

PRE-READING



Webinar: **HOW TO APPLY FOR THE VARIATION OF A MAINTENANCE ORDER?**

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Guest speaker: Erin O'Neale (Candidate Attorney Oppermans Inc.)

1. Introduction to the variation (or substitution) of maintenance orders

In terms of Section 16(1)(b) of the Maintenance Act, the maintenance court may, in the case where a maintenance order is in force, either make an order substituting or discharging such existing orders. This means that a maintenance order may be varied, suspended or rescinded, at the Maintenance Court located at the nearest Magistrate's Court where the child resides. This is a useful tool in the event that a party can no longer meet their obligations in terms of a maintenance order, as they can approach court to lower the amount of maintenance payable. This is also useful for custodial parents who may require a higher amount of maintenance for their child in light of growing costs.

2. Terminology and context

The wording used in court forms, etc. for the alteration, variation or change of a maintenance order is "substitution". The webinar will however use the umbrella term 'variation' to denote the concept of either increasing or decreasing the amount of maintenance payable. Substitution merely refers to the effect that variation has on an existing maintenance order, namely that any changes in an order are effected through an entire new order. A newly varied maintenance order therefore substitutes the older original version of the order. 'Variation' as used in the webinar refers to both upwards and downwards variation of the amounts payable in terms of a maintenance order.

Variation of maintenance orders are mostly seen in the context of existing child maintenance orders. These variation applications arise where someone liable to pay maintenance (the maintenance debtor) can no longer afford the amount payable and therefore applies for a decrease, or when someone entitled to a maintenance amount can no longer survive off of the amount and thereby applies for an increase.

3. Things to know before asking for increase or decrease

All applicants must keep in mind that the court will not entertain an unreasonable application to vary an existing maintenance order. Variation will be ordered not only in cases of breach by either party, but because there has been such a change in the conditions that existed when the order was made, that it would now be unfair that the order should stand in its original form. The applicant must however ensure that they are indeed entitled to approach the court and ask for it to vary the order. The grounds on which to approach the court are elaborated in the webinar.