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LEGAL STATUS OF WOMEN IN CANADA

As Shown by Extracts from Dominion and Provincial
Laws relating to Naturalization, Franchise, Crime,
Marriage, Divorce, Property, Devolution
of Estates, Mothers and Children,
Employment, and other
subjects



Published at the request of
THE NATIONAL COUNCIL OF WOMEN OF CANADA
by
THE DEPARTMENT OF LABOUR
CANADA

Ottawa: F. A. ACLAND
Printer to the King's Most Excellent Majesty
1924

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INTRODUCTION

The British North America Act, passed by the Imperial Parliament in 1867 to enable the union of Upper and Lower Canada with Nova Scotia and New Brunswick and any other provinces that might be willing to enter the union subsequently, provided for the distribution of legislative powers between the federal parliament and the provincial legislatures. Upon the Dominion parliament was conferred exclusive legislative authority over all matters respecting the public debt, trade and commerce, taxation, postal service, navigation and shipping, currency and banking, bankruptcy, marriage and divorce, Indians, the census and statistics, naturalization and aliens, defence and other subjects of Dominion import and significance. On the other hand, the provincial legislatures were given power to make laws in relation to municipal institutions, public lands belonging to the provinces, the solemnization of marriage, property and civil rights in the provinces, the administration of justice in the provinces, including the constitution, maintenance and organization of provincial courts, both of civil and criminal jurisdiction, and generally, all matters of a local or private nature in the province. The provincial legislatures have, also, exclusive powers of legislation in educational matters subject only to the right of the Dominion parliament to make remedial laws under certain circumstances. Laws for the peace, order and good government of Canada in relation to all matters not coming within the classes of subjects assigned exclusively to the legislatures of the provinces are within the legislative authority of the federal parliament. The federal parliament and provincial legislatures have concurrent powers of legislation respecting agriculture and immigration, provided the provincial law is not repugnant to any Act of the parliament of Canada.

The sources of law in Canada, with the exception of civil law in the province of Quebec, are the common law of England and the statutory laws passed from time to time by the respective legislative authorities. The common law consists of a body of ancient customs and usages handed down through the medium of judicial decisions and it is to be found, for the most part, in the published reports of these decisions which commenced in the Middle Ages and have been continued down to the present time. The common law is subject to modification in two ways, (1) by considerations of equity as interpreted by the courts and, (2) by statute law, consisting of acts of the legislature. In Canada, the common law of England as introduced by the early settlers, has been modified by English statutes passed prior to the granting of representative government and by Canadian enactments subsequent to the creation of the local legislatures.

In the province of Quebec, the French law, derived from the Coutume de Paris, has come down from the days of the French régime and, as amended by legislative enactments from time to time, prevails in all civil matters. The civil laws of this province have been codified as the "Civil Code of Lower Canada."

The criminal law is uniform throughout Canada, being within the jurisdiction of the Dominion parliament, but the constitution of the courts is within provincial authority. Judges are appointed by the Governor-General in Council.

From the above statement, it will be clear that certain of the laws of special interest to women are within the authority of the Dominion parliament; certain matters, such as franchise and marriage, are the subject of enactments

by both federal and provincial legislatures within their respective fields, but the great majority of the subjects dealt with in this pamphlet fall solely within the legislative jurisdiction of the provinces, being concerned with property and civil rights.

Although the provincial statutes, with the exception of those of Quebec, have been developed from the same fundamental law, the common law of England, yet the independent action of the various legislatures has resulted in a great diversity of legislation. The absence of uniformity in provincial laws led to action being taken by the provinces on the recommendation of the Council of the Canadian Bar Association to provide for the appointment of commissioners to attend an interprovincial conference for the purpose of promoting uniformity of legislation. The first meeting of the commissioners took place in 1918 and annual conferences have been held since that year.

Certain of the subjects discussed by the conference have been of special interest to women. At the 1919 conference, a model statute providing for the legitimation of children by subsequent marriage was approved and the result of this action by the Commissioners on Uniformity of Legislation in Canada was the enactment of a Legitimation Act in Prince Edward Island, New Brunswick, Ontario, Manitoba, and Saskatchewan. In Alberta, Quebec and British Columbia similar provision had already been made. The laws regarding the devolution of estates and intestate succession were discussed at the conferences held in 1923 and 1924 and it is expected that draft Acts will be approved at the next conference. Consideration of the property rights of married women was suggested but has been postponed to a later conference.

The extracts from laws which make up this pamphlet are not intended to serve as a legal guide or to be an exhaustive statement of the law but are intended merely to give those provisions of the federal and provincial laws that are of special interest to women. Persons wishing to know the law on any particular point should seek legal advice and not depend on any information derived from this pamphlet which can be of value only for general information and not in individual cases into which many factors may enter.

The task of compiling these laws of the provinces and of the Dominion dealing with the relations of women in the home, in the family, in the municipality and in the state, was undertaken by Mrs. O. C. Edwards, Macleod, Alberta, convener of the committee on laws of the National Council of Women, and to her is due the credit for the preliminary work in connection with this pamphlet.

DEPARTMENT OF LABOUR, November, 1924.

CHAPTER I

NATURALIZATION

NATURALIZATION ACT, 1914, C. 44; AMD. 1914 (SECOND SESSION), C. 7; 1920, C. 59; 1923, C. 60

The Naturalization Act, 1914, was enacted in pursuance of an agreement with the Imperial Government and the governments of the other dominions to bring about an empire-wide naturalization and a uniform period of five years' residence for aliens before naturalization. This Act was amended in the second session of 1914 and was repealed and replaced by an Act of 1919. The Naturalization Act of 1920 repealed the latter Act and revived and amended the Act of 1914 together with the amendments of the second session of 1914.

NATURAL-BORN BRITISH SUBJECTS.

Sec. 1. (1) The following persons shall be deemed to be natural-born British subjects, namely:—

- (a) Any person born within His Majesty's dominions and allegiance; and,
- (b) Any person born out of His Majesty's dominions, whose father was a British subject at the time of that person's birth and either was born within His Majesty's allegiance or was a person to whom a certificate of naturalization has been granted, or had become a British subject by reason of any annexation of territory, or was at the time of that person's birth in the service of the Crown, or his birth was registered at a British Consulate within one year or, in special circumstances, two years after its occurrence;
- (c) Any person born in a British ship whether in foreign territorial waters or not;

Provided that the child of a British subject, whether that child was born before or after the passing of this Act, shall be deemed to have been born within His Majesty's allegiance if born in a place where by treaty, capitulation, grant, usage, sufferance, or other lawful means, His Majesty exercises jurisdiction over British subjects; provided also that any person whose British nationality is conditional on registration at a British Consulate shall cease to be a British subject unless he asserts his British nationality within one year after attaining his majority.

(2) A person born on board a foreign ship shall not be deemed to be a British subject by reason only that the ship was in British territorial waters at the time of his birth.

NATURALIZATION OF ALIENS

Sec. 2. The Secretary of State may grant a certificate of naturalization to an alien who makes an application for the purpose. The qualifications necessary are:—

Residence within His Majesty's Dominions for a period of not less than five years or service under the Crown for the same period within the last eight years before the application; residence in Canada for not less than one year immediately preceding the application and previous residence either in Canada or in some part of His Majesty's dominions for a period of four years within the last eight years before the application; good character; an adequate knowledge of the English or French language; an intention, if a certificate of naturalization is granted, either to reside in His Majesty's dominions or to enter or continue in the service of the Crown.

Sec. 3. A person to whom a certificate of naturalization has been granted has to all intents and purposes the status of a natural-born British subject.

Section 7 provides for the revocation of a certificate of naturalization if obtained by false representation or fraud or if person to whom it was granted does not meet the requirements of the Act.

Section 7A provides that unless otherwise ordered by the Governor in Council the nationality of the wife and minor children of the person whose certificate is revoked shall not be affected by the revocation and they shall remain British subjects; Provided that—

- (1) (a) it shall be lawful for the wife of any such person within six months after the date of the revocation to make a declaration of alienage, and thereupon she and any minor children of her husband and herself shall cease to be British subjects and shall become aliens; and,

(b) the Governor in Council shall not make any such order as aforesaid in the case of a wife who was at birth a British subject, unless he is satisfied upon the report of the Secretary of State of Canada that if she had held a certificate of naturalization in her own right the certificate could properly have been revoked under this Act.

(2) The provisions of this section shall, as respects persons affected thereby, have effect in substitution for any other provision of this Act as to the effect upon the wife and children of any person where the person ceases to be a British subject, and such other provisions shall accordingly not apply in any such case.

NATIONAL STATUS OF MARRIED WOMEN AND INFANT CHILDREN

Sec. 5. (3) Except as provided in this Act, a certificate of naturalization shall not be granted to any person under disability.

Sec. 33. (d) The expression "disability" means the status of being a married woman, or a minor, lunatic, or idiot.

Sec. 10. The wife of a British subject shall be deemed to be a British subject, and the wife of an alien shall be deemed to be an alien; provided that when a man ceases during continuance of his marriage to be a British subject, it shall be lawful for his wife to make a declaration that she desires to retain British nationality and thereupon she shall be deemed a British subject; and provided that when an alien is subject of a state at war with His Majesty it shall be lawful for his wife, if she was at birth a British subject, to make a declaration that she desires to resume her British nationality and thereupon the Secretary of State of Canada, if he is satisfied that it is desirable that she be permitted to do so, may grant her a certificate of naturalization.

Sec. 11. A woman who, having been a British subject, has by or in consequence of her marriage become an alien, shall not, by reason only of the death of her husband, or the dissolution of her marriage, cease to be an alien, and a woman who, having been an alien, had by or in consequence of her marriage become a British subject, shall not by reason only of the death of her husband, or the dissolution of her marriage, cease to be a British subject.

By an amendment 1914, c. 7, to subsection 5 of section 2 of the Act a woman who was a British subject prior to her marriage to an alien and whose husband has died or whose marriage has been dissolved, when seeking to become again a British subject, is not required to comply with the regulation as to residence.

Sec. 12. (1). Where a person being a British subject ceases to be a British subject, whether by declaration or otherwise, every child of that person, being a minor, shall thereupon cease to be a British subject, unless that child or that person ceasing to be a British subject, does not become by the law of any other country naturalized in that country; Provided that where a widow who is a British subject marries an alien, any child of hers by her former husband shall not, by reason only of her marriage, cease to be a British subject whether he is residing outside His Majesty's dominions or not.

(2) Any child who has so ceased to be a British subject may within one year after attaining his majority make a declaration that he wishes to resume British nationality, and shall thereupon again become a British subject.

Sec. 5. Minor children of an alien become naturalized by their names and ages being endorsed on the certificate of naturalization of their parent, any child not so named remains an alien, but the Secretary of State may in any special case grant a certificate of naturalization to any minor.

Any minor becoming naturalized may within one year after attaining his majority make a declaration of alienage and shall thereupon cease to be a British subject.

STATUS OF ALIENS

Sec. 17. Real and personal property of every description may be taken, acquired, held and disposed of by an alien in the same manner in all respects as by a natural-born British subject; and a title to real and personal property of every description may be derived through and from or in succession to an alien in the same manner in all respects as through, from or in succession to a natural-born British subject:

Provided that this section shall not operate so as to—

- (1) Qualify an alien for any office or for any municipal, parliamentary, or other franchise; or
- (2) Qualify an alien to be an owner of a British ship; or
- (3) Entitle an alien to any right or privilege as a British subject, except such rights and privileges in respect to property as are hereby expressly given to him; or
- (4) Affect an estate or interest in real or personal property to which any person has or may become entitled either mediately or immediately, in possession or expectancy, in pursuance of any disposition made before July 4th, 1883, or in pursuance of any devolution by law on the death of any person dying before that date.

CHAPTER II

FRANCHISE

(1) Federal

DOMINION ELECTIONS ACT, 1920, C. 46; AMD. 1921, CC. 1, 29; 1922, C. 20

Sec. 29. (1). Save as in this Act otherwise provided, every person, male or female, shall be qualified to vote at the election of a member, who, not being an Indian ordinarily resident on any Indian reservation,—

- (a) is a British subject by birth or naturalization; and
- (b) is of the full age of 21 years; and
- (c) has ordinarily resided in Canada for at least twelve months and in the electoral district wherein such person seeks to vote for at least two months immediately preceding the issue of the writ of election;
- (d) provided, however, that any Indian who has served in the naval, military or air forces of Canada in the late war shall be qualified to vote, unless such Indian is otherwise disqualified under paragraphs (a), (b) and (c) of this section.

(2) At a general election, any person who would have been qualified to vote in an electoral district if he had continued to reside therein shall remain so qualified to vote in such electoral district notwithstanding that he has within two months immediately preceding the date of the issue of the writ, changed his place of residence from such electoral district to another.

(3) If the name of any voter is on the voters' list of the district in which he previously resided and conditions prevent him from having his name placed on the voters' list in the district wherein he is resident at the time of polling, he may cast his vote in the constituency where his name is inscribed on the voters' list.

DISQUALIFICATION OF ELECTORS

Sec. 30. (1). The following persons may not vote:—

- (a) Judges of every court whose appointment rests with the Governor in Council during their tenure of office;
- (b) The chief electoral officer, during his tenure of office;
- (c) Persons disfranchised for corrupt or illegal practices under this Act, during the period of their disfranchisement;
- (d) Persons disfranchised under the Disfranchising Act during the period of their disfranchisement;
- (e) Persons who at an election have committed any corrupt practice or illegal practice, for the whole period of the election at which they so offended;
- (f) Persons who, at the time of an election are prisoners undergoing punishment for criminal offences or are patients in lunatic asylums, or are maintained in whole or in part as inmates receiving public charitable support or care in municipal poor houses or houses of industry, or are inmates receiving public charitable support in any institution receiving aid from the Government of a province under any statute in that behalf, for the whole period of such election.
- (g) Persons, who by the laws of any province in Canada are disqualified from voting for a member of the Legislative Assembly of such province in respect of race, shall not be qualified to vote in such province under the provisions of this Act: Provided, however, that the provisions of this paragraph shall not disqualify or render incompetent to vote any person who has served in the naval, military or air forces of Canada in the late war and who produces a discharge from such naval, military, or air force to the registrar upon the making of such voters' lists and to the deputy returning officer at the time of polling.

Section 31 disqualifies returning officers and election clerks, attorneys, agents, etc., employed for pay in connection with the election.

(2) Provincial

PRINCE EDWARD ISLAND

ELECTION ACT, 1922, C. 5

Sec. 2. Legislative Assembly shall be composed of thirty members, fifteen of whom shall be styled Councillors and fifteen Assemblymen.

MEMBERS' QUALIFICATIONS

Sec. 12. Any person shall be eligible to be elected to the Assembly who is a British subject, male or female, 21 years of age or upwards, unless he or she be disqualified as hereinafter mentioned.

Sec. 13. No member of the Senate of the Dominion of Canada or House of Commons shall be eligible nor any person in the service of the Dominion Government or the Government of Prince Edward Island.

Sec. 14. No person holding a contract with the Government is eligible.

Sec. 15. No person in holy orders or clergyman is eligible.

ELECTORS FOR COUNCILLORS

Sec. 31. The following persons shall be entitled to vote at an election for Councillors for the Legislative Assembly:

(1) Every person, male or female, a British subject, 21 years of age and owning real property to the value of \$325 in the electoral district in which he or she claims to vote and who has owned and been in possession of such property for six months prior to writ for Councillors;

(2) Every male person, independent of age, who has been employed in the defence of Canada.

ELECTORS FOR ASSEMBLYMEN

Sec. 32. Every person, male or female, except an Indian ordinarily resident on an Indian reserve, shall be entitled to vote at an election for an Assemblyman, if such person

(a) is of the full age of 21 years and is not disqualified by any law of the province;

(b) is a British subject;

(c) has resided in the province of Prince Edward Island for at least twelve months and in his or her electoral district for at least two months immediately preceding the issue of the writ for an election;

(d) who is the holder of a freehold estate, or who is in the bona fide use and occupation for his benefit of any dwelling, shop, farm, etc., to the value of at least \$100 and has owned and been in use of said property qualification for six months.

Sec. 36. Every mortgagor in actual possession of real estate to the value of at least \$100 shall be qualified to vote for an Assemblyman.

Sec. 59. A deposit of \$10 by candidate or in his behalf must be made.

Sec. 249. In this Act, words importing the singular member of masculine gender only, shall include more persons of the same kind and females as well as males and the converse.

PUBLIC SCHOOL ACT, 1920, C. 6, AMD. 1921, C. 3

Sec. 49. Voters must be ratepayers and have paid all taxes.

Sec. 50. Every woman residing in the district and being a mother, stepmother or adoptive mother of a child of school age residing with her and in actual attendance at the school of the district shall be a qualified voter in respect of all matters and things cognizable at a school meeting and shall be eligible for election of school trustee.

Sec. 70. No teacher while employed as such shall be a trustee and continuous non-residence by a trustee shall cause the vacation of his office.

NOVA SCOTIA

ACT RELATING TO THE LEGISLATURE, R.S., 1923, C. 2

Sec. 5. A person eligible as a member of the House, shall be a British subject by birth or naturalization of not less than 21 years of age.

Sec. 14. No judge, postmaster, deputy postmaster, registrar of probate, registrar of deeds, prothonotary, Deputy Commissioner of Public Works and Mines, Deputy Commissioner of Mines, Inspector or Deputy Inspector of Mines, clerk of a county court or medical superintendent of the Nova Scotia Hospital is eligible for appointment to the Council or Assembly unless he resigns such office.

FRANCHISE ACT, R.S., 1923, C. 3

Sec. 3. Every person (male or female) shall be entitled to be registered in any year upon the list of voters for the proper polling district of any county if such person,

(a) is 21 years of age and not by this Act or any law of the province disqualified or prevented from voting and was not on January 1 next before the meeting of revisers receiving public charitable support or care in a city, town, or municipal poor house, and did not in each of the two years preceding the first day of January preceding the meeting of the revisers receive aid as a pauper under any law of the province;

(b) is a British subject;

(c) is a resident of the county in which the polling district in which he or she claims to vote forms a part and has been resident for one year next before January 1 preceding the meeting of revisers.

Sec. 10. Notwithstanding anything in this chapter contained, the revisers for every revision section shall, for the purposes only of municipal and town elections, place on the list of voters non-residents of any polling district within such revision section who are assessed in such polling district in respect of real property to the value of \$300.

MUNICIPAL ACT, R.S., 1923, C. 83

Sec. 7. Except as otherwise provided, every person is qualified to serve as councillor who is possessed of the qualifications required in the case of members of the assembly.

Sec. 8. No person shall be qualified to be elected or to serve as councillor who,

(a) is a member of the House of Commons or Senate of Canada; or

(b) is a judge of the Supreme Court, a judge of the County Court or Court of Probate; or

(c) is an ordained clergyman in charge of a church or parish; or

(d) is a sheriff or crier of the Supreme or County Courts; or

(e) is a mayor, councillor, town clerk or any other salaried officer in or under the town council of an incorporated town; or

(f) is the municipal clerk, municipal treasurer, or collector of municipal rates of any kind; or

(g) has a contract with the municipality; or

(h) has within five years before the date of his nomination been convicted under any statute of Canada or Nova Scotia of selling or keeping for sale intoxicating liquors, or

(i) has been at any time convicted of a crime punishable with imprisonment in the penitentiary.

Sec. 11. Every person shall be qualified to vote at an election of a councillor who,

(a) is a British subject by birth or naturalization of the full age of 21 years; and

(b) is registered on the list of voters prepared under the provisions of "The Nova Scotia Franchise Act."

TOWNS' INCORPORATION ACT, R.S., 1923, C. 84

Sec. 4. No town shall be incorporated under this Act, the population of which does not exceed 1,500 persons, 150 of whom shall be assessed and rated upon real and personal property or both and dwell within an area of not more than 640 acres, provided that if 1,000 persons dwell within such area, a larger area than 640 acres may be embraced in the original boundaries of the town.

Sec. 26. (1). No person shall be qualified to be mayor unless he is 21 years of age, a British subject and has been a resident and rate-payer for at least three years next prior to his nomination, and is rated on real property assessed at not less than \$500 or personal property assessed at not less than \$1,000.

(2) A councillor must be a British subject, 21 years of age, a ratepayer of the town and have resided or had place of business and been a ratepayer for at least one year preceding nomination.

EDUCATION ACT, R.S., 1923, C. 60

Sec. 35. (1) One of the trustees may be chosen from the poll tax payers qualified to vote in the election of trustees or may be a woman; the remaining trustees shall be ratepayers of the section.

(3) No person shall be qualified to be elected or continue a trustee who has ceased to reside in the section or has been continuously absent for more than six months or is insolvent or is permanently disabled from transacting business.

Sec. 27-29. Voters in the election of trustees must be resident ratepayers or have paid the poll tax but any woman qualified to vote under the provision of the Franchise Act resident in the school section, on the payment to the secretary of the trustees of the amount of the poll tax fixed for the year, shall have all the right and privileges of a male poll tax payer, including the right of being elected a trustee.

NEW BRUNSWICK

ELECTIONS ACT, 1916, C. 15 AMD. 1919, C. 63; 1920, C. 49.

Sec. 3. Every person 21 years of age, being a British subject shall be qualified to vote in any election of members to the Legislative Assembly, whose name shall be duly entered on the voters' list in an electoral district, provided such person shall have been a resident of the province of New Brunswick for six consecutive months immediately preceding the 24th August in each year when the list is made up, and provided that such person was at the time of the making of the voters' list a bona fide resident of or domiciled in the electoral district, on the list of which he is registered, and is at the time of tendering his vote a resident of and domiciled in the district in which vote is tendered.

Sec. 6. The following are disqualified: A person in gaol or prison under sentence for a criminal offence, a patient in a lunatic asylum, or a person maintained in whole or in part as an inmate receiving charitable support or care in a municipal poor house or alms house or who is a pauper receiving aid from any city, town or parish for his support or that of his family or is an inmate receiving aid from the Province under any statute in that behalf, or who is an Indian.

Sec. 7. A Judge of the Supreme Court of this province shall not vote, or a returning officer in the county in which he holds office, shall not vote except in the case of a tie.

Sec. 31. No qualification in real estate shall be required of a candidate for the Legislative Assembly.

Sec. 66. Candidate must deposit \$100 which shall be returned if he be elected.

Sections 32, 33 and 35 are similar to Prince Edward Island Statutes, 1922 c. 5, ss. 13-15.

MUNICIPALITIES ACT, 1912, C. 6, AMD. 1921, C. 43

Sec. 9. Councillors must be resident property owners to the amount of \$300, 21 years of age and British subjects.

Sec. 25. (1) Every male of the age of 21 years, every widow and married or unmarried female of the age of 21 years who is a British subject, a resident of the parish and a ratepayer on an income of personal property to the amount of \$100 is qualified to vote.

SCHOOLS ACT, C.S. 1903, C. 50

Sec. 58. A school trustee must be a British subject, 21 years of age, a ratepayer and must have paid all taxes.

QUEBEC

R.S., 1909, AMD. 1912, C. 10; 1915, C. 17; 1922, C. 19

Arts. 84, 85. Members of the Legislative Council are appointed for life by the Lieutenant-Governor. A member of the Legislative Council must have property qualifications and be domiciled or have his property qualification within the district he represents.

Art. 305. Members of the Legislative Assembly must be 21 years of age, of the male sex, British subjects and free from all legal disabilities and in enjoyment of civil and political rights.

No person who holds any office in the service of the province may be elected unless he has ceased to hold such office at least six months prior to the date of nomination.

Art. 180. The following persons (and no others) being males, domiciled within the municipality for which the list is made and who are 21 years of age British subjects and not otherwise legally disqualified shall be entered on the list of electors:—

1. Owners, occupants and tenants.
2. Sons of owners, occupants and tenants domiciled with their father or widow's sons domiciled with their mother.
3. Priests, rectors, vicars, missionaries and ministers of any religious denomination.
4. Teachers, professors, principals of educational institutions, and members of teaching congregations.
5. Navigators, fishermen who are owners in whole or part of boats or fishing tackle to the value of \$50.
6. Annuitants.
7. Persons who receive by any title whatever in money or kind an average revenue of at least \$10 per month.

Art. 184. Nevertheless, the sons of the persons mentioned in paragraph 1 of this article [judges, clerks of the Crown, etc.], as debarred from voting may be entered on the lists as sons of owners.

A bill to secure provincial franchise for women was introduced in the Quebec Legislature in 1922, but owing to strong opposition was withdrawn.

CITIES AND TOWNS ACT, 1922, C. 65

Sec. 122. Every male resident in a municipality not declared disqualified by law may discharge any municipal office.

Sec. 123. The following persons cannot be mayor or alderman nor fill any other municipal office: Aliens, minors, persons in holy orders and ministers of any religious denomination, members of Privy Council, judges and magistrates receiving emoluments from the Federal or local governments or from the municipality, officers on full pay of His Majesty's army or navy, keepers of taverns, restaurants or hotels and persons who have acted as such within the preceding twelve months, whoever has had no place of residence or place of business in the municipality, whoever has any contract with the municipality; whoever for at least twelve months preceding the election or nomination has not paid all his taxes; whoever cannot read and write fluently even if he can read print and write his own name; or any person convicted of treason or any criminal offence punishable by imprisonment of at least two years.

Sec. 124. No person shall be elected mayor or alderman unless he has as proprietor in his own name or in that of his wife, property to the value of \$600 in the municipality.

Sec. 128. The following persons, if 21 years of age, British subjects and not legally disqualified shall be electors:—

(a) Male persons and widows or spinsters who are owners or occupants of immovable property of assessed value of \$200 or upwards or of annual value of \$20 or upwards,

(b) The husband whose wife owns property in the municipality of the assessed value of \$200 or upwards or carries on business subject to a tax and when such business is entered on the collection roll as being of the annual value of not less than \$20,

(c) Every male person, widow or spinster being tenant of house of value of \$200 or annual value of \$20 and upwards,

(d) Every male person, though neither owner nor householder who is entered on the valuation roll as the tenant of any store, shop, office or place of business of the value of \$200 or yearly value of \$20.

CITY OF MONTREAL ACT, 1921, C. 112

Sec. 42. Married women judicially separated from their husbands vote on municipal affairs when qualified the same as widows and spinsters, and a husband judicially separated from his wife is prohibited from voting on his wife's property. The franchise is extended to widows and spinsters who are assessed as tenants, and to bachelors who pay bachelor's tax.

SCHOOL TRUSTEES, R.S., 1909

Art. 2639. Every Catholic curé, and every minister of any other religious faith ministering in the school municipality although not qualified with respect to property, every male resident ratepayer and every resident husband of a ratepayer able to read and write qualified to vote under Article 2642 is eligible as school commissioner or trustee.

Art. 2642. To have a right to vote at any election of school commissioners or trustees, it is necessary to be 21 years of age, to be the proprietor or husband of the proprietor of real estate, or be the proprietor or husband of the proprietor of the buildings only upon land belonging to another, to be entered as such upon the valuation roll, and to have paid all school taxes.

ONTARIO

LEGISLATIVE ASSEMBLY ACT, R.S., 1914, C. 11, AMD. 1919, C. 8, S. 3

Sec. 7. The persons qualified to be elected and to sit and vote as members of the Assembly shall be any male or female persons of the full age of twenty-one years who are British subjects by birth or naturalization resident in Ontario and not disqualified by this or any other Act from election to the Assembly.

Sec. 10-11. No person is eligible who holds any office in the service of the Dominion or the province except an army or navy officer, justice of the peace, coroner, notary public or public school inspector and no person holding a contract with the Government is eligible.

DISQUALIFICATION ACT, 1919, C. 6, AMD. 1922, C. 3.

Sec. 3. Defaulters under the Military Service Act and any person who has been convicted of seditious or treasonable offences shall for ten years from the passing of this Act, be disqualified from holding any public office and from voting at provincial or municipal elections.

Sec. 3A. Any person disqualified as above may apply to judge of county court for an order removing such disqualification which may be granted after hearing.

ELECTION LAWS AMENDMENT ACT, 1920, C. 2, AMD. 1921, C. 2; 1922, C. 4; 1923, C. 3; 1924, C. 4

Sec. 6. The following persons are entitled to vote:—(1) Every man and every woman who, at the time of voting,—

- (a) is 21 years of age;
- (b) is a British subject;
- (c) is not disqualified under the Ontario Election Act or Disqualification Act, 1919, or otherwise by law prohibited from voting;
- (d) is and has been for a period of 12 months a resident of and domiciled in Canada;
- (e) is and has been resident of and domiciled in the electoral district for three months next preceding the day of polling or; in the case of a city comprising two or more electoral districts,
- (f) is and has been for a period of one month preceding such day a resident of and domiciled in the electoral district and is and has been for a period of three months next preceding such day a resident of and domiciled in such city;

(2) Every man and every woman who, at the time of voting—

- (a) is a British subject;
- (b) is not qualified to vote under (1):
- (c) is 21 years of age;
- (d) is not disqualified under the Ontario Election Act or Disqualification Act, 1919, or otherwise by law prohibited from voting; whether he or she is not an Indian, enfranchised or unenfranchised, and who,—
- (e) served in the military forces of Great Britain or any British possession in the late war and is an inmate or employed and resident in any military institution for such persons or in any hospital situated in the electoral district.

Sec. 8. A student in attendance at an institution of learning in Canada not entered on any other list shall be deemed to be a resident of the municipality if otherwise qualified.

ELECTION ACT, R.S., 1914, C. 8.

Sec. 12. Judges of the Dominion and Provincial Courts, clerks of the peace, crown attorneys and police magistrates in cities and towns having a population of 5,000 and over, shall be disqualified and incompetent to vote.

Secs. 13, 15. No returning officer or election clerk shall be entitled to vote except when he must give a casting vote. No persons employed by candidate for a reward, no person who is a prisoner in a gaol or prison, or in a hospital for the insane or is maintained in whole or in part as an inmate receiving charitable support or care in a municipal refuge or house of industry, shall be entitled to vote.

MUNICIPAL ACT, 1922, C. 72, AMD. 1923, C. 41.

Sec. 52. Every person shall be qualified to be elected as councillor who (a) is a householder residing in the municipality or is rated on last revised assessment roll for land in his own right for an amount sufficient to entitle him to be entered on the voters' list and resides in or within two miles of the municipality; (b) Is entered on last voters' list as qualified to vote at municipal elections; (c) Is a British subject; (d) Is 21 years of age and (e) is not disqualified under this or any other Act.

Sec. 53. The following shall not be eligible to be elected a councillor: Judge of any court, gaoler or keeper of a lockup, sheriff, deputy sheriff or sheriff's bailiff, high bailiff or chief constable of a city or town, assessment commissioner or other municipal officers, a person licensed to sell spirituous liquors by retail, police magistrate or person who is interested in a contract with or claim against the corporation.

Sec. 55. The following persons shall be exempt from being elected as members of a council and from being appointed to any municipal office: (a) Persons of sixty years of age and upwards; (b) Members and officers of the Senate and House of Commons of Canada or of the Assembly; (c) Coroners; (d) Clergymen and ministers of every denomination; (e) Members of the Law Society of Upper Canada whether barristers or students; (f) Officers of the Courts of Justice; (g) Physicians and surgeons; (h) Professors, masters, teachers and servants of a university college or school in Ontario; (i) Millers; (j) Officers and members of a fire brigade or an authorized fire company.

Sec. 56. (1) Every person shall be entitled to be entered on the voters' list who is of the age of 21 years, a British subject, not disqualified under this Act or otherwise by law from voting and rated or entitled to be rated in his or her own right as owner or tenant or so rated for income or who is entered on such roll as a farmer's son or who is the wife or husband of the person so rated for land as owner or tenant.

(2) The rating for land shall be in respect of a freehold or leasehold to an amount not less than \$100 in villages and townships, \$200 in towns of 3,000 or less, \$300 in towns of more than 3,000 and \$400 in cities.

(3) The rating for income shall be in respect of income of not less than \$400.

Sec. 57. Subject to sections 59, 60 and 61, every person whose name is entered on the proper voters' list shall be entitled to vote at a municipal election except that in the case of a tenant he must be resident of the municipality one month before the election and in case of an income voter or farmer's son he must be a resident of the municipality at the date of election.

Sec. 59. Persons who have not paid their taxes shall not be entitled to vote.

Sec. 60. The clerk of the municipality shall not be entitled to vote except in case of a tie.

Sec. 61. No persons who are employed by candidates for a reward shall be entitled to vote.

PUBLIC SCHOOLS ACT, 1920, C. 100

Sec. 51. (3) The persons qualified to be elected as trustees shall be British subjects, 21 years of age, who are resident ratepayers or the husbands, wives, sons, daughters, mothers and sisters of persons assessed as actual owners of farms where such persons are resident on the farm with persons so assessed.

Sec. 56. Every person who is a ratepayer in a rural school section and every other person who is qualified to vote at municipal elections and who resides in the rural section and is not a supporter of separate schools shall be entitled to vote for school trustees. No person who is not a British subject shall be entitled to vote.

Sec. 58. (2) Every ratepayer who is a British subject and 21 years of age and who resides in the municipality or within one mile from the boundaries in the case of a city or town may be elected as a school trustee in urban municipalities.

Sec. 62. Every person named in the last revised voters' list as being entitled to vote at municipal elections, and who is not a supporter of separate schools shall be entitled to vote at the election of school trustees in urban municipalities.

MANITOBA

LEGISLATIVE ASSEMBLY ACT, R.S. 1913, C. 112

Secs. 13-14. No person holding any office to which a salary from the Crown is attached, except coroners and justices of the peace; no person interested in any government contract or person holding any office from which he draws any fee shall be eligible to sit as members of the Legislative Assembly.

ELECTION ACT, R.S., 1913, C. 59, AMD. 1916, C. 36; 1920, C. 33

Sec. 14. Any person, male or female, married or unmarried, not disqualified or ineligible under the provision of the next succeeding section, or of "The Legislative Assembly Act," shall be eligible for election as member of the Legislative Assembly. No qualification of real estate is necessary.

Sec. 15. Any person who is not a British subject nor 21 years of age, or who is a registration clerk or revising officer of the list of electors, or any person guilty of corrupt practice, shall be ineligible to be elected as a member of the Legislative Assembly.

Sec. 16. Every person, male or female, who is a British subject, 21 years of age, and who has resided within the province for one year and within the electoral district for three months next preceding his application for registration may be registered as an elector. Any one otherwise qualified, if not resident for three months in the electoral district, has the right to register for the electoral division of and within which he was last a resident and domiciled for three months during the said period of one year.

Secs. 19, 218. The following persons shall not be entitled to be registered as electors: (a) Judges of the Court of Appeal, of the King's Bench and of the County Courts; (b) Indians or persons of Indian blood receiving an annuity or treaty money from the Crown or who have at any time within three years prior to the said date received such annuity or treaty money; (c) Persons disqualified from voting under this Act or any other act of the province relating to corrupt practices at legislative elections; (d) Lunatics, idiots, persons of unsound mind and persons confined in any gaol, penitentiary, asylum, or other public places as inmates or prisoners; (e) the returning officer, any agent of the candidate if serving for reward or indemnity.

MUNICIPAL ACT, R.S., 1913, C. 133, AMD. 1919, CC. 59, 63

Sec. 52. The persons eligible for election as mayors, aldermen, reeves and councillors shall be British subjects and males of the full age of twenty-one years, able to read and write, not subject to any disqualification under this Act. They must be residents of the municipality and owners, unless a by-law has been passed dispensing with this requirement, of real estate assessed at not less than \$500, \$300 or \$100 in cities or towns, villages and rural municipalities respectively.

Sec. 60. Electors must be British subjects twenty-one years of age, who are owners or the wives or husbands of owners of property within the municipality, tenants who are and have been for six months resident as tenants or owners in the municipality and such landowners' sons and daughters in order of seniority as the assessed value of the property is sufficient to qualify as electors after the parent.

PUBLIC SCHOOLS ACT, R.S., 1913, C. 165, AMD. 1918, C. 69

Sec. 109. The provisions of the Municipal Act respecting the qualifications of electors shall apply to the election of school trustees.

Sec. 111. Any actual resident ratepayer of the full age of 21 years, a British subject, able to read and write and not disqualified under this Act, shall be eligible to be elected a public school trustee in any city, and in any town or village the wife or husband of such ratepayer shall be also eligible.

SASKATCHEWAN

LEGISLATIVE ASSEMBLY ACT, R.S., 1920, C. 2

Sec. 8. Any British subject, male or female, of the full age of 21 years, resident in Saskatchewan is eligible for election as a member of the Legislative Assembly, unless disqualified under this or any other Act.

Secs. 10, 11. No Senator or member of the House of Commons of Canada and no persons (except coroners and justices of the peace and members of the Executive Council of the province of Saskatchewan) nor pensioners who hold any office or place of profit under the Government or who shall in any manner be employed in the public service of the province for salary, fee or wages, or emoluments shall sit in the Legislative Assembly.

Sec. 16. No person declared by this Act or any other law ineligible as a member of the Legislative Assembly shall sit or vote therein while under such disability.

ELECTION ACT, R.S., 1920, C. 3

Sec. 12. Judges of the Court of Appeal, Court of King's Bench and the district courts, Chinese, Indians, persons disqualified for corrupt practices and any person who at the time of preparation of the voters' list or on the polling day is a prisoner for a criminal offence or is a patient in a lunatic asylum, are disqualified from voting.

Sec. 13. Every person, male or female, has a right to have name placed on voters' list who is a British subject, 21 years of age, has resided in the province for twelve months and in the electoral district for three months immediately preceding the writ of the election. If otherwise qualified but not resident the necessary three months, then he or she may register in the electoral district where he or she was last a resident for three months during said period of one year.

CITY ACT, R.S., 1920, C. 86

Sec. 23. Every person shall be eligible for election as mayor or alderman who is a British subject, 21 years of age, able to read and write, not disqualified under this Act and is resident within the city or within two miles of city limits and whose name appears on the voters' list.

Sec. 24. No Judge of any court of civil jurisdiction, no gaoler, constable, assessor, town clerk, auditor or paid officials of the town, no bailiff, no inspector of licenses, no person having by himself, his partner or agent an interest in a contract with the town, no person who is insolvent, no person who has been convicted of an offence punishable with imprisonment for five years or over shall be qualified to be a member of the council.

Sec. 99. The assessor shall place on the voters' list the names of: (a) all men and women 21 years of age assessed upon the last revised assessment roll; (b) residents in the city for three months prior to July 1 who have paid to the city a license fee of at least \$10; (c) the householders on householders' list (tenants); (d) the wife or husband of a person qualified under subsections (a) and (b).

TOWNS ACT, R.S., 1920, C. 87

Section 19 is similar to Section 23 of City Act.
Section 20 is similar to Section 24 of City Act.
Section 87 is similar to Section 99 of City Act.

VILLAGE ACT, R.S., 1920, C. 88

Sec. 26. Every person, male or female, shall be eligible for nomination as councillor who is an elector residing in the village, has paid all taxes due by him and is a British subject.

Sec. 2. "Elector" means any person of the full age of 21 years who has owned or been an occupant of assessable property in the village for a period of at least two months immediately prior to such election or who is the chief resident officer of a corporation and the wife or husband of any such person if of the full age of 21 years and residing with such person in the village.

RURAL MUNICIPALITY ACT, R.S., 1920, C. 89

Sec. 66. Every person, male or female, shall be eligible for nomination as reeve or councillor who is an elector of the municipality, 21 years of age and, if a taxpayer, who has paid all taxes and who is a British subject.

Section 67 is similar to Section 24 of City Act.

Sec. 6. "Elector" means any person of the full age of 18 years who is the owner or occupant of assessable property in the municipality or the resident wife of such owner or occupant.

SCHOOL ACT, R.S., 1920, C. 110, AMD. 1920, C. 46; 1921-22, C. 47

Sec. 72. Each person nominated for the office of trustee shall be a resident ratepayer of the district, able to read and write who shall subscribe the oath of allegiance.

Sec. 77. Any resident ratepayer and the resident wife or husband of such ratepayer who is 21 years of age, who has been for two months the owner or occupant of property in the school district shall be entitled to vote for school trustee.

ALBERTA

LEGISLATIVE ASSEMBLY ACT, R.S., 1922, C. 3

Secs. 8-11. No Senator or member of the House of Commons, no person holding office at the nomination of the Crown or Government to which a fee or salary is attached (excepting officers in the army, navy or militia, members of the Executive Council), and no public contractor shall be eligible to be a member of the Legislative Assembly.

ELECTIONS ACT, R.S., 1922, C. 4

Sec. 9. Any person who is 21 years of age and a British subject resident in Alberta and who is not disqualified by the Legislative Assembly Act or any other Act, shall be qualified to be a candidate.

Sections 10-11 are similar to Saskatchewan, R.S. 1920, c. 3, ss. 12-13, except that in Alberta Chinese are not among those disqualified.

TOWN ACT, R.S., 1922, C. 108

Sec. 14. Every person shall be eligible for election as mayor or councillor who is a British subject, 21 years of age, able to read and write the English language, resident in the town or within two miles of it and is the owner of land to the value of \$100 over and above all charges; whose name is on the last revised assessment roll, and who has paid all taxes due by him.

This section disqualifies the same persons disqualified by the City Act of Saskatchewan, R.S., 1920, c. 86, s. 24, with the exception of those persons who are insolvent.

Sec. 79. The voters' list shall contain the names of all persons of full age of 21 years who are assessed upon the last revised assessment roll for \$50 or upwards and the name of the wife, husband, son, daughter, father or mother of each person so assessed provided such relative is a resident on the land of the assessed person within the town and is 21 years of age.

Sec. 77. A town may by by-law declare that no person shall be entitled to vote who had not by a specified date paid all arrears of taxes.

VILLAGE ACT, R.S., 1922, C. 109

Sec. 31. The persons eligible for election as councillors shall be resident electors who are British subjects and can read and write.

Sec. 2. (d) "Elector" shall mean any person, male or female, 21 years of age whose name appears on last revised assessment roll and who has paid all arrears of taxes.

Sec. 57. (4) The returning officer shall upon demand, give a ballot to the husband, wife, son, daughter, mother or father of an assessed person who has paid all taxes due by him if such relative is a resident of the village.

MUNICIPAL DISTRICT ACT, R.S., 1922, C. 110

Sec. 79. The persons eligible for election as councillors shall be the resident electors who can read and write and are British subjects.

Sec. 80. Persons having contracts with the council, or receiving remuneration for service from the council and all persons convicted and sentenced to imprisonment for more than two years for a criminal offence shall be ineligible for election as councillors.

Sec. 2. (d), 73. "Elector" shall mean any person, male or female, 21 years of age, who has owned or been the occupant of assessable land in the district for at least two months immediately prior to the election or who is the wife, husband, son, daughter, father or mother of each person upon land of the assessed person within the district assessed, provided that such relative is resident and 21 years of age.

SCHOOL ACT, R.S., 1922, C. 51

Sec. 2. (l) "Resident Ratepayer" shall mean any person of the full age of 21 years whose name is on the assessment roll of the district and who has been for a period of at least two months the owner or occupant of assessable property therein and the husband, wife, son, daughter or sister of any resident ratepayer provided such relative is 21 years of age and resides in the same house as such resident ratepayer.

Sec. 81. Only resident ratepayers shall be entitled to vote for the election of trustees.

Sec. 86. No person shall be nominated for the office of trustee unless he is a British subject, a resident ratepayer of the district and able to read and write.

BRITISH COLUMBIA

CONSTITUTION ACT, R.S., 1911, C. 44, AMD. 1920, C. 17

Sec. 30. (1) No person shall be capable of being elected a member of the Legislature who is not duly registered on the register of electors for some electoral district of the province according to the provisions of the "Provincial Elections Act," and who has not been a resident of the province for one year previous to the date of the election and no person shall be capable of being elected a member who is a minister of any religious denomination.

(2) No judge shall be capable of being elected.

(3) Women shall be capable of being elected in the same manner as men.

PROVINCIAL ELECTIONS ACT, 1920, C. 27

Sec. 4. (1) Every person who is not disqualified by this Act or any other law in force in the province and who (a) is 21 years of age, (b) is entitled within the province to the privilege of a natural-born British subject, (c) and has resided in the province for six months and in the electoral district one month of that period immediately preceding the date of his making his application under this Act to be registered as voter, shall be entitled to be registered as a voter.

Secs. 5, 6. The following persons shall be disqualified: Every Chinaman, Japanese, Hindu or Indian; every person convicted of bribery or personation or convicted of treason or any indictable offence unless pardoned for the offence or undergone the sentence imposed; every deserter from the military or naval service; every person, male or female, exempted or entitled to claim exemption from military service, by orders of the Governor in Council of August 13, 1873, December 6, 1898, or August 12, 1899; every man who has been granted a certificate of exemption from military service or from combatant service pursuant to Section 11 of Military Service Act, 1907, being chapter 19, Statutes of Canada, 1917, solely or in part on conscientious grounds, unless the person has performed military duty on active service in the Great War or has been honourably discharged from service.

MUNICIPAL ACT, 1914, C. 52, AMD. 1920, C. 63

Sec. 16. Persons qualified to be mayor of any city shall be British subjects, 21 years of age, who have been for the preceding six months and are owners of land or real property within the municipality assessed at not less than \$1,000.

Sec. 17. In case of aldermen, the qualifications are similar with the exception that the value of property held must be not less than \$500.

Sec. 18. Qualifications for reeve of any district municipality are similar to those of aldermen.

Sec. 19. Councillors of any district municipality must own real property to value of not less than \$250, be homesteaders, lessees from the Crown or pre-emptors who have resided in the municipality for one year and are assessed for land of the value of \$500 or more.

Sec. 20. The following persons are disqualified: sheriffs or their officers; persons who have been convicted of an offence for which they are sentenced to two years' imprisonment unless they have been pardoned or at liberty for five years preceding election; naval and military officers; persons holding contract with municipality; aliens; salaried officers of municipality; persons having any claim against the municipality.

MUNICIPAL ELECTIONS ACT, R.S., 1911, C. 71, AMD. 1915, C. 21; 1920, C. 26

Sec. 4. No Chinese, Japanese, or other Asiatics or Indians shall be entitled to vote at any municipal election for the election of a mayor, reeve, alderman or councillor.

Sec. 5. No person who is not a British subject may vote at any municipal election.

Sec. 8. Any male or female, 21 years of age, or any corporation being assessed owner of land or real property of the assessed value of not less than \$100; any person, 21 years of age, and any corporation carrying on business and being the holder of a license the annual fee for which is not less than \$5, any person who is a householder in the municipality is entitled to vote. A corporation may vote only by its authorized agent who shall be a resident of the province and a British subject, 21 years of age.

VILLAGE MUNICIPALITIES ACT, 1920, C. 65

Section 2 permits incorporation of villages to be governed by regulations set out in letters patent, and provisions of the "Municipal Act" are not to apply to such villages except as specifically provided in Letters Patent.

PUBLIC SCHOOLS ACT, 1922, C. 64

Sec. 37. The qualifications for trustees for any municipal school district shall, mutatis mutandis, be the qualifications as prescribed by law for persons eligible for election as alderman or councillor of the municipality comprised in the school district, except that every candidate shall be actually resident in the school district. The wife or husband of every person who is qualified to become a candidate for election as a trustee under the foregoing provisions of this section, shall, if she or he is of the full age of 21 years, and actually resident in the school district, be qualified also to become a candidate for election as a trustee for the school district.

Sec. 42. The qualifications of voters at elections of school trustees in any municipal school district shall, mutatis mutandis, be the same as for electors entitled to vote for mayor or reeve of the municipalities.

Sec. 79. A trustee in the case of rural schools must be a British subject, and resident in school district and a qualified voter or the wife or husband of a qualified voter and resident except that a wife or husband of existing trustee is not eligible for election.

Sec. 93. The qualified rural school district voters shall be ratepayers in the district or the wives or husbands of ratepayers who have paid all district school taxes imposed on them.

(4) Chinese, Japanese, Hindus and Indians shall not be entitled to vote.

CHAPTER III

CRIMINAL LAW

IMPRISONMENT OF WOMEN

Female convicts shall be kept in a separate ward from the male convicts and shall be under the charge of a matron with such and so many female officers as the Minister of Justice orders to be employed. (Penitentiary Act, R.S., 1906, c. 147.)

CRIMINAL CODE, 1922, AMENDED TO 1924

The Criminal Code is in force in all parts of the Dominion.

Sec. 22. The fact that an offender is ignorant of the law is not an excuse for any offence committed by him.

Sec. 294. The consent of a child under 14 years is no defence to a charge of indecent assault upon either male or female children.

RAPE

Sec. 298. (2) No one under the age of 14 years can commit this offence.

Sec. 299. Every one who commits rape is guilty of an indictable offence* and liable to suffer death, or to imprisonment for life and to be whipped.

Sec. 300. Every one is guilty of an indictable offence and liable to seven years' imprisonment and to be whipped who attempts to commit rape.

Sec. 301. Every one is guilty of an indictable offence and liable to imprisonment for life and to be whipped, who carnally knows any girl under the age of fourteen years, not being his wife, whether he believes her to be of or above that age or not.

(2) Every one is guilty of an indictable offence and liable to imprisonment for five years who carnally knows any girl of previously chaste character under the age of sixteen and above the age of fourteen, not being his wife, and whether he believes her to be above the age of sixteen years or not. No person accused of any offence under this subsection shall be convicted upon the evidence of one witness, unless such witness is corroborated in some material particular by evidence implicating the accused.

NOTE.—By Section 17, chapter 43, of the statutes of 1920, it is provided that:—

"On the trial of any offence against [sections 211, 213 and 301 of the Criminal Code], the trial judge may instruct the jury that if in their view the evidence does not show that the accused is wholly or chiefly to blame for the commission of said offence, they may find a verdict of acquittal."

Sec. 302. Every one who attempts to have unlawful carnal knowledge of any girl under the age of fourteen years is guilty of an indictable offence and liable to two years' imprisonment, and to be whipped.

ABORTION

Sec. 303. Every one is guilty of an indictable offence and liable to imprisonment for life who, with intent to procure the miscarriage of any woman, whether she is or is not with child, unlawfully administers to her or causes to be taken by her any drug or other noxious thing, or unlawfully uses any instrument or other means whatsoever with the like intent.

Sec. 304. Every woman is guilty of an indictable offence and liable to seven years' imprisonment who, whether with child or not, unlawfully administers to herself or permits to be administered to her any drug or other noxious thing, or unlawfully uses on herself or permits to be used on her any instrument or other means whatsoever with intent to procure miscarriage.

Sec. 305. Every one is guilty of an indictable offence and liable to two years' imprisonment, who unlawfully supplies or procures any drug or other noxious thing, or any instrument or thing whatsoever, knowing that the same is intended to be unlawfully used or employed with intent to procure the miscarriage of any woman, whether she is or is not with child.

Sec. 306. Every one is guilty of an indictable offence and liable to imprisonment for life who causes the death of any child which has not become a human being, in such a manner that he would have been guilty of murder if such child had been born.

* An indictable offence is one which may be formally brought before a grand jury.

Sec. 207. Every one is guilty of an indictable offence and liable to two years' imprisonment who knowingly, without lawful justification or excuse,—

- (c) offers to sell, advertises, publishes an advertisement of, or has for sale or disposal any means or instructions or any medicine, drug or article intended or represented as a means of preventing conception or of causing abortion or miscarriage; or advertises or publishes an advertisement of any means, instruction, medicine, drug or article for restoring sexual virility or curing venereal disease or diseases of the generative organs.

NEGLECT IN CHILDBIRTH AND CONCEALING OF DEAD BODY

Sec. 271. Every woman is guilty of an indictable offence who with either of the intents in this section mentioned, being with child and being about to be delivered, neglects to provide reasonable assistance in her delivery, if the child is permanently injured thereby, or dies, either just before or during, or shortly after birth, unless she proves that such death or permanent injury was not caused by such neglect, or by any wrongful act to which she was party, and is liable,—

- (a) if the intent of such neglect be that the child shall not live, to imprisonment for life;
(b) if the intent of such neglect be to conceal the fact of her having had a child, to imprisonment for seven years.

Sec. 272. Every one is guilty of an indictable offence and liable to two years' imprisonment who disposes of the dead body of any child in any manner, with intent to conceal the fact that its mother was delivered of it, whether the child died before or during, or after birth.

SEDUCTION

Sec. 210. The burden of proof of previous unchastity on the part of the girl or woman under the three next succeeding sections shall be upon the accused.

Sec. 211. Every one over the age of eighteen years is guilty of an indictable offence and liable to two years' imprisonment who seduces any girl of previously chaste character of or above the age of sixteen years and under the age of eighteen years. Proof that a girl has on previous occasions had illicit connection with the accused shall not be deemed to be evidence that she was not of previously chaste character.

Sec. 212. Every one, above the age of twenty-one years, is guilty of an indictable offence and liable to two years' imprisonment who, under promise of marriage, seduces and has illicit connection with any unmarried female of previously chaste character, and under twenty-one years of age.

[See note at end of Section 301 above.]

Sec. 213. Every one is guilty of an indictable offence and liable to two years' imprisonment,—

- (a) who, being a step-parent or foster-parent or guardian seduces or has illicit connection with his step-child or foster-child or ward;
(b) who seduces or has illicit connection with any girl previously chaste and under the age of twenty-one years who is in his employment, or who, being in a common, but not necessarily similar, employment, with him is, in respect of her employment or work under or in any way subject to his control or direction, or receives her wages or salary directly or indirectly from him. Proof that a girl has on previous occasions had illicit connection with the accused shall not be deemed to be evidence that she was not previously chaste.

[See note at end of Section 301 above.]

Sec. 214. Every one is guilty of an indictable offence and liable to a fine of four hundred dollars, or to one year's imprisonment, who, being the master or other officer or a seaman or other person employed on board of any vessel, while such vessel is in any water within the jurisdiction of the Parliament of Canada, under promise of marriage, or by threats, or by the exercise of his authority, or by solicitation, or the making of gifts or presents, seduces and has illicit connection with any female passenger.

(2) The subsequent intermarriage of the seducer and the seduced is, if pleaded, a good defence to any indictment for any offence against this or either of the two preceding sections, except in the case of a guardian seducing his ward.

Sec. 215. Every one who, being the parent or guardian of any girl or woman, who,—

- (a) procures such girl or woman to have carnal connection with any man other than the procurer; or
(b) orders, is party to, permits or knowingly receives the avails of the defilement, seduction or prostitution of such girl or woman;

is guilty of an indictable offence, and liable to fourteen years' imprisonment if such girl or woman is under the age of fourteen years, and if such girl or woman is of or above the age of fourteen years to five years' imprisonment.

Sec. 217. Every one who, being the owner or occupier of any premises, or having, or acting or assisting in the management or control thereof, induces or knowingly suffers any girl under the age of eighteen years to resort to or be in or upon such premises for the purpose of being unlawfully and carnally known by any man, whether such carnal knowledge is intended to be with any particular man, or generally, is guilty of an indictable offence, and is liable,—

- (a) to ten years' imprisonment if such girl is under the age of fourteen years;
- (b) to two years' imprisonment if such girl is of or above the age of fourteen years.

Sec. 218. Every one is guilty of an indictable offence and liable to two years' imprisonment who conspires with any other person by false pretences, or false representation, or other fraudulent means to induce any woman to commit adultery or fornication.

Sec. 219. Every one is guilty of an indictable offence and liable to four years' imprisonment who unlawfully and carnally knows, or attempts to have unlawful carnal knowledge of any female idiot or imbecile, insane or deaf and dumb or feeble-minded woman or girl under circumstances which do not amount to rape, but where the offender knew, or had good reason to believe at the time of the offence, that the woman or girl was an idiot, or imbecile, or insane, or deaf and dumb, or feeble-minded.

(Feeble-minded person means a person in whose case there exists from birth or from early age mental defectiveness not amounting to imbecility yet so pronounced that he or she requires care, supervision and control for his or her own protection and for the protection of others. R.S.C., 1906, c. 146, s. 2, par. (14A) as amended 1922, c. 16.)

ADDITIONAL PROTECTION FOR INDIAN WOMEN, IRRESPECTIVE OF AGE

Sec. 220. Every one is guilty of an indictable offence and liable to a penalty not exceeding one hundred dollars and not less than ten dollars, or six months' imprisonment,—

- (a) who being the keeper of any house, tent or wigwam, allows or suffers any unenfranchised Indian woman to be or remain in such house, tent or wigwam knowing or having probable cause for believing that such Indian woman is in or remains in such house, tent or wigwam with the intention of prostituting herself therein; or
- (b) who, being an Indian woman, prostitutes herself therein; or
- (c) who being an unenfranchised Indian woman, keeps, frequents or is found in a disorderly house, tent or wigwam used for any such purpose.

2. Every person who appears, acts or behaves as master or mistress, or as the person who has the care or management of any house, tent or wigwam in which any such Indian woman is or remains for the purpose of prostituting herself therein is deemed to be the keeper thereof, notwithstanding he or she is not in fact the keeper thereof.

ABDUCTION

Sec. 313. Every one is guilty of an indictable offence and liable to ten years' imprisonment who, against her will, takes away or detains any woman of any age and whether married or not, with intent to marry or carnally know such woman or to cause her to be married or carnally known by any other person.

Sec. 314. Every one is guilty of an indictable offence and liable to fourteen years' imprisonment, who with intent to marry or carnally know any woman, or with intent to cause any woman to be married or carnally known by any other person, such woman having any interest, legal or equitable, present or future, absolute, conditional or contingent, in any real or personal estate, or being presumptive heiress or co-heiress, or presumptive next-of-kin, to any one having such an interest

- (a) from motives of lucre takes away or detains such woman against her will, whatever the age of such woman;
- (b) fraudulently allures, takes away or detains such woman out of the possession and against the will of her father or mother or other person having lawful care or charge of her, such woman being under the age of twenty-one years.

Sub-section 2 of this section bars the person abducting or detaining, from taking any estate or interest, legal or equitable, in the real or personal property of the woman abducted or detained.

Sec. 315. Every one is guilty of an indictable offence and liable to five years' imprisonment who unlawfully takes or causes to be taken any unmarried girl, who is under the age of sixteen years, out of the possession and against the will of her father or mother, or of any other person having the lawful care or charge of her.

2. It is immaterial whether the girl is taken with her own consent or at her own suggestion or not.

3. It is immaterial whether or not the offender believed the girl to be of or above the age of sixteen.

Sec. 294. It is no defence to a charge or indictment for any indecent assault on a young person under the age of fourteen years to prove that he or she consented to the act of indecency.

PROCURING

Sec. 216. Every one is guilty of an indictable offence and shall be liable to ten years' imprisonment and on any second or subsequent conviction shall also be liable to be whipped in addition to such imprisonment, who—

- (a) procures, or attempts to procure or solicits any girl or woman to have unlawful carnal connection either within or without Canada, with any other person or persons; or
- (b) inveigles or entices any woman or girl not being a common prostitute or of known immoral character, to a common bawdy or assignation house for the purpose of illicit intercourse or prostitution; or
- (c) knowingly conceals any woman or girl in any common bawdy or assignation house, or
- (d) procures or attempts to procure any woman or girl to become, either within or without Canada, a common prostitute; or
- (e) procures or attempts to procure any woman or girl to leave her usual place of abode in Canada, such place not being a common bawdy house, with intent that she may become an inmate or frequenter of a common bawdy house within or without Canada; or
- (f) on the arrival of any woman or girl in Canada, directs or causes her to be directed, takes or causes her to be taken, to any common bawdy house or house of assignation; or
- (g) procures any woman or girl to come to Canada, or to leave Canada, for the purpose of prostitution; or
- (h) by threats or intimidation, procures or attempts to procure any woman or girl to have any unlawful carnal connection, either within or without Canada; or
- (i) for the purposes of gain, exercises control, direction, or influence over the movements of any woman or girl in such a manner as to show that he is aiding, abetting or compelling her prostitution with any person or generally; or
- (j) by false pretence or false representations procures any woman or girl to have any unlawful carnal connection, either within or without Canada; or
- (k) applies, administers to, or causes to be taken by any woman or girl any drug, intoxicating liquor, matter or thing with intent to stupefy or overpower so as thereby to enable any person to have unlawful carnal connection with such woman or girl; or
- (l) being a male person, lives wholly or in part on the earnings of prostitution.

2. Where a male person is proved to live with or to be habitually in the company of a prostitute or prostitutes, and has no visible means of support, or to live in a house of prostitution he shall, unless he can satisfy the court to the contrary be deemed to be living on the earnings of prostitution.

DISORDERLY HOUSES

The effort of the Dominion Government to effectually suppress disorderly houses is seen in the amendments to the Criminal Code in 1909, 1910, 1913, 1915, 1917 and 1920.

Sec. 225. A common bawdy house is a house, room, set of rooms or place of any kind kept for purposes of prostitution, or for the practice of acts of indecency or occupied or resorted to by one or more persons for such purposes.

Section 774 gives absolute jurisdiction to the magistrate in respect of houses of ill fame.

Sec. 230. Every one is guilty of an offence and liable on summary conviction before two justices, to a penalty not exceeding one hundred dollars and to six months' imprisonment with or without labour who prevents or obstructs the entry of an authorized officer to a disorderly house.

Sec. 228. The penalty for keeping a disorderly house is one year's imprisonment.

2. Any one who appears, acts and behaves as the keeper, manager, etc., is to be considered the keeper.

Section 228a makes the landlord liable, if his premises are used as a disorderly house, and if after conviction of his tenant as keeper, a second offence as to tenancy is committed, the landlord, lessor or agent is to be considered a keeper of a disorderly house.

Sec. 229. Every one who without lawful excuse is found in a disorderly house is liable to a fine of \$100, and in default of payment, to two months' imprisonment.

Sec. 229a. An inmate of a common bawdy house is guilty of an indictable offence and liable to a fine of \$100 and costs, or in default of payment, to imprisonment not exceeding two months, or to imprisonment not exceeding twelve months. Any one convicted under sections 228 and 229a three or more times shall be liable to imprisonment for not less than three months and not exceeding two years.

Section 773 provides for summary trials for—

- (d) indecent assault on a male child under 14 years and an indecent assault upon a female not amounting to attempted rape; and
- (f) with keeping a disorderly house under section 228, or with being an inmate of a common bawdy house under section 229a.

Sec. 781. In any cases summarily tried under paragraphs (c), (d), (e), (f), or (g) of section 773 the magistrate may commit the person charged to imprisonment not to exceed six months or condemn him to pay a fine not exceeding with costs in the case \$200, or to both fine and imprisonment not exceeding the said sum and term.

Sec. 781A. The provisions of section 1035 shall not apply or extend to any person convicted more than twice under said paragraph (f) of section 773 for keeping a common bawdy house, or of keeping a common bawdy house if such offence was committed in any premises with respect to which premises more than two convictions have been made, whether the same person has been convicted as keeper thereof or not, and any such person so convicted shall not in either case be sentenced to less than three months' imprisonment, nor shall any sentence imposed in either of the cases be suspended under the provisions of section 1081 without the concurrence of the counsel acting for the Crown in the prosecution of the offender.

Section 1035 enables the magistrate to impose a fine in lieu of imprisonment in cases punishable by imprisonment for five years or less. In case of offences punishable with imprisonment of more than five years, the magistrate may also impose a fine.

Sec. 1008. If sentence of death is passed upon a woman, she may move in arrest of execution on the ground that she is pregnant.

(2) If such motion is made the court shall direct one or more registered medical practitioners to be sworn to examine the woman in some private place, either together or successively, and to inquire whether she is with child of a quick child or not.

(3) If upon the report of any of them it appears to the court that she is so with child, execution shall be arrested until she is delivered of a child, or until it is no longer possible in the course of nature that she should be so delivered.

Sec. 1060. (4) Whipping shall not be inflicted on any female.

CORRUPTING CHILDREN

Sec. 220A. (1) Any person who, in the home of a child by indulgence in sexual immorality, in habitual drunkenness or in any other form of vice, causes such child to be in danger of being or becoming immoral, dissolute or criminal, or the morals of such child to be injuriously affected, or renders the home of such child an unfit place for such child to be in, shall be liable on summary conviction to a fine not exceeding \$500 or to imprisonment for a period not exceeding one year or to both fine and imprisonment.

(2) For the purpose of this section, "child" means a boy or girl apparently or actually under the age of 16 years.

VENEREAL DISEASE

Sec. 316a. (1) Any person who is suffering from venereal disease in a communicable form, who knowingly or by culpable negligence communicates such venereal disease to any other person shall be guilty of an offence, and shall be liable upon summary conviction to a fine not exceeding \$500 or to imprisonment for any term not exceeding six months, or to both fine and imprisonment.

Provided that a person shall not be convicted under this section if he proves that he had reasonable grounds to believe that he was free from venereal disease in a communicable form at the time the alleged offence was committed.

Provided also, that no person shall be convicted of any offence under this section upon the evidence of one witness, unless the evidence of such witness be corroborated in some material particular by evidence implicating the accused.

(2) For the purpose of this section "venereal disease" means syphilis, gonorrhoea, or soft chancre.

(For criminal law relating to marriage, see chapter IV; for law relating to support of married women, see chapter VI.)

CHAPTER IV

MARRIAGE

Legislation governing marriage in Canada is both federal and provincial. By the British North America Act, the Dominion Parliament was given the right to enact laws relative to the status of marriage, to determine between what persons and under what circumstances it might be created and destroyed, and the provincial legislatures have statutory control over the solemnization of marriage and the circumstances under which it may be solemnized.

The same Act, however, which thus divided the legislative authority in the matter of marriage, provided that the respective provinces should retain the laws which they enjoyed prior to Confederation. This provision reserved to the Maritime Provinces the right to grant divorce. Similar power is possessed by the Supreme Courts of the four western provinces by virtue of legislation of the Imperial Parliament which was in force prior to their entering the Dominion. (See chapter V—Separation and Divorce.)

In addition to the powers above mentioned, the Dominion Parliament can enact laws rendering certain acts relating to marriage offences under the criminal law.

Under English law the requisites of a valid marriage are:—

1. That each of the parties should, as regards age, mental capacity and otherwise, be capable of contracting marriage;
2. That they should not by reason of kindred or affinity be prohibited from marrying one another (a husband is of affinity to his wife's kindred, and a wife to the kindred of the husband);
3. That there should not be a valid subsisting marriage of either of the parties with any other person;
4. That the parties understanding the nature of the contract should fully consent to marry one another, and
5. That certain forms and ceremonies should be observed. Mere dulness of intellect is not of itself sufficient to prohibit a person marrying. The capacity of contracting marriage depends upon whether at the time of the marriage, he or she is capable of understanding the nature of the contract.

It is difficult to say to what extent the law as it exists in England is in force in Canada. Certainly apart from any Dominion statute, it would not seem to be in force in the province of Quebec, and even in the other provinces where the common law of England prevails unless changed by statute, there may be statutes which differ from the common law or English statutes. It must not, therefore, be assumed that the following extracts from Halsbury's "Laws of England" give the law for all the provinces.

MARRIAGE INVALID *Ab Initio*

A marriage between persons within the prohibited degree of consanguinity or affinity is absolutely null and void for all purposes whatsoever. (Hals. Vol. 16, 525.)

MARRIAGE VOIDABLE

Inability to consummate a marriage is now the only cause (except nonage) for which, though not void, it is voidable and may be avoided. If the condition of one of the parties thereto at the time of marriage renders consummation practically impossible this makes the marriage voidable only, not void.

Such marriages are deemed valid for all civil purposes unless a sentence of nullity is actually obtained during the lifetime of the parties. (Hals. Vol. 16, 970.)

FALSE ASSERTION OF A MARRIAGE

If any one falsely and maliciously assert a marriage with another (jactitation), the latter may present a petition praying for a decree enjoining perpetual silence on the subject. (Hals. Vol. 16, 1916.)

PERSUADING A WIFE TO LEAVE HER HUSBAND

If a third person without just cause, persuades or entices a wife to live apart from her husband, or receives and harbours her while living apart without her husband's consent, that person commits an actionable wrong, for which the husband is entitled to recover damages; but where a wife leaves her husband in consequence of his ill-treatment, no action will lie against any person for receiving and harbouring her. (Hals. Vol. 16, 628.)

WHO MAY NOT INTERMARRY

By an English statute (5-6 William IV, c. 54, s. 2), which probably is in force in most of the provinces of Canada, marriage between persons within the prohibited degrees of consanguinity and affinity is absolutely null and void for all purposes whatsoever. These degrees were expressed in a table set forth by authority in 1563 and annexed to the Book of Common Prayer. By that table—

A man may not marry his—

1. Grandmother
2. Grandfather's wife
3. Wife's grandmother
4. Aunt
5. Uncle's wife
6. Wife's aunt
7. Mother
8. Step-mother
9. Wife's mother
10. Daughter
11. Wife's daughter
12. Son's wife
13. Sister
14. Granddaughter
15. Grandson's wife
16. Wife's granddaughter
17. Niece
18. Nephew's wife
19. Brother's wife

A woman may not marry her—

1. Grandfather
2. Grandmother's husband
3. Husband's grandfather
4. Uncle
5. Aunt's husband
6. Husband's uncle
7. Father
8. Step-father
9. Husband's father
10. Son
11. Husband's son
12. Daughter's husband
13. Brother
14. Grandson
15. Granddaughter's husband
16. Husband's grandson
17. Nephew
18. Niece's nephew
19. Husband's nephew
20. Husband's brother

The relationships set forth in this table include all such relationships whether by the whole or half-blood, and whether legitimate or illegitimate.

An Act declaring marriage with a deceased wife's sister not to be invalid was passed in Canada in 1882 (R.S. 1906, c. 105). A similar Act was passed in England in 1907. By a Dominion Act of 1923 (c. 19) the marriage of a woman with her deceased husband's brother or nephew is now not invalid.

(1) Federal Law

EVIDENCE BY HUSBAND OR WIFE

CANADA EVIDENCE ACT, R.S., 1906, C. 145, AMD. 1917, C. 14

Sec. 4. (2) The wife or husband of a person charged with certain offences against morality and certain matrimonial and other offences shall be a competent and compellable witness for the prosecution without the consent of the person charged.

(3) No husband shall be compellable to disclose any communication made to him by his wife during their marriage, and no wife shall be compellable to disclose any communication made to her by her husband during their marriage.

(4) Nothing in this section shall affect a case where the wife or husband of a person charged with an offence may at common law be called as a witness without the consent of that person.

ADULTERY

Adultery is not a punishable offence in itself under the Criminal Code, but can be pleaded before the Senate of Canada as a reason for granting divorce.

Section 218 of the Criminal Code reads: "Every one is guilty of an indictable offence and liable to two years' imprisonment who conspires with any other person by false pretences, or false representation or other fraudulent means to induce any woman to commit adultery or fornication."

Adultery is an indictable offence in New Brunswick under a pre-Confederation statute of the province. (R. vs. Strong, 1915 43 N.B.R. 190, 24 Can. Cr. cas. 430; R.S. N.B. 1854, c. 145, sec. 3.)

A husband may, in a petition either for dissolution of marriage or for judicial separation or in a petition limited to such object only, claim damages from any person on the grounds of his having committed adultery with his wife. (Imperial Matrimonial Causes Act 1857, Hals., Vol. 16, 1921.)

The National Council of Women request the Federal Government each year to enact legislation to make adultery a crime.

(See also Chapter V on Separation and Divorce.)

CRIMINAL CODE, 1922

OFFENCES RELATING TO THE LAW OF MARRIAGE

Sec. 309. Every one is guilty of an indictable offence and liable to seven years' imprisonment who procures feigned or pretended marriage between himself and any woman or who aids in procuring such marriage.

Sec. 311. Every one is guilty of an indictable offence and liable to a fine or two years' imprisonment or to both who, without lawful authority solemnizes or pretends to solemnize a marriage or procures any person to solemnize such a marriage.

ASSAULTS ON FEMALES

Sec. 292. (c). Every one is guilty of an indictable offence and liable to two years' imprisonment, and to be whipped, who assaults or beats his wife or any other female and thereby does her bodily harm.

HUSBAND OF WIFE NOT ACCESSORIES AFTER THE FACT

Sec. 71. An accessory after the fact to an offence is one who receives, comforts, or assists any one who has been a party to such offence in order to enable him to escape, knowing him to have been a party thereto.

2. No married person whose husband or wife has been party to an offence shall become accessory after the fact thereto by receiving, comforting or assisting the other of them and no married woman whose husband has been a party to an offence shall become an accessory after the fact thereto, by receiving, comforting or assisting in his presence and by his authority any other person who has been a party to such offence in order to enable her husband or such other person to escape.

THEFT

Sec. 354. During cohabitation no husband or wife shall be convicted of stealing the property of the other, but a husband or wife shall be guilty of theft who, intending to desert or on deserting the other or while living apart from the other, fraudulently takes or converts anything which is by law the property of the other in a manner which in any other person would amount to theft.

POLYGAMY

Sec. 310. Every one is guilty of an indictable offence and liable to imprisonment of five years and fine of \$500 who practices polygamy.

BIGAMY

Sec. 307. Bigamy is—

1. (a) the act of a person who, being married, goes through a form of marriage with any other person in any part of the world; or
- (b) the act of a person who goes through a form of marriage in any part of the world with any person whom he or she knows to be married.

3. No one commits bigamy by going through a form of marriage—
 (a) if he or she in good faith and on reasonable grounds believes his wife or her husband to be dead; or
 (b) if his wife or her husband has been continually absent for seven years then last past and he or she is not proved to have known that his wife or her husband was alive at any time during those seven years; or
 (c) if he or she has been divorced from the bond of the previous marriage; or
 (d) if the former marriage has been declared void by a court of competent jurisdiction.

4. No person shall be liable to be convicted of bigamy in respect of having gone through a form of marriage in a place not in Canada, unless such person being a British subject resident in Canada, leaves Canada with intent to go through such form of marriage.

Sec. 308. Every one who commits bigamy is guilty of an indictable offence and liable to seven years' imprisonment.

(2) Every one who commits this offence after a previous conviction for like offence shall be liable to fourteen years' imprisonment.

Bigamy in British Columbia in connection with adultery in petition for divorce shall be taken to mean a marriage of any person being married to any other person during the lifetime of the former husband or wife whether the second marriage shall have taken place within the dominions of His Majesty or elsewhere. (20-21 Vict., c. 85, s. 27; R.S.B.C. 1897, c. 62, s. 12.)

(2) Provincial Laws

As will be seen in the following extracts, the marriage laws of the various provinces differ in some important points. The minimum age for marriage without the consent of parent or guardian varies from eighteen to twenty-one years. The minimum age for marriage with the consent of parent or guardian varies from twelve years of age to sixteen years, while in some provinces there is no age limit. In certain provinces, marriage can only be solemnized as a religious act; in others, provision is made for civil marriage.

Marriage affects the property of the contracting parties in some provinces; in others it has no effect except in cases of intestacy; in some of the provinces marriage deprives a woman of municipal franchise.

There are two legal ceremonies of marriage in Canada: a ceremony performed by clergymen, ministers, or others appointed to do so by a religious denomination, and a civil ceremony by duly appointed marriage commissioners. A civil marriage ceremony can only be performed under a marriage license. In most of the provinces marriage licenses are issued under the hand and seal of the Lieutenant-Governor or his deputy. In Manitoba they are issued from the department of the municipal commissioner, in Saskatchewan from the department of the provincial secretary. Fees for licenses vary from three to eight dollars. The appointment of persons to be issuers of marriage licenses is a question with which public opinion, especially among women, is concerned. The facility with which a license may be procured is a serious evil.

PRINCE EDWARD ISLAND

MARRIAGE ACT, 1832, C. 14, AMD., 1903, C. 7

Sec. 4. A marriage must be performed by a clergyman or minister or by a justice of the peace before two or more adult witnesses and must be registered.

A male officer of the Salvation Army may perform ceremony of marriage.

MARRIAGE LAW AMENDMENT ACT, 1843, C. 8, AMD. 1912, C. 12

Sec. 1. Both contracting parties must be twenty-one years of age, but minors who have the written consent of parents or guardians may marry.

Qualified clergymen may marry minors without consent of parents or guardians if none exist, but only after careful enquiry.

Sec. 2. Marriage may be after publication of banns or by license.

VITAL STATISTICS ACT, 1919, C. 10

Sec. 16. Everyone authorized to solemnize marriage must, at the time of such marriage, make a record in prescribed form signed by himself, the two parties married, and by two credible witnesses. Such record must be forwarded to the District Registrar within forty-eight hours.

Sec. 21. Marriage license fee shall be \$3, and twenty-five cents for registration of certificate.

Sec. 22. Every person authorized to issue marriage licenses must, within forty-eight hours of issuance of license, forward to the Registrar full and complete particulars in the prescribed form.

NOVA SCOTIA

MARRIAGE ACT, R. S., 1923, C. 134

Sec. 4. Except as otherwise provided, every marriage shall be solemnized by a minister or clergyman of a church or religious denomination, being a man and resident in Canada, recognized as duly ordained according to the rites and ceremonies of the church or denomination to which he belongs.

Sec. 6. No marriage in Nova Scotia is valid unless (a) it is solemnized by a person authorized by this Act to solemnize marriage and (b) publication has been made of banns or a license has been obtained for the solemnization.

Sec. 7. Publication by banns of any intended marriage may be made at any church or meeting house for divine worship, at the place in which one of the parties to the intended marriage resides, by the officiating minister or clergyman of any congregation at such place, in an audible voice during divine service.

Sec. 8. Marriage licenses shall be under the hand and seal of the Lieutenant-Governor, who may from time to time sign and seal licenses in blank, which shall then be furnished by the Registrar to the issuers. Every issuer shall give the Registrar a receipt for all blank licenses received by him, and shall account to the Registrar for all licenses so received.

Sec. 9. Every person applying for a license shall make an affidavit stating all the facts necessary to enable the issuer to legally issue to him a license.

Sec. 10. Fee for license shall be five dollars.

Sec. 12. Contracting parties must be twenty-one years of age. If either party to an intended marriage (not being a widower or widow) is within the age of twenty-one years, the consent of the father of such party, if the father is living, or if the father is dead, the consent of the mother, if father and mother are dead the consent of guardian (if any has been appointed), shall be obtained before a license for such a marriage is issued.

Sec. 13. In the case of Salvation Army marriages, the solemnization must be by license by a male commissioner or staff officer, who must be licensed to marry. One of the parties must make affidavit that he and the other party belong to the said society.

Sec. 14. Every marriage must be solemnized before two or more witnesses.

Sec. 15. The clergyman solemnizing the marriage must give a duly filled-in marriage certificate to one of the parties to the marriage.

Every marriage must be registered, and the register signed by two or more witnesses as well as by the officiating clergyman and the parties to the marriage.

Sec. 32. Every person who, knowing the same to be false, shall send to any newspaper, publisher, or other person for publication in any newspaper in Nova Scotia, a false statement of the marriage of any person shall be liable to a fine of one hundred dollars.

Sec. 35. (1) Either party to a marriage being under the age of eighteen and not having had required consent, the Supreme Court shall have power and jurisdiction in an action brought by either party who was at the time of the celebration under the age of eighteen to declare the marriage invalid, provided that such persons have not cohabited as man and wife, and that the action is brought before the person bringing it has reached the age of nineteen years.

(3) The court is not bound to grant relief when carnal intercourse has taken place between the parties before the ceremony.

No provision is made for civil marriage in Nova Scotia.

VITAL STATISTICS ACT, R.S., 1923, C. 20

Section 20 is similar to P.E.I. Act, 1919, c. 10, s. 16.

NEW BRUNSWICK

MARRIAGE ACT, 1917, C. 23

Sec. 9. Contracting parties must be of the age of eighteen years or have the consent of father or guardian.

Sec. 10. (1) Every marriage must be solemnized in the presence of two or more credible witnesses who must sign the certificate, which is also signed by the clergyman and the contracting parties.

(3) The person solemnizing a marriage is required to transmit to the Division Registrar a return in the prescribed form which is supplied by municipalities.

Sec. 11. All marriage licenses shall be issued from the office of the Provincial Secretary under the hand and seal of the Lieutenant-Governor. The Provincial Secretary may issue such licenses in blank, marked with the number and date of issuing, but shall keep a register thereof showing the date and person to whom issued.

Sec. 6. No person shall solemnize marriage unless duly registered as authorized to do so.

Sec. 2. Persons authorized to solemnize marriage are: All Christian ministers and teachers duly ordained and having charge of a congregation in the province or connected therewith; all commissioners and staff officers of the Salvation Army, having charge of a division or branch of the Salvation Army in the province; also Christian ministers and teachers formerly in charge of a congregation in the province, duly ordained and in good standing with their denomination; also Jewish Rabbis duly ordained and having a charge.

Sec. 1. These persons, if registered as having the right to marry, may solemnize marriage by license or on publication of banns.

Sec. 8. Publication of banns must be made at least once during divine service in the parish where either of the parties reside.

There is no provision for civil marriage in New Brunswick.

QUEBEC

CIVIL CODE, 1922

115. A man cannot contract marriage before the full age of fourteen years nor a woman before the full age of twelve years.

116., 148. There is no marriage where there is no consent. A marriage contracted without the free consent of both parties or of one of them, can only be attacked by such parties themselves, or by the one whose consent was not free.

153. A marriage contracted before the parties or either of them have attained the age required, can no longer be contested (1) when six months have elapsed since the party or parties have attained the proper age, (2) when the wife, under that age, has conceived before the termination of the six months.

129. All priests, rectors, ministers and other officers authorized by law to keep registers of acts of civil status are competent to solemnize marriage, but none of the officers thus authorized can be compelled to solemnize a marriage to which any impediment exists according to the doctrine and belief of his religion and the discipline of the church to which he belongs.

128. Marriage must be solemnized openly by a competent officer recognized by law.

156. Every marriage which has not been contracted openly, or solemnized before a competent officer, may be contested by the parties themselves and by all those who have an existing and actual interest saving the right of the court to decide according to circumstances.

57, 130. The marriage ceremony may only be performed after the publications of banns by the priest, minister or other officer in the church to which the parties belong, at morning service and if there be no morning service, at evening service on three Sundays or holidays with reasonable intervals. If the parties belong to different churches, these publications take place in each of such churches.

63, 131. Marriage is solemnized at the place of domicile of one of the parties. If solemnized elsewhere, the person officiating is obliged to verify the identity of the parties. If the actual domicile of the parties to be married has not been established by a six months' residence, the publication must also be made at the place of their last domicile in Lower Canada.

59. The marriage ceremony may, however, be performed without publication of banns if the parties have obtained and produced a dispensation or license from a competent authority.

119. Children who have not reached the age of twenty-one years must obtain the consent of their father and mother before contracting marriage; in case of disagreement, the consent of the father suffices.

174. A husband owes protection to his wife, a wife obedience to her husband.

175. A wife is obliged to live with her husband and to follow him wherever he thinks fit to reside.

163. A marriage, although declared null, produces civil effects, as well with regard to the husband and wife as with regard to the children, if contracted in good faith.

164. If good faith exists on the part of one of the parties only, the marriage produces civil effects in favour of such party alone and in favour of the children of such marriage.

57, 58, 59, 59a. An officer, before solemnizing marriage, must be furnished with certificate of publication of banns signed by publishing officer, containing names, surnames, occupation of parties, whether they are of age or minors, names, surnames and domicile of parents or name of former husband or wife, or license from a competent authority dispensing with certificate. A license issued by Provincial Secretary under hand and seal of Lieutenant-Governor is the competent authority for Protestant ministers, dispensing with the publication of banns.

60. Publications one year old must be renewed.

53b, 64. Act of marriage must be signed by solemnizing officer, the two parties and two witnesses. If solemnizing officer is unauthorized to keep register, he must send copy of act with solemn declaration within thirty days to prothonotary of district.

108. Presumptions of death arising from absence do not apply in case of marriage; the husband or wife cannot marry without producing positive proof of death.

R.S., 1909

Art. 1497. Fee for marriage license is eight dollars of which the issuer shall retain for himself such portion as the Lieutenant-Governor shall allow. The remainder shall be paid to the Provincial Treasurer.

Art. 1414. All marriage licenses for Protestant marriages shall be issued from the department of the Provincial Treasurer, under the hand and seal of the Lieutenant-Governor.

Art. 1496. The licenses are furnished by such persons as the Lieutenant-Governor in Council names for that purpose, to all persons requiring the same, who shall previously have given a bond together with two sureties being householders.

ACT VALIDATING CERTAIN MARRIAGES, 1922 (FIRST SESSION), C. 88

Sec. 1. Notwithstanding any law to the contrary or the provisions of any special Act, any register of civil status shall be deemed to have been kept by one entitled by law so to do, when it has been kept by a priest, missionary or minister of any religious denomination within the purview of article 7251 of the R.S., 1909, who duly authorized by competent ecclesiastical authority thereto to celebrate marriages, administer baptism, or perform rites of burial, was doing duty as such priest, missionary or minister in any church, congregation or religious community of such denomination in this Province; and all marriages, baptisms and acts of burial, hitherto so performed by him shall be deemed as valid and legal as if performed by one legally competent to perform same.

ONTARIO

MARRIAGE ACT, R.S., 1914, C. 148, AMD. 1914, C. 21, S. 33; 1916, C. 32; 1919, C. 35; 1921, C. 51

Sec. 2. The following persons, resident in Canada, may solemnize the ceremony of marriage between any two persons not under a legal disqualification to contract such a marriage;

(a) The ministers and clergymen of every church and religious denomination, duly ordained or appointed according to the rites and ceremonies of the churches or denominations to which they respectively belong;

(b) Any elder, evangelist, or missionary for the time being, of any church or congregation of the religious people commonly called or known congregationally as "Congregations of God" or "of Christ", and individually as "Disciples of Christ", who from time to time is chosen by any such congregation for the solemnization of marriage;

(c) Any duly appointed commissioner or staff officer of the religious society called the Salvation Army, chosen or commissioned by the said society to solemnize marriages.

(d) Any elder of the Farringdon Independent Church.

(e) Any recognized Evangelist teacher or Elder of the Brethren whose appointment has been filed in the office of the Provincial Secretary.

Sec. 3. Every marriage duly solemnized according to the rites, usages and customs of the religious Society of Friends, commonly called Quakers, shall be valid.

Sec. 4. (1) No marriage shall be solemnized without a license or certificate unless banns have been published.

(2) Such intention (to intermarry) shall be proclaimed once openly, and in an audible voice, either in the church, chapel or meeting-house in which one of the parties has been in the habit of attending worship, or in some church, chapel, meeting-house or place of public worship of the congregation or religious community with which the minister or clergyman who performs the ceremony is connected, in the local municipality, parish, circuit or pastoral charge, where one of the parties has, for the space of fifteen days immediately preceding, had his or her usual place of abode; and where both parties do not live in the same local municipality, parish, circuit or pastoral charge, and the marriage is not authorized by license or certificate as aforesaid, a similar proclamation shall be made in the local municipality, parish, circuit or pastoral charge (being within Canada) where the other of the

contracting parties has for the space of fifteen days immediately preceding had his or her usual place of abode; and where the proclamation last mentioned is required, such marriage shall not be celebrated until there is delivered to the person proposing to celebrate it a certificate (Form 1) showing that such proclamation has been made.

(3) Every such proclamation shall be made on a Sunday, immediately before the service begins or immediately after it ends, or at some intermediate part of the service.

(4) The said certificate of proclamation of intention shall be signed by the clergyman, minister, clerk, secretary or other person who actually proclaimed the same, and shall show the official position of the person who signs it.

Sec. 5. (1) Proclamation must have been made at least one week and not more than three months previously. License must not have been procured more than three months previously.

(2) No person shall solemnize a marriage between 10 p.m. and 6 a.m. unless under exceptional circumstances.

(3) Marriage must be performed before at least two adult witnesses who shall sign the marriage register.

Sec. 7. A certificate in the form prescribed in the Act may be substituted for a license and have the same legal effect.

Sec. 8. Marriage licenses and certificates in lieu of marriage licenses shall be issued from the office of the Provincial Secretary. The clerk of any city, town, and incorporated village, and any police magistrate having jurisdiction in territory without municipal organization shall ex-officio be an issuer of marriage licenses and, subject to any regulation as herein provided, shall furnish marriage licenses to persons requiring the same.

An issuer of marriage licenses has power to examine under oath applicants or witnesses for a marriage license.

Sec. 17. If any issuer of marriage licenses issues a license or if any minister, clergyman, or other person shall celebrate the ceremony of marriage between two persons, knowing or believing either of them to be an idiot or insane, or under the influence of intoxicating liquor, the person so offending shall incur a penalty not exceeding \$500, and also be liable to twelve months' imprisonment.

Sec. 19. (1) Before any license or certificate is granted, one of the parties to the intended marriage shall personally make an affidavit before the issuer or deputy issuer which shall state:

- (a) in what county or district it is intended that the marriage shall be solemnized, and in what city, town, village or place therein; and
- (b) that he or she believes there is no affinity, consanguinity, prior marriage or other lawful cause or legal impediment to bar or hinder the solemnization of the marriage;
- (c) that one of the parties has for the space of fifteen days immediately preceding the issue of the license or certificate, had his or her usual place of abode within the county or district in which (for either municipal or judicial purposes), the local municipality or place in which the marriage is to be solemnized lies;
- (d) the age of the deponent, and that of the other contracting party is of the full age of eighteen years or the age of such other contracting party, if under the age of eighteen years, as the case may be;
- (e) the condition in life of each of the parties, whether bachelor, widower, spinster or widow; and
- (f) the facts necessary to enable the issuer or deputy-issuer to judge whether or not the required consent has been duly given in the case of any party under the age of eighteen years, or whether or not such consent is necessary.

Sec. 15. (1) Where a party who is not a widower or widow is under the age of eighteen years, the written consent of the person whose consent to the marriage is required, shall be produced and annexed to the affidavit and its execution shall be verified by affidavit which shall be made before the issuer or deputy issuer.

(2) When such consent is necessary under the preceding subsection, no license or certificate shall be issued without the production of the consent, and the issuer or deputy-issuer shall satisfy himself of the genuineness of such consent by satisfactory proof in addition to the affidavit required of one of the parties.

(3) In the case of a party under the age of eighteen years (not being a widower or widow), if both the father and mother of such person are dead and there is no guardian of such party duly appointed, the issuer or deputy-issuer, on being satisfied as to the facts, may grant the license or certificate.

(4) In case the father or mother, though living, is not a resident of this province, and is not in this province at the time of the application for a license or a certificate, and the party under the age of eighteen years is himself or herself a resident and has been such resident for the preceding twelve months, the issuer or deputy-issuer, on being satisfied by evidence of these facts, may grant the license or certificate.

Sec. 20. (2) The issuer or deputy-issuer before administering the oath to the applicant, shall see that the applicant is aware what degrees of affinity or consanguinity are a bar to the solemnization of marriage.

Sec. 21. (1) Where the person having authority to issue the license or certificate has personal knowledge that the facts are not as required by section 15, he shall not issue the license or certificate; and if he has reason to believe or suspect that the facts are not as so required, he shall, before issuing the license or certificate, require further evidence to his satisfaction in addition to the affidavit prescribed by section 19.

(2) The issuer or deputy-issuer shall keep on record the affidavits or depositions satisfying him of the facts of which he is to be satisfied before issuing a license.

Sec. 16. (1) No license or certificate shall be issued to any party under the age of fourteen years, except where a marriage is shown to be necessary to prevent the illegitimacy of off-spring and a certificate to this effect is given by a legally qualified medical practitioner known to the issuer, and, except as aforesaid, no person shall celebrate the marriage ceremony in any case in which either of the contracting parties is under the age of fourteen years, to the knowledge or information of such person.

Sec. 22. Every issuer of marriage licenses shall immediately upon issuing a marriage license, fill up on a form the particulars contained in Form 4 appended to this Act, or such of them as he is then able to give, and the issuer shall forward the same forthwith to the Registrar General.

Sec. 24. Fee for license is five dollars, four of which is to be remitted to the Provincial Treasurer and one dollar is to be retained by issuer.

VITAL STATISTICS ACT, 1919, C. 23

Section 29 requires person performing marriage ceremony to report the same to the division registrar within 30 days.

LEGITIMATION ACT, 1921, C. 53

Sec. 4. When a man who is lawfully married and whose wife is living goes through a form of marriage with another woman who is ignorant of the prior marriage, such woman and her children by the man with whom she has gone through such form of marriage shall, in case of his death, be entitled to a lien or charge upon his estate for all sums of money advanced by them for the purchase, maintenance, and upkeep of any property of which the man may die possessed, or for the discharge of encumbrances or the making of improvements thereon, but such lien or charge shall be postponed till the payment of the other just debts, funeral and testamentary expenses of the deceased.

MANITOBA

MARRIAGE ACT, R.S., 1913, C. 122, AMD. 1923, C. 27

Sec. 2. The following persons, being men and resident in Canada, may solemnize marriage between any two persons not under a legal disqualification:

- (a), (b), (c), the same as those of the Ontario Marriage Act.
- (d) any catechist, missionary or theological student duly appointed or commissioned by the governing body of any church or religious denomination with special authority to solemnize marriages.

Sec. 3. Special requirements as to appointment of persons authorized to marry Jews.

Sec. 4. Every marriage duly solemnized according to the rites, usages, and customs of the Society of Friends (Quakers) is valid.

Sec. 5. (1) No minister, clergyman or other person shall celebrate the ceremony of marriage between two persons unless duly authorized to do so by license in the form A of this Act, or unless the intention of two persons to intermarry has been published.

(2), (3), (4), are similar to the Ontario Act, Sec. 4 (2), (3), (4).

(5) It shall be competent for the head of the church or congregation to which one of the parties belongs to grant a dispensation of such proclamation, according to the rites and usages of such church or congregation; and such dispensation shall have the same effect as a marriage license issued under this Act, and the same fee exacted for a marriage license shall be payable to the Treasurer of the province.

Sec. 6. (1), (2), (3) Similar to Ontario Act, Sec. 5 (1), (2), (3).

Sec. 24. Marriage must be registered as in Ontario.

Sec. 21. Fee for license is five dollars, issuer to retain one dollar, balance to the Department of the Municipal Commissioner.

Sec. 16. (1) No license shall be issued to any party under the age of 16 except where a marriage is shown to be necessary to prevent the illegitimacy of the offspring.

(2) Marriage of idiots or insane persons is prohibited.

Sec. 17. Similar to Ontario Act, s. 19.

Sec. 18. Similar to Ontario Act, s. 15 (1).

Sec. 20. (3) No license shall be issued between the hours of 11 p.m. and 6 a.m.

Sec. 22. Similar to Ontario Act, s. 25.

Sec. 30. Every marriage heretofore or hereafter solemnized between persons not under a legal disqualification to contract such marriage, shall after one year from the time of the solemnization thereof, or upon the death of either of the parties before the expiry of such time, be deemed a valid marriage so far as respects the civil rights in this Province of the parties or their issue, and in respect of all matters within the jurisdiction of the Legislature of Manitoba, notwithstanding the clergyman, minister or other person who solemnized the marriage was not duly authorized to solemnize marriages and notwithstanding any irregularity or insufficiency in the proclamation of intention to intermarry, or in the dispensation thereof, or in the issue of the license, or notwithstanding the entire absence of either; provided that the parties after such solemnization lived together and cohabited as man and wife, and that the validity of the marriage has not before such death or prior to the expiry of the said time been questioned in any suit or action; and provided further that nothing in this section shall make valid any marriage in case either of the parties thereto had or has previous to the death of the other and previous to the expiration of the said two years* contracted matrimony according to law, and in such a case the validity of such marriage shall be determined as if this section had not been passed.

VITAL STATISTICS ACT, R.S., 1913, C. 203

Section 28 requires persons performing ceremony to report the same to the division registrar within 15 days.

SASKATCHEWAN

MARRIAGE ACT, R.S., 1920, c. 152.

Sec. 2. All clergymen and ministers duly ordained and appointed by the various rites of the religious societies to which they belong, and Commissioners and Staff Officers of the Salvation Army and Commissioners appointed for the purpose by the Lieutenant-Governor in Council may solemnize or perform the ceremony of marriage; also missionaries and theological students duly appointed by churches or religious denominations.

Sec. 18 (2) Subject to the following provisions, all Quakers and Doukhobortsi desirous of being married according to the rites and ceremonies of their own religion or creed shall not less than eight days before such marriage is solemnized, give notice in writing to be signed by one of the parties in prescribed form of the schedule to a marriage commissioner of their intention to have such rite or ceremony performed; and forthwith after the performance of the said rite or ceremony shall make and sign a declaration in prescribed form which said declaration shall be signed by both parties to the marriage so contracted in the presence of two witnesses who shall each severally attest such declaration by their signatures; and such declaration shall within eight days be delivered by one or other of the parties so married to the marriage commissioner to whom the aforesaid notice was given.

Sec. 11. Contracting parties must be of the age of 21 years or a widower or a widow or have the consent of father if living; or, if father be dead, that of mother; if mother be dead that of guardian, but any female over the age of eighteen years living apart from her parents or guardian and earning her own living may be excused from obtaining the consent of such parent or guardian, and a statement of the fact constituting such excuse shall be set forth in the affidavit required.

Secs. 15-17. In the event of any parties objecting to or not being desirous of adopting marriage by a clergyman or minister of any religious denomination then, and in that case, notice in writing must be given by one of the parties to the marriage commissioner where such parties propose to marry at least fourteen clear days immediately preceding the day of the intended marriage. Such marriage must be solemnized in the office of said commissioner and with open doors. Such marriage must be by license.

Sec. 4. All marriages must be solemnized before two or more credible witnesses besides the person performing the ceremony.

Secs. 3, 15. Publication of banns on two Sundays or a license of fourteen days' notice in prescribed form to marriage commissioner and a license are necessary to solemnization of a marriage.

Sec. 14. Fee for marriage license is three dollars.

VITAL STATISTICS ACT, R.S. 1920, C. 26

Sec. 32. (1) Every clergyman, minister or other person who solemnizes a marriage shall forthwith make a written record thereof in the form prescribed; and every such record shall be signed by each of the parties to the marriage, and by the minister, clergyman, or other person officiating and by at least two credible witnesses.

(2) Every such clergyman, minister or other person shall after solemnizing a marriage, forthwith deliver the signed record or forward it by registered letter to the registrar.

(For Marriage Settlement Act, 1922, see Chapter X.)

* Apparently a typographical error in the statutes.

ALBERTA

MARRIAGE ACT, R.S. 1922, C. 213, AMD. 1923, C. 5

Sec. 2. All clergymen and ministers duly ordained and appointed according to the various rites of the religious societies to which they belong, commissioners and staff officers of the Salvation Army, and commissioners appointed for that purpose by the Lieutenant-Governor in Council may solemnize the ceremony of marriage.

Sec. 19. Marriage ceremony of Quakers and Doukhobortsi is the same as in Saskatchewan, section 18 (2).

Sec. 11. Minimum legal age to contract marriage is twenty-one years; minors under eighteen years must have the consent of both parents; if over eighteen years and under twenty-one, the consent of one parent only is necessary. Provisions with respect to the marriage of a young woman over eighteen years of age earning her own living are the same as in Saskatchewan, section 11.

Sec. 16. Provisions regarding civil marriage are similar to those in Saskatchewan Act, sections 15-17.

Sec. 4. All marriages must be solemnized before two or more credible witnesses, besides the person performing the ceremony.

Sec. 14. Fee for marriage license is six dollars of which one dollar and fifty cents is retained by issuer, balance sent to the Provincial Treasurer.

Sec. 10. No license shall be issued or granted for the marriage of any person under the age of fifteen years except in case of a female with child.

Sec. 3. Publication of banns on three successive Sundays, or license or notice in prescribed form to a marriage commissioner and a license are necessary to solemnization of a marriage.

VITAL STATISTICS ACT, R.S., 1922, C. 24

Sec. 22. Every clergyman, minister or any person authorized by law to celebrate marriages shall report every marriage he celebrates to the Registrar-General within three days from the date of the marriage with the particulars required by Form B in the schedule of the Act, together with such additional information as may from time to time be required by the Registrar-General.

BRITISH COLUMBIA

MARRIAGE ACT, R.S., 1911, C. 151, AMD. 1913, C. 42; 1915, C. 40; 1919, C. 52; 1921, C. 36; 1923, C. 43

Sec. 4. Marriage licenses are supplied by the Provincial Treasurer's Department to issuers appointed by the Act.

Sec. 15. Fee for marriage license is five dollars for the use of His Majesty.

(2) An issuer of marriage licenses who is not a salaried member of the Civil Service shall be entitled to receive as commission ten per cent of all sums received by him for licenses issued by him.

Sec. 5. Every minister and clergyman of every church and religious sect and denomination in the province, and every registrar appointed by the Lieutenant-Governor in Council under this Act may celebrate a marriage between any two persons neither of whom shall be under legal disqualification to contract marriage, provided always that such minister or clergyman shall have resided within the province for at least one month. . . . unless he is a minister or clergyman of any church or denomination in the province who is in charge of a church, or stationed by his denomination in any particular place within the province.

Sec. 7. The provisions of this Act shall apply to the "Salvation Army" and any duly appointed commissioner or staff officer being an adult male chosen or commissioned by the said society to solemnize marriages and resident in Canada.

Sec. 6. Marriage may be by license or on publication of banns by clergymen on three consecutive Sundays. When banns have not been published by the clergyman who is to solemnize the marriage, such clergyman shall require a certificate of such publication from the clergyman by whom such banns have been published; such certificate shall then be attached to the register by the clergyman solemnizing the marriage.

Sections 8-10 make similar provision with regard to civil marriage to that of Alberta and Saskatchewan.

Sec. 11. Should any party married by civil contract by a Registrar desire a religious ceremony in addition thereto, the Registrar's certificate, in the form of schedule D to this Act, of the marriage of the parties shall be sufficient evidence to any qualified clergyman that he is authorized to solemnize marriage between such parties.

Sec. 12. The religious celebration must be before two or more credible witnesses in a public manner with open doors (save where permitted by license).

Sec. 13. Marriages according to the rites and ceremonies of the Jewish religion or that of the Society of Friends commonly called Quakers are permitted, provided always that all the requirements as to registration are complied with.

Section 14 deals with the appointment and duties of issuers of marriage licenses and district registrars, and provides that no issuer of marriage licenses shall solemnize a marriage unless he has been duly appointed a registrar as hereinafter provided.

Sec. 16. The fee for marriage by registrar is ten dollars.

Sec. 17. All marriages shall be registered in a book kept for that purpose and every such registration shall be signed by each of the parties, the minister or registrar or other duly authorized person officiating and witnessed by at least two credible witnesses; all such registrations shall be open to the inspection of the public. Copy of such registration shall be given to any person demanding it on payment of one dollar.

Sec. 18. No marriage of any person under twenty-one years of age shall take place nor any license therefor be issued without consent of both parents or of the one surviving parent or of the lawful guardians or on judicial declaration as provided in the section.

Sec. 19. No marriage of any person under sixteen years of age shall take place except where a marriage is shown to be expedient and in the interests of the parties when a judge may authorize the issuing of a license for the marriage. Every order made under this section shall be subject to observance of section 18.

Sec. 25. In all matters relating to the mode of celebrating marriages or the validity thereof, and the qualification of parties about to marry and the consent necessary to the validity of such marriage, the law of England shall prevail subject always to the provisions of this Act.

VITAL STATISTICS ACT, 1913, C. 81

Sec. 21. Every person who solemnizes a marriage shall report the same to the district registrar within forty-eight hours.

CHAPTER V.

SEPARATION AND DIVORCE

The British North America Act, 1867, gave to the Dominion Parliament exclusive jurisdiction in matters of divorce, but the provinces of Prince Edward Island, New Brunswick and Nova Scotia had divorce courts before Confederation, and the Act provided that the laws in force at that time should continue in force until repealed or altered by the competent authority. These courts, therefore, were given the right to continued jurisdiction in divorce. In these provinces and in Ontario and Quebec, the English law as it was before the enactment of the Matrimonial Causes Act of 1857 is in effect in so far as the causes for divorce are concerned, and there is no distinction as between the sexes.

In 1918 the Supreme Court of Alberta granted a divorce on the grounds of adultery (Board vs. Board). This judgment was appealed and the case taken to the Judicial Committee of the Privy Council of England. The appeal was dismissed and the jurisdiction of the Supreme Court of Alberta to grant divorce established by the finding of the committee that the general wording of Section 9 of the Dominion Act of 1886 put into force in the Territories the law of England on divorce as it was in England in 1870.

By similar decisions of the Judicial Committee, the right of the courts of British Columbia, Manitoba and Saskatchewan to grant divorces was established. In the former province the English law as it stood in 1858 is in force and in Manitoba, Saskatchewan and Alberta the English law of 1870.

In the four western provinces, therefore, the distinction made in the English statute of 1857 as between the sexes in the matter of causes of divorce is effective. A husband may obtain a divorce on the ground of adultery on the part of his wife but the wife cannot obtain a divorce on the ground of adultery only. Adultery must be coupled with cruelty, desertion or infection. In 1923, the Imperial Parliament amended the law of 1857 to do away with this distinction. A bill for the same purpose was introduced in the Canadian House of Commons in the session of 1924 but failed to reach a second reading.

In response to the requests of the National Council of Women, a divorce bill designed to establish a uniform divorce law throughout Canada, exclusive of the province of Quebec, was introduced and passed in the Senate in 1920, but, owing to the pressure of business towards the end of the session, was not dealt with by the House of Commons.

According to the common law of England, which in this respect is in force in all the provinces except Quebec, a man cannot compel his wife to live with him by force or prevent her by force or lock and key from leaving his house, and the wife may bring an action against her husband for alimony on a judicial decree of separation. The courts in all the Canadian provinces have power to enable separation with alimony as seems proper.

PRINCE EDWARD ISLAND

An Act for establishing a Court of Divorce was passed April 10, 1835, the causes being impotency, adultery and consanguinity within the degrees prohibited in and by Act of Parliament, enacted in 1540, and no other cause whatever. The wife in such case was not barred of her dower or the husband deprived of any tenancy by the courtesy unless it should be so expressly adjudged and determined in and by such sentence of divorce.

This Act was amended in 1866 to provide for further machinery to carry the Act into effect.

The court has not been asked to grant a divorce for many years.

NOVA SCOTIA

COURT FOR DIVORCE ACT, R.S., THIRD SERIES, C. 126, REPRINTED R.S., 1923, VOL. 3, PP. 5-7

Sec. 4. The court shall have jurisdiction over all matters relating to prohibited marriages and divorce, and may declare any marriage null and void for impotence, adultery, cruelty.....or kindred within the degrees prohibited in 32, Henry VIII—an Act touching degrees of consanguinity Whenever a sentence of divorce shall be given, the Court may pronounce such determination as it shall think fit on the rights of the parties or either of them to courtesy or dower.

ALIMONY ACT, R.S., 1923, C. 135

Provides for the granting by the Supreme Court of alimony to any wife who would be entitled thereto by the law of England.

NEW BRUNSWICK

COURT OF DIVORCE AND MATRIMONIAL CAUSES ACT, C.S., 1903, C. 115, AMD. 1917, C. 45

Sec. 2. All jurisdiction which on April 9, 1860, was vested and exercisable by the Court of Governor in Council under the authority of Act of 31, George III intituled "*An Act for regulating marriage and divorce and for preventing and punishing incest, adultery and fornication*", in respect of suits, controversies and questions concerning marriage and contracts of marriage, and divorce, as well from the bond of matrimony as divorce and separation from bed and board and alimony, shall continue to belong and be vested in the Court of Record called "The Court of Divorce and Matrimonial Causes" constituted and established in and by an act of Assembly made and passed in 23 Victoria, intituled "*An Act to amend the law relating to divorce and matrimonial causes.*"

In this province a divorce is granted for adultery, consanguinity within the degrees prohibited by Act of Parliament of 32 Henry VIII and for impotence. Extreme cruelty is no cause for divorce. A man cannot compel his wife to live with him. No distinction is made on the ground of sex of petitioner. Trial may be by jury. Domicile as to divorce is that of wife if she maintains a bona fide residence in the province, notwithstanding her husband acquired another domicile after their separation in any other territory or country.

QUEBEC

Those seeking divorce must apply to the Federal Parliament through a Bill introduced in the Senate. The courts, however, grant separation from bed and board. The Civil Code of Lower Canada provides:—

185. Marriage can only be dissolved by the natural death of one of the parties; while both live it is indissoluble.

108. The presumption of death arising from absence, whatever be its duration, does not apply in the case of marriage; the husband or wife of the absentee cannot marry again without producing positive proof of the death of such absentee.

206. Separation from bed and board from whatever cause it arises, does not dissolve the marriage tie.

207. The separation relieves the husband from the obligation of receiving his wife and the wife from that of living with her husband.

208. Separation from bed and board carries with it separation of property; it deprives the husband of the rights which he had over the property of his wife and gives to the wife the right to obtain restitution of her dowry and of the property that she brought in marriage, also all the benefit of all gifts and advantages conferred on her by the marriage contract saving the rights of survivorship to which such separation does not give rise unless they have been forfeited by adultery.

214. The children are entrusted to the party who has obtained the separation unless ordered otherwise by the court after consultation with a family council.

215, 165. Whoever may be entrusted with the care of the children, the father and mother respectively retain the right of watching over their maintenance and education and are obliged to contribute thereto in proportion to their means.

209. When community of property exists separation dissolves that community.

186. Separation from bed and board can only be demanded for specific causes which must be proved; it cannot be based on mutual consent.

187. A husband may demand the separation on the ground of his wife's adultery.

188. A wife may demand the separation on the ground of her husband's adultery, if he keep his concubine in their common habitation.

189. Husband and wife may respectively demand this separation on the ground of outrage, ill-usage or grievous insult committed by one toward the other.

191. The refusal of a husband to receive his wife and to furnish her the necessaries of life according to his rank, means and condition, is another cause for which she may demand separation.

ONTARIO

There is no divorce court in Ontario. Those seeking divorce must make application to the Senate of Canada.

The Supreme Court of Ontario has power to grant alimony to any wife entitled to such by the law of England or to any wife who would be entitled by the law of England to a divorce and alimony. R.S. O., 1914, c. 56.

MANITOBA

The Court of King's Bench exercises the right to deal with the validity of the marriage contract in cases of fraud, duress and lunacy. The court has also jurisdiction in separation and divorce.

The law of England on divorce as it was in 1870 is in force in Manitoba. The causes for divorce are the same as in British Columbia.

For judicial separation, nullity or jactitation (pretended marriage), residence gives jurisdiction: *Roberts v. Brennan*, 1902, P.D. 143; *Aughinelli v. Aughinelli*, 1918; in case of dissolution of marriage, domicile is necessary. *Le Mesurier*, 1905, A.C. 517.

SASKATCHEWAN AND ALBERTA

The Supreme Courts of these provinces have jurisdiction in the matter of divorce, separation, alimony and validity of marriages.

The English law as it was in 1870 is in force in Alberta and Saskatchewan. The causes for divorce are the same as in Manitoba and British Columbia. A wife cannot be granted a divorce for adultery of husband; adultery must be coupled with cruelty or desertion or infection.

BRITISH COLUMBIA

R.S., 1911, C. 67

Sec. 1. Establishes a Court for Divorce and Matrimonial Causes.

Sec. 5. Divorce *a mensa et thoro* is abolished and judicial separation granted in place, having the same force and consequence as a divorce *a mensa et thoro*. It may be obtained either by husband or wife for adultery or cruelty or desertion without cause for a period of time of two years or more. The decree for separation may be reversed if obtained for desertion when proved that there were reasonable grounds for that desertion, and that the decree was obtained in his or her absence.

Court may direct alimony to wife or her trustee.

In case of judicial separation wife is to be considered as *feme sole* with respect to any property she may acquire from date of sentence.

Secs. 12, 16. Dissolution of marriage with right to remarry is granted to a man for wife's adultery, but a woman must petition on the ground of incestuous adultery, or bigamy with adultery, or rape, or sodomy, or bestiality, or of adultery coupled with such cruelty without

adultery which would have entitled her to a divorce *a mensa et thoro* or of adultery coupled with desertion for two years or upwards without reasonable excuse. The petition is granted on proof that the adultery has not been condoned, that the petitioner is innocent of adultery and has in no way been accessory to or connived at the adultery, or that the petition is presented or prosecuted in collusion with either of the respondents.

Sec. 18. Husband may claim damages from any one on the ground of his having committed adultery with the wife of the petitioner.

Sec. 29. Court may order settlement of property for benefit of innocent party and children of marriage.

Sec. 39. Either party dissatisfied with any decision of the Court in any matter which may be made by the judge ordinary alone, may, within three calendar months from decision, appeal therefrom to the full court, whose decision shall be final.

Sec. 40. When no appeal has been presented within the time limit then the parties may marry again as if the marriage had been dissolved by death.

Sec. 41. No minister of any church of the Church of England can be compelled to solemnize marriage of a divorced person but must permit any other clergyman to perform such marriage service in such church.

A husband separated from his wife on account of intemperance and making no provision for her maintenance, thereby leaving her without any means of support, is not entitled to a divorce on ground of adultery committed by her after separation. *Forest v. Forest*, 8 B.C.R., 19.

In 1907, Mr. Justice Clement, in the trial of *Watts v. Watts* (1907) B.C.R., 281, held that the Imperial Divorce and Matrimonial Causes Act, 1857, was not in force in British Columbia, and that the Supreme Court of British Columbia had no jurisdiction to grant a divorce *a vinculo*. This decision was reversed in 1908 by the Judicial Committee of the Privy Council (1908 A.C., 573), which held that the Supreme Court of British Columbia had jurisdiction to entertain a petition for divorce between persons domiciled in British Columbia in respect of matrimonial offences alleged to have been committed therein. The result of this decision is that while a husband may obtain a divorce in British Columbia on the ground of adultery of the wife, the wife cannot obtain a divorce for adultery merely. Proof must also be given of cruelty or desertion on the part of the husband.

REGISTRATION OF DIVORCE

Records of divorces are to be found in the records of the courts of the three Maritime Provinces and of the four western provinces. Divorces granted by the Dominion Parliament through application to the Senate are among the private Acts in the Statutes of Canada for each year. Saskatchewan (1921-22, c. 16) and Alberta (1924, c. 28) amended the Vital Statistics Act of the province to require that divorces should be registered with the Provincial Registrar.

CHAPTER VI.

THE RIGHT OF MARRIED WOMEN TO SUPPORT

By English common law, which is in force, unless altered by statute, in all the provinces of Canada except Quebec, the wife has the right as an agent of her husband to pledge her husband's credit for necessaries, as appears by the following quotations from Halsbury's Laws of England:—

"Where a husband deserts his wife or turns her out of his house (selling up all furniture and leaving his wife to obtain lodgings for herself is equivalent to turning her out of doors) without adequate cause, (e.g. adultery), and without the means of supplying herself with the necessaries suitable to her position in life, she has an irrevocable authority, as an agent of necessity, to pledge his credit for the purpose of providing herself with such necessaries. (Halsbury, Vol. VI, para. 865)."

"Money borrowed by a wife so deserted or turned away is recoverable from the husband, if it is shown to have been actually expended by her in providing suitable necessaries. (S. C. 865)."

"If a husband is guilty of personal violence or by his cruelty or ill-treatment gives his wife reasonable ground for apprehending personal violence, and so renders it unsafe for her to continue to live with him, and she leaves him in consequence, that is equivalent, for the purpose of investing her with authority to pledge his credit for necessaries, to turning her out of doors, and so is such misconduct as bringing a loose woman into the house and cohabiting with her there, or threatening to have the wife confined in a lunatic asylum. If a husband merely asks his wife to come back, this does not affect her authority, if the consequence of her return may be to subject her to a repetition of the cruelty or misconduct for which she has left him. (S. C. 866)."

"The term 'necessaries,' in respect of which a wife is entitled to pledge her husband's credit as an agent of necessity when living apart from him, includes all such things as she reasonably requires, regard being to her station and the actual means and position of her husband. (S. C. 868)."

"A husband is liable for legal costs incurred by his wife as agent of necessity for legal advice. (S. C. 872)."

The Criminal Code of Canada, R.S.C. 1906, c. 146, as amended 1913, chapter 13, makes it a crime for a husband who, being under legal duty to provide necessaries for his wife or child, neglects to do so. Section 242 reads as follows:—

"Every one is guilty of an offence and liable on summary conviction to a fine of five hundred dollars, or to one year's imprisonment, or to both, who—

(a) as a husband or head of a family, is under a legal duty to provide necessaries for his wife or any child under sixteen years of age; or,

(b) as a parent or guardian, is under a legal duty to provide necessaries for any child under sixteen years of age;

"and who, if such wife or child is in destitute or necessitous circumstances, without lawful excuse, neglects or refuses to provide such necessaries."

The various provinces have passed Acts dealing specifically with the question of the support of married women.

PRINCE EDWARD ISLAND

A law enacted in 1851 (c. 7) allows of seizure and sale of the husband's property to provide for the wife, if he neglects to do so.

The Married Woman's Property Act, 1903, c. 9, s. 18, provides that the wife may secure a protection order entitling her to the earnings of her minor children if she has a decree for alimony, or lives apart from her husband, having been obliged to leave him for cruelty or other causes that would justify her for leaving him, or whose husband is a lunatic either with or without lucid intervals or is in jail for a criminal offence, or whose husband neglects or refuses to provide for her, or whose husband has never been in the province or who has deserted or abandoned her.

NOVA SCOTIA

MARRIED WOMEN'S PROPERTY ACT, R.S., 1923, C. 141

Sec. 31. Any married woman,—

- (a) who has a decree of alimony, or any decree, judgment, or order in the nature of a decree or order for alimony, against her husband;
- (b) who lives apart from her husband, having been obliged to leave him for cruelty, or other causes which by law justifies her leaving him, renders him liable for her support; or
- (c) whose husband is a lunatic, with or without lucid intervals; or
- (d) whose husband is undergoing sentence of imprisonment in a penitentiary, jail or other prison for an indictable offence; or
- (e) whose husband, from habitual drunkenness, profligacy, or other causes, neglects or refuses to provide for her support and that of his family; or
- (f) whose husband has never been in this province during her coverture; or
- (g) who is deserted or abandoned by her husband, may apply to a judge for an order for protection, entitling her to have and enjoy all the earnings of her infant children, and any acquisition therefrom, free from the debts or obligations of her husband, and from his control or disposition.

NEW BRUNSWICK

MARRIED WOMEN'S PROPERTY ACT, C.S., 1903, C. 78 AMD., 1906, C. 9; 1916, C. 29

Any woman living apart from her husband for reasons justified by law may obtain an order for protection entitling her to the control of the earnings of her minor children as in Nova Scotia, R.S. 1923, c. 141.

QUEBEC

Non-support is a justifiable cause for obtaining separation from bed and board.

C.C. 213. Either of the parties thus separated, not having sufficient means of subsistence, may obtain judgment against the other for an alimentary pension which is fixed by the court, according to the conditions, means and other circumstances of the parties.

ONTARIO

DESERTED WIVES' AND CHILDREN'S MAINTENANCE ACT, 1922, C. 57; AMD., 1923, C. 32

Sec. 2. (1) A husband who has deserted his wife may be summoned by her before a police magistrate who, upon proof of service of summons and (whether or not the husband appears) if satisfied that the husband, being able wholly or in part to maintain his wife or his wife and family, has wilfully refused to do so, and has deserted his wife, may order that the husband shall pay to his wife such weekly sum, not exceeding \$20 with or without costs, having regard to his means and to any means the wife may have for her support and the support of the family.

(2) A married woman shall be deemed to have been deserted within the meaning of this section when she is living apart from her husband because of his acts of cruelty or of his refusal or neglect without sufficient cause to supply her with food or other necessaries when able so to do.

(3) Provided that no order shall be made in favour of a wife who is proved to have committed adultery unless the adultery has been condoned, and any order may be rescinded upon proof that the wife since the making of the order has been guilty of adultery if it has not been condoned.

Sec. 3. A father who has deserted his child may be summoned before a police magistrate or a Judge of a Juvenile Court who may order that the father shall pay a weekly sum not exceeding \$20 with or without costs as in the case of a deserted wife.

MANITOBA

WIVES' AND CHILDREN'S MAINTENANCE AND PROTECTIVE ACT, R.S., 1913, C. 206

Sec. 2. Every man shall be legally liable to support, maintain and educate his infant children, or the infant children of his wife up to the age of sixteen years, but this shall not be deemed to imply that fathers are not so liable at common law.

Sec. 8. Any married woman whose husband shall have been convicted of an assault upon her within the meaning of "The Criminal Code," or any Act or Acts amending the same or which may be substituted therefor, or whose husband shall have deserted her, or been guilty of persistent cruelty to her or habitual drunkenness or wilful neglect to provide reasonable maintenance for her, or her infant children whom he is legally liable to maintain, and shall by such cruelty, habitual drunkenness or neglect have caused her to leave and live separately and apart from him, may from time to time apply to any county court judge within the judicial district in which any such conviction has taken place, or in which the cause of complaint shall have wholly or partially arisen, for an order or orders under this part.

Sec. 10. No order shall be made where wife is guilty of adultery which has not been condoned by husband.

SASKATCHEWAN

DESERTED WIVES' MAINTENANCE ACT, R.S., 1920, C. 154, AMD. 1920, C. 64

Sec. 2. (2) A married woman shall be deemed to be deserted when she is living apart from her husband because of his acts of cruelty or his refusal or neglect without sufficient cause to supply her with food and other necessaries when able to do so.

Sec. 3. A married woman deserted by her husband may secure an order from the court that the husband shall pay her a weekly sum not exceeding \$20 having regard to her husband's means and any means that she may have.

Sec. 6. Order may not be made when wife is proved to have committed adultery unless it has been condoned.

MARRIED WOMAN'S PROPERTY ACT, R.S., 1920, C. 153

A wife whose husband is a lunatic with or without lucid intervals, whose husband is undergoing sentence of imprisonment for a criminal offence, whose husband from habitual drunkenness profligacy or other cause neglects or refuses to provide for her support and that of his family, whose husband has never been in Saskatchewan during her coverture may apply to a judge of the district court for an order of protection entitling her to have and enjoy all earnings of her infant children.

ALBERTA

JUDICATURE ACT, R.S., 1922, C. 72

Sec. 21. The Supreme Court shall have jurisdiction to grant alimony to any wife who would be entitled to alimony by the law of England or entitled to divorce and to alimony as incident thereto, or to any wife whose husband lives separate from her without sufficient cause and under circumstances which would entitle her by the law of England to the restitution of conjugal rights, and alimony when granted shall continue until the further order of the court.

BRITISH COLUMBIA

THE DESERTED WIVES' MAINTENANCE ACT, 1919, C. 19

Sec. 2. For the purposes of this act a wife is deemed to be "deserted" when she is living apart from her husband,—

- (a) because of his assault or other acts of cruelty towards her or their children; or
- (b) because of his refusal or neglect, without sufficient cause, to supply his wife and their infant children (if any) with food, clothing and other necessaries.

A wife shall be deemed to be destitute when she is in necessitous circumstances because of her husband's refusal or neglect without sufficient cause to supply her and their infant children, if any, with food, clothing or other necessaries.

Sec. 4. A wife may have summons issued requiring husband to appear before a magistrate. The magistrate upon such evidence as he deems requisite may find the wife deserted or destitute within the meaning of this Act, and order the husband to pay a weekly sum not exceeding \$20, according to the means of the husband,—

- (a) If she is in her own right possessed of separate property sufficient for the comfortable maintenance of herself and infant children (if any), no order shall be made for any sum in excess of one-half of amount necessary to maintain infant children.

Sec. 6. No order for the payment of money shall be made in favour of a wife who is proved to have committed adultery, unless the adultery is condoned. If the making of order is barred on this ground, order may be made for the maintenance of the children, if any, by the payment by the husband of money to the municipality or to any one having the custody of the children.

(For laws providing compensation to widows and children of wage earners injured during employment, see under heading Workmen's Compensation in Chapter XIII; for laws providing mothers' allowances, see Chapter XII.)

CHAPTER VII.

INSURANCE FOR WIFE AND CHILDREN

In life insurance policies there are three classes of beneficiaries: (1) Ordinary beneficiaries, (2) Preferred beneficiaries and (3) Beneficiaries for value.

An insurance contract for the benefit of any among the preferred class is in the nature of a trust and is not subject to the control of the assured, except that the assured is generally permitted to vary the apportionment of the insurance money among beneficiaries of the preferred class, but not otherwise. It is also generally the case that the assured may with the consent of his wife (if she is a beneficiary) borrow on the insurance, or, without such consent, borrow on the insurance the amount necessary to cover payments for premiums to keep the contract in force.

Those included in the preferred class vary in the different provinces from husband, wife and children, to husband, wife, children, grand-children, mother, father, brother and sister. The preferred class as defined in the statutes of each province is as follows:—

PRINCE EDWARD ISLAND, 1906, c. 16: 1907, c. 15: 1921, c. 13. Mother, wife, husband, children and grandchildren.

NEW BRUNSWICK, 1905, c. 4, s. 12, amd. 1907, c. 7. Beneficiaries are same as in Prince Edward Island. By 1905, c. 4, sec. 14, if a preferred beneficiary is leading a criminal or immoral life the court may authorize the assured to take away the benefit from such person.

NOVA SCOTIA. R.S. 1923, c. 141. Husband, wife and children. Wife forfeits benefit if divorced for adultery, and if wife during coverture commits adultery which has not been condoned. Money is to be paid to issue, but if there be no issue the benefit is to form part of estate of the assured.

QUEBEC. R.S., 1909, arts. 7377, 7387. Wife and children.

ONTARIO. R.S. 1914, c. 183, amd. 1916, c. 36. Husband, wife, children, grandchildren and mother. Assured may borrow on policy to pay premiums. If policy is for wife only, designated by name and wife living at time of maturity of policy is not the one named, the benefit is to be distributed in equal shares between wife living at maturity of contract and the children of assured.

MANITOBA. 1920, c. 61, s. 2 by amendment to R.S. 1913, c. 99, s. 15, restored the protection to insurance for wife, husband, her husband and children, his wife and children, or any of them. An amendment in 1921 deals with alterations or revocations made prior to 1920.

SASKATCHEWAN. R.S. 1920, c. 84. Husband, wife, children, grandchildren, mother of assured. When wife is designated by name beneficiaries are same as in Ontario. When benefit is for wife and children and no wife nor children are living at time of maturity of contract and assured is unmarried or a widower, the insurance money shall form part of his estate.

ALBERTA. R.S. 1922, c. 172. Husband, wife, child, grandchild, mother. Assured, although a minor, may borrow on a preferred insurance policy sufficient to keep the policy in force.

BRITISH COLUMBIA. R.S. c. 115, amd. 1918, c. 38. Wife, husband and children.

CHAPTER VIII.

DOWER AND TENANCY BY THE COURTESY

DOWER

Dower is the right in the hands of the husband which the English common law gives to a wife who survives her husband. The pre-requisites of dower are:—

- (1) Lawful marriage.
- (2) What is called seizin of the husband, that is to say, ownership of the lands by the husband.
- (3) Death of the husband.

Dower has been defined as the right of a wife on surviving her husband to an estate for her life in one-third part of the freehold estates of inheritance of which her husband was solely seized at any time during the marriage to which her issue by him might by possibility have been heir at law. It is not necessary as in the case of the husband's right to what is called an estate by the courtesy that issue should actually be born in order to entitle the wife to dower. (See Hals. Vol. XXIV, para. 362.)

The right to dower at common law has been modified or enlarged by the provincial laws.

TENANCY BY THE COURTESY

Just as by common law the widow has an estate for life in part of the freehold lands of her husband, so the husband on the death of his wife has in certain cases a somewhat similar estate known as an estate by the courtesy of England in the lands of his wife. The pre-requisites are:—

- (1) Lawful marriage.
- (2) Seizin of the wife.
- (3) The birth of children.
- (4) Death of wife.

Courtesy has been defined as the right of a husband to an estate for his life expectant on the death of his wife in the entirety of the lands and hereditaments of his wife of which she is seized for an estate of inheritance subject to his having issue by her born alive who are capable of inheriting the property from her. (Hals. Vol. XXIV, para. 349.)

By statute in the various provinces this common law right has been modified.

PRINCE EDWARD ISLAND

DOWER ACT, 1871, C. 23

The widow has dower of one-third interest for life in all the lands that the husband owned during marriage, or of which he was the owner in fee simple, and one-third interest for life in all the lands of which he was the equitable owner at the time of his death.

DOWER ACT, 1899, C. 13

Sec. 1. When husband dies beneficially entitled to interest in land in which the widow is not entitled to dower at common law and such interest is an estate of inheritance in possession or equal to an estate of inheritance in possession (other than an estate in joint tenancy) the widow shall be entitled to dower in respect of such interest.

When husband has been entitled to right of entry or action in respect to any land, his widow may sue for dower even though husband did not receive possession.

NOVA SCOTIA

DOWER ACT, R.S. 1923, C. 143

Sec. 1. If a testator by his will manifests an intention to dispose of his real property in a manner inconsistent with his wife's right of dower the widow shall be obliged to elect between the provisions made for her and her dower.

Sections 2 and 3 are similar to Prince Edward Island, 1899, c. 13, s. 1.

Sec. 4. Dower is not recoverable out of any wild lands, but the wife has a right to firewood and fencing.

Sec. 7. Wife is entitled to dower in surplus proceeds of land sold under mortgage or judgment.

Sec. 8. A woman guilty of adultery which has not been condoned by her husband is not entitled to dower nor to take any advantage or privileges conferred by the Act.

Sec. 9. If a wife in consequence of being a lunatic, idiot or of unsound mind be incapable of executing a deed, a judge may make an order dispensing with necessity of wife's consent to a deed of conveyance of real estate in which she has dower rights.

DESCENT OF PROPERTY ACT, R.S. 1923, C. 147

Sec. 16. Nothing in this Act shall affect the title of a husband as tenant by the courtesy nor that of a widow as tenant in dower.

NEW BRUNSWICK

DOWER ACT, C.S. 1903, C. 77

Widow has the common law right of dower.

In this province no arrears of dower nor any damage on account of such arrears can be recovered or obtained by any action or suit for longer period than six years preceding commencement of suit.

In addition to the right to common dower, the widow has dower out of equitable estate and lands where her husband has a right of entry. There is no right to dower out of land in the state of nature and unimproved by clearing, fencing or otherwise for cultivation or occupation, but the widow has the right to have woodland assigned to her from which she may take firewood for her own use and for the purpose of fencing other lands assigned to her as dower.

MARRIED WOMEN'S PROPERTY ACT, C.S., 1903, C. 78

Sec. 4. (4) Nothing in the Act shall be taken to prejudice the husband's right to tenancy by the courtesy in any real estate of the wife.

QUEBEC

CIVIL CODE, 1922

1426. There are two kinds of dower, that of the wife and that of the children. These dowers are either legal or customary, or prefixed or conventional.

1427. Legal or customary dower is that which the law, independently of any agreement, and as resulting from the mere act of marriage, establishes upon the property of the husband in favour of the wife as usufructuary, and of the children as owners.

1434. Customary dower consists in the usufruct for the wife, and ownership for the children, of one-half of the immovables which belong to the husband at the time of the marriage, and one-half of those which accrue to him during marriage from his father or mother or other ascendants.

1436. The customary dower resulting from a second marriage, when there are children born of the first, consists in one-half of the immovables not affected by the previous dower which belong to the husband at the time of the second marriage or which accrue to him during such marriage from his father or mother or other ascendants. The rule is the same for all subsequent marriages which the husband may contract when there are children of previous marriages.

1428. Prefixed or conventional dower is that which the parties agreed upon by the contract of marriage.

1429. Conventional dower excludes customary.

1437. Conventional dower when there is no agreement to the contrary also consists in the usufruct for the wife and the ownership for the children of the portion of the movable or immovable property which constitutes it according to the contract. The parties may, however, modify this dower at will.

1440. Conventional dower is taken from the private property of the husband.

1438. Dower, whether customary or conventional, is a right of survivorship which opens with the death of the husband.

It may, however, be opened and become exigible by separation from bed and board or by separation of property only, if such effects result from the terms of the contract of marriage. It may likewise be demanded in the case of the absence of the husband under the circumstances and conditions expressed in articles 109 and 110.

1463. The wife may be deprived of her dower by reason of adultery or desertion.

In either case an action must have been instituted by the husband and a subsequent reconciliation must not have taken place.

1464. A wife may also be declared to have forfeited her dower by reason of the abuse she has made of her enjoyment. (She is obliged to keep it in reasonable repair).

1454. The dowager, as long as she remains a widow, enjoys the dower, whether customary or conventional, upon giving the security of her oath to restore it, but if she remarry she is bound to give the same security as any other usufructuary.

1443. Neither the alienation by the husband of immovables subject to or charged with dower, or the charges or hypothecs which he may have imposed upon them, either with or without the consent of his wife, affect in any manner the rights of the latter or of the children unless she has expressly renounced in conformity with the following article:

1444. The wife who is of age may, however, renounce her right of dower whether customary or conventional upon such immovables as her husband sells, alienates or hypothecates.

The renunciation may be made either in the act by which her husband sells, alienates or hypothecates the immovable or by a separate and subsequent act.

1439. Children do not come into possession of dower until after the death of the mother.

1468. In order to be entitled to dower, the child is bound to return into the succession of his father all such benefits as he has received from him in marriage or otherwise, or to take less in the dower.

1467. A child cannot accept dower and also be an heir to his father.

1323. After the dissolution of the community (of property) by death, and in the absence of any will to the contrary, the surviving consort has the enjoyment of the property of the community coming to the children from the deceased husband, such usufruct lasts as to each child until he is of the age of eighteen or emancipated.

2116. The right to legal customary dower cannot be preserved otherwise than by the registration of the marriage certificate with a description of the immovables then subject to dower.

As regards immovables which may subsequently fall to the husband and become subject to customary dower, the right to dower upon such immovables does not take effect until a declaration for that purpose has been registered setting forth the date of the marriage, the names of the consorts and the description of the immovable, its liability for dower and how it has become subject to it.

1448. If the dower which is not yet opened be the conventional dower, whether it consists in an immovable or in an hypothecary claim it is subject to the effect of the registry laws.

NOTE—A woman marrying a widower with children by a former wife should see that an inventory of her husband's free property is made and registered.

ONTARIO

DOWER ACT, R.S., 1914, C. 70

Sec. 2. A widow on the death of her husband may tarry in his chief house forty days after his death, within which time her dower shall be assigned her and in the meantime she shall have her reasonable maintenance. For her dower shall be assigned her one-third part of all lands of her husband whereof he was seized at any time during coverture, except such thereof as he was so seized of in trust for another.

Sec. 9. When a wife willingly leaves her husband and goes away and continues with her adulterer, she shall be barred forever of her action to demand dower that she ought to have of her husband's lands unless her husband willingly, and without coercion be reconciled to her and suffers her to dwell with him; in which case she shall be restored to her action.

Sec. 10. No bar of dower contained in any mortgage or other instrument intended to have the effect of a mortgage or other security upon such land shall operate to bar such dower to any greater extent than shall be necessary to give full effect to rights of the mortgagee or grantee under such instrument.

Sec. 4. A wife has dower out of equitable estate.

Sec. 5. She has dower when husband has right of entry or action in any land.

Secs. 6, 8. No dower in land in state of nature, in mining lands granted by the crown to husband, or in land dedicated by husband for street or public highway.

Sec. 14. Where a wife (a) lives apart from her husband for two years under such circumstances as disentitle her to alimony, (b) is a lunatic or confined as such, her husband may get an order from a judge dispensing with the concurrence of the wife for the purpose of barring her dower.

Sec. 17. When the wife of an owner has been living apart from her husband for five years or more and the husband sells or conveys land without consent of wife, and the purchaser or mortgagee has no knowledge of the existence of the wife, an application may be made to a judge for an order for the conveyance of such land free from dower rights.

Sec. 29. (2) If from peculiar circumstances, such as there being a mill or manufactory upon the land, a fair and just assignment cannot be made of the dower by metes and bounds, a yearly sum of money being as near as may be one-third of the clear yearly rents of the premises shall be assessed for dower.

(4) Such yearly sum shall be a lien upon the land.

TENANCY BY THE COURTESY

CONVEYANCING AND LAW OF PROPERTY ACT, R.S., 1914, C. 109

Sec. 28. When a husband has issue born alive and capable of inheriting any land to which his wife is entitled in fee simple or fee tail, if the husband survive his wife, whether such issue live or not, the husband shall, subject to the provisions of the Married Women's Property Act, be entitled to an estate for his natural life in such land as may not have been disposed of by her by deed or will, but if he has no such issue by his wife, he shall not be entitled to any further or other estate or interest in such land in the event of surviving his wife, except such as may be devised to him in her will, or such as he may become entitled to under the Devolution of Estates Act.

MARRIED WOMAN'S CONVEYANCES ACT, R.S., 1914, C. 150

Sec. 10. When a person is entitled to tenancy by the courtesy in the land of his wife and when a married woman is unable to give a valid deed of her land without her husband joining therein, if the husband is in consequence of his being a lunatic, idiot, or of unsound mind, and whether so found by inquisition or not, or is from any other cause incapable of executing a deed or conveyance, or if his residence is not known, or he is in prison, or is living apart from his wife by mutual consent under circumstances which would entitle her to alimony, or if he has deserted her, or if there is in the opinion of the judge any other cause for so doing, a judge may, by an order to be made by him in a summary way upon the application of the wife upon such evidence as to him seems meet and upon such notice to the husband as he deems requirable, dispense with the execution of the deed or conveyance by or concurrence of the husband therein in any deed or conveyance of land of his wife and enable the wife effectually to convey such land without such execution by or concurrence of the husband and free from any estate of the husband by the courtesy.

MARRIED WOMAN'S PROPERTY ACT, R.S., 1914, C. 149

Sec. 6. (4) The real estate of any woman carried after March 2, 1872, whether owned by her at the time of marriage or acquired by her in any way after her marriage, and the rents, issues and profits thereof shall without prejudice and subject to the trust of any settlement affecting the same, be held and enjoyed by her for her separate use free from any estate therein of her husband during her lifetime and from his debts and obligations and from any claim on estate by him.

MANITOBA, ALBERTA AND SASKATCHEWAN

When Manitoba and the Northwest Territories (later divided and formed into the provinces of Alberta and Saskatchewan) joined the Dominion, the laws in force were those which had existed in England on July 1, 1870. In England on that date a Dower Act was in force which had been passed in 1833 (3 and 4 William IV, c. 105) and which provided that the widow was not entitled to dower which had been absolutely disposed of by her husband in her lifetime, or by his will. As will be seen by the following references to the statutes of these provinces, the rights of the widow to dower have been modified from what they were in 1870.

Tenancy by the courtesy was abolished for the Territories in 1886.

MANITOBA

DOWER ACT, 1919, C. 26

The Dower Act of Manitoba deals with two distinct portions of the husband's estate: First, the "homestead" as defined by the Act, section 2, is (a) a dwelling-house in a city, town or village occupied by the owner as his home and the lands and premises appurtenant thereto, consisting of not more than six lots or one block (where said block is not subdivided in lots) as shown on a duly registered plan, and not more than one acre when the land is described otherwise than by registered plan, (b) a dwelling-house outside a city, town or village occupied by the owner as his home with land and premises appurtenant, consisting of not more than three hundred and twenty acres;

Second, one-third of the husband's net real and personal estate at the time of his death, and moneys from life insurance for his wife

The "Homestead" sections, 3-12 inclusive, deal with the protection of the wife's interest in the homestead, and her consent is necessary to any disposition or encumbrance of it, and provide that her consent shall operate only to the extent that shall be necessary to give full effect to rights of the mortgagee, encumbrancee, chargee or grantee. If the homestead is sold under a mortgage, etc., the wife of the owner shall be entitled to a one-half share of any surplus of the purchase money after the mortgage, etc. or any other person having any right in priority to any right of the wife is satisfied.

If wife has been living apart from husband for two years or more or is in a lunatic asylum or is of unsound mind, the owner may get an order from a judge of the county court dispensing with the consent of the wife upon such terms as may appear just.

Section 13 provides that every widow who is not left at least one-third in value of her husband's net real and personal estate is entitled to receive from the executor an amount equal to one-third of her husband's net estate, and is entitled in addition thereto to a life estate in her husband's homestead.

Sec. 14. Section 13 does not apply in the following cases: (a) when the testator has provided an annual income for his wife during her life of not less than \$6,000; (b) when the testator leaves by will for her benefit and for her own use property of the value of not less than \$100,000 over and above encumbrances; (c) when the testator has during his life time conveyed after marriage to his wife property of which she is the legal or equitable owner at the time of his death and which is of the value of not less than \$100,000 above encumbrances; (d, e, f) specific other circumstances including the case where the wife obtains from life insurance policies not less than \$100,000; (g) when she owns property worth \$50,000 and in addition obtains an annuity of not less than \$3,000 per annum by will of her husband.

Sec. 16. In any case where section 13 applies, the widow is bound to elect within three months after notice requires her to make election, or if she herself is an executrix within three months after probate of will, to take under this Act, or under the will. Any such election must be filed within the time aforesaid in the surrogate court. Any widow who fails to elect and file her election within two years after her husband's death shall be deemed to have elected to take under her husband's will and not under this Act.

Sec. 20. If any wife at the time of her husband's death had left her husband with the intention of living separate and apart from him, she shall have no right under this Act either to life estate in the homestead or any share of her husband's estate unless a judge in the surrogate court otherwise directs by order.

Sections 20-21 give the husband the same right in the homestead if owned by the wife and in her estate.

By a statute of 1919 (c. 115), the provisions of the Wills Act, Devolution of Estates Act and the Married Women's Property Act, are made subject to the provisions of the Dower Act.

SASKATCHEWAN

HOMESTEADS ACT, R.S., 1920, C. 69

Section 2 taken in conjunction with paragraphs 9 and 10 of section 27 of the Exemptions Act, in effect, defines "homestead" as the house and buildings of the homestead and also the lot or lots, not exceeding 160 acres, on which the same are situated according to the registered plan of the same. It also includes any property which has been such a homestead at any time within the period of one year immediately preceding the date of the transfer.

Sec. 3. No transfer or encumbrance on the homestead by the husband is valid unless also signed by the wife if there is one. Where the wife of the owner is living apart from her husband under circumstances disentitling her to alimony or is a lunatic or a person of unsound mind, a judge of the Court of King's Bench may give an order to dispense with the consent of the wife.

Sec. 9. On the death of the owner of the homestead, the same shall vest in his personal representative subject to the provisions of section 6 of the Exemptions Act which states that the homestead shall continue to be exempt as against his personal representative if it is in the use and enjoyment of the widow and children, or widow, or children of the deceased and is necessary for the maintenance and support of the said widow and children or any of them.

Sec. 7. The wife of the owner of a homestead may file a caveat to protect her rights in the same. This section is amended to further protect the wife's interest in the homestead in case of assignment or bankruptcy of the owner. If there has been no caveat filed by the wife the registrar of the land titles office, if he has received notice from the trustee in bankruptcy that the owner of the homestead has a wife, shall by registered letter notify the wife of the registration of the receiving order or assignment and that she is required, if she claims any of her husband's lands in his homestead, to file a caveat in form "D" against such lands within sixty days of the mailing of the notice.

Sec. 11. The provision of the Homestead Act shall not apply to sales to railway companies. Where the deceased husband has left a will, the widow has right to apply to the Court of King's Bench for relief if she can show that she would receive less by the will of the testator, than if he had died intestate, and the judge has power to make allowance out of the estate accordingly.

ALBERTA

DOWER ACT, R.S., 1922, C. 135

In 1917 the Alberta Government passed a Dower Act giving the wife the use of the "homestead" for her life.

Sec. 2. In this Act, unless the context otherwise requires,—

(a) the expression "Disposition" shall mean any disposition by act *inter vivos* requiring to be executed by the owner of the land disposed of and shall include every transfer, agreement of sale, lease or other instrument intended to convey or transfer any interest in land, and every mortgage or incumbrance intended to charge land with the payment of a sum of money and requiring to be so executed and every devise or other disposition made by will;

(b) "Homestead" shall mean.

- (i) land in a city, town or village, consisting of not more than four adjoining lots in one block, as shown on plan duly registered in the proper land titles office, on which the house occupied by the owner thereof as his residence is situated;
- (ii) land other than referred to in paragraph (i) of this definition on which the house occupied by the owner thereof as his residence is situated, consisting of not more than one quarter section.

Sec. 4. (1) Every disposition by will of such married man and every devolution upon his death intestate shall, as regards the homestead of such married man, be subject and postponed to an estate for the life of such married man's wife hereby declared to be vested in the wife so surviving.

(2) Where at the time of the death of a married man intestate with respect to his homestead, his wife is living apart from her husband under circumstances disentitling her to alimony, no such life estate shall vest in such wife nor shall she take any benefit under this Act.

Sec. 5. The residence of a married man shall not be deemed, for the purposes of this Act, to have been changed unless such change of residence is consented to in writing by the wife of such married man.

Sec. 8. (1) Where a husband and his wife are living apart, a judge of the Supreme Court may, by order, dispense with the consent of the wife to any proposed disposition if in the opinion of such judge it seems reasonable under the circumstances so to do.

(2) When the wife is a lunatic or person of unsound mind, notice of every such application shall be served in the manner provided by the Rules of the Supreme Court for the service of statements of claim on such persons.

WIDOW'S RELIEF ACT, R.S., 1922, C. 145

Sec. 2. The widow of a man who dies leaving a will by the terms of which his said widow would in the opinion of the judge before whom the application is made receive less than if he had died intestate may apply to the Supreme Court for relief.

Sec. 8. On any such application the court may make such allowance to the applicant out of the estate of her husband disposed of by will as may be just and equitable in the circumstances.

Sec. 9. Any such allowance may be by way of an amount payable annually or otherwise, or of a lump sum to be paid, or of certain property to be conveyed or assigned either absolutely or for life or for a term of years to the applicant or for her use as the Court may see fit.

Sec. 10. If the application be made after the expiration of six months from the death of the husband, the allowance, if any, shall be made so as to affect only beneficiaries under the will interested in the portion of the estate remaining at the date of the application unadministered in the hands of the executors, administrators or undistributed in their hands as trustees under the will.

The following Order in Council was passed January 20, 1921:—

It shall be the duty of the person applying for probate or letters of administration with will annexed of the estate of any person leaving him surviving a widow resident within the province, where such widow is entitled to make application for relief under the Married Women's Relief Act (now called the Widow's Relief Act) to satisfy the District Court Judge before such letters do issue that such married woman is fully aware of her rights under the said Act, and before letters be issued the Judge may direct that a copy of the said Act be forwarded by registered post to such married woman, and may delay the issue of probate and letters of administration until such time as in the opinion of the Judge such married woman will have in due course become informed of her rights under the said Act.

BRITISH COLUMBIA

DOWER ACT, R.S., 1911, C. 68

Sec. 5. No widow shall be entitled to dower out of any land which shall have been absolutely disposed of by her husband in his lifetime or by his will.

Sec. 9. The right of widow to dower shall be subject to any conditions, restrictions or directions which shall be declared by the will of her husband duly executed as aforesaid.

Sec. 10. A bequest of land to her by her husband may, however, deprive her of dower in all other lands.

Sec. 14. Nothing in this Act contained shall interfere with any rule of equity by which legacies bequeathed to widows in satisfaction of dower are entitled to priority over other legacies.

TESTATOR'S FAMILY MAINTENANCE ACT, 1920, C. 94, AMD. 1921, C. 66

Sec. 3. Notwithstanding the provisions of any law or statute to the contrary, if any person dies leaving a will and without making therein in the opinion of the judge before whom the application is made, adequate provision for the proper maintenance and support of the testator's wife, husband, or children, the court may at its discretion, on the application by or in behalf of the said wife, or of the said husband or of a child or children, order that such provision as the Court thinks adequate, just and equitable in the circumstances shall be made out of the estate for such wife, husband, or children.

Sec. 11. No application shall be heard by the court unless the application is made within six months from the date of the grant or resealing in the province of the probate of the will.

Sec. 12. Estate is not to be distributed until six months after probate.

Sec. 14. Mortgage, etc., made in anticipation of order is invalid.

CHAPTER IX

MARRIED WOMEN'S EARNINGS AND PROPERTY

Earnings

NOVA SCOTIA

THE MARRIED WOMEN'S PROPERTY ACT, R.S., 1923, C. 141

Sec. 5. Every woman who marries after the coming into force of this Act shall be entitled to have and to hold as her separate property, and dispose of in manner aforesaid, all real and personal property which belongs to her at the time of marriage, or is acquired by, or devolves upon, her after marriage, including any wages, earnings, money and property gained or acquired by her in any employment, trade or occupation, in which she is engaged, or which she carries on separately from her husband, or by the exercise of any literary, artistic or scientific skill.

Sections 18 and 19 provide that if a married woman carries on business separately from her husband, she or her husband must file a certificate in the registry of deeds for the district giving certain information; otherwise her husband becomes liable for debts incurred and contracts made.

In Prince Edward Island, New Brunswick, Ontario, Manitoba, Saskatchewan, Alberta and British Columbia, as in Nova Scotia, the law provides that a married woman has the right to her own earnings. Quebec, like Nova Scotia, requires that if a woman carries on a business separate from that of her husband, she or her husband must register a declaration stating her name and that of her husband and the name of the firm. In the former province, a penalty is provided for failure to comply with this requirement.

The sections containing these provisions are to be found as follows:—

P.E.I. S. 1903, c. 9, s. 4.

C.S. N.B. 1903, c. 78, s. 5.

R.S. Que. 1909, art. 7255.

R.S. O. 1914, c. 149, s. 7.

R.S. M. 1913, c. 123, s. 4.

R.S. S. 1920, c. 153, s. 4.

R.S. A. 1922, c. 10, s. 2.

R.S. B.C. 1911, c. 152, s. 7.

Property

PRINCE EDWARD ISLAND

MARRIED WOMEN'S PROPERTY ACT, 1903, C. 9, AMD. 1908, C. 5

Sec. 3. A married woman may acquire and dispose of real and personal estate as if she were unmarried. She may sue and be sued in her own name and make herself liable on any contract in respect of and to the extent of her separate estate.

Sec. 11. She has the same remedies for the protection and security of her property as a man but no husband or wife shall be entitled to sue the other for a tort. In any proceedings under this section it shall be sufficient to allege such property to be her property and in proceedings under this section a wife or husband shall be competent to give evidence against each other.

NOVA SCOTIA

MARRIED WOMEN'S PROPERTY ACT, R.S., 1923, C. 141

Sec. 4. A married woman can acquire, hold or dispose of her own property in the same way as if unmarried.

Sec. 17. Any money or other property loaned to a husband by his wife for the purpose of any trade or business carried on by him or otherwise shall be treated as assets of her husband's estate in case of his assignment for the benefit of his creditors and the

wife may claim for a dividend as a creditor for the amount or value of such money or other property only after all claims of the other creditors of the husband, for valuable consideration in money or money's worth have been satisfied.

MARRIED WOMEN'S DEEDS ACT, R.S., 1923, C. 142

Sec. 3. Every deed made by a married woman of any real property to which she is entitled either in her own right or by way of dower or otherwise, shall be as valid and effectual as if made by an unmarried woman if the husband joins in the deed or by a separate instrument expresses his concurrence therein and if the married woman acknowledges that the deed is her free act and executed without fear of or compulsion by her husband.

NEW BRUNSWICK

MARRIED WOMEN'S PROPERTY ACT, C.S. 1903, C. 78, AMD. 1916, C. 29

Sec. 3. A married woman is capable of acquiring, holding and disposing of any real and personal property, as if she were unmarried. She can sue and be sued, can enter into contracts and render herself liable as far as her separate property is concerned.

Sec. 4. Nothing in this Act shall be taken to prejudice the husband's tenancy or right to tenancy by the courtesy in any real estate of the wife.

QUEBEC

There are three kinds of estates of property: the husband's estate, the wife's estate and the joint estate of husband and wife called "the community."

There are two kinds of community, legal community and conventional community. The Civil Code specifies what falls into the legal community; the conventional community is modified community by agreement.

CIVIL CODE, 1922

324. An unmarried woman of the complete age of twenty-one years is capable of performing all civil acts and therefore as free in the acquisition and management of her property as a man.

A married woman is in the eye of the law as incapable as a minor, and her husband stands to her in the relation of a guardian, his consent being necessary to all that relates to the acquisition and disposal of her property, except as to the administration of her property if she be separated as to property.

763. She cannot give or receive a gift *inter vivos* without the consent of her husband.

176. A wife cannot appear in judicial proceedings without her husband's authorization.

178. If a husband refuses to give authority to his wife to appear in judicial proceedings or to make a deed, the judge may give the necessary authorization.

179. A wife, however, who is a public trader may obligate herself for all that relates to her commerce and in so doing, when there is community of property she binds her husband. She cannot, however, become a public trader without the consent of her husband.

180. If the husband be interdicted or absent the judge may authorize a wife for purposes of contracting or appearing in judicial proceedings.

1270-1272. By the mere act of marriage, unless there has been an ante-nuptial contract to the contrary, all the movables become a community of property which is equally owned by husband and wife. These include shares and interests in financial, commercial or manufacturing companies, but not money or precious stones, which the consorts possess on the day when the marriage is solemnized (see CC. 395); all the movable property which they acquire during marriage, or which falls to them by succession or by gift if the donor or testator has not otherwise provided; all rents, revenues, arrears, interests from property belonging to the consorts at time of marriage or have accrued to them by any title whatever during marriage, and all the immovables they acquire during marriage.

1293. One consort cannot to the prejudice of the other bequeath more than his share of the community.

1275. The husband and wife both retain as separate property the immovables which they possess on the day of marriage or which fall to them by succession or equivalent title.

1276. Also all gifts and legacies made during the marriage by ascendants of one of the consorts either to the consort entitled to inherit from them or to the other consort.

All gifts and legacies left to one or both of the consorts by other than ascendants fall into the community unless they have been expressly excluded.

This community of property is the common law of Quebec and exists in every case unless modified or excluded by marriage contract. It has its advantages and disadvantages for women. For a woman without private property and not likely to succeed to any, it is an advantage, as it gives her as a wife much more than the dower of the other provinces, namely, the half as absolute owner of all her husband's moveables and of the immovables acquired during marriage.

1292, 1298. The husband alone administers the property of the community and receives all revenues both of his own private property and that of his wife's, as well as the revenue of the community which includes the wife's earnings. He may not sell the immovables of his wife's private property without her consent but the property of the community he may sell, alienate or hypothecate without the concurrence of his wife. He may even alone dispose of it either by gifts or otherwise *inter vivos* provided it is in favour of persons who are legally capable and without fraud.

Community of property, which the consorts are free to exclude by stipulation, may be altered or modified by the marriage contract and in such case is called conventional community.

1264. All marriage contracts must be made in notarial form and before the solemnization of marriage upon which they are made conditional.

Contracts of marriage made in certain localities for which an exception has been created by special law are exempted from the necessity of being in notarial form. In marriage contracts the parties may stipulate for (1) conventional community (2) exclusion of community (3) separation of property.

1384. In conventional community the consorts may modify the legal community by all kinds of agreements not contrary to article 1258 of Civil Code, which refers to covenants contrary to public order or good morals, and article 1259, which says consorts cannot derogate from the rights incident to the authority of the husband over the persons of the wife and children.

1416, 1420. In exclusion of community the consorts stipulate that there shall be no community. This does not give the wife the right to administer her property; it may be agreed that the wife for her support and personal wants shall receive her revenues in whole or in part upon her own acquittances.

1318, 1422, 1423, 1424, 1431. Separation of property in contract of marriage gives the wife the entire administration of her property, movables and immovables, and the free enjoyment of her revenues, only she cannot alienate her immovables without her husband's consent, or on his refusal without judicial authority. She also becomes responsible to a certain degree for the expenses of marriage. This contract of separation of property nullifies her right to the half of whatever movables or real estate may have accrued to her husband during marriage, but not necessarily her dower right.

1310, 1311, 636. The community is dissolved by natural death, by separation from bed and board, by separation of property. Separation of property can only be obtained judicially when the interests of the wife are imperilled and the disordered state of the husband's affairs gives reason to fear that his property will not be sufficient to satisfy what the wife has a right to receive or get back. The community is also dissolved by the absence of one of the consorts. This dissolution may be only provisional and is made after obtaining authority to take possession of the half of the community. If there are no heirs of the absentee, the present consort may obtain provisional possession of the other half.

1315. The separation can be demanded only by the wife herself.

1342. On the dissolution of the community an inventory must be made within three months after the death of the husband in a notarial form in the presence of the heirs of the husband.

1330. The want of an inventory within the delays allowed by law causes the surviving consort to lose the enjoyment of the revenues of the minor children.

1323, 1325. After the dissolution of the community by death and in the absence of any will to the contrary, the surviving consort has the enjoyment of the property of the community coming to the children from the deceased consort; such usufruct lasts as to each child until he is of the age of eighteen or until he is emancipated. This enjoyment ceases in the event of a second marriage.

184. A wife can dispose of her own property by will without the authorization of her husband.

1265. Consorts cannot confer benefits *inter vivos* upon each other, except a husband may, subject to certain restrictions insure his life for his wife and children.

181. All general authorizations, even those stipulated by marriage contract, are only valid in so far as regards the administration of the wife's property.

If a woman carries on a business separate from that of her husband, she must under penalty, register a declaration stating her name, that of husband and the firm name. R.S., 1909, Art. 7255.

ONTARIO

MARRIED WOMEN'S PROPERTY ACT, R.S., 1914, C. 149

Sec. 4. A married woman is capable of acquiring, holding and disposing by will or otherwise of her own property and of suing and being sued as if she were a *feme sole*.

[If property be settled to the separate use of a married woman and the words, "without power of anticipation," or words of like import be added, she cannot anticipate her income and the person who is responsible for the payment of that income cannot safely pay it to any person other than the married woman herself].

Sec. 10. Notwithstanding that a married woman is restrained from anticipation, the court may, when it appears to the court to be for the benefit, by judgment or order, with her consent, bind her interest in any property.

Section 15 is similar to Manitoba R.S. 1913, c. 123, s. 14.

Section 16 gives a married woman the same remedies for the protection of her property as an unmarried woman.

Section 21. Nothing in this Act shall affect any marriage settlement.

MANITOBA

MARRIED WOMEN'S PROPERTY ACT, R.S., 1913, C. 123

Sec. 3. A married woman is as free in the possession, acquisition and administration of her property as a man.

Sec. 7. Husband and wife may make a valid conveyance of land to each other without the intervention of a trustee.

Sec. 11. A married woman shall be capable of entering into and rendering herself liable on any contract and of suing and being sued.

Sec. 14. If any investment in any property shall have been made by means of moneys of her husband without his consent, the court may order such investments and the dividends thereof, or any part thereof to be transferred and paid respectively to her husband; and nothing in this Act shall give validity to gifts made to a wife, or investments in wife's name against the creditors of the husband if such gifts or investments were made in fraud of his creditors.

Sec. 19. A married woman shall be subject to all such liabilities for the maintenance of her children as a husband is now by law for the maintenance of his children, provided always that nothing in this Act shall relieve her husband from any liability imposed on him by law to maintain her children.

Marriage Settlement Act, 1916, c. 66, is similar to the Saskatchewan Act, 1922, c. 62.

SASKATCHEWAN

MARRIED WOMEN'S PROPERTY ACT, R.S., 1920, C. 153

Sec. 3. Every married woman shall be capable of acquiring, holding and disposing of by will or otherwise and without her husband's consent, any real or personal property, whether acquired before or after the passing of the Act and she shall in respect of the same be under no disabilities whatsoever heretofore existing by reason of her coverture, and she may in all respects deal with real and personal property as if she were a *feme sole*.

Sections 6 and 7 deal with investments in fraud of husband and investments and gifts to wife by husband in fraud of his creditors as in Manitoba.

Section 8 gives a married woman the same civil remedies to protect her property as a *feme sole* has.

Sec. 22. Marriage settlements are not affected by this Act.

MARRIAGE SETTLEMENT ACT, 1922, C. 62

Sec. 2. (2) "Marriage Settlement" means any indenture, contract, agreement, covenant or settlement entered into in consideration of marriage whereby one of the parties agrees to pay a sum or sums of money to or for the benefit of himself or the other party or any other person or issue of the marriage, or whereby he settles, grants, conveys, transfers mortgages or charges, or agrees to settle, grant, convey, transfer, mortgage or charge real or personal property of any description upon or to or in favour of any person for the benefit of himself or the other party or any other person or the issue of the marriage.

(3) "Settlor" means a party to a marriage settlement who agrees or is liable to pay any sum or sums of money thereunder or settles or agrees to settle, grant, convey, transfer, mortgage, or charge any real or personal property upon or to or in favour of, any person.

Sec. 3. Every marriage settlement hereafter made by a person residing in Saskatchewan shall be accompanied by the affidavit of a subscribing witness of due execution and an affidavit by the settlor that the settlement is entered into in good faith and not for the purpose of delaying, defeating, or defrauding his creditors and such settlement shall be registered within three months after execution.

Secs. 5, 6. Previous settlement by persons coming to reside in Saskatchewan, and settlement by non-residents but carrying on business in Saskatchewan must be registered within six months of residence or commencing business.

Sec. 7. Unregistered settlements are void.

Sec. 8. Every marriage settlement shall be registered by filing in the office of the registration clerk for chattel mortgages in the judicial district within which the settlor resides or carries on business.

ALBERTA

MARRIED WOMEN'S ACT, R.S., 1922, C. 214

Sec. 2. A married woman shall be capable of acquiring, holding and disposing of or otherwise dealing with all classes of real and personal property, and of contracting, suing and being sued in any form of action or prosecution as if she were an unmarried woman.

Sec. 3. A husband shall not have any right to sue in respect of a tort done to his wife, except where and in so far as he has sustained any separate damage or injury thereby.

BRITISH COLUMBIA

MARRIED WOMEN'S PROPERTY ACT, R.S., 1911, C. 152, AMD. 1915, C. 41

Sec. 3. A married woman is as free as an unmarried woman to acquire, hold and dispose of property.

Sec. 4. She can sue and be sued as if unmarried.

Sec. 12. A married woman can protect her property from any person including her husband. A husband and wife are competent to give evidence against each other in this matter.

Sec. 15. Nothing in this Act shall interfere with or affect any settlement made before or after marriage respecting the property of any married woman.

Sec. 16. A husband may convey property to his wife without the intervention of a trustee.

Sec. 23. Similar to Manitoba, R.S., 1913, c. 123, s. 14.

CHAPTER X.

DEVOLUTION OF ESTATES

(1) Intestacy

PRINCE EDWARD ISLAND

INTESTACY ACT, 1873, C. 23, AMD., 1888, C. 6

Secs. 2, 10. In the case of a man dying intestate, one-third of his personal property goes to his wife as absolute owner besides her dower of one-third interest for life in houses and lands, when such wife shall not be otherwise endowed before marriage. The residue of real and personal estate is divided among the children or their representatives and if there be no children, then among the next of kin, but not beyond the children of brother and sister. If there be no children, one-half of his personal property goes to his wife.

MARRIED WOMEN'S PROPERTY ACT, 1903, C. 9

Sec. 21. The separate personal property of a married woman dying intestate shall be distributed in the same proportion between her husband and her children as the personal property of a husband.

NOVA SCOTIA

DESCENT OF PROPERTY ACT, R.S., 1923, C. 147

Sec. 2. In the case of a man dying intestate, his real estate, subject to dower, shall descend to his children in equal shares, and if no children surviving, to their legal representatives.

Sec. 3. When no issue, one-half goes to his father and mother or to the one surviving parent and one-half to his widow in lieu of dower. If no widow nor issue, all goes to father and mother or to the one surviving parent.

Sec. 4. (1) If intestate leaves no issue nor parents, one-half of real property goes to widow and the other half in equal shares to his brothers and sisters and the children of any deceased brother or sister.

(2) (3). If intestate leaves no widow, issue or parents, the whole of his real property goes to his brothers and sisters or to the children of deceased brothers or sisters.

(4). If intestate leaves no widow, children or parents or brothers or sisters or their issue, real property shall go to next of kin in equal degree.

(5). If intestate leaves no issue, parents or brothers or sisters or their issue, whole of real property goes to widow.

Sec. 6. In distribution of personal estate, if there be issue one-third goes to widow in addition to dower, if no issue one-half of personal property goes to widow. The residue shall be distributed as if it were real estate.

Sec. 7. (1) If a married woman dies intestate leaving real or personal property or both, and if she leaves issue, her husband, in addition to his estate as tenant by the courtesy in her real property, takes one-third of the personal estate, the residue of her real and personal property goes to her children or their legal representatives.

(2) If she leaves no issue, one-half of real and personal property goes to husband, one-half to mother and father in equal shares; if no father or mother, to her brothers and sisters in equal shares; if no father or mother, brothers or sisters, to the children of any deceased in equal shares.

(3) If none of the above survive, whole of the property goes to her husband.

ADMINISTRATION OF ESTATES BY ATTORNEY GENERAL, R.S., 1923, C. 148

Sec. 1. When any person dies in Nova Scotia intestate, or intestate as to part of his estate, and without any known relative within the province or any known relative who can be readily communicated with, living elsewhere, any court of probate may upon application grant administration, general or limited, to the Attorney General for the use and benefit of his Majesty, or of such persons as may ultimately appear to be entitled thereto.

NEW BRUNSWICK

ACT RESPECTING INTESTATES' ESTATES, C.S., 1903, C. 161

Sec. 1. (1) The real estate of a man dying intestate is divided, subject to dower, among his children or their legal representatives; if no issue, the next of kin or their legal representatives.

Children advanced by settlement or portion not equal to the other shares shall have so much as to make all equal.

(2) Estate in land under mortgage to devolve as a chattel real would devolve.

Sec. 2. The personal property is divided: One-third to the widow and residue to children; if no children, half to the widow, residue to next of kin.

The real estate of a wife dying intestate is divided in the same manner as that of husband subject to tenancy by courtesy.

Sec. 3. The separate personal property of a married woman dying intestate shall be distributed in the following manner: in case she has died or dies leaving children by a former husband, her surviving husband shall be entitled to one-third thereof, and her children, including those by her surviving husband, and their representatives, to the remaining two-thirds; and in case she has died or dies leaving children by her surviving husband only, he shall be entitled to one-half thereof, and her children and their representatives to the remaining half; and if there be no such child or children living at the death of the wife so dying intestate, then such property shall pass and be distributed as if this section and The Married Woman's Property Act, chap. 78 of these consolidated statutes had not been passed.

QUEBEC

CIVIL CODE, 1922

606. Abintestate successions pass to the lawful heirs in the order established by law; in default of such heirs they fall to the crown.

614. Successions devolve to the surviving consort capable of inheriting, children and descendants of the deceased, and to his descendants and collateral relations in the order and according to the rules hereinafter laid down.

624. (a) The wife succeeds to her husband and the husband to the wife, when the deceased leaves no issue and has no father or mother living, and is without collateral relations up to nephews or nieces in the first degree, inclusively.

(b) If deceased leaves a consort capable of inheriting and issue, the surviving consort takes one-third and the child or the children take two-thirds divided in equal shares.

If deceased die leaving no issue but a consort, and a father and mother or either of them and collateral relations up to nephews and nieces in the first degree inclusively, the surviving consort takes one-third, father and mother or one of them one-third and collateral relations above mentioned take one-third.

If deceased die leaving no issue, but a consort, and father or mother, or both, but no collateral up to nephews and nieces, the surviving consort takes half, the other half devolves to father or mother, or both.

(c) If there be issue, or a father or mother or both or collateral relations, up to nephews or nieces in the first degree, the wife in order to be able to succeed to her husband, must abandon all her rights in any community of property that may have existed between herself and the deceased, as well as all rights of survivorship accruing to her under her marriage contract or by law, including dower; nor can the husband succeed to his wife unless he first pays into the mass as if it were a return made under the provisions of article 700 his share in any community of property which may have existed between him and his wife, when such community has been accepted by the succession of his said wife, or abandon to such mass all rights and advantages conferred on him by any marriage contract which may have existed between them.

In the case mentioned in this article, the surviving consort in order to be entitled to succeed to the deceased consort must also renounce his or her rights to the proceeds of insurance policies made in his or her favour by the deceased consort and return such proceeds to the mass.

(d) The surviving consort is excluded from the succession when the deceased consort died before having reached the age of majority.

625. If there be no surviving consort capable of inheriting, children or their descendants succeed to father and mother, grandfather and grandmother, or other ascendants.

627. If one parent dies the remaining parent succeeds to the deceased parent's share.

628. If the deceased leave no consort or issue surviving nor brothers nor sisters, nor nephews nor nieces in the first degree, nor father nor mother, but only other ascendants the latter succeed to him to the exclusion of all other collaterals.

[For collateral succession see Articles 631 to 635.]

629. The nearest ascendant takes the half accruing to his line to the exclusion of all others.

ONTARIO

DEVOLUTION OF ESTATES ACT, R.S. 1914, C. 119, AMD. 1918, C. 20, S. 22;
1919, C. 28; 1921, C. 47, S. 6

Sec. 9. Nothing in this Act shall take away a widow's right to dower; but a widow may by deed or instrument in writing attested by at least one witness, elect to take her interest under this Act in her husband's undisposed of real property in lieu of all claim to dower in respect of the real property.

Sec. 29. (1) The real and personal property, whether separate or otherwise of a married woman in respect of which she dies intestate shall be distributed as follows: one-third to her husband if she leaves issue, and one-half if she leaves no issue, and subject thereto shall devolve as if her husband had predeceased her.

(2) A husband who if this Act had not been passed would be entitled to an interest as tenant by the courtesy in real property of his wife, may by deed or instrument in writing executed and attested by at least one witness and delivered to the personal representative if any, or if there is none, deposited in the office of the Surrogate Clerk at Toronto within six months after his wife's death, elect to take such interest in the real or personal property of his wife as he would have taken if this Act had not been passed, in which case the husband's interest therein shall be ascertained in all respects as if this Act had not been passed, and he shall be entitled to no further interest therein.

Sec. 30. Except as in this Act is otherwise provided the personal property of a person dying intestate shall be distributed as follows, that is to say: one-third to wife of the intestate and all the residue by equal portions among the children of the intestate and such persons as legally represent such children in case any of them have died in his lifetime and if there are no children or any legal representatives of them, one-half of the personal property shall be allotted to the wife and the residue thereof shall be distributed equally to every of the next of kindred of the intestate who are of equal degree and those who legally represent them and for the purpose of this section the father and the mother and the brothers and sisters of the intestate shall be deemed of equal degree; but there shall be no representation admitted among collaterals after brothers' and sisters' children, and if there be no wife then all such personal property shall be distributed equally among the children and if no child then to the next of kindred in equal degree of or unto the intestate and their legal representatives and in no other manner.

Sec. 31. If after the death of a father, any of his children die intestate without wife or children in the lifetime of the mother, every brother and sister and the representatives of them shall have an equal share with her, anything in Section 30 to the contrary notwithstanding.

Sec. 32. Subject to the provisions of the Trustee Act, Section 55, no such distribution shall be made until after one year from the death of the intestate.

(See also amendment to Marriage Act, 1921, c. 51, s. 4, in chapter on Marriage.)

MANITOBA

DEVOLUTION OF ESTATES ACT, R.S., 1913, C. 54.

Sec. 4. If any intestate shall die leaving a widow and child or children, or issue, one-third of his real and personal estate shall go to widow, two-thirds to child or if children to them in equal shares, and in case of the decease of any of his children, to their children or issue in equal proportion, and if there be no child living at the time of his death to his other lineal descendants; and if all the descendants shall be in the same degree of kindred they shall share the estate equally, otherwise they shall take according to the right of representation.

Sec. 5. If there be a widow and no issue his whole real and personal estate shall go to the widow; if no widow or issue the whole shall go to the father.

Sec. 6. If there be no widow but child, children or issue, whole estate shall go to them in equal shares; if any of the children shall have died leaving issue, such issue shall take according to their right of representation.

Sec. 12. If intestate leave no widow, child or grandchild, his whole estate, real and personal, shall go to father; if he have no father, it shall go to his mother, brothers and sisters in equal shares. If he have no father, brothers or sisters it shall go to his mother; if he have no father or mother it shall go to his sisters and brothers in equal shares or their representatives; if there be none of the above it shall go to next of kin; in no case shall representatives be admitted among collaterals after brothers' and sisters' children.

Sec. 13. All such estate real and personal as is not devised in a will shall be distributed as if the testator had died intestate.

Sec. 15. The property of a married woman dying intestate shall be distributed in the same proportion and manner as the property of a husband dying intestate.

(2) For the purpose of this section "widower" shall be substituted for "widow," "her" for "his" when such words occur in sections 4, 5, 6 and 12.

SASKATCHEWAN

DEVOLUTION OF ESTATES ACT, R.S., 1920, C. 73

Sec. 16. If an intestate dies leaving a widow and one child, one-half of his real and personal property shall go to each. If he dies leaving a widow and children, one-third of his real and personal property goes to his widow and the residue to his children in equal shares or to their representatives.

Sec. 17. If an intestate dies leaving a widow and no issue, his whole estate, real and personal, shall go to the widow.

Sec. 18. If an intestate dies leaving children or issue and no widow, it shall go to his children or their representatives in equal shares.

Secs. 19-20. If an intestate dies leaving no widow or issue, it shall go to his father; if his father is not living, it shall go to his mother.

Sec. 21. If intestate leaves no issue, widow or parents, property shall go to brothers and sisters in equal shares or to their children.

Sec. 22. If intestate leaves none of the above mentioned, property shall go to his next of kin in equal degrees but in no case to representatives among collaterals after brothers' and sisters' children.

Sec. 35. The real and personal property of a married woman dying intestate shall be distributed in the same manner as the real and personal property of a husband dying intestate.

Secs. 36-37. If a wife (or husband) has left her husband (or wife) and has lived in adultery after leaving him (or her) she or he shall take no part of his or her real or personal estate.

ALBERTA

INTESTATE SUCCESSION ACT, R.S., 1922, C. 143

Sec. 3. If an intestate dies leaving a husband or wife then—

(a) If two or more children of the intestate are living, one equal third part of the property shall be distributed to the husband or wife.

(b) If one child only is living, one-half of the property shall be distributed to the husband or wife.

(c) If no child is living, all the property shall be distributed to the husband or wife.

(d) If a wife has left her husband and is living in adultery at the time of her husband's death or has at any time lived in adultery with another man, and such adultery has not been condoned, no part of her husband's property shall be distributed to such wife.

(e) If a husband has left his wife and is living in adultery at the time of his wife's death or has at any time lived in adultery with another woman, and such adultery has not been condoned, no part of his wife's property shall be distributed to such husband.

(f) Where any issue of a child is living, the property shall be distributed to the husband or wife as if such child were living at the date of the death of the intestate.

Sec. 4. If an intestate dies leaving issue then, subject to the rights of a surviving husband or wife, the property shall be distributed among such issue per stirpes, and so that no descendant of living issue of the intestate shall take any share of the property.

Sec. 6. If an intestate dies leaving no husband or wife or issue then the property shall be distributed to the father and mother of the intestate, if then living, in equal shares, and if either of them is dead, the whole property shall be distributed to the other.

Sec. 7. (1) If an intestate dies leaving no husband, wife, issue, father or mother, but leaving one or more brothers or sisters, either of the whole or of the half blood, the property shall be distributed to such brother or sister or to such brothers or sisters in equal shares.

(2) If the intestate also leaves a child or children of a deceased brother or sister, such child or children shall take by representation the share his or their parent would take if such parent were alive at the date of the death of the intestate.

Sec. 8. (1) If an intestate dies leaving no husband, wife, issue, father, mother, brother or sister, the property shall be distributed in equal shares to the persons surviving him, who are next in degree of kindred to him.

Sec. 9. If an illegitimate intestate dies leaving a husband or wife or any issue, his property shall be distributed to the person or persons who would be entitled to the property if the intestate were not illegitimate.

(2) If an illegitimate intestate dies without issue and without husband or wife, his property shall be distributed to his mother.

(3) If the parents of a child born out of wedlock afterwards intermarry, such child shall be thereby legitimised.

(4) Illegitimate children shall be entitled to take property from or through their mother as if they were legitimate.

Sec. 10. Any residue of the property of a deceased person not expressly disposed of by his will, shall vest in his executor or executors as trustee or trustees for the person or persons entitled under this Act to property distributable by an executor unless it appears by the will or any codicil thereto that the said executor or executors were intended to take beneficially.

Sec. 11. Where any person, being a child or other issue of a testator to whom any real or personal estate is devised or bequeathed for any estate or interest not determinable at or before the death of such person dies in the lifetime of the testator, and any issue of any such person is living at the time of the death of the testator, such devise or bequest shall not lapse, but shall take effect as if the death of such person had happened immediately after the death of the testator, unless a contrary intention appears by the will.

The Ultimate Heir Act, R.S., 1922, c. 144, provides that when a person without kin dies intestate, his property shall go to the University of Alberta.

BRITISH COLUMBIA

INHERITANCE ACT, R.S., 1911, C. 108; AMD., 1912, C. 12

Sec. 5. The real property of a man dying intestate shall be distributed as follows:—

- (1) to lineal descendants and those claiming by or under them *per stirpes*; if none such exist, then
- (2) to his father;
- (3) to his mother;
- (4) to his collateral relations

subject in all cases to the rules and regulations hereinafter prescribed:

(5) Provided, however, that if the intestate shall leave a widow or husband, him or her surviving, such widow or husband as the case may be, shall be entitled, in case the intestate has left no lawful descendants, to one-half of such real estate absolutely, and in case the intestate has left lawful descendants him or her surviving then to one-third of such real estate for life.

Sec. 9. If no descendants, father does not inherit if the inheritance came to the intestate through mother and such mother be living; if such mother be dead inheritance goes to father for life and reverts to brothers and sisters of the intestate and their descendants; if there be no such brothers and sisters, such inheritance shall descend to the father.

Sec. 10. If intestate leave no descendants and no father, but mother and brothers and sisters, mother inherits for life and inheritance reverts to brothers and sisters; if there be no brothers and sisters, inheritance shall descend to the mother.

Sec. 11. If there be no descendants, no father, no mother, it shall descend to brothers and sisters.

Sec. 15. If no brothers or sisters of father of the intestate and no descendants of them, then the inheritance shall descend to the brothers and sisters of the mother.

Sec. 16. If estate came to intestate through mother, then inheritance shall descend to the brothers and sisters of mother of intestate unless there are no heirs on the mother's side.

Sec. 17. If inheritance has not come to the intestate through either father or mother, the inheritance shall descend equally to the brothers and sisters of the father and mother.

ADMINISTRATION ACT, R.S., 1911, C. 4; AMD. 1913, C. 1; 1915, C. 1; 1916, C. 2; 1917, C. 1; 1918, C. 1; 1920, C. 1

Sec. 95. The personal estate of an intestate is to descend: One-third to the widow and the remainder among the descendants *per stirpes* equally. If there be no descendants all shall go to widow. If there be no widow, then whole shall be divided equally among descendants *per stirpes*; if there be neither widow nor children, then equally among next of kin of same degree, and the mother equally with the father.

Sec. 91. Where any intestate shall leave him surviving in this province a concubine, at the time of his death actually maintained by him or under his protection or shall leave him surviving any illegitimate child or children under the age of 16 years reputed to be by him begotten of any woman and at the time of his death maintained by him or under his protection, or for the support or maintenance or advancement of which child he shall have made any provision within the twelve months next preceding his decease, it shall be lawful for

the court to order that there be retained, allotted and applied for the support, maintenance, and benefit of such concubine and of every such child respectively so much of the net real and personal estate or either of them, of such intestate (after payment of all his debts) as the court shall see fit, not, however, retaining, allotting and applying for such concubine or for any such child a sum greater for each than \$500, or in the whole than the amount of ten per cent on the net real and personal estate of the intestate within the province which-ever limit may be the largest.

MARRIED WOMEN'S PROPERTY ACT, R.S., 1911, C. 152

Sec. 20. The separate personal property of a married woman dying intestate shall be distributed in the same proportion between her husband and children, as the personal property of a husband dying intestate between his wife and children; and if there be no child or children living at her death, then such property shall pass and be distributed as if this Act had not been passed.

HOMESTEAD ACT, R.S., 1911, C. 100

Sec. 7. (1) If any person holding a homestead shall die intestate leaving him surviving a widow and minor children, the homestead of the value aforesaid shall wholly pass to such widow to be held by her during the minority of such children, or while said widow remains unmarried; and the exempted property shall not be sold during such minority, or while such widow remains unmarried, for the payment of any debt which shall have been contracted by any such deceased person subsequent to the due registration of such homestead.

(2) If any person holding a homestead shall die intestate (a) leaving a widow him surviving and no children, the widow shall be entitled to the homestead absolutely. (b) leaving children only him surviving and no widow, the property shall belong to such children absolutely in equal shares, divisible upon the youngest child attaining the age of 21 years.

(2) Wills

The following conditions for the making of a will are required in all the provinces of Canada:—

1. The testator must not be under twenty-one years of age.
2. The testator must not be an imbecile, insane or interdicted person.
3. The testator must be of a sound mind.
4. All wills must be signed at the end of the will by the testator.
5. All wills must be in writing. By "writing" is meant either print, handwriting, typewriting, etc.
6. Two or more persons cannot make a will by one and the same act.

There are three forms of wills: The notarial or authentic, the English form, and the holograph will. The latter is only valid in Manitoba and Quebec.

The notarial or authentic form in use in the Province of Quebec is executed before two notaries or one notary and two male witnesses, neither of whom shall be clerk or servant to the notary.

Wills made in the form derived from the law of England, whether they affect movable or immovable property, must be in writing and signed at the end with the signature or mark of the testator made by himself or by another for him in his presence and under his express direction, which signature is then or subsequently acknowledged by the testator as having been subscribed by him to his will then produced, in presence of at least two competent witnesses together, who attest and sign the will immediately in the presence of each other and of the testator and at his request.

Women may serve as attesting witnesses and the rules concerning the competency of witnesses are the same in all other respects as for will in authentic form.

Holograph wills are those wholly written and signed by the testator and require neither notaries or witnesses.

In holograph wills and wills made in the form derived from the law of England, whatever comes after the signature of the testator is looked upon as a new act, which in the former case must likewise be written and signed by the testator. In the latter case the attestation of witnesses must follow each signature, or come after the last as witnessing the whole of the will preceding such signatures with the same formalities as the original will.

Subsequent wills which do not revoke the preceding ones in an express manner annul only such dispositions therein as are inconsistent with or contrary to those contained in the latter wills.

An heir accepting inheritance makes himself liable for his share of debts due by the estate. The taking into his possession as heir by an heir of anything belonging to the estate makes an acceptance.

Any one witnessing a will bars his or her right to any bequest in that will and nullifies any legacy left to the wife or husband of the witness.

PRINCE EDWARD ISLAND

English form of will is prescribed.

An amendment to the Married Women's Property Act, 1903, enacted in 1908, gives full power to a married woman to make a will disposing of her property independently of her husband.

An executor must present the will for registration within thirty days after the death of the testator.

NOVA SCOTIA

WILLS ACT, R.S., 1923, C. 146

English form of will is prescribed.

Sec. 15. A declaration must be made by a married woman before the witnesses of her will that she makes it of her own free will and without undue influence from or by her husband if under the will her husband takes a greater interest in her property than he would be entitled to were she to die intestate. Such declaration must be (a) made before a judge in the Supreme Court, a judge in the County Court, a barrister in the Supreme Court, a notary public or a justice of the peace and a certificate that such declaration was made must be appended to the will, or (b) proved by evidence under oath upon the application to admit the will to probate that such declaration was made.

Sec. 18. Marriage revokes a will except (a) where it is declared in the will that the same is made in contemplation of such marriage, (b) when the wife or husband of the testator elects to take under the will by an instrument in writing signed by such wife or husband and filed, within one year after the testator's death, in the court of probate in which probate of such will is taken or sought to be taken, or (c) when the will is made in exercise of a power of appointment.

Sec. 25. Unless a contrary intention appears by the will, such real property or interest therein as is comprised in any devise in such will which fails or becomes void by reason of the death of the devisee in the lifetime of the testator or by reason of the devise being contrary to law or otherwise incapable of taking effect shall be included in the residuary devise, if any, contained in such will.

Sec. 31. Where any person to whom any real property is bequeathed dies before the testator but has issue living at the time of the testator's death, such bequest shall not lapse.

Sec. 32. In case child or other issue of testator is legatee and dies before testator leaving issue a bequest of real or personal property shall not lapse.

NEW BRUNSWICK

WILLS ACT, C. S., 1903, C. 160, AMD., 1918, C. 48

English form of will is prescribed.

Sec. 12. Every will is revoked by marriage, except a will made in the exercise of a power of appointment, when the estate thereby appointed, in default of appointment, would not pass to the testator's heirs or next of kin.

Section 19 is similar to Nova Scotia, R.S., 1923, c. 146, s. 25.

Sections 26-27 are similar to Nova Scotia, R.S., 1923, c. 146, ss. 31-32.

Sec. 28. Any married woman may make a will in the same manner as if she were a *feme sole* and the consent of her husband shall not be necessary.

QUEBEC

CIVIL CODE, 1922

842. Wills may be made:

1. In notarial or authentic form;
2. In the form required for holograph wills;
3. In writing and in the presence of witnesses in the form derived from the law of England.

843. Wills in notarial or authentic form are received before two notaries or before a notary and two witnesses.

844. Testator's authentic will remains with the notary. Witnesses must be named and described in the will and must be of the male sex, of full age, and must not have been sentenced to civil degradation or to an infamous punishment.

845. A will cannot be executed before notaries who are related to the testator or to each other.

847. Wills in authentic form cannot be dictated by signs.

850. Holograph wills must be wholly written and signed by the testator and require neither notaries nor witnesses. They are subject to no particular form.

851. Wills made in the form derived from the laws of England must be in writing and signed at the end with the signature or mark of the testator made by himself or by another for him in his presence and under his express direction and in the presence of two competent witnesses, who attest and sign the will immediately in the presence of the testator and at his request women may serve as witnesses.

846. Legacies made in favour of the notaries or witnesses, or to the wife of any such notary or witness, or any relation of such notary or witness in the first degree, are void.

900. Every testamentary disposition lapses if the person in whose favour it is made, do not survive the testator.

184. A wife may make a will without the authorization of her husband.

1293. One consort cannot, to the prejudice of the other, bequeath more than his or her share in the community.

ONTARIO

WILLS ACT, R.S., 1914, C. 120, AMD. 1919, C. 25

A married woman can make a will as freely as a *feme sole*.

English form of will is prescribed.

Section 28 is similar to Nova Scotia, R.S., 1923, c. 146, s. 25.

Section 36 is similar to Nova Scotia, R.S., 1923, c. 146, s. 31.

Sec. 37. When any person being a child or other issue or the brother or sister of the testator to whom any real or personal estate is devised or bequeathed for any estate or interest not determinable at or before the death of such person, dies in the lifetime of the testator, either before or after the making of the will, leaving issue and any issue of such person are still living at the time of the death of the testator, such devise or bequest shall not lapse but shall take effect as if the death of such person had happened immediately after the death of the testator unless a contrary intention appears in the will.

Section 21 is similar to Nova Scotia, R.S. 1923, c. 146, s. 18.

MANITOBA

WILLS ACT, R.S., 1913, C. 204

Sec. 10. A holograph will, wholly written and signed by the testator himself, shall be subject to no particular form, nor shall it require an attesting witness.

Section 23 is similar to Nova Scotia, R.S., 1923, c. 146, s. 25.

Sections 30-31 are similar to Nova Scotia, R.S., 1923, c. 146, ss. 31-32.

Sec. 2. (d) The word "testator" includes a married woman.

Sec. 2A. All the provisions of this Act shall be subject to the provisions of the Dower Act, 1919, c. 115.

Section 15 is similar to New Brunswick, C.S., 1903, c. 160, s. 12.

SASKATCHEWAN

WILLS ACT, R.S., 1920, C. 74

Sec. 5. Any married woman without obtaining her husband's consent or without his knowledge may by such will executed as in this Act bequeath or dispose of any real or personal property as if she were a *feme sole*.

Sec. 7. No holograph form of will is valid in Saskatchewan.

Sec. 17. Every will shall be revoked by marriage except when it is declared to be made in contemplation of marriage or where made in exercise of a power of appointment and when the wife or husband of the testator elects to take under the will by an instrument in writing signed by said husband and wife and filed within one year after testator's death in the court where probate of will is sought.

Section 25 is similar to Nova Scotia, R.S., 1923, c. 146, s. 25.

Sections 34-35 are similar to Nova Scotia, R.S., c. 146, ss. 31-32.

Sec. 36. If in any will of a testatrix, any devise or bequest is made by her to or for her issue or for her child or children, no child of such testatrix shall be debarred from taking under such will for the reason only that such child is an illegitimate child of the testatrix.

HOMESTEAD ACT, R.S., 1920, C. 69

Sec. 11. A widow's interests in her deceased husband's estate are protected as against his will (see chapter on Dower).

ALBERTA

Section 11 of the Intestate Succession Act, R.S. 1922, c. 143 is similar to Saskatchewan, R.S. 1920, c. 44, s. 37.

No holograph form of will is valid in Alberta.

The Married Woman's Act, R.S. 1922, c. 214, enables a married woman to dispose of property by will.

The Married Woman's Relief Act, R.S. 1922, c. 145, protects a wife in her interests in her husband's estate as against his disposition by will. (See chapter VIII.)

BRITISH COLUMBIA

WILLS ACT, R.S., 1911, C. 241, AMD., 1918, C. 101

English form of will is prescribed.

A married woman may dispose of her property by will as freely as an unmarried woman may.

Sec. 7. Every will shall, so far only as regards the position of the signature of the testator, be deemed to be valid within the meaning of this Act if the signature shall be so placed at, or after, or following, or under, or beside, or opposite to the end of the will that it shall appear on the face of the will that the testator intended to give effect by such signature to the writing signed as his will.

No signature shall be operative to give effect to any disposition or direction which is underneath or which follows the signature nor shall it give effect to any disposition or direction inserted after the signature shall be made.

Section 15 is similar to New Brunswick, C.S., 1903, c. 160, s. 12.

Section 22 is similar to Nova Scotia, R.S. 1923, c. 146, s. 25.

Sections 29-30 are similar to Nova Scotia, R.S., 1923, c. 146, ss. 31-32.

TESTATOR'S FAMILY MAINTENANCE ACT, 1920, c. 94

A widow's interest in her deceased husband's estate is protected as against his will. (See Chapter VIII.)

(For laws governing dower and tenancy by courtesy, see Chapter VIII.)

CHAPTER XI.

GUARDIANS, TRUSTEES, EXECUTORS, TUTORS

The common law of England recognizes the right of the father to the control of an infant's religious education and no promise to the contrary is valid unless for "valuable consideration" e.g. marriage.

PRINCE EDWARD ISLAND

The father has a right to the custody of his children subject only to the control of the courts. When he abuses his right to the detriment of the child, the courts may take the child from the father and give it to the mother.

Women may be guardians independent of relationship.

A woman may be appointed administratrix or trustee. The wife has the first right to be appointed administratrix to her husband's estate.

NOVA SCOTIA

Section 29 of the Married Woman's Property Act (R.S. 1923, c. 141) provides that an ante-nuptial agreement in writing as to the religion in which the children of the marriage shall be educated, shall be binding on husband and wife or their legal representatives unless changed by mutual consent expressed in writing.

GUARDIANS AND WARDS ACT R.S. 1923, C. 136

Sec. 4. The father is the lawful guardian, or, if dead, then the mother becomes guardian alone or jointly with any guardian appointed by the father.

Sec. 5. No guardian being appointed and if father and mother are both dead, the minor, if fourteen years of age, may nominate a person to be guardian; if under fourteen, the executors or administrators of any estate in which the infant is interested, or any one next of kin may make application, and such next of kin shall be entitled to be appointed unless the court otherwise directs.

When any freehold hereditament is vested in a married woman as a bare trustee, she may convey it as if she were a *feme sole*. (R.S. 1923, c. 212, s. 17.)

CUSTODY OF INFANTS ACT, R.S. 1923, C. 138

Sec. 4. No order directing that the mother shall have the custody of an infant shall be made in favour of a mother against whom adultery has been established by judgment in an action for criminal conversation at the suit of the husband or by sentence or decree of Court of Divorce and Matrimonial Causes or by Act of Parliament.

NEW BRUNSWICK

CUSTODY OF CHILDREN ACT, 1910, C. 8

Sec. 1. In all cases whenever any application shall be made to the court or judge by proceedings in the Equity Court or by Habeas Corpus, or otherwise for the custody or control of any infant or infants, it shall be the duty of the court judge before whom the said application shall be heard, to take into consideration the interests of such infant or infants in deciding between the claims of parents of such infant or infants.

MARRIED WOMEN'S PROPERTY ACT, C.S. 1903, C. 78

Sec. 18. A married woman can act as trustee, administrator or guardian and may transfer or join in the transfer, in that character, of any such property without her husband's consent as if she were a *feme sole*.

QUEBEC

CIVIL CODE, 1922

905. Single women and widows may be executors. If there be no testamentary executors and none has been appointed in the manner in which they may be, the execution of the will devolves entirely upon the heir or the legatee who received succession.

906. Married women cannot accept testamentary executorship without the consent of their husbands. Single women and widows who marry while they are testamentary executors do not forfeit their office by mere operation of law but they require the consent of their husbands to continue the exercise of such office.

A testamentary executrix separated as to property from her husband, either by contract of marriage or by judgment, may, if he refuse the consent necessary for her to accept or to exercise the office, obtain judicial authorization as in the cases provided for in article 178.

TUTORS

922. A testator cannot appoint tutors to minors, nor curators to persons requiring their assistance or to substitutions, but can give his executors or administrators specific powers that amount to the same thing.

282. The father as the lawful tutor of his children cannot refuse the office, but the mother may.

283. Mothers and grandmothers who have been appointed to tutorship during their widowhood, are deprived of it from the day on which they contract a second marriage, and if the minors have not been provided with another tutor prior to such marriage, the husbands of such mothers and grandmothers remain responsible for the administration of the property of the minors during the second marriage, even if there be no community.

249. All tutorships are dative; they are conferred on the advice of a family council by a competent court or by any judge of such court, having civil jurisdiction in the district in which the minor is domiciled.

252. With the exception of the mother and other female ascendants during widowhood, the relations taking part in a family council must be males of the full age of twenty-one years and residing in the district where the appointment of the tutor is to be made.

342. A wife may be curatrix to her interdicted husband.

ONTARIO

MARRIED WOMAN'S PROPERTY ACT, R.S., 1914, C. 149

Sec. 4. (3) A married woman who is an executrix or administratrix alone or jointly with any other person or persons of the estate of any deceased person, or a trustee alone or jointly of property subject to any trust, may sue or be sued without her husband as if she were a *feme sole*.

MARRIED WOMAN'S CONVEYANCES ACT, R.S., 1914, C. 150

Sec. 4. (1) A married woman who is an executrix or administratrix alone or jointly with any other person or persons of the estate of any deceased person, or trustee alone or jointly of property subject to any trust, may transfer or join in transferring any such particulars as are mentioned in section 11 of the *Married Woman's Property Act*, [bank deposits, stocks or bonds], without her husband as if she were a *feme sole*.

INFANTS ACT, R.S., 1914, C. 153, AMD., 1915, C. 20; 1923, C. 33

Sec. 3. (1) Unless otherwise ordered by the Court and subject to the provisions of this Act, the father and mother of an infant shall be joint guardians and shall be equally entitled to the custody, control and education of such infant.

Sec. 26. The Surrogate Court may appoint the father or mother of the infant or may, with the consent of the father and the mother or of the surviving parent, appoint some other suitable person to be the guardians or guardian to the infant; but if the infant is of the age of fourteen years no such appointment shall be made without his consent.

Sec. 36. Nothing in this Act shall change the law as to the authority of the father in respect of the religious faith in which his child is to be educated.

Section 22 of the Judicature Act (R.S. 1914, c. 56) provides that on questions relating to the custody and education of children the rules of equity shall prevail over the common law in case of any conflict.

OFFICIAL GUARDIAN

The Judicature Act, R.S., 1914, c. 56, ss. 76 (a), 104, the Surrogate Courts Act, R.S., 1914, c. 62, s. 69, and the Devolution of Estates Act, R.S., 1914, c. 119, ss. 8, 15, 19, 21, 22, 25, 33, provide for an Official Guardian of the rights of all infants in matters before the courts.

MANITOBA

MARRIED WOMEN'S PROPERTY ACT, R.S., 1913, C. 123

Sec. 17. A married woman who is an executrix or administratrix or trustee alone or jointly with any other person may sue or be sued and may transfer or join in transferring any such property without her husband as if she were a *feme sole*.

CHILD WELFARE ACT, 1922, C. 2, AMD., 1924, CC. 6, 7

Sec. 123. Father and mother have equal rights to the custody and control of their children but the court or any judge thereof may give the sole custody and control to either subject to regulations.

Sec. 125. The Surrogate Court may appoint or remove guardians of infants whose parents are not living. If infant is under eighteen years of age, the guardian may be appointed or removed by the Juvenile Court.

Sec. 126. A Surrogate Court may give effect to the testamentary appointment of guardians of infant children by either parent either as respects the person and estate or the person only or the estate only, notwithstanding the previous appointment by will of the other parent of such infant, upon petition presented and fact proved, if it shall seem in the interest of the infants to do so.

Sec. 131. Official administrator for the judicial district may be appointed guardian by the Surrogate Court.

SASKATCHEWAN

The Married Woman's Property Act, R.S., 1920, c. 153, s. 12, is similar to Manitoba R.S., 1913, c. 123, s. 17.

TRUSTEE ACT, R.S., 1920, C. 75

Sec. 31. Where any freehold hereditament is vested in a married woman as bare trustee, she may convey or surrender the same as if she were a *feme sole* and without her husband joining in the conveyance.

INFANTS ACT, R.S., 1920, C. 155

Sec. 2. In the absence of any order to the contrary, the mother shall have the custody of her infant children until they attain the age of fourteen. On the death of the mother or on a child attaining the age of fourteen the custody of the child shall belong to the father if living.

Sec. 3. (1) Upon the application of either parent, the court may make such order as seems fitting regarding the custody of the infant and right of access of either parent.

Sec. 4. Subject to the provisions of the Act and to any order which may be made by the court, the surviving parent of an infant may dispose of the custody of an infant by deed or will while he remains an infant or for any lesser time.

Sec. 23. On the death of the father, the mother, if surviving, shall be sole guardian until the child attains the age of fourteen and thereafter when no guardian has been appointed by the father, or jointly with any guardian appointed by the father. The court may appoint a guardian if there is none appointed by the father.

Sec. 24. The mother of an infant may by will or deed provisionally nominate any person or persons to act as guardian of her children after her death jointly with the father and the court may, if the father is shown to be unfit to be sole guardian, confirm the nomination.

Sec. 25. A judicial trustee may be appointed on application. Such trustee must once a year submit the accounts of the trust to the court after they have been audited.

Section 41 is similar to Ontario R.S., 1914, c. 153, s. 36.

ALBERTA

A woman may be a guardian, executrix, or trustee with the same legal rights and liabilities as a man.

THE INFANTS ACT, R.S., 1922, C. 216

Sec. 2. Unless otherwise ordered by the court, the father and mother of an infant shall be joint guardians and shall be entitled to custody and control and education of such infant and hereafter the father of such infant shall possess no right or control over the person, education and conduct of such child that is not possessed by the mother.

Sec. 3. The Supreme Court may, on the application of the father or the mother of an infant, make such order as the court sees fit regarding the custody of the infant and the right of access thereto of either parent.

Sec. 22. The father and mother of an infant shall be joint guardians of the estate of such infant, provided always that either father or mother may delegate his or her authority over the estate of such infant in writing to the other parent.

Sec. 23. (1) On the death of either parent, the other, if surviving, is to be the guardian either alone or jointly with a guardian appointed by the deceased parent.

Sec. 24. Upon the application of an infant or of anyone on its behalf when it is made to appear that the infant has no parent or lawful guardian or that such parent or lawful guardian is not a fit or proper person to have the guardianship of such infant, the court may appoint a guardian.

OFFICIAL GUARDIAN ACT, R.S., 1922, C. 22

The Official Guardian for the province may act as guardian *ad litem* of infants or administer estates or act as judicial trustee of the estate of any deceased person.

BRITISH COLUMBIA

The Married Woman's Property Act, R.S., 1911, c. 152, s. 14, makes similar provision to that of Manitoba, R.S. 1913, c. 123, s. 17.

EQUAL GUARDIANSHIP OF INFANTS ACT, 1917, C. 27; AMD. 1919, C. 31

Sec. 4. All disabilities of married women with respect to the guardianship of their minor children are hereby removed.

Sec. 5. The husband and wife living together shall be joint guardians with equal powers, rights and duties.

Sec. 6. Either parent may appoint a guardian to act after his or her death.

Sec. 7. In case of the death of either parent, the surviving parent shall be the sole guardian provided that wherever a guardian has been appointed by deceased parent, the survivor shall exercise all such powers jointly with such guardian.

Sec. 11. If the parents are living apart voluntarily, the guardianship of their infant children may be arranged by agreement in writing between them. In the absence of such arrangement or if one of the parents desires its termination, he or she may apply to the court for adjudication as to guardianship.

Secs. 12-13. In case of separation or divorce of parents the court may decide the question of guardianship and right of access of parent.

Sec. 14. The consent of a male child of fourteen and a female child of twelve years of age is necessary to the change of guardianship by the Court.

Sec. 17. Application may be made to Court when guardians disagree on question concerning the child.

Sec. 18. If parents are both dead and no other guardian appointed, the Official Guardian by right of his office without any further appointment shall be the guardian of such infant.

Sec. 22. Father and mother are equally liable for the support of their children.

Sec. 23. The rules of equity shall prevail in relation to the custody and the education of infants.

OFFICIAL GUARDIAN ACT, 1913, C. 28, AMD. 1916, C. 25

The Official Guardian may act as guardian *ad litem* of infants or administer estates or act as judicial trustee of the estate of any deceased person.

(For laws governing the adoption of children, see Chapter XII.)

CHAPTER XII

PROTECTION OF MOTHERS AND CHILDREN

Legislation dealing with various phases of this subject has been enacted in several provinces. It has been noticeably stressed within recent years in the provinces of British Columbia, Alberta, Saskatchewan, Manitoba and Ontario, where the following Acts have been enacted and have been in force since 1920: Mothers' Pensions or Allowances Acts, Maintenance of Parents Acts, Acts for the Protection of Children of Unmarried Parents, Legitimation Acts, and Deserted Wives' Maintenance Acts. In addition to these the province of Saskatchewan issued a regulation in 1920 under the provisions of the "Public Health Act" dealing with the support of needy and expectant mothers. The province of British Columbia is the only province which has enacted legislation for the protection of expectant mothers engaged in industrial and commercial undertakings. In the Maritime Provinces this class of legislation has not been so extensive. New Brunswick and Nova Scotia, however, as early as 1903 and 1900 respectively enacted legislation for the protection of children of unmarried parents.

PRINCE EDWARD ISLAND

LEGITIMATION ACT, 1920, C. 12

Marriage of the parents of any child born out of wedlock renders the child legitimate from time of birth but no right or interest in or to property can be affected by such marriage if such right has vested in any person prior to the passing of this Act or prior to such marriage.

ADOPTION OF CHILDREN ACT, 1916, C. 6; AMD. 1918, C. 4

An agreement in writing heretofore or hereafter made by parents, or next of kin to assign all rights whatever over such infant to a third person named in such agreement shall be considered a transfer of guardianship of such infant and shall be binding in the case of males until they attain 21 years of age, and in the case of females until the age of 21 unless sooner married.

NOVA SCOTIA

ILLEGITIMATE CHILDREN'S ACT, R.S., 1923, C. 49

Sec. 9. (1) Upon the mother and putative father being brought before the two Justices in obedience to such warrant, they shall hear the evidence of the mother, the putative father, and any other evidence which is adduced before them.

(2) Upon such evidence they may, unless they discharge the putative father, make an order of filiation requiring him to pay to the overseers of the poor for the poor district or to the town or city, as the case may be:—

- (a) the expenses incidental to the lying-in and maintenance of the child up to the date of the order; and
- (b) the expenses of the funeral of the child if it has died before the making of such order, or,
- (c) if it has not died, such sum of money weekly towards the maintenance of such child while chargeable to such poor district, or for such period as they consider right, respect being had to the ability and prospective means of the putative father.

Sec. 21. The putative father of every illegitimate child shall be liable to contribute

- (a) to the medical and all other expenses connected with the birth of such child, its maintenance and education until the child is able to maintain itself, and with its burial in case it dies before becoming able to maintain itself; and
- (b) To the expense of the maintenance and care, medical and otherwise, of the mother of such child during three months next preceding its birth, and during such period after birth as medical or other special or unusual care and nursing are necessary in connection with or as a consequence of the birth of such child; and
- (c) To the expense of the burial of the mother in case of her death at or in consequence of the birth of such child.

MOTHERS' ALLOWANCES

By an Act of 1919, chapter 26, provision was made for the investigation by a commission of the subject *inter alia* of mothers' allowances. The commission stated in a report published in 1923 that the collection of the necessary information for a study of this subject would require a longer time.

ADOPTION OF CHILDREN ACT, R.S., 1923, C. 139

An order may be made by the county court on application, if written consent to the adoption has been obtained from the child if above the age of fourteen years, or of the parents or surviving parent or the mother of an illegitimate child or from anyone acting in any of the above positions. Consent is not required if parent or guardian has neglected or abandoned child or is not a proper person to have control of child.

NEW BRUNSWICK

BASTARDY ACT C.S., 1903, C. 182; AMD. 1915, C. 53; 1918, C. 44

Section 24 provides that if it be found or admitted by the defendant (the father) that the child has become a charge on the county, the court shall make the order for the mother's expenses and a weekly sum till the child is seven years of age unless the defendant then and there pays into court the sum of \$100, with all costs and expenses to be taxed and allowed by the judge. If it is not proved or admitted by the defendant that the child has so become a public charge, the court shall make an order for the payment of the costs of the prosecution and \$100 or bonds for \$250 each for security for the maintenance of the child up to the age of seven years.

Sec. 25. No order of affiliation shall be made for any amount beyond the lying-in expenses of the woman, the costs and expenses of apprehending and convicting the defendant and a sum not exceeding 70 cents per week for the support of the child from its birth until it attains the age of seven years; but in certain cases the court may order the sum of \$100 to be paid.

Sec. 26. If defendant fails fully to comply with the order of affiliation made, he shall be committed to gaol until he does comply therewith, unless the court is satisfied that he is unable to furnish sureties.

The amendment of 1918 provides that in the city and county of St. John the sums specified in this Act shall be \$200 instead of \$100 and \$400 instead of \$250.

LEGITIMATION ACT, 1920, C. 40

Similar provision to that made in Prince Edward Island is contained in this Act.

AN ACT RESPECTING RATES AND TAXES, C.S., 1903, C. 170

Sec. 3. (10) The property to the amount of five hundred dollars of a wife deserted by her husband and compelled to support herself; and where the whole property owned by a widow, as well in the place where she resides as elsewhere, is under the value of \$1,500, and such widow supports minor children of her own or of her deceased husband, her property in the parish where she resides shall be exempt from taxation to the extent of \$200, and also to the further extent of \$100 for each minor child wholly supported by her. If she has no property in the parish where she resides, then such exemption shall be allowed in the place where such property is situate, but such exemption shall not apply or extend to school taxes.

QUEBEC

The Civil Code of Lower Canada contains the following provisions with regard to illegitimate children:—

237. Children born out of marriage, other than the issue of an incestuous or adulterous connection, are legitimated by the subsequent marriage of their father and mother.

238. Such legitimation takes place even in favour of the deceased children who have left legitimate issue, and in that case it benefits such issue.

239. Children legitimated by a subsequent marriage have the same rights as if they were born of such marriage.

ONTARIO

MOTHERS' ALLOWANCES ACT, 1920, C. 89; AMD. 1921, C. 79

This Act came into force October 1, 1920. The conditions under which an allowance may be paid are dealt with in Section 3, as follows:—

(1) Subject to the provisions of this Act and of the regulations, a monthly allowance may be paid towards the support of dependent children of a mother who

- (a) is a widow or wife of an inmate of a hospital for the insane in Canada, or of a man permanently disabled and incapable of contributing to the support of his family or of a man who has deserted her and has not been heard of for at least five years;
- (b) was resident in Canada at time of the death or total disability of the father of the children on whose behalf the application is to be made, and for a period of three years immediately prior to the application for an allowance;
- (c) is resident in Ontario at the time of the application for an allowance and for a period of two years immediately prior thereto;
- (d) continues to reside in Ontario with her dependent children while in receipt of an allowance;
- (e) was a British subject by birth or naturalization or is the widow or wife of a British subject;
- (f) is a fit and proper person to have the care and custody of her children;
- (g) has resident with her two or more of her own children under fourteen years of age and has not adequate means to care properly for them without the assistance of an allowance under this Act.

(2) A life allowance may be paid to a woman who is a British subject domiciled and resident as aforesaid and is a fit and proper person to have the care and custody of children and who

- (a) has resident with her and under her care a child over the age of fourteen years or a husband who is permanently disabled and incapable of contributing to the support of the family and has also resident with her one of her own children born in lawful wedlock under the age of fourteen years and has not adequate means to care properly for such child without the assistance of an allowance under this Act; or
- (b) is married or unmarried and has resident with her two or more orphan children under fourteen years of age and is the grandmother, sister, aunt or other suitable person acting as the foster mother of such children and has not adequate means to care properly for them without the assistance of an allowance under this Act.

PARENTS' MAINTENANCE ACT, 1921, C. 52

The liability of a son or daughter for the support of his or her parents, when the parents are dependent by reason of age, disease or infirmity is dealt with in Section 2.

Section 3 supplies the procedure for bringing the Act into effect. A dependent parent with consent of the Crown Attorney may summon the son or daughter before a magistrate and upon sufficient evidence as to the means of the son or daughter, the magistrate may make an order for a weekly sum of money not exceeding \$20.

CHILDREN OF UNMARRIED PARENTS' ACT, 1921, C. 54

Sec. 18. Where the person so served, appears in pursuance of such notice, the judge may hear and determine the matter in a summary manner . . . and may make an order . . . requiring the father to pay to the provincial officer

- (a) the reasonable expenses for the maintenance and care, medical and otherwise, of the mother of such child during the three months next preceding the birth of the child, at the birth, and during such period after the birth as may in the opinion of the judge have been or be necessary in connection with or in consequence of the birth of such child, taking into consideration the circumstances of the case and the report of the medical officer of health of the municipality;
- (b) a sum of money weekly toward the maintenance of the child, until the child attains an age of sixteen years, or a lump sum in lieu of such weekly payments, which shall form a principal consuming annuity, the income from which shall be equivalent to the order for weekly maintenance by the court, the balance of which, in the event of the death of the child before the age of sixteen years, shall revert to the province unless otherwise ordered by the court;
- (c) the expenses of the burial of the mother in case of her death at or in consequence of the birth of the child;
- (d) the expenses of the burial of the child if he dies before the making of the affiliation order.

LEGITIMATION ACT, 1921, C. 53

Section 2 provides, that if parents of any child born out of lawful wedlock intermarry, such child shall for all purposes be deemed to have been legitimate from the time of birth, except that such a child shall be postponed as to inheritance to a child born in lawful wedlock to the same father under a previous marriage to another woman or to the same mother under a previous marriage to another man.

FATAL ACCIDENTS ACT, R.S., 1914, C. 151

Where the death of a person is caused by a wrongful act, neglect or default, which, if death had not ensued, would have entitled the injured person to damages, the party who would have been liable if death had not ensued, shall be liable for an action for damages which shall be taken for the benefit of the wife, husband, parent or child of the person whose death has been so caused.

ADOPTION OF CHILDREN ACT, 1921, C. 55

An order for the adoption of a child under fourteen years shall not be made unless the provincial officer has certified in writing (a) that the child has lived for at least two years with the applicant; (b) that the applicant is to the knowledge of the provincial officer a fit and proper person to have the care and custody of the child.

MANITOBA

CHILD WELFARE ACT, 1922, C. 2; AMD. 1924, CC. 6, 7

Part IV of this Act deals with the children of unmarried parents and provisions is made for claim by the mother for support for her child by the father. Evidence as to the facts is to be heard by the court.

Sec. 42. (1) Upon such evidence they or he (justices or police magistrate or judge) may adjudge him to be the father of the child and make an order of filiation requiring him to pay to the mother or in his or their discretion to any person or charitable organization or society or to the director on behalf of the mother of the child, or on behalf of the child,

(a) the expenses incidental to the lying-in and maintenance of the mother and the birth and maintenance of the child up to the date of the order; and

(b) the expenses of the funeral of the child if it has died before the making of such order; or

(c) if it has not died, such sum of money weekly or monthly towards the maintenance of such child for such period as shall be considered right, respect being had to the ability and prospective means of the father.

(2) No order shall be made unless the evidence of the mother is corroborated by some other material evidence implicating the accused.

ACT RESPECTING COMPENSATION TO FAMILIES OF PERSONS KILLED BY ACCIDENT, R.S., 1913, C. 36

This Act renders liable for damages a person who is responsible for death of another by accident resulting from a wrongful act, neglect or default, if act is such that if injured person had not died he would have been entitled to maintain an action for damages.

Such action shall be for the benefit of the wife, husband, parent, child, brother and sister of the person whose death has been so caused.

LEGITIMATION ACT, 1920, C. 72

This Act provides for the legitimation of children born out of wedlock by subsequent intermarriage of the parents. It does not affect right to property which has vested in any person before the intermarriage or before the enactment of this statute.

MOTHERS' ALLOWANCES, CHILD WELFARE ACT, 1922, C. 2; AMD. 1924, C. 6

Part III of this Act repeals the Mothers' Allowances Act, 1916, and its amendments and authorizes the Child Welfare Board to draw up and submit to the Lieutenant-Governor in Council, a schedule according to which allowances for the maintenance of dependent and bereaved children may be granted to the mother of such child or, if the mother is not living or is confined in a hospital for mental diseases or is physically incapacitated, to such other

person as may be entrusted by the Child Welfare Board with the care and custody of such child. Such schedule and amendments thereto when approved by the Lieutenant-Governor in Council shall be the basis on which every allowance for the maintenance of a bereaved and dependent child shall be made.

ADOPTION OF CHILDREN, CHILD WELFARE ACT, 1922, C. 2

Secs. 113-120. The Director of Child Welfare may issue a certificate of adoption after investigation of circumstances and after one year a decree of absolute adoption may be issued by the county court on approval in writing from the director.

SASKATCHEWAN

MATERNITY BENEFITS

Saskatchewan is in advance of the other provinces of the Dominion in dealing with the subject of maternity benefits, in as much as it is the only province which has provided for support to needy and expectant mothers, who for financial reasons are unable to obtain the necessary medical, hospital or nursing services. A regulation issued under the authority of the Public Health Act, April 16, 1920, provides that:—

1. The Commissioner of Public Health may with the approval of the Minister in charge, grant to any expectant mother in Saskatchewan, who, for financial reasons is unable to procure the medical, hospital or nursing attendance or services necessary for her expected confinement or proper clothing for herself or her expected child such sums as he may consider are reasonably required for those purposes, not to exceed \$25.

2. The money granted may be paid directly to the hospital which cares for her, the physician or nurse who attends her, or to the expectant mother herself, or partly to one and partly to another in such manner and proportion as the commissioner may decide.

3. The commissioner may make the grants above mentioned when he has obtained such information as to the circumstances of the person requiring aid as shall satisfy him of the necessities.

ILLEGITIMATE CHILDREN'S ACT, R.S., 1920, C. 156

Sec. 5. After the birth of the child the court may after hearing evidence adjudge the man so summoned to be the putative father of the child, and may make an order upon the putative father for the payment to the mother of the child, or to any one who may be appointed by the court to have the custody and charge of the child, of a sum not exceeding \$5 weekly for the maintenance and education of the child, and of the expenses incidental to the birth of the child, and of its funeral expenses, providing it has died before the making of the order, and of such costs as may have been incurred in the obtaining of the order, such weekly sum to be calculated from the birth of the child unless the court otherwise determines.

Sec. 7. All monies payable under any order shall be due and payable to the mother of the child in respect of such time and so long as she lives and is of sound mind and is not confined in any gaol or prison.

Sec. 8. No order for the payment of moneys made under section 6 shall except for purpose of recovering money previously due and unpaid be of any force or validity after the child has attained the age of thirteen years or after its death.

Sec. 9. Order may be varied on proof that the means of the putative father have been altered since the making of the said order.

LEGITIMATION ACT, R.S., 1920, C. 157

Provides that in the event of marriage of the parents after the birth of the child, the child shall be deemed to be legitimate from the time of birth. This does not affect the right, title or interest in or to property where it has vested in any person prior to the marriage or to the passing of the Act.

PARENTS' MAINTENANCE ACT, 1923, C. 53

Similar to corresponding legislation in Ontario, but deals more fully with position of dependent mother.

Sec. 2. (3) A mother is a dependant if she is

(a) a widow;

(b) wife of a man in gaol or penitentiary for at least six months or in an institution for insane or of one permanently incapacitated.

MOTHERS' ALLOWANCES ACT, 1922, C. 73

Sec. 3. (1) Subject to the provisions of this Act and of any regulations made thereunder, monthly payments, not to exceed in the whole the amount voted for that purpose by the legislature, may be paid to provide support or partial support for the dependent children, under sixteen years of age, of any woman who by reason of poverty is unable to take proper care of her child or children, and who

- (a) is a widow or the wife of an inmate of a gaol or penitentiary, of an institution for incurables or for the feeble minded or insane in Canada, or of a man who is permanently incapacitated by incurable disease or insanity from contributing sufficiently to the support of his family; or
- (b) being unmarried or a widow, has resident with her one or more such children who are orphans, and is the grandmother, sister, aunt, or other suitable person acting as the foster mother of such children, and has not adequate means to care properly for them without the assistance of an allowance under this Act.

ADOPTION OF CHILDREN ACT, 1922, C. 64

In addition to the consent of the natural parents and of the child, if of twelve years of age, the consent of the Provincial Officer of Dependent Children is required.

ALBERTA

CHILDREN OF UNMARRIED PARENTS ACT, 1923, C. 50

Section 11 makes similar provisions to that of Ontario Act, 1921, c. 54, s. 18.

VITAL STATISTICS ACT, R.S., 1922, C. 24

Section 18 provides for the registration of an illegitimate child as the lawful issue of its parents on the production of a statutory declaration made by both parents setting forth the names, occupations of the parents, date of birth of child, date of their marriage with certificate of marriage.

MOTHERS' ALLOWANCE ACT, R.S., 1922, C. 215, AMD., 1923, C. 51

Sec. 4. Any woman who is a widow or the wife of a person committed to a hospital under the provisions of the *Mental Diseases Act*, and actually an inmate thereof and who was either a resident of the province at the time of the passing of this Act, or whose husband was a resident at the time of his death or at the time of his entering the hospital, and who, having in her custody a child or children under the age of fifteen years in the case of boys, and sixteen years in the case of girls, is unable to take proper care of such child or children, may by herself or through any other person apply to an inspector of the municipality of which she is a resident, or in the case of an improvement district to the superintendent for assistance under this Act.

INFANTS ACT, R.S., 1922, C. 30

The Supreme Court may issue order for adoption if satisfied with character and fitness of petitioner and on the written consent of child if above the age of ten years or the parents or surviving parent or mother if child is illegitimate or any person *in loco parentis*.

BRITISH COLUMBIA

LEGITIMATION ACT, 1922, C. 43

Where parents of a child born out of lawful wedlock intermarry after birth of child, child shall be deemed to be legitimate from time of its birth. Nothing in this Act affects any right in property where such right vested prior to the passing of the Act.

PARENTS' MAINTENANCE ACT, 1922, C. 57

Sec. 2. (1) For the purposes of this Act, a parent shall be deemed to be "dependent" where, by reason of age, disease or infirmity, he is unable to maintain himself.

Sec. 3. Every son and every daughter shall be liable for the maintenance of his or her dependent parents to the extent and in the manner provided in this Act.

Sec. 4. Proceedings may be instituted at instance of parent or municipality or Attorney General.

Sec. 5. Magistrate may make order if satisfied on evidence before him that parent is dependent and child has sufficient means to contribute to maintenance of parent for the payment of a weekly sum not exceeding \$20.

Sec. 6. Power is given to vary order on change of circumstances.

MATERNITY PROTECTION ACT, 1921, C. 37, AMD. 1921 (SECOND SESSION) C. 31

This Act is formally entitled "An Act Concerning the employment of Women before and after child birth."

Sec. 3. In any public or private industrial or commercial undertaking or in any branch thereof other than an undertaking in which only members of the same family are employed, a woman

- (a) shall not be permitted to work during the six weeks following her confinement;
- (b) shall have the right to leave her work if she produces a medical certificate stating that her confinement will probably take place within six weeks;
- (c) shall in any case, if she is nursing her child, be allowed half an hour twice a day during her working hours for this purpose.

Section 4 forbids an employer dismissing a woman for absence covered by clauses (a) and (b) of section 3, or for a longer period of absence arising out of pregnancy or confinement.

Section 5 imposes a maximum penalty of \$1,000 for contraventions of Section 3.

The amendment of 1921 (second session) provided that the Act should come into force January 1, 1922.

MOTHERS' PENSIONS ACT, 1920, C. 61, AMD. 1921, C. 43; 1921 (SECOND SESSION) C. 35

Under the amending Act of 1921, "Mother" is deemed to be any indigent person who is the mother of a child or children under the age of sixteen years, and who is

- (a) a widow whose husband at the time of his death was domiciled in the province;
- (b) a married woman whose husband became an inmate of a penitentiary or public hospital for the insane at a time when he was domiciled in the province;
- (c) a woman whose husband is unable to support his family by reason of total disability from sickness or accident arising at a time when he was domiciled in the province;
- (d) a deserted wife whose husband deserted her at a time when he was domiciled in the province; or
- (e) any other person whose case, in the opinion of the Workmen's Compensation Board, is a proper one for assistance under the provisions of this Act.

Sec. 3. Applications are made to the superintendent and approved by the minister.

Sec. 4. Applicant must be:

- (a) A British subject;
- (b) Resident in province eighteen months prior to application;
- (c) Mother of a child or children under sixteen years living with her;
- (d) Without necessary means of support.

Section 5 requires that the applicant must be a fit and proper person to have custody of the child.

Sec. 6. Allowance shall in no case exceed \$42.50 per month to the mother of one child under sixteen years, and an additional monthly allowance of \$7.50 for each additional child under sixteen years. Payment ceases upon remarriage of mother or her ceasing to reside within the province.

CHILDREN OF UNMARRIED PARENTS ACT, 1922, C. 9

Sec. 9. (1) Upon sufficient evidence being adduced, the magistrate may make an order declaring the putative father to be the father of the child and requiring him to pay the superintendent

- (a) the reasonable expenses for the maintenance and care, medical or otherwise, of the mother or unmarried woman, during the three months next preceding the birth of the child, at the birth and during such period after the birth as may in the opinion of the magistrate have been or be necessary in connection with, or as a consequence of the birth of the child, taking into consideration the circumstances of the case and the report of any Health Officer or duly qualified medical practitioner made in respect thereof;
- (b) a sum of money weekly towards the maintenance of the child until the child attains an age of sixteen years;
- (c) the expenses of the burial of the mother or unmarried woman in case of her death at or in consequence of the birth of the child;
- (d) the expenses of the burial of the child in case of the death of the child before making the affiliation order.

(2) In determining the sums payable by the putative father under this section, the magistrate shall take into consideration the ability of the putative father to provide the same and his prospective means.

(3) The magistrate may, in his discretion by the affiliation order or by a subsequent order varying it, require the mother of a child born out of wedlock, to contribute a sum of money weekly towards the maintenance of the child until the child attains the age of sixteen years.

TESTATOR'S FAMILY MAINTENANCE ACT, 1920, C. 94, AMD. 1921, C. 66

The object of this Act is to provide for the wife, husband or children of a person who died leaving a will, and, in the opinion of a judge before whom the application is made, without making adequate provision for the proper maintenance and support of the testator's wife, husband or children. The court may make such order as it thinks adequate, just and equitable under the circumstances.

FAMILIES' COMPENSATION ACT, R.S., 1911, C. 82

Where the death of a person is caused by wrongful act, neglect or default which, if death had not ensued, would have entitled the party injured to damages, the person, who would have been liable if death had not ensued, shall be liable to an action for damages. Every such action shall be for the benefit of the wife, husband, parent and child of the person whose death shall have been so caused.

ADOPTION OF CHILDREN ACT, 1920, C. 2; AMD. 1921, C. 1; 1922, C. 3

This Act is similar to Nova Scotia, R.S. 1923, c. 139, except that consent of child is required if child is over twelve years of age.

(For laws governing the custody of children and the appointment of guardians, see Chapter XI.)

CHAPTER XIII

COMMERCIAL AND INDUSTRIAL EMPLOYMENT

Laws governing the employment of women are provincial in scope and affect the women engaged in industrial and commercial occupations.

IN FACTORIES

(a) HOURS OF LABOUR

In British Columbia the Factory Act (R.S. 1911, c. 81) limits the normal working day for female employees to eight hours in one day and forty-eight in one week. A similar law in Saskatchewan (R.S. 1920, c. 176) prohibits the employment of women for longer than forty-eight hours in one week. In Alberta, an order of the Minimum Wage Board established a forty-eight-hour week for women employed in the manufacturing industry. In Manitoba, women employed in factories are limited to nine hours' work a day and fifty-four a week (R.S. 1913, c. 70 amd. 1915, c. 24). Regulations of the Minimum Wage Board have reduced weekly hours to forty-eight in certain factories. In Ontario, Quebec and New Brunswick the law provides for a ten-hour day and sixty-hour week for women in factories (R.S. O., 1914, c. 229, s. 32; R.S. Q., 1909, Art. 3837; S. N.B., 1920, c. 54, s. 4). The Minimum Wage Board of Ontario has authority to fix maximum hours of employment but no such orders have been issued. The Nova Scotia Factory Act does not limit the normal working day but the new Minimum Wage Act (1924, c. 57) enables the Minimum Wage Board to limit working hours of women.

All the provinces, with the exception of Alberta, permit an extension of hours of labour of women in case of accident or emergency.

(b) NIGHT WORK

All the provincial factory Acts place some restriction on the employment of women at night, no province permitting work to be resumed at an earlier hour than 6 a.m.

(c) HEALTH AND SAFETY

The Factory Acts make it illegal to employ a woman in such a manner that her health is likely to be injured.

IN SHOPS

The Manitoba Minimum Wage Board has fixed an 8½-hour day for women in shops and in Ontario the Factory Act limits working hours to ten a day and sixty a week.

Alberta, British Columbia, Manitoba, Nova Scotia, New Brunswick and Ontario require an employer to provide a chair or seat for each woman worker and to allow her to use it when her work permits.

In Ontario, the Factory Act requires the employer in a shop where thirty-five or more women are employed to provide suitable dressing-rooms and dining-rooms with a matron in attendance. The factory inspector may exempt the employer from compliance with this provision.

IN MINES

Women are not permitted to be employed in mines in Canada.

IN LAUNDRIES

In all provinces except Nova Scotia, laundries are subject to regulation under the Factory Acts. The Minimum Wage Boards of British Columbia, Alberta and Saskatchewan, have fixed weekly hours at forty-eight. In Manitoba the same authority has limited hours of labour to fifty-two a week and nine a day and in Ontario the maximum is fifty hours a week.

IN HOTELS AND RESTAURANTS

In British Columbia and Alberta, the Minimum Wage Boards have limited weekly hours of labour in hotels, restaurants and refreshment rooms to forty-eight with provision for emergency overtime up to fifty-two hours. In Alberta overtime is limited to three weeks in any month and in British Columbia a rate of time and a half is payable for overtime.

In Saskatchewan and Manitoba, a ten-hour day is prescribed. In the latter province, a forty-eight-hour week is provided with one full day off each week and in the former a fifty-hour week is permitted for a six-day week or fifty-six hours for a seven-day week. In Manitoba, overtime up to six hours a week or on twenty days a year may be worked in emergencies and in Saskatchewan a permit must be obtained for overtime.

BY ORIENTALS

Legislation prohibiting the employment of women by Orientals has been enacted in British Columbia, Ontario and Manitoba but in the two last named provinces the statutes have not been proclaimed to be in force. In 1923 the Winnipeg charter was amended to enable that city to pass a by-law prohibiting the employment of white women by Chinese except by special license.

The British Columbia law (1919, c. 63) prohibits the employment of any white woman by any Chinese person or the permitting of any white woman to reside or lodge in any restaurant, laundry or other place of business or amusement owned or managed by Chinese persons.

In Saskatchewan, the Female Employment Act (R.S. 1920, c. 185) requires any person employing a white woman in any capacity which necessitates her residing or working in a laundry or restaurant to obtain a special license from the municipality concerned.

MINIMUM WAGES

All the provinces except Prince Edward Island and New Brunswick have laws enabling the establishment of minimum wages for women, but the Quebec statute is to become operative only on proclamation by the Lieutenant-Governor.

NOVA SCOTIA

WOMEN'S MINIMUM WAGE ACT, 1920, C. 11, AMD. 1924, C. 57

Section 3 provides for a board of five members to be called "The Minimum Wage Board" of whom two shall be women.

Sec. 4. The board shall have power to establish after due enquiry a minimum wage and the maximum number of hours per week for which such minimum wage shall be paid. The board may establish a rate of wages for all time worked in excess of the established number of hours and also a wage lower than the minimum wage for any handicapped employee, part-time employee or apprentice.

Sec. 7. This Act does not apply to farm workers or domestic servants.

QUEBEC

WOMEN'S MINIMUM WAGE ACT, 1919, C. 11

Sec. 2. Three persons, one of whom may be a woman, are to be appointed to form a Minimum Wage Commission.

Sec. 6. The commission may convene in a conference a number of persons who shall be selected one-half by the employers and one-half by the employees and add a number of disinterested persons to it. After hearing the employers and employees, such conference shall, by the vote of the majority of the members constituting it, determine the minimum wage to be paid to the women employed in the special industry in question.

Sec. 7. The decision of the conference shall be submitted to the commission which may approve, reject or amend the same. The decision of the commission fixing a minimum wage shall be binding upon employers and employees.

Sec. 9. The commission may issue special permits for the employment of apprentices or of women who are handicapped at a lower wage than that fixed by an order.

Sec. 10. A special scale may be fixed for girls under eighteen years of age.

No commission has been constituted under this Act.

ONTARIO

MINIMUM WAGE ACT, 1920, C. 87; AMD. 1921, C. 78; 1922, C. 91

This statute is similar to Nova Scotia, 1920, c. 11, amd. 1924, c. 57.

MANITOBA

MINIMUM WAGE ACT, 1918, C. 38; AMD. 1919, C. 54

Sec. 2. (e) "Employee" includes every female worker employed in any mail order house, shop, office, place of amusement or factory in any city in Manitoba.

Sec. 3. The Minimum Wage Board must consist of five persons, two members of whom represent the employers and two the employees, one representative of each being a woman.

Sec. 4. The board is authorized to ascertain and declare and make all necessary orders relative to minimum wages, hours of employment and conditions of labour for female employees.

Sec. 10. Special licenses may be granted for the employment of persons who are physically defective or of apprentices.

SASKATCHEWAN

MINIMUM WAGE ACT, R.S., 1920, C. 186, AMD., 1922, C. 72

Sec. 2. (2) "Employee" includes every female worker in a shop or factory in any city in Saskatchewan.

Section 3 is similar to Nova Scotia, 1920, c. 11, sec. 3.

Section 4 enables the board to establish minimum wages and maximum hours of employment and standards of sanitary conditions and to determine the number of employees who may be apprentices.

Section 9 is similar to Manitoba, 1918, c. 38, s. 10.

ALBERTA

MINIMUM WAGE ACT, R.S., 1922, C. 181, AMD. 1924, C. 3, S. 13

Sec. 2. (c) "Employee" means every female worker employed in any trade or occupation who works for wages except domestic servants in private houses.

Sec. 4. The Minimum Wage Board must have three members, two of whom represent the employers and employed.

Secs. 6-7. Provide for a conference as in Quebec, 1919, c. 11, ss. 6-7.

Sec. 8. The board may establish minimum wages with special rates for handicapped and part-time employees and for apprentices.

Sec. 10. (1) The board with the approval of the Lieutenant-Governor in Council may fix periods of employment and shifts for different classes of employees and may determine the time or times to be allowed for meals.

(3) Where, by reason of the season of the year or otherwise it seems advisable, the board may temporarily increase the hours for any class of employees and determine the rate at which such overtime shall be remunerated and may temporarily increase the number of apprentices which may be employed in any trade or occupation.

BRITISH COLUMBIA

MINIMUM WAGE ACT, 1918, C. 56, AMD., 1919, C. 61; 1921, C. 40

Sec. 2. The term "employee" shall include every female person who is in receipt of any compensation for labour or services performed for an employer.

Sec. 15. This Act shall not apply to farm labourers, fruit pickers or domestic servants.

Sec. 3. The Minimum Wage Board shall consist of three members one of whom shall be a woman and one shall be the Deputy Minister of Labour who shall be chairman.

Sec. 5. The board shall fix the minimum wages, the maximum hours and such conditions of labour as seem expedient for the welfare of the employees.

Sec. 7. The board is empowered to call a conference as in Quebec, 1919, c. 11, ss. 6-7.

Sec. 10. Special licenses may be granted for the employment at lower rates of physical defectives and apprentices.

WORKMEN'S COMPENSATION

All the provinces except Prince Edward Island provide for compensation to be paid to the wife, husband, children or dependants of workers killed or injured in the course of their employment. In Quebec and Saskatchewan, compensation is obtained through an action in the courts and, in the other provinces, from the Workmen's Compensation Board which administers an accident fund made up of contributions from employers based on an assessment made according to the hazard of the industry.

NOVA SCOTIA

WORKMEN'S COMPENSATION ACT, R.S., 1923, C. 129

Sec. 38. (1) In case of death from injury, the compensation shall be \$75 for burial, a monthly allowance of \$30 to widow or invalid widower with \$7.50 additional for each child under 16 years of age up to a maximum of \$60 a month. If the only dependants are children, the monthly allowance shall be \$15 for each child under 16 years to a maximum of \$60. Compensation payable exclusive of burial expenses shall not exceed 55 per cent of the average earnings of the workman.

Secs. 42, 44. In case of total disability, the compensation shall be a periodical payment equal to 55 per cent of the average earnings payable for the duration of the disability, the maximum earnings being \$1,200 per year.

Secs. 43-44. In case of partial disability, compensation shall be a periodical payment equal to 55 per cent of the difference between the earnings prior and subsequent to the accident.

Sec. 18. Medical aid, including hospital and nursing services, is provided for those entitled to compensation.

NEW BRUNSWICK

WORKMEN'S COMPENSATION ACT, 1918, C. 37; AMD. 1919, C. 7; 1920, C. 12; 1922, C. 10

Sec. 36. In case of death, compensation is payable in the same scale as in Nova Scotia, except that the amount allowed for burial expenses is \$100 and a maximum of 55 per cent of earnings is fixed.

In case of disability the rate of compensation is the same as in Nova Scotia but the maximum is \$2,500 for permanent partial disability and the maximum earnings \$1,500 per annum.

Sec. 39. Medical aid is provided as in Nova Scotia.

QUEBEC

A commission is investigating the subject of workmen's compensation in Quebec and is expected to submit its report at the next session of the legislature.

R.S., 1909, AMD. 1914, C. 57; 1918, C. 71; 1919, C. 69; 1920, C. 75; 1922, C. 38

Art. 7322. In case of total disability, compensation is equal to 50 per cent of yearly or daily wages up to a maximum of \$3,000 and in case of partial disability 50 per cent of the difference between earnings prior and subsequent to the accident.

Art. 7323. In case of death, compensation shall be equal to a sum four times the average yearly wages and shall not be less than \$1,500 or more than \$3,000 and medical aid and funeral expenses up to \$50.

ONTARIO

WORKMEN'S COMPENSATION ACT, 1914, C. 25, AMD. 1915, C. 24; 1916, C. 31; 1917, C. 34; 1919, C. 34; 1920, C. 43; 1922, C. 56; 1923, C. 31; 1924, C. 41

Sec. 33. In case of death, compensation shall be \$125 for funeral expenses, \$40 per month to a widow or invalid husband with a lump sum of \$100 and \$10 a month for each child under 16 years of age. If children are only dependants compensation is at rate of \$15 a month for each child. Maximum is 66 $\frac{2}{3}$ per cent of the average earnings which cannot exceed \$2,000 a year.

Secs. 37, 39, 40A. In case of total disability, compensation is 66 $\frac{2}{3}$ per cent of average earnings for duration of disability, the minimum being \$12.50 a week and maximum earnings \$2,000.

Secs. 38, 40. In case of partial disability, compensation shall be 66 $\frac{2}{3}$ per cent of difference in earnings before and after accident.

Sec. 44A. Every workman is entitled to full medical aid and such artificial apparatus as may be necessary.

MANITOBA

WORKMEN'S COMPENSATION ACT, 1920, C. 159, AMD. 1921, C. 83

Sec. 24. In case of death, compensation shall be \$150 for burial expenses, \$30 a month to a widow or invalid widower and \$7.50 a month for each child under 16 years.

Secs. 29, 31. In case of total disability, compensation is at rate of 66 $\frac{2}{3}$ per cent of average earnings, the minimum compensation being \$15 a week, the maximum earnings being \$2,000 a year.

Secs. 30-31. In case of partial disability, compensation is at rate of 66 $\frac{2}{3}$ per cent of difference between earnings prior and subsequent to the accident.

Sec. 23. Full medical aid is provided as in Ontario.

SASKATCHEWAN

WORKMEN'S COMPENSATION ACT, R.S., 1920, C. 210, AMD. 1920, C. 73

Sec. 15. The amount of compensation recoverable under this Act shall not exceed either such sum as is found to be equivalent to the estimated earnings during the three years preceding the injury or the sum of \$2,000 whichever is larger but shall not exceed in any case the sum of \$2,500.

ALBERTA

WORKMEN'S COMPENSATION ACT, R.S., 1922, C. 177, AMD. 1924, C. 33

Sec. 49. In case of death, compensation shall be \$100 for burial expenses and a monthly allowance of \$35 to the widow or invalid widower together with \$12 for the first child under 16 years of age, \$10 for the second child under 16 and an additional allowance decreasing by a \$1 for each additional child but not less than \$8 for any child. If children are only dependants, compensation shall be \$15 monthly for each child.

Secs. 52, 54, 56. In case of total disability, compensation shall be at the rate of 62 $\frac{1}{2}$ per cent of average earnings during the period of disability, maximum earnings being \$2,000 but compensation is not to exceed \$1,140 a year.

Secs. 53, 55. In case of partial disability, compensation shall be at the rate of 62 $\frac{1}{2}$ per cent of the difference between average earnings before and after accident.

Sec. 60. Full medical aid is provided.

BRITISH COLUMBIA

WORKMEN'S COMPENSATION ACT, 1916, C. 77; AMD. 1918, C. 102, 1919, C. 93; 1920, C. 105; 1921, C. 35; 1922, C. 86

Sec. 15. In case of death, compensation shall be \$100 for funeral expenses, a monthly allowance of \$35 to a widow or invalid widower with \$7.50 for each child under 16 years of age up to a maximum of \$65 a month. If children are only dependants, monthly allowance shall be \$12.50 for each child under 16 up to a maximum of \$50.

Secs. 17, 19, 22. In case of total disability, compensation shall be 62½ per cent of average earnings, the maximum earnings allowed being \$2,000, for the duration of disability.

Secs. 18, 20. In case of partial disability, compensation shall be 62½ per cent of the difference in earning capacity before and after the accident.

Sec. 21. Full medical aid is provided.

MORAL PROTECTION

Section 213 (b) of the Criminal Code of Canada protects a girl under 21 years of age from seduction by her employer. (See Chapter III).

BEFORE AND AFTER CHILDBIRTH

The draft convention of the International Labour Conference, 1919, regarding the employment of women before and after childbirth has been embodied in the Maternity Protection Act of British Columbia, 1921, c. 37, amd. 1921, (2nd session) c. 31. (See Chapter XII.)

CHAPTER XIV

MISCELLANEOUS

CIVIL ACTION FOR SEDUCTION

In addition to the protection given to young girls and women against seduction by sections 210-214 of the Criminal Code of Canada, a civil action may be maintained in the courts in the different provinces, for damage against the seducer.

In Alberta, the father, or in case of his death, the mother of an unmarried woman, may maintain an action for seduction. Upon the trial of such an action brought by the parent it shall not be necessary to prove any act of service performed by the party seduced but it shall in all cases be presumed and no evidence shall be received to the contrary.

Any other person, who by reason of relation of master or otherwise would have been entitled at common law to maintain an action for the seduction of an unmarried female, may maintain an action if the father or mother be not resident in the province, or being resident, does not bring an action for seduction within six months from the birth of the child.

Or the person seduced may bring an action in her own name in the same manner as an action for any other tort. (R.S.A., 1922, c. 102.)

Saskatchewan, R.S. 1920, c. 57, is similar to Alberta, R.S. 1922, c. 102.

Ontario, R.S. 1914, c. 72, makes similar provision to that of the Alberta law with two exceptions, that of the clause enabling an action to be brought by the seduced girl which is omitted in the Ontario Act and a section in the Ontario law which provides that in the case of an unmarried female under 21 years of age, the legal guardian or any person who stood *in loco parentis* to such girl may maintain an action for seduction.

Manitoba, R.S. 1913, c. 177, is similar to the Alberta Act with the exception of the section enabling the seduced girl to bring an action.

VENEREAL DISEASES

In addition to the provisions in the Criminal Code of Canada regarding the communication of venereal diseases as quoted in Chapter III, several of the provinces have enacted laws for the suppression of venereal diseases. In Quebec (1919, c. 51, s. 15) provision is made for the medical examination of certain prisoners and for notification to district health inspectors. In Nova Scotia, Ontario, Manitoba, Saskatchewan, Alberta and British Columbia, the main features of the Acts are the same. They comprise compulsory modified notification, compulsory examination of suspects and compulsory treatment of infected individuals, regulations prohibiting the sale of drugs and appliances for the cure of venereal disease except on physician's prescription, exclusion of infected persons from trades, right of entry, detention, quarantine and regulations prohibiting the infection of others. (Nova Scotia, R.S. 1923, c. 157, ss. 61-71; Ontario, 1918, c. 42, amd. 1920, c. 82, 1922, c. 89; Manitoba, 1919, c. 109; Saskatchewan, R.S. 1920, c. 175; Alberta, R.S. 1922, c. 61; British Columbia, 1919, c. 88.)

DOMICILE

A married woman's legal domicile is the domicile of her husband, and until she is legally separated from him she has no other in the eyes of the law. This fact affects the obtaining of a divorce as domicile limits the jurisdiction of the courts.

WOMEN AS MAGISTRATES OR JUDGES

The Juvenile Courts Act, 1918 (c. 20) of British Columbia enables women to be appointed as Judges of Juvenile Courts upon the same terms as men.

The Magistrates Act, 1922 (c. 48) of Ontario provides for the appointment of a woman as police magistrate in a city having a population of over 100,000 if such action is declared desirable by a resolution of the city council. The same section states, however, that nothing in the section is to be construed as a declaration that women were ineligible for such appointment at the time of the enactment of the Act.

Mrs. R. R. Jamieson, president of the Local Council of Women of Calgary, was the first woman to be appointed judge in Canada. She was appointed judge of the Juvenile Court in 1914 and was later given the authority of a police magistrate and judge of a district court.

WOMEN ON JURIES

ALBERTA

JURY ACT, R.S., 1922, C. 74

Sec. 3. Subject to the exemptions and disqualifications hereinafter mentioned, any resident of Alberta who is a British subject over 25 and under 60 years of age shall be liable to serve as juror in all civil and criminal cases tried by a jury in the judicial district in which he or she resides.

Sec. 5. No woman shall be compelled to serve as a juror unless prior to the service of a summons upon her she signs a document signifying her willingness to so serve.

Sec. 28. Every jury shall consist of six persons, any five of whom may return a verdict in civil action but in criminal cases, the verdict must be unanimous.

Sec. 32. In all actions triable by a jury, if a woman be a party to the action she may at any time notify the clerk of the court that she desires three women to be upon the jury and in such event the jury shall be composed of three women and three men. If all the parties to an action be women they may at any time notify the clerk that all the jury must be women and in such event the jury shall be composed of six women. If the rights of a woman who is not a party to the action are involved, such woman or any party to the action may apply to a judge for an order that one-half or all of the jury be women and the judge may make such order as to him seems proper, provided always that the notice and application for such jurors must be given or made at least twenty days before the opening of the sittings of the court at which the trial is to be held.

Sec. 41. Every man summoned and every woman who having signed a consent to serve as a juror who fails to obey the summons shall be liable to a fine not exceeding \$50 or to imprisonment not exceeding thirty days or to both fine and imprisonment.

Sec. 17. No woman shall be summoned to serve on a jury in criminal cases until the Parliament of Canada enacts that it shall not be necessary to keep the jury together during the adjournment of a trial of indictable offences.

BRITISH COLUMBIA

JURY ACT, 1913, C. 34, AMD. 1922, C. 38

Sec. 2. "Person" means and includes those of either sex.

Sec. 8. (4) The sheriff shall forthwith after the completion of the preliminary list notify all women whose names have been placed on the list, by registered letter addressed to her last known address, stating that her name has been placed on a preliminary list of jurors for the ensuing year, and that unless she notifies the sheriff within fifteen days from the date of the notice of her unwillingness to serve as a juror, she will be liable to have her name placed on the jury list for said year.

HIGHER EDUCATION AND THE PROFESSIONS

Canadian universities give degrees to women on the same terms as to men and the professions of medicine and teaching may be practised by women as by men. Women may follow the legal profession in all the provinces except Quebec.

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