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Registered Partnerships: A Model for Relationship Recognition

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Biography

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PART I: INTRODUCTION

The principal objective of this paper is to provide a factual and an analytical examination of registered partnerships. It is submitted to the Law Commission of Canada as part of an exploration of close, personal relationships formed by adults. As such, this research could provide a better understanding of the actual and potential uses of registered partnerships, as a means for creating better conditions for adults in close personal relationships to declare their commitments, obligations and responsibilities to each other.

The paper is divided in three main sections. Following the introduction, Part II categorizes and describes the various types of registered partnership models that have been established in different jurisdictions around the world. The Annex, which provides factual information about existing registered partnership models in a table format, provides additional and complementary information and should be consulted in conjunction with Part II. Part III reviews current uses of registered partnerships to assess the value of opting for such a model. Academic and activist debates are examined to outline the benefits and pitfalls with registered partnerships as a model of legal recognition for either conjugal or non-conjugal relationships. Part VI looks to situate the issue in the Canadian context by contrasting the debates surrounding registered partnerships in other jurisdictions. This last section will assess whether registered partnerships add any value if same-sex couples are no longer barred from marriage.

PART II: TYPES OF REGISTERED PARTNERSHIP RECOGNITION

I. TERMINOLOGY

Many terms are used to designate the legal status established by relationship registration initiatives. “Registered Domestic Partnerships”, “Registered Partnerships”, “Domestic Partnerships”, “Declared Partnerships”, “Life Partnerships”, “Stable Relationships”, “Civil Unions”, “Legal Cohabitation”, “Reciprocal Beneficiaries”, and “Unmarried Couples Registration” are all terms used in legislation, municipal ordinances, academic and activist writings, and the media.

Throughout this report, the term “registered partnerships” will be the expression used to describe the various methods, which allow unmarried individuals to register their mutually dependent relationships in order to gain official state and societal recognition. The expression provides a simple but precise description of the initiatives examined in this report. “Partnership” is a commonly used word referring to personal relationships, and is therefore an accurate representation of the interdependent relationships that are the subject of registration methods. The term “registration” aptly covers the fact that all the models reviewed are opt-in schemes, that is, they require partners to identify themselves to the relevant authorities either through registration or the issuance of a licence.

2. EXISTING MODELS¹

At the outset, it should be underscored that while many of the registered partnerships that will be reviewed in this report are open to both same-sex and opposite sex partners, the inability of same-sex couples to opt-in to a legally recognized relationship is the primary impetus for all registered partnerships initiatives. The lack of protective status has placed gay and lesbian families everywhere under considerable personal, economic and social constraint.² Registered partnerships have essentially been established to remedy this lack of relationship status. Indeed, all existing registration schemes permit same-sex couples to register their partnerships, while not all of these initiatives are open to opposite sex individuals. Although relationship recognition through registration may or may not benefit only gay and lesbian partners, it has served a real need in the gay and lesbian communities as partners are not otherwise able to achieve societal recognition by marrying each other.³

There is more than one model of registered partnership recognition.⁴ Some models are the product of law-making bodies at the local, regional or national level, while others are the product of the private sector.⁵ Moreover, the forms in which registered

¹ See the Annex for a detailed description of the models reviewed in this section.

² L. Poverny and W. Finch, Jr, "Gay and Lesbian Domestic Partnerships : Expanding the Definition of Family" (1998) *Social Casework : The Journal of Contemporary Social Work* 116 at 118.

³ L. Becker, "Recognition of Domestic Partnerships by Governmental Entities and Private Employers" (1995) 1:1 *National Journal of Sexual Orientation Law* 90, on-line: <<http://www.ibiblio.org/gaylaw/issue1/becker.html>> (date accessed: 4 August 2001).

⁴ See the Annex.

⁵ "Thirteen percent of all United States employers offer benefits to the domestic partners of their employees. Larger companies, with more than 5,000 employees, the figure is twenty-five percent..." : D. Zielinski, "Domestic Partnership Benefits: Why Not Offer Them To Same-Sex Partners And Unmarried Opposite Sex Partners?" 13 *Journal of Law and Health* 281 at 281-82.

partnerships have been established depend on the constitutional, legal, social and religious contexts of each relevant jurisdiction. In addition, there are important differences in the level of benefits and obligations actually incurred through registration.

Nevertheless, most models possess some common features. Their purpose is usually to recognize, validate and support committed, mutually supportive personal relationships between unmarried individuals. Most registered partnership policies define who may register, for instance by setting cohabitation or age requirements. Furthermore, an essential element of this new civil status is the fact that individuals make an official record of their partnerships. This process allows individuals to register with various levels of government or private employers by completing a formal declaration or by obtaining an official licence. It is also true that the majority of registered partnership confer a number of entitlements and obligations.⁶ In this fashion, registered partnerships regulate rights: between partners; entitlements and obligations involving third parties; and, in some cases, parenting rights. Finally, registered partnership programs define a process by which the partners may dissolve the formal relationship.

For the purposes of this report, the different models⁷ will be categorized to situate registered partnerships in relation to marriage. Under this approach, marriage is viewed as the ceiling, namely the model that offers couples the most extensive rights and obligations. The floor, on the other hand, is basically a blank slate, the level at which no

⁶ There are a few municipal registered partnership schemes that confer no rights or obligations, and provide only a symbolic recognition. This is the case in Hamburg, Germany. See C. Hebling & R. Sass, "Symbolic Domestic Partnership in Hamburg" (1997) 55 Euro-Letter 14, on-line: < <http://www.steff.suite.dk/eurolet.htm> > (date accessed: 3 August 2001).

⁷ See the Annex for a detailed description of the models reviewed in this section.

rights or obligations are conferred on non-married partners.

Using these two reference points, a simplified overview of the different types of registered partnerships can be offered. Indeed, registered partnerships can be grouped into two main categories. First, several jurisdictions have enacted registration schemes that will be referred to as “Marriage Minus” partnership schemes. These legislative models offer quasi-marital options, but they fall short of reaching the marriage ceiling in that they exclude a small number of rights and responsibilities conferred to married couples. It is clear nonetheless that these registered partnerships “both functionally and socially reproduce marriage”⁸.

The second major grouping of registered partnerships will be referred to as “Blank Slate Plus” schemes. These consist of initiatives designed to grant specific enumerated rights and obligations to two individuals in a partnership, without attempting to parallel marriage laws. Rather than subtracting from the marriage ceiling, these registered partnerships add a bundle of rights and obligations onto what was previously a blank slate. In some cases, the handout of rights and obligations is very modest indeed.

A. The “Marriage Minus” Model of Registered Partnerships

⁸ E. Brumby, “What Is In A Name: Why The European Same-Sex Partnership Acts Create A Valid Marital Relationship” 28 GA. J. Int’l & Comp. L. 145 at 168.

Quasi-marital models of registered partnerships include those established in the Nordic states of Denmark, Sweden, Norway, Iceland, and The Netherlands.⁹ In addition, Vermont falls within this category, although it is arguable that the state's civil unions are really marriage under a different name. However, given the continued differences between marriage and civil unions in Vermont, it appears useful to view civil unions as a far reaching registered partnership model.

These jurisdictions represent six models of registered partnerships that come the closest to mirroring the institution of marriage by offering marriage-like formalities and consequences. Indeed, in some jurisdictions, the differences between marriage and registered partnerships are relatively minor, or relate to matters outside the jurisdiction's legislative powers.

For instance, in Vermont, the newly created civil unions are equivalent to marriages in almost every way, with one major exception, and that is the actual name of the civil status. Indeed, the symbolic title "marriage" is reserved solely for the union of a man and a woman.¹⁰ Another difference is the fact that gay men and lesbians joined in a civil union cannot access federally regulated rights and obligations¹¹, and further, they cannot expect legal recognition of their relationship outside the state of Vermont.¹² This jurisdiction will obviously continue to be outside the purview of the Vermont legislature.

⁹ Finland is also considering enacting a registered partnership scheme: "Finish Gays to Get Legal 'Union'" (30 November 2000), on-line: CNN.com (date accessed: 1 August 2001).

¹⁰ "Recent Legislation" (2001) 114 Harvard L.J. 1421 at 1424.

¹¹ *Ibid.* at 1423.

¹² R. Sneyd, « Le Vermont autorise les couples homosexuels à s'unir civilement » (2000), en ligne : LeSoleil.com (date accessed : 26 April 2000); L. Gevirtz, "US Gays Tie Historic Knot in Midnight 'Marriage'", on-line: Yahoo News Homepage <http://dailynews.yahoo.com/hlx/nm/20000701/ts/life_gays_dc_2.html>.

Legal differences between registered partners and married couples are also relatively insignificant in the Netherlands, to the extent that individuals can convert from one or the other by filing a conversion record with the appropriate state authority.¹³

In other cases, the differences between marriage and registered partnerships are not considerable, but the limitations of registered partnerships are socially significant. In Sweden, registered partners have been granted the same entitlements as married couples except for critical rights relating to children, such as custody, adoption and medically assisted procreation.¹⁴ The same is true for both Norway¹⁵ and Iceland¹⁶, which prohibit registered domestic partners from adopting, or accessing medically assisted procreation.

Except for the Netherlands, all “Marriage Minus” partnership schemes are open exclusively to same-sex partners. But even in the Netherlands, the law reform initiative was first considered as a remedy for the inequality suffered by lesbian and gay cohabitants.¹⁷ In all six jurisdictions, people who are close relatives, for instance relatives in the ascending or descending line, or siblings, cannot register a partnership. Thus, like marriage, these registered partnerships initiatives are intended for individuals in conjugal relationships, rather than all adults involved in an interdependent personal relationship.

¹³ Email from Kees Waaldijk (30 July 2001) [hereinafter “Email no. 1”].

¹⁴ International Lesbian and Gay Association (ILGA), “Equality for Lesbians and Gay Men” (June 1998), on-line: <<http://www.steff.suite.dk/report.htm>> (date accessed: 28 July 2001) at 104.

¹⁵ *Le pacte civil de solidarité*, on-line: Sénat français <http://www.senat.fr/lc/lc48/lc48_mono.htm> (date accessed : 30 July 2001).

¹⁶ SAMTOEKIN '78, « A Victory For Icelandic Lesbians and Gays » (August 1996) 43 Euro-letter 10, on-line: <<http://www.steff.suite.dk/eurolet.htm>>.

¹⁷ W.M. Schrama, “Registered Partnership in the Netherlands” (1999) 13 International Journal of Law, Policy and the Family 315 at 316-18.

In some cases, registered partnerships are easier to dissolve than civil marriages. For instance, in the Netherlands, registered couples can terminate the relationship by mutual agreement, and through the registration of a declaration stating they wish to end the partnership.¹⁸

Not surprisingly, all of the registered partnerships establishing marriage-like institutions were enacted by jurisdictions that have the constitutional power to regulate marriage. Thus, the registered partnerships from the Nordic countries were established at the national level. Whereas in the United States, state governments have the power to define civil status, thus the Vermont state legislature had the legal authority to enact the civil union legislation.¹⁹

B. The “Blank Slate Plus” Model of Registered Partnerships

The registered partnerships methods in this category include the ones established in France, Belgium, Germany, Hawaii, in two regions of Spain, and in Nova Scotia. Also included are the registration mechanisms set up at the municipal level, as well as those created by private employers.²⁰ The very first registered partnership falls into this category, originated by the City of Berkeley in 1984.²¹

¹⁸ “Email no. 1”, *supra* note 13.

¹⁹ C. Bowman & B.M. Cornish, “A More Perfect Union: A Legal and Social Analysis of Domestic Partnership Ordinances” (1992) 92 Columbia L.R. 1164 at 1198.

²⁰ Private employers often require registration, evidentiary support, and other eligibility requirements similar to municipal partnership programs : D. Zielinsky, *supra* note 5 at 291.

²¹ Partners Task Force for Gay & Lesbian Couples, “Domestic Partnership Benefits, Philosophy and Provider List” (2001), on-line: <<http://www.buddybuddy.com/d-p-1.html>> (date accessed: 1 August 2001);

The registered partnerships schemes that can be considered “Blank Slate Plus” are very diverse, but their commonalities are significant. First, these partnerships initiatives do not seek to create marriage-like legal institutions. Rather, a new status is established, one that is an intermediary between married couples and *de facto* relationships. It is true that the range of rights and obligations are often far more limited than in marriage. But in contrast with legislation that ascribes to individuals the status of *de facto* cohabitants, the requirement of registration makes the partnership an opt-in model, based on the consent and knowledge of the partners.

Secondly, these partnership models “provide an entry point for official state and societal recognition”²² of interdependent adult relationships. Essentially, these schemes focus on the creation of entitlements for non-married couples to rights or benefits offered by third parties, such as employment and health benefits, hospital and prison visitation privileges, and tenancy rights. In addition, some registrations initiatives may confer reciprocal obligations for mutual basic support while the two individuals remain in the partnership. In many cases, the motivation to extend entitlements stems from anti-discrimination policies. For instance, many private employers concluded that to deny family benefits to gay and lesbian employees who were similarly situated to married heterosexual employees was in fact a violation of their own anti-discrimination employment policy relating to sexual orientation.²³

Zielinsky, *supra* note 5 at 290.

²² E.J. Juel, “Non-Traditional Family Values: Providing Quasi-Marital Rights To Same-Sex Couples” 13 Boston College Third World Law Journal 317 at 319.

²³ *Ibid.* at 325.

The differences in the “Blank Slate Plus” models are, however, extensive. For instance, in Belgium²⁴, Hawaii²⁵ and New York²⁶, registration is open to all without regard to conjugality, sex, or family ties. In France, the “Pacte civil de solidarité” (PACS) excludes people who are siblings or lineal descendants, but it is not restricted by sex.²⁷ In Nova Scotia²⁸, Catalonia²⁹, and Aragon³⁰, any two persons who are living in a conjugal relationship can register their partnerships, regardless of whether they are same-sex or opposite sex. In Germany³¹, Hamburg³² and for a substantial number of private employers in the United States³³, registration programs are limited to same-sex couples living in conjugal relationships.

The level of benefits provided, and obligations incurred, varies significantly from one scheme to the next. There are several registration policies that grant significant benefits to registered partners. In the case of municipalities, the range of entitlements and obligations is obviously limited to areas under local jurisdiction. In New York, for example, registered partners are granted visitation rights in jails or hospitals, tenancy

²⁴ *Loi instaurant la cohabitation légale*, (23 November 1998), on-line : Belgique, Ministère de la justice <<http://www.ulb.ac.be/cal/Cohabitation.html>> (date accessed : 1 August 2001).

²⁵ Brumby, *supra* note 8 at 160.

²⁶ H. Gewertz, “Domestic Partnerships: Rights, Responsibilities and Limitations” (1994), on-line: Public Law Research Institute <http://www.uchastings.edu/plri/fall94/gewertz.htm> (date accessed: 25 June 2001).

²⁷ *Virtual PACS, Mode d'emploi*, en ligne : France, Ministère de la justice <<http://vpacs.ouups.net/modedemploi.html>> (last modified : 15 novembre 2000).

²⁸ *Vital Statistics - Domestic Partnerships*, on-line: Province of Nova Scotia <<http://www.gov.ns.ca/snsmr/vstat/certificates/domestic.stm>> (last modified: 4 June 2001).

²⁹ C. Léston, “Equality for Lesbian and Gay Men in Spain, Catalan Law of Partnership”, on-line: International Lesbian and Gay Association http://ilga.org/information/legal_survey/Europe/spain.htm (last modified: 13 January 2001).

³⁰ *Unmarried Couples Law in Aragon*, on-line: <<http://redestb.es/triangulo/leyarin.htm>> (date accessed: 17 July 2001).

³¹ L. Millot, “L'union gay ne réjouit pas toute l'Allemagne” *Libération* (2 August 2001), on-line : Libération <<http://www.liberation.fr/quotidien/semaine/20010802jeug.html>>.

³² See Zielinsky, *supra* note 5 at 282.

³³ Juel, *supra* note 22 at 337.

rights, and municipal employees may receive family employment benefits.³⁴ In the case of national schemes like the PACS in France, and the “Cohabitation légale” in Belgium, the limitations are deliberate, since the national governments can legislate on many more marriage-like entitlements but declined to do so.

It is obvious from the preceding survey that there is not one single model of reform in the area of registered partnerships. The ways in which unmarried individuals can be granted state and societal recognition are extremely diverse. One feature that distinguishes registered partnership models is the state’s policy objective: in “Marriage Minus” models, the main policy objective is to confer quasi-marital rights to gays and lesbians. In the case of “Blank Slate Plus” initiatives, jurisdictions are more interested in creating a lesser civil status, one that falls between marriage and *de facto* relationships.

In addition, the choice of a particular model of registered partnership depends directly on the constitutional, political, social, religious and economic context of a specific jurisdiction. The next section will outline some of the factors that impact on the legitimacy and popularity of different registration models.

PART III: ASSESSING DEBATES ABOUT REGISTERED PARTNERSHIPS

I. Introduction

³⁴ “Domestic Partnership Registries”, on-line: Mycounsel.com <<http://www.mycounsel.com/content/famiylaw/gay/protect/domestic/registry.htm>> (date accessed: 25 June 2001).

The fact that same sex couples have been barred from marriage, and have few legal means to recognize their relationships continues to be a driving force behind domestic partnerships. It helps explain why the most extensive debates surrounding the value and legitimacy of registered partnerships have often taken place within the lesbian and gay communities. In addition, debates about registered partnerships have often been seen in contradistinction to the issue of same-sex marriage. However, the larger societal implications of partnership recognition have also meant that the debates have extended beyond the lesbian and gay communities.

This paper will attempt to summarize and evaluate the range of social, political, economic issues that have been debated in relation to registered partnerships. In surveying the various arguments for and against registered partnerships, it becomes apparent that the debates are multi-layered and complex, and views cannot be easily categorized into pro and cons arguments. Instead, I will look at the spectrum of views on these issues.

II. Registered Partnerships vs. Marriage

A. Are Registered Partnerships a “Distracting Impediment”?³⁵

As previously mentioned, debates surrounding the value of registered partnerships tend to be voiced most often in the context of discussions surrounding

³⁵ R.D. Mohr, “The case for gay marriage” (1995) 9 Notre Dame Journal of Law, Ethics & Public Policy 215 at 239.

same-sex marriage. Some of these debates have been most pronounced in the United States where there is no consensus on whether marriage or domestic partnerships are the best route for the legal recognition of same-sex relationships.³⁶ Similar debates have occurred in other jurisdictions like Australia³⁷, France³⁸ and the Netherlands³⁹. For the most part, the debates focus on political strategy and political values.

Certainly for many, registered partnerships distract from the more important goal of including same-sex partners in marriage. Proponents of this view argue that anything short of marriage is accepting inequality, discrimination, or even a form of apartheid⁴⁰. In Vermont, Representative Hingten had the following to say about the Civil Union Bill:

[It] does more than validate [bigotry]. It institutionalizes the bigotry and affirmatively creates an apartheid system of family recognition in Vermont.⁴¹

Speaking about the PACS in France, one gay man stated the following: "Le PACS est un sous-mariage. On a accepté d'être traités comme des demi-portions..."⁴²

³⁶ See N.D. Hunter, "Marriage, Law, and Gender: A Feminist Inquiry" (1991) 1:9 *Law & Sexuality* 9. See also G. Rotello and E.J. Graff, "To Have and To Hold: The Case for Gay Marriage" (1996) 262: 25 *The Nation* at 58.

³⁷ See R. Graycar and J. Millbank, "The Bride Wore Pink... To the Property (Relationships) Legislation Amendment Act 1999: Relationships Law Reform in New South Wales" (2000) 17 *Canadian Journal of Family Law* 227.

³⁸ D. Borrillo, M. Iacub et E. Fassin, « Au-delà du PACS : pour l'égalité des sexualités » *Le Monde* (25 mai 1999).

³⁹ Email from Kees Waaldijk (26 July 2001) [hereinafter "Email no. 2"].

⁴⁰ "Marrying Apartheid: The failure of Domestic Partnership Status" (1999), on-line: Partners Task Force <<http://buddybuddy.com/mar-apar.html>> (date accessed: 2 August 2001) [hereinafter "Marrying Apartheid"]. See also M.A. McCarthy & J.L. Radbord, "Family Law for Same Sex Couples: Chart(er)ing the Course" (1998) 15 *Canadian Journal of Family Law* 101 at 123: "[registered domestic partnerships] create a second class category of relationships for those deemed less worthy of recognition." See also N. Hunter, *supra*, note 36; B.J. Cox, "The Little Project: From Alternative Families To Domestic Partnerships To Same-Sex Marriage" (2000) 15 *Wisconsin Women's Law Journal* 77; B.J. Cox, "The Lesbian Wife: Same-Sex Marriage as an Expression of Radical and Plural Democracy" (1997) 33 *California Western L. R.* 155 [hereinafter "Lesbian Wife"].

⁴¹ W.N. Eskridge Jr., "Equality Practice: Liberal Reflections on the Jurisprudence of Civil Unions" (2001) 64 *Albany L. R.* 853, on-line: LEXIS [hereinafter "Equality Practice"].

⁴² P. Krémer, « Les premiers récits des pacsés de l'an I » *Le Monde* (27 novembre 1999) [hereinafter "Les premiers récits"].

Interestingly, individuals express this view on both ends of the political spectrum.

Liberal gay activist Thomas Stoddard favours focussing on marriage because it is:

...the political issue that most fully tests the dedication of people who are not gay to full equality for gay people, and also the issue most likely to lead ultimately to a world free from discrimination against lesbians and gay men.⁴³

Yet there are completely different rationalizations from within the gay community when it comes to supporting marriage and opposing registered partnerships. Conservative gay columnist Andrew Sullivan contends that gays and lesbians should not embark of any legislative reform that would “destroy or diminish the status of marriage.”⁴⁴ For Sullivan, the very “concept of domestic partnership chips away at the prestige of traditional relationships and undermines the priority we give them.”⁴⁵ Sullivan suggests that marriage is preferable to registered partnerships because marriage encourages long-term monogamous relationships.⁴⁶ For proponents of this view, gays and lesbians need to be influenced in that direction.⁴⁷

But even gay social conservatives are not unanimous. While sharing Sullivan’s support of traditional marriages, others are more reluctant to condemn registered partnerships. Registration initiatives are seen as valuable because they also achieve the goal of encouraging individuals to embark upon long-term monogamous unions. In fact, it has been suggested that monogamous, marriage-like registered partnerships

⁴³ T.B. Stoddard, “Why Gay People Should Seek the Right to Marry (1989) *Out/Look* at 10.

⁴⁴ See Andrew Sullivan, “Here comes the Groom : A (Conservative) Case for Gay Marriage” in B. Bawer, ed., *Beyond Queer : Challenging Gay Left Orthodoxy* (New York: Free Press, 1996) 252, 254.

⁴⁵ A. Sullivan, “Here Comes the Groom: A (Conservative) Case for Gay Marriage” (1989) 201:9 *The New Republic* 20.

⁴⁶ *Ibid.*

⁴⁷ *Ibid.*; W.N. Eskridge, Jr., *The Case for Same-Sex Marriage: From Sexual Liberty to Civilized Commitment*, (New-York: The Free Press, 1996) at 8: “...same-sex marriage is good for gay people and good for America, and for the same reason: it civilizes gays and it civilizes America.”

should be embraced as a measure to combat HIV and AIDS.⁴⁸

At the other end of the continuum, there are many writers and activists who see registered partnerships as a positive alternative to marriage.⁴⁹ In Australia and New Zealand, a survey of lesbian and gay couples showed they preferred registered partnerships to same-sex marriage, according to sociologist Sotirios Sarantakos. The survey indicated that over 80 percent of gays and lesbians believed that marriage was not their preferred option, with the majority choosing registered partnerships as the best form of partnership recognition. In France, a heterosexual man who took out a PACS with his female partner thought that the registration system was very progressive because it allows same-sex partners to register as well.⁵⁰ American lesbian rights activist Paula Ettelbrick counters that opting for marriage over registered partnerships would force gay men and lesbians to assimilate into the mainstream, moving them further away from the goals of gay liberation.⁵¹

Those who favour registered partnerships tend to denounce marriage as a “most restrictive, gendered and regressive institution”.⁵² In the survey conducted by Sarantakos, many of the Australians and New Zealanders characterized marriage as “antiquated”, as an institution that “oppresses and brutalizes women” and “not a step to

⁴⁸ M.L. Closen & C.R. Heise, “HIV-AIDS and Non-Traditional Family: The Argument for State and Federal Judicial Recognition of Danish Same-Sex Marriages” (1992) 16 *Nova Law Review* 809 at 814-15.

⁴⁹ B. Findlen, “Is Marriage The Answer” (1995) Ms. at 86. See also P.L. Ettelbrick, “Since When is Marriage a Path to Liberation?” (1989) *Out/Look* 9 at 14; N.D. Polikoff, “We Will Get What We Ask For: Why Legalizing Gay and Lesbian Marriage Will Not “Dismantle the Legal Structure of Gender in Every Marriage” (1993) 79 *Virginia L. R.* 1535.

⁵⁰ “...il est très différent du mariage dans la philosophie qui permet aux ignobles homosexuels de se marier ! C’est un texte progressiste! “ : “ Les premiers récits”, *supra* note 42.

⁵¹ Ettelbrick, *supra* note 49 at 14, 17.

⁵² “Lesbian Wife”, *supra* note 40 at 161.

liberation but subjugation.”⁵³ Domestic partnerships, on the other hand, were seen as offering increased freedom of choice, sufficient legal support and protection, and easy entry and exit.⁵⁴ Sarantakos suggested, “Cohabiting gays and lesbians experience problems in their relationships not because they cannot marry but rather because their relationship is not legally recognized.”⁵⁵ Thus, a system of registered partnership would meet the needs of gay and lesbian cohabitants.

While many gay and lesbian activists argue that registered partnerships are a poor substitute for marriage, some commentators from socially conservative and religious perspectives don’t make such a distinction. Instead, they have equated registered partnerships with marriage, specifically same-sex marriage. For instance, anti-gay evangelical Chuck McIlhenny claims that registered partnerships and same-sex marriage are identical.⁵⁶ In Hawaii, the Alliance for Traditional Marriage had the following comment on the state’s proposed registered partnership legislation:

While we tolerate homosexuals, the people of Hawaii do not want to grant social approval to homosexual unions by allowing them to marry, even if it’s called by a different name: domestic partnerships.⁵⁷

Indeed, for social conservatives who value marriage as a “bedrock institution, unique among all other forms of interpersonal relationships”⁵⁸, registered partnerships will only

⁵³ S. Sarantakos, “Legal Recognition of Same-Sex Relationships” (1998) 23 *Alternative L. J.* 222 at 224 [hereinafter “Legal Recognition”].

⁵⁴ *Ibid.* at 224.

⁵⁵ S. Sarantakos, “ Same-Sex Marriage: Which Way To Go? Options for Legalizing Same-Sex Relationships” (1999) 24 *Alternative Law Journal* 79 at 79 [hereinafter “Same-Sex Marriage”].

⁵⁶ J.M. Donovan, “An Ethical Argument to Restrict Domestic Partnerships to Same-Sex Couples” (1998) 8 *Law & Sexuality* 649 at 649, footnote 1.

⁵⁷ C. Barillas, “Hawaii’s Marriage Foes Take Aim at DP Proposal” (2 December 1998), on-line: The Data Lounge <<http://www.datalounge.com/datalounge/news/record.html?record=3702>> (date accessed: 17 juillet 2001).

⁵⁸ Donovan, *supra* note 56 at 652.

undermine family values.⁵⁹ Hermina Dykxhoorn, president of the Alberta Federation of Women United for Families argues that registered partnerships “would be a dumbing down of marriage.”⁶⁰

B. The Natural Order of Things: Registered Partnerships As A Stepping Stone⁶¹

Another aspect of the debates over registered partnerships centres on the value of establishing registration schemes prior to opening up same-sex marriage.

As outlined previously, for advocates of same-sex marriage, registered partnerships allow governments to make an end run around same-sex marriage. In Hawaii, after the courts in that state ruled that the prohibition against same-sex marriage violated the state constitution, the government introduced the *Reciprocal Beneficiaries Act*.⁶² For many observers, this was an attempt by the state government to diffuse the push for same-sex marriage.⁶³ In Vermont, the state government opted to create a separate but apparently equal institution, the civil union, when it was ordered by its judiciary to provide gay men and lesbian with marriage-like entitlements. William Eskridge characterizes this move as “a concession to moral and religious traditionalists who seek to preserve the ‘sanctity’ of marriage as the organizing institutions in western

⁵⁹ D. Frum, “The Fall of France: What Gay Marriage Does to Marriage” (1999) 51 National Review 26.

⁶⁰ C. McLean, “Similar but Separate: The ‘Gay Benefits’ Question Pushes the Distinction Between Household and family” *Alberta Report* (22 March 1999) 37.

⁶¹ Mohr, *supra* note 35 at 239.

⁶² C. Barillas, “Hawaii Reciprocal Beneficiaries Law Takes Effect” (8 July 1997), on-line: The Data Lounge <<http://www.datalounge.com/datalounge/news/record.html>>.

⁶³ “Marrying Apartheid” *supra* note 40.

society.”⁶⁴

For some commentators, registered partnerships are an acceptable compromise when viewed as a political strategy. In the case of Hawaii, Thomas Coleman argues that establishing registered partnership legislation “would distance the state from a volatile religious dispute”⁶⁵ over marriage and, at the same time, the policy would be “the appropriate political remedy for eliminating unjust discrimination against same-sex couples.”⁶⁶ It is also suggested that the longer registered partnerships exists without same-sex marriage, the more inclusive the definition of marriage will be:

...Domestic partnerships practices are expanding and will become a much larger body of law and policy. By the time equality finally gets won universally, we'll be in a whole other place about the definition of family, and gay marriage may be become almost irrelevant.⁶⁷

Another view suggests that same-sex marriage will in fact undermine the progress made through registered partnerships. In jurisdictions that have already established registered partnerships systems, some activists fear that the opening up of marriage will spell the end of registered partnerships. If anyone can get married, then governments may decide to restrict entitlements to married spouses.⁶⁸ Ettelbrick fears that “[w]e will be told, ‘Get married.’ What does that say about the notion that we can choose not to get married?”⁶⁹ James Donovan, who supports same-sex marriage, takes exactly that position. He argues that “when marriage becomes an option for same-sex

⁶⁴ W.N. Eskridge Jr., “The Emerging Menu of Quasi-Marriage Options” FindLaw's Writ - Legal Commentary, on-line: <http://writ.news.findlaw.com/commentary/20000707_eskridge.html> (date accessed: 1 August 2001) [hereinafter “Emerging”].

⁶⁵ T.F. Coleman, “The Hawaii Legislature Has Compelling Reasons To Adopt A Comprehensive Domestic Partnership Act” (1995) 5 Law & Sexuality 541 at 561.

⁶⁶ *Ibid.* at 551.

⁶⁷ Findlen, *supra* note 49 at 90.

⁶⁸ *Ibid.* at 86.

⁶⁹ *Ibid.* at 86-91.

couples, then domestic partner benefits should immediately terminate... those who can marry, should, if they want the benefits of marriage.”⁷⁰ The Netherlands is a case in point: the existence of registered partnerships alongside with gender neutral marriage will be re-evaluated in 2006, and abolishing the partnership scheme is one option to be considered.⁷¹

While some fear marriage and registered partnerships are mutually exclusive, academics such as Kees Waaldijk and William Eskridge share the view that recognition of same-sex partnerships “comes through a step-by-step process.”⁷² Waaldijk argues that in Europe, the path to partnership recognition was preceded by a standard sequence of law reform: decriminalisation, anti-discrimination and partnership recognition. In his view, shared by the American scholar Eskridge, registered partnerships and same-sex marriage will only be attained in jurisdictions that have first succeeded in decriminalizing homosexuality, and then in turn provided anti-discrimination protections for sexual minorities. Partnership recognition, whether in the form of registered partnerships or same-sex marriage is the third step in the sequence. In fact, Waaldijk suggests that, as was the case in the Netherlands, registered partnerships will pave the way for same-sex marriage.⁷³ Phil Ivers, President of the Calgary-based Gay and Lesbian Community Services Association, shares this assessment, characterizing registered partnerships as “a step in the right direction” on

⁷⁰ Donovan, *supra* note 56 at 667.

⁷¹ “Email no 2”, *supra* note 39. Waaldijk is of the view that it will be very difficult to abolish the registered partnership status because of the thousand of couples who opted for registration. He suggests that the more likely scenario is that lawmakers will create more significant differences between marriage and registered partnerships.

⁷² See “Equality Practice”, *supra* note 41. K. Waaldijk, “Civil Developments: Patterns of Reform in the Legal Position of Same-Sex Partners in Europe” (2000) 17 Canadian Journal of Family Law 62 at 66.

⁷³ *Ibid.* at 87.

the road to full marriage rights.⁷⁴ Thomas Stoddard also believes that registered partnerships move society further along the path to equality, but that the ultimate goal remains marriage.⁷⁵

Finally, Richard Mohr suggests that it is difficult to know whether “domestic partnership legislation is a stepping-stone or a distracting impediment to gay marriage.”⁷⁶ In his view, this will depend on “the specific content of the legislation, the social circumstances of its passage, and the likely social consequences of its passage.”⁷⁷

III. Registered Partnerships vs. Other forms of Recognition

A. Having a Say: Registered Partnerships vs. *De Facto* Recognition

In Australia, debates have mainly focussed on the value of presumption-based approaches as a model of relationship recognition.⁷⁸ Reg Graycar and Jenni Millbank ascribe this tendency to three factors: past law reform assimilated the treatment of

⁷⁴ McLean, *supra* note 60. See also B. Tobisman, “Marriage vs. Domestic Partnership: Will We Ever Protect Lesbians’ Families” (1997) *Berkeley Women’s Law Journal* 112.

⁷⁵ Stoddard, *supra* note 43 at 13.

⁷⁶ Mohr, *supra* note 35 at 239.

⁷⁷ *Ibid.*

⁷⁸ Graycar and Millbank, *supra* note 37 at 228.

cohabiting heterosexual relationships with married couples, constitutional realities, and the influence of gay and lesbian lobby groups.⁷⁹ The concerns of Australian gay and lesbian communities seem to centre on the fact that opt-in systems like registered partnerships do little for vulnerable individuals who have not formalized their relationships and legal affairs.⁸⁰ Moreover, gays and lesbians express a reluctance to create yet another level in the hierarchy of relationships.⁸¹

In light of these views, Graycar and Millbank suggest that any registered partnership scheme in Australia “should operate in tandem with comprehensive presumptive recognition, rather than as the only method of relationship recognition.”⁸² Another reason why the two options should be offered in tandem is the fact that governments will want to avoid partners choosing not to formalize their relationships in order to avoid public obligations.⁸³

But ascribing a civil status on unmarried cohabitants raises different concerns. As Sarantakos points out, legal status is established without the knowledge and consent of the partners.⁸⁴ Ascription legally binds two individuals without their consent, thus depriving cohabitants of a level of self-determination and personal independence, and in

⁷⁹ *Ibid.* at 229.

⁸⁰ *Ibid.* at 258. See also “Legal Recognition”, *supra* note 53 at 225.

⁸¹ Graycar and J. Millbank, *supra* note 37 at 258, 263.

⁸² *Ibid.* at 264. The British Columbia Law Institute made a similar recommendation in their *Report Respecting the Need to Enact Domestic Partner Legislation*: T. Anderson, “Models of Registered Partnership and their Rationale: The British Columbia Law Institute’s Proposed *Domestic Partner Act*” (2000) 17 *Canadian Journal of Family Law* 90 at 94.

⁸³ N. Bala, « Alternatives for Extending Spousal Status in Canada » (2000) 17 *Canadian Journal of Family Law* 169 at 194.

⁸⁴ “Same-Sex Marriage”, *supra* note 55 at 82.

some cases resulting the forcible outing of gay and lesbian couples.⁸⁵ Registered partnership, on the other hand, has the advantage of requiring consent of partners. Moreover, legislative provisions ascribing rights and obligations to individuals in a personal relationship usually require a minimum period of cohabitation. Registered partnerships have the advantage of allowing partners to opt-in to a civil status at any time they wish.⁸⁶

B. Sign on the Dotted Line: Registered Partnerships vs. Contract

In assessing the value of registered partnerships, some authors contrast this option with domestic contracts that allow individuals to legally structure their relationships. Most agree that the drawback of contracts is the fact that parties can only affect rights between the parties; they cannot bestow the full range of third party entitlements and obligations that may come along with a registered partnership system.⁸⁷ In addition, registered partnerships offer a more simplified process, and they are not as costly as contracts since they do not require the advice of a lawyer.⁸⁸ However, contracts have the advantage of allowing couples to opt out of statutory regimes.⁸⁹

⁸⁵ *Ibid.*

⁸⁶ Bala, *supra* note 83 at 185.

⁸⁷ *Ibid.* at 192. See also C. Davies, "The Extension of Marital Rights and Obligations to the Unmarried: Registered Domestic Partnerships and Other Methods" (1999) 17 Canadian Family Law Quarterly 247 at 251; Juel, *supra* note 22 at 327.

⁸⁸ Davies, *supra* note 87 at 251.

⁸⁹ Bala, *supra* note 83 at 192.

Christine Davies, in her analysis of contract and registered partnerships schemes, concludes that contracts remain an important method for individuals to determine their mutual rights and obligations inter se. However, she suggests that the “contract is not a sufficient remedy in and of itself”⁹⁰, and registered partnerships should also be made available.⁹¹

IV. Widowed Sisters, Army Buddies, Priests and their Housekeepers⁹²: Issues of Eligibility

The issue of whether registered partnerships should be restricted to specific classes of individuals, or open to all, can also be divisive.

In Canada, when Ian McClelland, a Member of Parliament with the Alliance Party, proposed a form of registered partnerships for any two people living in relationships of economic dependence, Svend Robinson of the NDP denounced the idea, characterizing the proposal as a half measure that denied gays and lesbian full equality.⁹³ Robinson is quoted as saying:

My relationship with my sister is not qualitatively the same as my relationship with my partner. It is unacceptable to diminish the significance of it by suggesting we be lumped in with army buddies and

⁹⁰ Davies, *supra* note 87 at 257. See also Juel, *supra* note 22 at 327.

⁹¹ Davies, *supra* note 87 at 257.

⁹² David Frum believes that the registered partnership policy in France extends to “widowed sisters living together, even to priests and their housekeepers” : *supra* note 59 at 26. In opposing a registered partnership in Canada, Svend Robinson indicated that it was “unacceptable to diminish the significance of [his relationship to his male partner] by suggesting we be lumped in with army buddies and brothers” : N. Greenway, “Family Values: Reform MP Ian McClelland Was Caught Between Love for his Gay Son and Loyalty to His Party” *The Ottawa Citizen* (31 October 1999).

⁹³ *Ibid.*

brothers.⁹⁴

Another commentator suggests that the inclusion of unmarried heterosexual couples in registration schemes allows these couples to “seek the economic benefits of marriage without the social responsibilities.”⁹⁵ It is interesting to note that most private sector policies in the United States restrict registered partnerships to same-sex couples, arguing that opposite sex couples can marry should they want access to family employment benefits.⁹⁶

On the other hand, several writers suggest that the opening up of registered partnerships to more than just gays and lesbians moves society further along the path of recognizing a broader definition of family. This view contends that marriage marginalizes people who are outside that unit, while registered partnerships are more inclusive of evolving forms of families.⁹⁷ In denouncing the fight for same-sex marriage, Paula Ettelbrick states the following:

Marriage runs contrary to two of the primary goals of the lesbian and gay movement: the affirmation of gay identity and culture; and the validation of many forms of relationships.⁹⁸

She adds the following with regard to registered partnerships:

The lesbian and gay community has laid the groundwork for revolutionizing society’s views of family. The domestic partnership movement has been an important part of this progress insofar as it validates non-marital relationships. Because it is not limited to sexual or romantic relationships, domestic partnership provides an important opportunity for many who are not related by blood or marriage to claim certain minimal protections.⁹⁹

⁹⁴ *Ibid.*

⁹⁵ Donovan, *supra* note 56 at 657.

⁹⁶ Juel, *supra* note 22 at 337, 342-43.

⁹⁷ Findlen, *supra* note 49 at 87.

⁹⁸ Ettelbrick, *supra* note 49 at 12.

⁹⁹ *Ibid.* at 17.

From that perspective, many argue that registered partnerships should not ignore the reality of the millions of heterosexuals who cohabit as a family and should have access to similar rights and obligations.¹⁰⁰

It is possible to go even further to question whether registered partnerships should be based on conjugality. It is argued that broadening the category beyond conjugality is the only approach which conforms to the social justice view of the family:

Part of our struggle is to fight for a broader definition of family. Domestic partners shouldn't have to be gay or lesbian. They shouldn't have to be having sex. They can be two adults sharing a home and sharing commitment, responsible to each other.¹⁰¹

Nicholas Bala contends that if two people should choose to register their relationships and undertake mutual obligations:

Why should individuals be denied this benefit because they do not have a particular kind of emotional commitment or do not have a sexual relationship?¹⁰²

Bala adds that the obligations entailed would probably deter non-conjugal partners, but it would still be preferable to give the choice to all.¹⁰³

Interestingly, in some jurisdictions, the inclusion of unmarried heterosexual couples constitutes the most contentious issue. For instance, in Massachusetts, Acting Governor Paul Cellucci vetoed the City of Boston's plan to extend health benefits because the policy extended to unmarried opposite sex couples. Cellucci claimed that he could not sign a bill that "would undermine his support for strengthening traditional

¹⁰⁰ Juel, *supra* note 22 at 343.

¹⁰¹ B. Findlen, *supra* note 49 at 87, citing Melinda Paras of the National Gay and Lesbian Task Force. See also "Lesbian Wife", *supra* note 40 at 163 for a discussion of the domestic partnership initiative in Madison, Wisconsin.

¹⁰² Bala, *supra* note 83 at 188.

¹⁰³ *Ibid.*

marriage.”¹⁰⁴

V. Toaster Ovens and Silverware: The Issue of Entitlements

The debates around registered partnerships are also shaped by the issue of the entitlements and obligations the state confers on specific kinds of relationships.

In the United States, registered partnerships have sometimes been viewed as a remedial legal construct, one that provides compensation to individuals who have been denied the economic benefits of marriage.¹⁰⁵ Attaining the same basic family benefits as those conferred on married couples is therefore often a goal of those advocating registered partnerships. For instance, in the context of the private sector, the pursuit of domestic partnership benefits:

...establishes a civil rights remedy to the pervasive practice of disproportionately providing married employees with health insurance, paid bereavement, family sick leave and other “family” based benefits that are denied to unmarried employees and their families.¹⁰⁶

David Chambers outlines how, when the AIDS crisis hit North America, gay men and lesbians realized the social and legal costs of the lack of recognition of their relationships:

That price revealed itself when the biological families of gay men with

¹⁰⁴ Donovan, *supra* note 56 at 650.

¹⁰⁵ *Ibid.* at 655-56.

¹⁰⁶ N.K. Kubasek, K. Jennings & S.T. Browne, “Fashioning a Tolerable Domestic Partners Statute in an Environment Hostile to Same-Sex Marriage” (1997) 7 *Law and Sexuality* 55 at 78.

AIDS tried to exclude their sons' partners from hospital visitation or from participating in decisions about medical treatment. Conflicts continued after death, with struggles over burial and property. Most urgently, many gay men faced difficulty in gaining access to medical insurance.¹⁰⁷

Chambers argues that this denial of entitlements played an important role in finally securing a registered partnership policy in San Francisco.¹⁰⁸ Given the lack of medical coverage in the United States, for some there is an added urgency to the issue of partner recognition for same-sex benefits. It is therefore suggested that, in the United States at least, "domestic partnership initiatives have proven to be the most successful option thus far in giving same-sex couples the opportunity to attain some quasi-marital rights."¹⁰⁹ Here in Canada government and private benefit plans are an added incentive for many.

Yet it is the very issue of entitlements that makes some activists oppose registered partnerships:

Registered partnerships do not work as a model in America because it would involve duplicating 150-to-250 laws in each state and over 1,040 laws on the federal level; the whole idea is completely impractical.

The argument is presented somewhat differently by social conservative and religious opponents of registered partnerships. Concerns are voiced about the cost of extending entitlements to same-sex partners, some even suggesting this is unwise "in the time of AIDS."¹¹⁰ Indeed, in the United States, opponents of registered partnerships have suggested that extending benefits to unmarried cohabitants could result in massive

¹⁰⁷ D.L. Chambers, "Tales of Two Cities: AIDS and the Legal Recognition of Domestic Partnerships in San Francisco and New York" (1992) 2 *Law and Sexuality* 181 at 184.

¹⁰⁸ *Ibid.*

¹⁰⁹ Juel, *supra* note 22 at 322, 344.

¹¹⁰ Chambers, *supra* note 107 at 186.

insurance burdens.¹¹¹

For others, the issue of entitlements is not as important as the symbolic societal recognition that comes with registered partnerships. The very fact that the state would provide a forum by which people could make a public commitment to their relationship and hold themselves out as something different than what they were before the registration is of fundamental value in and of itself.¹¹² This might explain why certain municipalities, such as Hamburg, Germany, would adopt a registration scheme that is essentially symbolic since no rights or obligations are granted.

Yet another view is the one that suggests that no rights or benefits should be based either on marriage or registered partnerships:

...Domestic partnership ...is curiously tied to health care [...] If universal health care were available, no one would be forced to say, 'I want to be able to get married to take advantage of my partner's health insurance benefits.'¹¹³

Speaking specifically of same-sex marriage, Nancy Polikoff states:

Advocating lesbian and gay marriage will detract, even contradict, efforts to unhook economic benefits from marriage and make basic health care and other necessities available to all.¹¹⁴

This is perhaps why the Gay and Lesbian Rights Lobby of New South Wales called on governments to disentangle rights and obligations from personal relationships.¹¹⁵

¹¹¹ Juel, *supra* note 22 at 335.

¹¹² *Ibid.* at 344. C. Bowman and B. Cornish, *supra* note 19 at 1185, make this argument in relation to marriage:

If marriage conferred no legal rights or obligations, it seems likely that the state would continue to solemnize marriages because that is what people want – a public commitment and a right to hold themselves out as something different than they were before the marriage.

¹¹³ Findlen, *supra* note 49 at 89. See also "IGLHRC Policy on Marriage" on-line: <http://www.iglhrc.org/news/factsheets/marriage_policy.html>.

¹¹⁴ Polikoff, *supra* note 49 at 1549. See also Ettelbrick, *supra* note 49 at 16-17 who makes the argument in relation to marriage.

¹¹⁵ Graycar and J. Millbank, *supra* note 37 at 255, 276-77.

VI. A Slow March to the Registration Altar: Registered Partnership Utilization Rates

Low utilization of registered partnerships programs raises concerns about the legitimacy of this new civil status, and lends support to the view that registered partnerships are a less than perfect mode of relationship recognition.

Few statistics on utilization rates are available, with the exception of the following. In France, after just over of year of the PACS being available, 29,855 partnerships were registered.¹¹⁶ Marriage, on the other hand, is two times more popular.¹¹⁷ Yet a recent poll taken in France reveals that 70 percent of individuals questioned were very supportive (“très favorables”) of the new PACS.¹¹⁸ In Hawaii, as of October 1999, “only 435 reciprocal beneficiary relationships were on file with the Hawaii Health Department”¹¹⁹, leading one media outlet to describe the reciprocal beneficiary law as “a bust”.¹²⁰ In Denmark, it is reported that in the 9 years from 1990 to 1998, only around 1,793 partnerships were registered.¹²¹ This number represents is only 0.8

¹¹⁶ P. Krémer, “Le premier bilan du nombre de PACS signés est sensiblement inférieur aux prévisions” *Le Monde* (27 janvier 2001) [hereinafter “Premier bilan”].

¹¹⁷ P. Krémer, « En moins d’une année, le pacs est entré dans les mœurs » *Le Monde* (28 septembre 2000).

¹¹⁸ *Ibid.*

¹¹⁹ N.G. Maxwell, “Opening Civil Marriage To Same-Gender Couples: A Netherlands- United States Comparison” (2000) 4: 3 E.J.C.L. 1at 32. See also C. Barillas, “Hawaii Beneficiaries Law Languishes in Ambiguity” (23 December 1997), on-line: The Data Lounge <<http://www.datalounge.com/datalounge/news/record.html?record=2616>> (date accessed: 17 July 2001).

¹²⁰ *Ibid.*

¹²¹ J. Eekelaar, “Registered Same-Sex Partnerships and Marriages – A Statistical Comparison” (1998) 28

percent of the number of marriages. Interestingly, in Denmark, one author points out that when taken up, the stability of registered partnerships are remarkably close to marriage, especially for men.¹²² In Belgium, the “cohabitation légale” system is reportedly unpopular. As of June 2000, few couples had registered in the whole of the country, with only eight couples having done so in Brussels.¹²³

If it is in fact true that registration numbers are low, several authors suggest the following factors as explanation: reluctance to disclose a same-sex relationship¹²⁴, benefits are already received from another source¹²⁵, unwillingness to take on financial responsibility for a partner¹²⁶, or discouraging formalities¹²⁷.

A note of caution: it is difficult to draw firm conclusions as to the popularity of registered partnerships given that statistics are often non-existent or incomplete. For instance, while some states may record the number of unmarried heterosexual cohabitants, statistics of same-sex couples are rarely, if ever, recorded in the majority of the relevant jurisdictions. If one does not know with any degree of certainty what percentage of the population is homosexual, and how many gays and lesbians are cohabitants, it is difficult to assess popularity of registration.

The preceding section presented the range of arguments for and against

Family Law 561 at 561.

¹²² *Ibid.*

¹²³ R. Wockner, “Belgian Partner Law Unpopular” (2000) 8o Euro-Letter of the International Lesbian and Gay Association, on-line: < <http://www.steff.suite.dk/eurolet.htm>> (date accessed: 3 August 2001).

¹²⁴ Juel, *supra* note 22 at 335 : “...same-sex couples in particular may be likely to feel some apprehension about their relationship becoming a matter of public record.”

¹²⁵ *Ibid.* at 334-35.

¹²⁶ Zielinsky, *supra* note 5 at 293.

¹²⁷ “Premier bilan”, *supra* note 116.

registered partnerships. Proponents and opponents of this mode of relationship recognition are not easily categorized. For instance, the views of gay and lesbian activists and scholars are extremely diverse. Differences of opinion can also be found among socially conservative writers and commentators. One reason for this is the fact that jurisdictions that have enacted registered partnerships schemes differ tremendously in terms of their historical, constitutional, political, social, economic and religious contexts. The discussion in the next section will specifically assess the Canadian situation to determine the relevance of the models outlined in Part II and the significance of the debates identified in Part III.

PART IV: LESSONS FOR CANADA

I. The Unique Canadian Context

In trying to determine the relevance and value of establishing a registered partnership system in Canada, it is suggested that only tentative lessons can be drawn from the experience of other jurisdictions. While Canada possesses many common features with other jurisdictions that have enacted registered partnerships, there are also differences that support the view that the discussion in this country should be unique.

Canada does share a constitutional hurdle like the United States. The division of powers in both countries makes it tremendously difficult to enact a uniform registered partnership system that would confer entitlements and obligations under the jurisdiction

of both levels of government.¹²⁸ If policy makers are interested in the uniformity and portability of a registered partnership scheme, the Canadian constitutional context is challenging. It also means that this model of relationship reform may attract the same criticisms it has in the United States with regard to the entitlement issue. It is quite possible that Canada could emerge with a patchwork quilt of provincial registered partnership schemes. In fact, this pattern of reform may have been initiated with Nova Scotia implementing the very first registered partnership system in the country.¹²⁹ Thus opening up marriage may be the preferred mode of reform, since it would offer a simpler and uniform access point to entitlements and obligations. This does, however, does not resolve the issue whether registered partnerships are a useful way of recognizing non-conjugal cohabitants.

Another similarity with the American experience is the fact that both jurisdictions have constitutional guarantees in the area of fundamental freedoms and equality. Indeed, the constitutions of both countries can, and has, been the basis for litigation in the area of relationship recognition, including marriage.¹³⁰ It was such a legal challenge that led Hawaii to institute a system of reciprocal beneficiaries, and likewise, the courts led Vermont to establish civil unions. In Canada, both unmarried heterosexuals and

¹²⁸ For an analysis of the constitutional impediments to the establishment of a registered partnership in Canada, see Bala, *supra* note 83 at 173-81.

¹²⁹ *Registration of Domestic Partnerships Regulations made under Section 59 of the Vital Statistics Act*, R.S.N.S. 1989, c. 494 O.I.C. 2001-263 (May 31, 2001, effective June 4, 2001), N.S. Reg. 57/20, Halifax, on-line: Province of Nova Scotia <http://www.gov.ns.ca/just/regulations/regs/visdpreg.htm> (last modified: 25 June 2001).

¹³⁰ For the United States, see Robert Cabaj, "History of Gay Acceptance and Relationships" in R.P. Cabaj & D.W. Purcell, *On the Road to Same-Sex Marriage. A Supportive Guide to Psychological, Political, and Legal Issues* (San Francisco: Jossey-Bass Publishers, 1998) at 16-17. For Canada, see Donald G. Casswell, *Lesbians, Gay men and Canadian Law* (Toronto: Emond Montgomery, 1996) at 225-245. See also Emily Yearwood, "Courts Should Update Common Laws Dictating Marriage, B.C. Lawyer Argues" (26 July 2001) *The Ottawa Citizen*, on-line: Ottawa Citizen <<http://www.southam.com/ottawacitizen.ca>> (date accessed: 26 July 2001).

gays and lesbians have sought relationship recognition through the courts¹³¹ and this equality litigation has generally had several successes.¹³² In this way, the Canadian situation cannot be compared to Australia, where law reform had favoured presumption based relationship recognition, in part because the absence of a bill of rights or any constitutional guarantee of equality in Australia trumps any possible reform through the courts.¹³³ Any relationship recognition model in Canada must conform to equality provisions in the Canadian *Charter of Rights and Freedoms*.¹³⁴

The constitutional similarities with the United States suggest that gays and lesbians may be successful in lifting the ban on same-sex marriage just as they were in Vermont and, temporarily, in Hawaii and Alaska. It is true that Hawaiian and Alaskan legislators amended their constitution rather than end the ban on same-sex marriage.¹³⁵ But the difficult process required for constitutional amendments, and the unpopularity of derogations to the Charter, would make it more difficult in Canada to reverse a successful court challenge in the area of marriage. What is unclear is whether the federal and provincial governments might attempt to substitute a Vermont-style registered partnerships instead of marriage for gays and lesbians. Such a scenario raises of course the possibility that the divisive debates on same-sex marriage and registered partnerships described earlier could become part of Canadian debates on partnership recognition.

¹³¹ See Casswell, *supra* note 130 at 317-435.

¹³² *Ibid.* at 331-427.

¹³³ Graycar and Millbank, *supra* note 37 at 229, 270.

¹³⁴ *Canadian Charter of Rights and Freedoms*, Part I of the *Constitution Act, 1982*, being Schedule B to the *Canada Act 1982* (U.K.), 1982, c. 11.

¹³⁵ C. Barillas, "Reaction to Hawaii's Adoption of Gay Marriage Ban" (4 November 1998), on-line: The Data Lounge <<http://www.datalounge.com/datalounge/news/record.html?record=3612>>. Alaska was among the first states to ban same-sex marriage. Voters approved "Measure 2," an initiative that amended the state's constitution to say that a "valid" marriage in Alaska can exist only between one man and one woman: National Gay and Lesbian Task Force, *Elections Report* (4 November 1998).

It should not be assumed, however, that Canada's experience is directly parallel to the United States, in fact there are remarkable differences. If we apply Kees Waaldijk's model of law reform, registered partnership systems generally come about in jurisdictions that have accomplished two important reforms. First, the state has decriminalized homosexuality and enacted anti-discrimination protections for sexual minorities.¹³⁶ Second, registered partnership evolved in countries that also have extensive legal recognition of opposite sex de facto relationships.¹³⁷ Canada is well ahead of the United States in both areas. In fact, 17 states and the U.S. military still criminalize sodomy; in five states, sodomy laws apply only to homosexuals.¹³⁸ Also, "there is no widespread acceptance and protection of non marital cohabitants in the United States",¹³⁹ whereas in Canada, many of the provinces and the federal government have recognized the legal status of heterosexual, and in fact homosexual, cohabitants. Canada is thus already engaged in the partnership stage of Waaldijk's sequential model of law reform.

This might suggest that Canada is closer to the Netherlands' experience than the United States. In addition to having progressed through the decriminalization, anti-discrimination and partnership recognition stages, like the Netherlands, Canadian social legislation is more individualized than the United States. For instance, some social programs are not connected to marital status, for example the universal health care system. But in the Netherlands, registered partnerships were established before

¹³⁶ Waaldijk, *supra* note 72 at 66-79.

¹³⁷ *Ibid.* at 81.

¹³⁸ Deb Price, "Activists Hope to Reverse Anti-Gay Ruling" (30 July 2001) *The Detroit News*, on-line L <<http://detnews.com>> (date accessed 30 July 2001).

¹³⁹ Maxwell, *supra* note 119 at 37.

marriage was opened up to gays and lesbians. In Canada, it is unclear at this point whether the ban on marriage will be lifted before some sort of nation-wide partnership registration is enacted. Indeed, as already mentioned, Canadian courts may legalize same-sex marriage before elected legislatures will, while in several European countries, notably Germany and the Netherlands, legal challenges to the ban on same-sex marriage were unsuccessful.¹⁴⁰ The possibility that Canada could consider establishing a registered partnership system after having resolved the issue of same-sex marriage places it in a unique and unparalleled situation.

Finally, Canada does share some similarities with Australia where presumption-based legislation has been the favoured mode of law reform. Unlike the United States and many of the European countries with registered partnerships, various Canadian jurisdictions have granted unmarried cohabitants a substantial number of rights and obligations. In *M. v. H.*¹⁴¹, the Supreme Court of Canada essentially ascribed common law status to gay and lesbian relationships. Since that ruling, provincial governments who had not yet acted in this area¹⁴² have since passed legislation ascribing spousal status to gay and lesbian partners, equating them either to unmarried heterosexual cohabitants or to married couples.¹⁴³ While gays and lesbians still seek access to marriage¹⁴⁴, the decreased distinctions in rights and obligations between unmarried cohabitants and married partners may make debates surrounding entitlements less relevant in Canada, except for the question of the disaggregation of entitlements from

¹⁴⁰ Waaldijk, *supra* note 72 at 79. See Maxwell, *supra* note 119 at 3.

¹⁴¹ *M. v. H.*, [1999] 2 S.C.R. 3.

¹⁴² Québec and British Columbia amended provincial laws to extend entitlements to gays and lesbians in 1999 and 1997 respectively.

¹⁴³ Nova Scotia, Manitoba, Saskatchewan and Alberta have or in the process of amending their laws to conform to the Supreme Court decision.

¹⁴⁴ Yearwood, *supra* note 130.

conjugal relationships.

The differences between the Canadian context and that of other jurisdictions which have enacted and debated registered partnerships suggest that the road to registered partnerships in Canada may be unique and unprecedented. While debates which have occurred elsewhere suggest the range of issues that should be considered in any reform of relationship recognition, Canadian realities could substantially shift the emphasis of future debates.

II. Picking a Canadian Path Among Discordant Voices

Much of the controversy in other jurisdictions regarding registered partnerships has centred around the continued ban on same-sex marriage. In Canada, gays and lesbians are currently challenging the ban on same-sex marriages. Whether the state or the courts rush to the altar first, it seems same-sex marriage is not far off. If same-sex partners are no longer barred from marriage, the shape of public policy discussions in relation to registered partnerships can be expected to be substantially transformed. Indeed, it is realistic to project that some of the opposition to registered partnerships will evaporate if marriage is opened up to gays and lesbians. Activists who demand nothing short of marriage will have achieved what they demand, and social conservatives who oppose broadening access to marriage won't focus on registered partnerships. Essentially, many political impediments to registered partnerships could slowly

evaporate.

Thus, for the purposes of this paper, the following analysis will presume that gay men and lesbians are granted the right to marry. If such is the case, are registered partnerships still relevant in the Canadian context? The debates described earlier suggest that registered partnerships could address many public policy concerns which will not be remedied with same-sex marriage.

A. Alternative to Marriage, Ascription and Contract

Except for the recently enacted legislation in Nova Scotia, Canada has no experience with registered partnerships. If individuals wish to formalize their relationships, they can marry, contract with each other, or simply rely on legislation that may ascribe a spousal status to their cohabitation. While it may appear that this menu offers enough choice for everyone, it can also be argued that registered partnerships can fill gaps in the current options.

Australian sociologist Sotirios Sarantakos suggests that the plurality of views among cohabiting gays and lesbians about the appropriate form of legal recognition makes it is advisable that governments adopt a number of options.¹⁴⁵ Kees Waaldijk shares this view, arguing that in a pluralistic society, more choices should be offered, not less.¹⁴⁶ In fact, he contends that when the Netherlands reviews their registered partnership system in 2006, it is very likely the model will be preserved given the number

¹⁴⁵ "Legal Recognition", *supra* note 53 at 225.

¹⁴⁶ "Email no. 2", *supra* note 39.

of couples who have preferred registration over marriage.¹⁴⁷

It is certainly true that the arrival of same sex marriage will not address the concerns of those who are reluctant to embrace marriage. Both same-sex and opposite sex may prefer registered partnerships over than a traditional marriage. Recall the activists and writers who opposed marriage on political and philosophical grounds, and the gays and lesbians who preferred registered partnerships. In these cases, registered partnerships create an interesting alternative to the institution of marriage. Despite concerns about take-up rates, thousands of individuals have opted for this mode of relationship recognition in other jurisdictions.

Ascription of spousal status to partners similarly situated to married couples has been the preferred process of law reform in Canada, and many governments have travelled far along this legislative road. Indeed, Canada appears to be marching rapidly toward a presumptive based model for conjugal relationships. Nevertheless, the drawback of the presumptive based model is that it eliminates choice and personal autonomy. If governments wish to further extend the rights and obligations of individuals in close personal relationships, registered partnerships offers a consensual model that avoids further erosion of personal choice and autonomy.

The concerns with contract have been outlined in Part III. One advantage of registered partnerships is that registration is simpler, it does not require the advice of a lawyer and, in relation to contracts, it is relatively inexpensive.¹⁴⁸

¹⁴⁷ *Ibid.*

¹⁴⁸ Davies, *supra* note 87 at 251.

B. Eligibility

While several registered partnership models exclude non-conjugal partners, there does not seem to be a persuasive reason to pursue that approach in Canada. Again, most of the “Marriage Minus” models, and several of the “Blank Slate Plus” initiatives, were designed to remedy an equality issue, namely the discriminatory treatment of gays and lesbians in conjugal relationships. If same-sex marriage is attained, conjugality loses importance in relation to registered partnerships.

Registered partnerships provide a model by which non-conjugal partners can formalized a relationship of mutual rights and obligations, particularly in relation to third party entitlements. As Nicholas Bala contends, if two individuals wish to undertake mutual obligations, why should they be required to have a particular kind of emotional commitment or sexual relationship?¹⁴⁹ Using “Blank Slate Plus” approach, this has been done in other jurisdictions like France and Hawaii. Similarly, Canadian jurisdictions should allow “partners with a lesser degree of mutual commitment to choose a regulatory regime that offers fewer benefits in return for easier exit from the relationship.”¹⁵⁰

Finally, establishing a registered partnership system which extends to a broader range of adult personal relationships is responsive to the changing definition of family. As described previously, one issue that has been voiced in the debates surrounding

¹⁴⁹ Bala, *supra* note 83 at 188.

¹⁵⁰ “Emerging”, *supra* note 64 at 2.

registered partnerships is a concern that the state not exclude the growing diversity of families and personal relationships.

C. Entitlements

One issue debated in relation to registered partnership initiatives is the link between entitlements and conjugality. If the state does not completely unhook rights and obligations from individuals' personal relationships, registered partnerships offers an alternative access point for those who do not wish to marry.

But a question remains as which entitlements and obligations would attach to registered partners. If it is assumed that marriage is open to gays and lesbians, there seems to be no reason to adopt a "Marriage Minus" model of registered partnerships. As was suggested earlier, the objective of "Marriage Minus" models has primarily been to grant gays and lesbians quasi-marital rights. A more appropriate approach would be to identify a bundle of rights and obligations which would be conferred to registered partnerships, in effect adopting the "Blank Slate Plus" model.

In fact, if registered partnerships include non conjugal partners, then the "Blank Slate Plus" model seems even more appropriate, as the state may want to confer lesser obligations on individuals with a lesser degree of mutual commitment. It is suggested that a new status be established, one that might be an intermediary between married couples and *de facto* relationships.

To conclude this section, it is clear that there remain valid public policy reasons for considering a registered partnership system in Canada. However, the previous analysis is based on the assumption that marriage becomes an option for gays and lesbians. When same-sex marriage is removed as a factor in evaluating registered partnership, this paper has suggested that registered partnership systems take on a less contentious shape. The model as a form of relationship recognition remains a relevant one. It offers a consensual way by which the state could offer a bundle of rights and obligations to adults in a variety of mutually supportive relationships other than marriage.

PART V: CONCLUSION

This paper has examined existing models of registered partnerships. There are two principal categories of registration models. The “Marriage Minus” model confers quasi-marital rights and obligations to conjugal partners. The “Blank Slate Plus” models create a new intermediary civil status; registration confers a bundle of entitlements and obligations that does not equate to the one available to married couples, but is often more extensive than the one ascribed to *de facto* cohabitants.

Both models are the subject of multi-layered and complex debates, and diverse views cannot be easily categorized into pro and cons arguments. In fact, the popularity of registered partnerships as a law reform option depends on historical, constitutional, political, social economic and religious factors.

One of the most divisive debates arises when registered partnerships are pitted against the issue of same-sex marriage. This paper has attempted to demonstrate that if the ban on same-sex marriage is lifted, policy discussions relating to registered partnerships could be less contentious. In Canada, registered partnerships models could be used to create another relationship recognition option for individuals who reject marriage or who are not in a conjugal relationship, but who nevertheless wish to undertake mutual obligations. In that case, a Canadian registered partnership initiative should adopt the approach taken by jurisdictions with “Blank Slate Plus” models.

Annex

Registered Partnerships: A Factual Profile of Existing Models

Jurisdiction	Form of Recognition	Year	Availability	Rights and Responsibilities	Dissolution	Differs from Marriage
Country						
The Netherlands	<p>Registered partnership – <i>Dutch Registered Partnership Act</i></p> <p>1998 – Shared Custody and Guardianship Act (allows partners to apply for joint custody)</p> <p>2001 – Act on the Opening up of Marriage (allows same-sex couples to marry and accompanying legislation allows for the conversion of all partnerships into marriage, or vice versa)</p>	1998	<ul style="list-style-type: none"> • Same sex couples • Heterosexual couples <p>(But not siblings, or people who are relatives in the descending or ascending line)</p>	<ul style="list-style-type: none"> • Obligation of fidelity, aid and assistance to one another • Shared responsibility in caring for and the rearing of children • Obligation of cohabitation • Community of property system applies (can opt out) • Obligation to maintain each other • Partners have the power to administer the property he/she brings into the community of property • Household expenses have to be shared • Shared liability for debts connected to the household • Consent of the partner required for certain legal transactions (e.g. selling of communal home) • Inheritance rights • Pension rights • May use each other's name • Partner of a tenant becomes a co-tenant • Same rights and duties as married couples under revenue and social security law • Partners become related to the relatives of the other partner 	<ul style="list-style-type: none"> • Death of a partner • Dissolution by a judge upon request of one of the partners • Mutual agreement and registration of a declaration to that effect • Absence or disappearance of one of the partners for a specified period of time (5 years) 	<ul style="list-style-type: none"> • Male partner not automatically presumed to be father of a child born into a partnership (applies to married same-sex couples) • Same-sex partners/same-sex married couples do not have access to international adoptions • Only children born in a heterosexual partnership or marriage can succeed as King of Queen • Differences in pension rights • Partners are registered by the registrar and not through their own declarations • King/ Queen do not need permission of Parliament to enter partnership (required for a marriage) • Partnership can be dissolved through a declaration

Denmark & Greenland (Self-governing territory of Denmark)	Registered Partnership – <i>Act of Registration of Partnership</i>	1989	<ul style="list-style-type: none"> • Same-sex couples only <p>(But not siblings, or people who are relatives in the descending or ascending line)</p>	<ul style="list-style-type: none"> • Must express desire to provide mutual security • Obligation of fidelity and assistance to one another • Shared responsibility in the caring and rearing of children • Community of property system applies (can opt out) • Obligation to maintain each other • Partners have the power to administer the property he/she brings into the community • Household expenses must be shared • Shared liability for debts connected to the household • Consent of the partner required for certain legal transactions • Inheritance rights • Pension rights • Same rights and duties as married couples under revenue and social security law • Same-sex couples may adopt each other's children 	<ul style="list-style-type: none"> • Annulment by judicial decree (mental defect, duress, mistake, fraud) • Divorce (separation, adultery, violence, bigamy) • Registered couple has no claim to mediation performed by clergy 	Governed by <i>the Marriage (Formation and Dissolution) Act</i> <ul style="list-style-type: none"> • One partner must be a citizen and live in Denmark. Non-Danish residents may register their partnerships if they have lived in the country two years • Same-sex couples do not have access to international adoptions • Same sex couples do not have access to medically assisted procreation, or joint custody of children • No access to religious ceremony • Rules regarding paternity in the Children's Act do not apply • International treaties do not apply unless contracting parties agree
		1994				
	Amendments to the <i>Danish Legal Incapacity and Guardianship Act and the Danish Adoption Act</i>	1991				

Norway	Same-sex Partnership Registration – Registered Partnership for Homosexual Couples Act	1993	<ul style="list-style-type: none"> • Same-sex couples only <p>(But not siblings, or people who are relatives in the descending or ascending line)</p>	<ul style="list-style-type: none"> • Mutual duty of maintenance • Possibility of shared responsibility for the caring and rearing of children • A community of property system applies • Partners have the power to administer the property he/she brings into the community • Household expenses must be shared • Liability for debts connected to the household • Consent of the partner required for certain legal transactions • Inheritance rights • Pension rights • Same rights and duties as married couples under the revenue and social security law 	<ul style="list-style-type: none"> • Divorce (separation, abuse, previous marriage or partnership, consanguinity) 	<p>Governed by <i>the Marriage Act</i></p> <ul style="list-style-type: none"> • One partner must be both a citizen and resident of Norway • No access to adoption, or medically assisted procreation (joint custody or guardianship are possible) • Rules governing civil marriage ceremonies do not apply but registration is comparable to non-church weddings • Rules which depend on the biological sex of the partners, like the presumption of paternity, do not apply
Sweden	Same-sex Partnership Registration – <i>Registered Partnership Act</i>	1995	<ul style="list-style-type: none"> • Same-sex couples only 	<ul style="list-style-type: none"> • Obligation to care for one another • Entitlement to half the property held by the other partner on dissolution • Obligation to maintain each other • Inheritance rights • Pension rights • May use each other's name • Same rights and duties as married couples under revenue and social security law 	<ul style="list-style-type: none"> • Death of a partner • Judicial decree, on the request of one or both partners 	<p>Governed by <i>the Marriage Code</i></p> <ul style="list-style-type: none"> • One partner must be both a citizen and resident of Sweden (though provision can be made for Swedish citizens living abroad) • No access to adoption, medically assisted procreation or joint custody of children • No access to religious ceremonies • Rules which depend on the biological sex of the partners, like the presumption of paternity, do not apply

<p>Iceland</p>	<p>Same-sex Partnership – <i>Act on Registered Partnership</i></p>	<p>1996</p>	<ul style="list-style-type: none"> • Same-sex couples only <p>(But not siblings, or people who are relatives in the descending or ascending line)</p>	<ul style="list-style-type: none"> • Obligation of fidelity • Joint responsibility or the maintenance of the family which includes reasonable necessities for keeping the family home, the upbringing and education of children, and the personal needs of each of the spouses • Community of property system applies • Obligation to maintain each other • Partners have the power to administer the property he/she brings into the community • Shared liability for debts connected to the household • Consent of the partner required for certain legal transactions • Inheritance rights • Pension rights • Same rights and duties as married couples under revenue and social security law 	<ul style="list-style-type: none"> • Death of a partner • Annulment (by (mental defect, duress, mistake, fraud) • Divorce (separation, adultery, bigamy, physical assault) 	<ul style="list-style-type: none"> • One partner must be a citizen and resident in Iceland • Non-Icelandic residents can register their partnerships if they have lived in the country two years • No access to adoption or medically assisted procreation. <p>But partners are allowed to have joint guardianship and custody of children brought into the relationship</p> <ul style="list-style-type: none"> • No access to religious ceremonies or, upon dissolution, no claim to mediation performed by clergy • International treaties do not apply unless contracting parties agree • Rules which depend on the biological sex of the partners, like the presumption of paternity, do not apply
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<p>France</p>	<p><i>Pacte civile de solidarité – PACS</i> (Civil Union Pact) – Loi no 99-944 du 15 novembre 1999 relative au pacte civil de solidarité</p>	<p>1999</p>	<ul style="list-style-type: none"> • Same sex couples • Heterosexual couples <p>(But not siblings, or people who are relatives in the descending or ascending line)</p> <p>(Not people who are bound by any other partnership contract or marriage)</p>	<p>A contract must be entered into by which partners are free to determine the rights and obligations of their partnership, within the constraints imposed by law</p> <ul style="list-style-type: none"> • Obligation to provide financial and moral support for each other • Liability for debts connected to the household • Household expenses must be shared • Legal protection of tenancy and household in case of death • Property acquired after a PACS is concluded is to be considered joint property and is divided in two if the partners break the contract • Rights and duties under social security and tax laws 	<ul style="list-style-type: none"> • Death of a partner • Joint statement of the parties at the town hall • Dissolution by a court upon request of one of the partners • Marriage by one the partners • Partners must inform each other and the registration office of their intention to dissolve the union • Same-sex couples cannot adopt children • The revenue law for couples applies only after three years after the signature of the PACS 	<p>A PACS is “an element of appreciation” in the immigration law but has no real impact</p> <ul style="list-style-type: none"> • No access for same-sex couples to artificial medically assisted procreation – though heterosexual common law couples do have access
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Belgium	Cohabitation légale (legal cohabitation) – <i>Loi instaurant la cohabitation légale</i>	2000	Open to all without regard to relationships, sex, family ties, etc.	<p>Law provides for two persons to make a statement of legal cohabitation to municipal authorities</p> <ul style="list-style-type: none"> • Obligation to maintain one another • Legal protection of tenancy and household in case of death • Costs of the household have to be shared • Liability for debts connected to the household • Obligation to cohabit • Property acquired after a legal cohabitation declaration is considered joint property and is divided in two if the partners break the contract • Partners have the power to administer the property he/she brings into the community • Consent of the partners required for certain legal transactions • Inheritance of a lease 	<ul style="list-style-type: none"> • Death of a partner • Marriage of one the partner. • Declaration written by one, or both partners, expressing the will to break the contract, submitted to the Civil Official (Officier d'État communal) 	<ul style="list-style-type: none"> • Apart from the rights and responsibilities previously mentioned, gay couples registered under the Belgium legal cohabitation law are denied all the other rights of married couples (no inheritance rights, joint adoption, or pension rights)
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Germany	Declared Partnership /Life Partnership) – <i>Registered Partnership Act</i>	Aug 2001	<ul style="list-style-type: none"> • Same-sex couples only 	<ul style="list-style-type: none"> • Mutual duty of support • Inheritance rights • Legal protection of tenancy and household in case of death • Custody rights • Rights to the tenant’s lease • Social benefits for children • Health care insurance • Immigration and naturalization rights • Maintenance obligations • Partners may use each other’s name • Partners become related to the relatives of the other partner • Partners can refuse to testify against each other in a criminal trial 	(No information available)	<ul style="list-style-type: none"> • No access to adoption • No access to same income tax provisions as married couples • For heterosexual marriages, the acquired property status is the default status • For registered partnerships the separate property status is the default one. <p>Default status can be changed through a public notary. (The three property regimes are:</p> <ol style="list-style-type: none"> 1. A common property status – at dissolution, each partner receives 50%; 2. A separate property status – at dissolution, each partner keeps their property and earnings; 3. An acquired property status – at dissolution, only the property and income acquired during the partnership is shared)
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Regions, States & Provinces

<p>Vermont, USA</p>	<p>Civil Union Legislation – Act no. 91, An act relating to civil unions</p>	<p>2000</p>	<ul style="list-style-type: none"> • Same-sex couples <p>(But not close family members)</p>	<ul style="list-style-type: none"> • Parties – shall be responsible for the support of one another • Law of domestic relations applies, including annulment, separation and divorce, child custody and support, and property division and maintenance • Rights of parties to a civil union, with respect to a child of whom either becomes the natural parent during the term of the civil union are the same as those of a married couple • Same-sex couples registered under this union are also entitled to more than 300 benefits, protections and responsibilities 	<ul style="list-style-type: none"> • Same rules of dissolution as married couples • Same benefits and rights of marriage the state can legally offer • Parties to a Civil Union must obtain a licence from a town clerk, which is then certified by an authorized official or clergy 	<ul style="list-style-type: none"> • Does not grant the tax advantages and hundreds of other benefits that the federal government provides • Applies only in the state of Vermont. Congress and 30 States have passed laws saying they won't recognize such unions. • The union is not called a marriage
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<p>Hawaii,</p> <p>USA</p>	<p>Reciprocal Beneficiaries – <i>Reciprocal Beneficiaries Act</i></p>	<p>1997</p>	<ul style="list-style-type: none"> • Open to all without regard to relationships, sex, family ties, etc. • Allows two persons who are legally prohibited from marrying one another under state law to register their relationship by filing a notarized declaration with the state director of health 	<ul style="list-style-type: none"> • Affords between 50-60 rights previously were reserved to married spouses, including: <ul style="list-style-type: none"> • Standing to sue for wrongful death and other tort claims • Rights to an elective share upon death • Authority to make health care decisions • Rights to workers' compensation benefits • Rights to receive payments of wages on the death of an employee • Rights to family leave under state law 	<ul style="list-style-type: none"> • Inheritance rights • The presentation of a signed notarized declaration of termination to the director by either of the reciprocal beneficiaries 	<ul style="list-style-type: none"> • Does not grant tax advantages or hundreds of other benefits that the federal government provides • No division of property • No access to adoption • Workplace medical insurance was eliminated by Hawaii's attorney general who claimed that no private business is required to offer domestic partner benefits • No requirement for the Public Employees Health Fund to provide coverage for unmarried partners of state workers and retirees
<p>Nova-Scotia,</p> <p>Canada</p>	<p>Registered Domestic Partnership – <i>Vital Statistics Act of Nova-Scotia</i></p>	<p>2001</p>	<ul style="list-style-type: none"> • Two persons living in a conjugal relationship, same or opposite sex 	<p>Filing a domestic partners declaration provides the partners with many of the same rights and obligations that married couples have under a number of Nova Scotia statutes, including:</p> <ul style="list-style-type: none"> • Spousal support • Protection under the Matrimonial Property Act • Access to pension provisions • Access to medical record and medical decisions 	<ul style="list-style-type: none"> • Parties live separate and apart for more than a year (affidavit to be submitted to Vital Statistics) • Parties enter into a separation agreement pursuant to <i>the Maintenance and Custody Act</i> • Parties file a Statement of • Termination with Vital Statistics • One of the parties marries a third party 	<ul style="list-style-type: none"> • There are more than 100 laws, which do not include same-sex couples, such as the right to adopt. However, a recent court case declared the prohibition on adoption to same-sex couples to be unconstitutional.

<p>Catalonia</p> <p>Spain</p>	<p>Stable Relationship Union – <i>Unión Estable Heterosexual y Homosexual</i></p>	<p>1998</p>	<ul style="list-style-type: none"> • Same-sex couples and heterosexual couples <p>(The law specifies a couple living together in the same way as a married couple)</p>	<ul style="list-style-type: none"> • Mutual care and custody • Obligation of maintenance in case of separation • Household expenses must be shared • Liability for debts connected to the household • Legal protection of tenancy and household in case of death • Inheritance rights • Right of representation of the absent • Right to food – Partners are compelled to share food 	<ul style="list-style-type: none"> • Notarized cancellation of the contract, submitted to a Catalan Registry by either or both partners 	<ul style="list-style-type: none"> • Adoption rights • Pensions • Tax • Social security <p>(The above are national and not regional matters. They have to be approved by Parliament)</p>
<p>Aragon,</p> <p>Spain</p>	<p>Unmarried Couples Law</p>	<p>1999</p>	<ul style="list-style-type: none"> • Same-sex couples and heterosexual couples <p>(The law specifies couples in marriage-like unions of mutual affection)</p>	<ul style="list-style-type: none"> • Mutual care and custody • Obligation of maintenance in case of separation • Household expenses must be shared • Liability for debts connected to the household • Legal protection of tenancy and household in case of death • Inheritance rights • Right of representation of the absent • Right to food – Partners are compelled to share food 	<p>Notarized cancellation of the contract, submitted to the Registry of the Aragon General Deputy by either or both partners</p>	<ul style="list-style-type: none"> • Adoption rights are not granted to same-sex registered couples, but are allowed for heterosexual registered couples • Pensions • Tax • Social security <p>(The above are national and not regional matters. They have to be approved by Parliament)</p>

CITIES*

* Only a few models are outlined

<p>New York</p> <p>New York, USA</p>	<p>Domestic Partnership Registration – Municipal ordinance</p>	<p>1993 & 1998</p>	<ul style="list-style-type: none"> • Same-sex couples • Heterosexual couples • Non-conjugal couples 	<ul style="list-style-type: none"> • Visitation rights in jail or at hospital • Family medical or bereavement leave • Purchase of real estate as a family, or inheritance of partner’s lease • Obligation of assistance to one another • Liability for debts connected to the household • Household expenses must be shared • Shared cemetery plots 	<ul style="list-style-type: none"> • Notification in writing to partner • Submission of document formally terminating domestic partnership to municipal authorities 	<p>Law covers all areas under City jurisdiction, extending to registered domestic partners equal access to services, entitlements and responsibilities as currently extended to spouses</p> <ul style="list-style-type: none"> • Only recognized by the City of New York • Only deals with municipal matters, and municipal employees
<p>Berkeley</p> <p>California, USA</p>	<p>Domestic Partnership – Municipal ordinance</p>	<p>1984</p>	<ul style="list-style-type: none"> • Same-sex couples • Heterosexual couples 	<ul style="list-style-type: none"> • Law covers all areas under city jurisdiction, extending registered domestic partners equal access to services, entitlements and responsibilities as are currently extended to spouses 	<ul style="list-style-type: none"> • Submission of a Statement of Termination to the city 	<ul style="list-style-type: none"> • Only deals with municipal matters • Domestic Partnerships may have potential legal implications under California law, which has recognized that non-marital cohabiting couples may privately contract with respect to the financial obligations of their relationship

Hamburg, Germany	Partner registration – Municipal ordinance	1999	<ul style="list-style-type: none"> • Same-sex couples 	<ul style="list-style-type: none"> • No rights or obligations are granted 	Notarized cancellation of the contract, submitted to Hamburg’s authorities	<ul style="list-style-type: none"> • One of the partners must be a resident of Hamburg • This legislation is essentially symbolic since no rights or obligations were granted
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PRIVATE SECTOR*

* Only a few models are outlined

Apple Computer, Inc.	Employee Benefits	1993	<ul style="list-style-type: none"> • Same-sex partners 	<ul style="list-style-type: none"> • Adoption benefits • Bereavement and family leave policies • Child care • COBRA benefits • Dental Insurance • Family leave policy for domestic partners is same as married partners under <i>The Family Medical Leave Act</i> • Medical Benefits • Parenting leave • Use of health and fitness programs • Relocation policy • Sick Leave • Vision medical insurance 		<ul style="list-style-type: none"> • The company is currently researching ways to implement this policy for its employees outside the United States
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Coca Cola	Employee Benefits	2001	<ul style="list-style-type: none"> • Same-sex partners 	<ul style="list-style-type: none"> • Health care benefits (not defined) 		<ul style="list-style-type: none"> • Only offered to American employees
Compaq Computer Corp	Employee Benefits	1998	<ul style="list-style-type: none"> • Same-sex partners 	<ul style="list-style-type: none"> • COBRA benefits • Dental Insurance • Medical Benefits • Vision medical insurance included • Relocation policy • Family leave policy for domestic partners is same as for married partners under <i>The Family Medical Leave Act</i> 		<ul style="list-style-type: none"> • Only offered to American employees

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