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Step-Parent Obligation to Pay Child Support

Did you ever wonder if or when the step-parent of a child would be required to pay child support? Most people, when entering into a new relationship, never give it a second thought until they are leaving the relationship and are suddenly confronted with the prospect of having to pay support for a child for whom they are not the biological parent. This is what happened in *Chartier v. Chartier*, [1999] 1 S.C.R. 242. (S.C.C.).

The Respondent played an active role in caring for and was a father-figure for his wife's daughter from a previous relationship. The parties had discussed but never proceeded with the husband's adoption of the child. The parties did falsely change the child's birth registration to indicate the Respondent was the child's natural father and changed her surname to his. In early proceedings, the Respondent entered a consent judgment pursuant to the *Family Maintenance Act* of Manitoba where he acknowledged the child to be a child of the marriage and was granted access to her. The order was silent as to maintenance. In subsequent divorce proceedings, the Appellant sought a declaration that the husband stood in the place of a parent to the child.

The Respondent contested the claim, and an interim order requiring him to pay monthly child support was made, and suspending his access to the child until a further order of the court, and ordered a report concerning access. The

report recorded the Respondent's desire to sever his relationship with the child.

At trial, the judge found the Respondent had repudiated his parental relationship with the child and, accordingly, was not obligated to pay child support for her. The Manitoba Court of Appeal dismissed the wife's appeal for child support. At issue before the Supreme Court of Canada was under what circumstances, if any, could an adult who is or has been in the place of a parent pursuant to Section 2 of the *Divorce Act* withdraw from that position.

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Section 2(2) of the *Divorce Act* reads as follows.

For the purposes of the definition "child of the marriage" in subsection (1), a child of two spouses or former spouses includes:

- a) any child for whom they both stand in place of parents; and
- b) any child of whom one is the parent and for whom the other stands in the place of a parent.

The Supreme Court of Canada allowed the appeal and remitted the case back to the trial court for a determination as to the quantum of support, but also made an interim order of \$200 per month pending the quantum hearing. In lengthy reasons, the court said that a person cannot unilaterally withdraw from a relationship in which he or she stands in the place of a parent. Obviously this is a very important public policy decision.

The court then went on to determine the test for whether or not a person stands in the place of a parent by setting out a non-exhaustive list of factors to be viewed objectively. The court must determine the nature of the relationship and do so by looking at a number of factors, including intention. Not only will intention be expressed formally, but 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 child of the marriage.

Some of the relevant factors set out by the court in defining the parental relationship are: 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, and the world—either explicitly or implicitly—that he or she is responsible as a parent to the child; and the nature or existence of the child’s relationship with the absent biological parent. Not all these factors need be present when making the determination of whether or not the person stands in the place of a parent.

The fact that a husband has not been a good step-parent or that he may have been an excessive disciplinarian does not preclude a finding that he stood in the place of a parent to his wife’s children. As well, absences for extended periods from the family home for employment purposes do not preclude such a finding.¹

Once it is shown that the child is to be considered, in fact, a child of the marriage, the obligations of the step-parent toward the child are the same as those relative to a child born of the marriage with regard to the application of the *Divorce Act*. At this point, the step-parent not only acquires obligations but also certain rights, such as the right to apply for custody or access.

Not every adult-child relationship results in a finding where the adult stands in the place of a parent. Every case must be determined on its own facts established from the evidence that the adult acted so as to stand in the place of a parent to the child. ▲

¹ *R.M. v. P.M.* [2000] N.J. No. 180 (S.C.)

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