



Law Reform Commission  
of Canada

Commission de réforme du droit  
du Canada

# 14<sup>th</sup> ANNUAL REPORT

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Annual report

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LAW REFORM COMMISSION  
OF CANADA

FOURTEENTH ANNUAL REPORT  
1984-1985





PRESIDENT  
LAW REFORM  
COMMISSION

Ottawa  
July, 1985

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 Fourteenth Annual Report of the Law Reform Commission of Canada for the period June 1, 1984 to May 31, 1985.

Yours respectfully,

A handwritten signature in dark ink, consisting of a series of loops and a long horizontal stroke.

Allen M. Linden

## COMMISSION MEMBERS

### President



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

### Vice-President



Mr. Gilles Létourneau  
Appointed 24 June 1985

### Commissioners



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



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



Mr. John P. Frecker  
Appointed 19 April 1985



## TABLE OF CONTENTS

1. INTRODUCTION.....	1	c) The Canadian Sentencing Commission.....	26
a) Mandate .....	1	d) The Canadian Judicial Council.....	26
b) First Steps.....	4	e) The Canadian Institute for the Administration	
c) The Work Continues .....	4	of Justice (C.I.A.J.).....	26
d) The Current Team.....	4	f) The Canadian Bar Association .....	27
		g) The Canadian Association of Law Teachers	
		(C.A.L.T.) .....	27
2. INFLUENCE		h) The Media.....	27
ON LAW REFORM .....	7	i) The Canadian Law and Society Association .....	27
a) Influence on Law Reform		j) Other Canadian Law Reform Agencies .....	28
through Research.....	7	k) The Canadian Criminal Justice Association	
b) Influence on Law Reform		(C.C.J.A.).....	28
through Education .....	7	l) International Agencies.....	28
c) Influence on Law Reform			
through Judicial Decisions .....	8		
d) Influence on Law Reform		7. OPERATIONS.....	28
through Changing Conduct.....	10	a) Meetings.....	28
e) Influence on Law Reform		b) Regional Operations.....	28
through Legislation.....	11	c) Official Languages Policy.....	28
		d) Library .....	29
3. PUBLICATIONS RELEASED		e) Personnel .....	29
THIS YEAR .....	12	f) Finances .....	29
a) Reports to Parliament .....	12	g) Visitors .....	30
b) Working Papers .....	14		
c) Study Papers .....	16		
4. CURRENT RESEARCH .....	17		
a) Substantive Criminal Law Project.....	17		
b) Criminal Procedure Project.....	18		
c) Protection of Life Project .....	19		
d) Administrative Law Project .....	21		
e) Project Plain Language.....	22		
5. CONSULTATION .....	22		
a) Regular Consultations .....	22		
b) Special Consultations.....	23		
c) Public Consultations.....	24		
6. CO-OPERATION WITH OTHER			
INSTITUTIONS.....	26		
a) Parliament .....	26		
b) The Department of Justice			
and the Department			
of the Solicitor General .....	26		

## APPENDICES

A — Reports to Parliament.....	31
B — Working Papers.....	33
C — Studies, Study Papers, Background Papers	
and Conference Papers .....	33
D — Unpublished Papers Prepared	
for the Law Reform Commission .....	35
E — Some Other Books and Articles	
by Present and Former Personnel	
Supported by the Law Reform Commission...	37
F — Some Articles about the Law Reform	
Commission and Its Work.....	40
G — A Selection of Quotations, Editorials	
and Media Reports on the Law Reform	
Commission and Its Publications .....	43
H — Law Reform Commission Publications	
Referred to by the Courts .....	48
I — Research Consultants .....	50
J — Commission Personnel	
Other Than Research Consultants .....	53

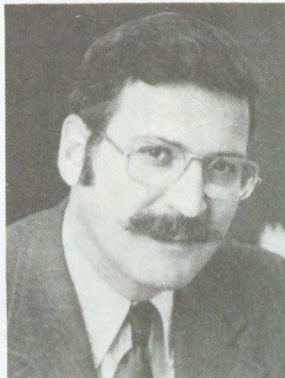


## FORMER COMMISSION MEMBERS\*

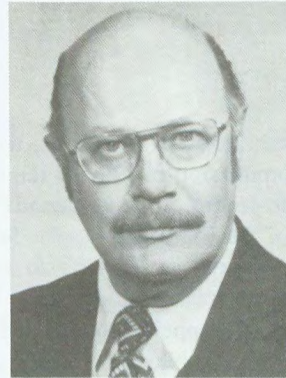
### Presidents



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



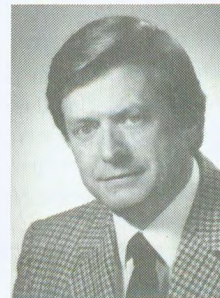
Jean-Louis Baudouin, Q.C.  
Commissioner  
1 May 1976 — 30 April 1978  
Vice-President  
1 May 1978 — 1 December 1979



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



Jacques Fortin  
Vice-President  
3 November 1983 — 28 January 1985

\* In order of appointment



## Commissioners



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



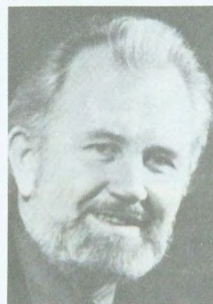
William F. Ryan, Q.C.  
Commissioner  
1 July 1971 — 15 April 1974  
Now Mr. Justice Ryan,  
Federal Court of Canada



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



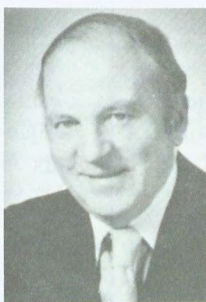
John D. McAlpine, Q.C.  
Commissioner  
1 December 1971 — 1 December 1974



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



Gérard V. La Forest, Q.C.  
Commissioner  
15 April 1974 — 1 July 1979  
Now Mr. Justice La Forest,  
Supreme Court of Canada



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



Alan D. Reid, Q.C.  
Commissioner  
1 April 1982 — 31 March 1985



## 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 on *Evidence*, which included a proposed code of evidence 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 non-technical as possible. He undertook a dialogue with the public, to involve them in the process of law reform. Studies on 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 could develop 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 Report 3, *Our Criminal Law*.

During Mr. Justice Lamer's term as Chairman, several new studies in the field of criminal law were undertaken. In addition, 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, pollution, 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 the Honourable Jacques Flynn, Minister of Justice in the Clark Government, 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. This institutionalized and ensured governmental scrutiny and action on the criminal law work of the Commission as it emerged.

## d) The Current Team

Following 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 three distinguished Commissioners: 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.



Jacques Fortin, Vice-Président de la Commission de réforme du droit, est décédé le 28 janvier dernier. François Handfield, ancien étudiant et collègue de Me Fortin, nous livre ses réflexions.

Jacques Fortin, Vice-President of the Law Reform Commission of Canada died in Montreal on Jan. 28, 1985. Below, Patrick Fitzgerald reflects on the man and his accomplishments.

## Un éminent juriste, un philosophe éclairé, un grand ami de tous

Par François Handfield  
Pour le National

Rencontrer un éminent professeur est troublant, mais retrouver un éminent professeur après 16 ans d'absence l'est encore plus. C'est l'expérience que j'ai vécue lorsqu'en 1983 je me suis joint à la Commission de réforme du droit du Canada en tant que coordonnateur du Projet de recherche en droit pénal de fond. Au départ, le titre de droit pénal "de fond" m'était inconnu mais je l'ai attribué sans hésitation à celui qui avait été pour moi en 1967 un professeur avide de connaissance et de perfectionnement juridiques.

J'avais laissé le professeur Jacques Fortin après mes études de droit et n'en avais entendu parler que par ses conférences et écrits. Il était à l'époque de 1967 un jeune professeur à la recherche de la vérité jurisprudentielle. Il était convaincu, me semble-t-il de

l'exactitude de l'enseignement du common law. Mais il était ardu pour des étudiants à l'esprit cartésien de nous soumettre à la pensée britannique. Nous attendions des principes généraux que la common law ne nous apportait pas sur le champ.

Chez le professeur Fortin par contre, il y avait une recherche de principes. Nous ne les trouvions pas toujours. Sa tâche n'était pas facile; d'autant plus qu'il s'efforçait d'élaborer des principes généraux en un français que l'on ne retrouvait pas dans les textes. Il y avait certes, l'ouvrage admirable du Juge Irénée Lagarde dont nous nous inspirions; mais Jacques Fortin voulait aller plus loin.

Il voulait isoler les principes généraux de droit pénal de la partie du Code qui traite des infractions. Il y travailla très fort. Son volume en collaboration avec le professeur Louise Viau en est un résultat tangi-



ble. "Oeuvre admirable que celle de créer un langage juridique français en droit pénal" dira le professeur Jacques Bellemare.

L'histoire voulu qu'il se retrouve à la Commission de réforme dès 1971. A cette époque on garde comme souvenir celui d'un professeur parfaitement instruit en droit pénal.

Celui qu'il retrouvait en 1983 n'avait plus cette soif

d'apprendre des années 60, il savait!

Sa pensée avait évolué. Il était devenu un critique du droit pénal. Certes il respectait la règle jurisprudentielle; il en avait d'ailleurs tiré des principes généraux, mais il remettait en question maintenant ces mêmes principes.

C'est ainsi que le groupe de droit pénal de fond a travaillé avec lui jusqu'à son départ. Autour de lui, son grand ami,

le professeur Patrick Fitzgerald, de l'Université Carleton, un groupe d'environ six jeunes avocats et moi.

Les séances de travail étaient merveilleuses. On y parlait droit, philosophie et surtout logique. Un exemple: la responsabilité des parties aux infractions. D'instinct, nous avons ouvert le Code criminel. C'était de trop; "Nous ne sommes pas là, nous disait-il, pour déplacer une virgule ou changer un mot. Il faut aller plus loin, il faut dépasser le Code". Pour ce faire, il faut remettre en question, se poser des questions fondamentales. C'est ce que nous avons appris à faire à ses côtés. Ce n'était pas toujours facile; nous n'étions pas toujours de taille. Chez lui, aucun signe d'impatience ou de mécontentement. Bien au contraire, il invitait à la discussion. Il pratiquait avec le groupe l'art de faire naître les idées.

On ne compte plus les heures passées avec nous, loin de sa famille, loin de sa ville, loin de son université. Et c'est ainsi que les documents en droit pénal de fond ont été élaborés puis soumis à la Commission. Il savait, cependant, que cette approche au droit pénal ne serait pas acceptée d'emblée par tous. La route de la réforme était tracée dans les principes de base mais la législation de demain était encore loin.

Nous vivons depuis son départ, nourris de sa pensée et de son dynamisme. Nous ne connaissons peut-être plus d'esprits réformateurs comme le sien mais nous allons tout faire pour qu'un jour le rêve qu'il chérissait se réalise.

M. François Handfield est Coordonnateur de la section de recherche en droit pénal de fond à la Commission de réforme du droit du Canada.

## 'A guide, philosopher and friend to whom we never looked in vain'

By Patrick Fitzgerald  
For the National

"Who," wrote Glanville Williams, "is the ideal law reformer? It would be easy to depict this Benthamite character, possessing enormous erudition and with an unremitting zeal for legal improvement. But it's not the habit of governments to fill their committees with such people." A notable exception was the late Jacques Fortin.

I first met Jacques in 1971. We met with two others (Commissioner Friedland, as he then was, and Bernard Grenier) to discuss the arrangement of a new Criminal Code. This was the first of many meetings with him, for subsequently I worked together with him two days a week throughout the next 14 years. From that collaboration

came many of the commission papers in criminal law, e.g. *Meaning of Guilt, Theft and Fraud, The General Part and Homicide*. "In terms of intellect and scholarship," said Mr. Justice Lamer, "he made the major contribution from Quebec."

At the 1971 meeting, three things struck me about him. First, he spoke rarely and, when he did so, quietly; his voice was ever soft — an excellent quality in colleagues.

Second, he spoke with acknowledged authority based on an encyclopaedic knowledge of the criminal law: no precedent from early or present case law escaped him; no scholarly work from Hale to Fletcher passed him by — he was a veritable walking abridgement.

Third, he was a born expositor; I have fond memories of him explaining with his usual clarity and logic, without jargon or redundancy, some abstruse concept or proposal to groups such as the commission's advisory panel of judges — the only pity was the explanation had to end.

Another essential quality for law reform is grasp of principle. He had this in abundance, partly because of his knowledge of comparative criminal law. After we had wrestled ineffectively for days with some intractable conceptual problem, a mere half-hour with him would make the whole thing clear. "Let's wait," we'd say — and see what Jacques says — he'll have the answer."

Most important, however, for

a law reformer is "unremitting zeal for legal improvement." This, too, he had and in good measure. It showed in what former president Mr. Justice Muldoon called "the patience and outward serenity with which he faced the verbal abuse inflicted on reformers daring to question what previous generations have passed down to us."

It showed too in his willingness, at great personal and financial cost, to leave his home and family and spend so much time in Ottawa and at consultations elsewhere. He gave, it's fair to say, much of his life to law reform and to preparing a new Criminal Code. Should Canada ever obtain such a code, much of the credit for it must go to Jacques

Fortin.

To the commission he was, as President Allen Linden put it, "the creative force, the intellectual light and the true spirit behind the commission's work in criminal law." To his colleagues he was that guide, philosopher and friend to whom we never looked in vain for help however great the burden of providing it. To those who worked under him — researchers, secretaries, support staff — he was the kindest, most amiable and most supportive of directors. In short he was that unique thing, an ideal law reformer. We shall not look upon his like again.

Patrick Fitzgerald is a senior Research Consultant with the Law Reform Commission of Canada.



Tragically, Professor Jacques Fortin died in January 1985, depriving the Commission and Canada of his great wisdom and courage. The Criminal Law Project, to which he had dedicated himself, however, will continue on the course that he set for it. We miss him desperately, but his strength of purpose, his love of liberty and his sense of justice continue to guide and inspire us.

The Commission also lost the services of Mr. Alan Reid, who left before the completion of his term to become the first Director of Research with the firm of Gowling and Henderson. His high intellectual standards, steady sense of justice, and capacity for work set an example which remains with us. We are assured of his continuing interest and support in the years ahead.

The Commission is delighted with its two new Commissioners appointed this year. Each brings broad academic and practical experience to his new post. Mr. Gilles Létourneau of Québec City holds a law degree from Laval University, a master's degree in Criminal Law and Criminology from the London School of Economics and Political Science and a Ph.D. in Criminal Law and Procedure from that same university. He is the author of the book *The Prerogative Writs in Canadian Criminal Law and Procedure* and has written a series of articles in law journals. He brings with him a great deal of experience in law reform and legislation at the provincial level. He was, before his appointment as Vice-President, Associate General Secretary for legislation within the Québec government. Mr. Létourneau's term of office is for five years.

Mr. John Frecker, an experienced, practising barrister and solicitor, from the law firm Stirling, Ryan of St. John's, Newfoundland, has also joined the team. He has a Bachelor of Arts degree from Memorial University, Newfoundland and a master's degree in Political Science from the University of British Columbia. Mr. Frecker has also completed course work and comprehensive examinations at Queen's University for a Ph.D. in Canadian Politics and Comparative Politics. He holds an LL.B. from the same university. He has been a contributing editor to a number of Legal Digests and the Canada Legal Directory. Mr. Frecker's appointment is for a term of three years.

Supporting the Commission is a highly qualified and distinguished staff. Key people include: Mr. Jean Côté of the Québec Bar, the Secretary of the Commission; Mr. Harold Levy, the Deputy Secretary; Brigadier General (retired) Michael H.F. Webber, Director of Operations; Mr. Mario Bouchard, Co-ordinator, Administrative Law Project; Mr. François Handfield, Co-ordinator, Substantive Criminal Law Project; and Dr. Edward W. Keyserlingk, Co-ordinator, Protection of Life Project.

We will continue to build on the solid foundation laid by our predecessors, who gave us such a clear sense of direction. As the Commission undertakes to make further specific recommendations for reform, it will continue to rely heavily on the fundamental principles developed in the early years of its history. The great advantage of a permanent law reform body is the fact that it develops and fosters a consistent, continuing approach to law reform.



At a Commission meeting, from left to right: Commissioner Louise Lemelin, Q.C.; Commissioner Joseph Maingot, Q.C.; Commissioner Alan D. Reid, Q.C.; President Allen M. Linden; Jean Côté, Secretary; and Harold J. Levy, Assistant Secretary.



## 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 Reports, Working Papers and Study Papers that we have sponsored, our personnel have also published privately several books and many articles based on work they have done while at the Commission. 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. Many articles have been written about the Commission, its history, its function and its philosophy. All of this scholarly activity stimulates thinking about law reform and helps move us forward to understanding and, it is hoped, to action. (See Appendices A to G for detailed listings of research.)

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

have become law professors, government lawyers or active practitioners working at the frontiers of the law. Research done by the Commission has earned it an international reputation. Requests for our publications come from all over the world. Some of our work has been translated into other languages. 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 culture.

Commission research has been recognized as excellent. This is particularly manifest this year when, on October 26, 1984, the Commission was honoured to receive the Archambault-Fauteux Award from the Société de criminologie du Québec for its contribution to legal research.

### b) Influence on Law Reform through Education

An 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 Commission personnel have communicated with the public is through the media. Commissioners and staff were interviewed over one hundred and fifty times during this past year. In addition, articles about new Reports and Working Papers were carried by many of the 765 English language and 164 French language community newspapers to which they were made available. The country has applauded many of the Commission's innovative recommendations in news reports and editorials which have appeared throughout Canada (see Appendix G). Our Working Paper, *Assault*, has been commented on in one hundred articles in newspapers across Canada, a record for the Commission.



The Commission has also informed the public about law through its participation in Law Day. The purpose of Law Day, held annually on April 17, the anniversary of the coming into force of the *Canadian Charter of Rights and Freedoms*, is to inform members of the public about law and the legal profession.

Commission publications are often used as teaching aids. To further increase the presence of our publications in the classroom, the Commission participated in the sixth Canadian Law Teaching Clinic which assembled for nine days, last May, in Corvichan Bay, B.C. Professor Diane Labrèche, of the University of Montréal and presently a consultant with the Commission, helped to organize, plan and conduct the clinic for the benefit of some twenty law teachers. Suggestions were offered on how to use Commission publications effectively in order to enhance the quality of law teaching in Canada.

### c) Influence on Law Reform through Judicial Decisions

As in previous years, courts at every level have used Law Reform Commission research and recommendations as authorities. This year we have been able to locate over twenty cases in which judges have cited Commission publications, for a grand total of over one hundred cases specifically citing our publications since the Commission's inception. Many unpublished judgments, citing the Commission's papers cannot, however, be mentioned here (see Appendix H).

The Supreme Court of Canada, which had in earlier years cited our publications on some eight occasions, has cited Law Reform Commission works on three occasions in the year under review. In *R. v. Big M Drug Mart* (1985), 58 N.R. 81, the Chief Justice, in ruling that the *Lord's Day Act* offends freedom of religion and violates the Charter, agreed with the Law Reform Commission's Report on *Sunday Observance* (1976) that "any recharacterization of the *Lord's Day Act* in a modern context ... is a task the Parliament of Canada and the provincial legislatures will have to take up directly."

In *Perka v. R.*, [1984] 2 S.C.R. 232, Mr. Justice Dickson, as he then was, refers to Working Paper 29, *The General Part: Liability and Defences* (1982), for its analysis of the two principles (utilitarian and humanitarian) of the defence of necessity.

In *Skogman v. R.*, [1984] 2 S.C.R. 93, Mr. Justice Estey quotes from the Study Paper, *Discovery in Criminal Cases* (1974) in tracing the history of the origins of the preliminary inquiry system in Canada.

While not specifically mentioning any Law Reform Commission publication, the Supreme Court of Canada in *Hunter v. Southam Inc.*, [1984] 2 S.C.R. 145, adopted the position recommended in Working Paper 30, *Police Powers: Search and Seizure in Criminal Law Enforcement* (1983), that a requirement of prior authorization is a prerequisite for a valid search and seizure under the *Canadian Charter of Rights and Freedoms*.

Courts of Appeal have also used Law Reform Commission publications to assist them in reaching their decisions. In two cases, Appeal Court Justices quoted from Working Paper 30. In the first case, *R. v. Hamill* (1984), 13 D.L.R. (4th) 275, the British Columbia Court of Appeal ruled that a writ of assistance under paragraph 10(1)(a) of the *Narcotic Control Act* confers a valid power to enter and search if there is a reasonable belief on the part of the peace officer in the presence of a narcotic and if both the initial entry and the actual search are reasonable. The court noted that the Commission recommended the abolition of warrantless searches but felt that this was a matter for Parliament and had nothing to do with the question of whether a given statute was inconsistent with the *Charter*.

In the second case, *Procureur Général de Québec v. La Banque Royale du Canada* (March 19, 1985), Montréal 500-10-000321-839 (C.A.), Kaufman J.A., in ruling that the search and seizure power is restricted to "things" and excludes forms of property such as funds in bank accounts or information from computers, quotes from the Working Paper which, in his view, correctly summarizes the present state of the law. This decision upheld a judgment of the Superior Court of Québec, *sub nom Royal Bank of Canada v. Bourque* (1983), 38 C.R. (3d) 363, which also quotes a passage from the Working Paper.

In another search and seizure case, *R. v. Noble* (1984), 48 O.R. (2d) 643, Mr. Justice Martin of the Court of Appeal of Ontario, found that a writ of assistance under the *Narcotic Control Act* and the *Food and Drugs Act* is of no force and effect. He stated: "I am in substantial agreement with the Law Reform Commission's analysis of the writ of assistance."

In *R. v. Jackson* (1983), 9 C.C.C. (3d) 125 (B.C.C.A.), Hutcheon J.A., in a dissenting opinion to the effect that a Justice of the Peace did not have reasonable grounds for issuing a search warrant under subsection 10(2) of the *Narcotic Control Act*, refers to the Study Paper entitled *The Issuance of Search Warrants* (1980). This Paper confirmed his view that the task of a reviewing court is to examine whether a Justice of the Peace should have been satisfied by information upon oath that there were reasonable grounds for believing that there were narcotics in the dwelling-house described in the information.



In *R. v. Scott* (1984), 16 C.C.C. (3d) 511 (Sask. C.A.), Mr. Justice Vancise, in a dissenting opinion on the issue of whether an accused can obtain production or discovery of evidence or chattels in the possession or under control of the Crown prior to the time of trial, outlines the history of the right to discovery or production in Canada based on Working Paper 4, *Discovery* (1974).

In *R. v. Bank of Nova Scotia* (1985), 66 N.S.R. (2d), 152 A.P.R. 222 (C.A.), Mr. Justice MacDonald, in a dissenting opinion, quoted from Working Paper 19, *Theft and Fraud: Offences* (1977), regarding the mental element of a fraud offence created by section 338 of the *Criminal Code*.

In *Hayes v. Thompson* (January 31, 1985), CA 00525 (B.C.C.A.), Mr. Justice Hutcheon, in deciding whether the powers to arrest in section 31 of the *Criminal Code* for a "breach of the peace" include an "apprehended breach of peace" quoted extensively from the Study Paper, *Legal Status of the Police* (1981), which he called "a wide ranging and very helpful review, among other things, of the origins of the office of the constable, the legal status in each of the Provinces and the implications that arise from provincial legislation and the *Criminal Code*."

In *Webb v. Webb* (1984), 46 O.R. (2d) 457 (C.A.), Mr. Justice Blair stated: "I adopt the views of McIntyre J.A. with reference to the applicability of policy proposals on maintenance made in a Report of the Law Reform Commission and which apply equally to the policy considerations advanced in this case." He quoted from *Marcus v. Marcus*, [1977] 4 W.W.R. 458 (B.C.C.A.), where the court mentioned that our "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."

Commission publications have been found to be useful as well for courts at lower levels in the judicial hierarchy. In interpreting section 17 of the *Garnishment, Attachment and Pension Diversion Act*, the New Brunswick Court of Queen's Bench in *Bank of Montreal v. Pafford* (1984), 6 D.L.R. (4th) 118, held that provincial garnishment law is overridden by the section in procedural questions only, as shown by the Law Reform Commission Report 8, *The Exigibility to Attachment of Remuneration Payable by the Crown in Right of Canada* (1977).

In *Re Martinson* (January 30, 1985), CUB 9958, Muldoon J., in his capacity as umpire under the *Unemployment Insurance Act*, referred to three of our publications, and particularly to Report 3, *Our Criminal Law* (1976) and Working Paper 29, *The General Part: Liability and Defences* (1982) in deciding that the *ignorantia juris*

rule applies only to criminal law and that adjudicatory tribunals are not directed by Parliament to apply it.

In two search and seizure cases, *Re Danielson* (1984), 16 C.C.C. (3d) 332, and *Vella v. R.* (1984), 14 C.C.C. (3d) 513, the Trial Division of the Federal Court and the Ontario High Court of Justice respectively referred to our Working Paper 30, *Police Powers: Search and Seizure in Criminal Law Enforcement* (1983).

In family law, the Québec Superior Court in two cases, *Droit de la Famille - 100*, [1984] C.S. 75 and *Droit de la Famille - 116*, [1984] C.S. 106, granted applications to cancel maintenance orders and stated that the decisions were in agreement with the principles established in Working Paper 13, *Divorce* (1975).

In *Kristman v. R.* (1984), 12 D.L.R. (4th) 283, the Alberta Court of Queen's Bench noted that Working Paper 4, *Criminal Procedure* (1974) "is argument to the effect that there should be a more comprehensive system of discovery than is presently provided in criminal cases."

Working Paper 22, *Sexual Offences* (1978), was referred to by the Manitoba Court of Queen's Bench in *R. v. Bird* (1984), 40 C.R. (3d) 41, in deciding that the victim of a sexual assault should not be subjected unnecessarily to the social consequences and psychological trauma associated with the disclosure of unrestricted evidence of her sexual conduct.

In a very interesting sentencing decision, *R. v. Smith* (May 15, 1985), York File No. 2490-83 (Ont. Dist. Ct.), the court notes that "the Law Reform Commission of Canada has recommended that a trial of an indictable offence be held within six (6) months of the alleged offence" and states, "But for the failure of the Attorney-General of Ontario to provide sufficient courtrooms in this Judicial District to ensure a trial within a reasonable period of time ... I would have unhesitatingly imposed a lengthy reformatory sentence."

And finally, in *Re K.* (1985), 3 W.W.R. 204, the British Columbia Supreme Court dismissed an application by a mother to have doctors perform a hysterectomy on her ten-year-old severely mentally handicapped daughter. In very lengthy and scholarly reasons Wood J. reviewed the recommendations of the Law Reform Commission in Working Paper 24, *Sterilization: Implications for Mentally Retarded and Mentally Ill Persons* (1979), and quoted extensively from both Working Paper 24 and Working Paper 26, *Medical Treatment and Criminal Law* (1980).



#### d) Influence on Law Reform through Changing Conduct

Law reform also brings about changes in people's conduct, without the need for parliamentary action. The Commission can take credit for many achievements in that respect.

##### (i) *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 on *Discovery in Criminal Cases* and the conferences and experiments that it encouraged. Once controversial Commission recommendations are now conventional wisdom.

##### (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 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 unified family court pilot 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 where one court, rather than several, handles, in a humane and efficient way, all the legal issues arising out of marital breakdown. Similar developments took place in Saskatchewan, Newfoundland and New Brunswick, where the federal and provincial governments have co-operated in the establishment and funding of the projects.

In 1984 the influence of Commission proposals on family law spread further afield with the publication by Statistics Canada of *Family Courts in Canada*. This major work reflects the essentials of the Commission's proposals. In fact, on pages 138 to 140, the Commission is credited with the initial recommendations for unified family courts and standardized provincial procedures.

##### (iii) *Videotape Project*

The Videotape Project sprung from Working Paper 32, entitled *Questioning Suspects*. This Paper recommends

the videotaping of questioning and confession in order to reduce allegations of police misconduct, shorten the time needed for *voir dire*s to determine whether statements were made voluntarily, and generally expedite the administration of justice. In order to test this concept, a Taped Interviewing Project was initiated by the Halton Regional Police in co-operation with the Law Reform Commission. Equipment and technical assistance have been provided by 3M Corporation of Canada and Sony Corporation. A full evaluation of the Project is scheduled for 1987. It will be conducted by Professor Alan Grant of Osgoode Hall Law School, a former police officer.

The Municipality of Metropolitan Toronto is also experimenting with videotaping of statements in its Scarborough district, with the advice and support of the Commission. Commission personnel have had several meetings with the Toronto Police team in connection with this project.

Discussions have also taken place with the Montréal and Ottawa police forces to explain the concept and encourage experimentation with it. These police departments have chosen to experiment with audiotapes rather than videotapes.

Both Mr. Harold Levy, Special Consultant to the Commission and project liaison person, and Mr. Alan Reid, Commissioner, made speeches on this topic. Mr. Levy addressed training officers from across Canada and Mr. Reid spoke at the Law Faculty of the University of New Brunswick.

If evaluation of these initial projects demonstrates a meaningful success in expediting administration and reducing complaints of police misconduct, it is likely that police practices across Canada may be significantly modified. As of now, it is gratifying to note that interest in this project is widespread.

##### (iv) *Corporal Punishment*

The Commission discussion on corporal punishment in Working Paper 38 on *Assault*, released this year, has sparked debate and has not gone unnoticed by major school boards throughout the country. Shortly after the release of the Working Paper, which called for a complete ban on corporal punishment in school, the Commission was gratified to learn that the Toronto separate schools (95,000 students) decided to abolish the strap. Other school boards are now reviewing the issue in the light of the Commission's recommendations.



#### (v) *Violence in Sports*

Working Paper 38 also had a section on violence in sports which aroused considerable discussion in the media and amongst professional sport managers and owners.

#### e) *Influence on Law Reform through Legislation*

In other years the Commission witnessed portions of five of its Reports being implemented in legislation. This year, another five Commission Reports have been enacted in part (see last year's Annual Report).

Bill C-18, tabled in the House of Commons by Justice Minister John C. Crosbie on December 19, 1984, was an important step in the reform of the criminal law and of criminal procedure in Canada. Its predecessor, Bill C-19, which was much longer, was not enacted owing to the dissolution of the last Parliament in July 1985. Bill C-18 is in part the fruit of the Government of Canada's Criminal Law Review, which is a non-partisan, federal-provincial, co-operative effort to modernize Canada's criminal justice system. It was passed by Parliament on June 20, 1985, and will come into force in the fall. Several important subjects dealt with in the Bill derived from the Criminal Law Review:

- (i) the abolition of writs of assistance;
- (ii) the introduction of telewarrants;
- (iii) the authorization of pretrial conferences and motions;
- (iv) the taking of blood samples;
- (v) and some matters of search and seizure and other items.

The Law Reform Commission supported the work of the House of Commons Justice and Legal Affairs Committee which studied the Bill by providing ideas and concepts embodied in its Reports and Working Papers and by accepting the invitation to testify before the Committee, which it did on February 12, 1985.

Specifically five items in Bill C-18 are based on the work of the Law Reform Commission:

##### (i) *Writs of Assistance*

Bill C-18 adopts the Law Reform Commission's recommendation that writs of assistance be abolished by enacting amendments to the *Narcotic Control Act*, the *Food and Drugs Act*, and the *Customs Act*. This provision was contained in Report 19 of the Law Reform Commission, tabled in the House of Commons in the fall of 1983.

The writ of assistance has been under attack for many years by scholars and judges. It is said to have contributed

to the Boston Tea Party, which led to the American Revolution. Last year, an important decision of the Ontario Court of Appeal (*R. v. Noble*), written by one of Canada's most distinguished judges, the Honourable G. Arthur Martin, who quoted from the Law Reform Commission's Report 19, held that writs of assistance were unconstitutional because they violated the unreasonable search and seizure clause of the Charter. Although there are judicial decisions and other legal views to the contrary, it has always been the Commission's view that these writs of assistance cannot survive in the post-Charter age.

##### (ii) *Telewarrants*

Report 19 also recommended the establishment of a system of telewarrants, which would enable police officers to obtain a search warrant without having to travel to the office of a judicial officer. By simply using the telephone, the officer could obtain a warrant which would empower him or her to perform a search with the full authority of the law, but more expeditiously.

The scheme contained in Bill C-18 is, with slight variations, identical with that suggested by the Law Reform Commission, and is similar to one which is in operation in some American states.

##### (iii) *Pretrial Conferences and Motions*

Bill C-18 also adopts a number of procedural recommendations made by the Law Reform Commission in its Report 9, entitled *Criminal Procedure: Part I — Miscellaneous Amendments*, tabled in Parliament in early 1978.

In that Report, the Law Reform Commission made several suggestions to expedite the administration of justice in Canadian criminal courts. It was an effort aimed at reducing the expense of legal proceedings in criminal cases. The suggestions were based on empirical research and consultation with the various players in the criminal justice system.

Bill C-18 contains a provision requiring a pretrial conference procedure in cases to be tried by judge and jury — a device that is already being used informally in some jurisdictions of Canada. The Bill proposes that this procedure be formalized. It also incorporates some suggestions contained in Report 9 aimed at streamlining the process of election and re-election of the mode of trial.

Finally, the Bill provides for judges to deal with certain procedural and evidentiary matters prior to the empanelling of a jury, something which escapes their jurisdiction at present.



#### (iv) *Blood Samples*

Bill C-18 adopts the Law Reform Commission's recommendations contained in Report 21, tabled in the House of Commons in the fall of 1983, with regard to the taking of blood samples. Bill C-18, along with the Law Reform Commission's Report, reflect our increasing concern with the problem of impaired driving in Canada.

The Law Reform Commission recommended that, following the example of some provinces, a blood sample could be demanded where a person is physically unable to give a breath sample owing to injury or illness, and that blood samples could also be taken from unconscious drivers, as long as a warrant was obtained and certain safeguards were met.

Bill C-18 enacted this strong measure, with a somewhat different mix of safeguards. It incorporates the suggestion that blood be taken by medically qualified personnel. It would allow the blood to be taken only with a judicially authorized telephonic warrant, as we urged. In addition, it provides for some of the blood sample to be given to the suspect, so that he may have his own independent analysis done in order to ensure the accuracy of the test. Finally, Bill C-18 does not permit the blood sample to be taken if, in the view of a medical doctor, it would endanger the health or life of the suspect.

While a few of the safeguards suggested by the Law Reform Commission have not been written into Bill C-18, it is worth noting that the parliamentary Committee eventually voted to adopt the Commission's recommendation that expressly protects medical practitioners and nurses from criminal and civil liability for either taking the blood sample or refusing to do so.

#### (v) *Search and Seizure*

Bill C-18 contains a few items in the area of search and seizure which have been dealt with in a preliminary way in our Working Paper 30, *Search and Seizure*, released in the summer of 1983 (now Report 24). Bill C-18 suggests that there be a restriction on the publication of information with respect to a search warrant or search made under such a warrant.

While Bill C-18 would have the publication ban extend only until the charge has been laid, the Law Reform Commission's proposal would have extended this ban until the person affected consents to its publication, has been discharged at a preliminary inquiry, or the trial of the individual has ended.

Bill C-18 also adopts a modified form of one of our recommendations in Working Paper 30 that there be a seal-

ing and application procedure with respect to seized documents when it is alleged that a solicitor-client privilege exists.

Bill C-18 also contains some material on the disposition of goods seized. Although the scheme contained in Bill C-18 is not as elaborate as the system that the Law Reform Commission has developed, it is consistent with the Commission's recommendations on this subject in Working Paper 39, *Post-Seizure Procedures*, released in May 1985.

## Conclusion

The Law Reform Commission is grateful that many of its Reports, Working Papers and Study Papers were useful in helping to develop Bill C-18.

As reported earlier, the Commission was privileged to have the opportunity to explain its views further to the Justice and Legal Affairs Committee which was assessing and refining this important reform legislation. The Commission was, of course, especially gratified that some of its testimony influenced the Committee to improve the Bill, which should commence to benefit Canadians in the fall of 1985.

## 3. PUBLICATIONS RELEASED THIS YEAR

The past year was a most productive one for the Commission. Four Reports to Parliament, seven Working Papers and three Study Papers were published, for a total of fourteen new publications.

### a) Reports to Parliament

*Report 22: Disclosure  
by the Prosecution*

This Report recommends amendments to the *Criminal Code* that would entitle any person charged with an indictable (more serious) offence to receive information from the prosecutor concerning important elements of the Crown's case at an early stage in the proceedings.



Such an approach is necessary, in the opinion of the Commission, because the *Criminal Code* has never formally provided for a general scheme of pretrial disclosure by the prosecution. Except for very limited specific instances in which the *Code* stipulates that the Crown must make disclosure, pretrial disclosure by the prosecution in Canada is an informal process based entirely upon the discretion of Crown prosecutors.

The Commission was concerned that as a result of this informal process, the quality of disclosure, to the extent that it occurs, is variable and sometimes depends upon the quality of personal relations between defence and prosecution lawyers.

The Commission believes that fundamental fairness requires that all persons have an equal right to prepare fully for their trial and thereby make full answer and defence when facing the serious consequences of a criminal charge. Formal disclosure rules guarantee that equal treatment should be accorded to all those accused of serious crimes.

#### *Report 23: Questioning Suspects*

*Questioning Suspects* is the first of a series of Commission Reports dealing with police powers and procedures. It was prepared as part of the Commission's mandate to define the limits of permissible intrusion by agents of the state upon the private interests of its subjects for the purpose of investigating and prosecuting crime. The Commission's work with regard to the law of investigative powers was motivated by a search for procedural rules which will promote fairness and efficiency in the administration of justice. It also reflects the Commission's awareness that a just measure of intrusion is necessary for the preservation of public order.

The Report recommends legislative reform of the existing law relating to admissibility of confessions by proposing detailed rules and procedures governing the taking of statements from the suspects by the police, rather than having police accountability based on administrative guidelines which do not have the force of law as is the practice now. Under the current state of the law, judges are only required to determine whether a confession has been given voluntarily in the sense that it has not been given under fear, prejudice or hope of advantage offered by a person in authority. Under the Commission's recommendations, a judge would also be able to consider, quite apart from his determination of the voluntary nature of the statement, the manner and the conditions in which the statement was obtained.

It should be noted that the Commission does not propose a rule of automatic exclusion or an absolute rule

of exclusion. Rather, under the Commission's recommendations, evidence obtained in contravention of the procedural rules would be admissible in circumstances where the Crown prosecutor can demonstrate that the admission of the evidence does not bring the administration of justice into disrepute.

#### *Report 24: Search and Seizure*

The Report relies upon a comprehensive survey of search warrant practices in seven major cities across Canada which indicates that there is a clear gap between the legal rules for issuing and obtaining search warrants and the daily realities of practice. For example, in recent years a trend has developed toward the creation of new, widespread exceptions to search warrant requirements, and many warrantless searches have been conducted without any accountability on the basis of the citizens giving uninformed and undocumented consent.

The Report states in this regard that "[t]he peace officer has come to acquire discretion, particularly with respect to entry onto private domains, of a breadth and variety unimaginable when the first common law powers of search and seizure were developed. When his coercive powers are combined with the opportunities to perform searches on consent, the peace officer's range of discretionary options is considerable."

The Commission proposes that Parliament remedy the "quite bewildering" state of Canada's search and seizure laws by replacing the disparate array of search and seizure powers presently provided for criminal investigation with a single comprehensive regime.

#### *Report 25: Obtaining Forensic Evidence*

This is yet another Report concerning police powers. It formulates a number of recommendations regarding the manner in which investigative procedures in respect of the person ought to be statutorily regulated. These cover administration of truth drugs, pumping of stomachs, probing of body cavities, removal of concealed foreign objects from within the subject's body, exposure to X-ray, the taking of hair samples and fingernail scrapings.

The Commission's recommendations will assist the police, by providing guidance and certainty, and by establishing procedures which will make it more likely that the evidence will be admitted in court. They are also intended to protect the public, by ensuring that people clearly understand their rights. Potentially incriminating procedures have been narrowly circumscribed so that they will be carried out in the fairest, safest and least intrusive manner possible.



## b) Working Papers

### *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 investigative 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.

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.

### *Working Paper 35: Defamatory Libel*

This Working Paper recommends the decriminalization of defamatory libel. The offence of defamatory libel developed in the English Court of Star Chamber in the seventeenth century to prevent duels over slights to a person's reputation and to stifle harsh political criticism. In the Commission's view, this criminal offence has no place in modern Canada.

"Defamatory Libel" (the publishing of matter which is likely to injure a person's reputation by exposing him or her to hatred, contempt or ridicule, or which is insulting) is punishable by up to two years in jail and a maximum of five years where the defamatory matter is known to be false. The Commission believes that retention of this archaic law creates an unhealthy, unwarranted chill on journalistic and artistic expression and may conflict with the provisions of the new *Canadian Charter of Rights and Freedoms* guaranteeing freedom of thought, belief, opinion and expression. Moreover, there are civil remedies available for slander and defamation that are both more appropriate and effective. In fact, there are few prosecutions under this *Code* provision (research indicates only thirty-six in the last ten-year period where we have statistics).

The Working Paper on *Defamatory Libel* is consistent with the Commission's view that the criminal law should be used with restraint.

### *Working Paper 36: Damage to Property: Arson*

The Commission Working Paper 36, entitled *Damage to Property: Arson*, was motivated in part by recent statistics which show that the crime of arson has become a serious national problem. This can be documented by the following:

- the incidence of arson in Canada went up 27% between 1977 and 1981;
- in 1982, a total of 8,881 actual arson offences were committed encompassing (together with other set fires) 18% of the total losses caused by fire;
- the total actual dollar loss for 1982 estimated by the Fire Commissioner of Canada is \$180,527,394.00, representing an actual dollar loss of \$7.00 per Canadian;
- in 1982, arson and other set fires caused 40 deaths and 523 injuries.

While there has been a significant acceleration in the number of deaths, injuries and the economic damage caused by acts of arson throughout Canada in recent years, Canada's laws dealing with the offence have scarcely changed since they were embodied in the country's first *Criminal Code* in 1892. In view of the need to revamp Canada's arson laws to keep up with the changing nature of the crime and the criminal, the Commission is inviting Canada's legislators to toughen up the laws by expanding the offence to include the destruction caused by explosives, and by making the arson laws easier to enforce and apply.

The Working Paper recommends replacing the many *Criminal Code* sections relating to arson with a single offence prohibiting wilful conduct which causes a fire or explosion resulting in damage to, or destruction of, property.

### *Working Paper 37: Extraterritorial Jurisdiction*

The Commission Working Paper recommends that Canada's extraterritorial authority in criminal law be extended from the twelve nautical mile territorial sea limit, where it lies now, to include the entire 200-mile exclusive fishing and economic zones which Canada claims under international law and the full extent of the continental shelf which stretches more than 400 miles into the Atlantic Ocean.



Such an extension is thought necessary to ensure that people are protected by Canadian law in this vital area of of Canadian influence which is attracting increasing national and international interest because of its rich economic potential.

This extension of Canada's criminal law to all persons in the exclusive zones would be limited to activities over which Canada has sovereign rights under international law. The recommendations would serve to protect fishermen and others in the exclusive fishing and economic zones by enabling prosecution in Canadian courts of anyone suspected of violating the *Criminal Code* therein.

The Commission's recommendations are rooted in international law and will remove any doubt about the application of Canada's criminal law on and in the immediate vicinity of such installations beyond the territorial seas.

#### *Working Paper 38: Assault*

The Working Paper on *Assault* is concerned with bringing order to the *Criminal Code* chapter on non-fatal crimes of violence which, in the opinion of the Commission, is in a state of "disarray".

It is also concerned with resolving fundamental conflicts such as the right to freedom of one's own body on the one hand, and the right to have the integrity of one's own body protected on the other. It explores modern problems relating to "consent" to bodily contact in areas such as medical treatment, contact and combat sports and consensual sado-masochistic sexual activities.

The Commission proposes the restructuring of the types of assault and the addition of a new category.

Under the Commission's proposal, the basic assault offences would be defined as:

- assault by touching an unwilling victim;
- assault by hurting an unwilling victim;
- assault by causing harm or injury.

All of these forms of assault could be aggravated by the manner in which the assault was committed or the relationship of the offender with the victim.

For example, the touching, hurting or harming constituting the assault would be aggravated, and therefore treated more severely: if firearms were used in the commission of the offence; if the victim was a police officer; if the accused's intent was to resist arrest; or if the assault was committed on a member of the accused's family.

The Commission says that this new approach will enable "consent" to be directly related to the kind of force inflicted and will more clearly draw the line between consent which can willingly be given to certain conduct and consent which cannot willingly be given because intentional harm or injury is being inflicted.

#### *Working Paper 39: Post-Seizure Procedures*

This Working Paper is aimed at facilitating the prompt return of stolen property recovered by the police to victims of crime who become doubly victimized — once by the offence and once more by the process. They become disappointed and frustrated when they discover that the recovered stolen property will not be restored until after the criminal case has been concluded — perhaps many months or even years later.

The Paper noted that in many cases the actual detention of the victim's property is not necessary for the Crown to prove its case. It is unnecessary to detain cars and trucks and drive them into the courtroom to prove theft because photographs and other forms of evidence are readily available and acceptable. Therefore, why must we deprive victims of their television sets, record-players, cameras and other easily identifiable items when alternative methods of recording the evidence for presentation in court without dispossessing the victim now exist?

#### *Working Paper 40: Legal Status of the Federal Administration*

The Working Paper says that a new attitude is called for in which the balance between the citizen and the State is redressed not only because of the necessity of holding the State to the rule of law — rather than permitting it to be above the law, but also because of the new era heralded by the *Canadian Charter of Rights and Freedoms* and its equality provisions.

While the purpose of the Working Paper is to set out a philosophic foundation for future Commission work, some possible areas of reform are explored, including measures which will simplify the recovery of damages against the Administration and increase the safeguards available to individuals. The Paper also proposes modernizing the rules relating to the execution of judgments against the Administration.

Recommendations are made which would assist citizens in their relationship with the Administration outside of the courtroom and serve as an alternative to processing grievances in the courts.



While appreciating the positive role that the Canadian judiciary has played in attempting to contain unfair exercise by the Crown of its privileges, the Paper states that "it cannot provide comprehensive reforms, which are usually the province of the legislator. In view of the importance assumed by the law and Parliament in the legal tradition of this country, the legal status of the federal Administration should be governed by a coherent body of legislation. Only a reform of this kind can accommodate the idea of the special nature of the administrative function, which needs to be further developed."

### c) Study Papers

Neil Brooks and Judy Fudge, *Search and Seizure under the Income Tax Act*

The Study Paper recommends removing the power granted to tax officials to compel entry into a taxpayer's business or private premises in order to inspect books and records as part of a routine audit and suggests or proposes reforms which will subject the search and seizure powers to greater control and accountability.

The authors speculate that these powers have been overlooked by parliamentarians because they have been cloaked in a regulatory statute, namely the *Income Tax Act*, rather than being placed in Canada's *Criminal Code*, where they would have been subject to careful probing, minute examination and concern over the rights and liberties of citizens.

T.S. Schrecker, *Political Economy of Environmental Hazards*

The Study Paper calls for a restructuring of the political process by which decisions are made about the content and enforcement of environmental hazard law and suggests specific measures which will help unstack the deck and give the potential polluter and the potential victim an equally influential voice in the decision-making process.

After all, the Study argues, decisions about the degree to which risk to people's health will be treated as acceptable by society are inescapably political decisions — decisions about who is to be allowed to do how much of what to whom. These are decisions about how the rights and rewards of technological activity are to be distributed.

Some other legal measures proposed in the Study Paper are the creation of new pollution offences and the entrenchment in statute of new kinds of penalties for corporate polluters.

However, the author argues that for there to be real long-term change, political decisions must be made on the basis of open debate with explicit acknowledgement of the kinds of decisions and value-judgments that are being made.

From a political science point of view, the Study Paper presents a detailed analysis of the role of large corporations as policy-making institutions — describing them as private governments which determine the level of environmental hazards to which Canadians are exposed.

From an economic perspective, the Study Paper analyzes the extent to which the concept of "efficiency" has been used to justify pollution.

From a scientific point of view, there is a critical discussion of the way in which scientific evidence is assessed and interpreted for purposes of public policy.

The author believes that the bias favouring the actual or potential creators of hazards can be reduced or countered in part, by providing opportunities for members of the public to participate at all stages of making environmental policy decisions, and by providing a right of access to all the information on which such decisions are based.

John Swaigen and Gail Bunt, *Sentencing in Environmental Cases*

Some people who deliberately pollute the environment should be sentenced to jail. This is just one of the many recommendations made in this Study Paper prepared for the Commission.

Current laws do not provide the courts with sufficient powers to impose sentences in environmental cases which will achieve the ultimate goal of stopping the offending behaviour, repairing damages caused to the environment and preventing recurrence of the harm.

The authors propose to remedy this gap by proposing a broad spectrum of penalties and sentencing tools which will supplement the most common sanction currently imposed against environmental offenders, the imposition of a fine.

They call upon judges to exercise a higher ecological consciousness by recognizing that pollution offences are not victimless crimes — as all people who share the environment are victims — and by recognizing that stringent punishment should be imposed on offenders on the basis that the environment has been threatened, without requiring proof of actual harm before a deterrent punishment can be imposed.



## 4. CURRENT RESEARCH

### a) Substantive Criminal Law Project

The Project was under the direct supervision of the Vice-President, Professor Jacques Fortin, until his death in January 1985. He was actively involved in the *Assault* Paper and the Paper on *Omissions, Negligence and Endangering*. This last Paper was very important to him because it was the follow-up to his involvement in Working Paper 29 on the *General Part*. Since January 1985, the Project has been under the direct supervision of the President, Mr. Justice Allen M. Linden.

During the period of June 1, 1984 to May 31, 1985, eight internal researchers were involved with the Project. This number includes the Commissioner responsible for the Project, the Senior Consultant, Professor Patrick Fitzgerald, and the Co-ordinator, François Handfield. There were fewer external consultants this year because the bulk of the research had been done in 1983-1984. Most of the work which had been started in that year was delivered in the summer of 1984. The following is a summary of the work done in the Project during the period under review.

The most important aspect of the 1984-1985 year is the work on codification. As planned, in January 1985, the Project turned its attention to the preparation of the new Criminal Code. At least five persons have devoted three-quarters of their time to this exercise. The group also included Mr. Vincent Del Buono from the Department of Justice and several outside consultants who were invited to provide advice and criticism. A Special Advisory Task Force was established to oversee the Project Study. The members were Mr. Justice G.V. La Forest, Mr. Justice G. Arthur Martin, Mr. Justice C.L. Dubin, Mr. Justice F. Kaufman, Professor M. Freidland and Professor Gisèle Côté-Harper.

Since January 1985, much progress has been made with the drafting of the Code. The General Part is almost complete. We have also worked on the topics of Offences against the Person and Offences against Property. This work should be incorporated into the Code by the end of June, 1985. In the fall of 1985, the Commission will present its first draft of the Code to regular consultation groups and then will invite more public involvement.

The Project has also been very active in publishing, and consulting on, Papers over the past year. The project has divided its work into the General Part of the *Criminal Code* and the Special Part.

#### (i) *The General Part*

*Publications:* A Working Paper on *Extraterritorial Jurisdiction* of Canadian courts has been published this year. The Paper deals not only with legal matters intrinsic to criminal law, but also with policy matters related to international transactions and relations such as government policy on foreign affairs, and national defence. The Paper generated a positive response from the other government departments and from the press.

*Approved for Publication:* A Working Paper on *Secondary Liability* (parties to offences, attempt, incitement, and conspiracy), has been approved for publication. This Paper brings together in a unified concept the law on parties, attempt, incitement and conspiracy.

*Other Work Done:* Over the past year, work has been finalized in the following areas:

- *Corporate Criminal Liability:* a draft Report will be submitted to the Commission during the summer of 1985. Publication is anticipated in the fall of 1985.
- *Criminal Law and the Rule of Law:* This Study is presently being incorporated into the *Code*. It deals with the rule of law and the interpretation of the law.
- Working Paper 29 (1982) is gradually being incorporated into the *Code*. *Omissions, Negligence and Endangering*, the follow-up to Working Paper 29, was completed over the past year. It deals with important topics such as: negligence, omissions, legal duties, causation and endangering offences. This Working Paper is expected to be published in the fall of 1985.
- *Procedural Defences:* A draft Working Paper on *de minimis non curat lex* was prepared and consultation has taken place. Further study and refinement will occur during the summer of 1985. Publication is anticipated in the fall of 1985.

On the question of *Entrapment*, a separate draft Working Paper has been written this year and consultations are scheduled for November 1985.

In summary, most of the work over the past year on the General Part was to finalize what had been started in 1983 and 1984 and to incorporate it into the *Code*.

#### (ii) *The Special Part*

*Publications:* Three Working Papers have been published. They are: *Arson*, *Assault*, and *Defamatory Libel*.



*Approved for Publication:* A Paper on *Bigamy* was approved for publication. It deals with bigamy, polygamy and other offences against conjugal rights.

*Anticipated Publications:* The Project is looking forward to publishing the following Papers in late fall of 1985:

- Offences against the Security of the State;
- Hate Propaganda; and
- Break and Enter (Criminal Intrusion).

*Work Done:* Research has been completed during the past year in the following subject areas:

- kidnapping and abduction;
- threats and intimidation;
- offences against justice;
- offences of corruption; and
- currency offences.

Research is about completed on Offences against Public Order and a draft Working Paper is now taking form. This Paper will be considered by the Commission late in 1985.

The Project has begun to work in the area of Road Traffic Offences and Obstructing a Police Officer, and is preparing work on Cruelty to Animals, Unlawful Possession and Firearms Offences.

It has been an active and fruitful year, in spite of the untimely passing of our colleague and leader, Professor Jacques Fortin.

## b) Criminal Procedure Project

The Criminal Procedure Project is under the direction of Commissioner Joseph Maingot, Q.C. Dr. Winston McCalla served as the Project Co-ordinator until his resignation towards the end of the year under review. The Project's ultimate objective is the presentation of a Code of Criminal Procedure which will deal with four major areas:

- (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 procedures tentatively entitled "Our Criminal Procedure" which is intended to guide the Commission in the preparation of the Code of Criminal Procedure.

### (i) Classification of Offences

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

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

### (ii) Police Powers

The Commission is cognizant of the importance of defining the scope and limitations of police powers, as the police often represent the citizen's initial contact with the criminal justice system. In this regard, members of the Project are currently devoting the greater part of their energies to this aspect of the criminal procedure. Virtually all of this work is either complete or near completion. Reports on *Questioning Suspects* and *Search and Seizure* were released during the year under review. A Working Paper on *Post-Seizure Procedures* and a summary on *Search and Seizure under the Income Tax Act* were also published during the year.

A Report on *Obtaining Forensic Evidence* (Investigative Tests) will be released in June of 1985. This Report recommends the adoption of statutory rules to govern police powers and procedures for taking certain types of evidence from suspects, with safeguards designed to protect their interests.

A Working Paper on *Arrest* has been recently approved by the Commission and will be published in the summer of 1985. The objective of this Paper is to clarify and reformulate powers of arrest in a way which strikes an appropriate balance between the interest of efficient crime control and the freedom of the citizen.



Also, a Working Paper on *Electronic Surveillance* has been approved by the Commission and is awaiting translation and publication. The emphasis of this Paper is on ensuring that authorizations to intercept private communications are strictly governed by the criteria of judiciality and particularity.

A Study Paper on the *Powers of the Attorney General* has been approved by the Commission and will be published by a private publisher. This Paper is expected to be released in August of 1985.

Work is continuing on several other topics within the Police Powers and Procedures subtopic. The Commission has marshalled the various commentaries arising from the Working Paper on *Post-Seizure Procedures* and is in the process of preparing a Report on the subject. Further consultations have been carried out in the area of arrest. Following the publication of the Working Paper, the Commission will take into consideration the public response and proceed forthwith to a Report. The area of *Private Prosecutions* has been made the subject of a Working Paper and consultations have already commenced.

#### (iii) *Pretrial Procedures*

A Report on *Disclosure by the Prosecution* has been released during the year under review, while a Working Paper on *Disclosure by the Accused* is currently under way. This latter Paper 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.

#### (iv) *Trial and Appeal Procedures*

The Commission is at present preparing Papers on Criminal Pleadings, Trial and Appeal Procedures and Jurisdiction of Criminal Courts. 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 responsible for the Protection of Life Project is Louise Lemelin, Q.C. The Project Coordinator is Edward W. Keyserlingk. The work of the Project has been divided into two branches. One branch consists of work in health law matters, and the other branch deals with environmental law issues. Both branches have a largely, although not exclusively, criminal law emphasis. The main objective is to examine the strengths and weaknesses of existing law in responding to the new challenges created by both technological developments and existing or potential threats to human life and health.

#### (i) *Health Law Issues*

In the health area, a Working Paper on Behaviour Alteration was completed, and approved by the Commission for publication in the summer of 1985. This Working Paper studies the adequacy of the protection given to psychological integrity by existing law and considers the need for explicit protections in the *Criminal Code* for psychological integrity. The issue is examined especially in the contexts of prisons, psychiatric hospitals and the use of behaviour modification techniques for social control. Of particular interest are the sections on patients who wish to refuse treatment and the scope of the psychiatric patient's rights when found to be incompetent.

A draft Working Paper on human experimentation was almost completed. Following approval by the Commission, release is expected to take place in the late fall of 1985. The issue addressed in this draft Working Paper, is that of the role of law, especially criminal law, in the control of experimentation with human subjects.

A draft Study Paper on Biotechnology was nearly completed during the period under review and will be distributed to readers for comments in the summer of 1985. This Paper addresses the urgent legal and ethical questions which arise in view of new genetic techniques now being used or contemplated in many activities such as agriculture.

A draft Report entitled *Medical Treatment* is near completion. This Report summarizes and synthesizes the various recommendations flowing from this Project's Reports, Working Papers, and Study Papers regarding medical treatment.



During the year in question, a number of Project publications issued in previous years continue to be requested in large numbers and have had a considerable impact on contemporary debates and policy making. Among these are: Report 20 — *Euthanasia, Aiding Suicide and Cessation of Treatment*; Working Paper 24 — *Sterilization*; Report 15 — *Criteria for the Determination of Death*; and the Study Papers, *Consent to Medical Care* and *Sanctity of Life or Quality of Life*. Altogether, some 85,000 copies of these Papers were distributed.

Planning got under way early in 1985 for a major new Project Study on the legal status of the foetus. A research group of eight leading scholars of various disciplines was assembled in May and meetings began almost immediately. Members of the research group include several law professors, an ethicist, a sociologist, and a geneticist. Members of many other professions and groups will be consulted and involved during the two-year period anticipated for carrying out this particular Study.

The plan of this Study will continue to evolve but the initial focus of the research will be restricted to the question of the legal status of the foetus. The scope of the Study will likely include a wide variety of issues including new birth technologies, abortion, in-vitro fertilization, embryo experimentation and reproductive hazards in the workplace. Of particular interest and importance is the adequacy of various sections of the *Criminal Code* with relevance to the foetal status question. Attention will be given to expressed views and positions on the question of the foetal status and to the attitudes of Canadians as indicated by recent polls and contemporary studies.

## (ii) *Environmental Law Issues*

This branch of the Project published one Study Paper during the year under review, entitled *The Political Economy of Environmental Hazards*. This Paper, discussed earlier, examines the influences shaping environmental and occupational policies and law. The Paper has been in such great demand that copies were exhausted a few months after its printing. Consequently, a second printing was required to fill the demand.

A second Study Paper, *Sentencing in Environmental Cases*, was completed and will be published in June of 1985. It explores the adequacy of present sentencing policies in the environmental field and suggests the use of more severe fines and a greater use of imprisonment. The Paper focuses on environmental statutes, not the *Criminal Code*.

A number of other Study Papers were completed in this year under review. Some are in the nature of unpublished background papers, and others are still being considered for publication. All of them are presently available in the Law Reform Commission's library. They include:

- Selected Environmental Statutes: A Legislative Analysis;
- The Jurisdictional and Constitutional Perspective of Environmental Law; and
- The Comparative Criminal Law Perspective.

A Study Paper under way focuses on the subject of Native Rights and Environmental Law. It is scheduled for completion in draft form in the summer of 1985, when it will be distributed to readers for comments. The Paper addresses the interaction between environmental law making and law enforcement on the one hand and Aboriginal and Treaty Rights on the other hand. It seeks to identify the competing interests involved and suggest ways of respecting and reconciling those rights and interests. Extensive efforts at consultations with native peoples and the various agencies with responsibilities in environmental law making and law enforcement have taken place.

A second Study Paper near completion is entitled *Pesticides: An Examination of Canadian Law and Policy*. It probes the adequacy of present statutory and regulatory controls over the use of pesticides.

As regards Working Papers, a draft of the Paper entitled: *Crimes against the Environment* was completed and approved for publication by the Commission. Its release is anticipated for the fall of 1985. This Paper examines whether some instances of serious environmental pollution should fall within the scope of *Criminal Code* offences, and whether existing *Code* prohibitions are adequate for the task. After extensive prepublication consultation and the examination of comments from a large number of readers, the Commission concluded that serious pollution harm, or endangering, should in some cases be treated as real crimes, and that new *Criminal Code* prohibitions should be formulated to repudiate and deter such conduct.

Another Working Paper completed during this year is entitled: *Policing Pollution: The Enforcement of Environmental Legislation*. This Paper examines the policies and practices of environmental agencies in the enforcement of environmental legislation. It was subjected to extensive consultation and, on the basis of comments and reactions, was being revised at the end of the year under review.



Work was advanced on two other Working Papers. One of these is entitled: *Workplace Pollution*. It studies the adequacy of existing legal and extra-legal controls and sanctions which apply in the workplace regarding pollution. Of particular interest is the present and potential role for criminal law in this arena. It has been distributed to readers for comments and will be considered by the Commission in the fall of 1985. The second Working Paper is entitled: *Consumer Product Pollution*. It studies the adequacy of present procedures, sanctions and controls in the testing and approval by government agencies of products which are potentially polluting. This Paper is of interest to criminal law as well. Recommendations will be made regarding the more effective protection of consumers and others by revising present procedures and safeguards.

#### d) Administrative Law Project

The Commissioner responsible for the Administrative Law Project was, during most of the year under review, Alan D. Reid, Q.C. He has now been replaced by John P. Frecker. The Project Co-ordinator is Mario Bouchard.

The Commission's broad objectives in the field of administrative law are to promote a better understanding of relationships 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 enforce these values. The Commission is presently concentrating its energies in three main areas:

- (i) Independent Administrative Agencies;
- (ii) Policy Implementation, Compliance and Administrative Law; and
- (iii) The Legal Status of the Federal Administration.

##### (i) *Independent Administrative Agencies*

The Report which deals with a framework for decision making by independent administrative agencies has reached the translating and printing stage. Researchers have now prepared drafts of studies on the advisability of having minimum legislative standards for federal administrative agencies, as well as on information gathering by administrative agencies, including issues relating to the use of hearing officers by agencies as a means of determining facts upon which their decisions can be based. Structured consultations on this subject should begin during the summer.

Our conceptual study of administrative appeals is moving ahead towards completion this fall.

A further consideration of the concept of a council on administration to provide an institutional focus for the promotion of sound administrative decision making remains on the back burner.

##### (ii) *Policy Implementation, Compliance and Administrative Law*

The Working Paper on Policy Implementation, Compliance and Administrative Law has reached the editorial stage. We continue to sense that much of the effort in this field must be educational, shaping attitudes towards the enforcement of administrative objectives. We hope to provide a continued contribution to a better understanding of the role of law in this area and of the strengths and limitations inherent in the various strategies that the law may authorize.

In this respect, we should note the preparation of a Paper regarding the role of Crown corporations in the implementation of government policy. This Paper was prepared for discussion at the Symposium on Government Enterprise, convened on September 24 and 25, 1984 by the Economic Council of Canada. Project researchers also prepared a presentation to be made to the annual meeting of the Law and Society Association, to be held in San Diego in June 1985, about the role of institutions in policy implementation.

In the coming year, our efforts in this regard will concentrate on the preparation of documents relating to the role of inspectorates and grants. These are, in our opinion, two of the areas where the role of law is most misunderstood.

##### (iii) *Legal Status of the Federal Administration*

Work on the legal status of the federal Administration has continued to progress. A Working Paper proposing a principled basis for applying special rules to the legal relationships between the Administration and citizens will be released in July. Specific areas where the general principles would apply are explained in two Papers now under way. One dealing with the special rules that apply in respect of the execution of judgments against the Crown is currently the object of a final round of consultations.

Another, addressing the procedural privileges and immunities enjoyed by the Crown in legal proceedings should be submitted to the Commission early in 1986. The Paper concentrating on tort liability of the Crown is currently being re-evaluated. Consultations regarding the latter Paper are expected to take a fair amount of time.

The Project researchers have continued to co-operate closely with the Department of Justice. This co-operation has resulted, among other things, in the completion by Commission researchers of background papers relating to *ex gratia* payments to claimants by the Administration, to statutory immunities and liabilities, and to the payment of Crown debts.

#### e) Project Plain Language

For some years, the Commission has been concerned about making the law more easily understood by the public. This can be done before the hoped-for rewriting of the legislation.

Forms are the closest contact the Government has with much of the public. They should be clear, concise, logical and contain only generally understood words used in their common, everyday sense. Much improvement of forms has been made in Australia, New Zealand and Britain. As well as introducing simpler forms, several states of the USA have enacted Plain English Laws. It was decided to start a small feasibility project to see if Canadian forms could be improved and, if so, how.

The preliminary work is being spearheaded by a researcher who has been connected with the Plain English Campaign in Britain. There, it has had an enormous impact on the Government. Our present study is being done in English but a similar study concerning Plain French is contemplated for a later date.

Thirty-nine departments and agencies were asked to send specimens of some of their most used forms for review. They have been extremely helpful and enthusiastic; ten deputy ministers wrote personally to give their support to the project. The time-consuming review of the forms is now being made. The first department to whom we returned forms, along with our suggested modifications, said they would be incorporating most of the suggested changes, believing these will help them to serve the public better.

## 5. CONSULTATION

The Law Reform Commission of Canada must consult with a great many individuals and organizations in order to fulfil 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 have reached out to involve new groups for their advice.

#### a) Regular Consultations

In the criminal law field, the Commission now regularly consults with five key groups, with whom we have a continuing dialogue about our Publications and Proposals. 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, Court of Appeal of British Columbia, Vancouver
- The Hon. Mr. Justice Alan B. Macfarlane, Court of Appeal of British Columbia, Vancouver
- The Hon. Mr. Justice Calvin F. Tallis, Court of Appeal of Saskatchewan, Regina
- The Hon. Mr. Justice William A. Stevenson, Court of Appeal of Alberta, Edmonton
- The Hon. Mr. Justice G. Arthur Martin, Court of Appeal of Ontario, Toronto
- The Hon. Mr. Justice Charles L. Dubin, Court of Appeal of Ontario, Toronto
- His Honour Patrick J. LeSage, Associate Chief Judge, Ontario District Court, Toronto
- The Hon. Mr. Justice Antonio Lamer, Supreme Court of Canada, Ottawa
- The Hon. Mr. Justice Melvin Rothman, Court of Appeal, Québec, Montréal
- The Hon. Mr. Justice Fred Kaufman, Court of Appeal, Québec, Montréal
- The Hon. Madame Justice Claire Barrette-Joncas, Superior Court, Québec, Montréal
- The Hon. Mr. Justice G.V. La Forest, then of the Court of Appeal, New Brunswick, Fredericton, now of the Supreme Court of Canada, Ottawa
- The Hon. Mr. Justice Angus L. Macdonald, Supreme Court of Nova Scotia, Appeal Division, Halifax



In addition, judges from the local community are usually added to the advisory group when it meets in various regions of the country. Those included in the past year were:

His Honour Judge Bernard Grenier, Sessions of the Peace, Québec, Montréal  
The Hon. Mr. Justice Yves Mayrand, Superior Court, Québec, Montréal  
His Honour Judge Kenneth Fogarty, District Court, Ontario, Ottawa  
His Honour Judge J.-P. Beaulne, Provincial Court, Ontario, Ottawa

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

Mr. D.I. 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  
Mr. Serge Ménard, Montréal  
Mr. 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:

Deputy Chief E. Hahn, City Police Department, Edmonton  
Deputy Chief Keith Farraway, Hamilton-Wentworth Regional Police, Hamilton  
Deputy Chief Thomas G. Flanagan, Ottawa Police Force, Ottawa  
Mr. Guy Lafrance, Montréal Urban Community, Montréal  
Chief Greg Cohoon, Moncton Police Force, Moncton

Though regular meetings between the Commission and the Canadian Association of Chiefs of Police have been held and more are planned, some disagreement is evident regarding a few Commission proposals. The Chiefs of Police feel that certain proposals are unduly restrictive of police powers. On the other hand, the Commission believes that the *Canadian Charter of Rights and Freedoms* and recent Supreme Court cases require a careful specification of police procedures. Continued dialogue based on regular meetings, discussions, and a continuing relationship will assure that proposals of the Commission will embody the practical experience of the police, society's concern about violent crime, as well as respect for the evolving constitutional law.

A 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 Peter MacKinnon, University of Saskatchewan  
Professor David Watt, Osgoode Hall Law School, Toronto  
Professor Anne Stalker, University of Calgary  
Professor Winifred Holland, University of Western Ontario  
Professor Martin Friedland, University of Toronto  
Professor Donald R. Stuart, Queen's University  
Professor Louise Viau, Université de Montréal  
Professor Bruce Archibald, Dalhousie University  
Professor Gerard Ferguson, University of Victoria

A 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 on three occasions with the government group, twice with the judicial advisory panel, twice with the law professors, twice with the defence lawyers and twice with the chiefs of police.

Minutes of all these private discussions are taken down in detail, typed 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

The category of special consultations is meant to describe specific consultative events held with groups, institutions or professionals who are concerned with the work of the Commission.

During the past year the President had a stimulating meeting, with lively discussion, on the subject of sentencing policy with the John Howard Society of London, Ontario. The Commission hopes to continue a dialogue with many branches of the John Howard Society. In fact, the Law Reform Commission is providing logistical support to the national John Howard Society as it prepares to put on a seminar on "Violence: Myth and Reality, Causes and Cures."

In addition to these activities, the Commission sponsored, or participated in, the following events:

- Consultation dinner with members of the Committee on Sexual Offences against Children and Youths for a confidential briefing on their as-yet-unreleased report — July 23/84.
- Luncheon jointly co-sponsored by the Law Reform Commission, the Canadian Bar Association and the Canadian Human Rights Commission to which were invited all members of the House of Commons Committee on Justice and Legal Affairs — Feb. 5/85.
- Osgoode Hall Law School Annual Lecture Series "The Media, the Courts and the Charter" jointly sponsored by the Law Reform Commission and five other bodies — March 21-22/85.
- Presentation of a brief by Mr. John Robinette of McCarthy & McCarthy on behalf of the Insurance Crime Prevention Bureau concerning Working Paper 36 on Arson — June 18/85.
- A day-long consultation jointly sponsored by the Law Reform Commission and the Institute for Studies in Policy, Ethics and Law, held at Carleton University on the subject of Sports Violence and the Law — April 26/84.
- Round Table Discussion of Pesticides, Law and Policy, co-sponsored by the Law Reform Commission and the Environmental Law Research Foundation, held in Ottawa's Conference Centre with participation from government departments, environmental groups and industry, including a discussion of a Paper prepared for the Commission on Pesticides: An Examination of Canadian Laws and Policies — February 27/85.
- Annual meeting of the Law & Society Association, Boston — June 8-10/84.
- Second leg of the third colloquium on Anglo-Canadian Comparative Administrative Law, held at the Université Laval — September 11-13/84.
- Colloquium on Extra-Contractual Liability of the Crown, held at the Law Faculty of the University of Ottawa — September 21-22/84.
- Annual meeting of the Association des avocats de province du Québec, Sutton — September 28-29/84.
- Various information seminars of the Administrative Law Sections of the Canadian Bar Association of Ontario.
- Conference on the Role of Comparative Law in Administrative Law Reform, Civil Law/Common Law Exchange Programme, Sherbrooke — July 17/84.
- Symposium on Legal Scholarship, Osgoode Hall Law School, York University, Toronto — April 12/85.
- Colloquium on Government Enterprise, convened by the Economic Council of Canada — September 24-25/84.
- Advisory Committee on the Administrative Tribunals Statistics Project, organized by the Canadian Centre for Justice Statistics.

### c) Public Consultations

In order to understand and receive the views of ordinary Canadians, the Law Reform Commission holds public meetings in different parts of the country. This year, with the assistance of the Public Legal Education Society of Nova Scotia, we held a meeting in Halifax which over 200 people attended. The subjects considered were Assault, Corporal Punishment and Violence in Sports. We received many valuable briefs and comments.

In addition to formally consulting with the public, the Commission attempts to distribute information and, hopefully, receive informal comment and criticism from the public through several avenues.



Over 200 people attended the Public Meeting in Halifax, organized with the assistance of the Public Legal Education Society of Nova Scotia.



During the course of the year, the Commission set up information booths at various conferences held throughout the country. The Commission was present at the Annual Meeting of the Canadian Bar Association (Winnipeg); the Salon du livre (Montréal); The Woman's Show (Toronto); the National Women's Group (Ottawa); Law Day '85 (Ottawa); and L'association des avocats de province du Québec (Sutton), for a combined total of twenty-two days. We also sent information sheets, pamphlets and catalogues to be inserted in delegate kits for conferences held in various cities, namely, C.A.C.P., Barreau du Québec. At all of these functions, the Commission distributed some 26,000 items of information highlighting its work.

To assure regular information flow to the interested public, the Commission endeavours to distribute its publications as widely as possible. This year individual requests for publications and information totalled 23,837 including some 21,423 by mail, 1,554 by telephone and 860 callers at the publications offices in Ottawa and Montréal, an increase of 51% over last year. The mailing list increased by 10% from 12,962 last year to 14,346 this year, including some 2,058 additions and 674 deletions.

The law reform message was carried to the Canadian public through the media, several of them taking an active interest in the Commission's work. Members of the Commission were interviewed on several occasions on television shows such as the National, the Journal, Télé-journal, Droit de parole, the Jack Webster Show, Speaking Out, Canada AM and radio programs such as Morning Side, As It Happens, Présent, La Filière, Prisme, Ontario Morning, and Edmonton Today. Newspapers wrote articles

and editorials in record number. Many of these interviews and articles prompted individual citizens to convey to the Commission their ideas and comments about our laws, often illustrated with eye-opening "exposés" of personal experience with the legal system of our country.

One other way in which the Commission has attempted to inform the public about law is through its participation in Law Day. On April 17, 1985, the third 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 "A New Criminal Code for Canada?" Prizes for the best essay in English and the best in French were awarded by Her Excellency the Governor General, Jeanne Sauv , at Rideau Hall. The winners were Byron Sheldrick (University of Toronto) and Yves Charette (University of Montr al). That evening, the winners were guests of the Commission and the Canadian Bar Association, at a dinner in the Ottawa Congress Centre. Several hundred people, most of them representatives of social and service clubs from the Ottawa and Hull area, attended the Law Day dinner and engaged in a dialogue on law reform and the *Canadian Charter of Rights and Freedoms*, following an address by the Honourable Jean Chr tien.

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



Prizes for the Law Day 1985 Essay Competition were awarded by Her Excellency the Governor General, Jeanne Sauv , at Rideau Hall. From left to right: Mr. Claude Thompson, President of the Canadian Bar Association; Mr. Yves Charette, winner for the best essay in French; Her Excellency the Governor General, Jeanne Sauv ; Mr. Byron Sheldrick, winner for the best essay in English; and Mr. Justice Allen M. Linden, President of the Law Reform Commission of Canada.

## 6. CO-OPERATION WITH OTHER INSTITUTIONS

### a) Parliament

The Law Reform Commission, together with the Canadian Bar Association and the Canadian Human Rights Commission hosted a luncheon for the Justice and Legal Affairs Committee of the House of Commons in order to explain to the members of the Committee their respective role and function.

The Law Reform Commission was asked to testify during the Committee's deliberations over Bill C-18. One Member of Parliament, Alan Redway (East York), asked for recommended amendments from us and one of these that we offered was added to the legislation concerning the protection of medical personnel in the administration of blood tests.

The Law Reform Commission, in conjunction with the Canadian Bar Association, prepared a brief for the McGrath Committee studying parliamentary reform. During our testimony, we urged that timetables be adopted so that legislation can move more quickly and suggested that Committees should be able to study bills after first reading, rather than the second reading. Moreover, as stated in the Committee's final report, we also drew to the attention of the Committee "the lack of adequate legal services for committees." The parliamentary Committee adopted our suggestion that the matter be remedied.

Meetings and discussion were also held with the Chairperson and Vice-Chairperson and members of the Senate Committee on Legal and Constitutional Affairs.

### b) The Department of Justice and the Department of the Solicitor General

The Law Reform Commission served as a member of the Joint Committee, the Executive Committee and the Program Management Committee, and our close co-operation with the two Departments has continued. There is much contact between the officials from the Law Reform Commission and the two legal departments of the federal Government at all levels, exchanging views and commenting on each other's work.

The Criminal Law Review continued apace with Bill C-18 being a major achievement. Our Committee, which

is drafting the Commission's new Criminal Code, has as a member a representative of the Department of Justice.

### c) The Canadian Sentencing Commission

In May 1985, the Commission presented a brief to the Canadian Sentencing Commission, appointed last year by the former Minister of Justice, the Honourable Mark MacGuigan. The brief, entitled "Proposed Classification and Sentencing Framework" drew on the many recommendations made by the Law Reform Commission in past years.

The authors concluded the brief by advancing their proposals for a new classification and sentencing framework to be developed under statutory directives and embodied in a clear and comprehensive legislative statement.

### d) The Canadian Judicial Council

We have remained in contact with the Canadian Judicial Council. We have been contacted by Chief Justice MacEachern to assist in the preparation of restatements of the law, and we are looking forward to co-operating with these Committees in the months ahead. We are most grateful for the use of the Canadian Judicial Council Board Room, which is in our building, for many of our meetings.

### e) The Canadian Institute for the Administration of Justice (C.I.A.J.)

We have continued our close co-operation with the C.I.A.J. and have assisted in the organization of the 1984 conference which was held in Ottawa entitled "Law and Justice after 1984." Members of the Commission assisted in the preparation of the programme and served as panelists as well as helping with the preparation of the support material which was distributed.

We are also assisting in the organizing of the conference to be held next year in Toronto on Sentencing, at which time we expect to serve as panelists and again assist with the preparation of the material for the conference.



## f) The Canadian Bar Association

Our warm relationship with the Canadian Bar Association continued this past year. As we have done before, we jointly sponsored the Law Day essay contest and celebrated Law Day by holding a joint dinner for several hundred Ottawa members of various service clubs. On that occasion we joined hands with the Bar to mark the coming into force of the equality provisions of the Charter, and the third anniversary of the coming into force of the *Canadian Charter of Rights and Freedoms*.

The Mid-Winter Meeting of the Canadian Bar Association, after a lively debate, voted its support for the Law Reform Commission's recommendations on blood testing contained in our Report 21 by passing a resolution to that effect. We also co-operated in the preparation and presentation of a joint brief intended for the McGrath Committee. As is customary, the Commission reported to the Bar's Annual Meeting in Winnipeg.

The President and Commissioners met with various groups from the Canadian Bar Association, including the Executive, the Research Section, the Administrative Law Section, the Criminal Law Section and several others at different times during the year.

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

The Law Reform Commission assisted in the organization of the Annual Meeting in Montréal. We consulted with members of the Criminal Law section and the Administrative Law section. Once again the CALT-LRCC Award was given for the outstanding contribution to legal research. The 1985 winner was Professor Martin L. Friedland of the University of Toronto, a former Commissioner of the Law Reform Commission.

In addition, the Commission seeks to contribute to the goals of the Canadian Association of Law Teachers. For example, we assisted in the organization of a Family Law seminar at Queen's University in Kingston to consult with family law scholars about whether we should re-enter research in this area. We also helped in the preparation of the seminar on the teaching of law held at Victoria, B.C. One of our representatives, Professor Diane Labrèche, gave a paper including some advice on how to use the Law Reform Commission's material in the teaching of criminal law and criminal procedure.

As in the past, we maintain a contact person in each of the law schools of Canada through whom we distribute material and from whom we gather advice and information about activities in the law schools.

In addition, the Commission has a Summer Research Internship Programme involving eight students from different schools across Canada. These students gain valuable experience participating in research and aiding in the writing of all the Commission's Projects. Finally, the President and other members of the Commission visited many law schools across Canada, giving talks and seeking advice.

## h) The Media

Commission publications have been well covered by the media during this past year. Many of the major newspapers not only covered the releases of documents but also wrote very helpful editorials, both for and against our recommendations.

In addition, the Commission has sought to further understanding and interest by the media in law reform. This, for example, led us to organize, in conjunction with Osgoode Hall Law School, a conference on "The Media, the Courts and the Charter." The proceedings of this conference will be published in book form in the next few months.

The Commission worked with CTV and with Peter Rehak and Jim Reed of W5 to produce a segment about cameras in the courts which was aired in March, and which was shown at the conference on "The Media, the Courts and the Charter." The entire conference was televised live by Rogers Cable and was repeated several times afterwards.

Similarly, the President addressed the National Newspaper Awards Banquet at which point he urged the establishment of a new prize for the best newspaper article on legal affairs.

## i) The Canadian Law and Society Association

This is a new organization which has been formed in Canada and which is interested in the interaction between law and society. The Law Reform Commission assisted in translating the material and reproducing the documentation for this first conference which was held in Montréal at the same time as the C.A.L.T. meeting. A number of Commission personnel attended the meeting and participated in the various discussions.

## j) Other Canadian Law Reform Agencies

The co-operation between the Law Reform Commission of Canada and the law reform agencies in the provinces has been excellent. We attended a meeting of the law reform agencies in Winnipeg and we plan to attend the next one in Halifax. The Commission responded to the request of these organizations to publish a new newsletter dedicated to matters of law reform, containing items about the various law reform agencies. Two editions of this newsletter entitled *Law Reform* have been produced and circulated. In this publication, issues of interest to the law reform community including publications issued, studies undertaken, personnel changes, and legislative developments are dealt with in a short and simple way so that all of us can keep informed about one another's work.

## k) The Canadian Criminal Justice Association (C.C.J.A.)

The President attended a meeting organized by the Canadian Criminal Justice Association in Toronto about the place of the victim in the criminal justice system.

## l) International Agencies

The Commission remains in close contact with many agencies at the international level. We note with pleasure that the British Law Commission has recently issued a paper called "Codification of the Criminal Law" which adopts many of the ideas that we have been advancing in this country and around the world.

Through the kind assistance of Professor Georges Levasseur, we have remained in close contact with the French Commission which is revising their penal code.

We are also in contact with the Australian Law Reform Commission and the Commissions of a number of African countries, some of whom are arranging to visit us in Ottawa.

This year in particular we had repeated exchanges with the Australian Administrative Review Council and the British Council on Tribunals. The Centre for Socio-Legal Studies at Wolfson College, Oxford, England, was also contacted several times concerning the initiation of major research they have undertaken in the field of health and safety regulation. Bilateral exchanges are contributing to the quality of research on both sides.

Our Commission is assisting the Eighth Commonwealth Law Conference organizers in arranging a Law Reform Day during which we will discuss codification as a tool of law reform.

The President is part of the Canadian delegation to the 7th United Nations Congress on the Prevention of Crime and the Treatment of Offenders in Milan, Italy, in August, which will be dealing with the following topics:

- new dimensions of criminality and crime prevention in the context of development: challenges for the future;
- criminal justice processes and perspectives in a changing world;
- victims of crime;
- youth, crime and justice;
- formulation and application of United Nations standards and norms in criminal justice;
- international trafficking of drugs.

## 7. OPERATIONS

### a) Meetings

Activities continued again this year at a brisk pace. The Commission held twenty-one formal meetings, although the minimum statutory requirement is six meetings per year.

### b) 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 fulfilment 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.

Through smaller operations in Vancouver and Toronto, the Commission maintains a presence which is conducive to a more active involvement of Canadians in these regions of the country in federal law reform.

### c) Official Languages Policy

Once again the Commissioner of Official Languages, in his report for 1984, recognized the excellent record of the Commission in the application of the official languages policy. He wrote that the "Commission's linguistic performance remains virtually unchanged." For the eighth consecutive year now, the Commission has received tributes from the Official Languages Commissioner: in 1983, "consistently high achiever"; in 1982, "top marks"; in 1980, "rates high"; in 1979, "excellent". The Commission intends to maintain its record.



#### d) 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, depending on the priorities of the Commission's projects. The library provides reference and interlibrary loan services to support the needs of the research staff.

In the year under review, the library undertook a major re-evaluation of its collection. Approximately 40% of the monographic collection and 10% of the periodical collection were judged to be no longer useful for the current research projects and were discarded. The additional space now available will be used to develop a collection which is better suited to contemporary needs. Planned expansion and modernization will be gradually implemented as resources permit in order that the library can continue to fulfil the needs of the research staff.

#### e) Personnel

As in the past, during the year under review, ending May 31, 1985, the personnel strength of the Commission varied according to seasonal and functional factors. The

Commission utilized the services of 109 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 assistance of persons sponsored by the Ottawa and District Association for the Mentally Retarded.

#### f) Finances

Parliament appropriated \$5.013 million to the Commission for fiscal year April 1, 1984 to March 31, 1985. Although still subject to final audit, the table below indicates that expenditures almost exactly matched the budget.

#### FISCAL YEAR 1984-85

	\$	\$
Operating Budget		5,013,000
Expenditures by Standard Object*		
01 Personnel Salaries & Wages (including employee benefits)	1,599,494	
02 Transportation & Communications	567,987	
03 Information	449,557	
04 Professional & Special Services	2,115,464	
05 Rentals	82,449	
06 Purchased Repair & Upkeep	14,475	
07 Materials & Supplies	133,448	
09 Furniture & Equipment	50,953	
12 Other Expenditures	<u>287</u>	
TOTAL	5,013,114	5,013,114
Amount overspent		<u><u>114</u></u>

\* Figures supplied by Supply and Services Canada

## g) 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 at the Commission:

Keith Hawkins  
Research Lawyer, Centre for Socio-Legal Studies,  
Oxford, England

His Hon. Judge Don Luther  
P.O. Box 2006, Corner Brook,  
Newfoundland

Mrs. M.A. Shone  
Counsel,  
Institute of Law Research & Reform,  
Edmonton

Professor Lewis N. Klar  
Faculty of Law,  
University of Alberta,  
Edmonton

Claude Thomson, Q.C.  
President,  
Canadian Bar Association,  
Toronto

Mr. M.J. Frost  
Manager, Environmental Council,  
Canadian Pulp and Paper Association,  
Montréal

William H. Kerr  
Deputy Chief, Metro Police,  
Toronto

Professor Makato Kojo  
Faculty of Law, Hokkaido University,  
Sapporo, Japan

Professor Kenji Sanekata  
Faculty of Law, Hokkaido University,  
Sapporo, Japan

Professor Yoshiaki Sukarada  
Faculty of Law, Hokkaido University,  
Sapporo, Japan

Professor Yoshiyuki Matsumura  
Faculty of Law, Hokkaido University,  
Sapporo, Japan

Aubrey E. Golden, Q.C.  
Barrister, Toronto

Chief R.G. Lunney  
President,  
Canadian Association of Chiefs of Police,  
Edmonton

D.N. Cassidy  
Executive Director,  
Canadian Association of Chiefs of Police

Ms. Ellen P. Minor  
accompanied by 11 students  
of the Criminal Law Study Group  
Buxton School,  
Williamstown, Mass.,  
U.S.A.

Rudolph W. Koch  
Humane Society, Toronto

Michael O'Sullivan  
Humane Society, Toronto

Nancy Rodenberg  
Humane Society, Toronto

Mr. Justice Lewis Makame  
Judge, Tanzanian Court of Appeal

Mr. M. Kyando  
Registrar, Tanzanian Court of Appeal

Mr. Jim McClatchie  
Executive Director, John Howard Society,  
Ottawa

Douglas M. Johnston  
Professor, Dalhousie Law School,  
Halifax

D.A. Kruger  
Secretary,  
South African Law Commission

Professor Jerry Waltman  
Political Science,  
University of Southern Mississippi,  
Hattiesburg, Miss.  
U.S.A.

Professor Jean Pradel  
Faculté de droit,  
Université de Poitiers,  
France

Dr. John E. Griffiths  
Director of Research,  
Administrative Review Council, Australia



# APPENDIX A

## REPORTS TO PARLIAMENT

Title, Date Transmitted to Minister  
and Response

### 1. Evidence

December 19, 1975

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

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

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

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

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

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

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

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

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

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

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

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

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

Bill C-455, "An Act to amend the Canada Evidence Act" first reading May 2, 1980, 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. 1980-81-82-83, 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" first reading November 18, 1982, Senator Olson.

Bill C-685, "An Act to amend the Criminal Code" first reading May 27, 1983, 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" first reading November 21, 1978, The Minister of Justice.

*Young Offenders Act*, S.C. 1980-81-82-83, c. 110 (Code, s. 26, 51).

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

Bill C-19, "An Act to amend the Criminal Code ..." first reading February 7, 1984, 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) S.C. 1980-81-82-83, c. 80, 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" first reading November 21, 1978, The Minister of Justice.

### 6. Family Law

May 4, 1976

Bill C-10, "An Act to amend the Divorce Act" first reading January 19, 1984, The Minister of Justice.

Bill C-47, "An Act Respecting Divorce and Corollary Relief" first reading May 1, 1985, 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 by the Crown in Right of Canada

December 19, 1977

*Garnishment, Attachment and Pension Diversion Act*, S.C. 1980-81-82-83, 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" first reading November 21, 1978, The Minister of Justice.

Bill C-18, "An Act to Amend the Criminal Code ..." assented to June 20, 1985.

10. *Sexual Offences*

November 29, 1978

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

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

Bill C-53, "An Act to amend the Criminal Code" first reading January 12, 1981, 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 ..." first reading February 7, 1984, The Minister of Justice.

12. *Theft and Fraud*

March 16, 1979

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

Bill C-18, "An Act to Amend the Criminal Code ..." assented to June 20, 1985.

17. *Contempt of Court*

August 18, 1982

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

Bill C-18, "An Act to Amend the Criminal Code ..." assented to June 20, 1985.

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 ..." first reading February 7, 1984, The Minister of Justice.

Bill C-18, "An Act to Amend the Criminal Code ..." assented to June 20, 1985.

22. *Disclosure by the Prosecution*

June 15, 1984

Under consideration by the Department of Justice.

23. *Questioning Suspects*

November 19, 1984

Under consideration by the Department of Justice.

24. *Search and Seizure*

March 22, 1985

Bill C-18, "An Act to Amend the Criminal Code ..." assented to June 20, 1985.

25. *Obtaining Forensic Evidence: Investigative Procedures in Respect of the Person*

June 12, 1985

Under consideration by the Department of Justice.



## APPENDIX B

### WORKING PAPERS

- |   |  |
|---|--|
| <ol style="list-style-type: none"> <li>1. <i>The Family Court</i> (1974). 55 p.</li> <li>2. <i>The Meaning of Guilt: Strict Liability</i> (1974). 38 p.</li> <li>3. <i>The Principles of Sentencing and Dispositions</i> (1974). 35 p.</li> <li>4. <i>Discovery</i> (1974). 44 p.</li> <li>5. <i>Restitution and Compensation</i> (1974). 25 p. (Bound with Working Paper No. 6).</li> <li>6. <i>Fines</i> (1974). 30 p. (Bound with Working Paper No. 5).</li> <li>7. <i>Diversion</i> (1975). 25 p.</li> <li>8. <i>Family Property</i> (1975). 45 p.</li> <li>9. <i>Expropriation</i> (1975). 106 p.</li> <li>10. <i>Limits of Criminal Law: Obscenity: A Test Case</i> (1975). 49 p.</li> <li>11. <i>Imprisonment and Release</i> (1975). 46 p.</li> <li>12. <i>Maintenance on Divorce</i> (1975). 40 p.</li> <li>13. <i>Divorce</i> (1975). 70 p.</li> <li>14. <i>The Criminal Process and Mental Disorder</i> (1975). 61 p.</li> <li>15. <i>Criminal Procedure: Control of the Process</i> (1975). 60 p.</li> <li>16. <i>Criminal Responsibility for Group Action</i> (1976). 68 p.</li> <li>17. <i>Commissions of Inquiry: A New Act</i> (1977). 91 p.</li> <li>18. <i>Federal Court: Judicial Review</i> (1977). 54 p.</li> <li>19. <i>Theft and Fraud: Offences</i> (1977). 123 p.</li> <li>20. <i>Contempt of Court: Offences against the Administration of Justice</i> (1977). 69 p.</li> </ol> | <ol style="list-style-type: none"> <li>21. <i>Payment by Credit Transfer</i> (1978). 126 p.</li> <li>22. <i>Sexual Offences</i> (1978). 66 p.</li> <li>23. <i>Criteria for the Determination of Death</i> (1979). 77 p.</li> <li>24. <i>Sterilization: Implications for Mentally Retarded and Mentally Ill Persons</i> (1979). 157 p.</li> <li>25. <i>Independent Administrative Agencies</i> (1980). 212 p.</li> <li>26. <i>Medical Treatment and Criminal Law</i> (1980). 136 p.</li> <li>27. <i>The Jury in Criminal Trials</i> (1980). 164 p.</li> <li>28. <i>Euthanasia, Aiding Suicide and Cessation of Treatment</i> (1982). 79 p.</li> <li>29. <i>The General Part: Liability and Defences</i> (1982). 204 p.</li> <li>30. <i>Police Powers: Search and Seizure in Criminal Law Enforcement</i> (1983). 356 p.</li> <li>31. <i>Damage to Property: Vandalism</i> (1984). 65 p.</li> <li>32. <i>Questioning Suspects</i> (1984). 104 p.</li> <li>33. <i>Homicide</i> (1984). 117 p.</li> <li>34. <i>Investigative Tests</i> (1984). 166 p.</li> <li>35. <i>Defamatory Libel</i> (1984). 99 p.</li> <li>36. <i>Damage to Property: Arson</i> (1984). 44 p.</li> <li>37. <i>Extraterritorial Jurisdiction</i> (1984). 210 p.</li> <li>38. <i>Assault</i> (1984). 59 p.</li> <li>39. <i>Post-Seizure Procedures</i> (1985). 77 p.</li> <li>40. <i>Legal Status of the Federal Administration</i> (1985). 106 p.</li> </ol> |
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## APPENDIX C

### PUBLISHED STUDIES, STUDY PAPERS, BACKGROUND PAPERS AND CONFERENCE PAPERS

#### ADMINISTRATIVE LAW

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|--|---|
| <ol style="list-style-type: none"> <li>1. Anisman, Philip. <i>A Catalogue of Discretionary Powers in the Revised Statutes of Canada 1970</i> (1975). 1025 p.</li> <li>2. <i>The Immigration Appeal Board</i> (1976). 88 p.</li> <li>3. Carrière, Pierre and Silverstone, Sam. <i>The Parole Process: A Study of the National Parole Board</i> (1977). 157 p.</li> <li>4. Doern, G. Bruce. <i>The Atomic Energy Control Board: An Evaluation of Regulatory and Administrative Processes and Procedures</i> (1977). 85 p.</li> </ol> | <ol style="list-style-type: none"> <li>5. Lucas, Alastair, R. <i>The National Energy Board: Policy, Procedure and Practice</i> (1977). 216 p.</li> <li>6. Mullan, David J. <i>The Federal Court Act: Administrative Law Jurisdiction</i> (1977). 117 p.</li> <li>7. Issalys, Pierre and Watkins, Gaylord. <i>Unemployment Insurance Benefits: A Study of Administrative Procedure in the Unemployment Insurance Commission</i> (1978). 342 p.</li> <li>8. Seminar for Members of Federal Administrative Tribunals, April 5-7, 1978. <i>Speaker's Remarks</i> (1978). 253 p.</li> <li>9. Fox, David. <i>Public Participation in the Administrative Process</i> (1979). 174 p.</li> </ol> |
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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. *Speakers 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.

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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. Harrison, Irene. *Public and Press Response to Sentencing Working Papers* (1976). 135 p.
36. Macnaughton-Smith, P. *Permission to Be Slightly Free* (1976). 307 p.
37. *Studies on Imprisonment* (1976). 327 p.
38. *Towards a Codification of Canadian Criminal Law* (1976). 56 p.
39. *Preparing for Trial: Report of Conference Held in Ottawa, March 23-24, 1977* (1977). 342 p.
40. Kennedy, Carole. *Evaluation of the Comments Received on Working Paper 22 "Sexual Offences"* (1978). 46 p.
41. *The Jury* (1979). 473 p.

42. Stenning, Philip C. and Shearing, Clifford D. *Search and Seizure: Powers of Private Security Personnel* (1979). 204 p.
43. Grant, Allan. *The Police: A Policy Paper* (1980). 97 p.
44. Paikin, Lee. *The Issuance of Search Warrants* (1980). 119 p.
45. Stenning, Philip C. *Legal Status of the Police* (1981). 169 p.
46. Brooks, Neil. *Police Guidelines: Pretrial Eyewitness Identification Procedures* (1983). 260 p.
47. Smith, Maurice H. *Origins of Writ of Assistance Search in England, and its Historical Background in Canada* (1984). 99 p.
48. Brooks, Neil and Fudge, Judy. *Search and Seizure under the Income Tax Act: Summary of a Study Paper* (1985). 23 p.

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49. *Evidence: 1. Competence and Compellability. 2. Manner of Questioning Witnesses. 3. Credibility. 4. Character* (1972). 60 p.
50. *Evidence: 5. Compellability of the Accused and the Admissibility of His Statements* (1973). 42 p.
51. *Evidence: 6. Judicial Notice. 7. Opinion and Expert Evidence. 8. Burdens of Proof and Presumptions* (1973). 67 p.
52. *Evidence: 9. Hearsay* (1974). 20 p.
53. *Evidence: 10. The Exclusion of Illegally Obtained Evidence* (1974). 36 p.
54. *Evidence: 11. Corroboration* (1975). 19 p.
55. *Evidence: 12. Professional Privileges before the Courts* (1975). 26 p.

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56. London, Jack R. *Tax and the Family* (1975). 349 p.
57. Payne, Julien. *A Conceptual Analysis of Unified Family Courts* (1975). 681 p.
58. *Studies on Divorce* (1975). 313 p.
59. *Studies on Family Property Law* (1975). 401 p.
60. Kennedy, Carole. *Evaluation of Comments Received in the Area of Family Law* (1976). 88 p.
61. Ryan, Edward F. *Enforcement of Maintenance Obligations* (1976). 47 p.
62. Bowman, C. Myrna. *Practical Tools to Improve Interprovincial Enforcement of Maintenance Orders after Divorce* (1980). 50 p.

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

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66. Eddy, Howard R. *The Canadian Payment System and the Computer: Issues for Law Reform* (1974). 80 p.
67. 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. *Analysis of Ombudsman Case Files* (1975). 88 p.
4. Hyson, Stewart. *Federal Administrative Agencies: Origins and Evolution* (1975). 105 p.
5. Andrew, C., Pelletier, R. and Blouin, M. *Composition of Federal Administrative Agencies* (1976). 100 p.
6. Picher, Pamela. *Courts of Record and Administrative Tribunals* (1976). 206 p.
7. Leadbeater, Alan. *Appeals from Federal Administrative Authorities to the Federal Courts of Canada* (1977). 40 p.
8. *Summary of Reactions to Working Paper 17: Commissions of Inquiry* (1979). 4 p.
9. Dunning, Clara. *Resource Management Methods* (1981). 74 p.
10. Fox, David. *Impartiality in the Administrative Process* (1981). 400 p.
11. Lucas, Alastair. *The Sanctions Process of the Northern Pipeline Agency* (1981). 64 p.
12. Dagenais, Rita. *Aviation Safety in Canada: A Case Study on Compliance in the Canadian Air Transportation Administration* (1982). 117 p.
13. Dunning, Clara. *Compliance through the Economic and Regulatory Methodologies* (1982). 68 p.
14. Hall, Terrance Hamilton. *A Draft Administrative Procedure Code for Federal Adjudicatory Hearings* (1982). 265 p.
15. Marvin, Charles. *Guidelines on Administrative Procedure* (1982). 60 p.
16. Weber, Ludwig. *The German Ordnungswidrigkeitengesetz: Research Materials and Comments* (1982). 45 p.
17. Nadeau, Robert. *Compliance and Enforcement in Customs and Excise: Background Paper* (1982). 237 p.
18. Charney, Robert. *Crown Prerogatives: Where Are They Now?* (1983). 124 p.
19. Clifford, John Charles. *Content Regulation in Private FM Radio and Television Broadcasting: A Background Study about CRTC Sanctions and Compliance Strategy* (1983). 619 p.
20. Klee, Laurie. *Governmental Immunity in the United States* (1983). 98 p.
21. Laberge, Thérèse. *Le conformisme et les droits de la personne au Canada* (1983). 178 p.
22. Mockle, Daniel. *English Abstract of "L'avenir des privilèges et immunités de la Couronne en droit public canadien"* (1983). 29 p.
23. Webb, Kernaghan, R. *Industrial Water Pollution Control and the Environmental Protection Service: A Background Study of the Compliance Initiatives Used by the Federal Government to Control Industrial Water Pollution. Focussing on the Pulp and Paper Sector* (1983). 699 p.

24. Meyers, Jasper. *Interaction of Materials Implicitly and Explicitly Commenting on Working Paper 25* (1984). 168 p.
25. Dyke, K. E. *Statutory Immunities and Liabilities of the Crown* (1985). 91 p.

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26. Krasnick, Mark, Bartlett, G. M. and Reynolds, D.D. Graham. *Codebook: Empirical Events Basis of Criminal Occurrences* (1971). 51 p.
27. Stewart, V. Lorne. *A Proposed Multi-National Study of Juvenile Justice Systems and Alternatives: A Cross-National Survey of Attitudes, Practices and Effectiveness* (1971). 40 p.
28. Atrens, Jerome. *Trial and Appeal Procedure in Relation to Minor Offences* (1972). 112 p.
29. Burns, Peter Thomas. *Costs in Criminal Cases and Appendices* (1972). 248 p.
30. Ferguson, Gerry. *Lay Judges in the Criminal Process* (1972). 35 p.
31. Hogarth, John. *East York Criminal Law Project: Progress Report No. 1* (1972). 153 p.
32. Hogarth, John. *East York Criminal Law Project: Staff Meetings* (1972). 23 p.
33. MacKaay, Ejan. *Proposal for a Study of Pretrial Procedure in Criminal Cases* (1972). 13 p.
34. Pomerant, David. *Retention of Stolen Goods as Exhibits at Trial* (1972). 42 p.
35. Price, Ronald and Gold, Alan. *Legal Controls for the Dangerous Offender* (1972). 100 p.
36. *Retention of Stolen Goods as Exhibits at Trial: Questionnaire* (1972). 23 p.
37. Williams, Paul C. *The Oneidas and the Canadian Legal System: Middlesex County* (1972). 58 p.
38. Barton, P. G. *Extraordinary Remedies in the Criminal Process and Alternatives* (1973). 58 p.
39. Burns, Peter. *Private Prosecutions* (1973). 45 p.
40. Chevette, François and Marx, Herbert. *Constitutional Aspects of Obscenity in Canada* (1973). 102 p.
41. Ferguson, Gerry. *A Profile on Plea Bargaining* (1973). 21 p.
42. Hogan, Brian. *Vicarious Liability for Crime* (1973). 29 p.
43. Jobson, K. and Ferguson, G. *Hospital Orders: Study Paper* (1973). 65 p.
44. 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.
45. *Offender Restitution* (1973). 25 p.
46. *An Outline on Criminal Bankruptcy* (1973). 18 p.
47. Palef, Sandra R. *The Format and Content of Pre-Sentence Reports: Experiment 1. Final Report* (1973). 20 p.
48. Roberts, Darrell. *The Structure and Jurisdiction of the Courts and Classification of Offences* (1973). 90 p.
49. Roberts, Darrell and Wilson, Thomas. *Search and Seizure* (1973). 59 p.

50. Schulman, Perry. *Jury Study* (1973). 88 p.
51. Arbour, Louise. *Rapport sur l'enquête portant sur la communication de la preuve avant le procès en matière pénale: document préliminaire* (1974). 126 p.
52. Grosman, Brian. *Discretion in the Initiation of Criminal Proceedings* (1974). 111 p.
53. Hunter, Ian. *Obscenity: The Jansenist Pantomime* (1974). 32 p.
54. Kiessling, Jerry J. *The Ottawa Criminal Court Volunteer Program* (1974). 48 p.
55. *Notes on Imprisonment* (1974). 51 p.
56. Pickard, Toni. *Criminal Enactment Jurisdiction: Transnational Problems* (1974). 125 p.
57. Reynolds, D. D. Graham. *Computer Analysis of Metro Toronto Police Use of Diversionary Dispositions for Juvenile Offenders* (1974). 40 p.
58. Swabey, Thomas R. *Submission to the Federal Law Reform Commission in Reply to "A Proposal for Costs in Criminal Cases"* (1974). 20 p.
59. Barnard, Kathryn, Krasnick, Mark and Tennenhouse, Carol. *The September Study: A Look at Sentencing and Recidivism* (1975). 69 p.
60. Berner, S. H. *Intoxication and Criminal Responsibility* (1975). 69 p.
61. Hooper, Anthony. *Theft and Related Offences: Draft Sections and Explanatory Note* (1975). 181 p.
62. Kiessling, Jerry J. *The Ottawa Volunteer Program: Operation and Preliminary Cost-Benefit Analysis: Interim Report* (1975). 57 p.
63. Landreville, P. and Carrière, P. *Les mesures de libération: document préliminaire* (1975). 62 p.
64. Leigh, L. H. *The Criminal Liability of Corporations and Other Groups* (1975). 88 p.
65. 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.
66. 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.
67. Ortego, Jim. *Consecutive Sentencing: Study* (1975). 58 p.
68. *Questioning Imprisonment* (1975). 24 p.
69. Reynolds, D. D. Graham and Krasnick, Mark. *Bits, Bytes and B & E's: Criminal Law and Justice Information* (1975). 18 p.
70. Samek, R. A. *Study Paper on Pornography* (1975). 79 p.
71. Waller, Louis. *The Criminal Trial* (1975). 31 p.
72. Ferguson, Gerry. *Forms of Psychiatric Treatment for the Mentally Disordered Offender in Canada* (1976). 54 p.
73. 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.
74. Katz, Lynne Cheryl and Genser, Susan. *Restitution: A Reconciliative Alternative* (1976). 48 p.
75. Jobson, K. and Ferguson, G. *Hospital Orders: A Study* (1976). 62 p.
76. MacKaay, Ejan. *The Paths of Justice: A Study of the Operation of the Criminal Courts in Montreal* (1976). 114 p.
77. Poirier, Michel and MacKaay, Ejan. *Méthodologie d'un projet de simulation de la procédure criminelle à Montréal* (1976). 185 p.
78. Horowitz, Stephen. *Cases and Materials on Ignorance of Law and Mistake of Fact* (1977). 29 p.
79. McCabe, William. *Post-Release Medical Problems of Ex-Inmates of Correctional Institutions* (1977). 20 p.
80. Craig, Ellis. *Electronic Eavesdropping in Canada Part I: Confederation to Legislation* (1978). 234 p.
81. Prowse, Janet A. *An Overview of the Provincial Pre-Trial Project in Vancouver as of November 1978* (1978). 66 p.
82. Swan, Judy. *Customs and Excise: The Legal Regime with Emphasis on Search and Seizure* (1978). 38 p.
83. Brooks, Neil. *Procedure and Evidence at Sentencing Inquiries* (1979). 63 p.
84. Brooks, Neil. *Search and Seizure Powers in the Income Tax Act: Suggestions for Reform* (1979). 163 p.
85. Craig, Ellis. *Electronic Eavesdropping in Canada Part II: The Protection of Privacy Act* (1979). 168 p.
86. Ferguson, Gerry. *Medical and Scientific Techniques for Treating, Altering or Controlling Personality and Behaviour* (1979). 345 p.
87. MacCrimmon, Marilyn T. and Vining, Aidan R. *Pretrial Discovery in Vancouver* (1979). 169 p.
88. Savage, Louise. *Electronic Surveillance: Annual Reports, 1975-1977* (1979). 96 p.
89. Standerwick, R. Warren. *Interim Report: Pre-Trial Discovery Project (Federal Offences)* (1979). 36 p.
90. Stuart, Donald. *Homicide, Assault and Threats* (1979). 100 p.
91. *Summary of Reactions to Working Paper 19: Theft and Fraud* (1979). 1 p.
92. Viau, Louise. *La façon de garder et de disposer des biens saisis* (1979). 54 p.
93. Wong, Victoria. *Search and Seizure Powers outside the Traditional Criminal Law Context* (1979). 109 p.
94. Becker, Calvin and Savage, Louise. *Consultation Paper No. 5 Search with Warrant Vancouver* (1980). 115 p.
95. Bellack, Wendy. *Compensation for Wrongful Conviction* (1980). 33 p.
96. La Forest, G. V. *The Ambit of Criminal Law* (1980). 72 p.
97. Williams, Sharon A. *The Territorial and Extraterritorial Application of the Criminal Law* (1980). 50 p.
98. Becker, Calvin and Savage, Louise. *Consultation Paper No. 1: Search with Warrant Edmonton* (1981). 116 p.
99. Becker, Calvin and Savage, Louise. *Consultation Paper No. 2: Search with Warrant Winnipeg* (1981). 119 p.
100. Becker, Calvin and Savage, Louise. *Consultation Paper No. 3: Search with Warrant Montreal* (1981). 121 p.
101. Becker, Calvin and Savage, Louise. *Consultation Paper No. 4: Search with Warrant Toronto* (1981). 123 p.
102. Morris, Phillip. *Territoriality and Extraterritoriality: Some Comments on the Ambit of the Criminal Law of Canada* (1981). 214 p.
103. Melnitzer, Julius and Bentley, Christopher. *Disposition of Things Seized* (1982). 299 p.
104. Axon, Lee. *Search and Seizure Practices in Five Canadian Cities* (1983). 205 p.
105. Rounthwaite, Ann. *Issues Paper: Prostitution* (1983). 35 p.
106. Atrons, Jerome. *The Adversary System: A Discussion Paper* (1984). 37 p.
107. *Background Paper: Towards a New Criminal Code for Canada* (1984). 230 p.
108. Cairns-Way, R. A. *A Critique of the McLeod Report: Draft* (1984). 50 p.
109. *Codification Seminar: Towards a New Criminal Code for Canada* (1984). 133 p.
110. Lahey, Kathleen A. *Implications of Feminist Theory for the Direction of Reform of the Criminal Code* (1984). 110 p.
111. Brooks, Neil and Fudge, Judy. *Search and Seizure under the Income Tax Act* (1985). 193 p.



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

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115. *Constitutional Validity of the Present Sections [of the Divorce Act]* (1972). 9 p.
116. *Findings of Illegitimacy in Divorce Proceedings* (1972). 8 p.
117. *Interim Corollary Relief* (1972). 40 p.
118. *Inter-Spousal Maintenance* (1972). 72 p.
119. Katz, Leslie. *The Distribution of Legislative Authority in Family Law* (1972). 75 p.
120. *Privilege in Reconciliation Attempts* (1972). 10 p.
121. *Privilege Regarding Questions Concerning Marital Intercourse* (1972). 3 p.
122. *Privilege Regarding Questions Tending to Show Adultery* (1972). 3 p.
123. Garigue, Philippe. *Family, Science and Policy* (1973). 81 p.
124. Steinberg, David. *Preliminary Report on the Drafting of Model Unified Family Court Legislation* (1973). 123 p.
125. Fortin, Denyse. *Régimes matrimoniaux au Québec* (1974). 114 p.
126. *Matrimonial Property: Part I* (1974). 43 p.
127. Lown, Peter. *The Conflict of Laws Aspects of Divorce* (1975). 56 p.
128. Sanders, Douglas. *Family Law and Native People* (1975). 182 p.
129. Sanders, Iwan. *Maintenance Law in Canada* (1975). 208 p.
130. Bisson, Alain-François. *Aspects généraux du droit canadien des nullités de mariage: droit existant et perspectives de réforme* (1976). 158 p.

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131. Starkman, Bernard. *Preliminary Study on Law and the Control of Life* (1974). 92 p.
132. University of Sudbury. Institute for Research on Contemporary Interpretations of Man. *Definition of Death: Euthanasia: Study and Report* (1975). 746 p.

133. 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.
134. Somerville, Margaret A. *Human Medical Research in Canada* (1979). 635 p.
135. Vandervort, Lucinda. *Changing Persons? A Working Paper on Techniques for Altering Behaviour - What You Think, What You Do, and How You Feel about It* (1981). 200 p.
136. Davidson, Paul. *New Genetic Life Forms* (1982). 171 p.
137. Freedman, Benjamin. *Toward Consensus in Regulating Risks in Society: A Study of Issues and Methods* (1983). 271 p.
138. Driscoll, Monica. *Criminal Liability of the Crown* (1984). 97 p.
139. Tanner, Susan. *Selected Environmental Statutes: Study Paper* (1984). 293 p.
140. Vandervort, Lucinda. *Comments on the Third Draft Working Paper Entitled Personality and Behaviour Alteration Techniques* (1984). 8 p.

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141. Eddy, Howard. *Impact of the Computer System on the Canadian Payment System* (1973). 32 p.
142. Fitzgerald, Patrick. *Rights and Liberties* (1973). 91 p.
143. Morden, John. *Research Paper on Expropriation* (1973). 266 p.
144. Baum, Daniel. *The Legal Capacity of the Young to Enter the Economic Mainstream* (1974). 209 p.
145. Baum, Daniel. *Age and the Law: Preliminary Report* (1975). 41 p.
146. Samek, Robert. *The Objects and Limits of Law Reform* (1975). 142 p.
147. Smith, J. C. and Coval, S. *The Causal Theory of Rules* (1975). 61 p.
148. Myers, Edward. *Judicial Impact Statements* (1979). 48 p.

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149. Hartt, E. Patrick. *Manifesto for Law Reform* (1976). 197 p.
150. Lamer, Antonio. *Reformation* (1978). 336 p.
151. Muldoon, Francis. *Law Reform: A Change for the Better* (1983). 713 p.

## APPENDIX E

### SOME OTHER BOOKS, ARTICLES AND PAPERS BY PRESENT AND FORMER PERSONNEL SUPPORTED BY THE LAW REFORM COMMISSION

1. Anisman, P. et al. *Proposals for a Securities Market Law for Canada* (Ottawa: Supply and Services Canada, 1979).
2. Anisman, P. *Takeover Bid Legislation in Canada: A Comparative Analysis* (Don Mills, Ontario: CCH Canadian, 1974).
3. Anisman, P. "Water Pollution Control in Ontario" (1972), 5 Ottawa L. Rev. 342.
4. Barton, B. J., Franson, R. T. and Thompson, A. R. *A Contract Model for Pollution Control* (Vancouver: University of British Columbia, Westwater Research Centre, 1984).
5. Burns, P. "Private Prosecutions in Canada: The Law and a Proposal for Change" (1975), 21 McGill L.J. 269.
6. Caparros, E. *Les régimes matrimoniaux au Québec* (Montréal: Wilson et Lafleur/Sorej, 1979).

7. Clifford, J. C. and Webb, K. R. "Institutions in Policy Implementation: The Approach of Canada's Federal Government", Paper Prepared for the Annual Meeting of the Law and Society Association, San Diego, June 1985.
8. *Coccinelle: le journal des jeunes* (1975).
9. Cohen, S. A. "Invasion of Privacy: Police and Electronic Surveillance in Canada" (1982), 27 McGill L.J. 619.
10. Cohen, S. A. *Invasion of Privacy: Police and Electronic Surveillance in Canada* (Toronto: Carswell, 1983).
11. Cohen, S. A. and Healy, P. "A Technical Note on Subsection 454(1.1) of the *Criminal Code* and the Release Powers of Peace Officers" (1981-82), 24 Crim. L.Q. 489.
12. Del Buono, V. M. *Canadian Criminal Procedure: Cases, Notes, Materials* (Toronto: Butterworths, 1981).
13. Del Buono, V. M., ed. *Criminal Procedure in Canada: Studies* (Toronto: Butterworths, 1982).
14. Deleury, E. "Les enfants du divorce sont-ils les enfants du mariage?" (1976), 17 C. de D. 935.
15. Doern, G. B. et al. "The Structure and Behaviour of Canadian Regulatory Boards and Commissions: Multidisciplinary Perspectives" (1975), 18 Can. Pub. Adm. 189.
16. Evans, J. M., Jamisch, H. M., Mullan, D. J. and Risk, R. C. B. *Administrative Law: Cases, Text and Materials* (Toronto: Emond-Montgomery, 1980).
17. Ferguson, G. A. and Roberts, D. "Plea Bargaining: Directions for Canadian Reform" (1974), 52 Can. Bar Rev. 497.
18. Fitzgerald, O. and Douglas, L. "[Bill C-19]: IV. Counselling and Conspiracy" (1984), 16 Ottawa L. Rev. 331.
19. Fitzgerald, P. "Canadian Rights and Freedoms — First Class or Charter?" (1983), 13 Man. L.J. 277.
20. Fitzgerald, P. and McShane, K. *Looking at Law: Canada's Legal System*. Rev. ed. (Ottawa: By Books, 1982).
21. Fitzgerald, P. *This Law of Ours* (Scarborough, Ont.: Prentice Hall, 1977).
22. Fortin, J. *Preuve pénale* (Montréal: Thémis, 1984).
23. Fortin, J. and Viau, L. *Recueil d'arrêts en droit pénal général* (Montréal: Thémis, 1983).
24. Fortin, J. and Viau, L. *Traité de droit pénal général* (Montréal: Thémis, 1982).
25. Friedland, M. L. *Access to The Law* (Toronto: Carswell, 1975).
26. Friedland, M. L. "R.S. Wright's Model Criminal Code: A Forgotten Chapter in the History of the Criminal Law" (1981), 1 Oxford J. Legal Studies 307.
27. Fuerst, L. "[Bill C-19]: III. Contempt of Court" (1984), 16 Ottawa L. Rev. 316.
28. Garigue, P. *Famille, science et politique* (Montréal: Leméac, 1973).
29. Healy, P. "[Bill C-19]: VII. Motor Vehicles" (1984), 16 Ottawa L. Rev. 361.
30. Healy, P. "Bill C-19: Reforming The Criminal Law: I. Introduction" (1984), 16 Ottawa L. Rev. 297.
31. Healy, P. *The Cause of Legislative Reform in Canadian Criminal Law*" (1984). [unpublished]
32. Healy, P. "Chabotage: Expanding the Crown's Power to Prefer Additional Counts" (1984), 38 C.R. (3d) 344.
33. Healy, P. "Criminal Pleading and Practice in Canada. By Eugene G. Ewaschuk [Book Review]" (1982-83), 28 McGill L.J. 1047.
34. Healy, P. "L'interrogatoire des suspects", *Le Devoir*, 29 décembre 1983 and *Le Soleil*, 9 janvier 1984.
35. Healy, P. "Steps to Police Reform", *Globe and Mail*, December 8, 1983, p. 7.
36. Issalys, P. "Regards sur le droit administratif suisse" (1978), 19 C. de D. 703.
37. Jordan, J. C. "Applications and Limitations of the Rule Prohibiting Multiple Convictions: *Kienapple v. The Queen* to *R. v. Prince*" (1985), 14 Man. L. J. 341.
38. Jordan, J. C. "Admissibility of Hypnotically-Developed Evidence" (1984), 16 Ottawa L. Rev. 231.
39. Jordan, J. C. "Diminished Capacity" (1982-83), 25 Criminal L. Q. 480.
40. Keyserlingk, E. W. "Clarifying the Right to Prenatal Care: A Reply to a Response" (1983-84), 4 Health Law in Canada 35.
41. Keyserlingk, E. W. "Die Strafbarkeit der Nichtbehandlung von Neugeborenen und Kindern in Kanada und in den Vereinigten Staaten von Amerika" (1985), 97:1 Zeitschrift für die gesamte Strafrechtswissenschaft 178.
42. Keyserlingk, E.W. "The Right to Natural Death" (1985), 1 Humane Medicine 34.
43. Keyserlingk, E. W. *The Unborn Child's Right to Prenatal Care: A Comparative Law Perspective* (Montréal: Quebec Research Centre of Private & Comparative Law, 1984).
44. Keyserlingk, E. W. "The Unborn Child's Right to Prenatal Care: Parts I and II" (1982), 3 Health Law in Canada 10 and 31.
45. Labrèche, D. "Droit pénal: La défense d'erreur de droit" (1982-83), 17 R.J.T. 333.
46. La Roche, K. and Webb, K. "Bureaucrats among the Businessmen: Influencing the Private Sector through Crown Corporations" in *Government Enterprise: Roles and Rationales*: Papers Presented at a Colloquium Held in Ottawa, September 24 and 25, 1984. Sponsored by the Economic Council of Canada at 184.
47. Last, J. N. "The Nature and Quality of Epidemiological Evidence", Lecture presented at several medical colleges in China and elsewhere.
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## APPENDIX G

### A SELECTION OF QUOTATIONS, EDITORIALS AND MEDIA REPORTS ON THE LAW REFORM COMMISSION AND ITS PUBLICATIONS

#### DISCLOSURE BY THE PROSECUTION (Report 22, 1984)

"Robert Wakefield, Head of the Defence Council Association of Ottawa, applauded the Commission's recommendations, saying they 'would end trial by ambush, where defence lawyers go into a trial not knowing what to expect'."

*The Ottawa Citizen*, June 22, 1984

"'I think it makes excellent sense', says Richard Cairns, who heads the Calgary Defence Lawyers Association, of the proposal by the Law Reform Commission ... 'It's a good idea,' agrees John Wilson, Chairman of the Canadian Bar Association's Criminal Law sub-section for southern Alberta ... 'I'd like to think on the whole we have procedures like that now', says Earl Wilson, a local senior prosecutor. 'I don't know if it would make a hell of an impact here. ... This is a tough enough business without the defence playing games.'"

*Calgary Herald*, June 23, 1984

"We do not want normal criminal investigations turned into witch hunts by the defence, where the victims and the witnesses are put on trial and the accused is protected in a cotton-wool legal cocoon."

*Don Lobb, Columnist, Newcastle Miramichi Leader*, October 3, 1984

"In my view, the greatest damage from such unwarranted and unreasonable delay is the impression left upon the convicted person and the public of the apparent triviality of this offence." Judge Cartwright noted that the Law Reform Commission of Canada has recommended that indictable offences be tried within six months of the offence.

*Judge Cartwright, The Globe & Mail*, May 16, 1985

"The Law Reform Commission of Canada has made an excellent case for amending the Criminal Code to require prosecutors to reveal to accused persons or their lawyers what evidence they have that they think will prove the accused guilty ... In the face of such evidence, it's hard to dispute the commission's logic."

*Examiner, Peterborough, Ontario*, June 25, 1985

#### QUESTIONING SUSPECTS (Report 23, 1984)

##### On the Halton Police Project

"Most importantly it will be very useful in speeding up the whole judicial process. The evidence will be there ... now you have the worry of people making up stories or forgetting things."

*Mr. Noel Bates, Burlington Defence Lawyer, Hamilton Spectator*, November 21, 1984

"If they are taping all the interrogation then I think it is likely a positive step. It would guarantee accused persons that they would not be pressured by police."

*Mr. Tim Culver, Defence Lawyer, Hamilton Spectator*, November 21, 1984

"I couldn't be more pleased. It's a really gutsy move and a credit to the brass of the local police force."

*Mr. Bruce Hillyer, Attorney, Hamilton Spectator*

"One of my prime functions as Chief of Police is to properly prepare my force to professionally meet the demands that the future will place upon it."

*Chief W. I. James Harding, Halton Police Force*

"My observation is it's the best type of evidence you can get," said Ed Hahn, Edmonton City Police Deputy Chief. "We're not taking a position right at the moment, but I am sure we'll be considering these kinds of things."

*Edmonton Journal*, December 6, 1984

"Public Complaints Commissioner Sidney Linden pointed out, video evidence could cut down on court time; one Ontario trial involving brutality spent 22 weeks dealing with the voluntariness of statements. There would be less need to argue such issue with tapes — complete ones."

*Toronto Star*, December 6, 1984

"All it would be doing would be adding extra expense to the taxpayer and an extra step in the proceedings."

*Deputy Chief Paul Johnston, Winnipeg Free Press*, November 26, 1984

"As it happens, the magic of electronic recording did have a part to play in this case and certainly proved its worth. Surely a more official version has earned a place in the interrogation room."

*The Globe & Mail, March 27, 1985*

"Any tools that can assist the courts in the search for truth, which is at the heart of our judicial system, are to be welcomed."

*Hamilton Spectator, November 22, 1984*

"... it would be a grave mistake to think that something seen on videotape is Gospel truth just because you see it with your own eyes. The main bugaboo of confessions will remain and will have to be dealt with: what did we not see before the record was made?"

*Examiner, Peterborough, November 21, 1984*

## SEARCH AND SEIZURE (Report 24, 1984)

"Metro Police Deputy Insp. Bill Kerr said the Law Reform Commission proposal would "unquestionably hamper investigations".

*Toronto Sun, March 22, 1985.*

"While the objectives of the commission are praiseworthy, one curious proposal would not allow publication in newspapers of the contents of a search warrant until the matter had gone to court."

*Edmonton Journal, March 22, 1985*

"A proposal by the Law Reform Commission that would place an automatic press gag on all search warrants attacks the principle of a free press."

*Edmonton Journal, March 23, 1985*

"On the whole, we like the tone of the Commission report and believe it could be implemented without seriously impeding the work of the police."

*The Globe & Mail, March 25, 1985*

## BILL C-18

Excerpts from Minutes of Proceedings of the Standing Committee on Justice and Legal Affairs.

"... The Minister will be aware of the fact that the Law Reform Commission recommends that, where there has been a substantial violation of any of the procedures which are set out for taking blood tests, any evidence so obtained should not be admitted unless the court balances the admissibility of that evidence against the violation in question. Obviously, the Charter of Rights in Section 24 has a similar test, but it is a higher test because we are dealing with unreasonable search and seizure. Would the Minister at least be prepared to consider including that balancing test in the legislation as recommended by the Law Reform Commission?"

*Mr. Syvend Robinson, NDP Justice Critic*

"Yes, I mean, we are certainly prepared to consider anything the committee feels we should consider. But the exclusionary rules with respect to evidence is under review in the department now generally ... You mentioned that the Law Reform Commission recommended this, and we attribute a lot of weight to the conclusions they come to. However, we do not naturally accept everything they suggest, although they are very persuasive and nobody wants to aggravate or irritate Mr. Justice Linden, of course. Anything that he suggest, we certainly pay close attention to."

*Mr. John Crosbie, Minister of Justice*

"... I just think that if examination is made of the Law Reform Commission's report and incorporates their recommendations they may go far towards protecting the rights not only of the conscious but also the unconscious."

*Mr. Joel Pink, Vice-Chairman, Criminal Justice Section of the CBA*

"Thank you very much for that very comprehensive answer. I wanted also to recognize how very much the Canadian Bar Association is relying, and how good that is to see, on the work of the Law Reform Commission in these areas. The Law Reform Commission's role in improvement of our legislation is becoming stronger and stronger, and it is a good thing to see it."

*Mr. Bob Kaplan, Liberal Justice Critic*

"... We appreciate that checks and balances are built into the legislation. ... At the very least, if blood sample testing is added to the legislation against impaired driving, the legislation should incorporate more extensive safeguards, such as those recommended by the Law Reform Commission of Canada in its Report No. 21, Investigative Tests: Alcohol, Drugs and Driving Offences."

*Excerpts from Brief presented by the Canadian Bar Association*

"... The Committee might consider an earlier recommendation of the Law Reform Commission of Canada that merely stipulates that a summons could authorize 'to cause such a sample to be taken' without interfering in the patient/physician relationship."

The Law Reform Commission mentioned this possible dilemma of the attending physician in its report and used the term 'conscription' applied to the 'forced' obtaining of a blood sample by medical personnel for the sole reason of prosecution of the individual concerned; thus encroaching upon the time-honoured principle of *primum non nocere*. For that reason the Law Reform Commission of Canada had recommended 'that no medical practitioner or registered nurse should be liable for any failure or refusal to take a blood sample from any person.' ... The CMA supports legislation to facilitate obtaining blood samples for alcohol determination but would prefer driver involvement through prior signed consent."

*The Canadian Medical Association*

"At the urging of the government's own Law Reform Commission — reinforced by representations from the Canadian Medical Association and the Canadian Nurses Association — ... medical professionals are expected to get a reprieve from prosecution under the federal government's proposal for mandatory blood samples from suspected drunk drivers."

*The Medical Post, April 2, 1985*

## DEFAMATORY LIBEL (Working Paper 35, 1984)

"I think the Law Reform Commission of Canada hints at the question of whether or not words as such are criminal in a democracy. I think it's an important question which purports that in democracy, words as words should not be subject to criminal prosecution."

*Robert Martin, Law Professor, University of Western Ontario, Ottawa Citizen, March 2, 1985*

"Members [of the Ontario Press Council] voted yesterday to support a proposal by the Canadian Law Reform Commission that rarely used defamatory libel law be removed from the criminal code."

*Toronto Star, February 22, 1985*

"It would be difficult to emerge from a study of this ancient law without concluding that its departure is overdue."

*The Globe & Mail, September 24, 1984*

"Let us hope that the government acts quickly and amends the Criminal Code accordingly."

*Erin Advocate, October 3, 1984*

"... in a society like Canada's which prides itself on the freedom of expression it tolerates, is it important that there be the maximum scope given to the expression of opinion, even if it may cross the line of questionable taste and perhaps even be insulting. ... But better the restraint, the deterrent of a suit for damages by the offended person, than punishment meted out by the state in the form of fines, jail terms and criminal convictions."

*The South Daily Star, September 28, 1984*

"Its recommendation that the Criminal Code offence be abolished is one that will make sense to everyone with a direct interest in libel law. After all, libel is something that offends the individual, not the state. The individual, therefore, and not the state, is the proper person to benefit from the law's protection."

*Examiner, Peterborough, October 1, 1984*



"That the Council accept the statement drafted by K. A. Baird and Donald C. MacDonald supporting the proposal of the Law Reform Commission of Canada that the section on Criminal Libel be removed from the Criminal Code, and express its thanks to them for their work. Carried unanimously."

*Ontario Press Council Resolution, March 1985*

"This law should be repealed. It is not necessary to protect personal reputations and its most likely consequence is to restrict the rights of free speech and public dissent that are central to democracy."

*Calgary Herald, October 9, 1984*

"It is worth noting that when it comes to defamation of individuals the Law Reform Commission of Canada has recently made a recommendation that Parliament abolish the crime of defamatory libel."

*Times-Colonist, Victoria, October 19, 1984*

#### DAMAGE TO PROPERTY: ARSON (Working Paper 36, 1984)

"Chief Bill Brown of the Cambridge Fire Department agrees and welcomes numerous recommendations outlined in a recent commission working paper on arson ... Tentative commission recommendations which Chief Brown supports include the creation of a new offence of endangering life which covers arson-related conduct which threatens the lives of others. 'I'm all in favour of that one — that's a big one to me', says Chief Brown."

*Cambridge Daily Reporter, December 27, 1984*

"Patrick Collins, chairman of the arson committee of the Canadian Association of Chiefs of Police, said he's pleased that the Commission is calling for tougher penalties and that the recommended changes will include setting fire to a car. But he hopes the commission will reconsider a specific crime of arson fraud."

*The Ottawa Citizen, November 1, 1984*

"On the whole, the Commission's recommendations make sense .... Of course even if adopted the Commission's recommendations won't get rid of the problem. ... Our lawmakers ought to look seriously at making it easier to go after people who cause such damage."

*Toronto Star, November 1, 1984*

"Tougher laws and stiffer penalties would go a long way in combatting this serious problem."

*Moose Jaw Times-Herald, November 2, 1984*

"The Law Reform Commission's recommendations need quick implementation."

*Cape Breton Post, November 3, 1984*

#### EXTRATERRITORIAL JURISDICTION (Working Paper 37, 1984)

"A working Paper for the Commission notes that it's a crime in Canadian law to promote genocide but to commit genocide is not! Do Canadians really support that kind of legislation?"

*The Province, Vancouver, February 18, 1985*

"The Government should follow the advice of the Law Reform Commission and take a fresh look at laws dealing with war crimes; it should also spend a moment considering the wisdom of hasty shredding."

*The Globe & Mail, February 15, 1985*

"They have been recognized in the community of nations for many years as crimes against humanity. And, the underlying basis of retroactivity is that you shouldn't be found criminally responsible for actions which at the time which you engaged in them carried no criminal sanction. Well, obviously, if you're engaged in mass murder and genocide that argument fails."

*The Globe & Mail, February 9, 1985*

"The Chairman of the B'nai B'rith League for Human Rights says the laws are adequate but politicians and police are unwilling to act."

*Medicine Hat News, February 18, 1985*

"Those of use who have laboured for years for action by the Canadian Government are encouraged by the comments of the federal Law Reform Commission that new legislation might be enacted."

*Bert Raphael, President, Jewish Civil Rights Education Foundation of Canada, Letter to the Editor, Toronto Sun, February 19, 1985*

#### ASSAULT (Working Paper 38, 1984)

##### On Corporal Punishment

"... we have long since discarded the flogging, beating or whipping of prisoners as a cruel and unusual punishment. Yet we fail to extend the same protection to children."

*Michael E. Manley-Casimir, Simon Fraser University*

"It is a striking anomaly that the Criminal Code which is intended to protect the weak and the vulnerable should single out, as potential recipients of violence, the most helpless and defenceless group in our society."

*Professor Ezzat A. Fatah, Simon Fraser University*

"I want the strap abolished. It has no place in our schools, and I'm sure we'll end up abolishing corporal punishment before this fall as part of our new discipline policy."

*Rev. Edward Boehler, Chairman, Metro Separate School Board, Toronto Star, March 6, 1985*

"In light of what has been reported (by the Law Reform Commission) I think trustees should have another look at the issue."

*Elizabeth Witmer, Chairman, Waterloo County Board of Education, Kitchener-Waterloo Record, March 13, 1985*

"Trustee Murray Mazza said the Law Reform Commission was not qualified to make a recommendation on strapping. 'They are too far removed from the scene'."

*Hamilton Spectator, April 3, 1985*

"There is a need for the strap in extreme cases."

*Rod Jones, Superintendent of Operations for Niagara South Schools*

"Seldom discussed in these debates is the fact that other options for controlling persistent improper behaviour are less effective and possibly more cruel."

In some instances a 10 day suspension or expulsion has resulted in missed lessons and test which then required repetition of the whole course or even the full year. Surely that is much worse than a three-second sting on the palms."

*Walter Melnyk, Trustee, Metropolitan Separate School Board, Letters to the Editor, Toronto Star*

"At the risk of being denounced as completely reactionary, it might also be suggested that the increase in violent crime has been in direct ratio to society's reluctance to use violence as a means of retribution. ... it would be cheaper than jail sentences and considerably more effective."

*North Bay Nugget, March 9, 1985*

"Bette Stephenson, former Minister of Education was in favour of banning the strap, but she declined to put her inclination into a regulation. ... Whether the new Minister, Keith Norton, will react the same way remains to be seen. However, if Norton wants to establish himself as the minister who made our school system more civilized, he could find no better issue than the expulsion of the strap from the classroom."

*Kitchener-Waterloo Record, March 6, 1985*

"Not wanting to act hastily, the Waterloo County Separate School Board has decided to continue monitoring the use of the strap in its schools before deciding whether to abolish it."

*Kitchener-Waterloo Record, May 2, 1985*

## On Violence in Sports

"The courts have enough of a backlog (of cases) now and we (hockey organizations) have the rules and the enforcement regulations to handle it."

*Dave Cooke, Executive Member of the Ontario Minor Hockey Association, Windsor Star, March 5, 1985*

"I am happy to see that the Law Reform Commission of Canada disapproves of this quasi-immunity professional hockey enjoys before the courts."

*Gaston Monette, Professor in the Laval University Department of Physical Education, Le Soleil, March 13, 1985*

"These people (the Law Reform Commission) come around shooting their mouths off when they don't know one end of a hockey stick from the other."

*Harold Ballard, Maple Leaf Owner, The Globe & Mail, March 5, 1985*

"The fact that men are involved in sports, that the incidents occur in arenas, under the control of a league, does not mean that they are beyond the reach of the law."

*Gil Cardinal, Executive Director of the Québec Ice Hockey Federation, Le Droit, March 5, 1985*

"The Rodney Dangerfield quip about going to a fight, only to have a hockey game break out, contains as much truth as whimsy. Do those who defend hockey violence also regard the games of yore in the Roman Coliseum as being examples of man at his finest?"

*Comox District Free Press, March 8, 1985*

"Stretching the long arm of the law to arrest the man behind the bench may strike some fans as a little extreme. But if that is where the incitement comes from, shouldn't those responsible share some of the guilt?"

*Telegraph Journal, Saint John, N.B., March 18, 1985*

"But in the interest of avoiding a society so ruled by laws that it loses all self-regulating instincts, change might best be accomplished through nurturing an awareness of the inacceptability of violence and more active prosecution (as the Commission suggests) of laws already in place."

*Medicine Hat News*

"Until the fans stop cheering and start booing, no resort to legislative control is going to change anything."

*Leamington Post & News, March 20, 1985*

"Sensationalistic media coverage has done a grave disservice to sport through exploitation of the seamier side of the games, the aspect of violence. To be sure the powers to be are equally to blame when they promote or at least suffer the goonish fools gladly. They say it adds color. Nonsense it does."

*Waterloo Chronicle, March 6, 1985*

"Naturally there would be a scream from the hockey fraternity if the law stepped in. But it would be the scream of guilty men if they had not cleaned up the game before the law intervened."

*The Province, Vancouver, March 6, 1985*

"The predictable bleats of opposition from Harold Ballard make it all the more obvious that action is needed."

*The Globe & Mail, March 5, 1985*

"Since the courts might have problems in dealing with the matter, the better approach might be to exert pressure on league operators themselves to clean up the game. Suspensions of coaches, managers and owners might be a little easier to obtain than jail sentences. And they can be just as financially costly."

*The Star Phoenix, Saskatoon, March 7, 1985*

"By stressing the role of coaches and other officials, the Commission has removed the focus from the players, who are the people against whom evidence can most easily be gathered. Perhaps they should be charged more often than they are."

*Kitchener-Waterloo Record, March 7, 1985*

"No one has developed the perfect solution but hockey leagues try their best to keep the worst offenders in check, be they coach or player. The system isn't perfect, but it's getting better."

*Edmonton Journal, March 6, 1985*

"Let's face it, the only way a lawyer should get into a hockey game is with a ticket .... The next thing you know, they'll try to take violence out of boxing."

*Marc Horton, Edmonton Journal, March 7, 1985*

"The guilt lies with not only the players but the officials and the fans that call for blood instead of the true sport of hockey."

*Sarnia Observer, March 9, 1985*

"... Why do politicians feel the burning desire to save the country from pro-hockey? Can't they be satisfied that if something serious happens, it can be dealt with on its own merit rather than by some sweeping philosophy of cleaning up the entire game?"

*Hockey News, March 22, 1985*

"While putting the coaches, owners and league officials in the dock along with players is probably not an appropriate solution to reducing hockey violence, team owners should be aware they are not operating in a vacuum or above the law."

*Windsor Star*

"However, if the latter [leaders] refuse to take harsh measures against vicious players ... the courts will have to set an example by dealing harshly with offending players and even with trainers, managers, owners and referees who, in the name of the almighty dollar, tolerate the violence around them."

*Le nouvelliste, Trois-Rivières, March 6, 1985*

"Charged by competitive spirit, and highly anesthetized by a sport which has traditionally tolerated violence, even the sweetest family man can turn brutally savage in fast paced action. It's the ugly side of every competitor we must restrain, regardless of fear of prosecution."

*Leduc Representative, Leduc, Alberta, April 9, 1985*

## On Family Violence

"The Commission appears to be advocating tougher treatment of parents who physically or sexually abuse their children, and of husbands or wives who assault their spouses. This is a recommendation that would probably be vigorously endorsed by many Canadians."

*The Sault Daily Star, March 8, 1985*

"It is not surprising, then, that a Law Reform Commission of Canada report on domestic violence has had a mixed reaction ... I hope they [the Commission] generate lots of it. Public discussion is needed so that citizens and governments will do more to prevent domestic violence and to succor its victims."

*Calgary Herald, March 9, 1985*

"One can see in this latter working paper the importance the Commission attaches to the drafting of a new criminal code that is adapted to present realities."

*Le Carillon, Hawkesbury, March 13, 1985*

## POST-SEIZURE PROCEDURES (Working Paper 39, 1985)

"The Law Reform Commission is sure there is a better way — one that will not only prevent injustice but encourage the public to help in the prosecution of an offender."

*The Globe & Mail, May 3, 1985*

"The federal government should take a long hard look at the Law Reform Commission's comments and then consider an amendment to the Criminal Code."

*Daily Sentinel Review, Woodstock, Ontario, April 22, 1985*

"Such steps should be able to arrange for the use of photographs or other documentation and work with police to ensure that owners get their property back as soon as possible."

*The London Free Press, April 17, 1985*

"Such steps would seem to properly serve the interest of law enforcement, justice and the victim."

*The Sault Daily Star, April 13, 1985*

"The Provincial Council of the B.C. branch [of the CBA] ... passed a resolution directing that if documents subject to a claim of confidentiality or solicitor-client privilege are to be seized or inspected pursuant to provisions of the legislation, similar provisions to those recommended by the Law Reform Commission of Canada in the draft working paper on 'post-seizure procedures' should be provided."

*National, January, 1985*

"This change in favour of victims is long overdue. A federal-provincial task force on victims recommended it almost two years ago. There was also a Senate bill in 1983 that proposed changes along the lines of the Commission's proposals, but it died. Let's have some action from Ottawa."

*Toronto Star, April 1, 1985*

"My job would be a lot easier. We get complaints from people all the time."

*Paul Culver, Senior Crown Counsel, Toronto Sun, April 11, 1985*

"We're hampered to a large extent by what the courts will accept as evidence."

*Roger Bruce, Public Services Co-ordinator, London Free Press, April 17, 1985*

## POLITICAL ECONOMY OF ENVIRONMENTAL HAZARDS (Study Paper, 1984)

"The Committee for the Preservation of Three Rivers is considering a plan to raise money for a legal defence fund with a catchy campaign .... It was none other than the non-partisan Law Reform Commission of Canada which warned citizens trying to protect themselves against environmental hazards are playing against a stacked deck."

*The Lethbridge Herald, November 12, 1984*

"The fate of Schrecker's paper is uncertain, but traditionally these projects become part of an LRC working paper ... followed by a proposal to the federal justice department .... Previous proposals in other fields, however, have tended to be listened to closely."

*Oilweek, September 10, 1984*

"George Cooper, a Halifax lawyer who represented Nova Scotia Forest Industries in a battle over herbicide use in the province, said it is foolish for anyone to expect they can live in a risk-free society .... The famine in Ethiopia would seem like a church picnic compared with the crop failures and agricultural havoc that would follow a world-wide pesticide ban, he added."

*The Globe & Mail, February 29, 1985*

"Attorney General Neil Crawford says a proposal to place environmental laws in the Criminal Code could make conviction more difficult .... Despite that disagreement, Crawford acknowledged 'a case could be made for some more serious offences to be included in the Criminal Code'."

*Edmonton Journal, September 5, 1984*

"The bottom line on environmental protection is developing an informed and concerned electorate that the politicians will pay attention to, regardless of the structures in which environmental issues will be debated."

*George Dacks, Political Scientist, University of Alberta, Edmonton Journal*

"I recognize that we have made some progress in the past decade in cleaning up some forms of pollution, but we still have a long way to go and for every year that we delay doing the job, we'll pay for it several times over in the future in terms of restoring the environment and paying the human health costs involved."

*MPP Report, George Samis, Standard-Freeholder, Cornwall, Ontario, February 23, 1985*

"The Law Reform Commission is showing its awareness of the scope of the challenge ahead. However, it should not be the only public institution left to meet it."

*Jean-Claude Leclerc, Le Devoir, August 22, 1984*

"States in our country that have not established ethical-legal standards in this field would do well to study and consider the wisdom applied to these difficult issues by the Law Reform Commission of Canada."

*Prof. William J. Curran, J.D., S.M., Hyg. New England Journal of Medicine, February 2, 1985*

"It's not the meek who will inherit the earth. It's those who take the trouble to fight for fair treatment in the regulatory process."

*The Medical Post, September 4, 1984*

## SEARCH AND SEIZURE UNDER THE INCOME TAX ACT (Study Paper, 1985)

"As the minister will no doubt have noticed, last week the Law Reform Commission made some important recommendations concerning the tremendous powers of search and seizure his Department has. .... will he introduce legislation which will take away that awesome power from his officials and bureaucrats?"

*Mr. de Jong, House of Commons Debates, May 17, 1985.*

"... The answer is yes, I will, and yes, I will be delighted to receive the Hon. Member's support. I have already limited the powers of the Department under Section 231(4): we are now seeking search and seizure warrants under the Criminal Code. We will be introducing amendments which will curtail the powers of the Department under Section 231. It is our goal to ensure that they are brought into line with basic civil liberties, and I appreciate the Hon. Member's support."

*Hon. Perrin Beatty, Minister of National Revenue, House of Commons, May 17, 1985.*

"Judge Smith ultimately concluded that investigative sections of the Income Tax Act shouldn't give the investigators powers as adjudicators in deciding what evidence to seize ..."

Release of the decision came within hours of the release of a report by the Law Reform Commission of Canada, which described tax officials' powers of search and seizure as an excessive invasion of privacy."

*The Globe & Mail, May 10, 1985*

"Revenue Canada, now under new Management, seems to be a more reasonable instrument of government than it once was; still, the law should be made to conform to the new image."

*The Globe & Mail, May 10, 1985*

## THE JURY (Study Paper, 1979)

"The Law Reform Commission of Canada recommended that jurors wishing to question a witness should be instructed to wait until counsel have completed their questioning of the witness. They should then put their question in writing and hand it to the judge who will decide whether the question is a proper one. Such a procedure enables the trial judge to exercise control over questions by the jury."

*Mr. Justice Martin, Ontario Lawyers Weekly, April 5, 1985*



## APPENDIX H

### LAW REFORM COMMISSION PUBLICATIONS REFERRED TO BY THE COURTS

#### *Evidence: 4. Character* (1972)

*R. v. Konkin*, [1983] 1 S.C.R. 388; (1983), 3 C.C.C. (3d) 289.

#### *Evidence: 8. Burdens of Proof and Presumptions* (1973)

*R. v. Carroll* (1983), 40 Nfld. & P.E.I.R. 147; 115 A.P.R. 147; 4 C.C.C. (3d) 131 (P.E.I.C.A.).

#### *The Family Court* (Working Paper No. 1, 1974)

*Re Dadswell* (1977), 27 R.F.L. 214 (Ont. Prov. Ct.).

*Reid v. Reid* (1977), 11 O.R. (2d) 622; 67 D.L.R. (3d) 46; 25 R.F.L. 209 (Div. Ct.).

#### *Strict Liability* (Working Paper No. 2, 1974)

*Hilton Canada Ltd. v. Gaboury (juge) et autres*, [1977] C.A. 108.

*R. v. MacDougall* (1981), 46 N.S.R. (2d) 47; 89 A.P.R. 47; 60 C.C.C. (2d) 137 (C.A.).

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#### *The Principles of Sentencing and Dispositions* (Working Paper No. 3, 1974)

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## APPENDIX I

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#### Substantive Criminal Law Project

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STOLTZ, Douglas. *Bill C-18 (Alcohol, Drugs and Driving Offences)*

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VIAU, Louise. *Post-Seizure Procedures; Principles of Criminal Procedure*

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## APPENDIX J

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Law reforms predicted under Tories

Ottawa adoptera d'ici Noël une loi plus sévère pour contrer l'ivresse au volant

Calgary Herald

Limits to the search  
The objects of seizure is like the commission's endorsement

Skating On Thin Ice

JUST because hockey players carry big sticks does not mean they should be allowed to act like gladiators of old. Clearly, the message to the courts is that hockey is a violent game.

Law group urges strap ban

The Law Reform Commission believes it should be possible to ban the use of the strap in hockey.

Abuse as a family  
The Law Reform Commission believes it should be possible to ban the use of the strap in hockey.

Tighten the law  
A court ruling in Kamloops requires blood samples from suspects who give breath samples. The court is unable to refuse to give breath samples to suspects who are committing an offence.

Courts are willing to skate on thin ice

Most citizens will concede that the police power to search for property or person, and to what is considered a reasonable element of a system of real hockey violence.

The Sun

Changing attitudes

It is all very well to come out and say that the courts are not the place for dealing with hockey violence.

From the unconscious

The Criminal Justice Commission is planning to introduce a pilot program in the courts.

MPs change bill on drunk driving to protect doctors  
OTTAWA (CP) Medical practitioners would not have to use a strap in a suspended licence case.

The Evening Times-Globe

By Editor Paul Bell  
Although Canadian society naturally condemns deliberate acts of violence and accepts criminal prosecution as the appropriate remedy, when violence is the result of a hockey game, the courts are willing to skate on thin ice.

The Province

Editorial pages  
Stop the violence in national game

Hockey, the national game of the nation, is being played on a field of blood. The question has been asked with increasing concern lately: Now the Law Reform Commission of Canada is studying the violence that has become such a problem, may the law enforcement step in and control the game?

Get rid of the strap, school chairmen agree

The chairmen of Waterloo Regional School Board, who are recommending the removal of the strap from the hockey rink, are not alone in their view.

Law body urges new arrest rights

Canada's police forces are urged to take the lead in a new pilot program in the courts.

Law Reform Commission Hears

Opposing Views On Punishment

Marcotte estime que les mentalités sont à changer

Les lois ne sont pas le seul moyen de résoudre les problèmes de violence au hockey. La Commission de la réforme du droit de la justice estime que les mentalités doivent changer.

Too common

We live in a society in which common sense is a rare commodity. The violence in hockey is a common sight.

Nazis abound

While it is a relief to learn that the war criminal Josef Mengele did not settle in Canada, it is a pity that he was not executed.

SUN

Four que les accusés sachent à quoi s'en tenir

La violence familiale est la plus grave

OTTAWA (PC) — La violence familiale est la plus grave des formes de violence.

Tighter search laws will hamper police

OTTAWA (PC) — La violence familiale est la plus grave des formes de violence.

Taping goes too far?

In addition to saving money, he said the modern technology to record statements would be a good idea.

Violence

OTTAWA — Les tribunaux ne peuvent pas faire grand-chose pour empêcher la violence.

Group wants old law abolished

The Law Reform Commission of Canada recommends the placing of new limitations on the powers of federal tax collectors.

Limits recommended

The Law Reform Commission of Canada recommends the placing of new limitations on the powers of federal tax collectors.

The Leader Post

Violence 'restrained' NHL responds to assault report

Il suffit d'appliquer

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The London Free Press

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