

Family

Obligation of stepparent to pay child support

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(August 25, 2021, 12:39 PM EDT) -- Many stepparents are surprised to learn that they may be liable to pay child support for stepchildren, even if the relationship between the adults was of short duration, and even if there is no relationship between the stepparent and the stepchildren after the breakdown in the relationship between the adults.

More surprising to some is that this obligation to support stepchildren may persist even with the reality of an involved, financially supportive biological parent. Two recent Alberta cases (to be discussed in part two of this series) have recently underscored this.

Some commentators have observed that, in view of the long-standing legislative basis in Canada governing child support obligations of stepparents, there has been a readiness of the courts to impose such liability. Indeed, child support obligations on stepparents can be as extensive as those imposed on biological parents. In contrast, in many other countries, the stepparent obligation is non-existent or quite limited. (Carol Rogerson, "The Child Support Obligations of Step-Parents" (2001), 18 *Canadian Journal of Family Law* 9)

As Rogerson explains, whereas the child support obligation of the biological parent is based on the fact that the parent brought the child into the world, the obligation of a stepparent is based on a social construct — the stepparent has stepped into the role of parent in their relationship with the child.

Modern family law, however, has necessarily adapted to the emergence not only of increasing numbers of stepfamilies, but successive stepfamily configurations, and has increasingly adopted a functional approach in defining family relationships, looking at the social reality of those relationships, rather than just their formal attributes.

Further, as family law has become more child centred, as is underscored by the increased emphasis on the best interests of the child as a central organizing principle, there is an expanding focus on the economic needs of the child, which can be met by the stepparent in the absence of or as supplemental to the economic attributes of the biological parent.

The obligation of a stepparent to pay child support reaches back to a common law doctrine which imposed liability on the basis of standing in place of a parent — or, *in loco parentis*, a doctrine that has been integrated in Canada through various legislative vehicles. Thus, in the *Divorce Act*, a stepparent can legally be liable for child support if the stepparent "stands in the place" of a parent (*Divorce Act* s. 2(2)).

In the seminal case of *Chartier v. Chartier* [1999] 1 SCR 242, Justice Michel Bastarache, for the court, stated that the test must "relate to contemporary Canadian society" (para. 19), articulating an objective test as follows:

[39] ... The court must determine the nature of the relationship by looking at a number of factors, among which is intention. Intention will not only be expressed formally. The court must also infer intention from actions, and take into consideration that even expressed intentions

may sometimes change. The actual fact of forming a new family is a key factor in drawing an inference that the step-parent treats the child as a member of his or her family, i.e., a child of the marriage. The relevant factors in defining the parental relationship include, but are not limited to, whether the child participates in the extended family in the same way as would a biological child; whether the person provides financially for the child (depending on ability to pay); whether the person disciplines the child as a parent; whether the person represents to the child, the family, the world, either explicitly or implicitly, that he or she is responsible as a parent to the child; the nature or existence of the child's relationship with the absent biological parent. ...

Thus, in moving away from the doctrine of *in loco parentis*, there has been a de-emphasis on the subjective factor of intention, which historically had been a central basis for the imposition of a support obligation. Instead, the focus has shifted to the nature of the relationship between stepparent and child and an objective test applied, focusing on external actions and representations of the stepparent (per Rogerson).

Post-*Chartier* case law suggests that factors mitigating a finding of liability for child support may be: (1) a poor relationship between the stepparent and child, "ranging from indifference and a complete lack of affection and bonding to, at worst, relationships that are described as 'hostile,' 'stormy' and 'troubled;'" (2) the children were older at the commencement of the step relationship; and (3) the biological parent remained very involved with the child and continued to play a significant role in their lives (per Rogerson).

Outside of divorce, in many provinces, including Alberta, the obligation for child support arises if, in the context of a "relationship of interdependence of some permanence with a parent of the child", the stepparent has "demonstrated a settled intention to treat a child as a child of his or her family," with factors which would demonstrate a settled intention prescribed by the legislation (*Alberta Family Law Act*, SA 2003, c F-4,5, s. 48).

But what of the obligations of the biological parent? In *Chartier*, the obligations of a biological parent and the stepparent were said to be joint and several, the "concern that a child might collect support from both the biological parent and the step-parent" not valid. An obligation of support arises as soon as the child is determined to be a "child of the marriage" (i.e., "a child of two spouses or former spouses," *Divorce Act*, s. 2(1)), and "the issue of contribution is one between all of the parents who have obligations towards the child, whether they are biological parents or step-parents."

While one parent may seek contribution from another parent, in the meantime that parent must pay support for the child, as the child is not to be affected. Further, the stepparent cannot unilaterally resile their obligations to support the child, notwithstanding the end of the relationship between the adults.

The *Federal Child Support Guidelines* s. 5, (and its equivalent provincial guideline counterparts), vest a discretion in the court as to the amount of child support that should be paid by the stepparent:

5 Where the spouse against whom a child support order is sought stands in the place of a parent for a child, the amount of a child support order is, in respect of that spouse, such amount as the court considers appropriate, having regard to these Guidelines and any other parent's legal duty to support the child.

Notably s. 5 of the federal Guidelines and the provincial counterparts do not create a primary support obligation of the biological parent. Many of the provinces take a slightly different approach however, including Alberta, which places the primary obligation for child support on the biological parent.

Thus, in *Family Law Act* s. 51(5), the obligation of a biological parent is said to outweigh the obligation of a person standing in the place of a parent; however, in considering how much a person standing in place of a parent must pay, the court must consider certain factors, including the amount being paid or that should be paid by either or both parents of the child, as well as the duration of the relationship between the parent and the party *in loco parentis* (*Alberta Family Law Act*, SA 2003, c F-4.5, s. 51(5)).

This is part one of a two-part series. In part two, we will explore two recent Alberta cases which

weigh the relative contributions of child support that must be made by the biological and stepparent.

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