

# MAINTAINING YOUR CHILD:

## Whose responsibility is it?

*A parent's primary concern is the wellbeing of their child. No matter how many they have, every parent should want to give each one of them the very best in life.*

So many parents are faced with the struggle of ensuring that their children are properly cared for financially. The benefit of understanding each of your obligations is a step in the right direction towards a co-operative relationship with each other that can only be in the best interests of your child.

There are many examples of circumstances where a parent does not take financial responsibility for their child and the other parent is left covering all the expenses, without considering what their position is with regard to recourse in terms of the laws of South Africa. These include:

- In the process of a separation or divorce and need financial assistance to sustain the children's needs while this process is taking place;
- An unmarried parent who has no idea what their financial responsibility is towards their unborn or newborn child; or
- Currently a single parent post the divorce order, unable to cope with the lack of payment or insufficient amount awarded.

### WHAT DOES THE LAW SAY?

In South Africa, the financial responsibility towards a child is termed as 'maintenance' and is covered in many legislated Acts pertaining to Family Law. Maintenance is a wide concept and covers the provisions of food, housing, clothing, medical care and the education of a child, generally until the child reaches the age of 18 years. Each maintenance claim is looked at on its own merits. A court will determine what will be 'reasonable maintenance' when

it looks at the needs of each child, such as the position of the family and the child's health. With regard to education and training, the court will look at the child's aptitude and how well the child performs academically to understand fully the needs of that child and the extent of each parent's obligation to pay for these necessities.

### Both parents are responsible

This obligation, in accordance with common law, rests proportionally on **both** parents and is based on the standard of living, incomes and means of the person/s obligated to pay. It would be contrary to public policy to expect just the father of the child to be solely responsible for the financial obligations toward his child if the mother is financially capable of contributing towards the maintenance of her child too.

### Children born in and out of wedlock

These basic principles apply to children born out of wedlock and to children who have been formally adopted. An unwed pregnant woman may claim for the 'laying-in' expenses, which covers the medical costs she incurs while pregnant, from the father of her child. If paternity is disputed, a court will order a paternity test to be done as part of a verification process, and should the child be born during this process, the mother may claim for these maternity costs in her maintenance order.

### Re-marriage

A parent's duty of support towards his/her child is not affected in anyway by a re-marriage and a child from a first marriage does not have priority over a child from a subsequent marriage when it comes to maintenance obligations.



by claiming that they do not earn an income, unless their circumstances dictate otherwise. A court can order that the assets of the parent claiming a lack of income be sold to satisfy the obligation to pay maintenance. This approach has been supported by the courts to prevent a parent from evading his/her duty to pay maintenance, for example, by giving up employment and becoming a full-time student.

### How reasonable maintenance is determined

The court will look at a parent's ability to pay as a primary factor when determining reasonable maintenance. The law makes provision for a change in a parent's circumstances by allowing the affected parent an opportunity to make an application to the court for an increase or reduction in maintenance even after the order has been granted.

### A claim for maintenance can be applied for in the following ways:

- A High Court Rule 43 application or Magistrates Court Rule 58 application for an interim order towards a maintenance claim and enforcing certain payments while the divorce process is underway;
- In light of the Maintenance Act 99 of 1998, Maintenance Courts, also called family courts, deal specifically with maintenance and family-law related issue and the maintenance officer can be approached for assistance;
- A parent in an abusive relationship can approach the Domestic Violence Court or the Magistrates Court for a Domestic Violence Interdict, where they may ask for urgent or emergency monetary assistance.

### IN ABSENTIA

If a person who has a claim of maintenance against them does not appear in court on the date arranged, and the court is satisfied that he/she knew of the court day, the court will make an order of maintenance based on the evidence presented. MRP



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Advocate Veerash Srikison

Advocate Veerash Srikison is a legal practitioner and accredited mediator at Fair Practice in Johannesburg. Contact her on 083 724 4425 or visit [www.fairpractice.co.za](http://www.fairpractice.co.za).

### CHILDREN AS LEVERAGE

Once the parents start the process of separation or divorce, their relationship may become acrimonious. As a result, one parent might stop paying certain expenses in order to 'punish' the other parent, or because they are living separate lives. It is important to note at this stage that **the contact children have with each of their parents cannot be used as leverage to negotiate a maintenance payment** and parents must deal with the issues of contact and maintenance separately when applying for a maintenance order.

### AVOIDING MAINTENANCE

To fulfill their obligation to support their children, both parents must make use of their incomes, and if necessary, their capital. No parent will be able to avoid paying maintenance