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WHERE DID THESE LAWS COME FROM?

Maternity Leave

Individual's Rights Protection Act

Matrimonial Property Legislation

Prepared for Options for Women

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WHERE DID THESE LAWS COME FROM?

MATERNITY LEAVE

When the new Labour Act was passed in 1973, a provision was deleted from the former Act which gave the Industrial Relations Board the discretionary power to make maternity leave regulations. This government decision was based on an interpretation of the law made by government legal advisors that a provision for maternity leave was discriminatory and therefore offended the Individual's Rights Protection Act. Irrespective of this previously held power, the Board had never passed any regulations providing for maternity leave.

Following the passing of the new Labour Act, the Department of Labour received a number of public submissions from local and national organizations including the Federation of Labour, the Royal Commission on the Status of Women, the International Labour Organization and several Alberta women's groups including Options for Women. Each of these reports requested that the provincial government enact legislation which would guarantee every working woman the right to maternity leave.

In reaction to these submissions, and because it was International Women's Year, the provincial government responded by passing an amendment to the Labour Act in October, 1975, which gave the Board of Industrial Relations the discretion to pass an order which would require an employer to grant maternity leave to its female employees. In order to protect themselves against potential complaints that this "discriminatory" treatment of women infringes the Individual's Rights Protection Act, the amendment was worded to be effective "notwithstanding the Individual's Rights Protection Act". It has been questioned by many groups since as to whether this provision should legally be considered to be discriminatory treatment.

This amendment merely establishes a general guideline for maternity leave provisions, to be set by the Board of Industrial Relations. Once the order is made it is submitted to Cabinet where it becomes legally binding on all employers in the form of regulations. Regulations do not come before the General Assembly of the Legislature for public review; however, the Board of Industrial Relations has stated that during March of 1976 public notice will be given requesting public input before this order is made. At this stage, the government is accepting public ideas on the content of the maternity leave regulations but not so far as the legislated guidelines (for example, a public submission could suggest the time period allowed or form of the notice but cannot request leave of absence with pay).

In summary, any future amendments to the maternity leave laws could come in the form of an amendment to the Labour Act (legislative review) or an amendment to the regulations under the Labour Act (administrative review). Legislative amendments can only be made twice yearly when the Legislature is in session and these amendments could be introduced by the Minister of Labour, any other M.L.A. or member of the Opposition. Bills introduced by the Opposition however rarely become law. Changes to the regulations can occur at any time as the Cabinet meets all year long. Public input with respect to the regulations can be addressed to the Minister of Labour or his Deputy or the Board of Industrial Relations.

INDIVIDUAL'S RIGHTS PROTECTION ACT

While the maternity leave legislation arose mainly in response to public submissions and in response to the occasion of International Women's Year, the Individual's Rights Protection Act came into existence because of an intergovernmental policy decision to update its human rights legislation. The Individual's Rights Protection Act was passed in 1972 to combine the anti-discrimination provisions formerly contained in the Human Rights Act and the Labour Act. All of these provisions were placed under one act to be administered by the Human Rights Commission. Public participation with respect to the content of this Act occurred between first and second reading of the Bill at which time public submissions were invited.

Human rights legislation is unique in that unlike most other legislation it is continually under a formal review and updating process. This updating process is made possible by the fact that the Human Rights Commission must submit an annual report to the Legislature of its activities, successes and failures. Necessary amendments are made obvious on the basis of this report which is available to the public. Presently the Human Rights Commission is working with the Institute of Law Research Reform in preparing a review of the Commission and its effectiveness in eliminating discrimination.

Public submissions requesting amendments to the Individual's Rights Protection Act can be presented at any time to the Human Rights Commission, the Minister of Labour who is charged with the administration of the Act, or any M.L.A.

MATRIMONIAL PROPERTY LEGISLATION

In 1971 the Institute of Law Research and Reform was instructed by resolution of the Alberta Legislature to review existing legislation dealing with matrimonial property. This action of the Legislature was in terms of a recommendation of the Royal Commission on the Status of Women which asked the provinces to legislate for an equalizing of property rights as between husband and wife on dissolution of the marriage.

Although the intensive research on matrimonial property rights was not undertaken by the Institute until 1973, prior to that time research papers on this subject from all over the Commonwealth were reviewed and a public survey taken. When the Institute did its eventual research, it expanded the original concerns and studied the distribution of assets on divorce and death. Legislation reviewed included such Acts as the Dower Act, Family Relief Act, Domestic Relations Act and Married Women's Property Act. The Institute held public hearings throughout the province to screen the public view on distribution of matrimonial property.

In April, 1974, the Institute published a working paper and although it set a deadline of October, 1974, for submissions in reply to its report, many submissions were received after that date. The final report of the Institute was presented in August, 1975. The onus now lies on the provincial government to introduce amendments using this report as a guideline. The Attorney General who is charged with responsibility for legislation in this area has publicly stated his views on the report and which parts he proposes to adopt. (There was a majority and minority report.) He has invited public response to his stated stand on the possible amendments which would give husband and wife equal share of the property on dissolution of the marriage. Pressure must now come from the general public in support or opposition to the proposed changes. Public pressure would be necessary to cause the government to take action in the near future.