

1991 ~~BILL~~ 50,

Third Session, 22nd Legislature, 40 Elizabeth II

THE LEGISLATIVE ASSEMBLY OF ALBERTA

BILL 50

**FAMILY AND DOMESTIC RELATIONS
STATUTES AMENDMENT ACT, 1991**

MR. TANNAS

First Reading

Second Reading

Committee of the Whole

Third Reading

Royal Assent

BILL 50

1991

FAMILY AND DOMESTIC RELATIONS STATUTES AMENDMENT ACT, 1991

(Assented to _____, 1991)

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

Domestic Relations Act

1(1) The Domestic Relations Act is amended by this section.

(2) Section 47 is repealed and the following is substituted:

47(1) Unless a court of competent jurisdiction otherwise orders,
the joint guardians of a minor child are

- (a) the mother, and
- (b) the father, if
 - (i) he was married to the mother of the child
at the time of birth of the child,
 - (ii) he was married to the mother of the child
and the marriage was terminated by
 - (A) a decree of nullity of marriage
granted not more than 300 days
before the birth of the child, or
 - (B) a judgment of divorce granted not
more than 300 days before the
birth of the child,
 - (iii) he cohabited with the mother of the child
for at least one year immediately before
the birth of the child, or
 - (iv) he married the mother of the child after

Explanatory Notes

Domestic Relations Act

1(1) This section will amend chapter D-37 of the Revised Statutes of Alberta 1980.

(2) Section 47 presently reads:

47 Unless otherwise ordered by the Court the father and mother of a minor are the joint guardians of the minor, and the mother of an illegitimate minor is the sole guardian of the illegitimate minor.

the birth of the child and has acknowledged that he is the father of the child.

(2) If, on the application of a person declared to be a parent under Part 8, the Court is satisfied that it is in the best interest of the child and that the applicant is able and willing to assume the responsibility of a guardian towards the child, the Court may appoint the person as a guardian jointly with any other guardian.

(3) *The following is added after section 61:*

PART 8

ESTABLISHING PARENTAGE

62 This Part does not apply

- (a) to an application under section 11.1 of the *Child Welfare Act*, or
- (b) to an application under the *Parentage and Maintenance Act* unless an application under that Act is combined under section 68 with an application under this Part.

63(1) For all purposes of the law of Alberta, unless the contrary is proven on a balance of probabilities, there is a legal presumption that a person is the father of a child in any of the following circumstances:

- (a) the person was 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 and the marriage was terminated by
 - (i) a decree of nullity of marriage granted not more than 300 days before the birth of the child, or
 - (ii) a judgment of divorce granted not more than 300 days before the birth of the child;

(3) New Part provides for establishing parentage.

- (c) the person married the mother of the child after the birth of the child and has acknowledged that he is the father of the child;
- (d) the person cohabited with the mother of the child for at least one year immediately before the birth of the child;
- (e) the person is registered as the father of the child at the joint request of himself and the mother of the child under the *Vital Statistics Act* or under similar legislation in a province other than Alberta.

(2) Where there is a conflict between subsection (1) and any other enactment, the other enactment prevails.

64(1) A person claiming to be the father, mother or child of another person may apply by originating notice to the Court for a declaration of parentage.

(2) The Court shall grant a declaration of parentage on being satisfied, on a balance of probabilities, that the alleged father or mother is the father or mother of the child.

(3) An application under this section may be brought on behalf of the child or by any person acting on the child's behalf.

(4) The Court has jurisdiction under this section if the child or an alleged parent against whom an application is brought is resident in Alberta.

(5) A declaration of parentage under this section applies for all purposes of the law of Alberta.

65(1) A declaration of parentage remains in force until it is set aside under this section.

(2) An application to set aside a declaration of parentage may be made to the Court, with the leave of the Court.

(3) Notice of the application shall be given to persons prescribed by section 66(1) and (2).

(4) The Court hearing the application may confirm the declaration of parentage or set it aside.

(5) The setting aside of a declaration of parentage does not affect rights that vested while the declaration was in force.

66(1) Unless the Court otherwise directs, notice of an application for a declaration of parentage shall be given to

- (a) the person claimed to be a child, if the person is 12 years of age or older,
- (b) the guardian of, a person with the care and control of, or any person named by law to be served on behalf of, the person claimed to be a child, and
- (c) any other person claiming or alleged to be a parent.

(2) On application or on its own motion, the Court may direct that notice be given to any person who in its opinion should have an opportunity to be heard.

67 The Court

- (a) shall have regard to any subsisting presumption of parentage under section 63, and
- (b) shall admit as evidence an order or judgment of any court of competent jurisdiction that expressly or by implication determines the parentage of the child.

68 The Court may, on its own motion or on application of any of the parties, join an application under this Part with an application under the *Parentage and Maintenance Act* in accordance with any directions the Court considers appropriate.

69(1) On the request of a party or on its own motion, the Court may make an order granting leave to obtain blood tests or any other tests that the Court considers appropriate from any person named in the order and to submit the results in evidence.

(2) An order under subsection (1) may be made subject to any terms and conditions the Court considers proper.

(3) No test shall be performed on a person without his consent.

(4) If a person named in an order under subsection (1) is not capable of giving consent because of age or incapacity, the consent may be given by the guardian of the person.

(5) If a person named in an order under subsection (1) or the person's guardian, as the case may be, refuses to consent to a test referred to in the order, the Court may draw any inference it considers appropriate without prejudice to the child in future proceedings on behalf of the child.

Family Relief Act

2(1) The Family Relief Act is amended by this section.

(2) Section 1(b) is repealed and the following is substituted:

- (b) "child" includes
 - (i) a child born after the death of a deceased, or
 - (ii) a child born within or outside marriage;

Intestate Succession Act

3(1) The Intestate Succession Act is amended by this section.

(2) Section 1(b) is repealed and the following is substituted:

- (b) "issue" includes all lineal descendants, whether born within or outside marriage, of the ancestor;

(3) Sections 13 and 14 are repealed.

Family Relief Act

2(1) This section will amend chapter F-2 of the Revised Statutes of Alberta 1980.

(2) Section 1(b) presently reads:

1 In this Act,

(b) "child" includes

(i) a child of a deceased born after the death of the deceased,

(ii) an illegitimate child of a deceased man who

*(A) has acknowledged the paternity of the child,
or*

*(B) has been declared to be the father of the child by
an order under the Parentage and Maintenance Act or
any prior Act providing for affiliation or paternity
orders,*

and

(iii) an illegitimate child of a deceased woman;

Intestate Succession Act

3(1) This section will amend chapter I-9 of the Revised Statutes of Alberta 1980.

(2) Section 1(b) presently reads:

1 In this Act,

*(b) "issue" includes all lawful lineal descendants of the
ancestor;*

(3) Sections 13 and 14 presently read:

Transitional and Commencement Provisions

4 Nothing in this Act affects any interest in property or any right, title or interest in or to property or any other right that has vested before the coming into force of this Act.

5 This Act comes into force on Proclamation.

13 For the purposes of this Act, an illegitimate child shall be treated as if he were the legitimate child of his mother.

14(1) Where a male person who is survived by illegitimate children dies intestate with respect to the whole or any part of his estate, and leaves no widow or lawful issue, if the Court of Queen's Bench, on an application made by the executor, administrator or trustee or by a person claiming to be an illegitimate child, declares after due inquiry that

(a) the intestate has acknowledged the paternity of the illegitimate children, or

(b) the person has been declared to be the father by order made under any of the provisions of the Child Welfare Act or the Parentage and Maintenance Act or any prior Act providing for affiliation or paternity orders,

the illegitimate children and their issue shall inherit from the person so dying the estate in respect of which there is an intestacy as if they were his legitimate children.

(2) For the purposes of this section, an intestate male person shall be deemed to have left no widow if she has left him and was at the time of his death living in adultery.

4 Vested rights.

5 Coming into force.