

**STUDY OF THE EFFECTS OF THE ABOLITION OF THE
LAW COMMISSION OF CANADA**

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Rights

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Canada

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I would like to thank the members of this Committee for inviting me to testify about the abolition of the Law Commission of Canada, a *de facto* abolition, since the Commission, lacking funds, will close its doors December 15, 2006. As for the *de jure* abolition, it will have to wait for the revocation of the Act creating the Law Commission.

Obviously, I would have preferred that such a discussion with the members of the Committee and other actors had taken place before the decision to eliminate the funding of the Law Commission, and this for reasons of transparency and out of respect for the Canadians, who, until the government's announcement September 25, 2006, were actively engaged in several Law Commission projects.

As President, it is my duty to inform you of the impact the closure of the Commission has on current projects. Before I comment on these projects, allow me to address, in a general manner, the impact of the closure of the Commission.

The loss of the Law Commission will deprive the government, Parliament and the judiciary of independent advice from an entity that drew on the ideas of some of the best experts of various disciplines, including jurists, philosophers, criminologists, sociologists, economists, etc. More importantly, it will deprive Canadians of a non partisan forum in which they were invited to debate fundamental questions for our society. The Commission was created in 1996, at the request of Parliamentarians who wanted to give Canadians an opportunity to express their opinions on topics of concern to them. These include, among others, institutional child abuse, electoral reform, laws applicable to conjugal and non conjugal relationships and participatory justice. Diverse points of view were expressed in a climate of confidence due to the independent nature of the Commission. The Commission, through its studies and reports, conveyed these points of view to Parliament. The Commission has no walls surrounding it. Law reform discussions were transparent, open to all people from all walks of life. I am not aware of any other legal fora of this kind at the national level.

In addition, as I indicated to the Minister of Justice on September 25, following the government's decision to eliminate all funding to the Law Commission, Canada will now have the peculiar distinction to have eliminated a federal law reform agency for a second time in 15 years. The impact of this decision is that Canada is distancing itself from the model adopted by other countries such as the United Kingdom, Australia, New Zealand, Ireland and some thirty others with which we share an important part of our legal heritage. I believe it is important to question the reasons for "our difference".

Having made these general comments, allow me to deal in a concrete way with the consequences of closing the Law Commission by reviewing the projects that were just finalized or were currently being studied. I will only deal, given the limited amount of time, with some of the projects that recently led or were to lead to reports to Parliament. The Commission was also exploring many other topics of interest, through various partnerships. I will deal briefly with six topics:

First, policing: In July of this year, the Commission tabled its report on policing. This report was the result of a multi-faceted research and citizen engagement program to examine the changing nature of policing in society. Some of the world's leading experts on policing, notably Professors Clifford Shearing and Philip Stenning, worked on this project. In addition to extensive consultation with stakeholders, the Law Commission held an international conference on this topic, which provided the opportunity for the first time for public police and private security to discuss these issues openly. The final report reflects on the evolution of policing and its impact on our legal, policy and social environments, offering 15 recommendations. Following the release of this report, the Commission was invited to fora such as the Police District Council to discuss its findings. Since this report has just been released, the Law Commission will not be able to do any follow-up, including discussions within the policing community. In fact, we had to cancel a planned appearance to discuss this report at the annual conference of the International Association of Security and Investigative Regulators that will be held in Halifax this fall and at the Canadian Association of Chiefs of Police next spring.

Second, globalization: Canada has felt the impact of globalization on all the various facets that shape its society. One example is the growing influence of international law on domestic law, a recent phenomenon deserving of further study.

In March 2006, the Law Commission of Canada released its discussion paper on globalization. In the paper, the Commission studies the impact of globalization on the overall domestic legal process, including law making, implementation, interpretation and enforcement. The Commission asked what should be the role of various domestic actors, such as the federal Executive, Parliamentarians, Parliament, provinces, judges and non governmental organizations with regards to the negotiation, acceptance, implementation and application of international law instruments and how these could be rendered more transparent, participatory and accountable.

The Law Commission also examined the issue of when legislation should have a reach outside Canada. To pursue this question, the Commission recently funded research on extraterritoriality. A contract was awarded to four scholars from the Faculty of Law of Dalhousie University who, for \$10 000, prepared a 100-page study on this issue that is now available in both official languages on our web site. We had also funded research by the Conference Board of Canada to determine the business perspective on international corporate social responsibility.

Since the release of the paper, we have organized various activities such as public fora and discussions with provincial governments and were planning a host of activities this Fall and early Winter, including discussions with current and former parliamentarians, with the federal government and on-going discussions with provincial governments. As a result of the closing of the Commission, these will not happen. The reputed expert the Commission retained to help draft its report, Professor Armand De Mestral, of McGill University, will not be able to continue his work with the Commission. The work of the Commission could have proven valuable in further exploring the role of Parliament with regards to these issues, a role that was alluded to in the Speech From the Throne, which indicated that “Significant international treaties will be submitted for votes in Parliament.”

Third, Indigenous Legal Traditions: Starting with the recognition that Indigenous peoples were the earliest practitioners of law in what is now Canada, the Law Commission set out to explore how the regeneration of these traditions might be supported and how greater space might be made for them in the Canadian legal landscape. The Commission produced an innovative consultation package, consisting of a discussion paper, a 30-minute video documentary and an in-depth research paper by a leading scholar, John Borrows.

We are all aware of the critical importance of addressing the situation of Aboriginal Peoples in Canada, of reconciling the relationship between Aboriginals and non-Aboriginals and of improving the economic, social and political health of Aboriginal

communities. The research conducted by and for the Law Commission provides clear support for the conclusion that the development of successful Aboriginal communities is directly linked to real control by Aboriginal peoples over decision-making, including decisions on the enactment and enforcement of laws. Our research also highlighted, however, real challenges to greater recognition of Indigenous legal traditions: the challenges faced by communities trying to regenerate their traditions, issues of applicability, equality, accountability, etc.

The consultation package was delivered to the Commission just days following the government's announcement that it was closing the Commission and it has just been released. I want to thank my fellow Commissioner Mark Stevenson, who, at his own cost, attended a meeting of the Indigenous Bar Association two weeks ago, where the consultation package was launched. Obviously, the closing of the Commission cuts this important work short. The release of the package was to have been followed by a comprehensive series of consultations with Aboriginal communities and organizations, government departments, legal scholars and others that would have explored in greater depth the benefits and challenges to providing greater recognition of Indigenous legal traditions. Perhaps most importantly, the elimination of the Law Commission removes an important neutral voice from a highly politically charged debate.

Fourth, Vulnerable workers: This is a project that looks at ways in which Canada's work laws are out of sync with the reality of the labour market today. Our research revealed that almost a third of Canadian workers today work in non-standard

arrangements: contract, part-time, self-employment, etc. As a result, increasing numbers of workers in Canada do not benefit from such legislated rights and protections as employment insurance, the right to refuse unsafe work, overtime compensation and the right to bargain collectively; these same workers do not often have access to employment related benefits such as extended medical, pensions, dental plans, etc. The Law Commission's discussion paper, released in January 2005, looked at this trend and considered what might be done about it.

Earlier this year, we commissioned research from a team that included two of the leading scholars in the international labour law community – Brian Langille of U of T and Guy Davidov of Haifa University - explore practical, but creative solutions to the problems identified in the discussion paper. This innovative research, which was well under way at the time the government announced the closure of the Commission was being performed at a cost of \$40,000. It would have formed the backbone of our final report to Parliament. The opportunity to present innovative recommendations to address a complex and pressing social issue affecting millions of Canadian workers has been lost as a result of the closing of the Commission.

Fifth, “What is a Crime?” For the past several years, the Commission has been working on an analytical framework for understanding the processes that both underlie and inform responses to unwanted behaviour, including the impacts of choosing various response and control mechanisms. In addition to a discussion paper, followed by extensive public engagement and consultation, the LCC commissioned six extensive case

studies by multidisciplinary research teams from across Canada, at a cost of approximately \$50,000 per study, to examine the effects of criminalization and alternatives to punishment by the criminal justice system. The studies, which are available in both official languages on our web site, were to directly inform the Law Commission's report to Parliament on this important issue. To help us with this report, the Commission, through its partnership with the Social Sciences and Humanities Research Council, worked with professor Roger Shiner, from UBC University, Okanagan Valley campus. With the closure of the Commission, there will not be a final report and Parliament and Canadians will therefore be deprived of thoughtful perspectives and specific recommendations on the pressing issue of criminalization.

Sixth, Age and law: In this project, the Law Commission was studying whether age as a criterion remains relevant in various areas of law and whether other criteria might better respond to the objectives pursued while promoting healthy, respectful relationships between generations and flexibility in addressing the life course of individuals. Twelve research papers were funded over a number of years to feed this project. In February 2006, a study panel was held with representatives from a variety of disciplines and from all regions of Canada who willingly gave their time to read LCC materials and comment on the direction of the project. These experts told us that this project, which looked at relationships between generations and people's life course, was cutting edge and innovative. It was in line with Social Development Canada's work on the life course and with new research and policies emerging from the United States and Europe.

The project provided an opportunity for people of different age groups to consider the needs and concerns of others. It was linked to the development by the Commission of a new strategic approach to youth engagement. As a result of the closure of the Commission, research and consultations on this topic will be lost.

As I mentioned, there are other projects, but insufficient time to talk about them. Let me just say that the Commission was involved in several financial and intellectual partnerships. As a result of the Commission's closure some of these initiatives could be put at risk.

Overall, the Commission accomplished a great deal in the past nine years with a 3.2 million dollar annual budget, which has remained the same since its creation in 1997, and with limited staff. In the last few years, the Commission was able to leverage more than \$200, 000 in partnership money annually. On several occasions, it obtained and benefited from eminent scholars' and civil society's input at no cost and pursued an ambitious law reform research program at little cost to the taxpayers. Why was the Commission able to accomplish this? I believe the Law Commission of Canada could accomplish this because of its reputation for neutrality, for thoughtful work and for its ability to provide a voice to those who would not or could not otherwise participate in law reform.