



Manitoba Law  
Reform Commission

## ***THE PARENTS' MAINTENANCE ACT***

**CONSULTATION PAPER**

**May 2022**

## **The Parents' Maintenance Act**

Consultation Paper

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

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## CONSULTATION PAPER

Comments on this Consultation Paper should reach the Manitoba Law Reform Commission (“the Commission”) by **July 30, 2022**.

The Commission encourages you to provide your thoughts, comments and suggestions concerning this aspect of Manitoba’s law. Please refer to the issues for discussion identified in this Paper, and any other matters you think should be addressed.

Please submit your comments in writing by email, fax or regular mail to:

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## CHAPTER 1: INTRODUCTION

It is a well-known tenant 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.<sup>1</sup> 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 (“parents’ maintenance”).<sup>2</sup> This Paper addresses parents’ maintenance and not child support. Parents’ maintenance legislation currently exists in all Canadian provinces and territories, except British Columbia, Alberta, and Saskatchewan.

The Poor Laws of England are the origin of Canadian parents’ maintenance legislation.<sup>3</sup> This is reflected in the note to section 1 of Manitoba’s initial *Parents’ Maintenance Act*.<sup>4</sup> In 1948, the parents’ maintenance component of the English Poor Laws “was repealed as part of the legislation setting up the United Kingdom’s comprehensive post-World War II welfare state.”<sup>5</sup>

### 1.1 Manitoba

The enactment of parents’ maintenance legislation in Canada came in two waves: the first in the 1920s, presumably as reaction to the economic recession following World War I, comprising Acts enacted by Ontario, Alberta, British Columbia, and Saskatchewan, and the second in the 1930s, comprising Acts passed by Manitoba<sup>6</sup>, Prince Edward Island, Nova Scotia, New Brunswick, and the North West Territories.

The current *Parents’ Maintenance Act* of Manitoba (“*The PMA*”) is almost identical to the 1933 Act.<sup>7</sup> It 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”.<sup>8</sup>

Section 2 of the Act 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.”<sup>9</sup> 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

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<sup>1</sup> In Manitoba, see *The Family Maintenance Act*, c. F20, s 36.

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

<sup>3</sup> For a comprehensive overview and history of England’s Poor Laws, see the BCLI Report, *supra* note 2, 2-4.

<sup>4</sup> See Appendix A.

<sup>5</sup> The BCLI Report, *supra* note 2, 5.

<sup>6</sup> *The Parents’ Maintenance Act*, SM 1933, c 31 [*The PMA*]. See Appendix A.

<sup>7</sup> 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.

<sup>8</sup> *The PMA*, *supra* note 6, s 1.

<sup>9</sup> *Ibid*, s 2.

of the case.”<sup>10</sup> The Act caps the amount that can be ordered under the Act to a weekly sum not exceeding \$20.00 and that order can be with or without costs.<sup>11</sup> Additionally, the Act establishes that proceedings may be commenced by persons and entities other than the parent in certain circumstances.<sup>12</sup>

The remainder of the brief Act sets out general procedural matters, including, 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 it may be enforced. The full text of the current version of the Act is appended as Appendix “B”.

## 1.2 Other Canadian Jurisdictions

There was substantive changes to Canadian parents’ maintenance legislation in the 1970s and 1980s.<sup>13</sup> In 1978, Ontario enacted the *Family Law Reform Act*<sup>14</sup>, which included a consolidation of its parents’ maintenance and spousal and child support legislation. All of the other Canadian provinces and territories followed suit, except Alberta, Saskatchewan, and Manitoba. The Government of Manitoba did attempt to enact similar legislation when, in 1980, Bill 77, *The Family Law Amendment Act*, received first reading.<sup>15</sup> Bill 77 would have repealed the *PMA* and added provisions respecting parents’ maintenance to *The Family Maintenance Act* (“*The FMA*”) as Part III.<sup>16</sup> As a result of concerns raised in Standing Committee, the Attorney General withdrew the sections of Bill 77 establishing parents’ maintenance in *The FMA* and leaving *The PMA* intact.<sup>17</sup> Subsequently, the Attorney General requested the Law Reform Commission to consider *The PMA*, resulting in the Commission publishing an Informal Report on the topic in 1981 (“Informal Report”).<sup>18</sup>

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<sup>10</sup> *Ibid.*, s 3.

<sup>11</sup> *Ibid.*

<sup>12</sup> 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.

<sup>13</sup> 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).

<sup>14</sup> *Family Law Reform Act*, RSO 1980, c 152.

<sup>15</sup> 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*, 4<sup>th</sup> Sess, 31<sup>st</sup> Leg, Manitoba, 1980 (first reading June 2, 1980).

<sup>16</sup> See Appendix C.

<sup>17</sup> See Manitoba, Legislative Assembly, Hansard, Standing Committee on Law Amendments, Friday, July 11, 1980, 5610-5613, and Monday, July 14, 1980, 175-180, and 189-195.

<sup>18</sup> Manitoba Law Reform Commission, Informal Report 11A, 1981.

While parents' maintenance legislation existed in all provinces at one time, such laws have been repealed in British Columbia, Alberta, and Saskatchewan.

In Alberta, the *Maintenance Order Act*<sup>19</sup> provided for parents' maintenance. In 2003, Bill 45, *Family Law Act* transferred the provisions of the *Maintenance Order Act* to the *Family Law Act*.<sup>20</sup> The relevant division, Division 3, was withdrawn from Bill 45, "primarily in order to achieve greater consistency with [the Alberta government's] policy of encouraging financial independence of disabled adults".<sup>21</sup> In addition, s. 129(c) of the *Family Law Act*<sup>22</sup> repealed the *Maintenance Order Act* 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 s. 90 of the *Family Relations Act*<sup>23</sup>. In 2011, when the *Family Relations Act* was repealed and replaced by the *Family Law Act*<sup>24</sup>, section 90 was not continued in that piece of legislation or any other Act. By eliminating parental maintenance, the BC legislature implemented the recommendations contained in the British Columbia Law Institute's 2007 Report (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")<sup>25</sup> to repeal British Columbia's parents' maintenance legislation. Relying on the reasons outlined in the BCLI Report, the White Paper explains that s. 90 ought not to be carried forward into a new statute, because:

- Section 90 is rarely used, and orders made under it are typically for very small amounts, too little to meet the financial needs of an elderly parent.
- The section creates more problems than it solves. The cost for an elderly parent to sue an adult child for parental support could often exceed the amount of support ordered, and such litigation is likely to damage the relationship between adult child and parent [... and]
- There are a wide variety of programs that address issues of seniors' poverty more effectively than parental support, including the Canada Pension Plan, the Old Age Security Program and subsidized housing.<sup>26</sup>

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<sup>19</sup> RSA 2000, c M-2.

<sup>20</sup> Part 3, "Support Obligations", Division 3.

<sup>21</sup> 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.

<sup>22</sup> SA 2003, c F-4.5.

<sup>23</sup> SBC 1972, c 20

<sup>24</sup> SBC 2011, c 25.

<sup>25</sup> 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).

<sup>26</sup> *Ibid* at 130.



In 2018, the *Parents' Maintenance Act* of Saskatchewan was repealed by the *Miscellaneous Statutes Repeal and Amendment Act*<sup>27</sup>, as being “outdated and obsolete” and “no longer relevant.”<sup>28</sup>

The recommendations contained in the BCLI Report and the recent repeal of the parents' maintenance legislation of British Columbia, Alberta, and Saskatchewan raise two issues. Should Manitoba repeal *The PMA* and, if not, are there improvements that should be made to *The PMA*, bearing in mind the comparable legislation of the other Canadian provinces and territories?

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<sup>27</sup> SS 2018, c 19, s. 12.

<sup>28</sup> Saskatchewan Legislative Assembly, Hansard, November 21, 2017, 2008, and April 24, 2018, 333.

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## CHAPTER 2: TO REPEAL OR NOT TO REPEAL...

The British Columbia Law Institute (the “BCLI”) thoroughly considered the arguments for and against parents’ maintenance legislation in the BCLI Report<sup>29</sup> published in 2007. While now 15 years old, the summary of arguments for and against parental support laws contained in that report are thorough, remain relevant today and are applicable in Manitoba. For this reason, the Commission will quote extensively from the BCLI Report in this chapter.

### 2.1 Why a Review is Warranted

Very few claims have been made under *the PMA* in Manitoba. In the 89 years since the legislation was enacted, there have been no reported cases. In its Informal Report, 1981, the Commission advised that, at that time, there had been only three unreported applications, two of which were withdrawn and the order resulting from the third application was stayed.<sup>30</sup> The Commission has been unable to find any reported or unreported applications since 1981.

As stated in the BCLI Report, with the insignificant number of cases, one could plausibly claim that reform is not a pressing concern.<sup>31</sup> However, the BCLI points to two reasons why this argument is unconvincing. First, “broad social trends” raise the possibility of increased reliance on parents’ maintenance legislation in the future.<sup>32</sup> According to Statistics Canada’s latest data, the proportion of Manitoba’s population aged 65 and over is projected to rise from 15.4% in 2018 to between 17.2% and 21.8% in 2043.<sup>33</sup>

This pattern is reflective of the Canadian population as well. It is projected that the proportion of Canadians aged 65 and over would increase from 17.2% in 2018 to between 21.4-29.5% in 2068.<sup>34</sup> The population aged 85 and older is one of the fastest-growing age groups, with a 12% increase from 2016.<sup>35</sup> Population projections show that growth could peak between 2031 and 2036, as the first cohorts of baby boomers reach 85 years of age.<sup>36</sup>

The percentage of seniors with low incomes has been declining in Canada. In 2020, the rate of poverty amongst Canadians 65 years and older was 6.4%.<sup>37</sup> This is a decrease from 2015 when 7.1% of seniors lived below the poverty line.<sup>38</sup> However, taken with the projected influx of seniors, if the population of Canada increases as anticipated and the proportion of Canadians and

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<sup>29</sup> *Supra*, BCLI Report, note 2.

<sup>30</sup> Informal Report, *supra* note 18, 3.

<sup>31</sup> *Supra* BCLI Report, note 2, 15.

<sup>32</sup> *Ibid.*

<sup>33</sup> Statistics Canada, “Projections for Canada (2018-2068), Provinces and Territories” released: September 17, 2019.

<sup>34</sup> *Supra* note 32, 5.

<sup>35</sup> Statistics Canada, “A portrait of Canada’s growing population aged 85 and older from the 2021 Census.” Release date: April 27, 2022.

<sup>36</sup> *Ibid.*

<sup>37</sup> Statistics Canada. Table 11-10-0135-01 Low Income Statistics by age, sex and economic family type.

<sup>38</sup> *Ibid.*

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<sup>39</sup>, fewer Canadians belong to employment pension plans than in the past<sup>40</sup> and public programs, including Old Age Security, the Guaranteed Income Supplement and the Canadian 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.

As noted in the BCLI Report,

One commentator has even compared this situation to the boom in spousal and child support applications that followed the liberalization of divorce laws in the late 1960s. [footnote omitted] While 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].<sup>41</sup>

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.<sup>42</sup>

## 2.2 Arguments For and Against Parental Support Laws

In its report, the BCLI points out that little commentary exists from Canadian sources<sup>43</sup> but that parents' maintenance laws have generated a fair amount of discussion among American lawyers,

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<sup>39</sup> Statistics Canada, Table 13-10-0114 Life expectancy at birth and at age 65 for Canada, provinces and territories 1980-2020.

<sup>40</sup> 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, 5.

<sup>41</sup> BCLI Report, *supra* note 2, 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.").

<sup>42</sup> BCLI Report, *supra* note 2, 17.

<sup>43</sup> See Steel, *supra* note 40; Wendy Bernt, "Lines of Dependence: The Rebirth of Parental Support Legislation in Canada" (1996) 2 Appeal 52; Christa Bracci, "Ties that Bind: Ontario's Filial Responsibility Law" (2000) 17 Can. J. Fam. L. 455. See also Georgiale A. Lang, "Parental Support in Canada: Honour Thy Father and Thy Mother," in Canadian Bar Association & Federation of Law Societies of Canada, *The 1998 National Family Law Program*:

law professors and law students. The utility of this American commentary as well as the differences between the two countries' position on the issue is explained in the following manner:

[B]oth American and Canadian parental support laws derived from the same source, the English poor laws,<sup>44</sup> and show a family resemblance to one another. But it must be borne in mind that the American experience with parental support differs in important ways from the Canadian. Most notably, parental support laws in the United States are still viewed as a part of the public welfare system. They did not go through a development analogous to the Canadian reforms in the 1970s and 1980s.<sup>45</sup> As a result, American commentators tend to be very concerned with government enforcement of parental support laws, which has not been an issue in British Columbia since at least 2000, when public standing to commence a proceeding to enforce the parental support obligation was eliminated [but is a potential issue pursuant to *The PMA*, s. 10(a) and (c)] [...].

Arguments for and against parents' maintenance laws are thoroughly canvassed on pages 17-30 of the BCLI Report. Presuming that Manitoba's situation is much the same as that of British Columbia prior to the revocation of its parents' maintenance law and mindful of the wisdom of not re-creating the wheel, the Commission quotes from the BCLI Report:<sup>46</sup>

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*Whistler Conference* (June 1998); John-Paul Boyd, "Intergenerational Conflict, Part I: Parental Support," in Continuing Legal Education Society of British Columbia, *Aging, Death & Divorce: The Big Three and The Perfect Storm* (February 2007) 1.1.1. Also see: Miller, Moira J., *supra* note 13, published since the BCLI Report.

<sup>44</sup> With the exception of the laws in force in Québec and Louisiana, the two civil law jurisdictions in Canada and the United States [...]

<sup>45</sup> The major development on the American scene during these years had to do with one part of the American social safety net, the Medicaid program. Medicaid is a program that provides monetary assistance for the medical care of low-income people. Its costs are shared by the federal and state governments. The decision to participate in Medicaid is left to the states, but once a state opts in it is bound by the federal legislative framework to comply with all federal statutory and administrative requirements. One of the provisions in the federal enabling legislation prohibited the consideration of an adult child's income and resources in determining the eligibility of a person to assistance. After the program was established in the 1960s, the prevailing legal opinion was that state parental support laws were incompatible with the federal legislation. Faced with the risk of losing federal funding, many states repealed their laws. The vast majority of those states that left their parental support laws in place stopped enforcing them. In 1983, the federal government issued an administrative "transmittal" that contradicted the prevailing legal view and appeared to encourage states to enact or to resume enforcement of their parental support laws. During the tight budgetary times of the 1980s and 1990s, this message received a sympathetic ear from many state governments. But, replaying a pattern that was observed in England and Canada, when the time came to enforce the parental support laws in practice (as opposed to musing about their utility in theory), very few state governments decided to follow through. See generally George F. Indest, "Legal Aspects of HCFA's Decision to Allow Recovery from Children for Medicaid Benefits Delivered to Their Parents Through State Financial Responsibility Statutes: A Case of Bad Rule Making Through Failure to Comply with the Administrative Procedure Act" (1988) 15 S. U. L. Rev. 225. See also Ann Britton, "America's Best Kept Secret: An Adult Child's Duty to Support Aged Parents" (1990) 26 Cal. W. L. Rev. 351 at 353 ("It was a politically unpopular administrative decision to resurrect use of the filial support obligation and, therefore, enforcement was not pressed.")

<sup>46</sup> *Ibid*, 15-30. Beginning with note 47, notes numbered consecutively with the foregoing notes of this Paper have been substituted for the notes in the BCLI Report excerpt.

## [A.] Arguments For Parental Support Laws

### 1. INTRODUCTION

Most, if not all, proponents of parental support laws concede that there are problems with the current design and implementation of those laws. But these commentators argue that the problems are not so grave as to require the repeal of parental support laws. Rather, parental support should be reformed along lines that are more relevant to today's society.<sup>47</sup> If, as one lawyer put it, a "rational role"<sup>48</sup> can be found for parental support laws, then legislation like section 90 of the *Family Relations Act* [or *the PMA*] can make a meaningful contribution to the lives of needy citizens, their families, and the general public.

Commentators have sought this rational role in three places. First, they have argued that parental support can serve as a last line of defence to save a person from falling into abject poverty. Second, they have claimed that parental support laws are an organic growth from the moral benevolence that worthy families show to their members, and can therefore serve to strengthen the bonds between members of families where that natural generosity is lacking. And, third, they have alleged that the enforcement of parental support laws may have a salutary effect on government finances.

### 2. PARENTAL SUPPORT LAWS MAKE A NECESSARY SOURCE OF FUNDS AVAILABLE TO IMPOVERISHED INDIVIDUALS

Proponents of parental support laws like to point out that poverty still exists among older adults, despite concerted government efforts to stamp it out.<sup>49</sup> They posit that a gap will always exist between the needs of the poor and the ability of the government to meet those needs.<sup>50</sup> Parental support laws can help to fill that gap.<sup>51</sup>

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<sup>47</sup> See, e.g., Daniel R. Mandelker, "Family Responsibility Under the American Poor Laws: Parts I & II" (1956) 54 Mich. L. R. 497 at 505 ("This writer, however, sees no objection to the retention of the family responsibility laws, provided that some revisions in the statutory framework are made.") & 607.

<sup>48</sup> Terrance A. Kline, "A Rational Role for Filial Responsibility Laws in Modern Society?" (1992) 26 Fam. L.Q. 195.

<sup>49</sup> See, e.g., Kline, *ibid.* at 202 ("Empirical evidence demonstrates the persistence of poverty among the aged, notwithstanding massive government aid for the benefit of the elderly." [footnote omitted]).

<sup>50</sup> See Kline, *ibid.* at 203 ("Further government aid is improbable due to increasing budget constraints. With 30 percent of the federal budget already set aside for programs benefitting the elderly, and with state budgets tighter than ever, additional benefits to alleviate poverty among the aged are not likely. . . ."); Bracci, *supra* note 43 at 500 ("As the years progress and the senior population grows, government resources may not be able to keep up with either financial demands or demands for services.").

<sup>51</sup> See Robin M. Jacobson, "*Americana Healthcare Center v. Randall*: The Renaissance of Filial Responsibility," Note (1995) 40 S.D. L. Rev. 518 at 541 ("Filial responsibility statutes also provide support to the elderly beyond what the government is able to provide." [footnote omitted]); Kline, *ibid.* at 207 ("Perhaps the most convincing argument in favor of filial responsibility laws is that they have the potential to provide the indigent elderly with financial support beyond that which is provided by the government.").

Parental support, by itself, cannot solve the problem of poverty or take the place of government programs, and its proponents are careful to point these facts out.<sup>52</sup> But it is more useful for the poor, particularly the older poor, to have a range of options at their disposal. The loss of parental support would leave the poor more dependent on government programs—a development that could increase their vulnerability, since funding for government programs can ebb and flow. Financing of government programs may be increasing at one moment, but the future could hold cutbacks. Doing away with parental support laws on the basis that the government can provide all necessary assistance may be short sighted.<sup>53</sup>

Proponents of parental support also point out that egregious cases of deprivation still exist.<sup>54</sup> In too many of these cases, the immediate family members of the indigent older adult live in comparative ease. The existence of such a state of affairs speaks both to the existence of holes in the social safety net and the continuing need for a legal remedy for such deprived parents.

In the past, parental support laws were designed with the primary goal of limiting government funding of social programs. Modern parental support laws can be designed to enhance and supplement existing government programs.<sup>55</sup> They can be reformed by placing the needs of poor older adults, rather than governments, at the centre of their focus. British Columbia has already started down this road by taking the decision to commence proceedings under section 90 of the *Family Relations Act* out of the hands of government and giving it primarily to the affected parent. Further development can make this province's parental support law a helpful strand in the social safety net.

### 3. PARENTAL SUPPORT LAWS REINFORCE AND STRENGTHEN FAMILY SOLIDARITY

Parental support laws have long been seen as a way to reinforce family solidarity and to promote an ideal of family behaviour. In the eighteenth century, William Blackstone attempted to explain their origin as “. . . aris[ing] from a principle of natural justice and retribution”:<sup>56</sup>

For to those, who gave us existence, we naturally owe subjection and obedience during our minority, and honour and reverence ever after: they, who protected the weakness of our infancy, are entitled to our protection in their infirmity of their age; they who by sustenance and education have enabled their offspring to prosper, ought in return to be supported in case

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<sup>52</sup> See Kline, *ibid.* at 210 (“Filial responsibility laws alone would be incapable of solving the enormous problem of poverty among the aged, but they may begin to alleviate the problem and achieve desirable public and social policy results.”).

<sup>53</sup> See, e.g., Bernt, *supra* note 43 at 57 (“It is not difficult to foresee a time when Canada’s increasing elderly population will be forced to balance decreasing financial resources with increased living and health care costs. If the state is unwilling or unable to help the elderly meet those costs, it is likely that the burden of parental support will shift once again to adult children.”).

<sup>54</sup> See Kline, *supra* note 34 at 195–96; Joann Blair, “‘Honor Thy Father and Thy Mother’—But for How Long?—Adult Children’s Duty to Care for and Protect Elderly Parents,” Note (1997) 35 U. Louisville J. Fam. L. 765.

<sup>55</sup> See Kline, *ibid.* at 208 (“Filial responsibility laws can be limited to those cases where existing government and charitable programs are insufficient to provide life’s basic necessities for indigent persons. This would help to ensure that the laws serve only to supplement government benefits, not replace them.”).

<sup>56</sup> Wayne Morrison, ed., *Blackstone’s Commentaries on the Laws of England*, vol. 1 (London: Cavendish, 2001) at 348.

they stand in need of assistance. Upon this principle proceed all the duties of children to their parents which are enjoined by positive laws.

Blackstone's comment is historically inaccurate, but it has been adopted by some proponents of parental support laws. They see it as a valuable expression of a policy goal of parental support laws, rather than as an account of how those laws came into being.<sup>57</sup>

As a general proposition, moral approbation attaches to acts that relieve another person from distress. No one questions the generosity and benevolence of adult children who voluntarily seek to remedy the situation of a parent who has fallen into poverty. In fact, many Canadians have taken up the burden of caring for their parents (either monetarily or, more commonly, by providing services), without being compelled to do so by the law.<sup>58</sup>

Proponents of parental support laws claim that those laws can usefully strengthen solidarity among the members of those families who do not respond to distress voluntarily.<sup>59</sup> In their view, parental support laws impart a salutary moral lesson or example of proper family behaviour. Parental support laws reinforce well-established patterns of family relations.<sup>60</sup> They encourage independence, self-sufficiency, and benevolence among family members.<sup>61</sup>

Some commentators go further and claim that parental support laws can be a useful tool in the suppression of elder abuse.<sup>62</sup> In their view, parental support laws share a common rationale with criminal laws designed to protect the elderly.<sup>63</sup> Respect for parental support laws may pre-empt the development of neglect into out-and-out abuse.

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<sup>57</sup> See Jacobson, *supra* note 37 at 543–44.

<sup>58</sup> See, e.g., Wendy Piper, “Balancing Career and Care” (2006) 7.11 Perspectives on Labour and Income 5 at 5 (“In 2002, over 1.7 million adults aged 45 to 64 provided informal care to almost 2.3 million seniors with long term disabilities or physical limitations.” [citation omitted]).

<sup>59</sup> See Kline, *supra* note 34 at 207 (“While government regulation of private family conduct in a normal, healthy family is undesirable, intervention may be necessary when the family breaks down.”).

<sup>60</sup> See Jacobson, *supra* note 37 at 543 (“By their mandate, filial responsibility statutes encourage traditional family principles.”)

<sup>61</sup> See Jacobson, *ibid.* at 544 (“... filial responsibility statutes encourage a return to close family bonds by removing governmental interference” [footnote omitted]); Kline, *supra* note 34 at 203 (“The enforcement of filial responsibility laws might also reduce government expenditures and serve to enforce a moral duty between parent and child in those cases where a child has failed to assume the appropriate responsibility for parental support, thereby strengthening family ties by encouraging family members, rather than the government, to care for one another.”).

<sup>62</sup> See Kline, *supra* note 34 at 195–96.

<sup>63</sup> See Blair, *supra* note 40 at 780 (“Some of the same reasons underlying filial responsibility laws . . . are applicable to the question of whether children should face criminal liability for neglect of an elder.” [footnote omitted]).

#### 4. PARENTAL SUPPORT LAWS FREE UP PUBLIC FUNDS FOR OTHER SOCIALLY VALUABLE PURPOSES

Parental support laws can still encourage some savings of government expenditures, even if this goal is no longer their primary rationale. One American commentator has estimated the savings at between 11 percent and 30 percent of a typical state's social welfare costs.<sup>64</sup>

In the American context, these savings come from two sources. First, the state obtains funds from adult children directly by the enforcement of parental support laws; second, the state benefits indirectly when parents receive compensation from their adult children in lieu of obtaining state assistance.<sup>65</sup> Since public enforcement of parental support laws has been abandoned in British Columbia, the potential savings would be lower and much harder to estimate, as they would only derive from the second source.

Proponents acknowledge both the difficulty of measuring the savings produced by parental support laws and the historical failure of using those laws to fulfill only this rationale. But they argue that there can be benefits to society as a whole in the form of savings that may be used on other priorities, even if those benefits are collateral to the primary goals of parental support laws, which are to shore up the finances of the poor and contribute to family solidarity.<sup>66</sup>

#### 5. SUMMARY

Proponents of parental support laws argue that the existing legislation can be updated to advance contemporary policy goals. Reformed parental support laws would primarily meet the concerns of the poor, particularly the older poor. The existence of a legal remedy would give them one more avenue for recourse, which may help to relieve their distress. More broadly the renewal of these laws could provide benefits for the family (by strengthening family ties) and the general public (by lessening the burden on government to provide assistance to the poor).

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<sup>64</sup> Usha Narayanan, "The Government's Role in Fostering the Relationship Between Adult Children and Their Elder Parents: From Filial Responsibility Laws to . . . What?, A Cross-Cultural Perspective," Note (1996) 4 Elder L.J. 369 at 378.

<sup>65</sup> See James L. Lopes, *Filial Support and Family Solidarity* (1975) 6 *Poc. L.J.* 508 at 520 ("The first means of public financial gain is the direct revenues produced by the application of these laws, balanced against the administrative costs involved in making these collections. The second form of financial benefit is the indirect lessening of public assistance costs brought about by the failure of elderly people to apply for assistance due to the inhibitory presence of these statutes."); Kline, *supra* note 34 at 204 ("Costs might be reduced either by shifting the costs of welfare to children or by deterring the destitute from accepting government benefits.").

<sup>66</sup> See Jacobson, *supra* note 37 at 544–45 ("The court's decision in *Americana* [upholding the South Dakota parental support statute in the face of a constitutional challenge] advocates reliance on the family rather than the government, thereby relieving the government's burden of supporting the poor. By renewing notions of filial responsibility, the court has provided a meaningful method of holding children accountable to their indigent parents. Filial responsibility statutes ensure that parents have at least a minimal standard of living. In the final analysis, they strengthen the family by encouraging reliance on one another rather than on government.").



## [B] Arguments Against Parental Support Laws

### 1. INTRODUCTION

By a wide margin, there are more commentators arguing for the repeal of parental support laws than there are those arguing for the laws' preservation.<sup>67</sup> Much of this commentary comes from the United States and is directed toward aspects of American parental support laws that have no equivalent in British Columbia's *Family Relations Act*. (Public enforcement of parental support laws is a particular concern.) But some of the commentary is directed at the general rationale for parental support laws<sup>68</sup> and, even more helpfully, some of it engages in detailed discussions of the policy choices underlying those laws.

There is symmetry between the arguments for and against parental support laws. Opponents of parental support have focussed on arguments that rebut the arguments advanced by proponents of parental support. Opponents of parental support laws have argued that those laws should be repealed for three reasons. First, they do not provide the poor with adequate and sustainable assistance. Second, they harm rather than foster family relations. And third, they are less efficient than direct state support of the poor.

### 2. PARENTAL SUPPORT LAWS DO NOT PROVIDE THE POOR WITH A SUSTAINABLE SOURCE OF FUNDS

Opponents of parental support laws offer a number of arguments on how those laws fail to provide adequate, lasting relief for the poor. These arguments run the gamut from immediate practical concerns to more wide-ranging social and policy issues.

At a practical level, litigation is an unusual way to combat poverty.<sup>69</sup> Two recent reports have emphasized the escalating costs and increasing delays that are plaguing both the civil litigation

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<sup>67</sup> See Britton, *supra* note 45 at 368 ("Commentators are almost unanimously opposed to the statutes." [footnote omitted]); Catherine Doscher Byrd, "Relative Responsibility Extended: Requirement of Adult Children to Pay for Their Indigent Parent's Medical Needs" (1988) 22 Fam. L.Q. 87 at 100-01 ("The appraisal by legal scholars of relative responsibility laws is nearly unanimously negative.")

<sup>68</sup> See, e.g., Robert Whitman & Diane Whitney, "Are Children Legally Responsible for the Support of their Parents?" *Trusts & Estates* 123:12 (December 1984) 43 at 46 ("Filial responsibility statutes have never worked well in the past and they do not work well today."); Leo J. Tully, "Family Responsibility Laws: An Unwise and Unconstitutional Imposition" (1971) 5 Fam. L.Q. 32 at 62 ("... the family responsibility statutes are actually operating in our modern social context to undermine the very objectives they were conceived to serve").

<sup>69</sup> See Seymour Moskowitz, "Filial Responsibility Statutes: Legal and Policy Considerations" (2001) 9 J. L. & Pol'y 709 at 726 ("Litigation as a means of solving problems is a particularly blunt instrument when continuing relationships or processes are involved. Its strength is maximized when discrete transactions between parties are involved or a relationship is to be terminated."); Britton, *supra* note 45 at 356 ("... it is a burden on the older person to expect him or her to sue a relative for support").

system<sup>70</sup> in general and the family law system<sup>71</sup> in particular, effectively placing the right to go to court out of the reach of many ordinary people. The difficulties inherent in going to court are even more pronounced for the segment of the population that is supposed to be assisted by the parental support law. A destitute parent would have to find the means to hire a lawyer (if it were not possible to engage one pro bono) or to summon the wherewithal to act as a self-represented litigant.<sup>72</sup> Since a successful application under section 90 requires an applicant to show economic dependency due to age, illness, infirmity, or economic circumstances, an applicant would be required to navigate the family law system at a time of financial, and possibly physical or psychological, distress. The disjunction between the requirements of the legislation and the practical realities of litigation sets up a classic catch-22.<sup>73</sup>

Opponents of parental support have pointed out that most cases that make their way to court involve both poor parents and poor adult children.<sup>74</sup> As a result, even in cases where the need of the parent is plain, no relief can be obtained because the child does not have the means to provide it. In other cases, an award is granted, but it is inadequate. The periodic nature of parental support payments can also cause problems. Circumstances may change for the adult child, justifying a discontinuation of support, but leaving the parent in a vulnerable and precarious financial position. Enforcement of spousal and child support orders has proved to be an especially vexing problem, and there is no reason to believe that similar issues cannot arise in the context of parental support.<sup>75</sup> Finally, opponents have argued that parental support laws can have the insidious effect of perpetuating poverty from one generation to the next: the

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<sup>70</sup> BC Justice Review Task Force, *Effective and Affordable Civil Justice: Report of the Civil Justice Reform Working Group to the Justice Review Task Force* (November 2006), online: BC Justice Review Task Force <[http://www.bcjusticereview.org/working\\_groups/civil\\_justice/cjrwg\\_report\\_11\\_06.pdf](http://www.bcjusticereview.org/working_groups/civil_justice/cjrwg_report_11_06.pdf)> at vii (“‘Too expensive, too complex and too slow.’ These are the words used by many members of the public and litigants of all types in British Columbia to describe our present civil justice system.”).

<sup>71</sup> BC Justice Review Task Force, *A New Justice System for Families and Children: Report of the Family Justice Reform Working Group to the Justice Review Task Force* (May 2005), online: BC Justice Review Task Force <[http://www.bcjusticereview.org/working\\_groups/family\\_justice/final\\_05\\_05.pdf](http://www.bcjusticereview.org/working_groups/family_justice/final_05_05.pdf)> at 10 (“The system we make available to [persons with family law disputes] today is complicated, intimidating and costs a great deal of money. . .”).

<sup>72</sup> Charmaine Spencer and Ann Soden explain that many older Canadian adults do not have adequate access to justice because legal services are largely beyond their financial capacity, because legal aid in Canada does not cover many of the legal issues commonly affecting older adults, and because older adults’ incomes may be slightly over financial thresholds for legal aid eligibility. However, Spencer and Soden highlight The Advocacy Center for the Elderly (“ACE”) of Ontario as an exception to this general lack of legal aid services for older adults. ACE provides “specialized legal aid services to older adults” in Toronto, Ontario in areas such as housing, abuse and neglect, and care facility rights. See Charmaine Spencer & Ann Soden, “‘A Softly Greying Nation, Law, Aging and Policy in Canada” (2007) 2 J Int’l Aging L & Pol’y 1 at 7-8.

<sup>73</sup> See Moskowitz, *supra* note 55 at 727 (“It is difficult if not impossible to enforce the legal rights of indigent aged parents, who are often frail, homebound, or in nursing homes.”).

<sup>74</sup> See Tully, *supra* note 54 at 42 (“The children and other relatives of the poor are most likely to be poor themselves—and relatives who are not officially ‘poor’ are apt to be so close to it that they can support none other than themselves.”).

<sup>75</sup> See Britton, *supra* note 45 at 370 (“[Parental support laws] suffer from the same defects as our statutes for supporting minor children; it is no secret that our enforcement of child support orders is scandalous.”).

funds awarded to the parent are often insufficient to lift the parent out of poverty, but may be just enough, when added to other financial pressures, to tip the adult children into destitution.<sup>76</sup>

On a broader, more philosophical level opponents have argued that parental support is incompatible with contemporary social trends and modern approaches to public welfare and social assistance.<sup>77</sup> When parental support laws were first enacted in England and North America, agriculture was the dominant economic activity. Families were typically much larger than they are today.<sup>78</sup> And life expectancy was much lower.<sup>79</sup> Support was a natural extension of society's basic economic unit—the family farm—being concentrated in the hands of parents until they were physically no longer able to work. In return for relinquishing control over this asset, an informal support obligation (likely only lasting a few years) would be parceled out among a number of adult children reaching their productive and earning peak in middle age. In contrast, in today's world families are typically not economically integrated, families are smaller, and parents live longer. A legally imposed parental support obligation is apt to fall on one or two children who are themselves nearing retirement age and to extend potentially for a decade or more.<sup>80</sup>

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<sup>76</sup> See Lopes, *supra* note 51 at 526 (“The imposition of liability, in many cases, actively interferes with whatever potentialities for self-advancement ‘responsible’ children may have and helps to assure poverty for generations to come.”); Byrd, *supra* note 53 at 101 (“... [A]ssets are taken away from a younger family to aid the older. The net long-term effect is a depletion of resources where younger family members will have diminished means with which to furnish their own needs. . . .”); Renae Reed Patrick, “Honor Thy Father and Mother: Paying the Medical Bills of Elderly Patients” (1984) 19 U. Rich. L. Rev. 69 at 82 (“... [C]hildren forced to support their parents may do so at the cost of depriving their own immediate families of necessity. This could encourage a perpetuation of poverty.”).

<sup>77</sup> See Lee E. Teitelbaum, “Intergenerational Responsibility and Family Obligation: On Sharing” [1992] Utah L. Rev. 765 at 766 (“The 1930s . . . saw the creation of the modern social security and welfare system and, with it, the first substantial, direct participation of the federal government in care for the disabled and elderly. Concomitantly, reliance on private and familial responsibility declined. . . . To the extent that social welfare was needs-based, the theory was of societal and intergenerational responsibility rather than familial responsibility.”); Kris Bulcroft, June Van Leynseele, & Edgar F. Borgatta, “Filial Responsibility Laws” (1989) 11 Research on Aging 374 at 391 (“Looking at the experience in the United States in the last half century or so, the global trend clearly has been one of provision of security for older persons, independent of their children and other relatives. . . . [T]he recent focus of policymakers and advocates on filial responsibility as a centerpiece of the debate on long-term care policy is not consistent with an historical perspective concerned with welfare of the elderly.”).

<sup>78</sup> See Moskowitz, *supra* note 55 at 725 (“The average [American] family in 1910 had 4.5 children; in 1960, it had only 2.5 children, and it has even fewer today.”); *Population Projections for Canada*, *supra* note 23 at 17 (“While the number of children per woman in Canada, as measured by the total fertility rate, was close to 4.0 around 1960, it dropped below the replacement level (2.1 children per woman) in 1972 and has remained below this level ever since. The downward trend has continued almost uninterrupted for forty years, even though the recent trend indicates that the rate has stabilized around 1.5 children per women since 2000.”)

<sup>79</sup> See, e.g., British Columbia, Premier's Council on Aging and Seniors' Issues, *Aging Well in British Columbia: Report of the Premier's Council on Aging and Seniors' Issues* (November 2006), online: Premier's Council on Aging and Seniors' Issues—Ministry of Community Services <[http://www.cserv.gov.bc.ca/seniors/council/docs/Aging\\_Well\\_in\\_BC.pdf](http://www.cserv.gov.bc.ca/seniors/council/docs/Aging_Well_in_BC.pdf)> at 1 (“Life expectancy in British Columbia rose from 62 years in 1921 to over 81 in 2005. . . .”).

<sup>80</sup> See Bulcroft *et al.*, *supra* note 63 at 390 (“... the typical situation of the relevant unit is likely to be an 85-year-old mother being taken care of by a 60- or 65-year-old daughter”); Lopes, *supra* note 51 at 516–17 (“An old German proverb states that one father takes better care of ten children than ten children take care of one father. As the number of children in families decreases, each child's proportionate share of the financial burden of caring for the needy parent is increased, leading to an increasing inability or reluctance to carry out this responsibility.”).

Attitudes toward state support of social programs have also changed dramatically since the introduction of parental support laws. Opponents argue that the existence of parental support erodes public programs for the care and support of older adults in a way that would not be tolerated in the areas of medically necessary care or primary and secondary education.<sup>81</sup> While private financing of medical care and education certainly exists, it is not compelled by law. The main reason why such laws do not exist is that they would undermine social equality and lessen support for the public programs.<sup>82</sup> Opponents of parental support argue that support for older adults should be seen in the same light.

### 3. PARENTAL SUPPORT LAWS DISRUPT FAMILY RELATIONSHIPS

Opponents of parental support counter claims that parental support fosters family solidarity by focussing on the impact litigation has on the family. 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.<sup>83</sup>

There is a basic mismatch between what litigation can provide and what many older adults require from their children. The goal of parental support litigation is a monetary award. Many older adults require—and receive—care from their children in the form of services. The courts cannot compel children to provide services under parental support laws. Opponents of those laws have raised the spectre that a successful lawsuit will result in a short-term monetary gain that leads to a withdrawal of caregiving services, thwarting the long-term interests of older adults.<sup>84</sup>

Parental support laws are also out of step with current notions about healthy family behaviour. Independence and mutual respect are among the keys to prospering family relationships. But parental support laws encourage dependency. Section 90 of the *Family Relations Act*, for

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<sup>81</sup> See Tully, *supra* note 54 at 44 (“The theory that public medical care will destroy family unity has not been advanced. Yet care for its sick members was first a function assumed by the family.” [footnote omitted]); Hilde Lindemann Nelson & James Lindemann Nelson, “Frail Parents, Robust Duties” [1992] Utah L. Rev. 747 at 762 (“. . . [W]e propose an analogy to education. We have agreed as a society that it is of fundamental importance to have an educated citizenry, and so the cost of that education is shared by all, even the childless. The needs of the elderly ought to be provided for on the same basis.”).

<sup>82</sup> See Bulcroft, *et al.*, *supra* note 63 at 390 (“If born to a wealthy set of parents, it is likely that the person will not only be advantaged, but he or she may never be called upon to support parents. Thus . . . the economic circumstances of being poor would be predisposing to the additional penalization of having to provide for dependent elders.”).

<sup>83</sup> See Britton, *supra* note 45 at 357 (“Not only is such a suit inherently repugnant to most persons, but the publicity of a lawsuit bringing to public scrutiny the family’s ability and willingness to care for one another further raises the emotional cost.”).

<sup>84</sup> See Britton, *ibid.* at 367 (“If the statutes require financial as opposed to other kinds of support, will it discourage families from providing in-kind services?”); Moskowitz, *supra* note 55 at 726–27 (“Indigent (and more affluent) older persons require long term care and continuing concerted efforts by formal and informal care givers. It is highly unlikely that the courts can create ongoing social and financial relationships within families.” [footnote omitted]).

example, requires an applicant to demonstrate dependency in order to succeed. Meeting this statutory requirement can trap families in unhealthy patterns of behaviour.<sup>85</sup>

Finally, parental support laws can exacerbate inequality within the family. Opponents contend that parental support cannot be properly evaluated without taking into account its disproportionate impact on the lives and careers of women.<sup>86</sup> In most families, caregiving responsibilities tend to fall more heavily on the shoulders of women. A move to greater private financial responsibility for care provided to older adults could disturb what is already a delicate and tenuous balance in many families.<sup>87</sup>

#### 4. PARENTAL SUPPORT LAWS ARE LESS EFFICIENT THAN DIRECT STATE SUPPORT OF THE POOR

Parental support laws were originally introduced to alleviate the burden of welfare costs on the public purse. Historically, they did not have this intended effect. Opponents of parental support contend that this failure is due to flaws inherent in the design of parental support.<sup>88</sup> They argue that relying on private financing for the care of older adults is, in the end, more costly than public financing for society as a whole.<sup>89</sup>

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

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<sup>85</sup> See Britton, *ibid.* at 369–70 (“The statutes are also sharply criticized as creating disharmony in the family. Social scientists agree that having an aged person dependent on an adult child is disruptive to normal family interaction.”); Lopes, *supra* note 51 at 524 (“When an older person is financially dependent on his children, a great strain is put on their relationship. Both the parent and the child resent the dependence, both feel guilt as a result of this resentment and both tend to become hostile toward the source of their guilt. This kind of relationship is a vicious circle of resentment, guilt, and hostility that tends to grow increasingly worse—often to the point of breakdown of the relationship between parent and child.” [footnotes omitted]); Mandelker, *supra* note 33 at 504 (“Indeed, in any family relationship characterized by tension, the relative called on for support may deny the call for help in order to punish the relative who makes the demand.”).

<sup>86</sup> See Moskowitz, *supra* note 55 at 724 (“... [F]ilial responsibility laws implicate important gender issues. It is typically women who find themselves saddled with the multiple responsibilities of rearing children, working for income outside the home and also providing care for aging family members.”); Lindemann Nelson & Lindemann Nelson, *supra* note 67 at 761 (“... [S]uch laws perpetuate a sexually oppressive feature of traditional family life by imposing the burden of care without the possibility of equitable enforcement.”).

<sup>87</sup> See Moskowitz, *ibid.* at 724–25 (“To impose a legal/financial responsibility in addition to the traditional caregiving role will, in many circumstances, places [*sic*] an unfair burden on women.”).

<sup>88</sup> See Lopes, *supra* note 51 at 521 (“Although the evidence is scanty, it seems safe to conclude that net revenues, if any, produced by the direct application of filial support statutes are not very substantial. There seems to be little doubt that this small return can be traced to the high administrative costs involved in the enforcement of the relative’s obligation.”).

<sup>89</sup> See Tully, *supra* note 54 at 34 (“Regardless of the merits of placing the public purse before the subsistence of the poor, it is an ironical fact that this policy is currently being seriously undermined in practice because of the high administrative costs of collecting money from the legally responsible family members outweigh the monies saved by the states in the form of lower welfare payments.”).

proceedings as a self-represented litigant. A rise in self-represented litigants would likely impose additional costs and delays across the civil litigation system.<sup>90</sup>

Proponents of parental support acknowledge that much of the public savings realized from parental support derived from deterring the elderly from using social programs. Opponents argue that this strategy of deterring use of social programs is perverse and ultimately counterproductive. It is contradictory to make a program available to the public, and then discourage use of it.<sup>91</sup> And it is also short-sighted, as a person who is deterred from seeking care one day may be in a much worse situation later on, and may require more expensive care from public programs.<sup>92</sup>

## 5. SUMMARY

Opponents of parental support argue that laws compelling adult children to support their parents only cause mischief and should be repealed. Litigation is not an appropriate or feasible device to use to reduce poverty. Its adversarial nature does not contribute to family solidarity, which cannot simply be legislated into being where it does not exist. And, by sending the message that individual family units are primarily responsible for supporting older adults, parental support laws have the potential to erode the public consensus underlying social programs geared toward older adults.

### D. Summary and Conclusions

These policy arguments over the wisdom of retaining parental support laws have the stark quality of a gestalt image. The commentators often disagree over the basic facts surrounding the issue and tend to present their arguments as if the underlying policy choices were plain and obvious. In fact, the question of whether to retain a parental support law, in whatever form, involves complex and difficult choices.

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<sup>90</sup> See BC Justice Review Task Force, *Exploring Fundamental Change: A Compendium of Potential Justice System Reforms* (July 2002), online: BC Justice Review Task Force <[http://www.bcjusticereview.org/media\\_releases/2002/potential\\_reforms\\_07\\_02.pdf](http://www.bcjusticereview.org/media_releases/2002/potential_reforms_07_02.pdf)> at 23 (“... [M]any jurisdictions are very concerned about a perceived increase in the number of self-represented litigants in the courts, and it is certainly the perception of those within the system that there are increasing numbers of self-represented litigants. The concerns relate to both the plight of the self-represented litigant in navigating the complex waters of the civil justice system alone, as well as the inefficiencies for the system itself and the frustrations for justice system professionals created by the presence of self-represented parties in the courtroom.”). See also Alberta Law Reform Institute, *Self-Represented Litigants* (ALRI Consultation Memorandum No. 12.18, March 2005), online: Alberta Law Reform Institute <<http://www.law.ualberta.ca/alri/docs/cm12-18.pdf>>.

<sup>91</sup> See Lopes, *supra* note 51 at 522 (“To view these indirect savings as a positive effect of the filial support laws is to embrace a contradiction with the very purpose of providing public support. If it is in fact desirable to reduce the costs of public support by deterring the use of the program, the logical goal would be to deter the use of the program by all potential recipients—to eliminate the program.”).

<sup>92</sup> See Tully, *supra* note 54 at 56–57 (“Welfare, like education, or police and fire protection, is a basic public function benefitting all who live in the community. . . . If an individual’s house burns down and the fire department puts out the fire at great expense, it is inconceivable that the fire department under a relative responsibility law could seek to recover these expenses which were incurred in connection with the property of a single individual from a multitude of his relatives.”).

In our [i.e. the BCLI] view, this debate ultimately resolves itself in favour of repealing British Columbia's parental support law [...] The moral impulse that many children have to assist their parents in times of need is noble, but any attempt to give this impulse the force of law is misguided. Parental support legislation creates mischief for older adults, their families, and the general public, and this mischief cannot be completely remedied by amending the legislation.

[The parents' maintenance provision] has been rarely used in the past and it will likely continue to languish in the future, because it is based on a fundamental contradiction. Litigation is too costly, time-consuming, and complicated to be an effective method to deliver relief to the poor. Repealing [the relevant provision] will not deprive the poor of a practical tool to better their lot.

On a more philosophical level, retaining parental support as part of [reformed family law legislation] would be problematic. It would implicitly endorse a model of combating poverty, especially among older adults, that focusses on dependency and private action.

**Issue for Discussion # 1:** Should *The PMA* be repealed?

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## CHAPTER 3: IF THE PARENTS' MAINTENANCE ACT SHOULD NOT BE REPEALED...

Are there any changes or improvements that should be made to *The PMA*?

### 3.1 Restricting the Obligation to Adult Children

The parents' maintenance legislation of all Canadian provinces and territories, except Manitoba, restricts the parents' maintenance obligation to adult children. Although it is unlikely, it is not inconceivable that a minor son or daughter will have sufficient means to provide for a dependent parent. In its Informal Report the Commission recommends that a child "who is a minor should not be subject to a parents' maintenance application."<sup>93</sup>

**Issue for Discussion # 2:** If *The PMA* should be continued, should the Act be amended to define "son or daughter" to mean a son or daughter who has reached the age of majority?

### 3.2 Legal Definition of Parent

*The PMA* does not define "parent," which leaves the definition as a matter of judicial construction. Currently, *The Family Maintenance Act ("FMA")* of Manitoba defines 'parent' as "a biological or adoptive parent of a child and includes a person declared to be a parent of a child under Part II."<sup>94</sup> As mentioned in Chapter 1, Bill 77, introduced in 1980, initially included the absorption of the parents' maintenance provisions of *The PMA* into *The FMA* and the repeal of *The PMA*. Had this occurred, the then-definition of 'parent' in *The FMA*, which "include[d] a person standing in *loco parentis* to a child", would have applied to not only the child support provisions of *The FMA*, but also to the parents' maintenance provisions. This was one of the concerns, which led the Attorney General to withdraw from Bill 77 the section absorbing *The PMA* into *The FMA*. The Commission, in its Informal Report stated:

This uniform definition could lead to problems in the Bill's practical application. That is, a person could, at least potentially, become the object of several parents' maintenance applications, especially where family breakdown has occurred. A guardian, a step-parent, a natural and adoptive parent could each be considered a "parent" within the meaning of the Act, provided they had performed the rights and duties of parenthood for some period of time during the child's minority.<sup>95</sup>

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<sup>93</sup> *Supra*, note 18, 7.

<sup>94</sup> SM 1978, c 25, Part II. Section 23(1) provides that "any person who has an interest may apply to the court for a declaratory order that a person is or is not a parent of a child, whether born or unborn."

<sup>95</sup> *Supra*, note 18, 7.



In its Informal Report, the Commission recommended a “more restrictive definition for parents’ maintenance provisions”<sup>96</sup>, which corresponded with the definition of “parent” contained in the equivalent legislation then existing in British Columbia. Section 58 of British Columbia’s *Family Relations Act* (which later became s.90) defined ‘parent’ as: “a father or mother dependent on a child because of age, illness, infirmity or economic circumstances”.<sup>97</sup> This raises three issues for consideration.

**Issue for Discussion #3:** (a) If *The PMA* should be continued, should it be amended to add a definition of parent?  
(b) If yes, should the definition be the same as or more restrictive than the definition in *The FMA*?  
(c) Should the definition specifically state who is a parent (biological, adoptive, step, foster parent, *loco parentis*)?

### 3.3 Quantifying Maintenance

Section 4(2) of the 1933 *PMA* capped a maintenance order at “a weekly sum of money not exceeding twenty dollars.”<sup>98</sup> This continues in s. 3 of *The PMA*. While the legislation of Nova Scotia and British Columbia also used to restrict the amount of a parents’ maintenance order to \$15.00 and \$20.00 respectively, Manitoba is now the only province with a statutory limit. While \$20.00 might have been an appropriate cap in maintenance in 1933, obviously it is dated; at an annual inflation rate of 3.5%, \$20.00 in 1933 rises to \$427.00 in 2022.

In the only Manitoba parents’ maintenance case, *Ioculano v. Ioculano*<sup>99</sup>(unreported), the Court interpreted the limit in s. 3 as \$20.00 *per child*, meaning a parent with three children, for example, could be awarded up to \$60.00 per week. Oddly, this interpretation favours the parent of several children over the single child parent.

Another component of this issue is the meaning of “maintain” in section 2:

2 A parent who [...] is unable to maintain himself or herself [...]

Does “maintain” mean the necessities of life or something more? In the Commission’s Informal Report, the Commission stated that: “[t]he right of support [in *The PMA*, ss. 1-3] is aimed towards those [parents] who are incapable of satisfying their basic needs; it is not broadly drafted so as potentially to allow a parent the right to continue his/her previous standard of living.”<sup>100</sup>

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<sup>96</sup> *Ibid.*

<sup>97</sup> SBC 1972 c 20.

<sup>98</sup> See Appendix A.

<sup>99</sup> (7 August 1979), Winnipeg (Winnipeg County Ct.).

<sup>100</sup> *Supra* note 18, 12.

Similarly, what are the “whole circumstances of the case” to be taken into account in ss. 1 and 3? Is it only the current economic circumstances of the parent and child(ren) or are past positive and arguably disqualifying circumstances relevant, such as the parent having provided a caring, satisfactory childhood, or an abusive or deprived childhood, or an estrangement caused by the parent, or the parent having indulged in a spendthrift lifestyle? Reference to past conduct is made in parents’ maintenance legislation of Ontario, New Brunswick, Prince Edward Island, Newfoundland and Labrador, Yukon, and the Northwest Territories, which restricts the maintenance obligation to a parent who has either “cared for *and* provided support for the child”<sup>101</sup> or “cared for *or* provided support for the child.”<sup>102</sup>

Other options that have been proposed to provide more guidance on the quantification of parents’ maintenance include the creation of parents’ maintenance guidelines similar to the child support guidelines<sup>103</sup> and enhancing the defence of abandonment against claims of parental maintenance whereby a parent who did not support his or her child would not qualify for support later in life.<sup>104</sup>

**Issue for Discussion #4:**

- (a) If *The PMA* should be continued, should s. 2 be amended to clarify its intent and, if so, how would you express that intent? Is this a matter best suited to the Court to clarify?
- (b) If *The PMA* should be continued, should s. 1 of *The PMA* be amended to add after the word “case” the words “including the past conduct of the parent”, or is the meaning of the “whole circumstances of the case” best left to the Court to determine?
- (c) If *The PMA* should be continued, should the \$20.00 cap on a maintenance order be increased, either by amending s. 3 or providing for it to be prescribed by regulation, or should there be no prescribed dollar cap, leaving it entirely to judicial discretion?

### 3.4 Overriding Contractual Agreements

In the Commission’s Informal Report, the Commission considered the following:

Should the court be able to override an agreement in which a parent has either agreed in writing to release the child from liability for support or to accept a certain amount of periodic maintenance?<sup>105</sup>

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<sup>101</sup> SNB, 2020, c 23, s 16

<sup>102</sup> RSO, 1990, c F-3, s 32; RSPEI, 1988, c F-2.1, s 32; RSNL, 1990, c F-2, s 38; SNWT, 1997, c 18, s 17(1), which adds “over a significant period of time, including any period during which care or support was provided by the parent after the child attained the age of majority”; RSY, 2002, c 83, s 33.

<sup>103</sup> Shannon Frank Edelstone, “Filial Responsibility: Can the Legal Duty to Support our Parents be Effectively Enforced?” (Fall 2002) 36 Fam. L.Q. 501 at 512.

<sup>104</sup> Allison E. Ross, “Taking Care of Our Caretakers: Using Filial Responsibility Laws to Support the Elderly Beyond the Government’s Assistance” (2008) 16 Elder L.J. 167 at 208.

<sup>105</sup> *Supra*, note 18, 13.

The Commission noted that only the New Brunswick *Family Law Act*<sup>106</sup> provides for a judicial override of such agreements. At that time, the Commission indicated that it “would favour” the addition of a provision in *The PMA* for the judicial override of such agreements.<sup>107</sup>

**Issue for Discussion #5:** If *The PMA* should be continued, should it be amended to provide for judicial override 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?

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<sup>106</sup> SNB, 2020, c 23, s 27: The Court may set aside a provision for support or a waiver of the right to support in any agreement and may make a support order even though the agreement contains an express provision excluding the application of this section, if

- (a) the provision for support or the waiver of the right to support results in unconscionable circumstances,
- (b) the provision for support is in favour of or the waiver is by or on behalf of a dependant who qualifies for assistance under the *Family Income Security Act* or a dependant in respect of whom any payment has been made under the *Family Services Act*, or
- (c) there is default in the payment of support under the agreement at the time the application is made.

In Manitoba, the legislation equivalent to the *Family Income Security Act* is the *Manitoba Assistance Act*, RSM 1987, c S160, and the legislation equivalent to the *Family Services Act* is *The Child and Family Services Act*, SM 1985-86, c 8.

<sup>107</sup> *Supra*, note 2, 14.

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## CHAPTER 4: ISSUES FOR DISCUSSION

**Issue for Discussion # 1:** Should *The PMA* be repealed? (p. 18)

**Issue for Discussion # 2:** If *The PMA* should be continued, should the Act be amended to define “son or daughter” to mean a son or daughter who has reached the age of majority? (p. 19)

**Issue for Discussion #3:**

- (a) If *The PMA* should be continued, should it be amended to add a definition of parent?
- (b) If yes, should the definition be the same as or more restrictive than the definition in *The FMA*?
- (c) Should the definition specifically state who is a parent (biological, adoptive, step, foster parent, *loco parentis*)? (p. 20)

**Issue for Discussion #4:**

- (a) If *The PMA* should be continued, should s. 2 be amended to clarify its intent and, if so, how would you express that intent? Is this a matter best suited to the Court to clarify?
- (b) If *The PMA* should be continued, should s. 1 of *The PMA* be amended to add after the word “case” the words “including the past conduct of the parent”, or is the meaning of the “whole circumstances of the case” best left to the Court to determine?
- (c) If *The PMA* should be continued, should the \$20.00 cap on a maintenance order be increased, either by amending s. 3 or providing for it to be prescribed by regulation, or should there be no prescribed dollar cap, leaving it entirely to judicial discretion? (p. 21)

**Issue for Discussion #5:** If *The PMA* should be continued, should it be amended to provide for judicial override 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? (p. 22)

# APPENDIX A: THE PARENTS' MAINTENANCE ACT, 1933

## CHAPTER 31

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

[Assented to April 28th, 1933]

**H**IS 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.

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  
by another.

(2) An order may be made under the provisions of this Act, whether or not the dependent parent is being cared for by another or in a sanatorium, home, mental 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

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).

**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.

**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.

Application of "Summary Convictions Act".  
 Service of summons.  
 See R.S.S., c. 194, s. 5.  
 Filing of order in County Court.  
 R.S.O., c. 185, s. 5.

#### PROCEEDINGS BY OTHERS.

**10.** Proceedings may be taken under this Act

(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 sented to.

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

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## **APPENDIX B: *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.

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**APPENDIX C: BILL 77: THE FAMILY LAW AMENDMENT ACT, 1980**

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.

(Assented to 1980)

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

[...]

Division 2

Amendments to The Family Maintenance Act

**Family Maintenance Act am.**

**2** The Family Maintenance Act, being chapter 25 of the Statutes of Manitoba, 1978 (chapter F20 of the Continuing Consolidation of the Statutes of Manitoba) (hereinafter in this Division referred to as "the Act") is amended

- (a) by renumbering Parts III, IV and V thereof as Parts IV, V and VI, respectively; and
- (b) by adding thereto, immediately after Part II thereof, the following Part:

PART III

PARENTS

**Obligation to support parents.**

**15.1 (1)** Every person who has a dependent parent has the obligation to provide the parent with reasonable support and maintenance.

**Joint obligation to support parents.**

**15.1 (2)** Where 2 or more persons have the same dependent parent, each of the persons has the obligation jointly with the other persons to provide the parent with reasonable support and maintenance.

**“Dependent parent” defined.**

**15.2** For the purposes of section 15.1, a dependent parent is a parent who requires assistance for support and maintenance and

- (a) is widowed or does not have a spouse; or
- (b) has a spouse but, for any reason, is not receiving support and maintenance or adequate support and maintenance from that spouse

**Application for order.**

**15.3 (1)** To enforce an obligation under section 15.1, a parent or any person on behalf of a parent may apply to a court for an order under this Part.

**Failure to claim against all persons.**

**15.3 (2)** Where an application to enforce an obligation under subsection 15.1(2) fails to include as a respondent any of the persons who have the obligation under that subsection, the court may, before making an order and either on its own initiative or on the motion of any respondent named in the application, direct that the person who was not included as a respondent be served with notice of the application and the time and place of the hearing, and after the service the court shall deal with the person as a respondent in the proceeding for all purposes under this Part.

**Factors affecting order.**

**15.4** In determining whether to make an order under this Part or section 21 and what provisions the order should contain and, in particular, in determining what is reasonable under section 15.1 for the purposes of the order, a court shall consider all the circumstances of the parent, the parent’s spouse, if any, and the person or each person, as the case may be, who has the obligation under section 15.1, including the following:

- (a) The financial needs of the parent.
- (b) The financial means, including any assets, earnings, income, pension benefits and earning capacity, of the parent and of the parent’s spouse if any.
- (c) The financial obligations of the parent’s spouse, if any.
- (d) The financial means, including any assets, earnings, income and earning capacity and any financial obligations, of the person or each person, as the case may be, who has the obligation under section 15.1 with respect to the parent.

**Order.**

**15.5 (1)** Upon an application under this Part, a court may subject to subsection (2) make an order containing any one or more of the following provisions and may make any of the provisions subject to such terms and conditions as the court deems proper:

- (a) In the case of an obligation under subsection 15.1(1), that the person who has the obligation shall pay to the parent, or to a third person on behalf of the parent, such periodic sums for support and maintenance as the court may determine.
- (b) In the case of an obligation under subsection 15.1(2), that each of the persons who have the obligation or any one or more of them, as the court may determine, shall pay to the parent, or to a third person on behalf of the parent, such periodic sums for support and maintenance as the court may determine.
- (c) That court costs and reasonable solicitor's costs, in such amounts as the court may determine, shall be paid by such party or proportionately by all or such of the parties to the application, as the court may determine.

**Limitation on payments.**

**15.2 (2)** No order made under this Part shall require a person to make payments for the support and maintenance of a parent in excess of the sum of \$200.00 monthly excluding costs, but a court may order payments in excess of that limitation to be made in any case where it is satisfied that the limitation would be grossly unjust under all the circumstances.

**Consent order.**

**15.6** A court may, without a hearing, make an order under this Part where all parties to the application consent to the order and to the provisions thereof.

[...]

GENERAL

**Reference to Parents' Maintenance Act.**

**14** All references in any other Act of the Legislature or the Parliament of Canada to The Parents' Maintenance Act shall be read as references to Part III of The Family Maintenance Act.

**Transitional.**

**15** Any application brought under The Parents' Maintenance Act and not completed before the coming into force of this Act shall be continued under Part III of The Family Maintenance Act as nearly as may be possible.

**Parents' Maintenance Act rep.**

**16** The Parents' Maintenance Act, being chapter P10 of the Revised Statutes, is repealed.