

**RETHINKING VOLKS V ROBINSON: THE IMPLCATIONS OF APPLYING A
"CONTEXTUALISED CHOICE MODEL" TO PROSPECTIVE SOUTH AFRICAN
DOMESTIC PARTNERSHIPS LEGISLATION**

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Summary

The article considers certain critical failings of the so-called "choice argument" (that is the view that, by opting to cohabit in a life partnership rather than marry or enter into a civil partnership, a life partner is not entitled to the legal benefits provided by matrimonial [property] law) as it was applied to opposite-sex life partnerships by the majority of the Constitutional Court in *Volks v Robinson*.¹ On the basis of Canadian jurisprudence, a "contextualised choice model" is developed that distinguishes between need-based claims and those involving property disputes, and holds that the "choice argument" could at best be relevant regarding the latter category of claims, while the existence of a reciprocal duty of support is *sine qua non* for any need-based claim to succeed. These findings are applied to registered and unregistered domestic partnerships under the draft *Domestic Partnerships Bill, 2008*, with the aim of suggesting certain amendments to the Bill in the hope of ensuring a more consistent and principled legal position once the Bill is enacted.

Keywords

Life partnership; domestic partnership; Domestic Partnerships Bill; choice argument; contextualised choice model; reciprocal duty of support.

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1 2005 5 BCLR 446 (CC).