

PARENTAL LIABILITY LAWS

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EXECUTIVE SUMMARY

Recently, there has been interest in holding parents accountable for their children's actions. Parental liability laws have been enacted in Canada and the United States to hold parents civilly and criminally responsible for their children's actions.

In Canada, there is some debate about whether parents currently have civil liability for the actions of their children under civil (tort) law. There are areas of tort law where vicarious liability of parents can be found; the plaintiff must persuade the court that the parents knew or reasonably ought to have known that the young person would commit the act in question. Manitoba recently passed a Parental Responsibility Act which establishes parental civil liability for damages or losses to property caused by their dependent children. Alberta and Ontario intend to introduce similar legislation.

A recent development in the parental liability debate in Canada is a practice implemented by Canadian retailers The Bay and Zellers of sending letters through lawyers to the parents of shoplifters under the age of 18 demanding payment for damages or the company will sue the parents in civil court. The damages sum reflects a general amount (usually \$225-325) to cover store security and other shoplifting enforcement costs. The legality of these letters is currently being tested in the courts.

In the United States, at least 10 states and dozens of municipalities have enacted parental liability laws. California was the leader in enacting more punitive parental liability legislation. California's Street Terrorism Enforcement and Prevention Act of 1988 holds parents/legal guardians criminally liable when they have not exercised "reasonable care, supervision, protection, and control over the minor child." Punishments range from fines to imprisonment for up to one year. St. Clair Shores, Michigan was the first municipality to adopt a Parental Responsibility Ordinance which allows parents to be fined up to \$100 for failing to control their children's actions or seek professional assistance.

Parental liability laws generally aim to involve parents in their children's lives, encourage improved parental control over children and decrease youth crime. While there is an established relationship between poor parenting skills and youthful offending, this relationship does not suggest the need to punish parents for poor parenting. The reality is that many parents lack effective parenting skills and require support and assistance in addressing their children's behaviour problems. Further, these laws tend to disproportionately penalize poor, single parent families who are unable to live up to middle class parenting standards.

Parental liability laws have emerged during a time of increasing culpability of youthful offenders. Such laws send a confusing message to young people and their families and do nothing to encourage responsibility in young people. Further, the ability of these laws to stand up to constitutional or Charter challenges is suspect. These laws tend to violate basic rules of law such as that a person is presumed innocent until proven guilty. Furthermore, parental liability laws penalize parents for the status of parenthood.

Parental liability laws are not an effective means of fostering parental involvement in their children's lives. Rather, there is a need for early intervention and assistance for families in need. The court is not the proper milieu for addressing parenting problems; the problem is a social issue, not a legal one.

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INTRODUCTION

The public has become increasingly concerned with youth crime. Governments have tried to appease the public through measures such as more punitive youth crime laws and special police units to fight youth crime. Most recently, there has been interest in holding parents accountable for their children's actions (Cahn, 1996; Humm, 1991).

The concept of parental liability in North America is not new (Cahn, 1996; Humm, 1991). Parents have long been subject to laws such as contributing to the delinquency of a minor and providing dependent children with the necessities of life, including a suitable home environment (Cahn, 1996). Most recently, North American parents have been subject to increased civil and criminal liability for their children's actions. City ordinances and state laws holding parents accountable for their children's actions gained popularity in the United States in the 1980s (Humm, 1991). In Canada, a Parental Responsibility Act which outlines parents' civil liability for property damage or loss caused by their dependent children was recently passed in Manitoba. Similar legislation is expected to be introduced in Alberta and Ontario.

The goals of parental liability laws are seemingly admirable. Parental liability laws generally aim to involve parents in their children's lives, encourage improved parental control over children and decrease youth crime (Cahn, 1996). However, the legality of such laws is suspect as they essentially punish parents for the status of parenthood. In addition, parental liability laws impose class based parenting standards and unfairly penalize low income, single parent families. Furthermore, parental liability laws are being introduced in a time of calls for increased accountability of young offenders for their actions, sending a confusing message to young people and their families. As will be shown, parental liability laws are a misguided and overly simplistic solution to the problem of youth crime.

PARENTAL LIABILITY IN CANADA

In Canada, parents are not financially responsible for court ordered treatment or restitution of a young person (Member of Legislative Assembly (MLA) Task Force, 1994). However, there is some debate about whether parents currently have civil liability for the actions of their children under civil (tort) law. Generally, there is a reluctance on the part of courts to hold one person liable to compensate a third party unless that person has done something to breach a duty to the third party. This is the essence of tort law. However, there are areas of tort law where vicarious liability of parents can be found. For example, in the case of driving offences committed by young people driving the family car, case law has established the liability of registered car owners; vehicle insurance covers such vicarious parental liability claims. In other cases, the plaintiff must persuade the court that the parents knew or reasonably ought to have known that the young person would commit the act in question. However, Manitoba has passed, and Alberta and Ontario are considering, legislation establishing parental civil liability for their children's actions causing property damage or loss to others.

A recent development in the parental liability debate is a practice implemented by Canadian retailers The Bay and Zellers of sending letters through lawyers to the parents of shoplifters under the age of 18 (Mildon, 1996a). The letters inform parents that the store holds them legally responsible for the actions of their children and demands a sum of money (usually \$225-325) in payment for damages, or the store will proceed with a civil suit which will likely be much more costly for the parents. The damages sum reflects a general amount to cover store security and other shoplifting enforcement costs. Few of these cases have reached the courts. However, a parent in Winnipeg paid the damages and later took Zellers to court to reclaim the payment; the court ordered Zellers to repay the money on the grounds that the letter was threatening and intimidating and “there is no general rule that parents are liable for the torts (wrong-doings) of their children by virtue of their status as parents” (Zellers ordered to repay..., 1996, p. A3). Ten additional cases are currently going to court and will provide a further test of the legality of the retailers’ letters (Mildon, 1996b).

Manitoba

A Parental Responsibility Act was recently passed in Manitoba. “The purpose of this Act is to ensure that parents are held reasonably accountable for the activities of their children in relation to the property of other people” (Parental Responsibility Act, p. 2). Parents of children who deliberately take, damage or destroy property of another person are liable for the loss suffered and the owner of the property can start civil action for damages up to \$5,000. A certificate of disposition under the Young Offenders Act showing that the child has been convicted of an offence causing the property damage or loss is proof that the child caused the loss. Parental defences include that the parent was exercising reasonable supervision over the child at the time the child committed the offence and that the parent made reasonable efforts in good faith to prevent or discourage the child from this kind of activity. The onus of establishing a defence rests with the parent. In determining whether parents have one of these defences, the court may consider a number of factors relating to the age and competency of the child, the child’s prior behaviour, the potential danger of the activity, whether the parent was responsible for the care and control of the child at the time of the incident and, if not, whether reasonable arrangements were made for the supervision of the child, whether the parent has attempted to improve his/her parenting skills by attending parenting courses, whether professional assistance for the child was sought and any other matter the court considers relevant. Payment of damages may be made in full or, where deemed necessary by the court to avoid unreasonable financial burden upon the parent, in instalments.

The Parental Responsibility Act has not been proclaimed in force as of yet (Personal Communication, Manitoba Department of Justice staff member, May, 1997). There are a number of administrative issues which need to be addressed. For example, the onus is on the Small Claims Court to respect the provisions of the Young Offenders Act relating to confidentiality. Small Claims Court procedures and file handling will have to be changed to accommodate young offenders.

Alberta

Provincial government consultation of the Alberta public on the Young Offenders Act in 1994 revealed support for holding parents accountable for crimes committed by their children (MLA Task Force, 1994). The MLA Task Force (1994, pp. 8-9) recommended the following amendments to the Young Offenders Act to encourage increased parental accountability for their children's actions:

- Amend the Act to give the youth court the discretion to compel the parent/guardian and/or other family members, to participate in counselling together with the offender.
- Amend the Act to require the youth court to assess parental ability to pay for the costs of family and/or young offender counselling.
- Amend the Act to require parents to supervise and ensure that community service orders, as may be ordered by a judge, are carried out.
- Amend the Criminal Code and Young Offenders Act to make it unlawful for any person to encourage or contribute to a youth's offending behaviour through action or inaction, or, where a duty to supervise a young person exists, permit that young person to commit an offence.
- Amend the Act to limit the circumstances where Legal Aid services must be provided to act for a young person charged with an offence.

However, the MLA Task Force (1994, p. 9) noted that "amendments to the Act requiring financial accountability of the parents, who have not been convicted of any offence, could be the subject of a challenge under the Canadian Charter of Rights and Freedoms."

In addition to lobbying for changes to the Young Offenders Act to increase parental accountability for their children's actions, the Alberta government is also pursuing provincial legislation establishing parents' civil liability for their children's actions. Alberta Justice expects a private members bill on parental civil liability to be introduced in the legislature in 1997. The proposed legislation will likely be modelled after Manitoba's Parental Responsibility Act.

PARENTAL LIABILITY IN THE UNITED STATES

In the United States there have always been mechanisms to hold parents accountable for their children's actions (Cahn, 1996; Humm, 1991). For example, "early parental liability statutes authorized the juvenile courts to assert jurisdiction over parents (and often over any other adult) who had contributed to the delinquency of a minor" (Cahn, 1996, p. 405). However, in the past 10 years, parental liability laws have increased in popularity in response to fears of increasing juvenile crime

(Cahn, 1996; Parents did nothing..., 1996; Counselling issue helped..., 1996; Humm, 1991). There is strong public support for laws which hold parents accountable for their actions as parents when their dependent children commit crimes.

California was the leader in enacting additional, more punitive parental liability legislation with the introduction of the Street Terrorism Enforcement and Prevention Act of 1988 (Cahn, 1996). The legislation holds parents/legal guardians criminally liable when they have not exercised “reasonable care, supervision, protection, and control over the minor child” (California Penal Code Section 272, as quoted in Cahn, 1996, p. 409). Punishments range from misdemeanours and fines to imprisonment for a year or probation for five years. At least nine other states have passed similar legislation and roughly half of the states in the U.S. have passed or tightened parental responsibility/liability ordinances (Michigan parents convicted..., 1996).

The United States’ interest in holding parents liable for their children’s crimes has grown rapidly (Parents did nothing..., 1996; Michigan parents convicted..., 1996). St. Clair Shores, Michigan adopted a “Parental Responsibility Ordinance” in 1994 which allows parents to be fined up to \$100 for failing to control their children’s actions or seek professional assistance (Are parents responsible..., 1996; Parents did nothing..., 1996). Dozens of towns have since adopted parental responsibility ordinances similar to the St. Clair Shores ordinance. In most cases where these ordinances have been enforced, parents settle out of court (Michigan parents convicted..., 1996).

ISSUES SURROUNDING PARENTAL ACCOUNTABILITY

Legal Issues

The legality of parental liability laws has been subject to scrutiny. In the United States and Canada, such laws may be unconstitutional or violate the Charter respectively because they essentially punish parents for their children’s actions (Michigan parents convicted..., 1996). In many cases, these laws are not based on parental negligence, but rather on the fact that the parent is responsible for the child and the child has committed the act; adequate supervision is raised only as a defence (Cahn, 1996). In effect, these laws punish parents for the status of parenthood.

Further, parental liability laws often violate established principles of law. For example, The Bay and Zellers’ letters are sent to parents whether or not the accused young person has been convicted of shoplifting; this practice violates a basic rule of law that people are presumed innocent until proven guilty (Mildon, 1996a).

Parenting Issues

The enactment of parental liability laws implies that the state is no longer willing to assume full responsibility for addressing youth crime (Cahn, 1996). The rationale for parental liability laws is that parents will spend more time and effort in monitoring the activities of their children if they know they will be held responsible for their children's actions (Are parents responsible..., 1996). However, "the underlying and highly questionable assumption of such laws is that parents *can* control their child" (Cahn, 1996, p. 410; Humm, 1991).

Research on the relationship between parenting and youthful offending has found an association between lax parenting and youth crime (Humm, 1991). Loeber and Stoutbamer-Loeber (1986, cited in Goetting, 1992, p. 4) found that "lack of parental supervision, parental rejection and lack of parent-child involvement, were among the most powerful predictors of juvenile conduct problems and delinquency." However, this relationship does not suggest the need to punish parents for poor parenting. The reality is that many parents lack effective parenting skills and require support and assistance in addressing their children's behaviour problems (MLA Task Force, 1994). Parents want to provide for their children, but circumstances beyond their control may prevent them from providing the level of care and supervision necessary for a proper upbringing. Parents of misbehaving children may not know how to discipline effectively (Wells & Rankin, 1988). For example, parents may not know that both overly permissive and excessively strict parenting styles are ineffective; intermediate levels of discipline and control have been found to be most effective in eliciting desired behaviour in children (Wells & Rankin, 1988). Wilson (1980, p. 233) states that "lax parenting methods are often the result of chronic stress, situations arising from frequent or prolonged spells of unemployment, physical or mental disabilities among members of the family, and an often permanent condition of poverty."

Parental liability laws tend to disproportionately penalize poor, single parent families who are unable to live up to middle class parenting standards (Cahn, 1996; Mante, 1995). For many families, punishing parents may deteriorate an already tenuous parent-child relationship and result in domestic violence or child abuse (Cahn, 1996). Parental liability laws are not an effective means of fostering parental involvement in their children's lives. Rather, there is a need for early intervention and assistance for families in need.

Youth Accountability

Parental liability laws have emerged during a time of increasing culpability of youthful offenders (Cahn, 1996). Parental liability laws suggest that young people are not fully responsible for their actions (Cahn, 1996). However, a principle tenet of the Young Offenders Act set out in the Declaration of Principle is that young people are to take responsibility for their actions. It is inappropriate and counterproductive to send such a confusing message to young people and their families. If parents are held accountable as well as or instead of the young person, young people will not learn to take responsibility for their actions and will be less likely to alter their behaviour.

DISCUSSION

"Parental responsibility laws are a 'quick-fix' approach to juvenile crime that fails to address the underlying problems" (American Civil Liberties Union, cited in Michigan parents convicted..., 1996). A progressive society cannot support penalizing parents for the actions of their children. Rather, society should assist parents in need. While it is important to address young offenders in the context of family (Polauck, 1993), "mandating parental involvement can be ineffective or counterproductive" (Cahn, 1996, p. 440). The real issue is the lack of parenting skills, resources and community support. Parenting skills programs, readily accessible daycare and access to social programs are just some of the many things society could be doing to help parents. The government would be wise to invest in adequate housing for low income families, quality kindergarten programs, support for single parent families, community centres and child care (Polauck, 1993). Thus, the court is not the proper milieu for addressing parenting problems; the problem is a social issue, not a legal one.

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