

**Guardianship of Infants Act  
(CHAPTER 122)**

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### **Legislative History**

## **GUARDIANSHIP OF INFANTS ACT (CHAPTER 122)**

(Original Enactment: Ordinance 11 of 1934)

REVISED EDITION 1985

(30th March 1987)

An Act relating to the guardianship of infants.

[1st January 1935]

### **Short title**

1. This Act may be cited as the Guardianship of Infants Act.

### **Interpretation**

2. In this Act, unless there is anything repugnant in the context —  
“court” means the High Court or a judge when sitting in open court;

“judge” means a judge sitting in chambers.

### **Welfare of infant to be paramount consideration**

3. Where in any proceedings before any court the custody or upbringing of an infant or the administration of any property belonging to or held in trust for an infant or the application of the income thereof is in question, the court, in deciding that question, shall regard the welfare of the infant as the first and paramount consideration and save in so far as such welfare otherwise requires the father of an infant shall not be deemed to have any right superior to that of the mother in respect of such custody, administration or application nor shall the mother be deemed to have any claim superior to that of the father.

### **Equal right of mother to apply to court**

4. The mother of an infant shall have the like powers of applying to the court in respect of any matter affecting the infant as are possessed by the father.

### **Power of court to make, discharge or amend orders for custody and maintenance of infants**

5. The court may, upon the application of either parent or of any guardian appointed under this Act, make orders as it may think fit regarding the custody of such infant, the right of access thereto and the payment of any sum towards the maintenance of the infant and may alter, vary or discharge such order on the application of either parent or of any guardian appointed under this Act.

### **Rights of surviving parent as to guardianship**

6.—(1) On the death of the father of an infant, the mother, if surviving, shall, subject to the provisions of this Act, be guardian of the infant, either alone or jointly with any guardian appointed by the father. When no guardian has been appointed by the father or if the guardian or guardians appointed by the father is or are dead or refuses or refuse to act, the court may if it thinks fit appoint a guardian to act jointly with the mother.

(2) On the death of the mother of an infant, the father, if surviving, shall, subject to the provisions of this Act, be guardian of the infant, either alone or jointly with any guardian appointed by the mother. When no guardian has been appointed by the mother or if the guardian or guardians appointed by the mother is or are dead or refuses or refuse to act, the court may if it thinks fit appoint a guardian to act jointly with the father.

(3) Where an infant has no parent, no guardian of the person and no other person having parental rights with respect to him, the court, on the application of any person, may, if it thinks fit, appoint the applicant to be the guardian of the infant.

### **Power of father and mother to appoint testamentary guardians**

7.—(1) The father of an infant may by deed or will appoint any person to be guardian of the infant after his death.

(2) The mother of an infant may by deed or will appoint any person to be guardian of the infant after her death.

(3) Any guardian so appointed shall act jointly with the mother or father, as the case may be, of the infant so long as the mother or father remains alive, unless the mother or father objects to his so acting.

(4) If the mother or father so objects, or if the guardian so appointed as aforesaid considers that the mother or father is unfit to have the custody of the infant, the guardian may apply to the court, and the court may either refuse to make any order (in which case the mother or father shall remain sole guardian) or make an order that the guardian so appointed shall act jointly with the mother or father, or that he shall be sole guardian of the infant, and in the later case may make such order regarding the custody of the infant and the right of access thereto of the mother or father as, having regard to the welfare of the infant, the court may think fit, and may further order that the mother or father shall pay to the guardian towards the maintenance of the infant such weekly or other periodical sum as, having regard to the means of the mother or father, the court may consider reasonable.

(5) Where guardians are appointed by both parents, the guardians so appointed shall after the death of the surviving parent act jointly.

(6) If a guardian has been appointed by the court to act jointly with a surviving parent, he shall continue to act as guardian after the death of the surviving parent; but if the surviving parent has appointed a guardian, the guardian appointed by the court shall act jointly with the guardian appointed by the surviving parent.

### **Dispute between joint guardians**

8. Where two or more persons act as joint guardians of an infant and they are unable to agree on any question affecting the welfare of the infant, any of them may apply to the court for its direction, and the court may make such order regarding the matters in difference as it may think proper including power —

- (a) to make such orders regarding the custody of the infant and the right of access thereto of the mother or father as, having regard to the welfare of the infant, the court may think fit;
- (b) to order the mother or father to pay towards the maintenance or education of the infant such weekly or other periodical sum as, having regard to the means of the mother or father, the court may consider reasonable; and