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## **Policy Forum: Comments on the Law Commission of Canada's *Beyond Conjugality: Recognizing and Supporting Close Personal Adult Relationships***

**E**ditor's note: In 1997, the Canadian government established the Law Commission of Canada as an independent government agency to provide Parliament with a critical perspective on the fundamental principles of Canadian law. To date, not much of the commission's work has touched on tax issues. However, its recent report, *Beyond Conjugality: Recognizing and Supporting Close Personal Adult Relationships*, contains a number of recommendations that would, if implemented, result in significant amendments to the Income Tax Act.

Personal relationships, in particular interdependent relationships between adults, are one of the major themes around which the commission has organized its work over the past four years. Since the quality of life in a society is largely determined by the richness and diversity of the personal relationships among its members, this focus seems appropriate. The commission's work in this area, and the recommendations in *Beyond Conjugality*, are premised on a number of value judgments: equality among relationships—all types of personal relationships, not just those similar to marriage, should be valued equally (hence the title of the report); equality within relationships—the law should be concerned with the distribution of resources between partners of a relationship; autonomy—individuals should be able to freely choose their personal relationships; and privacy—the law should not require unnecessary intrusions into the intimate aspects of relationships.

Basing its work on a balancing of these and related values, the commission formulated four general principles that should guide an examination of any law that seeks to accomplish its objective by reference to a close relationship between adults. First, the objectives of any such law should be reviewed to ensure that they are legitimate in the light of the values identified by the commission and contemporary social realities. Second, if, after review, the law's objectives remain legitimate, Parliament should consider whether the objectives can be achieved without reference to a close personal relationship between adults. Third, if a reference to a relationship between adults is required in order to achieve the objectives of the law, Parliament should consider whether the affected individuals should be able to self-designate their relationship as one that qualifies under the law. Fourth, if the self-designation of the qualifying relationship is not feasible or appropriate, Parliament should define the relevant relationship by reference to the function that the law assumes the relationship serves. On the basis of such a functional analysis, whether

the parties have a marriage-like or conjugal relationship will be over- or underinclusive of the law's purposes in most if not all cases.

In its report, the commission applies these principles to selected provisions of a number of federal statutes. With respect to the income tax provisions that it examined, the commission made the following recommendations:

- the individual, not the family, should remain the basic tax-filing unit;
- the spousal and common law partner tax credit should be repealed and replaced with direct income support to caregivers and children;
- the GST credit should be administered on an individual, not a family, basis;
- the provision allowing for the non-recognition of capital gains on transfers between spouses should be extended to all individuals who are living together in economically interdependent relationships; and
- the dependent relatives tax credits should be extended to any taxpayer who has provided assistance to a dependent person.

We invited three tax policy analysts to comment on the commission's recommendations.

David Duff thinks the commission goes too far in wanting a law that ignores relationships. Contrary to the arguments in the report, he believes that the spousal and common law partner credit can be supported as a technical tax measure that is designed to reflect more accurately the ability to pay of an individual who supports another economically. Indeed, he thinks it should be available "for any relationship in which support obligations are mandated by law." Moreover, he argues that the GST credit should remain dependent on family income. He concludes that "close personal adult relationships are inevitably interdependent, creating mutual rights and obligations that are rightly taken into account in defining each individual's rights and obligations vis-à-vis the state."

Lisa Philipps agrees with the commission's recommendations by and large and provides a sympathetic account of the report's value premises and methodology. However, she feels strongly that the commission should have turned its attention to the spousal and common law partners attribution rules. She argues that the commission's objectives would be significantly furthered if these attribution rules were revised so that transfers of effective control over income and property between spouses and common law partners were recognized for tax purposes.

Frances Woolley estimates the cost and distributional consequences of two of the commission's recommendations: repealing the spousal and common law partner tax credit and using the saved revenue to enrich the Canada child tax benefit, and administering the GST credit on an individual basis. In terms of the commission's recommendations themselves, she questions, among other things, the logic of administering the GST credit on an individual basis but continuing to deliver the many much more significant government transfer programs—such as social assistance—on a family basis. Accepting the commission's principle of framing laws, where possible, without reference to relationships, she suggests that the commission should have taken a much more radical position—namely, that all individuals, including children, should be entitled to a minimum level of guaranteed income.