



living law

Law Commission of Canada
annual report 1997-98



LAW COMMISSION OF CANADA
COMMISSION DU DROIT DU CANADA

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.



Roderick A. Macdonald
President



Nathalie Des Rosiers
Vice-President



Alan Buchanan
Commissioner



Stephen Owen, Q.C.
Commissioner



Gwen Boniface
Commissioner



THE YEAR IN REVIEW

APRIL 21
Proclamation of the
*Law Commission of
Canada Act*.
Appointment of
Commissioners.

JULY 4-5
First COMMISSION
meeting—Ottawa, Ontario.

AUGUST 15-16
Second COMMISSION
meeting—Ottawa, Ontario

NOVEMBER 14-15
The Minister of Justice forwards
a reference to the COMMISSION.
Third COMMISSION meeting.
First meeting of the Advisory
Council—Ottawa, Ontario.

1997

JULY 2
Commencement
of operations.

JULY 15-31
Broad consultations held to solicit
nominations for the Advisory
Council and suggestions for the
Strategic Agenda.

SEPTEMBER 2
Opening of office at
473 Albert Street, Ottawa.

Canadians want their law to be responsive to their concerns and to embody justice. *The Law Commission of Canada* frames these desires as a legislative mandate.

The COMMISSION is directed to elaborate new concepts of law and new approaches to law, to consider measures to make the legal system more efficient, economical and accessible, to stimulate critical debate about law and how it operates in Canadian society, and to identify obsolescence and anomalies in the law. • In pursuing its work, the COMMISSION is enjoined to take a multidisciplinary approach, investigating law and the legal system as part of the general social and economic environment.

The COMMISSION is also required to adopt policies and procedures that are open and inclusive, to develop partnerships so as to build upon existing knowledge and expertise, and to involve in its activities a wide range of people affected by and concerned about

law reform. • Over this past year, we have sought to convert our legislative mandate into a plan of action. Our initial tasks involved establishing an Advisory Council to assist in planning our research, developing a long-term programme of study, building networks and launching collaborative projects, adopting procedures and mechanisms for consultation with Canadians, and recruiting the COMMISSION's full-time staff. • This Annual Report reviews our activities in each of these dimensions.



1998

DECEMBER 17
Submission of the
COMMISSION's Strategic
Agenda to the Minister
of Justice.

FEBRUARY 13
Submission of the
Interim Report on
Ministerial
Reference.

FEBRUARY 20-21
Fourth COMMISSION
meeting—Victoria, B.C.

MARCH 7
Round Table on
the Provincial Court
Judges Case—
Victoria, B.C.

MARCH 11
Round Table on
Governance—
Ottawa, Ontario.

MARCH 25-26
Round Table on Law
Reform 2000—
Edmonton, Alberta.

MARCH 27-28
Fifth COMMISSION meeting—
Ottawa, Ontario.
Second Meeting of the Advisory
Council, Ottawa, Ontario.

Law is at once a dynamic and a fragile human accomplishment. It mirrors, and partly moulds, the moral character of a society.

Law is a powerful lens through which a society is able to view and judge itself. Over time, it comes to express a society's values and convictions, as well as its prejudices and pathologies. In giving form to debate about many of life's most important questions, the law is a transparent symbol of how we imagine who we are and how we conceive our relationships with others.

Modern societies have established a number of specialized legal institutions to assist in developing and stating the values to which they aspire. Among the best known are legislatures, courts, the public service and the police. Others include independent agencies such as the LAW COMMISSION OF CANADA, created to examine, critically assess and promote the renewal of the law.

But law comprises more than the rules produced by public officials. Most living law arises in everyday human interaction. Some of the most fundamental coordinating rules by which Canadians organize their lives together are neither enacted by Parliament, nor even formally recognized and applied by courts.

The official law of legislatures and courts and the informal law of everyday practice and usage are the legal reflection of our society's aspiration to justice. Together, they give focus to the Mission of the LAW COMMISSION OF CANADA.

..... **a mission** Our Mission Statement encapsulates how we understand our role. It states our commitment to involving as many people as possible in our activities. Since Canadians themselves are ultimately the source of the living law, they must be directly engaged in its renewal. Without this engagement, our proposals

and recommendations, even if adopted by Parliament, are likely to have little practical impact.

Many Canadians today have ambivalent attitudes towards official law. More than ever, they are turning to governments and the courts as a means of obtaining justice—to solve conflicts with neighbours, family members, and strangers; to seek empowerment in the workplace and the marketplace; to counter discrimination by invoking due process and equality guarantees; and to protect the environment through public interest litigation.

At the same time, Canadians are increasingly frustrated by what they perceive to be law's failures—the gap between what the letter of the law promises and what it is actually able to deliver; the detail and complexity of even the simplest types of legal regulation; the cost and delays associated with obtaining redress through the courts; and the apparent inattention of the official law to their concerns about social justice.

As the COMMISSION embarks on its programme of research, a key objective will be to gain a better sense of this ambivalence and its causes. Law in modern, complex and diverse societies can be understood in two complementary ways. In one sense, law is simply a means for keeping the peace, controlling behaviour and solving disputes. In another, it is about the way we negotiate, build, modify and dismantle relationships so as to promote a just balance of social power. Both perspectives are reflected in the COMMISSION's view that law is a way of imagining and shaping how human beings interact in contemporary society.

..... **a symbol** We have chosen a logo encompassing a stylized *eye*, *ear*, *question mark* and *lightbulb* as the visual representation of our Mission.

Closely observing how Canadians understand and use the law is the essential first step in our research activities. We hope to see, from as many different perspectives and with as few preconceptions as possible, the ways in which Canadians actually experience the law. The *eye* symbolizes our focus on the rich interplay of official law and everyday living law.

Listening as Canadians reveal their hopes for the law and their disappointments with the law is also fundamental to our mandate. Consulting and collaborating with those not always heard in policy debates will assist us to learn how law can be made more responsive and accessible. The *ear* expresses our commitment to translating the enthusiasm of Canadians for improving their law into an active engagement in its renewal.

Observing and listening, we believe, will enable us to probe why officials respond to the legal challenges of modern society as they do. We need to ask if enacting legislation will always be the best way to ensure that law evolves in

harmony with social values. The *question mark* also reminds us to check whether these current values actually correspond to the aspirations we have for our society and for our law.

The outcome of this observing, listening and questioning should be the promotion of new approaches to law and its renovation. Studying the socio-economic impact of law will enable us to evaluate with greater insight the performance of official institutions. The *lightbulb* captures the idea that we can extrapolate from everyday lived law workable alternatives to the judicial system and new approaches to solving social problems.

Our logo is a reminder that we must observe the law in action. We must listen to what Canadians have to say about their law, question the content of this law and the way legal institutions actually work, and imagine creative ways for law to contribute to achieving a more just society.

..... **an approach** The COMMISSION is directed by its statute to look carefully at the law that is made by Parliament and the courts. This is a central component of our activities, but our mandate does not end there.

Some of Canada's most pressing legal problems do not easily lend themselves to legislative solutions. Thinking through appropriate statutory and other responses requires research into social, economic and cultural questions, and cooperative action within and among governments.

The COMMISSION recognizes the many different ideas that Canadians have about the law and its capabilities. Identifying the sources and acknowledging the power of these preconceptions are necessary steps to dispelling the stranglehold that they have upon the way we conceive the possibilities for recasting the law.

Most Canadians act responsibly and with integrity in their relationships. The law should facilitate and nurture respectful human interaction. An important aim of the COMMISSION is to make proposals that encourage fair practices in the marketplace, the workplace, the neighbourhood and the household, to promote a more just regime of governance by law.

Examining assumptions about what we ask of ourselves and our law, engaging in a dialogue about where and why our expectations of it may be unrealistic, and holding ourselves accountable for this law, are at the heart of the COMMISSION's endeavour.

..... **research** The design of our research flows directly from this interpretation of our mandate and from initial consultations with Canadians. Our programme of study is based on three main principles: We seek to be innovative in our research and recommendations, exploring legal problems from novel perspectives. We attempt



The living law arises from human

interaction.

It reflects the values and
aspirations that we affirm daily—
at home, at work, at play.


to promote balance and accessibility in the law by addressing issues of inequality caused by disparities in information, resources and power. And we aim to enhance the responsiveness of the legal system by helping to renew the connection between Canadians and the law intended to serve them.

The preamble to the *Law Commission of Canada Act* sets out a framework within which we are to conduct our research. From this framework, we have developed guidelines to assist us in selecting specific projects. The need for intervention by the COMMISSION must be clearly demonstrated. Projects must be relevant to contemporary concerns, and provoke the interest of those who are most affected by the legal rules being examined. Projects must exploit the particular approach of the COMMISSION and favour collaborative research. Finally, projects must have the potential to influence the way people view the law and the legal system.

..... **strategic agenda** Our Strategic Agenda was developed with these objectives in mind. Our programme of study is organized around broad themes, rather than around particular areas of law. The themes selected—personal, social, economic and governance relationships—underscore our focus on law as a tool for enhancing the quality of human relationships. Other approaches emphasizing different features of our mandate could have been adopted. Our chosen orientation compels us to confront how the law is perceived by Canadians and what they expect of the law. Consultations to establish study panels and structure particular research programmes are now underway and contracts to develop the COMMISSION'S first two themes have been awarded.

..... **ministerial reference** Last fall, the COMMISSION received a reference from the Minister of Justice requesting the preparation of “a report addressing processes for dealing with institutional child physical and sexual abuse,” and making recommendations for how to respond to victims of abuse, that occurred in the past, in government-run and government-funded institutions. In February, the COMMISSION submitted an Interim Report that outlined the questions to be addressed in order to fulfil this mandate. A number of research projects examining these questions are now in progress and a study panel for this reference will soon be established. We expect to deliver a final report later this year.

..... **engaging Canadians** Our ability to fulfil our mandate effectively will depend in large part on establishing creative, comprehensive and continuing processes of consultation with Canadians. Many have already participated in the development of our Strategic Agenda and in the shaping of specific research programmes and projects. We will pursue these consultations as we circulate

A woman with dark hair, wearing a light-colored top, is smiling and looking down at a bunch of carrots she is holding. The background is slightly blurred, showing what appears to be a kitchen or a similar indoor setting. The overall tone is warm and positive.

Canada's most important law
reformers are its

citizens.

They renew the law by living the law.

discussion papers, draft studies and interim reports setting out our tentative recommendations.

One of our first initiatives last summer was to solicit nominations for the COMMISSION's Advisory Council. Hundreds of Canadians responded to this invitation. The Advisory Council now has 22 members drawn from across the country and reflecting its diversity. We rely on the Council to keep our work attuned to the needs and hopes of Canadians. We have also organized formal consultation sessions to assist in the elaboration of specific research programmes.

The Internet is an important tool for reaching people interested in renewal and reform of the law. Our website, located at www.lcc.gc.ca, offers information about the COMMISSION and its activities, permits us to advertise contract opportunities and formal consultations, allows for direct access to our research papers, and provides an opportunity for dialogue through online discussion groups.

As part of our efforts to involve Canadians in our work, we have also visited schools and addressed community groups, to receive suggestions about where we should focus our research. Together with media consultations that prompted the publication of news articles about the COMMISSION, these more informal processes help us to broaden our scope of understanding law as a feature of everyday life, with a wide cross-section of Canadians.

..... **building bridges** Today, many governmental and non-governmental bodies are engaged in law reform. While some independent agencies remain active, others have been transformed into joint ventures with governments, law societies and faculties of law. This makes us keenly aware of the need to forge partnerships with groups and individuals interested in law reform, to stimulate critical debate, to build networks among academic and other research communities, and to facilitate cooperative efforts among commissions, governments, and the legal professions.

In the spring, the COMMISSION co-sponsored a round table entitled *Law Reform 2000* with the Alberta Law Reform Institute. This round table brought together representatives of the law reform community from across Canada and led to the reconstitution of the Federation of Law Reform Agencies of Canada. We also hosted a round table on the *Provincial Court Judges Case* attended by 70 participants, including judges and Chief Justices from all Canadian courts, as well as about two dozen officials from various Ministries of Justice.

Collaborative activities have also been initiated with the legal professions, law faculties and other university departments, voluntary professional associations, the Uniform Law Conference, the Social Sciences and Humanities Research Council of Canada, and various not-for profit organizations and policy institutes. This



Imagining a

creative

relationship between law and justice
is our collective challenge.

strategy is complemented by contacts with several federal departments and agencies and with Parliamentarians from all political parties.

We hope these efforts will yield joint research projects, avoid duplication of studies and reinvigorate the law reform movement in Canada. Reaching out beyond the legal community, and drawing on the insights of all Canadians is an important component in reorienting and renewing the law.

..... **looking ahead** The creation of the LAW COMMISSION OF CANADA demonstrates Parliament's conviction that independent law reform agencies have a valuable role to play.

As we move forward with our research plan, we will do more than simply follow the paths outlined in the *Law Commission of Canada Act*. If we are to meet the challenges of developing new approaches to law and of stimulating critical debate about law, we must also work to change the way law reform has traditionally been undertaken.

In a democracy, citizens are always the most important law reformers. They renew the law by living the law, often managing to redress the injustices of an official law that Parliament is unable or unwilling to change. The practices by which this everyday law is constituted, debated and modified are the real engines of law reform. For this reason, the LAW COMMISSION OF CANADA will attempt to foster a greater harmony among the values to which Canadians aspire, the institutions they create or employ to advance these values, and the actual results of their legal interventions.

Recognizing the limited capacity of official law to enhance the conditions of social justice suggests the need to recast its symbolic role. Looking ahead, this will mean finding new ways for Canadians to participate in law reform. In the final analysis, helping citizens and governments come to a richer understanding of law in modern society, is our key contribution to renewing the law.



COMMISSIONERS



Roderick A. Macdonald
president
Montreal, Quebec

Mr. Macdonald is F.R. Scott Professor of Constitutional and Public Law at McGill University, where he has taught since 1979. He was Dean of Law from 1984 to 1989, was Director of the Law in Society Program of the Canadian Institute for Advanced Research between 1989 and 1994, and chaired the Task Force on Access to Justice of the Ministère de la justice du Québec from 1989 to 1991. He is a Fellow of the Royal Society of Canada.



Nathalie Des Rosiers
vice-president
London, Ontario

Ms. Des Rosiers is a Professor of Law at the University of Western Ontario where she has taught since 1987. She was Law Clerk to Justice Julien Chouinard at the Supreme Court of Canada in 1982-83 and practiced law until 1987. She is an active member of the Association des juristes d'expression française de l'Ontario and the Canadian Law Teachers' Association. She is a member of the Environmental Appeal Board of Ontario and, from 1993 to 1996, she was a member of the Ontario Law Reform Commission.



Gwen Boniface
commissioner
Orillia, Ontario

Ms. Boniface is Commissioner of the Ontario Provincial Police (OPP). From 1993 to 1995, Ms. Boniface was Superintendent-Director, First Nations and Contract Policing Branch of the OPP and, from 1996 to 1998, was Chief Superintendent and Regional Commander of the Western Region. Ms. Boniface is Vice-Chair of the Law Amendments Committee and past Chair of the Policing with Aboriginal Peoples Committee for the Canadian Association of Chiefs of Police. She has been an Adjunct Professor at the Faculty of Law of the University of Western Ontario.



Stephen Owen, Q.C.
commissioner
Victoria, British Columbia

Mr. Owen is the David and Dorothy Lam Professor of Law and Public Policy at the University of Victoria. He was Deputy Attorney General of British Columbia from 1995 to 1997, and served as Commissioner for the Commission on Resources and the Environment from 1992 to 1995, as Ombudsman from 1986 to 1992, and as Executive Director of the Legal Services Society from 1982 to 1986. Mr. Owen also served as Legal Representative for Amnesty International in numerous cases and investigations, including security force killings in the former Yugoslavia, apartheid in South Africa, and the IRA inquest in Gibraltar. He was appointed Queen's Council in 1994.



Alan G. Buchanan
commissioner
Charlottetown,
Prince Edward Island

Mr. Buchanan is Director, Corporate Development and Assistant Corporate Secretary for Island Telecom Inc. of Prince Edward Island. He is responsible for human resources, public affairs, government relations, regulatory affairs, labour relations and administration. Mr. Buchanan served as a Member of the Legislative Assembly of Prince Edward Island from 1989 to 1996. He was Minister of Health and Social Services from 1993 to 1994, and Minister of Provincial Affairs and Attorney General from 1994 to 1996.

ADVISORY COUNCIL MEMBERS

Wendy Armstrong, Edmonton, Alberta

Jacques Auger, Sherbrooke, Quebec

Lorraine Berzins, Ottawa, Ontario

Céline Bureau, St-Lambert, Quebec

Dave Cassels, Winnipeg, Manitoba

Dan Christmas, Sydney, Nova Scotia

Bradley Crawford, Q.C., Toronto, Ontario

Margaret Denike, Vancouver,
British Columbia

Priscilla de Villiers, Burlington, Ontario

Emerson Douyon, Montreal, Quebec

Gerry Ferguson, Victoria, British Columbia

Vinh Ha, Burnaby, British Columbia

Bernice Hollett, Goose Bay, Labrador

Andrée Lajoie, Montreal, Quebec

Alcide LeBlanc, Moncton, New Brunswick

Wade MacLauchlan, Fredericton,
New Brunswick

Hans Mohr, Gananoque, Ontario

Michael Morrison, Charlottetown,
Prince Edward Island

Irma Murdock, Saskatoon, Saskatchewan

Katherine Peterson, Q.C., Yellowknife,
Northwest Territories

Jennifer Stoddart, Westmount, Quebec

George Thomson (ex officio member),
Ottawa, Ontario

COMMISSION STAFF

Bruno Bonneville, Executive Director

Susan Zimmerman, Director of Research

Cathy Hallssey, Communications Manager

Suzanne Schryer-Belair, Administration and
Financial Services Officer

Patricia Steele, Executive Secretary

LAW COMMISSION OF CANADA STATEMENT OF OPERATIONS

(for the year ended March 31, 1998)

	1998 \$
Expenditures	
Salaries and employees benefits	254,437
Supply, materials and equipment	314,520
Professional and special services	286,901
Travel, communication and publications	102,452
Rental, repair, equipment maintenance and fit-up	72,054
Accommodation	39,506
Training, conference and memberships	13,731
Commission meetings (10)	60,036
Advisory Council meetings (2)	56,957
Others	5,826
Cost of operations	<u>1,206,421</u>

The accompanying notes are an integral part of this statement

Significant Accounting Policies

This statement of operations has been prepared in accordance with the requirements and standards for reporting established for departmental corporations by the Receiver General for Canada. The most significant accounting policies are as follows:

- a) **Expenditure Recognition**
Expenditures are recorded for all goods and services received and/or performed up to March 31, in accordance with the Government's payable-at-year-end accounting policy.
- b) **Capital Purchases**
Acquisitions of capital assets are charged to operating expenditures in the year of purchase.

	1998 \$
Parliamentary Appropriations	
Law Commission of Canada - Vote 33a	1,836,917
Less: Lapsed	667,466
	<u>1,169,451</u>
Add: Statutory contributions to employee benefit plans	36,970
Total use of appropriation	<u>1,206,421</u>
Add: Services provided without charge by other Government Departments	-
Net cost of operations	<u>1,206,421</u>

ACKNOWLEDGEMENTS

The launching of any organization is a major undertaking. Since last April, many people have contributed to establishing the LAW COMMISSION OF CANADA. We are particularly grateful to:

The Honourable A. Anne McLellan, Minister of Justice and Attorney-General for Canada

George Thomson, Deputy Minister of Justice and Deputy Attorney-General for Canada

Deborah McCorkell-Hoy, Director, Evaluation Section and formerly Director, Law Reform Division, Department of Justice

Paula Kingston, Counsel, Priorities and Planning Division and Law Commission Liaison with the Department of Justice

Salim Fakirani, Law Reform Division, Department of Justice, 1997

Marja Hughes, Communications Consultant

LCC PUBLICATIONS

1. LAW COMMISSION OF CANADA: Briefing Notes (November 1997)
2. LAW COMMISSION OF CANADA: Strategic Agenda (December 1997)
3. LAW COMMISSION OF CANADA: Interim Report on Institutional Abuse (February 1998)
4. LAW COMMISSION OF CANADA: Plans and Priorities (March 1998)

For more information, please visit the LAW COMMISSION's website: www.lcc.gc.ca.

Law Commission of Canada

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©Minister of Public Works and Government Services
Canada 1998
ISBN Number 0-662-63666-X
Catalogue Number JL 1-1/1998