

**To:** ULC Economic Rights of Unmarried Cohabitants Act Committee  
**From:** Cathy Sakimura, National Center for Lesbian Rights & Professor Courtney Joslin, UC Davis, Observers  
**RE:** Economic Rights of Unmarried Cohabitants Act Draft, November 2019  
**Date:** December 3, 2019

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This is an appendix to our previously submitted memo that includes a few of the existing status-based models from the U.S. and around the world.

## **APPENDIX TO MEMO**

### **A. American Law Institute's (ALI) Principles of the Law of Family Dissolution (2002)**

Under the ALI Principles, unmarried couples who are domestic partners are entitled to the same property division and spousal support rules that apply to married couples.

The ALI defines “domestic partners” as follows:

- (1) For the purpose of defining relationships to which this Chapter applies, domestic partners are two persons of the same or opposite sex, not married to one another, who for a significant period of time share a primary residence and a life together as a couple.
- (2) Persons are domestic partners when they have maintained a common household, as defined in Paragraph (4), with their common child, as defined in Paragraph (5), for a continuous period that equals or exceeds a duration, called the *cohabitation parenting period*, set in a rule of statewide application.
- (3) Persons not related by blood or adoption are presumed to be domestic partners when they have maintained a common household, as defined in Paragraph (4), for a continuous period that equals or exceeds a duration, called the *cohabitation period*, set in a rule of statewide application. The presumption is rebuttable by evidence that the parties did not share life together as a couple, as defined by Paragraph (7).
- (4) Persons *maintain a common household* when they share a primary residence only with each other and family members; or when, if they share a household with other unrelated persons, they act jointly, rather than as individuals, with respect to management of the household.
- (5) Persons have a *common child* when each is either the child's legal parent or parent by estoppel, as defined by § 2.03.
- (6) When the requirements of Paragraph (2) or (3) are not satisfied, a person asserting a claim under this Chapter bears the burden of proving that for a significant period of time the parties shared a primary residence and a life together as a couple, as defined in Paragraph (7). Whether a period of time is significant is determined in light of all the Paragraph (7) circumstances of the parties' relationship and, particularly, the extent to which those circumstances wrought change in the life of one or both parties.
- (7) Whether persons share a life together as a couple is determined by reference to all the circumstances, including:
  - (a) the oral or written statements or promises made to one another, or representations jointly made to third parties, regarding their relationship;
  - (b) the extent to which the parties intermingled their finances;

- (c) the extent to which their relationship fostered the parties' economic interdependence, or the economic dependence of one party upon the other;
- (d) the extent to which the parties engaged in conduct and assumed specialized or collaborative roles in furtherance of their life together;
- (e) the extent to which the relationship wrought change in the life of either or both parties;
- (f) the extent to which the parties acknowledged responsibilities to each other, as by naming the other the beneficiary of life insurance or of a testamentary instrument, or as eligible to receive benefits under an employee-benefit plan;
- (g) the extent to which the parties' relationship was treated by the parties as qualitatively distinct from the relationship either party had with any other person;
- (h) the emotional or physical intimacy of the parties' relationship;
- (i) the parties' community reputation as a couple;
- (j) the parties' participation in a commitment ceremony or registration as a domestic partnership;
- (k) the parties' participation in a void or voidable marriage that, under applicable law, does not give rise to the economic incidents of marriage;
- (l) the parties' procreation of, adoption of, or joint assumption of parental functions toward a child;
- (m) the parties' maintenance of a common household, as defined by Paragraph (4).

Principles of the Law of Family Dissolution § 6.03 (2002)

## **B. Washington State—Committed Intimate Relationship doctrine**

For over 100 years, Washington state has applied a status-based approach. Currently, that doctrine is called the committed intimate relationship doctrine. Under the doctrine, property division rules that are similar to those applicable to married couples are applied to committed intimate relationships. The doctrine applies both at dissolution and at death.

Relevant factors to establish a committed intimate relationship “include, but are not limited to: [1] continuous cohabitation, [2] duration of the relationship, [3] purpose of the relationship, [4] pooling of resources and services for joint projects, and [5] the intent of the parties.” *Connell v. Francisco*, 898 P.2d 831 (Wash. 1995) (citing *In re Marriage of Lindsey*, 678 P.2d 328 (Wash. 1984)).

## **C. Australia**

Since March 1, 2009, parties in de facto relationships have been entitled to have their “financial matters determined in the same way as married couples.”<sup>1</sup>

The law defines “de facto relationships” as follows:

4AA De facto relationships

Meaning of **de facto relationship**

- (1) A person is in a **de facto relationship** with another person if:
  - (a) the persons are not legally married to each other; and

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<sup>1</sup> <http://www.familycourt.gov.au/wps/wcm/connect/fcoaweb/family-law-matters/separation-and-divorce/defacto-relationships/>.

(b) the persons are not related by family (see subsection (6)); and  
(c) having regard to all the circumstances of their relationship, they have a relationship as a couple living together on a genuine domestic basis.

Paragraph (c) has effect subject to subsection (5).

Working out if persons have a relationship as a couple

(2) Those circumstances may include any or all of the following:

- (a) the duration of the relationship;
- (b) the nature and extent of their common residence;
- (c) whether a sexual relationship exists;
- (d) the degree of financial dependence or interdependence, and any arrangements for financial support, between them;
- (e) the ownership, use and acquisition of their property;
- (f) the degree of mutual commitment to a shared life;
- (g) whether the relationship is or was registered under a prescribed law of a State or Territory as a prescribed kind of relationship;
- (h) the care and support of children;
- (i) the reputation and public aspects of the relationship.

(3) No particular finding in relation to any circumstance is to be regarded as necessary in deciding whether the persons have a de facto relationship.

(4) A court determining whether a de facto relationship exists is entitled to have regard to such matters, and to attach such weight to any matter, as may seem appropriate to the court in the circumstances of the case.

(5) For the purposes of this Act:

(a) a de facto relationship can exist between 2 persons of different sexes and between 2 persons of the same sex; and

(b) a de facto relationship can exist even if one of the persons is legally married to someone else or in another de facto relationship.

When 2 persons are related by family

(6) For the purposes of subsection (1), 2 persons are *related by family* if:

(a) one is the child (including an adopted child) of the other; or  
(b) one is another descendant of the other (even if the relationship between them is traced through an adoptive parent); or  
(c) they have a parent in common (who may be an adoptive parent of either or both of them).

For this purpose, disregard whether an adoption is declared void or has ceased to have effect.

Family Law Act 1975 (Cth) [Aus FLA], pt VIIIAB (Austl.).

## D. Canada

Canada has long extended status-based protections for unmarried couples both at the federal level and at the province level. The province vary, however, with regard to how they define qualified unmarried couples.

For reference here are a few definitions:

Alberta: requires living together for three years in “relationship of interdependence.”

British Columbia: “spouse” for property division purposes is defined as a person who is married to another person or who “has lived with another person in a marriage-like relationship, and (i) has done so for a continuous period of at least 2 years.” Family Law Act, SBC 2011, c 25, s 3(1).

Saskatchewan: “spouse” includes “either of two persons who ... is cohabiting or has cohabited with the other person as spouses continuously for a period of not less than two years” Family Property Act, SS 1997, c F-6.3, s 2(1).