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Backgrounder

BCLI Report no. 5—Report on Recognition of Spousal and Family Status

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The Attorney General asked the British Columbia Law Institute to review the statute law of British Columbia and make recommendations for legislative changes necessary to provide legal recognition to the variety of family relationships in the province, and to address the rights and obligations that should be attached to those relationships. The request from the Attorney General followed amendments made by the legislature to the *Family Relations Act* in 1997, which recognized certain marriage-like relationships. The BCLI was asked to begin work in March 1998 and complete it by 30 November 1998. It was understood that the time available would not allow the Institute an opportunity to consult with stakeholders or the community in general.

The BCLI approached its task having regard to the principles embodied in Canada's constitution (particularly the Charter of Rights and Freedoms), federal and provincial human rights legislation, judicial decisions, and policies accepted by the British Columbia legislature in other legislation dealing with family relationships. These principles include:

- Protection of relationships based upon personal choice;
- Non-discrimination in access to social status;
- Voluntariness;
- Protection of the vulnerable;
- Protection of expectations;
- Equity in distribution of benefits;
- Equality among family relationships;
- Protection of privacy.

The BCLI, after an exhaustive examination of the provincial statutes, concluded that in many cases they draw unsustainable distinctions between persons who are married and those of the same or opposite sex who live in non-traditional marriage-like relationships. The same is true of distinctions between conventional families and non-relatives who choose to live together as a family.

To eliminate these distinctions and provide greater legislative recognition of the variety of family relationships in the province, the BCLI made a number of proposals.

The BCLI proposed the enactment of a *Family Status Recognition Act* (FSRA), which would define an expanded concept of family relationship. The Act would also set out rules of general application respecting status, rights, and obligations, as well as for determining when such a relationship arises and when it ends. The FSRA would not directly create any new rights or obligations. Its function would be to guide the interpretation of other provincial acts so far as rights and obligations created by those acts are concerned. In addition to its indirect effect, a schedule to the FSRA would expressly amend over 100 other statutes to harmonize their operation with it.

The BCLI proposed the enactment of a *Domestic Partner Act* (DPA), which would allow two adults to enter into a joint declaration that they are domestic partners and have the same status, rights, and obligations ascribed to married spouses. Domestic partners may be of the same or opposite sex, and need not be in a conjugal relationship.

The DPA would permit, but not require, the registration of the declaration with the Registrar of Vital Statistics. If the declaration is registered the domestic partners, as between themselves and with respect to any third party, would have as of the date of the registration rights and obligations equivalent to those of married people. If the declaration is not registered, it would still confer rights and obligations upon the partners between themselves during their joint lifetimes. An unregistered declaration may also be evidence that the parties are in a “marriage-like relationship” for the purposes of the FSRA and this may be relevant in claims involving third parties.

The BCLI proposed the enactment of a new Part 5.1 of the *Family Relations Act*, which would provide for the sharing of family property on the termination of a marriage-like relationship. Rights under the proposed Part 5.1 would arise only where the relationship had existed for 2 years. The principles that govern the sharing of property in Part 5.1 are based on “constructive trust” concepts developed by the courts to prevent the unjust enrichment of one person at another’s expense. The proposed legislation would refine the operation of the remedy and make it more accessible through the removal of certain evidentiary barriers.

The report contains draft legislation with extensive annotations to explain its operation. Accompanying this summary is a table comparing the different forms of spousal status contemplated by the BCLI’s proposals.