
Legislation

Constitutional Law and Human Rights

AUSTRALIA - NEW SOUTH WALES

Anti-Discrimination Act 1977

This Act provides individuals and groups with more rights against discriminatory practices when dealing with both private and governmental bodies. The Act will make it illegal for such bodies to discriminate against a person on grounds of race, sex or marital status but, due to substantial amendments in the State's Legislative Council, the effect of the Act will be confined, by and large, to employer-employee, seller-buyer, and government-taxpayer types of relationships.

The underlying principles behind the Act is equality of opportunity and for the most able person to succeed. Its main areas of impact will therefore be in the areas of employment, accommodation, goods and services, and access to public places. The Act makes exceptions in the cases of education, aged persons, physically and mentally handicapped persons, homosexuals, and non-members of trade unions.

July 1977 C.L.B. p.352-353

AUSTRALIA

Sex Discrimination Act 1984

This Act prohibits discrimination on the grounds of sex, marital status or pregnancy. It passed the House of Representatives nine months after the Bill was first introduced in Parliament.

More than half the 50-strong Opposition voted against the Bill, but the legislation was overwhelmingly passed by 86 votes to 26. The Leader of the Federal Opposition was among Opposition Members who voted for the Bill with Government Members.

The Act prohibits discrimination in the areas of employment, education, the provision of goods, facilities and services, accommodation, the disposal of land, the activities of clubs and the administration of Federal laws and programmes.

It also prohibits sexual harassment in the workplace and in educational institutions, although there are exemptions, such as single-sex schools.

The Act gives effect to the United Nations Convention on the Elimination of All Forms of Discrimination Against Women, which was signed by the Australian Government in 1981, and ratified by the present Government in July 1983.

The Australian Human Rights Commission will administer the legislation, determining complaints and hearing applications for exemptions.

The Australian Government's legislation complements anti-discrimination legislation in South Australia, New South Wales and Victoria.

It will be followed by a programme of affirmative action legislation to ensure elimination of discrimination which the Government will introduce the package in about two years time.

The Minister assisting the Prime Minister on the Status of Women, who was responsible for the Bill, said that it would be some months before the legislation was proclaimed because the Government had to appoint a Sex Discrimination Commissioner. She said that regulations exempting the Australian Defence Force from the operation of the legislation over combat and combat-related duties also had to be approved.

July 1984 C.L.B. pp.1061-1065

Australian Citizenship Amendment Bill 1984

This Bill, which seeks to amend the Australian Citizenship Act 1949, would -

1. reduce the qualifying period for citizenship by grant from three to two years;
2. relax the continuous residence requirement from 12 months, immediately preceding the application, to 12 months' residence in the previous two years;
3. provide for an application for a grant of citizenship to be deferred to periods of up to 12 months, to enable the applicant to meet one or more requirements;
4. amend the requirement that an applicant for citizenship demonstrate an adequate knowledge of the English language. The requirement will now be that an applicant demonstrates a "basic" knowledge of English, and applicants over 50 years of age will be exempted altogether;
5. consistent with the Government's reform of the Migration Act 1958, repeal of the definition of British subject status;
6. provide a new pledge of Australian citizenship, which can be taken in either a religious or secular form;
7. provide a right of determinative appeal to the Administrative Appeals Tribunal on a number of grounds, for denial or deprivation of citizenship;
8. remove discrimination on the basis of sex or marital status; for example, a mother will have equal rights with a father in determining their child's citizenship; and
9. provide automatic acquisition of citizenship by adopted children.

Speaking on the introduction of the Bill, the Federal Minister for Immigration and Ethnic Affairs stated, inter alia: "These are the most significant changes to the Australian Citizenship Act since it came into force in 1949. Australian society has changed dramatically since that time, both in values and perceptions and in ethnic mix which has produced a diverse multicultural society. The Amendment Bill redresses obvious anomalies in the original Citizenship Act, and removes unreasonable impediments to the acquisition of citizenship by those 1.1 million permanent residents in Australia who are eligible to do so." He also added: "The package of reforms proposed in the Amendment Bill will ensure that all permanent residents and citizens of Australia will be treated equally, and will enjoy increased democratic rights in a wide range of areas."

January 1985 C.L.B. p.384

CANADA

Citizenship Act 1974-75-76

This Act, which received royal assent on 16 July 1976, revises the law respecting citizenship. The Act specifies the right to citizenship, the circumstances under which citizenship is lost and when it may be resumed. Among the important changes introduced by the Act are the following -

- (i) children born abroad, whether in or out of wedlock, derive citizenship from either parent. Citizenship is automatic for the first generation, and for the second generation requires only a declaration of retention and the establishment of a substantial connection with Canada before the age of 28;
- (ii) citizenship can be resumed as a right by former citizens who have been admitted for permanent residence and have resided in Canada for a period of one year;
- (iii) women who lost citizenship through marriage to foreign nationals prior to 1947 when the Canadian Citizenship Act was enacted, can recover it automatically upon notice to the Minister;
- (iv) applicants for naturalization are treated alike, regardless of sex or country of origin. The Minister shall grant citizenship to applicants who are at least 18 years old and have accumulated three years residence in Canada. Previously applicants had to be 21 years of age and 5 years residence was required;
- (v) Application for the grant, retention, resumption or renunciation of citizenship is made to a citizenship judge, a new office created by the Act. The Governor-in-Council may appoint any citizen to be a citizenship judge and may make regulations regarding the duties and procedures of the office. An appeal from the citizenship judge's decisions lies to the Federal Court, whose decision is final and conclusive. A citizenship judge may make recommendations for the exercise of discretion by the Minister or Governor-in-Council. The Minister may waive requirements for compassionate reasons. The Governor-in-Council has absolute discretion to grant citizenship to alleviate hardship or reward services to Canada;
- (vi) subject to specified limitations, the Lieutenant Governor-in-Council is authorized to restrict the acquisition of any interest in real property located in the province by persons who are not Canadian citizens or by corporations not controlled by Canadian citizens.

October 1976 C.L.B. p.340

NEW ZEALAND

Human Rights Commission Act 1977

The Act establishes the Human Rights Commission and seeks to promote the advancement of human rights in New Zealand in general accordance with the United Nations International Conventions on Human Rights.

Part II of the Act outlaws discrimination on the grounds of sex, marital status, or religious or ethical belief in the field of employment (which includes a provision that it is unlawful for a firm comprising six or more partners to refuse or to omit to offer a person admission to the firm "by reason of the colour, race, ethnic or natural origins, sex, marital status,

or religious or ethical belief of that person" or of his relatives or associates). A similar provision applies to industrial unions, professional and trade associations, qualifying bodies and vocational training bodies.

Discrimination in the access of the public to places, vehicles and facilities, to the provision of goods and service, to land, housing and other accommodation, and to educational arrangements is also made unlawful.

Further provisions deal with victimisation, advertisements, and agency, and some necessary exceptions are made which inter alia permit positive discrimination which favours the disadvantaged.

Part III provides remedies against unlawful discrimination. Complaints are to be investigated by the Commission, which may also act of its own motion. After investigation, where the Commission is of the opinion that a breach of the Act has occurred, it is to use its best endeavours to secure a settlement between the parties concerned. Where it is unable to do so, it may take proceedings before the Equal Opportunities Tribunal, which is also established under this Act. The Tribunal may in appropriate cases make a declaration, issue an order restraining repetition of the breach, award damages, order the defendant to perform any act specified with a view to redress any loss or damage other than by the grieved person, grant relief under the Illegal Contracts Act 1970, or declare that any contract entered into or performed in contravention of Part II of this Act is an illegal contract.

The functions of the Tribunal are to adjudicate proceedings brought under the Act and to exercise any other such functions, powers or duties as may be conferred upon it. The Tribunal is to act "according to equity, good conscience, and the substantial merits of the case, without regard to technicalities". The ordinary rules of evidence, also, are not to apply. It is to sit in public other than in special circumstances.

April 1978 C.L.B. pp.229-230

Citizenship Act 1977

The Act consolidates and amends existing provisions in respect of the status of New Zealand citizenship. Every person born in New Zealand on or after 1 January 1949 is deemed to be a New Zealand citizen by birth - unless his father or mother was a person protected under diplomatic or consular immunity or in some other way and neither of his parents was a New Zealand citizen, or unless his father and mother were enemy aliens and the birth occurred in a place then under occupation by the enemy. The proviso is made that every person born in New Zealand on or after 1 January 1978 shall be a New Zealand citizen by birth if he would otherwise be stateless.

Persons born outside New Zealand on or after 1 January 1978 shall be New Zealand citizens "by descent" if at the time of their birth their father or mother was a New Zealand citizen otherwise than by descent. Citizenship by descent is to lapse two years after a person acquires "his majority" unless his birth has been registered in accordance with regulations to be made under the Act.

New Zealand citizenship may be granted by the Minister to anyone 18 years and above who satisfies the Minister that he meets each of the following requirements -

(a) that the applicant was, throughout the period of three years

immediately preceding the date of his application, ordinarily resident in New Zealand;

- (b) that the applicant is entitled, in terms of the Immigration Act 1964, to reside in New Zealand permanently;
- (c) that the applicant is of good character;
- (d) that the applicant has sufficient knowledge of the responsibilities and privileges attaching to New Zealand citizenship;
- (e) that the applicant has sufficient knowledge of the English language;
- (f) that the applicant intends, if he is granted New Zealand citizenship, either -
 - (i) to continue to reside in New Zealand; or
 - (ii) to enter into or continue in Crown service under the New Zealand Government, or service under an international organisation of which the New Zealand Government is a member, or service in the employment of a person, company, society, or other body of persons resident or established in New Zealand.

The Minister may also grant citizenship in special cases, to any person -

- (a) who is a minor;
- (b) who is or has been married to a New Zealand citizen, and satisfies the Minister that -
 - (i) he meets each of the requirements specified in paragraphs (c) to (e) (above); and
 - (ii) he has established and will maintain some association with New Zealand (other than his marriage to a New Zealand citizen);
- (c) whose father or mother was, at the time of that person's birth, a New Zealand citizen by descent;
- (d) if, because of exceptional circumstances of a humanitarian or other nature relating to the applicant, the Minister is satisfied that granting a certificate of New Zealand citizenship to the applicant would be in the public interest.

The Minister is also empowered by order to deprive a person of his New Zealand citizenship if he is satisfied that the person has, while a New Zealand citizen and while of and over the age of 18 years and of full capacity -

- (a) acquired the nationality or citizenship of another country by any voluntary and formal act, other than marriage, and acted in a manner that is contrary to the interests of New Zealand; or
- (b) voluntarily exercised any of the privileges or performed any of the duties of another nationality or citizenship possessed by him in a manner that is contrary to the interests of New Zealand.

Orders depriving a person of citizenship may be reviewed by a Supreme Court.

Special provisions relate to parentage. A person, in the absence of evidence to the contrary is presumed to be the father of another person if he was married to that other person's mother at the time of his confinement of birth or where his paternity has been established in terms of the Status of Children Act 1969. Adopted children are treated as though they were the natural children of the adopting parents and are "deemed to have been born when and where the adoption order was made".

April 1978 C.L.B. pp.231-232

SIERRA LEONE

Sierra Leone Citizenship (Amendment) Act (No. 13 of 1976)

This Act amends Part III of the Sierra Leone Citizenship Act No. 4 of 1973. Part III of Act No. 4 of 1973 provides for the acquisition of Sierra Leone citizenship by naturalisation. The Act made it available on application to three categories of persons. They are -

- (i) married women who are not Sierra Leoneans and who are or have been married to Sierra Leone citizens;
- (ii) persons of negro African descent born in Sierra Leone after 18 April 1971;
- (iii) persons of full age and capacity of negro African descent resident in Sierra Leone and who have been continuously so resident for a period of not less than eight years.

The grant of the certificate of naturalisation in all these cases is subject to an apparently unfettered ministerial discretion.

The Act also imposes two limitations on the grant of naturalisation to such persons. Firstly, if at the time of the applicant's birth neither of his parents was a citizen of Sierra Leone and his father possessed such immunity from suit and legal process as is accorded to any envoy of a foreign sovereign power accredited to Sierra Leone, he would be refused citizenship by naturalisation. Secondly, naturalisation would also not be granted where at the time of the applicant's birth his father was an enemy alien and the birth occurred in a place then under occupation of the enemy.

The amending legislation extends the categories of persons eligible for citizenship by naturalisation to include -

- (i) persons of full age and capacity, either of whose parents are of negro African descent and who are resident in Sierra Leone and have been continuously so resident for a period of not less than eight years;
- (ii) persons of full age and capacity, neither of whose parents are persons of negro African descent who are resident for a period of not less than 21 years and whose fathers or mothers were citizens of Sierra Leone by naturalisation;
- (iii) persons under the age of 21 years born outside Sierra Leone on or after the date on which their fathers or mothers became citizens.

However, persons who acquire citizenship by naturalisation are precluded from holding the following public offices -

- (i) President of the State of Sierra Leone;
- (ii) Members of any Commission established under the Sierra Leone constitution;
- (iii) Ambassador or diplomatic representative of Sierra Leone in any foreign country;
- (iv) Members of the army or navy or air force or police force of Sierra Leone;
- (v) Permanent Secretary, Provincial Secretary, Secretary to the President, Secretary to the Vice-President, Secretary to the Prime Minister, Secretary to the Foreign Minister, the Financial Secretary, the Secretary to the Cabinet or the Establishment Secretary; and
- (vi) Members of Parliament or of a local authority.

Finally, a naturalised citizen is not exempted from the payment of rates, taxes, fees, charges and impositions under the Business Registration Act 1972, the Non-Citizens (Registration, Immigration and Expulsion) Act 1965,

the Pay Roll Tax Act 1972, the Business Names Registration Act, the Income Tax Act, and the Alluvial Diamond Mining Act.

October 1976 C.L.B. p.341

SOLOMON ISLANDS

Citizenship Ordinance 1978 (No. 7 of 1978)

The Ordinance supplements the provisions of the Constitution which relate to citizenship. A Citizenship Commission is established. The Commission comprises not less than five nor more than seven members (including the Chairman) who shall be appointed by the Minister.

The Ordinance provides for the acquisition of citizenship by adoption and naturalization and the loss, renunciation and regaining of citizenship.

The Ordinance charges the Commission with the responsibility of granting citizenship by naturalization on application and on being satisfied of the matters set out in the Ordinance. The Commission also has power to grant applications for the regaining of citizenship by a woman citizen who married a foreign national and became a national of her husband's country, where the Commission is satisfied that her marriage has broken down.

The Ordinance also provides that the Minister may give the Commission directions (not inconsistent with the Ordinance) of a general nature with respect to the exercise of a power or the performance of a duty of the Commission, and the Commission is required to comply with the direction. The Minister may also require the Commission to advise him on any matter relating to or concerning citizenship.

October 1978 C.L.B. p.776

TRINIDAD AND TOBAGO

Citizenship of the Republic of Trinidad and Tobago Act 1976 (Act No. 11 of 1976)

The new Act came into force on 31 July 1976. The comments to the Act as noted at (1976) 2 C.L.B. 195 apply to the Act as assented to. One significant feature of this Act is section 11(3) which allows dual citizenship in certain cases. For example, under the former Constitution many citizens of Trinidad and Tobago who acquired citizenship of another country were required to renounce within one year of the acquisition of that other citizenship, such other citizenship. Failure to do so would have entailed the loss of the Trinidad and Tobago citizenship. Section 11(3) now provides that where such other citizenship was acquired involuntarily or by marriage, a citizen of Trinidad and Tobago shall be deemed not to have ceased to be a citizen of Trinidad and Tobago by reason of such failure to renounce. A person in such circumstances thus retains the other citizenship as well as his Trinidad and Tobago citizenship. The section operates retrospectively.

October 1976 C.L.B. p.342

Citizenship of the Republic of Trinidad and Tobago (Amendment) Act 1978

Two principal features of this amending Act are -

- (i) a child born outside of Trinidad and Tobago of a citizen by descent is now entitled to be granted a certificate of citizenship of Trinidad and Tobago if the prescribed application is made -
 - (a) by the responsible parent or guardian of such child before the child attains full age, that is, 18 years, or
 - (b) by the child within one year of his attaining his majority according to the law of the country of which he is a citizen or on his attaining full age.

[A child born outside of Trinidad and Tobago of a person granted a certificate of citizenship of Trinidad and Tobago under these provisions would not, however, similarly qualify for a grant of such a certificate of citizenship.]

- (ii) the entitlement of a former citizen of Trinidad and Tobago by birth or descent who acquired the citizenship of another country voluntarily to be granted a certificate of citizenship upon the making of the prescribed application therefor to the Minister.

October 1978 C.L.B. p.777

Courts Practice and Procedure

AUSTRALIA - NEW SOUTH WALES

Juries (Amendment) Act 1977

As a result of the amending legislation, which came into operation on 1 July 1977, women and public servants are no longer automatically exempt from jury service in New South Wales. The only public servants now ineligible for jury service are judges and Masters of the Supreme Court and their spouses; coroners; stipendiary magistrates; employees of the Department of Corrective Services; police officers and their spouses; employees of the Attorney-General's and Justice Departments; Permanent Heads of Departments of State; members of the Public Service Board; firemen; State Emergency Services employees; and ambulance staff.

Occupations no longer exempt include pilots; masters of ships; servants of the state Governor; commercial travellers; and managing directors, managers, cashiers and tellers of banks.

Those persons who now may claim exemption from jury service as of right are clergymen; practising dentists; doctors and chemists; people over the age of 65 years; those living with and caring full-time for an ill or aged person; members and secretaries of statutory corporations; and mining managers.

Members and officers of the Legislative Assembly, Legislative Council and Executive Council, and their spouses, are ineligible to serve as jurors, as are barristers and solicitors. Responsibility for compiling the jury lists

has been transferred from the police to the Sheriff's Office, and persons who fail to appear on the issuing of a jury summons or who make false representations in order to evade jury service are now liable for fines up to, respectively, \$A100 and \$A500.

January 1978 C.L.B. p.5

Jury Act 1977

The New South Wales computer jury selection system will become fully operational in April 1978.

Under the new system, which came into operation as a result of the enactment of the Jury Act 1977, the old means of selecting jury panels by means of the police keeping a jury roll has been abandoned and juries will in future be based on electoral rolls, selecting names at random.

Most people, such as public servants, bank officials and school teachers who were previously exempted from jury service are now eligible to serve. Similarly, women are equally liable to serve as men.

The Attorney-General stated that under the old method of selecting jurors some people were called on repeatedly to serve whereas others were hardly ever or never called. The Attorney-General emphasised the need for a person to be tried by a jury of his peers, or equals, and not merely by a jury consisting only of males, who were middle-aged, middle-class, white Australians.

April 1978 C.L.B. pp.234-235

AUSTRALIA - A.C.T.

Juries (Amendment) Ordinance 1979

This Act amends the Juries Ordinance 1967 (A.C.T.) so as to abolish the right which women formerly possessed of having their names omitted from a jury list simply by writing to the Sheriff of the Supreme Court of the Australian Capital Territory requesting that their names be removed from the list. The effect of the amending Ordinance will be to put men and women on the same footing as regards potential jury service.

October 1979 C.L.B. pp.995-996

BAHAMAS

Juries (Amendment) Act 1980 (No. 2 of 1980)

The principal effect of this Act is to amend the Juries Act 1967 (No. 30 of 1967) in two important respects -

- (i) procedures are provided whereby any woman who so desires may now remove her name from the jury list: the new subsections (2), (3) and (4) of s. 3 are in the following terms -

- (2) Any female person between the ages of twenty-one and sixty years resident in a sessions district may apply in the manner prescribed by subsection (3) of this section to have her name entered upon the jury list and thereupon she shall be qualified for jury service.

(3) Any woman who desires to be enrolled for jury service may, on or before the first day of November in any year, apply in writing to the Registrar, stating her full name and address and her date of birth; and upon receipt of any such application, the Registrar shall, subject to subsection (4) of this section, cause it to be taken into account by the revising panel in the preparation of the jury list.

(4) Any woman who desires to have her name removed from the jury list for any year may on or before the first day of December of the preceding year apply in writing to the Registrar and upon receipt of any such application, the Registrar shall cause it to be taken into account by the revising panel in the preparation of the relevant jury list for the next ensuing year.

(ii) it repeals s. 28 (dealing with separation of jurors during adjournment) and replaces it with new sub-sections (1) and (2) in the following terms -

28. - (1) In every case on the criminal side of the court and in every civil case triable by jury, the judge may, if he thinks fit, permit jurors sworn and empanelled upon the trial thereof to separate and depart from the court during any adjournment of such trial before they have retired to consider their verdict upon each such juror taking the oath prescribed by section 13(3) of the Oaths Act.

(2) The following provisions shall apply whenever the jury have not been permitted to separate -

- (a) a proper provision shall be made for preventing the jury from holding communication with any person;
- (b) the judge may allow one or more of the jurors to separate from the other jurors;
- (c) jurors who are allowed to separate from the other jurors shall not hold communication with other persons except with the leave of the Court;
- (d) jurors who are allowed to separate shall remain in the charge of the officer of the court who has charge of them.

October 1980 C.L.B. pp.1122-1123

BERMUDA

Matrimonial Causes Act 1974 (No. 74)

Matrimonial Proceedings (Magistrate's Courts) Act 1974 (No. 75)

The first Act amends the law, at the same time dealing in full with divorce, nullity and other matrimonial suits (providing for divorce on breakdown of the marriage), financial relief, children etc. The second Act amends and consolidates the enactments relating to matrimonial proceedings in magistrates' courts.

January 1975 C.L.B. p.

CANADA - PRINCE EDWARD ISLAND

An Act to Amend the Jury Act (1980)

This Act, when proclaimed, will amend the Jury Act, R.S.P.E.I. 1974, Cap. J-S, to -

- (a) remove the upper age limit (70) for liability to jury service, while allowing a person over that age to apply for exemption;
- (b) make new provision [following the Uniform Jurors (Qualifications and Exemptions) Act approved by the Uniform Law Conference of Canada at its 1976 proceedings] extending the range of disqualified persons;
- (c) disqualifying persons who do not understand the language in which the trial is to be conducted;
- (d) replace the list of exemptions in the principal Act by provision for exemption on religious or hardship grounds - women will no longer be automatically exempt;
- (e) raise the per diem allowance, and make provision for a travel allowance.

July 1980 C.L.B. pp.763-764

CANADA - ALBERTA

Reciprocal Enforcement of Maintenance Orders Act 1980

The Act was passed to address certain problem areas which have been ongoing for several years.

The new Act makes provision for mobility. Under the old Act, once a final order from another Province was registered in Alberta, it could not be forwarded to another Province for enforcement if the respondent moved. Section 18 of the new Act permits the Alberta Court to forward documents to the Courts of another Province for enforcement, simply upon the request of the claimant, the Attorney-General, or the Court which made the order.

The new Act also makes it possible for final orders to be varied. The old Act did not allow for a mechanism which would permit changes in circumstances of either of the parties to be taken into consideration. Under s. 7 of the new Act, jurisdiction has been given to the registration court in Alberta to make provisional and confirmation orders to vary or rescind final orders of reciprocating States.

The new Act also clarifies whether the law of Alberta or the law of the reciprocating State shall apply to the proceedings. Prior to the passage of this Act, the question was subject to widely differing judicial interpretation.

The new Act further contains provision for a State or Province to be subrogated to the rights of a person entitled to maintenance. Where, under the old Act, it was not possible to extend this right to other jurisdictions when the respondent moved out of the Province, the new Act will now place the State in the shoes of a claimant under the Act.

Section 12 of the new Act has been included to cure problems such as have arisen with respect to orders from the State of California. In the past, due to the wording of certain California orders, reciprocity could not be affected. Due to the liberal interpretation which may now be given, such foreign orders can now be registered and enforced in Alberta.

October 1980 C.L.B. pp.1125-1126

CANADA - MANITOBA

Reciprocal Enforcement of Maintenance Orders (Amendment) Act 1983

This Amendment expands the scope of the Act by allowing Manitoba residents to apply to Manitoba Courts for variation of maintenance orders (except orders made under the Divorce Act) originating from reciprocating jurisdictions. If, however, the other party resides outside Manitoba, that party must be given the opportunity to present evidence in his or her home jurisdiction. Further, where one party still resides in the jurisdiction of the original order, only that jurisdiction has the power to make final decisions on the variation.

April 1984 C.L.B. p.1064

CYPRUS

Maintenance Orders (Facilities for Recovery) Law 1981 (Law 43 of 1981)

This Law adapts the law to the provisions of the Convention on the Recovery Abroad of Maintenance (Ratification) Law 1978 (Law 50 of 1978) and the enactment of the necessary procedural mechanism for the effective application of the provisions of the abovementioned Convention in Cyprus.

It is based on the UK Maintenance Orders Reciprocal Enforcement Act 1971 which was enacted to make possible the application of the provisions of the same Convention to the United Kingdom.

April 1982 C.L.B. p.459

INDIA

Family Courts Act 1984

This Act, also noted at (1984) 10 C.L.B. 1932, provides for the establishment of Family Courts with a view to promote conciliation in, and secure speedy settlement of, disputes relating to marriage and family affairs.

January 1985 C.L.B. p.8

NEW ZEALAND

Juries Amendment Act 1976

This was noted as a Bill at (1976) 2 C.L.B. 317. It has since been enacted so that men and women now have equal obligations in respect of jury service and equal rights to exemption from jury service.

April 1977 C.L.B. p.191

Family Courts Act 1980

This Act, which comes into force on 1 October 1981, except for the section providing for the appointment of the Principal Family Court Judge, which came into force immediately, provides for the establishment of Family Courts as divisional courts of District Courts. District Court Judges will be eligible for appointment as Family Court Judges if they are, by reason of their training, experience and personality, suitable persons to deal with matters of family law. The number of District Court Judges is to be increased to enable the Family Courts to handle the work assigned to them. One of the Family Court Judges will be appointed Principal Family Court Judge.

Counselling supervisors, counsellors and other officers are to be appointed. An officer of the Justice Department will be appointed to be responsible to the Secretary for Justice for ensuring the proper functioning of the Family Courts and of counselling and related services.

The statutes under which the Family Courts are to have jurisdiction are the Adoption Act 1955, Marriage Act 1955, Guardianship Act 1968, Domestic Actions Act 1975, Matrimonial Property Act 1976, Family Proceedings Act 1980, and the provisions in the Social Security Amendment Act (No. 2) 1980 which establish a scheme for child support contributions.

General matters of procedure are covered. Two sections are worthy of mention. First, it is provided that Family Court proceedings shall be conducted in such a way as to avoid unnecessary formality. Wigs and gowns are not to be worn. Second, there is provision for the transfer of complex proceedings to the High Court for determination.

April 1981 C.L.B. p.448

ST VINCENT AND THE GRENADINES

Recognition of Divorces and Legal Separations Act 1983 (No. 19 of 1983)

This Act makes fresh provision for the recognition of divorces and legal separations granted outside St. Vincent and the Grenadines - i.e. divorces and legal separations which have been obtained by means of judicial or other proceedings in any country outside St. Vincent and the Grenadines, and are effective under the law of that country.

The validity of an overseas divorce or legal separation shall be recognised if, at the date of the institution of the proceedings in the country in which it was obtained (a) either spouse was habitually resident in that country, or (b) either spouse was a national of that country. It is provided that in appropriate cases to accommodate the concept of domicile, the reference to "habitual residence" includes a reference to domicile.

The Act also provides for the recognition of cross-proceedings and divorces following legal separation; for the proof of facts relevant to recognition; recognition as affected by existing common law and statutory rules; and the refusal of recognition or exceptions from recognition.

It is provided that where the validity of a divorce obtained in any country is entitled to recognition under the Act, neither spouse shall be precluded from re-marrying in St. Vincent and the Grenadines on the ground that the validity of the divorce would not be recognised in any other country.

April 1984 C.L.B. pp.526-527

TRINIDAD AND TOBAGO

Jury (Amendment) Act, 1975, No. 20 of 1975

The Act increases the property qualifications of jurors, and provides for married women to qualify for jury service if their husbands are qualified, and for wives of certain persons exempt from jury service to be themselves exempt. The Chief Election Officer will be responsible for the preparation and compilation of jury lists instead of the former wardens of County Councils. The Act makes it an offence for an employer to dismiss, threaten to dismiss or in other ways adversely affect an employee summoned for jury service.

January 1976 C.L.B. p.6

Criminal Law and Procedure

AUSTRALIA - QUEENSLAND

Pregnancy Termination Control Bill 1980

This Bill was introduced by the State Minister of Health, who said he firmly believed the decision of the Government to tackle the abortion issue was in the interests of all Queenslanders, particularly the unborn -

In introducing the Bill, I am conscious of the fact that it will place the Queensland Parliament under the closest scrutiny, both in Australia and overseas. We will never be able to legislate on this issue to satisfy everyone. But at least we can make a genuine and honest attempt to protect the unborn child.

The Bill provides for -

- (i) imprisonment with hard labour for 14 years for a person attempting to procure miscarriage;
- (ii) a woman attempting to procure her own miscarriage would be liable to imprisonment for three months;
- (iii) a person supplying drugs or instruments to procure a miscarriage would be liable to three years' imprisonment; and
- (iv) a lawful abortion is defined.

The Bill also seeks to provide for the necessity to prove that an emergency situation exists involving the serious risk of death of the woman with the continuation of the pregnancy. Two medical practitioners are each required to issue a certificate that they have each examined her and that an abortion is necessary to avoid the risk of her death.

The approval of the State Director-General of Health is required before any prosecution can be proceeded with under the Act.

"Pregnancies resulting from rape and incest and those exposing a woman to a serious risk of death, a potential suicide or self-inflicted grievous bodily harm, are cases where an abortion may be performed", the Minister

said. "Serious risk of major foetal abnormality or disease also provides legal ground for a termination of pregnancy. However, the Bill, in these instances, provides built-in conditions."

The rape must have been reported to police within seven days and the abortion will have to be performed within 60 days of the report. Also a legally qualified medical practitioner must have examined the woman and be satisfied the pregnancy was a result of rape, by obtaining police verification. These conditions also applied to incest-induced pregnancy.

For a foetal abnormality abortion, a serious risk of major foetal abnormality or disease must be clearly demonstrated.

A person making a false statement to a doctor on the cause of pregnancy, and in order to obtain an abortion, will be liable to three years' imprisonment.

(Note: The Bill aroused considerable controversy, and was defeated.)

July 1980 C.L.B. pp.765-766

AUSTRALIA - NEW SOUTH WALES

Crimes (Sexual Assault) Amendment Bill 1981

Child Welfare (Amendment) Bill 1981

These two Bills seek to substantially affect the State's laws relating to rape: the Crimes (Sexual Assault) Amendment Bill 1981, to amend the Crimes Act 1980 so as to abolish the crime of rape, to create three new offences of sexual assault, and to make certain provisions relating to those and other offences, including provisions relating to evidence in sexual assault proceedings; and the Child Welfare (Amendment) Bill 1981, a cognate Bill to amend the Child Welfare Act 1939 with respect to the committal of children and young persons to trial.

When introducing the Crimes (Sexual Assault) Amendment Bill 1981, the Premier of New South Wales said that the objects of the Bill were to protect the victims of rape from further victimisation over the legal process; to encourage victims of rape to report their offences to the authorities; to facilitate the administration of justice and the conviction of guilty offenders; to preserve the rights of the accused; and to serve an educative function in further changing community attitudes towards sexual assaults.

The Premier explained that under the Bill four categories of sexual assault would be established, graded according to the seriousness of the offence, and to which different levels of penalties would apply. He added that the thrust of the new proposals was, first, to impose criminal liability on "persons", rather than people who were "males" and "females" and, secondly, to abolish a husband's immunity from prosecution for raping his wife.

The Premier added that although the present maximum penalty for rape in New South Wales is imprisonment for life, statistics for 1979 had shown that only 46 persons had been convicted and sentenced for the maximum penalty. In fact, 85 per cent of those who had been convicted had been sentenced to ten years imprisonment or less. The Bill sought to rectify this problem by providing for maximum penalties of seven, 12 and 20 years imprisonment for the three major categories of sexual assault.

Speaking later on the Bills, the Attorney-General for New South Wales told Parliament that nearly 50 per cent of rapes in the State took place

in the homes of the victims and that 70 per cent of all such crimes were committed by men who know their victims. He added that "the view that a husband should have a legal right to compel his wife by force to submit to sexual intercourse is intolerable".

Among the various other amendments sought to be made to the existing law by the Bill are -

- (i) introduction of an extended definition of the phrase "sexual intercourse";
- (ii) power on the part of a trial judge to warn the jury that there may well have been a good reason for the delay that was occasioned on the part of a victim in complaining about a sexual assault;
- (iii) abolition of the practice whereby the victim of a sexual assault is required to give evidence of the assault and undergo cross-examination at committal proceedings in cases where the accused pleads guilty;
- (iv) abolition of the rule requiring a trial judge to warn the jury that it is unsafe to convict the accused of sexual assault upon the uncorroborated evidence of the alleged victim; and
- (v) prohibition of irrelevant questioning of victims of sexual assault about their prior sexual conduct.

The Bill to amend the Child Welfare Act is intended to allow a person charged in the State's Child Welfare Court with an indictable offence to have the option of trial by jury. The Bill provides that only a person under 18 years of age who is charged with what will become the most serious offence of sexual assault must in future be charged in the Supreme Court of New South Wales before a jury.

July 1981 C.L.B. pp.845-847

Prostitution (Amendment) Bill 1983

The Bill, which was tabled in Parliament, but which has not yet received its Second Reading Speech, seeks to amend the Prostitution Act 1979 (NSW) so as to make it an offence for a person in a public street to solicit another person for the purpose of prostitution or in a dwelling, school, church or hospital.

The Bill also seeks to provide that its provisions are in addition to, and do not derogate from, the provisions of any other law of the State, including s. 5 of the Offences in Public Act 1979 (NSW).

The Bill, which was introduced in an effort to deal effectively with the growing incidence of prostitution in Sydney, defines the words "building", "church", "dwelling", "hospital", "prostitution", "public street", and "school".

July 1983 C.L.B. p.776

BERMUDA

Criminal Law Amendment Act 1980 (No. 39 of 1980)

Several very significant reforms in the criminal law are effected by this Act.

Special provision is made in regard to evidence at a trial for an offence of rape. Except with the leave of the court, no question may be asked in cross-examination nor any evidence adduced about any sexual experience of

the complainant with a person other than the defendant in the case. After a person has been arrested and charged with a rape offence, no material likely to lead members of the public to be able to identify the complainant or the man against whom the accusation has been made, may be published except upon a direction from the Court.

January 1981 C.L.B. p.7

INDIA

Suppression of Immoral Traffic in Women and Girls (Amendment) Act 1978 (No. 46 of 1978)

This Act amends the principal Act of 1956 in relation, *inter alia*, to -

- (a) living on the earnings of prostitution, controlling a prostitute and acting as a tout or pimp;
- (b) carrying on prostitution in certain places and within certain areas;
- (c) probation, admonition or detention in a corrective institution;
- (d) powers of entry and search;
- (e) rescue of women and girls, and their intermediate custody;
- (f) power to establish Special Courts.

July 1978 C.L.B. p.619

Criminal Law (Second Amendment) Act 1983

This Act amends the Indian Penal Code, the Code of Criminal Procedure and the Evidence Act suitably to deal effectively not only with cases of dowry deaths but also cases of cruelty to, and ill-treatment of married women by the husband and his people. The Act provides for imprisonment to the husband and the relatives for three years and also fine for cruelty to a married woman which drives her to commit suicide. The offence has been made cognisable. The Act also provides for compulsory inquest by an Executive Magistrate in all cases where a woman has within seven years of her marriage, committed suicide or died in circumstances raising a reasonable suspicion that some other persons has committed an offence. If it is shown that her husband or any relative of her husband had subjected her to cruelty, the court may presume that such suicide has been abetted by her husband or such relative of her husband.

January 1985 C.L.B. p.10

NEW ZEALAND

Contraception, Sterilisation and Abortion Act 1977

In recent and controversial legislation following in the wake of the report of the Royal Commission on Contraception, Sterilisation and Abortion (noted at (1977) 3 C.L.B. 472) the New Zealand Parliament has enacted new laws, the procedural elements of which are designed to ensure that abortions are available only in strict compliance with the law.

Although rejecting the Royal Commission's recommendation that panels consisting of two doctors and a social worker be set up to consider each request for an abortion, Parliament in the Contraception, Sterilisation and

Abortion Act 1977 has provided an alternative but similar procedure. Under the new procedure a woman seeking an abortion must have her case referred to by her doctor to two certifying consultants. To establish a list of medical practitioners who will be certifying consultants (half the total number of such persons are to be practising obstetrician or gynaecologists) and to otherwise administer the new procedure under the Act an Abortion Supervisory Committee consisting of a Chairman (the first chairman is a Magistrate) and two medical practitioners has been established. There is an interesting point that in appointing certifying consultants the Supervisory Committee is to have regard to the desirability that their assessment of cases "will not be coloured by news in relation to abortion that are incompatible with the tenor" of the Act.

If the certifying consultants agree, a certificate authorising the abortion must be forwarded to the hospital where the operation is to take place. There is provision in the case where two certifying consultants disagree for a third such consultant's opinion to be sought.

An amendment to the Crimes Act 1961 passed at the same time as the Contraception, Sterilisation and Abortion Act gives for the first time statutory grounds to be applied in the case of a woman seeking an abortion. Hitherto it was an offence for a person to unlawfully procure a miscarriage, the word "unlawfully" being interpreted in the light of R v Bourne [1939] 1 K.B. 687.

The feature of the new Crimes Act provisions that has caused the greatest difficulty is the meaning to be ascribed to the words, forbidding the performance of an abortion if the danger to the women can be averted by other means. The Crimes Amendment Act 1977 defines "unlawfully" as follows -

(1) The carrying out of an abortion is unlawful unless in the case of a pregnancy of not more than 20 weeks gestation, the person doing the act believes -

(a) that the continuance of the pregnancy would result in serious danger (not being danger normally attendant upon childbirth) to the life, or to the physical or mental health, of the woman or girl, and that the danger cannot be averted by any other means; or

(b) that the pregnancy is the result of sexual intercourse between -

(i) A parent and child; or

(ii) A brother and sister, whether of the whole blood or of the half blood; or

(iii) A grandparent and grandchild; or

(c) that the pregnancy is the result of sexual intercourse that constitutes an offence against section 131(1) of this Act; or

(d) that the woman or girl is severely subnormal within the meaning of section 138(2) of this Act.

(2) The following matters, while not in themselves grounds for an abortion may be taken into account in determining whether the continuance of the pregnancy would result in serious danger to the woman's life or to her physical or mental health -

(a) the age of the woman or girl concerned is near the beginning or the end of the usual child-bearing years;

(b) the fact (where such is the case) that there are reasonable grounds for believing that the pregnancy is the result of rape.

(3) In the case of a pregnancy of more than 20 weeks gestation, the person doing the act must believe that the miscarriage is necessary to save the life of the woman or girl or to prevent serious permanent injury to her

physical or mental health.

The ground for abortion of foetal abnormality recommended by the Royal Commission was struck out of the bill during its Committee stages.

April 1978 C.L.B. pp.239-241

Crimes Amendment Act 1978

The New Zealand Parliament has again been wrestling with the vexed question of abortion, despite its earlier hopes that last year's legislation had settled the matter.

Following the implementation of the Crimes Amendment Act 1977 [noted at (1978) 4 C.L.B. 239] considerable uncertainty was felt as to the meaning of s. 187A subsection (1)(a) -

(1) The carrying out of an abortion is unlawful unless in the case of a pregnancy of not more than 20 weeks gestation, the person doing the act believes -

(a) that the continuance of the pregnancy would result in serious danger (not being danger normally attendant upon childbirth) to the life, or to the physical or mental health of the woman or girl, and that the danger cannot be averted by any other means.

Because of the uncertainty, which specifically related to the words "and that the danger cannot be averted by any other means", the Abortion Supervisory Committee which administers the provision of abortion in New Zealand, recommended that these words in question be deleted. This now leaves the law as it was recommended by the Royal Commission on Contraception, Sterilisation and Abortion.

The Crimes Amendment Act 1978 also makes foetal abnormality a ground for an abortion. That, too, had been recommended by the Royal Commission, but a provision to that effect in the Contraception, Sterilisation and Abortion Bill 1977 was struck out by Parliament. The Crimes Amendment Act 1978 now reverses that position.

October 1978 C.L.B. pp.787-788

Suppression of Names of Complainants in Specified Sexual Cases Bill 1980

A Private Member's Bill to restrict the publication of names of complainants in specified sexual cases has been introduced by a Government member. The Bill was introduced after considerable concern had been expressed over the publication of the name of the complainant in a rape case.

The Bill contains a general prohibition on the publication of the names or particulars likely to lead to the identification of complainants in a number of different sexual offences including rape, incest, sodomy, indecency between adults and minors of the same sex, sexual intercourse with a girl under 16 or a girl under care or protection. Similar provision was made in 1975 for the suppression of names of complainants under 16 in such cases. This would be replaced by the general prohibition set out in the Bill.

The Bill does provide that names may be published where the complainant is 16 or more and the Court by order permits publication. This is the reverse of existing law under which the names of complainants 16 or more in age can be published in such cases unless the Court directs otherwise.

The Bill was welcomed by Government and Opposition Members and has generally received public support. It was referred for study to a

Parliamentary Select Committee (the Statutes Revision Committee) which has yet to report on it.

July 1980 C.L.B. pp.768-769

Rape Law Reform Bill 1983

This Bill seeks to change the statutory definition of rape, abolish the rule that the Judge must warn the jury in the absence of corroboration, and regulate certain procedural matters at preliminary hearings and trials of rape cases.

The introduction of the Bill followed considerable public debate and concern over the incidence and seriousness of recent rape complaints. A Rape Study, prepared by the Department of Justice in collaboration with the Institute of Criminology, Victoria University of Wellington, was published in early 1983. The Government subsequently called for public submissions on the Study. The Bill as introduced to the House endeavours to respond to many rape complainants' experiences of the criminal justice process and accommodate special procedural problems which they encounter.

The Bill defines "sexual connection", the term used in the reformulation of the crime of rape. "Sexual connection" includes penetration of the vagina or anus by any part of the body or any object manipulated by another person; fellatio; cunnilingus; the continuation of any of these acts. The definition is wide enough to degender the crime of rape: it allows for male and female offenders and victims.

The Bill also substitutes a new definition of rape, the essential element of which is sexual connection with another person without that person's consent. The mens rea of the offence is refined to capture some of the recent developments in the law of recklessness and revise the rule in DPP v Morgan [1975] 2 All ER 347. The law providing that there can be no rape in marriage is restated, so that submissions can be made to the Select Committee on this controversial provision.

As to penalty, the Bill includes a provision that a convicted offender is to be sentenced to imprisonment unless special circumstances justify a departure from this rule.

The rule that the Judge must warn the jury that it is unsafe to convict on the uncorroborated evidence of the complainant is abolished. A Judge may still comment on such evidence but he must avoid using the present formula. Where the question of the complainant's delay in making a complaint of rape arises, the Judge may tell the jury that there may be good reasons for such a delay.

The Bill seeks to provide that at the preliminary hearing or trial of a rape case, only certain specified persons may remain in the courtroom while the complainant gives oral evidence. Furthermore, the Court may make an order prohibiting publication of any report of the criminal acts alleged to have been performed on the complainant. At the preliminary hearing, the complainant shall give evidence in written form unless the Judge orders that the evidence be given orally because the written statement is insufficient to put the accused on trial or it is "indispensable in the interests of justice" that the evidence be given orally. It is intended that these procedural amendments will ease the trauma many rape complainants experience in bringing a case to court.

The significant changes embodied in the proposed legislation are certain to spark considerable controversy. The Bill has been referred to the

Statutes Revision Committee for the presentation and consideration of submissions.

April 1984 C.L.B. p.537

UNITED KINGDOM

Sexual Offences (Amendment Act 1976)

The Act redefines rape as -

- (i) unlawful sexual intercourse with a woman who at the time of the intercourse does not consent to it; and
- (ii) at that time the man knowing that she does not consent to the intercourse or being reckless as to whether she consents to it.

The Act further declares that the presence or absence of reasonable grounds for belief that a woman was consenting is a matter to which the jury is to have regard, in conjunction with any other relevant matter, in considering whether he so believed.

Restrictions are placed on the right of the defence to cross-examine a complainant as to previous sexual experience with a person other than the defendant. The publication of matter likely to lead to the identification of complainants is prohibited unless a judge orders otherwise, but then only in specified circumstances.

January 1977 C.L.B. p.16-17

UNITED KINGDOM - SCOTLAND

Sexual Offences (Scotland) Act 1976

The Act consolidates enactments relating to sexual offences in Scotland.

January 1977 C.L.B. p.16-17

UNITED KINGDOM

Marital Rape Bill 1983

This Bill, a Private Member's Bill, seeks to amend the Sexual Offences (Amendment) Act 1976 so as to make rape within marriage a criminal offence.

Prohibition of Female Circumcision Bill 1983

This Bill seeks to prohibit female circumcision. The penalty is a fine. Provision is made for the saving of certain necessary surgical operations.

July 1983 C.L.B. p.790

VANUATU

Penal Code Act 1981 (No. 17 of 1981)

On independence, Vanuatu inherited three separate parallel legal systems - common law, civil law and customary law. As a priority in reconstructing a unitary legal system, a new Penal Code has been enacted. The maximum penalty provided for (including that for the offence of treason) is life imprisonment. Among its other provisions are the following -

Prostitution

s.101 No person shall procure, aid or facilitate the prostitution of another person or share in the proceeds of such prostitution whether habitual or otherwise, or be subsidised by any person engaging in prostitution.

Penalty: Imprisonment for five years.

Duty to provide the necessaries of life

s.104 (1) Every person who has charge of any other person unable, by reason of detention, age, sickness, insanity or other cause whatever to provide himself with the necessaries of life, is (howsoever such charge arises) under a legal duty to supply that person with the necessaries of life and is criminally responsible for omitting without lawful excuse to perform such duty if the death of that person is caused, or if his life is endangered or his health permanently injured by such omission.

(2) No person shall without lawful excuse neglect the duty specified in subsection (1) so that the life of the person under his charge is endangered, or his health permanently injured by such neglect.

Penalty: Imprisonment for seven years.

April 1982 C.L.B. pp.468-470

Evidence

AUSTRALIA

Evidence Act Amendment Act 1976

This Act provides that in the trial of rape offences (including indecent assaults), evidence of the complainant's sexual history, disposition and reputation is restricted. Leave of the Court must be obtained to introduce or cross-examine on any such matter and leave may only be granted where the material sought to be adduced is of substantial relevance.

October 1977 C.L.B. p.562

CANADA

Evidence of sexual offences

Amendments to the Canadian Criminal Code include the abolition of the requirement of a warning as to corroboration, and the limit of questions concerning the past sexual conduct of the complainant in certain criminal proceedings.

January 1978 C.L.B. p.18

NEW ZEALAND

Evidence Amendment Act (1977)

The Evidence Amendment Bill, noted at (1977) 3 C.L.B. 201, as being considered by the statutes Revision Committee has now been passed and came into effect on 29 August 1977.

The Act ensures that only relevant evidence is admitted in a prosecution for a rape offence by restricting the right of the defence to introduce evidence or ask questions relating to -

- (a) the complainant's sexual experience with persons other than the accused, or
- (b) her reputation in sexual matters.

Such evidence may be introduced only with leave of the trial judge and applications for leave are to be dealt with in the absence of the jury. Before the judge may grant leave he must be satisfied that the evidence to be given or the question to be put is of such direct relevance to facts in issue in the proceedings or to the issue of appropriate sentence, that to exclude it would be contrary to the interests of justice.

The Act further declares that evidence shall not be regarded as being of sufficient relevance to warrant its admission by reason only of any inference it may raise as to the general disposition or propensity of the complainant in sexual matters.

January 1978 C.L.B. p.19

Family Law

AUSTRALIA - QUEENSLAND

Description of Women (Reference to Condition in Life) Act 1975

This Act abolishes any requirement that a woman shall describe herself or her calling by reference to her "condition in life", a term defined to mean "the condition of a woman in relation to whether she is or has been married".

October 1975 C.L.B. p.10

AUSTRALIA

Family Law Amendment Act 1976

Consequent on the decision of the High Court of Australia concerning the validity of certain provisions of the Family Law Act 1975, the Australian Parliament has enacted the Family Law Amendment Act 1976 in order to overcome, to the extent constitutionally permissible, some of the defects in the principal Act disclosed by that decision. As a result the latter Act amends the definition of "matrimonial cause" in the principal Act to confine the areas of custody and property to the degrees required by the decision. Also, in the areas of maintenance and injunctions, the definition has been confined to proceedings between the parties and, in the case of maintenance of a child, to proceedings by or on behalf of a child against one or both parents. The expression the "child of a marriage" in the principal Act has been amended to limit its operation to the natural or adopted children of both parties to the marriage. The jurisdiction of the State Supreme Courts over new proceedings under the principal Act has been terminated and special provision has been made for the State of Western Australia to enable it to establish and operate its own Family Court rather than have a Federal Family Court created under the Act. The requirement that proceedings under the Act be held in closed court has been retained notwithstanding the fact that, as a result of the High Court's decision, it can only validly affect the Family Court established under the Act and not State Courts vested with Federal jurisdiction.

Provision has also been made in the amending Act to make the maintenance and custody provisions contained in the principal Act more effective and to clarify the powers of a person to whom a warrant is addressed to enforce a custody or access order. To facilitate the determination of questions of law by the Full Court of the Family Court, a provision has been included in the principal Act to enable such questions that arise in any proceedings before the Family Court to be referred by way of a case stated procedure to the Full Court, thus enabling a decision to be obtained from that Court without the necessity for a full appeal.

July 1976 C.L.B. pp.183-184

Maintenance

The Australian Government has made regulations under the Family Law Act 1975 to make it easier for wives to enforce maintenance orders against their defaulting husbands. Under the regulations chamber magistrates are empowered to make maintenance orders against husbands who default on their maintenance payments, and such orders may be enforced against the husband's income and property.

Marriage

The Federal Attorney-General has introduced a Bill to amend the Australian Marriage Act 1961-1973. The amendments to the Act include the making of grants to approved organizations for purposes of pre-marital education and for enabling information about marriage to be furnished to intending parties by marriage celebrants, the increasing of the time of notice of intention of marriage from 7 days to 1 calendar month except in special circumstances, the requirement of pre-marital counselling for those under 18 years of age who seek to marry without parental consent, and the abolition of the action

of breach of promise of marriage.

July 1976 C.L.B. p.184

Family Law Act 1975

New Regulations made under the Act close certain loopholes associated with the enforcement of maintenance orders inter-state, add Hong Kong and California to the list of overseas territories from which maintenance orders can be sent to Australia for enforcement, provide improvements for appeal procedures in the Family Court of Australia and the Full Bench of that Court, and increase to \$A100 the fees payable to the Court on an application for a divorce and \$A150 on an appeal to the Full Bench.

The Bill also seeks to recognise the validity for purposes of state law the wills of deceased persons that are valid under foreign law but which do not otherwise conform to the state's laws relating to wills. Under the Bill, such foreign wills will be recognised in the state provided they conform with the legal requirements of the country where they are made.

Legal Representation of Infants Bill 1977

This Bill seeks to provide for the separate legal representation of Children in cases that affect their interests, including cases of custody, guardianship and adoption. The Bill gives effect to most of the recommendations of the state's Law Reform Committee (now the Law Reform Commission) on the need for separate legal representation for children who are not parties to an action but in respect of which their rights are affected.

The Bill also makes provision for the costs of a child's representation to be paid by a party to the proceedings, from any fund in which the child has an interest, or, failing these, from the Suitors' Fund.

January 1978 C.L.B. pp.19 and 20

AUSTRALIA - NEW SOUTH WALES

Children (Equality of Status) Amendment Act 1979

The Blood Tests Regulation 1979, made pursuant to the Children (Equality of Status) Act 1976 (N.S.W.), together with Part IV of that Act, relates to the use of blood tests in determining paternity and maternity. This Act amends Part IV of the Act, proclaimed to commence on 23 November 1979, as follows -

- (i) sub-sections (1) and (2) of s.19 of the Act authorise a court in civil proceedings to require the use of blood tests. Where two or more persons are to be tested, the blood samples must be taken by the same sampler, unless the Court otherwise directs;
- (ii) sub-section (11) of s.19 requires blood samples to be taken by a medical practitioner, a registered nurse or a person of a class of persons as prescribed. The class of persons is prescribed by clause 3 of the Regulation;
- (iii) clause 4 requires the parties to the proceedings to notify the Court of the name and address of the person who is to take the blood samples. Upon notification, the Court is to give written notice concerning the proceedings and other details as set out in the Regulation to the person in charge of the testing laboratory to which the blood samples are to be forwarded;

- (iv) clause 5 requires the person in charge of the testing laboratory to issue instructions and provide a container and labels to the person taking the blood samples;
- (v) clauses 6 and 7 set out the procedures to be observed by the person taking the blood sample;
- (vi) clause 8 requires a written report in or to the effect of Form 1 to be furnished by the person taking the blood sample to the testing laboratory;
- (vii) clauses 9 and 10 require the person to be tested, or in some instances a person on his behalf, to furnish prior to testing a declaration (Form 2) dealing with certain medical conditions and blood transfusions. A photograph of the person to be tested is also to be supplied with the declaration to the person taking the blood sample. The photograph is to be affixed to and signed in a prescribed manner on the report by the sampler;
- (viii) clause 11 provides for the Minister administering the Act to appoint persons to carry out blood tests and to appoint places at which such tests may be carried out;
- (ix) clause 12 requires the blood sample tester to record the results of his tests and to furnish to the Court a written report in or to the effect of Form 3, together with the sampler's report and the party's declaration;
- (x) sub-section (6) of s.20 provides for the costs of taking or testing of blood samples to be borne by the person being tested, unless the Court otherwise directs. Clause 13 prescribes an amount of \$A30 as the charge for a blood test;
- (xi) pursuant to s.20 the reports of the tester and the sampler are admissible as evidence in the court proceedings;
- (xii) section 21 deals with the failure of a person to comply with a direction for the use of blood tests and the inferences which the Court may draw as a result of the person's failure to comply;
- (xiii) Section 22 creates an offence for personating another person for the purpose of a blood test or for allowing the wrong child to be tested.

Pursuant to clause 11 of the Regulation, the Attorney-General has already appointed certain persons to carry out blood tests and has appointed certain places at which those blood tests may be carried out.

October 1980 C.L.B. pp.1146-1147

AUSTRALIA - VICTORIA

Status of Children (Artificial Insemination) Bill 1981

This Bill, which amends the State's Status of Children Act 1974, was introduced by two Private Members of Parliament. It seeks to provide for a new section, s.5A, to be inserted in the principal Act in the following terms -

S.5A. (1) A child born to a woman during her marriage or within ten months after the marriage has been dissolved by death or otherwise being a child conceived by her with the consent of her husband after artificial insemination with semen donated by a man not her husband shall be presumed to be the child of its mother and her husband or former husband, as the case may be.

(2) Without prejudice to any other mode of proof the production of a certificate filed with the Health Commission of Victoria purporting to be the certificate of a legally qualified medical practitioner who supervised the artificial insemination of a woman in the circumstances referred to in sub-section (1) that the insemination was performed in those circumstances with the consent in writing of the woman and her husband on the day and at the place referred to in the certificate shall be sufficient evidence of the facts stated in the certificate.

(3) Where the Health Commission of Victoria receives a certificate described in sub-section (2) the Commission shall cause it to be filed and kept confidential unless otherwise required by the order of a court.

July 1982 C.L.B. p.892

AUSTRALIA - NEW SOUTH WALES

Adoption of Children Act 1965

The New South Wales Parliament has repealed sub-section 46(2) of this Act in order to recognise foreign orders of adoption.

Before the repeal foreign orders of adoption could not be recognised in New South Wales because one of the conditions of recognition of a foreign adoption order was that "at the time at which the legal steps that resulted in the adoption were commenced, the adopter, or each of the adopters was resident or domiciled in that country".

Because of the repeal of the sub-section, foreign orders of adoption can now be recognised as valid by the Supreme Court of New South Wales. The Department of Youth and Community Services no longer is required to make application to that Court for a New South Wales Order of Adoption, and it is now possible for adopting parents to approach the Supreme Court direct to seek an order declaring that a foreign adoption order is a valid order pursuant to s.47 of the Adoption of Children Act (NSW).

After the Court makes a Declaration of Validity in respect of the child's Foreign Adoption Order, the Court will notify the Principal Registrar of Births, Deaths and Marriages, who in turn will cause an entry to be placed in his records of births which will show the adopting parents as the child's parents after which a birth certificate can be obtained. The Declaration of Validity does not confer Australian citizenship on the child and adopting parents still need to contact the Department of Immigration and Ethnic Affairs to arrange for this to be done.

AUSTRALIA - VICTORIA

Domicile (Amendment) Bill 1982

This Bill, in its main amendment seeks to substitute a new s.8 in the Domicile Act 1978 (Vic) -

- (i) New sub-section 8(1) sets out the definition of the word "child" and the meaning of the references to parents;
- (ii) new sub-section 8(2) sets out provisions for determining the domicile of a child who has his principal home with one of his parents and his parents are living apart or he does not have another living parent. In such a case his domicile is that of the parent with whom

- he has his principal home. When that parent dies, the child retains the domicile which that parent had at death. This sub-section must be read subject to sub-section (4);
- (iii) new sub-section 8(3) contains provisions for determining the domicile of an adopted child. If, upon his adoption, he has two parents, his domicile is that which he would have had if he had been a child born in wedlock to those parents. If, upon his adoption, he has only one parent, his domicile is the domicile of that parent or, if that parent dies, the domicile that parent had at the date of death;
 - (iv) new sub-section 8(4) provides that a child ceases to have, by virtue of sub-section (2), the domicile or last domicile of one of his parents, if his principal home changes to the other parent or his parents live together again;
 - (v) new sub-section 8(5) provides, in effect, that where a child acquires a domicile by virtue of sub-section (2) or (3), he retains that domicile until he acquires a domicile of choice;
 - (vi) new sub-section 8(6) provides for the domicile of a child whose adoption is rescinded. If the court order rescinding the adoption provides for his domicile, he has the domicile so provided. Otherwise, his domicile reverts to that which he would have had if he had not been adopted.

October 1982 C.L.B. pp.1286-1287

AUSTRALIA - WESTERN AUSTRALIA

Stamp Amendment Act (No. 3) 1982 (No. 45 of 1982)

This amendment to the Stamp Act 1921 - 1982 (Western Australia) is necessitated by the recent Australian High Court decision in Gazzo v Comptroller of Stamps (Vic.); ex parte Attorney-General (Vic.) (1982) 56 ALJR 143. The Court held in that case that s.90 of the Family Law Act 1975 (Commonwealth) was invalid as ultra vires the legislative power of the Commonwealth Parliament. Section 90 had provided that maintenance agreements and other instruments executed in accordance with an order under Part VIII of the Family Law Act were not subject to any duty or charge under any law of a State or Territory, or any law of the Commonwealth applying only to a Territory.

The validity of s.90 and its effect on the Western Australian Stamp Act 1921 - 1982 had been doubted prior to the decision in Gazzo and the State Taxation Office had nevertheless assessed the instruments referred to in s.90 in accordance with the Stamp Act. However, most documents had been considered to operate as if they were orders of the Family Court and thus only a nominal stamp duty had been assessed.

The High Court decision produced some uncertainty as to the manner in which agreements approved or registered in the Family Court of Australia were to be assessed pursuant to the Stamp Act 1921 - 1982 (WA).

The Stamp Act has now been amended by the insertion of a new Part IVD headed "Maintenance Agreements and Orders". Section 112UA defines a "maintenance agreement" as -

an agreement in writing with respect to any one or more of the following, namely -

- (a) the maintenance of one of the parties to the agreement;
- (b) the conveyance or transfer of property (whether real or personal) of the parties to the agreement or either of them to one of the parties or to a dependent child of the parties or of either of them or to both a dependent child of one of the parties and one of them;
- (c) the maintenance of a dependent child of the parties or either of them;

An "order" is defined as -

a sealed copy of an order made by a court exercising federal or non-federal jurisdiction in any proceeding under the Family Court Act 1975 (WA) or the Family Law Act 1975 (Clth) with respect to one or both of the following, namely -

- (a) the conveyance or transfer of real or personal property;
- (b) the vesting of property;

The effect of ss.112UC and 112UD is to provide that maintenance agreements entered into by the parties to a marriage as a result of their divorce or separation and pursuant to the Family Court Act or the Family Law Act, which provide for the payment of maintenance and/or the disposition of property to either party or to any dependent children, will be charged only a nominal stamp duty of Aus\$5. Similarly any court orders which dispose of, or vest property in the parties to the marriage or dependent children will only be subject to nominal stamp duty.

However, maintenance agreements prepared and agreed to by the parties to a marriage as to the disposition of property and simply registered with, or approved by, the court may simply be a means by which property is transferred between parties other than parties to the marriage without paying ad valorem stamp duty. This is possible even with respect to court orders resulting from consent agreements by the parties. This problem is avoided by the new s.112UB which provides that where a maintenance agreement or court order provides for the sale of property to either marriage partner, or for the disposition of property to a person other than a party to the marriage or a dependent child, stamp duty will be assessed by the Commissioner of State Taxation in accordance with the normal provisions of the Stamp Act relating to such transactions.

January 1983 C.L.B. pp.23-25

BARBADOS

Family Law Act 1981 (No. 29 of 1981)

This Act reforms the law relating to the dissolution and nullity of marriage, judicial separation and institution of conjugal rights. It provides for counselling with a view to facilitating reconciliation in matrimonial causes in relation thereto. Parental rights and the custody and guardianship of children are dealt with in Part V of the Act. Part VI of the Act sets out the powers of the court relating to maintenance and property matters.

The Act also provides for the establishment of a Family Law Council to advise and make recommendations to the Attorney-General, either of its own motion or upon request by the Attorney-General in respect of -

- (a) the operation of this Act and other legislation relating to family law;

- (b) the provision of legal aid in proceedings relating to family law;
and
- (c) any other matters relating to family law.

The Act lays down the jurisdiction of the High Court in matrimonial proceedings.

Change of Name Act 1981 (No. 17 of 1981)

This Act enables a person's surname to be changed in certain circumstances. Consent is required in the case of change of name of a spouse, or a child. The Act also provides that where an individual whose marriage has been dissolved and who has lawful custody of a child of the dissolved marriage may, with the consent of the other parent of the child apply to change the name of the child. Further, the mother of a child who has the custody of the child, may apply to change the surname of the child with the consent of the father in certain circumstances.

A change of name, however, may be revoked if the Registrar is satisfied that it has been obtained by fraud, duress or misrepresentation, and once revoked, the individual is required to deliver up the certificate of change of name to the Registrar. Failure to do so is a criminal offence punishable with a fine of \$100 or three months imprisonment or both.

January 1983 C.L.B. p.25

BELIZE

Status of Children Bill 1980

This Bill seeks to remove the legal disabilities of children born out of wedlock. For all legal purposes, the relationship between every person and his parents would be determined irrespective of whether they are or have been married to each other, and all other relationships would also be determined accordingly. All the legal consequences of that relationship would follow as if the father and mother are or had been married to each other at the time of the conception or birth of that person provided paternity has been admitted or is otherwise established or the parents marry each other at some time subsequent to the birth of that person.

The Bill also contains provisions relating to presumption of parenthood, evidence and proof of paternity, the use of blood tests to ascertain or repudiate paternity and consent to the marriage of infants.

On the subject of maintenance, the Bill would require every man to maintain his own children as well as -

- (a) every child whether born in wedlock or not which his wife may have living at the time of her marriage to him;
- (b) if he cohabits with any woman, every child which such woman may have living at the time of the commencement of such cohabitation;
- and
- (c) the children of any child of his, so long as such children are unable by reason of tender years or bodily or mental infirmity to maintain themselves.

January 1981 C.L.B. pp.18-19

BERMUDA

Law Reform (Husband and Wife) Act 1977 (No. 2 of 1977)

This Act amends the law relating to the capacity, property and liabilities of married women, and the liabilities of husbands.

A married woman is now capable of acquiring, holding and disposing of any property in all respects as if she were not married; she may render herself liable in tort or contract or in respect of other legal obligations; she may sue her husband in contract or in tort or otherwise; and the restraint on anticipation is abolished. Her husband is not by reason only of his being her husband, liable for her torts, contracts or other obligations.

The Act also makes provision for the determination of property questions between husband and wife and of questions arising out of money and property derived from housekeeping allowances; it also deals with contributions by spouses in money or money's worth to the improvement of real or personal property.

Law Reform (Miscellaneous Provisions) Act 1977 (No. 3 of 1977)

This Act abolishes actions for breach of promise of marriage, the right of a husband to claim damages for adultery, actions for the enticement or harbouring of a spouse, and actions for the enticement, seduction or harbouring of a child. Special provision is made for the disposal of the property of engaged couples and of gifts exchanged between them.

Recognition of Divorces and Legal Separations Act 1977 (No. 20 of 1977)

The Act, which closely follows the United Kingdom Act of 1971 with the same short title, gives effect to the 1970 Hague Convention on the Recognition of Divorces and Legal Separations (Cmd. 4542).

A divorce or a legal separation obtained by means of judicial or other proceedings in any country (including dependencies) outside Bermuda and effective under the law of that country, is recognised in Bermuda if at the date of the institution of the proceedings in the country in which it was obtained -

- (i) either spouse was habitually resident in that country; or
- (ii) both spouses were nationals of that country; or
- (iii) the petitioner was a national of that country and
 - (a) was habitually resident there, or
 - (b) had habitually resided there continuously for one year within the past two years; or
- (iv) the petitioner was a national of that country and
 - (a) he was present in that country, and
 - (b) he and the respondent last resided in a country whose law did not provide for divorce.

The Act also provides, inter alia, that in relation to a country the law of which has the concept of domicile as a ground of jurisdiction in matters relating to divorce or legal separation, references to habitual residence shall be taken to include a reference to domicile within the meaning of that law. No divorce or legal separation will be recognised if it was obtained at a time when, according to the law of Bermuda (including its rule of private international law), there was no subsisting marriage between the parties.

CANADA

Extra-Provincial Custody Enforcement Act (British Columbia) 1976

The Extra-Provincial Custody Orders Enforcement Act (Manitoba)

Extra-Provincial Custody Order Enforcement Act (Newfoundland) 1975-76

Reciprocal Enforcement of Custody Orders Act (Nova Scotia) 1976

The Extra-Provincial Custody Orders Enforcement Act (Prince Edward Island) 1975

These statutes, enacted by British Columbia, Manitoba, Newfoundland, Nova Scotia and Prince Edward Island, are based on a model act, "The Extra-Provincial Custody Enforcement Act", recommended by the 1974 Uniform Law Conference of Canada. The model act essentially provides that a court shall give full faith and credit to a custody order of another jurisdiction unless the court is satisfied either that the child did not have, at the time the order was made, a real and substantial connection with the province, state or country in which the order was made, or that the child would suffer serious harm by remaining in or being restored to the custody of the person named in the order. The provincial statutes recognize the concern expressed at a federal-provincial conference of attorneys general in 1975 about the serious social and legal problems caused in Canada by "childnapping" which usually occurs because a parent has lost or is likely to lose a custody action and seeks a jurisdiction that might favour him or her in a custody action. The ministers agreed that both levels of government would take early action to develop a more effective legal framework whereby children abducted by a parent will be returned to lawful custody. Consideration is also being given to making the Criminal Code sections on abduction and kidnapping more effective and useful in these cases.

January 1976 C.L.B.

CANADA - ONTARIO

Family Law Reform Act 1978

Comprehensive reform of family law has taken place in Ontario with the Family Law Reform Act 1978 and three related Acts. The framework for this reform was laid with the completion of a series of reports by the Ontario Law Reform Commission, and an earlier Act, the Family Law Reform Act 1975. This Act declared the principle of equal status and capacity in law for both husband and wife and abolished many of the legal disabilities of married women.

A federal-provincial agreement provided for an experimental pilot court, set up under the Unified Family Court Act 1976, whereby all family law matters are heard in the same court. Simplified rules of procedure made specifically for the Unified Family Court are designed to facilitate and speed up the process of the court.

Further children's law reform dealing with issues of custody, guardianship and the legal representation of children, is now being prepared by the Ministry of the Attorney-General for passage by 1979, The International Year of the Child.

The Family Law Reform Act 1978, a major piece of novel remedial legislation, reforms the law relating to family property, support obligations, the

matrimonial home, domestic contracts, dependants' claims for damages and specific common law actions and principles. This is done in the context of the formal recognition found in the Act's preamble of "the equal position of spouses as individuals within marriage" and of "marriage as a form of partnership".

The Act introduces the "family assets" system of property which provides for the division of family property. Upon marriage breakdown each spouse is entitled to half of the matrimonial home and to half of the property which is owned by either or both of the spouses and which is ordinarily used or enjoyed by both spouses or one or more of their children while the spouses are residing together for shelter or transportation or for household, educational, recreational, social and aesthetic purposes.

While providing this basic rule, the Act also contemplates that on application the court may order an unequal division of family assets which it is merited or a division of property which is not a family asset such as business property or private investments, having reference to certain circumstances specified in the Act.

Quite apart from judicial discretion, a spouse or a former spouse is entitled to an interest in property other than a family asset in which the other has or had an interest, when it is shown that "the spouse or former spouse has contributed work, money or money's worth" to that property.

The Act abolishes the presumption of advancement between husband and wife and in its place adopts a presumption of resulting trust except in the case of a joint tenancy, where a joint beneficial ownership is presumed.

During marriage each spouse has an equal right of possession in the matrimonial home (which can include rented premises and personal property such as a mobile home). Notwithstanding this right to possession, or the ownership of the home, the court may order that one spouse is to have exclusive possession of the home.

The Act also regulates one spouse's disposal or encumbrance of his interest in the home, requiring generally the consent of the non-owning spouse to any such dealing. If the requirements set out are not met, the transaction may be set aside, unless the third party holding the interest acquired it for value, in good faith and without notice that the property was a matrimonial home.

The Act deals in a comprehensive fashion with support obligations, unifying and updating the law of support and resulting in the repeal or amendment of other major family welfare statutes.

The obligation to support falls on spouses, parents and children. A parent has an obligation to support an unmarried child under eighteen, and a child who is not a minor has an obligation to support a parent who has cared for or supported him. Both parent and child are broadly defined so as to include a person who treats a child as a child of the family and a child who has been so treated, but excluding a foster parent or child.

Both husbands and wives now have a responsibility to support themselves as well as their spouse. The definition of spouse for the purposes of the support obligation has been expanded to include the partners of a common law relationship of five years duration, or of "some permanence" where there is a child of the union.

Support orders are determined on a basis of need and ability to pay. The several criteria to be considered by the court introduce such factors as the contribution by the dependant to the realisation of the career potential of the respondent; and the domestic responsibilities undertaken by the dependant,

giving legislative recognition to the value of contributions made by both partners of the relationship.

The obligation to provide support exists regardless of the conduct of either spouse. However, the Act provides that a course of conduct that is "so unconscionable as to constitute an obvious and gross repudiation of the relationship" may be considered by the court in determining the amount of support to be provided.

While the Act creates a comprehensive scheme of property sharing and support obligations which is to apply to all married couples, it also makes the system flexible by allowing couples to opt out of the legislation and create their own property and support regimes by contract. The Act provides for marriage contracts and separation agreements, as well as for cohabitation agreements between unmarried couples. Certain specific limitations are placed on this otherwise wide power of contract, such as: preservation of the parens patriae jurisdiction of the court to protect the interests of children, a prohibition of contracting out of the statutory rights and obligations regarding the matrimonial home and a prohibition of dum casta clauses.

The Act repeals the Fatal Accidents Act and replaces it with provisions dealing with the right of dependants to sue in tort where a person is injured or killed by the negligence of another. Noteworthy changes to the former legislation include the expansion of the right to recover to non-fatal injuries and the expansion of the class of dependants who can sue to include brothers and sisters of the victim, persons who have shown a settled intention to treat the victim as their own child, a common law spouse of the victim, and the victim's former spouse where there is a subsisting order for support.

The Act also abolishes the unity of legal personality and removes any legal disabilities imposed on married women. A married woman's domicile is to be determined independently of that of her husband's and rules are set down to determine the domicile of a minor.

The actions for criminal conversation, enticement or harbouring of a spouse, loss of consortium and enticement, harbouring, seduction and loss of services of a child are abolished. The common law rights to dower and alimony are also abolished.

Succession Law Reform Act 1977

The Succession Law Reform Act 1977 broadly reforms the law of testate and intestate succession and consolidates the law relating to estates within one Act. Paramount among the substantive reforms is the equalization of the treatment of all children in estate matters, whether born inside or outside marriage. Similarly, the rights and obligations of husbands and wives have been equalized.

In testate matters, the Wills Act has been repealed and is replaced by provisions recommended by the Uniform Law Conference of Canada for enactment in the various jurisdictions of Canada. The holograph will is now recognised, and the Uniform Law on the Form of an International Will is adopted.

On an intestacy, the surviving spouse is entitled to the first \$75,000 of the estate. Where the estate exceeds this amount, the surviving spouse takes a distributive share of the remainder, and where there are no children, he or she takes the entire remainder to the exclusion of next of kin.

This Act repeals the Dependants' Relief Act and broadens the scope of dependants' relief. In particular, a dependant will now have a claim against an estate where the deceased died intestate as well as where the deceased left a will. The classes of persons who may make claims on an estate have been expanded so as to include brothers and sisters as well as former spouses and common law spouses, as defined in the Act.

Children's Law Reform Act 1977

The Children's Law Reform Act 1977 abolishes the status of illegitimacy and declares that for all purposes the legal status of a child is independent of the marital status of his parents.

The Act provides various means by which parentage may be established, the most definitive method being by judicial declaration. However, in most cases such a step is unnecessary for the Act sets out six circumstances which give rise to a presumption of paternity. The first three presumptions relate to situations where a child is born in a marriage or where his parents marry after his birth. In the fourth presumption, the same principles are extended to the situation where a child is born in a union of some permanence where his parents have not married. The fifth and sixth presumptions deal with cases in which there is a clear public recognition of parentage, either by the parents' statutory declaration or by a judicial finding of paternity where parentage was in issue in the proceeding. The final method provided under this Act is a written acknowledgement of parentage against the interest of the declarant.

The Act encourages the use of voluntary blood tests as evidence of paternity by regulating standards for testing and by facilitating medical consents in cases of persons without capacity. The refusal to consent to a test is admissible evidence, permitting whatever inferences the court wishes to make.

The Act also establishes a registry system for certain documentation which will assist such persons as executors and trustees in making searches for children born outside marriage.

Marriage Act 1977

The Marriage Act 1977, seeking to provide administrative improvements to the marriage process, implements several recommendations of the Ontario Law Reform Commission.

In order to make marriage ceremonies available without delay and with greater dignity, the classes of public officials who have the jurisdiction to perform civil ceremonies have been expanded.

No longer serving its function of publicity in the community, the provincial residency period required before a licence could be obtained has been deleted. The provisions of the Act apply only to the first marriage ceremony and permit additional ceremonies by the same couple without formalities. The minimum age for marriage is eighteen years (the age of majority), or sixteen years with parental consent. Whenever possible, the consent of both parents is now necessary, expanding the prior provision requiring the father's consent only.

The common law action for breach of a promise to marry is abolished.

CANADA - QUEBEC

Civil Code Amendment Act 1977

The Act substitutes parental authority for paternal authority. It establishes the principle of parental authority, provides for its deprivation by judicial declaration, permits disagreements in the exercise of parental authority to be referred to a judge, and creates presumption in favour of third persons in good faith that a parent performing an act of authority concerning the child has the consent of the other parent.

It also empowers judges to authorise investment in trust of money belonging to a minor child.

July 1978 C.L.B. pp.502-506

CANADA - ALBERTA

Matrimonial Property Act 1978

The Act, which will come into force on a date to be fixed by Proclamation, provides for a system under which, upon the breakdown of a marriage, different classes of property owned by each or both of the spouses are to be distributed in the manner, and according to specific guidelines, set out therein. It also empowers the courts to give possession of the matrimonial home and household goods to a spouse to the exclusion of the other spouse in appropriate circumstances.

The following provisions of the Act govern the powers of the court to make a distribution and contain the matters to be taken into account when exercising this jurisdiction -

7(1) The Court may, in accordance with this section, make a distribution between the spouses of all the property owned by both spouses and by each of them.

(2) If the property is

- (a) property acquired by a spouse by gift from a third party,
- (b) property acquired by a spouse by inheritance,
- (c) property acquired by a spouse before the marriage,
- (d) an award or settlement for damages in tort in favour of a spouse, unless the award or settlement is compensation for a loss to both spouses, or
- (e) the proceeds of an insurance policy that is not insurance in respect of property, unless the proceeds are compensation for a loss to both spouses,

the market value of that property

- (f) at the time of marriage, or
- (g) on the date on which the property was acquired by the spouse, whichever is later, is exempted from a distribution under this section.

(3) The Court shall, after taking the matters in section 8 into consideration, distribute the following in such manner as it considers just and equitable:

- (a) the difference between the exempted value of property described in subsection (2) (in this subsection referred to as the "original property") and the market value at the time of the trial of the original property or property acquired.
 - (i) as a result of an exchange for the original property, or

- (ii) from the proceeds, whether direct or indirect, of a disposition of the original property;
- (b) property acquired by a spouse with income received during the marriage from the original property or property acquired in a manner described in clause (a)(i) or (ii);
- (c) property acquired by a spouse after a decree nisi of divorce, a declaration of nullity of marriage or a judgment of judicial separation is made in respect of the spouses;
- (d) property acquired by a spouse by gift from the other spouse.

(4) If the property being distributed is property acquired by a spouse during the marriage and is not property referred to in subsections (2) and (3), the Court shall distribute that property equally between the spouses unless it appears to the Court that it would not be just and equitable to do so, taking into consideration the matters in section 8.

8 The matters to be taken into consideration in making a distribution under section 7 are the following:

- (a) the contribution made by each spouse to the marriage and to the welfare of the family, including any contribution made as a homemaker or parent;
- (b) the contribution, whether financial or in some other form, made by a spouse directly or indirectly to the acquisition, conservation, improvement, operation or management of a business, farm, enterprise or undertaking owned or operated by one or both spouses or by one or both spouses and any other person;
- (c) the contribution, whether financial or in some other form, made directly or indirectly by or on behalf of a spouse to the acquisition, conservation or improvement of the property;
- (d) the income, earning capacity, liabilities, obligations, property and other financial resources
 - (i) that each spouse had at the time of marriage, and
 - (ii) that each spouse has at the time of the trial;
- (e) the duration of the marriage;
- (f) whether the property was acquired when the spouses were living separately and apart;
- (g) the terms of an oral or written agreement between the spouses;
- (h) that a spouse has made
 - (i) a substantial gift of property to a third party, or
 - (ii) a transfer of property to a third party other than a bona fide purchaser for value;
- (i) a previous distribution of property between the spouses by gift, agreement or matrimonial property order;
- (j) a prior order made by a court;
- (k) a tax liability that may be incurred by a spouse as a result of the transfer or sale of property;
- (l) that a spouse has dissipated property to the detriment of the other spouse;
- (m) any fact or circumstance that is relevant.

The Act provides that matrimonial property orders cannot be made where spouses (or those contemplating marriage) enter into a written agreement dealing with the status, ownership and division of property (including future property) owned by either or both of them, and the agreement satisfies the formal requirements set out in the Act.

In a separate Part, the Act empowers the court to do one or more of the following, and the order (which may be varied) may be made subject to such

conditions and for such time as the court considers necessary -

- (a) direct that a spouse be given exclusive possession of the matrimonial home,
- (b) direct that a spouse be evicted from the matrimonial home,
- (c) restrain a spouse from entering or attending at or near the matrimonial home,
- (d) and in addition, give a spouse possession of as much of the property surrounding the matrimonial home as is necessary for its use and enjoyment.

Power is also given to the court to direct that a spouse be given the exclusive use and enjoyment of any or all of the household goods. The order may be for such duration and subject to such conditions as the court considers necessary, and may be varied.

In exercising jurisdiction under this Part of the Act, the court is required to have regard to -

- (a) the availability of other accommodation within the means of both the spouses,
- (b) the needs of any children residing in the matrimonial home,
- (c) the financial position of each of the spouses, and
- (d) any order made by a court with respect to the property or the maintenance of one or both of the spouses.

The Act defines "household goods" as meaning personal property that is owned by one or both spouses, and was ordinarily used or enjoyed by one or both spouses, or one or more of the children residing in the matrimonial home, for transportation, household, educational, recreational, social or aesthetic purposes. The expression "matrimonial home" is defined to mean property that is owned or leased by one or both spouses which is or has been occupied by the spouses as their family home, and which falls into one of the following categories: a home or part of a home that is a self-contained unit; part of a business premises used as living accommodation; a mobile home; a residential unit as defined in the Condominium Property Act or a suite.

October 1978 C.L.B. pp.793-795

CANADA - MANITOBA

Marital Property Act 1978

The preamble to the Act (expected to come into force on 1 October 1978) sets out the basic presumption of law that all assets acquired by spouses during marriage are to be shared equally in the event of marriage breakdown.

Assets are classified as being either commercial assets or family assets. Generally speaking, all assets used by the family, e.g., the marital home, the household furnishings, the family car, the family trailer, the family boat, the summer cottage, and all monies which are used for family purposes, are classified as family assets. All other assets, including insurance policies and pension plans, are classified as commercial assets. The marital home is placed in a special category and, no matter which spouse owns the marital home, both spouses have an equal right to the use and enjoyment of the marital home - s.6(2). The interest of the non-title owning spouse in marital home is further protected by The Dower Act (Statutes of Manitoba,

Chapter D100) which states that any disposition of the marital home, including any sale, mortgage or lien, is invalid without the written consent of that spouse.

Each spouse has an equal right to the use and enjoyment of any other family asset that is ordinarily used or enjoyed by both of them - s.6(3). This means that both spouses have an equal right to the use and enjoyment of assets like the family car but not to the other spouse's skis or golf clubs, assets which are ordinarily used or enjoyed by only one spouse.

While the basic presumption of equal sharing of all assets acquired during the marriage applies to both family and commercial assets, s.13 provides different tests to be applied by the Court in determining whether to vary the equal division of assets. Subsection 13(1) provides that with respect to family assets, the Court may vary the equal division "if the Court is satisfied that a division of those assets in equal shares would be grossly unfair or unconscionable having regard to any extraordinary financial or other circumstances of the spouses or the extraordinary nature of value of any of their assets."

With respect to commercial assets, subsection 13(2) of the Act provides that the Court may vary the equal division -

"if the Court is satisfied that the division of those assets in equal shares would be clearly inequitable having regard to any circumstances the Court deems relevant including -

1. the unreasonable impoverishment by either spouse of the family assets;
2. the amount of the debts and liabilities of each spouse and the circumstances in which they were incurred;
3. any spousal agreement between the spouses;
4. the length of time that the spouses have cohabited with each other during their marriage;
5. the length of time that the spouses have lived separate and apart from each other during their marriage;
6. whether either spouse has assets of an extraordinary value to which the Act does not apply by reason of their having been acquired by way of gift or inheritance;
7. the nature of the assets;
8. the extent to which the financial means and earning capacity of each spouse have been affected by the responsibilities and other circumstances of the marriage."

While the Court is given a wider discretion to vary the equal division of commercial assets, the Court should only vary the equal division where there are clear, unmistakable grounds.

The Act is retroactive in effect and applies to all assets acquired during cohabitation by the spouses from the date of the marriage. In this regard, the Manitoba Law Reform Commission, the Manitoba Bar Association and a special Government appointed Family Law Review Committee recommended that either spouse be permitted to unilaterally opt out of the application of the Act. The government did not follow the recommendation, but this was an important factor in the decision to allow the Court a wider discretion to vary the equal division of commercial assets.

Section 5 of the Act permits spouses to make any agreement between themselves (in writing) as to how they wish to dispose of their assets. Spouses may agree that the Act will not apply to any or all of their assets.

The Act applies to all married persons in Manitoba except those spouses who were living separate and apart from each other on 6 May 1977 (the date that The Marital Property Act was first introduced into the Manitoba Legislature), unless those spouses, after that date, cohabit for a period of more than 90 days.

Gifts, trust benefits and assets acquired by way of inheritance and the appreciation and income earned from these assets are not shareable unless it can be shown that it was intended that both spouses would benefit - s.7. However, the appreciation and income earned (less depreciation) from other assets which are not shareable, i.e., acquired prior to the marriage of the spouses or at a time when the spouses were living separate and apart, is to be included in any accounting of the assets on marriage breakdown - s.4(3).

In the event that assets are dissipated or a spouse makes an excessive gift or a spouse transfers an asset for inadequate consideration, the other spouse may require, an application within two years of discovering the event, that these matters be considered in any accounting - s.6(6), (7), (8) and (9).

Dower Act 1978

The Dower Act had provided for the surviving spouse to elect to take under the will or, if the surviving spouse was not left assets comprising at least one-third of the value of the net real and personal property of the estate, the surviving spouse could elect to take under the Dower Act. The Act is now amended to allow the surviving spouse at least one-half of the value of the estate.

A testator could have avoided this particular provision by providing the surviving spouse with a life income of \$6,000 per year or property of the value of not less than \$100,000 over and above any encumbrances. The Act further provided that an annual income of \$3,000 in addition to property of the value of not less than \$50,000 over and above any encumbrances would also be sufficient. These amounts were clearly out of date.

While the Attorney-General has referred the whole of the Dower Act to the Manitoba Law Reform Commission for an in depth study and report as to recommend legislative changes, the amounts that a testator could leave to the surviving spouse and thereby vitiate the election available to the surviving spouse to take half of the estate, have been increased. The Dower Act now requires that the surviving spouse be provided at least \$15,000 per year or property of a value not less than \$250,000 over and above any encumbrances. Further, a testator could leave the surviving spouse an annual income of \$10,000 if in addition the surviving spouse was provided with property of a value of at least \$150,000 over and above any encumbrances.

While the Dower Act now provides that the surviving spouse is entitled to one-half of the estate, any division of assets that may have been made under the Marital Property Act will be taken into consideration in the accounting of the estate.

Family Maintenance Act 1978

When The Family Maintenance Act comes into force (expected to be 1 October 1978), the present Wives' and Children's Maintenance Act will be repealed.

(C.L.B. October 1978 pp.796-800)

CANADA - MANITOBA

Survivorship (Amendment) Act 1983

This amendment affects the "deemed survival" provisions of the Act. Formerly, where persons died in a common accident and it was not possible to determine the order of death, the younger was deemed to have survived the older. The result of this amendment is that where persons die in such a common accident, each will be deemed to have survived the other for the purpose of disposing of their estate.

Family Maintenance (Amendment) Act 1983

These amendments expand the scope of the statutory obligation to provide support for dependant persons. A common law spouse who has been substantially dependant on the other person during a continuous period of co-habitation of not less than five years may seek maintenance even where there is no child of the union. With respect to children, corroboration is no longer required in proving an allegation of parentage and the court may order that blood samples be taken. Legal distinctions between illegitimate and legitimate are abolished, both groups now having the same rights with respect to maintenance and inheritance.(C.L.B. July 1984 1072)

CYPRUS

Legitimation of Children Born out of Wedlock (Temporary Provisions)
Law 1977 (No.48 of 1977)

This law makes provision enabling the court to make an order recognising a child born out of wedlock as a lawful child where such child was born of a mother who was engaged to be married to a deceased or missing person.

A "deceased" person means a person who has been killed as a consequence of the coup d'etat of 14th July 1974, or due to the Turkish invasion. A "missing" person means a person who has been missing as a consequence of the Turkish invasion of 20 July 1974 and in respect of whom the Government of the Republic, acting through the Ministry of Justice, does not possess any positive information as to his fate during the last six months before the making of the application under the Law.

A court order under the Law may be made on the application of the mother of the child which shall be served on the Attorney-General of the Republic and any other person directed by the court.

No order shall be made under the Law, unless -

- (i) at the time of conception of the child there was subsisting between the deceased or missing person, as the case may be, and the mother of the child a valid betrothal in accordance with the law applicable to both or a duly proved mutual promise of marriage;
- (ii) the marriage between them would not have been prohibited on account of any relationship in accordance with the law applicable to both; and
- (iii) from the last day on which the deceased or missing person was with the mother of the child until the birth of the child no period exceeding 302 days has intervened.

A child born out of wedlock which has been legitimated by an order of the court made in accordance with this Law shall be deemed to be a law-

ful child of the deceased or missing person.
(C.L.B. October 1977 pp.567-568)

GIBRALTAR

Inheritance (Provisions for Family and Dependents) Ordinance 1977

This Ordinance follows almost verbatim the United Kingdom Act of 1975 and follows the policy of keeping "family" legislation in line with that in England.

(C.L.B. July 1977 p.362)

GHANA

National Council on Women and Development Decree, 1975

This Decree was made as a result of the declaration by the United Nations that 1975 should be known as International Women's Year. The Decree establishes a Council to be known as the National Council on Women and Development.

The functions of the Council are:-

- (a) to advise the Government generally on all matters relating to full integration of women in national development at all levels;
- (b) to serve as the official national body for co-operating and liaising with national and international organisations on matters relating to the status of women;
- (c) to examine and evaluate the contribution of women in the economic, social and cultural fields and to advise Government as to the specific areas where participation by women may be strengthened or initiated;
- (d) to study the effect of customary beliefs, prejudices and practices on advancement of women in the educational, political and economic fields and to report their findings to the Government from time to time;
- (e) to devise a programme for the establishment of machinery and procedures to make possible the continuous evaluation of women's integration in the total development effort at local, regional and national levels;
- (f) to study plans and proposals for the establishment of large-scale non-formal education and training for the purpose of raising living standards in the rural and urban communities and eradicating illiteracy.

The Council consists of twenty persons, fifteen to be women with competence in areas of public affairs and women's activities, in addition to representatives from Ministries of Education and Culture, Health, Labour, Social Welfare and Co-operatives, Agriculture, Economic Planning, Finance, Foreign Affairs, Information, Justice and the Public Services Commission.

The Council was formally inaugurated by the Chairman of the National Redemption Council on 21 April 1975 with Mrs. Justice Annie Jiagge as Chairman.

(C.L.B. May 1975 p.5)

GUYANA

Dependants' Pension (Amendment) Act 1978

This Act amends the Widows and Orphans Pension and re-styles it as the

"Dependants' Pension Act". It includes females among the categories of Government employees to become contributors to the Fund. It allows children born out of wedlock to benefit from the Fund established by the Act. (C.L.B. January 1979 pp.36-37)

Children Born out of Wedlock (Removal of Discrimination) Act 1983

This Act makes a number of amendments to existing laws for the purpose of removing discrimination with respect to children born in and out of wedlock. Some of the main reforms introduced by the Act are;-

- (i) for the purpose of intestate succession, a person born out of wedlock shall be entitled to the same rights as a person born in wedlock;
- (ii) for the purpose of the maintenance of children, the Act provides for an increase in such maintenance and casts a duty on every man to maintain his children or the children of any woman he co-habits with or, in some cases, his grandchildren, whether the children or grandchildren were born in wedlock or not; and
- (iii) the Act repealed legislation that dealt separately with child-born out of wedlock and has removed the distinction between those born in wedlock and those born out of wedlock.

(C.L.B. April 1981 pp.546-547)

HONG KONG

Marriage Reform (Amendment) Ordinance 1979
Matrimonial Causes (Amendment) Ordinance 1979

These measures together provide that a registered Chinese customary marriage, which previously could only be dissolved by mutual consent, may now be dissolved in the same manner and on the same grounds (with one exception) as other marriages.

(C.L.B. January 1980 p.34)

INDIA

Child Marriage Restraint (Amendment) Act 1978

This Act amends the Child Marriage Restraint Act 1929 which prohibited child marriage. The minimum age limit for marriage for males was 18 years and for females 15 years (raised from 14 in 1949). By this Act the minimum age limits have been raised to 21 years for males and to 18 years for females. Similar and consequential amendments are made to the Hindu Marriage Act 1955 and the Christian Marriage Act 1872.

The Objects and Reasons published when the Bill was introduced explained that the Government felt that there was an urgent need to check the growth of population in the country. Raising the minimum age of marriage would result in lowering the total fertility rate by reducing the span of married life. It would also result in more responsible parenthood and in better health of the mother and child.

(C.L.B. January 1979 p.29)

Hindu Widows' Remarriage (Repeal) Act 1983

It has been judicially settled that once a widow succeeds to the property of her late husband and acquires absolute rights under the Hindu Succession Act 1856, she cannot be divested of that right on re-marriage. Certain provisions of the Act of 1856 making references to disabilities imposed on childless widows under the Dayabhaga School now suffer from a comparable obsolescence and the Law Commission in its 81st Report also recommended that the Hindu Widows' Remarriage Act of 1856, being obsolete, be repealed.

(C.L.B. January 1985 p.16)

JAMAICA

Status of Children Act 1976

The Act seeks to remove the legal disabilities of children born out of wedlock. It provides that (subject to certain provisions specified in the Act) for all purposes of the law of Jamaica the relationship between every person and his father and mother be determined irrespective of whether the father or mother are or have been married to each other and all other relationships be determined accordingly. The Act abolishes the rule of construction whereby in any instrument words of relationship signify only a legitimate relationship in the absence of a contrary expression of intention. The Act seeks to overcome, as far as possible, the lingering and difficult problem of the identification of the father of an illegitimate child by widening the ways in which paternity may be evidenced or established and provides for the inclusion of blood tests in court proceedings.

(C.L.B. October 1976 p.332)

MALTA

Marriage (Amendment) Act 1981

The amending Act adds the following new provisions -

- (a) In the case of non-observance of any formality or other similar requirement relating to the celebration of the marriage or preparatory thereto, a marriage may not be annulled and shall be held to have always been valid, if the demand for annulment has not been made within two years after the celebration of the marriage.
- (b) In the case of a marriage contracted by proxy signed earlier than ninety days before the marriage or which is revoked before the marriage without the knowledge of the other party, the marriage shall not be annulled and shall be held to have always been valid, if there has been co-habitation for at least one month after the celebration of the marriage.

(C.L.B. July 1982 pp.893-894)

MAURITIUS

Divorce and Judicial Separation (Amendment) Act 1978

The principal amendments made by this Act are to abolish the right of a

husband to claim damages against a co-respondent in a petition for divorce or for judicial separation and to remove undue delay as a discretionary bar to the pronouncement of a divorce.

The Act also declares that any party to a marriage who is domiciled in Mauritius or who is a citizen of Mauritius may petition for divorce or judicial separation

(C.L.B. January 1979 p.29)

MONTSERRAT

Matrimonial Causes for Foreigners Ordinance 1978

The Act provides for divorce within the jurisdiction of "foreigners" (defined as persons not belonging to the Colony or to any of the countries listed in the Schedule, at present Commonwealth Caribbean jurisdictions). The object is to provide foreigners with prompt divorces and to enable immediate re-marriage.

An Office of Foreign Divorce is established to which foreigners may apply. The Attorney-General is charged with the duty of determining the existence of a valid marriage, the true place and residence of the petitioner and the appearance of the respondent either in person or by duly authorised counsel. The filing of a petition and the entry of an appearance on behalf of a respondent is deemed a submission to the jurisdiction of Montserrat.

Special grounds for a petition include that the respondent has, since the celebration of the marriage demonstrated an incompatibility of character or temperament with the petitioner.

The court is required to enquire into the possibility of reconciliation and either pronounce a final decree, or dismiss the petition within 24 hours. The court may subsequently grant a rectifying decree on proof that the original decree was obtained by collusion or fraud or that material facts had not been brought before the court.

There is no residential requirement beyond presence in the jurisdiction. The Act also provides that any foreigner who has been in the Colony for 48 hours is entitled to apply for a marriage licence.

(C.L.B. October 1978 p.802)

NEW ZEALAND

Domestic Actions Act 1975

This act does away with the right to claim damages for adultery and abolishes the action for breach of promise of marriage, for harbouring a spouse or child and for enticement or seduction of a child. It does not abolish the action for enticement of a spouse but makes it clear that such an action may be brought by either husband or wife. Provision is made for the informal settling of property disputes arising from broken engagements.

(C.L.B. January 1976 p.14)

Estate and Gift Duties (Amendment) Act 1976

The major effect of this Act is to exempt all matrimonial homes from

estate duty when the home passes to the surviving spouse. Previously only matrimonial homes settled under the Joint Family Homes Act 1964 were in this position. Without affecting the rule on joint family homes the Estate and Gift Duties Amendment Act provides that a deduction from the dutiable estate may be made in any one of the following situations: where a matrimonial home, including a matrimonial home which forms part of a farm or other business, passes to a surviving spouse; where equivalent property passes instead of a home; and where the deceased's estate contains building land for a matrimonial home. The deduction is to the value of the home, land or equivalent property. The existing relief from estate duty on the succession of the surviving spouse continues to operate on the remainder of the succession once the value of the matrimonial has been deducted.

The Act also amends other aspects of the Estate and Gift Duties Act, principally by revising rates of duty.

(C.L.B. January 1977 p.19)

Matrimonial Property Act 1976

The Act came into force in 1 February 1977. Despite many modifications made during its passage through Parliament it continues to embody the philosophy that both spouses make an equal contribution to the general-ity of marriages and that the division of property if their marriage comes to an end should reflect this. Specifically, there is to be no presumption that a contribution of a monetary nature is of greater worth than one of a non-monetary nature.

Equal division of all the matrimonial property upon divorce or separation thus becomes the starting point, to be departed from only where on the facts the contribution of one spouse to the marriage has clearly been greater than that of the other. The matrimonial home and the family chattels are in a special category. They must be divided equally in every case unless the marriage has lasted for less than three years or there exist extraordinary circumstances in which equal division would be "repugnant to justice". The court is directed to have regard to the interests of minor or dependent children of the marriage and may settle the matrimonial property or any part of it for the benefit of the children of the marriage.

The Act distinguishes between matrimonial property, which is subject to division and separate property which ordinarily is not. Broadly matrimonial property consists of all property acquired by either spouse in contemplation of or after their marriage other than property acquired by gift or succession. The family home and chattels, whenever or how-ever acquired, are always matrimonial property.

The spouses may contract out of the provisions of the Act provided that each has had independent legal advice.

In essence the new Act creates a community property system of "deferred participation" not dissimilar to the situation in the Scandinavian countries. But it stops short of altering the existing law applying on the death of one spouse.

(C.L.B. April 1977 pp.204-205)

Status of Children (Amendment) Act 1978

The 1969 Status of Children Act removed legal disabilities attaching to

illegitimate children by requiring all relationships between all persons to be determined, irrespective of whether or not the parents had ever been married. As a result no one is barred from receiving under an intestacy, will or trust because the relationship through which the claim is traced is not a legitimate one, but the Act placed no obligation upon executors, administrators or trustees to inquire into the existence of any such claimant. The 1978 amendment changes this by requiring all executors, administrators and trustees to make relevant inquiries and letters of administration may not be granted until it is shown that these have been made. Similar inquiries must be made prior to the distribution of an estate or trust. The minimum form that such inquiries may take involves checking through the papers in the estate or trust, inquiring of at least one person likely to know, searching the register of instruments, declarations and orders maintained by the Registrar-General of Births, Deaths and Marriages and, in the case of an estate, inquiring of the solicitor last known to have acted for the deceased.

(C.L.B. October 1978 pp.802-803)

Family Proceedings Act 1980

The Family Proceedings Act which received the Royal Assent on 21 January 1981 is the major measure in which has become known as the "family law package". The other statutes are the Guardianship Amendment Act 1980, the Family Courts Act 1980 and the Social Security Amendment Act (No.2) 1980.

The Act revises the law relating to counselling and conciliation, dissolution of marriage, principles of maintenance, enforcement of maintenance and protection against domestic violence.

The Act is discussed in considerable detail in the Commonwealth Law Bulletin.

(C.L.B. April 1981 pp.483-485)

Domestic Protection Act 1982

This Act, which came into force on 1 March 1983, mitigates the effects of domestic violence and confers protection from molestation in the domestic sphere. It provides four remedies: a non-violence order, a non-molestation order, an occupation order and a tenancy order.

A non-violence order may be made if the court is satisfied that the respondent has used violence against or caused bodily harm to the applicant or a child of the family and is likely to do so again. When a non-violence order is made against a respondent he or she may be arrested if a police officer has good cause to suspect him or her of having breached the order.

When a non-molestation order is made against a respondent, he or she commits an offence by coming on to property where the applicant or child lives or is present, without the applicant's consent; or by molesting the applicant or child in certain specified ways - for example making persistent telephone calls. The penalty for breach of a non-molestation order is \$500 or three months' imprisonment.

An occupation order or a tenancy order may be made under the domestic protection legislation if the court is satisfied that such an order

is necessary for the protection of the applicant, or that it is the best interests of a child of the family. When an occupation order is made the applicant is entitled to live in the household residence to the exclusion of the respondent. When a tenancy order is made the tenancy of the house is vested solely in the applicant.

All the orders described may be made on an ex parte application. However, an order made ex parte is an interim one. As soon as reasonably practicable there must be a court hearing of which both parties have notice.

(C.L.B. April 1983 pp.373-374)

SAINT CHRISTOPHER AND NEVIS

Status of Children Act 1983

This Act gives effect to s.15 of the Constitution by removing legal disabilities of children born out of wedlock. It provides (subject to certain exceptions) that for all purposes of the law of St. Christopher and Nevis, a person is the child of his natural parents and his status as their child is independent of whether the child is born out of wedlock. The rule of construction whereby in any instrument words of relationship signify only legitimate relationship in the absence of a contrary expression of intention is abolished.

Other provisions of the Act deal with presumptions as to parenthood, the recognition of paternity, evidence and proof of paternity, the procedure for the relevant court to make a declaration of paternity and the power of the court in any civil proceedings in which the paternity of any person fails to be determined to require blood tests.

(C.L.B. October 1984 p.1444)

SAINT VINCENT

Status of Children Act 1980

This Act provides that for all purposes of the law (except in relation to questions of domicile, citizenship, adoption or the construction of the word "heir") the relationship between every person and his mother and father shall be determined irrespective of whether the father and mother are or have been married to each other. All other relationships will be determined accordingly.

(C.L.B. April 1981 pp.485-486)

SAINT VINCENT AND THE GRENADINES

Recognition of Divorces and Legal Separations Act 1983

This Act, which provides for the recognition of foreign divorces and legal separations is noted in the Commonwealth Law Bulletin.

(C.L.B. April 1984 p.547)

Matrimonial Homes Act 1984

This Act provides for the rights of a husband or wife to occupy a dwelling house which has been the matrimonial home.

Where one spouse is entitled to occupy a dwelling house by virtue of a beneficial estate or interest or contract or enactment and the other spouse is not entitled, then, subject to the Act, the spouse not entitled shall have certain rights called "rights of occupation", being -

- (a) if in occupation, a right not to be evicted or excluded from the dwelling house, except by order of the High Court; and
- (b) if not in occupation, a right, with the leave of the Court to enter and occupy the dwelling house.

So long as one spouse has rights of occupation, either of the spouses may apply to the Court for an order declaring, enforcing, restricting or terminating those rights or prohibiting, or suspending or restricting the exercise by either spouse of the right to occupy, or requiring either spouse to permit the exercise by the other of that right.

(C.L.B. July 1984 p.1072)

Domestic Violence and Matrimonial Proceedings Act 1984

This Act makes fresh provisions in the law relating to matrimonial injunctions; to provide the police with powers of arrest for the breach of an injunction in cases of domestic violence; to make provision for vary-rights in the matrimonial home.

(C.L.B. January 1985 p.17)

TRINIDAD AND TOBAGO

Married Persons Act 1976

The Act consolidates and amends the law relating to married persons. The opportunity has been taken to up-date the law by including certain reforms with respect to the rights of enjoyment by married women in property and with respect to the tortious and criminal liability of spouses inter se.

The Act seeks to equate the position of a married woman to that of a man by removing the restrictions on anticipation and alienation imposed on the enjoyment of property by a married woman. Under the existing law so long as spouses are living together no criminal proceedings in respect of an appropriation of property belonging to either one can be brought by the other, unless it took place in the course of the desertion of one spouse by the other. In such proceedings either spouse is competent to give evidence without the consent of the other.

The Act confers on any spouse the right to institute a prosecution against the other spouse for any criminal offence committed by the latter on the property of the former. The institution of such proceedings would be subject to the approval of the Director of Public Prosecutions so as to curb any over-readiness to institute proceedings by one spouse against the other and thus prevent situations from arising which will militate against the continuation of a satisfactory domestic relationship

(C.L.B. April 1977 pp.205-206)

Status of Children Act 1981

The Act seeks to remove the legal disabilities of children born out of wedlock. It provides that the status and rights, privileges and obligations of a child born out of wedlock shall be identical to those of a child born in wedlock.

The Act also provides for the Court to make paternity orders and gives the Court power to require the use of blood tests.

(C.L.B. October 1983 p.1166)

UGANDA

Affiliation (Amendment) Bill 1984

The Bill seeks to amend the Affiliation Act so as to raise the amount of money the court may order to be paid as maintenance of an infant child by a putative father from shs.100 to shs.2,000.

(C.L.B. January 1985 p.17)

UNITED KINGDOM

Inheritance (Provision for Family and Dependents) Act 1975

This Act follows the recommendations of the Law Commission (England and Wales). It repeals the Inheritance (Family Provisions) Act 1938 and enables the court to order the making of "reasonable financial provision" out of the estate of a deceased person for the wife or husband, former wife or husband, or child of the deceased, and certain other persons, if such provision is not made under the will or the law relating to intestacy. S.3 of the Act contains a list of the matters to which the court is to have regard in exercising its powers.

(C.L.B. January 1976 p.15)

Legitimacy Act 1976

The Act consolidates certain enactments relating to legitimacy. It provides *inrer alia* for the legitimacy of children of certain void marriages legitimation of adopted children and the rights of legitimated persons to take interests in property.

(C.L.B. October 1976 p.333)

Domestic Violence and Matrimonial Proceedings Act 1976

The Act amends the law relating to matrimonial injunctions and provides the police with powers of arrest for breaches of injunctions in cases of domestic violence.

(C.L.B. January 1977 p.20)

Marriage (Scotland) Act 1977

The Act makes new provisions for marriage in Scotland

(C.L.B. July 1977 p.362)

Domestic Proceedings and Magistrates' Court Act 1978

This Act implements the Report on Matrimonial Proceedings in Magistrates' Courts by the Law Commission (for England and Wales) presented in 1976. In making new provision for matrimonial proceedings in those courts, the Act brings their jurisdiction and procedure more in line with that applicable to matrimonial cases in higher courts.

(C.L.B. July 1978 p.803)

Reciprocal Enforcement of Maintenance Orders (Hague Convention Countries) Order 1979

This order will come into force on 1 March 1980. It provides for the implementation in the United Kingdom of the Convention of the Recognition and Enforcement of Maintenance of Decisions Relating to Maintenance Obligations concluded at the Hague on 2 October 1973.

(C.L.B. January 1980 p.35)

Marriage (Stepparents and Stepchildren) Bill 1981

This Bill has been introduced into Parliament in order to enable courts to consider applications for leave for marriages to take place between stepparents and stepchildren, notwithstanding that they stand in relation to each other within the prohibited degrees of affinity.

(C.L.B. April 1981 pp.486-487)

Matrimonial Homes (Family Protection) (Scotland) Act 1981

The Act makes new provision for Scotland as to the rights of occupancy of spouses in a matrimonial home and of co-habiting couples in the house where they cohabit; to provide for the transfer of the tenancy of a matrimonial home between the spouses in certain circumstances during marriage and on the granting of a decree of divorce or nullity of marriage, and for transfer of the tenancy of a house occupied by a co-habiting couple in certain circumstances; and to strengthen the law relating to matrimonial interdicts.

(C.L.B. January 1982 pp.23-24)

Divorce Jurisdiction, Court Fees and Legal Aid (Scotland) Act 1983

This Act extends the jurisdiction of sheriffs in Scotland in relation to actions for divorce. It makes provision as regards the sufficiency of evidence in certain actions for divorce in Scotland; it introduces a new provision in Scotland as to the fees and outlays of counsel and solicitors in relation both to legal aid and to the giving of legal advice and assistance under the Legal Advice and Assistance Act 1972.

The Act also makes new provision in relation to the regulation of

fees payable in the Scottish courts.

(C.L.B. July 1983 p.795)

Matrimonial Homes Act 1983

This Act consolidates certain enactments relating to the rights of a husband or wife to occupy a dwelling-house that has been a matrimonial home.

Marriage Act 1983

This Act makes changes in the law relating to the place of solemnisation of marriage in England and Wales and in Northern Ireland. It provides for the marriage of a person to be solemnised where that person is if he or she cannot move by reason of illness or disability or is detained under certain legislation relating to mental health or in prison.

(C.L.B. October 1983 p.1166)

Industrial Relations

GUYANA

Factories (Amendment) Act 1983

This Act amends the Factories Act (Cap. 95.02) so as to remove discrimination with respect to the employment of women in factories.

Prior to this amendment, the Act provided for regulations to be made prescribing different hours of work for women in factories and prescribing different conditions with respect to their employment. Such regulations tend to place women at a disadvantage in the employment market. This amendment removes the power to make such regulations.

(C.L.B. October 1984 p.1445)

NEW ZEALAND

Equal Pay (Amendment) Act 1976

The Act makes a number of procedural changes to the Equal Pay Act 1973 which was passed following the 1971 report of the Commission of Enquiry into Equal Pay. The 1973 Act provided for the removal and prevention of discrimination based on sex in rates of pay of males and females in paid employment. Equal pay was to be implemented under the Act in five approximately equivalent steps with full equal pay to take effect from 1 April 1977.

The Act provides that an employer's own decision to fix the wage rates for an individual employee or groups of employees will be covered by the Act and that the percentage relationship required by the Act to be maintained between male and female rates at each of the five implementation steps must continue to be maintained following any adjustment of male rates of pay at any time.

Employers must provide individual written pay advice to female workers whenever their rates of pay are altered for any reason during the implementation period. They must also supply at the request of an employee all relevant information as to any right or benefit provided for that employee as a result of an employer's own decision to increase that employee's rate of pay.

(C.L.B. January 1977 p.29)

Health, Education and Social Welfare

BANGLADESH

Dowry Prohibition Act 1980

Dowry, meaning the property given or agreed to be given either directly or indirectly by one party to a marriage to the other party to the marriage, or by parents of either party to a marriage or by any other person to either party to the marriage or to any other person, is a social curse condemned by all, irrespective of caste or creed, but all efforts to eliminate it socially have failed. Hence a legislative measure had to be adopted to prohibit dowry. Giving or taking, or abetting the giving or taking, of dowry in a marriage and demanding, directly or indirectly, from parents or guardians of a bride or bridegroom, as the case may be, any dowry, has been made an offence punishable with imprisonment which may extend to one year or a fine of up to 5,000 taka or with both.

The law has also made provision for the transfer to the woman of any dowry received for her benefit or for the benefit of her heirs by any person other than the woman in connection with whose marriage it is given. The failure to transfer any property so given as dowry within the time limit prescribed therefore has been made punishable with imprisonment of up to one year or a fine of up to 5,000 taka or with both.

(C.L.B. April 1981 p.492)

Cruelty to Women (Deterrent Punishment) Ordinance 1983

This Ordinance provides for deterrent punishment for cruelty to women which has been causing anxiety to all in society. It provides inter alia-

- (1) Any person who kidnaps or abducts any woman of any age with intent that such woman shall be employed or knowing it to be likely that that such woman shall be employed, or that such woman may be compelled or knowing it likely that she may be compelled to marry any person against her will or that such woman may be forced or seduced to illicit intercourse, shall be punishable with transportation for life or with rigorous imprisonment of up to 14 years.
- (2) Import, export, sale, letting to hire, disposal otherwise and buying hiring and obtaining possession otherwise, of any woman of any age with intent that such woman shall be employed or used for the purpose of prostitution or illicit intercourse with any person or for any unlawful purpose are punishable with transportation for life or with a term of imprisonment of up to 14 years or a fine or both.

- (3) Further, causing or attempting to cause death or grievous hurt to any woman for dowry by the husband or parent, any guardian or relation of the woman is punishable with death, or with transportation for life or with rigorous imprisonment for a period of up to 14 years or with a fine.
- (4) Causing death to a woman in committing or attempting rape or murdering a woman after committing rape is punishable with death, or with transportation for life and also with a fine. The offence of attempting to cause death or causing grievous hurt to a woman in committing rape or attempting to commit rape is punishable with transportation for life or with rigorous imprisonment for up to 14 years or also with a fine.

(C.L.B. January 1984 p.53)

BARBADOS

Medical Termination of Pregnancy Act 1983

This Act provides that notwithstanding ss.61 and 62 of the Offences Against the Person Act, the treatment for the termination of pregnancy is lawful if administered in accordance with the Act.

The treatment for the termination of a pregnancy of not more than 12 weeks duration may be administered by a medical practitioner if he is of the opinion, formed in good faith, - (a) that the continuance of the pregnancy would involve risk to the life of the pregnant woman or grave injury to her physical or mental health, or (b) that there is substantial risk that if the child were born, it would suffer such physical or mental abnormalities as to be seriously handicapped.

The written statement of a pregnant woman that she reasonably believes that her pregnancy was caused by an act of rape or incest is sufficient to constitute the required element of grave injury to mental health. In determining whether the continuance of the pregnancy would involve such risk of injury to the health of the pregnant woman, the medical practitioner must take into account the pregnant woman's social and economic environment, whether actual or foreseeable.

There are similar provisions relating to the treatment for the termination of pregnancy of more than 12 weeks duration but not more than 20 weeks if two medical practitioners are of the opinion, formed in good faith of the risks referred to above and the treatment for the termination of a pregnancy of over 20 weeks duration of three medical practitioners are of such an opinion.

For the purposes of termination the duration of the pregnancy must be determined - (a) by calculating from the first day of the last normal menstruation of the pregnant woman ending on the last day of the relevant week; and (b) by clinical examination.

(C.L.B. October 1983 pp.1172-1173)

JAMAICA

National Insurance (Amendment) (No.2) Act 1979

This Act, a companion measure to the Maternity Leave Act, creates a new benefit, namely a maternity benefit.

The amount payable as maternity allowance is equivalent to the

national minimum wage in force at the time of entitlement. This allowance will be payable for eight weeks from the week of claim, if the claim is made prior to the date of confinement, or the date of confinement in any other case. The allowance is not payable in respect of any period earlier than 11 weeks before the expected date of confinement. Also it is not payable unless the claimant confirms the date of confinement or expected date of confinement by furnishing one of the following -

- (i) a certificate from a registered medical practitioner,
- (ii) a certificate from a registered midwife, or
- (iii) such other evidence as the Minister shall consider satisfactory.

(C.L.B. January 1981 p.24)

MALAWI

Decency in Dress (Amendment) Bill 1982

This Bill seeks to amend the Decency in Dress Act (Cap. 7:04) by inserting therein an additional subsection empowering the Minister to suspend in certain cases the application of the provision of the Act which declares the wearing of trousers by a female in a public place to be a criminal offence.

(C.L.B. October 1982 p.1297)

PAPUA NEW GUINEA

Baby Feed Supplies (Control) Act 1977

The Act restricts the right of freedom of expression conferred by s.46 of the Constitution in order to protect baby health from the consequences of the unhygienic, insufficient or wrong use of certain items connected with the feeding of babies.

Under the Act it is an offence to publish an advertisement whose intention or likely effect is to encourage the bottle feeding of babies or the purchase or use of milk or other products in connection with the use of prescribed articles.

(C.L.B. January 1978 pp.24-25)

SEYCHELLES

Termination of Pregnancy Act 1981

This Act legalises the termination of pregnancy (abortion) by qualified doctors in certain circumstances.

These circumstances are similar to those set out in the Medical Termination of Pregnancy Act 1983 of Barbados and appearing at p.54 supra.

(C.L.B. July 1981 p.873)

UGANDA

National Council of Women Decree 1978

This Decree establishes a National Council of Women with branches in each sub-county and province. The objectives for which the Council is established include, inter alia, the promotion and inspiration among women of a spirit of unity and national consciousness; to work for the eradication of illiteracy among women; to improve family life, especially the stability of the family; to provide amenities for the care, education and general welfare of children; to encourage women to play their proper role in national development; to initiate and encourage the formation of girl's and women's organisations; and to promote relations with international women's organisations. All women's and girl's voluntary organisations are abolished and all women's or girl's organisations whose membership exceeds 100 must apply to the Council for membership.

(C.L.B. April 1979 pp.362-363)

Industrial Relations

JAMAICA

Maternity Leave Act 1979

This Act, which came into operation on 31 December 1979, provides for the right of female workers to be granted maternity leave by their employers and to receive maternity pay in some cases:

Basically, the female worker who comes within the scope of the Act is one who has entered into, or works under, a contract with an employer, whether the contract is express or implied and (if it is express) whether it is oral or in writing and whether it is a contract of service or apprenticeship. This includes any individual who is in the service of the Government.

(C.L.B. January 1980 p.27)

Private International Law

AUSTRALIA - SOUTH AUSTRALIA

Domicile Act 1980

This Act abolishes the dependent domicile of married women and makes other reforms in the law relating to domicile. The Act provides, inter alia -

- (i) The rule of law whereby a married woman has at all times the domicile of her husband is abolished;
- (ii) the rule of law whereby the person's domicile of origin revives on the abandonment of a domicile of choice without the acquisition of a new domicile is abolished and the Act provides that the domicile that a person has at any time continues until he

acquires a different.

(C.L.B. July 1981 pp.884-885)

AUSTRALIA - WESTERN AUSTRALIA

Domicile Act 1981

This Act is similar to those enacted in other Australian jurisdictions and to that of South Australia referred to on p.56 supra.

C.L.B. April 1982 pp.473-474)

CANADA

Reciprocal Enforcement of Maintenance Orders Act 1982

This Act revises the Reciprocal Enforcement of Maintenance Orders Act 1980 and adopts the Uniform Act recommended by the Uniform Law Conference of Canada. Among major changes are the simplification of choice of law rules.

(C.L.B. January 1983 p.42)

NEW ZEALAND

Domicile Act 1976

This Act makes a number of reforms in the law of domicile and restates a substantial part of that law. The Act's most noteworthy result will be to abolish the rule of the married woman's dependent domicile.

(C.L.B. October 1976 pp.342-343)