

Lesbian Mothers and the Law of Custody, Access, and Child Support

At least one-third of lesbians are mothers.¹ Whether lesbians raise children from previous heterosexual relationships, or have babies as lesbian mothers, the law currently fails to support lesbian families. This paper discusses the law in Canada,² particularly in the Province of Ontario, with respect to custody and access for lesbian mothers, and touches briefly on the child support rights and obligations of lesbian parents.

1. Custody and access

The term “custody” refers to the rights and responsibilities of a parent in relation to a child, including the right to make decisions about the child. A custodial parent usually has primary care and control of a child. “Access” refers to the right to spend time with a child, and the right to make inquiries and be given information as to the health, education and welfare of the child. In Canada, all provinces allow custody and access claims by parents, grandparents, step-parents and same-sex spouses. Most statutes say that custody claims may be made by “any parent or other person,” at least where the claimant has “shown a settled intention to treat the child as a family member.” In Ontario, “a court may grant custody or access to one or more persons.”³ As in all matters related to children, “the best interests of the child” are the paramount consideration. However, a relationship by blood between the child and the applicant is one statutory criteria used in determining the child’s best interests in custody and access proceedings.⁴

(a) Custody and access on breakdown of a heterosexual relationship

Traditionally, most custody or access claims by lesbians have arisen after

the breakdown of a heterosexual relationship. In early decisions, courts viewed “homosexuality” as a problem or negative factor, although not a complete bar to custody. As a result, many lesbians felt forced to remain closeted, “voluntarily” surrendering custody in favour of more generous access rights.⁵

Whatever success lesbians have achieved at the Supreme Court of Canada in pursuing abstract equality rights, lower courts sometimes participate in and reflect the systemic homophobia of our society. I have heard a judge remark about a lesbian parent, “I have no problem with her as a mother, but with her life” and “she chose this lifestyle and she can live with the consequences.” In that case, the judge ordered the stay-at-home mother to leave the matrimonial home, the children to be primarily resident with the father, and the mother’s limited access time with the children to be held outside the presence of her girlfriend. In other cases, however, judges take a child-centered perspective and progressively advance substantive equality rights.⁶ One judge was surprised by my eagerness to present sociological and psychological evidence on behalf of a transsexual client. This judge accepted immediately that gender identity was completely irrelevant to the best interests of the child and looked instead at my client’s excellent parenting.⁷

Judges have frequently distinguished between “good” and “bad” lesbian mothers on the basis of whether the mother is closeted and “discreet.”⁸ “Bad” lesbian mothers are those who are open about their sexual orientation and who participate in the gay and lesbian community. Arnup and Boyd conclude that openly lesbian mothers “are almost certain to lose custody of their children to their ex-husbands.”⁹ Of course, any demands of “discretion” require lesbian parents to deny their full personhood and punish lesbians for participating in cultural and political life. The approach is discriminatory and contrary to the best interests of the child.¹⁰

There are many examples of judges demanding “discretion” from lesbian and gay parents. In *Case v. Case*,¹¹ a lesbian mother sought custody of her ten year old daughter and four year old son. The judge determined that the mother exaggerated allegations of bad conduct by the father, finding that the mother was just “slightly hurt” when the father “pushed the mother around,” and the father was not abusive but only “soundly spanked the son.” Another problem was that the mother slept in the same bed as her female partner and the partner had not been called as a witness at trial. Justice MacPherson stated that Ms. Case’s “way of life is irregular” and “... I greatly fear that if these children are raised by the mother they will be too much in contact with people of abnormal tastes and proclivities.”¹² She was denied custody.

The Alberta Provincial Court granted custody to a lesbian mother in *K. v. K*¹³ on the basis that her relationship was “discreet” and her sexuality would not be “flaunted.” Her sexuality was described as no more of a bar to custody than the father’s drug use. In *D. v. D.*, the trial judge regarded the father’s “abnormal” sexual orientation as a “problem which may damage the children’s psychological, moral, intellectual or physical well-being, and their orderly development

and adaptation to society.”¹⁴ However, the father was awarded custody on the basis that he was bisexual, discreet, not an exhibitionist, he did not flaunt his sexual orientation, had married couples as visitors to the home, was not a “missionary” or militant, and was not a member of any gay club. Similarly, in *B. v. B.*, the Court was willing to grant custody to a lesbian mother because “any possible ill effects” were minimized because the mother was not “militant,” “did not flaunt her homosexuality,” and did not seem “biased” about her child’s sexual orientation but rather seemed to assume that the daughter would be heterosexual.¹⁵

In Ontario, the leading case of *Bezaire v. Bezaire*, provides that “homosexuality of a parent is irrelevant, unless it affects the best interests of the child.”¹⁶ This approach still implies that gay or lesbian sexual orientation can be a negative factor.¹⁷ Furthermore, the Ontario Court of Appeal did not criticize the discriminatory restrictions imposed by the lower court.¹⁸ The trial judge had initially decided that the mother should retain custody, having had *de facto* custody of the children for four years. However, the judge barred “any open, declared and avowed lesbian or homosexual relationship.” No other person was permitted to reside with Ms. Bezaire without the approval of the court. The father applied for custody after the mother moved in to an apartment with another woman. The trial judge reversed his decision, finding “psychological instability” on the part of Ms. Bezaire. The Ontario Court of Appeal dismissed her appeal. Apparently, the mother then removed the children and disappeared.¹⁹

A better approach would recognize that children of a gay or lesbian parent are likely to encounter homophobia regardless of which parent has custody. Therefore, the appropriate question should be which parent is better suited to assist the child in dealing with issues of sexuality, including sexual orientation discrimination, in a constructive and supportive manner.²⁰ A lesbian mother may then be advantaged in being able to help a child to cope with the inevitable realities of intolerance.

Today, many lesbians do obtain custody of their children. Still, lesbians have yet to achieve substantive equality in custody and access determinations as a result of heterosexism and homophobia. Lesbian mothers continue to be denied custody and be granted limited access to their children. The “best interests” test, while appearing to be neutral, is not necessarily applied in a manner that recognizes the requirements of equality.²² The best interests test must be infused with substantive equality principles to promote justice for lesbians and to ensure the welfare of children.

(b) Custody of children of a same-sex relationship

In a claim for custody or access involving the breakdown of a lesbian relationship, the court could order custody or access in favour of either partner, even though only one spouse is the biological or adoptive parent. Although the court may be tempted to privilege the parent with a blood or

legal relationship, any such presumption threatens the guiding principle of child custody: the paramount concern must be the best interests of the child. The best approach is to carefully consider the individual circumstances and needs of the child. Biological connection should not be privileged over daily caregiving and love.²³

In Canada, a court would be required to consider a range of factors, including the bond between the child and each parent, each mother's parenting abilities, and the biological connection between parent and child.²⁴ A recent Ontario case involved a non-biological lesbian parent who was seeking sole custody and a declaration that she was a mother of the child.²⁵ The couple planned for the child's birth together and shared in all aspects of his life. The child called the birth mother "mama" and had her last name. After the parties separated, the non-biological mother moved out and had access to the child. The birth mother was offered a job in Vancouver and wished to move there with her son. Justice Benotto held that, although the non-biological mother was very involved in the child's care, the birth mother was the primary caregiver. It was in the child's best interest to be with the birth mother, and to maintain regular contact with the mother's former partner. Joint custody was impossible given the conflict between the parties. The non-biological mother's claim for sole custody was therefore denied.

There is an unreported Ontario decision in which interim sole custody was awarded to a non-biological co-mother, "L". *Re L. and S*²⁶ involved two children, one adopted legally by "L" and the other conceived by artificial insemination by her partner during their relationship. On consent, the Court ordered that "L" retain sole custody of the adopted child, joint legal custody of the other child, and that the children would be primarily resident with "L". The Court relied on the *Children's Law Reform Act*, which states that the parties to an application for custody and access in respect of a child shall include a person who has demonstrated a settled intention to treat the child as a child of his or her family.

Known sperm donors may also bring successful claims for custody and access, despite any agreement with the donor to the contrary.²⁷ Donor contracts, purporting to limit rights and obligations of parentage, are likely unenforceable,²⁸ and the reality is that donors can and do change their minds, particularly after seeing that first adorable grin of a cute and cuddly baby. Regardless of the parties' original intentions, a sperm donor, particularly one who has a relationship with the child and who has been providing financial support, will very likely be seen as the child's father and will be equally entitled to claim custody. Lesbians who wish to prevent any future claims by a sperm donor should use clinic services for sperm.²⁹

(c) Joint custody and adoption to create parental rights

Several Ontario Judges have given same-sex parents joint custody where the couple has decided to co-parent the biological children of one of the

spouses and both wish to have rights and obligations as parents.³⁰ A joint custody order gives non-biological parents a right of access to information from schools and doctors, and the power to give instructions to institutions. Because there is no restriction on who may be granted custody of children, joint custody orders are available to any group of persons who are co-parenting a child. All four parents might be granted custody in co-parenting situations involving a gay male biological father and his partner, and a lesbian birth mother and her partner.

In *Re K*.³¹ Justice Nevens amended the definition of "spouse" to include same-sex spouses for the purposes of second parent and stranger adoption. The case involved non-biological mothers who wished to adopt the children born to lesbian partners so that each spouse had status as her child's mother. Second parent adoptions provide the most certainty and equality to same sex parents on breakdown of relationships.

In cases of stranger adoption, only one spouse in a same-sex relationship will be entitled to legally adopt a child, except in British Columbia and Ontario.³² A constitutional challenge on the basis of sexual orientation discrimination would be required to access joint adoption. On the breakdown of a same-sex relationship in which one spouse has adopted a child, there may be a strong presumption in favour of the sole adoptive parent. In an American decision, a non-adoptive mother, who had been the primary caregiver for the first seven months after the adoption placement, was held to have no right to even commence an action for custody, visitation, and enforcement of a separation agreement providing for access, despite the court ordinarily allowing persons who stand in place of a parent to bring claims for custody.³³

Absent a joint custody or second parent adoption order, a non-biological same-sex parent has no power to pick up children from school, take them to the doctor or travel with them. An easy answer to this problem is a letter of authorization or permission from the biological parent. However, this does not provide the best mechanism for long-term legal security for the family.

2. Getting or paying child support

Child support is a contribution to the financial maintenance of a child paid to the custodial parent by the non-custodial parent, usually strictly in accordance with the payor's annual income. British Columbia is the only jurisdiction to expressly include lesbian co-parents in its support legislation. In that province, "parent" includes the stepparent of a child if the stepparent contributed to the support and maintenance of the child for at least one year, and a stepparent includes a person who lived with a parent of the child in a marriage-like relationship for a period of at least two years. Such a marriage-like relationship may be between persons of the same gender.³⁴

In Ontario, New Brunswick, Manitoba, P.E.I., Saskatchewan, and Newfoundland, the definition of "parent" includes those who have shown "a settled intention" to treat a child as a child of his or her family³⁵ or who stand *in loco*

parentis (in place of a parent) to a child.³⁶ A lesbian who cohabits for a length of time with a spouse and children will therefore likely be considered to have a “settled intention” to parent which is sufficient to create child support obligations. In *M. (D.E.) v. S. (H.J.)*,³⁷ a Saskatchewan court ordered a lesbian to pay child support of \$150 per child, for two children that the couple had reared for five years, notwithstanding the fact that her partner refused to claim support from the children’s biological father. *Buist v. Greaves*³⁸ is another case in which a non-biological lesbian parent was ordered to pay child support of \$450 per month plus half of access costs.

In those jurisdictions in which only biological or adoptive parents are recognized in child support legislation, this could be challenged as adverse effects discrimination against lesbians and gay men, contrary to the *Charter*. Another option would be to argue “promissory estoppel.” An Australian lesbian mother successfully relied on this doctrine to obtain child support from her former partner. The former partner had promised to support the birth mother and child. The birth mother reasonably relied on the assurance to her economic detriment, so the former partner was obliged, on the basis of promissory estoppel, to comply with her promise.

3. Conclusion

With its decision in *M. v. H*³⁹ in May, the Supreme Court of Canada has given meaning to the *Charter*’s promise of equality for lesbians.⁴⁰ The Court held that the wholesale exclusion of same-sex couples from the justice of family law was discriminatory and could not be upheld as reasonable limit of the equality guarantee in a free and democratic society. In an eight-to-one decision, the Court struck down the definition of spouse under section 29 of the *Family Law Act*. The spousal support provisions will have to be re-written before the Court’s November 20, 1999 deadline. The Legislature has also been invited to consider all definitions of “spouse” which exclude lesbians and gays to allow comprehensive change, rather than piecemeal court reform.

Although the decision applies strictly only to Ontario’s legislation, at the time of writing, legislatures across Canada are reviewing their statutes to ensure equal recognition of same-sex spouses and opposite-sex unmarried cohabitants.⁴¹ The next months will likely be marked by significant family law reform, hopefully across Canada. The law is clear that legislatures should now be providing equal treatment of all unmarried couples. This means it is likely that the law will soon, at least on its face, provide equal rights and obligations for lesbian families, and that can only be in the best interests of children.

More information about the case and its possible impact on family law is available on the McMillan Binch website at <http://www.mcbinch.com>. The author wishes to thank Maretta Miranda, Ida Morra-Caruso and Martha McCarthy. Martha and the author co-wrote “Family Law for Same Sex Couples: Chart(er)ing the Course” (1998) Canadian Journal of Family Law 15 (101), which served as a starting point

for this article and provides more comprehensive treatment of a whole range of issues facing same-sex couples.

¹Affidavit of Dr. Rosemary Barnes, sworn August 12, 1994, "Expert Opinion from Dr. Rosemary Barnes Prepared Re: M. v. H. August 12, 1994," S.C.C. Case on Appeal, Tab 18, pp. 128-129; K. Arnup, "We Are Family': Lesbian Mothers In Canada" (1991) 20:3/4 *RFR/DRF* 101-107; F.W. Bozett, ed., *Gay and Lesbian Parents*, (Westport: Praeger, 1987); S. Slater, *The Lesbian Family Life Cycle* (New York: The Free Press, 1995) at 89-118; C. O'Brien and L. Weir, "Lesbians and Gay Men Inside and Outside Families" in N. Mandell and A. Duffy, eds. *Canadian Families: Diversity, Conflict and Change* (Toronto: Harcourt Brace, 1995) 127-130.

²This article includes occasional references to U.S. law. American readers should note that Canada is considerably more advanced in recognizing lesbian and gay equality rights. Practical suggestions for American family law lawyers are provided in M. McCarthy and J. Radbord, "Unmarried Couples: Equality and Equity in Canada" forthcoming in *Family Law 2000* (Aspen Publishing).

³*Children's Law Reform Act*, R.S.O. 1990, s. 28 (1).

⁴*Ibid.* s. 24 (2)(g).

⁵K. Arnup, *supra* note 1; K. Arnup and S. Boyd, "Familial Disputes? Sperm Donors, Lesbian Mothers and Legal Parenthood" in D. Herman and C. Stychin, eds., *Legal Inversions: Lesbians, Gay Men and the Politics of Law* (Philadelphia: Temple University Press, 1995) at 83; S. Gavigan, "A Parent(ly) Knot: Can Heather Have Two Mommies?" in Herman and Stychin, eds. *Legal Inversions: Lesbians, Gay Men and the Politics of Law* (Philadelphia: Temple University Press, 1995); K. A. Lahey, *Are We 'Persons' Yet? Law and Sexuality in Canada* (Toronto: University of Toronto Press, 1999) (forthcoming).

⁶For a discussion of Canada's substantive equality jurisprudence, please see M. McCarthy and J. Radbord "Foundations for 15(1): Equality Rights in Canada" forthcoming in the *Michigan Journal of Gender and the Law*.

⁷Evidence on same-sex parenting which might be helpful to judges includes: *Gay and Lesbian Parents*, F.W. Bozett, ed. (Westport: Praeger Publishers, 1987); *Homosexuality: Research Implications For Public Policy*, J.C. Gonsiorek and J.D. Weinrich, eds. (Newbury Park: Sage Publications, 1991); C.J. Patterson, "Children of Lesbian And Gay Parents" (1992) 63 *Child Development* 1025-1042; S. Golombok and F. Tasker, "Children in Lesbian and Gay Families: Theories and Evidence" in *Lesbians Raising Sons*, Jess Wells (ed.) (Los Angeles: Alyson Books, 1997) 158; R. Green, J.B. Mandel, M.E. Hotvedt, J. Gray, and L. Smith, "Lesbian Mothers and their Children: A Comparison with Solo Parent Heterosexual Mothers and their Children" (1986) 15 *Archives of Sexual Behaviour* 167-184; C.J. Patterson, "Children of the Lesbian Baby Boom: Behavioural Adjustment, Self Concepts and Sex Role Identity" in *Lesbian and Gay Psychology: Theory Research and Clinical Applica-*

tions, B. Greene and G.M. Herek (eds.) (Newbury Park, California: Sage) 156-175. Lawyers might also provide judges with the Ontario case of *Re K* (1995), 15 R.F.L. (4th) 129 (Ont. Ct. Prov. Div.). It summarizes an array of expert evidence and provides answers to the common homophobic stereotypes about same-sex parenting.

⁸S. Gavigan, *supra* note 5; K. Arnup and S. Boyd, *supra* note 5; K. Arnup, *supra* note 1. See discussion *infra*.

⁹K. Arnup and S. Boyd, *ibid*.

¹⁰The American Psychological Association reports that, by being open with their children about their relationships and by living with their same-sex partners, gay and lesbian parents assist their children to become well-adjusted adults. American Psychological Association, *Lesbian and Gay Parenting: A Resource for Psychologists* (District of Columbia, 1995).

¹¹(1974), 18 R.F.L. 132 (Sask. Q.B.).

¹²*Ibid.* at 138.

¹³(1975), 23 R.F.L. 58 (Alta. Prov. Ct.).

¹⁴(1978), 3 R.F.L. (2d) 327 (Ont. Co. Ct.).

¹⁵(1980), 16 R.F.L. (2d) 7 (Ont. Prov. Ct.).

¹⁶(1980), 20 R.F.L. (3d) 358 (Ont. C.A.).

¹⁷The Ontario Court, Provincial Division, adopted a more desirable approach in *Steers v. Monk* [1992] O.J. No. 2701 (Prov. Ct.) (Q.L.). Justice Wolder stated that the mother's lesbian "relationship should be seen in the same light as if she were living in a heterosexual relationship with another [sic] male person, which could also either be positive or negative, depending on the particular facts surrounding the relationship and the outward conduct of the parties."

¹⁸The case was decided prior to the introduction of the *Canadian Charter of Rights and Freedoms* and the equality protections received by lesbians and gays in cases like *Egan v. Canada* [1995] 2 S.C.R. 513. See also a Quebec case which found that such a restriction would be unconstitutional under the *Quebec Charter: J. v. R.* (1982), 27 R.F.L. (2d) 380 (Que. S.C.).

¹⁹J. McLeod, Annotation to *Bezaire*, *supra* note 16 citing *London Free Press* (Jan. 17, 1981).

²⁰Susan Boyd, "Lesbian (and Gay) Custody Claims: What Difference does Difference Make?" (1998) 15 Can. J. Fam. L. 131.

²¹*B. v. B.*, *supra* note 15; *Droit de la Famille - 14*, File no. 750-12-002454-82, 22 décembre 1982 (C.S.Q.); *Daller v. Daller* (1988), 18 R.F.L. (3d) 53, 22 R.F.L. (3d) 96 (Ont. C.A.); *Steers v. Monk*, *supra* note 17; *N. v. N.*, [1992] B.C. J. No. 1507 (Q.L.).

²²In determining the best interests of a child, it may be relevant to consider whether a parent will be able to provide a permanent and stable family unit. The fact that same-sex couples are denied the right to marry cannot be used against the lesbian or gay parent. Discrimination must not be used to justify continuing discrimination.

²³As the U.S. Supreme Court has observed in *Lehr v. Robertson*, 463 U.S. 248

at 260, 103 S.Ct. 2985 at 2992, 77 L. Ed.2d 614 at 626, (1983): "Parental rights do not spring full-blown from the biological connection between parent and child. They require relationships more enduring." (citing Caban, 441 U.S. at 397, 99 S.Ct. at 1770, 60 L. ED.2d at 297) (Stewart, J., dissenting) and further in 463 U.S. at 261, 103 S.Ct. at 2993, 77 L. ED.2d at 626: "the importance of the familial relationship, to the individuals involved and to the society, stems from the emotional attachments that derive from the intimacy of daily association... as well as from the fact of blood relationship." It is important to note that months of carrying a child to term and giving birth create an initial relationship between the biological mother and child that should be recognized at law. This would be particularly important in a contest between a sperm donor and a birth mother, for instance. However, the status of birth mother is important because of the caregiving bond of reproductive labour, rather than biological connection.

²⁴In the U.S., some courts deny standing to non-biological mothers, stating that a non-biological lesbian co-parent is not a parent but a "biological stranger." Co-parent mothers are often restricted to extremely limited visitation. In New York, however, a trial court granted full custody to a lesbian non-biological mother. The couple had agreed that one mother would be inseminated and the other would be the primary caregiver. The judge determined that the non-biological mother was the six year old girl's "psychological" parent and that granting custody to her was in the child's best interest. The biological mother was awarded visitation. *Briggs v. Newingham*, Lesbian and Gay Law Notes (Lesbian and Gay Law Assoc. Of Greater N.Y., N.Y.) (Summer 1992) at 54. ²⁵*Buist v. Greaves*, [1997] O.J. No. 2646 (Gen. Div.) (QL).

²⁶File No.195/89 (Ont. Prov. Div.) *per* Pedlar J.

²⁷Newfoundland, Québec and the Yukon are possible exceptions. The provisions of the *Children's Law Act*, R.S.N. 1990, c. C-13, s. 12(1)(6) and the *Children's Act*, R.S.Y. 1986, c. 22, s. 13(1)(6) are identical. They state that a man whose semen is used to "artificially inseminate" a woman is not the father unless he is married to or living with the mother. There is no clear definition of "artificial insemination" so it is unclear whether "artificially inseminated" includes self-insemination. Given this uncertainty, there is a danger that the statutes may be interpreted in a manner so as to allow sperm donors to assert parental rights. In *Jordan C. v. Mary K.*, 179 Cal. App. 3d 386, 224 Cal. Rptr. 530 (1986, 1st Dist.), the Court held that parties who proceeded with alternative insemination in a manner not contemplated by the terms of a similar statute could not receive its protections. The sperm donor could obtain parental status.

Québec's Civil Code provides that participation in the parental project of another person by way of a contribution of genetic material to medically assisted procreation does not allow the creation of any bond of filiation between the contributor and the child born of that procreation. A person who, after consenting to medically assisted procreation, does not acknowledge the child,

is responsible to the child and mother of the child born of medically assisted procreation. Procreation or gestation agreements on behalf of another person are void. See Art. 538-542 C.C.Q.

²⁸Parents can never bargain away support or access rights. See *e.g. Willick v. Willick*, [1994] 3 S.C.R. 670; *Hansford v. Hansford* (1973), 9 R.F.L. 233; *Baumann v. Clatworthy* (1991), 35 R.F.L. (3d) 200 (Ont. Gen. Div.): "child support is the right of the child, and a parent cannot bargain away the child's right." *Richardson v. Richardson*, [1987] 1 S.C.R. 857 at 869, 38 D.L.R. (4th) 669: "Child maintenance, like access, is the right of the child." *Young v. Young*, [1993] 4 S.C.R. 3 at 60: "...the right to access and the circumstances in which it takes place must be perceived from the vantage point of the child."

²⁹Although some Canadian clinics and doctors have a written or unwritten policy that prevents them from assisting single or lesbian women to conceive, this is clearly discriminatory. The refusal to provide insemination services to lesbians has been successfully challenged under B.C. human rights legislation. See, *Benson v. Korn*, [1995] C.H.R.R. D/319 (4 August 1995) (B.C. Council of Human Rights). See also discussion of a case reaching the same result in Australian jurisprudence, A. Stuhmcke, "Lesbian Access to *In Vitro* Fertilization" (1997) 7 *Australasian Gay and Lesbian Law Journal* 15 at 30, citing Australian news reports, and *Pearce v. South Australian Health Commission* (1996), 66 S.A.S.R. 486, which reached the same conclusion in favour of a single woman.

³⁰To the best of my knowledge, none of these cases are reported.

³¹*Re K.* (1995), 23 O.R. (3d) 679 (Prov. Div..)

³²*Adoption Act*, R.S.B.C. 1995, c. 48, s. 29.

³³*In re Z.J.H.*, 471 N.W. 2d 202 (Wisc. 1991) at 204.

³⁴*Family Relations Act*, R.S.B.C. 1996, c. 128, as am. by *Family Relations Amendment Act*, 1997 (proclaimed February 4, 1998);, s. 1(2)(b).

³⁵*Family Law Act*, R.S.O. 1990, c. F. 3, s. 1(1); *Family Services Act*, S.N.B. 1980, c. F-2.2, s.113, s.1; *Family Law Reform Act*, R.S.P.E.I. 1988, c. F-3, s. 1(a); *The Family Law Act*, S.N. 1988, c. 60, s. 37(1), s. 2(d); *Family Maintenance Act*, S.S. 1997, c. F-6.2, s. 2.

³⁶*Family Maintenance Act*, R.S.M. 1987, c. F20, s. 36(4);

³⁷(1996), 25 R.F.L. (4th) 264 (Sask. Q.B.)

³⁸*Buist v. Greaves*, *supra* note 25.

³⁹*M. v. H.* (1996), 132 D.L.R. (4th) 538 (Ont. Ct. Gen. Div.) (Epstein J.); *aff'd* (1996), 142 D.L.R. (4th) 1 (C. A.) (Finlayson J.A. dissenting); *aff'd* (1999), 171 D.L.R. (4th) 577 (Gonthier J. dissenting) (S.C.C.).

⁴⁰In *Egan v. Canada*, *supra* note 18, the Supreme Court of Canada held that gays and lesbians are a historically disadvantaged group requiring the equality protections of the *Charter*.

⁴¹See, *The National Post* (May 21, 1999) A-2. At the federal level, it has been reported that the government plans to introduce omnibus legislation redefining spouse to include same-sex couples in every federal enactment that uses an

opposite-sex requirement. See, Lori Kittelberg and Mike Scandiffio, "Top Liberals discuss omnibus bill" *The Hill Times* (May 30, 1999). The Québec National Assembly unanimously approved such an omnibus Bill on June 10, 1999. See, Bill 32, *An Act to amend various legislative provisions concerning de facto spouses*, 1st session, 36th Legislature of Québec, 1999. Note that Quebec provides limited rights and responsibilities to unmarried couples.