



Law Reform Commission
of Canada

Commission de réforme du droit
du Canada

13th ANNUAL REPORT

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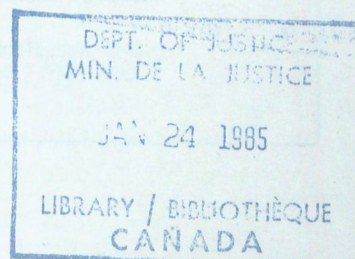
Annual report

Seen by
Vu par
R. TASSÉ

LAW REFORM COMMISSION
OF CANADA

COMMISSION MEMBERS

THIRTEENTH ANNUAL REPORT
1983-1984





PRESIDENT
LAW REFORM
COMMISSION

Ottawa
September, 1984

The Honourable John Crosbie,
P.C., Q.C., M.P.,
Minister of Justice,
Ottawa, Canada.

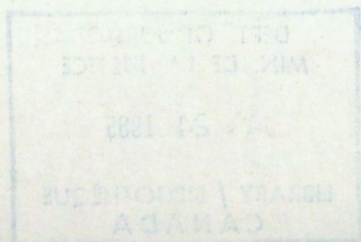
Dear Mr. Minister:

In accordance with section 17 of the *Law Reform Commission Act*, I submit herewith the Thirteenth Annual Report of the Law Reform Commission of Canada for the period June 1, 1983 to May 31, 1984.

Yours respectfully,

A handwritten signature in black ink, appearing to read "Allen M. Linden".

Allen M. Linden



COMMISSION MEMBERS

President



Mr. Justice Allen M. Linden
Supreme Court of Ontario
Appointed 18 July 1983

Vice-President



Professor Jacques Fortin
Appointed 3 November 1983

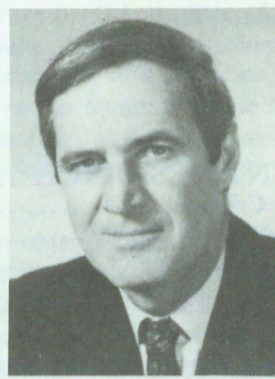
Commissioners



Mrs. Louise Lemelin, Q.C.
Appointed 17 August 1981



Mr. Alan D. Reid, Q.C.
Appointed 1 April 1982



Mr. Joseph Maingot, Q.C.
Appointed 7 April 1982

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1. INTRODUCTION

After thirteen years of existence, the mission of the Law Reform Commission of Canada remains constant — to modernize the federal laws of Canada to better reflect the aspirations of the Canadian people. In that period, we have produced twenty-two Reports to Parliament, thirty-four Working Papers, over sixty Study Papers and over one hundred unpublished Study Papers. In these first thirteen years, we have succeeded in changing some laws, attitudes and legal practices, but there is still much to be done. Our law is still too complex and archaic. Laws designed in the days of horse and buggy travel still govern us in the space age. Laws which were enacted to regulate a simple, agricultural economy are still being used to control an extraordinarily complex industrial civilization. Laws based on ideas of morality from the Victorian age still rule us in this time of sexual equality.

We must rededicate ourselves to the enormous task of law reform. We must strive harder to modernize our laws to better serve Canadian society. We must encourage Canadians to tell us what kind of legal system they want. We must design laws that not only respond to, but also anticipate technological change. We must promote an atmosphere of co-operation among all the participants in our legal system. Only by working together with judges, lawyers, government officials, police officers and the public can we ensure that the cause of law reform and the legal system itself will continue to deserve the respect of all Canadians.

In the late 1960's, a movement to create a federal law reform agency gained momentum in Canada. During the preceding years, such agencies had been established in several provinces and in various jurisdictions around the world. At its annual meeting in 1966, the Canadian Bar Association, echoing its earlier study done by Professor F. R. Scott in 1956, passed a resolution advocating the establishment of such an agency. Later that year, and again in 1967, the Honourable Richard A. Bell, a Progressive Conservative Member of Parliament representing the riding of Carleton, Ontario, intro-

duced a private Member's bill to establish a "Canadian Law Reform Commission". In 1968, Stanley S. Schumacher, a Progressive Conservative Member of Parliament from Drumheller, Alberta, introduced a bill identical to those tabled by Mr. Bell. None of these were passed.

In a 1968 speech at a special convocation of the Law Society of Upper Canada at Osgoode Hall, the Honourable John N. Turner, then Minister of Justice, in response to the felt needs, announced his intention to create a federal law reform agency. In 1970, he tabled Bill C-186, "An Act to establish a commission for the reform of the laws of Canada". When introducing the Bill, Mr. Turner expressed his hope that the creation of the Law Reform Commission of Canada would mean "that the law will never again stand still in this country." The Act was quickly passed by Parliament, with the full support of all parties, coming into force on June 1, 1971.

a) Mandate

According to the *Law Reform Commission Act*, the Commission's mandate is to review on a continuing basis the federal laws of Canada and make recommendations for their improvement, modernization and reform. The Commission must develop new approaches to the law that are in keeping with, and responsive to, the changing needs of modern Canadian society. It must strive to reflect in the law the distinctive concepts and institutions of the common law and civil law legal systems in Canada. The Commission is granted broad powers to assist it in carrying out these functions, including the power to conduct legal research, surveys, discussions and hearings for the purpose of consulting with interested groups and individuals. Moreover, all departments, branches and agencies of the government are required to make available to the Commission any information, advice and assistance it needs to discharge its functions properly.

The wide objects and powers of the Law Reform Commission thus permit it to do more than simply research the law. The Commission's enabling legislation permits it to examine the philosophical basis of our legal system, to analyse the present law and identify its defects, to take bold, new approaches when recommending changes, and to involve others, including members of the public, in the process of law reform.

FORMER COMMISSION MEMBERS*

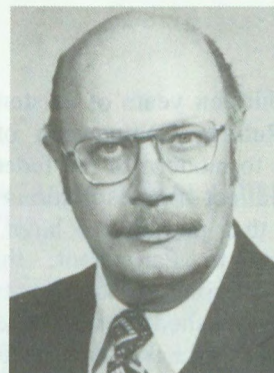
Presidents



Mr. Justice E. Patrick Hartt
Supreme Court of Ontario
Chairman
1 April 1971 – 31 March 1976



Mr. Justice Antonio Lamer
Superior Court of Québec
Vice-Chairman
1 December 1971 –
31 March 1976
Chairman
1 April 1976 – 1 May 1978
Now Mr. Justice Lamer,
Supreme Court of Canada



Francis C. Muldoon, Q.C.
Vice-Chairman
30 June 1977 – 30 April 1978
President
1 May 1978 – 17 July 1983
Now Mr. Justice Muldoon,
Federal Court of Canada

Vice-Presidents



Mr. Justice John C. Bouck
Supreme Court of
British Columbia
Vice-Chairman
1 May 1976 – 17 March 1977



Jean-Louis Baudouin, Q.C.
Commissioner
1 May 1976 – 30 April 1978
Vice-President
1 May 1978 –
1 December 1979



Mr. Justice Jacques Ducros
Superior Court of Québec
Commissioner
1 May 1979 – 8 October 1980
Vice-President
9 October 1980 –
28 February 1981



Réjean F. Paul, Q.C.
Commissioner
16 March 1981 –
6 April 1982
Vice-President
7 April 1982 – 17 July 1983
Now Mr. Justice Paul,
Superior Court of
Québec

* In order of appointment

Commissioners



Dr. Martin L. Friedland, Q.C.
Commissioner
1 June 1971 – 1 July 1972



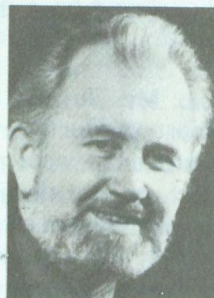
William F. Ryan, Q.C.
Commissioner
1 July 1971 – 15 April 1974
Now Mr. Justice Ryan,
Federal Court of Canada



Claire Barrette-Joncas, Q.C.
Commissioner
1 December 1971 –
1 December 1974
Now Madam Justice Barrette-Joncas,
Superior Court of Québec



John D. McAlpine, Q.C.
Commissioner
1 December 1971 –
1 December 1974



Dr. Johann W. Mohr
Commissioner
1 January 1973 –
1 April 1976



Gérard V. LaForest, Q.C.
Commissioner
15 April 1974 – 1 July 1979
Now Mr. Justice LaForest,
Court of Appeal of
New Brunswick



Judge Edward J. Houston
County and District
Court of Ontario
Commissioner
13 September 1978 –
13 September 1981

b) First Steps

The first Chairman of the Law Reform Commission of Canada was Mr. Justice E. Patrick Hartt of the Supreme Court of Ontario. Under his dedicated and charismatic leadership, the Commission assembled some of the most outstanding scholars in Canada as commissioners and researchers, who embarked upon "a deep philosophical probe" into the criminal law of Canada. The result of this enormous effort by these "young tigers", as they were described, was the publication of the Commission's Report to Parliament, *Our Criminal Law*. The principles contained in that Report continue to guide the Commission's work in the field of substantive criminal law.

Mr. Justice Hartt made many other important contributions during the formative years of the Commission. Studies of the law of evidence resulted in the publication of the Commission's Report entitled *Evidence*, which included a proposed Evidence Code aimed at ridding the law of unduly technical and complex rules. He committed the Commission to a style of writing and drafting which is as simple and untechnical as possible. He undertook a dialogue with the public, to involve them in the process of law reform. Studies in sentencing, criminal procedure, expropriation, Sunday observance, mental disorder, family law and administrative law were initiated.

c) The Work Continues

In 1976, Mr. Justice Antonio Lamer (now a member of the Supreme Court of Canada), who had served as Vice-Chairman in the first five years, succeeded Mr. Justice Hartt as Chairman of the Law Reform Commission. His energetic and imaginative leadership led to the publication of many outstanding reports and studies. One of Mr. Justice Lamer's most significant contributions was his dramatic call for a moratorium on all new legislative programs that involve the criminal law (except for criminal procedure) until the Government of Canada developed a comprehensive justice policy. Without such a policy, all legislative changes would be "random and *ad hoc* measures." In response to his challenge, the Government undertook and articulated a comprehensive criminal justice policy for Canada, which is contained in *The Criminal Law in Canadian Society*

(1982). This official statement of the purpose of the criminal law, and the principles to be applied by the Government to achieve that purpose, is consistent with the views expressed by the Law Reform Commission of Canada in its Report 3, *Our Criminal Law*.

During Mr. Justice Lamer's term as Chairman, several new studies in the field of criminal law were undertaken. Research in Family Law and Administrative Law flourished. A major conference on preparing for trial, held in March of 1977, greatly influenced the conduct of criminal trials by encouraging the use of disclosure and other useful techniques. He built a solid base of support for our work in Québec. It was also under Mr. Justice Lamer's stewardship that the Protection of Life Project was established to study such issues as euthanasia, consent to medical treatment and other similar issues.

Francis C. Muldoon, Q.C. (as he then was), now Mr. Justice Muldoon of the Federal Court of Canada, who had been Vice-Chairman of the Commission for a time, became the third Chairman, later President, of the Law Reform Commission of Canada in 1978. Mr. Justice Muldoon, whose steady and committed leadership brought to the Commission even greater credibility, characterized the process of law reform as "change for the better." He strove to establish stronger ties with the judiciary, the legal profession, the police and others, by setting up permanent committees for periodic and continuing consultation about the criminal law.

Mr. Justice Muldoon's period of tenure was most productive; no less than twelve Reports to Parliament were prepared, on such varied topics as the cheque, the jury, theft and fraud, contempt of court, euthanasia, criteria for the determination of death, and writs of assistance and telewarrants.

Moreover, it was during Mr. Justice Muldoon's term that there was established the Criminal Law Review, a joint effort of the Commission, the Department of Justice and the Department of the Solicitor General (including involvement of the provinces) to overhaul the criminal law and criminal procedure. No longer would the Reports of the Commission be ignored; there was now machinery in place to evaluate the work of the Commission as it emerged.

d) The New Team

During the period of this reporting year, after the appointment to the bench in 1983 of Mr. Justice Francis C. Muldoon and Mr. Justice Réjean Paul, the Vice-President of the Commission, Mr. Justice Allen M. Linden, of the Supreme Court of Ontario, was appointed President, and Professor Jacques Fortin, of the University of Montréal, was named Vice-President of the Commission. They joined Mrs. Louise D. Lemelin, Q.C., a barrister and solicitor from Victoriaville, Québec, the Commissioner in charge of the Protection of Life Project; Mr. Alan D. Reid, Q.C., formerly with the Office of the Attorney General of New Brunswick, the Commissioner responsible for the Administrative Law Project; and Mr. Joseph Maingot, Q.C., former Parliamentary Counsel and Law Clerk of the House of Commons, the Commissioner in charge of the Criminal Procedure Project. Also joining the new team in this period were two new Co-ordinators, François Handfield, Substantive Criminal Law Project, and Winston McCalla, Criminal Procedure Project, whose function is to act as research directors of their respective projects. Other key members of the Commission staff include Mr. Jean Côté of the Québec Bar, the Secretary of the Commission; Brigadier General (retired) Michael H. F. Webber, Director of Operations; Mr. Harold J. Levy, Special Assistant to the President; Mario Bouchard, Co-ordinator of the Administrative Law Project; and Edward W. Keyserlingk, Co-ordinator of the Protection of Life Project.

The new team will build on the solid foundation laid by their predecessors, which affords the present members of the Commission a clear sense of direction and a strong sense of purpose. As the Commission proceeds further to make specific recommendations for reform, it will continue to rely heavily on the fundamental principles developed in the early years of its history, for the great advantage of a permanent law reform body is the fact that it develops and fosters a consistent, continuing approach to law reform.

2. INFLUENCE ON LAW REFORM

A law reform commission influences law reform in many ways, not only by encouraging Parliament to enact legislation. Law reform commissions, as they develop their recommendations, sponsor legal research which enlarges our understanding of the law and the legal system. This research may be used in litigation by counsel and may assist courts in arriving at their decisions, some of which may advance the law along new paths. Further, the results of research may affect the various actors in the legal system, who may alter their conduct in response to the advice offered, even in the absence of legislation requiring them to do so. Lastly, the dissemination of new ideas about law to the public may change attitudes, alter expectations, and create fertile ground for reform. Let us consider briefly the various ways in which the Law Reform Commission of Canada has sought to influence law reform in Canada.

a) Influence on Law Reform through Research

Before the Commission can make recommendations to Parliament about any aspect of the law, it must research the history and purpose of the present law, identify the defects in it, and try to determine how to solve the problem. The Commission must study how other jurisdictions deal with similar problems, how effective those solutions are, and what solutions would work best in Canada.

Research, thus, plays a critical role in the work of the Commission. In addition to the twenty-two Reports (Appendix A), the thirty-four Working Papers (Appendix B), and over sixty Study Papers (Appendix C) that we have published, we have also produced over one hundred unpublished Study Papers which are available to researchers in our library (Appendix D). In addition, several books and many articles, based on work they have done while at the Commission, have been published privately by Commission personnel (Appendix E). The research work of the Law Reform Commission also acts as a catalyst for other legal research and writing in Canada, which is sometimes critical of our work (Appendix F). Many articles have also been written

about the Commission, its history, its function and its philosophy (Appendix G). All of this scholarly activity stimulates thinking about law reform and helps move us forward to understanding and, it is hoped, action.

The Commission's research work has another important consequence. Working at the Commission for a year or two is excellent training for young lawyers, who become effective researchers, something that remains with them during their entire professional lives. Many Commission researchers have continued their interest in scholarship and become law professors, government lawyers or active practitioners working at the frontiers of the law. It should be noted that the research done by the Commission has earned it an international reputation. Requests for our publications have come from all over the world. Scholars have relied on our research work, praised it and criticized it in legal journals of many different countries. Hence, the research work, by itself, has value for Canada, just as the research in other fields contributes to the enrichment of our society.

b) Influence on Law Reform through Education

Another important function which the Law Reform Commission performs is keeping members of the public informed about problems with the present law, and the possible ways of solving those problems. All of the Commission's Working Papers and Reports are available to members of the public upon request, free of charge. Our Working Papers invite readers to transmit their views about our proposals to the Commission. Many do.

This process benefits both the public and the Commission. When citizens read our publications, they learn about particular aspects of the law. If they take the time to send us their views, we study and learn from them as we prepare our final Reports to Parliament. It is most illuminating to read letters from members of the public expressing their concerns and offering their advice.

Another way in which the Commission tries to educate Canadians about law and law reform is by speaking to various groups. During the last year, Commission personnel have spoken to high school students at sessions sponsored by the Forum for Young Canadians and the Terry Fox Canadian Youth

Centre, and to special interest groups such as the Salvation Army and the Association for the Prevention of Crime.

In addition, Commission personnel have communicated with the public through the media. Members of the Commission were interviewed on television shows such as the "National", the "Journal", "Téléjournal", "Droit de parole", the "Jack Webster Show", "Canada AM", "Forum", the "Douglas Fisher Show", the "Margaret Trudeau Show", and radio programs such as "As It Happens", "Présent", "Prisme", and "Edmonton Today" have also broadcast interviews with us. Articles written by the staff of the Commission have also appeared in newspapers such as the *Globe and Mail*, *Le Devoir*, the *Toronto Star*, the *Ontario Lawyers Weekly*, the Canadian Bar Association newspaper, the *National* and the Québec Bar newspaper, *Barreau 84*.

One other way in which the Commission has attempted to inform the public about law is through its participation in Law Day. The purpose of Law Day is to inform members of the public about law and the legal profession. On April 17, 1984, the second annual Law Day in Canada, the Commission joined with the Canadian Bar Association to sponsor an essay contest. University students from across Canada were invited to submit essays on the area of federal law most in need of reform. Prizes for the best two essays in English and the best two in French were awarded by His Excellency the Governor General, Edward Schreyer, at Rideau Hall on Law Day. The winners were Lilja Elianne Lawler (Osgoode Hall), Pierre Rainville (Laval), Leonard Abramowicz (McGill) and Louise Maguire Wellington (Ottawa). The winners met the Prime Minister and were guests of the Commission and the Canadian Bar Association, at a luncheon also attended by His Excellency, prominent lawyers, and representatives from government and the media.

c) Influence on Law Reform through Judicial Decisions

The Law Reform Commission has had an impact on law reform by virtue of the use of its publications by members of the judiciary in arriving at their decisions. In the last thirteen years, there have been over eighty reported cases in which Canadian judges have cited or relied on Commission publications as legal source material (see Appendix H).

The Supreme Court of Canada has frequently cited our Reports in its reasons for judgment. For example, in the criminal law field, in *R. v. Sault Ste. Marie* [1978] 2 S.C.R. 1299, Mr. Justice Dickson referred to the Commission's Working Paper 2 entitled *Strict Liability* (1974) as he decided *inter alia* that an accused person should not normally be convicted of a public welfare offence if he is able to establish that he exercised due diligence. In *R. v. Zelensky* [1978] 2 S.C.R. 940, the court held that, as part of the sentencing process, a criminal court could constitutionally award restitution. Chief Justice Laskin cited the "relevant observations" of the Commission's work to the effect that restitution should play a more important role in the sentencing process.

In the evidence area, the Supreme Court of Canada has also relied on Commission work in reaching its decisions. For example, in *R. v. Vetrovec and Gaja* [1982] 1 S.C.R. 811, Mr. Justice Dickson, after referring to the Commission's plea for the simplification of the law of corroboration contained in its Report on *Evidence*, did just that and held that the testimony of an accomplice should be treated in the same way as that of any other witness. This holding was tempered by noting that it might be wise to caution a jury to look for additional evidence in certain types of situations. Similarly, in *Graat v. The Queen* [1982] 2 S.C.R. 819, the Supreme Court of Canada referred to the Commission's Report on *Evidence* which urged that a non-expert witness be permitted to offer opinion evidence if it is based on facts perceived by the witness. In another case, *R. v. Konkin* (1983), 3 C.C.C. (3d) 289, Madam Justice Wilson, in her dissenting opinion, referred to the recommendation of the Law Reform Commission that the questioning of a complainant in a rape case in relation to sexual conduct with other men should be prohibited.

As for family law, the Supreme Court of Canada in its recent maintenance case of *Messier v. Delage* (1984) 2 D.L.R., (4th) 1, referred to our work on the subject. Mr. Justice Chouinard quoted from the case of *Marcus v. Marcus* [1977] 4 W.W.R. 458 (C.C.A.), in which that court mentioned that the Commission's "learned discussion of the law and recommendations on changes in the law are useful in clarifying the issues which arise before the courts and may well be helpful in that they offer examples of current thought upon the subject." (at p. 8) Mr. Justice Lamer, in his dissent, also quoted extensively from our Working Paper 12 on *Maintenance on Divorce*.

Courts at all other levels in the judicial hierarchy have also relied on Commission publications as authorities. In the last year alone, our work was cited in at least fourteen reported decisions. For example, Mr. Justice G. A. Martin, writing for an unanimous Ontario Court of Appeal decision in *R. v. Rao* (May 16, 1984), referred to our Working Paper 30 on Search and Seizure on six separate occasions. The court, noting that "the Law Reform Commission of Canada has recommended the elimination of warrantless searches of private premises subject to specific exceptions," held that evidence obtained by a warrantless search would be inadmissible unless it was highly impractical to obtain one. The P.E.I. Court of Appeal in *R. v. Carroll* (1983), 4 C.C.C. (3d) 131, held unconstitutional the reverse onus clause of section 8 of the *Narcotic Control Act*, citing *inter alia*, our Study Paper on *Burdens of Proof and Presumptions* (1973).

The Québec Superior Court relied on our work in two cases. In *Institut Philippe Pinel de Montréal c. Dion* [1983] C.S. 438, our Report on *Mental Disorder in the Criminal Process* was cited on the issue of whether a patient in a psychiatric institution has the right to refuse treatment. In *A. G. Québec v. Laurendeau* (1983), 3 C.C.C. (3d) 250, the court denied a jury in a contempt of court case, relying upon our Report 17 entitled *Contempt of Court* in which it was urged that no jury should be allowed in such cases.

The Northwest Territories courts have utilized our work. In *Wasylyshyn* (1984), 36 C.R. (3d) 143, Mr. Justice Marshall held that advertence was required for recklessness, basing his decision, in part, on our Working Paper 29 on the *General Part — Liability and Defences*. In *R. v. Panarctic Oils Ltd.* (1983), 43 A.S.R. 199, our Working Paper 16 on *Criminal Responsibility for Group Action* was cited. In *R. v. Kusyj* (1984), 51 A.R. 243, our Working Paper 29 on the *General Part — Liability and Defences* was referred to for the proposition that self-defence cannot be used as a cloak for unlawful aggression.

Among the other instances in which our publications have been cited is *R. v. Cyrenne, Cyrenne and Grant* (1983), 62 C.C.C. 240, where parents who refused blood transfusions for their dying child were held not guilty of negligence. Fitzgerald D.C.J. quoted from our Working Paper 26 on *Medical Treatment and Criminal Law*, describing the role of criminal law in affirming fundamental values and setting limits for tolerable behaviour. Our Report on

Sunday Observance has been quoted to indicate that honouring Sunday is not an exclusively Christian moral doctrine in *R. v. Big M Drug Mart* [1983] 4 W.W.R. 54.

In *R. v. Texaco Canada* (November 10, 1983) two of our works were quoted: Working Paper 30, *Police Powers — Search and Seizure in Criminal Law Enforcement* (1983) and Report 19, *Writs of Assistance and Telewarrants* (1983). The definition of search and seizure as found in Working Paper 30, was relied upon by Judge Grenier in *R. v. Blake* (1983), 37 C.R. (3d) 347.

In *R. v. Perron* [1983] C.S.P. 1103, the Commission Report on *Evidence* was used by the court in a field where "... there is little to guide me" The court looked at all the surrounding circumstances, as the Report had urged, and held that the evidence must be excluded if its use would bring the administration of justice into disrepute.

Lastly, in his dissenting reasons, in *R. v. Stevens* (1984), 7 C.C.C. (3d) 220, Mr. Justice Jones of the Nova Scotia Court of Appeal noted that the Canadian, Commonwealth and American law on the exclusion of illegally obtained evidence is "admirably summarized in the study paper issued by the Law Reform Commission of Canada," entitled *The Exclusion of Illegally Obtained Evidence* (1974).

The reliance on the Commission's research and recommendations by courts of every level across Canada is an indication of the respect given to the Commission's work. We are pleased to be of assistance to the judiciary in coming to difficult decisions.

d) Influence on Law Reform through Changing Conduct

The Commission has been able to influence law reform in many ways without the need for parliamentary action.

(i) *Unemployment Insurance Commission*

One good example of this is the Unemployment Insurance Commission's adoption of several of the proposals made in a Study Paper of the Law Reform Commission in 1977 entitled *Administrative Procedure in the Unemployment Insurance Commission*. The Chairman of the Unemployment Insurance Commission at that time, Mr. J. L. Manion, wrote to

Mr. Justice Lamer commending the study and outlining the steps that had been taken, without legislation, as follows:

The proposals for change have been carefully reviewed by officers of the Commission. Of the 68 recommendations in the report, 20 have already been implemented and a further 31 have our support. Proposals for their implementation, albeit with modifications in some instances, are in the course of development.

(ii) *Unified Family Court*

Another of the Commission's achievements without parliamentary intervention has been its influence on the creation of unified family courts across Canada. In the Commission's Working Paper 1 on *The Family Court* and its Report 6 on *Family Law*, it recommended the creation of a single family court with comprehensive jurisdiction over all family law matters, including divorce, division of property, spousal maintenance and child custody and support. Following publication of that work, a number of provinces took steps to develop pilot unified family court projects, with the assistance and encouragement of the Law Reform Commission. One of those provinces was Ontario, which on July 1, 1977, established the Unified Family Court of the District of Hamilton-Wentworth, as a three-year pilot project. This experiment has now evolved into a permanent institution which has allowed one court, rather than several, to handle all the legal issues arising out of marital breakdown in a humane and efficient way. Similar developments took place in Saskatchewan, Newfoundland and New Brunswick, where the federal and provincial governments co-operated in the establishment and funding of the project.

(iii) *Disclosure*

The Commission's work has influenced the practice of criminal law. Pretrial disclosure practices by the Crown have altered significantly over the last decade, at least partially in response to the Law Reform Commission's Working Paper 4 on *Discovery* in criminal cases and the conferences and experiments that it encouraged.

In February of 1975, after the publication of that paper, the first experimental disclosure project began under His Honour Judge Lessard in Montréal. The results of that experience clearly demonstrated that a system of pretrial disclosure by the Crown could increase the number of cases settled prior to trial,

avoid the needless summoning of witnesses, and produce substantial savings in the cost of the administration of justice. Other experiments followed, in cities such as Ottawa, Edmonton and Vancouver. At the present time, several provinces, including Ontario, operate under non-legislative guidelines issued by the provincial Attorneys General indicating the extent of disclosure to be made by the Crown to accused persons.

(iv) *Videotape*

During the past few months, the Commission's Working Paper 32 on *Questioning Suspects* has generated considerable interest among judges, criminal lawyers, Crown prosecutors and police officers. In that paper, the Commission recommended that the questioning of suspects in police stations or prisons should be electronically recorded wherever feasible, either by audiotape or videotape, as is already being done in several American jurisdictions, with encouraging results. It is hoped that this will reduce incidents of police misconduct, curtail unfounded allegations of police brutality, and shorten the amount of time needed for *voir dire*s to determine whether statements were made voluntarily.

Even before any legislation is enacted, the Commission has engaged in active discussions with the police in Ottawa and Montréal, which we hope will lead to the establishment of videotaping experiments on a voluntary basis without legislation. If the experiments are successful in expediting the criminal trial and reducing allegations of police misconduct, it is likely that police practices across Canada will change dramatically in the years ahead, even if legislation is not enacted.

e) *Influence on Law Reform through Legislation*

The Commission's primary function is, of course, to submit Reports to Parliament which contain recommendations for legislative law reform. Several of the Commission's studies have had some influence on the enactment of legislation by Parliament.

The Law Reform Commission can claim some credit for subsection 24(2) of the *Canadian Charter of Rights and Freedoms*, which requires a court to exclude evidence obtained in a manner that infringes a legal right or fundamental freedom, if its admission

into evidence would bring the administration of justice into disrepute. The minutes of the Joint Committee on the Constitution clearly demonstrate that section 15 of the Law Reform Commission's draft Evidence Code, contained in Report 1, played a major role in the shaping of subsection 24(2). Section 15 of our Evidence Code provides that evidence "obtained under such circumstances that its use in the proceedings would tend to bring the administration of justice into disrepute" shall be excluded. Our influence on this section, which he admires, was pointed out by the former Attorney General of the United States, Mr. William French Smith, in a speech to the Annual Meeting of the Canadian Bar Association in Québec City in August 1983.

The Commission's Report 10 on *Sexual Offences* is another example of legislative law reform contributed to by the Commission. Bill C-127, which was proclaimed in force in January 1983, adopted in essence the Commission's proposal to remove the offence of "rape" from the *Criminal Code* and to substitute an offence aimed at protecting the physical integrity of the person. In the new legislation, the offence replacing rape is called "sexual assault". The Commission's recommendation that the immunity of husbands from prosecution be removed also was adopted, so that husbands can now be convicted of sexually assaulting their wives, whereas in the past they could not be. Moreover, solicitation by persons of either sex is now an offence, as urged by the Commission.

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 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 remunerations 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 entitled *The Exigibility to Attachment of Remuneration Payable by the Crown in Right of Canada*.

Several of the recommendations made in Report 4, *Expropriation*, have influenced changes in the procedures used to expropriate land needed for the construction of pipelines and power lines. The amendments to the *National Energy Board Act* (Bill C-60) which enacted these items were assented to on

December 18, 1981, and were proclaimed into force on March 1, 1983, becoming S.C. 1980-81-82-83, c. 80.

Other proposals in the Commission's Report on *Evidence* have influenced section 13 of the Charter, which deals with self-incrimination, some provisions of the recently proclaimed *Young Offenders Act*, and a number of the provisions of Bill S-33, "An Act to give effect, for Canada, to the Uniform Evidence Act adopted by the Uniform Law Conference of Canada", which is currently being revised. For example, paragraph 88(a) of the Commission's Evidence Code, which would abrogate the rule in *Hodge's* case, has been reflected in section 14 of Bill S-33, which provides that "in a criminal proceeding, the court is not required to give the trier of fact any special direction or instruction on the burden of proof in relation to circumstantial evidence." There were many other similar examples in Bill S-33, which, it is hoped, will be re-introduced and enacted by Parliament.

A major effort at legislation containing much of the Commission's work was undertaken, but not completed prior to the dissolution of Parliament in 1984. On February 7, 1984, Bill C-19, "An Act to amend the Criminal Code ..." was tabled in Parliament by Justice Minister Mark MacGuigan. The Bill proposed major criminal law reforms as part of a systematic overhaul of the *Criminal Code*, the first product of the Criminal Law Review. It was the most far-reaching effort at criminal law reform since 1955.

A significant number of the proposals in Bill C-19 were based on the work of the Law Reform Commission, in particular, on seven of our Reports: *Dispositions and Sentences in the Criminal Process*, *Theft and Fraud*, *Criminal Procedure — Part I: Miscellaneous Amendments*, *The Jury*, *Contempt of Court*, *Alcohol, Drugs and Driving Offences*, and *Writs of Assistance and Telewarrants*. Of the Bill's 306 pages, more than one-third, 125 pages, had its genesis in the work of the Law Reform Commission.

The true impact of the work of the Law Reform Commission on Bill C-19 can best be illustrated by focusing upon a few particular aspects of the Bill. For example, virtually all of the recommendations made by the Commission in its Report 16 on *The Jury* have been adopted in the Bill. Of the twenty-nine proposed new provisions, at least twenty-five of them are the same as, or similar to, the recommen-

dations made by the Commission. The same can be said of the Bill's proposals to abolish writs of assistance and implement a telewarrant procedure. The telewarrant scheme set out in the Bill is almost identical to that proposed by the Commission. Another feature of the Bill, adopting our suggestions, is the proposal for testing the blood of drivers involved in accidents who are suspected of having consumed alcohol.

Other parts of the Bill adopt many of the recommendations made by the Law Reform Commission, but with some significant variations. For example, the precise definitions of the theft and fraud offences in the Bill differ from the definitions proposed by the Commission. Nevertheless, the Bill adopts the Commission's general approach of simplifying the law and deleting unnecessary offences. Both the Commission and the Bill would codify and define in the *Criminal Code* the law of criminal contempt. However, some of the definitions and procedures set out in the Bill differ from the Commission's recommendations.

Other noteworthy features of the Bill include new sentencing provisions and procedural amendments designed to expedite the criminal process. Most of the Commission's proposals about sentencing principles and procedure and the range of available sanctions were adopted in some form in the Bill. The provisions of the Bill dealing with speedy trials, pretrial conferences and the determination of certain issues prior to the empanelling of the jury are consistent with the recommendations made by the Commission in its Report 9, *Criminal Procedure — Part I: Miscellaneous Amendments*.

Another very significant piece of legislation which was introduced during the last session, is Bill C-10, "An Act to amend the Divorce Act". This Bill adopts many of the recommendations made by the Law Reform Commission in its Report on *Family Law* and Working Papers on *Divorce* and *Maintenance on Divorce*. For example, the Bill adopts the Commission's recommendations that the only basis for the dissolution of marriage should be a breakdown of the marriage. The doctrines of matrimonial fault, collusion and condonation would be abolished. The Bill also incorporates the Commission's proposal to delete reference to conduct of the parties in the maintenance provisions of the *Divorce Act*.

Like the Commission's recommendations, the effect of the provisions of the Bill would be to encourage parties to a marriage to attempt to

reconcile, but permit their marriage to terminate as painlessly as possible where divorce is the only solution.

A complete list of the Reports of the Law Reform Commission and the Bills based on them can be found in Appendix A.

3. PUBLICATIONS RELEASED THIS YEAR

The past year was a most productive one for the Commission. Four Reports to Parliament, five Working Papers and two Study Papers were published.

a) Reports to Parliament

Report 19: Writs of Assistance and Telewarrants

This Report adopts two proposals tentatively advanced by the Commission in Working Paper 30 (see below). The first calls for the immediate abolition of writs of assistance, because we have concluded that the writ of assistance is an instrument of unconstitutional search and seizure and "antithetical to our common-law traditions." The second recommendation was that the *Criminal Code* should be amended to provide for the issuance of search warrants by telephone or other means of telecommunication where a personal appearance of a peace officer before a justice of the peace would be impractical. The proposed procedure would employ modern communications technology to increase search efficiency, without sacrificing civil liberties. Both of these recommendations were included in Bill C-19.

Report 20: Euthanasia, Aiding Suicide and Cessation of Treatment

This Report is a response to concerns expressed by doctors, lawyers and members of the public about the law relating to euthanasia, suicide and

cessation of treatment. Existing provisions of the *Criminal Code* are ambiguous and vague. Some were drafted at a time when modern medical technology was less developed.

In response to these defects, the Commission recommends that euthanasia, meaning the active ending of the life of a person when terminally ill or suffering unbearably, should *not* be legalized, but should continue to be treated as culpable homicide. Legalizing euthanasia would indirectly condone murder and weaken respect for human life. For the same reasons, the Commission also recommends that the present offence of aiding suicide should be retained.

The Commission does, however, propose that any competent person should have the right to refuse treatment of any kind and to insist that treatment already begun be discontinued. Moreover, it is urged that a physician should not be held criminally liable for undertaking or continuing the administration of appropriate palliative care to eliminate or reduce the suffering of an individual, even if such care might shorten the individual's life expectancy.

Report 21: Investigative Tests — Alcohol, Drugs and Driving Offences

This Report dealt with deficiencies in the law concerning the detection and proof of drug- and alcohol-related driving offences. The Commission recommends that a police officer should be empowered to require a person suspected of having driven while impaired by drugs or alcohol to provide a blood sample, in certain limited situations. If the person is unconscious, a warrant would have to be obtained. Unreasonable failure or refusal to comply with a demand for a blood sample would constitute an offence.

Certain procedural safeguards would protect the rights of a person compelled to provide a blood sample. For example, a person from whom a blood sample is taken would be entitled to have half of the sample sent to an independent analyst. The taking of a blood sample would be lawful only if performed by a person qualified by professional training, and if taken in a manner ensuring minimum discomfort to the person. A substantial violation of any of these procedures would result in the evidence so obtained being excluded, unless the court is of the opinion that admission of the evidence would not bring the administration of justice into disrepute.

Report 22: Disclosure by the Prosecution

The proposals contained in this Report are the product of earlier work done by the Commission on disclosure, the results of several experimental disclosure projects, and studies published by other organizations on the role of the preliminary enquiry. In this Report, the Commission recommends that statutory rules on pretrial disclosure by the prosecution should be enacted to promote fairness and efficiency in the criminal process. No specific recommendations are made in this Report about the future role of the preliminary enquiry.

The Commission recommends that a new Part be added to the *Criminal Code* to deal with disclosure. At the accused's first appearance, he must be provided with a copy of the information or indictment and informed of the right to request further disclosure from the prosecution. Before electing mode of trial or pleading to an indictable offence, the accused would be entitled to request and receive other types of information and documentation, including copies of the criminal record, any recorded statement made to a person in authority, and statements made by persons whom the prosecutor proposes to call as witnesses. Upon application by the prosecutor to a judicial officer having jurisdiction in the matter, an order could be made delaying the time of disclosure if timely disclosure would probably endanger life or safety or interfere with the administration of justice. Failure by the prosecutor to make timely disclosure would entitle the accused to apply for an order adjourning the proceedings or any other order appropriate in the circumstances.

These rules should afford the accused a more informed appreciation of the case to be met, while minimizing the need for, and length of, preliminary enquiries. Further work is being done by the Commission on the role of the preliminary enquiry and disclosure by the defence.

b) Working Papers

Working Paper 30: Police Powers — Search and Seizure in Criminal Law Enforcement

The recommendations contained in this paper attempt to consolidate, rationalize and simplify police powers of search and seizure. Three central precepts have guided the Commission in making

proposals in this area. First, the disparate array of search and seizure powers should be replaced by a single, comprehensive scheme. Second, the grounds for the exercise of these powers should be determined to be reasonable by a judicial officer adjudicating upon sworn information prior to the search, in order for the powers to comply with the *Canadian Charter of Rights and Freedoms*. Third, search by warrant should be the rule, and exceptions to that rule should be so circumscribed as to permit search without warrant only in circumstances of exigency or informed consent. The Commission recommends that only two exigencies should permit search without warrant: searches of persons and vehicles incidental to arrest, and searches of persons, places or vehicles where the delay necessary to obtain a warrant could cause danger to human life or safety. Several of the exceptional search powers presently found in the *Narcotic Control Act*, *Food and Drugs Act* and gun control provisions of the *Code* thus would be eliminated.

Working Paper 31: Vandalism

In this paper, the Commission tentatively proposes to create a new offence of vandalism to prohibit conduct which damages or destroys property or renders property useless by tampering with it. The offence would be called "vandalism" rather than "mischief" because the word "vandalism" carries a stronger negative connotation and highlights a social problem which is of increasing concern. The offence would be restricted to conduct affecting the property of others. Arson would be a separate offence because of the risk to life and safety involved in the use of fire. The content of the arson offence is being explored in another study.

In general, these proposals attempt to distinguish between conduct which causes serious harm to property and is best dealt with through the mechanism of the criminal law, and conduct which is not really culpable and better left to other mechanisms of social control.

Working Paper 32: Questioning Suspects

In this paper, the Commission recommends that statutory rules be enacted that would regulate the questioning of suspects. It is our belief that the enactment of such rules would regularize police procedures for taking statements, thereby ensuring

that a suspect is treated fairly, and facilitating determinations on the admissibility of such statements.

The Commission's proposed scheme would require that questioning in a police station or prison be electronically recorded wherever feasible. This procedure should diminish unfounded allegations of police misconduct, expedite the *voir dire*, and thereby enhance the speedy disposition of cases.

Other recommendations would require a police officer who questions a suspect in a place other than a police station or prison to make a record of all questions put and answers given to the fullest extent possible. Statements taken from a suspect in contravention of these rules would be inadmissible unless it is established that the contravention is merely a defect of form or a trifling irregularity of procedure.

Working Paper 33: Homicide

The proposals contained in this paper are aimed at ridding the law of homicide of many of its present deficiencies, and creating a scheme which is rational and easier to explain to juries. The most important recommendations made by the Commission are to create two homicide offences, distinguishable according to the state of mind of the offender.

The most serious homicide offence was, for discussion purposes only, labelled "intentional homicide" and would consist of only those killings done with actual intention. The constructive murder rule would be abolished because it capriciously equates some unintentional killings with intentional killings, and thus rides roughshod over important distinctions drawn by morality.

Intentional homicide would, however, be divided into two degrees. First degree intentional homicide would consist of the most heinous killings, such as murder for gain, revenge, or some other evil motive. It would be defined in principle as intentional homicide involving deliberate subordination of the victim's life to the offender's purpose. Such killings would carry a minimum sentence of imprisonment, to reflect the needs of social policy.

Second degree intentional homicide would consist of all other intentional homicides, and would carry a maximum penalty of life imprisonment. A statutory maximum penalty would obviate the need

for special rules on excess force in self-defence, provocation and infanticide. Instead, the judge could take account of such matters flexibly in sentencing.

The second most serious type of homicide offence would, for discussion purposes only, be called "reckless homicide". It would be restricted to reckless killing, that is, causing death by knowingly exposing another to a serious and socially unacceptable risk of death. This definition would clearly distinguish reckless killings from intentional homicide, and killing through gross negligence. Reckless homicide would carry a lower penalty than intentional homicide, to reflect the fact that there is a moral distinction between causing harm which is foreseen but unintended, and causing harm intentionally.

The Commission has not dealt with negligent homicide in this Working Paper, having left for further study this vexing issue.

Working Paper 34: Investigative Tests

This Working Paper is directed toward the rational and comprehensive statutory regulation of those investigative test procedures which either require some form of participation on the suspect's part, or constitute an intrusive interference with the suspect's physical or mental integrity.

The paper divides investigatory tests into four categories according to their degree of intrusiveness. The Commission makes recommendations about the circumstances in which each class of test may be carried out. Testing for the presence of alcohol or drugs in the blood of someone suspected of having driven while impaired would be subject to a different regime. These recommendations were adopted in Report 21 (see above).

The paper also recommends that statutory safeguards be enacted to protect the interests of the suspect. For example, tests should be conducted in circumstances guaranteeing the greatest possible privacy to the test subject. The subject of such tests should be entitled to have the tests conducted by persons qualified by professional training. A substantial violation of the statutory procedures should result in evidence so obtained being excluded unless its admission would not bring the administration of justice into disrepute.

c) Study Papers

Maurice H. Smith, *Origins of Writ of Assistance Search in England, and Its Historical Background in Canada*

This paper describes the English origins of the broad and peremptory power to search private premises identified with the writ of assistance, its introduction into British North America and its history in Canada.

Neil Brooks, *Pretrial Eyewitness Identification Procedures*

In this paper, Professor Brooks develops a set of guidelines to establish uniform rules for obtaining verbal descriptions of a suspect from an eyewitness, for preparing sketches and composites of a suspect, and for conducting lineups, photographic displays, informal viewings and confrontations. The purposes of these guidelines are to establish uniform procedures, to increase the reliability of identifications, to reduce the risk of mistaken identification and to protect the rights of suspects. The guidelines are drafted as a comprehensive code, parts of which could be enacted as part of a comprehensive code of criminal procedure if that were felt to be desirable.

4. CURRENT RESEARCH

a) Substantive Criminal Law

This project is under the supervision of the Vice-President of the Commission, Professor Jacques Fortin. He is assisted by François Handfield, the Co-ordinator of the project, and Patrick Fitzgerald, a special consultant.

The Substantive Criminal Law Project has, as its main object, the production of a new code of substantive criminal law for Canada. Much of the foundation work has already been completed. For example, the Commission has produced a basic Report 3 on the general principles of criminal law, *Our Criminal Law* (1976). Another fundamental

document is Working Paper 29 on the *General Part — Liability and Defences* (1982). Reports on *Sexual Offences* (1978), *Theft and Fraud* (1979) and *Contempt of Court* (1982), and Working Papers on *Vandalism* (1983) and *Homicide* (1983) have already been produced.

(i) *The General Part*

Work on the General Part is proceeding quickly. During the past year, a Working Paper on the application of the *Code*, *Extraterritorial Jurisdiction* was completed. This paper focuses on the compatibility of the present provisions of the *Criminal Code* with principles of international law. It canvasses the territorial and extraterritorial provisions of the *Code*, points out its defects, makes tentative recommendations for reform and presents draft legislation. The draft paper was discussed with representatives of the Department of Justice and the Department of the Solicitor General, External Affairs, Fisheries and Oceans, National Defence and Transport Canada, along with the regular consultation groups prior to completion.

Studies on Parties to Offences, Incitement, Attempt and Conspiracy also were finalized in the spring of 1984 and incorporated into a draft Working Paper entitled Secondary Liability.

Several other papers should be completed in the near future. A Study Paper on the Application of the Code will be ready soon. That paper will examine issues such as the Rule of Law, the principle of legality, and retroactive application of the law. A final draft of a Working Paper on Corporate Liability also will be ready in the near future.

Work is proceeding on the subject of Procedural Defences such as entrapment, abuse of process and *res judicata*. A draft Working Paper on the defence of *de minimis non curat lex* is almost finished.

(ii) *The Special Part*

Researchers working on the Special Part of the *Code* also have been very productive during the past year. Working Papers on *Homicide* and *Vandalism* were published and received a great deal of publicity.

Several other papers are almost ready for publication. The Commission expects to be able to publish Working Papers on *Arson* and *Defamatory Libel* before the end of 1984.

Other draft studies were completed during the past year, including Offences against Credit Currency and Offences against Public Order.

Work is continuing on a number of other Working Papers and studies. Studies dealing with offences against the person include Assault, Kidnaping and Abduction, and Intimidation and Threats. Studies of Offences against Justice, Offences against Public Morality, Offences against and by State Institutions, and Hate Propaganda are proceeding. A draft Working Paper on Offences against Safety and Security of the State is close to completion.

(iii) *Future Plans: New Criminal Code for Canada*

During the next few years the project will be concentrating much of its efforts on preparing a new code of substantive criminal law for Canada that is intelligible to all Canadians, responsive to their needs and reflective of their values. After nearly one hundred years of service, we feel that the current *Code* should be replaced by a new Code made in Canada by Canadians for Canadians.

This new Code will avoid the haphazard arrangement of provisions which characterizes the present *Criminal Code*. The Commission's Code will be divided into a General Part, containing guiding principles and rules of general application, and a Special Part, containing rules concerning particular offences. The General Part thus will state the objects and general principles of the Code and deal with matters such as the application of the Code, jurisdiction, requirements of liability, defences, participation and inchoate offences. The Special Part will define specific offences with simplicity and precision, without excessive detail. It will be divided into sub-parts classifying these various offences according to a logical scheme.

In April 1984, the Commission sponsored a special meeting in Ottawa at which a preliminary outline of the new Code was discussed. The Commission asked for advice about arrangement of the Code's provisions, the style of drafting, and strategy for implementation. Canadian government representatives, both federal and provincial, academics and lawyers attended. Other participants included scholars of codification from other countries, such as Professors Wechsler and Kadish from the United States, Professors Hogan and Simpson from Great Britain and Professor Levasseur from France. Many of the comments made at the seminar were very

positive and encouraging. For example, Professor Hogan from Great Britain praised the Commission's tentative work as being distinctive and not obviously borrowed from any other source. Several criticisms of a constructive nature also were made. One of the most significant was the suggestion that the Commission alter slightly its usual manner of dealing with each specific topic. Rather than proceeding from Study Paper to Working Paper to Report on every aspect of the *Code*, it was suggested that a more streamlined approach should be considered, that is, by preparing a draft Code. The Commission has taken this suggestion to heart. Although we shall continue to publish Working Papers on most areas, we shall expedite the process by producing three drafts of the new Code — a tentative partial draft in May 1985, a tentative complete draft in May 1986, and a final complete draft in December 1986, in accordance with our commitment.

Drafting and redrafting a code of criminal law acceptable to judges, lawyers, academics, police officers, government representatives and members of the public will require extensive consultation and co-operation. The Commission will strive to involve outside consultants in the process to the greatest extent possible, so that we can together write a new Criminal Code for Canada of which all Canadians can be proud.

b) Criminal Procedure Project

The Criminal Procedure Project is under the direction of Commissioner Joseph Maingot, Q.C., and Co-ordinator Winston McCalla. The project's long-term goal is the preparation of a comprehensive code of criminal procedure. This code will deal with four major aspects of criminal procedure :

- i) classification of offences;
- ii) police powers;
- iii) pretrial procedures; and
- iv) trial and appeal procedures.

In addition, the project is involved in the preparation of a statement of general principles of criminal procedure, to be entitled "Our Criminal Procedure", to guide the Commission in the preparation of its code of criminal procedure.

(i) *Classification of Offences*

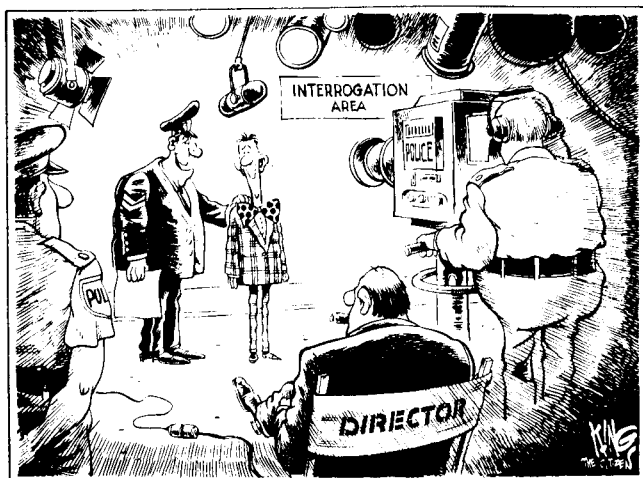
Central to the Commission's workplan for a code of criminal procedure is the development of a scheme for the systematic organization, by class of

offence, of the powers, protections and procedures which collectively make up criminal procedure. The project has given high priority to the preparation of a Working Paper on Classification of Offences, which should be ready by the spring of 1985.

(ii) Police Powers

Members of the project are currently devoting most of their energies to this aspect of criminal procedure. Virtually all of this work is complete or near completion. Reports on *Writs of Assistance and Telewarrants* and *Alcohol, Drugs and Driving Offences* were released during the year under review. Working Papers on *Police Powers — Search and Seizure in Criminal Law Enforcement*, *Investigative Tests* and *Questioning Suspects* were also published during the last year. In addition, Study Papers on *Pretrial Eyewitness Identification Procedures* and *Origins of Writ of Assistance Search in England, and Its Historical Background in Canada* were published.

Other Reports are near completion. A Report on Search and Seizure should be released at the beginning of 1985. This Report will recommend that the disparate array of criminal search and seizure powers should be replaced by a single, comprehensive scheme which complies with the *Canadian Charter of Rights and Freedoms*. This regime will make search pursuant to a judicially authorized warrant the rule for criminal investigations. Exceptions will be circumscribed to permit search without warrant only in circumstances of exigency or informed consent.



"THE LIEUTENANT WANTED YOU TO KNOW THAT THE SOFT-SHOE ROUTINE WAS VERY, VERY NICE AND YOUR GEORGE BURNS IMPRESSION IS ABSOLUTELY UNCANNY... NOW, IF WE COULD JUST TURN OUR ATTENTION TO THE LITTLE MATTER OF A CONFESSION..."
Courtesy of "The Citizen"

A Report on *Questioning Suspects* will also be released in the fall of 1984. This Report will recommend the enactment of statutory rules to govern questioning of suspects by the police. The purpose of these rules is to protect the rights of the accused, protect police officers from unwarranted allegations of misconduct, and expedite the *voir dire* held to determine whether a statement was made voluntarily. The use of videotape technology is advocated.

A Report on *Investigative Tests* is being prepared at the present time. This Report will recommend the adoption of statutory rules to govern police powers and procedures for taking certain types of evidence from suspects, with safeguards to protect their interests.

Several Working Papers are also almost complete. A draft Working Paper on Post-Seizure Procedures is to be the subject of consultations during June, 1984. The paper sets out a scheme of procedures to govern the detention and disposition of all things seized, regardless of the mode of authorization of the seizure. The emphasis of the recommendations is on facilitating the return of things seized to the person lawfully entitled to possession as promptly as possible, while minimizing the administrative burden on the police. This paper should be published during the spring of 1985.

Another Working Paper which is almost ready for publication is Arrest. The objective of this paper is to clarify and reformulate powers of arrest in a way which strikes an appropriate balance between the interests of efficient crime control and freedom of the citizen. This paper is the subject of ongoing consultation, and should be ready for publication before the end of 1984.

Work is continuing on several other topics within the police powers and procedures sub-project. A Working Paper on Electronic Surveillance is being prepared, and should be ready for consultation within the next few months. The emphasis of this paper will be on ensuring that authorizations to intercept private communications are strictly governed by the criteria of judiciality and particularity. Work is also proceeding on Search and Seizure outside the Criminal Code, in consultation with the Administrative Law Project. This paper will focus on the non-criminal search and seizure powers found in federal revenue and regulatory legislation. One of the major reasons for undertaking this study is to ensure that the search and seizure procedures

governing criminal investigations are not circumvented by resort to one of the numerous and disparate search and seizure regimes outside the *Criminal Code*.

(iii) *Pretrial Procedures*

A Report on *Disclosure by the Prosecution* was released during the year under review. A study of Disclosure by the Accused is under way. It will examine the advisability of enacting statutory rules for the regulation of pretrial disclosure by the accused. The Commission is also in the process of preparing a Study Paper on Criminal Procedure Remedies, which will focus primarily upon the development of remedies relevant to police powers and procedures. In the coming year, the Commission will be reviewing existing studies on the Preliminary Inquiry with a view to putting forward its own recommendations.

(iv) *Trial and Appeal Procedures*

The Commission is in the process of preparing papers on Criminal Pleadings and Trial and Appeal Procedures. The Commission's work in this area will address the organization, structure and jurisdiction of the courts, criminal pleadings, the development of a comprehensive and simplified procedural scheme, and remedies available during and after the trial.

c) *Protection of Life Project*

The Commissioner in charge of the Protection of Life Project is Louise Lemelin, Q.C. She is assisted by Mr. Edward W. Keyserlingk, the project Co-ordinator. The project's work has been divided into two phases. Phase I consists of work in medico-legal matters, primarily in the context of the criminal law. Pollution and environmental issues are studied in Phase II. The main objective is to determine the existing strengths and weaknesses of the criminal law tool in combatting pollution in relation to the environment, the workplace and consumer products.

(i) *Phase I*

Much of the work in Phase I is complete or near completion. A Report on *Euthanasia, Aiding Suicide and Cessation of Treatment* was released last year. A Report on Medical Treatment should be completed in the coming year. This Report will consist of a synthesis of the final and tentative recommendations about medical treatment issues made in other Reports, Working Papers and Study Papers. Some of

the recommendations will have a direct relevance to *Criminal Code* offences.

A Working Paper on Behaviour Alteration has been completed in draft form, although further revisions are expected. This paper examines the adequacy of the protection given to psychological integrity under the existing law. The focus is on the institutional context, such as penal institutions and psychiatric hospitals. Specific legal issues such as the patient's right to refuse treatment and the use of behaviour alteration as a substitute for punishment are considered.

Another draft Working Paper on Human Experimentation is also ready. This paper examines the role of law, including the criminal law, in regulating experimentation with human subjects.

A Study Paper on Biotechnology — New Genetic Techniques is almost complete. The paper studies ethical, legal and public policy questions which arise from the application of new genetic techniques.

(ii) *Phase II*

A preliminary draft of a Working Paper on Crimes against the Environment is complete. This paper examines whether criminal law, criminal sanctions and courts are appropriate legal means to deal with serious environmental pollution offences. Should the most serious pollution offences be treated as "real crimes"?

Another Working Paper which is substantially complete is Policing Pollution : The Enforcement of Environmental Legislation. In this paper, the policies and practices of environmental agencies in the enforcement of environmental legislation are identified and evaluated. The objective of the paper is to propose more coherent and uniform principles, priorities and criteria for discretionary decision making regarding prosecution of environmental offences.

Work is proceeding on two other Working Papers. A paper on Pollution in the Workplace will identify and evaluate the legal and non-legal controls and sanctions relevant to pollution hazards in the workplace, and determine the appropriate role for courts and the criminal law. A Working Paper on Consumer Product Pollution will examine the adequacy of procedures, controls and sanctions involved in agency testing and approval of potentially "hazardous by polluting" products.

Two Study Papers were completed during the year under review. A paper on *The Political Economy of Environmental Hazards* has been approved for publication. From primarily a political science perspective, the paper examines the process and influences which shape environmental and occupational policies and law. A paper called *Towards Consensus in Regulating Risks in Society* was completed last year, and will be published privately. From a largely ethical perspective this paper addresses the issue of whether existing legal mechanisms and controls have sufficiently attended to the evolving wisdom about risk and risk assessment in fields other than law.

A number of other research papers are substantially complete. These include *Evaluation of Selected Environmental Statutes: A Legislative Analysis*, which examines four federal environmental statutes in order to determine their legislative intent and coherence. *Sentencing in Environmental Cases* applies functional criminal law objectives to environmental statutes and gives special attention to the adequacy of fines as a sentencing tool. *Pesticides: An Examination of Canadian Law and Policy* examines existing federal, provincial and municipal programs and controls for the management of pesticides in Canada. *The Jurisdictional and Constitutional Perspective of Environmental Law* seeks to identify and evaluate the features of the federal structure relevant to environmental policy making and control. *The Comparative Criminal Law Perspective of Environmental Offences* examines the use of criminal law against pollution offenders in various foreign jurisdictions.

Studies in two other areas are ongoing. A special paper is being prepared on *Sentencing in Environmental Cases in Québec*. A paper on *Native Rights and Environmental Law* will focus upon the interaction between environmental law enforcement and Aboriginal and Treaty Rights in Canada.

d) Administrative Law Project

Alan D. Reid, Q.C., is the Commissioner in charge of the Administrative Law Project. He is assisted by Co-ordinator Mario Bouchard. The Commission's broad objectives in the field of administrative law are to promote a better understanding of the relationship between law and administration, to encourage the recognition of values such as fairness, efficiency and accountability in the dealings between the federal administration and private citizens, and, where appropriate, to recommend both

legislative and operational reforms to reinforce these values. The Commission is presently concentrating its energies in three main areas :

- i) independent administrative agencies;
- ii) compliance with administrative programs; and
- iii) the special status of the federal Crown.

(i) *Independent Administrative Agencies*

During the year under review, a draft version of a Report dealing with Statutory Decision Making by Independent Administrative Agencies was prepared. The project consulted extensively on this draft, and the Commission expects to publish a Report in the winter of 1984.

While that Report will deal with many issues raised earlier by the Commission in Working Paper 25, *Independent Administrative Agencies*, a number of aspects of that Working Paper remain under continuing study. In the area of administrative procedure, for example, we substantially completed over the year a study into the advisability of having minimum legislative standards for federal administrative agencies. This work should be published over the coming year. Related to this is a study of information gathering by administrative agencies, which examines, among other things, issues relating to the use of hearing officers by agencies as a means of determining facts upon which their decisions can be based. Other related work includes both empirical and conceptual studies of administrative appeals, as well as further consideration of the concept of a council on administration to provide an institutional focus for the promotion of sound administrative decision making.

(ii) *Compliance with Administrative Programs*

Our work on compliance has proceeded slowly, in part because of the interdisciplinary nature of the subject-matter, and in part because of the dearth of useful empirical information we can draw upon. Extensive Study Papers on Content Regulation by the C.R.T.C. and Industrial Water Pollution Control in the Environmental Protection Service have been completed and made available for consultation purposes, although they have not yet been published. Background papers completed during the year include documented studies of the compliance approaches of the Canadian Human Rights Commission and the Canadian Film Development Corporation. These and other background papers

prepared earlier for the Administrative Law Project, as well as for the Protection of Life Project, will form the base for our forthcoming Working Paper on Compliance. This Working Paper will outline the compliance options federal laws do or could make available for administering program goals, will discuss how the use of certain legal mechanisms can be influenced by political, economic, social and psychological factors, and will begin to map out a strategy for setting and attaining more realistic compliance objectives. We sense that much of the effort in this field must be educational, shaping attitudes towards the enforcement of administrative objectives. It is hoped that this work will contribute to a better understanding of the role of law in achieving compliance and the strengths and limitations inherent in the various strategies that the law may authorize.

(iii) *The Special Status of the Federal Crown*

Work on the special status of the Federal Crown has progressed on two fronts. First, a paper advancing a principled basis for applying special rules to legal relationships between government and citizens was substantially completed during the year and will be considered shortly by the Commission. The paper has already, in draft, been the subject of considerable outside consultation.

Our second focus has been the assembly of information. A number of background studies were completed, including a general inventory of Crown procedural privileges, a catalogue of extraordinary powers and privileges granted to the federal administration in the *Revised Statutes of Canada*, a study of the American approach to governmental immunities and privileges and a history of the Crown prerogative at common law. These studies were designed to provide background for three other papers on which substantial progress has been made during the year. The first deals with the special rules that apply in respect of the execution of judgments against the Crown. The second addresses the procedural privileges and immunities enjoyed by the Crown in legal proceedings. The third concentrates on the liability of the Crown in Tort. The project is looking not only at the law, but also at the practices that are sometimes followed to blunt the full impact of Crown privilege or immunity, for example the making of *ex gratia* payments to claimants. The project has been working closely with the Department of Justice in order to gain a better understanding of these practices.

The object of these studies is to consider whether the existing legal regime, which is frequently supported by a historical rationale whose relevance is open to question, should be replaced with one that recognizes special rules only where their need can be demonstrated in the context of contemporary Canadian government.

5. CONSULTATION

The Law Reform Commission of Canada must do more consulting than any other government agency in Canada. There can be no other way for it to perform its legislative mandate, of trying to keep the law responsive to the changing needs of modern Canadian society. Parliament recognized the importance of consultation by making it an obligation in the *Law Reform Commission Act*, for the Commission to consult. The first Chairman of the Law Reform Commission, the Honourable Mr. Justice Hartt, stressed this duty to consult with members of the public when he said: "The process of law reform is too important to be left to lawyers alone. Law touches the lives of everyone: it is therefore the business of everyone." In the last year, the pace of the Commission's consultative process accelerated. Not only did we continue to discuss our draft recommendations with the important bodies that have helped us in the past, but we reached out to involve new groups for their advice.

a) Regular Consultations

In the criminal law field, the Law Reform Commission regularly consults with five key groups, with whom we have a continuing dialogue about our problems. First we are fortunate to be able to meet with an advisory panel of distinguished judges with whom we consult, in private, several times a year. During the year under review, the following were members of this group :

The Hon. Mr. Justice William A. Craig, Vancouver
The Hon. Mr. Justice Alan B. Macfarlane, Vancouver
The Hon. Mr. Justice Calvin F. Tallis, Regina

The Hon. Mr. Justice William A. Stevenson,
Edmonton
The Hon. Mr. Justice G. Arthur Martin, Toronto
The Hon. Mr. Justice Charles L. Dubin, Toronto
His Honour Judge Patrick J. LeSage, Toronto
The Hon. Mr. Justice Antonio Lamer, Ottawa
The Hon. Mr. Justice Claude Bisson, Montréal
The Hon. Mr. Justice Fred Kaufman, Montréal
The Hon. Madam Justice Claire Barrette-Joncas,
Montréal
The Hon. Mr. Justice Angus L. Macdonald, Halifax
The Hon. Mr. Justice G. V. LaForest, Fredericton

In addition to these individuals, judges from the local community are frequently added to the group when it meets in various regions of the country. Included this year were :

The Hon. Mr. Justice J. Wood, Vancouver
His Honour Judge W. T. Oppal, Vancouver
His Honour Judge D. S. Collins, North Vancouver
His Honour Judge J. B. Paradis, Victoria
The Hon. Mr. Justice J. C. Anger, New Brunswick
His Honour Judge James McNamee, New Brunswick

A second group which gives us advice is a delegation of defence lawyers, nominated by the Canadian Bar Association :

Mr. D. J. Sorochan, Vancouver
Mr. G. Greg Brodsky, Q.C., Winnipeg
Mr. Edward L. Greenspan, Q.C., Toronto
Mr. Morris Manning, Q.C., Toronto
Mr. Marc Rosenberg, Toronto
M^c Serge Ménard, Montréal
M^c Michel Proulx, Montréal
Mr. Joel E. Pink, Halifax

A third group comprises police chiefs or their representatives, nominated by the Canadian Association of Chiefs of Police, who offer us the perspective of those who are engaged in law enforcement across Canada :

Mr. Richard Anthony, Victoria
Deputy Chief E. Hahn, Edmonton
Inspector Michael W. Huska, Edmonton
Deputy Chief Keith Faraway, Hamilton-Wentworth
Staff Supt. Frank Barbetta, Toronto
Deputy Chief Thomas G. Flanagan, Ottawa
M^c Guy Lafrance, Montréal
Chief Greg Cohoon, Moncton

The fourth group includes law teachers working in the field of criminal law and procedure, selected by the Canadian Association of Law Teachers. Included this year have been the following :

Professor Gerard Ferguson, University of Victoria
Dean Peter Burns, University of British Columbia
Professor J. C. Robb, University of Alberta
Professor Eric Colvin, University of Saskatchewan

Professor Douglas Schmeiser,
University of Saskatchewan
Professor Winifred Holland,
University of Western Ontario
Professor Martin Friedland, University of Toronto
Professor Louise Arbour, Osgoode Hall Law School
Professor R. J. DeLisle, Queen's University
Professor Donald R. Stuart, Queen's University
Professor Fred Bobiasz, University of Ottawa
Professor Rachel Grondin, University of Ottawa
Professor G. A. Jodouin, University of Ottawa
Professor Jean-Louis Baudouin,
Université de Montréal
Professor Louise Viau, Université de Montréal
Professor Grant Garneau,
University of New Brunswick
Professor Bruce Archibald, Dalhousie University

The fifth group consists of representatives of the federal and provincial governments, who give us the Crown Counsel's point of view as well as the vital perspective of those charged with the administration of justice on a day-to-day basis.

During the last year, the Commission consulted with the government group, the judicial advisory panel and law professors twice and with the defence lawyers and chiefs of police on three occasions.

Minutes of all these private discussions are taken down in detail, and retained, so that they may be referred to when revisions to the draft papers are being considered.

All of these consultants donate their time to the Commission as a public service. We are most indebted to them for contributing so generously to the cause of law reform. Needless to say, our work is rendered far more valuable as a result of their help.

b) Special Consultations

In addition to consulting routinely with the five regular groups, the Commission meets with various special groups of experts and others interested in specific topics being studied by the Commission. For example, a special consultation was held at Osgoode Hall in Toronto with Justices of the Supreme Court of Ontario to hear their views on the Commission's draft Working Paper on Homicide. Researchers with the Substantive Criminal Law Project met with philosophy professors to discuss the role of negligence in the criminal law. Members of the Criminal Procedure Project met with prominent Ottawa criminal lawyers to discuss disclosure by the Crown and questioning suspects. We have held several meetings

with judges and criminal lawyers in Montréal. A unique meeting was held with people involved in sports to obtain their views concerning the law of assault and its role in controlling violence in sports. A special consultation was held in Toronto with representatives of the media to discuss their concerns about search and seizure. The administrative law group held a series of special meetings with academics specializing in public administration and law in Ottawa, Toronto, Québec City and Halifax to discuss the Commission's draft Report on Statutory Decision Making by Independent Administrative Agencies. There are many other examples of *ad hoc* consultations done by the Commission about various legal problems as they arise.

The Commission is attempting to broaden the scope of these special consultations by reaching out to groups which may have been overlooked in the past. For example, the Commission has made greater efforts to solicit the views of judges, lawyers and others working outside of central Canada. A proposed reform may be needed in Toronto or Montréal, but because of regional differences may not be necessary in Saint John or Vancouver. During the past year, the Commission held special, informal sessions with judges, lawyers and others in Vancouver, Regina, Saskatoon, Halifax, Fredericton, Saint John and Moncton. At these sessions, Mr. Justice Linden asked participants for their advice about what the Commission should be doing, and what it should avoid. The advice received has given the Commission many new insights into regional differences in the Canadian legal system.

c) Public Consultations

Another group to which the Commission has reached out in the last year deserves special mention — members of the public, who have no legal expertise and are not affiliated with any special interest group. Such consultation is vital if the Commission is to perform its mandate of keeping the laws of Canada responsive to the changing needs of Canadian society. How can we know the direction in which to move the law if we are unaware of the expectations and aspirations of the people who are governed by the law?

Involving large numbers of people in the consultative process is, however, no easy task. We have sought to reach Canadians by communicating

through radio, television and newspapers but, except for call-in shows, this is mainly one-way communication whereas we seek two-way communication.

This year we have taken a more direct approach by holding public meetings on law reform in Vancouver, Saskatoon and Fredericton. At these meetings, organized with the help of local public legal education organizations, members of the public were invited to attend to voice their opinions on issues such as corporal punishment, violence in sports, and vandalism. Participants were also encouraged to express their views on any other legal issue of concern to them. From these meetings, the Commission received valuable comments about a broad range of topics including drunken driving, violence against women, abortion and divorce. Questionnaires were distributed to each person, collected and analysed. All of these meetings were also recorded on videotape for future use by the Commission. We plan to continue these meetings in the future.

Individual meetings have been held with representatives of the Canadian Chamber of Commerce, the Canadian Federation of Humane Societies, the Church Council on Justice and Corrections, the editorial boards of several major Canadian newspapers and others, in order to obtain their views and advice on law reform.

The Law Reform Commission of Canada is committed to the goal of the widest possible public participation in our processes. We want to involve the people of Canada in our mission of improving the quality of our laws. We believe that these initiatives constitute important steps to achieving that goal.

6. CO-OPERATION WITH OTHER INSTITUTIONS

The Law Reform Commission co-operates with many other institutions in advancing its goals, for without the support of others in the legal system, our efforts would be less effective.

a) Parliament

The Commission is a creature of Parliament and responsible to it. Consequently, efforts have been made to establish and maintain contact with individual members of the House of Commons and the Senate. The Commissioners met this year with the Justice and Legal Affairs Committee of the House of Commons as well as the Legal and Constitutional Affairs Committee of the Senate, in order to brief them and obtain their advice. All of our publications are automatically distributed to all Members of both Houses, seeking their reactions. The Commission is always eager to respond to any questions that may be asked of it and to any suggestions that may be given to it by Parliamentarians from all parties.

b) The Criminal Law Review

In 1979, Senator Jacques Flynn, then the Minister of Justice in the Progressive Conservative government of Prime Minister Joe Clark, with the support of the provinces, launched a plan for the reform of the criminal law and procedure of Canada, known as the Criminal Law Review. Funding for the project was approved and allocated in 1980, while the Honourable Jean Chrétien was Minister of Justice in the Liberal government of Prime Minister Pierre E. Trudeau. Work on the review began in 1981 and is scheduled to be completed in 1986.

The Criminal Law Review, thus, is a non-partisan, federal-provincial effort. It is a three-phase project involving the Law Reform Commission of Canada, the Department of Justice and the Department of the Solicitor General as well as the co-operation of the provinces.

The work of the Law Reform Commission constitutes Phase I of the review. In this phase, the Commission studies the present law and, after consulting provincial representatives and others, makes proposals for reform. In Phase II, the Department of Justice and the Department of the Solicitor General analyse the Law Reform Commission's recommendations, in consultation with other federal departments and provincial authorities, and make recommendations to the federal Cabinet. In Phase III, legislative changes, based on Phases I and II, are made.

c) The Department of Justice and the Department of the Solicitor General

The President of the Commission (or his representative) participates in at least three important committees established by the two legal departments of the national government.

First, the Joint Criminal Justice Committee meetings help to keep the Commission informed of the criminal justice projects of both departments of the government. Second, the Criminal Law Review Executive Committee meetings provide for input by the Commission into the preparation of memoranda being submitted to Cabinet concerning the subject-matter of the Criminal Law Review. Third, participation in the Program Management Group meetings helps to avoid duplication of effort between Phase I and Phase II of the Criminal Law Review, and fosters greater co-operation between the Law Reform Commission and the two government departments.

Senior members of the two federal departments are included as members of the Commission's government group when it consults on draft papers in the Criminal Law Review process. There is close liaison between our Administrative Law Project and the Department of Justice's public law group. We have one of our researchers involved in a joint research and information gathering effort in the area of Crown status, which is being conducted by the department currently. In addition, members of the Commission and our staff meet frequently, on an informal basis, with senior members of the Department of Justice and the Department of the Solicitor General, to co-ordinate and expedite the process of law reform.

d) Criminal Law Review Joint Consultations

As part of the Criminal Law Review, the Law Reform Commission participates in cross-country consultations with the Department of Justice and the Department of the Solicitor General. Representatives of these three groups consult together with representatives of municipal or provincial police forces, the defence Bar, the provincial Attorneys General, and civil liberties groups, along with provincial court judges, justices of the peace and law professors.

The main purposes of the meetings are to get support for, or criticisms of, the Commission's recommendations, to determine how the recommendations would operate in each jurisdiction and to learn of any problems regarding implementation and administration at the local level. The comments made at these meetings are of great assistance to the Commission as it goes about preparing its final Report on the topics. They also assist the Department of Justice and the Department of the Solicitor General to better assess the Commission's proposals.

Following the tabling in Parliament of the Law Reform Commission Report on *Writs of Assistance and Telewarrants* in September 1983, the Department of Justice and the Department of the Solicitor General organized such a series of meetings to gather views regarding that Report and the Commission's Working Paper on *Police Powers — Search and Seizure in Criminal Law Enforcement*. Consultants from the Law Reform Commission attended meetings in Calgary, Regina, Winnipeg, Toronto, St. John's and Halifax. Many of the views expressed at those meetings are being incorporated into the Commission's Report on Search and Seizure, which will be released in the spring of 1985.

During April and May of 1984, the Commission also participated in a series of joint consultations concerning the use of force, entrapment, questioning suspects, investigative tests and eyewitness identification procedures. Recommendations made by the Commission in its Working Papers on *The General Part — Liability and Defences*, *Questioning Suspects*, *Investigative Tests* and its Study Paper on *Pretrial Eyewitness Identification Procedures* were discussed. Commission representatives attended these meetings in various cities across Canada. The comments made at these consultations will be of

great assistance as the Commission's final proposals on these topics are shaped.

e) Law Reform Agencies

The Commission seeks to maintain contact with other law reform agencies at the provincial level as well as with those in other jurisdictions. We routinely exchange publications and assist one another with information. Each year representatives of every Canadian law reform agency meet to discuss matters of common concern, this past year at Québec City in August. In addition, members of our Commission met informally with members of the B.C. Law Reform Commission in Vancouver, the Alberta Institute of Legal Research and Reform in Edmonton and the Saskatchewan Law Reform Commission in Saskatoon this past year. The possibility of joint projects is being discussed with the Saskatchewan Law Reform Commission (costs) and the Manitoba Law Reform Commission (compensation).

A representative of the Commission is included in the federal delegation to the Conference of Commissioners on Uniformity of Legislation each year where we participate in the deliberations of that important law reform agency.

We are in frequent communication with the English Law Revision Commission, the Australian Law Reform Commission, the New Zealand Law Reform Commission, as well as many other such commissions abroad, both in the Commonwealth and outside of it. Among these, is France's *Commission de révision du droit pénal*, with which we have developed a close working relationship.

f) Canadian Bar Association (CBA)

Support for the Commission's work from members of the Bar is vital to the Commission's success. However, to gain that support we must keep the Bar informed of our activities and seek its advice. One way of keeping members of the Bar informed of our work is by participating in the Canadian Bar Association's annual and mid-winter meetings. In August 1983, Mr. Justice Linden attended the annual meeting in Québec City and gave a progress report on the Commission's activities. In February 1984, Commissioner Lemelin participated in the CBA mid-winter meeting in Whitehorse to explain the Commission's work.

In addition to participating in the annual and mid-winter meetings, Commission representatives often participate in the regional activities of the CBA. For example, Commissioner Alan Reid addressed the mid-winter meeting of the New Brunswick branch of the Association in February 1984. François Handfield, Co-ordinator of the Substantive Criminal Law Project, is on the Executive Committee of the recently formed criminal justice section for the Ottawa-Outaouais region. Other similar activities are often engaged in by our staff.

Another way in which the Commission tries to make members of the Bar aware of what we are doing is by contributing articles to the CBA newspaper, the *National*, and to the Québec Bar newspaper, *Barreau 84*. In each edition, every month, a full-page called "Dialogue on Law Reform" is produced, containing a column written by a member of the Commission as well as comments from newspapers and critics.

The Commission also uses a more direct approach for soliciting the views of members of the Bar. The CBA has established an advisory panel of criminal defence lawyers to give us their thoughts about our recommendations in the field of criminal law. Several times a year we meet with the panel for formal consultations on specific topics. Commission researchers also consult with these representatives on an informal basis while they are preparing their papers. The advice of these leading members of the Bar is of invaluable assistance to the Commission.

Last year, for the first time, the Commission co-operated with the CBA in a Law Day Essay Contest, which honoured the four law student winners at a luncheon in Ottawa, attended by the Governor General.

g) Canadian Association of Law Teachers (C.A.L.T.)

The Law Reform Commission enjoys a close and productive relationship with the Canadian Association of Law Teachers. This is natural, for both organizations share many common goals. Both are interested in the pursuit of legal research and writing, and improving the laws of Canada. In addition, some of our Commissioners and researchers have taught law prior to coming to the Commission.

Maintaining a close relationship benefits both groups. The research by law professors and their students helps Commission researchers to write better papers and reports. The regular consultations with C.A.L.T. representatives helps the Commission to recognize the strengths and weaknesses of its proposals. Commission work also benefits law teachers and students. Commission publications provide useful reference material in courses such as administrative law, criminal law, family law and evidence.

During the past year the Commission participated in a number of C.A.L.T. activities. Commissioner Reid participated in a panel discussion at the Vancouver annual meeting. Mr. Justice Linden spoke about law reform at the C.A.L.T. seminar in Montebello, Québec, in February, 1984. The Commission helped to sponsor the annual C.A.L.T. meeting held in Toronto on May 28, 29 and 30, 1984, at which Mr. Justice Linden delivered a paper. Entire C.A.L.T. seminars were devoted to the Commission's recommendations for reform of the law in three areas : homicide, arrest and compliance.

One of the highlights of the last C.A.L.T. annual meeting was a special dinner hosted by the Law Reform Commission at Hart House in the University of Toronto to honour the recipient of a new award jointly established by the Commission and the C.A.L.T. The C.A.L.T.-L.R.C.C. award will be given annually to the professor who has made an outstanding contribution to legal research and law reform during the previous years. The winner for 1983 was Professor Jean-Louis Baudouin, Q.C., of the University of Montréal, a former Commissioner and Vice-Chairman of the Law Reform Commission, who continues to consult with us on a part-time basis. He is an internationally respected author of many books and articles and is an Assistant Editor of the *Canadian Bar Review*.

h) The Law Schools

Without the support of the law schools, the Law Reform Commission of Canada would have great difficulty achieving its objectives. It is from the twenty Canadian faculties of law that we enlist many of our full-time and part-time researchers, who contribute so much to our Study Papers, Working Papers and Reports. It is from the law schools that we attract so much enthusiasm for our recommendations, which are often included in the material law students study in their courses. We have sought to forge even stronger links with the law schools. It is for that reason that we appointed, for the first time,

a contact person (or liaison officer) in each Canadian law school to serve as our representative in the school, to distribute material, to answer questions, to recruit research staff, to stimulate discussions of our publications and to give us advice that will keep us in touch with the current thinking in the law schools.

The President has visited many Canadian law schools in order to inform the members of the community about our work and to seek advice on the future directions the Commission should travel. Among the schools consulted were the University of Ottawa, the University of Windsor, the University of Western Ontario, McGill University, Dalhousie University, the University of Toronto, the University of Alberta and Queen's University.

Further, inspired by Professor Harry Arthur's eloquent plea for a more "scholarly discipline of law," we launched a new summer research intern program, through which we brought to Ottawa this past summer fifteen of the best and brightest students to engage in supervised research into contemporary legal problem areas that need reform. It is hoped that the spirit of law reform across the country will be given a transfusion by these law reformers of the future.

There are other initiatives that we are working on. We are trying to find ways to stimulate fundamental or basic research. We have begun to support indirectly graduate studies in areas of concern to the Commission. We are seeking methods whereby we can support financially Canadian law reviews which publish fundamental research and federal law reform material. We are planning to support several conferences at law schools next year to elicit advice on various aspects of our work.

i) Others

There are many other institutions with which the Commission co-operates periodically. Discussions have been held this past year with the Criminal Lawyers' Association, the Canadian Institute for the Administration of Justice, the Canadian Judicial Council, the Canadian Institute for Advanced Legal Studies and others. We participated in major international conferences held by l'Institut de droit d'expression française and the International Association of Criminal Law. Informal meetings have been held with the Task Force on Conflict of Interest, the Badgeley Committee on Sexual Abuse of Children,

and the Fraser Committee on Prostitution and Pornography. We are co-operating with six other federal research agencies in the presentation of several colloquia as part of Expo 86 in Vancouver.

7. OPERATIONS

a) Meetings

This year has been a period of intense activity, which is reflected in the number of formal Commission meetings — twenty-nine. The minimum statutory requirement for the Commission is only six meetings per year.

b) Public Relations

(i) *Information Booths*

During the course of the year, the Commission set up information booths at various conferences and public events held throughout the country. The Commission was present at the Annual Meeting of the Canadian Association of Chiefs of Police (Calgary); the Canadian Bar Association Annual Meeting (Québec City); People's Law Conference (Ottawa); Law Courts (Charlottetown); Colloque Juridique 1984 (Université de Montréal); Salon de la Femme (for the second time in Montréal); Law and Learning Conference (Ottawa); the Canadian Association of Law Libraries (London, Ontario); the Drinking and Driving Conference (Ottawa); Barreau du Québec (Montréal) and Violence in Sports Seminar (Carleton University, Ottawa). Our information booth and several displays were also set up in Vancouver, Saskatoon and Fredericton, where the Commission held public meetings. All told the information booth was used for a combined total of thirty seven days. We also sent information sheets to be inserted in delegate kits for conferences held in various cities. At all of these functions, the Commission distributed over 55,000 information sheets highlighting the work of the Commission.

In months to come, the Commission is planning to attend the following public functions : Salon du livre (Montréal); The Woman's Show (Toronto); 66th Annual Meeting of the Canadian Bar Association (Winnipeg); Congrès de l'Association des Avocats de province (Sutton); Salon du livre de l'Estrie (Sherbrooke) and the National Women's Groups Meeting 1984 (Ottawa).

(ii) *Distribution of Publications*

During the year under review, the Commission distributed a grand total of 186,568 copies of its publications, a 35% increase over last year. There were 93,663 copies of new publications issued during the period (20% increase) and 92,905 copies of other titles (55% increase). Individual requests for publications and information totalled 15,762, including some 13,440 by mail, 1,353 by telephone and 969 by callers at the publications offices in Ottawa and Montréal, an increase of 25% over last year. The mailing list increased by 9% from 11,816 last year to 12,962 this year, including some 1,727 additions and 581 deletions.

(iii) *Coverage by the Media*

The Commission is pleased with the interest shown by the media in its ongoing activities. An exact nation-wide monitoring of all media coverage is impossible because it is so extensive. Hundreds of articles and broadcasts have discussed our work. Interviews on radio and television granted by the Commissioners and staff during the year more than doubled, totalling approximately 130 interviews. In addition, six full-page features on new Reports and Working Papers were carried by many of the 975 English-language and 203 French-language community newspapers to which they were made available.

c) *Regional Operations*

Within a year of its establishment, the Commission had opened a Québec regional office, located in the city of Montréal. This presence in the civil law province has proved invaluable to the Commission in the fulfillment of its statutory responsibility to reflect "the distinctive concepts and institutions of [both] the common law and civil law legal systems in Canada, and the 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 well "tuned in" to the thinking and aspirations of the legal community and the general public in Québec.

During the last year, we expanded our activities into other regions. In Toronto, in co-operation with the Canadian Bar Association, we established a physical presence to help us serve the Ontario population better. In Western Canada, we now have a part-time representative, Mark Krasnick, in Vancouver to help us intensify the involvement in our work of British Columbians. Consideration is also being given to establish another listening-post in Atlantic Canada.

We are convinced that these regional activities will enable the Canadian people to be more closely associated with the Commission, helping us to do a more effective job for them.

d) *Official Languages Policy*

According to the Commissioner of Official Languages in his report for 1983, "[t]he Law Reform Commission has been a consistently high achiever in the official languages field. Its performance in 1983 maintained that reputation." He thus confirmed his previous ratings : in 1982, "high standard"; in 1981, "top marks"; in 1980, "rates high"; in 1979, "excellent".

e) *Library*

The library of the Law Reform Commission maintains a core collection of Canadian and foreign legal materials, and publications of other law reform bodies from around the world. Books and documents in other fields are acquired as needed by the priorities of the ongoing Commission projects. The library provides reference and interlibrary loan services to support the needs of the research staff.

A major innovation this year was the introduction of computer-assisted information retrieval on the Quic/Law Data bases. Since this has proved highly successful, it is hoped that resources will permit the acquisition of additional data bases in the near future.

A collection of under 10,000 volumes made it necessary to borrow 3,950 books and articles from other libraries this year. This figure is quite high in comparison to other federal government libraries of similar size.

Plans are under way for an expansion and modernization to rectify both the deficiencies in the collection and the crowded conditions which exist at present. It is hoped that in the near future, the

library can more adequately serve the research staff whose needs sometimes go unfulfilled under present conditions.

f) Personnel

As in the past, during the year under review, ending May 31, 1984, the personnel strength of the Commission varied according to seasonal and functional factors. The Commission utilized the services of 106 research consultants at some point during that period (see Appendix I). They were all 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 forty (see Appendix J).

Not included in this figure, but worth mentioning, are certain temporary employees whose assistance to the operations of the Commission has been invaluable. 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.

g) Finances

Parliament appropriated \$5.417 million to the Commission for fiscal year April 1, 1983 to March 31, 1984. The operating budget was however less — \$4.966 million — owing to a cut of \$104,200 under the government's restraint program and a transfer of \$347,000 to the Department of Justice. Actual expenditures amounted to \$4.777 million. A breakdown of these appears in the table below.

FISCAL YEAR 1983-84

	\$	\$
Operating Budget		4,965,800
Expenditures by Standard Object*		
01 Personnel Salaries & Wages (including employee benefits)	1,572,980	
02 Transportation & Communications	492,099	
03 Information	500,734	
04 Professional & Special Services	1,957,843	
05 Rentals	55,928	
06 Purchased Repair & Upkeep	16,181	
07 Materials & Supplies	140,486	
09 Furniture & Equipment	30,579	
12 Other Expenditures	10,268	
TOTAL	4,777,098	4,777,098
Amount unspent and returned		<u>188,702</u>

* Figures supplied by Supply and Services Canada

h) Visitors

In addition to the many consultants (mentioned elsewhere in this Report) who honour us from time to time with their attendance to provide expert help in our work, the Commission received visits by many individuals interested in law reform across Canada and from other countries. During the year under review, we were pleased to receive the following persons (listed in chronological sequence) at the Commission :

Ernest Tucker
Chairman of the Australian
Administrative Review Council
Canberra, Australia

Professor James Crawford
Australian Law Reform Commission

L. Yves Fortier
Président
Association du Barreau canadien
Montréal, Québec

Robert Miller
Member of Parliament
Melbourne, Australia

Dr. Aksam Elkholy
Professeur de droit commercial
Faculté de droit
Université du Caire

Professor L. Neville Brown
Faculty of Law
University of Birmingham
Great Britain
Member of the British Council on Tribunals

Robert H. McKercher, Q.C.
President of the Canadian Bar Association

M. le Bâtonnier Bernard E. Blanchard
Directeur exécutif de l'Association
du Barreau canadien

Richard Ouellette
Senior Director
Research and Member Services
Canadian Bar Association

His Honour Judge Stephen Borins
County Court
Judicial District of York

Joost Blom
Professor of Law
University of British Columbia
President of the Canadian Association
of Law Teachers

Professor Gerald L. Gall
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University of Alberta

Geoffrey Palmer
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Deputy Leader of the Opposition
New Zealand

Janice Tufford
C.T.V. Reporter — Toronto

Jim Reed
C.T.V. Reporter — Toronto

Sir Gordon Borrie
Director General
Office of Fair Trading — London
Member of Parliament
Great Britain

His Honour Livius A. Sherwood
Provincial Court — Criminal Division
Ottawa
(now retired)

Mr. Peter Roger
Executive Director
State of Pennsylvania Law Association

His Honour Bernard Grenier
Court of Sessions of the Peace
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Professor Vladimir Vrecion
Charles University, Law Faculty
Prague

Mark Schoenberg
Executive Director
Regulatory Information Service Centre
Washington, D.C.

Mr. Jeff Sallot
Globe & Mail Reporter
Ottawa, Ontario

APPENDIX A

REPORTS TO PARLIAMENT

Subject, Date Transmitted to Minister and Response

1. Evidence

December 19, 1975

Bill C-242, "An Act to amend the Criminal Code" tabled October 30, 1978 by Mr. Woolliams (LRC Evidence Code, s. 42(1)).

Bill C-334, "An Act to amend the Canada Evidence Act" tabled October 30, 1978 by Mr. Orlikow (Code, s. 16(1)).

Bill C-21, "An Act to amend the Criminal Code, the Canada Evidence Act and the Parole Act" tabled November 21, 1978 by the Minister of Justice (Code, s. 88).

Bill C-462, "An Act to amend the Canada Evidence Act" tabled February 26, 1979 by Mr. Howie (Code, s. 15(1)).

Bill C-15, "The Freedom of Information Act" tabled October 24, 1979 by the President of the Privy Council (Code, s. 89(c), 43).

Bill C-362, "An Act to amend the Federal Court Act" tabled October 24, 1979 by Mr. Oberle (Code, s. 43(1), (2)).

Bill C-365, "An Act to amend the Canada Evidence Act" tabled October 24, 1979 by Mr. Orlikow (Code, s. 16).

Bill C-384, "An Act to amend the Federal Court Act" tabled October 24, 1979 by Mr. Woolliams (Code, s. 43(1), (2), (4), (5)).

Bill C-455, "An Act to amend the Criminal Code" tabled October 24, 1979 by Mr. Woolliams (Code, s. 15, 42(1)).

Bill C-202, "An Act to amend the Federal Court Act" tabled May 2, 1980 by Mr. Oberle (Code, s. 43(1), (2)).

Bill C-238, "An Act to amend the Criminal Code" tabled May 2, 1980 by Mr. Baker (Code, s. 15, 42(1)).

Bill C-446, "An Act to amend the Canada Evidence Act" tabled May 2, 1980 by Mr. Orlikow (Code, s. 16).

Bill C-477, "An Act to amend the Canada Evidence Act" tabled May 2, 1980 by Mr. Howie (Code s. 15(1)).

Bill C-455, "An Act to amend the Canada Evidence Act" tabled May 2, 1980 by Mr. Beatty (Code, s. 31(h)).

An Act to enact the Access to Information Act and the Privacy Act, to amend the Federal Court Act and the Canada Evidence Act and to amend certain other Acts in consequence thereof, S.C. 1980-81-82, c. 111 (Code s. 43(4), 89(c)).

An Act to amend the Criminal Code in relation to sexual offences and other offences against the person and to amend certain other Acts in relation thereto or in consequence thereof, S.C. 1980-81-82-83, c. 125 (Code s. 88(b)).

Young Offenders Act, S.C. 1980-81-82, c. 110 (Code, s. 16, 51).

Canadian Charter of Rights and Freedoms, Constitution Act, 1982, Part I of Schedule B, Canada Act 1982, c. 11 (U.K. s. 24(2) (Code, s. 15).

Bill S-33, "An Act to give effect, for Canada, to the Uniform Evidence Act adopted by the Uniform Law Conference of Canada" tabled November 18, 1982 by Senator Olson.

Bill C-685, "An Act to amend the Criminal Code" tabled May 27, 1983 by Mr. Robinson (Code s. 17(2)).

2. Guidelines — Dispositions and Sentences in the Criminal Process

February 6, 1976

Bill C- 21, "An Act to amend the Criminal Code, the Canada Evidence Act and the Parole Act" tabled November 21, 1978 by the Minister of Justice.

Young Offenders Act, S.C. 1980-81-82, c. 110 (Code, s. 26, 51).

Bill C-682, "An Act to amend the Criminal Code" tabled April 21, 1983 by Mr. Kilgour.

Bill C-19, "An Act to amend the Criminal Code ..." tabled February 7, 1984 by the Minister of Justice.

Publication of a policy paper by the Government of Canada, *Sentencing* (February, 1984).

3. Our Criminal Law

March 25, 1976

Publication of a policy paper by the Government of Canada, *The Criminal Law in Canadian Society* (August, 1982).

4. Expropriation

April 8, 1976

Amendments to *National Energy Board Act* (Bill C-60), c. 80, S.C. 1980-81-82-83, assented to December 8, 1981, proclaimed in force March 1, 1983.

5. Mental Disorder in the Criminal Process

April 13, 1976

Bill C-21, "An Act to amend the Criminal Code, the Canada Evidence Act and the Parole Act", tabled November 21, 1978 by the Minister of Justice.

6. Family Law

May 4, 1976

Bill C-10, "An Act to amend the Divorce Act" tabled January 19, 1984 by the Minister of Justice.

7. Sunday Observance

May 19, 1976

Under consideration by the Department of Justice and the Department of the Solicitor General.

8. The Exigibility to Attachment of Remuneration Payable in Right of Canada

December 19, 1977

Garnishment, Attachment and Pension Diversion Act, S.C. 1980-81-82, c. 100, s. 5.

9. Criminal Procedure — Part I: Miscellaneous Amendments

February 23, 1978

Bill C-21, "An Act to amend the Criminal Code, the Canada Evidence Act and the Parole Act", tabled November 21, 1978 by the Minister of Justice.

10. *Sexual Offences*

November 29, 1978

Bill C-44, "An Act to amend the Criminal Code" tabled February 28, 1979 by the Minister of Justice.

Bill C-406, "An Act to amend the Criminal Code" tabled May 2, 1980 by Mr. Friesen.

Bill C-53, "An Act to amend the Criminal Code" tabled January 12, 1981 by the Minister of Justice.

An Act to amend the Criminal Code in relation to sexual offences and other offences against the person and to amend certain other Acts in relation thereto or in consequence thereof, S.C. 1980-81-82-83, c. 125.

11. *The Cheque: Some Modernization*

March 8, 1979

Bill C-19, "An Act to amend the Criminal Code ..." tabled February 7, 1984 by the Minister of Justice.

12. *Theft and Fraud*

March 16, 1979

Bill C-19, "An Act to amend the Criminal Code ..." tabled February 7, 1984 by the Minister of Justice.

13. *Advisory and Investigatory Commissions*

April 18, 1980

Under consideration by the Department of Justice.

14. *Judicial Review and the Federal Court*

April 25, 1980

Minister of Justice's Draft proposal to amend the Federal Court Act (August 29, 1983).

15. *Criteria for the Determination of Death*

April 8, 1981

Under consideration by the Department of Justice.

16. *The Jury*

July 28, 1982

Bill C-19, "An Act to amend the Criminal Code ..." tabled February 7, 1984 by the Minister of Justice.

17. *Contempt of Court*

August 18, 1982

Bill C-19, "An Act to amend the Criminal Code ..." tabled February 7, 1984 by the Minister of Justice.

18. *Obtaining Reasons before Applying for Judicial Scrutiny — Immigration Appeal Board*

December 16, 1982

Under consideration by the Department of Justice.

19. *Writs of Assistance and Telewarrants*

July 22, 1983

Bill C-19, "An Act to amend the Criminal Code ..." tabled February 7, 1984 by the Minister of Justice.

20. *Euthanasia, Aiding Suicide, and Cessation of Treatment*

October 11, 1983

Under consideration by the Department of Justice.

21. *Investigative Tests: Alcohol, Drugs and Driving Offences*

November 10, 1983

Bill C-19, "An Act to amend the Criminal Code ..." tabled February 7, 1984 by the Minister of Justice.

22. *Disclosure by the Prosecution*

June 15, 1984

Under consideration by the Department of Justice.

APPENDIX B

WORKING PAPERS

1. *The Family Court* (1974). 55 p.
2. *The Meaning of Guilt: Strict Liability* (1974). 38 p.
3. *The Principles of Sentencing and Dispositions* (1974). 35 p.
4. *Discovery* (1974). 44 p.
5. *Restitution and Compensation* (1974). 25 p. (Bound with Working Paper No. 6).
6. *Fines* (1974). 30 p. (Bound with Working Paper No. 5).
7. *Diversion* (1975). 25 p.
8. *Family Property* (1975). 45 p.
9. *Expropriation* (1975). 106 p.

10. *Limits of Criminal Law: Obscenity: A Test Case* (1975). 49 p.
11. *Imprisonment and Release* (1975). 46 p.
12. *Maintenance on Divorce* (1975). 40 p.
13. *Divorce* (1975). 70 p.
14. *The Criminal Process and Mental Disorder* (1975). 61 p.
15. *Criminal Procedure: Control of the Process* (1975). 60 p.
16. *Criminal Responsibility for Group Action* (1976). 68 p.
17. *Commissions of Inquiry: A New Act* (1977). 91 p.
18. *Federal Court: Judicial Review* (1977). 54 p.

19. *Theft and Fraud: Offences* (1977). 123 p.
20. *Contempt of Court: Offences against the Administration of Justice* (1977). 69 p.
21. *Payment by Credit Transfer* (1978). 126 p.
22. *Sexual Offences* (1978). 66 p.
23. *Criteria for the Determination of Death* (1979). 77 p.
24. *Sterilization: Implications for Mentally Retarded and Mentally Ill Persons* (1979). 157 p.
25. *Independent Administrative Agencies* (1980). 212 p.
26. *Medical Treatment and Criminal Law* (1980). 136 p.
27. *The Jury in Criminal Trials* (1980). 164 p.
28. *Euthanasia, Aiding Suicide and Cessation of Treatment* (1982). 79 p.
29. *The General Part: Liability and Defences* (1982). 204 p.
30. *Police Powers: Search and Seizure in Criminal Law Enforcement* (1983). 356 p.
31. *Damage to Property: Vandalism* (1984). 65 p.
32. *Questioning Suspects* (1984). 104 p.
33. *Homicide* (1984). 117 p.
34. *Investigative Tests* (1984). 166 p.

APPENDIX C

PUBLISHED STUDIES, STUDY PAPERS, BACKGROUND PAPERS AND CONFERENCES

ADMINISTRATIVE LAW

1. Anisman, Philip. *A Catalogue of Discretionary Powers in the Revised Statutes of Canada 1970* (1975). 1025 p.
2. *The Immigration Appeal Board* (1976). 88 p.
3. Carrière, Pierre and Silverstone, Sam. *The Parole Process: A Study of the National Parole Board* (1977). 157 p.
4. Doern, G. Bruce. *The Atomic Energy Control Board: An Evaluation of Regulatory and Administrative Processes and Procedures* (1977). 85 p.
5. Lucas, Alastair, R. *The National Energy Board: Policy, Procedure Practice* (1977). 216 p.
6. Mullan, David J. *The Federal Court Act: Administrative Law Jurisdiction* (1977). 117 p.
7. Issalys, Pierre and Watkins, Gaylord. *Unemployment Insurance Benefits: A Study of Administrative Procedure in the Unemployment Insurance Commission* (1978). 342 p.
8. Seminar for Members of Federal Administrative Tribunals, April 5-7, 1978. *Speaker's Remarks* (1978). 253 p.
9. Fox, David. *Public Participation in the Administrative Process* (1979). 174 p.
10. Franson, Robert T. *Access to Information: Independent Administrative Agencies* (1979). 80 p.
11. Issalys, Pierre. *The Pension Appeals Board: A Study of Administrative Procedure in Social Security Matters* (1979). 360 p.
12. Janisch, H. N., Pirie, A. J. and Charland, W. *The Regulatory Process of the Canadian Transport Commission* (1979). 151 p.
13. Seminar for Members of Federal Administrative Tribunals, March 19-22, 1979. *Selected Proceedings*. Edited by C. C. Johnston (1979). 90 p.
14. Slayton, Philip. *The Anti-Dumping Tribunal* (1979). 111 p.
15. Vandervort, Lucinda. *Political Control of Independent Administrative Agencies* (1979). 190 p.
16. Kelleher, Stephen. *Canada Labour Relations Board* (1980). 106 p.
17. Leadbeater, Alan. *Council on Administration* (1980). 88 p.
18. Seminar for Members of Federal Administrative Tribunals, March 1-12, 1980, at Touraine, Québec. *Speaker's Remarks and Excerpts from Discussion Periods*. Edited by C. C. Johnston (1980). 156 p.
19. Eddy, Howard R. *Sanctions, Compliance Policy and Administrative Law* (1981). 141 p.
20. Johnston, C. C. *The Canadian Radio-Television and Telecommunications Commission* (1981). 144 p.
21. Slayton, Philip and Quinn, John J. *The Tariff Board* (1981). 154 p.
22. Slatter, Frans. *Parliament and Administrative Agencies* (1982). 154 p.

CRIMINAL LAW AND PROCEDURE

23. *Obscenity* (1972). 81 p.
24. *Fitness to Stand Trial* (1973). 57 p.
25. *A Proposal for Costs in Criminal Cases* (1973). 20 p.
26. *Discovery in Criminal Cases* (1974). 261 p.
27. *Discovery in Criminal Cases: Report on the Questionnaire Survey* (1974). 116 p.
28. Schmeiser, Douglas A. *The Native Offender and the Law* (1974). 90 p.
29. *Studies in Strict Liability* (1974). 251 p.
30. *Studies on Sentencing* (1974). 205 p.

31. *Studies on Diversion* (1975). 255 p.
32. Becker, Calvin. *The Victim and the Criminal Process* (1976). 338 p.
33. *Community Participation in Sentencing* (1976). 249 p.
34. *Fear of Punishment: Deterrence* (1976). 149 p.
35. Macnaughton-Smith, P. *Permission to Be Slightly Free* (1976). 307 p.
36. *Studies on Imprisonment* (1976). 327 p.
37. *Towards a Codification of Canadian Criminal Law* (1976). 56 p.
38. *Preparing for Trial: Report of Conference Held in Ottawa, March 23-24, 1977* (1977). 342 p.
39. *The Jury* (1979). 473 p.
40. Stenning, Philip C. and Shearing, Clifford D. *Search and Seizure: Powers of Private Security Personnel* (1979). 204 p.
41. Grant, Allan. *The Police: A Policy Paper* (1980). 97 p.
42. Paikin, Lee. *The Issuance of Search Warrants* (1980). 119 p.
43. Stenning, Philip C. *Legal Status of the Police* (1981). 169 p.
44. Brooks, Neil. *Police Guidelines: Pretrial Eyewitness Identification Procedures* (1983). 260 p.
45. Smith, Maurice H. *Origins of Writ of Assistance Search in England, and Its Historical Background in Canada* (1984). 99 p.

EVIDENCE

46. *Evidence: 1. Competence and Compellability. 2. Manner of Questioning Witnesses. 3. Credibility. 4. Character* (1972). 60 p.
47. *Evidence: 5. Compellability of the Accused and the Admissibility of His Statements* (1973). 42 p.
48. *Evidence: 6. Judicial Notice. 7. Opinion and Expert Evidence. 8. Burdens of Proof and Presumptions* (1973). 67 p.
49. *Evidence: 9. Hearsay* (1974). 20 p.

50. *Evidence: 10. The Exclusion of Illegally Obtained Evidence* (1974). 36 p.
51. *Evidence: 11. Corroboration* (1975). 19 p.
52. *Evidence: 12. Professional Privileges before the Courts* (1975). 26 p.

FAMILY LAW

53. London, Jack R. *Tax and the Family* (1975). 349 p.
54. Payne, Julien. *A Conceptual Analysis of Unified Family Courts* (1975). 681 p.
55. *Studies on Divorce* (1975). 313 p.
56. *Studies on Family Property Law* (1975). 401 p.
57. Ryan, Edward F. *Enforcement of Maintenance Obligations* (1976). 47 p.
58. Bowman, C. Myrna. *Practical Tools to Improve Interprovincial Enforcement of Maintenance Orders after Divorce* (1980). 50 p.

PROTECTION OF LIFE

59. Keyserlingk, Edward W. *Sanctity of Life or Quality of Life* (1979). 224 p.
60. Somerville, Margaret A. *Consent to Medical Care* (1980). 186 p.

MISCELLANEOUS

61. *First Research Program of the Law Reform Commission of Canada* (1972). 21 p.
62. Eddy, Howard R. *The Canadian Payment System and the Computer: Issues for Law Reform* (1974). 80 p.
63. Lajoie, Marie, Schwab, Wallace and Sparer, Michel. *Drafting Laws in French* (1981). 296 p.

APPENDIX D

UNPUBLISHED PAPERS PREPARED FOR THE LAW REFORM COMMISSION

ADMINISTRATIVE LAW

1. Meunier, Claude. *Analysis of Public Opinion: Study of Royal Commission of Inquiry Briefs* (1973). 96 p.
2. Doern, G. Bruce. *Approaches to the Study of Federal Administrative and Regulatory Agencies, Boards, Commissions and Tribunals* (1974). 60 p.
3. Hyson, Stewart. *Federal Administrative Agencies: Origins and Evolution* (1975). 105 p.
4. Andrew, C., Pelletier, R. and Blouin, M. *Composition of Federal Administrative Agencies* (1976). 100 p.
5. Picher, Pamela. *Courts of Record and Administrative Tribunals* (1976). 206 p.
6. Leadbeater, Alan. *Appeals from Federal Administrative Authorities to the Federal Courts of Canada* (1977). 40 p.
7. *Summary of Reactions to Working Paper 17: Commissions of Inquiry* (1979). 4 p.
8. Fox, David. *Impartiality in the Administrative Process* (1981). 400 p.
9. Hall, Terrance Hamilton. *A Draft Administrative Procedure Code for Federal Adjudicatory Hearings* (1982). 265 p.
10. Marvin, Charles. *Guidelines on Administrative Procedure* (1982). 60 p.
11. Nadeau, Robert. *Compliance and Enforcement in Customs and Excise: Background Paper* (1982). 237 p.

CRIMINAL LAW AND PROCEDURE

12. Krasnick, Mark, Bartlett, G. M. and Reynolds, D. D. Graham. *Codebook: Empirical Events Basis of Criminal Occurrences* (1971). 51 p.
13. Stewart, V. Lorne. *A Proposed Multinational Study of Juvenile Justice Systems and Alternatives: A Cross-National Survey of Attitudes, Practices and Effectiveness* (1971). 40 p.
14. Atrens, Jerome. *Trial and Appeal Procedure in Relation to Minor Offences* (1972). 112 p.
15. Burns, Peter Thomas. *Costs in Criminal Cases and Appendices* (1972). 248 p.
16. Ferguson, Gerry. *Lay Judges in the Criminal Process* (1972). 35 p.
17. Ferguson, Gerry and Roberts, Darrell. *Plea Bargaining: Directions for Canadian Reform* (1972). 122 p.
18. Hogarth, John. *East York Criminal Law Project: Progress Report No. 1* (1972). 153 p.
19. Hogarth, John. *East York Criminal Law Project: Staff Meetings* (1972). 23 p.
20. MacKaay, Ejan. *Proposal for a Study of Pretrial Procedure in Criminal Cases* (1972). 13 p.
21. Pomerant, David. *Retention of Stolen Goods as Exhibits at Trial* (1972). 42 p.
22. Price, Ronald and Gold, Alan. *Legal Controls for the Dangerous Offender* (1972). 100 p.
23. *Retention of Stolen Goods as Exhibits at Trial: Questionnaire* (1972). 23 p.
24. Williams, Paul C. *The Oneidas and the Canadian Legal System: Middlesex County* (1972). 58 p.
25. Barton, P. G. *Extraordinary Remedies in the Criminal Process and Alternatives* (1973). 58 p.
26. Burns, Peter. *Private Prosecutions* (1973). 45 p.
27. Canadian Criminology and Corrections Association. *Toward a New Criminal Law for Canada: Brief to Law Reform Commission* (1973). 37 p.
28. Chevrette, François and Marx, Herbert. *Les aspects constitutionnels de l'obsécité au Canada* (1973). 90 p.
29. Hogan, Brian. *Vicarious Liability for Crime* (1973). 29 p.
30. Jobson, K. and Ferguson, G. *Hospital Orders: Study Paper* (1973). 65 p.
31. MacKaay, Ejan, Rainville-Laforte, F. and Vinet, Pierre. *A Study on the Pre-Trial Stages of Criminal Procedure: Report on Phase I* (1973). 162 p.
32. *Offender Restitution* (1973). 25 p.
33. *An Outline on Criminal Bankruptcy* (1973). 18 p.
34. Palef, Sandra R. *The Format and Content of Pre-Sentence Reports: Experiment #1, Final Report* (1973). 20 p.
35. Roberts, Darrell. *The Structure and Jurisdiction of the Courts and Classification of Offences* (1973). 90 p.
36. Roberts, Darrell and Wilson, Thomas. *Search and Seizure* (1973). 59 p.
37. Schulman, Perry. *Jury Study* (1973). 88 p.
38. Société canadienne de criminologie. *Nouveau droit criminel: mémoire pour la Commission de réforme du droit* (1973). 36 p.
39. Arbour, Louise. *Rapport sur l'enquête portant sur la communication de la preuve avant le procès en matière pénale: document préliminaire* (1974). 126 p.
40. Grosman, Brian. *Discretion in the Initiation of Criminal Proceedings* (1974). 111 p.
41. Hunter, Ian. *Obscenity: The Jansenist Pantomime* (1974). 32 p.
42. Kiessling, Jerry J. *The Ottawa Criminal Court Volunteer Program* (1974). 48 p.
43. *Notes on Imprisonment* (1974). 51 p.
44. Pickard, Toni. *Criminal Enactment Jurisdiction: Transnational Problems* (1974). 125 p.
45. Reynolds, D. D. Graham. *Computer Analysis of Metro Toronto Police Use of Diversionary Dispositions for Juvenile Offenders* (1974). 40 p.
46. Swabey, Thomas R. *Submission to the Federal Law Reform Commission in Reply to 'A Proposal for Costs in Criminal Cases'* (1974). 20 p.
47. Barnard, Kathryn, Krasnick, Mark and Tennenhouse, Carol. *The September Study: A Look at Sentencing and Recidivism* (1975). 69 p.
48. Berner, S. H. *Intoxication and Criminal Responsibility* (1975). 69 p.
49. Hooper, Anthony. *Theft and Related Offences: Draft Sections and Explanatory Note* (1975). 181 p.
50. Kiessling, Jerry J. *The Ottawa Volunteer Program: Operation and Preliminary Cost Benefit Analysis: Interim Report* (1975). 57 p.
51. Landreville, P. and Carrière, P. *Les mesures de libération: document préliminaire* (1975). 62 p.
52. Leigh, L. H. *The Criminal Liability of Corporations and Other Groups* (1975). 88 p.
53. MacKaay, Ejan and Vignola, Jacques. *Étude de la procédure criminelle à Montréal avec un accent particulier sur les étapes préliminaires au procès* (1975). 224 p.
54. Morton, J. S. *A Code of Petty Crime. A Code of Procedure in Cases of Petty Crime. A Code of Evidence in Cases of Petty Crime* (1975). 92 p.
55. Ortego, Jim. *Consecutive Sentencing: Study* (1975). 58 p.
56. *Questioning Imprisonment* (1975). 24 p.
57. Samek, R. A. *Study Paper on Pornography* (1975). 79 p.
58. Waller, Louis. *The Criminal Trial* (1975). 31 p.
59. Ferguson, Gerry. *Forms of Psychiatric Treatment for the Mentally Disordered Offender in Canada* (1976). 54 p.
60. Gerstein, R., Clement, W., and Barker, M. *To Study and Report on Psychological Tests and Evaluative Procedures Currently in Use or in Development Phases for the Selection of Police or Internal Police Tasks* (1976). 107 p.
61. Katz, Lynne Cheryl and Genser, Susan. *Restitution: A Reconciliative Alternative* (1976). 48 p.
62. Jobson, K. and Ferguson, G. *Hospital Orders: A Study* (1976). 62 p.
63. MacKaay, Ejan. *The Paths of Justice: A Study of the Operation of the Criminal Courts in Montreal* (1976). 114 p.
64. Poirier, Michel and MacKaay, Ejan. *Méthodologie d'un projet de simulation de la procédure criminelle à Montréal* (1976). 185 p.
65. Horowitz, Stephen. *Cases and Materials on Ignorance of Law and Mistake of Fact* (1977). 29 p.
66. McCabe, William. *Post-Release Medical Problems of Ex-Inmates of Correctional Institutions* (1977). 20 p.
67. Prowse, Janet A. *An Overview of the Provincial Pre-Trial Project in Vancouver as of November 1978* (1978). 66 p.

68. Swan, Judy. *Customs and Excise: The Legal Regime with Emphasis on Search and Seizure* (1978). 38 p.
69. Brooks, Neil. *Procedure and Evidence at Sentencing Inquiries* (1979). 63 p.
70. Brooks, Neil. *Search and Seizure Powers in the Income Tax Act: Suggestions for Reform* (1979). 163 p.
71. Craig, Ellis. *Electronic Eavesdropping in Canada* (1979). 168 p.
72. Ferguson, Gerry. *Medical and Scientific Techniques for Treating, Altering or Controlling Personality and Behaviour* (1979). 345 p.
73. MacCrimmon, Marilyn T. and Vining, Aidan R. *Pretrial Discovery in Vancouver* (1979). 169 p.
74. Standerwick, R. Warren. *Interim Report: Pre-Trial Discovery Project (Federal Offences)* (1979). 36 p.
75. Stuart, Donald. *Homicide, Assault and Threats* (1979). 100 p.
76. *Summary of Reactions to Working Paper 19: Theft and Fraud* (1979). 1 p.
77. Viau, Louise. *La façon de garder et de disposer des biens saisis* (1979). 54 p.
78. Wong, Victoria. *Search and Seizure Powers outside the Traditional Criminal Law Context* (1979). 109 p.
79. Morris, Phillip. *Territoriality and Extraterritoriality: Some Comments on the Ambit of the Criminal Law of Canada* (1981). 214 p.
80. Rounthwaite, Ann. *Issues Paper: Prostitution* (1983). 35 p.
81. Atrens, Jerome. *The Adversary System: A Discussion Paper* (1984). 37 p.

EVIDENCE

82. *Res Gestae* (1972). 43 p.
83. Delisle, Ronald J. *Authentication and Identification* (1974). 71 p.
84. Delisle, Ronald J. *Authentication and the Documentary Originals Rule* (1975). 14 p.

FAMILY LAW

85. *Constitutional Validity of the Present Sections [of the Divorce Act]* (1972). 9 p.
86. *Findings of Illegitimacy in Divorce Proceedings* (1972). 8 p.
87. *Interim Corollary Relief* (1972). 40 p.
88. *Inter-Spousal Maintenance* (1972). 72 p.
89. Katz, Leslie. *The Distribution of Legislative Authority in Family Law* (1972). 75 p.
90. *Privilege in Reconciliation Attempts* (1972). 10 p.
91. *Privilege Regarding Questions concerning Marital Inter-course* (1972). 3 p.
92. *Privilege Regarding Questions Tending to Show Adultery* (1972). 3 p.
93. Garigue, Philippe. *Family, Science and Policy* (1973). 81 p.

94. Steinberg, David. *Preliminary Report on the Drafting of Model Unified Family Court Legislation* (1973). 123 p.
95. Fortin, Denyse. *Régimes matrimoniaux au Québec* (1974). 114 p.
96. *Matrimonial Property: Part I* (1974). 43 p.
97. Lown, Peter. *The Conflict of Laws Aspects of Divorce* (1975). 56 p.
98. Sanders, Douglas. *Family Law and Native People* (1975). 182 p.
99. Sanders, Iwan. *Maintenance Law in Canada* (1975). 208 p.
100. Bisson, Alain-François. *Aspects généraux du droit canadien des nullités de mariage: droit existant et perspectives de réforme* (1976). 158 p.

PROTECTION OF LIFE

101. Starkman, Bernard. *Preliminary Study on Law and the Control of Life* (1974). 92 p.
102. University of Sudbury. Institute for Research on Contemporary Interpretations of Man. *Definition of Death: Euthanasia: Study and Report* (1975). 746 p.
103. Castel, Jean-Gabriel. *Nature and Effects of Consent with Respect to Right to Life and the Right to Physical and Mental Integrity in the Medical Field* (1977). 157 p.
104. Somerville, Margaret A. *Human Medical Research in Canada* (1979). 635 p.
105. Freedman, Benjamin. *Toward Consensus in Regulating Risks in Society: A Study of Issues and Methods* (1983). 271 p.

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106. Eddy, Howard. *Impact of the Computer System on the Canadian Payment System* (1973). 32 p.
107. Fitzgerald, Patrick. *Rights and Liberties* (1973). 91 p.
108. Morden, John. *Research Paper on Expropriation* (1973). 266 p.
109. Baum, Daniel. *The Legal Capacity of the Young to Enter the Economic Mainstream* (1974). 209 p.
110. Baum, Daniel. *Age and the Law: Preliminary Report* (1975). 41 p.
111. Francis, Robert. *Analysis of Ombudsman Case Files* (1975). 88 p.
112. Samek, Robert. *The Objects and Limits of Law Reform* (1975). 142 p.
113. Smith, J. C. and Coval, S. *The Causal Theory of Rules* (1975). 61 p.
114. Myers, Edward. *Judicial Impact Statements* (1979). 48 p.

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115. Hartt, E. Patrick. *Manifesto for Law Reform* (1976). 197 p.
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- Attorney General of Québec v. Laurendeau* (1983), 3 C.C.C. (3d) 250 (Qué. S.C.).
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- R. v. Texaco Canada*, Ont. Prov. Ct. (Crim. Div.), Renfrew, Nov. 10, 1983, Merredew J. (unreported).

APPENDIX I

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APPENDIX J

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Hébert, Lyne
Legault, Jean-Pierre

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Clermont, Viviane
Corder, Colleen
Côté, Denise
Currie, Linda
Dixon, Darcy
Giguère, Flora

Haché, Rose-Marie
Haitas, Susan
Halderson, Christine
Ippersiel, Madeleine
Johnson, Deborah
Keeler, Liliane
Kelly, Heather
Lajoie, Suzanne
Lallemant, Louise
Main, Barbara
Mathé, Diane
McGreevy, Stella
McKaskle, Suzette
Milks, Viola
Normand, Lynne
Perrier, Chantal
Plouffe, Suzanne
Robert, Micheline
Shaw, Irene
Verreault, Louise
Voyer, Hélène

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