

LEGISLATIVE ASSEMBLY OF THE  
NORTHWEST TERRITORIES  
7<sup>TH</sup> COUNCIL, 49<sup>TH</sup> SESSION  
RECOMMENDATION TO COUNCIL  
NO. 1-49



Not for release before  
tabling during the  
49th Session of Council

COUNCIL OF THE NORTHWEST TERRITORIES  
CANADA

RECOMMENDATION TO COUNCIL 1-49

DOWER AND CURTESY RIGHTS

DISPOSITION

Tabled	To Committee	Accepted as Read	Accepted as Amended	Deferred (to Session)	Rejected	Noted not Considered

## DOWER AND CURTESY

### 1. Definitions

Dower, at common law, is the life interest of a widow in one-third of the legal estates in real property owned by her husband at any time during the marriage.

Curtesy, at common law, is the life interest of a widower in all of the legal estates in real property owned by his wife on the death of his wife, provided they have had lawful issue born alive which might have been capable of inheriting the estate.

One very important difference between the two is that an incomplete dower right exists during marriage, but curtesy only comes into effect on the death of the wife. This has an important result in conveyancing practices; i.e., a wife must sign a transfer or mortgage to bar her dower in her husband's property, but a husband does not have to join conveyances of his wife's property.

### 2. Historical

Dower and curtesy were abolished by statute (what is now the Land Titles Act) in the Northwest Territories effective January 1, 1887. As a result it was necessary in due course for the Prairie Provinces to bring them back into force by statute.

Both were abolished by statute in England in 1925.

### 3. The Situation Today

In the Northwest and Yukon Territories, in England, in Newfoundland, and in many states of the United States, dower and curtesy have been abolished and different rights substituted. In the Northwest Territories widows and widowers are protected by the Intestate Succession Ordinance and the Dependents' Relief Ordinance. These, however, provide protection only at the death of one of the parties; there is nothing to prevent a person from

selling his or her property without the spouse's consent. Some states in the United States have community property laws, which recognize the contributions of both to the accumulation of the assets of the marriage partnership.

In Manitoba and Saskatchewan there are no rights of curtesy, but dower rights exist in the homestead. The homestead means the dwelling house plus four to six adjoining town lots on which it is situated, or in rural areas one or two quarter sections. In Alberta there are both dower and curtesy rights in the homestead.

In the remaining common law provinces the dower and curtesy rights are basically the same as under the common law. In Nova Scotia and Ontario it apparently is generally felt that these rights are archaic. The Nova Scotia Law Reform Commission is studying the matter with a view to abolishing dower and curtesy as being out of date and already replaced by other statutes which make them unnecessary.

The Ontario Law Reform Commission has been studying the general field of Family Law for several years, including dower and curtesy. Their feeling apparently is that the present law is archaic, and that there are better ways to ensure sharing on death. They are looking with interest at the provisions of the Alberta Dower Act, and are also considering how a wife's contribution to the family home (stead) might be recognized.

4. Recommendation

That consideration be given to enacting legislation based on the Dower Act of Alberta. This Act provides:

- (1) That a married man or woman cannot sell or mortgage the homestead without the consent of his or her spouse;
- (2) That if title does pass without consent, the aggrieved spouse can recover from the (Land Titles) Assurance Fund;
- (3) That the surviving spouse has a life interest in the homestead, and some personal property therein;

- (4) That it is an offence punishable by fine or imprisonment to dispose of the homestead without the spouse's consent and that an action for damages shall also lie.

Our Ordinance could be entitled the Dower and Curtesy Ordinance.

Various organizations, most particularly women's organizations, have been asked to submit their comments. The replies received will be distributed to members of Council when they are available.