Law Reform Commission of Canada

Commission de réforme du droit du Canada

11th annual report

1981-1982

Canada

LAW REFORM COMMISSION
OF CANADA

ELEVENTH ANNUAL REPORT
1981-1982

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PRESIDENT
LAW REFORM
COMMISSION

Ottawa
December, 1982

The Honourable Mark MacGuigan,
P.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 Eleventh Annual Report of the Law Reform Commission of Canada for the period June 1, 1981 to May 31, 1982.

Yours respectfully,

F. C. Muldoon

Francis C. Muldoon, Q.C.

This is the Eleventh Annual Report of the Law Reform Commission of Canada. This Report describes the Commission's activities during the period from June 1, 1981 to May 31, 1982.

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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 was amended in 1981 by altering the Chairman's title to President and the Vice-Chairman's title to Vice-President. The statute further provides that the President, the Vice-President 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 ten years standing at the bar of any province; and that the President or the Vice-President 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*.

At the beginning of the year, the Commission was composed of the minimum statutory quorum of only three Commissioners. Mr. Francis C. Muldoon, Q.C., of the Manitoba Bar, has been President during the whole year spanned by this Annual Report. Judge Edward J. Houston, of the County of York in Ontario, terminated his mandate on September 12, 1981 and returned to the Bench after three years of valuable service to the Commission. Mr. Réjean F. Paul, Q.C., of the Québec Bar, was promoted to Vice-President on April 7, 1982. At the end of the year, the Commission was at full strength for the first time in thirty-four months with a complement of five Commissioners: Ms. Louise D. Lemelin, a barrister and solicitor from Victoriaville, Québec, was appointed Commissioner on August 17, 1981; Mr. Alan D. Reid, of the New Brunswick Bar, a senior official of the Department of the Attorney General of New Brunswick, became Commissioner on April 1, 1982; and Mr. Joseph Maingot, Q.C., of the Ontario Bar, Parliamentary Counsel and Law Clerk of the House of Commons, began his term as Commissioner on April 7, 1982.

Mr. Jean Côté is Secretary of the Commission. Mr. Michael H. F. Webber is the 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*. In brief, 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 is 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, from time to time, 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 required by the Act 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

Meetings

The Commission held fifteen formal meetings during the period under review. The minimum statutory requirement mentioned in subsection 9(2) of the *Law Reform Commission Act* is six meetings.

Reports

A list of the Reports which the Commission has submitted to Parliament is Appendix A to this Report. Because the Com-

mission's Reports must all be laid before Parliament, the Commission does not issue so-called informal reports, a technique of reporting which is practised by some provincial law reform bodies. All of the Commission's Reports are both formal and published.

Recommendations

Appendix B shows the Commission's tentative and final recommendations which, over the years, have been judicially noted by various courts.

Publications

Publications issued during fiscal year 1981-1982, which ended on March 31, 1982, are set forth in Appendix C to this Report.

Over 53,000 copies of various publications were distributed to interested members of the legal profession and the public at large during the period under review.

Personnel

During the year under review, ending May 31, 1982, the personnel strength of the Commission varied according to seasonal and functional factors. There were eighty-one consultants of all categories, including seventy-six research consultants, identified in Appendix D, 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 office assistants, are public servants. The number of staff during most of the year was thirty-eight.

Not included in this figure but worth mentioning are two categories of temporary employees whose assistance to the operations of the Commission has been invaluable. First, fourteen law students were employed, mostly during summer months, as assistants to researchers, thus providing projects with competent basic legal research and analysis while giving these jurists-to-be an insight into the Commission's activities. Second, the Commission's huge mailing operations at time of releases of new publications were greatly helped by the able assistance of persons sponsored by the Ottawa and District Association for the Mentally Retarded.

Consultations

The Commission's program of consultations carried out pursuant to section 15 of the *Law Reform Commission Act* is described in relation to our principal projects later in the Report.

Official Languages Policies

"Top marks", said the Commissioner of Official Languages in his last annual report about this Commission's performance in respect of the official languages policy. The Commission and its staff accept this appraisal with much satisfaction, conscious and proud of our constant efforts to apply on a day-to-day basis the very meaning of both the letter and the spirit of the *Official Languages Act*, the government policy and its own policy in this regard.

This success depends, in our view, on three factors. First, our deep belief that the Commission being a Canadian institution must be regarded and sensed by all Canadians as their own "personal" institution, speaking their own official language and expressing their own

culture. Second, the *Law Reform Commission Act* which imposes on the Commission the obligation to take into account in its work of law reform the two legal systems and cultures which benefit our country. Third, our determination and ability to ensure that everyone at the Commission has the important individual day-to-day responsibility of being a living example of the Commission's dual linguistic character. In a nutshell, the official languages policy is part and parcel of the Commission's customs and operational way of life.

No change was made, during the period under review, to the Commission's policy that "any request from anywhere in Canada is a significant request". Therefore every communication with Canadians, and indeed with foreigners, is handled in the official language chosen by the outside party.

No complaints of non-compliance with the government policy were received by the Commission nor the Commissioner of Official Languages during the period.

With respect to the language of work, the Commission's policy is that employees have an absolute right to work in the official language of their choice. Indeed, they are strongly encouraged to do so. Needless to say, all work instruments are available in both languages and all administrative communications of general application are issued in both English and French simultaneously.

A better balance between the two linguistic groups was achieved. Where the policy aimed at maintaining, among professional employees (under contract), a ratio of one francophone research officer out of four, the balance has been improved to 33 1/3 per cent of French mother tongue to 66 2/3 per cent English. With regard to administrative and technical support staff (public servants), the past situation of one anglophone out of three employees has been slightly improved to 37 per cent of English mother tongue to 63 per cent French. This was the situation at the end of December 1981, the effective date of a report which had to be submitted to the Treasury Board.

The Commission makes a special effort to ensure the highest quality of all its publications in both English and French. Each version is separately approved by the Commission both as to intellectual content and quality of language.

Although the Commission is proud of its record with regard to the official languages aspects of its work, it is conscious that there is still room for improvement. It is with this in mind that we invite the public to give us the benefit of its opinions, comments, criticism and suggestions concerning the linguistic quality of the Commission's services.

Expenditures

The total expenditures incurred by the Commission during the fiscal year April 1, 1981 to March 31, 1982, amounted to $2.99 million. The sum of $1.44 million was expended on the research program, including translation costs and remuneration of those Commissioners who are not in receipt of a salary under the *Judges Act*. The information and publications activity cost $245,600, while administrative costs amounted to $1,306,800.

□ Influence on Law Reform

The influence of the Law Reform Commission of Canada on the shaping of the laws of Canada has been described in previous Annual

Reports. The four principal spheres in which the Commission can be influential are the legislative; the judicial; the administrative; and the general public receptiveness to law reform.

The First Session of the Thirty-Second Parliament has continued since the last federal election in 1980. Consequently, those Bills referred to in our *Ninth* and *Tenth Annual Reports* are still before the House. No new Bills incorporating Law Reform Commission recommendations have been identified. However, Bill C-61, the *Young Offenders Act*, was passed by the House of Commons on May 17, 1982. This Bill was referred to in our *Tenth Annual Report*.

Bill C-61, as passed by the House of Commons, incorporates some of the Commission's recommendations set out in Report 2: *Guidelines — Dispositions and Sentences in the Criminal Process*. The Commission recommended that pre-trial settlement or diversion be instituted in respect of all criminal proceedings. Bill C-61 codifies such methods in respect of young offenders, as well as pointing out that any admissions or confessions made by the young offender during a pre-trial settlement would be inadmissible in any civil or criminal proceedings. This protection was recommended by the Commission in its Report 2 as well as in section 26 of the Evidence Code set out in Report 1: *Evidence*. Bill C-61 also recognizes restitution and community service orders as possible sentences for young offenders. The Commission, in its Report 2, recommended such sentences for all criminal offenders. As noted in our *Tenth Annual Report*, Bill C-61 also codifies the discretion of a judge in instructing a young person on his duty to tell the truth. The recommendation of the Commission, set out in section 51 of the Evidence Code of Report 1: *Evidence*, while similar, would not be restricted to the testimony of young persons.

Another Act which became law this year incorporates, whether intentionally or not, certain recommendations of the Commission set out in its Report 1: *Evidence*. The *Constitution Act, 1982*, and particularly its *Canadian Charter of Rights and Freedoms*, became law on April 17, 1982. In subsection 24(2), the section dealing with the enforcement of the rights and freedoms set out in the Charter, where a person can establish that evidence was obtained in a manner which infringed or denied his rights or freedoms, such evidence "shall be excluded if it is established that, having regard to all the circumstances, the admission of it in the proceedings would bring the administration of justice into disrepute". It expresses the almost identical idea, in almost identical words, of subsection 15(1) of the Commission's proposed Evidence Code.

The Charter also provides a protection against self-incrimination in section 13. This protection is at once both broader and narrower than the recommendation of the Commission in section 38 of its Evidence Code. The Charter accords a witness the right to avoid self-incrimination in any proceedings, whereas the Commission's suggestion would have granted the right to an accused to prevent testimony given in a proceeding, other than the preliminary hearing in respect of the matter of which he was accused, from being used against him. Both the Charter and the Commission would make an exception in the case of a prosecution for perjury, but the Charter makes a further exception "for the giving of contradictory evidence".

The Commission's work, because of the widespread dissemination of its publications among the judiciary and the legal profession,

has frequently attracted judicial notice in court proceedings. Over fifty court decisions have made reference to, and in most instances adopted, the Commission's views in the last few years. A recent example is found in the unanimous decision of the Supreme Court of Canada in *R.* v. *Vetrovec and Gaja*, 67 C.C.C. (2d) 1. In the course of its reasons for judgment the Court, for whom Mr. Justice Dickson alone spoke, specifically adopted the Commission's reasons for abrogating the common-law rule which requires corroboration of an accomplice's evidence expressed in the Commission's Report 1: *Evidence*. Because this common-law rule is not a statutory provision, the implementation of this recommendation by the Supreme Court of Canada is of virtually the same force and efficacy as if Parliament had abrogated a statutory rule upon the Commission's recommendation. Indeed, it would now require an Act of Parliament, or a (highly unlikely) change of mind by the Supreme Court, expressed in a similarly strong judgment, to restore the rule which the Commission recommended be abrogated.

2

Reports to Parliament

During the year under review, no Reports were submitted to Parliament. However, by the end of the year, two Reports had been approved by the Commission and were being translated and prepared for printing and tabling. One Report dealt with the Jury and the other with Contempt of Court.

Commission Reports present the final views and formal recommendations of the Commissioners on a given area of the law. Once a Report has been tabled in Parliament, the advisory role of the Commission is completed in respect of this particular topic. It is then a matter for the Government and Parliament to decide what should be the fate of recommendations expressed in the Report. Its work completed, the Commission keeps a "low profile" concerning its recommendations, refraining from any statements or occurrences which would amount to lobbying. This posture does not preclude explanation of previous Reports. In sum, the Commission proposes but the Government and Parliament dispose.

3

Working Papers

Working Papers are statements of the Commission's law reform positions at the 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.

Two Working Papers were completed and approved by the Commission during the year under review. However, their release was delayed until after the close of the year. One was in the field of Substantive Criminal Law and is entitled *The General Part — Liability and Defences*. The other was the result of work of the Protection of Life Project and was comprised of three topics: *Euthanasia, Aiding Suicide and Cessation of Treatment.*

No less than six other Working Papers were being drafted for consideration by Commissioners.

4

Criminal Law Project

The year under review coincides more or less with the first of the five-and-a-half-year Comprehensive and Accelerated Review of Criminal Law in which the Commission has responsibility for Phase I. As we reported in our last *Annual Report*, Phase I consists in the research of the law and the formulation of recommendations for reform, if warranted. Phase II consists in the determination of government policies after examination of the Commission's recommendations, and Phase III in the implementation of these policies through legislation. The last two phases are outside the Commission's province and belong, in the case of Phase II, to the Department of Justice working in co-operation with the Ministry of the Solicitor General and, in the case of Phase III, to the Executive and Parliament.

The intensification and acceleration of the Review is a huge and complex undertaking and its operations during the first year ran into a number of problems, the most serious of them having to do with the absence of a full complement of Commissioners, the shortage of research specialists at the opportune time, the heavy consultation process and the slowness of translations. Toward the end of the year under review, the Commission was relieved that it was at long last at full strength and it took a number of administrative decisions to solve the other problems. It is now confident that the pace of its work in criminal law will quicken and is hopeful of meeting the ultimate target date of 1986/87 for its part of the work in the Criminal Law Review.

□ Substantive Criminal Law

Work Completed

By the end of the year under review, following extensive consultations with the various groups described later in this Chapter, we had put the final touches on our work on criminal liability and general defences. Our tentative views on this most important part of substantive criminal law were then set for consultation at large through a Working Paper now in the process of translation and printing.

One Report to Parliament was completed and at the printing stage at the close of the year. Entitled *Contempt of Court*, it proposes the codification of the various aspects of the common-law offence of contempt of court.

Work in Progress

Research activities were in various stages of progress in some ten different areas of substantive criminal law:

- *Offences against Person — Assaults, Threats and Related Offences*: A Working Paper on this topic was nearing completion and extensive research has been done on the existing law relating to non-fatal offences against the person. These include all types of assault, kidnapping, forcible confinement, abduction and threatening behaviour. The defects in the law have been carefully analyzed and recommendations prepared for a restructured chapter in a new code.

- *Offences against Person — Homicide*: On this topic, detailed research has been done on existing law and its history. Defects in existing law have been carefully noted. Some tentative reform proposals have been identified.

- *Corporate and Vicarious Liability*: A draft Working Paper has been prepared which deals with the justification for retaining corporate criminal liability, the problems with the present law relating to it, proposals for new criteria for such liability and suggestions as to sanctions and enforcement. On vicarious liability, a short Study Paper has been prepared.

- *Mischief*: A virtually complete Working Paper on mischief was discussed by the Commission and is in the process of being refined.

- *Defamatory Libel*: A Working Paper on this topic is in an advanced stage of preparation. It examines the justification, if any, for retaining defamatory libel as a crime and provides alternative recommendations to improve the existing law.

- *Conspiracy*: Studies toward a Working Paper on conspiracy are well advanced. An extensive description of the present law has now been completed.

- *Break and Enter*: The first part of a Working Paper on this topic is now finished. It examines in some detail the existing law together with its defects, and offers tentative proposals for reform.

- *Participation*: Considerable background material on participation in crime by accomplices has already been assembled in preparation for the drafting of a Working Paper.

- *Jurisdiction*: During the current year, work has begun on a paper on the application of criminal law in terms of space, i.e., the matter of jurisdiction. A detailed description of existing law is now complete.

- *Offences against Security of the State*: By the end of the year under review, several meetings had been held to map out the area and arrive at basic principles. Research and proposals are to follow.

The President of the Commission, Francis C. Muldoon, Q.C., is the Commissioner responsible for the substantive law aspect of the Criminal Law Project.

□ Criminal Procedure

The term "criminal procedure" embraces the array of common-law and statutory procedures, prerogatives and powers provided for

the investigation, prosecution, trial, sentencing and appeal of criminal offences. Where substantive criminal law specifies what conduct is proscribed and punishable, criminal procedure specifies the means by which those proscriptions are enforced and those punishments imposed. In a 1976 Study Paper, *Towards a Codification of Canadian Criminal Law*, codification was conceived as the most effective way of obtaining a comprehensive, principled, coherent and distinctively Canadian statement of criminal law and procedure. As so conceived, codification is less an end in its own right than a strategy of law reform, one which offers certain practical and theoretical advantages over other styles of reform. This strategy is being given serious consideration by the Commission in its continuing work in the reform of criminal procedure.

At a general level, the task of codifying criminal procedure is divisible into six principal segments: (1) classification of offences, (2) police powers and procedures, (3) pre-trial procedures, (4) trial procedures, (5) sentencing procedure, and (6) appeal procedure. The largest part of the Commission's criminal procedure project is presently engaged in what might be termed the front end of that sequence, details of which are elaborated below. Also, as part of its larger work on criminal trial procedure, the Commission has completed its work and formulated its recommendations on the jury in a Report to Parliament. At the end of the year, this Report was being printed.

Classification of Offences

Central to the Commission's workplan for a code of criminal procedure is a proposal for the systematic organization, by class of offence, of the powers, protections and procedures which collectively make up criminal procedure. The precepts governing the Commission's approach to classification of offences are: first, there should be as few classes of offence as possible; second, divisions between classes should be determined by reference to legislatively-prescribed penalties, so as to ensure that procedures are scaled to the degree of penal liability entailed in conviction; and, third, to the degree possible, all offences within a given class should carry common procedural characteristics.

The present organization of criminal procedure seems to the Commission unnecessarily complicated, confusing and anomalous. It seems apparent, moreover, that systematic assignment of procedural incidents would permit criminal procedure to be greatly simplified, without significantly affecting the distribution of criminal-law cases between lower and higher courts.

Police Powers and Procedures

Police Powers

- *Legal Status of the Police in Canada*: The legal status of the police is widely perceived as having important implications for their governance and accountability. Yet, there is considerable lack of understanding and no little disagreement as to what legal status the police might actually have in Canada. In consequence, it becomes imperative to analyze and clarify the legal status of Canadian police. Only thus can one cogently evaluate the constraints, both internal and external, upon the exercise by the police of their law enforcement powers and, correspondingly, appreciate the appropriate scope of police discretion and the mechanisms available

to define its limits and curb its abuse. The Commission has accordingly contracted for a study which (a) defines, to the extent possible, the current legal status of the police in Canada, (b) identifies the origins and circumstances under which the current definitions of the legal status of the police in Canada have evolved and been adopted, and (c) examines the implications of the current legal status of the police for their governance and accountability in Canada, and for the definition and control of police discretion. As a result of this study, the Commission expects to be in a better position to specify which aspects of police discretion and accountability are appropriate for codification as matters of criminal law and procedure.

- *Search and Seizure* (*Criminal Code*): Over the past four years the Commission has closely examined police powers of search and seizure. This inquiry was prompted by a concern that the existing proliferation of search and seizure powers rendered the aggregate of such powers, for law enforcement personnel and public alike, virtually unascertainable and hence uncertain. We propose therefore to consolidate, rationalize and reform the various search and seizure regimes found within the common law, the *Criminal Code*, and within such crime-related statutes as the *Narcotic Control Act* and the *Food and Drugs Act*. Ideally, all crime-related search and seizure would be governed by the standards and procedures prescribed in a comprehensive code of criminal procedure. By the end of the year, the Commission had virtually completed a Working Paper on Police Powers of Search and Seizure.

  Also to be published at about the same time as the Working Paper are two Study Papers. The first is a three-part study on writs of assistance, which traces the writ's origins in England and Canada, analyzes the juridical character of Canadian writs of assistance, and develops the data acquired in the course of a four-month, seven-city survey of writ of assistance practices. The second study, tentatively entitled "Search Warrant Practices in Five Canadian Cities", describes the results of a parallel survey of the legalities of search warrant issuance and execution. A third study, *The Issuance of Search Warrants: A Manual*, has already been published.

- *Search and Seizure* (Outside the *Criminal Code*): The Commission has also closely examined the array of non-criminal search and seizure powers presently found in federal revenue and regulatory legislation. Our reasons for doing so were several. First, the objective of a common set of procedures for *Criminal Code* offences could too easily be frustrated by resort to one of the approximate 119 search and seizure regimes outside the *Criminal Code*. Second, by reason of their indiscriminate proliferation and attendant disparities of powers and protections, there is as compelling a case to be made for the reform of federal powers of search and seizure *outside* the *Criminal Code* as for the reform of search and seizure powers *within* the *Criminal Code*. Third, much of the federal legislation with which we are

concerned depends for its enforcement not only upon what we have termed "investigative search", but also upon a species of search which we have termed an "inspection" — routine monitoring to ensure compliance with legislative or regulatory prescriptions. In the context of the present review of the *Criminal Code*, the chief problem posed by these powers of inspection is their accessibility as an alternative to investigative search and seizure.

The issue of what powers of search and inspection should be available for the enforcement of revenue and regulatory legislation is one which affects a broad range of federal departments and agencies. The Commission therefore intends to consult widely, both with those who employ, and with those who are the object of, such powers, before publishing its Working Paper on search and seizure powers outside the *Criminal Code*.

- *Arrest*: As part of its commitment to a comprehensive code of criminal procedure, the Commission has begun a review of the law of arrest. There is no area of criminal procedure in which it is more important that both police and public appreciate the precise limits of their powers and liabilities. Such, however, is the complexity and obscurity of our present law of arrest that the legality of exercising or resisting a power of arrest in particular circumstances can seldom be more than a matter of conjecture.

That an area of law in which certainty is imperative should yet be so muddled cannot easily be explained. Several of the most salient aspects of that confusion can be identified, however. First, there is the juridical limbo occupied by persons who are neither under arrest nor, according to recent case-law, being detained, but whose liberty is nevertheless inhibited by a peace officer acting under colour of authority. Thus, for example, persons subject to a demand for a breath sample or to certain firearms, narcotics and drug searches are without a clearly defined legal status. Because of the hiatus between formal and objective restraints upon liberty, such persons are subject to all the liabilities of arrest, but enjoy none of the rights which attach to that status.

Second, there is the confusion introduced by the *Bail Reform Act* of 1971. Arrests for certain classes of offences (indictable offences within the absolute jurisdiction of the magistrate, hybrid offences and summary conviction offences) have not only to be justified by a belief that an offence is being committed, but also by a belief that the arrest is necessary in the public interest. For the police community, the 1971 amendments meant that the arresting officer had to be alert not only to whether the arrest was justified, but also to whether it was necessary according to criteria which varied materially between and among classes of offences. The 1971 amendments have thus made anyone's liability to arrest virtually unascertainable and left those who are arrested without recourse for unnecessary but otherwise justified arrests.

- *Electronic Surveillance*: Access to the day-to-day practices and procedures associated with electronic surveillance is of course precluded by statute. Our research program for this aspect of police powers has therefore been rather more oblique than that employed to develop our recommendations on powers of arrest and powers of search and seizure.

  As a necessary preliminary to the preparation of a Working Paper on electronic surveillance, four separate background papers have been commissioned and completed. The first traces the legislative history of the *Criminal Code* controls on electronic surveillance; the second examines the judicial treatment of electronic surveillance from the inception of the controls in 1974 to the present; the third background paper analyzes the annual reporting system, with a view to assessing the prevalence and effectiveness of electronic surveillance practices against the background of existing controls; and the fourth examines the policy dimensions of police surveillance in general, and electronic surveillance in particular, concluding with a series of proposals for reforming the legislative and administrative regimes by which electronic surveillance is presently governed.

  The Commission's criminal procedure project will shortly be integrating these various studies into a comprehensive Working Paper on electronic surveillance.

Police Procedures

- *Eyewitness Identification Procedures*: The subject of pre-trial eyewitness identification is widely regarded as one of the most important in criminal procedure. This is so because it is extremely difficult to challenge an honest, but mistaken, eyewitness on cross-examination and because, notwithstanding the fragility and unreliability of such evidence, there is good reason to believe that juries tend to accept eyewitness testimony too uncritically.

  Although it is impossible to improve an eyewitness's original perception of events, uniform and clearly-defined procedures would at least minimize the potential for error in eyewitness identification and ensure that identification procedures could be reconstructed at trial and knowledgeably evaluated by judges and juries. To that end, the Commission is completing, in study paper format, a comprehensive set of guidelines for the conduct of eyewitness identification procedures.

  As a necessary preliminary to publication, we have discussed this study's recommendations with separate panels of appellate court judges, assistant attorneys general, experimental psychologists and police identification officers.

- *Custodial Interrogation*: Traditionally, custodial interrogation has been conceived as exclusively a matter of evi-

dentiary concern. We wonder, however, whether this conception is adequate and whether custodial interrogation should not be recognized for its procedural as well as its evidentiary dimensions. Custodial interrogation is arguably an intrinsically coercive procedure, since by definition it entails a person in custody being questioned by a person in authority. Given this element of coerciveness and its inherent potential for derogation from the common-law right to silence, it seems anomalous that custodial interrogation should not previously have been acknowledged as appropriate for treatment as a matter of criminal procedure.

The preparation of a Working Paper on this subject was commenced in the latter part of the year under review.

- *Investigative Tests*: Also intended for inclusion within that portion of the proposed code of criminal procedure relating to police procedures is an item we have termed "investigative tests". This term is meant to embrace the array of investigative procedures (other than interrogation and search and seizure) which may seem to derogate from the common-law right to remain silent or its constitutionally-entrenched corollary, the privilege against self-incrimination.

The most prominent investigative tests are perhaps those for analyzing breath, blood, urine and other bodily substances, and those involving psychological and psychiatric observations and examinations. However, there are as well some two dozen similar procedures, all of them involving a potential for coercive derogation from rights that a citizen would otherwise enjoy — and all of them requiring the authorization of a statutory licence or an informed consent. This topic will form the subject of another Working Paper in the Criminal Procedure series.

Pre-Trial Procedures

- *Post-Seizure Procedures*: The deficiencies of the *Criminal Code*'s present scheme for the disposition of things seized are both manifest and several.

First, the *Criminal Code*'s provisions embrace only things seized pursuant to a search warrant. This of course ignores the much larger array of things seized without warrant, as well as those seized pursuant to non-*Criminal Code* warrants, such as those issued under the *Narcotic Control Act*, the *Food and Drugs Act*, etc.

Second, the emphasis in the present statutory treatment of disposition of things seized upon the method of seizure, the identity of the substance seized, and the offence charged, seems entirely misplaced. Instead, the organization of the disposition procedures should be consistent with the purposes for which seizure is authorized, namely, the preservation of evidence, the restoration of takings and the confiscation of contraband.

Third, the present regime's preoccupation with the circumstances of seizure creates serious problems of accountability. Some of these problems

surfaced during our 1978 surveys of search and seizure practices: for example, it was not uncommon for peace officers to be unaware that they were obliged by section 443 of the *Criminal Code* to report to the issuing justice upon their seizures pursuant to warrant; nor, in some jurisdictions, did the issuing justices insist upon compliance with the reporting requirements of section 443. In consequence, those justices found themselves in the very awkward position of not knowing whether their warrants had been executed, what (if anything) had been seized, what (if anything) was nominally in their custody, and at what point their three-month powers of detaining things seized began and ended.

Fourth, the present statutory treatment of disposition of things seized is inadequate in the face of the combination of sections 8 and 24 of the *Canadian Charter of Rights and Freedoms*. Although the Charter does not advert specifically to property rights, it does enjoin "unreasonable search and seizure" and provide for remedies to be obtained from a court of competent jurisdiction, and for evidentiary sanctions in the event that the breach of protected rights is so egregious as to bring the administration of justice into disrepute. What would clearly seem to be needed, then, is a regime for disposition of things seized which reifies the remedial and exclusionary provisions of the Charter.

- *Disclosure and Committal Procedures*: For several years now, our *Annual Report* has referred to discovery, disclosure and the preliminary inquiry as matters which the Commission could not usefully pursue until (1) the Department of Justice reported upon its assessment of its various experimental discovery projects; (2) the Commission's own criminal procedure program was sufficiently advanced to permit the issues entailed to be resolved within the context of such larger concerns as classification of offences and the organization and jurisdiction of courts; and (3) some formal response was forthcoming from the Department of Justice with respect to the Commission's preliminary recommendations on pre-trial procedure expressed in Report 9, *Criminal Procedure: Part I — Miscellaneous Amendments*, submitted in February, 1978.

However, the exigencies of the Criminal Law Review have obliged the Commission to reconsider its position, in terms of when and how these matters might be most usefully addressed. We are therefore proceeding directly to the preparation of a Working Paper on the related subjects of discovery, disclosure and preliminary inquiries.

Trial Procedures

- *The Jury*: Within the year, the Commission completed its final Report on the jury, although translation and printing delays did not allow for tabling until after the close of the year under review. The recommendations in this Report were drafted for use as a comprehensive legislative enactment, the provisions of which we have urged be incorporated within the present structure of the *Criminal Code*.

The Commission's Vice-President, Réjean F. Paul, Q.C., is responsible for the Criminal Procedure Project.

□ Consultations in Criminal Law

The Commission conducts an extensive program of consultation which is essential to its research and reform work. This methodology is part of the statutory mandate of the Commission by virtue of section 15 of the *Law Reform Commission Act* which makes it mandatory for the Commission to consult. In particular, the Commission has established a systematic program of consultation in respect of the Criminal Law Review.

The varied groups consulted by the Commission may be divided into four categories: first, the Advisory Panel on Criminal Law, comprised at present of nine eminent jurists, all of them Justices of Appeal; second, the Government Consultation Group, composed of representatives of all Attorneys General and Ministers of Justice of Canada, both federal and provincial; third, the Defence Bar Group formed at present of five distinguished criminal lawyers designated by the Canadian Bar Association; and, fourth, the Special Groups. This latter category includes special interest groups such as the Canadian Association of Chiefs of Police, the Canadian Association of Law Teachers, medical doctors and nurses associations, churches, other specialized groups depending on the topics under study. The general public, as always, is cordially invited to respond to our Working Papers and other publications.

During the year under review, the Commission held twenty-six days of consultation in Criminal Law alone. The Advisory Panel Group met three times for a total of six days in Vancouver, Montréal and Montebello. The discussions covered such topics as principles of legality, search and seizure, custodial interrogation, euthanasia, corporate criminal liability, and vandalism. The members of the Advisory Panel Group are:

- Hon. Mr. Justice Angus Macdonald, Appeal Division, Supreme Court of Nova Scotia
- Hon. Mr. Justice Fred Kaufman, Court of Appeal of Québec
- Hon. Mr. Justice Claude Bisson, Court of Appeal of Québec
- Hon. Mr. Justice G. Arthur Martin, Court of Appeal, Supreme Court of Ontario
- Hon. Mr. Justice Charles L. Dubin, Court of Appeal, Supreme Court of Ontario
- Hon. Mr. Justice William Stevenson, Court of Appeal of Alberta
- Hon. Mr. Justice Calvin F. Tallis, Court of Appeal for Saskatchewan
- Hon. Mr. Justice William A. Craig, Court of Appeal of British Columbia
- Hon. Mr. Justice Alan B. Macfarlane, Court of Appeal of British Columbia

On the Crown side, the Government Consultation Group convened five times for a total of fifteen days. The agenda was much the same as that for the Advisory Panel but with notable additions, such as classification of offences, electronic surveillance, and pre-trial identification procedures.

The consultation program with the Defence Bar Group began during the year covered by this Report. One two-day meeting

was held in Ottawa to discuss the draft on euthanasia, aiding suicide and cessation of treatment, and also criminal liability and defences. The five members of this group are Messrs. Joel E. Pink, of Halifax; Serge Ménard, of Montréal; Edward L. Greenspan, Q.C., of Toronto; G. Greg Brodsky, Q.C., of Winnipeg; and Donald J. Sorochan, of Vancouver. All of them donate their time to the Commission as a public service and the Commission assumes the travel and living expenses occasioned by the consultations.

Among the special groups, a one-day consultation took place in April with officers of the R.C.M.P.'s Drug and Commercial Crime Investigation Division in connection with our work on search and seizure. In May, the Commission also held a two-day consultation with the Criminal Law Section of the Canadian Association of Law Teachers, taking advantage of their annual meeting then taking place in Ottawa.

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Protection of Life Project

□ Transition and Goals

During the year under review, intensive research, writing and consultation began on the second phase of this project, namely that of environmental health law. The previous and first phase has involved a number of medico-legal issues and papers focused on the legal and ethical rights and responsibilities involved in individual acts of medical treatment. The two remaining Working Papers of that phase, *Euthanasia, Aiding Suicide and Cessation of Treatment*, and *Behaviour Alteration and Criminal Law*, were both close to completion at the end of the year.

As indicated in the previous *Annual Report*, the second phase continues to focus on human health and the quality of life, but now more widely by examining the urgent problem of the legal response to pollution in three areas — the environment, the workplace and consumer products.

The particular targets for potential law reform proposals are both the *Criminal Code* and federal environmental statutes. Whereas much of the present legal response to pollution is by means of administrative or regulatory law, the legal response of particular interest in the context of this project is that of criminal law.

A number of specific questions, goals and problems have thus far served as the challenges and reference points for this project's research, consultation and papers. First of all there is the need to identify more clearly and classify pollution-related offences. Are they, at least when serious harm or risk is created, "real crimes", that is crimes which should be prohibited and sanctioned in the *Criminal Code*? Are some pollution offences best classified as strict liability offences and therefore the subject of environmental, occupational or consumer product statutes? Should a clearer line be established between pollution activity which is essentially a regulatory violation and that which is criminal? Implicit in these questions is the need to challenge and re-examine a certain amount of conventional wisdom which claims that criminal law, courts and criminal sanctions may not be particularly useful in promoting deterrence and compliance.

A second and related concern focuses on the interface between medical and scientific evidence on the one hand and legal evidence on the other. The traditional legal interest in protecting life, health and property is what justifies and urges the refining and re-shaping of legal tools to respond to new and growing pollution dangers. But how certain and reliable is the evidence that certain substances and activities are harmful? Given that much of the

pollution threat is in the form of risk and even future risk rather than hard evidence of present harm to health and property, can the legal, and particularly, the criminal-law response be further refined to respond to instances of serious risk, even to future generations? What burden of proof should suffice, and should the onus of proof continue to be on the prosecution to prove harm, or (in some serious cases of corporate pollution) should the burden shift to the accused to prove that what was done was indeed safe?

A third concern has to do with the large gaps in empirical data needed in order to make accurate evaluations of competing legal mechanisms or sanctions, and to formulate practical reform proposals. Among the indispensable questions being addressed by project researchers to environmental agencies, individuals and interest groups are:

1. What are the present agency enforcement policies and practices?
2. What are the discretionary considerations in decisions to prosecute or not?
3. How effective are present enforcement practices and sanctions as regards deterrence of environmental offenders and compliance with environmental protection laws?
4. What legal reforms in substantive or procedural criminal law do the various parties consider essential?

A fourth concern centres on jurisdictional and constitutional aspects of environmental law. The perception in many quarters is that present jurisdictional divisions and responsibilities for protection from pollution do not adequately protect the public from pollution sources and substances. Many argue that there is too much overlapping or duplication of responsibility between central government agencies and provincial government agencies, or too little cohesion between the responsibilities and practices of the various federal agencies responsible for environmental protection, or both. Some attention to this jurisdictional framework for the legal response to pollution is inescapable in such a project as this. As well, given the new *Constitution Act, 1982* and the *Canadian Charter of Rights and Freedoms*, it is a propitious moment to identify and propose more creative and effective legal responses to pollution imposed or permitted by this recent constitutional development.

Considering the nature of environmental health law and the sorts of goals and concerns just indicated, research staff and consultants include specialists of various disciplines other than law. Considerable attention is being directed not just to the strictly legal aspects of pollution activity, but also to the wider political, economic, ethical and health contexts. To explore these issues in a strictly legal context closed to these wider perspectives would be to risk law reform proposals which would be unrealistic and utopian.

□ Papers in Progress

During the year under review the project was engaged in various stages of planning, researching and preparing ten papers. Their subjects are:

1. Pollution as crime — the use of the *Criminal Code* and courts for environmental law enforcement;
2. Environmental agency enforcement policies and practices;

3. The comparative law perspective — how other jurisdictions and countries use criminal law in the environmental context;
4. Analysis and evaluation of selected environmental statutes — the legislative intent, the jurisdictional and constitutional framework;
5. Consumer product pollution — UFFI (Urea Formaldehyde Foam Insulation) and pesticides;
6. Pollution in the workplace;
7. The ethical perspective — risk, and risk assessment;
8. The political and economic perspectives — cost-benefit considerations in formulating the legal response;
9. The public health perspective — determining health hazards and the use of scientific and medical evidence in the legal context;
10. The legal implications of new genetic products.

□ Consultations

Both in the planning stage of this second phase and since its inception, contact has been established for consultation purposes with a very large and growing number of individuals, groups and agencies with expertise, interest or responsibilities in pollution-related matters. A small sample of those with whom contact has been established includes the following:

- Agriculture Canada, Pesticides Division
- American Occupational Medical Association
- American Public Health Association
- British Columbia Medical Association, Environmental Health Committee
- Canadian Bar Association, Environmental Section
- Canadian Coalition for Nuclear Responsibility
- Canadian Environmental Advisory Council
- Canadian Environmental Law Research Foundation
- Canadian Institute of Resources Law
- Canadian Labour Congress
- Canadian Occupational Health and Safety Centre
- Canadian Public Health Association
- Consumer and Corporate Affairs, Consumer Products Branch
- Consumers Associations of Canada
- Council of Europe, Environment and National Resources Division
- Criminal Law Divisions of the Ministries or Departments of Justice or the Attorney General
- Environment Canada, Environmental Protection Service
- Environment Ministries or Departments of the various provinces
- Environment Council of Alberta
- Environmental Law Centre of Alberta
- Fisheries and Oceans (Canada), National Enforcement Branch
- Health Advocacy Unit, City of Toronto

- International Bar Association, Standing Committee on Environmental Law
- Labour Canada, Occupational Health and Safety Branch
- Medical Research Council of Canada
- Ministry of State, Science and Technology (Canada)
- National Council of Women of Canada
- Saskatchewan Environmental Society
- Science Council of Canada
- Society for the Promotion of Environmental Conservation
- The Public Interest Advocacy Centre
- Transport Canada, Transportation of Dangerous Goods Branch
- Unit for the Study of Health Policy (London, England)
- United Steel Workers of America
- West Coast Environmental Law Association
- World Health Organization (Geneva)
- Workplace Cancer Research

□ Conferences

During the year under review, the project Commissioner, project co-ordinator and project researchers attended a number of conferences and meetings relevant to project issues and papers. Among them were the following:

- Canadian Medical Association Annual Meeting, Halifax, N.S., August 26, 1981;
- Annual Meeting of the Affiliate Societies of the Canadian Medical Association, Toronto, September 15, 1981;
- Royal College of Physicians and Surgeons of Canada, Annual Meeting, Toronto, September 17, 1981;
- Colloque international de droit civil comparé, Montréal, October 3, 1981;
- Science and the Citizen — Interpreting Scientific Information, Toronto, October 7, 1981;
- Royal College of Physicians and Surgeons of Canada, Bioethics Committee, October 16, 1981;
- Colloque sur la stérilisation non-thérapeutique des déficients et malades mentaux, Montréal, November 13-14, 1981;
- Nuclear Power: A Guide for the Lay person, Toronto, November 21, 1981;
- Environmental Law in the 1980's: A New Beginning, Banff, Alberta, November 27-29, 1981;
- Colloque sur le recours collectif, McGill University, Montréal, March 6, 1982;
- Boardrooms, Backrooms and Backgrounds — A Seminar on the Formulation of Environmental Regulations, Toronto, March 30, 1982;

- Meeting of the Canadian Association of Administrators of Labour Legislation, Hull, Québec, March 31, 1982;
- International Bar Association, Mining and Environmental Law, Washington, D.C., April 3-8, 1982;
- Formaldehyde – the Facts — A Seminar on the Health and Regulatory Aspects of Formaldehyde, Toronto, May 3-4, 1982;
- World Symposium on Asbestos, Montréal, May 25-27, 1982.

Louise Lemelin is the Commissioner responsible for the Protection of Life Project.

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Administrative Law Project

This year, throughout the western world, one could sense a fervour for administrative law reform. The intensity of activity surrounding regulatory reform, and the calls for deregulation, continued to grow. In Canada, administrative agencies are becoming increasingly aware of a need for visible procedural fairness and of the public's role in their operations; witness the numerous drafts of procedural regulations that agencies have circulated for discussion. South of the border, the American Bar Association has put forward a new *Model State Administrative Procedure Act*. Australia has put into place a new system for judicial review of administrative action, the last in a series of reforms started seven years ago. In the United Kingdom, the publication of the *Justice* group's discussion paper on administrative law marked the culmination of a year in which there were many new developments. In short, administrative law in the western world is boiling with activity.

Given this profusion of activities, the Commission has found it necessary to observe, digest and analyze a mass of information and comments received from all quarters.

□ Conferences

We continued our practice of participating in conferences of administrative law specialists. These conferences reflect the special attention paid by Canadian society to the problems of regulatory reform. This year, we attended the following meetings:

- Annual meeting of the Canadian Association of Law Teachers in Halifax, Nova Scotia, June 1 and 2, 1981.
- Economic Council of Canada, Conferences on Regulatory Reform, in Toronto (Ontario) on June 25, 1981; in Montréal (Québec) on June 29, 1981; and in Vancouver (British Columbia) on September 30, 1981.
- Annual Meeting of Administrative Law Section of the Canadian Bar Association, in Vancouver (British Columbia), August 31-September 3, 1981.
- Part Two of the Anglo-Canadian Comparative Administrative Law Seminar, in Ste-Foy (Québec), September 8-11, 1981.
- Conferences on Human Rights and Administrative Law, organized by the Canadian Human Rights Foundation,

in Vancouver (British Columbia) on October 16, 1981; in Fredericton (New Brunswick) on November 13, 1981; and in London (Ontario) on November 27, 1981.

- Law Society of Upper Canada's programme on Administrative Tribunal Advocacy, in Toronto (Ontario) on October 31, 1981.
- Quatrième colloque de droit administratif de la Faculté de droit de l'Université Laval sur la réforme de la réglementation, in Ste-Foy (Québec), November 13-14, 1981.
- Corpus Seminar on Lobbying, in Ottawa (Ontario), November 19-20, 1981.
- Canadian Institute of Resources Law, Environmental Law Symposium, in Banff (Alberta), November 27-29, 1981.
- Canadian Bar Association Seminar: "Immigration — New Developments", in Toronto (Ontario) on May 1, 1982.
- Conference on Impact of Regulatory Reform in Canada and U.S.A., in Toronto (Ontario), May 20-21, 1982.

□ Consultations

Consultation is essential to our research. In Canada, we have maintained contact with government employees and agencies, and with the academic world. As for our relationships abroad, the President was able, while in Australia in April, to view at close hand the operation of the system of administrative law recently introduced there; this will be helpful to us in assessing which aspects of that system, if any, may be adaptable to the Canadian situation. In New Zealand, the President obtained valuable insights for us on the Administrative Division of the High Court. We should also mention here the visit to our offices in Ottawa of Mr. D. G. T. Williams, President of Wolfson College, Cambridge, England, and of Professor Patrick Shultz from Université de Lille III, in France, as well as our valuable exchanges with the Administrative Review Council of Australia and the *Justice* group in the United Kingdom.

We met on three occasions with a committee of the Study Group on Administrative Tribunals for the purpose of obtaining reactions to our Working Paper 25, *Independent Administrative Agencies*. These meetings proved to be very fruitful and showed, once again, that members of agencies can be very receptive to reform proposals having a positive and practical effect on their operations. Unfortunately, no meeting of the Study Group itself took place during the year. Exchanges of ideas and practical experiences during discussions of the Study Group are an invaluable source of information for us. In our experience, participating agencies also have benefited from sharing information and ideas on issues of common interest. In our view, it would be highly desirable for the Group to meet more often, perhaps four to six times a year, as was the case in past years.

□ Work in Progress

Independent Administrative Agencies

Toward the end of the year work was begun on a Report to Parliament proposing a framework for reform affecting administrative agencies and taking a second look at some of the issues raised in Working Paper 25. This Report will deal principally with administrative agencies and their relations with Parliament, the executive, the public and the courts.

Administrative Procedure

In the course of our past work in this area, substantial progress was made toward the preparation of a comprehensive check-list of the powers and procedures of quasi-judicial agencies. This major effort has helped us come to grips with the complexity of the problems involved in developing a common legislative framework for administrative decision-making. During the past year our consultants continued to study various proposals for the development of such a framework. We expect to be in a position to publish the results of this research in the coming year.

Achieving Compliance in Administrative Law

Our research on sanctions now falls under the above heading because we have been persuaded by several of the comments we have received that emphasis must be placed on compliance rather than on sanctions. The word "sanction" suggests an element of coercion, ignoring methods of implementing administrative policies which are, or appear to be, voluntary.

In early summer of 1981, we circulated a discussion paper on compliance. It provoked numerous responses, for the most part favourable. A one-day meeting in November 1981 brought together some twenty specialists in the field. Their contributions revealed certain weaknesses in our preparatory work and we benefited from their excellent suggestions. We record our thanks to them and to those who sent us their comments in writing.

It has been a great surprise to us to discover how little research, published or unpublished, has been done hitherto in the area of compliance. However, our contacts with departments and agencies have shown us that they are concerned about these matters. Their experiences have provided us with considerable insight into the subject.

Throughout the year, researchers working on this project studied the operations of the environmental protection services of the Department of the Environment as well as those of the C.R.T.C. The research on these two subjects is now complete and the resultant documents are being prepared. These two case studies have revealed inherent problems in achieving compliance in two agencies quite different in nature and will assist us in preparing a general paper on compliance.

Study Papers

At the end of the year under review, two Study Papers were in the production stage for printing. One is an examination of the *Tariff Board*, the last in our series of studies on independent administrative agencies. The other is a study of the relationship between legislative power and administrative agencies; it will be published under the title *Parliament and Administrative Agencies*.

The President was the Commissioner in charge of the Administrative Law Project during most of the year. At the end of the period, Commissioner Alan D. Reid, recently appointed, became the Commissioner responsible for Administrative Law.

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Other Work of the Commission

□ Drafting Laws in French

One of the tasks of the Law Reform Commission is to propose to Parliament legislative texts in the two official languages. It has already done so in several of its Reports on criminal law and administrative law.

Certain members of the Commission have noted, as have many others in this regard, the difficulty of formulating legal provisions in the two languages without betraying the thought, the culture and the linguistic reflexes of one of them.

Some five years ago, it appeared useful to undertake a project with a dual objective in mind. The first would be to demonstrate in concrete fashion the possibility of obtaining in federal legislation a French version which would reflect the spirit of that language, without at the same time modifying the substance of the law. The second would be to verify an hypothesis according to which, in many respects, the English version would also be rendered more intelligible and more accessible to the public without betraying the spirit of that language.

The result of this project was the publication of *La rédaction française des lois* (*Drafting Laws in French*) a Study Paper which we saw fit to publish in English as well. Using two existing federal statutes of older vintage, the authors of the study have proposed a new way of expressing the same statutes which will respect the spirit of the French language and culture. It turned out that many of the proposals, if adopted, would equally bring about many an improvement to legislative drafting in the English language.

□ 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 this regard, grateful acknowledgment must be proffered to the Australian Law Reform Commission through its dynamic Chairman, Mr. Justice Michael Kirby, who helped plan and organize an eight-day information-gathering visit of Australia by the President. Talks with law reform commissioners at both the federal and state levels, representatives of the judiciary, the government and the academic world provided this Commission with valuable factual information and a comparative basis for our work, in criminal law, protection of life and administrative law.

Much information of value to the furtherance of the Commission's projects was provided to us during the President's all-too-brief visit to New Zealand. Members of the New Zealand Court of Appeal, the Bar, the Department of Justice and the faculties of law were consulted and were invariably helpful and hospitable.

We gratefully acknowledge the help and hospitality accorded the President on those visits to Australia and New Zealand by Mr. R. C. Anderson, Canadian High Commissioner to Australia and by Mr. Roger Rousseau, Canadian High Commissioner to New Zealand, and their respective officials.

The President also attended a meeting of representatives of provincial law reform organizations, held the day before the opening plenary session of the Uniform Law Conference of Canada in Whitehorse, Yukon Territory, in August, 1981.

During the year, the Government of Canada appointed the President and Vice-President to be members of the federal delegation to the Uniform Law Conference of Canada. The Commission was pleased to be able to participate officially in this important meeting of the various jurisdictions of our country in light of the interest in law reform which is evident among these representatives of the two major levels of government.

At the invitation of the Deputy Minister of Justice and the Deputy Solicitor General of Canada, the Commissioners may attend all, and have found time to attend several meetings of the Joint (departmental) Criminal Justice Committee which meets time and again in Ottawa. This Joint Criminal Justice Committee provides one helpful means of keeping the Commission informed of the many criminal justice projects of both departments of the government. We also have the opportunity of discussing the subject matter of some of the Commission's forthcoming Reports with officials of the Department of Justice in informal meetings. The Commission invariably invites response to its tentative proposals from senior law officers of the department, as well as their participation in most of those of our group consultations which take place in Ottawa.

Senior officers of both the above-mentioned departments are, of course, included in our government group consultations on the criminal law.

□ 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 various regions and from other countries. During the year under

review, we were honoured to receive the following persons (listed in chronological sequence) at the Commission:

- Sir Darnley Alexander, C.F.R.
  Chairman
  Nigerian Law Reform Commission
- Mrs. T. M. Osindera
  Commissioner
  Nigerian Law Reform Commission
- Professor R. O. Ekundare
  Commissioner
  Nigerian Law Reform Commission
- Dr. E. E. J. Okereke
  Commissioner
  Nigerian Law Reform Commission
- Mr. P. O. Okoli
  First Secretary
  Nigerian High Commission, Ottawa
- Mr. T. N. Nnadi
  Secretary/Director
  Nigerian Law Reform Commission
- Dr. S. N. C. Obi
  Commissioner
  Nigerian Law Reform Commission
- Mr. Joseph Aisa
  Chairman
  Law Reform Commission of Papua New Guinea
- Mr. Marc Labelle
  Lawyer, Québec Bar
- Ms. Joanne Doucet
  Lawyer, Québec Bar
- Ms. Suzanne Verrault
  University of Montréal
- Mr. Joseph La Leggia
  Lawyer, Québec Bar
- Mr. Jacques J. M. Shore
  Ministry of the Solicitor General
- Hon. Mervin Giffin
  Attorney General for South Australia
- Mr. Rod Trowbridge
  Press Secretary
  to the Attorney General
  of South Australia
- Mr. Jeff Walsh
  Premiers Adviser on Inter-Government Relations
  Premiers Department
  of South Australia
- Han Tien Pan
  Research Fellow
  Institute of Law
  Chinese Academy of Social Sciences
  Peking
- Mr. Q. J. Thomas
  Assistant Secretary
  Home Office
  London, England
- Ms. Vicky Barnett
  Reporter
  Calgary Herald
- Mr. Patrick Shultz
  Assistant Professor (Public Law)
  University of Lille III, France
- Mr. D. G. T. Williams
  President
  Wolfson College
  Cambridge University
  England
- Mrs. Edna Chambers
  Barrister and Solicitor
  Dalhousie Legal Aid Service
  Halifax
- Professor J. C. Smith
  Head
  Faculty of Law
  Nottingham, England

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Appreciation and Acknowledgments

The Commission greatly prizes the co-operation 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 relies on for advice: the Canadian Bar Association and its various sections; the Canadian Association of Chiefs of Police and, in particular, its Law Amendment Committee; the Canadian Nurses Association; the Canadian Hospital Association; the Canadian Medical Association; various members of the Solicitor General's Department as well as of the Departments of Justice, both federal and provincial.

APPENDIX A

REPORTS OF THE LAW REFORM COMMISSION OF CANADA

Subject	*Date transmitted to Minister of Justice*
1. Evidence	December 19, 1975
2. Guidelines — Dispositions and Sentences 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. The 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
10. Sexual Offences	November 29, 1978
11. The Cheque	March 8, 1979
12. Theft and Fraud	March 16, 1979
13. Advisory and Investigatory Commissions	April 18, 1980
14. Judicial Review and the Federal Court	April 25, 1980
15. Criteria for the Determination of Death	April 8, 1981

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. 56, 17 O.R. (2d) 1 (C.A.)
- *R.* v. *Simpson* (1977), 77 D.L.R. (3d) 507, 35 C.C.C. (2d) 337, 16 O.R. (2d) 129 (C.A.)
- *R.* v. *Avadluk* (1979), 24 A.R. 530 (N.W.T.S.C.)

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, 17 O.R. (2d) 65 (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, 11 O.R. (2d) 28 (Co. Ct.)
- *Turcotte* c. *Gagnon*, [1974] R.P.Q. 309
- *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] 2 S.C.R. 940, [1978] 3 W.W.R. 693, 2 C.R. (3d) 107
- *R.* v. *MacLean* (1979), 32 N.S.R. (2d) 650, 54 A.P.R. 650, 49 C.C.C. (2d) 552 (C.A.)
- *R.* v. *Irwin* (1979), 16 A.R. 566, 48 C.C.C. (2d) 423, 10 C.R. (3d) S-33 (C.A.)

Limits of Criminal Law

- *R.* v. *Southland*, [1978] 6 W.W.R. 166 (Man. Prov. Ct.)
- *R.* v. *Chiasson*, (1982), 39 N.B.R. (2d) 631 (N.B.C.A.)

Strict Liability

- *Hilton Canada Ltd.* v. *Gaboury (juge) et al.*, [1977] C.A. 108 (Qué.)
- *R.* v. *Sault Ste-Marie*, [1978] 2 S.C.R. 1299, 3 C.R. (3d) 30, 21 N.R. 295
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- *R.* v. *Gonder* (1981), 62 C.C.C. (2d) 326 (Yukon Terr. Ct.)

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- *R.* c. *Cie John Kuyper et fils Canada ltée*, [1980] C.S.P. 1049 (Qué.)

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- *R.* v. *Cyrenne, Cyrenne and Cramb* (1981), 62 C.C.C. (2d) 238 (Ont. Dist. Ct.)

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- *R.* v. *Mastroianni* (1976), 36 C.C.C. (2d) 97 (Ont. Prov. Ct.)
- *Magna* v. *The Queen* (1978), 40 C.R.N.S. 1, (Qué. C.S.), [1977] C.S. 138 (Qué.)
- *R.* v. *Barnes* (1979), 49 C.C.C. (2d) 334, 12 C.R. (3d) 180, 74 A.P. 277 (Nfld. Dist. Ct.)

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- *R.* v. *Stewart* (1981), 33 O.R. (2d) 1, 125 D.L.R. (3d) 576, 60 C.C.C. (2d) 407 (C.A.)
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FAMILY LAW

- *Re Dadswell* (1977), 27 R.F.L. 214 (Ont. Prov. Ct.)
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- *Reid* v. *Reid* (1977), 67 D.L.R. (3d) 46, 25 R.F.L. 209, 11 O.R. (2d) 622 (Div. Ct.)
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ADMINISTRATIVE LAW

Independent Administrative Agencies

- *Attorney-General of Canada* v. *Inuit Tapirisat of Canada et al.*, [1980] 2 S.C.R. 735, 115 D.L.R. (3d) 1, 33 N.R. 304.

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- *Re James Richardson & Sons Ltd. and Minister of National Revenue*, [1981] 2 W.W.R. 357, 117 D.L.R. (3d) 557 (Man. Q.B.)

OTHER

Statutes — Discretionary Powers

- *R.* v. *Vandenbussche* (1979), 50 C.C.C. (2d) 15 (Ont. Dist. Ct.)

Attachment of Remuneration

- *Martin* v. *Martin* (1981), 33 O.R. (2d) 164, 123 D.L.R. (3d) 718, 24 R.F.L. (2d) 211 (H. Ct.)

Contempt of Court

- *Protection de la jeunesse – 5*, [1980] T.J. 2033 (Qué.)

The Police

- *Attorney-General of Alberta et al.* v. *Putnam et al.*, [1981] 2 S.C.R. 267, [1981] 6 W.W.R. 217, 28 A.R. 387, 123 D.L.R. (3d) 257, 62 C.C.C. (2d) 51 (S.C.C.)

APPENDIX C

PUBLICATIONS ISSUED DURING FY 1981-1982

STUDY PAPERS

Criminal Law — The Issuance of Search Warrants

Drafting Laws in French

GENERAL

10th Annual Report 1980-1981

APPENDIX D

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