

Pension Lawyers Association Conference 2005

# **MAINTENANCE**

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**NBC**



## **ARREAR MAINTENANCE**

### **PENSION FUNDS ACT, 24 OF 1956 SECTION 37A(1)**

*‘Save to the extent permitted by this Act, the Income Tax Act, 1962 (Act 58 of 1962), and the Maintenance Act, 1998, no benefit provided for in the rules of a registered fund ..... shall*



## **ARREAR MAINTENANCE cont.**

*notwithstanding anything to the contrary contained in the rules of such a fund, be capable of ....., or be liable to be attached or subjected to any form of execution under a judgment or order of a court of law...”.*



## **ARREAR MAINTENANCE cont.**

### **MAINTENANCE ACT 99 OF 1998 SECTION 26(4)**

*Notwithstanding anything to the contrary contained in any law, any pension, ..... shall be liable to be attached or subjected to execution under any warrant of execution or any order issued or made under this Chapter in order to satisfy a maintenance order.*



## **ARREAR MAINTENANCE (cont.)**

### **Maintenance Order**

*“...Is defined to mean ‘any order for the payment, including the periodical payment, of sums of money towards the maintenance of any Person issued by any court in the Republic, and includes, except for the purposes of s311 any sentence suspended on Condition that the convicted person make payments of sums of money towards the maintenance of another person.’”*



## **CASE LAW : FUTURE MAINTENANCE**

1. Mngadi v Beacon Sweets & Chocolates  
Provident Fund & Others 2004(5) SA  
388(D)
2. Bannatyne v Bannatyne (Commission  
for Gender Equality as Amicus Curiae)  
2003(2) SA363 (CC) (2003 (2)  
BCLR111)



## **CASE LAW : FUTURE MAINTENANCE Cont.**

3. Magewu v Zozo & Others 2004 (4) SA 578(C)
4. Knox D'Arcy Ltd & Others v Jamieson & Others 1996 (4) SA 348 (A) at 372C
5. Fose v Minister of Safety and Security 1997 (3) SA 786 (CC) (1997 (7) BCLR 851)



## CONCLUSION

- Common Law Duty of Support
- Section 28(2) of the Constitution of the Republic of South Africa Act 108 of 1996
- Anti-dissipating Interdict
- Constitutional obligation to develop Common Law

