

M O N T S E R R A T
S T A T U S O F C H I L D R E N A C T

No. 15 of 2012

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Montserrat
Status of Children Act, 2012
No. 15 of 2012

I ASSENT

Alric Taylor
Governor (Ag.)

DATE:13.11.12

M O N T S E R R A T

No. 15 of 2012

AN ACT TO PROVIDE FOR THE EQUAL STATUS OF CHILDREN.

BE IT ENACTED by the Queen's Most Excellent Majesty, by and with the advice and consent of the Legislative Assembly of Montserrat, and by the Authority of the same as follows:—

PART 1—PRELIMINARY

1. Short title and commencement

This Act may be cited as the Status of Children Act, 2012 and shall come into force by Order on a date fixed by the Governor acting on the advice of Cabinet.

2. Interpretation

In this Act—

Montserrat

Status of Children Act, 2012

No. 15 of 2012

“attorney-at-law” means a barrister or a solicitor who has been admitted to practice law in Montserrat;

“cohabitant” means a person who is living or has lived with a person as a spouse, although not legally married to that person;

“child” includes an adult as the circumstances require;

“Court” means the High Court;

“court of competent jurisdiction” means the court competent to make the order being relied on;

“marriage” includes—

- (a) a void marriage; and
- (b) a voidable marriage that has been annulled by a court;

“Minister” means the Minister with responsibility for Health;

“parentage testing procedure” includes:

- (a) the sampling of tissue fluid or other bodily sample from a person and the scientific examination of the samples; and
- (b) any test carried out on a person involving the application of medical science;

for the purpose of obtaining evidence with respect to parentage;

“parent” means a natural father or natural mother of a child as the circumstances require, and includes an adoptive mother or father;

“Registrar” means the Registrar of the High Court;

“Registrar-General” means the Registrar-General of Births and Deaths appointed under the Registration of Births and Deaths Act, (Cap. 06.13);

“Registry” means the Registry of Births and Deaths.

3. Application

This Act applies to a person, whether or not—

- (a) the person—
 - (i) was born in Montserrat;
 - (ii) was born before or after the commencement of this Act; or
- (b) the parents of the person have ever been domiciled in Montserrat;

PART 2—STATUS OF CHILDREN

4. Determination of relationship

- (1) Subject to sections 13, 14 and 15, the legal distinction in the status of children born within and outside of marriage is abolished and all children, whenever born, are of equal status.
- (2) In the absence of expression to the contrary in an instrument, the rule of construction under which words of familial relationship are construed to signify only legitimate relationships is abolished.
- (3) For the purpose of construing an instrument, the use, with reference to relationship of a person, of the words “legitimate”, “illegitimate”, “lawful” or “unlawful” must not, without clear words to the contrary, prevent the relationship from being determined in accordance with subsection (1).

5. Presumptions of paternity

- (1) Unless there is proof to the contrary, on a balance of probabilities, there is a presumption that a person is, and must be recognised in law to be, the natural father of a child in any one of the following circumstances—
- (a) the person was married to the mother of the child at the birth of the child;
 - (b) the person was married to the mother of the child and that marriage was terminated by—
 - (i) death;
 - (ii) judgement of nullity; or
 - (iii) divorce,during the ten month period immediately preceding the birth of the child;
 - (c) the person marries the mother of the child after the birth of the child and acknowledges by word or conduct that he is the natural father of the child;
 - (d) the person was a cohabitant with the mother of the child for the ten month period immediately preceding the birth of the child or they ceased to be cohabitants during that period;
 - (e) the person has been adjudged or recognised in his lifetime or after his death by a court of competent jurisdiction to be the father or putative father of the child;
 - (f) the mother of the child and the person acknowledging that he is the natural father of the child, have signed and executed an instrument to this effect in the presence of a notary public, Justice of the Peace, or any other person lawfully authorised under an enactment to administer oaths, but that instrument is of no effect unless it is notarised and recorded in the Registry or the Record Office during the lifetime of the person acknowledging himself to be the father;

- (g) the person has acknowledged in the process of the registration of the child, under the Registration of Births and Deaths Act, (Cap. 06.13), that he is the father of the child;
 - (h) the person who is alleged to be the father of the child has given written consent to that child adopting his name in accordance with the law relating to change of name; or
 - (i) the person who is alleged to be the father of the child has by his conduct implicitly and consistently acknowledged that he is the father of the child.
- (2) Where circumstances exist that give rise to presumptions of paternity in respect of more than one father, no presumption must be made as to paternity.

6. Presumptions where child is born as a result of artificial conception procedures

- (1) If—
- (a) a child is born to a woman as a result of an artificial conception procedure while the woman was married to a man; and
 - (b) the procedure was carried out with their consent;
- whether or not the child is biologically a child of the woman and of the man, the child is their child for the purposes of this Act.
- (2) If a child is born to a woman as a result of an artificial conception procedure, whether or not the child is biologically a child of the woman, the child is her child for the purposes of this Act.
- (3) If a child is born to a woman as a result of the carrying out of an artificial conception procedure, whether or not the child is biologically a child of the man—

- (a) referred to in section 5(1)(c), (e) – (i), the child is his child for the purposes of this Act;
 - (b) referred to in section 5(1)(b)(i), (ii) and (d), the child is his child for the purposes of this Act only if he consented to the carrying out of the procedure.
- (4) Subsection (1) applies to cohabitants as if—
- (a) they were married to each other; and
 - (b) neither person was married to any other person at the time of conception of the child.
- (5) For the purposes of subsection (1), a person is presumed to have consented to an artificial conception procedure being carried out unless it is proved, on a balance of probabilities that the person did not consent.

7. Instruments filed in the Registry

- (1) The Registrar-General must—
- (a) cause records of all instruments and copies filed under section 5(1)(f) and (g) to be made and kept in the Registry; and
 - (b) on request made by any person who the Registrar-General is satisfied has a proper interest in the matter, cause a search of any record to be made and must permit that person to inspect the instrument or copy.
- (2) If the Court makes a declaration under section 8—
- (a) the Registrar must cause a copy of the declaration, to be filed in the Registry under this section; and
 - (b) on receipt of the declaration, the Registrar-General must amend the entry in respect of the child, in the register book of births, by inserting the name of the natural father and by adding words to the effect that

parentage has been established by a declaration of the Court.

PART 3—PARENTAGE

8. Declaration of parentage

- (1) A person who—
 - (a) alleges that any named person is a parent of a child;
 - (b) alleges that the relationship of father and child exists between him and another named person;
 - (c) alleges that the relationship of mother and child exists between her and another named person; or
 - (d) having a proper interest in the result, wishes to have determined the question whether the relationship of parent and child exists between two named persons;may apply to the Court for a declaration of parentage and the Court may, if it is satisfied that the relationship exists, make the declaration whether or not the mother, father or child is, or all of them are, living or dead.
- (2) Where a declaration is made under subsection (1) and it appears to the Court, upon an application being made to it, that new facts or circumstances have arisen that have not previously been disclosed to the Court and could not by the exercise of reasonable diligence previously been known or if for any reason the Court thinks it desirable, the Court may make an order revoking the declaration.
- (3) The Court must not make or revoke a declaration under this section unless the Court is satisfied that, so far as is reasonably practicable, all persons whose interests are or may be affected by the declaration or revocation are represented before it or have been given the opportunity

to make representations to the Court with respect to the subject matter of the proceedings.

- (4) In any proceedings in the Court, a declaration or order made pursuant to this section is conclusive evidence of the matters contained in the declaration or order.

9. Parentage testing procedure

- (1) In any proceedings in which the parentage of a person is required to be determined by the Court, the Court may—

- (a) on the request of a party to the proceedings;
- (b) on the request of the person or his representative; or
- (c) of its own motion,

issue a direction requiring a parentage testing procedure to be carried out for the purpose of obtaining information to assist in determining the parentage of the person.

- (2) The Court, before issuing a direction under subsection (1), must ensure, if the person—

- (a) is an adult or is a child who is 18 years or older, that the person consents to the carrying out of the procedure; or

- (b) is a child who is under 18 years—

- (i) that the child's parent or guardian or a person exercising parental responsibility in relation to the child consents to the carrying out of the procedure; and

- (ii) it is in the child's best interest to do so.

- (3) A direction under subsection (1) may be issued in relation to—

- (a) the child;
 - (b) a person believed by the Court to be a parent of the child; or
 - (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 may assist in determining the parentage of the child.
- (4) Where the Court issues a direction under subsection (1), the Court may—
- (a) issue directions as it considers necessary or desirable to —
 - (i) enable the parentage testing procedure to be carried out; or
 - (ii) make the parentage testing procedure more effective and reliable;including but not limited to, directions requiring a person to submit to a parentage testing procedure, to provide a bodily sample or to furnish information relevant to the medical or family history of a person; and
 - (b) issue directions as it considers necessary in relation to costs incurred with respect to—
 - (i) the carrying out of the parentage testing procedure or other directions issued by the Court in relation to the parentage testing procedure; or
 - (ii) the preparation of reports in relation to the information obtained as a result of the carrying out of the parentage testing procedure.

- (5) The Court may at any time revoke or vary a direction previously given by it under this section.
- (6) A person who fails to comply with a direction issued under subsection 4 (a) is not liable to any penalty in relation to the contravention but the Court may draw such inferences as it considers fit in the circumstances.
- (7) If a direction under this section is to a child who has not attained the age of 18 years, a parentage testing procedure or other act must not be carried out in relation to the child unless a guardian or other person who has the care and protection or parental responsibility of the child consents to the parentage testing procedure or act being carried out, but the Court may draw such inferences from a failure or refusal to consent as the Court considers fit in the circumstances.
- (8) If a direction under this section relates to a person who is suffering from a mental disorder and is incapable of understanding the nature and purposes of the parentage testing procedure or other act, that procedure or other act must not be carried out in relation to that person under the direction unless the person who has the care and control of that person consents and the medical practitioner in whose care the person is, has certified that the parentage testing procedure will not be prejudicial to the person's health, proper care and treatment.
- (9) A person who properly carries out, or assists in the proper carrying out of, the parentage testing procedure or other act under this section is not liable in any civil or criminal action in relation to the parentage testing procedure or other act.

10. Matters to be taken into account by Court in making determination

- (1) Before making a determination under section 9, the Court may, if it is of the view that to do so would be in the best interest of the child, appoint a guardian *ad litem* for the child.
- (2) In deciding whether to issue a direction under section 9 the Court must—
 - (a) consider and determine all objections made by a party to the proceedings on account of medical, religious or other grounds; and
 - (b) if it determines that an objection is relevant take the objection into account in arriving at its decision.

11. Reports of parentage testing procedure

- (1) The person responsible for carrying out a parentage testing procedure for the purpose of giving effect to a direction under section 9 must provide the Court with a report which must state—
 - (a) the results of the tests;
 - (b) whether the person to whom the report relates is or is not excluded by the results from being the parent of the child; and
 - (c) if that person is not so excluded, the value, if any, of the results in determining whether that person is the parent of the child.
- (2) Where a report has been made to the Court under subsection (1), any party to the proceedings may, with the leave of the Court, or must, if the Court so directs, obtain from the person who made the report a written statement explaining or amplifying any statement made

in the report, and that written statement must not form part of the report made to the Court.

- (3) A report made pursuant to subsection (1) may be received in evidence in any proceedings under this Act.
- (4) Where a report referred to in subsection (1) is received in evidence in proceedings under this Act, the Court may—
 - (a) on the request of a party to the proceedings;
 - (b) on the request of a person representing the child; or
 - (c) of its own motion;

make an order requiring the person who made the report, or 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.

12. Approved laboratory

- (1) The Minister must approve a laboratory for the purpose of carrying out a parentage testing procedure under this Act.
- (2) The Minister must publish in the *Gazette* the name of the approved laboratory.

PART 4—DISPOSITION OF PROPERTY

13. Transitional provisions relating to instruments

- (1) The following dispositions are to be construed as if this Act had not come into operation—
 - (a) dispositions made *inter vivos* before the commencement of this Act; and
 - (b) dispositions made by a will or codicil executed by a person who died before the commencement of this

Act, unless the will or codicil contains clear words to the contrary.

- (2) If a disposition referred to in subsection (1) contains a special power of appointment, this Act does not—
- (a) extend the class of persons in whose favour the appointment may be made in the absence of clear words to the contrary, or
 - (b) cause the exercise of the power to be construed so as to include any person who is not a member of that class in the absence of clear words to the contrary.
- (3) The estate of a person who dies intestate as to the whole or any part of his or her estate before the commencement of this Act must be distributed in accordance with the enactments and rules of law which would have applied to the estate if this Act had not come into operation.

14. Persons dealing with property after the commencement of this Act

For the purposes of the administration or distribution of any estate or property, an executor, administrator or a trustee must, whenever it is material in the circumstances, make honest and reasonable inquiries as to the existence of any person who by reason only of this Act could claim an interest in the estate or property.

15. Protection of executors, administrators and trustees

- (1) No action lies against—
- (a) an executor;
 - (b) an administrator; or

(c) the trustee under any instrument;

in relation to any estate or property, by any person who could claim an interest in the estate or the property by reason only of this Act, to enforce any claim arising by reason of the executor, administrator or trustee—

- (i) having made any distribution of the estate or of the property held on trust; or
- (ii) having otherwise acted in the administration of the estate or property held on trust,

so as to disregard the claims where, at the time of making the distribution or otherwise so acting, the executor, administrator or trustee had no notice of the relationship on which the claim is based.

- (2) Where a person alleges that an interest referred to in subsection (1) existed at the time the executor, administrator or trustee made the distribution or otherwise acted, that person may follow the estate or any property representing that interest into the hands of any person, other than a bona fide purchaser for value without notice.

PART 5—MISCELLANEOUS

16. Hearings

- (1) Unless the Court otherwise orders, the hearing of an application made pursuant to this Act must be in closed court.
- (2) A person must not without the authority of the Court before which the proceedings are taken, publish, whether by newspaper, or by radio or television or otherwise, the name of or any particulars relating to the

identity of any person by, or in relation to whom proceedings are taken under this Act.

- (3) A person who contravenes subsection (2) commits a summary offence and is liable to a fine of \$5000 or to 3 months imprisonment.

17. Existing rights

This Act does not affect rights vested before its commencement.

18. Regulations

The Governor acting on the advice of Cabinet may make regulations under this Act for or with respect to the following—

- (a) prescribing the forms and fees for the purposes of this Act;
- (b) the carrying out of parentage testing procedures under directions issued under section 9;
- (c) the preparation of reports in relation to the information obtained as the result of the carrying out of parentage testing procedures or other acts under directions issued under section 9; and
- (d) providing for any other matter required or necessary for giving full effect to this Act and for its due administration.

19. Repeal

The Legitimacy Act, (Cap. 5.08) is repealed.

Montserrat
Status of Children Act, 2012
No. 15 of 2012

Teresina Bodkin (Sgd.)

SPEAKER

Passed the Legislative Assembly this 31st day of October, 2012.

Judith Baker (Sgd.)

CLERK OF THE LEGISLATIVE ASSEMBLY