

In the U.S.S.R., as elsewhere, unpalatable social conditions can lead to ingenious devices for subverting the law. Professor Luryi discusses the "fictitious marriage" as a prime example of this.¹⁹ One can only wryly observe that our system is not without similar ploys. However, a certain segment of our society strives to achieve not the "fictitious marriage," but the "fictitious divorce." This arises in North American society when a person desires to take advantage of social assistance or public welfare allowances, and endeavours to conceal from the appropriate governmental authority the fact that he or she is either married or engaged in a Common Law union. If the true facts were known, the inevitable result would be diminution or complete curtailment of the welfare allowance.

IV. SPOUSAL RIGHTS AND OBLIGATIONS

The U.S.S.R. has always considered itself a champion of women's rights. The equality of women is a cornerstone of the Soviet constitution. This, at least, is the pristine theory. The reality, unfortunately, can sometimes prove to be markedly different.²⁰

The Common Law has always lagged far behind in the clarification of women's rights. To a great extent this is due, once again, to the ecclesiastical origins of our family law. Biblically, a woman "cleaved" unto her husband. When this concept was transmuted into legal terms, the woman was considered, from the strict legal point of view, to be merely an appendage of her spouse. It was not until the end of the 19th century that the first married woman's property legislation was enacted in England, thus freeing women from many of the legal fetters that had restrained them.²¹ Old attitudes die hard, and no broad legislative attempt was made to grant females some modicum of equality in the matrimonial law sphere in Canada until new divorce legislation²² was passed in 1968. Equal privileges, of course, also implied equal obligations.²³

It is interesting to note that in Canada, unlike in Russia, there is no legislation controlling the usage of surnames. At Common Law, a female has never been under any constraints as regards the usage of any surname of her choice, provided that there is no attempt to deceive or mislead. However, social custom, at least until the emergence of the Women's Movement, usually compelled the usage of a husband's surname by a married woman. The recent upsurge of in the feminist emancipation movement in the Western world has resulted in a much more varied practice relating to the utilization of a family surname by married women. As Professor Luryi points out²⁴ the use of a family surname is of no small import in the U.S.S.R. It goes beyond mere symbolism, and is a *legal* manifestation of the fact that Marx and Lenin, in theory at least, wished to establish

19. *Id.*, at n. 77-84.

20. *Id.*, at n. 86.

21. *Married Woman's Property Act*, 1870, 33 & 34 Vict., c. 93 (U.K.).

22. *Divorce Act*, R.S.C. 1970, c. D-8.

23. *Divorce Act*, R.S.C. 1970, c. D-8, s. 11(1)(b), where in divorce actions, for the first time in Canadian legislative history, an obligation was imposed on females to support their husbands.

24. Luryi text, *Supra* n. 93-120.

authoritatively that in a viable socialist society, neither sex should be placed in a subordinate position to the other.

V. MARITAL PROPERTY

Professor Luryi's thorough analysis of marital property rights in the Soviet Union has led perhaps to the greatest number of surprises. One would assume that the legal implementation of a true collectivist philosophy would inevitably result in the abolition of most of the old bourgeois capitalistic concepts of "separate" property and that it should be immaterial whether or not such separate property was acquired by industry or enterprise or by inheritance or windfall. By and large this does not appear to be the case. What is perhaps even more surprising is that the good old fashioned doctrine of culpability, or *fault* seems to play an important role in the disposition of marital property in the Soviet Union. This particular aspect of Soviet family law will be dealt with in some greater detail when the subject of maintenance is discussed.

In the Common Law world, every decade appears to spawn its own particular brand of legal populism. During the 1950's, due probably in great part to the aftermath of World War II, international law was in the forefront of legal scholarship.²⁵ The early 1960's spawned the growth of Ralph Nader and the consumer protection movement. The latter part of the 1960's and the first half of the 1970's gave rise to the evolution and growth of environmental law. Nobody can deny that the cutting edge of the legal sword during the latter part of the 1970's is that of marital property and the disposition thereof, at least in those Common Law jurisdictions that do not adhere to a community of property matrimonial regime. From the vantage of hindsight, it is interesting to compare the more salient provisions of the Soviet law in this regard with some of the recently developed Canadian legislation. For the sake of brevity, we will deal with two rather typical statutes in this regard.²⁶

In the Soviet Union, according to Section 22 of the Family Code, the *personal* property of a spouse consists of:

- a) property acquired by the spouse prior to marriage, and
- b) property acquired by either of the spouses as the result of an inheritance.
- c) Personal goods such as clothing. It is interesting to note that jewellery and similar chattels are considered "objects of luxury" and as such are considered common property.
- d) "Tools of a trade" and professional equipment determined to be part of an individual's work are considered separate property, at least insofar as the ultimate disposition of this property on separation or divorce.²⁷

The analogies that can be drawn to recent legislative enactments in the Canadian sphere are nothing short of amazing. In Manitoba, pursuant to *The Marital Property Act*, the following types of real and personal property are considered to be "separate":

25. To wit: look at the ascendancy of Myres McDougal, the intellectual darling of legal scholarship, during the fabulous fifties. *The Index to Legal Periodicals* indicates that no less than 15 articles were penned by McDougal during that time, being directed solely to the international law field.

26. Namely, *The Marital Property Act*, S.M. 1978, c. 24 (M45) and the *Family Law Reform Act*, S.O. 1978, c. 2.

27. Luryi text, *Supra* n. 93.