

Law Commission of Canada

2003-2004 Estimates Report on Plans and Priorities

Martin Cauchon
Minister of Justice

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Messages

President's Message

It gives me great pleasure to present the report on the plans and priorities of the Law Commission of Canada for fiscal year 2003-2004.

To fulfill its mandate, the Commission must develop research and consultation processes that lead to proposals for the improvement of our law.

The Commission's goal is to analyze major trends within our society, in the context of relationships that exist between citizens and that are reflected in our law. The Commission's work includes three components: cutting-edge research based on empirical data, innovative consultation mechanisms, which engage citizens in efforts to renew the law, and the development of relevant recommendations.

Cutting-edge Research

Since the beginning of its mandate, the Commission has developed a strategic research plan, whose aim is to start from social realities rather than the categories of the law. This involves a constant process of properly gauging the impact of social changes on our law: is it appropriately adapted to deal with reality? Does it allow Canadian society to realize its aspirations for justice?

The research effort is multidisciplinary and consultative. It is based on empirical data and must be at the cutting-edge of knowledge on social changes. It must also assess the solutions, which have been developed and

tested in Canada and throughout the world. For example, during 2003-2004, the Commission will produce its report on changes in the world of order and security. This report will survey the practices developed in different countries, which have been discussed at an international conference to be held in February 2003.

The objective for the year 2003-2004 is to continue to keep abreast of developments in national and international research, to extend the network of researchers and to create partnerships, which have the benefit of support from all sectors: academic, governmental, private, voluntary and public.

Innovative Consultation Mechanisms

The research must be made available to citizens. They are entitled to it. The Commission's task is to engage Canadians in a process of critical reflection on the law, thus allowing citizens to participate in the solutions. The law does not evolve if citizens do not want it to change. Changes in the law must support the citizens' ability to shape their institutions in a just and accessible way.

The Commission has, therefore, developed an innovative consultation methodology, which focuses citizen participation in the issues in law reform issues and their ability to continue to make themselves heard. The Commission's aim, therefore, is to facilitate the contribution of citizens to the creation of a living law, which meets their needs and their continuing involvement in justice issues. In 2003-2004, consultations on justice between the generations, on democratic participation and on issues of criminal behaviour and prevention will be ongoing. This will allow citizens to make themselves heard on these topics and will further allow a democratic debate of the issues involved.

Relevant Recommendations

The recommendations made by the Commission emerge from its research work and its consultations. The process involves making available to decision-makers solutions that may appropriately respond to problems in our society. The recommendations made by the Commission are not only directed at governmental actors, they are intended for all the stakeholders involved in a reform: the legal institutions, but non-governmental organisations, the private sector, employers, consumers and users as well. To be effective, a reform must involve a multitude of citizens in their different roles and institutions.

Hence, this involves proposing reforms based on democratic Canadian values, which will be capable of responding to the challenges in our society, making recommendations properly supported by innovative research and consultation processes and which are focused on allowing Canadians to benefit from a relevant, responsive, effective, equally accessible to all, and just law.

Nathalie Des Rosiers
President

Management Representation Statement

Report on Plans and Priorities 2003-2004

I submit, for tabling in Parliament, the 2003-2004 Report on Plans and Priorities (RPP) for the Law Commission of Canada.

To the best of my knowledge the information:

- Accurately portrays the Commission's mandate, priorities, strategies and planned results of the organisation.
- Is consistent with the disclosure principles contained in the *Guidelines for Preparing a Report on Plans and Priorities*.
- Is comprehensive and accurate.
- Is based on sound underlying departmental information and management systems.

I am satisfied as to the quality assurance processes and procedures used for the RPP's production.

The Planning and Reporting Accountability Structure (PRAS) on which this document is based has been approved by Treasury Board Ministers and is the basis for accountability for the results achieved with the resources and authorities provided.

Name: _____

Date: _____

Raison d'être

Mission

The raison d'être of the Law Commission of Canada is best expressed in its mission statement, which is:

**To engage Canadians in the renewal of the law to ensure
that it is relevant, responsive, effective, equally accessible to
all, and just.**

Strategic Outcome

The strategic outcome of the Commission is independent advice on improving, modernising and reforming Canadian laws, legal institutions and procedures to ensure that they are aligned with the changing needs of Canadian individuals and society.

Strategic Objectives

The Commission is directed under Section 3 of the *Law Commission of Canada Act* to focus on four orientations:

- ***New Concepts of Law:*** The Commission is to work toward the development of new concepts of law and new approaches to law.
- ***Efficiency and Accessibility:*** The Commission is to consider measures to make the legal system more efficient, economical and accessible.
- ***Stimulating Critical Debate:*** The Commission is charged with stimulating critical debate about law and how it operates in Canadian society. It is encouraged to forge productive networks with academic and other communities to ensure cooperation and coordination in law reform initiatives.
- ***Eliminating Obsolescence and Anomalies:*** The Commission is to work toward the elimination of obsolescence and anomalies in the current law.

Planning Overview

Resources

Our organisation is, to a large extent, funded through operating expenditures and we are authorized to spend income collected over the course of the year. Our expenditures essentially consist of salaries, research contracts and operational overhead costs.

Background

Democratic societies have major expectations with regard to their law. It is

one of the characteristics of our modern societies to rely on law as a mechanism of social control. Democratic societies want to be subject to the rule of law and, therefore, desire a law that is relevant and which allows everyone to participate fully. Social and economic changes continually test the capacity of the law to adequately respond to these expectations. Citizens, therefore, demand that the law be reformed and respond well to evolving change in society and with regard to social issues. Citizens' expectations and their diagnosis on the impact of social changes on the law are often contradictory. The Commission has the challenge of facilitating an informed public discussion of the issues involved in law reform.

Structural Framework

The complexity of the transformations affecting our society in the social and economic areas, suggests that simplistic legal solutions will not be adequate. Social trends are created through the dynamic and changing relationships, which exist between citizens and which are reflected in the law. The Commission, since it was initially set up, has explored how the law operates in the framework of the relationships that people develop among themselves.

The structural framework of the research programme includes four general themes: personal relationships, social relationships, economic relationships and governance relationships.

Such a framework emphasizes the supremacy of relationships and the guiding role of the law in the type of relationships between individuals in modern society. It is these very relationships and not specific rules in the law, which constitute the starting point of the research. Our studies analyse relationships, not because they are passive reflections of legal concepts, but rather dynamic social institutions.

Plans and Priorities

For fiscal year 2003-2004, the Commission has set three priorities for achieving its strategic objective. The first priority is cutting-edge research on issues of law and society conducted through its growing network of organisations and individuals sharing its objectives and methodological directions. The second priority is to engage Canadians in stimulating debates about the issues of concern to them through innovative consultation mechanisms. The third priority is to submit to public and private decision-makers well-founded and timely recommendations to make the law better adapted to the contemporary needs of society. In support of these priorities, the Commission will establish partnerships with other institutions and organisations. Finally, the Commission will continue to monitor and follow-up on its recommendations.

Cutting-edge Research

Concepts and Organisation of Work

Changes in the areas of trade, consumerism, education and work present major challenges, particularly because of the dislocation that these trends cause for employment. The Commission believes that by seeing commercial activities in the context of relationships, there will be an enhanced ability to understand how to provide the responses required by the human and social disruptions caused by an economy in transition.

Economic security is most often associated with work and work is most often solely associated with the position occupied by an individual in the labour market. However, work encompasses more than a paid job and it does not always lead to economic security. The Commission has, therefore, undertaken a project, with the goal of studying the ways in which the law allows people to attain economic security or the manner in which it impedes them in achieving this security.

The law plays an important role when we try to determine the types of work that are recognized, valued and rewarded, as well as those that are downgraded, poorly regarded and prohibited. The Commission will attempt to determine if the law recognizes a sufficient number of occupations and if it provides adequate and appropriate support for the promotion of economic security of those engaged in work in this broad sense of the term.

In 2003-2004, the Commission will continue its research work on these issues and will publish its research to allow citizens to think about the links between society's concepts of work and the goals of economic security.

Legal Diversity and Pluralism

The relationships between communities raise important governance issues. Are the legal and political mechanisms, which frame and structure the relationships, adequate? Do they permit the development of healthy relationships?

Since its inception, the Commission has supported research in this area, particularly with regard to Aboriginal issues. It has published a collection of papers on fiduciary relationships and it is continuing to examine this question in partnership with the Indigenous Bar Association.

The concept of self-governmental for First Nations also presents many governance challenges, which the concept of legal pluralism may help to resolve. In order to explore this assumption, the Commission will work with many partners, including the Assembly of First Nations, to hold a symposium bringing together experts from many disciplines and decision-makers from all levels of government.

Globalization

The growing role of international institutions and agreements is having consequences for Canadians, which affect their law and institutions. The scope of this impact is of concern to a fair number of citizens and civil organisations. For many Canadians, who think they are as much citizens of the world as of Canada, the impact of Canadian law and policies on the social and economic development of other countries is also important.

The Commission intends to explore the influence of international authorities and foreign policies on Canada and of Canada's role in the world. Firstly, the Commission will examine the governance of corporate activities abroad. At the domestic level, what is the ideal governance model for organisations? What mechanisms are required? What will be the consequences of these policies on foreign countries? At the international level, what influence could Canada exert? How should Canada initiate its participation in international meetings to represent its domestic interests and mitigate the resulting consequences, while, simultaneously, respecting and engaging developing countries, that have diverse capabilities?

In 2003-2004, the Commission will undertake research to respond to these questions.

Innovative Consultations

Justice Between the Generations

In the context of their personal relationships, citizens seek to satisfy their material needs and their needs for affection and support. These relationships occur within a legal framework, which supports the family, relationships between spouses, and between friends. As part of its studies on personal relationships, the Commission is concerned with relationships structured by age and generations. With an aging population in certain sectors of society, how will the relationships between generations be structured? How do we ensure that these relationships continue to be enriching, respectful and free of discrimination? Is our concept of the consequences related to age, which are reflected in our laws and public policies, adequate? Is the "age" factor used too often for discriminatory purposes? Are we able to allow all the generations to live harmoniously in an atmosphere of equality? Is the human rights model adequate to meet the challenges of the dynamics of the relationships between generations?

The Commission is proposing a model of engagement of citizens in this discussion, to broaden the debates and equip groups that are not often called upon to participate in public debates – youth and senior citizens – to interact on this issue. For example, it has made the issue of age the theme of its contest for Canadian secondary schools. During the year, the Commission intends to publish a discussion paper and hold consultations on the topic.

Democratic Participation

As part of its research on governance relationships, the Commission is studying decision-making mechanisms within institutions, both public and private, and is seeking to propose effective governance mechanisms within a framework of transparency and accountability.

Last year, the Commission examined the electoral system in Canada and published a discussion paper, which posed a series of questions to Canadians on the state of their democracy. Is the current electoral system adequate or does it require changes? Is the current structure of our system one that is best adapted to the political realities of this country? Does this system facilitate or hinder participation in public life? What are citizens' expectations with regard to representation? Will changes made to the electoral system reduce the level of public discontent about government institutions?

This year, the Commission will continue to encourage, in different ways, the public debate on solutions to improve democratic institutions. It will conduct a series of public consultations, as well as interactive debates on the Internet. It will then prepare a report on the issue.

What is a Crime?

Apart from the four thematic areas forming the Commission's strategic plan, work has also been conducted on an issue with links to the four themes. The objective is to understand the reasons why certain patterns of behaviour are identified under the concept of crime, and to check the impacts of such a concept on personal, social, economic and governance relationships, by assessing the various options available for regulating undesirable behaviour.

The Commission is focusing on developing a communications and consultations strategy for this project, which includes developing scenarios and using the Internet site, as well as cross-Canada meetings to allow the various stakeholders to participate in the discussions. Various discussion fora have already been initiated.

Relevant Recommendations

Policing – A Sector in Transition

In liberal democratic states, it is assumed that the government is responsible for the provision of the security required, through the creation of state-controlled police forces. However, over the last two decades, we have witnessed a gradual loosening of the connection between the police and the state. The state remains a significant player in the delivery and regulation of police services, but it is no longer the only institutional actor offering guarantees of security to citizens. There is now a wide range of private policing organisations, for example, private security firms, insurance companies, forensic accountants and private in-house security services

established by various companies. These private policing agencies have moved beyond simply protecting private property; they are actively participating in policing, as well as the investigation and prevention of crimes committed in public spaces.

If police services are provided through a network of public and private actors, what are the implications for issues of fundamental justice? How can we ensure that these networks of police services respect democratic values, justice and equality?

Following the publication of a discussion paper in the spring 2002, the Commission organized a series of activities intended to obtain the participation of Canadians in the debate on the future of policing. Various public fora were held and they stimulated a debate in the media and in policing institutions. The consultation exercise will culminate in an international conference to be held in Montreal in February 2003. The Commission will submit its report on the transformations in the policing sector during the 2003-2004 fiscal year.

Conflict Resolution – Towards a More Consensual Justice

Researchers and commentators often criticize the adversarial models of criminal and civil justice to respond to conflicts. In criminal justice, efforts have been made to find solutions to replace incarceration for offenders, better respond to the needs of victims and support communities. In civil justice, there is also an attempt to find solutions to create alternatives to courts, in order to resolve contractual, family and other conflicts.

There is a close connection between restorative justice in criminal law and alternative dispute resolution mechanisms in civil law. They both attempt to institute a new awareness of the processes through which conflicts are identified and structured and what might be the optimal corrective results for conflicts.

Over the last few years, the Commission has consulted Canadians on their perceptions of the justice system and on the possibility that the principles and practices of restorative justice might provide an effective response to conflicts, in criminal and civil law contexts.

The Commission's discussion paper entitled "*From Restorative Justice to Transformative Justice*" has been widely distributed to Canadians. Following the distribution of this discussion document, the Commission produced an educational video entitled "*Communities and the Challenge of Conflict: New Perspectives on Restorative Justice*". This educational video explores the role of the community in the conflict resolution process. The Commission has also funded several complementary projects dealing with conflict resolution in both criminal and civil contexts. It will be in a position to submit its report on the challenges of transformative and consensual justice during the 2003-2004 fiscal year.

Partnerships

The Commission is working in partnership with a large number of organisations. We are mentioning the following partnerships as examples:

A multi-year agreement has been established with the Canadian Association of Law Teachers, the Canadian Law and Society Association and the Council of Canadian Law Deans to hold an annual competition entitled *Legal Dimensions* for the preparation of scientific documents on an issue related to the Commission's research program.

The two organisations also collaborate in selecting virtual scholars in residence, who work on Commission projects. Also, an annual competition entitled *Relationships in Transition* is held in association with the Social Sciences and Humanities Research Council, in which researchers from all disciplines, who want to contribute to the evolution of the law, can participate.

This year, a joint research project with the British Columbia Law Institute will be conducted on issues affecting senior citizens, as well as one with the Canadian Policy Research Networks on intergenerational relationships. The Commission also continues to cooperate with the Commercial Law Strategy of the Uniform Law Conference of Canada.

In addition, the Commission is working in close collaboration with several community and voluntary organisations. For example, it is cooperating with Fair Vote Canada by participating in research and consultations on electoral reform, as well as with the Indigenous Bar Association on fiduciary relationships. The Commission's works also have the benefit of the advice and participation of government departments and agencies such as Elections Canada in the area of electoral reform, or the Department of the Solicitor General of Canada for the organisation of the international conference on order and security.

As well, the Commission has established many publication partnerships with various publishers for the publication and distribution of the research it sponsors, for example with *Les Presses de l'Université Laval*, UBC Press, the University of Ottawa Press, *Les Éditions Thémis*, the University of Toronto Press and Carswell.

Follow-up

The Commission is carefully monitoring the impact of its recommendations on the development of the law and the evolution of legal institutions. The Commission has also established mechanisms to ensure that it is always able to receive input from Canadians as to their expectations for justice and law reform.

Commission Planned Spending

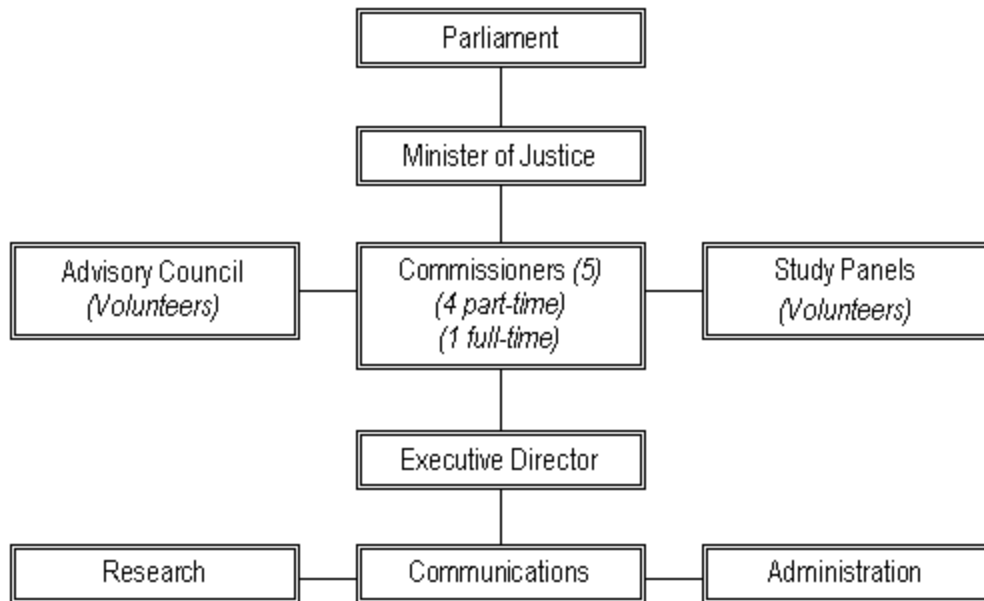
	Forecast Spending	Planned Spending	Planned Spending	Planned Spending
(thousands of dollars)	2002- 2003*	2003- 2004	2004- 2005	2005- 2006
Budgetary Main Estimates (gross)	3 076.0	3 110.0	3 110.0	3 110.0
Non-Budgetary Main Estimates (gross)	-	-	-	-
Less: Respendable revenue	-	-	-	-
Total Main Estimates	3 076.0	3 110.0	3 110.0	3 110.0
Adjustments **	91.1	11.0	11.0	11.0
Net Planned Spending	3 167.1	3 121.0	3 121.0	3 121.0
Less: Non-respendable Revenue	-	-	-	-
Plus: Cost of services received without charges	126.0	223.6	252.4	252.4
Net cost of Program	3 293.1	3 344.6	3 373.4	3 373.4
Full Time Equivalents	12	11	11	11
<p>* Reflects the best forecast of total net planned spending to the end of the fiscal year. ** Adjustments are to accommodate approvals obtained since the Main Estimates and are to include Budget Initiatives, Supplementary Estimates, etc.</p> <p>- The increase in the planned spending for 2003 -2004 and beyond is attributed to increased compensation resulting from collective bargaining agreements. - The difference between the planned spending for 2002-2003 and 2003-2004 is also due to the 2001 -2002 carry forward of \$48,000 included in the 2002-2003 forecast. In addition, the cost of services received without charges will increase over the next few years as the Commission is moving to a new location in July 2003 resulting in higher accommodation costs.</p>				

Organisation

Mandate

The mandate of the Law Commission of Canada is derived from the *Law Commission of Canada Act*, which came into force in late April 1997. The legal mandate of the Commission is "to study and keep under systematic review, in a manner that reflects the concepts and institutions of the common law and civil law systems, the law of Canada and its effects."

Organisation Chart



The Law Commission is an independent departmental corporation, accountable to Parliament through the Minister of Justice. The Governor in Council appoints the President and four part-time Commissioners on the recommendation of the Minister for terms not exceeding five years. The Commission is supported by a small Secretariat headed by an Executive Director.

The Commission has appointed an Advisory Council comprising 23 volunteer individuals, reflecting Canada's socio-economic and cultural diversity, and represent a broad range of disciplines. The Council provides input and advice on strategic direction, the Commission's long-term research program, performance review and other relevant matters.

Study panels are appointed as needed to provide advice on specific research projects. Each panel, headed by a Commissioner, comprises volunteer experts from multiple disciplines and members of affected communities. To support the study panels, research contracts are given to recognised experts in the private sector and academia.

Business Line Description

The Law Commission of Canada fulfils its mandate through the promotion of relevant research that directly engages Canadians in the renewal of the law. The Commission develops and conducts research programs to further the understanding of the role law can and should play in Canadian society.

The Commission uses a variety of formats to consult within the legal community and with Canadians at large. Aside from the publication and distribution of reports, the Commission takes advantage of other media and

fora, including electronic dissemination of studies, the sponsorship of conferences and seminars, press conferences, and town hall meetings.

The results of the Commission's research and consultations are summarised in public discussion papers announcing its findings and proposals, which are disseminated widely. On occasion, these may be formulated into recommendations to Parliament and other decision-makers.

Annexes

Net Cost of Program for 2003-2004

(thousands of dollars)	Total
Net Planned Spending	3 121.0
<i>Plus: Costs of services received without charges</i>	
Accommodation provided by Public Works and Government Services Canada (PWGSC)	160.3
Contributions covering employers' share of employees' insurance premiums and expenditures paid by TBS	63.3
	223.6
2003-2004 Net Cost of Program	3 344.6

Statute Administered by the Law Commission of Canada

Law Commission of Canada Act (S.C., 1996, c. 9)

Contacts for Further Information

Law Commission of Canada
11th Floor, Trebla Building
473 Albert Street
Ottawa, ON
K1A 0H8

Telephone: (613) 946-8980
Fax: (613) 946-8988
E-mail: info@lcc.gc.ca
Web site: www.lcc.gc.ca