In sight of land...

FOURTH ANNUAL REPORT 1974 - 1975

LAW REFORM COMMISSION OF CANADA

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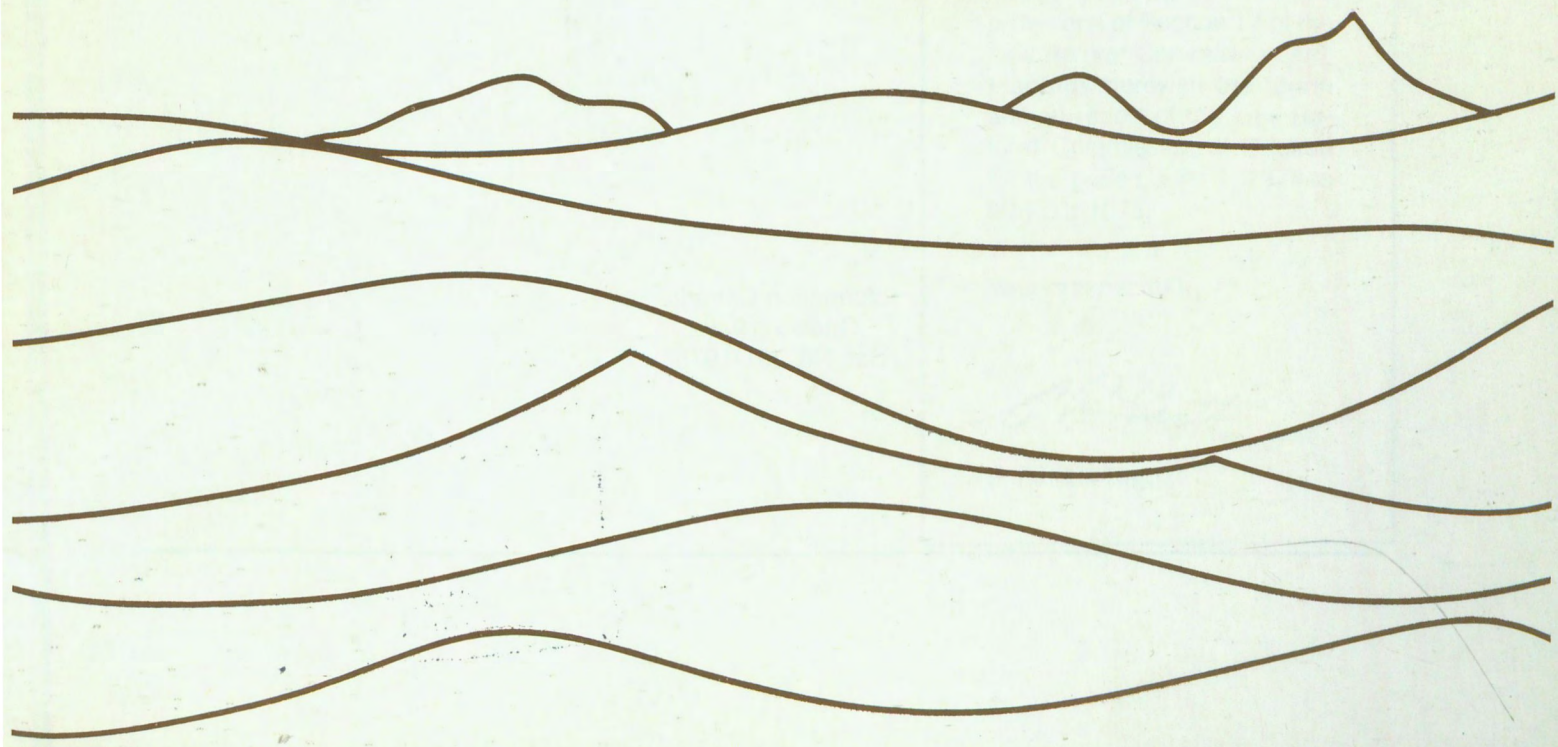

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CHAIRMAN
LAW REFORM COMMISSION

The Honourable Otto E. Lang,
Minister of Justice,
Ottawa, Canada.

Dear Mr. Minister:

In accordance with the provisions of Section 17 of the *Law Reform Commission Act,* I submit herewith the fourth annual report of the Law Reform Commission of Canada for the period June 1, 1974 to May 31, 1975.

Yours respectfully,

E. Patrick Hartt

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foreword

This, the fourth annual report of the Law Reform Commission of Canada, submitted in accordance with section 17 of the *Law Reform Commission Act,* covers the period from June 1st, 1974 to May 31st, 1975.

During the period, the members of the Commission were:

Chairman — The Honourable E. Patrick Hartt, Justice of the Supreme Court of Ontario

Vice-Chairman — The Honourable Antonio Lamer, Justice of the Superior Court of Québec

Full-time members — Dr. J. W. Mohr, Professor at Osgoode Hall Law School and the Department of Sociology, York University

— Dr. Gérard V. La Forest, Q.C.

Part-time members — Mme Claire Barrette-Joncas, Q.C., member of the Bar of the Province of Québec

— John D. McAlpine, member of the Bar of the Province of British Columbia.

The staff of the Commission consists of Mr. Jean Côté, B.A., B.Ph., LL.B., Secretary, Colonel (Ret'd) H. G. Oliver, Director of Operations (now a Provincial Judge in the Province of Alberta), replaced by Brigadier General (Ret'd) M. H. F. Webber, B.Sc., and research personnel totalling, during the year under review, thirty-five. A list of names of research staff appears on the following page.

Research Personnel

employed during part or the whole of the period June 1, 1974 to May 31, 1975

ARBOUR, Louise, B.A., LL.L.
ATRENS, Jerome, B.A., B.C.L.
BAUDOUIN, Jean-Louis, B.A., B.C.L., D.J., D.I.C., D.E.S.C.
BECKER, Calvin, B.A., LL.B., LL.M.
BROOKS, Neil, B.A., LL.B.
CHRÉTIEN, François, B.A., LL.L., member of the Bar of Québec
EDDY, Howard R., B.A., J.D., member of the Bar, Washington State
ELTON, Tanner, B.A., LL.B.
FITZGERALD, Patrick, M.A., Professor of Law, Carleton University, Barrister-at-law, England
FORTIN, Jacques, B.A., LL.L., D.E.S., LL.D., Associate Professor of Law, University of Montréal and member of the Bar of Québec
FRANCOEUR, Henri, former Deputy Director of Police, Laval, and former Inspector-Detective, Montréal Police
FRASER, Murray, B.A., LL.B., LL.M.
FRITZ, Ronald E., LL.B., LL.M.
GREENSPAN, Rosann, B.A., M.A.
GRENIER, Bernard, B.A., LL.L., member of the Bar of Québec
HOUGH, Barbara, B.A., LL.B.
ISSALYS, Pierre, B.A., B.Ph., LL.L., D.E.S., Ph.D.
JANISCH, Hudson N., B.A., M.A., LL.B., M.C.L., LL.M., J.S.D.
JOBSON, Keith B., B.A., B.Ed., LL.B., LL.M., J.S.D., Associate Professor of Law, Dalhousie University
KRASNICK, Mark, B.A., LL.B.
LANDREVILLE, Pierre, B.Sc., M.A., Ph.D.
McCABE, William, Dip. Social Work
McCALLUM, Sandra, B. Juris., LL.B.
MURRAY, Graham, B.A., LL.B., LL.M., member of the Law Society of Nova Scotia
PAYNE, Julien D., LL.B., member of the Bar of Ontario
POMERANT, David L., B.A., LL.B., member of the Bar of Ontario
REID, Alan, B.A., B.C.L., LL.M.
REYNOLDS, Graham, B.Sc., LL.B.
ROBERTS, Darrell W., B.A., LL.B., LL.M., member of the Bar of British Columbia and Associate Professor of Law, University of British Columbia
RYAN, Edward F., B.A., LL.B., LL.M.
SILVERMAN, Hugh W., M.A., LL.M., S.J.D.
SILVERSTONE, Samuel, B.A., B.C.L., LL.M.
TENNENHOUSE, Carol, B.A.
THURSTON, Herbert, Advisor to the Ontario Police Commission, and former Inspector-Detective of the Metropolitan Toronto Police
WALLER, Peter Louis, LL.B., B.C.L.
WATKINS, Gaylord, B.Sc., LL.B., LL.M.
WUESTER, Terrence, B.A., M.A., J.D., LL.M.

three steps

Progress, said G. K. Chesterton, *is simply a comparative of which we haven't settled the superlative.* In other words, don't hope for better things until we know just what we mean by *better.* And in particular don't look for better laws until we know exactly what we're looking for. Otherwise all law reform is an illusion—a journey lacking all direction, a voyage to nowhere, a question mark whose only answer is what Sam Goldwyn called *a definite maybe.*

So how did we define this *maybe,* how did we give direction to the journey, and how did we navigate to make a landfall? From the outset our strategy involved three steps. We took as our guiding principle the motto, *See, judge, act.* Seeing the law and underlying social factors as they really are, judging how best to alter the law to make it better satisfy the social need, and acting to secure these alterations—this was how we studied the charts, plotted the course and then set sail on a heading that brings us now in sight of land.

Seeing

An hour's reconnaissance, say army experts, *is worth a week of skirmishing.* We started, then, by trying to see. This wasn't easy, though. It never is, especially for law reformers. *A reformer,* said a New York mayor, *is a guy who rides through a sewer in a glass-bottomed boat.* He never smells, he never feels the dirt; he doesn't even see it properly. So naturally he doesn't know how to clean it up. To know how, we must get out and see reality.

But seeing is difficult: it must be learnt. Take seeing in a literal sense. Most of us learn to see so

early on in life that we forget we ever had to learn, but people who are born blind but later on acquire their sight say they make no sense of the visual phenomena until they learn to find the pattern there. Besides, ordinary seeing comes so naturally that we forget that curious limitation of the eye which only lets us see clearly what is right in the centre of our visual field. Unless we move the eye continually to bring different things into focus, our vision goes haywire. Experiments at McGill in 1960 showed that if you fix your eyes too long on a stationary object, the image may disappear. Worse still, it may become distorted. *Better to know nothing,* says the proverb, *than to know what ain't so.* In short, physical seeing isn't static but dynamic.

So too in law reform we had to learn to make our seeing dynamic. We had to shift our attention continually from legal rules to social practices and back again, from the general to the particular and *vice versa,* from the wood to the trees and once more to the wood. For instance, when examining the proper scope of criminal law, we sharpened our perception of that general question by looking at the particular problem of obscenity, which we used as an illustrative test case. Conversely, our discussion of the general question highlighted our picture of the specific issue of obscenity. That way we tried to make our vision dynamic.

We also tried to make it stereoscopic. To get a three-dimensional picture we looked in three directions. We looked to the past because this is where we come from and because law, like language, is rooted in history and loses contact with those roots at the risk of being as artificial as Esperanto. We looked to the present because this is where we are and because law, like life itself, can't turn the clock back. And we looked at the future because this is where we're going and because real law reform isn't putting out today's fires so much as trying to prevent tomorrow's.

A Matter of Excellence

Our thanks go to our two part-time members, Commissioner John D. MacAlpine of Vancouver, and Commissioner Claire Barrette-Joncas of Montréal who completed their terms with the Commission during the year under review. Mr. MacAlpine served with the Commission for three years while Mrs. Barrette-Joncas's term lasted four years.

Despite their heavy schedules as law practitioners, they devoted long hours to keeping abreast of the Commission's work, reading countless research documents, briefs and comments from the public, and in attending Commission meetings. Their contribution, bearing the mark of excellence, was invaluable to the forging of Commission opinion as represented in our working papers.

All our inquiries, then, have tried to look in these three directions—backwards, sideways and forwards. First, backwards looking to the past. In studying the nature and purpose of the criminal trial from a basic, philosophical standpoint, we considered the criminal trial not only as it exists today in Canada but also as it existed and developed throughout man's history.

Next, sideways, looking at the present. In examining the problem of sentencing in general and of imprisonment in particular, we paid particular attention to present social realities as discovered by empirical investigation. Also in our work on family property we tried to get clear about the underlying social reality with which the law on this particular topic deals. Another way of looking sideways, though, is looking outside Canada to see what we can learn from other jurisdictions. This we have done by examining foreign laws and also by inviting foreign lawyers to assist us. For instance, we have had working with us distinguished lawyers from England, France, Australia and Scotland; and we have had shorter visits from lawyers from Holland, Czechoslovakia and the United States. In addition, we seconded one of our researchers to the Ministry of Justice in Paris to study the French approach to drafting legislation.

Last, forwards, looking to the future. This we tried to glimpse by means of experiments and pilot projects. Take for example our recommendations on discovery. On looking at this question we concluded that a prosecutor ought to give much fuller advance information to a defendant of the case and evidence against him on a criminal charge. We argued that this would be both fairer to defendants and more convenient to all concerned because of the amount of time it might save. To test our argument we helped set up a pilot project on these lines in Montreal. In fact the saving in terms of time and money has exceeded our predictions.

In this way then we have tried to

build a three-dimensional picture. This was how we tried to see.

Judging

Next came the hardest part—evaluating what we had seen. Real evaluation, real judging, can be so difficult that all too often law reformers shy away from it. They just put forward various alternatives to the existing law and then express a preference for one of them without ever fully making out the case for it. They simply plump for one particular option.

But plumping is for the birds. What law reform needs is persuasive argument that the alternative preferred is better than the others. We need to know what consequences that alternative will produce. And this, as we outlined above, we tried to ascertain by experimental projects. This is how we tried to see whether our preferred alternative would work.

But whether it works is one thing; whether it works satisfactorily is another. This raises the most difficult question: satisfactorily to whom? As we said in our second annual report, if we are to develop new approaches to the law, then whose approaches should these be? Suppose we mount a pilot project to see if a proposal works satisfactorily, whom must it satisfy? Ourselves, the legislators, all Canadians or what? Whose values are the ones that matter most?

Here we could have simply plumped for option 'X' or 'Y' and said *that is our preference.* Our job, we could have said, is to put forward our own values. Alternatively, we could have gone in for extensive market research. We could have asked what values in general Canadians hold, and could have left it at that. In fact, we took a third approach: we tried to see what values, if any, are shared by our society in general, to find out their implications and to discover how far in the light of those implications the values are self-consistent and supportable by rational argument.

But are there any shared values or morality in our society? Indeed, is there any such a thing as morality? Is morality, as Bernard Shaw once put it, merely a suspicion that other people aren't legally married? Or is morality like comedian Spike Milligan's floor—a floor so cunningly laid that no matter where you stood it was always under your feet? Does morality underlie our behaviour and our attitudes? After all, we can't prefer one thing to another without thinking it is in some way better.

But every man to his taste, goes the saying: *one man's meat is another man's poison.* Does this hold good for morals too? Some think abortion utterly wrong, some think it's simply every woman's right. And so it goes across the board with moral questions. *There is nothing either good or bad but thinking makes it so,* says Hamlet. Push this to the ultimate and you get the cynicism of the politician who said:

Those are my principles and if you don't like them, I have others.

We took a different approach. We chose to plot our course by looking at human beings to see what they share. What characteristics, needs and abilities have men in common? *The Chinese taste for music,* said Arthur Koestler, *differs from ours considerably, but all men are subject to the pull of gravity and prefer keeping their balance to losing it.* And preferring to keep our balance is only one of many things we have in common. What these are we

Five Full-Time Members

On April 24th, 1975, Royal assent was given to Bill C-43, an *Act to amend the Law Reform Commission Act.*

The amending Act provides, essentially, for the replacement of the two part-time members by one additional full-time member. The total number of members was therefore brought up to five, including the Chairman and Vice-Chairman. All members are eligible for a term not exceeding seven years. Three members constitute a quorum of the Commission.

Appearing before the Standing Senate Committee on Legal and Constitutional Affairs, the Commission's Chairman said *the two part-time members of the Commission have made an excellent contribution to the work of the Commission, but it was our recommendation to the minister that it would be better to have five full-time members.* Originally, the theory was that the two part-time members would provide a continuing input from the bar. After discussion with the president of the Canadian Bar Association, it was agreed that mechanisms could be developed for providing a continuing input from the bar. New methods are now in the process of being developed for this purpose.

know without the need for vast, expensive surveys. A little reflection is enough to tell us.

Besides, mankind is not a tribe of animals to which we owe compassion; it is, in Chesterton's words, a club to which we all owe our subscription. All of us, as the present time shows all too clearly, depend upon one another. Coping with this interdependence, by respecting one another's needs and catering to them, is the way we pay our subscription to the club of mankind. And this is what morality is all about. As Bronowski said in *The Ascent of Man,*

Justice is a universal of all cultures. It is a tightrope that man walks between his desire to fulfil his wishes and his acknowledgement of social responsibility. No animal is faced with this dilemma: an animal is either social or solitary. Man alone aspires to be both in one, a social solitary.

Or, as Hillel put it,

If I am not for myself, who's for me? And if I am for myself alone, what am I? And if not now, when?

In short, as we argued in our Working Paper, *Limits of Criminal Law,* man needs society. But this means sharing values, for a society isn't just an aggregate of persons; it is a group of people living together. Now living together involves amongst other things communication, and this involves a need for truth. Allow indiscriminate lying and communication is at an end. Truth has to be the general rule. Lying itself is a parasitic activity which couldn't occur if truth-telling weren't normal. Respect for truth, then, is essential to society.

Truth isn't the only essential social value, though. There are others: respect for peace, for order, for agreeing to differ, for non-violence. Given indiscriminate violence, anarchy or rioting, society would collapse. Put it a different way, such a state of affairs wouldn't qualify for the name *society.*

These then are some of the values that are essential to society. As well as these there are other values which are not absolutely essential to every society but nevertheless very important to particular societies. Societies, like individuals, differ from one another. Canada for example is different from certain other societies, partly because of the values we hold. For instance we prefer a larger measure of personal freedom to choose one's own lifestyle, job and residence than they do in certain other countries. Not that such personal freedom is essential to society. Those other countries seem to work excellently without it. Indeed monolithic societies are possible and many seem to like them, but we in Canada prefer mosaics.

These values then—both those which are essential to any society and those which are important to our kind of society—we tried to bring right into law reform. Divorced

Comparing Notes with France

During the fall of 1974, the Chairman and Vice-Chairman met with representatives of the French Ministry of Justice with whom the Vice-Chairman had established contact two years earlier. These meetings were very profitable in discussing Criminal Law reform. Justices Hartt and Lamer also met with the President of French Magistrates, President Braunschweig, and discussed the initial and continuing training of magistrates. They also had the opportunity to attend an assize trial with President Braunschweig, thus observing French Justice in action.

Similarity with a Difference

While the Criminal Code may vary from country to country, and while procedure may be different from province to province, the principles on which we base our criminal law are generally the same wherever we go throughout the Commonwealth. We were fortunate to benefit from the experience of two of the Commonwealth's most eminent legal academics: Professor Brian Hogan and Professor Louis Waller.

Professor Hogan discussed the theory of our criminal law and specifically looked at the issue of vicarious liability. He is a Professor of Law at Leeds University.

Professor Louis Waller looked at the institution of the trial with a view to trying to decide what elements should be retained as is and which should be changed. Professor Waller is from the Faculty of Law at Monash University, Melbourne, Australia.

from values, law reform is nothing. This is why, for example, we reckoned that reforms in family law must be clearly based on presently shared values. This too is why we have concluded that the criminal law must be seen as having to do primarily with articulating, underlining and reinforcing values.

Bringing such values into law reform is difficult. It takes considerable time and effort. But making the effort marks the difference between real and illusory law reform. It's like the difference between agriculture and farming as the man from the Prairies put it. *They're the same thing,* he said, *except that farming is doing it.* And law reform—real law reform—is *doing it*: it means we really have to work seriously at plotting the proper course.

Acting

But having plotted the proper course, the law reformer has to get to work and make the voyage. He has seen and judged and now he has to act. He has ascertained what is wrong with the law and produced a recipe for putting it right, so now he has to strive to get his recipe adopted.

How then did we go about getting our recipes adopted? In several different ways. Of these the most obvious way—the way that everybody thinks of automatically—is that of recommending legislation. We have done much less of this than is usually done by law reform bodies, because, as we have frequently pointed out, we don't believe that altering the written law necessarily alters the reality. The *Bail Reform Act* is evidence enough of this. All the same, we have made legislative recommendations. For instance, on strict liability, on the penalty for regulatory offences, on discovery and most recently on expropriation, our working papers made recommendations suitable for legislative action. As well as putting such recommendations in official papers, we have on occasions recommended in less formal ways. Finally, members and researchers from our criminal law project appeared by invitation before legislative committees and presented briefs before a Senate Committee on the *Cannabis Bill* and before a House of Commons committee on the *Environmental Contaminants Bill.*

Another way of getting our recipes adopted is by persuading those who operate the legal system to do things differently. Things can often be changed administratively without recourse to legislation. We have already drawn attention to the project on discovery that we helped set up in Montreal. Our previous annual report discussed the project on diversion, which in a limited area allowed certain suitable criminal cases to be diverted out of the main stream of the criminal justice system into other and more suitable channels; and this project is being copied now in other areas. Another example comes from our work on family law, which led us to recommend a unified family court—a matter of course for federal-provincial collaboration; and our encouragement has led in certain areas to attempts at such unification by administrative development. Much of the law is developed in this way, by administrative techniques, not least of course by administrative tribunals. Before one such tribunal, the Canadian Transport Commission, researchers from our administrative law project appeared and presented a brief on the question of costs of interveners before tribunals.

Lastly, and most important, we have always seen law reform largely as a matter of changing beliefs and attitudes rather than written laws. We have seen it as concerned pre-eminently with the general public's attitude. For this reason we have tried from the beginning to mount a dialogue with the public.

Mounting such dialogue hasn't been easy. *I can call spirits from the deep,* boasts Owen Glendower in Shakespeare's Henry IV. *And do they come when you do call for them?* asks Hotspur. As D. H. Lawrence said, *Life makes no absolute statements; it is all call and answer.*

Testing Discovery

Following the publication of our working paper on *Discovery,* Montreal judges, the Honourable James K. Hugessen, Deputy Chief Justice of the Superior Court, the Honourable Andre Fabien, Chief Justice of the Court of Sessions of the Peace, as well as Justices Jacques Lessard and Yves Mayrand of the Court of Sessions of the Peace, took the initiative of testing, through a pilot project, the measures recommended by the Commission. Impressive results were achieved within the first few weeks: hundreds of witnesses were exempted from appearing in court and the number of preliminary inquiries made at the Montreal Courthouse dropped by two-thirds.

Church Council Viewpoint

Following a number of years of very fruitful consultation on an individual basis, the Canadian Council of Churches and the Canadian Catholic Conference have come together through the Church Council on Justice and Corrections to respond to our Working Papers.

The objective of this new Council is to develop throughout Canada's churches a viewpoint on the moral issues involved in the areas of justice and penal reform and to present this approach to the Law Reform Commission. The Council has met regularly with the Commission throughout the last year. For instance, such basic concepts as fault, guilt, punishment and restitution were the subject of a recent one-day exchange of views between some seven theologians representing as many churches and Commission members and researchers. The Commission very much appreciates the considerable time and effort the Council now devotes to helping inform the public about the issues involved in law reform.

All we can do is call. The public has to answer.

Why does the public have to answer? One reason is that it's no good proposing a reform unless we're sure the goal it aims at is the goal we really want. Otherwise we could end up like the man in the fable who wished for immortality and when his wish came true, grew steadily older, feebler and more miserable until he finally realized what it was he really wanted—eternal youth. His trouble was he hadn't stopped to think.

In law reform we have to stop and think. Take crime for instance. *If only*, some say, *we could abolish crime*. But if we could, would we really want to? Would we really want a society where no one ever stepped out of line, where no one ever challenged the system and where no one ever had a conflict with another? Or would we end up like Midas in the legend? King Midas begged the gods to grant that everything he touched might turn to gold. They did. Everything he touched turned to gold—the food he ate, the horse he rode, the daughter he kissed. He prayed for things to be as they had been before his wish was granted. Fortunately for him the gods heard this second prayer.

As law reformers, we can't assume the gods will be so kind. We must avoid such mistakes. We must make sure what we really want.

But this means all of us must be involved. For one thing, this is only fair: if we really attach importance to the need for the consent of the governed, then law reforms too must enjoy popular consent. For another, it is more effective. *The less public participation there is in the planning process*, says Alvin Toffler, *the less efficacious it becomes*. There is no negative feedback to correct poor plans before errors mushroom into disasters. Such feedback, Toffler points out, can only come from an educated, informed and involved public.

The public then needs educating and informing on law and law reform. But law is difficult for ordinary people to understand. Recognizing this, we commissioned a study called *Access to Law* to increase the lay public's understanding. In addition we have taken steps to increase the knowledge and understanding of law possessed by children in Canada. And finally, throughout our publications—reports, working papers, study papers and other documents—we have done our best to write as simply and untechnically as possible in order to make our work readable, interesting and intelligible.

Understanding the Arctic

Although the offices of the Commission are located in Ottawa, Montreal and Toronto, the commissioners and their staff travel to every corner of Canada, including the Arctic. A few months ago, the Commission sent its Vice-Chairman, Justice Antonio Lamer, to the Arctic to meet with the people of Frobisher Bay and Pangnirtung on Baffin Island. The Vice-Chairman met a large number of natives and almost all of the police officers stationed in the eastern region of the Arctic. The purpose of his visit was to provide this isolated population with information about the Commission and its concerns as well as to obtain a greater understanding of the problems related to the administration of justice in this remote area of our country.

To an extent we think we have succeeded. Our work on criminal law, on family law and on administrative law has received increasing and extensive coverage in the media. Legislators, judges, the legal profession, police and officials in the criminal justice system have provided considerable feedback on our working papers. Law professors, law students, philosophers, and bodies like the John Howard Society are increasingly commenting on our work. The Council of Churches and the Catholic Conference have set up a quarter of a million dollar project in order to respond to our efforts. Finally, the growing number of requests for copies of our papers shows that a useful, constructive public dialogue has now begun. This we welcome, for just as war is too important to be left to the soldiers, law is too important to be left to lawyers.

This then has been our strategy. To see, to judge, to act—we have tried our best to do all three. And now as we approach the end of the period for which the first commissioners were appointed, and this portion of our voyage is nearly over, we feel that though our ship of law reform may not yet be in port, it's nonetheless in sight of land.

Interacting with the Community

All of the Commission's Working Papers are printed in two monthly newspapers—the *National,* a publication of the Canadian Bar Association and *Barreau,* of the Association du Barreau du Québec.

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The Working Paper entitled, *Principles of Sentencing and Dispositions* was reprinted in the Canadian Journal of Criminology and Corrections.

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The recommendations in the Study Paper entitled, *The Canadian Payment System and the Computer* have been reprinted in the Canadian Banker.

*

Members of the Commission staff have attended Seminars on Law Reform sponsored by the John Howard Society of Ontario, and the Manitoba, Ontario, Saskatchewan and Maritime Associations of Criminology and Corrections.

*

Commission members have attended Seminars of Judges in Québec, Ontario and British Columbia as well as attending the Conference of the National Association of Provincial Court Judges.

*

The Commission presented a brief to a Senate Committee that dealt with changes in our marijuana laws and to the House of Commons Committee that dealt with the control of environmental contaminants.

*

Members of the Commission are active in training sessions at the National Harbours Board Police and the Ontario Police College. Staff members have also lectured at the Canadian Police College.

*

The Canadian Bar Association and Canada's Crown Attorneys have both sponsored meetings with members of the Commission and have reviewed and commented on our papers. This is besides the personal contribution of many members of the legal profession.

*

Since our last Annual Report we have published 8 Working Papers, 4 Study Papers and 5 Background Papers. We have distributed 134,000 copies of documents in the last year. In addition, 4 illustrated information brochures and 2 *Coccinelle* were published and a total of 900,000 copies were circulated throughout Canada.

the way it worked

This, then, was our overall strategy. How has it worked this year in detail? How has it worked in criminal law, family law, administrative law and evidence law? And how has it worked in terms of communication and information?

Criminal Law

First, criminal law. As Winston Churchill said, the way a society treats its criminals is an infallible index to the level of its civilization. So here our three-stage approach raised three questions:

- What does criminal law really do?
- What should it do?
- How best ensure it serves this purpose, and this purpose only?

The Effect of Criminal Law

Ask anyone about criminal law and he'll probably say: *It's there to make sure crime doesn't pay.* Criminal law forbids wrongful acts, sets a penalty for them and punishes those that do them. This serves the purpose both of justice and of crime prevention. In George Eliot's words, *the law's made to take care o' raskills.*

A neat and simple picture, but, we asked, what of the reality? First, who are the rascals and what makes them count as such? Is it the acts they do that makes them rascals? Or is it the status they already have that makes their acts count as rascality?

Surely, our average man replies, *they're rascals because they do rascally things—things the law des-*

ignates as wrong.

Things the law designates as wrong, indeed, but are they really wrong? Just think: who makes the law that says they're wrong? The rich, the high, the mighty—those at the levers of power. As Goldsmith put it, *laws grind the poor and rich men rule the laws.*

Take for example what most people reckon the basic criminal offence—stealing. Of course, there has to be a law against theft. As the cowboy said, *you have to have a law against finding things that ain't lost.* But do we have to have the law we have? Why are certain kinds of *rip-offs* punished as stealing and others praised as smart business practice? As was said in the old rhyme on enclosures,

The law doth punish man or woman
That steals the goose from off the common,
But lets the greater felon loose
That steals the common from the goose.

Under the present law, it seems that gentlemen don't steal; at best they only outsmart others; at worst, they're criminals in plain clothes. To a large extent what they do isn't criminal by definition.

The proof of the pudding, though, is in the eating. Look at conviction statistics. Who form the bulk of those convicted? The poor, the young, the disadvantaged. This is a general trend in all western countries, and Canada is no exception. This was partly borne out by a study we did on those convicted in September, 1967 in Canada of their first indictable offence. The *September Study* showed that over a quarter of the people in the sample were under nineteen and almost three-quarters were under thirty.

Next, look at the imprisonment statistics. They tell the same story with a special twist. Our study *The Native Offender and the Law* revealed that Indians, Metis or Eskimos, who form only 1.5 per cent of Canada's total population, account for nearly 10 per cent of inmates. In fact in Saskatchewan almost 60 per cent of those committed to Provincial jails were Natives. Are these groups really five times as criminal as the rest of us? Or is this a result rather of our laws? A Greek sage said, *laws are like cobwebs—they catch small flies but let great hornets through.* Are our laws cobwebs?

All the same, replies common sense, *some things must clearly be prevented—murder, rape, wounding and so on. These must be prevented, whoever does them, and criminal law is there to do the preventing. It does so by deterrence and by rehabilitation.*

But do they work? What about deterrence? Most people feel in their bones that deterrence works: after all parking tickets deter us from illegal parking and library fines make us bring back books on time. But how far does this hold good for crimes like rape and murder, like theft and burglary? On this the evidence is notoriously inconclusive. Recent research has failed to prove the efficacy of general deterrence, and though some recent economics research has suggested that deterrence works very well, other research, in turn, has queried the validity of that research. All we can do perhaps with regard to deterrence is to adopt Tallulah Bankhead's immortal words and say: *there's less in this than meets the eye.* How far deterrence works we just don't know.

Then what about rehabilitation? If punishing doesn't deter, does it reform? Does it turn offenders into decent members of society? Again we can't be sure. It's difficult to know for certain how far different treatment given to different offenders prevents recidivism. As the *September Study* put it, *the only sanction which guarantees to prevent recidivism one hundred per cent is capital punishment.* The effectiveness of other measures is not fully known.

What we do know is this: crime doesn't ever diminish or go away. As the French sociologist, Quetelet, said centuries ago, *crime is a terrible toll we pay continually.* Worse still, the toll apparently increases: according to statistics the crime rates are rising year by year. In Canada alone the last decade has shown a doubling of the figures for property offences. Who says crime doesn't pay?

One person who says crime doesn't pay is the victim. He says the same, alas, about the criminal law. Indeed, one of the saddest things about our criminal law is its treatment of the victim. Here is the person who was wronged, the one who's suffering, the one who's burning with resentment. And what does our law do for him? It reduces him to a spectator or at best a witness. For instance, should he have some say about the offender's sentence? Worst of all, the criminal law does little for him by way of restitution or compensation. In fact the victim of the crime becomes also the victim of the criminal process—the forgotten man. Our present process directs all our attention on the offender. The victim is *the man who never was.*

What criminal law's supposed to do, then, and what it actually does are two quite different things. It's supposed to satisfy our desire to stop people committing wrongful acts. In reality, though, we can't be sure that criminal law stops people from doing them or that we really

NEW CRIMINAL CODE

An Approach

A task force set up under the supervision of the Vice-Chairman was commissioned to prepare a report on the requirements of a true codification of Canadian Criminal Law. This report contains a general plan as well as an approach to codification of the substantive part of Criminal law. Invited by the Commission to participate in the work of the task force in Montréal were two distinguished French jurists, professors Georges Levasseur from the University of Paris and Raymond Gassin from the University of Aix-en-Provence. This preliminary study will be published shortly.

want the criminal law to stop them. In fact the citizen's mind is queerly divided when it comes to crime. He feels we should get rid of crime, and so he forks out taxes to pay for policemen, courts and penitentiaries. But never enough, because taxpayers are too mean to pay police forces and penitentiaries sufficient money to do a more effective job. *You want justice,* says the man in Brecht's play, *but do you want to pay for it?* And besides, the citizen may well have a sneaking love of crime: after all, what does he really like to see in newspapers and on television?

One thing we know for certain, though: the criminal law produces *anti-welfare*—fines, imprisonment and other kinds of suffering. What's more, in Canada it produces more *anti-welfare* than in many other countries. Our criminal law is more repressive than that of most other similar jurisdictions: we imprison more people and imprison people for longer terms than do most Western countries. Perhaps criminal law itself, not crime, creates part of the problem.

Part of the problem is the price we pay for using criminal law. As we said in *Limits of Criminal Law,* you get nothing for nothing in this life and everything comes at a cost. The price we pay for criminal law is threefold: suffering by being punished, loss of liberty by being forbidden to do things, and loss of the money we pay to fund the criminal justice system. We therefore ought to try to minimise the cost by going easy on our use of criminal law. We have to learn restraint.

The True Purpose of Criminal Law

If criminal law doesn't stop people being criminals, what does it do besides producing anti-welfare? The answer is: it helps protect our fundamental values.

Man needs society, as we argued earlier. And this means sharing certain values—respect for non-violence and truth as a bare minimum. These are fundamental values, essential to any society. Besides, there are other important, though non-fundamental values, shared in our particular society—respect for freedom, privacy and human dignity, for instance.

Both kinds of values need to be protected. Essential values have to be protected to stop society's disintegration. If everybody felt free to take to violence or if lying became common practice, social life wouldn't be viable. Certain non-fundamental values also have to be protected if the society is to stay the kind of society it is. If Canadians came to think it right that the authorities should regulate the minutest details of their life and tell them where to live, what work to do and how to dress, then Canada would become a very different sort of country.

Take an example—strict liability. If Canadians were happy to have laws punishing people who never intended any harm and have no moral fault, then where would be our *just society*? At the outset of our work on criminal law we dealt with that curious doctrine of strict liability, common to most Western countries, which allows conviction and punishment of people who in any moral sense are quite without blame. We recommended that it should be replaced by a doctrine of due diligence.

Another example concerns mental disorder and the criminal law. Based on nineteenth-century English law, our rules on the criminal responsibility of the mentally disordered are archaic, artificial and unjust. We suggest a different approach to square more satisfactorily with our basic notions of freedom and responsibility. We want our criminal law to be what at common law it always was—a law based firmly on the notion of choice.

In these two examples—strict liability and mental disorder—we want our criminal law to do what it should do in all areas: not undermine our values, but bolster them and underline them. But how does it do this? By treating seriously those acts that are seriously wrong. To see the importance of this just think

how queer it would be if criminal law did the opposite. How odd are the following lines in a certain television play: *On the last occasion on which he took a life he was warned by a detective sergeant that complaints had been lodged and that action would be taken against him if he failed to conform to the law.* This isn't how we operate our criminal law.

As we said in *Limits of Criminal Law,* when values are threatened, criminal law serves various purposes: it provides a response, articulates the values threatened, helps to inculcate those values, and provides the rest of us with reassurance. First it is a *response.* To take an analogy, when someone—a friend or colleague—dies, we feel called to respond by acting gravely: we stand in silent recollection, attend a burial service and so on. Death is a serious event: we feel a need to solemnise it. But so is crime. Once a serious crime is committed in our midst, we can't just ignore it, we must do something. And criminal law is a means of doing something.

But criminal law is more than a mere response to breach of values. After all, what does it mean to really hold a certain value? It means various things: it means to act in certain ways, conform our conduct to that value, commend those who despite temptation to the contrary stick to the value, and condemn those who contravene the value. So if we really hold that murder is *out,* then when one member of our society murders another, we have to *articulate* our holding of that value. Prosecuting, trying, convicting, and punishing the murderer does just this. Just as medals for bravery, prizes for achievement and canonization for sanctity officially articulate our respect for meritorious behaviour, criminal law officially articulates and clarifies our condemnation of bad behaviour. As Sir John A. MacDonald says in the play *Louis Riel: Once more the outlaw shapes the law.*

There is another purpose, though. Our values must be learnt and reinforced. These need various teaching and socialising agencies, like families, schools and churches. But one such agent, and one all the more important as those others gradually seem to abdicate their teaching role, is the criminal law. As Desmond Morton wisely said, the criminal trial is a morality play which reiterates the lesson that murder, rape, robbery and so on are *out of bounds.* Such lessons help to *inculcate* the value threatened by the criminal.

They also serve a further purpose: they provide the rest of us with *reassurance.* They reassure us first by letting us see justice done. Suppose that while most of us refrain from violence and dishonesty, one or two resort to murder and robbery and nothing is done about it. The rest of us will feel that this is unjust and that we ought to make society as just as possible. Criminal law is one way of trying to satisfy that want.

But quite apart from the question

Techniques of Legislative Drafting

Concerned with the complex problem of legislative drafting, the Commission decided to study the European approach in this matter. Bernard Grenier, a researcher with the Commission, and Pierre Béliveau, professor at the Faculty of Law of the University of Montréal as well as a consultant for the Commission, spent four months with the French Ministry of Justice, in Paris, carrying out a comparative study of French and Canadian legislative techniques for the purpose of improving the latter where appropriate. They studied the pros and cons of French codification as well as its various forms. They also became familiar with the experience of other European countries such as Switzerland, and agencies such as the European Council and the European Communities.

Messrs. Grenier and Béliveau had the opportunity to work with French jurists in the drafting of bills involving, among other things, amendments to the Criminal Code and to the Code of Criminal Procedure whose objective is to propose alternatives to short prison sentences and to limit preventive detention. Their experience will be useful to the Commission in preparing legislative drafting, particularly in the area of criminal law.

The Commission has established a very good relationship with the authorities of the French Ministry of Justice and wishes to thank them for their cooperation.

of justice, there is another need for reassurance. If most of us refrain from violence and dishonesty even when it would suit us not to, and if one or two resort to murdering and stealing and get away with it, then the rest of us will grow cynical and disillusioned: we'll feel we're being *taken for a ride*. Chances are too that we'll take the law into our own hands and resort to lynch law. Out of the window then goes order. Hence our need for criminal law.

Given this view of criminal law, then there are certain corrollaries. One concerns the scope of the criminal law, another the nature of the criminal trial, and another the matter of sentencing. And all involve restraint—the criminal law is a sledgehammer which we should use no more often than necessary.

Take first the *scope* of criminal law. In our view criminal law should be confined to those offences which, like rape and murder, seriously threaten essential or important values. As we recommended in *The Meaning of Guilt,* all serious criminal offences should be contained in the Criminal Code. Offences, like illegal parking, which don't seriously threaten these values but may be anti-social, should form no part of the real criminal law. For these the serious penalty of imprisonment should be excluded. And acts which neither threaten social values nor have any anti-social character but pertain more to a person's own life style shouldn't be against the law at all.

Next take the criminal trial itself. Of late it seems that lawyers have been divided. One group sees trials as conveyor-belts processing people as quickly as possible into the post-conviction part of the criminal justice system. The other group sees them as due process hurdles for prosecutors to surmount before they can hand their charges over to the next stage in the system.

In our view both groups are wrong. Both make the same mistake of looking at the trial simply as a hoop through which the accused must go en route to the next stage. The only difference between them is that one group wants to make the hoop as easy as possible to go through while the other wants to make it as hard as possible. Both fail to see that the trial has a function, not just as a step to the next stage in the process, but as a stage that is complete in itself.

What, then, is the function of the criminal trial? Following Morton's suggestion that the trial is a kind of morality play, we argued in our work on the criminal trial that the trial at its best is a contest between good and evil, good represented by the prosecutor, evil—according to the prosecution—by the accused, where we're provided with a kind of moral discovery: evil is unmasked. Is the accused really evil? Did he actually commit the crime? Did he in fact have some justification? Is that sort of act really wrong? Such questions the trial enables us to grapple with. It lets us talk about what concerns and disturbs us, and allows us to discuss openly and publicly the things we need to have discussed.

But what does this mean in practical terms? First it means that criminal trials should be reserved for the conflicts that need this kind of public moral contest. Many incidents at present finding their way into the courts don't need it; they are the natural and normal outcome of group living, and people who live in groups should learn to solve their own conflicts. To help such people find them, we mounted the *diversionary option* scheme already mentioned, which forms the subject of a Working Paper and a series of study papers. The accent here is on reconciliation, on the parties settling their differences themselves, and on moving positively to a more fruitful relationship.

Some cases, though, aren't fit for the diversionary option. They're far too serious—the conflict has got out of hand. These have to go to trial. What's needed then for these is a fair trial in accordance with justice and the criminal law.

This means two things. First, it means that the outcome should be dictated by the demands of justice and not by any bargain struck between the parties. In our view plea-bargaining can't be justified. To decide upon a defendant's guilt or sentence in accordance with what he's prepared to accept and bargain for is like determining a student's grade by reference, not to the work he's done, but the bribe he's offered his professor. If the professor hasn't time to assess all his students' work, then either we need fewer students or more professors. Likewise, if the courts' case-loads are too big to get through without plea-bargaining, then we may need more courts, fewer prosecutions or better procedures. Limit the scope of criminal law, as we suggest, and make good use of the diversionary option, and the problem may well solve itself. Meanwhile plea-bargaining, is something for which a decent criminal justice system has no place. There has to be a trial.

Second, the trial must be fair. This means that the accused must be a full participant and have his day in court: he has to be a subject, not an object. But what if he's unfit, by reason of mental disorder or some other disability, to plead? This question formed the subject of *Unfitness to Plead,* in which we faced the following dilemma: try a

mentally unfit accused and we deny him a fair trial; declare him unfit and postpone the trial till he recovers and the charge may hang over him forever while he himself may languish in a mental institution till he dies. We have recommended a way of minimizing this injustice.

Fortunately most criminal defendants are *quite* fit to plead. In their case, what more is necessary to make the trial a fair one? Given that the accused can take part, can have a lawyer represent him, and can get legal aid if he can't afford to pay a lawyer himself, we still consider him at a disadvantage. If he is to have a fair chance of answering the case against him, he has to know clearly the nature of that case. Prosecutors should allow the accused much more discovery of their case than they usually do. As we said earlier, our Working Paper *Discovery* argued the need for greater discovery in the interests both of justice and of expediency. This working paper prompted judges in Montreal to mount an experiment in which we have assisted and cooperated. It involved crown attorneys giving full discovery to the defence in lieu of preliminary inquiry. This has won general acceptance, has proved fairer than previous practice, and has turned out to be vastly more efficient. Defendants who know the full case against them have not only been better able to prepare their defence, they have also been better able to see in many cases the futility of contesting the charge. In such cases, by pleading guilty they have saved witnesses the trouble of appearing to testify, have spared jurors the need to serve, and have shortened the time spent on the cases by all court personnel. The monetary saving alone is estimated in the millions of dollars.

The third corrollary of our view of criminal law relates to sentencing. Here too, the emphasis is on restraint. Punishment hurts.

Today no punishment hurts more than imprisonment. As Oscar Wilde wrote in *Reading Gaol:*

I know not whether laws be right
Or whether laws be wrong.
All that we know that lie in gaol
Is that the wall is strong,
And that each day is like a year,
A year whose days are long.

Alternative Ways of Sentencing

During the deliberations about the use of Sentencing Guidelines, we were joined by Professor L. Hulsman of the Faculty of Law at Erasmus University in Rotterdam. Professor Hulsman is heading a Committee examining restitution and compensation in Holland and has previously served with the Council of Europe.

But criminal statistics suggest that far too many people are being imprisoned in Canada today and for terms that are far too long. Indeed few democratic countries make such extensive use of prison. The excessive suffering involved, the negative approach of isolating offenders from the community, and the expense entailed—$14,000 a year is the estimated cost of keeping a person in jail—led us in *Imprisonment* to recommend that prison be confined to two sorts of cases: (1) where the offender is too dangerous to be left at large, and (2) where no other form of punishment will suffice to denounce the wrong done and underline the value infringed. Yet the more rarely we use imprisonment, the more rapidly it may become unnecessary for denunciation.

Certainly we hope that prison may become increasingly unnecessary. Other forms of disposition are so much more constructive—particularly restitution and compensation. In *Restitution and Compensation* we urge that restitution should be made a central consideration in sentencing and dispositions, and that compensation is necessary to give increased recognition to the victim in the criminal process. To make fines more constructive, and more equitable, we argue in *Fines* for a system of day-fines to gear the penalty to the offender's means in the way our progressive tax system seeks equality of sacrifice by gearing tax to taxpayers' means.

In this way, using criminal law with restraint, employing it to bolster core values and utilising constructive sentences, we may achieve a more modern, more humane and more civilized system of dealing with offenders.

The Way of Reform

How best ensure we get this system? What is the most practical way of reform? *People don't object to reform,* it has been said; *what irks them is being reformed by people no better than themselves.* Yet when it comes to evaluating alternative possible types of criminal law, perhaps no one is really much

more qualified than anyone else to do it. All we as law-reformers can do is examine the problem, discover alternatives, and draw out the implications of each alternative in the light of that general value system held by our society. Eventually the public must take over. The public must reform its laws itself.

Family Law

Hard as it is to grapple with criminal law, it's harder still to deal with family law. Criminal law after all comes squarely under federal jurisdiction, while family law is both a federal and provincial concern. Here, then, we have tried to see the real family situation with its problems, to judge how best help resolve those problems, and to act in order to co-operate with the provinces in devising the appropriate mechanism for dealing jointly with family law issues. To that end we have from the first held ourselves available for consultation by the provinces. Also we were to some extent responsible for setting up an interdepartmental committee of government to facilitate a joint federal-provincial approach to family law problems.

But first we had to see what are the present problems in family law. Chief among them is the factor of change. The twentieth century has been one of change rather than stabilization in this field—change in the basic notion of the family, change in the position of husband and wife and change in the parent-child relationship. These three developments manifest themselves in three current phenomena: the women's liberation movement, the youth rebellion and the sexual revolution.

First, women's liberation. This indicates a shift away from the Victorian image of the autocratic father who alone is legally and socially responsible for making all major decisions affecting the family. The accent now is on equality between the sexes. Long left behind is the traditional assumption that *a woman's place is in the home.*

Also left behind is the notion that *children should be seen and not heard.* Each member of the family, we hold today,—children no less than parents—should be helped to fulfill himself and find his own way to personal happiness. More important still, childhood is no longer seen merely as a stepping-stone to adulthood. Instead we recognize it better now for what it is: a stepping-stone certainly, but in addition a period existing in its own right—a stage of life with value in itself. Such recognition can be seen in the recent upsurge of concern for children's rights.

Most notable, however, has been the sex revolution. Traditional values and the ideas of *the good old days* are challenged, scrutinized and criticized. This even goes for marriage itself. Gone are the days when we could say, *Marriage is such a fine institution that no family should be without one.* Today we find more public tolerance of a variety of unions: trial marriage, contract marriage with renewable option, open marriage, group marriage and homosexual marriage.

This change in public attitude reveals itself too in a different view of divorce. Much water has flowed under the bridge since Robert Benchley said, *the surface of divorce has not been scratched yet: it's lucky everybody isn't divorced.* Today divorce carries far less social stigma than it did. People accept that some marriages just break down without either of the parties being primarily to blame.

But how has our law kept abreast of all these changes? In a word, it hasn't. The changes in family structure and organization in the real world aren't mirrored in our legal arrangements. The changes in our attitudes and values regarding the family, sex and marriage aren't reflected in our law and jurisprudence. No wonder the Canadian public in response to our initial questionnaire asked that our programme of reform should include family law.

Once we included family law, however, we encountered a major difficulty. Our task, we reckoned, was to try to make the law more truly reflect the social need. So family law, we concluded, had to be revised to deal more appropriately with the Canadian family. But then, what is the Canadian family? In fact we know extremely little about it. Indeed it's questionable how far there is such a thing as *the Canadian family.* Instead there seem to be different types of family: the Anglo-Canadian family, the French-Canadian family, the Indian family and the Eskimo family, to mention only the most obviously different types. The truth is Canada is a mosaic: families differ culturally, ethnically, linguistically, religiously, ideologically, and in other ways. How far is there enough consensus on which to base our family law? Is there a basis on which to build?

What do we judge to be the basis of any viable family law? Indeed what is our philosophy of family law? It starts from the premise that human beings are by nature social. This means, as we said when discussing criminal law, that they share certain values, principles, standards and attitudes. In particular they share common values with regard to those matters which are of

serious concern either to individuals or to society. Sex is one of these. So too is the bringing up of children.

Sex is a basic human drive. As such, given the human condition and the divided self, it is also a major source of conflict. 'X' wants 'Y' for his sexual partner but she doesn't want him for hers. Where does his right to have sex with her end and where does her right not to have sex with him begin? Such are the conflicts human life is made of, and such is the stuff of morals, religion, literature—and law. Inevitably we need to have laws on these problems, although not necessarily those very laws we have.

Sex, then, is vitally important to society, but so is the bringing up of children. Society has to make provision for its own renewal. Who is to be responsible for babes-in-arms, for young children and for adolescents? How are they to be educated? These are questions every society has to answer, even if it only provides answers by default—by doing nothing or by simply letting the parents act as society's deputies. These questions our own society answers primarily through its family law provisions.

Our premise, then, that sex and child rearing are matters of great concern to any society leads us to conclude that any society needs some sort of family unit. It needn't be the typical Victorian lifelong union of one man and one woman. It needn't be the typical *two parent* family: single parent families, multi-parent families, communes—all these alternatives are possible. But some sort of unit there must be. In short, there have to be arrangements to deal with these socially important matters.

Given that we have such arrangements in our society—we have in fact a variety of types of family units, although the typical two parent union for life is the most prevalent—what is the proper role of family law? It is, we think, to provide constructive means of resolution of family conflicts and to promote and protect the basic institution of the family unit.

Protecting the family unit, though, isn't simply setting our faces against divorce. In our view society needs family units, though, as we pointed out, these come in different shapes and sizes. But above all, society needs useful, fruitful family units. There can be instances where preservation of a family would militate against the welfare of the individuals making up that family. Such conflicts of interest aren't resolved by parroting homilies. For example, opponents of divorce may say, *divorce is bad for children.* But here the real question is not whether it's bad for children, but whether it's worse than the alternative. Living with two parents locked in conflict can be more damaging for a child than living with one separated from the other by divorce. On this, however, there is still a notable lack of sociological data.

In our view, then, the role of family law is to promote fruitful family units. This means first that in general law shouldn't interfere with marriages that are working well. All it should do is foster arrangements calculated to produce fairness and harmony between the parties to such marriages. One of the most unfair aspects of present family arrangements is the inequity regarding family property. Our recommendations, set out in our Working Paper on *Family Property,* aim to put both parties on a footing of equality, so as to produce greater harmony, more justice and an increased chance for the average marriage to be viable.

But concern for fruitful family units means secondly, that the law needs to step in to deal with marriages that are no longer fruitful. And here we see a kind of paradox. Law is often criticized for over-emphasizing the pathological: it stresses divorce rather than marriage. Yet in a way law is quite right to do so. After all, to take an analogy, look at medicine: it concentreates on injury and illness rather than health. That too is right. Surely it's bad enough to have to call the doctor when we are ill. Don't call him also when we're well. The same with law: we need it—perhaps unfortunately—wnen things go wrong, but surely not when things are going

TWO MILLION

words

Researching this most important field of concern—Family Law—kept, over the last four years, some thirty academics, lawyers, judges, sociologists and other consultants very busy. More than two million words were written in all covering some thirty different studies.

In addition to three Family Law working papers already published, three more are to be released during the next few months. Furthermore, background papers are being published through Information Canada.

The Commission is planning to forward its final report to the Minister of Justice and Parliament next winter.

right. So family law is right to fasten on marriage breakdown, for this is where the law is necessary.

But what is marriage breakdown? Clearly not a simple isolated event occurring suddenly. On the contrary, it is invariably a slow and gradual process of disintegration. On this account, many of our recommendations presuppose new techniques and procedures going far beyond our traditional concepts of law, lawyers and courts. So we have recommended the introduction of new laws and procedures to encourage reconciliation of differences between spouses, to promote the welfare of the family as a whole instead of vindicating private *rights* and punishing matrimonial *wrongs*, and to treat the causes rather than the symptoms of family breakdowns.

Many of these recommendations involve substantial departures from the existing legal regime and judicial process. To take one example, *The Family Court* urged a move away from the adversary system and recommended the extensive use of social services to mitigate the injustices flowing from the traditional approaches of the law and the judicial process. In *Family Property*, we condemned the present law regarding family property and we suggested changes of a fundamental character. Since then we have been undertaking an extensive review of the need for fundamental alterations in our divorce and maintenance laws.

These then are the problems as we see them and these are the methods we judge necessary to solve them. But how do we act to see that those methods are applied?

First, we bear in mind that it is often impossible to predict the consequences of new arrangements. Where possible, therefore, we have favoured the development of pilot or experimental projects to test the theses articulated in our Working Papers. Since publication of *The Family Court*, a number of provinces have taken steps to develop pilot projects. While one province, British Columbia, developed such a project under provincial auspices, other projects now being considered will involve close federal and provincial co-operation. There is every possibility that pilot projects will be established in the near future in Manitoba and Saskatchewan, several other provinces are presently formulating proposals for submission to the federal government, and no doubt new pilot projects will be developed in a number of areas across Canada. Encouraging and assisting in such projects and in such federal and provincial co-operation has been the way we have acted to further reforms in family law.

Administrative Law

In administrative law, also, we have tried to see, judge, act. Seeing is what most of our work in this branch of law is about. Only a very small number of administrative decisions are challenged in the courts. But administrative law is developed out of those challenges. As a result, it gives a limited picture of what really is an immense process —a process in which thousands of decisions are made every day. Very few people aren't touched in one way or another by these decisions.

Who makes these decisions? And how do they do it? These are important questions for the people affected. Indeed they are important questions for everyone, because we all have an interest in the efficiency, if not in the fairness, of administrative decision-making.

Very little has been written about the administrative process, about how statutory authorities make their decisions. These authorities are public servants, agencies, boards, commissions, departments and tribunals created and empowered by Parliament for particular purposes. Here, then we have had to start from scratch: we had to see the total picture. Our first step therefore was to undertake descriptive studies on how a number of these authorities make decisions and on the practices and procedures they follow. And in doing these studies, our researchers attempted to see things at first hand, to *live* with the agency and its problems during the course of research.

Our studies have so far concentrated on what could be called independent administrative agencies. Two studies of this type of agency, operating in very different fields, are now complete, one on the Immigration Appeal Board and the other on the National Energy Board. They will be published shortly. Seven more we hope to complete over the next year—on the Anti-Dumping Tribunal, the Atomic Energy Control Board, the Canadian Transport Commission, the National Parole Board, the Pension Review Board and the Unemployment Insurance Commission. Meanwhile during this year we circulated an interim report on the Canadian Transport Commission, and it is being studied as part of the current review of transport regulation by the government.

These descriptive studies have enabled us to see better the administrative law picture, and, having seen it, to judge what and where the problems are. Indeed we are planning a report on the federal administrative process, its important char-

acteristics, attributes and problems. In this we are trying to evaluate the administrative process, to suggest improvements, and to point the way for further research and reform.

But law reform means more than seeing problems and suggesting solutions. It means trying to persuade people to adopt your preferred solutions. So we have tried to help statutory authorities with some of their current problems. For example, we have made sugestions to a number of administrative tribunals about *notice*—about how administrators tell people what they are doing and what people can do about it. In addition, researchers from our administrative law project intervened in a *legislative* hearing before the Canadian Transport Commission. They did so to present their views before proceedings which could lead to changes in rules or policy by the agency in question. This intervention concerned the matter of awarding costs, particularly to citizen groups intervening in agency proceedings. In these ways we have tried to act to further our suggestions for improving administrative law.

From the findings of our empirical studies, we are beginning to develop a broader framework for an examination of the larger questions. One aspect, for example, relates to public participation. Such participation is on the increase, and this has presented many statutory authorities with difficulties. Procedures which have been designed for a limited number of parties, and which often rely on trial techniques, often prove to be inadequate when many parties intervene in the same matter. We are currently considering this new phenomenon and studying the ways in which some tribunals have reacted.

Expropriation

A particular aspect of our work on administrative law related to expropriation. Here, we discovered that some 1200 federal statutes authorize expropriation. What's more, we found that most of them do so without providing an opportunity for owners of the property expropriated to be heard and without prescribing full compensation for their losses.

In modern societies some degree of expropriation is inevitable. The problem is to balance society's needs against the need for justice to the individual. In the light of our researches and of comparison with what happens in a number of jurisdictions, we judged that the problem can only be solved by a fair expropriation law containing certain basic essentials. Those affected by the expropriation must be treated equally. They must be able to discover their rights easily and understand them. There must be a public hearing prior to the decision to expropriate. Compensation for all losses must be available. And there must be political accountability for the final decision to expropriate.

These basic essentials of a fair expropriation law are by no means uniformly guaranteed in Canada, despite the improvements provided by the *Expropriation Act* of 1970. For this reason we have suggested a new uniform statute to govern all federal expropriations. This statute would follow the pattern of the *Expropriation Act* of 1970 but would include a number of variations and improvements. Some features of the statute are hearings that would allow independent assessment of proposed expropriations, compensation of owners for actual expenses reasonably incurred, a less expensive alternative than the Federal Court of Canada for owners claiming small amounts, and special provisions to give equivalent protection to owners affected by the land acquisition and expropriation by railway and pipeline companies.

These suggestions we made in a Working Paper on *Expropriation* which has been published and widely circulated.

Canadian Payment System

In this field, too, we are still learning to see and understand. Burgeoning computer technology is fast developing the future payment system, while we attempt to cope with today's and even yesterday's problems with ancient tools. Only yesterday it seems the usual form of payment was cash; today it is cheques. And these, though expanding at a phenomenal rate, are increasingly supplemented by credit cards. Immediate electronic payments will soon replace both in many transactions.

Our quest began with the simple notion of reviewing the statute governing cheques—the *Bills of Exchange Act*—in keeping with our mandate of systematically reviewing and modernizing the laws of Canada. But we soon concluded that a mere revamping of this obsolescent statute was inadequate and that what we needed to learn was the methods of payments actually in use and those that were developing. This led us into an examination of future computerized payment system. This was the subject of a study paper *The Canadian Payment System and the Computer: Issues for Law Reform* published last fall.

That study paper included not

only what we had observed but also our evaluation of the situation. Our judgment led us to the following conclusions. First, when payment systems are computerized, many present practices required by the law, on the assumption of a paper-based currency, will become uneconomic and unnecessary, and banks shouldn't be forced to adopt them. Second, the future payment system must be organized to meet consumer needs—the necessary consumer rights and remedies must be built into the system. But in order to know their rights and remedies, consumers need to understand the system. This means new techniques to promote that understanding—the system mustn't be devised solely by financial institutions. Finally, no segment of the financial community must be given an undue advantage over its competitors: in a free economy no participating institution can be allowed to dictate to the others.

To try and implement the above conclusions, our researchers have co-operated in a study of the payment system begun by the Government. In addition we propose to continue having a member on the Interdepartmental Committee recently established to delve further into these problems. This way we can advance our views, particularly on the issues we have just identified —in a subject as technical and fast moving as this one, the best means of assisting in law reform.

Drawing from a Common Experience

One of the first tasks accepted by the Commission was a review of Canada's Evidence Law. One model we consulted was the American Model Code of Evidence and we were fortunate to be able to draw on the experience of Judge Spencer Gard of the Supreme Court of Kansas, one of the originators of that Code.

Judge Gard enabled us to see some of the serious questions that had to be considered in trying to introduce a Code of Evidence in Canada and explained the ways the adoption of the Code was facilitated in the United States.

Evidence Law

A key part of the legal process is the trial. But what does a close look at the trial reveal? A mass of technical and often arbitrary rules apparently preventing witnesses from telling the truth as they know it. Evidence accepted by all reasonable people turns out to be inadmissible because it's hearsay or for some other reason. The result is technicality and unreality, delay and often increased expense.

How can evidence law be improved? How can it be made to cater to the social need? First, we must understand the reason why we have to have laws on evidence. The reason is simple: in an adversary legal process such as we have in Canada it is left to the parties themselves to put evidence forward, so naturally there must be rules to guide the parties on the matters to be considered by the court—no rational system of law could leave the parties absolutely free.

So judges naturally developed rules of evidence. Unfortunately, however, such is the common law doctrine of precedent that over the years the rules became too cumbersome and complex. Yet, given that questions on evidence law often arise unexpectedly in the heat of the trial and must be answered

MILITARY LAWYERS

Constructive Criticism

From the beginning of its existence the Commission has maintained a useful liaison with the Judge Advocate General of the Canadian Armed Forces, and during the past year this relationship has continued to flourish. At the invitation of Brigadier General J. M. Simpson, the Commission's Chairman and two members of the Commission's staff attended one day of the annual conference of the Judge Advocate General at Canadian Forces Base Trenton.

They reviewed with the military legal officers the Commission's tentative proposals for changes in the Law of Evidence.

It is interesting to note that the Armed Forces have had long years of experience with their own Rules of Procedure which, in effect, are not unlike a codification system. This exposure of an important draft paper in a working session elicited candid and constructive criticism of meaningful value to the Commission.

on the spur of the moment, a relatively simple and easy set of evidence rules is desirable.

But how are we to get such simple rules? Our method of approach was as follows. First we established the Evidence Project to make an examination of the law in depth. The Project then put forward tentative suggestions for improvement, and these were submitted to the legal profession for comment. Professional reaction—at public meetings and in written communications—was reviewed by a special task force. In the light of this review we have now produced a Working Paper setting out the principles underlying our proposals. This Working Paper should be out shortly. It looks at evidence as a total picture and, rather than tidying odd bits of the law, attempts to set out a comprehensive solution.

Communication and Information

As we said earlier, the process of law reform we believe in requires continuing dialogue with people—people interested in law and in change. But many interested and talented people are unwilling to undertake or even attempt to undertake a meaningful role in law reform. They shy away from the complexity and confusion of both the form and substance of the law. Naturally enough, for a lot of legislation is difficult to understand and many of our present laws are incomprehensible to those not used to legal reading. So an honest approach to law reform means giving the public useful access to the law itself. Last year we started to do just this.

We commissioned a study called *Access to Law*. Here a group of lawyers, journalists and librarians looked at various ways of presenting the current law so as to ensure that Canada's laws could be available to all. This would require a rewriting of many of our laws and different methods of distributing our statute books. To have an informed public, the government may have to undertake this task.

One class of the public, we believe, requires special treatment—our children. First, they need to start learning about the law as soon as possible if we are to have a really informed and legally literate lay public: learning the law can't begin too early in life. Second, they need to have the law presented to them simply and attractively. To do just this, a Montréal newspaper, with our help, is experimenting with various methods of presenting facts about laws and law-making to children in a way that is both informative and entertaining. The paper uses cartoons, puzzles and quizzes—all designed to get kids to understand their legal process.

Both the above developments underline the first step of our approach. A public that wants to reform a law must know the law. New modes of presentation may make that possible. This we view as the educative model of law reform. Education leads to knowledge, and knowledge to interaction on the way to change.

Sometimes, however, knowing the law is not enough. Sometimes a knowledge of law does not provide an understanding of the process in which we work. Here we need a different approach to law reform. We need to bring about the sort of administrative change that can be implemented without recourse to formal legislative enactment. For instance, in the area of *Discovery*, we sent a questionnaire to approximately a thousand criminal lawyers to find out basically two things—their present practice and their views of change.

The results of this survey we've published both in our Working Paper and in a special statistical report. Lawyers can use that report to see how other people deal with a

Shorter Version

Publishing Working Papers is only one way of consulting with the public. The Commission has also published a number of short illustrated pamphlets that briefly summarize the findings of the longer documents and then present our proposals for change.

The Family Court looks at our first working paper and examines the need for a single place where legal problems that arise within the family setting can be settled. The brochure entitled, *Guilty or Not Guilty* talks about the reasons why we believe morality has an important role to play in our criminal law; *The Victim Vs. the Offender* considers restitution and settlement instead of jail. Finally, *Witnesses and Accused* explores Canada's pre-trial system.

The pamphlets are distributed in legal aid offices, law courts, and libraries; police departments use them at speaking engagements. They are available by writing to the Commission.

common situation; we use the results to see what lawyers think. In that way, change occurs in a number of ways—lawyers can improve their personal practice, institutions can attempt administrative reform and we can understand and incorporate the feelings of the profession in formulating new ideas. This to us is an effective method of social change—one we know to be faster, more worthwhile and in some ways more satisfying than legislation.

The paper on *Diversion* required a different approach. Here we tried to interact with communities—because without community support and involvement, diversion can not succeed. So we've attended community seminars and meetings to discuss diversion, spending a day in an area and asking the community to give us their views. In this way they themselves begin one process of law reform and we return to Ottawa to refine their ideas into our next proposals. We see our role here as attempting to instill ideas and to help formulate plans that groups, associations and communities can use to solve a problem in their own area.

Not that we discount the importance of legislative reform. We realize, however, that our legislators have constantly to vote on bills which their authors cannot guarantee to be effective. One way of trying to guarantee such effectiveness and get more detailed practical knowledge before we recommend to Parliament is by making use of pilot projects.

All law reform is ultimately a leap in the dark. So legislative reform must follow a period of experimentation, evaluation and consolidation. First, experimentation in which those proposing the new law look at different forms and methods and try them out in different areas. Next, evaluation, in which the various approaches are assessed and a decision is made as to which idea is most feasible. So in the area of the family court, we worked with various federal and provincial governments and agencies to see that pilot Family Courts are funded, and we then funded a research project

Mathematical Models for Law

Important and promising research has been carried out in the last few years on the application of mathematical techniques in certain areas of law. Professor Victor Knapp's team of researchers from Charles University, in Prague, are pioneers in this field. At the Commission's invitation, one of his close associates, Dr. Vladimir Vrecion, a jurist and mathematician, visited Canada a few months ago.

Professor Vrecion is the author—sometimes in joint effort with others—of a mathematical model for the analysis of alimonies, the possibilities of rehabilitation of inmates, and a formal legislative drafting technique which would ensure uniformity and detect deficiencies. He also created a general model for the analysis of consistency in a legislative program in respect of the means proposed for the attainment of different objectives. Reports on his work have been published, in particular outside the Eastern block, in several languages, in particular German, English and French.

The Commission, interested in these techniques, held many work sessions with Dr. Vrecion and put him in contact with a number of researchers in Canada. Meetings were thus held at the University of Montréal with those in charge of the Legal Documentation Service and with the staff of the Jurimetrics Research Group. Dr. Vrecion also visited the MODUL/Deplor group and the Mathematics Department of Laval University in Québec. He had an interesting discussion with Québec's Official Publisher about the new legislative registration system. He also met with researchers at the Centre of Criminology of the University of Toronto and was then the guest of Systems Dimensions Ltd. where he encountered one of his former students now established in Canada. In London, he visited the School of Commerce as well as the Mathematics Department of the University of Western Ontario. Finally, in Ottawa, in addition to attending numerous meetings with the Commission, Dr. Vrecion met with officials of the Departments of Justice and Urban Affairs.

Professor Ejan MacKaay of the University of Montréal greatly contributed to the organization and success of this visit and plans to publish joint articles with Dr. Vrecion on the continuing developments of the legal application of mathematical techniques.

COCCINELLE

The World of Children

puzzles, games, cartoons as teaching aids

The work of the Law Reform Commission is not aimed solely at adults. Children can also learn about law, government, administration of justice and reform through *Coccinelle*—the cartoon section of the French weekly newspaper *Dimanche Matin*. In *Coccinelle*, basic questions and answers pertaining to our legal system are put forward in the form of puzzles and games, supplemented by cartoons, making the learning process fun and interesting.

This year, three such editions have been published. Their distribution mainly includes French schools in Québec and Ontario and Caisse Populaires in Québec, which act as distribution outlets.

We also sponsored a contest about the institutions of the Government of Canada. The winner, Patrick Leroux, age 9, of Saint-Laurent, Québec, was then our guest in Ottawa for two days of first-hand experience in law-making. Accompanied by his parents, he met the Chairman of the Commission, the Chief Electoral Officer, his Member of Parliament, the Minister of Justice, the President of the Senate and the speaker of the House, the Prime Minister and the Governor General.

to look at the different methods of implementing a unified Family Court. With this knowledge we can then consolidate the various test results into a proposal that legislators can consider.

But how far can we evaluate existing legislation and government programmes? No agency proposes a change unless it believes there is a real need for it. But such an assessment requires information about both the size of existing problems and the degree of demand for change. This demand may come from either continuous re-examinations of an existing situation or from public reaction, but, no matter which, this preliminary assessment and evaluation is crucial to our work.

Evaluation, though, needs adequate statistics. This Canada doesn't have. In Canada we don't have a sufficient data base to allow social policy planners to evaluate their work. This means that even simple decisions about the efficacy of present laws and programmes become costly and time consuming. More important, we have no means of predicting and so preventing future problems.

This brings us to Statistics Canada. What role should they play in this? To look at future need for statistical data a federal committee and an intergovernmental task force have been set up. We are members of both these bodies, because we are convinced that the acquisition of sufficient and satisfactory evaluative data is an essential underpinning of all worthwhile law reform.

Consider the example of crime statistics. The crime we all know about is by definition unusual crime —exciting and interesting enough to be considered news by papers or entertainment by the media. The paradox is that in this case everyday criminality—petty thefts, minor drug offences, simple assaults—may not make good copy but attention to them could lead to more appropriate laws. This view of crime and criminal law, however, isn't readily accepted because that type of crime reporting isn't available. To this one response would be to try to restructure our crime reporting methods—in some ways a small change, but one that could very much increase our knowledge of crime.

In this way, then, we have tried to move through observation, evaluation, education and on to alteration and reform. We have tried to see, to judge, to inform and to act. Each stage has had its place in law reform. Each stage has played its part in bringing us within sight of land.

conclusion

There are three ingredients, said Christopher Morley *in the good life; learning, earning and yearning.* Doesn't law reform have three similar ingredients? To improve the law, we need to learn where we are, earn a better place to move to and yearn, be really committed to, that move. In short we have to see, judge, act.

Throughout our work each step has had its place. Not that they always remained completely distinct. In law reform, as in many other things, doing is a form of learning, so seeing, judging and acting often intermingle. But each remains a necessary stage in the journey towards better laws.

But this, of course, is a never-ending journey. To some it might seem a journey on which, as Stevenson said, *to travel hopefully is a better thing than to arrive, and the true success is to labour.* To them the process matters more than the product. Others take a different view: to them the end result is all and it doesn't much matter how you get there. In our experience, however, adopting our three-stage strategy enabled us to travel hopefully as well as to arrive. We had an interesting journey but also are in sight now of our hoped for destination. As Joachim du Bellay put it,

Happy the man who like Ulysses
has made a good journey
Or who, like Jason, won the golden
fleece.

The journey and winning are both necessary.

outside studies

In progress during the year 1974-1975

GENERAL PRINCIPLES OF CRIMINAL LAW AND PROHIBITED AND REGULATED CONDUCT

BELIVEAU, Pierre, Professor, Faculty of Law, University of Montréal
Study of legislative drafting within the Department of Justice of the French government in France

DUMONT, Hélène, Professor, Faculty of Law, University of Montréal
Ignorance of the Law

GASSIN, Raymond, Professor, Faculty of Law, University of Montréal
Critical analysis of general principles papers on criminal law

GIGEROFF, A. K., Research Scientist, Clarke Institute of Psychiatry, Toronto
Empirical research: Sexual Offences under the Criminal Code of Canada

HACKLER, James C.
Police Records and the Ecology of Crime

HOGAN, B., Professor, Faculty of Law, Leeds University, England
Consulting in the field of criminal law

HOOPER, Anthony, Osgoode Hall Law School, York University, Toronto
Background Study on the Law of Theft and Related Offences

LEVASSEUR, G.
Consulting with regard to an approach to a new Criminal Code

LEVY, J. C., Professor, College of Law, University of Saskatchewan

The Mental Element and Material Element of Homicide

MOREL, André, Professor, Faculty of Law, University of Montréal
The Reception of English Criminal Law in Québec

MORTON, J. D., Professor, Faculty of Law, University of Toronto
Studies in classification of offences:

- petty crimes
- procedure in petty crimes
- evidence in petty crimes
- serious crimes
- procedure in serious crimes

POPOVICI, Hadrian
Study on Contempt of Court

SAMEK, R. A.
Preparation of a basic paper on the Principles and Theory of law reform

STUART, D. R.
Preparation of a study paper on Conspiracy

TURNER, R. E., Associate Director, Clarke Institute of Psychiatry, Toronto
Critical analysis, from the point of view of the science of psychiatry, of General Principles of Criminal Law study papers

UNIVERSITY OF SUDBURY
Study on euthanasia

UNIVERSITY OF TORONTO, Department of Philosophy, Centre of Criminology. (Lorenne M. G. Clark)
Preparation of Study of Rape in Canada

CRIMINAL PROCEDURE

ATRENS, Jerome, Professor, Faculty of Law, University of British Columbia
Structure and Jurisdiction of Courts for Trials and Appeals in Relation to Major Offences

GORDON, G. H.
Scottish criminal law and criminal procedure compared to Canadian criminal law and criminal procedure particularly in relation to the Commission's areas of study in criminal law and criminal procedure

GUIL, Roger
Analysis of the pilot project on Discovery

MACKAAY, Ejan, Professor, Assistant-director, DATUM/SEDOJ, Faculty of Law, University of Montréal
Pre-Trial Procedure in Criminal Cases (Phase II)

SENTENCING AND DISPOSITION

BARLETT, George, lawyer, Toronto
Preparation of statistical reports on theft, fraud, diversion and crime in connection with the East York study

THE JOHN HOWARD SOCIETY OF ONTARIO
Preparation of a study paper on the subject of human rights and corrections

FERGUSON, Gerry
Work on Hospital Orders and on Working Papers on the Criminal Process and Mental Disorder

GERSTEIN, Dr. Reva
To study and report on psychological tests and evaluative procedures currently in use or in development phases for the selection of police or internal police tasks

PARKER, Beverly
Research papers on Probation

PERKINS, C. E., Judge
Empirical research project on consecutive sentences and related subjects through the use of a questionnaire distributed to judges

PITMAN, L. R. & KATZ, A. J.
Preliminary research relative to the Pilot Alberta Restitution Centre

SCACE, Anne
Methods of implementation of Diversion

EVIDENCE

DELISLE, Ronald J., Provincial Judge, Kingston
Study on Authentication and Identification

DOOB, Anthony, Professor, Department of Psychology, University of Toronto
Critical analysis, from the point of view of the science of psychology, of the Evidence

Project study papers

SCHIFF, S. A., Professor, Faculty of Law, University of Toronto
Preparation of critical analysis from the point of view of the fundamentals of the laws of Evidence of all the Evidence Project study papers

FAMILY LAW

AMREN, Bergen
Report on the evaluation of the internal operation of the B.C. pilot project on Integrated Family Court

BISSON, Alain, Professor, Faculty of Law, University of Ottawa
Nullity of Marriage under Common Law and Civil Law in Canada

COHEN, Ronald
Preparation of a study report on Frailty of Children's Testimony

FORTIN-CARON, Denyse, Public Notary,
Consultant in connection with The Working Paper on Divorce

FRASER, Murray, Dean, Faculty of Law, University of Victoria
Consultant in connection with the Working Paper on Divorce and other family law matters

HOGARTH, Flora M.
Provide continuing evaluation of the internal operation of the province of British Columbia's pilot project on Integrated Family Court

LEVINE, Saul V., Associate Professor, Department of Psychology and Psychiatry, University of Toronto
Critical study of family law study and working papers

LONDON, Jack R., Professor, Faculty of Law, University of Manitoba
Taxation and the Family

RAE-GRANT, Quentin, Professor of Child Psychiatry, Psychiatrist in chief, Hospital for Sick Children, Toronto
Critical study of family law study and working papers

SAUNDERS, Ivan B., Professor, College of Law, University of Saskatchewan
The Maintenance of Family Dependants in Divorce and Nullity Proceedings

STEWART, Lorne, Judge
The Juvenile Offender and Family Court

ADMINISTRATIVE LAW

BRUCE DOERN & ASSOCIATES LTD., Ottawa
Study of Atomic Energy Control Board

HYSON, STEWART, Professor, Department of Political Science, Carleton University, Ottawa
Preparation of a paper on the evolution of federal administrative tribunals

LUCAS, Alastair, Professor, Faculty of Law, University of British Columbia
Study on National Energy Board

PELLETIER, RÉJEAN AND ANDREWS, CAROLINE, Department of Political Sciences, University of Ottawa
Preparation of a Study on Appointments to Federal Boards

OTHER RESEARCH

ATKEY, OSLER & HANSON, Toronto
Preparation of a paper on Reform of the Sunday Observance Laws

COTLER, Irwin, Professor, Faculty of Law, McGill University, Montréal
The Attainment of Equality Before the Law

SMITH, J. C., Professor, Faculty of Law, University of British Columbia
Theoretical studies on the structures of the law

SZABO, Denis, Director, International Centre of Comparative Criminology, University of Montréal
Preparation of a questionnaire to be applied to different samples within the population and covering areas concerning the knowledge of laws and administration of justice

TURNER, R. E., Clark Institute of Psychiatry, Toronto
Consultant on psychiatric aspects of legal research done by the Commission

publications

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