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in Canada

*Vancouver Sun*

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# Parental Support

1 *Vancouver Sun* (9 February 1993) A4.

2 *Godwin v. Bolco* (1993), 45 Reports of Family Law (3d) 310 (Ontario Court of Justice, Provincial Division).

3 Jean Van Houtte and Jef Breda, "Maintenance of the Aged by Their Adult Children" (1978) 12 *Law and Society* 645 at 649.

4 49 Elizabeth 1, chapter 2., section VI (1601).

5 CCQ 1980, chapter 39 Book Two, Title Four sections 633-644; *Family Law Act*, RSN 1990, chapter F-2, section 38; *Family Law Act*, RSO 1990, chapter F-3, section 32; *Family Law Reform Act*, RSPEI 1988, chapter F-3, section 17; *Family Maintenance Act*, RSNS 1989, chapter 160, section 15; *Family Relations Act*, RSBC 1979, chapter 121, section 58; *Family Services Act*, SNB 1980, chapter F.2.2, section 114; *Maintenance Order Act*, RSA 1980, chapter M-1, section 2(1); *Parents' Maintenance Act*, RSM 1987, chapter P10; *Parents Maintenance Act*, SS 1923, chapter 53.

### 4 Adult Children ordered to aid mom!

proclaimed a 1993 *Vancouver Sun* headline.<sup>1</sup> The story referred to a decision of the Ontario Provincial Division in which the adult children of Veronica Godwin were ordered to pay financial support to their mother.<sup>2</sup> The article quoted Mrs. Godwin's lawyer as saying that the decision meant that children had a legal responsibility to support their parents, and that the judgement could open the door to similar cases. What the article failed to mention is that statutory provisions requiring children to support their parents have existed for hundreds of years.

### Background

The historical foundations of a legal duty on children to support their parents reach back to the Roman

Empire.<sup>3</sup> Current Canadian parental support laws have their roots in the Elizabethan Poor Laws. Among other things, the Poor Laws stated that children of the indigent elderly were required to support their parents if they had the capacity to do so.<sup>4</sup> Modern parental support laws have not changed substantially since Elizabethan times.

In Canada, legislated provisions for parental support exist in all ten provinces.<sup>5</sup> Although there are variations between the provincial statutes, all of these laws recognize that in certain circumstances it will be necessary for adult children to support their parents, and that adult children have an obligation to do so. In order for this obligation to be enforced, the statutory provisions and case law provide that a parent must have a history

of supporting the child, and that the parent must establish some form of need or dependency. In addition, the extent of the support required of an adult child will depend on that child's financial capacity.<sup>6</sup>

While provisions for parental support have a long history in Canadian law, the decision in *Godwin v. Bolcso* is remarkable. Prior to *Godwin*, the few Canadian cases that dealt with parental support provided relatively little insight into the extent and applicability of the relevant statutory provisions. As one of the first cases to interpret and apply the statutory provisions in any depth,<sup>7</sup> *Godwin* marks the first comprehensive analysis of the role and scope of this type of legislation in Canadian law.

In *Godwin*, a 58 year old mother sued her adult children for support. The Bolcso children were born and raised in the 1950s and 1960s. Their father, a butcher, abused alcohol. Their mother, Veronica Bolcso Godwin, was a housewife and the primary caregiver in the family. Physical demonstrations of affection were rare in the Bolcso household, and responsibility and duty were stressed over praise or emotional comfort.<sup>8</sup> All four children graduated from high school and left home to pursue careers or post-secondary education. As adults, the children did not visit their mother often, but kept in contact with her through letters and notes.<sup>9</sup> In 1990, at the time that Mrs. Godwin began her court action, the children had had no prior notice of their mother's intentions.

## The Test

Mrs. Godwin used section 32 of the Ontario *Family Law Act*<sup>10</sup> to apply to the court for support from her children. That section provides that to the extent that she or he is capable, an adult child is obligated to support a parent who cared for or supported that child. The court stated that in order for Mrs. Godwin's application to be successful three questions had to be answered: did Mrs. Godwin provide support to her children; did Mrs. Godwin provide care; and, was Mrs. Godwin in financial need? All three of these elements had to be satisfied before Mrs. Godwin could be successful against her children.

Did Mrs. Godwin support her children? The court defined support to include the basic necessities of life such as food, shelter and clothing.<sup>11</sup> It held that the proper standard was that level of support that ...would reasonably have been expected from a parent in the circumstances in which the family found itself.<sup>12</sup> The court rejected the children's argument that a relationship of interdependency (that is, additional support beyond the standard normally required of a parent) was necessary in order for Mrs. Godwin to be successful in her claim.<sup>13</sup> The court stated that a claim for parental support would not be defeated by the fact that a parent provided only the minimum level of support required by law.<sup>14</sup> As a result, the minimal financial and moral support Mrs. Godwin had provided her children was found sufficient to meet the burden of the first test for parental support.

6 *Re Blum and Blum* (1982), 132 Dominion Law Reports (3d) 69 at 72 (Ontario Provincial Court); *Newson v. Newson* (1994), 99 British Columbia Law Reports (2d) 197 at 200 (Supreme Court).

7 *Godwin*, see note 2 at 312.

8 *Godwin*, see note 2 at 315.

9 *Godwin*, see note 2 at 315.

10 See note 5.

11 *Godwin*, see note 2 at 321.

12 *Godwin*, see note 2 at 321.

13 *Godwin*, see note 2 at 323.

14 *Godwin*, see note 2 at 323. In this respect, the decision represents a significant departure from decisions of the past. See for example *Berendt v. Berendt* (1987), 11 Reports of Family Law (3d) 69 at 74 (Ontario Unified Family Court), where the court had held that section 32 of the Ontario *Family Law Act* addressed "...a mutual support obligation between parents and children based on direct interdependency."

The *Godwin* decision is a significant act in Canadian law that sets out a parent's obligations in order to support their children. It also marks an increase in the role of parental support legislation.

Did Mrs. Godwin care for her children? Care was defined as the amount of care that could be reasonably expected within the family's circumstances at the time.<sup>15</sup> During the course of the trial, the children complained about the level of care they had received from their mother. They testified that she had failed to protect them from their father's violent tendencies and from sexual assault by people close to them. Several of the children also claimed that they were prone to depression and feelings of abandonment as a result of their upbringing.<sup>16</sup> The court declared that the parenting conditions existing at the time of the children's upbringing were critical in assessing the standard of care. While admitting that the level of care provided by Mrs. Godwin might not meet current standards for child rearing, the court nonetheless found that Mrs.

Godwin had met the standard of care required of parents in the 1950s and 1960s.<sup>17</sup> Consequently, it was held that Veronica Godwin had provided levels of both care and support sufficient to satisfy the statutory provisions.

With respect to financial need, the court found that Mrs. Godwin's age and lack of work experience would make it difficult for her to find employment in the future. It was noted in particular that Mrs. Godwin's financial needs were caused in part by the fact that, because she

had been at home raising her children, she had been unable to accumulate work experience.<sup>18</sup> In the result, the court found that the children owed their mother support, and ordered them to pay her a cumulative monthly support allowance of \$1000.<sup>19</sup>

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The *Godwin* decision is a significant landmark in Canadian law because it sets out the test that a parent is required to meet in order to be successful in an action for support. It also may indicate an increasing appreciation for the role of parental support laws in Canadian society. Although statutes providing for parental support long have been a part of Canadian legal history, their use has been infrequent. In fact, parents' maintenance acts existed for over half a century without having

<sup>15</sup> *Godwin*, see note 2 at 323.

<sup>16</sup> *Godwin*, see note 2 at 316.

<sup>17</sup> *Godwin*, see note 2 at 323-324. It seems either that the court did not accept the children's allegations, or that it did not find sufficient evidence to support them.

<sup>18</sup> *Godwin*, see note 2 at 321.

<sup>19</sup> A recent judgement of the Ontario Court of Appeal overturned a lower court decision to stay the interim support award of \$1000 pending an appeal: see *Godwin v. Bolcso* (10 August 1995) No. 621262 (Ontario Court of Appeal). The Court of Appeal found the interim award to be reasonable given the circumstances of the case. The trial judgement discussed in this article was upheld by the Ontario Court of Appeal: see *Godwin v. Bolcso*, [1996] Ontario Judgements No. 145 (Quicklaw) (Court of Appeal).

an impact on family law,<sup>20</sup> and over the last 10 years the current Ontario legislation has yielded less than a dozen cases.<sup>21</sup> What is notable is that the majority of these cases have occurred in the last decade. The increasing frequency of parental support cases seems to indicate that past

of private concern. Parental support should not be viewed as a moral issue alone, however. To do so would be to ignore the fact that society has an interest in ensuring that its elderly population receives adequate care. Where moral and societal pressures are not enough to enforce family responsibility, and a breakdown has occurred in the parent-child relationship, it may be necessary and proper for the courts to interfere.<sup>22</sup>

Critics of parental support legislation also argue that such laws are unfair to adult children.<sup>23</sup> That is, parents choose to have children and should assume the responsibility for them; by contrast, children do not choose their parents. In addition, the increased longevity of our ageing population means that adult children may have to support their parents longer than their parents ever supported them.<sup>24</sup> While it is true that children do not have

control over the circumstances of their birth, this lack of individual choice is not determinative. The very existence of parental support legislation indicates that society has accepted that the parent-child relationship involves obligations on children as well as on parents. By passing and enforcing this type of legislation, society has chosen to favour the collective interest of providing support to destitute parents, over the individualistic interest of children in such circumstances.

ideas about support for ageing parents are being challenged.

## Observations

It could be argued that legislating for parental support turns a private issue into a public responsibility. Traditionally, despite laws providing for support, a child's obligation to his or her parents has been viewed primarily as a moral responsibility. By shifting the emphasis to the legal aspects of support, the courts could be viewed as intruding on an area

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20 The *Parents Maintenance Act*, 1921, SO 1921, chapter 52, has not been judicially considered. The subsequent legislation — the *Parents' Maintenance Act*, 1954, SO 1954, chapter 68 and the *Parents Maintenance Act*, RSO 1970, chapter 336 — was considered in only three cases.

21 *Godwin*, see note 2 at 311-312.

22 Terrance A. Kline, "A Rational Role for Filial Responsibility Laws in Modern Society?" (Fall 1992) 26 *Family Law Quarterly* 195 at 207.

23 For example, see Kline, note 22 at 206-7; see also Lee E. Teitelbaum, "Family Obligation" (1992) *Utah Law Review* 765 at 780.

24 Kline, see note 22 at 206.

While there are principled arguments both for and against parental support legislation, practical reasons most likely underlie both the infrequent use of these provisions in the past, and their growing importance in recent years. Historically, several factors have ensured that parents either did not, or did not need to take advantage of parental support laws. Traditional family roles that defined parents as providers and caregivers reinforced the notion that parents should support themselves.<sup>25</sup> In many cases, parents may have been ashamed or embarrassed to take their children to court for support. At the same time, the sheer force of moral persuasion often encouraged children to support their parents.<sup>26</sup> In many cases legal action was not necessary to ensure that children met the support obligations they owed their parents.

Probably the most effective deterrent to the use of these provisions in the past, however, was the growth of the welfare state. In the twentieth century, the burden of supporting aged or dependent parents was transferred from adult children to the state. Universal old age pensions and medical benefits generally ensured that parents had the ability to support themselves as they aged. As a result, it was not necessary for parents to use either moral or legal force to obtain support from their children.

The changing nature of the welfare state may also provide the best explanation of why parental support cases have increased in frequency in recent years. Canadian governments have responded to concerns over the

levels of debt and deficit by cutting social spending, with a resulting downsizing of the social welfare system. Unfortunately, these changes are occurring at the same time that Canada's population is ageing rapidly.<sup>27</sup> 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 these costs, it is likely that the burden of parental support will shift once again to adult children. Parents may have no choice but to use the existing family responsibility legislation if moral and societal pressures are insufficient to force adult children to provide support.

The *Godwin* decision did not establish a bold new frontier of Canadian law. Nor did it create new support obligations on the part of children toward their parents. Instead, the court in *Godwin* breathed new life into statutory provisions that have existed for hundreds of years. By providing a comprehensive, detailed analysis of an adult child's obligation toward a parent, the *Godwin* decision established that parental support has an important role to play in modern Canadian society. Where societal, family and moral pressures are not enough to persuade children to support their parents, devastating consequences may result to aged persons. Family responsibility legislation ensures that parents have a means of enforcing this important and necessary support obligation. ■

25 Freda Steel, "Financial Obligations Toward the Elderly: Filial Responsibility Laws" in Margaret E. Hughes and E. Diane Pask, eds., *National Themes in Family Law* (Carswell: Toronto, 1988) at 111-112.

26 See Teitelbaum, note 23.

27 By the year 2030, the population over the age of 65 is expected to triple in size: see Statistics Canada, *The Seniors Boom: Dramatic Increases in Longevity and Prospects For Better Health* (Ottawa: Ministry of Supply and Services Canada, 1986) at 1.1.