Identical Origins, Divergent Paths: Filial Responsibility Laws in Canada and the United States

By

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Abstract

This dissertation examines the origins of filial responsibility laws in Canada and the United States, laws which prescribe that adult children have an obligation of support which is owed to their parents. Filial responsibility laws enable an indigent parent, or an institution providing medical treatment and care to an indigent parent, to seek financial support from that parent’s adult children through the use of litigation. While those who favour these rarely-used laws claim that they bring many benefits to both the family and the state, there is little evidence to suggest that such benefits are actualized. The development and use of the laws in Canada and the United States make it clear that the limitation of the expenditure of government funds was the primary motive for these laws and the support of families a distant secondary motive.

A comparison between the laws of Canada and the United States demonstrates some differences concerning how the laws can be applied. In Canada, filial responsibility laws have been used in attempts to avoid paying spousal and child support. In the United States, they have become a means for healthcare institutions to collect compensation from adult children for the bills accumulated by their elderly parents. While some Canadian legislation does give to healthcare facilities and governments the right to sue adult children for the cost of the care of their parents, Canadian judges have warned against giving standing to sue to too many third parties, concerned that the laws will be abused as mechanisms for debt collection. However, as medical costs rise in Canada, as the number of seniors in the population increases, and as financial support from governments is reduced, institutions may look to America’s model to seek compensation. As American case law reveals, a development in this direction would provide no relief for the state, would have a disastrous effect on families, and would leave many adult children buried in debt.
It is submitted that filial responsibility laws in Canada should be repealed. If the repeal of these laws is impossible, then the laws should be redrafted in order to restrict their use.
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Chapter 1: Introduction

In the face of rising poverty, the Parliament of Elizabeth I enacted *An Act for the Relief of the Poor, 1597/98*,\(^1\) which was amended by *An Act for the Relief of the Poor, 1601*.\(^2\) With these laws, Elizabeth I created a legally enforceable duty which had not existed in common law. This duty demanded that people support family members who could not work due to illness, physical impairment, or age, and were living in poverty. Those who failed to do so could be brought before a tribunal and punished with heavy fines. The *Act of 1601* is considered the basis of filial responsibility laws in Canada and the United States. Currently, these laws are in place in eight provinces and all territories in Canada, and twenty-nine states in the United States. They enable parents, governments, and medical and healthcare institutions to seek financial support from adult children by means of a court application.

While Canada and America’s filial responsibility laws had the same origins, the enactment and use of those laws involve significant differences between the countries. Canada’s first filial responsibility laws were enacted in the 1920s and 1930s, seemingly a reaction to the economic difficulties experienced by many as a result of the First World War and the Great Depression. The first filial responsibility laws in the United States were enacted among the original thirteen colonies, a reaction to the poverty that plagued American colonies from the mid-1700s on. Most reported Canadian cases tend to involve disputes between family members. A great deal of American jurisprudence involves hospitals and nursing homes seeking compensation for medical bills from the adult children of patients and residents. While judges in Canada have warned

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1 39 Elizabeth c.3. ("Act of 1597/98")
2 43 Elizabeth c. 2. ("Act of 1601")
against expanding the scope of who has standing to seek financial support and compensation from adult children, fearing the laws might be used as a form of debt collection, debt collection appears to be becoming the most common motive for filial responsibility litigation in the United States. Finally, while there is currently little interest in increasing the use of filial responsibility laws in Canada, with calls from academics and lawyers that they be repealed, there is significantly more support for their use in the United States.

In both countries, it appears that these laws have not often been utilized in the past, but there has been renewed interest in them during the last few decades. This renewed interest can be traced to three phenomena: the increasing number of senior citizens, the fear that the increased need for public economic assistance by senior citizens will overwhelm government programs, and the belief that adult children are failing to take proper care of their elderly parents. However, the nature of this renewed interest is unique to each country. While many in Canada fear the strain on resources will encourage the use of filial responsibility laws, resulting in litigation that is ineffective and destructive, many in America embrace filial responsibility laws as the solution to their difficulties.

This dissertation is, principally, a comparison of the development of filial responsibility laws in Canada and the United States, but the development of these laws in England is an essential part of that comparison. Both Canada and the United States point to England’s Poor Laws as the source of their own filial responsibility laws. Societal characteristics that resulted in the Poor Laws of England were present in Canada and the United States when those two countries created their statutes. In addition, decisions made in England during America’s colonial period had a
direct influence on the nature of poverty in those colonies and on the form of the filial responsibility laws enacted.

In the investigation of filial responsibility laws in Canada, the provinces of Alberta, British Columbia, Manitoba, Nova Scotia, and Ontario will be studied. These provinces were chosen as representatives of their regions and for the differences in the content of their statutes, the use of those statutes, and, in two cases, the repeal of those statutes. British Columbia and Ontario have the greatest number of reported decisions, those decisions often considered persuasive by judges in other provinces. A search of legal resources revealed no reported cases in the Northwest Territories, the Yukon, or Nunavut.

In the investigation of the United States, most attention will be given to California, Pennsylvania, North Dakota, and South Dakota. While there has been little litigation in California for the last forty years, earlier decisions continue to be persuasive in other states. Pennsylvania was among the first of the states to enact a filial responsibility law, in 1705, with language very similar to that used in the Act of 1601. Pennsylvania and South Dakota have been identified as among the most active and most influential in shaping the use of filial responsibility laws.³ North Dakota, which has not been very active in the past, has released some recent decisions that contribute to the trend of ordering adult children to pay for shockingly high healthcare bills acquired by their parents.

³ Jared M. DeBona, “Mom, Dad, Here’s Your Allowance: The Impending Re-Emergence of Pennsylvania’s Filial Support Statute and an Appeal for its Amendment” (Summer 2014) 86 Temp. L. Rev. 849 at 859. (“DeBona”)
Filial responsibility laws were enacted by provincial and state governments, but their creation and use were often a response to national events. In Canada, most filial responsibility laws were enacted in the 1920s and 1930s, during the particularly harsh economic times of national recessions, and a number of unreported cases have been found from that period. Filial responsibility laws underwent significant revisions in the 1970s and 1980s as a result of changing divorce laws, which were modified at the federal level. This represented a second period of significantly increased use.

While some filial responsibility laws in the United States were enacted due to circumstances at the state or colonial level, later use was often a reaction to federal government programs and economic rises and dips on a national scale. The 1930s saw a drop in the use of filial responsibility laws due to the introduction of federal relief programs, which were expected to assume responsibility for the support of older people. Use dropped again with the introduction of Medicare and Medicaid in the 1960s.

There was a time in Canada when all provinces and territories had filial responsibility laws. At one point, forty-eight American states had filial responsibility laws. Since the 1960s, the number of states with filial responsibility laws has dropped to twenty-nine, while in Canada only Alberta and British Columbia have repealed their filial responsibility laws.

It is beyond the scope of this dissertation to address the economic and social history of each province and state as they pertain to filial responsibility laws. In addition, old age, poverty, and the impact of poor laws varied according to gender, ethnicity, ability, and socioeconomic status. The impact of poverty laws on aboriginals or those who were enslaved deserve dissertations of
their own. While these are relevant and worthy areas of study, it is the purpose of this dissertation to explore the broad strokes of filial responsibility laws in these two countries.4

As mentioned, in the United States the use of filial responsibility laws appears to be driven primarily by state and private institutions seeking compensation for the costs of providing seniors with healthcare and long-term housing. Such disputes are not common in Canadian case law, especially during the last few decades. However, while medical and long-term care costs are not quite so high in Canada as they are in the United States, they are rising, and many Canadians are unaware that many services are not covered by universal healthcare. Despite the opinions expressed by Canadian judges that filial responsibility laws should not be used for the purposes of debt collection, legislation can be changed, and referring to American laws and court

decisions is considered a legitimate practice. Adult children in Canada may also find themselves facing the obligation to pay their parents’ medical bills.

As will be elaborated upon later in this dissertation, there is debate among legal scholars and professionals about the utility and justice of filial responsibility laws. One common claim among the supporters of these laws is that their enforcement will strengthen family bonds. With respect, this is a disingenuous assertion. It is submitted that there is no other area of law in which it is suggested that litigation, or the threat of litigation, improves rather than strains or shatters the relationships of the parties involved. A brief study of the Act of 1601, Canadian provincial laws, and American state laws make it clear that filial responsibility laws were not designed to support families but were attempts to control the poor and limit government spending.

A. A Note on Vocabulary

The perception of old age changed over the course of the twentieth and twenty-first centuries. Prior to the twentieth century, old age was not associated with a particular number, but with an inability to take care of oneself due to declining strength. ⁵ Prior to the eighteenth century, there were many who didn’t even know how old they were. ⁶ It was in the twentieth century that society determined that a person was old at the age of sixty-five, regardless of ability. This belief influenced the timing of pensions and the use of both public and private resources. ⁷ For the sake of convenience, this dissertation also uses the age of sixty-five to separate young from old,

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⁷ *Citizen’s Wage*, supra note 5 at 8.
despite the arbitrary determination of this age and the evidence that it is no longer relevant. The terms “older,” “elderly,” and “senior citizen” are used interchangeably.

“Adult children” refers to the targets of these lawsuits. Some, but not all, statutes specify that a child must have reached the age of majority before being required to support his or her parents. For the sake of convenience, the terms used in this dissertation to address children who are involved in these lawsuits will be “adult children” or “adult child,” and this will indicate children who are eighteen years of age and older. A search of legal resources found no cases involving children under the age of eighteen.

“Parent” refers to the biological and adopted fathers and mothers of the adult children. In Canada, this definition can extend to stepparents. For example, Ontario’s *Family Law Act* \(^8\) defines a parent in section 1 as:

\[
…[including] \text{a person who has demonstrated a settled intention to treat a child as a child of his or her family, except under an arrangement where the child is placed for valuable consideration in a foster home by a person having lawful custody…}
\]

A search of legal resources has not revealed any cases in the United States in which compensation was sought in support of a stepparent.

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\(^8\) R.S.O. 1990, c. F.3.
B. An Under-Studied Area of Law

The challenge in studying filial responsibility laws in Canada and the United States involves finding material about them. Compared to other areas of law, there has been little study about filial responsibility statutes. There are Canadian legal professionals who aren’t aware the laws exist. As mentioned earlier, there appears to be no case law from the Northwest Territories, the Yukon, and Nunavut. In the United States, eleven states that have filial responsibility laws have never used them.

C. Outline

Chapter Two will examine the current population dynamics of Canada and the United States. This examination will include statistics concerning the growing percentage of older people in both populations, the lengthening of lifespans, and the current economic state of both countries. These developments are largely responsible for the renewed interest in filial responsibility laws and encourage the belief that adult children have been failing to properly care for their vulnerable parents.

Chapter Three will provide a summary of the events in England, Canada, and the United States that brought about the creation of their filial responsibility laws. This chapter will demonstrate

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9 “B.C. mom suing for financial support” (September 26, 2011) online: CTVNews <http://www.ctvnews.ca/b-c-mom-suing-kids-for-financial-support-1.703091>. A legal consultant who had been interviewed by a journalist about a case that had its final decision in 2013 confessed that he had never heard of filial responsibility laws before becoming aware of that case.

that the first laws in England and the United States were aimed at controlling who received aid from the church or the government and punishing those who were deemed able but unwilling to work. While Canada did have early laws designed to control and punish poverty, it did not create filial responsibility laws until the 1920s, and they were a means of reminding people that they, not the government, were responsible for taking care of the older members of their family.

Chapter Four will describe and compare statutes from a small sample of Canadian provinces and American states. Alberta, British Columbia, Manitoba, Nova Scotia, Ontario, California, Pennsylvania, North Dakota, and South Dakota will receive the most attention.

Chapter Five will examine case law in Canada and the United States. In Canada, the use of filial responsibility laws has largely been confined to family law or family law adjacent areas, such as estate law, with limited use of the laws by third parties seeking compensation from adult children. Usually, any payments ordered were meant to be paid directly to the older person. In contrast, the majority of American cases in the twentieth and twenty-first centuries involve hospitals and long-term care facilities seeking payment of bills from adult children for services rendered to their parents. Payments were to be made to the institutions, not the parents.

Chapter Six will study the arguments in favour and against filial responsibility laws. While academics on both sides of the border have some arguments in common, those in the United States have developed greater debate involving issues different from those in Canada. The chapter ends with examples of American proposals for the reform of filial responsibility laws.
Chapter Seven presents the conclusion of this dissertation, that filial responsibility laws in Canada have been a harsh and ineffective tool that could destroy family relationships. While there are examples of families using these laws to support claims against third parties, such as employers or insurance companies, those benefits could be made available to families by adjusting other areas of law. The use of filial responsibility laws in the United States includes frightening examples of the harm that filial responsibility laws can do when a third party can sue an adult child for compensation. As Canada faces tighter budgets and rising medical costs, it would be wise for Canadians to heed the warning provided by the use of filial responsibility laws in the United States and find other ways to ensure senior citizens enjoy an acceptable standard of living. If filial responsibility laws are to remain in force, reform is needed to clearly define and limit their use.

Chapter 2: Current Social Context in Canada and the United States

It could be said that three elements are colliding to create a “perfect storm” that will increase the pressure to use filial responsibility laws in Canada and the United States. This chapter will explore those three elements, beginning by addressing the belief held by many in Canada and the United States that adult children are failing their duty to support their elderly parents. This will be followed with a discussion of statistics concerning the increasing percentage of elderly people in the two countries and predictions of continued growth in the next few decades. The chapter will conclude with a discussion about the state of the economy of the two countries as they pertain to employment and personal finances.
A. Attitudes Toward the “Younger” Generation

The children now love luxury; they have bad manners, contempt for authority; they show disrespect for elders and love chatter in place of exercise. Children are now tyrants, not the servants of their households. They no longer rise when elders enter the room. They contradict their parents, chatter before company, gobble up dainties at the table, cross their legs, and tyrannize their teachers.\(^\text{11}\)

This quote was attributed to Socrates (469-399 B.C.) by Plato (428/427 or 424/423 B.C.). It demonstrates that allegations that the younger generation is lazier and less respectful than those who came before them are over two thousand years old, an ancient inheritance shaping the views of all who came after. Often people believe their own generation recognizes duties owed toward one’s parents and are happy to take on the responsibility of caring for them. While many might speak of the centuries-long decline of respect for elders, it is usually only the “next” generation, whomever that happens to be, who are truly too selfish to properly care for their parents.

In reality, the treatment of the older members of any society has always been at least partially driven by economic factors such as food supply, medical resources, and housing. When few people lived long lives, they could be revered and supported as sources of wisdom.\(^\text{12}\) As the number of the aged increased in a society, opinions involving the value of older people often changed, usually for the worse.\(^\text{13}\) The image of the perfectly obedient and dutiful adult child of the past might not be accurate, or at least not universal.

\(^{13}\) Ibid at 371.
Evidence that people knew they couldn’t assume their children would look after them includes contracts from thirteenth century England, in which property owners promised to give or leave their property to their sons or sons-in-law in exchange for care.\textsuperscript{14} This practice was inherited by Canadians, but fell into disuse in the late nineteenth century because the parties failed to live up to their sides of the bargain.\textsuperscript{15} American cases from the late nineteen and early twentieth centuries also demonstrate that not all adult children were so eager to care for their parents. An 1895 case from South Dakota involved a court deciding in favour of the county, which was seeking a reimbursement in the amount of $100 as well as ongoing support from the son of an indigent parent.\textsuperscript{16}

In the past, the motive for taking care of parents was not necessarily a sense of duty or affection, but the result of an economic process in which the patriarch controlled the family assets. Children, even upon adulthood, were often reliant on the family farm or business for their own economic security.\textsuperscript{17} As English, Canadian, and American societies shifted from largely agrarian to largely industrialized, the asset-owning patriarch lost control over his children, who were in a position to seek their own sources of income elsewhere and achieve a level of independence earlier generations had lacked.\textsuperscript{18}

\textsuperscript{14} James G. Snell, “Maintenance Agreements for the Elderly: Canada, 1900-1951” (1990) 3:1 Journal of the Canadian Historian Association 197 at 198. (“Snell – Maintenance”)
\textsuperscript{15} In Cunningham v. Moore, (1895) 1 N.B. Eq. 116, (1895) CarswellNB 6, Mr. Moore sought the enforcement of an agreement in which he conveyed his home to his daughter and her husband in exchange for care. The judge found in favour of Mr. Moore and ordered that a lien be placed on the property.
\textsuperscript{16} McCook County v. Kammoss, 31 L.R.A. 461 (1895), 7 S.D. 558 (Supreme Court of South Dakota)
\textsuperscript{18} Narayanan, supra note 12 at 375.
Those who romanticize the past may acknowledge the differences between “now” and “then,” “now” involving differences such as a greater number of seniors, fewer children, longer lifespans, and the mobility necessary to find work, yet often choose to ignore the impact these realities have on the ability of adult children to provide full care for vulnerable parents. The belief that adult children are failing their parents is maintained in the face of proof that families continue to shoulder a great deal of the responsibility for caring for their older members. As of 2012, an estimated 8 million Canadians were caring for an ill or disabled loved one or friend.\(^1^9\) In 2012, 21% of American households cared for an older adult.\(^2^0\)

While it is often one generation criticizing the younger generations about the failure to properly take care of elderly parents, this contempt can also be shown by one person for strangers within the same generation. A study performed over the course of three years, from 2004 to 2006, found that while participants felt they were supporting their parents, others of their generation were abdicating their responsibilities to the government.\(^2^1\)

**B. Population Dynamics**

Canada and the United States are, like so many other countries, facing an unprecedented increase in the percentage of seniors in their populations, a trend that has been developing for over a century and one that will continue at an exponential rate for the next few decades. A recent


\(^2^0\) Twyla Sketchley, Carter McMillan, “Filial Responsibility: Breaking the Backbone of Today’s Modern Long-Term Care System” (Fall 2013) 26 St. Thomas L. Rev. 131 at 141. (“Sketchley”)

\(^2^1\) Laura Funk, “Interpretive Dynamics of Filial and Collective Responsibility for Elderly People” (January 2010) 47:1 Canadian Review of Sociology/Revue canadienne de sociologie 71 at 81.
report released by Statistics Canada stated that the Canadian population grew from 30.7 million in 2000 to 35.2 million in 2013, and predicted the population may increase to 40 million by 2063.\(^{22}\) It also predicted that the percentage of seniors would rise from 15.3% of the population in 2013 to up to 27.8% by 2063.\(^{23}\)

It is not only the number of seniors in Canada that is changing, but the lifespan of those seniors. The number of Canadians eighty years of age and older was, in 2013, 1.4 million, five times higher than in 1963. By 2063, that number may be as high as 6 million.\(^{24}\) The number of centenarians is predicted to rise from 6,900 in 2013 to 62,200 in 2063.\(^{25}\) Seniors are also beginning to outnumber other age groups. On September 29, 2015, Statistics Canada released a statement announcing that, for the first time in Canadian history, those sixty-five years of age and older outnumbered those from newborn to fourteen years of age.\(^{26}\)

In the United States, a study from 2015, using information from the 2010 Census, predicted that the American population would grow to 417 million by 2060. It predicted that by 2030, 20% of the American population would be sixty-five years of age or older.\(^{27}\) The study predicted that the

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\(^{24}\) Ibid at 17.

\(^{25}\) Ibid at 19.


working age population will drop from 62% in 2014 to 57% in 2060. A more recent report stated that the number of those one hundred years of age and older rose from 32,000 in 1980 to over 53,000 in 2010, and predicts that they will number more than 600,000 by 2060.

A 2016 study states that, currently, over six million Americans require a high level of long-term care, and predicts that number will climb to over sixteen million within fifty years. The study estimates that, in 2013, the care given to older people by members of their families or other loved ones resulted in 37 billion uncompensated hours worth up to $470 billion, three times what was spent by Medicaid on long-term services and support.

Fascinating factors in our changing societies, so far largely unexamined in this context, are the increasing numbers of “blended” families, access to donated sperm, eggs, and embryos, and the wider acceptance of “non-traditional” families. These changes could possibly leave adult children with more than two parents to support. Under Ontario law, stepparents can seek support provided they have acted as parents to the adult child. Should a biological or adoptive parent have a series of partners who meet this standard, would a child be obligated to support all of them? The Ontario Family Law Act also recognizes polygamous marriages that have been

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28 Ibid at 4.
31 Ibid at 7.
33 Ibid at 316.
performed in a jurisdiction where such marriages are legal. How many parents can a child be expected to support?

C. Current Economies

The recent collapse of the price of oil was a hard blow to Canada’s economy. The economy shrank four months in a row in the beginning of 2015. Unemployment is higher than it has been in three years. Exports have declined since 2008, in part due to the financial difficulties experienced by principal trading partners. In the meantime, federal and provincial governments have been cutting back on spending to recoup money spent on earlier programs. While some feel Canada’s economy has shown signs of getting stronger in the early months of 2016, there is disagreement over whether the improvements will last, and in May of 2016 Canada experienced a larger deficit than expected.

35 Ibid at 3.
There are fewer private pensions than there have been in earlier decades.\(^{41}\) Despite the elimination of mandatory retirement laws,\(^{42}\) older workers continue to be marginalized, as they are seen as less productive and more likely to need time off due to illness.\(^{43}\) While the boomer generation, those born between 1946 and 1964, may be the wealthiest in history,\(^{44}\) they are also experiencing rising rates of bankruptcy as they face unexpected costs of long-term health needs and the unanticipated trend of adult children moving back into their parents’ homes.\(^{45}\) Many who are taking care of vulnerable seniors are themselves seniors, forced to change their own retirement plans due to the costs of caring for their parents. These costs can include $10,000 for home renovations or retirement homes that charge from $1,500 to $5,000 a month.\(^{46}\)

Meanwhile, those between the ages of twenty-four and twenty-nine are working for less pay and fewer benefits than their parents enjoyed during their working lives.\(^{47}\) The costs for post-secondary education have sky-rocketed since the deregulation of universities in the 1990s, leaving graduates with a much larger debt load than those carried by earlier generations, and this


\(^{42}\) Some exceptions apply. See section 53.1(2) of the Fire Protection and Prevention Act, 1997, S.O. 1997, c.- 4. This section allows a union to require a firefighter who is regularly assigned to fire suppression duties to retire at the age of sixty.


is one reason why many must delay saving for retirement. High prices make it more difficult for young people to buy houses. Jobs are less secure. More young people are self-employed than in earlier generations, resulting in lower contributions to the Canada Pension Plan. For many, the retirement plan is “work ‘til you drop.”

The U.S. economy has also been suffering from turmoil in recent years, still recovering from the recession starting in 2007, which was brought on by factors such as risky practices in the financial sectors, consumer debt, and weak government regulation. This was followed by the collapse of the housing market and of major banks in 2008, resulting in the worst American economy since the Great Depression. While the economy has experienced significant improvement, with employment recovering levels prior to the recession, the American economy still suffers from stagnant wages, income inequality, and rising medical costs.

As the American economy improves, Millennials are being left behind. In the last three months of 2015 and the first three months of 2016, two million jobs were created, but two hundred thousand jobs were lost among employees between the ages of twenty and twenty-four. In addition, many Millennials are burdened with high student debt, many are forced to live with their parents, and many have low expectations for the future.


__50__ Stephen Gandel, “OMG, Young Millennials are the Job Market’s Biggest Losers” (March 4, 2016) online: Fortune <fortune.com/2016/03/04/young-millennials-job-market-losers/>.
As in Canada, older people in the United States are discovering that they haven’t saved enough to pay for their retirement and the care that they need. A study performed by the Employee Benefit Research Institute in 2012 found that 44% of those born between 1948 and 1974 might find themselves with insufficient funds for their retirement. This wasn’t necessarily due to irresponsible use of finances, but because both financial experts and prudent seniors didn’t anticipate how long older people would live after retirement, or the increased costs of healthcare. In addition, many Baby Boomers in the United States have incorrectly assumed their long-term care would be covered by Medicare.

As in Canada, the increase of wages in America has not mirrored the increase in the cost of living. The purchasing power of the minimum wage has dropped 25% since 1969. The American economy has lost more than one third of its manufacturing jobs, some sent to other countries. Companies that have brought their operations back to the United States pay wages that are lower than similar jobs would have earned in the past.

In summary, there is a higher number of seniors in Canadian and American society. Those seniors are living longer than they or anyone else expected, and they are running out of private funds. Meanwhile, the younger generations are experiencing significant obstacles to finding jobs of sufficient pay that will enable them to assume full responsibility for their aging parents. Many

51 Consensus, supra note 30 at 9.
54 Kochan, Thomas A., “Here’s the real reason you don’t make enough money” (September 1, 2015) online: Fortune <fortune.com/2015/09/01/heres-the-real-reason-you-don’t-make-enough-money>.
are experiencing difficulties because of economic events beyond their control. While accusations of failing to properly care for elderly parents may inspire shame in younger people, they do nothing to provide families with the means to ensure their senior members are experiencing a high quality of life.

Chapter 3: History of Filial Responsibility Laws in England, Canada, and the United States

This chapter will explore the conditions in England, Canada, and the United States that led to the enactment of filial responsibility laws. The conditions in England make it clear that its laws, the source of filial responsibility laws in Canada and the United States, were not motivated by a wish to support families but by a desire to limit government expenditures in the face of widespread poverty. England’s filial responsibility laws were not limited to supporting the elderly, but placed financial responsibility on any child, parent, or grandparent of a person unable to earn their own income. While many current filial responsibility laws in Canada and the United States have limited the scope of family members to children and parents, the circumstances surrounding the creation and use of these laws make it logical to believe that these laws were also created to curb government spending, not support families, rhetoric to the contrary.

A brief overview of the causes of poverty, attempts to control poverty, and the development of filial responsibility laws in England, Canada, and the United States reveals many similarities in their circumstances. All three countries encountered poverty brought on by increases in population, changes in the use of resources, reduced opportunities for employment, marginalized older workers, urbanization, and industrialization. In all three countries, filial responsibility laws were usually enacted as part of a larger poverty law regime. These laws were a reaction to the
poverty of the society as a whole, designed to control poverty and to shame people living in poverty into seeking employment that often didn’t exist. The laws were harsh and unlikely to engender stronger feelings of affection and loyalty among family members. Finally, these laws were unpopular and ineffective.

A. England

i) Causes of Poverty

Some of the causes of poverty in England may be familiar to the modern reader. From the mid-fifteenth century on, England’s population increased to an unprecedented degree.\(^55\) Property and assets were gathered into the hands of the elite as landowners enclosed their land in order to raise sheep. Raising sheep required fewer tenants than farming, and the enclosures deprived others of access to land that had once been available for common use.\(^56\) Those who had been able to raise crops on this land to support their families were forced to seek employment from others, and employment was not always available.\(^57\) This resulted in the rising urbanization of the population as young people migrated to larger centres to seek work or, if no work was available, charity.\(^58\) As industrialization continued to develop in the late nineteenth century, work grew more physically demanding with a pace many older people couldn’t meet, and employers became

\(^{55}\) Marjorie Keniston McIntosh, *Poor Relief in England, 1350-1600* (Cambridge: Cambridge University Press, 2012) at 19. ("McIntosh")

\(^{56}\) Alvin Finkel, *Social Policy and Practice in Canada: A History* (Waterloo: Wilfred Laurier Press, 2006) at 47. ("Finkel")


\(^{58}\) Ibid at 116.
reluctant to hire them. In 1890, the first statistical analysis of the poor was conducted, finding that those sixty-five years of age and older represented over a third of those living in poverty.

**ii) Aid for the Poor and Poverty Laws**

When one couldn’t find sufficient work to support oneself, one turned to family and friends. When family and friends couldn’t provide adequate support, one turned to the local parish. While there were other sources of charity such as monasteries, convents, private organizations, and wealthy individuals, for centuries the parishes were the principal means of collecting donations and distributing funds. Yet as time passed, poverty overwhelmed the means of small villages and local parishes, and the government felt compelled to step in. With that involvement came stringent control over who could receive charity and how it would be distributed.

The *Act of 1597/98* and the *Act of 1601* are commonly referred to as the source of filial responsibility laws in Canada and the United States, but these statutes were only two in a series passed in an ongoing attempt to control poverty. Beginning in 1530 and continuing until poverty laws were eliminated in 1948, statutes required licenses for beggars, punishments for those who engaged in vagrancy, and the construction of workhouses. Begging without a licence or in an area that the licence didn’t permit could result in the perpetrator being whipped and placed into the stocks for two days. In 1572, workhouses were established and the local residents were

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61 McIntosh supra note 55 at 1.
63 *Ibid* at 121.
required to support them.\textsuperscript{64} Living conditions in the workhouses declined to such an extent that they were perceived by many as a scheme to frighten people out of seeking aid,\textsuperscript{65} and they continued to operate until the 1940s.\textsuperscript{66}

From this list of laws, the \textit{Act of 1601} contained the section that is considered the foundation of filial responsibility laws in Canada and the United States. Section VII stated:

\begin{quote}
And be it further enacted, That the Father and Grandfather, and the Mother and Grandmother, and the Children of every poor, blind, lame, and impotent Person or other poor Person not able to work, being of sufficient Ability, shall at their own Charges, relieve and maintain every such poor Person in that Manner, and according to that Rate, as by the Justices of the Peace of that County where such sufficient Persons dwell, or the greater Number of them, at their General Quarter Sessions shall be assessed: upon Pain that every one of them shall forfeit twenty Shillings for every Month, which they shall fail therein.
\end{quote}

This section was an attempt to limit government expenditures by threatening family members with the punishment of a fine. Any money collected did not go to the elderly family member but to the local agent in charge of distributing charity.

Other sections of the \textit{Act of 1601} demonstrate that the support of the family unit was not a priority. Section I provides an excellent example:

\begin{quote}
\textsuperscript{64} \textit{Ibid} at 168.
\textsuperscript{65} L. Neville Brown, “National Assistance and the Liability to Maintain One’s Family” (1955) 18:2 Mod. L. Rev. 110 at 115, footnote 17.
\end{quote}
And they, Peace as is aforesaid, for setting to work the Children of all such whose Parents shall not by the said Churchwardens and Overseers, or the greater Part of them, be thought able to keep and maintain their Children:

When parents were considered too poor to properly care for their children, the government didn’t see fit to provide assistance to that family. Instead, the children were forcibly removed from their families and put to work elsewhere. This could hardly be said to be in the spirit of strengthening family relationships.

The use of section VII was not common. The officials in charge of calling adult children to account found the task distasteful. Those cases that did take place rarely resulted in an order for support. When an order was made, those who chose not to comply were usually left unpunished.67

iii) The Move to National Support Programs

With the beginning of the twentieth century, support for the Poor Laws continued to wane.68 Inspired by social programs developing in continental Europe, England introduced the Old Age Pensions Act69 in 1908 and, in 1911, the National Insurance Act, which provided sickness benefits and unemployment insurance.70

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68 Lees, supra note 66 at 311.
69 Ibid at 305.
70 Ibid at 326.
Through the 1920s, England struggled with the costs of the First World War, and the stock market crash of 1929 caused a severe increase in unemployment. The government cut back on insurance and other benefits. The 1930s saw a number of “hunger marches” protesting the high levels of unemployment, illness, malnutrition, and the reduction of government programs.

The Second World War brought high employment and fixed food prices, which lifted many out of poverty, but the difficulties of the 1930s had brought attention to poverty as a social problem. After the war, an investigation into the health and welfare of the general population took place. The result of this investigation was the National Assistance Act of 1948, which repealed the Poor Laws, including the enforcement of filial responsibility, with section 1:

> The existing poor law shall cease to have effect, and shall be replaced by the provisions of Part II of this Act as to the rendering, out of moneys provided by Parliament, of assistance to persons in need, the provisions of Part III of this Act as to accommodation and other services to be provided by local authorities, and the related provisions of Part IV of this Act.

It had taken over three hundred years for England to concede that filial responsibility laws were not an effective means of either combating poverty or supporting family ties. While deciding to create a wider universal social net, they eliminated their poverty laws, and filial responsibility laws with them.

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73 Ibid at 497.
75 1948, Chapter 29.
B. Canada

i) Causes of Poverty

European settlement in the colonies and provinces of Canada began with a period of low unemployment. In the early seventeenth century, the colonists tended to be young and healthy and well able to find work. However, by the end of the seventeenth century many were growing older and infirm, and if they lacked friends or families to support them, they would turn to community organizations for aid.76

Immigration to the British North American colonies increased beginning in the 1830s, bringing many who were willing to work but unable to find reliable employment. To spare these “worthy” poor from the stigma of seeking charity, private organizations provided support. However, this did not represent an organized, cohesive, or consistent source of funds, which tended to rise and fall according to the season or the will of those leading the organizations.77

As in England, settlers of European descent migrated to larger urban centres in search of work. At the time of Confederation, eighty percent of the Canadian population lived on farms and in small settlements. By 1914, that number had shrunk to fifty percent. Those living in urban areas were wage earners, many reliant on seasonal work and particularly vulnerable to the highs and lows of the economy. The gathering of resources and production of goods became more industrialized, one result of this being a change in the nature of work. Speed became a priority and the tasks normally done by older employees, less physically demanding but requiring more

76 Finkel, supra note 56 at 30.
77 Ibid at 16.
experience, declined in value.\textsuperscript{78} Families in urban areas found it more difficult to support their older members as they had in prior decades,\textsuperscript{79} in part due to laws regulating life in the city. For example, there were often restrictions on private food production, depriving families of a resource, the backyard garden, they’d been able to rely on in the past.\textsuperscript{80}

The first employment pension plan in Canada was created by the Hudson’s Bay Company, the pension limited to employees considered of particularly high merit.\textsuperscript{81} Other industries followed, such as railway companies, but the benefits were usually restricted to certain employees, those working in management positions or those who had worked with the company for a long time. The pensions were a reward rather than a right. By 1900, only a minority of workers had employment benefits or pensions.\textsuperscript{82}

ii) Aid for the Poor and Poverty Laws

By the mid-nineteenth century, it was recognized that family, religious institutions, and private charities couldn’t keep up with the need of those living in poverty.\textsuperscript{83} As in England, those who migrated from rural areas into urban areas without employment were often viewed with suspicion and distaste, and ultimately considered criminals. Vagrancy laws were passed in the colonies and, upon Confederation, Canada created legislation addressing vagrancy on a national

\textsuperscript{79} \textit{Citizen’s Wage, supra} note 5 at 32.
\textsuperscript{80} \textit{Ibid} at 33.
\textsuperscript{81} “A Brief History of Pensions in Canada” (March 2007) online: National Union of Public and General Employees <nupge.ca/sites/nupge.ca/files/publications/Pensions%Documents/History_of_Pensions.pdf> at 1. (“National Union”)
\textsuperscript{82} \textit{Ibid} at 2.
\textsuperscript{83} \textit{Finkel, supra} note 56 at 47.
scale with *An Act Respecting Vagrants*. This statute carried a trace of England’s Poor Laws. Beggars who didn’t have a certificate from a clergy person or two Justices of the Peace stating that he or she was a “deserving object of charity” could be punished with up to two months’ imprisonment or a fine of up to fifty dollars, or both. This legislation was merged into the first criminal code of Canada in 1892.

### iii) The Move to National Support Programs

Reformers and unions, inspired by the pension plans developing in Europe, pushed for more inclusive pension plans in Canada. In 1908, the federal government passed the *Canadian Government Annuities Act*. This statute was designed to encourage people to save for their own retirement by buying annuities at reduced prices in order to receive fixed yearly benefits in old age. Unfortunately, many could not afford to buy in.

The First World War rescued Canada’s faltering economy as the entire country became involved with the war effort. Employment was high during the war. The government became involved in managing the economy to an unprecedented degree. It encouraged the production of some goods over others, rationed supplies, imposed a federal income tax, and provided financial support to

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84 1869, 32-33 Vict., c.- 28.
85 Ibid at s.1.
88 S.C. 7-8 Edw. VII, c. 5 (1907-08.)
89 National Union, supra note 81 at 2.
91 Dennis Guest, *The Emergence of Social Security in Canada*, 3rd ed. (Vancouver: UBC Press, 1999) at 49. (“Guest”)
injured soldiers and their families.\textsuperscript{92} People not only became accustomed to more expansive
government interaction in their lives, but came to expect the government to be a source of greater
assistance.\textsuperscript{93} If the state was to take more from the population, the population felt entitled to
expect more from the state.\textsuperscript{94}

The decades between the First and Second World Wars represented a difficult time for
Canadians. While unemployment had virtually disappeared during the First World War, Canada
experienced a recession immediately after it,\textsuperscript{95} exacerbating the difficulties experienced by the
returning veterans who couldn’t find work and the widows of those who had died. Pensions and
retraining programs were introduced by the government, but they weren’t available to all, and
they weren’t enough to meet the needs of everyone who was living in poverty.\textsuperscript{96} While workers’
wages had been kept low during the war, business owners had made profits. This inequity, in
combination with harsh working conditions, instilled resentment in the workers and led to unrest
and strikes.\textsuperscript{97}

The recession ended in the mid-1920s as the development of new industries and the expanded
exploitation of resources created new jobs.\textsuperscript{98} However, rising prices and frozen wages left a
majority of Canadians living below the standard of what was considered the acceptable

\textsuperscript{92} Ibid at 49. \\
\textsuperscript{93} \textit{Citizen’s Wage, supra} note 5 at xv. \\
\textsuperscript{94} Ibid at xv. \\
\textsuperscript{95} Guest, supra note 91 at 49. \\
\textsuperscript{96} “Reconstruction in Canada” The Canada Year Book 1920 by the Canada Dominion Bureau of Statistics (Ottawa: Printer to the King’s Most Excellent Majesty, 1921) online: Statistics Canada <http://www66.statcan.gc.ca/eng/acyb_c1920-eng.aspx> at 36. \\
\textsuperscript{97} Guest, supra note 91 at 49. \\
\textsuperscript{98} Ibid at 65.
minimum. Most of the new wealth was enjoyed by business owners. Many workers and farmers couldn’t afford the new mass-produced items. As sales failed to meet expectations, companies began to cut back on production and laid off workers. The Canadian economy had already begun to decline when the Great Depression of the 1930s hit.

The Old Age Pensions Act was introduced by the federal government in 1927. It was limited to British citizens seventy years of age and older who had lived in Canada for twenty years and for five years in the province in which they were seeking benefits. Applicants were subject to a means test, those with too high an income determined ineligible. While evaluating the income of an applicant, provincial boards, which were responsible for administering the pension program, had a great deal of latitude. They could, and some did, include in their calculations money given to applicants by their adult children.

From 1930 to 1935, the federal government invested $200,000,000 in social support programs, an unprecedented amount in Canadian history that was still insufficient to meet the need. The War Veterans Allowance Act provided fixed pension for destitute veterans. Prime Minister Bennett’s proposal for a more expansive unemployment program didn’t survive William Lyon Mackenzie King’s re-election in 1935.

\[99 \text{Ibid at 66}\]
\[100 \text{Finkel, supra note 56 at 108.}\]
\[101 \text{Ibid at 109.}\]
\[102 \text{The Old Age Pensions Act, 1927, S.C. 1926-1927, c.-35.}\]
\[103 \text{Finkel, supra note 56 at 106.}\]
\[104 \text{Citizen’s Wage, supra note 5 at 82.}\]
\[105 \text{Ibid at 110.}\]
\[106 \text{1930, 20-21 George V, c.-48.}\]
\[107 \text{Finkel, supra note 56 at 115.}\]
It was during these hard times, when unemployment was high and most of the Canadian population was struggling, that many provinces enacted filial responsibility laws. Alberta, British Columbia, and Ontario enacted filial responsibility laws in the 1920s. Manitoba and Nova Scotia were among those that followed in the 1930s. Parents and certain government agencies could seek support from adult children. Failure to pay as ordered could result in an adult child going to jail.

Unfortunately, the legislative assemblies of Alberta, British Columbia, Manitoba, and Ontario did not keep Hansard records of their debates during the 1920s and 1930s. Nova Scotia did keep records of their debates from this time, but those records were not available during the course of preparing this dissertation. One can only guess exactly why these statutes were enacted, however the historical circumstances make it logical to believe that they were enacted to restrict the responsibility of the governments for their elderly citizens.

C. The United States

The development of America’s towns, colonies, territories, and states varied significantly. Some were founded as a long-term community while others were created for the purpose of exploiting natural resources. There were significant changes of borders both before and after the American
Revolution. The dates at which various colonies and territories chose to join the Union span from 1787 to 1959.

An in-depth analysis of these differences is beyond the scope of this dissertation. Instead, attention will be given to the similarities among the colonies and states. Of great import were the close relationships between the colonies and England before the American Revolution, and the impact England had on the causes of poverty in America. These influences resulted in many colonies using England’s Poor Laws as models for their own.\(^{113}\)

**i) Causes of Poverty**

One cause of poverty in the colonies had been developing before those colonies were founded. The practice of enclosure in the sixteenth century in England, in addition to the other causes of poverty addressed earlier in this dissertation, created a pool of people in England reliant on charity or government services. In the late sixteenth century, politicians in England began to see the American colonies as a solution to their problems, that of sending to them their “idle” and “wretched” people to avoid the “dangers” such people presented to England.\(^{114}\) They soon began to put these ideas into practice. Those living in the colonies resented and resisted this practice but could do nothing to stop it.\(^{115}\) This was an example of increasing poverty that was not only

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\(^{115}\) *Quigley - Starve, supra* note 113 at 75.
beyond the control of the poor, but completely beyond the control of the society in which they lived.

There was a high demand for skilled labour in early colonial life, but in the mid-1700s opportunities for free European settlers lessened, in part due to the increased use of indentured servants. Some of these servants might have engaged in contracts voluntarily, seeking opportunity in the colonies,\textsuperscript{116} but others had been forced into servitude, criminals or poor people sent to the colonies by England.\textsuperscript{117} Regardless of why they were there, they could be bought and sold.\textsuperscript{118}

Not long after, the practice of slavery expanded beyond agricultural labour.\textsuperscript{119} Many slaves, especially those born in the colonies, were trained in artisan and manufacturing trades\textsuperscript{120} and had skills that were superior to indentured servants and free colonists.\textsuperscript{121} The use of indentured servants and slaves was seen as the more economical choice by those with the wealth to buy them, as they required only the upfront cost of purchase and room and board.\textsuperscript{122} This competition for work, in addition to the growth of the population and the diminishing availability of land, resulted in rising poverty among free European settlers and prompted them to move to urban centres.\textsuperscript{123}

\begin{footnotes}
\item[116] Jernegan - Dependent, supra note 114 at 47.
\item[117] Ibid at 48.
\item[118] Quigley-Starve, supra note 113 at 72.
\item[119] Jernegan-Dependent, supra note 114 at 8.
\item[120] Ibid at 10.
\item[121] Ibid at 9.
\item[122] Ibid note 113 at 71.
\item[123] Ibid at 40.
\end{footnotes}
ii) Aid for the Poor and Poverty Laws

Originally, aid was considered a local responsibility, those who were in poverty to be supported by family, private individuals, religious organizations, and town agents. Some colonies had a system of parishes somewhat similar to England’s. Like England, local governments used this system to manage poverty, largely by taking over the lives of the poor by arranging work for them. Poverty, including that of children, was seen as a moral failure or a path to criminal behaviour. As in England, children of parents deemed unable to care for them were hired out as apprentices. Who was permitted to receive assistance was strictly controlled, and usually excluded new or non-residents, who were often run out of town.

iii) The Move to National Support Programs

In the late nineteenth century, the United States began to shift from a primarily agrarian society to one more urban and industrialized, with similar results as those in England and in Canada. Older workers were unable to keep up with the demands of industrialization and were left marginalized and economically vulnerable. Young people migrated to urban areas, leaving their parents behind.

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124 Ibid at 48.
125 Marcus Wilson Jernegan, “The Development of Poor Relief in Colonial England” (March 1929) 3:1 Social Service Review 1 at 5.
126 Ibid at 6.
127 Ibid at 7.
128 William P. Quigley, “Reluctant Charity: Poor Laws in the Original Thirteen States” 31 URMDLR 111 at 111.
129 Ibid at 112.
130 Sketchley, supra note 20 at 135.

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However, there were other societal changes occurring at the time. Prior to the twentieth century, poverty was considered the moral failure of the individual. In the beginning of the twentieth century, many came to believe that poverty was a societal problem, the result of circumstances beyond the individual’s control.\textsuperscript{132} There was also increased interest in government programs that would support the vulnerable.\textsuperscript{133}

As in Canada and England, the period between the First and Second World Wars in America was tumultuous. The Great Depression devastated not only the economic viability of individuals, but eliminated many private charities.\textsuperscript{134} Prior expectations that everyone should prepare themselves for retirement through the management of their finances\textsuperscript{135} collided with the new reality that the savings and other assets accumulated for this purpose were devalued or even eliminated by the stock market crash.\textsuperscript{136} While there had been some assistance programs developed before this time, it was recognized that these programs were insufficient, and the state and federal governments contemplated adding additional forms of support.\textsuperscript{137}

In the 1930s, the federal government created a series of programs meant to combat the deep unemployment and poverty brought on by the Great Depression. These included programs to create jobs and protect workers’ rights,\textsuperscript{138} and in 1935 the new \textit{Society Security Act}\textsuperscript{139} provided

\begin{itemize}
\item \textsuperscript{132} Narayan, supra note 12 at 377.
\item \textsuperscript{133} Lee E. Teitelbaum, “Intergenerational Responsibility and Family Obligation: On Sharing” (1992) Utah L. Rev. 765 at 776. (“Teitelbaum”)
\item \textsuperscript{134} Ibid at 776.
\item \textsuperscript{136} \textit{Ibid} at 6.
\item \textsuperscript{137} Terrance D. Kline, “A Rational Role for Filial Responsibility Laws in Modern Society?” (1992-93) 26 Fam. L.Q. 195 at 199. (“Kline”)
\item \textsuperscript{138} “New Deal” online: History Channel <http://www.history.com/topics/new-deal>.
\item \textsuperscript{139} 42 U.S.C.A. § 401.
\end{itemize}
life insurance protection, disability insurance, and retirement benefits.¹⁴⁰ States also increased their welfare programs, including tax relief, free prescription drugs, and free transportation for the elderly.¹⁴¹

It appears that, unlike in Canada, these new programs did not prompt a desire on the part of politicians to remind Americans of their filial responsibilities. On the contrary, reliance on family members and the enforcement of filial responsibility laws declined. The programs were considered an act of the government taking over responsibility for caring for the elderly. These programs had a great deal of support among the public and were considered the beginning of a welfare state.¹⁴²

While the use of filial responsibility laws declined during and immediately after the 1930s, they weren’t eliminated, and in the period after the Second World War their use rose again.¹⁴³ By the 1960s, forty-eight states had filial responsibility laws.¹⁴⁴ However, the creation of the federal programs Medicare and Medicaid in 1965 put a dent in this trend. This was due, partially, to these programs providing unprecedented levels of medical and long-term care, but it was also due to restrictions placed on the states, which were responsible for the administration of these programs. Applicants for Medicaid had to pass a means test. States were forbidden to include

¹⁴¹Kline, supra note 137 at 199.
¹⁴²Teitelbaum, supra note 133 at 766.
potential support from anyone other than a spouse while determining an applicant’s eligibility. While states still had the option of using their filial responsibility laws for costs that fell outside the coverage of Medicaid, most ceased to enforce their laws or repealed them altogether.

Confusion was created when, in 1983, the Health Care Financing Administration released the Medicaid Manual Transmittal No. 2, which announced that states could seek compensation from adult children for expenditures under the Medicaid program permitted they did so under their state filial responsibility laws as opposed to a federal procedure. This was in contradiction to earlier intentions expressed by Congress, yet the document has not been ruled invalid by either the government or the courts. A search of legal resources resulted in no reported cases relevant to filial responsibility laws that address this contradiction.

In the 1980s, the federal government decreased the budget for Medicaid spending, and in the 1990s it made a significant change to how nursing homes were compensated for their expenses. It created pricing formulas and paid nursing homes according to those formulas rather than compensating the nursing homes for their actual expenditures. Members of the long-term care industry have indicated that the decrease in funding has pushed them into seeking other means of payment for their expenses.

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145 Wolf, supra note 143 at 241.
146 Moskowitz, supra note 4 at 715.
147 Pearson-Modern Ear, supra note 144 at 271.
149 Wolf, supra note 143 at 242.
150 Pearson-Modern Ear, supra note 144 at 294.
Medicare and Medicaid have never covered all costs associated with medical or long-term care for the elderly, and litigation continued after they were put in place as medical institutions sought compensation for the costs the programs didn’t pay. Today, as then, a patient or resident can easily find themselves denied services or required to contribute to the costs of services. Much filial responsibility litigation involves institutions attempting to get compensation for the “gaps” in the system. While Medicaid bars states from considering possible income from adult children – or anyone other than a spouse – when determining eligibility for the program, it doesn’t prevent institutions from seeking compensation from the adult children of an indigent parent after the parents have been accepted.151 In addition, there are predictions that Medicare and Medicaid will soon become too expensive to continue.152 These factors are encouraging some to support the increased use of filial responsibility laws.

In all three countries, filial responsibility laws were developed not because people were suddenly deserting their family members, but because the governments wanted them to think they were, to shame them into providing support that they often lacked the means to deliver. Unemployment and the poverty that came with it was often the result of decisions made by governments and the wealthy, yet pressure to keep responsibility for supporting the vulnerable elderly on their children has been constant, even when government programs have been created. In England, filial responsibility laws have been eliminated. In Canada and the United States, filial responsibility laws have, for the most part, evolved from poverty law into family law, but they

152 DeBona, supra note 3 at 855.
still represent attempts on the part of government and business to limit responsibility for caring for the elderly.

Chapter 4: Statutes

Despite their English origins, the creation and development of filial responsibility laws were very different in Canada and the United States. In Canada, most of the statutes were created in the 1920s and 1930s, during difficult economic times. They underwent significant alteration in the 1970s and 1980s, when many provinces drastically revised their family law regimes. Since that time, two provinces have repealed their filial responsibility statutes, while there has been little change to the remaining statutes. The discussion in this chapter concerning the evolution of filial responsibility statutes in Canada is divided between the eras of the 1920s and 1930s, the 1970s and 1980s, and the versions relevant to 2016.

This will be followed by a discussion of statutes in the United States. Unlike Canada, there was no single national event that caused the creation of the statutes. Aside from many being repealed after the introduction of Medicare and Medicaid, statutes were not amended as a result of national forces. As addressed earlier in this dissertation, the colonies and states of the United States created their statutes in wildly different circumstances. The statutes of California, Pennsylvania, North Dakota, and South Dakota were chosen due to the persuasiveness and frequency of their use. While copies of the earliest laws in Pennsylvania were available, copies of the earliest statutes for the other sample states were not. For this reason, Pennsylvania’s early and current versions of the statutes will be explored, and only the current versions of the other states’ statutes will be addressed.
A. Canada

i) 1920’s and 1930s

<table>
<thead>
<tr>
<th>Province</th>
<th>Who Could Be Required to Pay</th>
<th>Who Could Make an Application</th>
</tr>
</thead>
<tbody>
<tr>
<td>Alberta</td>
<td>s.3 The husband, wife, father, mother and children of every old, blind, lame, mentally deficient or impotent person, or of any other person who is not able to work, shall provide maintenance, including adequate food, clothing, medical aid and lodging, for such person. (Emphasis added.) s.3(3) excludes those who are unable to pay from the fruits of their labour or their property. s. 1 states that “father” includes “grandfather” and “mother” includes “grandmother”</td>
<td>s.5 The Attorney General, or the mayor or chairman of the city, town, village, or municipal district in which the dependent parent resides.</td>
</tr>
<tr>
<td>British Columbia</td>
<td>s.3. Every son and daughter. s.5 limits payments to no more than $20 a week.</td>
<td>s.4(1) The dependent parent who has sought aid from a child and been denied s.4(2) Any municipality required to make provision for its poor and destitute, or the Attorney General or any person authorized by him or her.</td>
</tr>
<tr>
<td>Manitoba</td>
<td>s.2 A son or daughter with the means to do so. s.4(1) limits payments to no more than $20 a week.</td>
<td>s.4(1) The dependent parent, or any other person on his or her behalf s.10(a) The supervisor of public institutions in the case of a parent who is indigent or the inmate of any hospital, home for the aged and infirm, house of refuge, institution for mental defectives or mental diseases; s.10(b) The governing body of the institutions listed under subsection 10(b) s.4(10)(c) Any municipality or municipal district in which the person entitled to such maintenance resides</td>
</tr>
<tr>
<td>Nova Scotia</td>
<td>s.3 Every son and daughter s.5(1) limits payments to no more than $15 a week.</td>
<td>s.4(1) Any dependent parent s.4(2) Any person with the consent of the Attorney General</td>
</tr>
</tbody>
</table>
Ontario | s.2 A son or daughter | s.3(1) A dependent parent or any other person with the written consent of the Attorney General

These statutes were rarely used by either parents or organizations. Historian James G. Snell searched for unreported cases in British Columbia from the years 1927 to 1937, finding eleven.\textsuperscript{153} In his search for unreported cases in the county of Carleton in the province of Ontario, he found thirty-seven cases from 1922 to 1933. In the county of Ontario in the province of Ontario, he found ten cases in the years between 1933 to 1963.\textsuperscript{154} That represented fifty-eight cases over the course of thirty-six years. While the sample of locations was small, these decisions were found in the provinces in which such laws were used the most frequently.

Snell noted a pattern in the timing of the cases in Carleton County. There were twenty-six cases from 1932 to 1940. He found no cases in the years 1941, 1942, or 1943, when everyone was involved in the war effort. He found one case a year from 1944 to 1948, and six cases from 1950 to 1961.\textsuperscript{155}

(ii) 1980s and 1990s

The 1970s to the mid-1990s saw another dip in the economy. While these decades were not a period similar to the shocking disarray experienced during the Great Depression, they did represent a significant drop in an economy that had been strong since the Second World War. Alberta experienced a gold rush and an economic high due to rising oil prices in the 1970s, but

\textsuperscript{153} Snell-\textit{FRL}, supra note 90 at 271.
\textsuperscript{154} \textit{Ibid} at 272.
\textsuperscript{155} \textit{Ibid} at 273.
this wealth was not shared by the rest of the country. The high oil prices hit many Canadians hard in the wallet. Work became increasingly mechanized, and many workers lacked the training to keep up. The Canadian dollar grew weak against the American dollar. The country slid into a recession in 1980, and the popularity of social support programs waned. Canada suffered high unemployment and income inequity from the 1980s to the mid-1990s. Service jobs replaced manufacturing jobs, and exports dropped.

It was during the 1970s and 1980s that many filial responsibility laws from the 1920s and 1930s were repealed, and the statutory obligations of adult children for their parents were merged with family law statutes. The federal government had amended Canada’s divorce laws, expanding the grounds upon which divorces could be sought. The government introduced the “no-fault” ground of the breakdown of the marriage. The earlier double standard which had granted wives fewer grounds than husbands on which to seek a divorce was eliminated, and joint petitions became possible. These changes made divorce more accessible, and provincial politicians worried that ex-wives and children would be left vulnerable to poverty as a result of the break up of the family. Many provinces created commissions to study their family law regimes and make

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suggestions for reform. In many provinces, reform included bringing filial responsibility laws under the umbrella of family law.

Despite the years dedicated to these studies and reports, very little attention was given to the adult child’s obligation to support her or his parent. The “Report of the Ontario Family Law Commission,” released in 1974, was 219 pages long, and less than a page was dedicated to discussing support for elderly parents. The Commission acknowledged that the repeal of filial responsibility obligations had been suggested, but stated it would not be following that advice. It was the duty of the adult child to make sure his or her parents did not become indigent. While state support was a necessary part of helping seniors maintain a reasonable quality of life, this responsibility was primarily that of the adult children, and this was why the statutory requirement would not be repealed.

Bill 59, An Act to Reform the Law Respecting Property Rights and Support Obligations Between Married Persons and in Other Family Relationships, was introduced to the Legislative Assembly of Ontario in 1978. Most of the discussion during the Readings of this bill concerned property rights, support for spouses and children, and access to children by grandparents. However, during the Second Reading on March 14, 1978, there was some debate about continuing to use the filial responsibility statute. Those in opposition to filial responsibility laws pointed out that adult children would have to support their parents at the time when they were also raising

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163 Ibid at page 103. Alberta’s enforcement of filial responsibility was always part of a larger family law statute, while Manitoba has never merged its filial responsibility statute with its family law statute.  
families and paying significant costs such as mortgages. The bill didn’t clearly state that social services couldn’t sue children, and those institutions might use the threat of a lawsuit to frighten adult children into paying compensation. Enforcing the laws didn’t improve family relationships. The statutes were an attempt by the government to avoid the circumstances facing older people and their families. Poverty was often the result of situations outside the individual’s control. Collection under these statutes would be a form of taxation, one that was applied only to those with indigent parents. The reason the statutes had fallen into disuse was because most people recognized adult children didn’t have the means to pay.

Those in support of the statute felt it would protect parents who had given their assets to their children and then were disserted by them. It might prevent parents from transferring their assets to their children in order to qualify for government assistance. It would discourage individuals who would seek to avoid their family obligations. Only affluent adult children would be targeted, as the legislation would be limited to those who had the means to pay. A further limitation was that the parent would have had to have been a “good” parent. Finally, the legislation was an instrument expressing society’s expectation that people take care of the older, vulnerable members of their family.

The assembly voted in favour of keeping the filial responsibility law on March 16, 1978, merging it into the new family law statute.  

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The British Columbia Reform Commission operated from 1969 to 1997, and over that time it produced a number of reports relating to family law issues such as the rights of common law couples, marital assets, and spousal agreements. The Commission did not provide reports addressing filial responsibility laws. The debates in the legislature concerning the passing of the Family Relations Act did not focus on filial responsibility laws in any depth, despite the fact that the new statute repealed The Parents’ Maintenance Act and inserted the obligation to support parents in the new family act.

The Manitoba Law Reform Commission released a report in 1976. While the report did address support obligations, it didn’t address the obligation of adult children to support their elderly parents.

Nova Scotia’s thorough examination of its family law regime took place a little later, in 1992. One of the reports the Law Reform Commission of Nova Scotia released was the Final Report: Enforcement of Maintenance Obligations. It provided recommendations for enforcing support orders for spouses and children but explicitly stated that it was not addressing support orders for parents.

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In 2002, a year before Alberta repealed its filial responsibility statute, Alberta Justice released the *Alberta Family Law Reform Stakeholder Consultation Report.*\(^{169}\) The report was 96 pages long. On page 4, supporting parents was referred to as a non-legal obligation that wasn’t binding. On page 41, it was acknowledged that one participant in the consultation had opposed removing the legal obligation to support one’s parents, and that person had been supported by other participants. As the population aged, it was “critical” that adult children take “some” responsibility for supporting their parents. However, as noted, Alberta repealed its filial responsibility law shortly thereafter.

While all of the provinces were subject to the federal divorce acts, they retained jurisdiction over the dissolution of marriage, custody, and support. Of the sampled provinces, British Columbia,\(^{170}\) Nova Scotia,\(^{171}\) and Ontario\(^{172}\) merged their parent maintenance acts into their family law regimes. Despite the fact that the support of parents had nothing to do with the dissolution of marriage, the provinces were using the opportunity to encourage the belief that taking care of one’s parents was a family duty akin to supporting one’s spouse or child. Introducing filial responsibility requirements to the family law regime had consequences that were likely unforeseen by the drafters. It was during this period that ex-spouses began to use the filial responsibility laws in attempts to lower or eliminate child and spousal support obligations.

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\(^{169}\) Acquired from Alberta Justice via email.

\(^{170}\) *Family Relations Act, S.B.C. 1972, c. – 20.*

\(^{171}\) *Family Maintenance Act, S.N.S. 1980, c.-6, s.53(1).*

\(^{172}\) *Family Law Reform Act, 1978, S.O. c.-2., s.84.*
The following chart represents the sample statutes as they existed during the 1970s and 1980s. While Alberta and Manitoba did not reform their family law regimes during those decades, examples of their statutes from that era are included.

<table>
<thead>
<tr>
<th>Province</th>
<th>Who Could Be Required to Pay</th>
<th>Who Could Make an Application</th>
</tr>
</thead>
<tbody>
<tr>
<td>Alberta</td>
<td>s.2(1) The husband, wife, father, mother and children of (a) an old, blind, lame, mentally</td>
<td>s.4(1)(a) the person entitled to maintenance</td>
</tr>
<tr>
<td></td>
<td>deficient or impotent person, or (b) any other destitute person who is not able to work shall</td>
<td>(b) the mayor or reeve of the municipality in which the person</td>
</tr>
<tr>
<td></td>
<td>provide maintenance, including adequate food, clothing, medical aid and lodging Those who</td>
<td>entitled to support resides</td>
</tr>
<tr>
<td></td>
<td>are unable to pay from the fruits of their labour or their property are excluded s. 1</td>
<td>(c) the Minister of Social Services and Community Health if the person entitled to</td>
</tr>
<tr>
<td></td>
<td>states that “father” includes “grandfather” and “mother” includes “grandmother” s.4(1)(a)</td>
<td>maintenance resides in an improvement district</td>
</tr>
<tr>
<td></td>
<td>the person entitled to maintenance</td>
<td>(d) the Minister of Municipal Affairs if the person entitled to maintenance resides in a</td>
</tr>
<tr>
<td></td>
<td>s.46(b) Payments were limited to no more than $40 a week</td>
<td>special area</td>
</tr>
<tr>
<td></td>
<td>s.45(2)(a) The dependent parent, after having applied for aid from a child and had been</td>
<td>(e) the superintendent of a hospital if the person entitled to maintenance is a patient</td>
</tr>
<tr>
<td></td>
<td>denied according to s.45(1)</td>
<td>therein</td>
</tr>
<tr>
<td>British</td>
<td>s.1 A son or daughter of sufficient means. s. 3 limits the payments to no more than $20</td>
<td>s.3 The dependent parent or any other person on his or her behalf s.10 (a) the minister</td>
</tr>
<tr>
<td>Columbia</td>
<td>a week.</td>
<td>charged with the administration of the Act in the case of a parent who is in need, or is an</td>
</tr>
<tr>
<td></td>
<td></td>
<td>inmate of a hospital, a home for the aged or the infirm, house of refuge, or institution for</td>
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<tr>
<td></td>
<td></td>
<td>the care and treatment of persons who are mentally disordered within the meaning of The</td>
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<tr>
<td></td>
<td></td>
<td>Mental Health Act (b) by the governing body of</td>
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</table>

<table>
<thead>
<tr>
<th>Province</th>
<th>Section</th>
<th>Description</th>
<th>Notes</th>
</tr>
</thead>
</table>
| Nova Scotia| s.15    | A child of the age of majority.                                                                                                                                                                            | (i) any hospital, home, house, or institution to which reference is made in clause (a)  
(ii) any other charitable institution in which the dependent is an inmate  
(c) any municipality in which the person entitled to maintenance under this Act resides |
|            | s.16    | lists the factors to consider when making an order, which are  
(a) The reasonable needs of the parent  
(b) The ability of the parent to contribute to their own maintenance  
(c) The ability of the child to pay |
|            | s.23(1) | The dependent parent  
(s.23(2)(a) a person, or  
s.23(2)(b) a representative of a government department or agency, a city, an incorporated town or a municipality of a county or district that is providing maintenance to the dependent parent. |
|            | s.23(2) |                                                                                                                                             |                                                                                                                                                                                                     |
| Ontario    | s.17    | Every child who is not a minor has an obligation to provide support, in accordance with need, *for his or her parent who had cared for and provided support for the child*, to the extent the child is capable of doing so. (Emphasis added.\(^\text{175}\))  
s.18(5) Factors in determining an order of payment include:  
(a) the assets and means of both the dependent parent and the child  
(b) the capacity of the dependant to provide for his or her own support  
(d) the age and the physical and mental health of the dependent and the respondent |
|            | s.18(2) | The dependent parent                                                                                                                                                                                        |                                                                                                                                                                                                     |

\(^{175}\) The italicized portion of section 17 provides an unusual requirement on the part of the parent, that the parent had been a “good” parent. “Good,” in these circumstances, didn’t necessarily mean kind or affectionate, but that the parent had raised the children with an acceptable lifestyle according to the circumstances the judge found relevant.

Alberta repealed its filial responsibility laws in 2003, with little fanfare or comment. During the Third Reading of the bill, it was stated that given the statute was rarely used and was inconsistent with the government’s policy of encouraging the independence of disabled people, that section of the bill should be struck.\footnote{Minister of Justice, Marlene Graham November 27, 2003 Alberta Hansard 1947 online: Legislative Assembly of Alberta <http://www.assembly.ab.ca/Documents/isysquery/2ffa7817-8654-4766-9633-ec8437c1563f/1/doc/>.}


The British Columbia Ministry of the Attorney General produced a report\footnote{Ministry of the Attorney General, Justice Services Branch, Civil Policy and Legislation Office, (British Columbia) “White Paper on Family Relations Act Reform Proposals for a New Family Law Act” (2010) online: Kelly Harvey Russ Personal Law Corporation <http://russfamilylaw.ca/wp-content/uploads/2011/11/Family-Law-White-Paper.pdf at 131.>} concerning proposals it had sought to amend British Columbia’s family law statute. In a report of more than 170 pages, a single page was dedicated to the filial responsibility section, s.90, of the current act. The report noted that there had been little feedback concerning filial responsibility. Referring to
the *Report of 2007*, the Ministry stated that it was recommending the repeal of s.90, finding that the section was rarely used and, when it was, provided insufficient support for the elderly person. They also found that the cost of litigation outweighed any benefits, and that there were social programs better able to meet the needs of the elderly. Section 90 was later repealed.

The following chart represents the current state of the sample statutes.

<table>
<thead>
<tr>
<th>Province</th>
<th>Who Could Be Required to Pay</th>
<th>Who Could Make an Application</th>
</tr>
</thead>
<tbody>
<tr>
<td>Alberta</td>
<td>Act repealed</td>
<td></td>
</tr>
<tr>
<td>British Columbia</td>
<td>Act repealed</td>
<td></td>
</tr>
<tr>
<td>Manitoba 181</td>
<td>s.1 A son or daughter of sufficient means s.3 limits payments to no more than $20 a week.</td>
<td>s.3 A dependent parent, or any other person on his or her behalf s.10 (a) by the minister charged with the administration of this Act in the case of a parent who is in need, or is a patient or resident in a hospital, a home for the aged and infirm, house of refuge, a psychiatric facility as defined in <em>The Mental Health Act</em>, or a developmental centre as defined in <em>The Vulnerable Persons Living with a Mental Disability Act</em>; or (b) by the governing body of (i) any hospital, home, house, psychiatric facility or developmental centre to which reference is made in clause (a), or (ii) any other charitable institution in which the dependant is a patient or resident; or (c) by any municipality in which the person entitled to maintenance under this Act resides.</td>
</tr>
<tr>
<td>Nova Scotia 182</td>
<td>s.15 A child of the age of majority.</td>
<td>s.23(1) The dependent parent or s.23(2)(a) a person or</td>
</tr>
</tbody>
</table>

s.16 lists the factors to consider when making an order, which are
(a) The reasonable needs of the parent
(b) The ability of the parent to contribute to their own maintenance
(c) The reasonable needs and ability of the child to pay

s.23(2)(b) a representative of a government department or agency, city, an incorporated town or a municipality of a county or district that is providing maintenance to the dependent parent

<table>
<thead>
<tr>
<th>Province</th>
<th>Section</th>
<th>Description</th>
</tr>
</thead>
<tbody>
<tr>
<td>Ontario</td>
<td>s.32</td>
<td>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</td>
</tr>
<tr>
<td></td>
<td>s.33(9)</td>
<td>In determining the amount and duration, if any, of support for a spouse or parent in relation to need, the court shall consider all the circumstances of the parties, including, (a) the dependant’s and respondent’s current assets and means; (b) the assets and means that the dependant and respondent are likely to have in the future; (c) the dependant’s capacity to contribute to his or her own support; (d) the respondent’s capacity to provide support; (e) the dependant’s and respondent’s age and physical and mental health; (f) the dependant’s needs, in determining which the court shall have regard to the accustomed standard of living</td>
</tr>
<tr>
<td></td>
<td>s.33(2)</td>
<td>The dependent parent</td>
</tr>
</tbody>
</table>
while the parties resided
together;
(g) the measures available for
the dependant to become able to
provide for his or her own
support and the length of time
and cost involved to enable the
dependant to take those
measures;
(h) any legal obligation of the
respondent or dependant to
provide support for another
person;
(i) the desirability of the
dependant or respondent
remaining at home to care for a
child;
(j) a contribution by the
dependant to the realization of
the respondent’s career
potential;

B. The United States

A study of filial responsibility laws in the United States is far more challenging than that of
Canada due to the significant differences in the circumstances under which these statutes were
enacted. In addition, there is much greater variety in the content of those statutes. For this reason,
you cannot be easily categorized according to era in which they created, or their evolution. For
example, Pennsylvania passed its first filial responsibility law in 1705, while Iowa created its
filial responsibility law in 1851.\footnote{Moskowitz, supra note 4 at 714.} In Alaska, Iowa, and Rhode Island, grandchildren can be
sued, and some statutes provide a maximum limit on the age until which children are expected to
pay.\footnote{Ibid at 716.} Kentucky and Massachusetts do not support filial responsibility laws as civil actions but
as criminal proceedings, stripping dependent parents of the right to start the actions themselves.

In Nevada, support can be sought only if the adult child had previously written a promise to support the parent.  

Copies of legislative debates surrounding the enactment of filial responsibility laws were unavailable, as were copies of earlier versions of statutes. As a result, this dissertation addresses two earlier statutes from Pennsylvania, as well as the current versions of the codes from California, North Dakota, Pennsylvania, and South Dakota.

From Pennsylvania is an example of an early colonial act:

The Statutes at Large of Pennsylvania 1705-1706 Commonwealth of Pennsylvania  

Chapter CLIV

Section V:

And be it further enacted by the authority aforesaid, That the father and grandfather and the mother and grandmother and the children of every poor, old, blind, lame and impotent person, or other poor person not able to work, being of a sufficient ability, shall at their own charges relieve and maintain every such poor person as the justices of the peace at their general quarter-

185 Pearson-Modern Era, supra note 144 at 276.
sessions shall order and direct, on pain of forfeiting forty shillings for every month they shall fail therein.

Upon referring to section VII of the Act of 1601, one can see that the wording is almost identical.

Section VI:

And be it further enacted by the authority aforesaid, That it shall and may be lawful for the said overseers of the poor by the approbation and consent of two or more justices of the peace, to set to work the children of all such whose parents shall not be by the said justices thought able to maintain them; and also to put such children out apprentices for such term as they may in their discretion shall see meet.

The intent of this section seems similar to that of section I of the Act of 1601.

In 1771, Pennsylvania created a new act, An Act for the Relief of the Poor.\textsuperscript{187} Considerably longer than the original act, this new act more specifically outlined the rights and duties of overseers, magistrates, and other local agents. In section IV, it ordered townships and boroughs and other settlements to build workhouses:

\begin{quote}
…to be employed in providing proper houses and places and a convenient stock of hemp, flax, thread and other ware and stuff for setting to work such poor persons as apply for relief and are capable of working, and also for relieving such poor, old, blind, impotent and lame persons or others persons
\end{quote}

\textsuperscript{187} An Act for the Relief of the Poor, Chapter DCXXXV [1770-71] Statutes at Large of Pennsylvania online: Pennsylvania Legislative Reference Bureau <www.palrb.us/statutesatlarge/17001799/1771/0/act/0635.pdf>.
not able to work within said boroughs and townships respectively, who shall therewith be maintained and provided for.

Section VIII established the authority of certain state agents to put poor children to work:

And be it further enacted by the authority aforesaid, That it shall and may be lawful for the managers of the house of employment in the city of Philadelphia, or a majority of them, and the overseers of the poor of the boroughs and townships aforesaid, by the approbation and consent of two or more magistrates of the said city, or two justices of the peace of the county, to put out as apprentices all such poor children whose parents are dead or shall be by the said magistrates or justices and managers found unable to maintain them, males to the age of twenty-one and females to the age of eighteen years.

At Section XXVI, the act stated:

And be it further enacted by the authority aforesaid, That the father and grandfather and mother and grandmother and the children of every poor, old, blind, lame and impotent person or other poor person not be able to work, being of sufficient ability, shall, at their own charges, relieve and maintain every such poor person as the magistrates or the justices of the peace at their next general quarter sessions for the city or county where such poor persons reside shall order and direct, on pain of forfeiting forty shillings for every month they shall fail therein.

A logical reading of these two statutes makes it clear that family support was not the motive for their creation. As in England, the purposes of these statutes were controlling the poor and restricting government expenditures.

The states’ original filial responsibility laws were part of their regime for managing poverty. Over time, many of these poor laws, as they pertained to filial responsibility, were merged into the family codes of the states. As with Canada’s laws, these codes described who could bring an action and who could be expected to pay. The American statutes had a slightly different
approach, however. Once it was determined that a parent was indigent, it was up to the adult child to prove that they lacked the means to pay or that their parent had “abandoned” them, and both of those defences were, and remain, very difficult to prove.

The following chart includes the current filial responsibility sections of the sample American codes.

<table>
<thead>
<tr>
<th>State</th>
<th>Who Could Be Required to Pay</th>
<th>Who Could Make an Application</th>
</tr>
</thead>
<tbody>
<tr>
<td>California</td>
<td>§4400 An adult child according to ability to a parent in need and unable to maintain him or herself by work.</td>
<td>§4403 (a)(1) A parent or the county on behalf of the parent</td>
</tr>
<tr>
<td>West’s Ann. Cal. Fam. Code – Duty to Support Parents (U.S. Westlaw)(^{188})</td>
<td>§4401 The promise of an adult child to pay for necessaries previously furnished to a parent describe in §4400 is binding. §4404 Factors to consider when making an order of payment include (a) Earning capacity and needs (b) Obligations and assets (c) Age and health (d) Standard of living (e) Other factors the court deems just and equitable</td>
<td></td>
</tr>
<tr>
<td></td>
<td>§4411 A child may seek relief from an order if he or she can demonstrate his or her parent had abandoned him or her for at least two years before the child</td>
<td></td>
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</tbody>
</table>

\(^{188}\) In 1975, the California amended its welfare code, CAL. WELF. & INST. CODE §12350, stating that no relative could be required to reimburse the state for a family member who was applying to or was on welfare. Therefore, the filial support law has been greatly narrowed in its possible application. *Pearson - Modern Era, supra* note 144 at 287.
<table>
<thead>
<tr>
<th>State</th>
<th>Law Code</th>
<th>Provision</th>
<th>Description</th>
</tr>
</thead>
<tbody>
<tr>
<td>North Dakota</td>
<td>NDCC – Reciprocal</td>
<td>§14-09-10 Every child of any person who is unable to support oneself to the extent of the ability of each. The promise of an adult child to pay for necessaries furnished to the child’s parent is binding.</td>
<td>§14-09-10 Any person furnishing necessaries to the person.</td>
</tr>
<tr>
<td></td>
<td>Duty of Support –</td>
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<tr>
<td></td>
<td>Support of Poor</td>
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</tr>
<tr>
<td></td>
<td>(U.S. Westlaw)</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Pennsylvania</td>
<td>23 Pa. C.S.A.</td>
<td>§4603 (a)(1)(ii) The child of an indigent parent, regardless of whether the indigent parent is a public charge, unless (2)(i) the child lacks sufficient means or (ii) the parent has abandoned the child for at least ten years while the child was a minor (b) Amount (2)(i) Except as set forth in subparagraph (ii), the amount of liability shall, during any 12-month period, be the lesser of: (A) six times the excess of the liable individual’s average monthly income over the amount required for the reasonable support of the liable individual and other person dependent upon the liable individual; or (B) the cost of the medical assistance for the aged.</td>
<td>§4603 (c)(1) an indigent person; or (2) any other person or public body or public agency having any interest in the care, maintenance or assistance of such indigent person</td>
</tr>
<tr>
<td></td>
<td>Relatives’ Liability; Procedure</td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td>(U.S. Westlaw)</td>
<td></td>
<td></td>
</tr>
<tr>
<td>South Dakota</td>
<td>SDCL – Adult Child’s</td>
<td>§25-7-27 Any adult child, having the financial ability to do so, shall provide necessary food, clothing, shelter, or medical attendance for a parent who is unable to provide for oneself. No claim can be made unless the</td>
<td>§25-7-27 The parent or someone acting on behalf of the parent.</td>
</tr>
<tr>
<td></td>
<td>Duty to Support Parent When Necessary</td>
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</tr>
</tbody>
</table>
(U.S. Westlaw)  
parent has given the adult child written notice that the parent is unable to care for him or herself and the adult child has refused to support him.

Chapter 5: Case Law

For the purposes of studying Canadian case law, and with a few exceptions, only court decisions from Alberta, British Columbia, Manitoba, Nova Scotia, and Ontario are represented. Only those decisions that involve a discussion of some substance were studied. Court decisions in which there is a reference of a single sentence, or where the reference didn’t result in a decision, were omitted. Cases that involved multiple court appearances are treated as a single case. The cases are limited to the periods of 1920 to 1939, 1980 to 1999, and 2000 to 2015.

Not all of these cases involved a parent or stepparent suing an adult child. In the 1980s and 1990s, there were a number of cases in which an ex-spouse attempted to use filial responsibility statutes to lower spousal or child support payments. There were cases involving estate matters, which will also be explored.

One difficulty with attempting to establish a firm understanding of the use of these laws is that almost all of the reported cases involve interim orders. Later steps in those court cases, if they were ever taken, appear to be unreported. In most cases where children were successfully added as parties, there is no further reported appearances to tell us whether they were later ordered to pay support.
The judges involved in these cases frequently pointed to the lack of earlier decisions and the lack of attempts to thoroughly interpret the statutes. The judges often referred to cases and statutes from other provinces. For this reason, Canadian cases are reported according to subject matter instead of jurisdiction.

The approach to American jurisprudence will be different from that of Canadian jurisprudence. American cases didn’t spread into other areas of law as Canadian cases did, their primary form of evolution involving a shift from parents suing adult children to institutions suing adult children. What was developed over time was an understanding of three core issues: the definitions of “indigent” and “need,” the definition of the ability to support, and the definition of “abandonment.”

Most attention will be given to Pennsylvania’s case law. Pennsylvania was among the first colonies to enact a filial responsibility law on a state level, it is one of the states that has used filial responsibility laws the most frequently, its decisions are persuasive in other states, and it is responsible for some of the more shocking recent decisions. However, attention will be given to other states as well. California, while not very active in recent decades, has released a number of decisions in earlier decades of the twentieth century that have been persuasive. South Dakota has fewer cases that address the three issues of interest in this dissertation, but those cases have, again, been persuasive. North Dakota has few cases but its recent decisions have been, like Pennsylvania’s, rather harsh and shocking.
A. Canada

(i) 1920-1939

Despite the fact that these decades involved the creation of these statutes, and that Snell was able to find fifty-eight unreported cases, there are few reported cases. Of the unreported cases Snell studied, all appear to be suits launched by parents against their children. Although he found that the legislation wasn’t used often, those decisions that were made provided at least temporary relief for the applicant parents.¹⁸⁹

The following two cases represent early attempts to identify the scope of Canada’s new filial responsibility laws, and they both involve adult children seeking contributions from siblings.

*Manclark v Manclark,*¹⁹⁰ an Ontario decision from 1925, involved an appeal from an earlier order, made by a police magistrate, that a man pay support to his mother. Justice Justin found the applicant mother was not dependent. She lived with her daughter and there was no indication of infirmity on her part. The judge stated that while the statute allowed an application where the parent was being supported in an institution, it was silent on the occasion when a parent was being supported by another adult child. The original order was set aside.

Ten years later in British Columbia, *Rex v Skilling*¹⁹¹ involved an appeal from an earlier order requiring a son to compensate the hospital in which his mother was housed. The son wished to have his siblings added to the suit. Unable to find any case law in British Columbia, Justice

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¹⁸⁹ Snell-FLR, *supra* note 90 at 275.
¹⁹⁰ (1925) 28 O.W.N. 78, (1925) O.J. No. 359 (Co. Ct.)
¹⁹¹ (1935) 1 W.W.R. 183, (1934) CarswellBC 93 (Co. Ct.)
Thompson decided to be guided by the laws and case law of Quebec. He chose to remit the case back to the magistrate in order to add the siblings. If there was a later court appearance in this case, that decision does not appear to have been recorded.

(ii) 1980 to 1999

This period represents a time not just of the greatest use of filial responsibility laws since their first enactment in the 1920s and 1930s, but the expansion of the use of laws beyond that of a parent or even an institution seeking compensation from an adult child. In some family law proceedings, ex-spouses sought to avoid paying spousal and child support, a situation that was unlikely to have been in the minds of those who had drafted and passed this legislation.

a) Successful Applications for Support from Adult Children

In the 1982 Ontario case of *Blum v Blum*, Mrs. Blum sought support from her son under Ontario’s *Family Law Reform Act*. She had initially sought spousal support from her ex-husband, the father of her son. In a previous court decision, she had been granted an order for $40,600 in arrears, interest of over $14,000, and $1 a week in ongoing payments, but she’d found it impossible to collect on it. It was proven that the applicant’s ex-husband had transferred his assets to his son and that his son supported him. The judge found that the ex-husband had made these arrangements deliberately in order to avoid paying his ex-wife spousal support, but said nothing about reversing what may have been a fraudulent conveyance.

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Mrs. Blum had monthly expenses of $1,189 a month, and needed $2,000 for dental work. She requested $10,000 for furniture and appliances. The judge determined that she was in need. The son had a personal income of $50,000 a year as well as unspecified income from various companies.

In finding Mrs. Blum entitled to support from her son, Justice Karswick stated:

Eligibility is not dependent upon destitution or inability of the parent to maintain himself or herself by reason of any enumerated causes. Under the Act, eligibility is based upon the combined features of “need” and “capability”. In this regard, the principles to be applied in establishing the claim and in assessing the quantum are the same as those that would apply when adjudicating a claim by one spouse against another … or in a claim asserted by a minor child against his or her parent…. 193

The judge also noted that Mrs. Blum and her son had had a good relationship, the son providing her with financial assistance until she sought support from his father. During that original court process, Mrs. Blum’s lawyer had called some of her son’s business associates as witnesses, which her son had found embarrassing. The relationship had deteriorated and he had stopped supporting her. It is submitted that the relationship couldn’t have been genuinely good if the son was willing to help his father cheat his mother out of her spousal support.

After considering the needs of the son’s wife and family, the judge found that the son was able to provide support to his mother and ordered him to pay a monthly amount of $270. It is submitted that while this court decision is technically a success for the applicant mother, the miserly

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193 *ibid* at para. 10.
amount of $270 a month, given the circumstances, represents a failure on the part of the filial responsibility statute to provide Mrs. Blum with a reasonable income.

The following five cases address the relevance of a pre-existing relationship of dependence on the part of the parent on the adult child, and the significance of estrangement between the parties prior to litigation. While it has been established that such a pre-existing relationship is not necessary for a finding that an adult child owes a parent support, it can be taken into consideration and add strength to a parent’s claim. This may be of increasing significance as more and more parents are signing over significant assets, such as the family home, to their adult children in exchange for shelter and care. The weight given to the nature of the relationship between the parties at the time of litigation varies.

The 1984 Nova Scotia case Barrington (Municipality) v Shand\(^\text{194}\) was an action to enforce an earlier order that Ms. Shand pay arrears and maintenance to Roseway Manor for the care of her father. Prior to moving to the Manor, the father had lived with Ms. Shand and her husband, Mr. Shand, for twelve years. Part of the discussion involved whether Mr. Shand’s income should be included in calculating Ms. Shand’s ability to support her father. The judge found that by taking care of the father for twelve years, Mr. Shand had taken on a role comparable to that of a stepparent toward a child, and therefore his income was to be included in the calculation. At paragraph 25, the judge stated:

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\text{I have considered the family income as a total amount because I find that the income and expenses of Mr. Shand are also the income and expenses of Mrs. (sic) Shand. In other words, the income and expenses of this family are all common income and expenses of the family. To separate the payment of}
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expenses on a person-by-person basis is impossible under the circumstances because they are, as in most families where all resources are pooled, one and the same.

The judge found that Ms. Shand did owe payments to the manor, but as she was unemployed at the time, and Mr. Shand’s income was not sufficient to enable him to support the father on his own, payments were suspended until Ms. Shand gained employment.

There are several disturbing aspects to this decision. It does not seem just that a spouse could be ordered to pay support to the other spouse’s parent. As the spouse had not been raised or supported in childhood by the in-law parent, there are no valid reasons to impose a filial obligation on him. The importance of a history of dependence in this decision may dissuade adult children and their spouses from voluntarily caring for their parents. The idea that the parent assumes a child-like role while the adult child assumes a position of authority would be offensive to many, and counters the policy of treating elders as adults who value their independence and are able to make their own decisions.

The 1993 Ontario case *Godwin v Bolcso*[^195] remains a highly cited case. It involved a series of court appearances over three years. At its core was the dispute over whether the applicant mother had been a good parent to her four children, three from whom she was seeking support. Her children alleged that their mother had failed to meet the minimum acceptable level of care due to her rather distant manner with them and a perceived failure to protect them from their abusive father.

In determining whether the applicant had provided care and support for the children, Justice Dunn used the definitions of support and care from Black’s Law Dictionary, Fifth Edition.

“Support” was defined as the following:

It is said to include anything requisite to housing, feeding, clothing, health, proper recreation, vacation, travelling expense, nursing and medical attention in sickness and suitable burial at death.\(^{196}\)

“Care” was defined as the following:

Reasonable care 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 an ordinarily prudent person would exercise under the conditions existing at the time he is called upon to act.\(^{197}\)

The judge acknowledged that while the mother hadn’t provided the warm and supportive parenting that was expected in 1993, she had met, at the very least, the minimum standard. The judge took into consideration the parenting standards of the 1950s and 1960s, the cultural upbringing of the applicant, whose relationship with her own parents had been poor and had included physical discipline, and the effects of having an alcoholic and at times unemployed husband. She had worked in her husband’s shop and worked hard at home. She had made sure the children were housed, clothed, and fed, and had instilled in them a good work ethic. She had protected her children by forcing the father to leave the home when he became abusive.

In ordering that the children pay support, Justice Dunn stated:

\(^{196}\) Ibid at para. 4.3.
\(^{197}\) Ibid at para. 4.4.
…the support obligation created by (the family law regimes) is a purely economic remedy and therefore is virtually fault free. … For the support of a destitute parent, however, there is no fault-oriented “defence” prescribed in the Act, unless a parent’s failure to have “cared for or provided support for the child” can be construed as a fault-based defence. On the facts above, however, I have found that the applicant did indeed “care for” and “support” the respondents as children….

This case provides an example of the damage litigation can do to family relationships. All of the children had left home upon graduating from high school. One had maintained little contact with his mother or his siblings but said this was because he had little in common with them. The other children had maintained a regular relationship with their mother, with frequent visits and correspondence. However, once the mother brought her application, the children came to resent her, and this influenced their testimony concerning their upbringing. The relationships were severed.

The British Columbia series of *Newson v Newson* decisions, with reported decisions from 1994 to 1998, resulted in a number of court appearances and a wide variety of judicial decisions. The case involved a father seeking support from his six children from two marriages, from whom he had been estranged for many years. There was great disagreement between the father and his children concerning the nature of his support while they were still minors. The adult children alleged that their father had been abusive, at times physically, and that there were periods when he had been absent and he had not financially supported the children and their mothers. The

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198 *Ibid* at para. 4.5. This decision was appealed by the adult children. In *Bolcso v Godwin* (1995) 84 OAC 395, (1995) CanLII 3504, the Court of Appeal dismissed the appellants’ application for a stay. At that time, the mother hadn’t received any of the payments ordered by the earlier decision. Further appeals to the Court of Appeal took place in 1996, *Godwin v Bolcso* (1996) CanLII 8304 and *Godwin v Bolcso* (1996) 20 RFL (4th) 66, 1996 CanLII 10255, where the appeals were dismissed and a hearing ordered. There is no mention as to whether the mother had received any payments. No further steps, if any, seem to have been reported.
father challenged these allegations. All of the children, as adults, had been estranged from their father for many years. Two of the children hadn’t seen him for twenty years.

The first reported court appearance\(^\text{199}\) was an appeal from an order that the children were not required to provide support to their father. Master Donaldson, in the first appearance, had decided that “dependent” required a pre-existing relationship of dependence on the part of the parent upon the children. Justice Dohm, in upholding this decision, stated:

> Absent any definition of the term dependent in the present legislation, I think it reasonable to conclude that the Legislature intended that the term ‘dependent’ take on its ordinary common sense meaning; namely, that in order for the parent to be dependent, the parent must be both unable to maintain himself without the aid of another because of age, illness, infirmity or economic circumstances and some sort of pre-existing support relationship between the parent and child must have existed on which the parent had relied.\(^\text{200}\)

The next reported decision, from 1997,\(^\text{201}\) involved the father’s appeal from the earlier order. In this appearance, Justices Hinds, Goldie, and Ryan allowed the appeal, finding that requiring an applicant to prove the existence of a prior relationship of dependency could not be an accurate interpretation of the statute. The children would already be supporting the parent and wouldn’t need the interference of the court.\(^\text{202}\) The case was remitted to the Supreme Court so that a ruling could be made according to the Court of Appeal’s definition of dependence.

\(^{200}\) Ibid para. 9.
\(^{202}\) Ibid at para. 15.
At least three more appeals took place in 1998. The first took place in the British Columbia Supreme Court in January.\textsuperscript{203} The father was seeking an order of interim support from the children. In this decision, Justice Burnyeat summarized the factors that should be considered when evaluating an application for parental support. They were the following:

(a) The obligations that of each of the defendants have to their own families will take priority over any obligations that they owe to the applicant
(b) Any assets and income which are available to the defendants from their spouse or former spouses are not to be taken into account when determining whether, on the basis of their responsibilities and liabilities and their reasonable needs, they also have an ability to maintain and support the applicant
(c) Evidence of abandonment, abuse and estrangement can be taken into account as one of the factors in the objective evaluation of the application
(d) The length of the period of estrangement is also a factor to be taken into account in the objective evaluation of the application and the consequent ranking of the needs of the adult child, and
(e) A parent should first look to spousal support and, only if such support is not available, to then look to possible child support\textsuperscript{204}

The judge also stated that because this case did not involve a government agency, the purpose of the laws, to ease government expenditures, was not present.

The judge found that four of the adult children were living modestly and couldn’t spare any money to support their father. Two of the adult children could spare the money, but given the insufficiency of the support they had received as children and the lack of contact they had had with the father for the prior twenty years, the judge felt it would be unjust to order them to pay support. The judge also found that the father’s needs were sufficiently met by his pension, and

\textsuperscript{204} Ibid at para. 140. (a) and (c) are references to a “ranking” of relationships defined in court decisions that will be addressed later in the dissertation.
that what he was seeking was an improvement of his current lifestyle based on wants, not needs. It was not the purpose of filial responsibility laws to help a parent raise his or her lifestyle when it was already at an acceptable standard. Finally, the judge found that the father’s own financial behaviour had caused his current standard of living, and he couldn’t look to children he had failed to support to pay to improve it. None of the adult children were ordered to pay support.

The next reported appearance took place in the Court of Appeal in July.205 The father sought leave to appeal the previous order. Judge Esson dismissed the appeal regarding the four adult children found unable to pay support to the father, but allowed the appeal against the other two adult children in order to avoid making an order that might have an impact on the trial judge. In the appeal that followed in the Court of Appeal in December,206 the justices found those two adult children of sufficient means to support their father and ordered them each to pay $200 a month, also to avoid making a decision that might appear to be binding on the trial judge.

If there was a trial, the decision appears to have been left unreported.

In the Ontario case of 1998, Dragulin v Dragulin,207 the plaintiff father sought support from his daughter. He had an income of $12,000 a year and listed expenses that exceeded his income,
while she had an income of $35,000 a year and had won the lottery in the amount of $1,030,473.90.

The daughter alleged that the father had been emotionally and verbally abusive when she was a child, and there had been an estrangement between them for more than ten years. The judge pointed out that s.32 of the Family Law Act demanded care or support, not necessarily both, and the father had financially supported the daughter and her siblings when they were minors. Section 32 did not consider the nature of the current relationship between parent and child.

The judge determined that the daughter had the ability to pay, but found some of the expenses claimed by the father unreasonable, exaggerating costs and including the expenses of his second wife, to whom the daughter owed no obligation. The judge found the father was reporting not just needs but wants, seeking an improvement of his current lifestyle because his daughter had won the lottery. The judge considered the lifestyle the family had had while the daughter was a child, which had been modest, relevant to determining the lifestyle the father could expect to have in the present. The judge cut the expenses to what he considered a more reasonable amount and the daughter was ordered to pay her father $400 a month.

In a British Columbia decision in 1999, Peach v Emlyn, the applicant mother sought support from her daughter and son-in-law. The parties, along with the mother’s son, had made an agreement involving purchasing a plot of land. The land would be put in the mother’s name, but all of the parties would contribute to the mortgage payments. The anticipated result was that all

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parties would eventually have an interest in the land. However, after a long series of land
transfers, loans, and new agreements, the mother’s relationship with her daughter and son-in-law
soured and they ceased their payments.

Master Powers found that the applicant was in a state of need due to the failure to honour the
agreement on the part of the daughter and son-in-law, that they had benefited from the earlier
arrangements, and that the daughter owed a duty to her mother. An order for support was made.

There was no discussion about whether the mother was able to work. She had a monthly income
of $1,626.66 from her CPP and other sources. She had savings of approximately $35,000 as well
as her interest in the land, which wasn’t given a value. It was determined that she could probably
manage to “get by” if she didn’t have to pay for the mortgage, but the possibility of her selling
her land wasn’t addressed.

b) Unsuccessful Applications for Support from Adult Children

The following five cases involved failed applications for support.

In an Ontario case in 1987, Berendt v Berendt, a widow was found to be ineligible for support,
despite her expenses and lack of income, from her stepsons because there had never been any
interdependency between them. The stepsons had been financially independent adults when she

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married their father, and she had never acted as their parent. She was, however, qualified to seek support from her husband’s estate under the *Succession Law Reform Act*.

In an Alberta case of 1996, *Leung v Leung*,\(^{210}\) a father sought $2,000 a month from his six children. Justice Nash’s test for determining whether the children had an obligation to pay was whether the father was destitute and whether the father was unable to work. The judge found that the father was not destitute and hadn’t proven he was unable to work. The father received an income of $540 a month from social assistance and he was entitled to at least a third of the equity in the matrimonial home. The judge took special care to note that some of his debts were due to the purchase of non-essential items. The judge noted that the adult children had supported the father in the past but this did not seem to be a factor in the judge’s decision. The father’s application was dismissed.

A British Columbia decision of 1997, *Puskeppelie v Puskeppelie*,\(^{211}\) involved an interim order in a divorce case that included conflicting accounts of assets and what was done with them. The applicant mother, who had a monthly income of $2,400, sought support from her adult son. The judge ruled against her because she had not demonstrated need and because given the lack of financial information so far provided, it was impossible to determine the son’s needs. In addition, she had not sought spousal support from her ex-husband first. This last item represents a “ranking” of support relationships, a concept that was expanded upon in later cases.


\(^{211}\) (1997) B.C.J. No. 2080 (BCSC)
In an Ontario case of 1996, *Skrzypacz v Skryzpacz*,\(^{212}\) the applicant mother sought an interim order for support from her son. The son claimed that it was his grandmother, not his mother, who had raised him. The judge found that the applicant mother had failed to provide sufficient evidence to determine that she had taken care of her son. In the face of this failure, the judge found the applicant mother wasn’t entitled to support, stating:

> Section 32 [of the Ontario *Family Law Act*] does not impose an obligation upon every child to support his or her parent who is in need. It limits the class of parents entitled to receive support from the child to a parent “who has cared for or provided support for the child.”\(^{213}\)

It is interesting to note that the court gave the parent the responsibility of proving she had provided care or support. As will be addressed later in this dissertation, in the United States it is the burden of the adult child to prove he or she had been abandoned by the parent.

In the British Columbia case of 1998, *Nevill v Nevill*,\(^{214}\) the applicant mother sought support from her son. She had contributed financially to the purchase of his house and had lived with him for a short time, contributing to the payment of the mortgage. She had left that house and, at the time of the court action, had moved into her own home. The judge found that while she was able to pay the mortgage of the current home, she had insufficient income to pay her other expenses and was therefore in need. The judge then examined the son’s financial situation. He was married with two children and three foster children. He earned approximately $60,000 a year. His wife received $40,000 a year for the support of the foster children. The judge included her

\(^{212}\) Ibid at para. 6.
income to the extent that it would relieve some of Nevill’s expenses, but stated that the wife had no obligation to support her mother-in-law, and such support had not been sought. While the couple had more resources than the applicant mother, their expenses and responsibilities rendered the son unable to support his mother.

c) Applications Seeking Reduction in Child and Spousal Support Payments

As stated previously, as a reaction to easier access to divorce and concern that more women and children would be living in poverty, many provinces studied their family law regimes and added support for parents to the statutes regulating the dissolution of marriage. It is unlikely that the supporters of these laws thought they might be used by one party to avoid paying child or spousal support to the other, but the following five cases represent such attempts. Unfortunately, few of these appearances result in a final recorded decision, but they did develop a new element within filial responsibility laws, that of “ranking” obligations to family members. An adult child owed support to his or her children and spouse before his or her parents. Support was to be sought from an ex-partner before adult children, though there are cases where an ex-partner was successful in getting orders that adult children be added to the case as respondents.

In a British Columbia case of 1985, Hua v Lam,\textsuperscript{215} an ex-husband sought to reduce his child support payments on the grounds that his obligation to support his parents, who were immigrants

\textsuperscript{215} (1985) 49 R.F.L. (2d) 6, (1985) B.C.J. No. 2706. Of note is that the judge erroneously stated that the obligation of an adult child to support their parent had been created by statute in 1978 and that there had been no statutory requirement for adult children to support their parents before then.
in Canada under his sponsorship, made it impossible for him to pay child support. The judge decided that child support “outranked” parental support and dismissed the application.

An Ontario decision of 1989, Baddeley v Baddeley,\(^{216}\) was an appeal from an interim order granting the ex-husband the right to add the ex-wife’s son to the proceedings on the grounds that the son had an obligation to support his mother. The son argued that the obligation of an adult child to support a parent was secondary to the obligation of an ex-spouse, and that an adult child should be added only if it was determined that the ex-spouse was unable to pay. The judge found that the *Family Law Act* did not support that argument, and that sections 33(5) and 33(6) of that statute enabled the court to add anyone who might have an obligation to support the relevant dependant. This refusal to find a “ranking” of obligations was countered in later cases.

In an Ontario case of 1994, Burgess v Burgess,\(^{217}\) an ex-husband sought a variation of spousal support pursuant to a separation agreement on two grounds of a material change of circumstances, the first that the ex-wife’s son had become an adult with an income, the second that the ex-husband’s income had been lowered. The ex-husband argued that the son should be ordered to pay his mother support, or that the judge should factor in the son’s potential contribution when calculating the amount for spousal support. The judge found that the son’s acquisition of an income didn’t represent a material change of circumstances to a substantive degree, that he hadn’t supported his mother in the past, and that he didn’t have the funds to spare. While the son and his wife had an annual income of $50,000, they were seeking to become


financially secure before starting their own family, and the judge believed this plan was valid and reasonable.

An Ontario case of 1994, Whiteley v Brodie\textsuperscript{218} represents a conflict with the Baddeley decision. An ex-husband sought to have his ex-wife’s children, who had been added as respondents, contribute to any spousal support he was ordered to pay. The judge denied this claim, finding that a spouse’s obligation to support the other spouse trumped the duty of a child to support a parent. The judge pointed out that the preamble of the *Family Law Act* made no specific reference to a child’s obligation to support a parent but clearly referred to the obligation to support spouses and children. The judge didn’t find the phrase “and to provide for other mutual obligations in family relationships” in the preamble a reference to the support of parents. The judge appears to have believed that the relationship between child and parent wasn’t one of mutual obligation, as children didn’t choose to enter the relationship and they were, while minors, subject to the unilateral decisions of their parents. In addition, the Act made several references to child and spousal support but few to parental support. In the judge’s opinion, these facts meant that child and spousal support had priority over parental support.

The judge stated:

> If [the spouse is] able to make a claim … and have their reasonable 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 to a claim over

by (sic) the other spouse. In the event that the other spouse cannot meet their needs, then such a claim is available.  

The British Columbia decision of 1997, *Smeland v Smeland*, involved an ex-husband who had previously been ordered to pay spousal support. He did not appeal the original order, nor had he sought to have the wife’s children added as respondents in the original proceeding. This decision involved a new motion in which he sought, on the wife’s behalf, compensation from her children so his spousal support payments could be lowered. The judge found the ex-husband didn’t have the standing to do so. While the legislature allowed parties other than the dependent parent to start an application on the dependant’s behalf, an ex-spouse wasn’t included in that list. The judge warned against allowing the scope of who had standing to bring an application to spread too wide. The judge stated:

> Otherwise, a person could conceivably sue the children of a destitute parent to get them to pay maintenance so that the parent would have money to pay a debt or civil judgment….

A unique case that demonstrated a different use for filial responsibility statutes, and perhaps represents a sign of things to come, was *Nova Scotia (Minister of Community Services) v K.(L.)*. An elderly woman had been declared unable to care for herself and was

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institutionalized. Her husband and son wanted to care for her themselves. The judge, deciding against the Ministry, found that a person had a right to be cared for by family and family had a duty to do so. In this case, the filial responsibility statute was a benefit to the family as a whole.

(iii) 2000s

A search of legal databases resulted in five reported cases from 2000 to 2015 involving family members suing each other. So far, the increase in the percentage of elderly people, the lengthened lifespan, and the diminishing social services have not resulted in a significant increase of lawsuits involving parents suing their children. In addition, the cases that are available demonstrate a possible trend in how these statutes may be used to the family’s true benefit in the future.

a) Parents Suing Adult Children

Of these cases, four involved a parent or stepparent suing a child or stepchild, and they all, ultimately, failed. Three failed because the adult children were found to lack the means to support their parents. In those three cases, the adult children had an income and assets, but this by itself did not mean they could afford to support their parents. The forth decision involved a widow seeking support from her adult stepchildren, to whom she had never acted as a parent.

In a British Columbia case of 2000, *S.A.G. v M.R.G.*, Justice Gillis found that the estrangement between mother and son didn’t make her ineligible for support, but that the son lacked the means, despite the fact that he had RRSPs. Selling the RRSPs would not support his

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mother for long, and his purchase of them was “an astute and prudent thing to do.”224 The judge also made it clear that the son’s income alone should be considered, not that of his wife.

In an Ontario case of 2007, Daskalov v Daskalov,225 a stepparent who had acted as a parent to her stepson sued him for support. She and his father had lived in a house that the stepson owned. The stepson lost his job due to cancer. When his father died shortly thereafter, the stepson told the applicant she would have to move out. The stepson could no longer afford the rent of his apartment and he wanted to move into the house with his wife and stepdaughter. The stepmother, who received a higher monthly income than the stepson, suggested transferring the house to her or selling the house and splitting the proceeds. Justice McLaren denied the application because a) while she was in need, she had a higher income than her stepson, b) adult children weren’t required to sell their assets to pay parental support, and, c) it would represent a transfer of property in the guise of support.

The British Columbia case Anderson v Anderson, with appearances taking place from 2000 to 2013, involved a mother seeking support from her five adult children. After their father had been injured in an accident, the mother had split the children up and sent some of them to live with relatives. The adult children alleged that she had, from that time, deserted them and failed to support them either financially or emotionally, and the relationship had been one of estrangement ever since. The mother’s response was that she had never abused them. In the first decision,226

224 Ibid para 56.
Master Donaldson decided that the mother was in need and, despite her unreliable care of her children, was entitled to support. Four of the five children were ordered to pay the mother $10 a month. In this decision, Master Donaldson stated that only the income of an adult child could be considered when determining support, not that of the adult child’s spouse.

After two court decisions that did not impact the original order, a final court appearance took place in 2013. In paragraph 11, Justice Butler described a process for determining whether a parent should be given support. It was the following:

(a) The first step is to examine the applicant’s financial circumstances as well as her health and personal circumstances to determine if she is financially dependent.
(b) After examining those circumstances if it is determined that the applicant is financially dependent – in other words her assets and ability to earn income are not sufficient to enable her to support herself – then she has an entitlement to support under s.90.
(c) The next step is to examine the means of the children from whom support is sought as well as their responsibilities, liabilities, and reasonable needs. If it is determined that a child has an excess of income over his or her reasonable expenses for responsibilities, liabilities and needs, an order for support may be made.
(d) At the final stage, the court should examine the other circumstances of the parent/child relationship to determine the level of support. At this stage of the analysis, the reasons for and the length of any estrangement between them are “factors to be taken into account in the objective evaluation and consequent ranking of the needs of the adult child.” Estrangement may lead the court to conclude that a parent has no moral claim to a lifestyle comparable to that of any of her children.

Justice Butler discussed in some detail what assets and expenses were considered reasonable for adult children to have before being considered of means to support a parent. Reasonable expenses included vacations, gifts, and entertainment for the adult child’s family, and reasonable

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assets included pensions and land. The judge found that the children, while engaging in these activities, didn’t have the means to support their mother. The estrangement relieved the adult children of any moral obligation to support her. Finally, the judge found that the mother’s support from various social assistance programs gave her a reasonable standard of living.

In an Ontario case of 2012, *Laidler v Laidler*, the widow’s attempt to sue her stepsons failed as they had been financially independent adults when she had married their father. She had never cared for or supported them and she had never stood in the place of a parent.

**b) Filial Responsibility Laws and Estate Law**

An Ontario case from 2014, *Brash v Zyma* represents another situation that had surely not been anticipated by the drafters of filial responsibility laws. A widow sought support from the estate of her husband as a dependant under the *Succession Law Reform Act*. Her stepchildren sought to have her biological children added as parties in an attempt to stop her from getting support from the estate. While the *Succession Law Reform Act* didn’t have a provision to add other parties who might owe support to a party of the action, the Ontario *Family Law Act* did. The judge used the language in the *Family Law Act* to interpret the rights of the husband’s adult children under the *Succession Law Reform Act* and allowed the widow’s biological adult children to be added as parties.

With so few cases to work with, it can be challenging to find common threads, especially as provinces operate under slightly different statutes. However, the case law that is available

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suggests that parents must demonstrate need. The parent must demonstrate they have acted as a parent to their adult children. When calculating whether an adult child has the means to support their parent, judges do take into account the needs of the adult child’s spouse and children, and allow for the accumulation of at least some assets before demanding payment. Children and spouses are owed support before parents, and an ex-spouse should be applied to for support before adult children. Whether the children had supported the parent in the past and the nature of the current relationship between child and parent can be considered but isn’t determinative.

(iv) Additional Applications of Filial Responsibility Laws

The following are three additional cases that demonstrate that filial responsibility laws can expand even farther from the original use of a parent or government agent seeking money from an adult child. One involves a criminal action in which an adult son had abused his vulnerable father. The other two demonstrate that filial responsibility laws might enable families to work together to get benefits from sources outside the family.

a) Criminal Law

An Ontario case of 2005, *R v Peterson*,\(^\text{230}\) involved the severe and dangerous neglect of a father by his son. Peterson was convicted of failing to provide the necessaries of life under s. 215(2)(b) of the *Criminal Code*.\(^\text{231}\) The court stated that while the breach of a law such as s.32 of the *Family Law Act* of Ontario would not constitute a crime under the *Criminal Code*, it could be used as a factor in the determination of what is expected of an adult child who has taken on the

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\(^{231}\) R.S.C. 1985, c.C-42.
care of a parent and of how far that child has fallen short of that standard. As the Criminal Code currently has no section dedicated to elder abuse, the development of standards supported by other statutes may provide another form of protection for vulnerable older people.232

b) Insurance Law

A Newfoundland case from 2014, Drover v Smith,233 involved a couple who agreed to travel with their adult son and his family to Florida. In exchange for babysitting the grandchildren, the son agreed to pay for all of the plaintiffs’ costs. While in Orlando, the family suffered an automobile accident. The plaintiffs sued the son’s insurance company on the grounds that, for the duration of the trip and according to the insurance policy, the plaintiffs were dependants of their son. Referring to the filial responsibility requirements under Newfoundland’s family law act, this court of appeal decision upheld the trial judge’s decision that, although the plaintiffs owned their own home and were financially independent, for the purposes of the trip, as the son paid all of their expenses, they were the son’s dependants and therefore covered by his insurance policy.

c) Human Rights Law

In the 2015 Federal Court decision Canada (Attorney General) v Hicks,234 Hicks alleged a violation of his human rights by Human Resources and Skills Development Canada. (“HRSDC”)

When he was transferred from Nova Scotia to Ottawa, his wife remained in Nova Scotia to care

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for her ailing mother, who was living in an assistance living apartment and then a full care nursing home during the time relevant to this case. Hicks claimed the expenses of the two homes under the employees’ relocation directive, which recognized that dependants might have to remain behind in the original home for a period of time, and the claim was denied by HRSDC for a number of reasons. One of the reasons was that their policy didn’t recognize Hicks’ mother-in-law as a “dependant” because she hadn’t been living with him during the period for which he was seeking compensation. One of Hicks’ allegations was that he was being discriminated against under the prohibited ground of “family status,” and this complaint was supported by the federal court. Justice O’Keefe made the following statement:

The prohibited ground of discrimination of family status should encompass the eldercare obligation because whose non-fulfillment can attract not only civil responsibility (Maintenance and Custody Act), but also criminal responsibility if not exercised properly (Peterson.) Eldercare obligation is entrenched in Canadian societal values. It demonstrates the adult children’s responsibility to their elderly parents.235

These latter two cases suggest that, instead of tearing the family apart, filial responsibility laws can be used to acquire benefits from third parties, parties who are more likely to be able to pay.

B. The United States

Filial responsibility case law didn’t evolve in the United States as it did in Canada. While indigent parents did have a right to sue their adult children in most of the states that had filial responsibility laws, it was and is far more common for an institution to sue adult children, and for payments to be given to those institutions rather than their parents. While Canadian courts

235 *Ibid* at para. 70.
seem almost reluctant to find adult children obligated to support their parents, American courts seem eager to do so. If the parent is found to be indigent, adult children are often quickly found able to pay, despite low income and other family responsibilities. The case law suggests that if there is any form of “ranking” of responsibilities as there is in Canada, indigent parents come first. If a parent is found indigent, and the adult child able to pay, the adult child’s “last defence” is proving that the parent abandoned them, and the burden of proof is very demanding.

The following cases were chosen due to the frequency with which they were cited by judges and academics. As many of them address the same issues – indigence, ability to pay, and abandonment – and are cited by different states, they are organized according to date, from the oldest to most recent.

i) Case Law Defining Need, Ability to Pay, and Abandonment

In *Petition of Stark*, 236 a 1960 case from California, a daughter appealed a court decision ordering her to provide support for her mother, using the ground of abandonment. Approximately three years after the daughter’s birth, the mother had willingly given custody of the child to the child’s father. In the following years, the mother had visited three or four times a year. The daughter was unable to demonstrate an absence of two years or more, as required by California law. The evidence established that the mother had not contributed to the financial upkeep of the child, but the judge did not think that a reason to find a case of abandonment. The court stated:

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236 182 Cal. App. 2d 20 (1960), 5 Cal. Rptr. 839 (District Court of Appeal, First District, Division 1, California)
The relationship of parent and child is so deep and fundamental in our society that we do not lightly terminate its legal effects. Abandonment calls for an intent to sever and disrupt this rooted relation, an intent, accompanied by actual desertion, that must either be declared or manifested in overt acts. 237

The court also stated:

… the Legislature …. exonerated the child from support if (1) he “was abandoned by a parent,” (2) “such abandonment continued for a period of two or more years” and (3) “such parent during such period was physically and mentally able to support such person.” The abandonment is thus not dependent upon failure to support; indeed, quite the contrary, abandonment is qualified by a third condition, ability of the parent to support the child. The Legislature did not pass a statute which would produce so incongruous a result as to rest the child’s liability for support of a parent upon the parent’s past support of the child, when, in many cases, the parent is relieved of the liability of child support by a court decree which places that obligation upon the other parent. 238

And again:

There can be no doubt but that the substantial evidence upholds the ruling of the trial court. Certainly the facts do not show on the part of the mother any intentional disruption of the parent-child relationship manifested by an actual desertion of the child, concomitant with an express declaration to abandon the child or by conduct which exhibits such intentional disruption of the relationship. 239

The original order was affirmed.

237 Ibid at 21.
238 Ibid at 24.
239 Ibid at 26.
This case demonstrates that a parent need not have cared for or supported the child in order to be entitled to support, merely that the parent had not been completely absent from the child’s life for two or more years. And, as the judge stated, even an absence of that length would be forgiven if the parent was physically or mentally unable to care for the child.

In a Pennsylvania case from 1962, *Commonwealth ex. rel. Maceroyal v. Cunningham*, an elderly woman who was receiving $40.10 every two weeks from welfare sought support from her son. The court found her to be indigent. She was separated from her husband, but the court decision doesn’t indicate whether or not she was seeking spousal support from him. The son had a business that was operating at a loss, was carrying considerable debt, and was supporting his twenty-two-year-old son, whom the judge described as “incapacitated” and therefore, one presumes, in need of support for the indefinite future. Despite this, the son was found able to support his mother.

The son claimed that his mother had abandoned him. He had been raised by his grandmother while his mother had dropped in and out of his life. The court found that the son had not been abandoned by his mother, stating the following:

> For a mother to abandon her child means to give it up absolutely with the intent of never claiming her right to it. Mere neglect does not necessarily constitute abandonment; ordinarily, to have that effect, it must be coupled with affirmative acts or declarations on her part indicating a positive intention to abandon. Abandonment may therefore be affected, sometimes by a mere formal legal instrument, sometimes by a course of conduct. It is a

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matter of intention, to be ascertained by what the parent says and does, viewed in the light of the particular circumstances of the case ….

While it was demonstrated that the mother had been absent from her son’s life for up to two years at a time, this fell short of the ten or more years required by Pennsylvania law. There was a dispute as to whether the mother had provided the grandmother with any financial contribution for the upkeep of her son, but the court found that even if the mother had not contributed to the son’s support, he had failed to prove a “positive intent to abandon.” The son was ordered to pay $7.50 per week to the probation officer of the county.

Another case from 1962, this time from California, *Chryst v Chryst* involved a couple who had been unable to find work and had left their children with the mother’s sister and brother-in-law in South Dakota for two and a half years. They didn’t communicate with their children over this time, nor did they contribute to their upkeep. They returned for the children upon learning that the mother’s sister was ill. Although the parents had been absent from the children’s lives for the two years the statute required, the court found that the couple had demonstrated no intention of abandoning the children. Unable to care for the children themselves, the parents had left them with family members, which was a reasonable and natural thing to do. Therefore, the plaintiff was ordered to pay support for his mother.

A rare situation in which the court found a lack of means on the part of the child and abandonment on the part of the parent occurs in the 1968 decision, *Gluckman v. Gaines*. The

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241 *Ibid* at 469/470.
242 204 Cal. App. 2d 620 (1962), 22 Cal. Rptr. 459 (District Court of Appeal, Fourth District, California)
243 266 Cal. App. 2d 52 (1968), 71 Cal. Rptr. 795 (District Court of Appeal, Third District, California)
plaintiff father was found to be reasonably supported by income from a pension and as a beneficiary of a trust. The son was found unable to support his father due to a lack of liquid assets and absence of a fixed income. The defendant son hadn’t met his father before the age of twelve, and until that age hadn’t even known who his father was. This judge provided a definition of abandonment that was more compassionate toward the child, stating that the child couldn’t be expected to compensate for a past relationship of support that had never existed.

In a California case from 1971, *County of San Mateo v. Boss*, an adult child appealed from an earlier decision ordering him to pay $20 a month to the county for the support of his elderly mother, who was receiving $181.50 per month from the county and social security. Although she owned a house worth $31,800, she was found to be “in need.” However, a person could be “in need” without being “poor,” and “poor” was needed to trigger a support obligation. The court found that, unlike spouses for each other and parents for their children, there was no pre-existing duty on adult children for their parents. In addition, to impose this duty on the adult children of indigent parents, while the adult children of wealthy parents would not be required to support them, would be an arbitrary imposition on one sector of society. As the welfare code didn’t apply in this situation, and as there was no common law requirement that adult children support their parents, no duty to support could be imposed upon the son.

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244 3 Cal. 3d 962 (1971), 479 P. 2d 654 (Supreme Court of California) (“Boss”)
As a result of *Boss*, the California legislature changed the wording of the welfare code to “in need,” and stated that a person in receipt of aid for the aged would be deemed to be “in need.” In addition, the code was changed to make clear that adult children owed a duty to their parents.

This was addressed in a California case from 1973, *Swoap v. Superior Court*.\(^{245}\) The case involved two unrelated seniors reliant on social assistance and their adult children. The welfare department had demanded that the adult children compensate the department for the support of their parents. The parents and their adult children were seeking to have those demands denied. One of the adult children was sixty years old and was, with his sixty-seven-year-old wife, attempting to save for his own retirement. The other adult child stated that he couldn’t afford to support his mother because of his bills, which included child support. The adult children also alleged that their constitutional right to equal treatment was being violated, as only the adult children of parents in need would be required to support their parents.

The court determined that the parents qualified as “in need,” and found that the change in the legislation had created a pre-existing duty owed by adult children to their parents. After referring to earlier statutes in the state’s history, as well as the *Act of 1601*, the court stated:

> It is thus abundantly clear that a long tradition of law, not to mention a measureless history of societal customs, has singled out adult children to bear the burden of supporting their poor parents. This duty existed prior to, and independent of, any duties arising out of state assistance to the aged. Subsequent statutes imposing liability upon the adult children of persons receiving aid to the aged merely selected a class of relatives who were otherwise legally responsible for the support of their parents. The fact that the Legislature in 1971 changed the standard from “poor persons unable to

\(^{245}\) 10 Cal. 3d 490 (1973), 516 P. 2d 840 (Supreme Court of California) ("Swoap")
maintain themselves by work” to “needy persons unable to maintain themselves by work” in no way affects or changes this conclusion.  

The court found there was no unequal distinction being made between the children of indigent parents and those of wealthy parents. Parents in need were the parents to which the state would be providing support. The court ordered the adult children to pay the compensation demanded by the welfare department.

A unique case comes from North Dakota in 1986. In *Trinity Medical Center Inc. v. Rubbelke*, the medical center had reached a settlement with two former patients for the bills they had acquired. It then sought compensation from their adult children. The court found that the settlement agreement had absolved the adult children of any responsibility. However, the court also stated that North Dakota’s filial responsibility laws imposed on adult children a liability similar to that of a guarantor. They could be held responsible for the consequences of a default on the part of the principal, which in this case would be a parent. While this responsibility wasn’t imposed on the adult children in this case, it is clear it would have been had it not been for the settlement agreement.

This decision seems to place an elderly parent in the place of a child, and the adult child in a position of authority over the parent, undermining the independence elderly parents seek. It is also unjust to enable one person to create a legal obligation on another without their consent.

246 *Ibid* at 503/504.
247 389 N.W. 2d 805 (1986) (Supreme Court of North Dakota) (“Rubbelke”)
A 1994 case from Pennsylvania, *Savoy v. Savoy*,[^248] involved a woman who was unable to work and, between her Social Security payments and her Supplementary Income benefits, had an income of $438 a month. She had costs in the amount of $940 a month and $10,000 in unpaid medical bills. Her son had a monthly income of $2,327 and expenses of $2,583 a month.

The mother was found to be indigent according to the common law definition, which the court identified as the following:

… the indigent person need not be helpless and in extreme want, so completely destitute of property, as to require assistance from the public. Indigent persons are those who do not have sufficient means to pay for their own care and maintenance. “Indigent” includes, but is not limited to, those who are completely destitute and helpless. It also encompasses those persons who have some limited means, but whose means are not sufficient to adequately provide for their maintenance and support.[^249]

Despite the fact that the son’s expenses exceeded his income, and that an argument could therefore be made that he was also indigent or that he might be pushed into indigence if his expenses were raised, the judge determined that he was able to support his mother. He was ordered to pay $125 a month to the mother’s medical care providers.

A Pennsylvania decision from 2003, *Presbyterian Medical Center v. Budd*,[^250] was an appeal from an earlier order that had ruled in Budd’s favour. Budd’s mother had been a resident of the Presbyterian Medical Center (“PMC”), a long-term care nursing facility, and had, by the time of her death, acquired a bill of $96,000. PMC sought compensation from Budd. Prior to her

[^249]: ibid at 555.
[^250]: 832 A. 2d 1066 (2003), 2003 PA Super. 323 (Superior Court of Pennsylvania)
mother’s death, Budd had agreed to seek financial assistance from the state welfare department on behalf of her mother. Both she and PMC were aware that the mother’s resources exceeded the maximum amount allowed to qualify for welfare. PMC alleged Budd had promised to “spend down” her mother’s resources on medical costs until she was below the maximum limit to qualify. Because of this promise, PMC delayed enforcing payments for the mother’s bills. However, instead of spending down her mother’s assets, Budd, as her mother’s Power of Attorney, transferred $100,000 from her mother to her own chequing account prior to her mother’s death, and a further $60,000 after her mother’s death.

PMC brought an application with a multitude of claims. Allegations of fraud and breach of contract failed, but a claim under Pennsylvania’s filial responsibility law succeeded. The court found that the medical centre had standing to sue Budd because it had provided care, maintenance, and assistance to the mother. The mother’s death did not eliminate the center’s right to seek compensation from the daughter, who should have been paying the mother’s costs all along. The court remanded the action to further proceedings in order to make a determination under Pennsylvania’s filial responsibility law.

Given the mother was dead, this decision cannot be said to be about supporting a parent. According to the recorded decision, the state wouldn’t be on the hook for the bill, and therefore this order can’t be described as a means of lessening government expenditures. It was purely a matter of debt collection.
The 2012 Pennsylvania case *Health Care & Retirement Corp. of America v. Pittas*251 earned a great deal of attention in both academic and media circles. It affirmed an earlier decision made in favour of the hospital. The appellant’s mother had spent approximately six months in the hospital receiving treatment and care after a car accident. Upon being released from the hospital, the mother and her husband moved to Greece, leaving behind $92,943.41 in unpaid bills. The hospital sought payment of this bill from the appellant through arbitration. The arbiter found in favour of the appellant. The hospital appealed this to a trial court and won. The appellant was appealing from that decision.

The court agreed that it was the burden of the hospital to establish that Pittas had the means to pay, and the court found that burden had been met. It was established that the appellant made roughly $85,000 a year. The appellant claimed he couldn’t pay his mother’s bills because of his other obligations, but the trial judge found his testimony lacked credibility. The appellant also argued that the court should have considered the income of his siblings and his mother’s husband while making its decision, and that there should be a stay as they waited to learn whether the mother’s application for Medicaid would be accepted.

The court rejected these arguments, finding that the wording of the statute didn’t require the court to consider other sources of income and that the appellant could have asked to have the mother’s husband and other children added as parties. If his mother qualified for Medicaid, he

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251 46 A. 3d 719 (2012), 2012 PA. Super 96 (Superior Court of Pennsylvania) ("Pittas")
would be compensated, so he suffered no prejudice if the court didn’t wait. He was ordered to pay the entire bill. His request for further appeal was denied.

Despite insufficient financial disclosure by both the mother and the son, the judge felt comfortable declaring the mother indigent and the son able to pay a bill that was higher than his annual salary. The decision didn’t mention the son’s wife and children. The decision didn’t address the mother’s current costs and assets, how she and her husband had been able to afford a move to Greece, or the possibility that the move to Greece had been a deliberate attempt on the part of the mother to avoid paying her hospital bills.

In a North Dakota decision from 2013, *Four Seasons Healthcare Center, Inc. v. Linderkamp*, the healthcare centre sought reimbursement from the appellant for more than $104,276 in fees acquired by his parents while they were in their facility. The parents had died before the court action was launched. This appearance was an appeal from an earlier decision which had ordered the appellant, the son of the two former patients, to pay the bill.

The court quoted N.D.C.C. § 14-09-10, which provides:

> It is the duty of the father, the mother, and every child of any person who is unable to support oneself, to maintain that person to the extent of the ability of each. This liability may be enforced by any person furnishing necessaries to the person. The promise of an adult child to pay for necessaries furnished to the child’s parent is binding.

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252 2013 ND 159, online: Justia <law.justia.com/cases/north-dakota/supreme-court/2013/20120432.html> (Supreme Court of North Dakota)
Referring to *Rubbelke*, the court stated:

This Court has recognized that “a child is liable to a third party for actual necessaries furnished to the child’s parent, regardless of whether or not the child has been notified of, or agreed to pay for, the services rendered.” In *Rubbleke*, at 807, this Court explained liability established by N.D.C.C. § 14-09-10 was secondary liability imposed on children because of their relationship to their parents and was akin to the liability of a guarantor. The language of N.D.C.C. § 14-09-10 imposes a duty on children of parents who are unable to support themselves to maintain their parents to the extent of the ability of each child, which may be enforced by any person furnishing necessaries to the parents.\(^{253}\)

Having stated this, the court remanded the decision, finding the lower court had erred in finding the appellant solely responsible for the bill without considering the possible contributions of his siblings. This opinion is in direct contrast with *Pittas*, relying on the use of “every child” in the North Dakota code.

One of the alarming aspects of this case is the ability of any person who has been “furnishing necessaries to the parents” to seek compensation from an adult child. “Necessaries” has included food, clothing, shelter, and medical care. It isn’t difficult to imagine future cases in which private businesses other than hospitals and long-term care facilities can seek compensation. This also represents another example of a case which could not be described as a means of supporting elderly parents, given the parents had died.

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\(^{253}\) *Ibid* at para 25.
In the Pennsylvania 2014 case *Eori v Eori*, Joseph Eori sought contribution from his brother, Joshua Eori, for the support of their mother, Dolly Eori. His sister was already contributing $400 a month, and that amount was included in the calculation of Dolly’s income. Dolly lived with Joseph. She had Alzheimer’s, was unable to care for herself, and couldn’t be left alone. She also had cancer and required ongoing medical treatment. Joseph managed Dolly’s finances, paying from his own pocket the costs Dolly’s income didn’t cover. He arranged for round-the-clock care through the services of an adult day care centre and paid three individuals to look after Dolly during the week. As he couldn’t afford to hire anyone to care for his mother on weekends, he took on that task himself.

Joshua, appealing from an earlier court decision made in his brother’s favour, challenged the claims that Dolly was indigent and that he was able to pay support. He also alleged that Dolly had abandoned him.

The judge found that Dolly met the common law definition of indigent. Her income was $2,189 a month, $1,789 from social security and $400 from her daughter. This amount did not cover all of Dolly’s expenses.

The court rejected the defendant’s argument that Dolly wasn’t indigent as she had no unpaid bills or other debts. The judge stated:

… the clear language of the statute does not impose an obligation of establishing unpaid medical bills or liabilities to justify a claim for filial support. Also, the definition of indigent does not state that outstanding debt

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is necessary for an individual to qualify as indigent. It just requires an inability to provide for one’s own maintenance and support with the income received.\footnote{Ibid at 6.}

The judge also stated that Joseph was under no obligation to support his mother and might stop supporting her in the future. This is an odd statement to make given that Joseph was surely obligated to provide support to his mother according to the same statute that was being applied to his brother. While the court included the sister’s contribution to Dolly as part of Dolly’s income, the judge refused to treat Joseph’s contributions, which were significantly higher, as income, stating that case law didn’t support including Joseph’s contributions.

It is not submitted that the mother was not indigent, merely that the judge’s rationale for finding her indigent involved an argument with internal inconsistencies.

While calculating Joshua’s ability to pay, the judge examined his business, which also employed his wife. His recent income had been an estimated $60,000 a year. The judge seemed to feel that the business finances were not managed as well as they could be, apparently disapproving of Joshua’s custom of giving his employees bonuses. Joshua supported his wife’s two children, who were not biologically his, putting one through college. The judge indicated that Joshua was not required to support his two stepchildren, and wouldn’t be required to put even a biological child through college. These facts were weighed against Joshua’s claim that he couldn’t support his mother. He was found able to pay.
In addressing Joshua’s allegation that he had been abandoned, the judge defined “abandoned” as “left without provision for reasonable and necessary care or supervision.” Joshua claimed that his grandmother had cared for him more than his mother had, but his mother had always been “around,” either living in the house or in the vicinity. He was unable to demonstrate that she had left him for ten or more years, as was required by the Pennsylvania statute. There was a dispute over whether Dolly had contributed any financial support to Joshua’s upkeep, but the judge didn’t find that relevant. It was determined that Joshua hadn’t been abandoned. The judge ordered Joshua to pay $400 a month.

A Pennsylvania court case, Commonwealth of Pennsylvania by Attorney General Kathleen G. Kane v James A. Havassy, individually and d/b/a Hamilton Law Group; and Hamilton Law Group, P.C., launched in 2015 and settled in 2016, provides some hope that there might be some limits on who can seek compensation from adult children. In her petition to the court, the Attorney General alleged that the defendant law firm, which engaged in debt collection for its clients, violated debt collection laws by sending letters to the relatives of patients who had received care from various healthcare providers. The letters referred to Pennsylvania’s filial responsibility law and demanded payment. The Attorney General alleged that this represented a false portrayal of the character and legal status of the debts, as the debts the defendants were

256 Ibid at 13.
attempting to collect “were not contemplated by the Filial Responsibility Law.” The Attorney General stated:

By sending collection notices to Pennsylvania consumers that mischaracterizes the applicability of the Filial Responsibility Law to any and all healthcare debts, whether or not public funds are needed to be or anticipated to be reimbursed for the underlying services, Defendants engaged in deceptive conduct which created a likelihood of confusion or of misunderstanding.

The Attorney General also stated that claiming the recipients owed a debt without first receiving a court order was deceptive. There had been no judicial consideration determining that the parents were indigent or that their adult children had the means to pay.

The case was settled out of court, the defendants agreeing to pay financial compensation and fines, and to restore the credit ratings of their targets.

It is unfortunate that a judicial decision wasn’t made in this case, particularly pertaining to the claim that the filial responsibility law applies only to situations in which a parent’s bills would be or expected to be paid from public funds. The statute doesn’t explicitly state this. Individuals have successfully sought payment when there were no public agencies involved in the court case, as was the situation in Eori. In Pittas, which was referred to in this decision, it was unknown whether Medicaid would be prepared to pay the bill. Judicial clarification on this matter would have been useful.

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259 Petition, supra note 257 at para 53.
260 Ibid at para 55.
Pennsylvania is the most active in the use of filial responsibility laws, and its decisions are among the harshest. Of the sample states, Pennsylvania’s legislation sets out the most precise manner with which payments are to be calculated. To repeat the relevant section:

(b) Amount
   (2)(i) Except as set forth in subparagraph (ii), the amount of liability shall, during any 12-month period, be the lesser of: (Emphasis added) 
   (A) six times the excess of the liable individual’s average monthly income over the amount required for the reasonable support of the liable individual and other person dependent upon the liable individual; or 
   (B) the cost of the medical assistance for the aged.

If those calculations were made in the sample of the cases from Pennsylvania, they are not described in the recorded decisions.

The bar set for finding an ability to pay is incredibly low. A child whose expenses exceeded his income was required to pay, though there seemed to be no investigation as to whether his lifestyle was reasonable according to his income. An adult child entering his own senior years and seeking to save for his own retirement was considered able to pay, again with no close examination of his expenses and lifestyle. The needs of the adult child’s other family members are often cavalierly dismissed. The balancing act required in Canadian courts is largely absent in American courts.

In stark contrast, the bar for finding a parent didn’t truly parent the adult child is set incredibly high. Failure to provide either funds or care isn’t enough to find that the adult child is released from the obligation to support his or her parent. Abandonment is required. A parent can avoid being found to have abandoned their child as long as they left the child in the care of someone
competent and visited on a semi-regular basis. It appears that if there is any “ranking” of interests in these decisions, parents and the institutions to which they owe money outrank the needs of the adult children, their spouses, and their children.

ii) A Constitutional Challenge

The following case does not focus on the issues of need, ability to pay, or abandonment, but is frequently cited for the constitutional arguments it addresses. This 1994 decision from South Dakota, *Americana Healthcare Center, a Div. of Manor Healthcare v Randall*, involved an appeal from a trial decision that had ordered Robert Randall to pay the healthcare centre $36,722.30 for the care it had provided for his mother, who had since died. Robert had been the trustee and residual beneficiary of his mother’s assets, his mother the income beneficiary while she was still alive, and he had then inherited the assets upon her death. While the most obvious point of discussion was the misuse of his mother’s funds as a trustee, in which role he should have been paying his mother’s bills all along, the court also discussed his liability under the state’s filial responsibility law. Robert challenged the constitutionality of requiring the adult children of indigent parents to pay support, stating that it violated his right to equal treatment under the law, as only the children of indigent parents would be required to pay. Referring to *Swoap*, the court rejected this argument, stating that the government had a legitimate interest in seeing that the elderly were cared for and it was reasonable to give adult

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261 513 N.W. 2d 566 (1994), 62 USLW 2719 (Supreme Court of South Dakota)
children this duty. Robert also argued that given children didn’t voluntarily enter into a relationship with their parents, it was unjust and arbitrary to impose on children the kind of duty to care for their parents that parents had for their children. The court rejected this argument as well, stating:

The fact that a child has no choice in the creation of a relationship with it’s parents does not per se make this an arbitrary classification. The fact that an indigent parent has supported and cared for a child during that child’s minority provides an adequate basis for imposing a duty on the child to support that parent.262

The original order was affirmed.

Chapter 6: Arguments in Support of and Opposition to Filial Responsibility Laws

Whether filial responsibility laws are just or even helpful is a matter of considerable debate. The following represents the most common arguments in support of and in opposition to filial responsibility laws, first in Canada, then in the United States.

A. Canada

i) Arguments in Support:

1. Supporters feel that these laws provide an additional source of funds for the indigent elderly,263 filling in the gaps that exist in social programs.

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262 Ibid at para 12.
2. The laws make clear that the government supports the values of taking care of the elderly and strengthening family unity.\textsuperscript{264}

3. The money that would have been spent on supporting senior citizens living in poverty can be used for other programs.\textsuperscript{265}

4. It is a logical extension of the support one is expected to show to other family members, such as spouses, ex-spouses, and children.\textsuperscript{266}

Snell ended his article on unreported cases in British Columbia and Ontario with the following:

Though use of the laws frequently resulted in at least short-term financial support for the parents involved, the place of the laws in the modern spectrum of state old age policy is problematic at best. The laws were very infrequently employed and in some cases led to conflict and a weakening of the intrafamilial environment so critical to effective intergenerational support. Filial responsibility laws may well be an inefficient means of producing substantial support for the dependent elderly. As an expression of values, however, this legislation remains important. It articulates a continuing belief in the centrality of the family as a vital element in the lives of the elderly. Such laws both assume and perpetuate a familist philosophy. By emphasizing intergenerational support and by appealing to the assumed existence and vitality of kinship networks, filial responsibility laws act as a behavioural injunction and as an expression of deeply held, traditional beliefs about the character of family relations and particularly about the place of the elderly within the extended family.\textsuperscript{267}

\textsuperscript{264} Ibid at 21.
\textsuperscript{265} Ibid at 22.
\textsuperscript{266} Helen Burnett-Nichols, “My Parents’ Keeper,” (March 6, 2011) online: Canadian Lawyer <http://www.canadianlawymag.com/3640/My-parents-keeper.html>.
\textsuperscript{267} Snell FRL, supra note 90 at 275/276.
ii) Arguments in Opposition

1. Filial responsibility laws don’t address much of what seniors actually need, such as affordable housing and access to healthcare.268

2. Litigation is expensive and stressful.269

3. The adult children of poor parents are likely to be poor themselves, with other family obligations.270

4. Court orders tend to result in small amounts of money, and the orders are difficult to enforce.271

5. The litigation process tends to undermine the relationships between parent and child and may intensify any breaches that had already developed between family members.272

6. The courts can order only monetary awards, not the kind of services adult children tend to provide to their parents, such as doing chores or assisting with intimate care such as bathing. These adult children may cease to perform these services once litigation is involved.273

270 Ibid at 25.
271 Ibid at 25.
272 Ibid at 27.
273 Ibid at 28.
7. It is cheaper for the government to support parents directly than to pay the costs of litigation.\textsuperscript{274}

8. Some parents might be too embarrassed to take their children to court, fearing that it means making public their inability to support themselves.\textsuperscript{275}

9. These laws contradict government policy of promoting independence for elderly people.\textsuperscript{276}

10. These laws contribute to the stereotype of older people being a burden on their families.\textsuperscript{277}

B. The United States

While American critics and supporters do have some arguments in common with those in Canada, they have explored those arguments in much greater depth. In addition, commenters in the United States have included other areas of dispute that don’t seem to be addressed in Canadian academic circles.

i) Arguments In Support:

1. It would reduce spending on elders and allow the government to spend more on seniors who don’t have anyone else to rely on, improving their quality of life.\textsuperscript{278}

\textsuperscript{274} Ibid at 29.
\textsuperscript{276} Bracci, supra note 268 at 497.
\textsuperscript{277} Ibid at 498.
\textsuperscript{278} Ross, supra note 140 at 185.
2. It may deter the elderly from seeking assistance, and may prompt family members to take care of their elder members in order to avoid a lawsuit.\textsuperscript{279}

3. It would help fill the gaps in the current system of social support.\textsuperscript{280}

4. Children owe their parents for the care their parents gave them.\textsuperscript{281} While this is an argument also made in Canada, it has far greater support in the United States.

5. Enforcement of these laws will serve as “notice” to adult children, who will be motived to make plans with other family members involving the care of their elderly parent. This will strengthen family relationships.\textsuperscript{282}

6. Enforcement of these laws may prompt people to better prepare for their own retirement in order to avoid having their children sued by third parties.\textsuperscript{283}

7. The possibility of lawsuits would encourage people to buy long-term care insurance.\textsuperscript{284}

\textsuperscript{279}Ibid at 186.
\textsuperscript{280}Ibid at 187.
\textsuperscript{281}Ibid at 187.
\textsuperscript{282}Ibid at 188.
\textsuperscript{283}Ibid at 189.
\textsuperscript{284}Jamie P. Hopkins, Theodore T. Kurlowicz, Christopher P. Woehlre, “Leveraging Filial Support Laws Under the State Partnership Programs to Encourage Long-Term Care Insurance” (2014) 20 Widener L. Rev. 165 at 189. Long-term care insurance was designed to enable people to acquire benefits that would pay for in-home or nursing home care. The program was very popular roughly twenty years ago, but insurance companies underestimated how long their customers might live. With drastic loss of profits, many insurance companies left the field, while those remaining have sharply increased their premiums. Their customers face a choice involving paying considerably higher premiums, accepting policies with fewer benefits, or dropping their policies altogether. See Barbara Feder Ostrov, “Why Long-term Care Insurance is Becoming a Tougher Call” (March 8, 2016) online: Time <time.com/money/4250147/long-term-care-insurance-rising-premiums/>. 
8. Enforcement of filial responsibility laws may discourage parents from fraudulently transferring their assets to their children in the attempt to avoid paying their bills or to become eligible for Medicaid.285

9. Filial responsibility laws “have a long and rich history throughout the world.”286

10. These laws will force families spread out over a great distance to talk to each other, which will not only result in planning but help combat the isolation and mental health issues many elderly people are facing.287 In addition, the adult children will be providing role models to their own children, who will hopefully be willing to take care of their parents.288

11. Society shouldn’t be expected to shoulder the “burden” of caring for older people.289

12. Enforcement of these acts wouldn’t create a cycle of poverty, as it is more likely that poor families already pool their resources to take care of an elderly family member. Those most likely to be subject to enforcement of the laws would be those earning middle-to-high incomes.290

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286 Randall, supra note 261 at 540.
288 Ibid at 90.
290 Matthew, Pakula, “A Federal Filial Responsibility Statute: A Uniform Tool to Help Combat the Wave of Indigent Elderly” (2005) 39 Fam. L.Q. 859 at 876. ("Pakula") Pakula provides no evidence in this article to support his opinion that poor families are more likely to pool resources in order to support elderly parents.
ii) Arguments In Opposition:

1. Enforcement of these laws, especially if the suit is being brought by creditors, may lead to the breakdown of family relationships. Such suits tend to happen in situations where relations are already strained, and a lawsuit might finish them.²⁹¹

2. Many adult children who already support their parents in some way, often by doing chores and providing personal care, are likely to withdraw that assistance if they are brought to court.²⁹²

3. Adult children may make decisions with the intention of avoiding liability, such as moving to a state that doesn’t have filial responsibility laws, or trying to persuade their parents to use cheaper medical or long-term care facilities.²⁹³

4. Filial responsibility laws encourage individuals to sue each other.²⁹⁴

5. Children may try to take control over their parents’ spending in order to ensure their parents can pay their own bills later in life.²⁹⁵

6. Many feel applying a reciprocal duty on children is unjust. Parents choose to have children, but children have no choice about being born. In addition, parents are required to care for their children for only a set period of time, while adult children might be required to take care of their

²⁹¹ Park, supra note 285 at 455.
²⁹² Lesher, supra note 148 at 263.
²⁹³ Sketchley, supra note 20 at 153.
²⁹⁴ Ibid at 154.
²⁹⁵ Ibid at 154.
parents for far longer than eighteen years. Adult children may be seniors themselves while taking care of their elderly parents and their financial situation will become even more strained when they retire. Finally, reciprocation should not be demanded if the parent took poor care of their children.

7. The bureaucratic process necessary to enforce these laws would be demanding. The enforcers would need to know whether there are adult children, their means, and how much they can pay. The trials would be costly and a new mechanism may be needed to enforce any orders.

8. While this argument has been largely unsuccessful in court, there are those who feel filial responsibility laws involve a violation of the equality rights guaranteed by the American Constitution, as only those who have indigent parents are required to provide support while those who have wealthy parents are not. Other challenges involve allegations that these laws involved “taking,” appropriating private property for public use with no compensation, as well as double taxation. Adult children are already paying taxes, some of which are meant to fund social programs for the elderly, and now they are being required to pay again. While the defense of a violation of equality rights had some early success, later decisions seem to find this and other constitutional challenges unconvincing.

296 Ross, supra note 140 at 187/8.
297 Ibid at 192.
299 Ross, supra note 140 at 189.
300 Ibid at 190.
301 Narayanan, supra note 12 at 380.
302 Ibid at 383.
9. Some states include criminal sanctions, the enforcement of which will make it more difficult for adult children to support their parents and may increase family tension.\textsuperscript{303}

10. Enforcement of filial responsibility laws risk perpetuating poverty from one generation to the next.\textsuperscript{304}

11. The laws don’t account for seniors who might have been careless with their money.\textsuperscript{305}

12. The possibility that their children may be sued may deter older people from applying to social programs, with the result that they will suffer an even lower standard of living.\textsuperscript{306}

C. Proposals for Reform

There is little movement for reform of filial responsibility laws in Canada beyond repealing them. In America, given the greater support for filial responsibility laws, there have been a number of suggestions made for making the laws more predictable and useful. They include the following:

\textsuperscript{303} Ross, supra note 140 at 193. It is interesting that all who pointed out this flaw were worried only about the ability of an incarcerated adult child to continue supporting their parent, not that criminal sanctions are unjustified and harsh.

\textsuperscript{304} Pakula, supra note 290 at 876.

\textsuperscript{305} Harkness, supra note 32 at 332.

\textsuperscript{306} Narayanan, supra note 12 at 378.
1. Create a model statute that can be followed by every state that has filial responsibility laws. This would make it easier to enforce orders if an older person has children in different states. The process of creating a model might raise awareness of these laws.\(^{307}\)

2. If reciprocity is going to be used as an argument in favour of filial responsibility laws, the defence of abandonment must be more accessible, with less stringent requirements to be met. A parent who didn’t support his or her child shouldn’t expect to receive support later in life.\(^{308}\)

3. If it is left to the state agencies and care providers to pursue the lawsuits, rather than the parents, this may decrease the potential for animosity between parents and adult children.\(^{309}\)

4. Provide tax deductions for adult children who willingly support their parents.\(^{310}\)

5. Eliminate criminal sanctions.\(^{311}\)

6. Create a guideline for evaluating support for parents to increase predictability and uniformity.\(^{312}\)

7. Create an age range during which an adult child is required to provide support. Proposals include starting at the age of twenty-five, in order to enable the adult child to get an education.

\(^{307}\) Ross, supra note 140 at 207.

\(^{308}\) Ibid at 208.

\(^{309}\) Ibid at 208. This seems an overly optimistic view of human nature. It is more likely that the adult children will resent being sued by a third party on behalf of their parents just as much as if it were the parents starting the suit.

\(^{310}\) Ibid at 209.

\(^{311}\) Ibid at 209.

and a solid financial footing, and ending at the age of sixty-five, when the adult child would then be living on retirement with a lower income.\textsuperscript{313}

8. One proposal points out that while an adult child may be required to provide support to a parent while the child lives, if the adult child predeceases his or her parent and dies intestate, a hierarchy of dependants is created. The spouse, and then the children, and finally the parents are entitled to support from the estate. The proposal suggests that such a hierarchy should be eliminated. If the same tests as those required while the adult child was alive are met, the parent should be entitled to support from the estate.\textsuperscript{314}

9. Create a federal statutory definition of ‘indigent’ and ‘necessities.’ This proposal includes the suggestion that services such as burial of the elderly should be paid by the adult child.\textsuperscript{315}

**Chapter 7: Conclusion**

The purpose of the research outlined in this dissertation is to examine the origins of filial responsibility in Canada and the United States, and to record and compare the use of these laws. This research demonstrates that these laws have been rarely used, and when they have been, have

\textsuperscript{313} Sisaket, \textit{supra} note 287 at 95. These proposals don’t appear to address the difficulty adult children would have saving for their own retirement while caring for their parents for decades, nor have there been suggestions concerning who would then take care of their parents after the caregivers have reached the age of sixty-five.


\textsuperscript{315} \textit{Ibid} at 873. It is submitted that paying for a burial cannot logically be considered a form of support for the parent.
failed to fulfill the purpose for which they were supposedly enacted, that of ensuring elderly members of society are spared from living in poverty.

The history of the development of these laws demonstrates that they were created not because adult children were suddenly failing to care for their vulnerable parents, but because the country was experiencing massive poverty due to severely declining economies, brought on by forces over which the poor had no control. While the discussion of filial responsibility laws in Canada and the United States is often accompanied by rhetoric about strengthening family relationships, their origin, the Act of 1601 in England, did no such thing. The Act of 1601 was driven by the desire to control the poor and the distribution of charity. That the Act of 1601 authorized the separation of children from their poor parents is an example of the lack of concern Elizabeth I felt for family relationships. Early legislation in the American colonies often had language that was just as harsh. While the first filial responsibility laws in Canada did not include actively separating family members, that they were enacted during one of the worst economic disasters in Canadian history speaks more to limiting government expenditures than supporting families.

There does not appear to be any evidence of family responsibility laws “filling the gaps” of social assistance programs in either Canada or the United States, nor any evidence that money which would have been spent supporting elderly parents has been shifted to other parts of the social support net. There is evidence that litigation destroys family relationships. Much of the later American case law involved institutions that, it appears, wouldn’t have been compensated by public funds. In those cases, regardless of whether the institutions were public or private, whether or not they were being compensated in some part by Medicaid, the court was enabling debt collection.
The only positive outcome of the use of filial responsibility laws involves a few Canadian court decisions outside the area of the family law regime. In these cases, elderly people were genuinely protected. These cases included using filial responsibility laws to regain care of a loved one against the wishes of a government long-term care facility, to acquire compensation from an employer for costs spent on an elderly parent’s care, and to gain coverage under an adult child’s insurance policy. Should these cases represent a trend that expands in the future, filial responsibility laws may actually accomplish what supporters claim they do.

Unfortunately, in the United States the use of filial responsibility laws has been increasingly hard on adult children, finding in favour of parents who had not reliably supported their children while they were minors, and finding that adult children with heavy financial burdens are able to accommodate the additional financial strain of supporting their parents or paying their bills. As support from Medicare and Medicaid is cut back, adult children may be facing increasingly high healthcare debts from their parents, as well as their own. In addition, some states allow the collection of compensation by providers of any necessaries, which might include food, clothing, and shelter, aside from those provided by healthcare and long-term care institutions. The standing of who can sue, and what they can sue for, may continue to expand.

Supporters of filial responsibility laws state that one of their purposes is to remind adult children that they have a duty to care for their parents. Evidence suggests that most adult children do believe in that duty and fulfill it to the best of their ability. Perhaps it is time for Canada and the United States to move beyond old, unworkable laws and recognize that elderly citizens living in poverty deserve the support of family, business, and the government, with all working together to eliminate any gaps.
Reform in Canada

Given the lack of use, and the destruction caused when they are used, it would be logical to eliminate filial responsibility laws in all of Canada’s provinces and territories. Given that some statutes disallow payments of more than $20 a week, it could hardly be said that those provinces think those statutes are of any great value. There is no evidence that any parent has enjoyed long-term benefits from litigation. While there are a few Canadian cases in which a reference to filial responsibility took a part in enabling a family to obtain benefits from a third party, the protection of the interests of vulnerable parents do not need a section in a family law statute. When it comes to neglect or abuse, abuse of an elderly person can be addressed by other existing legislation, such as the Criminal Code. The recognition of the prevalence and demands of eldercare can be placed right into labour, employment, and insurance laws.

The focus on filial responsibility often fails to address the societal factors that contribute to the difficulties of vulnerable older people. Older people are pressured to retire and experience difficulty finding new jobs, which impairs their ability to make their own income. Ageism is rampant in the healthcare system. Practitioners are more likely to withhold treatment and information from older people, dismiss their complaints, and prescribe medication, all of which have a significant impact on their quality of life. Racial discrimination is an additional factor in the medical treatment of older people. Some professionals make assumptions about patients from ethnic groups that are believed to value filial obligations and decide those patients are in

lesser need of long-term healthcare services.\textsuperscript{318} In seeking housing, seniors face many obstacles, including ageism. Once a senior reaches the age of eighty-five, becoming one of the “oldest of the old,” landlords and the management of senior housing become reluctant to have them as residents, and sometimes refuse to accept them.\textsuperscript{319} A thorough examination of these forms of discrimination and a genuine attempt to combat them would, while more difficult than taking adult children to court, go far in improving the quality of life for older people and enable them to remain independent longer.

If Canadian provinces and territories are to retain their filial responsibility laws, there needs to be significant changes to how these laws are drafted and used. The scope of who has standing to bring a case should be strictly curtailed, standing granted only to the dependent parent or, if the parent can’t seek an action of their own due to disability, to a personal representative authorized by a court or a Power of Attorney. Institutions or government agencies shouldn’t be permitted to start an action. Payments should be made for ongoing support, not to repay debts. Any services the adult child provides to the parent should be given a dollar value and taken into account when making calculations about how much an adult child must pay. The income of a spouse should not be part of the calculation. There should be a minimum income established, under which no adult child can be expected to provide support. There should be a cap on how long an adult child can be expected to pay, accommodating the right of the adult child to build a reasonable lifestyle of

\textsuperscript{318} \textit{Ibid} at 40.
\textsuperscript{319} \textit{Ibid} at 52. Some forms of senior housing are excluded from landlord and tenancy laws, giving the management the freedom to raise rent and the cost of services at will. Some institutions refuse to accept tenants eighty-five years of age and older based on claims that older tenants need more care than the management can provide, are more likely to damage the facilities due to the use of mobility devices or, because of declining mental faculties, may present dangers to all of the residents by, for example, accidentally setting their apartment on fire.
his or her own and to save for her or his own retirement. It should be made clear that filial responsibility laws cannot be used to avoid child and spousal support obligations.

In addition, if litigation is permitted, mediation should be mandatory. Mediation is already a respected part of family litigation. Elder mediation is a unique form of mediation which is designed to help families in conflict plan for the ongoing support of a vulnerable parent. Unlike litigation, there is evidence to support the claim that mediation can help improve family relations and result in an agreement that meets the needs of all parties. If necessary, the cost of mediation can be covered by Legal Aid certificates. The services of a mediator are likely to be far less expensive than a court process.

What is indisputable is that Canada must not ignore the warning the use of filial responsibility laws in the United States provides. The difficulties in the economy must not be used as an excuse to encourage litigation among family members, and the duty of Canadians to take care of their parents should not be used to justify debt collection. Canadian society as a whole – family members, government, and businesses - must work together to ensure all vulnerable members of our society enjoy independence and a high quality of life.

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