the same circumstances. 1987, c.8, s.25. Findings of paternity outside Canada
- 25.** A copy of an order or judgment in which an extra-provincial finding of paternity is made, certified under the seal of the court that made it, is admissible in evidence without proof of the signature or office of any person executing the certificate. 1987, c.8, s.26. Evidence
- 26.** There shall be no presumption of paternity under clause 9(1)(f) where contradictory findings of paternity exist, whether extra-provincial or otherwise. 1987, c.8, s.27. Presumption where conflicting findings
- 27.** Sections 17 to 26 apply to extra-provincial declaratory orders and extra-provincial findings of paternity whether made before or after this Part comes into force. 1987, c.8, s.28. Application