Law Reform Commission of Canada

Commission de réforme du droit du Canada

12th annual report

1982-1983

Canada

LAW REFORM COMMISSION
OF CANADA

TWELFTH ANNUAL REPORT
1982-1983

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PRESIDENT
LAW REFORM
COMMISSION

Ottawa
July, 1983

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 Twelfth Annual Report of the Law Reform Commission of Canada for the period June 1, 1982 to May 31, 1983.

Yours respectfully,

F. C. Muldoon

Francis C. Muldoon, Q.C.

This is the Twelfth Annual Report of the Law Reform Commission of Canada. This Report describes the Commission's activities during the period from June 1, 1982 to May 31, 1983.

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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 at full strength for the first time in thirty-four months with a complement of five Commissioners: Mr. Francis C. Muldoon, Q.C., of the Manitoba Bar, President; Mr. Réjean F. Paul, Q.C., of the Québec Bar, Vice-President; Ms. Louise Lemelin, of the Québec Bar, Commissioner; Mr. Alan D. Reid, of the New Brunswick Bar, Commissioner; and Mr. Joseph Maingot, Q.C., of the Ontario Bar, Commissioner.

Mr. Jean Côté, of the Québec Bar, is Secretary of the Commission. Brigadier General (Retired) 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.

The Commission's program of activities is divided into four major segments: substantive criminal law, criminal procedure, protection of life and administrative law. In addition, the Commission prepares from time to time discrete Reports on small but significant anomalies found in statutes, as part of its constant pursuit of the modernization of statutes. Upon the decision and direction of the Commissioners, the research work and the formulation of proposals for reform in each of these areas are first carried out by a Project group, responsible to a Commissioner. When this initial work is completed, the Commissioners study and discuss draft Working Papers until they reach a consensus or majority position. An identical process applies to the preparation of Reports to Parliament.

Wherever appropriate, the Commission is required to make use of technical and other information, as well as 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 is not then sitting, within fifteen days after Parliament resumes sitting.

□ Operations

Meetings

The Commission held twenty-eight 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 over the years is found in Appendix A to this Report. Three Reports were tabled during the year under review. They are discussed in Chapter 2. Because the Commission'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.

Research Projects

Almost all of the Commission's research endeavours fall within three major categories: Criminal Law, Protection of Life and Administrative Law. The scope of work in Criminal Law is such that it is best handled as two projects with the Commission, i.e., Substantive Criminal Law and Criminal Procedure. The Commission also performs work in the field of Modernization of Statutes but, as this tends to be sporadic, it is not treated as a separate project for planning purposes. The four continuing projects are described below.

Criminal Law (Substantive) Project: This project covers the substance of criminal law, i.e., the rules on definitions of offences and the rules on liability, jurisdiction, defences, participation and inchoate crimes. This project is analysed in Chapter 4.

Criminal law (Procedure) Project: This project encompasses common law and statutory procedures, prerogatives and powers provided for the investigation, prosecution, trial, sentencing and appeal in criminal offences. It specifies the means by which proscriptions are enforced and punishments imposed. For a detailed analysis of this project, see Chapter 4.

Protection of Life Project: The main focus of this project is upon the subject of environmental pollution. However, the Commission is now completing its work in the field of medico-legal matters. The role of criminal law in protecting the environment and health is of particular concern. Chapter 5 examines the activities of this project in detail.

Administrative Law Project: This project is examining several aspects of the federal administrative process, including the role of administrative sanctions, procedures before administrative tribunals and the special position of the Crown. This project is discussed at length in Chapter 6.

Consultations

In accordance with section 15 of the *Law Reform Commission Act*, which directs the Commission to engage in consultation, a detailed program of systematic consultation is being conducted for all aspects of the Commission's work, with the emphasis on Criminal Law, Criminal Procedure and Protection of

Life. Four different groups of persons make up the consultation program: (1) the Advisory Panel of Eminent Jurists, comprised of eight judges of Superior and Appeal Courts. This group meets, as required, on issues papers and draft Working Papers; (2) the Government Consultation Group, comprised of delegates from Attorneys General, both at the federal and provincial levels. This group meets at the issue identification stage, and at the draft Working Paper Stage; (3) the Canadian Bar Association Group, comprised of representatives of the Defence Bar from across the country. This group meets at the draft Working Paper Stage; (4) Special Interest Groups, where necessary, with regard to particular subject-matter. These groups range from the law teachers' associations, police associations and medical associations to churches and human rights associations, and they are consulted after the release of Working Papers.

In addition, the Commission invites, as usual, the public at large to make its views known, in writing, on the basis of tentative proposals presented in Working Papers.

The scope of the consultation program is discussed in relation to the various research activities, in the individual chapters dealing with research.

Publications

Nine publications were issued during fiscal year 1982-1983, which ended on March 31, 1983. They are listed in Appendix C to this Report.

Nearly 138,000 copies of various publications were distributed to interested members of the legal profession and the public at large during the period under review. The program of information services is described in Chapter 7 — Other Work of the Commission.

Personnel

During the year under review, ending May 31, 1983, the personnel strength of the Commission varied according to seasonal and functional factors. There were ninety consultants of all categories, including eighty-one 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, eighteen 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 the 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.

Official Languages Policies

"The Law Reform Commission had no trouble maintaining a high standard of official languages performance in 1982", found the

Commissioner of Official Languages in his annual report for 1982. For the Commission, this is not a new phenomenon. Ever since 1979, when the Commissioner of Official Languages began his audits, his rating has confirmed this Commission's well-established record of adherence to both the spirit and the letter of the policies derived from the *Official Languages Act*. In 1979, he said that our "overall performance . . . is excellent", adding, in 1980, that the Commission "continues to be one of the best institutions this office has audited to date and rates high . . .", and granting the Commission, in 1981, "top marks".

As we stated last year, this success depends, in our view, on three factors. The first is 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. The second is 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. The third factor is 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.

Again last year, no complaints of non-compliance with the official languages policy were received by the Commission nor the Commissioner of Official Languages during that period.

Service to the Public: The Commission continued to apply its long-standing policy that the whole of Canada is one huge bilingual district. Therefore, "any demand from anywhere in Canada is a significant demand". Foreigners may also choose to communicate with the Commission in the official language of their choice.

Language of Work: The picture remains unchanged from the previous report. Employees work, more and more, in the language of their choice as they are, indeed very strongly, encouraged to do so. This includes, but to a lesser degree we must admit, oral communication at meetings.

During the period, one employee received language training in French. One new English-speaking Commissioner was provided with private tutoring in French. The French-speaking Commissioner, who commenced studying English the previous year, completed her training in three months.

Full Participation: The steady progression which began three years ago has continued. Where the Commission's action plan (1979) called for a ratio of one francophone research officer out of four, the balance has improved again from last year (33 1/3 per cent of French mother tongue to 66 2/3 per cent English) to 40 per cent French and 60 per cent English. (All research officers are under contract.) With regard to administrative and technical support staff (public servants), gains have again been made this year. Where our action plan stated "one anglophone out of three employees", the improved level of last year (37 per cent of English mother tongue to 63 per cent French) reached a still better balance in 1982: 40 per cent English and 60 per cent French. As for the five Commissioners, appointed by the Governor in Council, three of them are anglophones and two francophones.

At December 31, 1982, overall, the total personnel of seventy-eight, showed an even balance of 50 per cent anglophones and 50 per cent francophones.

Linguistic Quality: The Commission makes a special effort to ensure the highest quality for all its publications in both English and French. Each version is separately approved by the Commission as to both 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 Commission's operations during the fiscal year April 1, 1982 to March 31, 1983, cost $3.89 million. Expenditures on the research program, including translation costs and remuneration to Commissioners, amounted to $1.79 million. The information activity cost $394,000, the larger part of which was for Commission publications. Expenditures on administration totalled $1.71 million.

□ 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 receptiveness of the general public to law reform.

The First Session of the Thirty-Second Parliament has continued since the last federal election in 1980. Consequently, most of the Bills referred to in our *Ninth, Tenth and Eleventh Annual Reports* are still before the House. However, two Bills were passed by Parliament and came into force during the year under review. They are discussed below. Three new Bills incorporating Law Reform Commission recommendations have been identified. Last year, we reported that Bill C-61, an *Act respecting young offenders and to repeal the Juvenile Delinquents Act*, was passed by the House of Commons on May 17, 1982. This Bill, which incorporates some of the Commission's recommendations set out in Report 2: *Guidelines — Dispositions and Sentences in the Criminal Process*, has not been proclaimed in force as yet. For a comparative analysis of Bill C-61 and the Commission's recommendations, we refer the reader to our *Eleventh Annual Report*.

Bill C-127, *An Act to amend the Criminal Code in relation to sexual offences and other offences against the person* . . . was introduced by the Minister of Justice and passed by the House of Commons on August 4, 1982. The amendments were proclaimed in force on January 4, 1983. This Bill contained several clauses previously introduced by the Minister of Justice on January 12, 1981 in Bill C-53, referred to in our *Tenth Annual Report*. Several of the Commission's recommendations have been enacted through Bill C-127. Solicitation of another person by persons of either sex, as recommended in Report 10: *Sexual Offences*, has now become a criminal offence. The new

Criminal Code's section 246.4 abrogates the rule requiring corroboration in relation to sexual offences. The Commission, in paragraph 88(b) of the *Evidence Code* set out in Report 1: *Evidence*, would have abrogated this rule in relation to any offence. Another concern of the Commission, expressed in subsection 17(2) of its *Evidence Code* has now found force of law in the new section 246.6(3) of the *Criminal Code*. This provision sets out the necessity of an *in camera* hearing, in relation to the character of a victim of a sexual offence, prior to the admission of such evidence.

Bill C-38, the *Garnishment, Attachment and Pension Diversion Act* was passed by the House of Commons on June 18, 1982, and Part I was proclaimed in force on March 11, 1983. This Bill, referred to in our *Tenth Annual Report*, was passed virtually unchanged from the proposal introduced by the Minister of Justice on June 27, 1980. The new Act provides, in section 5, that salaries and other remuneration payable on behalf of the Crown will be subject to provincial garnishment laws. This provision enacts the main recommendation made by the Commission in its Report 8: *The Exigibility to Attachment of Remuneration Payable by the Crown in Right of Canada.*

Bill C-43, which enacted the *Access to Information Act* and the *Privacy Act*, was passed by the House of Commons on June 28, 1982, but had not been proclaimed by the end of the year under review in this Report. In our *Tenth Annual Report*, reference was made to an earlier draft of this Bill, as it was introduced on July 17, 1980. Several substantial changes to the original draft occurred. While the *Access to Information Act* no longer applies to cabinet documents, the original proposal, that the Federal Court be allowed to examine any material being withheld from disclosure, is retained in section 46. This provision is in harmony with the Commission's recommendation expressed in subsection 43(4) of the *Evidence Code* set out in Report 1: *Evidence*. The *Access to Information Act* is being proclaimed piecemeal, and section 46 is not yet in force.

Bill S-33, *An Act to give effect, for Canada, to the Uniform Evidence Act adopted by the Uniform Law Conference of Canada*, was introduced in the Senate by Senator Olson on November 18, 1982. The Commission's *Evidence Code*, set out in its Report 1: *Evidence*, was a precursor to the proposed *Uniform Evidence Act*, and clearly established the need for statutory expression of many common law rules of evidence beyond those now existing in the present *Canada Evidence Act*. Unlike the simplified code recommended by the Commission, the proposals of the Uniform Law Conference set out in great detail many particular rules of evidence, but reflect the basic concern of the Commission. This Bill is currently generating much controversy among the legal profession, as did the Commission's *Evidence Code*.

A Private Member has submitted a Bill which, in part, reflects a concern of the Commission. On April 21, 1983, Mr. Kilgour, member for Edmonton-Strathcona, introduced Bill C-682 which speaks directly to the issue of compensation for the victims of crime. One provision would amend the *Criminal Code* to allow the court to order a convicted person to pay compensation to victims of physical or mental injury caused by the guilty party. The Commission, in its Report 2: *Guidelines — Dispositions and Sentences in the Criminal Process*, encouraged restitution orders in respect of any injury suffered by the victim as a separate element of sentencing.

Another Private Member's Bill echoes the concern of the Commission about the introduction, at a trial, of character evidence relating to the victim of a sexual offence. Bill C-685, introduced by Mr. Robinson, member for Burnaby on May 27, 1983, would limit the type of character evidence admissible in such circumstances and would require an *in camera* hearing to determine its admissibility in any event. This would perhaps exceed the recommendation of the Commission, as set out in subsection 17(2) of the *Evidence Code* proposed in Report 1: *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. We have been able to trace some sixty-five reported court decisions which, until the end of the year under review, had made reference to, and in most instances adopted, the Commission's views in the last few years. Many of these decisions thus, in effect, impart to those Commission's recommendations virtually the same force of law, as if they had been enacted by Parliament.

Of particular interest is Mr. Justice Dickson's adoption, for the unanimous Supreme Court of Canada, of the proposal by the Commission to abrogate the common law rule requiring corroboration of an accomplice's evidence in *R.* v. *Vetrovec and Gaja*, [1982] 1 S.C.R. 811, 67 C.C.C. (2d) 1. Another noteworthy example is found in *Graat* v. *The Queen*, 31 C.R. (3d) 289, a unanimous decision of the Supreme Court of Canada. In stating that a lay witness who perceived an event may testify in the form of an opinion, if this more accurately expresses the facts he perceived, Mr. Justice Dickson, who delivered the judgment of the Court, reviewed the case law, as well as the texts and the recommendations of the Law Reform Commission. The principle expressed by the Court essentially adopts the recommendation of the Commission expressed in section 67 of the *Evidence Code* as proposed in Report 1: *Evidence*. The Supreme Court of Canada has thereby clarified and simplified the common-law rule of evidence relating to opinion evidence proffered by non-experts.

2

Reports to Parliament

During the year under review, three Reports were submitted to Parliament — Report 16: *The Jury*; Report 17: *Contempt of Court*; and Report 18: *Obtaining Reasons Before Applying for Judicial Scrutiny — Immigration Appeal Board*. A summary of the main recommendations contained in these Reports appears below.

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 virtually 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. However, the Commission is available to Parliament and the Government for any additional help they may require in further explaining its proposals and recommendations.

- Report 16: *The Jury*

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*.

Our Report affirms the vital role played by the jury: to the criminal justice system, the jury brings the wisdom and conscience of the community; to the community, the jury takes a better understanding of the principles and traditions by which guilt and innocence are determined in this country. As a measure of our respect for the jury as an institution, our recommendations were designed to ensure that the essence of the jury's character, prerogatives and integrity would be preserved intact.

Among the more significant of our recommendations was a proposal that the tradition of requiring that jury unanimity upon the verdict be prescribed in legislation. In sharp contrast to a growing number of other common law jurisdictions, we have, by implication, recommended against the introduction of majority verdicts in criminal trials.

For the rest, our recommendations were directed primarily at clarifying the respective prerogatives and duties of trial judge and jury in the conduct of a criminal trial; at rationalizing the procedures for jury selection and challenge; and at ensuring that the integrity of the jury's verdict and the privacy of its members are respected.

- Report 17: *Contempt of Court*

This Report aims to codify the present law on Contempt of Court and, while it strengthens

the right of the defendant through procedural changes in accordance with the *Canadian Charter of Rights and Freedoms*, it does not recommend any fundamental changes in the nature and structure of the offence. The Report strongly supports the salutary principle of *nulla poena sine lege*.

It defines, for legislative enactment, four offences known to common law:

(1) Disruption of judicial proceedings,
(2) Defiance of judicial authority,
(3) Affront to judicial authority, and
(4) Interference with judicial proceedings.

These definitions are intended for insertion in Part III of the present *Criminal Code*. The principles underlying the proposed reform are: that the rights of freedom of expression and freedom of information should be preserved; and, that only those forms of contempt which represent an intolerable threat to the integrity of the judicial process should be made criminal offences.

- Report 18: *Obtaining Reasons Before Applying for Judicial Scrutiny — Immigration Appeal Board*

This brief Report recommends a change in the law which would lead to the more equitable functioning of one segment of the federal administrative system. The change would enable a person who seeks in the Federal Court an appeal or the review of an adverse decision of the Immigration Appeal Board, to have access to the reasons of the Board *before* the time for filing the application in court expires. It could be implemented through minor statutory amendments.

The Report focuses on an anomalous situation in which persons affected by decisions of the Immigration Appeal Board find themselves. Although the law states that they are entitled to obtain reasons for these decisions upon request, they are generally required to decide whether or not to apply for appeal or review without having seen those reasons. There are two factors which contribute to this situation: First, the reasons are not usually transmitted until a considerable time after the decision has been handed down by the Board. Second, the period within which an appeal or review must commence is extremely short. It will usually have expired long before the applicant receives the reasons. In order to preserve access to appeal or review, the application is usually filed without the applicant's knowing whether or not further action is justified.

This situation appears to the Commission to be unfair, illogical and inefficient. The solution it recommends is to provide that the time allowed for commencing an appeal or review starts to run only when the reasons for the decision are communicated to the affected parties, if a request for the Board's reasons is made within the time presently prescribed for initiating such action. A person seeking an appeal or review would thus be entitled to examine the reasons before the time for court filing had expired.

The Commission believes that the implementation of this recommendation would lead to more fairness towards litigants, and would bring about economies of time, effort and cost in the administration of the law. Moreover, implementation would not add any burden whatever to the work of the Immigration Appeal Board.

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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, because the primary purposes of the Working Paper are to elicit comment and to provide a vehicle for consultation.

Two Working Papers were issued during the year under review. One is the result of work done by members of the Protection of Life Project and is comprised of three topics: *Euthanasia, Aiding Suicide and Cessation of Treatment*. The other is in the field of Substantive Criminal Law and is entitled *The General Part — Liability and Defences*. These Papers are discussed in Chapters 5 and 4 respectively.

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 second 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 previous *Annual Reports*, 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 those 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 now well under way and building a momentum of its own. Although it is still a huge and complex undertaking, generating many problems not fully foreseen at the planning stage, the Commission is now satisfied that the pace of its work in criminal law has quickened and is hopeful of meeting the ultimate target date of October 1, 1986 for its part of the work in the Criminal Law Review.

□ Substantive Criminal Law

The Substantive Criminal Law Project's work consists in research of the law and formulation of proposals for reform, if warranted, of the substantive provisions of the *Criminal Code* and related statutes. This work forms part of Phase I of the Comprehensive and Accelerated Review of Criminal Law. Thus, it is concerned with the definition of offences, the liability of persons for offences and the defences available to accused persons in respect of them.

The object of the Project is to contribute to the drafting of substantive provisions for a new *Criminal Code* which will be clear, concise and in accordance with the principles of fundamental justice.

The President of the Commission, Mr. Francis C. Muldoon, Q.C., is the Commissioner responsible for the substantive law aspect of the Criminal Law Project. Mr. James Simpson has been acting Project coordinator during most of the year.

Work Completed

- *Contempt of Court* (Report 17): A Report to Parliament on this topic was tabled at the beginning of the year

under review. A summary of the recommendations it contains appears in Chapter 2, Reports to Parliament.

- *The General Part — Liability and Defences* (Working Paper 29): The idea, history, purpose and function of a General Part of a criminal code and the extent of fulfillment of that function by the General Part in Canada are described in Appendix E to the Working Paper. A General Part should articulate a set of overall objects for the *Criminal Code*, set out a list of basic principles to guide its operation, and contain rules to translate these principles into operational form. The present General Part of our *Criminal Code* does not fulfill these functions. It does not achieve completeness; it leaves many matters of general relevance to the Special Part, and others to the common law. It lacks orderly arrangement and sufficient generality to obviate repetitiveness in the Special Part. Finally, it does not clearly enunciate the principle of responsibility. A "fresh start" is needed to enable the General Part of the *Criminal Code* to fulfill its proper function in the criminal law of Canada.

  In the main part of the Working Paper, the fundamental principles of criminal liability and defences are expressed in the form of draft legislation with comments. The legislation consists of seventeen sections, some with alternative formulations dealing primarily with general defences and with the requirements of *actus reus* and *mens rea*. Defences of special application, those which merely deny part of the charge and therefore require no special treatment, and those which raise procedural hurdles, are omitted.

  While remaining faithful in substance to the tradition and thrust of the present law, the draft legislation attempts to be clearer, simpler and more comprehensive. It focuses on presenting rules with sufficient generality so as to eliminate the need for repetition in the Special Part.

Work in Progress

Research activities were in various stages of progress in some fourteen different areas of substantive criminal law.

Draft Working Papers were completed or virtually completed on the following topics:

- *Offences against Person — Assaults, Threats and Related Offences*: The object of this study is to examine non-fatal acts of violence against the person. Within this topic, which includes all types of assaults, a separate study is being prepared on kidnapping and forceful confinement.

- *Offences against Person — Homicide*: The object of this study is to simplify the law on homicide in Canada in form and substance. Regarding form, it investigates the need for the present proliferation of sections and subsections, and enquires whether a much simpler exposition of the law of homicide might be possible. In regard to substance, it examines, among other things, the aspects of constructive murder, criminal negligence and provocation.

- *Corporate and Vicarious Liability*: The objects of this study are to ascertain whether there is justification for retain-

ing corporate criminal liability; to identify the problems with the present law relating to it; to make proposals for new criteria for such liability; and to make suggestions as to sanctions and enforcement.

- *Mischief*: The object of this study is to examine Part IX of the *Criminal Code*, an amorphous and eclectic collection of provisions which, although concerned mainly with damage to or interference with property, deal also with matters such as interference with persons (paragraph 387(1)(*d*)), false alarm of fire (section 393), and cruelty to animals (sections 402 and 403). The study focuses on vandalistic damage to property, including arson, but also considers whether some of the matters dealt with in Part IX could be more effectively dealt with elsewhere in the *Code* with a view to reducing their complexity and avoiding the overlapping of offences.

- *Defamatory Libel*: This study compares the tort of defamation and the civil law delict of libel with the crime of defamatory libel, and seeks to determine whether there is justification for retaining defamatory libel as a crime.

Background studies were substantially ompleted on the following topics:

- *Conspiracy*: The object of the study is to examine the law of conspiracy in Canada, to discover whether there is a need to retain it as a crime in view of the existence of other inchoate offences, particularly attempts.

- *Break and Enter*: The object of this study is to examine the substance and form of sections 306, 307 and 308 of the *Criminal Code* dealing respectively with: break and enter; unlawfully being in a dwelling-house; definition of "entrance"; and, in the light of the *Charter of Rights*, to examine their presumptions regarding burden of proof.

- *Participation*: The object of this study is to examine, with a view to simplifying the law, the relationships between participation and aiding and abetting, counselling, incitement, and conspiracy.

- *Jurisdiction*: The object of this study is to examine the applicability of our criminal law and the jurisdiction of our criminal courts in terms of space (i.e., in Canada and outside Canada), taking into particular account the principles of international law. Included in the many facets of this study is the jurisdiction of Canadian courts over offences committed in ships and aircraft outside Canada.

Background studies were under way on the following topics:

- *Offences against Justice — Perjury*: The object of this study is to examine offences against justice other than the offence of contempt of court, which was the subject of Report 17, mentioned above. The study includes an examination of offences concerning affidavits, misconduct of officers executing process, and obstruction of justice, as well as perjury in court proceedings.

- *Offences against Person — Privacy*: It has been decided not to limit the scope

of the study to the interception-of-communications type of offences described in Part IV.1 of the *Criminal Code*, but to deal also with other invasions of privacy.

- *Offences against Property — Unlawful Possession*: This is an important area of criminal law inasmuch as the recipient of stolen goods provides a market for them, without which theft might not have been resorted to in the first place.

- *Offences against Public Order*: The ambit of the study has not yet been determined; but it will include such things as riots and disturbances of the peace.

- *Offences against Social Institutions — Transport*: This study will examine offences involving the transportation of people and goods within and outside Canada.

Consultations

During the year under review, five consultative meetings were held on the General Part of Criminal Law (Liability and Defences). The groups involved were the Government Consultation Group, the Advisory Panel (Judges), the Canadian Bar Association (Defence Bar) and the Canadian Association of Chiefs of Police. These meetings, which totalled ten days of consultation, took place in Toronto, Ottawa, Montréal and St. John's, Newfoundland. Similar meetings took place on other topics.

Conclusion

In summary, since the last *Annual Report*, the Substantive Criminal Law Project has completed its basic research on eleven studies and commenced research on four more. Hence, much of the research in preparation for the drafting of Working Papers on provisions of a new *Criminal Code* has been completed or is under way.

□ 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.

The Commission continues to explore the advisability of a comprehensive code of criminal procedure. The Commission first set this objective for itself in its 1972 Research Program, which was subsequently approved by the then Minister of Justice. Codification may well prove to be the most effective way of obtaining a comprehensive, principled, coherent and distinctively Canadian statement of criminal procedure. As so conceived, codification is less an end in its own right than a strategic vehicle of law reform, one which offers certain practical and theoretical advantages over other styles of reform.

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) pretrial 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, under the supervision of Mr. Réjean Paul, Q.C. The Project coordinator is Mr. Calvin Becker.

Work Completed

- *The Jury* (Report 16): A Report to Parliament on this topic was tabled in Parliament during the year under review. An overview of the recommendations it contains appears in Chapter 2 of the present Report.

- *Search and Seizure (Criminal Code)*: The Commission has now completed Working Paper 30 on *Police Powers — Search and Seizure in Criminal Law Enforcement*. Over the past five 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 recommendations 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.

  Our recommendations for reform have been guided by three central precepts. First, the disparate array of search and seizure powers presently provided for criminal and crime-related investigations should be replaced by a single, comprehensive regime. Second, if search and seizure powers are meaningfully to comply with the *Canadian Charter of Rights and Freedoms*, the grounds for their exercise must, as a rule, be determined to be reasonable by a judicial officer, adjudicating before the event and upon particularly sworn information. Third, the exceptions to the rule that search shall be by warrant should be so circumscribed as to permit resorting to powers of search without warrant, only in circumstances of recognized exigency or informed consent.

- *Legal Status of the Police*: Within the past year, the Commission has also published 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.

- *Eyewitness Identification Procedures*: A background study has been completed formulating a comprehensive set of guidelines for the conduct of eyewitness identification procedures. This study also incorporates the most recent findings of psychological research in

the areas of memory recall and eyewitness identification, together with a description of the identification procedures presently being employed by the police in thirteen Canadian cities.

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.

Work in Progress

- *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: (1) there should be as few classes of offence as possible; (2) 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 (3) 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 dockets between the various trial courts of criminal jurisdiction. The Commission believes it to be particularly urgent that this procedural reform take place, because the Criminal Law Review which is now under way will, otherwise, have the effect of virtually entrenching the shortcomings of the present classification scheme.

- *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 approximately 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 Commission's tentative agenda for the reform of investigative search and seizure powers outside the *Criminal Code* would entail that all such powers be stripped from federal revenue and regulatory legislation. The necessary exercise of investigative search and seizure powers would, instead, be referable to the procedures prescribed in the reformed law of criminal procedure. As for powers of inspection, our recommendations for reform are directed towards ensuring that they be confined to their appropriate uses and rendered inaccessible as an alternative to investigative search and seizure in criminal law enforcement.

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*: The Commission is also currently undertaking 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. We suspect, however, that much of the confusion in the present law of arrest derives from a failure to distinguish the power in terms of its purpose, its justifications and the necessity of its exercise in the public interest. We propose, therefore, to clarify these various aspects of the arrest power.

- *Electronic Surveillance*: Access to the 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's 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 analyses 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. As presently conceived, the Working Paper will propose a regime for electronic surveillance which closely approximates that recommended for police powers of search and seizure. Thus, the emphasis will be upon ensuring that authorizations to intercept private communications be strictly governed by the criteria of judiciality and particularity; that authorizations be granted for investigative rather than intelligence purposes; and that the interceptions authorized be subject to a meaningful measure of *ex post facto* accountability to the authorizing justice, the persons whose communications were intercepted, and the public at large.

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

  In preparing its Working Paper on this subject, the Commission has accepted that custodial interrogation carries both procedural and evidentiary significance. We are therefore presently elaborating procedures directed to enhancing respect for the common-law right to silence, procedures which will ensure that any waiver of that right is voluntarily made and reliably evidenced. It is fully expected that the sanctions available for certain classes of procedural non-compliance will include that of excluding as evidence any admission thereby obtained.

- *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 derogate from the common law right to remain silent or its constitutionally-entrenched corollary, the privilege against self-incrimination. It is of course quite arguable, that the obtaining of scientifically objective physical evidence, such as fingerprints, blood type and the like, which cannot be extorted from the suspect's mind, soul or psyche, do not derogate from those important rights.

As with our treatment of custodial interrogation, our Working Paper on investigative tests is proceeding on the premise that evidentiary constraints upon admissibility may be sufficient to protect the integrity of the evidence and, to a degree, the integrity of the administration of justice; but they are not sufficient to guarantee procedural due process, nor to guarantee that no one is compelled to provide the evidence by which he might be convicted, without express statutory authorization or informed consent, voluntarily obtained and reliably evidenced. Hence, as a matter of criminal procedure, the Commission is scrutinizing the need for front-end controls (by way of limitations upon coercive investigative procedures), as well as back-end controls (by way of limitations upon the admissibility of evidence).

- *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* and the *Food and Drugs Act*, among others.

  Second, the present statutory treatment of disposition of things seized is inadequate, in the face of the combination of sections 8 and 24 of the *Charter*. Although the *Charter* does not advert specifically to property rights, it does enjoin "unreasonable search and seizure" and provides 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 realizes the remedial and exclusionary provisions of the *Charter*. Equally clearly, there is no such regime at present, what with the fragmented statutory treatment we now have, the absence of accountability mechanisms, and the misplaced emphasis upon such peripheral criteria as the method of seizure.

- *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 programme 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 most usefully be addressed. We are therefore proceeding directly into an intensified study of the related subjects of discovery, disclosure and preliminary inquiries.

Consultations

Fifteen consultation meetings were held on topics such as Search and Seizure Powers, Investigative Tests and Custodial Interrogations. The groups consulted were the Government Consultation Group, the Advisory Panel (Judges), the Canadian Bar Association (Defence lawyers), the Canadian Association of Chiefs of Police and the Canadian Association of Law Teachers. These meetings, which totalled thirty-two days of consultation, took place in Winnipeg, Toronto, Ottawa, Meech Lake (Québec), Montréal, Québec City and St. John's, Newfoundland.

Conclusion

The aspects of criminal procedure which the Commission believes stand in most urgent need of consolidation, rationalization and reform, are those of classification of offences, police powers and procedures, and pre-trial procedures. We have accordingly concentrated the largest part of our resources upon these topics. Although much remains to be done, we are confident that we shall soon have a structure in place for systematically organizing the powers, procedures and prerogatives which comprise the "front end" of a possible code of criminal procedures.

As for trial procedure, sentencing procedure and appeal procedure, we see these as matters requiring less a fundamental review than a relatively straightforward consolidation and rationalization. Since we believe these aspects of criminal procedure will prove comparatively less difficult, we expect to be able to bring them to completion more or less contemporaneously with the work now in progress on pre-trial procedures.

5

Protection of Life Project

In face of enormous scientific and technological developments, the Commission is endeavouring, through the Protection of Life Project, to establish a legally protected "place" for the individual into which scientific and technological processes cannot intrude without legal sanction. The basis for this project is, then, some new dimensions in criminal law.

Comprised of two phases, the Project is in the process of completing its work in medico-legal matters (phase 1) and is now well engaged in matters of pollution and environmental law (phase 2). The main objective is to determine the existing strengths and weaknesses of the criminal tool and response in respect of pollution in relation to the environment, the work place and consumer products.

Though the primary focus of this project is on courts and criminal law, no implication is intended that legal and administrative responses and preventive measures other than criminal or quasi-criminal are not of great and continuing value as regards pollution prevention and control. Some attention is being directed to existing or proposed administrative law sanctions and mechanisms, as well as non-legal mechanisms, in order to identify their strengths and their applicability in the three pollution contexts of interest.

The Project Commissioner is Ms. Louise Lemelin, Q.C., and the Project coordinator is Mr. Edward W. Keyserlingk.

□ Work Completed

Euthanasia, Aiding Suicide and Cessation of Treatment (Working Paper 28): The Commission does not favour the legalization of euthanasia in any form. It tentatively recommended that the existing prohibition of the *Criminal Code* concerning homicide be maintained, and that the act of so-called compassionate murder should continue to be a punishable offence under the law.

Nor did the Commission favour the complete decriminalization of the act of aiding or counselling suicide. Rather, it proposed that the present prohibition of the *Criminal Code*, contained in section 224, be maintained. The Commission's position is indicative of what it sees as serious abuse which could result from total decriminalization.

In regard to the cessation of treatment, the Commission essentially recommended the maintenance of existing law and practice. The governing principle proposed by the Commission is that the law in this matter should not

enforce the continuance of medical treatment which has become useless, since the decision to stop, or not to initiate, useless medical treatment is good medical practice, and should be recognized as such in law. The law should therefore affirm that a doctor who does not prolong dying acts legally.

The Commission concluded that this principle should apply to both the competent person and the person incapable of expressing wishes regarding treatment. Regarding the competent person, the Commission proposed (as it already had earlier in Working Paper 26) that such a person has the right to refuse treatment or to demand that it be stopped, even if death results more quickly. In cases involving persons incapable of expressing wishes, the Commission proposed two criteria. A physician should not be required to continue to administer or to undertake medical treatment, first, when that treatment is medically useless and second, when the treatment is not in that person's best interest as determined by others.

□ Work in Progress

Work continued or began during this year on five Working Papers, seven Study Papers and one Report to Parliament.

Working Papers

Five Working Papers were well under way.

- *Pollution as Crime*: This Paper seeks to determine whether, and to what extent, activities or omissions causing or risking environmental pollution should be considered as criminal offences. Should the most serious pollution offences be treated as "real" crimes, and should specific *Criminal Code* sections be fashioned to cover such offences? To do so might help to underline the fact that pollution harm or risk can be as, or more, harmful to health and property as many offences presently included in the *Criminal Code*. To do so may also provide a needed deterrent and more effective sanctions than presently exist. But there are legal problems as well with such a policy, such as the need to prove *mens rea* and the burden-of-proof requirement.

  Should the less serious pollution offences continue to be classified and treated as "quasi-criminal" or strict liability offences? If so, there may well be some needed procedural reforms to equip agencies and courts better to prosecute statutory offences, and at the same time to ensure the rights of the accused. Among the elements being examined for possible reforms are the due diligence defence, the onus of proof and discovery to the Crown.

- *Enforcement of Environmental Legislation*: The major focus of this Working Paper is on the policies and practices of environmental agencies in the enforcement of environmental legislation for which they are responsible. Of special interest are two factors weighed in the use of agency discretion in making decisions to prosecute or not to prosecute environmental pollutors. One of the goals of this study is to compile more comprehensive and accurate

empirical data than presently exist regarding the coherence and effectiveness of enforcement practices.

The ultimate objective is to propose specific principles for the reform of the offence sections of environmental statutes, and a set of coherent criteria for decision-making about whether or not to prosecute. Inasmuch as the present jurisdictional division of environmental enforcement responsibilities between the federal and provincial governments may promote or impede environmental and health protection, those jurisdictional arrangements will also be tested for coherence and effectiveness. A further issue being examined is that of the relationship and interaction of private and public prosecutions in pollution matters.

- *Consumer Product Pollution*: The objective of this Working Paper is to identify and to evaluate the legal controls and sanctions involved in the testing and marketing of toxic consumer products. Three sorts of products are being studied by way of test cases in this area: insulation materials, pesticides, and drugs. The statutes of particular interest in this study are: the *Hazardous Products Act*, *Food and Drugs Act* and *Pest Control Products Act*. A number of relevant provincial statutes is being examined as well.

  This Paper does not aim at establishing the responsibility of individuals, companies or agencies for past policies and decisions, but rather at proposing more adequate, open and accountable mechanisms, where indicated, and to determine degrees of liability for future negligence in this area. Among the specific questions being addressed are the following:

  - What are the present sanctions and safeguards governing commercial and household chemicals?
  - How much is the public entitled to know about suspected toxic risks and hazards?
  - How should the law formulate risk-benefit trade-offs and assumption of risk regarding products with largely invisible toxic dangers?
  - Are civil or criminal sanctions justified and effective against individuals, corporations or government agencies in cases of insufficient testing or non-disclosure of risk?

- *Pollution in the Workplace*: The objective of this Working Paper is to identify and to evaluate the legal controls and sanctions relevant to pollution hazards in the workplace, and to determine the appropriate role, if any, for the courts and criminal law.

  The working hypothesis of this Paper is that there is too little coherence or certainty as to the strengths and weaknesses of the various legal and non-legal controls and sanctions presently available, when applied to occupational pollution hazards and risks. Among the available tools being studied are: education programs, health and safety committees, compensation boards, private suits and

prosecutions on the basis of occupational health and safety legislation or *Criminal Code* provisions.

While the *Labour Code* and *Criminal Code* are of major interest in this context, attention is also being directed, for purposes of comparison, to the enforcement policies and practices under provincial labour legislation. Of particular interest are the actual and potential roles and competence of courts in dealing with occupational *pollution*, as distinct from the more traditional problem of occupational *safety*.

- *Behaviour Alteration*: The main objective of this Working Paper is to determine whether there should be a legal and even criminal law interest in the protection of psychological/behavioural integrity, on the analogy of the already established legal interest in protecting physical integrity. Given the many relatively new and potentially intrusive behaviour alteration techniques and treatments now available, and the many institutional contexts in which they are applied, there may well be good reasons for more stringent legal controls and sanctions. Some of the techniques and therapies are not physically intrusive (for example, psychotherapeutic interventions) and others are (such as drug therapy, electroconvulsive therapy, psychosurgery or castration).

  The focus of the Working Paper is on institutional contexts, especially those within federal jurisdiction such as psychiatric hospitals and penal institutions. Among the legal issues being examined are the following: the right to treatment and the right to refuse treatment, behaviour alteration as a substitute for punishment/imprisonment, the problems of evidence and proof of the infliction of psychological harm, the applicability of specific *Criminal Code* sections such as assault and criminal negligence.

Study Papers

The seven Papers under way in this category all provide very valuable analysis and evaluations about background issues relevant to one or more of the Working Papers just described. As such, they contain the views and proposals of the various writers rather than recommendations by the Commission itself. To a large extent, these papers and the issues addressed reflect the broader interdisciplinary and international contexts which must be carefully canvassed in a health law and environmental health law project such as this. Not to do so would risk ignoring important lessons and considerations beyond the strictly legal and strictly federal perspectives.

- *Ethical Perspective*: From a largely philosophical perspective, this Paper addresses an issue of direct and urgent relevance to all the Working Papers and environmental health law generally — whether existing legal mechanisms have adequately taken account of evolving wisdom and debates about risk and risk assessment in fields other than law. With the aid of many examples of pollution risk arising in the three areas of interest to this project (environmental, occupational and con-

sumer product), the Paper deals with the importance and limits of the assumption of risk. The nature of risk itself is explored, and the use and varieties of individual consent within society. The objective is to explore and establish the boundaries of concepts such as consent and voluntariness in the context of pollution risk, and to propose reasons why a degree of risk should be understood and tolerated, not just minimized and rejected.

- *The Political and Economic Perspectives*: This Paper deals with the process by which environmental hazard law and policy are made, and with the conceptual frameworks which are used to define objectives and strategies for controlling environmental hazards. The study includes a critical overview of how policy on controlling environmental hazards is made in Canada. Another issue bears on the ways in which scientific evidence is assessed and interpreted for purposes of public policy. A third issue examines the extent to which economics and the concepts of efficiency and optimality have permeated the normative considerations of public policy. Examined, as well, will be the role of the large corporation as a policy-making institution, determining the level of environmental hazards to which Canadians are exposed.

- *The Comparative Criminal Law Perspective*: Plans for this study have now been delineated. The study will examine the use of criminal law against pollution in nine other jurisdictions in order to draw some conclusions and lessons potentially applicable to Canada. The jurisdictions chosen were selected to allow a comparison of the use of criminal law among countries or jurisdictions of various structures and orientations — federations, unitary systems, supra-national government, socialist systems, and developing or "third world" nations. The jurisdictions selected for study and comparison are: The U.S. (federal government), Michigan, the E.E.C., Italy, West Germany, Sweden, Hungary, Kenya and Japan. Various questions will be addressed to each jurisdiction, such as the particular values of each society which may affect the legal response to pollution, the factors which make pollution offences "criminal" in those societies, the manner of dealing with corporate criminal liability, the particular sanctions used and the manner and effectiveness of enforcement. Conclusions will be drawn and applied to the particular circumstances of Canada.

- *Analysis and Evaluation of Selected Environmental Statutes*: This study examines various federal environmental statutes, in order to determine and evaluate their legislative intent and coherence. Particular attention is given to the offence sections and their justification, in the light of present priorities and knowledge about protecting health and environment. The statutes being examined in some detail are: the *Environmental Contaminants Act*, the *Transportation of Dangerous Goods Act*, the *Fisheries Act*, the *Atomic Energy Control Act*. The study subjects each of the Acts in question to four main tests or questions: how the Act deals with the

prevention of environmental harm; how it proposes to control and limit harm once an incident has taken place; how it penalizes those responsible for environmental harm; and, how it compensates victims of pollution offences.

- *Sentencing in Environmental Cases in Canada*: Even though environmental offences encompass a wide range of causes, effects, degrees of risk, extent of harm, degrees of culpability, and types of offenders, the sentencing provisions of most environmental statutes do not give the courts any guidance in distinguishing between offences of different natures, and the penalties provided may not be appropriate for many offences and offenders. The potential offender of particular interest in this study is the corporation. The study examines the application of functional criminal law objectives to environmental cases, and gives particular attention to the adequacy of fines as a sentencing tool. Proposals are being developed for the reform of the present fine structure, the better to reflect the diversity of environmental offences and offenders. The Paper also considers the wider availability of alternatives to fines, such as forfeiture of property, suspension or revocation of licenses, permits and other privileges, imprisonment, supervisory orders, restitution and compensation.

- *Pesticides Law and Policy in Canada*: This study reviews existing federal, provincial and municipal programs for the management of pesticides in Canada and will recommend new directions in legislation and policy in this area. It includes important data and proposals for use in the Commission's Working Paper on hazardous consumer products referred to earlier. The study is being done in the light of increasing concern for the manner in which pesticides are registered or not registered in Canada, a conclusion of the Agriculture Canada Consultative Committee on IBT pesticides in the April, 1982 report on Captan. Since the 1980s, several federal bodies have increasingly perceived the need to deal with the environmental and health problems posed by pesticides in Canada. An evaluation of existing and prospective legal and regulatory controls is therefore timely. The study will examine the roles of federal and provincial governments and will focus on the *Pest Control Products Act*, the *Food and Drugs Act*, and the *Environmental Contaminants Act*.

- *The Right of Psychiatric Patients to Refuse Treatment in Provincial Legislation*: This study provides important background information for the Working Paper on behaviour alteration referred to earlier. It examines provincial legislation according to the right (or lack of right) of an involuntarily committed patient to refuse psychiatric treatment.

Reports to Parliament

In the light of further reflection by the Commission and considerable comment to date (see below), on Working Paper 28 (referred to earlier), work began towards the end of the year under review on the Commission's Report to Parliament on the subject of *Euthanasia, Aiding Suicide and Cessation of Treatment*. That Report is tentatively

scheduled for publication and release in the fall of 1983.

□ Consultations

In the period between the release of Working Paper 28: *Euthanasia, Aiding Suicide and Cessation of Treatment*, and the end of the year under review, that Paper attracted a great deal of interest and generally enthusiastic support. It was generally well received by groups such as the Government Group (prosecutors), the Canadian Bar Group (defence) and the Advisory Panel (Judges), all part of the systematic consultation process. In addition, twenty-nine associations and institutions and fifty-four individuals presented the Commission with comprehensive briefs and submissions in response to the paper. Most of them were in substantial agreement, and a number of suggestions were made by way of refinements which will be helpful for the final Report to Parliament on these issues.

Working Paper 28 also demonstrated the great public interest in these issues. Some thirty-seven newspaper stories reporting on this paper came to the attention of the Commission. As well, another forty-three articles of various kinds, commenting on the paper in various newspapers and journals, also appeared in this period.

The President, Project Commissioner, Project coordinator and the special consultant all took part in a large number of radio and television programs and interviews, all of which helped to publicize the Paper, heighten public awareness of these issues and encourage responses from a wide sector of viewers and listeners. In all, there were about twenty-five radio interviews and another twenty-five television interviews.

During the year under review, continuing contact for consultation purposes was maintained with many of the groups and associations already listed in the previous *Annual Report* (pp. 21-22). As well, contacts were initiated with many other groups and institutions, some of them listed below:

- Agriculture Canada
- American College of Preventive Medicine (Washington, D.C.)
- American Public Health Association
- American Society of Law and Medicine
- Association for the Advancement of Science in Canada
- Canada Mortgage and Housing Corporation
- Canada Safety Council
- Canadian Agricultural Chemicals Association
- Canadian Bar Association, Health Law Committee, and Environmental Section
- Canadian Centre for Occupational Health and Safety
- Canadian Coalition for Nuclear Responsibility
- Canadian Council on Social Development
- Canadian Environmental Advisory Council
- Canadian Environmental Law Research Foundation
- Canadian Government Specifications Board, Supply and Services Canada
- Canadian Hospital Association

- Canadian Institute of Law and Medicine
- Canadian Institute of Resources Law
- Canadian Labour Congress
- Canadian Medical Association
- Children's Hospital of Eastern Ontario
- Clinical Research Institute of Montreal
- Consumer and Corporate Affairs Canada
- Council of Europe, Division of Social Affairs
- DENE National Office (Yellowknife, N.W.T.)
- Energy and Chemical Workers' Union
- Energy, Mines and Resources Canada
- Environmental Council of Alberta
- Environmental Law Centre of Alberta
- Federated Women's Institute of Canada
- Fédération des travailleurs du Québec
- Fraser River Coalition
- Health Professionals for Nuclear Responsibility
- Health and Welfare Canada
- Institute for Research on Contemporary Interpretations of Man
- Labour Canada
- Manitoba Environmental Council
- Mines Accident Prevention Association of Ontario
- National Research Council Canada
- Petroleum Association for Conservation of the Canadian Environment
- Pharmacological Society of Canada
- Provincial Ministries and Departments of Agriculture
- Provincial Ministries and Departments of the Attorney-General
- Provincial Ministries and Departments of the Environment
- Provincial Ministries and Departments of Labour
- Provincial Occupational Health and Safety Commissions
- Public Interest Advocacy Centre
- Swiss Institute of Comparative Law
- (U.S.) Association of Teachers of Preventive Medicine (Houston, Texas)
- (U.S.) Food and Drug Law Institute (Washington, D.C.)
- Vancouver Health Department
- Waterloo Public Interest Research Group
- Westminster Institute for Ethics and Human Values
- World Health Organization (Geneva)

During the year under review, various members of the Commission and Project participated in, or contributed to, a number of meetings, conferences and symposia on issues related to project papers and concerns. Among them were the following:

- Visit to the Max Planck Institute of Comparative Criminal Law, Frieburg, Germany, August 14-18, 1982
- Conference, "Hazardous Waste Management: Practical Solutions for Today's Problems", Toronto, September 9-10, 1982

- Annual Meeting, Canadian Environmental Advisory Council, Ottawa, September 21, 1982
- Fourth Annual Conference, Canadian Institute of Law and Medicine, "Legal Aspects of the Care of the Elderly", Toronto, September 30, 1982
- Aesculapian Society Symposium, "Biomedical Ethics in Human Reproduction", Ottawa, October 1-2, 1982
- International Seminar on Terminal Care, Montréal, October 3-6, 1982
- Risk Symposium, the Royal Society of Canada and the Science Council of Canada, Toronto, October 18-19, 1982
- Symposium of the Coalition on Toxic Substances, "Toxic Substances at Home, Work and in the Environment", Toronto, October 30, 1982
- Seminar, Children's Hospital of Eastern Ontario, "Care of Defective Newborns", Ottawa, November 8, 1982
- Symposium, Senior Citizens Council, "Euthanasia, Cessation of Treatment and Aiding Suicide", Ottawa, November 9, 1982
- Annual Meeting, American Public Health Association, "Issues Which Arouse the Public", Montréal, November 14-18, 1982
- Symposium, Canadian Institute of Resources Law, "Fairness in Environmental and Social Impact Assessment Processes", Banff, Alberta, February 10-12, 1983
- Panel on Death and Dying, University of Alberta, Edmonton, March 14-18, 1983
- Annual Meeting, Canadian Association of Administrators of Labour Legislation, Hull, Québec, March 31, 1983
- Tenth World Congress on Prevention of Occupational Accidents, Ottawa, April 8, 1983
- Symposium on Québec's Bill 106, Institute of Comparative Law, McGill University, Montréal, April 22, 1983
- Symposium held in the *Salon de la Femme*, Montréal, on the subject of Working Paper 28, April 23, 1983
- Science Council of Canada Symposium, "Regulating the Regulators", Montréal, May 10, 1983

□ Conclusion

During the year under consideration, there have been exceptional interest and support by many groups and individuals in the research and consultation in progress. While that interest and assistance in the form of correspondence, briefs and consultations were and are much appreciated and necessary, they also have the effect of underlining further the complexities and conflicts in the issues being addressed. This has necessitated both the addition of new studies as the project has evolved, and a number of delays in completion dates. It is hoped that those delays will contribute to more comprehensive and useful papers and recommendations than would otherwise have been possible.

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Administrative Law Project

The Commission's work in administrative law is distinguished somewhat from its other activities, which are concentrated in the field of criminal law. There is, however, a relationship between the two, stemming from the philosophy of restraint expressed in Report 3, entitled *Our Criminal Law*. Administrative law often proves to be an effective and equitable alternative to criminal law; the need to resort to the latter is thereby diminished, and its application may be limited to those situations where it is more necessary. In this way, the Commission's work reflects an overall philosophy of the role that should be played by the law in contemporary Canadian society.

The Commission's activities in the field of administrative law are essentially devoted to a single objective: the implementation of procedures and structures that are simplified, systematic, consistent and suitable for the purposes intended for them by Parliament. They must embody the two basic values, equity and effectiveness, which are the very reason for the existence of administrative law. To this end, the Commission plans to make recommendations designed to modernize three key sectors of administrative law in order to improve relations between the individual and government. These three sectors are independent administrative agencies, the federal Crown and achieving compliance.

Mr. Alan D. Reid is the Commissioner responsible for the Administrative Law Project Section and Mr. Mario Bouchard is the coordinator.

□ Work Completed

- *Independent administrative agencies*: The first research program of the Commission provides that the Commission is to "study the broader problems associated with procedures before administrative tribunals". For the reasons given in Working Paper 25, *Independent Administrative Agencies*, the Commission interpreted its mandate so as to include the whole of the federal administrative process.

- This year we published two Study Papers on administrative agencies. One is an examination of the *Tariff Board*, the last in our series on independent administrative agencies. The other is a study of the relationship between legislative power and administrative agencies; it was published under the title *Parliament and Administrative Agencies*.

□ Work in Progress

- *Independent Administrative Agencies*: Preparation of the Report to Parliament proposing a framework for the reform of administrative agencies, and taking a second look at some of the issues raised in Working Paper 25, did not progress as quickly as we had anticipated. However, we have now reached the stage of drafting the Report and look forward to its early completion.

  With respect to the powers and procedures of agencies, analysis of the data we were able to collect is practically complete. The data seem to confirm our suspicion that framework legislation on independent administrative agencies is required, which would give this area a certain cohesiveness that would benefit both the public and the government. The challenge facing us is to provide this cohesiveness without forcing the administrative agencies into a legislative strait-jacket that fails to take their individuality into account. An outline of a reform of this kind should be included in the general Report, and the details in a Working Paper on Administrative Procedure that is already well on the way to being completed.

- *Federal Crown*: Research on the privileges and immunities of the federal Crown, which was announced in Working Paper 25 three years ago, was begun this year. Preliminary analyses confirmed that reform of this area is necessary if we are to ensure that a special status is extended only on what we would regard as a principled and consistent basis. Furthermore, although the present state of the law requires from the outset a division, for purposes of analysis, between those parts of the federal government that are identified with the Crown and those that are not, there is no *a priori* theoretical justification for the traditional distinction. A Study Paper is being prepared which will suggest guiding principles for a new legal regime to apply to the Federal Administration.

  Practical studies in support of this were also undertaken. Because a computer search of federal statutes proved unsatisfactory, we used a card system to conduct an examination of privileges held by the government under legislation passed by the Parliament of Canada. Similarly, we are currently conducting a historical analysis of the special position of the Crown at common law.

  However, the sheer size of the subject and the existence of certain more important priorities led the Commission to conduct the project in stages. The thematic research that is under way, and which should be published in Working Papers, relates to the tort liability of the Crown, procedural privileges and problems relating to the execution of judgments. The first should take some time to complete, in view of the complexities involved. The other two should produce results in the coming year.

  The Commission intends to examine other questions relating to the legal position of the federal government as research on other subjects is com-

pleted. These questions include the contractual liability of the government, the applicability of statutes to the federal Crown and the rules governing public property and the public domain.

- *Achieving Compliance in Administrative Law*: Since it began its work, the Commission has been interested in the effectiveness of the sanctions provided in federal legislation to ensure compliance. However, our work in this area did not really begin until 1980. We gradually came to view the problem as one of compliance with or observance of the law rather than of sanctions. The research, which was viewed originally as a sideline of the evidence and criminal law projects, gradually became independent. Most of our preliminary work now seems to be complete and we feel we have reached a point where we can soon put forward our provisional recommendations.

The first set of documents on the activities of the Environmental Protection Service of the Department of the Environment and the C.R.T.C. is now complete; they should be published within the coming year. Moreover, we completed three background documents during the last year. The first is a compilation of the methods of analysing the cost to the public of achieving compliance with the law. The second is a survey and analysis of the vast amount of documentation published over the last few years on the subject of air safety; several recommendations were made to improve compliance with the acts and regulations in this area, and a comprehensive analysis of these recommendations enabled us to draw a number of useful conclusions in this regard. The third concerns the use of contracts as a means of achieving compliance with administrative policies. Finally, we conducted studies on compliance with customs and excise legislation.

Preparation of a general Working Paper on compliance in administrative law is now under way. The research completed so far confirms the extreme complexity of the problems confronting administrative authorities in this field. However, we continue to think it is of primary importance that we first try to present an overview of the problems involved in compliance, if we are to improve administrative effectiveness and fairness which are the primary goals of our work.

One thing is certain: some lawyers, and others as well, too often tend to view compliance solely in terms of sanctions and of confrontation; the role law should play in administration has been either misjudged or overestimated. Lawyers should refocus their attention on the role of law in the design and implementation of administration, just as they should recognize the limits of law in this area and allow other disciplines to play their part.

We are at present considering the relevance of other background studies following preparation of the Working Paper. These might include studies of the award of grants and of the use of Crown corporations as mechanisms for achieving compliance. We are in ongoing consultation with persons who can be of assistance in this area, in

order to determine whether the priorities of our research should be changed.

Finally, we cannot omit the fact that the research section has co-operated closely throughout the year with the Department of Justice's federal offences conversion project, by assisting in the design and implementation phases of that project, including participation in a series of interviews covering current compliance strategy. We feel that our involvement enabled us to confirm a number of intuitions concerning the attitudes of administrators to the application of legislation. These findings were of great use to us, and will greatly influence the preparation of the upcoming Working Paper.

□ Consultations

On March 25 and 26, 1983, the Commission held a meeting with a committee of the Administrative Law Section of the Canadian Association of Law Teachers, designed to revive the contacts between our two organizations, to inform members of the Association of developments in our research program and to obtain their comments on both our current research and its future direction. The meeting was a great success, and we have already taken action on some of the comments made on that occasion.

We also participated actively in the third International Comparative Administrative Law Seminar organized by the *Laboratoire de recherche sur la justice administrative* at Laval University, the theme of which was public participation in decisions concerning energy. The coordinator of the Research Section joined the Laval team in December for a week of consultations with French administrators and academics, mainly in Montpellier and Perpignan in France. The Québec part of the seminar, which consisted in the presentation of more formal papers, took place on May 16 and 17, 1983. Finally, on May 19 and 20, 1983 the academics from France and Québec met in Ottawa with our research team and with officials of agencies involved in the energy field whom we invited to attend. The high quality of the exchanges enabled participants to increase considerably their knowledge in this field. The Commission too obtained valuable information in the area of comparative law.

This year, we participated in the following conferences bringing together specialists in administrative law:

- Annual Meeting of the Canadian Association of Law Teachers, Ottawa, Ontario, June 1 and 2, 1982
- Administrative Law Section of the Canadian Bar Association, Toronto, Ontario, August 29 to September 2, 1982
- Annual Conference of the Canadian Institute for the Administration of Justice: Judicial Review of Administrative Rulings, Montréal, Québec, November 10 to 12, 1982
- Cinquième Colloque de Droit administratif de la Faculté de droit de l'université Laval on appeals and judicial reviews in administrative law, Ste-Foy, Québec, November 19, 1982
- Conférence annuelle des avocats et notaires de la Fonction publique du

Québec, Québec City, Québec, March 10 and 11, 1983

- Canadian Institute of Resources Law Symposium on the Public Disposition of Natural Resources, Banff, Alberta, April 12 to 15, 1983

Finally, mention should be made of the recent efforts to revive the Study Group on Administrative Tribunals. The Commission continues to view this forum as an invaluable source of information and comments on its work.

□ Conclusion

This year, the Commission's work in the field of administrative law made satisfactory progress. We have reached the point in several projects where we can draft conclusions, preliminary or definitive, for submission to Parliament by the Commission. This task is proving to be more time-consuming and difficult than expected. Indeed, it is not easy to be clear without being simplistic. Moreover, other aspects of administrative law need to be studied as soon as possible; we can only undertake this when resources that have been devoted to other projects become available. Mention should be made of the problem of appeals from administrative rulings; this is a field in which rationalization of the existing systems might achieve substantial savings. Much work remains to be done before an administrative system can be developed that combines the greatest possible fairness with the lowest possible cost.

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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 Report 18: *Obtaining Reasons Before Applying for Judicial Scrutiny — Immigration Appeal Board*. This particular Report is discussed in Chapter 2 of the present *Annual Report*. Commissioner Joseph Maingot, Q.C., is responsible for the Project, Ongoing Modernization of Statutes. The coordinator is Mario Bouchard.

The Commission reiterates the position which it expressed in the past. We should be pleased to maintain open channels of communication with Senators and Members of Parliament of all parties. Because the *Law Reform Commission Act* authorizes the Commission to receive and consider any proposals for law reform which may be made or referred by any body or person, Senators and Members of Parliament representing their constituents are most welcome to draw to the Commission's attention complaints about the law's flaws which they consider meritorious, or worth examining at least. The Commission believes that in this way it could respond to the need for modernizing our laws without usurping, but rather by complementing, the role of the parliamentarian.

□ 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 therefore it suffers, by contrast with provincial law reform agencies, because of the geographic expanse of Canada and accordingly the mutual difficulty of access 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 eight years ago, there are now no Commissioners who are resident in any region other than the National Capital Region and the City of Montréal.

This state of affairs obliges 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.

Although personal presence in various communities is not always feasible nor practicable, the Commission reaches tens of thousands of Canadians, through a fairly extensive program of information services.

During the year under review, the Commission distributed a grand total of 137,994 copies of its publications: some 77,762 copies of nine new publications issued during the period and another 60,232 copies of other titles. Individual requests for publications and information totaled 12,543, including some 10,820 by mail, 1,133 by telephone and 590 by callers at the publications offices in Ottawa and Montréal. The mailing list increased by eight per cent from 10,918 last year to 11,816 this year, including some 1,608 additions and 710 deletions.

The media showed a clear interest in the activities of the Commission. Although it was not possible to monitor all instances of coverage, we were able to record some 255 news articles in dailies and 624 minutes of radio and television broadcasts. Some fifty interviews were granted by Commissioners and staff members during the year. In addition, five full-page features on new Reports and Working Papers were carried by several of the 975 English-language and 203 French-language community newspapers to which they were made available.

Direct contact with the general public is a good way of measuring the ordinary citizen's interest in law reform and of engaging his participation. To this end, the Commission has set up an information and display booth at such public events as the *Salon de la femme* (Women's Fair) in Montréal and the Book Fair in Hull, Québec, as well as in Court Houses and other public places in Toronto, Winnipeg, Ottawa, Montréal, Québec City, Moncton and Charlottetown. Participation in eleven different events, for a combined total of forty-nine days, reached an estimated 15,000 Canadians.

□ 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 no less immersed in their own particular priorities than is 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.

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, which was held in Montebello, Québec, during the month of August, 1982. 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 with 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:

- Han Tien Pan,
  Institute of Law,
  Chinese Academy of Social Sciences,
  Peking
- Susan Hayes,
  Senior Lecturer,
  University of Sydney, Australia
- Yosé Francisco Paes Landim,
  Dean, Faculty of Applied Social Studies,
  University of Brazil
- Justice H. D. Carbury,
  Court of Appeal,
  Kingston, Jamaica
- Professor Anthony Bradley,
  Faculty of Law,
  University of Edinburgh, Scotland
- Peter J. M. Lown,
  Executive Director,
  Canadian Institute for the Administration of Justice,
  Edmonton, Alberta
- William Hurlburt, Q.C.,
  Director,
  Institute of Law Research and Reform,
  Edmonton, Alberta

- Professor George P. Fletcher,
  Faculty of Law, Jerusalem,
  and New York, Columbia University
- Professor J. C. Smith,
  Faculty of Law,
  Nottingham, England
- Professor Christian Mouly,
  University of Aix-Marseille, France
- Mr. D. G. T. Williams
  President
  Wolfson College
  Cambridge University
  England
- Mr. Patrick Schultz
  Assistant Professor (Public Law)
  University of Lille III, France

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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
16. The Jury	July 30, 1982

17.	Contempt of Court	November 2, 1982
18.	Obtaining Reasons Before Applying for Judicial Scrutiny – Immigration Appeal Board	December 16, 1982

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. *Mouland* (1983), 38 NFLD. & P.E.I.R. and 108 A.P.R. 281
- *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, 135 D.L.R. (3d) 499, 66 C.C.C. (2d) 195, 27 C.R. (3d) 361 (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
- *R.* v. *MacDougall* (1981), 46 N.S.R. (2d) 47, 89 A.P.R. 47, 60 C.C.C. (2d) 137 (C.A.)

- *R.* v. *Gonder* (1981), 62 C.C.C. (2d) 326 (Yukon Terr. Ct.)

Sexual Offences

- *R.* v. *Moore* (1979), 41 A.P.R. 476, 30 N.S.R. 638 (C.A.)
- *Protection de la Jeunesse - 13*, [1980] T.J. 2022 (Qué.)

Group Action

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

Medical Treatment

- *R.* v. *Cyrenne, Cyrenne and Cramb* (1981), 62 C.C.C. (2d) 238 (Ont. Dist. Ct.)
- *In Re Goyette*: Centre de services sociaux du Montréal Métropolitain (C.S. Montréal, 500-05-022258-824, December 22, 1982)

CRIMINAL PROCEDURE

Pre-trial

- *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.)
- *R.* v. *Barnes* (1979), 49 C.C.C. (2d) 334, 12 C.R. (3d) 180, 74 A.P. 277 (Nfld. Dist. Ct.)
- *R.* v. *Brass* (1981), 15 Sask. R. 214, 64 C.C.C. (2d) 206 (Q.B.)
- *Re Gillis and The Queen* (1982), 1 C.C.C. (3d) 545 (Qué. S.C.)

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), 90 D.L.R. (3d) 420, 21 O.R. (2d) 258, 42 C.C.C. (2d) 449 (C.A.)
- *R.* v. *Czipps* (1979), 25 O.R. (2d) 527, 48 C.C.C. (2d) 166, 101 D.L.R. (3d) 323 (C.A.)
- *R.* v. *MacPherson* (1980), 36 N.S.R. (2d) 674, 64 A.P.R. 674, 52 C.C.C. (2d) 547 (C.A.)
- *R.* v. *Stewart* (1981), 33 O.R. (2d) 1, 125 D.L.R. (3d) 576, 60 C.C.C. (2d) 407 (C.A.)
- *R.* v. *Vetrovec and Gaja*, [1982] 1 S.C.R. 811 (1982), 136 D.L.R. (3d) 89, [1983] 1 W.W.R. 193, 41 N.R. 606, 67 C.C.C. (2d) 1, 27 C.R. (3d) 304 (S.C.C.)
- *R.* v. *Alarie* (1982), 28 C.R. (3d) 73 (Qué. C.S.P.)
- *R.* v. *Samson (No. 7)* (1982), 37 O.R. (2d) 237, 29 C.R. (3d) 215 (Co. Ct.)
- *R.* v. *Cassibo* (1983), 39 O.R. (2d) 288 (C.A.)
- *Posluns* v. *Rank City Wall Canada Ltd.* (1983), 39 O.R. (2d) 134 (Co. Ct.)
- *Graat* v. *The Queen* (1982), 2 C.C.C. (3d) 365, 31 C.R. (3d) 289, 45 N.R. 451 (S.C.C.)
- *R.* v. *Konkin*, April 26, 1983, S.C.C., unreported

FAMILY LAW

- *Re Dadswell* (1977), 27 R.F.L. 214 (Ont. Prov. Ct.)
- *Gagnon* v. *Dauphinais*, [1977] C.S. 352 (Qué.)
- *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, 11 O.R. (2d) 622 (Div. Ct.)
- *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.)
- *Kruger* v. *Kruger and Baun* (1979), 11 R.F.L. (2d) 52 (Ont. C.A.)
- *Harrington* v. *Harrington* (1981), 33 O.R. (2d) 150, 123 D.L.R. (3d) 689, 22 R.F.L. (2d) 40 (C.A.)

PROTECTION OF LIFE

- *Re Eve* (1980), 27 NFLD. & P.E.I.R. 97, 74 A.P.R. 97, 115 D.L.R. (3d) 283 (P.E.I.C.A.)

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.

Federal Court

- *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* v. *Putnam*, [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 1982-1983

REPORTS

16. The Jury
17. Contempt of Court
18. Obtaining Reasons Before Applying for Judicial Scrutiny — Immigration Appeal Board

WORKING PAPERS

28. Euthanasia, Aiding Suicide and Cessation of Treatment
29. Criminal Law: The General Part — Liability and Defences

STUDY PAPERS

Administrative Law — The Tariff Board
Administrative Law — Parliament and Administrative Agencies
Criminal Law — Legal Status of The Police

GENERAL

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APPENDIX D

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