

Hull on Estates Podcast #42

Adult Support Obligations of Elderly Parents

Posted on January 16, 2007

Justin de Vries: Hi and welcome to Hull on Estates. You're listening to Episode #42 of our podcast on Tuesday, January 16th, 2007.

Welcome to Hull on Estates, a series of podcasts for the Canadian legal community dealing with issues and insights surrounding estate planning in Canada. Hosted by the lawyers of Hull & Hull, the podcast will touch on some key considerations when planning estates and Wills. Now, here are today's hosts.

Justin de Vries: I am Justin de Vries and today Megan and I will be discussing a case whereby an application was brought by a fifty-eight year old mother for support from her four adult children. The case is a 1993 case and it's called *Godwin v. Bulksol*. Megan's going to tell us about the facts.

Megan Connolly: Okay, well this case dealt with Section 32 of the *Family Law Act* which states that every child who is not a minor has an obligation to provide support in accordance with need for his or her parent who cared for or provided support for the child to the extent each child is capable of doing so. Now this case dealt with Veronica Godwin who, at the time, was in her late fifties. She had five children and the claim was brought against four of them, it doesn't explain why the fifth one wasn't included. The issue involved was whether the children were liable to pay support. Now she said that as she was destitute, could not find a job, could not afford her living expenses, and could not afford mental care, that her children were obligated to support her. The adult children took the position that Veronica's care and support had been so substandard that it fell below a generally accepted parenting norm. Now for her part, Veronica maintained that she had done the best that she could and had adequately provided and cared for her children.

Justin de Vries: So in considering the evidence, I note that the court held that there was really no evidence of Veronica being selfish or lazy or putting her own needs ahead of her children.

Megan Connolly: That's right. Well the court said that the children's upbringing hadn't been ideal. It said that Veronica, for the most part, acted as any mother would. She looked after her children, she took care of the house, the children took part in extra-curricular activities, they lived in a home that was near schools, they played outside, and they had friends.

Justin de Vries: And the court seemed to have quite a bit of sympathy, it comes out in the reason, for Veronica. And we need to keep in mind that the children were brought up in the sixties and seventies, and that their father turned out to be an alcoholic. But he was also entrepreneurial in his time and they had to move a lot as he sought to find financial

opportunity for the family. And finally the court noted I think as well that the family started out as a lower middle-class family and that, I think, it was recognized in the reasons, had it's own unique problems or characteristics that were associated with that.

Megan Connolly: Alright, I think the decision said that the children moved something like ten times in twenty years and that the father was, as you said, an alcoholic whose problem got worse and worse over time. He was also apparently physically abusive to the mother. Eventually the father couldn't work anymore and although their lifestyle had never been, I guess, upper-class, when the father stopped working they had to go on welfare, which sort of decreased the standard of living even more.

Justin de Vries: The court pointed out that the family was really concentrating on financial survival and also looked at parenting concepts, as I mentioned in the fifties and sixties and into the early seventies, which was different. Today some people would say children are too coddled, but clearly, in this case, as I said, it was financial survival. It was pulling up your own socks, it was dealing with life's knocks as they came forward and Veronica, whose parents were Hungarian, also came from a difficult environment as a child and seemed to import that when dealing with her own children.

Megan Connolly: Right, I think the court also looked at the span of time that had occurred. It said that the children as adults probably remember their childhood slightly differently than they would have as children. It also said things may have happened that they didn't recall anymore. And further, it pointed to the fact that there's evidence as adults that the children were close to the mother, they sent cards to her, they exchanged gifts and warm notes. The relationship really started to decline after the mother had filed the claim and that's when the children's claims of poor parenting really started.

Justin de Vries: I think her son Steven characterized it as a financial assault and the judge was very quick, as you said, to take that on board and look at evidence of the relationship before the application was brought and put some reliance and weight on letters that was exchanged between Veronica and two of her daughters.

Megan Connolly: Right, I think part of the resentment on the part of the children wasn't just they were being asked for money, but the decision said that the mother had never spoken to them about her financial situation or otherwise requested money. She just sort of brought the claim out of the blue and none of them were expecting it. And I think from that point forward the relationship became chillier (Laughter) then it had previously been.

Justin de Vries: So according to the court, and we're now considering the law which is Section 32 of the *Family Law Act* as you mentioned. There are three questions that have to be asked: did Veronica provide support for her children is the first question; did she provide care; and then finally, was she in financial need. Just dealing with financial need, you touched upon that Megan in the facts. And I think the court recognized that there was a financial need that, while she had at one point had a house that she received from her father, that is Veronica, she had to sell it and she paid off a student debt because she

had gone to school subsequently after her children left the house. And she had also invested unfortunately in a friend's business that went sour. But bottom line is she couldn't find a job, even though she had in a sense re-educated herself, she couldn't look after her health care needs including dental and chiropractic problems. So the court answered that question positively, that is, was she in financial need.

Megan Connolly: Right, and I noticed that the children in the decision didn't really question the fact she was in financial need all that much, or at least it wasn't referred to. It seemed that they were more concerned with the other two parts of the task, and saying that they weren't met.

Justin de Vries: That's right. So in terms of care and support, the question the court posed in the case was what care and support for children would reasonably have been expected from a parent in the circumstances in which Veronica and her family found itself. And the court was quick to point out that minimum or maximum measurements were to be avoided and that makes a lot of sense in these situations, which are so driven by the facts.

Megan Connolly: Um hmm

Justin de Vries: The court defines support as such things as housing, food, clothing, health, recreational activities, vacation, traveling expenses, as well as nursing and medical attention during illness. And reasonable care was to be defined as such care as an ordinary prudent person would exercise under the conditions existing at the time he or she was called upon to act. So again, the court always went to look at the situation the family found itself when the children were young, and what the parents and particularly Veronica tried to do to bring about a supportive and caring environment. And the court ultimately held that Veronica did provide as much care as reasonably might be expected of her in the circumstances, which as I said, were difficult. And an interesting part is that the conditions, the court said that the conditions existing in the fifties and sixties were relevant in judging Veronica's level of skill and parenting.

Megan Connolly: Right, so it seems that when they're talking about reasonable care, they're trying to identify some sort of standard that must be met. And when they're talking about support, they're thinking about different, I guess you can say, aspects of the care, such as food and housing, rather than the degree of support.

Justin de Vries: Yeah, in many ways I think the court was driven by a consideration of equitable principles. They looked at poor Veronica who herself came from a difficult background, found herself in a difficult financial situation, managed to raise five relatively productive children. All of them seem to have gone, had some sort of post-secondary education, and at the end of her life or near the end of her life at age fifty-eight, really found herself without any financial support and was on welfare and the case looked at what she had provided to her children and said it was enough. Now in a perfect world and in today's standard, we may say it was not enough, but then according to the court, it was. And there's a certain tragedy about this case. Tragedy that children aren't

prepared to support their mother and tragedy that it's a family that clearly had some hard times and it certainly wasn't a perfect environment. But the test is not perfection; the test is whether or not a parent, in this case Veronica, provided enough support and care for her children and the court found that she did and that therefore the children were required to support their mother.

Megan Connolly: I thought it was interesting also, the children took the position that because during high school they were required to work, and because they had to pay for their own post-secondary education, that their success in life was due to their own hard work, and as such, the mother shouldn't be permitted to benefit from their positions in life.

Justin de Vries: And as we discussed, the court wasn't willing to accept that. They recognized that the mother did have some impact on that, and the court even looked at letters from the two daughters that were sent to Veronica before the application, where they talked about the strong sense of faith that the mother had clearly provided them and that helped them get through some difficult times.

Megan Connolly: Right. Now I guess as a further effort to avoid support, the children also introduced evidence of a medical specialist explaining different modes of parenting and the effect that poor parenting can have on children's self-esteem later in life. And the court held that that wasn't the sort of standard of care that was known at law and that because parenting is socially and culturally contextual, it's impossible to look at simple models and use them to determine whether the extent of care required by Section 32 was met or not.

Justin de Vries: And it's interesting to note, this case was appealed, and it was upheld on appeal. And the appellant judge even dealt with the issue of whether or not a judge could make that kind of comment, and take judicial notice of what the times required in terms of parenting in the fifties and sixties and into the seventies and held that the trial judge could. I think finally, it's important to note that the children also tried to say that support had a degree of financial support to it that, as we discussed, I think indirectly, the court was not prepared to broaden the definition or include in the definition of support or care the fact that there had to be financial support. Again, the court found that Veronica did as best she could in the circumstances.

Megan Connolly: Right. So eventually the court did order the children to pay support although in this decision, it didn't say how much they'd be required to pay. They were supposed to try and agree on an amount themselves, and if they couldn't, the court would intervene. But the court also declined to impose a termination date and held that support could run indefinitely.

Justin de Vries: So good. Thanks Megan, a good lesson for everybody out there who is looking to bring such application. Thanks very much.

Megan Connolly: Thank you.

This has been Hull on Estates with the lawyers of Hull & Hull. The podcast you have been listening to has been provided as an information service. It is a summary of current legal issues in estates and estate planning. It is not legal advice and you are reminded to always talk with a legal professional regarding your specific circumstances.

To listen to other podcasts, or to leave a question or comment, please visit our website at www.hullandhull.com.

Our theme music is Upper Structure by DJ AKid and is courtesy of the Podsafe Music Network.

/mem