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CHAPTER 8

(Bill No. 33)

Domestic Relations Act

Honourable L. Gerard Greenan
Attorney General

GOVERNMENT BILL

MICHAEL D. FAGAN
Queen's Printer
Charlottetown, Prince Edward Island

CHAPTER 8

Domestic Relations Act

(Assented to May 22, 2008)

BE IT ENACTED by the Lieutenant Governor and the Legislative Assembly of the Province of Prince Edward Island as follows:

Adoption Act

1. (1) The *Adoption Act* R.S.P.E.I. 1988, Cap. A-4.1 is amended by this section.

(2) Clause 4(a) of the Act is amended by the deletion of the words “mother and the father if she or he is” and the substitution of the words “parent or parents, if”.

(3) Section 15 of the Act is amended by the deletion of the words “a married couple” and the substitution of the word “spouses”.

(4) Subsection 16(1) of the Act is repealed and the following substituted:

16. (1) Spouses may together make a joint application.

Joint application

(5) Clause 18(1)(b) of the Act is amended by the addition of the words “who are married” after the word “applicants”.

(6) Clause 22(c) of the Act is repealed and the following substituted:

(c) a parent of the child who is

(i) the spouse of the mother,

(ii) registered as a parent in accordance with the *Vital Statistics Act* R.S.P.E.I. 1988, Cap. V-4.1, or corresponding legislation of another jurisdiction, or

(iii) declared to be a parent under the *Child Status Act* R.S.P.E.I. 1988, Cap. C-6, or corresponding legislation of another jurisdiction,

unless guardianship has been permanently transferred from that parent pursuant to an agreement or order under the *Child Protection Act*;

(7) Subsection 23(3) of the Act is amended by the deletion of the words “mother or father” and the substitution of the word “parent”.

Child Status Act

2. (1) The *Child Status Act* R.S.P.E.I. 1988, Cap. C-6 is amended by this section.

(2) Section 1 of the Act is amended

(a) by the repeal of subsection (2) and the substitution of the following:

Parent of a child (2) A person is in law the parent of a child, as if he or she were a natural parent, if the person is

(a) recognized as a parent of the child pursuant to sections 5, 6 or 9, or the law of any other jurisdiction; or

(b) made a parent of the child by an adoption order under the *Adoption Act* R.S.P.E.I. 1988, Cap. A-4.1 or the law of any other jurisdiction.

(b) in subsection (5), by the deletion of the words “his mother or father” and the substitution of the words “either of his or her parents”.

(3) Sections 5 and 6 of the Act are repealed and the following substituted:

Application for declaration **5. (1) Any person having an interest may apply to the Supreme Court (in this Part referred to as the “court”) for a declaration that the person is or is not recognized in law to be the parent of a child.**

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

Presumptions (3) If the court finds that a presumption of parentage exists under section 9, the court shall make a declaratory order confirming the presumed parentage, unless the court finds on the balance of probabilities that the presumed parent is not the parent of the child.

Recognition of order (4) Subject to section 7, an order made under this section shall be recognized for all purposes.

Application for declaration of parentage where no presumption **6. (1) Where there is no person or more than one person recognized in law under section 9 to be the parent of a child, any person may apply to the court for a declaration that a person is his or her parent, or any person may apply to the court for a declaration that a person is his or her child.**

Limitation (2) An application shall not be made under subsection (1) unless both the persons whose relationship is sought to be established are living.

(3) Where the court finds on the balance of probabilities that the relationship of parent and child has been established, the court may make a declaratory order to that effect and, subject to section 7, the order shall be recognized for all purposes. Declaratory order

(4) Section 9 of the Act is repealed and the following substituted:

9. (1) Subject to a declaration under section 5, the presumptions in this section apply to births occurring before or after the coming into force of this section and shall be recognized in law. Presumption

(2) In this section, “assisted conception” means conception by a means other than sexual intercourse and includes the fertilization of the mother’s ovum outside of her uterus and subsequent implantation of the fertilized ovum in her. “assisted conception”, defined

(3) A person is presumed to be the parent of a child if Presumed parent

- (a) the person was the spouse of the mother of the child at the time of the birth of the child;
- (b) the person has filed a statement pursuant to subsection 3(1) or an application for amendment pursuant to subsection 3(5) of the *Vital Statistics Act* or a document under a similar provision of a corresponding Act in any jurisdiction in Canada; or
- (c) the person has been found or recognized during his or her lifetime by a court of competent jurisdiction in Canada to be the parent of the child.

(4) A male person is presumed to be the parent of a child if No assisted conception

- (a) he was married to the mother of the child by a marriage that was terminated by death or judgment of nullity within 300 days before the birth of the child or by divorce where the divorce was granted within 300 days before the birth of the child;
- (b) he marries the mother of the child after the birth of the child and acknowledges that he is the natural father; or
- (c) he was cohabiting in a conjugal relationship with the mother of the child at the time of the birth of the child or the child is born within 300 days after they ceased to cohabit.

(5) In the case of birth by assisted conception, a person is presumed to be the parent of a child if the person was, at the time the mother is inseminated, the spouse of, or cohabiting in a conjugal relationship with, the mother unless Presumed parent in assisted conception

- (a) the person did not consent in advance to the assisted conception and did not demonstrate a settled intention to treat the child as the person’s child; or
- (b) the person did not know that the child was born by assisted conception.

Status of donor (6) A person who donates the semen or ovum used in the assisted conception of a child is not, by that reason alone, a parent of the child.

Birth mother (7) A woman who gives birth to a child is deemed to be the mother of the child, whether the woman is or is not the genetic mother of the child.

Conflicting presumptions (8) The presumptions in this section shall not be applied if they result in more than one person being considered to be the parent of a child, in addition to the mother.

(5) Subsection 12(1) of the Act is repealed and the following substituted:

Statutory declaration of parentage **12.** (1) Any person may file in the office of the Director of Vital Statistics a statutory declaration, in the form prescribed by the regulations, affirming that he or she is the parent of a child.

(6) Section 26 of the Act is repealed and the following substituted:

Presumption where conflicting findings **26.** There shall be no presumption of parentage under clause 9(3)(c) where contradictory findings of parentage exist, whether extra-provincial or otherwise.

Civil Service Superannuation Act

3. (1) The *Civil Service Superannuation Act R.S.P.E.I. 1988, Cap. C-9* is amended by this section.

(2) Section 1 of the Act is amended

(a) by the repeal of clauses (c) and (d); and

(b) by the repeal of clause (p) and the substitution of the following:

spouse (p) “spouse” means an individual who, in respect of a member, vested former member or pensioner,

- (i) is married to the member, vested former member or pensioner,
- (ii) has entered into a marriage with the member, vested former member or pensioner that is voidable or void,
- (iii) where the member, vested former member or pensioner is not married to anyone, is cohabiting with the member, vested former member or pensioner in a conjugal relationship and has done so continuously for a period of at least three years, or
- (iv) where the member, vested former member or pensioner is not married to anyone, is cohabiting with the member, vested former member or pensioner in a conjugal relationship and together they are the natural or adoptive parents of a child;

(3) The Act is amended by the addition of the following after section 2:

2.1 A spouse or a surviving spouse is not entitled to a division of pension benefits or to pension benefits as a spouse or a surviving spouse, if Voidable or void marriage not in good faith

- (a) the marriage is voidable or void; and
- (b) the person did not enter into the marriage in good faith.

(4) Section 13 of the Act is amended

(a) in subsection (2), by the deletion of the words “wife or husband” and the substitution of the word “spouse”;

(b) in subclause (4)(b)(i), by the deletion of the words “wife or husband” and the substitution of the word “spouse”; and

(c) by the repeal of subsection (5) and the substitution of the following:

(5) A non-member spouse who, after pension benefits have been divided, has no further rights under the Fund pursuant to subsection 18(4) shall be deemed not to be married to the member or vested former member and not to be a spouse or surviving spouse at the date of death of the member or vested former member. Deceased deemed to be unmarried

(d) in subsection (6), by the addition of the words “at any one time, commencing with the oldest four,” after the words “up to a maximum of four.”

(5) The Act is amended in the following provisions by the deletion of the words “widow or widower” wherever they appear and the substitution of the words “surviving spouse”:

(a) subsection 13(1);

(b) subsection 13(2);

(c) subsection 13(4).

(6) The Act is amended in the following provisions by the deletion of the words “widow, widower” and the substitution of the words “surviving spouse”:

(a) subsection 13(3);

(b) clause 13(4)(c);

(c) subsection 13(10);

(d) section 14.

(7) Clause 15(a) of the Act is amended by the deletion of the word “marriage” and the substitution of the words “spousal relationship”.

(8) Subsection 23(2) of the Act is amended by the deletion of the words “date of marriage breakdown” and the substitution of the words “valuation date”.

(9) Clause 28(g) of the Act is repealed and the following substituted:

(g) for the purposes of section 23, for determining, on the basis of generally accepted actuarial principles, the valuation date and the value of pension benefits during the period subject to division;

(g.1) respecting the apportionment of benefits payable upon the death of a member or vested former member;

Conflict of Interest Act

4. Clause 1(i) of the *Conflict of Interest Act* R.S.P.E.I. 1988, Cap. C-17.1 is repealed and the following substituted:

spouse

(i) “spouse” does not include a person from whom the member is separated, whether or not support obligations and family property have been dealt with by a domestic contract or court order.

Consent to Treatment and Health Care Directives Act

5. (1) The *Consent to Treatment and Health Care Directives Act* R.S.P.E.I. 1988, Cap. C-17.2 is amended by this section.

(2) Clause 1(n) of the Act is repealed and the following substituted:

spouse

(n) “spouse” does not include a person living separate and apart within the meaning of the *Divorce Act* R.S.C. 1988, Chap. D-34;

(3) Subsection 25(2) of the Act is repealed and the following substituted:

Effect of ceasing to be a spouse

(2) Unless the directive expressly provides otherwise, the appointment of a spouse as proxy in a directive is revoked if the person ceases to be a spouse after executing the directive.

Credit Unions Act

6. Clause 1(1)(v) of the *Credit Unions Act* R.S.P.E.I. 1988, Cap. C-29.1 is repealed.

Dependants of a Deceased Person Relief Act

7. Section 1 of the *Dependants of a Deceased Person Relief Act* R.S.P.E.I. 1988, Cap. D-7 is amended

(a) by the repeal of subclause 1(d)(i) and the substitution of the following:

(i) the surviving spouse of the deceased,

(b) by the addition of the word “or” after subclause 1(d)(iv);

(c) by the deletion of the words “, or” and the substitution of a semicolon after subclause 1(d)(v); and

(d) by the repeal of subclause 1(d)(vi).

Employment Standards Act

8. (1) The *Employment Standards Act* R.S.P.E.I. 1988, Cap. E-6.2 is amended by this section.

(2) The Act is amended by the deletion of the words “common-law spouse,” in the following provisions:

(a) clause 1(d.2);

(b) clause 22.3(1)(a).

(3) Clause 22(1)(b) of the Act is amended by the deletion of the words “mother or father” and the substitution of the word “parent”.

Evidence Act

9. (1) The *Evidence Act* R.S.P.E.I. 1988, Cap. E-11 is amended by this section.

(2) The Act is amended by the addition of the following after section 1:

1.1 For the purposes of this Act, “spouse” means a spouse as defined in clause 1(1)(g) of the *Family Law Act* R.S.P.E.I. 1988, Cap. F-2.1. Spouse

(3) Sections 4 of the Act is amended by the deletion of the words “husbands and wives” and the substitution of the word “spouses”.

(4) Section 5 of the Act is amended by the deletion of the words “husband or wife” and the substitution of the word “spouse”.

(5) Section 8 of the Act is amended

(a) by the deletion of the words “husbands and wives” and the substitution of the word “spouses”; and

(b) by the deletion of the words “husband or wife” and the substitution of the word “spouse”.

(6) The Act is amended by the repeal of section 9 and the substitution of the following:

Communication during marriage, disclosure

9. No spouse is compellable to disclose any communication made to him or her by his or her spouse during their marriage.

(7) Section 10 of the Act is amended by the deletion of the words “wife or husband” and the substitution of the word “spouse”.

Family Law Act

10. (1) The *Family Law Act* R.S.P.E.I. 1988, Cap. F-2.1 is amended by this section.

(2) The Act is amended by the repeal of clause 1(1)(g) and the substitution of the following:

spouse

(g) “spouse” means an individual who, in respect of another person,
 (i) is married to the other person, or
 (ii) has entered into a marriage with the other person that is voidable or void;

(3) The Act is amended by the addition of the following after section 2:

Voidable or void marriage not in good faith

2.1 A spouse is not entitled to any rights, or to enforce any rights, under sections 6 or 20 or Part III, if

(a) the marriage is voidable or void; and
 (b) the spouse did not enter into the marriage in good faith.

(4) Subsection 14(1) of the Act is amended by the deletion of the words “husband and wife” and the substitution of the word “spouses”.

(5) Subsection 29(1) of the Act is amended

(a) by the repeal of clause (a);

(b) by renumbering clause (b) as (a); and

(c) by the addition of the following after clause (a):

- (b) “spouse” means an individual who, in respect of another person, ^{spouse}
- (i) is married to the other person,
 - (ii) has entered into a marriage with the other person that is voidable or void,
 - (iii) is not married to the other person but is cohabiting with him or her in a conjugal relationship and has done so continuously for a period of at least three years, or
 - (iv) is not married to the other person but is cohabiting with him or her in a conjugal relationship and together they are the natural or adoptive parents of a child.

(6) The Act is amended by the deletion of the words “spouse or common-law partner” wherever they appear in the following provisions and the substitution of the words “spouse or former spouse”:

- (a) section 30;**
- (b) subsections 33(3), (6), (7) and (9);**
- (c) clauses 34(1)(i) and (j);**
- (d) section 38.1;**
- (e) subsection 39(2);**
- (f) section 40;**
- (g) subsection 41(3);**
- (h) subsections 49(1) and (2).**

(7) The Act is amended by the deletion of the words “or common-law partner” wherever they appear in the following provisions:

- (a) subsection 44(1);**
- (b) subsection 45(1);**
- (c) clause 54(3)(a).**

(8) The Act is amended by the deletion of the words “, common-law partner” and the substitution of the words “, former spouse” in the following provisions:

- (a) subsection 33(9);**

(b) subsection 37(2).

(9) The Act is amended by the deletion of the words “or common-law partners” wherever they appear in the following provisions and the substitution of the words “or former spouses”:

(a) subsection 33(7);

(b) subsection 49(2)

(10) Section 38.1 of the Act is amended by the deletion of the words “or a common-law partner” wherever they appear and the substitution of the words “or former spouse”.

(11) Subsection 51(1) of the Act is amended by the deletion of the words “A man and a woman” and the substitution of the words “Two persons”.

(12) Subsection 54(4) of the Act is repealed and the following substituted:

Extended meaning
of “spouse”

(4) In subsection (3), “spouse” means a spouse as defined in clause 29(1)(b).

Fatal Accidents Act

11. (1) The *Fatal Accidents Act* R.S.P.E.I. 1988, Cap. F-5 is amended by this section.

(2) Clause 1(f) of the Act is amended

(a) by the repeal of subclause (i) and the substitution of the following:

(i) the surviving spouse of the deceased,

(b) by the repeal of subclause (vi).

(3) Clause 7(1)(a) of the Act is amended by the deletion of the word “marry” and the substitution of the words “may become a spouse”.

Highway Traffic Act

12. Subsection 92.1(1) of the *Highway Traffic Act* R.S.P.E.I. 1988, Cap. H-5 is amended

(a) in clauses (a) and (c), by the deletion of the words “or common-law partner”;

(b) by the repeal of clause (b) and the substitution of the following:

(b) a parent of the newly licensed driver and the spouse of the parent of the newly licensed driver”;

(c) by the repeal of clause (g) and the substitution of the following:

(g) a parent of the spouse of the newly licensed driver and the spouse of a parent of the newly licensed driver; and

Human Rights Act

13. The *Human Rights Act* R.S.P.E.I. 1988, Cap. H-12 is amended by the repeal of clause 1(1)(h.2) and the substitution of the following:

(h.2) “marital status” means the status of being married, single, widowed, divorced, separated, or living with a person in a conjugal relationship outside marriage; marital status

Human Tissue Donation Act

14. The *Human Tissue Donation Act* R.S.P.E.I. 1988, Cap. H-12.1 is amended by the repeal of clauses 1(a) and (f).

Insurance Act

15. (1) The *Insurance Act* R.S.P.E.I. 1988, Cap. I-4 is amended by this section.

(2) Section 127 of the Act is repealed and the following substituted:

127. Without restricting the meaning of the expression “insurable interest”, a person has an insurable interest in his or her own life and in the life of Insurable interest

- (a) his or her child or grandchild;
- (b) his or her spouse;
- (c) any person upon whom he or she is wholly or in part dependant for, or from whom he or she is receiving, support or education;
- (d) his or her employee; and
- (e) any person in the duration of whose life he or she has a pecuniary interest.

(3) Section 188 of the Act is repealed and the following substituted:

188. Without restricting the meaning of the expression “insurable interest”, a person has an insurable interest in his or her own life and well-being and in the life and well-being of Insurable interest

- (a) his or her child or grandchild;
- (b) his or her spouse;
- (c) any person upon whom he or she is wholly or in part dependant for, or from whom he or she is receiving, support or education;
- (d) his or her officer or employee; and
- (e) any person in whom he or she has a pecuniary interest.

(4) Clause 233(4)(c) of the Act is amended by the deletion of the words “his spouse” and the substitution of the words “the insured’s spouse”.

(5) The Act is amended by the repeal of Part I-B(2) of subsection 2 of Schedule B and the substitution of the following:

- (2) “spouse” means a spouse who
 - (a) was cohabiting with the deceased at the time of the occurrence giving rise to a claim; or
 - (b) was cohabiting with the deceased within the year preceding the occurrence giving rise to a claim.

(6) The Act is amended by the deletion of the words “husband and wife” and the substitution of the word “spouses” in Part II-B(1)(b)(i) of subsection (3) of Schedule B.

Interpretation Act

16. The *Interpretation Act* R.S.P.E.I. 1988, Cap. I-8 is amended by the addition of the following after clause 26(e.2):

- (e.2.1) “spouse” means a spouse as defined in clause 29(1)(b) of the *Family Law Act* R.S.P.E.I. 1988, Cap. F-2.1;

Landlord and Tenant Act

17. Subclause 39(a)(iii) of the *Landlord and Tenant Act* R.S.P.E.I. 1988, Cap. L-4 is amended by the deletion of the words “wife, husband” and the substitution of the word “spouse”.

Marriage Act

18. (1) The *Marriage Act* R.S.P.E.I. 1988, Cap. M-3 is amended by this section.

(2) Section 1 of the Act is amended

- (a) by the deletion of the period after clause 1(e) and the substitution of a semi-colon; and

(b) by the addition of the following after clause 1(e):

(f) “spouse” means a spouse as defined in clause 1(1)(g) of the *Family Law Act*. spouse

(3) Subsection 21(1) of the Act is amended by the deletion of the words “his spouse” wherever they appear and the substitution of the words “his or her spouse”.

Probate Act

19. (1) The *Probate Act* R.S.P.E.I. 1988, Cap. P-21 is amended by this section.

(2) Subsection 46(1) of the Act is amended by the deletion of the words “husband, or to the wife, or to the next of kin, or to the wife and next of kin” and the substitution of the words “spouse, to the next of kin, or to both”.

(3) Sections 65 and 66 of the Act are amended by the deletion of the words “wife or husband” wherever they appear and the substitution of the word “spouse”.

(4) Subsection 69(2) of the Act is repealed.

(5) Sections 87 to 93 of the Act are repealed and the following substituted:

87. (1) If an intestate dies leaving a surviving spouse and one child, one-half of the estate goes to the surviving spouse. Entitlement of surviving spouse, if one child

(2) If an intestate dies leaving a surviving spouse and children, one-third of the estate goes to the surviving spouse. More than one child

(3) If a child has died leaving issue and the issue is alive at the date of the intestate’s death, the surviving spouse shall take the same share of the estate as if the child had been living at that date. Child died leaving issue

88. If an intestate dies leaving issue, the estate shall be distributed, subject to the rights of the surviving spouse, if any, by stocks among the issue. Distribution among issue of child

89. If an intestate dies leaving a surviving spouse but no issue, the estate goes to the surviving spouse. Intestate succession, surviving spouse but no issue

90. If an intestate dies leaving no surviving spouse or issue, the estate goes to the parents in equal shares if both are living but, if either of them is dead, the estate goes to the surviving parent. No surviving spouse or issue, distribution of estate

No surviving spouse, issue, father, mother, distribution of estate

91. If an intestate dies leaving no surviving spouse or issue or parents, the estate goes to the brothers and sisters in equal shares and, if any brother or sister is dead, the children of the deceased brother or sister take the share their parent would have taken, if living.

Nephews & nieces, entitled, where

92. If an intestate dies leaving no surviving spouse, issue, parents, brother or sister, the estate goes to the nephews and nieces in equal shares and in no case shall representation be admitted.

Distribution among next of kin

93. If an intestate dies leaving no surviving spouse, issue, parents, brother, sister, nephew or niece, the estate shall be distributed equally among the next of kin of equal degree of consanguinity to the intestate and in no case shall representation be admitted.

(6) Section 98 of the Act is repealed.

(7) Subsections 99(1) and (2) of the Act are repealed and the following substituted:

No share for surviving spouse living in a conjugal relationship with another

99. (1) If an intestate dies leaving a surviving spouse who is cohabiting in a conjugal relationship with another person at the time of the intestate's death, the surviving spouse takes no part of the intestate's estate.

Probation Act

20. (1) The *Probation Act R.S.P.E.I. 1988, Cap. P-22* is amended by this section.

(2) Clause 4(1)(e) of the Act is repealed and the following substituted:

(e) to see that any person so convicted while on probation duly carries out any order of the judge requiring the person to make due provision for the support of his or her spouse and any other dependants for whom the person may be liable;

(3) Clause 8(b) of the Act is repealed and the following substituted:

(b) provide for the support of his or her spouse or any other dependents whom the accused is liable to support;

Provincial Administrator of Estates Act

21. (1) The *Provincial Administrator of Estates Act R.S.P.E.I. 1988, Cap. P-23* is amended by this section.

(2) Section 1 of the Act is amended by the deletion of the words "husband or wife" and the substitution of the word "spouse".

(3) Section 6 of the Act is amended by the deletion of the words “husband, widow” and the substitution of the words “surviving spouse”.

Provincial Court Act

22. (1) The *Provincial Court Act* R.S.P.E.I. 1988, Cap. P-25 is amended by this section.

(2) Clause 1(e) of the Act is amended

(a) by the deletion of the period and the substitution of a semicolon; and

(b) by the addition of the following after clause 1(e):

(f) “spouse” means a spouse as defined in clause 1(1)(g) of the *Family Law Act* R.S.P.E.I. 1988, Cap. F-2.1. spouse

(3) Subsection 8(5) of the Act is amended

(a) by the deletion of the words “his widow” wherever they appear and the substitution of the words “his or her surviving spouse”; and

(b) in clause (b), by the deletion of the word “wife” and the substitution of the word “spouse”.

Real Property Act

23. (1) The *Real Property Act* R.S.P.E.I. 1988, Cap. R-3 is amended by this section.

(2) Subsection 13(1) of the Act is amended by the deletion of the words “husband to his wife, or by a wife to her husband” and the substitution of the words “spouse to his or her spouse”.

(3) Schedule 3 of the Act is amended by the deletion of the word “husband-like” in column 2, section 4 and the substitution of the word “functional”.

Real Property Assessment Act

24. Section 6 of the *Real Property Assessment Act* R.S.P.E.I. 1988, Cap. R-4 is amended by the deletion of the words “widow or widower” wherever they appear and the substitution of the words “surviving spouse”.

Real Property Tax Act

25. The *Real Property Tax Act* R.S.P.E.I. 1988, Cap. R-5 is amended by the repeal of clause 14(1)(d).

Teachers' Superannuation Act

26. (1) The *Teachers' Superannuation Act* R.S.P.E.I. 1988, Cap. T-1 is amended by this section.

(2) Section 1 of the Act is amended

(a) by the addition of the following after clause 1(a.2):

court order (a.3) "court order" means an order of a court of competent jurisdiction in Canada;

(b) by the repeal of clause (b) and the substitution of the following:

dependent (b) "dependent" in relation to an individual entitled to or receiving a pension under this Act at the time of the individual's death means a parent, brother, sister or child, whether over 18 years of age or not, of the individual, who at the time of the death of the individual was dependent upon the individual for support;

domestic contract (b.1) "domestic contract" means a domestic contract as defined in Part IV of the *Family Law Act* R.S.P.E.I. 1988, Cap. F-2.1;

(c) by the repeal of clause 1(h.1) and the substitution of the following:

spouse (h.1) "spouse" means an individual who, in respect of a member, vested former member or pensioner,
 (i) is married to the member, vested former member or pensioner,
 (ii) has entered into a marriage with the member, vested former member or pensioner that is voidable or void,
 (iii) where the member, vested former member or pensioner is not married to anyone, is cohabiting with the member, vested former member or pensioner in a conjugal relationship and has done so continuously for a period of at least three years, or
 (iv) where the member, vested former member or pensioner is not married to anyone, is cohabiting with the member, vested former member or pensioner in a conjugal relationship and together they are the natural or adoptive parents of a child;

(3) The Act is amended by the addition of the following after section 2:

2.1 A spouse or a surviving spouse is not entitled to a division of pension benefits or to pension benefits as a spouse or a surviving spouse, if

- (a) the marriage is voidable or void; and
- (b) the person did not enter into the marriage in good faith.

Voidable or void marriage not in good faith

(4) The Act is amended by the addition of the following after subsection 18(3):

(4) Where there has been a division of pension benefits pursuant to this Act, the amount of pension benefits payable pursuant to this section shall be adjusted as prescribed by regulation.

Adjustment of pension benefits

(5) Section 26 of the Act is repealed and the following substituted:

26. A non-member spouse who, after pension benefits have been divided, has no further rights under the Fund pursuant to subsection 31.1(4) shall be deemed not to be married to the member or vested former member and not to be a spouse or surviving spouse at the date of death of the member or vested former member.

Deemed to be unmarried

(6) The Act is amended by the addition of the following after section 31:

31.1 (1) A person who is a member, a vested former member or a pensioner, or a spouse or former spouse of such person, may, in the circumstances described in subsection (2), apply to the Minister to divide the pension benefits to which the person is entitled under this Act between the person and the spouse or former spouse.

Application for division of pension benefits on marriage breakdown

(2) An application may be made where

- (a) a court of competent jurisdiction in Canada, in proceedings in relation to a divorce or an annulment of marriage, makes an order that provides for the division of pension benefits under this Act between the person and the spouse or former spouse;
- (b) the person and the spouse or former spouse have entered into a written witnessed domestic contract that provides for the division of pension benefits between them upon divorce or annulment of marriage or upon separation; or
- (c) one of the spouses commences an application based on subsection 6(2) of the *Family Law Act* respecting improvident depletion that is subsequently granted,

Application division of pension benefits

and the effective date of the divorce or annulment of marriage or the separation referred to in clauses (a) and (b), or the date of the application referred to in clause (c), is on or after January 1, 2006.

(3) The value of the pension benefit shall be determined as of the valuation date in accordance with this Act and the regulations and shall

Determination of value of pension benefits

be divided in accordance with an order of the court, the terms of a domestic contract or an order under subsection 6(2) of the *Family Law Act*.

Effect of division	(4) If the pension benefits under the Fund have been divided in accordance with subsection (3), the non-member spouse has no further right under the Fund and the member's, vested former member's, or pensioner's pension benefits shall be revalued accordingly.
Reduction may not exceed 50%	(5) A division of pension benefits under the Fund pursuant to the circumstances described in subsection (2) shall not result in a reduction of the commuted value of a member's, vested former member's, or pensioner's pension benefits by more than fifty per cent.
Cash payment	(6) If a member would not be entitled to a deferred pension on termination of employment, the portion of the member's contributions with interest to be attributed to the non-member spouse may be paid out in cash in accordance with this Act and the regulations.
Minister not liable	(7) Where a court order or domestic contract provides for payment by the member, vested former member, or pensioner of a sum equal to and in lieu of the amount owing to the member's, vested former member's or pensioner's spouse in relation to a pension benefit, the Minister and the Fund are not liable for any payments.
Application	(8) An application shall be made in writing containing the prescribed information, accompanied by a certified true copy of the court order or domestic contract and by such other documents as are prescribed.
Interested party, defined	31.2 (1) In this section and in sections 31.3 and 31.4, the term "interested party" means the person who is a member, a vested former member or a pensioner, and the spouse or former spouse of such person, between whom the person's pension benefits under this Act are sought to be divided in an application under section 31.1.
Notice of receipt of application	(2) The Minister shall, after receiving an application under section 31.1, send a notice of the receipt in the prescribed manner to each interested party.
Notice to interested party	(3) In the case of an interested party who is not the applicant, the notice shall include any document or information prescribed by regulation.
Deemed receipt	(4) The notice is deemed to be received by an interested party 30 days after the day on which it is sent in the prescribed manner to that party.
Interested party objects to division	31.3 (1) An interested party who objects to the division of pension benefits on any of the grounds described in subsection (2)

- (a) may submit a notice to the Minister or his or her delegate in writing within thirty days after the day on which notice of the receipt of the application is deemed under subsection 31.2(4) to be received by that party; and
- (b) shall include with the notice, documentary evidence to establish the grounds for objection.

(2) The grounds for objection are

Grounds for
objection

- (a) that the court order, or domestic contract has been varied or is of no force or effect;
- (b) that the terms of the court order or domestic contract have been, or are being satisfied by other means; or
- (c) that proceedings have been commenced in a court of competent jurisdiction in Canada to appeal or review the court order or challenge the terms of the domestic contract.

31.4 (1) Subject to subsections (2) and (3), the Minister shall, as soon as is practicable after the Minister is satisfied that an application meets the requirements of this Act, approve the division of the pension benefits for which the application is made.

Approval of
division of pension

(2) If an interested party submits a notice of objection to the Minister in accordance with section 21, the Minister shall defer any decision on the application until such time as the Minister is able to ascertain to the Minister's satisfaction whether the grounds referred to in clauses 31.3(2)(a) or (b) have been established, or until the final disposition of the proceedings referred to in clause 31.3(2)(c), as the case may be.

Decision on
application deferred

(3) The Minister shall refuse to approve the division of pension benefits under this Act where

Division of benefits
refused where

- (a) the application for the division does not meet the requirements of this Act;
- (b) the application is withdrawn in accordance with the regulations;
- (c) the Minister is satisfied that grounds for objection under clause 31.3(2)(a) or (b) have been established and that they provide sufficient reason to refuse the division;
- (d) as a result of the proceedings described in clause 31.3(2)(c), the court finds that the court order or domestic contract is of no force or effect in respect of the division of pension benefits; or
- (e) the period subject to division cannot be determined.

31.5 (1) A division of pension benefits shall be effected by transferring in accordance with subsection (3) an amount which is not more than fifty per cent of the lump-sum value of the pension benefits of the member, vested former member or pensioner subject to division, as determined in accordance with the regulations.

Division of benefits
effected by
transferred amount

Benefits adjusted	(2) The pension benefits of the member shall be adjusted for the period between the date of marriage breakdown and the date the division is effected in accordance with the regulations.
Lump-sum on division of benefits	(3) A non-member spouse, or a non-member former spouse, who is entitled to a lump-sum amount upon division of pension benefits shall direct the Minister to transfer the amount to either <ul style="list-style-type: none"> (a) a pension plan selected by the spouse or former spouse that is registered under the <i>Income Tax Act</i> (Canada), if that pension plan so permits; (b) a retirement savings plan or fund for the spouse or former spouse that is of the prescribed kind; or (c) a financial institution authorized to sell immediate or deferred life annuities of the prescribed kind, for the purchase of such an annuity for the spouse or former spouse.
Failing to direct how entitlement is dealt with	(4) If the non-member spouse fails to direct the Minister in relation to the manner in which his or her entitlement is to be dealt with according to the regulations, that spouse shall be deemed to have directed the Minister to purchase a deferred life annuity.
Contributions after division adjusted in accordance with regulations	(5) Where the pension benefits of a member, vested former member or pensioner have been divided under this section the pension benefits and accumulated contributions contributed by the member, vested former member or pensioner shall be adjusted in accordance with the regulations.
No lump sum payment	(6) Where both spouses or former spouses are either members, vested former members, or pensioners, and the pension benefits of only one spouse or former spouse have been divided pursuant to this Act, the receiving spouse or former spouse is not entitled to a lump sum payment and the division shall be effected in accordance with the regulations.
Division of benefits for period of marriage	(7) Where the pension benefits of a member, vested former member or pensioner in respect of a given period of marriage have been divided under this section, no further division of pension benefits may be made under this section in respect of that period.
No transfer of benefits because of death paid to estate	(8) An amount that cannot be transferred in accordance with subsection (1) by reason only of the death of the spouse or former spouse shall be paid to the estate of the spouse or former spouse.
Notice of division sent to each interested party	(9) The Minister shall send a notice of the division of the pension benefits in the prescribed manner to each interested party.
Amount paid in excess of entitlement	31.6 If the amount transferred in respect of a spouse or former spouse or paid to the estate of that deceased person under subsection 31.5(8) exceeds the amount to which that person was entitled to have transferred

or the estate was entitled to be paid, the amount in excess constitutes a debt due to the Government of Prince Edward Island by that spouse, former spouse or estate.

31.7 Where an adjustment is made under section 31.5, and an amount is or has been paid to a member, vested former member, or pensioner that exceeds the amount to which that member, vested former member, or pensioner is or would have been entitled under the Fund after the effective date of that adjustment, the amount in excess constitutes a debt due the Government of Prince Edward Island by that member, vested former member, or pensioner and may be recovered at any time by setoff against any pension benefit that is payable to that member, vested former member, or pensioner from the Fund, without prejudice to any other recourse for recovery that may be available to the Government of Prince Edward Island. *Idem*

31.8 (1) Amounts to which a spouse or former spouse is or may become entitled under section 31.5 are not capable of being assigned, charged, anticipated or given as security, and any transaction that purports to assign, charge, anticipate or give as security any such amount is void. Amount not capable of being assigned, charged, anticipated or given as security

(2) Subject to sections 31.6 and 31.7, amounts to which a spouse or former spouse is or may become entitled under section 31.5 are exempt from attachment, seizure and execution, either at law or in equity. Amount exempt from attachment, seizure and execution

31.9 (1) Notwithstanding any other provision of this Act, where a court of competent jurisdiction in Canada so orders, the Minister shall not, for such period as the court may order, take any action on the direction of a member that may prejudice the ability of the spouse or a former spouse to make an application or obtain a division of pension benefits under this Act. Court order

(2) The Minister shall, in accordance with the regulations, on request of a spouse or former spouse of a member, vested former member, or pensioner, provide that person with prescribed information concerning the pension benefits that are or may become payable to or in respect of that member, vested former member, or pensioner under the Fund. Requested prescribed information on amount payable

(7) Section 33 of the Act is amended by the addition of the following after clause (k):

(k.1) prescribing the circumstances in which a person may make an application under section 31.5 of the Act on behalf of another person or may act on behalf of another person in prosecuting an application that has been made by that other person;

(k.2) prescribing the circumstances in which a personal representative may make and proceed with an application pursuant to section 31.5;

- (k.3) respecting the manner in which and the extent to which any provision of this Act applies to a person referred to in clauses (k.1) and (k.2) or in the circumstances prescribed by the regulations and adapting any provision of this Act to those persons or circumstances;
- (k.4) respecting the withdrawal of applications;
- (k.5) for the purposes of section 31.5, for determining, on the basis of generally accepted actuarial principles, the value of pension benefits during the period subject to division;
- (k.6) respecting the apportionment or benefits payable upon the death of a member or vested former member;
- (k.7) for the purposes of subsection 18(4) and section 31.5, respecting the adjustment of the pension benefits;
- (k.8) requiring interest be paid on lump-sum amounts and prescribing the rate of interest or the manner of determining the rate of interest;
- (k.9) for determining the effective date of the adjustment of pension benefits;
- (k.10) respecting the provision of information to a spouse or former spouse under subsection 31.9 (2);

Victims of Family Violence Act

27. Subclause 1(d)(i) of the *Victims of Family Violence Act* R.S.P.E.I. 1988, Cap. V-3.2 is amended by the deletion of the words “a man and a woman” and the substitution of the words “two persons”.

Vital Statistics Act

28. (1) The *Vital Statistics Act* R.S.P.E.I. 1988, Cap. V-4.1 is amended by this section.

(2) The Act is amended by the addition of the following after clause 1(n):

- (n.1) “parent” in respect of a child means the mother ^{parent} or the father of the child or a person presumed or declared to be a parent of the child under the *Child Status Act*;

(3) The Act is amended by the repeal of section 3 and the substitution of the following:

3. (1) Within 30 days after the birth of a child in the ^{Reporting birth} province, at least one parent of the child or another prescribed person shall, in accordance with the regulations, complete and provide a statement respecting the birth and the parents to the ^{Statement, multiple birth} division registrar.

(2) If a pregnancy results in the birth of more than one child, a separate statement for each child shall be completed and provided in accordance with subsection (1), and each statement shall state the number of children born and their order of birth.

(3) Where a registered statement is completed by only one parent of the child or by a person who is not the child's parent, the Director shall amend the statement on application of any of the following persons:

Amendment of statement by Director

- (a) the child's parents together;
- (b) one of the child's parents, if the other parent is incapable;
- (c) the child's mother, if the other parent is unacknowledged by or unknown to the mother.

(4) If only one parent of the child applies to amend the statement, a statutory declaration of the facts justifying the application shall be attached to the application.

Statutory declaration in support of application

(5) Where parentage is established under the *Child Status Act*, the Director shall, on receipt of a copy of the order, make a notation on the statement of the child to reflect the determination of parentage.

Notation of parentage

(4) Subsection 4(2) of the Act is amended by the deletion of the words “the mother or father or both” and the substitution of the words “one parent or both parents”.

(5) Section 32 of the Act is amended

(a) by the addition of the following after subsection (1):

(1.1) For the purposes of subsection (1), “spouse” means a spouse as defined in clause 1(1)(g) of the Family Law Act R.S.P.E.I. 1988, Cap. F-2.1.

Married spouse

(b) in clause (3)(b), by the deletion of the words “mother or father” and the substitution of the word “parent”;

(c) by the repeal of clause (6)(a) and the substitution of the following:

(a) to the parents, brother, sister or spouse of the deceased or to the adult child of the deceased;

(d) by the repeal of clause (7)(a) and the substitution of the following:

(a) who is the parent, brother, sister or spouse of the deceased or the adult child of the deceased;

(6) The Act is amended by the repeal of clause 40(b) and the substitution of the following:

(b) respecting the statements and forms to be filed or registered under this Act ;

Workers Compensation Act

29. The *Workers Compensation Act* R.S.P.E.I. 1988, Cap. W-7.1 is amended by the repeal of clause 1(1)(w) and the substitution of the following:

spouse

(w) “spouse” means an individual who, at the time of the worker’s death,

(i) is married to the worker,

(ii) has entered into a marriage with the worker that is voidable or void,

(iii) is not married to the worker but is cohabiting with the worker in a conjugal relationship and has done so continuously for a period of at least one year immediately preceding the worker’s death, or

(iv) is not married to the worker but is cohabiting with the worker in a conjugal relationship and together they are the natural or adoptive parents of a child;

Commencement

30. (1) Subject to subsection (2), this Act comes into force on a date that may be fixed by proclamation of the Lieutenant Governor in Council.

(2) Upon proclamation section 3 of this Act is deemed to have come into force on January 1, 2006.

CHAPTER 8

(Bill No. 33)

Domestic Relations Act

<i>STAGE:</i>	<i>DATE:</i>
<i>1st Reading:</i>	May 20, 2008
<i>2nd Reading:</i>	May 20, 2008
<i>To Committee:</i>	May 20, 2008
<i>Reported:</i>	May 20, 2008
<i>3rd Reading and Pass:</i>	May 20, 2008
<i>Assent:</i>	May 22, 2008

Honourable L. Gerard Greenan
Attorney General

GOVERNMENT BILL