

No. 29

1st Session, 14th Legislature, Alberta
8 Elizabeth II

BILL 29

A Bill Respecting Legitimacy

HON. MR. MANNING

Explanatory Note

General. This Act will replace Part VII (Legitimation) of The Domestic Relations Act. The principal of that Part, which provides for legitimation by a subsequent marriage of parents, was recommended in 1920 by the Conference of Commissioners on Uniformity of Legislation, and adopted by 1927, chapter 5, sections 53 and 54 in Alberta.

Several years ago the Conference began review of its Uniform Act in the light of changes made with respect to bastardy in Canada and England. At the 1959 Conference a new draft uniform Act was recommended for adoption by the Provinces of Canada; this Bill would enact in Alberta the uniform Act recommended by that conference.

2. Legitimation by subsequent marriage. No change is made in the present Alberta law. The date given is the date of commencement of the first Alberta legitimation provisions.

3. Legitimation by voidable marriages. Where a marriage is merely voidable, the children are not bastardized by the decree of nullity.

4. This clause provides for special cases of void marriages resulting in legitimate children without regard to factors other than that the form of marriage was entered into upon the basis of an order of presumption of death or an official notification of death from the Canadian Forces. The fact that a party to the void marriage has a spouse alive at the time will not affect the children of the second and void marriage.

5. This provision provides for legitimation in cases of void marriages, where the formal requirements of a valid marriage have been complied with and either or both of the parties reasonably believed that the marriage was valid.

BILL

No. 29 of 1960

An Act Respecting Legitimacy

(Assented to _____, 1960)

HER MAJESTY, by and with the advice and consent of the Legislative Assembly of the Province of Alberta, enacts as follows:

1. This Act may be cited as "*The Legitimacy Act*".

2. (1) Where before or after the coming into force of this section and after the birth of a person his parents have inter-married or inter-marry, he is legitimate from birth for all purposes of the law of the Province.

(2) Nothing in subsection (1) affects an interest in property that has vested in a person before the inter-marriage of the parents or the first day of July, 1927.

3. Where before or after the coming into force of this section a decree of nullity is granted in respect of a voidable marriage, a child who would have been the legitimate child of the parties to the marriage if it had been dissolved instead of being annulled continues to be legitimate notwithstanding the annulment.

4. Where, before or after the coming into force of this section, a person,

- (a) in respect of whose spouse an order of presumption of death is made either generally, or *inter alia*, in relation to remarriage, or
- (b) whose spouse was a member of the Canadian Forces in respect of whom official notification that he is dead or is presumed to be dead has been given under the laws of Canada,

enters into a marriage that would be valid if the spouse were in fact dead, then if the person to whom the order for presumption of death relates or in respect of whom the official notification was given was alive when the marriage was entered into, a child of the persons entering into the marriage is legitimate from birth for all purposes of the law of the Province.

5. Subject to section 4, where, before or after the coming into force of this section, a person is born of parents who enter into a marriage that is void, the person is legitimate from birth for all the purposes of the law of the Province if

6. By this provision voidable and void marriages (of the kinds dealt with in clauses 4 and 5) will have the effect of valid marriages for the purpose of legitimating children under the legitimation by subsequent marriage rule of clause 2, but not if the child was born eleven months after a nullity has been pronounced upon by a competent court.

7. This provision saves interests in property vesting before this Act or the marriage by which legitimacy is established.

8. Part VII of The Domestic Relations Act, being chapter 89 of the Revised Statutes, is repealed.

9. Act or parts to come into force upon Proclamation to obtain so far as possible uniformity with other jurisdictions.

- (a) the marriage was registered or recorded in substantial compliance with the law of the place where it was entered into, and
- (b) either of the parties reasonably believed that the marriage was valid.

6. (1) Sections 3, 4 and 5 apply whether the child of the persons entering into the marriage was born before or after entry into the marriage, but do not apply where the child was born eleven months after the marriage has been annulled or declared to be void by a court or other competent authority under the appropriate governing law.

(2) This Act legitimates a child notwithstanding the death of the child before the inter-marriage of the parents.

7. Nothing in section 3, 4, 5 or 6 affects an interest in property that has vested in a person before the enactment of this Act, or in the case of marriages after the birth of the child, before the inter-marriage of the parents.

8. Part VII of *The Domestic Relations Act*, being chapter 89 of the Revised Statutes, is hereby repealed.

9. This Act or any sections thereof comes into force on a day or days to be fixed by Proclamation.

No. 29

FIRST SESSION

FOURTEENTH LEGISLATURE

8 ELIZABETH II

1960

BILL

An Act Respecting Legitimacy

Received and read the

First time.....

Second time.....

Third time.....

HON. MR. MANNING
