

**FAMILY COURT OF NOVA SCOTIA**

**Citation:** T.L.T. and G.B., 2012 NSFC 8

**Date:** 20120423

**Docket:** FYMCA- 061982

**Registry:** Yarmouth

**Between:**

T.L.T.

Plaintiff

v.

G.B.

Defendant

**Editorial Notice**

Identifying information has been removed from this electronic version of the judgment.

**Judge:** The Honourable Judge John D. Comeau, JFC

**Heard:** March 14, 2012 at Yarmouth, Nova Scotia

**Counsel:** Celia J. Melanson Esq. For the Applicant

Andrew S. Nickerson, Q.C. for the Respondent

**The Applicant/Introduction:**

[1] This is an application for a declaratory order with respect to paternity of the child A., born March \*, 2003 pursuant to section 11A of the *Vital Statistics Act*.

The applicant is also requesting genetic testing pursuant to section 11B of the *Vital Statistics Act* to expedite this matter. The mother is opposed to the Court providing this remedy.

[2] The evidence indicates that the applicant wants access and a relationship with the child. Judicial notice is taken that a remedy was not available to him under the *Maintenance and Custody Act*. Section 18 of that *Act* requires that an alleged father must prove he is the biological father of the child. This type of proof is only available by genetic testing (DNA - blood-grouping tests as referred to in the *Maintenance and Custody Act*).

[3] Section 27(2) refers to the consequences of a refusal of the mother to submit her and the child to testing which is the case here.

“27(2) Where an order has been made under subsection (1), if the mother refuses to submit to a blood-grouping test or to permit a blood-grouping test to be made

of her child, the court or judge may infer from the refusal that the test would have established that the possible father could not be the father of the child”.

[4] The result of tests being positive would not be admissible in evidence.

“27(3) The results of such tests shall be admissible in evidence only where the results establish definite exclusion of the possible father as the father of the child”.

**Issue:**

Jurisdiction/Object of the *Vital Statistics Act*

**Facts relevant to jurisdiction:**

[5] The child A. was born March \*, 2003 in M., Ontario. A statement of live birth from the Ontario Registrar General has been admitted in evidence. Under “FATHER” in the document are the words “information not provided”. The mother is named as the Respondent G.B.

**The Law:**

The *Vital Statistics Act* (Nova Scotia)

**“Paternity order**

**11A (1)** In this Section and Sections 11B and 11C, “court” means the Supreme Court of Nova Scotia (Family Division) or the Family Court of Nova Scotia as the case may be.

(2) The court may, on application by any person having an interest in the paternity of a child, make a declaratory order with respect to the paternity of the child.

(3) Where the court makes an order pursuant to subsection (2), the court may order that

(a) **the name and particulars of the father of the child be registered** or removed from the register, as the case may be: and

(b) the surname of the child be registered in accordance with subsection (8) of Section 4.

(4) An order made pursuant to subsection (3) must contain

(a) the full name of the father of the child;

(b) the date and place of birth of the father of the child; and

**(c) sufficient particulars of the birth of the child to identify the birth record that is to be changed.**

(5) Upon receipt of an order made pursuant to subsection (3), the Registrar shall take whatever action is required under that subsection. 2004, c. 48, 2.2.

### **Genetic testing**

**11B (1)** Where an application has been made for an order with respect to the paternity of a child, the court may order genetic testing by a duly qualified medical practitioner or other person designated in the order to determine the biological father of the child.

**(2)** Unless the court otherwise orders, the costs of genetic testing carried out pursuant to subsection (1) shall be paid by the party bringing the application.

### **Refusal to make order**

**11C** Notwithstanding any proof of the paternity of a child, the court may decline to make an order pursuant to subsection (2) or (3) of Section 11A where the court considers it in the best interests of the child.”

[6] Section 11A(3) and (4) contemplates there is a birth record in Nova Scotia and subsection (c) of subsection (4) of section 11A requires “sufficient particulars of the birth of the child to identify the birth record that is to be changed”.

[7] The *Interpretation Act* in section 9(5) sets out the considerations to determining the intent and nature of statutes:

“(5) Every enactment shall be deemed remedial and interpreted to insure the attainment of its objects by considering among other matters

- (a) the occasion and necessity for the enactment;
- (b) the circumstances existing at the time it was passed;
- (c) the mischief to be remedied;
- (d) the object to be attained;
- (e) the former law, including other enactments upon the same or similar subjects;
- (f) the consequences of a particular interpretation; and

(g) the history of legislation on the subject.”

[8] In section 7(1)(c) the reference to the Province is to be interpreted and “means Province of Nova Scotia”.

[9] In *Sullivan and Droedger* on the Construction of Statues (4<sup>th</sup> edition) reference is made to the object with which the statute was passed.

[10] In *R. v. Adams* [1995] 4 S.C.R. 707 at page 719, Sopinka S. wrote:

“In approaching the interpretation of any statutory provision, it is prudent to keep in mind the simple but fundamental instruction offered by the Court in *Reigate Rural District Counsel v. Sulton District* ... and affirmed by this Court in *Hirsh v. Protestant Board of School Commissioners* ... it is always necessary in constructing a statute, and dealing with the words you find in it, to consider the object with which the statute was passed, because it enables one to understand the meaning of the words introduced into the enactment”.

### **Conclusions/Decision:**

[11] The object of the *Vital Statistics Act* is to collect and keep data on births, deaths, marriages and domestic contracts in the Province of Nova Scotia It is a statute particular to Nova Scotia.

[12] Where a person having an interest in the paternity of a child desires to add to or correct the record he may ask the Court (in this particular case the Family Court) to make a declaratory order with respect to paternity. This has the effect of adding to or taking away from the registration of birth required for every child born in Nova Scotia (see section 4 of the *Vital Statistics Act*).

[13] When a declaratory paternity order is made, the surname (which can be both parents names hyphenated) is registered under section 4(8). Section 4 is clear that the registration is “every child born in the Province (interpreted as the Province of Nova Scotia)”.

[14] The purpose of a declaratory paternity order under the *Vital Statistics Act* is to assist in providing a record of birth and the particulars of the father of a child. It is to add to or take away from an existing record. There is no jurisdiction to register a child born outside of Nova Scotia. With this in mind a declaration of paternity would be redundant. It would have no purpose and consequently an order for genetic testing would be contrary to the child’s best interest. (See s. 11C).

[15] This matter is dismissed

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JOHN D. COMEAU  
JUDGE OF THE FAMILY COURT OF NOVA SCOTIA