



Law Reform Commission
of Canada

Commission de réforme du droit
du Canada

15th ANNUAL REPORT

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Annual report

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LAW REFORM COMMISSION
OF CANADA

FIFTEENTH ANNUAL REPORT
1985-1986



PRESIDENT
LAW REFORM
COMMISSION

Ottawa
July, 1986

The Honourable Ray Hnatyshyn,
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 Fifteenth Annual Report of the Law Reform Commission of Canada for the period June 1, 1985 to May 31, 1986.

Yours respectfully,

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

Allen M. Linden

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1985-86

A Special Year

1985-86 is a special year in the history of the Law Reform Commission of Canada. The first draft of a new and distinctively Canadian Criminal Code was completed. This draft Code represents the culmination of fifteen years of philosophical probing, researching, thinking, debating, writing, consulting and publishing on numerous criminal law subjects. It also represents the full co-operation of the federal and all provincial governments over the past five and a half years of the Accelerated Criminal Law Review.

The year 1985-86 is special for another reason. With the completion of the draft Criminal Code, the Commission finds itself in a period of rejuvenation and revitalization. The winding down of the fundamental review of Canadian criminal law has released a new surge of energy, and with this energy we have embarked on developing a new research programme. Our aim, as it has been in the past, is to be at the forefront in identifying modern-day issues and developing new and practical approaches to deal with the problems they raise.

To mark this special year, this turning-point in the history of the Law Reform Commission of Canada, we celebrated our fifteenth anniversary by holding a Seminar on the Future of Law Reform. Over one hundred people from across Canada, interested and involved in law reform attended the seminar. Past achievements were analysed and the future of law reform was explored.

Fifteen years after the creation of the Commission, we are very proud of our achievements and successes. We have produced 28 Reports to Parliament, 49 Working Papers, 69 published Study Papers, over 150 unpublished Study Papers, and we have contributed to the private publication of more than 100 books and articles. Approximately 1.3 million copies of our publications have been distributed.

Over the years, the Commission has tried to blend pragmatism with idealism, because we feel that sensible law reform must be both practical and theoretically sound. The goal of the Commission is to promote laws which are modern, principled, rational, comprehensive, egalitarian, and readily intelligible to ordinary citizens as well as

lawyers and judges. Where possible, we try to employ empirical research. We seek to develop laws which, in conformity with the rule of law, are codified, and therefore will be more certain and accessible to the public.

The Commission also serves as a bridge carrying ideas from the judiciary to Parliament, from the legal profession to Parliament, from scholars to Parliament and from the people to Parliament. Of course, Parliament has other sources of information, but the Commission tries to present these ideas in the form of published recommendations, a format which is more developed and easier to understand, and one which lends itself to being adopted by Parliament in new legislation. In some ways, the Commission is like Parliament's radar, giving it early warnings about action that must be taken so that the laws can be adjusted to meet new social needs.

Although the Commission has succeeded in changing a fair number of laws, in altering administrative and legal attitudes and practices, in assisting the judiciary in their decision making, in stimulating research and educating the public on matters of legal importance — there is still much more to do. As was said in our fifth annual report, *A Never-Ending Relay Race*: "Law reform is like a never-ending relay race. As soon as one objectionable law is dealt with another takes its place. Just as the price of freedom is eternal vigilance, so the price of justice is eternal effort. The law reformer's race is never over. One lap complete, the next begins. One runner finishes, the next takes over and the team goes on continually."

Our Origins

In the late 1960s a movement to create a federal law reform agency gained momentum in Canada. During the preceding years, such agencies had been established in several provinces and in various jurisdictions around the world. At its annual meeting in 1966, the Canadian Bar Association, echoing a ground-breaking study by Professor Frank R. Scott ten years earlier, passed a resolution advocating the establishment of such an agency. Later that year, and again in 1967, the Honourable Richard



Mr. Justice Allen M. Linden,
President,
Law Reform Commission
of Canada

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A. Bell, a Progressive Conservative Member of Parliament representing the riding of Ottawa-Carleton introduced a private Member's Bill to establish a "Canadian Law Reform Commission." In 1968, Stanley S. Schumacher, a Progressive Conservative Member of Parliament from Drumheller, Alberta, introduced a Bill identical to those tabled by Mr. Bell. None of these Bills were passed, but the pressure continued to build.

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

Our Mandate

When Parliament created the Law Reform Commission in 1971, it endowed it with two vital features: permanence and independence. By making the Commission *permanent*, Parliament recognized the importance of continuity, and a systematic, sustained, consistent approach to law reform, as opposed to *ad hoc* law reform by royal commissions. By making the Commission *independent*, Parliament recognized the importance of an independent body scrutinizing and reforming the federal laws, as opposed to a main line government department which may be bound by political constraints. Parliament gave the Commission this framework of permanence and independence so that the Commission would have the freedom to ask the right questions about our legal system, however fundamental, and to offer solutions, however controversial.

Within this solid framework of permanence and independence the Commission was given a very

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

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

A Brief History

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 was the publication of the Commission's Report 3, *Our Criminal Law* (1976). 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 1 on *Evidence* (1977), which included a proposed Evidence Code aimed at ridding the law of unduly technical and complex rules. He committed the Commission to a style of writing and drafting which is as simple and 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.

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 programmes 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* (1976).

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. 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 topics.

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. This Review was to be 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.

Following the appointment to the bench in 1983 of Mr. Justice Francis C. Muldoon and Mr. Justice Réjean Paul, then 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

appointed Vice-President of the Commission.

Tragically, Professor Jacques Fortin died in January 1985, depriving the Commission and Canada of his great wisdom and courage. We at the Commission miss him desperately, but his strength of purpose, his love of liberty and his sense of justice continue to guide and inspire the Commission in completing a new Criminal Code for Canada. He will always be remembered, not only by the Commission, but in the history of our country, as being one of the primary architects of the new Criminal Code.

Mr. Justice Muldoon ... characterized the process of law reform as "change for the better."

In 1985 Mr. Gilles Létourneau was appointed Vice-President of the Commission. A graduate of Laval University Law School, Mr. Létourneau holds a master's degree in criminal law and criminology from the London School of Economics and Political Science and a doctorate 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* (1976), and has written many articles published in law journals. He brings with him a great deal of experience in law reform and legislation at the provincial level. Before his appointment as Vice-President, he was Associate General Secretary for Legislation with the Québec Government.

The Current Team

Joining President Linden and Vice-President Létourneau in carrying out the duties of the Commission are three distinguished Commissioners: Ms. Louise Lemelin, Q.C., a barrister and solicitor from Victoriaville, Québec, is the Commissioner in charge of the Protection of Life Project; Mr. Joseph Maingot, Q.C., former Parliamentary Counsel and Law Clerk of the

House of Commons, is the Commissioner, along with the Vice-President, in charge of the Criminal Procedure Project; and Mr. John Frecker, a barrister and solicitor from St. John's, Newfoundland, is the Commissioner in charge of the Administrative Law Project.

The Commissioners are supported in their work by four Project Co-ordinators. They are Dr. Edward W. Keyserlingk, Protection of Life; Mr. François Handfield, Substantive Criminal Law; Mr. Stanley A. Cohen, Criminal Procedure; and Mr. Patrick Robardet (acting Co-ordinator replacing Mr. Mario Bouchard), Administrative Law. Ms. Joyce Miller, a member of the Ontario Bar, is the Special Assistant to the President and the Secretary.

This summer marked the retirement of Mr. Jean Côté, Secretary of the Commission, and Brigadier-General (retired) Michael H.F. Webber, Director of Operations. Mr. Jean Côté had a long and distinguished career in the Public Service of Canada and was the Commission's first Secretary, a position he held since 1971. Brigadier-General (retired) Webber, who served his country with distinction in the armed forces for many years, had been Director of Operations since 1975. Mr. Côté was replaced by the Special Adviser to the Commission, Mr. Harold Levy, who served in an acting capacity until May 1985 when he left the Commission to join the editorial board of *The Toronto Star*. Mr. François Handfield is now acting Secretary. A member of the Québec Bar, Mr. Handfield has been the Substantive Criminal Law Project Co-ordinator since 1983 and played a key role in helping to bring to fruition the first draft of the new Criminal Code for Canada. He is also a part-time professor at the University of Ottawa Law School. He brings with him to this new position not only energy, commitment and a vast knowledge of the criminal law, but, as a former Chief Crown Prosecutor for the Hull, Pontiac-Labelle region, he also brings outstanding organizational experience. The new Director of Operations is Mr. Robert Rochon, an experienced administrator who has worked for the federal Government for many years.

Influence on Law Reform

The influence of a law reform commission is felt in many

ways. By publishing its research and recommendations, a law reform commission advances legal scholarship and writings; it educates the public on the legal system and justice; it influences the opinion of lawyers who assist the courts in leading the law along new paths; and finally it changes attitudes, affects conduct and promotes legislative reform.

Legal Research

Research plays a critical role in the work of this Commission. Before we can make recommendations to Parliament we must research the history and purpose of the present law, identify its defects, and try to determine how to solve the problems. The Commission must study how other jurisdictions deal with similar problems, how effective those solutions are, and what solutions would work best in Canada.

Most of the Commission's research and recommendations are published in Reports to Parliament, Working Papers and Study Papers. An important consequence of the publication and dissemination of this legal research is that it acts as a catalyst, engaging Canadian legal scholars in further research and writings on important areas in need of reform. It also subjects the Commission's work to an objective critical analysis. Many articles have been written about the Commission, its history, function, philosophy and recommendations (see Appendix F). All of this scholarly activity stimulates thinking about law reform, creates a deeper understanding of the issues involved and

helps promote action by formal or informal implementation of the Commission's recommendations.

The excellent quality of the Commission's research is universally recognized. Its reputation for excellence is firmly established not only in Canada (in 1984, the Commission received the Archambault-Fauteux Award for its contribution to legal research) but abroad as well. Indeed, requests for our publications come from all over the world with some of our work being translated into other languages. Legal scholars from many different countries have relied on our work, praised it, and criticized it in the legal journals of their countries. In this way the Commission has acted as an important link in disseminating Canadian legal scholarship to other countries.

As well as stimulating scholarly research, the Commission provides excellent training for young legal scholars who have just completed their formal schooling. In return for their training these young scholars have provided us with their energy, enthusiasm, hard work and solid legal scholarship. After leaving us, many Commission researchers have continued their interest in scholarship by becoming law professors, government policy makers or active practitioners working at the frontiers of law reform. We believe that through its legal research, the Commission has helped to foster, build and disseminate, nationally and internationally, a uniquely Canadian perspective on legal scholarship.

Educating the Public

From the beginning, the Commission's policy has been to establish a dialogue with the public about

our present laws, the way they work and the means that can and should be used to modify them. The first Chairman of the Law Reform Commission, the Honourable Mr. Justice Hartt, stressed this duty to dialogue with members of the public when he stated: "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." To further the participation of the public in law reform the Commission has established a wide distribution network for all our publications. As noted earlier, more than 1.3 million copies have been distributed. This year the Commission has received over 57,000 requests for publications.

As part of the Commission's policy to encourage the process of education and communication, most of our publications are written in a simple and straightforward style. To encourage dialogue we invite the public to read our Working Papers and to comment on our recommendations. Over the past fifteen years many members of the lay public have read our papers, learned from them and offered thoughtful comments and suggestions, which have helped us in making our final recommendations to Parliament.

The Commission's publications are also used in high schools and universities as a means of educating young Canadians about our legal system. This year as a result of a Law Day Essay Contest sponsored by the Canadian Bar Association (Ontario branch), the Commission was besieged with requests for our publications from over fifty high schools. In addition, we distributed more than fifteen thousand information sheets, catalogues and pamphlets to schools

where special displays had been set up. Many universities use our papers as educational material; for example, one University of Toronto Law School criminal law class was given as a term assignment the task of writing an analysis and critique of one of our two recently published Working Papers 45 and 46, *Secondary Liability* and *Omissions, Negligence and Endangering*. In police colleges future peace officers study our material on police powers.

The Commission reaches out to the public at various conferences, by setting up information kiosks to inform them about the work of the Commission. Also, in collaboration with various organizations, we have arranged for the insertion of information sheets, pamphlets and catalogues in delegate kits at conferences held in various cities. This year at these functions the Commission distributed an additional 22,000 items of information highlighting our work.



The Chief Justice of the Supreme Court of Canada, the Right Honourable Brian Dickson presenting the Scales of Justice Award to Mr. David Vienneau of *The Toronto Star*.

Four years ago, the Canadian Bar Association decided to designate April 17 as a special day, "Law Day," to make Canadians more aware of the law and inform them about our justice system and law reform. To this end, the Law Reform Commission of Canada, in association with the Canadian Bar Association, organizes an annual Law Day dinner. This year over 450 members of the public, most of whom were representatives of social and service clubs from the Ottawa and Hull area, attended the dinner. The keynote speaker at the dinner was the Honourable John C. Crosbie, Minister of Justice and Attorney General of Canada.

One of the highlights of the evening was the announcement by the Chief Justice of the Supreme Court of Canada, the Right Honourable Brian Dickson, of the first recipients of the annual Scales of Justice Award. This competition is co-sponsored by the Law Reform Commission of Canada and the Canadian Bar Association and is open to all Canadian newspapers, magazines, television and radio stations, wire services and news syndicates and their reporters. The objective of the competition is to accord national recognition to media reports that foster greater public understanding of the inherent values of the Canadian legal and judicial system.

This year fifty-nine entries were evaluated by a committee of distinguished members of the legal and journalistic communities who had the task of choosing the winners in three categories: newsprint, radio and television. The criteria for judging submissions were: infor-

mational value, originality, insight, critical analysis and impact.

The winners this year were: David Vienneau of *The Toronto Star*, for his series entitled "The Supreme Court"; C.B.C. Television for "Lawyers — 'And You Shall Be Heard'"; and C.B.C. Radio for "Scales of Justice — 'Second Time Around'". In addition, certificates of merit were awarded to: Michel C. Auger, *Presse Canadienne*, for his series on the "Third Anniversary of the Canadian Charter of Rights and Freedoms"; "The Journal," C.B.C. Television, for "History on Trial" and C.B.C. Radio, Current Affairs, St. John's, for its series, "Legalease."

The enthusiastic involvement of the general public and the media in the events of Law Day encourages the Commission in our endeavours to involve the public in the process of dialogue on law and law reform. We have much to learn through this contact with the public and it is hoped that they learn a lot from us.

Judicial Decisions

Assisting the judiciary in their decision making and influencing the courts to advance the law along new paths has been one of the important consequences of the publication of the Law Reform Commission's research and recommendations. The Commission is pleased to report that over the years at least 120 reported judgments have cited our publications, including 16 decisions of the Supreme Court of Canada (see Appendix G). This year our publications were cited in 22 reported cases, including 5 decisions of the Supreme Court of Canada.

Now more than ever, the Commission believes that our publications will play an important role in judicial decision making. Our desire to promote laws that are truly reflective of the values underlying human dignity has resulted in our proposing laws built upon the principles which are now reflected in the *Canadian Charter of Rights and Freedoms*. Given the enormous number of *Charter* challenges and the infancy of research on *Charter* issues, the courts, we believe, will in the future be relying on our in-depth analysis of the present law and our principled approach for the development of new laws which are consistent with the values protected by the *Charter*.

"A man's home is his castle." This ancient common law principle, first enunciated in *Semayne's Case* in 1604, was one of many which the Supreme Court of Canada grappled with this year. In arriving at his dissenting opinion, Mr. Justice La Forest in *R. v. Landry*, [1986] 1 S.C.R. 145, quotes from Working Paper 41, *Arrest* (1985) which states at p. 116 that, "[e]ntry to effect an arrest has potentially greater repercussions

for the liberty of the individual than does entry for the purposes of searching for evidence of offences, and it is difficult to see how the protections surrounding the former should be less stringent than those for the latter as is presently the case."

In *Libman v. The Queen*, [1985] 2 S.C.R. 178, the Supreme Court adopted our approach as outlined in Working Paper 37, *Extraterritorial Jurisdiction* (1984), in deciding that "all that is necessary to make an offence subject to the jurisdiction of our courts is that a significant portion of the activities constituting that offence took place in Canada (at 212-3)."

Madam Justice Wilson, in her concurring reasons in *Reference Re Section 94(2) of Motor Vehicle Act*, R.S.B.C. 1979, c. 288, [1985] 2 S.C.R. 486, stated among other things that an absolute liability offence should not make it mandatory for the courts to deprive a convicted person of his liberty, and quoted from Working Paper 11, *Imprisonment and Release* (1975) in support of her reasons as follows: "Justice requires that the sanction of imprisonment not be disproportionate to the offence and humanity dictates that it must not be heavier than necessary to achieve its objective (at 10)."

In the course of her exploration of the meaning of the phrase "security of the person" used in section 7 of the *Canadian Charter of Rights and Freedoms*, Madam Justice Wilson, in *Singh v. Minister of Employment and Immigration*, [1985] 1 S.C.R. 177, quoted from Working Paper 26, *Medical Treatment and Criminal Law* (1980). In that paper we wrote, "the right to security of the person means not only protection of one's physical integrity, but the provision of necessities for its support (at 6)."

Working Paper 10, *Limits of Criminal Law: Obscenity: A Test Case* (1975) was cited by Mr. Justice Chouinard in his concurring reasons in an obscenity case, *Germain v. The Queen*, [1985] 2 S.C.R. 241.

Commission research and recommendations have been used by other Canadian courts to assist them in arriving at their decisions. In *R. v. Doiron* (1985), 19 C.C.C.

(3d) 350, the Nova Scotia Court of Appeal noted that the Commission, in Report 22, *Disclosure by the Prosecution* (1984) recommended that "the *Criminal Code* be amended to require the Crown to furnish a copy of any relevant statement made by a prospective witness at any stage of the proceedings unless the Crown can show that disclosure will probably endanger life or safety or interfere with the administration of justice (at 363)" and decided that there is an overriding obligation on the part of counsel for the Crown to inform the defence of any evidence which may be helpful to the accused.

The Alberta Court of Appeal, which considered whether the right to search after an arrest should be automatic in *R. v. Lerke*, [1986] 3 W.W.R. 17, quoted from Working Paper 30, *Police Powers: Search and Seizure in Criminal Law Enforcement* (1983). Therein the Commission had stated that it seemed difficult to maintain that the need to perform a search should be the same for all cases. Mr. Chief Justice Laycraft further commented that "[t]o a considerable extent the problem is resolved by s. 8 of the Canadian Charter of Rights and Freedoms (at 27)." The Working Paper was also cited by the Alberta Provincial Court in *Re T.R.W., P.B. and R.W.* (1986), 68 A.R. 12, in the course of a general discussion on the law of search and seizure in Canada.

The Commission's work has been used in other cases dealing with police powers. For example, in *R. v. Strachan* (1986), 24 C.C.C. (3d) 205 (B.C.C.A.), Mr. Justice Esson referred to the study, *Legal Status of the Police* (1981) which he termed "[a]... useful summary of the development of police in Canada, including reference to the influence of the English experience (at 232)." This Study Paper was also referred to by the Court of the Sessions of the Peace in *Office de la Construction du Québec c. Plante*, [1985] C.S.P. 1103, in considering whether an inspector of the Office is an officer of the peace as defined by the *Criminal Code*.

The Commission's work on the jury was used in three cases dealing with the subject. In *R. v. Cecchini* (1986), 22 C.C.C. (3d) 323,

the Ontario High Court agreed with the recommendations set out in Report 16, *The Jury* (1982) and decided that there should be no disparity in the number of jury challenges and stand-asides as between the accused and the Crown. In *R. v. Andrade* (1985), 18 C.C.C. (3d) 41, the Ontario Court of Appeal ruled that note taking by a jury is proper and that judges can permit questions to be put by a juror in accordance with Working Paper 27, *The Jury in Criminal Trials* (1980). This paper was also referred to by the Northwest Territories Supreme Court in *R. v. Punch*, [1986] 1 W.W.R. 592, for its analysis of the functions and composition of the jury, which "are of significance for the question whether or not there is likely to be a real disadvantage in having a jury of six rather than one of 12 (at 605)."

In the area of evidence the British Columbia Court of Appeal decided in *R. v. Corbett* (1984), 17 C.C.C. (3d) 129, that section 12 of the *Canada Evidence Act*, which permits the cross-examination of a witness on his prior criminal record, does not contravene section 7 and paragraph 11(d) of the *Charter*. Mr. Justice Seaton, in his concurring reasons, reviewed the authorities and the legislation of other jurisdictions on the issue of whether an accused is afforded a fair hearing when exposed to cross-examination on his record and notes that "[t]he provisions in Canada are different... (at 137)." He comments further that the Commission has recommended changes in its Study Papers and in Report 1, *Evidence* (1975) and states, "I might conclude that another system is better,... but Parliament has not seen fit to change the scheme of which this provision is a part (at 137-8)."

Among other instances in which the Commission's publications have been cited is *Canadian Broadcasting Corp. v. MacIntyre* (1985), 23 D.L.R. (4th) 235, where the Nova Scotia Supreme Court refers to Working Paper 35, *Defamatory Libel* (1984), for the history of the law of defamation. In *R. v. Swain* (1986), 53 O.R. (2d) 609, the Ontario Court of Appeal quotes from Report 5, *Mental Disorder in the*

Criminal Process (1976) on the issue of termination of a Lieutenant-Governor's Warrant and from Working Paper 14, *The Criminal Process and Mental Disorder* (1975), on the issue of the reliability and predictive accuracy of psychiatric dangerousness.

Lastly, in *Oag v. The Queen* [1986], 1 F.C. 472 (T.D.), Mr. Justice Muldoon refers to the "trenchant observations" of the Law Reform Commission on the subject of Crown liability in Working Paper 40, *The Legal Status of the Federal Administration* (1985), which he calls a "profoundly farseeing and analytical (at 480)" document.

Changing Conduct

Over the years the Commission's in-depth analyses, practical studies and sound recommendations have

had the effect of influencing needed reforms and changes in the day-to-day practices and procedures in various areas of criminal law, family law and administrative law, without parliamentary intervention. As we have noted in our *Fourteenth Annual Report 1984-1985*, our Working Paper 4 on *Discovery* (1974) has helped to alter significantly pretrial disclosure practices by the Crown. Our Report 6 on *Family Law* (1976) has acted as an influence in the creation of unified family courts in some jurisdictions across Canada. In the area of administrative law, through a series of in-depth studies of nine independent federal agencies, the Commission has helped to influence some major changes in the practices and procedures of some of these agencies. As well, various agencies have requested

our assistance in altering their rules of practice in light of the recommendations made in Working Paper 25 (1980) and Report 26 on *Independent Administrative Agencies* (1985).

This practical, informal influence of law reform on conduct is very well illustrated in the recent implementation of recommendations from the Commission's Working Paper 32 and Report 23 on *Questioning Suspects* by the Halton Regional Police Force "Taping of Police Interviews Project" (Project TIP) which began in July 1985.

Working Paper 32 on *Questioning Suspects* (1984) recommends the videotaping of accused persons being questioned, in order to reduce allegations of police misconduct, shorten the time needed for *voir dire* to determine whether statements were made voluntarily,



Courtesy of "The Toronto Star"

and generally expedite the administration of justice. In order to test this concept, Project TIP was undertaken by the Halton Regional Police Force with the assistance of the Commission and the technical co-operation of the Sony Corporation of Canada. The object of the project was to provide a full electronic record of police interviews with suspects and to test the various propositions which have been advanced for and against the process.

In February 1986, an interim report on the first six months of the two-year project was prepared by Professor Alan Grant of Osgoode Hall Law School, York University. Although the report is only preliminary and deals with initial police and prosecutorial reaction to the project (analysis of the responses of defence counsel will appear in forthcoming reports), the general tenor was quite positive. Only four per cent of the suspects/accused refused to be taped and seventy-one per cent of those who agreed to be videotaped made admissions or confessions. It was also shown that when cases did get to court, the videotaping process had saved court time when defence counsel agreed to waive the *voir dire* after viewing the tape.

From the perspective of the police officers, although there was an initial hesitation about the project, once it was begun they were very enthusiastic about using the videotaping technology. As well, Crown counsel indicated that there had been no problems in having the tapes introduced into evidence in the few cases that actually reached court.

Although it is still too early to make long-term predictions, the Commission is optimistic that the results of Project TIP will show that the implementation of the Commission's recommendations by police forces will not only save valuable time and court costs, but will fairly and justly expedite the administration of justice. Other experiments with videotaping in Toronto and audiotaping (with the help of 3M Canada Inc.) in Montréal are under way, the results of which, we expect, will be equally encouraging.

Legislation

As the Commission noted earlier law reform can be influenced by stimulating research, educating the public on matters of legal importance, assisting the judiciary in their decision making, and altering administrative and legal attitudes and practices. A fifth way in which law reform can be influenced is through the enactment of legislation. Although this is not the only measure of our success, we are pleased to report that twelve out of twenty-eight of our Reports have been enacted — at least in part — by Parliament.

In 1985 the *Criminal Law Amendment Act, 1985* contained seven different items dealt with in our publications, extending back more than a decade. Commission recommendations included in the Act were: (1) the abolition of writs of assistance; (2) the introduction of telewarrants; (3) the authorization of pretrial conferences and motions; (4) the taking of blood samples; (5) some matters of search and seizure; (6) changes to the jury system; and (7) issues of jurisdiction.

... in the new Divorce Act, 1985 Parliament recognized in legislative form the Commission's proposal for reform.

The Commission supported the work of the House of Commons Justice and Legal Affairs Committee, which studied the amendments, by providing ideas and concepts embodied in our Reports and Working Papers. We were pleased that some of the testimony presented was retained by the Committee to improve some of the proposed amendments.

Another recent piece of legislation that has completed its journey through Parliament is the *Divorce Act, 1985*, which was inspired in part by one of our early Reports on family law. To a large extent the Act incorporates the Commission's recommendations on no-fault divorce, encouraging mediation to settle disputes, and the

equitable distribution of property aimed at overcoming economic hardship arising from the breakdown of the marriage. Since the publication of our recommendations in Report 6 on *Family Law* (1976), the practice of private mediation and arbitration has played an increasingly important role in the resolution of family disputes or marriage breakdown and divorce. This year, in the new *Divorce Act, 1985* Parliament recognized in legislative form the Commission's proposal for reform.

The Commission was also pleased to see that the recently proposed amendments to the *Criminal Code* on mental disorder tabled in Parliament incorporated the policy and the substance of the recommendations in our 1976 Report to Parliament on *Mental Disorder in the Criminal Process*. Report 5 recommended that the rights of the accused should be set out in a complete and principled manner so as to guarantee procedural fairness and to ensure that the criminal law should be used so as to involve the minimum possible interference with the liberty of the individual consistent with public safety. Although our principled approach taken in 1976 pre-dates the *Charter*, we are pleased to see how relevant it has proven to be in this post-*Charter* era.

Technically, although no response is expected from Parliament following the publication of a Working Paper, a number of our Working Papers have helped to produce legislative initiatives. For example, the Federal Commission of Inquiry on War Criminals (the Deschênes Commission), and Bill C-104, the "Canadian Laws Offshore Application Act" (first reading, April 11, 1986) deal with subjects specified as problems in Working Paper 37, *Extraterritorial Jurisdiction* (1984). Recommendations in this Working Paper and Working Paper 39, *Post-Seizure Procedures* (1985) are reflected in the *Criminal Law Amendment Act, 1985*.

Although the Commission is pleased that so many of our recommendations have been enacted into legislation, there is concern among law reformers about the length of time it takes

for legislatures, both provincially and federally, to enact reform proposals. We are, of course, aware that Parliament is a very busy institution and that law reform is only one of the very many important matters that Parliament has to deal with. Nevertheless, we would like to help it find ways of expediting consideration of our Reports, at least the non-controversial ones.

Speedier adoption of our recommendations can sometimes save money and avoid litigation. One example is the Commission's 1976 Report 7 on *Sunday Observance* which recommended that the federal *Lord's Day Act* be repealed, and that the transition period from federal to provincial law not be delayed too long. Despite our urging, the federal *Lord's Day Act* remained in force for nearly ten more years until 1985, when after a *Charter* challenge to the *Lord's Day Act*, the Supreme Court of Canada in *R. v. Big M Drug Mart*, [1985] 1 S.C.R. 295, declared the legislation invalid. The Court held it was in conflict with the *Charter's* guarantee of freedom of religion, (paragraph 2(a)). The Commission's publications on this subject figured prominently in the various decisions rendered at each stage of the appeal process. If our recommendations had been acted upon earlier, this costly litigation might have been avoided, thus saving the costs involved and some of the valuable time of the Supreme Court of Canada. It would also have given the provinces more time to develop alternative legislation, rather than having to act hastily to fill the void created by the decision.

In April 1985, the Law Reform Commission and the Canadian Bar Association presented a brief to the Task Force on the Reform of the House of Commons. In this brief, we expressed our concern about the length of time taken to implement non-controversial recommendations for important and necessary changes. We offered two suggestions on how to accelerate the pace of law reform. One idea would be to separate the legislative load into two groups so that non-controversial technical Bills would be dealt with in a different, less time-consuming way than their

more controversial counterparts. For example, the non-controversial Bill could go to committee for consideration after the first reading. The other idea would be to change the way in which time is allocated for the consideration of Bills, by scheduling their implementation for example, by scheduling a group of Bills or a week's business at a time, or by shortening the prescribed length of time for debate. Unfortunately, these suggestions which might help to expedite the legislative process, were not adopted in the *Report of the Special Committee on Reform of the House of Commons* (McGrath Report).

Participants at our Seminar on the Future of Law Reform expressed concern about the pace of parliamentary consideration of our recommendations for reform. Mr. Bryan Williams, Q.C., President Elect of the Canadian Bar Association, suggested a way in which Parliament could deal with recommendations for law reform: "[T]here ought to be something in the way of a time limit where the government either says one of three things: we agree with the Law Reform Commission and we are in the process of implementing; we don't agree with the Law Reform Commission and we're not going to implement, ...; or we have looked at it and we need another year."

On the same subject a most respected law reformer, Mr. William Hurlburt of the Alberta Institute of Law Research and Reform, author of *Law Reform Commissions in the United Kingdom, Australia and Canada* (1986) observed: "[T]o my mind, ... the thing to go along with is really what the Chairman [Mr. Blaine Thacker, M.P.] was suggesting, namely consideration by parliamentary committees. It seems to me that there is no reason in principle why there should not arise a convention, that parliamentary committees ... would take under consideration those law reform proposals which are not in the party political arena. [...] If an all-party committee were to consider a law reform proposal and if the all-party members of that committee were to approve it or agree on some modification of it

or agree to reject it, then it should be possible to have an understanding with the caucuses that they would [allow] these ... non-politically controversial items, [to be brought forward] ... [without the need for] extended parliamentary debate, that they wouldn't become the subject of parliamentary games and would be processed in a rational and intelligent way, saving parliamentary time because the committee would have thrashed them out. It seems to me that the legislator and the governments should be willing to do this. It would [avoid] the politicization of law reform proposals. [...] [I]t seems to me that the missing piece of machinery in the law reform process is one which would allow law reform proposals which are not in the party political arena to be taken up by the legislator, [and] considered by the legislator, untrammelled by whips and all the other sorts of things"

The Honourable Robert Kaplan, M.P., agreed with Mr. Hurlburt's suggestion: "What was proposed could work very well without changing one single rule of the House of Commons, let alone changing one single law or abandoning the principle of responsible government. [...] I am committed personally to law reform and I think that the reform rules have produced the possibility of a committee which can work without a partisan temperature So, what I would like to suggest and to offer is that if a committee is set up, ... I would offer and do offer now to get legislation through, insofar as the official Opposition can do so, before the next election."

We respectfully suggest that these ideas are worthy of Parliament's consideration. It is more important now than ever before to expedite legislative law reform. The entrenchment of the *Canadian Charter of Rights and Freedoms* in our Constitution and the dramatic technological revolution we have been undergoing these past few decades pose unprecedented challenges for law reform in this country. We believe that Parliament must be prepared for these new challenges and must be able to act to respond more expeditiously in enacting law reform (and other) measures.

Publications

This year, as in the past, the Commission has been very productive, publishing four Reports to Parliament and ten Working Papers. As in the previous years, the Commission's publications received a great deal of attention from the press.

One of the main objects of the Commission is to stimulate public interest in the process of law reform. It is essential in a democratic society that the public are kept aware and are encouraged to become involved in the formulation of the laws that govern them. We are happy to report that the wide coverage of our publications by the press has helped us in our efforts to carry on a dialogue on law reform with the Canadian public. Some of the comments on our recommendations published by the press are included in the summaries that follow.

Reports to Parliament

Commission Reports present the final views of the Commissioners on a given area of the law. Once a Report has been tabled in Parliament, the advisory role of the Commission is completed in respect of this particular topic. It then becomes a matter for the Government and Parliament to act upon, if and when they choose to do so.

Report 25

Obtaining Forensic Evidence

This Report formulates a rational and comprehensive structure for the statutory regulation of investigative procedures which utilize a person's body or mind as a source of incriminating evidence. The procedures deal with such things as administering truth drugs, pumping stomachs, probing body cavities, exposing a person to X-rays, removing concealed foreign objects from within the suspect's body, and taking of hair samples and finger-nail scrapings.

The proposed scheme sets out:

(1) investigative tests which are absolutely prohibited; (2) tests which the subject can be compelled to submit to in carefully defined circumstances; and (3) tests which may only be performed if the subject has been fully informed of his or her rights and expressly consents. Potentially incriminating procedures have been narrowly circumscribed so that they will be carried out in the fairest, safest and least intrusive manner possible.

The proposed scheme aims at assisting the police, by providing guidance and certainty in carrying out their investigative duties. It also establishes a procedure which will make it more likely that evidence obtained from investigative tests will be admitted in court.

In an editorial in the *Sault Daily Star* (June 14, 1985), the paper supported the Commission's proposals. It stated: "There should be clearly defined rules and regulations outlining what steps police are allowed to take to gather without improper encroaching in the rights and privacy of the individual.... The federal government should follow up on this report by framing the legislation called for by the Commission."

Report 26

Independent Administrative Agencies

This Report recognizes the independent administrative agency as a government model and makes recommendations for improving its capacity to produce decisions that have appropriate regard for efficiency, fairness, integrity and accountability.

The Report recommends that the integrity of independent administrative agencies should be protected from political interference and that appeals from an agency to a minister, or to Cabinet should be abolished. The Report further recommends that Parliament and parliamentary committees should

play an active role in monitoring all aspects of administrative agencies and ensuring that agencies are accountable to Parliament for the policies they follow.

There were twelve articles including six editorials on this Report, largely endorsing the Commission's recommendations. For example, *The Ottawa Citizen*, on October 29, 1985, commented: "We hope the commission's proposals win a responsive hearing in Parliament. Instituting changes would be a fitting use of the powers MPs are about to receive from new Commons rules."

Report 27

Disposition of Seized Property

This Report presents a comprehensive scheme of procedures which embrace all federal crime-related search, seizure and disposition powers. The proposed scheme carefully balances the demands of criminal law enforcement with the rights of individuals to privacy and control of their property.

In a significant addition to the Working Paper, the Report recommends that where items have been seized by the police, either pursuant to a warrant or without a warrant, and continued detention is not necessary, the police should be free to return the items to the person entitled to possession immediately, without the necessity of filing a return with the justice first.

The purpose of this recommendation is to reduce the administrative burden on both the police and individuals in situations where it is clear that detention of seized things is unnecessary in the circumstances. It is intended to respond to concerns expressed by victims of crime and was urged upon us by representatives from various groups with whom we consult, including two important groups, the police and the Canadian Bar Association. The *Criminal Law Amendment Act, 1985* amendments are also a response to these concerns.

Report 28

Some Aspects of Medical Treatment and Criminal Law

The Report brings together various recommendations that the Commission has published over the past five years in a series of Study Papers, Working Papers and Reports to Parliament. The object of the Report is to present a systematic and organized presentation of recommendations to which the drafters of the new Criminal Code can refer. The Report's recommendations deal with medico-legal issues that have been challenged by the development of new technologies, and focuses primarily on the protection of the integrity of the person.

The proposals for reform present both legislative amendments and recommendations on general legal policy. They are grouped under three main principles: (1) maintaining the principle of protection of life and health; (2) maintaining the principle of the autonomy of the person; and (3) maintaining the principle of the person's right to self-determination. The three principles include and deal with issues such as: the protection of psychological integrity; general standards of criminal law; palliative care; the role of consent; the protection of incompetent persons; cessation of treatment; active euthanasia; and aiding suicide.

Working Papers

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

Working Paper 40

The Legal Status of the Federal Administration

This Working Paper presents an overview of the administrative apparatus of the federal Government and proposes a new status for the federal Administration which will be better suited to the contemporary legal and social circumstances

of Canada. The paper sets out a philosophic foundation for future Commission work in this area, and explores possible areas of reform, including measures which will simplify the recovery of damages against the Administration and increase safeguards available to individuals. It calls for a change in attitudes with regard to the balance between the individual and the State.

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. These measures would precede the start of court proceedings, which could only begin when negotiations between the Administration and the person injured had broken down. The individual could thus be expected to save time and money. It would also be in the interest of the Administration to arrive at an amicable settlement of the case. This procedure could be used particularly for claims involving small amounts. Other non-court safeguards such as strengthening the citizen's right to access to government files and perhaps even the appointment of a federal ombudsman would create a healthier relationship between the individual and the State and avoid conflicts in court.

Comments on this Working Paper in the newspapers were quite favourable to the Commission's recommendations. For example, *The Leader Post* of Regina, on August 1, 1985, commented: "Canada's usually sensible and equally usually ignored Law Reform Commission has come up with another good idea.... [B]y narrowing the definition of Crown privilege, prospects are open for Canadians to feel less like Davids in seeking legal redress against government — a Goliath that not only can say whether there's going to be a fight, but that sets the rules and also has the last word on who gets the prize." *The Winnipeg Free Press* on August 4, 1985, also endorsed the Working Paper, stating: "The Law Reform Commission's report on special privileges government accords itself deserves close attention. Government should

be, but is not, as accountable for the law as are individual citizens"

Working Paper 41

Arrest

This Working Paper presents a synopsis of the law as it presently exists in Canada and makes recommendations for a simple, clear, coherent and comprehensive arrest regime for the *Criminal Code*.

The Working Paper addresses the difficult distinction between arrest and detention and the rights that flow from this distinction. The paper recommends that the *Criminal Code* be amended to incorporate the reasoning of the Supreme Court of Canada in *R. v. Therens*, [1985] 1 S.C.R. 613.

The paper also recommends that sections 30 and 31 of the *Criminal Code*, which permit the arrest of individuals without the laying of a criminal charge, using the breach of peace provisions, be repealed. The paper states that there is no longer justification for retaining this general power which originated in mediaeval England when there were very few peace officers, and few offences in criminal law. The *Criminal Code* now contains other provisions which allow for arrest in similar circumstances as the breach of peace power.

There were thirty-five newspaper articles on the *Arrest* Working Paper, including eighteen editorial comments, all of which favoured the Commission's recommendations. For example, commenting on the recommendation to repeal sections 30 and 31 of the *Criminal Code*, *The Times-Transcript* of Moncton stated: "The recommendation is one that the federal government ought to take up at an early date. It is basic to the principles of a democracy. It will dovetail appropriately with certain provisions in the *Charter of Rights and Freedoms*. Those who would try to block such fundamental rights are the ones who should be questioned as to their fitness to be in policing, for it is that type of mentality that would appreciate the lack of restrictions that appertains in a police state. Of which Canadians need nothing." Another view was expressed by a police officer, Chris Braiden, in a letter to the editor of *The Globe and Mail*,

published on October 25, 1985. Therein he writes: "The arrest powers that would be repealed are more than compensated for by the recommendations of the commission. Indeed, if accepted and made into law, arrest powers of both police and citizen alike will be made broader and more easily understood than the current state of those laws."

Working Paper 42 *Bigamy*

This Working Paper recommends the retention of the offence of bigamy and repeal of polygamy and other criminal offences respecting the solemnization of marriage.

The Working Paper recommends that bigamy be retained as an offence to protect the institution of marriage and the important role of the family in Canadian society. In the case of offences such as polygamy, feigned marriage, pretending to solemnize marriage, and solemnizing marriage contrary to law (sections 256 to 259 of the *Criminal Code*) the paper concludes that these offences can be adequately dealt with under present provincial legislation and the fraud provisions of the *Criminal Code*.

Twenty-two newspaper articles, including three editorials, were written on the paper. In one of them on September 19, 1985, the *Montreal Gazette* endorsed the Commission's recommendations, commenting: "So why worry about polygamy — surely not Canada's number one crime problem? Well, the commission notes that the law on polygamy now prohibits 'any kind of conjugal union with more than one person at the same time,' even if what is involved does not include marriage in the legal sense The state does have some business in the bedrooms of the nation — but not as much as the Criminal Code now sets out."

Working Paper 43 *Behaviour Alteration and the Criminal Law*

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*.

The Working Paper endeavours to determine the stance of criminal law regarding potential abuses of techniques such as the administration of mood-altering drugs, psychosurgery or sophisticated behavioural therapies which can have a profound impact on a person's personality and way of life.

The paper emphasizes the importance of free and voluntary consent to psychiatric treatment and concludes that a judicial or administrative declaration of incompetence, or a committal, should not automatically constitute legal justification for completely ignoring the wishes of the patient. The paper also concludes that the systematic or even occasional use of behaviour alteration methods as a penalty for the perpetrators of criminal or antisocial acts, without the consent of the individual, is unacceptable and should be firmly rejected.

Working Paper 44 *Crimes against the Environment*

This Working Paper affirms that, while the vast majority of pollution offences can be dealt with under the existing regulatory system, the apparatus of the criminal law must be available against those worst offenders who intentionally, negligently or recklessly harm or endanger the environment by their acts or omissions. Consequently, the addition of a new and special offence to the *Criminal Code*, "a crime against the environment," is recommended.

The paper takes great care to define and limit the scope of this new offence to include only serious pollution acts or omissions which harm or endanger human life or health. It does not extend to prohibiting pollution which deprives others of the use and enjoyment of a natural resource, but causes no serious harm or risk to human health. Provision, however, is made for an express exception where, for example, a form of pollution deprives an entire community of its livelihood.

There was an overwhelming response by the press to this Working

Paper with over eighty articles, including thirty-four editorials making comments mostly in favour of the paper's recommendations. Pierre Tremblay of *Le Droit* enthusiastically endorsed the proposed scheme, commenting: [TRANSLATION] "The Commission is to be congratulated on this modern, comprehensive, human approach to the challenge presented by this new problem, which may be the most urgent of all." In the same positive spirit the *Guardian and Patriot* of Charlottetown on December 2, 1985, commented: "In view of all the new substances coming into use and the increased chances of their being mishandled, because of the sheer volume of them, the commission recommendation is timely and eminently reasonable. It's the proposition of new laws being required to apply to new conditions."

Working Paper 45 *Secondary Liability*

This Working Paper examines the present law on participation, inchoate offences and conspiracy, outlines a more principled approach to the whole question and makes concrete recommendations for inclusion into the new Criminal Code.

Although the improvements proposed by the Commission in this Working Paper are largely concerned with form, structure and an overall simplification of this complex area of law, several innovations are proposed. The paper identifies the common link between the present *Criminal Code* concepts of procuring, inciting, counselling, aiding and abetting, conspiracy and attempt: the concept of "furthering." The paper then restructures the secondary liability rules on the basis of this concept. Thus, a person who aids in a crime would be liable for furthering the crime not, as under the present *Code*, for committing it. Succinctly, the person would be held liable for what he actually did.

The paper criticizes Canada's existing law of conspiracy as it can lead to overcriminalization. It points out that a person who both conspires to commit a criminal offence and also commits the

actual offence can be convicted and punished for both. The paper therefore recommends that there be a verdict rule establishing that an accused can be convicted of one or the other. The paper also points out that under the current law, one can be convicted of conspiring to commit a provincial or municipal offence and even a civil wrong. The Commission's recommendations would confine the crime of conspiracy to agreements relating to *Criminal Code* offences in order to ensure that only Canada's Parliament enacts the criminal law, and, that persons can be convicted of conspiracy only where Parliament has regarded the behaviour as a grave enough social evil to require criminal sanctions.

Working Paper 46 *Omissions, Negligence and Endangering*

This Working Paper examines the topics of omissions, negligence and dangerous conduct which does not cause actual harm. Recommendations include a "duty of easy rescue," a duty to provide necessities of life for all persons living in the same household, a crime of negligently causing death or serious bodily harm, and a general offence of endangerment.

A key recommendation in the paper is the "duty of easy rescue." The paper recommends that the Special Part of the new Criminal Code provide that everyone commits a crime who fails to take reasonable steps to assist another person whom he sees in instant and overwhelming danger, unless he is incapable of doing so without serious risk to himself or another or there is some other valid reason for not giving assistance.

The paper points out that the common law already imposes duties on persons who create dangers and that the *Criminal Code* now requires persons involved in motor vehicle accidents to offer assistance to any person who has been injured.

The latter recommendation caught the attention of the press and was the subject of thirty-six articles, including sixteen editorials expressing divergent views. Opposed was *The Edmonton Journal*

commenting on December 20, 1985, that: "The Law Reform Commission of Canada listened to its heart, but not its head, in recommending people be prosecuted if they fail to render reasonable aid in case of danger [The Commission] is right — Canada is basically a caring society. Good Samaritanism springs from the heart. It can't be meaningfully legislated; the courts shouldn't try."

In favour of the recommendation was *The Community Press* of Sedgewick, Alberta which commented on January 28, 1986: "If these proposals do become law, it brings up the point that we have rights under the Charter of Rights, but also as Citizens, we will have legal obligations as well as moral obligations." Also supporting the Commission's recommendation was the *Montreal Gazette*: "By reviewing Canada's laws independently, [the Commission] can help Parliament close the proverbial barn door before the horse escapes. Too often, laws are not changed until problems have been made obvious by practice. Prevention is the better course The commission's sensible suggestion that failure to rescue be made a crime is a case in point."

Working Paper 47 *Electronic Surveillance*

This Working Paper reviews the invasion of privacy provisions of the *Criminal Code*. The focus of the paper is the use of electronic surveillance by the police. Recommendations are designed to bring the current legislation into accord with the principles of restraint and respect for privacy demanded by the search and seizure provisions of the *Canadian Charter of Rights and Freedoms*.

The Working Paper develops a scheme which would open up the wiretap application process to public and individual scrutiny, while maintaining a satisfactory balance between the need for effective police investigation and the need to protect personal privacy. Access to the material in the sealed packet would have to be permitted by the prosecutor under the paper's scheme, but such disclosure would not necessarily occur in every case.

Recommendation 50 of the paper permits a prosecutor to apply in writing to a judge for an order that certain portions of the material not be disclosed on the basis that disclosure could tend to reveal the identity of an informer, or any other person who has assisted in the investigation. This application would have to be supported by the sworn affidavit of the police officer.

By opening up the system, by providing judges with necessary direction, information and supervisory powers, and by defining more precisely the rights and duties of the various participants in the process, the paper contends that much of the suspicion and distrust which permeates the present system should be eliminated. More information, and hence more accuracy, would be brought into the decision-making process and the privacy of unsuspected individuals would be better safeguarded. Adoption of these proposals would help make our criminal justice system more efficient and less costly by lowering the number of lengthy contested hearings on wiretap issues.

There were thirty-nine news articles published on the release of this Working Paper, of which twenty-three were editorials. Most of the comments made were very supportive. On January 31, 1986, *The Edmonton Journal* stated: "The maturity of a democracy is reflected in its willingness to trust its citizens, to allow them to live without undue state interference in their lives The commission asserts that any invasion of privacy must be justified and open to challenge. It's a reasonable proposal which Ottawa must adopt and respect." The Working Paper was also endorsed by the *Times-Colonist* of Victoria on February 5, 1986, which commented: "[The Commission's] report provides a useful basis for much-needed legislative reform to ensure that wiretapping in Canada is used as a last resort — and only a last resort — by law enforcement authorities."

The Globe and Mail commented on January 30, 1986: "It is time to tighten up the law in this area. The commission's proposals, balancing police need against the rights to privacy, provide useful guides to

revision." As well, *The Vancouver Sun* made favourable comments on January 31, 1986: "No one wants to deprive law enforcement officials of a valid investigative tool, but the usefulness of that tool must be constantly weighed against its potential for abusing individuals' rights. The Law Reform Commission's critique and recommendations for increasing surveillance controls deserve broad public debate."

Working Paper 48 *Criminal Intrusion*

This Working Paper completes the Commission's review of the main offences against the person and property. It deals with the "break and enter" provision of the *Criminal Code*. The paper proposes to modernize and clarify the law by replacing the existing sections with one offence, that of criminal intrusion. The prohibited conduct would consist of acts of entering or remaining in a building or occupied structure and the requirement of "a break" would be eliminated as an element of the offence.

The Working Paper also recommends removal of several statutory presumptions, which allow a court to presume that a person has entered premises without consent in order to commit a criminal offence. The removal of these presumptions is recommended in order to conform with the judicial disapproval of presumptions generally in interpreting the *Canadian Charter of Rights and Freedoms* by requiring the accused person to prove his or her innocence rather than requiring the Crown to prove the suspect's guilt beyond a reasonable doubt. (See *R. v. Oakes*, [1986] 1 S.C.R. 103, where the Supreme Court of Canada struck down the "reverse onus" presumption for the offence of possession for the purpose of trafficking in narcotics.)

The Globe and Mail on March 24, 1986, commenting on this paper fully endorsed its recommendations: "If the federal Government were to accept the proposals in the working paper, the three sections of law which now converge awkwardly on the same offence, would be replaced by one outlining the

straightforward offence of 'criminal intrusion.' It sounds like a good idea. Simplifying the law usually is."

Working Paper 49 *Crimes against the State*

This Working Paper proposes that the more serious crimes against the State found in the *Official Secrets Act* and the *Criminal Code* be revised, updated, simplified and consolidated into one chapter of the new Criminal Code.

Under the proposed scheme, the primary crimes against the State would still be called treason. It would be treason for anyone: (a) to engage in war or armed hostilities against Canada; (b) to assist anyone, whether a Canadian or a foreigner, who is engaged in war or armed hostilities against Canada; (c) to use violence to overthrow the constitutional Government of Canada or a province; and (d) to communicate or obtain, collect or record for the purpose of communicating prohibited national security information to a foreign State or its agent.

In addition, the paper recommends that there be four secondary crimes against the State. These would include: (a) using violence to extort or prevent a decision or measure of a provincial or federal legislative executive body, or a court; (b) jeopardizing Canada's safety, security or defence by acts of vandalism; (c) failing to inform the authorities about, and failing to take reasonable steps to prevent, the crimes of engaging in war or assisting the enemy; and (d) leaking prohibited national security information to anyone other than a foreign State or its agent.

Independently Published Books

Although the following books have not been published by the Law Reform Commission, we have nonetheless been closely involved with their production. One is a study prepared under our auspices, and three are proceedings of conferences which we have supported. Others have been written or edited by members of our staff.

Appearing for the Crown: A Legal and Historical Review of Criminal Prosecutorial Authority in Canada by Philip C. Stenning. Cowansville, Qué.: Brown Legal Publications, 1986.

This book examines the origins, development and modern legal conception of prosecutorial authority in Canada. It consists of three Parts. Part I contains a review of the English and Canadian origins of the modern prosecution process and the history of public prosecutorial offices in Canada. Part II examines the extent and nature of modern prosecutorial authority, and Part III considers the present arrangements for accountability and control. The book concludes with the author's personal observations as to some of the implications of his findings for future reform of the law.

Crime, Justice & Codification: Essays in Commemoration of Jacques Fortin edited by Patrick Fitzgerald. Toronto: Carswell, 1986.

The majority of the eleven essays in this book relate to criminal law and justice; some concern the overall nature, rationality and legitimacy of criminal law. Others cover specific topics such as codification, negligence, and the law of attempts. Also included is an essay on the ethics of advocacy and another on the relationship between criminal and administrative law.

Contributors include former colleagues and associates of the late Jacques Fortin both from Canada and abroad. The foreword was written by Mr. Justice G. Arthur Martin of the Ontario Court of Appeal.

Justice beyond Orwell edited by Rosalie S. Abella and Melvin L. Rothman. Montréal: Yvon Blais, 1985.

This book represents a number of the principal papers which were presented at the 1984 Tenth Annual Conference of the Canadian Institute for the Administration of Justice. The theme of the Conference was "Law and Justice beyond 1984" and the contributors, among them judges, practising and aca-

democratic lawyers, representatives of Government and the literary world, examine the purpose, development and application of law in a broad social context. In dealing with the relationship between the individual, the State and the justice system, they offer a combination of analysis and prognosis which helps unravel the complex and pervasive way in which law and society blend.

The Media, the Courts and the Charter edited by Philip Anisman and Allen M. Linden. Toronto: Carswell, 1986.

The Law Reform Commission co-sponsored the 1985 Osgoode Hall Law School Annual Lecture Series. The topic was "The Media, the Courts and the Charter." Speakers included members of the legal profession and media journalists. The object of the seminar was to consider the implications of the freedom of the press and other media of communication guaranteed by the *Charter*.

This book contains the principal papers and comments delivered at

the lecture series, including: an overview of the history of freedom of expression and the *Charter*; an introductory comparison of freedom of the press in Canada and the United States; the special status of the media under the *Charter*, including the protections they are entitled to in the gathering and dissemination of news, and the mechanisms to ensure that they perform their protected functions responsibly; issues dealing with the media's access to public proceedings such as judicial, quasi-judicial, investigative or governmental proceedings; and lastly, the currently debated issue as to whether the media could broadcast or publish judicial and other proceedings, in particular through television and videotapes.

Sports Violence and Law Reform edited by John Barnes. Ottawa: Institute for Studies in Policy, Ethics and Law, Faculty of Social Sciences, Carleton University, 1985.

This is an edited collection of papers and comments of a one-day conference on violence in sports.

Participants, including sports academics, lawyers, sports writers and representatives of amateur sports, discussed the problems posed by violence in both combat and contact sports and the role of the criminal law as a means of imposing sanctions and control. Opening and closing remarks were delivered by Mr. Justice Allen M. Linden and Professor Patrick J. Fitzgerald respectively.

A Reporter's Guide to Canada's Criminal Justice System by Harold J. Levy. Ottawa: Canadian Bar Foundation, 1986.

The purpose of this book is to assist reporters in covering the criminal justice system by providing them with knowledge, information and a perspective which will lead to more balanced, accurate and informed reporting. It is full of practical information, such as advice for tracking down cases, techniques for gaining information and ways of making effective use of investigation and court-related documents.

Current Research

SUBSTANTIVE CRIMINAL LAW PROJECT

A New Criminal Code

The Substantive Criminal Law Project is under the direction of the President of the Commission, Mr. Justice Allen M. Linden. He is assisted by Mr. François Handfield, the Co-ordinator of the Project, and Professor Patrick J. Fitzgerald, a Special Adviser to the Commission.

This past year has been a very exciting time for the Substantive Criminal Law Project for we have seen our labours come to fruition with the completion of the first draft of a new Criminal Code for

Canada, a modern, simplified, comprehensive, principled and practical Code that will better express our Canadian identity.

Our present *Criminal Code* has its roots in nineteenth-century England. Enacted in 1892, it has undergone a number of *ad hoc* revisions, with the result that we now have a *Criminal Code* which does not deal comprehensively with the general principles of criminal law, which suffers from a lack of internal logic and which contains a hodgepodge of anachronistic, redundant, contradictory and obsolete provisions. The end result is that Canadians living in one of the most technologically advanced societies in human history, are being governed by a *Criminal Code* rooted in the horse-and-buggy era of Victorian England.

From its conception the Substantive Criminal Law Project was committed to a fundamental review of the criminal law of Canada. As noted earlier in this Report, the Commission, with the help of the Project, has spent fifteen years researching, writing, consulting and publishing many Working Papers and Reports on substantive criminal law issues. Our aim was, and is, to give Canada a new Criminal Code that reflects its own national character and special identity, built on a sound philosophical base, expounding rational and just principles and able to meet the challenges that await our society in the twenty-first century. We are very pleased to report that the Commission will be able to present such a Code to Parliament in the coming year.

The Commission's design for the new Criminal Code is a simplified and comprehensive Code which would fully state the aims, purposes and essential principles of criminal law and rules of general application, as well as the concepts governing criminal justice. The present *Criminal Code* is deficient in this respect. For example, neither *mens rea*, causal relationship, nor the prerequisites of guilt or harm are adequately identified and defined.

As well as comprehensiveness the Commission's aim is to make the Code much more understandable to the general public. A well-known rule states that ignorance of the law is no defence. If this is to be a fair rule, a rule of justice, the law must be capable of being understood. Codification of criminal law represents a positive step in making laws more accessible to lay people, especially if the laws are reorganized in a logical, coherent way, with a clear statement of the principles on which they are based. The Code's accessibility is essential, given Parliament's absolute duty to provide our citizens with a fair and complete warning of both the prohibitions and the consequences to their violation.

Comprehensiveness and accessibility are only two of the Commission's objectives. Along with flexibility, certainty and predictability, the Commission has another important aim: efficiency. We aspire to give Canada a Code which will greatly reduce the costs and time spent on the administration of justice.

With these aims and purposes in mind, the Commission constructed a Code that was simple in its style and structure. The structure of the new Code will be divided into two parts: a General Part, containing rules of general application, and a Special Part, containing the specific offences. The General Part will state the objects and principles of the Code, and deal with the law relating to application, liability, defences, modes of participation and jurisdiction. The Special Part will be divided into subparts classifying all the various offences according to a logical and coherent plan. These subparts include: (1) crimes against the person; (2)

crimes against property; (3) crimes against the natural order; (4) crimes against the social order; (5) crimes against the political order; and (6) crimes against the international order.

This new draft Criminal Code, we believe, marks the beginning of a new era for Canadian criminal law. The Code that has been drafted is not a radical or revolutionary one. In substance, it will not differ greatly from the present *Code*; but it will be modern, logical, clear, coherent and comprehensive, reflecting the fundamental values of humanity, freedom and justice inherent in Canadian society. It will

and an in-house group of researchers of the Substantive Criminal Law Project. They were assisted by some outside consultants, one of whom was Mr. Vincent Del Buono of the Department of Justice whose valuable advice was most appreciated. The Project also had the advice from a Special Advisory Task Force which included: Mr. Justice La Forest of the Supreme Court of Canada, Mr. Justice Martin and Mr. Justice Dubin of the Ontario Court of Appeal, Mr. Justice Kaufman of the Court of Appeal of Québec and two eminent legal scholars, Professor Martin Friedland of the University of



(from left to right)

Mr. Vincent Del Buono, Department of Justice; Ms. Oonagh Fitzgerald, Consultant; Ms. Donna White, Consultant; Mr. Justice Allen M. Linden, President, responsible for Substantive Criminal Law Project; Mr. François Handfield, Co-ordinator, Substantive Criminal Law Project; Mr. Patrick Fitzgerald, Special Adviser; Ms. Marie Tremblay, Consultant; Mr. Glenn Gilmour, Consultant.

be restrained where possible, and strong where necessary. We hope it will form the starting-point for further work by Parliament which will ultimately lead to a new and distinctively Canadian Criminal Code being enacted.

The chief architects of the draft Criminal Code were Patrick J. Fitzgerald and the late Jacques Fortin. Over the years they have been assisted by a large number of highly qualified research consultants. These past few years, since Jacques Fortin's untimely death, the drafting of the new Code has been done by Messrs. Patrick Fitzgerald and François Handfield

Toronto and Professor Gisèle Côté-Harper of Laval University.

The Project has not only been working very hard on the codification effort, but in addition, this year we have published five Working Papers and initiated or continued work in other areas such as corporate criminal liability, firearms offences, possession of offences, cruelty to animals and hate propaganda. A Working Paper on the latter topic will be published in the summer of 1986. The other Working Papers are scheduled to be published next fall and in the winter of 1986-87.

CRIMINAL PROCEDURE PROJECT

Towards a Code of Criminal Procedure

The Criminal Procedure Project is under the direction of Vice-President Gilles Létourneau and Commissioner Joseph Maingot, Q.C. Stanley A. Cohen is the Project Co-ordinator. The Project's ultimate objective is the presentation of a Code of Criminal Procedure which will deal comprehensively with all major areas of criminal procedure including: (a) classification of offences; (b) police and investigative powers; (c) pretrial procedure; (d) trial and appeal procedures.

In addition the Project is involved in the preparation of a statement of general principles of criminal procedure. This document will serve as a statement of the guiding principles which have informed the work of the Commission in all of the areas upon which we have reported in the past or will report upon in the future. It will serve as a point of reference both for the preparation of particular Working Papers and ultimately for the Code of Criminal Procedure itself.

Several key elements in the Project's work plan have already been completed. With the publication of Working Paper 47, *Electronic Surveillance* (1986) and Report 27, *Disposition of Seized Property* (1986), the Commission may be said to have completed preliminary work on police powers. The Commission has either tabled Reports or issued Working Papers on the following subjects: questioning suspects; search and seizure; writs of assistance and telewarrants; investigative tests; obtaining forensic evidence; and arrest. In addition, numerous Study Papers, both published and unpublished on the subject of police powers, have been produced.

Our forthcoming Working Paper on classification of offences is now complete and has been approved for publication. This work has long been regarded as central to the

Commission's endeavour to produce a comprehensive and coherent Code of Criminal Procedure. This Working Paper now presents a scheme for the systematic organization by class of offences, of the powers, protections and procedures which collectively make up criminal procedure. The precepts which have governed our approach to classification of offences are: (1) there should be as few classes of offences as possible; (2) division 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 convictions; and (3) to the



Mr. Gilles Létourneau,
Vice-President, responsible
for Criminal Procedure Project

extent possible, all offences within a given class should carry common procedural characteristics. It has long been recognized that the procedures and practices set forth within the *Criminal Code* are unnecessarily complicated, confusing and anomalous. Our research tends to substantiate this perception. When the proposals contained in our classification of offences paper are incorporated with our suggestions on the subject of jurisdiction of courts, they will point the way toward simplifying this complex and cumbersome area of law.

Much work on the subjects of pretrial, trial and appeal procedure has already been done. We have published Reports on *The Jury* (1982), and *Disclosure by the Prosecution* (1984), as well as Working Papers on *Discovery* (1974), *The Criminal Process and Mental Disorder* (1975), and *Criminal Procedure: Control of the Process* (1975). The area of private prosecutions has also been made

the subject of a Working Paper and it is to be published shortly.

In the coming year we anticipate the completion of the following studies which are presently in production: pleadings in criminal cases; compelling appearance, interim release and pretrial detention; jurisdiction of courts; trial within a reasonable time; moving cases up to trial; extraordinary remedies; the judge and the conduct of trial; the presumption of innocence; pleas and verdicts; costs in criminal cases; and appeals.



Mr. Joseph Maingot, Q.C.,
Commissioner, responsible
for Criminal Procedure Project

As indicated, the Project's ultimate objective is the production of a new Code of Criminal Procedure. The process of codification has already begun. The initial emphasis in this codification exercise will be the development of coherent and integrated statutory provisions on police powers and the investigation of offences. As our work in other discrete areas of pretrial, trial and



Mr. Stanley A. Cohen,
Co-ordinator,
Criminal Procedure Project

appeal procedure progresses, the codification focus will shift so as to encompass those matters as well. Ultimately, in the spring of 1987, the Commission will present its draft of the Code of Criminal Procedure to its regular consultation groups and then will invite greater public involvement.

PROTECTION OF LIFE PROJECT

Law Reform and New Technologies

The Protection of Life Project is under the direction of Commissioner Louise Lemelin, Q.C. She is assisted by Dr. Edward W. Keyserlingk, Project Co-ordinator.

The Protection of Life Project was established in 1975. Its primary goal was and remains that of analyzing the strengths and weaknesses of existing health-related federal law, and of formulating reforms which will enable that body of law to better respond to both technological developments and evolving values. Initially the area of law of particular interest was that of criminal law.

However, most of the Project's studies have provided more fundamental and broader analyses and proposals than those limited to law alone or criminal law alone. Seeking to contribute to and influence attitudes, guidelines and policies is a necessary first step and sometimes even a preferred alternative to specific reforms of the law. That has been a major guiding principle of the working philosophy of the Project.

The initial focus was on some of the urgent issues within medical law — euthanasia, cessation of treatment, sterilization and the mentally handicapped, behaviour alteration, the legal definition of death, human experimentation, medical treatment and criminal law, informed consent, sanctity of life and quality of life. Commission papers have now been published on all those subjects except for that of experimentation, which should be completed by late fall of 1986.

In 1981, a new branch was added to the Project, that of environmental law. Here too, the focus has been restricted to federal law, and of particular interest has been the impact of pollution on human life and health. In this branch as well, our concern and challenge has been more adequately to protect human life and health in the face of technological and industrial

threats to human integrity. We hope to encourage a growing respect for our environment and the repudiation of those who seriously pollute it. From this branch have come a number of published papers released by the Commission, specifically: *Political Economy of Environmental Hazards* (1984),



Ms. Louise Lemelin, Q.C.,
Commissioner, responsible
for Protection of Life Project

Sentencing in Environmental Cases (1985), *Crimes against the Environment* (1986). Unpublished background papers have been completed on: "The Legislative Analysis of Selected Environmental Statutes"; "The Constitutional Perspective of Environmental Law"; "The Comparative Criminal Law Perspective of Environmental Law Policing Pollution"; and "Toward Consensus in Regulating Risks in Society." Four major papers in this branch are now under way and are briefly described below.

In view of the Project's mandate and the issues addressed, the Project has always been multidisciplinary with regard to staff and consultants and the associations and groups with which it is in contact. Included among the Project staff or consultants are not only lawyers, but also philosophers, biologists, nurses, physicians, sociologists, psychiatrists, psychologists and geneticists.

During the past year, three papers produced by this Project were published and released by the Commission: *Sentencing in Environmental Cases* (1985), *Crimes against the Environment* (1986) and *Behaviour Alteration and the Criminal Law* (1986). A number of other papers were close to completion and released by the end of the year under review.

A Working Paper on human experimentation which deals with

the role of law, especially criminal law, in the control of experimentation with human subjects is nearing completion.

A Working Paper on workplace pollution was completed and approved for publication and should be released shortly. It examines the adequacy of existing legal and extralegal controls and sanctions applying to pollution in the workplace. A major study on the subject of pesticides has also been completed and approved for publication and its release is expected soon.



Dr. Edward W. Keyserlingk,
Co-ordinator,
Protection of Life Project

A first draft of a study on the interaction between aboriginal rights and environmental law was completed and is in the hands of outside readers for comments. It explores the interaction between environmental law-making and law enforcement, on the one hand, and aboriginal and treaty rights, on the other hand. The paper identifies the competing interests involved, and proposes ways of respecting and reconciling those various rights and interests.

A draft of a study on biotechnology was completed and will shortly be in the hands of outside readers for their comments. Its release is expected in 1987.

Much effort has been devoted over the past year to a major two-year project entitled "The Status of the Foetus." The first year of the study is almost over, most of the time having been devoted to the subject of abortion. The Commission will be releasing a consultation document on that issue by the fall of 1986. The paper will identify the major abortion policy options, the implications of each, and will seek reactions of professionals, the public and interest groups to those

options. In the second year of this study, issues tackled will include new birth technologies, experimentation on the embryo and foetus, and genetic screening and diagnosis.

The foetal status working group is comprised of the Protection of Life Project staff and eight leading scholars of various disciplines, all of whom meet on a regular basis. The goal of this working group is to formulate a comprehensive legal policy on all activities which have a bearing on the foetus, one which will identify and clarify the various rights and interests of all parties involved. A Report on these issues is expected by the fall of 1987.

At the same time as work continues on the above issues, much thought is being given to a new programme for the Project. A comprehensive plan for that new programme has been drawn up and is now under consideration by the Commission. The thrust will remain that of responding to the challenges of law posed by technology. While technologies which impact upon human health will remain a major Project concern, the horizons may be expanded to include other technologies as well.

Our concern and challenge has been more adequately to protect human life and health in the face of technological and industrial threats to human integrity.

Given the complexities and special expertise required, more research will be undertaken in conjunction with other agencies and groups. Among the additional subjects under consideration are the following: genetic engineering; allocation of scarce health technologies; forced feeding in prisons and hospitals; prescription and non-prescription drugs; control of food industries; electronic technologies such as "informatics."

ADMINISTRATIVE LAW PROJECT

Bridging the Gap between Law and Administration

The Commissioner responsible for the Administrative Law Project is Mr. John P. Frecker. The Project Co-ordinator during most of the year under review was Mr. Mario Bouchard. He resigned from that position in March to carry out a study of the operations of the Immigration Appeal Board for the Commission. Mr. Patrick Robardet has been acting Co-ordinator since March 1st.



Mr. John Frecker,
Commissioner, responsible
for Administrative Law Project

The Commission's broad objectives in the field of administrative law are to promote a better understanding of the relationship between law and administration and to encourage the recognition of values such as fairness, efficiency and accountability in dealings between the federal Administration and individuals. Where appropriate, we recommend both legislative and operational reforms to promote these values. In its work, the Administrative Law Project is attempting to break down the barriers which have developed between the social and administrative sciences on the one hand, and the discipline of law on the other.

The Administrative Law Project is continuing to concentrate its energies in the three main areas noted in our *Fourteenth Annual Report 1984-85*, namely: (1) independent administrative agencies; (2) policy implementation and compliance; and (3) the legal status of the federal Administration.

However, over the past year, the primary emphasis has shifted from independent administrative agencies to the concerns which arise from our efforts to develop a rational and coherent framework for ascribing special legal status to the federal Administration.

In addition to these specific areas of inquiry, the Commission is seeking to clarify the nature and scope of administrative law in the Canadian context. Pursuant to the directive set forth in the *Law Reform Commission Act* for the Commission to reflect the distinctive concepts and institutions of the common law and civil law systems in Canada, we are endeavouring to articulate an approach to administrative law which integrates the best elements from the civilian *droit administratif* and the narrower common law concept of "administrative law." We hope to begin external consultation on this issue this fall.



Mr. Mario Bouchard,
Co-ordinator,
Administrative Law Project

In the year under review the Commission published Report 26, *Independent Administrative Agencies*. This Report provides recommendations for a framework of decision making by independent administrative agencies and suggests criteria by which the procedures and decision-making processes of these agencies might be evaluated. It is anticipated that many of the recommendations from Report 26 might be implemented by the agencies themselves without the need for parliamentary intervention.

Working Paper 40, *The Legal Status of the Federal Administration*, published in July 1985, sets the basis for a series of specific inquiries on topics such as Crown

liability, procedural privileges enjoyed by government agencies in the legal system, and application of statute law to the federal Administration. Work is already well under way on these subsidiary topics. A Working Paper on government immunity from compulsory execution of court orders was completed during the year under review and will be published in the fall of 1986. Work has also begun on a study of procedural privileges.

Our study of Crown liability has proven more complex than originally anticipated. Rather than publish a Working Paper purporting to make sweeping recommendations for reform in this area, the Commission wants to promote informed discussion regarding the criteria by which the liability regime can be evaluated. Only when the community sets out what it hopes to achieve by subjecting the government Administration to legal liability for its actions can proposals for specific reforms sensibly be made. State liability is, of necessity, different from personal liability because the imposition of legal liability on the State inevitably entails redistribution of public as opposed to private resources.

Extensive research on the Crown liability issue was carried out during the year under review. This will form the basis for a future Working Paper with specific reform proposals. However, before publishing such a paper the Commission proposes to produce an issues paper setting forth in some detail the criteria by which we believe a reformed Crown liability regime should be evaluated. Once we have had the benefit of public comment on our proposed evaluative criteria, we will proceed to publish a Working Paper on the topic.

A Working Paper on policy implementation, compliance and administrative law was completed and will be published in September. Following from this compliance paper, research was carried out during the year on the inspection activities of the Canadian Air Transportation Administration. This is part of a broader research effort being made in connection with the production of a Working Paper on the role of inspectorates in the federal administrative system.

Research on a proposed Working Paper on financial incentives was deferred from the 1985-86 fiscal year to the current fiscal year to allow the contract researcher to prepare a Study Paper on environmental protection from an administrative law perspective. This study, which is intended to complement the Commission's Working Paper 44, *Crimes against the Environment*, will be circulated for consultation and, pending response and Commission approval, may be published during the current year.

A Study Paper on administrative appeals was substantially completed during the year and is now being prepared for publication. This paper examines the diverse channels and procedures for appeal from administrative decisions which now exist in the federal arena and suggests ways in which the process might be rationalized and simplified. As a follow-up to this paper the Commission has undertaken a study of the Australian experience with a specialized Administrative Appeals Tribunal which has jurisdiction to hear most of the administrative appeals arising in that country. This Study Paper is likely to be completed late in the current year and will be ready for publication in 1987.

The Canadian Bar Association, at its 1985 Annual General Meeting, adopted a resolution calling for the appointment of a federal ombudsman. In anticipation of the need for a careful examination of the pros and cons of such a proposal, the Commission has contracted for the preparation of a Study Paper on the topic. This paper, which examines the history of past efforts to have a federal ombudsman appointed as well as the problems and the potential benefits associated with the creation of such an office was substantially completed during the past year and is expected to be submitted to consultation during the autumn of 1986.

The Commission has undertaken a study of the practices and procedures of the Immigration Appeal Board with a view to recommending concrete ways in which the Board might apply the recommendations stated in Report 26 to respond constructively to the pro-

cedural due process requirements set forth by the Supreme Court of Canada in *Singh v. Minister of Employment and Immigration*, [1985] 1 S.C.R. 177. A Study Paper suitable for consultation purposes is expected to be produced by the autumn of 1986. It is hoped that this case-study might also point the way to how other independent agencies might adjust their practices to improve the efficiency and fairness of their operations.

Researchers from the Administrative Law Project have endeavoured throughout the year to provide advice and assistance to various government departments and agencies with regard to adaptation and implementation of the Commission's recommendations for reforms in the administrative process.



Mr. Patrick Robardet,
Acting Co-ordinator,
Administrative Law Project

We have noted with particular interest the work of the Nielsen Task Force study group on the regulatory system and the work of a separate study group which examined a number of independent administrative agencies, many of which had been the subject of in-depth studies by this Commission over the past ten years. Steps have been taken to establish a liaison between the Administrative Law Project and the Secretariat for Regulatory Reform created by the Government in response to the Nielsen Task Force recommendations.

We have also moved to strengthen our liaison with the administrative law section of the Canadian Bar Association. It is anticipated that this will provide a valuable channel of communication between the Commission and members of the practising Bar and a forum where reform proposals

can be subjected to close scrutiny by experienced counsel in the field before being adopted by the Commission.

Beyond the pending publications noted above, a study is under way on the use of financial incentives as instruments for policy implementation, with particular regard to how incentive programmes should be subject to legal regulation. We anticipate that a first draft of our Working Paper on inspectorates should be circulated for external consultation within the current year.

We are planning to undertake a study of limitation periods in federal law which will endeavour to identify present rules governing limitation periods and suggest ways to rationalize and simplify the present regime.

Following from the general principles set forth in Working Paper 40, *The Legal Status of the Federal Administration*, specific studies will be carried out on the application of statutes to the federal Administration and on the legal status of Crown corporations.

Proposals for the future research programme of the Law Reform Commission of Canada, including the Administrative Law Project, will be submitted to Parliament this autumn.

PLAIN LANGUAGE PROJECT

Demystifying Government Forms

The Plain Language Project is a pilot project begun last year under the direction of Mr. Cy Whitel y, a part-time consultant. The Project deals with demystifying government forms.

Forms are the closest contact the Government has with the majority of the public. Our pilot study showed that the language used in many federal forms has justifiably been described by its critics as "gobbledegook." The Commission has been told that the obscurity of government forms

forces some Canadian government pensioners to consult lawyers to explain what should really be straightforward information.

From the beginning the Commission has been committed to making the law more easily understood by the public. Often our government forms, such as tax or pension forms, a necessary part of enforcing the laws, are unintelligible to the public who are nevertheless legally obliged to fill them out. Given the Commission's commitment to simplifying the language of the law, we have been urged to undertake a project to simplify government forms.

In our pilot study we asked thirty-nine federal departments and agencies to send samples of some of their most used forms for review. We received replies from thirty-five departments and agencies, who sent us approximately eleven hundred of their forms and leaflets (a small fraction of the total forms they issue). We examined these forms and leaflets, suggested changes and returned them to the originators. The initial reaction by most of the departments and agencies has been very favourable. One agency wrote to us saying: "The consensus of the meeting... was that the principle of the Plain Language Project was excellent and that there are many areas in which [we] can benefit from the observations you provided to us"

From a government department we received the following remarks: "We agree with your comments and greatly appreciate the time and consideration you have given to this project. [...] The information you have provided has shed light on the ... wide gap between the ordinary citizen's powers of understanding and the language in which he is addressed by his government, [...] A copy of this information has been given to each member of our Forms Management Staff and has already proven to be useful"

Along with making government forms more understandable to the public, Plain English Projects in Great Britain, Australia, New Zealand and several American states have proved that using plain language forms saves money. For example, the British Department of National Defence receives 750,000

travel claims each year. At a cost of \$22,000 (Canadian) a new travel claim using plain English was developed. The result was fifty per cent fewer errors in submissions, a ten per cent cut in the completion time and a fifteen per cent cut in the processing time. The total saving each year for the Department is 80,000 staff hours or \$735,000. A new plain English "Application for Legal Aid" form, which cost the British Department of Health and Social Security \$56,000 to develop and test, will save the Department over \$2.5 million each year.

Our pilot study showed that the language used in many federal forms has justifiably been described by its critics as "gobbledegook."

The Commission is very encouraged both by the responses we have received to our pilot study and the dramatic savings realized by Plain Language Projects in other countries. Therefore, in our new research programme, the Commission plans to create a more formal programme than the present one. This programme, in English and in French, would encourage federal form designers to create plain language forms and offer them experienced advice on the wording. The House of Commons Standing Committee on Finance and Economic Affairs recently recommended that the existing Canadian income tax return be simplified immediately and drastically, and that the extremely complicated *Income Tax Act* be rewritten in words easily understood by the average Canadian. The Committee, in our view, has manifested the spirit of reform that is beginning to surface in the public's demand for clearer and plainer language in government forms.



1. Deputy Chief Keith Farraway, Hamilton-Wentworth, Regional Police; 2. Harold Levy, Acting Secretary, L.R.C.; 3. Assistant Chief Judge Bert Oliver, Provincial Court of Alberta; 4. Mr. Justice Roger Kerans, Court of Appeal of Alberta; 5. Mr. Justice Paul Chrumka, Court of Queen's Bench of Alberta; 6. Joseph Maingot, Q.C., Commissioner, L.R.C.; 7. Vincent Del Buono, Dept. of Justice, Ottawa; 8. Deputy Chief Ed Hahn, Edmonton City Police Dept.; 9. Guy Lafrance, Montréal Urban Community; 10. Mme Justice Claire Barrette-Joncas, Superior Court of Québec; 11. Prof. Chris Levy, Univ. of Calgary; 12. Deputy Chief Tom Flanagan, Ottawa Police Force; 13. Mr. Justice Calvin Tallis, Court of Appeal of Saskatchewan; 14. Mr. Justice Alan Macfarlane, Court of Appeal of B.C.; 15. Prof. Winifred Holland, Univ. of Western Ontario; 16. John Frecker, Commissioner, L.R.C.; 17. Prof. Gerry Ferguson, Univ. of Victoria; 18. Prof. Anne Stalker, Univ. of Calgary; 19. Dean of Law, Margaret Hughes, Univ. of Calgary; 20. Stanley Cohen, Project Co-ordinator, L.R.C.; 21. Don Sorochoan, Barrister, Vancouver; 22. Mr. Justice Allen Linden, President, L.R.C.; 23. Mr. Justice J.C. Cavanagh, Court of Queen's Bench of Alberta; 24. Sue Haitas, Consultations Administrator, L.R.C.; 25. Prof. Peter Burns, Univ. of B.C.; 26. Jim Jordan, Research Officer, L.R.C.; 27. Patrick Fitzgerald, Research Officer, L.R.C.; 28. Lynn Douglas, Research Officer, L.R.C.; 29. François Lareau, Dept. of Justice, Ottawa; 30. Prof. Peter MacKinnon, Univ. of Saskatchewan; 31. Louise Lemelin, Q.C., Commissioner, L.R.C.; 32. Gilles Létourneau, Vice-President, L.R.C.; 33. Joyce Miller, Research Officer, L.R.C.; 34. Greg Brodsky, Q.C., Barrister, Winnipeg; 35. Serge Ménard, Barrister, Montréal; 36. Marc Rosenberg, Barrister, Toronto.

Consultations

In a democratic society the law depends upon a broad consensus to achieve an effective ordering of social relations. To reflect in our laws the aspirations of all Canadians, the Commission seeks to involve the public in our decision-making process through formal and informal consultations. We feel the more one can encourage people, whether professionals or members of the general public, to discuss ideas about law and principles of law, the greater awareness there will be of approaches to law and the greater opportunity for effective change in the way the law affects individuals on a day-to-day basis. To this end the Commission, over the years, has organized a number of public meetings to hear the public's views on issues such as physical discipline of children by parents and teachers, wife battering, vandalism, and violence in sports. We also consult on a regular basis with judges from all jurisdictions, members of police forces and the R.C.M.P., defence lawyers, Crown prosecutors, law professors and other specialized groups and individuals. We receive very valuable advice from these groups and individuals and consider their contribution to be an essential element in the development of our recommendations.

Regular Consultations

For the past six years the Commission, as part of the Accelerated Criminal Law Review, has participated in in-depth consultations on a regular basis with five key groups. The object of these consultations has been to carry on a dialogue with, and receive advice from, the various participants. The first group to be formed for this purpose was an advisory panel of distinguished judges from different courts across Canada. During the past year the members of this group were:

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 William A. Stevenson, Court of Appeal of Alberta, Edmonton
The Hon. Mr. Justice Calvin F. Tallis, Court of Appeal of Saskatchewan, Regina
The Hon. Mr. Justice Charles L. Dubin, Court of Appeal of Ontario, Toronto
The Hon. Mr. Justice G. Arthur Martin, Court of Appeal of Ontario, Toronto

The Hon. 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 Fred Kaufman, Court of Appeal of Québec, Montréal

The Hon. Mr. Justice Melvin Rothman, Court of Appeal of Québec, Montréal

The Hon. Madame Justice Claire Barrette-Joncas, Superior Court of 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 communities are usually added to the advisory group when it meets in various regions of the country. Those included in the past year were:

The Hon. Mr. Justice J.C. Cavanagh, Court of Queen's Bench of Alberta

The Hon. Mr. Justice Paul Chumka, Court of Queen's Bench of Alberta

His Honour H.G. Oliver, Assistant Chief Judge, Provincial Court of Alberta

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

Mr. D.J. Soroohan, 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, Bâtonnier du Québec

Mr. Michel Proulx, Montréal

Mr. Joel E. Pink, Q.C., Halifax

A third group that we meet with is police chiefs or their representatives, nominated by the Canadian Association of Chiefs of Police. This group gives us the important perspective of those who are engaged in law enforcement across Canada. This year the participants included:

Deputy Chief E. Hahn, City Police Department, Edmonton

Chief Robert Hamilton, Wentworth-Hamilton Regional Police, Hamilton

Deputy Chief Keith Faraway, 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

A fourth group is made up of legal scholars 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 Bruce Archibald, Dalhousie University

Professor Gisèle Côté-Harper, Laval University

Professor Gerry Ferguson, University of Victoria

Professor Martin Friedland, Q.C., University of Toronto

Professor Winifred Holland, University of Western Ontario

Professor Chris Levy, University of Calgary

Professor Peter MacKinnon, University of Saskatchewan

Professor Anne Stalker, University of Calgary

Professor Donald R. Stuart, Queen's University

Professor Louise Viau, Université de Montréal

Professor David Watt, Osgoode Hall Law School, Toronto

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 recorded in detail 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.

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. This past year the Commission participated in the following events.

A Seminar on the Future of Law Reform

On May 23, 1986 as part of our Fifteenth Anniversary celebration the Commission held an all-day Seminar on the Future of Law Reform in co-operation with the Law Reform Conference of Canada. Over one hundred people were invited including present and past Commissioners of the federal Commission, representatives of the provincial law reform agencies, present and past Ministers and Deputy Ministers of Justice, Members of Parliament, judges, lawyers, Crown prosecutors, police, government officials involved in law reform, legal academics, members of law societies and lay people interested in law reform.

In his speech, the keynote speaker, the Honourable John C. Crosbie, Minister of Justice and Attorney General of Canada, underscored the indispensability of law reform in our society. He stated: "The challenge of law reform is no less real today than it was fifteen years ago. I have recognized that reality as Minister of Justice. You must also continue to recognize it as law reformers. You must be philosophers, thinking deeply about the legal system. You must be innovators, setting new courses for our legal institutions. You must be communicators, consulting Canadians. You must be pragmatists, applying your philosophy to the real world. Finally, you must be educators and inspirational leaders, demonstrating to society that law reform is indispensable to the well-being of Canada."

Included in the programme were four panel discussions on the origins, the aims, the successes and the problems of the law reform movement, and future trends in law reform. Participants on the panels included the following respected law reformers: Ms. Louise Lemelin, Q.C., Mr. James Breithaupt, Q.C., Dr. H. Allan Leal, Q.C., Mr. William Hurlburt, Q.C., the Honourable Judge Derek Mendes da Costa, Professor Cliff Edwards and Mr. Arthur Close. Other panellists involved in the discussion on law reform included: The Honourable Mr. Justice Fred Kaufman; Her

Honour Judge Rosalie Abella; Mr. Blaine Thacker, M.P.; The Honourable Robert Kaplan, M.P.; Mr. Edward Greenspan, Q.C., a distinguished criminal lawyer; Ms. June Callwood, author and journalist; Mr. Bryan Williams, Q.C., President-Elect of the Canadian Bar Association; and Dean J.R.S. Prichard of the Faculty of Law, University of Toronto.

Although the panellists represented various different perspectives, law reformers, judges, politicians, lawyers, law professors and a journalist were all unanimous in their support of institutional law reform. Dean Prichard, at the end of the Seminar, summarized the general feeling among the panellists when he stated: "Understood broadly, law and law reform have never been more important, more prominent or more central to our public life [T]he need for reform is growing more intense and more urgent. For me, the proper conclusion to draw from the changing context of law reform is not the case for retreat from the commissions but rather a need for a shift in emphasis and priorities and strategies by the commissions. [...] Among all our needs in law reform, our greatest need in the process is for new knowledge, for new ideas, for new facts and for new understandings The commissions should search for joint ventures with the new centres and institutes as the most likely vehicles for maintaining the commissions at the frontiers of our knowledge about law. And it will be at these frontiers, I believe, that we will likely gain guidance and insight into the directions that the laws must change."

The Seminar was an excellent learning experience for the Commission, and we hope, for all who came to help us celebrate our fifteenth birthday. The transcript of the proceedings will be edited and made available shortly.

A New Research Programme

As noted earlier, the Commission this year has embarked on the development of a new research programme. To this end the Commission has engaged in an exten-

sive consultation process. We have advertised for suggestions in the *National*, *The Lawyers Weekly*, *Barreau '86*, and the newsletter *Law Reform* which goes to all the law reform agencies in Canada and abroad. We have invited suggestions from Members of Parliament, Senators, the Canadian Bar Association, the Canadian Association of Chiefs of Police, the R.C.M.P., the Departments of Justice and Solicitor General, university law deans, and members of the Canadian Association of Law Teachers. We have solicited advice from a broad spectrum of special interest groups, councils and organizations such as the Canadian Advisory Council on Social Development, the Canadian Manufacturers' Association, the Canadian Medical Association, the Canadian Federation of Agriculture, the Canadian Council on Children and Youth, the Canadian Criminal Justice Association, the Canadian Association of Elizabeth Fry Societies and the John Howard Society. We have also analysed recent legal writings and generated ideas from our legal researchers, Project Co-ordinators and Commissioners.

Over the next few months the Commission intends to study the suggestions and comments received on this new research programme and develop our final programme, which we plan to submit to the Minister of Justice and ultimately to Parliament next fall.

Special Consultation with the Media

A special consultation with distinguished representatives of the media, the Bar and the Bench to discuss the Commission's forthcoming Working Paper on public and media access to the criminal process was held in Toronto this year. Among those who attended the meeting were: June Callwood (*The Globe and Mail*); Jim Reed (CTV, "W5"); Ron Haggart (CBC, "The Fifth Estate"); Murdoch Davis (*The Ottawa Citizen*); Lynden MacIntyre (CBC, "The Journal"); Vicki Russell (CBC, "The National"); Bodine Williams ("CTV News"); Daniel Henry (CBC); Raymond Giroux (*Le Soleil*); Harold

Levy (*The Toronto Star*); Philip Anisman; Casey Hill; Clayton Ruby; Edward Greenspan, Q.C.; Michel Proulx; David Scott, Q.C.; David Lepofsky; Alan Borovoy (Canadian Civil Liberties Association); and Mr. Justice Charles Dubin of the Ontario Court of Appeal. A lively and fruitful discussion of the competing values in maximizing both freedom of the press and an accused's right to a fair trial took place. The meeting was extremely successful in focusing our attention on the fundamental philosophical issues at stake in this area of study. The Commission is hoping to hold consultations with media and legal experts on this subject again in the near future.

Other Consultations

As well as the above special formal consultations, members of the Commission have met with the Canadian Advisory Council on the Status of Women to discuss issues of mutual concern, including pornography and sexual assault. Many of us have participated in presenting papers at conferences such as the Canadian Institute for Advanced Legal Studies, the Eightieth Annual Conference of the Canadian Association of Chiefs of Police, the Canadian Institute for the Administration of Justice Seminar on Sentencing, and annual meetings such as the Annual Meeting of the Canadian Association of Law Teachers, the Law and Society Association, and the Mid-Winter Meeting of the Canadian Bar Association held in St. John's, Newfoundland.

Co-operation with Other Institutions

During the course of the last year, the Commission continued to co-operate with many other institutions involved in law reform activities. We met with committees of Parliament, including the Standing Committee on Justice and Legal Affairs and Public Accounts. Our co-operation with the two legal departments of Government — the Department of Justice and the Department of the Solicitor General — in the Accelerated Criminal Law Review continued apace. We remained in contact with the Canadian Judicial Council, the Canadian Judges Conference, the Canadian Institute for the Administration of Justice, the John Howard Society and the Canadian Criminal Justice Association.

We continued our close co-operation with other Canadian law reform agencies and similar bodies around the world. The Law Reform Conference of Canada, which is an association of Canadian law reform agencies, jointly sponsored our Seminar on the Future of Law Reform. We also attended their annual meeting in Winnipeg. We continued to publish the newsletter, *Law Reform*, three or four times a year. It contains news from the various law reform bodies in Canada and abroad. We assisted in the organization of a Law Reform Day at the Eighth Commonwealth Law Conference. We have hosted Ottawa visits by law reformers from the United Kingdom, Australia, New Zealand and several African and Asian countries.

As in other years, the Commission worked closely with the Canadian Bar Association. We reported, as is our custom, to both the mid-winter meeting and the annual meeting. As noted earlier in this Report, we jointly organized the Law Day dinner in Ottawa, at which the guest speaker was the Honourable John C. Crosbie. At this dinner, the first annual Scales of Justice Awards were presented to media figures who contributed to a better understanding of the

legal system of Canada. The Awards were presented by the Chief Justice of Canada, the Right Honourable Brian Dickson, on behalf of the Canadian Bar Association and the Law Reform Commission of Canada. We also participated in several Canadian Bar Association section meetings and remained in contact with the President, the executive and staff.

The Commission continued its close association with the Canadian Association of Law Teachers, helping to organize its annual meeting in Winnipeg, and consulting with the criminal law and administrative law teachers at that time. We maintain a summer research intern programme, as well as contact people in each Canadian law school. This year, the CALT-LRCC Award for an outstanding contribution to legal research and law reform went to Professor R. Dale Gibson of the University of Manitoba. His novel acceptance speech, which was in the form of a poem, follows:

BEASTS OF ACADEME

The scholarly life
is said to be pastoral:
strolling meadows & groves
thinking thoughts that are ast(o)ral.

But I'm here to assert
that description's a bungle;
the groves of academe
are really a jungle.

The creatures that lurk there —
the birds, beasts & fishes —
are wildly exotic
and frequently vicious.

Take, for example,
the scholarly boar
who impales the unwary
on fine points of yore.

Or the white-thatched committee-bird
whose malevolent best
keeps more gifted than he
from the tenure-track nest.

Now, some of these fauna
are strictly conceptual,
and these are the ones
I find most perplexual.

For instance, a beast
that I'd vote for extinction
is the slithering, slinking
common law distinction
which renders its victims
incurably lame:
for them — everything's different
and nothing's the same.

(Pour nos collègues québécois
qui ont un autre système,
rien n'est pas différent,
toutes choses sont les mêmes.)

But of all these fierce creatures
of fin, fur or feather
there's one more ferocious
than all put together.

More fearsome by far
than three hippopotami:
the venomous, full-fanged
fallacious dichotomy.

Dichotomies devastate
devour & destroy ya.
They're especially crippling,
it seems, for the lawyer,
Who's reduced, post attack,
to utterances feeble,
such as: "Ours is a system
of laws, not of people."

Now, a lawless society
would sure be Draconic
but discretionless law
is simply moronic.

Call it judgment or wisdom —
however you style it —
law sans humanity
is a place without pilot.

Another dichotomy
stalking the tomes
long ago ambushed
the great Justice Holmes.

An attack by the beast
turned Holmes demagogic,
saying: "Law's all experience
rather than logic."

When lawyers talk nonsense
plain folks don't trust us.
Logic, they know, is as crucial to law
as consistency to justice.

Experience is important
to keep touch with reality
but law without consistency's
a bonnet for brutality.

The great debate about the Charter's
becoming quite monotonous
since most combattants have
succumbed
to reasoning dichotomous.

Some keep declaiming
with dull repetition:
"The only safe guardian
of right's the politician."

The other persuasion
refuses to budge
from placing their sole
faith and trust in the judge.

There are sadly few scholars
aware the sound growth
of freedoms and rights
needs the efforts of both.

So my message, dear colleagues
in case you have missed it:
if tempted to dichotomize
do your best to resist it.

For the venomous, full-fanged
fallacious dichotomy
is more to be feared
than a frontal lobotomy.

Dale Gibson
1986

Operations

The operations of the Commission are the responsibility of the Secretary of the Commission, who is the ranking public servant of the Commission. He is assisted by the Director of Operations.

Meetings

Activities continued again this year at a brisk pace. The Commission held twenty-four formal meetings.

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; ..." (*Law Reform Commission Act*, s. 11(b)). The Commission is well "attuned" 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 federal law reform in these regions of the country.

Official Languages Policy

Once again the Commissioner of Official Languages, in his report for 1985, recognized the excellent record of the Commission in the application of the official languages policy. For the ninth 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.

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.

Following a reorganization of Commission premises this year, some additional space was acquired in an area adjacent to the library. As a result, we have been able to provide more convenient access to a major portion of the collection which was removed from storage and placed on open stacks.

Also this year, in keeping with its policy of gradual modernization, the library acquired the DOBIS Search Service, an on-line retrieval system offered by the National Library of Canada. This system provides access to over four million bibliographic records and will improve delivery of interlibrary loan services.

Personnel

As in the past, during the fiscal year under review, ending March 31, 1986, the personnel strength of the Commission varied according to seasonal and functional factors. The Commission utilized the services of seventy-four research consultants at some point during that period (see Appendix H). They were all retained on a contractual basis in accordance with subsection 7(2) of the *Law Reform Commission Act*. All of the support staff, with the occasional exception of temporary office assistants, are public servants. The Commission this year used forty-six of the forty-seven authorized person years.

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.

Information Services

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. We have discovered over eight hundred articles and editorials commenting on our publications during the year. The Commission, through its members, has always made itself available for interviews. This year more than 150 interviews were conducted and aired by such television programmes as "The National," "The Journal," "Téléjournal," "Le Point," "Droit de parole," "Webster Show," "Canada AM," "Morning Side," "Ce Soir," "W5," "Newsday," "The Fifth Estate"; and radio programmes such as "As It Happens," "L'informateur," "Présent national," "La filière," "Prisme," "L'événement," "Ontario Morning," "Speaking Out," "Edmonton Today," "CKO Radio News," "Metro Morning," "Vie privée," "Day Break," "Impact Almanach," "All in a Day," "Saskatchewan Today," "The House," "Insight," "Afternoon Show" and "D'un soleil à l'autre." We have also published several "Dialogue on Law Reform" pages in the *National*, the Canadian Bar Foundation newspaper, in addition to six special features about our new Reports and Working Papers, in *Barreau '86* of the Québec Bar and in *The Lawyers Weekly*. These same features were carried by many of the 735 English and 168 French community newspapers to whom we have provided camera-ready proofs.

Finances

For 1985-86, the Commission was allotted a sum of \$5,049,000. As a result of the federal government restraints programme, the Commission was successful in implementing cost-reducing measures which yielded a saving of approximately \$515,000. (Please refer to table on p. 27 for budget breakdown; figures are still subject to final audit.)

FISCAL YEAR 1985-86

	\$	\$
Operating Budget		5,049,000
Expenditures by Standard Object*		
01 Personnel Salaries & Wages	1,704,433	
(including employee benefits)		
02 Transportation & Communications	392,079	
03 Information	260,777	
04 Professional & Special Services	1,914,270	
05 Rentals	73,502	
06 Purchased Repair & Upkeep	21,597	
07 Materials & Supplies	124,244	
09 Furniture & Equipment	42,060	
12 Other Expenditures	188	
TOTAL	4,533,149	4,533,149
Amount unspent		<u>515,851</u>

* Figures supplied by Supply and Services Canada

General Administration

Included under this heading are: information and library services, records and material management, communications, text processing and secretarial services. During the year under review, considerable savings were realized with the reorganization of secretarial services, modifications to publications, distribution lists as well as distribution methods.

Auditor General

The Commission has acted on the recommendations made by the Auditor General in his March 31, 1985 report to the House of Commons. Several recommendations have since been implemented in the area of administration and financial controls, as well as project management and contract administration. The other recommendations will be acted on before the end of the fiscal year.

Visitors

During the year under review, we were pleased to receive the following visitors at the Commission:

Dr. Adamszke Andres, Criminal Law Teacher, Torun, Poland
 M. Paul Falcone, Conseil d'État, Paris, France
 The Hon. Justice C.H.E. Miller, E.B.S., Judge of Appeal and Chairman of the Kenya Law Reform Commission
 Mr. George K. Waruhiu, Kenya Law Reform Commission
 The Hon. Justice Mrs. E. Owor, Kenya High Court and Commissioner, Kenya Law Reform Commission
 Mr. J.A. Couldrey, Kenya Law Reform Commission
 Mr. E.O. Abang, Secretary, Kenya Law Reform Commission
 Mr. K. Hoshino, Professor of Anatomy and Chairman of the Committee on Medical Ethics, Kyoto University, Japan
 Dean Emanuel Peyreda, Faculty of Law, University of the Andes, Bogotá, Columbia
 Dean Ma Ke-Chang, Department of Law, Wuhan University, China
 Professor He Hua-hui, Department of Law, Wuhan University, China
 Sir Owen Woodhouse, President of the Court of Appeal of New Zealand

Mme Marie-José Mandine, Association SOS Aggression/Conflits, Paris, France

M. Maurice Mandine, Association SOS Aggression/Conflits, Paris, France
 Father Paul Béchar, Madonna House, Combermere, Ontario
 Professor Anne Bayefsky, President, Canadian Section, Association of Philosophy of Law, Ottawa

Ms. Claire Bernstein, Lawyer, Columnist and Consultant, Montréal
 Mr. Alan Harding, Home Office, London, England

Mr. Ken Keith, Chairman, Law Commission of New Zealand
 S.E. Benjamin Itoe, Minister of Justice, Cameroun

M. Louis Gabriel Djeudgang, Procureur général près la Cour Suprême, Cameroun

M. Momo Mpidjoue, Conseiller technique à la Présidence, Cameroun

M. Foredey Kosob, Professeur, Faculté de droit, Université de Yaoundé, Cameroun

S.E. Philemon Yang, Ambassadeur du Cameroun, Ottawa

Mr. Albert Eser, Director, Max Planck Institute, Friburg, Germany

Mr. J. Michael Foers, Inland Revenue, London, England

Professeur Catherine Labrusse-Rio, Université de Paris, France

Dr. Claire Ambroselli, Institut national de la santé et de la recherche médicale, Paris, France

M. Christian Byr, Magistrat, Ministère de la Justice, Paris, France

APPENDIX A

REPORTS TO PARLIAMENT

The Reports along with the response of Parliament and other institutions to our recommendations are listed below.

1. *Evidence* (1975)
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. 1980-81-82-83, c. 111 (Code ss. 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 ss. 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).
2. *Guidelines — Dispositions and Sentences in the Criminal Process* (1976)
Young Offenders Act, S.C. 1980-81-82-83, c. 110 (Code ss. 26, 51).
Publication of a policy paper by the Government of Canada, *Sentencing* (February 1984).
3. *Our Criminal Law* (1976)
Publication of a policy paper by the Government of Canada, *The Criminal Law in Canadian Society* (August 1982).
Criminal Law Amendment Act, 1985, S.C. 1985, c. 19 (Repeal of Code ss. 423(2) (Conspiracy) and 253 (Venereal Diseases)).
Report of the Special Committee on Pornography and Prostitution (Paul Fraser, Chairman), *Pornography and Prostitution* (1985).
4. *Expropriation* (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* (1976)
Proposed Amendments to the Criminal Code (Mental Disorder), The Minister of Justice, June 23, 1986.
6. *Family Law* (1976)
Publication by the Department of Justice of a booklet entitled *Divorce Law in Canada: Proposals for Change* (1984).
An Act to Amend the Divorce Act, S.C. 1986, c. 3.
Divorce Act, 1985, S.C. 1986, c. 4.
7. *Sunday Observance* (1976)
R. v. Big M Drug Mart, [1985] 1 S.C.R. 295.
8. *The Exigibility to Attachment of Remuneration Payable by the Crown in Right of Canada* (1977)
Garnishment, Attachment and Pension Diversion Act, S.C. 1980-81-82-83, c. 100, s. 5.

9. *Criminal Procedure — Part I: Miscellaneous Amendments* (1978)
Criminal Law Amendment Act, 1985, S.C. 1985, c. 19. (Code ss. 464, 485(2), 485(3), 486, 491, 495, 553.1 and 574(5)).
10. *Sexual Offences* (1978)
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* (1979)
Bill C-19, "An Act to amend the Criminal Code ..." first reading February 7, 1984, The Minister of Justice.
12. *Theft and Fraud* (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* (1980)
Under consideration by the Department of Justice.
14. *Judicial Review and the Federal Court* (1980)
Minister of Justice's Draft proposal to amend the Federal Court Act (August 29, 1983).
15. *Criteria for the Determination of Death* (1981)
Under consideration by the Department of Justice.
16. *The Jury* (1982)
Criminal Law Amendment Act, 1985, S.C. 1985, c. 19. (Code ss. 554(1), 560(1)).
17. *Contempt of Court* (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* (1982)
Under consideration by the Department of Justice.
19. *Writs of Assistance and Telewarrants* (1983)
Criminal Law Amendment Act, 1985, S.C. 1985, c. 19.
20. *Euthanasia, Aiding Suicide, and Cessation of Treatment* (1983)
Under consideration by the Department of Justice.
21. *Investigative Tests: Alcohol, Drugs and Driving Offences* (1983)
Criminal Law Amendment Act, 1985, S.C. 1985, c. 19.
22. *Disclosure by the Prosecution* (1984)
Under consideration by the Department of Justice.
23. *Questioning Suspects* (1984)
Under consideration by the Department of Justice.
24. *Search and Seizure* (1985)
Criminal Law Amendment Act, 1985, S.C. 1985, c. 19.

25. *Obtaining Forensic Evidence: Investigative Procedures in Respect of the Person* (1985)
Under consideration by the Department of Justice.
26. *Independent Administrative Agencies* (1985)
Under consideration by the Department of Justice.
27. *Disposition of Seized Property* (1986)
Criminal Law Amendment Act, 1985, S.C. 1985, c. 19.

APPENDIX B

WORKING PAPERS

1. *The Family Court* (1974). 55 p.
2. *The Meaning of Guilt: Strict Liability* (1974). 38 p.
3. *The Principles of Sentencing and Dispositions* (1974). 35 p.
4. *Discovery* (1974). 44 p.
5. *Restitution and Compensation* (1974). 25 p. (Bound with Working Paper 6.)
6. *Fines* (1974). 30 p. (Bound with Working Paper 5.)
7. *Diversion* (1975). 25 p.
8. *Family Property* (1975). 45 p.
9. *Expropriation* (1975). 106 p.
10. *Limits of Criminal Law: Obscenity: A Test Case* (1975). 49 p.
11. *Imprisonment and Release* (1975). 46 p.
12. *Maintenance on Divorce* (1975). 40 p.
13. *Divorce* (1975). 70 p.
14. *The Criminal Process and Mental Disorder* (1975). 61 p.
15. *Criminal Procedure: Control of the Process* (1975). 60 p.
16. *Criminal Responsibility for Group Action* (1976). 68 p.
17. *Commissions of Inquiry: A New Act* (1977). 91 p.
18. *Federal Court: Judicial Review* (1977). 54 p.
19. *Theft and Fraud: Offences* (1977). 123 p.
20. *Contempt of Court: Offences against the Administration of Justice* (1977). 69 p.
21. *Payment by Credit Transfer* (1978). 126 p.
22. *Sexual Offences* (1978). 66 p.
23. *Criteria for the Determination of Death* (1979). 77 p.
24. *Sterilization: Implications for Mentally Retarded and Mentally Ill Persons* (1979). 157 p.
25. *Independent Administrative Agencies* (1980). 212 p.
26. *Medical Treatment and Criminal Law* (1980). 136 p.
27. *The Jury in Criminal Trials* (1980). 164 p.
28. *Euthanasia, Aiding Suicide and Cessation of Treatment* (1982). 79 p.
29. *The General Part: Liability and Defences* (1982). 204 p.
30. *Police Powers: Search and Seizure in Criminal Law Enforcement* (1983). 356 p.
31. *Damage to Property: Vandalism* (1984). 65 p.
32. *Questioning Suspects* (1984). 104 p.

33. *Homicide* (1984). 117 p.
34. *Investigative Tests* (1984). 166 p.
35. *Defamatory Libel* (1984). 99 p.
36. *Damage to Property: Arson* (1984). 44 p.
37. *Extraterritorial Jurisdiction* (1984). 210 p.
38. *Assault* (1984). 59 p.
39. *Post-Seizure Procedures* (1985). 77 p.
40. *Legal Status of the Federal Administration* (1985). 106 p.
41. *Arrest* (1985). 143 p.
42. *Bigamy* (1985). 32 p.
43. *Behaviour Alteration and the Criminal Law* (1985). 48 p.
44. *Crimes against the Environment* (1985). 75 p.
45. *Secondary Liability* (1985). 53 p.
46. *Omissions, Negligence and Endangering* (1985). 42 p.
47. *Electronic Surveillance* (1986). 109 p.
48. *Criminal Intrusion* (1986). 25 p.
49. *Crimes against the State* (1986). 72 p.

APPENDIX C

PUBLISHED STUDIES, STUDY PAPERS, BACKGROUND PAPERS AND CONFERENCE PAPERS

ADMINISTRATIVE LAW

1. Anisman, Philip. *A Catalogue of Discretionary Powers in the Revised Statutes of Canada 1970* (1975). 1025 p.
2. *The Immigration Appeal Board* (1976). 88 p.
3. Carrière, Pierre and Silverstone, Sam. *The Parole Process: A Study of the National Parole Board* (1977). 157 p.
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APPENDIX D

UNPUBLISHED PAPERS PREPARED FOR THE LAW REFORM COMMISSION

The following papers supplement the complete list of unpublished papers contained in the *Fourteenth Annual Report 1984-1985*. Unpublished papers are available for consultation in the Commission's library and can be purchased on microfiche from private companies. Please contact the Commission for additional information.

Bayefsky, Anne F. "Public International Law in the Canadian Legal Context: In Particular, the Context of the Canadian Charter of Rights and Freedoms and Legal Rights" (1985). 64 p.

Appendix A. The Major International Conventions and Other International Documents and Charter Sections 7-14 (Section by Section).*

Appendix B. The Major International Human Rights Conventions (in Whole) Which Contain Provisions Related to Charter Sections 7-14.*

Appendix C. The Major International Human Rights Documents Other than Conventions (in Whole) which Contain Provisions Related to Charter Sections 7-14.*

Appendix D. Other Conventions and International Documents Related to Charter Sections 7-14. 1. Arrest, Detention and Imprisonment (4 vols.). 2. Treatment of Prisoners (2 vols.). 3. Detention and Mental Ill-Health. 4. Law Enforcement. 5. Capital Punishment. 6. Nazi War Criminals (3 vols.). 7. Hate Literature. 8. Women. 9. The Independence of the Judiciary. 10. Terrorism. 11. Equality in the Administration of Justice. 12. I) Habeas Corpus, II) Juvenile Justice, III) Personal Data Protection, IV) Access to Justice, V) Internationally Protected Persons, VI) Child Abduction, VII) Torture, Inhuman and Degrading Treatment, VIII) Medical Ethics. 13. Reports of the Committee on Crime Prevention and Control.*

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* Not available on microfiche.

APPENDIX E

BOOKS, ARTICLES AND PAPERS PUBLISHED INDEPENDENTLY WITH LAW REFORM COMMISSION INVOLVEMENT

The following is a supplement to the list of 114 items that appeared in Appendix E of the *Fourteenth Annual Report 1984-1985*.

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APPENDIX F

SOME ARTICLES ABOUT THE LAW REFORM COMMISSION AND ITS WORK

IN GENERAL

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APPENDIX G

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Evidence: 4. Character (1972)

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Evidence: 5. Compellability of the Accused and the Admissibility of His Statements (1973)

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

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R. v. Barnes (1979), 74 A.P.R. 277; 49 C.C.C. (2d) 334; 12 C.R. (3d) 180 (Nfld. Dist. Ct.).
R. v. Brass (1981), 15 Sask. R. 214; 64 C.C.C. (2d) 206 (Q.B.).
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Restitution and Compensation (Working Paper 5, 1974)

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APPENDIX H

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Substantive Criminal Law Project

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Principal Consultant: Professor Patrick J. Fitzgerald, M.A. (Oxon); Barrister-at-Law (Lincoln's Inn); Professor, Carleton University; Member, Ontario Bar.

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CYR, Lita, LL.B. (Ottawa); Member, Ontario Bar. *Codification; Omissions, Negligence*

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TREMBLAY, Marie, LL.B. (Laval); Member, Québec Bar. *Firearm Offences; Codification*

TURP, Philippe, LL.B. (Sherbrooke); Member, Québec Bar. *Hate Propaganda*

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BAYESKY, Anne, B.A. (Hon.) (Toronto), M.A. (Toronto), LL.B. (Toronto), M.Litt. (Oxford); Member, Ontario Bar. *Introduction of Public International Law into the Canadian Legal Context*

BURNS, Peter, LL.B. (Otago), LL.M. (Otago); Member, New Zealand Bar; Professor and Dean, University of British Columbia. *Private Prosecutions*

CHARETTE, Yves, LL.B. (Montréal). *Police Powers and Procedures*

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COUGHLAN, Stephen, M.A. (Toronto), Ph.D. (Toronto), LL.B. (Dalhousie). *Arrest*

ERASMUS, Janet E., B.A. (Victoria). *Pornography*

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GRENIER, Bernard, His Honour, B.A. (Collège Jean de Brébeuf), LL.L. (Montréal); Member, Québec Bar. *Jurisdiction of Courts*

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JORDAN, James C., B.A. (Winnipeg), LL.B. (Manitoba), LL.M. (Alberta); Member, Manitoba and Alberta Bars. *Disposition of Seized Property; Pleas and Verdicts*

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MANNING, Morris, Q.C., LL.B. (Toronto); Member, Ontario Bar. *Jurisdiction of Court*

O'REILLY, James W., B.A. (Hons.) (Western), LL.B. (Osgoode); Member, Ontario Bar. *Media Coverage of Judicial Proceedings*

OSCAPELLA, Eugene L., B.A. (Toronto); LL.B. (Ottawa), LL.M. (London, U.K.); Member, Ontario Bar. *Classification of Offences; Trial within a Reasonable Time*

PREFONTAINE, Stéphane, LL.M. (Columbia), LL.L. (Montréal). *Costs*

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ROSENBERG, Marc, LL.B. (Osgoode); Member, Ontario Bar. *Electronic Surveillance; Powers of the Attorney General*

SHELDRIK, Byron M., B.A. (Hons.) (Carleton). *Disposal of Dead Bodies; Presumptions in the Criminal Law*

STOLTZ, Douglas, Director, Legislative Drafting Programme, University of Ottawa. *Disposition of Seized Property*

TEPLITSKY, Martin, Q.C., LL.B. (Toronto); Member, Ontario Bar. *Pleadings in Criminal Cases*

TURP, Philippe, LL.B. (Sherbrooke); Member, Québec Bar. *Appeals*

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FREEDMAN, Benjamin, B.A. (Brooklyn College City, University of New York); M.A. (Brooklyn College City, University of New York); Ph.D. (Brooklyn College City, University of New York). *Towards Consensus in Regulating Risks in Society; Legal Status of the Foetus*

GILHOOLY, Joseph R., B.A. (Carleton), M.A. (Carleton). *Biotechnology, New Genetic Techniques; Legal Status of the Foetus*

GILLETT, Peter G., M.D., C.M. (McGill), A.B. (History) (Rochester); F.R.C.S.(C.), F.R.C.O.G.(C.) (Montreal General Hospital). *Legal Status of the Foetus*

KNOPPERS, Bartha, B.A. (McMaster), M.A. (Alberta), LL.B. (McGill), B.C.L. (McGill), D.E.A. (Paris), D.L.S. (Trinity, Cambridge). *Legal Status of the Foetus*

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LIPPMAN, Abby, B.A. (Cornell), Ph.D. (McGill), F.C.C.M.C. *Legal Status of the Foetus*

MORSE, Bradford, B.A. (Rutgers), LL.B. (U.B.C.), LL.M. (Osgoode). *Aboriginal and Treaty Rights in Canada*

NAHWEGAHBOW, David, B.A. (Ottawa), LL.B. (Ottawa). *Aboriginal and Treaty Rights in Canada*

PICARD, Ellen, B.Ed. (Alberta), LL.B. (Alberta), LL.M. (Alberta). *Legal Status of the Foetus*

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SMITH, R. David, B.A. (Toronto), M.A. (Toronto), Graduate Diploma Social Sciences (Stockholm), Ph.D. (Toronto). *Legal Status of the Foetus*

SCHRECKER, Theodore F., B.A. (Trent), M.A. (York). *Political Economy of Environmental Hazards; Pollution in the Workplace*

TREMBLAY, Marie, LL.B. (Laval); Member, Québec Bar. *Pollution in the Workplace*

Administrative Law Project

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ROWAT, Donald, B.A. (Toronto), M.A. (Columbia), Ph.D. (Columbia). *Ombudsman*

WEBB, Kernaghan R., LL.B. (Calgary). *Crown Corporations and Policy Implementation; Grants; Institutions; Environmental Institutions; Financial Incentives*

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APPENDIX I

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Un crime nouveau

Crimes contre l'environnement: l'expression est forte, mais elle ne doit pas être prise au pied de la lettre. La Commission de l'environnement du Canada, qui a causé une préoccupation dans les milieux de l'environnement, a déclaré que les crimes contre l'environnement ne sont pas nouveaux. Ils ont toujours existé, mais ils ont été considérés comme des crimes ordinaires par le Code criminel. Ce qui a changé, c'est la façon dont ils sont traités. Il faut les traiter comme des crimes graves.

Easy wiretapping hurts our freedom

The thing that is most disturbing about the new law is that it makes it so easy to wiretap that it is almost impossible to prevent. This is a serious threat to our freedom of expression and our right to privacy.



Sensible suggestions

The recent recommendation by the Law Reform Commission of Canada that specific sections of the criminal code dealing with wiretapping be implemented, is something we believe is long overdue. For too long regulatory officials have been making suggestions.

New offence recommended

OTTAWA (AP) — A new offence dealing with the environment should be added to the Criminal Code, says the Law Reform Commission. The commission suggests that a new offence be added to the Criminal Code dealing with the environment. This offence would be aimed at those who cause or risk death or serious injury to the public by neglecting their duties.

Tighten rules on bugging

The Law Reform Commission of Canada has proposed a valuable service to alert citizens to the alarming frequency of wiretapping in this country. The commission has recommended that the rules governing wiretapping be tightened.

Les lois doivent frapper autant les grands que les petits pollueurs

(Le Devoir) — Pour l'équilibre des lois, les lois doivent frapper autant les grands que les petits pollueurs. C'est une question de justice. Les lois doivent être appliquées de la même manière à tous.

Journal de Montréal

Law reformers taking aim at environmental polluters

By Peter Calamai
St. John's News
Canadians want "eco-criminals" dragged from their offices into jail? The Law Reform Commission thinks so.

The Globe and Mail

CANADA'S NATIONAL NEWSPAPER
The Law Reform Commission has recommended that the Criminal Code be amended to include provisions dealing with environmental pollution. This is a significant step towards holding polluters accountable.

I spy

FEDERAL LAW REFORM Commission report which expresses alarm in the number of wiretaps used in investigations. According to the report, wiretapping has increased by 20 times in the last few years.

Who's on the line

The Law Reform Commission of Canada has had only minimal impact to date on changes to federal statutes, but even if its latest report falls on stony ground, its findings will shock many Canadians.

Muddy thinking

A certain amount of muddy thinking seems to have gone into the formation of the Law Reform Commission. The commission's mandate is to reform the law, but its approach has been unclear.

Our wiretap laws not fully understood

The Law Reform Commission of Canada has only had minimal impact to date on changes to federal statutes, but even if its latest report falls on stony ground, its findings will shock many Canadians.

Plan ignores city 'garbage,' police charge

By Bob Cox
The Law Reform Commission of Canada's proposal to increase restrictions on ways police gather evidence is another sign it is not of touch with reality, Winnipeg police say. They argue that the commission's plan ignores the needs of law enforcement.

Feds urged to change B&E laws

The Law Reform Commission of Canada has recommended that the Criminal Code be amended to include provisions dealing with environmental pollution. This is a significant step towards holding polluters accountable.

Commission wants law change

The Law Reform Commission of Canada has recommended that the Criminal Code be amended to include provisions dealing with environmental pollution. This is a significant step towards holding polluters accountable.

Commission wants law change

The Law Reform Commission of Canada has recommended that the Criminal Code be amended to include provisions dealing with environmental pollution. This is a significant step towards holding polluters accountable.

Pincer les vrais pollueurs

Il est de notoriété publique que les vrais pollueurs ne sont pas ceux qui sont accusés, mais ceux qui ne le sont pas. La Commission veut cibler ces derniers.

Who says polygamy is OK?

There is a potential for abuse here. The commission is considering whether to allow polygamy. This is a controversial issue that has divided the public.

Evidence guidelines

Police should be prohibited from administering drugs to suspects in order to obtain evidence. This is a guideline proposed by the Law Reform Commission.

Projects & Plans

Reforms in environmental sentencing. The Law Reform Commission has proposed changes to the way environmental offenses are punished.

Commission proposes stronger pollution laws

A FEDERAL GOVERNMENT advisory board, the Law Reform Commission, has proposed that a specific Criminal Code penalty should be established for environmental offenses.

Canada's law enforcement community is bug-happy

Canada's law enforcement community is bug-happy. Given loose rules set by Parliament and a police force that has acquiesced in the sophisticated electronic techniques, agents have been remarkably effective in their way.

Wants "Negligence"

The law has traditionally been reluctant to hold individuals liable for negligence. The Law Reform Commission wants to change this.

Bug-happy

The Law Reform Commission of Canada has recommended that the Criminal Code be amended to include provisions dealing with environmental pollution. This is a significant step towards holding polluters accountable.

Protect from mi legal gr

By David Vienneau Toronto
OTTAWA (AP) — The Law Reform Commission of Canada has recommended that the Criminal Code be amended to include provisions dealing with environmental pollution. This is a significant step towards holding polluters accountable.

LE SOLEIL

Il est de notoriété publique que les vrais pollueurs ne sont pas ceux qui sont accusés, mais ceux qui ne le sont pas. La Commission veut cibler ces derniers.

X-rays, surgery cited

think police are practicing "surgery" on the law. This is a criticism of the Law Reform Commission's proposals.

Projects & Plans

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The Law Reform Commission of Canada has recommended that the Criminal Code be amended to include provisions dealing with environmental pollution. This is a significant step towards holding polluters accountable.

The Hamilton Spectator

human being whose life is in peril has a right to assistance and that when someone's life is in peril, everyone must come to his aid unless it is dangerous to himself or another. This is a principle that the Law Reform Commission supports.

