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LEGAL SUPPLEMENT — C

BILL No. 5 of 2009

Tuesday 27th January, 2009

PARLIAMENT OFFICE
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The following Bill which will be introduced in the National Assembly is published for general information.

S.E. Isaacs,
Clerk of the National Assembly.



GUYANA

BILL No. 5 of 2009

STATUS OF CHILDREN BILL 2009

ARRANGEMENT OF SECTIONS

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A BILL
Intituled

AN ACT to repeal and re-enact the provisions of the Children Born Out of Wedlock (Removal of Discrimination) Act 1983; to provide for presumptions of parentage and parentage testing procedures; to effect reform of the law generally and for related purposes.

A.D. 2009

Enacted by the Parliament of Guyana:-

PART I
PRELIMINARY

Short title.

1. This Act may be cited as the Status of Children Act 2009.

Interpretation.

2. (1) In this Act, unless the context otherwise requires –

"body sample" includes one or more of the following –

- (a) a blood sample;
- (b) a tissue sample;
- (c) a sperm sample;
- (d) other samples of material obtained from the human body;

"child" means a person whether born in or out of wedlock and includes a person who is under the age of eighteen years;

"Court" means the High Court of the Supreme Court of Judicature;

"declaration of parentage" means a declaration under section 21 or 22;

"extra-territorial declaration" means an order in the nature of a declaration providing for motherhood or fatherhood made by a Court outside of Guyana;

"extra-territorial finding of paternity or maternity" means a judicial finding of paternity or maternity that is made incidentally in the determination of another issue by a Court outside of Guyana and that is not an extra-territorial declaration;

"fertilisation procedure" means –

- (a) the artificial insemination of a woman;
- (b) the procedure of transferring to a woman's body an ovum (whether or not produced by her) fertilised outside her body;
- (c) the procedure of transferring to a woman's body an ovum (whether or not produced by her) or both the ovum and sperm to enable fertilisation of the ovum to occur in her body; or
- (d) any other procedure that assists with fertilisation in a woman;

"husband" means the man to whom a woman is legally married;

"parentage testing order" means Deoxyribonucleic acid testing or any other procedure;

"prescribed overseas jurisdiction" means a country or part of a country, outside of Guyana that is listed in the regulations;

"Registrar" means the Registrar of the Court;

"wife" means the woman to whom a man is legally married;

"21st May, 1983" means the date on which the Children Born out of Wedlock (Removal of Discrimination) Act 1983 commenced.

(2) For the purposes of sections 13 and 16 –

- (a) where a man and a woman go through a marriage with each other with at least one of them doing so in good faith and they cohabit, they shall be considered to be married during the period they cohabit, notwithstanding that the marriage is void;
- (b) where a voidable marriage is decreed a nullity the man and woman shall be considered to be married until the date of the decree of nullity.

(3) A reference in this or any other Act –

- (a) to a child born out of wedlock is a reference to a child whose father and mother were not married to each other at the time of birth of the child and who have not subsequently married each other; and
- (b) to a child born in wedlock is a reference to a child whose father and mother were married to each other at the time of birth of the child.

Application of Act.

3. (1) Save as otherwise provided in this Act, this Act applies to a child –

- (a) whether born before or after the commencement of this Act;
- (b) whether born in Guyana or not; and
- (c) whether or not either of the child's parents has ever been domiciled in Guyana.

(2) Existing laws shall be construed with such adaptations as may be necessary to bring them into conformity with this Act.

(3) This Act shall not affect rights vested before its commencement.

PART II

STATUS OF CHILDREN AND CONSTRUCTION OF INSTRUMENTS

All children of equal status.

4. (1) The status and rights, privileges and obligations of a child born out of wedlock are identical in all respects to those of a child born in wedlock.

(2) This section applies subject to sections 6 and 7.

Child of natural parents.

5. (1) A person is the child of his natural parents, and his status as their child is independent of whether he is born in or out of wedlock.

No. of 2007.

(2) Where there is an adoption order under the laws dealing with adoption of children, the child is in law the child of the adopter as if the adopter were a natural parent.

(3) All distinctions between the status of a child born in wedlock and a child born out of wedlock are abolished and the relationship of parent and child shall be determined in accordance with this section and section 15.

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

Construction of instruments made on or before 21st May, 1983.

No. 12 of 1983.

6. (1) This section applies to the following dispositions only –

- (a) dispositions made *inter vivos* on or after 21st May, 1983, being the date on which the Children Born out of Wedlock (Removal of Discrimination) Act commenced;
- (b) dispositions made by will or codicil executed before, on or after 21st May, 1983 by a person who dies after that date.

(2) Unless a contrary intention appears, in any disposition in which this section applies –

- (a) a reference (however expressed) to a child of a person includes a reference to a child born out of wedlock of whom that person is a parent; and
- (b) a reference (however expressed) to any person or persons related to another person (other than a parent or child) includes a reference to anyone who is so related in fact, or some other person through whom the relationship is traced, is or was a child born out of wedlock.

(3) The use of any of the following words (or of any word or words having the same or a similar meaning) does not of itself indicate a contrary intention for the purposes of subsection (2) –

- (a) the words "legitimate" or "lawful" when used with reference to the child or children of a person or persons related to another person in some other way;
- (b) the words "married", "husband" or "wife" when used with reference to the parent or parents of a person.

(4) Without limiting any other provision of this Act, any rule of law that a disposition in favour of a child born out of wedlock not conceived or born when the disposition takes effect is void as being contrary to public policy, is abolished in respect of any disposition to which this section applies.

Construction of other dispositions.
No. 12 of 1983.

7. (1) The following dispositions are to be construed as if the Children Born out of Wedlock (Removal of Discrimination) Act and this Act had not been enacted –

- (a) dispositions made *inter vivos* before the 21st May, 1983; and
- (b) dispositions made by will or codicil executed by a person who died before the 21st May, 1983.

(2) Where any disposition referred to in subsection (1) contains a special power of appointment, nothing in this Act –

- (a) extends the class of persons in whose favour the appointment may be made; or
- (b) causes the exercise of the power to be construed so as to include any person who is not a member of that class.

Description in terms of relationship by blood or marriage.

8. A reference to a person or group or class of persons described in terms of relationship to another person by blood or marriage shall be construed to refer to and include a person who comes within the description by reason of the relationship of parent and child as provided for in this Act.

Rights on intestacy.

9. (1) This section applies to rights under the rules of intestacy of persons dying on or after 21st May, 1983.

(2) Where any relative of a child born out of wedlock (including a parent of the child) dies intestate in respect of all or any of the relative's movable or immovable property, the child (or any of the child's issue if the child is dead) is entitled to take any interest in that property that the child (or the child's issue) would have been entitled to if the child's parents had been married to each other when the child was born.

(3) Where a child born out of wedlock dies intestate in respect of all or any of the child's movable or immovable property, a relative of the child (including a parent of the child) is entitled to take any interest in that property that the relative would have been entitled to if the parents of the child had been married to each other when the child was born.

PART III ESTABLISHMENT OF PARENTAGE

Presumption of paternity arising from marriage.

10. A man is presumed to be the father of a child where –
- (a) he was married to the mother of the child at the time of the child's birth;
 - (b) he was married to the mother of the child by a marriage that was terminated by –
 - (i) death;
 - (ii) decree of nullity; or
 - (iii) divorce where the decree absolute of divorce was granted, within three hundred days, or a longer period as the Court may allow, before the birth of the child;
 - (c) he married the mother of the child after the child's birth and acknowledges that he is the father of the child.

Presumption of paternity arising from acknowledgements.

11. (1) A man is presumed to be the father of a child where –
- (a) under this Act or any other law of Guyana or law of a prescribed overseas jurisdiction the man executes a formal acknowledgement of paternity or any other instrument acknowledging that he is the father of the child; and
 - (b) the instrument has not been annulled or otherwise set aside.

(2) This section extends to instruments executed before the commencement of this Act.

Presumption of paternity arising from cohabitation.

12. A man is presumed to be the father of a child where he was cohabiting with the mother of the child in a relationship of some permanence at any time during the period beginning not earlier than three hundred days and ending not less than one hundred and forty days before the birth of the child.

Presumption of paternity arising from registration of birth.

13. A person is presumed to be a child's parent if the person's name is entered as the mother or father in the register of births or a register of information on parentage kept under a law of a foreign country.

Presumption of parentage arising from findings of Courts.

14. (1) A person is presumed to be a child's parent if –

(a) while the person is alive or after the person's death, a Court of competent jurisdiction has –

- (i) found expressly that the person is the parent of the child; or
- (ii) made a finding that it could not have made unless the person was the child's parent; and

(b) the finding has not been altered, set aside or reversed.

(2) A presumption arising under subsection (1) is irrebuttable.

(3) In this section, a reference to a finding of a Court of competent jurisdiction includes –

- (a) a declaration of parentage;
- (b) a finding whether made before or after the commencement of this section; and
- (c) a finding of a Court of a prescribed overseas jurisdiction.

Presumption of parentage arising from use of fertilization procedure.

15. (1) Where a woman becomes pregnant as a result of undergoing a fertilisation procedure –

(a) her husband or the man with whom she is cohabiting is presumed to be the father of any child born as a result of the pregnancy; and

(b) the woman is presumed to be the mother of any child born as a result of the pregnancy.

(2) For the purposes of subsection (1) (a), the presumption applies –

(a) whether or not the husband or the man with whom she is cohabiting provided any or all of the sperm used in the fertilisation procedure; and

(b) only if the husband or the man with whom she is cohabiting consented to the fertilisation procedure.

(3) For the purposes of subsection (1) (b), the presumption applies whether or not the woman provided the ovum used in the fertilisation procedure.

(4) Where a woman becomes pregnant by means of a fertilisation procedure using any sperm obtained from a man, that man shall be presumed to be the father of any child born as a result of the pregnancy where his express consent in writing to be the father has been given to the woman or to the entity conducting the fertilisation procedure.

(5) Where a woman becomes pregnant by means of a fertilisation procedure using an ovum obtained from another woman, that other woman is presumed not to be the mother of any child born as a result of the pregnancy.

(6) Where a woman is impregnated with the embryo that is the result of a fertilisation procedure using ovum and sperm obtained from other persons under any agreement of surrogacy, that woman is presumed not to be the mother of the child born as a result of the pregnancy under these circumstances.

(7) In this section a reference to a woman includes a woman -

- (a) who is married;
- (b) cohabiting with a man as his wife although not married to him; or
- (c) in a casual relationship.

Rebuttal of
parentage
presumptions.

16. (1) A presumption arising under this Act or a paternity or a parentage presumption arising under any law that is rebuttable, is rebuttable by proof on the balance of probabilities.

(2) Every presumption arising under this Part, save and except a presumption arising under section 14 (1) or 15 (1) (b), (4), (5) or (6), is a rebuttable presumption.

Conflicting
rebuttable
parentage
presumptions.

17. Where two or more rebuttable presumptions referred to in section 16 conflict with each other and are not rebutted in any proceedings, the presumption that appears to the Court to be more or most likely prevails.

Conflicts involving
irrebuttable
parentage
presumptions.

18. (1) Where two or more irrebuttable presumptions arising under this Act conflict with each other, the presumption that appears to the Court to be more or most likely prevails.

(2) Where an irrebuttable presumption arising under this Act conflicts with a rebuttable presumption arising under this Part that is not rebutted in any proceedings, the irrebuttable presumption prevails over the rebuttable presumption.

Acknowledgement
of paternity.

19. (1) A formal acknowledgement of paternity shall not be effective unless –

- (a) made in a prescribed form;
- (b) signed by the man acknowledging that he is the father and countersigned by the mother of the child;

- (c) a copy is filed in the office of the Registrar General of births and deaths; and
- (d) it complies with the other provisions of this section.

(2) An acknowledgement for the purposes of subsection (1) shall be a statutory declaration made –

- (a) in the case of a person in Guyana, before a Magistrate, Justice of the Peace, Notary Public, Commissioner authorised to administer oaths to affidavits or other officer authorised by law to administer an oath under the Statutory Declarations Act;
- (b) in the case of a person who is not in Guyana, before a Guyana diplomatic representative, a consular officer, a Notary Public, or some other person lawfully authorised to administer oaths in the country or place where the declaration is made.

(3) Acknowledgement of paternity may occur where a person consistently performs certain prescribed acts with respect to a child or has in writing confirmed his parentage of that child.

Annulment of paternity acknowledgements.

20. (1) The Court may annul a formal acknowledgement of paternity on the grounds of fraud or mistake on the application of or on behalf of –

- (a) the person who executed the acknowledgement;
- (b) the mother of the child to whom the acknowledgement relates;
- (c) the child to whom the acknowledgement relates;
- (d) the Registrar General of births and deaths;
- (e) any other person who may be affected by the result of the application.

Cap. 44:01.

(2) Where the Court makes an annulment order, the Registrar shall immediately cause a copy of the order to be transmitted to the Registrar General of births and deaths to be dealt with under the Registration of Births and Deaths Act.

Declaration of motherhood.

21. (1) A person with an interest may apply to the Court for a declaration that a woman is or is not in law the mother of a child.

(2) Where the Court finds on the balance of probabilities that a woman is or is not the mother of a child, the Court may make a declaration to that effect.

(3) Where circumstances exist that give rise under this Part to conflicting rebuttable presumptions of motherhood and a Court finds on a balance of probabilities that a woman is the mother of the child, the Court may make a declaration to that effect.

Declaration of fatherhood.

22. (1) A person with an interest may apply to the Court for a declaration that a man is or is not in law the father of a child.

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(2) Where the Court finds on the balance of probabilities that a man is or is not the father of a child, the Court may make a declaration to that effect.

(3) Where the Court finds that a presumption of paternity under this Part exists, the Court shall make a declaration confirming that the paternity is recognised in law unless it is established on the balance of probabilities that the presumed father is not the father of the child.

(4) Where circumstances exist that give rise under this Part to conflicting rebuttable presumptions of fatherhood and a Court finds on a balance of probabilities that a man is the father of the child, the Court may make a declaration to that effect.

Provisions relating to sections 21 and 22.

23. (1) A declaration made under sections 21 and 22 may be made –

- (a) whether or not the parent of the child (or both) are alive; or
- (b) whether or not the child has been born.

(2) Where a declaration of parentage is made under section 21 or 22, the Registrar shall immediately cause a copy of the declaration to be transmitted to the Registrar General of births and deaths, to be dealt with under the Registration of Births and Deaths Act.

Cap. 44:01

Person entitled to apply.

24. (1) For the purpose of bringing an application under section 21 or 22 for a declaration, the following persons shall be presumed to have an interest –

(a) a person who alleges that the relationship of parent and child exists between his child and a named person;

(b) a person who alleges an interest that the relationship of parent and child exists between the person and another named or identified person;

(c) the Registrar General of births and deaths when seeking a determination that the relationship of parent and child exists between a named person and another named or identified person;

(d) a person prescribed by regulations who seeks a determination that the relationship of parent and child exists between a named person and another named or identified person;

(e) a person who may be affected by the result who seeks a determination that the relationship of parent and child exists between a named person and another named or identified person.

(2) An application may be brought on behalf of a child by a person acting on his behalf.

Notice of application for declaration.

25. (1) Unless the Court otherwise directs, notice of an application under section 21 or 22 shall be given to –

(a) the person alleged to be the child concerned or a person prescribed to be served on that child's behalf;

(b) the person alleged to be the parent of the child;

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- (c) a person –
 - (i) who, within the meaning of the law relating to Custody, Access, Guardianship and Maintenance, has parental responsibility for the child;
 - (ii) who is the guardian of the child;
 - (iii) who has *de facto* custody of the child;
- (d) the committee or guardian of a mentally incompetent person or in the absence of such a committee or guardian, the Attorney-General;
- (e) any other person claiming to be parent of the child.

Order to be recognised.

(2) Upon application by a person who alleges an interest, the Court shall consider whether or not a person should receive notice and may direct that notice be given to a person who in its opinion should have an opportunity to be heard.

26. (1) A declaration made under section 21 or 22 shall be recognised for all purposes.

(2) Notwithstanding subsection (1), the Court may make an order annulling a declaration made under section 21 or 22 on the application of any person who applied or could have applied for the making of the declaration, if it appears to the Court –

- (a) that new facts or circumstances have arisen that have not previously been disclosed to the Court; and
- (b) those facts could not, by the exercise of reasonable diligence, have previously been disclosed to the Court.

(3) On the making of an order under subsection (2), the declaration ceases to have effect from that time.

(4) Section 25 applies for the purposes of notification of an application under subsection (2).

(5) Subject to subsection (6), an annulment order made under subsection (2) does not affect –

- (a) rights and duties which have been exercised and observed; and
- (b) interest in property which has been distributed as a result of the declaration, before its annulment.

Cap. 44:01

Admissibility of Court findings and paternity acknowledgements.

(6) Where a declaration is annulled under subsection (2), the Registrar shall immediately cause a copy of the order annulling the declaration to be transmitted to the Registrar General of births and deaths to be dealt with under the Registration of Birth and Deaths Act.

27. (1) Where in any proceedings in which the parentage of a child is in issue and a presumption under section 11 or 14 is relied on, the finding or the acknowledgement giving rise to the presumption is admissible in evidence in those

proceedings.

(2) Where in any proceedings in which the parentage of a child is in issue, the Court before which the proceedings are taken may admit any evidence that tends to establish that a person is or is not a parent of the child.

(3) The power of the Court under subsection (2) may be exercised even though the evidence is not required to be admitted by virtue of subsection (1).

(4) Where the Court makes an order under section 26 (2), it may, if it thinks that it would be just and equitable to do so, make such ancillary orders (including orders varying property rights) as may be necessary to place any person affected by the annulment of the declaration, as far as practicable, in the same position as the person would have been in if the declaration had not been made.

Conduct of
hearings.

28. (1) The hearing of an application for –

(a) a declaration of parentage;

(b) an order to annul a declaration of parentage,

shall be in *camera*.

(2) The Court may adjourn the hearing of any application under subsection (1) to give a person the opportunity to be present or to be represented at the hearing if the Court considers that the person's interests would be affected by a declaration or an order annulling a declaration of parentage.

Offence to publish
name, particulars,
etc.

29. A person who publishes –

(a) the name; or

(b) the particulars relating to the identity,

of a person by or in relation to whom an application for a declaration of parentage or an order to annul a declaration of parentage is brought commits an offence and is liable on summary conviction to a fine of two hundred thousand dollars and to imprisonment for six months.

Parentage testing
procedures.

30. (1) In any proceedings where the parentage of a child is in issue, the Court may make an order requiring a parentage testing procedure to be carried out for the purpose of obtaining information to assist in determining the parentage of the child.

(2) An order made under subsection (1) may direct that the parentage testing procedure be carried out on –

(a) the child;

(b) a person alleged to be a parent of the child;

(c) any other person where the Court is of the opinion that the information that could be obtained if the parentage testing procedure were to be carried out in relation to the person might assist in determining the parentage of the child.

(3) A parentage testing order may be made subject to the terms and conditions as directed by the Court.

(4) The Court may make a parentage testing order –

- (a) on the application of –
 - (i) a party to the proceedings;
 - (ii) the Public Trustee;
 - (iii) the Attorney General;
 - (iv) the Registrar General of births and deaths;
 - (v) the person representing the child under an order made under section 45; or
- (b) of its own motion.

(5) When considering whether to make a parentage testing order, the Court shall –

- (a) consider and determine any objection made by a party to the proceedings on account of medical, religious or other grounds; and

(b) where the Court determines that an objection is valid, the Court shall take the objection into account in deciding whether to make the order.

Consequential orders.

31. (1) The Court may, upon making a parentage testing order, make such other orders as it considers necessary or desirable-

- (a) to enable the parentage testing procedure to be carried out; or
- (b) to make the parentage testing procedure more effective or reliable.

(2) Without limiting the generality of subsection (1), the Court may make any of the following orders –

- (a) an order requiring a person named in the order to submit to a medical procedure;
- (b) an order requiring a person to provide a body sample;
- (c) an order requiring a person to surrender a body sample previously obtained from that person or from another person that has been stored or otherwise preserved;
- (d) an order requiring a person to furnish information relevant to that person's medical or family history.

(3) An order under subsection (2) (c) may be made whether or not the person whose body sample is stored or preserved is alive at the time the order is made.

(4) In deciding whether to make an order under this section, the Court

shall –

- Order as to costs.
- (a) consider and determine any objection made by a party to the proceedings on account of medical, religious or other grounds; and
 - (b) if it determines that an objection is valid, take the objection into account in deciding whether to make the order.

32. (1) The Court may make such orders as to cost as it considers just in relation to costs incurred for –

- Order in regards to medical procedure, etc.
- (a) the carrying out of the parentage testing procedure or other orders made by the Court in relation to the parentage testing procedure;
 - (b) the preparation of reports in relation to the information obtained as a result of the carrying out of the parentage testing procedure.

33. (1) This section applies where a parentage testing order or an order under section 31 requires a medical procedure or other act to be carried out in relation to a child.

(2) No parentage testing procedure or other act shall be carried out in relation to a child unless –

- (a) a parent of the child;
 - (b) a person with parental responsibility for the child; or
 - (c) a guardian of the child,
- consents to the medical procedure or other act being carried out.

(3) Nothing in subsection (2) operates to prevent a child of or over the age of sixteen years consenting to the medical procedure or act being carried out on his own behalf.

(4) Where a child of or over the age of sixteen withholds consent to the medical procedure or the act being carried out, the consent of any or all of the persons referred to in subsection (2) shall be ineffective for the purpose of the carrying out of the medical procedure or act.

No liability where consent given.

34. (1) Where –

- (a) a parent of a child;
- (b) a person with parental responsibility for the child; or
- (c) a guardian of a child,

consents to a medical procedure or other act being carried out in relation to the child under an order made under section 30 or 31, a person who carries out, or assists in the carrying out of, the medical procedure or act is not liable to any civil or criminal action

in relation to the proper carrying out of the medical procedure or act.

(2) Nothing in subsection (1) affects any liability of a person for an act done negligently, or negligently omitted to be done, in relation to the carrying out of a medical procedure or act.

Non-compliance with percentage testing or other orders.

35. Where a person, including a child of or over the age of sixteen years, fails or refuses to consent to the medical procedure or act being carried out, the Court may draw such inferences from the failure or refusal to consent as appear just in the circumstances.

Reports on parentage testing procedure.

36. (1) A report made in accordance with regulations made under section 48 (2) (b) may be received in evidence in any proceedings under this Act.

(2) Where a report is received in evidence in any proceedings under this Act, the Court may make an order requiring –

- (a) the person who made the report;
- (b) any person whose evidence may be relevant in relation to the report,

to appear before the Court and give evidence in relation to the report.

(3) An order under subsection (2) may be made by the Court –

- (a) on the application of –
 - (i) a party to the proceedings;
 - (ii) the Public Trustee;
 - (iii) the Attorney-General;
 - (iv) a person representing a child under an order made under section 45; or
- (b) on its own motion.

Personating, proffering, etc. another for a parentage testing procedures.

37. A person who –

- (a) undergoes a parentage testing procedure under a parentage testing order or other procedure ordered under section 31 for the purpose of impersonating the person who is required by the order to undergo the procedure; or
- (b) proffers a child for the purpose of undergoing a parentage testing procedure under a parentage testing order or other procedure ordered under section 31 knowing that the child is not the child named in the order,

Inspection of register.

commits an offence and is liable on summary conviction to a fine of two hundred thousand dollars and to imprisonment for six months.

38. On application and on satisfying the Registrar General of births and

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deaths that the information is not to be used for an unlawful or improper purpose, a person may inspect and obtain from the Registrar General a certified copy of –

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Extra-territorial
declaration.

- (a) a formal acknowledgement of paternity filed under section 19;
or
- (b) a certificate of registration of birth made under the Registration of Births and Deaths Act.

39. An extra-territorial declaration shall be recognised and have the same effect as if made in Guyana where –

Exceptions to
section 39.

- (a) at the time the proceedings were commenced or the order was made, either parent was domiciled in Guyana;
- (b) the court that made the order would have had jurisdiction to do so under the laws of Guyana;
- (c) the court that made the order is a prescribed overseas jurisdiction;
- (d) the child was habitually resident in the territorial jurisdiction of the court making the order at the time the proceedings were commenced or the order was made; or
- (e) the child or either parent had a real and substantial connection with the territorial jurisdiction in which the order was made at the time the proceedings were started or the order was made.

40. The Court may decline to recognise an extra-territorial declaration and may make a declaration under this Act where –

Filing of extra-
territorial
declarations.

- (a) new evidence that was not available at the hearing becomes available; or
- (b) the Court is satisfied that the extra-territorial declaration was obtained by fraud or duress.

41. (1) A copy of an extra-territorial declaration, certified under the seal of the court that made it, may be filed in the office of the Registrar General of births and deaths.

(2) A copy of extra-territorial declaration may not be filed under subsection (1) unless it is accompanied by –

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- (a) a sworn statement by a lawyer or public official lawfully authorised in the jurisdiction in which the order was made as to the effect of the declaration in that jurisdiction; and
- (b) where necessary, a translation verified by affidavit.

(3) Subject to subsection (4) upon the filing of an extra-territorial declaration under this section, the Registrar General shall, in accordance with the Registration of Births and Deaths Act, amend the register accordingly.

(4) Where an extra-territorial declaration contradicts paternity found by an

order already filed with the Registrar General of births and deaths, the most recent order in time shall prevail.

Admissibility
extra-territorial
declaration.

(5) For the purposes of this section, the Registrar General of births and deaths is not liable for consequences resulting from filing of material that is apparently regular on its face for the purposes of this section.

Extra-territorial
paternity findings.

42. A copy of an extra-territorial declaration or finding certified under the seal of the court that made it and accompanied by the documents specified in section 41 (2), is admissible in evidence without proof of the signatures or office of a person certifying the declaration.

Admissibility of
extra-territorial
finding of
paternity.

43. An extra-territorial finding of paternity or maternity that is made by a court that has jurisdiction to determine the matter in which the finding was made (prescribed overseas jurisdiction) shall be recognised and have the same effect as if made in Guyana under the same circumstances.

44. A copy of an extra-territorial order or judgment in which a finding of paternity or maternity is made, certified under the seal of the court that made it, is admissible in evidence without proof of the signature or office of a person executing the certificate.

Separate
representation of
child.

PART IV MISCELLANEOUS

45. (1) Where it appears to the Court that a child ought to be separately represented, the Court may order that the child is to be separately represented, and may also make such orders as it considers necessary to secure that representation.

(2) The Court may make an order for separate representation of a child –

- (a) on the application of a person with an interest in the proceedings; or
- (b) of its own motion.

Court may enforce
its own orders.

Application of
particular sections.

46. Nothing in this section affects the jurisdiction or power of the Court making an order under this Act to enforce its orders.

Regulations.

47. Subject to section 3 (3) the provisions of section 39 to 44 inclusive apply to extra-territorial declarations and extra-territorial finding of paternity or maternity whether made before or after 21st May, 1983 (being the date on which the Children Born out of Wedlock (Removal of Discrimination) Act commenced.

48. (1) The Minister may make regulations with respect to any matter that this Act requires or permits to be prescribed or that is necessary to be prescribed for carrying out or giving effect to this Act.

(2) Without affecting the generality of subsection (1), the regulations may make provision with respect to –

- (a) the carrying out of parentage testing procedures under parentage testing orders;
- (b) the preparation of reports in relation to the information

obtained as a result of the carrying out of such procedures.

(3) A person who contravenes any regulation commits an offence and is liable on summary conviction to a fine of two hundred thousand dollars and to imprisonment for six months.

Repeal of Children
Born out of
Wedlock (Removal
of Discrimination)
Act.
No. 12 of 1983.

PART V TRANSITIONAL, REPEAL, SAVINGS

49. The Children Born out of Wedlock (Removal of Discrimination) Act is repealed.

Regulations for
resolving
transitional
difficulties.

50. The Minister may make regulations to provide –

- (a) for resolving any difficulties that may arise out of the repeal by this Act;
- (b) for the amendment of subsidiary legislation or a part, made under any law repealed by this Act and remaining in force pursuant to this Act.

Savings and
transitional
regulations.

51. (1) The Minister may make regulations containing provisions of a saving or transitional nature consequent on the enactment of this Act.

(2) A provision referred to in subsection (1) may, if the regulations so provide, take effect on or from the date of the commencement of the Act or a later day.

(3) To the extent to which a provision referred to in subsection (1) takes effect from a date that is earlier than the date of its publication in the Gazette, the provision does not operate so as to –

- (a) affect, in a manner prejudicial to any person (other than the State or an authority of the State), the rights of that person existing before the date of its publication;
- (b) impose liabilities on any person (other than the State or an authority of the State) in respect of anything done or omitted to be done before the date of its publication.

Prior Court
determinations.

52. Nothing in any provision of this Act affects any determination concerning the parentage or status of a child made by a Court before the commencement of the provision, except where specifically provided by this Act.

Reference to
repealed
enactments.
No. 12 of 1983.

53. A reference in any instrument made under any Act, or any repealed provision of the Children Born out of Wedlock (Removal of Discrimination) Act is to be read as a reference to the equivalent, if any, provision of this Act.

EXPLANATORY MEMORANDUM

Section 1 and 2 state the name of the Bill and define the various terms used in the Bill.

Section 3 explains the persons and situations to which this legislation can be applied.

Section 4 states that all children have equal rights.

Section 5 clarifies that all children whether of natural parents, adoptive parents and born in or out of wedlock, have equal status and rights.

Section 6 sets out the manner in which wills or other instruments made on and after May 21, 1983, are to be interpreted.

Section 7 states that dispositions made between parties while alive or made by will by a person who has died before the May 21, 1983 are not affected by the aforesaid 1983 Act. This Act does not apply to special appointment made before May 21, 1983.

Section 8 provides that family relationships by blood or marriage are applicable where this Act applies.

Section 9 sets out that the rights on intestacy apply to children and their heirs born after May 21, 1983 whether they are born in or out of wedlock, and to estates of persons who die after May 21, 1983.

Section 10 outlines the situations under which a man is presumed to be a child's father.

Section 11 sets out the situations where a man is presumed by his actions to have acknowledged paternity of a child. The presumption applies before and after the commencement of this legislation.

Section 12 states that a man is presumed to be a child's father once he cohabited with the child's mother for between three hundred and one hundred and forty days prior to the child's birth.

Section 13 states that the entering of a person's name on the birth register is presumed to mean that that person is the child's parent.

Section 14 allows for the Court to make findings and declarations to a child's parentage and for similar findings of a foreign Court to apply. This presumption cannot be rebutted.

Section 15 sets out the circumstances in which a presumption of parentage would be drawn where a fertilisation procedure was used.

Section 16 states that all presumptions except those declared by the Courts or with respect to the use of the fertilisation procedure, may be voided where sufficient proof is given.

Section 17 vests a discretion in the Court to determine and declare which of two or more rebuttable presumptions would apply.

Section 18 vests a discretion in the Court to determine and declare which of two or more irrebuttable presumptions would apply. If the Court has made no declaration, an irrebuttable presumption takes precedence over one that is rebuttable.

Section 19 states that acknowledgement of paternity must be in writing on the prescribed form, signed by the man and filed with the Registrar General of Births and Deaths. This section also sets out the manner in

which such a document is to be executed in or out of Guyana. Informal acknowledgements are also catered for.

Section 20 provides for the Court to order an annulment of a paternity acknowledgement. The Registrar General of Births and Deaths must give effect to the annulment order in an appropriate manner.

Section 21 allows for the Court, on an application, to declare whether or not a person is a child's mother.

Section 22 allows for the Court, on an application, to declare whether or not a person is a child's father. This section also provides for the Court to declare a person to be a child's father where there are two conflicting rebuttable presumptions of fatherhood.

Section 23 allows for a declaration of parentage to be made by the Court whether the parent is alive or not and whether or not the child in question is yet born. The Registrar of the Supreme Court must send these Court declarations to the Registrar General of Births and Deaths to give effect to the declaration.

Section 24 sets out the persons who may apply to the Court for a declaratory order in relation to parentage.

Section 25 stipulates who must be notified when a declaratory order on parentage is applied for. The Court may also order other persons to be notified, as necessary.

Section 26 allows for a declaration of parentage to be recognised for all purposes. This section also sets out circumstances under which an annulment of a declaration of parentage can occur. The annulment order must be forwarded to the Registrar General of Births and Deaths for appropriate action.

Section 27 provides for the admissibility of Court findings and paternity acknowledgement in proceedings related to a child's parentage.

Section 28 stipulates that hearings for declaration of parentage or an annulment of such a declaration be held in a closed courtroom, and vests the Court with discretion to hear a person it considers to have an interest.

Section 29 states that the publication of a name or identity particulars of a person related to an application for declaration of parentage amounts to a criminal offence, which may, on conviction, result in a fine or imprisonment being imposed.

Section 30 sets out the various testing procedures which may be ordered by the Court to determine parentage.

Section 31 sets out the various types of orders, which may be made by the Court when ordering that a parentage test be done.

Section 32 vests the Court with discretion to order who should stand the costs of a parentage testing procedure.

Section 33 stipulates that the parentage testing procedure can only be ordered with consent of a parent/guardian. A child of sixteen years and over can give consent in this context. A parent's consent cannot over rule the refusal of a child sixteen years and over.

Section 34 disallows legal proceedings against a person who carries out parentage testing procedures.

Section 35 allows the Court to draw inferences from a refusal or failure to consent to a parentage testing procedure or to other orders.

Section 36 provides for a report on parentage testing to be admissible in evidence. Oral evidence on the procedure may also be taken. This section also sets out who may ask for the oral evidence to be taken and allows the Court to so order.

Section 37 creates an offence against a person who impersonates a person or causes a child to impersonate another for the purpose of fulfilling the parentage testing ordered by the Court.

Section 38 allows a person to examine the Register of Births and Deaths and obtain a certified copy of a formal paternity acknowledgement or birth certificate.

Section 39 allows recognition in Guyana in certain circumstances of declaratory orders made by foreign Courts.

Section 40 sets out instances where a foreign Court order may not be recognised.

Section 41 provides for the filing of the foreign Court order provided certain procedures as set out are followed. This section also provides that the most recent foreign Court on paternity will stand. In any circumstance, the Registrar General of Births and Deaths is exempted from liability.

Section 42 provides for foreign declaratory parentage orders to be admissible in evidence.

Section 43 stipulates that the foreign declaratory parentage order be treated in similar manner as if made in Guyana.

Section 44 allows for foreign declaratory parentage findings to be admissible in evidence. Proof of signatory or executing officer is not required.

Section 45 vests the Court with a discretion to order the separate representation of a child.

Section 46 empowers the Court to enforce its own order made under this legislation.

Section 47 states that foreign declaratory parentage orders are applicable whether they were made before or after May 21, 1983.

Section 48 provides for the making of regulations by the Minister for certain stipulated matters.

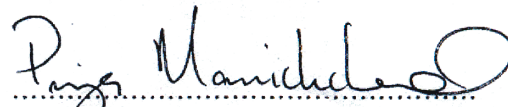
Section 49 repeals the Children Born out of Wedlock (Removal of Discrimination) Act 1983.

Section 51 allows for the making of regulations by the Minister to save and to accommodate transition of this legislation.

Section 52 provides that an order concerning the parentage or status of child made prior to this legislation stands.

Section 53 provides that references to the repealed 1983 Act shall be read as though made under this Act.

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**Minister of Human Services
and Social Security.**