

2010 Bill 22

Third Session, 27th Legislature, 59 Elizabeth II

THE LEGISLATIVE ASSEMBLY OF ALBERTA

BILL 22

**FAMILY LAW STATUTES
AMENDMENT ACT, 2010**

THE MINISTER OF JUSTICE AND ATTORNEY GENERAL

First Reading

Second Reading

Committee of the Whole

Third Reading

Royal Assent

BILL 22

2010

FAMILY LAW STATUTES AMENDMENT ACT, 2010

(Assented to _____, 2010)

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

Family Law Act

Amends SA 2003 cF-4.5

1(1) The *Family Law Act* is amended by this section.

(2) Section 1 is amended

(a) by adding the following after clause (b):

(b.1) “birth mother” means a person who gives birth to a
child;

(b) by adding the following after clause (c):

(c.1) “conjugal” means marriage-like;

(c) by repealing clause (f);

(d) by repealing clause (g) and substituting the following:

(g) “grandparent” means a parent of a person’s parent;

(e) by adding the following after clause (g):

(g.1) “marriage” includes a void marriage and a voidable
marriage;

Explanatory Notes

Family Law Act

1(1) Amends chapter F-4.5 of the Statutes of Alberta, 2003.

(2) Section 1 presently reads in part:

1 In this Act,

(f) “father” means

(i) unless subclause (ii) or (iii) applies, the biological father of a child, including a male person described in section 13(2)(a),

(ii) in the case of an adopted child, a male person who adopts the child, or

(iii) a male person described in section 13(2)(b);

(g) “grandparent” means the parent of a person’s father or mother;

(i) “mother” means

(i) unless subclause (ii) or (iii) applies, the person who gives birth to a child,

(f) by repealing clause (i);

(g) by repealing clause (j) and substituting the following:

(j) “parent” means a person determined under Part 1 to be a parent of a child;

(3) Section 2 is repealed and the following is substituted:

Crown is bound

2 This Act, except sections 97 and 98, binds the Crown.

(4) Section 3(2)(a) is amended by striking out “9, 10, 12” and substituting “8.2, 9, 10”.

(5) Section 4(3) is repealed and the following is substituted:

(3) If, in an application under this Act, it appears to the court in which the application is brought that it does not have jurisdiction over all or part of the matters in issue, that court may transfer all or part of the application to the other court in accordance with the regulations.

(3.1) A party to an application under this Act may apply to the court in which the application is brought for an order transferring the matters in issue to the other court in accordance with the regulations.

(6) The following is added before section 6:

Interpretation

5.1(1) In this Part,

(a) “assisted reproduction” means a method of conceiving other than by sexual intercourse;

(ii) *in the case of an adopted child, a female person who adopts the child, or*

(iii) *a female person described in section 12(6);*

(j) *“parent” means the father or mother of a child;*

(3) Section 2 presently reads:

2 The Crown is bound by this Act.

(4) Section 3(2) presently reads:

(2) Subject to this section, the Provincial Court has jurisdiction in all matters under this Act except

(a) to make a declaration under section 9, 10, 12 or 83,

(c) to make orders under sections 68, 73 and 76, and

(d) to grant relief described in section 66(3)(b), (d), (g), (4), (7), (9) and (10).

(5) Section 4(3) presently reads:

(3) If in an application under this Act before the Provincial Court, it appears the Provincial Court does not have jurisdiction over all or part of the matters in issue, the proceeding may be transferred in whole or in part to the Court of Queen’s Bench in accordance with the regulations.

(6) Definitions and other interpretation provisions added.

- (b) “embryo” means an embryo as defined in the *Assisted Human Reproduction Act* (Canada);
- (c) “human reproductive material” means human reproductive material as defined in the *Assisted Human Reproduction Act* (Canada);
- (d) “surrogate” means a person who gives birth to a child as a result of assisted reproduction if, at the time of the child’s conception, she intended to relinquish that child to
 - (i) the person whose human reproductive material was used in the assisted reproduction or whose human reproductive material was used to create the embryo used in the assisted reproduction, or
 - (ii) the person referred to in subclause (i) and the person who is married to or in a conjugal relationship of interdependence of some permanence with that person.

(2) For the purposes of this Part, if a child is born as a result of assisted reproduction, the child’s conception is deemed to have occurred at the time the procedure that resulted in the implantation of the human reproductive material or embryo was performed.

(7) Section 7 is repealed and the following is substituted:

Rules of parentage

7(1) For all purposes of the law of Alberta, a person is the child of his or her parents.

(2) The following persons are the parents of a child:

- (a) unless clause (b) or (c) applies, his or her birth mother and biological father;
- (b) if the child was born as a result of assisted reproduction, a person identified under section 8.1 to be a parent of the child;

(7) Section 7 presently reads:

7 Unless another enactment provides otherwise, a person who is a parent of a child under this Act is a parent of that child for all purposes of the law of Alberta.

(c) a person specified as a parent of the child in an adoption order made or recognized under the *Child, Youth and Family Enhancement Act*.

(3) The relationship of parent and child, and the kindred relationships flowing from that relationship, shall be determined in accordance with this Part.

(4) A person who donates human reproductive material or an embryo for use in assisted reproduction without the intention of using the material or embryo for his or her own reproductive use is not, by reason only of the donation, a parent of a child born as a result.

(5) A person who was married to or in a conjugal relationship of interdependence of some permanence with a surrogate at the time of the child's conception is not a parent of the child born as a result of the assisted reproduction.

(6) All distinctions between the status of a child born inside marriage and a child born outside marriage are abolished.

(8) Section 8 is repealed and the following is substituted:

Presumption of parentage — biological father

8(1) For the purposes of section 7(2)(a), unless the contrary is proven on a balance of probabilities, a male person is presumed to be the biological father of a child and is recognized in law to be a parent of a child in any of the following circumstances:

- (a) he was married to the birth mother at the time of the child's birth;
- (b) he was married to the birth mother by a marriage that within 300 days before the birth of the child ended by
 - (i) death,
 - (ii) decree of nullity, or
 - (iii) judgment of divorce;
- (c) he married the birth mother after the child's birth and has acknowledged that he is the father;

(8) Section 8 presently reads:

8(1) For all purposes of the law of Alberta, unless the contrary is proven on a balance of probabilities, a male person is presumed to be the biological father of a child in any of the following circumstances:

- (a) the male person was the spouse of the mother of the child at the time of the birth of the child;*
- (b) the male person was the spouse of the mother of the child and the marriage was terminated by*
 - (i) a decree of nullity of marriage granted less than 300 days before the birth of the child, or*
 - (ii) a judgment of divorce granted less than 300 days before the birth of the child;*
- (c) the male person became the spouse of the mother of the child after the birth of the child and has acknowledged that he is the father of the child;*

- (d) he cohabited with the birth mother for at least 12 consecutive months during which time the child was born and he has acknowledged that he is the father;
- (e) he cohabited with the birth mother for at least 12 consecutive months and the period of cohabitation ended less than 300 days before the birth of the child;
- (f) he is registered as the parent of the child at the joint request of himself and the birth mother under the *Vital Statistics Act* or under similar legislation in a province or territory other than Alberta;
- (g) he has been found by a court of competent jurisdiction in Canada to be the father of the child for any purpose.

(2) Where circumstances exist that give rise to a presumption under subsection (1) that more than one male person might be the father of a child, no presumption as to parentage may be made.

(3) Subsection (1) does not apply in the case of a child born as a result of assisted reproduction.

(9) The following is added after section 8:

Assisted reproduction

8.1(1) In this section and section 8.2,

- (a) a reference to the provision of human reproductive material by a person means the provision of the person's own human reproductive material to be used for his or her own reproductive purposes;
- (b) a reference to the provision of an embryo by a person means the provision of an embryo created using the person's own human reproductive material to be used for his or her own reproductive purposes.

(2) If a child is born as a result of assisted reproduction with the use of human reproductive material or an embryo provided by a male person only, the parents of the child are

- (a) unless clause (b) or (c) applies, the birth mother and the male person;

(d) the male person cohabited with the mother of the child for 12 consecutive months during which time the child was born and has acknowledged that he is the father of the child;

(e) the male person cohabited with the mother of the child for at least 12 consecutive months and the period of cohabitation ended less than 300 days before the birth of the child;

(f) the male 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 or territory other than Alberta;

(g) the male person has been found by a court of competent jurisdiction in Canada to be the father of the child for any purpose.

(2) Where circumstances exist that give rise to a presumption under subsection (1) that more than one male person might be the father of a child, no presumption as to parentage may be made.

(9) Provisions added respecting assisted reproduction and surrogacy.

- (b) if the birth mother is a surrogate and, under section 8.2(6), she is declared not to be a parent and the male person is declared to be a parent, the male person and a person who
 - (i) was married to or in a conjugal relationship of interdependence of some permanence with the male person at the time of the child's conception, and
 - (ii) consented to be a parent of a child born as a result of assisted reproduction and did not withdraw that consent before the child's conception;
- (c) unless section 8.2(9) applies, if the birth mother is a surrogate but does not consent to the application under section 8.2, the birth mother only.

(3) If a child is born as a result of assisted reproduction with the use of human reproductive material or an embryo provided by a female person only, the parents of the child are

- (a) unless clause (b) or (c) applies, the birth mother and a person who
 - (i) was married to or in a conjugal relationship of interdependence of some permanence with the birth mother at the time of the child's conception, and
 - (ii) consented to be a parent of a child born as a result of assisted reproduction and did not withdraw that consent before the child's conception;
- (b) if the birth mother is a surrogate and, under section 8.2(6), she is declared not to be a parent and the female person is declared to be a parent, the female person and a person who
 - (i) was married to or in a conjugal relationship of interdependence of some permanence with the female person at the time of the child's conception, and
 - (ii) consented to be a parent of a child born as a result of assisted reproduction and did not withdraw that consent before the child's conception;

(c) unless section 8.2(9) applies, if the birth mother is a surrogate but does not consent to the application under section 8.2, the birth mother only.

(4) If a child is born as a result of assisted reproduction with the use of human reproductive material or an embryo provided by both a male person and a female person, the parents of the child are

(a) unless clause (b) or (c) applies, the birth mother and the male person;

(b) if the birth mother is a surrogate and, under section 8.2(6), she is declared not to be a parent and the male person and female person are each declared to be a parent, the male person and the female person;

(c) unless section 8.2(9) applies, if the birth mother is a surrogate but does not consent to the application under section 8.2, the birth mother only.

(5) If a child is born as a result of assisted reproduction without the use of human reproductive material or an embryo provided by a person referred to in subsection (1)(a) or (b), the parents of the child are the birth mother and a person who

(a) was married to or in a conjugal relationship of interdependence of some permanence with the birth mother at the time of the child's conception, and

(b) consented to be a parent of a child born as a result of assisted reproduction and did not withdraw that consent before the child's conception.

(6) Unless the contrary is proven, a person is presumed to have consented to be a parent of a child born as a result of assisted reproduction if the person was married to or in a conjugal relationship of interdependence of some permanence with,

(a) in the case of a child born in the circumstances referred to in subsection (2), the male person referred to in that subsection,

- (b) in the case of a child born in the circumstances referred to in subsection (3), the female person referred to in that subsection, or
- (c) in the case of a child born in the circumstances referred to in subsection (5), the birth mother.

Surrogacy

8.2(1) An application may be made to the court for a declaration that

- (a) a surrogate is not a parent of a child born to the surrogate as a result of assisted reproduction, and
- (b) a person whose human reproductive material or embryo was provided for use in the assisted reproduction is a parent of that child.

(2) Subject to subsection (3), the following persons may make an application under subsection (1):

- (a) the surrogate;
- (b) a person referred to in subsection (1)(b);
- (c) a person who was, at the time of the child's conception, married to or in a conjugal relationship of interdependence of some permanence with a person referred to in subsection (1)(b).

(3) If a child is born as a result of assisted reproduction with the use of human reproductive material or an embryo provided by both a male person referred to in subsection (1)(b) and a female person referred to in subsection (1)(b), only the surrogate, the male person or the female person may make an application under subsection (1).

(4) An application under subsection (1) may not be commenced more than 30 days after the date of the child's birth unless the court allows a longer period.

(5) Unless the court directs otherwise, the following persons must, in accordance with the regulations, be served with notice of the application:

- (a) if a surrogate brings an application under subsection (1),
 - (i) a person referred to in subsection (1)(b),
 - (ii) unless subsection (3) applies, a person who was, at the time of the child's conception, married to or in a conjugal relationship of interdependence of some permanence with a person referred to in subsection (1)(b), and
 - (iii) any other person as the court considers appropriate;
- (b) if a person referred to in subsection (1)(b) brings an application under subsection (1),
 - (i) the surrogate,
 - (ii) unless subsection (3) applies, a person who was, at the time of the child's conception, married to or in a conjugal relationship of interdependence of some permanence with a person referred to in subsection (1)(b),
 - (iii) if subsection (3) applies, the other person referred to in subsection (1)(b), and
 - (iv) any other person as the court considers appropriate;
- (c) if a person who was, at the time of the child's conception, married to or in a conjugal relationship of interdependence of some permanence with a person referred to in subsection (1)(b) brings an application,
 - (i) the person referred to in subsection (1)(b),
 - (ii) the surrogate, and
 - (iii) any other person as the court considers appropriate.

(6) The court shall make the declaration applied for if the court is satisfied that

- (a) the child was born as a result of assisted reproduction with the use of human reproductive material or an

embryo provided by a person referred to in subsection (1)(b), and

(b) the surrogate consents, in the form provided for by the regulations, to the application.

(7) A person who is declared to be a parent of the child under subsection (6) and any person who, as a result of that declaration, is a parent of the child under section 8.1 are deemed to be the parents at and from the time of the birth of the child.

(8) Any agreement under which a surrogate agrees to give birth to a child for the purpose of relinquishing that child to a person

(a) is not enforceable,

(b) may not be used as evidence of consent of the surrogate under subsection (6)(b), and

(c) may be used as evidence of consent for the purposes of section 8.1(2)(b)(ii) or (3)(b)(ii).

(9) The court may waive the consent required under subsection (6)(b) if

(a) the surrogate is deceased, or

(b) the surrogate cannot be located after reasonable efforts have been made to locate her.

(10) If the court makes a declaration under subsection (6), the court shall identify in the declaration any person referred to in section 8.1(2)(b)(i) and (ii) or (3)(b)(i) and (ii), as the case may be, who is a parent as a result of that declaration.

(11) The court has jurisdiction under this section if the child is born in Alberta.

(12) An application may not be made under this section if

(a) the child has been adopted, or

(b) the declaration sought would result in the child having more than 2 parents.

(10) Section 9 is repealed and the following is substituted:

Declaration respecting parentage

9(1) If there is a dispute or any uncertainty as to whether a person is or is not a parent of a child under section 7(2)(a) or (b), the following persons may apply to the court for a declaration that the person is or is not the parent of a child:

- (a) a person claiming to be a parent of the child;
- (b) a person claiming not to be a parent of the child;
- (c) the child;
- (d) a parent of the child, if the child is under the age of 18 years;
- (e) a guardian of the child;
- (f) a person who has the care and control of the child.

(2) This section does not apply where a child is born to a surrogate who has consented to an application under section 8.2.

(3) If the court finds that a living person is or is not a parent of a child, the court may make a declaration to that effect.

(4) If the court finds that a deceased person is or is not a parent of a child conceived before that person's death, the court may make a declaration to that effect.

(5) In making a declaration under this section, the court shall give effect to any applicable presumption set out in section 8 and any applicable provision of section 8.1.

(6) The court has jurisdiction under this section if

- (a) the child is born in Alberta, or
- (b) an alleged parent resides in Alberta.

(7) An application or declaration may not be made under this section if

(10) Section 9 presently reads:

9(1) The following persons may apply to the court for a declaration that a female person named in the application is the mother of a child or a male person named in the application is the father of a child:

- (a) a person claiming to be the mother or father of the child;*
- (b) the child;*
- (c) a parent of the child, if the child is under the age of 18 years;*
- (d) a guardian of the child;*
- (e) a person who has the care and control of the child.*

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

(3) In making a declaration of parentage, the court shall have regard to any subsisting presumption of parentage under section 8.

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

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

- (a) the child has been adopted, or
- (b) the declaration sought would result in the child having more than 2 parents.

(11) Section 10(1)(a) is amended by adding “under section 9” after “dismissed”.

(12) Section 11(1) is amended by adding “under section 9” after “parentage”.

(13) Sections 12 and 13 are repealed.

(11) Section 10(1) presently reads:

10(1) Where

- (a) a declaration of parentage has been made or an application for a declaration of parentage has been dismissed, and*
- (b) evidence of a substantial nature becomes available that was not available at the previous hearing,*

the court may, on application by a person referred to in section 9(1), confirm a declaration, set aside a declaration or make a new declaration of parentage.

(12) Section 11(1) presently reads:

11(1) Unless the court directs otherwise, the following persons must, in accordance with the regulations, be served with notice of an application for a declaration of parentage:

- (a) the person claimed to be the child, if the child is 16 years of age or older;*
- (b) each guardian of the person claimed to be the child;*
- (c) a person who has the care and control of the person claimed to be the child;*
- (d) any person claiming or alleged to be a parent of whom the applicant has knowledge;*
- (e) any other person, including a child under 16 years of age, as the court considers appropriate.*

(13) Sections 12 and 13 presently read:

12(1) In this section,

- (a) “genetic donor” means a female person who provides genetic material that is fertilized and implanted in the uterus of a gestational carrier;*

(b) *“gestational carrier” means a female person in whose uterus the genetic material of a genetic donor is implanted.*

(2) *A genetic donor may apply to the court for an order declaring the genetic donor to be the mother of a child who is born in Alberta to a gestational carrier.*

(3) *An application under subsection (2) may not be made more than 14 days after the date of the child’s birth or such longer period as the court allows.*

(4) *The gestational carrier and any other guardian of the person claimed to be the child must, in accordance with the regulations, be served with notice of an application under subsection (2).*

(5) *If*

(a) *the court is satisfied that the child resulted from the fertilization of the genetic donor’s genetic material, and*

(b) *the gestational carrier consents, in the form provided for by the regulations, to the application,*

the court shall make an order declaring the genetic donor to be the sole mother of the child.

(6) *A genetic donor who is declared to be the sole mother of the child under subsection (5) is deemed to be the mother at and from the time of the birth of the child.*

(7) *Any agreement under which a gestational carrier agrees to give birth to a child for the purpose of relinquishing that child to a genetic donor*

(a) *is not enforceable, and*

(b) *may not be used as evidence of consent of the gestational carrier under subsection (5)(b).*

13(1) *In this section, “assisted conception” means the fertilization by a male person’s sperm of a female person’s egg by means other than sexual intercourse and includes fertilization of a female person’s egg outside of her uterus and subsequent implantation of the fertilized egg into her uterus.*

(14) The heading to Part 2 is amended by striking out “Access Enforcement” and substituting “Enforcement of Time with a Child”.

(15) Section 17(1)(c) is repealed and the following is substituted:

- (c) in the case of an application for a guardianship order,
 - (i) each proposed guardian, and
 - (ii) a director under the *Child, Youth and Family Enhancement Act* if
 - (A) the child is in the custody or under the guardianship of a director, or
 - (B) the child comes into the custody or under the guardianship of a director at any time after the application is commenced;

(16) Section 18(1) is amended by adding “except proceedings under section 20” after “this Part”.

(2) A male person is the father of the resulting child if at the time of an assisted conception he was the spouse of or in a relationship of interdependence of some permanence with the female person and

(a) his sperm was used in the assisted conception, even if it was mixed with the sperm of another male person, or

(b) his sperm was not used in the assisted conception, but he consented in advance of the conception to being a parent of the resulting child.

(3) Subject to the exceptions in the regulations, a male person whose sperm is used in an assisted conception involving an egg of a female person who is neither his spouse nor a person with whom he is in a relationship of interdependence of some permanence is not the father of the resulting child and acquires no parental or guardianship rights or responsibilities of any kind as a result of the use of his sperm.

(14) The heading to Part 2 presently reads:

Part 2

*Guardianship, Parenting and Contact Order
and Access Enforcement*

(15) Section 17(1)(c) presently reads:

17(1) Unless the court directs otherwise, the following persons must, in accordance with the regulations, be served with notice of an application under this Part:

(c) in the case of an application for a guardianship order, each proposed guardian, and a director under the Child, Youth and Family Enhancement Act if the child is in or comes into the custody of a director at any time after the application is commenced;

(16) Section 18(1) presently reads:

18(1) In all proceedings under this Part, the court shall take into consideration only the best interests of the child.

(17) Section 19 is repealed and the following is substituted:

Children subject to guardianship

19(1) Every child is subject to guardianship.

(2) Subsection (1) does not apply to a child who has become a spouse or adult interdependent partner.

(3) A person who is or is appointed as a guardian of a child under this Part is a guardian for all purposes of the law of Alberta.

(18) Section 20 is repealed and the following is substituted:

Guardians of child

20(1) This section is subject to any order of the court regarding the guardianship of a child.

(2) Subject to this section, a parent of a child is a guardian of the child if the parent

- (a) has acknowledged that he or she is a parent of the child, and
- (b) has demonstrated an intention to assume the responsibility of a guardian in respect of the child

within one year from either becoming aware of the pregnancy or becoming aware of the birth of the child, whichever is earlier.

(3) For the purposes of this section, a parent has demonstrated an intention to assume the responsibility of a guardian in respect of a child by

- (a) being married to the other parent at the time of the birth of the child,
- (b) being the adult interdependent partner of the other parent at the time of the birth of the child or becoming the adult interdependent partner of the other parent after the birth of the child,

(17) Section 19 presently reads:

19 Every child is subject to guardianship except a child who becomes a spouse or adult interdependent partner.

(18) Section 20 presently reads:

20(1) This section is subject to any order of the court regarding the guardianship of a child.

(2) The mother and the father of a child are both the guardians of the child where

- (a) the mother and the father were married to each other at the time of the birth of the child,*
- (b) the mother and the father were married to each other and the marriage was terminated by
 - (i) a decree of nullity of marriage granted less than 300 days before the birth of the child, or*
 - (ii) a judgment of divorce granted less than 300 days before the birth of the child,**
- (c) the mother and the father married each other after the birth of the child,*
- (d) the mother and the father cohabited with each other for 12 consecutive months during which time the child was born, or*
- (e) the mother and the father were each other's adult interdependent partners at the time of the birth of the child or became each other's adult interdependent partners after the birth of the child.*

(3) Where the mother and the father of a child are not the guardians of the child under subsection (2), the mother and the father are both

- (c) entering into an agreement that meets the requirements of the regulations with the other parent to be a guardian of the child,
- (d) marrying the other parent after the birth of the child,
- (e) cohabiting with the other parent for at least 12 consecutive months during which time the child was born,
- (f) with respect to a female parent, carrying the pregnancy to term,
- (g) with respect to a child born as a result of assisted reproduction, being a parent of the child under section 8.1,
- (h) being married to the other parent by a marriage that, within 300 days before the birth of the child, ended by
 - (i) death,
 - (ii) a decree of nullity, or
 - (iii) a judgment of divorce,
- (i) where the other parent is the birth mother of the child, voluntarily providing or offering to provide reasonable direct or indirect financial or other support, other than pursuant to a court order, for the birth mother during or after her pregnancy,
- (j) voluntarily providing or offering to provide reasonable direct or indirect financial or other support, other than pursuant to a court order, for the child, or
- (k) any other circumstance that a court, on application under subsection (6), finds demonstrates the parent's intention to assume the responsibility of a guardian in respect of the child.

(4) Despite subsection (2), if the pregnancy resulting in the birth of the child was a result of a sexual assault, the parent committing that assault is not eligible to be a guardian of the child under this section.

the guardians of the child until such time as the child begins to usually reside

(a) with one of the parents, at which time that parent becomes the sole guardian of the child, or

(b) with both parents or alternately with each parent for substantially equivalent periods of time, at which time both parents become the guardians of the child.

(4) Despite subsection (3), a parent with whom the child has usually resided for one year is a guardian of the child even if the child no longer resides with that parent.

(5) Despite subsection (3)(a), if both parents so agree in writing, both parents continue to be the guardians of the child even after the child begins to usually reside with only one of them.

(5) For the purposes of subsection (4), sexual assault may be found by a court under subsection (6) to have occurred whether or not a charge has been or could be laid, dismissed or withdrawn and whether or not a conviction has been or could be obtained.

(6) A court may, on application by a parent of a child, a guardian of a child or a child, or on its own motion in a proceeding under this Act or the *Child, Youth and Family Enhancement Act*, make a determination that a parent meets or does not meet the requirements to be a guardian under subsection (2).

(7) In making a determination under subsection (6), the court may identify the powers, responsibilities and entitlements of the guardian, but the court may not vary those things without an application under section 32.

(8) In an application under this section, the court may, for the purposes of this section only, make a finding that a person is a parent, and in doing so, the court shall have regard to Part 1.

(9) Despite anything to the contrary in this section, a person who is a guardian of a child immediately before the coming into force of this subsection does not cease to be a guardian by reason of this section.

(19) Section 22 is amended

(a) by repealing subsection (1) and substituting the following:

Testamentary appointment of guardian

22(1) A guardian who is a parent of a child may appoint a person to be a guardian of the child after the death of that guardian by

- (a) a will, or
- (b) a written document that is signed and dated by the guardian and an attesting witness.

(b) in subsection (3) by striking out “deed or will” and substituting “will or document referred to in subsection (1)”.

(19) Section 22(1) and (3) presently read:

22(1) A guardian who is a parent of the child may by deed or will appoint a person to be guardian of the child after the death of that guardian.

(3) Unless the guardian expressly states otherwise in the deed or will,

(a) the guardianship takes effect immediately on the guardian's death, and

(b) if more than one person is appointed as a guardian under subsection (1), any one of the persons may accept the appointment even if one or more of the other persons appointed decline to accept.

(20) Section 23 is amended

(a) by repealing subsection (3) and substituting the following:

(3) The court on hearing an application for a guardianship order shall consider, and may require the applicant to provide the court with a report prepared by a qualified person respecting, whether it is in the best interests of the child that the applicant be appointed as a guardian of the child, including whether the proposed guardian

- (a) is suitable as a guardian, and
- (b) has the ability and is willing to exercise the powers, responsibilities and entitlements of guardianship in respect of the child.

(b) in subsection (6) by striking out “to act jointly with another guardian of the child” **and substituting** “to act with another guardian of the child in accordance with section 21(2)”;

(c) by adding the following after subsection (8):

(9) For greater certainty, one or more persons may be appointed guardians of a child under this section despite the fact that one or both parents of the child are guardians pursuant to section 20.

(21) Section 31(1) is amended by striking out “deed” and substituting “a document referred to in section 22(1)”.

(22) Section 35 is repealed and the following is substituted:

Contact order

35(1) The court may, on application by any person, including a guardian, make an order providing for contact between a child and a person who is not a guardian.

(2) Subject to subsection (3), a person other than

(20) Section 23(3) and (6) presently read:

(3) The court on hearing an application for a guardianship order shall consider, and may require the applicant to provide the court with a report prepared by a qualified person respecting,

- (a) the suitability of the proposed guardian as a guardian,*
- (b) the ability and willingness of the proposed guardian to exercise the powers, responsibilities and entitlements of guardianship in respect of the child, and*
- (c) whether it is in the best interests of the child that the applicant be appointed as a guardian of the child.*

(6) Subject to the regulations, the court may at any time on its own motion make a guardianship order appointing a guardian of a child, other than a director under the Child, Youth and Family Enhancement Act, to act jointly with another guardian of the child.

(21) Section 31(1) presently reads:

31(1) A guardian appointed by the court or by will or deed may apply to the court for directions concerning a question affecting the child, and the court may make any order in that regard that the court considers appropriate.

(22) Section 35 presently reads:

35(1) The court may, on application by any person other than a guardian, make an order providing for contact between a child and the applicant.

- (2) Subject to subsection (3), a person other than*
 - (a) a parent of a child, or*

- (a) a parent or a guardian of a child, or
- (b) a person standing in the place of a parent

may not make an application under this section without the leave of the court on notice to the guardians.

(3) A grandparent of a child does not require the leave of the court to make an application under this section if

- (a) the guardians are the parents of the child and
 - (i) the guardians are living separate and apart, or
 - (ii) one of the guardians has died,
- and
- (b) the grandparent's contact with the child has been interrupted by
 - (i) the separation of the guardians, or
 - (ii) the death of the guardian.

(4) In determining whether to grant leave under subsection (2), the court shall consider the best interests of the child, including

- (a) the significance of the relationship, if any, between the child and the person for whom contact with the child is proposed, and
- (b) the necessity of making an order to facilitate contact between the child and the person for whom contact with the child is proposed.

(5) Before the court makes a contact order, the court shall satisfy itself that contact between the child and the person for whom contact with the child is proposed is in the best interests of the child, including whether

- (a) the child's physical, psychological or emotional health may be jeopardized if contact between the child and the person for whom contact with the child is proposed is denied, and

(b) a person standing in the place of a parent

may not make an application under this section without the leave of the court on notice to the guardians

(3) A grandparent of a child does not require the leave of the court to make an application under this section if

(a) the guardians are the parents of the child and

(i) the guardians are living separate and apart, or

(ii) one of the guardians has died,

and

(b) the grandparent's contact with the child has been interrupted by

(i) the separation of the guardians, or

(ii) the death of the guardian.

(4) In determining whether to grant leave under subsection (2), the court shall consider

(a) the significance of the relationship, if any, between the child and the applicant, and

(b) the necessity of making an order to facilitate contact between the child and the applicant.

(5) Before the court makes a contact order, the court shall satisfy itself that

(a) contact between the child and the applicant is in the best interests of the child,

(b) the child's physical, psychological or emotional health may be jeopardized if contact between the child and the applicant is denied, and

(c) the guardians' denial of contact between the child and the applicant is unreasonable.

(6) The court may, in a contact order, provide for contact between the child and the applicant in the form of visits or in the form of oral

(b) the guardians' denial of contact between the child and the person for whom contact with the child is proposed is unreasonable.

(6) The court may, in a contact order, provide for contact between the child and the person for whom contact with the child is proposed in the form of visits or in the form of oral or written communication or any other method of communication, and may provide for any related matter as the court considers appropriate.

(23) The following is added after section 45:

Division 5 Effect of Divorce Proceedings

Effect of divorce proceedings

45.1 The jurisdiction of the court to make or vary a guardianship order, parenting order or contact order continues in effect unless and until a court makes an interim or final order with respect to custody or access in divorce proceedings under the *Divorce Act* (Canada).

(24) Section 46(g) is amended by striking out “despite the fact that the marriage is void or voidable”.

(25) Section 47 is amended by adding “except in section 51(5),” **after** “this Division,”.

(26) Section 48 is amended

(a) by repealing subsection (1)(a) and substituting the following:

(a) is the spouse of a parent of the child or is or was in a relationship of interdependence of some permanence with a parent of the child, and

or written communication or any other method of communication, and may provide for any related matter that the court considers appropriate.

(23) Effect of divorce proceedings.

(24) Section 46(g) presently reads:

46 In this Part,

(g) "spouse" includes a former spouse and a party to a marriage despite the fact that the marriage is void or voidable;

(25) Section 47 presently reads:

47 In this Division, "parent" includes a person standing in the place of a parent.

(26) Section 48 presently reads in part:

48(1) A person is standing in the place of a parent if the person

(a) is the spouse of the mother or father of the child or is or was in a relationship of interdependence of some permanence with the mother or father of the child, and

(b) has demonstrated a settled intention to treat the child as the person's own child.

- (b) in subsection (2)(c)(iii) by striking out “father or mother” and substituting “other parent”.**

(27) Section 50 is amended

- (a) in subsection (5) by striking out “section 8” and substituting “Part 1”;**

- (b) by repealing subsection (6) and substituting the following:**

(6) If, on an application under this section, 2 or more persons are alleged to be the biological father of the child and the court

- (a) finds on a balance of probabilities that any one of them might be the biological father, and
- (b) is unable to determine which person is the biological father,

the court may, for the purposes of this Division only, make a finding that each person who in the opinion of the court might be the biological father is a parent and direct each person to pay child support in an amount the court considers appropriate.

(28) Section 51(5) is amended

- (a) by striking out “mother or father” and substituting “parent”;**

- (b) in clause (b) by striking out “the father or mother, or both,” and substituting “either or both parents”.**

(2) In determining whether a person has demonstrated a settled intention to treat the child as the person's own child, the court may consider any or all of the following factors:

- (c) the nature of the child's relationship with the person, including*
 - (i) the child's perception of the person as a parental figure,*
 - (ii) the extent to which the person is involved in the child's care, discipline, education and recreational activities, and*
 - (iii) any continuing contact or attempts at contact between the person and the child if the person is living separate and apart from the child's father or mother;*

(27) Section 50(5) and (6) presently read:

(5) In an application under this section, the court may make a finding that a person is a parent and in doing so, the court shall have regard to section 8, and sections 14 and 15 apply.

(6) If, on an application under this section, 2 or more persons are alleged to be the father of the child and the court

(a) finds on a balance of probabilities that any one of them might be the father, and

(b) is unable to determine which person is the father,

the court may, for the purposes of this Division only, make a finding that each person who in the opinion of the court might be the father is the father and direct each person to pay child support in an amount the court considers appropriate.

(28) Section 51(5) presently reads:

(5) Notwithstanding subsection (1), the obligation of a mother or father to provide child support outweighs the obligation of a person standing in the place of a parent to provide child support and in determining the amount and duration of child support a person standing in the place of a parent must pay, the court shall consider the following:

(29) Section 56 is amended by striking out “Every” and substituting “Subject to this Division, every”.

(30) Section 58(b) is amended by striking out “and”.

- (a) *the amount determined in accordance with the prescribed guidelines;*
- (b) *the amount of child support that is being paid or should be paid by the father or mother, or both, of the child;*
- (c) *the duration of the relationship between the person standing in the place of a parent and the child for whose benefit the order is sought;*
- (d) *any other factor that the court considers relevant.*

(29) Section 56 presently reads:

56 Every spouse or adult interdependent partner has an obligation to provide support for the other spouse or adult interdependent partner.

(30) Section 58 presently reads:

58 In making a spousal or adult interdependent partner support order, the court shall consider

- (a) *the conditions, means, needs and other circumstances of each spouse or adult interdependent partner, including*
 - (i) *the length of time the spouses or adult interdependent partners lived together,*
 - (ii) *the functions performed by each spouse or adult interdependent partner during the period they lived together, and*
 - (iii) *any order or arrangement relating to the support of the spouses or adult interdependent partners,*
- (b) *any legal obligation of the spouse or adult interdependent partner having the support obligation under the order to provide support for any other person, and*
- (c) *the extent to which any other person who is living with the spouse or adult interdependent partner having the support obligation under the order contributes towards household expenses and thereby increases the ability of that spouse or adult interdependent partner to provide support, and*

(31) The heading to Division 3 of Part 3 is amended by adding “Support” after “General”.

(32) Section 66 is amended

(a) by repealing subsection (1)(a) and substituting the following:

(a) “birth mother”, for the purposes of subsection (5), includes an expectant birth mother;

(b) in subsection (5)

(i) **by striking out “father” and substituting “other parent”;**

(ii) **by striking out “mother” and substituting “birth mother”.**

(33) Section 67 is repealed and the following is substituted:

Definitions

67(1) In this section and sections 68 to 74, “family home” means property

(a) that is owned or leased by one or both spouses or adult interdependent partners,

(b) that is or has been occupied by the spouses or adult interdependent partners as their home, and

(c) that is

(d) the extent to which any other person who is living with the spouse or adult interdependent partner who is to receive support under the order contributes towards household expenses and thereby reduces the financial needs of that spouse or adult interdependent partner.

(31) The heading to Division 3 of Part 3 presently reads:

*Division 3
General Matters*

(32) Section 66 presently reads in part:

66(1) In this section,

(a) “mother”, for the purposes of subsection (5), includes an expectant mother;

(5) The court may, in a spousal or adult interdependent partner support order or a child support order, but not in both, direct the father of a child to pay reasonable expenses for the support of the mother of the child

(a) during a period not exceeding 3 months preceding the birth of the child,

(b) at the birth of the child, and

(c) during a period after the birth of the child,

whether or not the child survives the birth.

(33) Section 67 presently reads:

67 In this section and sections 68 to 76,

(a) “household goods” means personal property

(i) that is owned by one or both spouses or adult interdependent partners, and

(ii) that was ordinarily used or enjoyed by one or both spouses or adult interdependent partners or one or more of the children residing in the primary home, for transportation, household, educational, recreational, social or esthetic purposes;

- (i) a house, or part of a house, that is a self-contained dwelling unit,
- (ii) part of business premises used as living accommodation,
- (iii) a mobile home,
- (iv) a residential unit as defined in the *Condominium Property Act*, or
- (v) a suite.

(2) In sections 73 and 74, “household goods” means personal property

- (a) that is owned by one or both spouses or adult interdependent partners, and
- (b) that was ordinarily used or enjoyed by one or both spouses or adult interdependent partners or one or more of the children residing in the family home, for transportation, household, educational, recreational, social or esthetic purposes.

(34) Section 77(3)(c) is repealed.

(35) The following is added after section 80:

Variation of support obligation where payor deceased

80.1(1) This section applies where

- (a) there is a support obligation in a support order or support agreement,

- (b) *“primary home” means property*
- (i) *that is owned or leased by one or both spouses or adult interdependent partners,*
 - (ii) *that is or has been occupied by the spouses or adult interdependent partners as their home, and*
 - (iii) *that is*
 - (A) *a house, or part of a house, that is a self-contained dwelling unit,*
 - (B) *part of business premises used as living accommodation,*
 - (C) *a mobile home,*
 - (D) *a residential unit as defined in the Condominium Property Act, or*
 - (E) *a suite.*

(34) Section 77(3) presently reads:

- (3) *The following persons may make an application under subsection (2):*
- (a) *in the case of a child support order, a person referred to in section 50(1);*
 - (b) *in the case of a spousal or adult interdependent partner support order, a person referred to in section 57(1);*
 - (c) *if the person against whom the support order is made is deceased, the personal representative of that person.*

(35) Variation of support obligation where payor deceased.

- (b) the support order or support agreement binds the estate of the person having the support obligation, and
- (c) the person having the support obligation has died.

(2) The court may, on application by a person referred to in subsection (3), make an order varying or terminating a support order or a support agreement.

(3) The following persons may make an application under subsection (2):

- (a) in the case of a child support order or support agreement, a person referred to in section 50(1);
- (b) in the case of a spousal or adult interdependent partner support order or support agreement, a person referred to in section 57(1);
- (c) the personal representative of the person having the support obligation under the support order or support agreement.

(4) Before the court makes an order under subsection (2) in respect of a child support order or support agreement, the court shall consider

- (a) the prescribed guidelines,
- (b) any changes in the conditions, means, needs or other circumstances of the child, the deceased person and the other parent of the child since the making or last variation of the child support order or support agreement,
- (c) any obligation of the deceased person or his or her estate to provide support to another person under a support order or support agreement,
- (d) any claims or potential claims for maintenance and support of one or more dependants under section 3 of the *Dependants Relief Act*,
- (e) the assets of the deceased's estate that are available to pay for any support obligations,

- (f) the value of any payment or distribution of any property, including life insurance proceeds and any property acquired by survivorship, to which any person is entitled as a result of the death, and
- (g) any other factor the court considers relevant in the circumstances.

(5) Before the court makes an order under subsection (2) in respect of a spousal or adult interdependent partner support order or support agreement, the court shall consider

- (a) any changes in the conditions, means, needs or other circumstances of either spouse or adult interdependent partner since the making or last variation of the spousal or adult interdependent partner support order or support agreement,
- (b) any obligation of the deceased person or his or her estate to provide support to another person under a support order or support agreement,
- (c) any claims or potential claims for maintenance and support of one or more dependants under section 3 of the *Dependants Relief Act*,
- (d) the assets of the deceased's estate that are available to pay for any support obligations,
- (e) the value of any payment or distribution of any property, including life insurance proceeds and any property acquired by survivorship, to which any person is entitled as a result of the death, and
- (f) any other factor the court considers relevant in the circumstances.

(6) In addition to considering the factors set out in subsection (5), the court shall, before making an order under subsection (2) in respect of a spousal or adult interdependent partner support agreement, consider the circumstances referred to in section 62(3).

(7) Sections 51 and 77 do not apply to an application under this section.

(36) Section 81(1) is amended by adding “interim or final” after “makes an”.

(37) Section 107(1) is amended

(a) by adding the following after clause (a.1):

(a.2) respecting an agreement referred to in section 20(3)(c);

(b) by repealing clause (b).

(38) Section 108 is amended by adding the following after subsection (10):

(10.1) For greater certainty, the publication of a report or notice of a hearing under this Act to enforce, vary, suspend or terminate any order or declaration granted under the *Parentage and Maintenance Act* is governed by section 100 of this Act instead of section 23(3) of the *Parentage and Maintenance Act*.

(39) Section 124(3) is amended by striking out “Section 23(c)” and substituting “Section 23(2)(c)”.

(40) In the following provisions, “primary home” is struck out wherever it occurs and “family home” is substituted:

section 68(1)(a), (b) and (c) and (2);
section 69(b) and (e);
section 70;
section 71(1);
section 72;
section 74.

(41) The *Change of Name Act* is amended by repealing section 5(1) and substituting the following:

Change of child’s surname

5(1) Subject to section 7(2)(c) and (4), the surname of a child may be changed only to a surname that

(a) is the surname or maiden surname of a parent,

(36) Section 81(1) presently reads:

81(1) The jurisdiction of the court to make or vary a support order continues in effect unless and until a court makes an order with respect to support in divorce proceedings under the Divorce Act (Canada).

(37) Section 107(1)(b) presently reads:

107(1) The Lieutenant Governor in Council may make regulations
(b) respecting the exceptions for the purpose of section 13(3);

(38) Further transitional provision added for clarification purposes.

(39) Corrects reference to section 23(c) of the School Act. The correct reference is section 23(2)(c).

(40) Substituting “family home” for “primary home”.

(41) Amends RSA 2000 cC-7.

- (b) is the surname of the spouse or adult interdependent partner of a parent, or
- (c) consists of not more than 2 of the surnames referred to in clauses (a) and (b), combined or hyphenated.

(42) The *Child, Youth and Family Enhancement Act* is amended

- (a) in section 38 by striking out “born out of wedlock”;
- (b) in section 72(1) by striking out “in lawful wedlock”.

(43) The *Dependants Relief Act* is amended by repealing section 1(b) and substituting the following:

- (b) “child” includes a child who is in the womb at the time of the deceased’s death and is later born alive;

(44) The *Interpretation Act* is amended in section 28(1)

- (a) by adding the following after clause (p):
 - (p.01) “father” means a parent who is a male person;
- (b) by adding the following after clause (ii):
 - (ii.1) “mother” means a parent who is a female person;

(45) The *Intestate Succession Act* is amended

- (a) in section 1(b) by striking out “, whether born within or outside marriage,”;
- (b) in section 5 by striking out “father and mother” and substituting “parents”.

(46) The *Law of Property Act* is amended in section 21 by striking out “primary home” and substituting “family home”.

(47) The *Perpetuities Act* is amended in section 9(4)

- (a) by striking out “or legitimation”;
- (b) by striking out “by those means” and substituting “by adoption”.

(42) Amends RSA 2000 cC-12.

(43) Amends RSA 2000 cD-10.5.

(44) Amends RSA 2000 cI-8.

(45) Amends RSA 2000 cI-10.

(46) Amends RSA 2000 cL-7.

(47) Amends RSA 2000 cP-5.

(48) The *Reciprocal Enforcement of Judgments Act* is amended in section 1(1)(b)

- (a) by striking out “a putative father” and substituting “an alleged parent”;**
- (b) by adding “birth” before “mother”.**

(49) The *School Act* is amended in section 1(2)(a) by striking out “or” at the end of subclause (i), by adding “or” at the end of subclause (ii) and by adding the following after subclause (ii):

- (iii) the guardian appointed under a will or document referred to in section 22 of the *Family Law Act* whose appointment has taken effect, if the guardian notifies the board in writing of the guardian’s appointment,

(50) The *Victims of Crime Act* is amended by repealing section 1(b).

(51) The *Vital Statistics Act*, RSA 2000 cV-4, is amended

- (a) in section 3**
 - (i) in subsections (2), (6), (7), (8) and (10) by adding “birth” before “mother” wherever it occurs;**
 - (ii) in subsections (2), (3), (5), (6), (7) and (8)(a) by striking out “father” wherever it occurs and substituting “other parent”;**
 - (iii) by striking out “husband and mother” wherever it occurs and substituting “birth mother and her spouse”;**
 - (iv) by striking out “husband’s” wherever it occurs and substituting “spouse’s”;**
 - (v) by striking out “mother’s” wherever it occurs and substituting “birth mother’s”;**
 - (vi) in subsection (5)(a)(iii) by striking out “of the mother” and substituting “of the birth mother”;**
 - (vii) in subsection (5)(b)(i) by striking out “husband and the mother” and substituting “birth mother and her spouse”;**

(48) Amends RSA 2000 cR-6.

(49) Amends RSA 2000 cS-3.

(50) Amends RSA 2000 cV-3.

(51) Amends RSA 2000 cV-4.

- (viii) **in subsection (5) by striking out** “particulars of the husband” **and substituting** “particulars of the spouse”;
 - (ix) **in subsections (6) and (10) by striking out** “husband” **wherever it occurs and substituting** “spouse”;
 - (x) **in subsections (8) and (8.1) by striking out** “acknowledging himself to be the father” **and substituting** “who acknowledges being the other parent”;
- (b) **in section 5(1)**
- (i) **by striking out** “child is legitimated by the intermarriage of the child’s parents” **and substituting** “child’s parents are married to each other”;
 - (ii) **in clause (b) by striking out** “legitimation” **and substituting** “marriage”;
- (c) **in section 9(2)(b) by adding “and” at the end of subclause (i) and by repealing subclauses (ii) and (iii) and substituting the following:**
- (i) as the parents of the adopted person, the adopting parents, together with particulars pertaining to them.
- (d) **in section 30(2)(c) by striking out** “the mother or father” **and substituting** “a parent”.

(52) The *Vital Statistics Act*, SA 2007 cV-4.1, is amended

- (a) **in section 1(1)(a) and (u) by striking out** “mother, as defined in section 1(i)(i)” **and substituting** “birth mother as defined in section 1(b.1)”;
- (b) **in section 3(1) by adding** “birth” **before** “mother”;
- (c) **in section 10(1) by striking out** “and the child is under 12 years of age”;
- (d) **in section 11**
 - (i) **by repealing subsection (1) and substituting the following:**

(52) Amends SA 2007, cV-4.1.

Amendment of parentage on birth registration document

11(1) In this section, “parent” means a parent as defined in section 1(j) of the *Family Law Act*.

- (ii) **in subsection (2)(a) by striking out** “mother and father” **and substituting** “parents”;
- (iii) **in subsection (2)(b) by striking out** “9” **and substituting** “9(8)”;
- (iv) **in subsection (8)(a) by striking out** “the mother or father” **and substituting** “one of the parents of the child”;

(e) in section 14

- (i) **by repealing subsection (1) and substituting the following:**

Registration of surrogate birth

14(1) If the Registrar receives a declaration of the Court of Queen’s Bench made under section 8.2 of the *Family Law Act*

- (a) declaring that a surrogate is not a parent of a child,
- (b) declaring that a person referred to in the declaration is a parent of a child, and
- (c) if applicable, identifying another person to be a parent as a result of the declaration,

the Registrar shall replace the birth registration document with a new birth registration document in accordance with the particulars set out in the declaration of the Court.

- (ii) **in subsection (2) by striking out** “gestational carrier” **and substituting** “surrogate”;

(f) by repealing section 24(2)(h);

(g) by repealing section 82 and substituting the following:

Amends SA 2003 cF-4.5

82 The *Family Law Act* is amended in section 9 by adding the following after subsection (7):

(8) When making a declaration of parentage, the court may, in order to facilitate registration under the *Vital Statistics Act*, order one or more of the following:

- (a) if the child is less than 12 years of age at the time the application is made, that the Registrar of Vital Statistics register or amend the name of the child in accordance with section 10 of the *Vital Statistics Act*;
- (b) that the Registrar of Vital Statistics add the name of a parent to the child's birth registration document;
- (c) that the Registrar of Vital Statistics amend the parentage shown on the child's birth registration document.

(9) In making an order under subsection (8), the court shall consider the child's views and preferences.

(53) The *Wills Act* is amended by repealing section 36 and substituting the following:

References to children, descendants or issue

36(1) Unless a court, in interpreting a will, finds that the testator had a contrary intention, references in the will to the children, descendants or issue of any individual, including the testator, must be interpreted as including

- (a) any child for whom that individual is a parent within the meaning of Part 1 of the *Family Law Act*, and
- (b) any child who is in the womb at the time of the testator's death and is later born alive.

(2) This section applies only in respect of wills made after the coming into force of this subsection.

(54) The *Workers' Compensation Act* is amended in section 1(1)(e) by striking out "a child born out of wedlock,".

(55) The *Legitimacy Act*, RSA 2000 cL-10, is repealed.

(53) Amends RSA 2000 cW-12.

(54) Amends RSA 2000 cW-15.

(55) Repeal.

(56) This section comes into force on Proclamation.

**Interjurisdictional Support
Orders Act**

Amends SA 2002 cl-3.5

2(1) The *Interjurisdictional Support Orders Act* is amended by this section.

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

- (k) “support order” means
 - (i) an order made by a court or an administrative body requiring the payment of support, or
 - (ii) the provisions of a written agreement requiring the payment of support if those provisions are enforceable in the jurisdiction in which the agreement was made as if they were contained in an order of a court of that jurisdiction,

and includes the recalculation by an administrative body of the payment of support for a child if the recalculation is enforceable in the jurisdiction in which the recalculation was made as if it were an order of, or were contained in an order of, a court of that jurisdiction;

(3) The heading preceding section 5 is amended by striking out “Ordinarily” and substituting “Habitually”.

(4) Section 5(1) is repealed and the following is substituted:

Support application

5(1) Where a claimant lives in Alberta and believes that the respondent habitually resides in a reciprocating jurisdiction, the claimant may start a process in Alberta that could result in a support order being made in the reciprocating jurisdiction.

(5) The heading preceding section 8 is amended by striking out “Ordinarily” and substituting “Habitually”.

(56) Coming into force.

Interjurisdictional Support Orders Act

2(1) Amends chapter I-3.5 of the Statutes of Alberta, 2002.

(2) Section 1(k) presently reads:

1 In this Act,

(k) “support order” means a court order or an order made by an administrative body requiring the payment of support and includes the provisions of a written agreement requiring the payment of support if those provisions are enforceable in the jurisdiction in which the agreement was made as if they were contained in an order of a court of that jurisdiction;

(3) The heading preceding section 5 presently reads:

*Division 1
Claimant Ordinarily Resident in Alberta*

(4) Section 5(1) presently reads:

5(1) Where a claimant ordinarily resides in Alberta and believes that the respondent ordinarily resides in a reciprocating jurisdiction, the claimant may start a process in Alberta that could result in a support order being made in the reciprocating jurisdiction.

(5) The heading preceding section 8 presently reads:

(6) Section 10 is amended

(a) in subsection (3) by striking out “18” and substituting “12”;

(b) by adding the following after subsection (3):

(3.1) Subsection (3) as amended by section 2(6)(a) of the *Family Law Statutes Amendment Act, 2010* applies to a direction by the court under subsection (2)(a) made after the coming into force of this subsection.

(7) Section 12(1) is repealed and the following is substituted:

Choice of law

12(1) In determining the entitlement to support for a child, the Alberta court must first apply the law of Alberta, but if the child is not entitled to support under that law, the Alberta court must apply the law of the jurisdiction in which the child habitually resides.

(1.1) Subsection (1) as amended by section 2(7) of the *Family Law Statutes Amendment Act, 2010* applies in respect of a support application heard by the Alberta court after the coming into force of this subsection.

(8) Section 13 is amended by adding the following after subsection (4):

(5) If an order made under this section does not specify the law applied, it is presumed that the Alberta court applied the law of Alberta.

(9) Section 18 is amended by adding the following after subsection (3):

(4) Unless otherwise stated in the order, the duration of the requirement to pay support in an order registered under subsection (1) is governed by the law of the jurisdiction pursuant to which the order was made.

(5) If, in the case of an order filed with the Director of Maintenance Enforcement, the Director cannot in the Director’s opinion determine the law of the jurisdiction pursuant to which the order was made from the material received from the

Division 2

Claimant Ordinarily Resident Outside Alberta

(6) Section 10(3) presently reads:

(3) If the information or documents requested under subsection (2) are not received by the Alberta court within 18 months from the date of the request, the Alberta court may dismiss the support application and terminate an interim support order made under subsection (2)(b).

(7) Section 12(1) presently reads:

12(1) In determining the entitlement to support for a child, the Alberta court must first apply the law of the jurisdiction in which the child ordinarily resides, but if the child is not entitled to support under that law, the Alberta court must apply the law of Alberta.

(8) Section 13 presently reads:

*13(1) On the conclusion of a hearing, the Alberta court may, in respect of a claimant or a child, or both,

court must give reasons for its decision.*

(9) Section 18 presently reads:

18(1) On receiving a copy of the extra-provincial order or foreign order, the clerk of the Alberta court must register it as an order of the court.

(2) On being registered, the extra-provincial order or foreign order

(a) has, from the date it is registered, the same effect as if it were a support order made by an Alberta court, and

(b) may, with respect to arrears accrued before registration and with respect to obligations accruing after registration, be

applicant or the reciprocating jurisdiction, the Director may apply Alberta law to determine the duration of the requirement to pay support.

(10) Section 19(5) is repealed and the following is substituted:

(5) For the purposes of subsection (3)(b)(iii), the Alberta court must consider the foreign court to have had jurisdiction if the Alberta court finds that

- (a) both parties to the foreign order habitually reside in the reciprocating jurisdiction outside Canada, or
- (b) a party who does not habitually reside in the reciprocating jurisdiction outside Canada is, under the conflict-of-law rules of Alberta, subject to the jurisdiction of the court that made the foreign order.

(11) The heading preceding section 24 is amended by striking out “Ordinarily” and substituting “Habitually”.

enforced or varied as provided in this Act whether the order is made before, on or after the day on which this Act comes into force.

(3) An order registered under subsection (1) may be filed with the Director of Maintenance Enforcement and, if so filed, must be enforced in Alberta in accordance with the Maintenance Enforcement Act.

(10) Section 19 presently reads in part:

19(1) After the registration of a foreign order under section 18, the designated authority must, in accordance with the regulations, notify any party to the order believed to ordinarily reside in Alberta of the registration of the order.

(3) On an application under subsection (2), the Alberta court may

(a) confirm the registration, or

(b) set aside the registration if the Alberta court determines that

(i) in the proceeding in which the foreign order was made, a party to the order did not have proper notice or a reasonable opportunity to be heard,

(ii) the foreign order is contrary to public policy in Alberta, or

(iii) the court that made the foreign order did not have jurisdiction to make the order.

(5) For the purposes of subsection (3)(b)(iii), a court has jurisdiction

(a) if both parties to the foreign order ordinarily reside in the reciprocating jurisdiction outside Canada, or

(b) if a party does not ordinarily reside in the reciprocating jurisdiction outside Canada but is subject to the jurisdiction of the court that made the foreign order.

(11) The heading preceding section 24 presently reads:

(12) Section 24(1) is repealed and the following is substituted:

Application to vary support order

24(1) Where an applicant lives in Alberta and believes that the respondent habitually resides in a reciprocating jurisdiction, the applicant may start a process in Alberta that could result in a support variation order being made in the reciprocating jurisdiction.

(13) The heading preceding section 28 is amended by striking out “Ordinarily” and substituting “Habitually”.

(14) Section 30 is amended

(a) in subsection (3) by striking out “18” and substituting “12”;

(b) by adding the following after subsection (3):

(3.1) Subsection (3) as amended by section 2(14)(a) of the *Family Law Statutes Amendment Act, 2010* applies to a direction of the court under subsection (2)(a) made after the coming into force of this subsection.

(15) Section 31(1) and (2) are repealed and the following is substituted:

Choice of law

31(1) In determining the entitlement to receive or continue to receive support for a child, the Alberta court must first apply the law of Alberta, but if the child is not entitled to support under that law, the Alberta court must apply the law of the jurisdiction in which the child habitually resides.

(2) In determining the amount of support for a child, the Alberta court must apply the law of Alberta.

(2.1) For greater certainty, the law of Alberta includes *Alberta Child Support Guidelines* (AR 147/2005).

Division 1
Applicant Ordinarily Resident in Alberta

(12) Section 24(1) presently reads:

24(1) Where an applicant ordinarily resides in Alberta and believes that the respondent ordinarily resides in a reciprocating jurisdiction, the applicant may start a process in Alberta that could result in a support variation order being made in the reciprocating jurisdiction.

(13) The heading preceding section 28 presently reads:

Division 2
Applicant Ordinarily Resident Outside Alberta

(14) Section 30(3) presently reads:

(3) If the information or documents requested under subsection (2) are not received by the Alberta court within 18 months from the date of the request, the Alberta court may dismiss the support variation application and terminate an interim support variation order made under subsection (2)(b).

(15) Section 31 presently reads:

31(1) In determining the entitlement to receive or to continue to receive support for a child, the Alberta court must first apply the law of the jurisdiction in which the child ordinarily resides, but if the child is not entitled to support under that law, the Alberta court must apply the law of Alberta.

(2) In determining the amount of support for a child, the Alberta court must apply the law of the jurisdiction where the person liable to pay the support ordinarily resides.

(3) In determining the entitlement of a party other than a child to receive or to continue to receive support and the amount of that support, the Alberta court must apply the law of Alberta.

(2.2) This section as amended by section 2(15) of the *Family Law Statutes Amendment Act, 2010* applies in respect of a support variation application heard by the Alberta court after the coming into force of this subsection.

(16) Section 35 is repealed and the following is substituted:

Jurisdiction

35(1) This Division applies to the variation of a support order referred to in subsection (2), other than a variation that is commenced by a support variation application under Division 1 or 2.

(2) The Alberta court may, on a party's application and after taking into account any right of a government or agency of a government under section 42, vary

- (a) a support order made or registered in Alberta under Part 2 or under the former Act
 - (i) if both the applicant and the respondent accept the Alberta court's jurisdiction, or
 - (ii) if the respondent habitually resides in Alberta,
- or
- (b) a support order if the applicant habitually resides in Alberta and the respondent
 - (i) no longer habitually resides in a reciprocating jurisdiction, or
 - (ii) habitually resides in a reciprocating jurisdiction that cannot under its laws, or will not, facilitate the determination of a support variation application under Division 1.

(4) If under the law of Alberta a party other than a child is not entitled to receive or to continue to receive support, the Alberta court must apply the law of the jurisdiction in which that party ordinarily resides.

(5) If a party other than a child is neither entitled to receive or to continue to receive support under the law of Alberta nor under the law of the jurisdiction in which that party ordinarily resides, the Alberta court must apply the law of the jurisdiction in which the parties last maintained a common habitual residence.

(16) Section 35 presently reads:

35(1) The Alberta court may, on a party's application and after taking into account any right of a government or agency of a government under section 42, vary a support order registered in Alberta under Part 2 of this Act or under the former Act

- (a) if both the applicant and respondent accept the Alberta court's jurisdiction,*
- (b) if both the applicant and respondent ordinarily reside in Alberta, or*
- (c) if the respondent ordinarily resides in Alberta and the support order is registered by the applicant under Part 2 of this Act or under the former Act.*

(2) For the purposes of varying a support order under this section, the Alberta court must apply the law that would have applied if the registered order had been made in Alberta.

(3) For the purposes of varying a support order under this section, the Alberta court must apply the law that would have applied if the registered order had been made in Alberta.

(17) The following provisions are amended by striking out “ordinarily resides” wherever it occurs and substituting “habitually resides”:

section 5(2)(b);
section 6(2)(b);
section 7(1);
section 9(1) to (3);
section 24(2)(c);
section 25(2)(b);
section 26;
section 27(1);
section 29(1), (2), (3)(c);
section 31(4) and (5);
section 34.

(18) This section comes into force on Proclamation.

Maintenance Enforcement Act

Amends RSA 2000 cM-1

3(1) The *Maintenance Enforcement Act* is amended by this section.

(2) Section 13(1)(a) is amended by adding the following after subclause (viii):

- (ix) any other business, corporation, association or organization specified in the regulations as a business organization for the purpose of this clause;

(17) Change in terminology.

(18) Coming into force.

Maintenance Enforcement Act

3(1) Amends chapter M-1 of the Revised Statutes of Alberta 2000.

(2) Section 13(1)(a) presently reads:

13(1) In this section,

(a) *“business organization” means*

(i) *a bank, credit union, loan corporation, trust corporation, insurance corporation or Alberta Treasury Branches;*

(ii) *a utility;*

(iii) *a municipality;*

(iv) *a professional or occupational association or organization;*

(v) *a non-profit association or organization;*

(3) The following is added after section 14:

Locating creditor

14.1 The Director may, in writing, request any one or more of the following to provide in writing any information in its possession or control respecting the whereabouts of a creditor:

- (a) the Government;
- (b) a Provincial agency or statutory agent as defined in section 12(1);
- (c) a business organization as defined in section 13(1)(a).

(4) Section 15(3) is amended

(a) in clause (a) by striking out “as to the address and location of” and substituting “about”;

(b) by repealing clause (f) and substituting the following:

- (f) if the Director considers it appropriate to do so, provide to any law enforcement agency in Canada any information received by the Director under this Act to assist in an investigation
 - (i) undertaken with a view to a law enforcement proceeding, or
 - (ii) from which a law enforcement proceeding is likely to result;

- (vi) *a business whose primary activities include payday loans and other forms of cheque cashing;*
- (vii) *any employers or former employers of debtors;*
- (viii) *any organization of employees*
 - (A) *that has as one of its objects the regulation of relations between employers and employees, and*
 - (B) *that carries out functions for the purpose of facilitating the employment of those employees;*

(3) Locating creditor.

(4) Section 15(3)(a) and (f) presently read:

(3) Notwithstanding subsection (1), the Director may, subject to the regulations,

- (a) provide information as to the address and location of a debtor or creditor that is in the records of the Director*
 - (i) to a person in a position similar to that of the Director in a reciprocating jurisdiction under the Interjurisdictional Support Orders Act, or*
 - (ii) to a court or a person engaged in the administration of*
 - (A) the Interjurisdictional Support Orders Act, or*
 - (B) legislation similar to the Interjurisdictional Support Orders Act in a reciprocating jurisdiction under the Interjurisdictional Support Orders Act*

- (g) if the Director considers it appropriate to do so, provide personal information to any person where the individual the information is about has identified the information and has consented to the disclosure;
- (h) provide the necessary information to a debtor or a creditor about transactions to an account;
- (i) if the Director considers it appropriate to do so, provide information to the surviving spouse or adult interdependent partner or relative of a deceased creditor or debtor;
- (j) if the Director believes, on reasonable grounds, that the disclosure will avert or minimize an imminent danger to the health or safety of any person.

(5) Section 25.1 is amended

(a) by adding the following after subsection (4):

(4.1) If a creditor or another person on behalf of a creditor makes a payment to the Director in respect of an amount owing under this Act by cheque, pre-authorized withdrawal or money order and

- (a) the cheque or withdrawal is dishonoured on the grounds that no funds or insufficient funds were available, or
- (b) a stop payment order is placed on the cheque, withdrawal or money order,

the Director may require the creditor to pay a charge in an amount set in the regulations.

(b) in subsection (5) by striking out “subsection (4)” and substituting “subsection (4) or (4.1)”.

for the purpose of facilitating the service of an application under the Interjurisdictional Support Orders Act or an application under the Divorce Act to vary a support order;

- (f) if the Director considers it appropriate to do so, provide to a peace officer any information received by the Director under this Act.*

(5) Section 25.1 presently reads:

25.1(1) If

- (a) a debtor fails to pay maintenance under a maintenance order
 - (i) by the date required in the order, or*
 - (ii) in accordance with an arrangement made between the debtor and the Director,**
- (b) a debtor fails to file a statement of finances with the Director pursuant to section 24, or*
- (c) a debtor or another person on behalf of a debtor makes a payment to the Director in respect of maintenance or other amounts owing under this Act by cheque, pre-authorized withdrawal or money order and
 - (i) the cheque or withdrawal is dishonoured on the grounds that no funds or insufficient funds were available, or*
 - (ii) a stop payment order is placed on the cheque, withdrawal or money order,**

the Director may require the debtor to pay a charge in an amount set in the regulations.

(6) The following is added after section 25.1:

Amounts owed by creditors

25.2(1) In this section, “overpayment” means an amount paid to a creditor that should not have been paid because

- (a) the creditor did not give information to the Director that, in the opinion of the Director, was necessary to determine an enforceable amount of maintenance,
- (b) the Director made an accounting error, or
- (c) of some other circumstance provided for in the regulations.

(2) Where a creditor owes a fee or charge imposed under this Act or the child support recalculation program under the *Family Law Act*, the Director may enforce the payment by the creditor of the amount of the fee and charge owing by the creditor in the same manner as a maintenance order may be enforced against a debtor under this Act.

(3) Where the Director determines that an overpayment has been made, the Director may enforce the repayment by the creditor of the amount of the overpayment in the same manner as a maintenance order may be enforced against a debtor under this Act.

(2) A charge payable under subsection (1) may be collected in the same manner as maintenance may be enforced under this Act.

(3) A debtor who is required to pay a charge under subsection (1) for failing to file a statement of finances with the Director may not be charged under section 26 with an offence in respect of that contravention.

(4) If a creditor under a maintenance order filed with the Director receives a payment directly from the debtor and fails to report that payment to the Director in accordance with the regulations, the Director may require the creditor to pay a charge in an amount set in the regulations.

(5) Notwithstanding section 36(3), a charge payable under subsection (4) may be deducted from the amount of maintenance collected by the Director on behalf of the creditor.

(6) Overpayment to creditors and updating contact information.

Updating contact information

25.3(1) A debtor shall, in the prescribed manner, immediately notify the Director of any change to the debtor's

- (a) residential address, telephone number, e-mail address and other contact information required by the regulations, and
- (b) employment, income and other financial information required by the regulations.

(2) A creditor shall, in the prescribed manner, immediately notify the Director of any change to the creditor's residential address, telephone number, e-mail address and other contact information required by the regulations.

(7) Section 32 is repealed and the following is substituted:

Stay of enforcement

32(1) If the Director has issued a support deduction notice or a creditor has obtained an order for payment under section 19, the debtor may apply to the Court of Queen's Bench for a stay of those proceedings, and a copy of the application must be served by the applicant on the Director and the creditor.

(2) A stay of enforcement may be granted under this section with respect to the issuance of a support deduction notice only if the Court is satisfied that

- (a) the debtor has made attempts to establish a payment arrangement with the Director and there was a valid reason why the debtor was unable to enter into an arrangement, and
- (b) the debtor has a valid reason for not paying arrears or periodic maintenance payments during the period the stay of enforcement is in effect.

(3) Unless the Court provides otherwise, a stay of enforcement

- (a) applies to the enforcement of arrears but does not apply to the enforcement of periodic maintenance payments from the time the stay is entered with the Court,

(7) Section 32 presently reads:

32(1) If the Director has issued a support deduction notice or a creditor has obtained an order for payment under section 19, the debtor may apply by notice of motion to the Court of Queen's Bench for an order suspending those proceedings on any condition the Court considers appropriate for a period specified in the order, not to exceed the periods provided for under subsections (5) and (6).

(2) An order granted under this section suspending the proceedings referred to in subsection (1) may be made only if the Court is satisfied that the debtor is unable for valid reasons to make the payments required under the maintenance order.

(3) Notwithstanding subsection (1), an order granted under this section does not suspend or affect

(a) any enforcement proceedings respecting the payment of maintenance carried out in relation to a federal enactment;

(b) any registration or filing made by the Director under the Land Titles Act or in the Personal Property Registry;

(c) any proceeding or action taken under section 22.

(4) An order may not be granted by a court under any other enactment or otherwise that has the effect of suspending or staying any proceeding, matter or action referred to in subsection (3).

- (b) does not stay enforcement against lump sum or non-periodic amounts that are payable to the debtor, and
- (c) terminates 9 months after it is entered with the Court.

(4) Notwithstanding subsection (1), a stay of enforcement does not stay or affect

- (a) any enforcement proceedings respecting the payment of maintenance carried out in relation to a federal enactment,
- (b) any registration or filing made by the Director under the *Land Titles Act* or in the Personal Property Registry, or
- (c) any proceeding or action taken under section 22.

(5) An order may not be granted by a court under any other enactment or otherwise that has the effect of staying a matter referred to in subsection (1) or suspending or staying any proceeding, matter or action referred to in subsection (4).

(6) If a stay of enforcement is granted under this section, the Court of Queen's Bench may direct that any money or any portion of the money paid into the Court or to the Director in respect of the proceedings that were stayed and that is still in the possession of or under the control of the Court or the Director, as the case may be, be paid to the debtor.

(8) Section 45 is amended by adding the following after clause (b):

- (b.1) specifying a business, corporation, association or organization as a business organization for the purpose of section 13(1)(a);
- (b.2) respecting other circumstances for the purpose of section 25.2(1)(c);
- (b.3) respecting the manner in which notification of any change in information of a debtor or creditor referred to in section 25.3 is to be made;
- (b.4) respecting other contact information and other financial information for the purpose of section 25.3;

(5) An order granted pursuant to an application made under subsection (1) suspending the proceedings referred to in subsection (1) expires at the conclusion of 3 months from the day the order is entered with the Court or of any shorter period provided for in the order.

(6) Notwithstanding subsection (5), if within the 3-month period or shorter period referred to in subsection (5) the debtor applies to a court in Alberta to vary the maintenance order referred to in subsection (2), the Court of Queen's Bench may make an order suspending the proceedings referred to in subsection (1) for only one further period of not more than 6 months.

(7) Subject to subsections (5) and (6), in making an order suspending any proceedings referred to in subsection (1), the Court of Queen's Bench shall state in the order the period of time or the circumstances under which the suspension of the proceedings remains in effect.

(8) If an order is made under this section, the Court of Queen's Bench may direct that any money or any portion of the money paid into the Court or to the Director in respect of the proceedings that were suspended and that is still in the possession of or under the control of the Court or the Director, as the case may be, be paid to the debtor.

(9) Notice of any application made under subsection (1) or (6) must be served by the applicant on the Director.

(8) Section 45 presently reads in part:

45 The Lieutenant Governor in Council may make regulations

- (a) respecting the filing and refiling of maintenance orders with the Director;*
- (b) respecting support deduction notices;*

(9) This section, except subsections (1), (2), (3) and (4), comes into force on Proclamation.

(9) Coming into force.

