

Law Commission of Canada

**1999–2000
Estimates**

A Report on Plans and Priorities

Anne McLellan
Minister of Justice

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Section I Messages



President's Message

As President of the Law Commission of Canada, I am pleased to present our second Report on Plans and Priorities. This past year was devoted to moving our activities from the planning to the operational stage. We are now fully staffed; we have completed our work on the Ministerial Reference; we have launched research projects and held Round Tables on each of the four themes identified in our Strategic Agenda; we have built partnerships and co-sponsored national events with NGOs and universities; and we are moving towards the release of our first Discussion Papers on our research themes.

This has been a year of challenge and discovery. All members of the Commission are enthusiastic about the projects we are undertaking and the methodologies we are deploying to respond to our statutory mandate and mission. We are especially gratified that our ambition and activities directed to finding new approaches to law and to developing new concepts of law are striking a responsive chord throughout Canada.

New Approaches to Law

Our Strategic Agenda sets out our understanding of how Canadians see their law and how they desire it to be. This past year we have deepened our appreciation of the ways in which these desires can be translated into new approaches to law.

Many Canadians believe that current approaches to justice are outmoded. To address this concern we have launched a major initiative examining the concept of "restorative justice". We believe that this concept has much to teach us not only about the criminal justice system, but about our approaches in areas like family conflict and bankruptcy.

Canadians have responded warmly to our attempts to involve them in law reform. Our web-page is very popular, and the consultations we have set up in connection with the Discussion Document on the Ministerial Reference show that Canadians have a thoughtful and subtle view of their law and its possibilities. They crave access to the kinds of information that will help them become more engaged citizens, and they desire the occasions to express their views about the values that matter to them.

Focusing on the justice of the law, providing information so that Canadians may participate more fully in public governance, and adopting a multidisciplinary approach to law reform are the main goals we have set for ourselves in 1999-2000 as we pursue the objective of developing new approaches to law.



New Concepts of Law

It is not just the mechanics of law that preoccupy Canadians. Many have expressed their dissatisfaction with the concepts that the law currently uses to put into operation the policies it announces. Often statutes do not fully cover all the situations they ought, while extending themselves to situations that they should not. We have begun several projects to explore where and why the legal concepts around which regulatory regimes have been built are inadequate. We hope to show how these concepts can be adjusted to capture the diversity of Canadian society and better achieve the legislative policies they promote.

Canadians have also indicated their perception of a misfit between the substance of the law and the procedures it puts into place to achieve its goals. They are now seeing how, in many areas, the law takes an overly restrictive view of the way in which they should live their lives. We are pursuing studies that examine how law can be written so that citizens are empowered to act responsibly, rather than being told in great detail how to do so.

A deep contemporary concern of Canadians is with the effect of social and economic change on their daily lives. Many key relationships are now in transition. A number of our projects are designed to explore how the law should respond to or manage these transitions. They seek to find or develop the legal concepts needed to achieve a balance among the options of resisting change, structuring and channelling change, and facilitating change.

Recasting traditional concepts to achieve better policy coherence, promoting the use of legal concepts that reconcile law's procedure with its substance, and balancing approaches to social change are the main ideas we will highlight in 1999-2000 as we pursue the objective of developing new concepts of law.

Moving Forward

Specific projects and studies under our four research themes will enable us to move each of these key ambitions forward during the coming year. Collaborative undertakings on various research projects are now in place. We have learned much through the Ministerial Reference about how to use study panels, discussion documents, and the Internet to involve Canadians in our work.

In our initial year of operation, the overriding goal was to enhance the engagement of Canadians in the renewal of the law by reshaping public perception of where law comes from and to whom it really belongs. Our Annual Report—entitled *Living Law*—sought to highlight this ambition.



In the coming year, we seek to emphasize how the success of law depends on its sensitivity and responsiveness to issues of justice. Maintaining the enthusiasm of Canadians for law reform and their involvement in its processes through explicit attention to the justice of the law is the first priority for the Law Commission of Canada in 1999-2000.

Roderick A. Macdonald,
President



Management Representation Statement

I submit, for tabling in Parliament, the 1999-2000 Report on Plans and Priorities (RPP) for the Law Commission of Canada.

To the best of my knowledge the information:

- Accurately portrays the mandate, plans, priorities, strategies and expected key results of the organization.
- 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 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 structure 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.

Bruno Bonneville,
Executive Director

Section II Agency Overview



Mandate

The mandate of the Law Commission of Canada is derived from the *Law Commission of Canada Act*, which came into force in April 1997. The legal mandate of the Commission is “to study and keep under systematic review, in a manner that reflects the concepts and institutions of the common law and civil law systems, the law of Canada and its effects with a view to providing independent advice on improvements, modernization and reform that will ensure a just legal system that meets the changing needs of Canadian society and of individuals in that society”.

Programme Objective

The objective of the Commission is to provide independent advice on improving, modernizing and reforming Canadian laws, legal institutions and procedures to ensure that they are aligned with the changing needs of Canadian individuals and society.

Strategic Objectives

The Commission is directed under Section 3 of the *Act* to focus on the following strategic objectives:

New Concepts of Law: The Commission is to work towards the development of new concepts of law and new approaches to law.

Efficiency and Accessibility: The Commission is to consider measures to make the legal system more efficient, economical and accessible.

Stimulating Critical Debate: The Commission is charged with stimulating critical debate about law and how it operates in Canadian society. It is encouraged to forge productive networks with academic and other communities in order to ensure cooperation and coordination in law reform initiatives.

Eliminating Obsolescence and Anomalies: The Commission is to work toward the elimination of obsolescence and anomalies in the current law.

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

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



Organization

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

In order to implement the spirit as well as the letter of the *Law Commission of Canada Act*, a voluntary Advisory Council of 21 outside individuals and experts representing Canada's socioeconomic and cultural diversity, as well as a broad range of disciplines has been appointed. The Council provides input and advice on strategic directions and the Commission's long-term research program, performance review and other relevant matters.

Study panels are appointed as needed to provide advice on specific research projects. Each panel, headed by a Commissioner, is comprised of volunteer experts from multiple disciplines and members of affected communities. The majority of the research in support of the study panels will be obtained through contracts with recognized experts in the private sector and academia.

Guiding Principles

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

Inclusiveness

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

Multidisciplinary Approach

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



Innovative Practices

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

Partnerships and Networks

The Commission builds partnerships with 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.

Operating Environment

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

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

Expectations for law reform are broad, varied and sometimes contradictory. A key challenge for the Commission is therefore to identify those areas where its contribution can be both timely and instrumental in bringing about changes in the way the law is perceived, conceived and administered.

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



Financial Spending Plan				
	Forecast Spending 1998-99*	Planned Spending 1999-00	Planned Spending 2000-01	Planned Spending 2001-02
(thousands of dollars)				
Gross Programme Spending	2,541	3,011	3,011	3,011
<i>Less: Revenue Credited to the Vote</i>	—	—	—	—
Net Programme Spending	2,541	3,011	3,011	3,011
<i>Plus: Cost of Services Provided by other Departments</i>	107	107	107	107
Net Cost of the Commission	2,648	3,118	3,118	3,118

* Reflects best forecast of total planned spending to the end of the fiscal year.

The difference between the 1998-99 Forecast Spending and the 1999-2000 Planned Spending is mainly attributable to delays in the implementation of research projects.

Section III Plans, Priorities and Strategies



Chart of Key Results Commitments

Law Commission of Canada

<i>to provide Canadians with:</i>	<i>as demonstrated by:</i>
Relevant and timely research on issues of law and justice	<ol style="list-style-type: none"> 1. A strategic agenda reflective of social trends and priorities 2. A multidisciplinary research programme that is focused and realistic 3. Productive research partnerships and intergovernmental cooperation
An open forum about law and how it operates in Canadian society	<ol style="list-style-type: none"> 4. Sponsorship of meetings, focus groups and conferences 5. Continuing consultation with all Canadians on research programs and recommendations
Quality recommendations on improvement, modernization and reform of the law	<ol style="list-style-type: none"> 6. Development of new concepts of law and new approaches to law 7. Proposals to improve efficiency and accessibility of the legal system 8. Recommendations to eliminate obsolescence and anomalies in the law

Strategies and Expected Results

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

This thematic orientation around various types of relationships highlights the Commission’s commitment to seeking new concepts of law and new approaches to law reform. It immediately suggests multidisciplinary since relationships are not a traditional legal category. It also intimates the importance that the Commission attaches to designing and pursuing its research in a manner that is understandable and accessible to Canadians.

In addition, framing its agenda in this way underscores the primacy of relationships and the role of law in structuring and shaping human interaction in modern society. The relationships themselves, and not specific rules of law, are the point of departure for the inquiry. The chosen relationships will be examined not as passive reflections of legal concepts, but as dynamic social institutions.



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

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

Personal Relationships

Canadian law now rests on assumptions about how people organize their private lives, and how they relate to their partners, parents and children. These assumptions are frequently out of touch with the facts. As a result, some legal policies derived from them are obsolete and counter-productive. For example, many social programmes—unemployment insurance, child tax credits, family allowances, pension entitlements—do not reach all their potential beneficiaries today because of the evolution of different forms of family life, conjugal unions and domestic relationships.

The Commission has launched a number of studies that look closely at different relationships of dependence and interdependence. The objective is to understand how the law imagines and constructs these relationships and how it may, in consequence, palliate or exacerbate power imbalances that can lead to abuse and exploitation. A collateral issue is whether the legal concepts we have used to pursue public policies aimed at personal relationships are still adequate to the task.

In 1999-2000, the Commission plans to issue two discussion papers on this theme. The first one, in September 1999, will solicit the views of Canadians on how the law should respond to different models of contemporary domestic partnerships. The second one, to be published in December 1999, will outline the results of the Commission's research on law and the personal relationships of older adults and invite comments from all interested parties on how the law should accommodate the evolving social values that underlie these relationships. During the year, the Commission will also begin studies of relationships involving children as well as other relationships of dependence and interdependence.

Social Relationships

To develop this theme the Commission is exploring the concept of restorative or transformative justice. The goal is to discern the root ideas associated with the concept, and to compare these ideas with traditional notions of retributive, corrective, restitutionary and distributive justice. Studies will be launched to



consider how restorative justice might apply not only in the criminal justice sphere, but also in fields such as the family, consumer bankruptcies, corporate governance, labour relations, and anti-discrimination law, where maintaining just multi-party and inter-group relationships is an important value. If the concept of restorative justice really is a powerful new way of thinking about law it will also have important consequences for the design of judicial institutions and processes of civil dispute resolution.

In June 1999, the Commission will publish a Discussion Paper that examines the potential of this concept as a guiding principle in Canadian law. In the fall, it intends to publish a Report that establishes a conceptual framework highlighting the principles underlying restorative justice and identifying the potential benefits and drawbacks of their application to various spheres of law. At the same time, it will launch studies that seek to apply the concept to selected areas of the law.

Economic Relationships

The Commission proposes to develop its Economic Relationships theme by exploring how the law responds to the human and social dislocations caused by markets in transition. The organizing idea of this research theme is to understand these market activities as relational.

Technological innovations now permit significant crossborder transactions which are facilitated by international agreements. These have an impact on business practices and on policy related to financial institutions, labour markets, pensions, bankruptcy, the environment, immigration and social welfare. They also bear directly on how the law defines property and employment. For example, at the same time that society is required to manage the major upheavals in the workplace, it must also now address how to give proper recognition to unpaid as well as paid work. Again, the creation of new forms of property and wealth profoundly affect policies by which society has sought to protect the value of a worker's labour and to address disparities in market power.

The Commission's first research programme under this theme looks at organized crime as an economic activity. It aims to determine how the criminal law creates market opportunities through ill-advised or unenforceable rules that no longer enjoy broad public support in practice, how legislative responses to economic crime, like money-laundering legislation, shape the contours of the official economy, and how the infra-structure of organized crime leads to the establishment of alternative and competing loci of governance. The Commission will hold a Round Table on this topic in May 1999 and hopes to produce a Discussion Paper in October of that year.

The Commission's second programme will directly look at public policy. In August 1999, the Commission will launch a multidisciplinary research competition, in association with the Social Sciences and Humanities Research Council. Scholars will be invited to explore the range of policy options open to governments for dealing with the impact of social dislocation caused by economic change. This



initiative will culminate in the publication of a series of papers to be presented at a national conference to be held in early 2000.

Governance Relationships

The aim of the Governance Relationships theme is to examine ways to enhance the capacity of citizens to participate meaningfully in the democratic processes of public institutions. Canadians are disengaging from these institutions and are more sceptical about their responsiveness. The judicial and administrative systems are pressured to provide expedient and accessible justice attuned to current needs. Increased recourse to adversarial processes to solve interpersonal conflict and larger issues of social justice have contributed to a crisis of legitimacy.

The focal idea for the governance theme is to explore what kinds and forms of law best meet the notion of citizenship and citizen capacity that underlies a liberal-democratic state. Projects will be cast so as to identify institutions that reflect a pluralistic respect for a citizenry empowered to govern itself within a framework of the Rule of Law. Understanding the impact on democratic governance of the trend to deploy private systems to deliver public services and identifying best practices for structuring these non-public sector delivery mechanisms is a key component of this inquiry.

To date the Commission has contracted for a study examining whether the concept of citizen agency can usefully be deployed to organize research projects under this theme. In addition, three specific projects have been launched. A first explores how to increase the participation of aboriginal youth in urban governance. Another investigates what lessons government can learn from the private and voluntary sectors about how to recognize and manage diversity and social cleavages. A third investigates models of governance for the ethical conduct of medical research, assessing the impact of the competing multiple regulatory frameworks in both the public and private sectors.

In the coming year, the Commission will consolidate the findings of these initiatives in a Discussion Paper aimed at generating further debate about optimal processes for effective governance. Partnerships will also be sought with other government institutions and private sector organisations conducting research and pilot projects in this rapidly evolving area of critical importance. A Report will be issued in the Spring of 2000.

Other Activities

Notwithstanding its modest means, the Commission will continue to affirm its presence in the overall field of public policy by providing a unique insight and encouraging innovative thinking on issues under debate. Starting in 1999-2000, the Commission will partner with the Canadian Association of Law Teachers, the Canadian Law and Society

Association and the Canadian Council of Law Deans in sponsoring research papers to be presented at an annual conference on “Legal Dimensions”.

Also starting next fiscal year, the Commission will join the Social Sciences and Humanities Research Council in funding a multidisciplinary academic competition for research on “Relationships in Transition”.

In April 1999, the Commission will co-host a conference on the implementation of the recommendations of the Royal Commission on Aboriginal People, in association with the Indigenous Bar Association, the Canadian Bar Association and the Law Society of Upper Canada. Other initiatives of this nature that meet the policy requirements of the Commission will be pursued as opportunities arise.





Section IV Supplementary Information

Table 1			
Spending Authorities – Part II of the Estimates			
Vote	(thousands of dollars)	1999-2000 Main Estimates	1998-1999 Main Estimates
Law Commission of Canada			
35	Programme expenditures	2,861	2,791
(S)	Contribution to employee benefit plans	150	149
Total Commission		3,011	2,940

Explanation of change: The increase of \$71,000 in Main Estimates for 1999-2000 over 1998-1999 is due primarily to additional costs resulting from collective bargaining agreements signed as of December 31, 1998.

Table 2
Organization Chart

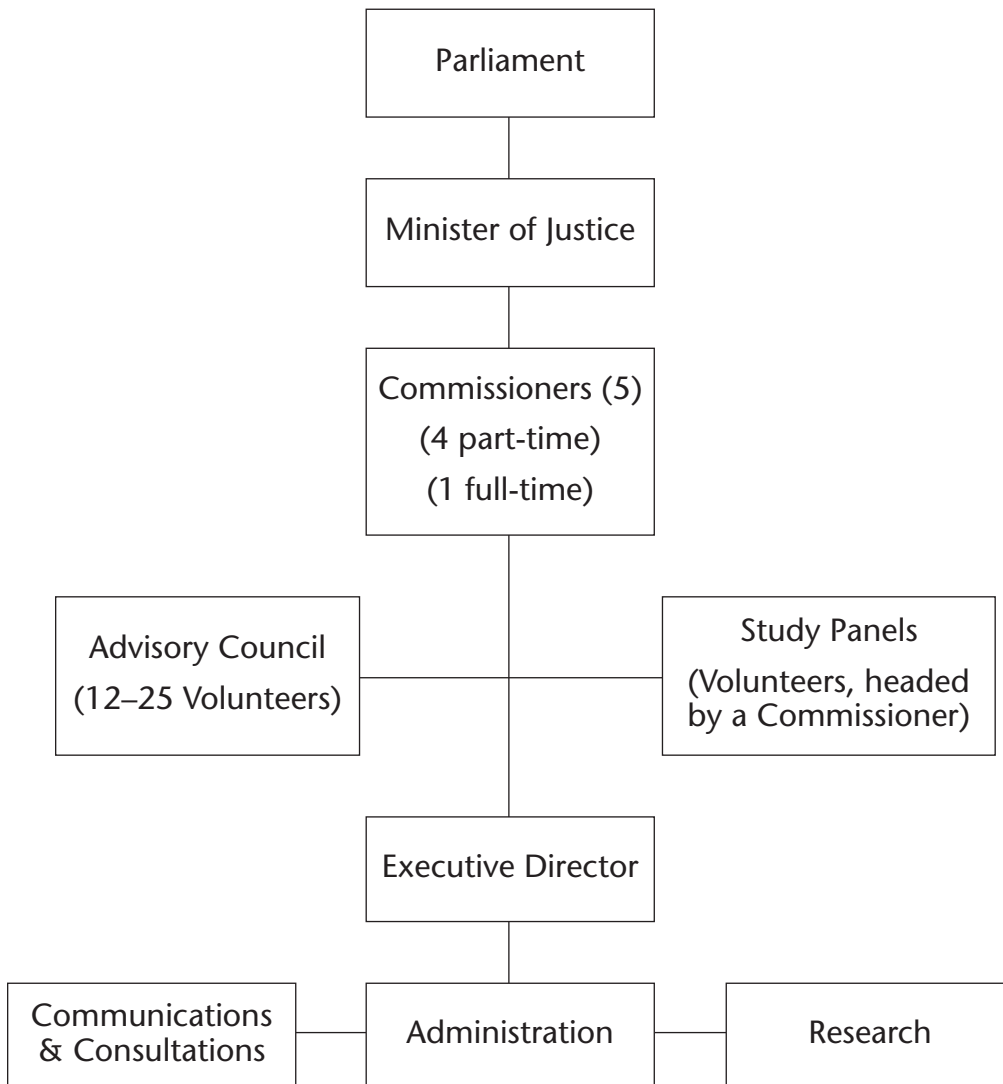




Table 2.1	
Responsibility for Planned Spending by Business Line for 1999-2000	
(thousands of dollars)	
Law Commission of Canada	3,011

Table 2.2				
Planned Full Time Equivalents (FTEs) by Business Line				
	1998-1999 Forecast	1999-2000 Planned	2000-2001 Planned	2001-2002 Planned
Law Commission of Canada	8	11	11	11



Table 3				
Agency Summary of Standard Object of Expenditure				
(thousands of dollars)	Forecast Spending 1998–1999	Planned Spending 1999–2000	Planned Spending 2000–2001	Planned Spending 2001–2002
Personnel				
Salaries and wages	615	751	751	751
Contributions to employee benefit plans	149	150	150	150
	764	901	901	901
Goods and services				
Transportation and communications	274	269	269	269
Information	255	306	306	306
Professional and special services	1,177	1,455	1,455	1,455
Rentals	28	27	27	27
Purchased repair and upkeep	2	2	2	2
Utilities, materials and supplies	14	35	35	35
Other subsidies and payments	—	1	1	1
Minor Capital	27	15	15	15
	1,777	2,110	2,110	2,110
Total operating	2,541	3,011	3,011	3,011
Less: Revenues Credited to the Vote	—	—	—	—
Total	2,541	3,011	3,011	3,011



Table 4							
Programme Resources by Business Line for the Estimates Year 1999-2000							
(thousands of dollars)	FTE	Budgetary			Gross Planned Spending	Less:	
		Operating	Capital	Grants and Contributions		Revenue Credited to the Vote	Net Planned Spending
Law Commission of Canada	11	3,011	—	—	3,011	—	3,011

Table 5	
Net Cost of Programme for 1999-2000	
(thousands of dollars)	Total
Gross Planned Spending	3,011
Plus Services Received without Charge:	
Accommodation provided by Public Works and Government Services Canada (PWGSC)	66
Contributions covering employees' share of insurance premiums and costs paid by TBS	41
Total Cost of Programme	3,118
Less: Revenue Credited to the Vote	—
1999-2000 Estimated Net Programme Cost	3,118

Other Information



Statutes Administered by the Law Commission of Canada

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

References:

Law Commission of Canada
11th Floor, TREBLA Building
473 Albert Street
Ottawa, Ontario
K1A 0H8

Telephone: (613) 946- 8980

Fax: (613) 946- 8988

e-mail: info@lcc.gc.ca

Web Page: www.lcc.gc.ca