



ANALYSIS

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1978, No. 8

An Act to amend the Status of Children Act 1969

[13 July 1978]

BE IT ENACTED by the General Assembly of New Zealand in Parliament assembled, and by the authority of the same, as follows:

1. Short Title and commencement—(1) This Act may be cited as the Status of Children Amendment Act 1978, and shall be read together with and deemed part of the Status of Children Act 1969 (hereinafter referred to as the principal Act).

(2) This Act shall come into force on the 1st day of October 1978.

2. Substituted sections—The principal Act is hereby amended by repealing section 6, and substituting the following sections:

“5A. Grant of letters of administration—(1) Letters of administration with or without the will annexed in respect of the estate of any deceased person or any part thereof shall not be granted to any applicant therefor unless the applicant shows—

“(a) That he has made reasonable inquiries to determine whether there exists (in addition to any parent or child of the deceased person already known to him) any parent or child of the deceased person who could claim an interest in the estate or part by reason only of this Act and the provisions of the enactments governing the distribution of intestate estates or the provisions of the will (such parent or child being hereafter in this section referred to as any such claimant) ; or

“(b) That no useful purpose would be served in the particular case by making the inquiries specified in paragraph (a) of this subsection ; or

“(c) That the making of the inquiries specified in paragraph (a) of this subsection would unduly delay the making of a grant of administration ; or

“(d) That the getting in or preservation of the assets of the estate requires the making of an immediate grant of administration.

“(2) An applicant for a grant of letters of administration with or without the will annexed in respect of the estate of any deceased person or any part thereof shall be deemed to have made reasonable inquiries as to the existence of any such claimant to an interest in the estate or part if, acting in good faith, he has—

“(a) Caused a search to be made of the register of instruments, declarations, and orders maintained by the Registrar-General pursuant to section 9 of this Act and ascertained whether or not the existence of any such claimant to such an interest is revealed in the register ; and

“(b) Looked through any papers of the deceased person that have come to his notice in the course of searching for a testamentary disposition made by the deceased person, or otherwise howsoever, and ascertained whether or not the existence of any such claimant to such an interest is revealed in those papers.

“(3) Where subsection (1) (a) of this section applies, an applicant for a grant of letters of administration in respect of the estate of any deceased person or any part thereof shall file an affidavit saying that he has made reasonable inquiries for the purposes of the Status of Children Act 1969 as to the existence of any such claimant to an interest in the estate or part (with a brief indication of the nature of those inquiries) and (if such is the case) that he does not know of the existence of any such claimant to an interest in the estate or part.

“(4) Where, pursuant to this section, an applicant for letters of administration with or without the will annexed in respect of the estate of any deceased person or any part thereof complies with subsection (1) of this section, nothing in the Administration Act 1969 or the Code of Civil Procedure or the practice of the Supreme Court relating to a grant of letters of administration shall be construed as requiring him to do anything further in connection with the application for the purposes of this Act.

“(5) This section shall have no application in relation to any grant of administration to a trustee corporation within the meaning of section 2 of the Administration Act 1969, either alone or jointly with another person; and nothing in the Administration Act 1969, the Code of Civil Procedure, or the practice of the Supreme Court shall require the trustee corporation or any other joint applicant for the grant to make inquiries, before the grant is made, as to the existence of any such claimant.

“(6) In this section ‘applicant’ includes a person acting on behalf of the applicant, with the applicant’s express or implied authority, for the purposes of obtaining the grant.

“6. Reasonable inquiries to precede distribution—(1) For the purposes of the distribution of any estate or of any property held upon trust, an executor, administrator, or trustee shall make reasonable inquiries to determine whether there exists any person (in addition to any person or persons already known to him) who could claim an interest in the estate or property by reason only of this Act and the provisions of the enactments governing the distribution of intestate estates or the provisions of the will, deed, or other document governing the distribution of the estate or property (such person being hereafter in this section and in section 6A and in section 6B of this Act referred to as any claimant).

“(2) In the case of a continuing trust of income it shall be sufficient for the purposes of continuing distributions of income if reasonable inquiries as to the existence of any claimant are made before the first distribution after the commencement of this section of income under the trust.

“(3) Subject to subsection (2) of this section and to subsections (3) and (4) of section 6A of this Act, it shall be sufficient if reasonable inquiries as to the existence of any claimant are made before the first distribution after the commencement of this section of the estate or property and before any subsequent distribution where a period of 3 years or more has elapsed since reasonable inquiries were last made.

“**6A. Reasonable inquiries that comply**—(1) An executor, administrator, or trustee shall be deemed to have made reasonable inquiries for the purposes of section 6 of this Act if, acting in good faith and subject to subsections (2) to (4) of this section, he has—

“(a) Inquired about the existence of any claimant from at least one person whom he believes may have knowledge of the matter (except where no such person can readily be located) and obtained from that person (if he is willing to make it) a statutory declaration concerning the matter; and

“(b) Caused a search to be made of the register of instruments, declarations, and orders maintained by the Registrar-General pursuant to section 9 of this Act and ascertained whether or not the existence of any claimant is revealed in the register; and

“(c) Looked through any papers that have come to his notice in the ordinary course of administration of the estate or property and ascertained whether or not the existence of any claimant is revealed in those papers; and

“(d) In the case of the administration of the estate of any deceased person, inquired from the solicitor (if any) last known to him to have acted for the deceased person in his lifetime whether the solicitor knows of the existence of any claimant.

“(2) Compliance with the requirements of section 5A (2) (a) of this Act in respect of the estate of any deceased person or any part of such an estate constitutes compliance with the requirements of subsection (1) (b) of this section in respect of the same estate or part thereof unless—

“(a) Compliance with the requirements of subsection (1) (b) of this section is material—

“(i) Because a person other than a parent or child could claim; or

“(ii) For any other reason; or

“(b) A period of 3 years or more has elapsed since the requirements of section 5A (2) (a) of this Act were complied with.”

“(3) It shall not be necessary for an executor, administrator, or trustee to fulfil the requirements of subsection (1) (c) of this section on more than one occasion in respect of the same estate or property:

“Provided that where subsection (3) of section 6 of this Act applies, the executor, administrator, or trustee shall, before each distribution subsequent to the first distribution mentioned in that subsection, look through the papers (if any) that have come to his notice in the ordinary course of the administration of the estate or property since the immediately preceding distribution of the estate or property.

“(4) It shall not be necessary for an executor, administrator, or trustee to fulfil the requirements of subsection (1) (d) of this section on more than one occasion in respect of the same estate.

“6B. Protection of executors, administrators, and trustees— No action shall lie against any executor of the will or administrator or trustee of the estate of any person, or the trustee under any instrument, by any person to enforce any claim arising by reason of the executor or administrator or trustee having made any distribution of the estate or the property held upon trust disregarding the claims of any claimant where at the time of making the distribution the executor, administrator, or trustee had no notice of the relationship on which the claim is based, if he has made reasonable inquiries in accordance with such of the provisions of section 6 and section 6A of this Act as are applicable:

“Provided that if it appears to the Court that an executor, administrator, or trustee is or may be personally liable for having failed to comply with those provisions, in whole or in part, but has acted honestly, and ought fairly to be excused for his failure, the Court may relieve him either wholly or partly from personal liability for the same.

“6c. Warning notices—(1) Where an executor, administrator, or trustee is aware of the existence of any claimant or

potential claimant who has not, in the opinion of the executor, administrator, or trustee, been able to establish the relationship of father and child, or any other relationship traced in any degree through that relationship, pursuant to paragraph (a) or paragraph (b) of subsection (1) of section 7 of this Act but who may be able to do so pursuant to the provisions of paragraph (c) of subsection (1) of that section, he shall serve on that claimant or potential claimant or on any other person on whom notice is required to be served in accordance with section 6D (1) of this Act, a notice—

“(a) Advising the person served of his right to seek to establish the relationship in question by applying to the Supreme Court under section 10 of this Act for a declaration of paternity; and

“(b) Warning the person served that, unless such an application to the Court is made within 3 months from the date of the service of the notice and thereafter prosecuted with all due diligence, the estate or the property held in trust may be distributed disregarding the claims of the claimant or potential claimant.

“(2) Where a person on whom such a notice has been served in accordance with subsection (1) of this section fails to apply as aforesaid for the relevant declaration of paternity, or fails to prosecute with all due diligence an application for such a declaration that is made within the said 3 months, no action shall lie against the executor, administrator, or trustee by reason of his having thereafter made any distribution of the estate or property or any part thereof before it is shown to him that the relevant declaration of paternity has been made.

“6D. **Service of warning notices**—(1) Where an executor, administrator, or trustee desires to serve a notice under section 6C (1) of this Act on any person who is not of full age and capacity, the notice shall not be served on that person but shall be served on the parent or guardian of that person or on the manager of his estate or on such other person as the Supreme Court may direct.

“(2) Any notice under section 6C (1) of this Act may be served—

“(a) Either by delivering it to the person for whom it is intended or by sending it by post in a registered letter addressed to that person at his usual or last known place of abode or business; or

“(b) In such other manner as may be directed by an order of the Supreme Court.

“(3) Where a notice is sent by post as aforesaid it shall be deemed to be served at the time at which the letter would have been delivered in the ordinary course of post.”

3. Recognition of paternity—(1) Section 7 (1) of the principal Act is hereby amended by repealing paragraph (b), and substituting the following paragraphs:

“(b) Subject to paragraph (c) of this subsection, paternity has been admitted (expressly or by implication) by or established against the father in his lifetime (whether before or after the birth of the child and whether by one or more of the types of evidence specified by section 8 of this Act or otherwise) and, if that purpose is for the benefit of the father, paternity has been so admitted or established either before the birth of the child or in its lifetime; or

“(c) Paternity has been established by means of a declaration of paternity made under section 10 of this Act—

“(i) After the death of the father; or

“(ii) If that purpose is for the benefit of the father, after the death of the child.”

(2) Section 7 of the principal Act is hereby further amended by repealing subsection (2), and substituting the following subsections:

“(2) In any case where by reason of subsection (1) of this section, the relationship of father and child is not recognised for certain purposes at the time the child is born, the occurrence of any act, event, or conduct that enables that relationship, and any other relationship traced in any degree through it, to be recognised shall not—

“(a) Affect any estate, right, or interest in any real or personal property, or any part thereof, if the executor, administrator, or trustee has, by a distribution that is properly paid or applied in terms of subsection (3) of this section, placed the property or part beyond the possession and control of the executor, administrator, or trustee (in his capacity as such) to or for the benefit of other beneficiaries otherwise entitled thereto before the act, event, or conduct occurred; or

“(b) Disturb a distribution that is properly paid or applied in terms of subsection (3) of this section:

“Provided that, on any further distribution of the real or personal property or any part thereof after the occurrence, event, or conduct enabling the recognition of the relationship, the earlier distributions shall, so far as possible, be brought into account in determining the respective estates, rights, and interests of the persons then entitled to the property that has not been distributed.

“(3) For the purposes of subsection (2) of this section, a distribution shall be properly paid or applied if—

“(a) It is made in accordance with any trust, power, or authority which is subsisting when the distribution is made and which, irrespective of subsequent events, justifies the distribution at the time when it is made; and

“(b) It is made either—

“(i) Without notice of the existence of a person who is entitled by reason only of this Act and the provisions of the enactments governing the distribution of intestate estates or the provisions of the will, deed, or other document governing the distribution of the estate or property; or

“(ii) After the expiration of any notice under section 6c (1) of this Act and without notice of any declaration of paternity made by the Supreme Court under section 10 of this Act.

“(4) No action shall lie against an executor, administrator, or trustee for any decision that he makes in applying the proviso to paragraph (b) of subsection (2) of this section if he establishes that in making that decision he acted honestly.”

4. Instruments of acknowledgment may be filed with Registrar-General—Section 9 (3) of the principal Act is hereby amended by omitting the words “of paternity”.

5. Revocation—The Legitimation Regulations 1940 are hereby revoked.