



# Law Commission of Canada

## Performance Report

For the period ending  
March 31, 2002

Canada

## The Estimates Documents

Each year, the government prepares Estimates in support of its request to Parliament for authority to spend public monies. This request is formalized through the tabling of appropriation bills in Parliament.

The Estimates of the Government of Canada are structured in several parts. Beginning with an overview of total government spending in Part I, the documents become increasingly more specific. Part II outlines spending according to departments, agencies and programs and contains the proposed wording of the conditions governing spending which Parliament will be asked to approve.

The *Report on Plans and Priorities* provides additional detail on each department and its programs primarily in terms of more strategically oriented planning and results information with a focus on outcomes.

The *Departmental Performance Report* provides a focus on results-based accountability by reporting on accomplishments achieved against the performance expectations and results commitments as set out in the spring *Report on Plans and Priorities*.

The Estimates, along with the Minister of Finance's Budget, reflect the government's annual budget planning and resource allocation priorities. In combination with the subsequent reporting of financial results in the Public Accounts and of accomplishments achieved in Departmental Performance Reports, this material helps Parliament hold the government to account for the allocation and management of funds.

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## Foreword

In the spring of 2000, the President of the Treasury Board tabled in Parliament the document “Results for Canadians: A Management Framework for the Government of Canada”. This document sets a clear agenda for improving and modernising management practices in federal departments and agencies.

Four key management commitments form the basis for this vision of how the Government will deliver their services and benefits to Canadians in the new millennium. In this vision, departments and agencies recognise that they exist to serve Canadians and that a “citizen focus” shapes all activities, programs and services. This vision commits the Government of Canada to manage its business by the highest public service values. Responsible spending means spending wisely on the things that matter to Canadians. And finally, this vision sets a clear focus on results – the impact and effects of programs.

Departmental performance reports play a key role in the cycle of planning, monitoring, evaluating, and reporting of results through ministers to Parliament and citizens. Departments and agencies are encouraged to prepare their reports following certain principles. Based on these principles, an effective report provides a coherent and balanced picture of performance that is brief and to the point. It focuses on outcomes - benefits to Canadians and Canadian society - and describes the contribution the organisation has made toward those outcomes. It sets the department’s performance in context and discusses risks and challenges faced by the organisation in delivering its commitments. The report also associates performance with earlier commitments as well as achievements realised in partnership with other governmental and non-governmental organisations. Supporting the need for responsible spending, it links resources to results. Finally, the report is credible because it substantiates the performance information with appropriate methodologies and relevant data.

In performance reports, departments and agencies strive to respond to the ongoing and evolving information needs of parliamentarians and Canadians. The input of parliamentarians and other readers can do much to improve these reports over time. The reader is encouraged to assess the performance of the organisation according to the principles outlined above, and provide comments to the department or agency that will help it in the next cycle of planning and reporting.

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This report is accessible electronically from the Treasury Board of Canada Secretariat Internet site:  
<http://www.tbs-sct.gc.ca/rma/dpr/dpre.asp>

Comments or questions can be directed to:

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## Performance Report

For the period ending  
March 31, 2002

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*Martin Cauchon*  
Minister of Justice

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## Section I: Messages

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### President's Message

#### A just law for all

Law must reflect Canadians' aspirations for justice. It must not lag behind progress a society makes nor should it be isolated from citizens' needs and concerns. For a law-based society, maintaining a close connection between values and law is of considerable importance: it is just not possible to continue to respect or uphold laws that cease to reflect society's ideals of justice.

Most democratic countries invest in law reform to ensure the law continues to serve society and citizens well. The Law Commission of Canada has been given a mandate to propose changes and reforms to modernize the law in Canada. To fulfil this purpose, it must first identify problems and then propose innovative and realistic solutions.

To that end, the Law Commission must stimulate critical debate on the law among Canadian citizens, because those who "live the law" are the people who can best identify injustices and reflect society's values. That is why, since its inception in 1997, the Law Commission has developed a research program that engages the general public in debating issues pertaining to law reform.

#### Engaging Canadians in the renewal of the law

Instead of dividing its research program according to traditional systems of law — criminal law or family law, for example — the Law Commission opted for a broader classification based on the relationships citizens have amongst themselves, whether they are primarily personal, social or economic, or concern governance. This research program is intended to enable all citizens to take part in debates and to allow a broader questioning of the issues our society is facing.

The Law Commission has used various means to stimulate public debate and to encourage Canadians' participation in its work: it has organized community forums, developed quizzes and created interactive scenarios on its Internet site that have stimulated the creation of videos and plays.

**"the commission's work should be open to and inclusive of all Canadians and the results of that work should be accessible and understandable"**

*Preamble of the Law Commission of Canada Act*

#### Stimulating multidisciplinary research

To address the complex problems in our society and enrich our understanding of human and social behaviour, we seek input from all disciplines, including sociology, psychology, economics, philosophy and political science, as well as from the different

areas of law, including both common and civil law traditions. A multidisciplinary approach also helps to situate law in its social context, and **to study the law as it is experienced, not just as it is written.**

**“the commission should adopt a multidisciplinary approach to its work that views the law and the legal system in a broad social and economic context”**

*Preamble to the Law Commission of Canada Act*

### **Proposing new concepts of law**

As the rapid pace of technological and social change continues, we need new tools, in law as elsewhere. Laws and institutions that may have served us well in the 19<sup>th</sup> and 20<sup>th</sup> centuries may prove ineffective to meet the challenges of the 21<sup>st</sup> century.

The Law Commission has therefore taken an ambitious approach in its research, in its consultations and in its critique of existing concepts in current law. It is a matter of going beyond traditional understanding to seek stimulating ideas, in all fields, and to evaluate them. Anything less ambitious will prevent us from coping with the issues that are emerging and will continue to emerge in our society over the coming years.

**“[the commission must provide advice on] the development of new approaches to, and new concepts of, law”**

*Subsection 3(a) of the Law Commission of Canada Act*

Our legal system is a valuable legacy: it has allowed us to enjoy a certain degree of peace and prosperity. But it is not perfect. It is up to each one of us to ensure our laws continue to reflect society’s aspirations for peace and justice.

Nathalie Des Rosiers  
President

## Section II: The Law Commission of Canada's Performance

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### Strategic Context

The law both structures relationships and reflects them. It must therefore support a view of society built around values shared by its citizens. However, society's needs and values are constantly changing. Continuous consideration must be given to the ability of law to fulfil our aims and aspirations for justice.

The mandate of the Law Commission of Canada is to propose measures for improving and modernizing Canadian law. The range of possible reforms is vast and expectations are manifold, arising from many different sectors and directed at clarifying the law as well as making it more accessible and increasing its effectiveness. The *Law Commission of Canada Act* therefore directs the Law Commission to provide independent advice around four objectives:

- developing new concepts of law;
- improving efficiency and accessibility;
- stimulating critical debate; and
- eliminating obsolete laws and anomalies.

#### Our mission

“... engaging Canadians in the renewal of the law to ensure that it is relevant, responsive, effective, equally accessible to all, and just.”

It is a major challenge to identify the most appropriate fields in which interventions are needed to foster the evolution of law, in terms of both new concepts and implementation. The Law Commission must also identify trends in Canadian society, provide an informed diagnosis of problems in the Canadian legal system and propose realistic reforms.

### Strategic Results

#### Summary of Accomplishments

In its *Report on Plans and Priorities* for 2001–02, the Law Commission undertook to continue its work in relation to four themes based on the different kinds of relationships that describe citizens' interactions. Specifically, the Commission proposed:

- under *Personal Relationships*
  - to complete its report on close personal relationships between adults, and
  - to continue its work on the issues raised by aging of the population;
- under *Social Relationships*
  - to produce a discussion paper on the private and public dimensions of policing services,
  - to distribute its research on law and communities, and
  - to continue its work on restorative justice;
- under *Economic Relationships*
  - to study the issue of security interests in relation to intellectual property, and



- to develop a research plan for studying the impact of changes in patterns of trade and employment on the law; and
- under *Governance Relationships*
  - to stimulate critical thinking on law and democracy, and
  - to study questions concerning Aboriginal governance.

Finally, the Commission pledged:

- to study the question “What is a Crime?” in relation to these four themes
  - by establishing networks of researchers.

These projects have been carried out. The following sections explain how they contribute to the strategic goals of both the Government of Canada and the Law Commission of Canada.

## **A. Engaging Canadians in the Renewal of the Law**

To participate in renewing the law is to participate in the country’s political and democratic life. The following projects provide three examples of ways in which the Law Commission has promoted citizens’ active involvement in its work and fostered critical debate.

### ***i. Beyond Conjuality: Supporting Canadians’ ability to participate in renewing their law***

Published during 2001, the Law Commission’s report, *Beyond Conjuality: Recognizing and Supporting Close Personal Adult Relationships*, questions the legal framework that has characterized our law until now. For a long time, Canadian law has defined close personal and interdependent relationships between adults based on concepts of conjuality and marriage.

The first part of the report suggests a methodological framework to help governments reconsider current policies and programs that use the concepts of conjuality or marriage in a way that limits the definition of adult relationships involving emotional or economic interdependence. The second part of the report deals with the legal framework for interpersonal relationships. In it, the Law Commission recommends the establishment of registration systems that will enable adults to register their relationship and to benefit from an easy and accessible legal framework that provides for a set of commitments. The Law Commission also recommends a new review of the heterosexual restrictions imposed on the legal concept of marriage.

*In addition to its report, the Law Commission provided various activities that encouraged the public to reflect on the question of close personal adult relationships. Some scenarios were displayed on the Law Commission’s Internet site and inspired the creation of an interactive play that is now available for community groups interested in exploring the issue.*

This project supported Canadians' capacity to participate in reforming their law. At the same time, it raised issues relevant to the courts and to those responsible for making public policies.

Finally, the report suggests a more general approach to the recognition of close personal relationships between adults. It continues to stimulate critical debate and solicit citizens' participation.

### ***ii. Reforming Democratic Institutions: Creating tools accessible to the public***

The decline in voter turnout and other measures of participation in the democratic process suggest that Canadians have less confidence in their government's ability to satisfy their legitimate expectations than in the past. Conversely, political participation is a sign of social cohesiveness and vibrant communities. We must nurture our democratic institutions to ensure their efficiency and relevance.

*As part of its work on the topic of reforming democratic institutions, the Law Commission created a background paper explaining the various electoral systems, to the general public, and a quiz on electoral reform, available on its Internet site.*

### ***iii. What is a Crime? Promoting the ability of youth to participate in public debate***

Why do we consider certain behaviours criminal and not others? What are the legal, social and cultural factors that influence the decision as to whether or not to criminalize undesirable behaviours? Why do some behaviours seem to call for criminal sanctions, while others are considered matters of health, education or lifestyle?

The objective of the project "What is a Crime?" is to develop a conceptual framework for understanding our differing reactions to undesirable behaviours, including the repercussions for choosing various control mechanisms (i.e., the official legal process, regulatory codes, health and education programs, and decriminalization).

To promote the participation of youth in these public debates, the Commission launched a competition in Canadian high schools. The Roderick A. Macdonald Essay Competition invited young people to think about what behaviour should and should not be considered criminal, and to discuss the impact criminalization has on our society.

## **B. Stimulating Multidisciplinary Research**

One of the Law Commission's objectives is to promote multidisciplinary research, which is more suitable for examining complex problems. The following projects demonstrate the Law Commission's commitment to stimulating a wide range of multidisciplinary research.

### ***i. Leveraging Knowledge Assets: Setting up innovative partnerships and using new technologies***

The nature of wealth has changed. While wealth used to be based on land and real property, and later on shares and securities, it is now driven by access to information. Has commercial law kept pace with such changes?

It is widely acknowledged that support for an innovation-based economy is increasingly necessary to compete in world economy. However, many feel that access to investment is difficult for businesses whose assets consist mostly of intellectual property. Problems may stem from uncertainties involved in the registration of security interests on such assets, as well as from approaches to valuation on the part of lenders. Is it possible to make some practical improvements to facilitate access to investment for information-based businesses? To what extent does the international nature of the new economy prevent or accelerate the need for law reform in this area?

*In collaboration with the Richard Ivey School of Business and the Faculty of Law, University of Western Ontario, the Law Commission hosted a conference on security interests in intellectual property in November 2001. The conference, entitled Leveraging Knowledge Assets, attracted economists, business leaders anxious to increase investments in their organizations and attorneys who advise on intellectual property issues. Video-conferencing allowed stakeholders in five Canadian cities to discuss problems of access to credit and investors' concerns.*

### ***ii. Restorative Justice: Reflecting the law as it is lived***

In addition to exploring restorative justice as an alternative method of applying criminal justice, the Law Commission is also examining its potential in other areas of law, such as family, labour and commercial law.

Over the past year, the Law Commission sponsored the following papers on new research methods, the practice of restorative justice and new perspectives:

- *Aboriginal Restorative Justice Alternatives: Two Case Studies*, by Joan Ryan and Brian Calliou;
- *The Implications of Restorative Justice for Aboriginal Women and Children; Survivors of Violence: A Comparative Overview of Five Communities in British Columbia*, by Wendy Stewart, Audrey Huntley and Fay Blaney; and
- *Community Participation in Criminal Jury Trials and Restorative Justice Programs*, by Gerry Ferguson.

Furthermore, researchers from different disciplines focused on the application restorative justice to criminal and civil law as follows:

- *Exploring Transformative Justice in the Employment of Nurses: Toward Reconstructing Race Relations and the Dispute Process*, by Rebecca Hagey, Lillie Lum, Robert MacKay, Jane Turriffin and Evelyn Brody;

- *La Loi canadienne sur l'équité en emploi et la transformation des rapports sociaux : le cas des minorités visibles*, by Lucie Lamarche and Francine Tougas;
- *Cultural Change? Commercial Litigators and the Ontario Mandatory Mediation Program*, by Dr. Julie Macfarlane;
- *Restorative Justice, Social Relationships and the Adjudication of Conflicts Arising from Complaints of Professional Misconduct and Harassment at Canadian Universities*, by Augustine Brannigan, Erin Gibbs Van Brunschot and John A. Baker;
- *Les modes non judiciaires de règlement des différends : nouveau rôle professionnel pour une meilleure justice?* by Georges A. Legault and Louise Lalonde; and
- *Les nouveaux modes de régulation et la protection des ressources et des milieux marins au Canada*, by Paule Halley.

The Law Commission's research and recommendations pool perspectives from many different disciplines with a view to making tangible changes in people's lives.

### ***iii. Fiduciary Relationships: Inviting an international perspective***

The relationship between First Nations and the Crown reflects more than 500 years of complex interactions. The courts have defined such relationships as "fiduciary."

However, for a large number of First Nations communities, affixing the "fiduciary" label has not clarified the mutual obligations of such relationships, nor has it created more trust, satisfaction or optimism.

A joint conference of the Association of Iroquois and Allied Indians (AIAI) and the Law Commission was held to shed light on the nature of this complex relationship, to examine the relevance of its premises and to propose a framework for the future.

Multidisciplinary research must also be conducted at the international level, since many of the problems encountered in Canada are also experienced in other countries. The Law Commission's partnership on fiduciary relationships with the AIAI has made it possible to evaluate other countries' perspectives on this issue.

## **C. Proposing New Concepts of Law**

The complex problems facing Canadian law often require a new approach and new concepts. All of the Law Commission's projects are directed at developing new ways of thinking and consider current trends that are shaping our society.

### ***i. In Search of Security: Taking social change into consideration***

Even before the events of September 11, 2001, Canadians were concerned about security. In some segments of society, security is bought, like any consumer product. People buy detection and alarm systems, install security bars on windows, and even hire security guards to patrol their neighbourhoods.

The Law Commission's discussion paper, entitled *In Search of Security: The Roles of Public Police and Private Agencies*, examines changes that have occurred in the delivery of security services to Canadians. It describes new security arrangements in Canada and the expanded use of police networks that consist of private as well as public security services.

This work provides a critical examination of the dangers and the advantages of privatization of security services. It raises a number of key questions aimed at helping to determine whether the new arrangements are an appropriate response to changes in our society.

### ***ii. Marginalized Work: Questioning traditional legal classifications***

Law plays an important role in determining the type of work that will be recognized, valued and rewarded or, conversely, devalued, ignored or prohibited. Does the law recognize a sufficiently broad range of work? On what basis does the law recognize and reward certain types of work or certain categories of workers, but not others? What are the legal and economic consequences of the lack of recognition for some types of work?

The concept of marginalized work is used in its broadest sense to describe various forms of employment that exist outside the mainstream. It includes part-time, irregular, transient and atypical jobs, such as those found in the fast-food industry and homemaking services, some forms of agricultural work, jobs paid "under the table," and prostitution. The Law Commission's projects on marginalized work seek to analyse why some types of work fall outside the law's protection, examine the concept of self-employment and to determine the role of the law in ensuring adequate economic security for all types of workers.

### ***iii. What is a Community? Reflecting new concepts of law***

Increasingly, governments are turning to local communities for solutions to a variety of problems. Thus, we are seeing growing reliance on the role of communities in our law.

At the same time, the customary concepts of what constitutes a community are being called into question. Canadian society is becoming increasingly compartmentalized along lines of age, race, gender, nationality, culture, sexual orientation, interests and religion. There is also a growing sense of fragmentation in communities, territorially defined. What constitutes a community? How can different kinds of communities be recognized for legal purposes? Are new concepts of what constitutes a community just as viable as traditional ones for the administration of justice?

This research project illustrates the need for new concepts of law, or legal thematics. It questions and analyses existing concepts to propose new ideas that can better serve the needs of Canadian society.

## Conclusion

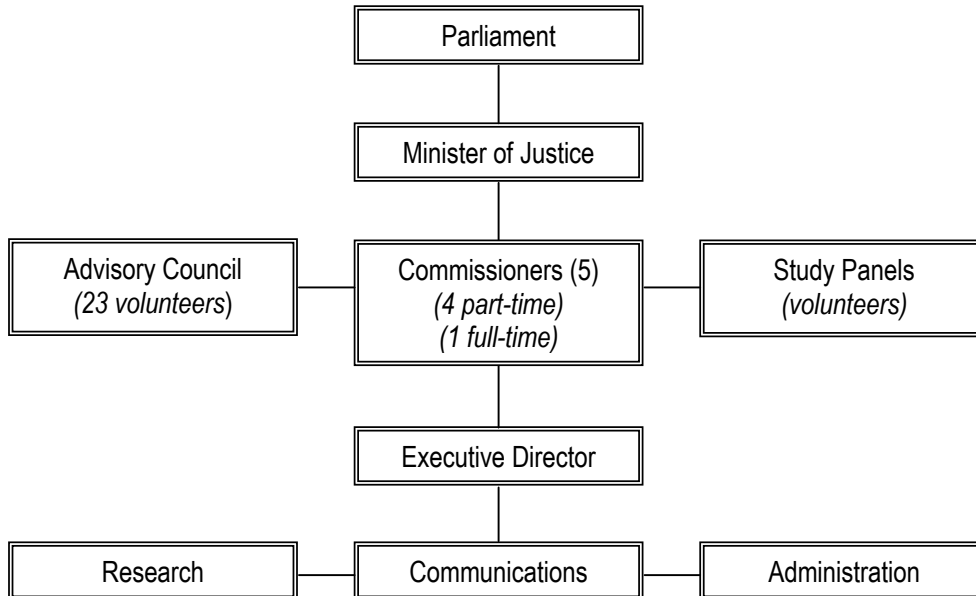
Law that is relevant and effective and provides justice for all requires the involvement of citizens, a multidisciplinary approach to analysing problems and new concepts of law. The Law Commission engages Canadians in critical debate about the renewal of the law. It has developed an ambitious, multidisciplinary research plan responsive to concrete problems in Canadian law. It has also proposed new approaches to existing concepts of law as new socio-economic trends emerge. The Commission thus continues to fulfil the mandate set out in the *Law Commission of Canada Act*.



## Section III: Other Information

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### Organization Chart



The Law Commission chooses its research topics with the assistance of its Advisory Council. The latter consists of 23 volunteers who represent diverse socio-economic and cultural backgrounds and a wide range of disciplines. The council advises the Law Commission on strategic orientation, long-term research and performance review, among other matters.

When it requires advice on specific research projects, the Law Commission organizes study panels. Each one is headed by a Commissioner and consists of volunteer specialists from various disciplines, as well as members of communities affected by the research. On the advice of the study panels, the Law Commission awards research contracts to recognized experts from the private sector and the academic community.

### Act Administered by the Law Commission of Canada

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



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## Appendix I: Financial Tables

**Table 1. Summary of Voted Appropriations**

**Financial requirements by Authority (\$ thousands)**

Vote	2001-02		
	Planned Spending	Total Authorities	Actual
<b>Law Commission of Canada</b>			
35 Program spending	2,870.0	3,073.0	<b>3,039.8</b>
(S) Contribution to employee benefit plan	148.0	148.0	<b>148.0</b>
<b>Total for the Commission</b>	<b>3,018.0</b>	<b>3,221.0</b>	<b>3,187.8</b>

Total Authorities comprise Main Estimates plus Supplementary Estimates plus other authorities.

Explanation of the 2001-02 Total Authorities: The 2001-02 total authorities represent an increase of \$203,000 or 7% over the 2001-02 planned spending of \$3,018,000. This difference represents mainly the funding received through Supplementary Estimates for the following:

- to fund ongoing research projects that were started in 2000-01; and
- to fund collective bargaining agreements and an executive salary increase.

**Table 2. Comparison of Total Planned Spending and Actual Spending**

**Commission's planned spending versus actual spending (\$ thousands)**

Law Commission of Canada	2001-02		
	Planned Spending	Total Authorities	Actual
Full-time equivalents (FTEs)	11	11	<b>10</b>
Operating	3,018.0	3,221.0	<b>3,187.8</b>
Capital	-	-	-
Grants and contributions	-	-	-
<b>Total gross expenditures</b>	<b>3,018.0</b>	<b>3,221.0</b>	<b>3,187.8</b>
Less: Respendable revenues	-	-	-
<b>Total net expenditures</b>	<b>3,018.0</b>	<b>3,221.0</b>	<b>3,187.8</b>
<b>Other revenues and expenditures</b>			
Non-respendable revenues	-	-	-
Cost of services provided by other departments (Note 1)	122.6	122.6	<b>130.5</b>
<b>Net cost of the program</b>	<b>3,140.6</b>	<b>3,343.6</b>	<b>3,318.3</b>

Total Authorities comprise Main Estimates plus Supplementary Estimates plus other authorities.

Note 1: Cost of services provided by other departments is for accommodation, worker's compensation and employee insurance plans.

### Table 3. Historical Comparison of Total Planned Spending and Actual Spending

Historical comparison of the Commission's planned versus actual spending (\$ thousands)

Business Line	Actual 1999–2000	Actual 2000–01	Planned Spending	2001–02	
				Total Authorities	Actual
Law Commission of Canada	2,913.3	3,109.9	3,018.0	3,221.0	<b>3,187.8</b>
<b>Total</b>	2,913.3	3,109.9	3,018.0	3,221.0	<b>3,187.8</b>

Total Authorities comprise Main Estimates plus Supplementary Estimates plus other authorities.