



UNDERSTANDING POLYAMOROUS RELATIONSHIPS AND  
THEIR JUDICIAL RECOGNITION, BY ADAM BLACK





IN RECENT TIMES, the concept of family has experienced tremendous change. From the recognition of same-sex marriage to amendments to adoption laws designed to recognise nuances of familial structure, the definition of family today undoubtedly captures a much broader set of relationships than the rigid dyadic definition of days gone by.

Polyamory is the newest dimension to make its way into the modern family. Underscoring the broad range of relationships that can exist within the four corners of polyamory, John-Paul Boyd describes polyamorous people as those who:

... are, or prefer to be, involved in more than one intimate relationship at a time. Some polyamorists are involved in stable, long-term, loving relationships involving two or more other people. Others are simultaneously engaged in a number of relationships of varying degrees of permanence and commitment. Still others are involved in a web of concurrent relationships ranging from short-term relationships that are purely sexual in nature to more enduring relationships characterized by deep emotional attachments.<sup>1</sup>

The prevalence of polyamorous relationships in North America may come as a surprise to many. According to the Canadian Polyamory Advocacy Association, there are approximately 1,100 polyamorous families in Canada.<sup>2</sup> Researchers have suggested that the number of polyamorous families in the US could be as high as 500,000.<sup>3</sup>

Testament to the evolution of the family paradigm in Canada is the recent decision in *C.C. (Re)*, penned by Justice Robert A Fowler of the Supreme Court of Newfoundland and Labrador. In the case, two male partners, JM and JE, and a female, CC, were in a committed and enduring polyamorous relationship. A child, A, was born of the three-way relationship and, while the mother was obvious, the father was unknown. JM, JE and CC sought a declaration that, if granted, would recognise all three of

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them as the legal parents of A. Justice Fowler granted the declaration.

Justice Fowler appreciated the emerging prevalence of polyamory in Canada and responded accordingly. In granting the declaration pursuant to which all three parties to the polyamorous relationship were named as the child's parents, Justice Fowler noted that 'the realities of a changing society must not be ignored to the detriment of children who no longer fit the traditional family model'.<sup>4</sup>

The implications of Justice Fowler's judicial recognition of this new family paradigm are significant. This is particularly the case in the event of the breakdown of a polyamorous relationship. The traditional models of rights and obligations regarding parenting, child support, spousal support and sharing of property are mostly designed for dyadic relationships and do not adequately address situations in which there may be more than two spouses involved in the breakdown.

The most malleable concept when it comes to the breakdown of polyamorous relationships will be parenting. In Canada, parenting issues are always determined by reference to the child's best interests. With that governing principle in mind, the existence of three (or more) parents likely does not give rise to the need for a new model. Rather, the best interests test can be just as easily applied when there are more than two parents.

The more complex issues to resolve will undoubtedly be financial in nature. First, consider the issue of child support.

In a two-parent model, child support in Canada is usually payable by one parent to the other with the quantum of support being driven primarily by the child's residence and the income of the paying parent. What happens in the event of the breakdown of a polyamorous relationship? Which parent pays? Does more than one parent pay? What happens if only one parent exits the relationship and the remaining parents remain in an intact relationship? In the context of the current absence of a clear child-support model that expressly contemplates situations with more than two parents, these permutations and combinations will likely give rise to judicial uncertainty.

Similarly, consider spousal support. Under Ontario's *Family Law Act* (the Act),<sup>5</sup> a spouse includes either of two persons who are not married to each other and have cohabited continuously for a period of not less than three years, or in a relationship of some permanence, if they are the parents of a child. While it seems that nothing under the Act excludes individuals in a polyamorous relationship from pursuing spousal support, it remains unclear how the Canadian courts will consider and determine such a claim.

As the traditional family model becomes a thing of the past, courts will need to keep pace with change. Polyamory is the new frontier in family law and the current two-spouse framework of rights and entitlements will need to be reshaped to address the expanded family model.

<sup>1</sup> John-Paul E. Boyd, *Polyamorous Relationships and Family Law in Canada*, (April 2017), p.12 <sup>2</sup> Canadian Polyamory Advocacy Association, 'The Poly Majority', [polyadvocacy.ca/majority](http://polyadvocacy.ca/majority) <sup>3</sup> Jessica Bennett, 'Polyamory: The Next Sexual Revolution?', *Newsweek* (28 July 2009), [bit.ly/M83k9r](http://bit.ly/M83k9r) <sup>4</sup> *C.C. (Re)*, 2018 NLSC 71, at para.28 <sup>5</sup> *Family Law Act* (R.S.O. 1990, c. F.3)



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