

# Law Commission of Canada

## Performance Report

For the  
period ending  
March 31, 2000

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Minister of Justice



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## Section I      President's Message

Canadians understand their society as a complex web of relationships that emerge through the interplay of social, cultural, religious and economic forces. Law both responds to and helps constitute these relationships. This does not mean that today's law is always appropriate to the hopes and expectations that Canadians have for themselves, for their families, for their communities, and for their society. In many cases, it is not. For this reason, the focus of Commission activities has been on projects that expose the assumptions and attitudes that frame how the law conceives relationships. The goal has been to imagine other ways of fostering and affirming relationships as a first step towards refashioning legal and policy debates.

In its first year of operation, the Law Commission sought 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: *living law*. 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 was undertaken, its ambition was to emphasize how the success of law depends on its sensitivity and responsiveness to issues of justice: *just law*.

This past year, which also marks the conclusion of the initial term of office of those Commissioners appointed to establish the Commission in 1997, the Commission has oriented its research and other activities to enhance the capacity of Canadians to overcome society's excessive reliance on "official law from the centre". Disanchoring interpersonal relationships from static and outmoded concepts, detaching individual and group 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 are needed to vindicate a conception of law more attuned to contemporary *relationships*.

Law is a precious resource. Through it, Canadians negotiate personal and family relationships, social and community relationships, economic relationships, institutional relationships and governance relationships. Sometimes our reflexes about the forms and purposes of law should give us pause. In our relationships with each other we have too often made rights and obligations the only measure of our entitlements, our duties and our expectations. Sadly, we have come to disparage the capacity of law to educate, to incite debate, to guide and to empower.

These past three years, the Commission has often taken a critical look at its own intellectual framework. In doing so, its ambition has been to scrutinize how well its activities address 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.

The capacity and the willingness to hold its own work up for evaluation is, after all, a central justification for establishing an independent agency as a vehicle for renewing the law. Moreover, in doing so, the Commission re-iterates its commitment to engaging Canadians in the process of making informed choices about the kind of law that they feel is needed to achieve a responsive, relevant, accessible and just legal system.

Roderick A. Macdonald

## Section II Commission's Performance

The Law Commission of Canada (thousands of dollars)	
Planned Spending	3,011
Total Authorities	3,151
<b>1999-2000 Actuals</b>	<b>2,913</b>

### Societal Context

#### *Objectives*

The Law Commission of Canada studies and keeps 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. Its ultimate objective is to provide independent advice on improvements, modernization and reform to ensure a just legal system that meets the changing needs of Canadian society and of individuals in that society.

#### *Strategic Priorities*

Drawing on ideas suggested by a broad spectrum of groups and individuals, the Law Commission has identified four strategic themes that will frame its work in its first five years:

***Personal Relationships:*** The Commission will look closely at how the legal system deals with relationships of dependence and interdependence.

***Social Relationships:*** The Commission will undertake research on how the legal system recognizes diverse social relationships in a changing socio-demographic context.

***Economic Relationships:*** The Commission will explore how best to structure law to enhance the country's economic strength while protecting fundamental social values.

***Governance Relationships:*** The Commission will study public decision making and governmental institutions and make proposals that further enhance openness and accountability.

#### *Social and Economic Factors*

Canadians want their law to embody justice, and their legal systems 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 have 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.

## Performance Results Expectations and Chart of Key Results Commitments

### *Chart of Key Results Commitments*

<b>To provide Canadians with:</b>	<b>As demonstrated by:</b>
Advice to improve the justice of the law	• Relevant and timely <b>research</b> on issues of law and justice
	• An open <b>forum</b> about law and how it operates in Canadian society
	• Quality <b>recommendations</b> on improvement, modernization and reform of the law



## ***Key Planned Results for 1999-2000***

The 1999-2000 Report on Plans and Priorities outlined the following planned activities and results for each of the four strategic themes:

### ***Personal Relationships***

- Issue a discussion paper on how the law should respond to different models of contemporary domestic partnerships
- Issue a discussion paper on the results of the Commission's research on law and the personal relationships of older adults and how the law should accommodate the evolving social values that underlie these relationships
- Begin studies of relationships involving children as well as other relationships of dependence and interdependence

### ***Social Relationships***

- Publish a discussion paper that examines the potential of the concept of restorative justice as a guiding principle in Canadian law
- Issue a report establishing a conceptual framework highlighting the principles underlying restorative justice
- Launch studies that seek to apply the concept of restorative justice to selected areas of the law

### ***Economic Relationships***

- Hold a round table on organized crime as an economic activity
- Produce a discussion paper on organized crime as an economic activity
- Launch a multidisciplinary research competition, in association with the Social Sciences and Humanities Research Council, on the policy options open to governments for dealing with the impact of social dislocation caused by economic change
- Publish a series of papers on the policy options open to governments for dealing with the impact of social dislocation caused by economic change to be presented at a national conference

### ***Governance Relationships***

- Commission a study examining whether the concept of citizen agency can be used to organize research projects on governance relationships
- Conduct a research project on how to increase the participation of Aboriginal youth in urban governance
- Carry out a research project on what lessons government can learn from the private and voluntary sectors about how to recognize and manage diversity and social cleavages

- Conduct a research project on models of governance for the ethical conduct of medical research
- Publish a discussion paper consolidating the findings of these initiatives
- Issue a report on optimal processes for effective governance

***Other Activities***

- Sponsor research papers to be presented at an annual conference on “Legal Dimensions”, in partnership with the Canadian Association of Law Teachers, the Canadian Law and Society Association and the Canadian Council of Law Deans
- Fund a multidisciplinary academic competition for research on “Relationships in Transition” in partnership with the Social Sciences and Humanities Research Council
- Co-host a conference on the implementation of the recommendations of the Royal Commission on Aboriginal Peoples, in association with the Indigenous Bar Association, the Canadian Bar Association and the Law Society of Upper Canada

## Performance Accomplishments

In order to track its performance with respect to its Key Results Commitments, the Commission has developed a number of performance indicators. The following table lists these indicators and shows their relationship to the Key Results Commitments.

<b>To provide Canadians with:</b>	<b>As demonstrated by:</b>	<b>Indicators</b>
Advice to improve the justice of the law	<ul style="list-style-type: none"> <li>• Relevant and timely <b>research</b> on issues of law and justice</li> </ul>	A strategic agenda reflective of social trends and priorities
		A multidisciplinary research program that is focused and realistic
		Productive research partnerships and intergovernmental cooperation
	<ul style="list-style-type: none"> <li>• An open <b>forum</b> about law and how it operates in Canadian society</li> </ul>	Sponsorship of meetings, focus groups and conferences
		Continuing consultation with Canadians on research programs and recommendations
	<ul style="list-style-type: none"> <li>• Quality <b>recommendations</b> on improvement, modernization and reform of the law</li> </ul>	Development of new concepts of law and new approaches to law
		Proposals to improve the efficiency and accessibility of the legal system
		Recommendations to eliminate obsolescence and anomalies in the law

This section sets out the Commission's performance accomplishments for each of the above performance indicators. It should be noted that the nature of the Commission's activities are such that many of them overlap one or more fiscal years. Also, the Commission has completed its third year of operation and much of the work that has been done in the first three years has been designed to lay the groundwork for future research efforts and recommendations. Accordingly, while this section focuses primarily on performance accomplishments, it also includes ongoing activities that will lead to specific results in the coming fiscal years.

Another important factor in assessing the Commission's activities is the significant level of effort that was devoted to responding to the Ministerial Reference dealing with institutional child abuse in Canada. From November 1997, when this report was requested, to March 2000, when the final report was released, a large part of the Commission's resources were committed to this important initiative.

#### ***A strategic agenda reflective of social trends and priorities***

In 1997, the Commission developed a Strategic Agenda covering four strategic themes (personal relationships, social relationships, economic relationships and governance relationships). This agenda remains highly relevant and did not change in 1999-2000.

#### ***A multidisciplinary research program that is focused and realistic***

The Commission has organized its research activities around a program that is focused, realistic and multidisciplinary. This research program is reviewed and updated annually. In 1999-2000, significant progress was made in conducting research under each of the four strategic themes.

Under the theme of *personal relationships*, four research papers on close personal adult relationships were launched and a computer database of relevant federal legislative provisions was assembled. A draft of a discussion paper on close personal relationships between adults was prepared and preliminary research and planning was conducted for a project on the relationship between immigrants and sponsors. Three research papers on the topic of relationships involving older adults were also published.

In the area of *social relationships*, the Commission published a discussion paper on restorative justice and launched studies applying this concept to selected areas of the law. In addition, four research studies were issued in support of the major report on institutional child abuse in Canada.

Under the theme of *economic relationships*, the Commission published a research study on organized crime as a reflection of the perverse consequences of economic relationships and initiated a study of the different theoretical justifications for governmental responses to economic shocks and the different policy instruments by which these responses may be put into effect.

In the area of *governance relationships*, five research papers – written by criminologists, law professors, social theorists, political scientists, public administration scholars and philosophers – were published on the theme of citizen agency. In addition, the Commission released a volume containing six studies on the Art of Legislation. Other studies were also undertaken, notably with respect to the governance of medical research involving human subjects.

### ***Productive research partnerships and intergovernmental cooperation***

Since its inception, a major focus of the Commission has been to work in partnership with other organizations in government, the universities and the private sector. This emphasis continued in 1999-2000. For example, the Commission sponsored a Legal Dimensions Competition in conjunction with the Canadian Association of Law Teachers, the Canadian Law and Society Association and the Canadian Council of Law Deans. Six papers were presented in a multidisciplinary joint session of these associations at their annual meetings.

Another important multidisciplinary research partnership is the Commission's five-year Relationships in Transition initiative with the Social Sciences and Humanities Research Council. The theme for 1999-2000 was economic relationships in transition and five major case studies are now underway.

In the *economic relationships* area of activity, the Commission collaborated with the Uniform Law Conference of Canada on a project examining the legal regime governing federal security interests. A joint project was also undertaken with the Canadian Policy Networks to explore the changing environment of the employment relationship and to assess what new regimes of legal regulation, across the full spectrum of human endeavour, may be necessary to respond justly to these changing relationships.

Under the *governance relationships* theme, a paper on urban Aboriginal governance was published in partnership with the National Association of Friendship Centres and a case study of how well different ethno-cultural groups integrate into Canadian society was co-sponsored with the Institute on Governance. The Commission also contributed to a series of studies on patterns of association in civil society, conducted by university professors and supported by the Privy Council Office.

### ***Sponsorship of meetings, focus groups and conferences***

The Commission was also very active in this area throughout the fiscal year in each of the strategic research themes.

In the area of *personal relationships*, it sponsored a conference on registered domestic partnerships in October 1999 and conducted study panels on adult personal relationships and older adult relationships in December 1999 and January 2000. The Commission also participated in a conference on population aging.

Under the *social relationships* theme, the Commission participated in conferences on conflict resolution (September 1999) and crime and safety (October 1999).

In the area of *economic relationships*, the Commission participated in round tables on federal security interests (June 1999) and economic shocks (December 1999).

Under the theme of *governance relationships*, the Commission held study panels on biomedical research in December 1999 and February 2000, as well as round tables on citizen agency (June 1999) and legislation (January 2000). In April 1999, it co-sponsored a conference on implementing the recommendations of the Royal Commission on Aboriginal peoples and in March 2000 it co-sponsored a forum on the treaty-making process.

### ***Continuing consultation with Canadians on research programs and recommendations***

The Commission has created an Advisory Council composed of 22 members, broadly representative of the socio-economic and cultural diversity of Canada, representing various disciplines and reflecting knowledge of both common and civil law. The Council met twice in 1999-2000.

In addition, the Commission made extensive use of the Internet in its outreach activities with the general public and with on-line discussion groups in order to stimulate debate on issues related to its strategic research agenda.

### ***Development of new concepts of law and new approaches to law***

Much of the Commission's research in 1999-2000 was focused on the development of new concepts of law and new approaches to law. The work of the Commission in the area of citizen agency (a round table and five research studies) is an example of a contribution that the Commission has made to transforming standard assumptions about law and governance. A similar re-orientation can be seen in the Commission's work on close personal relationships between adults, where the idea of asking what the legitimate interest of the state in all such relationships might be, has been advanced as an alternative to asking what types of relationships should be analogized to traditional marriage.

### ***Proposals to improve the efficiency and accessibility of the legal system***

The concept of restorative justice has great potential for improving the efficiency and accessibility of the legal system. In 1999-2000, the Commission issued a discussion paper on this subject and is undertaking additional research studies.

The major result in this area, however, was the publication in March 2000 of *Restoring Dignity: Responding to Child Abuse in Canadian Institutions*. This report examines different ways of providing redress for people who, as children, suffered physical and sexual abuse in government-run or government-sponsored institutions. The goal was to recommend responses that meet the needs of victims of abuse and address the concerns of

their families and communities. By placing survivors first, the Commission was able to evaluate existing legal institutions and processes that might be used to respond to the needs of survivors and suggest improvements to them. It was also able to identify and suggest other approaches that could be specifically designed to address the needs while still respecting fundamental legal values.

### ***Recommendations to eliminate obsolescence and anomalies in the law***

In March 2000 the Commission presented a brief to the Parliamentary committee studying Bill C-23 on the Modernization of Benefits and Obligations. It also presented a brief in response to a Department of Justice consultation paper on child victims and the criminal justice system.

### ***Contribution to Government-wide Priorities***

The Commission is an independent agency which operates at arm's-length from the government. As such, it is not required to organize its activities around the government's priorities in the same way as a line department, for example.

Nevertheless, the research projects and other activities in which the Commission is involved do contribute in a significant way to a number of the government-wide priorities set out in the *Speech from the Throne* in October 1999. The Commission views this as another dimension of the relevance of its activities.

A number of studies completed and in progress deal with relationships involving children, which relates to the priority on *children and youth*. The Commission's report on historical child abuse in Canadian institutions will have a major impact on the management of institutions for children and the way in which children are treated in these institutions.

The work of the Commission on economic relationships, particularly in regard to technological innovation and an evolving economic context, is closely linked to the priority on a *dynamic economy*.

The study panels on the governance of biomedical research on human subjects held during the year and the research studies on older adults' personal relationships are highly relevant to the priority on *health and quality care*.

Many of the activities of the Commission in the area of governance relationships will undoubtedly contribute to the government-wide priority on *stronger communities*. The new research initiatives under the social relationships theme to explore emerging forms of communities and the increasing importance of communities of interest rather than geographical communities will also feed into this government priority.

Much of the focus of the report on child abuse in Canadian institutions involved Aboriginal children. In addition, the Commission co-hosted a conference on the

implementation of the recommendations of the Royal Commission on Aboriginal Peoples and a forum on the treaty-making process. It also initiated a research project on the involvement of Aboriginal youth in urban governance. These activities relate to the priority on *Aboriginal people*.

### ***Key Reviews, Audits and Evaluations***

In the fall of 1999, the Commission underwent an external mid-term review of its performance, judged against the accountability framework approved by its Advisory Council. The conclusions of this review were that, given the short, two-year period of activities covered by the review, the Commission had established credibility in the constituencies to which it has reached out and that events are on course to achieve the various outcomes specified in the Commission's mandate. Indeed, the interviews conducted with a cross-section of stakeholders reveal that the Commission has adopted a unique and promising approach to law reform, has established meaningful and effective partnerships, has engaged in innovative multidisciplinary research and has opened up discussions into issues that have social, moral, economic and legal implications of great interest to Canadians.





### **III Consolidated Reporting**

#### **Statutory Annual Reports**

Law Commission of Canada, Annual Report, 1999-2000, *Relationships*  
(*Law Commission of Canada Act, s. 23*)



## **IV Financial Performance**

### **Financial Performance Overview**

The following financial tables depict the resources available to the Commission in 1999-2000 and how these resources were used.

As shown in Table 1 planned spending for 1999-2000 at the beginning of the year was \$3.011 million. Additional spending of \$140 thousand was approved by Parliament, increasing available resources to \$3.151 million.

Of the \$3.151 million available, the Commission spent only \$2.913 million. This represents 92% of the total authority. Spending was slightly less than expected mostly because of delays in some research projects.

### **Financial Summary Tables**

The following tables are applicable to the Law Commission of Canada:

**Financial Table 1** Summary of Voted Appropriations

**Financial Table 2** Comparison of Total Planned Spending and Actual Spending

**Financial Table 3** Historical Comparison of Total Planned to Actual Spending

## Financial Table I

### Summary of Voted Appropriations

<b>Financial Requirements by Authority (\$ thousands)</b>				
<b>Vote</b>		<b>1999-2000</b>		
		<b>Planned Spending</b>	<b>Total Authorities</b>	<b>Actual</b>
<b>Law Commission of Canada</b>				
35	Program expenditures	2,861.0	3,000.5	<b>2,763.3</b>
(S)	Contributions to employee benefit plans	150.0	150.0	<b>150.0</b>
<b>Total for the Commission</b>		<b>3,011.0</b>	<b>3,150.5</b>	<b>2,913.3</b>

## Financial Table II

Comparison of Total Planned Spending to Actual Spending

<b>Commission's Planned versus Actual Spending (\$ thousands)</b>			
	<b>1999-2000</b>		
<b>Law Commission of Canada</b>	<b>Planned</b>	<b>Total Authorities</b>	<b>Actual</b>
FTEs	11	11	11
Operating	3,011.0	3,150.5	<b>2,913.3</b>
Capital	-	-	-
Grants and Contributions	-	-	-
<b>Total Gross Expenditures</b>	<b>3,011.0</b>	<b>3,150.5</b>	<b>2,913.3</b>
Less:			
Respendable revenues	-	-	-
<b>Total Net Expenditures</b>	<b>3,011.0</b>	<b>3,150.5</b>	<b>2,913.3</b>
<b>Other Revenues and Expenditures</b>			
Non-respendable revenues	-	-	-
Cost of services provided by other departments	107.0	107.7	<b>107.7</b>
<b>Net Cost of the Program</b>	<b>3,118.0</b>	<b>3,258.2</b>	<b>3,021.0</b>

### Financial Table 3

Historical Comparison of Total Planned Spending to Actual Spending

<b>Historical Comparison of Commission's Planned versus Actual Spending by Business Line (\$ thousands)</b>					
<b>Business Line</b>	<b>Actual 1997-98</b>	<b>Actual 1998-99</b>	<b>1999-2000</b>		
			<b>Planned Spending</b>	<b>Total Authorities</b>	<b>Actual</b>
Law Commission of Canada	1,206.4	2,415.6	3,011.0	3,150.5	<b>2,913.3</b>
<b>Total</b>	<b>1,206.4</b>	<b>2,415.6</b>	<b>3,011.0</b>	<b>3,150.5</b>	<b>2,913.3</b>

## V Overview

### Mandate

The mandate of the Law Commission of Canada is derived from the *Law Commission of Canada Act* which came into force in late April 1997. The 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.

### Mission

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**The Mission of the Law Commission of Canada is to engage Canadians in the renewal of the law to ensure this it is relevant, responsive, equally accessible to all, and just**

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### 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 organizations 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. As a result most of the Commission research is conducted by external resources.

## **Organization**

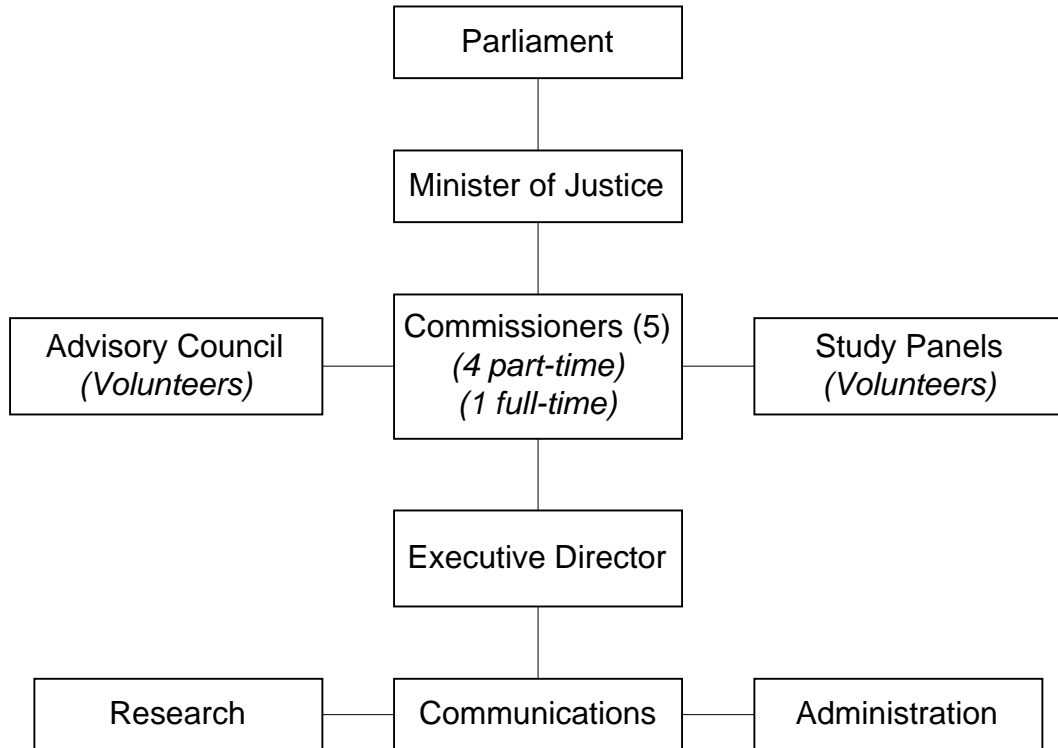
The Law Commission is a departmental corporation, accountable to Parliament through the Minister of Justice. The Governor in Council appoints the President and four part-time Commissioners on the recommendation of the Minister for terms not exceeding five years. The Commission is supported by a small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

The Commission has appointed a voluntary Advisory Council of 22 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, on 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, will be comprised of 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.



## Organization Chart



## **VI Other Information**

### **Contacts for further information**

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### **Statutes Administered by the Law Commission of Canada**

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