

Chapter 25

AN ACT TO AMEND SEVERAL ACTS FOR CONSTITUTIONAL VALIDITY (SPOUSAL BENEFITS AND OBLIGATIONS)

(Assented to October 31, 2011)

The Commissioner of Nunavut, by and with the advice and consent of the Legislative Assembly, enacts as follows:

Adoption Act

1. (1) **The *Adoption Act* is amended by this section.**
- (2) **The definition "cohabit" in subsection 1(1) is repealed.**
- (3) **The definition "spouse" in subsection 1(1) is repealed and the following substituted:**

"spouse" has the meaning assigned to it by section 1 of the *Family Law Act*. (*conjoint*)

Business Corporations Act

2. (1) **The *Business Corporations Act* is amended by this section.**
- (2) **Paragraph (d) of the definition "associate" in section 1 is repealed and the following substituted:**

(d) the spouse of the person, or

Change of Name Act

3. (1) **The *Change of Name Act* is amended by this section.**
- (2) **Section 1 is amended by adding the following definition in alphabetical order:**

"spouse" has the meaning assigned to it by section 1 of the *Family Law Act*. (*conjoint*)

(3) **Paragraph 9(2)(c) is amended by striking out "the father of the applicant and" and substituting "the parents of the applicant including, where applicable,".**

(4) **Paragraph 9(2)(d) is amended by striking out "the father of the spouse and" and substituting "the parents of the spouse including, where applicable,".**

Children's Law Act

4. (1) The *Children's Law Act* is amended by this section.

(2) Section 4 and subsections 5(1) and (2) are repealed and the following substituted:

Application

- 5.** (1) Any interested person may apply to a court for a declaratory order that
- (a) a person is the parent of a child; or
 - (b) a person shall not be recognized in law as the parent of a child.

Declaration of parentage

(2) Where the court finds on the balance of probabilities that the person is the parent of a child, or shall not be recognized in law as the parent of a child, as the case may be, the court may make a declaratory order to that effect.

(3) Section 8 is amended by adding the following before subsection 8(1):

Presumption of parentage

- (01) A person is presumed to be the parent of a child where
- (a) the person was the spouse of the mother of the child at the time of the birth of the child;
 - (b) the person and the mother of the child have filed a statement under subsection 2(2.1) of the *Vital Statistics Act* or a document under a similar provision of a corresponding Act of another jurisdiction in Canada;
 - (c) the person and the mother of the child have acknowledged in writing that he or she is the parent of the child; or
 - (d) the person has been found or recognized in his or her lifetime by a court of competent jurisdiction in Canada to be the parent of the child.

(4) Subsection 8(1) is amended by

- (a) **striking out** "Unless the contrary is proven on the balance of probabilities, a person shall be presumed to be," **and substituting** "A male person is presumed to be,";
- (b) **striking out the semi-colon at the end of paragraph (d) and substituting a period; and**
- (c) **repealing paragraphs (e) to (g).**

(5) Subsection 8(2) is repealed.

(6) Subsection 12(1) is repealed and the following substituted:

Declaration of parentage

12. (1) A person may file in the office of the Registrar General a declaration, in a form approved by the Minister, affirming that he or she is the parent of a child.

(7) Subsection 14(1) is amended by striking out "section 4, 5" and substituting "section 5".

(8) Subsection 18(1) is amended by striking out "the father and the mother" and substituting "the parents".

(9) Paragraph 76(3)(a) is amended by striking out "the mother and father" and substituting "the parents".

(10) The following provisions are amended by striking out "section 4 or 5" and substituting "section 5":

- (a) section 6; and**
- (b) subsection 7(1).**

Coroners Act

5. (1) The *Coroners Act* is amended by this section.

(2) Section 1 is amended by

- (a) repealing the definition "spouse"; and**
- (b) adding the following definition in alphabetical order:**

"spouse of the deceased" means a person who, immediately before the death of another person,

- (a) was married to the deceased, or**
- (b) had lived in a conjugal relationship outside marriage with the deceased, if**
 - (i) they had so lived for a period of at least two years, or**
 - (ii) the relationship had been one of some permanence and they were together the natural or adoptive parents of a child.**
(conjoint du défunt)

Dependants Relief Act

6. (1) The *Dependants Relief Act* is amended by this section.

(2) The definition "cohabit" in subsection 1(1) is repealed.

(3) Paragraphs (d) and (e) of the definition "dependant" in subsection 1(1) are repealed and the following substituted:

- (d) a person who immediately before the death of the deceased
 - (i) had lived in a conjugal relationship outside marriage with the deceased for at least one year, and
 - (ii) was dependent on the deceased for maintenance and support, or

(4) The definition "spouse" in subsection 1(1) is repealed and the following substituted:

"spouse" means a person who, immediately before the death of the deceased,

- (a) was married to the deceased, or
- (b) had lived in a conjugal relationship outside marriage with the deceased, if
 - (i) they had so lived for a period of at least two years, or
 - (ii) the relationship had been one of some permanence and they were together the natural or adoptive parents of a child.
(conjoint)

Evidence Act

7. (1) The *Evidence Act* is amended by this section.

(2) The English version of section 6 is repealed and the following substituted:

Communication made during marriage

6. A spouse is not compellable to disclose a communication made to him or her by his or her spouse during the marriage.

Family Law Act

8. (1) The *Family Law Act* is amended by this section.

(2) Subsection 1(1) is amended by

- (a) **repealing the definition "spouse" and substituting the following:**

"spouse" means a person who

- (a) is married to another person, or
- (b) has lived together in a conjugal relationship outside marriage with another person, if
 - (i) they have so lived for a period of at least two years, or

- (ii) the relationship is one of some permanence and they are together the natural or adoptive parents of a child.
(*conjoint*)

(b) adding the following definition in alphabetical order:

"surviving spouse" means a person who, immediately before the death of another person, was a spouse within the meaning of this Act; (*conjoint survivant*)

(3) The following is added after subsection 37(2):

Deemed election on spouse's intestacy

(2.1) A surviving spouse who does not have a right to a share of the estate under the *Intestate Succession Act* need not make an election under subsection (2), and shall be deemed to have elected to receive the entitlement under section 36.

(4) Subsections 37(3) and (4) are repealed and the following substituted:

Election on spouse's partial intestacy

(3) Where a spouse dies testate as to some property and intestate as to other property, the surviving spouse shall elect

- (a) if the surviving spouse has a right to a share of the estate under the *Intestate Succession Act*, to take under the will and to receive the entitlement under the *Intestate Succession Act*, or to receive the entitlement under section 36; or
- (b) if the surviving spouse does not have a right to a share of the estate under the *Intestate Succession Act*, to take under the will, or to receive the entitlement under section 36.

Property outside estate

(4) A surviving spouse who elects any of the following shall also receive the other property to which he or she is entitled because of the deceased spouse's death:

- (a) to take under the will under subsection (1) or paragraph (3)(b);
- (b) to receive the entitlement under the *Intestate Succession Act* under subsection (2); or
- (c) to take under the will and to receive the entitlement under the *Intestate Succession Act* under paragraph (3)(a).

(5) Subsection 37(8) is amended by striking out "A surviving spouse" and substituting "Subject to subsection (2.1), a surviving spouse".

Guardianship and Trusteeship Act

9. (1) The *Guardianship and Trusteeship Act* is amended by this section.

(2) Subsection 1(1) is amended by repealing the definition "spouse" and substituting the following:

"spouse" has the meaning assigned to it by section 1 of the *Family Law Act*, except that a reference to "at least two years" shall be read as a reference to "at least one year".
(conjoint)

Human Tissue Act

10. (1) The *Human Tissue Act* is amended by this section.

(2) The definition "cohabit" in subsection 2(1) is repealed.

(3) The definition "spouse" in subsection 2(1) is repealed and the following substituted:

"spouse" means a person who, immediately before the death of another person,

- (a) was married to the deceased, or
 - (b) had lived in a conjugal relationship outside marriage with the deceased, if
 - (i) they had so lived for a period of at least two years, or
 - (ii) the relationship had been one of some permanence and they were together the natural or adoptive parents of a child.
- (conjoint)

Insurance Act

11. (1) The *Insurance Act* is amended by this section.

(2) The definition "spouse" in the SCHEDULE, SUBSECTION 2 "DEATH BENEFITS AND LOSS OF INCOME PAYMENTS", Part I - Death Benefits, B, is repealed and the following substituted:

"spouse" has the meaning assigned to it by section 1 of the *Family Law Act*, except that a reference to "at least two years" shall be read as a reference to "at least three years".
(conjoint)

(3) Subparagraph (1)(b)(i) of the definition "Insured person" in the SCHEDULE, SUBSECTION 3 "DEFINITIONS, EXCLUSIONS AND SPECIAL PROVISIONS OF THIS SECTION" is amended by striking out "husband and wife" and substituting "spouses".

Interpretation Act

12. (1) The *Interpretation Act* is amended by this section.

(2) Subsection 28(1) is amended by adding the following definitions in alphabetical order:

"spouse" means a person who

- (a) is married to another person, or
 - (b) has lived together in a conjugal relationship outside marriage with another person, if
 - (i) they have so lived for a period of at least two years, or
 - (ii) the relationship is one of some permanence and they are together the natural or adoptive parents of a child.
- (conjoint)*

"surviving spouse" means a person who, immediately before the death of another person,

- (a) was married to the deceased, or
 - (b) had lived together in a conjugal relationship outside marriage with the deceased, if
 - (i) they had so lived for a period of at least two years, or
 - (ii) the relationship was one of some permanence and they were together the natural or adoptive parents of a child.
- (conjoint survivant)*

(3) The following is added after subsection 28(1):

Marriage void or voidable

(1.1) Where two persons go through a form of marriage with each other in good faith and then live together in a conjugal relationship,

- (a) where the marriage is void, they shall be deemed to be married during the time they so lived together; or
- (b) where the marriage is decreed a nullity, they shall be deemed to be married until the judgment of nullity is granted.

Intestate Succession Act

13. (1) The *Intestate Succession Act* is amended by this section.

(2) The definition "cohabit" in subsection 1(1) is repealed.

(3) The definition "spouse" in subsection 1(1) is repealed and the following substituted:

"spouse" has the meaning assigned to it by section 1 of the *Family Law Act*. *(conjoint)*

Marriage Act

14. (1) The *Marriage Act* is amended by this section.

(2) Paragraph 13(b) is amended by striking out "(wife or husband)" and substituting "(husband, wife, or spouse)".

(3) Section 19 is repealed.

(4) Subsection 23(2) is repealed.

(5) Subsection 35(2) is repealed.

(6) Subsection 43(4) is amended by striking out "husband and wife" and substituting "spouses".

(7) The Schedule is repealed.

Mental Health Act

15. (1) The *Mental Health Act* is amended by this section.

(2) Section 1 is amended by adding the following definition in alphabetical order:

"spouse" has the meaning assigned to it by section 1 of the *Family Law Act*. (*conjoint*)

(3) Paragraph 19.2(1)(c) is amended by striking out ", including anyone who, although not legally married to the patient, lives or cohabits with the patient as a spouse of the patient and is known as such in the community in which they live".

Powers of Attorney Act

16. (1) The *Powers of Attorney Act* is amended by this section.

(2) The definition "spouse" in section 1 is repealed and the following substituted:

"spouse", in relation to a donor or attorney, has the meaning assigned to it by section 1 of the *Family Law Act*. (*conjoint*)

Senior Citizens and Disabled Persons Property Tax Relief Act

17. (1) The *Senior Citizens and Disabled Persons Property Tax Relief Act* is amended by this section.

(2) Section 1 is amended by

- (a) striking out "**, including a person who has cohabited with the senior citizen or disabled person for at least one year" **in subparagraph (b)(i) of the definition "dependent"; and**
- (b) adding the following definition in alphabetical order:**

"spouse" has the meaning assigned to it by section 1 of the *Family Law Act*, except that a reference to "at least two years" shall be read as a reference to "at least one year";
(*conjoint*)

Vital Statistics Act

18. (1) The *Vital Statistics Act* is amended by this section.

(2) Section 1 is amended by

- (a) repealing the definition "married woman"; and**
- (b) adding the following definition in alphabetical order:**

"parent" means

- (a) a mother or father of a child,
- (b) a person who declares herself or himself to be a parent under subsection 2(2.1), or
- (c) a spouse of the mother or father at the time of a child's birth or stillbirth who intends or had intended to participate as a parent in the upbringing of the child; (*parent* or *père ou mère*)

(3) Subsections 2(2) and (3) are repealed and the following substituted:

Statement respecting births

2. (2) Within 30 days after the day of the birth of a child, a statement in the prescribed form respecting the birth shall be completed and delivered or mailed to the district registrar of the registration district in which the birth occurred by the following persons:

- (a) a parent of the child,
- (b) if the parents are incapable, a person standing in place of the parents of the child; or
- (c) if there is no person to whom paragraph (a) or (b) applies, any person who has knowledge of the birth of the child.

Particulars of parent

(2.1) Where the mother of a child and another person acknowledging himself or herself to be a parent of the child jointly request in writing, the particulars of that person may be given as the particulars of a parent.

(4) Sections 3 to 5 are repealed and the following substituted:

Surname of child

3. The birth of a child shall be registered showing
- (a) the surname of a parent; or
 - (b) a hyphenated or combined surname comprised of the surnames of two parents.

(5) Section 6 and 8 are repealed.

(6) The French version of subsection 12(4) is amended by striking out "des déclarations des proches parents du père et de la mère" and substituting "des déclarations des personnes apparentées aux parents".

(7) The French version of subsection 19(2) is amended by

- (a) striking out "par le plus proche parent du défunt qui était présent au moment du décès ou qui a été le dernier à le soigner au cours de sa dernière maladie" in paragraph (a) and substituting "par la plus proche personne apparentée au défunt qui était présente au moment du décès ou qui a été la dernière à le soigner au cours de sa dernière maladie";**
- (b) striking out "par un parent du défunt qui réside dans le district d'enregistrement ou qui s'y trouve, si aucun proche parent n'est disponible" in paragraph (b) and substituting "si une telle personne apparentée n'est pas disponible, par une personne apparentée au défunt qui réside dans le district d'enregistrement ou qui s'y trouve"; and**
- (c) striking out "par toute personne présente au moment du décès, si aucun parent n'est disponible" in paragraph (c) and substituting "par toute personne présente au moment du décès, si aucune personne apparentée n'est disponible".**

Workers' Compensation Act

19. (1) The *Workers' Compensation Act* is amended by this section

(2) Section 1 is amended by

- (a) repealing the definition "spouse" and substituting the following:**

"spouse", in relation to a worker, has the meaning assigned to it by section 1 of the *Family Law Act*, except that a reference to "at least two years" shall be read as a reference to "at least one year". (*conjoint*)

(b) adding the following definition in alphabetical order:

"surviving spouse", in relation to a worker, means a person who, immediately before the death of the worker, was a spouse within the meaning of this Act; (*conjoint survivant*)

(3) Section 7 is repealed.

Miscellaneous Regulations

20. (1) The *Adoption Regulations*, made under the *Adoption Act*, are amended by this section.

(2) Forms 1, 2, and 12 in Schedule B of the *Adoption Regulations* are repealed and the Forms set out in the Schedule to this Act substituted.

21. The *Children's Law Forms Regulations*, made under the *Children's Law Act*, and registered under the *Statutory Instruments Act* (Northwest Territories) as regulation numbered R-139-98, as duplicated for Nunavut under section 29 of the *Nunavut Act* (Canada), are repealed.

22. (1) The *Marriage Forms Regulations*, made under the *Marriage Act*, are amended by this section.

(2) Forms 2, 3, 4, 5, 6, 7, and 10 in the Schedule are amended by striking out "the Northwest Territories" wherever it appears and substituting "Nunavut".

(3) Forms 3, 5, and 6 in the Schedule are amended by striking out "*signature of bridegroom*", "*signature of bride*" and "*signature of bridegroom or bride*" and substituting "*signature of spouse*" in each instance.

(4) Form 7 in the Schedule is amended by striking out "Supreme Court of the Northwest Territories" wherever it appears and substituting "Nunavut Court of Justice".

23. (1) The *Forms*, R.R.N.W.T. 1990, c.V-2, as duplicated for Nunavut by section 29 of the *Nunavut Act* (Canada), and made under the *Vital Statistics Act*, are amended by this section.

(2) The title is repealed and "*Vital Statistics Forms Regulations*" substituted.

(3) Form 4 in Part II of the Schedule is amended by

(a) striking out "BRIDEGROOM" and "BRIDE" and substituting "SPOUSE" in each instance;

- (b) **adding "(prior to this marriage)" after "Surname" in item 5;**
- (c) **striking out "Jamais mariée, veuve ou divorcée" in the French version of item 18 and substituting "Jamais marié, veuf ou divorcé";**
- (d) **striking out " Métisse, Indienne inscrite" in the French version of item 24 and substituting " Métis, Indien inscrit"; and**
- (e) **striking out "signature of bridegroom" in item 29 and "signature of bride" in item 29 and substituting "signature of spouse" in each instance.**

(4) Form 8 in Part II of the Schedule is amended by striking out "bridegroom" and "bride" and substituting "spouse" in each instance.

SCHEDULE

(Section 20)

SCHEDULE B

FORM 1

(Subsection 77(1))

IN THE NUNAVUT COURT OF JUSTICE

IN THE MATTER of the *Adoption Act*;

AND IN THE MATTER of an Application for

the adoption of....., a child.
(name of child)

CONSENT OF PARENT
(Section 10 of the Adoption Act)

I.....of....., Nunavut
(full name) (community)

CERTIFY THAT I am the parent of
(name of child)

who was born at.....,
(community) (province or territory)

on..... AND of my own free will and accord
(day month,, year)

CONSENT to the adoption of under the *Adoption Act*,
(name of child)

UNDERSTANDING that I am, by this consent, divesting myself of the custody and all legal rights in respect of the child.

SIGNED by me at....., Nunavut, on
(community) (day, month, year)

SIGNED IN THE PRESENCE OF

.....
(signature of witness)

.....
(signature of parent)

.....
(signature of interpreter)

FORM 2

(Subsection 77(1))

IN THE NUNAVUT COURT OF JUSTICE

IN THE MATTER of the *Adoption Act*;

AND IN THE MATTER of an Application for

the adoption of....., a child.
(name of child)

REVOCAION OF CONSENT OF PARENT
(Section 12 of the Adoption Act)

I,.....of....., Nunavut
(full name) (community)

CERTIFY THAT I am the parent of
(name of child)

who was born at.....,
(community) (province or territory)

on..... AND of my own free will and accord
(day, month, year)

REVOKE my consent to the adoption of under
(name of child)

the *Adoption Act*, which was given by me at
(community)

on
(day, month, year)

SIGNED by me at....., Nunavut, on
(community) (day, month, year)

SIGNED IN THE PRESENCE OF

.....
(signature of witness)

.....
(signature of parent)

.....
(signature of interpreter)

FORM 12

(Subsection 77(8))

IN THE NUNAVUT COURT OF JUSTICE

IN THE MATTER of the *Adoption Act*;

AND IN THE MATTER of a petition for

the adoption of....., a child (*or person*).
(name of child or person) *(gender)*

Birth Registration No.....,
by

AFFIDAVIT OF PETITIONER (or JOINT PETITIONER)

I.....of....., Nunavut
(full name) *(community)*

MAKE OATH AND SAY as follows:

1. Marked as Exhibit "A" to this affidavit is my petition for an adoption order for the adoption of
(name of child or person)
2. I am years of age.
3. I am an unmarried person and not the spouse of a person who is married.

OR

I am the spouse of, who has joined me
(name of spouse)

in this petition, and neither of us is married to another person.

OR

I am the spouse of, who is
(name of spouse)

the parent of, and neither of us is
(name of child or person)

married to another person.

4. On, at I married
(day, month, year) *(community)*

..... (who has joined me in this petition) and
(name of spouse)

the marriage still subsists.

OR

On, at, I began
(day, month, year) (community)

living in a conjugal relationship outside marriage with

..... (who has joined me in this petition)
(name of person/ common law spouse)

and our cohabitation still subsists (and we are together the parents of a child).

5. I am (not) related to (as follows):
(name of child or person)

.....
.....

6. No agreement or arrangement exists by which consideration is passing to or from
me in respect of the adoption of,
(name of child or person)

except as is disclosed in the petition and the document (or documents) relating to
the agreement or arrangement made an exhibit (or exhibits) to the petition.

SWORN before me

at.....
(place)

on.....
(day, month, year)

.....
(signature of Commissioner for Oaths or
other person authorized to take affidavits)

.....
(signature of Petitioner or joint Petitioner)

.....
(signature of interpreter)

.....
(signature of joint Petitioner)