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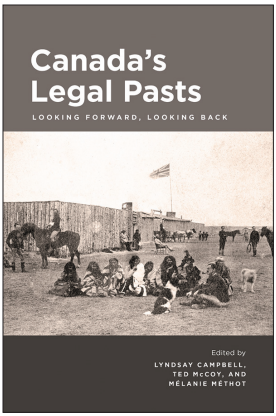

CANADA'S LEGAL PASTS: Looking Forward, Looking Back

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ISBN 978-1-77385-117-4

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Sex Discrimination in Canadian Law: From Equal Citizenship to Human Rights Law

Dominique Clément

Introduction: Equality Deferred

For most of Canadian history the unequal treatment of Canada's female citizens was pervasive and entrenched in law. The law reflected common sense notions about gender and women's roles in public and private life. Male legislators created laws that restricted women's opportunities and choices, or imposed greater obligations on women. Nineteenth-century law often gave husbands control over their wives. Alternatively, some laws "privileged" women, such as protective labour laws that provided opportunities for women that did not exist for men. Such laws, however, were rooted in the belief that women were dependents, or defined women as mothers whose reproductive responsibilities needed to be regulated. In other words, these laws marginalized women in the workforce and reinforced unequal gender roles.

Most scholarship on women and the law in Canada is narrowly focused on a single jurisdiction or only addresses one form of law, such as criminal or family law.[1] Studies are also often concerned with a particular period in history, such as the late nineteenth century or the period following the

Charter of Rights and Freedoms.[2] These studies, while invaluable, fail to capture the broad scope of legal reform throughout Canadian history.[3] Moreover, they underestimate the extent of those legal disabilities that have historically been imposed on women in Canada by ignoring the multiple intersecting legal regimes that compound discrimination over time.

This chapter argues that there were three stages of legal reform in Canadian history that addressed sex discrimination in law: equal citizenship, formal legal equality, and human rights law.[4] Each stage of legal reform mirrored the evolution of the women's movement. The first wave of the women's movement, which gained prominence by the late nineteenth century, played a central role in lobbying for legal reforms that recognized fundamental rights of citizenship.[5] The most notable reform was the right to vote, but during this period there were also changes to the law on property, family, and work. Most of these reforms were designed to protect (i.e., regulate) women and children from abuse, rather than provide for equality under the law. Legal distinctions based on gender remained prevalent. The next stage of legal reform coincided with a second wave of mobilization within the women's movement during the mid-twentieth century.[6] These reforms were designed to achieve formal legal equality. By the 1980s most of the explicit legal distinctions based on gender were eliminated from statute law. Once again, however, these reforms had limits. They addressed only the most basic procedural forms of inequality. The last stage of legal reform—human rights law—signaled a shift towards substantive equality. Anti-discrimination statutes, in particular, became a powerful legal tool for women.

The country's complex legal system is a patchwork of municipal, provincial, territorial, and federal jurisdictions (including the common law and a civil code) divided between criminal, civil, and constitutional law. Nonetheless, it is possible to identify common trends over time. This chapter draws on a broad range of primary sources, including statutes and case law, as well as a comprehensive survey of the scholarship on women's legal history. Federal law and the provincial law of Ontario and British Columbia have been prominent for establishing key precedents in legal reform. To be sure, the country's federal system can make it difficult to identify common trends in legal reform. Women secured the right to vote in Manitoba in 1916, but not in Quebec until 1940. And yet the federal

system can also foster unity. Ontario's pioneering human rights statute in 1961 became a model for every other jurisdiction. In this way, there was a shared experience in terms of how the law was gendered in Canada.

Equal Citizenship

Women in nineteenth-century Canada were, under the law, denied even the most basic rights. Women did, on occasion, vote before universal suffrage, usually if they were property owners. But they were gradually disenfranchised in the nineteenth century. Prince Edward Island, in 1832, was the first colony in British North America to prohibit women from voting, followed by New Brunswick (1836), the Canadas (1849), and Nova Scotia (1851).[7] Because they could not vote, women were unable to become legislators, coroners, magistrates, or judges: this is why not a single woman was appointed a judge, coroner, justice of the peace, police constable, or police magistrate in the nineteenth century. In 1905 a Supreme Court judge in New Brunswick, reflecting on the role of women in society, quoted a United States Supreme Court justice as saying that "[t]he paramount destiny and mission of women are to fulfil the noble and benign offices of wife and mother. This is the law of the Creator."[8]

Family law was explicitly patriarchal. Fathers determined their children's education and religion. A man could disinherit his wife; children were his sole property; a father could consent to have his twelve-year-old daughter married without his wife's consent; a husband could appoint a guardian for children under seven years old without the mother's consent (his wife's consent was not required after the child's seventh birthday unless children were sent "beyond the seas"); fathers inherited the estates of all children under twenty-one years old; and a father could even appoint a guardian in his will for children after his death, including *unborn* children. Custody battles often favoured the father in those uncommon circumstances when women left their husbands.[9] Only in extreme cases involving abuse would a judge have taken children from their father. Unsurprisingly, laws that dealt with marriage and divorce were premised on male dominance in the family. Nineteenth-century law in Upper and Lower Canada made it virtually impossible to divorce: the former required an Act of Parliament, and under the latter marriage was indissoluble until

death.[10] Yet men had to prove only adultery on the part of their wives to secure a divorce, whereas a wife had to prove adultery as well as desertion without reason, extreme cruelty, incest, or bigamy. Judges often applied a cruel double standard, blaming wives for giving up too quickly if they left after one incident of abuse, or alternatively accusing battered wives of accepting or encouraging the abuse if they waited too long.[11] As an alternative to divorce, women could seek separation and damages. When women did secure a divorce, they often faced ostracism and poverty.[12]

Nineteenth-century common law denied women basic property rights (in Quebec, the Civil Code codified a community property regime). "Marriage," as one historian has described the legal reality for women under the common law in the nineteenth century, "meant civil death."[13] A woman lost her legal status when she married, and her husband was assumed to control her person. Women took their husbands' nationality and domicile when they married. Under the common law, a husband controlled his wife's earnings and could prohibit her from working for wages. Husbands could legally rape their wives, confine them, and mete out physical punishment or "discipline." Until the 1850s, the family farm belonged to the husband, including everything in the home. Canada's *Dominion Lands Act* of 1876 also banned women from homesteading, which was especially problematic for women in Western Canada where homesteading was common.[14] Without property, women could not hope to support themselves independent of their husbands. A lifetime of work on the farm did not ensure a woman any guarantee of ownership if her husband died. In fact, the land usually went to the son (leaving her dependent on her children) and widows could lose any claim to property if they remarried.[15] Married women had no control over property. Income and profits belonged to their husbands; they could not be sued, and they could not contract or sue another person in their name; their spouse's consent was required for them to start a business; and all personal property (including wages) was transferred to their husbands. In return, husbands were liable for their wives' debts and contracts.[16]

Minority women experienced discrimination as both women and minorities. British Columbia, for instance, went to extraordinary lengths to restrict immigration, and when Chinese women did manage to make it to the province, they were usually restricted to working in small restaurants,

laundries, or fish canneries. Indigenous women worked in the province's canneries, although at lower pay and for fewer hours than men. Those few girls who did attend school were segregated based on race. Solicitation laws included particular provisions for Chinese and Indigenous peoples.[17] Chinese sex workers were banned under the 1885 head tax legislation, and in the 1880s Parliament passed a series of laws to impose harsher sentences and lower evidentiary standards for Indigenous sex workers.[18] Similarly, the 1880 federal *Indian Act* prohibited the owner of a house from allowing Indigenous sex workers on the premises and imposed harsher penalties for keepers of bawdy houses.[19] In 1869, Indigenous women were further banned from voting in band elections or holding political office.[20] African-Canadian women throughout Canada struggled to find jobs other than as domestics.[21] Retail sales work was not an option for most visible minority women. Jewish women found themselves unable to get hired at Eaton's or Woodward's. Women who did not come from Anglo-Celtic backgrounds might also find office work barred for them. In fact, white-collar work in general was usually off-limits to minority women, unless perhaps a segregated school needed to hire a black teacher.[22]

Some of the earliest legal reforms to recognize women's rights dealt with property, albeit they were never seriously designed to undermine male privilege (although they might protect women from husbands leaving the family destitute). New Brunswick (1851) and Ontario (1859) granted women, in certain cases, nominal control over their wages free from their husbands. In 1872, Ontario introduced the country's first *Married Women's Property Act*, which was later adopted with similar provisions by other provinces. It allowed women to hold and dispose of any property they brought to the marriage or acquired thereafter, including any profits deriving from the property, as well as acquire future property for themselves.[23] Any wages a wife earned *separately from her husband* belonged to her. At the same time, the law protected husbands from any debts arising from their wives' property before marriage, and immunized husbands from liability for any debts incurred from his wife's business or employment. In this way, the law "did not challenge the economic and social inequality central to nineteenth century marriage."[24] Moreover, women had few opportunities in the paid workforce. Explicit legal restrictions on women in occupations were admittedly rare, although British Columbia

(1877) and Ontario (1890) passed legislation preventing women from working in mines and regulated their work above ground (e.g., hours and meal breaks).[25] Professional associations refused to certify women, most notably law societies. Even when they did work, women invariably earned less for doing the same work as men, or they were often concentrated in the same occupations and paid less. Women were also routinely barred from higher education. McGill, for instance, did not admit women until 1857. By 1900, only 11 percent of university and college students were women.[26]

Similarly, laws designed to protect women and children workers, which were first introduced in Ontario and Quebec in the 1880s, were premised on the belief that "female workers needed greater protection than male workers because of their presumed physical frailty and moral vulnerability."[27] The need for protective labour legislation was routinely framed in terms of women's reproductive capabilities. These laws defined women as a dependent category of workers requiring state regulation.[28] In this way, although state legislation may have mitigated some of the harshest conditions in the workplace, it also restricted women's access to the paid labour force. Protective labour laws could also go to extremes. Between 1912 and 1919**,** Saskatchewan law banned "Chinese, Japanese or other Oriental persons" from employing white women.[29] Manitoba (1913), Ontario (1914), and British Columbia (1919) implemented similar measures.[30] Even more extraordinary was British Columbia's 1923 *Act for the Protection of Women and Girls in Certain Cases*. The law empowered a chief of municipal police, by the simple expedient of posting a certificate in his office, to prohibit any employer from providing lodging or hiring an "Indian" or white woman if the police deemed that it might undermine "the morals of such women and girls."[31]

Further legal reform was incremental. In 1855, the Province of Canada passed a statute for Canada West (Ontario) that allowed judges to grant women custody over children under twelve years old.[32] Women who had committed adultery, though, were automatically denied custody. Nineteenth-century courts rarely provided relief for women and children abandoned by the father. In the early 1900s, however, many provinces introduced legislation for deserted wives and children. In most cases, the law empowered a magistrate to order a husband to provide money to his

wife for her basic necessities if he abandoned or severely beat her.[33] But women who had committed adultery could not sue for maintenance.

There were additional reforms to family law in the early twentieth century. Several provinces introduced legislation that allowed judges to remove children from abusive situations. In 1917, British Columbia was the first province to enact legislation that provided mothers with rights and obligations equal to fathers for the care, custody, and education of their children.[34] The province also set a Canadian precedent in 1921 with *An Act Concerning the Employment of Women before and after Childbirth*.[35] The law provided mothers modest financial support and prohibited employers from dismissing a woman because of her absence. Meanwhile, Ontario, Alberta, Saskatchewan, Manitoba, and British Columbia enacted legislation between 1916 and 1920 to support women raising young children (mothers' allowances). Still, many of these reforms continued to marginalize women. Mothers' allowances defined women as nurturers, mothers, and dependents. Benefits were usually discontinued when children turned sixteen years old.[36]

The women's movement was at the forefront of many of these campaigns for legal reform. The first wave of the movement, led by organizations such as the National Council of Women (including local and provincial councils), the Canadian Women's Suffrage Association, the *Fondation nationale Saint-Jean Baptiste*, and the Woman's Christian Temperance Union, mobilized women to campaign for the right to vote and reforms to property laws, among other issues.[37] And yet, by the early twentieth century, there was some hesitation among even the most prominent feminists in the country to demand full equality. In 1912, for example, several unions recommended to the Royal Commission on Labour Conditions that the government establish a minimum weekly wage of $6.50 for female workers. The Vancouver Local Council of Women in British Columbia, however, suggested the minimum wage be set at $5 "'to be fair to employers as well as the employee.'"[38] Similarly, while in the 1930s the Canadian Federation of Business and Professional Women's Clubs advocated against low salaries for women and passed resolutions against workplace discrimination based on marital status, by the late 1930s the organization hesitated to assert that equal treatment was a right. Rather, the organization framed the issue as financial need.[39] Moreover, women struggled to

gain political influence by the mid-twentieth century because few women were elected to public office.

Nonetheless, the movement achieved a significant victory when women obtained the vote. Universal suffrage was first granted in 1916 in Manitoba. The franchise offered the opportunity for women to become more active in public life, although most provinces continued to ban women from serving on juries or allowed an exemption based on gender.[40] Women also gained access to additional professions. By 1926, only Quebec prohibited women from voting and practicing law. Organizations such as the *Ligue des droits de la femme* and *l'Alliance canadienne pour le vote des femmes du Québec* set the groundwork in the 1930s that ultimately secured women the right to vote in Quebec in 1940.[41] And although the Supreme Court of Canada affirmed in 1928 that women were not eligible to be senators, the Judicial Committee of the Privy Council overruled the decision and determined in 1929 that women were indeed "persons" as stated in the constitution.[42]

Criminal law, however, appeared immune from substantial reform during this period. Criminal law reflected an almost obsessive need to regulate women's sexuality. In 1892, for example, the *Criminal Code* prohibited an employer or coworker with any kind of directive power from seducing a female employee under his direction in any factory, mill, or workshop. In 1900 this prohibition was extended to shops and stores, and to all workplaces in 1920.[43] Chastity laws were introduced in the nineteenth century, and the practice of separately incarcerating female convicts became common by the 1870s. In 1910 the federal government also deemed it necessary to prohibit contact between female immigrants and male members of a ship's crew during passage.[44] It was also a crime, as of 1918, for a woman with a venereal disease to have sex or solicit sex with a member of the armed forces.[45]

In rape trials, which were rare in nineteenth-century Canada, judges and juries favoured women who fit a model of chastity. Women's sexual history was often a key issue at trial. Chastity was also an issue in seduction trials, which the federal Parliament criminalized in 1886. Previously, seduction had been a civil cause of action that permitted fathers to sue men who had "carnal knowledge" of their daughters. If the daughter was pregnant, and the man refused to marry her, the father would sue for the cost

of maintaining the daughter and the child (essentially "asserting parental property interests in the sexual behaviour of their female offspring").[46] The law (except in Quebec) recognized only the father's right to sue, not that of the woman who had been seduced. When seduction was criminalized, a man who had sex with a girl between the ages of twelve and sixteen years old (the threshold was raised to twenty-one in 1887 if the male was over twenty-one) could be sent to jail for two years. Women under eighteen were also included if they were of previously chaste character and the act was committed under the promise of marriage.[47]

Criminal law on infanticide and abortion also targeted women. An 1892 amendment to the *Criminal Code* criminalized "failing to obtain reasonable assistance for childbirth." The crime carried the severe sentence of life in prison if a prosecutor could prove that a woman did not seek assistance so the child would die.[48] Procuring an abortion became a crime in British North America beginning in New Brunswick in 1810 and, soon after, the other colonies. Abortion trials were uncommon in the nineteenth century, but, when they did go to trial, the vast majority of accused women were found guilty. Doctors faced severe penalties, ranging from ten years to life in prison. Parliament went even further and, in 1892, banned the sale, distribution, and advertisement of any material relating to contraception or abortion.[49]

By the twentieth century the law touched on almost every aspect of women's lives: birth (infanticide), childhood (maintenance, child custody), work (labour laws, professions), courtship (seduction, marriage), sexual relations (rape, solicitation), marriage (property), parenting (maternity leave, abortion, adoption, legitimacy), divorce or separation (maintenance, child custody, pensions, desertion), and death (inheritance). Legal reforms during this period were designed to remove those legal distinctions that had created a separate and lesser form of citizenship for women such as voting, employment, or owning property. These reforms enabled women to better engage in public life. Yet the law continued to reinforce male privilege and patriarchal power, especially in the family.

Formal Legal Equality

Women born in mid-twentieth century Canada faced an inadequate and patronizing legal regime in property, labour, family, and criminal law. Alberta (1928) and British Columbia (1933) passed legislation to forcibly sterilize people who were mentally ill. In practice, the law disproportionately targeted women and Indigenous peoples.[50] That the state continued to define women in terms of rigid gender roles in the 1960s was exemplified in a 1966 publication of the federal Department of Citizenship and Immigration, which explained that "winter weather is a limiting factor [for Canadian women's political activity] as well as household duties and farm chores."[51]

After securing key victories around the right to vote and access to property among other issues, new campaigns emerged demanding full legal equality. A new wave of feminist activism, led in part by a generation of women coming of age in the 1950s and 1960s, reinvigorated the movement. Organizations such as the National Council of Women had been advocating on issues such as equal pay since the 1920s.[52] During the war, women's organizations successfully lobbied to raise the basic pay for servicewomen to 90 percent of the male rate. Twenty-one affiliates of the Young Women's Christian Association established Public Affairs committees in Ontario in 1950 to advocate for laws to ban sex discrimination. Margaret Hyndman, president of the Business and Professional Women's Clubs, led a delegation to Premier Leslie Frost in 1951 to demand equal pay legislation and a prohibition on sex discrimination in employment. Hyndman, a lawyer, helped draft the Ontario *Female Employees Fair Remuneration Act* (1952), which was the first equal pay statute in Canada. Business and Professional Women's Clubs committees outside Ontario also lobbied for equal pay laws.[53] Meanwhile, in Ottawa, the Business and Professional Women's Clubs and the National Council of Women convinced the federal Liberal government to implement equal pay legislation covering 70,000 women working in federal jurisdiction.[54] Women's Institutes were also active in lobbying for equal pay.[55]

A second stage of legal reforms sought to eliminate formal legal distinctions based on gender. Mothers' allowances had already been replaced with a more generous federal family allowances program in 1944. In 1951,

Ontario and Manitoba removed their bans against women serving on juries, which later spread to other jurisdictions.[56] New Brunswick (1964) and the federal government (1971) implemented policies for maternity leave.[57] Differential minimum wage laws were revoked in Alberta, Saskatchewan, Manitoba, Ontario, Quebec, and New Brunswick by 1970. In each jurisdiction women and men were given equal legal responsibility for maintaining their children, and both wives and husbands were eventually permitted to sue for alimony or maintenance.[58]

Women were no longer prohibited from voting or, in common law jurisdictions, from owning and controlling property if they were married.[59] By 1953, all references to race were removed from provincial electoral law and, in 1960, the federal government enfranchised Indigenous peoples. But the sudden disappearance of a legal prohibition did not diminish the legacy of generations of legal discrimination. The situation facing Indigenous women was especially bleak. The original *Indian Act* had given the Superintendent-General the power to "stop the payment of the annuity and interest money of any woman having no children who deserts her husband and lives immorally with another man." The 1884 *Indian Act* further specified that Indigenous widows had to be of "moral character" to inherit property. An especially contentious section was the provision that Indigenous women lost their status if they married a non-Indigenous man. The same did not apply to men. When women lost their status, they forfeited their right to live on Indigenous lands, own band property, inherit land or a house on a reserve, and to be buried on a reserve.[60] And they could not regain their status, and therefore return to their home, if their marriage dissolved or they divorced. The *Indian Act* was rife with such discriminatory provisions: women and their children were involuntarily enfranchised if their husband/father was enfranchised; married women's band membership was determined by their husband's band; illegitimate children of Indigenous men or non-Indigenous women were denied status; and children lost status when they reached the age of twenty-one if their mothers did not have status before they were married.[61]

Whereas Indigenous women continued to face widespread legal disabilities, there were several major reforms designed to remove distinctions based on gender in statute law. The 1968 federal *Divorce Act*, for instance, extended judicial divorce to jurisdictions where it had not been previously

available and set consistent grounds for divorce across the country. Divorce was permitted on the basis of adultery, homosexuality, physical and mental cruelty, or marriage breakdown.[62] The law streamlined the process for applying for a divorce and reduced costs and delays, which had been a particular hardship for women. The divorce rate in Canada doubled in the first year following the *Divorce Act*, and most of those flocking to the courts were women.[63]

One of the most important developments during this period was the federal Royal Commission on the Status of Women (RCSW). The RCSW identified a plethora of discriminatory laws in its report published in 1970. Some of the more blatant forms of sex discrimination that were still rampant in several or all jurisdictions included prohibitions on enlisting in the Royal Canadian Mounted Police or serving in the military and attending military colleges; exemptions for serving on juries; separate policies for women who married non-citizens, such as refusing to automatically recognize their future children's Canadian citizenship; or requiring married women to have their husband's name on their passport. There were also many obscure provisions in statute law that discriminated against women: married women could not hold a legal domicile separate from their husbands; husbands were assumed to be the owner of a house under national housing loan regulations; federal prison legislation treated women differently in the punishment alternatives for different imputed offences and in the length of possible sentences; and the Canada Pension Plan had different entitlements for men and women, as did workers' compensation and unemployment insurance.

The RCSW's study of criminal law was especially revealing. By the 1970s the most common crimes for which women were convicted were theft; prostitution or keeping a bawdyhouse; abortion or attempted abortion; concealing the body of a child; and child neglect. Women were disproportionately convicted of narcotics, vagrancy, and attempted suicide, compared to other crimes.[64] The *Criminal Code* did not consider women capable of committing sexual offences except incest, buggery, indecent assault on another female, and gross indecency (the last was added in 1954). Women could not sexually assault or seduce men, or be charged for having illegal sex with a boy under a certain age. Only boys could seduce girls, and it was entirely based on age: if the boy was under eighteen years old or

if the girl was older than eighteen it was not an offence. The basis of several offences continued to rest on a woman's "previously chaste character" up to twenty-one years old, while the burden was on the accused to prove otherwise. For instance, sexual intercourse with a girl under fourteen years old was criminal, but a man could be found innocent for having sex with a girl between fourteen and sixteen years old if he could show that she was not of previously chaste character.

The RCSW submitted 167 recommendations for legislative reform. The federal government responded with wide-ranging reforms, most notably the *Statute Law (Status of Women) Amendment Act, 1974*. The legislation amended ten federal statutes dealing with immigration, the military, unemployment insurance, pensions, elections, and the public service.[65] The *Criminal Code* was amended to recognize a spouse's (rather than a husband's) responsibility to provide necessities of life, and the *Citizenship Act* was changed to apply equally to men and women. Other legal reforms followed soon thereafter.[66] Women were permitted to enlist in the Royal Canadian Mounted Police beginning in 1974 and to enroll in military colleges after 1979. Vagrancy laws targeting prostitution were changed to solicitation in 1972. The law on solicitation applied equally to men and women although, in practice, women continued to be the primary targets for arrests. In 1983, Parliament repealed the section of the *Unemployment Insurance Act* that denied benefits to pregnant women.[67] In the same year, rape was removed from the *Criminal Code* and replaced with gender-neutral sexual assault provisions.[68] Marital rape became a crime. In 1986 Parliament passed the *Employment Equity Act* to enhance women and minorities' representation in any federally regulated industry with more than one hundred employees.[69]

There was further pressure for legal reform following Canada's ratification, in late 1981, of the United Nations *Convention on the Elimination of All Forms of Discrimination against Women*.[70] Provinces eliminated long-standing gendered language in statute law (from male to persons, or husband to spouse). Still, there were innumerable discriminatory statutes that managed to survive. In Newfoundland and Labrador, for example, women working in the civil service and at Memorial University were required to quit if they married (unless the Minister gave a special exemption); female civil servants received lower pensions, could not claim their

pension until they were sixty-five years old (sixty for men), and could not receive compensation if they were injured on the job; women were prohibited from changing their name while married; unmarried girls (not boys) under sixteen years old were banned from employment without parental consent; married women's place of residence for elections was based on their husband's; the *Family Relief Act* implied that being an unmarried female was a disability; and the *Limitations of Actions Act* placed married women in the same category as persons of unsound mind.[71]

These statutory provisions were eliminated in the 1980s. By this time there was clearly a shift towards gender-neutral statute law. The law had undergone profound changes in eliminating formal legal discrimination against women. Yet formal legal equality as expressed in statute law was only the beginning. Discrimination remained a deeply embedded social practice.

Human Rights Law

While there were significant reforms to statute law throughout the twentieth century, widespread discriminatory practices remained embedded in state regulations. For example, several provinces denied social assistance to single women if there was evidence that they were living with a man. Such policies, which lasted into the 1980s, presumed that a sexual relationship implied an economic one.[72] Daycare (including the lack thereof), health care (including abortion), education (including textbooks), pensions, adoption, and many other policies were similarly gendered. Judge-made law could also be discriminatory. Women were routinely incarcerated for "immoral behaviour," which was often a pretext for using "incarceration as a means to regulate the sexual and moral behaviour of women perceived to be 'out of sexual control'."[73] Judges favoured men in property distribution during divorce proceedings. As late as 1975, the Supreme Court of Canada ruled that a lifetime of labour on a farm did not entitle a woman to a division of assets after divorce.[74]

Sex discrimination was also a pervasive social practice. Landlords refused to rent to single mothers; retailers refused to allow women to breastfeed on their premises; and gender stereotyping was commonplace in school textbooks. Employers justified lower wages for women on the basis

of unsubstantiated beliefs: women were financially supported by men or they only needed to support themselves; they had a lower standard of living; they ate less; they should not spend money on luxuries such as alcohol or tobacco. Employers refused to hire women in certain professions and published advertisements for "male only" positions; women were ghettoized in low-paying professions or refused promotion; separate wage scales were often endorsed by unions; employers imposed job requirements such as height and weight minimums; and women were fired when they became pregnant, or married, or divorced. Sexual harassment, which the former editor of *Chatelaine* magazine described as "so common that it was rarely even talked about," appeared in the form of pin-ups or graffiti if not outright groping or propositions from male workers.[75] Workers' organizations were also exclusionary: unions routinely signed collective agreements that reinforced a gendered division of labour.

Beginning in the 1950s, the leading feminist organizations of the period, including the National Council of Women, Canadian Federation of Business and Professional Women's Clubs, and the Young Women's Christian Association (among others) began organizing campaigns calling for legislation that prohibited discrimination on the basis of sex. In 1953, for instance, a delegation from the Canadian Federation of Business and Professional Women's Clubs and the National Council of Women lobbied for a federal ban on sex discrimination as well as equal pay legislation.[76] The former complained that such legislation would "afford protection in matters of employment—hiring, promotion and pay—for Jews, Chinamen and Negros, but not for women."[77] Women's organizations also joined campaigns for provincial anti-discrimination legislation. These campaigns, which included large delegations from numerous community organizations, soon convinced the premier of Ontario to introduce the country's first comprehensive anti-discrimination statute in 1952—the *Fair Employment Practices Act*.[78] Within a year, women's organizations were presenting briefs before a Parliamentary committee demanding a similar statute for the federal government.[79]

Several jurisdictions introduced Fair Employment and Fair Accommodation Practices laws in the 1950s that prohibited discrimination in employment and housing.[80] These statutes were weak and poorly enforced. Moreover, none of them included sex and were restricted to

race, religion, and ethnicity. The Canadian Federation of Business and Professional Women's Clubs' Vancouver Branch decried the federal government's failure to include sex in the 1953 *Canada Fair Employment Practices Act*.[81] Nonetheless, women's organizations were successful at least in campaigning for equal pay laws. Eight provinces introduced equal pay laws in the 1950s alongside the federal government's 1956 *Female Employees Equal Pay Act*.[82] And yet, as the president of British Columbia's Provincial Council of Women insisted in 1950, "equal opportunity and equal pay for men and women, regardless of sex, marital status, race, colour or creed, will not be firmly established unless vigorously promoted by education and legislation."[83]

There were some tentative reforms over the next few years that directly addressed the problem of sex discrimination. The federal government, for instance, banned sex discrimination in federal contracts beginning in 1953. Similarly, the federal *Bill of Rights* (1960) prohibited sex discrimination in employment. But the most significant development was the emergence of a new legal regime that began with Ontario's precedent-setting *Human Rights Code* in 1962. Although the statute did not include sex, Newfoundland and Labrador and British Columbia did include sex when they introduced their respective human rights statutes in 1969.[84] Within eight years every other jurisdiction would do the same.

Human rights legislation would become one of the most important legal innovations of the twentieth century. The Ontario model was copied in every jurisdiction. Human rights legislation prohibited discrimination in accommodation, employment, and services. Full-time human rights officers—civil servants working for the government—staffed the commission. Human rights officers were responsible for receiving and investigating complaints. If an individual had a legitimate complaint within the scope of the Code, the officer would first attempt conciliation between the two parties. If this failed, the Commission could recommend that the case be sent to an independent board of inquiry appointed by the minister of labour to force a settlement. Perhaps the most important innovation contained in human rights legislation, in addition to having the government absorb the entire cost of investigating the complaint, was that the commission would represent the complainant before the board of inquiry. Complainants thus did not have to shoulder the burden of investigating

and litigating the complaint, which was one of the major obstacles to seeking remedy through the courts. Offenders might pay a fine, offer an apology, reinstate an employee, or agree to a negotiated settlement.[85]

Boards of inquiry were an innovative approach to human rights complaints. They were more accessible to the average person, partly because the proceedings were more informal than a court, but also because the human rights commissions helped complainants prepare and present their cases. Boards of inquiry contributed to changing employers' behaviour and constructing a culture of rights by raising the level of public debate and awareness. As one inquiry chairman noted, "its [the *Human Rights Code*] aim is to educate the public with respect to the need for tolerance as an essential weave in our social fabric."[86] Human rights law was premised on the belief that discrimination was not necessarily motivated by hatred or fear, but through misunderstandings, discomfort, or confusion. Formal inquiries offered an opportunity for people to re-assess their opinions and beliefs. Intent was not a factor in determining discrimination, so the accused did not need to be labelled a bigot or sexist to be found guilty. It was, perhaps, a subtle distinction, and yet a profound one that undoubtedly made it easier to conciliate conflicts. And if people refused to change, then boards of inquiry could force a settlement.

At the same time, human rights laws went beyond simply responding to explicit discriminatory acts. A key pillar of human rights law was education. Each commission had a mandate to educate the public about human rights. Moreover, human rights legislation provided a forum for addressing grievances outside the courts and established a process that favoured conciliation rather than confrontation. The goal was to promote tolerance. The primary mandate of human rights statutes was *prevention*; punishment was a last resort. The education mandate was an enduring legacy of human rights law.[87] In 1982, the Supreme Court of Canada ruled that human rights legislation was quasi-constitutional and held primacy over other laws.[88] Three years later, the court went further and affirmed that human rights law also prohibited systemic discrimination, such as the indirect effect of practices on classes of people.[89]

In this way, human rights law was unlike any previous legal reform. And although human rights law prohibited discrimination on numerous grounds, its most enduring impact was on sex discrimination. The

largest number of complaints received by human rights commissions in almost every jurisdiction in Canada until the 1990s involved discrimination against women, especially in the workplace.[90] Boards of inquiry set legal precedents on a host of issues, from sexual harassment to arbitrary employment policies, and in doing so developed a corpus of human rights law. They became contested sites where a broad spectrum of people fought over the meaning of rights and equality. For example, in *Foster v. British Columbia Forest Products* (1979) and *Grafe v. Sechelt Building Supplies* (1979), boards of inquiry in British Columbia ruled that arbitrary height and weight requirements had the indirect effect of excluding women from employment.[91] There were also inquiries that ruled that firing a woman for being pregnant was sex discrimination (*H.W. v. Kroff*), as was denying a woman sick leave benefits because her illness was pregnancy-related (*Gibbs v. Bowman*).[92] Another inquiry awarded a woman damages in 1975 when a landlord refused to rent her a house because she was a single mother.[93] In 1984 an Ontario board of inquiry determined that sexual harassment was sex discrimination.[94] The Supreme Court of Canada would later confirm in 1989 that pregnancy and sexual harassment were forms of sex discrimination (and, in 1999, it extended the protection of human rights law to gays and lesbians).[95]

The women's movement played a critical role in the creation and enforcement of human rights law. Women's organizations engaged in a wide array of activities such as documenting cases of discrimination; producing surveys or conducting research on issues such as equal pay (e.g., listing specific employers' pay scales) to initiate inquiries; identifying large employers who were violating the legislation and mailing letters with a copy of the statute; sending volunteers to individual employers to discuss hiring and management practices (e.g., department stores that rarely hired women or factories with segregated job assignments); drawing the media's attention to deficiencies in the legislation, including delays and poorly-trained investigators; organizing and inviting investigators to conferences on human rights; lobbying government departments on policy issues (e.g., gender stereotyping in textbooks); promoting board of inquiry decisions through press releases and newsletters (a common critique was that the government did not publicize rulings); securing federal government funding to promote human rights in the province; and writing to the

Branch to support specific cases and to prod investigators to advance an inquiry.[96] In many ways, women's organizations were as important as the state in enforcing the law.

By the 1980s, human rights law in Canada had become overwhelmingly associated with gender. In 1976, British Columbia's Human Rights Branch compiled a survey of newspaper stories relating to human rights law. It examined even the smallest, most remote papers in the province as well as major papers across Canada. They found that, in every case, when the media wrote about human rights, they were most often writing about women's issues.[97] The largest number of complaints and boards of inquiry dealt with sex discrimination, and they were often successful: between 1956 and 1984, the success rate for sex discrimination complaints that reached boards of inquiry in Canada was 66.4 percent (and 75 percent for cases involving pregnancy).[98] Women used the law to extend its protections to women who were pregnant, unmarried, single mothers, or sexually harassed. Although financial penalties were often small and inconsequential, the process provided an affirmation of women's legitimate demands for equality.

The *Charter of Rights and Freedoms*, a constitutional amendment introduced in 1982, was the next step in securing equality under the law. Every government introduced omnibus legislation to remove the final vestiges of explicit discriminatory provisions in statute law (for instance, requiring married women to take their husband's name).[99] It was a testament to the transformative potential of the new constitution that governments needed several years to change their laws to ensure conformity with the equality section. In Ontario, the threat of a constitutional challenge forced the government to eliminate its notorious "man in the house" policy that denied welfare benefits to women who were living with a man.[100]

The *Charter*'s equality section transformed family law, criminal law, employment law, and a host of other statutes and policies.[101] One of the most symbolic decisions that exemplified the transformative potential of this new legal regime was handed down in December 2013. The Supreme Court of Canada declared that the country's solicitation laws were inconsistent with the *Charter of Rights and Freedoms*. The court ruled that the *Criminal Code* provisions restricting solicitation infringed on the "rights of prostitutes by depriving them of security of the person in a manner

that is not in accordance with the principles of fundamental justice."[102] The *Bedford* decision symbolized a profound shift in Canadian law and the emergence of a new legal regime that could be used to challenge sex discrimination.

The Supreme Court of Canada has also redefined equality since the implementation of the *Charter*, from treating people equally and accommodating differences to ensuring equality in practice in order to remedy past disadvantages. Since the Supreme Court of Canada's 1999 *Law* decision, the equality section has been given a much broader interpretation.[103] The ruling provided judges with a litmus test for determining discrimination, which was defined as differential treatment based on an enumerated or analogous ground; whether or not differential treatment constitutes discrimination is, according to the court, based on contextual factors such as stereotyping, prejudice, vulnerability, or pre-existing disadvantages. Judges must now take into consideration how unspoken norms and practices produce inequality in the application of law. Such precedents recognized the need to go beyond formal legal inequality and address systemic inequality in the public and private realm.

Conclusion

Legal reform in Canada is a slow and imperfect process. The first stage of legal reform in Canada, which dealt with basic rights of citizenship such as voting or property rights, was premised on inequality and a concern with protecting (i.e., regulating) women. By the early twentieth century, the law continued to reinforce traditional gender roles in the family and the workplace. The second stage of legal reform was designed to guarantee formal legal equality. Explicitly discriminatory policies and laws, such as those prohibiting women from serving in the Royal Canadian Mounted Police or requiring them to adopt their husband's last name, were slowly eliminated over time. Yet even the guarantee of formal legal equality could not address the immense obstacles facing women in public and private life that were a product of centuries of legal discrimination.

Human rights law was an attempt to go beyond formal equality and address systemic discrimination. Rather than focus on punishing individual acts of discrimination, human rights statutes were designed to

promote a culture of rights through conciliation and education. Boards of inquiry established key precedents and, in doing so, created new law. More importantly, human rights law constituted a new form of state practice. Human rights laws could not eliminate sexism, but they could endeavour to eliminate the public practice of sexism. The new human rights legal regime replaced a legal system that explicitly discriminated against women with a system that banned discrimination in the private and public spheres. At the same time, human rights law, as was the case with past legal reforms, was flawed. Human rights law applied to the private realm such as employment, services, and accommodation, but did nothing to address inequalities in other private spheres such as the family. The system was rife with delays, underfunded commissions and education programs, a propensity towards low monetary awards, as well as exemptions for philanthropic, charitable, religious, and educational institutions. Moreover, human rights law has done little to address broad social problems such as female job ghettos, underrepresentation in business and politics, or the feminization of poverty. It remains, as has been the case with all legal reforms in Canadian history, an imperfect solution.

NOTES

1 Constance Backhouse, *Carnal Crimes* (Toronto: University of Toronto Press, 2008); Bettina Bradbury, *Wife to Widow* (Toronto: University of Toronto Press, 2008); Joan Brockman, G*ender in the Legal Profession* (Vancouver: UBC Press, 2006); Lori Chambers, *Married Women and Property Law in Victorian Ontario* (Toronto: University of Toronto Press for the Osgoode Society, 1997); Lori Chambers, *Misconceptions: Unmarried Motherhood and the Ontario Children of Unmarried Parents Act, 1921–1969* (Toronto: University of Toronto Press, 2007); Lori Chambers, "Newborn Adoption: Birth Mothers, Genetic Fathers, and Reproductive Autonomy," *Canadian Journal of Family Law* 26, no. 2 (2010): 339–93; Chris Clarkson, *Domestic Reforms: Political Visions and Family Regulation in British Columbia, 1862–1940* (Vancouver: UBC Press, 2007); Ruth A. Frager and Carmela Patrias, "Human Rights Activists and the Question of Sex Discrimination in Postwar Ontario," *Canadian Historical Review* 93, no. 4 (2012): 583–610; Jean McKenzie Leiper, *Bar Codes: Women in the Legal Profession* (Vancouver: UBC Press, 2006); Isabelle Perreault, "'Sans honte et sans regret': les chemins de traverse entre le pénal et le psychiatrique dans les cas d'aliénation criminelle à Montréal, 1920–1950," *Canadian Bulletin of Medical History* 32, no. 1 (2015): 51–75; Joan Sangster, "Debating Maternity Rights: Pacific Western Airlines and Flight Attendants' Struggle to 'Fly Pregnant' in the 1970s," in *Work on Trial: Canadian Labour Law Struggles*, ed. Judy Fudge and Eric Tucker (Toronto: University of Toronto Press, 2010); Joan Sangster, *Through Feminist Eyes: Essays on*

Canadian Women's History (Edmonton: Athabasca University Press, 2011); Robert J. Sharpe and Patricia L. McMahon, *The Persons Case: The Origins and Legacy of the Fight for Legal Personhood* (Toronto: University of Toronto Press for the Osgoode Society, 2007); Wanda Wiegers, "Gender, Biology, and Third Party Custody Disputes," *Alberta Law Review* 47, no. 1 (2009): 1–36; Andrew Wingate, "Discrimination against Pregnant Employees in Canada, 1988–2000," Masters thesis, University of Windsor, 2000.

2 Constance Backhouse, *Petticoats and Prejudice* (Toronto: Women's Press, 1991); Gwen Brodsky, *Canadian Charter Equality Rights for Women* (Ottawa: Canadian Advisory Council on the Status of Women, 1989); Dorothy E. Chunn, Susan B. Boyd, and Hester Lessard, eds., *Reaction and Resistance: Feminism, Law, and Social Change* (Vancouver: UBC Press, 2007); Fay Faraday, Margaret Denike, and M. Kate Stephenson, eds., *Making Equality Rights Real: Securing Substantive Equality under the Charter* (Toronto: Irwin Law, 2006); Sue Findlay, "Feminist Struggles with the Canadian State: 1966–1988," *Resources for Feminist Research* 17, no. 3 (1988): 5–9; Judith Fingard and Janet Guildford, eds., *Mothers of the Municipality: Women, Work, and Social Policy in Post-1945 Halifax* (Toronto: University of Toronto Press, 2005); Amanda Glasbeek, *Feminized Justice: The Toronto Women's Court, 1913–1934* (Vancouver: UBC Press, 2009); Sherene H. Razack, *Canadian Feminism and the Law: The Women's Legal Education and Action Fund and the Pursuit of Equality.* (Toronto: Second Story Press, 1991).

3 For an example of how historians have attempted to offer a survey of the history of legal reform of women's rights, see Beverley Baines, "Law, Gender, Equality," in *Changing Patterns: Women in Canada*, 2nd ed., ed. Sandra Burt, Lorraine Code, and Lindsay Dorney (Toronto: McClelland and Stewart, 1993).

4 James Walker offers a comparable framework in his study of human rights law. However, Walker's study focuses on racial discrimination. Moreover, Walker's three stages—equal citizenship, protective shield, and remedial sword—address a very different legal regime. See James Walker, "The 'Jewish Phase' in the Movement for Racial Equality in Canada," *Canadian Ethnic Studies* 34, no. 1 (2002): 1–29.

5 Gail Brandt et al., *Canadian Women: A History* (Toronto: Nelson Education, 2011), 223–30.

6 Nancy Adamson, Linda Briskin, and Margaret McPhail, *Feminist Organizing for Change* (Toronto: University of Toronto Press, 1988); Naomi Black, "The Canadian Women's Movement: The Second Wave," in Burt, Code, and Dorney, *Changing Patterns*; Yolande Cohen, "Genre, religion et politiques sociales au Québec dans les années 1930: Les pensions aux mères," *Canadian Review of Social Policy* 56, no. 1 (2006): 87–112; Sangster, *Through Feminist Eyes*.

7 Women were further disenfranchised when provinces such as British Columbia banned people of Chinese (1874), Indigenous (1874), Japanese (1895), and East Indian (1907) descent as well as Doukhobours (1931), Hutterites (1947), and Mennonites (1947) from voting. Between 1885 and 1898, the federal government had its own criteria for voting eligibility. Women, however, were still denied the right to vote as were persons of Mongolian or Chinese descent. Moreover, between 1914 and 1946, women in Canada who married non-citizens lost their citizenship. For an overview on the history of suffrage, see Brandt et al., *Canadian Women*, 113–17.

8 *Re Mabel P. French* (1905), 37 NBR 359, 366.

9 Backhouse, *Petticoats and Prejudice*, 201.

10 Brandt et al., *Canadian Women*, 44–45.

11 The Maritimes provinces, in contrast, established divorce courts rather than requiring an act of the legislature.

12 The Maritime provinces did not apply the same double standard: women could apply for divorce on the basis of adultery alone, and divorce courts were established in New Brunswick (1758), Nova Scotia (1791), and Prince Edward Island (1833) to provide accessible venues for divorce.

13 Chambers, *Married Women and Property Law in Victorian Ontario*, 3.

14 Sarah Carter, "'Daughters of British Blood' or 'Hordes of Men of Alien Race' : The Homesteads-for-Women Campaign in Western Canada," *Great Plains Quarterly* 29, no. 1 (2009): 267–68. Parliament had earlier prohibited women, in 1872, from homesteading on their own unless they had children: Brandt et al., *Canadian Women*, 145.

15 Ruth A. Frager and Carmela Patrias, *Discounted Labour: Women Workers in Canada, 1870–1939* (Toronto: University of Toronto Press, 2005), 7–8.

16 Quebec's Civil Code was only somewhat less draconian. Women held property jointly with their husbands. Husbands were the acknowledged head of the household, but they had a legal obligation to support their wives and children, and husbands could not sell their wives' dower without their wives' permission. Quebec's Civil Code (1866) prohibited married women, however, from entering into contracts on their own or appearing before the courts; a wife could not engage in a profession separate from her husband or in commerce without his permission; and she could not discipline their children unless the father defaulted in his duty: Brandt et al., *Canadian Women*, 44–45, 103.

17 Amanda Glasbeek argues that in Toronto police targeted interracial couples, especially involving Chinese men. White women in relationships with Chinese men might be arrested for vagrancy for the purposes of "disciplining the young woman for her choice of lovers": *Feminized Justice*, 103.

18 Backhouse, *Petticoats and Prejudice*, 241.

19 Constance Backhouse, "Nineteenth-Century Canadian Prostitution Law: Reflection of a Discriminatory Society," *Histoire sociale/Social History* 18, no. 36 (1986): 420–22.

20 Sarah Nickel, "'I Am Not a Women's Libber although Sometimes I Sound Like One': Indigenous Feminism and Politicized Motherhood,'" *American Indian Quarterly* 41, no. 4 (Fall, 2017): 308.

21 Frager and Patrias, *Discounted Labour*, 44.

22 Frager and Patrias, *Discounted Labour*, 71–73.

23 *An Act to Extend the Rights of Property of Married Women*, SO 1871–72, c 16; *An Act to Extend the Rights of Property of Married Women*, SBC 1873, c 29.

24 Chambers, *Married Women and Property Law in Victorian Ontario*, 4. Ontario was the first jurisdiction to provide formal legal equality for wives in 1884. Over time other provinces would follow with similar legislation, although it was only in 1931 that Quebec granted greater control over property for married women: Backhouse, *Petticoats and Prejudice*, chapter 6.

25 Backhouse, *Petticoats and Prejudice*, 290–91.

26 Brandt et al., *Canadian Women*, 200–1.

27 Frager and Patrias, *Discounted Labour*, 105.

28 Frager and Patrias, *Discounted Labour*, 106.

29 *An Act to Prevent the Employment of Female Labour in Certain Capacities*, SS 1912, c 17.

30 *An Act to Amend the Municipal Act*, SBC 1919, c 63; *An Act to Prevent the Employment of Female Labour in Certain Capacities*, SM 1913, c 19; *An Act to Amend the Factory, Shop and Office Building Act*, SO 1914, c 40.

31 *An Act for the Protection of Women and Girls in Certain Cases*, SBC 1923, c 76, s 3.

32 *An Act to Amend the Law Relating to the Custody of Infants*, S Prov C 1855 (18 Vict) c 126.

33 *An Act Respecting the Maintenance of Wives Deserted by Their Husbands*, SBC 1901, c 18.

34 *An Act Respecting the Guardianship and Custody of Infants*, SBC 1917, c 27 [*Equal Guardianship Act*].

35 *An Act Respecting the Employment of Women Before and After Childbirth*, RSBC 1924, c 155.

36 Nancy Christie, *Engendering the State: Family, Work, and Welfare in Canada* (Toronto: University of Toronto Press, 2000); Margaret Hillyard Little, "'A Fit and Proper Person': The Moral Regulation of Single Mothers in Ontario, 1920–1940," in *Gendered Pasts: Historical Essays in Femininity and Masculinity in Canada*, ed. Kathryn McPherson, Cecilia Morgan, and Nancy Forestell (Toronto: Oxford University Press, 1999).

37 Yolande Cohen, "'Du féminin au féminisme'": l'exemple québécois," in *Histoire des femmes en Occident*, vol. 5: *Le XXe siècle*, ed. Georges Duby, Michelle Perrot, and Françoise Thébaud (Paris: Plon, 1992); Collectif Clio, *L'histoire des femmes au Québec depuis quatre siècles* (Montreal: Le Jour, 1992); Johanne Daigle, "Le siècle dans la tourmente du féminisme," *Globe* 3, no. 2 (2000): 65–86; Karine Hébert, "Une organisation maternaliste au Québec: la Fédération nationale Saint-Jean-Baptiste et la bataille pour le vote des femmes," *Revue d'histoire de l'Amérique française* 52, no. 3 (1999): 315–44; Michèle Jean, "Histoire des luttes féministes au Québec," *Possibles* 4, no. 1 (1979): 17–32; Diane Lamoureux, *Fragments et collages: Essai sur le féminisme québécois des années 70* (Montreal: Éditions du remue-ménage, 1986).

38 Marie Campbell, "Sexism in British Columbia Trade Unions, 1900–1920," in *In Her Own Right: Selected Essays on Women's History in B.C.*, ed. Barbara Latham and Cathy Kess (Victoria: Camosun College, 1980), 177.

39 Frager and Patrias, *Discounted Labour*, 82–83.

40 Alice Jane Jamieson and Emily Murphy became in 1916 the first female magistrates of the British Empire: see Mélanie Méthot, "Revoir Emily Murphy : première magistrate de police de tout l'Empire britannique," *Journal of Canadian Studies* 50, no. 1 (2016): 150–78.

41 Denyse Baillargeon, *To Be Equals in Our Own Country: Women and the Vote in Quebec* (Vancouver: UBC Press, 2019).

42 Robert J. Sharpe and Patricia L. McMahon, *The Persons Case : The Origins and Legacy of the Fight for Legal Personhood* (Toronto: University of Toronto Press for the Osgoode Society, 2007).

43 Walker, *"Race," Rights and the Law in the Supreme Court of Canada*, 82.

44 Sandra Burt, "The Changing Patterns of Public Policy," in Burt, Code, and Dorney, *Changing Patterns*, 214.

45 Robert A. Campbell, "Ladies and Escorts: Gender Segregation and Public Policy in British Columbia Beer Parlours, 1925 to 1945," *BC Studies* 105/6 (1995): 125.

46 Backhouse, *Petticoats and Prejudice*, 42, 56.

47 Backhouse, *Petticoats and Prejudice*, 74–75.

48 Backhouse, *Petticoats and Prejudice*, 133.

49 Glasbeek, *Feminized Justice*, 48–50.

50 Jana Grekul, "The Right to Consent? Eugenics in Alberta, 1928–1972," in *A History of Human Rights in Canada: Essential Issues*, ed. Janet Miron (Toronto: Canadian Scholars' Press, 2009).

51 As quoted in Prentice et al., *Canadian Women: A History*, *Canadian Women: A History*, 2nd ed. (Toronto: Harcourt Brace & Company, 1996), 400.

52 Josie Bannerman, Kathy Chopik, and Ann Zurbrigg, "Cheap at Half the Price: The History of the Fight for Equal Pay in BC," in *Not Just Pin Money: Selected Essays on the History of Women's Work in British Columbia*, ed. Barbara K. Latham and Roberta J. Pazdro (Victoria: Camosun College, 1984), 306.

53 Prentice et al., *Canadian Women*, 332–33.

54 Prentice et al., *Canadian Women*, 333. The Canadian Business and Professional Women's Clubs in British Columbia, Alberta, Ontario, and New Brunswick (and the federal executive) were among the most vocal critics of the 1953 federal Fair Employment Practices Act for not including sex.

55 Prentice et al., 334. Shirley Tillotson concludes that "had there been no pressure from women's groups, however, labour's interest in pay equity would not have led to legislation": Shirley Tillotson, "Human Rights Law as Prism: Women's Organizations, Unions, and Ontario's Female Employees Fair Remuneration Act, 1951," *Canadian Historical Review* 72, no. 4 (1991): 542.

56 Quebec retained a ban on jury duty until 1976, albeit "domestic obligations" remained a ground for exemption.

57 Maternity-leave provisions were added to the federal Canadian Labour (Standards) Code in 1970: Burt, "Changing Patterns of Public Policy," 222.

58 See e.g., *Family Relations Act*, SBC 1972, c 20.

59 Until 1954 women in Newfoundland could not vote before the age of twenty-five years old whereas men could vote at twenty-one.

60 Sally Weaver, "First Nations Women and Government Policy, 1970–92: Discrimination and Conflict," in Burt, Code, and Dorney, *Changing Patterns*, 93–94.

61 Weaver, "First Nations Women and Government Policy, 1970–92," 108–10. See also Indian and Northern Affairs Canada, *The Elimination of Sex Discrimination from the Indian Act* (Ottawa: Queen's Printer, 1982).

62 See sections 3 and 4 in *An Act Respecting Divorce*, SC 1968, c 24.

63 Brandt et al., *Canadian Women*, 485.

64 Between 1950 and 1966, women represented approximately 12.5 percent of all persons convicted of indictable offences, and rarely for violent crimes. There were twenty-nine convictions relating to women's child-bearing functions: Florence Bird et al., *Report of the Royal Commission on the Status of Women in Canada* (Ottawa: Information Canada, 1970), 366.

65 SC 1975, c 66.

66 For a useful overview of legal reforms based on the RCSW's recommendations, see Roger Gibbins and Robert Roach, *Building a Stronger Canada: Taking Action on Western Discontent* (Calgary: Canada West Foundation, 2004).

67 Baines, "Law, Gender, Equality," 261.

68 Judy Fudge, "The Effect of Entrenching a Bill of Rights Upon Political Discourse : Feminist Demands and Sexual Violence in Canada," *International Journal of the Sociology of Law* 17, no. 4 (1989): 451.

69 *An Act Respecting Employment Equity*, SC 1986, c 31 [*Employment Equity Act*].

70 United Nations General Assembly [UNGA], *Convention on the Elimination of All Forms of Discrimination against Women*. UN General Assembly, 34th Sess., 107th Plenary Meeting, UN Doc A/RES/34/180 (18 December 1979).

71 Fred Coates to Edward Maynard, Maynard (3 November 1976). Department of Justice Papers, file 7– 4–7–2, PRC #23, The Rooms Provincial Archives Division, St. John's, NL; Joseph Rousseau to the Executive Council, Memorandum (n.d.), History of the Human Rights Commission file, Newfoundland Human Rights Commission office files, St. John's, NL.

72 Canadian Civil Liberties Association, *Welfare Practices and Civil Liberties – A Canadian Survey* (Toronto: Canadian Civil Liberties Education Trust, 1975); Bruce Porter, "Twenty Years of Equality Rights: Reclaiming Expectations," *Windsor Y.B. Access Justice* 23, no. 1 (2005): 145–92.

73 Joan Sangster, "Incarcerating 'Bad Girls': The Regulation of Sexuality through the Female Refuges Act in Ontario, 1920–1945," *Journal of the History of Sexuality* 7, no. 2 (1996): 240.

74 *Murdoch v Murdoch*, [1975] 1 SCR 423.

75 Doris Anderson, *Rebel Daughter: An Autobiography* (Toronto: Key Porter Books, 1996), 89.

76 "Present Brief On Equal Pay, Equal Work," *Montreal Star,* 23 April 1953.

77 Cora Woloszyn to Don F. Brown (16 March 1953), Senate Committee on Industrial Relations, box 63, Acc.1987–88/146, RG14–20, LAC.

78 Walker, "The 'Jewish Phase' in the Movement for Racial Equality in Canada," 5–7. The first anti-discrimination law was in Ontario with the 1944 Racial Discrimination Act, which prohibited any signs or publications expressing racial or religious discrimination. Saskatchewan's 1947 Bill of Rights recognized a broad range of human rights, from fundamental freedoms, such as free speech, to non-discrimination in employment and services. But these laws were poorly enforced and they did not include sex discrimination.

79 List of organizations, 1952–53, Senate Committee on Industrial Relations, box 63, Acc.1987–88/146, RG14–20, LAC.

80 See, for example, *An Act to Promote Fair Employment Practices in Ontario*, SO 1951, c 24; *An Act to Promote Fair Accommodation Practices in Ontario*, SO 1954, c 28; *An Act to Prevent Discrimination in Employment because of Age*, SO 1966, c 3; *An Act Respecting the Legal Capacity of Married Women*, SQ 1964, c 66; *An Act to Amend the Fair Employment Practices Act*, SBC 1964, c 19 [*Fair Employment Practices Act Amendment Act*, 1964]; A Brief from the Association for Civil Liberties to the Premier of Ontario (1951), Jewish Labour Committee of Canada fonds, file 6, vol. 23, V75, MG28, LAC.

81 SC 1952–53, c 19; Margaret Campbell to A.F. Macdonald (20 February 1953), Senate Committee on Industrial Relations, box 63, Acc. 1987–88/146, RG14–20, LAC.

82 Legislation for equal pay was introduced for the first time in Ontario in 1949 by the Co-Operative Commonwealth Federation, but was defeated in the legislature: Dean Beeby, "Women in the Ontario C.C.F., 1940–1950," *Ontario History* 74, no. 4 (1982): 258–83. *An Act to Ensure Fair Remuneration to Female Employees*, SO 1951, c 26; *An Act to Ensure Fair Remuneration to Female Employees*, SS 1952, c 104 [*The Equal Pay Act, 1952*]; *An Act to Ensure Fair Remuneration to Female Employees*, SBC 1953 (2nd sess.), c 6 [*Equal Pay Act*]; *An Act to Ensure Equal Pay to Men and Women for Equal Work*, SNS 1956, c 5 [*Equal Pay Act*]; *An Act to Amend The Alberta Labour Act*, SA 1957, c 38; *The Equal Pay Act*, SPEI 1959, c 11; *An Act to Prevent Discrimination between the Sexes in the Payment of Wages for the Doing of Similar Work*, SM 1956, c 18 [*The Equal Pay Act*]; *Female Employees Fair Remuneration Act*, SNB 1960-61, c 7; *An Act to Promote Equal Pay for Female Employees*, SC 1956, c 38 [*Female Employees Equal Pay Act*]; Tillotson, "Human Rights Law as Prism," 535.

83 Fraudena G. ("Mrs. Rex") Eaton, Presidential Address, 1950, Provincial Council of Women, file 6, box 4, British Columbia Archives [BCA].

84 Dominique Clément, "Human Rights Law and Sexual Discrimination in British Columbia, 1953–1984," in *The West and Beyond*, ed. Sarah Carter, Alvin Finkel, and Peter Fortna (Edmonton: Athabasca University Press, 2010).

85 On human rights law in Canada, see R. Brian Howe and David Johnson, *Restraining Equality: Human Rights Commissions in Canada* (Toronto: University of Toronto Press, 2000).

86 Yvonne Bill v J.R. Trailer Sales, 1977, Vancouver Status of Women [VSW] fonds, file 46, vol. 2, University of British Columbia Rare Books and Special Collections [UBC RBSC].

87 Jim Gurnett, "Oral Histories," in *Alberta's Human Rights Story: The Search for Equality and Justice*, ed. Dominique Clément and Renée Vaugeois (Edmonton: John Humphrey Centre for Peace and Human Rights, 2012).

88 *Insurance Corporation of British Columbia v Heerspink*, [1982] 2 SCR 145; Day, *Reassessing Statutory Human Rights Legislation Thirty Years Later*.

89 *Ontario Human Rights Commission and O'Malley v Simpson-Sears Ltd.*, [1985] 2 SCR 536; *Bhinder v Canadian National Railway*, [1985] 2 SCR 561.

90 The exceptions were Ontario and Nova Scotia, where there were only slightly more complaints involving racial discrimination in some years. Even today, sex discrimination is still the basis for among the largest numbers of human rights claims in Canadian jurisdictions.

91 "Human Rights Board of Inquiry. Refusal to Hire: Jance Foster and BC Forest Products Limited," *Labour Research Bulletin* 7, no. 11 (November 1979): 52–53; *Grafe v Sechelt Building Supplies* (17 May 1979, BC Bd Inq); Joey Thompson, "Human Rights is B.S. to Company Man," *Kinesis* 8, no. 1 (1979): 3.

92 H.W. v Kroff (1976), VSW fonds, file 41, vol. 2, UBC RBSC; "Human Rights Code – Board of Inquiry Decision: Kerrance B. Gibbs v Robert J. Bowman," *Labour Research Bulletin* 7, no. 4 (April 1979): 51–52.

93 Norene Warren v F.A. Cleland & Son, and David Fowler (1975), British Columbia Human Rights Boards of Inquiry collection, file 2.21, Acc. 97–159, AR017, UVA.

94 *Bell v Ladas* (1980), 1 CHRR D/155 (ON Bd Inq).

95 *Brooks v Canada Safeway Ltd.*, [1989] 1 SCR 1219; *Janzen v Platy Enterprises*, [1989] 1 SCR 1252; *Vriend v Alberta*, [1998] 1 SCR 493.

96 Status of Women Action Group [SWAG], Report on discrimination in the retail trades (1972), AR119, file 32, vol. 3, British Columbia Archives [BCA]; SWAG report on the Human Rights Code (1981), British Columbia Department of Labour fonds, box 5, G84 079, BCA; Kathleen Ruff to Carol Pfeifer (15 December 1976), VSW fonds, file 2, vol. 10, UBC RBSC; Human rights policy (n.d.), British Columbia Federation of Women fonds, file 28, vol. 1, UBC RSBC; Linda Sproule-Jones to David Barrett (12 December 1973) and Linda Sproule-Jones to William Black (15 January 1974), both in Linda Sproule-Jones private collection; Victoria Human Rights Council Brief to the Human Rights Commission (1979), Dan Hill fonds, file 17, vol. 16, H155, MG31, LAC.

97 Newspaper index and outline (1974 to 1976), Acc. 1989–699–63, Ministry of the Attorney General, Human Rights Branch files.

98 P. Andiappan, M. Reavley, and S. Silver, "Discrimination against Pregnant Employees: An Analysis of Arbitration and Human Rights Tribunal Decisions in Canada," *Journal of Business Ethics* 9, no. 2 (1990): 146, 148.

99 Michael Mandel, *The Charter of Rights and the Legislation of Politics in Canada* (Toronto: Thompson Education Publishing, 1994), 399. A successful challenge under the *Charter of Rights and Freedoms* forced Yukon in 1985 to amend its laws prohibiting a married woman from changing her name, and in 1985 a married woman successfully challenged Ontario's vital statistics law that denied her the right to give her child her surname: Baines, "Law, Gender, Equality," 266–67.

100 Mary Gooderham, "Ontario Drops 'Spouse' Welfare Rule," *Globe and Mail*, 26 June 1987.

101 On the Charter of Rights and Freedoms and women's rights, see Faraday, Denike, and Stephenson, eds., *Making Equality Rights Real*.

102 *Canada (Attorney General) v Bedford*, 2013 SCC 72, [2013] 3 SCR 1101, 1104.

103 *Law v Canada (Minister of Employment and Immigration)* [1999] 1 SCR 497.