

## Chronology of Some Legal Landmarks in the History of Canadian Women

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### 1774 Pre-Confederation:

*The British North America (Quebec) Act, 1774*, 14 Geo.III, c.83 (U.K.), commonly referred to as the *Quebec Act, 1774*, provides for a system of Civil Law in the Province of Quebec.

### 1791 Pre-Confederation:

*The Clergy Endowments (Canada) Act, 1791*, 31 Geo.III, c.31, commonly referred to as the *Constitutional Act, 1791*, gives the vote to all "persons" in Upper and Lower Canada who meet certain requirements as to property (s.20); but this will change in 1831 (see below).

### 1801 Lower Canada:

Married women can dispose of property by testament to their husbands; *An Act to explain and amend the law respecting Last Wills and Testaments*, 41 Geo.III, c.4 (Lower Canada).

### 1831 Lower Canada:

*An Act for rendering valid Conveyances of Lands and other immoveable Property held in Free and Common Soccage within the Province of Lower Canada, and for other purposes therein mentioned*, 9 Geo.IV, c.77 is passed. Land held in free and common socage must be disposed of according to the law of England, which at this time did not recognize the right of a married woman to hold property. Since the right to vote in a legislative election is contingent on certain property requirements, this Act severely restricts the right of a married woman to vote in such an election.

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The authors would like to emphasize that this Chronology is not exhaustive but attempts to highlight major developments in the law.

**1845 Province of Canada:**

Married women can renounce to dower; *Acte pour amender l'Ordonnance et l'Acte y mentionnés, concernant l'Enregistrement des Titres et des Biens immeubles, dans le Bas Canada, ou les Hypothèques dont ils sont grevés*, 8 Vict., c.27, s.4 (Prov. of Canada).

**1849 Province of Canada:**

An Act consolidating various legislative assembly elections Acts is passed and specifically excludes women from voting in any "County or Riding, City or Town"; *An Act to repeal certain Acts therein mentioned, and to amend, consolidate, and reduce into one Act, the several Statutory provisions now in force for the regulation of Elections of Members to represent the People of this Province in the Legislative Assembly thereof*, 12 Vict., c.27, s.46 (Prov. of Canada).

**1866 Lower Canada:**

Birth of the Civil Code, based partly on the French Civil Code of 1804 and partly on local custom: A married woman is legally incapable of contracting or of appearing before the courts (art.986); she may not engage in a calling distinct from that of her husband, nor engage in commerce without his consent (art.181); in community of property only the husband can administer and dispose of the joint property (art.1292), while in separation of property the wife can administer, but not dispose of, her own property (arts.1422 and 1424); mothers have the right to supervise and correct children only if the father defaults (art.245); they cannot act as tutors of minor children alone (art.282). This resembles the position of married women at common law a century earlier, summed up by Blackstone as follows: "By marriage, the husband and wife are one person in law: that is, the very being or legal existence of the woman is suspended during the marriage"; *Wendell's Blackstone's Commentaries* (1857), vol.1, 441.

**1872 Common law provinces:**

ONTARIO passes the *Married Women's Property Act, 1872*, 35 Vict., c.16 which allows a married woman to hold and dispose of property as if she were unmarried, and to enter into contracts — the first province to pass such an Act.

NEWFOUNDLAND passes an Act entitled *Of Deserted Wives and Children*, C.S.N. 1872, c.108 providing financial relief for abandoned wives and children.

**1873 Common law provinces:**

BRITISH COLUMBIA passes the *Married Women's Property Act, 1873*, 36 Vict., c.116.

**1875 Common law provinces:**

MANITOBA passes the *Married Women's Act of Manitoba, 38 Vict.*, c.25.

**1876 Common law provinces:**

NEWFOUNDLAND passes the *Married Women's Property Act of 1876*, see C.S.N. 1916, c.112, s.23.

**1884 Common law provinces:**

NOVA SCOTIA passes the *Married Women's Property Act, 1884*, 47 Vict., c.12.

ONTARIO passes *The Municipal Amendment Act 1884*, 47 Vict., c.32 which allows unmarried women and widows who own property to vote in local elections.

**1885 Canada:**

*The Electoral Franchise Act, 48-49 Vict.*, c.40 defines a "person" who may vote in federal elections as "a male person, including an Indian and excluding a person of Mongolian or Chinese origin" (s.2).

**1892 Quebec:**

*An Act to extend the franchise to spinsters and widows in municipal and school matters, 55-56 Vict.*, c.35 gives to widows and unmarried women the right to vote in municipal and school elections (ss.1 and 2). Married women will acquire these rights in 1941 (see below).

**1895 Common law provinces:**

NEW BRUNSWICK passes *The Married Women's Property Act, 58 Vict.*, c.24.

**1896 Common law provinces:**

PRINCE EDWARD ISLAND passes the *Married Women's Property Act, 59 Vict.*, c.5.

**1897 Common law provinces:**

ONTARIO: Clara Brett Martin is called to the Bar of Ontario, becoming the first woman lawyer in the British Empire. By

1923 the other provinces will have admitted women, but Quebec women must wait until 1941 (see below); MacLellan, "History of Women's Rights in Canada" in *Cultural Tradition and Political History of Women in Canada* (1971), Royal Commission on the Status of Women in Canada, Study No.8, 9. Twenty-seven years earlier, the U.S. Supreme Court barred women from practicing law because of "natural and proper timidity and delicacy"; Time Magazine, special issue on The New Woman, March 20, 1972, 67. Canadian male lawyers were equally askance "to see a woman seeking a profession where she is bound to meet much that would offend the natural modesty of her sex"; Can.L.J. (1896) vol.XXXII, no.10, 423.

**1900 Common law provinces:**

MANITOBA passes *An Act respecting the Protection of Married Women in certain cases*, 63-64 Vict., c.28 which gives protection to wives and children abandoned by the husband.

**1901 Common law provinces:**

BRITISH COLUMBIA passes the *Deserted Wives' Maintenance Act, 1901*, 1 Edw. VII, c.18.

**1907 Common law provinces:**

SASKATCHEWAN passes *The Married Woman's Property Act*, 7 Edw.VII, c.18.

**1911 Common law provinces:**

ONTARIO passes *The Deserted Wives' Maintenance Act*, 1 Geo.V, c.34.

SASKATCHEWAN passes *The Deserted Wives' Maintenance Act*, 1 Geo.V, c.14.

**1913 Common law provinces:**

ALBERTA passes *An Act respecting Infants*, 3 Geo.V, c.13 (2nd Sess.) allowing the mother to petition the court for custody of the children; she will be given powers, rights and obligations equal to those of her husband in 1920 (see below).

**1915 Quebec:**

The "Loi Pérodeau" amends the Civil Code to allow one spouse to inherit part of the estate if the other dies without a will; *Loi amendant le Code civil relativement aux successions*, 5 Geo.V, c.74, ss.624(a), (b) and (c).

**1916 Common law provinces:**

Women are given the right to vote in provincial elections in three provinces:

ALBERTA: *The Equal Suffrage Statutory Law Amendment Act*, 6 Geo.V, c.5.

MANITOBA: *An Act to amend "The Manitoba Election Act"*, 6 Geo.V, c.36.

SASKATCHEWAN: *An Act to amend The Statute Law*, 6 Geo.V, c.37, s.1.

**1917 Common law provinces:**

Women are given voting rights in two provinces:

BRITISH COLUMBIA: *Provincial Elections Act Amendment Act, 1917*, 7-8 Geo.V, c.23.

ONTARIO: *The Ontario Franchise Act, 1917*, 7 Geo.V, c.5 which, however, does not give women the ancillary right to hold office; this will be added in 1919 (see below).

BRITISH COLUMBIA passes the *Equal Guardianship of Infants Act*, 7-8 Geo.V, c.27 and becomes the first province to give the mother powers, rights and obligations equal to those of the father regarding the care, custody, education and control of their children.

**1918 Canada:**

*An Act to confer the Electoral Franchise upon Women*, 8-9 Geo.V, c.20 gives women the vote in federal elections two years ahead of the United States and ten years ahead of Great Britain.

**Common law provinces:**

NOVA SCOTIA passes *The Nova Scotia Franchise Act*, 8-9 Geo.V, c.2 giving women the right to vote in provincial elections.

**1919 Quebec:**

*The Women's Minimum Wages Act*, 9 Geo.V, c.11 provides for a Commission to investigate working conditions and wages and to set minimum standards if it finds them insufficient.

**1920 Canada:**

The *Dominion Elections Act*, R.S.C. 1906, c.6 is amended by 10-11 Geo.V, c.46 to give women the right to hold political office and sit in Parliament (s.38).

**Common law provinces:**

NEW BRUNSWICK passes *An Act to extend the electoral franchise to women, and to amend the New Brunswick Electors Act*, 9 Geo.V, c.63; the right to hold office is omitted but will be added in 1934 (see below).

ONTARIO passes *The Women's Assembly Qualification Act, 1919*, 9 Geo.V, c.8 giving women the right to be elected to the Legislative Assembly.

**1920 Common law provinces:**

ALBERTA passes *An Act to amend An Act respecting Infants, and to Provide for Equal Parental Rights*, 10 Geo.V, c.10.

**1921 Common law provinces:**

BRITISH COLUMBIA passes *An Act concerning the Employment of Women before and after Childbirth*, 11 Geo.V, c.37 and becomes the first province to provide maternity leave for working women: Before "confinement" a woman may take up to six weeks leave of absence; she is not permitted to work during the six weeks following "confinement" and in the case of a woman nursing a child, she shall be given half an hour off, twice a day, for this purpose (s.3); any employer contravening these provisions is subject to a penalty not exceeding \$1,000 (s.5); subsequent to the period of "confinement", it is unlawful for an employer to give a woman notice of dismissal because of her absence (s.5).

**1922 Common law provinces:**

ALBERTA passes *An Act respecting the Rights and Property of Married Women*, 12 Geo.V, c.10.

MANITOBA passes *An Act respecting the Welfare of Children*, 12 Geo.V, c.2 giving parents joint custody and control over children (s.123).

PRINCE EDWARD ISLAND gives women the right to vote; *The Election Act, 1922*, 12 Geo.V, c.5.

**1925 Common law provinces:**

NEWFOUNDLAND gives women the vote at age 25; *An Act to amend Chapter 3 of the Consolidated Statutes of Newfoundland (Third Series) entitled "Of the Election of Members of the House of Assembly"*, 15 Geo.V, c.7. The age will be lowered to 21 in 1954 (see below).

**1926 Common law provinces:**

NEW BRUNSWICK passes *The Deserted Wives' and Children's Maintenance Act, 1926*, 16 Geo.V, c.11.

SASKATCHEWAN passes *An Act to amend The Infants Act, S.S. 1925-26*, c.42 giving joint guardianship to parents.

**1927 Common law provinces:**

ONTARIO passes *The Infants Act, 1927*, 17 Geo.V, c.50 giving the parents joint custody.

**1928 Canada:**

*In the matter of a reference as to the meaning of the word "Persons" in section 24 of the British North America Act, 1867* [1928] S.C.R. 276: The Supreme Court rules that women are not among the "qualified persons" who may be called to the Senate under the terms of the *B.N.A. Act*, since that Act was passed in 1867 when women had no legal capacity.

**1930 Canada:**

*Henrietta Muir Edwards v. A.G. for Canada* [1930] A.C. 124: The Privy Council overrules the Supreme Court decision in the "Persons" case (see 1928 above), and women are pronounced legal persons.

**1931 Quebec:**

*An Act to amend the Civil Code and the Code of Civil Procedure respecting the civil rights of women*, 21 Geo.V, c.101 is passed, following the recommendations of the Dorion Commission. Implemented immediately are: Control by the wife over her earnings and damages for injury (art.1425a); free disposal of moveable property by women married in separation (art.1422); full legal capacity for women separate as to bed and board (art.210); increased facility for obtaining separation of property (arts.1311, 1312; 1313, 1314c, 1314d repealed).

**1934 Common law provinces:**

NEW BRUNSWICK passes *An Act To Amend "The Elections Act", being Chapter 4 of The Revised Statutes, 1927*, 24 Geo.V, c.22 which amends *The Election Act* to allow women to hold seats in the Legislative Assembly by striking the word "male" from s.33 of that Act.

**1935 Quebec:**

A Bill introduced in the Legislative Assembly would forbid women from working anywhere except on the farm, in the woods or in their homes but is defeated; *The Gazette*, Jan. 23, 1935, 8.

**1940 Quebec:**

*An Act granting to women the right to vote and to be eligible as candidates*, 4 Geo.VI, c.7 comes only four years after *The Quebec Election Act*, 1 Edw.VIII (2d), c.8 extended full suffrage to all men in the province.

**1941 Quebec:**

*An Act respecting the Bar*, 5 Geo.VI, c.56 finally allows the admission of women to the Bar (after 13 attempts). They will be permitted to become notaries in 1956 (see below).

Married women are given the vote in municipal elections: *An Act to amend the Cities and Towns' Act*, 5 Geo.VI, c.41 and *An Act to amend the Municipal Code*, 5 Geo.VI, c.69.

**Common law provinces:**

NOVA SCOTIA passes *The Wives' and Children's Maintenance Act*, 5 Geo.VI, c.8.

**1942 Canada:**

*An Act to amend the Income War Tax Act*, 6 Geo.VI, c.28 permits one spouse to deduct alimony and maintenance payments and obliges the other to include them in income (ss.7(1) and 11). A further amendment in 1958 will permit these deductions where spouses are living apart but are not legally separated (see below).

**1944 Quebec:**

Under new federal legislation, *The Family Allowance Act*, 8 Geo.VI, c.40, cheques are sent to the father instead of the mother in Quebec, since married women are still restricted as to their legal capacity.

**1945 Quebec:**

The Civil Code is amended to permit wives to own amounts paid to them personally in damage actions; art.1279a added by *An Act to amend the Civil Code*, 1945, 9 Geo.VI, c.66, s.3.

**1946 Canada:**

*The Canadian Citizenship Act*, 10 Geo.VI, c.15 now permits a woman to retain Canadian nationality if she marries an alien. Previously, under the *Naturalization Act, 1914*, 4-5 Geo.V, c.44, ss.13 and 14, she lost Canadian citizenship.

**1951 Quebec:**

The Civil Code is amended to allow married women to exercise civil rights in their maiden name; art.56a, added by *An Act to amend the Civil Code*, 14-15 Geo.VI, c.42, s.1.

**1952 Common law provinces:**

MANITOBA allows women to sit as jurors; *An Act to amend The Jury Act*, 16 Geo.VI, c.37.

**1953 Canada:**

The Criminal Code, R.S.C. 1927, c.36 is repealed by 2-3 Eliz. II, c.51 enacting the new Criminal Code, s.186 of which makes it an offence for husbands not to provide "the necessaries of life" to wives, children and other dependents.

*The Canada Fair Employment Practices Act*, 1-2 Eliz.II, c.19 prohibits discrimination based on sex in the hiring of employees. The United States does not introduce similar laws until 1964 and 1970.

**1954 Quebec:**

The Civil Code is finally amended to remove the double standard regarding adultery contained in arts.187 and 188; *An Act to amend the Civil Code*, 3-4 Eliz.II, c.48. Up to now a husband could obtain separation if the wife committed adultery, but a wife could only obtain separation if the husband committed adultery *and kept his mistress in the matrimonial home*. The Dorion Commission had refused to change this, saying that women forgive more easily, and that the sting of public ridicule is more painful for men; Casgrain, *Une femme chez les hommes* (1971), 192.

**Common law provinces:**

NEW BRUNSWICK allows women to sit as jurors; *An Act to Amend the Jury Act*, 3 Eliz.II, c.50.

NEWFOUNDLAND passes *The Election Act, 1954*, S.N. 1954, No.79 which lowers the voting age for women from 25 to 21 years, the legal age for men (s.3).

**1956 Canada:**

The *Female Employees Equal Pay Act*, 4-5 Eliz.II, c.38 provides equal pay for women doing "identical or substantially identical work" to men, for the same employer (s.4).

**Quebec:**

*An Act to amend the Notarial Act (sic)*, 4-5 Eliz.II, c.62 provides that members of either sex are eligible to become notaries (s.3).

**Common law provinces:**

MANITOBA makes provision for equal pay for women by *The Equal Pay Act*, 4-5 Eliz.II, c.18.

**1957 Common law provinces:**

ALBERTA makes provision for equal pay for women by *An Act to amend The Alberta Labour Act*, 6 Eliz.II, c.38, s.41.

**1958 Canada:**

The *Estate Tax Act*, 7 Eliz.II, c.29 allows widows not to pay succession duties on a portion of the estate they receive from their husbands (ss.7(1)(a), (b) and (c)).

*An Act to amend the Income Tax Act*, 7 Eliz.II, c.32 permits one spouse to deduct alimony or maintenance payments and obliges the other to include them in income when the spouses are living apart but not legally separated (s.1).

**1960 Canada:**

The *Canadian Bill of Rights*, S.C. 1960, c.44 forbids any kind of discrimination based on sex (s.1(b)). This section was raised unsuccessfully to challenge the *Indian Act*, R.S.C. 1970, c.I-6 in the case of *Attorney-General of Canada v. Lavell* [1974] S.C.R. 1349 (see 1973 below).

**1961 Common law provinces:**

NEW BRUNSWICK passes the *Female Employees Fair Remuneration Act*, 9-10 Eliz.II, c.7 providing equal pay for "the same work done in the same establishment" (s.3(1)).

**1964 Canada:**

The *Canada Pension Plan*, S.C. 1964, c.51 gives certain benefits to widows but not to widowers, thus making women's contributions to the Plan less valuable (s.44). This will be changed in 1974 (see below).

**1964 Quebec:**

Claire Kirkland-Casgrain, Quebec's only woman cabinet minister, is instrumental in amending the Civil Code through *An Act respecting the legal capacity of married women*, S.Q. 1963-64, c.66: The wife participates with the husband in the moral and material control of the family and its maintenance, as well as the education of the children (art.174); the wife may be authorized to take up a separate residence when the husband's choice of residence endangers the physical or moral health of the family (art.175); a married woman has full legal capacity, subject only to those restrictions arising from her matrimonial regime (art.177); many impediments to her capacity to contract obligations and assume civil responsibility are removed (arts.3360 and 1011); the wife separate as to property may, to the same extent as her husband, perform civil acts and contract civil obligations (arts.1422 and 1424) and the wife in community of property has the same rights subject to her husband's consent (arts.643, 763, 906, 282, 1292, 178, 1297, 182 and 1415).

*An Act respecting discrimination in employment*, S.Q. 1964, c.46 covers hiring, but makes no mention of equal pay. However, such a provision will be added in 1975 (see below).

**Common law provinces:**

BRITISH COLUMBIA passes the *Jury Act Amendment Act, 1964*, 12-13 Eliz.II, c.26 which provides that women cannot be exempted merely on the basis of their sex.

NEW BRUNSWICK: The *Minimum Employment Standards Act*, S.N.B. 1964, c.8 provides maternity leave for working women (ss.11, 12 and 13).

**1966 Common law provinces:**

PRINCE EDWARD ISLAND passes *An Act to Amend the Jury Act*, 15 Eliz.II, c.22 which allows women to sit as jurors.

**1967 Canada:**

Appointment of the Royal Commission on the Status of Women in Canada to investigate and recommend steps "to ensure for women equal opportunities with men in all aspects of Canadian society"; P.C. 1967-312, Feb. 16, 1967 which designates the Chairman by the name of her husband — Mrs John Bird.

**1968 Canada:**

The *Divorce Act*, S.C. 1967-68, c.24 allows the Governor General in Council, on advice from the Lieutenant Governor in Council, to declare that the superior courts of Quebec and Newfoundland shall have jurisdiction in divorce (s.22). These provinces had no divorce courts at the time of Confederation, and they were prohibited by s.91(26) of the *B.N.A. Act* from creating any after 1867. Divorces from these two provinces had to be obtained by special Acts of the Senate. The Act allows women a separate domicile for the purpose of divorce (s.6); the grounds for divorce are standardized and a new concept of "marriage breakdown" is introduced where neither party is at fault (s.4); a husband as well as a wife may be granted alimony (ss.11 and 12).

*An Act to amend the Income Tax Act and the Estate Tax Act*, S.C. 1968-69, c.33 makes the inheritance received by widows from their husbands entirely exempt from succession duties (s.3).

**Common law provinces:**

ONTARIO passes *The Employment Standards Act, 1968*, S.O. 1968, c.35 which gives equal pay to women employed "for the same work performed in the same establishment, the performance of which requires equal skill, effort and responsibility, and which is performed under similar working conditions" (s.19).

PRINCE EDWARD ISLAND passes a *Human Rights Code*, 17 Eliz.II, c.24 which gives equal pay for "substantially the same work done in the same establishment" (s.7).

**1968-75 Canada:**

Substantial amendments to the *Income Tax Act*, S.C. 1970-71-72, c.63 which now refers to the "spouse" instead of "husband" or "wife". Gifts between spouses are not taxable (s.74); women can deduct child-care expenses (s.63).

**1969 Canada:**

The *Criminal Law Amendment Act, 1968-69*, S.C. 1968-69, c.38, s.18 amends s.237 of the Criminal Code, S.C. 1953-54, c.51 to make abortion lawful under certain conditions, such as approval by a therapeutic abortion committee which finds that the mother's life or health would be endangered, and provides for the carrying out of the operation by a qualified medical practitioner in good faith.

**1969 Quebec:**

*An Act concerning matrimonial regimes*, S.Q. 1969, c.77 further amends the Civil Code: The legal matrimonial regime is changed from community of property to partnership of acquests (arts.1260 *et seq.*); the full legal capacity of both partners under all regimes is established (art.177); the wife's consent becomes mandatory before the husband administers their joint property (arts.181-184). Under the regime of partnership of acquests, the spouses live as if in separation of property, but when the marriage ends each gets half the "acquests" which the other acquired during the marriage (arts.1266c and 1266d). The Ontario Law Reform Commission, in its *Report on Family Law: Part IV, Family Property Law* (1974) recommends a very similar regime to replace the present system of separation of property, which can leave a wife without any assets at the end of a marriage, *e.g.*, *Murdoch v. Murdoch* [1975] 1 S.C.R. 423 (see 1973 below).

Réjane Laberge Colas is the first woman in Canada to be made a superior court judge; (1969) 29 R.du B. 187.

**Common law provinces:**

Equal pay provisions are passed by three provinces:

BRITISH COLUMBIA: *Human Rights Act*, S.B.C. 1969, c.10, s.4.

NOVA SCOTIA: *Equal Pay Act*, S.N.S. 1969, c.8, s.3.

SASKATCHEWAN: *Labour Standards Act, 1969*, S.S. 1969, c.24, ss.41-50.

**1970 Common law provinces:**

NEWFOUNDLAND makes provision for equal pay in *The Newfoundland Human Rights Code*, R.S.N. 1970, c.262, s.10.

**1971 Canada:**

*An Act to amend the Canada Labour (Standards) Code*, S.C. 1970-71-72, c.50 provides equal pay for equivalent work for all federal employees (s.8); it also provides maternity leave for employees in jobs under federal jurisdiction (s.17) at the suggestion of the Royal Commission on the Status of Women in Canada. (Only two provinces have previously enacted laws on maternity leave, British Columbia (see 1921 above) and New Brunswick (see 1964 above)).

The Public Service Commission establishes an Office of Equal Opportunity for Women to promote equal employment opportunities in the federal public service; Labour Gazette, January 1975, 4.

**Quebec:**

*An Act to amend the Jury Act*, S.Q. 1971, c.15 finally removes the requirements that a juror be male (s.2).

**Common law provinces:**

ONTARIO: *Cohen v. Cohen* (1971) 16 D.L.R. (3d) 241: The Court of Appeal awards a husband alimony.

**1972 Canada:**

The International Labour Organization Convention 100 concerning equal remuneration for men and women workers in equivalent positions or doing equivalent work is ratified; Labour Gazette, March 1974, 201.

The *Canada Assistance Plan Regulations*, SOR/67-62, Canada Gazette Part II, Vol.101, No.3, February 8, 1967 are amended by the *Canada Assistance Plan Regulations*, SOR/72-468, Canada Gazette Part II, Vol.106, No.22, November 10, 1972 to expand financial support for provincially-approved day-care institutions to include operating costs.

The Canada Law Reform Commission recommends the inadmissibility of evidence regarding the character of a victim of a sex offence; Study paper no. 4, *Character*, Law of Evidence Project (undated).

**Common law provinces:**

BRITISH COLUMBIA passes the *Family Relations Act*, S.B.C. 1972, c.20 allowing both husband and wife to ask for alimony or maintenance (ss.5 and 11); both parents are made responsible for the support of their children (s.16).

**1973 Canada:**

*Attorney-General of Canada v. Lavell* [1974] S.C.R. 1349: The Supreme Court refuses to declare those sections of the *Indian Act* which discriminate against women as contrary to the *Canadian Bill of Rights* and therefore *ultra vires*.

*Murdoch v. Murdoch* [1975] 1 S.C.R. 423: The Supreme Court holds that a farm wife has no legal interest in land belonging to her husband, which she has helped work and develop.

**1973 Quebec:**

A Council on the Status of Women is appointed to watch over "the equality and respect of the rights and status of women"; *Council on the Status of Women Act*, S.Q. 1973, c.7, ss.2 and 3.

**Common law provinces:**

ALBERTA passes *The Attorney-General Statutes Amendment Act*, 1973, No.2, S.A. 1973, c.61 amending the *Domestic Relations Act*, R.S.A. 1970, c.113 to allow the court to grant alimony to either husband or wife in cases where the plaintiff would be entitled to a judgment of judicial separation or a judgment for restitution of conjugal rights (s.5(6)); where a decree of divorce or nullity of marriage has been obtained, the court may order *either* party to secure to the other an annual sum for a term not to exceed the lifetime of the other party (s.5(13)). The *Individual's Rights Protection Act*, S.A. 1972, c.2 is also amended to provide that no employer shall employ males or females performing similar work at different rates of pay (s.9(a)).

*Fiedler v. Fiedler* [1974] 6 W.W.R. 320: The Supreme Court of Alberta holds that a wife has an equal interest in land bought during marriage which the wife has helped work. The decision is subsequently reversed by the Court of Appeal (see 1975 below).

BRITISH COLUMBIA passes the *Human Rights Code of British Columbia Act*, S.B.C. 1973, c.119 prohibiting discrimination based on sex or marital status.

**1974 Canada:**

*An Act to amend the Canada Pension Plan*, S.C. 1974-75, c.4 provides that the children and surviving spouse may benefit from the Pension Plan when that surviving spouse is male.

*An Act to amend the Canada Pension Plan (housewives' contributions and benefits)*, Bill C-202, 1st Sess., 30th Parl., 1974 is introduced. "Employment" within the meaning of s.2 of the *Canada Pension Plan* is defined to include the occupation of housewife and allows housewives to contribute any amount up to the maximum as though it were a joint contribution of employer and employee.

The *Statute Law (Veterans and Civilian War Allowances) Amendment Act*, 1974, S.C. 1974-75, c.8 provides males and

females with equality of status under the *War Veterans Allowance Act*, R.S.C. 1970, c.W-5 and stipulates that every male reference in the Act is to be taken to include females unless the section expressly excludes this interpretation (s.2).

The *Citizenship Act*, Bill C-20, 1st Sess., 30th Parl., 1974-75 provides that the law regarding citizenship shall apply equally to men and women: The residence requirements are equalized for both sexes (s.5) (as it presently stands, the law provides that an alien wife of a Canadian citizen may be granted citizenship after 1 year of residence, while the alien husband of a Canadian citizen may not be granted citizenship until he has resided in Canada for 5 years); legitimate children of Canadian females are given the same rights as children of Canadian males (s.3(1)(b)) (as the law presently stands, only the illegitimate child of a Canadian woman has the same citizenship rights as the child of a Canadian male); any woman who has lost Canadian citizenship through marriage may reacquire it as of right (s.10(2)(a) and (b)).

*An Act to amend the Unemployment Insurance Act*, Bill C-125, 1st Sess., 29th Parl., 1974 (not proceeded with in the 2nd Sess. of the 29th Parl.) would have provided for maternity leave of 15 weeks; however, this provision is carried over into the *Statute Law (Status of Women) Amendment Act, 1974* (see 1975 below).

#### 1975 Canada:

*Statute Law (Status of Women) Amendment Act, 1974*, S.C. 1974-75, c.66 amends several existing statutes to provide for equality of status before the law for men and women:

- 1) The *Criminal Code*, R.S.C. 1970, c.C-34, s.197(1)(b) is repealed and the new section requires a "married person" (instead of "husband") to provide the necessaries of life for the "spouse" (instead of "wife") (s.8(1)); s.23(3) is repealed, removing the protection granted a married woman whose husband commits a crime, and who, at the insistence of her husband, aids another person who is party to her husband's offence (s.7);
- 2) The *Immigration Act*, R.S.C. 1970, c.I-2 is amended and the expression "head of family" which has always been taken to mean "husband" is deleted and replaced with terminology capable of embracing either the husband or the wife (s.9);
- 3) The *Public Service Employment Act*, R.S.C. 1970, c.P-32 is amended to extend the prohibitions against discrimination

under that Act to include discrimination based on marital status or age (s.10);

4) The *Pension Act*, R.S.C. 1970, c.P-7, c.22 (2nd Supp.), S.C. 1972, c.12 and c.20, 1973-74, c.19 is amended to provide for equality of status for male and female members of the armed forces (s.11); the discrepancy between the ages up to which a pension may be paid in respect of a male child and a female child is removed (ss.13(1) and (2)); the Commission loses the discretion to refuse to award an additional pension to children of a female member of the forces, or to refuse a pensioner who is a married woman the additional pension (ss.13(4) and 14); a pension may now be paid to a widow who was maintaining a member of the forces at the time of his death, and the prohibition against payment of a pension to a widower of a member of the forces is deleted (s.15); the discrepancy between the ages up to which a brother or sister of a member of the forces can be paid a pension is removed (s.16(1) and (2)).

5) The *National Defence Act*, R.S.C. 1970, c.N-4, c.44 (1st Supp.), c.10 (2nd Supp.), S.C. 1972, c.13 is amended to substitute the word "persons" for "boys" so as to allow girls to join cadet organizations (s.21).

6) The *Unemployment Insurance Act*, S.C. 1970-71-72, c.48, 1973-74, c.2 is amended to provide 15 weeks maternity leave benefits to be paid within a more flexible period surrounding the week in which confinement occurs and within the claimant's initial benefit period (s.22).

7) The *Civilian War Pensions and Allowances Act*, R.S.C. 1970, c.C-20, c.3 (2nd Supp.), S.C. 1972, c.12 is amended to allow a pension to be paid to a woman who was not a dependent of her deceased spouse, or who was not wholly or substantially maintained by him (ss.18 and 19).

8) The *Canada Elections Act*, R.S.C. 1970, c.14 (1st Supp.) as amended by R.S.C. 1970, c.10 (2nd Supp.) and S.C. 1973-74, c.51 is amended to establish, *inter alia*, the same residence provisions for husbands of temporary workers as now exist for wives of temporary workers under that Act (s.2).

The *Canadian Human Rights Act*, Bill C-72, 1st Sess., 30th Parl., 1974-75 provides for the establishment of a Canadian Human Rights Commission to hear complaints of discrimination based on, *inter alia*, sex and marital status. If a complaint is well-founded, the Commission may appoint a conciliator to settle the matter, or a Human Rights Tribunal to conduct

a public hearing. The Tribunal may order that a discriminatory practice cease and that those rights denied be given the complainant. It may also compensate the complainant with an award of up to \$5,000.00. A discriminatory practice is defined to include denying an individual access to services, facilities or accommodations ordinarily available to the general public; the Bill applies to discrimination in employment, leased commercial premises or residential accommodations. Trade unions excluding, suspending or expelling anyone for discriminatory reasons would be subject to the legislation.

*Attorney-General of Canada v. Canard* (1975) 52 D.L.R. (3d) 548: The Supreme Court refuses to declare that those sections of the *Indian Act* denying an Indian woman the right to act as administratrix of her husband's estate are contrary to the *Canadian Bill of Rights*.

*Morgentaler v. The Queen* (1975) 53 D.L.R. (3d) 161: The Supreme Court rejects the defence's argument that the restrictions on abortion provided by the Criminal Code are unconstitutional. The Court upholds the decision of the Quebec Court of Appeal, overturning the jury's verdict of acquittal and entering a verdict of guilty.

#### Quebec:

*Charter of human rights and freedoms*, Bill 50, 3d Sess., 30th Leg., Que.Nat.Ass., 1975, assented to June 27, 1975 provides for equal pay for equal work for "members of the personnel of the same firm carrying on their duties at the same place" (s.43).

#### Common law provinces:

ALBERTA: *Fiedler v. Fiedler* [1975] 3 W.W.R. 681: The Supreme Court of Alberta, Appellate Division, reverses the lower court decision and holds that a wife has no legal interest in land which is acquired during marriage and which she has helped work.

ONTARIO enacts *The Family Law Reform Act*, S.O. 1975, c.41 in response to the Supreme Court of Canada's decision in *Murdoch v. Murdoch* (see 1973 above). The Act provides that married persons are given separate and distinct personalities for all purposes of Ontario law except domicile (s.1(1)); married women now have the right to act as guardian *ad litem* or next friend for an infant in a law suit (s.1(3)(b)); in the absence of an agreement to the contrary, the contribu-

tion of money or money's worth which one spouse makes to the property or business owned by the other will be treated as if made by one individual to another outside marriage (ss.1(3)(c) and (d)); the *Married Women's Property Act*, R.S.O. 1970, c.262, ss.2-11 and 13 are repealed but not those provisions setting out the procedure for determining disputes between a husband and wife (s.6); however, the interest of husband and wife in marital property is *not* dealt with.

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