

---

---

Fifth Session First Parliament Republic of Trinidad  
and Tobago

---

---



REPUBLIC OF TRINIDAD AND TOBAGO

Act No. 15 of 1981

[L.S.]

AN ACT to define and regulate the authority of parents as guardians or their minor children, whether or not born in wedlock, their power to appoint guardians, and the powers of Courts in relation to the guardianship, custody and maintenance of minors and related matters.

*[Assented to 29th June, 1981]*

ENACTED by the Parliament of Trinidad and Tobago as follows—

Enactment

1. (1) This Act may be cited as the Family Law (Guardianship of Minors, Domicile and Maintenance) Act, 1981.

Short title and  
Commencement

(2) This Act shall come into operation on such day as the President may, by notice published in the *Gazette*, appoint.

Interpretation

2. (1) In this Act, unless the context otherwise requires,—

“actual custody” in relation to a minor, means the actual possession of his person, whether or not that possession is shared with one or more persons;

“court” means the Court as provided for in section 44;

“custody” means the right to possession and care of a minor;

“custodian of a minor” means a person who is appointed to have custody of the minor by a court of competent jurisdiction, and custodianship shall be construed accordingly;

“guardianship” means guardianship of the person of a minor and includes the rights of control and custody of the minor, the right to make decisions relating to the care and upbringing of the minor and the right to exercise all powers conferred by law upon the parent or guardian of a minor, and “guardian” means a person with guardianship;

“High Court” means the High Court of Justice or a Judge thereof;

“legal custody” means, as respects a minor, so much of the parental rights and duties as relate to the person of the minor (including the place and manner in which his time is spent);

“Magistrate’s Court” means a Magistrate’s Court within the meaning of the Summary Courts Ordinance;

“maintenance” includes education;

“minor” means a person under the age of eighteen years;

“minor child of the family” or “minor child of his family” in relation to the parties to a marriage or to unmarried persons means—

- (a) a minor child of both of those parties; and
- (b) any other minor child, who has been treated by both of those parties as a minor child of their family;

“person” includes any school or institution;

“paternity order” means an order of the court declaring a man to be the father of a minor whether born or unborn;

“upbringing” includes education;

(2) In this Act, until the contrary is proved, a man is presumed to be the father of a minor if—

- (a) at the time of the conception or birth of the minor, or between those times, he is married to the child’s mother; or
- (b) he is registered as the father of the minor under the Birth and Deaths Registration Ordinance; or
- (c) he is named as the father of the minor in a paternity order made under section 10 of the Status of Children Act, 1981; or
- (d) he is named as the father of the minor in a paternity order made by a Magistrate’s Court under section 22; or
- (e) he has been declared to be the father of the minor by an order made in any country outside Trinidad and Tobago being an order to which subsection (4) of section 8 of the Status of Children Act, 1981, applies,

Ch. 29. No. 1

Act No. of 1981

Act No. of 1981

but the making of any such order as is referred to in paragraphs (c), (d) and (e) shall terminate any presumption under paragraphs (a) and (b).

(3) While a person not having legal custody of a minor has actual custody of the minor he shall have the like duties in relation to the minor as a custodian would have by virtue of his legal custody.

Principles on:  
which questions  
relating to custody,  
upbringing, etc. of  
minors are to be  
decided

3. Where in any proceedings before any court—

(a) the legal custody or upbringing of a minor; or  
(b) the administration of any property belonging to or held in trust for a minor, or the application of the income thereof, is in question, the court, in deciding that question, shall regard the welfare of the minor as the first and paramount consideration, and shall not take into consideration whether, from any other point of view, the claim of the father or any right at common law possessed by the father in respect of such custody, upbringing, administration or application, is superior to that of the mother, or the claim of the mother is superior to that of the father.

Equality of  
parental rights

4. (1) In relation to the custody or upbringing of a minor, and in relation to the administration of any property belonging to or held in trust for a minor or the application of income of any such property, a mother shall have the same rights and authority as the law allows to a father, and the rights and authority of mother and father shall be equal and be exercisable by either without the other.

(2) An agreement for a man or woman to give up in whole or in part, in relation to any child of his or hers, the rights and authority referred to in subsection (1) shall be unenforceable.

(3) Where a minor's father and mother disagree on any question affecting his welfare, either of them may apply to the court for its direction, and (subject to subsection (4) the court may make such order regarding the matters in difference as it may think proper.

(4) Subsection (3) shall not authorise the court to make any order regarding the custody of a minor or the right of access to him of his father or mother.

(5) An order under subsection (3) may be varied or discharged by a subsequent order made on the application of either parent or, after the death of either parent, on the application of any guardian under this Act, or (before or after the death of either parent) on the application of any other person having the custody of the minor.

(6) Section 44 and 45 shall apply for the purposes of subsection (3) to (5) as if they were contained in section 13.

(7) Nothing in this section shall affect the operation of any enactment requiring the consent of both parents in a matter affecting a minor.

5. (1) The father or mother of a minor may apply to the High Court to change a given name or the surname of that minor but subject to subsection (2) such father or mother may not apply under this section without the consent of the other parent of the minor. Changes of name of minor

(2) The Court may dispense with such consent as it sees fit to do so.

6. (1) Unless the High Court otherwise orders the following are joint guardians of a minor— Guardianship of minors

- (a) the mother of the minor;
- (b) the father of the minor.

(2) Subject to the provisions of this Act, the mother of a minor born out of wedlock shall be the sole guardian of the minor unless and until the paternity of the minor has been registered pursuant to the Births and Deaths Registration Ordinance, established by any of the modes specified in section 8 or 10 of the Status of Children Act, 1981. Ch. 29. No. 1  
Act No. 1981

#### APPOINTMENT, REMOVAL AND POWERS OF GUARDIAN

7. On the death of a parent of a minor the surviving parent shall, subject to the provisions of this Act, and to section 48(4) of the Matrimonial and Proceedings and Property Act, 1971, be guardian of the minor either alone or jointly with any guardian appointed by the deceased parent and— Rights of surviving parent as to guardianship  
Act No. 2 of 1972

- (a) where no guardian has been appointed by the deceased parent; or
- (b) in the event of the death or refusal to act of the guardian or guardians appointed by the deceased parent;

the High Court may, if it thinks fit, appoint a guardian to act jointly with the surviving parent.

Power of father and mother to appoint testamentary guardians

8. (1) The father or the mother of a minor may by deed or Will appoint any person to be guardian of the minor after his or her death.

(2) If the father of a minor who was born out of wedlock desires to appoint a testamentary guardian of such minor under subsection (1) it shall not be necessary for such father first to obtain a custody order with respect to the minor.

(3) Any guardian appointed under subsection (1) shall act jointly with the mother or father, as the case may be, of the minor 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 considers that the mother or father is unfit to have the custody of the minor, the guardian may apply to the High Court, and the High Court may either—

(a) refuse to make any order (in which case the mother or father shall remain sole guardian); or

(b) make an order that the guardian so appointed—

(i) shall act jointly with the mother or father; or

(ii) shall be the sole guardian of the minor.

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

(6) If under section 7 a guardian has been appointed by the Court to act jointly with the 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 High Court shall act jointly with the guardian appointed by the surviving parent.

Power of court to appoint guardian for minor having no parent, etc.

9. Where a minor has no parent, no guardian of the person, and no other person having parental rights with respect to him, the High Court, on application of any person, may, if it thinks fit, appoint the applicant to be the guardian of the minor.

10. The High Court at any time may, in its discretion, on being satisfied that it is for the welfare of the minor, remove from his office any testamentary guardian or any guardian appointed or acting by virtue of this Act, and may also, if it deems it to be for the welfare of the minor, appoint another guardian in place of the guardian so removed.

Power of High Court to remove or replace guardian

11. Where two or more persons act as joint guardians of a minor and they are unable to agree on any question affecting the welfare of the minor, any of them may apply to the High Court for its direction, and the High Court may make such order regarding the matters in difference as it may think proper.

Disputes between joint guardians

12. (1) Subject to subsection (2), a guardian under this Act, besides being guardian of the person of the minor, shall have all rights, powers, and duties of a guardian of the minor's estate, including in particular the right to receive and recover in his own name for the benefit of the minor property of whatever description and wherever situated which the minor is entitled to receive or recover.

Powers of guardians

(2) Nothing in subsection (1) shall restrict or affect the powers of the High Court to appoint a person to be, or to act as, the guardian of a minor's estate either generally or for a particular purpose.

#### ORDERS FOR CUSTODY, ACCESS AND MAINTENANCE

13. (1) The High Court or a Magistrate's Court may, (who may apply without next friend) make such order regarding—

Orders or custody and maintenance on application of mother or father

(a) the legal custody of the minor; and

(b) the right of access to the minor of his mother or father,

as the court thinks fit having regard to the welfare of the minor.

(2) Where the court makes an order under subsection (1) giving the legal custody of the minor to any person (whether or not one of the parents), the court may make a further order requiring payment to that person by the parent or either of the parents

excluded from having that custody of such periodical sum towards the maintenance of the minor in accordance with section 19.

(3) An order may be made under subsection (1) or (2) notwithstanding that the parents of the minor are then residing together, but

(a) no such order shall be enforceable and no liability thereunder shall accrue, while they are residing together; and

(b) any such order shall cease to have effect if for a period of six months after it is made they continue to reside together;

Provided that, unless the court in making the order directs otherwise, paragraphs (a) and (b) of this subsection shall not apply to any provision of the order giving the legal custody of the minor to a person other than one of the parents or with respect to a minor of whom legal custody is so given.

(4) An order under subsection (1) or (2) may be varied or discharged by a subsequent order made on the application of either parent or after the death of either parent on the application of any guardian under this Act, or (before or after the death of either parent) on the application of an other person having the custody of the minor by virtue of an order under subsection (1).

(5) Notwithstanding subsection (2) the court may without determination any issue relating to custody or right of access to the minor make a maintenance order under this section in accordance with section 19: Provided that no maintenance order shall be made under this Act against any person as the father of a minor who is not presumed to be a father within the meaning of any of the classes referred to in subsection (2) of section 2 unless—

(a) before or at the time of making the maintenance order—

(i) in the case of proceedings in the High Court a paternity order has been made declaring such person to be the father under section 10 of the Status of Children Act, 1981; or

- (ii) in the case of proceedings in a Magistrate's Court a paternity order has been made declaring such person to be the father under section 22; or
  - (b) such person has in the proceedings before the court admitted that he is the father of the minor.
- (6) The power of the court to make a maintenance order under this section shall include power to make any one or more of the following orders—
- (a) an order against the father of a minor for the maintenance of the minor;
  - (b) an order against the mother of a minor for the maintenance of the minor;
  - (c) an order for the payment of expenses incidental to the birth of the minor;
  - (d) an order for the payment of the funeral expenses of the minor if the minor died before the order was made;
  - (e) an order for the payment of costs incurred in obtaining the order.
- (7) An application for maintenance of a minor may be made by the mother of a minor though not a single woman at the date of the birth of the minor and whether or not she is a single woman at the time of the application.
- (8) The guardian or custodian of a minor in respect of whom no maintenance order has been made on the application of its mother or father under this Act shall have the same right to apply for maintenance for the minor as is conferred by this section upon a mother or father of a minor.
- (9) Subject to subsection (2) of section 16 all moneys payable under any maintenance order in respect of a minor under this section shall be due and payable to the mother or father of the minor unless a custodian has been appointed in which case all such moneys shall be due and payable to the custodian.
- (10) When the surviving parent of a minor (whose paternity has not been admitted or established) dies, or become mentally ill within the meaning of the

Mental Health Act, or is in prison, or is abroad, or about to go abroad, a Magistrate's Court may from time to time appoint some person who is willing to have custody of the minor to be custodian of the minor.

(11) A custodian shall have power to make application for the recovery of all payments in arrear or becoming due under a maintenance order in the same manner as the mother or father or guardian might have done.

(12) Upon any order or appointment or revocation being made under this section by a Magistrate's Court such Magistrate's Court may also order the minor to be delivered by any person to the person appointed to have custody.

(13) A Magistrate's Court may also on the application of the father of a minor born out of wedlock make an order that the custody of such minor be committed to the father.

(14) If a minor in respect of whose maintenance an order subsists or is sought, is wrongfully taken out of the custody of the mother, father or custodian of the minor, a Magistrate may on the application of the mother, father or custodian make an order that the custody of the minor be committed to the mother, father or custodian.

(15) Any person who contravenes any order made under subsection (14) is liable, on summary conviction, to a fine of one thousand dollars or to imprisonment for three months.

(16) Where, in proceedings in the High Court or in a Magistrate's Court, it is found or admitted that a man is the father of a minor and an order in his favour for custody or access or against him for maintenance is made a reference to such finding or admission shall appear on the face of the order if either party to the application so requests.

(17) Nothing in this section shall apply in respect of minors who are Wards of Court.

14. (1) Where the High Court makes an order under subsection (4) of section 8 that a person shall be the sole guardian of a minor to the exclusion of his mother or father, the High Court may—

Orders for custody and maintenance where person is guardian to exclusion of surviving parent

(a) make such order regarding—

(i) the legal custody of the minor; and

(ii) the right of access to the minor of his mother or father,

as the Court thinks fit having regard to the welfare of the minor; and

(b) make a further order requiring the mother or the father to pay to the guardian a periodical sum towards the maintenance of the minor in accordance with section 19.

(2) The powers conferred by subsection (1) may be exercised at any time and include power to vary or discharge any order previously made under those powers.

15. The powers of the High Court under section 11 shall where one of the joint guardians is the mother or the father of the minor, include power—

Orders for custody and maintenance where joint guardians disagree

(a) to make such order regarding—

(i) the legal custody of the minor; and

(ii) the right of access to the minor of his mother or father, or of any person who has treated the minor as a minor child of his family,

as the Court thinks fit having regard to the welfare of the minor;

(b) to make an order requiring the mother or the father to pay a periodical sum towards the maintenance of the minor in accordance with section 19.

(c) to vary or discharge any order previously made under that section.

Order for  
maintenance of  
persons between  
18 and 21

16. (1) An order under section 13, 14 or 15 for the payment of sums towards the maintenance of a minor may require such sums to continue to be paid in respect of any period after the date on which he ceases to be a minor but not extending beyond the date on which he attains twenty-one if it appears to the court that—

- (a) the minor is, or will be receiving instruction at an educational establishment or undergoing training for a trade, profession or vocation, whether or not he is also, or will also be, in gainful employment; or
- (b) there are special circumstances which justify the making of such order.

Any such order may provide that any sum which is payable thereunder for the benefit of a person after he has ceased to be a minor shall be paid to that person himself.

(3) Subject to subsection (4) where a person who has ceased to be a minor but has not attained the age of twenty-one has, while a minor being the subject of an order under this Act or under any enactment repealed by this Act, the court may, on the application of either parent of that person or of that person himself, make an order requiring either parent to pay—

- (a) to the other parent;
- (b) to anyone else for the benefit of that person; or
- (c) to that person himself,

in respect of any period not extending beyond the date when he attains the said age, such periodical sum towards his maintenance as the court thinks reasonable having regard to the means of the person on whom the requirement is imposed.

(4) No order shall be made under subsection (3) and no liability under such an order shall accrue, at a time when the parents of the person in question are residing together, and if they so reside for a period of six months after such an order has been made it shall cease to have effect.

(5) An order under subsection (3) may be varied or discharged by a subsequent order on the application of any person by or to whom payments were required to be made under the previous order.

17. (1) Subject to section 16 a maintenance order in respect of a minor shall not, except for the purpose of recovering money previously due under the order, be of any force or validity after the minor has attained the age of eighteen years or has died; and payments under such order shall not be required to be made in respect of any period after the minor has attained the age of sixteen years unless the order contains a direction that payments to be made under it are to continue until the minor attains the age of eighteen years.

Duration of orders for maintenance

(2) Where pursuant to Part II or III of the Matrimonial Proceedings and Property Act, 1971 the High Court makes an order with respect to the maintenance or custody of a minor any maintenance order in respect of the same minor made by a Magistrate's Court under this Act or the corresponding provisions of any enactment repealed by this Act, shall cease to have effect.

Act No. 2 of 1972

18. (1) An order shall not be made under section 13(1), 14(1)(a) or 15(a) giving the legal custody of a minor to more than one person; but where the court makes an order under one of those sections giving the legal custody of a minor to any person, it may order that a parent of the minor who is not given the legal custody of the minor shall retain all or such as the court may specify of the parental rights and duties comprised in legal custody (other than the right to the actual custody of the minor) and shall have those rights and duties jointly with the person who is given the legal custody of the minor.

Further provisions relating to orders for custody

(2) Where the court makes an order under section 13(1), 14(1)(a) or 15(a) the court may direct that the order, or such provision thereof as the court may specify, shall not have effect until the occurrence of an event specified by the court or the expiration of a period so specified; and where the court has directed that the order or any provision thereof shall not have effect until the expiration of a specified period, the

court may, at any time before the expiration of the period, direct that the order, or that provision thereof, shall not have effect until the expiration of such further period as the court may specify.

(3) Any order made in respect of a minor under sections 13(1), 14(1)(a) or 15(a) shall cease to have effect when the minor attains the age of eighteen years.

Matters to which court is to have regard in making orders for maintenance

19. In deciding whether to exercise its powers under sections 13(2), 13(5), 14(1)(b), or 15(b) and, if so, in what manner, the court shall have regard to all the circumstances of the case including the following matters—

- (a) the income, earning capacity, property and other financial resources which each parent of the minor has or is likely to have in the foreseeable future;
- (b) the financial needs, obligations and responsibilities which each parent of the minor has or is likely to have in the foreseeable future;
- (c) the financial needs of the minor;
- (d) the income, earning capacity (if any), property and other financial resources of the minor;
- (e) any physical or mental disability of the minor.

Provisions relating to lump sums

20. (1) Without prejudice to the generality of sections 13(2), 13(5), 14(1)(b) or 15(b), an order under any of those provisions for the payment of a lump sum may be made for the purpose of enabling any liabilities or expenses reasonably incurred in maintaining the minor before the making of the order to be met.

(2) The amount of any lump sum required to be paid by an order made by a Magistrate's Court under sections 13(2), 13(5), 14, 14(1)(b) or 15(b) shall not exceed five thousand dollars or such larger amount as the Minister may from time to time by order determine for the purposes of this subsection.

Any order made by the Minister under this subsection shall be subject to affirmative resolution by both houses of Parliament.

(3) The power of the court under sections 13, 14 or 15 to vary or discharge an order for the making of periodical payments by a parent or a minor shall include power to make an order under the said sections 13, 14 or 15, as the case may be, for the payment of a lump sum by that parent.

(4) The amount of any lump sum which a parent may be required to pay by virtue of subsection (3) shall not, in the case of an order made by a Magistrate's Court, exceed the maximum amount that may at the time of the making of the order be required to be paid under subsection (2), but a Magistrate's Court may make an order for the payment of a lump sum not exceeding that amount prescribed by subsection (2) notwithstanding that the parent was required to pay a lump sum by a previous order under this Act.

(5) An order made under sections 13, 14 or 15 for the payment of a lump sum may provide for the payment of that sum by instalments, and where the court provides for the payment of a lump sum by instalments the court, on an application made either by the person liable to pay or the person entitled to receive the sum, shall have power to vary that order by varying the number of instalments payable and the date on which any instalment was payable and the date on which any instalment becomes payable.

21. (1) In exercising its powers under section 13, 14 or 15 to vary or discharge an order for the making of periodical payments the court shall have regard to all the circumstances of the case including any change in any of the matters to which the court was required to have regard when making the order.

Variation of  
orders for  
periodical payments

(2) The power of the court under sections 13, 14 or 15 to vary an order for the making of periodical payments shall include power to suspend any provision thereof temporarily and to revive any provision so suspended.

(3) Where on an application under section 13, 14 or 15 for the variation or discharge of an order for the making of periodical payments the court varies the

payments required to be made under that order, the court may provide that the payments as so varied shall be made from such date as the court may specify, not being earlier than the date of the making of the application.

(4) An application for the variation of an order made under sections 13, 14 or 15 for the making of periodical payments to or for the benefit of a minor may, if the minor has attained the age of sixteen, be made by the minor himself.

#### PATERNITY ORDERS

Application for  
paternity order  
in Magistrate's  
Court

22. (1) This section applies to a father of a minor in respect of whom paternity is not presumed under section 2.

(2) An application for a paternity order may be made to a Magistrate's Court under this section—

(a) by the mother of the minor;

(b) if the mother of the minor is under the age of sixteen years by any person having custody of her;

(c) where the child has been born, and the mother is dead or has abandoned the minor or for any reason is unable to make an application herself, by a parent of the mother, or by a guardian of the minor or, with the leave of the Court, by any other person:

Provided that an application pursuant to paragraph (c) shall be made only if the applicant can satisfy the Court that it is appropriate, having regard to the welfare of the child, that the issue be tried.

(3) Such application may be made before the birth of the minor or at any time after the birth of the minor and shall be by complaint to the said Magistrate for a summons to be served on the man alleged to be the father of the minor, and the Magistrate shall thereupon issue his summons to the person alleged to be the father of the minor to appear before a Magistrate on some day to be named in the summons.

(4) After the birth of the minor and on the appearance of the person summoned under subsection (2), or on proof that the summons was duly served on the person or left at last place of abode served on or more before the hearing, the Magistrate's Court of the district in which the summons was issued shall hear the application and the Court shall, if it is satisfied that the defendant is the father of the minor, make a paternity order accordingly.

(5) Subject to section 45 a paternity order made under this section shall for the purposes of any application for a maintenance order under this Act or of any proceedings in respect thereof, be evidence that the person against whom it is made is the father of the minor.

(6) Where a paternity order is made pursuant to this section the Court may, if it sees fit, and having regard to all the circumstances of the case make a maintenance order in accordance with sections 13, 18 and 19.

(7) If the application for a paternity order is made before the birth of the minor or within two months after the birth of the minor any periodical sum ordered to be paid under the order may, if the Court thinks fit, be made payable from the birth of the minor.

23. A Magistrate's Court shall not make a finding of paternity under section 22 based upon the evidence of one witness only unless that evidence is corroborated by some other material evidence.

Evidence with respect to finding of paternity

#### MATRIMONIAL PROCEEDINGS IN MAGISTRATE'S COURTS

##### *Power of Court to make Orders for Financial Provision for Parties to a Marriage*

24. Either party to a marriage may apply to the Magistrate's Court of the district in which the cause of complaint has wholly or partially arisen for an order under section 25 on the ground that the other party to the marriage (hereinafter referred to as "the respondent")—

Grounds of application

- (a) has failed to provide reasonable maintenance for the applicant; or

- (b) has failed to provide, or to make a proper contribution towards reasonable maintenance for any minor child of the family; or
- (c) has behaved in such a way that the applicant cannot reasonably be expected to live with the respondent; or
- (d) has deserted the applicant.

Powers of Court to make orders for financial provision and matters to which Court is to have regard in exercising such powers

25. (1) Where an application for an order is made under this section, a Magistrate's Court may, subject to the provisions of this Act, make any one or more of the following orders—

- (a) An order that the respondent shall make to the applicant such periodical payments, and for such term, as may be specified in the order;
- (b) an order that the respondent shall pay to the applicant such lump sum as may be so specified;
- (c) an order that the respondent shall make to the applicant for the benefit of a minor child of the family to whom the application relates, or to such a child, such periodical payments, and for such term, as may be specified;
- (d) an order that the respondent shall pay to the applicant for the benefit of a minor child of the family to whom the application relates, or to such a minor, such lump sum as may be so specified;
- (e) an order that the applicant be no longer bound to cohabit with the respondent (which provision while in force shall have the effect in all respects of a decree of judicial separation) on the ground that the respondent has behaved in such a way that the applicant cannot reasonably be expected to live with the respondent;
- (f) an order that the legal custody of any minor child of the family, who is under the age of sixteen years, be committed to the applicant.

(2) Without prejudice to the generality of subsection (1)(b) or (d) an order under this section for the payment of a lump sum may be made for the purpose of enabling any liability or expenses reasonably incurred in maintaining the applicant, or any minor child of the family to whom the application relates, before the making of the order to be met.

(3) The amount of any lump sum required to be paid by an order under this section shall not exceed five thousand dollars or such larger amount as the Minister may from time to time by order determine for the purpose of this section.

(4) Any order made by the Minister under subsection (3) shall be subject to negative resolution of the House of Representatives.

(5) Where application is made for an order under this section, the Magistrate's Court in deciding whether to exercise its powers under subsection (1)(a) or (b), and if so in what manner, shall have regard to the following matters—

- (a) the income, earning capacity, property and other financial resources which each of the parties to the marriage has or is likely to have in the foreseeable future;
- (b) the financial needs obligations and responsibilities which each of the parties to the marriage has or is likely to have in the foreseeable future;
- (c) the standard of living enjoyed by the parties to the marriage before the occurrence of the conduct which is alleged as the grounds of the application;
- (d) the age of each party to the marriage and the duration of the marriage;
- (e) any physical or mental disability of either of the parties to the marriage;
- (f) the contribution made by each of the parties to the welfare of the family, including any contribution made by looking after the home or caring for the family;

(g) any other matter which in the circumstances of the case the Court may consider relevant, including, so far as it is just to take it into account, the conduct of each of the parties in relation to the marriage.

(6) Where an application is made for an order under this section, a Magistrate's Court in deciding whether to exercise its powers under subsection (1)(c) or (d) and if so in what manner, shall have regard to all the circumstances of the case including the following matters—

- (a) the financial needs of the minor;
- (b) the income, earning capacity (if any), property and other financial resources of the minor;
- (c) any physical or mental disability of the minor;
- (d) the standard of living enjoyed by the family before the occurrence of the conduct which is alleged as the ground of the application;
- (e) the manner in which the minor was being educated or trained and the manner in which the parties to the marriage expected him to be so educated or trained;
- (f) the matters mentioned in relation to the parties to the marriage in paragraphs (a) and (b) of subsection (5).

(7) The Court in deciding whether to exercise its powers under subsection (1)(c) or (d) in favour of a minor child of the family who is not the minor child of the respondent, and if so in what manner, shall in addition to the matters mentioned in subsection (6) have regard (among the circumstances of the case)—

- (a) to whether the respondent had assumed any responsibility for the minor's maintenance and, if he did, to the extent to which, and the basis on which he assumed

that responsibility and to the length of time during which he discharged that responsibility;

- (b) to whether in assuming, and discharging that responsibility the respondent did so knowing that the minor was not his own child;
- (c) to the liability of any other person to maintain the minor.

(8) The term to be specified in any order made under this section shall be such term as the Court thinks fit except that the term shall not begin earlier than the date of the making of the application for the order and shall not extend beyond the death of either of the parties to the marriage and where an order is made under subsection (1)(a) and the marriage of the parties affected by the order is subsequently dissolved or annulled but the order continues in force, the order shall, notwithstanding anything in it cease to have effect on the remarriage of the party in whose favour it was made, except in relation to any arrears due under the order on the date of the remarriage.

(9) A Magistrate's Court in which any order under this section has been made may, on the application of either party and upon cause being shown upon fresh evidence to the satisfaction of the court, at any time after, vary or discharge any order made under this section and may upon application from time to time increase or diminish the amount of any periodical payment ordered to be made.

Court may vary or discharge order

(10) In this section "minor" in relation to one or both of the parties to a marriage, includes a minor child of that party born out of wedlock or, as the case may be, of both parties.

#### ENFORCEMENT

26. (1) Any maintenance order made by the High Court under this Act may be enforced as if it were a maintenance order to which section 37 of the Matrimonial Proceedings and Property Act applies.

Enforcement orders for payment of money

Act No. 2 of 1972

(2) Any person for the time being under an obligation to make periodical payments in pursuance of any order made by a Magistrate's Court under this Act shall give notice of any change of address to such person (if any) as may be specified in the order, and on failing without reasonable excuse, to give such notice is liable on summary conviction to a fine of one hundred dollars.

(3) Subject to subsection (4) for the purposes of this Act the Chief Magistrate shall for each Magisterial district designate a Clerk or an assistant Clerk of the Peace to be Collecting Officer for the district.

(4) Notwithstanding subsection (3) whenever it may appear to the Chief Magistrate necessary to appoint an additional Collecting Officer or Officers for any magisterial district, the Chief Magistrate may appoint such additional Collecting Officer or Officers.

(5) A Collecting Officer shall perform the duties set out in subsection (7).

(6) Where a Magistrate's Court makes a maintenance order under this Act the Court shall, upon application of the applicant, or of a guardian of a minor, either at the time of making the order or subsequently on an *ex parte* application to vary the same, provide in the order that all payments thereunder be made to the Collecting Officer and payments made under such order shall be made to the Collecting Officer on behalf of the persons entitled thereto.

(7) Where in a maintenance order made by a Magistrate's Court it is provided that payment be made to a Collecting Officer under the provisions of this Act, nothing in this section shall preclude the Collecting Officer from enforcing such order in the manner hereinafter prescribed.

(8) Payment of the amount ordered may be made to the Collecting Officer in person, or by letter sent by registered post properly addressed to the Collecting Officer and posted in time to be delivered to him on or before the day appointed for payment.

(9) It shall be the duty of the Collecting Officer to receive all payments directed to be made to him under this Act and to pay out the same in accordance with the terms of the maintenance order directly to the person entitled to receive payment of the sum thereby directed to be paid or such part thereof as he receives without making any deduction therefrom.

(10) Payment shall be made by the Collecting Officer directly to the applicant for the order or to such other person as is named in the maintenance order at the office of the Collecting Officer if such applicant or person is resident in the town in which such office is situated, or otherwise payment shall be made by the Collecting Officer sending to the postmaster at the post office of the person to whom payment is to be made an original and a duplicate order specifying the amount to be paid. It shall be the duty of the person entitled to payment to attend at the post office and sign the receipt on the original and duplicate orders in the presence of the postmaster who shall then pay out the amount.

(11) It shall be the duty of the postmaster to keep the duplicate order and to return the original to the Collecting Officer.

(12) Where by a maintenance order it is provided that payment be made to the Collecting Officer, the applicant for the order shall thereupon give his or her nearest post office address to the Collecting Officer.

(13) Where by a maintenance order it is provided that payment be made to the Collecting Officer, the father or the mother or guardian or custodian of the minor, if he or she changes his or her address, shall give notice thereof to the Collecting Officer, and on failure so to do without reasonable excuse, shall be liable on summary conviction to a fine of one hundred dollars.

27. (1) If at any time after the expiration of one month from the making of a maintenance order made by a Magistrate's Court in respect of a minor under this Act it appears to a Magistrate or Justice of the district in which the order was made, upon oath, that any sum to be paid in pursuance of the order has not

If payment of maintenance one month in arrear distress may issue

been paid, the Magistrate or Justice may upon application of the Collecting officer by warrant under his hand, cause the person under obligation to make payment in pursuance of the order (hereinafter in this section referred to as "the defendant") to be brought before a Magistrate.

(2) Where the defendant neglects or refuses to make payment of the sums due from him or her under the order or since any commitment for disobedience to the order as hereinafter provided together with the costs attending the warrant, apprehension and bringing up of the defendant the Magistrate may—

- (a) by warrant under his hand, direct the sum which appears to be due, together with the costs attending such warrant, to be recovered by distress and sale of the goods and chattels of the defendant; and
- (b) order the defendant to be detained and kept in safe custody until return can be conveniently made to the warrant of distress, unless the defendant gives sufficient security by way of recognisance or otherwise to the satisfaction of such Magistrate for his appearance before a Magistrate on the day appointed for the return of the warrant of distress, such day not to exceed seven days from the time of the taking of the security.

(3) If upon the return of the warrant, or if by the admission of the defendant, it appears that no sufficient distress can be had then the Magistrate may, if he sees fit, by warrant under his hand, cause the defendant to be committed to prison, there to remain without bail for any term not exceeding three months, unless such sum or costs and all reasonable charges attending the distress, together with the costs and charges attending the commitment and conveying to prison and of the persons employed to convey him or her are sooner paid and satisfied.

(4) Notwithstanding the provisions of this section, on an application for the enforcement of the payment of any sum payable in pursuance of an order under this section, the Magistrate shall make enquiries in the

presence of the defendant as to whether the defendant's failure to pay that sum was due either to the defendant's wilful refusal or to a culpable neglect, and if the Magistrate is of the opinion that the failure of the parent to pay that sum was not due to his or her culpable neglect, a warrant of commitment to prison shall not be issued.

(5) Where in any proceedings for the enforcement of a maintenance order made by a Magistrate's Court under this Act the defendant is committed to prison then, unless the Magistrate otherwise directs, no arrears shall accrue under the order during the time that the defendant is in prison.

(6) Notwithstanding anything to the contrary in any written law limiting to six months the time within which summary proceedings are to be taken such limitation shall not apply to proceedings for enforcing the payment of sums under an order made under this Act.

(7) On an application for the enforcement, variation, revocation, discharge or revival of a maintenance order made by a Magistrate's Court under this Act, a Magistrate's Court may remit the payment of any sum due thereunder or of any part of any such sum.

(8) Where on application for the enforcement of the payment of a sum payable in pursuance of a maintenance order made by a Magistrate's Court under this Act no warrant of commitment to prison is issued, the application may be renewed, except so far as regards any part of the sum remitted under subsection (7) on the ground that the circumstances of the person to whom the application relates have changed.

28. (1) Where the High Court or a Magistrate's Court has made an order for the payment of money under this Act either Court shall in addition to any other powers of enforcing compliance with the order, have power in any case where there is any pension or income payable to the person against whom the order is made and capable of being attached, after giving the person by whom the pension or income is payable an opportunity of being heard, to order that such part as Pension or income liable to attachment

the court may think fit of any such pension or income be attached and paid to the person named by the Court and such further order shall be an authority to the person by whom the pension or income is payable to make the payment so ordered, and the receipt of the person to whom the payment is to be made shall be a good discharge to the person by whom the pension or income is payable.

(2) At any time after an order has been made under subsection (1) the court may, upon the application of the person to whom any pension or income would have been payable but for the making of the order, or of the mother, or father, or guardian, or custodian of the minor, vary such order in such manner and to such extent as the court thinks fit, or suspend such order (or revive such order if suspended) or cancel the same.

Neglect and  
desertion of  
minor

29. Every father or mother of a minor who neglects to maintain the minor, being able wholly or in part to do so or who deserts the minor is liable, on summary conviction, to a fine of one thousand dollars or to imprisonment for two months.

Misapplying  
moneys or  
illtreating a minor

30. Every person having the custody of a minor under any order made under this Act who misapplies moneys paid for the support of the minor, or who withholds proper nourishment from the minor, or who in any manner illtreats the minor is liable, on summary conviction, to a fine of one thousand dollars or to imprisonment for two months.

Power of High  
Court to refuse  
production of  
minor

31. Where the parent of a minor applies to the High Court for a writ or order for the production of a minor, and the High Court is of the opinion that the parent has abandoned or deserted the minor, or that the parent has otherwise so conducted himself that the Court should refuse to enforce his right to the custody of the child, or for any other good and sufficient reason, the High Court may, in its discretion, decline to issue the writ or make the order.

32. If at the time of the application for a writ or order for the production of the minor, the minor is being brought up by another person, the High Court may, in its discretion, if it orders the minor to be given up to the parent, further order that the parent shall pay to such person the whole of the costs properly incurred in bringing up the minor, or such portion thereof as shall seem to the Court to be just and reasonable, having regard to all the circumstances of the case.

Power of High Court to order repayment by parent of costs of bringing up minor

33. Where a parent has—

- (a) abandoned or deserted his minor child; or
- (b) allow his minor child to be brought up by another person at that person's expense for such a length of time and under such circumstances as to satisfy the Court that the parent was unmindful of his parental duties,

High Court in making order to have regard to conduct of parent

the High Court shall not make an order for the delivery of the child to the parent, unless the parent has satisfied the Court that, having regard to the welfare of the child, he or she is a fit person to have the custody of the minor.

34. Upon application by a parent for the production or custody of a minor, if the High Court is of the opinion that the parent ought not to have the custody of the minor, and that the minor is being brought up in a different religion to that in which the parent has a legal right to require that the minor should be brought up, the court shall have powers to make such order as it may think fit to secure that the minor is brought up in the religion in which the parent has a legal right to require that the minor should be brought up; but nothing contained in this Act shall interfere with or affect the power of the High Court to consult the wishes of the minor in considering what order ought to be made, or diminish the right which any minor now possesses to the exercise of its own free choice.

High Court may order minor though not delivered to parent, to be brought up in such religion as he has a right to require

35. (1) Subject to this section no minor shall be made a ward of court except by virtue of an order to that effect made by the High Court.

Wards of Court

(2) Where application is made, for such an order in respect of a minor the minor shall become a Ward of Court on the making of the application, but shall cease to be a Ward of Court at the expiration of such period as may be prescribed by rules of Court, made by the Rules Committee established by the Supreme Court of Judicature Act, 1962 unless within that period an order has been made in accordance with the application.

Act No. 12 of 1962

(3) The High Court may, either upon an application in that behalf or without such an application, order that any minor who is for the time being a Ward of Court shall cease to be a Ward of Court.

#### DOMICILE

**36.** (1) The domicile that a person had at any time before the date of commencement of this Act shall be determined as if this Act had not been enacted.

(2) The domicile that a person has at a time after the date of commencement of this Act shall be determined as if this Act had always been in force.

Domicile before commencement of this Act and after

**37.** (1) The domicile of a married woman, shall, instead of being the same as her husband's by virtue only of marriage, be determined as if she were unmarried and by reference to the same factors as in the case of any other individual capable of having an independent domicile and (if she is a minor) as if she were of full age; and the rule of law whereby upon marriage a woman acquires her husband's domicile and is thereafter during the subsistence of the marriage incapable of having any other domicile is abolished.

(2) This section applies to the parties to every marriage, wherever, whenever and pursuant to whatever law the marriage was solemnized, and whatever the domicile of the parties at the time of the marriage.

**38.** (1) This section shall have effect with respect to the dependent domicile of a minor at any time after the coming into force of this Act.

(2) A minor whose parents are living together has the domicile for the time being of his father.

Abolition of wife's dependent domicile

Domicile of minors

(3) A minor whose parents are living apart shall have the domicile of the parent with whom he resides and if he resides with neither parent then of the person who for the time being has actual custody of him; and for the purposes of this section a minor who is in the care of an institution established in Trinidad and Tobago shall be deemed to be domiciled in Trinidad and Tobago.

(4) Until a minor who is a foundling has its home with one of its parents both of his parents shall for the purpose of this section, be deemed to be alive and domiciled in the country in which the minor who is a foundling was found.

(5) This section shall have effect in place of all rules of law relating to the domicile of minor children.

39. Subject to any rule of law relating to the domicile of insane persons, every person is capable of having an independent domicile upon attaining the age of majority or, being a minor, upon marriage.

Acquisition of independent domicile

40. The domicile a person has immediately before becoming capable of having an independent domicile continues until he acquires a new domicile in accordance with section 41 whereupon such domicile ceases.

Domicile of dependence to continue until acquisition of new domicile

41. A person acquires a new domicile in a country at a particular time if immediately before that time—

How new domicile acquired

- (a) he is not domiciled in that particular country;
- (b) he is capable of having an independent domicile;
- (c) he is in that country; and
- (d) he intends to live indefinitely in that country.

42. A new domicile acquired in accordance with section 41 continues until a further new domicile is acquired in accordance with that section; and the rule of law known as the revival of domicile of origin whereby a person's domicile revives upon his abandoning a domicile of choice is abolished.

Domicile of origin not to revive

Standard of proof  
of domicile

43. The standard of proof which, immediately before the commencement of this Act, was sufficient to show the abandonment of a domicile of choice and the acquisition of another domicile of choice shall be sufficient to show the acquisition of a new domicile in accordance with section 41.

#### JURISDICTION, PROCEDURE AND APPEALS

Courts having  
jurisdiction  
under this Act

44. (1) Subject to the provisions of this section, "the court" for the purposes of this Act means—

(a) the High Court; or

(b) a Magistrate's Court of the district in which the applicant or respondent or the minor to whom the matter or order relates resides.

(2) A Magistrate's Court shall have no jurisdiction to entertain any application in respect of a minor—

(a) where proceedings relating to or affecting the minor are pending in the High Court;

(b) where an order of the High Court relating to the custody or guardianship of, or access to, the minor is in force;

(c) where the minor is a Ward of Court.

(3) In any proceedings in which any question of guardianship, custody, or access arises as an ancillary matter either of the said courts shall have jurisdiction.

(4) Where in any court proceedings under this Act against a man in this section referred to as "the respondent", for maintenance he successfully rebuts a presumption of paternity based on any of the circumstances referred to in paragraph (a) or (b) of subsection (2) of section 2 and—

(a) the application for maintenance is accordingly dismissed; and

(b) the court makes a positive finding of non-paternity in favour of the respondent, the court shall have the power to make a declaration of non-paternity in favour of the respondent.

45. Proceedings in a Magistrate's Court under this Act may be taken in the manner provided for in the Summary Courts Ordinance and except as provided for or varied by this Act such procedure including the computation of and other matters with respect to costs shall be as near as may be according to the procedure under the Summary Courts Ordinance.

Procedure

Ch. 3. No. 4

Ch. 3. No. 4

Provided that at least seven days shall have elapsed between the service of a summons on a defendant and the commencement of the hearing of the matter that requires the adjudication of the Court.

46. (1) Where any application has been made under this Act to a Magistrate's Court, the High Court may, at the instance of any party to the application, order the application to be removed to the High Court and there continued as if it had been properly and duly commenced in that court on such terms as to costs as it thinks proper.

Removal of proceedings

(2) Where an application is made to a Magistrate's Court under this Act, and the Court considers that the matter is one which would more conveniently be dealt with by the High Court, the court may refuse to make an order, and in that case no appeal against such order shall be to the Court of Appeal.

47. (1) Subject to section 46 and subsection (2) of section 48 an appeal shall be to the Court of Appeal from any judgment or order of the court under this Act.

Appeals

(2) An appeal under this section shall be brought before the expiration of thirty days from the order or judgment appealed against unless the court or a judge at the time of making the order or at any subsequent time or the Court of Appeal shall enlarge the time.

(3) A notice of appeal under this section shall not operate to stay the order or judgment appealed against :

Provided that a judge of the Court of Appeal may stay execution of the order appealed against on such conditions, if any, as may be appropriate.

Act No. 12 of 1962

(4) Save as otherwise provided in this section the provisions of the Supreme Court of Judicature Act, 1962, the Supreme Court Rules, 1975, and the Court of Appeal Rules, 1962, apply, where appropriate, to appeals under this section from an order or judgment of the High Court and the provisions of the Summary Courts Ordinance apply, where appropriate, to appeals under this section from an order of a Magistrate's Court.

Ch. 3. No. 4

## MISCELLANEOUS

Interim  
maintenance

48. (1) Where the hearing of an application for a maintenance order or for the discharge, variation, extension, or suspension of a maintenance order is adjourned for any period exceeding one week, a Magistrate's Court may, if it thinks fit having regard to all the circumstances of the case, make an order under this section.

(2) An order under this section shall direct the defendant, or, as the case may be, the applicant to pay such periodical sum as the Court thinks reasonable for the maintenance of a wife, mother or father and any minor child or children in the custody of a wife, mother or father until the final determination of the case; but the order directing the payment shall not remain in operation for more than six months from the date on which it was made.

(3) Any order under this section may be enforced varied, extended or discharged in the same manner as if it were a final order of the Court and proceedings for the enforcement of any such order may be taken immediately after default has been made in payment of any periodical sum.

(4) Any sum of money directed to be paid to any person by any order made under this section or under section 25 shall be paid in the same manner as if it were a maintenance order made by a Magistrate's Court under section 13 and may also be enforced in the manner as payment of money is enforced under an order made under the said section.

49. The form of warrant in the First Schedule may, with such variations and additions as the circumstances of the particular case require, be used in the cases to which it applies and where so used shall be good and sufficient in law. Form of Warrant. First Schedule

50. Nothing in this Act shall restrict or affect the jurisdiction of the High Court to appoint or remove guardians or otherwise in respect of minors. Savings for powers of High Court

51. (1) The Minister may make rules and prescribe forms for carrying into effect the provisions of this Act. Minister's power to make rules

(2) All rules made and forms prescribed under this section shall be published in the *Gazette* and shall come into force on such publication or at such other time as may be specified.

52. (1) This Act shall apply with respect to:— Transitional

- (a) all affiliation orders made under the Affiliation Ordinance as if they were paternity orders made under this Act; Ch. 5. No. 14
- (b) all orders under the said Act directing the payment of any sum of money in pursuance of the said Act;
- (c) all maintenance orders under the Separation and Maintenance Ordinance as if they were maintenance orders under this Act. Ch. 45 : 52

and all maintenance orders whether made under the Affiliation Act or the Separation and Maintenance Ordinance may be enforced, varied, discharged or suspended and any arrears due under any such order may be remitted under this Act. Ch. 46 : 05  
Ch. 5. No 15

(2) Any order or other thing made, done or having effect under or for the purposes of an enactment repealed by this Act and in force immediately before the commencement of this Act shall be deemed to have been made or done under or for the purposes of the corresponding enactment in this Act.

(3) Any application made pursuant to an enactment repealed by this Act and pending immediately before the commencement of this Act shall be continued to conclusion as if the enactment under which it was brought had not been repealed.

(4) So much of any document as refers expressly or by implication to any enactment repealed by this Act shall, if and so far as the nature of the subject matter of the document permits, be construed as referring to this Act or the corresponding enactment therein, as the case may require.

Nothing in this Act shall limit or affect Parts II, III, IV or V of the Infants Ordinance.

Ch. 5. No. 12

Consequential  
amendment  
Second Schedule

**53.** The enactments specified in the Second Schedule are amended in the manner indicated in that Schedule.

Repeals  
Third Schedule

**54.** The enactments specified in the Third Schedule are hereby repealed to the extent specified in the third column of that Schedule.

FIRST SCHEDULE

(Section 49)

FORM I

TRINIDAD AND TOBAGO

THE FAMILY LAW (GUARDIANSHIP OF MINORS, DOMICILE AND MAINTENANCE) ACT, 1981

Warrant of Apprehension for Disobedience of Order

To all Constables,

Whereas it has been made to appear to me.....Magistrate (or Justice) for the County of.....on the oath of .....(hereinafter called the complainant) that by an order duly made on....., 19.....

hereinafter called the defendant)\* was declared to be the father of a minor of which..... was the mother) and was ordered to pay to.....

or to.....having the care of a minor or minors

which sum (or sums) is (or are) the weekly (or monthly) payment (or payments) which became payable on the day of , 19 and that the payment (or payments) so directed to be made by the said Order have not been made according thereto by the defendant and that there is now in arrear the sum of..... being the amount due for.....

This is therefore to command you to apprehend the said ..... and bring him before a Magistrate unless the said sum (or sums) and the costs and charges of executing this warrant amounting to the further sum of..... shall be sooner paid.

And for your so doing this shall be your sufficient warrant. Dated this day of , 19

Magistrate (or Justice)

\* delete if necessary.

SECOND SCHEDULE  
ENACTMENTS AMENDED

(Section 53)

*Enactment*  
Children's Ordinance,  
Ch. 4. No. 21

*Chap 46:01*

*Amendment*  
In section 65—

(a) by deleting the words "includes the putative father of an illegitimate child" at the end of subsection (1) of the section and substituting therefor the words—

"includes the father of a child born out of wedlock".

(b) by repealing subsection (2) and substituting therefor—

"(2) A Magistrate may, upon the hearing of a complaint, as hereinafter provided, against any person in respect of the maintenance of any child, if it be alleged in such complaint that he is the father of such child, make a paternity order against him in accordance with section 22 of the Family Law (Guardianship, Domicile and Maintenance Act) 1981:

Provided that the court making an order under this section may direct that any amount payable under a maintenance order under the said Family Law (Guardianship, Domicile and Maintenance Act) 1981, shall for the future be paid to the Inspector and to the extent thereof be applied towards the payment of the amount ordered to be paid under this Part of this Act.

In section 2 in the definition of the word "maintenance order" by deleting the words "other than an order of affiliation".

Maintenance  
Orders  
(Enforcement)  
Ordinance,  
Ch. 5. No. 16

*Chap 45:53*

The Matrimonial  
Proceedings  
and Property  
Act  
Act No. 2 of  
1972

*Chap 45:51*

By deleting from subsection (1) of section 6 the words "Separation and Maintenance Act" and substituting therefor "The Family Law (Guardianship of Minors, Domicile and Maintenance) Act, 1981.

## THIRD SCHEDULE

## ENACTMENTS REPEALED

(Section 54)

Ch. 5. No. 12	The Infants Ordinance	...	Part I
Ch. 5. No. 14	The Affiliation Ordinance	...	The Whole Act
Ch. 5. No. 15	The Separation and Maintenance Ordinance		The Whole Act

Passed in the House of Representatives this 6th day of May, 1981.

J. E. CARTER  
*Clerk of the House*

Passed in the Senate this 19th day of May, 1981.

R. GRIFFITH  
*Clerk of the Senate*