

## Divorce and Covid-19: Variation of Maintenance

### **Introduction**

May you live in interesting times. To the naïve it could be seen as a blessing; but those of us who are living through the Covid-19 pandemic know it to be a curse. Households have been thrown into chaos, often both financially and emotionally. There is a significant re-ordering of people's daily lives which ranges from having to home-school their children to learning how to make a face mask.

Unfortunately, the Covid-19 pandemic has also had a serious impact on people's finances. Incomes across the jurisdiction have been reduced and while individuals may hope to see a recovery, for many, that is clearly not in sight. Those who are facing financial problems inevitably need to rearrange their spending and obligations. For many, one of these financial obligations will be an agreement or court order to pay spousal and/or child maintenance to a former partner. For others, they will be a recipient of such payment and will rely on it more than ever.

Not sure what to do if you find yourself in such a situation? Suddenly the maintenance payment looks unmanageable or has been cut off. What rules govern such situations and what are the best steps to take? What help is available? The first step is understanding the structure surrounding the process of changing a maintenance payment. The Grand Court regularly hears applications by those who find themselves unable (or unwilling) to make payments they previously agreed to. While Covid-19 is a new occurrence, the court's approach to addressing family law problems in the context of a change in financial circumstance is not.

### **Variation of Maintenance**

The Matrimonial Causes Law gives the Grand Court the power to vary an existing order or agreement including in financial matters such as maintenance. An applicant must show that there has been a substantial change in circumstances. In particular, *"the court is looking for a change in the circumstances*

*in the light of financial arrangements were made, the sort of change which make those arrangements manifestly unjust, or for a failure to make proper provision for any child in the family.”<sup>1</sup>*

In deciding what level of maintenance is payable, a court takes into consideration: -

- a. The best interests of any children of a marriage; and
- b. the responsibilities, needs, financial and other resources, actual and potential earning power and the deserts of the parties.

It is important to note that seeking to vary an existing order is not an appeal of the original order. There must be a substantial change in circumstances of the party seeking to vary, and that change in circumstance will cause the Court to make a new order.

### **How does that apply practically?**

If you are facing a substantial change in your financial circumstances, the first step you should take is to document the change. This involves examining your finances at the time of your divorce (looking at the paperwork that was provided to the court at that time, for example) and comparing it to your current circumstances.

Secondly, if you can, speak to the recipient of the maintenance payment and explain your situation and provide evidence, if necessary. Discuss the situation: you may be able to come to an arrangement.

If that isn't successful, you can consider mediation. There are a number of qualified mediators who would be happy to help, as well as a mediation service provided by the Judicial Administration. Mediation has a number of proven benefits, which are outlined here <http://www.broadhurstllc.com/articles/news/articles/mediation-where-there's-a-will,-there's-a-way....html>.

You can of course speak to an experienced attorney. Attorneys can often be perceived as divisive and costly. However, in reality they can often assist in reaching an amicable resolution. An attorney has

---

<sup>1</sup> McLeod v McLeod (2010) 1 AC 288 (paragraph 41)

knowledge of how a court will likely decide a matter, as well as practical experience of dealing with these topics. Getting clear and concise legal advice can often avoid an unnecessary court application.

Unfortunately, court intervention is sometimes unavoidable. Notwithstanding the Covid-19 pandemic, the courts are still operating and hearing applications. The Judicial Administration has implemented procedures which allow parties to be heard via online services, file documents by email, and obtain virtual notary services. A full list of their specialized procedures and services can be located on their website: [www.judicial.ky](http://www.judicial.ky)

### **Broadhurst LLC**

Broadhurst LLC is one of the Cayman Island's leading law firms, with an expertise in giving objective, practical legal advice in family law matters. We have taken our services online, with a facility to have e-consultations. Given that the questions around marital breakdown are often complex, with significant consequences for the parties it is advisable to seek the assistance of a professional who can give legal advice and assist in the decision making process. For further information contact [yvonne@broadhurstllc.com](mailto:yvonne@broadhurstllc.com) or [lynne@broadhurstllc.com](mailto:lynne@broadhurstllc.com).

*\*This publication and the material on this website was prepared for general information purposes only to provide an overview of the subject matter. It is not a substitute for legal advice nor is it a legal opinion and should not be taken as such. It deals in broad terms only and is subject to change without notice. If you require legal advice, please contact us and arrange a consultation.*