

PRE-READING



Webinar: **HOW TO DEAL WITH PATERNITY DISPUTES (DNA)?**

Host: Eugene Opperman (Oppermans Inc Attorneys)

Handout : Erin O'Neale (Candidate Attorney at Oppermans Inc Attorneys)

1. What are DNA tests?

DNA tests are used to establish various things, among others things such as paternity is established using DNA testing. The DNA is analysed by taking samples such as hair, saliva or blood. Blood is the most common DNA sample used to do tests. The DNA chains are then analysed and compared to determine for example; whether two people are biologically related to one another.

2. Who may apply for a paternity test?

Any person wishing to establish paternity with another person may apply for a paternity test. Moreover, lawyers and magistrate's may also apply for paternity testing. This is the situation where the Magistrate in the Maintenance court orders the father or the mother to undergo a paternity test to establish whether maintenance can in fact be claimed. Note: Maintenance can only be claimed from the biological parents of the child, and therefore if the paternity is negative that person cannot be held liable to make maintenance payments. The Children's court has the jurisdiction to hear any matter relating to the paternity of a child. This is confirmed in section 45(1)(c) of the Children's Act 38 of 2005 (hereinafter the "Act").

Section 36 of the Children's Act reads as follow: "if in any legal proceedings in which it is necessary to prove that any particular person is the father of a child born out of wedlock it is proved that that person had sexual intercourse with the mother of the child at any time when that child could have been conceived, that person is, in the absence of evidence to the contrary which raises a reasonable doubt, presumed to be the biological father of the child."

Section 37 of the Children's Act reads as follow: "If a party to any legal proceedings in which the paternity of a child has been placed in issue has refused to submit himself or herself, or the child,

to the taking of a blood sample in order to carry out scientific tests relating to the paternity of the child, the court must warn such party of the effect which such refusal might have on the credibility of that party.”