

The non-traditional family is becoming quite expensive

By John T. Syrtash, Associate, Garfin Zeidenberg LLP

Question: I have a deep concern for my brother. He is a good man with a good heart, and he makes a very substantial salary. He works hard and I am happy to finally see him with a woman. He deserves to be happy.

This relationship has become very serious very quickly and unfortunately, I have some very serious concerns about the woman he is involved with. He is a very intelligent man but I know how love can be blind.

She has been previously married three times. However, my concern actually lies in child support. She has three children (all under 16 years of age): two from her first marriage and one from her third marriage. She recently informed me that her second husband, whom she was married to for a short period of time (just under three years), pays child support for the first two children.

Apparently, he did not legally adopt these children and they still see their biological father on a regular basis. I am assuming she is collecting monies from both her first and second husbands for these children. Is this possible?

My brother is now engaged to this woman and living with her. She has either sole or joint custody of all three children, to the best of my knowledge. My biggest question is: Even if he does not adopt these children and it does not work out between them, will he have to pay child support for her three children?

Answer: Yes. If he lives with this woman for a substantial period of time, then under Canadian law he will be deemed to become a replacement father to her children, even if he hasn't adopted them, and will almost certainly be paying the same amount of child support as if he was their biological father.

Moreover, if he attempts to have her sign a prenuptial or cohabitation agreement excluding himself for any such liability, such agreements are of no legal affect whatsoever because they don't bind the child.

The support, in legal theory, belongs to the child not the mother, even though she collects the funds on the child's behalf for the child's needs.

The Supreme Court of Canada has made it increasingly difficult for those single women with children seeking mates who honestly don't wish their lovers to become liable for child support if they sincerely just want companionship. Increasingly, many single men are becoming very wary of dating women with children, especially if they are already paying child or spousal support. The non-nuclear family is beginning to become very expensive.

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