

Law Commission of Canada

Performance Report

For the period ending
March 31, 2001

A handwritten signature in black ink, reading "Anne McLellan". The signature is written in a cursive style with a horizontal line underneath it.

Anne McLellan
Minister of Justice

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Section I: Messages

President's Message

As the Law Commission of Canada comes to the end of its fourth year of existence, it is in a position to assess the impact that its approach has had in Canada and elsewhere in the world of law reform.

The original methodological choices of multidisciplinary and inclusiveness continue to resonate with the public, decision-makers and the research community. The public's eagerness to participate in our consultations confirms that all Canadians are interested in law reform issues. Decision makers find the approach refreshing and useful. The academic community, in Canada and elsewhere, has also been receptive to the approach developed by the Commission.

Our orientation has thus been reaffirmed during the last year:

- We continue to be committed to a better understanding of how law is lived by Canadians, not only of how law is written.
- We have maintained a research agenda that is articulated around relationships — personal, social, economic and governance relationships. This choice ensures a reflection beyond traditional legal categories and has proven to stimulate discourse beyond academic and legal circles.
- We have moved toward developing new ways of engaging the academic community and the general public and have also strengthened our ties with decision-makers.

This Performance Report details several of our accomplishments:

- linking researchers, decision-makers and the public in creative ways;
- carrying out projects that are seen to be relevant;
- establishing productive research partnerships that broaden our networks; and
- developing innovative approaches to doing law reform.

The demands for law reform are complex. We must develop approaches that reach citizens and respond to their multifaceted needs. A program or a methodology disconnected from the true preoccupations of the people who live the law cannot yield appropriate results. Our challenge in the years to come is to undertake law reform in a way that engages Canadians in the process, in the reflection and in the results.

Nathalie Des Rosiers
President

Section II: Commission Performance

Strategic Context

Canadians want laws that are just and legal institutions that are accessible and accountable. Yet the pace at which society has changed in recent years has outstripped the rate of law reforms. How can Canadian laws maintain the values of this country's unique democratic traditions while being responsive to the needs of modern society?

To help governments tackle this challenge, the Law Commission of Canada was established as a source of independent, strategic and timely advice on legal policy.

Expectations for law reform are broad, varied and sometimes contradictory. As a starting point, the *Law Commission of Canada Act* requires the Commission to focus on four research orientations:

- new concepts of law;
- efficiency and accessibility;
- stimulating critical debate; and
- eliminating obsolescence and anomalies.

Our Mission

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

A key challenge for the Commission, therefore, is 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.

The Commission decides what research to undertake with guidance from its Advisory Council. The Advisory Council's 23 volunteers reflect Canada's socio-economic and cultural diversity, and represent a broad range of disciplines. They offer input and advice on strategic direction, the Commission's long-term research program, performance review and other relevant matters.

To provide advice on specific research projects, the Commission appoints study panels as needed. Each panel, headed by a Commissioner, comprises volunteer experts from many disciplines, as well as people from affected communities. On the advice of the study panels, the Commission gives research contracts to recognized experts in the private sector and academia.

Strategic Outcomes

The Commission's Approach: Exploring Issues through Innovation

Pursuant to our legislative mandate, the work of the Commission must observe the following principles:

- ***Inclusiveness:*** The Commission canvasses a wide range of people affected by and concerned with law and justice, and seeks to give a voice to those not ordinarily heard.
- ***Multidisciplinary Approach:*** To evaluate the law in its societal context, the Commission draws 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 for information gathering, evaluation, consultation and communication.
- ***Partnerships and Networks:*** This approach avoids duplication of effort and benefits from existing knowledge and capacity in addressing areas of common concern.

Best Practice:

Partnerships with University Presses

Publishing research and discussion papers — and taking an active role in disseminating ideas to interested groups and individuals — remain an important outreach activity. The Commission's partnerships with university presses generate wider discussion, strengthening existing channels in Canada's legal research community:

- *McGill Law Journal*
- University of Toronto Press
- UBC Press
- Les presses de l'Université Laval
- McGill–Queen's University Press

Through these partnerships, the Commission can direct more money to doing research rather than disseminating it.

As the Commission explores issues surrounding law reform, these principles cannot be singled out from each other.

Partnerships invite

multidisciplinarity. Inclusiveness fosters innovation as the Commission looks for new ways to reach individuals and groups not typically consulted or not traditionally considered as belonging together. Inviting and analyzing input on the law requires an openness to new ways of thinking about and responding to the effects of laws.

Linking with the Research Community

The Commission's approach to research is characterized by an extensive use of partnerships with the research community. Although the Commission sponsors its own research, it also partners with other members of the research community to increase its ability to support worthy projects. This interaction increases awareness, fosters more research, deepens the debate, and broadens the constituency for the reform and renewal of the law.

The **Legal Dimensions Initiative** is one example of jointly funded research. Established in 1999, it is a socio-legal research initiative sponsored annually by the Commission, the Canadian Association of Law Teachers (CALT), the Canadian Law and Society Association (CLSA) and the Canadian Council of Law Deans. Legal and socio-legal scholars are invited to submit proposals for research papers. Up to six proposals are selected for an award of \$3,000 as an honorarium to produce the paper, as well as expenses incurred to present the paper as a work in progress at the annual meetings of CALT and CLSA. The topic in 2000 was “Personal Relationships of Dependence and Interdependence.”

Legal Dimensions 2000

Under the theme “Personal Relationships of Dependence and Interdependence,” the Legal Dimensions program set the objective of looking at such relationships to understand how the law imagines and constructs these relationships and how it may, as a result, palliate or exacerbate power imbalances that can lead to abuse and exploitation. In 2000, the program commissioned five scholarly papers:

- Sue Campbell, *Epistemic Dependence in Client–Therapist Relationships*
- William Flanagan, *Fiduciary Duties in Commercial Relationships: When Does the “Commercial” Become the “Personal”?*
- Ian Kerr, *Personal Relationships in the Year 2000: Me and My ISP*
- Lucie Lauzière, *Dependence and Interdependence in the Relationship Between Lawyers and Clients*
- Lorne Sossin, *Law and Intimacy in the Bureaucrat–Citizen Relationship*

Innovative Programs

The Commission launched a **Student Program** to increase research capacity, provide work that is relevant to students’ studies, and introduce the Commission to a new generation of legal and social sciences scholars. The program aims to employ up to four university students to conduct part-time research for the Commission during the academic year. Students are selected through a competitive process. Because the work is forwarded and returned by e-mail and telephone, the Commission is able to hire students from across the country. Four students, from Quebec, Ontario and British Columbia, contributed to the work of the Commission last year.

Another initiative this year is the **Virtual Scholar in Residence Program**. To create a critical bridge between the academic community and policy makers, this partnership with SSHRC was established to support multidisciplinary research on law reform issues. The program provides funding that will allow a scholar based anywhere in Canada to work ‘virtually’ with the Commission for six months, using e-mail, tele- and video-conferencing, and other communications technologies to advance research on one of the Commission’s four research themes.

Justicia Awards

The media is an important channel for improved understanding of the law. To encourage the media to increase awareness among the Canadian public of fundamental legal issues,

the Commission established the Justicia Awards for Excellence in Journalism in partnership with the Canadian Bar Association and the federal Department of Justice. These awards recognize outstanding journalism about the Canadian justice system and the roles played by institutions and participants in the legal system.

Strategic Research Agenda

The Commission's strategic agenda for its research program embraces four broad themes:

- personal relationships;
- social relationships;
- economic relationships; and
- governance relationships.

These themes highlight the Commission's commitment to seeking new concepts of law and new approaches to law reform. They immediately suggest the need for input across many disciplines, which go beyond the traditional focus on criminal or administrative law. They also underscore the importance that the Commission attaches to designing and pursuing its research in a manner that is understandable and accessible to all Canadians.

Personal Relationships: Linking Researchers, Decision-makers and the Public

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.

Close Personal Relationships between Adults

The Commission has been studying how Canadian law addresses close personal relationships between adults, the objectives behind those laws and whether the law's approach requires an overhaul.

In the spring of 2000 the Commission released "Recognizing and Supporting Close Personal Relationships Between Adults," a discussion paper. The paper was widely

Best Practice:

Consultation Over the Internet

Because of our mandate to use technology in our work, we used the Internet for a great deal of our consultations on the Close Personal Relationships Between Adults project. Besides publishing the research on our web site, we:

- posted the discussion paper, scenarios and questions;
- asked for feedback online;
- posted, with permission of the authors, people's responses; and
- held a live webcast discussion.

The results proved the worth of this approach. We reached Canadians who have never approached the Commission before with insights. The Commission is now evaluating this approach for other projects.

Lesson learned: Be prepared to provide technical support. Going online has become an everyday pastime, but not all Canadians have the technical know-how to participate without assistance.

distributed, and the Commission solicited input and feedback from Canadians across the country.

To enhance public understanding of the issues, the Commission developed discussion scenarios. The scenarios demonstrated a range of relationships that exist in Canadian society and how the law affects them. They were written as stories to bring the issues to life and illustrate the significance of the questions. The scenarios helped foster interest and understanding and provoked discussion and feedback from Canadians on situations in which the law creates, at times, questionable disadvantages for adults who share a close personal relationship. Examples include a widower and a divorced woman living together, parents who take unpaid leave to care for their sick adult son or two men living as a couple.

Canadians were then invited to tell the Commission their thoughts and comments on the scenarios, the discussion paper and its questions. Throughout the consultation period, from June 2000 to the end of January 2001, an interactive Comments Board displayed — with permission of the authors — a cross-section of the insights that Canadians shared with the Commission. Besides having the option of being able to post comments directly on the web site, Canadians also participated in a live webcast discussion of the issues. More than 500 Canadians joined the one-hour interactive webcast on the issue via their personal computers.

The consultation process also involved meetings with officials in Human Resources Development Canada and the Department of Finance to discuss issues and options.

The Commission's final report and recommendations are now being drafted.

Older Adults

A new project was launched to look at how the law affects older adults. Research papers have been commissioned on the following topics:

- mandatory retirement and the economic well-being of Canadian immigrants;
- unemployment protection for older workers, which is a case study of systemic bias in a statutory regime; and
- using “age” as a fitness-to-drive criterion for older adults.

Immigration–Sponsor Relationship

This project was postponed because the government put the *Immigration Act* under review.

Social Relationships: Building a Research Program that is relevant

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.

Restorative Justice

The limitations of Canada’s justice system in responding to conflict have long been recognized. The civil court experience — for those Canadians who can access the courts — can leave all parties feeling dissatisfied and disenfranchised. The same can be said of the criminal court experience: victims often feel detached from the process and offenders are not always held responsible for the concrete consequences of their behaviour.

The Commission has been exploring restorative justice as an alternative method of delivering criminal justice. It is also examining the potential for extension of restorative justice principles to other fields of law, such as family law, labour law and commercial law.

The starting point of restorative justice is the idea that conflicts that find their way into the criminal justice system are not only, or even primarily, transgressions against the state; rather, they represent the rupture of relationships between two or more people.

Accordingly, restorative justice focuses on the physical, economic, emotional, psychological and spiritual elements of that conflict.

Essentially, restorative justice programs attempt to repair the harm done by crime. This attempt goes beyond simple reparations to victims and involves a healing or therapeutic process for all parties, including offenders and the community. This attempt at social transformation is the strength of restorative justice programs but, as the Commission’s research shows, these programs have their own limitations.

For example, sensitivity to victims’ needs and concerns is a key feature of restorative justice principles, but, in practice, victims can feel forced into the process and can sometimes feel as if the offender’s needs are placed first. In particular, some women who were victims of domestic violence have expressed concerns related to the clearly inappropriate goal of “restoring” a relationship that has been marked by abuse or power imbalances.

Communities and the Challenge of Conflict: Perspectives on Restorative Justice

The Commission produced a video, “Communities and the Challenge of Conflict: Perspectives on Restorative Justice.” The video discusses the potential and challenges of restorative justice and comes with a study guide for education programs.

The people who appear in the video present different views on restorative justice. Some claim that restorative justice has great potential to respond to the needs of victims and offenders and to empower communities, while others are more tentative in their appraisals. The video also captures the experiences of a victim and an offender who participated in a restorative justice program.

The Commission distributed approximately 1,000 copies of a video it produced on restorative justice (see box). Community organizations and other groups across the country, including police associations and universities, requested copies. The Commission also screened the video at numerous events, including those held during Restorative Justice Week. Several requests for the video came from outside Canada.

Community Forums on Restorative Justice

This year, the Commission invited input and feedback from Canadians on its discussion paper on restorative justice by sponsoring two community forums on the topic — one in Charlottetown and one in Ottawa.

The **Community Forum on Justice** held in Charlottetown was part of a larger event called “Conference 2000: Communities Challenging Violence.” The forum attracted more than 100 participants from the community and featured a panel of eight people from diverse backgrounds who talked about their experiences with the criminal justice system and their perspectives on the potential of restorative justice for building stronger communities.

The Ottawa forum also drew more than 100 participants. It featured Nils Christie, Professor of Criminology at the University of Oslo and internationally renowned expert on restorative justice, and James Scott, Program Coordinator of the Collaborative Justice Project in Ottawa.

Community Research Project

Communities are not merely the sites where official policies and programs are only implemented. More and more, communities are being called on to develop and administer policies themselves. The Commission embarked on a research project that will explore the relationship between law and communities.

Several research projects will address the following two sets of questions:

- How and why does the law fix some and undermine or erase other notions of community? Why is it that the law recognises, supports and nurtures some communities and not others?
- What are the implications when there is a variance between communities as social facts and communities as recognised by the law? How does this variance stimulate or block legal reform and innovation?

Economic Relationships: Establishing Productive Research Partnerships

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

Employment Relationships in Transition

The Commission was one of the sponsors of a research project of the Canadian Policy Research Networks (CPRN). Last year was the final stage of the three-year undertaking, which involved two roundtables, a discussion paper, three studies, a synthesis report and a highlight report. This year CPRN published *What's a Good Job? The Importance of Employment Relationships*, by Graham S. Lowe and Grant Schellenberg.

Federal Security Interests

Canada's laws regarding security interests in federally regulated industries is often said to be inadequate. Many complain that there is incoherence, uncertainty and difficulties in application of the different federal statutes that regulate particular industries. What could be done to remedy such uncertainty and incoherence, and what are the costs of not engaging in the reforms that have been proposed over the years? Two questions in particular need to be studied: first, how the federal system completes the provincial ones and second, whether uncertainty in the law has a practical impact and the nature of such impact. The Commission is focusing on the intellectual property regime, particularly as it relates to the high-tech sector. This project is being done in the context of the commercial law strategy of the Uniform Law Conference of Canada. The first study by Fraser Milner Casgrain was released in June 2000.

Governance Relationships: Developing New Approaches to Law Reform

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.

Seeking New Ideas and Perspectives

The Commission recognizes the value of new ideas and fresh perspectives that arise from free-ranging discussions. Its two Roundtables on Legislation invited law, sociology and anthropology scholars, as well as officials from government departments that draft legislation, to discuss aspects of legislation from the perspective of their respective disciplines. The scholars engaged in the exercise to look beyond traditional approaches to legislative drafting. The effort yielded papers on such topics as plain language drafting, the implications of making laws available on the Internet and the meaning of preambles. Drafts of the papers were presented and discussed at the second roundtable in February 2001. They were published in final form by the *McGill Law Journal*.

Medical Research Involving Human Subjects

Its recent study, *The Governance of Health Research Involving Human Subjects*, the Commission examined the moral and legal complexities of health research involving human subjects. In particular, this study examines the effectiveness of the multiple forms of governance affecting human subjects of research. It also considers the ethical quality of such research: Is it socially beneficial? does it respect the dignity and rights of research subjects? Does it maintain trust between the research community and society?

This important study revealed substantial gaps between the ideals expressed in policies — intended to protect participants and provide social benefits — and the actual arrangements for accountability, effectiveness and other criteria of good governance.

The report was widely circulated, including to all health departments in Canada and internationally.

Speaking Truth to Power

The “Speaking Truth to Power: Treaty Forum” explored new paths toward the successful conclusion of treaties between First Nations and other levels of government. The Law Commission of Canada, with the B.C. Treaty Commission, published the papers and deliberations of the forum to increase public understanding of the significance and complexities of the treaty process, as well as differing perspectives and expectations.

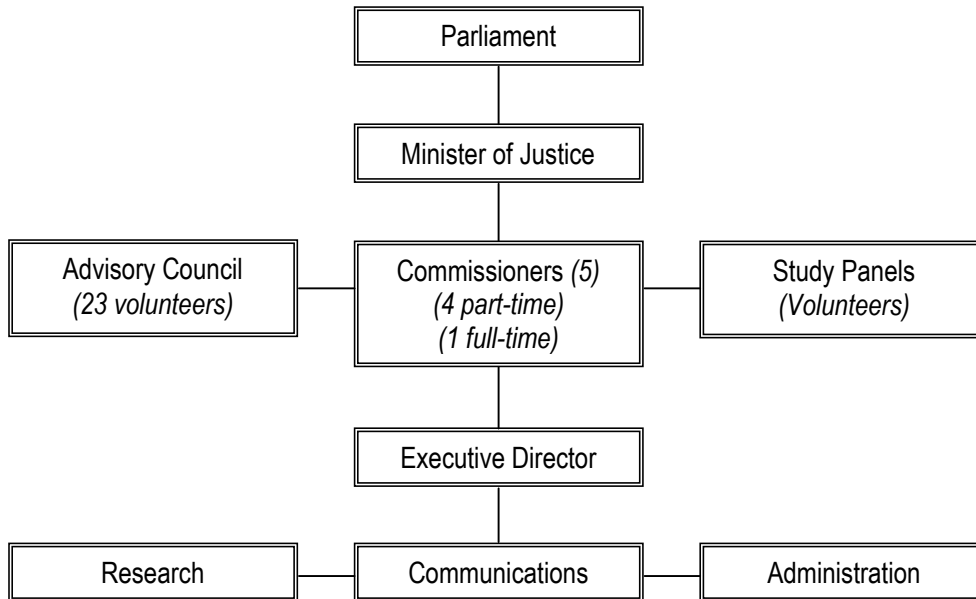
Restoring Dignity Follow up

In March 2000, the Commission submitted its report on institutional child abuse in Canadian institutions, in response to a ministerial reference. Followup work on this report continues. One project is examining the economic costs of institutional child abuse — including the cost of doing nothing to respond to criticism of the cost of implementing the Commission’s recommendation. Another involves the preparation of a training framework for interveners dealing with the consequences of child abuse, and a third is developing a resource guide to assist communities in the process of redress and healing.

It is fitting to wrap up our discussion of accomplishments with this item because it demonstrates the continuing nature of law reform, and therefore of the Commission’s efforts to stay on top of how laws affect people. Our work does not end with the delivery of a report to the Minister of Justice. Consultation must continue as Canadians respond to our recommendations and research must continue as our recommendations are carried out to assess the results. Canada has a living law and law reform must respond to this dynamic nature.

Section III: Other Information

Organization Chart



Statute Administered by the Law Commission of Canada

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

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Appendix I: Financial Tables

Table 1. Summary of Voted Appropriations

Financial Requirements by Authority (\$ thousands)

| Vote | 2000-2001 | | |
|---|------------------|-------------------|----------------|
| | Planned Spending | Total Authorities | Actual |
| Law Commission of Canada | | | |
| 35 Program Expenditures | 2,861.0 | 3,050.0 | 2,963.9 |
| (S) Contribution to Employee Benefit Plan | 146.0 | 146.0 | 146.0 |
| Total for the Commission | 3,007.0 | 3,196.0 | 3,109.9 |

Total Authorities are comprised of Main Estimates plus Supplementary Estimates plus other authorities.

Table 2. Comparison of Total Planned Spending to Actual Spending

Commission's Planned versus Actual Spending (\$ thousands)

| Law Commission of Canada | 2000-2001 | | |
|--|------------------|-------------------|----------------|
| | Planned Spending | Total Authorities | Actual |
| Full-time Equivalents -FTEs | 11 | 11 | 10 |
| Operating | 3,007.0 | 3,196.0 | 3,109.9 |
| Capital | - | - | - |
| Grants and Contributions | - | - | - |
| Total Gross Expenditures | 3,007.0 | 3,196.0 | 3,109.9 |
| Less: Respendable Revenues | - | - | - |
| Total Net Expenditures | 3,007.0 | 3,196.0 | 3,109.9 |
| Other Revenues and Expenditures | | | |
| Non-respendable Revenues | - | - | - |
| Cost of Services Provided by Other Departments | 107.7 | 112.6 | 112.6 |
| Net Cost of the Program | 3,114.7 | 3,308.6 | 3,222.5 |

Total Authorities are comprised of Main Estimates plus Supplementary Estimates plus other authorities.

Table 3. Historical Comparison of Total Planned Spending to Actual Spending

**Historical Comparison of Commission's Planned versus Actual Spending
(\$ thousands)**

| Business Line | Actual 1998-1999 | Actual 1999-2000 | 2000-2001 | | Actual |
|--------------------------|-----------------------------|-----------------------------|-----------------------------|------------------------------|----------------|
| | | | Planned Spending | Total Authorities | |
| Law Commission of Canada | 2,415.6 | 2,913.3 | 3,007.0 | 3,196.0 | 3,109.9 |
| Total | 2,415.6 | 2,913.3 | 3,007.0 | 3,196.0 | 3,109.9 |

Total Authorities are composed of Main Estimates plus Supplementary Estimates plus other authorities.