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CHAPTER 243

STATUS OF CHILDREN ACT

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Numbering of sections

<i>Original number</i>	<i>Comment</i>	<i>Present number</i>
1-4	-	1-4
5	a 41/83	5
6	-	6
7	a 41/83	7
8-17	-	8-17
18	spent/omitted	-
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Index of subsidiary legislation

Nil

CHAPTER 243
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AN ACT to remove the legal disabilities of children born out of wedlock and to provide for matters connected therewith or incidental thereto.

Commencement: 1st July 1980
S. R. O. 44 of 1980

Short title.

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

Interpretation.

2. (1) In this Act, unless the context otherwise requires-
 - "child" includes a child born out of wedlock;
 - "marriage" includes a void or voidable marriage;
 - "Registrar General" means the Registrar General under the Registration of Births and Deaths Act [**Cap. 179**];
 - "trustee" includes a guardian as well as all persons who are trustees within the meaning of the Trustees Act [**Cap. 583**].
- (2) For the purposes of sections 11 to 16, both 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;

" Minister" means the Attorney General.

All children have equal status.

3. (1) Save as provided in subsection (4) of this section and in sections 4 and 7, for all purposes of the law in force in Saint Vincent and the Grenadines, the relationship between every person and his mother and father shall be determined irrespective of whether the father and the mother are or have been married to each other, and all other relationships shall be determined accordingly.

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

(3) The provisions of subsections (1) and (2) shall apply in relation to every person, whether born before or after the commencement of this Act and whether he has been in Saint Vincent and the Grenadines or not and whether or not his father or mother has ever been domiciled in Saint Vincent and the Grenadines.

(4) Nothing in this section shall affect or limit in any way any rule of law relating to-

(a) domicile of any person;

(b) citizenship of any person;

(c) the provisions of any law relating to adoption which determines the relationship to any person of a person who has been adopted;

(d) the construction of the word "heir" or of any expression which is used to create an entailed interest in real or personal property.

Transitional provisions regarding wills and other instruments and intestacies.

4. (1) All dispositions made before the 1st July, 1980, shall be governed by the written laws and rules of law as if this Act had not been passed.

(2) Where an 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, nor 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 1st July, 1980, shall be distributed in accordance with the law as if this Act had not been passed.

(4) In this section "disposition" means disposition, including an oral disposition, of real or personal property, whether *inter vivos* or by will; and notwithstanding section 3 of the Wills Act [Cap. 384] nor any other rule of law, a disposition made by will executed before the 1st July, 1980, shall not be treated for the purposes of this section as having been made on or after that date.

Protection of personal representatives and trustees.

5. (1) For the purposes of the administration or distribution of the estate of any deceased person or of any other property held on trust, every personal representative or 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 other property by reason only of this Act, but shall not be obliged to pursue such inquiries further than he honestly believes to be necessary.

(2) No action shall lie against personal representative or trustee, by any person who could claim an interest in the estate or other property aforesaid by reason only of this Act, to enforce any claim arising by reason of the fact that the personal representative or trustee has made any distribution of the estate or property, or otherwise acted in the administration of the estate or property, disregarding the claims of any person where, at the time of making the distribution or otherwise so acting, the trustee, having made such inquiries as are required under subsection (1), had no notice of the relationship on which the claim is based.

(3) Nothing in this section shall prejudice the right of any person claiming an interest in the estate or property aforesaid (which interest is alleged by the claimant to have existed at the time the trustee made the distribution or otherwise acted as aforesaid) to follow such estate or property, or any property representing it, into the hands of any person other than a *bona fide* transferee for value, who may have received it.

Presumption regarding parenthood of child born during marriage.

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

(2) Subsection (1) shall not apply to a case where during the whole of the period within which the child must have been conceived the mother and her husband were living apart under an agreement for separation, or under a decree or order of separation or a decree nisi of divorce made by a competent court or authority in Saint Vincent and the Grenadines or elsewhere.

(3) Subsection (1) shall not apply to a case where a child is born within the period specified in that subsection if the woman was married again before the birth of the child, and in every such case the question as to who is the father of the child shall be determined on the balance of probabilities.

Recognition of paternity required in cases of succession etc.

7. (1) The relationship of father and child, and any other relationship traced in any degree through that relationship, shall, for any purpose related to succession to property which devolves after the commencement of this Act or to the construction of any will or other testamentary, disposition or of any instrument creating a trust operating after such commencement, be recognised only if -

(a) the father and the mother of the child were married to each other at the time of its conception or at any time subsequent thereto; or

(b) the paternity has been admitted by, or established during the lifetime of, the father (whether by one or more of the types of evidence specified by section 8 or otherwise):

Provided that, if the purpose aforesaid is for the benefit of the father, there shall be the additional requirement that paternity should have been so admitted or established during the lifetime of the child or during the period when the child was conceived.

(2) In any case where by reason of subsection (1) the relationship of the father and child is not recognised for certain purposes at the time the child is born, the occurrence of any act, event or

conduct which enables that relationship, and any other relationship traced in any degree through it, to be recognised shall not affect any estate, right or interest in any real or personal property to which any person has become absolutely entitled, whether beneficially or otherwise, before the act, event or conduct occurred.

Evidence of proof of paternity.

8. (1) If, pursuant to the provisions contained in the Registration of Births and Deaths Act, or under any other law, the name of the father of the child to whom the entry relates has been entered in the register of births (whether before or after the commencement of this Act), a certified copy of the entry made or given in accordance with any provision made by or under that Act shall be *prima facie* evidence that the person named as the father is the father of the child.

(2) The entry in the register kept by any minister of the christian religion before the 29th June, 1867, and all copies and extracts therefrom duly certified as provided in the Registration of Births and Deaths Act, showing the name of the father of the child to whom the entry relates, shall be *prima facie* evidence that the person named as the father is the father of the child.

(3) Any instrument signed by the mother of a child and by any person acknowledging that he is the father of the child shall, if executed as a deed by each of those persons in the presence of a notary public, commissioner for oaths, justice of the peace, registrar of the courts, registered medical practitioner, marriage officer, midwife or the head of a public educational establishment, be *prima facie* evidence that the person named as the father is the father of the child.

(4) An affiliation order, within the meaning of any written law, made in any proceedings between the parties, shall be *prima facie* evidence whether or not between the same parties.

(5) Subject to section 7 (1), a declaration made under section 10 shall, for all purposes, be conclusive proof of the matters contained in it.

(6) An order made in any state outside Saint Vincent and the Grenadines declaring a person to be the father or putative father of a child, being an order to which this subsection applies pursuant to subsection (7), shall be *prima facie* evidence that such person is the father of the child.

(7) The Minister may, by order, declare that subsection (6) shall apply with respect to an order made by any court or public authority of a state outside Saint Vincent and the Grenadines or by any specified court or public authority in any such state.

Instruments of acknowledgement.

9. (1) Any instrument of the kind described in section 8 (3), or a duplicate or attested copy of any such instrument may, in the prescribed manner and on payment of the prescribed fee (if any), be filed in the office of the Registrar General, but it shall not be necessary to file any such instrument.

(2) The Registrar General shall cause indices of all instruments and duplicates and copies of instruments filed with him under subsection (1) to be made and kept in his office, and shall upon the request of any person, and on receipt of the prescribed fee (if any), cause a search of any index to be made and shall permit any such person to inspect any such instrument or any such duplicate or copy.

(3) Where the High Court makes a declaration of paternity under section 10 of this Act or a decree declaratory of legitimacy under section 4 of the Legitimation Act [Cap. 170], or where a competent court makes an adoption order under the Adoption Act [Cap. 163] or any other law, the Registrar or clerk of the court, as the case may be, shall forward a copy of the declaration, decree or order, as the case may be, to the Registrar General for filing in his office under this section. On receipt of any such

copy the Registrar General shall file it accordingly as if it were an instrument of the kind described in section 8 (3).

Declaration of paternity.

10. (1) Any person who-

- (a) being a woman, alleges that any named person is the father of her 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, 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 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) (b), whether any of the requirements of that paragraph have been satisfied.

Court may order use of blood tests.

11. (1) In any civil proceedings in which the paternity of any person (hereinafter referred to as "the subject") falls 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 the use of the blood tests to ascertain whether such tests show that that 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 a 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 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 those 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 person is called as a witness the party who called him shall be 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 purpose 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 for affiliation.

Consent required for taking of blood samples.

12. (1) Subject to the provisions of subsections (3) and (4) and without prejudice to the provisions of section 13, a blood sample which is required to be taken from any person for the purpose of giving effect to a direction under section 11 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 shall be 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.

(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.

Failure to comply with directions for blood tests.

13. (1) Where a court gives a direction under section 11 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 the court hearing the proceedings there is a presumption of law that person is born in wedlock, then if-

- (a) a direction is given under section 11 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 step 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 11 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 shall be deemed for the purposes of this section to have failed to take a step required of him for the purpose of giving effect to the direction.

Personation etc.

14. Any person who, for the purpose of providing a blood sample for a test required to give effect to a direction under section 11, personates another, or puts forward a child knowing that it is not the child named in the direction, is guilty of an offence and liable to a fine of seven hundred and fifty dollars and to imprisonment for one year.

Regulations for blood tests.

15. The Minister may, by regulations, make provisions as to the manner of giving effect to directions under section 11 and, in particular, any such regulations may

- (a) provide 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 blood from the person from whom it is to be taken as may be prescribed by the regulations;
- (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 so specified in the regulations suffered from such illness as may be so specified or received a 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 11;
- (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 11 are tested by the same person;
- (i) prescribe the form of the report to be made to a court under section 11.

Regulations generally.

16. (1) The Minister may 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 matters as are contemplated by or necessary for giving full effect to this Act and for its due administration.

(2) 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.

(3) Notwithstanding the provisions of any regulations under this Act, the Registrar General may dispense with the payment of any fee payable under this Act.

Rules of construction.

17. (1) As from the 1st July, 1980,-

- (a) any reference in any law to an illegitimate child shall be deemed to be a reference to a child born out of wedlock;
- (b) any reference in any law to a legitimate child shall be deemed to be a reference to a child born in wedlock for the purposes of that law,

and the words "legitimate" and "illegitimate" shall, with grammatical variations and cognate expressions be construed accordingly.

(2) To give effect to the provisions of subsection (1), the Attorney-General may, by order, make such modifications to any law as are necessary or consequential so as to substitute the correct reference as in that subsection.
