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TWO'S COMPANY, THREE'S A CROWD: A critical analysis of the interpretation of the Property (Relationships) Act 1976 regarding a polyamorous relationship in *Mead v Paul*

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Abstract

Designed as a form of social legislation to recognise a spectrum of relationships and promote a just division of assets after relationship dissolution, the Property (Relationship) Act 1976 encounters a challenge highlighted by Paul v Mead. This challenge underscores that both the Act itself and its subsequent judicial interpretations still favour a perspective centred around the colonial nuclear family framework when delineating the essence of partnerships and family. This sentiment is evident in each Court which engaged with this case following the two subsequent appeals after the initial Family Court appearance. This essay will argue that the effect of this ill-fitted Act is that polyamory exists as a legal afterthought, thus restricting access to equal rights and justice to those in multi-partner relationships.

Key Terms: '*Polyamory', 'Property (Relationships) Act 1976', 'Paul v Mead', 'Mead v Paul', 'Queer Legal Theory'*

I Introduction

Drafting legislation with a foundational set of guiding principles, as a way to steer the accomplishment of the Act's objectives, is an optimistic pursuit. Consequently, this hopeful pursuit leads to frustration as the Act's judicial interpretations conflict with its guiding principles.

The Property (Relationships) Act 1976 ("the Act") aims to distribute property at the dissolution of a relationship, using values such as equality, justice and ease of access.[1] Yet the four court appearance of the landmark case *Mead v Paul,* highlights the rigidity built into the Act, despite its premise as a social legislation.

Mead v Paul is a recent landmark decision regarding the division of relationship property upon the dissolution of a polyamorous relationship.[2] The case initially arose in the Waitakere Family Court, due to an application made by Lilach Paul, concerning a dispute about relationship property.[3] Lilach and Brett Paul married in 1993.[4] Six years into the marriage, Lilach met Fiona Mead.[5] This led to the formation of a polyamorous relationship involving all three parties in 2002.[6] In November 2002, the parties moved into a newly bought $533,000 four-hectare property, using a $40,000 deposit made by Ms Mead.[7] The property is situated in the rural Auckland suburb of Kumeū.[8] However, in November 2017, the 15-year-long triad ended, when Lilach split from Fiona and Brett.[9] At this point, the Kumeū home had a valuation of $2,157,000.[10] In the following year, Brett and Fiona separated, with Fiona solely residing in the Kumeū property.[11]

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[1] Property (Relationships Act) 1976, s 1N.
[2] *Mead v Paul* [2023] NZSC 70, [2023] NZFLR 75.
[3] *Paul v Mead* [2020] NZHC 666, [2020] NZFLR 104 at [16].
[4] At [5].
[5] At [6]
[6] At [7].
[7] At [8].
[8] At [8].
[9] At [14].
[10] At [8].
[11] At [15].

The dissolution led to the 2019 application by Lilach Paul to the Family Court.[12] Lilach applied for a one-third share of the property as the three were "in a committed relationship for more than 15 years," with both herself and Brett being in a de facto relationship with Fiona.[13] Lilach claimed the property was their family home.[14] This initial application led to a referral to the High Court, which led to her appeal to the Court of Appeal and subsequently the defendant's appeal to the Supreme Court.[15]

The novelty of a polyamorous relationship attempting to find legal remedy under the Act led to an analysis across all courts of the meaning of terms used in the Act such as "de facto relationship," and "couple."[16] Both appeals held that whilst the terms envisioned a relationship between two people, the Act could apply to a polyamorous relationship provided they split their relationship into three dyadic relationships.[17] As observed in the dissenting Supreme Court opinion this solution had the effect of "shoehorning the parties" relationship into the coupledom paradigm."[18]

This essay will analyse how the courts' came to this decision, which will ultimately lead to an analysis of the origins and provisions of the Property (Relationship) Act 1976. An analysis of the legislation and its subsequent judicial interpretation will shed light on the definition of family according to the New Zealand government.

I will argue that the government's view of family is archaically centred around nuclear ideas of family, despite a societal rejection of these ideas. Thus, the Supreme Court's attempt to recognise polyamory through a dyadic monogamous framework is not a true recognition of polyamory. This deceptive recognition means that polyamory remains a legal afterthought.

However, the Act confines the judiciary's interpretations, by defining a relationship strictly between two people. The Act, tasked with keeping up with social mores around

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[12] At [16].
[13] At [16].
[14] At [16].
[15] *Mead v Paul,* above n 2, at [3].
[16] At [47].
[17] At [89].
[18] At [95].

evolving relationships, therefore fails to do as promised.[19] Consequently, those in non-monogamous relationships have to rely on a lengthy court process or try to find remedy through equity. I will argue that these options are incongruent with the Act's guiding principles of equal rights and justice.

In Part II of the paper, I begin my argument with an exploration of polyamory's history and origins, as well as its manifestation within the case at hand. This exploration will focus on polyamory in the Western world, whilst outlining how polyamory differs from other multi-partner relationships.

In Part III, I highlight, compare and contrast the High Court, Court of Appeal and Supreme Court's understanding and interpretations of key terms guided by the Act. These terms include "couple" "de-facto relationship" and "contemporaneous relationships" and feature in s 52A, s 52B and the interpretation provision of the Act.[20] I will then use queer legal theory to analyse how mononormativity influence the courts' misconception of polyamory and their continual upholding of the nuclear family structure.

In Part IV I discuss the alternatives and implications of the Supreme Court's decision, which opens up a potential breach of the Act's section 1N principle that "Questions arising under the PRA should be resolved as inexpensively, simply and speedily as is consistent with justice."[21]

II Polyamory in the Western World

Ideas and depictions of polyamory are often rife with misconceptions. Therefore, this section will outline what polyamory is and how it differs from monogamous and other multi-party relationships.

A Definition and Origins

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[19] *Paul v Mead,* above n 3, at [53].
[20] Property (Relationships Act) 1976, above n 1, at s 2.
[21] At s 1N.

Polyamory is a form of consensual non-monogamy.[22] At its core, it notes that it is possible and acceptable to maintain multiple love relationships.[23] A key component of polyamory is the prioritisation of honesty in each relationship, which can be emotional and/or sexual.[24] Consequently, each partner has knowledge and consent of each other's relationships.[25] Conventional polyamory includes appointing a "primary" and "secondary" partners.[26] Often an individual will have one or two primary partners whom they may live together and prioritise.[27] Secondary partners exist externally.[28] However, these relationships can also be non-hierarchical, granting equal status to partners.[29]

In theory, polyamorous relationships can be limitless, however, most relationships do not extend past trios or quads.[30] Other polyamorous groups cohabite as families or tribes, and the term "polycule" represents networks of people who are romantically, emotionally or sexually involved.[31] Some polycules believe in "polyfidelity" whilst others are "open."[32] Author, Elizabeth Emens notes five principles commonly adopted by the polyamorous community are "self-knowledge, radical honesty, consent, self-possession, privileging love and sex."[33]

As Meg Barker explains, polyamory in the West originated in the 1960s.[34] The first recorded usage of the term 'polyamory' was in Robert Heinlein's 1961 novel *Stranger in a Strange Land*.[35] Heinlein used polyamory to conceptualise a form of responsible non-monogamy.[36] At the time of Heinlein's writings, prominent counterculture movements challenging traditional societal norms arose. Scholars such as Adrienne Rich, argue that

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[22] Marian O'Connor "Polyamory a romantic solution to wanderlust?" (2019) 21 EJPC 217 at 219.
[23] Meg Barker "This Is My Partner, and This Is My ... Partner's Partner: Constructing a Polyamorous Identity in a Monogamous World" (2005) 18 Journal of Constructivist Psychology 75 at 76.
[24] At 75.
[25] O'Connor, above n 22, at 219.
[26] Barker, above n 23, at 76.
[27] At 76.
[28] At 76.
[29] O'Connor, above n 22, at 219.
[30] Barker, above n 23, at 76.
[31] Dee Morgan "Learn about polyamory: What is a Polycule?" (27 August 2022) polyam proud <www.polyamproud.com>.
[32] Barker, above n 23, at 76.
[33] Elizabeth Emens "Monogamy's law: compulsory monogamy and polyamorous existence" (2004) 29 N.Y.U. Review of Law and Social Change 277 at 283.
[34] Barker, above n 23, at 75.
[35] At 75.
[36] At 75.

this traditional and dominant construction of sexuality is "compulsory heterosexuality."[37] Similar critiques led to a reimagination of alternate ways of living. Among these reimaginations stemmed the idea of "free love" which rejected predominant Christian ideas of a traditional monogamous, heterosexual family structure.[38] It is here the idea of polyamory grew in the West.

In addition, polyamory is often mistaken for polygamy. However, polygamy refers to a man with multiple wives or girlfriends who all remain monogamous to the male in the relationship.[39] In contrast, polyamory transcends gender confinements and allows for partners of all genders to partake in non-monogamy.[40]

Notably, similar understandings of family and nonmonogamy existed in indigenous and non-Western societies. However a commentary on indigenous and non-western non-monogamy lies beyond the scope of this essay.

B Polyamory in Paul v Mead

Paul v Mead centers around a typical polyamorous relationship, involving three parties.[41] Brett and Lilach were married for nine years with no children, prior to Fiona forming a relationship with the two.[42] The three lived in the Kumeū home and often shared a bed.[43] Each party made contributions to the household's general maintenance and business such as Brett and Lilach's joint lawn mowing venture.[44]

Congruent with Barker's account of polyamory, Brett, Lilach, and Fiona's polycule had an inbuilt hierarchy.[45] Their relationship was primary, as they were free to love others but their relationship was the most prominent.[46] This primacy was demonstrated by their

[37] Adrienne Rich "Compulsory Heterosexuality and Lesbian Existence (1980)" (2003) 15 Journal of Women's History 11 at 11.
[38] Sally Goldfarb " Legal recognition of plural unions: Is a nonmarital relationship status the answer to the dilemma?" (2020) 58 Family Court Review 157 at 160.
[39] At 158.
[40] At 159.
[41] *Paul v Mead,* above n 3, at [7].
[42] At [5].
[43] At [13].
[44] At [10].
[45] Barker, above n 23, at 76.
[46] *Paul v Mead,* above n 3, at [12].

expressed commitment to each other, as stated in Lilach's affidavit to the Family Court, "When we moved into the property Fiona, Brett and I committed to a shared life with each other."[47]

The primacy was further solidified by a private ceremony where Brett and Lilach gave Fiona a third ring, upon the commencement of living in the Kumeū house.[48] Throughout the 15-year relationship, each party had secondary relationships, some involving fellow triad members, with one relationship lasting up to three years.[49]

The triad concluded in 2017, when Lilach separated from both Fiona and Brett, followed by Brett and Fiona's relationship ending in early 2018.[50] Fiona remains the sole occupant of the property in contention, prompting Lilach's application to the Family Court, which ultimately referred the case to the High Court.[51] This referral asked, "Does the Family Court have jurisdiction to determine the property rights of three persons in a contemporaneous polyamorous relationship under the Property (Relationships) Act 1976?" [52]

III Case Analysis

To analyse how the judiciary came to a mononormative decision and understanding of polyamory, this essay will focus on the courts' approach to two fundamental issues which each court engaged with and ultimately influenced each decision. These issues are:[53]

1. Whether a polyamorous relationship can be seen as a de facto relationship under s 2D of the Property Relationships Act 1976?

   "De facto relationship" is defined in s 2D as :[54]

   > (1) For the purposes of this Act, a **de facto relationship** is a relationship between 2 persons (regardless of their sex, sexual orientation, or gender identity)—

[47] At [13].
[48] At [13].
[49] At [12].
[50] At [15].
[51] At [16].
[52] At [2].
[53] *Mead v Paul,* above n 3, at [47].
[54] Property (Relationships Act) 1976, above n 1, at s 2D.

(a) who are both aged 18 years or older; and
(b) who live together as a couple; and
(c) who are not married to, or in a civil union with, one another.

2. Whether polyamory is envisioned in the "contemporaneous" relationships references under ss52A and s52B of the Property Relationships Act 1976?

These references are as follows:[55]

52A Priority of claims where marriage or civil union and de facto relationship

(2) If this section applies, the relationship property is to be divided as follows:

(b)if the marriage or civil union and the de facto relationship were at some time contemporaneous, then,—

52B Priority of claims where 2 de facto relationships

(2) If this section applies, the relationship property is to be divided as follows:

(b) if the de facto relationships were at some time contemporaneous, then,—

A Can a polyamorous relationship be a de facto relationship?

An affirmative answer to this question is central to the judiciary's recognition of polyamory within the Act. The consideration of polyamory as a de facto relationship enables the applicant to apply for a determination of property rights under the Act in the Family Court.[56] Consequently, a negative answer removes the applicant's ability to apply for a determination of property, which effectively determines polyamory as unrecognised in law, thus removing their access to legal remedies.

[55] At s 52.
[56] *Mead v Paul,* above n 3, at [35].

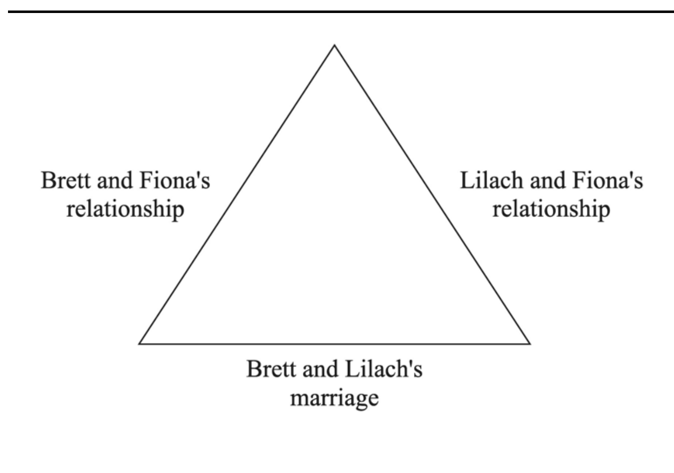
1 Paul v Mead in the High Court

The High Court reformulated the question of the case as follows: [57]

> Does the Family Court have jurisdiction under the Property (Relationships) Act 1976 to determine the property rights of three persons in a polyamorous relationship, either on the basis of that relationship or by dividing that relationship into dyadic parts?

This reformulation arises from Lilach and Brett acceptance's that the Act "does not provide for polyamorous relationships as such."[58] Therefore, the applicants aim to split the relationship into three dyadic parts in an attempt to apply the Act and have them recognised as contemporaneous qualifying relationships under section 52.[59] However, Justice Hinton ruled that the Pauls' case broke down upon an attempted application of section 2D of the Act.[60]

Table 1 **Dyadic split of Brett, Lilach and Fiona's relationship:[61]**



Section 2D outlines the meaning of "de facto relationship" which confines the relationship to two people who "must be living as a couple."[62] The section also permits

[57] At [3].
[58] At [3].
[59] At [3].
[60] At [31].
[61] At [3].
[62] Property (Relationships Act) 1976, above n 1, at s 2D.

the consideration of other circumstances under 2D(2). These considerations are outlined in s2D(2)(a) – (i) and take into account a variety of factors, including the presence of a sexual relationship, financial dependence, property, mutual commitment to a shared life, the execution of household duties, and the reputation and public aspects of the relationship.[63] Hinton J notes the fundamental question is where the parties lived together *as a couple*.[64]

Noting Lilach and Brett are a legally married couple who are not claiming against one another, the Court rejects Brett and Lilach's pleadings for three separate claims.[65] Instead, it considers two separate concurrent claims.[66] Namely, Brett and Fiona as de facto partners, and Fiona and Lilach as de facto partners.[67]

Hinton J asserts that Lilach and Brett did not live with Fiona "as a couple."[68] The evidence provided by the claimants excluded them from meeting this qualification as both separate relationships (Lilach and Fiona and Brett and Fiona) involved a third party or parties also participating in each relationship.[69] Her Honour notes her aversion to circumvent the "couple" requirement as it would have the effect of allowing an illogical limitless number of people applicable/involved in a polyamorous relationship.[70]

Consequently, the High Court finds de facto relationships with Fiona did not exist.

2 Paul v Mead in the Court of Appeal

The Court of Appeal notes that the sole issue remains as to whether the Family Court has jurisdiction to hear claims under the Property Relationship Act between partners in a polyamorous relationship?[71]

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[63] Property (Relationships Act) 1976, above n 1, at s 2D.
[64] *Mead v Paul,* above n 3, at [31].
[65] At [29].
[66] At [29].
[67] At [30].
[68] At [31].
[69] At [31].
[70] At [32].
[71] *Paul v Mead* [2021] NZCA 649, [2022] 2 NZLR 413 at [28].

Ms. Taefi, counsel for Lilach Paul, submitted the test for a de facto relationship under s 2D of the Act is an evaluative assessment that requires a fact-specific approach to the relationship in question.[72] Counsel argues the Act is a social legislation, so its interpretation must reflect "changing social mores and the diverse forms of relationships in our society." [73] Ms Taefi submits that a purposive approach to the interpretation recognises the intentional flexibility built into the legislation which solely aims to enable the fair division of property at the end of a relationship.[74]

Justice Goddard's judgment starts with an analysis of the relevant Act's provisions. It notes the Act is code, thus its application overrides common law and equity rules regarding property transactions between partners.[75] The identified relevant provisions are the purpose section as defined in section 1M, the meaning of marriage and civil union defined in sections 2A and 2AB as well as the meaning of de facto relationship defined in section 2D.[76] Of these, the court sees s 2D as being "at the "heart" of this appeal." [77]

Goddard J confirms Hinton J's conclusion that the PRA focuses on relationships between two people, therefore a polyamorous relationship does not qualify.[78] This conclusion derives from language and indications within the text, which premises itself on "coupledom" and applies to two people.[79]

Unlike the High Court, the Court asks a further question of whether coupledom requires exclusivity.[80] Thus, the key issue is: [81]

> whether, as between two people in a wider multi-partner relationship, there may be a qualifying relationship to which the PRA applies. And whether, if so, there may be multiple qualifying relationships between couples within that broader multi-partner relationship.

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[72] At [31].
[73] At [31].
[74] At [31].
[75] At [38].
[76] At [39] – [46].
[77] At [42].
[78] At [58].
[79] At [76].
[80] At [59].
[81] At [59].

Goddard J affirms the critical question is if two people "live together as a couple" under s 2D(1)(b).[82] He reaffirms that the approach must centre on the nature of the relationship between the two. This leads to the conclusion that the Act's purpose remains engaged regardless of whether a member of the qualifying de facto relationship is in a relationship with someone else. His Honour notes that alternative approaches would illogically mean that Brett and Lilach's marriage ended in 2002 upon Fiona joining the relationship.[83] However, this would unfairly mean the PRA did not apply to them from 1993 onwards.[84]

Goddard J also uses statutory context to assist his decision. His Honour observes that another PRA case, *DM v MP,* holds that s 52B(2)(b) expressly contemplates contemporaneous de facto relationships.[85] In this case, Miller J says that a "de facto couple need not "live together" to the exclusion of others" and additionally, one can "live in more than one de facto relationship at any given time, so the idea of a relationship in which two people "live together as a couple" must accommodate that possibility."[86]

Thus the Court ultimately held that due to the discussed contextual indications in the Act, two people can live together in a married couple, whilst being in another qualifying de facto relationship. Therefore, polyamorous relationships can be considered de facto relationships, provided they are split into two-person dyadic relationships.[87]

3 Mead v Paul in the Supreme Court

The Supreme Court's approach to whether polyamory can qualify as a de facto relationship under s 2D was to divide the question into two sub-issues. These sub-issues are as follows: [88]

- Whether exclusivity is necessary for a qualifying de facto relationship?
- What Parliament meant in section 2D when drafting that parties to a relationship must be "living together as a couple."

[82] At [71].
[83] At [70].
[84] At [70].
[85] At [71].
[86] At [71].
[87] At [100].
[88] *Mead v Paul,* above n 2, at [51].

Kós J affirms the Court of Appeal decision, answering "no" to the question of whether a triangular relationship itself can be a qualifying de facto relationship.[89] The reasoning given is both the text and parliamentary purpose do not consider polyamory to apply in their drafting.[90] Thus, the real question is whether the relationship can be subdivided, with Fiona in a qualifying de facto relationship with Lilach, whilst also in a separate qualifying relationship with Brett.[91]

Fiona's Counsel submitted a strict definition of de facto relationship, namely it being "two people living together intimately, to the exclusion of others."[92] A contextual analysis of the word "couple" and the Act's pattern of using dyadic language supports this submission.[93] However, Kós J notes that ss52A and s 52B undermine Counsel's argument due to its express contemplation of contemporaneous arrangements.[94] Further analysis of the approach to ss 52A and 52B will be explored in the next section of this essay. However, they ultimately note that the express contemplation of contemporaneity defeats the need for a qualifying de facto relationship to be exclusive.[95]

Kós J ultimately concludes that a qualifying relationship under s 2D must display: [96]

> "a need for mutual commitment to living together in an intimate domestic relationship, in which risk and reward are so intertwined that it would be unjust for one partner to fall back on equitable principles to obtain an advantageous proprietary entitlement."

Ultimately, Kós J argues that given the context, the question is instead, "why the statutory regime for property allocation upon termination of an intimate domestic relationship ought *not* apply."[97] Kós J offers his own answer using Professor Mark Henaghan as authority.[98] Professor Henaghan states that s 2D's case law demonstrates that "living together as a couple" does "not require a monogamous relationship in the sense of

[89] At [49].
[90] At [49].
[91] At [50].
[92] At [54].
[93] At [54].
[94] At [54].
[95] At [55].
[96] At [65].
[97] At [66].
[98] At [66].

cohabitation to the exclusion of all others."[99] Therefore, the Court ultimately concluded that "living together as a couple" need not be at the exclusion of others.

B Is polyamory is envisioned in the contemporaneous provisions of the Act? (ss52A and s52B of the Property Relationships Act 1976)

All three Courts interpret sections 52A and 52B of the Act as evidence of Parliament's intent to include polyamorous relationships in the legislation.

1 Paul v Mead in the High Court

After its consideration of whether Brett and Lilach were in separate de facto relationships with Fiona, Hinton J turned to consider the workability of sections 52A and 52B of the Act.[100] Noting that these sections anticipate the priority of claims when there are two de facto contemporaneous relationships, Hinton J ultimately concludes this section is inapplicable in this case.[101] She also notes that 52A and s52B's plain language finds no application towards a situation with three contemporaneous relationships.[102]

Hinton J further solidifies her argument when highlighting the purpose of the sections which aims to recognise and resolve conflicting claims. [103] She notes that in 2002, the Act was extended to apply to de facto couples, thus the application of this section was irrelevant when the Act was confined to two couples, due to bigamy laws.[104] Thus Hinton J concludes the *key* purpose of the acts is to prioritise competing claims in cases of *"two* discrete *qualifying* relationships."[105] Her Honour asserts that the relationships were not "qualifying" for reasons previously mentioned.[106]

Additionally, Hinton J rules that extension of ss52A and 52B to a polyamorous relationship is incongruent with the Act.[107] This ruling stems from the difficulty of

[99] At [66].
[100] *Mead v Paul,* above n 3, at [33].
[101] At [33].
[102] At [35].
[103] At [36].
[104] At [36].
[105] At [36].
[106] At [37].
[107] At [36].

applying the sections, which entails an identification of a qualifying secondary relationship.[108] Hinton J cites the case *Ngavaevae v Harrison* as authority, which rules that exclusivity is a key element in the consideration of a 'qualifying' relationship.[109] As no case displays a practical working application of ss 52A and 52B, she cites material by scholars and the Law Commission who also highlight the difficult application of the sections.[110] The Law Commission notes the context in the drafting of sections 52A and 52B originate from the law of succession, not polyamorous relationships.[111]

Finally, Hinton J considers academic commentary. She cites Professor Henaghan's argument stating that the definition of de facto relationship overlooks a "threesome" living situation, also known as a "menage a trois."[112] Professor Henaghan suggests treating these as two contemporaneous relationships: however, Hinton J concludes that the brevity of the Professor's suggestion indicates passing thoughts rather than anticipation of the present case.[113] Furthermore, Hinton J argues the phrases "menage a trois" refer to a "live-in caretaker" case as opposed to examples of polyamory.[114]

These issues result in the conclusion that the sections discourage a wide interpretation of the Act.[115] Hinton J reiterates the premise of coupledom in the scheme of the Act is made clear.[116] Her Honour reaffirms the importance of statutory interpretation which must prioritise the text and scheme of the Act.[117] Thus, the question of reform instead lies within the legislature as opposed to the judiciary.

2 Paul v Mead in the Court of Appeal

The Court of Appeal begins by reframing the High Court's fundamental question:[118]

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[108] At [36].
[109] At [39].
[110] At [40].
[111] At [40].
[112] At [49].
[113] At [50].
[114] At [50].
[115] At [56].
[116] At [56].
[117] At [56].
[118] At [3].

> does the Family Court have jurisdiction under the Property (Relationships) Act 1976 to determine the property rights of three persons in a polyamorous relationship, either on the basis of that relationship or by dividing that relationship into dyadic parts?

Noting the difficulty of the inclusion of 'polyamorous relationship' which remains undefined in the Act, it reframes the question to whether the "property rights of three persons in such a relationship can be determined under that Act on the basis of that relationship or by dividing it into "dyadic parts."[119]

Again, the Court of Appeal does not follow the High Court's approach; instead, it notes that s52A and s52B serve as contextual indications that one may be married while simultaneously being in a qualifying de facto relationship.[120] Goddard J expressly states that s52A makes it clear that "coupledom" for the purposes of the PRA is not dependent upon the exclusivity of the relationship between that couple."[121]

The Court states that if the Act is ready to accept an extra-marital relationship of one spouse in a monogamous relationship, the same should logically follow if both spouses are in relationships with the same third person.[122] Goddard J rejects a reversion to a financial and property-centred approach in cases of polyamory, as suggested by the High Court.[123] Furthermore, he notes that given the wider statutory context of s 2A (2) it is illogical to conclude that Lilach and Brett's marriage dissolved when they began a relationship with Fiona.[124] Additionally, the law in New Zealand allows the dissolution of polygamous relationships contracted overseas.[125] Therefore, it would be odd if the same individual could have their marriage dissolved in New Zealand but could not seek division of the relationship property.[126]

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[119] *Paul v Mead,* above n 71, at [100].
[120] At [65].
[121] At [65].
[122] At [66].
[123] At [67].
[124] At [70].
[125] At [67].
[126] At [67].

In conclusion, the Court of Appeal concludes that polyamory can apply in the case of contemporaneous relationships, provided they are split into dyadic relationships.

3 Mead v Paul in the Supreme Court

The Supreme Court ultimately upholds the judgment in the Court of Appeal, however, it conceptualises the issue differently. Here, Kós J introduces the concept of "vee arrangements."[127] This arrangement refers to a non-triangular multi-partner relationship, as opposed to the triangular relationships considered in lower Courts. In this 'vee' arrangement, A has relationships with both B and C, however, B and C are not in a relationship with one another and may be unaware of the other.[128]

These vee arrangements are reminiscent of an intended monogamous relationship, yet one party appears to have an additional relationship, which may be clandestine as envisioned by the Act.[129] Kós J finds that vee arrangements can be subdivided into two qualifying relationships, regardless of cohabitation status.[130] His Honour states the clarity of this is evident from the text in ss 52A(1) and (2), and 52B(1) and s52(2).[131] Kós J also notes that these provisions make it clear that when one partakes in a non-exclusive relationship, they will "not lose their statutory claim to relationship property" upon the dissolution of the relationship.[132]

Upon establishing vee relationships can be broken down into two dyadic relationships, the Court then moves on to considering whether the same can apply to triangular relationships, such as the case at hand.[133] Kós J answers this with an affirmative "yes" stating that they cannot find any material distinction between vee arrangements and triangular arrangements, thus the same rights should exist in the case in hand. [134]

4 Conclusion

[127] *Mead v Paul,* above n 2, at [51].
[128] At [51].
[129] At [53].
[130] At [59].
[131] At [63].
[132] At [60].
[133] At [77].
[134] At [82].

In conclusion, the courts' responses to this question vary. The High Court does not recognise a qualifying relationship following their application of s 2D which naturally means they cannot find a contemporaneous relationship existed. In contrast, the Court of Appeal and Supreme Court, having found qualifying de facto relationships through dyadic splitting, concluded contemporaneity is not explicitly envisioned in the Act. Nevertheless, through comparison to extra-marital relationships and "vee arrangements" both courts find polyamory satisfies both provisions in s 52.

IV Mononormativity and the Judiciary

The judiciary's extension of the Act to incorporate polyamory first appears progressive. However, analysis of the reasoning behind each verdict unveils their understanding of the relationship at hand is predominantly shaped by their understanding of monogamy. consequently, polyamory is misconceived and remains a legal afterthought.

A Mononormativity in the Court's Analysis

Mononormativity was first coined in 2005 and is defined as: [135]

> "to refer to dominant assumptions of the normalcy and naturalness of monogamy, analogous to such assumptions around heterosexuality inherent in the term heteronormativity."

Mononormativity also refers to monocentrism, monogamism, compulsory monogamy, heteronormative monogamy and socially imposed monogamy.[136] Each term refers to an overall belief that monogamous and heterosexual relationships are natural and morally superior, whilst stigmatising non-monogamy as unnatural and sometimes even perverse.[137]

Whilst each judgment ultimately concludes that polyamory or a "triangular relationship" cannot be contemplated under the Act, the Court of Appeal and Supreme Court find that those *within* a polyamorous relationship can find application under the Act, provided one subdivides these relationships into dyadic parts.

I argue that true recognition of polyamory is to recognise key distinguishing elements from monogamy. I have identified these key elements as the idea that:[138]

a) that one can maintain multiple love relationships at once;
b) these relationships are openly communicated, known and accepted by each party in the polycule;
c) the essence of polyamory is that is a network of relationships and must be viewed holistically.

Therefore, the judiciary must accept each element to conclude there is legal recognition of polyamory. Unsurprisingly, the judiciary does not. The judiciary's mononormativity becomes clear in each court in answering both questions regarding s 2D and ss 52A and 52B.

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[135] Jorge Ferrer "Mononormativity, Polypride, and the ''Mono–Poly Wars''" (2018) 22 Sexuality & Culture 817 at 819.
[136] At 819.
[137] At 819.
[138] Barker, above n 23, at 76.

The judiciary's mononormative stance is first evident in the High Court, which splits the parties into dyadic parts for comprehension which neglects polyamory's holistic nature.[139] This approach highlights monogamy's dominance, as the Court breaks down relationships into dyads mirroring monogamy. Consequently, the omission of the triad's entirety fails to fully capture the relationship's essence and dynamics.

Justice Hinton offers refuses to legally recognise *any* sort of relationship in the polycule, by way of a classic legal slippery slope argument.[140] Hinton J acknowledges that although the Act does not apply to polyamorous relationships, recognition and thus legal remedy may apply to the Pauls if their relationships with Fiona can be viewed as a "couple."[141] Hinton J rejects this opportunity, not because considering them as a "couple" disingenuously reflects the nature of the relationships, but that it would "have the effect of allowing an illogical limitless number of people applicable/involved in a polyamorous relationship."[142]

Hinton J's assertion is a clear rejection of the first key element of polyamory because it highlights a preference for a confinement of relationships to a small number of people, thus favouring monogamous ideas of family. Furthermore, the usage of "illogical" highlights her view that polyamory is abnormal and unnatural, as illogical suggests a reasonable person would not enter a polycule surpassing three people.

In contrast, both the Court of Appeal and the Supreme Court offer partial legal recognition of polyamory through their decision that polyamorous relationships, when split into dyadic parts, are de facto relationship. This has the effect of offering polyamorous couples a form of legal recognition by closing the judicial remedy gap between polyamorous and monogamous couples. As with most minority groups, legal recognition is often a pivotal step towards social and legal equality.

As previously discussed, this dyadic splitting overlooks polyamory's holistic essence. The Supreme Court justifies this dyadic split, by explaining that multilateral relationships, such as family, are inherently made up of collections of bilateral relationships.[143] Therefore a focus on one bilateral relationship does not negate the family's collective nature.[144] Yet, this analogy

[139] *Paul v Mead,* above n 3, at [3].
[140] At [58].
[141] At [60].
[142] At [32].
[143] *Mead v Paul,* above n 2, at [62].
[144] At [62].

has a drawback. The dominant understanding of "family" is a nuclear family with heterosexual parents and children, which greatly contrasts with societal perceptions of polyamory. Therefore, focusing on a singular relationship within the polycule, like Brett and Fiona's relationship, does not imply engagement in a wider polycule. Thus, the example of multilateral relationships rejects the holistic nature of polyamory and upholds mononormativity by reinforcing nuclear families as the standard.

Despite critique of the judiciary's mononormativity, it is important to note that the judiciary, albeit their own biases, is simply tasked with interpreting legislation. If there are mononormative assumptions built into the legislation, they will likely arise in its subsequent interpretation. Therefore, the Act confines their interpretations. Thus, it is important to analyse the Property (Relationships) Act 1976 and the social context surrounding its enactment.

5 Mononormativity in the Act

(a) The Origins of the Act

The Law Commission's 2017 Issues Paper '*Dividing Relationship Property – Time for Change? Te mātatoha rawa tokorau – Kua eke te wā?'* identifies the history and policy guiding the Act.[145] The paper asks, "if New Zealand has changed so much, is the policy of the PRA still sound, and are the right principles guiding its rules?"[146] It is here the genealogy mononormative relationships in New Zealand are explored.

The evolution of a preference towards prominence of monogamy in the West has amassed multiple theories. However, of relevance to property law is the practice of succession. Simply, monogamy favourably allows for a family's wealth to be directly transferred to their offspring.[147]

The Paper notes the Act was first enacted to remove the 'legal disabilities' the patriarchal family structure placed on women.[148] As women lacked access to land and subsequent financial

[145] Law Commission | Te Aka Matua o te Ture *Dividing Relationship Property – Time for Change? Te mātatoha rawa tokorau – Kua eke te wā* (NZLC IP41, 2017) at 1.
[146] At 1.
[147] At 7.2.
[148] At 2.18.

freedom, 'deserted' wives became an issue since they could not sustain their own lives.[149] Thus, Parliament's "primary concern" was the doctrine of matrimonial unity allowing husbands to squander property brought into the marriage by their wives, thus limiting the means of women.[150] The Act enabled women to become independent legal persons, which meant husbands and wives' property were seen as "his" or "hers" as opposed to "theirs."[151] The paper concludes that the fundamental philosophy of the 1963 iteration of the Act was: [152]

> "to produce an outcome that recognised a wife's role in the family, at a time when marriage was still a defining structure of society and a wife's role was still largely focused in the home."

The Act has subsequently undergone multiple amendments to provide legal remedies for relationships that no longer fit within the originally conceived heteronormative husband and wife relationship. This evolution is evident in the recognition of civil unions, de facto and same-sex relationships.[153] This constant evolution has led to the Act being viewed as 'social legislation.'

(a) Social legislation and mononormativity

All three courts greatly emphasise that the Act is a social legislation, as the Act serves as a reflection of the state's expectations of the sharing of family resources when a relationship ends.[154] As the Law Commission notes, the state's role is to enable the law to encourage and reflect societal change, hence the Act's initial emancipation of women and subsequent extension to unmarried and same-sex couples.[155] This social legislation reflects the Act's values of justice and equality.

The Issues paper acknowledges the Act's premise on coupledom and mononormativity by briefly examining multi-partner relationships and their potential recognition under s 52.[156] Whilst the term 'polyamory' is not used, it notes that multi-partner relationships may wish to

[149] At 2.19.
[150] At 2.20.
[151] At 2.20.
[152] At 2.24.
[153] At 2.43.
[154] At 2.43.
[155] At 2.44.
[156] At 7.28.

break down their relationships under a series of contemporaneous relationships to be eligible.[157]

Here, mononormativity is evident through the second key element of polyamory I identified, namely the inability to understand the consenting nature of polyamory. Instead, the paper notes parliamentary intent envisions contemporaneous relationships as 'clandestine.'[158] This language displays an inclination towards monogamy. Furthermore, the paper cites a judgment from *M v P* in the High Court which notes that the incorporation of contemporaneity in the Act is likely because: [159]

> A contemporaneous de facto relationship with a different partner shows that the relationship before the court lacks the character of a life lived as a couple. The legislation governs division of the property of a relationship between two people and there must be natural limits to one's capacity to spend the only life that one has in B contemporaneous bilateral relationships with more than one person.

Here, mononormativity is explicitly expressed in the terms "lacks the character" and "natural limits to one's capacity" as the Court is blatantly arguing that contemporaneous relationships are lesser in quality than monogamous relationships are. [160] This again shows mononormativity as the Judge believes that polyamory at its core is of lesser quality than monogamous relationships.

Despite the paper exploring the Act as a social legislation and the increasing prominence of polyamory, the paper inadequately addresses the potential for reform in this area. [161] It does, however, note the Act's premise on "coupledom" thus it fails to apply to relationships with three or more people.[162] Nonetheless, the Law Commission argues that multi-partner relationships satisfy many qualifying relationship criteria such as "common residence, raising children together, financial dependence or interdependence, ownership, use and acquisition of property, mutual commitment to a shared life and the performance of household duties."[163] Despite this, legal recognition remains absent. This omission might stem from the Act's and wider property law's historical origins and preference for succession norms. Consequently,

[157] At 7.27.
[158] At 7.16.
[159] At 7.22.
[160] At 7.22
[161] Michael Hall "Is polyamory on the rise?" (28 March 2019) Radio New Zealand <www.rnz.co.nz>.
[162] At 6.28.
[163] *Paul v Mead,* above n 3, at [52].

recognising civil unions and de facto relationships does not clash with succession norms, unlike the recognition of polyamory.

Hence the Act's lack of discussion around multi-partner relationships confines the scope for discussion or anticipation of polyamory. This lack of discussion combined with the mononormativity within the Act, shows that the state has yet to recognise polyamory. Consequently, the judiciary's understanding of societal change is to give validity to affairs, as supported by s 52 of the Act. This understanding is demonstrated through reference to clandestine relationships.

4 Polyamory and the unfaithful

The Act's misconception of polyamory as clandestine demonstrates the judiciary's failure to recognise the second key element of polyamory, namely that polyamory is openly communicated and accepted by each party in the polycule. In the Court of Appeal and Supreme Court, polyamory is accepted by comparing it to infidelity. The effect of this comparison is the stigmatisation of polyamory which perpetuates a preference for monogamy.

Despite its lack of recognition of polyamory within ss 52A and 52B, the High Court sets in motion a paradigm of understanding polyamory by drawing parallels with infidelity. Justice Hinton initiates this trend by rejecting the idea that section 52 was drafted with polyamory in mind. Instead, she employs various analogies involving heterosexual couples to demonstrate her understanding of scenarios that would trigger its application. Thus the Court refers to hypothetical cases of a travelling spouse or a live-in caretaker.[164] In the travelling spouse example, a monogamous cohabits, but Person A works overseas whilst Person B forms a relationship with Person C. The second example describes a monogamous couple with a live-in caretaker who begins a relationship with one party. Both examples are incongruent with principles of polyamory as they depict infidelity in monogamous relationships. Analogising infidelity to polyamory explicitly ignores key principles of openness and honesty inherent to polyamorous relationships. Moreover, both examples feature only one party in a relationship with the third person. This disregards the multiplicity of polyamorous relationships, such as the triad dynamic which the appellants and respondent were in.

[164] At [47].

Furthermore, Hinton J's analysis cites *Ngavaevae v Harrison* and *DM v MP* which both were cases with qualifying contemporaneous relationships. However, both cases involved a heterosexual monogamous couple in which the male partner deceitfully had secondary relationships with other women. In *Ngavaevae v Harrison* the Court notes the appellant's description of Mr Harrison's behaviour as "womanising."[165] Similarly, in *DP v MP*, the defendant is described as having 'played' women.[166] The pattern of citing cases of male partners cheating on their loyal female partners, whom they have children with, continually upholds the patriarchal dynamics in a heterosexual nuclear family.

This trend of equating polyamory to infidelity is also evident in the Court of Appeal's 'workability' section of the judgment.[167] By way of analogy, Goddard J starts with a 'vee' relationship between an unnamed X, Y and Z as the starting presumption, before extending the rights under this approach to a multi-partner relationship.[168] This approach is explicitly named a "vee arrangement" in the Supreme Court which draws similar analogies.[169]

Kós J's vee arrangement analogy rejects the communicative and holistic nature of polyamory as previously outlined. Yet, once again the courts analogies show they are unable to conceive of polyamory outside of their mononormativity.

This trend is further demonstrated further in the High Court's response to Professor Mark Henaghan's article, which is also cited in the Supreme Court.[170] In his discussion of multiple relationships on death, he explicitly envisions a situation analogous to the current case.[171] He refers to the triad situation as a "menage a trois" and "threesome" which, despite the incorrect terminology used, strongly suggests a reference to the current case.[172]

Professor Henaghan's article offers Hinton J a chance to specifically consider polyamory outside of a mononormative lens. However, Judge Hinton reverts her understanding of this

[165] *Ngavaevae v Harrison* [2017] NZHC 2788 at [58].
[166] *DM v MP* [2012] NZHC 503, [2012] NZFLR 385 at [35].
[167] *Paul v Mead,* above n 71, at [80].
[168] At [91] – [96].
[169] *Mead v Paul,* above n 2, at [51].
[170] At [73].
[171] At [73].
[172] *Paul v Mead,* above n 3, at [49].

situation through a mononormative lens by citing the "live-in caretaker" case, and explicitly stating "I do not consider it clear the Professor had in mind a case such as the present."[173]

In addition, Professor Henaghan's usage of sexually charged language such as "menage a trois" and "threesome" to depict a triad relationship reinforces the societal assumption that polyamory is akin to infidelity.[174] As Barker's analysis suggests, equating multi-partner relationships to sexual behaviour and promiscuity dismisses polyamory's credibility.[175] Western society often views threesomes as a sinful fleeting desire to be dabbled in discreetly, which by comparison stigmatises polyamory as sexual deviance. Despite this, it is noteworthy that members of the polyamorous community refer to themselves as a "family."[176] In a survey regarding polyamorous relationships and stigma, a participant expresses a dire for recognition as "a family. That's all. We're just a family."[177] However, as her family differs from a traditional nuclear family it is unsurprising that polyamory is unseen in a familial light.

(a) Polyamory and social stigma

Polyamory is equated with deception, as a consequence of employing these analogies and rejecting polyamory's core concepts. This effectively situates polyamory within the context of monogamous relationship norms. The intentional portrayal of polyamory as dishonest in these chosen analogies is a matter of debate, but the result is the stigmatization of polyamory.

Dr Sarah Calabrese et al delves into the stigma in their article *Stigma and Its Implications for Health: Introduction and Overview.* [178] They define stigma as the devaluation of individuals possessing norm-violating attributes recognized by society. [179] This stigma can emerge from minority group membership or devalued personal characteristics.[180] Consensual non-monogamy is the norm-violating attribute in this context. [181] Although those in polyamorous

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[173] At [50].
[174] At [49].
[175] Barker, above n 23, at 82.
[176] Barker, above n 23, at 82.
[177] Barker, above n 23, at 82.
[178] Sarah Calabrese, Bruce Link, Brenda Major and John Dovidio "Stigma and Its Implications for Health: Introduction and Overview" in The Oxford Handbook of Stigma, Discrimination, and Health, 2018 (Oxford University Press, 2018) 3 at 3.
[179] At 5.
[180] At 5.
[181] At 5.

relationships form a minority group, the extent of this membership remains unclear due to limited representation in sexuality statistics. [182]

The devaluation of non-monogamy is prominent in both law and society. Emens analyses how laws contribute to the mononormative ideas about family and heterosexuality, which polyamory disrupts.[183] Such is displayed in the criminalisation of "infidelity, bigamy and polygamy, through marriage laws that invalidate marriages or restrict registration of certain forms of partnerships and through discrimination in the workplace."[184]

Polyamory is implicitly stigmatised through its continuous likening to infidelity. Professor Calder argues that polyamorous families are more honest as the idea of "cheating" is less prevalent. Thus, one should avoid assuming that "extra-marital activity was the betrayal of a sacred promise."[185] However, this argument still contextualises polyamory within monogamy. Terms like "cheating" and "womanising" carry deep stigma due to the *deception* involved with extra-relational affairs, as opposed to having extra-relational affairs with a third party. Therefore, the concept of "cheating" is not prominent in polyamory, albeit cases of polyfidelity involving affairs outside the polycule. Thus, to establish social stigma of polyamory it is important to refrain from equating non-monogamy with cheating, as non-monogamy crucially centres around consent.

Conley and others add to the discourse regarding the stigmatisation of polyamory, by way of analysing how stigmatisation stems from societal and legal rules regarding non-marital sex. For example, prostitution is heavily stigmatised as although there is no deception about the multiple sexual partners, it still violates ideas of monogamy.[186] In addition, it hints at an unspoken willingness to "engage in noncommitted relationships that do not revolve around family, fidelity, love, romance, and marriage."[187]

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[182] Law Commission, above n 145, at 7.29.
[183] Emens, above n 33, at 287.
[184] Gillian Calder "Penguins and Polyamory: Using Law and Film to Explore the Essence of Marriage in Canadian Family Law" 21 Canadian Journal of Women and the Law 55 at 82.
[185] At 83.
[186] Terri Conley, Amy Moors, Jes Matsick and Ali Ziegler "The Fewer the Merrier?: Assessing Stigma Surrounding Consensually Non-monogamous Romantic Relationships" 13 Analyses of Social Issues and Public Policy 1 at 3.
[187] At 3.

This argument of a secretive desire to partake in non-monogamy is also discussed by Barker, which illuminates the "compulsory monogamy" theory.[188] Barker discusses the argument of morals about infidelity and culturally dominant ways of viewing relationships. In a survey taken of polyamorous people, many argued that the stigma against polyamory comes from its exemplification of an "honest way" of having multiple partners, which monogamous people may consider but ultimately do not partake in due to Western values about infidelity.[189]

Therefore, it becomes clear that whilst polyamory is envisioned in the Act through its contemporaneous relationship provisions, it must reflect the dynamics of infidelity in monogamous relationships to be recognised by the courts.

V An Alternative Paradigm?

One may use the principle of comity to argue that the judiciary is faultless in its mononormative interpretations of the Act. The principle of comity rules that "separate and independent legislative and judicial branches of government each to recognise … the other's proper sphere of influence and privileges."[190] Thus, the judiciary rightfully recognised this principle in its 'shoehorning' approach to the polyamory. However, one can abrogate comity through legislation, in instances where Parliament fails to legislate consistently with the defined standard.[191] Therefore, room exists for the judiciary to critically analyse whether the Act's defined standard of a "family" and "relationship" is consistent with contemporary social mores.

Alternatively, the judiciary's mononormative recognition of polyamory potentially gives the applicants a form of legal remedy. The judiciary's recognition of polyamory through dyadic relationships means that polyamorous relationships are now subject to the principles of the Act. A fundamental principle of the Act identified s1N that "Questions arising under the PRA should be resolved as inexpensively, simply and speedily as is consistent with justice."[192] However, this case contradicts this principle, as it has been four years and counting since Lilach

[188] Barker, above n 23, at 75.
[189] Barker, above n 23, at 83.
[190] New Zealand Parliament "Chapter 44 Parliamentary Privilege" (13 June 2017) New Zealand Parliament Paremata Aotearoa <www.parliament.nz>.
[191] New Zealand Parliament "Chapter 44 Parliamentary Privilege" (13 June 2017) New Zealand Parliament Paremata Aotearoa <www.parliament.nz>.
[192] Property (Relationships Act) 1976, above n 1, at s 1N(d).

Paul's initial application to the Family Court. This contradiction opens room for potential legal remedy for the Act's breach.

Although the concluding recognition of polyamory is confined to a dyadic understanding, perhaps this is the best outcome. As identified in the dissenting Supreme Court opinion, a denial of polyamory being legally viable through dyadic relationships removes the plaintiff's access to a Family Court hearing to divide property. It additionally bars plaintiffs from a potential section 19(1) NZBORA claim on the grounds of "family status", which polycules may wish to engage with following the outcome of this case and its outcomes in the Family Court. This ground includes a de facto relationship as one of its prerequisites.[193]

Regardless of the approach used to try to offer polyamorous people adequate legal remedy, it is clear the underlying issue regarding their lack of legal recognition is the Court's preference for a nuclear family interpretation. Until this implicit mononormativity is remedied it is difficult to imagine a more favourable outcome for the plaintiffs. However, perhaps the most favourable outcome will not be for the plaintiffs but for other polycules. Judicial recognition of polyamory, albeit ingenuous, gives room for future courts to consider polyamorous relationships in other of relationship property and family law.

VI Conclusion

Despite their three court appearance, the fate of the Pauls's initial application for property division remains unknown. The Supreme Court ruled that the Pauls can claim under the Act by way of splitting their relationship into dyadic parts.

The dyadic splitting shows the judiciary has not *truly* recognised polyamorous, as it has created a collection of "bilateral" relationships amongst a "multilateral" relationship.[194] This is done by analogy of a "vee" relationship to the case at hand. This conclusion opens further questions of what will the Courts rule in cases of more complex polycules? Would these more complex

[193] *Paul v Mead,* above n 71, at [79].
[194] *Mead v Paul,* above n 2, at [62].

polycules have to go through a similar court process as the plaintiffs at hand? What if the property was acquired before the establishment of the polycule?[195]

Perhaps these issues could have been circumvented if courts viewed polyamorous relationships for what they really are, a network of relationships. Thus, a "triangular" approach should have been circular to encapsulate and truly legally recognise polyamory. However, as it stands, precedent from *Mead v Paul* is likely to only apply if the polyamorous couple at hand is the typical triangular polyamorous relationship.

Ultimately, the longevity of this case highlights that the Act is not adequately designed to keep up with social mores. Its values of equality, ease of access and justice appear to be confined to monogamous couples, despite the ruling that it can apply to polyamorous relationships. As discussed earlier, this could originate from the foundation of succession law the Act was built on, which is difficult to reconcile when polyamory is recognised. However, difficulty should never be an affront to justice and equality.

Instead, the rigidity of the Act highlights mononormative assumptions, which demonstrates the power of legislative drafting. Thus, if the Act is developed with monogamous relationships in mind, it will naturally struggle to apply and extend to polyamory. Hence, the judiciary attempts to rationalise polyamory through triangles and vee diagrams, comparisons to live-in caretakers, infidelity and menage a trois. Each understanding fails to grasp vital elements of polyamory and ultimately exposes the judiciary's lack of knowledge of polyamory and its manifestations. The lack of engagement with polyamory has the effect of treating them as a legal afterthought.

However, the judiciary is not alone in its ignorance and mononormative presumptions of polyamory. Notably, the plaintiffs were the first to submit their relationship's application to the Act by way of splitting the triad into dyadic parts in an attempt to fit under sections 52A and 52B by way of section 2D. Despite being an ingenuine representation of the parties' relationship, it is easy to sympathise with this legal strategy. If parties refused to break down the relationship into dyadic parts, it is difficult to see how their relationship would qualify under the Act, as section 2D explicitly confines a relationship to two people.

This legal strategy reflects a recurring trend of sexual minorities seeking legal recognition. Striking a balance between legal acknowledgement and preserving the essence of one's

[195] *Mead v Paul,* above n 2, at [104].

sexuality is often necessary. Thus, the applicants had to view their relationship through a mononormative dyadic lens and compromise on its holistic nature to gain legal redress. This aligns with legal incrementalism, suggesting the potential rectification of this skewed view of polyamory will be remedied in subsequent years through common law or legislation. However, this lack of equality ultimately highlights how New Zealand's legal system is not inclusive. Instead, it is made to serve colonial and nuclear ideas of family, consequently leaving behind those who do not conform to the mainstream.

Word count

The text of this paper (excluding table of contents, footnotes, and bibliography) comprises approximately 8,000 words.

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