



**Manitoba Law
Reform Commission**

THE PARENTS' MAINTENANCE ACT

FINAL REPORT

March 2023

The Parents' Maintenance Act

Final Report #144

March 2023

Library and Archives Canada Cataloguing in Publication

Manitoba Law Reform Commission

The Parents' Maintenance Act

(Report ; 144)

Cover title.

Includes bibliographical references.

ISBN: 978-0-7711-1644-5

The Commission's Reports are available electronically at www.manitobalawreform.ca.

The Manitoba Law Reform Commission was established by *The Law Reform Commission Act* in 1970 and began functioning in 1971.

Commissioners: Grant M. Driedger, President
The Honourable Madam Justice Shawn D. Greenberg
The Honourable Madam Justice Jennifer A. Pfuetzner
Janesca Kydd
Marc E. Marion
Dr. Laura Reimer
Dr. Mary Shariff

Legal Counsel: Kristal Bayes-McDonald
Stefanie Steigerwald

The Commission offices are located at 432–405 Broadway, Winnipeg, MB R3C 3L6.

Tel: (204) 945-2896 **Email:** lawreform@gov.mb.ca

Fax: (204) 948-2184 **Website:** <http://manitobalawreform.ca>

The Manitoba Law Reform Commission is funded through grants from:



ACKNOWLEDGMENTS

Funding for the Manitoba Law Reform Commission is generously provided by the Manitoba Law Foundation and the Manitoba Department of Justice.

This project was commenced under the direction of former Commissioners, Sacha Paul, Dr. Michelle Gallant, Jaqueline Collins, Myrna Phillips and former President Cameron Harvey, K.C. The consultation paper prepared and released in June 2022 was written by Cameron Harvey, K.C. and a significant portion of the research was undertaken by Mr. Harvey. The Commission is grateful for the work of the former Commission Board in moving this project forward.

The Commission gratefully acknowledges Mr. Gerald Jewers, the lawyers of Tradition Law LLP, and the Office of the Public Guardian and Trustee, for providing their insight on this topic, and lawyer Annika Friesen who proposed that the Commission consider this topic. Additionally, the Commission would like to thank Laura Balagus and Shawn Singh, former student externs from the Faculty of Law, University of Manitoba, for their research assistance.

Finally, the Commission wishes to acknowledge the thorough and extensive work of the British Columbia Law Institute in its 2007 *Report on the Parental Support Obligation in Section 90 of the Family Relations Act*, which greatly informed both the consultation paper for this project and this final report.

Please note that the information provided in this report and the recommendations of the Commission do not necessarily represent the views of those who have so generously assisted the Commission in this project.

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EXECUTIVE SUMMARY

Manitobans may be surprised to learn that, in most Canadian jurisdictions, including Manitoba, children have a statutory duty to provide financial support to their dependent parents in certain circumstances. This support obligation, known as “parents’ maintenance”, is established in Manitoba by *The Parents’ Maintenance Act* (the “*PMA*”)¹, a brief and little-known statute, which obligates financially-able children to provide support to their parents if, due to age, disease, or infirmity, a parent is unable to maintain themselves without assistance. The Act enables both dependent parents and, in certain circumstances, other persons and entities, on a dependent parent’s behalf, to commence support proceedings, and caps the amount that can be ordered to a parent to a weekly sum not exceeding \$20.00.

The *PMA* was first introduced in the province in 1933 and has changed very little since that time. The Act has been relied upon rarely by Manitobans in the past 90 years. Considering its infrequent utilization, the repeal of similar statutory maintenance obligations in other Canadian provinces in the last twenty years, and the incompatibility of statutory parents’ maintenance obligations with current Canadian economic and socio-cultural realities, the Manitoba Law Reform Commission chose to study the issue of whether Manitoba should repeal the *PMA*, or alternatively, seek to modernize it.

Ultimately, the Commission has concluded that the disproportionate cost of obtaining relief through the court process and changes in the familial, economic and social welfare states in Manitoba have rendered the *PMA* irrelevant, obsolete, and unsuitable for modern use. The Commission is of the opinion that these fundamental flaws cannot be remedied by revisions to the Act, and thus recommends the repeal of the *PMA* in its entirety.

¹ *The Parents’ Maintenance Act*, CCSM c P10 [*PMA*].

RÉSUMÉ

La population manitobaine sera peut-être surprise d'apprendre que dans la plupart des territoires et provinces du Canada, dont le Manitoba, les enfants ont, dans certaines circonstances, l'obligation légale de subvenir financièrement aux besoins de leurs parents à charge. Cette obligation d'entretien, appelée « obligation alimentaire des enfants », est établie au Manitoba par la Loi sur l'obligation alimentaire des enfants, un texte législatif court et peu connu qui oblige les enfants qui en ont les moyens à subvenir aux besoins de leurs parents lorsque les parents sont incapables de subvenir seuls à leurs propres besoins en raison de leur âge, d'une maladie ou d'une infirmité. La Loi permet aux deux parents à charge et, dans certaines circonstances, à d'autres personnes ou entités agissant au nom des parents à charge, d'intenter une action en justice pour obtenir une ordonnance à titre d'entretien et limite la somme pouvant être fixée par le tribunal à 20 \$ par semaine.

La Loi sur l'obligation alimentaire des enfants du Manitoba a très peu changé depuis son adoption en 1933, et rares sont les Manitobaines et Manitobains qui s'en sont prévalus au cours des quelque 90 années d'existence de la Loi. Compte tenu du faible recours à cette loi, de l'abrogation de dispositions d'entretien similaires par d'autres provinces canadiennes au cours des 20 dernières années et de l'incompatibilité des obligations légales de subvenir aux besoins de parents avec le contexte économique et socioculturel canadien actuel, la Commission de réforme du droit du Manitoba a entrepris d'étudier la question de savoir si le Manitoba devrait abroger ou moderniser la Loi sur l'obligation alimentaire des enfants.

La Commission a conclu que les coûts excessifs du recours à des processus judiciaires pour obtenir un soutien financier et l'évolution des structures familiales, de l'économie et des programmes d'aide sociale au Manitoba enlèvent toute la pertinence à la Loi sur l'obligation alimentaire des enfants et font de celle-ci une loi obsolète et inadaptée au monde moderne. La Commission juge que ces lacunes fondamentales ne peuvent être corrigées par une révision de la Loi et recommande donc que la Loi sur l'obligation alimentaire des enfants soit abrogée dans sa totalité.

CHAPTER 1: INTRODUCTION

It is a well-known tenet of law that parents have a statutory duty to provide reasonably for the support, maintenance, and education of their minor children by way of child support.² It is lesser known that in most Canadian jurisdictions, including Manitoba, children have a statutory duty to provide financial support to their parents, who by reason of age, disability, or infirmity are unable to maintain themselves.³ This support, known as “parents’ maintenance”, will be the focus of this report.

Manitoba’s parents’ maintenance legislation has its roots in the Poor Laws of England,⁴ English legislation enacted in the 16th century as a statutory response to the high rates of poverty in the country at that time.⁵ Under these laws, the “disabled poor” were first required to seek monetary relief from family members, including parents, children, or grandparents, before turning to the government for assistance. Familial payments were intended to “relieve local governments from the responsibility to provide for the poor, or to reimburse those governments for any provision made to the poor.”⁶

Although the parents’ maintenance component of the English Poor Laws was repealed in 1948 “as part of the legislation setting up the United Kingdom’s comprehensive post-World War II welfare state,”⁷ similar Canadian laws based on this English model persisted well beyond that time, with many, including Manitoba’s, still remaining to this day.

The current version of the *PMA*, which creates a statutory duty for financially-able children to provide monetary support to their dependent parents, is almost identical to the original Act⁸ enacted in 1933, with very few claims having been made under it in its 90 years of existence. In fact, since its enactment, there have been only a small handful of unreported cases and no reported decisions dealing with applications made under the *PMA*.

² In Manitoba, see *The Family Maintenance Act*, CCSM c F20, s 36, soon to be repealed and replaced by *The Family Law Act*, SM 2022, c 15, not yet in force.

³ Neither the child support duty nor the parents’ maintenance duty exist in common law. See Halsbury’s Laws of Canada (online), “Child Support: Right to Child Support” (III.1) at HC-76 “Statute-based right” (2018 Reissue). See also British Columbia Law Institute, *Report on the Parental Support Obligation in Section 90 of the Family Relations Act*, No 48, 2007 at 2 [“BCLI Report”], and Manitoba Law Reform Commission, Informal Report 11A, 1981 at 2 [Informal Report].

⁴ *An Act for the Reliefe of the Poore*, 39 Eliz. I, c. 3 (1597); *An Act for the Relief of the Poor*, 43 Eliz. I, c. 2 (1601).

⁵ See the note to section 1 of Manitoba’s initial *Parents’ Maintenance Act*, SM 1933, c 31 at Appendix B. See also Marion Allan, “Will You Still Need Me, Will You Still Feed Me, When I’m 94 - The Scary Demographic Reality of Aging Baby Boomers and Their Children’s Liability under Criminal and Family Law” (2008) 66:4 Advocate (Vancouver) 501 at 508.

⁶ BCLI Report *supra* note 3 at 4. As identified by the BCLI in their report, however, while this was the theory underlying the legislation, in practice, the direction that parents and children be assessed for support was very seldom enforced. See: S.G. Checkland & E.O.A. Checkland, eds., *The Poor Law Report of 1834* (Harmondsworth, UK: Penguin, 1974) at 115.

⁷ BCLI Report at 5. The legislation was repealed through the enactment of *National Assistance Act*, 1948 (UK), 11 & 12 Geo. VI, c 29, s 1.

⁸ The only substantive change is the repeal of s. 3(2) of the 1933 Act by *The Equal Rights Statutes Amendment Act*, SM 1985-86, c 47, s 34.

While parents' maintenance legislation existed in all provinces at one time, such laws have now been repealed in Alberta, British Columbia and Saskatchewan for various reasons that will be outlined in this report.

1.1 Reason for this Review

This review was commenced in response to the repeal of parents' maintenance provisions in other provinces, the obvious need for modernization of the legislation and to consider the utility of statutory parents' maintenance provisions generally.

As discussed in the 2007 report of the British Columbia Legal Institute ("BCLI") titled *Report on the Parental Support Obligation in Section 90 of the Family Relations Act* (the "BCLI Report")⁹, with the insignificant number of cases, one could plausibly claim that reform in this area is not a pressing concern.¹⁰ However, the Manitoba Law Reform Commission (the "Commission") agrees with the BCLI's position that this argument is unconvincing for two reasons.

First, "broad social trends" raise the possibility of increased reliance on parents' maintenance legislation in the future.¹¹ According to Statistics Canada's latest data, the proportion of Canada's population aged 65 and over is projected to rise from 18.5% in 2021 to between 21.6% and 29.8% in 2068.¹² The population aged 85 and older is one of the fastest-growing age groups, with a 12% increase from 2016.¹³ Population projections show that growth could peak between 2031 and 2036, as the first cohorts of baby boomers reach 85 years of age.¹⁴

While the percentage of seniors with low incomes has been declining in Canada,¹⁵ if the national population increases as anticipated and the proportion of Canadians and Manitobans over the age of 65 increases as well, it is likely that the number of seniors with low incomes will still increase.

In addition to Canada's changing demographics, as the population ages and continues to live longer,¹⁶ fewer Canadians belong to employment pension plans than in the past¹⁷ and public programs, including Old Age Security, the Guaranteed Income Supplement and the Canadian

⁹ BCLI Report, *supra* note 3.

¹⁰ *Ibid* at 15.

¹¹ *Ibid*.

¹² Statistics Canada, "Projections for Canada (2021-2068), Provinces and Territories" Released: August 22, 2022.

¹³ Statistics Canada, "A portrait of Canada's growing population aged 85 and older from the 2021 Census." Released: April 27, 2022.

¹⁴ *Ibid*.

¹⁵ Statistics Canada (2022) Table 11-10-0135-01 (Low Income Statistics by age, sex and economic family type). Released: 2022-03-23. This table shows that the rate of poverty amongst Canadians 65 years and older decreased from 7.1% in 2015 to 6.4% in 2020.

¹⁶ Statistics Canada (2019), Table 13-10-0114 Life expectancy at birth and at age 65 for Canada, provinces and territories 1980-2020.

¹⁷ Common Wealth for the Healthcare of Ontario Pension Plan, *The Value of a Good Pension: How to improve the efficiency of retirement savings in Canada*, (2018) Toronto: Health of Ontario Pension Plan at 5.

Pension Plan will soon be supporting a greater number of seniors for a longer period of time. This may result in a greater number of Canadians looking to children for financial support.

One commentator has compared this potential situation to the increase in spousal and child support applications that occurred in Canada following the liberalization of divorce laws at the end of the 1960s.¹⁸ They stated that: “[w]hile this comparison probably overstates the case, there should be no question of the desirability to act now, before demographic trends create even more pressure on [...] parental support law[s].”¹⁹

The second reason put forward by the BCLI as to why lack of use of parents’ maintenance laws should not excuse a lack of reform is a principled one:

It would be cold comfort for a parent or adult child who suffered at the hands of a defective law to be told that reform was not pursued because only a few people each year will suffer in this manner. It is for this reason that little-used laws which are determined only to hold out the prospect of mischief are usually considered to be among the most suitable candidates for law reform.²⁰

The mandate of the Commission, as set out in statute, includes the removal of provisions of the law that are outdated or inconsistent.²¹ Review of a little known and rarely utilized statute fits squarely within this mandate.

1.2 Consultation Process

The Commission set out in June 2022 to determine whether Manitoba should repeal the *PMA*, or alternatively, whether the Act could be improved. On June 9, 2022, the Commission released a consultation paper titled *The Parents’ Maintenance Act*²² (“the Consultation Paper”) and sought feedback on a series of issues.

The Consultation Paper was posted on the Commission’s website and on social media, circulated to the Commission’s mailing list, and sent directly to certain individuals and organizations with knowledge and expertise in relevant areas of the law. The feedback received assisted the Commission in concluding that the *PMA* should be repealed in its entirety.

¹⁸ BCLI Report, *supra* note 3 at 16-17, citing Freda Steel, “Financial Obligations Toward the Elderly: Filial Responsibility Laws,” in Margaret E. Hughes & E. Diane Pask, eds., *National Themes in Family Law: Selected Papers Presented to the 1987 Canadian Association of Law Teachers Family Law Conference* (Toronto: Carswell, 1988) 99 at 102–03 (“An analogous situation occurred with respect to married women in the 1970s and 1980s. The escalation in the divorce rate led to a substantial increase in the number of divorced women with dependent children. [...] That situation in turn led to a re-examination of the private and public means of support. [...] A similar situation may develop with respect to the aged in our population.”) [footnotes omitted].

¹⁹ *Ibid.*

²⁰ BCLI Report, *supra* note 3 at 17.

²¹ *The Law Reform Commission Act*, CCSM c L95, s 6(a).

²² Manitoba Law Reform Commission, *The Parents’ Maintenance Act*, Consultation Paper, 2022 [Consultation Paper].

Chapter 2 of this report provides background information on the history and current legal landscape of parents' maintenance in Manitoba and Canada, including a brief overview of the legislative changes and reform efforts in other jurisdictions. Chapter 3 explores the major arguments for and against parental support laws generally, and the Commission's ultimate recommendation for reform.

CHAPTER 2: BACKGROUND

2.1 Overview of Manitoba's Parents' Maintenance Legislation

The current *Parents' Maintenance Act* of Manitoba provides that a child is “liable for the support of his or her dependent parents if it appears that the son or daughter has sufficient means to provide for the parent and to the extent that it so appears, having regard to the whole circumstances of the case.”²³ Section 2 establishes when a parent is deemed “dependent” for the purpose of determining whether parents’ maintenance shall be ordered. It states that a parent is deemed dependent when “by reason of age, disease or infirmity, [he or she] is unable to maintain himself or herself without assistance.”²⁴ In determining whether to order parents’ maintenance, the court must deduce whether there is sufficient evidence that the parent is dependent and that the son or daughter has sufficient means to provide for the parent, with regard to “the whole circumstances of the case.”²⁵ The Act caps the amount that can be ordered to a parent to a weekly sum not exceeding \$20.00, and that order can be with or without costs.²⁶ Additionally, the Act establishes that proceedings may be commenced by persons and entities other than the parent in certain circumstances.²⁷

The remainder of the brief statute sets out general procedural matters, such as circumstances in which an order may be made, including when a parent is being cared for by another individual or in an institutionalized setting, and how an order may be enforced. The full text of the current version of the Act is appended as Appendix “A”.

2.2 Attempts to Reform the Parents' Maintenance Law in Manitoba

As described in the previous chapter, Manitoba’s *PMA* is rooted in old English law. Consistent with the reform efforts taking place elsewhere around Canada in the 1970s and 80s, in 1980, the Government of Manitoba attempted to reform its parents’ maintenance law with the introduction of Bill 77, *The Family Law Amendment Act*.²⁸ Among other things, this bill would have consolidated Manitoba’s parents’ maintenance and spousal and child support legislation by repealing the *PMA* and adding provisions respecting parents’ maintenance to a new Part III of *The Family Maintenance Act* (the “*FMA*”).²⁹ As a result of concerns raised in Standing Committee,

²³ *PMA*, *supra* note 7, s 1.

²⁴ *Ibid*, at s 2.

²⁵ *Ibid*, at s 3.

²⁶ *Ibid*.

²⁷ Section 10 provides that: [p]roceedings may be taken under this Act (a) by the minister charged with the administration of this Act in the case of a parent who is in need, or is a patient or resident in a hospital, a home for the aged and infirm, house of refuge, a psychiatric facility as defined in *The Mental Health Act*, or a developmental centre as defined in *The Vulnerable Persons Living with a Mental Disability Act*; or (b) by the governing body of (i) any hospital, home, house, psychiatric facility or developmental centre to which reference is made in clause (a), or (ii) any other charitable institution in which the dependant is a patient or resident; or (c) by any municipality in which the person entitled to maintenance under this Act resides.

²⁸ Bill 77, *The Family Law Amendment Act being An Act to amend The Queen's Bench Act, The Family Maintenance Act, The Judgments Act, The Marital Property Act and The Real Property Act and to repeal The Parents' Maintenance Act*, 4th Sess, 31st Leg, Manitoba, 1980 (first reading June 2, 1980)[Bill 77].

²⁹ *Ibid*.

however, including concerns that the bill would further dependency in the adult population of Manitoba, that it would be divisive of the family, that it would jeopardize individual entitlement to social allowances, and that it would present administrative difficulties, the Attorney General withdrew the sections of Bill 77 establishing parents' maintenance in the *FMA*, leaving the *PMA* intact.³⁰ Critics of the bill seemed unconcerned that the *PMA* would continue to exist despite the failure of this bill, given that they characterized the *PMA* as a virtually inoperative piece of legislation of little relevance in the province.³¹

Subsequently, the Attorney General requested that the Commission consider the *PMA*, resulting in the Commission publishing an Informal Report on the topic in 1981 (the "Informal Report").³² That report contained 5 recommendations, none of which were enacted.

2.3 History of Parents' Maintenance Legislation in Canada

The enactment of parents' maintenance legislation in Canada came in two major waves. The first in the 1920s, presumably as a reaction to the economic recession following World War I, comprising Acts enacted by British Columbia, Alberta, Saskatchewan, and Ontario.³³ The second came in the 1930s, including Acts passed by Manitoba,³⁴ New Brunswick, Nova Scotia, Prince Edward Island, and the Northwest Territories.³⁵ Both Newfoundland and Quebec enacted parents' maintenance laws prior to these two waves in the nineteenth century, while no such legislation was enacted in Yukon until years later in the 1950s.³⁶

Substantive changes were made to Canadian parents' maintenance legislation in the 1970s and 1980s.³⁷ Following the enactment of the *Family Law Reform Act*³⁸ in Ontario in 1978, which consolidated Ontario's parents' maintenance and spousal and child support legislation, nearly all of the other Canadian provinces and territories followed suit. Each province and territory except Alberta, Saskatchewan and Manitoba, consolidated their respective parents' maintenance laws and relevant family law statutes, so that parents' maintenance is no longer treated as a distinctive issue

³⁰ "Bill 77, *The Family Law Amendment Act*", Legislative Assembly of Manitoba, Standing Committee on Law Amendments, (14 July 1980) at 175-180 and 189-195.

³¹ *Ibid.*

³² Informal Report, *supra* note 3.

³³ British Columbia: *Parents' Maintenance Act*, SBC 1922, c 57; Alberta: *The Maintenance Order Act*, SA 1921, c 13; Saskatchewan: *The Parents Maintenance Act*, 1923, SS 1923, c 53; and Ontario: *The Parents Maintenance Act*, 1921, SO 1921, c 52.

³⁴ 1933 Act, *supra* note 4. See Appendix B.

³⁵ New Brunswick: *The Parents Maintenance Act*, SNB.1936, c 50; Nova Scotia: *The Parents Maintenance Act*, SNS 1933, c 14; Prince Edward Island: *The Parents' Maintenance Act of Prince Edward Island*, SPEI 1933, c 12; and Northwest Territories: *Maintenance Act* (assented to 7 March 1938).

³⁶ BCLI Report, *supra* note 3 at 5 (note 27).

³⁷ For an extensive review of the changes to parents' maintenance laws during this time period, see: Moira J. Moore, "Identical Origins, Divergent Paths: Filial Responsibility Laws in Canada and the United States". (Masters of Laws Thesis, Queen's University, Faculty of Law, 2016).

³⁸ RSO 1980, c 152.

but as another support obligation to be dealt with in the context of family law.³⁹ With Alberta and Saskatchewan having now both repealed their respective parental support laws, Manitoba is the only province left in Canada with a standalone parents' maintenance statute.

Whether in separate statutes or contained in broad family law legislation, parents' maintenance provisions across Canada have been relied upon less frequently in recent years. A review of the jurisprudence indicates that almost all of the litigated parents' maintenance claims since 2000 have been made in Ontario under s.32 of the *Family Law Act*.⁴⁰ Since that time, one petitioner has been successful in obtaining a support order.⁴¹ Additionally, the British Columbia Provincial Court found an adult child liable for parents' maintenance in one instance but did not order support given that the child was not in the financial position to make support payments.⁴² The Commission is not aware of any other successful claims for parents' maintenance in Canada since 2000.

2.4 Repeal of Parents' Maintenance Legislation in Canada

While parents' maintenance legislation like the *PMA* existed in all provinces at one time in one form or another, such laws have now been repealed in Alberta, British Columbia, and Saskatchewan.

In Alberta, parents' maintenance was addressed in the province's *Maintenance Order Act*,⁴³ which indicated that the husband, wife, father, mother *or child* of "an old, blind, lame, mentally deficient or impotent person" or "any other destitute person who [was] not able to work", was liable to provide maintenance for that person."⁴⁴ Like the *PMA*, an order for support was only to be granted under this Act to a person who was unable to maintain themselves,⁴⁵ and was not to be made unless

³⁹ See e.g. *Family Law Act*, RSO 1990, c F.3, s 32; *Family Law Act*, SNB 2020, c 23, ss 16-19; *Family Law Act*, RSPEI 1988, C F-2.1, ss 32-33; *Family Law Act*, RSNL 1990, c F-2, s 38; *Family Property and Support Act*, RSY 2002, c 83, s 33; *Family Law Act*, SNWT 1997, c 18, ss 17-18; *Family Law Act*, SNWT (NU) 1997, c 18, ss 17-18.

⁴⁰ Since 2000, there have been five reported decisions where a claim for parents' maintenance has been made in Ontario: *Weidenfeld v. Weidenfeld*, 2022 ONCA 860 (claim dismissed on procedural grounds); *Stravino v. Buttinelli*, 2018 ONSC 1041 (*Stravino*) (claim successful); *L.F.D. v. X.*, 2016 ONCJ 878 (CanLII) (claim dismissed as the mother did not demonstrate need and did not provide care and support), *Daskalov c. Daskalov*, 2007, 2007 CanLII 37467 (ON SC), 42 RFL (6th) 134 (claim dismissed); *Laidler v. Laidler*, 2012 ONSC 749 (claim dismissed). Claims for parents' maintenance were also considered outside of Ontario since 2020 in: *ZR v RAV*, 2020 NBQB 156 (claim dismissed on motion for summary judgment); *Anderson v. Anderson*, 2013 BCSC 129 (claim dismissed); *Dr. VA Snow Centre Inc. v. Palmer*, [2001] NBJ No. 71 (claim dismissed on procedural grounds); and *AG(S) v RG(M)*, 2000 BCPC 45 (CanLII) (son liable to pay maintenance but without the financial means to pay).

⁴¹ In *Stravino*, *supra* note 40, the ONSC ordered the petitioner's two adult children to each make monthly support payments to their father of \$350.00.

⁴² *AG(S) v RG(M)*, 2000 BCPC 45.

⁴³ RSA 2000, c M-2.

⁴⁴ *Ibid*, s 2(1). "Maintenance" included "adequate food, clothing, medical aid and lodging."

⁴⁵ *Ibid*, s 2(3).

the court was satisfied that the person against whom the order was sought was able to provide the maintenance.⁴⁶

The *Maintenance Order Act* was repealed in 2003 by Bill 45, the *Family Law Act*.⁴⁷ Bill 45 transferred the provisions of the *Maintenance Order Act* to the *Family Law Act*,⁴⁸ removing the relevant provisions pertaining to parents' maintenance. This was done "primarily in order to achieve greater consistency with [the Alberta government's] policy of encouraging financial independence of disabled adults."⁴⁹ In addition, s. 129(c) of the *Family Law Act* repealed the *Maintenance Order Act* entirely, therefore eliminating the province's parental maintenance provisions.

In British Columbia, parents' maintenance was initially established in the *Parents' Maintenance Act* of 1922 and subsequently in Part V of the *Family Relations Act*.⁵⁰ When the *Family Relations Act* was amended in 1978, parents' maintenance was brought under the broad umbrella of family law support obligations, including those owed by a parent to a child, or a spouse to another spouse. Under s. 58(1) of the *Family Relations Act*,⁵¹ and its eventual successor, s. 90,⁵² an adult child was liable to maintain and support their parent if the parent was dependent on the child by reason of age, illness, infirmity, or economic circumstances. The degree of support owed by a child to a parent would depend on the responsibilities and liabilities and the reasonable needs of the child.⁵³

In 2011, when the *Family Law Act*⁵⁴ repealed and replaced the *Family Relations Act*, s. 90 was not continued in the new legislation or any other Act in the province. The elimination of parental maintenance by the British Columbia legislature reflected the recommendations contained in both the BCLI Report and the Ministry of the Attorney General's "White Paper on *Family Relations Act* Reform: Proposals for a New *Family Law Act*" (the "White Paper").⁵⁵ Both the BCLI Report and the White Paper explained that s. 90 ought not to be carried forward into a new statute, because:

- Section 90 [was] rarely used, and orders made under it [were] typically for very small amounts, too little to meet the financial needs of an elderly parent.
- The section create[d] more problems than it solve[d]. The cost for an elderly parent to sue an adult child for parental support could often exceed the amount of support

⁴⁶ *Ibid*, at s 4(2).

⁴⁷ SA 2003, c F-4.5.

⁴⁸ *Ibid* at Part 3, "Support Obligations", Division 3.

⁴⁹ Alberta Legislative Assembly, Hansard, November 19, 2003, 1755, Minister of Justice; See also Alberta Law Reform Institute Report No. 93, 2004, Family Law Project, Final Report, 23 and 32.

⁵⁰ SBC 1972, c 20.

⁵¹ SBC 1978, c 20.

⁵² RSBC 1996, c 128.

⁵³ *Ibid*, at s 90(2).

⁵⁴ SBC 2011, c 25.

⁵⁵ ⁵⁵ British Columbia, Ministry of Attorney General, Justice Services Branch, Civil Policy and Legislation Office, *White Paper on Family Relations Act Reform: Proposals for a new Family Law Act* (July 2010) at 130.

ordered, and such litigation [was] likely to damage the relationship between adult child and parent [... and]

- There [were] a wide variety of programs that address[ed] issues of seniors' poverty more effectively than parental support, including the Canada Pension Plan, the Old Age Security Program and subsidized housing.⁵⁶

Similarly, in 2018, the *Miscellaneous Statutes Repeal and Amendment Act*⁵⁷ repealed the *Parents' Maintenance Act*⁵⁸ of Saskatchewan, which until that point in time, created a liability in children to support their dependent parents where the parent was unable to maintain themselves, and where the child had sufficient means to provide said support.⁵⁹ Like the *PMA*, Saskatchewan's *Parents' Maintenance Act* capped the amount of support that could be ordered under the Act to a weekly sum not exceeding \$20.00, which could have been with or without costs.⁶⁰ The Saskatchewan Act was ultimately repealed on the basis that the legislation was "outdated and obsolete."⁶¹

⁵⁶ *Ibid* at 130.

⁵⁷ SS 2018, c 19, s. 12.

⁵⁸ RSS 1978, c P-1.

⁵⁹ *Ibid*, at ss 2, 3.

⁶⁰ *Ibid*, at s 3(1).

⁶¹ "Bill 95, *The Miscellaneous Statutes Repeal and Amendment Act, 2017*" 2nd reading, Legislative Assembly of Saskatchewan *Legislative Debates and Proceedings*, 59, No 15A (21 November 2017) at 3008 (Hon Mr. Morgan).

CHAPTER 3: POTENTIAL REFORM IN MANITOBA

3.1 Arguments Supporting a *Reformed PMA*

Proponents of parental support legislation like the *PMA* argue that, with certain adjustments and some modernization, these laws could benefit dependent parents, their families and the public. For instance, it is said that for some, these laws may “impart a salutary moral lesson or example of proper family behaviour” where “natural generosity is lacking.”⁶² This, advocates of parental support laws contend, can serve to strengthen the bonds between family members. Another argument in support of parents’ maintenance legislation is that they may enhance and supplement existing government programs intended to meet the needs of the poor, which cannot on their own, solve the problem of poverty.⁶³ Proponents argue that by serving as an additional avenue for recourse, these laws may save poor older adults who might not otherwise be entitled to government supports from “falling into abject poverty.”⁶⁴ Finally, harkening back to the original intentions of parents’ maintenance in the English Poor Laws, it is argued that these laws may minimize public expenditures by government by “shifting the costs of welfare to children or by deterring the destitute from accepting government benefits.”⁶⁵

3.2 Arguments Supporting the *Repeal of the PMA*

The Commission acknowledges that there may be merit to the abovementioned arguments. However, it has ultimately concluded that the current economic and socio-cultural realities of Canadian families, and the expansion of the social welfare state in Canada and Manitoba, have rendered the *PMA* obsolete and no longer suitable for modern use. Further, it finds that the various disadvantages of parents’ maintenance legislation clearly outweigh any potential benefits. The following sections summarize the key arguments against parents’ maintenance legislation which justify the repeal of the *PMA*.

a) *Damage to Family Relationships*

Commentators weighing in on the utility and appropriateness of parents’ maintenance legislation have argued that the statutes will “weaken the family unit by creating family dissension.”⁶⁶ For instance, critics like Shannon Frank Edelstone have explained:

Parents are loath to sue their children [...] Parents do not want to burden their children, and adult children resent having to support their parents. Moreover, formal requirements may alter current family understandings. Adult children now providing in-kind support, such as

⁶² Terrance A. Kline, "A Rational Role for Filial Responsibility Laws in Modern Society"(1992) 26:3 Fam LQ 195 at 207.

⁶³ *Ibid* at 208.

⁶⁴ BCLI Report, *supra* note 3 at 19. See also Robin M. Jacobson, "Americana Healthcare Center v. Randall: The Renaissance of Filial Responsibility" (1995) 40:3 SD L Rev 518 at 541.

⁶⁵ Kline, *supra* note 60 at 204.

⁶⁶ Shannon Frank Edelstone, "Filial Responsibility: Can the Legal Duty to Support Our Parents be Effectively Enforced" (2002) 36:3 Fam LQ 501 at 506.

grocery shopping, cooking and transportation, may be discouraged from doing so if the in-kind support fails to satisfy statutory requirements.⁶⁷

In their report, the BCLI also highlights the fact that while successful parental support claims may result in monetary gains to dependent parents, these gains are generally short-term, and may lead to a withdrawal of other important caregiving services from family members.⁶⁸ Further, it highlights the negative impacts that litigation may have on a family unit:

Taking disputes to court shines a harsh light on private matters. It exposes family finances, relationships, and arguments to public scrutiny. This scrutiny, and the adversarial nature of litigation, can dissolve whatever bonds remain among the members of the family.⁶⁹

Similarly, Christa Bracci has argued that “rather than strengthening the family to its task of caring for the elderly, [parents’ maintenance legislation] can actually be a destructive force in the lives of family members.”⁷⁰ In support of her view that parental support claims can have “devastating” effects on families, she also touches on the impacts of litigation, referencing the decision in *Godwin v. Bolsco*, one of the few Canadian decisions addressing a claim of parental support:

Before [the claim] was launched, [Godwin] had not discussed bringing this suit, nor had she requested support from her children. From the time they learned of the action, their attitude to their mother changed entirely. Whereas before, they had some interest in her welfare, now they disdained her. It was as if shock waves went through the respondents very beings and their relationships with each other. Stephen [the eldest child] called the application a financial assault and said it led to a final divorce between himself and his mother.⁷¹

Feedback received in response to the Consultation Paper supported the position that parents’ maintenance laws may do more harm than good when the impact on the familial relationship is considered. Specifically, respondents raised the following concerns:

- Adult children may potentially withdraw or reduce other caregiving services that they already provide to a parent voluntarily if they are required to provide financial support. The provision of services and care may be more valuable than the financial support.
- Parents’ maintenance laws may negatively impact the relationships of adult siblings. Specifically, children of dependent parents may come to resent each other if one is made to provide more financial support to the parent than the other, or if one is providing other forms of care and support to a dependent parent in addition to financial support where another is not. Sibling conflicts may be exacerbated where one child is a personal representative for the parent (i.e. attorney under a power of attorney) and, in acting in

⁶⁷ *Ibid* [footnotes omitted].

⁶⁸ BCLI Report, *supra* note 3 at 28.

⁶⁹ *Ibid* at 27.

⁷⁰ Christa Bracci, "Ties that Bind: Ontario's Filial Responsibility Law" (2000) 17:2 Can J Fam L 455 at 500.

⁷¹ *Ibid* at 495, citing *Godwin v Bolsco*, [1993] OJ No. 297 (Prov. Div), (1993) 45 RFL (3d) 310 at para 2.9 [footnotes omitted].

accordance with their obligation to act in the best interests of the parent donor, is put in the position of making a claim against other siblings for maintenance.

- Parents' maintenance legislation may lead to the abuse of older parents. Children may potentially retaliate against a parent for bringing a support claim in the form of elder abuse. Additionally, the financial pressure placed on a child who is made to support a parent may simply "ripen the situation for elder abuse."

This last observation matches Bracci's argument that "[i]ncidences of elder abuse from children tend to arise in cases where children feel pressures in their own lives, which is further exacerbated by the pressure of caring or providing for an aging parent. Placing more financial strain on children caregivers may lead to more instances of elder abuse."⁷²

While one of the major arguments made by proponents of parents' maintenance legislation is that these laws can enforce a moral duty owed by a child to a parent, thus encouraging familial health and harmony,⁷³ the Commission concludes that parents' support obligations are likely more harmful to family relations than beneficial for the aforementioned reasons.

b) *Perpetuation of Financial Strain on the Next Generation*

In addition to harming familial relationships, the Commission has considered the argument that parents' maintenance legislation perpetuates poverty by "forc[ing] a younger generation to give up its resources and thus its ability to move beyond subsistence living."⁷⁴ Christa Bracci explains:

Where even small amounts of excess income in a low-income household might previously be set against raising the standard of living in that household [...] this money might be seen as money over and above the "needs" of the child, based on an already low standard of living, and thus available for support to the elder. Burnyeat J. echoes this concern: "[r]equiring children to include support of parents as part of their own monthly expenditures may well have the effect of perpetuating poverty if the child is not in a position to better their financial situation by allowing their efforts to be concentrated on improving their own situation."⁷⁵

This argument was reiterated during consultations as one respondent expressed concern that parental support laws may cause low-income or middle-income families to further distribute their limited wealth among the family, preventing them from building their own nest egg and preparing sufficiently for their own retirement in later years.

A second argument raised during consultations was that parents' maintenance legislation may perpetuate poverty or financial strain among particular demographics, thus preserving existing class structures. Parental support laws have even been referred to as discriminatory by some critics

⁷² *Ibid.*

⁷³ Kline, *supra* note 62 at 203.

⁷⁴ Edelstone, *supra* note 66 at 507.

⁷⁵ Bracci, *supra* note 70 at 496 – 497 [footnotes omitted].

on the basis of economic status.⁷⁶ It is argued that if someone is born to wealthy parents, they will likely never be called upon to support those parents, while on the flip side, the economic circumstances of being poor would be predisposing to the additional penalization of having to provide for dependent elders.

These issues may become even more prevalent as the life expectancy and population of older adults increases, and as the structure of families evolve. Seymour Moskowitz explains:

[...] critics contend that the burden of care also grows ever heavier as the increasing numbers and the longevity of the aged means having to care for very old, frail relatives. More and more adult children in their forties, fifties, and sixties will face the concern, physical labors, and expense of caring for parents that can strain the resources of individuals and marriages. Compounding these concerns are demographic and structural trends. The average American family in 1910 had 4.5 children; in 1960, it had only 2.5 children; and it has even fewer today. As the number of children decreases, each adult child's proportionate share of the financial and emotional burden increases.⁷⁷

The modernization of the family unit enhances the burden of parents' maintenance. As noted in the BCLI Report, when parental support laws were first enacted, families were typically much larger, life expectancy was much lower, and support was a "natural extension of society's basic economic unit—the family farm."⁷⁸ This asset would eventually be relinquished by parents to their adult children when the parents were no longer physically able to work, and in exchange, an informal support obligation would be "parceled out among a number of adult children reaching their productive and earning peak in middle age."⁷⁹ Today, as noted by the BCLI, with families being smaller and less economically integrated, and with parents living longer, there are fewer children to share the support burden for a longer period of time and it is no longer as common that there be a major asset to pass on.⁸⁰

c) *Existing Benefits*

One explanation that is offered for why parents' maintenance legislation is relied upon so infrequently in Canada is the enhanced level of government supports which are now available to individuals over the age of 65. The availability of these supports is also cited as a reason why parents' maintenance legislation like the *PMA* is unnecessary, and should be repealed.⁸¹ During consultations, the argument was made that the *PMA* should be repealed because Manitoba already offers government benefits to older adults that ensure that they have a basic level of income. These

⁷⁶ *Kris Bulcroft et al, "Filial Responsibility Laws: Issues and State Statutes"* (1989) 11:3 *Research on Aging* 267 at 390.

⁷⁷ Seymour Moskowitz, "Adult Children and Indigent Parents: Intergenerational Responsibilities in International Perspective" (2002) 86:3 *Marq L Rev* 401 at 436 [footnotes omitted].

⁷⁸ BCLI Report, *supra* note 3 at 26.

⁷⁹ *Ibid.*

⁸⁰ *Ibid.*

⁸¹ Heather Gardiner, "My parents' keeper", *Canadian Lawyer* (6 March 2011), online: <www.canadianlawyermag.com/news/general/my-parents-keeper/268141>.

benefits include those offered through the Employment and Income Assistance Program, Old Age Security, and the Guaranteed Income Supplement.

The Employment and Income Assistance Program (“EIA”) “provides financial help to Manitobans who have no other way to support themselves or their families.”⁸² In order to be eligible for EIA, you must be living in Manitoba and in financial need, meaning that “the total cost of your or your family’s monthly basic needs and housing costs are more than your total financial resources.”⁸³ The program provides money to Manitobans in financial need for things like “food, clothing, personal and household needs, basic dental, optical and prescription drugs, health-related supplies or equipment not provided by other programs”, as well as shelter and utility costs like rent and mortgage payments, through its Rent Assist program.⁸⁴ It also provides supports to individuals in financial need who are able to work by assisting them in obtaining employment.

Old Age Security is a monthly benefit provided to all Canadian residents and citizens aged 65 and older who have resided in the country for at least 10 years, whether they have worked or not.⁸⁵

Finally, the Guaranteed Income Supplement is an additional monthly benefit which is available to “low-income Old Age Security pensioners” who require more assistance than what the Old Age Security pension can offer on its own.⁸⁶

The availability of these and other similar benefits, it is argued, negates the need for the type of maintenance contemplated by the *PMA* for dependent parents who are unable to maintain themselves without assistance.

d) *Practical Realities of Litigation at Odds with Goals of Legislation*

As stated in the BCLI Report, “litigation is an unusual way to combat poverty.”⁸⁷ Over the last decade, as more attention has been drawn to the challenges of accessing justice in the Canadian legal system, a major gap has been recognized between what legal services cost and what the vast majority of Canadians can afford.⁸⁸ Not only do the majority of Canadians lack sufficient resources to obtain legal counsel, but they generally do not have access to safety net programs like subsidized legal aid, that are established by the government.⁸⁹ Considering the pervasiveness of this problem in the family and civil law systems for average Canadian income-earners, one wonders about the

⁸² “Employment and Income Assistance”, online: *Government of Manitoba* <www.gov.mb.ca/fs/eia/eia_general.html>.

⁸³ *Ibid.*

⁸⁴ *Ibid.*

⁸⁵ “Old Age Security”, online: *Government of Canada* <www.canada.ca/en/services/benefits/publicpensions/cpp/old-age-security/eligibility.html>.

⁸⁶ “Guaranteed Income Supplement”, online: *Government of Canada* <www.canada.ca/en/services/benefits/publicpensions/cpp/old-age-security/guaranteed-income-supplement.html>.

⁸⁷ BCLI Report, *supra* note 3 at 24.

⁸⁸ Canada, Action Committee on Access to Justice in Civil and Family Matters, *Access to Civil & Family Justice: A Roadmap for Change* (Report), (Ottawa: Action Committee on Access to Civil and Family Matters, October 2013).

⁸⁹ *Ibid* at 29.

chances of success of an indigent and dependent parent to enforce their parental support rights under legislation like the *PMA*.

The high cost of litigation relative to a potential support award under parents' maintenance legislation is one of the major arguments made by critics against parents' maintenance legislation. If, somehow, a destitute parent were able to find the means to hire a lawyer, or if they engaged a lawyer on a *pro bono* basis, it is likely that at the end of the day, "more time and energy [would be] spent by the lawyers litigating this than there is ever going to be successfully recovered."⁹⁰ For example, in *Anderson v. Anderson*,⁹¹ a decade-long case and one of few Canadian cases in which a claim for parental support was considered by the courts, the plaintiff's lawyer, who had represented Ms. Anderson for two and a half years through the Access Pro Bono Society of British Columbia, was ultimately forced to withdraw from the file. He advised that after five different trial dates, adjournments, and related travel expenses, he had spent more than twice what the pro bono society provides and could not continue to devote resources to the case.⁹²

What is more likely is that a dependent parent seeking to enforce their rights under legislation like the *PMA* would be required to do so as a self-represented litigant, as Ms. Anderson was ultimately required to do. This would be particularly challenging, given that the ground upon which their entitlement to support rests – their dependency on others to maintain themselves – necessarily means that they would be required to navigate the legal system "at a time of financial, and possibly physical or psychological, distress."⁹³ This catch-22 scenario was also referenced by a respondent to the Consultation Paper who agreed that parents meeting the qualifications for maintenance under the *PMA* are unlikely to have the financial resources to retain counsel to assist them with their claim. Further, due to their age, illness or infirmity (a statutory requirement), they are unlikely to be able to adequately understand the legal process such that they can represent themselves without legal counsel.⁹⁴ It is noted that the process for varying support under parents' maintenance legislation, and the general pace of the legal system, pose additional challenges:

Even if an initial support order is obtained, a change of circumstance may arise in the financial needs of parents or the ability to pay of children, causing the family to re-enter the litigation process, further stress[ing] and deplet[ing] [...] resources. The enforcement issues that arise in the context of child support or spousal support claims would be just as present, if not more pervasive in the context of parental support. As dependent parents continue to age, it will only get more difficult and cumbersome for them to engage with the legal system. The court system is also not reactive enough to deal with the immediacy of changing support needs of aging parents.⁹⁵

⁹⁰ Gardiner, *supra* note 82 at 4-5.

⁹¹ [2000] BCJ No. 2694.

⁹² Gardiner, *supra* note 82 at 4-5.

⁹³ BCLI Report, *supra* note 3 at 25.

⁹⁴ *Ibid.*

⁹⁵ *Ibid.*

e) *Implementation Costs, Administrative Burdens, and Court Backlog*

During the consultation phase, the Commission considered the impact that reforming the *PMA* may have on court resources. One respondent to the Commission’s Consultation Paper notes that reforming the Act to increase the amount of maintenance available to a successful party may result in an influx of support applications into an already backlogged court system. Such applications may be filed by financially dependent parents on behalf of themselves, or by their personal representatives obligated to explore this avenue of support for donors to uphold their duty to act in the donor’s best interests. The increased stress on the system and enhanced costs may outweigh any government savings that the *PMA* could hypothetically produce.

Similarly, the BCLI argues:

It is immediately apparent that effective parental support laws would require investments in public institutions supporting the litigation process, such as legal aid and maintenance enforcement. Any savings from public welfare programs, then, would be counterbalanced by government funding of these institutions. To the extent that such investments are not made, then the practical utility of parental support would be compromised. Dependent parents would be faced with a choice between foregoing their rights under the legislation and commencing proceedings as a self-represented litigant. A rise in self-represented litigants would likely impose additional costs and delays across the civil litigation system.⁹⁶

3.3 Conclusion and Recommendation

It is clear from the lack of court applications being made pursuant to the legislation that the *PMA* in its current form does not provide an adequate or appropriate form of relief for Manitobans in need of financial support.

In considering the foregoing arguments for and against parents’ maintenance laws, in addition to the feedback received during the consultation phase of this project, the Commission concludes that the principles underlying parental maintenance legislation are not compatible with our modern society and judicial system. Amending the legislation would not remedy the underlying inability of the legislation to address the societal ill it attempts to respond to- that being the impoverishment of older adults. Therefore, the Commission recommends that the *PMA* be repealed in its entirety.

RECOMMENDATION 1: *The Parents’ Maintenance Act* should be repealed.

⁹⁶ BCLI Report, *supra* note 3 at 30 [footnotes omitted].

In the Consultation Paper, the Commission posed six other questions requesting feedback on how the statute ought to be reformed should it not be repealed. The questions were:

- whether the Act ought to be amended to restrict the maintenance obligation to children who have reached the age of majority;
- whether the Act should define “parent” for the purpose of interpreting the Act and, if so, whether the definition should be consistent with the definition in *The Family Maintenance Act*. Similarly, whether “parent” ought to include different types of parents, including biological, adoptive, step and foster parents as well as those in the position of *loco parentis*;
- whether section 2 of the Act should be amended to clarify the level at which a parent must be unable to *maintain* him or herself without assistance;
- whether section 1 of the Act should be amended to provide additional guidance on whether both past and current circumstances should be considered when determining whether maintenance ought to be ordered;
- whether to amend the maximum amount of maintenance and, if so, whether it should be prescribed by regulation or set in some other way; and
- whether the Act should be amended to allow for judicial overriding of an agreement by which a parent releases a son or daughter from liability for maintenance or to accept a specified amount of periodic maintenance.⁹⁷

Given that the Commission is strongly recommending repeal of the Act as a whole, it has chosen to not make recommendations for reform of the current Act.

⁹⁷ Consultation Paper, *supra* note 22 at 23.

This is a report pursuant to section 15 of *The Law Reform Commission Act*, C.C.S.M. c. L95, signed this 16th day of March, 2023.

“Original Signed by”

Grant M. Driedger, President

“Original Signed by”

Janesca Kydd, Commissioner

“Original Signed by”

The Honourable Madam Justice Shawn
D. Greenberg, Commissioner

“Original Signed by”

Marc E. Marion, Commissioner

“Original Signed by”

The Honourable Madam Justice Jennifer
A. Pfuetzner, Commissioner

“Original Signed by”

Dr. Laura Reimer, Commissioner

“Original Signed by”

Dr. Mary Shariff, Commissioner

CHAPTER 4: RECOMMENDATION FOR REFORM

RECOMMENDATION 1: *The Parents' Maintenance Act* should be repealed (page 23).

APPENDIX A: *The Parents' Maintenance Act*, CCSM c P-10

HER MAJESTY, by and with the advice and consent of the Legislative Assembly of Manitoba, enacts as follows:

Liability of child

1 A son or daughter is liable for the support of his or her dependent parents if it appears that the son or daughter has sufficient means to provide for the parent and to the extent that it so appears, having regard to the whole circumstances of the case.

When parent deemed dependent

2 A parent who, by reason of age, disease or infirmity, is unable to maintain himself or herself without assistance shall be deemed to be dependent.

Summons and order of family court judge

3 A dependent parent, or any other person on his or her behalf, may summon a son or daughter of the parent before a judge of the Provincial Court (Family Division) or of The Family Division of the Court of Queen's Bench, who, upon proof of service of the summons, and whether or not the son or daughter appears, and upon sufficient evidence being adduced that the parent is dependent and that the son or daughter has sufficient means to provide for the parent, may, having regard to the whole circumstances of the case, order that the son or daughter pay for the support of the parent to the person mentioned in the order, a weekly sum of money not exceeding \$20., with or without costs.

Order where parent maintained by another

4 An order may be made under this Act, whether or not the dependent parent is being cared for by another or in a sanatorium, home, or hospital, mental health clinic, psychiatric facility as defined in *The Mental Health Act*, developmental centre as defined in *The Vulnerable Persons Living with a Mental Disability Act*, or in any charitable institution.

Summoning more than one child

5(1) Where there are several children a judge may require the summons to be served upon others not already summoned and may order such of them as ought, in the judge's opinion, to contribute to the support of the parent, to share in the payments ordered, and shall apportion the sum to be paid among the children, having due regard to their ability and obligations.

Time limit

5(2) The judge may, in any order, set a time limit, not exceeding 30 days, within which each sum of money ordered to be paid and the costs are to be paid.

Varying order or re-hearing application

6 Upon proof that the circumstances of any of the parties have changed since the making of an order, the order may be varied, or at the instance of any such party on notice, an

application may at any time be re-heard, and any order may be confirmed, rescinded, or varied by a judge.

Enforcement under Family Maintenance Act

7 An order made under this Act may be enforced under Part VI (Enforcement of Maintenance Orders) of *The Family Maintenance Act*.

8 and 9 [Repealed]

Proceedings by others to enforce maintenance

10 Proceedings may be taken under this Act

- (a) by the minister charged with the administration of this Act in the case of a parent who is in need, or is a patient or resident in a hospital, a home for the aged and infirm, house of refuge, a psychiatric facility as defined in *The Mental Health Act*, or a developmental centre as defined in *The Vulnerable Persons Living with a Mental Disability Act*; or
- (b) by the governing body of
 - (i) any hospital, home, house, psychiatric facility or developmental centre to which reference is made in clause (a), or
 - (ii) any other charitable institution in which the dependant is a patient or resident; or
- (c) by any municipality in which the person entitled to maintenance under this Act resides.

APPENDIX B: THE PARENTS' MAINTENANCE ACT, 1933

CHAPTER 31

An Act to provide for the Maintenance of Parents by their Children.

[Assented to April 28th, 1933]

HIS MAJESTY, by and with the advice and consent of the
Legislative Assembly of Manitoba, enacts as follows:

1. This Act may be cited as "The Parents' Maintenance Act". Short title.

Note: R.S.S. 1930, c. 194; R.S.B.C. 1924, c. 188; R.S.O. 1927, c. 185; and "The Poor Law Act, Imp. 1930", c. 17, s. 14 et seq.

LIABILITY TO MAINTAIN.

2. A son or daughter shall be liable for the support of his or her dependent parents if it appear that such son or daughter has sufficient means to provide for such parent and to the extent that it so appears, having regard to the whole circumstances of the case. Liability of child. R.S.O. 1927, c. 185, s. 1.

3. (1) A parent shall be deemed to be dependent, where by reason of age, disease, or infirmity, he is unable to maintain himself. When parent to be deemed dependent. R.S.S., c. 194, s. 2 (3).

(2) A mother shall be deemed to be dependent, if she be

(a) a widow; or

(b) the wife of a man who is an inmate of a gaol, penitentiary or other place of confinement and has been committed thereto for a period of not less than six months or of an institution for incurables or for the feeble-minded or insane, or of a man who is permanently incapacitated by incurable disease or insanity from contributing sufficiently to her support or that of her family, or both;

and if she be unable to maintain herself without assistance.

PROCEEDINGS TO ENFORCE MAINTENANCE.

4. (1) A dependent parent, or any other person on his or her behalf, may summon a son or daughter of such parent before a police magistrate, who, upon proof of service of the summons, and whether or not the son or daughter appear, and upon sufficient evidence being adduced that such parent is Summons and order of magistrate for maintenance. R.S.S., c. 194, s. 3.

such person to be imprisoned for a term not exceeding three months unless the sums of money payable under the order be sooner paid.

(2) Save where otherwise provided, the proceedings before a magistrate shall be in accordance with the provisions of "The Summary Convictions Act", and any order for the payment of money made hereunder may be enforced as if it were an order or conviction made under that Act, but imprisonment shall only be ordered under subsection (1).

Application of "Summary Convictions Act".

8. Any summons issued pursuant to this Act may be served on the person named therein either personally or in such other manner as the magistrate in writing directs, and shall require the person so served to attend at the time and place mentioned therein to show cause why the order be not made or enforced, as the circumstances require.

Service of summons.
See R.S.S., c. 194, s. 5.

9. An order for payment of money made under this Act may be filed with the clerk of any County Court and enforced as a judgment of that court.

Filing of order in County Court.
R.S.O., c. 185, s. 5.

PROCEEDINGS BY OTHERS.

10. Proceedings may be taken under this Act

Maintenance of parent in hospital or public institution.
S.O. 1929, c. 46, s. 2.

(a) by the supervisor of public institutions in the case of a parent who is indigent or the inmate of any hospital, home for the aged and infirm, house of refuge, institution for mental defectives or mental diseases;

(b) by the governing body of any hospital, home for the aged and infirm, house of refuge, institution for mental defectives or mental diseases, or other charitable institution in which such dependent parent is an inmate;

(c) by any municipality or municipal district in which the person entitled to such maintenance resides.

11. This Act shall come into force on the day it is assented to.

Coming into force.

dependent and that such son or daughter has sufficient means to provide for such parent, may, in the discretion of such magistrate, having regard to the whole circumstances of the case, order that such son or daughter pay for the support of such parent to the person mentioned in the order, a weekly sum of money not exceeding twenty dollars, with or without costs.

Parent
maintained

(2) An order may be made under the provisions of this section by a magistrate, or by a corporation, board, hospital, or charitable institution.

Note: Care of Indigents by Hospitals and Municipalities
—See sec. 434 of "The Municipal Act" and sec. 12 et seq. of "The Hospital Aid Act".

Summoning
more than
one child.

R.S.O. c. 185,
s. 2 (3), (4).

5. (1) Where there are several children the magistrate may require the summons to be served upon others not already summoned and may order such of them as ought, in his opinion, to contribute to the support of the parent, to share in the payments ordered, and shall apportion the sum to be paid among the children, having due regard to their ability and obligations.

Time limit.

(2) The police magistrate may in any order set a time limit, not exceeding thirty days, within which each sum of money ordered to be paid and the costs are to be paid.

Varying
order or
re-hearing
application.

R.S.O.,
c. 185, s. 3.

6. Upon proof that the circumstances of any of the parties have changed since the making of an order, the order may be varied, or at the instance of any such party on notice, an application may at any time be re-heard, and any order may be confirmed, rescinded, or varied, by the magistrate who made the order, or by any police magistrate who has jurisdiction in the locality in which the person in whose favour the order is made resides.

Enforcement
of order.

R.S.O.
c. 185, s. 4.

7. (1) Whenever default is made in the payment of any sum of money ordered to be paid, the police magistrate who made the order, or any police magistrate who has jurisdiction in the locality in which the person in whose favour the order is made resides,

By summons.

(a) may, from time to time, summon the person in default to explain the default; and

By warrant
to arrest.

(b) may, where service of the summons has been proved, and the person summoned does not appear or sufficient reason for his absence is not given, or where it appears that the summons cannot be served, or where an order of imprisonment has been made, issue a warrant for the arrest of such person; and

By imprison-
ment.

(c) may, when a warrant has been issued, or where the person in default fails to satisfy the magistrate that such default is due to inability to pay, order and adjudge