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Backgrounder

Report on the Parental Support Obligation in Section 90 of the Family Relations Act

INTRODUCTION

The British Columbia Law Institute (BCLI) has published a report that addresses the topic of parental support. Its focus is on the legal obligation that adult children have to pay monetary support to a parent who has become dependent on the child for reasons of age, illness, infirmity, or economic circumstances. This legal obligation is set out in section 90 of the *Family Relations Act*, this province's main family law statute. Funding for this report has been provided by the Ministry of Attorney General. The report forms part of the Ministry's broader, full-scale review of the *Family Relations Act*. The full text of the report is available on the BCLI's website.

The report does not address any of the moral, psychological, or economic issues that may arise when an adult child voluntarily provides care, most often in the form of services, to a parent. That phenomenon is wide-ranging, multi-dimensional, and has been the subject of intensive study elsewhere. In contrast, the legal obligation of an adult child is not well known and is little discussed and understood. Under section 90 of the *Family Relations Act*, a dependent parent may sue an adult child. If successful, the parent will receive an award of monetary support from the child. Section 90 does not authorize a court to order that a child provide caregiving services to a dependent parent.

THE LEGAL BACKGROUND TO PARENTAL SUPPORT

In its current guise, section 90 appears to be based on the proposition that litigation can provide some assistance in relieving poverty, particularly among older adults. The tensions inherent in that proposition have given the courts considerable difficulty in applying the provision, on the infrequent occasions when a parental support claim has been contested. Over the course of its eighty-five year history, the parental support law has only rarely been invoked. (But it has generated much more litigation over the past fifteen years than over the previous seventy.)

Both the practical difficulties of applying section 90 and its troubling theoretical underpinnings have led the BCLI to conclude that the section should be repealed. Repealing section 90 would not deprive the poor of a useful remedy and would be a welcome modernization of the law. The BCLI arrived at this conclusion after a thorough examination of the legislative history of, judicial interpretation of, and policy rationales for parental support laws.

SUMMARY OF THE REPORT

The report contains six chapters. The first chapter is a brief introduction and the sixth is a short conclusion. The bulk of the analysis in the report is contained in its middle four chapters.

Chapter 2 examines the history of parental support laws, from their origins in England to their current articulation in British Columbia. The chapter begins with the advent of parental support in England. There was no obligation placed on children to support their parents at common law. Parental support came into being as part of the Poor Laws, which were designed as a comprehensive response to the problem of poverty that arose and deepened throughout the sixteenth century. For the first time in English legal history, the Poor Laws created a framework for delivering cash relief to the destitute. The role of parental support in this framework was to minimize the financial burden placed on government to support the elderly and disabled poor. The theory was that the families of these people would be responsible for their support, and the parental support law would give the government a way to enforce that obligation and reduce or recover any financial assistance it was required to give. The historical record shows that the legislation did not work well in practice, and the government rarely resorted to its use.

The chapter then moves on to consider the Canadian legislative history. Parental support laws were first enacted in British Columbia in 1922. This province was part of a trend that would see almost all the provinces and territories enact parental support legislation during the hard economic times of the 1920s and 1930s. The reason for enacting parental support legislation in Canada echoes the reason that convinced the English to enact it 300 years earlier. In the 1920s, Canadian governments—federal, provincial, and municipal—for the first time recognized the need for direct cash payments to the indigent as part of the social welfare system. Once again, the theory that parental support would help lighten the welfare burden on government supplied the rationale for enacting parental support laws. And once again, those laws proved to be a disappointment in practice. They were almost entirely ignored until the 1970s, when a significant development took place. In the wake of legislation at the federal level in the late 1960s to liberalize divorce, the provinces came under extraordinary pressure to reform their antiquated family law statutes. In British Columbia, as in most of the other provinces and territories, parental support was caught up in this wave of reform. For reasons that remain obscure, parental support was placed on the same footing as child and spousal support. In effect, our parental support law was cut loose from its moorings in the public welfare system and set adrift in the litigation-based family law system.

Chapter two concludes by surveying the results of this decision, the small body of court cases on section 90 that has emerged in the 1990s and the present decade. Section 90 gives the courts precious little direction on resolving both the theoretical tensions inherent in treating parental support as another family support obligation and the practical problems raised by this type of litigation. All too often, the cases have displayed the dysfunctions that have caused dissatisfaction with the family law system as a whole.

Chapter three briefly makes the case for reform of the law on parental support in British Columbia. In part, this is done by pointing to the frustrations of litigants in relying on section 90 and the courts in applying the current law. The chapter also surveys some recent data on demographic and economic trends concerning older adults in British Columbia.

Chapter four addresses the major policy issue to consider in reforming parental support laws. This issue is whether parental support legislation (such as section 90) can be amended in a way that will allow it to be relevant to contemporary society. If this is not possible, then section 90 should simply be repealed. The chapter surveys academic commentary on the policy rationales for parental support legislation. It summarizes the major arguments of proponents and opponents of parental support. These arguments are almost perfectly symmetrical. Whereas proponents argue that parental support laws provide the poor with a sustainable and necessary source of funds, strengthen family solidarity, and lessen the burden on the public purse, opponents argue that they do not provide practical assistance to the poor, disrupt family relations, and have no meaningful impact on government finances. The chapter ends by setting out the reasons for the BCLI's conclusion that, on balance, these opposing arguments should be resolved in favour of repealing section 90.

Chapter five deals with a series of discrete issues that would arise if section 90 were to be amended. These issues are drawn from comments in the case law and from consideration of the legislation in force in other jurisdictions. They are primarily of a technical nature. Since there is little academic commentary on the practical and drafting issues that would be faced in amending a parental support law, we felt it would be useful to canvass these issues. No recommendations are made in this chapter, as the BCLI's basic recommendation is to repeal, not amend, section 90.