Step by Step: 
Stepchildren and Support Obligations

by

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Abstract

This thesis is an exploration of the legal relationship between stepparents and their stepchildren within the context of child support obligations post separation and divorce. While the law has moved towards imposing a duty on stepparents to provide financially for their stepchildren, this thesis examines the motivations of the courts in so doing. The legal and social implications of such a duty are explored within the context of our changing trends in family sociology, specifically looking at the role of fathers. Obligating stepparents to pay child support acknowledges that children may have more nurturing relationships with adults than simply the biological parent relationship. At the same time, the child support obligation may also be a way for the Canadian government to avoid its own obligations to provide for its financially dependent citizens, primarily, impoverished women and children.
# Table of Contents

Abstract ii

Introduction 1

Background 5

Legislative History 8

Orientation in the Case Law 12

Literature Review 17

Research Methods 22

Case Study 26

Discussion 40

Problems with the Analysis of Case Law 46

Implications 47

Conclusion 51

Bibliography 53
Introduction

We are living in a time where the meaning of 'family' is multitudinous and ever growing. This paper will look at one aspect of today's expanding notion of family, by examining the changing roles and responsibilities of stepparents. The role of stepparents has changed considerably over the last half century. In the past, a stepfather or stepmother married a widow, and became, for all intents and purposes, a "substitute parent."

(Robinson, Smith 1993) As such, the nuclear family, comprised of parents and children, remained more or less intact. Today, stepparents may in fact assume the role of 'substitute parent', but this is no longer presupposed. For many children, a stepparent represents a third or fourth parental figure. This reality is clearly one of the by-products of a society where approximately 33 per cent of marriages will end in divorce. (Beaujot; 2000) Remarriage rates are high. Approximately 64 per cent of divorced men and 52 per cent of divorced women can be expected to remarry, with a large non-included number of unmarried cohabitation. (Beaujot; 2000) Common law relationships in which children are involved follow a similar pattern. For the purposes of this paper, the word "marriage" will include both legal marriages and common law unions.

Across sociological circles, there is little consensus over the definition of 'family' today. Regardless of how it is defined, one commonality found in most definitions of family, is the idea that members of a family have mutual responsibilities and obligations. (Larson, Goltz, Hobart 1994; Robert Glossop 1994) Social and behavioral scientists generally conceptualize and define family responsibility and family obligations in one of two ways. (Ganong, Coleman 1999) Researchers either concentrate on individual’s self-perceived
responsibilities or felt obligations to specific family members, or, they focus on commonly held or normative obligation beliefs. (Galén, Coleman 1999)

Felt obligations are the personal feelings of being obligated to help other family members, and have been defined as "expectations for appropriate behavior as perceived within the context of specific, personal relationships with kin across the life cycle." (Stein 1993:85) Family members may hold divergent opinions about the nature of family obligations and responsibilities, and how they should be fulfilled. Normative obligation beliefs are generalized norms regarding obligations of family members to one another. (Lee, Netzer, Coward 1994) The responsibilities and obligations of stepparents to their stepchildren will be explored from both the personal and normative perspectives.

Today it is common for adults with children to experience several intimate relationships in their lifetimes where a partner lives together with the parent and children. Some of these relationships develop further, as the partner becomes a stepparent to the children of his or her partner, others end swiftly, with relatively little melding of spouse and children. There are all kinds of stepparents; some take on the role of stepparent when the children are infants, and become all these children know of a father or mother. Others are involved with the family for a relatively short time before the marriage or common law union breaks down. Some stepparents assume all the functional 'parenting' practices of a natural parent, while others remain detached from the children. Interestingly, the law seems to have mirrored this reality of differing levels of stepparental involvement in their
stepkins’ lives, by obligating only those stepparents who contributed to their stepchildren’s lives to pay child support upon breakdown of the spousal relationship.

This paper will look specifically at stepparents who are involved with the residential parent\(^1\) of children from a previous relationship. As such, this paper will be looking overwhelmingly at stepfathers. This is because the vast majority of residential parents are mothers, with a 1996 study estimating the number of female headed lone families at approximately 83%. (Beaujot; 2000) This highlights the underlying implications surrounding this topic, namely, the continued importance of gender and gender inequity, in issues relating to family law and sociology.

The increase in poverty rates for women and children is a direct consequence of the rise of divorce rates, (Weitzman 1985; Eichler 1990-1991) and is a subtext of the debate over stepparental responsibilities toward their stepkin following separation. As men continue to earn significantly higher wages than women, their departure from the family unit generally has come to mean a lowering of the standard of living to the women and children they left behind. How to best deal with this major issue, commonly referred to as “the feminization of poverty,” has been increasingly taken into consideration by the judiciary.

In the legal arena, there has been decades-long controversy and debate over the rights and responsibilities of stepparents upon separation. This debate is generally over whether
or not stepparents should be legally obligated to support their stepchildren after divorce or separation from the child’s parent. A recent Supreme Court of Canada decision may have set down the final legal word on this issue. The Court strongly affirmed the stepparent’s positive duty to provide financial support to his or her stepchild after separation from the child’s parent, in every case where that stepparent had ‘stood in the place of a natural parent’ to the child during the relationship. From a sociological perspective, this decision may have groundbreaking implications, as it accepts and encourages a broader definition of the meaning of ‘family’ in Canada today. At the same time, the decision might also represent an attempt to make the stepparent relationship something it is not, in an attempt to address the underlying social problem of the rising feminization of poverty.

While hailed as a progressive decision, this judicial decision begs certain questions:

First, is this judicially determined obligation in keeping with the general population’s attitudes and normative obligation beliefs concerning the role of stepparents? In so much as the decision deals with the rights of children, and the elimination of child poverty, is this the right way of ‘solving’ the problem? Do stepparents really have enough resources to support children from first and subsequent families? To what extent are stepparents becoming obligated to pay support because the biological father is nowhere to be found?

These questions and other implications of this Supreme Court decision will be explored below.

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1 As part of the current reforms in family law, the terms “custody” and “access” are being replaced with the less contentious terms “residential parent” and “parenting plans.” The residential parent refers to the parent with whom the children live most of the time, where the children have their primary residence.

This paper will be organized as follows: In the first section, I will explore the background and history of child support, from a social and legal perspective. This section will include a discussion on the ‘feminization of poverty’, the social implications of marriage breakdown, and the resulting impetus for a stronger child support scheme. Next, there will be a short literature review on the topic, to familiarize readers to the field of research on the topic of stepparental responsibility. The next section will outline the research methods that were used in this study. The following section will serve as the substantive core of the paper, in which the case law on the role of the stepparent will be explored, followed with an analysis and discussion of the implications stemming from these cases.

Background

It is estimated that as of 1996 single-parent families account for 22.3 per cent of all families with children. (Dumas 1990) A 1991 statistic indicates that there were 1.5 million children in Canada living in single-parent families, of which only 275,000 were not living with their mother. (Hunsley 1997) Consequently, in the majority of these families, there was a direct correlation between the father moving out of the home, and significant income loss. This is because men continue to earn a substantially higher income than women. It is estimated that in a dual earning marriage, the husband earns approximately two thirds of the household income. (Amato 1998; Eichler 1990-1991; Abella 1984) This is in part because men earn higher wages, and in part because women are less likely to work full time because of childcare responsibilities. Not only, but in a country where there is no national child care program, the responsibility for children restricts the single-mother’s job opportunities, or makes working outside the home
unfeasible altogether. Children pay a large toll for their parents' divorce, as they face a substantial increase in poverty and economic insecurity as a consequence of their fathers' departure from the family unit. Although many of the barriers to women have been lifted, our society is still gendered, and women continue to be at a financial disadvantage.

One reason (of which there are many) for the economic insecurity of children stems from the fact that in cases where there has been a marriage breakdown, child support awards have not been high enough. If paid at all, payments have been irregular, and often, not paid in full. This contributes to the rising poverty rates of single-mother families. (Zweibel 1993) Studies indicate that children living in single-mother families are less successful in adulthood than their counterparts who grew up in a two parent family home. This is often a consequence of living in a low income and economically unstable home during childhood. (Garfinkel et al 1994; Eichler 1990-1991)

Until very recently, child support awards were left to the discretion of the individual judge. They were characteristically inconsistent, unfair, and too low. Conflict between parents over the amount of support were widespread, and, as is the case with all conflict between parents, this had negative impacts on the children involved. An increasing reliance by women and children on the state welfare system was a natural consequence. All these elements combined to create a very bleak reality, which was ultimately the impetus for a major reform of child support law in Canada. In 1990, the Department of Justice announced the creation of an intergovernmental working group to establish the feasibility of introducing child support guidelines that would be applied across Canada,
and would establish set amounts of support based on the income of the non-custodial parent. On May 1, 1997, the Federal Child Support Guidelines were introduced as regulations of the Federal Divorce Act. The stated purpose of these guidelines was to standardize support awards, reduce conflict between parents over amounts of support, and to raise the overall amount of support awards. This was also an attempt to reduce the impoverishment of women and children. Furthermore, by raising the amount of support awards to be paid by fathers, presumably, welfare payments to single-mothers would decrease, the fathers resuming financial responsibility that had fallen to the state.

Fathers have historically played the role of family breadwinner and provider. As has been discussed, although women have entered the workforce, they do not earn as much as men. As such, men have remained the primary breadwinners. The importance of their financial contribution to the family, even when they no longer reside with their children, has been well documented. (Amato 1998; Furstenberg 1998) Less has been studied about the financial contributions of stepfathers post separation. It is clear, however, that remarriage is one way out of the poverty women and children so often face after marriage breakdown. (Robinson, Smith 1993; Coleman 1995) The fact that women are still dependent financially on men is a sign of a society that has not achieved equality.

The post-separation relationship between stepparents and their stepchildren is an important area to study, because the number of stepfamilies in Canada is rapidly growing. (Juby, Le Boudais 1998) The highest incidence of divorce has been found to occur with

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3 R.S.C. 1985, c.3 (2nd Supp)
second marriages. (Dumas 1990:28) Combined, this means that there will continue to be a growing number of stepfamily separations in the coming years. While the number is predicted to steadily rise, (Juby Le Bourdais 1998) it has currently been estimated that approximately 4.3 % of all children living in a two parent household in Canada live with a stepparent. (Beaujot 2000) This is ultimately a fairly low number, which suggests that if obligating stepparents post separation to pay child support awards is looked at as a solution to child poverty, it should be done with caution.

Legislative History

Family law has been somewhat slow to reflect the dramatic social changes which have taken place over the last half century. (Harvision Young 1998) Recent changes to existing legislation, and the creation of new Acts altogether, including the Divorce Act 1985, Ontario’s Family Law Act,⁴ and the Federal Child Support Guidelines, represent legal attempts to reflect the current social reality. These current legislative efforts have uniformly attempted to put ‘the best interests of the child’ at the centre of all matters concerning the family, and the individual responsible to support the family rather than the state.

The possibility of stepparents being in the position to pay child support after separation from the biological parent of the children has been contemplated by the law since as far back as the Divorce Act 1968. S. 2(a) of that act read:

⁴ There are similar Acts across the provinces and territories
“child” of a husband and wife includes any person to whom the husband and wife stand *in loco parentis* and any person of whom either of the husband and wife is a parent and to whom the other of them stands *in loco parentis.*

The term *in loco parentis* is a nineteenth century notion, meaning, ‘in the place of the parent,’ that was primarily used in tort and trust law. This doctrine is described by Diduck as a “creature of 19th century patriarchy [that] evolved during a time when it was a morally offensive notion for a man to be held responsible for another man’s child.” (Diduck 1990) A person intentionally entered into a situation where he stood *in loco parentis* to a child, and as such, bore certain duties with respect to that child. Such a union was based entirely on the intention of the adult, who could unilaterally withdraw from the relationship, and all obligations attached. The *in loco parentis* doctrine has been described as having “its roots deep in history” which “carries with it connotations from the past.”

In the *Divorce Act 1985*, the wording was altered slightly, replacing the term “*in loco parentis*” with the words, “*stood in the place of a parent*”.

Section 2 of the Federal Divorce Act states:

(1) “child of the marriage” means a child of two spouses or former spouses who, at the material time,

(a) is under the age of sixteen years

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5 *Divorce Act 1968*, Section 2(a)  
6 See *Re Spring and Spring* (1987), 61, O.R. (2d) 743 at 748  
7 R.S.C., 1985, c.3 (2nd Supp.)
(b) is sixteen years of age or over and under their charge but unable, by reason of illness, disability or other cause, to withdraw from their charge or to obtain the necessaries of life:

(2) For the purposes of the definition “child of the marriage” in sub-section (1), a child of two spouses or former spouses includes

(a) any child for whom they both stand in the 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.

It is arguable that in replacing the Latin with the English, Parliament intended to reject the common law notion of in loco parentis and the historically rooted concepts it implied therein. (Diduck 1990)

The Family Law Act is the Province of Ontario’s legislation governing family relations, created in conjunction with the Federal legislation. Section 1 of the Act defines “child” as including “a person whom a parent has demonstrated a settled intention to treat as a child of his or her family…”

The Family Law Act replaced the Family Law Reform Act. The statutory definition of "child" and "parent" first appeared in Ontario legislation as section 1(a) and (e) of the act, providing:

1. In this Act.

(a) "child" ... includes a person whom the parent has demonstrated a settled intention to treat
as a child of his or her family ...

(e) "parent" means the father or mother of a child, and includes a person who has demonstrated a settled intention to treat a child as a child of his or her family ...

While the definition of "child" has remained substantially the same, there has been a change in the definition of "parent". The words, "means the father or mother of the child", contained in section 1(e) of the repealed Act of 1978, are not found in the Family Law Act.

While there is a difference between the legislature in theory, in practice, there is little difference in how Judges determine whether or not a person acted as a parent to a child in question.

Interestingly, until the amendments to the Act of 1997, s.33(7)(b) of the Family Law Act read:

the obligation of a natural...parent outweighs the obligation of a person who is not a natural parent.

Many cases in Ontario where stepparents were arguing against having child support obligations imposed on them, applied this section of the Family Law Act to argue their case. Legislatures repealed this provision when the Federal Child Support Guidelines were enacted.

Section 5. of the "Guidelines" reads:

Spouse in place of a parent—Where the spouse against whom an order for the support of a child is sought stands in the place of a parent for a child or the parent is not a natural or adoptive parent of the child, the amount of the order is, in
respect of that parent or spouse, such amount as the court considers appropriate. Having regard to these guidelines and any other parent's legal duty to support the child.

While the Divorce Act does not differentiate between the parental obligations of a biological or adoptive parent and a person who stands in the place of a parent, section 5 of the guidelines is a special provision which does just that. Section 5 reserves the determination of the amount of support to the discretion of the presiding judge in cases involving parents standing in the place of the biological or adoptive parent. This special provision indicates that the law still does not see stepparents in the same way as biological or adoptive parents.

Orientation in the Case Law
A substantial number of cases have been tried under the above legislative provisions. While the case study below looks exclusively at Ontario, the case law on this topic spans the provinces and territories of Canada. In this section, I will briefly outline the major trends in the case law that address the stepparent's legal obligation to the children of his or her spouse, after marriage breakdown. Not all of the cases discussed in this section come from Ontario. Their importance in developing the case law is such that any study of this nature would be incomplete without reference to them. The vast majority of cases on post-separation relationships between stepparent and stepchild have been tried over the last two decades. Before the recent Supreme Court decision in Chartier v. Chartier, which came down in March, 1999, there was a spectrum of decisions, best represented by two cases; the 1989 case of Carignan v. Carignan10, on the one end, and the 1992 case

10 (1989) 61 Man. R. (2d) 66
Andrews v. Andrews,\textsuperscript{11} on the other. Carignan supported the view that a stepparent can unilaterally withdraw from his in loco parentis relationship with the children of his marriage. As a decision from Manitoba’s Court of Appeal, this case bore considerable weight. The decision was based on a historical review of the meaning of the in loco parentis doctrine, as being dependent strictly on the intention of the adult involved. Carignan was based on other considerations as well. The judgement contemplated the policy implications of imposing a legal obligation on a person in loco parentis. Of most concern to the court was that such a legal obligation could deter someone from being generous in the first place, which would arguably not be in the best interests of the children involved. Justice Huband, in Carignan stated

To impose the legal obligation to continue might deter many a person from being generous in the first place, which is self-defeating from the standpoint of the interests of the child. It seems to me axiomatic that the more difficult it is to terminate the relationship in loco parentis, the less likely it will be for people to enter into the relationship in the first place.\textsuperscript{12}

Another reason underlying the Carignan decision was the consistency this approach offered to the otherwise inconsistent and intuitively unfair circumstance where generous, kind stepparents are forced to continue their generosity indefinitely when stepparents who never contributed to their stepchildren’s well-being can simply terminate the relationship at their whim.

On the other end of the spectrum is Andrews, where the court came to the opposite conclusion of Carignan, stating that once a relationship of in loco parentis has been

\textsuperscript{11} (1992) 97 Sask. R. 213
\textsuperscript{12} Carignan, supra note 8
established, the adult cannot unilaterally terminate his/her relationship with the child and all the responsibilities and obligations contained therein. A case that follows the decision in *Andrews,* and that was considered the “high watermark” (Harivision Young 2000) prior to the most recent Supreme Court decision on the matter, is *Theriaux.* In this case, Justice Kerans wrote:

> Our society values parenthood as a vital adjunct to the upbringing of children. Adequate performance of that office is a duty imposed by law whenever our society judges that it is fair to impose it. In the case of the natural parent, the biological contribution towards the new life warrants the imposition of the duty. In the case of a step-parent, it is the voluntary assumption of that role. It is not in the best interests of children that step-parents or natural parents be permitted to abandon their children, and it is their best interests that should govern. Financial responsibility is simply one of the many aspects of the office of parent. A parent, or step-parent, who refuses or avoids this obligation neglects or abandons the child. This abandonment or neglect is as real as would be a refusal of medical care, or affection, or comfort, or any other need of a child.  

In *Chartier v. Chartier,* the Supreme Court unanimously decided that a stepparent who stood in the place of a parent during the relationship, cannot unilaterally withdraw from such a relationship. Post separation and divorce, a stepparent is now required to pay child support to all 'children of the marriage' with whom there was a parent-child type relationship.

*Chartier* has been lauded for its child-centred approach and for using a purposive and contextual interpretation of the meaning of contemporary Canadian families. (Harivision

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14 See S. 2(1) of the Federal Divorce Act [R.S.C., 1985, c.3 (2nd Supp.)] as laid out below.
Young 2000) Harvision Young writes. ‘‘Pre-Chartier law failed to reflect the changing forms and needs of modern day families. Today, however, it is clear that the law should seek to endorse broader conceptions of family that encourage the continuation of nurturing and supportive relationships, particularly with respect to children.’’ (Harvision Young; 2000)

The Court declared that once a parent-type relationship was established between a stepparent and a ‘‘child of the marriage,’’ one cannot withdraw from it, just as one cannot withdraw from one’s obligations as a biological parent (except in the case of putting a child up for adoption). Such a relationship cannot be qualified as to duration, or in any way conditional. The Court further suggested that ‘‘the stepparent, at this point, does not only incur obligations. He or she also acquires certain rights, such as the right to apply eventually for custody or access.’’

The decision outlined an objective test taking all relevant factors into account in order to determine whether a step parent did indeed stand in the place of a parent to a child. Intention, both as formally expressed and implied through actions, is one of the relevant factors, but not the only one, as had been suggested in Carignan. The decision reads, ‘‘the actual fact of forming a new family is a key factor in drawing an inference that the stepparent 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 are enumerated as including, but not limited to,

15 Chartier at paragraph 39
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.

This legal test has come to be one of the more difficult issues arising from the case, as trial judges are faced with making determinations as to whether the criteria for a "child of the marriage" have been met.\(^\text{17}\)

The idea that obligating a stepparent to pay child support might deter a stepparent from being generous in the first place was rejected by Justice Bastarache altogether. The Court suggested that it may not be in a child's best interest to form a close bond with the kind of person who could be so easily deterred. The problem with which the court struggled in Carignan, of the generous stepparent becoming legally obligated toward the child while the disinterested stepparent is released of any duty, was left unresolved.

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\(^{16}\) Intention was linked to the 19\(^{\text{th}}\) Century notion of *in loco parentis*, as described by Alison Diduck, supra. note 6

While *Chartier* has been considered a landmark decision from a children’s rights perspective, and while it is tempting to see this decision, which came down on the eve of the new millenium, as the culmination of almost three decades of gaining awareness of the rights of children, the case study below reveals that the ideas articulated in *Chartier* have been voiced in similar cases since the early 1970s. What makes *Chartier* so important, is that this time the Supreme Court articulated them. Whether or not this decision is as laudable as it has been described, will be explored below.

**Literature Review**

There is a surprising gap in literature on the topic of stepparental duties to their spouse’s children post separation, however, some significant studies on the topic have been conducted. In *Changing Families. Changing Responsibilities: Family Obligations Following Divorce and Remarriage*, (1999) Authors Ganong and Coleman conducted a study investigating attitudes about fathers’ and stepfathers’ obligations to child support. A questionnaire was sent to approximately 500 random homes in the state of Missouri. Results from this study are revealing. When asked whether stepfathers should contribute to special financial needs of their stepchildren, respondents believed that they should, dependent on financial ability to pay, sharing a residence, and, to a lesser degree, the custody arrangement. But what was most clear and sharply contrasting with the attitudes toward the father’s and stepfather’s continued financial responsibility to his children after divorce, was that the stepfather was immediately freed from financial responsibility for his stepchildren, upon divorce. The perceived lack of financial responsibility that a divorced stepfather has for his former stepchildren was the clearest consensus found in
the study. Respondents considered the stepfather who continued to pay support for his former stepchildren post divorce to be naïve and foolish. This notion that a stepfather ought to take some financial responsibility for his stepchildren was again evidenced in further studies by these authors, but again, only while married. Noteworthy, is that twice as many respondents believed a stepfather to be obligated to contribute financial support to his stepchildren as did those who were asked about a stepmother’s responsibilities to her stepchildren. This indicates a holdout of the traditional view of the male as provider.

Kaplan, Lancaster, and Anderson conducted a study of men’s investment in parenthood, through testing a representative sample of men from Albuquerque, New Mexico. (1994) The research consisted of two complementary interviews, a short interview administered to a total of 7,100 respondents, and a longer interview administered to a subset of the men in the short interview sample, totaling 1,250. A clear result from this study was the evidence that biological paternity is relevant to male parental investment. The investment in a partner’s child is contingent on a continuing relationship with that partner, as, according to the men interviewed, investment in a child ceases after they stop living with the child’s mother.

Other sociological studies of stepparenting do not speak specifically to this issue of child support post separation, although the nature of steprelationships are examined at length. David Popenoe’s controversial and provocative article “The Evolution of Marriage and the Problem of Stepfamilies: A Biosocial Perspective” (1994) professes that stepparenting is inherently problematic because adults have an inborn tendency to invest
greater resources in children to whom there is a genetic tie than in others. Popenoe asserts that "we, as a society should be doing much more to halt the growth of stepfamilies." While he does not mention it specifically, it can be surmised that the idea of obligating a stepparent to pay child support to his or her stepchildren post separation would be antithetical to our biological impulses.

Others, such as Glenn (1994), Kurdek (1994) and Coleman (1994) disagree with Popenoe, criticizing his research and challenging his sociobiological assertions. For example, Coleman discusses the phenomenon described by Furstenberg (1988) as child swapping, whereby fathers transfer their parenting from their biological children to their stepchildren when they remarry. While the reality of child swapping is cause for concern, it also contradicts the sociobiological theory expounded by Popenoe.

Hetherington and Clingempeel's longitudinal study of stepparental behavior found the most common stepfathering style to be disengaged parenting, characterized by low levels of involvement and rapport, and a lack of control, discipline, and monitoring of the stepchild's behavior and activities. (1992)

On the legal front, most of what has been written comes from a narrowly focused child-centred perspective. Two articles that represent this view were written following Carignan, and both articles sharply criticize that judgment, pointing to faults in the judicial reasoning and negative implications of the decision. In "Carignan v. Carignan: When is a Father not a Father? Another Historical Perspective," Alison Diduck considers
the history of the *in loco parentis* relationship, and its inapplicability to 20th (let alone 21st) century family law. As discussed above, the Manitoba Court of Appeal reviewed the issue from the historical perspective and found that the traditional common law doctrine of *in loco parentis* required a specific interpretation of the relevant section of the Divorce Act. Diduck explains that the historical interpretation, as it related to tort law and trust law, was seen by the Manitoba Court of Appeal, as the only "true" interpretation and "ignores the contingency of history and the relevance of the time and place from which one digs the roots." (Diduck 1990)

Keith B. Farquhar, is the author of the second major article written in the aftermath of *Carignan*. The article, "Termination of the *in Loco Parentis* obligation of Child Support." (1990) examines the judicial reasoning in *Carignan*, namely, that an obligation established by an act of will ought logically to be revocable by an act of the same quality. Farquhar looks to relevant Canadian legislation and jurisprudence and concludes that the interests of children outweigh the importance of individual autonomy in this matter.

James McLeod writes from the other perspective. He acknowledges the courts’ efforts to focus matters in family law around the best interests of the child, but writes, "Although the court may be looking at this issue as child related, spouses and the general public are unlikely to do so. Rather, while accepting that the child needs to be looked after, the issue is generally regarded as one involving fairness between the spouses." (1986) McLeod goes on to suggest that the relationship that exists between a spouse and the children of the other spouse is different from the relationship that exists between children
and their natural parents. The author suggests that a distinction be drawn between those stepparent child relationships that have developed to the point that they are indistinguishable from the kind of relationship that natural parents and their children share, emotionally and financially, and those relationships that are centred in "maintaining spousal peace without any independent commitment to the child."

Ramsey and Masson's "Stepparent Support of Stepchildren: A Comparative Analysis of Policies and Problems in the American and English Experience," (1985) provides a thorough analysis of the downside of automatically enforcing legal obligations on stepparents. This article embodies the traditional assumption that families involve two parents only. As such, the authors write, "a legal framework of rights and duties on stepfamilies is that the framework may not be suitable for many because of the diversity of stepfamily arrangements." While acknowledging that the same could be said for any regulation in family law, the authors continue, the "adult-child relationship in the stepfamily is more complex because of the existence of the natural parent external to the stepfamily." (1985)

More recently, Alison Harvision Young has written on the issue of stepparental responsibilities following the Chartier decision. The article is laudatory of Chartier, which argues that the decision marks a move towards a less exclusive vision of the family. In her article entitled "This Child Does Have 2 (or More) Fathers...Step-parents and Support Obligations," Harvision Young notes that the Supreme Court, in holding that a stepfather cannot unilaterally terminate his status as standing in the place of a parent,
has recognized the possibility that a child may have two (or more) fathers for the purposes of support obligations. In the past, Harvison Young explains, family law tended to exclude players from the family circle who were not the biological parents of children, rather than trying to foster and encourage the continuation of nurturing relationships between adults and children, other than their biological parents. As such, Chartier is groundbreaking. This article situates the Chartier decision within a broader examination of the norm of the exclusive family, exploring the Canadian and comparative contexts.

Finally, an important article on family law reforms written by Margrit Eichler (1990-1991) explores the limits of family law reform and why it is important to be cautious of these reforms. In “The Limits of Family Law Reform, or, The Privatization of Female and Child Poverty,” Eichler reveals many concerns with family law reform, namely, that the changes reach a very small percentage of Canada’s impoverished women and children. As the state relies on the individual responsibility model, whereby the individual members of society are called upon to look after one another, Eichler points to inherent constraints, i.e., a lack of resources. By putting the burden of responsibility on the shoulders of the individual, a major reform of the entire social system is diverted.

Research Methodology

The interplay between law and sociology is multi-layered. Sociology informs judicial decision making, and judicial decisions can set limits on sociological changes. It is social movements which inform the law, rarely does this happen in the reverse order. It is therefore useful to study legal decisions, as they indicate, on some level, the extent to
which social movements have been accepted by the more conservative institutions of society.

As indicated above, this study involves an analysis of legal responses to societal change. In tracing the evolution of judicial decisions on the issue of stepparental responsibilities, cases have been canvassed and selected from the 1970s, 1980s and 1990s. The cases that will be examined have been purposively selected from all of the cases that have occurred on this topic in Ontario over the past thirty years. In total, approximately 150 reported cases in Ontario have dealt with the financial responsibilities of the step parent vis-à-vis their stepchildren upon dissolution of the marital relationship. Of this pool of cases, thirty have been selected for examination in this study – ten from each of the three decades.

In trying to appraise the facts of each case that would be relevant to the final judgement, the following criteria were examined in each case:

(a) whether or not the couple were legally married;
(b) the length of the relationship at issue;
(c) whether or not the children were receiving support payments from their biological parent and if that parent was around in the first place;
(d) the number and age of the children in question.

Certain hypotheses were considered: The courts would be more reluctant to establish stepparental obligations in cases where the couple had not legally married, and this would
become less evident as the decades progressed; The length of the relationship would be a predictor of a stepparent’s obligation to the children, the shorter the relationship, the less likely the obligation would be enforced; If the children were already receiving financial support from their biological parent, the stepparent would be relieved of support, i.e., the underlying issue is financially supporting children, and not the maintenance of nurturing relationships, as suggested by Harvision Young 2000: The younger the children were when the stepparent moved in, the greater the likelihood that s/he would be obligated to pay support.

An attempt was made, in the case selection, to choose those cases that represented the general trends in the majority of cases. Other general framework criteria that were used included:

i) Cases that informed future jurisprudence;

ii) Cases that indicated societal or legal change

iii) Cases that contradicted previous jurisprudence

iv) Cases that generated new insight

In embarking upon this research, the initial intent was to trace an evolving body of law as it responded to rapid societal change. Perhaps because of this rapid change, the expectation that the jurisprudence would follow a linear, precedent-based trajectory has not proven accurate. Over the last three decades, the law has been anything but clear in its decisions regarding the legal obligations of stepparents. The law in this area has been contradictory.
For logistical purposes, the study has been confined to cases from Ontario. Placing this limit on the pool of cases is somewhat arbitrary, as the jurisprudence has developed on a national rather than provincial level. Despite this, the fact that most of the key issues could be found in Ontario cases, as well as the need to 'draw the line' have resulted in confining the research to Ontario.
Cases Studied

The 1970s

<table>
<thead>
<tr>
<th>CASE Name &amp; Year</th>
<th>Legally Married</th>
<th>Length of Relationship</th>
<th>Biological Father Around?</th>
<th>Number and Age of Children Involved (when began cohabiting)</th>
<th>Final Outcome</th>
<th>Times mentioned in following Jurisprudence</th>
</tr>
</thead>
<tbody>
<tr>
<td>Bouchard v. Bouchard (1972) 3.O.R. 873</td>
<td>Yes</td>
<td>Marriage lasted 11 months</td>
<td>Not mentioned</td>
<td>1 boy age 11</td>
<td>Not in loco parentis: criteria used: length of marriage, involvement with child, child's perspective</td>
<td>TOTAL 6</td>
</tr>
<tr>
<td>Re O'Neil and Rideout (1975) 7 O.R. (2d) 117</td>
<td>No</td>
<td>12 years</td>
<td>Not mentioned</td>
<td>2 children and 2 more together</td>
<td>In loco parentis: Stepfather did not treat biological children differently</td>
<td>TOTAL 38</td>
</tr>
<tr>
<td>Waters v. Nicholls (1979) 12 R.F.L.(2d) 342</td>
<td>No</td>
<td>4 years—3 years before birth of child</td>
<td>Not mentioned</td>
<td>1 boy From pregnancy until one year</td>
<td>Not in loco parentis: did not provide financially</td>
<td>TOTAL 1</td>
</tr>
<tr>
<td>Belanger v. Belanger (1978) 1 F.L.R.A. c. 245</td>
<td>Yes, married one month after birth of child</td>
<td>9 months</td>
<td>No</td>
<td>1 boy—pregnancy to infancy</td>
<td>In loco parentis—parents had legally married when mom pregnant, treated child as his own, financial support not considered</td>
<td>TOTAL 1</td>
</tr>
<tr>
<td>Case</td>
<td>Relevant</td>
<td>Duration</td>
<td>Parental Status</td>
<td>Child Description</td>
<td>Notes</td>
<td></td>
</tr>
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</tr>
<tr>
<td>Barlow v. Barlow</td>
<td>Yes</td>
<td>7 years</td>
<td>No</td>
<td>1 child, age 1 year when married</td>
<td>In loco parentis: Treated step child as own. Financially and emotionally, did not treat biological child differently</td>
<td></td>
</tr>
<tr>
<td>Whitin v. Whitin</td>
<td>No</td>
<td>Does not say</td>
<td>Biological father trying to vary support of biological children, because supporting stepchildren in new family</td>
<td>2 stepchildren. 2 biological children ages not mentioned</td>
<td>Not found to be in loco parentis to his stepchildren. Not clear financially supported, or caregiving, suspicious of intentions</td>
<td></td>
</tr>
<tr>
<td>Snedker v. Snedker</td>
<td>Yes</td>
<td>“Short period” of cohabitation</td>
<td>Yes, Biological father paying support, regular access</td>
<td>1 boy, age 13</td>
<td>Not in loco parentis. Child's perspective. Calls him “Tony”; support from natural father</td>
<td></td>
</tr>
<tr>
<td>Re MacDonald and Macdonald</td>
<td>Yes</td>
<td>3 year relationship</td>
<td>No support from Biological father (no order for support sought against him either)</td>
<td>1 child age not mentioned plus one child together</td>
<td>Not in loco parentis though supported child financially—not enough. Did not act as parent.</td>
<td></td>
</tr>
<tr>
<td>Schwartz v. Brown</td>
<td>Yes</td>
<td>“very short period of time”</td>
<td>No</td>
<td>1 child age not mentioned</td>
<td>Not ordered to pay support. A deal had been made not to ask for support, and ex-husband does not have money anyway.</td>
<td></td>
</tr>
<tr>
<td>Barham v. Barham</td>
<td>Yes</td>
<td>65 days</td>
<td>No</td>
<td>1 child age not mentioned</td>
<td>Not in loco parentis, as parental behaviour not intended as “direct benefit” to child, but rather, for harmonious marital relation</td>
<td>TOTAL 1</td>
</tr>
<tr>
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</tr>
</tbody>
</table>

**Understanding the Results:**

Of the ten cases, seven did not require the stepfather to pay support. Some criteria used to render these decisions stand out, namely, the significance of a legal marriage, the length of the relationship, and financial considerations linked with whether or not a biological father was on the scene.

**Cases where support obligation denied**

**Bouchard v. Bouchard**

- Focus on the stepparent’s financial investment in the child
- General lack of interest in the child
- Short marriage

**Waters v. Nicholls**

- Couple was not legally married.
- Father’s failure to provide for the child financially was sole reason not considered to be in loco parentis.
- Treated child as own from birth
- Stepfather’s name on Statement of Birth.
- Presented child as his to the public
- Maintained contact with the child when couple separated.

**Snedker v. Snedker,**

- Child was already receiving support from his biological father;
- No agreement between the parties that the stepfather would assume responsibility;
- Child referred to his stepfather by his first name, rather than as “dad”.
- Couple had been married for only a “short period.”
Re Macdonald and Macdonald

- Financial provision for a child is not "necessarily sufficient" evidence to determine if a person stood in loco parentis.
- General interest in the child's well being need also be established.
- Biological father could be called upon for support
- Lack of support from biological parent noted

Barham v. Barham.

- Marriage lasted total of 65 days.
- Difference between a "settled intention" to stand in the place of a parent, and a stepparent's motivation to maintain a harmonious relationship with his spouse, which involves being active in the lives of the spouses' child.
- Parental behaviour not intended as "a direct benefit" to the child.

Whiten v. Whiten

- stepfather tried to prove his in loco parentis position vis-à-vis his step-children, in order to vary a support order for his biological children.
- Stepfather attempting to prove that can no longer afford child support to biological children, as standing in loco parentis to his stepchildren
- First wife and children were forced to apply for Welfare
- Court found stepfather did not prove in loco parentis to stepchildren

Cases in which support obligation enforced

Barlow v. Barlow,

- Stepfather provided financially for the child,
- Did not treat biological child differently
- The child used the stepfather's name for all matters including school registration.
- Cannot unilaterally terminate in loco parentis once established
- Objective test considered: if objectively act as a parent, up to parent to disprove

Belanger v. Belanger

- Met while woman pregnant, married one month after birth of child
- Court found that marriage "demonstrated a settled intention" to treat the child as his son.
- Stepfather's surname was the child's registered birth surname,
- Stepfather distributed cigars at birth
- Referred to the child as his son.
- Financial support of child did not influence the Court.
**Re O'Neil and Rideout**

- Length of relationship
- Did not treat biological children differently

### Summary: 1970s cases

<table>
<thead>
<tr>
<th>Number of cases where:</th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>Financial considerations (in part) determinate:</td>
<td>4</td>
</tr>
<tr>
<td>Financial considerations said to <em>not</em> be determinate:</td>
<td>2</td>
</tr>
<tr>
<td>Legal marriage mentioned as affected outcome:</td>
<td>1</td>
</tr>
<tr>
<td>Age of child/ren determinate:</td>
<td>0</td>
</tr>
<tr>
<td>Length of relationship (in part) determinate:</td>
<td>4</td>
</tr>
<tr>
<td>Role of biological parent as determinate:</td>
<td>1</td>
</tr>
<tr>
<td>Role of biological parent as <em>not</em> determinate:</td>
<td>0</td>
</tr>
</tbody>
</table>

### The 1980s

<table>
<thead>
<tr>
<th><strong>Herbison v. Herbison</strong> [1981] O.J. No. 1787</th>
<th>Yes</th>
<th>Cohabited 2 years, three months of which were legally married</th>
<th>Yes, as well as regular access</th>
<th>2 children ages 2 and 4</th>
<th>In loco parentis: for purposes of support, can have more than one father. Stepfather cared for children</th>
<th>TOTAL 0</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Ogden v. Anderson</strong> [1983] O.J. No. 659</td>
<td>No, had &quot;contemplated marriage&quot;</td>
<td>2 ½ years</td>
<td>No</td>
<td>1 child age not mentioned</td>
<td>Not in loco parentis, child did not consider stepfather as parent, did not act like parent, treated his biological child differently</td>
<td>No record Obtainable</td>
</tr>
<tr>
<td><strong>McCarthy v. McCarthy</strong> [1984] O.J. No. 787</td>
<td>Yes</td>
<td>12 years, 8 of which were legally married</td>
<td>Mother remarried natural father after divorce with second husband</td>
<td>2 children ages 6 and 8 at time of marriage</td>
<td>In loco parentis position cannot be abrogated at will. Continued despite new living arrangement</td>
<td>No record obtainable</td>
</tr>
<tr>
<td>Case</td>
<td>Biol. Fa</td>
<td>Biol. Fa's role</td>
<td>Children</td>
<td>In loco parentis</td>
<td>Duration</td>
<td>Result</td>
</tr>
<tr>
<td>----------------------------</td>
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<td>------------------</td>
<td>----------</td>
<td>-----------------------------------------------------------------------</td>
</tr>
<tr>
<td>Tucker v. Tucker (1984)</td>
<td>Yes</td>
<td>No</td>
<td>3 children plus 1 biological together</td>
<td>In loco parentis cannot be terminated at will. Continues after relationship ends.</td>
<td>6 years</td>
<td>TOTAL 21</td>
</tr>
<tr>
<td>Primeau v. Primeau (1986)</td>
<td>Yes</td>
<td>Father purposefully excluded until after separation</td>
<td>1 child</td>
<td>In loco parentis cannot be terminated at will.</td>
<td>6 years, 4 of which were legally married</td>
<td>TOTAL 20</td>
</tr>
<tr>
<td>Carson v. Carson (1986)</td>
<td>Yes</td>
<td>Yes</td>
<td>2 children</td>
<td>In loco parentis to one child only, as had acted toward only one of the children as a parent</td>
<td>1 1/3 years</td>
<td>TOTAL 2</td>
</tr>
<tr>
<td>Spring v. Spring (1987)</td>
<td>Yes</td>
<td>1 father paid one lump sum, the other father never paid support</td>
<td>2 children, aged 8 and 1 1/2 at time of marriage</td>
<td>In loco parentis, acted as father, cannot unilaterally terminate</td>
<td>3 years</td>
<td>TOTAL 24</td>
</tr>
<tr>
<td>Hart v. Hart (1987)</td>
<td>Yes</td>
<td>Biological father excluded from lives of children in all ways, by request of mother and stepfather</td>
<td>2 children ages 6 and 4 at time of marriage</td>
<td>In loco parentis not terminated, but biological father should be required to contribute</td>
<td>11 years</td>
<td>TOTAL 13</td>
</tr>
<tr>
<td>Copeland v. Copeland (1988)</td>
<td>Yes</td>
<td>No</td>
<td>1 child age 2 at time of marriage</td>
<td>Mother has right to claim child support from either or both fathers. No question that stepfather stood in loco parentis</td>
<td>8 years</td>
<td>TOTAL 4</td>
</tr>
<tr>
<td>Pender v. Pender (1989)</td>
<td>Yes</td>
<td>No</td>
<td>2 children ages not mentioned</td>
<td>Limited role as stepfather, therefore, will pay support for limited period</td>
<td>5 years</td>
<td>TOTAL 3</td>
</tr>
</tbody>
</table>
Understanding the results

The 1980s

There was a shift in this decade, whereby the majority of cases (nine out of ten) of the stepfathers were found to have stood *in loco parentis* to the children involved, and thereby were obligated to pay support. The criteria that influenced the judicial decision makers in the previous decade did not bear the same weight on these cases. In particular, the whereabouts of the biological parent did not impact whether or not the stepfather was obligated to pay support. Also, the financial responsibility of the stepfather was no longer emphasized as a crucial indicator of having stood in the place of a parent.

Cases in which support obligation denied

*Ogden v. Anderson*

- Three rationales for the provincial legislature’s broadening of the definition of ‘parent’:
  - First rationale tied to idea that support law is designed to encourage the support of children by private individuals rather than the state, i.e., to relieve as much as possible the state’s responsibility for the support of children.
  - Under first rationale, definition of parent meant to be interpreted broadly.
  - Second rationale: Once a dependency relationship is established between a child and an adult, expectations are engendered in the child, which must be ‘carried forward and turned into an enforceable legal obligation.’
  - Under second rationale idea that ‘as time passes and the new relationship with the child becomes a primary one, then the opportunity to seek financial support from the biological parent … in all likelihood starts to diminish.’
  - Biological parent thought to be replaced by the new person with whom a dependency relationship is established.
  - Third rationale, no longer functioning under classic definition of family, and must support other viable, functional, family forms
  - Stepfather not required to pay support:
  - Not involved in making major decisions for, or disciplining the child.

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18 See the above section on legislative history.
- Child did not consider him a father
- treated biological child differently.
- Couple not legally married

Cases in which support obligation enforced

**Herbison v. Herbison**
- legally married, although for short period
- Stepfather fulfilled parental duties: babysitting, preparing meals, bathing, disciplining, and tucking the children in at night.
- Brought stepson to his hockey games on occasion
- Children called stepfather “daddy”
- Biological father played active role in their lives, and paid child support regularly.
- Both men played father role to the children.
- Intention to treat the children as own cannot be revoked.

**McCarthy v. McCarthy**
- challenges provision of the Divorce Act that allows for multiple debtors for the same child.
- Stepfather sought to “terminate” order for support of children of ex-wife
- After second divorce, mother remarried biological father of children
- both biological parents and children were residing together.
- Stepfather still found had no right to terminate his support
- Stepfather could bring new motion to have support obligations varied, or rescinded.

**Tucker v. Tucker**
- Stepfather did not deny had acted as parent
- Could not terminate parental position with separation.

**Primeau v. Primeau**
- Acted in all ways as parent to stepdaughter throughout marriage.
- Involved in all day to day activities with the child, including education and discipline.
- Whether or not natural father on the scene irrelevant to question of support
- Court recognizes relationship can be ended only if child withdraws.

**Carson v. Carson**
- Stepfather found to be in loco parentis to his stepson, but not to his stepdaughter.
- Stepdaughter spent most of her time with her grandparents and ignored the stepfather
• "(a) parental relationship is a mutual affair."

Spring v. Spring,

• Upon separation, stepfather did not maintain contact with the children to whom he had acted as a father.
• Judge listed material circumstances to be included when assessing whether or not a person had a settled intention to treat a child as one of the family:
  • Place where the child lived;
  • Financial support of the child;
  • Interest taken in the child's welfare;
  • Responsibilities assumed by the parties for the care of the child, including matters of discipline.
• Amount of time treated child as own does not matter
• Once intention found, cannot escape support obligation.

Hart v. Hart

• Mother had two children in common law relationship
• Father supported children post separation.
• When mother married stepfather, entered agreement with biological father to stop payments to children and absent himself from their lives, in favour of stepfather.
• Mother and stepfather separated 11 years later.
• Stepfather did not deny paternal role, but moved to have biological father added to also provide support.
• Judge considered respective ‘historical contribution’ to the development of the children, arguing that he who contributes the most, has the most obligation to support.
• Stepfather ordered to contribute twice the amount of biological father, with the mother bearing the balance of the children’s costs.

Copeland v. Copeland

• The second husband tried to argue that wife should be trying to claim child support from biological father before turning to him.
• Did not deny paternal role toward child.
• Court found that mother has the right of claim of either, or both fathers

Pender vs. Pender

• Court found settled intention, but competing issues:
• There was no real bond between the husband and the children.
Stepfather financially supported the family for a short time during cohabitation;
Wife accepted husband's disappearance from the children's life.
The husband had 'meager resources'.
Court imposed only limited liability for a support for a period of two years six months.

### Summary: 1980s Cases

Number of cases where:
- Financial considerations (in part) determinate: {}
- Financial considerations said to not be determinate: {}
- Legal marriage mentioned as affected outcome: 2
- Age of child/ren determinate: {}
- Length of relationship determinate: {}
- Involvement of biological parent as determinate: {}
- Involvement of biological parent as not determinate: 4

### The 1990s

<table>
<thead>
<tr>
<th>Case</th>
<th>Legal marriage</th>
<th>Length of relationship</th>
<th>Involvement of biological parent</th>
<th>Not responsible to children, not discussed whether stood in loco parentis</th>
<th>Total</th>
</tr>
</thead>
<tbody>
<tr>
<td>Chevrier v. Chevrier (1990)</td>
<td>Yes</td>
<td>2 years</td>
<td>No</td>
<td>2 children ages not mentioned</td>
<td>3</td>
</tr>
<tr>
<td>Venekeren v. Venekeren [1990]</td>
<td>Yes</td>
<td>4 years</td>
<td>No</td>
<td>In loco parentis position was unilaterally terminated</td>
<td>8</td>
</tr>
<tr>
<td>Morrison-Pelletier v. Pelletier (1991)</td>
<td>Yes</td>
<td>6 ½ years</td>
<td>No</td>
<td>1 child from infancy</td>
<td>4</td>
</tr>
<tr>
<td>Dufault v. Cyr (1993)</td>
<td>No</td>
<td>5 ½ years</td>
<td>Not pursued by mother</td>
<td>2 children ages 8 and 11</td>
<td>0</td>
</tr>
<tr>
<td>Case</td>
<td>Was it a stepparent case?</td>
<td>Length of Cohabitation</td>
<td>Whether the biological father mentioned</td>
<td>Children</td>
<td>Support Required</td>
</tr>
<tr>
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<td>------------------------------------------------------</td>
</tr>
<tr>
<td>Siddall v. Siddall [1994] O.J. No. 2944</td>
<td>Yes</td>
<td>3 years, two of which were legally married</td>
<td>No</td>
<td>1 child, 1 ½ years old</td>
<td>Cannot unilaterally terminate <em>in loco parentis</em>, and stepfather &quot;had ability to pay&quot;</td>
</tr>
<tr>
<td>Prieur v. Prieur [1998] O.J. No. 5378</td>
<td>Yes</td>
<td>10 years</td>
<td>Biological mother mentally ill</td>
<td>2 children ages not mentioned</td>
<td>Child support required as stepmother had treated children as her own</td>
</tr>
<tr>
<td>Bell v. Michie (1998) O.J. No. 675</td>
<td>No</td>
<td>5 years</td>
<td>No</td>
<td>2 children ages not mentioned</td>
<td>Child support required, but limited to same length of time the couple cohabited</td>
</tr>
<tr>
<td>Bruvels v. Guindon [2000] O.J. No. 875</td>
<td>No</td>
<td>Disputed either 3 ½ months, or years, depending on whose story</td>
<td>Not mentioned</td>
<td>2 children ages not mentioned, but older</td>
<td>No evidence that acted as parent during relationship, not required to pay support</td>
</tr>
</tbody>
</table>

**Understanding the Results**

**The 1990s**

Six out of ten of the cases in this decade resulted in the stepparent’s legal obligation to pay child support. This decade saw some changes in the kinds of cases brought before the court. It saw one of the very few cases in which the *stepmother* was called upon to pay child support to her stepchildren as was the case in *Prieur* [1998] Presumably more of these such cases will come up in the future. Two cases out of the ten studied came to
similar conclusions to *Pender* (1989) requiring the stepfathers to pay time specific periods of support, relating to the length of the relationship. At the same time, this group of cases had at least one surprising throw back, where matrimonial fault was recognized as relevant to the question of child support (*Chevrier* 1990).

**Cases in which support obligation denied**

*Chevrier v. Chevrier*

- Judge allowed mother's adulterous behavior as cause of marriage break down to determine case
- Stepfather released from any duty towards the stepchildren.

*Vanekerken v. Vanekerken*

- Both children considered Mr. Vankeren to be their father.
- Stepfather present at birth of mother's second child.
- Court held, intention to treat a child as a child of the family could be unilaterally terminated.
- Mother's decision to cut off communication with stepfather helped prove termination.
- Also, Court stated that mother who biological father of younger child was, but had not attempted to seek support from him
- Judge further noted that there was no evidence that the biological father was incapable of paying support.

*Chartier v. Chartier* came down in March, 1999. Since *Chartier*, decisions have been markedly more consistent. The cases tend to follow a distinct pattern, and when the parent's intention to treat the child as one of the family is in question, the test laid out in *Chartier* is undertaken. The following case is representative of those that have followed *Chartier*:
*Bravels v. Guindon*

- Mother sought child support from her ex-common law spouse, arguing that he had stood in the place of a parent to the children.
- Evidence in this case did not overwhelmingly point in one direction or the other.
- Judge systematically embarked on an analysis of the case based on *Chartier*, listing facts mother provided in her affidavit, and measuring them up against the factors established in *Chartier* necessary to help determine whether a person stands in the place of a parent.
- Court then found that a number of these factors were not addressed in the affidavit, and as such, the Court did not have the authority to render judgement.

**Cases in which support obligation enforced**

*Morrison-Pelletier v. Pelletier*

- Child newborn when stepfather became involved
- Court found there could be no unilateral termination of the relationship without some form of withdrawal by the child as well.

*Dufault v. Cyr*

- Stepfather denied any parental relationship with the children.
- Contribution to the family scant
- Only financial contribution was purchase of a house large enough for the wife and children.
- Court found inattentiveness to children to be "very little different from that in many other ‘intact’ families.”
- Judge found “it may be that in a contest between the provisions made for children through the taxpayers and those made by a responsible parent, that the taxpayers should not be at a disadvantage.”
- Notice was taken that applicant wife had not pursued the children’s biological father for support, therefore, stepfather did not have to meet all financial needs of the children
- Support was to last the period of time that the couple was together.

*Siddall v. Siddall*

19 While *Chartier* is not an Ontario case, the fact that it is a Supreme Court of Canada decision, and the frequency with which it has been cited in Ontario cases, make it an indispensable aspect of the present study.
Husband began adoption proceedings, but did not complete. Maintained contact until wife and child moved away. Cannot unilaterally terminate relationship Court noted that husband earned considerable income and had “the ability to pay.”

*Delorme v. Delorme,*
- Stepfather tried to argue paternal behaviour strictly to benefit his wife, and that children simply ‘tolerated.
- Judge rejected this argument altogether.
- Cannot withdraw from settled intention

*R.R.C. v. A.E.F.*
- Stepfather tried to terminate relationship with stepdaughter when learned of support obligations post separation.
- Biological father died when daughter infant, and stepfather all she knew as a father from infancy.
- Sudden “change of heart” to avoid financial responsibility considered unacceptable.

*Prieur v. Prieur*
- Father entered into the marriage with his biological children.
- Couple had one child together.
- Upon separation, wife had custody of biological child, husband had custody of his children from previous marriage.
- Stepmother found to have ‘tried’ to act as natural parent to stepchildren

*Bell v. Michie,*
- Stepfather stood in the place of a parent.
- Biological father of children should also be paying child support.
- Biological father unemployed and had not had contact with his children since separation, unable to pay support.
- Judge limited the period of child support obligations to 54 months, corresponding with the period of time couple was together.

Summary: 1990s Cases
Number of cases where:
Financial considerations (in part) determinate: 1
Financial considerations said to not be determinate: {}
Legal marriage mentioned as affected outcome: {}
Age of child/ren determinate: 2
Length of relationship determinate: 1
Role of biological parent as (in part) determinate: 1
Role of biological parent as not determinate: 2

Discussion:
Upon analyzing the sample portion of cases spanning three decades, it is difficult to find major trends that piece them together. This is due in part to the fact that it is difficult to draw clear conclusions from legal decisions, as judgements are rendered on the basis of a combination of factors, and it is not always clear which factors are overriding. As well, when factors are not mentioned, such as the whereabouts of the biological father, it is not clear whether or not the judge still considered it as a factor in the case, without mentioning it. Therefore, although summary tables were attempted, except in the earliest cases where some decisions seemed to be based on one overriding factor, they cannot reveal telling results.

As it turns out, the vast majority of cases involved couples who were legally married. This may not be a coincidence. It might be that common law spouses have not attempted to appeal for support from their ex-spouses, because the stepparent involved would not have been an 'official' stepfather or stepmother. As such, there was a higher denial of support obligations in cases where the couple had not legally married. (Waters v. Nicholls (1979): Ogden v. Anderson(1983)) However, when the relationship proved to have been a long one, whether or not the couple had legally married seemed less relevant. (Re
While in Belanger (1978) the fact that the couple had married (albeit for less than a year) bore significant weight in determining the stepfather's *in loco parentis* role, in the similar cases of short-lived marriages, Barham (1979), Bouchard (1972) the short duration of the marriage helped the judge determine the opposite conclusion.

In very few cases was the age of the child used to determine the stepfather's legal obligation, although in Morrison v. Pelletier (1991) and R.R.C v. A.E.F. (1996) the fact that the stepfathers had been involved with the child since infancy seemed to matter.

Most surprising was the fact that the contribution of the biological parent did not seem to greatly influence the judiciary. Snedker (1978) seems to be the only case that outright did not oblige the stepfather because the child was already receiving support from the biological father. This decision might simply be a misstatement of the law in which the judge misinterpreted the 1978 legislation allowing for more than one debtor of child support.

In Venekeren (1990), Dufault v. Cyr (1993) and Re MacDonald (1979) the fact that the mothers had not appealed to the biological fathers for support, at least in part, relieved the stepfathers from their support obligations. In Bell v. Michie (1998) it seemed that the stepfather was obligated to pay support because the biological parent was not in a financial position to do so. In Siddall (1994), the stepfather seemed to be obligated to pay because he *could* pay, as his earnings were substantial. All of these cases support the
hypothesis that stepparents have been targeted to, in a sense, pick up the slack the biological parents have left behind. The mothers in these cases are faulted for not pursuing child support from their children’s biological fathers, even though there may be good reason why they did not. The decision in Copeland (1988) came to a different conclusion, that it is the mother’s prerogative and choice to determine which father to call upon for support, if not both. Herbison (1981), Hart (1987) and McCarthy (1984) all indicate that the move to obligate stepparents to their stepkin is more complicated than simply a new resource from which to tap. In these cases, the biological parents were actively involved in their children’s lives, and still, the stepparent was not relieved of his duties. These cases do serve to expand the definition of family, as it would have been easy, to restrict the number of fathers to one, replicating the nuclear family.

What is perhaps one of the most interesting findings from the series of cases studied, is the way in which the role of stepfathers is assessed in determining whether or not a true ‘parental’ relationship existed. It is more than simply ironic that this is a test that a large portion of biological fathers would fail. It seems that assessments that put weight on whether or not the child called the stepparent by his first name or “daddy” and whether or not the children were taken to the stepfather’s hockey games cannot result in consistent determinations as to which stepparent really was a parent, and which was not. Given the current legislation, a stepparent may be found to have stood in the place of a parent for one of the children a spouse brought into the relationship, and not another. This was the case in Carson (1986) and Vanekeren (1990). This indicates how different the role of the
stepparent can be from that of 'natural' parent, as biological parents would be shunned for publicly favouring one child over another.

In *Ogden v. Anderson* (1983) Justice Thomson sets out a test for the purpose of aiding in the determination of whether a parent-child relationship has been established. Below, is a reproduction of the test in *Ogden*, set out beside the test emerging from the most recent case of *Chartier*.

<table>
<thead>
<tr>
<th></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>Whether financial support was provided</td>
<td>Whether the child participates in the extended family in the same way as would a biological child</td>
</tr>
<tr>
<td>Whether the parties married</td>
<td>Whether the person provides financially for the child (depending on ability to pay)</td>
</tr>
<tr>
<td>Length of time the parties were together</td>
<td>Whether the person disciplines the child as a parent</td>
</tr>
<tr>
<td>Day to day care of the children</td>
<td>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</td>
</tr>
<tr>
<td>Role of the stepparent in vital activities such as education and discipline</td>
<td>The nature or existence of the child’s relationship with the biological parent</td>
</tr>
<tr>
<td>How the child and adult acknowledged one another in their respective roles</td>
<td><em>Although not listed as part of the test, the child’s perception of the adult in question is an important factor to consider when determining the stepparent’s role vis a vis the child</em></td>
</tr>
</tbody>
</table>

Comparing these two tests, set out sixteen years apart from one another, it seems that the Supreme Court decision in *Chartier* is, in some ways, a refined version of the earlier test. This begs the question of whether or not 16 years were needed to develop the concepts in such a limited way. At the same time, while the differences between the tests are subtle, they are significant. In *Ogden*, one of the first criteria mentioned was whether the parties
were married, presumably as an indication of the degree of commitment to the family.

Interestingly, while Justice Thomson acknowledged that "the "world is changing" and that "there are other, very viable functioning family units," whether the parties married was still important in determining if a parent-child relationship existed. Chartier's test makes no such suggestion.

At the same time, Chartier's last factor, regarding the child's relationship with the biological parent does not coincide with the otherwise functional approach to families, by which this decision has been characterized. Chartier makes clear that a child can have two or more parents for the purpose of support. Following this rationale, the child's relationship with her biological parent should not be relevant.

The cases that might be considered most radical, are McCarthy and Hart, as they challenge some of the deeply ingrained assumptions held by the majority of society. In McCarthy, the obligations of the stepparent toward the 'children of the marriage' are upheld even when the children's biological parent replaces the stepfather's role. The biological tie is not seen as something stronger than the stepfather's, so that the stepfather's role could be terminated by the reemergence of the biological dad. In Hart, this approach is taken one step further, as the stepfather's role regarding his stepchildren was seen as more influential than that of the biological father. This decision challenges the term used throughout the cases and literature of "natural parent," generally considered to be the biological or adoptive parent of a child. In this case, it could be argued that Hart is perceived as the natural parent.
As far back as *Barlow* (1978), the Court stated that a parent cannot unilaterally terminate the relationship of *in loco parentis*. In other areas, there are some hints of a general progression of the law, as one would expect. For example, in *Bouchard* (1972) and *Waters v. Nicholls* (1979), the idea expressed and followed was that the financial support of the child by the stepparent prior to separation was the most indicative criteria for establishing whether a person stood *in loco parentis* to the child. This notion was argued against in *Re McDonald* (1979), when the Court ruled that the financial support of the child is not enough to establish an *in loco parentis* relationship. The Court found that additionally, consideration should be given to the adult’s overall interest in the child’s well being. This idea seems to have carried over as other criteria have been added to the test.

In only one third of the cases was the biological parent even considered. We cannot know for sure if that is because in the remaining two thirds of the cases, they were not on the scene, and were not contributing to the children. One would imagine that counsel for the stepfathers would have brought up the biological father’s contribution to the children in every case where a contribution existed. At the same time, it became clear by the 1980s that multiple debtors are a fact of current legislation.

*Ogden v. Anderson* (1983) and *Dufault v. Cyr* (1993) are two cases in which the overall policy considerations of child support obligations were taken into account. Both judges in these cases discussed the role of child support awards as putting the responsibility of supporting children in the hands of individuals rather than the state. This was not the
focus of the decision, but it played a part. These two cases are the only ones to explicitly voice their policy considerations. Whether or not these same considerations were on the minds of the other judges is impossible to gauge.

Problems with the analysis of case law from a sociological perspective

What is essential to remember when reading the cases, is the role of the individual judge in every decision. A great deal of discretion and room for differing interpretations is a part of every case, whether the judge frames it as such or not. Every judge comes to Court bearing values and prejudices, like the rest of society holds. To become a judge, a very high level of education must be attained. This implies a certain level of privilege. This places judges in one of the higher income earning brackets of society. The average judge is also assumed to have had years of experience and practice as a lawyer before being called to the bench. Given that women’s entry into the field of law has been only recent, and that people of colour have been economically disadvantaged in Canadian society, the majority of judges in this study, it can be assumed, are older white men.

Another problem with studying legal cases is that only the most highly contested cases ever reach the courts. The vast majority of family law cases are settled out of court. Access to these settlement arrangements is not possible. And of course, the above study of legal cases does not give readers any idea of how many stepparents pay support to their stepchildren willingly, out of their own felt obligations, without a battle. It is difficult to get statistical information on these cases, as it is only court records that are
open to the public. From this study it is clear that a number of stepfathers, even those who were actively involved in their stepchildren’s lives, do not think it fair that they be expected to pay child support. This is in keeping with the study conducted by Ganong and Coleman (1999).

Implications
While analyzing cases gives interesting insight into where the issue of child support post separation stands from an institutional perspective, this is not necessarily determinative of the population’s perceptions. For example, while Chartier is praised for its contemporary and functional interpretation of family, and for encouraging the continuation of nurturing relationships between adults and children, such ideals may be just that—ideals. More telling are surveys such as the ones conducted by Ganong and Coleman (1999) and Kaplan, Lancaster and Anderson (1995). These surveys indicate that the population is less ready to accept the Chartier decision than the courts. The results of these surveys make it clear that large segments of the population see a distinct difference between the role of stepparent and that of biological parent. This leads one to question whether the child centred legislation and Chartier decision are genuine reflections of society’s changing family patterns, or a method of answering children’s needs. Whether or not they appear to be intuitively fair in the minds of the general public is another question. It seems reasonable to suppose that the new child centred approach is a combination of both. If policy strays too far from the public’s perceptions of what is fair, this will ultimately impact the effectiveness of the policy. (Ganong, Coleman 1999) This is especially true in the area of support obligations, where it has been notoriously
uncomplicated for fathers to simply shirk on payments. Studies indicate that there is a direct correlation between the debtor's perception of whether the support award is fair, and whether that person will pay support. (Ganong, Coleman 1999)

The case of *Dutrisac v. Ulm*\(^{20}\) might portray a more realistic story of family in Canada today. In this case, the stepparent, who "stood in the place of a parent" during his relationship with his spouse, was applying to have his child support obligations terminated. Dutrisac no longer had a relationship with his stepchildren, and argued that his obligation should be terminated on the basis that a stepparent has a greater interest in "getting on with his life" than a biological parent. Dutrisac was supporting a biological child from a prior relation, and by the time of the hearing, had entered into a new relationship and fathered a new child. It seems that whether or not he continued to pay child support, Mr. Dutrisac was no longer interested in continuing a relationship with his stepchildren.\(^{21}\) Although Justice Bastarache spoke of the rights of stepparents to apply for custody or access of their stepkin, there are very few cases where a stepparent actually applied for custody of his/her stepchildren upon separation.\(^{22}\)

\(^{20}\) (1999) 45 R.F.L. (4th) 22. This case is not from Ontario, but the issues it raises are clearly relevant.


\(^{22}\) In *Augustine v. Kempleing* [1996] O.J. No. 3649 a stepfather and biological father battled for custody of their son/stepson, upon the death of the mother. It is worth noting, that in this case, the biological father was awarded custody. In this case, it was acknowledged that there was "a remarkable similarity or equality in the lifestyles and home conditions of the two parties", (at para. 10) and that the action was between "two equally appropriate, highly caring and committed parents." (at para. 16) While it was noted that it was a difficult decision, one of the reasons for awarding custody to the biological father was a psychologist's report stating the child's "best interests would be served if he were in the custody of his natural father." (at para. 27) On the other hand, in *G.D. v. G.M.* [1999] N.W.T.J. No. 38, a woman who stood in *locus parentis* to the daughter of her boyfriend fought for the right of access to the child post separation. This access was against the wishes of the father, but the court deemed it would be in the child's best interest to continue access visits with the woman who had been her most constant and stable adult figure in her life. In *Chartrand v. Chartrand* [1989] O.J. No 1267, a stepfather counter-petitioned his wife's application for custody and child support for her son from a previous union, with a claim for custody of the same child.
custodial parent is generally assumed to continue residing and caring for her children. While some stepparents exercise access post separation, it is not a generally accepted norm that they will, as it is with natural parents. Access to stepchildren is also often cut off by the natural parent as well as the stepparent, for a variety of reasons, and mostly uncontested. This may be in part because stepparents do not generally have the same stake in stepchildren as they do in their natural children.\footnote{23}

The studies conducted by Ganong and Coleman clearly indicate that a decided portion of the general public does not think that a stepparent should continue paying support to he/her stepchildren once the relationship between the spouses has broken down. Kaplan, Lancaster, and Anderson’s study of the attitudes of Albuquerque men toward parenthood found that the continued relationship with stepchildren depends upon the continuation of the spousal relationship.

The importance of children’s financial support cannot be underestimated, especially because of the alarming speed at which the child poverty rate is increasing.\footnote{24} At the same time “getting on with their lives” is a reality of relationship breakdowns. The reality of family life in Canada today is that people form and sever many intimate relationships in their adult lives. Many of these relationships involve children. People can find

\footnote{He ultimately withdrew this claim, and ended up trying to argue that he had not stood in the place of a parent during the marriage.}

\footnote{23 This is not to suggest that children generally maintain close bonds with their natural parents after their parents separate. Research estimates that 40% of children of divorce see their non-custodial parent less than once a month. See Nicole Marcil-Graton and Celine Le Bourdais, \textit{Custody, Access and Child Support: Findings from the Longitudinal Survey of Children and Youth} (Ottawa: department of Justice, 1999)}

themselves in the role of stepparent more than once, as well as biological parent in more than one family situation. It might be unfeasible for such persons to support all their "children of the marriage." As Eichler (1990-1991) points out, the majority of Canada’s poor children are still members of two parent families. Eichler has calculated that only a very small percentage of the overall poor would be helped by support increases. It would be cause for serious concern if legislators were resting assured by Chartier in the false hope that the increased support payments to children would have a major impact on the child poverty rates.

Sadly, no legislation or judicial decision can ensure that children’s emotional needs will be accounted for. Even if a stepparent cannot terminate his financial relationship with his stepchildren, no one has yet been able to enforce an emotional obligation to one’s stepchildren, or biological children, for that matter. One unavoidable consequence stemming from a stepparent’s legal duty to pay child support is the number of cases that are tried in which stepfathers deny the important role they played in their stepchildren’s lives, in order to be relieved of their financial responsibilities. These cases certainly heighten the conflict between parents, which is bad for children. From the child’s perspective, such a hearing is a devastating rejection. Perhaps Chartier will cause a reduction in such cases, as with a clear law, stepfathers will not go through the process of a hearing if they know their chances of succeeding are limited. Since Chartier, most cases have followed strongly enforcing the stepparent’s legal obligations toward the children.

For a discussion on first and subsequent families, and how to allocate support between them, see Eichler 1990-1991
The fact that the law now obligates good stepparents and "liberates" bad stepparents is an issue that needs to be addressed. It does not resonate with society's normative obligation beliefs.

**Conclusion:**
While *Chartier* may be the culmination of decades of debate about what the role of a stepparent should be, it may also be an attempt at protecting the economic rights of children. This is not of itself a bad idea. But it becomes a cause for concern when this legal step is taken, placing responsibility of children's economic rights on the shoulders of the individual, rather than the state. If stepparents feel themselves unfairly treated, they simply will not pay their obligations, or they may fight them in court, furthering family conflict. Stepfathers may indeed stop taking their stepkin to their hockey games, or choose not to get involved with lone mothers for fear of future economic repercussions. This may not always be motivated by selfishness. It may be prudent. Most people could not afford to pay child support to two (let alone three) separate sets of children. If our society were truly egalitarian, the feminization of poverty would not be our reality. As such, women would not be financially dependent on men, and the question of child support would not be as crucial.

From the child's perspective, the stepparental legal obligation of child support is wholly fair and reasonable. From the child's point of view, it makes sense that the person who *seemed* to care about her, should pay child support after the spouses separate. Of course,
the areas of family law, sociology, and policy are complicated, and other perspectives must be considered in order to have a system that is satisfactory to the majority of those affected by it. Ultimately, Chartier may indeed serve some children well, by bettering their economic status. This decision is a breakthrough in terms of its broad conceptualization of the changing valid family forms. At the same time, it is not a true answer to child poverty, and efforts at major societal reform are becoming increasingly essential.
Bibliography


