

Law Commission of Canada

**2002 – 2003
Estimates**

Report on Plans and Priorities

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Minister of Justice

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Messages

President's Message

I am pleased to present the fifth Law Commission of Canada Report on Plans and Priorities. The mandate of the Law Commission is to provide advice to Parliament for sound law reform. It is charged with the task of questioning the fundamental aspects of our legal system, of creating new concepts of law and stimulating debate about law and its role in our society.

Proposing reforms that will meet the needs of Canadian society in the years to come requires moving beyond the traditional legal categorisations and asking fundamental questions about law. It also demands an appreciation of the complex dynamic relationships that affect the way law is lived and experienced in Canada.

Over the past five years, the Commission has developed a research agenda that encourages multidisciplinary approaches to law reform and values the contribution of a variety of voices to the enterprise of developing a just legal system. Its research agenda is organised around relationships - personal, social, economic and governance relationships - as opposed to traditional legal categories in order to broaden the scope of the inquiry and allow for more fundamental questions to be asked. For example, the question is not only whether the criminal law is well-adapted to the current social reality but also whether criminal law is the most appropriate response to a social issue, and whether other mechanisms could better help Canadian society in the years to come.

To pursue this mandate, anchored in innovative thinking about law and law reform, the Commission must act as a conduit between the experiences of Canadians and their aspirations for justice, the concerns of decision-makers and the world of ideas about law reform. It is only through this dynamic exchange between citizens, decision-makers and academics that sound law reform may emerge. This is the unique contribution that an independent agency such as the Commission can make: it can engage Canadians in a reflection about new ideas on law and justice.

Responding to Canadians' aspirations for justice

During the year 2002-2003, the Commission will continue its commitment to engaging Canadians in the renewal of law. This commitment translates into creating meaningful opportunities for the general public to debate about law.

The Commission organises community forums to discuss social and legal issues. It regularly participates in conferences across Canada, not only to present its own research

findings but also to gain a better understanding of the needs and aspirations of the Canadian public. We encourage those who conduct research for the Commission to communicate their findings and engage with the public. We work to foster closer links between the public and the research community and, ultimately, a more informed debate on law reform issues.

Other strategies include:

- organising a high school essay contest on a legal theme;
- engaging the media and the artistic community in speaking about law and justice;
- producing videos and documents that are accessible to a variety of audiences;
- organising on-line discussions;
- maintaining an easily accessible and interactive website, and,
- organising conferences to attract academics, policy-makers and practitioners from around the world.

Understanding the concerns of decision-makers

To be effective, the Commission must understand the obstacles to change. At times, change is resisted because reforms fail to address the way in which a problem has been defined by decision-makers, in government and elsewhere. The Commission has a role to play in engaging decision-makers to re-imagine the contours of problems in light of current research and ideas.

The Commission has sought to make its findings and work accessible to decision-makers. It continues to participate in policy networks throughout Canada and actively engages the agents of the system to reflect on the implications of the work of the Commission.

Linking with the world of ideas

The Commission has a critical role to play in capturing the best ideas about law and law reform and assessing whether these ideas can respond to the shortcomings of the system or its anticipated problems.

To keep abreast of developments in social sciences and in law, the Commission has developed national and international networks of researchers and community-based organisations to assist in its work. It has fostered the use of study panels that bring together different disciplines, as well as civil law and common law expertise. It is only by examining from different angles how injustices can occur and how they can be corrected that we can propose meaningful law reforms.

The Commission has also assumed a leadership role in developing creative partnerships with academic institutions, public policy research organisations, and community groups. They insure a constant access to new ideas and innovative research methods.

Ultimately, the Law Commission seeks to be a catalyst for the renewal of law to ensure that it meets the current and future needs of Canadian society. It proposes changes that reflect the best research available, that respond to the concerns of decision-makers and that will continue to reflect the aspirations of a society committed to justice.

Nathalie Des Rosiers
President

Management Representation

Report on Plans and Priorities 2002–2003

I submit, for tabling in Parliament, the 2002–2003 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.

Plans and Priorities

Rationale

The framework for the Commission's research over the planning period comprises four broad themes: personal relationships, governance relationships, economic relationships and social relationships.

Framing its agenda through a focus on relationships rather than legal categories underscores the role of law in structuring and shaping human interaction in modern society. The relationships themselves, and not specific legal rules, are the point of departure for the inquiry. The chosen relationships will be examined not as passive reflections of legal concepts, but as dynamic social forces.

This thematic orientation around various types of relationships highlights the Commission's commitment to seeking new concepts of law and new approaches to law reform. The Commission has also endeavoured to examine a specific question: "What is a Crime?" through the prism of the four relationships in order to bring together and build on the insights of all four relationships themes.

Challenges and Risks

Expectations for law reform are broad, varied and sometimes contradictory. A key challenge for the Commission is therefore to identify those areas where its contribution can be both timely and instrumental in bringing about changes in the way the law is perceived, conceived and administered.

Canadians want their law to embody justice, and their legal system to support this ideal. They expect legal institutions to be accessible and accountable. They want the law to respect and promote the values of their democratic political tradition. All these aspirations occur at a time where there are profound transformations - technological, economic and social - in the Canadian society. Law must be responsive to the emerging needs of society. The proper identification of trends in social and economic transformations represents a challenge for law reformers.

In addition, the complexity of the transformations that affect our society socially and economically suggests that simplistic legal solutions will never be sufficient. The need to engage a multitude of actors in social change also presents another challenge.

Planned Results

Personal Relationships

Canadian law now rests on assumptions about how people organise their private lives and how they relate to their partners, parents, children and others with whom they share a close relationship. These assumptions are frequently out of touch with the facts. As a result, some legal policies derived from them are obsolete and counter-productive.

Since its beginning, the Commission has launched a number of studies that look closely at different relationships of dependence and interdependence. The objective is to understand how the law imagines and constructs these relationships and how it may, in consequence, palliate or exacerbate power imbalances that can lead to abuse and exploitation.

Older Adults

Work on close personal adult relationships having been completed with the presentation of a report to Parliament, the Commission's attention to personal relationships will now turn to those of older adults.

Questions of interest to the Commission in exploring these relationships include the following: Why is the law more interventionist or intrusive in dealing with relationships that involve older adults? Are there other ways for the law to respond, which could give older adults more power to shape their relationships according to their particular needs or desires?

The Commission has identified a number of ways that the law, directly or indirectly, has a negative impact on seniors' close personal relationships. The Commission hypothesises that these effects may be symptomatic of the divide that exists between the reality of seniors' relationships and how others perceive them. The law seems sometimes to be paternalistic, sometimes discriminatory, sometimes arbitrary and sometimes indiscriminate toward older adults and their relationships.

The Law Commission seeks to identify and propose more responsive and effective ways for the law to support older adults and their personal relationships.

Work in this area will be conducted in partnership with other organisations. Firstly, the Commission will contribute to the British Columbia Law Institute's research project on "legal issues affecting seniors". Secondly, the Commission will be participating in the Canadian Policy Research Networks' project on "intergenerational relationships". Finally, based on these projects and its own research and consultations, the Commission will produce a Discussion Paper that will invite Canadians to reflect on these issues.

Social Relationships

Under its social relationships theme, the Commission is exploring the concepts of security and conflict. Harmonious and healthy social relationships are built upon trust, interdependence and respect. But this is not the only way that everyday human interaction can be viewed. Disagreement and conflict are inevitable products of everyday life.

In the past, law relied heavily on public institutions such as the criminal justice system and the public police to resolve conflict and ensure security. Increasingly, however, Canadians are relying on more informal methods of conflict resolution and on private institutions to ensure their security. The objective of the Commission's research is to explore the impact that these arrangements have on the lives of Canadians.

Order and Security

One of the hallmarks of liberal democracies has been the idea that government is responsible for the provision of security. This has been achieved by the creation of state-controlled police forces. Over the past two decades, however, there has been a gradual decoupling of policing and the state. The state remains a significant player in the delivery and regulation of policing, but it is no longer the only actor involved in offering guarantees of security to citizens. There is now a range of private policing organisations that include, for example, private security firms, insurance companies, forensic accountants, and private in-house corporate security. These private policing agencies have moved beyond simply protecting private property. They are actively engaged in order maintenance, as well as the investigation and prevention of crime in public spaces.

If policing is delivered through a network of public and private actors, what are the implications for issues of fundamental justice? How can it be ensured that these networks of policing will respect democratic values or justice and equality? Will the conception that policing must be answerable to law, impartial, and work within a culture of independence have to change? How should it change?

Following publication of a discussion paper in the spring 2002, the Commission will embark on a series of activities to engage Canadians in a discussion of the implications of the changes in policing on their lives. Various public forums will be held this fiscal year culminating in an international conference to be held in Montreal in February 2003. The Commission hopes to then be in a position to prepare a report to Parliament.

Transformative Justice

The limits of the criminal and the civil justice models in responding to conflict have been well documented. In criminal justice, efforts have been devoted to finding alternatives to punishment and incarceration as a way of rehabilitating offenders, responding to the needs of victims and supporting communities. On the civil side, there has also been a movement to find alternatives to courts to resolve disputes in contracts, property claims, and family law, among others.

Restorative justice in the criminal law and alternative dispute resolution in the civil law are closely connected. They both attempt to trace a new understanding of how we might imagine the processes by which conflicts are named and framed, the assumptions about who is properly a party to a dispute, and what the optimal remedial outcomes might be.

Over the past few years, the Commission has been consulting with Canadians about their perceptions of the justice system and the possibility that the principles and practices of restorative justice may provide a better framework for responding to disputes, both in a criminal and a civil context.

The Commission's discussion paper *From Restorative Justice to Transformative Justice* was circulated widely among Canadians. Following the release of its discussion paper, the Commission produced a video called *Communities and the Challenge of Conflict: New Perspectives on Restorative Justice*. This video explored the role of community in the conflict resolution process. The Commission has also funded a number of other projects that have examined dispute resolution in a criminal and a civil context.

The Commission will hold a public forum on restorative justice in the criminal context with a view to further explore the hopes and fears of citizens in particular areas of Canada with respect to restorative justice. It will then be in a position to consolidate its research and consultations to publish a report for Parliament in the next fiscal year.

Economic Relationships

Many of today's most important relationships can be cast as economic relationships, involving the recognition, allocation and distribution of resources. The general intent of the Commission is to explore how best to structure law to enhance economic strength while protecting fundamental social values.

Various changes in patterns of trade, consumption, education and work pose policy challenges because of the dislocation of employment, families and communities that they cause. Understanding market activities as relational will help establish how law should best respond to the social disruptions caused by economic transitions.

Security Interests

The transformation of the economy from one of land and equity to one of knowledge and information creates significant challenges to the legal infrastructure, to its security regime among others. Access to investment is difficult for enterprises that hold mostly intellectual property assets. This problem may stem from the uncertainty in the law relating to registration of federal security interests on these assets. It may also stem from the culture of traditional lenders and valuation problems.

Focusing on the intellectual property regime, the Commission developed an issues paper on how uncertainty in the legal regime regarding security interests affects investment. It

also hosted an international conference on the topic in November 2001 with the Richard Ivey School of Business and the Faculty of Law of the University of Western Ontario. This research initiative on security interests is conducted in the context of the Commercial Law Strategy of the Uniform Law Conference of Canada.

In the Fall 2002, the Commission plans to issue a report outlining some practical improvements that could be made to facilitate access to investment for information-based enterprises. It is expected that attention will be given to proposing solutions that go beyond legislative reforms and include training, information and sensitisation as well as practical solutions such as communications between the different provincial registries.

Work and Security

Economic security is most often equated with work, and work is most often equated solely with one's position in the labour market. However, work encompasses more than just paid employment, and it does not always lead to economic security. The Commission is undertaking a project to explore the ways in which the law enables people to achieve economic security, or impedes their ability to do so. It is interested in exploring the economic relationships that arise from work in a broad sense.

The law plays a significant role in determining what kinds of work are recognised, valued and rewarded, and equally, what kinds are devalued, ignored or prohibited. The Commission will examine whether law recognises a sufficiently broad range of work, and whether it provides adequate and appropriate support to promote the economic security of all those who engage in work, broadly defined.

In 2002-2003, the Commission will complete its research exploring these issues and will convene a study panel of experts and stakeholders to guide its work in preparation for a discussion paper and public consultations in the next financial year.

Governance Relationships

The aim of the governance relationships theme is to examine ways to enhance the capacity of citizens to participate meaningfully in the processes of public institutions. Canadians are disengaging from these institutions and are more sceptical about their responsiveness. In its investigation of what kinds and forms of law best meet the notion of citizenship and citizen capacity that underlies a liberal-democratic state, the Commission is studying decision-making and institutions, both public and private, and exploring processes for effective governance in a framework of openness and accountability.

Electoral reform

As part of its research on governance relationships, the Commission has undertaken an examination of the electoral system in Canada, in an attempt to better understand this component of Canada's political system and its effects on other aspects of governance. Is

the current electoral system adequate or does it require amendments? Is the design of our current system best suited to political realities in this country? Does it facilitate participation in public life or impede it? What are citizens' expectations of a voting system? Will changing the voting system alleviate the growing public discontent with government institutions?

The Commission intends to encourage public dialogue on these issues in a variety of ways. It will disseminate a discussion paper on the issue, and create different opportunities for citizens to voice their opinions about the values they want to see represented in their electoral system.

Fiduciary Responsibilities

Relationships between communities raise important questions of governance. Are the mechanisms, legal and political that now frame the relationships, adequate? Do they empower citizens? Do they ensure meaningful representation? Do they allow for healthy relationships and discussion?

Since its inception, the Commission has supported research in this area, particularly in the Aboriginal context. It has published a report on urban Aboriginal governance and *Speaking Truth to Power*, a collection of essays on the treaty-making process. A third publication on the fiduciary responsibilities of the governments toward the Aboriginal communities will be added in 2002. The implications of this study will be the subject of further work done in partnership with the Indigenous Bar Association.

What is a Crime?

In addition to the four thematic areas that form the Commission's strategic agenda, work has begun on a question that relates to all four. The objective is to identify why certain behaviours are conceptualised as a crime and the impact of such a conceptualisation on personal, social, economic and governance relationships, with a view to exploring the range of governmental alternatives in regulating undesirable conduct. The Commission has identified "What is a Crime?" as the theme for the 2002 Legal Dimensions Competition. Six scholars from different disciplines will examine the question in a particular area. Their work will be published through a partnership with UBC Press and les Presses de l'Université Laval. As a way of engaging younger constituencies, a high school essay contest on "What is a Crime?" has also been launched and the results of the competition will be announced in 2002.

Finally, the Commission is planning to issue a discussion paper within the next financial year to generate public, academic and governmental reflection on the issue.

Partnerships

As evidenced throughout the preceding section, the Commission works in partnership with as many organisations as possible.

A multi-year agreement has been established with the Canadian Association of Law Teachers, the Law and Society Association and the Canadian Council of Law Deans to hold an annual *Legal Dimensions* competition for the writing of scholarly papers on a topic related to the Commission's research program.

Similarly, an annual competition on *Relationships in Transition* is held in association with the Social Sciences and Humanities Research Council inviting researchers from all disciplines to contribute to the evolution of law. Both organisations also cooperate in hiring scholars in virtual residence who work on Commission projects on secondment from their home employers.

This year, joint research will be undertaken with the British Columbia Law Institute on issues affecting older adults, and with the Canadian Policy Research Networks on intergenerational relationships. The Commission's co-operation with the Commercial Law Strategy of the Uniform Law Conference of Canada will continue.

The Commission also works closely with a number of community and volunteer organisations. Examples include Fair Vote Canada, assisting with the research and consultations on electoral reform and the Indigenous Bar Association with respect to the issue of fiduciary responsibilities. Governmental departments are also consulted and involved in the work of the Commission, such as Elections Canada in the context of electoral reform or the Ministry of the Solicitor General in the organisation of the international conference on order and security.

In addition, the Commission has developed several publishing partnerships with various editors for the publication and dissemination of the research that it sponsors, among them, Les Presses de l'Université Laval, UBC Press, les Presses de l'Université d'Ottawa, University of Toronto Press, and Carswell.

The Commission will continue to actively seek new partnerships to enrich its work and allow it to play an effective role in law reform in Canada.

Monitoring

The Commission also seeks to monitor the impact that its work is having on the development of law and legal initiatives. In that context, it has done follow-up work on the Report *Restoring Dignity: Responding to Institutional Abuse in Canada*, which was published in 2000. It is able to document how several recommendations of the report

were adopted in other countries and how the Report has been received and considered by a variety of constituencies.

In addition, the Commission has put in place mechanisms to ensure that it continues to be responsive to the law reform needs of Canadians: it maintains a dialogue with different constituencies that make suggestions for future work. It also participates into international networks of law reform to keep abreast of developments in law reform around the world.

Commission Planned Spending

(thousands of dollars)	Forecast Spending 2001–2002*	Planned Spending 2002–2003	Planned Spending 2003–2004	Planned Spending 2004–2005
Budgetary Main Estimates (gross)	3,018.0	3,076.0	3,076.0	3,076.0
Non-Budgetary Main Estimates (gross)	–	–	–	–
Less: Respendable revenue	–	–	–	–
Total Main Estimates	3,018.0	3,076.0	3,076.0	3,076.0
Adjustments **	188.0	–	–	–
Net Planned Spending	3,206.0	3,076.0	3,076.0	3,076.0
Less: Non-respendable Revenue	–	–	–	–
Plus: Cost of services received without charges	122.6	126.0	126.0	126.0
Net Cost of Program	3,328.6	3,202.0	3,202.0	3,202.0
Full Time Equivalents	10	11	11	11

* Reflects the best forecast of total net planned spending to the end of the fiscal year.

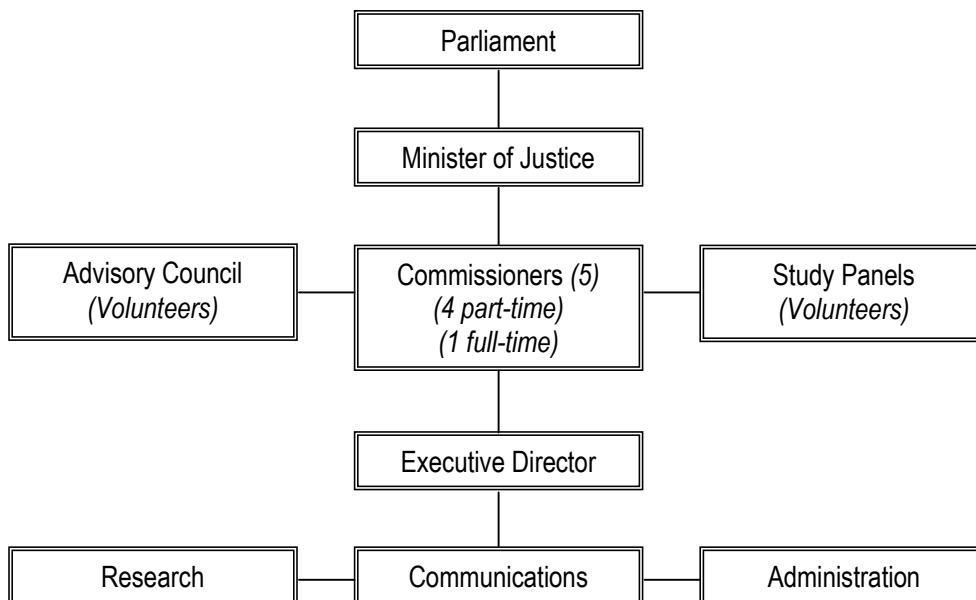
** Adjustments are to accommodate approvals obtained since the Main Estimates and are to include Budget initiatives, Supplementary Estimates, etc.

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 a 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

Table 7: Net Cost of Program for 2002-2003

(thousands of dollars)	Total
Net Planned Spending	3,076.0
<i>Plus : Costs of services received without charges:</i>	
Accommodation provided by Public Works and Government Services Canada (PWGSC)	65.6
Contributions covering employer's share of employees' insurance premium and expenditures paid by TBS	60.4
	126.0
2002–2003 Net Cost of Program	3,202.0

Statute Administered by the Law Commission of Canada

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

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