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Legal Capacity of Married Women in Québec

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Introduction

by Mrs. Claire Kirkland-Casgrain, Minister of
Transport and Communications

Bill 16 gives complete legal capacity to a married woman who is separate as to property by her Marriage Contract made in our Province, and to a married woman domiciled here whose husband was domiciled at the time of their marriage, in another province or country where separation as to property was the legal regime.

Bill 16 also contains provisions concerning the status of women married under the regime of community of property. These are temporary measures which were passed pending receipt of the second portion of the Nadeau Report dealing with the legal regime of the married woman in Québec.

The legal status of women is closely connected with the development of the family itself. This is an area in which custom and religion have always had great influence, sometimes upholding the existing concepts and sometimes supporting new theories. In this respect, we are the heirs of a secular tradition arising from two quite separate conceptions of family life.

To begin with, we inherited the patriarchal conception of the family: this is the primitive concept of the Roman law and of the Germanic law; it consists in gathering all descendants around a common ancestor: the *paterfamilias*. In this type of family, all members, including women and children, are under the domination of the head, who has almost absolute authority and power over the persons and property of the family.

In addition to this type of family based on the power of its head, Christianity offered another type, based on the conjugal association. It is more limited than the patriarchal type, including only the husband, wife and children, as opposed to the common ancestor, who might be the grandfather or great-grandfather.

Each of these concepts has played an important part in the development of family relationships in western countries, and it is certain that each inspired the French legislator of 1804 and later the Québec legislator of 1866.

On one hand, there was recognition of a conjugal partnership. Husband and wife owed each other mutual fidelity, succor and assistance. On the other hand, marital authority was maintained more clearly than ever by provisions which now appear offensive and paternalistic, such as the notor-

ious Article 213 of the French Civil Code, which was carried over word for word into our law: "The husband owes protection to his wife; the wife owes obedience to her husband."

We know that it was Bonaparte who directly inspired this text. Breaking into the debate, he said: "Will you not have women promise to obey? Women must know that when they leave the guardianship of their families, they become wards of their husbands. The word obedience," he continued, "applies particularly to Paris, where women believe they may do as they please. Nature made women our slaves. The husband has the right to tell his wife: You will not go out; You will not go to the theatre; You belong to me body and soul." This statement clearly illustrates the spirit which prompted supporters of the theory of absolute marital authority.

In addition to this marital authority, the husband's powers over his wife's property were guaranteed by legislation asserting the general incapacity of married women.

The influence of these two concepts of the family is also found in the 1866 Québec Civil Code. Using the French Civil Code as a model, the Québec Legislature took the ideas of marital and patriarchal authority and gave them concrete form, both in the general rule as to the legal incapacity of married women and in the provisions conferring absolute power on the husband as head of the community, over community property, and nearly absolute power over his wife's private property.

Since then, however, a century has passed. A century which has witnessed extraordinary events: the prodigious discoveries in science; the tremendous improvement in human welfare; the upheavals resulting from two world wars; the stupendous growth of public education, which has put a premium on individual ability and talent; and during which living conditions and customs have changed and evolved radically.

This accelerated pace of history had a profound effect on the role of women, encouraging or even forcing them to become more involved in social problems and to assume new responsibilities. It was therefore quite understandable that they should start demanding what the legislator had denied them: equal rights before the law. A high-minded and sincere movement, the League for Women's Rights, was formed in Québec to work for such equality and to obtain recognition and sanction for a new fact: the emancipation of married women.

In 1931, acting on recommendations by the Commission on Women's Civil Rights, the government of the day amended the Civil Code to give married women increased powers over that part of their property reserved to them, that is over property acquired through their "personal work".

In reality, this was only a partial answer, for while it gave a wife the right to administer and alienate such property for valuable consideration it

did not otherwise affect the general rule as to the legal incapacity of married women.

Then in 1954, from a desire to be tactful more than from any real desire for reform, the Legislature amended Article 986 of the Civil Code, which included married women among persons legally incapable of contracting, that is with minors, interdicted persons, and the insane and feeble-minded. This outrage was eliminated by adding Article 986a, which states: "The capacity of married women to contract, like their capacity to appear in judicial proceedings, is determined by law."

However, as Me André Nadeau, President of the Commission for Revision of the Civil Code, so correctly points out in his *Report on the Legal Capacity of Married Women*, this new provision was merely theoretical in scope.

In 1955, the Québec Government set up a Commission for Revision of the Civil Code. Presided over by the Honourable Mr. Justice Thibodeau Rinfret, former Chief Justice of the Supreme Court of Canada, this commission was to make a new study of the question, but no comprehensive report was ever submitted to Government authorities.

There was the Méthot Commission as well in 1947; it prepared a report which was never made public.

It was not until Me André Nadeau took over as president of the Commission in 1961 that the legal capacity of married women was again given a thorough examination which culminated in a report on the question. That report was tabled in the legislative assembly, on 9 July 1963.

This report deals with only one aspect of the legal position of married women, but it is by far the most important aspect: her legal capacity.

As the report makes clear, the Nadeau Commission divided its work into two parts; the last part will deal with matrimonial regimes.

We would not have been justified in waiting for publication of the second section of the report on matrimonial regimes to make a start on the reform of our legislation. This second section will follow logically after the adoption of the principle of the legal capacity of married woman but, because of the complexity of the texts and the many legal questions which must be studied before the necessary amendments are passed, it will require a great deal of work over a lengthy period.

Three aspects must be taken into account in studying the legal position of married women: marital authority (which should not be confused with paternal authority, the first is concerned with the husband's authority over his wife and the second with his authority over the children); her legal capacity; and her legal status.

A married woman's legal capacity is her ability to perform alone all legal acts which concern her.

A married woman's legal status consists of all the legal bonds between her and her husband, whenever they have a common interest in moveable or immoveable property arising out of a particular matrimonial regime.

The distinction between the two is illustrated by the position in a two-man business: each partner has full capacity to act, but whenever property of the business is involved which belongs to both of them, the capacity of one partner to deal with it is limited by the interest in it of the other which he has by reason of his status as a partner.

Thus, by acquiring full legal capacity, the married woman separate as to property can now act exactly as she wishes, since she is the sole owner of her property.

Bill 16 is a long step forward, for it provides that the married woman is to be treated as her husband's equal before the law, except for a few restrictions in the case of a wife common as to property. The new legislation definitively frees the woman married separate as to property. Civil acts of the wife common as to property are restricted only with respect to property common to the consorts (an immoveable, a business or household furniture and effects) or property, the income from which has to be paid over to the community. The same restrictions apply in both cases to the husband.

The significance of the change made in the husband's management of community property is also worth stressing: in future, he must consult his wife and obtain her consent whenever he wishes to dispose of important community assets. The amendments passed with respect to wives common as to property are not therefore merely matters of form: in clear and precise terms, they establish the principle of equality of husband and wife before the law; the legislator will have to respect this principle in future.

It should be noted that Bill 16 does away with the expression "head of the family", used until now in our law to designate the husband. The Government has thus tried to do more than enact technical legislation, it attempted to insert in the law the modern philosophy of marriage as expressed by Pope John XXIII, which holds that husband and wife are equals within the family: "Every man is entitled to a free choice of his way of life. He has, in consequence, the right to make a home in which the husband and wife have equal rights and responsibilities".

It is therefore clear that in future, the courts will not base themselves on the concept of the servitude of the wife with respect to her husband, instead, will render judgments on the basis of two equal human beings who must act in the interest of the family.

PART ONE

Explanation of the New Legislation

The Act respecting the legal capacity of married women is based upon an explicit recognition of the principle of their full legal capacity, even before there is a complete revision of the matrimonial regimes.

The principal changes made in the provisions of the Civil Code by this Bill are:

Control of the Family

The new Act does away with the provision of Article 174 whereby a wife owes obedience to her husband and replaces it by stating that a wife participates with her husband in ensuring the moral and material control of the family and that she performs this function alone when her husband is unable to do so.

This provision provides a happy solution in the many cases where it is practically impossible for the husband to act as head of the family. The Act thus provides for his wife to replace him in the several defined situations.

The first paragraph of Article 174 deals solely with marital authority, which should not be confused with paternal authority.

Residence

An exception is made to the rule in Article 175 that a wife is obliged to follow her husband. In future she may be authorized by a Superior Court judge to take up another residence when that chosen by the husband exposes the family to physical or moral dangers.

Legal Capacity and Restrictions

The new Article 177 gives a married woman full legal capacity, subject only to such restrictions as arise from her matrimonial regime. In fact, such restrictions will cease to exist except under the community of property regime, since the new Article 1422 of the Civil Code (Sec. 19 of Bill 16) abolishes all restrictions under the regime of separation as to property.

This article makes it clear that the woman married under the regime of separation as to property has full legal capacity as to her civil rights.

Although restrictions are imposed on a wife who is living under the community of property regime, they do not affect her legal capacity, but merely take into account the husband's authority as administrator of the community property.

Conventional Mandate

Article 178 makes the law more practical by authorizing each consort to give the other a mandate to represent him or her in the exercise of his or her powers under the matrimonial regime.

This article was designed to give more flexibility to matrimonial regimes, by enabling a husband living under the regime of community of property to ask his wife to act for him for a certain period. This mandate is a conventional one which may be revoked under the Civil Code.

Minor Consort

Article 179 maintains in substance the former provisions of Article 182 as to the authorization given by a minor consort to his wife, who has reached majority. The matter now is one of the minor consort's consent rather than of authorization to his wife, who was formerly considered legally incapable.

Domestic Mandate

Article 180 empowers a married woman to represent her husband for current household needs and maintenance of the children, including medical and surgical care. This text confirms the domestic or tacit mandate recognized by Québec courts with respect to the wife's power to assume certain responsibilities for the orderly running of the home.

This article goes farther than legislation in France; the French Civil Code makes no reference to maintenance of children. In Québec, a wife may obligate her husband financially and pledge his credit for the children.

Right to Engage in Separate Profession

The new Article 181 of the Civil Code permits a married woman to carry on a trade without her husband's authorization. However, the new Article 182 provides that a wife common as to property who carries on a trade does not obligate her husband without his consent or judicial authorization.

The only restriction then applies to the case, when the wife who carries on a trade is common as to property. A wife may engage in any other calling distinct from that of her husband without his authorization; if the husband is opposed to his wife carrying on a trade, she may petition the court for authorization under Article 182 of the Civil Code.

Right to Dispose of Property

Article 183 provides that a court may authorize one consort to dispose of property in the case of the unjustified refusal by the other to do so or when the latter's consent cannot be obtained because of remoteness or other reasons.

Thus, with the authorization of a Superior Court judge, a wife may dispose of property which normally she could alienate only with her husband's consent.

Freedom to Make a Will

Article 184 preserves the right of a married woman who is of age to make a will.

Action for Separation from Bed and Board

The purpose of sections 2 and 3 of Bill 16 is to abolish the requirement for judicial authorization to institute the action in separation from bed and board itself. The judge may authorize the wife to withdraw to a place which he designates.

Right to Act as Tutrix

Sections 4 and 5 of the bill permit a married woman to be a tutrix without her husband's consent when she is separate as to property. They recognize the right of the married woman, in a system in which all tutorships are dative, to be appointed tutrix to minor children other than those born of the marriage, without the necessity for joint appointment with her husband. An example would be a tutorship conferred on her with respect to minor children born of a previous marriage.

Tutorship is the authority given by law or by the court to manage the property of an unemancipated minor.

Tutorship is said to be dative when conferred by legal process.

Married Woman Appointed Curatrix

Section 6 of the bill clearly assimilates curatorship to tutorship.

Curatorship is the function of a person legally charged with administering the property and interests of an emancipated minor or inmate of an insane asylum, or with the management and liquidation of a vacant succession.

Acceptance of Succession

Section 7 of bill 16 has the effect of enabling a wife separate as to property to accept a succession without her husband's consent.

In the case of community of property, the married woman cannot accept a succession without judicial authorization or her husband's consent, because the succession may affect the community property.

Acceptance of Gift *Inter Vivos*

The effect of section 8 of the bill is to permit the wife separate as to property to make or accept any gift *inter vivos*. The restriction on making or accepting a gift arises in the case of the regime of community of property, in that any encumbrances which might attach to the gifts could affect the community property.

Testamentary Executorship

Section 9 enables a married woman separate as to property to accept testamentary executorship. Where there is community of property, the law also provides that the wife must have her husband's consent to act as testamentary executrix.

A testamentary executor is the person responsible for executing a will.

Removal of Wife's "Minority" Status

Section 10 of the bill removes all mention of married women from the provision relating to the rights of minors and interdicted persons.

Married women are thus no longer listed with persons permitted to be relieved from their contracts. Only minors and interdicted persons are now entitled to such relief.

Paternal Authority

The object of section 11 is to remove from an article relating to marriage covenants the provision whereby the consorts cannot derogate from the rights incident to the authority of the husband over the wife and children, or belonging to the husband as head of the conjugal association.

Marital authority disappears, but paternal authority remains. The obligation to obey formed the basis of marital authority. With the removal of the obligation, only paternal authority is left.

Paternal authority must now be exercised with the wife's participation (Civil Code, Art. 174 (new)).

Restriction of Husband's Rights as Administrator of Community

Section 12 of the bill restricts the husband's powers as administrator of the community property: he cannot sell, alienate or hypothecate any immovable property of the community without his wife's concurrence. However, without such concurrence, he can sell or alienate any moveable property of the community other than a business or household furniture in use by the family.

This section thus prohibits alienations by gratuitous title without the wife's concurrence, except for small sums of money and customary presents.

This serves to prevent a husband from quickly alienating certain community assets when threatened with a suit for separation from bed and board by his wife.

The law thus sets up a sort of joint management of the most important community property by the husband and wife.

Pecuniary Condemnations

Section 12 of the bill provides that pecuniary condemnations incurred by the wife for criminal offences or misdemeanours can be recovered only out of her property. Such condemnations are now a charge on the community.

Equal rights are accompanied by equal obligations. Thus, this section makes the community responsible for pecuniary condemnations incurred by both consorts for a criminal offence or misdemeanour, and not just by the husband. Formerly, the husband alone could involve the community in this respect.

Judicial Authorization

Section 14 sets aside the rule whereby, under the regime of community of property, acts done by the wife with judicial authorization failing that of the husband, did not affect the property of the community beyond the amount of the benefit it derived from them. Under the proposed amendment, judicial authorization will have the same effect as the husband's consent.

Right of Married Woman Common as to Property to Administer her Private Property

Section 14 gives a wife common as to property the administration of her private property. Her right to dispose of it is subject to the same restrictions as that of her husband as regards the community property. However, such power of administration may be withdrawn in case of abuse, under provisions based on those already in force for reserved property in Article 1425b of the Civil Code.

Regime of Exclusion of Community

The articles repealed by section 19 of the bill relate to the regime of exclusion of community, which has almost disappeared.

Separation as to Property

Section 20 abolishes all restrictions on the capacity of a married woman separate as to property just as section 17 acknowledges that the wife, when legally separated from bed and board or as to property only, regains the administration, enjoyment and free disposal of her property in the same way as a wife who is contractually separate as to property.

Delay for Contestation

Section 21 of the bill sets the time during which the husband of a woman separate as to property may contest an alienation of immoveable property made by his wife without his consent or oppose such alienation without his consent; the wife, however, may obtain authority for an alienation by applying to the court to have her husband's declaration of opposition stricken from the record.

Property Reserved to Married Women

Section 22 gives a wife common as to property not only the administration but also the enjoyment and free disposal of her reserved property, that is of the proceeds of her personal work, the economies therefrom and the moveable or immoveable property acquired by investing them. The only restriction retained is the prohibition against alienation of any such property by gratuitous title without her husband's concurrence.

The section does not apply to the wife separate as to property, who enjoys complete freedom with respect to her patrimony. A wife may likewise have her rights to administer her reserved property withdrawn, should she abuse them.

Article 1425c of the Civil Code also provides a concordance with regard to her engagement in a calling distinct from that of the husband.

Formalities—Separation from Bed and Board

Section 26 of the bill stipulates that a wife who desires a separation from bed and board must make application to a judge for permission to withdraw pending the suit to a place which she indicates and to convey to such place the effects necessary for her use.

The application must be served upon her husband if the judge so orders.

Persons Affected by Amendments

The main purpose of section 27 is to provide that the changes proposed shall benefit women married before the Act comes into force.

Effective Date

Section 28 of the bill provides that the new Act comes into force on 1st of July 1964.

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Vol. 1 — No. 10

Vol. 1 — No. 21

Vol. 1 — No. 22

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Vol. 1 — No. 81

Report of the Office of the Revision of the Civil Code
by Me André Nadeau

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PART TWO

Bill 16—An Act respecting the legal capacity of married women (Ch. 66, 12-13 Eliz. II)

Her Majesty, with the advice and consent of the Legislative Council and of the Legislative Assembly of Québec, enacts as follows:

1. Articles 174 to 184 of the Civil Code are replaced by the following:

“174. The wife participates with the husband in ensuring the moral and material control of the family, in providing for its maintenance, in bringing up the children and preparing their establishment in life.

The wife exercises these functions alone when the husband is unable to make his will known by reason of his incapacity, absence, remoteness, or other cause.

“175. A wife is obliged to live with her husband, and must follow him and reside wherever he fixes the residence of the family. The husband is bound to receive her there.

When the residence chosen by the husband exposes the family to dangers of a physical or moral nature, the wife may, by exception, be authorized to take up for herself and her children another residence fixed by the judge.

Such authorization may be given upon a petition to a judge of the Superior Court, after service upon the husband.

“176. A husband is obliged to supply his wife with all the necessities of life according to his means and condition.

“177. A married woman has full legal capacity as to her civil rights, subject only to such restrictions as arise from her matrimonial regime.

“178. Each consort may give the other a mandate to represent him or her in the exercise of his or her rights and powers under the matrimonial regime.

“179. A consort, although a minor, may give his concurrence or consent in all cases in which it is necessary.

"180. A married woman has, under any regime, the power to represent her husband for the current needs of the household and the maintenance of the children including medical and surgical care.

Acts thus done by the wife bind the husband towards a third person, unless he has withdrawn from his wife the power to do such acts and the third person had knowledge of such withdrawal when he dealt with her.

"181. A married woman may engage in a calling distinct from that of her husband.

"182. A wife common as to property who carries on a trade without her husband's consent or judicial authorization does not obligate the community beyond the amount of benefit it derives from it.

A wife common as to property who carries on a trade with the consent express or implied of her husband also obligates him for all that relates to such trade.

The obligations contracted by a wife common as to property in the course of her trade are not binding upon the husband if the third persons with whom she contracts have knowledge of the lack of his consent at the time they contract with her.

Third persons shall be deemed to have such knowledge from the date that the husband has deposited with the prothonotary of the Superior Court of the district where such trade is carried on a declaration that it is carried on without his consent.

The wife common as to property who carries on a trade with judicial authorization obligates the community for all that relates to such trade.

Such authorization is sought by a petition served upon the husband, and is granted only upon proof that his refusal is not justified in the family interest.

"183. The consort who wishes to sell, alienate, hypothecate or pledge property, when the concurrence or consent of the other consort is necessary, may be authorized by a judge of the Superior Court to do so without such concurrence or consent, if the other consort is unable to make his or her will known by reason of incapacity, absence, remoteness or any other cause, or if the refusal of the latter is not justified in the family interest.

A deed made in conformity with such authorization may be invoked against the other consort.

"184. A married woman who is of age has full freedom to make a will."

2. Articles 194 and 195 of the said code are replaced by the following:

"194. A wife who wishes to obtain a separation from bed and board must apply, by petition addressed to a judge of the Superior Court, for authorization to withdraw pending the suit to a place indicated by her.

"195. The judge may authorize the wife to withdraw to the place designated by him."

3. Article 210 of the said code is repealed.

4. Paragraph 3 of article 282 of the said code, replaced by section 9 of the act 21 George V, chapter 101, is again replaced by the following:

"3. A married woman common as to property, except with the consent of her husband;".

5. Article 283 of the said code, replaced by section 10 of the act 21 George V, chapter 101, is again replaced by the following:

"283. A woman who has been appointed to a tutorship cannot remain in office after the day on which she marries or remarries under the regime of community of property, unless her husband consents, in which case he becomes responsible for the administration of the minor's property during the marriage.

If the husband does not consent, he is responsible for such administration until a new tutor is appointed."

6. Article 3360 of the said code is replaced by the following:

"3360. The wife or the son of full age of any person so interdicted may be appointed his curator.

When the wife of the person interdicted has been appointed, she has all the powers of curators to persons interdicted for prodigality."

7. The first paragraph of article 643 of the said code is replaced by the following:

"643. A married woman common as to property cannot accept a succession without her husband's consent or a judicial authorization."

8. The fourth paragraph of article 763 of the said code is replaced by the following:

"A wife common as to property must have her husband's consent to make or to accept a gift *inter vivos*."

9. Article 906 of the said code is replaced by the following:

"906. A married woman common as to property cannot accept testamentary executorship without her husband's consent.

A single woman or widow who marries under the regime of community of property while she is a testamentary executrix does not forfeit her office by sole operation of law, but requires the consent of her husband to continue the exercise of such office.

A married woman separate as to property may accept testamentary executorship."

10. Article 1011 of the said code is replaced by the following:

"1011. When minors or interdicted persons are admitted in these qualities to be relieved from their contracts, the reimbursement of that which has been paid in consequence of these contracts, during the minority or interdiction, cannot be exacted, unless it is proved that what has been so paid has turned to their profit."

11. Article 1259 of the said code is replaced by the following:

"1259. Thus the consorts cannot derogate from the rights conferred upon the consorts by the title *Of Paternal Authority* and the title *Of Minority, Tutorship and Emancipation*."

12. Article 1292 of the said code, replaced by section 16 of the act 21 George V, chapter 101, is again replaced by the following:

"1292. The husband alone administers the property of the community.

He cannot sell, alienate or hypothecate without the concurrence of his wife any immoveable property of the community but he can, without such concurrence, sell, alienate or pledge any moveable property other than a business or than household furniture in use by the family.

Saving the provisions of The Husbands' and Parents' Life Insurance Act, the husband cannot, without the concurrence of his wife, dispose by gratuitous title *inter vivos* of the property of the community, except small sums of money and customary presents."

13. Article 1294 of the said code is replaced by the following:

"1294. Pecuniary condemnations incurred by a consort for criminal offences or misdemeanours may be recovered out of the property of the community."

14. Articles 1296, 1297 and 1298 of the said code are replaced by the following:

"1296. Saving the case of article 180, acts done by the wife without her husband's consent or judicial authorization do not affect the property of the community beyond the amount of the benefit it derives from them."

"1297. The wife has the administration of all her private property, but must turn over to the community the revenue she receives therefrom.

She exercises alone all her moveable and possessory actions.

She cannot sell, alienate or hypothecate her immovable property without her husband's consent but she can, without such consent, sell, alienate or pledge her moveable property other than a business or than household furniture in use by the family.

"1298. The husband may, by petition served upon his wife and addressed to a judge of the Superior Court of the district of the domicile of the consorts, obtain the withdrawal, in whole or in part, of such powers, and the right to administer himself the private property of his wife and to exercise the moveable and possessory actions relating thereto, when there is:

1. refusal to account to the husband, on demand, for the revenue of her private property; or

2. abuse of the power of administration or bad management.

The judgment rendered upon such petition shall be executory, notwithstanding any appeal.

The judge may, even after the judgment has become final, amend it, upon the petition of either consort, if he is of opinion that the circumstances justify it.

The judgments rendered under the present article may not be invoked against third persons who have no knowledge of them.

The judge may, in an urgent case, order the stay of any act or deed that the wife proposes to enter into with a third person."

15. Article 1299 of the said code is replaced by the following:

"1299. Leases of her property made by the wife cannot exceed nine years without the consent of her husband."

16. Article 1300 of the said code is repealed.

17. Article 1318 of the said code, replaced by section 22 of the act 21 George V, chapter 101, is again replaced by the following:

"1318. The wife, when separated from bed and board or as to property only, regains the administration, enjoyment and free disposal of her property."

18. The said code is amended by replacing article 1415 by the following:

"1415. A wife who was married before July 1st, 1964, under the regime contemplated in article 1416 before its repeal shall have, subject to her contract of marriage, the capacity and rights to be enjoyed after that date by a wife common as to property."

19. Articles 1416 to 1421 of the said code are repealed.

20. Article 1422 of the said code, replaced by section 25 of the act 21 George V, chapter 101, is again replaced by the following:

"1422. When the consorts have stipulated by their marriage contract that they shall be separate as to property, the wife retains the administration, enjoyment and free disposal of her moveable and immoveable property."

21. Article 1424 of the said code is replaced by the following:

"1424. No alienation of immoveable property made before February 13th, 1964, by a wife separate as to property shall be invalid for lack of her husband's consent, unless it is declared null in proceedings instituted before September 1st, 1964, and a notice of the institution of such proceedings is registered against the immoveable before October 1st, 1964.

If before October 1st, 1964, the husband causes to be registered against an immoveable of his wife separate as to property a declaration that he opposes the alienation of such immoveable without his consent, the wife cannot afterwards alienate it without such consent or without judicial authorization."

22. Articles 1425*a*, 1425*b* and 1425*c* of the said code, enacted by section 27 of the act 21 George V, chapter 101, are replaced by the following:

"1425*a*. On pain of the nullity of any covenant to the contrary, the proceeds of the personal work of the wife common as to property, the economies therefrom and the moveable or immoveable property she acquired by investing the same, are reserved to the administration of the wife and she has the enjoyment and free disposal of them.

She cannot, however, alienate them by gratuitous title without the concurrence of her husband.

Such property shall not include the earnings from the joint work of the consorts.

"1425*b*. Article 1298 shall apply to the powers mentioned in article 1425*a* in the case of abuse or bad management.

"1425c. The capacity of the wife who exercises such powers shall be presumed in favour of third persons in good faith, if there is a declaration in writing by her that she is engaged in a calling distinct from that of her husband."

23. Article 1425e of the said code, enacted by the said section, is replaced by the following:

"1425e. The creditors of the wife may proceed for the payment of their claims against such reserved property.

The creditors of the husband or of the community may also do so for debts contracted in the interest of the household."

24. Article 1425f of the said code, enacted by the said section, is amended by replacing the first paragraph by the following:

"1425f. The reserved property shall be included in the partition of the community."

25. Article 1425g of the said code, enacted by the said section, is repealed.

26. Article 1101 of the Code of Civil Procedure is replaced by the following:

"1101. A wife who desires a separation from bed and board must apply to a judge, by a petition giving a summary statement of the facts which give rise to her application, with an affirmation under oath, to be allowed to withdraw pending the suit to a place which she indicates and to convey to such place the effects necessary for her use.

The petition must be served upon her husband, if the judge so orders."

27. Women who married before the coming into force of this act shall henceforth have the capacity and rights that it grants them according to their matrimonial regime.

This section and section 18 shall not affect any existing contract or obligation.

Any action instituted before the coming into force of this act may be continued as if this act had not been passed.

28. This act shall come into force on the 1st of July 1964.







