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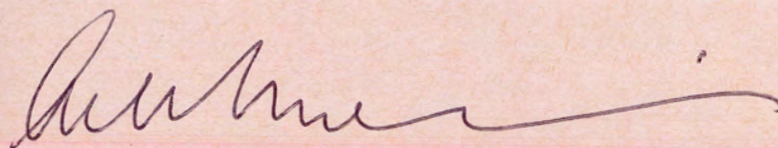
CABINET DECISION

No.....5989.....

Submission No.: 5150

Title: PROPOSAL FOR AN EQUALITY OF STATUS OF MARRIED
PERSONS BILL

Cabinet authorised the drafting of an Equality of Status of
Married Persons Bill.



A. G. MORRIS
Secretary to Cabinet.

28 March 1989

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5150

FOR CABINET

SUBMISSION No:

| | |
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| <p>Title:</p> <p>Minister</p> <p>Purpose:</p> <p>Relation to existing policy:</p> <p>Timing/ legislative priority:</p> <p>Announcement of decision, tabling, etc:</p> <p>Action required before announcement:</p> <p>Staffing implications, numbers and costs, etc:</p> <p>Total cost:</p> | <p><u>PROPOSAL FOR AN EQUALITY OF STATUS OF MARRIED PERSONS BILL</u></p> <p>Attorney-General</p> <p>To authorise the drafting of an <u>Equality of Status of Married Persons Bill</u>.</p> <p>Part of on-going review of Attorney-General's legislation.</p> <p>No priority.</p> <p>At time of Cabinet decision.</p> <p>Nil</p> <p>Nil</p> <p>Nil</p> |
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Department/Agency OF THE CHIEF MINISTER

COMMENT ON CABINET SUBMISSION No.

TITLE: PROPOSAL FOR AN EQUALITY OF STATUS OF MARRIED
..... PERSONS BILL

COMMENTS:

The Submission is supported.

Margaret P. Lyons

SIGNED: MARGARET P LYONS

DESIGNATION: DEPUTY SECRETARY

DATE: 9/3/89

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RECOMMENDATION

1. That Cabinet authorise the drafting of an Equality of Status of Married Persons Bill.

BACKGROUND

2. As a result of the research leading to the Report on De Facto Relationships by the N.T. Law Reform Committee, a number of anomalies were revealed in the way Territory law treats married women. These have been reviewed by the Department of Law.

CONSIDERATION OF THE ISSUES

3. The rule at common law was that, upon marriage, a woman lost most of her rights to deal with property and to have an independent legal capacity. In most common law jurisdictions, a Married Women's Property Act was enacted in the 1880's, with other minor reforms since, to overcome these and related problems. In the Northern Territory, the relevant legislation is -

- . Guardianship of Infants Act, s.22.
- . Married Women's Property Act 1883 (24 sections).
- . Married Persons (Torts) Act 1969.
- . Domicile Act 1979.

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- . Trustee Act, ss.16 and 69.
 - . Law Reform (Miscellaneous Provisions) Act, s.10.
- These provisions are set out in summary in Attachment "A".

4. In daily life (e.g. contracts for sale of house) and in litigation in all courts, these complex technical rules designed to confer equality of status are ignored. Equality of legal status is taken for granted in all matters of domestic law. The complex legislative provisions dealing with the capacity of a married woman are an historical anomaly and inconsistent with modern conditions.
5. It is, however, not possible to simply repeal these provisions. If this were done, the old common law disabilities would apply again. It is, however, possible to modernise and consolidate these provisions in a simple and short piece of legislation that simply declares that married women have legal status equal to that of married men. Attachment "B" is an example of how such an Act will look. It is recommended that this be done.

OPTIONS

- 6 . Cabinet might decide to -

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- (a) authorise the drafting of an Equality of Status Bill;
- (b) leave the existing law as it is.

PUBLIC IMPACT OF THE RECOMMENDATIONS

- 7. It is unlikely that a decision to legislate will arouse any significant public comment, though any reaction is likely to be favourable.

FINANCIAL CONSIDERATIONS

- 8. Nil.

REGULATORY IMPACT

- 9. Will repeal obsolete legislation and consolidate relevant provisions in a single Act drafted in modern language.

EMPLOYMENT AND INDUSTRIAL RELATIONS

- 10. Nil.

COMMONWEALTH, STATE AND LOCAL GOVERNMENT RELATIONS

- 11. Nil.

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CO-ORDINATION AND CONSULTATION

12. Copies of this submission in draft form were sent to the Department of the Chief Minister.

LEGISLATION

13. Legislation will be necessary if option (a) is adopted.

DATE:


DARYL W. MANZIE

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Attachment ALEGISLATION WHICH REMOVES A DISABILITY
THAT ONLY APPLIES TO MARRIED WOMEN

| ACT | S. | DISABILITY |
|-------------------------------|--|--|
| Domicile | 5 | Married woman taken to have the domicile of her husband. |
| Guardianship of Infants | 22 | A married woman is capable of suing as next friend and of being appointed guardian <u>ad litem</u> on behalf of her own, or any other, children |
| Law Reform (Misc. Provisions) | 10 | Husband's liability for his wife's torts and ante-nuptial obligations. |
| Married Women's Property | 1 | Married women unable to deal with separate property, enter into contracts, sue and be sued etc. as a single woman. |
| | 3 | Wife unable to prove loans to husband in his bankruptcy. |
| | 2 | Women married after commencement of Act are entitled to hold as separate property everything belonging to them at time of marriage or acquired by them after marriage. |
| | 5 | Property acquired by married woman after commencement of Act to be held by her as separate property. |
| | 6-9 | Shares, stocks etc. in the name of a married woman deemed to be her separate property [doesn't apply as against creditors of husband in situations of fraud etc. s.10] |
| 12 | Married woman to have same civil and criminal remedies and redress as a <u>feme sole</u> . | |

| ACT | S. | DISABILITY |
|--------------------------------|-------|--|
| Trustee | 16 | Married woman in whom a freehold hereditament is vested as a bare trustee may not convey/surrender it as if she were a <u>feme sole</u> . |
| | 69(1) | Married woman unable to fully and effectually dispose of future/reversionary interests, and possibilities of interests in personality, without consent of husband. |
| | 69(2) | Married women unable to fully and effectually release powers/rights or equities to settlement in personal estate without consent of husband. |
| Married Persons (Torts) Act | 4 | Persons who were a party to a dissolved or annulled marriage have rights of action in tort against each other as though they had never been married. |

Attachment B**1984-85-86****CHAPTER E-10.3****An Act to provide for Equality of Status of Married Persons and to repeal The Married Persons' Property Act**

(Assented to May 29, 1985)

HER MAJESTY, by and with the advice and consent of the Legislative Assembly of Saskatchewan, enacts as follows:

1 This Act may be cited as *The Equality of Status of Married Persons Act*. Short title

2(1) A married person has legal capacity for all purposes and in all respects as if that person were an unmarried person. Equality of status

(2) For all purposes of the law of Saskatchewan, a married person has a legal personality that is independent, separate and distinct from that of that person's spouse.

(3) This section does not apply to, interfere with or render inoperative any restriction on anticipation or alienation attached to the enjoyment of any property by virtue of an instrument executed prior to the coming into force of this section and for that purpose:

(a) a provision contained in an instrument made in exercise of a special power of appointment is deemed to be contained in the instrument in which the power was created; and

(b) the will of a testator is deemed to be an instrument executed on the day of his death.

3 A husband and wife each have a right of action in tort against the other as if they were not married. interspousal tort

4(1) The same rule applies to determine the domicile of a married woman as for a married man. Domicile

(2) Subject to subsection (3), a child who is a minor:

(a) takes the domicile of that child's parents, if both parents have a common domicile;

(b) takes the domicile of the parent with whom the child habitually resides, if the child resides with one parent only;

(c) takes the domicile of the child's father, if the domicile of the child cannot be determined pursuant to clause (a) or (b); or

(d) takes the domicile of the child's mother, if the domicile of the child cannot be determined pursuant to clause (a), (b) or (c).

(3) The domicile of a minor who is or has been married is determined in the same manner as if the minor were of full age.

Spouse as agent

5 A husband or wife does not, merely because of his or her status as a spouse, have authority to pledge the credit of the other spouse for necessities or to act as agent for the other spouse for the purchase of necessities.