Cameos from the Margins of Conjugality

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Penultimate Draft

Every discipline of academic study has something to say about the family: scientists, philosophers, social scientists, legal scholars, linguists, humanities scholars, ethicists, theologians, economists, public policy wonks, feminist theorists. We prod at the contours of the institution of the family; create taxonomies of alternative models of family; unfold histories of the evolution of family relationships in different regions of the world, over different periods, and in different social and economic classes; theorize the relationships of power between members of families; explicate the explicit and implicit rules of family life; identify stages in family development; delineate distinct language practices that follow from our understandings of family and so on. All of this work requires that we identify something called the family (whether human or non-human) and then go to the work of observing its behaviour in some way (whether through direct study or through study by some indirect means, for example, by reviewing newspaper clippings or digging up pots).

One of the most significant socio-legal documents that prod at the contours of adult personal relationships is the 2001 Law Commission of Canada report,
Beyond Conjugality: Recognizing and Supporting Close Personal Adult Relationships. That report speculated, and in some cases verified, that adult personal relationships were more diverse than reflected in our network of laws. The Commission sought, in the context of specific legal regimes (e.g. tax law, bankruptcy law, labour law), to identify the objectives of the legal regime, to determine whether the relationships invoked in that area of law mattered, to discern whether individuals could be relied upon to self-identify as being within those particular relationships, and if self-designation wasn’t possible, to consider whether there was a more sensible way to use the relationships. The report was a watershed in the development of thinking about the role of adult personal relationships in Canada, and to a lesser extent, in the United States. The timing of the release of the report is ideal given the dual questions - one empirical and one analytical - asked in this book: How have reforms since 2000, designed to enhance the equality of families, played out and how have they changed conduct? What problems, unintended consequences, and injustices have resulted from equality-driven reforms, both for their intended beneficiaries and for others (see Leckey, in this volume)?

Beyond Conjugality reframed the way we think about the function of relationships in legal regulation. But it was forced to do so in the absence of a sense of the texture of those underlying relationships themselves. The report relied on a
detailed review of the census data to present a picture of the diversity of adult personal relationships, although those data lack the rich texture of the kinds of empirical work undertaken by scholars who research the evolving nature of close personal relationships in disciplines outside law. As the report asserts, ‘We know little about the characteristics of non-conjugal relationships between unrelated persons’ (Law Commission of Canada 2001: 5).

This chapter uses the changes to the legislation in Canada’s Income Tax Act,¹ implemented by the Modernization of Benefits and Obligations Act,² and the subsequent cases on the meaning of ‘common-law partner’ or unmarried spouse as a method of deriving evidence about the texture of the lives lived by adults in personal relationships. In this chapter, I refer to adults as having proximate relationships, a phrase I mean to indicate a relationship that might be intimate in a variety of ways, and that might, given the statutory definition of common-law partner, be thought to be at the margins of conjugality. From that evidence, I seek to contribute to the social history of the margins of conjugal relationships between adult members in a post-legal-equality world in Canada. I step off from the chapters in this book undertaken by Claire Young and, to a lesser extent, Rosie Harding. Professor Young’s work provides a detailed and thoughtful review of the implications of the design of the Income Tax Act for lesbians and gay men, comparing the benefits and obligations of the legislative (and case law) changes
between 1994 and 2013. She then draws some empirical and normative
conclusions about the equality-shifting nature of those changes.

Here I look at the same context as that described in Young’s chapter, but attempt
an entirely different intellectual exercise, one that hopefully contributes to the
Beyond Conjugality project. In particular, this chapter is inspired by the notion
that you can see something by looking at it directly or you can study it through the
lens of something else. The legislative changes in 2000 provide an opportunity to
learn something about what post-legal-equality proximate adult relationships look
like in Canada. What might be seen is far from a thorough view: instead, it is a
view of proximate adult relationships through the refraction of Canada’s federal
income tax legislation and its judicial interpretation. It’s a glimpse in a mirror that
allows you to see an image in another mirror, which reflects the ‘real thing’ of the
relationships people have when they reside at the legal margins of conjugality.

I focus in particular on what we might learn about relationships between
cohabiting adults at the margins of conjugality because that is what has most
squarely been the focus of the post-legal-equality project: spouses. In other words,
the legislative changes in Canada designed to reflect the push for equal treatment,
initiated primarily by same-sex couples and non-married opposite-sex couples,
have been dominated by adult relationship recognition claims. Less academic and
advocacy time has been spent on the relationship status of adults with children who do (or do not) become the subject of the legal regulation of the family or on other non-conjugal adult relationships, although chapters in this collection centre those inquiries. To be perfectly clear, the project of this chapter is not to be prescriptive about how Canada’s tax legislation should be changed. Rather, it is to use changes to Canada’s tax legislation as a prism to see something about what proximate adult relationships in Canada at the margins of conjugality look like.

**SPOUSES UNDER THE INCOME TAX ACT**

Married opposite-sex partners have always been considered spouses under Canada’s Income Tax Act. Opposite-sex common-law couples became spouses for tax purposes in 1993, when the definition of spouse was amended to include a person of the opposite sex who cohabited with the taxpayer in a conjugal relationship throughout a 12-month period or who was the parent of a child of whom the taxpayer is a parent. In 2000, the Parliament of Canada passed the Modernization of Benefits and Obligations Act. That legislation changed the definition of spouse in a long list of federal statutes, including the Income Tax Act. References in the Act to ‘spouse’ became references to ‘spouse or common-law partner’ and references to ‘marriage’ became references to ‘marriage or common-law partnership’. In 2005, the Civil Marriage Act legalized same-sex marriage in Canada, with the consequence that married same-sex couples (like
opposite-sex married couples) do not need to rely on the definition of common-law partner in the Income Tax Act for treatment as spouses; they simply rely on their marital status.

The addition of the common-law partner definition to the Income Tax Act enables an exploration of the parameters of which individuals consider themselves to be spouses (at least for purposes of the Income Tax Act). As noted above, the definition requires that the taxpayer cohabit with the person in a conjugal relationship and have cohabited with that person for a continuous period of at least one year or be the parent of a child of the taxpayer.

Tax legislation does not define what it is to “cohabit in a conjugal relationship”. Case law informs this determination. The courts and the Canada Revenue Agency have adopted the articulation of what constitutes cohabiting in a conjugal relationship from the 1999 Supreme Court of Canada decision in *M v H* and from the 1980 Ontario District Court judgment in *Molodowich v Penittinen*. Determining whether parties cohabit in a conjugal relationship requires examining whether the parties lived in the same place, whether they slept together, whether anyone else occupied the accommodation, whether they had sexual relations, whether they maintained an attitude of fidelity, whether they communicated about personal things, whether they ate together, whether they assisted each other in
illness, whether they bought each other gifts for special occasions, whether they prepared meals, washed clothes, shopped, maintained the house or did other domestic chores for each other, and whether they participated together in community activities. The courts also look at evidence of their feelings toward each other, the attitudes of their families, the attitude of the community to them as a couple, whether there were financial arrangements for the provision of necessities between them, how they acquired and owned property, and any other special arrangements. In other words, the Tax Court and Federal Court of Appeal, alongside the Canada Revenue Agency, apply a broad facts and circumstances test. The advantage of this approach, given this project, is that the cases provide a good deal of description about what relationships at the margins of conjugality look like in Canada.

SEVENTEEN CAMEOS: ADULTS IN RELATIONSHIPS AT THE MARGINS OF CONJUGALITY

In attempting to discern what adult relationships at the margins of conjugality look like, I examined the tax cases where the courts have been compelled to weigh in on whether a particular arrangement is or is not a spousal one (for tax purposes). I focused on the cases decided after 2000 on the assumption that 2000 was the marker (almost, at least) of a post-legal-equality world. I chose only informal procedure cases, for reasons explained below, and I have provided
details about a maximum of two cases for each year. While there are some
differences in treatment between married and unmarried spouses that remain, and
same-sex couples could not marry in every province until 2005, the inclusion of
same-sex couples in marriage does not appear to have had any effect on the
evolution of the tax case law in the post-legal-equality period.

The records presented in the tax decisions I reviewed are wildly incomplete, of
course, given that they are cases where the judge or judges have already reduced
the available facts to a list that generally focuses on the kinds of factors identified
in Molodowich. Nevertheless, a portrait of some adults in relationships at the
margins of conjugality might be drawn from these facts. The tax context is
particularly rich, given that in 14 of the 17 decisions since 2000 the taxpayer was
self-represented, so was likely freer to describe his or her relationship in his or her
own words to the judge. All of the cases reviewed in this chapter are decided
under the informal procedure process, so they have no precedential value, which
presumably liberates somewhat the judges who render decisions in them.
Additionally, in informal procedure cases, the rules of evidence are relaxed: the
Tax Court is not bound by the technical rules of evidence and appeals are to be
dealt with as informally and expeditiously as fairness permits. What follows is a
presentation of the facts of these 17 cases. For the chapter’s purposes, whether or
not the court decided the two parties to have been spouses is unimportant. The
courts’ holdings are, however, available in the notes. Meet the people at the margins of conjugality in tax law.

**Ms Sykes and Mr Barnett (2000)**

Mr Barnett and Ms Sykes were both recently separated from previous partners. Ms Sykes owned a house in Sidney and Mr Barnett contributed to the mortgage payments and utility costs in exchange for an entitlement to 50 per cent of the increase in equity in the period for which the arrangement stayed in place. Mr Barnett lived about 90 percent of the time in hotels in Vancouver, where he was employed. They had separate telephones and Internet connections; they did not list each other in their employment benefits plans or pension plans. They had a joint account at the credit union and they appear to have shared some food costs. Each adult had some shares (indirect in the case of Mr Barnett) in a company owned by Ms Sykes’ mother. They had sex, but perhaps not very often. They did not take holidays together. They both had children from former relationships. Mr Barnett provided no emotional or financial support for Ms Sykes’ daughter. Ms Sykes represented herself.

**Ms Rangwala and Mr Rangwala (2000)**

Ms Rangwala and Mr Rangwala were married for almost 20 years when they separated. After they separated (and then divorced) they continued to live together
in the same house, although in separate parts of the house. Ms Rangwala made some small contributions to household expenses, but otherwise did not contribute to the cost of maintaining the home. Ms Rangwala told her employer that she and Mr Rangwala were separated and changed the designation of beneficiary on her retirement account to name their son. They kept their food in separately labelled containers in the fridge and did not perform any domestic services for each other. When Ms Rangwala had surgery, her brother came to assist her. She did not attend to Mr Rangwala if he fell ill. There was no communication between Mr and Mrs Rangwala and when they went to parties, they went to and from the party separately and did not speak to each other while at the event.

Ms Sigouin and Mr Déragon (2001)\textsuperscript{12}

Ms Sigouin and Mr Déragon were parents of a child. Ms Sigouin worked as an administrative assistant and she and Mr Déragon lived together in Blainville, Quebec. They wanted to live separately, but were unable to because of Mr Déragon’s precarious financial position. Mr Déragon converted the family room into a place where he could work and sleep. He paid Ms Sigouin a monthly amount to cover expenses. Ultimately, Mr Déragon declared bankruptcy and was unable to rent accommodation or borrow money. The sexual relationship ceased. They severed links with each other’s friends. They cooked separately. Each adult had his or her own car, social life, and recreational activities.
Ms Trudel and Mr Gagné (2001)\textsuperscript{13}

Ms Trudel separated from her husband in 1988 and retained custody of her three children. She had a child with leukemia, and a babysitter helped her care for her sick child. Ms Trudel met Mr Gagné, who used the same babysitter for one of his two children. Ms Trudel had to take two years’ sick leave from work to care for her son. She developed a relationship with Mr Gagné that, she later stated, confused love and friendship. In 1992, Ms Trudel moved in with Mr Gagné in Boucherville. The couple differed on a number of aspects of family life, including how to discipline the children, and Ms Trudel was unimpressed with Mr Gagné’s irregular attachment to the workforce. Mr Gagné moved to Ste-Foy for work and Ms Trudel continued to live in his house with her children; Mr Gagné put the house up for sale. Ms Trudel had engaged in an intimate relationship with a friend in Quebec City and planned to move to live with him in the future. When Mr Gagné lost his job in Ste-Foy, he returned to Boucherville and moved back into the house. Ms Trudel moved into another bedroom. She paid rent and her share of household expenses (including a house cleaner, electricity, telephone, and cable.). They bought a washer and dryer together. She took care of the children and did the grocery shopping for herself and the children. She kept track of the amount Mr Trudel owed each month for meals that he consumed with his children. They took the occasional trip together or as a family. They went out socially together
and referred to themselves as housemates. They had sex about once a year, often after a birthday dinner or other special occasion. Ms Trudel represented herself.

Ms Uwasomba and Mr Uwasomba (2002)\textsuperscript{14}

Ms Uwasomba, a night shift health worker, who insisted at trial on being called Victoria, and Mr Uwasomba, a mechanic, were granted a divorce in 1996. They had six children. After the divorce, the adults continued to live together in Brampton in the family residence, owned by Mr Uwasomba, who paid the expenses of the house. They shared other expenses and parental responsibilities. Mr Uwasomba moved into the basement, for which he had the only key. Mr Uwasomba prepared meals in the kitchen but had his own refrigerator. Ms Uwasomba made meals for herself and the children. They had the same arrangements for laundry and cleaning as they did for meal preparation. The parties did not have sex with each other; Mr Uwasomba had other sexual relationships. The parties quarreled about the children and generally did not speak to each other. While they each continued to buy gifts for the children, they did not buy gifts for each other. They attended separate churches. They had separate social lives and when they attended the same social gathering, they did not do so together. Ms Uwasomba was listed as Mr Uwasomba’s spouse in the beneficiary designations for his retirement account and life insurance plan. They had their
own bank accounts and credit cards. They jointly appealed the Canada Revenue Agency’s assessment, and they represented themselves.

Ms Henry and Mr Dean (2002)\textsuperscript{15}

Ms Henry moved to Toronto from Jamaica with her ten-year-old in 1993 to live with her sister. When the arrangements with her sister were no longer workable in 1994, she moved into the apartment of a friend and paid a modest amount of rent. When her friend was deported, Ms Henry needed to find another living arrangement. She met Mr Dean on a bus and agreed to share accommodation with him. She moved into his apartment in 1995, paying half the rent. The two adults had a child the following year. Ms Henry described their arrangement as a rent-sharing arrangement and nothing more. For some time they had a two-bedroom apartment and, when they did, they slept in the same room. When they moved to a three-bedroom apartment, Ms Henry shared a room with her daughter. Sex was irregular, and generally only when Mr Dean forced Ms Henry. Mr Dean had other sexual partners, but they did not come to the apartment. Ms Henry prepared meals, which Mr Dean ate in his room. In exceptional cases, Mr Dean prepared a meal because his children from a previous marriage were over for dinner. Mr Dean gave Ms Henry one Christmas present in 1995, but no gifts were exchanged after that. The adults each did their own laundry; Ms Henry did the children’s laundry. Ms Henry purchased the groceries, except for the occasional chicken or
beef purchased by Mr Dean. Ms Henry or her son took care of maintenance issues in the apartment. Ms Henry and Mr Dean did not take any trips together and they did not socialize together. Ms Henry went to church without Mr Dean. Ms Henry paid for the food, clothes, furniture, and entertainment. She also paid the utility bills. Eventually, Ms Henry forced Mr Dean to leave. She represented herself.

**Ms Richard and Mr Dumont (2003)**

Ms Richard and Mr Dumont lived together in Hull. She had a son from a previous relationship and they had a son together. They had a conjugal relationship until 1999. They would have ended their living arrangements after that; however, Ms Richard’s oldest child started to have issues at school and committed several minor offences. As a result, Ms Richard and Mr Dumont agreed that it would be best for the son if they continued to live together in a larger home, which they acquired jointly in 2000. In the new home, each child had his own room and Mr Dumont had a room. The adults shared the expenses of living in the home. Ms Richard might have slept on a sofa bed in the basement or perhaps she shared a room with Mr Dumont. She prepared the meals and ate with her children. Mr Dumont cooked his own food and ate separately. If they shared food, they calculated with precision what one of them owed to the other. There was conflicting evidence about who did the laundry and cleaning. Ms Richard and Mr Dumont socialized together periodically, but ceased visiting each other’s families.
They did not have sex after 1999. After 2002, Ms Richard changed the beneficiary designation on her insurance to her children. Ms Richard remained as Mr Dumont’s beneficiary. Ms Richard was covered by Mr Dumont’s dental and medical coverage. Mr Dumont and Ms Richard went to some activities together with the younger child; for example, they attended a Scouts event. Ms Richard alleged that she had a new boyfriend and that Mr Dumont was often away on weekends. Ms Richard represented herself.

**Mr Bellavance and Ms Gendron (2003)**

The living arrangements between Mr Bellavance and Ms Gendron changed over time. In 1995 and 1996 the two lived together in Matane, Quebec; then, Mr Bellavance moved to a new address and Ms Gendron joined him at that address in 1999. They filed as spouses in 1998 and as single in 1999. Apparently Ms Gendron became ill in 1999 and that ended their spousal relationship. For the period in issue (2000 to 2002), Ms Gendron looked after Mr Bellavance’s house while he was at work. She rented a room in the house he owned and paid him $100 a month for rent and electricity. Ms Gendron went to live with her daughter when Mr Bellavance was away because she was unable to be alone (presumably because of her illness). Mr Bellavance and Ms Gendron’s income tax returns were prepared by the same firm. Mr Bellavance reported that they had not had sex since January 2000. Each person did his or her own laundry, shopping.
housework, and meal preparation. Ms Gendron owned her own car. Mr Bellavance had little contact with Ms Gendron’s family. He purchased the washer and dryer without assistance from her. Ms Gendron’s income was higher. Mr Bellavance represented himself at the court hearing.

Ms Hamel and Mr Crépeault (2004)\(^{18}\)

Ms Hamel and Mr Crépeault purchased a piece of land together in Boischâtel, Quebec. (Throughout the decision, Judge Tardif refers to the two as friends, which is the language Ms Hamel sometimes used in describing the relationship.) Mr Crépeault built a house on the land as the prime contractor without charging Ms Hamel for his services. Ms Hamel and her two children moved into the house on its completion. Mr Crépeault and Ms Hamel planned to live together eventually (and did move into the house together a couple of years later), but did not want to live together in the period under consideration. The adults each had children from previous relationships and they consulted professional counsellors in the period in issue to support the integration of their children into a blended family. Ms Hamel and Mr Crépeault were in an exclusive relationship during that time. Ms Hamel represented herself.

Ms Chicheluk and Mr Oree (2005)\(^{19}\)
Ms Chicheluk separated from Mr Chicheluk and the post-separation relationship was massively disruptive: Mr Chicheluk harassed Ms Chicheluk with late-night phone calls, communicated with her employer and parents, and damaged her car. She changed the locks on the door to her house in Winnipeg four times and the police intervened on several occasions. She got a restraining order. They went to court to deal with child custody and support issues, multiple times. When Ms Chicheluk started a relationship with Mr Oree, the abuse by Mr Chicheluk escalated. She sought counselling. Mr Oree moved in with Ms Chicheluk, but would regularly move out of the home in difficult periods when Mr Chicheluk’s behaviour worsened. For example, in 2000, they lived apart three times: from the end of March until the middle of April, from May to the end of July, and for about 90 days from the middle of October until December. Ms Chicheluk supported herself and her two children throughout this period. She owned her residence and vehicle and paid all of her own expenses. She did all of the cleaning, cooking, laundry, and shopping. He did not contribute to the care of the children or the daily decisions. He did maintain the car, lawn, home and snow removal when he was living in the house. Ms Chicheluk represented herself.

Ms Savory and Mr Lamy (2008)²⁰

Ms Savory had a restraining order against Mr Lamy, a man with whom she had two children. They lived together for a short time (several months) in Halifax, but
Ms Savory was often not sure where Mr Lamy was for extended periods and would forward his mail to his mother. She described their relationship as on-again-off-again. Between 2001 and 2004, Ms Savory and Mr Lamy lived in the same apartment unit. However, there was some evidence that Mr Lamy also lived in other places between 2001 and 2004. They had a sexual relationship during this period. Ms Savory was committed to Mr Lamy, in the sense that during this time she did not see anyone else on a consistent basis. From September 2004 to 25 February 2005, they definitely lived in the same apartment and Mr Lamy definitely moved out at the end of that period. Mr Lamy took almost no part in household or family responsibilities. He did not help with chores. They never exchanged gifts. When Ms Savory was ill, Mr Lamy did not care for her or the children. They did not eat together and daily communication was not a characteristic of the relationship. Their friends and family considered them to be a couple and Ms Savory communicated with Mr Lamy’s mother on a regular basis. Ms Savory, a cook in a residential institution, was the primary income earner and provided for the children. Mr Lamy did not contribute toward food, clothing or shelter, but he did have some contact with the children. Custody of the children for the year following the 2005 separation fluctuated between the two adults and, after a year or so, custody for both children was granted to Ms Savory. She represented herself.
Ms DeRepentigny and Mr Ravimi (2008)²¹

Ms DeRepentigny had four children as a result of a previous relationship and had custody of them. She began living with Mr Ravimi in Salaberry-de-Valleyfield in February 1999 and they married in 2000. Mr Ravimi was Israeli in origin and Ms DeRepentigny served as his Canadian sponsor. They had a daughter. Mr Ravimi’s brother came to live with them in July 2002 and Mr Ravimi became increasingly distant after his brother’s arrival. Ms DeRepentigny could only reach Mr Ravimi on his cellphone. Mr Ravimi stopped contributing to expenses. Ms DeRepentigny took care of the medical appointments for the children along with the decisions about their education. She paid all of the household maintenance expenses and did the laundry. Mr Ravimi did the cooking. They separated in 2005 and Ms DeRepentigny required Mr Ravimi to take his brother and move out. They did not formally divorce because Ms DeRepentigny did not want to disrupt Mr Ravimi’s immigration application. Mr Ravimi continued to visit his daughter at Ms DeRepentigny’s house after they were separated and, when he visited, he and Ms DeRepentigny maintained their sexual relationship. Mr Ravimi had a sexual relationship with another woman in the post-separation period. Ms DeRepentigny stopped seeing Mr Ravimi’s relatives and had his mail held for him at the post office. They continued to have a joint bank account because Ms DeRepentigny had signed for his car and was unable to close the account. Ms DeRepentigny represented herself.
Ms Hendricken and Mr Curran (2008)\textsuperscript{22}

Ms Hendricken and Mr Curran lived together for over 20 years and had four children. They had a sexual relationship and continued that relationship, although they had sex only occasionally throughout the period in question. They did not have sexual relationships with anyone else. The two adults owned three parcels of land as joint tenants. The house where they lived was registered in Mr Curran’s name. Mr Curran operated a golf course and restaurant; Ms Hendricken operated a daycare, worked as a forest technician, and cooked at the restaurant. He looked after the house and its maintenance and paid the electricity and heating bills. She purchased the groceries and clothing for the children. He generally ate at the restaurant and slept in his own bedroom in the house with his door locked. They had separate bank accounts and their own vehicles. They went to most events separately; they attended wakes together. Ms Hendricken spent Christmas with her family. Mr Curran spent Christmas with his sister. One of their children had Down’s syndrome alongside hearing loss and a heart condition. Ms Hendricken took the child to medical appointments and if she was unavailable, Ms Hendricken’s mother attended in her place. Mr Curran rarely provided support when any child required medical attention or was ill. Ms Hendricken attended school meetings alone. The two adults had separate phone listings and did not
exchange any gifts. They characterized their relationship as one of friendship, respect, and fidelity.

**Ms Robertson and Mr Bear (2009)**

Ms Robertson lived in Saskatoon. She and Mr Bear lived together in 2001 and separated on 31 May 2002. Ms Robertson moved in with her cousin for three or four months and then with her mother for approximately six months. Ms Robertson and Mr Bear reconciled in 2003 and moved back in together. They lived together for about a month and then Mr Bear moved out again; Ms Robertson had her first child after Mr Bear moved out. Ms Robertson and Mr Bear reconciled again in 2004 and lived together for three weeks, during which time Ms Robertson became pregnant with their second child. At the time, Ms Robertson was working at a gas station. After the birth of her second child, Ms Robertson entered into a nurse training program. Following the 2004 separation, Ms Robertson did not know Mr Bear’s contact information or address. Mr Bear occasionally used Ms Robertson’s address as his own, which she knew because she had been contacted by the police, who were looking for him. Ms Robertson represented herself.

**Ms Kateb and Mr Leblanc (2009)**
Ms Kateb had custody of her two children from a previous marriage. The separation from her husband was acrimonious and Ms Kateb feared for her safety, calling the police on several occasions between 1998 and 2001. Ms Kateb met Mr Leblanc at his workplace in 2002 or 2003. For a time, Mr Leblanc would come to Ms Kateb’s house to facilitate the access visits of Ms Kateb’s former husband. Mr Leblanc gradually moved into Ms Kateb’s basement. He initially stayed there for only a few weeks and then went to live with his parents, but in March 2003 he eventually moved in. Ms Kateb and Mr Leblanc agreed that he would pay the cost of basement renovation and undertake lawn maintenance and snow removal. In 2004, Ms Kateb had the opportunity to sell her house and did so in order to move to a different neighbourhood and to build a house there. She had insufficient financial capital to borrow money from the bank to support the home construction and land acquisition, so Ms Kateb and Mr Leblanc agreed to buy the vacant lot as co-owners. They were unable to come up with the funds required to build the house, so they sold the lot. In December 2004, they purchased a property in Blainville, Quebec, as co-owners. They signed an agreement allowing Ms Kateb the return of her principal contribution if the house was sold and committing them to contribute equally to maintaining and repairing the property. Each of the adults and each of the children had their own bedroom in the home. Ms Kateb and Mr Leblanc had separate washrooms. Ms Kateb did not shop for Mr Leblanc, nor did she prepare meals for him. Her father is the beneficiary of her life insurance
policy; she kept her own bank accounts. The children consider Mr Leblanc to be Ms Kateb’s friend. On most of the children’s school forms, Ms Kateb is identified as the emergency contact, although on one form Mr Leblanc was identified as an emergency contact and spouse. Mr Leblanc sometimes drove the children places. Mr Leblanc is the only insured driver on his car, he has individual drug insurance, and he maintains his own bank account. The adults represented themselves in the matter before the court.

Ms Perron and Mr Jacob (2010)²⁵
Ms Perron was a secretary and bookkeeper. She and Mr Jacob lived together in a co-owned home in Saint-Eustache. They knew each other for about 20 years and lived together for ten. Ms Perron had a child from a previous relationship who lived with them. Although they separated, they decided to continue to live together to reduce the stress of separation. Mr Jacob suffered from depression and they thought that they lacked financial stability. After separating, Ms Perron relocated her bedroom to the basement. There were no shared household tasks: the adults prepared their own meals and did their own laundry. They split household maintenance and other expenses. From time to time, Ms Perron lent her car to Mr Jacob. They occasionally had a meal together. Ms Perron took care of her daughter’s education and sports engagements. They socialized separately and
did not have a sexual relationship following the separation. They had a joint bank account for expenses. Ms Perron represented herself.

Ms Astley and Mr Overton (2012)²⁶
Ms Astley and Mr Overton met on the Internet in 2003. Their relationship grew increasingly close and they decided to get married in 2008. Mr Overton returned to his home in Great Britain after the marriage to proceed with his application for immigration to Canada. The process took longer than they expected, over a year, and he did not return to Canada until 2009.

LOOKING IN THE MIRROR’S MIRROR
What I want to draw from these cases, in which the characterization of a proximate, adult relationship is contested in the post-legal-equality world, is modest: what do conjugal relationships at the legal margins look like?

The cameos are uniform in some ways and divergent in others. In most cases the taxpayer was arguing that he or she was not in a spousal relationship because a holding that the relationship was a spousal one would reduce the taxpayer’s access to child tax benefits, the Goods and Services Tax credit, or the equivalent-to-spouse credit, all of which require consideration of the income of the taxpayer’s spouse. In other words, the incentive for the individuals before the
The courts was to persuade the court that the adults were not in a cohabiting conjugal relationship. The context provides some information about the income class of the people under consideration: most of them are low- or modest-income taxpayers, which means their individual income is likely under $50,000. The tax benefits at issue also mean that almost every proximate adult relationship in the sample involves children.

The sample is geographically and racially diverse. From Halifax to Winnipeg to Sidney, the locations of the adults span the country. There are a disproportionate number of cameos from Quebec. This may be because more Quebecers live together without getting married, because the revenue authority in that province is more active, because Quebecers are more likely to dispute assessments, because of some combination of these factors or because of coincidence. The racial diversity of the sample is not explicit in any of the cases. Even if nothing can be said about any particular set of facts with confidence, however, there are facts - this is perilous, but even names - from which to draw reasonable inferences suggestive that the sample as a whole contains some racial diversity.

Some proximate adults do not appear in these cameos. On the surface at least, there are no stories about queers, or at least none about a same-sex couple. There isn’t one tax case (not just in the determination of who is a spouse, but at all) that
deals explicitly with a trans person or bisexual person. There are no cases in the sample that address explicitly people who are in multiple sustained sexual relationships at a given time. Significantly, there are no cases about wealthy adults in proximate relationships, although those kinds of relationships could surely give rise to tax disputes. For example, two wealthy taxpayers could each claim the principal residence exemption on properties they own and be denied the second exemption because they are spouses; or one wealthy taxpayer might try to direct income to a less well-off adult in an attempt to split income, which would raise the issue of whether they are spouses. But those kinds of circumstances seem not to have given rise to cases about whether the adults are cohabiting in a conjugal relationship. That may be because wealthier adults with proximate relationships may wish to avoid having to trot out the intimate details of their life arrangements and so may find ways to settle their tax disputes; because they have access to good tax-planning advice that allows them to comply with the tax rules or to design their affairs to avoid detection when they do not; or it may mean that the Canada Revenue Agency finds it harder to identify (and enforce) the tax rules around principal residences or income splitting, for example, than it does the rules that require taxpayers to make explicit claims to benefits.

These cameos enable some brief glances of the lives lived by adults in proximate relationships. Proximate adults might live together, but not necessarily. When
they do live together, sometimes they co-own the home, sometimes one person owns the home and the other person lives without direct financial contribution to costs, and sometimes one person owns the home and there is an explicit payment of rent between the adults. Many of the women, at least at the margins of conjugality, do not change their last names. Their sexual relationship may be ongoing, ceased, or ignored in the presentation of the facts of their lives together. (It seems fair to assume that if the taxpayer led evidence of a sexual relationship (or not), that would likely have been reported by the court.) The adults seem to have multiple, serial adult sexual relationships. They may share some of the tasks of living (cleaning, cooking, laundry) or they may be precise in delimiting where their obligations end (for example, by labelling their food in the fridge). Many people move along the spectrum of relationship proximity over the course of their relationship, undertaking some responsibilities and engaging in some practices (e.g. sexual intimacy or living together) during some periods and not undertaking those responsibilities or engaging in those practices during others. Most adults in relationships at the margins of conjugality keep their own bank accounts. The acquisition of a washer and dryer is viewed as a significant household expenditure, and the cost of its acquisition is often shared. Financial hardship (e.g. bankruptcy), extraordinary caring requirements (e.g. an ill child or a child who requires additional attention or a sick or disabled adult), or immigration pressures often justify maintaining a proximate adult relationship. As the last cameo hints,
the advent of the use of the Internet to build relationships may redefine what it is to be in a proximate adult relationship at the margins of conjugality.

This chapter makes three modest contributions. First, it looks at the question of whether scholars of the family might find something to learn from the evidence (not meant in its legal sense, but rather, in a broader sense) available from tax case law. I hope that the chapter demonstrates that some questions might be answered using these texts as archival materials. In this respect, the chapter challenges our sense of the hierarchy of legal knowledges. We readily position the holdings of cases as the important part of any judicial decision. Authors of case headnotes rarely include much, if any, of the factual context of the case. The methodology employed in this chapter, which privileges facts, in essence centring the refraction of the real people beneath the surface of legal decisions, over what we understand in a formal sense to be “law”, challenges our notions of what decision makers do that is valuable and the purposes for which we read cases. More on that below.

Second, the chapter specifically looks at the question of what we might be able to learn about who lives at the margins of conjugality. In short, the core part of this chapter focuses on presenting some of the figures who find themselves in the tax context as living at the margins of the post-legal-equality understanding of the meaning of conjugality.
Third, the chapter concludes with some speculation about the ways that adults at the margins of conjugality arrange their lives. Hopefully, I’ve left the reader curious about what might be available if we were to read the Income Tax Act and the cases it gives rise to in the way we read a good novel: as enriching our understanding of who we are, what we do, and why we might do it.

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NOTES

1 RSC 1985 c 1 (5th Supp) (as amended).

2 SC 2000, c 12.

3 See Income War Tax Act 7-8 Geo V c 28, s 4 (1917).

4 Then Income Tax Act RSC c 1 (5th Supp) s 252(4).

5 Ibid, s 248(1) ‘common-law partner’.

6 See e.g. M v H [1999] 2 SCR 3, 50.
7 Molodowich v Penttinen (1980) 17 RFL (2d) 376. The Revenue interpretation is at Canada Revenue Agency, doc 2006-0198341E5 (14 June 2007) (French). This test from Molodowich has been imported into the tax case law. See e.g. Milot v R [1996] 1 CTC 2247 (informal procedure).

8 See Tax Court of Canada Act RSC 1985 c T-2, s 18.15(4).

9 Sykes v R [2005] 3 CTC 2054 (informal procedure). Judge Rowe held that the two adults were not in a common-law partnership.

10 Ibid, para 23.

11 Rangwala v R [2000] 4 CTC 2430 (informal procedure). Judge Campbell concluded that Mr and Mrs Rangwala lived separate and apart.

12 Sigouin v R [2002] 1 CTC 2596 (informal procedure). Judge Lamarre Proulx held that the adults were living separate and apart.

13 Gagné v R [2002] 1 CTC 2666 (informal procedure). Judge Dussault held that the adults were in a conjugal relationship and were therefore spouses.

14 Uwasomba v R [2003] 2 CTC 2295 (informal procedure). Judge Beaubier held that the parties were living separate and apart.

15 Henry v R [2003] 1 CTC 2001 (informal procedure). Judge Little held that in the first half of the years in issue the relationship was a spousal one, but in the second half it was not.
16 *Richard v R* 2003 CCI 774 (informal procedure). Judge Lamarre held that the adults were spouses.

17 *Bellavance v R* [2004] 4 CTC 2179. Judge Angers held that although the two lived in the same house, they had ceased being spouses.

18 *Hamel v R* 2004 TCC 315 (informal procedure). Judge Tardif struggled with whether the adults were spouses but ultimately held they were.

19 *Chicheluk v R* [2005] 3 CTC 2446 (informal procedure). Judge Sarchuk held that Ms Chicheluk and Mr Oree were not spouses.

20 *Savory v R* [2008] 5 CTC 2033 (informal procedure). Judge McArthur held that the two adults were in a common-law partnership for 2004, but not for the 2002 and 2003 taxation years.

21 *DeRepentigny v R* 2008 TCC 304 (informal procedure). Judge Favreau determined that the adults were living separately after 2005.

22 *Hendricken v R* [2008] 5 CTC 2206 (informal procedure). Justice Webb determined that the two adults were living in a common law partnership.

23 *Robertson v R* [2009] 1 CTC 2085 (informal procedure). Judge Beaubier, in a decision rendered in 2008, held that Ms Robertson and Mr Bear had not been in a common-law partnership since 31 May 2002.

24 *Leblanc v R* [2009] 1 CTC 2191 (informal procedure). Judge Angers held that the adults had a common-law partnership.
Perron v R 2010 TCC 547 (informal procedure). Judge Favreau held that the adults were not in a conjugal relationship.

Astley v R 2012 TCC 155 (informal procedure). Judge Webb held that the adults were cohabiting spouses.

REFERENCES