



# PRINCIPLES OF FAMILY LAW

This report examines how the family is treated in Canadian law. Canada's redefining of family and parentage has negative consequences for children in particular, but also for society more broadly. The report proposes a different foundation on which to build family policy and shows the benefits for both children and society as a whole.

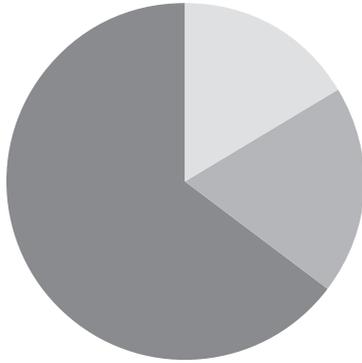
One writer in the New York Times shares her story about family structure: "It's a typical Thursday night and my family is gathered in the kitchen of my childhood home. There's me, freshly returned from college, helping my mom set the table; my half brother, also home on break, debating our father about politics; and my half siblings' mother chiding my half sister for Snapchatting with her high school friends."<sup>1</sup> The author describes her family as consisting of her mother, her half siblings' mother, and their combined father. She writes that she thought of the family as one that just happened to live in three different households. She concludes, "Family should be, above all else, about love – I hope we can all agree on that. Perhaps it's time for us to prioritize finding love through community and friendships in the same way many of us prioritize finding romantic love."<sup>2</sup>

But is the family only about love, or is more required? How does the structure of a family impact the family itself and society as a whole?

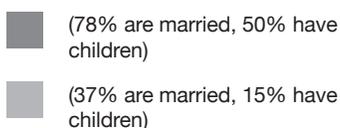
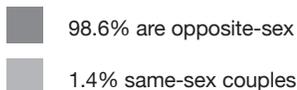
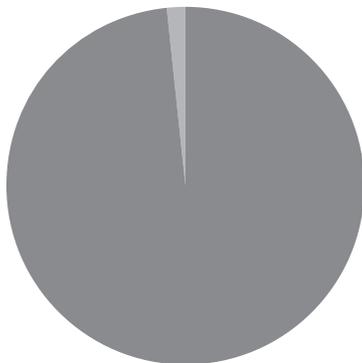
Statistics Canada defines a family as a married or common law couple, with or without children, or a single parent with at least one biological or adopted child living in the same dwelling.<sup>3</sup> Although marriage remains the predominant type of union, nearly one quarter of couples in Canada (and 19% of all families) live in a common law relationship, the highest rate among G7 countries and up from 16.7% in 2011.<sup>4</sup> Other data from the census reveals that more people live alone in Canada than ever before. And yet, more homes are being shared by multiple generations of families or families living with other families or individuals.<sup>5</sup>

Family law, historically and still today, addresses questions of marriage and parenting, including who can marry, how many individuals can enter a marriage, and parental duties and rights.<sup>6</sup> Canada's provincial and federal governments have made monumental changes to the law in this area in recent years. This report examines treatment of the family in international and Canadian law, the nature

## CANADA'S 10 MILLION FAMILIES (2021)



## CANADA'S 8.5 MILLION COUPLES (2021)



of the family, and the impact of family structure on individuals, particularly children, and society.

The impact of Canada's changes to its family law in recent decades is significant and overwhelmingly negative (particularly for children, as we will see). The state should enact laws that are best for children, families, and society as a whole.<sup>7</sup>

### The Family in International Law

International agreements recognize the importance of the natural family. The Universal Declaration of Human Rights (UDHR) states that "the family is the natural and fundamental group unit of society and is entitled to protection by society and the State."<sup>8</sup> This focus in the UDHR influenced later documents such as the International Covenant on Economic, Social, and Cultural Rights, and the International Covenant on Civil and Political Rights, which also recognize the family as the natural and fundamental group unit of society.<sup>9</sup> The UDHR also states that men and women have the right to marry and to found a family. The emphasis on the importance of the family was significantly influenced by Charles Malik, a Lebanese philosopher and statesman. In fact, Malik had hoped for a more robust defence of the family, proposing that the Declaration state: "the family deriving from marriage is that natural and fundamental group unit of society. It is endowed by the Creator with inalienable rights antecedent to all positive law and as such shall be protected by the State and Society."<sup>11</sup> This iteration emphasized the importance of marriage and the fact that the family was not created by the state, but by God. Although Malik's entire draft statement was not included, article 16 of the UDHR maintains that the family is the fundamental group unit of society,

a unit that enjoys natural rights and an authority that must be respected and protected by the state.<sup>12</sup>

The principles in the Universal Declaration of Human Rights were further established and built upon in the United Nations Convention on the Rights of the Child (UNCRC, 1989). The Preamble to the UNCRC states that parties to the agreement are "Convinced that the family, as the fundamental group of society and the natural environment for the growth and well-being of all its members and particularly children, should be afforded the necessary protection and assistance so that it can fully assume its responsibilities within the community."<sup>13</sup> The document asserts the rights of children to special safeguards and care, appropriate legal protection, and the right to know and be cared for by their parents.<sup>14</sup> The focus is on requiring adults to do what is best for children, meaning that legislators must prioritize the needs of children when developing family law and policy.<sup>15</sup> The concept of 'the best interests of the child' is found throughout the Convention, noting that the natural family provides an environment of security for the growth of children. The Convention also mentions the duty of the state to allow the family to fulfill its responsibilities without unnecessary interference.<sup>16</sup>

### Canadian Family Law

Although Canada has ratified both the Universal Declaration of Human Rights and the Convention on the Rights of the Child, federal and provincial governments have not adequately met these standards. In Canada, the federal government regulates marriage and divorce through the *Civil Marriage Act* and the *Divorce Act*, while issues such as adoption, parentage, and child protection

services fall under the jurisdiction of the provinces and territories.<sup>17</sup>

The natural family has been the norm in Canada for generations and remains the most common family structure in Canada.<sup>18</sup> However, with the rise of no-fault divorce, the increase in single-parent households, the legalization of same-sex marriage, and alternative methods of reproduction through the development of IVF and surrogacy, family law in Canada has changed dramatically in recent years and has become much more complex.

This report is not intended to be a comprehensive overview of every part of family law, but to look at which marriage and family structures are best for children, families, and society, and how Canada measures up. We note three particular areas where family law has shifted in recent years (family as mere contract, redefining parentage, and changing terminology) as well as recent legal developments around parentage and the best interests of the child.

Parliament enacted the *Divorce Act* in 1968, permitting divorce in various circumstances.<sup>19</sup> The *Divorce Act* was revised in 1985 to allow no-fault divorce, making divorce even easier to obtain. With each of these changes, the divorce rate in Canada rose steadily. This also resulted in an increasing number of single-parent families, usually headed by the mother.<sup>20</sup> In the current Canadian context, marriage often looks more like a contract which can be unilaterally

broken at will rather than a committed relationship with a particular bond unique from any other relationship, and oriented away from the self and toward the spouse and children. Although individuals voluntarily enter into a marriage bond, it is a reductionistic error to see that relationship as a mere contract. Marriage is something wholly different, based on a lifetime commitment of self-giving sacrifice of the whole person (economic, emotional, and biological) to another person. This also explains why couples do not negotiate renewable marriage contracts. Yet in practice marriage becomes increasingly contractual as commitment becomes optional.<sup>21</sup> At the same time, fewer people are choosing to enter marriages and are instead entering common-law relationships, which have a higher failure rate than marriages, lasting an average of just eighteen months.<sup>22</sup> This also points to the importance and benefit of commitment within marriage.<sup>23</sup>

In provincial and territorial family law, parenting has also become contractual rather than biological. Various arrangements around surrogacy and assisted reproduction allow agreements to be formed between multiple parties and for adults to either opt-in or opt-out of parental responsibility.<sup>24</sup>

Jennifer Roback Morse writes that, “It is not sufficient to reduce family obligations to a species of contractual obligations which may be renegotiated at will by consenting adults.”<sup>25</sup> After all, family relationships require a special kind of commitment which cannot be regulated by contracts. Additionally, children

within the family have a need for care which cannot be provided by contract but is provided through obligations of the child’s parent to do what is best for the child rather than what is convenient for the adults.<sup>26</sup>

Adoption is the ordinary alternative to becoming a parent biologically. Adoption is designed to provide as close a replacement as possible to the natural family for a child who has been deprived of his natural parents. However, provinces and territories throughout Canada have increasingly disconnected legal parentage from biological reality by permitting people to become parents not by adoption but by entering contracts that have as their object the creation and shared custody of a child yet to be conceived. For example, Manitoba defines ‘intended parent or parents’ as “a person who intends, or two persons who are married or in a marriage-like relationship who intend, to be the parent or parents of a child and who, for that purpose, enter into a surrogacy agreement.”<sup>27</sup> At least Manitoba’s law maintains that a child conceived pursuant to such a contract cannot have more than two legal parents.<sup>28</sup> In some jurisdictions, like Ontario, a child can have up to four intended parents, or five if a surrogate is included for a brief period, adding another level of complexity and intention to the agreements.<sup>29</sup>

Some jurisdictions retain a basic definition of parentage connected to biology, in spite of various other changes to parentage. For example, Yukon states

that “a person is the child of their natural parents, and their status as a child is independent of whether the child is born within or outside marriage.”<sup>30</sup> Other jurisdictions still recognize the family as the ‘basic unit of society.’<sup>31</sup> However, the concept of intended parentage has increasingly moved family law away from the foundation of the natural family.

In addition to blurring definitions around marriage and parenting, Canadian jurisdictions have increasingly blurred terminology, failing to recognize mothers and fathers as distinct and important people in their children’s lives. An extreme example of this is in Ontario, where a law passed in 2016 removed the terms ‘mother’ and ‘father’ and ‘natural parent’ from all Ontario family law statutes. Such changes stem from an ideological commitment to deny that the family is at its most basic a natural institution, rooted in creation and human nature, and not merely a product of human invention. Rather, this ideology wishes to transcend biology and assert that families are products of human will and design – your family is what you want it to be and comes into existence the way you choose. Instead of ‘mother,’ the law refers to ‘birth parent,’ or the person who gives birth to the child. Instead of ‘father,’ the law refers to ‘the person whose sperm resulted in the conception of a child conceived through sexual intercourse’ (a biological father through sperm donation does not necessarily have any legal status), with a variety

of additional methods to determine legal parentage.<sup>32</sup> The majority of other Canadian jurisdictions retain the terms ‘mother’ and ‘father’ to varying degrees.<sup>33</sup>

In recent years, the courts have also been involved in changes to how the family is viewed and defined in law. In Ontario, for example, in the 2006 case *MDR v. Ontario (Deputy Registrar General)*, the Court considered the legality of naming two persons of the same sex as a child’s parents on a birth registration. Justice Rivard found that in some (rare) cases, non-biological fathers were included on a child’s birth registry. He thus reasoned that, since some non-biological male parents are sometimes included (where paternity is not known), that any non-biological parent ought to be recognized: “having rejected the argument that a child’s parents at birth must be her biological parents, it becomes necessary to re-define who can be a parent under the VSA” and the judge thus declared the provisions of the *Vital Statistics Act* invalid.<sup>34</sup> Rather than clarifying the law to ensure that parentage was connected with biology (or adoption, where a child has lost his or her biological parents), the Ontario government permitted non-biologically related adults to register a child, although this did not permit them to automatically become legal parents.

One year later, in *A.A. v. B.B.*, the Ontario Court of Appeal heard a case involving a lesbian couple and a child conceived via a sperm donor. The court used its *parens patriae* jurisdiction to declare the lesbian partner as the child’s (second)

mother along with the biological mother and father.<sup>35</sup> Although the law did not provide a mechanism for recognizing non-biological adults as legal parents, they could be declared legal parents by a judge following this case by applying to court for such a declaration.

Ontario made further amendments to the law regarding legal parentage in 2016 through the *All Families Are Equal Act*. Through this Act, Ontario permitted up to four adults to become parents to a child not yet conceived through a so-called ‘pre-conception parentage agreement.’ This legislative change was precipitated by a case called *Grand v. Ontario* (2016), in which the applicants alleged that the *Children’s Law Reform Act* discriminated against same-sex couples by making it more difficult for them to be recognized or registered as legal parents.<sup>36</sup> The government settled the case with the applicants and no decision was made by the court.<sup>37</sup> The purported motivation for the *All Families Are Equal Act* in 2016 was to remedy this alleged discrimination in Ontario law.

Article 3 of the United Nations Convention on the Rights of the Child states that “In all actions concerning children, whether undertaken by public or private welfare institutions, courts of law, administrative or legislative bodies, *the best interests of the child shall be a primary consideration*” (emphasis added).<sup>38</sup> Canadian courts have discussed this concept of the best interests of the child extensively, particularly in the context of custody disputes, but also in

disputes about who counts as a parent in law. The best interests of the child must be properly understood when examining changes to Canadian family law.

In *M.R.R. v. J.M.* (2017), a sperm donor applied to the court for a declaration that he was not the child's legal parent. The court stated, "There may be circumstances wherein the 'best interests of the child' would be a factor in making a declaration [that the sperm donor was not the father]. However, in my view, the court is not required to look to the child's 'best interests' in the traditional sense in every case when making a declaration of parentage."<sup>39</sup> The court recognized that the biological mother had been advised that it was beneficial for the child to have the option of knowing her biological father,<sup>40</sup> but the court ultimately ruled that the biological father was not the legal parent of the child.<sup>41</sup>

In *B.J.T. v. J.D.*, (2022), the Supreme Court of Canada considered the question of how biological ties should factor into determining the best interests of the child. The case involved a custody dispute between the child's grandmother (who was caring for the child in PEI and had been designated a legal parent of the child) and the child's biological father, living in Alberta. The child's mother was unable to care for the child and had separated from the father prior to the child's birth. The father was unaware of the child's existence until sometime after the child's fifth birthday. The hearing judge found that it was in the best interests of this child to stay with the grandmother, and granted her custody, but the PEI Court of Appeal overturned that decision, granting custody to the child's biological father.

The case was appealed to the Supreme Court of Canada, which overturned the Court of Appeal decision. According to the Supreme Court of Canada, the Court of Appeal overstated the importance of the father's biological tie to the child:

"Courts have gradually moved away from an emphasis on parental rights and biological ties in settling custody matters, whether arising from a private dispute, an adoption, or the state's apprehension of children in need of protection."<sup>42</sup> The Court also noted that the PEI legislature decided to omit biology as a relevant factor in considering the best interests of the child, thus downplaying its significance. The decision lists four reasons why biological ties should carry less weight. First, biological ties may make decision-makers focus on parents' wants instead of children's needs. Second, a psychological and emotional bond is more important than biology. Third, the benefits of biology may be intangible and hard to articulate, especially as society changes and non-nuclear families become more common. Finally, this case was about two different biological relationships to the child (father and maternal grandmother), and the court should not prefer one over the other.<sup>43</sup> The Supreme Court ultimately awarded custody to the child's grandmother.<sup>44</sup> We make no conclusions about the court's final decision in this particular case. However, the principles articulated by the court in this case indicate how muddy family law has become. The Supreme Court's decision downplays the importance of biological ties, fails to recognize that children typically do best with their biological mother and father, and ignores the benefits that maintaining ties to biological parents and family brings to children. Courts and legislatures may be moving away from the idea that legal parents are either the biological or adoptive parents, but this increasingly confuses family law and does not truly consider the best interests of the child. If the natural family is not the standard – and one which adoptive families aim to replicate as closely as possible where tragedy has disrupted a child's natural



**Natural family:**

a married man and woman, along with their biological children, if any.

**Biological father/mother:**

the man/woman whose sperm/egg conceived the child.

**Birth mother:**

the woman who gave birth to the child, whether biological or through surrogacy

**Step father/mother:**

the man/woman who raise a child that is not their biological child, alongside the child's biological mother or father

**Adoptive father/mother:**

a man/woman who legally adopt and raise a child that is not their biological child

**Legal parent:**

a man/woman recognized in the law as the parent of a child

family – the idea of the ‘best interests of the child’ becomes subjective and potentially meaningless.

The ‘best interests of the child’ must be understood in the context of the natural family. As will be demonstrated later in this report, the natural family is also the most likely structure to create positive outcomes for children. Parents have the responsibility to care for and make decisions for their children and are presumed to make decisions that will be in the best interest of their children.<sup>45</sup> This presumption stands, even if parental decisions are contrary to the child’s wishes.<sup>46</sup> Ultimately, children ought to be raised by their biological parents, unless this is impossible due to loss, abject neglect, or criminal abuse.<sup>47</sup> The following section proposes a foundation on which to build family law and policy in contrast to recent changes in Canadian family law. This report concludes by demonstrating the benefits of natural families and biological ties for children, families, and society.

### A Christian View of the Family

A Christian view of the family, broadly shared by ARPA Canada’s constituents across the country, begins with the origins of the family, as explained in the Bible. The family is the first institution in history, dating back to the creation of mankind. Genesis 1:27-28 tells us that “God created man in His own image; in

the image of God He created him; male and female He created them. And God blessed them. And God said to them, ‘Be fruitful and multiply and fill the earth.’” God also created the institution of marriage, where “a man shall leave his father and his mother and hold fast to his wife, and they shall become one flesh.”<sup>48</sup> The Lord Jesus, quoting from this passage, explicitly affirms God’s design for marriage and family as normative for all cultures and times.<sup>49</sup> God’s design for the family precedes the state and was not structured by the state through law and public policy. God created the man and woman to be united in a marriage relationship and together to form a complete unit.<sup>50</sup> After the first man and woman were created, the first recorded command God gave them was to bear children.<sup>51</sup> The blessing of children is also highlighted throughout the Bible.<sup>52</sup> Although a husband and wife with no children constitute a family on their own, the birth of children to that couple is a natural and organic addition to the family unit.<sup>53</sup> It is by forming families that people replenish and increase the human race.<sup>54</sup>

The family is formed through fellowship, arising naturally or organically. When a child is conceived, that child is (or at least, ought to be) a product of intimacy between the child’s mother and father. Throughout every person’s life, fellowship is experienced in various

contexts, as people provide and care for each other. The fellowship experienced and the bond established by a husband and wife and their children is called a family.<sup>55</sup> The family, ultimately, is where nature and nurture meet in one unit. By nature, the child is connected to his father and mother by a bond of blood, also resembling the father and mother in various physical features.<sup>56</sup> Through nurture, the child is raised by his father and mother with attention to the child’s character, well-being, and growth.<sup>57</sup>

The family exists independently of the state and is its own domain within society.<sup>58</sup> The authority within the family is derived not from the government but from God who created and instituted the family.<sup>59</sup> This is, in part, what the preamble to the Canadian *Charter of Rights and Freedoms* signifies in stating that “Canada is founded upon principles that recognize the supremacy of God and the rule of law.” This means, at the very least, that the state is not God, and that the rule of law requires the state to recognize its own limits and recognize the legitimate authority of other social institutions apart from the state. The longer preamble to the *Canadian Bill of Rights* notes, along with the supremacy of God and the rule of law, the importance of the “position of the family in a society of free men and free institutions.”<sup>60</sup> In light of this, the state ought not to intrude on the authority of the family.<sup>61</sup> This is

not to say that the authority of the family is absolute; the state has a role to play in prosecuting criminal abuse or neglect of a child.<sup>62</sup> However, political history demonstrates that the civil government has been tempted to unify and rearrange various parts of society, including the family, or to assume authority to redefine it.<sup>63</sup>

In this context, the responsibilities of mother, father, and children are also important. The concept of motherhood and fatherhood is rooted in biological reality. In connection with this biological and creational reality, there is also authority and responsibility given by God to a mother and father to raise their children. Children, on the other hand, have a responsibility to respect that authority.<sup>64</sup> That authority and responsibility is not unlimited although it is particular and distinct.<sup>65</sup>

### **Benefits of the Natural Family for Children**

How we understand and define the family forms our foundation for family law and policy. As Katy Faust puts it, “The future of the nation’s children depends in large measure on how we define marriage and whether we continue to encourage and protect it.”<sup>66</sup>

Canadian governments should care deeply about preserving and promoting the natural family. Not only are intact natural families best for individual spouses and children, but thriving families have vast societal benefits. The family is not merely a private affair but is the ‘basic group unit of society.’

Marriage should be viewed also in the context of what is best for children, as it refers to the relationship that

unites a child’s biological mother and father.<sup>67</sup> Marriage must be a permanent, monogamous, and exclusive union of one man and one woman. Although marriage does not necessarily result in a couple having children, “Marriage is a child’s best chance to have both [father and mother] for a lifetime.”<sup>68</sup> Marriage provides increased security for a child as a greater guarantee that the child will be cared for by both his or her mother and father. Additionally, marriage provides increased confidence for a woman that her husband will not leave her to care for a child on her own. Likewise, it creates strong societal expectations for a man to stay with his family and fulfill his responsibilities to his wife and child(ren).<sup>69</sup>

When couples are legally married, they are incentivized to build up their relationship and invest in the relationship, their spouse, and their children.<sup>70</sup> Cohabiting relationships last



an average of 18 months and increase the risk of divorce even if marriage follows cohabitation.<sup>71</sup> Additionally, children raised by cohabiting couples have an increased likelihood of poverty, as well as negative impacts on their health and wellbeing, particularly for young children.<sup>72</sup> Marriage is essential for the well-being of children. Whenever possible, children ought to be able to know their mother and father, and parents have an obligation of love and care to their biological children. Marriage helps to satisfy these needs.<sup>73</sup>

Both the mother and the father play a critical role in a child's development in a way that cannot be replaced or replicated by other forms of parenting.<sup>74</sup> Men and women also have different, but complementary, parenting styles, and this is correlated to biological differences. As such, there are many areas where fathers and mothers cooperate in raising their children due to their different styles and approaches.<sup>75</sup> Children suffer deprivation when removed from their biological mother and/or father.

When a woman conceives a child, an intense bond is developed between the mother and the child. This bond is a natural bond that develops during gestation as the mother's body is continually connected to the child. The child is "pre-wired" to form strong attachment bonds to his or her mother.<sup>76</sup> Maternal-fetal attachment (MFA) is the emotional bond between mother and child that begins during pregnancy, extends after birth, and is beneficial to both mother and child.<sup>77</sup> After birth, this bond continues during infancy, childhood, adolescence, and adulthood, although the nature of this bond changes in each of these stages of life. The bond may also be affected by the mother's other relationships.<sup>78</sup>

Present fathers, on the other hand, increase their daughters' chance of success in school, work, and relationships, and an active father reduces his daughter's risk of engaging in risky sexual behavior.<sup>80</sup> Studies from the U.S. indicate that children raised without a father account for 63% of teen suicides, 85% of behaviour disorder patients, and 85% of young prison inmates. Overall, children who do not grow up with their biological father are at least two or three times more likely to suffer poverty, drug abuse, and negative educational, emotional, and behavioral outcomes than those who live with married, biological or adoptive parents. When a child is missing their father, risk of violent behaviour also increases. Fathers cannot be replaced.<sup>81</sup> In Canada, as of 2016, nearly one in five children lived in a single-parent home, and over 80% of these children do not have a father at home.<sup>82</sup>

Public policy that promotes the natural family will help future generations. Society benefits from stable families, and children who are raised by their married, biological parents are most likely to have a stable home environment. Children who live with their married mother and father are safer, have fewer negative behavioural outcomes, have better mental health and educational outcomes, are less likely to suffer poverty, and are at lower risk of depression, suicide, and abuse.<sup>84</sup> They tend to have higher incomes, higher quality of relationships, enjoy a greater level of social connectedness, and receive more guidance to enable them to thrive in adulthood.<sup>85</sup> Perhaps a marketing campaign to promote marriage could have success similar to anti-smoking campaigns.<sup>86</sup>

Children who live with unrelated adults have a higher risk of sexual, emotional, and physical abuse. One study demonstrated that "young children who

reside in households with an unrelated adult are at nearly 50-fold risk of suffering a fatal inflicted injury, compared with children residing with two biological parents.<sup>87</sup> Another study found that children separated from one or both biological parents were more likely to suffer poverty, to witness violence, and to live with someone who has a drug or alcohol addiction or becomes incarcerated. These experiences have been linked to poor outcomes for children, including drug abuse and risk of suicide.<sup>88</sup> It is for this reason that Canada seeks to have such a strong screening system for potential adoptive parents, to help ensure that non-biologically related adults will provide a safe environment for adopted children.<sup>89</sup>

To replace the natural family and biological parentage as the foundation for family law with parental ‘intent’ is to destabilize families and family law. The biological family is the fundamental, natural group unit of society. It corresponds to biological reality and natural human needs and affections. Natural ties, especially where they are recognized as important and supported by law and culture, set families on a firm footing and create stable environments in which children can thrive. The human will, however, is fickle. Mere ‘intention’ to become a parent, or a signature on a contract with other ‘intended parents’ (who may not be your legal spouse or relative) is a far less firm foundation.

Wherever possible, a child should remain with his or her biological parents. Due to tragic circumstances, children may lose one or both of their biological parents. This loss is painful for children because a powerful natural bond is broken. If a child can no longer live with his or her biological parents, adoption is the

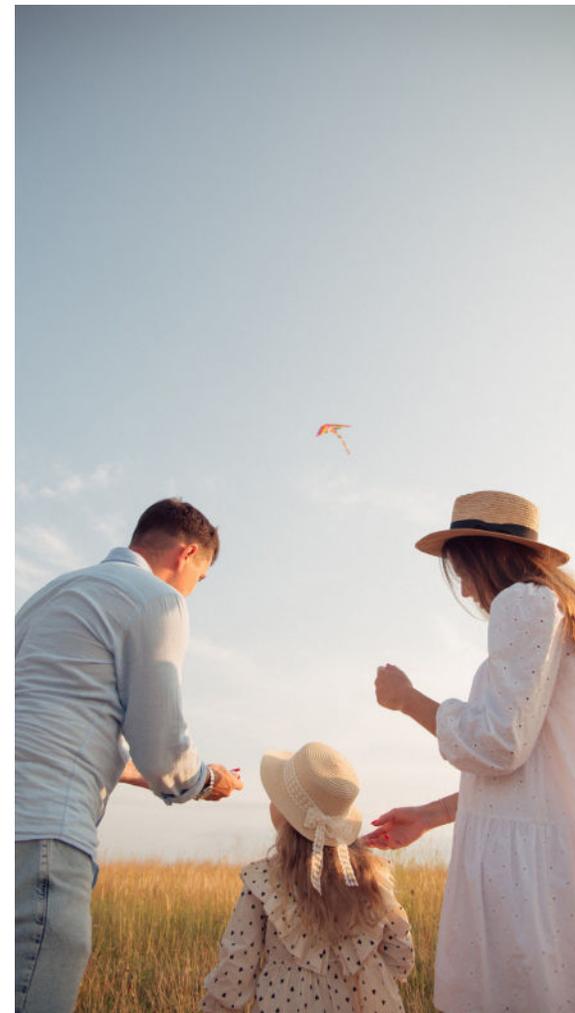
best solution to address the child’s loss. Adoption focuses on what will be best for a child, including ensuring, through intensive screening, that a child is placed with a family that will provide for his or her wellbeing. Even so, adopted children still have a statistically higher risk of behavioral disorders and mental health concerns, about twice that of non-adopted children.<sup>90</sup> But adoption into a stable family remains the best alternative for children whose natural parents cannot care for them. Where a stable family can be found among the child’s blood relatives, this may be the best adoptive home.<sup>91</sup> The increasingly common practice of open adoption recognizes the importance of the connection between a child and his or her biological parents.<sup>92</sup>

Non-biological, intent-based parenting, on the other hand, threatens children and parent-child relationships. In adoption, although the child has been deprived of their natural family, the goal is to provide the child with a stable family that is modeled on the natural family and that will be able to care for the child. Intent-based parenthood, on the other hand, ensures that adults with the necessary financial resources can get a biologically unrelated baby without any safety screening. Unlike adoption processes, non-biological, intent-based parenthood requires no background checks or home studies to ensure the child’s safety and focuses on the desires of adults instead of the best interests of the child.<sup>93</sup> Similarly, easy divorce disregards the fact that a child is most likely to thrive with his or her biological mother and father and ignores the pain felt by those who have lost their biological parents.<sup>94</sup> Society’s duty toward children is to care for them when they have lost their biological parents. What we must not do is promote or facilitate the separation of children from their biological parents by design.<sup>95</sup>

## The Benefits of the Natural Family for Society

The 2021 census found that the average number of people in a family in Canada has declined to 2.9 from an average of 4.2 in 1931.<sup>96</sup> Additionally, Statistics Canada reported that the steady decline of fertility rates in Canada has continued, reaching an all-time low of 1.40 children per woman in 2020. Countries with a fertility rate of 1.3 or less are considered to have the “lowest-low” fertility rates, which are connected to “rapid population aging and increased stress on the labour market, public health care and pension systems.”<sup>97</sup> Promoting marriage and the natural family structure will likely help increase the birthrate across Canada.

Promoting the natural family structure serves the well-being of society as parents help their children to become



good citizens. Marriage and the family precede civil government. They are the natural and fundamental institution on which societies are built.<sup>98</sup> Through the natural family, children have the greatest opportunity to learn about benevolent authority, obedience, and mutual care.<sup>99</sup> Parents in the home are the source of leadership for their children, while also providing teaching and discipline.<sup>100</sup> In the family, children learn social functioning, as well as the balance between rights and responsibility.<sup>101</sup>

The family also serves an educational function (teaching and guiding children from the time of birth), an authority function (demonstrating a structure of authority, law, and protection), and an economic function (providing for the support and well-being of the family unit).<sup>102</sup> Children within the family begin to understand other relationships that exist within society. They learn the relationship between freedom and connectedness, independence and dependence, authority and obedience, equality and difference. “One who has learned to honor his father later respects the authority of those through whom it has pleased God to rule over him. One who has truly loved his mother cannot violate another woman’s honor. . . The family is the nursery of love and inoculates society with such love.”<sup>103</sup>

In addition to learning about relationships, authority, independence, and interdependence, growing up within the family structure helps a child to grow in maturity. Children need to grow up under loving parental authority to become independent adults. Through a child’s upbringing in the family, they learn a proper attitude towards society which is critical to the growth and development of society itself.<sup>104</sup> The family is not a random collection of individuals.<sup>105</sup> The natural family remains a moral foundation on which society itself has been established, and it requires relationship and commitment.<sup>106</sup>

## Conclusion

Of course, children do not experience positive outcomes in every case where they live with their biological mother and father. Likewise, children can fare well when they grow up in an alternative family structure. There are also times where single parenting or adoption are unavoidable due to various circumstances. But the fact that there are exceptions does not negate the reality that children have the *best chance* of stability and positive outcomes when raised by a married, biological mother and father. Intentionally causing a child to lose his or her biological father or mother by promoting or normalizing that loss through bad public policy choices is not in the best interests of the child.<sup>107</sup> Law and public policy ought to be geared towards the best interests of the child by promoting the natural family.

1. Canadian jurisdictions should promote the family as the “natural and fundamental group unit of society.”<sup>108</sup> This should include education regarding the importance of the natural family and the outcomes of children.
2. Canadian courts and provincial child services ministries should interpret the ‘best interests of the child’ to include remaining with the child’s biological parents as much as possible, absent criminal abuse or neglect.
3. The federal government should promote marriage as an exclusive and lifelong relationship between one man and one woman, as a benefit to children, families, and society.
4. Provincial and territorial governments should connect parentage directly

to biology, with an exception for adoption. Any non-biologically related adults who wish to become the legal parent of a child ought to go through an adoption process to ensure the child’s wellbeing.

5. As part of the requirement for non-biological parents to adopt, provincial and territorial governments should eliminate parentage contracts and agreements, instead linking parentage to biology or adoption. Family law statutes should clarify that a child can have a maximum of two legal parents at one time to reflect the natural family structure and the biological reality that each and every child only ever has one biological mother and one biological father.
6. Provincial and territorial governments should maintain (or, where needed, reinstate) the terms ‘mother’ and ‘father’ in family law, to recognize the importance of motherhood and fatherhood in children’s lives.

## Citations

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- 4 This rate is strongly driven by Quebec, where 43% of couples live common law. See "State of the union," Statistics Canada. See also "Portrait of Families and Living Arrangements in Canada," Statistics Canada, September 2012. Excluding Quebec, 17% of Canadian couples live common law.
- 5 "Canadian census data shows rise in households with multiple generations of families," *Global News*, July 13, 2022. See ARPA Canada's [policy report](#) on elder care, which discusses the benefit of families caring for aging parents and grandparents in their home.
- 6 John Witte, Jr. and Gary S. Hauk, "Introduction," in *Christianity and Family Law: An Introduction*, eds. John Witte, Jr. and Gary S. Hauk, (Cambridge, UK: Cambridge University Press, 2017), 1.
- 7 Don S. Browning, "Christianity and the rights of children: an integrative view," in *Christianity and Human Rights: An Introduction*, eds. John Witte, Jr. and Frank S. Alexander, (Cambridge, UK: Cambridge University Press, 2010), 284.
- 8 "Universal Declaration of Human Rights," United Nations, article 16(3) (emphasis added). Canada is a signatory to this Declaration. While technically not a legal treaty, the Declaration is the statement of principles that underlies the most significant treaties and protocols that are considered binding on signatory states as a matter of international law.
- 9 Browning, "Christianity and the rights of children" 286. See also "International Covenant on Economic, Social and Cultural Rights," United Nations, article 10(1), and "International Covenant on Civil and Political Rights," United Nations, article 23(1).
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- 12 Browning, "Christianity and the rights of children," 287.
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- 19 Prior to this, there was no federal divorce law, and provinces implemented their own divorce legislation, primarily permitting divorce on the grounds of adultery, rape, sodomy, bestiality, bigamy, or adultery coupled with cruelty or desertion. With the passage of the Divorce Act, divorce was also permitted on the grounds of permanent marriage breakdown. See Kristen Douglas, "Divorce Law in Canada," Government of Canada, Law and Government Division, March 27, 2001.
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- 24 For a more in-depth discussion of assisted reproduction, see ARPA Canada's Respectfully Submitted policy reports on [Surrogacy](#) and on [In Vitro Fertilization](#).
- 25 Morse, *Love & Economics*, 269.
- 26 Morse, *Love & Economics*, 269.
- 27 *The Family Maintenance Act*, C.C.S.M. c. F20, s. 15 (Manitoba).
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- 29 For example, in Ontario and Saskatchewan. See *Children's Law Reform Act*, R.S.O. 1990, c. C.12, ss. 9-11 (Ontario), and *Children's Law Act*, 2020, SS 2020, c. 2, ss. 61-62 (Saskatchewan).
- 30 *Children's Law Act*, RSY 2002, c 31, s. 5 (Yukon). See similar definition in Northwest Territory, *Children's Law Act*, SNWT 1997, c 14, s. 2.
- 31 For example, *Family Services Act*, SNB 1980, c F-2.2, preamble (New Brunswick), *Children and Family Services Act*, 1990, c. 5, preamble (Nova Scotia), and *The Child and Family Services Act*, C.C.S.M. c. C80, Declaration of Principles (Manitoba).
- 32 *Children's Law Reform Act*, ss. 1 and 7 (Ontario).
- 33 For example, Manitoba's *Child and Family Services Act* primarily uses the term 'parent,' although it briefly refers to a child's 'mother.' Alternatively, Alberta's *Child, Youth and Family Enhancement Act*, RSA 2000, C-12, refers to both 'father' and 'mother' multiple times.
- 34 *MDR v. Ontario (Deputy Registrar General)*, 2006 ONSC 19053, at para. 259. This case is also cited as *Rutherford*.
- 35 *A.A. v. B.B.*, 2007 ONCA 2. The *parens patriae* literally translates to "parent of the fatherland" and refers to a court's residual parental jurisdiction of children. The classic definition of *parens patriae* comes from Lord Esher M.R., when he describes the doctrine this way, "It was a parental jurisdiction, a judicially administrative jurisdiction, in virtue of which the [sic] Court was put to act on behalf of the Crown, as being the guardian of all infants, in the place of a parent, and as if it were the parent of the child, thus superseding the natural guardianship of the parent." Although the *parens patriae* doctrine is ancient common law, today it is either codified or statutorily recognized in most provinces.
- 36 *Grand v. (Ontario) Attorney General*, 2016 ONSC 3434. To say that it is discriminatory misses the point. What makes it more difficult for same-sex partners to become parents is not the law but the fact that two men or two women cannot conceive a child together. The basic biological reality is that every single human being in history (except for Adam and Eve) has only ever had one biological father and one biological mother.
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- 38 "Convention on the Rights of the Child," *United Nations*, Article 3.
- 39 *M.R.R. v. J.M.*, at para. 150.
- 40 *M.R.R. v. J.M.*, at para. 94.
- 41 *M.R.R. v. J.M.*, at para. 177. Ontario legislation does not state that the 'best interests of the child' must be considered when the court makes such a declaration (see para. 139).
- 42 *B.J.T. v. J.D.*, at para. 88. This statement is untrue in at least one particular context: that of First Nations children.
- 43 *B.J.T. v. J.D.*, at paras. 102-108.
- 44 *B.J.T. v. J.D.*, at para. 114.
- 45 See Browning, "Christianity and the rights of children," 286-287.
- 46 Gerald Chipeur, "Family Ties: Individual and Family Rights Under Canada's *Charter of Rights and Freedoms*," *University of New Brunswick Law Journal* 52 (2003): 220.
- 47 Browning, "Christianity and the rights of children," 283.
- 48 [Genesis 2:24](#).
- 49 [Matthew 19:4-6](#). Jesus quotes from both Genesis 1:27 and Genesis 2:24, and then builds on what is said there by stating, "What therefore God has joined together, let not man separate." While the immediate meaning of this sentence refers to a particular man joined together with a particular woman, it also speaks to the creational norm: what God has joined together (one man and one woman as the design for marriage), let not man separate (by redefining marriage to be other than one man and one woman joined together). See also Abraham Kuyper, *Pro Rege (Volume 2): Living Under Christ's Kingship: The Kingship of Christ in its Operation*, eds. John Kok and Nelson D. Kloosterman, trans. Albert Gootjes (Bellingham, WA: Lexham Press, 2017) III.1, s.3.
- 50 Cornelis Van Dam, *God and Government* (Eugene, OR: Wipf and Stock, 2011), 130.
- 51 Wayne Grudem, *Politics According to the Bible* (Grand Rapids, MI: Zondervan, 2010), 245.
- 52 [Psalm 112:1-2](#), [Ps. 127:3-4](#), [Psalm 128:3-4](#), [Psalm 139:13-16](#).
- 53 Kuyper, *Pro Rege*, III.8, s.1.
- 54 John Frame, *The Doctrine of the Christian Life* (Phillipsburg, NJ: P&R Publishing Company, 2008), 595.
- 55 Herman Bavinck, *The Christian Family*, trans. Nelson D. Kloosterman (Grand Rapids, MI: Christian's Library Press, 2012), 112.
- 56 Kuyper, *Pro Rege*, III.8, s.2.
- 57 Kuyper, *Pro Rege*, III.17, s.1.
- 58 Bavinck, *The Christian Family*, 112-113.

- 59 Kuyper, *Pro Rege*, III.9, s.3. This language reflects what Malik wished to promote in the UDHR. See discussion around footnote 11 above.
- 60 "[Canadian Bill of Rights](#)," S.C. 1960, c. 44, *Government of Canada*.
- 61 Abraham Kuyper, *Lectures on Calvinism*, (Grand Rapids, Michigan: Wm. B. Eerdmans Publishing Company, 1931), 91-93.
- 62 J. Douma, *The Ten Commandments: Manual for the Christian Life*, trans. Nelson D. Kloosterman (Phillipsburg, NJ: P & R Publishing Company, 1996), 187.
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- 68 Faust, *Them Before Us*, 74.
- 69 Grudem, *Politics According to the Bible*, 224.
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