Law Reform Commission of Canada

Commission de réforme du droit du Canada

7th annual report

1977-1978

LAW REFORM COMMISSION
OF CANADA

SEVENTH ANNUAL REPORT
1977-1978

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CHAIRMAN
LAW REFORM
COMMISSION

Ottawa
November, 1978

The Hon. Marc Lalonde,
P.C., Q.C., M.P.,
Minister of Justice,
Ottawa, Canada.

Dear Mr. Minister:

In accordance with Section 17 of the *Law Reform Commission Act,* I submit herewith the Seventh Annual Report of the Law Reform Commission of Canada for the period June 1, 1977 to May 31, 1978.

Yours respectfully,

F. C. Muldoon

Francis C. Muldoon, Q.C.

This is the Seventh Annual Report of the Law Reform Commission of Canada. This Report describes the Commission's activities during the period from June 1, 1977 to May 31, 1978.

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1

Introduction

□ The Commission

The Commission was established by the *Law Reform Commission Act*, to which Royal Assent was accorded on June 26, 1970, and which came into force on June 1, 1971. The statute originally provided for a Commission composed of a Chairman, a Vice-Chairman, two other full-time Commissioners and two part-time Commissioners, to be appointed by the Governor-in-Council on the recommendation of the Minister of Justice and Attorney General of Canada. The statute was amended by Parliament in 1975, to provide for a Commission composed of a Chairman, a Vice-Chairman and three other full-time Commissioners, all appointed in the same manner as before, each for a term not exceeding seven years. The statute further provides that the Chairman, the Vice-Chairman and at least one other Commissioner shall be a person in receipt of a salary or annuity under the *Judges Act*, or a barrister or advocate of not less than 10 years standing at the bar of any province; and that the Chairman or the Vice-Chairman and at least one other Commissioner be a judge of the Superior Court of Québec or a member of the bar of that province. All the Commissioners are bound to devote the whole of their time to the performance of their duties under the *Law Reform Commission Act*.

Mr. Justice Antonio Lamer, then of the Superior Court of Québec, was the Chairman during almost all the time spanned by this Annual Report and until April 30, 1978. Dr. Gerard V. La Forest, Q.C. and Mr. Jean-Louis Baudouin, Q.C. have been Commissioners throughout the whole period which is the subject of this report. Effective July 1, 1977, Mr. Francis C. Muldoon, Q.C. of Winnipeg was appointed Vice-Chairman of the Commission.

On November 14, 1977, Dr. La Forest was accorded leave of absence by the Governor-in-Council to serve with the Canadian Bar Association as Executive Vice-Chairman of its committee on the Constitution of Canada. Dr. La Forest's leave expired on September 15, 1978.

The Commission in all its functions was well served indeed by the immediately past Chairman, Mr. Justice Antonio Lamer. He evinced qualities of heart and mind, energy and leadership which cannot be easily replaced. Commissioners and staff alike appreciated his sense of humour as well as his fairness, warmth and sense of justice. Mr. Justice Lamer has taken up duties as a member

of the Québec Court of Appeal and he carries our sincere good wishes in that important work.

On May 1, 1978, Mr. Muldoon was appointed Chairman, and Mr. Baudouin was appointed Vice-Chairman of the Commission. Dr. La Forest being on leave of absence, the Commission ended the year under review without a statutory quorum of three Commissioners.

Mr. Jean Côté is Secretary of the Commission. Mr. M. H. F. Webber is Director of Operations.

□ The Commission's Mandate

The Law Reform Commission of Canada is a continuing organization whose objects are established by Parliament and are described fully in section 11 of the *Law Reform Commission Act*. Basically the Commission is to study and to keep under review the federal laws of Canada, with a view to making recommendations for their improvement, modernization and reform. Specifically included among the Commission's statutory objects are innovation in the development of new approaches to — and new concepts of — the law in keeping with and responsive to the changing needs of modern Canadian society and the individual members of that society. Specifically mandated by the *Law Reform Commission Act* is the Commission's making reform recommendations which reflect the distinctive concepts and institutions of the common law and the civil law legal systems of bi-jural Canada. This statutory objective also sets the Commission upon the path of reconciliation of differences and discrepancies in the *expression* and *application* of the law arising out of differences in those concepts and institutions.

The Commission is required by statute to submit for the approval of the Minister of Justice specific programs of study of particular laws or branches of law; and it must include in such programs any study requested by the Minister to which, in his opinion, it is desirable in the public interest that special priority be accorded by the Commission. The Commission is then empowered by statute to initiate and carry out any studies and research of a legal nature as it deems necessary for the proper discharge of its functions, including studies and research relating to the laws, legal systems and institutions of other jurisdictions, whether in Canada or abroad.

Wherever appropriate, the Commission is required to make use of technical and other information, advice and assistance available from departments, branches and agencies of the Government of Canada. Moreover, every department, branch or agency is under a statutory obligation to make available to the Commission all such information, advice and assistance as may be necessary to enable the Commission properly to discharge its functions.

Section 16 of the *Law Reform Commission Act* requires the Commission to prepare and submit to the Minister of Justice a Report on the results of each study, including the Commission's recommendations in the form which the Commission thinks most suitable to facilitate the explanation and understanding of those recommendations. The Minister, in turn, is obliged by law to cause each Report to be laid before Parliament within fifteen days

of his receiving it, or if Parliament be not then sitting, within fifteen days after Parliament is next sitting.

□ Some Operational Observations

A list of the Reports which the Commission has submitted to Parliament is Appendix A to this Report. Because the Commission's Reports must all be laid before Parliament in both official languages, the Commission does not issue so-called informal reports, a technique of reporting which is available to, and practised by, some provincial law reform bodies. All of the Commission's Reports are, then, both formal and published.

The third column of Appendix A discloses a space for reporting any legislative implementation of the Commission's recommendations which may occur. None has been implemented to end of year under review, but there is another kind of implementation, which may come about through the Commission's recommendations finding a favourable and persuasive place in judicial reasons for judgment. Appendix B shows the Commission's tentative and final recommendations which have been judicially noted by various courts and, especially, by the Supreme Court of Canada and other appellate tribunals.

During the year under review, the personnel strength of the Commission varied according to seasonal and functional factors. For the most part of the year, there were three Commissioners, one of whom was on leave of absence. There were 54 researchers, whose names appear in Appendix D and nine other consultants, all of whom provided their services to the Commission for the whole or part of the year. They were retained on a contractual basis in accordance with subsection 7(2) of the *Law Reform Commission Act*. The Secretary is the ranking public servant of the Commission and all of the support staff, with the occasional exception of temporary personnel, are public servants. The staff level during most of the year was 34.

The total expenditures incurred by the Commission during the fiscal year 1977-1978 (April 1, 1977 to March 31, 1978) amounted to $2.180 million. The sum of $772.5 thousand was expended on the research program, including remuneration of Commissioners. The information and publications activity cost $373.5 thousand while administrative costs amounted to $1.034 million.

Because the Commission's published and publicized Reports to Parliament express final views and recommendations for reform in a particular area of law, the Commission then leaves that subject for the appropriate response by the government of the day, or by Parliament. In terms of any such particular subject the Commission considers itself to be *functus officio* and does not attempt to lobby for implementation of its recommendations. This self-restraint is one means of evincing the Commission's independence, which is both explicitly and implicitly defined by the *Law Reform Commission Act*. Adoption of this method of operation would not necessarily prevent the Commission from re-assessing the subject at a future time if trends indicated a need, or if a formal statutory reference were directed by the Minister of Justice.

□ Influence on Law Reform

The Law Reform Commission of Canada can influence the shaping of Canadian law on at least four principal planes. Possibly there may be other levels and ways of influencing palpable law reform open to a law reform commission, but they are likely so subtle and hard to define as would defy the attempt in an Annual Report. The four planes of influence are:

- the legislative plane,
- the judicial plane,
- the administrative plane, and
- the general public receptiveness to reform.

On the legislative plane, the Commission's recommendations expressed in the Report on the *Exigibility to Attachment of Remuneration Payable by the Crown in Right of Canada*, dated November 30, 1977, were adopted by the provisions of Bill C-49, *An Act to amend the Financial Administration Act (garnishment)* introduced on April 26, 1978. The Bill has not yet been enacted at the end of the year under review, that is, May 31, 1978.

Other recommendations of the Commission have surfaced in Bill C-51 introduced on May 1, 1978. The formal title of Bill C-51 is *An Act to amend the Criminal Code*, the *Canada Evidence Act* and the *Parole Act*, but it is informally referred to as the 1978 Justice omnibus bill. For example, provisions of Bill C-51 relating to compensation and restitution, reasons for sentence and length thereof, and community service orders, generally adopt some of this Commission's recommendations expressed in the Report on *Guidelines: Dispositions and Sentences in the Criminal Process*, submitted in January, 1976. Again, the provision in Bill C-51 for a six-month time limit within which trials in summary conviction proceedings must commence in order to reduce delays is identical with a portion of the Commission's recommendation regarding time limits for the commencement of all criminal trials. That recommendation, among several others, was submitted in our Report on *Criminal Procedure: Part I – Miscellaneous Amendments*, dated February 23, 1978. Bill C-51 is before the House of Commons, but as of the end of the year under review, it was not enacted.

Bill C-52 was also introduced on May 1, 1978. It contains provisions, among others, which deal primarily with the sexual offences of rape, the attempt to commit a rape and the punishment for rape, which it would delete from the *Criminal Code* and replace with modified offences of indecent assault and aggravated indecent assault. As is now well known, this Commission was on the verge of publishing a Working Paper on Sexual Offences expressing tentative recommendations for reform of this vexed sector of criminal law, when the government took the initiatives expressed in Bill C-52, *An Act to amend the Criminal Code and to amend certain other Acts in relation thereto or in consequence thereof*. In introducing Bill C-52 the then Minister of Justice referred to the impending publication of the Working Paper, and expressed the expectation that the Commission's tentative recommendations would be available in time for their consideration and incorporation into the ultimate version of the bill then being introduced. As at the end of the year under review, Bill C-52 had not been enacted.

On the jurisprudential plane the Commission's recommendations have been noticed and considered in several courts' reasons for judgment, not least the Supreme Court of Canada. For example, in the recent decision of the Supreme Court of Canada in *Regina v. Zelensky*, the majority opinion referred with approval to this Commission's Working Paper No. 5 on *Restitution and Compensation*. The conclusions expressed in that Working Paper were consonant with the majority's reasons for judgment in the Supreme Court of Canada. There was another recent judgment of the Supreme Court of Canada — this one unanimous — in the case of *H.M. the Queen on the Information of Mark Caswell v. The Corporation of the City of Sault Ste. Marie* in which this Commission's Working Paper on *The Meaning of Guilt — Strict Liability* and consequent Report to Parliament, in March 1976, *Our Criminal Law*, are noted with interest. The Commission's recommendations were, assuredly, not the only resources utilized by the Court in support of its judgment in the *Sault Ste. Marie* case, but they were specifically consonant with that judgment in advising that regulatory offences ought to admit of a defence of due diligence, or as the Court said, "reasonable care" on the part of the accused. These examples, among others, are shown in Appendix B to this Annual Report.

The third plane on which the Commission may play a role in shaping the law is in influencing administrative procedures without legislation or court decisions being involved. It would be too cumbersome to describe these many implementations either in an appendix to this Report or in narrative form. An example will suffice for this purpose. It is drawn from the work which went into the Commission's published *Study of Administrative Procedure in the Unemployment Insurance Commission*. That publication, be it noted, is a study paper only, and not a Report to Parliament. However, the Chairman of the U.I.C. informed us by letter in August 1977 that:

> . . . of the 68 recommendations in the [study paper], 20 have already been implemented and a further 31 have our support. Proposals for their implementation albeit with modifications in some instances, are in the course of development. The remaining 17 will not be acted upon, some because implementation is seen as too costly in relation to the degree of potential improvement, some because a change would not in our view bring measurable improvement and some because of legislative or equally constraining obstacles.
>
> . . . I think it is clear from this brief progress report that by and large, we have viewed the . . . recommendations as eminently sound and sensible and consider that their implementation would materially improve the effectiveness of the [U.I.C.] program and its administration.

While the above example of the responsiveness of the Chairman and Members of the Unemployment Insurance Commission is most readily quotable, there are other examples which might have been cited demonstrating the influence of the Law Reform Commission's work on the level of administrative developments.

The fourth, and by far the most ephemeral, plane on which this Commission influences the shaping of Canadian law, is in contributing to an atmosphere of general perception of law reform and its aims as well as its limitations. This can be regarded as a process of intellectual cross-pollination. Throughout Canada one observes a developing literature and discussion about various proposals for law reform. This Commission takes cognizance of articles published in professional journals and, in turn, sees its own proposals and recommendations discussed in such articles. But influencing the shape of Canadian law on this plane is not restricted to the

recondite publications. We know from perusing the popular media, the letters we receive, and the Commissioners' staff members' own personal and private discussions with others, that people are at least sporadically thinking about the Commission's proposals. Again, many of the Commission's publications are employed as teaching aids in schools and universities.

One must take care not to overrate this level of ambient influence. However, pervasive as it is, it may well generate reform in the middle and distant future.

At first glance, the record of legislative implementation of this Commission's reform recommendations may seem to be meagre. However, before submitting to Parliament recommendations in specific subjects such as theft and fraud, or sexual offences, or pre-trial proceedings, for example, the Commission had to define and express a general policy in substantive criminal law, criminal procedure, evidence and sentencing. Reports Nos. 1 *Evidence*, 2 *Sentencing*, 3 *Our Criminal Law*, and 5 *Mental Disorder in the Criminal Process* were made with that precise purpose in mind. Those Reports are mainly concerned with policy planning and only to a lesser degree with detailed amendments of specific sections of the *Criminal Code*. So it is also with Report No. 6 *Family Law* many of whose recommendations would at least require joint federal-provincial action and at furthest would have to invoke provincial jurisdiction in order to be implemented. Activity of such nature has occurred in terms of pilot projects.

In regard to all of the above mentioned Reports there are numerous and continuing preparatory consultations occurring among governmental officials and in the judiciary. This is a process of percolation. It is not surprising — although no cause for joy either — that many of those earlier recommendations have not found immediate legislative expression.

All reform involves change, but not all changes are reforms. Reform then, is change for the better. But, better by whose lights? The Commission's principal function is to recommend reform. Obviously and in the first place, it is the Commissioners who must be persuaded that their recommended reform proposals would be changes for the better. However, the power to implement any such recommended changes resides in the government of the day and in Parliament. If these latter two institutions see both merit and urgency in the proposals, they will be implemented. This process follows all the settled norms and traditions of parliamentary democracy, including, of course, the government's responsibility to elected members and the elected members' ultimate responsibility to the electorate, diluted as it might be in regard to any one particular law reform proposal.

It would be a strange confession indeed if the members of the Law Reform Commission did not express their confidence in the desire of the people of Canada through their elected Members of Parliament and their Senators to see the laws of Canada systematically improved. The Commission does express that confidence while being fully cognizant of the concern of many Canadians that the so-called permissiveness of the sixties and first half of the seventies may have had some untoward effects on Canadian society as a whole. Such concern is seen by some as the entry to an era of popular backlash against law reform on all levels. Whether that opinion be true or not, so-called backlash is only reaction and not

reform. The Commission is steadfast in asserting that those particular maladies of Canadian society which are capable of being cured or mitigated through law reform will yet be cured or mitigated by responsive, responsible innovation; and that it is imperative to do so while conserving and, in some instances even restoring, the practical ideals of the rule of law upon which the traditions of Canadian justice are founded.

2

Reports to Parliament

Since the end of the year which was the subject of our Sixth Annual Report, the Commission has tendered the following Reports to the Minister.

□ *Exigibility to Attachment of Remuneration Payable by the Crown in Right of Canada* — Report 8, dated December 19, 1977

Under the present law, the courts may not attach the earnings of federal public servants and others who receive their remuneration from the Crown in Right of Canada in cases of non-payment of debts. This immunity is based on the concept of the Royal Prerogative which prevents a court from making a binding order against Her Majesty on her funds or property and, accordingly, without specific statutory provision, a garnishment order may not be made in respect of remuneration payable by the Crown. One of the most unjust effects of this immunity from attachment occurs in the enforcement of maintenance orders where no diversion of federal public servants' income can be effected to meet family support obligations in those cases in which maintenance has been ordered by a court of otherwise competent jurisdiction. Six provinces and both territories have already removed the immunity. The Commission recommended that all existing immunity from garnishment, receivership or other attachment of salary, wages or other remuneration payable by the Crown and by the Government of Canada be abolished.

□ *Criminal Procedure: Part I — Miscellaneous Amendments* — Report 9, dated February 23, 1978

This report expressed specific proposals for procedural reform in four matters:

A. *Pre-trial Hearings* — These recommendations are designed to permit the 'clearing away' of as many procedural issues as possible before any full complement of witnesses and jurors has to come to court to wait around while such issues are being tried. Section 483 of the *Criminal Code* accords full local autonomy to make rules of court contemplated in the proposal according to the

exigencies of disparate circumstances in the provinces.

B. *Evidence by Solemn Declaration* — In many criminal cases — especially accusations of offences against property — owners and others in possession of such property are called as witnesses to give very factual and non-contentious testimony upon which they may be cross-examined to be sure, but often unnecessarily and in a desultory fashion, if at all. Such is the situation too of a parade of witnesses called for no other purpose than to demonstrate the sequence and continuity of possession of a proposed exhibit or other article. The proposals for admitting this certain kind of evidence by solemn written declaration are designed simply to give the system a chance to eliminate many, if not most, of these ritual charades. After all, if defence counsel knows he or she is not really going to cross-examine that sort of witness, why should the witness have to be personally present? Unless counsel specifically requests these witnesses for cross-examination, their evidence should be introduced by solemn written declaration.

C. *Elections and Re-elections* — These terms refer to an accused person's selecting the court of criminal jurisdiction (*i.e.* a magistrate, a judge alone, or a court composed of judge and jury) by whom the accusation will be tried. It is frequently suggested that the accused's defined right of re-election is sometimes articulated as a deliberate delaying tactic; and even where that is not the motive, untimely re-election may — and often does — cause administrative difficulties and delay. The Commission recommended that re-election of mode of trial be available as of right only within seven days after committal for the trial whose mode was originally elected by the accused. One week is sufficient time to mull over second thoughts about the chosen mode of trial. Thereafter, if permitted at all, re-election should be possible only if the accused can show valid cause and if the Crown and the court of original election both agree. The Commission further recommended that when no election is expressed, the accused be deemed to have elected trial by magistrate. Again, if the election is not for trial by magistrate but without specifying a preference for either of the other two modes, it should be deemed to be for trial by judge alone.

D. *Discharge of the Accused* — Apart from a few minor exceptions, there is no limitation period governing the commencement of prosecutions for indictable offences. Once a charge is laid, there is no rule specifying how soon the case must be brought to trial. The law does not formally express recognition of the vice of delay. The Commission recommended that when an accused has not been brought to trial within one year (or 180 days in proceedings under Part XXIV) of his or her first court appearance on a charge, the accused should be entitled to a discharge, upon application. Unless the period has been lawfully extended (for one example, in the instance of an absconding accused) in the manner provided, then the accused would, on application, simply be discharged. A discharge is not an acquittal. The Commission recommended that, in order to provide the provincial Attorney General with a new instrument of control over the administration of justice, the Crown could still proceed on the charge after the time lapse, if the Attorney General would personally consent to reinstituting the proceedings.

3

Working Papers

During the year under review ending on May 31, 1978, four Working Papers sequentially numbered, were issued for public response:

18. *Federal Court,*
19. *Theft and Fraud,*
20. *Contempt of Court,*
21. *Payment by Credit Transfer.*

These documents are listed in Appendix C, and are mentioned in the descriptions of project activities which follow.

Working papers are statements of Commission positions at time of publication and contain tentative recommendations for reform in a particular area. Such recommendations are not final and the primary purpose of the working paper is to elicit comment and provide a vehicle for consultation.

4

Administrative Law Project

For this Project on Independent Federal Administrative Agencies, the past year was one in which specific law reform efforts were consolidated through reciprocal consultations with senior government administrative authorities and counsel, as well as with appropriate committees of the Canadian Bar Association.

The highlight of the year came when the Law Reform Commission, together with the Privy Council Office and the Public Service Commission as co-sponsors, held a Seminar for Members of Federal Administrative Tribunals in April 1978, at Touraine, Québec.

The opening address was given by Mr. Francis C. Muldoon, Q.C., then Vice-Chairman of the Law Reform Commission, on general administrative law issues of common interest to many of the tribunals. Various individuals, from both the government and the private sector, then participated in a series of panels treating topics such as the following: internal relationships among tribunal members with respect to their official functions and to problems of comportment; external relations of tribunals with non-governmental institutions, particularly public interest groups and the press; the importance of hearings and decision-making as important functions of administrative tribunals — which was followed by discussions in small groups of typical questions raised in the hearings process; what public expectations are in respect of tribunal performance, and how tribunal activities could be better oriented to respond to public interests; relationships between administrative tribunals and Parliament, the Privy Council Office and the Treasury Board. Finally, there was a closing address on the future of Administrative Tribunals.

The Seminar was an unqualified success, and it is hoped that similar seminars for information and training purposes can be arranged through the initiative and efforts of appropriate government authorities to be held on a regular basis in the future. It was of great assistance not only to tribunal members, but to Administrative Law Project personnel, in regard to issues upon which they should focus in developing recommendations for law reform.

Further assistance was forthcoming from a consultative committee of senior officials and legal counsel from various agencies, who gave invaluable assistance to the Administrative Law Project by reading and criticizing, chapter-by-chapter, a penultimate draft of the projected General Working Paper on Independent Administrative Agencies.

To the gratification of all concerned, the Study Group of Administrative Tribunals, an informal group of members of tribunals and staff counsel, began to meet again on a regular monthly basis in January, 1978. The group had been started through the efforts of Mr. Jacob Finkelman, Q.C., then Chairman of the Public Service Staff Relations Board, in 1973, but had fallen into a moribund state upon his retirement. Fortunately, through the good offices of the Law Reform Commission and renewed efforts by Mr. Finkelman, who remains very interested, an even larger group of persons than before began attending the monthly round table discussions. By the end of May, 1978, four meetings had been held on the subjects of general administrative law issues, the Commission's Working Paper 18 on the Federal Court, the responsibilities of the Privacy Commissioner under Part IV of the *Canadian Human Rights Act*, and the relationship between the Privy Council Office and administrative tribunals, particularly with respect to the appointments process. Also by that time, this Commission was able to step down from performing any active administrative services for the group, as responsibility devolved on a committee constituted of members and counsel from various of the participating tribunals. Needless to say, the Law Reform Commission will continue its interest in what the study group is doing, and will remain willing and able to proffer assistance when asked.

Administrative Law Project input into other federal government bodies continued unabated. In the 65th Science Council Meeting on February 10, 1978, a representative of the Commission spoke on the "Science Court Proposal" which the Science Council was studying.

The importance of statistical record-keeping by the federal government on legal matters has been a concern of the Commission since its inception. Meetings with Statistics Canada personnel were held to discuss what might be compiled supplementary to what was already on central data government records. The Commission also co-ordinated efforts with personnel of the Federal Court of Canada so that the latter might produce more complete records of activities before that court in the administrative law field. The statistics compiled in that matter were set out as appendices to an in-house paper of the Commission on "Appeals from Federal Administrative Authorities to the Federal Court of Canada".

Interaction with federal administrative agencies continued to result in substantive law reform efforts. The Study Paper on Unemployment Insurance Benefits contained many recommendations which were adopted by the Employment and Immigration Commission. Employees of that Commission also used the Law Reform Commission Working Paper 19 on Theft and Fraud as a reference source for reworking their sanctions procedures and provisions. Officials from the Atomic Energy Control Board also asked the Commission for comments as to rules which a restructured board might adopt regarding disclosure of information, confidentiality and other matters. Such consultations and related activities reinforce the notion that often the Commission's rôle on a level other than legislative revision is of no little significance to law reform.

Mutual cooperation with provincial authorities continued to assist the law reform process. The final draft of a study paper

prepared for this Commission on Disclosure of Information, Confidentiality and Proceedings of Administrative Tribunals, along with other materials, was furnished to the Ontario Royal Commission on Freedom of Information and Individual Privacy, and in turn that Royal Commission reciprocated with materials of use to the Law Reform Commission of Canada.

The year also saw fruitful cooperation with the Canadian Bar Association, as committees of that association were asked for their advice on what changes might be made in Commission recommendations on Commissions of Inquiry and amendments to the *Federal Court Act* in between the Working Paper and Report stages. In return, Commission personnel were consulted by a special committee of the Canadian Bar Association which was preparing its own recommendations for changes in the *Federal Court Act* to put into a report to be tabled at the 1978 Annual Conference of the Association in Halifax, Nova Scotia. Worthy of note also, was the address on "Independent Administrative Agencies — a New Perspective", presented by Dr. G. V. La Forest, the Commissioner responsible for the Administrative Law Project, at the 1977 Annual Conference of the Canadian Bar Association, held in Ottawa, Ontario.

Law faculties across the country continue to provide inspiration, information and personnel for the Commission. Administrative law conferences are also held on university premises from time to time. In January this past year, consultants for the Commission actively participated in a Conference on Administrative Justice sponsored by the Canadian Institute for the Administration of Justice and hosted by the Common Law Students Association of the University of Ottawa Faculty of Law. Also, an "Update on the Administrative Law Project" was presented at the seminar for administrative law professors at the annual meeting of the Canadian Association of Law Teachers held during the Conference of the Learned Societies at the University of Western Ontario at the end of May, 1978.

Canada has always encouraged international legal exchanges and has benefited from comparative law studies. This past year, members of the Commission attended the Meeting of Commonwealth Law Reform Agencies at London, England, on August 2-3, 1977. A consultant from the Commission spent three weeks in Switzerland and the Federal Republic of Germany in September, 1977, consulting with various government authorities there, and prepared a detailed "Rapport de la Mission d'Information en Suisse et en République Fédérale d'Allemagne sur l'Organisation de la Juridiction Administrative et la Législation Générale sur la Procédure Administrative" upon returning to Canada. In November, a consultant attended a National Institute of the American Bar Association on "The Elements of Public Utility Rate Proceedings Including Current Issues", held in Washington, D.C., and visited with authorities of the Administrative Conference of the United States, the Brookings Institution, the American Enterprise Institute, and the National Center for Administrative Justice. Another consultant attended an American Bar Association National Institute on Freedom of Information, Sunshine and Privacy Laws held in New York City in December.

Publications from the Administrative Conference, the U.S. General Accounting Office, and various Congressional Committees have been of great use to the Commission. Professor L. Harold Levinson of the Vanderbilt University School of Law merits special thanks

for sending to the Commission a great deal of information on reform of administrative procedures which he had compiled while working under contract for the Administrative Conference.

Finally, the Administrative Law Project has greatly benefited from materials on administrative law reform obtained from New Zealand and Australia. The latter country, in particular, has taken an awesome leap toward changing its whole legal structure with regard to public administration.

The publication of administrative law studies accelerated at the Law Reform Commission during 1977-1978. Working Paper 17 dealt with Commissions of Inquiry and Working Paper 18 with the Federal Court's Jurisdiction over Administrative Authorities. Agency study papers on the Parole Process, Unemployment Insurance Benefits and the National Energy Board came off the press. Papers on the verge of publication were a study paper on The Federal Court Act, an agency study on the Regulatory Process of the Canadian Transport Commission, and the transcript of Speakers' Remarks from a Seminar for Members of Federal Administrative Tribunals, April 5-7, 1978. Papers which had been submitted to the Commission but had not yet entered the publication process were an agency study on the Anti-Dumping Tribunal and a study paper, mentioned above, on Disclosure of Information, Confidentiality, and Proceedings before Administrative Tribunals.

Agency studies are still being conducted on the Canadian Radio-Television and Telecommunications Commission, the Canada Labour Relations Board, and the Tariff Board. The Working Paper on Independent Administrative Agencies, following a painstaking series of consultations, will be published during the 1978-1979 fiscal year. The Commission finds it most useful, and therefore advisable, to perform practical study analyses of representative kinds of federal boards, agencies and tribunals in order to survey the scope of reforms which it is bound to propose. Accordingly, a handful of other study papers related to administrative agency activities are in the planning stages, and those papers will be prepared prior to any report or reports that the Commission will make to Parliament on the Administrative Agency Project.

5

Criminal Law Project

Research into criminal law and its perceived deficiencies has been performed during the year under review. This project divides itself naturally into substantive criminal law and criminal procedure. Commissioners frequently hear calls from the judiciary as well as the bar for the same discrete division in the law itself, that is to say, into a substantive *Criminal Code* and a separate statute being a *Code of Criminal Procedure*. It is said that such division would permit better understanding of the criminal law not only by the general public, but also by the bar and bench of our country. Such a severance of the provisions of the present *Criminal Code* might seem to be a labour much akin to unscrambling an omelette. Yet, it could be a most practical exercise for the future in that integral and distinct legislative statements of the "what" and the "how" in Canadian criminal law could enhance clarity and greatly help those who are and will be responsible for the proper functioning of the criminal justice system in our country.

The ultimate objective of the Commission in this project is to produce recommendations for the thorough reform of criminal law in Canada. Members of Parliament and Senators not infrequently tell the Commission that they understand that ultimate objective to be the production of "a new *Criminal Code*". Whether our work in this project results in the two new codes above mentioned or not, our objective is at least to make studied recommendations which will provide the fundamentals of a new code or codes for Canada. Such a fundamental review will, however, require much deliberate and painstaking work before culminating in a comprehensive new criminal law.

□ Substantive Criminal Law

During the year which is the subject of this report, two Working Papers were completed and published. They are:

Theft and Fraud, Working Paper 19

This paper examines the many sections of the present *Criminal Code* dealing with the variety of kinds of theft and fraud and tentatively recommends a thorough redefinition and considerable simplification. The suggested reformulation is presented as a draft enactment, with a schedule of actual case dispositions to demonstrate the potential impact of the proposed new sections on dispositions which would be effected under such new provisions.

Contempt of Court, Working Paper 20

Contempt of Court is a confused part of the law because there are at least three kinds of contempt, civil, criminal and common-law. In this paper it is tentatively recommended, among other things, that all such offences over which Parliament has jurisdiction be expressed in the *Criminal Code*, thereby eliminating the common-law contempt power; that *mens rea* or subjective fault be required in all such offences; and that all offences categorized as contempt be carefully and precisely defined. Future work on rationalizing all other offences against the administration of justice is forecast in this Working Paper.

Work on substantive criminal law continues in the areas described below.

The general part of the projected new *Criminal Code* is a subject in which research and reformulation are being conducted under the following topics:

- General Principles of Criminal Liability,
- Defences,
- Inchoate Offences,
- Parties and Participation,
- Classification of Offences,
- Corporate and Vicarious Liability,
- Jurisdiction.

The general part of the *Criminal Code*, as its designation implies, expresses the general principles of criminal law. In a profound sense, the spirit of our criminal law resides mainly in the general part. Because of its importance, the Commission's approach to the general part is exceedingly cautious and deliberate so that an apt expression of durable principles may be presented for discussion to the public.

The Special Part of the Code enunciates the specific offences. Work is proceeding toward recommended reforms in the following specific prohibitions of criminal law:

- Theft and Fraud,
- Contempt of Court,
- Sexual Offences,
- Homicide and Offences of Violence,
- Offences against the Administration of Justice.

Because a complete review of the *Criminal Code* is a major element of the Commission's mandate, the problems associated with other specific prohibitions of criminal law will ultimately be considered. The above list is therefore not exhaustive, but represents activities underway at the end of the year under review.

As and when these studies are completed, with tentative or final reform recommendations, they will each see light of day in Working Papers or Reports to Parliament as may be appropriate.

□ Criminal Procedure

Work on criminal procedure produced the Report on *Criminal Procedure – Part I: Miscellaneous Amendments* in February 1978. Ongoing research and reformulation efforts are being undertaken in the following

subject topics:

- Pre-trial Procedures,
- Sentencing Procedures,
- Jury Procedures,
- Police Powers.

Police Powers is the newest topic in the list, to be initiated by the Commission. Although the project will focus on the traditional powers of arrest, search and seizure, it will also examine a variety of important related matters, such as the disposition of seized things, and the growth of private policing.

In this study we have adopted the following approach: First, the research will examine both the legal and the wider social aspects of the exercise of police powers; second, project staff will gather as much data about the actual exercise of police powers as may be feasible in light of both time and fiscal restraints; and third, there will be much consultation and interviewing of knowledgeable persons in order to enhance the legal research, facilitate the collection of data and assess the tentative recommendations which will be formulated in a Working Paper.

Reliable information on the exercise of search and seizure powers is lacking in many particulars. It is probable that some actual practices will have to be scrutinized carefully in order to assess their benefit or detriment to that constant dynamic balance between effective enforcement and individual liberty which characterizes parliamentary democracy in Canada. Therefore during the summer of 1978, with the cooperation of the relevant provincial authorities, the Canadian Association of Chiefs of Police and the R.C.M.P. there is to be a survey of police practices relative to search with and without warrant and writs of assistance in several cities across Canada.

The Commission will undertake some further studies about policing but not directly linked to the exercise of any particular police power. These will involve at least

- Police powers and the constitutional division of powers;
- Private contractual policing;
- The rights of accused persons under investigation including the subjects of self-crimination and evidence relating to identification.

Because these studies of police powers are still underway as at the end of the year under review and because they are sensitive in terms of security and privacy, as well as necessary consultation and review with the police forces involved, publicity about the studies will await the publication of Working Papers and the issuance of next year's Annual Report. The Canadian Association of Chiefs of Police is really the main focal point of the Commission's entry into this study and, therefore, the cooperation accorded us by that Association is highly prized and, indeed, virtually indispensable.

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Protection of Life Project

For the Protection of Life Project, 1977-1978 was largely, though not exclusively, a year of research and writing. The issues being studied are sensitive. They are of deep interest to the medical and legal professions, to the moralist, the philosopher, the religious and, indeed, most, if not all, members of the general public. A multi-disciplinary approach was adopted to bring under examination the disparate views of all concerned. Some travels and consultations were undertaken as well (see below) but the initial "ground-breaking" consultations took place during the previous year, and the in-depth extended consultations will take place once the project studies are completed and available. The research and writing is focused on nine studies, five working papers and four study papers, all due for publication and distribution during 1979.

□ Working Papers in Preparation

The Working Papers in preparation during the year under review are the following:

Definition of Death ("Definition of Criteria for the Appraisal and Determination of Death")

This paper is considering the pros and cons of "defining" legally the criteria for death, and will make proposals accordingly, either by concluding that such a "definition" is not needed, or by formulating one judged to be most applicable. So far in Canada, the only jurisdiction to enact a statutory definition of death is Manitoba. The need to consider such definitions arises against the background of new medical technology (particularly life support systems) which helped to raise the fundamental question for both medicine and law as to exactly what signs are indicative of human death. Death is accordingly being studied as both a medical and a legal phenomenon; both medical and legal views are being sought, and existing and proposed "definitions" of death are being considered and evaluated. Any eventual proposal defining these criteria should help to define the context of the next issue — euthanasia — by shedding more light on the "life-death boundary" question. For that reason this study is being closely co-ordinated with that on the subject of euthanasia.

Euthanasia

This paper is an evaluation of how well relevant Canadian law (particularly the homicide laws) and legal theory actually protect and affirm the various rights and values raised by the issue of euthanasia in the

medical context. It is focusing on various classifications of patients — defective newborns, adults, the competent and the incompetent. It is considering and weighing the various meanings of euthanasia — direct and indirect, voluntary and involuntary, as they relate to the right to life and the duties and liabilities of physicians in the legal framework. Notions being examined in that legal framework are for instance: consent, assault, parental responsibilities, causation and the defence of necessity. If the Commission concludes in this paper that present law is inadequate with respect to euthanasia, specific laws or models will be formulated by way of reform proposals.

Behaviour Modification

This paper will be exploring and evaluating the adequacy of our laws and legal processes insofar as they regulate medical-scientific behaviour modification techniques. The issues involved go to the roots of our most fundamental and cherished values — dignity, the value of human life and autonomy. For that reason this study includes analyses of the philosophical as well as the legal contexts. The latter context is dealt with largely by means of analyses of the manner, extent and implications of the protection of relevant human rights in Canadian (and other) Bills of Rights, Charters, Acts and statutes. At this level the basic question is this: are these values and individual rights more important than enforced conformity to societal norms?

This study includes as well a description of the various behaviour modification techniques (particularly those used in Canada) as well as past and present theories of behaviour. Both the coercive use (*i.e.* without consent) and the non-coercive use (*i.e.* with consent) of these technologies are being examined. On the basis of these and other analyses, this paper will make specific proposals in an attempt to answer the following question: Assuming that there are limits to society's right to control behaviour, and to medical science's right to intrude, how should those limits be articulated and enforced?

Human Experimentation

This study is evaluating present legal controls in the area of human experimentation. It will include in its analysis both therapeutic and non-therapeutic research, and will consider various types or examples of medical research presently taking place in Canada — for instance, genetic, psychological and surgical research. Included as well is an analysis of the source of research funding in Canada, and the controls and reporting procedures attached to the funding. The research subjects of particular interest in this legal analysis are: healthy volunteer subjects, patients, the terminally ill, children, foetuses, mental incompetents and prisoners. Since in this study, as in the others, there are some basic and fundamental values and rights involved, a number of ethical/legal principles will be discussed, particularly those of autonomy and inviolability.

In discussing these and other principles and values, one of the central issues to resolve is that of whose standards should apply — the experimenter's, the medical profession's or those of the community; are they reconcilable, and what should be the rôle of law in making these choices. The study is evaluating both legal (or quasi-legal) controls such as legislation, case law and codes, as well as administrative and extra-legal controls such as peer or committee review.

Treatment

This paper examines both a number of the more "strictly legal" issues (such as the meaning and scope of "treatment" in medicine and law, responsibility in treatment, the meaning and scope of legal duty in treatment, and who may treat), as well as still more fundamental and value-oriented issues such as the right to treatment, the right to refuse treatment, who makes treatment decisions in the case of dying patients, how to make decisions involving the allocation of scarce medical resources. The study of these and other issues is being undertaken to fulfill four goals: to define "treatment" especially for the purpose of criminal law; to examine the process of the administration of treatment to determine criminal responsibility and legal duty; to identify controversy within the treatment area as it may or may not relate to law; to make suggestions for legal reform in relation to all these points.

□ Study Papers in Preparation

The Study Papers in preparation during the year on which this Annual Report is based, are as follows.

Sanctity of Life and Quality of Life in the Context of Ethics, Medicine and Law

This study paper seeks to do essentially two things. First of all, to describe and evaluate (from the ethical perspective) some of the major views today on the related and somewhat elusive subjects of "sanctity of life" and "quality of life" in the medical context. Secondly, to indicate some of the implications and priorities of those ethical analyses for law and law reform. Arguments pitting the "sanctity of life" against the "quality of life" are much used in debate on biomedical issues, particularly those of the definition of death and cessation of medical treatment. This paper attempts to determine with some precision the meanings and implications (for law and ethics) of both "sanctity of life" and "quality of life". It argues the thesis that they do not need always to be seen as competing values, because they are in fact (with certain important qualifications) complementary and mutually protective. This thesis is explored and argued by focusing primarily on the questions of euthanasia and the definition of death, and the ethical considerations involved. One of these considerations is the meaning and normative value of the concept of person.

Informed Consent

This study is an important background work for all the working papers, but particularly that of human experimentation, insofar as it is obviously a central consideration in that context. Particular attention is given to the meaning and implications of informed consent — particularly the duty to inform the patient; the importance of the patient's understanding of the risks and benefits; defects of consent, such as coercion and duress, mistake and deception.

This paper is largely an analysis of consent's primary function in the medical situation, that is, regulating of risk-taking and controlling of the invasion of privacy. Of particular interest, of course, is how this function is articulated in legislation and legal process. The paper seeks to analyze the legal and factual basis on which consent rests. The

fundamental principles underlying consent, that is, the rights to self-determination, inviolability and privacy are being given particular attention, especially as related to particular kinds of patients and research subjects. These are, the dying, children, foetuses, mental incompetents and prisoners.

The Concept of the Person in Law

Concentrating on the medical-legal field, this study explores legal attitudes towards the person. It seeks to uncover the values underlying legal rules and legal decisions which touch upon the concept of "person". Its central question is whether there is in fact a legal definition or concept of person, and if so, the implications of that concept for medical decision-making. Another issue involves a comparison of the legal concept or understanding of the person, with concepts of the person in philosophy.

More specifically, the paper attempts to delineate what the *Criminal Code* and criminal law in general consider as a person or an individual human being, and what in particular is protected by the "protection of the person". The particular values, human characteristics or rights protected may well not be accessible in law in the form of a clearly articulated concept or definition. But by analyzing a number of important court decisions in this area, some patterns and consistent concerns may emerge and provide a composite profile of the human person as protected in law.

Sterilization of the Mentally Retarded/Mentally Ill

Arguments in favour of sterilization of the mentally retarded/mentally ill tend to focus either on the supposed right of the "unfit" to be protected from the excessive burden of parenting, or on the supposed right of the state to protect its medical and financial resources. But what do these "rights" mean and imply in this question? This study attempts to answer that question by analyzing and evaluating the various arguments and theories advanced, particularly as they are articulated in social policy including legislation. Attention is directed to the rights and interests of all the concerned groups affected by decision-making in this question — parents, the state, and in particular of course those of the mentally ill and retarded. The most important rights relevant to these persons in the context of sterilization will be explored — the right to sexual relations, to procreate, to marriage, to parent, to receive family benefits. The real issue is, are there any reasons why under certain circumstances any of these rights should be denied or restricted? Included in this study will be an overview and evaluation of existing and proposed legislation in Canada and elsewhere relating to sterilization.

□ Consultations

As noted, this has been largely a research and writing year for the project. Nevertheless a number of formal and informal consultations and discussions took place at the Commission and elsewhere, and the Commissioner in charge and project staff have been invited on a number of occasions to speak to groups and associations about the work and aims of the project.

Several associations indicated much interest in the project, and are in the process of

forming committees to respond to the Commission's working and study papers once they are published and available. Of particular note among the groups with whom the project staff have been in touch this year is a Task Force established by the Canadian Nurses Association specifically to advise us in this project. The Committee comprises eleven nurses from every region of Canada and from many branches and kinds of nursing experience. A most useful meeting was held at the Commission with that Committee on January 26.

Consultations with most of the individuals, groups and associations with whom the project had already established contact during the past year took place on a continuing basis during this year as well. (A full list of these groups, associations and Centres appears later in this part.) Particularly helpful to those working in this project were several physicians and nurses at the Scarborough General Hospital (of Toronto), the Hospital for Sick Children (Toronto), Toronto Western Hospital, and the Palliative Care Unit of the Royal Victoria Hospital in Montréal. Also extremely helpful and informative were visits to the National Commission for the Protection of Human Subjects of Biomedical and Behavioural Research, and the Kennedy Institute for the Study of Human Reproduction and Bioethics, both located in Washington, D.C.

Among the groups addressed by Project Staff or Commissioners were, the Alberta Association of Registered Nurses (Annual Meeting, May 5), the Manitoba Medico-Legal Society (February 28), Colloquium on Biomedical Ethics, University of Western Ontario (October 27-30). Invitations have also been received to address a number of groups during the coming year, among them the Catholic Physicians Guild of Manitoba.

The issues being dealt with are extremely contentious. There are many individuals and groups with strong and important views and interests to represent. Because the Commission's views as expressed in these studies will be tentative only, a great deal of importance must be attached to the post-publication consultation period. During that period of about one year, the Commission intends to consult, and to consider attentively, the views of both the general public and the particular professions and disciplines with an interest in these issues. Only at the end of that period will the Report to Parliament be formulated on these matters, in which some of the Commission's initial proposals may well be revised in the light of the consultations.

Among the groups and institutions informed and consulted were the following:

- Canadian Medical Association
- Ontario Medical Association
- Quebec Medical Association
- Manitoba Medical Association
- Canadian Hospital Association
- Canadian Nurses Association (which put together a National Task Force to advise us)
- Canadian Association for the Mentally Retarded
- Health and Welfare, Canada
- Medical Research Council
- Queen's University (Department of Community Health and Epidemiology)
- Medical Protective Association
- University of Western Ontario (Faculties of Law, Medicine and Philosophy)

- McMaster University Medical Centre, Hamilton
- McMaster University, Department of Philosophy
- Kennedy Institute, Washington, D.C.
- Hastings Institute of Society, Ethics and the Life Sciences, Washington, D.C.
- Ottawa General Hospital
- Toronto Western Hospital
- Hospital for Sick Children, Toronto
- Scarborough General Hospital, Toronto
- National Commission for the Protection of Human Subjects, Washington, D.C.
- Clarke Institute of Psychiatry, Toronto
- Association des médecins de langue française du Canada
- Canadian Theology Society
- School of Nursing, University of Manitoba
- Alberta Association of Registered Nurses
- Foothills Hospital, Calgary
- Royal Victoria Hospital, Palliative Care Unit, Montréal
- Manitoba Medico-Legal Society
- Metropolitan Toronto Forensic Services
- Centre for Bioethics, Montréal
- Rideau Regional Centre, Smiths Falls

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Other Work of the Commission

Although, according to its authorized program of studies, the Commission is most intensively engaged in the three main projects already described, it has a fourth project in which it can identify needed reforms without embarking on a full-blown project such as the three mentioned. This fourth project is designated as the Ongoing Modernization of Statutes.

□ Ongoing Modernization of Statutes

It was under this rubric that the Commission formulated and submitted its eighth Report, that which dealt with the exigibility to attachment of remuneration payable by the Crown in Right of Canada. There it seemed utterly clear, especially in regard to family maintenance obligations, that federal employees ought no longer to be exempt from one of the most effective instruments of enforcement of maintenance judgments when others, including most provincial civil servants, police and judiciary are not so exempt. Warm support for the recommendations has been expressed by the Barreau du Québec and the Manitoba Bar Association. As noted previously the recommendations were legislatively expressed in Bill C-49.

Working Paper 21, *Payment by Credit Transfer,* was initiated as part of the Commission's project in the Ongoing Modernization of Statutes. It reflects a perceived need for the law to keep up with practice and new technology.

This sort of reform could be effectively advanced by individual Senators and Members of Parliament during an earlier era in which there was more or ample parliamentary time for debate and resolution of reform suggestions on the part of individual parliamentarians. These days there seems to be ever diminishing parliamentary time for such purposes. The Commission believes that it could be, and ought to be, of service in studying and assessing the law's undue pressures or laxities which are identified by constituents to their parliamentarians. In evident cases of misunderstanding or maladministration, of course, the rôle of a Member of Parliament on behalf of disaffected constituents is well known and efficacious: indeed, the Commission must frequently refer such persons to their M.P. It is obvious that not every such complaint about the law's flaws will be meritorious, but we are convinced that

parliamentarians still hear a goodly number of valid ones, or complaints which are worth examining at least.

The *Law Reform Commission Act* provides that the Commission

> may receive and consider any proposals for the reform of the law that may be made or referred to it by any body or person.

Surely Members of Parliament and Senators representing their constitutents are not to be excluded from such a broad class of persons and organizations as are described in the statute.

The independence of the Commission, however, requires that it be not seen or suspected to be — and that in verity it be not — the client of any politically partisan group. The Law Reform Commission, even though it functions in a highly *political* forum, must be scrupulously *non-partisan*. Accordingly, the Commission has invited parliamentarians, on a multi-partisan — and therefore non-partisan — basis, to refer to us those matters of law reform which may require extensive research and for which (if the proposal be meritorious) there is insufficient parliamentary time for an individual member to bring to a disposition in Parliament. The Commission believes that in this way it could respond to the need for modernizing our laws without usurping, but rather by complementing, the rôle of the parliamentarian.

□ Task Force on Legislative Drafting

Work in this area proceeds as time permits in the manner described in the Commission's Sixth Annual Report.

□ Relationships with the Public

The *Law Reform Commission Act* exacts that the head office of the Commission be located in the National Capital Region and yet, it suffers by contrast with provincial law reform agencies, because of mutual lack of accessibility to and with the vast public which the Commission serves.

The Commission maintains a regional office in Montréal in order palpably to accommodate its mandate regarding the bi-jural nature of our country, but there are no other regional offices. With the statutory termination of the office of Part-time Commissioners two years ago, there are now no Commissioners who are resident in any region other than the National Capital Region and the City of Montréal.

There may well be good reason for this state of affairs, but there is equally good reason for Commissioners and staff to attend various events related to the work of the Commission which occur from time to time throughout Canada. An isolated Law Reform Commission cannot very well discharge its statutory mandate. Accordingly, the Commissioners personally respond to as many requests to speak to groups or participate in panel discussions on the law across Canada as time permits. Evidently, positive response cannot be accorded to every such invitation because of either pressure of duties or value to the taxpayer who ultimately pays the bill. Although personal presence in various communities is most important in building up the Commission's credibility, we are also exploring more extensive methods of generating public response to reform proposals through the means of interviews broadcast by radio

and television. Such a process is really bi-lateral, and has proved to be highly useful in the case of at least one provincial law reform commission. Clearly, in order to obtain public awareness of, and response to, its tentative reform recommendations, the Commission needs to publicize them.

□ Relationships with Other Law Reform Agencies

All law reform organizations with whom we have contact have been invariably most cordial and helpful to us. It makes good sense to take full advantage of the work of other law reform bodies in Canada, and abroad. Such organizations, of course, are immersed in their own particular priorities no less than the Law Reform Commission of Canada. Because those divergent priorities in each jurisdiction are intensely important, the interests of various law reform agencies will necessarily and properly not coincide at any particular moment. However, full advantage of the work of others is always offered, and gratefully taken whenever possible.

In August, 1977, a conference of the law reform organizations of the Commonwealth was held at Marlborough House in London, United Kingdom. Mr. Justice Lamer, Mr. Muldoon, Mr. Baudouin, Dr. La Forest and Mr. E. F. Ryan attended the conference as representatives of the Law Reform Commission of Canada. Representatives of the law reform bodies of several provinces of Canada were also in attendance. As a result of the offer of our cooperation extended to other law reform agencies of the Commonwealth by Mr. Justice Lamer, we were pleased to arrange for a research internship at this Commission's premises on the part of Mr. Errol Chase of the Department of the Attorney General of Barbados.

□ Visitors

In addition to the various knowledgeable consultants who honour us from time to time by their attendance to provide expert help in our work, the Commission receives visits by notable personages from other countries. During the year under review, we have been honoured to receive the following persons (listed in alphabetical sequence) at the Commission:

- Ms. Nana Araba Apt, Attorney General's Department, Accra, Ghana;
- Prof. Koichi Bai, Metropolitan University, Tokyo, Japan;
- Mrs. Yolande Bannister, Chief Parliamentary Counsel, Barbados;
- Mr. B. James Cameron, Deputy Secretary of Justice, Law Reform Commission, New Zealand;
- Mr. W. Cheong, United Nations;
- Dr. David A. Frankel, Deputy Legal Adviser to the Minister of Health, Israël;
- M. Alain Peyrefitte, Minister of Justice and Keeper of the Seals, France;
- Dr. Alex Robertson, visiting Professor, Edinburgh University;
- Dr. H. W. Tambia, Q.C., High Commissioner for Sri Lanka;
- Mr. Justice J. N. K. Taylor, High Court, Accra, Ghana;

- Hon. D. S. Thompson, Minister of Justice, New Zealand, accompanied by Hon. Dean J. Eyre, High Commissioner for New Zealand;
- Mr. Tan Teow Yeow, Deputy State Counsel of Singapore;
- Mr. Justice Howard Zelling, Chairman, Law Reform Committee of South Australia.

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Appreciation and Acknowledgments

The Commission greatly prizes the cooperation and help which it is accorded by the many persons and organizations whom it consults. In this context, it is fitting to make particular mention of those whom the Commission most frequently importunes for advice: The Canadian Bar Association and its various sections; the Canadian Association of Chiefs of Police and, in particular, its Law Amendments Committee; the Canadian Nurses Association; the Canadian Hospital Association; the Canadian Medical Association; various members of the Solicitor General's Department; various members of the Department of Justice; and in particular, the previous Deputy Minister of Justice, Donald S. Thorson, Q.C. and his successor in office, Roger Tassé, Q.C.

APPENDIX A

REPORTS OF THE LAW REFORM COMMISSION OF CANADA

Subject	*Date Submitted*	*Legislative Implementation*
1. Evidence	December 19, 1975	
2. Guidelines on Dispositions and Sentencing in the Criminal Process	February 6, 1976	
3. Our Criminal Law	March 25, 1976	
4. Expropriation	April 8, 1976	
5. Mental Disorder in the Criminal Process	April 13, 1976	
6. Family Law	May 4, 1976	
7. Sunday Observance	May 19, 1976	
8. Exigibility to Attachment of Remuneration Payable by the Crown in Right of Canada	December 19, 1977	
9. Criminal Procedure – Part I: Miscellaneous Amendments	February 23, 1978	

APPENDIX B

PUBLICATIONS AND RECOMMENDATIONS JUDICIALLY NOTED

CRIMINAL LAW

Diversion

- *R. v. Jones*, (1975), 25 C.C.C. (2d) 256, at p. 257 (Ont. Div. Ct.)

Mental Disorder

- *R. v. Haymour*, (1977), 21 C.C.C. (2d) 30 (B.C. Prov. Ct.)
- *R. v. Rabey*, (1978), 79 D.L.R. (3d) 414; 37 C.C.C. (2d) 461; 40 C.R.N.S. 46; 17 O.R. (2d) 1 (Ont. C.A.)
- *R. v. Simpson*, (1977), 77 D.L.R. (3d) 507; 35 C.C.C. (2d) 337 (Ont. C.A.) (1977) 16 O.R. (2d) 129 at 151

Plea Bargaining

- *R. v. Wood*, (1976), 2 W.W.R. 135; 26 C.C.C. (2d)100 (Alta C.A.)

Sentencing

- *R. v. Earle*, (1975), 8 A.P.R. 488 (Nfld. Dist. Ct.)
- *R. v. Groves*, (1977), 39 C.R.N.S. 366; 79 D.L.R. (3d) 561; 37 C.C.C. (2d) 429 (Ont. H.C.) 17 O.R. (2d) (Ont. H.C.)
- *R. v. Jones*, (1975), 25 C.C.C. (2d) 256 (Ont. Div. Ct.)
- *R. v. MacLeod*, (1977) 32 C.C.C. (2d) 315(N.S.S.C.)
- *R. v. McLay*, (1976), 19 A.P.R. 135 (N.S.C.A.)
- *R. v. Shand*, (1976), 64 D.L.R. (3d) 626 (Ont. Co. Ct.), 11 O.R. (2d)(Ont. Co. Ct.)
- *Turcotte c. Gagnon*, (1974), R.P.Q. 309 at 317
- *R. v. Wood*, (1976), 2 W.W.R. 135, 26 C.C.C. (2d) 100 (Alta. C.A.)
- *R. v. Zelensky*, (1977), 1 W.W.R. 155 (Man. C.A.)
- *R. v. Zelensky*, (1978), 3 W.W.R. 693; 2 C.R. (3d) 107 (S.C.C.)

Strict Liability

- *Hilton Canada Ltd. v. Gaboury (juge) et al.* (1977) C.A. 108
- *R. v. Sault Ste. Marie*, (1978), 3 C.R. (3d) 30, 21 N.R. 295 (S.C.C.)

CRIMINAL PROCEDURE

Pre-Trial

- *R. v. Mastroianni*, (1976), 36 C.C.C. (2d) 97 (Ont. Prov. Ct.)

EVIDENCE

- *R. v. A.N.*, (1977), 77 D.L.R. (3d) 252 (B.C. Prov. Ct., Fam. Div.)

- *R. v. Cronshaw and Dupon*, (1977) 33 C.C.C. (2d) 183 (Ont. Prov. Ct.)
- *R. v. Stratton*, (1978), unreported (Ont. C.A.)

FAMILY LAW

- *Re Dadswell*, (1977), 27 R.F.L. 214 (Ont. Prov. Ct.)
- *Gagnon v. Dauphinais*, (1977), C.S. 352
- *Marcus v. Marcus*, (1977), 4 W.W.R. 458 (B.C.C.A.)
- *Reid v. Reid*, (1977), 67 D.L.R. (3d) 46; 25 R.F.L. 209 (Ont. Div. Ct.) (1976) 11 O.R. (2d) 622 at 628
- *Rowe v. Rowe*, (1976), 24 R.F.L. 306 (B.C.S.C.)
- *Wakaluk v. Wakaluk*, (1977), 25 R.F.L. 292 (Sask. C.A.)

APPENDIX C

PUBLICATIONS ISSUED DURING FISCAL YEAR 1977-1978

Reports to Parliament

Report on the Exigibility to Attachment of Remuneration Payable by the Crown in Right of Canada
Report on Criminal Procedure – Part 1: Miscellaneous Amendments

Working Papers

Working Paper 18 – Federal Court
Working Paper 19 – Theft and Fraud
Working Paper 20 – Contempt of Court
Working Paper 21 – Payment by Credit Transfer

Administrative Law Series Study Papers

The National Energy Board
The *Federal Court Act*

General

Annual Report 1976-1977

APPENDIX D

CONSULTANTS AND RESEARCH PERSONNEL FOR THE WHOLE OR PART OF THE YEAR UNDER REVIEW

ATRENS, Jerome, B.A., B.C.L.
BECKER, Calvin A., B.A., LL.B., LL.M.
BROOKS, Neil, B.A., LL.B.
CASTEL, Jean-Gabriel, LL.L., J.D., S.J.D.
CHASE, Errol DaCosta, B.A., Barrister-at-Law, England, Certificate in Legislative Drafting (Univ. of Ottawa)
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