

## PRE-READING MATERIAL



Webinar: **HOW DO I PREPARE FOR A SECTION 6 ENQUIRY?**

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### 1. Introduction to the section 6 enquiry

The section 6 enquiry is the first real consideration of your financial position in maintenance-related matters. It usually starts off with a complainant, who issues a complaint at the maintenance officer by filling out certain application forms. The maintenance officer shall then, after the complaint has been lodged in the prescribed manner, investigate the complaint by exercising various powers and by holding an informal enquiry. Only when the parties cannot reach an agreement at such formal enquiry, will the matter be referred to the maintenance court for consideration by the magistrate in terms of the so-called section 10 enquiry. The focus of this webinar is on the informal, section 6 enquiry.

### 2. Historical context of the process

In terms of the Maintenance Act 99 of 1998, maintenance matters are not regarded as civil or criminal proceedings, but rather of a *sui generis* or unique nature as neither of the parties bear the burden of proving their side. The parties are however responsible to provide sufficient information to relevant court officials as both the maintenance officer and presiding judicial officer/magistrate must play an active role in the proceedings. The section 6 enquiry is therefore an important proceeding in which the parties must provide as much as possible information on their financial positions, in order to allow the maintenance officer to see a full picture of both parties' means and needs.

The unique nature of a section 6 enquiry can be seen in the fact that neither parties bear the responsibility to prove their respective cases, but that it rests upon all the relevant court officials to seek out the true financial positions of parties in the matter. This is especially important as regards children and their bests interest that must be ensured in the face of a potential trial of the

section 6 enquiry does not result in agreement between the parties. This also shows the importance of placing all the information before the maintenance officer, who will only assess the circumstances with the information they have before them.

This ultimately means that parties must place sufficient information before the maintenance officer at the informal enquiry so that there is enough evidence to fall back on, should the matter not be resolved at the section 6 enquiry and sent to trial. However, the lodging of heaps of documentation as evidence also places an administrative burden on the maintenance officer and creates issues as to efficiency. Therefore, the law has developed and introduced a new actor, namely the maintenance investigator. Parties must also therefore ensure that they place a sufficient amount of *concise* evidence before the officer, to avoid information getting lost in a sea of receipts and paperwork. There must be a fine balance between giving evidence as to your financial position, but not overburdening the court with unnecessary documentation.

### **3. The law now**

In 2006, maintenance investigators were introduced with the goal to make the workload of maintenance officers more manageable. These investigators have a wide set of statutory powers and can almost act in the same way a court, sheriff or the police would in the investigation of offences. These maintenance investigators are crucial to ensure that maintenance complaints are duly investigated, especially where a single maintenance officer may have not been able to handle the workload and sheer amount of documentation.

Various amendments have further been made to the 1998 Act regarding the functions and powers of the role-players in maintenance matters. All these amendments have clarified the position and purported to simplify the process.

### **4. Setting the scene for webinar and handout reading material**

The accompanying webinar to this pre-reading will set out these role-players and the process followed in a section 6 enquiry. Practical tips will be given as to how you can prepare for an informal maintenance enquiry, and what you should expect on the day as such.