

The Gazette, 5 November 2010, A23

Unmarried-couples law hasn't kept up with the times

Quebec must review the rules in light of current marriage realities

By ROBERT LECKEY, Freelance November 5, 2010

The Quebec Court of Appeal has granted "Lola" a partial victory in her suit against her ex-partner, a Quebec billionaire, "Eric," ruling that the exclusion of unmarried couples from the rules on spousal support violates their constitutional equality right under the Canadian Charter of Rights and Freedoms. Whether or not "Eric" or the government appeals, the judgment prompts us to recognize that Quebec's current law is incoherent and out of step with the family realities of Quebec society.

Let's put aside the spectacular facts. The media have described the parties' opulent, jet-set lifestyle at length. But we don't base public policy or law on exceptional cases. In any case, bringing the treatment of unmarried couples into court is expensive enough that it's no surprise it happened in a big-money case.

Under the current law, unmarried cohabitation gives rise to no rights and duties as between the partners, no matter how long they live together. By contrast, the law in every other Canadian province provides for possible spousal support when unmarried cohabitants break up.

In Quebec, every parent owes support to his or her child. But that duty ends when the child grows up. Furthermore, it doesn't compensate a spouse for the economic loss resulting from an adult relationship or its breakdown.

Is the total exclusion of unmarried couples from family law consistent with our fundamental values? Answering that requires a careful reading of recent history.

In 1980, the legislature undertook a major reform of family law. It rejected proposals for recognizing a spousal support duty for unmarried couples. The justification was the need to preserve a space of freedom for those who wished to live their intimate lives outside family law.

In 1989, the legislature strengthened the protective regime entailed by marriage. Experience had shown that allowing people to contract out of legal protections on marriage produced harmful effects for married women. Too many of them found themselves impoverished by marriage breakdown.

With hindsight, it's possible to reconcile this history with the absence of any regime for unmarried cohabitants. Quebec society, the argument would run, wishes to preserve an unregulated space for those who want it. It's only once individuals make the choice to marry that they become subject to the heavy and largely non-negotiable regime of marriage.

But that ignores the social context. It is anachronistic to identify freedom of choice as the key interest in Quebec's regulation of the family.

At the time of the reforms, unmarried cohabitation was a marginal family form. Social pressures still pushed Quebecers to marry. The vast majority of children were born to married parents. The legislature of the day strengthened the regime of marriage knowing its act would affect the majority of families with children.

Today, things have changed. Whether it's in rejection of religion or for other reasons, living together unmarried has become socially accepted, even normal. More than one-third of Quebec couples today live together unmarried. More than three out of five children are now born to unmarried parents.

Keeping open a less regulated minority option is one thing. But standing by while social developments overtake family law, to the point where its central regime no longer affects the households into which the majority of our children is born, is entirely different.

Paradoxically, Quebec society views itself as progressive in family matters. We boast about generous parental leave and the \$7-a-day daycare. These programs testify to a decision to share the costs of social reproduction.

But in leaving unmarried couples without any legal structure whatsoever, Quebec law denies the dependence, often connected to the upbringing of children, which arises from conjugal relationships.

It's not the case that we should turn back the clock and pressure everyone to marry. But let's recognize that our lawmakers have never debated fully how to combine the protective instinct underlying our marriage law with the new demographic realities of Quebec society.

Whatever the details of the government's response, we should hope that it recognizes both our fundamental values and the concrete facts of our contemporary family lives.

Robert Leckey teaches family law at McGill University.

Read more:

<http://www.montrealgazette.com/life/Unmarried+couples+has+kept+with+times/3781242/story.html#ixzz14VuQryrv>