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Should Children Be Forced to Support Their Aging Parents?

By Andrew Feldstein

As the baby-boomer generation ages, their children face the prospect of having to support them. In Ontario this has been legislated in the Family Law Act. Despite seeming innocuous at first, this is an unfair law. It is, in the end, not widely applicable. Most people take care of their parents because of the love and affection they feel towards them. But, with the unprecedented number of individuals soon to skyrocket.

How it functions in Ontario

Parental support obligations are located in the Family Law Act. Section 32 of the Family Law Act states (There is similar legislation in other provinces across Canada):

"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."

This law was interpreted in the case of *Godwin v. Bolso*. Essentially the court stated that in order to gain support, a parent must show that they are in need or that they cared or supported their offspring when they were children. The court [specifically stated](#) that there was no fault-oriented defence on the part of children, "unless a parent has failed to care or provide support."

The wrong balance

Section 32 of the Family Law Act is fundamentally unfair. At first it may seem that there is a certain symmetry to the law: A parent supports the child and when they are old the child supports the parent. This ignores the fact that while a parent makes a choice to create a child (in most cases) a child does not pick their parent. Rather, this obligation is foisted upon them regardless of the relationship with their parents. Further, the law does not concern itself with how the parent came into their situation. The parent may have depleted their funds through their own poor choices. In some cases, the child is forced, by law, to pay for their parents financial failures. This law strikes the wrong balance and the state should not have the power to force children to support their parents. The child lacks the freedom of choice which could justify this mandatory obligation.

The only saving grace of section 32 is that it is rarely claimed. Most children do not require a court order to support their parents, but rather do so with love and affection. Further, most parents would not seek a court order to force their children to support them. While it is laudable when a child seeks to care for and support their parents in their old age, this is by no means something that the state should compel them to do.