



*Office of the Leader of the Opposition*  
**THE HON. PAM WEBSTER**

12 October 2015

**To All the People of Anguilla, both at home and abroad.**

I am writing to commend to you for public consultation three social development Bills that I have introduced in the House of Assembly, which are of crucial importance to the social fabric of Anguilla:

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- **The Family Law (Guardianship, Custody and Access to Children) Bill, 2015**
- **The Status of Children Bill, 2015**
- **The Protection Against Sexual Harassment Bill, 2015**

These Bills represent legislation that should have been put on the Statute Book in Anguilla long ago, but to which successive governments have failed to give the priority they deserve. I ask all of you who place importance on family values and the interests of children to consider these Bills carefully and to make any suggestions you may have for their improvement, so that they can go through their final stages and onto the Statute Book as truly enlightened legislation.

The background to these bills is well documented in the report for UNICEF on the Current State of Legislation in the British Overseas Territories from a Children's and Women's Rights Perspective, by Alejandro Morlachetti, which draws attention, amongst many other deficiencies of Anguilla legislation, to the fact that "There is clear need to adopt a new and modern legal framework related to the maintenance and access to children to reinforce common responsibilities of both parents in upbringing children and also to ensure that children have the right to stay in regular contact with both parents, even when they are not living together."

The purpose of **The Family Law (Guardianship, Custody and Access to Children) Bill, 2015** is described in its "Objects and Reasons" as being "to define and regulate the authority of parents as guardians of their children, whether or not born in wedlock, their power to appoint guardians, and the powers of Courts in relation to the guardianship, custody and access to children and related matters".

In the current state of Anguilla legislation, the fact is that loving fathers have no rights when it comes to their children unless they are married to the mothers of their children. There are many men who regularly pay child support for their children but who are punished wrongfully by the mothers who refuse them access to their children. As and when the Family Law (Guardianship, Custody and Access to Children) Bill, 2015 becomes law, it will at long last give men who support their children the right to have the Magistrate order the mother to allow them access to their children. At present, a vindictive mother can "punish" a father by depriving him of any right to see his child no matter how faithfully he pays child support. As a result, some children grow up without knowing and bonding with their fathers, even where the father desires this relationship. I believe there is not a man in Anguilla who would oppose reform in this area.

The purpose of **The Status of Children Bill, 2015** is described in its "Objects and Reasons" as being "to provide for the equal status of children" by providing that "all distinctions that exist as a result of the marital status of the parents of a child shall be abolished".

As far as the Status of Children Bill is concerned, Anguilla has done nothing to comply with our obligations under the International Convention on the Rights of the Child, long ago extended to us by the British Government. We still have "bastardy" laws in our Magistrate's Code of Procedure, for example. The rationale of the Status of Children Bill is that we should long ago have passed it in order to be in compliance with the UN Convention on the Rights of the Child. The Status of Children Bill is firmly based on the OECS model, with only minor adjustments. It will bring Anguilla into conformity with the Convention on the Rights of the Child, compliance with which is long overdue.

The purpose of **The Protection Against Sexual Harassment Bill, 2015** is described in its "Objects and Reasons" as being "to criminalise sexual harassment in employment, the provision of public services, education and accommodation, and to give additional powers to a Labour Tribunal appointed under the Labour Department Act to provide suitable remedies where a claim of sexual harassment is proved".

It is a shameful fact that the sexual harassment of women in the work place and in government offices in Anguilla goes unopposed and unpunished. There are not many women who would object to reform in this area, and that is the purpose of my Protection Against Sexual Harassment Bill, 2015. The Bill is based on the Caricom model, save that instead of proposing the establishment of a whole new Tribunal, it proposes that the new law, which will be mainly concerned with harassment in the place of employment, will be administered by the existing Labour Tribunal.

All three of the above Bills represent legislation of crucial importance to the social fabric of Anguilla.

By happy coincidence, the Anguilla Bar Association adopted, as its theme for this year's Law Week: "*Strengthening our families through the Law*". That title precisely expresses the purpose of my three Bills, which once again I commend to you and in respect of which I seek your views and insights.

My people, if you truly value social and family values, please roll up your sleeves and show support for these draft Bills by commenting on them. And do please suggest any improvements you would like to see in them. Once a proper consultation has taken place, I am confident that the government will, in the interests of the Anguillian people, cooperate with my objective of getting these Bills onto the Statute Book without further inordinate delay.

Please email your comments and/or questions to me at [Palmavon.Webster@hoa.ai](mailto:Palmavon.Webster@hoa.ai) by Friday 11th December 2015. Following that, I undertake to collate and publish all constructive comments and to ensure that they are taken into consideration during the next stage of the legislative process.

I greatly look forward to the participation in this process of as many interested persons as possible. We owe it to our children and to all our fellow Anguillians.

Blessings to you all.

A handwritten signature in blue ink, appearing to read 'Pam Webster', with a long horizontal flourish extending to the right.

Pam Webster  
Member for District 1



**ANGUILLA**

A BILL FOR

**THE FAMILY LAW (GUARDIANSHIP, CUSTODY  
AND ACCESS TO CHILDREN) ACT, 2015**

Published by Authority

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I Assent

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Christina Scott  
Governor

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Date

A BILL FOR  
**FAMILY LAW (GUARDIANSHIP, CUSTODY AND ACCESS TO CHILDREN)  
ACT, 2015**

[Gazetted                   ] [Commencement: Section 1]

ENACTED by the Legislature of Anguilla

**AN ACT** to define and regulate the authority of parents as guardians of their children, whether or not born in wedlock, their power to appoint guardians, and the powers of Courts in relation to the guardianship, custody and access to children and related matters.

**PART 1  
PRELIMINARY**

**Short title**

1. (1) This Act may be cited as the Family Law (Guardianship, Custody and Access to Children) Act.

(2) This Act shall come into operation on a day to be fixed by the Governor by Notice published in the *Gazette*.

**Interpretation**

2. In this Act:

“actual custody” in relation to a child, means the actual possession of his or her person, whether or not that possession is shared with one or more persons;

"child" means:

(a) a person under the age of 18 years;

(b) a person 18 years and older whose special circumstances are such that he or she is unable to reasonably provide for his or her daily requirements;

“Court” means the Court as provided for in section 33;

“custody” means the physical or legal control and responsibility for a child whether joint or individual, including providing for the normal daily requirements relating to the care and development of the child;

“custodian of a child” means a person who is appointed to have custody of the child by a Court of competent jurisdiction, and custodianship shall be construed accordingly;

“father” means a birth or adoptive father;

“guardianship” means the legal responsibility and authority for making decisions with respect to a child;

“High Court” means the High Court of Justice or a Judge thereof;

“legal custody” means, as respects a child, so much of the parental rights and duties as relate to the person of the child (including the place and manner in which his or her time is spent);

“Magistrate’s Court” means a Magistrate’s Court within the meaning of the Magistrate’s Code of Procedure Act RSA c M005;

“maintenance” includes making financial provision for education and medical care;

“maintenance order” means an order made under this Act for the maintenance of a child;

“mother” means a birth or adoptive mother;

“person” includes any school or institution;

“stranger” means a person who, being neither the mother nor father of a child, has in the opinion of the Court a sufficient interest in the child;

“upbringing” includes education.



## PART 2

### GENERAL PRINCIPLES

#### Equality of parental rights

3. (1) In relation to the custody or upbringing of a child, and in relation to the administration of any property belonging to or held in trust for a child or the application of income of any such property, a mother shall have the same rights and authority as the law allows to a father, and the rights and authority of mother and father shall be equal and be exercisable by either without the other.

(2) An agreement for a man or woman to give up in whole or in part, in relation to any child of his or hers, the rights and authority referred to in subsection (1) shall be unenforceable.

(3) Where a child's father and mother disagree on any question affecting his or her welfare, either of them may apply to the Court for its direction, and subject to subsection (4), the Court may make such order regarding the matters in difference as it may think proper.

(4) Subsection (3) shall not authorise the Court to make any order regarding the custody of a child or the right of access to him or her other than to his or her father or mother.

(5) An order under subsection (3) may be varied or discharged by a subsequent order made on the application of either parent or, after the death of either parent, on the application of any guardian, or (before or after the death of either parent) on the application of any other person having the custody of the child.

(6) Sections 33 and 34 shall apply for the purposes of subsections (3) to (5) as if they were contained in section 12.

(7) Nothing in this section shall affect the operation of any written law requiring the consent of both parents in a matter affecting a child.

#### Change of name of child

4. (1) Subject to subsections (2) and (3), the father or mother of a child or a stranger may apply to the High Court to change a given name or the surname of that child.

(2) Where an application is made under subsection (1)—

(a) by the mother or father, the consent of the other parent must first be obtained; or

(b) by the stranger, the consent of both parents must first be obtained.

(3) Notwithstanding subsection (2), the High Court may, on an application made under subsection (1), dispense with the consent of the father or of the mother in the case where the mother or father is dead or cannot be found or, in any other case, as it sees fit.

### **Guardianship of children**

5. (1) Unless the High Court otherwise orders the following are joint guardians of a child:

(a) the mother of the child;

(b) the father of the child.

(2) Subject to the provisions of this Act, the mother of a child born out of wedlock shall be the sole guardian of the child unless and until the paternity of the child has been registered pursuant to the Registration of Births, Deaths and Marriages Act RSA c R035 or established under the Status of Children Act, 2015.

## **PART 3**

### **APPOINTMENT, REMOVAL AND POWERS OF GUARDIAN**

#### **Rights of surviving parent as to guardianship**

6. On the death of a parent of a child the surviving parent shall, subject to the provisions of this Act, and to section 47 of the Matrimonial Proceedings Act RSA c M060, be guardian of the child either alone or jointly with any guardian appointed by the deceased parent; and—

(a) where no guardian has been appointed by the deceased parent; or

(b) in the event of the death or refusal to act of the guardian or guardians appointed by the deceased parent, the High Court may, if it thinks fit, appoint a guardian to act jointly with the surviving parent.

#### **Rights of father and mother to appoint testamentary guardians**

7. (1) The father or the mother of a child may by Deed or Will appoint any person to be guardian of the child after his or her death.

(2) If the father of a child who was born out of wedlock desires to appoint a testamentary guardian of such child under subsection (1) it shall not be necessary for such father first to obtain a custody order with respect to the child.

(3) Any guardian appointed under subsection (1) shall act jointly with the mother or father, as the case may be, of the child so long as the mother or father remains alive unless the mother or father objects to his or her so acting.

(4) If the mother or father so objects, or if the guardian so appointed considers that the mother or father is unfit to have the custody of the child, the guardian may apply to the High Court, and the High Court may either—

(a) refuse to make any order (in which case the mother or father shall remain sole guardian); or

(b) make an order that the guardian so appointed—

(i) shall act jointly with the mother or father; or

(ii) shall be the sole guardian of the child.

(5) Where guardians are appointed by both parents the guardians so appointed shall, after the death of the surviving parent, act jointly.

(6) If under section 6 a guardian has been appointed by the High Court to act jointly with the surviving parent, he shall continue to act as guardian after the death of the surviving parent; but if the surviving parent has appointed a guardian, the guardian appointed by the High Court shall act jointly with the guardian appointed by the surviving parent.

(7) In any case where a decree for judicial separation, or a decree nisi or decree absolute for divorce, shall be pronounced, the Court pronouncing such decree may thereby declare the parent by reason of whose misconduct such decree is made to be a person unfit to have the custody of the children (if any) of the marriage; and in such case, the parent so declared to be unfit shall not, upon the death of the other parent, be entitled as of right to the custody or guardianship of such children.

### **Power of Court to appoint guardian for child having no parent, etc**

8. Where a child has no parent, no guardian of the person, and no other person having parental rights with respect to him or her, the High Court, on application of any person, may, if it thinks fit, appoint the applicant to be the guardian of the child.

### **Power of High Court to remove or replace guardian**

9. The High Court at any time may, in its discretion, on being satisfied that it is for the welfare of the child, remove from his or her office any testamentary guardian or any guardian appointed or acting by virtue of this Act, and may also, if it considers it to be for the welfare of the child, appoint another guardian in place of the guardian so removed.

### **Disputes between joint guardians**

10. Where two or more persons act as joint guardians of a child and they are unable to agree on any question affecting the welfare of the child, any of them may apply to the High Court for its direction, and the High Court may make such order regarding the matters in difference as it may think proper.

### **Powers of guardians**

11. (1) Subject to subsection (2), a guardian under this Act, besides being guardian of the person of the child, shall have all rights, powers, and duties of a guardian of the child's estate, including in particular the right to receive and recover in his or her own name for the benefit of the child property of whatever description and wherever situated which the child is entitled to receive or recover.

(2) Nothing in subsection (1) shall restrict or affect the powers of the High Court to appoint a person to be, or to act as, the guardian of a child's estate either generally or for a particular purpose.

## **PART 4**

### **ORDERS FOR CUSTODY, ACCESS AND MAINTENANCE**

#### **Orders for custody and maintenance on application of parent or stranger**

12. (1) The Court may on the application of the father or mother of a child (who may apply without next friend) or of a stranger make such order regarding—

(a) the legal custody of the child; and

(b) the right of access to the child of the applicant or of any other person,

as the Court thinks fit having regard to the welfare of the child and to the conduct and wishes of the mother or father or of the stranger.

(2) Where the Court makes an order under subsection (1) giving the legal custody of the child to any person (whether or not one of the parents), the Court

may make a further order requiring payment to that person by the parent or either of the parents excluded from having that custody of such periodical sum towards the maintenance of the child in accordance with section 16.

(3) An order may be made under subsection (1) notwithstanding that the parents of the child are then residing together, but

(a) no such order shall be enforceable and no liability thereunder shall accrue, while they are residing together; and

(b) any such order shall cease to have effect if for a period of six months after it is made they continue to reside together,

provided that, unless the Court in making the order directs otherwise, paragraphs (a) and (b) of this subsection shall not apply to any provision of the order giving the legal custody of the child to a person other than one of the parents or with respect to a child of whom legal custody is so given.

(4) An order under subsection (1) or (2) may be varied or discharged by a subsequent order made on the application of either parent or after the death of either parent on the application of any guardian under this Act, or (before or after the death of either parent) on the application of any other person having the custody of the child by virtue of an order under subsection (1).

(5) Notwithstanding subsection (2) the Court may without determination of any issue relating to custody or right of access to the child make a maintenance order under this section in accordance with section 16.

(6) Upon any order or appointment or revocation being made under this section by a Court such Court may also order the child to be delivered by any person to the person appointed to have custody.

(7) Nothing in this section shall apply in respect of children who are Wards of Court.

### **Orders for custody and maintenance where person is guardian to exclusion of surviving parent**

**13.** (1) Where the High Court makes an order under section 7(4) that a person shall be the sole guardian of a child to the exclusion of his or her mother or father, the High Court may—

(a) make such order regarding—

(i) the legal custody of the child; and

(ii) the right of access to the child of his or her mother or father,

as the Court thinks fit having regard to the welfare of the child; and

(b) make a further order requiring the mother or the father to pay to the guardian a periodical sum towards the maintenance of the child in accordance with section 16.

(2) The powers conferred by subsection (1) may be exercised at any time and include power to vary or discharge any order previously made under those powers.

### **Orders for custody and maintenance where joint guardians disagree**

**14.** The powers of the High Court under section 10 shall, where one of the joint guardians is the mother or the father of the child, include power—

(a) to make such order regarding—

(i) the legal custody of the child; and

(ii) the right of access to the child of his or her mother or father, or of any person who has treated the child as a child of his or her family,

as the Court thinks fit having regard to the welfare of the child;

(b) to make an order requiring the mother or the father to pay a periodical sum towards the maintenance of the child in accordance with section 16;

(c) to vary or discharge any order previously made under that section.

### **Further provisions relating to orders for custody**

**15.** (1) An order shall not be made under section 12(1), 13(1)(a) or 14(a) giving the legal custody of a child to more than one person; but where the Court makes an order under one of those sections giving the legal custody of a child to any person, it may order that a parent of the child who is not given the legal custody of the child shall retain all or such as the Court may specify of the parental rights and duties comprised in legal custody (other than the right to the actual custody of the child) and shall have those rights and duties jointly with the person who is given the legal custody of the child.

(2) Where the Court makes an order under section 12(1), 13(1)(a) or 14(a) the Court may direct that the order, or such provision thereof as the Court may

specify, shall not have effect until the occurrence of an event specified by the Court or the expiration of a period so specified; and where the Court has directed that the order or any provision thereof shall not have effect until the expiration of a specified period, the Court may, at any time before the expiration of the period, direct that the order, or that provision thereof, shall not have effect until the expiration of such further period as the Court may specify.

### **Maintenance of Children Act to apply in making a maintenance order**

**16.** Any maintenance order made in respect of a child under this Act shall be made in accordance with the Magistrate's Code of Procedure Act and in the same manner as if it were a maintenance order made under the Magistrate's Code of Procedure Act and shall have effect as if made under the said Act and may be varied and discharged in the same manner and may also be enforced in the manner as is enforced under an order made under the said Act.

### **Civil enforcement of custody rights**

**17.** (1) Where an order is made by a Court under this Act awarding any person custody of a child a copy of the order may be served on any person in whose actual custody the child may for the time being be, and thereupon the provisions may, without prejudice to any other remedy open to the person given custody, be enforced as if it were an order of the Court requiring the person so served to give up the minor to the person given custody.

(2) Where custody of a child is awarded to a person by an order made or enforceable under this Act and the person is denied the exercise of custody, the Court may, on an application for the production of a child made without notice to any other person, order that the child be apprehended by an officer of the Department of Social Development and taken to the person awarded custody.

(3) For the purposes of locating and apprehending a child in accordance with an order under subsection (1), an officer of the Department of Social Development may enter and search any place where he or she has reasonable and probable grounds for believing the child may be.

(4) Any person who denies the exercise of custody to a person who is awarded custody by an order made or enforceable under this Act is guilty of an offence and liable on conviction to a fine of ten thousand dollars or to imprisonment for a period not exceeding two years.

## PART 5

### SERVICES OF FAMILY EXPERTS, MEDIATION

#### Services of persons other than probation officers may be used

**18.** (1) Where in any proceedings under this Act the Court requires the services of a probation officer, the Court may nonetheless utilize the services of any person whose qualifications are at least equivalent to those of a probation officer and who either—

(a) is a public officer; or

(b) is employed on contract by Government.

(2) A person, not being a public officer, whose services are utilized by the Court under subsection (1) shall exercise the same functions and enjoy the same protection as a probation officer.

#### Court may refer matter to mediation etc.

**19.** (1) Where in the opinion of the Court the interest of the parties to any proceedings under this Act may be better served if the matter or any aspect thereof is referred to mediation or to the Department of Social Development or to some other professional, the Court may with the agreement of the parties, make the appropriate referral.

(2) Parties to any family proceedings may, with the approval of the Court, agree to retain the services of a private mediator, counsellor or other professional.

(3) Any expenses incurred under subsection (2) shall be borne by the parties or either of them as the parties may agree.

(4) The Court may adjourn family proceedings in order to accommodate a referral under subsection (1) or the parties' desire to retain services under subsection (2).

#### Referral may take place before commencement of proceedings

**20.** The unit mentioned in section 19(1) may refer parties to any of the services provided for in that section, before the commencement of proceedings.

#### Mediation confidential

**21.** Mediation in any family proceedings is confidential.



### **Report to Court**

**22.** (1) A report shall be made to the Court as to whether or not the mediation resulted in agreement.

(2) Where there is agreement, the terms thereof may be communicated to the Court if the parties so agree.

## **PART 6**

### **ENFORCEMENT**

#### **Refusal of access**

**23.** Any person having care or custody of a child who, contrary to an order of any Court that has taken effect, refuses another person who has access to that child or who prevents that person from exercising such access or such parental rights and duties is guilty of an offence and liable on conviction to a fine of five thousand dollars or to imprisonment for a period not exceeding three months.

#### **Order restraining harassment**

**24.** On application, a Court may-

(a) make an order restraining any person from molesting, annoying, harassing, communicating or attempting to molest, annoy, harass or communicate with the applicant or a child in the lawful custody of the applicant or both the applicant and a child, and

(b) require a person named in an order under paragraph (a)

(i) to enter into a recognizance, with or without sureties, or to post a bond, and

(ii) to report to the court or a person designated by the Court, at the times and places and for the period of time the Court directs.

#### **Order prohibiting interference with child**

**25.** If a Court makes a custody order, or a custody order is enforceable by a court, the Court may-

(a) order that a person must not enter premises, including premises the person owns or has a right to possession of, where the child resides from time to time,

(b) order that a person must not make contact or endeavour to make contact with or otherwise interfere with either the child or any person who has custody of or access to the child, or

(c) if the Court concludes that the person named in its custody order may not comply with an order under paragraph (a) or (b), further order that the person

(i) enter into a recognizance, with or without sureties, in any reasonable amount that the court thinks necessary,

(ii) report to the court or person designated for the period of time, and at the times and places, as the court considers necessary and reasonable,

(iii) deliver up to the court, or a person designated by the court, any documents that the court thinks fit, or

### **Neglect and desertion of child**

**26.** Every person having the custody of a child under any order made under this Act who misapplies moneys paid for the support of the child, or who withholds proper nourishment from the child, or who in any manner ill-treats the child is liable, on summary conviction, to a fine of five thousand dollars or to imprisonment for six months.

### **Power of Court to refuse production of child**

**27.** Where the parent of a child applies to the Court for an order for the production of a child, and the Court is of the opinion that the parent has abandoned or deserted the child, or that the parent has otherwise so conducted himself or herself that the Court should refuse to enforce his or her right to the custody of the child, or for any other good and sufficient reason, the Court may, in its discretion, decline to issue the writ or make the order.

### **Power of Court to order repayment by parent of costs of bringing up child**

**28.** If at the time of the application for an order for the production of the child, the child is being brought up by another person, the Court may, in its discretion, if it orders the child to be given up to the parent, further order that the parent shall pay to such person the whole of the costs properly incurred in bringing up the child, or such portion thereof as shall seem to the Court to be just and reasonable, having regard to all the circumstances of the case.

### **Court in making order to have regard to conduct of parent**

**29.** Where a parent has—

(a) abandoned or deserted his or her child; or

(b) allowed his or her child to be brought up by another person at that person's expense for such a length of time and under such circumstances as to satisfy the Court that the parent was unmindful of his or her parental duties,

the Court shall not make an order for the delivery of the child to the parent, unless the parent has satisfied the Court that, having regard to the welfare of the child, he or she is a fit person to have the custody of the child.

### **Court may order a child though not delivered to his or her parent, to be brought up in such religion as the parent has a right to require**

**30.** Upon application by a parent for the production or custody of a child, if the High Court is of the opinion that the parent ought not to have the custody of the child, and that the child is being brought up in a different religion to that in which the parent has a legal right to require that the child should be brought up, the Court shall have powers to make such order as it may think fit to secure that the child is brought up in the religion in which the parent has a legal right to require that the child should be brought up; but nothing contained in this Act shall interfere with or affect the power of the High Court to consult the wishes of the child in considering what order ought to be made, or diminish the right which any child now possesses to the exercise of its own free choice.

### **Wards of Court**

**31.** (1) Subject to this section no child shall be made a Ward of Court except by virtue of an order to that effect made by the High Court.

(2) Where application is made, for such an application in respect of a child the child shall become a Ward of Court on the making of the application, but shall cease to be a Ward of Court at the expiration of such period as may be prescribed by Rules of Court, unless within that period an application has been made in accordance with the application.

(3) The High Court may, either upon an application in that behalf or without such an application, order that any child who is for the time being a Ward of Court shall cease to be a Ward of Court.

## PART 7

### JURISDICTION, PROCEDURE, APPEALS AND REMOVAL OF PROCEEDINGS

#### Courts having jurisdiction under the Act

**32.** (1) Subject to the provisions of this section, “the Court” for the purposes of this Act means—

- (a) the High Court; or
- (b) a Magistrate’s Court.

(2) A Magistrate’s Court shall have no jurisdiction to entertain any application in respect of a child—

- (a) relating to guardianship;
- (b) where proceedings relating to or affecting the child are pending in the High Court;
- (c) where an order of the High Court relating to the custody or guardianship of, or access to, the child is in force; or
- (d) where the child is a Ward of Court.

(3) In any proceedings in which any question of guardianship, custody, or access arises as an ancillary matter the said Courts shall have jurisdiction.

#### Procedure

**33.** Proceedings in a Magistrate’s Court under this Act may be taken in the manner provided for in the Magistrate’s Code of Procedure Act RSA c M005 and except as provided for or varied by this Act such procedure including the computation of and other matters with respect to costs shall be as near as may be according to the procedure under the Magistrate’s Code of Procedure Act, provided that at least seven days shall have elapsed between the service of a summons on a defendant and the commencement of the hearing of the matter that requires the adjudication of the Court.

#### Removal of proceedings

**34.** (1) Where any application has been made under this Act to a Magistrate’s Court, the High Court may, at the instance of any party to the application, order the application to be removed to the High Court and there continued as if it had

been properly and duly commenced in that Court on such terms as to costs as it thinks proper.

(2) Where an application is made to a Magistrate's Court under this Act, and the Magistrate's Court considers that the matter is one which would more conveniently be dealt with by the High Court, the Magistrate's Court may refuse to make an order, and in that case no appeal against such order shall be to the Court of Appeal.

### **Savings for powers of the High Court**

**35.** Nothing in this Act shall restrict or affect the jurisdiction of the High Court to appoint or remove guardians or otherwise in respect of children.

### **Appeals**

**36.** (1) Subject to section 34 an appeal shall be to the Court of Appeal from any judgment or order of the Court under this Act.

(2) An appeal under this section shall be brought before the expiration of thirty days from the order or judgment appealed against unless the Court or a Judge at the time of making the order or at any subsequent time or the Court of Appeal shall enlarge the time.

(3) A notice of appeal under this section shall not operate to stay the order or judgment appealed against, save that a Judge of the Court of Appeal may stay execution of the order appealed against on such conditions, if any, as may be appropriate.

(4) Save as otherwise provided in this section the provisions of the West Indies Associated States Supreme Court Order, the Eastern Caribbean Supreme Court Civil Procedure Rules, and the Court of Appeal Rules, apply, where appropriate, to appeals under this section from an order or judgment of the High Court and the provisions of the Magistrate's Code of Procedure apply, where appropriate, to appeals under this section from an order of a Magistrate's Court.

## **PART 8**

### **MISCELLANEOUS**

#### **Minister's power to make Regulations**

**37.** (1) The Minister may make Regulations and prescribe forms for carrying into effect the provisions of this Act.

(2) All Regulations made and forms prescribed under this section shall be published in the *Gazette* and shall come into force on such publication or at such other time as may be specified.

### **Transitional**

**38.** (1) Any order or other thing made, done or having effect under or for the purposes of a written law repealed by this Act and in force immediately before the commencement of this Act shall be deemed to have been made or done under or for the purposes of the corresponding written law in this Act.

(2) Any application made pursuant to a written law repealed by this Act and pending immediately before the commencement of this Act shall be continued to conclusion as if the written law under which it was brought had not been repealed.

(3) So much of any document as refers expressly or by implication to any written law repealed by this Act shall, if and so far as the nature of the subject matter of the document permits, be construed as referring to this Act or the corresponding written law therein, as the case may require.

**FAMILY LAW (GUARDIANSHIP, CUSTODY AND ACCESS TO CHILDREN)  
BILL**

**OBJECTS AND REASONS**

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

to define and regulate the authority of parents as guardians of their children, whether or not born in wedlock, their power to appoint guardians, and the powers of Courts in relation to the guardianship, custody and access to children and related matters.

**Part 1 – PRELIMINARY.** *Clauses 1-2* of the Bill deal with the short title and interpretation of words used.

**Part 2 – GENERAL PRINCIPLES.** *Clauses 3-5* of the Bill establish that a father and mother of a child have the same rights in relation to the custody and upbringing of and property belonging to their child. Where they disagree on any question affecting the welfare of the child they may apply to the Magistrate's Court for its direction. If one of them prefers, he or she may apply to move the dispute to the High Court. If they or one of them or someone else having responsibility for the child with the consent of the parents may apply to the High Court to change the given names or the surname of the child. Questions of guardianship when the mother and father do not agree are reserved for the High Court, but otherwise the mother and father are joint guardians of their children.

**Part 3 – APPOINTMENT, REMOVAL AND POWERS OF GUARDIANS.** *Clauses 6-11* of the Bill confirm that the father and mother are the guardians of their children. When one of them dies, he or she may by will appoint a successor guardian in his or her place, subject to the right of the High Court to intervene on the application of the surviving parent. The High Court alone has jurisdiction in questions of the legal guardianship of children.

**Part 4 – ORDERS FOR CUSTODY, ACCESS AND MAINTENANCE.** *Clauses 12-17* of the Bill empower the Magistrate's Court to make orders concerning the custody of and access to children. The father who is not married to the mother of his child will now for the first time have the right to demand access or even custody, which the court can grant in suitable cases.

**Part 5 – SERVICES OF FAMILY EXPERTS, MEDIATION.** *Clauses 18-22* of the Bill give the courts power to refer disputes between parents of children to mediation using either probation officers or officers of the Department of Social Development, who are trained counsellors.

**Part 6 – ENFORCEMENT.** *Clauses 23-31* of the Bill provide penalties for persons having custody of a child preventing access by another person who has

the right of access. The court may make orders restraining anyone from molesting or harassing a person who has the right to custody of or access to the child.

**Part 7 – JURISDICTION, PROCEDURE, APPEALS AND REMOVAL OF PROCEEDINGS.** *Clauses 32-36* of the Bill set out the jurisdiction of the High Court and Magistrate’s Court in matters of guardianship, custody and access to children. In sum, the High Court deals with guardianship issues, while the Magistrate’s Court deals with custody and access issues. Either parent may ask the Magistrate to transfer a case in the Magistrate’s Court to the High Court. Appeals go to the Court of Appeal.

**Part 8 – MISCELLANEOUS.** *Clauses 37-38* of the Bill give the Minister of Social Services power to make Regulations and prescribe the forms for carrying into effect the provisions of the Act; and make transitional provision for matters pending before the court immediately before the coming into effect of the Act.





**ANGUILLA**

A BILL FOR

**STATUS OF CHILDREN ACT, 2015**

Published by Authority

A BILL FOR  
**STATUS OF CHILDREN ACT**

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I Assent

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Christina Scott  
Governor

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Date

A BILL FOR  
**STATUS OF CHILDREN ACT, 2015**

[Gazetted:           ] [Commencement: section 1]

ENACTED by the Legislature of Anguilla

**AN ACT** to provide for the equal status of children

**PART I**  
**PRELIMINARY**

**Citation and commencement**

1.     (1) This Act may be cited as the Status of Children Act, 2015.

       (2) This Act shall come into operation on a day to be fixed by the Governor by Notice published in the *Gazette*.

**Interpretation**

2.     In this Act, unless the context otherwise requires:

“attorney-at-law” means an individual who has been admitted to practice law pursuant to the Eastern Caribbean Supreme Court (Anguilla) Act RSA c E015;

“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 Magistrate’s Court;

“marriage” includes:

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

“Minister” means the Minister responsible for social services;

“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;

“Registrar” means the Registrar General of Births, Deaths and Marriages;

“Registry” means the Registry of Births.

### **Application**

3. This Act shall apply to a child, whether or not:
- (a) the child was born in Anguilla;
  - (b) the child was born before or after the commencement of this Act; or
  - (c) the parents of the child have ever been domiciled in Anguilla.

## **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 be of equal status.

(2) The rule of construction whereby in any instrument, 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).

### **Presumption 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 occurring whether before or after the commencement of this Act:

- (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) judgment 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 or putative 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 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;
- (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 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.

(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.

(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.

(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 Births**

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.

(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.

(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.

#### **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 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 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.

(2) If a disposition referred to in subsection (1) contains a special power of appointment, this Act 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 shall 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.

##### **Persons dealing with property after the commencement of this Act**

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, 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, 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 shall be in closed court.

(2) A person shall not publish, whether by newspaper, by radio or television, by the internet, 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 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 does not affect rights vested before its commencement.

### **Regulations**

18. The Minister may make regulations under this Act 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 and for its due administration.

### **Repeal and savings**

19. (1) The following Acts are repealed:

- (a) The Law Reform (Illegitimacy) Act, RSA c L030; and
- (a) Legitimacy Act, RSA c L040; and

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

## STATUS OF CHILDREN BILL

### OBJECTS AND REASONS

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 Anguilla;
- (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, judgment 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 Births. 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.

**Part III, Parentage, Clauses 8-12** of the Bill make 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 such as the Legitimacy Act and the Legitimation Act and seeks to save Regulations and Orders made under the repealed Acts.



**ANGUILLA**

A BILL FOR

**PROTECTION AGAINST SEXUAL HARASSMENT ACT, 2015**

Published by Authority

A BILL FOR  
**PROTECTION AGAINST SEXUAL HARASSMENT ACT, 2015**

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I Assent

\_\_\_\_\_  
Christina Scott  
Governor

\_\_\_\_\_  
Date

A BILL FOR

**PROTECTION AGAINST SEXUAL HARASSMENT ACT**

[Gazetted:           ] [Commencement: section 10]

ENACTED by the Legislature of Anguilla

AN ACT to criminalise and to provide remedies in respect of acts of sexual harassment.

**Interpretation**

1. (1) In this Act –

"accommodation" includes residential and business accommodation;

"claimant" means the person by whom or on whose behalf that claim is lodged;

"claim" means a claim under section 5 in a dispute before a Labour Tribunal;

"educational institution" means a school, college, university or other institution at which education or training is provided;

"employment" includes part-time and temporary employment and work under a contract of services'

"fellow worker" in relation to an employee means another person who is employed by the employer of that first-mentioned employee;

"functions" include powers and duties;

“public officer” includes public servants, ministers of government, Members of the House of Assembly, special advisers and assistants to government ministers, persons on contract to government, board members and employees of statutory corporations, acting or purporting to act in their public capacity or in the provision of any public service;

"respondent" in relation to a claim, means the person who is alleged to have done the act to which the claim relates;

"supervisor" in relation to a person means a fellow worker who by virtue of the employment of that fellow worker is in a position of authority over that first-mentioned person.

(2) Any reference in this Act to conduct of a sexual nature in relation to a person includes a reference to the making, to or in the presence of, a person, of a statement of a sexual nature concerning that person, whether the statement is made orally or in writing.

### **Unlawful sexual harassment in employment**

2. (1) It is unlawful for an employer or supervisor of an employee to make it reasonably appear to an employee that the prospects or working conditions of that employee are contingent upon the employee's acceptance of sexual advances or toleration of sexual advances or persistent sexual suggestions or innuendo from the employer or supervisor.

(2) It is unlawful for a prospective employer to make it reasonably appear to a person that -

(a) an offer of employment to that person; or

(b) the terms on which employment is so offered is or are contingent on that person's acceptance of sexual advances or toleration of persistent sexual suggestions or innuendo from the prospective employer.

(3) It is unlawful for an employee to harass sexually a fellow worker.

(4) For the purposes of this section, a person shall be taken to harass sexually another person if the first-mentioned person makes an unwelcome sexual advance, or an unwelcome request for sexual favours to the other person, or engages in other unwelcome conduct of a sexual nature in relation to the other person, and -

(a) the other person has reasonable grounds for believing that a rejection of the advance, or refusal of the request or the taking of objection to the conduct would cause the other person to suffer disadvantage in any way

in connection with the other person's employment or work or possible employment or possible work; or

(b) as a result of the other person's rejection of the advance, refusal of the request or taking of objection to the conduct, the other person suffers any form of disadvantage in connection with that other person's employment or work or possible employment or possible work.

(5) A person who commits an act of sexual harassment in employment shall be guilty of an offence and shall be liable on summary conviction to a penalty not exceeding twenty five thousand dollars.

### **Unlawful sexual harassment in the provision of public services**

3. (1) It is unlawful for a public officer to make it reasonably appear to a member of the public seeking the assistance of the officer that the prospects of securing assistance are contingent upon the person's acceptance of sexual advances or toleration of sexual advances or persistent sexual suggestions or innuendo from the officer.

(2) It is unlawful for a public officer to make it reasonably appear to a person that

(a) an offer of assistance to that person; or

(b) the terms on which assistance is so offered is or are contingent on that person's acceptance of sexual advances or toleration of persistent sexual suggestions or innuendo from the officer of government.

(3) It is unlawful for a public officer to harass sexually a member of the public seeking public assistance of whatever kind.

(4) For the purposes of this section, a person shall be taken to harass sexually another person if the first-mentioned person makes an unwelcome sexual advance, or an unwelcome request for sexual favours to the other person, or engages in other unwelcome conduct of a sexual nature in relation to the other person, and -

(a) the other person has reasonable grounds for believing that a rejection of the advance, or refusal of the request or the taking of objection to the conduct would cause the other person to suffer disadvantage in any way in connection with the assistance sought; or

(b) as a result of the other person's rejection of the advance, refusal of the request or taking of objection to the conduct, the other person suffers any form of disadvantage in connection with the assistance sought.

(5) A public officer who commits an act of sexual harassment shall be guilty of an offence and shall be liable on summary conviction to a penalty not exceeding twenty five thousand dollars.

### **Unlawful sexual harassment in education**

4. (1) It is unlawful for a person who is a member of staff of an education institution to harass sexually a person who is a student at that educational institution or is seeking admission to that educational institution as a student.

(2) For the purpose of this section, a person shall be taken to harass sexually another person if the first-mentioned person makes an unwelcome sexual advance or an unwelcome request for sexual favours to the other person, or engages in other unwelcome conduct of a sexual nature in relation to the other person, and -

(a) the other person has reasonable grounds for believing that a rejection of the advance, a refusal of the request or the taking of objection to the conduct would disadvantage the other person in any way in connection with the other person's studies or the other person's application for admission to an educational institution as a student; or

(b) as a result of the other person's rejection of the advance, refusal of the request or the taking of objection to the conduct, the other person is disadvantaged in any way in connection with the other person's studies or the other person's application for admission to an educational institution as a student.

(3) A person who commits an act of sexual harassment in education shall be guilty of an offence and shall be liable on summary conviction to a penalty not exceeding twenty five thousand dollars.

### **Unlawful sexual harassment in accommodation**

5. (1) It is unlawful for a person to make it reasonably appear to another person that

(a) the terms on which the first-mentioned person offers the other person accommodation;

(b) the first-mentioned person's acceptance of the other person's application for accommodation;

(c) the time of processing of the other person's application for accommodation, or the order of precedence of the other person or any list of applicants for that accommodation;

(d) the other person's access or the extent of such access to any benefit connected with the accommodation;

(e) the failure to evict the other person or to subject that other person to any other detriment in relation to the accommodation,

is or are contingent on that other person's acceptance of sexual advances or toleration of persistent sexual suggestions or innuendo from the first-mentioned person.

(2) A person who commits an act of sexual harassment in relation to accommodation shall be guilty of an offence and shall be liable on summary conviction to a penalty not exceeding twenty five thousand dollars.

### **Determination by Labour Tribunal**

6. (1) A Tribunal appointed under the Labour Department Act RSA c L005 before whom a claim of sexual harassment in relation to employment has been made whether or not a prosecution has commenced under this Act, may in addition to its powers under the said Labour Department Act

(a) make a determination which may include any one or more of the following declarations, that is to say -

(i) that the respondent has engaged in conduct amounting to sexual harassment and should not repeat or continue such conduct;

(ii) that the respondent should perform any reasonable act or course of conduct to redress any loss or damage suffered by the claimant;

(iii) that the respondent should employ or re-employ the claimant;

(iv) that the respondent should pay to the claimant damages by way of compensation for any loss or damage suffered by reason of the conduct of the respondent;

(v) that the respondent should promote the claimant;

(vi) that the termination of a contract or agreement should be varied to redress any loss or damage suffered by the claimant;

(vii) where the claim relates to sexual harassment by a fellow worker, that the employer concerned should take such action as



may be appropriate to ensure that the harassment ceases and to report thereon to the Tribunal; or

(b) make such order as may be appropriate in relation to the claim.

(2) The Tribunal may, in the making of a determination under subsection (1)(a) include injury to the claimant's feelings or humiliation suffered by the complainant.

(3) Where the Tribunal makes a determination by way of a declaration for the payment of compensation to the claimant, the sum so payable may be recovered by the claimant summarily in a Magistrate's Court; without limit of amount, as a civil debt.

(4) Any respondent who fails to comply with a determination by the Tribunal shall be liable to be proceeded against and punished in like manner as if he were found guilty of contempt of Court.

### **Labour Tribunal may prevent publication of evidence etc.**

7. The Tribunal hearing a dispute involving a claim of sexual harassment may direct that

(a) any evidence given before it;

(b) the contents of any document produced to the Tribunal; or

(c) any information that might enable a person who has appeared before the Tribunal to be identified.

shall not be published or shall be published only in such manner, and to such persons, as the Tribunal may specify.

### **Court may hear evidence in closed court**

8. (1) Subject to subsection (2) a complaint in relation to sections 2, 3, 4 or 5 shall be held in public.

(2) The court may, of its own volition or on the application of a party to any proceedings under sections 2, 3, 4 or 5, if it is satisfied that it is appropriate to do so, direct that the proceedings, or part thereof, be held in closed court.

### **Offence of victimisation**

9. (1) A person who commits an act of victimisation against another person shall be guilty of an offence and shall be liable on summary conviction to a penalty not exceeding twenty five thousand dollars.

(2) For the purposes of subsection (1), a person shall be taken to commit an act of victimisation against another person if the first-mentioned person subjects, or threatens to subject, the other person to any detriment -

(a) on the grounds that the other person -

(i) has made, or proposes to make, a complaint under this Act;

(ii) has brought, or proposes to bring, proceedings under this act against any person;

(iii) has furnished, or proposes to furnish, any information, or has produced, or proposes to produce, any documents to a person exercising or performing any power or function under this Act;

(iv) has attended or proposes to attend a Labour Tribunal or to appear thereat as a witness in a claim of sexual harassment in employment;

(v) has made an allegation that a person has done an act that is unlawful by virtue of section 2, 3, 4 or 5; or

(b) on the ground that the first-mentioned person believes that the other person has done, or proposes to do, an act or thing referred to in any of sections 2, 3, 4 or 5.

### **Citation and commencement**

10. This Act may be cited as the Protection Against Sexual Harassment Act, 2015 and shall come into force on such date as the Governor may appoint by Notice published in the *Gazette*.

## **PROTECTION AGAINST SEXUAL HARASSMENT BILL**

### **OBJECTS AND REASONS**

**[The Objects and Reasons do not form part of this Bill]**

The Protection Against Sexual Harassment Bill seeks to to criminalise sexual harassment in employment, the provision of public services, education, and accommodation, and to give additional powers to a Labour Tribunal appointed under the Labour Department Act to provide suitable remedies where a claim of sexual harassment is proved.

The Bill consists of 10 clauses.

**Clause 1** is the Interpretation section of the Bill and defines the key terms used in the Bill.

**Clauses 2, 3, 4 and 5** create the offences of sexual harassment in employment, provision of public services, education, and accommodation, and provide a penalty on summary conviction of a maximum fine of EC\$25,000.00.

**Clause 6** empowers a Labour Tribunal appointed under the Labour Department Act to consider claims of sexual harassment in employment whether or not a criminal charge has been brought, and if the claim is proved to give various remedies to the worker involved.

**Clause 7** provides for a Labour Tribunal hearing a claim of sexual harassment in employment to control or restrict the publication of any evidence given before it.

**Clause 8** empowers a court hearing a complaint of an offence of sexual harassment to hear part or all of the evidence in private.

**Clause 9** makes it a crime for any person to victimise a person who is involved in proceedings under the Act.

**Clause 10** is the commencement and citation clause.