**The Legal Recognition of Poly-Parenting: Common-Law and European Approaches**

The move towards same-sex marriage in France and the UK highlights the commitment to the recognition of same-sex families in Europe. In the same way that the recognition of same-sex unions within the EU\(^1\) is recognised as being of fundamental importance, so too is the recognition of the relationships that exist between same-sex parents and their children.\(^2\) LGBT poly-parenting, where same-sex couples (and single people) are conceiving and raising children with a friend of the opposite sex, is becoming increasingly visible in society.\(^3\) Legislatures in Europe are beginning to consider the possibility of legally recognising families created in this way.\(^4\) Therefore, it is necessary to consider the types of legal issues these family arrangements raise and how the law might respond to them.

This paper is based on PhD research, which compares the legal response to poly-parenting in the UK and Canada. UK legislation has recently been reformed to allow both members of a female couple to be legally recognised as the parents of a child born through assisted reproduction.\(^5\) The courts, however, have struggled to interpret this legislation in situations where the child's biological father is an acquaintance or friend of the female couple rather than an anonymous donor.\(^6\) The Canadian courts in Ontario\(^7\) and the Legislative Assemblies of British Columbia\(^8\) and Quebec\(^9\) have similarly...


\(^2\) See for example Committee of Ministers of the Council of Europe, 'Recommendation CM/Rec(2010)5 of the Committee of Ministers to member states on measures to combat discrimination on grounds of sexual orientation or gender identity' (31 March 2010) [26].


\(^4\) The Justice Ministry of the Netherlands is reported to have commissioned a report considering the possibility of legally recognising multiple parent families. See B Durr, 'Meet My Mom and Three Dads - Dutch Bill Would Allow More Than Two Parents' (14 February 2013) Suddeutsch Zeitung <http://www.worldcrunch.com/culture-society/meet-my-mom-and-three-dads-dutch-bill-would-allow-more-than-two-parents/legislation-lgbt-rights-homosexuality-parenting/c3s10900/#.USSmL_t35TE> accessed 29 July 2013.

\(^5\) See the UK Human Fertilisation and Embryology Act 2008, part 2.

\(^6\) See for instance the recent high court case in the UK of *Re G (A Minor); Re Z (A Minor)* [2013] EWHC 134 (Fam).

\(^7\) See for example *A v B* [2007] ONCA 2


struggled with these issues, which are regulated at the provincial, not federal, level in Canada.

This paper discusses the various legal approaches to this issue in each jurisdiction, highlighting the factors that courts and legislatures have identified as particularly significant. These include the role of pre-conception intentions and post-conception parenting in determining who should be recognised as a parent. The paper will largely focus on the recognition of known donors/biological fathers in relation to female couples who have children because this is what the majority of the reported case law deals with. Of particular importance in this regard are the choices the law makes in relation to the recognition of the biological father's parental involvement through the use of parental responsibility rather than as a record of parental status on the birth certificate, which is an approach adopted by the UK courts.

This is an emerging area of family law and policy in Europe, which not only engages tensions within the European Convention on Human Rights\textsuperscript{10} but can also have a marked practical impact on the families involved. The comparative analysis presented in this paper raises questions of whether law reform in this area is required in the UK and how such reform could be achieved. Whilst the paper does not purport to answer these questions definitively, these issues deserve to be debated further at national, regional and international levels and this paper hopes to make some contribution to that debate.

\textsuperscript{10} On the way biological fatherhood engages Article 8 ECHR right to respect for private and family life in the absence of legal parenthood see Anayo v Germany.\textsuperscript{2010} ECHR 20578/07.