

# Women's Rights in Canada: Social and Economic Realities\*

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The entrenchment of the Charter of Rights and Freedoms in the Canadian constitution in 1982 must be considered as a milestone in constitutional and political development for women in this country. The process leading up to this event demonstrated the ability of women's groups not only to mobilize and to sustain political support for the inclusion of equality rights for women in the Charter but also to effect change in the government's initial proposals. Despite this achievement, there is little room for complacency. The fact that, near the end of the process, Premier Blakeney of Saskatchewan attempted to bargain with the rights of women for the rights for native peoples added a crass and callous note of reality, reflecting the fragile nature of the status of both women and natives in society.

The aftermath of the passage of the Charter has legal experts and academics assessing the implications of the provisions which have been

included. Sections 15 and 28 entrench particular rights for women which, in addition to other provisions in the Charter respecting general rights, will involve. The courts will have a major role in determining the practical effects of the law through judicial policymaking. And, as one writer has observed, "...the Charter does not prescribe a judicial attitude to its administration."<sup>1</sup> The disposition of the judges towards the issues brought before them will be an important factor in determining any legal interpretation of the provisions. Thus, one must not assume that rights for women in the Constitution will translate literally or automatically into 'equality' in the home, in the workplace and in society.

Beyond judicial interpretation, social and economic factors will also impinge on the meaning and relevance of women's rights as expressed in the Charter. It is one thing to have rights entrenched in a constitution, it is another to exercise those rights in any particular socio-economic context. The purpose of this paper is to examine some of the practical limitations of particular rights and freedoms as they affect women. To begin, an examination will be made of the exercise of political rights by women in national politics. A number of explanations for the low participation rates of women in seeking political office will be reviewed. Secondly, an assessment of equality rights as they affect the sta-

tus of women in the workplace will be made. The prospects of equal opportunity and affirmative action programs in light of changing economic conditions will be considered. Thirdly, a discussion of mobility rights will center on the balkanized nature of legislation, especially social legislation, in Canada. Finally, an attempt will be made to characterize how existing laws reflect a variety of values respecting the status of women and to comment on some implications of possible future reforms. It is the underlying principles upon which laws are based that will influence the substance and direction of change.

### Political Rights

There are few people today who would question women's right to vote. Studies, especially those of Cleverdon,<sup>2</sup> Brodie and Vickers,<sup>3</sup> demonstrate the relatively recent involvement of women in the Canadian political process. Women obtained full franchise in federal elections in 1918. The provinces of Manitoba, Saskatchewan and Alberta had extended provincial franchise to women in 1916. By 1925, all provinces except Quebec had passed legislation to grant the vote to women. In Quebec, women's right to vote was not affirmed until 1940.<sup>4</sup>

As Brodie and Vickers have observed: "...the history of political emancipation of Canadian women defies coherent analysis except within a framework of a region-by-region assessment...."<sup>5</sup> For example, women in New Brunswick gained the right to vote in 1919 but were not eligible to hold public office until 1934. The first female legislator in New Brunswick was elected in 1967. Although women were given the right to vote and hold public office in Prince Edward Island in 1922, it was not until 1970 that the first woman was elected to the legislature.<sup>6</sup> The exercise of rights obtained under the laws by women reveal varying and uneven patterns.

Section 3 of the 1982 Charter of Rights and Freedoms extends the democratic right to vote in

an election for members to the federal House of Commons or a provincial legislature and to be qualified to seek election to these bodies to "every citizen of Canada." In terms of voting behaviour, electoral studies in Canada have not revealed significant differences between men and women.<sup>7</sup> That is to say, women exercise their democratic right to vote at election time. There have been slight differences in the degree of support for particular political parties between men and women but not of a significant nature.<sup>8</sup> Rather, the critical differences between the sexes in the exercise of political rights relate to their participation in seeking and holding elected office. An examination of the results of the most recent federal general election is revealing:

#### 1980 Federal General Election<sup>9</sup>

	Number of Elected Members	Number of Women Elected	Number of Women Candidates
Liberals	148	10	23
Progressive Conservatives	101	2	14
New Democratic Party	32	2	22
Other	<u>0</u>	<u>0</u>	<u>122</u>
Totals	281 ±	14	181
	± (one vacancy due to death of candidate)		

The number of women elected to the House of Commons in 1980 represented 5% of the total number of elected members. The total number of female candidates seeking office, nevertheless, was about 12%.<sup>10</sup> The Liberal party had the highest success rate for its women candidates (nearly 50%) but two-thirds of them came from Quebec, a province in which the federal Liberal party had strong political support and a strong party organization. One might conclude that this reflected an effort on the part of the Party to support the nomination of women in constituencies where they had good chance of winning and not just to have women candidates on the

slate. In contrast, the Progressive Conservatives had a smaller number of women candidates who, in turn, had a lower success rate. This Party ran few women candidates in western Canada, a region where their overall party support was strong. Of the three women elected in British Columbia, two were elected for the NDP and were from constituencies which had a reasonably strong party support base provincially. Perhaps the most dramatic figure is the large number of women candidates who ran for independent or fringe parties and who were unsuccessful in their election bid. One might conclude that this reflects a non-partisan orientation on the part of the majority of female candidates or it may be viewed as evidence of inaccessibility to major political party organizations.

Comparative data for the past decade or more would show similar patterns of representation and lower participation rates. It has been reported that, between 1921 and 1980, only 34 women had become federal legislators.<sup>11</sup> To provide a more balanced perspective of female representation, reference is often made to the number of female senators who, while appointed, also hold parliamentary office. Currently, there are about 10% of senators who are women. In the case of provincial legislatures, the number of female legislators decreases progressively as one moves from west to east.<sup>12</sup>

Studies that have addressed the issue of female participation in the seeking of elected office in national and state politics, provide a range of explanations for low representation and success rates.<sup>13</sup> First, a frequent explanation is one which is related to attitudes. Prejudices about the physical, emotional and/or intellectual inferiority of women have prevailed for a long time. Moreover, it is often observed that the socialization of women prepares them for traditional roles as mother and wife and, even if they work, seeking election to political office is not a desired female undertaking.

Beyond the traditional roles, other kinds of attitudes and values may be inhibiting. Many feminists, for example, are ambivalent about seeking elected office in existing political institutions that support power relationships based on domination and inequity.<sup>14</sup> For those women who do achieve office and work within the 'system,' they do not always provide the type of leadership or act as the type of role model that might encourage other women to pursue a political career.

A second line of explanation offered for the limited numbers of women in political office is that many of the issues that concern women are not on the public agenda or, at least, are not major priorities. Moreover, they are not matters that are in dispute not are they seen as power issues.<sup>15</sup> Many 'women's issues' such as abortion, divorce, family law and social services have been and are public ones. While some may argue that 'women's issues' lack the national significance of unemployment and government deficits, they do, in fact, involve fundamental power issues. Abortion is a good case in point.

Since 1968-69 when the Criminal Code was amended to allow for therapeutic abortion, the number of abortions performed each year in Canada has been increasing steadily. The concern of particular community groups, many of them women's groups, raised this matter to a major single issue that confronted candidates in the last two federal elections. Public opinion on the question spans a spectrum ranging from proponents of abortion on demand to those who promote outright prohibition on the ground that abortion violates the right to life. For feminists, the right to choose is paramount. That a woman should have control over her own body is a fundamental element of freedom and requisite for equality of status. In the middle range, there are a variety of views that reflect qualified support for therapeutic abortions in particular circumstance such as when the life of the mother is in danger or in rape cases.

A main concern of many women engaged in debates and political action on this and other issues is that the decision-makers who will be responsible for resolving or attempting to resolve them are primarily men. What is often not realized is that decision-makers, whether men or women, have to make compromises and negotiate solutions across a broad range of policy issues. Single issue political activism, therefore, has severe limits on enhancing female participation in the broader political process where conflicting demands must be accommodated. The difference between acting on principle and acting purposively has to be understood and, if necessary, reconciled before effective strategies for political success can be formulated. Above all, it must be remembered that politics is the art of the possible, and compromise and consensus are ultimately required for action to be taken.

Another line of argument focuses on conditions and factors affecting the selection and nomination of women for political candidature. Here it is important to note some of the practical difficulties of penetrating the formal and informal structures and networks that control entry and advancement in the formal political process. Generally speaking, the issues are not so much ones respecting the eligibility of women in the sense of their availability and interest in seeking office. Rather the problems relate to a number of conditions and factors respecting the candidates' social and financial situation and the community environment. In broadest terms, the problems stem from the organizational structures of political parties, the processes they use to recruit and nominate candidates and even the nature of the electoral system itself.

In this context, it is interesting to note that, at its 1983 convention in Regina, the New Democratic Party passed a resolution requiring that 50% of the positions in the party organization be filled by women. By assuming leadership and decision-making roles within the party, it would be expected that women would have a better

opportunity not only to influence party policies and activities but also help reform the candidate recruitment and selection processes controlled by the party organization. It will be interesting to see, in the years ahead, what effect this party resolution will have on democratizing the party structure and on extending opportunities for women's candidacy for office.

Although women have the right to hold political office, the exercise of that right has eluded the majority of women especially at the national and provincial levels in Canada. Women appear to be more active in seeking and obtaining municipal office but this experience is not always used as a stepping stone into other political arenas. Furthermore, one often hears the patronizing comment that municipal politics is a more 'appropriate level' at which women may participate. What seems clear is that the political parties themselves should consider seriously the implementation of "affirmative action" programs in the recruitment and selection of women candidates.

### Equality Rights

Equality rights for women have been defined, for the most part, as freedom from discrimination. The 1960 Canadian *Bill of Rights* prohibited discrimination on the ground of sex on matters falling within the jurisdiction of the federal Parliament. Secondly, the federal *Human Rights Act* of 1977 established a commission for investigation and appeals of sex discrimination for individuals employed under federal law. Anti-discrimination clauses are contained in provincial human rights legislation and most provinces also have Human Rights Commissions. In British Columbia, the body that will replace the recently dis-established Human Rights Commission will continue to advise on matters of sex discrimination but it is not clear how enforcement powers will be exercised. Thus, there are two key elements that are pertinent: the types of guarantees of equal treatment and free-

dom from discrimination and the scope of their application; and, the means available for grieving or correcting action taken against an individual.

The current provisions in the 1982 Canadian Charter go some distance in guaranteeing equality and freedom from discrimination on the basis of sex. The story behind the inclusion of the provisions affecting women is one of the more dramatic ones to come out of the Great Constitutional Debate.<sup>16</sup> Briefly, the events were as follows: Without consulting women's groups or even federal women's advisory agencies on the issue, the federal government proposed a clause in its 1980 constitutional resolution which guaranteed equality before the law and equal protection of the law. The reaction was immediate and forceful. In an exhaustive analysis of judicial interpretations of the equality-before-the-law provision in the 1960 *Bill of Rights* and other cases, Beverley Baines of Queen's University had demonstrated that this kind of wording fell short of protecting women's equality.<sup>17</sup> Women's lobbying activity led initially by the Canadian Advisory Council on the Status of Women centered around changing the wording of the clause and including other provisions to guarantee equal rights for women.

On the face of the record, these efforts resulted in some measure of success. Three provisions in the 1982 Act address equality rights. Section 15(1) provides for equality "before and under the law" and offers the "right to the equal protection and equal benefit of the law without discrimination." Section 15(2) protects the existence of any law, program or activity "that has as its object the amelioration of conditions of disadvantaged individuals or groups." Thirdly, Section 28 reaffirms the guarantee of equal rights to both sexes. However, this latter clause begins with the disclaimer, "notwithstanding anything in this Chapter." There are also other provisions in the Act which qualify the application of Section 15. For example, Section 33(1) allows for exceptions to

be declared for matters included in Sections 7 to 15, although Section 33(3) places a five-year limitation on such exceptions. Then there is the "reasonable limits" phrase used in Section 1 which pertains to all matters contained in the Charter.

The debate on equality rights served to heighten women's awareness of the issues and, for those who participated directly in it, helped to increase their sense of efficacy in the policy process. Hopefully, the results will be more than symbolic, although the symbolic significance should not be dismissed. Obviously, the practical significance of these rights is the critical issue. One writer has questioned whether judicial procedures and interpretations will provide an effective means of dealing with issues such as those involving equality rights.<sup>18</sup> As the critics of entrenchment have argued, the courts are not the appropriate authorities to resolve policy issues because judicial interpretation may influence a line of policy which displaces the original intent of a legislature. And this can occur whether the disposition of the judges is towards restraint or activism.

In practical terms, the struggle for equal rights for women has been particularly pertinent in the workplace. Efforts to remove inequities in employment opportunities and in wage and working conditions for women have resulted in a variety of programs and legislative acts at both the provincial and federal levels of government. For example, at the federal level, the *Canada Labour Code* has, since July 1971, prohibited differences in wages between male and female employees "employed in the same establishment performing the same or similar work under the same or similar working conditions on jobs requiring the same or similar skill, effort and responsibility." Section 11 of the *Canadian Human Rights Act* sets out the equal value clause in respect of matters falling under the jurisdiction of this Act. Considerable attention has been paid to the implementation of this section. In particular,

the tribunal has concerned itself with defining the critical terms in the provisions. Although the Commission has settled only a half dozen equal value cases, its resolution of a complaint involving intergroup comparisons has been heralded as precedent-setting.<sup>19</sup> The case involved the Public Service Alliance of Canada acting on behalf of members of the Library Science group who alleged that their work was of equal value to that of members of the Historical Research group. The former group was female-dominated; the latter group was male-dominated. The commission concluded that the wage difference was attributable to sexual discrimination and appropriate recompense subsequently was paid by the Treasury Board to members of the Library Science group.

Legislative requirements such as equal pay for work of equal value have been considered effective means of addressing the problem of wage differentials in specific circumstances. A main difficulty with equal value clauses has been the restrictions and qualifications contained in them. The broader problem of occupational segregation of the sex-typing of occupations involves other factors and conditions respecting the recruitment, promotion and mobility of female employees, which must be addressed.

Equal opportunity and affirmative action programs have been developed to help redress some of the problems of occupational segregation and are often considered as complements to equal pay legislation. Unlike the United States, governments in Canada have not attempted to use quota systems in implementing these programs. Rather, they have focussed on particular target groups such as women. Implementation has involved a central agency or administrative unit responsible for policy and program development to work in co-operation with managers in the various public service organizations. The federal government has played a leading role in this area and most provincial governments and some municipal jurisdictions have introduced

equal opportunity and affirmative action programs for women.

At the federal level, the Public Service Commission, since 1974, has been increasing its efforts to improve the access of women to job opportunities, particularly to senior positions in government. While there has been improvement in the representation of women in the officer categories, for example, women still dominate groups in the Administrative Support category. In 1982, 65.6% of women employed under the *Public Service Employment Act* earned \$20,000 or less per year compared to 15.6% of men earning \$20,000 or less.<sup>20</sup> A comparison of changes in participation rates in a five-year period by category shows the extent to which change is taking place:

#### Percentage of Women in Occupational Categories in the Federal Public Service\*

Category	Percentage of Women in Category	
	1977	1982
Senior Executive/Management	2.9%	5.4%
Scientific and Professional	23.0%	22.1%
Administrative and Foreign		
Service	22.1%	32.0%
Technical	10.2%	11.9%
Administrative Support	90.9%	81.9%
Operational	17.7%	11.4%

\*Denotes full-time employees only employed under the *Public Service Employment Act*.

Source: Canada, Public Service Commission, *Annual Reports*, 1977, 1982.

It would be misleading to focus exclusively on efforts by governments to promote the equality of women in the workplace. While governments—federal, provincial, municipal—are large employers, the private sector is responsible for employing equally large numbers of workers. It

is expected that future growth in jobs will rest primarily with the private sector employer. And the record of the private sector in advancing women's equal status and opportunity is typically described as dismal, although rays of hope sometimes shine through.

In a recent article, the Hon. William Hamilton, President of the Employers' Council of British Columbia, described a scheme whereby the private sector in that province has attempted to meet the challenge of equal opportunities by taking an initiative of its own.<sup>21</sup> In 1981, the Council produced "A Guide to Affirmative Action" which set out broad policy principles and identified a number of steps to achieving the implementation of affirmative actions plans. The scheme is voluntary and the responsibility ultimately falls on the employer and the industry to take action. While some would consider these features to be shortcomings, the overall plan itself is a progressive step.

In an age of government cutbacks and even retreat from social responsibilities, the future of equal opportunity, equal benefits and affirmative action may look rather bleak. Voluntary compliance within the private sector may also add a note of anxiety for those concerned with these issues. But the slow improvement in female representation in executive and professional ranks in the federal public service, the continuing wage differentials and occupational segregation in many employment sectors and the portending consequences of continued economic recession on job opportunities in general are not as disquieting as the statistics which show that women do not appear to be acquiring non-traditional educational backgrounds and jobs in significant numbers. Graduate and employment patterns over the last ten years reveal that women are not well-represented in some of the sciences and engineering fields and continue to be under-represented in management and administration.<sup>22</sup> Obstacles to equal opportunity may be more deep-rooted and more subtle than we think. Cur-

rent and future studies of sex discrimination should examine closely the reasons for these patterns.

### **Mobility Rights**

In an open, democratic state, freedom of movement and domicile from one place to another are taken largely for granted. In a federal system such as Canada, there are no legal prohibitions to a change of residence from one part of the country to another, nor are there any customs office on interprovincial boundaries restricting entry or granting permission to travel from one place to another. The powers assigned to the federal government in 1867 in respect of such matters as trade and commerce, taxation, legal tender, banking, etc., were intended to provide for an economic union that contained no barriers to trade and movement of goods or inhibited mobility of citizens. Despite the efforts of the 'fathers' of Confederation to establish a division of powers between governments that would respect local interests on the one hand and matters of national importance with the central government on the other, there has been a balkanization of laws concerning economic and social matters, which, if not restricting mobility *per se*, can have an influence on residency and freedom of movement in that regard.

Within this context, Section 6 of the 1982 Charter is pertinent. It grants every citizen of Canada the "right to enter, remain in and leave Canada." It then goes on to guarantee citizens and permanent residents the right to move to and live in any province and "to pursue the gaining of a livelihood in any province." These rights are then limited by being subject to any provincial laws in force other than those "that discriminate among persons primarily on the basis of province of present or previous residence" in respect of qualifications for social service benefits. Finally, the limitations do not preclude programs or laws directed to ameliorating in a province "conditions of individuals in that

province who are socially or economically disadvantaged if the rate of employment in that province is below the rate of employment in Canada." Presumably, the province of British Columbia could not pass legislation prohibiting the entry of residents from Ontario or impose special taxes on Ontario residents entering the province and not on others. However, British Columbia could pass laws which varied the residency requirements, if only by a few months, for eligibility for social services also available in other provinces. Similarly, the federal government could initiate special programs for the residents of a single province "whose rate of employment is below the national rate" and not for those in other provinces.

While a primary *raison d'être* for federal systems is to protect regional interests and to account for diversity in social, economic and cultural conditions and circumstances in the federation, those same protections and guarantees of local particularisms can sustain and nurture inequities in the social and economic affairs of the citizens. Three examples which are particularly pertinent to women are offered to demonstrate this point. In the first instance, varying provisions in provincial equal pay legislation may act as barriers to interprovincial mobility of workers. If less protection is offered under legislation in one province than another, the inequities in opportunities for women at the level of the firm, so to speak, are extended to become inequities on an interprovincial level. Varying minimum wage laws, employment and pension benefits, as well as varying equal pay and equal opportunities programs can bear directly on where women may live to pursue a livelihood.

Secondly, provincial laws respecting property and family law is another area which affects residency and mobility, especially for women. During the 1980 constitutional debate, the federal government proposed that family law, including matters such as marriage, divorce, property and civil rights, should become the responsibility

of those provinces that wished to assume them. Although this issue and others respecting division of powers were put aside by first ministers, the debate which the family law proposal generated at that time revealed divided opinions on the proposal.

Those opposed to the transfer of responsibility to the provinces argued that the current provincial laws respecting family law matters already constitute a fragmented, checkerboard system and that inclusion of any further local or regional particularisms in provincial legislation would create even greater inequities. As Carol Huddart has observed, although the general scheme of provincial matrimonial property legislation is similar in nature, each provincial scheme varies in detail. According to her, "We have 10 different systems of dealing with matrimonial property; we have 10 different ways of dealing with matrimonial property during marriage; and, we have 10 varieties of result on death."<sup>23</sup> As property division has tax implications and as provincial systems respecting property division vary, there is considerable uncertainty about how the burden of tax may affect the parties involved.

Those who advocated the transfer of jurisdiction on family law to the provinces, especially some women's groups in the province of Quebec, argued that family law matters are interdependent and inseparable.<sup>24</sup> Responsibility should rest with the provinces since they already have primary jurisdiction in the area. However, it is important to note here that the province of Quebec protects sharing of property in matrimonial regimes in its *Civil Code*. Similar rights and protections do not exist in the common law provinces.

The problem of variations in provincial legislation and its administration respecting family matters is also evident in relation to custody laws and maintenance orders respecting children.<sup>25</sup> As in the case of property settlements, the province of residence of the mother and the father



after marriage breakdown can be a critical factor in determining the extent to which women may be able to obtain support for their children. Ironically, in this type of situation, the mobility of one of the parents, especially the father, may be the cause of difficulty for the other parties.

A third area in which women's mobility and pursuit of a livelihood can be influenced by place of residency is in the realm of social services. Despite the elaborate and complex federal-provincial fiscal structure which has evolved over the last forty years for the purpose of overcoming interprovincial inequities in fiscal capacity and of promoting the provision of national minimum standards of social services across the country, the ability of the different provinces to maintain services varies significantly.<sup>26</sup> The federal government has expanded its involvement in the social services field primarily through the exercise of the federal spending power. Constitutionally, the provinces have primary jurisdiction in this field. Different types of arrangements have been established for different programs. Joint federal-provincial conditional grant programs usually require matching funds from both levels of government. Unconditional or bloc grants from the federal government impose no such conditions on the provinces who may spend these grants as they see fit. Many of these services, from hospital and medical services to social assistance to daycare are important to women. Where provincial governments administer the programs, regardless of the source of funds, residency requirements and other eligibility criteria may be applied and, hence, can vary from province to province. Although they may be 'reasonable requirements,' they may result in loss or reduction of services.

Another factor that may have an even more profound impact on mobility and residency protection is the growing disparity in provincial arrangements for social welfare. In the last several years, all governments have experienced ris-

ing costs and growing deficits. Social service programs have come under heavy attack in political arenas and have often been the object of budget-cutting exercises. Moreover, in some jurisdictions, political sentiment supporting the state's social responsibilities has waned and government response has been to implement measures to reduce the role. At the present time, it is difficult to ascertain or even speculate on how far social services may be eroded either by cutbacks or program elimination. On a large scale, such developments could compound any existing inequities. As a result, mobility and residency guarantees may be circumscribed by economic and political circumstances.

Whether the issue is employment opportunities, family law matters or social services, women are effected by variations in provincial legislation in distinct ways. Guarantees of mobility and pursuit of a livelihood may have a hollow ring when particular social and economic circumstances are taken into account. The resolution of some of these issues will require either a larger role for the national government or better co-ordination and complementarity among provincial legislative and administrative measures.

### **Social Position and Economic Status — How Much Independence?**

During the television broadcast in January 1983, the Honourable Judy Erola, federal Minister of State responsible for the Status of Women, put forward ideas concerning a revision of the spousal deduction in federal personal income tax law.<sup>27</sup> Basically, her suggestion was that the deduction be dropped and that the additional revenues obtained be re-channelled into more critical areas like child care. Public reaction was immediate and, in some instances, vociferous. Although more sympathetic commentators suggested that the Minister was, perhaps, ahead of her time in her views on this matter, the fact that there was a strong negative outcry to her sugges-

tion demonstrates a basic dilemma concerning women's human rights and equal status.

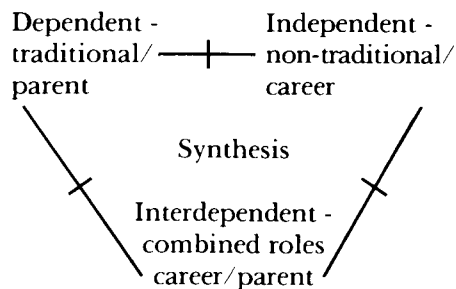
The heart of the issue seems to be this: Many of our laws reflect social values and establish social arrangements which have been designed primarily to protect the dependent married woman who engages in no paid work.<sup>28</sup> Changes that have been made in various laws to recognize changing social values and economic roles may be described essentially as accommodations within the traditional value framework. Attempts at the reconciliation of different principles and values in our laws have resulted in changes in some areas, such as maternity/paternity benefits, pension benefits (to a limited degree), child care benefits, but there are still other areas such as marriage or spousal deductions where the fit is imperfect.

It is against this backdrop that human rights of women, especially those dealing with anti-discrimination and equality rights must be viewed. Our current system of laws is one which has been built around the protection of the woman as homemaker and childbearer. That laws reflect the social values that support this role is understandable. Reforms of the law have concentrated on inequities which affect individuals most directly, but they have hardly touched the fundamental underlying principles upon which the laws are based. The overlay of constitutionally entrenched rights respecting equal status for women on a system of laws which continues, in large measure, to uphold the traditional role of women is bound to have a number of unintended, as well as intended, consequences. Although there is a three year period (to 1985) before Section 15 of the Charter comes into effect to allow governments to examine their laws in order to identify clauses and provisions which violate the equality clause, there is no requirement that prompt ameliorative action be taken. In fact, there are several options open to governments, including simply doing nothing, until an offending law is challenged in the courts.

Moreover, it can be expected that prevailing public opinion and financial consideration may influence the course of action chosen. And in some provinces that may mean not much action at all.

The woman who is prepared to accept laws which protect her dependent interests will not be moved to furthering systematic application of equal status. She might, in fact, be motivated to work against such changes. Witness, for example, the women's groups involved in opposing the Equal Rights Amendment in the United States. Women who seek to combine two main roles as wife and mother on the one hand and as working women on the other may seek modifications in the laws that balance the interests around these two roles. For example, equal opportunity in the workplace, equal pay for work of equal value may be important, but day-care services, family allowance payments and childcare deductions are also parts of the benefit package necessary to achieve equal status. To the extent that sharing responsibilities for child-rearing becomes an increasingly dominant value, there may be a continuing rationalization of laws to remove discriminatory provisions with respect to sex. For the single woman, committed to career and financial independence, the achievement of equal status may have to be sought for the time being within the male economic structure and governed by terms and conditions which obtain in those settings. These situations, too, may be changed over time as larger numbers of female careerists assume positions within those structures or alternatively create competing structures of their own.

At the risk of oversimplification, one might depict the divisions and interrelationships among different types of women's interests and values in the following way:



One could argue that these three sets or groupings reflect the dominant values systems in which contemporary women may be placed. Each set connotes a particular role or roles for women. These three sets, however, are not mutually exclusive. For any particular woman, her experiences could require her to transcend the roles and values associated with them of any one set either temporarily or permanently. Moreover, certain values may be carried over from one set to another as well. Hence, it would be inappropriate to suggest a strict compartmentalization of individuals within one set or another. Rather, the interaction between the role and value sets could work toward a synthesis, depicted by the mid-point in each of the lines in the diagram. Values can change over time and as a result of different experiences. New value sets may evolve through the synthesis of existing ones. The range of possibilities is, of course, much greater in real life than what the diagram suggests.

The essential point is that the social values respecting the role and position of women are varied, complex and interwoven. Female relationships are evolving as well as male-female relationships. How governments and societies seek and obtain consensus on direction for change as a result of what can best be described as uneven changes in values is a major challenge for the public policy process. For some women's groups, change in public policy is not occurring fast enough; for others, it has already gone beyond the limits it should. Identifying the majority view on any particular issue is not easy for, as noted above, individuals may adhere to

different values on different issues and in different circumstances.

### Future Prospects

The entrenchment of equality rights for women in the Charter of Rights and Freedoms has afforded a major opportunity for women in Canadian society. However, women should be cautious in their expectations of consequent changes in our laws and in their position as a result of this achievement. Many of the issues respecting women are ones which have not yet worked through the policy process in social and economic areas. In many instances, we do not know the precise meaning of equality in relation to issues involving conflicting social values. While the courts will play a large role in defining the various terms in the Charter and their application to women as cases are brought before them, the political process will also be a vehicle for women to pressure for policy changes that represent their values and interests. It may be that the courts will be restrained in their adjudications. As a result, the importance of policy changes may become more, not less, critical.

In addition, the political and economic environment in Canada has been changing in ways that might be perceived by some to threaten the accomplishments respecting women's status. For example, in the last decade, governments have shifted their agenda from social to economic policy concerns. In recent years, governments, especially at the provincial level, have been elected on political platforms of restraint and less government intervention. Although there is a strong tradition of support and toleration of government intervention in Canada, the fact that changes are occurring in the political and economic environment which are creating general conditions of limited government support and economic opportunities will require greater vigilance and more concerted action from women on a number of different planes. The following

strategies are among those most likely to result in positive effects:

1. Organizational reform in political parties. If women are going to use their democratic right to hold elected political office, the structures and mechanisms whereby political parties recruit and select candidates need to be reformed. Systematic efforts of nominating and electing capable female candidates to public office are required. Certainly there are examples of women in top party positions: the president of the national Liberal Party is a woman; the executive director of the national Progressive Conservative Party is a woman. As noted earlier, the New Democratic Party, whose record has been no better than the other two major national parties in recruiting and electing women candidates, appears now to be reforming its party structure. If women want power, they are going to have to seek it and that means being involved in those processes by which it is obtained.
2. Continued efforts to advance equal status in the workplace. Equality in this context may, for some time to come, continue to involve equal status in equal circumstances. Overcoming occupational segregation will be a gradual process. At the risk of establishing new centers of privilege over the short-term, affirmative action programs will be important to the achievement of long-term goals of equal status. Equity within occupational groupings can be advanced in this way.
3. Reconciliation of traditional and non-traditional values respecting the family. In some respects, this area may be the single most important element underlying strategies for change. To many, to real 'revolution' is occurring in the home, and in respect of economic roles of family members and parenting responsibilities. The protection of

traditional family values is going through major metamorphosis. Secondly, our laws should reflect compatibility between and among traditional and non-traditional values. There has to be accommodation of varying values but they should not contradict basic principles of law concerning equality. Despite new lifestyles, statistics show that the majority of Canadians live in married, family circumstances. Thus, the family unit may continue to be where the 'real action' is going to be in the years ahead.

#### NOTES

1. Berend Hovius, "The Legacy of the Supreme Court of Canada's Approach to the Canadian Bill of Rights: Prospects for the Charter," *McGill Law Journal*, Vol. 28, no. 1 (December 1982), p. 58.
2. Catherine L. Cleverdon, *The Women Suffrage Movement in Canada*, 2nd edition (Toronto: University of Toronto Press, 1974).
3. There are several key references here. In particular, see M. Janine Brodie and Jill McCalla Vickers, *Canadian Women in Politics: An Overview*, (Ottawa: Canadian Research Institute for the Advancement of Women, 1982); and M. Janine Brodie, "The Recruitment of Canadian Women Provincial Legislators, 1950-1978," *Atlantis*, Vol. 2, no. 2, Spring 1977, pp. 6-17.
4. See T. H. Qualter, *The Election Process in Canada* (Toronto: McGraw-Hill, 1970), pp. 9-10 and William Mishler, *Political Participation in Canada: Prospects for Democratic Citizenship* (Toronto: MacMillan, 1979), p. 25.
5. Brodie and Vickers, *Canadian Women in Politics*, p. 1.
6. *Ibid.*, p. 3.
7. See John Meisel, *Working Papers in Canadian Politics* (Montreal: McGill-Queen's University Press, 1975), p. 12.
8. *Ibid.*
9. Statistics compiled from official listings printed in Toronto *Globe and Mail*, Tuesday, 19 February 1980, pp. 12-13, rechecked on elected members for *Canadian Parliamentary Guide 1981*.
10. There were 1,437 listed candidates who ran in the election.
11. Brodie and Vickers, p. 38.
12. *Ibid.*
13. In addition to Brodie and Vickers's work, two studies were particularly useful. One done in Great Britain by Margaret Stacey and Marion Price, *Women, Power and Politics* (Suffolk: Richard Clay, The Chaucer Press), 1981 and a study in the United States by Wilma Rule, "Why Women Don't Run: The Critical Contextual Factors in Women's Legislative Recruitment," *The Western Political Quarterly Review*, Vol. XXXIV, no. 1 (March 1981) pp. 60-77.
14. Helene Moglen, "Power and Empowerment," *Women Studies. International Forum*, Vol 6, no. 2, (1983), pp. 131-35.
15. Stacey and Price, pp. 102-3.
16. For an account see Chaviva Hosek, "Women and the Constitutional Process," Keith Banting and Richard Simeon, *And No One Cheered: Federalism, Democracy and the Constitution Act* (Toronto: Methuen, 1983), pp. 280-300.

17. The Baines' paper may be found in Audrey Doerr and Micheline Carrier, eds., *Women and the Constitution* (Ottawa: Supply and Services, 1981), pp. 31-63. Mary Eberts, a Toronto lawyer, was also actively involved in preparing the Council's case.
18. Donald Smiley, "A Dangerous Deed: The Constitution Act, 1982," in Banting and Simeon, p. 92.
19. See paper by Lindsay Nieman, "Equality and Compensation: The Secondary Economic Status of Women in the Paid Workforce," in Labour Canada, *Sexual Equality in the Workplace* (Ottawa: Supply and Services, 1982), pp. 45-65 and page 59.
20. Public Service Commission, *Annual Report 1982*, Table 8, p. 54.
21. William M. Hamilton, "Beating Government to the Punch," *Policy Options* Vol. 4, no. 1 (January/February 1983) pp. 6-7.
22. See Statistics Canada, W. G. Picot, *University Graduates and Jobs: Changes During the 1970s* (Ottawa: Supply and Services, 1983), Appendix C.
23. Carol Huddart, "Property Division on Marriage Breakdown in the Common Law Provinces," Doerr and Carrier, eds., *Women and the Constitution*, p. 95.
24. "Statement by the Federation des femmes du Quebec on Jurisdiction in Family Law," in Doerr and Carrier, pp. 119-120.
25. See Myrna Bowman, "From Bad to Worse in One Easy Step," in Doerr and Carrier, pp. 77-93 and Keith B. Farquahar, "The Variation, Enforcement and Interpretation of Maintenance Orders in Canada—Some New Aspects of An Old Dilemma," *Canadian Bar Review*, Vol. 60 (1983), pp. 585-618.
26. David J. Elkins and Richard Simeon, *Small Worlds: Provinces and Parties in Canadian Political Life* (Toronto: Methuen, 1980), pp. 242-284. Although the authors argue that there has been a high degree of convergence among the provinces in government spending in areas such as health, education and welfare, the range of variations expressed as a percentage of gross general expenditures is considerable. See for example, *ibid.*, p. 260.
27. See George Galt, "Politics—Judy Erola's views on family and taxes created a political furor," *Saturday Night*, (July 1983), pp. 7-9.
28. An interesting paper on this theme is Brian Abel-Smith's, "Marriage, Parenthood and Social Policy," *The Political Quarterly*, Vol. 53, no. 3, (July-Sept. 1982), pp. 304-317.