

ESTATE ALERT

FEBRUARY 2016

FOR MORE INFORMATION OR INQUIRIES



Anastasija
Sumakova
416.947.5063
[» full bio](#)

WeirFoulds LLP

66 Wellington Street West
Suite 4100, PO Box 35
Toronto-Dominion Centre
Toronto, Ontario, Canada
M5K 1B7
Office 416.365.1110
Facsimile 416.365.1876
www.weirfoulds.com

**Voted the #1 regional firm in Ontario
by Canadian Lawyer 2015**

Follow us on:  

Proposed Amendments to Ontario Legislation in Respect of Parental Recognition

Bill 137 - *An Act to amend the Children's Law Reform Act, the Vital Statistics Act and other Acts with respect to parental recognition*, which is also known as *Cy and Ruby's Act (Parental Recognition)*, 2015 - proposes a number of amendments to the statutes dealing with parental recognition¹. The proposed amendments (the main ones being the amendments to the *Children's Law Reform Act*² ("**CLRA**") deal with various typical factual scenarios involving assisted reproduction that involve donated genetic material from a third party, surrogacy arrangements, or the possibility that the intended parent's own genetic materials may be stored and used at a later time. Not only would the proposed amendments facilitate the parental recognition of same-sex partners who rely on assisted reproduction for conception and birth of the children they intend to parent³, but they would affect all children conceived or born through assisted reproduction.

For example, under Bill 137, a donor providing human reproductive material for someone else's reproductive use would not be considered as the child's parent by reason only of a donation. In addition, section 8.2 would also allow a potential birth parent and a person or persons who intend to be a parent or parents to the child to agree to be parents of the child together. Such parentage agreements would provide a legislative framework for parentage arrangements comprising three or more parents, and importantly, would apply on the birth of a child whether as a result of assisted reproduction or not. At the same time, section 8.3 of Bill 137 deals specifically with situations involving surrogacy arrangements in which the birth parent would not be considered a parent of the child conceived through assisted reproduction, if an agreement to that effect is made between the birth parent and intended parent or parents.

Further, section 8.5 of Bill 137 provides for parentage where a child is conceived through assisted reproduction after the death of one of the people who provided the genetic material⁴, subject to certain conditions. These conditions include proof that the deceased gave written consent to the use, after his or her death, of his or her human

¹ The full text of Bill 137 can be found at http://www.ontla.on.ca/web/bills/bills_detail.do?locale=en&BillID=3554. The Bill passed the second reading and as of December 10, 2015, was referred to the Standing Committee on Regulations and Private Bills.

² R.S.O. 1990, c. C.12

³ One of the significant proposed amendments affecting the rights of same-sex partners is the replacement of all references to "mother" and "father" by references to "parent".

⁴ Section 2.1(2) of Bill 137 provides that a child is born as a result of assisted reproduction is deemed to have been conceived on the day the human reproductive material or embryo was implanted in the birth parent.

reproductive material or embryo for a specified purpose⁵ and gave written consent to be the parent of a child conceived after his or her death.

The important aspect of the proposed legislation from the estate planning and estate administration perspective is that it does not contemplate any parallel amendments to the *Succession Law Reform Act*⁶ (“**SLRA**”), which governs testate and intestate succession in Ontario. Among other things, under the *SLRA*, it is the “issue” of the deceased person that have intestate succession rights, which the *SLRA* defines by reference to descendants of the deceased, thus implying a genetic lineal connection between the deceased and an heir. In the absence of a genetic connection, an argument can be made that a child born through assisted reproduction where donated genetic material was used does not meet the definition of “issue”. Having parentage established despite the absence of a lineal genetic connection between the deceased and his or her child would not eliminate *SLRA*’s embedded requirement.

Further, the terms “issue” and “child” as defined in the *SLRA* specifically includes only children and issue that are conceived before and born after death. Although posthumously conceived children are not specifically excluded, the courts have not yet had an opportunity to consider how “conceived before death” could be interpreted in the context of assisted human reproduction. Once again, the recognition of parentage under section 8.5 of Bill 137 would not necessarily expand the scope of the definition of “child” and “issue” under the *SLRA*.

It remains to be seen, if Bill 137 passes third reading and comes into force, how its provisions will be interpreted, and whether any amendments to the *SLRA* will be proposed or discussed as a result. In any event, how terms such as “child”, “issue”, “parent” and “next of kin” are defined and used in the relevant statutes and the common law will have to be carefully considered to ensure that estate planning wishes and intentions are achieved.

⁵ This requirement is consistent with the requirements under the *Assisted Human Reproduction Act*, S.C. 2004, c. 2 and the *Assisted Human Reproduction (Section 8 Consent) Regulations*, SOR/2007-137.

⁶ R.S.O. 1990, c. S. 26.

ESTATES, TRUSTS AND CHARITIES

Since the creation of the firm, our lawyers have been advising clients on all aspects of will preparation, family and business trusts, estate planning, business succession planning, capacity and guardianship issues, estate litigation, and estate arbitration and mediation. Our Estates, Trusts and Charities Practice is led by senior partners with a wide range of experience. Our practice members are active in the litigation, mediation and corporate and commercial areas of practice. Several of our members have been recognized as leading practitioners in their area of expertise in various legal directories. Our clients include trust companies, charities, not-for-profit corporations, independent business owners, executors, estate trustees and individuals.

ABOUT THIS NEWSLETTER

For over 150 years, the lawyers of WeirFoulds have been proud to serve our clients in their most difficult and complex matters. We are the firm of choice for discerning clients within our core areas of practice: (1) Litigation; (2) Corporate; (3) Property; and (4) Government Law. Within these core areas, as well as key sub-specialties, we address highly sophisticated legal challenges. We have acted in some of Canada’s most significant mandates and have represented clients in many landmark cases. Reflecting the firm’s focus, our lawyers are consistently recognized as leaders in their chosen areas of practice and in the profession at large. To learn more about our firm, visit www.weirfoulds.com.

Do not act on the information without seeking specific advice on the particular matters which are of concern to them. WeirFoulds LLP will be pleased to provide additional information on request and to discuss any specific matters.

If you are interested in receiving this publication or any other WeirFoulds publication by e-mail, or if you would like to unsubscribe from this newsletter, please let us know by sending a message to publications@weirfoulds.com.

© WeirFoulds LLP 2016