

Parental Recognition and Proposed Amendments to Ontario Legislation: Part 2

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By

In February 2016, we wrote about the *Cy and Ruby's Act* (Parental Recognition), 2015, which proposed a number of amendments to statutes dealing with parental recognition[1]. We noted that the proposed amendments (the main amendments being to the *Children's Law Reform Act*)[2] dealt with various typical factual scenarios involving assisted reproduction with donated genetic material from a third party, surrogacy arrangements or the possibility that an intended parent's own genetic materials would be stored and used at a later time. One of the goals of the proposed amendments was to facilitate the parental recognition of same-sex partners who rely on assisted reproduction for the conception and birth of children they intend to parent. Indeed, one of the significant proposed amendments was the replacement of all references to "mother" and "father" with references to "parent".

While it had many notable proposed amendments designed to recognize modern families and parenting arrangements (as noted in the February edition of our *Estate Alert*), missing from *Cy and Ruby's Act* were parallel amendments to the *Succession Law Reform Act*[3] ("SLRA"), which governs testate and intestate succession in Ontario. From an estate planning and estate administration perspective, there was a potential for increased uncertainty and litigation as the definitions of "child" and "issue" in the SLRA did not marry well with the expanded parentage definitions contemplated by *Cy and Ruby's Act*.

Cy and Ruby's Act was a private member's bill, and has subsequently been replaced by Bill 28 *an Act to amend the Children's Law Reform Act, the Vital Statistics Act and various other Acts respecting parentage and related registrations, also known as the All Families Are Equal Act (Parentage and Related Registrations Statute Law Amendment)*, 2016[4].

This Bill does contain important proposed amendments to the SLRA.

The definition of "child" in subsection 1(1) of the SLRA would be expanded so that a "child" would include a child conceived and born alive after the parent's death, if certain specified conditions are met. The definition of "issue" is similarly expanded if certain specified conditions are met. The specified conditions are set out in a new subsection 1.1. One of the conditions is that the spouse of a deceased person provide written notice to the Estate Registrar for Ontario, that the spouse may use reproductive material or an embryo to attempt to conceive (through assisted reproduction and with or without a surrogate) a child to which the deceased intended to be a parent. Another condition is that the posthumously-conceived child must be born no later than the third anniversary of the deceased person's death (unless otherwise extended by an order of the Superior Court of Justice).

Section 47 of the SLRA, which deals with the distribution of property of an individual who dies intestate, would be amended to provide that if the conditions set out in new subsection 1.1 are met, a child conceived and born alive after death will inherit as if s/he had been born during the lifetime of the deceased and had survived him or her.

Sections 57 and 59 of the SLRA would be amended, such that dependent support applications can now factor in a child of the deceased conceived and born alive after the death of the deceased.

The new legislation could have a significant effect on how estate planning wishes and intentions are implemented, and possibly interpreted by the courts. The government plans to proclaim the law in force as of January 1, 2017.

[1]See http://weirfoulds.com/_Estate-Alert-Proposed-Amendments-to-Ontario-Legislation-in-Respect-of-Parental-Recognition.

[2]R.S.O. 1990, c. C.12.

[3]R.S.O. 1990, c. S. 26.

[4]The full text of Bill 28 can be found at http://www.ontla.on.ca/web/bills/bills_detail.do?locale=en&BillID=4176. The Bill was passed on November 29, 2016.

The information and comments herein are for the general information of the reader and are not intended as advice or opinion to be relied upon in relation to any particular circumstances. For particular applications of the law to specific situations, the reader should seek professional advice.

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