

**THE MAINTENANCE ACT, 2005**  
**(Act of 2005)**

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**SCHEDULE**

**A BILL  
ENTITLED**

**AN ACT** to Confer obligations on spouses to maintain each other, on parents to maintain their children and on persons to maintain their parents and grandparents, and for connected purposes.

**BE IT ENACTED** by The Queen's Most Excellent Majesty, by and with the advice and consent of the Senate and the House of Representatives of Jamaica, and by the authority of the same, as follows:-

Short title.

1. This Act may be cited as the Maintenance Act, 2005.

**PART I. Preliminary**

Interpreta-  
tion.

2. In this Act -

"cohabit" means to live together in a conjugal relationship outside marriage;

"Collecting Officer" means the Accountant appointed in each parish pursuant to section 41A(1)(b) of the Judicature (Resident Magistrates) Act;

"Court" means a Resident Magistrate, Judge or court referred to in section 3;

"dependant" means a person to whom another person has an obligation to provide support under this Act;

"maintenance order" means an order made under this Act for the maintenance of a dependant;

"minor" means a person under the age of eighteen years;

"respondent" means a person who, pursuant to this Act, has an obligation to maintain another person;

"single woman" or "single man", used with reference to the definition of "spouse", includes a widow or widower, respectively, or a divorcee;

"spouse" includes -

(a) a single woman who, for period of not less than five years, has cohabited with a single man as if she were in law his wife; and

(b) a single man who, for a period of not less than five years, has cohabited with a single woman as if he were in law her husband.

Application  
for main-  
tenance  
order.

3. - (1) Subject to subsection (2), a person may apply to the Resident Magistrate's Court in the parish in which the person resides, or, as the case may be, to the Family Court for a maintenance order in accordance with the provisions of this Act.

(2) In any case where an application is made for the division of property under the Property (Rights of Spouses) Act, the Court hearing the proceedings under the Property (Rights of Spouses) Act may make a maintenance order in accordance with the provisions of this Act.

**PART II. *Obligation of Spouses during Marriage or Cohabitation***

Obligation  
of spouses  
to maintain  
each other.

4. Each spouse has an obligation, so far as he or she is capable, to maintain the other spouse to the extent that such maintenance is necessary to meet the reasonable needs of the other spouse, where the other spouse cannot practicably meet the whole or any part of those needs having regard to -

(a) the circumstances specified in section 14(4); and

(b) any other circumstances which, in the opinion of the Court, the justice of the case requires to be taken into account.

Maintenance

5. - (1) A maintenance order for the support of a

order re  
spouse.

spouse shall -

- (a) contain such provisions as will ensure that the economic burden of child support is shared equitably;
- (b) make such provision as the Court considers fair with a view to assisting the spouse to become able to contribute to that spouse's own support.

(2) In determining the amount and duration of support to be given to a spouse under a maintenance order, the Court shall have regard to the following matters in addition to the matters specified in section 14(4) -

- (a) the length of time of the marriage or cohabitation;
- (b) the spouse's contribution to the relationship and the economic consequences of the relationship for the spouse;
- (c) the effect of the responsibilities assumed during the marriage or cohabitation on the spouse's earning capacity;
- (d) the spouse's needs, having regard to the accustomed standard of living during the marriage or cohabitation;
- (e) whether the spouse has undertaken the care of a child of eighteen years of age or over who is unable, by reason of illness, disability or other cause, to care for himself;
- (f) any housekeeping, child care or other domestic service performed by the spouse for the family, as if the spouse were devoting the time spent in performing that service in remunerative

- employment and were contributing the earnings to the family's support;
- (g) the effect of the spouse's child care responsibilities on the spouse's earnings and career development;
- (h) the terms of any order made or proposed to be made under the Property (Rights of Spouses) Act in relation to the property of the parties; and
- (i) the eligibility of either spouse for a pension, allowance or benefit under any rule, enactment, superannuation fund or scheme, and the rate of that pension, allowance or benefit.

**PART III. *Obligation of Parties on Termination of Cohabitation***

Maintenance after termination of cohabitation.

6. - (1) In the case of cohabiting parties and subject to the provisions of this section, after the termination of cohabitation each spouse has an obligation, so far as he or she is capable, to maintain the other spouse to the extent that such maintenance is necessary to meet the reasonable needs of the other spouse, where the other spouse cannot practicably meet the whole or any part of those needs having regard to -

- (a) the circumstances specified in section 14(4); and
- (b) any other circumstances which, in the opinion of the Court, the justice of the case requires to be taken into account.

(2) An application for maintenance upon the termination of cohabitation may be made within twelve months after such termination, and the Court may make a maintenance order in accordance with Part VI in respect of the application.

(3) Where a Court acts under subsection (2) -

- (a) the provisions of section 5 shall apply with the necessary modifications;
- (b) the Court shall, as far as practicable, make such orders as will finally determine the financial relationship of the parties and avoid further proceedings between them.

Effect of entering into new marriage or cohabitation.

7. - (1) A person shall not be liable to maintain another person under section 6 if the other person marries someone else or is cohabiting with someone else.
- (2) In any case where subsection (1) applies, any order made under section 6 shall cease to have effect.

**PART IV. *Obligation of Parents and Grandparents***

Obligation of parent to support child.

8. - (1) Subject to subsection (2), every parent has an obligation, to the extent that the parent is capable of doing so, to maintain the parent's unmarried child who -
- (a) is a minor; or
  - (b) is in need of such maintenance, by reason of physical or mental infirmity.
- (2) Every grandparent has an obligation, to the extent that the grandparent is capable of doing so, to maintain the grandparent's unmarried grandchild to whom the provisions of subsection (1)(a) or (b) apply, in the event of the failure of the grandchild's parents to do so owing to death, infirmity or mental incapacity .
- (3) For the purposes of this Act, a person is the parent of a child if -
- (a) the person's name is entered as a parent of the child in the general register of births pursuant to the Registration (Births and Deaths) Act, or in a register of births or parentage information kept under the law of any overseas jurisdiction;
  - (b) the person is or was a party to a marriage (including a void marriage) or cohabitation and

the child is a child of the marriage or cohabitation;

- (c) the person is a party to a marriage or cohabitation and accepts as one of the family a child of the other party to the marriage or cohabitation;
- (d) the person adopts the child;
- (e) the person has admitted paternity or a court has made a declaration of paternity under section 10 of the Status of Children Act against the person in respect of the child;
- (f) the person is the child's natural mother;
- (g) the person has at any time in any proceedings before a court, or in writing signed by the person, acknowledged that the person is a parent of the child, and a court has not made a finding of paternity of the child that is contrary to that acknowledgement; or
- (h) the person is in *loco parentis* to the child, including a person who has demonstrated a settled intention to treat a person as a child of the person's family, except under an arrangement where the child is placed for valuable consideration in a home by a person having lawful custody.

Maintenance  
order re  
child.

9. - (1) A maintenance order for the support of a child -
- (a) shall apportion the obligation according to the capacities of the parents to provide support; and
  - (b) may make an award for the payment of a sum of money for expenses in respect of the child's prenatal care and birth.

(2) In considering the circumstances of a dependant who is a child, the Court shall have regard to the following matters in addition to the circumstances

specified in section 14(4)-

- (a) that each parent has an obligation to provide support for the child;
- (b) the child's aptitude for, and reasonable prospects of, obtaining an education; and
- (c) the child's need for a stable environment.

(3) The Court shall have regard to the matters set out in subsection (4) in considering whether any and what order should be made under this section for requiring any party to make any payment towards -

- (a) the payment of expenses in respect of the prenatal care and birth; or
- (b) the maintenance or education, of a child who has been accepted by that party as a child of the family.

(4) The matters referred to in subsection (3) are -

- (a) the extent (if any) to which that party had, on or after such acceptance of the child, assumed responsibility for the child's maintenance; and
- (b) the liability of any person, other than the persons who cohabited, to maintain the child.

**PART V. *Obligation of person who is not a minor***

Obligation  
of person  
to support  
parent.

10. - (1) Every person who is not a minor has an obligation, to the extent that the person is capable of doing so, to maintain the person's parents and grandparents who are in need of such maintenance by reason of age, infirmity or any other disability.

(2) In considering the circumstances of a dependant who is a parent or grandparent, the Court shall have regard to whether, by reason of age or infirmity, that dependant is unable to provide for himself or herself.

(3) The obligation of a person under subsection (1)

in respect of that person's grandparent only arises in the event of the failure of the grandparent's children to do so owing to death, infirmity or mental incapacity.

**PART VI. Maintenance Orders**

Order for maintenance.

11. A Court may, on application by or on behalf of a dependant, order the respondent named in the application to maintain that dependant and in making such an order, the Court shall, where the order is a monetary order, determine the amount to be paid thereunder.

Application for order of maintenance.

12. - (1) An application for an order for the maintenance of a dependant may be made to the Court by the dependant or, in the case of a dependant referred to in section 8(1)(a) or (b), a parent of the dependant or any other person who has the care and custody of the dependant.

(2) Where -

(a) a local authority or other Government agency is providing assistance in respect of the maintenance of a dependant; or

(b) an application for such assistance has been made to the local authority or other Government agency by or on behalf of the dependant,

an application for a maintenance order may be made to the Court by the local authority or other Government agency.

Manner of proceeding in Resident Magistrate's Court.

13. - (1) Proceedings in a Resident Magistrate's Court or a Family Court, as the case may be, for maintenance under this Act, shall be by way of summons.

(2) A Resident Magistrate or Judge of the Family Court, as the case may be, may hear and determine the matter in the absence of the respondent where the Resident Magistrate or Judge is satisfied by evidence upon affidavit, in the form set out in the Schedule,

Schedule.

that a summons in respect of the proceedings was served on the respondent at least seven days before the date of the proceedings.

Power of the  
Court re  
application.

14. - (1) In hearing an application for an order under section 11, the Court shall act in accordance with subsection (2) if satisfied that -

- (a) the dependant is entitled under this Act to be maintained by the respondent named in the application; and
- (b) the respondent has failed to fulfil the obligation to maintain the dependant.

(2) The Court shall enquire into the respondent's means and if the Court is satisfied that the respondent is able to maintain or to contribute to the maintenance of the dependant, the Court shall make a maintenance order that the respondent pay, either to the dependant or to some other appropriate person named by the Court in the order, such periodical sum as the Court thinks fit, having regard to the respondent's means and the relevant circumstances specified in subsection (4), or such other order under section 15(1) as the Court considers appropriate.

(3) Where an application is made under section 12 (2) by or on behalf of a local authority or other Government agency, it shall be lawful for the Court, to further order the respondent to pay to the local authority or other Government agency, such additional periodical sum as the Court thinks just, as reimbursement for assistance given:

Provided that the total amount payable under this subsection shall not exceed the aggregate amount of assistance given by such local authority or other Government agency to the dependant.

- (4) In determining the amount and duration of support, the Court shall consider all the circumstances of the parties including the matters specified in sections 5(2), 9(2) or 10(2), as the case may require, and -
- (a) the respondent's and dependant's assets and means;
  - (b) the assets and means that the dependant and respondent are likely to have in the future;
  - (c) the dependant's capacity to contribute to the dependant's own support;
  - (d) the capacity of the respondent to provide support;
  - (e) the mental and physical health and age of the dependant and the respondent and the capacity of each of them for appropriate gainful employment;
  - (f) the measures available for the dependant to become able to provide for the dependant's own support and the length of time and cost involved to enable the dependant to take those measures;
  - (g) any legal obligation of the respondent or the dependant to provide support for another person;
  - (h) the desirability of the dependant or respondent staying at home to care for a child;
  - (i) any contribution made by the dependant to the realization of the respondent's career potential;
  - (j) any other legal right of the dependant to support other than out of public funds;
  - (k) the extent to which the payment of maintenance to the dependant would increase the dependant's earning capacity by enabling the dependant to undertake a course of education or training or to establish himself or herself in a business or otherwise to obtain an adequate income;
  - (l) any fact or circumstance which, in the opinion of the Court, the justice of the case requires to be

taken into account.

Powers of  
Court regard-  
ing main-  
tenance  
orders.

15. - (1) In relation to an application for a maintenance order, the Court may make an interim or final order requiring -

- (a) that an amount be paid periodically whether for an indefinite or limited period, or until the happening of a specified event;
- (b) that a lump sum be paid or held in trust;
- (c) that property be transferred to or held in trust for or vested in the dependant, whether absolutely, for life or for a term of years;
- (d) that some or all of the money payable under the order be paid to the Collecting Officer or to another appropriate person or agency for the dependant's benefit;
- (e) that payment be made in respect of any period before the date of the order;
- (f) payment to an agency referred to in section 12(2) of an amount in reimbursement for assistance referred to in that subsection, including assistance provided before the date of the order; and
- (g) the securing of payment under the maintenance order, by a charge on property, an order of attachment otherwise.

(2) The provisions of section 17(2) and (3) shall apply, with any necessary modifications, to an order of attachment made under subsection (1)(g).

(3) The Court may, on application by or on behalf of a person for whose benefit a maintenance order has been made, make an interim or final order restraining the depletion of a person's property that would impair or defeat a claim under this Act.

(4) In an application for a maintenance order or

for variation thereof, the Court may order the employer of a party to the application to make a written return to the Court showing the party's emoluments during the preceding twelve months.

(5) A return purporting to be signed by the employer may be received in evidence as *prima facie* proof of its contents.

(6) A respondent against whom an order is made under this section shall notify the Court in writing of any change in the respondent's employment, within seven days after becoming aware of the change.

Duration of  
order.

16. - (1) Subject to the provisions of this section and section 18, a maintenance order shall remain in force -

- (a) in case of a child, until the child attains the age of eighteen years; and
- (b) in the case of any other person, for such period as may be specified in the order.

(2) Where a dependant is unable to maintain himself or herself by reason of old age or an illness or infirmity which is likely to be permanent, a maintenance order may be made to be in force for the rest of the natural life of that dependant.

(3) Where the Court is satisfied that -

- (a) a child in respect of whom a maintenance order has been made is or will be engaged in a course of education or training after attaining the age of eighteen years; and
- (b) for the purposes of such education or training it is expedient for payments under the order to continue after the child has attained that age, the Court may direct that the order remain in force for such period as may be specified in the order, being a period not extending beyond the date on which the child attains the age of twenty-three years.

Pension or  
income  
liable to  
attachment.

17. - (1) Where a maintenance order has been made against a respondent in respect of whom there is any pension or income payable and capable of being attached, the Court may -

(a) after giving the respondent an opportunity to be heard; and

(b) if satisfied that the respondent has failed to comply with the order without reasonable cause, make an order (to be called an order of attachment) in accordance with subsection (2).

(2) An order of attachment shall direct that such sum periodically as is specified in the maintenance order, or any part of such sum, be attached and paid either to the person to whom a periodical sum has been directed to be paid in the maintenance order or to some other person named in the order of attachment.

(3) An order of attachment made under subsection (1) shall be an authority to a person by whom any pension or income affected by such order is payable, to make the payment and the receipt of the person to whom payment is ordered shall be a good discharge to the person by whom the pension or income is payable.

Variation,  
suspension  
or cancella-  
tion of  
orders.

18. At any time after a maintenance order or an order of attachment has been made under this Act, a Court may, upon the application of -

(a) any of the parties to the proceedings in which such order was made;

(b) any person having the actual care and custody of a child who is a dependant; or

(c) any person to whom any payment was directed in such order to be made,

vary the order in such manner as the Court thinks fit, suspend the order, revive a suspended order or cancel the order if circumstances so warrant.

Payments  
under Act.

19. - (1) Where a Resident Magistrate's Court or Family Court makes a maintenance order it shall, upon the application of -

- (a) a person entitled to be maintained by any other person under this Act; or
- (b) any person having the actual care and custody of any child so entitled,

either at the time of making the order or subsequently on an *ex parte* application for variation of the order, provide in the order that all payments thereunder be made to the Collecting Officer and payments under such order shall thereafter be made to the Collecting Officer.

(2) Payments of any amount ordered by a court under this Act may be made to the Collecting Officer for the parish in which the order is made, or to such other Collecting Officer as the Resident Magistrate or Judge of the Family Court may direct, in person or by letter sent by registered post properly addressed to the Collecting Officer and posted in time to be delivered to the Collecting Officer on the day appointed for payment.

(3) It shall be the duty of the Collecting Officer to -

- (a) receive all payments directed to be made to the Collecting Officer under this Act; and
- (b) make to the person named in the maintenance order fortnightly payments of the sum directed to be paid under the maintenance order or such part of the payment as is received by the Collecting

Officer, without making any deduction therefrom.

(4) Payment shall be made by the Collecting Officer -

(a) directly to the person named in the maintenance order at the office of the Collecting Officer if the person so named is resident in the town in which the office is situated; or

(b) in any other case, by sending to the postmaster at the post office of the person named in the maintenance order, an original and a duplicate order specifying the amount to be paid.

(5) In a case to which subsection (4)(b) applies, the person named in the maintenance order shall attend at the post office and sign the receipt on the original and duplicate orders in the presence of the postmaster or responsible officer who shall then pay out the amount.

(6) The postmaster shall keep the duplicate order and return the original to the Collecting Officer.

(7) Where a maintenance order provides for payment to be made to a Collecting Officer, the applicant for the order shall thereupon notify the Collecting Officer of the post office nearest to the applicant.

Distress may  
issue if  
payment in  
arrears.

20. - (1) Where any amount ordered by a maintenance order to be paid to the Collecting Officer is fourteen clear days in arrears, a Resident Magistrate may, on the application of the Collecting Officer, issue a warrant directing the sum due under the order or since any commitment for disobedience as hereinafter provided and the costs in relation to the warrant, to be recovered by the respondent.

(2) If upon the return of the warrant issued under subsection (1) it appears that no sufficient distress can be had, the Resident Magistrate may issue a warrant to

bring the respondent before the Court.

(3) If the respondent neglects or refuses without reasonable cause to pay the sum due under the maintenance order and the costs in relation to the warrant, the Resident Magistrate may commit the respondent to an adult correctional institution for any period not exceeding three months unless the sum and costs and the costs of commitment, be sooner paid.

(4) Where a respondent is committed to an adult correctional institution under subsection (3), the provisions of section 21(3) shall apply.

(5) Notwithstanding anything to the contrary in any enactment limiting 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.

Committal  
for non-  
payment.

21. - (1) A person shall not be committed to an adult correctional institution for default in payment under a maintenance order unless the Court is satisfied that the default is due to the wilful refusal or culpable neglect of that person.

(2) For the purposes of subsection (1), if the person liable to make payment is not before the Court, the Court may, if it thinks necessary or desirable, issue a warrant to bring that person before the Court.

(3) Where a person is committed to an adult correctional institution for default then -

(a) unless the court otherwise directs, no arrears shall accrue under the maintenance order during the time that the person is in the correctional institution; and

(b) the committal shall not operate to discharge the liability of the person to pay the sum in respect

of which he is so committed, but at any subsequent hearing relating to the enforcement, revocation, revival, variation or discharge of the order, the Court may, if in its opinion the circumstances so warrant, remit the whole or any part of the sum due under the order.

Court may order payment during respondent's incarceration for any offence.

22. - (1) If a respondent is incarcerated for any offence (other than by committal under section 21) and the Court is satisfied that the respondent has means by which payments under a maintenance order may be made, the Court may -

- (a) order that, during the period of incarceration, such payments shall be made from the respondent's income; and
- (b) make an order of attachment in respect thereof.

(2) The provisions of section 17(2) and (3) shall apply, with any necessary modifications, to an order of attachment made under this section.

Appeal.

23. - (1) An appeal shall lie to the Court of Appeal, from any decision of a Court in respect of a maintenance order, an order of attachment, or any order made under section 19.

(2) The Court of Appeal may, upon hearing an appeal -

- (a) confirm, reverse or modify the decision of the Court;
- (b) remit the matter to the Court for rehearing generally or with the opinion of the Court of Appeal thereon; or
- (c) make such order as the Court of Appeal thinks fit, including an order as to costs to be paid by either party as the Court may think just.

(3) The Court of Appeal may, in making an order under subsection (2)(c), exercise any power which the Court

below might have exercised and such order shall have the same effect and may be enforced in the same manner as if it had been made by the Court below.

**PART VII. General**

Minister's power to make rules. 24. The Minister may make rules and prescribe forms for carrying into effect the provisions of this Act.

Repeal of the Maintenance Act and Affiliation Act. 25. The Maintenance Act and the Affiliation Act are hereby repealed.

Amendments to other Acts. 26. - (1) The Matrimonial Causes Act is amended -

(a) by deleting sections 21, 25 and 28;

(b) in section 20 -

(i) in the marginal note by deleting the words "the wife" and substituting therefor the word "spouse";

(ii) by deleting subsection (1) and substituting therefor the following -

" (1) On any decree for dissolution of marriage, the Court may, if it thinks fit -

(a) order a spouse (hereinafter in this section referred to as the contributing spouse) to secure to the other spouse (hereinafter in this section referred to as the dependant spouse), to the satisfaction of the Court -

(i) such gross sum of money;

or

(ii) such annual sum of money for any term not exceeding the life of the dependant spouse, as having regard to the means of the dependant spouse, the ability of the contributing spouse and to all the circumstances of the case, the Court thinks reasonable;

(b) for the purposes of paragraph (a), refer the matter to any attorney-at-law to settle and approve a proper instrument to be executed by all necessary parties, and may order the costs of such instrument to be paid by the parties, or such of them as the Court thinks fit; and

(c) where the matter is referred under paragraph (b), suspend the pronouncement of the decree until the instrument has been duly executed,

and on any petition for dissolution of marriage the Court shall have power to make interim orders for such payments of money to the dependant spouse as the Court thinks reasonable.";

(iii) by deleting from subsection (2) the words "direct the husband to pay to the wife during their joint lives such monthly or weekly sum for her maintenance and

support" and substituting therefor the words "direct the contributing spouse to pay to the dependant spouse during their joint lives such monthly or weekly sum for the maintenance and support of the dependant spouse";

(iv) by deleting subsection (4) and substituting therefor the following -

" (4) An order under subsection (1)(a) or (2) shall have regard to the matters specified in section 14(4) of the Maintenance Act.";

(c) in section 22 by deleting the words ", section 21 and subsection (2) of section 23" and substituting therefor the words "or section 23(2)";

(d) in section 23 -

(i) by deleting the marginal note and substituting therefor the following -

"Orders re custody, maintenance and education.";

(ii) in subsection (1) by inserting next after the words "any relevant child", the words "or for the maintenance of a spouse";

(iii) by deleting subsections (2) and (3) and inserting the following as subsection (2) -

" (2) An order under subsection (1) for the maintenance and education of any relevant child or for the maintenance of a spouse shall be in accordance with the provisions of the Maintenance Act.";

- (e) in section 26(1) by deleting the words ", 23 or 25" and substituting therefor the words "or 23";
- (f) in section 29(1) and (3) by deleting the words "or 28".

(2) The Status of Children Act is amended -

- (a) by deleting sections 8(3) and 11(7);
- (b) by deleting section 9(3) and substituting therefor the following -

" (3) Where the Supreme Court, Resident Magistrate's Court or the Family Court makes a declaration of paternity under section 10, the Registrar of the Court or the Clerk of the Court, as the case may be, shall forward a copy of the declaration to the Registrar-General for filing in his office under this section, and on receipt of any such copy the Registrar-General shall file it accordingly as if it were an instrument described in section 8(2).";

- (c) in section 10 by -

- (i) deleting from subsection (1) the words "to the Supreme Court or the Family Court";

- (ii) inserting the following as subsections (3) and (4) -

" (3) An application under subsection (1)(a) may be made by a woman who is with child, before the birth of the child.

(4) An application may be made under subsection (1) to -

- (a) the Resident Magistrate's Court for the parish in which

any of the parties reside or,  
as the case may be, the  
Family Court; or  
(b) the Supreme Court."

**SCHEDULE (Section 13)**

***Affidavit of Service***

I, \_\_\_\_\_ make oath and say that I did,  
on the \_\_\_\_\_ day of \_\_\_\_\_ 20\_\_\_\_, duly serve  
the defendant, C.D., with a summons (or order) a true  
copy whereof is herewith annexed, marked A, by  
delivering the same personally to the defendant (or by  
leaving the same with  
at the place of abode of the defendant).

Sworn at \_\_\_\_\_, in the parish of \_\_\_\_\_  
this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, before me

Justice of the Peace  
for the parish of \_\_\_\_\_

*Endorse the copy summons (or order) thus -*

This paper marked A is the paper referred to in the  
annexed affidavit.

**MEMORANDUM OF OBJECTS AND REASONS**

The Maintenance Act was enacted in 1881 and has  
been amended many times since that time. However, these  
amendments have not kept pace with modern trends in the  
law relating to maintenance. This became evident  
with the proposals for the enactment of legislation in  
respect to the rights of spouses regarding property.

The provisions of the Affiliation Act have also not  
kept pace with modern trends, in so far as that Act  
places emphasis on the duty of a putative father to  
maintain his child.

The trend in modern maintenance legislation is that

the person who is best able to make financial contribution to the family or a member thereof should be the one to make that contribution. It should be noted that the Bill is gender neutral and that fault is not a determining factor in the withholding of maintenance.

It is also to be noted that the definition of spouse includes unmarried persons who have cohabited for a period of not less than five years as if they were in law husband and wife.

Consequently, this Bill seeks to repeal the Maintenance Act and the Affiliation Act and to make provision -

- (a) that to the extent that they are capable of so doing -
  - (i) a spouse is to maintain the other spouse;
  - (ii) a parent is to maintain that parent's unmarried child;
  - (iii) a grandparent to maintain that grandparent's grandchild;
  - (iv) an adult is to maintain that person's parents and grandparents,
 and as to the circumstances relating to such maintenance;
- (b) for the persons who may make an application to the Court for an order for maintenance;
- (c) regarding the powers of the Court to hear an application, enquire into the means of the person against whom an order is sought, the circumstances which the Court is to take into account in making a determination and the type of orders which the Court can make;
- (d) regarding -

- (i) the duration of an order for maintenance and for the variation, suspension or cancellation of the order;
- (ii) the making of payments;
- (iii) distress to issue if payments are in arrears;
- (iv) appeals from a decision of the Court;
- (v) committal for non-payment of maintenance and the person so committed to be liable for such payment during the period of incarceration.

A. J. Nicholson Q.C.,  
Attorney-General and Minister of Justice