



Status of Children Act

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Introduction

The Status of Children Act came into force on September 18, 2009 and states that all children, whether they are born of natural or biological parents, (whether these parents are married or not) and children who have been adopted have equal status and rights.

The Constitution of Guyana

The Constitution of Guyana also provides that all persons whether born in or out of wedlock are born equal, have equal status and are entitled to equal rights.



What does the Status of Children Act say?

The Act outlines how the parents of a child would be known and can be determined or decided.

When a person is born, their birth should be registered and a birth certificate issued, which states who are the person's parents and where they were born. The persons who are named as the mother and father of the child on the birth certificate are presumed or considered to be the child's parents. Many times, only the name of a child's mother is stated on the birth certificate. This is because his/her father did not sign the registration form acknowledging or agreeing that he is father.

Where a father has not signed the registration form so that he can be named in a child's birth certificate, it may become necessary to establish who the child's father is. This is called proving paternity and it may be necessary to prove who your father is in order to benefit as his child e.g. so that he can be ordered by a court to support you financially by paying maintenance, or so that you can inherit his property, or to enable or allow the Court to decide in whose care and custody you should be placed or who can have contact with you.

The Status of Children Act, therefore, also provides for the establishment or determination of parentage i.e. paternity or fatherhood and maternity or motherhood.

Paternity – Presumptions of Paternity

Paternity relates to who is, or who can be declared to be a child's father.

Usually, a person would be presumed or considered to be the father of a child if -

1. he is married to the child's mother at the time of birth;
2. he was married to the child's mother but the marriage was ended by death, or a court order of divorce or nullity and the child was most likely conceived before the marriage ended;
3. the man married the mother of the child after the child's birth and he acknowledges that he is the father of the child;
4. the man and the child's mother were living together in a relationship of some permanence and the child was most likely conceived during the relationship.



How can a father acknowledge his child?

Usually, a father acknowledges or consents to being the father of a child by signing the registration form so that a birth certificate can be obtained. But a father can acknowledge a child to be his in different ways also e.g. -

- a. by swearing to an affidavit;
- b. by testifying or giving evidence on oath;
- c. by executing or signing a formal document acknowledging paternity. This document could be executed in Guyana or in another country. The mother of the child must also sign this formal document. A copy of this formal document must then be filed with the Registrar General of Births and Deaths at the General Register Office;
- d. by simply stating or acknowledging in writing as being the father; or
- e. by consistently performing or doing acts or things in relation to the child which show that he is acknowledging the child as his.

Maternity – Presumptions of Maternity

Maternity relates to who is, or who can be declared to be a child's mother.

The Court may have to decide who is a child's mother because with the advancement of science and technology women can become pregnant by fertilization procedures such as –

- a. by artificial insemination;
- b. by the transferring into a woman's body an ovum (whether or not produced by her) fertilized outside her body;
- c. by the transferring into a woman's body (whether or not produced by her) or both an ovum and sperm to enable fertilization of the ovum to occur in her body; or
- d. by any other procedure that assists in the fertilization process.

Where a fertilization procedure is used, a woman's husband or male partner with whom she is cohabiting is considered or presumed to be the father of the child born as a result of the pregnancy, whether or not his sperm is used in the procedure, but he must have agreed or consented to the fertilization procedure being done. The woman is also presumed to be the mother of the child whether or not she provided the ovum used in the fertilization procedure. This means that the carrying or surrogate mother is not considered to be the mother of the child and that a child's biological mother is considered to be the parent.



Who decides who is your parent?

In circumstances of uncertainty, a Judge of the High Court would consider all the evidence presented to the Court and decide who should be declared your parent. The order made by the Court is called a Declaration of Parentage.

If necessary, in order to protect your interests as a child, the Court can order that you have your own lawyer. The Court hears these cases in camera i.e. the public or strangers cannot be present and there can be no publication of information about the case that identifies the persons involved.

Declarations of motherhood or fatherhood can be made whether or not the parent or parents of the child are alive or whether or not the child is born.

Declarations of parentage can be annulled or set aside by the Court where it is proven that there are new facts or circumstances which were not disclosed to the Court and which could not have been previously known.

Declarations of parentage that have been ordered by foreign Courts can be recognized in Guyana.



Can the court order tests to determine parentage?

Yes. The Court can order tests such as DNA tests to be done in order to help the Court decide who a child's parent is. The test can be carried out on the child, on the person who alleges denies being the parent of the child and on any other person as the Court orders. In deciding whether to make the order the Court is to consider any medical, religious or other grounds of objection.

The Court can also make orders directing a named person to submit to a medical procedure, to take a body sample or to surrender a previously taken and preserved sample or to provide information as to medical or family history.

A parent/guardian or person with parental responsibility has to consent to a medical procedure being performed on a child. A child who is 16 years old or older can agree or refuse to take the test.

Where a person fails or refuses to consent or agree to a medical procedure being carried out, the Court can draw such inferences as it deems fit from such failure or refusal to consent.

Glossary – Words in the Act you should know

Act – An Act is a law passed by the National Assembly and signed by the President. Everyone must do what the law says. An Act also guides us on what persons have a duty to do. So it is important to understand what the law says. If someone breaks the law then they can be arrested and charged and taken to court where a judge or magistrate can order that they pay a fine or be imprisoned. Persons who break the law can also be taken to court where a judge or magistrate can order that they must obey the law.

Biological – A child's biological parents and relatives and the persons who are related to them by blood.

Child – In this Act, child means any person who is the child of his/her biological parents.

Fertilization – the process by which the sperm of a male is joined with an ovum or egg of a female so that it develops into a baby or its young.

Maternity – this is the state of being a mother of a particular child and is also called motherhood.

Parentage – a person's parents

Paternity – this is a state of being a father of a particular child and is also called fatherhood

Surrogate – in this Act, a surrogate mother is a woman who agrees to conceive and give birth to a baby for another woman who cannot do so herself.

