

Law Commission of Canada

**2000 – 2001
Estimates**

Report on Plans and Priorities

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Minister of Justice

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Section I President's Message

I am pleased to present the third Report on Plans and Priorities of the Law Commission of Canada. This past year the Law Commission achieved all the institutional goals it set for itself in its Strategic Agenda submitted to the Minister of Justice in December 1997.

Both long-term and project-specific partnerships have been established with academic, research, policy, law reform and professional organisations across Canada. The Commission has co-sponsored national conferences in five provinces. It is now regularly invited to participate in public information and educational projects about law reform from coast-to-coast — school activities, community initiatives, academic conferences, professional educational programmes, and continuing judicial education seminars.

Discussion Papers have been produced or are in production in connection with each of the Commission's four research themes. Reports to Parliament on two of our key research topics will be submitted shortly. Finally, the Report on the Reference on Institutional Child Abuse was delivered to the Minister of Justice in March.

Last fall, the Law Commission underwent an external mid-term evaluation of its performance, judged against the accountability framework approved by its Advisory Council. This evaluation revealed that the Law Commission is widely acknowledged throughout Canada and in international law reform circles as a law reform agency having an innovative and far-reaching conception of the problems and potential of law.

Projects now being pursued under each research theme — a citizen agency approach to governance, new forms of adult personal relationships of dependence and interdependence, restorative and transformative justice, legal responses to economic shocks — appear to have struck a responsive chord with Canadians. The Law Commission is frequently solicited to participate in national law reform endeavours. Even more than the Reports submitted to Parliament, it is these reflections and recommendations about the form and substance of law reform that define the unique contribution of the Law Commission of Canada.

Accounting to Canadians

At the end of this third year of operation, and as the terms of the five Commissioners come to an end, the Law Commission is keen to report on what it has learned from its ongoing research and about how it can best fulfil its legislative mandate.

Studies and research to date have confirmed the approaches set out in the Strategic Agenda of December 1997. In addition, these studies point to ways in which other specific research projects can enrich the four relationship themes set out in its original five-year Research Plan. The Commission has updated this Research Plan so that it reflects the lessons learned over the past three years and continues to advance the twin goals of developing new approaches to law and elaborating new concepts of law.

This coming year, the Commission also intends to take a critical look at its own intellectual framework. Here the idea is to scrutinize how the Commission addresses the challenges of pluralism, the capacity of law to treat citizens as moral agents, and the role of law in overcoming imbalances of social power. In the end, if the Law Commission is not itself able to critique how well its research is actually furthering the understandings of law it has adopted to guide this research, it is not meeting one of its principal statutory objectives.

These activities will assist the Commission in re-iterating its commitment to engage Canadians in the renewal of their law. The aspiration is to provide the Canadian public with the information necessary to make informed choices about the kind of law that they feel is needed to achieve a responsive, relevant, accessible and just legal system.

Vindicating Law

In its first year of operation the Law Commission sought above all to stake out a position about the relationship between official law and the law that emerges in the everyday interaction of Canadians with each other. Its 1998 Annual Report — *Living Law* — was meant to signal the Commission's aim to understand the law as a reflection of social life, and its belief that official law occupied entirely too much place in Canadian society.

In its second year of operation, as work on the Ministerial Reference was fully engaged and as studies of restorative justice, urban aboriginal governance, new forms of family relationships, and changing workplace relationships were undertaken, the ambition was to emphasize how the success of law depends on its sensitivity and responsiveness to issues of justice. Its Annual Report in 1999 observed that “the struggle for a more just law is, above all, a struggle for recognition and respect.”

This past year, the Commission has oriented its research and other activities to enhance the capacity of Canadians to overcome the professionalization and the instrumentalism of “official law from the centre”. Freeing our understanding of interpersonal relationships from outmoded, censorial concepts, detaching identity from its recognition by the state, uncoupling governance from government, and separating self-interested “rent-seeking” from responsive economic regulation are the central themes that it believes can meet the objective of vanquishing static, unjust and outmoded law and vindicating a conception of law more attuned to contemporary needs.

This capacity to challenge accepted beliefs is, after all, the justification for establishing an independent agency as a vehicle of reflection and law reform.

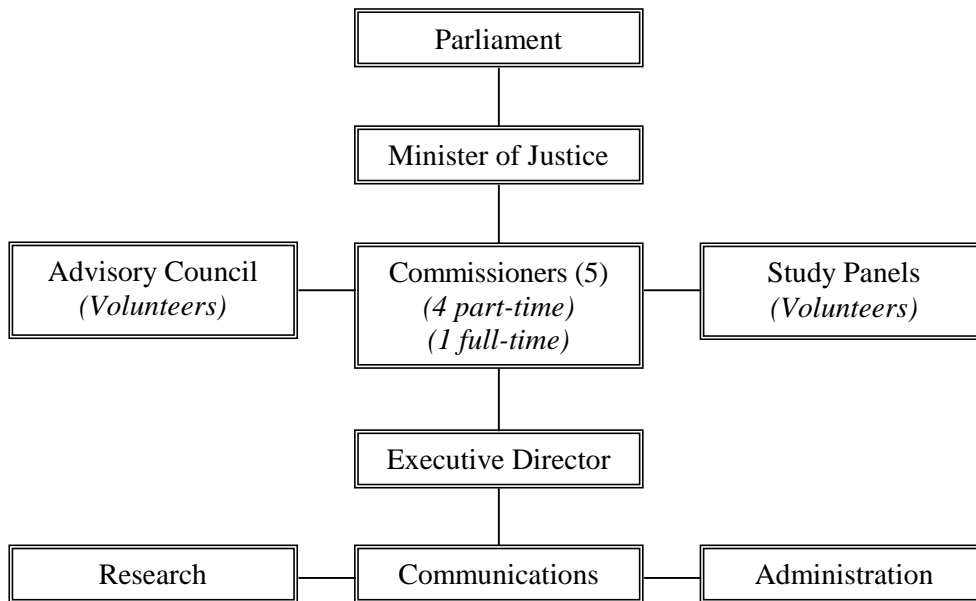
Roderick A. Macdonald
President

Section II Agency Overview

A. Mandate, Roles and Responsibilities

The mandate of the Law Commission of Canada is derived from the Law Commission of Canada Act, which came into force in 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



B. Programme Objective

The objective of the Commission is to provide independent advice on improving, modernizing 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 Act to focus on the following strategic objectives:

New Concepts of Law: The Commission is to work towards 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 in order 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.

In support of its legal mandate outlined above, the Law Commission has articulated its mission as follows:

The mission of the Law Commission of Canada is to engage Canadians in the renewal of the law to ensure that it is relevant, responsive, effective, equally accessible to all, and just.

Organisation

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

In order to implement the spirit as well as the letter of the *Law Commission of Canada Act*, a voluntary Advisory Council of 21 outside individuals and experts representing Canada's socioeconomic and cultural diversity, as well as a broad range of disciplines has been appointed. The Council provides input and advice on strategic directions and 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, is comprised of volunteer experts from multiple disciplines and members of affected communities. The majority of the research in support of the study panels will be obtained through contracts with recognized experts in the private sector and academia.

Guiding Principles

The following principles govern the manner in which the Law Commission of Canada pursues its mission:

Inclusiveness

The policies, procedures and practices of the Commission are open and inclusive. This involves canvassing a wide range of people affected by and concerned with law and justice, and giving a voice to those not ordinarily heard. The Commission is committed to making its work responsive and accessible to Canadians.

Multidisciplinary Approach

The Commission understands the law as part of the broader social and economic environment. A multidisciplinary perspective informs its search for the underlying causes of inadequacies in the legal system. To evaluate the law in its societal context the Commission will draw on diverse sources of legal and non-legal experience and expertise.

Innovative Practices

The Commission employs innovative research and management practices, and uses new technologies, where appropriate, for information gathering, evaluation, consultation and communication. It endeavours to be efficient in all aspects of its operations.

Partnerships and Networks

The Commission builds partnerships with organisations from the public and private sectors and with governments. It works closely with academic and other communities, as well as with centres of research. To avoid duplication of effort and to benefit from existing knowledge and capacity in addressing areas of common concern, it will forge dynamic and creative networks of persons and groups interested in improving the law.

C. External Factors Influencing the Agency

Although the Law Commission is not ultimately responsible for developing policy, for passing or amending legislation or for delivering public services, it is expected to provide government and Parliament with sound and informed advice on how best to deploy the law in the service of Canadians.

As such, it must be sensitive to the concerns expressed by Canadians over the relevance and adequacy of contemporary law and legal institutions as these affect their capacity as citizens, partners, parents, workers, consumers and bystanders. The concerns relate generally to the accessibility, accountability and justice of a legal system often considered outdated in its assumptions and prescriptions.

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.

Given its limited resources, the Commission must also be acutely aware of what others in governments, universities and the private sector are doing in terms of research and policy development with regard to issues of law and society. Besides avoiding wasteful duplication, this allows the Commission to build on the efforts of other organisations and establish productive partnerships in pursuit of its goals.

D. Agency Planned Spending

(\$ thousands)	Forecast Spending 1999 – 2000*	Planned Spending 2000 – 2001	Planned Spending 2001 – 2002	Planned Spending 2002 – 2003
Budgetary Main Estimates (gross)	3,011.0	3,007.0	3,007.0	3,007.0
Non-Budgetary Main Estimates (gross)	-	-	-	-
Less: Respendable revenue	-	-	-	-
Total Main Estimates	3,011.0	3,007.0	3,007.0	3,007.0
Adjustments**	139.5	-	-	-
Net Planned Spending	3,150.5	3,007.0	3,007.0	3,007.0
Less: Non-respendable Revenue	-	-	-	-
Plus: Costs of services received without charge	107.0	107.7	107.7	107.7
Net Cost of Program	3,257.5	3,114.7	3,114.7	3,114.7

Full Time Equivalents	9	11	11	11
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* Reflects the best forecast of total net planned spending to the end of the fiscal year.

** Adjustments are to accommodate approvals obtained since the Annual Reference Level Update (ARLU) exercise and to include Budget initiatives.

Section III Plans, Results and Resources

Law Commission of Canada

A. Business Line Objective

The business line objective is the same as the program objective stated above.

B. Business Line Description

The Law Commission of Canada fulfils this mandate through the promotion of 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 summarized in public papers announcing its findings and proposals. On occasion, these may be formulated into recommendations to Parliament.

C. Key Results Commitments, Planned Results, Related Activities and Resources

Chart of Key Results

To provide Canadians with:	As demonstrated by:
Advice to improve the justice of the law	<ul style="list-style-type: none">• Relevant and timely research on issues of law and justice.• Open forum about law and how it operates in Canadian society.• Quality recommendations on improvement, modernisation and reform of the law.

Planned Results and Activities

The Commission adopted a Strategic Agenda for its research programme over its first 3-5 years. The framework for the Commission's research over the planning period comprises four broad themes: personal relationships, governance relationships, economic relationships, and social relationships.

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. It immediately suggests multidisciplinary since relationships are not a traditional legal category. It also intimates the importance that the Commission attaches to designing and pursuing its research in a manner that is understandable and accessible to Canadians.

In addition, framing its agenda in this way underscores the primacy of relationships and the role of law in structuring and shaping human interaction in modern society. The relationships themselves, and not specific rules of law, 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 institutions.

Within each of these four themes the Commission has generated framework documents reflecting the key ideas and programmes of research it wishes to pursue. A number of specific research projects have been launched under each theme. Later the Commission will studies will later be commissioned to synthesize the lessons learned from specific projects, to show how these projects connect with each other, and to illustrate how they inform the more general research themes that the Commission has selected.

The Commission will continue to produce a wide variety of research documents. These include, for example, Background Papers tracing out the nature and scope of an issue, Discussion Documents presenting the Commission's findings and tentative options for consultation and comment, and Reports setting out the Commission's views on the topic under consideration.

Personal Relationships

Canadian law now rests on assumptions about how people organize 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.

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.

In 2000-2001, the Commission plans to publish two sets of background studies and to issue two Reports to Parliament on this theme. The first Report, to appear in the fall of 2000, will present the views of the Commission on how the law should recognize, nurture and sustain adult personal relationships of dependence and interdependence. Commission research suggests that Parliament has not devoted sufficient attention to defining its role in relation to the psychological, emotional, physical and economic well-being of adults in such relationships. Not only has it failed to recognize the wide diversity of relationships, it has continued to rely on outmoded legal concepts as a way of identifying how best to promote its substantive policy goals. The Law Commission hopes to recast the current debate about the true meaning of marriage and the central form of the family into an inquiry concerning which policies should be adopted so as to best respond to the needs of all Canadian adults who are now living in a relationship of dependence and interdependence.

The second Report, to be published in the spring of 2001, is meant to describe the inadequacy of the law relating to mediated personal relationships involving older adults. The Commission will present research about the conditions under which abuse and exploitation occurs and make recommendations about how the autonomy of older adults may be increased as well as how institutional and personal caregivers can be supported in providing them with appropriate care and assistance.

To complement its studies of personal relationships where law and social practice together define the character of the relationship, the Commission will also initiate studies of personal relationships where the status of those involved is almost exclusively defined by law. A first such project will be to examine the relationship between immigrants and their sponsors.

Finally, personal relationships has been selected as the theme of the year 2000 "Legal Dimensions" initiative, co-sponsored by the Commission, the Canadian Association of Law Teachers, the Canadian Association of Law and Society and the Canadian Council of Law Deans. This initiative will result in the production and publication of six scholarly papers on new and emerging forms of personal relationships in the fall of 2000.

Social Relationships

The boundaries that define group identity are shifting as individuals seek to re-fashion existing social relationships or develop new social relationships with one another. There is a growing perception that group identity has become more heterogeneous, diffuse and complex over the past two decades. Increasingly, Canadians are identifying themselves as members of multiple, overlapping and sometimes contradictory groups. This reflects the shifting social, political and cultural boundaries that we used to determine group membership.

During 2000 the Law Commission will launch a major research program to explore the linkage between group identity and the law. Issues to be considered include the role that law plays in creating and sustaining vibrant communities; how computer-mediated communication is re-defining our notion of communities; how group identity and community formation are shaped by economic, technological and social processes associated with globalisation; and, how the law is responding to new ways of organising public space such as gated communities.

The Commission will continue to explore the concept of restorative or transformative justice. The goal is to discern the root ideas associated with the concept, and to compare these ideas with traditional notions of retributive, corrective, restitutionary and distributive justice. In May 2000, studies will be launched, under the second SSHRC-Law Commission “Relationships in Transition” competition to consider how restorative justice might apply not only in the criminal justice sphere, but also in fields such as the family, consumer bankruptcies, corporate governance, labour relations, and anti-discrimination law, where maintaining just multi-party and inter-group relationships is an important value.

Additional contracts will be awarded during the year and a major conference, to discuss and synthesise the results of the research will be held early in 2001. A Report will be published that Spring.

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. The Commission believes that understanding market activities as relational will help establish how law should best respond to the human and social disruptions caused by economic transitions.

In the Spring of 2000, the Commission will publish a Study Paper examining justifications for, and types of governmental response to, one kind of economic transition — a transition that can be characterized as an economic shock. The five research papers contracted under the 1999-2000 SSHRC- Law Commission “Relationships in Transition” competition will be presented at a national conference to be held in November 2000. From that conference the Commission will develop a Report setting out the policy options for governmental responses to economic transitions in the Spring of 2001.

The Commission also plans to produce a Report in August 2000 on options for rationalizing the law relating to federal security interests. This project, undertaken in partnership with the Uniform Law Conference of Canada, is meant to explore different models of legal harmonisation that might be appropriate both within Canada and in the transnational economic sphere.

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. The focal inquiry is to ask what kinds and forms of law best meet the notion of citizenship and citizen capacity that underlies a liberal-democratic state.

In the first quarter of 2000-2001, the Commission will publish two sets of essays on governance: one on the concept of citizen agency; and the other on the theory of legislation. In the early summer it will circulate a Discussion Paper on the opportunity and implications of adopting the concept of citizen agency as the root principle of modern governance. In this Discussion Paper the objective will be to test how thinking of governance from the perspective of the citizen can improve the way regulatory programs are designed, the forms and substance of legislation and delegated legislation, and the manner in which policy instruments such as subsidy, contract and taxation are deployed.

In the early fall the Commission will publish a Study Paper on Legislation and will follow that with a Discussion Paper at the beginning of 2001. This Discussion Paper will offer a model of how legislation should be framed and drafted to meet the needs of a bilingual, bisystemic and culturally diverse Canadian state in a manner that is responsive to both instrumental and semiotic-symbolic concerns.

The Commission will also publish two Study Papers that look at different sites and modes of governance. One relates to the governance of medical research involving human subjects and the other relates to strategies for managing linguistic diversity in national non-governmental organisations. Near the end of the year, the Commission hopes to consolidate the result of its investigation of modes and sites of governance into a Report highlighting principles and best practices for the governance of public institutions in a diverse society.

Other Activities

Notwithstanding its modest means, the Commission will continue to affirm its presence in the overall field of public policy by providing a unique perspective and encouraging innovative thinking on issues under debate.

The Commission will continue its four-year research partnership with the SSHRC. The theme for 2000 is "Social Relationships in Transition". The Legal Dimensions partnership with CALT, CLSA and CCLD will also continue with the theme for 2000 being new forms of "Personal Relationships".

Other project partnerships — with government policy shops, NGOs, universities and professional bodies — will be entered into as opportunities arise and where resources permit.

In 2000-2001, the Law Commission will also publish two other volumes. One of these will be a compendium of the feature stories on Law and Life that have appeared monthly on the web-site of the Law Commission. Eighteen of these stories will be assembled and co-published with a University Press in paperback format. They will also be made available on compact disc. The objective is to disseminate these broadly to educational institutions and non-governmental organisations with a view to encouraging public reflection about the possibilities for law in Canada today.

The other volume will comprise a series of essays about the challenges of modern law that sets out the lessons about law and its renewal that it has learned from its first three years of operation. This will constitute an attempt to state the underlying themes and approaches that have animated and have been reflected in the Commission's work. Here the aim is to show how the Commission has sought to avoid simply reinforcing outmoded assumptions and replicating the inappropriate legal institutions it was meant to challenge.

Section IV Financial Information

Table 4.1: Net Cost of Program for 2000 – 2001

(\$ thousands)	Total
Net Planned Spending	3,007.0
<i>Plus: Costs of services received without charges:</i>	
Accommodation provided by Public Works and Government Services Canada (PWGSC)	65.6
Contributions covering employees' share of employees' insurance premium and expenditures paid by TBS	42.1
	107.7
2000 – 2001 Net Cost of Program	3,114.7

Section V Other Information

Statutes Administered by the Law Commission of Canada

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

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