

THE STATUS OF CHILDREN (AMENDMENT) BILL, 2009

EXPLANATORY NOTE

(These notes form no part of the Bill but are intended only to indicate its general purport)

This Bill seeks to amend the Status of Children Act, Chap. 46:07 to provide for the use of DNA analysis in civil proceedings to ascertain whether a party to proceedings relating to the determination of parental relationship, is the parent of another person.

Clause 1 would state the short title of the Act for which this is the Bill (“the Act”).

Clause 2 would amend the long title to the Act.

Clause 3 would speak to interpretation.

Clause 4 would amend section 2 of the Act to delete certain definitions and introduce others to effect the required changes referred to in the first paragraph of this Explanatory Note.

Clause 5 would repeal and replace section 10 of the Act primarily to enable a woman to seek an order from the Court declaring her to be the biological mother of a child and introduce a new subsection that would seek to give legal effect to the measure until such time that the Court makes the relevant Rule of Court.

Clause 6 would amend section 12 of the Act to extend the application of that provision to maternity orders.

Clause 7 would insert new section 12A to relocate in the Act, section 16A and additionally, empower the Registrar General to effect any change to certain birth certificates as directed by the Court.

Clause 8 would replace the heading “BLOOD TESTS” appearing between sections 12 and 13, with the heading “DNA ANALYSIS”.

Clause 9 would amend section 13 of the Act to bring that provision in line with the changed policy of replacing blood testing with DNA analysis as the method of determining whether a person is or is not the parent of another person.

The amendment would also empower the Court to specifically give directions relating to certain aspects of the new system of DNA analysis.

Clause 10 would repeal section 14 of the Act.

Clause 11 would insert new sections 14A and 14B into the Act. Proposed section 14A would allow qualified persons to take tissue samples and empower the Chief Justice to designate certain “qualified persons” while 14B would provide for the Minister’s qualified designation of testers to perform DNA analysis.

Clause 12 would repeal and replace section 15 of the Act to speak to a person’s failure to comply with the Court’s direction for DNA analysis. This clause would also insert new sections 15A and 15B to deal with the offence of impersonating a qualified person and recognize parties’ decision to mutually consent to DNA analysis.

Clause 13 would repeal and replace section 16 of the Act to increase the penalties for impersonation in relation to providing tissue or proffering a child who is not the child named in the relevant direction of the Court.

Clause 14 would repeal and replace section 16A of the Act.

Clause 15 would repeal and replace section 17 of the Act to enable the Minister to make regulations from time to time.

Clause 16 would introduce new section 17A to empower the Court to direct the taking of a tissue sample from a deceased person in an invasive manner.

Clauses 17 and 18 would amend the Births and Deaths Registration Act, Chap. 44:01 and the Family Law (Guardianship of Minors, Domicile and Maintenance) Act, Chap 46:08, respectively, to effect consequential amendments to those Acts.

A BILL

AN ACT to amend the Status of Children Act, Chap. 46:07 and to provide for DNA analysis in civil proceedings

- Enactment ENACTED by the Parliament of Trinidad and Tobago as follows:
- Short title 1. This Act may be cited as the Status of Children (Amendment) Act, 2009.
- Long title amended 2. The long title to the Act is amended by inserting after the words “out of wedlock”, the words “and to provide for DNA analysis in civil proceedings”.
- Interpretation Chap. 46:07 3. In this Act, “the Act” means the Status of Children Act.
- Section 2 amended 4. Section 2 of the Act is amended –
- (a) in subsection (1) in the definition of “Minister”, by deleting the words “the administration of this Act” and substituting the words “the registration of births and deaths”;
 - (b) in subsection (2) by –
 - (i) deleting the definitions of “blood samples”, “blood tests” and “excluded”;
 - (ii) inserting in the appropriate alphabetical sequence, the following definitions:
 - “” Court” includes a Judge in chambers;
 - “DNA” means deoxyribonucleic acid;
 - “DNA analysis” means the analysis of genetic material performed by a tester;

“non-invasive manner” in relation to obtaining a tissue sample for DNA analysis means obtaining the sample by –

- (a) plucking strands of hair other than pubic hair;
- (b) scraping from or under a fingernail or a toenail;
- (c) swabbing a person’s buccal cavity or any part of his body other than any part of his genitals or other bodily orifices; or
- (d) taking a skin impression,

without breaking the skin;

“parent” means the biological parent of a person and “mother” and “father” have a corresponding meaning;

“qualified person” means –

- Chap. 29:50 (a) a medical practitioner registered under the Medical Board Act;
- Chap: 29:53 (b) a person registered under Part II or III of the Nurses and Midwives Registration Act; or
- (c) a person designated by the Chief Justice in accordance with section 14A(2),

who may take a tissue sample in respect of which DNA analysis is

required to be performed;”;

(c) deleting the definition of “tester” and substituting the following definitions:

“ “tester” means a laboratory designated by the Minister in accordance with section 14B, that conducts DNA analysis for determining familial relationships for courts of law in accordance with internationally accepted standards;

“tissue sample” means –

(a) a sample of blood, saliva or hair and includes a buccal swab taken from a living person in a non-invasive manner in accordance with this Act; or

(b) in relation to a deceased person, human matter taken in an invasive or non-invasive manner or tissue taken in accordance with section 16(b) the Human Tissue Transplant Act or taken prior to death during a lawful medical procedure;”.

Act No. 13
of 2000

Section 10
amended

5. The Act is amended by repealing section 10 and substituting the following section:

“Power of Court to
make certain orders

10.(1) Any person who –

(a) alleges that the relationship of father and child or mother and child exists between the person so alleging and any other person;

(b) alleges that he is the father of an unborn child;
or

(c) being a person having a proper interest in the

result, wishes to have it determined whether the relationship of father and child or mother and child exists between named persons,

may apply in such manner as may be prescribed by Rules of Court to the High Court for a declaration of paternity or maternity, as the case may be, and if it is proved to the satisfaction of the Court that the relationship exists the Court may make the appropriate order whether or not –

- (i) the father or child or both of them are living or dead; or
- (ii) the mother or child or both of them are living or dead.

(2) An application under this section may be brought on behalf of the child by any person acting on his behalf.

(3) The High Court has jurisdiction under this section if at the date of the making of any application under this section -

(a) the child to whom this application relates or the alleged parent of the child against whom the application is brought is -

(i) actually present in Trinidad and Tobago; or

(ii) though absent from Trinidad and Tobago is a citizen or resident of Trinidad and Tobago; and

(b) the child to whom this application relates or

the alleged parent of the child, against whom the application is brought, is deceased but there subsists in Trinidad and Tobago in respect of such child or parent, a tissue sample.

Chap. 4:01

(4) Where on an application to the High Court under this section the Court has made or has refused to make an order there shall be the same rights of appeal as are in force or exist for the time being in respect of civil proceedings in the High Court and the provisions of the Supreme Court of Judicature Act, and the Civil Proceedings Rules, 1998, the Family Proceedings Rules, 1998 and the Court of Appeal Rules, shall apply to such appeals.

(5) If in relation to this section, at the time of commencement of the Status of Children (Amendment) Act, 2009 no Rule of Court subsists, the existing Rules of Court shall be read so as to give effect to this section until the appropriate rule is made.”.

Section 12

6. Section 12 of the Act, is amended in subsections (1), (2) and (5) by inserting after the words “paternity order” where they occur, the words “or maternity order”.

Act amended 7. The Act is amended by inserting after section 12 the following section:

“Change
on birth
certificate

12A. The Registrar General –

- (a) may pursuant to section 9 or section 10 and upon payment of the prescribed fee insert the name of the father of a child on the birth certificate of that child, or
- (b) shall effect to the birth certificate of a child, such change as the Court may direct.”.

Act amended 8. The Act is amended by deleting the heading “BLOOD TESTS” appearing between sections 12 and 13 and substituting the heading “DNA ANALYSIS”.

Section 13
amended

9. Section 13 of the Act is amended –

- (a) by repealing subsections (1) to (3) and substituting the following subsections:

“Power of
Court to
require
DNA
analysis to
ascertain
parentage

13.(1) Where in any civil proceedings the question of whether a person is the parent of another person (hereinafter referred to as “the subject”) falls to be determined by a Court hearing the proceedings, the Court may give a direction for the use of DNA analysis to ascertain whether the analysis shows to the satisfaction of the Court that a person is or is not the parent of the subject and for the taking, within a period to be specified in the direction, of a tissue sample from the subject and from any person alleged to be the parent of the subject.

(2) A Court may at any time revoke or vary a direction previously given by the Court under this section.

(3) A tester performing the analysis referred to in subsection (1) shall make to the Court by which the direction referred to in subsection (1) was given, a report in which he shall state –

(a) the results of the analysis; and

(b) the level of probability that the person to whom the report relates is or is not the parent of the subject,

and the report shall be received by the Court as evidence in the proceedings of the matters stated therein.”;

(b) in subsection (5) by deleting the words “tests taken” and “those tests” and substituting the words “DNA analysis” and “such analysis”, respectively; and

(c) by repealing subsection (6) and substituting the following subsection:

“ (6) Where a direction is given under this section, the Court may in its discretion –

(a) order any party to the proceedings to bear;

(b) order that the Court shall bear; or

(c) make such other order as the Court may see fit in relation to the bearing of,

the cost of taking and analysing tissue samples for the purpose of giving effect to the direction.”

(d) by inserting after subsection (6), the following subsection:

“ (6A) In relation to any party to proceedings under this section, the Court may give a direction respecting the nature of identification to be provided to the qualified person taking the tissue sample, by or for each person directed to provide such a sample and the time for providing the identification.”.

(e) by repealing subsection (7).

Section 14
repealed

10. The Act is amended by repealing section 14.

Sections 14A
and 14B
inserted

11. The Act is amended by inserting immediately before section 15, the following sections:

“Qualified
persons to
take tissue
samples

14A.(1) Qualified persons may take tissue samples in accordance with this Act.

Chief Justice
may designate
persons to
take tissue
samples

(2) Notwithstanding subsection (1), the Chief Justice may designate court officials trained as prescribed to take tissue samples.

Minister may
designate
testers

14B . The Minister may, by Order, on the advice of the Minister to whom responsibility for standards is assigned, designate testers.”.

Section 15
repealed and
substituted

12. The Act is amended by repealing section 15 and substituting the following sections:

“Failure to comply with direction for DNA analysis

15. Where a Court gives a direction under section 13 and any person fails to take any step required of him for the purpose of giving effect to the direction, the Court may draw such inferences, if any, from that fact as appear proper in the circumstances.

Impersonating a qualified person

15A. A person who for the purposes of this Act impersonates a qualified person commits an offence and is liable on summary conviction, to a fine of one hundred thousand dollars or to imprisonment for five years.

DNA analysis between consenting parties

15B. Nothing in this Act shall be construed as preventing parties interested in the determination of the parentage of a person from consenting to the use of DNA analysis and utilising services of their choice.”.

Section 16 repealed and substituted

13. Section 16 of the Act is repealed and the following section substituted:

“Penalties for impersonating another person *re* **tissue sample**

16.(1) If for the purpose of providing a tissue sample for DNA analysis required to give effect to a direction under section 13 any person impersonates another, or proffers a child knowing that it is not the child named in the direction, he is liable on summary conviction, to a fine of one hundred thousand dollars or to imprisonment for five years.

(2) If a person wilfully and maliciously -

(a) breaks the seal of or opens or causes to be opened any container with a tissue sample which is to be delivered to a tester; or

(b) does any act or thing whereby the due delivery of such container to the tester is prevented or impeded;
or

(c) in any manner tampers with such container,

he is liable on summary conviction to a fine of one hundred thousand dollars or to imprisonment for five years.”.

Section 16A repealed 14. Section 16A of the Act is repealed.

Section 17 repealed and substituted 15. Section 17 of the Act is repealed and the following section substituted:

“Regulations 17.(1) The Minister may, subject to negative resolution of Parliament, make regulations for giving effect to the purposes and provisions of this Act.

(2) Without prejudice to the generality of subsection (1), regulations made thereunder may provide for –

(a) giving effect to any direction given under section 13;

(b) regulating the taking, identification, security and transportation of tissue samples;

(c) prescribing on the advice of the Minister to whom responsibility for health has been assigned, the training referred to in section 14A(2).”.

Act amended 16. The Act is amended by inserting between the heading "GENERAL" and section 18, the following section:

"Tissue samples from deceased persons

17A. For the purposes of this Act, a tissue sample may be taken from a deceased person on the direction of the Court."

Chap.44:01 amended

17. The Births and Deaths Registration Act is amended –

(a) in section 21B(1)(b) by deleting the word "paternity";

(b) by inserting after section 21B, the following section:

"Change on Birth Certificate

21C. The Registrar General shall effect to the birth certificate of a child any change as the Court may direct."

Chap. 46:08 amended

18. The Family Law (Guardianship of Minors, Domicile and Maintenance) Act is amended by inserting after section 22, the following section:

"Change on Birth Certificate

22A. The Registrar General shall effect to the birth certificate of a child, any change as the Court may direct."

Passed in the House of Representatives this _____ day of _____, 2009.

Clerk of the House

I confirm the above.

Speaker

Passed in the Senate this _____ day of _____, 2009.

Clerk of the Senate

I confirm the above.

President of the Senate