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

INTRODUCTION

The British Columbia Law Institute has received funding from the Ministry of Attorney General for a new law reform project. The project will examine the obligation of an adult child to support a dependent parent. This obligation is found in section 90 of the *Family Relations Act*.¹

Obligation to support parent

90 (1) In this section:

“**child**” means an adult child of a parent;

“**parent**” means a father or mother dependent on a child because of age, illness, infirmity or economic circumstances.

(2) A child is liable to maintain and support a parent having regard to the other responsibilities and liabilities and the reasonable needs of the child.

The project will culminate in a report, which will be published next spring.

BACKGROUND

At common law, an adult child is under no obligation to support a parent. Legislation creating this obligation first appeared in England with the enactment of the Elizabethan poor laws.² This statute was an early attempt to create a comprehensive program for the relief of poverty. The policy expressed throughout the Act was that indigent persons should become a charge on the state only as a last resort. The family support obligation was intended to bolster this policy.

In 1922, British Columbia enacted its first parental support statute, which was called the *Parents' Maintenance Act*.³ The early 1920s was a time of economic hardship, both in British Columbia and throughout Canada. In response to the crisis, the federal government took what was, at the time, the novel approach of providing emergency cash grants to the poor. This money was provided on the condition that the federal government would only be responsible for one-third of the

1. R.S.B.C. 1996, c. 128.

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

3. S.B.C. 1922, c. 57.

cost of the program; the other two-thirds were to be provided by the provincial government and the local authority, in equal measure.

One of the main reasons for the enactment of the *Parents' Maintenance Act* appears to have been to allay the fears of local governments that their obligations under the federal program would overtake their ability to raise revenue.⁴ The legislation expressly allowed a municipality to commence proceedings against an adult child of a dependent parent. There is only one court case involving a public authority using the legislation in this manner, effectively to reduce the costs of providing assistance to an indigent person.⁵ Of course, the Act originally required proceedings to be commenced before a magistrate, police magistrate, or two justices of the peace, and there simply may not be an adequate public record of such proceedings. But all indications are that the public financing function of this legislation has never been very important in practice in British Columbia.

In 1972, the *Parents' Maintenance Act* was incorporated into the *Family Relations Act* and the old procedure of applying to a magistrate was replaced with an application to the Provincial Court.⁶ In 1978, the legislation was amended by explicitly including "economic circumstances" in the list of conditions that could produce dependency in a parent.⁷ In addition, for the first time, parental support legislation was grouped with provisions dealing with child and spousal support. These changes had the effect of changing the way that the legislation was viewed. As the public component of the legislation has declined in prominence, the private component, which requires a court to examine the relationships within a family in a normative or moral way, has increased. Over the past 10 years, the legislation has begun to be invoked in a wide variety of cases, each having this private component as one item in common.⁸

PLANNED APPROACH TO THE REPORT

The report will have three main parts. The first part will review the history of parental support legislation, and compare the experience of British Columbia with that of other common law ju-

4. See *Newson v. Newson*, (1998) 53 B.C.L.R. (3d) 191 at para. 105, Burnyeat J.

5. *R. v. Skilling*, [1935] 1 W.W.R. 183 (Co. Ct.).

6. S.B.C. 1972, c. 20, sections 43–47.

7. S.B.C. 1978, c. 20, section 58.

8. See, e.g., *Newson*, *supra* note 4, *rev'd*, (1998) 65 B.C.L.R. (3d) 22 (C.A.) (Court of Appeal ordering two children each to pay \$200 per month in interim support to father); *Smeland v. Smeland*, (1997) 38 B.C.L.R. (3d) 96 (S.C.) (husband had no standing to apply under section 90 for order for parental support for mother, concurrently reducing husband's spousal support obligation); *Puskeppelies v. Puskeppelies*, [1997] B.C.J. No. 2080 (S.C.) (QL) (application for interim support from child to fund litigation against husband dismissed); *Nevill v. Nevill*, [1998] B.C.J. No. 2802 (S.C.) (QL) (application for interim support in litigation involving dispute over real estate transaction dismissed); *Peach v. Emlyn*, [1999] B.C.J. No. 1455 at para. 5 (S.C.) (QL), Master Powers (claim for support that was "essentially an overlay to the property dispute" between the parties granted); *S.R.G. v. M.R.G.*, 2000 BCPC 45 (application for support dismissed as son did not have sufficient funds); *Anderson v. Anderson*, [2000] B.C.J. No. 2694 (S.C. Master) (QL) (application for interim support in the amount of \$50 per month granted), *aff'd*, [2001] B.C.J. No. 418 (S.C.) (QL).

risdictions having this type of legislation. The second part will examine the major policy arguments in favour of keeping parental support legislation and in favour of repealing it. The third part will discuss a series of issues to be considered if the legislation is retained and amended.

The report will make recommendations on whether section 90 should be retained, whether section 90 should be amended, and what form any amendments should take. The report will not include draft legislation.

MAJOR ARGUMENTS IN FAVOUR OF AND AGAINST PARENTAL SUPPORT LEGISLATION

Supporters of parental support legislation have argued that it encourages and strengthens the moral duties children owe to parents, that it makes available funds to impoverished individuals that may not be available from any other source, and that it frees up public funds for spending on other socially valuable purposes. Opponents of parental support legislation have argued that it is disruptive of family relationships, that it does not provide the poor with a sustainable source of funds when compared with state support, that it may deprive the adult child's family of needed funds, and that it is difficult to enforce.

ISSUES TO CONSIDER IN AMENDING SECTION 90

At this initial stage in the project, there appear to be a number of issues that should be considered if section 90 is to be amended.

- (1) Should the legislation provide that a parent's conduct can disqualify the parent from receiving support?
- (2) Should the legislation address the level of support a qualifying parent will be entitled to? Should this be restricted to the bare level of meeting the parent's basic needs or should it be set to some other standard?
- (3) Should the requirement of dependency be retained?
- (4) Should the list of conditions—"age, illness, infirmity, or economic circumstances"—that apply to the section's conception of dependency be amended?
- (5) Should there be any onus on a dependent parent to take all reasonable steps to become self-sufficient?
- (6) Should there be a legislated time limit on support, which could parallel the time limit on child support?
- (7) Should section 90 apply to an individual who, though not biologically a parent, has stood in the place of a parent for a child?
- (8) Should section 90 expressly deal with the apportionment of liability for support among two or more children?

- (9) Should the legislation expressly give effect to, prohibit, or allow a court to override an agreement between a parent and a child releasing the child from an obligation to pay support?

Over time, items may be added to or taken away from this list.

OTHER LAW REFORM WORK

Neither the Law Reform Commission of British Columbia nor the British Columbia Law Institute has previously done work on parental support. The Manitoba Law Reform Commission has produced an informal report on the topic.⁹ The Uniform Law Conference of Canada has included a provision on parental support in its *Uniform Family Support Act*.¹⁰ Outside Canada, the California Law Revision Commission has examined parental support in the course of its major study on family law.¹¹

CONSULTATION

No formal consultation is planned for this project. But responses to this document are welcome, and will be considered along with any comments received in connection with the presentation at the Canadian Conference on Elder Law

NEXT STEPS IN THE PROJECT

Research into the subject matter of the project is ongoing. The project will be the subject of a presentation at the Canadian Conference on Elder Law, 14–15 October 2006. The report will be drafted over the winter, and will be published in March 2007.

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9. *Report on Parents' Maintenance Legislation* (Rep. No. 11A, 1981) (archived with the British Columbia Law Institute).
10. *Proceedings of the Sixty-Second Annual Meeting* (Ottawa: The Conference, 1980) 138.
11. *Family Code*, 22 Cal. L. Revision Comm'n. Reports 1 at 425–30 (1992).