



Law Reform Commission  
of Canada

Commission de réforme du droit  
du Canada

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# *19th Annual Report*

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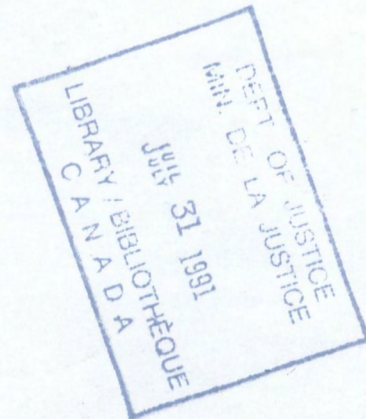
Law Reform Commission of  
Canada.

Annual report



Law  
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NINETEENTH  
ANNUAL  
REPORT



Ottawa

The Honourable A. Kim Campbell, P.C., M.P.  
Minister of Justice  
and Attorney General of Canada  
Ottawa, Canada

Dear Mr. Campbell:

In accordance with section 17 of the Law Reform  
Commission Act, I submit herewith the Nineteenth  
Annual Report of the Law Reform Commission of  
Canada for the period June 1, 1989 to May 31, 1990.

Yours respectfully,

  
Allan Rock, Chairman

Law Reform Commission of Canada  
138 Avenue St. Jean  
Ottawa, Canada  
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President  
Law Reform Commission of Canada

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A handwritten signature in black ink, appearing to read 'Allen M. Linden', with a long horizontal flourish extending to the right.

Allen M. Linden  
President  
Law Reform Commission of Canada

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## MAKING LAW REFORM HAPPEN

The task of a law reform commission is to make law reform happen. The Law Reform Commission of Canada has a broad mandate. According to the *Law Reform Commission Act* (1971), the Commission was created as a permanent and independent body 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. Some think this means that the *only* task of a commission is to get legislation enacted. This is not so. Although it is certainly an important goal, it is merely one of several facets of the law reform process. Enacting legislation in our modern society is slow and cumbersome. There are many interests competing for change, improvements and the enactment of new laws. At times, despite its merits, a new law may not be adopted because it does not have as high a priority as other items on the legislative agenda.

Parliament has only so much time to spend on legislative initiatives. Usually it gives its highest priority to controversial issues that the public and the media complain the loudest about, such as capital punishment, prostitution, pornography and — most recently — abortion. While these issues are no doubt important, there are many other laws which are in need of reform but remain low on the legislative priority list because they are less visible. It is unfair to measure the success of a law reform commission using the yardstick of enacted legislation alone.

The Law Reform Commission of Canada has respectable lists of both non-legislative and legislative achievements. The purpose of what follows is to outline those achievements.

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## Non-legislative Achievements

### Legal Research

The Law Reform Commission of Canada has contributed much in a non-legislative way to improve and modernize our laws. Research is the precursor of law reform. At the heart of a law reform commission is the research it conducts that leads up to final recommendations. The publication and dissemination of this legal research act as a catalyst, engaging Canadian legal scholars in further research and writing on matters in need of reform. It also subjects the commission's work to an objective critical analysis. Many articles have been written about our Commission, its history, function, philosophy and recommendations. 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 our Commission's research is universally recognized. Its reputation for excellence is firmly established both in Canada and abroad. In 1984, the Law Reform Commission of Canada received the Archambault-Fauteux Award for its contribution to legal research. Requests for our publications come from all over the world and some of our work has been translated. Legal scholars from many countries have relied on our work, praised it and criticized it in their legal journals. In this way the Commission has acted as an important means of disseminating Canadian legal scholarship in other countries.

In addition to stimulating scholarly research, the Commission provides excellent training for young legal scholars who have just completed their formal schooling. In return for the experience of working at the Law Reform Commission of Canada, these young men and women provide us with their energy, enthusiasm and solid legal scholarship. After leaving us, many former Commission researchers have continued to engage in scholarship. Some have become law professors or government policy-makers while others have become 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.



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## Educating the Public

A prominent lawyer, Edward Greenspan, once said that a law reform commission must be a law "inform" commission. There is no doubt that part of our effort to achieve better laws is carrying on a dialogue with the public. We need to find out what people feel about our present laws, how they think the laws can be improved and whether the Commission's recommendations meet some of their concerns.

In its endeavour to make recommendations that reflect the needs and concerns of Canadians, the Law Reform Commission of Canada distributes its documents free of charge and invites members of the public to submit their views in writing on

the basis of tentative recommendations outlined in Working Papers. Their responses are recorded and their suggestions considered in the formulation of our final recommendations to Parliament.

This year, the Commission received 5,250 requests for our publications and distributed over 31,000 free copies of our documents, bringing the total number of copies distributed to date to over 1.6 million.

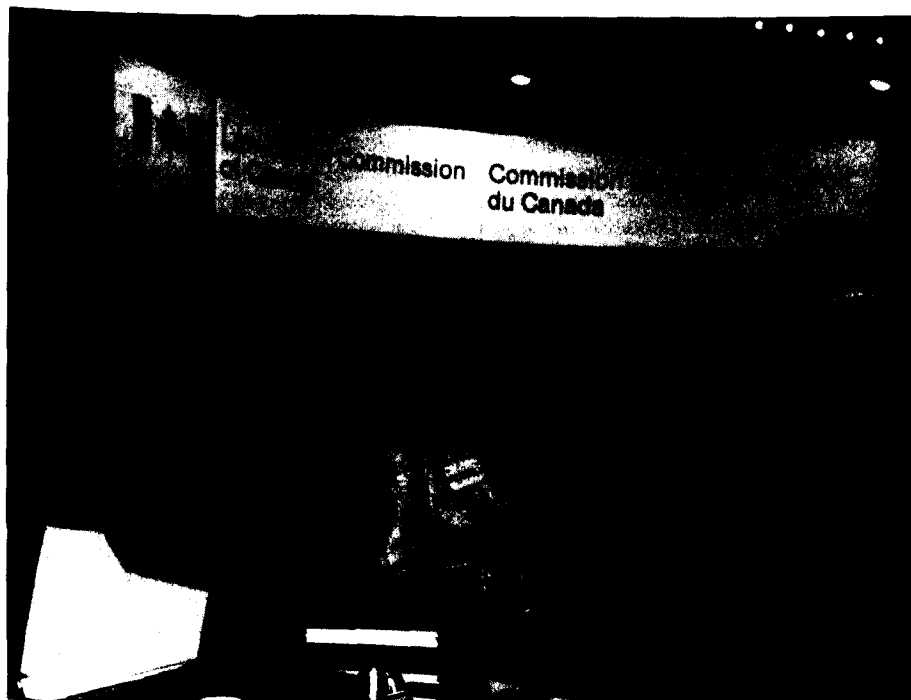
The Commission has also sought public opinion by holding informal public meetings. During the past several years, such meetings were held in different cities in most Canadian provinces from St. John's, Newfoundland, to Victoria, British Columbia. The topics discussed have included corporal punishment, sports

violence, wife battering, endangering, environmental pollution and criminal intoxication.

In addition, the Commission has set up information kiosks at various conferences, making our documents available to attending delegates. During the course of this year, the Commission was present at the Canadian Library Association's Forty-fourth Annual Conference in Edmonton; the 1989 Criminal Justice Congress in Halifax; the *Onzième Salon du livre de l'Outaouais* in Hull and the Sixth Annual Conference of the Association of Paroling Authorities International in Toronto.

Last year, a booklet entitled *A New Criminal Code for Canada?*, a questionnaire and a videotape were offered to high schools and universities across Canada. This material was designed to educate, to encourage discussion and to elicit the views of Canada's youth. The program was such a success that we offered it again this year. In addition, at the request of many teachers, we also prepared a series of information sheets on various law reform topics which could be reproduced in the schools to facilitate class discussion. The information sheets, together with order forms for the booklet, questionnaire and videotape, were mailed to 3,700 schools throughout Canada. We received orders from 559 schools for 26,781 booklets, 23,703 questionnaires and 553 videotapes. This year, 2,992 questionnaires were returned.

Finally, members of the Commission and the research staff attend as many speaking engagements as possible to inform university students and professional associations about our work.



The Commission's information kiosk at the annual meeting of the Canadian Library Association.

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## Judicial Decisions

Of equal importance is the Commission's contribution to the development of Canadian jurisprudence. Increasingly, there are court decisions that rely on our work. Our publications provide a body of independent and scholarly analysis that can be easily incorporated into reasons for judgment. In recent times, with the enactment of the *Canadian Charter of Rights and Freedoms*, the Commission's recommendations, which are informed by adherence to the principles contained in the *Charter*, have helped the judiciary in resolving certain legal issues arising in litigation. Our papers have been cited in 211 reported decisions, 39 of which were decisions of the Supreme Court of Canada. For example, in 1984, in our Working Paper 33 on *Homicide*, the Commission called for the abolition of constructive murder. Parliament did not respond. However, in 1987, in *R. v. Vailancourt*, the Supreme Court held that the constructive murder provisions of paragraph 213(d) of the *Criminal Code* infringed section 7 of the *Charter* on the ground that the nature of the crime and the stigma attached to a conviction required some degree of *mens rea*. In giving his reasons for judgment, Mr. Justice Lamer pointed out that the Commission had not only criticized section 213 in Working Paper 33, *Homicide*, but in Report 30, *Recodifying Criminal Law*, it had also excluded the notion of constructive murder from its draft *Criminal Code*.

This year, we have located nine Supreme Court cases that referred to our work, including the much-publicized abortion case, *Tremblay v. Daigle*, [1989] 2 S.C.R. 530. In that case, the Court set aside an injunction upheld by the Quebec Court of Appeal in *Daigle v. Tremblay*, [1989] R.J.Q. 1735. In arriving at their decisions, both Courts reviewed the legal status of the foetus in Anglo-Canadian law as outlined by the Commission in its Working Paper 58, *Crimes against the Foetus* (1989).

In an equally well-publicized case concerning public inquiries, *Starr v. Houlden*, [1990] 1 S.C.R. 1366, our work in that area, namely, Working Paper 17, *Commissions of Inquiry: A New Act* (1977), and Report 13, *Advisory and Investigatory Commissions* (1979), was used by both Mr. Justice Lamer and Madam Justice L'Heureux-Dubé in their majority and dissenting reasons respectively.

In *Thomson Newspapers Ltd. v. Canada* (*Director of Investigation and Research, Restrictive Trade Practices Commission*), [1990] 1 S.C.R. 425, Mr. Justice La Forest used both Report 3, *Our Criminal Law* (1976), and Working Paper 16, *Criminal Responsibility for Group Action* (1976), for his analysis of the distinction between "real crimes" and "regulatory" crimes. In the same case, Madam Justice L'Heureux-Dubé quoted Working Paper 17, *Commissions of Inquiry: A New Act* (1977), on the issue of the threshold of protection of witnesses against self-incrimination.

In *Syndicat des employés de production du Québec et de l'Acadie v. Canada* (*Canadian Human Rights Commission*), [1989] 2 S.C.R. 879, the Court ruled that the Federal Court of Appeal had no jurisdiction under section 28 of the *Federal Court Act* to review a decision of the Canadian Human Rights Commission made pursuant to subsection 36(3) of its Act. In her dissenting opinion, Madam Justice L'Heureux-Dubé agreed with Working Paper 18, *Federal Court: Judicial Review* (1977), that section 28 is "notoriously unclear," "depend[ing] on unarticulated criteria" and "reduc[ing] the rational element in law."

In *Cloutier v. Langlois*, [1990] 1 S.C.R. 158, the Court examined the scope of the power to search a person who has been lawfully arrested, and concluded that a frisk search is justified, constituting a minimal intrusion on individual rights. In writing for the Court, Madam Justice L'Heureux-Dubé agreed with the Commission that "[i]n order to safeguard freedom it is sometimes necessary to limit it, through prohibitions," as stated in Report 32, *Our Criminal Procedure* (1988).

In *R. v. Fitzgibbon*, [1990] 1 S.C.R. 1005, the Court decided that in the sentencing of an individual who is bankrupt, the judge can make an order for restitution of amounts defrauded or stolen without obtaining the consent of the bankruptcy court. In discussing the importance of the concept of compensation and restitution as a fundamental aspect of sentencing, Mr. Justice Cory

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quoted from our Working Paper 5, *Restitution and Compensation* (1974), as follows: "To the extent that restitution works towards self-correction, and prevents or at least discourages the offender's committal to a life of crime, the community enjoys a measure of protection, security and savings. Depriving offenders of the fruits of their crimes or ensuring that offenders assist in compensating victims for their losses should assist in discouraging criminal activity."

In *Reference Re ss. 193 and 195.1(1)(c) of the Criminal Code (Man.)*, [1990] 1 S.C.R. 1123, Mr. Justice Lamer used our work in a discussion of the "void for vagueness" doctrine. He stated, "the vagueness doctrine does not require that a law be absolutely certain; no law can meet that standard. I point to the introductory comments of the Law Reform Commission of Canada in respect of its draft Code." He quoted the following from Report 31, *Recodifying Criminal Law* (1988): "It [the draft Code] is drafted in a straightforward manner, minimizing the use of technical terms and avoiding complex sentence structure and excessive detail. It speaks, as much as possible, in terms of general principles instead of needless specifics and *ad hoc* enumerations."

Our work on the jury was used by the Court in *R. v. Turpin*, [1989] 1 S.C.R. 1296. In that decision, Madam Justice Wilson stated that the jury functions both as a protection for the accused and as a public institution that benefits society in its educative and legitimizing roles, as recognized by the Commission in both Report 16, *The Jury* (1982), and Working Paper 27, *The Jury in Criminal Trials* (1980).

In *R. v. Duarte*, [1990] 1 S.C.R. 30, the Court noted the widespread practice of surreptitiously recording conversations by undercover police officers or informers, as documented in Working Paper 47, *Electronic Surveillance* (1986).

Other courts have used our work in several interesting cases this year. In *C.W.C. v. Canada (Attorney General)*, [1989] 1 F.C. 643, a case concerned with the power of the Governor in Council to rescind or vary a rule or regulation made by the CRTC under subsection 64(1) of the *National Telecommunications Powers and Procedures Act*, the Trial Division of the Federal Court noted that the Commission, in Working Paper 25, *Independent Administrative Agencies* (1980), had characterized the procedures sanctioned by that subsection as unjustifiable interference with the regulatory process and had recommended that they be abolished. In *Air Atonabee Ltd. v. Canada (Minister of Transport)* (1989), 37 Admin. L.R. 245, the same Court quoted the Study Paper by John Clifford, *Inspection: A Case Study and Selected References* (1988), on the issue of the special relationship of confidence enjoyed by inspectors of the Department of Transport and the airline industry.

Our work on sentencing was used by the courts in three interesting cases this year. In *R. v. Doerksen* (1990), 62 Man. R. (2d) 259, the Manitoba Court of Appeal referred to our Study Paper, *Fear of Punishment: Deterrence* (1976), on the issue of the sentencing of a drunk driver. In *R. v. McGinn* (1989), 49 C.C.C. (3d) 137, Mr. Justice Vancise of the Saskatchewan Court of Appeal used Working Paper 11,

*Imprisonment and Release* (1975), Working Paper 3, *The Principles of Sentencing and Dispositions* (1974), and *Studies on Sentencing* (1974) as sources for the history, definition and value for deterrence of sentencing in Canada. In *R. v. L.(D.)* (1990), 75 C.R. (3d) 16, Mr. Justice Taylor of the British Columbia Court of Appeal referred to both Working Paper 3, *The Principles of Sentencing and Dispositions* (1974), and Report 2, *Guidelines: Dispositions and Sentences in the Criminal Process* (1976). He stated that, in those documents, the Commission had characterized incarceration as "a costly sanction that ought only to be used as a last resort" and as having failed to "fulfil humanitarian expectations." In arriving at his decision, Mr. Justice Taylor stated, "These thoughts ... were expressed 15 years ago. Almost everything that has been said on the subject since that time as a result of thoughtful inquiry has reinforced the Law Reform Commission's conclusions."

Courts have also used our work in other areas of criminal procedure. In *R. v. Lalli-Caffini*, [1989] R.J.Q. 161, Mr. Justice Paul of the Superior Court of Quebec used our Working Paper 57, *Compelling Appearance, Interim Release and Pre-trial Detention* (1988), in a case concerning pre-trial detention. In his reasons, he called that Working Paper an "interesting and very valuable document." While he disagreed with the Commission's views on the notion of "public interest" as a reason for pre-trial detention, he agreed with the recommendation for the removal of the distinction between primary and secondary grounds for detention in subsection 457(7) of the



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*Criminal Code*. He stated: "I share these views entirely." In another case from the Quebec courts, *R. v. Taillefer*, [1989] R.J.Q. 2023, Mr. Justice Lebel of the Court of Appeal used Report 22, *Disclosure by the Prosecution* (1984), in concluding that Canadian criminal legislation has never formally provided for a general scheme of pre-trial disclosure. In *Southam Inc. v. Mercure*, [1990] R.J.Q. 437, the Quebec Superior Court ruled that a hearing by the Judicial Council of complaints against Her Honour Judge Ruffo of the Court of Quebec (Youth Division) should be open to the public. In his reasons, Mr. Justice Lévesque noted that a totally closed hearing is practically never used in criminal trials, a publication ban being sufficient, as outlined in Working Paper 56, *Public and Media Access to the Criminal Process* (1987). In another case from Quebec involving the media, *La Société Radio-Canada v. Lessard*, [1989] R.J.Q. 2043, Mr. Justice Monet of the Court of Appeal used our Working Paper 30, *Police Powers: Search and Seizure in Criminal Law Enforcement* (1983), in his dissenting opinion that a warrant for a search and seizure was properly granted. In his opinion he stated, [TRANSLATION] "This area of law could be amended to one's advantage. The Law Reform Commission some six years ago made recommendations which, like so many others, were filed away somewhere and forgotten. The creative role of the judge does not extend to including in the relevant text of law what he would like to have read there."

## Changing Conduct

Another way in which the Commission has been able to influence law reform is through the changing of conduct. Over the years, the Commission's in-depth research, 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.

Our 1974 Working Paper on *Discovery* has helped significantly to alter pre-trial disclosure practices by the Crown. The Commission's Report 6 on *Family Law* (1976) has influenced the creation of unified family courts in some Canadian jurisdictions. In administrative law, the work of the Commission continues to influence the practices and operations of various federal agencies. Our 1987-88 survey of federal inspectorates, involving eighty inspectorates within more than thirty federal institutions, has prompted those organizations to reflect on their functions and to consider improving their operations. Another significant change in conduct has been the Halton Regional Police Force's "Taped Interviewing Procedure" (Project TIP), started in July 1985. This two-year study by the Halton Regional Police Force, assisted by the Commission, confirmed the Commission's view that videotaping police interviews would not only fairly and efficiently expedite the administration of justice, but would also reduce costs.

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## Legislative Achievements

### Past Achievements

We have shown how we can influence law reform 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. Another way to reform the law is through legislation.

The Commission's record on the enactment of legislation has been slow but steady. Recently, however, Parliament has been active in proposing and passing legislation based on Commission recommendations. A review of past legislative initiatives, along with the activity in this year, indicates that the Commission's work is playing an increasingly significant role in reforming the law — especially criminal law — through the legislative process.

### Evidence

Section 15 of the Commission's draft Evidence Code, contained in Report 1, played a major role in the shaping of subsection 24(2) of the *Canadian Charter of Rights and Freedoms*. That subsection requires a court to exclude evidence obtained in a manner that infringes a legal right or fundamental freedom, because its admission would tend to bring the administration of justice into disrepute.

### Sexual Offences

Bill C-127, which was proclaimed in force in January 1983, adopted in essence the Commission's proposal in Report 10 on *Sexual Offences* to remove the offence of "rape" from the *Criminal Code* and to substitute an offence of "sexual assault" aimed at protecting the physical integrity of the person. Also adopted was the Commission's recommendation that the immunity of husbands from prosecution for sexually assaulting their wives be removed from the *Code*.

### Garnishment

Bill C-38, the *Garnishment, Attachment and Pension Diversion Act*, proclaimed in force in March 1983, enacts in section 5 the main recommendation made by the Commission in its Report 8, *The Exigibility to Attachment of Remuneration Payable by the Crown in Right of Canada*. Section 5 of that Act adopts the recommendation that salaries and other remuneration payable on behalf of the Crown are subject to provincial garnishment laws.

### Expropriation

Several of the recommendations made in Report 4, *Expropriation*, have influenced changes in the procedures used to expropriate land needed for the construction of pipelines and power lines. Those recommendations were reflected in *An Act to amend the National Energy Board Act*, proclaimed in force in March 1983.

### Criminal Law Amendment Act, 1985

A major legislative effort containing much of the Commission's work was undertaken, but not completed, prior to the dissolution of Parliament in 1984. Bill C-19 was tabled in Parliament by the then Justice Minister, Mark MacGuigan, on February 7, 1984, but was not enacted. Later that year, the new Minister of Justice, John C. Crosbie, introduced a shorter version of that Bill, Bill C-18, now the *Criminal Law Amendment Act, 1985*. That Act puts into force several key recommendations of the Commission.

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(a) Writs of Assistance: One important recommendation adopted from Report 19, *Writs of Assistance and Telewarrants*, was the abolition of writs of assistance. The use of those writs had already been declared unconstitutional under the *Charter* in a judgment of the Court of Appeal of Ontario in *R. v. Nobel*. In rendering his judgment, the Honourable Mr. Justice Arthur Martin had quoted from our Report 19.

(b) Telewarrants: Another recommendation adopted from Report 19 was the establishment of a system of telewarrants. This allows a police officer to obtain a search warrant by simply using the telephone. The scheme contained in the *Criminal Law Amendment Act, 1985* is, with slight variations, identical to that suggested by the Commission.

(c) Pre-trial Conferences and Motions: The *Criminal Law Amendment Act, 1985* adopted a number of procedural recommendations made by the Commission in its Report 9, *Criminal Procedure — Part I: Miscellaneous Amendments*, the object being to expedite the administration of justice in Canadian criminal courts. Recommendations adopted in that Act include: the requirement for a pre-trial conference in cases to be tried by judge and jury; a streamlining of the procedures for election and re-election in the trial process; and providing judges with the ability to deal with certain procedural and evidentiary matters prior to the empanelling of a jury.

(d) Investigative Tests: The key recommendation in Report 21, *Investigative Tests: Alcohol, Drugs and Driving Offences*, was adopted by the *Criminal Law Amendment Act, 1985*. To answer the increasing public concern about impaired driving in Canada, the Commission recommended that a blood sample could be taken where a person is physically unable to give a breath sample owing to injury or illness, or where the driver is unconscious, as long as a warrant was obtained and certain safeguards were met. The *Criminal Law Amendment Act, 1985* enacted this strong measure, but with a slightly different mix of safeguards than those that the Commission recommended.

(e) Search and Seizure: Finally, the *Criminal Law Amendment Act, 1985* adopted a number of recommendations from Report 24, *Search and Seizure*, and Working Paper 39, *Post-Seizure Procedures*. The recommendations adopted dealt with publication bans, the sealing and application procedure with respect to seized documents when it is alleged that a solicitor-client privilege exists and some measures with respect to the disposition of goods seized.

### Family Law

In 1985, Parliament passed the *Divorce Act, 1985*, legislation inspired in part by our Report 6, *Family Law*. To a large extent that 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 a marriage.

### Victims of Crime

In 1988, Parliament substantially amended the *Criminal Code* to assist victims of crime. Although differing in some details, the general thrust of the new law is consistent with the ideas and recommendations outlined in various Commission publications. (See: Report to Parliament on *Disposition of Seized Property*. See also the following Working Papers: *Public and Media Access to the Criminal Process*, *Post-Seizure Procedures*, *The Principles of Sentencing and Dispositions*, and *Restitution and Compensation*; and a Research Paper on *Restitution, Compensation for Victims of Crime and Canadian Criminal Law*, published in our Study Paper entitled *Community Participation in Sentencing*.)

The provisions included in the *Criminal Code* aim at: (1) protecting the identity of victims and witnesses by the use of a publication ban; (2) facilitating the prompt return of property by the use of alternative evidence (e.g., using photographic evidence); (3) allowing written victims' impact statements for the purposes of sentencing; (4) allowing restitution, where appropriate, without its having to be applied for; and (5) imposing fine surcharges to be used for victim services.



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## Last Year's Achievements

This last year, Parliament has moved briskly forward on several important Commission recommendations.

### Arson

On December 14, 1989, Bill C-53, *An Act to amend the Criminal Code (arson)*, was given first reading, and on May 4, 1990, it was passed on third reading.

Arson is a serious crime in our society. In 1988, there were approximately 10,500 cases of arson or suspected arson causing 42 deaths and injury to 456 civilians and fire-fighters. As well, arson caused close to 200 million dollars in insurable loss — the actual economic loss reaching to between four and five times that amount.

Despite the seriousness of that crime, the present *Code* sections are substantially the same as those enacted in 1892. In 1984, the Commission prepared Working Paper 36, *Damage to Property: Arson*, which outlined the archaism and inadequacies of the present law. As well, it presented a number of recommendations to make the law on arson more comprehensive, modern, simple and enforceable. The intention was to provide police and enforcement fire officials with the means to counter the threats posed by the sophisticated modern arsonist.

A key recommendation was a new definition of arson, one that has not only simplified the offence, but also includes the new concept of arson caused by explosion. The Commission recommended, as well, that the provisions be made more comprehensive by extending the offence to include the damage or destruction of all property. It is immaterial whether a fire, once started, has been set to a bed or to a barn. The loss and danger are equally unacceptable in both instances. The present *Code* only relates to certain categories of property.

When the Honourable Doug Lewis, then Minister of Justice, introduced Bill C-53 to Parliament, he acknowledged that the legislation had "virtually adopted" the Commission's definition of arson as well as its recommendation on comprehensiveness. In the debate on third reading over whether there should be an offence of negligent arson, the new Minister of Justice, the Honourable Kim Campbell, endorsed the Commission's test for criminal negligence proposed in our Report 31 on *Recodifying Criminal Law*. We now look forward to the smooth passage of this legislation through the Senate.

## Federal Court Act

In November 1989, Bill C-38, *An Act to amend the Federal Court Act, the Crown Liability Act, the Supreme Court Act and other Acts in consequence thereof*, was introduced in Parliament. This Bill reflects many reform ideas and proposals submitted by the Commission to Parliament. The work of the Commission is contained in a number of documents, including: *The Federal Court Act: Administrative Law Jurisdiction* (a Study Paper by D. Mullan, 1977); *Federal Court: Judicial Review* (Working Paper 18, 1977); and *Independent Administrative Agencies* (Working Paper 25, 1980). In a brief presented on December 6, 1989, to the House of Commons Legislative Committee on Bill C-38, the Commission supported the thrust of the changes proposed by the Government insofar as they reflected our proposals. The jurisdiction of the Federal Court of Appeal was changed along the lines of the recommendations made by the Commission in 1980 in its Report 14, *Judicial Review and the Federal Court*. As we urged, Bill C-38 aims at establishing a simplified and unified procedure for seeking judicial review in the Federal Court by way of a single application for review, resulting in a wide power to review decisions of administrative agencies. This procedure would replace the old common law prerogative writs. As well, Bill C-38 attempts to give the Federal Court better control over frivolous, vexatious and trivial proceedings, as we suggested. The further useful changes in Bill C-38 with respect to Crown liability are primarily of a technical and procedural nature. Bill C-38 was passed by Parliament without any significant amendment and received Royal assent on March 29, 1990. The Commission looks forward to seeing the new *Federal Court Act* coming into force in the very near future.

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## Abortion

For the past two years, our country has engaged in a highly charged debate on the issue of abortion. Although the topic of abortion has always been controversial, the Supreme Court of Canada's decision on January 28, 1988, in *R. v. Morgentaler* dramatically intensified the debate. In that decision, the Supreme Court struck down section 251 on abortion in the *Criminal Code* as being contrary to the *Canadian Charter of Rights and Freedoms*. At that time, the Commission was nearing the completion of a four-year special study on the status of the foetus, including the issue of abortion. Shortly thereafter, following much consultation, the Commission published its recommendations in Working Paper 58, *Crimes against the Foetus*. This document led to further debate and discussion.

In September 1989, after the *Daigle* and *Dodd* cases had heated up the debate, the Prime Minister of Canada declared that legislation on abortion would be presented to Parliament before the end of the year. On November 3, 1989, the then Minister of Justice, the Honourable Doug Lewis, introduced Bill C-43, *An Act respecting abortion*. To a large extent, the legislation adhered to the underlying principles and basic recommendations that the Commission had outlined in Working Paper 58. In introducing the Bill, the Minister acknowledged the Commission's work by commenting that "[t]he work of the Law Reform Commission was carefully considered, and I congratulate the Commission for its excellent work."

On November 28, 1989, during his speech on second reading, the Prime Minister of Canada referred to statements by the President of the Law Reform Commission, as reported in the *Globe and Mail*: "I draw to your attention recent comments of Mr. Justice Allen Linden, the distinguished chairman of the Law Reform Commission of Canada, as reported on November 7. [in the *Globe and Mail*] 'Recriminalizing abortion,' Mr. Justice Linden said, 'was needed to ensure that various provinces did not enact Draconian laws to restrict access to the procedure.' 'What always concerned me,' he said, 'was the prospect of provincial intrusions. By making abortion a therapeutic procedure covered by the Criminal Code, the provinces will find it much more difficult to jump in with their own legislation and evade their obligations under the Canada Health Act to pay for medical services. ...' I think Mr. Justice Linden makes an extremely valid and important point. Nobody sought to recriminalize the question of abortion for the pleasure of doing it. It was brought under the purview of the Criminal Code because of legal imperatives in terms of application nationally."

On February 7, 1990, the Commission presented a brief to the Legislative Committee on Bill C-43 supporting the thrust of the legislation. We did so because we believed it reflected the basic underlying principle of our recommendations — namely, that the legislation should reflect a balance between reproductive freedom and respect for the foetus. The key to this approach is to recognize maternal autonomy and the need to protect the foetus, without obliterating one right in favour of the other. Bill C-43, which sought to capture this balance, passed third reading on May 29, 1990. We can now only hope for its expeditious passage through the Senate.

## The General Part

The most exciting news that the Commission received this past year was the announcement of an invitation by the then Minister of Justice, the Honourable Doug Lewis, to the House of Commons Standing Committee on Justice and the Solicitor General to undertake a study of the General Part of the *Criminal Code*. The Minister, speaking at an international Conference on Criminal Code Reform in Washington, D.C., in January, declared:

"We in Canada are proud of the work of the Law Reform Commission. ... In recommending a new General Part, the Law Reform Commission of Canada observed that the General Part of the current Code was 'incoherent', 'inconsistent', and 'sometimes illogical'. ... The need for reform of the General Part has become increasingly apparent, and I am pleased to announce ... that I will be inviting the Standing Committee on Justice and the Solicitor General to undertake a study of the General Part of the Code with a view to making recommendations for the development of a new General Part."

On May 28, 1990, the new Minister of Justice, the Honourable Kim Campbell, renewed that invitation to the Committee and informed the Commission of her decision, encouraging our participation in this process. In her letter she states: "I regard this as a very important step in the criminal law reform process. As you know, this initiative follows upon the commitment made by my predecessor, a commitment which I share, to take this important step to improve the criminal law of Canada and its administration. The Commission's draft Criminal Code, which has been the subject of so much favourable comment both in Canada and internationally, will be of great assistance

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to the Committee in its review. Given the Law Reform Commission's long-standing commitment to the enactment of a new *Criminal Code*, I know that you and your colleagues will welcome this initiative."

The Commission is pleased that Parliament is undertaking a study on a new General Part. We shall co-operate enthusiastically in this endeavour, for we see it as the first and most important step on the road to a new Criminal Code for Canada.

Therefore, law reform commissions not only contribute to legislative reform, they also do research, they educate, they help the judiciary and they foster change in conduct. All of these activities are important functions that encourage law reform and alter the climate of the legal system, facilitating changes in the laws. But law reform commissions obviously are also committed to legislative reform. The Law Reform Commission of Canada has inspired a fair number of these reforms in the past. In the last year, particularly, there has been a burst of legislative activity based on our recommendations. We are, naturally, pleased by this and are delighted that we have been able to contribute meaningfully to making law reform happen.



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## PUBLICATIONS

The Commission publishes three categories of documents: Reports to Parliament, Working Papers and Study Papers. To date we have published 32 Reports, 61 Working Papers, and 76 Study Papers. We have also contributed to the private publication of more than 175 books and articles. Over 1.6 million copies of our publications have been distributed.

### 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. This year, the Commission has published two Working Papers.

#### **Working Paper 60** ***Plea Discussions and Agreements***

This Working Paper recommends that the practice now called "plea bargaining" be known as "plea discussions and agreements," and that it be more closely regulated. The paper presents a number of recommendations to improve the process by way of legislative controls and uniform guidelines.

Some of the recommendations require that plea agreements be disclosed and justified in open court in order to maintain public confidence in the criminal justice system and to ensure accountability for prosecutorial decisions. The aim of these recommendations is to promote equality of treatment by prosecutors and to discourage both unfair negotiation practices (such as overcharging) and unduly lenient charge reductions.

Other recommendations introduce a limited form of judicial supervision that would help make the process more visible and the participants more accountable. For example, Recommendation 12(1), requiring disclosure of plea agreements, has been designed to provide the judge with a basis for deciding whether the accused should receive the disposition that a plea agreement contemplates and to improve the general visibility of the plea discussion process. Recommendation 13 would ensure that any guilty plea entered pursuant to a plea agreement represents an informed decision by the accused. The purpose of Recommendation 16 is to ascertain the genuineness and factual accuracy of guilty pleas. In allowing judges to require disclosure of *all* inducements, this recommendation would assist judges in ascertaining whether improper inducement has been offered to the accused to plead guilty.

Consideration for the victim is outlined in Recommendation 11. This recommendation would require that the prosecutor solicit and weigh carefully the views of any victim before concluding a plea agreement. In addition, the prosecutor would advise the victim of the conclusions of the agreement. The policy underlying this recommendation is that obtaining the position of the victim is important not only to ensure that the victim's interests are protected, but also to maintain the confidence of the general public in the process.

#### **Working Paper 61** ***Biomedical Experimentation Involving Human Subjects***

This Working Paper proposes to clarify the present law governing non-therapeutic biomedical experimentation on human beings. The paper recommends that such experiments be considered legal, subject to strict conditions regarding consent and the acceptable degree of risk involved. The paper also proposes legal mechanisms for ensuring that those conditions are fully met in practice.

Working Paper 61 recommends that non-therapeutic biomedical experimentation (experimentation on healthy volunteer subjects) be considered legal and permissible only after the subject's free and informed consent has been properly obtained. There must also be an acceptable ratio between the risks incurred by the subject and the benefit expected to result from the experiment.

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The Working Paper puts forward a policy decision that to ban all research involving children would be to deprive other children of beneficial advances in the treatment of childhood diseases. Therefore, it recommends that a legal provision be made to permit non-therapeutic experimentation on children under very strict conditions. Included in those conditions would be rules that the experiment does not involve any serious risks for the child, that wherever possible the consent of the child should be obtained and that, whatever the child's age, his or her refusal should always be respected. To facilitate necessary research on the treatment of mental illness, the Commission proposes that similar conditions to those recommended for the protection of children apply to experiments involving the mentally disordered.

The Working Paper provides for placing special legal limits on experiments involving human embryos and fetuses. Specifically, it calls for a criminal prohibition on the creation of human embryos solely for purposes of scientific research. Cloning, ectogenesis, parthenogenesis, the crossing of human and animal gametes and the re-implantation of embryos used for experimental purposes should also be strictly prohibited.

The paper recognizes that research on embryos outside of the womb offers great hope for advances in assisted fertility and in the diagnosis and treatment of genetic disorders. It therefore recommends that, in very limited circumstances, such research should be permitted. One important condition is that experimentation on human embryos should be strictly prohibited after the fourteenth day of embryonic development.

Incidental to its recommendations on embryo experimentation, the paper recommends the development of standards for the creation, expansion and management of sperm and embryo banks. It also recommends specifically that the storage of frozen embryos not be allowed for longer than five years.

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## ONGOING WORK

### The Current Team

Joining President Linden and Vice-President Létourneau in carrying out the duties of the Commission are two distinguished Commissioners. Mr. John Frecker, a barrister and solicitor from St. John's, Newfoundland, is the Commissioner in charge of the Administrative Law Project, and Judge Michèle Rivet of the Quebec Court is in charge of the Protection of Life Project, based in Montreal. The Commission is awaiting the appointment of a third Commissioner to replace Mr. Joseph Maingot, Q.C., whose term ended in April 1989. The Commissioners are supported in their work by the four Project Co-ordinators named below.

Ms. Joyce Miller, a member of the Law Society of Upper Canada, is the Special Assistant to the President.

### Substantive Criminal Law Project

The President, Mr. Justice Allen Linden, is responsible for the direction of the Substantive Criminal Law Project. Professor Patrick J. Fitzgerald is the Project Co-ordinator and is responsible for the supervision and direction of research.

The present aim of the Project is to complete the remaining chapters and provisions of the proposed new Criminal Code. Report 31, *Recodifying Criminal Law*, did not include the crimes of sexual assault or sexual exploitation of young persons and did not include recommendations on the role of criminal law in dealing with obscenity, pornography and prostitution. This past year the Project has: prepared a draft chapter on sex crimes, pornography and prostitution; conducted research on securities frauds, intellectual property and firearms; worked towards the preparation of a chapter on sentencing; and re-examined the provisions contained in the General Part in Report 31 on conduct, culpability and involvement in crimes with a view to possible simplification. These new chapters and provisions will be added to our proposed Code.

### Criminal Procedure Project

Vice-President Gilles Létourneau is the Commissioner responsible for the Criminal Procedure Project. Stanley A. Cohen is the Project Co-ordinator and is responsible for the supervision and direction of research. The ultimate objective of the Project is the preparation of a Code of Criminal Procedure that will comprehensively address all major areas of criminal procedure, including police and investigative powers and pre-trial, trial and appeal procedures.

The Project operates on the basis of a published statement enunciating general principles of criminal procedure. Report 32, *Our Criminal Procedure*, sets out these guiding principles which form the foundation of the Commission's work in all areas of criminal procedure.

Several key elements in the Project's work have already been completed. All of the preliminary work on the subject of police powers has been published in the form of Working Papers or Reports or both.



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For the past few years, the Project has taken a two-tracked approach to the completion of its work on the Code of Criminal Procedure.

The first track is the development and completion of all outstanding Working Papers and Reports. The Project recently published Working Paper 60, *Plea Discussions and Agreements*. Other Working Papers on remedies, appeals, extraordinary remedies, costs, trial within a reasonable time and the role of the judge and the conduct of trial are in various stages of advanced development and will be brought forward for Commission approval for publication in the days ahead. Two Working Papers, one on Double Jeopardy, Pleas and Verdicts and the other on Controlling Criminal Prosecutions, have been approved for publication and will appear within the coming year.

The link between the Project's core work on criminal procedure and the field of human rights law is an intimate one. The relationship between the two is especially evident in the study that the Commission, in association with the Aboriginal Justice Inquiry in Manitoba, has undertaken on the Native Offender and the Sentencing Process. This study is to be subjected to a process of consultation in the near future.

The second track to the completion of its work on the Code of Criminal Procedure is codification. The Project's recent endeavours have largely concentrated on the development of the first volume of a Code of Criminal Procedure pertaining to police and investigatory powers. *Recodifying Criminal Procedure, Volume One: Police Powers, Title I: Search and Related Matters*, is presently in publication. Title II, pertaining to arrest and investigation, is well advanced and the Project anticipates its approval for publication in early 1991. The remainder of the work will be assembled in an additional volume devoted to the pre-trial, trial and appeal processes. In due course, the Commission will begin to present these components to its regular consultation groups and will then invite greater public involvement in the consultation process.

## Human Rights

The Commission is expanding its preliminary research activities into the human rights field, under the direction of Stanley A. Cohen, Special Counsel, *Canadian Charter of Rights and Freedoms*.

The bulk of Canada's current legislation was developed before the enactment of our *Canadian Charter of Rights and Freedoms* and modern human rights statutes. As we noted in our last annual report, at this stage in the life of the *Charter* and in the aftermath of the Supreme Court of Canada pronouncements concerning the paramount importance of human rights legislation, we increasingly confront laws and institutions that are in flux and require improvement.

Since the Commission's inception, our work in virtually every area of concern has been rights-oriented. This has been especially noticeable in the field of criminal procedure and is attested to in the Commission's philosophy as expressed in Report 32, *Our Criminal Procedure*.

During the past year, the Commission, under the umbrella of our existing research program, has begun to explore the larger dimensions of human rights in the Canadian legal context and plans to enhance its involvement in the field of human rights. The Commission commissioned a study by Professor William Pentney of the University of Ottawa's Faculty of Law (Common Law Section),

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now completed, which explores the policy dimension of federal jurisdiction over the field of human rights. The Commission has also been involved in a joint venture with the Public Inquiry into the Administration of Justice and Aboriginal People in Manitoba, to study the impact of the sentencing process on the native offender in Canada. More recently, the Commission has been requested, by the Minister of Justice pursuant to subsection 12(2) of the *Law Reform Commission Act*, to give special priority to a study of the *Criminal Code* and related statutes that assesses the extent to which our laws ensure that (a) aboriginal persons and (b) persons who are members of cultural or religious minorities have equal access to justice and are treated equitably and respectfully.

For the purposes of consulting on the Pentney study and of identifying subjects in which the Commission can make a unique contribution, the Commission has recently established a special Human Rights Advisory Group. This Group is comprised of persons chosen from all segments of the human rights community. Its initial consultation is planned for June of 1990.

## Protection of Life Project

Judge Michèle Rivet of the Court of Quebec is the Commissioner responsible for the Protection of Life Project. Dr. Burleigh Trevor-Deutsch is the Project Co-ordinator and is responsible for the supervision and direction of research.

The Protection of Life Project, based in Montreal, was established in 1975. Originally, the Project's primary goal was to analyse the strengths and weaknesses of existing health-related federal law to better respond to both technological developments and evolving values. The emphasis was on the criminal aspects of the practice of medicine. This gave rise to studies on euthanasia and the cessation of medical treatment, sterilization and the mentally handicapped, behaviour alteration, the legal definition of death, medical treatment and the criminal law, informed consent and the sanctity and quality of life. In 1986, recommendations and conclusions drawn from these separately published Papers were collected and presented to Parliament in Report 28, *Some Aspects of Medical Treatment and Criminal Law*.

Last year, the Project published a major study in the form of a Working Paper entitled *Crimes against the Foetus*. This year, it has published another significant Working Paper, *Biomedical Experimentation Involving Human Subjects*. The latter addresses the question concerning what types of experimentation should be allowed, controlled or forbidden. It also focuses on issues of consent to experimental treatment and the cost-benefit analysis that must be made to justify such treatment. This encompasses a variety of issues, including the amount of information with which patients should be provided to allow them to exercise informed consent, and the questions raised when dealing with children, prisoners and the mentally handicapped, all of whom function under special constraints that make the legal validity of their consent even more difficult to assess.

In the last twelve months, the Commission has approved two Study Papers for publication. The first, entitled *Toward a Canadian Advisory Council on Biomedical Ethics*, examines the desirability of establishing a fully independent body. Similar bodies have met with considerable success in other countries, and the Study Paper contains an in-depth examination of the utility of such a committee in Canada.

The second approved Study Paper will be published under the title *Human Dignity and Genetic Heritage*. In the near future, technology will allow us to alter our genetic make-up which constitutes the heredity link with our ancestors and future generations. While this advance in technology offers hope for the cure of genetic diseases, there exists the potential for less desirable uses of its techniques.

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Is genetic patrimony an element of human dignity? Is there a right to an unaltered genetic heritage? And under what circumstances is the genetic alteration of human beings appropriate? These are the main issues addressed in this Study Paper.

Work on two other studies in the medical field is progressing rapidly. The first of these will be entitled *Medically Assisted Procreation*. Advances in medical technology now allow us to take an active role in the process of human reproduction. Artificial insemination, *in vitro* fertilization and sex selection are just three of the techniques that raise important social and ethical considerations, as well as concerns regarding the cost burden on an already heavily loaded medical delivery system. Who should have access to new reproductive technologies and under what circumstances? Should "contracts" for maternal surrogacy be enforceable at law? Consultants in medicine, ethics, constitutional law and health law have brought their expertise to bear on this very current topic. The delicate balance between social merits, risks and individual rights is being investigated.

In the second of these studies, the problem of the shortage of transferable organs, tissues and bodily substances is being addressed. As medical transplant technology progresses, so does the demand for bodily parts from cadavers and live donors. While donation is to be encouraged, this study addresses the issues of informed consent, the protection of donors and their families and commercialization. Because tissue and organ transfer on a large scale is a comparatively new phenomenon, it is not surprising that there are many areas of legal uncertainty. Should they be the subject of commercial transactions and if so, under what circumstances and subject to what limitations? This study on the procurement and transfer of human tissues and organs addresses these issues as well as issues of informed consent and the protection of donors and their families.

The foregoing two studies were submitted in November to our Advisory Group of Experts on Health Law for their scrutiny. The comments of the Group and the reflections of the Commission are being incorporated into the text. These revised studies are being completed and will be submitted for the final approval of the Commission early in the new year.

Finally, following up on Working Paper 61, *Biomedical Experimentation Involving Human Subjects*, a study is being prepared dealing with the testing of new drugs on human beings. There comes a time in the history of every therapeutic drug or treatment when the first human trials must take place. At what level of risk are such trials justifiable? A cost-benefit analysis must be undertaken and a legal minimum standard should be clarified. A first draft of this study was received in the spring of 1990. It will be revised and then submitted to the Advisory Group of Experts on Health Law in the months to come.

In 1981, the Protection of Life Project added a new component to its health-related concerns: the protection of the environment. The basic philosophical thrust remained the same — the protection of life and health in the context of technological hazards that threaten human integrity. Papers published by the Commission in this area include *Political Economy of Environmental Hazards*, *Crimes against the Environment*, *Behaviour Alteration and the Criminal Law*, *Workplace Pollution* and *Pesticides in Canada: An Examination of Federal Law and Policy*.

This year, the environmental law thrust consisted of two lines of related research: responsibility for contaminated lands, and environmental impact assessment and the role of the court in promoting sustainable development.

The problem of contaminated lands in Canada is worse than generally realized, and existing federal laws regarding liability for clean-up costs are, in many cases, more cumbersome than necessary. A research study was prepared, making an exhaustive examination of national and international legislation on civil responsibility for contamination, with recommendations for a comprehensive approach to dealing with contaminated lands and those who should be liable for their reclamation. In March, these recommendations were considered by our Advisory Group of Experts on Environmental Law. Their observations and those of the Commission are being incorporated into a revised version of the study.

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Sustainable development is an idea whose time has come. Rarely has a philosophical approach of this kind met with such rapid, international acceptance. Our study on sustainable development is premised on the notion that the first stage of environmental sustainability is planning in the form of environmental impact assessment. Issues being examined include what should be assessed and by whom, the influence that such assessment should have on development and the role of the court as overseer of these matters.

### **Administrative Law Project**

The Commissioner responsible for the Administrative Law Project is Mr. John P. Frecker. Dr. Patrick Robardet is the Project Co-ordinator and is responsible for the supervision and direction of research.

In line with the theme for 1987-88, bridging the gap between law and administration, work on the reform and construction of federal administrative law increasingly focused on making direct contributions to improve government operations generally.

Our broad approach to policy implementation, based on the large number of measures available for compliance, has been reflected in many facets of our ongoing work.

In the matter of statutory offences, the Commission has continued its close co-operation with the federal Department of Justice and has maintained its commitment to planning and organizing joint initiatives with officials of the Department of Justice. In particular, joint research was undertaken and fruitfully advanced on the topic of the use of non-criminal sanctions and offences in the area of compliance with public policy. The Commission participated in the preparation of a joint paper, entitled *For a Model of Regulatory Offences*, with the Compliance Project of the Department of Justice, which included a proposed regime of administratively imposed penalties and a summary proceedings code for treating non-criminal sanctions in the area of regulatory violations.

Furthermore, work on environmental mediation, which was the topic of a preliminary report submitted to the Commission before the end of the 1988-89 fiscal year, has advanced considerably.

Within the perspective developed by Working Paper 51, *Policy Implementation, Compliance and Administrative Law* (1986), work has progressed on developing a framework for federal inspections under the broad notion of administrative policing. A draft Working Paper entitled *Administrative Policing: Its Nature and Authorization*, which was discussed at a formal consultation in May 1989, has been revised. It now forms a new draft Working Paper entitled *Administrative Policing: Some Unifying Ideas*, and purports to define general principles designed to guide the statutory and managerial execution of the policing function entrusted to many federal public officials. Finally, the preparation of institutional profiles of a large number of federal inspectorates has been finalized. The Commission plans to make these available in a special monograph entitled *Administrative Policing: Some Federal Inspectorates*. This document will inform federal officials and the general public about commonalities within government units sharing administrative policing roles. It is designed primarily for distribution within those government units that perform a policing role.

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Our concern with policy implementation has led us to inquire further into the actual use of governing instruments. Financial incentives form part of the instruments used by government to achieve its objectives and influence individual behaviour. Extensive work was conducted on this topic during 1989-90. This included the planning of a symposium on federal financial incentives to be held in Calgary in October 1990, under the joint sponsorship of this Commission and the Canadian Institute of Resources Law and the Faculty of Law at the University of Calgary. In addition, a first draft of a paper entitled *The Legal Framework for the Administration of Federal Financial Incentives* was completed in December 1989. A short revised version, entitled *Federal Financial Incentives: The Case for Better Legal Structure*, was circulated to the Calgary Symposium Steering Committee members in April 1990. This paper is designed to serve as a leading background piece for discussions at the symposium.

Finally, we have been accumulating some background material on the topic of intergovernmental agreements in the context of government regulation. In our system of co-operative federalism and shared jurisdictional responsibilities between the federal and the provincial levels of government, agreements between those levels have become a major tool for achieving national public policy objectives. This spirit is reflected in the first paper which this Commission has asked the Canadian Institute of Resources Law (CIRL) at the University of Calgary to prepare on the topic of intergovernmental agreements. Beyond the more general constitutional dimensions discussed in this CIRL paper, intergovernmental agreements deal as well with many issues, including the sharing between public institutions of responsibilities for resource management, and agreements entered into by governments and private firms. The CIRL paper, entitled *Intergovernmental Agreements in the Canadian Regulatory Process*, was received at the end of March 1990.

As we mentioned earlier, on December 6, 1989, we presented a brief to the House of Commons Legislative Committee on Bill C-38, *An Act to amend the Federal Court Act, the Crown Liability Act, the Supreme Court Act and other Acts in consequence thereof*. The Commission is also carrying out a study on the composition and jurisdiction of the Federal Court. We regard this work as the beginning of the next round of Federal Court reform and, in our brief on Bill C-38, we had cautioned that it should in no way delay passage of that Bill.

Papers and commentaries presented at the national conference co-sponsored by the Commission and the Faculty of Law of the University of Toronto and held in 1988 in Toronto on the topic "Law and Leviathan: The Administrative Law Challenge in the 1990's" will soon be published in a special volume of the 1990 *University of Toronto Law Journal*.

Over the past year, research continued to focus on the liability of the Crown. Issues examined by the Commission go far beyond those addressed in Bill C-38, an important piece of legislation already referred to. Consideration has been given to the justifications for, and the consequences of, the creation of a liability regime for the federal Crown which would not be based on torts caused by government action and officials. Ideas have been discussed in a position paper which, in its most recent draft, was submitted to the Commission in March 1990. As well, the Commission has closely followed and co-operated with the Ontario Law Reform Commission, which has now published its *Report on the Liability of the Crown*.

Research on the limitation periods in federal law was completed in February 1990. An additional report on the law of limitations in Quebec has been submitted to us. Progress on finalizing this study for publication as a Working Paper has been made according to our plans. The 1988 Supreme Court decision in *Clark v. Canadian National Railway Co.*, [1988] 2 S.C.R. 680, has clarified some old difficulties in working towards a set of simple principles to streamline federal limitations.



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The studies on Administrative Appeals and the Federal Ombudsman, announced in our *Fifteenth Annual Report 1985-1986*, are at different stages of completion. Options about an approach to reforming administrative appeals were considered in a research protocol submitted to us in 1989-90.

Study on a proposal for the creation of an office of Federal Ombudsman is progressing, with a publication being planned for the near future.

With respect to the study on the practices and procedures of the Immigration Appeal Board, the Commission has monitored the operations of the new Immigration and Refugee Board put in place in January 1989. This task has been twofold. First, an academic paper, to be published as a review article, was prepared during the year on refugee determination legislation. We expect it to be completed before the end of the current year. Secondly, as planned, the Commission has conducted systematic research into the operation of the new Immigration and Refugee Board during the second half of 1989-90. Interviews and survey questionnaires were administered to various stakeholders in the refugee process (IRB members, refugee hearing officers, immigration adjudicators, private counsel). As well, information was gathered by direct observation at hearings in four regions. The Commission believes that this important research will lead to a better understanding of how law is applied daily by officials and will enable it to draw concrete conclusions and make recommendations on the functioning of the new Board.

On the expectation that the efficiency and fairness of the action of federal departments and agencies can be improved, the Commission is continuing its research into administrative procedures and decision making. In August 1989, a seminar dealing with federal legislation on administrative procedure was held jointly with the Administrative Law Section of the Canadian Bar Association in Vancouver. That joint meeting provided an opportunity to discuss *Systematization of Decision Making*, a paper specifically prepared for the event. With the help of consultants in the field of public administration, we have started additional work on the place of legal culture and values in the bureaucracy, examining both the development of legal principles internally within the administrative system and the need for a more systematized approach to such development. A short draft discussion paper is expected in the fall of 1990. It will be one of several papers being produced internally for discussion at the next annual seminar held jointly with the Administrative Law Section of the Canadian Bar Association in October 1990.

Throughout the year, administrative law consultants intervened with federal agencies to further the cause of law reform and the reform of administrative action. They also made presentations or attended seminars and workshops on topics such as administrative policing reform (Interdepartmental Committee on Law Enforcement Management, Ottawa, June and October 1989), the role of the public

in environmental protection (Waterloo Conference, August 1989), policy implementation and policing (Conference on Ethics and Technology, University of Guelph, October 1989), environmental law and policy for the 1990s (Edmonton, October 1989), judicial review of errors of fact (Conference of the Association des juristes d'expression française de l'Ontario, Toronto, November 1989), the creation of a federal ombudsman (Canadian Ombudsmen Conference, Quebec, November 1989), contract research policies (Association des professeurs de droit du Québec, Orford, Que., April 1990), Federal Court reform (Société de droit administratif du Québec, Montreal, May 1990) and administrative procedure (Sixth Annual Conference of Canadian Administrative Tribunals, Ottawa, May 1990).

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## CONSULTATIONS

The Commission seeks to involve the public in its decision-making process through formal and informal consultations. We believe that the more we can encourage people, whether professionals or members of the general public, to discuss their ideas about law and principles of law, the greater will be their awareness of approaches to law reform and the greater will be the opportunity for effective change in the way law affects individuals. The Commission has organized public meetings on issues such as the physical discipline of children by parents and teachers, wife battering, vandalism and violence in sports. We also consult regularly with judges from all jurisdictions, the police, defence lawyers, Crown prosecutors, law professors and other specialized groups and individuals. We receive valuable advice from these groups and individuals, and their contribution is an essential element in the development of our recommendations to Parliament.

### Regular Consultations

#### Criminal Law and Procedure Projects

As part of its involvement arising out of criminal law review, the Commission regularly consults with major interest groups. These include an advisory panel of judges from across Canada, a delegation of defence lawyers nominated by the Canadian Bar Association, chiefs of police, legal scholars chosen by the Canadian Association of Law Teachers and representatives from the federal and provincial governments. These consultations enable the Commission to benefit from the advice of key players in the criminal justice system.

This year, meetings were held in Vancouver and Ottawa. The topics discussed by the different groups, named below, dealt with the recodifying of sex crimes, sentencing, a unified criminal court, costs in criminal cases, draft legislation on arrest and bail, the sentencing procedure and immunity from prosecution.

#### *Advisory Panel of Judges*

His Honour Judge J.R. Omer  
Archambault,  
Provincial Court of Saskatchewan,  
Prince Albert

His Honour Judge Bernard Grenier,  
Court of Sessions of the Peace, Montreal

His Honour Judge B.W. Lennox,  
Provincial Court of Ontario, Ottawa

The Hon. Mr. Justice  
Angus L. Macdonald,  
Supreme Court of Nova Scotia, Halifax

The Hon. Mr. Justice  
David C. McDonald,  
Court of Queen's Bench of Alberta,  
Edmonton

His Honour Judge Norman J. Nadeau,  
Provincial Court of Ontario, Barrie

The Hon. Mr. Justice Wallace T. Oppal,  
Supreme Court of British Columbia,  
Vancouver

His Honour Judge Robert D. Reilly,  
Provincial Court of Ontario, Kitchener

The Hon. Mr. Justice  
Melvin L. Rothman,  
Court of Appeal of Quebec, Montreal

The Hon. Mr. Justice Calvin F. Tallis,  
Court of Appeal of Saskatchewan,  
Regina

The Hon. Mr. Justice André Trotier,  
Superior Court of Quebec, Montreal

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A consultation with the Advisory Panel of Judges held in Ottawa: from left to right, Commissioner John Frecker, Ms. Rosalie S. Abella, the Hon. Messrs. Justice David C. McDonald, Melvin L. Rothman, André Trotier and Angus L. Macdonald, Mr. Mark Edwards and His Honour Judge J.R. Omer Archambault.

*Canadian Bar Association  
Representatives*

Richard C. Peck, Q.C., Vancouver

Joel E. Pink, Q.C., Halifax

Donald J. Sorochan, Vancouver

*Canadian Association of Chiefs of Police  
Representatives*

Guy Lafrance,  
Montreal Urban Community

Staff Sergeant John Lindsay,  
Edmonton Police Force

Chief Collin Millar,  
Hamilton-Wentworth Regional Police

Chief Herbert Stephen,  
Winnipeg Police Department

*Canadian Association of Law Teachers  
Representatives*

Professor Bruce Archibald,  
Dalhousie University

Professor Winifred H. Holland,  
University of Western Ontario

Professor Anne Stalker,  
University of Calgary

Professor Donald R. Stuart,  
Queen's University

Professor Louise Viau,  
University of Montreal

*Federal/Provincial Government  
Representatives*

Adeline Bowland,  
Department of Justice, Ottawa

Gordon S. Gale, Q.C.,  
Department of the Attorney-General,  
Nova Scotia

Daniel Grégoire,  
Department of Justice, Quebec

Richard Hubley, Q.C.,  
Crown Attorney's Office,  
Prince Edward Island

Greg Lawlor,  
Department of Justice, Manitoba

Howard Morton, Q.C.,  
Ministry of the Attorney-General,  
Ontario

Richard Mosley,  
Department of Justice, Ottawa

Daniel C. Préfontaine, Q.C.,  
Department of Justice, Ottawa

Carol Snell,  
Department of Justice, Saskatchewan

Edwin A. Tollefson, Q.C.,  
Department of Justice, Ottawa

Michael Watson,  
Department of the Attorney General,  
Alberta

Stuart J. Whitley, Q.C.,  
Department of Justice (Attorney  
General's Office), Manitoba

David L. Winkler,  
Ministry of the Attorney General,  
British Columbia

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### Protection of Life Project

This year, the Protection of Life Project established two permanent advisory groups, one in health law and the other in environmental law. They are comprised of leading national and international experts in their respective fields, coming from the ranks of practitioners of law and medicine, university academics, government and industry.

A consultation on health law was held in Montreal during November. Two papers were considered by the group, whose members are listed below. A Study Paper entitled *Medically Assisted Procreation* was co-authored by Anne Marcoux, Laura Arbour, Professor Marc Gold, Professor Edward W. Keyserlingk, Professor Suzanne Nootens and Isabelle Panisset. Another Study Paper, *Procurement and Transfer of Human Tissues and Organs*, was written by Derek Jones and Barry Hoffmaster.

#### *Advisory Group of Experts on Health Law*

Professor R. Alta Charo,  
University of Wisconsin

Ms. Laura T. Arbour,  
Hamilton, Ontario

Professor Donald G. Casswell,  
University of Victoria

Professor Edith Deleury,  
Laval University

Professor Bernard M. Dickens,  
University of Toronto

Dr. John B. Dossetor,  
University of Alberta

Mr. Hubert Doucet,  
Saint Paul University

Dr. Benjamin Freedman,  
McGill University

Professor Marc Gold,  
York University

Professor Barry Hoffmaster,  
Dorchester, Massachusetts

Professor E. W. Keyserlingk,  
McGill University

The Hon. Mr. Justice Horace Krever,  
Supreme Court of Ontario, Toronto

Dr. Abbyann Lynch,  
Westminster Institute for Ethics and  
Human Values,  
London, Ontario

Ms. Judith N. Miller,  
Royal College of Physicians and  
Surgeons, Ottawa

Dr. Hans Mohr,  
Howe Island, Ontario

Mr. Patrick A. Molinari,  
University of Montreal

Professor Suzanne Nootens,  
University of Sherbrooke

Professor Monique Ouellette,  
University of Montreal

The Hon. Madam Justice Ellen I. Picard,  
Court of Queen's Bench of Alberta,  
Edmonton

Professor Arthur Schafer,  
University of Manitoba

Dr. John Watts,  
McMaster University

Professor Earl Winkler,  
University of British Columbia

A consultation on environmental law was held in Ottawa during March to consider a Study Paper on Responsibility for Contaminated Lands, prepared by Dianne Saxe, a former Ontario Crown attorney with the Ontario Ministry of the Environment. Members of the Advisory Group are as follows:

#### *Advisory Group of Experts on Environmental Law*

Mr. Robert Bissonet,  
Department of the Environment, Quebec

Professor Marie-Ann Bowden,  
University of Saskatchewan

Ms. Beverley Chomyn,  
Department of Indian Affairs and  
Northern Development, Ottawa

Professor Donald Dewees,  
University of Toronto

Professor Paul Emond,  
York University

Mr. Gilles Favreau,  
Canadian Bar Association

Ms. Mary Gade,  
U.S. Environmental Protection Agency

Professor Maryse Grandbois,  
University of Quebec in Montreal

Professor Jack Knetsch,  
Simon Fraser University

Mr. Mohan A. Prabhu,  
Department of Justice, Ottawa

Mr. John Z. Swaigen,  
Metro Toronto Legal Department

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Ms. Donna G. Tingley,  
Alberta Environmental Law Centre,  
Edmonton

Professor David L. VanderZwaag,  
Dalhousie University

Mr. Hajo Versteeg,  
Pesticide Registration Review, Ottawa

Dr. Greg Weary,  
Lavalin Environment Inc., Montreal

### **Special Consultations**

The category referred to as special consultations describes specific consultative events held with groups, institutions or professionals who are concerned with the work of the Commission.

### **International Conference on Criminal Code Reform (Criminal Law)**

This year, the Commission participated in an international conference on Criminal Code Reform sponsored by the Society for the Reform of the Criminal Law. Mr. Justice Linden, President of the Commission, chaired the conference, held in Washington, D.C., from January 21 to 25, 1990. This meeting brought together nearly 200 lawyers, judges, legislators and academics from 15 countries to discuss criminal code reform. Representatives for Australia, Canada, England and Wales, Finland, France, Israel, New Zealand, Nigeria, West Germany, the West Indies, the United States and the Soviet Union came together in plenary sessions, seminars and workshops to exchange ideas on topics such as codifying general principles, sentencing, criminal procedure, homicide, sexual assault and abortion.

The Commission received many compliments from distinguished participants on its proposed Criminal Code. Professor Herbert Wechsler, the drafter of the American Model Penal Code, commented that "[t]he [proposed] Canadian Code is one of the best undertaken in the common law world — in many respects an improvement over the Model Penal Code." The Honourable Dick Thornburg, Attorney General of the United States, in an address to the delegates at a luncheon commented that the Commission's Code "[is] of considerable elegance and simplicity."

The Honourable Doug Lewis, the then Minister of Justice and Attorney General of Canada, in an address to the delegates at a dinner, applauded the Commission's work, stating: "We in Canada are proud of the work of the Law Reform Commission ...." He went on to announce that he "will be inviting the Standing Committee on Justice and the Solicitor General to undertake a study of the General Part of the *Code* with a view to making recommendations for the development of a new General Part."

Professor Ian Dennis of University College, London, commented: "[The Commission's draft Code] is regarded as a document of major constitutional importance. It aspires to express fundamental principles and to set forth moral values. The preference is for generality rather than detail, and for principle rather than pragmatism."



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### **Women's Perspectives on the Reform of Sex Crimes (Substantive Criminal Law)**

On November 17, 1989, the Commission held a special one-day consultation session called, "Women's Perspectives on the Reform of Sex Crimes." This consultation brought together a group of judges, lawyers, law professors and representatives of women's organizations who analysed and commented on a preliminary paper dealing with sex crimes. The participants were:

Professor Amy Bartholomew,  
Carleton University

Professor Shannon Bell,  
York University

Professor Christine L.M. Boyle,  
Dalhousie University

Ms. Ginette Busque,  
Canadian Advisory Council on the Status  
of Women, Ottawa

Mrs. Marie Cameron,  
The Catholic Women's League of Canada,  
Winnipeg

Professor T. Brettel Dawson,  
Carleton University

Mrs. Eleanor Field,  
United Church Women,  
North Gower, Ontario

Ms. Sam Gale,  
Women against Violence against Women,  
Rape Crisis Centre, Vancouver

Professor Winifred H. Holland,  
University of Western Ontario

Ms. Gwen Landolt,  
REAL Women, Toronto

Professor Thelma MacCormack,  
York University

Ms. Patricia Marshall,  
Metro Action Committee on Public Violence  
against Women and Children, Toronto

Ms. Helena Orton,  
Women's Legal Education and Action Fund,  
Toronto

Her Honour Judge Sandra E. Oxner,  
Provincial Court of Nova Scotia, Halifax

The Hon. Madam Justice  
Patricia Mathi Ida Proudfoot,  
Supreme Court of British Columbia,  
Vancouver

Professor Anne Stalker,  
University of Calgary

Mrs. Gloria Strom,  
National Council of Jewish Women  
of Canada, Toronto

Ms. Nicole Tellier,  
National Association of Women and the Law,  
Ottawa

Professor Louise Viau,  
University of Montreal

### **Canadian Advisory Council on Biomedical Ethics (Protection of Life)**

In June, the Protection of Life Project held a one-day meeting in Montreal to discuss what was at that time a proposed Study Paper entitled *Toward a Canadian Advisory Council on Biomedical Ethics*. A broad spectrum of expertise was brought to bear on this topic, including leading thinkers in law, theology, ethics and nursing. The participants were:

Professor Edith Deleury,  
Laval University

Professor Guy Durand,  
University of Montreal

Mr. Glenn G. Griener,  
Joint Faculties Bioethics Project,  
University of Alberta

Professor Edward W. Keyserlingk,  
McGill University

Ms. Pat McLean,  
Canadian Nurses Protective Society, Ottawa

Professor Patrick A. Molinari,  
University of Montreal

Professor Suzanne Nootens,  
University of Sherbrooke

Professor Monique Ouellette,  
University of Montreal

Professor Arthur Schafer,  
University of Manitoba

Dr. John Williams,  
Centre for Bioethics,  
Clinical Research Institute of Montreal

Dr. John Watts,  
McMaster University

The Commission wishes to thank all our consultants for donating their time and contributing so generously to the cause of law reform.

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## 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. We continued our co-operation with the two legal departments of the federal government — the Department of Justice and the Department of the Solicitor General of Canada — and provincial governmental officials. We maintained contact with the House of Commons Standing Committee on Justice and the Solicitor General.

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.

Our close co-operation continued with other Canadian law reform agencies and similar bodies around the world. The newsletter, *Law Reform*, containing news from the various law reform bodies in Canada and abroad was continued. We attended the meeting of the Law Reform Conference of Canada.

We have maintained close ties with the Society for the Reform of the Criminal Law. This year the President of the Commission acted as Chairman of the Fourth Annual Meeting, held in Washington, D.C., from January 21 to 25, 1990 (see page 24).

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.

The Commission continued its close association with the Canadian Association of Law Teachers (CALT), participating in the organization of its annual meeting in Victoria, B.C., and consulting with the criminal law and administrative law teachers at that time. We maintain a summer research intern program, and have a contact person in each Canadian law school. This year, the CALT-LRC Award for outstanding contribution to legal research and law reform went to Professor Michael Trebilcock of the University of Toronto.

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## ADMINISTRATION

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

### Meetings

Activities continued again this year at a brisk pace. The Commission held fifteen formal meetings.

### Regional Operations

Within a year of its establishment, the Commission had opened a Quebec regional office, located in Montreal. 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*, paragraph 11(b)). The Commission is well attuned to the thinking and aspirations of the legal community and the general public in Quebec.

### Official Languages Policy

The Commissioner of Official Languages recognized the excellent record of the Law Reform Commission in the application of the official languages policy, and to this effect the Commission has received tributes from him which indicate "consistently high achiever." The Commission intends to maintain its record.

### Translation

The Commission wishes to express its gratitude to the translators with the Department of the Secretary of State and to the free-lance translators of the Commission's publications. In particular, we would like to thank Ms. Michèle Ali, Ms. Marcelle Gendron and Ms. Ghislaine Poitras of the Translation Bureau as well as Mr. Pierre Ducharme, for their outstanding work over the fiscal year.

### 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 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 inter-library loan services to support the needs of its researchers.

### Personnel

During the fiscal year ending March 31, 1990, the personnel strength of the Commission varied according to seasonal and functional factors. The Commission used the services of research consultants for varying lengths of time during that period (see Appendix G at page 45). They were 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 its 36 authorized person-years.

We also wish to acknowledge the invaluable assistance given to us by certain temporary employees who are not included in the person-year figure.

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## Information Services

Over 250 articles and editorials on the Commission's publications were published in the print media. The electronic media conducted and aired over 100 broadcasts, including interviews with commissioners and consultants.

## General Administration

Included under this heading are: information and library service; mail and records management; material, property and telecommunications management; text processing and secretarial services; printing and duplicating services; and personnel services and contract administration.

## Finances

The Commission was allotted a budget of \$4,834,000 for the 1989-90 fiscal year. Of that amount, \$4,763,667 (98.5%) was spent by the organization in the course of doing business. (Please refer to the table below for the budget breakdown. Figures are still subject to final audit.)

FISCAL YEAR 1989-90		\$	\$
Operating Budget			4,834,000
Expenditures by Standard Object*			
01	Personnel Salaries & Wages	2,013,788	
02	Transportation & Communications	424,516	
03	Information	211,784	
04	Professional & Special Services	1,713,617	
05	Rentals	46,729	
06	Purchased Repair & Upkeep	20,838	
07	Materials & Supplies	149,791	
09	Furniture & Equipment	182,482	
12	Other Expenditures	122	
	TOTAL	4,763,667	4,763,667
	Amount unspent		<u>70,333</u>

\* Figures supplied by Supply and Services Canada

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## VISITORS

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

Ms. Rosalie S. Abella, President,  
Law Reform Commission of Ontario,  
Toronto

Professor A.A. Adeyemi,  
Department of Public Law,  
University of Lagos, Nigeria

Professor Koichi Bai,  
School of Medicine,  
Kitasato Institute, Japan

Professor Larry A. Bakken,  
Hamline University School of Law,  
St. Paul, Minnesota

Professor Jean-Philippe Colson,  
Faculty of Law,  
University of Montpellier, France

The Honourable Justice Sotonye Denton,  
High Court of Justice, Nigeria

Justice Elizabeth Evatt, A.O., President,  
Law Reform Commission of Australia,  
Sydney, Australia

Dr. Kazumasa Hoshino, Chairman,  
Medical Ethics Committee,  
Kyoto University, Japan

Mr. Friederich-Adolf Jahn, M.P.,  
Federal Republic of Germany

Sir Kenneth Keith, Deputy President,  
Law Commission, New Zealand

Mr. Arthur C.I. Mbanejo,  
Pro-Chancellor,  
Obafemi Awolowo University,  
Ile-Ife, Nigeria

Mr. John McGreevy,  
John McGreevy Productions, Toronto

Mr. Alberto Hernandez Mon, President,  
Administrative Reform Commission,  
Colombia

Professor Takashi Narushima,  
Niigata University, Japan

Professor Jean Pradel,  
Director of the Institut de sciences  
criminelles de Poitiers,  
University of Poitiers, France

Professor Katsumi Sawada,  
Niigata University, Japan

Professor Tan Sook Yee,  
Faculty of Law,  
National University, Singapore

His Excellency Jaime Vidal,  
Ambassador of Colombia and Professor  
of Constitutional and Administrative  
Law, Colombia



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## APPENDICES

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

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

*Young Offenders Act*, S.C. 1980-81-82-83, c. 110 (Code ss. 16, 26, 51).

*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)).

**2. Guidelines — Dispositions and Sentences in the Criminal Process** (1976). 71 pp.  
*Young Offenders Act*, S.C. 1980-81-82-83, c. 110.

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

*An Act to amend the Criminal Code (victims of crime)*, S.C. 1988, c. 30.

Proposed Amendments to the *Parole Act* and the *Penitentiary Act*, the Solicitor General of Canada, August 16, 1988.

Bill C-155, *An Act to amend the Criminal Records Act*, first reading August 25, 1988, the Solicitor General of Canada.

Bill C-154, *An Act to establish the office of the Correctional Investigator*, first reading August 25, 1988, the Solicitor General of Canada.

**3. Our Criminal Law** (1976). 42 pp.  
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). 38 pp.  
*An Act to amend the National Energy Board Act*, S.C. 1980-81-82-83, c. 80.

**5. Mental Disorder in the Criminal Process** (1976). 53 pp.  
Proposed Amendments to the *Criminal Code* (mental disorder), the Minister of Justice, June 23, 1986.

**6. Family Law** (1976). 73 pp.  
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). 63 pp.  
*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). 5 pp.  
*Garnishment, Attachment and Pension Diversion Act*, S.C. 1980-81-82-83, c. 100, s. 5.

**9. Criminal Procedure — Part I: Miscellaneous Amendments** (1978). 27 pp.  
*Criminal Law Amendment Act, 1985*, S.C. 1985, c. 19 (Code ss. 464, 485(2) and (3), 486, 491, 495, 553.1, 574(5)).

**10. Sexual Offences** (1978). 56 pp.  
*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.

*An Act to amend the Criminal Code and the Canada Evidence Act*, S.C. 1987, c. 24.

*An Act to amend the Criminal Code (victims of crime)*, S.C. 1988, c. 30.

**11. The Cheque: Some Modernization** (1979). 42 pp.  
Bill C-19, *An Act to amend the Criminal Code* ..., first reading February 7, 1984, the Minister of Justice.

**12. Theft and Fraud** (1979). 60 pp.  
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). 48 pp.  
Under consideration by the Department of Justice.

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14. **Judicial Review and the Federal Court** (1980). 57 pp.  
*An Act to amend the Federal Court Act ...*,  
S.C. 1990, c. 8.
15. **Criteria for the Determination of Death** (1981). 35 pp.  
Under consideration by the Department of Justice.
16. **The Jury** (1982). 86 pp.  
*Criminal Law Amendment Act, 1985*, S.C. 1985, c. 19 (Code ss. 554(1), 560(1)).
17. **Contempt of Court** (1982). 67 pp.  
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). 21 pp.  
Under consideration by the Department of Justice.
19. **Writs of Assistance and Telewarrants** (1983). 110 pp.  
*Criminal Law Amendment Act, 1985*, S.C. 1985, c. 19.
20. **Euthanasia, Aiding Suicide and Cessation of Treatment** (1983). 35 pp.  
Under consideration by the Department of Justice.
21. **Investigative Tests: Alcohol, Drugs and Driving Offences** (1983). 33 pp.  
*Criminal Law Amendment Act, 1985*, S.C. 1985, c. 19.
22. **Disclosure by the Prosecution** (1984). 36 pp.  
Under consideration by the Department of Justice.
23. **Questioning Suspects** (1984). 25 pp.  
Publication entitled *Report to the Attorney General by the Police Commission on the Use of Video Equipment by Police Forces in British Columbia* (1986).
24. **Search and Seizure** (1985). 78 pp.  
*Criminal Law Amendment Act, 1985*, S.C. 1985, c. 19.  
  
*An Act to amend the Criminal Code, the Food and Drugs Act and the Narcotic Control Act*, S.C. 1988, c. 51.
25. **Obtaining Forensic Evidence: Investigative Procedures in Respect of the Person** (1985). 45 pp.  
Under consideration by the Department of Justice.
26. **Independent Administrative Agencies** (1985). 101 pp.  
Under consideration by the Department of Justice.
27. **Disposition of Seized Property** (1986). 76 pp.  
*Criminal Law Amendment Act, 1985*, S.C. 1985, c. 19.  
  
*An Act to amend the Criminal Code (victims of crime)*, S.C. 1988, c. 30.  
  
*An Act to amend the Criminal Code, the Food and Drugs Act and the Narcotic Control Act*, S.C. 1988, c. 51.
28. **Some Aspects of Medical Treatment and Criminal Law** (1986). 19 pp.  
Under consideration by the Department of Justice.
29. **Arrest** (1986). 65 pp.  
Under consideration by the Department of Justice.
30. **Recodifying Criminal Law — Volume 1** (1986). 117 pp.  
*An Act to amend the Criminal Code (torture)*, S.C. 1987, c. 13 (Draft Code s. 35).
31. **Recodifying Criminal Law: Revised and Enlarged Edition of Report 30** (1987). 213 pp.  
Bill C-291, *An Act to amend the Criminal Code (duty to give assistance)*, first reading March 14, 1990, Mr. Kaplan.
32. **Our Criminal Procedure** (1988). 56 pp.  
Under consideration by the Department of Justice.

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## APPENDIX B WORKING PAPERS

Although the recommendations contained in Working Papers are not final, from time to time they do have an impact on legislation. Some current examples include *An Act to amend the Criminal Code* [war crimes], the *Immigration Act, 1976 and the Citizenship Act*, S.C. 1987, c. 37 (Working Paper 37, *Extraterritorial Jurisdiction* (1984)), the *Canadian Environmental Protection Act*, S.C. 1988, c. 22 (Working Paper 44, *Crimes against the Environment* (1985)), Bill C-43, *An Act respecting abortion* (Working Paper 58, *Crimes against the Foetus* (1989)) and *An Act to amend the Criminal Code (arson)*, S.C. 1990, c. 15 (Working Paper 36, *Damage to Property: Arson* (1984)).

1. *The Family Court* (1974). 55 pp.
2. *The Meaning of Guilt: Strict Liability* (1974). 38 pp.
3. *The Principles of Sentencing and Dispositions* (1974). 35 pp.
4. *Discovery* (1974). 44 pp.
5. *Restitution and Compensation* (1974). 25 pp. (Bound with Working Paper 6.)
6. *Fines* (1974). 30 pp. (Bound with Working Paper 5.)
7. *Diversion* (1975). 25 pp.
8. *Family Property* (1975). 45 pp.
9. *Expropriation* (1975). 106 pp.
10. *Limits of Criminal Law: Obscenity: A Test Case* (1975). 49 pp.
11. *Imprisonment and Release* (1975). 46 pp.
12. *Maintenance on Divorce* (1975). 40 pp.
13. *Divorce* (1975). 70 pp.
14. *The Criminal Process and Mental Disorder* (1975). 61 pp.
15. *Criminal Procedure: Control of the Process* (1975). 60 pp.
16. *Criminal Responsibility for Group Action* (1976). 68 pp.
17. *Commissions of Inquiry: A New Act* (1977). 91 pp.
18. *Federal Court: Judicial Review* (1977). 54 pp.
19. *Theft and Fraud: Offences* (1977). 123 pp.
20. *Contempt of Court: Offences against the Administration of Justice* (1977). 69 pp.
21. *Payment by Credit Transfer* (1978). 126 pp.
22. *Sexual Offences* (1978). 66 pp.
23. *Criteria for the Determination of Death* (1979). 77 pp.
24. *Sterilization: Implications for Mentally Retarded and Mentally Ill Persons* (1979). 157 pp.
25. *Independent Administrative Agencies* (1980). 212 pp.
26. *Medical Treatment and Criminal Law* (1980). 136 pp.
27. *The Jury in Criminal Trials* (1980). 164 pp.
28. *Euthanasia, Aiding Suicide and Cessation of Treatment* (1982). 79 pp.
29. *The General Part: Liability and Defences* (1982). 204 pp.
30. *Police Powers: Search and Seizure in Criminal Law Enforcement* (1983). 356 pp.
31. *Damage to Property: Vandalism* (1984). 65 pp.
32. *Questioning Suspects* (1984). 104 pp.
33. *Homicide* (1984). 117 pp.
34. *Investigative Tests* (1984). 166 pp.
35. *Defamatory Libel* (1984). 99 pp.
36. *Damage to Property: Arson* (1984). 44 pp.
37. *Extraterritorial Jurisdiction* (1984). 210 pp.
38. *Assault* (1984). 59 pp.
39. *Post-Seizure Procedures* (1985). 77 pp.
40. *Legal Status of the Federal Administration* (1985). 106 pp.
41. *Arrest* (1985). 143 pp.
42. *Bigamy* (1985). 32 pp.
43. *Behaviour Alteration and the Criminal Law* (1985). 48 pp.
44. *Crimes against the Environment* (1985). 75 pp.
45. *Secondary Liability* (1985). 53 pp.
46. *Omissions, Negligence and Endangering* (1985). 42 pp.
47. *Electronic Surveillance* (1986). 109 pp.
48. *Criminal Intrusion* (1986). 25 pp.
49. *Crimes against the State* (1986). 72 pp.
50. *Hate Propaganda* (1986). 57 pp.
51. *Policy Implementation, Compliance and Administrative Law* (1986). 105 pp.

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- 52. *Private Prosecutions* (1986). 51 pp.
- 53. *Workplace Pollution* (1986). 94 pp.
- 54. *Classification of Offences* (1986). 92 pp.
- 55. *The Charge Document in Criminal Cases* (1987). 57 pp.
- 56. *Public and Media Access to the Criminal Process* (1987). 106 pp.
- 57. *Compelling Appearance, Interim Release and Pre-trial Detention* (1988). 138 pp.
- 58. *Crimes against the Foetus* (1989). 106 pp.
- 59. *Toward a Unified Criminal Court* (1989). 72 pp.
- 60. *Plea Discussions and Agreements* (1989). 97 pp.
- 61. *Biomedical Experimentation Involving Human Subjects* (1989). 69 pp.

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## APPENDIX C OTHER PAPERS PREPARED FOR THE LAW REFORM COMMISSION

### I. 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 pp.
2. *The Immigration Appeal Board* (1976). 88 pp.
3. Carrière, Pierre, and Sam Silverstone. *The Parole Process: A Study of the National Parole Board* (1977). 157 pp.
4. Doern, G. Bruce. *The Atomic Energy Control Board: An Evaluation of Regulatory and Administrative Processes and Procedures* (1977). 85 pp.
5. Lucas, Alastair R. *The National Energy Board: Policy, Procedure and Practice* (1977). 216 pp.
6. Mullan, David J. *The Federal Court Act: Administrative Law Jurisdiction* (1977). 117 pp.
7. Issalys, Pierre, and Gaylord Watkins. *Unemployment Insurance Benefits: A Study of Administrative Procedure in the Unemployment Insurance Commission* (1978). 342 pp.
8. Seminar for Members of Federal Administrative Tribunals, April 5-7, 1978. *Speakers' Remarks* (1978). 253 pp.
9. Fox, David. *Public Participation in the Administrative Process* (1979). 174 pp.
10. Franson, Robert T. *Access to Information: Independent Administrative Agencies* (1979). 80 pp.
11. Issalys, Pierre. *The Pension Appeals Board: A Study of Administrative Procedure in Social Security Matters* (1979). 360 pp.
12. Janisch, H.N., A.J. Pirie, and W. Charland. *The Regulatory Process of the Canadian Transport Commission* (1979). 151 pp.
13. Seminar for Members of Federal Administrative Tribunals, March 19-22, 1979. *Selected Proceedings*. Edited by C.C. Johnston (1979). 90 pp.
14. Slayton, Philip. *The Anti-dumping Tribunal* (1979). 111 pp.
15. Vandervort, Lucinda. *Political Control of Independent Administrative Agencies* (1979). 190 pp.
16. Kelleher, Stephen. *Canada Labour Relations Board* (1980). 106 pp.
17. Leadbeater, Alan. *Council on Administration* (1980). 88 pp.
18. Seminar for Members of Federal Administrative Tribunals, March 1-12, 1980, at Touraine, Quebec. *Speakers' Remarks and Excerpts from Discussion Periods*. Edited by C.C. Johnston (1980). 156 pp.
19. Eddy, Howard R. *Sanctions, Compliance Policy and Administrative Law* (1981). 141 pp.
20. Johnston, Christopher C. *The Canadian Radio-television and Telecommunications Commission* (1981). 144 pp.
21. Slayton, Philip, and John J. Quinn. *The Tariff Board* (1981). 154 pp.
22. Slatter, Frans. *Parliament and Administrative Agencies* (1982). 154 pp.
23. Frecker, John, Patrick Robardet, John Clifford, Daniel Mockle and Kernaghan Webb. *Towards a Modern Federal Administrative Law* (1987). 27 pp.
24. Mockle, Daniel. *Immunity from Execution* (1987). 103 pp.
25. Clifford, John. *Inspection: A Case Study and Selected References* (1988). 108 pp.
26. Webb, Kernaghan. *Pollution Control in Canada: The Regulatory Approach in the 1980s* (1988). 91 pp.
27. Ison, Terence G. *The Administrative Appeals Tribunal of Australia* (1989). 76 pp.

#### Criminal Law and Procedure

28. *Obscenity* (1972). 81 pp.
29. *Fitness to Stand Trial* (1973). 57 pp.
30. *A Proposal for Costs in Criminal Cases* (1973). 20 pp.
31. *Discovery in Criminal Cases* (1974). 261 pp.
32. *Discovery in Criminal Cases: Report of the Questionnaire Survey* (1974). 116 pp.
33. Schmeiser, Douglas A. *The Native Offender and the Law* (1974). 90 pp.
34. *Studies in Strict Liability* (1974). 251 pp.
35. *Studies on Sentencing* (1974). 205 pp.
36. *Studies on Diversion* (1975). 255 pp.
37. Becker, Calvin. *The Victim and the Criminal Process* (1976). 338 pp.
38. *Community Participation in Sentencing* (1976). 249 pp.
39. *Fear of Punishment: Deterrence* (1976). 149 pp.
40. Harrison, Irene. *Public and Press Response to Sentencing Working Paper* (1976). 135 pp.
41. Macnaughton-Smith, Peter. *Permission to Be Slightly Free* (1976). 307 pp.
42. *Studies on Imprisonment* (1976). 327 pp.
43. *Towards a Codification of Canadian Criminal Law* (1976). 56 pp.
44. *Preparing for Trial: Report of Conference Held in Ottawa, March 23-24, 1977* (1977). 342 pp.

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45. Kennedy, Carole. *Evaluation of the Comments Received on Working Paper 22, "Sexual Offences"* (1978). 46 pp.
46. *The Jury* (1979). 473 pp.
47. Stenning, Philip C., and Clifford D. Shearing. *Search and Seizure: Powers of Private Security Personnel* (1979). 204 pp.
48. Grant, Alan. *The Police: A Policy Paper* (1980). 97 pp.
49. Paikin, Lee. *The Issuance of Search Warrants* (1980). 119 pp.
50. Stenning, Philip C. *Legal Status of the Police* (1981). 169 pp.
51. Brooks, Neil. *Police Guidelines: Pretrial Eyewitness Identification Procedures* (1983). 260 pp.
52. Smith, Maurice H. *Origins of Writ of Assistance Search in England, and Its Historical Background in Canada* (1984). 99 pp.
53. Brooks, Neil, and Judy Fudge. *Search and Seizure under the Income Tax Act: Summary of a Study Paper* (1985). 23 pp.
54. Miller, Joyce. *The Audio-Visual Taping of Police Interviews with Suspects and Accused Persons by Halton Regional Police Force: An Evaluation* (1988). 23 pp.

### Evidence

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

### Family Law

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

### Protection of Life

#### Phase I — Medico-legal Issues

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

#### Phase II — Environmental Issues

71. Schrecker, Theodore F. *Political Economy of Environmental Hazards* (1984). 112 pp.
72. Swaigen, John, and Gail Bunt. *Sentencing in Environmental Cases* (1985). 81 pp.
73. Castrilli, J.F., and Toby Vigod. *Pesticides in Canada: An Examination of Federal Law and Policy* (1987). 131 pp.

### Miscellaneous

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



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## II. Unpublished Papers

The following papers supplement the list of over 300 unpublished papers which appear in previous annual reports.

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.

77. "Brief to the House of Commons Legislative Committee on Bill C-38, *An Act to amend the Federal Court Act, the Crown Liability Act, the Supreme Court Act and other Acts in consequence thereof*" (1989).
78. Clifford, John C. "Administrative Policing: Some Federal Inspectorates" (1990). 125 pp.
79. Saxe, Dianne. "Contaminated Land" (1990). 417 pp.
80. Turp, Philippe. "La Corruption et le droit criminel" (1985). 227 pp.

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**APPENDIX D  
ARTICLES PUBLISHED INDEPENDENTLY  
WITH LAW REFORM COMMISSION INVOLVEMENT**

The following is a selection of publications with which Commission personnel have been involved this year.

- Cohen, S.A. "Not As Easy As It Seems: Closing the Consent Loophole" (1990) 74 C.R. (3d) 304.
- Cohen, S.A. "Police Interrogation of the Wavering Suspect: The Impact of *R. v. Smith* on the Right to Counsel" (1989) 71 C.R. (3d) 148.
- Cohen, S.A. "Search Incident to Arrest" (1990) 32 Crim. L.Q. 366.
- Cohen, S.A., and A.N. Doob. "Public Attitudes to Plea Bargaining" (1989) 32 Crim. L.Q. 85.
- Lajoie, A. "La Macro-allocation des ressources et le droit aux services de santé" (1990) 20 R.D.U.S. 231.
- Létourneau, G., and A.A. Morin. "Technologie nouvelle et droit pénal canadien" (1989) 49 R. du B. 821.
- Responses to Non-compliance with Legal Standards: Edited Proceedings of a Consultation Seminar Held in Ottawa, May 12-13, 1988. Jointly sponsored by Department of Justice, Office of Privatization and Regulatory Affairs, Law Reform Commission. [Ottawa: 1989]
- Robardet, P. "Should We Abandon the Adversarial Model in Favour of the Inquisitorial Model in Commissions of Inquiry?" (1990) 12 Dalhousie L.J. 111.
- Robardet, P. "Streamlining Independent Agencies" (1990) 14:1 Dialogue 52.
- Webb, K.R. "Regulatory Offences, the Mental Element and the *Charter*: Rough Road Ahead" (1989) 21 Ottawa L. Rev. 419.

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## APPENDIX E SOME ARTICLES ABOUT THE LAW REFORM COMMISSION AND ITS WORK

The following is a list of articles published about the Commission and its work this year. Additional material is listed in previous annual reports.

- Clements, G.W. "Does Canadian Law Prepare You for Death?" (1990) 10 *Health L. Can.* 234.
- Cohen, S.A. "The Law Reform Commission's Position on a Unified Criminal Court" (1989) 13:4 *Prov. Judges J.* 7.
- "Crimes against the Foetus" [Book Review] (1989-90) 3 *C.J.W.L.* 660.
- Delisle, R.J. "Summary of Proceedings: General Philosophies of Criminal Law and Codification" (1989) 14 *Queen's L.J.* 31.
- Ferguson, G. "A Critique of Proposals to Reform the Insanity Defence" (1989) 14 *Queen's L.J.* 135.
- Galloway, D. "Causation in Criminal Law: Interventions, Thin Skulls and Lost Chances" (1989) 14 *Queen's L.J.* 71.
- Kaiser, H.A. "Summary of Proceedings: The Mental Element" (1989) 14 *Queen's L.J.* 115.
- Klinck, D.R. "The Language of Codification" (1989) 14 *Queen's L.J.* 33.
- Knoll, P.J. "Summary of Proceedings: Defences" (1989) 14 *Queen's L.J.* 133.
- Labeau, P.-C. "L'état du droit en matière d'outrage au tribunal et quelques propositions de réforme" (1989) 21:19 *Journal du Barreau* 20.
- Labrosse, S. "Codifier, ne pas codifier ... [L'outrage au tribunal]" (1989) 10:1 *Maitres* 15.
- "Law Reform Commission Advocates Change" (8 Sept. 1989) 1:11 *Environmental Dimensions*.
- Linden, A.M. "Recodifying Criminal Law" (1989) 14 *Queen's L.J.* 3.
- Manson, A. "Re-codifying Attempts, Parties and Abandoned Intentions" (1989) 14 *Queen's L.J.* 85.
- McConnell, M.L. "Capricious, Whimsical, and Aborting Women: Abortion As a Medical Criminal Issue (Again)" (1989-90) 3 *C.J.W.L.* 661.
- Mockle, D. "La couronne et l'administration fédérale: mise au point" (1990) 26 *Osgoode Hall L.J.* 135.
- Noonan, S. "Protection of the Foetus: Denial of the Woman" (1989-90) 3 *C.J.W.L.* 667.
- Rubiner, J.K. "Pollution Control in Canada: The Regulatory Approach in the 1980s, Kernaghan Webb" [Book Review] (1988) 8 *U.C.L.A. J. Env'tl. L. & Pol'y* 119.
- Stalker, M.A. "The Fault Element in Recodifying Criminal Law: A Critique" (1989) 14 *Queen's L.J.* 119.
- Stalker, M.A. "Introduction [to Selected Papers of a Conference Held in Alton, Ontario, October 14-16, 1988 on Recodifying Criminal Law]" (1989) 14 *Queen's L.J.* 1.
- "A Unified Criminal Court — An Answer to the Complexity and Confusion in the System" (1989) 8:6 *Canadian Police Chief Newsletter* 5.
- Usprich, S.J. "Summary of Proceedings: The Criminal Act" (1989) 14 *Queen's L.J.* 67.

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## APPENDIX F

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

#### **Evidence: 3. Credibility (1972)**

*Corbett v. The Queen*, [1988] 1 S.C.R. 670; [1988] 4 W.W.R. 481; 28 B.C.L.R. (2d) 145; 41 C.C.C. (3d) 385.

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

*R. v. Corbett* (1984), 17 C.C.C. (3d) 129; 43 C.R. (3d) 193 (B.C.C.A.).

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

*R. v. LeGallant* (1986), 33 D.L.R. (4th) 444; [1986] 6 W.W.R. 372; 6 B.C.L.R. (2d) 105; 29 C.C.C. (3d) 291; 54 C.R. (3d) 46 (C.A.).

*R. v. Tran* (1988), 46 C.C.C. (3d) 40 (Man. C.A.).

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

*R. v. Corbett* (1984), 17 C.C.C. (3d) 129; 43 C.R. (3d) 193 (B.C.C.A.).

#### **Evidence: 7. Opinion and Expert Evidence (1973)**

*Haida Inn Partnership v. Touche Ross and Co.* (1989), 34 B.C.L.R. (2d) 80 (S.C.).

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

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

*R. v. Keegstra*, [1988] 5 W.W.R. 211; 87 A.R. 177; 43 C.C.C. (3d) 150; 65 C.R. (3d) 289 (C.A.).

#### **The Family Court (Working Paper 1, 1974)**

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

*Re MacBride and MacBride* (1986), 58 O.R. (2d) 230; 35 D.L.R. (4th) 115 (Unif. Fam. Ct.).

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

#### **The Meaning of Guilt: Strict Liability (Working Paper 2, 1974)**

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

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

*R. v. Sault Ste. Marie*, [1978] 2 S.C.R. 1299; 21 N.R. 295; 3 C.R. (3d) 30.

#### **The Principles of Sentencing and Dispositions (Working Paper 3, 1974)**

*R. v. Groves* (1977), 17 O.R. (2d) 65; 79 D.L.R. (3d) 561; 37 C.C.C. (2d) 429; 39 C.R.N.S. 366 (H.C.).

*R. v. Irwin* (1979), 16 A.R. 566; 48 C.C.C. (2d) 423; 10 C.R. (3d) S-33 (C.A.).

*R. v. Jones* (1975), 25 C.C.C. (2d) 256 (Ont. Div. Ct.).

*R. v. L. (D.)* (1990), 53 C.C.C. (3d) 365; 75 C.R. (3d) 16 (B.C. C.A.).

*R. v. McGinn* (1989), 75 Sask. R. 161; 49 C.C.C. (3d) 137 (C.A.).

*R. v. Wood*, [1976] 2 W.W.R. 135; 26 C.C.C. (2d) 100 (Alta. C.A.).

*R. v. Zelensky*, [1977] 1 W.W.R. 155 (Man. C.A.).

*Turcotte v. Gagnon*, [1974] R.P.Q. 309.

#### **Discovery (Working Paper 4, 1974)**

*Kristman v. The Queen* (1984), 12 D.L.R. (4th) 283; 13 C.C.C. (3d) 522 (Alta. Q.B.).

*Magna v. The Queen*, [1977] C.S. 138; 40 C.R.N.S. 1.

*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.).

*R. v. Scott* (1984), 16 C.C.C. (3d) 511 (Sask. C.A.).

#### **Restitution and Compensation (Working Paper 5, 1974)**

*R. v. Fitzgibbon*, [1990] 1 S.C.R. 1005.

*R. v. Groves* (1977), 17 O.R. (2d) 65; 79 D.L.R. (3d) 561; 37 C.C.C. (2d) 429; 39 C.R.N.S. 366 (H.C.).

*R. v. Zelensky*, [1978] 2 S.C.R. 940; 21 N.R. 372; [1978] 3 W.W.R. 693; 2 C.R. (3d) 107.

#### **Fines (Working Paper 6, 1974)**

*R. v. Hebb* (1989), 89 N.S.R. (2d) and 227 A.P.R. 137; 47 C.C.C. (3d) 193; 69 C.R. (3d) 1; 41 C.R.R. 241 (S.C.T.D.).

#### **Discovery in Criminal Cases (1974)**

*Skogman v. The Queen*, [1984] 2 S.C.R. 93; 11 D.L.R. (4th) 161; [1984] 5 W.W.R. 52; 13 C.C.C. (3d) 161; 41 C.R. (3d) 1.

#### **Evidence: 10. The Exclusion of Illegally Obtained Evidence (1974)**

*R. v. A.N.* (1977), 77 D.L.R. (3d) 252 (B.C. Prov. Ct. Fam. Div.).

*R. v. Stevens* (1983), 58 N.S.R. (2d) and 123 A.P.R. 413; 7 C.C.C. (3d) 260 (C.A.).

#### **Studies on Sentencing (1974)**

*R. v. McGinn* (1989), 75 Sask. R. 161; 49 C.C.C. (3d) 137 (C.A.).

#### **Studies on Strict Liability (1974)**

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

#### **In Sight of Land ... (Fourth Annual Report, 1974-1975)**

*R. v. Earle* (1975), 8 A.P.R. 488 (Nfld. Dist. Ct.).

*R. v. Wood*, [1976] 2 W.W.R. 135; 26 C.C.C. (2d) 100 (Alta. C.A.).

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**Evidence** (Report 1, 1975)

*Catholic Children's Aid Society of Metropolitan Toronto v. S. (J.)* (1987), 62 O.R. (2d) 702 (Prov. Ct. Fam. Div.).

*Graat v. The Queen*, [1982] 2 S.C.R. 819; 144 D.L.R. (3d) 267; 45 N.R. 451; 2 C.C.C. (3d) 365; 31 C.R. (3d) 289.

*Posluns v. Rank City Wall Canada Ltd.* (1983), 39 O.R. (2d) 134 (Co. Ct).

*R. v. Alarie* (1982), 28 C.R. (3d) 73 (Que. Ct. Sess. P.).

*R. v. Auclair*, [1987] R.J.Q. 142 (S.C.).

*R. v. Cassibo* (1983), 39 O.R. (2d) 288; 70 C.C.C. (2d) 498 (C.A.).

*R. v. Corbett* (1984), 17 C.C.C. (3d) 129; 43 C.R. (3d) 193 (B.C.C.A.).

*R. v. Cronshaw and Dupon* (1977), 33 C.C.C. (2d) 183 (Ont. Prov. Ct).

*R. v. Czipps* (1979), 25 O.R. (2d) 527; 101 D.L.R. (3d) 323; 48 C.C.C. (2d) 166 (C.A.).

*R. v. MacPherson* (1980), 36 N.S.R. (2d) and 64 A.P.R. 674; 52 C.C.C. (2d) 547 (C.A.).

*R. v. Perron*, [1983] C.S.P. 1103.

*R. v. Samson (No. 7)* (1982), 37 O.R. (2d) 237; 29 C.R. (3d) 215 (Co. Ct).

*R. v. Stevens* (1983), 58 N.S.R. (2d) and 123 A.P.R. 413; 7 C.C.C. (3d) 260 (C.A.).

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

*R. v. Stratton* (1978), 21 O.R. (2d) 258; 90 D.L.R. (3d) 420; 42 C.C.C. (2d) 449 (C.A.).

*R. v. Sweryda* (1987), 34 C.C.C. (3d) 325 (Alta. C.A.).

*Vetrovec v. The Queen*, [1982] 1 S.C.R. 811; 136 D.L.R. (3d) 89; 41 N.R. 606; [1983] 1 W.W.R. 193; 67 C.C.C. (2d) 1; 27 C.R. (3d) 404.

**Diversion** (Working Paper 7, 1975)

*R. v. Jones* (1975), 25 C.C.C. (2d) 256 (Ont. Div. Ct).

**Limits of Criminal Law — Obscenity: A Test Case** (Working Paper 10, 1975)

*Germain v. The Queen*, [1985] 2 S.C.R. 241; 21 D.L.R. (4th) 296; 62 N.R. 87; 21 C.C.C. (3d) 289.

*R. v. Southland Corp.*, [1978] 6 W.W.R. 166 (Man. Prov. Ct).

**Imprisonment and Release** (Working Paper 11, 1975)

*R. v. Bowen and Kay*, [1989] 2 W.W.R. 213; 91 A.R. 264 (Q.B.).

*R. v. Earle* (1975), 8 A.P.R. 488 (Nfld. Dist. Ct).

*R. v. Harris*, [1985] C.S.P. 1011.

*R. v. MacLean* (1979), 32 N.S.R. (2d) and 54 A.P.R. 650; 49 C.C.C. (2d) 552 (C.A.).

*R. v. McGinn* (1989), 75 Sask. R. 161; 49 C.C.C. (3d) 137 (C.A.).

*R. v. Mouland* (1982), 38 Nfld. & P.E.I.R. and 108 A.P.R. 281 (Nfld. Prov. Ct).

*R. v. Shand* (1976), 11 O.R. (2d) 28; 64 D.L.R. (3d) 626 (Co. Ct).

*Reference Re Section 94(2) of Motor Vehicle Act, R.S.B.C. 1979, c. 288*, [1985] 2 S.C.R. 486; 24 D.L.R. (4th) 536; 63 N.R. 266; [1986] 1 W.W.R. 481; 69 B.C.L.R. 145; 23 C.C.C. (3d) 289; 48 C.R. (3d) 289.

**Maintenance on Divorce** (Working Paper 12, 1975)

*Marcus v. Marcus*, [1977] 4 W.W.R. 458 (B.C.C.A.).

*Messier v. Delage*, [1983] 2 S.C.R. 401; (1984), 2 D.L.R. (4th) 1.

*Pelech v. Pelech*, [1987] 1 S.C.R. 801; 38 D.L.R. (4th) 641; 76 N.R. 81; [1987] 4 W.W.R. 481; 14 B.C.L.R. (2d) 145.

*Rowe v. Rowe* (1976), 24 R.F.L. 306 (B.C.S.C.).

*Webb v. Webb* (1984), 46 O.R. (2d) 457; 10 D.L.R. (4th) 74 (C.A.).

**Divorce** (Working Paper 13, 1975)

*Droit de la Famille — 100*, [1984] C.S. 75.

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