

FEDERAL ASPECTS
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**A View from Ottawa: The Role of the Federal Government
as Regards the Status of Women**

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The role of the government in social reform relating to the status of women may be discussed under various headings relating to the functions of government. There are first of all the three functions that form the traditional trichotomy of the power of the state: the legislative, administrative and enforcement functions. Today many people would impose additional functions and argue that it is a responsibility of the state to take special measures to ensure continuing law reform in response to the expressed wishes of the people and that it is a proper function of the state to guide or develop public opinion. While the last two suggested responsibilities really come within the scope of the first three, for the purposes of this article they will at times be treated separately.

Each of the functions of the state has two components, a public one and an internal one. Thus, amendments to the *Canada Pension Plan*¹ improve the pension position of all Canadian women whereas corresponding amendments to the *Public Service Superannuation Act*² benefit only female government employees. Similarly, in the field of administration, Canada Manpower programmes are directed towards improving job opportunities for women in the private sector whereas Public Service Commission equal opportunities programmes apply only to women employed in the public service. When it comes to enforcement, the courts may have a role in both areas and, in addition, administrative or quasi-judicial tribunals may be established to provide special enforcement procedures in either or both the public and internal fields.

As may be seen from the foregoing, the role of the government in attaining social reform involves a wide range of activities.

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¹ R.S.C. 1970, c.C-5.

² R.S.C. 1970, c.P-36.

Because the field is so broad, this article will be principally directed towards the problems of achieving law reform. It will treat the public rather than the internal functions of government and will

- (a) examine the process of law reform as illustrated by status of women problems;
- (b) provide a progress report on legislative implementation of the Recommendations of the Royal Commission on the Status of Women;³ and
- (c) suggest the future role of government in the development of social justice through law.

The Process of Law Reform

The theme of social justice and the problems of law reform were examined at the National Conference on the Law at Ottawa in 1972. Two principal speakers at that conference made statements that, while intended to have general application, are also particularly relevant to contemporary demands of women for legal and social equality. The Prime Minister of Canada, the Right Honourable P. E. Trudeau, in his opening remarks, stated as follows:

... [We] are adherents of a single catechism ...: that law is one of the fundamentals of social institutions; that law is not only a protector of certain elements of the social structure, but that it is as well ... one of the best instruments for effecting social change; that law can better discharge these obligations and opportunities in the future than it has in the past.

We share as well a common motivation — to seek a society which emphasizes human dignity in all its manifestations.

After stating the functions and potential of the law, the Prime Minister described some of the problems of achieving law reform. He observed that we are a pluralistic rather than a monolithic culture — that when our forefathers chose federalism as the basic constitutional structure, diversity not homogeneity was the value that determined the course they followed. The Canadian value system has been further split up by technology and changing values:

The life span of an idea or attitude ... is now, in many instances, not more than five years. Yet our normal legislative cycle for the processing of law from proposal to statute often approaches the same length of time ... the speed of new ideas may make irrelevant some of our laws even before they are proclaimed.

³ *Report of the Royal Commission on the Status of Women* (1970).

Thus, in addition to the challenge of the diversity of interests and needs in our pluralistic society, we face the further challenge of an idea gap. As a result, the law stands as a structure that appears to some people to be the "backbone of civilization", and to others to be "a barrier to their self-fulfillment that will be cracked by the winds of change".

Given the premise that law is one of the best instruments for effecting social reform and recognizing the problems that relate thereto, how then may that reform be brought about? A second principal speaker at the Conference on the Law, Professor Julius Stone, an Australian expert on jurisprudential thought, suggested that several specific conditions must be present in order that legal reform in the social order be achieved. He postulated that

... western societies have increasingly come to see human demands as valid in themselves, and a just social and legal order as geared to the maximum satisfaction of these demands Yet this version of justice . . . can fully sustain the mediating role only under certain ideal conditions.

First, citizens must have sufficient information, and sufficient initiative, to know and express what they need Second, the social framework must be such that the demands of substantially all men and women can make themselves heard and regarded . . . so justice [may] emerge from the clash of competing demands Third, there must be standing machinery of government alert to hear demands and to respond to them with concern, with expertise and with action Fourth, the demands which are heard and taken into account must be authentic

Picking up the thread of argument from the Prime Minister and Professor Stone, the author would agree that the maximum satisfaction of human demands in a society that emphasizes human dignity in all its manifestations is a main touchstone of social justice. The author believes that Canadian legal institutions are capable of adapting to new challenges and of achieving social justice through law. The law is, undoubtedly, one of the best instruments for effecting social change, whether it lags behind and is revised only in response to the demands of society, or whether it precedes and encourages the development of new social attitudes in the community.

The application of the above premises in the process of law reform is well exemplified by the struggle to secure equal rights and obligations for women. Initiatives and action to secure equality of status for women in Canada came into play and gained momentum in the sixties. That these initiatives have been translated into legislative action at this time whereas they failed to make headway in the past may in part be attributable to the progressive emergence during the late sixties and early seventies of the four conditions

envisioned by Professor Stone as necessary to effect social change — information, participation, response and authentication.

As an increasing number of informed and motivated women began to express their demands, public awareness of the problems faced by women, particularly married women, mounted. The government responded early in 1967 by creating a forum in which these demands could be heard and considered — the Royal Commission on the Status of Women. As the Commission proceeded to hold hearings across the country, it became evident, both to the Commission and to the growing number of concerned citizens who watched its progress, that the matters raised before the Commission were the authentic requirements of a large segment of the population.

The *Report of the Royal Commission on the Status of Women* was published in September 1970 and covered a wide area of jurisdiction, including chapters on women in the economy, in society, in the family and in public life, as well as chapters devoted to taxation, child care, education, criminal law and women offenders, immigration, citizenship and poverty. Further, the Report contained a "Plan for Action" proposing mechanisms for its own implementation, including the creation of implementation committees and the establishment of human rights commissions and a federal status of women council.⁴

The first cycle of information, participation, response and authentication had been completed. The demands of Canadian women had been expressed and found authentic. A new cycle of demands based on the recommendations of the Royal Commission began and it remained to be seen whether there was standing machinery of government able to respond to the new (or newly expressed) demands and take appropriate action. Since the recommendations of the Royal Commission covered many fields and did not fall within the jurisdiction of any one minister or department, the initial response of the federal government to the Report was to create special administrative machinery to respond to them. To this end, a Minister responsible for the Status of Women was appointed and the office of the Coordinator, Status of Women, was established in the Privy Council Office.

The creation of the office of Coordinator, Status of Women, was related to the establishment of an interdepartmental committee. This committee was charged with studying the Report and other related questions, and recommending to the government strategies for the implementation of the recommendations and other means

⁴ *Ibid.*, 470, Recommendations 164-166.

of improving the status of women in Canada. Attached to the interdepartmental committee were five working groups composed of experts, both from government departments and from the community, who studied the Report in detail. After one year, the committee presented a comprehensive report to the government regarding the feasibility and means of implementing those recommendations of the Royal Commission that came within federal jurisdiction. The government reacted by approving the report, thus providing a mandate to the various government departments and agencies to begin implementation of the recommendations.

The implementation phase called for a variety of responses. Some proposed changes could be implemented only by statutory amendment. Others could be achieved by the establishment of new programmes or by a revision of existing administrative directives or practices. Still others could be accomplished only through the slow process of social attitudinal change.

Legislative Implementation

While the political policy endorsing equal status for women in Canada was enunciated in the early seventies, the statutory enactment of legislative proposals arising from that policy, apart from simple amendments that could be included in legislation already in progress, has taken considerable time. There have been a number of reasons for the delay. As already noted, the normal legislative cycle for the processing of law from proposal to statute often approaches five years. The proposals concerning the status of women had to compete with the other demands of an overcrowded legislative programme. Moreover, the political instability of the 29th Parliament had the effect of stranding on the Order Paper many of the items introduced during that Parliament, such as *An Act to amend the Canada Pension Plan*⁵ and the *Statute Law (Status of Women) Amendment Act, 1974*,⁶ which were still awaiting final passage when it was dissolved in the spring of 1974.

Delay has also been occasioned by reason of the nature of certain recommendations. Some of the statutes in respect of which proposals were made have a complexity that has necessitated postponement of their amendment until further study could be undertaken of the total legal and social schemes of which they form a part, by a body

⁵ S.C. 1974-75, c.4.

⁶ S.C. 1974-75, c.66.

having the necessary legal expertise. In this category, one may include the sexual offences in the Criminal Code⁷ and the *Divorce Act*,⁸ amendments to which have been held in abeyance awaiting reports of the Law Reform Commission of Canada. For example, suggestions have been made by some people that the crime of rape should be eliminated from the Criminal Code⁹ and replaced, as has happened in a number of American states, by a general crime of aggravated assault. Other people strongly oppose this idea. So far as seduction is concerned, the problem is not solved by a mere deletion of the references to "previously chaste character".^{9a} Perhaps it would be better to include seduction, as happens in some American states, within the more general concept of a criminal imposition. Alternatively, perhaps the Scandinavian approach to seduction of basing the crime on the relative age, experience and authority of the parties has merit. Decisions on matters such as these require lengthy and expert study.

Still other provisions offensive to women, such as certain sections of the *Canadian Citizenship Act*,¹⁰ form part of a statutory scheme that a department will wish to amend in whole rather than on a piecemeal basis. Finally, still other matters, such as amendments to the *Indian Act*¹¹ and abortion, come within the area where competing demands of different segments of the community have not yet allowed the legislators to determine which demand is of paramount importance to the majority of the population.

Although the problems in achieving legislative change have been numerous, they have not been insurmountable and much has been accomplished. As stated above, certain changes that could quickly be incorporated in legislation in progress were so incorporated. *The Criminal Law Amendment Act, 1972*,¹² amended the Criminal Code to provide that no person may be disqualified, exempted or excused from serving as a juror in criminal proceedings on the grounds of his or her sex.¹³ By the same Act, several vagrancy provisions of the Criminal Code were repealed,¹⁴ the sexual distinctions

⁷ R.S.C. 1970, c.C-34.

⁸ R.S.C. 1970, c.D-8.

⁹ *Supra*, f.n.7.

^{9a} *Ibid.*

¹⁰ R.S.C. 1970, c.C-19.

¹¹ R.S.C. 1970, c.I-6.

¹² S.C. 1972, c.13.

¹³ *Ibid.*, s.46.

¹⁴ *Ibid.*, s.12.

were removed from the prostitution provisions,¹⁵ and those provisions were supplemented by a new offence of soliciting, intended to apply to both males and females.¹⁶

More recently, in the 1st Session of the 30th Parliament, the *Statute Law (Status of Women) Amendment Act, 1974*¹⁷ was enacted. This Act represents an attempt to group together in one legislative proposal most amendments necessary to remove provisions in federal statutes that distinguish between men and women. This special Status of Women Act removes from the *Canada Elections Act*¹⁸ certain provisions that require enumerators to obtain different information from women than from men.¹⁹ It removes from the Criminal Code a protection that is really a legislative vestige of the Victorian concept that women are weak creatures unable to resist the importunities of their husbands. Henceforth, a married woman whose husband has committed a crime and who, at the instance of her husband, aids another person who is a party to the crime for the purpose of enabling her husband or that other person to escape, will be held criminally responsible for her act.²⁰ Furthermore, under the Act, she acquires the same criminal liability, upon failure to provide her family with the necessaries of life,²¹ as that now faced by her husband. In addition, the Act amends the *Unemployment Insurance Act*²² to provide more flexible maternity benefits,²³ enables girls to join cadet corps²⁴ formerly limited to boys only under the *National Defence Act*²⁵ and removes the "head of family" references from the *Immigration Act*.²⁶ No longer will a woman be deported merely because her husband, who was assumed to be the head of the family, becomes subject to deportation.²⁷

The 1st Session of the 30th Parliament also saw the enactment, in separate legislation, of a number of other amendments of im-

¹⁵ *Ibid.*, s.14.

¹⁶ *Ibid.*, s.15.

¹⁷ *Supra*, f.n.6.

¹⁸ R.S.C. 1970, c.14 (1st Supp.).

¹⁹ *Supra*, f.n.6, ss.2-6.

²⁰ *Ibid.*, s.7.

²¹ *Ibid.*, s.8.

²² R.S.C. 1970, c.U-2.

²³ *Supra*, f.n.6, s.22.

²⁴ *Ibid.*, s.21.

²⁵ R.S.C. 1970, c.N-4.

²⁶ R.S.C. 1970, c.I-2.

²⁷ *Supra*, f.n.6, s.9.

portance to women. These include amendments to the *Canada Pension Plan*,²⁸ the *War Veterans Allowance Act*²⁹ and the *Civilian War Pensions and Allowances Act*³⁰ which have granted to qualified women and their survivors the same rights to pensions as were formerly enjoyed by qualified men and their survivors. Moreover, a number of Bills relating to the status of women that were introduced in that session of Parliament have not yet been enacted. This legislation includes a new *Citizenship Act*,³¹ which would make that law apply in the future equally to both sexes and would enable a Canadian mother, as well as a Canadian father, to convey citizenship to legitimate children born abroad.^{31a} (At present a mother conveys citizenship only to illegitimate children born abroad.)

Some provisions that distinguish between men and women still remain in the statutes. These include provisions that are non-discriminatory, provisions that protect existing rights of persons in classes in which there could not now be additional members, provisions that are in the course of amendment in a subject matter statute such as the new *Citizenship Act*,³² and provisions that are still under study or awaiting policy decisions. Some of the provisions under study will likely form the subject of future legislation while others, such as those relating to closed classes of persons, will not. Still other provisions that do not now distinguish between men and women continue to reflect a social attitude based on the repealed distinctions and are likely to see change either as the next step of the rationalization of a legislative scheme or as a more distant response to changing social attitudes and demands. For instance, the rationale of man as the breadwinner, which led to the termination of a pension when the widow of a pensioner remarried, makes little sense when applied in the case of the remarriage of the widower of a pensioner. Similarly, considerable legislation relating to the family, especially provincial legislation, retains vestiges of medieval property concepts relating to women and children.

²⁸ R.S.C. 1970, c.C-5 as am. by *An Act to amend the Canada Pension Plan*, S.C. 1974-75, c.4.

²⁹ R.S.C. 1970, c.W-5 as am. by *Statute Law (Veterans and Civilian War Allowances) Amendment Act, 1974*, S.C. 1974-75, c.8.

³⁰ R.S.C. 1970, c.C-20 as am. by *Statute Law (Veterans and Civilian War Allowances) Amendment Act, 1974*, S.C. 1974-75, c.8.

³¹ *Citizenship Act*, Bill C-20, 1st Sess., 30th Parl., 1974-75.

^{31a} *Ibid.*, s.3(1)(b).

³² *Supra*, f.n.31.

Other Means of Implementation

As already noted, there are means of implementation other than legislation open to a government. These include the introduction of new programmes and the revision of administrative directives and practices. While, in an article directed to legal issues such as this, it would be inappropriate to dwell too long on administrative matters, it must be remembered that they form an important part of the structures and machinery for change and should not be overlooked.

As an administrative matter, the government has taken initiatives in a number of directions. It has, for example, revised Manpower programmes in the community to require that employment opportunities be made available to both men and women. Furthermore, as an employer, it has established in the Public Service Commission an Office of Equal Opportunities for Women and an Anti-discrimination Branch to ensure that the policies of non-discrimination are followed within government circles. Initiatives such as these not only produce direct administrative changes but, over a period of time, also contribute to the slow process of attitudinal change that, in turn, is reflected in the subsequent legislative and social demands of various segments of the community.

The Future Role of the Government in Developing Social Justice Through Law

(1) *Continuing obstacles to change.*

Given an expressed government policy endorsing equal status for women and legislative and administrative action to promote that policy, what then are the obstacles to its implementation?

One of the most important challenges to reformers, as noted by the Prime Minister,³³ is the diversity of interests and needs inherent in our pluralistic society. The sure determination of what are the most pressing claims to be satisfied at any given time is made more difficult when the demands are expressed in a federal jurisdictional framework. Thus, even when the need for reform in a particular field is recognized, as in the case of family law, the division of jurisdiction between the federal and provincial governments, and the legislative variations among the provinces, tend to hinder the bringing of a clear focus to bear on the underlying problem, which

³³ See text, *supra*, "The Process of Law Reform".

in essence may be similar in most provinces. The discriminatory nature of the married women's property law is recognized throughout Canada but, except in Quebec (and to a lesser extent in British Columbia and the Northwest Territories), comprehensive solutions to the problem have not yet found their way into legislative form.

Another barrier to change is the retention of obsolete social concepts and attitudes by large segments of the population. It is not only the reformers who write letters and bring pressures to bear on legislators. Moreover, even people with the best of conscious intentions may be victims of ingrained, subconscious discriminatory attitudes.

(2) *Possible solutions.*

To meet the challenge of constantly-evolving social attitudes and to break down the barriers to change, it is not sufficient merely to amend the law to eliminate existing discriminatory provisions and to proclaim fair and just administrative practices. It is necessary to build into the legal machinery of the state provision for continuing review and study for the purposes of reform. This may be done in a number of ways. One of the most important is the establishment of a law reform commission having the expertise and facilities to study serious existing legal problems and offer solutions that may stimulate action in one or more of the jurisdictions that make up the Canadian mosaic. To this end, the Law Reform Commission of Canada was created with the object of studying and keeping under review

... on a continuing and systematic basis the statutes and other laws comprising the laws of Canada with a view to making recommendations for their improvement, modernization and reform, including, without limiting the generality of the foregoing, ...

(d) the development of new approaches to and new concepts of the law in keeping with and responsive to the changing needs of modern Canadian society and of individual members of that society.³⁴

The Law Reform Commission has now published a number of working papers, four of which, the working papers entitled *Family Courts*,³⁵ *Family Property*,³⁶ *Maintenance on Divorce*,³⁷ and *Divorce*,³⁸

³⁴ *Law Reform Commission Act*, R.S.C. 1970 (1st Supp.), c.23, s.11.

³⁵ Law Reform Commission of Canada, *The Family Court* (1974), Working Paper No.1.

³⁶ Law Reform Commission of Canada, *Family Property* (1975), Working Paper No.8.

³⁷ Law Reform Commission of Canada, *Maintenance on Divorce* (1975), Working Paper No.12.

³⁸ Law Reform Commission of Canada, *Divorce* (1975), Working Paper No.13.

are of considerable importance in the search for more rational and just family laws, both at the federal and provincial levels. In the working paper on family property, the Commission states:

The conscience of Canadians was shocked by the application of the present law in the recent Supreme Court of Canada decision of *Murdoch v. Murdoch*, in which a married woman unsuccessfully sought to obtain a property interest in a valuable ranch to which her husband held legal title. The Court dismissed her contribution of work and management, which was about the same as her husband's, as being what was expected of an ordinary ranch wife in any event. The fact that she was as responsible as her husband for the value of the property did not give the Court any grounds for interfering with his legal title. When the law requires such results, then nothing could be more apparent than the fact that such law is no longer tolerable in a society that professes its laws to be both humane and just.³⁹

Speaking further on the subject of married women's property rights, the Commission laments the social concepts that have embodied in certain property laws a "patronizing and unnecessarily protective attitude towards married women".⁴⁰ The Commission concludes:

Marriage should be a partnership between persons who are legal equals. It is within the power of the people of Canada, acting through their elected representatives, to ensure that this ideal is realized. In our view, nothing short of this goal should be sought and no law short of this goal should be tolerated.⁴¹

While a law-oriented entity such as the Law Reform Commission performs an essential function in the evolution of social justice, by means of its in-depth studies and reports on legal subjects, there is also a place for non-professional advisory groups attuned to the expressed needs and wishes of the community as one of the continuing structures for social change. In recognition of the importance of such groups, and in response to the recommendations of the Royal Commission, an Advisory Council on the Status of Women was created by the federal government in 1973 to bring regularly to the attention of the government and the public the advances that have been made and the obstacles that continue to hinder improvement in the status of women. This Council has a full-time Chairperson and Vice-Chairperson and a small support staff and has adopted, *inter alia*, the following terms of reference:

- (a) to advise and consult on matters pertaining to women and report annually on the progress being made in improving the status of women in Canada;

³⁹ *Supra*, f.n.36, 2-3.

⁴⁰ *Ibid.*, 11.

⁴¹ *Ibid.*, 45.

- (b) to undertake research on matters relevant to the status of women and suggest research topics that can be carried out by governments, private business, universities and voluntary associations;
- (c) to establish programmes to correct attitudes and prejudices adversely affecting the status of women;
- (d) to propose legislation, policies and practices to improve the status of women;
- (e) to consult systematically with women's bureaux or similar provincial organizations, and with voluntary associations particularly concerned with the problems of women.⁴²

Although continuing structures for social change, such as the Law Reform Commission and the Advisory Council on the Status of Women, will probably play increasingly influential roles in the emerging framework of Canadian society, other machinery designed to protect the basic elements of the social structure and the gains already achieved must also be incorporated into that framework. Not all social reforms are achieved in response to general social demands. Some are produced in response to the innovative proposals of reform-minded legislators or interested citizen groups and may outreach the social attitudes of large segments of the population. In such cases, it is especially important that enforcement procedures be written into the new laws to ensure that they are respected. While law enforcement has long been a function of the courts, it is expected that it will also be a concern of any new anti-discrimination agency, such as the Canadian Human Rights Commission, proposed in the *Canadian Human Rights Act* introduced in the current session of Parliament.⁴³

Conclusions

What then is the immediate role of governments as regards women's rights, and what should that role be in the future?

1. It is submitted that it is the responsibility of governments, both federal and provincial, to progress along the path to social justice by continuing to repeal explicit discriminatory provisions in the law with the greatest possible expedition. Sexually based enact-

⁴² Advisory Council on the Status of Women, *What's Been Done?* (1974), 29; see also, *supra*, f.n.3, 470, Recommendation 166.

⁴³ Bill C-72, 1st Sess., 30th Parl., 1974-75.

ments that, while not distinguishing between men and women, still have a differential impact or perpetuate an obsolete social attitude that impedes the personal growth of women, and their integration into the mainstream of Canadian society, should also be eliminated.

2. The governments should ensure that their programmes and administrative practices are conducive to the full participation of women as equals with men in economic and social structures.
3. They can further discharge their responsibility by providing enforcement machinery, such as human rights commissions, to protect the gains already achieved.
4. They can and should provide machinery for the continuing review and reform of the law.
5. They should be prepared to reconsider and redesign the structures for change in response to changing needs and demands.

New policies and structures for change designed and intended to achieve the above goals are now either in place or being created. Where do we go from here? Is it the proper function of governments to content themselves with the establishment of an egalitarian legal framework through which the competing demands of the population may be heard and evaluated in the search for social justice? Or should a government proceed further by indicating the direction it considers that social attitudes should take? And if it does, at what stage should the government cease to interfere in the social evolution of its people or run the risk of appearing to be a totalitarian regime? To apply the question more directly, to what extent does the worthiness of ensuring full legal and social equality for women justify a government in taking measures to modify social attitudes?

These are questions that all lawyers and other persons interested in pursuing the ideal of social justice must ask themselves. The author is confident that, so long as a government concerns itself with the maximum satisfaction of the demands of its people in a society that emphasizes human dignity in all its manifestations, one need not be too concerned about policies designed to secure attitudinal change towards this end. The active pursuit of social justice for one segment of the population tends to trigger concerns as to the human rights of other elements of society. As the Honourable Marc Lalonde, Minister responsible for the Status of Women, said recently:

Only through the presentation of facts contradicting the myths on which prejudice is based can people be persuaded to adopt new attitudes, and as a result, new modes of behaviour.⁴⁴

To finish on an optimistic note, it is submitted that, as social attitudes become more attuned to the demands of social justice, the law will be better able to discharge its obligations as an instrument for effecting social change. It is to be anticipated that the law, while continuing to serve as the "backbone of civilization", will in time cease to appear to any segment of the population, and to women in particular, to be "a barrier to their self-fulfillment that will be cracked by the winds of change".⁴⁵

⁴⁴ Address entitled *Equality: A Principle in Practice*, by the Honourable Marc Lalonde, Minister responsible for the Status of Women, to Action '75+, Ottawa, Oct. 15, 1975.

⁴⁵ See text, *supra*, "The Process of Law Reform".