

Law Commission of Canada

**2001 – 2002
Estimates**

Report on Plans and Priorities

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Minister of Justice

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Section I: Messages

President's Message

I am pleased to present the fourth Law Commission of Canada Report on Plans and Priorities. The Law Commission's mission is to "to engage Canadians in the renewal of the law to ensure that it is relevant, responsive, effective, equally accessible to all, and just." This commitment arising from the Commission's legislative mandate is at the core of the strategic objectives it pursues, by engaging in a research agenda that is responsive to the concerns of all Canadians while exploring new concepts.

Responsive to the Concerns of all Canadians

The Commission is determined to consult and engage all Canadians in its law reform program. Developing a legal system that is fair for all and responsive to the needs of all Canadians is what the Law Commission's work is all about. However, our laws will not change if Canadians do not want change. Indeed, it is the people of our country who instil law reform by the way they use our laws and by expressing their priorities to governments and other institutions. It is in this context that law reform must engage all Canadians.

The Law Commission regularly participates in conferences across Canada, not only to present its own research findings but also to get a better handle on the needs of the Canadian public in terms of law reform. The efforts we put into publicizing our research are quite important, since this encourages closer links between the public and researchers and, ultimately, more informed debate on law reform issues. Dissemination of our research and the development of closer links between the public and our researchers are achieved through different ways:

- hosting Webcasts, that is interactive forums on the Internet;
- producing videos;
- organizing public events in partnership with co-sponsors;
- presenting and circulating research papers, not only to scientific audiences but also to various audiences composed of people who work on such issues, decision-makers and the public at large;
- maintaining an easily accessible Web page, stimulating further constructive debate.

This interaction between the public and our researchers and between decision-makers and our researchers has proven very productive. This, in turn, allows the Commission to pursue a unique and innovative research agenda.

Exploring New Ideas

The Law Commission's mission clearly states the need to "work toward the development of new concepts of law and new approaches to law." The Commission has thus

endeavoured since its inception, as it will continue during the upcoming year, to stimulate innovative research.

To this end, the Commission has undertaken to examine the underlying causes of our current legal system's shortcomings by taking a multidisciplinary approach. By examining from different angles how injustices can occur, we will reach a better understanding of how we can promote genuine law reform. The Commission has also used a wide array of legal and non-legal expertise and experience. It has also undertaken empirical research to assess the workings of the law in a societal context and to determine if past efforts aimed at reforming the law have been successful in reaching their goals.

The Commission has also put its energy in establishing networks of researchers, social workers and community-based organizations. These networks play a key role in a dynamic approach to law reform. They allow ongoing scrutiny of current legal concepts and help to ward off complacency. Such networks also help the Commission stay abreast of the real-life implications of the law in the lives of Canadians. The Commission can thereby continually check to what extent ongoing legal concepts remain current and useful, and whether they serve to eliminate injustice or continue to perpetuate it.

For example, and as will be more fully explained in the following pages, the Commission has developed its research plan around four themes based on the notion of relationships – personal relationships, social relationships, economic relationships and governance relationships – instead of using legal categories such as criminal law and administrative law. This innovative approach, which avoids defining social problems according to the current response afforded by the law has become a trademark of the Commission's work. By looking at the law through relationships formed between individuals, the Commission has been able to raise different questions concerning our law: for example, how can we prevent exploitation of an individual by another within a given personal relationship, instead of only trying to find out if the *Criminal Code* adequately protects the security and integrity of individuals.

Therefore, the Commission has been able to develop through its research framework, different sets of questions that seem to respond adequately to the needs of Canadians.

The Commission is thinking of undertaking a project combining the four themes under its relationships research program – personal relationships, social relationships, economic relationships and governance relationships – each theme bringing useful input to the project. “What is a crime?” is a question that compels us to consider why certain behaviours are qualified as criminal and what are the impacts of such qualification on personal, social, economic and governance relationships, to help us explore alternatives that may be available to governments to regulate undesirable behaviours.

Finally, the Commission continues its work on the issue of institutional child abuse. This issue was referred to the Commission by way of a reference from the federal Minister of Justice and the Commission filed its report to Parliament in March 2000. A follow-up to this report, which has been widely distributed with an accompanying video, is nearly

completed. It measures progress on this issue and the impediments that continue to exist, especially as it pertains to compensation regarding Aboriginal individuals who were interned in boarding schools. The Commission has sponsored more research on this matter to further informed public debate on these issues.

The Commission has undertaken a far-reaching research program, but such a program is necessary if Canadian law is to evolve. If we do not continue to reflect on the law and how it affects human interaction, we risk perpetuating injustice or even creating new injustices. Canadians care about law reform: indeed, their legal system is clearly a part of their national identity.

Nathalie Des Rosiers
President

Management Representation

Report on Plans and Priorities 2001–2002

I submit, for tabling in Parliament, the 2001–2002 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: _____

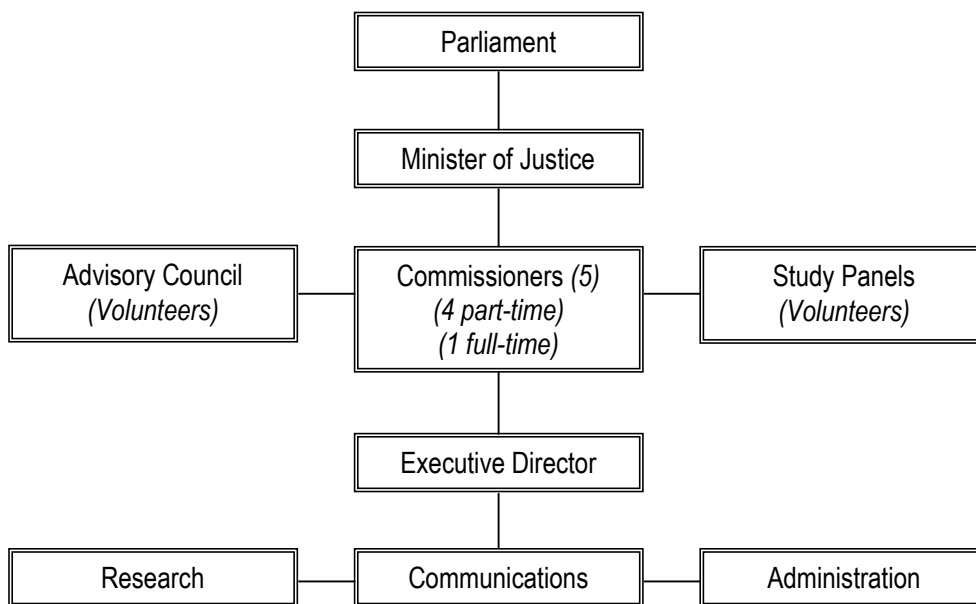
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Section II: Commission Overview

2.1 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 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.”

Organization 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 a voluntary Advisory Council of 23 individuals and experts. They reflect 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 recognized experts in the private sector and academia.

2.2 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 four research 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.

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.

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.

2.3 Planning Context

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. At the same time, they desire law that is responsive to the emerging needs of society.

The pace and depth of social change challenge the adequacy of contemporary law and legal institutions. The law is often outdated in its assumptions, its policies and its prescriptions. Some legal institutions, as well as some legal procedures and practices, have become obsolete or ineffective. Governments require independent, strategic and timely advice on legal policy to assist them in recognizing these deficiencies and finding appropriate remedies.

The economic context in which the law operates is also rapidly changing. Technological innovations have led to significant changes in the workplace, the creation of new forms of property and wealth, new forms of doing business and the emergence of a knowledge-based economy. The globalization of trade and developments in international commerce has affected many of Canada's basic economic and social arrangements.

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.

2.4 Commission Planned Spending

(thousands of dollars)	Forecast Spending 2000–2001*	Planned Spending 2001–2002	Planned Spending 2002–2003	Planned Spending 2003–2004
Budgetary Main Estimates (gross)	3,007.0	3,018.0	3,018.0	3,018.0
Non-Budgetary Main Estimates(gross)	–	–	–	–
Less: Respendable revenue	–	–	–	–
Total Main Estimates	3,007.0	3,018.0	3,018.0	3,018.0
Adjustments **	155.0	–	–	–
Net Planned Spending	3,162.0	3,018.0	3,018.0	3,018.0
Less: Non-respendable Revenue	–	–	–	–
Plus: Cost of services received without charges	107.7	122.6	122.6	122.6
Net Cost of Program	3,269.7	3,140.6	3,140.6	3,140.6
Full Time Equivalent	9	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 Annual Reference Level Update (ARLU) exercise and to include Budget initiatives.

Section III: Commission Plans, Results, Activities and Resources

3.1 Business Line Details

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 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 summarized in public papers announcing its findings and proposals. On occasion, these may be formulated into recommendations to Parliament.

3.2 Key Results Commitments, Planned Results, Related Activities and Resources

A. Key Results Commitments

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.• An open forum about law and how it operates in Canadian society.• Quality recommendations on improvement, modernization and reform of the law.

B. Planned Results and Activities

The Commission has adopted a strategic agenda for its research program over its first three to five 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 underlines 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 forces.

Within each of these four themes, the Commission has generated framework documents reflecting the key ideas and programs of research it wishes to pursue. A number of specific research projects have been launched under each theme. Later the Commission will commission studies 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 consultations and comment, and reports setting out the Commission's views on topics 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 independence. 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 the first quarter of 2001–2002, the Commission will finalize the research projects it has undertaken on close personal adult relationships and prepare a report for presentation to Parliament.

Three research papers on how age is used as a marker in various contexts will be completed in the second quarter. These papers deal with how age limits affect various aspects of our lives such as mandatory retirement, drivers' licences and pension plans. A discussion paper on the results of this research will be drafted in the final quarter of the year.

Social Relationships

The boundaries that define group identity are shifting as individuals seek to refashion 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 use to determine group membership.

Communities are not merely the sites where official policies and programs are only implemented. More and more, communities are being called upon to develop and administer policies themselves. The Commission has embarked on a major research project that will explore the relationship between law and communities. This project will examine how law supports vibrant communities, helps to rebuild fragile ones, and inspires people to build communities founded on principles of justice. During the second quarter of 2001–2002, the Law Commission will publish four research papers on conceptual issues in community social relationships.

Three research papers on the subject of order and security in communities will be published in the third quarter of the year. The first of these papers will be an examination of the needs of different types of communities for order and security and how the evolving relationship between private security and public police responds to these needs. A discussion paper on the results of this research will be published in the final quarter of the year. Two papers on community participation in the judicial process, to be completed in the third quarter of the year, will focus on the role that juries can play in the application of the concept of restorative justice.

The Commission is also providing support to the Aboriginal Women's Action Network for research on attitudes toward restorative justice and the effects of restorative justice in Aboriginal communities. A research paper will be completed in the first quarter of 2001–2002.

A new research initiative, the Virtual Scholar in Residence, was launched in the last half of fiscal year 2000–2001. A national competitive process will result in the selection of the researcher, who will be in "virtual residence" via the Internet from July to December.

It is hoped that a discussion paper on social relationships will be produced during this time. This initiative is being carried out in partnership with the Social Sciences and Humanities Research Council (SSHRC).

Another activity in the Commission's ongoing partnership with SSHRC was the Commission's participation in the SSHRC 2000 competition. A roundtable will be held in May 2001, where five papers will be presented on the use of restorative justice in areas other than criminal justice, such as environmental law, corporate law, labour relations, consumer bankruptcy and family law.

Another important partnership activity in which the Commission has been involved for the past two years is the legal dimensions research initiative. The other partners in this initiative are the Canadian Association of Law Teachers, the Canadian Law and Society Association (CLSA) and the Canadian Council of Law Deans. Up to six papers will be presented in draft form at the CLSA conference in May, with final papers due in August 2001. The theme for this year's initiative is "Social Relationships: Refocusing the Public/Private Divide."

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.

The Commission, in partnership with the Canadian Policy Research Networks, will hold a roundtable on workplace relationships in the third quarter of 2001–2002. It is expected that several draft research papers will result from this roundtable.

Another important aspect of economic relationships is the law regarding security interests in federally regulated industries. The Commission is focusing on the intellectual property regime and will develop an issues paper in the first quarter of 2001–2002 on how uncertainty in the legal regime regarding security interests affects investment. This will be followed in the second quarter by a roundtable or conference. This initiative is conducted in the context of the commercial law strategy of the Uniform Law Conference of Canada.

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.

The theme of the LCC-SSHRC 2001 competition, “Governance for the World,” explores how Canadians’ sense of identity has become more global and whether our governance mechanisms can respond to such aspirations. Successful applicants will be selected in the first quarter of the fiscal year and research papers will be due in the next year.

In the second quarter of 2001–2002, the Commission will publish a series of research papers on new approaches to legislation.

In partnership with the Association of Iroquois and Allied Indians, the Commission will hold a conference in the first quarter of the year on the topic of fiduciary relationships. Papers resulting from this conference will be completed and published in the third quarter.

An issues paper on the reform of democratic institutions will be prepared by the second quarter of 2001–2002 and a roundtable to discuss these issues will take place in the last quarter.

Other Activities

In addition to the four principal thematic areas that form the Commission’s strategic agenda, work has begun on a question that relates to all four areas, bringing together and building on insights from all four.

This question is a fundamental one: “What is a crime?” The objective is to identify why certain behaviour is conceptualized as a crime and the impact of such a conceptualization on personal, social, economic and governance relationships, with a view to exploring the range of governmental alternatives in regulating undesirable conduct. The Commission intends to take an issues-oriented approach to this question initially and will hold a roundtable on this subject in the first third quarter of the fiscal year.

In March 2000, the Commission submitted its report on institutional child abuse in Canadian institutions, in response to a ministerial reference. Follow-up work on this report will continue in 2001–2002. One project is examining the economic costs of institutional child abuse and a final report on this project is due in the second quarter. Another project involves the preparation of a training framework for interveners dealing

with the consequences of child abuse and final papers resulting from this project are due in the second quarter. Another project dealing with the dissemination and implementation of the report's findings will develop a resource guide to assist communities in the process of redress and healing. The results of this project are expected in the first quarter of the year. Finally, an event is being planned in April of 2001 to commemorate the first anniversary of the tabling of the report.

As part of its mission of engaging Canadians in the renewal of the law, the Commission will take part in or initiate a number of activities during 2001–2002:

- The President of the Commission will be a speaker at a number of conferences in Canada, the United States and Europe during the year.
- A series of events will be held on the subject of restorative justice.
- The Commission will continue to build networks by bringing together researchers from various disciplines
- The Commission's Web site will continue to be used as an important means to disseminate information on its activities and as a tool for consultation on critical issues.

Section IV Financial Information

Table 4.1: Net Cost of Program for 2001–2002

(thousands of dollars)	Total
Net Planned Spending	3,018.0
<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	57.0
	122.6
2001–2002 Net Cost of Program	3,140.6

Section V: Other Information

Statute Administered by the Law Commission of Canada

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

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