

DRAFT
STATUS OF CHILDREN BILL
REV III

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REPORT ON THE STATUS OF CHILDREN BILL

Introduction

This report is a prerequisite to the draft Status of Children Bill which is attached. The Bill seeks to provide for reform legislation in the OECS Member States to remove all discriminations against children born out of wedlock.

At present, there is status of children legislation existing in some of the OECS Member States, with the exception of Anguilla, Dominica, Montserrat and Saint Lucia. However the status of children which exists in some of the OECS Member States is inadequate and requires further expansion as it does not remove all forms of discrimination against children born out of wedlock and as a result is not in compliance with the Convention on the Rights of the Child, (CRC) and the Convention on the Elimination of All Forms of Discrimination Against Women, (CEDAW), of which all OECS Member States are parties. Because of the historical treatment of illegitimacy in the past, which was imported from the common law, certain forms of discrimination against children born out of wedlock were saved under the existing status of children legislation. As a consequence, this has had a negative effect of the rights of children born out of wedlock in relation to citizenship, succession, maintenance and custody.

The Convention on the Rights of the Child (CRC)

The CRC aptly sets out all rights to which children are and should be entitled. Article 2 (1) of the CRC provides that:

“States Parties shall respect and ensure the rights set forth in the present Convention to each child within their jurisdiction without discrimination of any kind, irrespective of the child’s or his or her parent’s or legal guardian’s race, colour, sex, language, religion, political or other opinion, national, ethnic or social origin, property, disability, birth or other status.”

The Convention therefore assumes no discrimination between children born in or out of wedlock and there is no discrimination between the rights of parents in relation to such children. It further supports the view that a child should have the rights to contact with both parents, regardless of whether or not they are married or whether they are living together or apart.

Article 7 of the Convention provides, among other things, for the right of a child to know and be cared for by both parents, and Article 9 (3) provides that states parties shall respect the right of a child who is separated from one or both parents to maintain personal relations and direct contact with both parents on a regular basis. Pursuant to Article 18 (1), states parties are obligated to use their best efforts to ensure recognition of the principle that both parents have common responsibilities for the development of their child. At present, the status of children legislation in the OECS Member States does not equate the rights of the mother of a child born out of wedlock to that of the father, and any legislation which is to be enacted to remove the discriminations as stated above, must provide for a more substantive role of the father and his ability to exercise such rights as is provided for in the Convention.

It is the view that the Articles of the Conventions referred to in this Introduction should be used as a benchmark in the preparation of any legislation which purports to have as its purpose the removal of discriminatory provisions in the law against children because of their status at birth.¹

Synopsis of existing legislation in OECS Member States

The status of children legislation that exists in the OECS Member States expressly abolishes the legal discrimination against children born out of wedlock. The provision in the legislation which does this expressly state that:

“for all purposes of the law in force[], the relationship between every person and his mother or father shall be determined irrespective of whether the father or mother are or have been married to each other, and all other relationships shall be determined accordingly”.

The legislation also abolishes the common law rule of construction as it applies to children born out of wedlock for succession purposes. The provision which purports to do this provides that:

“The rule of construction whereby in an instrument words of a relationship signified only legitimate relationship in the absence of a contrary expression of intention, is hereby abolished.”

The effect of the provisions listed above has however not been fully realised as a result of the retention of some discriminatory provisions which limit the rule of construction with respect to the following matters:

- (a) the domicile of a person;
- (b) the citizenship of a person;
- (c) the provisions of any law relating to adoption, which determines the relationship to any person of a person who has been adopted; and
- (d) the rule of construction of the word “heir” or any expression which is used to create an entailed interest in real or personal property.

¹ Zanifa Mc Dowell, in her report “Status of Children (LEGITIMACY V ILLEGITIMACY) makes this point on page 3.

In some of the existing legislation, it is provided that for succession purposes, paternity must be established during the lifetime of the deceased father in order for child born out of wedlock to be entitled to a legal share of the estate. This has been harshly criticised by Zanifa McDowell in her report² where she states that:

“This is a provision which must cause serious hardship to the out of wedlock child. Having regard to the fact that the burden of establishing paternity in any case must be discharged according to the standard of proof laid down by law, this in itself is a protection against an unreasonable or unjustified declaration of paternity being made so there seems to be no logical reason why such a requirement should exist, except to perpetuate the inequality of treatment.”

In addition to the above, the role of the putative father in the existing legislation is seen as only to provide for maintenance for his child. There is no provision which recognises the putative father of the child born out of wedlock as the legal guardian of his child upon recognition of paternity, and this also needs to be remedied in any legislation which is to be enforced in the OECS Member States.

There is no provision made for the presumption of paternity in some instances and this is seen as a necessity in any status of children legislation. Moreso, in instances where the provision exists, they are too narrow and need to be expanded to include provisions relating to DNA testing and other medical or scientific tests capable of amounting to evidence of paternity.

The Legitimation [Act/Ordinance] which is present in most of the OECS Member States and which purports to alter the common law in a limited way and applies only to children born out of wedlock whose parents have subsequently married, or to children born out of wedlock whose mothers die intestate, needs also to be repealed since many children born out of wedlock still remain unaffected by the limited objective of this legislation.

Recommendations considered in the preparation of the proposed Draft Status of Children Bill

In addition to the CRC and CEDAW Conventions, and existing legislative precedents of other countries, in preparing the draft Bill, guidance was sought from the draft report referred to above, entitled “Status of Children- LEGITIMACY OR ILLEGITIMACY” prepared by Ms Zanifa McDowell on behalf of the OECS. This report recommends:

- (a) the need to abolish the old common law rule of construction against children born out of wedlock in OECS Member States that have not yet done so;
- (b) the need to introduce status of children legislation in the OECS Member States that have not yet done so;
- (c) the need to remove the retained discriminatory provisions against children born out of wedlock in OCES Member Sates that have status of children legislation but which have retained specific forms of discrimination;

² See footnote 1 for reference. Comment is found on page in paragraph 19 of the said report.

- (d) the need to recognize the putative father as a legal guardian of a child where either paternity has been legally established, or where the father has acknowledged the child as his own and contributed toward the maintenance of the child. This should also include recognition for the purposes of adoption, the child's name, and all rights relevant to custody and parental responsibility;
- (e) the expansion of the provisions dealing with the presumption of paternity;
- (f) the expansion of the provisions dealing with blood tests in the establishment of paternity to include provision relating to DNA testing and any other medical or scientific tests capable of amounting to evidence of paternity; and
- (g) the inclusion of a provision in the draft legislation indicating that once paternity has been established in accordance with the provisions of the [Act/Ordinance], the father of a child born out of wedlock is a joint guardian of that child with the mother of the child and is entitled to exercise parental rights over that child jointly with the mother.

It is just notable that there may be need for constitutional amendment to provide for and safeguard the acquisition of equal rights of all children. The status of children legislation may need to be buttressed in all OECS Member States by guaranteeing equal rights to children within their constitutional provisions. This has been provided for in Saint Kitts and Nevis under section 15 (1) of that Member State's Constitution.

Draft regulations have also been prepared and are attached, to be examined in conjunction with the proposed Draft Bill.

STATUS OF CHILDREN BILL

EXPLANATORY NOTES

The purpose of this Bill is clearly enunciated in its Long Title, that is:

“to provide for the equal status of children.”

Part I Preliminary, *Clauses 1-3* of the Bill provide the preliminary and interpretation provisions. By virtue of **Clause 3**, the Bill applies to a child whether or not the child:

- (a) was born in [];
- (b) was born before the commencement of the Bill; or
- (c) the parents of the child have ever been domiciled in [].

Part II, Status of Children, *Clauses 4-7* of the Bill provides for the determination of the relationship between a child and his or her parent. **Clause 4 (1)** provides that all distinctions that exist as a result of the marital status of the parents of a child shall be abolished.

Clause 4 (2) maintains the provision as is present in the existing status of children legislation which abolishes the common law rule of construction. Sub-clause (3) provides that for the purpose of construing any instrument with reference to a relationship of a person, the words “legitimate” or “lawful” “illegitimate” or “unlawful” shall not of itself prevent the relationship from being determined in accordance with sub-clause (1).

Clause 5 provides for the expansion of the provisions of the existing status of children legislation with respect to the presumption of paternity. It states that unless there is proof to the contrary, on a balance of probabilities, there is a presumption that a person is and shall be recognised in law to be the natural father of a child, and lists the circumstances where the presumption will apply which includes the following:

- (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 death, judgement of nullity, within ten months before the birth of the child, or divorce where the *decree nisi* was granted within ten months before the birth of the child;
- (c) the person was a cohabitant with the mother of the child at the time of the birth of the child, if the child was born within ten months after they ceased to be cohabitants;
- (d) the person has been adjudged or recognised in his lifetime or after his death by a court of competent jurisdiction, to be the father of the child; and

- (e) the mother of the child or 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 an attorney at law or both, but that instrument shall be of no effect unless it is notarised and recorded in the Registry of the High Court during the lifetime of the person acknowledging himself to be the father.

Clause 5 (2) provides that where circumstances exist that give rise to presumptions of paternity in respect of more than one father, no presumption shall be made with respect to paternity.

Clause 6 provides for the presumptions of parentage, where a child is born to a woman as a result of the carrying out of an artificial conception procedure while the woman was married to a man and 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 Bill. **Clause 6 (4)** extends this provision to cohabitants as if they were married to each other and neither person was married to any other person.

Clause 7 provides for the filing of instruments of acknowledgement by the Registrar. Under sub-clause (1), an instrument of acknowledgement must be filed in the Registry of the High Court. Sub-clause (2) places an obligation on the Registrar on request made by any person, to cause a search of any record to be made, and to permit that person to inspect any such instrument or a copy where the Registrar is satisfied that the person has a proper interest in the matter.

Clause 7 (3) contemplates the establishment of a Family Court which shall be a division of the High Court with jurisdiction to hear all matters relating to the family. It therefore provides that if a declaration pursuant to **Clause 8** is made in the Family Court, the Registrar of that Court shall cause copies to be forwarded to the Registry of the High Court for filing and such copy of the declaration shall be filed and kept as if they were an instrument of the kind described pursuant to **Clause 5** of the Bill.

Part III, Parentage, Clauses 8 -12 of the Bill makes provision for the declaration of parentage.

Clause 8 provides for instances in which a declaration of parentage may be made to the Court. It provides that a person who:

- (a) alleges that a named person is the parent of a child;
- (b) alleges that the relationship of father and child exist between that person and any other named person;
- (c) alleges that the relationship of mother and child exist between that person and any other named person; or

- (d) having a proper interest in the result, wishes to have it determined whether the relationship of parent and child exists between two named persons;

may apply to the Court for a declaration with respect to the same.

Clause 9 provides for the medical procedures to be used to determine parentage and states that the Court may, on the request of a party to the proceedings, or on the request of a person representing the child or of its own motion, make an order requiring a testing procedure to be carried out in relation to a person who applied to the Court for a declaration.

Clause 10 states the matters to be taken into account by the Court when making a determination under Clause 9, and the Court may, if it considers that to do so would be in the best interest of the child, appoint a fit and proper person to act as the litigation guardian of the child.

Clause 11 provides for reports with respect to any medical procedure carried out pursuant to the Bill.

Clause 12 provides for the approval of laboratories to undertake parental testing procedures and for reporters for the approved laboratories.

Part IV, Disposition of Property, Clauses 13-15 of the Bill provide for the disposition of property before and after the commencement of the Bill. *Clause 13* provides for transitional provisions relating to instruments that were executed and became effective prior to the commencement of the Bill, such as gifts *inter vivos* and a Will of a person who died before the commencement of the Bill. Such instruments are held, by virtue of sub-clause (1) to be governed by the enactments, rules of construction and law which would have applied to them if the Bill had not come into operation. *Sub-clause (2)* states that where an instrument to which sub-clause (1) applies creates a special power of appointment, nothing in the Bill shall extend the class of persons in whose favour the appointment may be made, or caused to be made, or cause the exercise of the power to be construed so as to include any person who is not a member of the class.

Clause 14 provides that for the purposes of administration or distribution of an estate or property, an executor, administrator, or trustee of an estate or property shall, whenever it is material in the circumstances, make honest and reasonable inquiries as to the existence of any person who could claim an interest in the estate or property by reasons only of the provisions of the Bill. The executor, administrator or trustee is however not obliged to pursue such inquiries further than he or she honestly and reasonably believes to be necessary.

Clause 15 seek to protect an executor, administrator or trustee from an action being taken against them by a person who could claim an interest in property by virtue of the provisions of the Bill where that executor, administrator or trustee had no notice of the relationship on which the claim is based at the time when the distribution of the estate or property was made.

Part V, Miscellaneous, Clauses 16 – 19: contain general provisions relating to hearings, existing rights, regulations and repeal.

Clause 16 provides for the conduct of hearings.

Clause 17 seeks to protect rights acquired prior to the commencement of the Bill.

Clause 18 gives the Minister responsible for the administration of the Bill the power to make Regulations.

Clause 19 provides for the repeal of [Acts/Ordinances] such as the Legitimation [Act/Ordinance] and the Affiliation [Act/Ordinance] and seeks to save Regulations and Orders made under the repealed [Acts/Ordinances].

STATUS OF CHILDREN BILL

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STATUS OF CHILDREN BILL

AN [ACT/ORDINANCE] to provide for the equal status of children

BE IT ENACTED []

PART I PRELIMINARY

Short title and commencement

1. (1) This [Act/Ordinance] may be cited as the Status of Children [Act/Ordinance] 200[].
- (2) This [Act/Ordinance] shall come into operation on a day to be fixed by the [Minister/Governor] by [Order/Notice] published in the *Gazette*.

Interpretation

2. In this [Act/Ordinance] [, unless the context otherwise requires]:

["attorney-at-law" means an individual who has been admitted to practice law pursuant to the Legal Professions [Act/Ordinance], No. [] of [];

"child" includes a person who has attained the age of eighteen;

"cohabitant" means a person who is living or has lived with a person of the opposite sex as a husband or wife although not legally married to that person;

["Court" means the Family Court];

"marriage" includes:

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

"parentage testing procedure" includes:

- (a) the taking 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];

“prescribed” means prescribed by Regulations made pursuant to this [Act/Ordinance];

[“Registrar” means the Registrar of the [High/Family Court];

“Registry” means the Registry of the [High Court].

Application

3. This [Act /Ordinance] shall apply to a child, whether or not:

- (a) the child was born in [];
- (b) the child was born before or after the commencement of this [Act/Ordinance]; or
- (c) the parents of the child have ever been domiciled in [].

PART II STATUS OF CHILDREN

Determination of relationship

4. (1) The legal distinction in the status of children born within and outside of marriage is abolished and all children shall from the date of the commencement of this [Act/Ordinance] be of equal status.

[(2) The rule of construction whereby in any instrument, [in the absence of expression to the contrary,] words of relationship signify only legitimate relationships, is abolished.]

(3) For the purpose of construing any instrument the use, with reference to relationship of a person, of the words “legitimate” illegitimate”, “lawful” or “unlawful” shall not of itself prevent the relationship from being determined in accordance with subsection (1).

Presumptions of paternity

5. (1) Unless there is proof to the contrary, on a balance of probabilities, there is a presumption that a person is, and shall 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 where the *decree nisi* was granted,within [ten months] before 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 at the time of the birth of the child, or the child was born within ten months after they ceased to be cohabitants;
- (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 of the child;
- (f) the person has signed an instrument with the mother of the child acknowledging that he is the father and that instrument was executed as a deed or by each of them in the presence of an attorney-at-law or a Justice of the Peace or a registered medical practitioner or a minister of religion or a marriage officer or a midwife; but such an instrument; shall be of no effect unless it has been recorded in the Registry;
- (g) the mother of the child or the person acknowledging that he is the natural father of the child, or both have signed and executed an instrument to this effect in the presence of an attorney at law, but that instrument shall be of no effect unless it is notarised and recorded in the Registry during the lifetime of the person acknowledging himself to be the father;
- (h) the person has acknowledged in the process of the registration of the child, in accordance with the law relating to the registration of births, that he is the father of the child;

- (i) 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
 - (j) 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 shall be made as to paternity.

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

6. (1) If:
- (a) a child is born to a woman as a result of the carrying out 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/Ordinance].

(2) 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 woman, the child is her child for the purposes of this [Act/Ordinance].

(3) If a child is born to a woman as a result of the carrying out of an artificial conception procedure then, whether or not the child is biologically a child of the man, the child is his child for the purposes of this [Act/Ordinance].

(4) Subsection (1) applies to cohabitants as if:

- (a) they were married to each other; and
- (b) neither person were married to any other person.

(5) For the purposes of subsection (1), a person is to be presumed to have consented to an artificial conception procedure being carried out unless it is proved, on the balance of probabilities that the person did not consent.

Instruments filed in Registry of High Court

7. (1) An instrument referred to in section 5 (1) (f) and (h) must, be filed in the Registry.
- (2) The Registrar shall cause records of all instruments and copies filed under subsection (1) to be made and kept in the Registry and shall, on request made by any person who the Registrar

is satisfied has a proper interest in the matter, cause a search of any record to be made and shall permit that person to inspect any such instrument or copy where the Registrar is satisfied that the person has a proper interest in the matter.

- (3) If the Court makes a declaration under section 8:
- (a) the Registrar shall cause a copy of the declaration, to be filed in the Registry under this section; and
 - (b) on receipt of the declaration, the Registrar shall amend the birth certificate of the child by inserting the name of the natural father on the birth certificate with such words to the effect that parentage has been established by a declaration of the Court and shall file a copy of the declaration in the Registry as if it were an instrument referred to in section 5.

PART III PARENTAGE

Declaration of parentage

8. (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 such 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 is made to appear to the Court 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 have previously been known or if for any reason the Court thinks it desirable so to do, the Court may revoke the declaration and thereupon that declaration shall cease to have any effect.

(3) The Court shall 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 or have been given the opportunity of making representations to the Court with respect to the subject matter of the proceedings.

(4) In any proceedings in the Court, a declaration made pursuant to this section shall be conclusive evidence of the matters contained in the declaration.

Parentage testing procedure

9. (1) In any proceedings in which the parentage of a child 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 a person representing the child; 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 child.

(2) The Court shall, before issuing a direction pursuant to subsection (1), ensure that:

- (a) the child to whom the direction relates:
 - (i) if sufficiently mature, has been counselled about the effects of the parentage testing procedure; and
 - (ii) if twelve years of age or older, has given consent to the parentage testing procedure; and
- (b) it is in the best interest of the child 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 such directions as it considers necessary or desirable:
 - (i) to enable the parentage testing procedure to be carried out; or
 - (ii) to make the parentage testing procedure more effective and reliable;including but not limited to, directions requiring a person to submit to a medical procedure, to provide a bodily sample or to furnish information relevant to the medical or family history of a person; and
 - (b) issue such 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 eighteen years, a medical procedure or other act shall not be carried out in relation to the child under the direction unless a guardian or other person who has the care and protection or parental responsibility of the child consents to the medical 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 is 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 shall 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 proper care and treatment.
- (9) A person who properly carries out, or assists in the proper carrying out of, the medical procedure or other act under this section is not liable in any civil or criminal action in relation to the medical procedure or other act.

Matters to be taken into account by Court in making determination

10. (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 shall:

- (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 valid take the objection into account in arriving at its decision.

Reports of medical procedure

11. (1) The person responsible for carrying out a parentage testing procedure for the purpose of giving effect to a direction under section 10 shall provide the Court with a report in the prescribed form and in which the person shall 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 shall, 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 statement shall 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/Ordinance].

(4) Where a report referred to in subsection (1) is received in evidence in proceedings under this [Act/Ordinance], 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.

Approved laboratory and nominated reporter

12. (1) The Minister shall approve a laboratory for the purpose of carrying out a parentage testing procedure under this [Act/Ordinance] and may nominate a reporter for the approved laboratory.

(2) The Minister shall publish in the *Gazette* the name of the approved laboratory and the nominated reporter for the approved laboratory.

PART IV DISPOSITION OF PROPERTY

Transitional provisions relating to instruments

13. (1) The following dispositions are to be construed as if this [Act/ Ordinance] had not come into operation:

- (a) dispositions made *inter vivos* before the commencement of this [Act/Ordinance]; and
- (b) dispositions made by a will or codicil executed by a person who died before the commencement of this [Act/Ordinance].

(2) If a disposition referred to in subsection (1) contains a special power of appointment, this [Act/Ordinance] shall not:

- (a) extend the class of persons in whose favour the appointment may be made, 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.

(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/Ordinance] shall be distributed in accordance with the enactments and rules of law which would have applied to the estate if this [Act/Ordinance] had not come into operation.

Persons dealing with property after the commencement of this [Act/Ordinance]

14. For the purposes of the administration or distribution of any estate or property, an executor, administrator or a trustee shall, whenever it is material in the circumstances, make honest and reasonable inquiries as to the existence of any person who could claim an interest in the estate or property by reason only of this [Act/Ordinance], but shall not be obliged to pursue such inquiries further than he or she honestly and reasonably believes to be necessary.

Protection of executors, administrators and trustees

15. (1) An action shall not lie 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/Ordinance], 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) This section shall not prejudice the right of any person claiming an interest in the estate or property referred to under subsection (1), which interest is alleged by the claimant to have existed at the time the executor, administrator or trustee made the distribution or otherwise acted aforesaid, to follow such estate or any property representing it into the hands of any person, other than the purchaser, who may have received it.

PART V MISCELLANEOUS

Hearings

16. (1) Unless the Court otherwise orders, the hearing of an application made pursuant to this [Act/Ordinance] shall be in closed court.

(2) A person shall not 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/Ordinance] without the authority of the Court before which such proceedings are taken.

(3) A person who contravenes subsection (2) commits an offence and is liable on summary conviction, to a fine not exceeding five thousand dollars or to a term of imprisonment not exceeding three months.

Existing rights

17. This [Act/Ordinance] does not affect rights vested before its commencement.

Regulations

18. The Minister may make regulations under this [Act/Ordinance] for or with respect to the following:

- (a) forms;
- (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 medical procedures or other acts under directions issued under section 9;
- (d) fees; and
- (e) providing for such matters as are required or necessary for giving full effect to this [Act/Ordinance] and for its due administration.

Repeal and savings

19. (1) The following [Acts/Ordinances] are repealed:

- (a) The Legitimation [Act/Ordinance], No [] of []; and
- (b) The Affiliation [Act/Ordinance], No [] of [].

(2) Notwithstanding the repeal of the [Acts/Ordinances] listed in subsection (1) any Regulations or Orders made under these [Acts/Ordinance] shall be construed with such changes as may be necessary to bring them in conformity with this [Act/Ordinance] until they are repealed by Regulations and Orders made under this [Act/Ordinance].