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**PARENTS WHO SUE THEIR ADULT CHILDREN FOR SUPPORT:
AN EXAMINATION OF DECISIONS BY CANADIAN COURT JUDGES.**

A Thesis

Presented to

The Faculty of Graduate Studies

of

The University of Guelph

by

JEANETTE MARGARET PARSONS

In partial fulfilment of requirements

for the degree of

Master of Science

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ABSTRACT

CHILDREN OBLIGATED TO SUPPORT THEIR PARENTS: AN EXAMINATION OF DECISION BY JUDGES.

Jeanette Parsons

University of Guelph, 1998

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Joseph A. Tindale, Ph.D.

This thesis is an investigation of the factors considered by judges in cases where the provincial legislation obligates adult children to provide support for their parents. These factors are explored within the context of intergenerational relationships with a focus on functional solidarity. Fourteen case reports, which represent all of the cases reported to have come before the courts that considered or referred to this legislation, were examined. Thematic content analysis revealed that the courts promote the obligation of family members to provide for one another according to the legislation and that the responsibility to provide this support is organized according to certain priorities. Nuclear family obligations come before those of the extended family. The most salient factors considered by the court in these cases were: the parent's demonstrated need, the child's financial capability of meeting his or her obligations, the presence of interdependency in the relationship between parent and child, and the situation which led to the initiation of the judicial process.

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Introduction

On January 21, 1982, Judge Karswick, an Ontario Provincial Court Judge, awarded Paula Blum support from her son, Ephraim Blum, in the amount of \$270.00 per month (Karswick, 1982). According to the Globe and Mail, this was the first such award made under Ontario's Family Law Reform Act, revised in 1980 (Globe & Mail, February 8, 1982). In making his ruling, Judge Karswick considered the wording of the law at that time, which read:

17. Every child who is not a minor has an obligation to provide support, in accordance with need, for his or her parent who has cared for and provided support for the child, to the extent that the child is capable of doing so.

While the words "landmark decision" may not be applicable here, this particular case resulted in a number of newspaper articles (Globe and Mail, February 8 and 9, and Toronto Star, February 9, 1982). In addition, it has since been referred to and considered in similar cases (Donkin, 1983, Borins, 1984).

Although laws concerning children's obligations to provide support to their parents have been in existence in various provinces since 1921, (the first in Ontario being *The Parent's Maintenance Act, 1921, Statute Ontario, 1921, c. 52*), they have generated a small number of reported and unreported cases¹ (Dunn, 1993). However, it is possible that awareness is beginning to grow, particularly among parents who find themselves destitute and, seemingly with nowhere to turn.

1

Unreported cases are those cases which come before the court but are not written up by the judges in the law reports.

This scenario was the case for Veronica Godwin of St. Catharines, Ontario during the fall of 1990. She had been listening to a Canadian Broadcasting Corporation Radio program during which the radio host mentioned the existence of laws in which children are required to support needy parents. Shortly after learning this, she filed an application without the assistance of a lawyer (Carey, 1993). A provincial court judge later awarded her support for the amount of \$1000 monthly, to be paid by four of her children (Dunn, 1993).

In this thesis, it is my intention to conduct content analysis on cases much like the two described here. I am particularly interested in how the judges interpret the law and apply this interpretation to particular cases. This analysis will take place in the framework of intergenerational relations and social policy as they pertain to relationships between adult children and their parents. What follows is a brief review of the literature with respect to these concepts, and a short outline of the particulars I will use to organize the discussion of the cases, including the differences in legislation between provinces, social policy implications, and future research directions.

Working Framework

Use of case reports

As will be discussed in full detail in the methodology section, the use of case reports to answer research queries such as the one in this project can prove to be a useful mechanism. Research in a variety of contexts has used legal reports and judgements as data in an attempt to gain understanding and insight into the phenomenon in question. Examples include court attitudes about unborn child abuse (Dorczak, 1991), oppression in

the definition of family as it pertains to the existence of strong heterosexist values in the legal arena (Boyd, 1994), the values characterized in the legal system with respect to education for handicapped children (Woody, Yeager, and Woody, 1990), discerning the legal definition of the “family” (Robertshaw and Curtin, 1977), and the application of family law in the context of teenage pregnancy (Paul and Pilpel, 1979).

Although no literature pertaining to research conducted exclusively on case reports was located, it is interesting to note the similarities between the present research and the work of authors cited in the preceding paragraph. This is particularly true with respect to Robertshaw and Curtin’s (1977) work on the legal definition of the family. In this work, the researchers reviewed legal documents in five jurisdictions (Australia, Canada, England, Ireland, and New Zealand) in an attempt “to validate the hypothesis that the courts have since the mid-eighteenth century, and continue to make a distinction between the nuclear and extended family”(Robertshaw and Curtin). In the context of this hypothesis, the authors attempted to glean insight into the familial ideology as it emerged in judicial decisions. In the review of legal documents, particularly the judges’ reports of decisions and reasoning, Robertshaw and Curtin found that the court does make a significant distinction between the nuclear and extended family and “have consistently used this distinction as an operational factor in decisions”. For example, it was noted that in affording a special status to the nuclear family, it was determined that “priorities within this family configuration precede those in circumstances concerning the extended family” (Robertshaw and Curtin).

It is apparent from the work of Robertshaw and Curtin (1977), that the court

system does hold certain values with respect to the ideology of the “family” and that these values present themselves quite readily in the context of the judicial process. This is true from both an historical and contemporary perspective. It is not surprising, therefore, that this ideology of “favoring” the nuclear family configuration as being equivalent to the institution of the family has had a significant impact on how we think about family relations. This does not mean that relationships between the nuclear and extended family are not important. In fact, this could not be further from the truth. However, it seems that any focus on the “family” tends to be centered on the nuclear family.

The present research, however, is more concerned with the relationships between the nuclear family and the extended family. Specifically, as indicated earlier, it is the relationship between the parent and the adult child that is the focus of this investigation. To provide some guidance in exploring this relationship in the context of legislated obligation, what follows is a review of some of the literature on intergenerational relationships.

Intergenerational Relations

In order to begin to understand connections between family members, it is helpful to think of interactions and exchanges in terms of a conceptual structure. In their extensive work on intergenerational ties, Bengtson and his colleagues (Bengtson, Cutler, Mangen, & Marshall, 1985; Bengtson, Mangen & Landry, 1984; Bengtson, Olander & Hadded, 1976) have developed a practical model that views social bonds among the generations in terms of solidarity. According to Bengtson, Mangen, and Landry (1984, page 63), the concept of solidarity addresses cohesion or integration, as well as

implications for potential or actual social support between generations. In this model, six dimensions of intergenerational solidarity are identified: structure, association, affect, exchange, consensus, and norms. While all of these dimensions are important in understanding, analyzing, and researching family relations, the focus of this thesis will be concerned with only one of these dimensions - exchange. As this dimension, which refers to the exchange of money, goods, and services between generations, is the only one of the six dimensions that is concerned with the role of financial support within families, it will comprise the focus of this thesis. According to Hancock, Mangen and McChesney (1988), the exchange of money, goods, and services is a key aspect of family solidarity. Historically, families have played a major economic role in the lives of individuals. In present times, while economic cooperation among family members is no longer the vital element in individual survival, every individual does depend to a degree upon the exchanges of goods and services within the families.

Recent research conducted on these dimensions of intergenerational solidarity by Lawton, Silverstein, and Bengtson (1994) indicate that the probability of receiving assistance from an adult child rises steadily with the age of the parent. Assistance in this particular survey was defined as hands-on assistance such as running errands and helping with repairs. Analysis conducted on data collected by the 1990 AARP Intergenerational Linkages Survey showed that parents 65 and older were much more likely (30%) than parents under 45 (12%) to receive help. In addition, results showed that the income of the parent was negatively correlated to receiving help from an adult child. Using this intergenerational model in application to Canadian research, Rosenthal (1987) highlighted

findings from the Generational Relations and Succession Project, conducted in Hamilton and Stoney Creek, Ontario in 1979. Under the functional solidarity heading, the data from this study indicated that help such as services, goods, and financial aid generally flowed both up and down generational lines, although with advancing age, there was a decrease in the proportion of older people who provided help to their children and an increase in the proportion who received help. Results also showed that older people gave more financial assistance to their children than they received. Another interesting point in the data was that the generations did not always agree in their reports how much they helped one another. For example, parents reported receiving less help from children than children reported providing.

The results of this study should not be surprising considering that the solidarity model is embedded in a social definition of family. That is, family members typically remain connected through generations and a key component in the relationship network is exchange - exchange of help or support in a variety of ways. As a society, we generally expect that parents are responsible for the care and well-being of their children until they reach adulthood, and sometimes beyond. Likewise, there is an underlying belief that "children have an irredeemable obligation towards their parents. Nothing they do can ever make up for the initial parental gift of life and nurturing" (Berman, 1987, p. 25).

This ideology exerts a strong presence in family relations even today. Its presence is evident in the estimates that 80% of long-term care required by older people is provided by informal sources, many of which are family-related, and not nursing homes (Connidis, 1989, p. 49). While it is true that the support adult children give to their parents is often

seen as an indicator of close affectional bonds between them, this is not always the underlying factor that compels children to care for their elderly parents. In fact, researchers indicate that it is filial responsibility rather than closeness that appears to motivate adult children to provide for older parents (Connidis, 1989). For example, daughters aid their older mothers, regardless of variations in the quality of their relationships and in competing demands on their time and energy (Bromberg, 1983).

What happens to parents when the sense of filial responsibility does not compel their children to provide support and care? With the provisions made by the Old Age Pension, Canada Pension Plan, the Guaranteed Income Supplement and social assistance, many parents have access to support from the state. However, in situations where parents have already accessed maximum resources from these social programs and are still in destitute circumstances, there is legislation in place which parents can utilize to sue their children for support. This legislation, which exists in most provinces, is developed and implemented through social policy functions. Attention can now be turned to a brief discussion of social policy as it relates to aging and family relations.

Social Policy

Mishra, 1981, (as cited in Neysmith, 1987) defines social policy as “those social arrangements, patterns and mechanisms that are concerned with the distribution of resources in accordance with some criterion of need.” In addition, there is an intrinsic link between social policy development and economic health. Social policy as it pertains to the responsibility of the state to meet the needs of citizens, is largely dependent upon the economic and political conditions at the time. According to Neysmith (1987), when

governments are faced with deficits and reduced resources, social policy tends to be subordinated. Statements by the Department of Finance (1984, p. 91 as cited in Neysmith, 1987) clearly indicate the relative insignificance of social policy in the face of fiscal constraints: "Difficult choices face the government...Deficits must be reduced. Government intervention in the marketplace must be reduced. Investment must be encouraged. Confidence must be restored."

Another important concept in understanding social policy is the tendency of the bureaucratic process to attempt to distinguish clearly between "private troubles or public issues" (Mills, 1959 as cited in Connidis, 1989). It is evident that changes accompanying aging and the care of elderly parents are seen as private issues and ones for which family members largely assume responsibility. In addition, legislation clearly depicts the popular belief that people have filial obligations requiring them to care for elderly parents. This belief tends to support the justification of legislated family responsibility (Daniels, 1988).

As Daniels (1988) argues in his essay, it is not likely that legislation can compel adult children to assume moral responsibility to their elderly parents. However, legislation can coerce family members to financially support parents who are unable to support themselves. Given that a large portion of older people who need help are supported and cared for by family members, it would seem unnecessary to have family responsibility legislation in place. Nevertheless, such laws do exist, and furthermore, have been employed in recent years by parents who are often compelled to do so in the face of resource depletion.

Some social researchers have concerns with the underlying basis for such

legislation. Gee and McDaniel (1993), in their paper on social policy and aging for example, clearly demonstrate their concern with respect to the continuing support for and development of social policy that relies upon traditional values and assumptions about family relationships. The case described above provides a slight indication that their concerns are not unfounded.

These researchers also provide a clear indication of the type of changes that they believe are necessary with respect to the development of social policy. One of the most important proposed changes is to conceptualize social policy as being closely intertwined with economic policy. To separate social policy from economic policy is to continue risking the dependence of social policy expansion upon current economic conditions. This continued dependence will only further support current and future social policy which recognizes a clear distinction between private troubles and public issues. Such a distinction will continue seeing families shouldering the heavy burden of care and support for members who cannot do for themselves, and in times of fiscal restraint these burdens will only increase. Given the issues raised in the rationale for the legislation, what does the statute stipulate?

Legislation

The Parents Maintenance Act, 1921, Statute of Ontario has endured for over a half a century (Dunn, 1993). While it has gone through a number of revisions, the underlying characteristics have remained the same. That is, adult children are obligated to support their parents who have cared for them in the past. The wording of the legislation is similar for Ontario, New Brunswick, and Newfoundland. As indicated in the

Introduction, it reads as follows:

Every child who is not a minor has an obligation to provide support, in accordance with need, for his or her parent who has cared for or provided support for the child, to the extent that the child is capable of doing so.

It is obvious that many terms in this paragraph are not readily defined. For example, what does “cared for”, “support”, and “in accordance with need” mean? The wording of family responsibility obligations in British Columbia, Alberta, Nova Scotia and the Northwest Territories are significantly different. For example, the following paragraph falls under the *Maintenance Act* (amended 1995) for the Northwest Territories:

The spouse, father, mother, and **child** of a person who is:

- a) poor, and
- b) unable to work because of **age**, mental or physical disability or other cause beyond the control of the person,

shall provide maintenance, including adequate food, clothing, medical aid, and lodging for that person (my emphasis).

The wording under Alberta’s *Maintenance Order Act* is similar to that of the Northwest Territories, but also includes significant differences:

The husband, wife, father, mother and **children** of

- a) an **old**, blind, lame, mentally deficient or impotent person, or
 - b) any other destitute person who is not able to work,
- shall provide maintenance, including adequate food, clothing, medical aid, and lodging for that person (my emphasis).

The differences in wording can obviously have a significant impact on how it is interpreted in the courts. For example, in the Ontario statute, support is not defined. However, the statutes for the Northwest Territories and Alberta clearly connote what may be referred to as support. In addition, the maintenance or support outlined by Alberta and the Northwest Territories implies that some form of interaction may be necessary. For

Ontario and the provinces listed above with similar statutes, the courts generally define support in terms of monetary aid and rulings have reflected this interpretation.

With this illustration of the current statutes as they pertain to family responsibility for the support and care of elderly parents, I turn now to outline my intentions with respect to discussing cases in which these statutes, such as those indicated above, have been applied.

Research Question

My interest in this topic is to explore the decision making process employed by the judges in each case. This interest is embedded in the general research question:

How did the judges make decisions about filial responsibility?

In an attempt to respond to this question, this thesis will explore what the judges reveal about their understanding of family solidarity as it:

- underpins the law;
- is expressed in their application of the law to particular cases.

Methodology

Case Search and Data Collection

I began my search for cases which referred to the provincial legislation stating that adult children are responsible for supporting their parents by reviewing the abstracts listed under the “support” section of the *Family Law Digest* which lists most cases pertaining to family law as they occur throughout the country (Family Law Digest, 1995). Basic details about the cases along with the names of the applicant (the person suing for support), the respondents (the person(s) who are under order to respond to the application), and the

name of the provincial law report in which the case is published are provided. In some instances, the report is published in more than one set of law reports. However, the report is only published in the law reports for the province in which the case is tried (Banks, 1985).

It should be noted that generally, not all cases are included in the law reports; a routine case that raises no significant point of law is likely to be omitted (Bank, 1985). Therefore, it is usually at the judge's discretion whether a case is written up and reported. Only the essential facts are reported and the arguments of counsel are seldom included in full and are often completely omitted. The most important part of the report is the decision of the court and the reasons for it (Banks).

Twelve cases which referred to the adult child's duty to support parents were located in the abstracts of *Family Law Digest*. The last complete printing of the *Digest* was in 1995, but it is updated on a monthly basis with new insert sheets being added when cases are reported. The cases dated from 1982 to 1996. The reports documented various court proceedings ranging from motion hearings to trials to appeal trials.

Like most institutions, the legal system has made significant advancement in computerized data collection and preservation. One such Canadian computerized legal data system is *Quick Law* (Lawford, 1990). This privately owned and operated research system is accessible only to the court system, legal and government personnel and students at law schools in Canadian universities. However, in certain circumstances, the owner will make the system available to students and faculty of other university departments (J. Lawford, personal communication, January 13, 1998).

While manual research is still the most popular way of locating relevant case reports, the increasing use of computerized data systems is making it possible to conduct more thorough searches. All cases reported by Canadian judges since 1990 are indexed and published in the *Quick Law* data bank. On February 3, 1998, with the assistance of Rochelle Lyons, a graduate student at Osgoode Hall Law School, I conducted a search using the *Quick Law* research system. Two additional cases were located, dated 1994 and 1997. As well, to ensure a complete and thorough search, all cases that had been previously located manually dated 1990 and later were cross-referenced on the *Quick Law* system. The combination of the manual search of the *Family Law Digest* and accompanying provincial law reports as well as utilizing the *Quick Law* computerized data system yielded a total of 14 case reports. With these combined data collection techniques as well as input provided by Rochelle Lyons (Osgoode Hall Law School) and John Lawford (Quick Law) (personal communication, February 3, 1998), I am confident that all cases referring to the legislation of an adult child's duty to support his or her parent(s) have been located. It should be noted, therefore, that the fourteen cases to be analyzed in this research comprise the entire population of such reported cases and not merely a sampling representation.

Analyses

In organizing the data contained in the cases, I first developed a table to list the cases in chronological order and included primary components such as applicant and respondent identification, a summary of the circumstances surrounding the case, the judge's ruling, and the reasons she or he provided for the ruling (See Table One, beginning

on page 57.). Organizing the cases in this manner allowed for initial analysis of the information using basic descriptive statistical techniques (e.g., highlighting how many cases reflected parents directly suing their adult children).

The objective of this research project is to analyze the central themes as they emerge from the fourteen available cases to better understand intergenerational family relations when assumed patterns of support fail and recourse is taken to the court system. What follows is a brief review of content analysis and the steps taken in carrying out this analysis.

Holsti (1969) defines content analysis as a multipurpose research method developed specifically for investigating any problem in which the content of communication serves as a basis of inference. In further explanation, Holsti indicates that in doing 'content analysis' one transforms the communication, through an objective and systematic application of categorization of rules, into data that can be summarized and compared. This process of categorizing and summarizing the data permits drawing inferences about the meaning of the message contained in the communication (Holsti). Krippendorff (1980) offers a similar definition of content analysis - a method of inquiry into the symbolic meaning of messages, taking into consideration that messages do not have a single meaning and that meanings need not be shared.

For various reasons, using qualitative content analysis is often more useful in answering questions in social sciences than traditional quantitative methods. (Holsti, 1969, Weber, 1990; Goldenberg, 1992). In some cases, "qualitative analysis of a limited number of crucial communications may often yield better clues to *the particular intentions of a*

particular speaker at one moment in time than more standardized techniques” (Holsti).

While this is not a case against more popular research methods utilizing quantitative techniques, the data and research questions of this investigation is better explored using thematic content analysis. There are several reasons for this decision. One is economy - the costs for data collection for use in content analysis is very low in comparison to other traditional data collection methods (Goldenberg, 1992). In addition, the “dross rate” for content analysis is low compared to other methodologies. That is, there is not a lot of excess or “waste” (Goldenberg). In the present research, a relatively small amount of data has been collected which can be comfortably coded and categorized. In addition, all parts of the cases will be used in the analysis.

A second reason for selecting content analysis in this project is that it is the preferred methodology in research endeavors seeking to “determine the meanings, associations, values, motives, or intentions of the communicator that can be inferred from his or her message” (Holsti, 1969). As this research is concerned with attempting to determine what factors are considered when judges make decisions about filial responsibility in cases which invoke legislation obligating adult children to provide for their parents, content analysis provides the mechanisms for organizing and analyzing the data to gain this insight. In using thematic analysis, the general attitudes and values employed by the courts in filial responsibility cases may emerge.

In addition to these factors, Holsti (1969) noted that content analysis may prove useful when data accessibility is a problem, and that the data are limited to documentary evidence. In this research, the only consistently available data on these cases involving

legislation where adult children are responsible for supporting their parents is the written reports published by judges. The unreasonable costs of accessing court transcripts² and the difficulty associated with gaining access to a cross-section of Canadian judges for the purposes of interviewing them about the legislation in question makes other research techniques such as questionnaires and interviews virtually non-applicable.

Related to the issue of data availability, content analysis allows for analysis of materials in answering research questions for which those materials were not produced (Goldenberg, 1992). This constitutes *secondary analysis*. “As a research strategy, secondary analysis allows social sciences to make more efficient use of materials, since they need not produce all of their own materials each time to investigate a question” (Goldenberg). The case reports assessed in this research represent data which were produced for purposes outside of the research question. Using thematic content analysis allows for the use of these reports regardless of the reasons behind their development to identify the general themes and ideas that present themselves as they pertain to the research question: *how do judges make decisions about filial responsibility?*

Content analysis also provides an efficient mechanism for comparing messages in different situations (Holsti, 1969). This design has been used “to analyze messages generated under different conditions in simulation experiments” (Holsti, p. 29).

²

Court transcripts are public documents, but available at a cost of approximately two dollars per page. The average case before the family court generates a transcript of a couple of hundred pages (Court Clerk, Ontario Family Court, Kitchener, Ontario - November, 1997). Therefore, the costs of accessing transcripts for all fourteen cases would have been astronomical.

Goldenberg also talks about the use of content analysis as a way of “measuring, describing, and analyzing *temporal change* - measuring a particular phenomenon over a specified period of time (1992). While the present research is not concerned with temporal change, the conditions utilized are similar. The legislation remains the same while the conditions under which it is evoked and the factors that are considered in the decision making process before the courts varies significantly. Thus, the different reports composed by different judges analyzing a different set of circumstances in each case can be assessed effectively using the thematic content analysis design.

One of the main concerns that critics often raise about content analysis is that “items are selectively deposited and retained and the surviving data are therefore not a representative sample of the originally created data” (Goldenberg, 1992). In response to this question, it is important to note here that the data used in this research constitutes the entire population of case reports which refer to or consider the parental support legislation. In addition, as mentioned earlier, the entire report is assessed in the analysis and therefore, no selection of particular portions of the reports is conducted. In light of these factors, I am confident that the concern about “selection and retaining” has been adequately addressed. Goldenberg’s cautions about using the results gleaned from content analysis in generalizing to the larger population is also given serious consideration. Generalizations in this project generally will not extend beyond the cases reviewed. However, where questions are posed, particularly those that pertain to the attitudes and values of the court system, some generalizations that are embodied within tentative language may be appropriate.

Process Steps

The first step in the process is to organize the data into a manageable working format. For ease of analysis, I organized the cases in chronological order in table one which identifies the basic elements that identify the cases. In organizing the cases this way, certain categories presented themselves which are closely related to the information needed to consider the research question. Other categories were devised to provide further insight into the court's attitudes about intergenerational family relationships. The first part of the *Results section* is concerned with identifying the cases and assigning them to these categories.

One of the most important requirements of the development of categories is that they reflect the investigator's research question adequately (Weber, 1990). In establishing these categories, I maintained as much a focus on the various elements connected with the research question as possible. Elements such as information provided about the relationship between family members, the impact of the court proceedings on these relationships, reflections and comments about the interpretation of the legislation were considered. In addition, much thought was given to the sort of information that would likely be contained in the reports. Unfortunately, there is no strictly adhered to format when judges are writing final reports. Aside from providing the very basics of the court proceedings and the judgement, there is significant variability among judges in what they include in the reports. The categories, therefore, were developed with this variability in mind and the information that must be contained in the report was taken into

consideration.

Once I had reviewed all of the cases and organized them in chronological order in Table One, the following categories were identified as general themes that were apparent in the cases as they related to issues of family relations, family solidarity, and filial responsibility in the context of intergenerational relationships:

- responsibility (e.g., responsibility of an adult child to support her or his parent(s);
- categorization of responsibility (e.g., spouse supporting spouse versus adult child supporting parent);
- relationship between the applicant and the respondent;
- judges' understanding of the quality of relationships between family members involved in the case;
- judges' definitions and use of key words as defined by the court in the adjudication of such cases:
 - c. care
 - d. support
 - e. destitute
 - f. unable to work
 - g. ability to pay
 - h. adult child
 - i. parent
 - j. allowable applicant
 - k. allowable respondent and third party;

- judges' understanding of the history and intentions of the legislation;
- the judges' decision;
- reasons provided for the court's decision.

(Please refer to Table Two for a summary of the themes identified in the cases).

Once the categories were identified, I reviewed the case reports more closely and placed them in the various categories as appropriate. It should be noted here that most of the cases contained several themes. For example, in one report, the judge may have considered issues of eligibility as well as the impact of the court proceedings on the relationships between family members. Therefore, most cases were assigned to more than one category. In spite of this apparent overlap as it pertains to organizing the cases, the categories themselves do satisfy an important requirement that they be mutually exclusive or independent (Holsti, 1969).

Once the categories were devised and cases assigned to them, I examined the resulting synopsis in an attempt to gain some understanding of the court's attitudes about obligations in the context of intergenerational family relationships. In the next section, I outline the categories and the cases which were assigned to them. This is followed by a discussion on the inferences I draw from the information contained in the cases as they apply to the identified categories. It is important to note here the framework I used in drawing the inferences I did from the data. Mindful of Krippendorff's (1980) statement "it is important that the analyst has knowledge about the origin of the data and that he or she reveals the assumptions he or she makes about how the data and their environment interact", I will present some of these assumptions I operated under in drawing the

inferences outlined in the next section.

The data, case reports written by judges, were gathered for the purposes of legal proceedings. Generally, an applicant initiates proceedings within the court system. Various players participate in this proceeding - the applicant, the respondent, counsel for both sides, and a judge. The judge hears testimony and reviews documentation as it pertains to the application. Upon review of this information, the judge makes a decision and the case report is a record of that decision and the reasons for it.

In this legal process, it can be assumed that the judge, as a representative of the court, operates under her or his understanding of the law. This understanding is not without values or attitudes. My interest here, of course, is the judge's attitudes and values as they pertain to family relationships, particularly intergenerational relationships. While these attitudes and values play a role, it is difficult to decipher just how much they influence the judge in his or her interpretation and application of the law. The case reports, however, provide some indication of these values and attitudes by the information the judge deemed important in his or her decision. For example, a quick glance at the cases reveals that some judges heard and wrote about extensive testimony pertaining to the nature and quality of the relationship between the family members before and during trial proceedings. Other judges, under similar circumstances, did not report as much information. Of course, this is not say that this testimony or information was not provided. However, the case report is considered to be a synopsis of the proceeding and can also be seen as a reflection of what the judge deemed important to consider in the decision process.

One additional assumption underlying this research is that the judge, court, and the legal proceeding attempts as much as possible to reflect the values and beliefs of the society which it represents. The legislation, which is interpreted and applied in most legal proceedings, is developed and implemented through an elective process. The legislators are people who are elected by the Canadian people to represent them in the parliamentary system. It is the task of these legislators to consider the values and beliefs of the constituents they represent when developing laws that will guide the court system in settling disputes. Of course, the legislation does not represent everyone's views and values. However, the legislators and their actions do represent at least fifty-one percent of the population at the time the legislation was enacted, as is defined by the democratic practice. This assumption that the legislation and the proceedings surrounding its interpretation and application is at least a partial representative of the values and attitudes of the population underlines the basic thrust of this research project.

Results

Data Organization

In this section, I put the cases in thematic categories and use some descriptive detail, including direct quotes, to illustrate those categories/themes. Although each case is different from the others, there are similarities which provide some understanding of the types of situation where the legislation which obligates adult children to support their parents is referred to or considered.

Parents as applicant; adult children as respondents.

Of the fourteen reports, six of them are cases where parents as applicants have

initiated proceedings against their adult children for support. Of the six cases, three parents won support orders from the court - three were dismissed. In two of the three cases where support was awarded, the judge ordered the respondent children to begin payments immediately following court proceedings. In *Blum v. Blum* (Karswick, 1982) the mother was awarded \$270 per month from her son and in *Goldwin v. Bolsco* (Dunn, 1993), the mother was awarded \$1000 per month from her four children. The third case is different in that the daughter was requesting that her arrears in paying parental support, which had been established the year before, be forgiven in light of her unemployed status. Daley (1984) in *Barrington v. Shand* agreed that the daughter could not afford to continue paying the support at that time. However, the judge, upholding a previous decision, indicated that the daughter was still responsible for the support of her father and ordered her to report her earnings to the court every six months and indicated that should she become employed, she was to resume parental support payments of \$30 per month.

The judges in the three cases which were dismissed provided various reasons for doing so. In *Hanna v. Hanna*, Donkin (1983), indicated that while the father had demonstrated "need", the two adult children could not afford to pay any support to their father. Donkin also noted that the family had been separated for quite some time and inferred that the father had found other means of surviving. Van Duzer (1987) in *Berendt, v. Berendt* and *Berendt* pointed out the stepsons were adults and living on their own when the applicant (step-mother) married their father. This case, therefore, did not fit the "direct interdependency" criteria in that the applicant would not have provided the respondent adult children with "care" and "support". "As there was no interdependency

between the applicant and the respondent, no support should be awarded under the Family Law Act”(Van Duzer). In the third dismissed case, the judge indicated that the father did not fit the two criteria as established by the Alberta legislation - that is, he could not prove that he was "destitute" and that he was unable to work (Nash, 1996). Using the definition of destitute as defined by Black's Law Dictionary and referring to the phrase "for good cause" with respect to the father's argument that he couldn't work, the judge ruled that the father did not meet either definition and therefore, was not entitled to support from his children.

Adult children named as respondents in spousal support proceedings.

Five of the fourteen reports were cases which initially involved proceedings regarding spousal support or child support. In these cases, adult children were named by a third party as respondents to the support application. The most likely scenario is where the ex-spouse was responding to a support application and during the proceedings, requested a motion to have the adult child(ren) named as a respondent(s) as well. Five of these cases illustrate this typical scenario. In each of these cases, ex-husbands were respondents to support applications by their wives. The women all had children from previous marriages and all of the children were adults. In two of these cases, the judge agreed with and allowed the ex-husband's motion to add the adult children as respondents to the support application. Both judges reviewed the law and found that a respondent in any support application could name a third party as long as "the added party has an obligation to provide support to the same dependent" (which in these cases, would be the applicant mother) (Volelsang, 1994). Since the reports documented hearings related to

these motions, no information was provided with respect to the amount, if any, of support awarded and whether the decision to include the adult children as parties to the support application impacted on the amount of support paid by the ex-husband.

The judge in the three cases which were dismissed provided various reasons for doing so. In Ontario (Director, Family Support Plan) v. Burgess, Judge Fisher (1994) indicated that while the applicant's son may be obligated to support his mother, his financial circumstances and recent marriage did not provide him with the capacity to do so. Pedlar (1994) indicated in his ruling in Whiteley v. Brodie that "a child's obligation to support his or her parents is secondary to that of spouse to provide for the other spouse". In this particular case, Pedlar indicated that before the adult children could become a party respondent in the application the application against the spouse must be deemed unsuccessful. The third case in which the motion was dismissed, the judge interpreted British Columbia legislation as meaning that the "husband did not have standing to bring the application on the wife's behalf" (Humphries, 1997). The only way such a motion would be granted, according to Humphries, is that in naming the adult child as a third party, the applicant would benefit from such a motion. However, in this case, the judge indicated that the mother would not necessarily benefit. Rather, the ex-husband would benefit in that it would reduce the amount he is required to pay in support.

Health Care Centre as applicants, adult children of deceased as respondents.

The remaining three reports document situations which are significantly different from those already described. The first of these cases, St. Joseph's Health Centre v. Sauro et al., describes a case where a health centre brought an application against three adult

children for reimbursement of fees related to the care of their father while he was a resident of the centre. Their father had died and the centre incurred \$11,000 in expenses associated with the care of Mr. Sauro prior to his death. Judge Borins (1984) dismissed the motion on the grounds that "the Act limits the person who may apply for remedies which flow from the statutory support obligations to dependents, parents of dependants, the Ministry of Community and Social Services, and municipal corporations".

Application to reduce child support payments in light of responsibility to parents.

Hua v. Lam reports a case where an ex-husband applied to have his support payments to his wife and young child reduced in light of his changed financial circumstances and his responsibility of supporting both of his parents who had recently emigrated from Vietnam. The judge dismissed the motion, citing two basic reasons: 1) the changed financial circumstances reflect the applicant's choice to reduce his work hours to attend school and while this is commendable, "one must take into consideration his responsibilities before setting out to better himself"; and 2) "the support of a child precedes the support of a parent" (Collings, 1985).

Appeal of judgement - adult children as applicants, mother as respondent.

The final, and fourteenth report, documents an appeal proceeding of the case Godwin v. Bolsco, described earlier. Finlayson (1995), in his ruling, indicated that "the mother had received a strong judgement in her favor in the initial trial and had already won a first appeal on the case". In the review of the case, Finlayson ruled that the adult children were still legally responsible to pay \$1000 per month in support to their mother, interim, pending the outcome of the second appeal.

Discussion

Leading Themes Identified in the Data

In this section, the major themes, as they have been identified in the data, will be outlined and some demonstrative points from the cases will be provided (please refer to Table two for a listing of these themes and the relevant cases). These themes are comprised of central issues considered by the judges in interpreting and applying the law. To illuminate these issues, I first organized the cases in chronological order (please refer to Table One for an outline of the main elements of each case). Reviewing the cases, I noted the similarities and variations among the key elements as outlined by the judges in his or her report. These similarities and variations form the thrust of central themes I gleaned from the review of the data.

I will follow this brief review of the central themes with a discussion connecting these themes to the key purpose of this research project - interpreting these themes to understand the court's ideas about family solidarity and obligations in the context of intergenerational relationships.

Eligibility

Obviously, one of the most salient issues that the judge contends with in cases such as these, is determining if the applicant is eligible for support from the respondents. A major part of making this determination is considering two factors - *need and capability*. In all of the cases where parents sued their children for support, the judge assessed the information provided by the applicant parent to determine if he or she was in need of such

support. Factors such as age, physical and mental well-being, current financial circumstances, and whether the parent can access resources through other means, such as working or utilizing pensions for which he or she qualifies, are given consideration. Once need has been adequately established, the respondents' financial capability of providing that support is assessed. In assessing the respondents' ability to pay, the court considers factors such as the respondent's other family support obligations (e.g., supporting a child, spouse, or another parent), financial resources available to him or her after meeting his or her own financial needs, education, and current employment status.

The general theme with respect to eligibility in five of the six cases where parents directly sued their adult children for support is that both conditions of need and capability must be met. That is, the parent must adequately establish need and the responding children must be financially capable of meeting that need. In two of the cases, *Blum v. Blum* (1982) and *Goldwin v. Bolsco* (1993), both of these conditions were met. However, in *Hanna v. Hanna*, *Lewis and Hanna* (1983) and *Barrington v. Shand* (1984), while the parents had adequately established a need for the support, it was determined that the responding adult children did not have resources beyond those needed to meet their own needs and, therefore, could not support their parents. The fifth case in the category, *Leung. v. Leung* (1996), reports that the father did not adequately establish that he was in need of support from his adult children. According to Nash (1996), the father did not meet the criteria of "being destitute" and he did not provide sufficient evidence that he was unable to work.

Who Can Apply?

A theme that is distinctive from eligibility is the issue of who can make an application to the court which considers the section of the Family Law Act that obligates adult children to support their parents. The most obvious suitable applicants are the parents themselves. However, several of the cases reviewed involved third parties making an application on behalf of the parent or a respondent applying to have adult children named as third party respondents to a spousal support application. In reviewing these cases, several important points related to the interpretation of the law were highlighted. While there is some variation in the interpretation with respect to naming adult children in spousal support applications, particularly across provinces, there appear to be no differences among courts when considering other third party applicants. For example, in *St. Joseph's Health Centre v. Sauro et al.*, (1984), the judge reported that the legislation limits the persons who may apply for remedies which flow from the statutory obligations to dependents, parents of dependants, the Ministry of Community and Social Services, and municipal corporations. In this particular case, the applicant was a health centre which rendered care-provision services to the deceased father of the respondent children before he died. The judge ruled that the *Act* does not expressly impose an obligation upon adult children to pay debts incurred by their parents (Borins, 1984). In *Barrington v. Shand* (1984), it is noted that the Municipality of Barrington was making the application on behalf of the father. Unfortunately, no further information was provided about why the municipality was making this application.

In cases where children are named as third parties in spousal support applications, there exists significant variation. In three of the cases reviewed, *Baddeley v. Baddeley et*

al. (1989), *Directory, Family Support Plan v. Burgess* (1984), and *Bell v. Mellows* (1994), the ex-husband responded to a spousal support application by naming his ex-wife's adult children as a party obligated to support their mother. The judges in *Baddeley v. Baddeley et al.*, and *Bell v. Mellows* agreed with the motion and named the adult children as respondents. The only factor that was considered during each case was whether the adult children were obligated to support their mother and in both reports, the court ruled they were indeed obligated. No information about need or capability was provided as the report provided information relating only to the motion hearing. In addition, it was not indicated in either case whether this ruling impacted on the determination of eligibility or quantum of support from the ex-husband.

In the third case, *Director, Family Support Plan v. Burgess* (1984), the judge offered a different perspective. Fisher (1994) considered several factors in his ruling. He noted that the mother had not applied for support from her son and that the son did not have substantial financial resources beyond those needed to meet his and his wife's needs. Thus, he denied the ex-husband's motion to add the son as a respondent in the support application. Although similar to the issues considered in cases where parents have directly sued their adult children for support (e.g., need and capability), it seems that the judge gave equal consideration to the fact that the mother had not actually applied for support from her son. No information was provided concerning why this was given consideration, which differs from the decisions rendered in two similar cases discussed in the proceeding paragraph.

Responsibility/Obligation - Definition and Prioritization

The most apparent task before the court in the cases analyzed in this research is determining whether an adult child can be ordered to provide financial support to his or her parent. One important theme related to this decision making process that presents itself in a number of the cases is the definition of and prioritization of “financial responsibility” in terms of family relationships. Two of the cases dealt directly with identifying the aspects of family relationships that must be satisfied before one can be ordered to assume financial responsibility for another family member while three cases were concerned with prioritizing financial obligations.

Considering financial responsibility - family relationships

In *Barrington v. Shand* (1984), Judge Daley considered whether the father’s son-in-law could be held financially responsible for his father-in-law given that the daughter was currently unemployed and unable to continue making support payments to her father. In reviewing the evidence, Daley noted that the father had lived with his daughter and son-in-law for twelve years during which the son-in-law had provided various forms of care and support. Given that the son-in-law had taken on the active role of caregiver for the daughter’s father, he then became obligated for future support. Daley likened this situation to taking guardianship or adopting a child. In so doing, one takes on future responsibilities associated with the care and support of that person. Therefore, Daley ruled that the son-in-law was financially responsible for his father-in-law. However, in considering the financial circumstances of the family as a whole, he ruled that the family were not obligated to provide support until the daughter became employed again.

A second case that considered the meaning of “financial responsibility” in family

relationships is *Brendt v. Brendt and Brendt* (1987). The step-mother had applied for support from her deceased husband's estate as well as from his two sons, her stepsons. Judge Van Duzer heard testimony that the stepsons were of adult age before the woman married their father. Based on their ages at the time of their father's marriage, Van Duzer assumed that the step-mother would not have been expected to provide them with care and support as one would expect a mother rendering to a child during his or her dependent years. In his interpretation of the legislation, Van Duzer reported that for an adult child to have financial responsibility, there must be evidence of "direct interdependency". In assuming that the mother would not have provided care and support to her stepsons given their ages at the time of her marriage to their father, the judge indicated that the conditions of interdependency were not met, and therefore, the step-sons were not financially responsible for the applicant.

Prioritizing financial responsibility - family relationships

The issue of prioritizing financial responsibilities in family relationships were considered in three cases. In two of these cases, motions were entered to have the applicant's adult children named as parties to a support application by the responding ex-partner. Judge Pedlar (1994) ruled in *Whiteley v. Brodie, Whiteley and Whiteley* that "a child's obligation to support his or her parents is secondary to that of a spouse to provide for the other spouse". Fisher (1994) made a similar interpretation in his ruling in *Director, Family Support Plan v. Burgess*. Both judges indicated that while it is conceivable that the adult children could be deemed financially responsible for their parents, this responsibility is secondary to the financial responsibility that spouses have to one another. Pedlar

conceded that in the event the responding spouse could not provide the support, then the parent would be in a position to seek support from his or her adult children. This observation resembles comments made by Judge Henry in *Blum vs. Blum* (1980) where it was obvious to him that the responding spouse would not meet his financial responsibilities to his ex-wife. Given this situation, Henry pointed out to Mrs. Blum that she was entitled to support from her son, who it was determined, was financially capable of meeting that obligation. Following these statements, Mrs. Blum began application proceedings for support from her son.

The third case that considered prioritizing financial responsibilities is outlined in the report by Collings (1985) - *Hua v. Lam*. Mr. Hua applied to have the amount of his ordered support payments to his ex-wife and young child decreased in light of recent changes to his employment status and his financial responsibilities to his parents who had recently immigrated from Vietnam to British Columbia. In considering the information provided, Collings wrote that while Hua's efforts to better himself by reducing the number of hours he worked to attend school is commendable, his financial responsibilities to his family must take precedence. In determining which family members claimed first priority in Mr. Hua's financial responsibilities, Judge Collings wrote that "the support of one's child and spouse takes precedence over supporting one's parents". Thus, only after meeting his obligations to his child and ex-wife, could Mr. Hua provide his parents with financial support³.

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Collings noted in his report his understanding that perhaps in Vietnamese culture, prioritizing of responsibilities within the family may be different, but acknowledged that he

Legislation- its History and Purpose

In a number of the cases, judges provided their comments regarding the definition of the legislation obligating adult children to support their parents and the history behind its development. The judges' reflections in these cases indicates some of the details that may be considered when interpreting and applying this legislation. Judge Karswick in *Blum v. Blum* (1982) distinguishes between the wording of the older Ontario legislation, the *Parent's Maintenance Act* and its replacement, the *Family Law Reform Act* (FLRA). Karswick notes that under the old legislation, "it was necessary to demonstrate that the parent was dependent by reason of destitution, or was unable to maintain himself or herself by reason of age, disease or infirmity". Section 17 under FLRA which contends with a child's duty to support his or her parent, however, provides wider remedies. Eligibility is based upon the combined features of "need" and "capability". The newer legislation, according to Karswick, makes it more probable for parents to qualify for support from their children.

Three judges, in their reports, shed further light on the development and intentions behind the legislation. In these statements, the judges provide some contextual understanding of the attitudes of the court towards family relationships and the role the State plays in the maintenance of those relationships. Judge Daley, *Barrington v. Shand* (1984), asserts that

"the principle thrust of this section of the *Family Law Reform Act* recognizes, at least in the area of family support, the equality of roles and responsibilities of spouses, parents, and adult children to support

was bound by the law of British Columbia.

themselves and other members of the family and at the same time, a continued recognition of the ability of the State to step in where required to assist a family or an individual family member and recover all or a part of the costs of that assistance from the family.”

Judge Borins (1984) offers similar comments about the purpose behind the legislation. In his ruling, Borins determined that the *Act*’s basic purpose is to deal with intra-family obligations. “The *Act* imposes obligations on spouses to support one another, on parents to support their children, and on children to support their parents.”

In the case of *Director, Family Support Plan v. Burgess* (1984), Judge Fisher indicates that the government’s original intention in implementing this legislation was to allow “the State to make well-off children pay for parents in nursing homes rather than the State paying for them.” However, Fisher recognizes that the effect of this legislation is far more sweeping. “It is clear that if the parent has a need and the child has the capability, then support should be ordered” (Fisher). Vogelsang in *Bell v. Mellows* (1994), also referred to the wider, encompassing characteristics of the legislation that may be more extensive than originally intended. Vogelsang indicated that “the words of the legislation are very wide, and are not limited to a respondent chosen by an applicant”. In contrast to what it may first appear, the legislation provides the court with the power to “order a person to provide support for his or her parents, and determine the amount of support”. Statements such as these provide some indication of the possibilities that may evolve from invoking this legislation and some of the wide encompassing capabilities inherent in its realm.

Further Interpretation of the Legislation

The previous theme was concerned with highlighting the general meaning of the legislation. However, in interpreting and applying the law, often the court must consider the definition of key elements as deemed necessary according to various cases. This seems most apparent in cases where the parent's eligibility for support may be in question. In four of the cases, the court offered definitions of key phrases as a mechanism in making their determination.

As pointed out in a previous section, the two major tasks before the court when considering this legislation are determining if the parent is in need and if the child is capable of providing support. Deciding if the child is financially capable appears to be a somewhat straight forward endeavor. Usually, the court will ask for financial records along with information about the person's other financial obligations. It should be noted, however, that in the cases reviewed, only sketchy details have been provided about what specifics the court considered in determining the adult child's financial capability.

It seems that determining a parent's need may involve taking other factors into consideration beyond those immediately apparent in the proceedings. In the four cases where definitions were used as part of the decision making process, the additional factors were introduced in the context of the arguments put forth by the respondent. One such argument is that the parent is not in need of support. In response to this argument, Judge Daley (1984) in *Barrington v. Shand* (1984) provided definitions for 'dependent parent' and 'reasonable need'. Daley defined 'dependent parent' as a parent who by reason of age, disease or infirmity is unable to provide himself with reasonable needs. 'Reasonable needs' refers to whatever is reasonably suitable for the maintenance of the person in

question, having regard to the ability, means, and circumstances of that person or of any person obliged to contribute to such reasonable needs. It should be noted here that this case took place in Nova Scotia. Although the same components of “need” and “capability” apply, the wording of the legislation varies from province to province. More will be said about this variation in the next section pertaining to interpretation of the results. However, it is necessary to indicate that while the wording is different, the consideration of the basic elements of “need” and “capability” remains the same.

Daley’s (1984) definition of ‘dependent parent’ shares some similarities with the definition provided by Nash (1996) in *Lueng v. Lueng*. In weighing the evidence before the court, Nash considered whether the applicant father was “destitute” and “unable to work”. “Destitute” was defined as *not possessing the necessities of life and in a condition of extreme want*. In order to meet the “unable to work” criteria, Nash determined that the father must be zealously looking for work or disabled to the point where he couldn’t work. Ruling that the father did not fit either of these descriptions, Nash determined that the father was not a ‘dependent parent’.

One other important factor in determining the parent’s eligibility for support is considering the nature of the relationship between the applicant and the respondent adult children. Van Duzer (1987) in *Brendt v. Brendt and Brendt* ruled that for the relationship to be seen as a parent-child relationship, it must include an element of *direct interdependency*. Therefore, the child must have been dependent upon the parent for some period of time during his or dependency years to meet his or her reasonable needs. Without this element of interdependency in their relationship, Van Duzer ruled that the

adult children were not responsible for financially supporting the applicant.

This issue of interdependency was also a determining factor in the *Godwin v. Bolsco* case (Dunn, 1993). As part of their response to their mother's application, the four adult children in this case argued that while their relationship with their mother satisfied the interdependency requirement, the care and support she provided was not adequate and therefore, they should be not held accountable for supporting her now. In considering this argument, Dunn defined two words - 'reasonable care' and 'support'. Using the definition of these phrases from a law dictionary, Dunn determined that while the care and support provided by the mother during the respondent's childhood "fell short of 1993 standards, she helped them with school, gave them values, and interested them in activities to assist them in their development. Thus, she provided both care and support". This ruling played a significant role in the subsequent approval of the mother's support application.

Family Relationships

The *Family Law Act* in its entirety is embedded within the context of family relationships. It is not surprising then that when the court is considering an application for support from adult children for a parent that this process involves considering the nature of the relationship between the applicant and the respondent. As indicated in the previous theme, one aspect of this process may involve determining whether the relationship meets the defined criteria set out in the legislation. E.g., evidence of direct interdependency, whether the parent provided care and support during the childhood years, and whether this care and support were adequate. In addition, some judges will note their thoughts and

views concerning the quality of the present relationship between the applicant and respondent, and what impact, if any, the application for support has had or will have on that relationship.

Once the basic criteria of the terms set out by the legislation have been met, some judges permit counsel to present testimony related to the quality of the relationship between the applicant parent and respondent adult child(ren). While it is crucial that the elements of care, support, and interdependency are addressed, counsel in some of the cases provide testimony pertaining to the quality of the relationship when the respondents were children. As mentioned in the previous section, Dunn (1994) heard testimony about the quality of care and support provided by Ms. Godwin to her children during their childhood years. Judge Dunn determined that the support and care was adequate. However, in reviewing the testimony, Dunn also considered other factors beyond the care and support components. For example, testimony was presented concerning the family environment, the mother's role in the family, the relationship between the mother and the father, and the father's role in the family. In reviewing the testimony on these aspects of the family's life, Dunn noted that the mother did present a demeanor of "negative-mindedness" and that this demeanor may have negatively affected the overall happiness of the children when they were young, but "it was not intentional".

While most judges do not provide this level of detailed information about the relationship between family members, many do offer information related to the perceived quality of the relationship. In *Whiteley, v. Brodie, Whiteley, and Whiteley*, Judge Pedlar (1994) noted that the mother had cared for her children, and "in fact, sacrificed certain

career opportunities to give her family obligations a priority”. In this case, the ex-husband was applying to have the woman’s children added as a party respondent to a support application. It shares similarities with the case, *Director, Family Support Plan (Burgess) v. Burgess* (1984). Here, Judge Fisher noted that “while the son loves his mother, it is his intention to place all of his efforts and modest financial resources at the disposal of his own family... his mother understands that wish ... this court also understands that wish”.

In two of the cases, the judges included their comments on the future of the relationship between the parent and responding children in light of the court proceedings and approved application. Dunn (1993) noted that it was as if the application had sent “shock waves through the respondents and their relationships with one another. One son called the application a *financial assault* and said it led to a final divorce between himself and his mother”. In light of these observations, Dunn ordered the “applicant and the respondents to refrain from molesting, annoying, or harassing each other or their families”. In *Blum v. Blum* (1982) (mother suing son for support), Karswick noted that the son and mother had a good relationship, and he provided her with gifts and financial assistance from time to time. However, the judge noted that “the relationship between son and mother had begun to deteriorate following the initial court proceedings (involving a support application against the father) and this continued deterioration was apparent during present trial”.

In another case, despite some concerns raised about the impact approving the application may have on the family relationships, Vogelsang (1994) approved the ex-husband’s application to add his ex-wife’s son as a respondent. The mother’s counsel

argued that “the policy of the Act is to ameliorate the effects of breakdown of a relationship, not to inflame the situation or exacerbate possible acrimony”. Without providing details, Vogelsang ruled that “even if counsel had been able to point me to specific statutory language supporting that principle, I do not think that granting the order sought by Mr. Bell will lead to the drastic results that counsel predicts”.

In this section, I have presented the major themes identified in the fourteen cases which were reviewed for this research. The themes were divided into six categories labeled with the following titles - eligibility, who can apply, responsibility/obligation (definition and prioritization), legislation (interpretation and history), further interpretation of legislation, and family relationships (prior to, during and after court proceedings). In presenting the themes, my intention has been to provide illustrations of these themes through the use of direct quotes. One other intention has been to characterize the similarities and variations that exist among the cases and the kinds of factors that may lead to differences of interpretation of the legislation.

In this round, my hope has been to interpret why the judges’ made the decisions they did based on their case reports. Using this interpretation, in the next section I will attempt to respond to the question on which this research is based: how do the judges make decisions about filial responsibility. My intention here will be to add my own interpretations of the data and how the identified themes provide some perception into the attitudes and understandings of the court system as they pertain to obligations in family relationships.

Intergenerational Relationships, Obligations and the Courts

A quick review of the cases reveals that the judges, on behalf of the courts, have a clear opinion about obligations within the family. In all of the cases, judges indicated that adult children are legally obligated to support their parents when in need. Of course, various conditions must be met before support can be ordered. However, it is apparent that the court, as a societal institution, believes in the idea of obligation within families to support one another and this is true for bi-directional support between parents and children. Similar to the ideas proposed by Bengtson and his colleagues in their work on intergenerational relations (Bengtson, Culter, Managen, & Marshall, 1985; Bengtson, Mangen, & Landry, 1984; Bengtson, Olander & Hadded, 1976), the courts seem to endorse and uphold the value of functional solidarity - that is, family members are bound to one another through an obligation to provide support, particularly through the exchange of services, goods, and financial assistance.

In addition to enforcing this basic value of family solidarity through its interpretation and application of the law, what is interesting to note is the way the court assigns priorities to the obligations of family members to provide support for one another. In the several cases that involved prioritizing the support obligations, the judges indicated quite clearly that the obligation to support one's spouse and children comes before one's obligation to support one's parents. Likewise, in cases where there was dispute between support from one's spouse or adult children, the court ruled that the adult child's obligation to support his or her parent is secondary to the obligation of one spouse to support another. It is evident from these rulings that support obligations within the "nuclear" family are considered to be of more importance than obligations to one's family

of origin. This prioritizing of obligations within the family system may be a reflection of the basic value system of Canadians and the ideas we hold about family relationships. Generally, encounters with the concept “family” often conjures up an image similar to that of the nuclear family. In fact, Statistics Canada used the “census family” (a husband and a wife, with or without children, or a lone parent of any marital status, with one or more children who have never married, living in the same dwelling) as the definition of “family” in the 1981 census (Hayford, 1988). The fact that this may be different from other countries is evident by Colling’s comments (1985) in *Hua v. Lam* acknowledging his ruling that the son’s obligation was to his ex-wife and child might reflect different values from those of the applicant’s Vietnamese culture.

The court’s prioritizing of obligations between family members within intergenerational relationships does not differ from the results of Rosenthal’s findings in her research on intergenerational relationships among Canadian families (1979). The results of this study showed that while there is generally a bi-directional flow of financial and material assistance among intergenerational family members, most of the assistance flows from the parents to the children. Thus, it would seem that the legislation and the court’s interpretation of this legislation upholds the generally held Canadian belief that children are first priority over the support of parents in the scaling of support obligations among family members.

One other significant point to be considered when exploring the differences between the obligation of an adult child to support his or her parents and one’s obligation to support his or her children is the perceived impact on family relationships when an

application for support has been activated. Usually, when an application for child and spousal support comes before the court, the family has already separated and relationships have broken down. However, in several of the cases reviewed here, it was apparent that the adult children were surprised by the application. This was particularly true in situations where the child was being directly sued by her or his parents or where he or she is named as a third party respondent by the parent's ex-partner. In light of this surprise, judges in several of the cases acknowledged that the parent's initiation of court proceedings negatively affected the relationship between the parent and child and that the damage done was likely beyond repair. While relationships may have also been negatively affected in court proceedings involving child and spousal support, there seems to be a different flavor present in cases where parents are in need of support and using court proceedings to obtain that support. One judge noted "when a claim is made by a parent, the respondent child is faced for the first time with the question of meeting the obligation to the parent" (Donkin, 1983). It is possible that the unexpectedness of the application may be what impacts negatively on the relationship. As it is generally expected that parents assume legal and moral responsibility for supporting and caring for their children when they become parents, the initiation of court proceedings for support against one's children may go against one's general expectations.

In cases where parents directly sue their children, it is somewhat obvious how their relationship may be negatively affected, if it is. However, this is not so clear in cases where children are named as third party respondents by an ex-partner in spousal support applications. The possibility for the relationship between parent and child to experience a

negative impact was highlighted in the case *Bell v. Mellows* (1994). There, the mother's counsel urged the court not to approve the ex-husband's application for fear that the relationship between mother and son would be irreparably damaged. However, Judge Vogelsang (1994) ruled that there was no evidence that the relationship would be harmed and therefore granted the ex-husband's motion. In his report, Vogelsang acknowledged that this ruling is of significant importance in that it may open up legal doors that were not immediately visible before, particularly in cases of spousal and child support. Therefore, there is a greater likelihood that adult children may be more often called upon to support their parents, not by the parents themselves, but by other support application respondents.

One other way in which parental support applications differ from spousal and child support applications is the factors that are considered in making a determination. In a number of the cases, the courts heard testimony as to the quality of the relationship between parent and child and this seems to have played a significant role in the court's decision making process (*Blum v. Blum*, 1982; *Godwin v. Bolsco*, 1993; *Whiteley v. Brodie*, *Whiteley*, *Whiteley*, 1994). For example, in *Godwin v. Bolsco* (1993) the quality of care and support the mother provided during the respondent adult children's dependency years was explored. This care and support was deemed adequate. However, in cases where such support and care was not perceived as adequate, would the court deny the parent support from his or her adult children?

In cases of child support, the element of the child's dependency is obvious. In parent support applications, the parent must prove that there is a history of direct interdependency between her/him and the adult child. This may not be an issue in cases

where the parent is the child's natural parent and raised him or her from birth. However, in cases such as blended families where relationships may consist of step-parents and step-children, the element of direct interdependency is not so clear. The age of the children at the commencement of the relationship between the parent and step-parent seems to be a significant deciding factor in these cases. However, even if the age criterion is satisfied (whatever that age may be), it is not always the case that interdependency may be present.

The Decision Process

What do these interpretations tell us about how judges make decisions about filial intergenerational responsibility? Well, it is obvious that certain factors must be in place before a judge will award support from an adult child to his or her parent(s). First, the parent must have established that he or she is in need. Second, the court must determine that the adult child is financially capable of providing that support. While these factors are the two central components, other critical elements must be in place. As indicated earlier, the court must be satisfied that there exists a measure of direct interdependency between the applicant and the respondent, which means that the parent must have provided care and support for the child during his or her years of dependency. In further consideration of this element of direct interdependency, the court must be satisfied that the care and support provided by the parent is deemed "adequate".

These factors of "need and means" as well as direct interdependency seem to constitute the basic thrust of the cases reviewed in this research. However, other issues presented themselves which provide further details that impact on the judicial decision making process. Examples, as described earlier, include definition of key words and

phrases, the history and intended purpose of the legislation, and the impact the court proceedings may have or have had on the relationships between family members. It is clear that the consideration of these factors appears to have some impact on the decision making process. For example, Fisher (1984) in *Director, Family Support Plan v. Burgess*, noted that the intention of the legislation “was to allow the State to make well-off children pay for parents in nursing homes rather than the State paying for them. However, the effect of the section is far more sweeping. It is clear that if the parent has a need and the child has the means, support should be ordered”. In considering the legislation’s historical development and its wide sweeping implications, Fisher ruled that the son was legally obligated to support his mother. However, he ruled no support as the son’s financial circumstances did not allow for financially supporting his mother. It was clear from the judge’s report that if the son’s financial circumstances had been different, support would likely have been ordered.

What does the consideration of these factors as indicated above say about the legislators’ attitudes and values towards responsibility in intergenerational family relationships? Firstly, the very presence of legislation obligating adult children to support their parents indicates the values and attitudes endorsed by government that the support of individuals rests ultimately with their families. While there are many State provisions that people can access when they are unable to support themselves, it is quite evident from these cases that government supports the ideology of the responsibility that family members have to provide for one another and do not hesitate to order that support when the circumstances meet the criteria of the legislation. Secondly, in relation to this first

point, the court, in its interpretation of the legislation, seems to be aware of the unique characteristics that are intrinsic to family relationships. In considering elements such as those previously described (e.g., the level of care and support provided by an applicant parent to a responding adult child, the impact a particular decision will have on relationships within the family, the concerns that a responding adult child must grapple with when contemplating, perhaps for the first time, responsibility to his or her parents), the court reveals what might be investigated in its understanding of family relationships and the importance of pondering issues that are connected with such relationships. While it would be impossible to sum up the values endorsed by the court concerning family relationships into a neat package, it is conceivable that court advocates for the importance of these relationships in its attempts to salvage these relationships where ever possible. This is evident in several of the cases where the judges wrote of their reflections and concerns about the relationships and invited the family members to consider the importance of such relationships.

Thirdly, as discussed in the previous section, responsibilities within intergenerational relationships can be organized along a scale of priorities according to the court's interpretation. It is obvious from this scaling of family responsibilities that the government, through the judicial process, sees an individual's obligation to support his or her immediate family to be of greater priority than responsibilities to his or her family of origin. This scale of priorities seems to reflect Canadian values where the nuclear or immediate family comes before family of origin in terms of responsibilities. Collings (1985) in *Hua v. Lam* notes that these values may differ from those of other cultures, but

they provide guidance to the court in its decision making process.

The particulars presented here do represent a solid impression of the court's values and attitudes as they are represented in the judge's decisions and the reasons they provide for those decisions. To summarize, this impression conveys the following: a) that there are a number of basic factors that the court must consider when making a decision; b) the court values and understands the importance of family relationships; c) the court acknowledges the importance of these relationships through its upholding of legislation which obligates family members to support one another over and above the State's obligation to provide for individuals; and d) that the judges make inferences to what they believe to be Canadian values as is indicated by the judicial and democratic process.

This section was concerned with illustrating the main interpretations gleaned from the data as they relate to the central research question of this project. It is obvious from this analysis that the judges' reports say a great deal about Canadian values as they are represented in the legal system. Of course, this system is closely connected with the development and implementation of social policy. The next section of this paper will consider the issue of social policy and questions that present themselves in light of the cases which examine legislation that obligates a child to support his or her parents.

Social Policy

As cited in the literature review, some researchers are expressing concern over the ideologies which are based on traditional values and assumptions about family relationships, and their role in social policy development (Gee and McDaniel, 1993). It appears that the development of social policy related to the support and care of parents by

adult children was based upon values and assumptions which favored the obligation of family members to take care of their own. Thus, the provision for individuals, particularly those who can not provide for themselves, rests ultimately within the family. As noted by Daley (1984) in *Barrington v. Shand*,

“the principle thrusts of family law recognize, at least in the area of family support, the equality of roles and responsibilities of spouses and family members to support themselves and members of the family and at the same time, a continued recognition of the ability of the State to step in where required to assist a family or an individual family member and recover all or a part of the costs of that assistance from the family”.

Daley (1984) highlighted in his comments the basic underlying assumption about family obligations in issues of support for individual family members that may have guided much of the social policy development as it is related to family law. Does this assumption still have its place in current social policy development? According to Gee and McDaniel (1993), it does. One of their concerns about the continued use of traditional values in the social policy development arena is that families may become overburdened in providing care and support to dependent family members, with a growing absence of State support. This concern may be validated in light of Canada’s aging population. According to Denton and Spencer (1997), by 2031, “the population 65 and over will be about two and one-half times as large as it is now and will account for almost a quarter of the total”. As people get older, their level of dependency generally increases and researchers like Gee and McDaniel are expressing concern that social policy makers will continue to expect family members to meet the demands of support typically associated with this dependency. As depicted by the state of long-term care provision for the elderly in Canada, family

members have risen to meet the demands of their dependent parents. According to Liebig (1993), nearly 80% of all care, assistance, and support of elderly people is provided by family members, mostly by adult daughters.

In light of an aging population and a social policy that favors family obligation to support its members, the cases reviewed in this research pose a number of interesting questions about the future of social policy. While these cases represent a tiny number of families where issues of parental support have come into consideration, will more parents who cannot meet their own needs see their adult children as a source of support, not get it and have to sue? Will the State encourage parents to access this source of support before approving applications for assistance from social support programs? Under the Family Benefits Act, a person must show that they have accessed all sources of support before their application is approved. For example, a single mother may be asked to sue the child(ren)'s father for child support in conjunction with applying for Family Benefits. And, if child support is awarded from the father, the mother will receive less assistance under Family Benefits to reflect this source of income. Is it possible that when parents apply for social assistance, they will be encouraged to consider their adult children as a source of support as well? In other words, the legislation which states that adult children are obligated to support their parents is already in place. Will we see governmental agencies look to this legislation as a mechanism of reducing the State's own obligation to providing assistance? This question is not without its merits as the parental support legislation specifically names the Ministry of Community and Social Services as a party that can initiate proceedings to sue adult children for support of their parents. As well, in

light of near constant cutbacks in the social welfare arena, several services have been urging clients to access assistance and support from their families before turning to governmental assistance. For example, clients who have access to support from their families may not qualify for full-service support from the Victorian Order of Nurses (VON) as would someone who can demonstrate that they do not have access to this source of support (S. J. Hanmer, Executive Director, VON, personal communication, July 17, 1998).

The once proposed Senior's Benefit and its predecessor Old Age Security did not refer to the parental support legislation nor consider it in determining pension income (National Council of Welfare, 1996). The intention of the pension legislation is to provide an income to people over the age of 65 to allow for their retirement from the workforce. In spite of these intentions, however, nearly 42 percent of single women 65 and older and 25 percent of single men 65 and older still end up living below the poverty line (National Council of Welfare, 1994). While lobbyists and seniors groups press for an increased pension income to meet the needs of seniors living in poverty, it is interesting to consider the possibility of poor parents looking more to their adult children as a source of support and appealing to the court system for assistance in gaining that support. In spite of the overwhelming numbers of adult children who do assist their parents as is evident by the data presented by Leibig (1993), some parents, for whatever reason, are denied this assistance by their children. With increased awareness, would we see more parents utilizing the parental support legislation to force their children to support them?

The questions posed here are concerned with parents directly suing their adult

children. However, a number of the cases reviewed dealt with circumstances where adult children were named as respondents by a responding spouse in a spousal support application. These cases represent situations where individuals have re-married later in life, subsequently divorced, and the spousal support application is taking place after their children have reached adulthood. With the number of first marriages ending in divorce at approximately fifty percent and the number of second marriages ending in divorce at an even higher rate (Statistics Canada, 1995), it is likely that more cases like these will be presented before the courts. Given the increase in the number of blended families that make up our population, it is highly likely that divorce proceedings and spousal support applications will involve the consideration of adult children's responsibility to support their parents. Given the possibility of this trend, what role will social policy play in family law as it pertains to the area of spousal support? As more divorce cases come before the court involving blended family issues, will policy change to reflect this trend and automatically name adult children as party respondents?

The parental support legislation was first designed and implemented in the 1920's in Ontario. Since that time, as indicated by the data in this research, only a relatively small number of cases have considered or referred to this statute. However, as demonstrated in this section, numerous questions and possible implications emerge when these cases are explored for their impact on current and future social policy development. Of course, this law has received very little attention, both in the courts and within public discourse. However, we live in an age where the exchange of information takes place on a massive scale and as a result, people are becoming more aware of their rights and obligations under

the law. Could it be that if parents were aware that such legislation existed, they would access their rights under its jurisdiction? If taxpayers were aware of its existence, would they insist that adult children assume their legal obligation in paying for their parent's financial dependent needs instead of the State providing for them, particularly in light of the general perception that the aging population will bring with it increased burdens on the social welfare system? The basic intention of this research project was to highlight the existence of this legislation and to explore the mechanisms used by the courts in making decisions in cases which considered it. However, many other research possibilities come to light when attempting to evaluate social policy issues in the context of this legislation.

Conclusions, cautionary notes, and future research directions

Additional Conclusions

It is obvious from the above discussion that the court system, as demonstrated through the review of these cases, clearly promotes the ideology that family members within the intergenerational family system are morally and legally obligated to support one another. The very presence of legislation under the Family Law Act which outlines these obligations as well as the court's role in enforcing them points to some of the basic values held by a significant portion of the Canadian populace. The kinds of factors considered and explored in the litigation of cases which invokes this legislation and the reasons judges provide for their rulings provides further evidence that the court system endorses the responsibility of family members to support each other, and that the provision of this support is bi-directional in nature.

The small number of cases which considered the legislation that obligates adult

children to support their parents may be a reflection of one of two things: a) adult children are already providing support to their parents and are, therefore, not likely to face litigation brought against them by their parents, or b) parents do not consider their adult children a source of support, in spite of their having provided support for their children during their dependency years. The first of these points is evidenced by the fact that nearly 80% of all long-term care of elderly people is provided by their adult children (Liebig, 1993). Regardless of the motivation for this support provision, whether a close relationship or a sense of filial responsibility, the fact remains that most parents do receive assistance from their adult children, particularly as they get older. As for the second point, it is possible that many parents would not feel comfortable accepting financial support from their children. While it is true that providing long-term care is very different from financial support, perhaps parents are more likely to request and accept assistance from their children that does not involve money.

In addition to the small number of cases and the limited times this legislation has been referred to by the court system, the legislation does not seem to be a salient point in the development of social policy regarding the support of elderly people as is evidenced in Canadian pension policy (National Council of Welfare, 1996). Using the once proposed Senior's Benefit as a guide, it appears that no provision was made in the development of the policy nor in the determination of pension amounts for the consideration of support from adult children. However, this may not necessarily reflect an oversight. Perhaps most policy makers are aware of the amount of support that adult children provide to their parents, particularly in terms of care, and therefore, do not factor this in as a source of

income that must be utilized before qualifying for or determining pension amounts. Or, perhaps, this source of support is somehow considered, but not acknowledged by policy makers when determining the basic pension amounts. This possibility is not inconceivable as the National Council of Welfare (1996) openly challenged the government with respect its proposal to increase the basic pension amount by \$120 per year, which the Council indicated would be barely noticed by many poor seniors. Perhaps, the government's intention was to keep the pension amount low so as to compel adult children, who have elderly parents, to provide support.

Cautionary Notes

It is important to highlight some of the influential factors that relate to the low generalizability of the conclusions drawn here. As mentioned earlier, there are a small number of cases - fourteen in all. In addition, these cases vary significantly in terms of the types of court proceedings the case reports are reflecting. Some are trials, others are motion hearings, while yet others are appeals. As well as different types of court proceedings, different levels of the judicial system are involved - family court, court of appeal, county court, provincial supreme court, to name a few. Unfortunately, the case reports do not indicate the differences between these proceedings and court levels nor the reasons these various proceedings and court levels were invoked.

Related to the variation in court proceedings and judicial system level involvement are the different situations which lead to court proceedings. As highlighted earlier, some cases involved a parent directly suing his or her adult child for support. Other case reports reflected situations where adult children were named as party respondents to a support

application against an ex-spouse. Still other cases involve situations where representatives for the dependent parent making an application for support from the adult child. These different situations obviously entail different court proceedings, the consideration of different factors, and perhaps the involvement of different judicial divisions. It is obvious, therefore, that many of the conclusions drawn here must be considered with caution as the cases reflect very unique situations, which may not be reflective of the general population of family support cases before the court.

As the case reports reflect all cases considered or referred to by provincial courts across the country, the variation in wording of the relevant legislation across provinces may be reflected in different decisions across provinces. In addition to this variation, no similar legislation which essentially obligates adult children to support their parents was found for the provinces of Quebec, Prince Edward Island, Saskatchewan, or Manitoba. However, this does not necessarily mean that these provinces do not share similar legislation with their counterparts. It is possible that if cases came before the court which concerned adult children supporting their parents, than the courts in these provinces would refer to the legislation outside of the province for guidance or adopt similar legislation for their own interpretation.

As the wording of the legislation, the particular type of court proceeding and the level of judicial system involvement varies, so do the ways in which the judges write about their decisions and their reasons in the case reports. As mentioned earlier, some judges write extensively about a variety of factors they considered in making the decision. Other judges, however, are very brief in their reports and write of only what appears to be the

very basic components of the court proceeding. It is important to note that their conservative writing style may not necessarily reflect all of the factors they considered during the particular court proceeding. Of course, it would seem appropriate to assume that all of the important factors, particularly those which had the most impact on their decision, would be included. However, it is also possible that other factors were introduced, but did not meet the criterion of being significantly relevant and were therefore, not influential to the decision making process. It would be interesting to discover, if indeed, additional particulars were introduced, but not reported in the case report, and what impact, if any, these additional factors may have on the variation among judges' decisions.

All of the issues presented here reflect the significant variation that existed among the cases examined in this research. The thematic analysis of these cases can provide us with a glimpse of the kinds of factors that the court deems important when considering the obligation of adult children to support their parents. In addition, the variation speaks for the uniqueness of each case and for the unique elements that make up the situation and the family which comes before the court.

Future Research Directions

The small number of cases could be a reflection of the two points I raised earlier: adult children are already supporting their parents or parents do not see their children as a source of support. However, the limited number of cases which considers this legislation may also be a result of parents being unaware of their rights under the Family Law Act. Perhaps if more parents were aware of these rights, we would see more cases before the

courts. Future research could explore parent's awareness of the legislation and their willingness to seek support through the courts under its jurisdiction. This endeavor would be an excellent way of tapping into parents' attitudes about obligation to support and whether children are more obligated than the State or vice versa. On the flip side of the coin, it would be interesting to explore the attitudes of adult children concerning the support of parents. Perhaps adult children who are not currently supporting their parents in any way may be surveyed to determine whether they feel obligated to provide such support and if the circumstances presented themselves, would they meet this obligation.

The legislation obligating adult children to support their parents was developed early in this century. Although the wording of this legislation has been revised over the decades in most provinces, the general gist of its intention appears to have remained the same. Given the longevity of this legislation, does the general public believe that adult children are responsible for their parents, say as it did in the early 1920's? If so, what would the terms "responsibility", "support", and "care" mean in today's society? As well, given the general notion that our population is aging and that the increase in the numbers of elderly people brings with it increased burdens on the social system, what beliefs and values do the general public hold with respect to the assigning of responsibility for meeting these needs? These questions and their important relevance to the current social policy can make for interesting and valuable research investigations.

References

- All in the Family. (February 9, 1982). Globe and Mail. p. 6.
- Banks, M. (1985). Using a Law Library: A Guide for Students and Lawyers in the Common Law Provinces of Canada, 4th Ed. Toronto: The Carswell Company Ltd.
- Bengtson, V.L., Cutler, N., Mangen, D., & Marshall, V. (1985). Generations, cohorts, and relations between age groups. In R. H. Binstock and E. Shanas (Eds.), Handbook of Aging and the Social Sciences, 2nd Edition (pp. 304-338). New York: Van Nostrand Reinhold.
- Bengtson, V.L., Mangen, D. & Landry, P. (1984). The multi-generation family: Concepts and findings. In V. Garms-Homolova, E.M. Hoerning, & D. Schaeffer (Eds.) Intergenerational Relationships. (pp. 63-80). New York: C.J. Hogrefe.
- Bengtson, V.L., Olander, E., & Haddad, A.A. (1976). The 'generation gap' and aging family members: Toward a conceptual model. In J. F. Gubrium (Ed.), Time, Roles and Self in Old Age. (pp. 237-263). New York: Human Sciences Press.
- Berman, H. J. (1987). Adult children and their parents: Irredeemable obligation and irreplaceable loss. Journal of Gerontological Social Work, 10 (2). 21-34.
- Borins, C. (1984). St. Joseph's Health Centre versus Sauro et. al. Ontario Reports. Vol. 45, 2nd Edition, 221-224.
- Boyd, S. B. (1994). (Re)Placing the State: Family, law, and oppression. Canadian Journal of Law and Society 9(1), 39-73.
- Bromberg, E.M. (1983). Mother-daughter relationships in later life: The effect of quality of relationship upon mutual aid. Journal of Gerontological Social Work, 6 (1). 75-

92.

Carey, E. (1993). Can kids be forced to support parents? Toronto Star.

September 17.

A1, A9.

Collings, Prov. J. (1985). Hua v. Lam. Reports of Family Law. Vol. 49, 2nd

Edition, 6-13.

Connidis, I. A. (1989). Family Ties and Aging. (p. 49). Toronto, Ontario:

Butterworks Canada Ltd.

Daley, Fam. Ct. J. (1984). Barrington V. Shand. Reports of Family Law, Vol. 42,

2nd Edition, 38-46.

Daniels, N. (1988). Am I my parents' keeper?: An essay on justice between the young and the old. (p. 23). New York: Oxford University Press.

Donkin, Master (1983). Hanna versus Hanna, Lewis, and Hanna. Reports of

Family Law. Vol. 33, 2nd Edition, 335-336.

Dorcak, A. (1991). Unborn child abuse: Contemplating legal solution. Canadian

Journal of Family Law, 9(2), 133-156.

Dunn, Prov. J. (1993). Godwin versus Bolsco. Reports of Family Law. Vol. 45, 3rd

Edition, 310-327.

Family Law Digest (1995). (Vol. 4) 4th Edition. (pp. 441-443). Carswell

Thomson Professional Publishing: Toronto, Ontario.

Fisher, Prov. J. (1994). Ontario (Director, Family Support Plan) v. Burgess.

Reports of Family Law, Vol. 5, 4th Edition, 451-456.

- Fitterman, L. (1997). Lottery-winner ordered to aid parents. Montreal Gazette. March 19. A1-A2.
- Gee, E.M. & McDaniel, S.A. (1993). Social policy for an aging society. Journal of Canadian Studies, 28(1).
- Goldenberg, S. (1992). Thinking Methodologically. New York: HarperCollins Publishers Inc.
- Hancock, P., Mangen, D. J., & McChesney, K.Y. (1988). The exchange dimension of solidarity: Measuring intergenerational exchange and functional solidarity. In D. J. Mangen, V.L. Bengtson, & P. H. Landry, Jr. (Eds.), Measurement of Intergenerational Relations (pp. 156-186). Newbury Park: Sage Publications.
- Hayford, A. (1988). Outlines of the family. Family Matters: Sociology and Contemporary Canadian Families 1-19.
- Holsti, O. R. (1969). Content Analysis for the Social Sciences and Humanities. Don Mills, Ontario: Addison-Wesley Publishing Co.
- Humphries, J. (1997). Smeland v. Smeland. Quick Law.
- Karswick, J. (1982). Blum versus Blum. Dominion Law Reports. Vol. 132, 2nd Edition, 69-73.
- Krippendorff, K. (1980). Content Analysis. Beverly Hills, CA: Sage Publications.
- Liebig, P.S. (1993). The effects of federalism on policy for care of the aged in Canada and the United States. Journal of Aging and Social Policy, 5(1-2), 13-37.
- Lipovenko, D. (1982). Woman wins her suit for support from son under family law act. Globe and Mail, February 8. 1-2.

- Mother insists son pay \$2 000 month support. Toronto Star. February 9. A7.
- Nash, Prov. J. (1996). Leung v. Leung. Reports of Family Law, Vol. 20, 4th Edition, 48-54.
- National Council of Welfare (1996). A Guide to the Proposed Seniors Benefit. Ottawa, Canada: Minister of Supply and Services Canada.
- Neysmith, S.M. (1987). Social policy implications. In V.W. Marshall (Ed.). Aging in Canada. (pp. 586-597). Markham, Ontario: Fitzhenry & Whiteside.
- Paul, E. W. & Pipel, H.F. (1979). Teenagers and pregnancy: The law. Family Planning Perspectives 11(5), 297-302.
- Patten, M.Q. (1990). Qualitative Evaluation and Research Methods. Newbury Park, California: Sage Publications.
- Pedlar, Prov. Div. J. (1994). Whiteley v. Brodie. Quick Law.
- Robertshaw, P. & Curtin, C. A. (1977). Legal definition of the family: An historical and sociological exploration. Sociological Review, 25(2), 289-308.
- Rosenthal, C.J. (1987). Aging and intergenerational relations in Canada. In V.W. Marshall (Ed.). Aging in Canada. (pp. 311-342). Markham, Ontario: Fitzhenry & Whiteside.
- Snell, J. (1992). Maintenance agreements for the elderly: Canada, 1900-1951. Journal of Canadian Historical Association. 1992. 197-216.
- Van Duzer, U.F.C.J. (1987). Berendt v. Berendt & Berendt. Reports of Family

Law, Vol 11, 3rd Edition, 69-74.

Vogelsang, Prov. J. (1994) Bell v. Mellows. Reports of Family Law, Vol 6, 4th Edition, 5-9.

Weber, R. P. (1990). Basic Content Analysis. New Park, Ca: Sage Publications, Inc.

Woody, R. H., Yeager, M., & Woody, J. D. (1990). Appropriate education for handicapped children: Introducing family therapy to school-based decision making. American Journal of Family Therapy 18(2), 189-196.

APPENDICES

Table One

Case Summaries

Table Two

Themes, Cases, and Relevant Factors

TABLE ONE - Case Summaries

Case Particulars	Background Information	General Themes highlighted	Decision(s)	Reasons given
Blum v. Blum January, 1982 Ontario Provincial Court	A. Mother sued her husband for support. B. He couldn't pay C. Judge in this case suggested that the mother sue her son for support. D. Son was financially supporting his father at the time.	A. Judge considered the differences between the older <i>Parent's Maintenance Act</i> and the newer law under section 17. B. Older law required the parent to prove destitution or that he or she was unable to maintain him or herself by reason of age, disease or infirmity. New law provides wider remedies. Eligibility under s. 17 is based upon the combined features of "need" of the applicant and "capability" of the respondent. C. Judge noted the relationship between son and mother had deteriorated during the original trial.	Judge awarded mother \$270 support from son.	A. Judge noted that the mother had proceeded as "would be expected"- applying for support first from her ex-husband and then her son. B. The judge considered the mother's financial situation and documented her expenses and income (<i>need</i>) B. Judge took into consideration the son's financial obligations to his wife and children as well as to his father. Judge indicated that the "business holdings and financial resources permitted the capacity to provide support to his mother" (<i>capability</i>)

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<p>Hanna v. Hanna, Lewis, and Hanna</p> <p>March, 1983</p> <p>Ontario Supreme Court</p>	<p>Father applied for support from his ex-wife and his two adult children</p>	<p>A. Judge noted that "when a claim is made by a parent, the respondent child is faced for the first time with the question of meeting the obligation to the parent"</p>	<p>Case dismissed</p>	<p>A. Judge indicated the father had demonstrated need adequately enough.</p> <p>B. The children weren't capable of provide that support.</p> <p>C. The family had separated for "quite some time and the father had found other means of surviving"</p> <p>D. "Both children have set up their lives, using their incomes for the needs of themselves, and those who form their own family units."</p> <p>E. The children didn't live an affluent lifestyle and they used their own incomes to meet their own needs and their immediate family needs.</p>

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<p>St. Joseph's Health Centre v. Sauro et al.</p> <p>February, 1984</p> <p>Judicial District of York</p>	<p>A. St. Joseph's Health Care Centre applied for reimbursement of expenses related to the care of the adult children's father before he died.</p> <p>B. The Centre attempted to sue the children for \$11 141.96 under section 17</p>	<p>A. s. 17 imposes obligations of support upon children but limits the persons who may apply for the remedies which flow from such obligation". Therefore, a creditor can not apply for reimbursement for services rendered to the dependent parent.</p> <p>B. Judge indicated that the father (Genaro Sauro) was the parent of the defendants and "cared for and provided support for" them when children.</p> <p>C. Judge noted that the children were obliged to and capable of supporting their parent, Genaro Sauro.</p> <p>D. Judge pointed out that an order for support of a dependant may be made by the dependant (e.g., parent in this case). The range of applicants is extended to include the Ministry of Community and Social Services and a municipal corporation in cases where financial assistance is provide by the ministry or the municipality to the dependant.</p>	<p>Case Dismissed</p>	<p>A. Any payment ordered by the court must be paid to the parent by the child. The <i>Act</i> did not create a right of action in favor of a 3rd person against a child for obligations incurred to the third person by the part of the child.</p> <p>B. The <i>Act</i> relates only to intra-family support obligations. "<i>The Act imposes obligations on spouses to support one another, on parents to support their children and on children to support their parents in the circumstances and in the manner set out in the Act.</i>"</p> <p>C. "The Act limits the person who may apply for the remedies which flow from the statutory support obligations to dependants, parents of dependants, the Ministry of Community and Social Services and municipal corporations.</p> <p>D. <i>Act</i> does not expressly impose an obligation upon children to pay debts incurred by their parents.</p>

Case Particulars	Background Information	General Themes highlighted	Decision(s)	Reasons given
<p>Barrington v. Shand</p> <p>August, 1984</p> <p>Nova Scotia Family Court</p>	<p>A. Daughter and her husband had cared for her father in their home for 12 years.</p> <p>B. When he went into a nursing care facility, daughter was ordered to pay \$30 per month for his support (in addition to support he was awarded from his other six adult children)</p> <p>C. Daughter fell into arrears when she became unemployed.</p> <p>D. This court proceeding was to decide if daughter's husband was financial responsible for the support his father-in-law as well as to determine if daughter would have to pay arrears.</p>	<p>A. Judge indicated that husband's income can be considered when determining amount of support to be paid by daughter.</p> <p>B. Judge noted that husband had taken on the active role of caregiver for daughter's father (father-in-law). Therefore, husband becomes obligated for future support.</p> <p>C. In this case, the Municipality of Barrington applied for support under the Family Maintenance Act for the father.</p> <p>D. Judge considered:</p> <ul style="list-style-type: none"> - the "reasonable" needs of the parent - the ability of the dependent parent to contribute to his own maintenance - the "reasonable" needs and "ability to pay" of the child obliged to pay maintenance. <p>E. <i>reasonable needs</i> means: whatever is reasonably suitable for the maintenance of the person in question, having regard to the ability, means, needs and circumstances of that person or of any person obliged to contribute to such reasonable needs</p> <p>F. Judge even though daughter was unemployed and receiving Unemployment Benefits, she is still responsible to pay support.</p> <p>G. Judge highlights the basic thrust of the family legislation - <i>"it is possible to state that the principle thrusts of family law recognize, at least in the area of family support, the equality of roles and responsibilities of spouses and family members to support themselves and members of the family and at the same time a continued recognition of the ability of</i></p>	<p>Judge ordered daughter to indicate her income to the court every 6 months. If she became employed - either part or full-time - or if she received income for another sources, she was to commence paying the support as ordered.</p>	<p>A. Judge considered the income of the "family", but indicated without the daughter's income, they "were just keeping out of debt".</p>

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Barrington v. Shand (Cont'd)		<p><i>the state to step in where required to assist a family or an individual family member and recover all or a part of the costs of that assistance from the family".</i></p> <p>H. Judge indicates that the assumption of the care of a dependent parent by the family as opposed to an individual family member accurately reflects the reality of the care and is only proper. (Therefore, the care of a dependent family member becomes the responsibility of the "family" and not an individual family member).</p>		
<p>Hua v. Lam</p> <p>November, 1985</p> <p>British Columbia Provincial Court</p>	<p>Husband applied to have amount of child support payments reduced.</p> <p>Husband and wife, separated. 2 year old son lives with mother. Father was ordered to pay \$150 per month in child support. Judge who ordered child support did not take into consideration the husband's responsibilities of taking care of his parents, who have immigrated from Vietnam. Both husband and wife sponsored the parents and the husband's brother to immigrate from Vietnam. Were on a "visitors' permit". Can not work while on a visitor's permit. Judge notes that the husband had decreased his hours of work to take a course - 5 year course to become a Certified General Accountant.</p>	<p>A. Judge notes that before one sets out to "better oneself", one must take care of his or her responsibilities.</p> <p>B. Judge indicates that the husband had taken on great responsibilities. He can not "lay them down to better himself and let the slack be taken up by the public purse". The evidence is that one of his parents is already in receipt of welfare payments and the other will shortly be.</p> <p>C. Judge orders the obligations of support as follows:</p> <ul style="list-style-type: none"> - support of child precedes support of parent - support of spouse precedes support of parent <p>D. In the family law in British Columbia, under the section 58 (obligation to support for parents), there is no right to demand financial information. This is not true for support obligations for children or for spouses.</p> <p>E. Judge noted that in considering support obligations of an adult child to his or her parents, other "responsibilities and liabilities" must be first taken into consideration. Judge interprets these "other responsibilities and liabilities" to refer to his or her</p>	<p>Application to have child support payment reduced dismissed.</p>	

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Hua v. Lam (Cont'd)		<p>obligation to support a child or a spouse.</p> <p>F. Judge also talks about determining obligation - his arguments suggest that the obligation to support either child, spouse, or parent is inherent in the law. It is not determined by the ability to pay. Thus, the obligation exists, but one is only ordered to pay should his or her financial resources reflect the ability to do so.</p> <p>G. Judges notes that the "funds available" must be applied first to support the child and the spouse and only after these obligation have been fulfilled should they be applied to support the parent. (Judge indicates that this may not be the Vietnamese priority, but is applying the law of British Columbia).</p>		
Berendt v. Berendt & Berendt November, 1987 Ontario Unified Family Court	<ul style="list-style-type: none"> - widow claiming support from deceased husband's estate - widow naming husband's two adult sons as respondents for support - stepsons were adults at the time of marriage between widow and deceased (34 and 28 years of age) - mother provided care to mentally handicapped step daughter (sibling of step-son) on weekends and during visits) 	<ul style="list-style-type: none"> a. The family law act provides for a mutual support obligation between parents and children on <i>direct interdependency</i> b. As there was no interdependency between the applicant (step-mother) and stepsons, no support should be awarded under the Family Law Act. c. given the ages of the step sons at the time of the marriage, the judge assumed there would be no interdependency between the applicant and the step sons (she would not have "provided support to them") 	mother was awarded support from husband's estate, but not from her stepsons	<ol style="list-style-type: none"> 1. Family Law Act is based on the idea of <i>direct interdependency</i> 2. Since there was no evidence of direct interdependency between the applicant and the step-sons, she would not qualify for support from them. 3. Even though the applicant provided "support" and "care" to mentally handicapped sister, she did not provide support to the stepsons.

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<p>Baddeley v. Baddeley et al.</p> <p>December, 1989</p> <p>Ontario High Court of Justice</p>	<ul style="list-style-type: none"> - mother previously sued ex-husband, Baddeley, for support. Was awarded \$300 per month. - ex-husband applied to have ex-wife's adult son named as a respondent to the support application - court agreed that the son had an obligation to support mother - son appealed, appeal dismissed 	<ol style="list-style-type: none"> Adult children can be named as a respondent in spousal support applications. Adult children can be named by respondent to an application (e.g., a ex-husband can name an adult child) Judge did not indicate if the husband's support order was impacted by naming the son as a third party. When a third party (adult child) is deemed responsible for providing support, the respondent can request that the third part be added to the list of potential supporters. 	<p>Court agreed that the son had an obligation to support his mother.</p>	<ol style="list-style-type: none"> 1. Court determined that the son was obligated to support his mother. 2. Court did not indicate if naming the son as a respondent impacted on the husband's support order.
<p>Goldwin v. Bolso</p> <p>January, 1993</p> <p>Ontario Court of Justice</p>	<ul style="list-style-type: none"> - mother charged three of her adult children for support. A third sibling joined in for support. - mother was receiving \$150 a week in employment income, \$348 in pension (\$848 per month) - children argued that mother had not provided adequate care or support during their childhood. - judge carefully noted the children's financial positions - judge noted the mother's financial circumstances - mother was awarded \$1000 per month from her children 	<ol style="list-style-type: none"> Judge defined care using Black's Law Dictionary (5th ed., St. Paul, Minnesota: West Publishing Co., 1979) Judge defined support (using Black's Law Dictionary - 5th ed.) the only issue of concern to the court was to determine if the adult child were liable to pay support. Judge heard extensive evidence on the family's situation during the respondent's childhood (judge organized information in case report to reflect much of this evidence: for example, family residence, father and mother's role in the family, family finances, respondents as school children, as adults, etc.) Judge asked three questions: <ol style="list-style-type: none"> 1. Did the mother provide support? 2. Did the mother provide care? 3. Is she in financial need? <p>Court answered yes to each of these questions.</p> Judge determined that this family was not "a functioning family" as the mother's situation in a 	<p>Judge awarded mother support from four of her adult children: Oldest son - \$300 Oldest daughter - \$100 Second oldest daughter - \$300 Youngest daughter - \$300 (Daughter who was not initially named as a respondent was ordered to pay (\$100).</p>	<ol style="list-style-type: none"> A. Mother provided care and support to the standards of the time during the respondent's childhood. B. Mother was in need C. Children were financially capable of providing support.

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Goldwin v. Bolsco (Cont'd)		<p>"functioning family" would compel the adult children to willingly provide support.</p> <p>g. Judge indicated the necessity of avoiding measurements like a minimum or maximum amount of care or support</p> <p>h. <i>"The test should be: What care and support for children would be reasonably have been expected from a parent in the circumstances in which the family found itself?"</i></p> <p>i. <i>"the support that a parent had provided may very well have been close to the minimum that the law then required: parental poverty during the child-rearing years should not of itself defeat a subsequent claim under section 32 of the Act."</i></p>		
<p>Whiteley v. Brodie, Whiteley, and Whiteley</p> <p>February, 1994</p> <p>Ontario Court of Justice</p>	<ul style="list-style-type: none"> - ex-wife applied for spousal support from ex-husband. - husband applied to have wife's two adult children named as respondents in support application - parties co-habited for 7 ½ years and were married for 1 ½ of those years. - wife had two adult children from a previous relationship 	<p>a. "A child's obligation to support his or her parents is secondary to that of a spouse to provide for the other spouse".</p> <p>b. Judge heard evidence that the mother had cared for and provided support for her children during their childhood</p> <p>c. Judge indicates the difference between a spousal relationship and a parent/child relationship: spouses choose each other (and make a decision to enter into a form of partnership which carries with it both advantages and disadvantages) whereas children do not choose their parents.</p> <p>d. "There is no specific reference to the determination of an amount of support if the dependant is a parent"</p> <p>e. "I find that the obligation of an adult child to provide support for his or her parent is secondary to that of a</p>	<p>wife's two adult children were not named as a respondents to the support application against the ex-husband.</p>	<ol style="list-style-type: none"> 1. "A child's obligation to support his or her parents is secondary to that of a spouse to provide for the other spouse". 2. Only if the spouse is unable to meet the needs of the applicant, then the adult children can be ordered to provide support.

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Whiteley v. Brodie, Whiteley, and Whiteley (Cont'd)		<p>spouse to provide support for the other spouse".</p> <p>f. "If a spouse is able to make a claim under s. 30 (spousal support) and have their <i>reasonable</i> needs met by the other spouse, then they are not also able to make the same claim against their adult children, nor are their adult children liable in a claim over by the other spouse. In the event that the other spouse cannot meet their needs, then such a claim is available"</p>		
<p>Director, Family Support Plan (Burgess) v. Burgess; Cantena 3rd Party.</p> <p>June 1994</p> <p>Ontario Court of Justice</p>	<ul style="list-style-type: none"> - husband's financial circumstances changes. No longer able to afford support of \$900 per month - husband applies to have ex-wife's adult son named as a 3rd party to pay support to his mother. 	<p>a. Judge ordered that the application was not "appropriate" since the mother had not asked the son for support.</p> <p>b. Judge noted that the son intended to place all his efforts and modest financial resources at the disposal of his own wife and himself so that they could start a family</p> <p>c. The son had neither substantial income nor substantial assets beyond his or his wife's needs.</p> <p>d. History of legislation - "s. 32 was added to the Family Support Act to allow the State to make well-off children pay for parents in nursing homes rather than the State paying for them. However, the effect of the section is far more sweeping. It is clear that if the parent has a need and the child has the means, support should be ordered"</p> <p>e. Judge feared "a floodgate of litigation and expense" if parents in all cases where there are grown children with assets and income join such children in order to force a sharing of the support obligation.</p> <p>f. "Although it is rare for parents to sue their adult children, it is also conceivable that grown children</p>	<p>a. Ex-husband can no longer pay \$900 per month</p> <p>b. support payments waived until ex-husband's financial situation changes</p> <p>c. son is not named as a respondent in the support application</p>	<ol style="list-style-type: none"> 1. Son does not have financial means to provide support (no substantial financial resources beyond those needed to meet his own needs). 2. Mother did not ask for support from son. 3. Legislation does not prioritize the obligation of spouses and children in their support of dependents. 4. Judge concerned about the possibility of "a floodgate of litigation and expense".

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Director, Family Support Plan (Burgess) v. Burgess; Cantena 3 rd Party. (Cont'd)		<p>could be joined as support for the applicant father in cases such as this."</p> <p>g. Judge notes that "the legislators, in their wisdom, have not prioritized the obligation of spouses and children to support a dependent"</p> <p>h. "While the son loves his mother, it is his intention to place all his efforts and modest financial resources at the disposal of his own family that he hopes to start. His mother understand that wish and is not asking for support. This court also understands that wish".</p> <p>i. "The son's modest means are not a material change in circumstances that can either allow me to order support from the son or to factor in an obligation so as to reduce the applicant's obligation to support the respondent"</p>		

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<p>Bell v. Mellows</p> <p>June, 1994</p> <p>Ontario Court of Justice</p>	<ul style="list-style-type: none"> - woman claiming that she and the respondent man co-habited for a period of 3 years. Following the end of their relationship, she applied for support from him. - respondent man denied co-habitation - he also applies to have woman's son named as a respondent to the support application 	<ol style="list-style-type: none"> a. Judge noted that in an application the court may, on a respondent's motion, add as a party another person who may have an obligation to provide support to the same dependent. b. Judge determined that the "fundamental issue is whether or not Mr. Bell can direct the woman's application in effect forcing her to claim support against her adult children. c. "Words of the legislation are very wide, and are not limited to a respondent chosen by an application, for subsection 33 (1) is formulated in the following terms: a court may, on application, order a person to provide support for his or her dependents and determine the amount of support". d. The only question of concern here is whether the third party (the adult children) may have an obligation to provide support to the same dependent. e. Judge determined that adding the adult children as a 3rd party would not result in undue delay or prejudice. f. Mother's counsel indicated that "one undesirable effect of an order adding the children would be to involve available adult offspring in every case of matrimonial litigation involving support. Judge did not concur. g. Mother's counsel pointed that the policy of the act is to ameliorate the effects of breakdown of a relationship, not to inflame the situation or exacerbate possible acrimony among the children. Judge did not concur. 	<ol style="list-style-type: none"> 1. Judge ordered that the woman's four children be named as respondents to the support application 	<ol style="list-style-type: none"> 1. Judge decided that the children had an obligation to support their mother. 2. Court can decide, based on an application, whether 3rd parties can be named as a respondents in support application, regardless if applicant for support has named these potential supporters in the application. (Obligatory respondents not necessarily limited to those named by the applicant). 3. Only issue is whether the parties have an obligation to support - court decided the adult children have an obligation 4. Judge did not believe it would lead to a deterioration of the relationship between parent and children 5. Judge did not believe it would lead to undue delay. 6. Judge did not believe that all cases of matrimonial litigation would involve the naming of adult children as respondents.

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<p>Bolsco, Bolsco, Bolsco, Horton, v. Godwin</p> <p>August, 1995</p> <p>Ontario Court of Appeal</p>	<ul style="list-style-type: none"> - adult children appealed earlier ruling ordering them to pay \$1000 per month in support to their mother - appeal judge upheld earlier decision and ordered support of \$1000 per month. 	<p>A. Decision upheld</p> <p>b. Judge noted the mother had received a "strong judgement in her favour:"</p> <p>c. Judge noted that the adult children "failed to offer any proof that payment of support would be a hardship"</p>	<p>appeal denied</p>	<p>1. Prior strong judgement upheld</p> <p>2. Children failed to provide evidence that paying support would be a hardship</p>
<p>Leung v. Leung.</p> <p>January, 1996</p> <p>Alberta Court of Queen's Bench</p>	<ul style="list-style-type: none"> - father claiming to be destitute and unable to work - father sues adult children for support - application dismissed - father's assets and spending habits suggesting father not being "destitute" and no evidence that father is "unable to work." 	<p>A. Judge carefully reviewed the financial situations of both the father and each of his adult children who were named as respondents.</p> <p>B. Judge asked two questions:</p> <ol style="list-style-type: none"> 1. Is father a destitute person? 2. Is father unable to work? <p>C. Judge determined that in order for children to be liable, father must established a) that he is destitute, and b) the he is unable to work.</p> <p>D. Defines destitute: <i>not possessing the necessities of life and in a condition of extreme want</i> (Black's Law Dictionary, Revised 4th edition, 1968).</p> <p>E. In order to satisfy the requirement of being unable to work, the person must be zealously looking for work or disabled to the point where they can't work..</p> <p>F. Judge noted in response to counsel citation of Godwin v. Bolsco (1993), that the "wording of the Ontario Act differs from that of the Alberta legislation. Therefore, I find that this case is of no assistance".</p>	<p>Application dismissed</p>	<p>A. Father did not establish that he was destitute according to the definition put forth.</p> <p>B. Father failed to establish that he is unable to work for "good cause"</p>

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<p>Smeland v. Smeland (Fehr, Roeske, Roeske - 3rd party respondents)</p> <p>June, 1997</p> <p>British Columbia Supreme Court</p>	<ul style="list-style-type: none"> - appeal of Master's decision - husband had been ordered to pay child and spousal support of \$700 per month. - husband did not appeal this order - however, husband brought an application to have ex-wife's adult children named as respondents to the support application - he wanted the amount he paid in support to be determined based on the availability of support from his ex-wife's adult children. 	<p>a. Judge determined that the husband did not have standing to claim maintenance on the wife's behalf.</p> <p>b. "The court may, as it considers appropriate, adjust the amount of support it orders from on respondent, to take into account the needs, means, capacities and economic circumstances of each spouse, parent, or child, including any other source of support and maintenance for the applicant spouse or parent.</p> <p>c. Judge carefully reviewed the legislation who could name other parties as respondent's in the support application and whose benefit such naming would be meeting.</p> <p>d. Judge decided that when a 3rd party is named a respondent, in so doing, it must be for the benefit of the dependent person. Otherwise, a person could conceivably sue the children of destitute parents to get them to pay maintenance so that the parent would have money to pay a debt or civil judgement to the applicant.</p>	<p>Judge upheld the Master's decision to dismiss the application of naming adult children as respondents.</p>	<ol style="list-style-type: none"> 1. Husband did not have standing to claim maintenance on the wife's behalf. 2. Judge ruled that the husband's application was really for his own benefit - to have his own support payments lowered in light of possible support from wife's adult children.

TABLE TWO - Themes, Cases, and Relevant Factors

Themes	Cases	Relevant Factors
Eligibility a. Need b. Capability	a. Blum. v. Blum	Judge decided the mother had demonstrated sufficient need. Determining the son's capability to pay took into consideration his financial obligations his father (who was separated from his mother)
	b. Hanna v. Hanna, Lewis, and Hanna	Father had demonstrated need adequately but it was determined that the children weren't capable of providing support.
	c. Barrington v. Shand	Father had adequately demonstrated need in previous court proceedings. Daughter was deemed capable of paying support previously, but deemed incapable in present court proceeding given unemployment status. Ordered to report earnings to court every 6 months. Son-in-law was seen as obligated for support given his role in providing care to father-in-law while living in his home.
	d. Goldwin v. Bolsco	Mother adequately demonstrated need. Children were deemed financially capable of providing support.
	e. Leung v. Leung	Father did not demonstrate adequately that he was a "destitute person" or that he was unable to work. Therefore, did not qualify for support.

Themes	Cases	Relevant Factors
Who can apply?	a. St. Joseph's Health Centre v. Sauro et al.	Judge found that the Act limits the persons who may apply for remedies which flow from the statutory obligations to dependents, parents of dependants, the Ministry of Community and Social Services, and Municipal corporations.
	b. Barrington v. Shand	Municipality of Barrington applied for support on behalf of the father.
	c. Brendt v. Brendt and Brendt.	Mother applied for support from her step-sons. Court determined that there was not "direct interdependency" between applicant and respondents as respondents were adults when applicant married their father.
	d. Baddeley v. Baddeley et al.	Ex-husband applied to have ex-wife's son added as a party for support in ex-wife's applicant for support. Court agreed that the son had an obligation to provide support to the mother.
	e. Director, Family Support Plan v. Burgess	Ex-husband applied to have ex-wife's son, who have come of age, added as a party for support. Judge decides that since the mother had not applied for support from her son, and that the son does not have "substantial" financial resources beyond those needed to meet his and his wife's needs, he is not obligated to provide support.
	f. Bell v. Mellows	Ex-partner applies to have woman's son named as a party in her support application. Court grants the motion, indicating the son does have an obligation to provide support and that adding him as a respondent will not lead to undue delay in the application. Judge also predicts that such a process will not lead to a deterioration of the relationship between the mother and son.
	g. Smeland v. Smeland	Husband brings a motion against ex-wife's son to pay support to his mother. Court decides that husband does not have "standing to claim maintenance on his ex-wife's behalf". Determined that such a motion is really for the benefit of the ex-husband (to lower his ordered support payment) and not necessarily for the benefit of ex-wife.

Themes	Cases	Relevant Factors
Responsibility /Obligation: - Definition - Prioritization	a. Barrington v. Shand	Judge determined son-in-laws's responsibility by considering the fact that he cared for the father-in-law before he became a resident of a nursing home. "The care of a dependent parent by the family as opposed to an individual family member reflects the reality of the care and is proper. Therefore, the care of a dependent family member becomes the responsibility of the "family" and not an individual family member.
	b. Hua v. Lam	- One's responsibility to one's family takes precedence over bettering one's self. - judge determined that the responsibility to support a child precedes the responsibility of supporting a parent - the support of a spouse precedes the support of a parent - "the obligation to support either child, spouse, or parent is inherent in the law. It is not determined by the ability to pay. Thus, the obligation exists, but one is only ordered to pay should his or her financial resources reflect the ability to do so.
	c. Brendt v. Brendt & Brendt	Judge determined that evidence of <i>direct interdependency</i> must be present before obligation to support can be determined.
	d. Whiteley v. Brodie, Whiteley, and Whiteley	"a child's obligation to support his or her parents is secondary to that of a spouse to provide for the other spouse".
	e. Director, Family Support Plan (Burgess) v. Burgess	"the legislators, in their wisdom, have not prioritized the obligation of spouses and children to support a dependent".

Themes	Cases	Relevant Factors
Legislation:	a. Blum v. Blum	distinguishes between older <i>Parent's Maintenance Act</i> and the newer Section 17. Under the old act, it was necessary to demonstrate the parent was dependent by reason of destitution (e.g., unable to support oneself due to age, disease or infirmity). The new act provides wider sweeping remedies - eligibility determined by the parent's "need" and the adult child's capability to pay.
- Definition		
- Interpretation	b. Barrington v. Shand	"the principle thrusts of family law recognize, at least in the area of family support, the equality of roles and responsibilities of spouses and family members to support themselves and members of the family and at the same time, a continued recognition of the state to step in where required to assist a family or an individual family member and recover all or a part of the costs of that assistance from the family"
- History	c. Director, Family Support Plan (Burgess) v. Burgess	"s. 32 (section dealing with adult's children obligation to support parents) was added to the Act to allow the State to make well-off children pay for parents in nursing homes rather than the State paying for them. However, the effect of the section is far more sweeping. It is clear that if the parent has a need and the child has the means, then support should be ordered"
	d. Bell v. Mellows	"the words of the legislation is very wide, and are not limited to a respondent chosen by an applicant. A court may, on application, order a person to provide support for his or her dependants and determine the amount of support."
	e. St. Joseph's Health Centre v. Sauro et al.	The <i>Act</i> relates only to intra-family obligations. "The Act imposes obligations on spouses to support one another, on parents to support their children and on children to support their parents in the circumstances and in the manner set out in the Act".

Themes	Cases	Relevant Factors
Definitions - Care - Support - Destitute - Reasonable needs - Unable to work - Ability to pay - Adult child - Parent	a. Barrington v. Shand	judge defined <u>reasonable needs</u> as “whatever is reasonably suitable for the maintenance of the person in question, having regard to the ability, means, needs, and circumstances of that person or of any person obliged to contribute to such reasonable needs.
	b. Goldwin v. Bolsco	<u>reasonable care</u> is such a degree of care, precaution, or diligence as may fairly and properly be expected or required, having regard to the nature of the action, or the subject-matter, and the circumstances surrounding the transaction. It is such care as ordinarily prudent person would exercise under the conditions existing at the time he is called upon to act. Substantially synonymous with ordinary or due care. <u>Support</u> it is said to include anything requisite to housing, feeding, clothing, health, proper recreation, vacation, traveling expense...nursing and medical attention in sickness and suitable burial at death.
	c. Leung v. Leung	<u>destitute</u> - not possessing the necessities of life and in a condition of extreme want. <u>Unable to work</u> - the person must be zealously looking for work or disabled to the point where they can't work.
	e. Brendt v. Brendt & Brendt	Adult child and parent - determined the nature of the relationship that exists between two people - an element of <i>direct interdependency</i> must be present for the relationship to be seen as a parent-child relationship

Themes	Cases	Relevant Factors
Family Relationships: Prior to During and following court proceedings	a. Blum v. Blum	judge noted that the "relationship between son and mother had begun to deteriorate following the initial court case (mother suing father for support) as mother's counsel has called several of the son's business associates as witness".
	b. Hanna v. Hanna, Lewis, and Hanna	"when a claim is made by a parent, the respondent child is faced for the first time with the question of meeting the obligation to the parent"
	c. Goldwin v. Bolso	<ul style="list-style-type: none"> - Judge noted that the relationship between mother and the adult children when they first left home "was marked with the exchange of warm, supportive, and encouraging correspondence". - <u>Response to the application</u> - "whereas before they had some interest in her welfare, now they disdained her. It was as if shock waves went through the respondents' very beings and their relationships with each other. One son called the application a <i>financial assault</i> and said it led to a final divorce between himself and his mother" - Judge noted "this is the type of situation in a <i>functioning family</i> where children would willingly support an aging parent". - Judge ordered the applicant and the respondents to refrain from molesting, annoying, or harassing each other of their families.
	d. Whiteley v. Brodie, Whiteley, Whiteley	Judge noted that "the mother had cared for and provided support for her children during their years of dependancy. She had raised them for several years as a single mother and, in fact, sacrificed certain career opportunities to give her family obligations a priority"
	e. Director, Family Support Plan (Burgess) v. Burgess	"While the son loves his mother, it is his intention to place all his efforts and modest financial resources at the disposal of his own family that he hopes to start. His mother understands that wish and is not asking for support. This court also understands that wish".
	f. Bell v. Mellows	judge responded to mother's counsel's concern that "the policy of the Act is to ameliorate the effects of breakdown of a relationship, not to inflame the situation or exacerbate possible acrimony" by saying that "even had counsel been able to point me to specific statutory language supporting that principle, I do not think that granting the order will have drastic results".

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