

# Women and the Law in Nova Scotia

## LEGAL REMEDIES OF MARRIED WOMAN

Civil remedies of married women as to property.

17 (1) Every married woman shall have in her own name against all persons whomsoever, including her husband, the same civil remedies for the protection of her separate property as if such property belonged to her as a *feme sole*.

If married man against wife.

(2) Every married man shall have against his wife the same civil remedies for the protection of his property as if his wife were a *feme sole*.

CHAPTER 176

## Married Women's Property Act

### Certificate of Marriage

This is to Certify that, on the 9th day of August  
A.D. 1968, at Scottdunn

in the Province of Nova Scotia, I solemnized the Marriage of  
..... and  
..... under Marriage License

CHAPTER 10 21 Eliz. II

An Act to Provide for a Labour Standards Code

(Assented to the 15th day of May, A.D. 1972)

Be it enacted by the Governor and Assembly as follows:

#### INTERPRETATION

1 In this Act,

(a) "construction industry" means the on site constructing, erecting, altering, decorating, repairing, demolishing of buildings, structures, roads, sewers, water mains, pipe lines, tunnels, shafts, bridges, wharves, piers, canals or other works;

(b) "Director" means the Director of Labour Standards or other officer of the Department of Labour designated by the Minister to administer this Act, and any person acting under the control and direction of the person designated by the Minister to administer this Act;

(c) "discharge" means a termination of employment by an employer other than a lay-off;

(d) "employee" means a person employed to do work and includes a deceased employee;

(e) "employer" means a person, firm, corporation, agent, manager, representative, contractor or sub-contractor having control or direction of or being responsible, directly or indirectly, for the employment of any employee;

(f) "establishment" means a place or places at or in which all or any part of a business or undertaking of an employer is or has been carried on;



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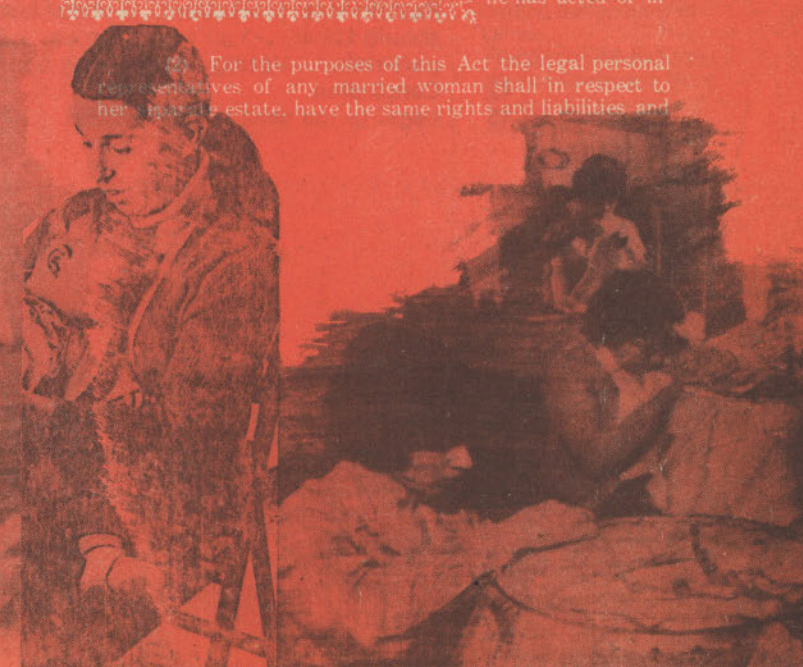
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For the purposes of this Act the legal personal representatives of any married woman shall in respect to her separate estate, have the same rights and liabilities and



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# Introduction

This booklet is a revised edition of **Women and the Law in Nova Scotia**, published in 1972.

In the past four years, women's interest in their legal position in this province has grown tremendously, in women's groups, unions, schools. The revised edition has been produced in response to women's requests for updated information on how the law treats them, and for a fuller look at some areas of the law. About 30,000 copies of the previous booklet have been distributed. That's about one for every ten women in Nova Scotia.

Since 1972, there have been changes in law that directly affect women. Many sections of the Criminal Code have been amended or repealed: vagrancy sections used against women, and rape trial procedures, for example. Armed forces pensions are now given equally to male or female partners; the head of the family under the Immigration Act can now be either partner; women have more rights to maternity leave benefits than they did, including the right to take leave to care for an adopted child. The Nova Scotia Human Rights Act now prohibits discrimination against people with a physical handicap and people aged 40-65. Tenants in Nova Scotia are more protected against rent increases by landlords. Common-law couples, in general, have more legal rights and obligations towards each other than before.

However, much more hasn't changed during the past four years in women's position under the law. Abortion still stands as a crime under the Criminal Code. Men can still legally expect to exchange their financial support for their wives sexual fidelity. A woman's contribution to her home (in effort or money) doesn't guarantee her a legal right to a fair share of the family property at separation. There is no human rights provision protecting women against discrimination because of marital status or sexual preference.

Many women have entered law school in the past four years, about ten times as many as before. However, lawyers are still mostly men, usually not at all interested in changing the law to benefit women. Lawyers are highly-paid, high status members of our community; they have close professional and social links to business and government. Women are outside this club.

Lawyers help perpetuate the belief that the law is too difficult for the ordinary person to understand. Law is full of complicated language and lawyers can earn a lot of money translating legal abstractions into simple English. Most of us are intimidated by the law. We rarely press a lawyer for a precise explanation of what the law says about us, we rarely treat a legal service like any consumer service. We don't complain and we don't shop around.

## How to use this booklet

This booklet is **not** a step-by-step handbook to any part of Nova Scotian law. It is in no way intended to be a substitute for a lawyer's

advice. Each case has its own complications, its own wrinkles. **No one should jeopardize her legal position by acting on the basis of this publication alone.**

We have tried most of all to give women a perspective on law: how it defines women in theory as inferior to and different from men, how it works in practice to support other social institutions which perpetuate this view. We have concentrated on those areas of the law and those cases we think can best provide examples of this. We discuss cases of national importance such as those of Irene Murdoch and Jeanette Lavell, because they are relevant to women in all parts of Canada.

The precise details of the law as it now stands may change and sections of this booklet could soon be out of date, but we think the over-all perspective offered will hold true for much longer. Before we can change our lives for the future, we have to understand our concrete situation right now. **Women and the Law in Nova Scotia 1976** has been produced in the hope of adding to that understanding.

## A note about the use of pronouns

Throughout most of this booklet, we use female pronouns, since we are talking about **women** and the law. This does not necessarily mean that the specific law under discussion will apply only to women. In other sections, female and male pronouns are used at random, for example, in a reference to a child, as either 'she' or 'he'. In some situations we have consciously made a point of using male and female pronouns to describe reality, rather than suggest possibility, such as 'he' for an employer, 'her' for an employee.

"We are not final because we are infallible: we are infallible because we are final."

—The last Justice Jackson of the U.S. Supreme Court

The total number of women judges in Canada at the federal level is eleven: one appellate court judge, five trial judges and five county judges and five county and district judges. This is out of a total of 523 federally appointed judges.

Nova Scotia has one woman on the judge's bench, Judge Sandra Oxner.

There are 56 practicing women lawyers in Nova Scotia, out of a total of about 750 lawyers.

In 1905 in New Brunswick Mabel French applied to be admitted as an attorney in the Barrister's Society, subject to a court ruling that she as a woman was eligible. The Chief Justice, Tuck, said:

"If I dare express my own views I would say that I have no sympathy with the opinion that women should in all branches come in competition with men. Better let them attend to their own legitimate business."

# You're married

A recent Nova Scotia county court decision for a change of name held that if you are married and not living with your husband, you can use your own name, if you can prove that you and your husband no longer make up an actual family, and if there is no prospect you will get back together in the future.

The Nova Scotia Change of Name Act has a provision unique in such Canadian legislation, in that it provides that a married woman not living with her husband shall be entitled to a change of her surname under the act if her application is approved by the county court judge. In a case in 1975, however, the judge decided that there was "strong legislative sentiment" that members of the same family should be known by the same surname. He denied her application on the grounds that her separation was recent and that she declared her intention of using her unmarried name even if she and her husband become reconciled. He said, however, that she might re-apply in the future, and that in the meantime, there was nothing "to prevent the applicant from using her maiden name or any name or surname that she can persuade her friends or acquaintances and the public in general to call her by."

## Tying the knot

**Your agreement to marry someone is a legally enforceable contract.** If either of you breaks off the engagement, the other person can sue for breach of contract, and for damages suffered because of the breach, bought furniture, changed jobs with the prospect of marriage in mind). You have to prove that mutual promises were exchanged.

**In Nova Scotia, any person over 19 years may marry without her parents' consent.**

- If you are between 16 and 19 years you can marry, with your father's consent. You don't need it if you are widowed or divorced.
- Your mother's consent will be accepted if: your father is mentally ill, dead or living apart from your mother and not contributing to your support; custody has been given to your mother; or your parents aren't married.
- If you are under the custody of a guardian, her consent is necessary.
- Wards of Children's Aid Societies must get consent from the director.
- A female under 16 years may marry if 'a marriage is shown to be expedient and in the interests of the parties'. Usually this means the woman is pregnant.
- The court can dispense with consent.

**There are some people you can't legally marry:**

- A marriage to anyone closer than first cousin (whether by blood or by marriage) is considered a form of incest. For example, you can't marry your grandfather, uncle, father (stepfather), husband's father, son, brother, daughter's husband.
- You can't marry someone who is already married. If you're married, you can't marry again without a divorce. You commit bigamy if you do either one. Five years imprisonment is the maximum sentence for bigamy.

**In Nova Scotia, you must be married under the authority of a provincial marriage licence.**

You have to get the licence at least five days before the marriage date. Under exceptional or urgent circumstances, however, you can get a special permit which allows you to marry after less than the five days waiting period.

- Either you or your future husband must have lived in Nova Scotia for at least 15 days before you marry.
- You can be married in either a religious or civil ceremony, as long as there are two witnesses to the event. You may write your own ceremony.
- A marriage can legally be performed by anyone ordained within a religious body and properly registered to solemnize marriages. There are special provisions for Quaker and Baha'i faith members who don't have ordained ministers, and for native peoples' ceremonies.
- There is nothing in the law which says you have to give a ring at the ceremony, or wear one afterward.

## What's in a name

If you think you are going to run into difficulties in business dealings you can go to a Commissioner of Oaths and get a sworn statement to carry with you, which will state that you are married and what name you are using.

Some stores will allow you to use the name you want in applying for a credit card. Others will insist that you use your husband's name. It's ironic that many of these are stores selling only women's clothing.

**Basically, it's much easier to keep the name you were born with than to change it, and try to go back to it later.**

Many women, married and single, feel that their marital status is not relevant information for job or credit applications, or for correspondence. The use of a deliberately ambiguous word, Ms., instead of Miss or Mrs. has become popular and fairly much accepted over the past few years. Women's use of Ms. gives them superficial equality with men who use Mr.

**There is nothing in the law which says you have to take your husband's name when you marry.** It's a long time custom, a symbol of guardianship being transferred from the father to the husband, and of a woman and man creating a family unit, of which the man is the head.

A woman may wish to take her husband's name, because she'd rather be identified with him than with her father. On the other hand, she may want to keep her father's name, acting as her husband does in keeping his father's name. Or she may use both last names.

At some point in her life, not necessarily at marriage, a woman might pick her own last name, entirely unconnected to any legal relationship she has to a man.

More and more women are not changing their names when they marry, or are starting to use their unmarried names again after some years of marriage. A married woman separated from her husband for some time can apply to a court to use a name which isn't his. Still, women are under great pressure to use the same last name as their husbands. In most business and social dealings, the assumption is that they do have the same name. A woman who uses a different name has to be prepared to run into social prejudice that has not broken down.

If you want to use a name that isn't your husband's, and want it recognized in your community, it's important to be consistent in using that name. **The law considers a name only a means of identification, so you can use any name you want in your day to day dealings, as long as you aren't using the name to defraud anybody.**

## Legal or common law marriage?

Should you get legally married or live common-law? Here are some advantages and disadvantages of each arrangement.

### Advantages of legal marriage

Most people marry. You won't have to explain your private philosophies. It's easier to fit into conventional standards.

There is a direct legal relationship between you and your partner: he supports you, you are faithful sexually.

In any public situation your relationship is clearly defined. He is the husband, you are the wife.

You can rent an apartment without any problems concerning marital status.

Tax law allows the main breadwinner to make deductions, using the other person as a dependent.

You will have legal claims on your husband's estate, if he dies with no will.

You will be considered 'next of kin' for emergency situations.

### Advantages of common-law marriage

You can separate without a divorce.

You have a better chance of being treated as an independent person at a job and socially.

Your body is your own, within the limits of the law.

You will probably have sole parental rights to your children.

If you have your own income, you have a better chance of getting your own credit.

You will be accepted with the name you regularly use.

### Disadvantages of common-law marriage

You will inevitably face more questions about your private relationships. You may be considered somewhat unusual in your community or at work and that might bother you.

You don't have a direct legal relationship in many areas. You could be left without any support or property more easily than a married woman could. If you don't sign a legal contract outlining mutual responsibilities in the partnership you could be at much more of a disadvantage than a married woman.

Our language has no precise word for your common-law 'husband' - friend? roommate? housemate? lover? partner? paramour? man?

A landlord could refuse you a place because you are not married. You have no protection against this under the Human Rights Act.

There are no provisions for common law couples to make deductions for each other on tax forms. You cannot claim deductions for each other as spouses in other situations, such as student loans.

If your partner dies without a will, you may not automatically get any money or property.

You have no legal rights in emergency situations - for example, to give permission for a medical operation.

### Disadvantages of legal marriage

You are locked into it. To become a legally independent person again, you have to get a divorce - costly and emotionally draining.

Employers, co-workers, friends may make assumptions about your personal beliefs and intentions: that you will leave a job soon to have children, that you're too busy for serious meetings, that you aren't interested in activities apart from your husband.

You may need your husband's permission for medical operations such as abortion or sterilization.

You may have to go to court to settle disputes over child custody.

You may have trouble getting credit without your husband's signature or without questions about his work and credit rating.

You may run into problems trying to keep your own name or going back to your unmarried name.

"I believe marriage is contentment, responsibility and sacrifice. I don't equate king and queen with master and slave, but I do believe that the woman should adapt her way of life to her husband's way of life. My authority for this is the Bible."

—Mable Morgan, author of best seller *The Total Woman*

"Everything that a married woman does shall be said to be done through dread of her husband."  
 —The Chancellor of England quoted in Year Book 7 Edw. IV

## One under the law

We still find presumptions in our law that the man incorporates the woman's identity into his own when they marry. For example:

- You can't be raped by your husband (in the eyes of the law, that is).
- You can't be charged with conspiring with your husband to commit an illegal act.
- You can't be charged with stealing from each other while you're living together. However, if someone helped you steal your husband's property, that person could be charged with theft. If you are living apart you may be charged. This is also the case if you take property while you are intending to desert one another, or while actually deserting.
- You can't sue your husband for damages to your person, although you can sue him for damages to your property. So if he punches you in the face, breaking your glasses and your teeth, you could sue him for money to repair the glasses, but not the teeth.
- In a **civil** court you have to testify for or against your husband, if you are called, but you can't be forced to reveal communication between each other.
- In a **criminal** matter you can't be forced to testify except in certain cases, where the offence is of a particular sexual nature.

This holds true for a common law wife as well.

## Who's in charge?

For centuries, the husband had the legal right to make decisions about all family matters. Many Nova Scotia statutes will presume that the head of the family is male, even though a great number of women share the financial burden by working outside the home, and even though many families are headed by single parent mothers.

The law is slow in recognizing changing social realities. For example, the 1976 census forms didn't insist that the **male** be listed as the household head, but did insist that **someone** be the head. Some marriage partners are trying to work out an equal sharing arrangement in which no one person dominates the decision making. Some people live in group



Cheryl Lean

households, in which no one person is in charge.

Here are some examples of provincial statutes which support the male's traditional role as head of the family:

- It's the father who has to give consent for the marriage of a minor. The mother's consent is only accepted if the father is dead or incapacitated.
- A minor who wants to become an apprentice to a trade has to have consent from her father. Again, mom is second choice.
- The Education Act says "parent means father, or, if the father is dead or absent . . . parent means the mother of the child".
- If your house is being assessed, the occupier is defined as being the husband "where the husband and wife live together; or the father or **other head** of the family . . ."
- The father will be appointed first as the guardian of an infant's estate. Mother is acceptable if father is dead. Even then, she won't necessarily have total rights, since the father can appoint another person to be a guardian who will share legal rights equally with the mother.
- If a father has been judged to be a habitual drunk and in need of a guardian, his son has the right to be appointed his guardian ahead of the man's wife or his daughters.

## Where you live, legally

Your domicile is your legal place of residence, it has nothing to do with your nationality or your citizenship.

Your domicile is an issue only when you are involved in certain kinds of legal matters: in many cases, your domicile will determine where you bring an action, and, as a result, your rights and obligations in that action.

Your domicile is the place where you plan to live for the foreseeable future. If you leave Nova Scotia and work in Ontario for a while but plan to return, your domicile is still Nova Scotia. If you settle in Ontario and don't plan to return to Nova Scotia, Ontario will be your new domicile.

**If you are single and a minor, your domicile is your father's place of residence. When you marry, your domicile becomes the same as your husband's.**

The law considers your husband's legal responsibility to support you as enough reason for his choosing your home. If he gets a job transfer you are expected to move too. If he moves and you stay, or if you move away without his consent, you could be disentitled to maintenance and he could have grounds for divorce, since you could technically be considered a deserting wife.

In certain cases, such as contesting a will or trying to get an annulment, you have to travel to your husband's domicile. You can stay in your own domicile to begin a divorce action or to bring an ordinary civil action against your husband (such as suing on a contract or for injuries in a car accident).

# He supports you

## Consortium

You might look at your marriage as a union based on mutual love, trust and respect. You each do your part. You make your home comfortable and clean, you cook for your husband. He takes responsibility for supporting the household.

The law looks at the roles played by partners in a marriage much more cold-bloodedly. When you get married, you enter into a contract of sorts (the law calls it a "status"), a swap of goods and services. He supports you. In return he has exclusive rights to your consortium. This is true even if you are employed and/or self-supporting.

**Consortium means co-operation, companionship and services, domestic and sexual.**

Your husband can sue for loss of consortium anyone who interferes with your ability to perform these services; for example, someone who injures you through their negligence. If a suit comes to court, the judge will have to calculate in cash terms what you're worth to your husband. This seems like a very cold way to approach a marriage crisis; but in legal terms your husband has been deprived of a benefit to which he is legally entitled, and he is asking compensation.

Your husband has exclusive claim to your sexual services. Your sexuality is considered an important part of your husband's assets. If you commit adultery with someone, your husband has a right to claim compensation from that person for the damage done to his honour and status. After all, someone else has trespassed on his exclusive territory.

Many hospitals will require that a husband give permission for his wife to have an operation, since he is seen to have control over her actions. This archaic concept may prevent even a separated woman who is still legally married from having a sex-related operation such as a tubal ligation, abortion or hysterectomy, if her husband refuses consent or isn't available.

It is unlikely that you have a legal right to sue other persons if your husband becomes sexually unavailable through their negligence. You also can't sue another woman if your husband has had sexual intercourse with her and you feel that your status and honour have been damaged.

## You spend his money

When you get married, your husband's part of the bargain is to support you. You have, therefore, the right to 'pledge his credit'. **That means he is assumed to be responsible for any debts you incur in his name in order to provide the family with the 'necessaries' of life.** You can spend money to keep your household going in the manner to which your husband is accustomed. You have the right to open accounts in your husband's name and to use any cards or accounts he already owns in his own name.

If a man and woman live together and the community believes them to be legally married, the law will assume that the woman has the common-law right to pledge the man's credit. She probably wouldn't be able to do this if they were openly living as unmarried partners.

If you are not employed and you apply for a credit card, a store will usually assume that you are applying on behalf of your husband and that he will be responsible for the bills, whether the card is in his name or not. It's common practice for a store to do a credit check on a husband, without his knowledge, when his wife applies for a credit card, which she may also be doing without his knowledge.

It's not clear from common practice if a store will consider you responsible for your own debts if you are employed, or if records will include credit information about your husband anyway.

**What happens if you separate?** You can still pledge his credit, unless:

- You have separated by mutual consent and he is supplying you with other means of support; for example, you have a written maintenance agreement, or still share a joint bank account.
- You have your own adequate means of income.
- You have separated because of your adultery or desertion. If alimony has been ordered in such a case, but hasn't been paid, you can pledge his credit. You shouldn't spend recklessly, however, because you may have to pay the bills yourself.

Your husband can make a formal declaration that he is cutting you off. He can send letters to local businesses or place ads in local newspapers to say he will no longer be responsible for debts you may pile up. There is no way he can be sure that everybody, including you, has seen these notices. He can give legal constructive notice that he is revoking your credit by advertising in the **Nova Scotia Gazette**. This notice is legally binding on everybody including those who haven't seen it.

## He leaves/you leave

- Your husband has to support you and your children, even if he leaves you.** In some cases, of course, the court could rule that a woman earns enough to support herself. But the man will be responsible for maintaining the children, unless he has no money.
- If he refuses to sign an order agreeing to support you, you have to bring an action in Family Court stating that you have been left without enough money for your needs. You also have to prove he deserted you.

Usually, if the man pays he gives the money to Family Court who in turn pays the woman. Money can be directly paid to the woman depending on the case.

Your partner may have left the province. Maintenance orders can be enforced in every

"When a man is taken in adultery with another man's wife, if the husband shall stab the adulterer, or knock out his brains, this is bare manslaughter; for jealousy is the rage of a man, and adultery is the highest invasion of property."

—Regina V. Mawgridge

Canadian province except Quebec, in England, and in some of the United States. However, it's usually difficult to do.

**Desertion can be 'constructive desertion', which means that, although you actually left him, you were justified in the law's eyes in doing it.** He might have made life intolerable by cruelty or refusal to support you. However, his adultery is not enough reason for you to leave him. If you weren't legally justified, you have no right to support and you lose your dower rights.

Your husband can get out of paying you maintenance if he can prove he had sufficient cause for leaving you. Your adultery would be a clear cut reason. If you get involved with another man, even after your husband leaves, you lose your matrimonial rights. If a support order has already gone through, it can be stopped if you have had sexual intercourse with another man.

Even if your support is cut off, your husband generally has to support the children until they are 18.

If your husband doesn't keep up his payments, the court has the power to garnish his wages, seize his bank account or his property or throw him in jail for three months. These measures would pose the most threat to men who are steadily employed, since most chronically unemployed men have little real savings or real estate and their work may be seasonal, their wages insecure.

We have no legally guaranteed rights to a well paying job, training or opportunities, or day care services. But we have some small right not to starve out on the streets. So family courts continue to enforce a cycle of meagre, inadequate payments, forced out of men without enough money, given to women who would benefit a lot more if they had a fair chance to support themselves and their children.

### **You ask for maintenance**

Maintenance is the money paid by one partner in a marriage to another, usually referring to payments made after a marriage

has dissolved. Maintenance covers your day to day family expenses, for yourself or your children. It could also include long term expenses, such as education.

The division of property which you and your husband have accumulated is decided separately, not doled out as part of maintenance.

Child support is decided separately from your own support. One or the other partner may support the child(ren) or support may be shared by mutual agreement.

### **If a woman wants to make a clean break and not be dependent on her husband, isn't it hypocritical for her to ask for maintenance?**

This may be true for some women: a woman in a marriage which hasn't lasted very long; a woman who has a well-paying job; a woman in a marriage which has been a partnership, with equal sharing of expenses, household chores, child care.

Most women however have not been in marriages that operated as equal partnerships. They have tailored their education, training, work and expectations with marriage in mind. Many women, at the time of divorce, may never have been employed or may not have worked in the labor force for years.

Each individual man is not to blame. But the system is weighted in his favour, and few men have made serious efforts to even the odds in their own marriage. A woman who wants to strike out on her own and become independent is not being hypocritical when she asks for maintenance. She is asking repayment for the years she has worked to put her husband through school, for the years she stayed home and raised children, cared for her husband's needs, cleaned, and cooked.

A woman who has some kind of skill training is better off when her marriage breaks down than a woman who has none. A young woman should understand that she may have to work full-time at some point in her life, and support herself and others, even if she marries. She should prepare for this possibility and not count on being supported by a man for the rest of her life.





# You untie the knot

## Getting it annulled

To annul a marriage means to formally declare the end of a union which never existed legally anyway. An incestuous marriage or 'marriage' in which one of the partners was already married could be annulled. A marriage in which one partner has been misled or was unaware of what was happening, or under very severe duress might also qualify for annulment.

There is one special ground for annulment: impotence. This ground doesn't presume that the marriage was legally void from the start.

If the marriage has never been consummated (there has been no sexual intercourse) because either or both of the partners have a serious physical or psychological block towards sex, there are grounds for annulment because of impotence. The block has to have existed at the time of the marriage.

## You separate

Many women come to lawyers seeking a 'legal' separation. A 'legal' (judicial) separation is very rare. It is **not** the same as a separation agreement, which is very common.

A **judicial separation** is a formal recognition by a Supreme Court that the partners in a marriage have separated permanently and don't intend to live together again. It is an archaic procedure and has been used mostly by people who are opposed to divorce on religious grounds. There is no specific law governing judicial separations, but a separated woman can get maintenance under the Alimony Act or the Wives and Children's Maintenance Act.

**Separation agreements** can be used by partners who want to make clear the terms of their separation regarding property, child custody and financial support. The agreement is not a substitute for divorce. Frequently, separation contracts are used later in court as the basis for the terms of a divorce settlement.

Many women think they must have had a 'legal' separation for three years in order to file for divorce. This is not true. You don't need a formal statement of your separation down on paper, you only need to have lived apart for that length of time.

## You divorce

You don't have to go through complicated, expensive legal battles for a divorce. If the divorce is not contested, that is, if there is agreement on support and/or child custody arrangements, the divorce proceedings can be quite straightforward.

You have different options depending on whether your divorce will be contested or not, and depending on whether you or your husband have money.

**Go to a legal aid office and find out if you are eligible for their services. They can also tell you whether your divorce is contested or not.** You may think you have no quarrel with the terms of separation, but you may not have

considered all the possible areas for disagreement.

Legal Aid may handle your case for you, whether it is uncontested or contested.

There are standard forms for a divorce and in an uncontested case, if you have the time and patience, you may be able to complete the forms yourself and present your own case.

You can do this with a 'Divorcé Kit', used only in uncontested divorces. You have to get the kit from an agency which has counselors trained to use the kit. They will guide you step by step through it. In Halifax, the kits are available from MCA Parapak. The cost is ten dollars for renting the kit and about 75 dollars for processing costs. It takes about nine months to a year from the time of your first interview with a counselor to your decree absolute.

If you're not eligible for legal aid, get a private lawyer. Lawyers minimum fees in Nova Scotia have gone down somewhat in the past few years, but still start around \$350. Some lawyers charge up to \$1,000 for an uncontested divorce case. Women should not be reluctant to discuss fees with a lawyer before contracting for the work.

There is a provision in Nova Scotia's civil procedure rules for **suit money**. This means if you don't have enough money for a lawyer and court costs in a divorce case, and your husband does, he can be forced to pay your legal costs as well as his own. You have to find a lawyer who will agree to take your case on this basis. Not all lawyers are willing to do this, since the lawyer has to count on getting money from the other side, not from his own client.

To petition for a divorce in Nova Scotia:

- Your domicile must be Canada, whatever your citizenship.
- You or your husband must have made Nova Scotia your home for at least a year and you or he must have lived here for at least ten months before the petition.

Until 1968, divorce law in Canada was based on the idea of matrimonial offences (introduced formally into English law by the Divorce and Matrimonial Causes Act of 1857). One party is considered innocent, the other guilty. The supposed innocent one lays blame and brings charges against the supposed guilty one in court.

New Canadian divorce grounds fall into two categories: matrimonial offences, and marriage breakdown.

### Matrimonial Offences

**Sodomy** anal intercourse.

**Bestiality** intercourse between a person and an animal.

**Rape** a matrimonial rather than a criminal offence. This ground could be used if a woman were separated from her husband and he came to her house and forced himself on her. The

Since 1968, when the divorce grounds in Canada were expanded, the number of divorces in Nova Scotia has been climbing steadily. In 1969, 791 divorces were granted in the province; in 1972, there were 927 granted.

Between 1969 and 1972 the duration of the average Canadian marriage shrank from 13.5 years to 11.8 years.

In Canada, the most common grounds used for divorce are adultery, cruelty and three years separation. There is a high national rate for divorce in marriages that have lasted more than ten years.

It is estimated that in 1975, Canadian lawyers received between 75 and 90 million dollars in professional fees from divorce cases.

ground also applies if the husband has raped another woman.

**A homosexual act** either by husband or wife.

**Bigamy**

**Cruelty** physical or mental cruelty which makes continued living together intolerable.

**Adultery** In legal terms, adultery can only take place between a man and a woman. If your partner has been involved sexually with a person of the same sex, and you are reluctant to use the ground of homosexuality, you can probably prove mental cruelty. If you use this ground you won't have to present the court with details of the sexual activities, only with the effect the activities had on your mental health.

### Marriage Breakdown

If the husband and wife are living apart, a divorce petition can be filed which doesn't lay blame squarely on either side, but admits that the marriage has permanently broken down for one or more of these reasons:

**Separation** living separate and apart continuously for at least three years, for whatever reasons.

If you have been deserted you can also apply under this ground.

If you have deserted your partner and you want to apply for divorce under this ground, you have to wait for five years.

**Imprisonment** for three out of five years before the petition.

**Gross addiction to alcohol or narcotics** for at least three years, with little hope of rehabilitation.

**Disappearance** for at least three years.

**Non consummation** after a year of marriage, because of impotence or refusal. If the two of you ever had sexual intercourse in the marriage, even once, this ground does not apply.

The last four grounds, though they were introduced to lessen a fault-finding approach to divorce, have in each of them an element of blame. One partner has committed a crime, become an alcoholic, has a block to sexual intercourse; the other hasn't. One person is blamed for the breakdown of the marriage.

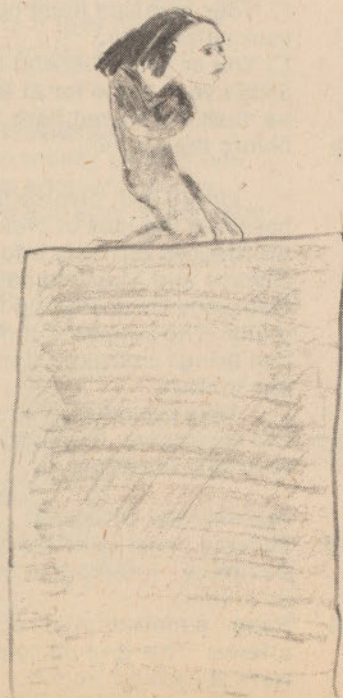
Before you get a divorce you have to deal with the three bars to divorce. A court can refuse you because of **collusion**, **condonation** or **connivance**.

**Collusion** when the husband and wife have agreed to invent or suppress evidence to deceive the court. It applies to all grounds, and is an absolute bar to divorce.

**Condonation** when the husband and wife resume sexual relations. This action is taken to mean that all is forgiven, even if the person seeking divorce is aware of the other person's adultery. Sometimes a court will call a casual act condonation, other times a clear intention to get back together is required.

**Connivance** when either partner acts in a way, or encourages the other to act in a way, which would be grounds for divorce.

Condonation and connivance are both 'discretionary' bars to divorce; that is, the judge can use his discretion to decide that it is better to dissolve the marriage than to refuse



divorce because condonation or connivance took place.

On the other hand, lawyers and judges are obliged to point out to partners seeking a divorce all their chances for reconciliation. Courts work under the belief that it's in the public interest to get people back together in a broken marriage.

There could be definite personal or economic circumstances that make it better for a man and woman to stay together. It shouldn't be up to the legal profession to take the role of marriage mediators, however.

A judge can also refuse a divorce if no arrangements have been made for the children, or if one of the partners will be unduly hardhit by the divorce; for example, a woman who had no prospect of work because of her older age and lack of training and little prospect of support, because she and her husband were both living on his pension.

A **decree nisi** is granted at the time of trial (nisi means unless).

A **decree absolute** is granted three months later. Until it is granted, you can appeal the judge's decision to grant the divorce, you can sort out support or child custody questions, or you can present new evidence. Either partner may make application to the court for the decree absolute.

Until the final decree, you are legally married. After it is granted you can't appeal the divorce itself, but you can appeal to have maintenance or custody varied.

Under special circumstances, the decree absolute can be granted at the same time as the decree nisi: for example, if a woman is pregnant and wants to marry a new partner right away.

### **Divorce law reform**

It's a lot easier to get a divorce since the grounds for divorce were broadened in 1968. Still, most divorces cost a lot of money and time, and are an emotionally exhausting and personally humiliating experience.

**Divorce grounds are defined in a context of fault finding, rather than in recognition that a marriage can break down for any number of reasons which can't be blamed on one partner.**

Even a man and a woman who agree that their marriage has broken down and don't want to lay blame for any specific reason have to live apart for three years before filing for a divorce. Much of our marriage law has been based on keeping the family unit together, whatever the cost. But children usually suffer more from a family situation in which the parents are always unhappy and fighting than from growing up with their parents living apart. Their parents will probably be personally happier after a divorce, and more able to have a close relationship with their children, separately.

A man and woman should be able to get an automatic divorce, if they agree the marriage has broken down. There should be no need to give reasons or lay blame. If one partner believes there is still hope for a marriage, but the other doesn't, they could go to community counselling services. If they still disagree, the court should grant the divorce, since a marriage continuing on that basis has little hope of succeeding.

There could be a brief waiting period of a few months, to make sure the decision wasn't taken on the spur of the moment. Divorce could be a simple administrative procedure with no need to hire a lawyer or go to court. If child custody and maintenance matters were disputed, there could be a simplified hearing before a judge or a community jury.

In June, 1976, the federal Cabinet, on the recommendation of The Federal Law Reform Commission, announced it planned to introduce further changes in Canadian divorce law. They said they hoped to bring in a bill for no-fault divorce, to be obtained on the sole ground of marriage breakdown, eliminating all current grounds including the three-year separation period.

These reforms will need the approval of each provincial government since their family courts will act as counselling agencies to determine that a marriage has without question broken down. If in their opinion it has, a divorce will be granted. It is not clear if or when the reform will be introduced into Parliament, or when it might become law.

# The state supports you

In 1975 two-thirds of Canadian women under 25 years had incomes of less than \$5,000 per year. Two-thirds of the 'low income' population in the country is female. In 1961, women headed 13.2 per cent of all low income families in Canada. By 1973 women headed 28.7 per cent of low income families.

In August 1975, female-headed families formed more than half Nova Scotia's welfare caseload of 17,012. Here's how women on welfare in Nova Scotia were divided that year:  
**Women With Children:**  
Prisoner's wives 38,  
Divorced women 708,  
Deserted wives 1,607,  
Widows 1,373, Unwed mothers 1,147.  
**Other Women:**  
Unemployable 1,118,  
Disabled women 4,558.

Welfare can come from the Department of Social Services (Welfare) of the Province of Nova Scotia, or from your municipal Department of Social Planning.

Provincial welfare, such as Mother's Allowance, is given to people with long-term financial troubles. Municipal assistance is usually temporary or emergency.

Two of the categories of women eligible for provincial welfare are:

- Unemployable women: single women between 60 and 65 (who are not living with a man as his wife), who are not quite old enough for the old age pension, but who are classified as having little chance of getting a job.
- Mothers whose children are under 18 or full-time students. This includes unmarried, divorced, widowed women, women deserted for at least two years and women whose husbands will be in a hospital or other institution for more than one year.

Fathers who are the sole support of their children must also be disabled to qualify for assistance. This could be interpreted to mean the law considers a woman to have the same chances of getting a job as a disabled man, if they both have children.

A city may give you short term temporary welfare if you are able to work but can't find any (but not if you're eligible for UIC), if you need a supplement to your provincial welfare, if you don't qualify for provincial assistance or if you're waiting for your provincial welfare cheque.

A city can also give help in the form of clothing, furniture, drugs, school equipment, money for job training, rent, or day care if you urgently need these goods or services. You are not automatically told this assistance is available; you have to ask for it.

The province will not give emergency help.

## To get welfare:

- If you are single or the head of a household in which there are two parents (usually applied to a male 'breadwinner') and out of work, you have to prove you are actively seeking work.
- You must spend any money (above a certain limit) that you have saved and not in such a way (quickly or all at once) that makes it look like you did it just to be eligible for welfare.
- You have to sign a consent form allowing the welfare department permission to check up on you by contacting your present or former employers, government agencies, your bank, your friends.
- You are usually required to make a complaint of non-support against your husband if he has left you and he was supporting you. This is not a formal regulation but it seems to be a commonly-used guideline. A Nova Scotia court has held that this practice is an abuse of the process of the courts by the welfare department.
- Welfare officers often cut off a woman's welfare payments if she is living with a man. Their assumption seems to be that he must be

living off her welfare cheque. And that this wouldn't be proper, since a man should be working and should in fact have to apply for welfare himself as head of the family. He should be subject to the pressures of looking for work. Women are presumed, also, to act more from their partner's influence than from their own desires. A woman may have to stop living with a man or may have to carry out elaborate deceptions to keep getting social assistance.

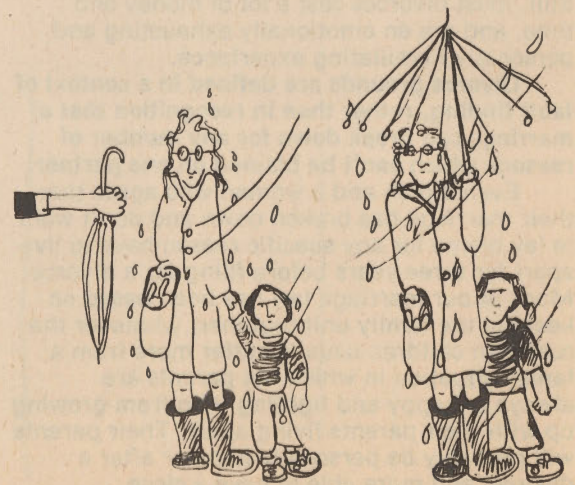
- If you are a student over 16, you can get welfare to go to school.
- If you're between 18 and 21 and a student living at home, you can get welfare if your parents receive it. You may be able to get welfare on your own, but only if your family situation is considered unsuitable. This usually means your parents won't support you.
- If you're between 16 and 18 and living away from home, you may not be granted welfare if your parents can support you.
- If you're between 18 and 21, single, unemployed, and living at home you are not eligible for welfare, except perhaps as a dependent adult on your parents' budget.

## Welfare and work

If you work full time but don't make enough to cover your expenses, you can apply for welfare to cover them.

You can work part-time while you are on welfare, as long as you earn less than the welfare payment. Most of the money you earn will be subtracted from your welfare cheque. You will probably be left with a small amount of money as a work incentive.

The policy on part-time work allows a welfare recipient virtually no net payment for her labour. Ideally, say the officials, she should be looking for a full-time job that will get her off the welfare rolls completely. However, most jobs she will be qualified to hold will probably pay so poorly, that after she subtracts the cost of day care she's better off financially if she stays on welfare.



..... A Gift from the government

Dawna Gallagher

# You're a mother

## You're not married

A child born into a legal marriage is called **legitimate**. A child born to a single woman or into a common law union is called **illegitimate**.

These terms insult parents and children. The words suggest different degrees of motherhood and fatherhood, and give a higher value to the pregnancy of a woman who has a legal bond with a man than to one who doesn't.

The stigma of illegitimacy is strong. Although legal prejudice against unmarried mothers and their children has begun to loosen up, social prejudice still persists. Single women who become pregnant feel pressured to marry. So do common-law couples who want children. Many women marry largely to avoid embarrassment and hurt for their future children, who may be teased about having parents who aren't legally married.

**All children should be treated equally, whatever the legal connection between their parents.**

At one time children born to unmarried women simply didn't exist in the eyes of the law because if there were no father, there was nobody in whom the child's legal existence could rest. A boy, for example, would be 'filius nullius': nobody's child. Rights to children, like all property rights, were vested with the father until around the 18th century. Children of unmarried parents have gained rights through statute law over the years. They have a normal legal relationship with their mother, but they don't necessarily inherit from their father, or have a legal relationship with him in the same way a child born into a legal marriage does.



Renate Deppe

**The father of a child born out of wedlock has to support the child, assuming the father can be identified and found.**

To get support the mother may have to lay a paternity charge in Family Court. She can get support before and after the birth. Women who have been living common-law for two years are also eligible for such support. It's humiliating for a woman to go into court and name the father: she may in fact want to further relationship with him, may not want to involve him with the child at all. She has little choice if she needs financial help.

A woman in Nova Scotia can get a lump sum payment of between \$750 and \$2,000 or periodic payments of whatever the judge thinks is right, until the child is 18.

This payment is fairly small. In our neighbour province Prince Edward Island this payment procedure has become virtually obsolete because the payments allowed are so meagre, a lump sum of up to \$750 or periodic payments of no more than \$100 a year until the child is 16.

## You register the birth

- A child born into a legal marriage in Nova Scotia must be registered in the mother's husband's surname. If he is not the father, she can ask that the biological father's name be used. He has to consent first.
- An unmarried woman normally registers the child with the surname she uses. If both parents request, the child can be listed with the father's surname.
- If she later marries, the birth registry will be changed to state that she was actually married at the time of birth. This is supposedly to save embarrassment for children or others who may later look into a birth record. It's a little legal reward to the woman who conforms and makes her union and child 'legitimate', even if a bit late.

## You adopt

If you are at least 19 years old you can adopt any person younger than yourself. In theory you don't have to be married, but in practice few single people meet the standards set for eligible parents. There are no provisions in the Adoption Act for two unrelated people - an unmarried couple, for example - to adopt a child.

What makes a 'good' home for a child is as unclear as what makes a home where a child is considered 'neglected'. A single person with a steady job, a woman in a common-law marriage who doesn't want to become pregnant or can't, might create just as 'good' a home as a married couple with all the solid external trappings that satisfy adoption agencies.

If you aren't a desirable parent in the eyes of an established social agency, you might be able to adopt a child privately, from a woman who has just given birth and wants to give up her child, or through an agency which finds it hard to place certain children (non-white, with a

physical handicap, older than a year).

Anyone who gets a child from someone else for the purpose of adoption has to notify the Administrator of Family and Child Welfare within ten days.

Under a 1976 amendment to Nova Scotia's Labour Standard's Code, if you are a woman planning to adopt a child five years or younger you can get up to four weeks leave from work starting with the week in which the adopted child comes into your care. The adoptive father is not mentioned in this law.

If you have signed an order giving your child up to an agency permanently, they can put the child up for adoption. Once someone else has put in an application to adopt the child, you cannot get the child back, unless there are exceptional circumstances.

If you feel you can't care adequately for your child but don't want to give the child up permanently, you can have the child put into the care of an agency, on a temporary basis. You can ask for the child back at any time. The agreement can last up to a year and can be renewed.

If you have been divorced and your husband has custody of the child(ren) and he remarries, his new wife may want to legally adopt the child(ren). You may not want to give permission for the adoption to take place, because you will lose the rights of the natural parent and rights (such as visiting) which you got as part of a settlement. Frequently if you don't give your permission, the court proceeds without it anyway.

A child who is 12 years or older has to give her or his written consent to be adopted.

It's a serious offence to participate in any way, either as adoptive parents, natural parents or intermediaries, in a private adoption in which payment or reward is involved. The maximum penalty is \$2,000 fine, one year imprisonment, or both.

**Adopted children have the same legal relationship to their parents as if they had been born to them.**

### Your obligations

The state tries not to step into family matters, but has set minimum standards to regulate relationships between parents and children. Some examples from the Criminal Code:

- You have to support your child until he is 16, and after that (indefinitely) if the child can't support himself and is still living with you. you.
- If you procure for your child or knowingly permit her to have illicit intercourse with someone, you are committing a crime.
- If you commit incest (have sex with your child) you can be imprisoned for 14 years.

There is a special offence - 'infanticide' - which can be committed only by a woman. As the result of mental disturbances caused by the birth of her child, the woman kills the child or causes his death. This is not murder and calls for a maximum sentence of five years.

If you corrupt your children, it's a crime. Thus, you can be imprisoned for up to three years for habitual drunkenness, sexual immorality, or adultery in your home.

Your child under 16 is protected from abuse under the Child Services Act of Nova Scotia. If the Director of Family and Child Welfare or a Children's Aid Society decides your child is being neglected he or she may be taken from you. You will lose your parental rights and the child can be put up for adoption without your knowledge or permission.

You may be required to pay support money for the child while he or she is a ward of the Society.

**A child in need of protection is defined very vaguely by the law. A neglected child can be a child without proper supervision or living in unfit circumstances, or whose life, health and emotional welfare is in danger, or in the care of someone who fails to provide education.**

For this area of the law a parent can include a male who has been supporting the child and living common-law with the mother at least a year before the child was seized, or a female who has lived at least a year with the father.

Provincial child welfare agencies don't have the time or facilities to deal with all the child abuse actually going on. Most reports of



Renate Deppe

'neglected' children will come out of families who have already been caught up in a network of Family Court appearances, welfare payments and social worker visits. Social agencies tend to assume that people who are better off financially will find other than the most desperate ways of dealing with their parental frustrations.

## You use day care

There are many kinds of day care: parent co-operatives, centres staffed partly by volunteers and partly by paid staff, individual babysitting, home care with one mother looking after a few children, day care attached to a housing complex, a university, a workplace.

Private centres or individuals can set whatever fees they want.

Public centres receive a subsidy from the provincial government: \$6.55 per child per day. If your total net family income is between \$4,500 and \$9,000 per year you will be eligible for a subsidy on your day care fees. If you are not eligible you will have to pay the full \$6.55 per child per day, for the first child and somewhat less for each additional child.

The ceiling for subsidy is unrealistically low, more and more so as the cost of living goes up. A two parent family, for example, with each partner earning barely above minimum wage, would make more than \$9,000. Yet they might not be able to afford the full cost of day care.

**Day care is administered by the Department of Social Services [Welfare]. In order to be eligible for subsidy, you have to show that you have financial and social need.** Social need means:

- You are a single parent family working or at school.
- You are a two parent family and you both work because of "financial need to maintain an acceptable standard of living".
- You are either a single parent or a two parent family and day care has been recommended by a social agency or is needed on an emergency basis.

On your application for subsidy you must say why an unemployed parent won't be at home caring for a child.

The present handling of subsidies in the same way welfare is administered tends to classify day care as a handout reluctantly given to underprivileged parents. This approach also reinforces the idea that it is a woman's responsibility to be home with her children and only women in the most dire circumstances would not be doing that.

Women have long been guilty that their children will suffer if put into day care. There has been no evidence to show this has happened. Children in day care are often exposed to new experiences, new friends, adults other than just their parents, toys and games they may not have at home.

Day care should be seen as desirable not only for women who are employed full time.

Some mothers want to work part-time or simply spend periods of time away from their children. The quality of time spent with children has proven more important than the length of time. A lot of parents feel more relaxed and open with their children if they are apart for long periods in a day. Often the trapped frustrated feeling of having to spend all day, every day with a child leads to child abuse.

The myth that a mother's love and undivided attention is the main ingredient in proper child care has affected attitudes to day care work in general. Day care workers are poorly paid and overburdened, often trying to handle too many children in too little space with inadequate facilities.

Few day care workers are men. Day care is still considered women's work; it is low-paying and low-status work.

**Children are society's responsibility. Day care is not a last ditch measure by mothers who can't help themselves. It's a necessary part of our social network, a right not a privilege. Day care should be administered as an educational service, not a welfare service.**

Subsidized day cares have to operate on their per diem grants alone. They cannot get any government assistance for capital costs to start a centre, or for continuing operation.

By mid 1976 a Nova Scotia government freeze on the per diem rate and on subsidies to new day care centres was in effect.

It's argued that day care centres can't provide the quality care that a mother at home can. Then the government puts a freeze on subsidies to day care centres and makes it much more difficult for them to provide this quality care.

The day care now available in the province is only minimal care: there are few centres able to care for infants or to supply women working shifts with convenient care.

We have equal pay legislation on the books as well as laws giving women in theory an equal chance at training and job opportunities. Yet these legal rights mean nothing without more day care facilities to allow women to truly take advantage of the opportunities.

**Women won't have a really 'free' choice of either staying home to care for children or placing them in day care until day care is easily available to all.**

As of March 31, 1975, working mothers across Canada had about half a million children five years and under needing day care. There were close to two million children between six and 15 years needing lunch time and after school care. It appears clear that facilities in every province are sorely inadequate, since such a small percentage of the children needing day care are actually enrolled in centres. For example, of those working mothers' children, only 4.34 percent of children under three years, 17.2 percent of those aged three to five, and 0.3 percent of children aged six to 15 were enrolled in day care.

It has been estimated that there are at least 10,000 children of working mothers in Nova Scotia who need day care. There are only about 40 day care centres with 1,560 children in the province, supplying the kind of full day care these children need. There are also about 160 centres licensed under the provincial Day Nurseries Act, providing mostly part time care for 3,040 children.

"The middle class housewife defends her right—even her obligation—to remain home with her children in their formative years, and she is supported in this by virtually all mental health experts. "No one questions the fact that she is totally dependent on someone else's labour. When a separated or widowed woman wishes to make the same choice for her children, she is denied every tool necessary to do that job responsibly." —a letter to the **Globe and Mail**, March 1975

# Property—his or yours?

## Through history

As the men and women in primitive tribes developed new and more efficient tools, they could produce more in one day than they could consume. Property had been created. These surplus objects were traded, and in the process some individuals accumulated more than others. The people who had more tools and animals could get others to work for them.

Under feudalism, both men and women were the property of the manor lord whose land they worked. **A woman was doubly valuable as a means of producing more property: children who could be extra farm hands.**

A woman of the propertied class also had no legal rights. She belonged first to her father and later to her husband. **She was doubly valuable because of the land she would inherit, and her chastity was the legal seal that guaranteed exclusive property ownership passing to her husband's sons.**

An industry began to develop in England and as feudalism declined, men were no longer the property of a lord. But women continued to be the property of men, even men who were 'free' to work as factory labourers.

With the Industrial Revolution, the spinning, weaving, brewing in which women had participated as home workers became separated from day-to-day family life and became developed as factory industries. Life's tasks became distinctly divided and woman's domain more clearcut: caring for children and home.

The legal rights of all married women remained the same. Even a woman factory worker had no rights to keep her earnings, since they were considered to be only contributions to the income of the whole family, of which the husband was the master.

Under English Common Law, single women gained the right to own and control property, but married women continued to have the same low legal status as children, lunatics, criminals and enemy aliens.

In the early nineteenth century in Canada, the pioneer women who helped build this country had no legal rights to the family property, though they shared the work with their husbands. The father had the legal power to decide his children's future, and while a mother's actual influence on her family's life might have been greater than her legal power indicates, her only legal right was to her husband's financial support.

**In 1884, Nova Scotia passed the Married Woman's Property Act, allowing married women the right to own and control their own property, to sign contracts, to be legally liable in the same way single women and all men were. Married women today in Nova Scotia have these same rights.**

## The Murdoch case

Few married women have accumulated much separate property. What happens if the marriage splits up? Irene Murdoch, a farm

woman in Alberta, faced this question.

Irene and Alex Murdoch had been married for 25 years. They bought their first ranch with earnings they saved from hiring themselves out as a farm couple. The pay cheque was always in Alex's name. They bought a small ranch, sold it, bought another, and still another, all of them in his name. The money for each ranch came from the sale of the previous one, and also from money given by Irene's mother. (Later, in court, the mother testified that the money had been a gift to Irene. Alex said it had been a loan to him. The court believed him.)

Over the years, Irene contributed huge amounts of physical labour, working equally with her husband, branding, dehorning cattle, haying, mowing, driving machinery and horses. He had another job and was away five months of each year. She managed the ranch single handedly at these times.

In 1968 Alex wanted to sell the ranch. Irene didn't. They argued, and in a scuffle he broke her jaw. When she returned from the hospital the door to her home was locked and all her credit cut off. She sued for, and assumed she would get, half interest in the family property.

**The court however, ruled that since she could not show direct financial contribution to the purchase money of the ranch she was entitled to no interest at all.**

From the Supreme Court of Alberta she went to the Supreme Court of Canada which ruled that she, Irene, had made 'only the normal contribution to the farm that most farm or ranch wives make'.

Her husband got the land, the buildings, furniture, car and machinery of a ranch worth about \$200,000. She received \$200 a month maintenance, had a \$2,000 medical bill for her jaw and had to pay all the court costs (\$3,500).

Irene Murdoch could have been granted part ownership in the ranch, if she could have shown direct financial contribution to it. But most women make their contribution to the home in time and labour; if they contribute money it usually goes to clothing, furniture, and the daily upkeep of the family.

Irene Murdoch was not an unusual case. A year after her 1973 Supreme Court verdict, a Saskatchewan farm woman, Helen Rathwell, heard the courts rule that she had no legal right to share in a 1,600 acre farm on which she had put the down payment and worked equally with her husband for 23 years.

## Protect yourself!

You should protect yourself from this happening to you.

**If you are already married:**

- Get all your joint assets (house, car, investments, bank accounts) in both names.
- If you have money of your own, keep records of where it goes (receipts), and try not to spend it just on day to day, short-term commodities while your husband puts his money into

In England, during the struggle for the vote, a suffragette had her purse stolen. The man held for the theft was charged with stealing the property of the woman's husband.



long term investments.

Make sure both you and your husband have the same opinion about where your money has come from and where it is going. If the court had believed Irene Murdoch's mother, Irene might be financially comfortable today.

Don't trust your husband's love or good nature to come through for you later. You won't feel the same about each other as you do now, if your marriage ends in divorce. If the marriage ends in your husband's death, you won't be dealing with him, but with a legal administrator who will be under a legal duty to round up every penny for your husband's estate.

#### **If you are considering marriage:**

You might put together a marriage contract which states how property will be owned and distributed. Courts generally don't respect marriage contracts, but will usually enforce a contract dealing only with property rights and which doesn't try to adjust what the law sees as the set rights and obligations of a marriage (wife's right to support, sexual fidelity).

Above all **get it in writing!**

### **Dower**

This is a common law right developed to protect women from being left homeless when their husbands died (under ancient law widows couldn't inherit property from their husbands). Dower was a form of maintenance for women, a right to be maintained at a future point when a man no longer supported them.

Dower is a right to a life interest in one-third of any real estate owned by your husband on his own during his lifetime.

**Dower is not one-third of his property. It is merely one-third life interest, and then only in his real estate.** If your husband owns three houses, your dower right entitles you to live in one of them for the rest of your life or rent one of them out for the rest of your life.

**You can lose your dower rights if you get a divorce, commit adultery, are judged to be of unsound mind, or if you chose to sign away your dower rights for another settlement.**

When your husband sells a piece of property, you will be asked to sign a document signing away your dower rights. You should be aware of it. A married man can't sell property without this signature from his wife. She gets nothing in return, not even a portion of the purchase money.

If your husband has died and you were living (faithfully) with him at the time of death, you may choose between your dower and the following provisions:

If your husband has no will, you are entitled to the first \$50,000 of the estate, and either half or one-third of the remainder depending on how many children you have.

If your husband's will hasn't left adequate provision for you, you can apply for maintenance from his estate. You must show you were financially dependent on him, and

that you need the money. Such awards are designed mainly to keep dependent women off the welfare rolls. The court can review their maintenance payments to you if you cease to be dependent (get a job, remarry).

If your husband has provided for you in a will, you have to choose between that provision, your dower, or another settlement like those above. You can choose only one of them.

### **Property law reform**

Our present system of matrimonial property law in Nova Scotia means a woman in this province could find herself in the same plight as Irene Murdoch.

**Law reform commission across the country which have been studying matrimonial property law agree that some kind of property sharing mechanism is the answer to the unfair scheme now used.**

The Task Force on the Status of Women in Nova Scotia (1976) has recommended a form of total community sharing in property. Under it, the property acquired by both the man and the woman during the marriage becomes the common property of both. If the marriage dissolves, the property is divided equally.

Another proposal, preferred by the Ontario Law Reform Commission is a deferred sharing system of property, now in practice in Quebec and several European and Scandinavian countries. Under this system each partner keeps his or her property as legally separate on entry into marriage and during the course of the marriage. If the marriage dissolves, all assets at that point are considered community property and divided equally.

**Thus, a woman's time and energy, contributed over the years, would be considered an investment, just as her husband's cash is, and both would be given the right to reap benefits.**

Such changes in law will put women into a much better position if their marriage breaks up. But, even under total community property, the day-to-day management and control of the family assets may still be under the thumb of the husband, a social custom long reinforced by the legal situation.

A woman's personal security will not be ensured by changes in the matrimonial property laws alone. Her ability to collect assets on her own is much more dependent on her economic situation outside of her marriage.

## Who controls your body?

### VD

Gonorrhoea and syphilis are the two most common forms of venereal disease (VD). In recent years, the spread of gonorrhoea in particular has reached virtual epidemic proportions, especially among young people and in cities. Gonorrhoea symptoms show up much sooner in males than females. Women sometimes don't show symptoms for months, if at all. Thus women are more likely to spread the infection to other partners without knowing it.

**The Criminal Code of Canada says it's a criminal offence to spread venereal disease to another person.** You won't be convicted if you can prove that you believed you didn't have VD at the time in question.

Until a few years ago, you could be jailed for refusing to submit to a test for VD. After one woman publicly objected because she was put in jail, the regulations under the Nova Scotia Public Health Act were changed. Now the Medical Officer of Health has to go to court first to prove that a person who is alleged to be

a contact has to have examination or treatment.

The Nova Scotia Public Health Act requires a physician to report by name, any people diagnosed as having venereal disease. The person doesn't have to name any contacts, although a doctor will usually ask for their names.

Doctors should be able to report the incidence of VD without using anyone's name outside confidential files. People should not be made to feel embarrassed or guilty because of sexual activities. As long as people who contract VD are treated by law as criminals, any public education program which attempts to teach us a moral/medical responsibility towards each other will be impossible.

### Birth control

In Canada there was a legal ban on the advertising and sale of birth control devices from 1892 to 1969. The ban wasn't closely enforced: birth control devices have been available in drug stores for years, and doctors have been prescribing the pill since it was first available in the early 1960's.



Reel Life Photo Heritage Collection

Advertising for all birth control devices **except** those available only by prescription such as the pill and IUD's (Interuterine Devices), is now legally permitted. Nothing in law says ads have to state a device's effectiveness relative to other forms of birth control. It's legal to advertise all forms of birth control to doctors.

There is no consistent policy within radio and television for the advertising of contraceptives. Several private Nova Scotia radio stations have accepted advertisements for condoms over the past few years. The CRTC has left it up to a station's own discretion whether to accept such ads. The CBC in general tries not to carry any advertising of a controversial nature. They carefully consider all ads to make sure they don't cause embarrassment to anybody.

Doctors are hesitant about supplying medical treatment to a minor without her parent's permission, although it is not clear that such consent is legally required, particularly if the minor understands the nature of the medical risks, and consents to them.

The law in many areas acknowledges that women under 19 years are having sexual relationships. **Yet restrictive laws on supply of birth control information and devices helps create more pregnant young women and unwanted children who in turn face further discrimination under the law.**

## Artificial insemination

Among couples who are unable to conceive children, artificial insemination may be an alternate solution.

If the semen comes from your own husband, there are no legal problems. Legal problems could arise when the semen came from a man who isn't your husband. Under the law, the child could be considered illegitimate, even if your husband consented to the artificial insemination.

To prevent any challenges to the child's legitimacy, it is best to adopt him or her.

Some cases suggest that artificial insemination can't be considered adultery, even if it is done without your husband's consent.

## Abortion

Under the Criminal Code of Canada,

Anyone who tries to procure a miscarriage using any means, on a woman, whether she is pregnant or not, is guilty of an indictable offence and liable to life imprisonment.

Any woman who is pregnant and who attempts to induce a miscarriage in herself using any means is liable to two years in prison.

**Since 1969, however, it has been legal in Canada to perform an abortion, but only at an accredited or approved hospital, under the approval of a therapeutic abortion board.**

An 'approved' hospital means approved by the Minister of Health for carrying out abortions. 'Accredited' means accredited by the Canadian Council of Hospital Accreditation. Hospitals in these categories have not

necessarily set up abortion boards.

An abortion is called **spontaneous** if it happens spontaneously, because of unknown causes. This is usually called a miscarriage. An abortion is **induced** when it is purposely brought on by drugs or mechanical means. An induced abortion is called **therapeutic** when it is performed for health or medical reasons.

A woman's case has to go through the abortion board of a hospital if she wants to have an abortion performed at that hospital. The abortion committee has to be made up of at least three doctors chosen by the board of governors, trustees or directors of the hospital. The woman doesn't usually appear before the committee, but she has the right to.

So it's legal for a doctor, as long as he's not on a therapeutic abortion board for any hospital, to perform an abortion on a woman provided he has a certificate of approval from the board that continuing her pregnancy would endanger her life or health. And it's legal for a woman to allow a doctor to carry out the abortion on her in the hospital.

The legal definition of health is vague. The World Health Organization has called health "a state of complete physical, mental and social well-being, and not merely the absence of infirmity or disease."

A woman under 19 years needs the permission of at least one of her parents to get an abortion. A married woman needs her husband's permission. **This is a strongly enforced hospital policy, not law.**

If you have missed one menstrual period and you have had sexual relations in the previous month, contact your doctor.

Your doctor is obliged to treat you as a patient with a medical problem. If she says you are pregnant and you ask for an abortion, she should tell you if she has any personal or moral objection to abortion. If she refuses to carry your case any further, ask to be referred to another doctor right away.

You can get an abortion from roughly two weeks after you miss your period. This is about the earliest that a doctor can confirm you are pregnant. You are counted as being six weeks LMP (Last Menstrual Period) from the **first** day of your last period, not the last day. The safest time to get an abortion is up to 12 weeks LMP.

You may be required to see a psychiatrist before your case goes to a board. His evidence that you are undergoing severe mental stress will strengthen your case.

If your doctor agrees to handle your request for a therapeutic abortion, she should send a letter to the Abortion Committee of the Regional Hospital within a day or two.

The committee will contact your doctor with their decision. Your doctor should contact you.

Your doctor will refer you to someone qualified to carry out the abortion in the hospital.

If you are refused an abortion in Nova Scotia and you have the time and money you can try to

By the beginning of 1975 there were 13 hospitals in Nova Scotia with hospital boards: **Yarmouth Regional**, Yarmouth; **Fisherman's Memorial**, Lunenburg; **Dawson Memorial**, Bridgewater; **Roseway**, Shelburne; **Queen's General**, Liverpool; **Western Kings Memorial**, Berwick; **Blanchard Fraser Memorial**, Kentville; **Payzant Memorial**, Windsor; **Victoria General**, Halifax; **Colchester**, Truro; **Highland View**, Amherst; **Aberdeen**, New Glasgow; **Sydney City**, Sydney.

In 1973, 43,201 abortions were reported in Canada, 932 in Nova Scotia. The number reported is far below the number actually performed, since many women get illegal abortions.

Nova Scotia has the seventh highest rate of abortion in Canada (out of ten provinces and two territories). It has the highest rate of the four Atlantic provinces.

Abortion hasn't always been illegal. The idea of abortion as a crime was a creation of Sir Edmund Coke, a 16th century jurist, influential in North American common law. From the reign of Edward III to George III women had the common law liberty to end a pregnancy from 1327 to 1803 in England, from 1607 to 1830 in America. The first abortion statutes of the 1830's were concerned only with abortion being a health hazard to the women and gave no status to the unborn child.

"The degradation of one group of women was inseparable from the false reverence kept for the wife of the bourgeois. Bourgeois men located in the prostitute, who was often seen as synonymous with the lower class woman, all the sensuality denied to his own women."

—Sheila Rowbotham

get an abortion in another part of Canada, in the United States, or overseas. You can't be convicted for obtaining an abortion outside of Canada. However, under new provisions in British abortion law, foreigners will not be able to get abortions in Britain.

MSI will cover 85 per cent of the costs of an abortion performed in Nova Scotia. Some doctors bill for the remaining 15 per cent.

A Nova Scotia abortion committee may approve your application, but not have room for you in a hospital at the time. If you can get an abortion elsewhere, you can get MSI to cover an amount equal to the cost of the abortion here.

If you don't have a doctor:

You can contact your local Family Planning Association or Planned Parenthood, who may be able to refer you to a sympathetic doctor.

You can try to contact a hospital (maternity or general) through its gynecology clinic.

If there is a Help Line or Women's Centre in your area, try to contact them for help.

The liberalization of Canadian abortion law in 1969 left many women unaffected: poor women and young women who don't have the money or mobility to travel far from home for an abortion; women in communities with Catholic (or other) hospitals which refuse to do abortions; women who live in small or isolated communities which don't have hospitals, or which have hospitals too small to perform abortions under current law (a hospital needs three doctors for the board, one or two to recommend the abortion, and another to perform the abortion).

The law claims to protect women. Women who can't get abortions under present law continue to suffer physical mutilation and death at the hands of careless butchers or well-meaning friends who attempt unsafe abortions. **Our laws regarding abortion are restrictive, not protective.**

An abortion performed by a trained person does not have to be a complicated operation. Safe abortions can be performed on an outpatient basis at hospitals and clinics, by doctors and paramedics.

Women should be allowed to decide for themselves if they want to remain pregnant. They should not need the permission of a father, a husband, or a committee of doctors. Abortion laws still prevent women from making independent decisions about their lives.

There are major changes needed in the administration of health by the provinces, in the structure of the hospital boards, in the relationship between patients and doctors, and in the law.

Dr. Morgentaler

Dr. Henry Morgentaler had been performing abortions on an outpatient basis for a number of years in his Montreal clinic. He had also spoken out in public for complete repeal of all abortion law from the Canadian

Criminal Code. In June 1970 his office was raided and he was charged with conspiracy to commit an 'illegal' abortion.

While this case dragged on through legal proceedings, he was charged with further violations of the law. His office was raided again in August 1973 and he was imprisoned. He was charged in ten further counts as a result of that raid. He faced a total of 13 charges.

A jury of 11 men and one woman heard the first case relating to the August raid, and found Dr. Morgentaler not guilty. The verdict then went to the Quebec Court of Appeal which found the verdict unacceptable. They reversed it, and substituted a guilty verdict. Their action was unprecedented. The usual procedure is for a court of appeal to send the case back for a new trial. Yet the court felt confident in passing a guilty verdict on a case for which they had not heard the evidence nor seen the witnesses.

The case went to the Supreme Court of Canada. On March 26, 1975 they upheld the Quebec court's decision, six to three.

While Dr. Morgentaler was serving an 18 month sentence, he was acquitted on another charge of performing an illegal abortion. Found innocent twice he was still in jail.

This happened even though the jury system is supposed to guarantee the fundamental right of a person to be judged by a group of his peers, and is supposed to give all a chance to influence the laws under which we live, even if in a token sense.

In early 1976, Dr. Morgentaler was released from prison and given a new trial, on the first charge, largely because the section of the Criminal Code which allowed a court of appeal the right to reverse a jury's verdict has been repealed.

The verdict on that new trial came down in September, 1976. The jury found Dr. Morgentaler not guilty.

He still faced eight more charges and the possibility of more drawn out legal battles.

The legal fight faced by Dr. Morgentaler came from his belief that he had a right to provide a service which was urgently needed by women. The courts have tried to make an example of him to discourage other doctors acting outside the law, despite what their consciences might dictate.

In December 1976, the new Quebec government dropped all charges against Dr. Morgentaler.

However, abortion is still in the Criminal Code and so he can be charged with new offences.

## Prostitution

Prostitution itself is not a crime in Canada. There is nothing illegal about buying or selling sex.

For years prostitutes were picked up and charged as vagrants under a section of the Criminal Code which said that any prostitute found in a public place who didn't give a good

account of **herself** was guilty of vagrancy. In 1972 this section of the Criminal Code was repealed.

However, prostitutes can still be arrested under other remaining sections of the Criminal Code:

□ Anyone who solicits in a public place for the purpose of prostitution can be charged. Men who are prostitutes or who solicit prostitutes could theoretically be charged under this section but they aren't.

□ Anyone who is found in a bawdy house without a lawful excuse or who is an inmate of a bawdy house is guilty of a crime. The owner or the landlord of a house who knowingly allows it to be used for prostitution is guilty, too. This applies to managers of hotels and motels. This section could be used to arrest male customers, but is almost always used to round up the female prostitutes.

□ Anyone who takes, offers to take or directs someone to a 'common bawdy house' is guilty of a crime. A 'common bawdy house' means a place that is kept, or occupied, or resorted to by one or more persons, for the purpose of prostitution, or the practice of acts of indecency.

The Public Health Act has also been used to round up prostitutes; officials can claim they have to check if the woman is carrying a venereal disease. (see VD)

Some people say that in order to raise the general moral tone of our society we must stamp out prostitution. Others say prostitution is harmless, even useful; a man can get rid of his sexual frustrations and even try out a few kinky things he wouldn't dare suggest to his wife.

One suggested compromise is to license the profession. A man could then get serviced in clean brothels without worry of venereal disease. This point of view presents itself as being liberal and enlightened. Actually it's an anti-woman view. Licensing prostitutes would not change the fact that women's sexual service is still a commodity in the marketplace.

All women are brought up to bargain in relationships with men by using their bodies. A wife sells her sexual services as a package which will be dealt out over a long period of time. In return she gains the right to be supported for this period and she gains a measure of security and respectability.

The prostitute doesn't have this long term security, but her bargain is a straight forward business arrangement. Most women who become prostitutes do so for economic reasons. The temptation of prostitution is the temptation of a job with fairly good pay, flexible hours, doing for money what most men expect women to do for free anyway.

**Prostitutes should be no more punished for selling their bodies than men are for buying them.** Many prostitutes would rather turn tricks than work a straight job. Their feelings are not a tribute to the trade, but more a comment on a society where this work could be more

rewarding financially and less oppressive to some women than most jobs open to them.

Prostitution can thrive only in a society in which women have to sell their bodies in order to scrounge a living wage, and in which men feel it is their right to expect to trade money (in the long or short term) for women's sexual services.

## Lesbians

**Female homosexuals - lesbians - don't face a lot of direct discrimination under existing laws, but suffer more from a lack of formal legal protection.** The Canadian government relaxed its laws against homosexuals in 1969. Now, if you're over 19 you can do pretty well what you want as long as it's in private. It's not considered private if more than two people take part.

One section of the Criminal Code leaves some leeway for prosecution of lesbians. If you commit an act of **gross indecency** you can be imprisoned for five years. This is the only sexual offence in the Criminal Code whereby a woman can be charged for being the active person in a sex act. The definition of what is grossly indecent is vague and a judge can interpret it according to his own views of community standards of sexuality. It's not clear what a court's view of oral sex committed by a woman on another woman would be.

Few sexual acts, however, even those a court might find grossly indecent, are committed in full public sight. Lesbians who are open about their sexual preference and publicly affectionate to each other could face harassment. They could possibly be arrested by police for loitering or creating a public nuisance.

**We learn fairly fixed ideas about female sexuality and female roles, and the law helps reinforce the concept of a woman as only half complete until she is part of a union with a man.**

In a child custody case, a woman may be denied rights to her child because of her sexual preference. The court should consider only the relationship between each parent and child, and each parent's ability to create a home conducive to the child's growth.

Some homosexuals have made their union public by getting "married". Such marriages are not legal. One recent British decision said the characteristics which distinguish marriage from all other relationships can only be met by two persons who are not the same sex. No-one has yet tested this law in the Nova Scotia courts.

**The Human Rights Act of Nova Scotia does not protect homosexuals. It does not prohibit discrimination because of sexual orientation or preference.**

"The wife who married for money, compared with the prostitute, is the true scab. She is paid less, gives much more in return in labour and care, and is absolutely bound to her master."  
—Havelock Ellis

"I read a book that is supposed to be a psychoanalytical study of call girls and it gives the impression that we are all emotional basket cases, heroin addicts, potential suicides...I think I'm remarkably sane and I think I'm living a remarkably sane life and I would say any girl who thinks she's better off waiting in a coffee shop is a sight more disturbed than I am."

—Ellie, a call girl in **Tricks of the Trade**

Historically, lesbians in England have avoided prosecution. Queen Victoria, who refused to believe that such a thing as lesbianism existed, removed all reference to women from an 1885 criminal law amendment making all homosexual acts between adults illegal.

In a recent case in Alberta a lesbian mother was awarded custody of her child.

In a Manitoba court a marriage between two people of the same sex was recently declared invalid.

# Crimes against women

## Sexual offences

In our culture, male and female sexuality has become distorted into stereotypes, stereotypes that contradict each other, but still manage to stagger on side by side. Women are portrayed as weak, helpless creatures, men are told to be 'real' men, strong men.

So our Criminal Code gives females under 16 extra protection from sexual abuse. Yet a female as young as 14 years must prove she was of 'previously chaste character' in order to win a case. Presumably women can only be assaulted, can only be vulnerable, as long as they are pure. Once fallen from the pedestal, the soft goddess shows herself to be a tough schemer under the skin.

Yet there is no similar legal protection for young men. Presumably even teenaged males are expected to be able to take care of themselves. On the other hand, the law appears to say that no male under 14 years is capable of performing sexual intercourse.

### Sexual intercourse with a female under 14

If a man has intercourse with a female under 14 who is not his wife, he can be imprisoned for life. He can be found guilty, even if the female consented or if he believed she was over 14.

A male under 14 cannot be charged with this offence, but he could be charged with indecent assault.

Sometimes this offence is called Statutory Rape, but it differs from rape because the man can be convicted even if the victim gave her consent.

### Sexual intercourse with a female between 14 and 16 years

A man is liable to five years in prison even if he believes the woman was over 16. However, there is an important rider in this charge: the female must have been of 'previously chaste character'.

What is 'chaste character'? There seems to be an elusive definition of moral cleanliness, or what is indecent behaviour for a young woman. A court doesn't necessarily accept that virginity and chasteness are the same thing. One judge defined it like this: "This does not imply the type of excessive virtue found in a prude, but it does embody that degree of decency which is found in the average decorous, self-respecting unmarried woman."

The court can find the man not guilty if he can prove the woman was more to blame for the act than he was.

Again, no male under 14 can be convicted for this offence.

### Indecent assault on a female

Indecent assault doesn't have to be physical violence. It refers to the use of force, however slight, or to gestures or words used in an indecent situation.

**Males or females can be charged with**

**indecent assault on a female, but only a male can be charged with indecent assault on a male.** A person can be imprisoned for up to five years for this offence.

There is no exception for anyone under 14 years.

Until recently, for certain sexual offences, the judge had to caution the jury that it would be dangerous to convict an accused without evidence to back up the victim's testimony. This section of the Criminal Code regarding the caution is now repealed.

Sometimes the accused will 'cop a plea' on a charge. That means he will try to get out of being convicted for the offence for which he was first charged by pleading guilty to a lesser charge. For example, a man accused of rape might plead guilty to a charge of indecent assault.

## Rape

Any person who commits rape is liable to life in prison. A rapist is defined in law as male, the rape victim as a female who is not his wife.

A man rapes a woman if he has sexual intercourse with her, without her consent, or with her consent if he gets it by threatening her with bodily harm, by impersonating her husband, or by falsely representing the nature and quality of the act.

The onus is on the woman to prove that she took every reasonable precaution to prevent the rape and to report it as soon as possible. She is expected to go to the police immediately after the rape, to show ripped clothing, cuts, bruises, signs of struggle. She is expected to go over the incident in detail and to submit to a medical exam to check for signs of penetration.

If a woman waits overnight or even a few hours before reporting a rape or if she is not hysterical, the police might think she really agreed to the act, but is feeling guilty and pressing false rape charges.

Until recent changes were made in the Criminal Code, rape was the only criminal charge in which the victim was on trial. In order to get the facts of a rape case out, the woman had to go on the stand and testify for the prosecution, but the alleged rapist did not have to. She had to answer questions in court about her entire sexual past. The man's past record of behavior **could** be questioned, once he was on the stand and points relating to his character had already been brought up. But he was protected by his legal right not to incriminate himself by testifying. The woman did not have this protection.

The questioning of a woman was permitted on two grounds:

- 1 **A woman's answer would show her credibility as a witness.** The logic: if a woman admitted other sexual activities, it would be inferred she was a woman of bad moral character, the kind who would have little hesitation about lying in the witness box.
- 2 **Many of the questions related to consent.**

The number of rapes reported compared to the number of suspects arrested and brought to trial in lower than the rate for any other crime against the person. Only about half the people charged with rape are convicted.

"The first thing the police detective said to me was, 'What's the matter, didn't he pay you enough money?'"  
—A rape victim interviewed by Myrna Kostash in Maclean's

In 1975 in an English court, an 18 year old man admitted raping two women at knifepoint. The judge sentenced him only to a six month suspended sentence, and said "you are at a difficult age in life and you were overcome by your own sexual desires."

The logic: A woman who had consented to intercourse in the past is the kind who would consent to intercourse whenever it's offered, and so probably consented on the occasion in question.

Arbitrary standards of morality have clouded rape cases. If you had ever lived with a man outside of marriage, gone alone at night to a man's apartment or invited him to yours, gone for a drink with a man you just met, you have a good chance of being judged morally loose by a jury.

Supposedly women who acted like this couldn't be raped, since they were leading men on by their walk, talk, and dress. In fact, few reported rapes result from the woman's action. **Women are not responsible for the crime of rape.**

### Rape law reform

The Federal Justice Department proposed changes in the courtroom procedure for rape trials. They became law in April, 1976.

They abolished the requirement that the judge tell the jury it would be dangerous to convict the man on the woman's testimony alone.

Cross examination of the woman about past sexual life is permitted only if notice is given in advance. The judge then can decide if the evidence is necessary. This particular reform leaves too large a loophole, however. A lawyer could prepare questions for the victim in advance and a judge could permit them. An individual judge might feel it was more relevant to find out about the victim's prior sexual contacts than to save her humiliation in the courtroom.

The victim can apply to have her identity kept from the press.

The judge has to consider whether changing the location of the trial would make the proceedings more fair.

Women's groups and rape crisis centres have suggested further reforms, such as eliminating the charge of rape and replacing it with different degrees of sexual assault, depending on whether there was a deadly weapon present, how serious the injuries suffered by the victim were, whether there was sexual penetration or just sexual contact. Each degree would have a different maximum sentence.

Lawyers defending a man charged with rape have often persisted in questioning a woman in court because the stakes are so high for their client, who faces a maximum life

sentence. Even so, more than two thirds of men sentenced in rape cases in Canada get five years or less.

Unfair rape trial procedures have embarrassed and degraded women and gotten many guilty men off the hook. **Now that the courtroom procedures are changed, women may be more willing to press charges, to confront rapists in court and give other women courage to do the same.**

### Assault charges

Women can follow another form of legal action against a rapist. They can bring him to court and sue him for damages for assault. Few women have done this, but there are advantages to this form of action.

First, the woman brings the action as the plaintiff; she is not just a witness for the prosecution's case, as in a rape trial. Therefore she has more control over how her case will be handled.

A woman doesn't have to prove she was absolutely innocent of contributing to the crime; that is, she could have joined the man for a drink, but he could still be found guilty of assaulting her.

Another difference is that the man can be forced to testify and give evidence in this kind of case.

A woman can also bring this charge if no actual rape took place, but was only attempted.

And a woman can claim physical and psychological damages and get financial compensation. She can't do this in a rape case. You couldn't do this in addition to pressing criminal charges.

### The reform of rape trials is long overdue, but changing courtroom procedures will not end rape.

Our social and legal systems are based on relationships of property. Much of our law has been created to protect one person's (or one business corporation's) private property from being violated by another. In law, and socially, women are defined as men's property, someone's wife, girlfriend.

Rape laws have not been created only as protection for women. They are also a man's way of getting back at other men. A man who rapes another man's woman has trespassed on someone else's exclusive territory and must be punished.

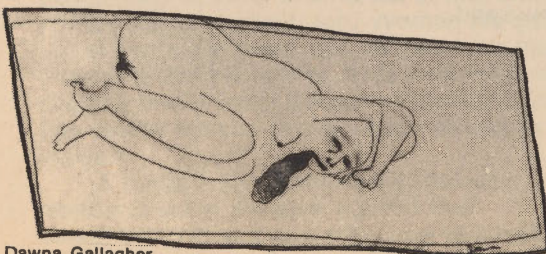
The severe maximum sentence for rape (life imprisonment) comes from the ancient belief that on the marriage market a virgin had a much higher sexual value than a non-virgin. A woman's chastity was seen as a precious possession, more precious than life itself. A raped virgin saw her marriage prospects dim; she was cast aside, a non-person. In the law's eyes, she might as well have been murdered.

A woman who isn't attached to a man and who isn't a virgin still rates much lower on the social scale. Her rape is less of a social outrage, because she has already been violated, or

"If I sit down on this chair, I defy anyone to take my pants off without my assisting."

—a lawyer defending a rapist in a New Brunswick court. He was disputing evidence by the woman claiming the man had pulled off her jeans in a car.

In a recent U.S. case, a woman who was raped in her room in Holiday Inn sued the hotel and won. Another U.S. woman won a case against a university, for not guarding their locker rooms in such a way that she was protected from rape.



Dawna Gallagher

The Mirror, a medieval legal commentary, defined rape as "capturing or carrying away by force", and added that it may be applied to "things and to women".

"The notion that a victim of sexual aggression is forced into an experience of sensory delight should be relegated to the land where candy grows on trees and there are lemonade fountains. If any pressure forced upon an erogenous zone resulted in pleasure, there would be no frigidity among women. If any pressure forced upon an erogenous zone resulted in pleasure, there would be no impotence among men."

—Ruth Herschberger,  
Adam's Rib

"I was seventeen, I was trying to prove that I was a man. I didn't fit in with what I saw on television. I didn't fit into that John Wayne image, so I had to do something to prove my manhood....All of a sudden a thought came into my head: my God, this is a human being. I came to my senses and saw that I was hurting this woman, that a person was involved, that it was not an actress in a movie."

—a man who raped a nurse in a doctor's office (from a transcript in Ms

About two thirds of rapists are either known well to the victim or have recently met her. Most rapes take place in the victim's home or car.

because - worse - she 'gave herself away'. There is a strong belief in our society that a non-virgin can't be raped. She will in any case, be treated with more suspicion and less sympathy in court.

**The act of rape is portrayed as unfortunate, yet inevitable. Inevitable, if women step outside the strict bounds set for them.** To keep women as managers of the home (whether they work outside it or not) it's essential that women themselves be managed. One of the ways women are kept under control, kept from moving freely, is their constant fear of rape.

**This second nature fear of rape is well drummed into women's heads from a very young age. Every woman knows that every time she walks down the street at night she has no real right to be doing it, and she does it at her own risk. If she is raped, she should have 'known better'. She should have been at home or on the arm and under the protective gaze of a man.**

The other side of the idealized domestic woman is the oversexed overcome man. The two mythical creatures meet and produce another myth: that beneath the woman's docility lies fire and passion, waiting only for Mr. Right to release it.

The myth is that women secretly want to be ravished; that they're coy creatures who say 'no' and mean 'yes'.

Men have grown up with these myths and therefore few of them, even if they have raped a woman, see themselves as rapists.

"A rapist," the man might think, "that's a dirty pervert in the bushes with a knife. Me? I'm no rapist. I'm a nice guy with a steady job, I love my mother, I walk my dog, I want this woman (I'm sure she feels the same) and I'm only 'seducing' her."

**Rape has absolutely no connection with love or pleasure.** The majority of rapes are planned, not done on passionate impulse. Most rapists are not strangers, they are already known to the victim.

Rape is a violation of every woman's physical integrity, right to peace of mind and freedom of movement.

**As long as women are encouraged to be sexually and socially passive and men are encouraged to treat women as prizes to be conquered, rape will continue to be accepted as a misguided male strategy in the mating game, not as the violent, brutal assault it is.**

#### Compensation for victims

Some provinces have available a program of financial help for innocent victims of crime. Rape, attempted rape, indecent assault, maintenance of a child born because of a rape are among the crimes covered by the plan.

Nova Scotia could adopt this legislation, but they haven't yet. By early 1976, British Columbia, Saskatchewan, Manitoba, Ontario, New Brunswick, and Newfoundland had compensation for victims of crimes.

This kind of financial help for women who

have been victims of sexual crimes is important, even if it's only a small step to the real psychological back pay owed to women.

#### Wife beating

Women and men get depressed about their work, or lack of it. They feel frustrated at trying to make do on low wages or welfare payments. They see no end to the rise in the costs of maintaining a home and children. They may drink away their troubles and take out their frustrations on each other in psychological and physical battle. Men often physically abuse their wives and children.

Until the middle of the 17th century, wife beating was permitted under church and civil law. As time passed, the law changed and a man could only beat his wife with a stick no thicker than his own thumb. Even when a man could be punished in court for beating his partner, the court tended to see his action as merely a too-liberal exercising of a husband's right, rather than a physical assault on another human being.

**In Nova Scotia it is against the law for a man to beat the woman he is married to.**

If you have not received physical injuries you can go to Family Court for a private trial. If there has been bodily harm, you go to Magistrate's Court. You usually need a lawyer to prosecute a common assault charge against your husband, although you can do it yourself. The Crown Prosecutor will take the case against your husband free of charge if you have suffered bodily harm.

Your partner can be sent to jail for beating you. If he isn't in jail, you can get a probation order to restrict his activity; for example, saying he can't drink, or that he has to stay away from you and the children. Some police forces won't continue to answer complaints about family quarrels unless you get a probation order.

The police often feel they are wasting their time, turning up at a home, only to find that the complaining woman won't prosecute her husband, after all. Women may not want to lay charges because they are afraid their husbands will come back afterwards and threaten or hurt them even more. Physical violence against women is not just a family matter, and often escalates into extremely serious harm to the woman, even to her death.

A woman who has repeatedly refused to lay charges against her husband should still be able to feel confident that the police will turn up at least as a threat of protection against her husband.



# Crimes by women

## Women as criminals

There are very few women in prison in this country, either in absolute numbers or compared to the number of men.

The female prison population fluctuates between one and two per cent of all people locked up. In 1973, 8,945 men and 166 women were in federal institutions. There are 27 federal penal institutions of different size and function for men. There is only one for women, at Kingston, Ontario.

Women in Nova Scotia - and in all of the Maritimes - who have been convicted of a provincial offence, or of a federal offence carrying a sentence of less than two years, are put in the Halifax County Correctional Centre. There are fewer than 20 women there at any given time, usually between ten and 15.

Women are arrested for fewer crimes than men, and the crimes they are charged with are less serious. Women are more likely to be charged for petty crimes against property: shoplifting, fraud (forging cheques); for liquor and drug-connected crimes. Women are rarely charged for violent crimes. For example, in Halifax, from 1969 to 1974:

- The largest number of charges against women was for theft under \$200. In some years half those charged for this crime were women.
- The next largest number of charges against women came under the Narcotic Control Act. They still formed only ten per cent of the number of men charged under that act.
- Five per cent of homicide charges were against women.
- Even in more serious crimes against property such as robbery and break and enter, the number of women charged in any one of those five years never came to more than two per cent of the number of men charged in the same year; the absolute number of women charged in a year was never more than ten.

In the past few years, there has been a lot of discussion about the drastic rise in crime committed by women. It is not clear whether more women, as compared to men, are committing crimes, or whether crime as a whole is increasing. Much of the publicity about the increase in female crime has centered around women in the United States and in Europe. There is little evidence that crime among Nova Scotian women is rising rapidly.

A popular explanation for this rise in female-committed crime is that women are demanding equality in all areas of life, and why not the world of crime, too? Women are getting out of the house more, and so they have more chance to commit crimes. This view tends to suggest that it is the women's movement which has caused the rise in crimes committed by women.

A woman who commits a crime as a conscious act of defiance against the establishment, and as a conscious feminist, is, however, a rare example. **A rise in crimes**

**committed by women would much more likely reflect the tight economic situation in which women find themselves.**

The women's movement grew out of women's efforts to overcome their personal and economic oppression; it was born out of concrete conditions at work and at home. Women who get involved in crime are also responding to concrete conditions they can't tolerate.

Many women who turn to crime have had a disrupted, unstable home life. They have left home or been turned out of the house and find it hard to fend for themselves. Untrained, with little practical job experience, often with a child to support on their own, even wards of Children's Aid Societies themselves, they drift between part-time and seasonal work, from the fish plant to the factory. They usually live on welfare payments.

Petty crime such as shoplifting is a supplement towards survival. It's a quick way to get goods. Often women become involved with drugs or drink heavily. They find it hard to organize their day. Bored, they get involved in public mischief, miss appointments, lose jobs, become more desperate, drink, get caught up in physical brawls, look for a quick way to cover the bills, such as stealing or cheque forging. The circle repeats itself.

Women who get involved in crime are more self-destructive than they are socially destructive.

In the Maritimes all these dilemmas are aggravated; there are fewer choices for women, and fewer jobs. The cost of daily living - even living on the bare edge - is high. In the eyes of the law these women are criminals. In many ways, they themselves are the victims of our social structure.

Statistics which show a jump in female crime around the world may not necessarily reflect a real rise in crime. Police departments haven't always kept separate records for female arrests and convictions; they've been lumped with the male records. Now, more attention is being given to female crime and it's easier to find statistics.

Also, police and judges have traditionally been lenient to women in charging them with offences and in passing sentences. Judges have tended to use fines, suspended sentences, conditional and absolute discharges for women, rather than stiff prison terms.

A rise in the statistics for female committed crimes may reflect judges' changing attitudes towards women. A judge who in the past might not have believed or wanted to believe that a weak, helpless woman could be capable of crime may be reversing this attitude and may now be treating women the same as men. On the other hand, another judge may feel that women have stepped outside their proper place at home, and accordingly mete out more severe sentences.

It's also possible that police, like judges,

"When it comes to preparation for the crime, the natural aptitude of the woman for subterfuge and concealment stands her in good stead. She has always had to rely on a certain amount of convincing chicanery to make up for the lack of physical strength."

—Gerald Sparrow, **Women Who Murder**

"A female has a much more devious mind than a man. A woman who plans a crime has a much better chance than a man to succeed—a woman is twice as deadly as a man."

—an Atlanta, Georgia policeman

"Women are more likely to commit murder than men are—that's always true (because) women are emotional and most murders are committed in emotional circumstances."

—Percy Forman, American criminal lawyer (said to be the basis for the character Perry Mason)

"The women's movement is not creating alcoholics, any more than student protests caused the war in Vietnam."

—Katherine Govier, in **Weekend Magazine**

"Ironically, women have often been confined for longer periods than men for the same crime, based on the belief that women are more easily rehabilitated than men. But when a woman gets to prison, she's five per cent of the prison population and she gets five per cent of the funds. If you need your money for building maintenance, guards and food, what's left for rehabilitation?"

—Freda Adler, criminologist

In Canada in 1973, females committed about 17 per cent of all juvenile offences. In contrast only between one and two per cent of the adult prison population is female.

75 per cent of male delinquencies involved violations of the Criminal Code. Only 46 per cent of female delinquencies did.

are reacting to women's more visible presence on the street and to women's stated desire to be treated equally, by bringing more women into the station. They may then be released. Percentages quoted in newspaper and magazine articles could reflect a growth in the number of arrests, but not a growth in the number of convictions.

There are few facilities for education or rehabilitative training for women in penal institutions. At Kingston, women find mostly 'female' vocational training: home economics, hair dressing, typing. A Maritime woman who goes to Kingston will have a slim chance of seeing her family or friends regularly.

In Nova Scotia, the Halifax County Correctional Centre has no formal program of education or training for women. Authorities have cited lack of money, the small number of women in these institutions, and the women's constant movement in and out as an excuse for inadequate programs. Yet the small number of inmates means that a program could be set up without a tremendous amount of money or personnel.

One of the organizations helping female offenders in Nova Scotia is UNISON. They are funded by the Department of Manpower and Immigration and they work in courts, in prisons, sometimes on the street helping female offenders, finding them employment, helping them to adjust. UNISON also works with prisoners' wives. Most of their work is with women 16 to 25 years old.

A prisoner's wife faces special problems. On top of the social stigma of having a husband in prison, she faces a special kind of isolation: she has all the restrictions and burdens of being a single parent with none of the freedoms of being an unattached woman.

A large number of prisoners' wives are on welfare. The welfare system makes no provision for paying them extra money to take trips to the prison to visit their husbands. A woman may be arbitrarily cut off welfare when her husband comes out of prison. The welfare system is based, as is so much of the law, on the assumption that all men, regardless of their situation, are obligated to support a woman and will be capable of doing so.

CONCERN is a self-help group of women whose husbands are in prison at Dorchester, Springhill, and the Halifax Correctional Centre.

### **You're under 16**

Any person under 16 years who violates a law can be considered a juvenile delinquent. The law can be the Criminal Code, a federal or provincial statute, a municipal by-law, or part of the Juvenile Delinquents Act.

**The Juvenile Delinquents Act allows young people to be punished for behaviour for which an adult wouldn't be punished: for example, "sexual immorality or any similar form of vice."**

Offences committed most often by Nova

Scotian juveniles are theft, break and enter, other property offences, vagrancy, incorrigibility and immorality.

Girls are charged with about the same number of incidents of escape from custody, vagrancy and truancy as boys. But 60 per cent of the juveniles charged with immorality, and 70 per cent of the juveniles charged with incorrigibility are female.

A young woman who uses abusive language, hangs around the streets because she's bored, is aggressive and belligerent, may not be acting much differently from a young man her own age. Parents, teachers, social workers, judges will tolerate such behaviour longer from males than from females. They are confident that a boy's aggressiveness will become drive, his restlessness will become ambition, his lack of respect will become singlemindedness. They believe a girl who displays the same qualities must be brought back into line right away. An aggressive woman is considered pushy, a restless woman fidgety, or a fussbudget, a woman who shows lack of respect 'does not know her place'. A girl must be encouraged to cultivate other qualities if she is to fit into a traditional role of mother and housewife and docile worker.

Young girls make up 35 per cent of the juveniles in Nova Scotia institutions. In the Halifax County Correctional Centre, in contrast, the adult female population is extremely small; only about ten to 15 women are there at one time, probably no more than ten per cent of the total prison population.

Juvenile cases are heard in Family Court. The trial is private and the girl's name is not publicized. If she has been charged with a serious offence and if she is 14 years or older, her case can go to an adult court.

A girl who has been convicted can be sent to the Nova Scotia Training School for Girls in Truro, run by the Provincial Department of Social Services. A much greater percentage of females than males brought into juvenile court for the first time get sent to training school.

Young female offenders do not get the same quality of service as male delinquents. At the adult level the excuse is that there are not enough offenders to warrant improved services. This is not true of juveniles, and the number of female juvenile offenders is increasing.

The government is considering raising the age of juveniles to 18, to protect young people from being subject to the tough sentences allowed in an adult court (for Criminal Code offences, for example), and from being subject to the tough atmosphere in adult prison, which has little rehabilitative effect.

Juveniles in a Family Court are supposed to be protected also from the harsh adult court system. But an adult court ensures safeguards: formal, well-defined and specific charges; formal procedures; rules of evidence; the right to a jury trial; set limits on sentences. **Young women too often meet an arbitrary system of justice in juvenile court.**

# Your political rights

## You vote

In Canada, the movement to gain the vote for women began around 1876, inspired by American and British suffragettes. Canadian women called themselves 'suffragists' - largely to avoid confusion with the more militant 'gettes' - and most of them were well off, middle class women.

Some Canadian women voted on the federal level as early as 1917. Borden's Conservative government, in an attempt to gain more support for its wartime policies, extended the vote to all British subjects, male or female, who had served in the Canadian Armed Forces, and to all females over 21 who had fathers, brothers, or husbands in the forces.

In 1918, the war was over and the government granted all women over 21 the vote. The gesture came in recognition of women's part in the war effort, but the government had gone too far at that point in granting suffrage to women to turn back.

Nova Scotian women got the vote on April 26, 1918. Nova Scotia was the sixth Canadian province to grant women the vote, the first east of Ontario to do so.

Any female who is a Canadian citizen, at least 19 years old, and who has lived in Nova Scotia for the previous year can vote in municipal, and provincial elections. Only Canadian citizens can vote in federal elections.

In federal elections a woman can register

under the name by which she is known, and "Mrs." or "Miss" is not required. According to Nova Scotia law, on the list of eligible voters for provincial and municipal elections, a married woman or widow is registered as 'Mrs.', an unmarried woman as 'Miss'. Normally a married woman will be registered under her husband's name (Mrs. George Smith). If you ask, you can use your own first name (Mrs. Betty Smith). Your husband's occupation will be listed, but the Nova Scotia Elections Act states quite clearly that 'no occupation shall be given opposite the woman's name'. Many married women do, however, make a point of listing their occupations.

## You're on a jury

The list of jurors for a trial is drawn from the permanent list of ratepayers in a community, so only people who have property listed in their name get called for jury duty. Anyone 19 years or over, and a Canadian citizen, can serve on a jury.

Since 1972, the Criminal Code has eliminated all exemptions for jury duty on the basis of sex. Criminal trials come under this federal law, but civil trials come under the provincial government.

In Nova Scotia, women are given special consideration for civil trials. All women notified of jury duty also have to be notified of their right to apply for exemption because of pregnancy, or "some other female condition or ailment."

Between 1891 and 1897, there were six attempts to pass bills in Nova Scotia giving women the vote. The Attorney General, J.W. Longely was strongly opposed to the idea, and said that if women got the vote they would forget their true functions. In 1895, in the Nova Scotia House of Assembly, he cited these functions as:

"**First**, the bearing and bringing up of children, and this is the highest; **second**, the creating of home and the beautifying of home life; **third**, to charm men and make the world pleasant, sweet, and agreeable to live in; **fourth**, to be kindly and loving, to be sweet and to be cherished, to be weak and confiding, to be protected and to be the object of man's devotion."

"No person denies a woman the right to go to church, and yet the church service takes a great deal more time than voting. People even concede to women the right to go shopping, or visiting a friend, or an occasional concert. But the wife and mother, with her God given, sacred trust of molding the young life of our land, must never dream of going round the corner to vote. 'Who will mind the baby?' cried out one of our public men, in great agony of spirit, 'when the mother goes to vote?'"  
—Nellie McClung

"A deaf person is not required to hear, a lame person need not be nimble....Special consideration is also given to the weaker sex and of course children."

—from a textbook on Canadian Negligence Law



Dawna Gallagher

"It (the Bill of Rights) is, however, a charming document, available at modest cost through the Queen's Printer. Frame it and hang it on your wall for decorative purposes."  
—Ruby and Copeland, **Law Law Law**

"They have chosen not to utilize the Bill or Rights as I thought it was going to be used. When I was a member of Parliament, and that bill passed, I remember having a few drinks with the guys after to celebrate. Boy, we felt we had started something really big around here. It's a big social document like the Constitution of the United States, we're going to get great ringing judgements."  
—Arthur Maloney, Ontario Ombudsman

Perhaps the most important legal landmark in Canadian women's rights was the persons' case of 1929. Women from Western Canada had been lobbying to get a woman appointed to the Senate. The British North America Act stated that only 'people' could be appointed; the Prime Minister's lawyers advised that a woman wasn't a person. The Supreme Court agreed in a 1928 ruling. An appeal was made to the Privy Council in England which decided in October 1929 that "the word persons includes members of the male and female sex." **So we have been officially recognized as persons in this country for only 43 years.**

In 585 A.D. the Synod of Macon passed a resolution officially declaring that a woman was a human being with a soul of her own.

## Equal to what?

Until 1960, our Parliament could theoretically pass any law that deprived us of basic rights, like freedom of speech or freedom from discrimination, and the courts couldn't touch it. In 1960, the Diefenbaker government passed a Bill of Rights.

The Bill of Rights is just an ordinary act of parliament (not a constitutional document), but it provides that no other federal act of parliament should be interpreted by the courts so as to deny anyone within the jurisdiction of federal law the fundamental rights and freedoms which the bill claims to protect. One of these freedoms is 'the right of the individual to equality before the law and protection of the law'.

**How effective has the Bill of Rights been in guaranteeing equality before the law for women?** The first major test for the Bill of Rights as it relates to women's rights came in 1973. It was the Jeanette Lavell case.

Jeanette Corbiere Lavell was born on the Wikemikong Indian Reserve at Manitoulin Island, Ontario. In 1970 she married a white man. The Indian Act states that any Indian woman who does this will have her name removed from the native registry, and will therefore lose her status as an Indian.

Yet the act also says that an Indian man who marries a white woman confers his Indian status on her. She becomes a member of his tribe with full native rights; so do her children. But an Indian woman whose children have a white father cannot confer Indian status on them. **Thousands of Indian women have had their names removed from the native registry because they married white men.**

Jeanette Lavell questioned the fairness of this law which defines an Indian woman (but not an Indian man) in terms of the person she marries. She challenged the Indian Act in court.

She was opposed by 18 Indian organizations. Some native groups were afraid



Dawna Gallagher  
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a change in the act would mean an influx of white men onto the reservation. Others felt that the male-dominated family should remain the mainstay of life on the reserve and felt threatened by what they considered a white women's liberation movement. Even some progressive native men opposed her case because they were afraid it would lead to piecemeal reform of the Indian Act, which needs a total overhaul.

**In 1973 the Supreme Court of Canada ruled five to four against Jeanette Lavell. She wanted equal treatment under law; the court chose to define equality in its most narrow sense.** They said it meant: "... equality of treatment in the enforcement and application of the laws of Canada before the law enforcement authorities and the ordinary courts of the land." So all Indian women in the same situation would receive 'equal treatment' under the law.

The Supreme Court had, in other words, ruled that the Indian Act did **not** violate the Bill of Rights, and did not, therefore, violate an Indian woman's right to equality before the law.

Their decision showed, too, that the courts have the power to ignore a document like the Bill of Rights. This power rests with judges strongly committed to traditional values such as the sacredness of property and subordination of women. **The Supreme Court did not apply the Bill of Rights in the spirit in which it was intended. The legal precedent set in the Lavell case was a severe blow to women's legal rights in Canada.**

The blow was especially strong, when seen in light of a Supreme Court verdict only a few years before the Lavell verdict.

There is a provision under the Indian Act which says that it is a crime for an Indian to be drunk off a reservation. This law applies to Indians, in addition to any other laws about drunkenness which apply to both Indians and white people. Joseph Drybones was an Indian charged with being drunk off the reservation, in the North West Territories. Unfortunately, there are no reservations in that part of Canada. So legally he could be charged with being drunk **anywhere**, including inside his own home.

The Drybones case was taken to the Supreme Court as a violation of an Indian's basic right to equality under the law guaranteed by the Bill of Rights. He had been punished for doing something a white man could do without punishment. The Supreme Court held in his case that the Indian Act **was** contrary to the Bill of Rights because the act discriminated on the basis of race. They held that the Bill of Rights could overrule the Indian Act.

Under the Indian Act, Jeanette Lavell was punished for marrying a white man. Yet the Supreme Court was able to find in her case that while that provision of the Indian Act **did** discriminate on the basis of sex, it was not contrary to the Bill of Rights. **The Bill of Rights has shown itself to be a useless tool in women's fight for real equality before the law.**

# Your human rights

## The Human Rights Act

The Human Rights Act of Nova Scotia was passed in 1963, and the Human Rights Commission was set up to enforce the act. **The Human Rights Act does not guarantee protection of all your basic human rights. It guarantees protection on certain grounds and under certain circumstances. It prohibits discrimination on the grounds of religion, race, colour, creed, ethnic or national origin, sex, age [between 40 and 65], or physical handicap of a person. Sex became a ground in 1972, age and physical handicap in 1974. Discrimination is prohibited only in employment, accommodation, and services customarily available to the public.**

The Human Rights Act also prohibits discriminatory advertising in any media. This means newspapers cannot legally segregate classified advertising jobs requiring a male or female unless there is a real occupational qualification based on sex.

There are neutral ways of describing some jobs (electrician, carpenter), and jobs can superficially be made neutral by adding the word 'person' instead of 'man' or 'woman'. But someone who advertises for a waiter/waitress will probably run a restaurant which normally hires either only men or only women, anyway.

If the commission staff sees an advertisement they think is discriminatory, they often call the newspaper and point out this fact to them. The usual practice is that nothing is done to those who placed the ad. The commission's call is more a friendly reminder than a threat of action.

The Human Rights Act prohibits an employer from asking for information on a job application form which could prejudice his view of the applicant on any of the grounds covered by the act. For example, it is a violation to ask before someone is hired, for the applicant's sex, or at any time to ask for a list of clubs they belong to with religious or national affiliation.

**The Human Rights Act does not cover discrimination because of marital status.**

Two groups are allowed exemption from Human Rights legislation:

- Any ethnic or religious organization. They have the right to decide who can make up their membership and can legally choose only those who conform with their own beliefs and prejudices.
- All domestic workers living in single family homes.

The Human Rights Commission handled complaints about maternity leave before it was a right under the Labour Standards Code. Interpretation of the Human Rights Act could be broad enough to cover equal pay for work of equal value, because they can deal with complaints relating to 'terms and conditions of employment'.

If you think you have been treated unfairly in any of the areas covered by the act, contact the Human Rights Commission. Their main

office is in Halifax. They have regional offices in Sydney, New Glasgow, Antigonish, and Digby.

## You file a complaint

- 1 After you have contacted the commission, they will send you a complaint form.
- 2 Once you have filed a written complaint them, stating the details of the alleged discrimination, they will assign an officer of the commission to investigate your charges. The officer does not act as a lawyer on your behalf. The idea of a Human Rights Commission is to resolve the dispute without you having to take someone to court yourself.
- 3 The officer will interview all parties concerned. If she or he feels there is lack of evidence your case will not go on to more formal investigation. If there is 'probable cause', the officer will try to bring everyone to an agreeable settlement. The majority of human rights complaints end at this stage.
- 4 If you don't like the settlement that's been reached, technically you could refuse it. But if the Human Rights Commission and the people charged think the settlement is fair, you have little chance of successfully challenging it.

Under current practice part of the enticement to reach an agreement without a public inquiry, is that all details of the case will be kept secret. A company that settles at this stage can proudly hang a plaque given them by the Commission praising them for being a group that actively works against discrimination.

- 5 If the officer or the director can't effect a settlement, the commission has to report to the minister (the provincial Cabinet Minister responsible for the Human Rights Commission), and the Minister may appoint a Board of Inquiry.
- 6 If the Board of Inquiry, after a hearing, finds that the claim of discrimination has been established by a reasonable amount of evidence, it will report this and make a recommendation to the commission. There are no set procedures if the claim is not established. There is no provision for an appeal of a board's decision.

The commission has to follow the board's recommendation.

- 7 The minister may then issue any order he feels is necessary.
- 8 If an employer doesn't follow the order, he will be guilty of a summary conviction offence and liable for maximum fines of \$500 for an individual and \$100 for an organization.
- 9 If someone continues to violate the order, the minister can apply to the Supreme Court for an injunction against them.

The commission has no power (with or without the consent of the minister) to make regulations under the act. They can only set up guidelines which have no legal clout.

"Either no individual of the human race has genuine rights, or else all have the same; and he who votes against the right of another, whatever the religion, colour or sex of the other, has henceforth abjured his own."

-Condorcet, 1790

The majority of complaints handled by the Nova Scotia Human Rights Commission have been on the grounds of race. The total number of complaints on the grounds of sex has been small. From 1972 (when sex was introduced as a basis for complaint) through 1974, 77 complaints were laid on the grounds of discrimination because of sex. Only about half of those were judged by the Commission to have sufficient cause and evidence to proceed with an investigation. There are no statistics available about how many of these cases were settled in favour of the woman and how many in favour of the 'accused'.

### The commission in action— three cases

Two recent cases in Nova Scotia, where women lodged complaints under the Human Rights Act charging discrimination on the basis of sex, highlight the deficiencies of human rights legislation generally and specific weaknesses in the Nova Scotia legislation and its enforcement.

#### Roberta Ryan

Roberta Ryan is a Cape Breton woman who applied to become a police officer on the North Sydney force. She had already served with that force for a summer term and had completed a course at the Holland College Police Academy on Prince Edward Island.

She had to make application to the North Sydney police chief who in turn recommended candidates for the job to the town council, which did the hiring. The chief told the council that if Ryan was hired, she would (under union rules) have to work an overnight shift, something he felt a woman could not do. Therefore he could not recommend her. The town presumably accepted the chief's recommendation, since they did not hire her.

Ryan brought her complaint to the Human Rights Commission, which appointed a one man Board of Inquiry: a Halifax lawyer, Keith Eaton.

It looked like Roberta Ryan had a clear case of discrimination on the basis of sex.

At the hearing the Board of Inquiry was told by the police chief that it wasn't just because of the night shift provision that he didn't recommend Ryan for the job. It was also because she didn't meet the height and weight requirements for the job.

**The board ruled that the town had not discriminated against Roberta Ryan because of her sex. He did not rule that the chief's assumption that women could not work the overnight shift was a sexist one. He did not question the built in bias of a job description which says all police officers must be five feet eight inches, and weigh 160 pounds.**

He instead interpreted the Human Rights Act narrowly. The Act states that no one can discriminate in 'providing or refusing to provide employment'. The board ruled that the police chief to whom Roberta Ryan applied, did not have the power to hire, only to make recommendations to the town. Therefore he had not discriminated. Further, the board ruled that on the two dates cited by Ryan in her complaint, there had been no discrimination.

Eaton based his conclusion mostly on the minutes of the town council meetings on those dates. At the first in December, Ryan's name was discussed but no final decision was reached on whether to hire her. At the second meeting in January her name was not brought up at all, although two other people, both male, were recommended for the job.

One of the people recommended did not

have nearly as impressive qualifications as Ryan did.

Since there is no provision under the Human Rights Act for anyone (the commission or Ryan) to appeal a board's decision, Roberta Ryan asked for a judicial review of her case - her only legal recourse. This means she can protest the board's judgement on the grounds that there was an error in law. She can't dispute whether the ruling itself was right or wrong.

The judicial review was pursued under two premises:

- The Board of Inquiry did not understand what the nature of 'discrimination' was.
- As a public Board of Inquiry, Eaton should have asked for more evidence from witnesses (which he had the power to do), if he felt there were obvious gaps in testimony, and it looked like there were. For example, there may have been no record of discrimination on the dates in question, according to council minutes. However, a decision was clearly taken about Ryan somewhere between those two dates, since she had been completely discounted by the second meeting.

Ryan's application for judicial review was refused by the Trial Division of the Nova Scotia Supreme Court in September 1976. A further appeal has gone to the Appeal Division of the N.S. Supreme Court.

#### Helen Grandy

The case which Helen Grandy took to the Nova Scotia Human Rights Commission was less straightforward than Roberta Ryan's case.

Grandy worked at Atmus Equipment in Truro in a clerical capacity. She had been there about a year when an opening for another clerical job came up. If she had been put into that new job, it would have meant a promotion for Grandy. However, she wasn't notified by her employer that the job was even open, although she was qualified for it. Someone else (a male) was put into the position.

Helen Grandy laid a charge with the Human Rights Commission claiming discrimination on the basis of sex. Her boss denied her charge. A hearing was held in late 1975.

It was up to Grandy to prove that she had been denied the job; a hard thing to do, since she never actually applied for it. She also had to prove that even if she did have a legitimate grievance because she wasn't promoted, that the actual reason she wasn't promoted was because she was a woman.

This is almost impossible to do, since it



Gert Mabey

means proving what her employer's state of mind was at a certain time, a thing only he could really know.

An employer could legally refuse a woman a promotion, or not let her know a promotion chance was open, because he didn't like her, because he wanted the job to go to a relative, or because the woman wouldn't go on a date with him. He doesn't need a 'good' reason. He could even say the idea of promoting the woman never occurred to him.

**This is where the limitations of human rights legislation show up. The average employer is smart enough not to say to a woman applying for a job "I won't hire you, you're a woman". He'll simply say someone else is more suitable for the job.** He may carry in his own mind stereotypes of how his women employees should behave. He may like to have a 'wife' around the office, to bring him coffee, tidy up, do personal errands for him. He might like docile and flattering women. He will tend to hire women who fit his biases.

When it comes to promotion time, he may turn around and say that the women in his office haven't shown themselves to be aggressive or tough enough or interested in higher positions. On the other hand, if a woman like Helen Grandy shows initiative, has a strong sense of self and complains publicly if she isn't promoted, the boss will probably call her a sourpuss, a woman who doesn't get along well, someone bound to make trouble in the office. Certainly not a person you'd want to put into a position with authority or responsibility.

**It is possible to toughen up legislation to deal with such subjective factors. Situations can be defined as objectively lending themselves to discrimination.** For example, the situation at Atmus Equipment did. The firm had no set job posting or promotion policies, no clear cut classifications, and its salaries were tied more to individuals than to the work they did. Salary scales also had a very wide margin, giving the employer the option of paying a woman the amount at the bottom. (The job Helen Grandy wanted had a salary scale of \$125-\$176.)

The law could define these policies, not only as bad employment practice but as practice that almost without a doubt lends itself to an easy cover for discrimination. Once an investigation showed that a minimum number of these factors were present at a workplace, it could be assumed that the employer was discriminating on the basis of sex (or on any other basis). The onus would then shift to him to prove he wasn't discriminating.

There had been no ruling on the Helen Grandy case by autumn 1976.

#### **F.W. Perry**

There has, however, been in Nova Scotia a public inquiry into a charge of sex discrimination which was won by the complainant. The complainant was a man.

F.W. Perry applied to Simpson's for a job as a

copywriter. He was told they really wanted a woman for the job because at that point they were hiring only women for the department. He complained to the Human Rights Commission, and was able to provide testimony from other men who had applied for the same job and been told the same thing. The Board of Inquiry ruled in his favour.

Employers have become used to covering themselves and giving a hundred different excuses for not hiring a woman. They have these reasons at their fingertips. Ironically, men probably have a better chance than women of getting concrete proof of discrimination, as Perry did. Employers might tend to be more honest with a man, thinking he would be flattered or relieved to know he isn't being seriously considered for a job traditionally or usually held by a woman.

#### **Are you protected?**

Rights ensured by law mean nothing if they are not enforced. The Nova Scotia Human Rights Commission takes the position of neutral arbitrator in disputes where employees and employers differ on what is unfair treatment. An officer of the commission then tries to get the parties to reach an 'impartial' settlement, to agree that no one was right or wrong, but that each was a little bit of both.

**Effective enforcement of human rights legislation means working from an assumption that the law was introduced because society has been constructed to discriminate against women. Each case must be treated as inevitable, not as an odd incident. Discrimination has to be understood as a thread woven into all our social institutions, not as a series of small incidents explained away by human weakness and misunderstanding on either side.**

People must change their attitudes towards women, and education is an important job for a human rights commission. But if it is to be an enforcement agency, it should not passively wait for complaints to drift its way. People who discriminate must be aggressively sought out, punished, and publicly embarrassed.

So far, women have seen few examples of successful complaints on the basis of sex discrimination to give them the confidence to take their own grievances to our Human Rights Commission. Women are left dealing with daily discrimination as they always have: by themselves, with support from co-workers, unions, friends, and family.

**There is no federal human rights legislation in Canada.** In 1975 a bill was introduced into Parliament which proposed setting up a federal human rights commission. The proposal was accompanied by great fanfare and hooplah during International Women's Year, but it never got off the ground. The bill appears to have died quietly somewhere in the legal process.

## More legal rights

The legal system acknowledges that judges and lawyers can carry personal prejudices into a courtroom. So to ensure the illusion at least of objectivity, the legal profession has invented 'the reasonable man'. The 'reasonable man' is said to represent accepted community standards of intelligence, caution, and foresight. A judge often considers what the reasonable man looking 'objectively' at a case would say. Here's an example from a textbook which has been used in first year law courses at Dalhousie Law School:

"The issue being dealt with is - under what circumstances does silence mean consent. 'Consent' is often used as a defence in a civil action for assault and battery.

1 Suppose Derek asks his date Penelope for a kiss in the moonlight.

Penelope says nothing. Derek kisses her.

Liability? (Answer: NO. It is reasonable to assume that she wanted it.)

2 Donald tells Peter he is going to punch him in the nose. Peter stands his ground. Donald punches him. Liability? (Answer: YES. It is unreasonable to assume that he wanted it.)"

And so another generation of lawyers goes out into the world.

### You need credit

**Creditors find it hard to shake the assumption that every woman is supported by a man and that this man manages their money matters.** You will run into different problems depending on why you want money on credit: for a mortgage, a personal loan, a business loan or retail credit to buy goods.

These are situations you will run into most often:

#### If you are a working wife

You may be refused an account in your name, an account you could get if you were single; you may be asked for information about your husband's credit rating; you may be considered a dependent when your husband applies for credit.

In mortgage dealings the lender will usually not count 100% of your income in calculating the total family income. This means the family will be eligible for less mortgage money. Lenders excuse this practice by saying that women are bound to get pregnant and leave their jobs, and their income won't continue. In their calculations, the mortgage people rarely take seriously a woman's prospects for promotion or salary raises.

#### For all women

Regular maintenance and child support payments aren't considered stable sources of income, even if you have proof the payments will continue.

You might be asked for information about birth control practices or marriage plans.

Some credit ratings are calculated using forms which give numerical values according to the sex or marital status of the applicant. Guess which sex gets the lower rating.

**If you have been denied credit, ask for reasons in writing.** For example, any institution which refuses credit to a married woman but not to a married man would be discriminating on the basis of sex.

If you've been discriminated against because of your sex, you can lodge a complaint with the Human Rights Commission. If the reason is more related to your marital status, you have no formal channel for complaint because the Human Rights Act does not cover marital status. The Act does not specifically provide for credit equality, either.

If the Human Rights Commission does not take your case you have no other legal recourse.

### You need legal aid

We are supposed to be guaranteed 'equality before the law' by the Canadian Bill of Rights. It's been said that freedom of the press belongs to those who own one. Likewise, a person who can afford a lawyer, or a battery of them, is usually more 'equal' before the law than a person who can't afford to be represented in court.

That's where legal aid comes in. **Access to legal service is a problem for all people with little money, but it's a special problem for**

### women alone and women who are single heads of families.

Legal Aid in Nova Scotia is currently run by the Barrister's Society and delivered by salaried lawyers through a series of regional storefront offices.

Judicare is another form of legal aid, a system in effect in Ontario. It allows the client to choose a private lawyer from a list of those willing to be part of a legal aid program. The government then picks up the lawyer's fees.

In 1976 an independent look at Nova Scotia's legal aid - the Gunn Commission - came out in favour of keeping the storefront operation, but taking legal aid away from the total control of the Barrister's Society. It also suggested that a Judicare system might be workable in rural areas not close to a storefront service.

As of mid-1976 you could be eligible for legal aid if your gross income was \$3,000 or less (for an individual), \$4,200 for someone with a dependent partner or child. You are allowed to add \$300 for one more dependent and \$180 for each dependent after that. These income levels for legal aid eligibility haven't changed since the previous edition of **Women and the Law in Nova Scotia** was published in 1972.

You can get legal aid, if you earn more than the stated limit, if:

- You need a lawyer for a criminal case and you haven't been able to get one.
- You need a lawyer to help organize your debts, and legal aid feels you will develop more debts without legal help.
- There are extreme circumstances which call for legal help 'in the public interest' and the 'interest of justice'.

In Halifax, Dalhousie Law School has fostered Dal Legal Aid, staffed mostly by law students. Since the students are not yet members of the bar, they handle only cases which don't have to go to the Supreme Court (all divorce cases, for example, are heard there). Generally they do legal work in magistrate's or family courts.

### Taxes and day care

You can deduct child care expenses, including money spent on a housekeeper, baby sitter, nursery school or day care, from your income tax. A recent amendment to the tax law (in third reading in Parliament summer/76) raised the deduction to \$1,000 per child per year, with a maximum deduction of \$4,000 allowed, no matter how many children you have, or how much you have actually spent on day care.

You have to have receipts to include with your tax return.

You must show that you had to spend money on child care in order to "perform the duties of an office or employment or to carry on a business".

**If you want your children in day care so**



**you can spend time on pursuits which are not paid employment, or if you want to go to school, you aren't allowed to deduct the day care expenses from your taxes.**

If a man wants to deduct day care expenses, he has to show that:

- he doesn't have a wife; or
- he does have a wife, but she has been certified incapable of taking care of the children because she is sick, mentally incompetent, or in prison. It's not enough to show that the wife doesn't care for the children because she is at work or at school.

So the tax deduction will usually be made from the woman's income, if she has one. Most of the time, the woman's income is smaller and the deduction is less useful to the family as a whole.

If the woman has no separate income, the legal right to a day care tax deduction is pretty well useless.

These tax regulations are a good example of how the law tends to encourage traditional patterns in personal relationships. The man is presumed to be the main breadwinner outside the home, the woman is presumed to be caring for the children at home.

### **You're a consumer**

Women are encouraged to view themselves primarily as wives and mothers, and to consider one of their main tasks as that of supervising family consumption. In most households, the woman handles the daily cash flow; she's in charge of food and furnishing. All women are taught, further, to personally define themselves

through the clothes and makeup they wear, the appliances they own, the way they decorate their homes. Fierce competition for the consumer dollar pushes advertisers to convince women they will become someone important by owning something instead of doing something.

Few women know their rights as consumers. Here are some of them:

#### **Consumer reporting**

A credit reporting agency can furnish information on you:

- To any government department: only name, former and present address, former and present place of employment.
- To a company or individual (landlord), as long as you give written permission OR are notified within ten days after the report is requested.
- If you ask, the agency must reveal to you its sources of information on you. It also has to tell you what people or companies have received reports on you.
- If you feel an agency has false or misleading information on you, they must either verify it or remove it from their files.

#### **Consumer protection**

If you borrow money or buy on credit you should know exactly what you're paying for the credit privileges.

You must be given a statement which sets out the amount borrowed or prices of goods, the cost of borrowing in dollars and cents and as a percentage of the amount borrowed, and any extra carrying charges.



Reel Life Photo Heritage Collection

### Collection Agencies

An agency can't call or contact you in person unless it has first sent written notice. It can't threaten or abuse you. It can't call between 9:00 p.m. and 8:00 a.m. or on Sundays. This means of course that it's usually women at home during the day who have to deal with collection agency calls, even if they know nothing about the debt.

A collection agency can't communicate with your friends or relatives except to get your address. It can't give misleading information to anyone, including your employer.

### Direct selling

This includes door-to-door and phone sales, but does not include food and drink products and newspaper sales. All direct sales contracts have to be in writing. It's illegal for a direct seller to offer you a prize or other benefit for providing a new customer.

You can cancel a contract within five days after signing it or within a year if the goods aren't delivered within 120 days. Some people think this 'cooling off' period was created with the assumption that impulsive housewives will sign up for anything offered and have to be given a legal safety valve.

If you have paid two-thirds or more of the purchase price of the goods a seller cannot repossess them. If the goods have been taken back you have 90 days to redeem them by paying the full purchase price.

The Nova Scotia Consumer Services Bureau handles complaints and questions about these and other consumer areas. Contact them at 5639 Spring Garden Road, in Halifax.

The Federal Department of Consumer and Corporate Affairs helps consumers too. Their jurisdiction includes misleading advertising; labelling and packaging; inaccurate weights and measures on foods; meat, fish and fresh fruit inspection; standardizing of children's clothes; labelling hazardous products. Contact the Bureau of Consumer Affairs (Government of Canada) in Halifax, 6th floor, 5151 George St., for complaints in these areas.

### You're a landlord/tenant

**The Human Rights Act of Nova Scotia prohibits discrimination in accommodation because of sex, with respect to the renting of 'any commercial unit or self-contained dwelling unit'.**

Since this provision applies only to self-contained units, (such as houses or apartments), boarding houses, 'Y's, university residences would be exempt.

A landlord is not allowed to discriminate because of sex, but can legally discriminate because of marital status. Some landlords insist that a separated woman get her husband's signature on her lease or they refuse space to a divorced woman on the grounds that she might invite in too many male friends. A landlord

can't legally do this, unless he is treating men with the same marital status in the same way.

**A landlord who refuses space to a common-law couple is acting within the law.**

Tenants and landlords have legal protection under the **Residential Tenancies Act** of Nova Scotia. Some of your rights as a tenant under this law:

Your landlord can't enter your premises unless it's an emergency, or you've already given notice and he turns up at a reasonable hour to show people around, or he gives you 24 hours notice.

If you rent year to year, you or the landlord has to give three months notice, before the year is over.

If you rent month to month, he must give you three months notice, or you must give him one month's notice, before the end of the month.

If you rent week to week, he has to give you four weeks notice, or you have to give him at least one week's notice, before the end of a week.

If your rent is overdue more than one full rent period, (for example, two months overdue), your landlord can legally give you notice to leave at the end of the next rent period.

A landlord can ask you for a security deposit, not more than half the amount you pay per month. When you leave a place, your landlord has to give you the security deposit back (minus any deductions for damages you may have caused) **plus six per cent interest per year.**

Your landlord has to supply you with a free copy of the Residential Tenancies Act. If you have a lease, it is not effective until he does this.

Under a recent change in Nova Scotia law, a landlord has to submit all proposed rent raises to the Nova Scotia Rent Review Commission. Any raises above eight per cent per year are reviewed.

If you have questions about your rights as a tenant or property owner or want to make a complaint, contact the Nova Scotia Residential Tenancies Board.

# Work, work, work...

## You get paid less

Women who work at the same jobs as men almost always get paid less. Across Canada, this is true in jobs which pay hourly, weekly, or monthly, in traditionally male jobs, in traditionally female jobs, in jobs from assembly line work to university teaching. For example:

### Hourly rates across Canada in 1973:

	female	male
fish cutter	\$1.64	\$2.13
sewing machine operator (women's clothing)	2.30	3.31
laundry presser	2.12	2.59

(A 50 cent an hour difference in wages means \$1000 a year difference in over-all salary.)

### Weekly rates in Halifax in 1973:

Senior accounting clerk	\$1.21	\$1.63
Class 'B' retail sales clerk	.71	1.29

Despite women's growing awareness that they have been, and continue to be paid less than men for doing the same or similar work, despite Human Rights legislation and a Labour Standards Code, the gap between male and female salaries gets wider every year.

## The gap grows

### The gap between male and female salaries across Canada:

	in 1967	in 1972
clerical	\$1,925	\$2,807
sales	3,804	5,796
service	2,594	4,581
transportation & communication	2,080	4,033

The law has not made a dent in reversing this trend; women's position at work is relatively worse now than it was ten years ago. An employer can't pay a woman less than a man for doing "substantially the same work, performed in the same establishment, the performance of which requires substantially equal skill, effort and responsibility and which is performed under similar working conditions."

This law is virtually impossible to enforce. The word "substantially" is very ambiguous. It could be fairly easy for an employer to show how 'substantially' different the work or responsibility was. Also, a woman has to be working in the same establishment as a male. Many women workers are segregated into 'female' jobs and can't directly compare their work with that of a man.

## What is 'women's work'?

In the past few years more women have been trained for, and entered into, jobs traditionally held by men: carpentry, engineering, truck driving, telephone repair work.

These efforts are important in breaking down employers' resistance to hiring women for certain jobs. But, **most women workers are in the same kinds of jobs they were in 50 years ago.**

A Nova Scotia report in 1929 showed that women worked in the personal service sector, the clerical sector, and the lower paying jobs in manufacturing. Professional women were mostly teachers and nurses. Not much has changed.

For every woman who becomes a telephone line worker, how many become telephone operators?

### Women in Canada are:

95.3% of telephone operators,  
97% of typists,  
93.7% of nurses,  
80.1% of elementary teachers,  
82.2% of bank tellers and cashiers,  
and only:  
0.7% of civil engineers,  
7.7% of doctors,  
3.1% of dentists,  
0.7% of truck drivers,  
0.4% of carpenters,  
4.1% of lawyers.

### In fact, women now hold a smaller percentage of professional jobs than they did in 1911.

Of all women working in Canada in 1974 63.5% were in clerical, sales or service jobs. Only 2.7% of women working were in management jobs. Remarkably, that's a smaller percentage than were in management jobs in 1962 (3.7%) or 1972 (4.2%).

One of the most important trends in the labour force is the great number of married women entering the workplace. Across Canada, in 1964 married women made up 51.1% of the female labour force. By 1974, married women were 57.1% of the female labour force.

In 1931 only 3% of married women in Nova Scotia worked outside the home. In 1974, in the Atlantic Region, 30% of married women were employed.

Fewer women are employed in this part of the country than in provinces such as Quebec, Ontario or British Columbia. But fewer men are employed here too. The tight economic conditions, the movement of people and industry in and out of the region keeps work life insecure and constantly in flux.

**There are some legitimate reasons for paying one worker more than another: experience, more training, skills, or responsibility. These should be the criteria for deciding differences in pay.**

There are very few jobs that absolutely need one sex or another to fill them. Two examples are sperm donor or wet nurse. There aren't many others.

In the United States, two categories for which the workers' sex is a bona fide occupational qualification have been adopted:  
1 Authenticity: actresses, bunny girls, models

During World War II women in the Maritimes became over 50 per cent of the labour force. They worked in steel mills, paper mills, in the holds of ships, building ships and aircraft. They worked as welders, crane operators, and blacksmiths.

A survey of working women in this region done during the war showed that 70 per cent of them wanted to stay in industry after the war. It wasn't until 1967 that the percentage of women working in the region matched the war time figure. It's gone up steadily since then.

In 1964, women formed 28.4 per cent of the total Canadian labour force. In 1974 they were 34.4 per cent of the total labour force.

The armed forces have opened up training and promotion programs to women in the past five years. However, women in the military are still mostly in traditional female classifications. Of 675 senior female officers across Canada, one is a colonel, five are lieutenant-colonels, 35 are majors. Most female officers are nursing officers.

Women can be employed in any capacity in the armed forces, except "primary combat roles, employment at remote locations and sea-going service."

"You know how those cute little dears can't balance a checkbook. When I was a kid, all bank tellers were male for that very reason. But then it got hard to hire male bank tellers. Now 90 per cent of them are female and apparently they can balance checkbooks after all."

—Isaac Asimov

for clothing, jobs needing 'sex appeal'.  
2 Community standards of morality and decency: washroom attendants, fitters for clothing, security guards who might be asked to search women.

Employers keep women out of jobs for personal reasons, and because of irrational prejudices. An employer might think that if the other employees are mostly men, they will resent a female employee. Or the customers or clients might object. They might want to stick with tradition where a job has 'always' been held by a man. The job may involve heavy physical labour, late night work, work in isolated areas, or unpleasant surroundings. The job may involve travel alone or with members of the opposite sex. The employer may think a job needs qualities which he sees as belonging to only one sex: for example, women are tactful, men aggressive. None of these reasons are legitimate reasons for refusing a woman a job.

### Myths about working women

Job training for women, application forms for work, pay scales, maternity leave, and day care policies are determined largely by popular myths about women and work. Some of them are:

**Myth:** Women are not serious workers. Their attachment to the labour force is only temporary. They are only working for 'pin' money.

**Fact:** In 1971, nearly half the women in the Canadian labour force were wholly or partly supporting themselves or others. Many women have to work; they are divorced, widowed, single, separated. Also, many married women have to work to help support a family; their husband's income is not enough. This is especially true in the Maritimes.

**Myth:** Women don't work for very long, they leave for marriage and children.

**Fact:** Women rarely leave work just for marriage, although women leave temporarily to have children. Many women would continue to work if they could find adequate day care. A growing number of women return after raising a family. In addition, many men leave specific jobs, for a variety of reasons.

**Myth:** Women are absent from work more than men.

**Fact:** The percentage of men and women taking time off from work is about the same. Women take shorter, more frequent times off. Men take fewer periods off than women, but take them for longer.

### Equal pay for work of equal value

The wage discrimination which women face is built into a structure which puts women and men into different jobs. Traditionally 'male' characteristics have been given a higher value in our society. So man who lifted heavy cartons of delicate instruments got paid more than the women who assembled the instruments. Equal pay for work of equal value means an employer assesses the value to him of the work each

person does. For example, how seriously would a worker's error affect the whole operation, how much training does she need, how many people does she supervise.

In 1951, the International Labour Organization, of which Canada is a member, supported a resolution calling for equal pay for work of equal value. Canada finally ratified it in 1972, which means this country supports the principle and should be taking action to enforce it legally. Nothing has been done.

### Wages for housework?

When a woman marries, she in a sense contracts to marry a household as well as a man. As legal wives, women gain the right to be supported and they are in turn expected to supply domestic services.

A husband's support is a form of payment, but in our present economy work which isn't directly paid in cash has far less status than paid work. Many women feel their housework should be legally recognized by making them salaried workers.

Unpaid housework already has an important social value in our economy. Women keep the present and future labour forces fed, clothed and cleaned. Men can better survive the burdens of their work precisely because they have wives who take care of the house and the children. And when the economy needs extra workers, women at home provide a handy source of extra labour.

"Women are people too and are to be recognized among their community and country as basketball players, politicians, lawyers, doctors, store managers, construction workers, and matadors. Not only as secretaries, playboy bunnies, typists and sex objects.

"I am only 12 years old, but I am not dumb and I realize the work and responsibility every woman has."

—letter to the International Women's Year Secretariat

"Those tender-hearted and chivalrous gentlemen who tell you of their adoration for women, cannot bear to think of women occupying public positions. Their tender hearts shrink from the idea of women lawyers of women policemen, or even women preachers: these positions would 'rub the bloom off the peach'...and yet their offices are scrubbed by women who do their work while other people sleep."

—Nellie McClung



Renate Deppe

**Women perform socially useful work, yet it is done in a socially wasteful way.** Housework is rarely done in the actual time needed; a day's work runs as long as the day itself. There is no beginning or end to the work: sparkling floors soon muddy, made beds and ironed shirts rumple, tasty meals become piles of dirty dishes. And the work is drawn out, punctuated by continual family crises.

In all logic, to recognize the work women do at home as vital to our economy work would mean to make it more efficient, for example, to organize community laundries and kitchens. However, a massive restructuring of household chores means also a large change in women's position within the family and the economy.

Paying women to do housework within the present structure would make women's traditional functions only more rigid.

**Unlike work outside the home, a housewife's work is tied to her personal and sexual commitments.** Women are taught that personal satisfaction can come through their own unique performance of household chores, and so women become vulnerable to advertising urging them to keep searching for that sweeter-smelling furniture polish and that ever more exotic recipe for meat loaf. That finally finished set of chores, and the thunder of external praise to go with it, is one of our culture's great myths; the very structure of housework destined this goal to be always sought and never caught.

Women's position at home has been explained as an extension of women's natural, even mystical ability to cope with housework, to be wonderfully creative at it. This is largely because women's natural ability to bear children has been redefined as women's natural ability also to wash a baby's bottom, the floor the child crawls on and the dishes the child eats from. Women, whether they work outside the home or not are given inevitable and ultimate responsibility for housework.

Wages for housework, however, would not help most women change their lives. It might create some financial independence and flexibility for certain women, especially those whose husbands' income is already adequate for daily needs. Most women would put wages for their housework back into family expenses. The total family income could increase, without the government bearing responsibility for the creation of more and better-paying jobs.

Meanwhile women at home would continue to work in isolation, missing a shared working experience and the challenge to their ideas and the mature support to change their lives which such daily contact outside the home often brings. **A paid homemaker would be no less married to her house than an unpaid one is now.**

Ultimately women must invent new roles for themselves, roles that don't tie the knot to the house tighter, but instead free them to get a divorce from centuries of sex-stereotyping.

"There was a time all nurses were males because everyone knew that women were simply too delicate and refined for such work. When the economic necessities made it important to hire females as nurses, it turned out they weren't all that delicate and refined after all. (Now nursing is 'women's work' that a proud man wouldn't do.)"  
—Isaac Asimov

"I maintained my sanity, I think and I ceased to scream at the children so much, but neither they nor anyone else got the benefit of my 'creative energy'; there just wasn't any. In half a day I could feel my mind turning to oatmeal, cold oatmeal, and it took the other half to get it bubbling again, and by then it was bedtime..."  
—confessions of a househusband, in Ms



Renate Deppe



# Your rights as a worker

## Restrictions/protection

In Nova Scotia, there are two kinds of protective labour legislation: statutes that prevent women from working at certain jobs; and regulations that provide workplace benefits for women, but not for men.

The only job women are prohibited by law from doing in this province is underground mining. There are three laws relevant to this restriction:

### **The Metalliferous Mines and Quarries**

**Regulation Act of Nova Scotia.** It prohibits women from working underground in mines other than coal mines. It states that any surface job women may have connected with mining must be limited to "a technical, clerical, or domestic capacity or such other capacity as requires the exercise of normal feminine skill or dexterity but does not involve strenuous physical effort".

### **The Coal Mines Regulation Act of Nova Scotia.**

This act is designed to prevent the exploitation of young people and forbids the employment of male persons under 18 as underground workers. Since there is no mention of female persons in the act, the implication is that women will not be working in mines.

**The Coal Mines Safety Regulations** of the Canada Labour Code. Women cannot work in coal mines under federal jurisdiction, except in positions which don't require manual labour. All coal mines in Cape Breton run by DEVCO fall under federal jurisdiction.

### **The Nova Scotia Industrial Safety Act**

provides some workplace benefits for women. Regulations under this act require a rest room for women, with a cot or couch and chairs if there are more than 5 women employed. Also, where the Chief Inspector feels it is necessary, the employer has to provide a competent female employee to be in charge of the welfare of the other female employees.

There are no laws in Nova Scotia which place any restrictions on the amount of weight a woman can lift; there is only a general provision requiring that persons handling heavy material be instructed in proper lifting techniques.

There are no provisions in our province's laws which prevent night work, or require transportation to and from night work.

**The law should not treat women as special, delicate workers. Regulations which give actual benefits to women workers should not be repealed and taken away from women, but should be extended to include all workers, male and female.**

'Protective' legislation has often been used to separate and divide male and female workers. If women workers are treated differently, the treatment paves the way for stereotyped jobs and unequal pay.

Our first minimum wage law applied only to women. The legislation was supposed to be a

protection for women workers who didn't have a lot of bargaining power. In fact, many trade unionists wanted minimum wages for women so women workers wouldn't get 'male' jobs by undercutting the men's wages.

For similar reasons, male trade unionists who were part of early fights for equal pay were often motivated by a desire to get female wages raised so women would price themselves out of the competitive labour market, which uses women as a cheap supply of labour.

## Labour law you should know

Laws that govern your work will fall under either federal or provincial jurisdiction, depending on the nature of your employment. Either jurisdiction has a separate labour standards code.

The federal code deals, for example, with employees of all radio, TV stations and cable companies (except for installers), banks (not trust companies), Crown corporations (such as DEVCO), and transportation services (plane, train, interprovincial ferries and trucking companies).

The province of Nova Scotia has its own Labour Standards Code, which came into effect in the spring of 1973. **Labour standards codes establish only the very minimum rights to which you as a worker are entitled.** The law has been written as a result of pressure from workers who for a long time had no legal protection at work if they were not unionized. The only legal option they had was to take an employer to court and sue him.

Some workers aren't covered by the code, for example, domestic workers, certain professionals and students, farmers, fishermen. Also, a union's collective agreement will take legal precedent over many sections of the Labour Standards Code, especially those relating to vacation pay, lay-offs, and notice procedures.

**Our discussion here is only of the Nova Scotia Labour Standards Code.** If you are covered by federal law and want further information, you can call or write the district office of the Federal Department of Labour at the Halifax Insurance Building, 5670 Spring Garden Road. There will soon be a regional office in Moncton, covering rights in employment. The Federal Labour Standards Code covers equal pay, but has no provisions about fair hiring practices with regard to women.

**Starting a job** When you begin work somewhere you have in effect made a contract with your boss, even if you have no written contract. Many jobs, especially non-unionized jobs, rely on an oral agreement of rights and responsibilities between employee and employer. You have the legal right to sue an employer who doesn't live up to verbal promises, for that is breaking the contract.

Some problems you may run into at work, covered by the Nova Scotia Labour Standards Code:

**Minimum Wage** The Nova Scotia minimum wage was first brought in in 1958. It was introduced as a protective measure for women workers. The minimum wage then was \$21.50 for a 48 hour week (45 cents an hour).

For the next 14 years the minimum wage law applied only to women. In fact, the wage stayed at 45 cents an hour until 1965, when the regulations changed to cover men. Men then got \$1.05 an hour and women's minimum wage jumped to 80 cents an hour.

Those 1965 regulations also set out different rates for different areas of the province: higher rates for the cities of Halifax-Dartmouth and Sydney, lower rates for the rural areas. Lower rates were allowed for workers under 17. The rate for men was 25 cents above women's rate everywhere.

By 1972 the gap between men and women had narrowed to 15 cents: \$1.20 for women, \$1.35 for men. There were only two zones. New minimum wage regulations came into effect in 1972. The rate then became \$1.55 for all workers over 18 years, \$1.35 for workers between 14 and 18 years and for inexperienced workers.

The basic Nova Scotia minimum wage as of January 1, 1977 will be \$2.75 an hour. There are slightly lower rates allowed for workers 14 to 18 years and for inexperienced workers.

If you have worked for one employer for three months doing the same work you are now doing for someone else, you are an experienced worker and are entitled to the full minimum wage. There are lower rates of pay allowed for inexperienced beauty parlour workers, until they have worked nine months.

Some workers are exempt from minimum wage law, for example apprentices and trainees, car and door-to-door salespeople, and employees at non-profit summer camps.

Your employer must post the minimum wage order in a conspicuous spot at the workplace.

The Federal government minimum wage is higher than the provincial.

**Getting paid** You have to get paid at least twice a month unless there is another long established practice at your workplace. Your boss can't by law be more than five days late in paying you.

It's a good idea to keep track of your hours and wages in case you want to file a complaint in the future. When you get your pay, you must by law also get a written statement of: the time period covered, the number of work hours, the wage rate, all deductions from pay, and your actual take home pay.

**Overtime** You don't have the right to get paid overtime until you have worked more than 48 hours in a week. When you work overtime you get paid at least one and one-half times your regular rate.

**Piecework** If you are paid for each piece of work or task finished, you still have to get paid at least the minimum wage for the total time you put in.

**Waiting** If your boss asks you to wait for work at your work place, this is counted legally as time worked and you must be paid for it.

**Call-in** If you are called into work, you have to be paid for at least three hours work, even if you don't work that long.

However, a worker who could be called in for an emergency: a hospital worker or police officer, for example, only has to be paid for the actual time worked.

**Partial Hour** If you work from 15 minutes to a half an hour it is counted as 30 minutes work. Likewise, between 30 and 60 minutes work is counted as an hour.

**Deductions** Your boss has the right to take from your pay cheque various deductions including Unemployment Insurance, Canada Pension, and Income Tax. Make sure you know what deductions are being taken from you. Some work deductions may be optional: health plans, for example. Find out if there are any plans you have the right to contribute to.

**Uniforms** If your boss supplies you with a working uniform, he can't take the cost of the uniform or the cost of cleaning it from your pay cheque, unless: the fabric needs dry cleaning, or the money he takes from your wages doesn't bring your total pay below minimum wage.

**Time Off** You have the right to a full day off, preferably Sunday, in every seven day period you work.

**Paid Holidays** There are five paid holidays in this province: New Year's Day, Good Friday, Dominion Day, Labour Day, and Christmas Day. Other public holidays such as Easter Monday or Boxing Day might be given to you as days off work, but you don't have to be paid for them.

If the holiday falls on a day you wouldn't normally be working, you are entitled to get as a holiday the next working day following the holiday, or the day after your vacation, or any other day you and your employer decide.

If you work on one of the paid holidays, you are entitled to your one day's holiday pay, plus time-and-a-half pay for the hours you work that day.

In a continuous operation an employer can substitute another paid holiday for the general holiday.

**Paid Vacation** After you are at a job 12 months and you have worked 90 per cent of the working time during this period, you are entitled to two weeks vacation with pay.

However, **your employer has up to ten months after this qualifying period to grant you your vacation.** You could work from January 1, 1976 to December 31, 1976 and qualify for two weeks paid vacation. But you don't have to be given it until up to October 31, 1977. So you could conceivably work 22 months straight without an extended period of time off.

**This two week period can be avoided by**

"I understand what you mean but I don't think it would work. You know, a man at a certain level is entitled to a certain size of desk, bookcase and a typewriter and a secretary. I don't like to refer to a girl as a chattel, but in fact, she comes along in the same way."

—C.M. Drury, President of the Treasury Board, when presented with a brief by the Association of Public Service Secretaries containing specific recommendations for increased mobility and opportunities for training and advancement for secretaries.

**the employer, as long as you get one continuous week off.**

Also, your employer can decide when your vacation time will be, and has to give you only one week's notice of that time.

You are entitled to get four per cent of the pay you earned during the twelve months as vacation pay. Overtime pay is included. You should get your vacation pay the day before your vacation, if you haven't already received it in your regular cheque.

If you have worked for 12 months, but haven't worked 90 per cent of that time, you are entitled to receive four per cent of your gross earnings (wages before deductions) for that time. You must receive this within a month after the 12 month period.

When you leave a job after any length of time worked, you are entitled to get four per cent of your gross earnings, unless you have taken a paid vacation, or received pay in lieu of vacation. This amount is due ten days after you finish work.

**Maternity leave** If you have worked somewhere for more than a year and you become pregnant, you can't be fired just for that reason. If you present your employer with a medical certificate stating the probable date of delivery he must grant you a leave of absence for a maximum of 17 weeks at any time during the 11 weeks before the birth and the six weeks after.

You might be asked to leave work earlier than you want to, if your job can't be reasonably performed by a pregnant woman. Sometimes women who have to meet the public - receptionists or waitresses, for example - are laid off when their pregnancy becomes obvious. You should lay a complaint with the Department of Labour if you feel you can still reasonably perform your work.

You have the right to go back to your job after the birth. You can't, by law, lose any seniority you have already gained.



Cheryl Lean

Your employer doesn't have to pay you while you are on maternity leave, although some companies do have their own maternity pay programs.

Under the Unemployment Insurance Act, however, you can claim maternity benefits for up to 15 weeks of the 17 weeks you are off work. You must have worked 20 weeks during the past 52 and have had contributions on your behalf paid into the Unemployment Insurance Commission. You have to have had insured employment or have been receiving UIC benefits for ten weeks, between the 30th and the 50th week before you expect the baby to be born, in other words, from before you became pregnant. It is important, therefore, that you are not laid off before you have enough insured earnings to qualify for UIC.

During the ten weeks before and the six weeks after your baby is born your weekly earnings have to fall below two-thirds of your regular weekly earnings for you to claim UIC benefits for that week.

If you want to get maternity benefits, go to your local UIC office and ask for a claim kit. You have to get a doctor to sign a certificate, as proof you are pregnant and with an expected date of birth. **You can't apply sooner than ten weeks before the baby is due.**

The UIC regulations allow you to take your 15 weeks of benefits at any time during your 17 weeks leave, at any 15 week stretch between the eight weeks before delivery and the 17 weeks after. The Nova Scotia Labour Standards Code has been amended to allow you 17 weeks of maternity leave starting at any point from 11 weeks prior to the birth up to the date of birth.

A woman who wants to continue getting UIC benefits after her maternity leave payments run out, has to show, as do all claimants, that she is actively seeking and available for work. Some new mothers find their UIC cut off, because they can't guarantee someone will be available to care for the child if they find work.

The UIC often interprets this situation to mean the woman isn't actually available for work. It's a Catch-22, of course, because a woman may not be able to hire someone to take care of a child so she can look for work, unless she has some money coming in, from UIC, for example.

**Quitting** If you have worked more than three months, you have to give your employer notice that you are leaving, unless he has broken any terms of your contract.

If you've worked three months to two years, you have to give a week's notice. If you've worked more than two years you have to give two week's notice.

**Fired-Laid Off** Your employer has to give you one week's notice for up to two years work, two weeks' notice for up to five years work, four weeks' notice for up to ten years work, and eight weeks' notice for more than ten years work. However, **an employer can get out of giving notice, if he gives you money equal to the**



**number of weeks' notice to which you are entitled.** For example, if you worked two years, you are entitled to one week's wages, instead of one week's notice. You are entitled to get your usual wage rate during a period of notice.

There are a number of loopholes in the law regarding notice.

**For example, you don't have to be given notice or money if you have been dismissed for 'just cause'.** This is defined as 'wilful misconduct, disobedience or neglect of duty'. These are vague terms which give the employer a lot of leeway. Your employer can also lay you off without notice for reasons 'beyond his control'. These include breakdowns, weather conditions, and labour disputes.

**Filing a complaint** If you feel you have a just complaint against your employer you can take it to the Department of Labour. After you fill out a complaint form the Director of Labour Standards will send someone to your workplace to investigate. He will try to bring the two parties to a settlement.

If he can't reach one he may refer the case to the Tribunal, a three member committee which hears complaints. If the Tribunal decides in your favour, your employer has to compensate you - pay you, give you the time off, change his practices - depending on what your complaint was. Some complaints have been settled, with payment, before reaching the Tribunal.

If your employer doesn't go along with the order, you or the Department of Labour can take it to the Supreme Court.

Legally, you cannot be fired or discriminated against at work because you brought a complaint to the Department of Labour. However, an employer can easily make life at work hard for someone who brought a complaint. He could even fire her and cite a reason such as 'wilful misconduct', or some minor infringement (like being late) as the 'just cause'.

The Department of Labour hasn't successfully prosecuted very many cases involving grievances from women. If they are reluctant to take your complaint, persist.

**UIC** Most jobs are insured for unemployment benefits. Some which aren't include casual work for six days or less, work by a husband or wife employing the other, and work by people who are defined as 'self-employed'.

Both you and your employer pay into the plan, and the employer is responsible for making deductions. You can pay insurance on up to \$200 per week. You must earn at least \$40 in a work week to have it count as an insured week.

As soon as you are 'separated' from a job and are no longer getting paid, you become eligible for UIC benefits. You must get a Record of Employment slip from your employer when you leave a job. The Unemployment Insurance Commission will determine your benefits from this record. Your employer has

seven days from your last day of work to supply you with this record. If you have not received it, apply for UIC anyway, and make it clear why you are missing the document.

If you have good cause for leaving the job - for example, if there was a shortage of work and you were laid off - you can start receiving benefits after a two week waiting period. However, if the commission feels you didn't have good cause, - let's say you were fired or you quit - you are penalized a further six weeks. Until recently, this extra penalty period was only three weeks.

**You can receive UIC benefits if you have worked eight insured weeks.**

A proposed amendment to UIC procedures, introduced into Parliament in 1975, suggested changing the eight week period to a 12 week eligibility period. However, by mid-1976 you still needed only eight weeks to qualify, although many people believed the law had already changed. The change may come by the beginning of 1977.

The most you can receive from UIC per week is \$133.

People in the Maritimes are usually eligible for extra benefit weeks, calculated according to the difference between regional and national unemployment rates.

To keep getting unemployment you have to prove that you are available for work and actively seeking it.

Many of your rights under UIC vary with how long you have been claiming benefits. For example, when you are first out of work, UIC will pay you benefits if you are injured or ill. You can even be away for extended periods, including vacations, without losing your right to benefits when you return.

Toward the end of your claim, however, you will be cut off if you are not available to take a job for four consecutive weeks for any reason, including illness. During this time, in fact, if you are **working** for four consecutive weeks (which is not enough to establish a new claim), you will be cut off.

Unemployment Insurance has many exceptions, to cover people who are in prison or taking approved courses, for example.

**Safety** Complaints about safety at a factory or construction site go to the Industrial Safety division of the Department of Labour. All complaints for other work sites go to a city hall (or equivalent), even those regarding federal work places.

**Workmen's Compensation** Most industries are covered by Workmen's Compensation. Some aren't, such as those with fewer than three workers at all times, some farm operations, and educational institutions.

If your employer is part of the Workmen's Compensation scheme you are entitled to compensation for any personal injury you receive in the course of your work, and for any specific disease directly related to that work.

An injured worker can be compensated for lost wages, given medical aid, or given a

pension if there is a permanent disability. If a worker dies, his or her survivors can be given assistance.

Your employer, by participating in the Workmen's Compensation program, is relieved of any personal responsibility for your injuries on the job.

You in turn give up your legal right to sue your employer the way you would sue any other person you felt was responsible for your injured condition. In reality, you have no choice. You cannot in fact sue your employer, unless he is not covered, or if the accident involved a motor vehicle. You must accept Workmen's Compensation.

If you are injured, you should report it to your employer right away. You shouldn't quit a job without reporting an injury. You should claim compensation within six months of the accident.

Your employer has to send the accident report to the Workmen's Compensation Board within three days after you report it. The Board will examine evidence from you, your employer and your doctor and make a ruling. Even if you don't feel the immediate effects of an accident, report it anyway. Complications could develop later. It's also a good idea to put down the names of any witnesses.

The entire Workmen's Compensation procedure is a complicated one. You may need legal advice. There is a free legal service for people on compensation through a Workmen's Counsellor, who is currently G.J. McConnell at the Kitz, Matheson, Green and MacIsaac law firm in Halifax.

**Taxes** In 1975, if you earned more than \$1,978 you had to file an income tax form. This figure goes up every year to cover the cost of living.

A husband could claim an exemption of \$1,644 for a wife who earned no more than \$334. Whatever she earned above that would be subtracted from the deduction.

If the woman in a marriage is the primary breadwinner she can claim her husband as a dependent in the same way. It is usually an advantage for the person earning the highest income to make deductions for dependent children on his or her tax form.

If you have earned less than the basic deduction, but your employer has taken tax off your pay cheque, you can get a refund by filing an income tax form.

If you are unmarried and have dependents such as a child or relative living with you, you can claim them on your income tax. A common-law wife or husband can't count each other as dependents for income tax purposes.

If your husband employs you, he can't claim your income as a tax deduction. The government seems to believe that the only reason a man would pay his wife a salary would be as a tax dodge, so he can get rid of some of his income and be taxed at a lower rate.

This discriminates against farm wives, for example, and against a couple who might want

a personal life and work style where a man worked and paid his wife for her housework. If she was his mistress/housekeeper he could legally deduct her salary as an expense on his tax form.

**CPP** There have been recent changes to the Canada Pension Plan which make pension payments to women fairer than they have been in the past. If you are a common-law wife, you may now receive benefits as a surviving spouse if:

You were living with the man for three years and there was a bar to marriage (one of you was already married, for example).

There was no bar to marriage and you were living with him for one year.

If you have been living apart from your husband for a number of years, and aren't eligible for maintenance (for example, you've been 'unfaithful') you probably won't be able to get pension benefits.

As of January 1, 1975 both female and male contributors can get the same benefits, and so can their surviving partners and children.

**One proposed way of paying housewives for their contribution to the home is through the Canada Pension Plan. The Advisory Council on the Status of Women has recommended that pension credits be split between partners.**

If both of you were employed, each would receive half the credits of the other. If one were employed and one at home, the partner at home would still get half the pension credits of the other. Such a system would recognize the marriage as a partnership, and would give women an income if their marriage broke down, not only if their partner died.

Some people feel that these types of revisions to the pension plan would adequately compensate women who have worked at home and could be an acceptable substitute for a 'wages for housework' system. But while split pension credits, (with the same intention as a community property scheme), might make a woman more secure knowing her income in her later years would be assured, it wouldn't give her more economic independence during most of her married years.

**The proposal also wouldn't affect women who aren't attached to men but still work full time in the home.**

### **You're in a union**

The Labour Standards Code sets only the minimum standards for legal protection in employment, and helps mostly unorganized workers. Women who are in unions have a much better chance of winning a fight against an employer than a woman who is trying to battle the government ladder of red tape by herself. Unions can negotiate many more areas of protection than the minimal standards provide. They can try to get fair promotion and job classifications or education and training programs.

At one time it was illegal to form or join a

"The aim is to integrate our women into a predominantly masculine environment without sacrificing their feminine identity; in other words to find the middle road between militarism and a disciplined servicewoman with a feminine decorum."  
—a Canadian Armed Forces brochure

trade union. Now under Nova Scotia law your employer cannot fire you if you try to form a union or if you join one. If you have been dismissed and believe it's because of union related activities, you can bring a complaint to the Nova Scotia Department of Labour and it will be heard by the Labour Relations Board. They have the power to re-instate you in your job.

You can form a local of a national or international union, or an independent union. A well-established union will have more legal expertise and organizing experience which will make it easier for you.

The law says there must be a community of interest among those applying to set up a union. Sometimes this works against the office staff in a factory who are usually women and aren't included in the bargaining unit. This could also work against all the workers in one job site (for example, a hospital) being able to organize into one union local.

Any trade union which discriminates against women in its administration, management or policy cannot be certified by the Labour Relations Board as the bargaining agent of the employees. Any agreement between such a union and an employer will **not** be considered a collective agreement. The Human Rights Commission has the power to read collective agreements to see if they discriminate, but they rarely do this.

Once you have been certified, you will negotiate the terms of work at regular intervals and formalize them in a collective agreement, the contract. It has to run at least a year.

If you and your employer can't reach an agreement on the terms of the contract, the Department of Labour will send a conciliator to try to effect a settlement. If that fails, workers can legally give notice that they will strike. You have to wait until 14 days after the conciliator's report, to 'legally' strike.

The threat of a strike can be a powerful weapon. It often forces the employer to compromise his position before the proposed strike date.

All strikes which occur while a contract is still in force are illegal. If workers are unhappy with conditions during this period, their only recourse is to use a grievance procedure set up by the union. Grievances go through the hierarchy of the company, and if they can't be settled internally, they may have to go to arbitration by an outside expert. These procedures can be slow and frustrating. Often workers walk out of work spontaneously ('wildcat') to make an immediate protest about unacceptable working conditions or company practices.

Women's grievances in unions frequently take second place to men's concerns. The union leadership, even in places where mostly women work, is often male. Men say women aren't as eager to fight or change. When that is true,

men rarely stop to look at the reasons. Women have been taught not to take themselves seriously as workers, and to leave the important decision-making to the men at home and at work. Women may also be less active in union activities because the burden of family responsibilities rests so much on their shoulders. Their free time outside of work hours, when many union meetings are held, is very limited.

**Women and men believe the myth that men are better leaders. A male who does a bad job is judged as an incompetent individual. A woman who does a bad job is judged as proof that all women are incompetent.**

Women need to develop confidence in themselves and in the validity of their needs and demands at work. They have to challenge the male domination of unions, and help men see that if workers of both sexes support each other, the union will be more effective in fighting for change. Employers are only too happy to have their work force divided, and as a result less capable of putting up a strong fight against unfair conditions.

### **You work part time**

A lot of women don't have a nine to five, year round commitment to the labour force. There is little legal protection for these part-time workers: they are usually not unionized, and so don't get work benefits such as pensions and medical insurance, job security or seniority.

The Labour Relations Board will certify as a union any group of people who work regularly, but few unions bother organizing part-time workers.

Many women could be helped financially and personally by working on a part-time basis, but as the law stands now, employers can hire a lot of part-time workers instead of a few steady full-time workers and get out of having to pay employee benefits. Part-time workers should be able to get the same advantages as full-time workers on a pro-rated system, according to the number of hours they work.

### **Voting and working hours**

For provincial elections and most municipal elections you are entitled to three consecutive hours off work in which to vote. If you don't have three hours from the time you leave work until the polls close, your employer has to give you the time off. You have to get paid for this time. Your employer can decide when the three hours will be taken.

For federal elections you are allowed four consecutive hours off. Some work places are exempt, such as operations where three or four hours off by employees would cause interference, e.g. trains, buses, transport ships, aircraft.

From the latest available statistics (1973): There are 13,335 women trade union members in Nova Scotia, that's 17.6 per cent of total union membership in the province. About half the female union members in Nova Scotia are in government employee's organizations. The other half is about equally divided between national and international union members. Close to two-thirds of female union members in the province are in Halifax.

## Conclusion

Our written law is a set of rules which outlines acceptable behaviour in our society, and the punishment for acting in an anti-social way. In our look at how the law treats women in Nova Scotia, we have found that acceptable behaviour is defined differently and more narrowly for women than it is for men, and that the law tends to reinforce a double standard of punishment which has become part of our culture.

Most women, of course, don't act in full awareness of what the law says is proper behaviour. Women's ideas of good and bad, right and wrong, come much more from unwritten social beliefs, the beliefs which underlie the structure and goals of our schools, the media, the family. And the legal system.

Women don't need officers of the law hanging around them all the time to keep them in line. They learn to police themselves. As they grow up, they learn to act 'normally'. They mimic behaviour called 'good', strive for praise of conformity. Good girls don't make trouble. Good girls don't use their minds or bodies aggressively. They play house as mother, and generally rehearse for a life where marriage and children are supposed to bring all the satisfaction they could ever need. If they see work outside the home as a real possibility, they imagine themselves as nurses, teachers, secretaries, airline stewardesses.

Males learn to be 'good' boys, too. Good boys also don't make trouble. But good boys are encouraged to use their minds and bodies aggressively. They might play house as father and generally rehearse for a life which includes marriage and children, but they expect their main life's satisfaction to come from work. They imagine themselves carpenters, doctors, truck drivers, pilots.

Women learn that it's quite acceptable to find out about these jobs and the work world as the wives of such men, and as their mothers.

**Women take care of their children and husbands, not because it is part of the legal marriage bargain, but because they have learned it is the correct and 'natural' way for a woman to act. Husbands support families because they have learned it is their proper role, not because it is their legal obligation.**

Women learn through experience which actions will bring praise, and which will bring punishment. One of the most bitter ironies of women's lives is that by trying so hard to please, and hoping to be rewarded for their self-sacrifice, they click comfortably into slots (as wives, as workers) which by their very structure punish women by placing them outside major events and decision-making in our world.

The double irony is that women don't even have a consistent image of who or what they should try to be. Young women are told to be careful about sexual activity, to strive for purity and chastity. Then every television show, pantyhose advertisement and fashion magazine

they run into urges them to be sexy and seductive in order to catch a man.

If a woman is raped, her dress and behaviour is carefully examined as a probable enticement to the rapist. On the other hand, a shy or modest or simply self-sufficient woman is called frigid or a prude. In our culture's myths women have been portrayed as jezebels and as angels. In real life, women are punished for being either.

Women learn if they just follow the rules they will be rewarded. The greatest reward will be getting a man to take care of them. They don't really need to learn how to organize their lives, to know about business or politics or law.

Then women find themselves divorced, widowed, separated, forced to support themselves. They are criticized because they know nothing about how the world is run and didn't have the sense to adequately plan their lives, to develop skills or training.

Women react to these contradictory pressures in diverse ways. They may become severely depressed, or beat their children or physically abuse themselves through drugs or drink. Or do all of these things.

A lot of women are physically abused by their men, who also find out that life isn't what they were promised in the fairy tales. That steady job, that ideal family life hasn't materialized for them either, even if they followed the rules, even if the rules are written more to their benefit.

Women may try to kill themselves; women who have money go to psychiatrists. Women get sent to mental hospitals. They are told there that if they learn to behave 'normally', they may be permitted to re-enter society. Women know that 'normal' behaviour means desiring

"Even though the little girl may on this occasion have established a half-nelson and be about to pin her brother to the ground, the mother's injunction will be the same: 'Junior; Don't hurt Joan! You know girls aren't as strong as you!'"

-Ruth Herschberger,  
Adam's Rib

"Men look at women. Women watch themselves being looked at. This determines not only most relationships between men and women, but also the relation of women to themselves."

—John Berger, *Ways of Seeing*



Lynn Henkel

and accepting society's rigid definition of them.

In addition, women feel they are alone in fighting their daily fears and problems. They learn that this solitary state is a 'natural' one. So each woman, on her own, feeling vulnerable and isolated, strives for an unreal unattainable image of the 'normal' woman.

**Women who commit crimes are victims of their economic and personal circumstances expressing their desperation in acts defined by formal law as illegal. Women who fill up psychiatric wards, welfare waiting rooms and family courts are victims too, being punished for not obeying the unwritten social laws, the 'laws of nature'.**

Women have been taught to be satisfied with limited visions and goals, to almost expect to be disappointed. The discrimination built into our law, and the lack of effective enforcement of even those laws promising equality, reinforces women's feeling that they are powerless to change their situation.

Over the past few years women have submitted hundreds of documents to government, outlining changes which should be made in the law. For example, in the 1970 report of the Royal Commission on the Status of Women, 46 recommendations were filed which fell under provincial jurisdiction. A look at the Nova Scotia Task Force Report on the Status of Women reveals that six years later, only seven of those recommendations have been completely implemented by the Nova Scotia government. Nineteen have been partially implemented, twenty haven't been implemented at all.

Women are told that legal change is a slow and cautious process. It is, though it doesn't have to be. Women continue to recommend the same changes over and over again in numerous task force reports, surveys, briefs, conferences.

Fundamental change in women's lives, however, won't come as the result of a changed status finally granted from above. It won't come simply by electing more women politicians, appointing more women judges, graduating more women lawyers, promoting more women to positions as corporation president or bank manager.

A woman in a position of authority and responsibility may sympathize with women's needs more than a man in the same position. This kind of encouragement from a woman can make life on a day-to-day level more bearable for other women. So can legal reform. But **even if the law treats women more fairly, other structures, such as our educational and media networks, have shown themselves well equipped to continue shaping a narrow vision of women. And to do it in a way which influences women and men much more strongly than any law.**

Advertisements still continue to portray women constantly probing their hopefully

groomed faces in carefully polished floors, running hopefully appealing lotioned hands across bouncy fabric softened washes. Many women have protested these caricatured views, although women have no legal basis for complaint.

Since the selling of goods is a sophisticated clever business, advertisers have tried to have it both ways. They've continued to produce the old ads, but have also, claiming to respond to women's protests, tried to push products with a straight talking, less patronizing approach. These ads take a 'we know you're a liberated woman and we have just the thing for the new woman' pitch.

Ads, however, fill the same function they always have: to sell goods by playing on women's personal insecurity about their appeal and their sexuality, and to count on women being the main organizers of their family's consumer spending.

At women's expense, with women's co-operation, the economy grinds on.

Women at school still learn to read from textbooks that promote an idealized, traditional view of women; guidance counsellors still channel women into vocational courses such as hairdressing and typing. Women don't receive the same encouragement, or facilities for sports as men do. Any woman who aspires to be an athlete, a welder, an architect, is still considered unusual.

**It has been the major social changes of the past 25 years much more than the piecemeal legal changes, that have affected women's lives profoundly.**

Scientific research produced the pill and made it possible for the first time in history for women to separate sex for pleasure from sex for procreation. Advanced technology has also changed many traditional concepts and organizations of work. The transport, servicing and promotion of goods has become as important as the actual manufacture of goods. Many jobs are now done by machines. Women's physical strength has become less important, creating more of a chance for job equality. Women have been brought into the labour force in increasing numbers to take jobs in these new areas.

There have been some reforms in employment law, but they have been few, and they have been badly enforced.

Women's situation in employment has in fact become worse. The gap between male and female average rates of pay widens every year, even though we have equal pay legislation on the books. Women stay in, and join the labour force in traditionally female jobs - nurses, telephone operators, clerical workers - even though we have human rights legislation prohibiting discrimination in employment. Women with the same education or training, even women with better qualifications than men, continue to be paid less than men. There is no legal protection in our province for

"The spectator-buyer is meant to envy herself as she will become if she buys the product. She is meant to imagine herself transformed by the product into an object of envy for others, an envy which will then justify her loving herself. One could put it another way: the publicity image steals her love of herself as she is, and offers it back to her for the price of the product."  
—John Berger, **Ways of Seeing**

"While the boy's acquaintance is with rough textures, grass and earth, land and sea, extremes of hot and cold, fair weather and foul, we say to the girl child: the greatest joy of your animal childhood is to sit in a little room of your own with pink curtains at the window and blue rabbits on the wall, with a miniature stove and Frigidaire finished in white enamel, and to play dolls, and 'play'  
—Ruth Herschberger, **Adam's Rib**

To a child, **happiness** is . . . having a snowman;  
To a man, **happiness** is . . . having a happy woman;  
To a woman, **happiness** is . . . having a new hairdo.  
—ad for a Dartmouth Nova Scotia hair dresser

domestic workers, not even minimum wage or human rights protection.

**Women in the Maritimes are especially hard hit as workers, and as homemakers trying to manage on less and less money, as food, shelter and fuel costs rise, all within the law. More and more people are becoming unemployed. Wage levels have been severely limited for frozen by recent legislation, and thus, so have the gaps between what workers earn here and in other provinces.**

Women in Nova Scotia have to bear the insecurity which all people in this region feel. Husbands are constantly moving around, looking for work where it can be found. Women themselves have few opportunities for work, they are expected to be a readily available reserve army of workers for any industry the government entices into the province. When the industry, usually lured here by legal grants and concessions, leaves the province, women return home.

This process is a way of life in Nova Scotia, a way of life many people would call unacceptable. Our society calls it legal.

Our legal system thrives within the myth that it is a neutral watchdog protecting citizen's rights against a biased society. **We've seen in this booklet that the law is not outside the prejudiced and confused attitudes towards women which we find in all our social institutions.** The law reflects these attitudes, and reinforces them.

For a long time women believed that their status in life was an inherent feature of being born a woman, not the social and economic creation it really has been. The law encourages such beliefs. Not only does the law help perpetuate popular myths about women, it also gives tacit approval to women's limited choices

in their real work and home lives.

We have been taught to revere the legal system. When it confirms stereotyped roles and economic discrimination, it tends to make them look legitimate. Women's position tends to appear timeless and unchangeable.

Yet women in this province have shown remarkable determination to change their lives. In the past few years women in Nova Scotia have been central and strong fighters in strikes of telephone workers, hospital workers, fishermen. Women have organized impressive campaigns for better day care. Women have fought discrimination within schools and workplaces.

**Women can be given legal rights to vote, to have their own credit, their own property, equal pay, and still be expected to be the sexual property of men, low paid workers, passive helpmates and mothers tied to the home.** not made a substantial difference in most women's lives. Women have seen that a change in the written laws alone can never be enough.

Our society has organized its economy and its people for maximum profit. It has accepted the rape of the land and of women as inevitable. It thrives on keeping the privilege of men over women and one class over another.

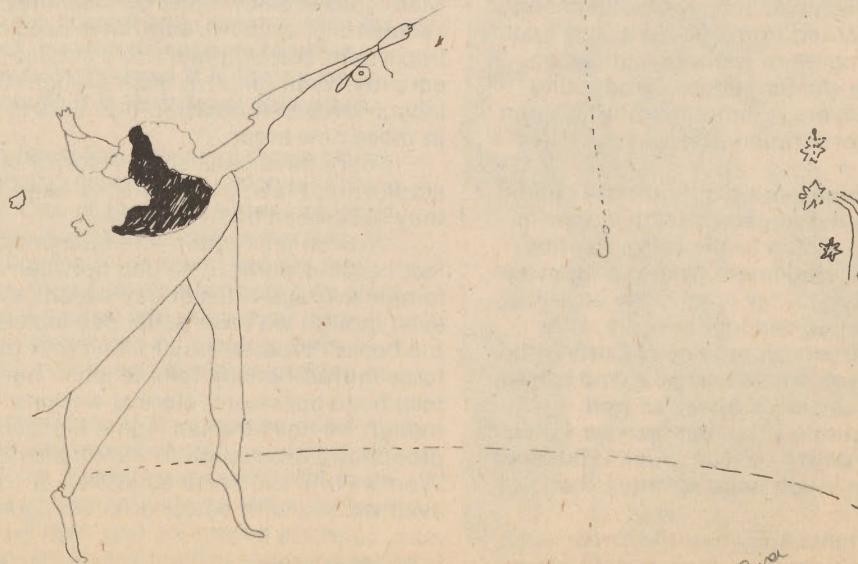
Women can be given legal rights to vote, to have their own credit, their own property, equal pay, and still be expected to be the sexual property of men, low paid workers, passive helpmates and mothers tied to the home.

It's unlikely that major changes in women's role in the family, at work, and within our educational and cultural institutions will be considered a pressing priority in such a society.

Changes will come, but not easily or without a fight.

"The law, in its majestic equality, forbids the rich, as well as the poor, to sleep under bridges, to beg in the streets and to steal bread."

-Anatole France



## Legal terms used in this booklet

**The Crown:** a term used to show the sovereign power of the Canadian state. In a criminal offence an action is brought in court in the name of the Crown, and thus the case is called Regina vs. Smith or The Queen vs. Smith.

**Common Law:** common law is based on the decisions of judges in Canada and other common law countries, such as Great Britain. Canadian decisions are binding; others are 'persuasive'. Common law goes back to about the 11th century. A ruling in a case becomes the 'common' law (also called 'case' law) regarding that particular issue, until it is overruled or changed by another court, or until a formal change is made by legislation.

**Statute:** an act of the legislature or parliament of either the provincial or federal government. The Criminal Code, the Wives and Children's Maintenance Act, the Labour Standards Code are examples of statutes.

**Criminal Code:** the federal statute which sets out the criminal law of Canada, listing all offences. An offence against a provincial statute can also sometimes be a 'criminal' offence.

**Criminal Offence:** An offence against the state. The Attorney-General for the state ('the Crown') generally prosecutes for the benefit of society. The **defendant** is the person accused of the crime. Most criminal offences come under federal jurisdiction. You usually get a criminal record if found guilty. Rape, abortion, murder, come under the Criminal Code of Canada.

**Civil Offence:** An offence by one person against another. The court can impose penalty or punishment for the personal benefit of the person bringing the charge. The state takes no part in the proceedings. If you are found '**liable**' (you aren't found 'guilty') you will not have a criminal record. Common civil charges are negligence in car accidents and breach of contract.

In a criminal trial the parties are the **prosecution** and the **defendant**, in a civil trial they are the **plaintiff** (the person who complains or sues) and the **defendant**. In Nova Scotia the same courts try both criminal and civil cases.

To **sue** means to bring a **civil action**; to **prosecute** means to bring a **criminal action**.

**Summary Convictions:** A less serious criminal offence, under a provincial statute. Light sentences or sometimes just fines are handed down. The trial takes place in Magistrate's Court, procedures are relatively quick. Minor traffic offences, common assault fall into this category.

**Indictable offence:** A serious criminal offence. The trial procedure takes longer, it's more complicated, and sentences are stiffer than for summary conviction offences. There are greater procedural protections for the defendant, such as the right to a jury. Murder, rape, theft, criminal abortion, are indictable offences.

Some offences, such as narcotics possession or assaulting an officer are called 'dual character' offences. They can be either

indictable or summary conviction offences depending on how the Crown decides it wants to prosecute.

**Note that 'felony' and 'misdemeanor' are American terms, roughly equivalent to summary conviction and indictable offence.** They are not used in Canadian law.

**Family Court** handles family and juvenile law, such as support orders and child protection. It's an informal court, you usually don't have a lawyer, and the legal guidelines for the judge handing out fines or sentences are less strictly defined than in other courts.

**City Court** handles disputes which come within the boundaries of a city where less than \$500 compensation is asked.

**Magistrate's Court** handles less serious criminal offences, such as breach of a provincial statute (being drunk in a public place, speeding, theft under \$200). It can also handle disputes which come up outside the boundaries of a city, where less than \$500 compensation is asked. (Nova Scotia has no courts officially called 'small claims' courts. City courts or magistrate's courts handle such cases.)

**County Court** handles civil cases, where the dispute comes up within a county, and compensation asked is under \$10,000. The court handles criminal offences other than the most petty (which magistrate's court handles) or the most serious (such as murder, handled by higher courts). County court also hears appeals from lower courts (those listed above).

**Supreme Court of Nova Scotia/Trial Division** can handle any civil dispute which comes up in Nova Scotia. There is no limit to the amount of compensation asked. It is more expensive to take a case to the Supreme Court than to one of the lower ones. This court also handles serious criminal offences, by means of a judge and jury trial.

**Supreme Court of Nova Scotia/Appeal Division** handles cases in which one of the parties disagrees with the verdict of the trial division or county court. Three judges hear appeals.

**Supreme Court of Canada** hears appeals from provincial court systems.

"Law, says the judge as he looks down his nose, Speaking clearly and most severely,  
Law is as I've told you before,  
Law is as you know, I suppose,  
Law is but let me explain it once more,  
Law is the law."  
—W.H. Auden

"For instance," she went on, sticking a large piece of plaster on her finger as she spoke, "there's the King's Messenger. He's in prison now, being punished: and the trial doesn't even begin until next Wednesday: of course the crime comes last of all."  
—Lewis Carroll, **Through the Looking Glass**

"When I use a word," Humpty Dumpty said in a rather scornful tone, "it means just what I choose it to mean, neither more nor less."  
"The question is," said Alice, "whether you can make words mean different things."  
—Lewis Carroll, **Through the Looking Glass**

"The fact that I have to go to the trouble to get a gown, the fact that the judge has to do the same, the fact that I must address him in a particular way—puts a control over everybody's tempers in the proceedings—the fact that I must refer to my colleagues, the adversary in the case, as 'my learned friend'. All this creates an atmosphere in which justice is handed out and administered so much more wisely and fairly."  
—Arthur Maloney, Ontario Ombudsman

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