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LEGAL SOLUTIONS TO PROTECT NON-MARITAL RELATIONSHIPS: SOME TAKEAWAYS FROM CANADA AND THE UNITED STATES

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Abstract

The rates of marriage are falling on a global scale in western countries. However, the level of care and commitment toward other people has by no means diminished in the last few decades: people are investing economically and emotionally in relationships which do not resemble the nuclear, romantic, dyadic, heterosexual family. The locution "non-marital relationships" refers to all those family unions developing outside the wedlock, which bear some features, among which is the economic and emotional interdependence of the members. These relationships include but are not limited to, siblings, friends, relatives, unmarried conjugal couples, queer assemblies, and polyamorous relationships.

Although family pluralism is on the rise, countries in comparative perspective continue to exclude new family unions from a wide array of public benefits. Such benefits accrue only through marriage (and in rare instances through marriage-like relationships), thereby constituting what is known as the "marital privilege." Therefore, the central claim of the paper is that social and tax programs that single out married couples for special treatment are not properly tailored to demographics and to the actual landscape of committed relationships. The underlying assumption is that the value of family primarily resides in its caregiving functions (not on marital status), and that benefits should be allocated accordingly.

While the marital privilege has received broad attention, the paper intends to analyze a relatively underdeveloped issue in comparative public family law: the issue of legal remedies available to protect non-marital relationships. It will thus proceed as follows: the first part will lay down the methodology and the terminology, given the difficulty in employing analytical linguistic categories in field of scholarship which is yet a work in progress. In the second part, it will address the issue of legal remedies. The models for protection available to non-marital units that will be expounded are: the contractual model, the ascriptive model, registration, and mixed systems. Though theoretically-grounded, the paper will also draw from the Canadian and United States experience under many respects.

Some states have in fact attempted, for various reasons, to attenuate the marital privilege, and to extend some limited protections to non-traditional families. The responses to family pluralism have been diverse. They range from schemes extending only health-related decision-making to schemes giving wide protection under both private and public family law. As to the U.S., the experience of Vermont, Hawaii, and Colorado, providing designated beneficiary schemes, is of interest. The conservative bills in Oklahoma, Alabama and

Missouri, proposing a hybrid system of private contracts and registration for mere clerical purposes will also be considered. As to Canada, the Alberta's model, enshrined in the Adult Interdependent Relationships Act (AIRA) of 2002, will be examined.
The paper will ultimately offer an account of the pros and cons of each model and attempt to identify the most suitable one, among those available, to protect new families.