

WHEN IS ADULT-CHILD MAINTENANCE APPROPRIATE?

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The law states that separated parents have a legal obligation to provide financially for their children. The Child Support Agency regulates this until the child is 18 years old – but what happens after that? Is it possible for a parent to be required to financially support an adult child?

Yes – Once a child turns 18 years of age the Child Support Agency involvement ceases and the *Family Law Act* then takes over.

What is required for such an Order to be granted is decided on a case by case basis, however, a number of questions come to mind – and one of the most notable is – does there need to be an existing relationship between the child and the parent who is Ordered to pay child maintenance?

SHOULD A RELATIONSHIP EXIST BETWEEN THE PARENT AND CHILD?

Recently, the Court was asked – *is it proper for the Father to pay financial support to his adult son when they have no interaction with each other and it is unlikely they will in the future?*

In a previous case, a Judge had noted that it is not necessary for a “warm relationship” to exist between the parent and the child, for maintenance to be awarded.

The Court has determined that, whether maintenance should be paid for an adult child, is an objective test, that is - what is reasonable in that particular circumstance? In deciding this, the Court balances the parents' resources and the child's actual and potential resources. The Court will also consider other ways the child could finance their education, including deferring their studies, obtaining part-time employment or studying part-time.

The Court, when deciding to Order child maintenance has a wide discretion and can consider if a lump sum payment should be made, or whether payment should be by instalments. The later is usually more desirable. A lump sum will most likely only be granted where “severe pressure” is involved.

A RECENT EXAMPLE:

The Federal Magistrates Court recently had to decide whether a Father who was estranged from his son, should be Ordered to pay Child Maintenance to support his adult son through his university studies.

The Facts:

- The Mother was aged 56 and the Father 51. They had been in a de facto relationship and had 3 children, aged 20, 18 and 16.

- The children had lived with the Mother since separation. None of the children had had any relationship with the Father for the past 6 years.
- For 2 years after the separation, the Father relied on social security payments and was assessed to pay the minimum monthly Child Support of \$21.67.
- The Mother claimed the Father was a highly skilled self-employed IT professional and that he was not earning his full income capacity. The Father disputed this and said he had actively sought work other than at times when he was unable to, due to illness.
- The Mother had her own IT business and retained the parties' properties, worth just under \$1.5 million.
- The eldest child was studying a double degree at university and the Mother stated that he was entirely financially dependent on her. She said his expenses were approximately \$420 per week and that the Father should contribute \$176.28 each week (about 40%)
- The Mother calculated that a lump sum adult Child Support of \$55,000 should be paid, as this would support the son for his 6 years at university.
- The Father stated that the Mother had not taken into consideration the eldest son's past scholarship and his capacity to seek part-time work in the university holidays. The Father also stated that a lump sum payment would be unfair to him, as the eldest son could defer or decide not to complete his studies in the future.
- The Mother stated that the eldest son's degree was demanding and it would not be appropriate for him to seek part-time employment.

What did the Court consider?

- In determining the level of financial support necessary for the maintenance of the child there must be a consideration of the needs of the child, the age of the child and the parent's expectation for the child's education.
- The capacity of the child to earn income, but disregarding any entitlement of the child to an income tested pension, allowance or benefit.
- What financial contribution each parent should make and in doing so, determine the income of each parent, property and financial resources.
- The Father had paid Child Support for the last 4 years, with the most recent annual amount being \$7,452.
- The Mother said that the eldest son was the most affected child when the couple separated and she did not want to push him, stating that at the end of his first year of university he "crashed".
- The adult child's weekly expenses were estimated to be at \$307.00 each week, this included food, clothing, education, entertainment and fares, it did not include board he paid to the Mother.

What was the Outcome?

The Court found that:

- It was the expectation in this family that the parents would provide some level of financial support (if it was available to them) for the child to pass through school or university.
- In this situation it was necessary for the parents to provide the adult child with a level of financial support.

It was not unreasonable for the adult child to provide for half of his financial needs.

In deciding whether Child Maintenance should be awarded, the Judge gave regard to the following considerations:

- The Father would not be asked for any advice or guidance in regards to the child's academic decisions;
- The Father would most likely not receive any "thanks" for the financial support; and
- The Father would not be able to enjoy the child's academic achievements.

The Court took into account the fact that the Mother and Father had similar incomes and earning potential. However, as the adult child had been estranged from the Father for several years, the Judge did not think it was "necessarily proper" that both parents contribute to the adult child's financial support equally.

The Court Ordered that the Father contribute 20% of the child's expenses, which amounted to \$3000 per year. The payment was to be made in a lump sum, as it was likely the Father would only provide the maintenance under duress. The sum of \$12,000 (for the remaining 4 years of study) was Ordered to be invested in an interest bearing account and released in \$3,000 instalments at the beginning of each year during the years the son would be engaged in study. If the child ceased to study, or became engaged in full-time work, the Father needed to be advised and the funds be refunded.