



## Paying Support to Parents by Breena Murray

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Everyone knows that parents have an obligation to support their children, at least while they remain under the age of 18, and that this obligation could be the topic of a court order in divorce proceedings. However, what most people probably don't know is that in all jurisdictions in Canada, except for Alberta, there is the possibility that adult children may be ordered to pay his or her parent support. This obligation dates back to the Depression, where there were no government programs to support our elderly population.

In Manitoba, this obligation is governed by *The Parents' Maintenance Act*. The Act states that a son or daughter is liable for the support of the dependant parent if it appears he or she has sufficient means to do so. Thus, for an order of parental support to be made, the applicant (the parent) would have to show two things: (1) that they are dependent on the child; and (2) that the child has sufficient means to support them. Point one is taken care of by the Act, as it states that a

parent is deemed to be a dependent if they cannot maintain him or herself without assistance by reason of age, disease or infirmity.

In Ontario and Prince Edward Island, there is a requirement that the parent seeking the support must have also cared for and provided support for the child they are seeking it from. In Manitoba, there is no such requirement.

The Act does limit the amount a child will have to pay in support to his or her parent, and specifically states that the order shall be for a weekly sum of money not exceeding \$20.00. This limit seems to be unique to Manitoba's legislation.

Given this nominal amount, and considering the costs it would take to bring an action like this, it is not surprising that there have been no reported decisions of a support order being made under this Act in Manitoba, and very little in the other provinces. In those cases that have been reported, you usually find that there is a lot of family tension that goes back far

before the litigation began. Perhaps because if adult children have the means to support their needy parents, they will do so without a court order.

Some lawyers think that this type of legislation has no place in our society anymore. They say that the legislation does meet the needs of the older adults and the litigation tends to frustrate all parties involved. One suggests that other measures, such as leave for works with sick, older parents would better help the elderly parents' needs. On the other hand, some lawyers think that this area will be growing in future years and that the legislation should be strengthened to make is clear when a child is obligated to provide support for his or her parents, as well as a regime that sets the levels of support the child would be required to pay.

Alberta got rid of its legislation in 2005 and it was recommended in 2010 that British Columbia drop its provision because the provision

is “rarely used” and “creates more problems than it solves”. It will be interesting to see if more provinces follow suit in the coming years or whether the number of cases using this type of legislation will increase as our population ages.