

LAW REFORM
COMMISSION
OF
NOVA SCOTIA



TWENTY-SIXTH ANNUAL REPORT

April 1, 2016 to March 31, 2017

The Law Reform Commission of Nova Scotia was established in 1991 by the Government of Nova Scotia under the *Law Reform Commission Act*.

The Commissioners are:

Darlene Jamieson Q.C., President
Professor Robert J. Currie, Vice-President
Justice Kevin Coady
Dr. Brian R. Joseph
Richard J. Melanson
Catherine D. A. Watson Coles

The staff of the Commission are:

Angus Gibbon (until July 2016)
Executive Director

Ilana Luther (until April 2017)
Legal Research Counsel

Rhoda Lemphers
Legal Research Counsel

William H. Charles, Q.C.
Special Counsel

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The Law Reform Commission receives funding from the Law Foundation of Nova Scotia and support from the Government of Nova Scotia. The Commission gratefully acknowledges their support.

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THE COMMISSION

The Law Reform Commission of Nova Scotia was created in 1991 pursuant to the *Law Reform Commission Act*. The Commission reviews Nova Scotia's laws and makes recommendations for their improvement, modernization, and reform.

The Commission is independent of the Government. It reports to the public and the elected representatives of Nova Scotia through the Attorney General of Nova Scotia.

Pursuant to the *Law Reform Commission Act*, the Commissioners are appointed from different sectors of the community, including: (a) a judge of a court of the Province; (b) two members of the Nova Scotia Barristers' Society; (c) a member of the faculty of the Schulich School of Law, Dalhousie University; and (d) up to three other persons appointed by the provincial government. At least one of the Commissioners must not be a graduate in law. Commissioners generally serve without remuneration of any kind.

In 2016-2017 the Commission received operational funding from the Law Foundation of Nova Scotia. The Law Foundation, which funds work relating to law reform, legal education, and the administration of justice, receives its funds from the interest on lawyers' trust accounts. The Government of Nova Scotia provided office premises.

In 2016-2017 the Commission employed a staff of three: the Executive Director to July 2016, Legal Research Counsel (full year), and a part-time Financial Administrator. As well, the Commission benefits from the continuing contribution of its founding President, Professor William H. Charles, Q.C., as Special Counsel to the Commission. Professor Charles has provided valuable assistance with all Commission projects during the past year.

The Commission's work is supported by volunteer effort from legal practitioners, experts, and stakeholders who offer advice and expertise on Commission projects. For each project, the Commission convenes one or more advisory groups to guide the Commission's research and to examine options for reform. The time and effort given by these advisory group members is considerable, and the Commission could not do its work without them.

The Commission's work has resulted in substantial new law and improvements to the administration of justice in diverse areas of law, including family law, estate planning and administration, environmental law, construction law, and court processes. The Commission's track record includes the following:

Enforcement of Maintenance Obligations (November 1992) - Resulted in the creation of Nova Scotia's maintenance enforcement program under the *Maintenance Enforcement Act*, 1994.

Reform of the Jury System (June 1994) - Resulted in the *Juries Act*, 1998.

From Rhetoric to Reality, Ending Domestic Violence in Nova Scotia (1995) - Recommended administrative reforms. In response the Province trained 2000 people in appropriate response to domestic violence, and instituted a domestic violence monitoring committee.

Legal Status of the Child Born Outside Marriage (March 1995) - Resulted in the elimination of discrimination against “illegitimate children” in the *Intestate Succession Act* in 1999.

Adult Guardianship and Personal Health Care Decisions (November 1995) - Provided background for the *Personal Directives Act* in 2008. The Department of Justice is currently examining reforms to the *Incompetent Persons Act*.

Probate Reform (March 1999) - Resulted in a new *Probate Act* in 2000.

Builders’ Liens (June 2003) - Resulted in the overhaul of the outdated *Mechanics’ Lien Act* in 2004, to improve the lien system for construction industry stakeholders.

Wills Act (November 2003) - Resulted in significant amendments to the *Wills Act* in 2006.

Vexatious Litigants (April 2006) - Resulted in amendments to the *Judicature Act* in 2009, to deal with litigants who improperly strain the time and resources of the courts.

Grandparent-Grandchild Access (May 2007) - Resulted in recognition of grandparents’ rights to apply for access with leave of the court in 2012, and the inclusion of ‘best interests of the child’ factors in the *Maintenance & Custody Act* in 2013.

Contaminated Sites (December 2009) - Provided background for the *Contaminated Sites Regulations* under the *Environment Act*, to promote redevelopment of derelict brownfields.

The Rule Against Perpetuities (December 2010) - Resulted in the abolition of an antiquated but troublesome rule of law by the *Perpetuities Act*, 2011.

Builders’ Liens (March 2013) - Resulted in amendments to the *Builders’ Lien Act* in 2013, to improve the process for paying out lien holdbacks in the construction industry.

The Commission was also on the Steering Committee for the Nova Scotia **Civil Procedure Rules**, providing extensive research and logistical coordination for that multi-year effort to make the rules of Nova Scotia’s courts as accessible and fair as they can be.

THE YEAR IN REVIEW 2016 - 2017

Work Program and Publications

Matrimonial Property Act

In April of 2012 the Commission decided to review the Nova Scotia *Matrimonial Property Act*. More than 30 years have passed since the *Act* came into force, and it has not been substantially amended since then. Family law stakeholders have said that the *Act* is in need of reform in a number of areas. Further, the *Act* affects a large number of Nova Scotians and family law litigation represents a substantial proportion of contested matters in Nova Scotia courts. A number of other jurisdictions have significantly strengthened their matrimonial property legislation in recent years.

The Commission convened an advisory group consisting of members of the legal profession with experience in family law, a faculty member from the Schulich School of Law at Dalhousie University, a justice of the Nova Scotia Supreme Court (Family Division), and a chartered accountant who specializes in matrimonial property division. The group met through the winter and spring of 2014 and worked through issues identified in an extensive issues paper prepared by Commission staff.

The Commission also convened a separate advisory group of estate planning and family law practitioners and faculty members from the Schulich School of Law to advise on issues that arise when family property is divided after the death of a spouse. The estates and succession advisory group met through the winter of 2014-2015.

In June 2016, the Commission published a Discussion Paper on Family Property Division as well as a user-friendly electronic and print survey. The paper and survey addressed critical family law issues, including whether common law spouses should have access to the *Act's* regime for property division, how to make matrimonial property disputes more certain and predictable to limit the need for court proceedings, whether the *Act* should continue to include assets owned by either spouse prior to the marriage in a division, how pensions should be divided, and many others.

During the summer and fall of 2016 the Commission consulted with experts, the Nova Scotia bar, and the public on its proposals for reform. During the winter and spring of 2017 the Commission prepared its recommendations for reform in response to feedback received on the Discussion Paper. The Final Report on Family Property Division will be published in Fall 2017.

Intestate Succession Act

The *Intestate Succession Act* governs the distribution of property of a deceased person who has not made a valid will, as well as any property which is not dealt with by a will. The *Act* has significant access to justice implications because it determines how surviving family members will inherit from the estate of a deceased person who has not made a will. The *Act* provides for a preferential share of the estate for the deceased's spouse, with the remainder to be divided between the spouse and other descendants of the deceased.

The *Act* was first introduced in 1966, when ideas about inheritance focused more on inter-generational wealth transfers as opposed to the material wellbeing of surviving spouses or common law partners. The *Act* was written at a time when multiple marriages and cohabitations, same-sex marriages and cohabitations, "blended families", and children conceived with assisted reproductive technologies were less prevalent than they are today.

Among other things, the Commission is examining whether the *Act* should include common law partners as spouses. The spouse's preferential share is also being reviewed. It is currently set at \$50,000 (or the spouse may elect to receive the deceased's primary residence), however that figure has not been adjusted since 1975.

The Commission is also looking at the question of who should be considered an "issue" of the deceased, entitled to a share of the estate. Currently, stepchildren who were not adopted by the deceased are not included, nor are children to whom the deceased stood *in loco parentis*. Additionally, the *Act* does not deal with various other biological and social relationships of parentage that may be formed by the use of reproductive technologies.

During the 2016-2017 period, Commission staff worked on an extensive issues paper that sets out comparative legal and sociological research and identifies the major issues for reform. The issues paper will provide the background for the deliberations of the Commission's advisory group, which will be convened during the fall of 2017.

Finances & Administration

The Commission's financial statements appear at the end of this report. During the reporting period, the Commission received operational funding in the amount of \$84,914 from the Law Foundation of Nova Scotia. The Commission's total revenue was \$97,579. The Commission's total expenses were \$148,844. This left a deficit in operating funds of \$-51,265.00. The Commission carried forward savings from prior years of \$66,792 which was used to balance the deficit, leaving a balance of \$15,527 carried forward into 2017-18.

COMMISSIONERS AND STAFF 2016-2017

Commissioners

Darlene Jamieson, Q.C.

President

Darlene Jamieson was appointed to the Commission by the Council of the Nova Scotia Barristers' Society in June 2002. She was appointed as President of the Commission in June of 2012. She has been a partner in the law firm Merrick Jamieson Sterns Washington & Mahody since 1998, with preferred areas of practice being civil litigation, including insurance, banking, construction and employment law. She has held numerous and varied posts with the Nova Scotia Barristers' Society.

Robert J. Currie

Vice-President

Professor Robert Currie was appointed to the Commission by Order in Council in January 2010. He is an Associate Professor at the Schulich School of Law, Dalhousie University, and Director of Dalhousie's Law & Technology Institute. He is a specialist in the area of international and transnational criminal law, and is the author of numerous books, articles and comments in that field. In 2008, Professor Currie was awarded the Dalhousie Law Students' Society and Alumni Association Award for Excellence in Teaching. He has been a member of the Nova Scotia Bar since 2000.

Kevin Coady

The Honourable Justice Kevin Coady was appointed to the Commission by Order in Council in December 2007. Mr. Justice Coady was called to the Nova Scotia Bar in 1981, and appointed to the Supreme Court of Nova Scotia in 2003. Prior to his judicial appointment, he practiced law in Nova Scotia with the law firm Coady Filliter and has taught criminal law at Dalhousie University.

Brian R. Joseph

Dr. Brian Joseph was appointed to the Commission by Order in Council in April 2010. He is a graduate of St. Francis Xavier University (B.Sc. and B.A. Hons), the University of Toronto (M.A.), and Harvard University (A.M. and Ph.D). Dr. Joseph has taught at Dalhousie, Saint Mary's, St. Francis Xavier, and Cape Breton universities. He has served in the Nova Scotia Attorney General's Department and the Privy Council Office, Government of Canada.

Richard J. Melanson

Richard Melanson was appointed to the Commission by the Council of the Nova Scotia Barristers' Society in September of 2012. Mr. Melanson was appointed as a member of the Nova Scotia Utility and Review Board in 2016. Before joining the Board, Mr. Melanson practiced law in Halifax for 27 years with Blois Nickerson and Bryson LLP. Mr. Melanson received his Bachelor of Arts (French major-1981) and Bachelor of Education (1983) from Université Sainte-Anne. He is a graduate of Dalhousie Law School, receiving the University Medal in 1988, awarded to the student

who achieved the highest average of those obtaining first class distinction in third year studies. He was admitted to the Nova Scotia Bar in 1989. Mr. Melanson has been an active volunteer in the legal community as a volunteer with various professional and civic organizations, including chairing the discipline committee as a member of the Board of Examiners of the Nova Scotia Association of Social Workers and holding the position of treasurer with Canadian Parents For French (Nova Scotia). He is a member of the Nova Scotia Barristers' Society, the Canadian Bar Association, CAMPUT: Canada's Energy and Utility Regulators, and the National Association of Regulatory Utility Commissioners (US).

Catherine D.A. Watson Coles

Catherine Watson Coles was appointed to the Commission by Order in Council in February 2015. She is a Partner in McInnes Cooper's Halifax office and leader of the firm's regional estates and trusts service group. She is a regular speaker on the subjects of estate trust and tax planning to various professional organizations and the public, and a frequent author of articles on these subjects in various newspapers and newsletters. She has been an instructor at the Ontario Bar Admissions course in the area of estate planning. Ms. Watson Coles has been recognized by Best Lawyers in Canada and is listed in the Canadian Legal Lexpert Directory. She is the Past President and a current member of the Halifax Estate Planning Council and is a member of the Society of Trust and Estates Practitioners, the Canadian Bar Association, the Nova Scotia Barristers' Society and the International Bar Association. She is Past Chair of the Wills & Estates Section of the Canadian Bar Association – Nova Scotia and is the Co-Founder and Past Chair of the Pride Business Network in Toronto, Ontario.

Staff

Angus Gibbon

Executive Director to July 2016

Angus Gibbon joined the Commission as Legal Research Counsel in August 2009, and was appointed Executive Director in April of 2011. A graduate of Acadia University, he received his law degree from the University of Toronto in 1999, followed by a Ph.D. from the University of Toronto in 2005. Mr. Gibbon was called to the Nova Scotia Bar in 2004 and was in private practice before joining the Commission. He has served on the part-time faculty of the Schulich School of Law at Dalhousie University, teaching Comparative Constitutional Law and coaching the Laskin Moot team. He is currently a member of the Nova Scotia Barristers' Society Code of Conduct Committee.

Ilana Luther

Legal Research Counsel to April 2017

Ilana Luther joined the Commission in June 2011. After receiving her Bachelor of Arts from Carleton University, she received a Master of Arts in Political Science from York University. In 2004, Ms. Luther received her law degree from Osgoode Hall Law School, followed by a Master of Laws from Harvard Law School. In 2015 she received a Ph.D. from the Schulich School of Law at Dalhousie University. She has worked for legal aid both in Ontario and in Nova Scotia.

Rhoda Lemphers*Legal Research Counsel*

Ms. Lemphers joined the Commission in April of 2017. After receiving her Bachelor of Arts, in 2013 she received her Juris Doctor degree from the University of Alberta. Ms. Lemphers was called to the Nova Scotia bar in 2016. Ms. Lemphers is also a member of the Alberta bar, and has worked with Ogilvie LLP and the City of Edmonton Law Branch.

William H. Charles, Q.C.*Special Counsel*

Professor William Charles has acted as Special Counsel to the Commission since 2001. He is a graduate of Dalhousie (where he was Dean of Law 1979-1985), Concordia, Harvard and Michigan universities. Professor Charles was the first President of the Law Reform Commission, and held that position from 1991 until 1995. He serves on a number of Boards and Councils in Nova Scotia.

Krista Tinslay - After an eight year absence, Krista Tinslay rejoined the Commission on a part-time basis in June 2016. She holds the Canadian Administrative Professional (CAP) designation and is a long-standing member of the International Association of Administrative Professionals. Krista has more than 20 years of experience in the administrative field, with a focus on organizational and information management.

FINANCES FOR 2016-2017

	<u>Year End</u> <u>31 Mar 2016</u>	<u>Budget</u> <u>2016-2017</u>	<u>Year End</u> <u>31 Mar 2017</u>
<u>Revenue:</u>			
Department of Justice	184,824		
Law Foundation of Nova Scotia	96,070	84,914	84,914
Conference Sponsorship	7,000	0	0
Other	0	0	12,522
Interest	1,064	0	143
Total Revenue:	288,958	85,214	97,579
<u>Expenses:</u>			
Personnel	237,812	130,070	123,770
Advertising	0	0	0
Commissioners Expenses	3,360	0	0
Meeting Costs	646	1,000	711
Library	2,237	2,300	2,178
Accounting Fees	2,859	3,000	3,650
Membership/Professional Fees	1,249	1,325	1,213
Information Technology	0	0	620
Internet Expense	2,143	1,800	2,303
Staff Expenses	675	750	1,284
Rent/Parking	4,243	2,500	1,398
Rental Equipment	1,910	1,950	3,447
Insurance	1,245	1,245	1,287
Office Supplies	626	550	340
Photocopying/Printing	2,454	2,200	2,169
Postage & Courier	1,448	1,250	853
Telephone	1,999	2,000	1,673
Travel, Conferences	67	0	48
Federation of Law Reform Agencies conference	12,421	0	
Professional Development	0	0	
Office Equipment Maintenance	0	250	396
Bank Service Charges	161	120	0
Miscellaneous	0	0	
HST Paid on Purchase	2,571	3000	1,507
GST Paid on Purchases	0	25	0
Contract Research	0	0	0
Moving expense	0	0	0
Total Expenses	280,126	155,335	148,844
Net Income	8,832	(70,121)	(51,265)

Note: accumulated surplus (31 Mar 2016): 66,792

STATEMENT OF FINANCIAL POSITION

March 31	2016	2015
ASSETS		
Current		
Cash and cash equivalents	\$ 72,565	\$ 60,647
Accounts receivable	1,773	-
Prepaid expenses	538	538
HST receivable	<u>2,536</u>	<u>3,020</u>
	<u>\$ 77,412</u>	<u>\$ 64,205</u>
LIABILITIES		
Current		
Payables and accruals	\$ 10,621	\$ 6,246
NET ASSETS		
Accumulated surplus	<u>66,791</u>	57,959
	<u>\$ 77,412</u>	<u>\$ 64,205</u>