Please select the "Table of Contents" Bookmark to navigate this

REPORT

A CONTINUING NEED FOR LAW REFORM:

THE CASE FOR THE LAW REFORM COMMISSION OF NOVA SCOTIA

Law Reform Commission of Nova Scotia
December 2001

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

The Commissioners are:

Gregory North, Q.C., Co-President
Dawn Russell, Q.C., Co-President
David A. Cameron
Theresa Forgeron
Justice David MacAdam

John Briggs, B.A., LL.B., is Executive Director and General Counsel of the Commission. William Laurence, B.A., LL.B., LL.M., M.L.I.S., is Legal Research Counsel. Franca Iussa is Administrative Assistant.

The Commission's work is available on the Internet at <www.lawreform.ns.ca>.

The Law Reform Commission receives funding from the Law Foundation of Nova Scotia. The Commission gratefully acknowledges this financial support.

TABLE OF CONTENTS

"*History shows that a nation which neglects the ordinary care of its laws is neglecting something which is very important to its national well-being.*"[1]

I. INTRODUCTION

In April 2000 the Law Reform Commission of Nova Scotia was advised that at the end of the fiscal year it would no longer receive any funding from the provincial government. As the government portion accounted for 60% of the Commission's funding, and no other sizeable sources of funding were apparent, it seemed that the Commission would have to close. Fortunately, however, in February 2001, on the eve of its demise, the Commission was awarded annual core funding by the Law Foundation of Nova Scotia for three years beginning on April 1, 2001. It was a condition of the funding agreement "*that the Law Reform Commission advance a proposal to the Law Foundation by December 31, 2001 respecting mission, governance, staffing arrangements and operations...*"

It is within the context of the Law Foundation's request for a proposal that this review of the Law Reform Commission takes place. Law reform bodies, including the Nova Scotia commission, characteristically arose out of the realization that the increasing demands of law reform in a modern society could no longer be met by the *ad hoc*, part-time, efforts of volunteers, no matter how capable, well-intentioned, or enthusiastic. The factors giving rise to the need for permanent institutions for carrying out law reform activities – such as the rapid growth of law, its daunting complexity, and the ever increasing challenge of making it responsive to the needs of a modern pluralistic society – have, if anything, become more, rather than less, compelling over time.

Our political and legal system is founded upon the principle of the rule of law. Adherence to that principle however, depends, in no small measure, on respect for the law and the system for the administration of justice. It is not too great a leap to suggest that systematic law reform activities have a significant and essential contribution to make to the maintenance of the rule of law.

Although the impetus for this Report arose with the Law Foundation's request for a proposal, the Report involves more, however, than simply fulfilling a requirement of the Commission's funding. The Report represents an effort to evaluate thoroughly the position occupied in the legal and legislative landscape by the Commission, thereby answering such questions as whether there is a need for such an entity, what have been its achievements, as well as what should be changed about the Commission. The Report begins with a brief description of earlier law reform bodies in Nova Scotia, followed by an overview of the current Commission. To place the Commission in the context of similar entities, the Report then identifies characteristic features of other law reform bodies elsewhere in Canada. Recommendations are then provided relating to the existence of the Commission, its mandate, relationship with government, selection of projects, Commissioners, staff, and funding. A number of appendices support and supplement the Report.

---

[1] Chairman of the English Law Commission, as quoted in P. Handford, "The Changing Face of Law Reform" (1999) 73 Aus. L. J. 503 at 518.

II. EARLIER NOVA SCOTIA LAW REFORM BODIES

1. Center for Legislative Research (1950-1965)

The Center for Legislative Research operated at Dalhousie University Law School from 1950 to 1965.[2] Law students enrolled in the Legislation course worked at the Center; their work served as the practical portion of the course. The instructor of the Legislation course served as the Center's Director, and the provincial Legislative Counsel served as the Associate Director. At the time of its establishment, the Center was endorsed by the provincial Premier.

Horace Read, then-Dean of the Law School and instructor in Legislation, explained that the Center was established "to provide law students with some experience in methods of research and drafting essential for effective legislation and, secondly, to make the results of their work, whatever its worth, available to the legislature."[3] A long-range plan of the Center was "to keep Nova Scotia laws under objective and politically disinterested study with the aim of discovering how to develop them best to fit the needs of the province."[4]

A large portion of student work at the Center involved completing research, and in particular, comparative analysis of how certain issues were dealt with in other jurisdictions. Student research also involved consulting welfare agencies, provincial and civic organizations, social scientists, and government departments.[5] Student duties included preliminary drafting of legislation. One of the Center's successes involved research and preliminary drafting for the revision of Nova Scotia statutes from 1923 to 1954, an effort which eventually appeared as the Revised Statutes of Nova Scotia 1954. The Center also prepared a number of draft statutes, including drafts of what became the *Proceedings Against the Crown Act* of 1951, the *Survival of Actions Act* of 1954, and the *Societies Act* of 1953. The Center's resources were also made available to the Conference of Commissioners on Uniformity of Legislation in Canada (now the Uniform Law Conference of Canada).[6]

As time unfolded, it became apparent that students often did not have the time or capability to fulfill the requests of government officials, who needed assistance to complete complex law amendment undertakings within limited periods of time. As a result, the Center received few

---

[2] L. Skene, "The Nova Scotia Law Reform Advisory Commission: An Early Appraisal" (1975) 2 Dal. L.J. 201 at 216.

[3] H.E. Read, "Reform of the Law" (1955) 33 Can. B. Rev. 248 at 248.

[4] H.E. Read, "The Nova Scotia Center for Legislative Research" (1956) 42 A.B.A.J. 572 at 572.

[5] H.E. Read, "The Public Responsibilities of the Academic Law Teacher in Canada" (1961) 39 Can. B. Rev. 232 at 240.

[6] Read, "The Nova Scotia Center," note 4, above, at 573.

requests from government to work on suitable projects. By the early 1960s, expectations for the importance of the Center had diminished. By that point, students only worked on projects assigned by the instructor in Legislation, with the main goal to help students understand principles taught in the course.[7]

2. Board of Legal Research (1953-1973)

The Center's work was complemented by the efforts of the Nova Scotia Barristers' Society's Board of Legal Research. The Board (sometimes referred to as the Legal Research/Law Reform Committee) was created in 1953, following a Barristers' Society Council resolution to establish a body which would promote improvements in private law and procedure, and which would enquire and report on suggestions for law revision, amendment or enactment that were referred to it by Council or by the Council's Legislation Committee.[8] The Board brought together practicing and academic lawyers, assisted by law students. Creation of the volunteer Board was attributed to a growing awareness that every lawyer shared responsibility to contribute to improvement of the law and its administration.[9] To complete its work, on an as-needed basis the Board formed sections consisting of Society members.

The Board seems to have operated for approximately 20 years, becoming inactive in the early 1970s. Throughout the time of the Board's operations, the Council also had a Legislation Committee. That Committee was involved in studying potential changes to statutes, drafting statutory amendments or new laws, and forwarding to the Attorney General copies of proposed changes. Certain topics involving lengthy or in-depth analysis, if considered beyond the Committee's resources, could be referred to the Board.[10] With the passage of time, attempts were made to ensure greater cooperation between the Legislation Committee and the Board. In 1960, for example, Council agreed that cooperation would be improved if the Legislation Committee Chairman became a member of the Board, and correspondingly, the Board's Chairman became a member of the Committee.[11] In 1973, it was reported that the Research Board and the Legislation Committee shared the same personnel.[12] After 1973, the lack of references in Council minutes to a separate Research Board would seem to indicate that the Board's activities had been assumed by the Legislation Committee.

---

[7] J. Willis, *A History of Dalhousie Law School* (Toronto: University of Toronto Press, 1979) at 178.

[8] Nova Scotia Barristers' Society (NSBS) Council, Meeting Minutes [hereinafter Minutes] (18 Sept., 1953) [unpublished, archived at NSBS Library] at 6.

[9] Read, "The Public Responsibilities," note 5, above, at 240-241.

[10] Minutes (29 June, 1956) at 6.

[11] Minutes (2 July, 1960) at 9-10.

[12] Minutes (21 Sept., 1973) at 3.

The Board's work contributed to the *Act to Simplify Conveyances* and to creation of Supreme Court of Nova Scotia pre-trial procedures. The Board also did work on such topics as: the *Statute of Frauds*; the Rule against Perpetuities; modernization of the administration of estates; land titles registrations; landlord and tenant law; the *Companies Act*; creation of a Family Court; vendor and purchaser legislation; personal property security legislation; testators' family maintenance law; and dower.[13]

In addition to the Board and the Legislation Committee, Council also pursued law reform by referring particular topics for study to special committees, or to sub-groups, such as regional or country bar associations, within the Society. Council minutes also indicate that as far back as 1965, a more broadly constituted law reform body was contemplated. At the Society's 1965 annual meeting, suggestions were made for the formation of a law reform committee "composed of lawyers, socialogists [sic], and others who [were] interested in the public weal to form such a Committee, and to make these suggestions to the Attorney-General's Department."[14] Later on that year, a resolution was passed by Council, calling for permanent machinery which would ensure: the continuous review of existing legislation; the promotion of revisions to existing legislation; and the promotion of new laws as required.[15]

3. Law Reform Advisory Commission (1972-1981)

Nova Scotia's first permanent law reform body, the Law Reform Advisory Commission (LRAC) was created by statute in 1969.[16] It began operations in 1972. Originally, the LRAC consisted of between five and ten members, all of whom were appointed by the provincial Cabinet upon the Attorney General's recommendation. For the first few years of the LRAC's existence, in order to serve as a member, one had to be a lawyer or a judge. Members served part-time, on a voluntary basis. In 1976, the governing statute was amended, to allow for the LRAC's expansion, to include between 10 and 15 members. Up to five non-lawyers were permitted, though none ever served on the Commission.

The Secretary, who served as chief executive officer of the LRAC, had to be the Legislative Counsel or another public servant appointed by Cabinet. Until the mid-1970s, the LRAC had no permanent legal staff. Rather, it relied on external consultants working under contract and its own members serving as volunteers in order to produce reports. In its 1975-1976 year of operations, the LRAC hired a full-time permanent legal research officer.

---

[13] Minutes (1953 to 1973), generally; Read, "The Public Responsibilities," note 5, above, at 241.

[14] Minutes (2 July, 1965) at 2.

[15] Minutes (4 Dec., 1965) at 5.

[16] Details concerning the LRAC are from Skene, note 2, above; W. Hurlburt, *Law Reform Commissions in the United Kingdom, Australia and Canada* (Edmonton: Juriber, 1986) at 249-252; and Nova Scotia Advisory Commission, *Fourth Annual Report: 1975-1976* (Halifax: Queen's Printer, 1976).

The Attorney General approved not only all members and staff, but also all topics for study. All of the LRAC's funds came from government, though the governing statute did allow for other sources of funding.

The LRAC ultimately studied 17 areas of law. Its work included such topics as mechanics' liens, matrimonial property, juries, the Public Trustee, changes of name, intestate succession, occupiers' liability, frustrated contracts, and reciprocal enforcement of judgments. The LRAC published both annual and topical reports, but publication could only take place with the Attorney General's approval.

In 1981, the terms of all the LRAC members expired and were not renewed. Although continuing to exist at law, the LRAC no longer operated. Its governing statute was not, however, repealed until 1990 and the creation of the Law Reform Commission of Nova Scotia. One commentator summarized the reasons for the LRAC's decline as follows:[17]

> "*financial stringency, lack of common approach to law reform between the Commission and the Attorney General, and the feeling of the Attorney General that he could effect through his department whatever law reform [was] necessary without being faced with reports from an entity which he did not control.*"

4. A continuing need for law reform

The Law School initiative was ultimately discontinued following the realization that part-time volunteers could not respond on an as-needed basis to requests from the Government for law reform work. Similarly, the Barristers' Society came to acknowledge the need for a broadly based, full-time group to carry on the province's law reform work. The LRAC was a permanent law reform entity, but for close to half its period of operations, it had no full-time permanent legal staff. Moreover, the LRAC was hampered by its lack of independence and disagreements with the Government about how to proceed with law reform. All three of the earlier law reform initiatives in Nova Scotia were characterized by one constant, namely a perceived need for law reform to be undertaken on a continuous basis. This need was acknowledged by the existence of law reform entities which were active for much of the 20th century. That this need had not disappeared was shown in 1990, with the enactment of a statute leading the following year to the establishment of the Law Reform Commission of Nova Scotia.

[17] Hurlburt, note 16, above, at 252.

III. OVERVIEW OF THE CURRENT LAW REFORM COMMISSION

The Law Reform Commission of Nova Scotia was created by the Government of Nova Scotia by the *Law Reform Commission Act*.[18] The Commission consists of between five and seven Commissioners (there are currently five), an Executive Director and legal research and administrative staff. The Commission reports to the public and the elected representatives of Nova Scotia through the Attorney General of Nova Scotia. It is not, however, a government department, but an independent advisor to government. The Commissioners, whose appointment process is set out in the *Act*, currently serve part-time and come from different sectors of the community. One Commissioner is a judge appointed by the Governor in Council (provincial Cabinet) after consultation with the Chief Justice of Nova Scotia and the chief judge of the court of which the judge is a member; two are community representatives appointed by Cabinet; two are appointed by the Council of the Nova Scotia Barristers' Society; and one person represents the full-time faculty members of Dalhousie University Law School. One of the Commissioners must not be a graduate in law.

The Commission's job is to review Nova Scotia law and to make recommendations for its improvement, modernization and reform. This may involve formulating new ideas and approaches to law, or proposing ways in which existing laws and the legal system can be made clearer or simpler to better serve the needs of the general public. The Commission may choose a topic for law reform based upon suggestions received from government, lawyers, judges, or the community. A project may also follow a government request, generally known as a reference. Since 1991, the Commission has received four references from the Government. The references related respectively to the administrative justice system, the probate system, mental health provisions of the *Hospitals Act*, and adoption information law.[19]

The Commission does not make law in Nova Scotia; that task is performed in part by the elected Members of the House of Assembly. The Commission's reports and recommendations are, however, formally presented to the Attorney General and may result in changes to the law. Law is also made through the decisions of judges and other appointed administrative decision makers in cases that come before them.

A distinguishing characteristic of the Commission is its independence from government. Although in the past the Commission received a significant portion of funding from government, on average about 1/3 of its money came from other sources. Government has a role in Commissioner selection, but does not choose all of the Commissioners, and no Commissioner is chosen to

---

[18] S.N.S. 1990, c.17, reproduced at **Appendix A.**

[19] The administrative justice and probate projects have been completed. A Final Report on the *Hospitals Act* is expected early in 2002. Following completion of background research, work on adoption information law was suspended after news of the loss of government funding. The project was subsequently referred to a committee formed by the Minister of Community Services.

represent the Government. The Commission does undertake government requests for law reform projects, as far as is feasible, but apart from that requirement, is free to select the work it undertakes. So long as done in compliance with its object and powers under the *Act*, the Commission enjoys a free hand in terms of its activities: it may conduct meetings, hire people, perform research, publish reports, enter into cooperative arrangements with other entities, and decide how its funds are to be spent.

The Commission usually prepares two publications during the course of a project. The first publication, the Discussion Paper, is intended to provide information about the project to people who do not have legal training. It sets out the Commission's preliminary suggestions for reform. The purpose of the Discussion Paper is to encourage people to consider and comment on the Commission's preliminary suggestions, as well as any issues, principles, and assumptions identified as having influenced the Commission's proposals for reform.

As part of the preparations for a Discussion Paper, the Commission generally forms an Advisory Group. The Advisory Group usually consists of Commission legal staff, and a number of community members, including government representatives, the judiciary, lawyers and other professionals, as well as participants from groups with interest or expertise in the topic being studied. The Group meets to identify and discuss relevant issues, as well as to propose to the Commission what should be included in a Discussion Paper. A list of participants in the Commission's projects, either as Advisory Group members or as commentators on the Commission's Discussion Papers, is provided at **Appendix B**. As the contents of Appendix B make clear, numerous groups and individuals have been involved with the Commission since its establishment in 1991.

The second publication is a Final Report which is submitted to the Attorney General. It contains the final recommendations of the Commission and, in some cases, a draft law. The Commission makes its final recommendations after it takes into account the responses it receives to the Discussion Paper. A Final Report is intended to provide a basis for the Government to consider and adopt the recommended reforms. The Commission does not engage in active advocacy regarding implementation of its recommendations beyond providing the recommendations to the Government and members of the public. The Commission has produced 24 project reports and 10 annual reports, which are listed at **Appendix C**.

Recommendations in Commission Final Reports have been brought into effect in a number of ways. In 1994, a new *Maintenance Enforcement Act* (known since 2000 as the *Maintenance and Custody Act*) was created, to improve the province's system which enforces court orders for maintenance obligations. The 1994 statute was largely based on a draft *Act* contained in the Commission's Final Report on the enforcement of maintenance obligations in Nova Scotia. Both the 1998 *Juries Act* and the 2000 *Probate Act* were largely modelled on recommendations made in Commission Final Reports. In 1998, the *Intestate Succession Act* was amended, to end distinctions based upon whether or not a child was born outside of marriage. The Commission's 1995 Final Report, *The Legal Status of the Child Born Outside of Marriage in Nova Scotia*, had

recommended such a change. Moreover, the Commission's 1997 Final Report, *Reform of the Law Dealing with Matrimonial Property in Nova Scotia*, recognized the need for reform of the law which governs the economic consequences of the ending of marriages or marriage-like relationships. In particular, the 1997 Report recommended that the relevant law should apply to both married and cohabiting couples, with no distinction based on the sex of the people involved. Following the Nova Scotia Court of Appeal decision in *Walsh* v. *Bona*,[20] which held the current law not to be consistent with the *Canadian Charter of Rights and Freedoms*, and which quoted at length from the 1997 Commission Report, the *Matrimonial Property Act* as well as other laws were changed in 2000 to extend certain rights and obligations to common law relationships, including same-sex couples.[21]

The influence of the Commission's work goes beyond legislation. Certain Final Report recommendations have been implemented through government policies or protocols. Further to the Commission's 1995 Report on ending domestic violence in Nova Scotia, the Government trained some 2000 of its personnel in appropriate responses to domestic violence and established a domestic violence monitoring committee. Following the Commission's Report on reforming Nova Scotia's administrative justice system, in 1998 the Government established a course, "Foundations of Administrative Justice," to train members of tribunals that conduct hearings. A list of instances in which Commission Final Report recommendations were enacted or implemented can be found at **Appendix D**.

Commission reports have also served an important educational function. Available for free, either in print or through the Internet, they have been used as a source of legal information, not only by lawyers, but by a wide range of community members. Commission reports have also been used as course materials at post-secondary institutions. Government, public interest groups, and other organizations have used Commission reports in order to develop awareness of issues and to focus discussions among interested people.[22]

The contents of Commission reports have been referred to by a number of courts as part as their published case decisions. Commission reports have been mentioned by judges in the context of interim payment of damages, matrimonial property, administrative law, the jury system, and the legal status of the child born outside of marriage. A list of these reported case decisions, including relevant quotations, is provided at **Appendix F**.

Nova Scotia House of Assembly members from the Liberal, New Democratic, and Progressive Conservative parties have referred with approval to Commission reports or to Commission work

---

[20] (2000), 183 N.S.R. (2d) 74.

[21] *Law Reform 2000 Act*, S.N.S. 2000, c. 29.

[22] Some of the Commission's accomplishments are discussed in more detail in W. Charles, "Measuring Success in Law Reform" (Meeting of Commonwealth Law Reform Agencies, Vancouver Trade and Convention Centre, 25 August 1996) [unpublished], which is reproduced at **Appendix E**.

generally, during the course of legislative debates. **Appendix G** provides the text of these remarks.

Most of the Commission's time is spent choosing, discussing, and researching law reform subjects, followed by report writing and communicating the conclusions reached. Another significant role of Commission staff is responding to inquiries about the law or about aspects of the Commission's work. The Commission does not provide legal advice, nor does it intervene in individual cases. Nonetheless, since 1991 Commission staff have responded to a large number of inquiries, which were made by telephone, by fax, by letter, by e-mail, or in person. In replying to inquiries, Commission staff have provided legal information, copies of Commission reports as well as other documents, and contact details for government departments and other relevant institutions. Statistics concerning the frequency of inquiries received are provided at **Appendix H**.

For the last ten years, the Commission has been funded jointly by the Nova Scotia Department of Justice and the Law Foundation of Nova Scotia.[23] This funding covered all of the Commission's costs. Virtually all of the Commission's funding has taken the form of core or "block" funding, rather than money tied to the completion of particular work. The Law Foundation, which funds work relating to the law, legal education, and the administration of justice, obtains its funds from the interest on lawyers' general trust accounts. The Law Foundation's objects specifically include law reform.[24] In April 2000, the Commission was informed that it would no longer be receiving government funding, beginning with fiscal year 2001-2002. Fortunately, in February 2001 the Commission received a three-year grant of $250,000 per year from the Law Foundation of Nova Scotia. This funding means that the Commission can continue its law reform work. As a condition of the funding grant, the Commission has been asked to submit to the Law Foundation, by December 31, 2001, a proposal concerning the Commission's mandate, governance, staffing arrangements, and operations.

In September 2001, the Commission formed an advisory group to help identify issues relevant to the Commission and to discuss the possible character of a future Commission. The Advisory Group consisted of a judge, legal academics, a university administrator, a Nova Scotia Department of Justice lawyer, a member of the Canadian Bar Association, and a representative from the Nova Scotia Barristers' Society. The Commission is grateful for the participation and contributions of Advisory Group members, though it is the responsibility of the Commissioners to make the final recommendations that are contained in this Report.

Before discussing issues relevant to the future of the Nova Scotia commission, the next section of this Report provides an overview of other law reform bodies in Canada. This will help to

---

[23] A table at **Appendix I** sets out details of financial contributions from the Nova Scotia government and the Law Foundation.

[24] *Barristers and Solicitors Act*, R.S.N.S. 1989, c. 30, s. 55.

familiarize the reader with characteristic features of law reform bodies and will provide points of comparison in relation to the Nova Scotia commission.

IV. OTHER LAW REFORM BODIES IN CANADA[25]

There are five provincial bodies carrying on law reform activities in Canada and one at the federal level, namely the Law Commission of Canada. Nova Scotia has the only provincial law reform commission in the eastern part of the country. The remaining four bodies are the British Columbia Law Institute, the Alberta Law Reform Institute, the Law Reform Commission of Saskatchewan, and the Manitoba Law Reform Commission.

Although law reform as a distinct activity has a long history, the institutionalization of such activities in permanent law reform bodies is a phenomenon of very recent origin. In 1964, Ontario established the first such permanent commission in the Commonwealth. This was followed by the establishment of other independent law reform agencies in various provinces over the following years and at the federal level in 1971. Since the days when all provinces, save Quebec and New Brunswick, had stand-alone law reform agencies, the landscape is considerably changed. The federal government abolished the Law Reform Commission of Canada in 1993, but a new government subsequently resurrected it as the Law Commission of Canada in 1997. Ontario abolished its commission in 1996. British Columbia's Law Reform Commission was abolished in 1997, although succeeded by the British Colombia Law Institute as a corporation under the provincial *Society Act*. The Saskatchewan Law Reform Commission is a small organization, with one full-time legal staff member, and until very recently, the Law Reform Commission of Manitoba had no permanent legal staff. The Newfoundland Law Reform Commission has long since ceased to operate, although its enabling legislation still remains in effect. The Prince Edward Island Law Reform Commission carried on operations from 1976 until 1983, when its budget was discontinued. Its enabling legislation was repealed in 1989. Quebec has had legislation establishing a law reform institute on the books for the past ten years, but has yet to proclaim it in force.

This section provides a brief survey of the salient similarities and differences between Canadian law reform agencies, with particular emphasis on their mandates, governance, staffing arrangements and operations, and funding. More complete details about individual law reform bodies can be found at **Appendix K**.[26]

---

[25] A note on terminology: the term law reform "commission" refers to a particular entity created by legislation. Law reform "bodies" or "agencies" are synonymous terms and refer to any organization, whether called a commission, institute, or otherwise, which carries on law reform activities.

[26] In an effort to keep the number of footnotes to a minimum, citations are omitted from this section. A reader seeking additional details about such aspects as the mandates and structures of other law reform bodies in Canada can find them at **Appendix K**. **Appendix J** contains information on financial contributions to law reform bodies in Canada.

1. Mandates

The purpose or mission of a law reform agency is set out in the applicable legislation, articles of incorporation or agreement which establishes the agency. A review of the mandates of Canadian law reform agencies, both past and present, reveals the recurrence of a number of themes. Firstly, all agencies are mandated to undertake activities directed to the reform of the law. This broad mandate is then given greater or lesser specificity. The following themes, however, recur across the country: clarification and simplification of the law; removal of outdated, obsolete, or inconsistent provisions of the law; the development of new approaches to, and new concepts of, the law; the adaptation of the law to modern social needs; the development of improvements in, modernization of and reform of the law; the review of judicial and quasi-judicial procedures; the development of recommendations or proposals for reform; the improvement of the administration of justice; and the acceptance of references from the Attorney General. The mandates of all agencies lend themselves to a broad interpretation justifying a very wide range of activities relating to law reform. The language of some mandates, however, is, in itself, quite expansive. For example, the *Law Commission of Canada Act* provides that 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, including*
>
> *(a) the development of new approaches to, and new concepts of, law;*
>
> *(b) the development of measures to make the legal system more efficient, economical and accessible;*
>
> *(c) the stimulation of critical debate in, and the forging of productive networks among, academic and other communities in Canada in order to ensure cooperation and coordination; and*
>
> *(d) the elimination of obsolete laws and anomalies of the law.*

The mandate of the Law Reform Commission of Nova Scotia is drawn in almost as broad terms as that for the federal commission. The Nova Scotia legislation states that:[27]

[27] Manitoba's legislation is virtually identical to that of Nova Scotia.

The object of the Commission is to review the law of the Province and any matter relating to law in the Province and to make recommendations for improvement, modernization and reform including, without limiting the generality of the foregoing, recommendations for

(a) development of new approaches to, and new concepts of, law that serve the changing needs of society and of individual members of society;

(b) clarification and simplification of the law;

(c) removal of provisions of the law that are outdated;

(d) improvement of the administration of justice;

(e) review of judicial and quasi-judicial procedures.

2. Governance

The governance arrangements for the various law reform commissions in Canada are set out in the legislation, articles of incorporation, or agreement under which they are established.

While most law reform agencies in Canada were established as commissions under legislation, there are two exceptions, namely, the Alberta Law Reform Institute and the British Columbia Law Institute. The latter was created in January 1997 by incorporation under the provincial *Society Act*, following the decision of the provincial government to withdraw any further funding to the Law Reform Commission of British Columbia, which had originally been created in 1969 by provincial statute. The Alberta Law Reform Institute was established in 1968 by virtue of a renewable tripartite agreement between the Attorney General of Alberta, the University of Alberta, and the Law Society of Alberta. This agreement is subject to renewal every five years.

The Alberta Institute is governed by a large board consisting of 14 members representative of, and appointed by, the three founding bodies, as well as the law faculties of the University of Calgary and the University of Alberta. The Director of the Institute is its Chief Executive Officer and also a member of the Board. The British Columbia Law Institute is also administered by a large board consisting of 14 members, eight of whom are appointed by "stakeholder groups", namely: the Attorney General (2); the Law Society of B.C. (2); the B.C. branch of the Canadian Bar Association (2); the Dean of the U.B.C. Law School (1); and the Dean of the University of

Victoria Faculty of Law (1). These eight members in turn appoint five members at large who in turn appoint an additional board member.

The law reform commissions, as such, have been governed by a Commission consisting of at least three Commissioners (Ontario, P.E.I. and Saskatchewan) or from five to seven Commissioners (Nova Scotia and Manitoba). The Law Commission of Canada has five Commissioners of which the President is the Chief Executive Officer and the only full-time member. In practice, Ontario operated with five Commissioners. Both Ontario, as of 1989, and the Law Commission of Canada have employed an advisory council. The Advisory Council to the Law Commission of Canada, which is statutorily required, advises on the Commission's strategic directions, its long-term program of studies, and its yearly performance. At present the Council consists of 22 members of whom over two-thirds have no legal training. The Council meets formally twice a year. Some commissions, such as those in Nova Scotia and Manitoba, require that there be a judge, a member of a law faculty, a practicing lawyer, and a non-lawyer as members of the Commission. Other Commissions, as was the case with the Ontario Law Reform Commission, specify no qualifications. The Law Commission of Canada does not require that its Commissioners have legal training, although membership on the Commission is expected to reflect a broad range of backgrounds and expertise. Appointments to law reform agencies range from three to five years with the possibility of renewal.

3. Staffing arrangements and operations

Most law reform agencies have a small permanent staff, who carry out the necessary research and the preparation and drafting of discussion papers and reports. Some bodies contract outside consultants to prepare papers or undertake work in respect of specific projects. The Law Commission of Canada, unlike its predecessor Commission, which had a large number of in-house legal counsel, contracts out a great deal of its work to legal academics and practitioners. Approximately one-third of its annual budget is dedicated to this purpose.

Many bodies establish study panels, or advisory groups, to assist them in their work on particular projects. Sometimes individual Commissioners or Board members participate in these study panels or advisory groups.

4. Funding

Most law reform agencies in Canada have received, if not all, a substantial portion of their funding from government. In recent times, however, a number of provincial governments have withdrawn or greatly reduced their support for law reform agencies. At present Alberta and British Columbia receive a significant percentage (61% and 63%, respectively) from their respective Law Foundations. Fifty percent of Saskatchewan's funding and 37% of Manitoba's funding is from their Law Foundations. At present, the Nova Scotia commission receives all of its funding from the Law Foundation of Nova Scotia.

The Law Commission of Canada receives all of its funding from the federal government and the Ontario Law Reform Commission received all of its funds from the Ontario Government. When the Newfoundland Law Reform Commission operated, it received, at least for a time, moneys from both the Newfoundland Government and its Law Foundation. The British Columbia Law Institute has carried out various fund raising activities. Although those efforts were successful, the Institute does not expect to be able to generate through fund raising more than about $8000-$9000 a year.

5. A global phenomenon

The emphasis in this Report is necessarily on the Nova Scotia commission and to a lesser extent, to provide context, on other law reform bodies in Canada. The creation of law reform bodies is not, however, simply a Canadian phenomenon. Research for this Report included examining the characteristics of law reform bodies in Asia, Africa, Europe, the United Kingdom, Australia, and the United States. In all cases studied, government had a role, not only in the creation, but also in the funding, of individual law reform bodies. For instance, in Australia, a country which shares with Canada a large size, small population, federal form of government, and English legal heritage, six of the seven law reform bodies receive between 95 and 100% of their funding, directly or indirectly, from government. In the seventh case, government still provides close to 50% of funding. This government involvement demonstrates that in countries throughout the world, where law reform bodies are established, their work is treated as a public service and a responsibility of government.

V. ISSUES AND RECOMMENDATIONS

A. Need for a Law Reform Body in Nova Scotia

The need for law reform work is apparent. This was shown by efforts during much of the 20th century in Nova Scotia by the Government, the Barristers' Society, and Dalhousie Law School. The question which arises is how law reform should best be undertaken.

As government has authority for creating and amending legislation, it has a clear responsibility for law reform. Among their benefits, better laws can improve access to justice, facilitate availability of social programs, support commerce, make social relations more orderly, and enhance personal security. On a more general level, better laws, given the satisfactory results that they can produce, encourage respect for the law and its institutions. Having legislators involved on an ongoing basis in law reform could lead to greater legislative efficiency, in that those people with the authority to make or change written laws would be able to explore directly any relevant issues. Elected officials may, however, find that current political matters keep them sufficiently occupied, and that they do not have adequate extra time for systematically and regularly reviewing legislation and for conducting public consultations.

Rather than being carried out by legislators directly, law reform could be entrusted to civil servants, for example, lawyers at the Nova Scotia Department of Justice. However, one must not overlook that departments exist to carry out the government's political agenda. Civil servants receive their directions, at least indirectly, from government ministers. As a result, work priorities for civil servants are also influenced by political events. This may mean that other responsibilities take precedence over in-depth law reform studies. In particular, civil servants may not have the time they would otherwise prefer in which to analyze the current law, derive possible changes, and complete consultations among interested groups.

Examining and applying the law on a regular basis, lawyers become aware of its inadequacies, not only in relation to their clients, but for society as a whole. Although potentially enthusiastic about contributing to law reform, individual lawyers may not find themselves with the necessary time to devote on an ongoing basis to such tasks as meeting to discuss law reform issues, conducting and reviewing research, writing reports, and dealing with the media or members of the public.

The interest in law reform work among law teachers is evident, as one of the major roles of legal academics is the examination of the law, with a view to suggesting areas in which it could be improved. As with legislators, civil servants, and members of the Bar, legal academics might also find that their other duties would prevent them from devoting sufficient time to law reform work.

If undertaken on an *ad hoc* and part-time basis by legislators, departmental civil servants, lawyers, or legal academics, law reform efforts would not proceed in a systematic, continuous, comprehensive, and detailed fashion. These aims can be accomplished, though, if law reform in

Nova Scotia continues to be entrusted to a law reform body which is permanent, which operates on a full-time basis, and which is independent.

Having a permanent entity devoted to law reform allows its members and staff to build up expertise in the law reform process generally, which would include how to identify laws in need of change, how to solicit public commentary, how to describe the need for change, and how best to communicate recommendations for change. This continuity would allow greater comprehensiveness and efficiency than one might expect from law reform efforts carried on in an as-needed fashion by people who do not undertake such work on a regular basis.

Another major advantage which a law reform body can bring to the law reform process is adequate time. Not having to meet political agendas and being able to undertake law reform work through its staff on a full-time basis, a law reform body is able to devote sufficient time to its projects. Sufficient time is needed for identification of issues, research, public consultations, deliberations, and report writing. On average, this Commission takes 18 months to complete a project. During the course of that time, the Commission will typically prepare a feasibility report, produce a memorandum identifying relevant issues, consult with an advisory group, publish preliminary suggestions for change in a Discussion Paper, solicit public commentary, take into account feedback received, and publish recommendations for reform in a Final Report. This manner of proceeding is meant to result in recommendations which have taken into account the current law in Nova Scotia, relevant laws from other jurisdictions, major relevant issues, and the perspectives of interested individuals and groups. Although time-consuming, it allows for thorough canvassing of issues and options, which should help lead to balanced and well-reasoned reports.

A third benefit of the Commission is its independence. Apart from having to respond to government references, the Commission is able to select its own projects. This may involve project choices which the Government might otherwise have avoided because of their perceived controversial nature. The Commission's independence also permits it to consult any individual or group in order to help determine relevant issues and perspectives on the state of the law. The Commission's independence can also contribute to its credibility within the community, helping to generate enthusiasm for law reform generally.

The permanent, full-time, and independent characteristics of the Commission contribute to a capacity to complete work that government cannot undertake in a credible manner, or will not undertake. Given constraints on resources and the pressing nature of other responsibilities, a project may be too large or complex for government to undertake. A topic may also be perceived as too controversial. Without an entity such as the Commission, willing to devote sufficient time and resources to the examination of certain subjects, without any predispositions towards particular conclusions, and regardless of possible political implications of recommendations for reform, some issues would simply not be studied.

Without interference, the Commission can decide what work to undertake and how to complete that work. The Commission's permanent basis and full-time staff allow it sufficient time in which to conduct comprehensive and detailed research that encompasses not only legal or other materials, but which also includes public consultations. When the Commission has completed a project, its independence allows it to propose, free from pressure, how the law might be improved. As the Commission has no political agenda to satisfy, it need not shy away from a topic seen as potentially controversial. The Commission therefore occupies a unique position. The next section of the Report examines what aspects about the Commission itself work well and which are in need of change.

B. Institutional Independence

1. Existence of the Commission

In Canada, three different models exist for the establishment of a law reform body. In most cases, law reform bodies have been set up through legislation. This can contribute to the body's permanence, in that its governing legislation will only be changed at the House of Assembly, in a public manner. This provides legislators with the opportunity to comment on proposed amendments in the Assembly. Members of the community can also provide their feedback to the legislators on the reasonableness of any changes. A governing statute can provide a law reform body with a degree of legitimacy, being seen as a serious enough initiative to justify its own legislation. Correspondingly, though, the permanence of a governing statute can result in a certain lack of flexibility, if a law reform body would like to expand or alter its role or activities. It is also possible that a government which is not pleased with the work of the law reform body could simply rid itself of that institution by abolishing the governing statute. This, however, is the case with any creation of government, including government departments, in a democratic society.

A law reform entity can be set up as a corporate body. This was the means chosen to establish the British Columbia Law Institute, which was incorporated under that province's *Society Act*. The B.C. Institute has also been registered as a charity. Incorporation can lessen the possibility of governmental interference with the body. A potential drawback, though, is that the body's decision-making may not be conducted as openly as would be the case were it created by government. As occurred with the Alberta Law Reform Institute, a law reform body can also be created by virtue of a renewable contractual agreement linking a number of interested parties. This type of arrangement has the benefit of being easily changeable, which, depending on the circumstances, could also prove to be a drawback. As the term of an agreement comes to an end, there could be uncertainty about the body's future, which could prove to be distracting for those involved. Uncertainty might make it difficult to retain staff.

The Commission is of the view that it should continue to exist as a creation of statute. The existence of a governing statute can imbue a law reform body with legitimacy. There are many groups involved in trying to have the law changed to reflect the wishes of their members. A law reform body created by statute is, however, an indication that only one entity has been entrusted

by government with the significant task of considering law reform for the province as whole. Another advantage of remaining a creation of statute is that it helps to ensure information about the Commission's activities is easily accessible to the public. For example, a copy of the Commission's Annual Report must be tabled in the Legislature. This contributes to a Commission which is accountable to the people of the province. Continuing the Commission under a statute might also contribute to the Commission's permanency. Unlike a contractual arrangement, which could be terminated with the agreement of the parties involved, or a corporation, which could be dissolved with little publicity, abolition of the Commission would have to take place in the Legislature, which would allow for debate by elected representatives and for publicity by the media. This public debate would also be possible if the Commission was not formally dismantled, but was threatened with closure further to cuts in government funding as part of a provincial budget.

In terms of a possible relationship with a university, rather than permanent structural changes that lead to the Commission becoming some type of university research institute, the Commission is of the view that the prospect of cooperation with a local university is more likely to occur on a project by project basis, which would allow both entities to share human, financial, and infrastructural resources. The topic of cooperative funding arrangements is discussed further at part C, below. Commission staff are continuing to investigate the potential for cooperation with universities. Some obstacles are apparent. Local universities tend to lack both funds and office space. For the Commission to become integrated on a permanent basis within a university, there would have to be significant, long-term benefits for the university involved. As universities must continuously look for new sources of money, they are not in a position to spend their funds without considerable benefits in return, and the prestige alone of being associated with the Commission would likely not be adequate. For instance, the Commission might be required to pay the salaries of certain faculty members, which would not be an option given current levels of funding. A university would also have to meet its own criteria for the establishment of a new entity. At Dalhousie University, for example, for a new research center or institute to be established in accordance with University Senate guidelines, funding for three years, and the involvement of at least three faculty members, would be required.

In exchange for funding and office space, a university would likely expect to be provided with a large role in the administration of the Commission, in particular to create opportunities for faculty members and students. The Commission expects that such interest could be accommodated to a certain extent, but must also remain conscious of the need to retain its independence.

The Commission recommends that it should continue to exist as a creation of statute, as this contributes to legitimacy, accountability, and permanence.

The Commission recommends:

- The Commission should continue to exist as a creation of statute, as this contributes to legitimacy, accountability, and permanence.

2. Mandate

Regardless of whether it is a creation of statute, incorporation, or contract, a law reform body needs some explicit direction as to what its role, or mandate, will involve. Persons directly involved with the law reform body will require an indication of what is expected of them, while members of the community will need some idea of how the body could be of service. A mandate that is generally defined allows for flexibility in operations, but less guidance for those involved with the law reform body. A mandate with greater specificity can give greater guidance and provide more information to those not familiar with the body. A drawback to a more specific mandate is that as the law reform body evolves, the mandate might be seen as too confining.

In addition to the question whether a mandate should be defined generally or specifically, there is also the issue of what items should make up the mandate. One might ask whether certain areas of interest should be defined. The answer to this question will depend to a certain extent on the imagined role of the law reform body. For example, should it be confined to technical or mechanical changes to the law, about which there is little or no social debate, or should it be permitted to study topics for which social or political policy has yet to be set? Related to this is the question of whether any restrictions on a law reform body should be specifically mentioned. In addition to areas of interest, there is the aspect of activities to consider, namely how a law reform body is to bring its mandate into effect.

As well as setting out what a law reform body may or may not do, a mandate might also describe the body's potential activities in the context of other institutions with involvement in law reform. For example, a mandate could indicate that a law reform body should cooperate whenever feasible with similar agencies in other provinces or further afield. This might encourage cooperation between institutions, improving awareness of law reform in all its facets, promoting common approaches, and leading to greater efficiency.

The object of the Law Reform Commission, as set out in the governing statute, is defined in a wide-ranging fashion. Although particular aspects of the Commission's aims are identified, this is not meant to confine the Commission's role, which is defined generally as being "to review the law of the Province and any matter relating to law in the Province." Further details relating to the Commission's mandate can be identified by reference to its powers, which are also set out in the *Act*. Once again, the scope of the Commission's activities is widely defined. For instance, on its own initiative the Commission may conduct meetings, carry out research, publish papers, enter

into cooperative agreements with other organizations, hire necessary personnel, and "do such things and take such measures as the Commission considers advisable for the achievement of its object ...." The Commission considers its mandate, which is defined very widely, yet with enough specificity to provide people both inside and outside the Commission with guidance as to what activities it might undertake, is satisfactory. The Commission therefore recommends that its mandate, as set out in the *Act*, should not be changed.

The Commission recommends:

- The Commission's mandate, as set out in the *Act*, should not be changed.

3. Relationship with government

The *Act* requires the Commission to provide an Annual Report to the Attorney General on the Commission's activities. Moreover, whenever the Commission studies matters, at the end of its deliberations it must make a report to the Attorney General.[28] As mentioned in the section on the Commission's existence, the reporting requirements help to ensure that a public body is accountable to the people of Nova Scotia. The Commission is also of the view that these reporting requirements help to foster good relations with government and should be continued. Keeping government aware on a regular basis of the Commission's work improves the potential for government to implement Commission recommendations. Even if government chooses not to adopt any of the recommended reforms in a report, it is still able to further appreciate what types of projects the Commission is capable of undertaking and completing. This should help to promote government confidence in the quality of the Commission's work. If government is willing to adopt Commission proposals, or at least to consider them seriously, then the Commission's profile and credibility with the public will also be enhanced. The Commission recommends that its requirement to report to the Attorney General should be continued.

The Commission recommends:

- The Commission's requirement to report to the Attorney General should be continued.

[28] Other aspects of government involvement with the Commission are the appointment of Commissioners and the ability to refer a topic to the Commission for its consideration.

4. Project selection

To continue to function, a law reform body needs not only sources of funding, but also sources of ideas. A law reform body must have a means of choosing topics for study that are relevant, significant, useful, and manageable.

It is common for government to have a role in determining what projects are undertaken by a law reform body. This could take the form of a section in a governing statute that requires the law reform body to perform work further to the government's request, commonly known as a reference. A law reform body might also have to present a list to government of proposed topics for governmental approval.

In a democracy, when setting its political agenda, a government is expected to take into account the concerns and preferences of its constituents. If government has a role in choosing a law reform body's projects and selects topics considered significant and timely by members of the public, then this will allow the law reform body to undertake work that is relevant to the community it serves. Allowing for government to have a role in what is on the law reform agenda can also maintain good relations, important for ensuring a law reform body's continued existence. If government appreciates the work that has been done by a law reform body, then there is a greater possibility that funding and other supports would be maintained. The potential for projects to be determined by government reference can enhance a law reform body's credibility. A reference could be seen as a sign of government's faith in the quality of the law reform body's work, on a project of significance to the province as a whole. Too close a relationship with government, though, could mean that a law reform body's independence, or at least its perceived independence, is undermined. Moreover, government tends to operate on a schedule dictated by current political issues. To ensure that its work is both comprehensive and detailed, a law reform body may not be able to comply with the time frames that are preferred by government.

A law reform body can invite suggestions from the community for project topics. This permits the law reform body to benefit from a variety of potential ideas. It also provides people in the community, and in particular those who traditionally lack influence in determining the direction of legislation, to be able to contribute to possible law reform topics.

A law reform body can also derive its topics internally, from advisory council members (if applicable), from those who administer the body, or from its staff (if any). A potential problem with this type of project selection is that there may be a small group of people, who share the same ideas on particular issues, who are determining the law reform body's direction.

The Law Reform Commission's governing statute places no limitation on the potential sources for an idea relating to law reform work. Any person may suggest a law reform project to the Commission. Although the range of possible topic suggestions is unrestricted, the Commission's capacity to undertake such work is not limitless. Before undertaking new work, the Commission must take into account limits on its resources, as well as the size of its current projects. As a

result, it is important for the Commission to be able to control the type of work it undertakes, as well as how this work is to be completed. The *Act* currently provides the Commission with this control. Even in the instance where government requests the Commission to undertake a project, this is to be done "in a manner as determined by the Commission." In all other instances, the Commission chooses its projects.

The lack of restrictions on project selection in the statute also means that the Commission is free to decide upon what, if any, criteria are to be used to guide the process of project determination. To establish guidelines for choosing projects allows work to be selected in a systematic, consistent, and objective fashion. Guidelines might relate to such factors as the perceived need for reform, the possibility of completing a project in a timely and cost-effective fashion, the nature of prior law reform topics, and the potential for suggested reforms to be put into effect. A project topic which at first glance seems promising may upon closer analysis be seen as no longer appropriate. Project criteria must be viewed as a whole – depending on the circumstances, one factor might assume more importance than it ordinarily does. As a result, selection criteria provide guidance, but also allow flexibility. Another advantage of the *Act* is that its lack of restrictions permits the Commission to devise its own project criteria.

As the *Act* places no limits on the source of a proposal for Commission's work, yet also allows the Commission a great deal of control concerning the specifics of how its work is to be undertaken, the Commission recommends that sections in the *Act* which pertain to project selection should remain unchanged.

The Commission recommends:

- Sections in the *Act* which pertain to project selection should remain unchanged.

5. Commissioners

Law reform bodies are generally administered by a board. This helps to ensure that responsibilities are shared, and that the law reform body benefits from multiple perspectives. Board members tend to be appointed to represent particular perspectives, as for example, from the judiciary. This can help to ensure the representative nature of a board. It could also be argued, however, that a perceived loyalty to the group one represents might override a board member's perception of what is appropriate in a particular instance.

Government frequently makes the appointments of law reform board members. If done in an open and objectively defined manner, then the public will be made aware of what factors were taken into account. Appointments might also be made by the interested parties to be represented. Allowing the interested parties to make their own choices can contribute to a greater feeling of

involvement among members of a particular group. Some boards also allow for certain appointments to be made by the board members themselves.

Depending on the approach used, some board members could serve on a full-time basis. Where board members are engaged on a part-time basis, they may receive payment for their services, again depending on the approach that is adopted. Resources in a jurisdiction will determine whether there is enough money to engage board members on a full-time basis, as well as whether part-time members are to receive any payment. Payment for part-time members can be justified as compensation for time in which they may be engaged in doing other activities. On the other hand, there are numerous boards, which administer charities and similar organizations, whose members serve strictly on a voluntary basis.

Some law reform bodies have not only an administrative board, but also a larger advisory council. The role of an advisory council, which meets less frequently than the board, is to monitor the law reform body's long-term direction and performance, as well as to advise board members on relevant issues. For instance, the advisory council might recommend that the board consider undertaking more projects in a particular branch of the law. Regardless of the advisory council's advice, however, the responsibility for decisions that bind a law reform body will rest with the board.

Establishing an advisory council can help to ensure that a wider range of perspectives are taken into account as part of the law reform process. In this way, the law reform body will better reflect the community it was set up to serve. Potential disadvantages associated with an advisory council include those which typically accompany the growth of an institution. Decision-making may be more complex, time-consuming, and costly.

Under its statute, the Law Reform Commission consists of up to seven members. The Commission is currently operating with only five. With such a limited number of members, a disproportionately larger work load can fall on the shoulders of certain Commissioners. More importantly, a five-member Commission is not able to benefit from as large a number of individual perspectives as the *Act* permits.

The Commission thinks that it is no longer satisfactory to operate with only five members. The Commission therefore recommends that the number of its members should be increased. A larger board would allow responsibilities to be shared among a greater number of Commissioners. This also would permit a Commission which represents more points of view. Expanding the Commission's size does not have to involve changing the *Act*. Rather, this can be accomplished by the Government simply appointing the full number of Commissioners allowed under the *Act* (seven). The Commission therefore recommends that as soon as possible, the Government should make the appointments necessary to ensure that the Commission is at the maximum size permitted under the *Act*.

The current *Act* specifically provides for representation on the Commission from a number of professional groups. Commission members in part represent the Bar, the judiciary, and full-time faculty members of Dalhousie Law School. From the Commission's perspective, this arrangement works well. It ensures participation from groups which have traditionally been involved in law reform efforts. It allows for sufficient knowledge of the law and legal practice experience among Commission members.

The Council of the Nova Scotia Barristers' Society appoints the two Bar representatives. No approval from the provincial Cabinet is required. However, representatives from the judiciary and Dalhousie Law School are appointed by Cabinet, after consultations, in the first case, with the Chief Justice of Nova Scotia and the chief judge of the court of which the judge is a member, and in the other, with the Law School Dean. The Commission is of the view that no distinctions should be made in the appointment process for professional groups identified in the *Act*. The Commission also thinks these appointments should be made directly by the relevant group, without any Cabinet involvement. As a result, the Commission recommends that each professional group specifically identified as having a Commission representative should make its appointments directly, without the need for provincial Cabinet approval.

Although lawyers have always played an active role in law reform, improving the law is not merely of interest for lawyers. All Nova Scotians are affected by, and therefore have a stake in, our province's laws. Accordingly, the *Act* not only allows for, but in the instance of at least one board member requires, participation on the Commission of people who do not have legal training. Compared to lawyers, they may have very different perspectives about the nature of law and how well it is working. Moreover, the participation of non-lawyer representatives helps to increase knowledge of the Commission's work among the general public. To achieve a better balance of perspectives, the Commission recommends that two positions should be set aside for non-lawyers.

The benefits of having a full-sized Commission would not be realized if certain Commissioner appointments are not made. In other words, if the power to appoint Commissioners is not exercised, then the Commission will not be at full strength and its effectiveness will be diminished. A solution to this problem would be to allow serving Commissioners to make a certain number of appointments where an outside body had failed to select all of its representatives, despite the passage of a reasonable amount of time following the creation of openings on the Commission. Cabinet can currently appoint up to three community members to the Commission, without having to consult any professional group. The Commission recommends changing the *Act*, to allow currently serving Commissioners to appoint someone to fill a vacant community position if that position has remained open for at least six months.

The Commission is also of the view that the *Act* should provide for the appointment of a representative from the Canadian Bar Association. Many Canadian Bar Association members have made valuable contributions to the Commission over the years by participating in advisory groups and by commenting on Commission reports.

Commissioners are currently entitled to receive a fee of $30 per hour spent on Commission work. Their Commission expenses are also reimbursed. On an annual basis, neither of these figures is large. In the current Commission budget, Commissioners' fees and expenses represent only about 3% of the total. Compensation is not what attracts people to serve on the Commission. Rather, it is the prospect of being able to contribute to improvement of the province's laws. Having said this, time spent on Commission work means time away from other work and commitments. In some cases, this could involve a financial sacrifice which some people could not afford. To help ensure that serving on the Commission remains open to as wide a range of Nova Scotians as possible, the Commission recommends that Commissioners should continue to be entitled to compensation for their work and reimbursement for their Commission expenses.

The Commission recommends:

- As soon as possible, the Government should make the appointments necessary to ensure that the Commission is at the maximum size permitted under the *Act*.
- Each professional group specifically identified as having a Commission representative should make its appointments directly, without the need for provincial Cabinet approval.
- Two positions should be set aside for non-lawyers.
- The *Act* should be changed to allow currently serving Commissioners to appoint someone to fill a vacant community position if that position has remained open for at least six months.
- The *Act* should provide for the appointment of a representative from the Canadian Bar Association.
- Commissioners should continue to be entitled to compensation for their work and reimbursement for their Commission expenses.

6. Staff

Law reform work generally involves research, consultations with interested persons or groups, report writing, and explanations or presentations concerning recommendations made. There are also all of the duties associated with managing an office. Another issue relating to law reform bodies is that of who will perform such work, namely whether the work is to be done internally or externally. How work is completed at a law reform body can take a number of forms. The law reform body can contract out its reports, on an as-needed basis, to external researchers. This allows the law reform body to engage subject matter specialists. This may result in savings in

personnel costs, as the law reform body would not to have to pay for benefits associated with full-time employees and would only be paying for work that is completed. These savings, however, would largely depend on the rate of pay that is negotiated with an external researcher. Another arrangement is to employ permanent legal research staff. Although not necessarily possessing the in-depth knowledge of subject matter specialists, these people would be able to apply their experience of law reform issues and procedures generally to any topic that has been studied. This can help to ensure consistency in how the law reform body undertakes its work. Depending on the nature of a law reform body's range of activities, permanent staff members might be required to answer questions, complete research, write reports, and meet with people on as-needed basis. A third form of arrangement, also involving internal completion of work, is for the administrators of a law reform body to complete the body's reports. Members may find, however, that they do not have the required time to devote to researching and writing lengthy documents. Finally, it is possible for a law reform body to complete its work through a combination of the above approaches.

The Law Reform Commission staff currently consists of three people, all employed full-time: two lawyers and an administrative assistant. These positions have always formed the core of the Commission's staffing arrangements. From time to time, as resources permitted, the Commission has engaged external research consultants on a contractual basis. All staff members are Commission employees. Until May 2001, the legal staff members were nominally employees of the Nova Scotia Department of Justice. The Department set their compensation, in accordance with rates provided to departmental lawyers with comparable seniority at the Bar. Amounts paid by the Department for salaries and civil service benefits were reimbursed by the Commission. In May 2001, further to cost reductions at the Department, both Commission lawyers were laid off from their civil service positions. One staff member chose to pursue other opportunities, and the Commission hired a replacement. The other legal staff member was re-hired as a Commission employee. In both cases, the amount now paid in salary and benefits is lower than when the Commission lawyers were Justice employees. The administrative assistant remained an employee of the Commission and was not affected by Justice lay-offs.

The Commission is of the view that in order to continue its work effectively, the number and the full-time nature of staff should remain unchanged. The Commission does not think it could continue to provide the same level of public consultation and the same scope and detail of research and writing with a reduced staff. Permanent staff are able to build up expertise in law reform processes generally. They become familiar with institutions and individuals involved in law reform efforts. The permanence of staff means that Commission projects can be approached in a consistent and efficient fashion. Through the establishment of long-term working relationships, it also permits good communications between staff and Commissioners. Moreover, law reform work involves much more than research and report writing. Numerous tasks of an unforeseen nature arise in relation to the Commission's work. For example, on a regular basis the media and members of the community ask questions about the Commission's work or about the law in general. In order for such requests to be dealt in a timely fashion, the Commission

considers it important to have sufficient staff on hand who are knowledgeable about the Commission's work and wider law reform issues.

The Commission remains open in general to the possibility of the hiring of external consultants on a contractual basis. By applying their expertise to an aspect of a Commission project, consultants can contribute valuable knowledge and insight to Commission work. The Commission's current level of funding, however, does not permit the hiring of any consultants.

The Commission recommends that its staffing arrangements should remain unchanged. In making this recommendation, the Commission wishes to point out that its current budget does not provide for certain benefits, enjoyed by civil servants, such as a pension plan. Moreover, the budget's capacity to accommodate increases in pay is very limited. Given the Commission's recommendation that the permanence of its staff should remain unchanged, as time unfolds the matter of salary and benefits will acquire greater importance. In order to attract and retain highly qualified staff, the Commission notes, the question of adjustments to staff benefits will ultimately have to be addressed.

The Commission recommends:

- The Commission's staffing arrangements should remain unchanged.

C. Financial Independence

1. Funding

Sufficient and stable funding is essential for a law reform body to function effectively. Adequate and secure funding enables those involved with the law reform body to focus their energies on law reform work, rather than on fund-raising efforts. A number of potential funding sources for law reform work come to mind. Each source has both benefits and disadvantages.

Government is an obvious funding source. Government has an obligation to improve laws, not only to attain such specific goals as the promotion of commerce or the protection of personal safety, but also for more general aims, such as to encourage respect for the law and law-making bodies. The majority of law reform bodies in Canada (and indeed, the rest of the world) have relied, and continue to depend, on government as their primary source of funding.
The drawbacks of government funding can be real or apparent. A government may wish to influence a law reform body's choice of work or how the work is undertaken. This type of interference may not actually occur, but it might be perceived to be taking place, thereby diminishing the credibility of a law reform body. The perception that a law reform body lacks credibility might be especially prevalent if the body obtained most of its government funding on a fee-for-service basis. This would involve individual government departments or agencies

commissioning studies on particular topics. There may be a perception that in order to obtain fee-for-service funding, a law reform body would reveal a predisposition to making certain proposals favourable to the funding institution. Questions of credibility aside, fee-for-service, given its irregular nature, is not stable and would not solve the issue of a law reform body's long-term financial security.

The Bar is another body with an interest in law reform. Lawyers are in a position to notice shortcomings in the law on a regular basis. Some lawyers may be of the view that members of a single profession should not be funding work that ultimately benefits the province as a whole. Others might suggest it would not be a good precedent to fund an external organization. It might also be suggested that in exchange for their financial support, the province's lawyers should be able to influence the agenda of a law reform body.

University funding, and in particular, law school funding, is another possible source. University support for law reform work would not have to take the form of direct financial contributions. A university contribution to law reform could take the form of office space, secretarial support, equipment, printing or other services. Recent years have not been kind ones in terms of university funding. Funding for law reform work would have to compete for exposure with other law school programs. It might be determined that in comparison to other programs, such as those with more of a commercial connection, law reform may not have the necessary prestige to attract funding. As a result, there may not be enough of a perceived benefit for a university to make a long-term funding commitment to law reform.

Law funding agencies, commonly known as law foundations, have been generous contributors to law reform bodies in a number of provinces. Law foundations derive most of their money from the interest on lawyers' trust accounts. This money is used to fund causes connected to the law. As law reform work relates to improvement of the law and its institutions, these activities fit comfortably within the mandate of law foundations. It should not be forgotten, however, that law foundations must support a wide range of activities and institutions, the financial needs of which might vary on a yearly basis. As a result, though a law foundation's commitment to supporting law reform work might remain constant, the level of this support cannot be guaranteed.

It is possible that a law reform body could be funded privately. An example would be a grant provided for completion of particular work. A potential problem of this type of funding is that some groups or institutions might fund law reform work with a specific result in mind. A law reform body's credibility could suffer, if there was a perception of undue influence on the part of those who were funding the law reform body's work. In addition, private funding, which would occur on an irregular basis, if obtainable, could not guarantee a law reform body's long-term existence.

One could also appeal directly to members of the public for financial contributions. Law reform bodies do have an educational role. However, unlike, for instance, the Legal Information Society of Nova Scotia, the primary role of law reform bodies is not to inform people about the law. As a

result, even though numerous people may have benefitted through law reform publications or other information provided by a law reform body's staff, this may not have created the widespread support that would be needed to justify a public fund-raising campaign. Large numbers of people whose lives have been improved by a change to the law that followed a Commission report may also not be aware that the impetus for reform originated with the Commission.

Law reform work fulfills a public need. Better laws can improve the lives of citizens. For the most part, governments around the world have traditionally acknowledged the public benefits of law reform by providing a significant proportion of funding for existing law reform bodies. Prior to 2001, on average the Nova Scotia commission received 2/3 of its funding from government. Government continues to be a major contributor to law reform bodies elsewhere in Canada. Even in Alberta and British Columbia, where government support is at its lowest, it still represents about 1/3 and 1/4 of funding, respectively. Significant government support is also apparent elsewhere in the world. For instance, in Australia, a country which shares with Canada a large size, small population, federal form of government, and English legal heritage, six of the seven law reform bodies receive between 95 and 100% of their funding, directly or indirectly from government. In the seventh case, government still provides close to 50% of funding.

The Nova Scotia Law Foundation has been very generous to the Commission, in particular, in 2001, when government funding stopped. The Foundation's current level of funding may not, however, be sustainable, given currently low interest rates, which affect how much money the Law Foundation has on hand to distribute. The Commission takes the position that given the need for law reform work, it is not merely appropriate, but is necessary that government participate in the funding of such initiatives.

The Commission acknowledges that during the current time of financial restraint, finding sufficient government funds might prove difficult. One way of generating government funds for the Commission could be through an arrangement similar to that used to generate law stamp proceeds. In Nova Scotia, whenever a legal action or petition for divorce is filed at the Supreme Court, a fee of $28.75 ($25 and $3.75 in tax) is paid. Proof of payment takes the form of a stamp, which is attached to the relevant legal documents. Revenue from law stamps is used to help financially support Barristers' Society law libraries in the province. In the 2000-2001 fiscal year, law stamp revenues totaled $184,225, representing 7,369 stamps.

The experience in British Columbia shows that an appeal for public donations would likely not generate much revenue. A fund-raising campaign, organized by the B.C. Law Institute, was only able to raise some $9,000. Moreover, it should not be overlooked that when Commission staff are involved in fund-raising efforts, they are not able to complete their law reform responsibilities.

Other funding relationships, arranged on an *ad hoc* basis, would lessen the Commission's financial difficulties. For example, depending on the nature of a project, cooperative efforts could be made with a university, the Nova Scotia Barristers' Society, the Canadian Bar Association, the Law Commission of Canada, or an interested group. The Commission remains committed to finding

alternative means of funding. The Commission would have to be careful, though, to ensure that its independence, or at least the public perception of this independence, was not undermined by too close a relationship with a funding entity. In particular, the Commission would need to preserve its independence as it relates to project selection. This may not be possible if the Commission, because of a lack of funds, in essence became a private consulting body, continually searching for new contracts. Regardless of the source, project-based funding would enable the Commission to carry on additional work, but it would not ensure the Commission's long-term viability.

The Commission's future well-being depends upon significant and stable funding. Apart from the Law Foundation, the only other source which would fulfil these criteria, in addition to allowing the Commission to preserve its independence, would be the Government.

Financial support by government is not only justifiable, but necessary, given that the Commission's work benefits the province as a whole and is being provided by no other entity. The Commission recommends that the important public service associated with law reform work should be acknowledged in the form of significant and stable government funding.[29] The Commission also recommends that the possibility of project funding from other entities should be pursued, but not at the price of undermining the Commission's independence or credibility.

The Commission recommends:

- The important public service associated with law reform work should be acknowledged in the form of significant and stable government funding.
- The possibility of project funding from other entities should be pursued, but not at the price of undermining the Commission's independence or credibility.

[29] In 1988, following its near-dissolution, the Manitoba Law Reform Commission completed a study designed to produce recommendations which could better ensure that Commission's future existence and independence. The Manitoba commission similarly concluded that government funding would be necessary for that Commission's long-term viability. See Manitoba Law Reform Commission, *Report on the Manitoba Law Reform Commission: A Framework for the Future* (Winnipeg: The Commission, 1988) at 17.

VI. CONCLUSION

For over fifty years, law reform efforts in Nova Scotia have been characterized by a number of constants. One constant has been an acknowledged need to keep the province's laws under regular review. If current statutes are no longer fair, consistent with social values, able to deal with contemporary problems, or understandable, then substitutes must be devised. There is no indication this need has lessened or disappeared. Rather, judging from the number of people who suggest project topics to the Commission, who offer to serve on advisory groups, or who comment on Commission reports, the need is as strong as ever.

Another constant is that law reform efforts in Nova Scotia have been meant to benefit the province as a whole. Although some law reform projects have held greater interest for certain people, either personally or professionally, law reform in this province has not been used to advance only the interests of certain groups or individuals. For instance, Dalhousie University's Center for Legislative Research was formed with the "needs of the province" in mind. The topics that have been examined over the years by various law reform entities, such as landlord and tenant law, vendor and purchaser law, mechanics' liens, change of name law, domestic violence, juries, administrative law, and the probate system, demonstrate that law reform efforts have been directed towards work that affects a wide number of Nova Scotians.

A third constant is the recognition that to enjoy success in the long term, law reform must be conducted by an entity which enjoys permanence, full-time operations, and independence. Permanence allows people involved in law reform efforts to build up expertise and establish necessary relationships with government and the community. Operating on a full-time basis allows a law reform body to perform thorough work, thereby completing tasks that are detailed and comprehensive. A degree of independence allows a law reform body to undertake tasks that because of other priorities or perceived controversy may not otherwise be examined. All of these characteristics form part of the current Law Reform Commission, but were not all enjoyed by prior law reform entities in the province.

As discussed in this Report, most features relating to the current Commission work well and are not in need of change. A weakness of the Commission, however, remains its long-term funding arrangements. After considerable discussion, the Commission has not been able to derive any definitive ideas for solving its funding difficulties on a long-term basis. This does not stem from a lack of initiative or imagination. Rather, it is merely indicative of the nature of law reform work. Law reform work is a public service. In order to remain independent and retain credibility within the community, law reform bodies cannot be operated on a money-making or fee-for-service basis. Their ability to operate for the public as a whole would be undermined if they had to depend on financing from individuals or groups interested in promoting particular changes to the law. Moreover, the Commission offers the results of its work for free, to as wide a number of persons as possible. The Commission does not attempt to try to derive payment from those who may benefit from recommendations in law reform reports. It is not possible to assign a monetary

value to many of the Commission's accomplishments, as for instance, in terms of educating Nova Scotians about the law.

In other parts of Canada and indeed elsewhere in the world, where law reform bodies have been created, the public nature of the service they provide has been acknowledged in the form of public funds, largely from government and to a lesser extent from local versions of law foundations. The situation in Nova Scotia should be no different. The Commission performs an essential public service, one which is not provided by any other entity. The key to the Commission's future viability is for the Government to recognize the benefits of a permanent, full-time, and independent law reform body by once again providing the Commission with sufficient and regular financial support.

VII. SUMMARY OF RECOMMENDATIONS

The Commission recommends that:

Institutional Independence

1. Existence of the Commission

- The Commission should continue to exist as a creation of statute, as this contributes to legitimacy, accountability, and permanence.

2. Mandate

- The Commission's mandate, as set out in the *Act*, should not be changed.

3. Relationship with government

- The Commission's requirement to report to the Attorney General should be continued.

4. Project selection

- Sections in the *Act* which pertain to project selection should remain unchanged.

5. Commissioners

- As soon as possible, the Government should make the appointments necessary to ensure that the Commission is at the maximum size permitted under the *Act*.

- Each professional group specifically identified as having a Commission representative should make its appointments directly, without the need for provincial Cabinet approval.

- Two positions should be set aside for non-lawyers.

- The *Act* should be changed to allow currently serving Commissioners to appoint someone to fill a vacant community position if that position has remained open for at least six months.

- The *Act* should provide for the appointment of a representative from the Canadian Bar Association.

- Commissioners should continue to be entitled to compensation for their work and reimbursement for their Commission expenses.

6. Staff

- The Commission's staffing arrangements should remain unchanged.

Financial Independence

1. Funding

- The important public service associated with law reform work should be acknowledged in the form of significant and stable government funding.

- The possibility of project funding from other entities should be pursued, but not at the price of undermining the Commission's independence or credibility.

LIST OF APPENDICES

APPENDIX A

CHAPTER 17 OF THE ACTS OF 1990

An Act to Establish an Independent Law Reform Commission

Short title

1 This Act may be cited as the *Law Reform Commission Act.* 1990, c.17, s.1.

Interpretation

2 In this Act, "Commission" means the Law Reform Commission of Nova Scotia. 1990, c.17, s.2.

Law Reform Commission of Nova Scotia

3 There is hereby established a body corporate to be known as the Law Reform Commission of Nova Scotia. 1990, c.17, s.3.

Object of Commission

4 The object of the Commission is to review the law of the Province and any matter relating to law in the Province and to make recommendations for improvement, modernization and reform including, without limiting the generality of the foregoing, recommendations for

(a) development of new approaches to, and new concepts of, law that serve the changing needs of society and of individual members of society;

(b) clarification and simplification of the law;

(c) removal of provisions of the law that are outdated;

(d) improvement of the administration of justice;

(e) review of judicial and quasi-judicial procedures. 1990, c.17, s.4.

Composition of Commission

5 (l) The Commission shall be composed of not fewer than five nor more than seven commissioners who may be appointed, either on a full-time basis or a part-time basis, as follows:

(a) two members of the Nova Scotia Barristers' Society appointed by the Council of the Society;

(b) a judge of a court of the Province, appointed by the Governor in Council after consultation with the Chief Justice of Nova Scotia and the chief judge of the court of which the judge is a member;

(c) a full-time member of the Faculty of Law of Dalhousie University appointed by the Governor in Council after consultation with the Dean of the Faculty;

(d) a person who is not a graduate in law appointed by the Governor in Council;

(e) where the Governor in Council determines that the Commission is to be composed of more than five commissioners, one or two persons appointed by the Governor in Council.

Term of office of commissioner

(2) Each commissioner holds office for a term of three years, except that one of the first commissioners appointed by the Council of the Nova Scotia Barristers' Society and one of the first commissioners appointed by the Governor in Council shall be appointed for a term of two years.

Ceasing to be a commissioner

(3) A person ceases to be a commissioner where

(a) that person fails to attend three consecutive regular meetings of the Commission, except where the Commission by resolution excuses the absences; or

(b) the composition of the Commission ceases to comply with this Act as a result of the person ceasing to be a person described in clause (a), (b), (c) or (d) of subsection (1).

Casual vacancies

(4) Where a person ceases to be a commissioner for any reason other than the expiration of that person's term of office, the Governor in Council or the Council of the Nova Scotia Barristers' Society, as the case may be, shall appoint a person for the unexpired portion of the term.

Re-appointment of commissioner

(5) A commissioner whose term of office has expired may be re-appointed.

Expiry of term of office

(6) A commissioner whose term of office expires continues to hold office until a successor is appointed.

Vacancy

(7) A vacancy in the membership of the Commission does not impair the ability of the remaining members to act. 1990, c.17, s.5.

President of Commission

6 The commissioners shall appoint one of the members of the Commission to be the President of the Commission. 1990, c.17, s.6.

Remuneration and expenses

7 The President and other members of the Commission may be paid such remuneration and shall be paid such travelling and living expenses as may be determined by the Governor in Council. 1990, c.17, s.7.

Powers of Commission

8 (1) The Commission may

(a) receive and consider any proposals for the reform of the law that may be made to it by any person;

(b) initiate, carry out and direct such studies and research as are necessary to properly carry out its object;

(c) publish papers, studies or other documents prepared by or for the Commission;

(d) co-operate or enter into agreements with any organization that undertakes projects relating to the object of the Commission within or outside the Province;

(e) with the concurrence of the Attorney General and to the extent that the Commission is able to do so without, in its opinion, impairing its ability to carry out its object or duties, provide information, research material and study results and make recommendations to departments, boards and agencies of the Government of the Province concerned with the improvement, modernization or reform of laws;

(f) regulate its proceedings and provide generally for the conduct and management of its affairs;

(g) do such things and take such measures as the Commission considers advisable for the achievement of its object, including the making of by-laws.

Duties and further powers of Commission

(2) The Commission

(a) may make use of technical and other information, advice and assistance from departments, boards and agencies of the Government of the Province;

(b) shall undertake, at the request of the Attorney General, in a manner as determined by the Commission, the examination of particular laws or branches of the law and make recommendations for their improvement, modernization and reform. 1990, c.17, s.8.

Meetings of Commission

9 The Commission shall meet at least four times in each year. 1990, c.17, s.9.

Personnel

10 (1) An Executive Director and such persons as are required for the administration of this Act and the regulations shall be appointed by the Commission, in accordance with the *Civil Service Act.*

Function of Executive Director

(2) The Executive Director has the management, direction, control and administration of the day-to-day operations of the Commission.

Advisers

(3) Notwithstanding subsection (1), the Commission may engage, upon such terms and conditions as the Commission deems fit, the services of such professional persons, technical persons and experts to advise the Commission as the Commission deems necessary for the carrying out of its object. 1990, c.17, s.10.

Appropriation of money

11 (1) Money appropriated by the Legislature for the purpose of this Act shall be paid out by the Attorney General.

Law Reform Commission Fund

(2) The Commission shall maintain an account to be under the control and management of the Commission, to be known as the Law Reform Commission Fund, into which the Attorney General may pay from time to time any sum of money appropriated and into which may be paid any sum of money contributed as a grant or gift by any person, organization or body.

Use of money in Fund

(3) Except where a stipulation or condition is expressed in relation to a sum of money paid into the Law Reform Commission Fund, the money in the Fund may be used by the Commission for the purpose of this Act. 1990, c.17, s.11.

Annual report to Attorney General

12 (1) The Commission shall report from time to time to the Attorney General and shall make an annual report to the Attorney General on the activities of the Commission.

Tabling of annual report

(2) The Attorney General shall table the annual report of the Commission in the Assembly, if the Assembly is then sitting and, if the Assembly is not sitting, within fifteen days of its next sitting.

Other report

(3) Where the Commission reviews, considers or inquires into a matter, the Commission shall make a report to the Attorney General with respect to that matter at the conclusion of its deliberations.

Publication of report

(4) The Commission may publish a report made pursuant to this Section. 1990, c.17, s.12.

Repeal

13 Chapter 251 of the Revised Statutes, 1989, the *Law Reform Act*, is repealed. 1990, c.17, s.13.

Proclamation

14 This Act comes into force on and not before such days as the Governor in Council orders and declares by proclamation. 1990, c.17, s.14.

Proclaimed	-	January 22, 1991
In force	-	February 1, 1991

APPENDIX B

List of Participants in the Law Reform Commission's Projects (references to positions or organizations are as of the time of a person's involvement)

1. The Enforcement of Maintenance Obligations in Nova Scotia

Members of Advisory Group (1991-1992)

Doug Campbell	Barrister and Solicitor
Kay Rhodenizer	Barrister and Solicitor
Judge Connie Sparks	Halifax Family Court
Professor Rollie Thompson	Faculty of Law, Dalhousie University
Judge Jim Williams	Dartmouth Family Court

People and organizations who responded to the Discussion Paper (1992)

Canadian Bar Association (Nova Scotia Branch), Family Law Section
Credit Consultants Limited, Dartmouth
Martha Crowe, Consultant, Legislation/Policy Division, Community Services
Debi Forsyth-Smith, Nova Scotia Advisory Council on the Status of Women
Bruce Gillis, Q.C., Durland, Gillis & Parker
Edith Gosbee-Lumsden, Guysborough
David G. H. Hayne, Guysborough County
Judith Hitchens, Shelburne County
Mark Hucko, Lower East Pubnico
Sandy Jolly, MLA, Liberal Caucus Office, Halifax
Dr. Gene Keyes, Halifax
Jeannine Kurtz, Halifax
Dennis Mason, Halifax
Rosemary MacDonald, Halifax
Dr. John MacEachern, Berwick
Linda MacLeod, Sydney
Louise MacPherson, Chair, Halifax Transition House Association
Brian S. Norton, Q.C., Department of Attorney General
Karen O'Hara, Executive Director, Tearman Society for Battered Women
Ombudsman
Muriel G. Skinner, New Glasgow
Patricia Deal Thies, Windsor
Professor R. Thompson, Dalhousie Legal Aid
Judge James C. Wilson, New Glasgow

2. Reforms to the Jury System of Nova Scotia

Members of Advisory Group (1992-1993)

Professor Bruce Archibald	Dalhousie Law School
Heather Chandler	Juries Officer
Thelma Costello	Executive Director, Courts and Registries
Alison Davidson	Director of Legal Research, Canadian Bar Association, Nova Scotia Branch
Justice J. Doane Hallett	Nova Scotia Court of Appeal
Dean Jobb	Journalist
Chris Manning	Barrister
Thomas McDonald	Chair, Canadian Bar Association Criminal Law Section (Nova Scotia)
Daniel Paul	former Executive Director of the Association of Mainland MicMacs
Susan Potts	Special Prosecutor, Department of Justice

People who Responded to the Discussion Paper (1993-1994)

J. Braunstein, N.S.	Department of Health
Joint Submission	H. B. Holton, P. C. Stickney, K. A. Briand and F. DeMont, Nova Scotia Legal Aid
D. Pink	Nova Scotia Barristers' Society
R. Wallet	Shelburne
E. Cuddihy, Q.C.	N.S. Department of Economic Development
A. Davidson	Canadian Bar Association

3. Domestic Violence

People and organizations consulted during the course of the Project (1992-1994)

(given concerns about protecting privacy and safety, in its Final Report the Commission did not identify any names)

Shelters For Women: Staff and Residents:

Executive Director, Bryony House, Halifax
Staff and Former Staff, Bryony House, Halifax
Social Action Committee, Bryony House, Halifax
Residents, Bryony House, Halifax
Executive Director, Adsum House, Halifax
Executive Director, Alice Housing, Dartmouth

Residents, Alice Housing, Dartmouth
Former Executive Director, Tearman House, New Glasgow
Executive Director, Tearman House, New Glasgow
Interim Executive Director, Cumberland County Transition House Association, Amherst
Executive Director, Naomi Society, Antigonish
Child Care Worker, Naomi Society, Antigonish
Executive Director, Harbour House, Bridgewater
Staff, Harbour House, Bridgewater
Executive Director, Chrysalis House, Kentville
Executive Director, Leeside Transition House, Port Hawkesbury
Staff, Leeside Transition House, Port Hawkesbury
Executive Director, Cape Breton Transition House, Sydney
Executive Director, Third Place Transition House, Truro
Executive Director, Juniper House, Yarmouth
Staff, Juniper House, Yarmouth
Member, Transition House Association of Nova Scotia, New Glasgow
Individual meetings with five women who were abused in past relationships

Other Organizations Providing Support to Women:

Nova Scotia Advisory Council on the Status of Women
Nova Scotia League for Equal Opportunities
Coverdale Court Services
Family S.O.S.
Director, Women's Resource Center, Antigonish
Women's Center, Bridgewater
Support Group in Sydney for women who have left or are still in an abusive relationship
Strong Women United for Change

Task Forces:

Member, National Panel On Violence Against Women, New Glasgow
Organizer, Nova Scotia Meetings of the National Panel on Violence Against Women
Chair, Dartmouth Task Force on Violence Against Women

Groups for Men Who Batter:

Co-facilitator of group for men who batter, Wolfville
Facilitator, "Shifting Gears", Antigonish
Founder, Bridges

Provincial Government:

Provincial Interdepartmental Family Violence Prevention Initiative
Senior Advisor, Policy and Planning, Department of Justice
Senior Solicitor, Department of Justice
Director, Victims' Services Division, Department of Justice
Victim Fine Surcharge Fund, Department of Justice
Nova Scotia Family Violence Tracking Project, Solicitor General Canada and Nova Scotia Department of Justice
Director, Family and Children Services
Nova Scotia District Director, Correctional Services Canada
Department of Solicitor General, New Brunswick
Ministry of Attorney General, British Columbia

Public Legal Education:

Executive Director, Public Legal Education of Nova Scotia

Ethno-Cultural Perspectives:

Executive Director, Micmac Family and Children's Services, Shubenacadie
Micmac Family and Children's Services, Eskasoni
Executive Director, Native Council of Nova Scotia
Professor, University College of Cape Breton
President, Association of Black Social Workers
Coordinator, Association de la femme acadienne

Police:

Constable, Community Relations, Halifax Police Dept.
Chief of Police, Amherst
Staff Sergeant, R.C.M.P. Amherst Detachment
Constable, Antigonish R.C.M.P.
Chief of Police, Bridgewater
Staff Sergeant, Bridgewater R.C.M.P.
Chief of Police, Kentville
Staff Sergeant, New Minas R.C.M.P.
Chief of Police, New Glasgow
Sergeant, Pictou R.C.M.P.
Sergeant, Stellarton R.C.M.P.
Staff Sergeant, Port Hawkesbury R.C.M.P.
Sergeant, Sydney Police

Staff Sergeant, Sydney R.C.M.P.
Chief of Police, Truro
Staff Sergeant, Truro R.C.M.P.
Staff Sergeant, Yarmouth Town Detachment, R.C.M.P.
Sergeant, Yarmouth Rural Detachment, R.C.M.P.

Court System:

Chief Clerk, Provincial Court, Digby
Members of Family and Supreme Court Judiciary

Public Prosecution Service:

Assistant Chief Crown Attorney, Trials, Halifax
Crown Attorney, Antigonish
Regional Crown Attorney, Kentville
Senior Crown Attorney, Bridgewater
Crown Attorneys, New Glasgow
Crown Attorney, Port Hawkesbury
Crown Attorney, Sydney
Crown Attorney, Truro
Senior Crown Attorney, Yarmouth

Legal Aid:

Lawyer, Nova Scotia Legal Aid, Dartmouth Office
Lawyer, Nova Scotia Legal Aid, Antigonish Office
Director, Nova Scotia Legal Aid, Kentville Office
Nova Scotia Legal Aid, Yarmouth Office

Probation and Parole Services:

Probation Services, Antigonish
Probation Services, Bridgewater
Probation Services, Kentville
Probation Services, New Glasgow
Probation Services, Port Hawkesbury
Probation Services, Sydney
Probation Services, Truro
Probation Services, Yarmouth
Parole Services, Kentville

Health Services:

Brunswick Street Counselling Services, Halifax
North End Community Health Center, Halifax
Director of Health Policy, Nova Scotia Medical Society
Program Trainer, Woman Abuse Program, Colchester Regional Hospital

Education:

Professor, Dalhousie Law School
Professor, School of Education, Dalhousie

People and organizations who responded to the Discussion Paper (1993-1994)

Transition House Association of Nova Scotia
Nova Scotia Family Violence Prevention Initiative
Dalhousie Legal Aid Services
North End Community Health Center
Committee Against Women Abuse - Mainland South
Project New Start
Tearman Society for Battered Women
Social Action Committee, Halifax Transition House Association
Nova Scotia Advisory Council on the Status of Women
Dean, Dalhousie Law School
Several Interested Members of the Public
Deputy Minister of Justice
Judge, Family Court, Dartmouth
Supreme Court Justice, The Law Courts, Halifax, N.S.
Director, Policy and Planning, Department of Justice
The Medical Society of Nova Scotia

4. The Legal Status of the Child Born Outside of Marriage in Nova Scotia

Members of Advisory Group (1992-1993)

F. Comeau	Nova Scotia Human Rights Commission
E. Etter	Registrar of Vital Statistics
J. Jones	Metro Legal Aid Clinic
Judge R. Levy	Nova Scotia Family Court
E. Paul	MicMac Family and Childrens' Services
L. Rantala	Parent Finders-Nova Scotia
A. Shaw	Director of Adoptions, Department of Community Services
E. Theriault	Public Trustee
Professor R. Thompson	Dalhousie Law School

People and organizations who responded in writing to the Discussion Paper (1993-1995)

Canadian Bar Association (Nova Scotia) Family Law Section
Dr. P. Ripley, Deputy Minister, Department of Community Services and Staff
Mr. I. Johnson, Halifax

5. and 6. Adult Guardianship and Advance Health Care Directives (Living Wills)
(One combined Final Report)

Members of Adult Guardianship Advisory Group (1992-1993)

Dr. Nigel Allison	Psychiatrist
Mr. Wayne Cochrane	Legal Counsel, Department of Health and Fitness
Dr. Robert Elgie	Dalhousie Health Law Institute
Mr. Bill Grant	Member, Ad Hoc Committee on Guardianship
Professor Archie Kaiser	Professor of Law, Dalhousie University
Justice E. Roscoe	Nova Scotia Court of Appeal
Ms. Estelle Theriault, Q.C.	Public Trustee

Members of Living Wills Advisory Group (1994)

Rev. Judith Adam-Murphy	St. David's Church, Halifax
Ms. Roberta J. Clarke	Barrister, Halifax
Mr. Doug Crossman	Canadian Mental Health Association
Ms. Penny Doherty	Executive Director, Alzheimer's Society
Mr. Jean-Pierre Galipeault	Consumer Consultant, Self-Help Connection
Dr. William Hart	Chair, Nova Scotia Advisory Commission on AIDS
Dr. Pamela Jarrett	Resident, Geriatrics
Ms. Anne MacDougall	Schizophrenia Society
Ms. Sarah MacKenzie	Canadian Pensioners Concerned
Mr. Harley Marchand	Canadian Cancer Society
Dr. Susan Sherwin	Philosophy Department, Dalhousie University

Comments on Adult Guardianship Discussion Paper (1993-1995)

J. Bathurst	Schizophrenia Society Ad Hoc Committee on Law Reform
Dr. Birch	Connections Club House, Camp Hill Hospital
H. Bridgewater	Member of Schizophrenia Society (dissenting)
Dr. S. Coughlan	Elder Abuse Project, Dalhousie Health Law Institute
D. Gates	Dartmouth
B. Grant	Ad Hoc Committee on Guardianship
J. Hamilton	Nova Scotia Barristers Society

H.A. Kaiser		Professor of Law, Dalhousie University
D.J. Keefe		Executive Director of Legal Services, Department of Justice
A. MacIsaac		Port Hawkesbury
F.R. MacKinnon	)	
J.A. MacKenzie	)	
M. North	)	
M. Bushell	)	On behalf of the Senior Citizens Secretariat
N. Cochrane	)	
P. Girard	)	
G. Humpries	)	
J. Lay	)	
B. Moore		Metro Chapter Schizophrenia Society
S. Murphy		Law student research paper
P.S. Niedermayer		Family Court Judge
Dr. V.J. O'Brien		Psychiatrist, Baddeck
D. Pettipas		Social Service Worker, City of Halifax
L.J. Potter		Annapolis County Seniors Council
Dr. P. Ripley		Deputy Minister, Department of Community Services
Dr. I. Slater		Aberdeen Hospital, New Glasgow
E. Theriault, Q.C.		Public Trustee
Written and Oral Comments		Workshop organized by Disabled Persons Commission

Comments on Living Wills Discussion Paper (1994-1995)

J. Bathurst	Executive Director, Schizophrenia Society of Nova Scotia
Dr. D. Birch & R. Jackson	Clubhouse Connections, Camp Hill Medical Centre
V. Black	Professor of Law, Dalhousie University
R.H. Blois	Barrister, Bedford
D. Bulmer	Halifax
B. Cartwright	Bear River
A. Gerriste	Canning
B. Grant	Ad hoc Committee on Guardianship
D.I. Jones	Barrister, Dartmouth
N.J. Logeman	Canning
D. Meyerwitz	Spencer House Seniors Cooperative Halifax
Rev. G. Pritchard	Chair, Ethics Committee, Health Services Association South Shore
M. Seguin	Dying With Dignity, Toronto
Dr. R. Stokoe	Reverend, Truro
Dr. M.D. Teehan	Psychiatrist, Halifax
Written and Oral	Workshop organized by the Disabled

Comments	Commission
Written and Oral	Workshop sponsored by Victoria County Hospice Comments Society in Baddeck, N.S.

7. Reform of the Administrative Justice System

Survey Responses (1993-1994)

Acadia University Board of Governors
Advisory Board, Nova Scotia Youth Training Centre
Advisory Body - Shelburne Youth Centre
Advisory Commission on AIDS
Advisory Committee on Protection of Special Places
Advisory Environmental Control Council (now Environmental Assessment Board)
Amusements Regulation Board
Annapolis County Livestock Health Services Board
Annapolis District School Board
Annapolis General Hospital Board of Directors
Annapolis Valley Regional Library Board
Antigonish District School Board
Apple Maggot Control Board
Association of Professional Engineers of Nova Scotia
Association of Nova Scotia Hairdressers
Atlantic Provinces Special Education Authority
Atlantic School of Theology
Board of Chiropractors of Nova Scotia
Board of Examiners (*Coal Mines Regulation Act*)
Board of Examiners (Scaling)
Board of Examiners (Stationary Engineers)
Board of Management - Soldiers Memorial Hospital
Board of Registration of Embalmers & Funeral Directors of Nova Scotia
Board of Registration - Nursing Assistants
Bridgewater Home for Special Care (Hillside Pines)
Canadian)Nova Scotia Offshore Petroleum Board
Cape Breton County Livestock Health Services Board
Cape Breton Development Corporation
Cape Breton District School Board
Cape Breton Regional Hospital
Cape Breton Regional Library Board
Children's Aid Society of Halifax
City of Dartmouth Heritage Advisory Committee
Civil Service Employee Relations Board
Clare Argyle School Board

Clean Nova Scotia Foundation
Colchester Regional Hospital
Colchester East Hants Regional Library Board
Colchester North Livestock Health Services Advisory Board
Correctional Facilities Employee Relations Board
Criminal Injuries Compensation Board
Cumberland East/Cumberland West Livestock Health Services Board
Cumberland District School Board
Cumberland Regional Library Board
Dartmouth-Halifax County Regional Housing Authority
Dartmouth Hospital Commission
Dartmouth Police Commission
Denturist Licensing Board of Nova Scotia
Digby Livestock Health Services Board
Disabled Persons Commission
Eastern Counties Regional Library Board
Eastern Kings Hospital Board of Trustees
Eastern Shore Memorial Hospital
Eastern Shore Memorial Hospital Board
Eastern Kings Memorial Hospital Corporation
Elections Commission
Emergency Measures Organization
Energy & Mineral Resource Conservation Board (Energy Board)
Family Benefits Review Board
Gaelic College Foundation
Grace Maternity Hospital
Guysborough County District School Board
Guysborough Memorial Hospital
Halifax County - Bedford District School Board
Halifax County Board of Health
Halifax County Regional Rehabilitation Centre
Halifax Court House Commission
Halifax Dartmouth Bridge Commission
Halifax-Dartmouth Port Development Commission
Halifax District Real Estate Board
Halifax Heritage Advisory Committee of the City of Halifax
Halifax Housing Authority
Halifax Police Commission
Halifax Regional Library Board
Hants West District School Board
Health Services Association of South Shore
Health Services and Insurance Commission
Inverness Consolidated Memorial Hospital Board

Inverness Victoria Livestock Health Services Board
Izaak Walton Killam Hospital
Judgement Recovery (N.S.) Ltd.
Judicial Council
Kings County District School Board
Kings County Livestock Health Services Board
Labour Standards Tribunal
Liquor License Board
Literacy Nova Scotia
Livestock Health Services Advisory Body
Lottery Commission
Louisbourg District Planning and Development Commission
Lunenburg Home for Special Care Corporation
Management Board
Maritime Municipal Training and Development Board
Maritime Provinces Higher Education Commission
Metropolitan Area Planning Commission
Minister’s Substance Abuse Advisory Board
Natural Products Council
New Waterford Hospital Commission
Nova Scotia Advisory Council on Heritage Property
Nova Scotia Advisory Council on the Status of Women
Nova Scotia Association of Architects
Nova Scotia Association of Occupational Therapists
Nova Scotia Association of Optometrists - Discipline Committee
Nova Scotia Barristers' Society
Nova Scotia Beef Commission
Nova Scotia Board of Examiners in Psychology
Nova Scotia Board of Review (Criminal)
Nova Scotia Building Advisory Committee
Nova Scotia Business Development Corporation
Nova Scotia Chicken Marketing Board
Nova Scotia College of Physiotherapists
Nova Scotia Council on Higher Education
Nova Scotia Credit Union Stabilization Fund Board
Nova Scotia Crop and Livestock Insurance Commission
Nova Scotia Dairy Commission
Nova Scotia Dental Association
Nova Scotia Dietetic Association
Nova Scotia Egg and Pullet Producers Marketing Board
Nova Scotia Environment Trust Fund
Nova Scotia Fisheries Loan Board
Nova Scotia Government Purchasing Agency

Nova Scotia Grain Marketing Board
Nova Scotia Greenhouse Vegetable Marketing Board
Nova Scotia Home Care Advisory Committee
Nova Scotia Horse Racing Commission
Nova Scotia Hospital
Nova Scotia Human Rights Commission
Nova Scotia Institute of Agrologists
Nova Scotia Legal Aid Commission
Nova Scotia Liquor Commission
Nova Scotia Marshland Reclamation Commission
Nova Scotia Municipal Finance Corporation
Nova Scotia Museum Board of Governors
Nova Scotia Pharmaceutical Society
Nova Scotia Police Commission
Nova Scotia Police Review Board
Nova Scotia Primary Forest Products Marketing Board
Nova Scotia Provincial Exhibitions Commission
Nova Scotia Real Estate Association
Nova Scotia Rehabilitation Centre
Nova Scotia Research Foundation Corporation
Nova Scotia Residential Tenancies Boards
Nova Scotia Resource Recovery Fund Board
Nova Scotia Senior Citizens Commission
Nova Scotia Social Service Council
Nova Scotia Student Aid Higher Appeal Board
Nova Scotia Turkey Producers Marketing Board
Nova Scotia Utility and Review Board
Nova Scotia Well Drilling Advisory Board
Nova Scotia Wool Marketing Board
Nova Scotia Women's Directorate
Nova Scotia Youth Conversation Council
Nova Scotia Youth Secretariat
Novaco Limited
Occupational Health and Safety Advisory Council
Pay Equity Commission
Peggy's Cove Commission
Pictou Antigonish Regional Library Board
Pork Nova Scotia
Provincial Apprenticeship Board
Provincial Dental Board of Nova Scotia
Provincial Health Council
Provincial Library Council
Provincial Medical Board

Provincial Tax Commission
Public Accountants Board
Public Sector Compensation Restraint Board
Registered Nurses Association of Nova Scotia
Richmond County Health Services Board
Richmond District School Board
Rosedale Home for Special Care
Securities Commission
Senior Citizens Secretariat
Sherbrooke Restoration Commission
Shubenacadie River Grand Lake Watershed Advisory Board
South Shore Regional Library
St. Martha's Regional Hospital
Strait-Richmond Hospital
Surplus Crown Property Committee
Sydney Steel Corporation
Teachers' Pension Commission
The Vegetable & Potato Producers Association of Nova Scotia
Trade Centre Limited
Traffic Control Authority
Twin Oaks Memorial Hospital
University College of Cape Breton
Veterinary Medical Association
Victoria General Hospital
Waterfront Development Corporation
Weed Control Advisory Committee
Western Counties Regional Library Board
Western Kings Memorial Hospital
West Nova Livestock Health Services Board
Wildlife Advisory Council
Womens Institute of Nova Scotia
Yarmouth Regional Hospital

Members of Advisory Group (1994-1995)

L. Cohen	Barrister
J. Fay	Dalhousie Legal Aid
A. Green	Utility and Review Board
W. Lahey	Department of Justice
K. MacDonald	N.S. Advisory Council on the Status of Women
G. MacLean	Ombudsman
R. McGarva	Dalhousie Legal Aid
B. Mitchell	Chair, C.B.A. Administrative Law Section, N.S. Branch

D. Pothier	Dalhousie Law School
F. Richardson	N.S. Veterinary Medical Association
A. Scott	Department of Justice
M. Shears	Chair, Liquor Licensing Board
G. Steele	Workers' Compensation Board
B. Ward	Barrister

People or organizations who responded to the Discussion Paper (1996)

J. Asuncion, Jr., Dr. H. Jones, Board Members, Allergy and Environmental Health Board
I. Blue, Toronto
Canadian Bar Association, Administrative Law Section, Nova Scotia branch
G. Carroll, Truro
P. Clahane, Halifax
H. Epstein, Halifax
M. Freeman, Department of Justice Canada, Administrative Law Section, Ottawa
S. Horne, Dept of Agriculture and Marketing (on behalf of the managers of the Nova Scotia Farm Loan Board, the Dairy Commission, the Crop and Livestock Insurance Commission, and the Grain and Forage Commission)
J. Merrick, President, Nova Scotia Barristers' Society
C. Moore, Executive Director, Registered Nurses' Association
S. Nicholson, Director, Nova Scotia Environmental Assessment Board
G. Steele, Halifax
B. Ward, Halifax

8. Reform of the law dealing with Matrimonial Property

Members of Advisory Group (1995)

Anne Bishop	Henson College, Dalhousie University
Douglas Campbell, Q.C.	Barrister
Patrick Casey	Barrister
Julia Cornish	Barrister
Donna Franey	Barrister, Dalhousie Legal Aid
Katherine MacDonald	N.S. Advisory Council on the Status of Women
Kit Waters	N.S. Department of Justice
Judge R.J. Williams	Family Court

Written Comments on Matrimonial Property Discussion Paper (1996-1997)

J. Arnold, Q.C.	Barrister
R. Aucoin	L'Association des juristes d'expression française de la Nouvelle-Ecosse

J. Begin	Dartmouth
K. Brookes	Policy Analyst/Legal Advisor, Atlantic Policy Congress of First Nation Chiefs Secretariat Inc.
A. Chapman &	Chair and Vice-Chair, Real Property Section,
K. Greenwood	Canadian Bar Association (N.S.)
J. Cornish	Barrister
M. Dechman	Nova Scotia Women's Directorate
G. Dragone	Hantsport
V. Dunlop	Lower Sackville
J. Embree	Westville
H. Foote and	Chair and Vice-Chair, Family Law Section,
J. Cornish	Canadian Bar Association (N.S.)
S. Foreman	Halifax
Justice W.R.E. Goodfellow	Supreme Court of Nova Scotia
W.B. Gillis, Q.C.	President, Annapolis County Barristers' Society
C. Gloade	President, Nova Scotia Native Women's Association
Justice D. Hallett	Nova Scotia Court of Appeal
S. Jain	Windsor, Ontario
K.M. Kahansky	Towers Perrin, Toronto, Ontario
K. LeBlanc	Halifax
W.L.C. Myers	Halifax
J. Williams	Acting Superintendent of Pensions, Department of Finance (N.S.)

9. Electronic Information and Privacy/Protection of Personal Information (as similar work was undertaken by the Uniform Law Conference of Canada, the Commission chose not to issue any reports or recommendations for this project)

Members of Advisory Group (1995-1996)

Frances Campbell	Consumers' Association of Canada
Gary Dupuis	Director of Community Corrections (N.S.)
Neil Ferguson	Lawyer, N.S. Dept. of Justice
Bruce Findlay	Senior Policy Analyst, N.S. Dept. of Transportation
Kevin Hall	Acting Director, Information Technology, Policy and Standards, Govt. of N.S.
Christine Hirschfeld	Lawyer, Boyne Clarke
Peter Moak	Systems Analyst, iSTAR
Sirje Weldon	Regional Director, Canadian Bankers' Association

10. Mortgage Foreclosure and Sale

Members of Advisory Group (1996)

Charles W. MacIntosh, Q.C.	Lawyer
Timothy C. Matthews, Q.C.	Lawyer
Anne Merry	Business & Consumer Affairs (NS)
W. Augustus Richardson	Lawyer
Tim Walsh	Scotiabank

Written comments on Discussion Paper (1997-1998)

Mervin F.J. Burgard, Q.C.	Lawyer (London, Ontario)
Kelly L. Greenwood	Lawyer, on behalf of the Real Property Section of the Canadian Bar Association (Nova Scotia Branch)
Stephen Kingston	Lawyer
Peter Landry	Lawyer
Betty MacNeil	Member of public
Timothy C. Matthews, Q.C.	Lawyer
The Honorable Mr. Justice Joseph T. Robertson	Federal Court of Canada
Jim Woods	Northern Nova Scotia Real Estate Board

Oral comments on Discussion Paper (1997-1998)

Adrian Campbell	Lawyer
George C. Huckle	Canada Mortgage and Housing Corporation
George Lohnes	Lawyer
CBA Legislation and Law Reform Committee	Conference Attendees, November 1997

11. Reform of the Probate System

Members of Advisory Group (1997)

John W. Arnold, Q.C.	Lawyer
Sharron M. Atton	Registrar, Probate Court
A. Lawrence Graham	Lawyer
David A. Howlett	CIBC Trust
Joan F. Lay	Canadian Pensioners Concerned
John K. MacDonald	Bank of Montreal
Justice Simon J. MacDonald	Supreme Court of Nova Scotia
Christine A. Mosher	Lawyer, Department of Justice (NS)
M. Estelle Theriault, Q.C.	Public Trustee
Shauna L. Wilson	Director of Probate

Written comments on Discussion Paper (1998-1999)

John W. Arnold, Q.C.	Lawyer
Myra L. Batalion	Lawyer
Ronald W. Burton	Lawyer
A. Lawrence Graham	Lawyer
Lawrence J. Hayes, Q.C.	Lawyer
David A. Howlett	CIBC Trust
Peter Lohnes	CBA - Nova Scotia, Wills & Trusts Section
Pamela MacDonald	Canada Trust
Kathleen Main	Member of the Public
Kay Rhodenizer	Lawyer
Wayne G. Ripley	Royal Trust
Eric O. Sturk	Lawyer
Milton J. Veniot, Q.C.	Lawyer

Oral Comments on Discussion Paper (1998-1999)

Jack A. Innes, Q.C.	Lawyer
Gary Manthorne	Lawyer
Timothy A. Reid	Lawyer
Sidney Shaw	Member of the Public
Colchester County Bar Association	
Cumberland County Bar Association	
Kings County Barristers' Society	

12. Enduring Powers of Attorney

Members of Advisory Group (1997)

Roberta J. Clarke, Q.C.	Lawyer
Wayne Cochrane	Lawyer, Dept. of Health (N.S.)
Kathryn Garden	Executive Director, Alzheimer Society of Nova Scotia
Philip J. Jenkins	Investment Advisor, RBC Dominion Securities
Wayne G. Ripley	Will and Estate Planner, Royal Trust
Estelle Theriault, Q.C.	Public Trustee
Brian Vandervaart	Director, Nova Scotia Senior Citizens Commission\Secretariat

Written comments on Discussion Paper (1998-1999)

Remi J. Chiasson	Member of the Public
Trevor I. Hughes	President and Chief Executive Officer, Evangeline Trust Company
Linda Kiley	Manager, Fiduciary Services, Scotiatrust
Peter A. Lohnes	Chair, CBA-Nova Scotia Wills and Trusts Section
William M. MacDonald	Manager, Deposit Services, League Savings and Mortgage
Wayne G. Ripley	Will and Estate Planner, Royal Trust
Robert L. Smith	Member of the Public

Oral comments on Discussion Paper (1998-1999)

Tom Khattar	Lawyer
Wayne G. Ripley	Will and Estate Planner, Royal Trust

CBA-Nova Scotia Health Law Section
Participants at CBA - Nova Scotia Legislation and Law
Review Committee Fall Forum, Dalhousie University

13. Hospitals Act

Members of Advisory Group (1999)

Joanne Bertrand	Executive Director, Schizophrenia Society of Nova Scotia
Jean Pierre Galipeault	Programs Manager, Self-Help Connection
Professor Elaine Gibson	Chair, Psychiatric Facilities Review Board
Professor Jean Hughes	Policy Advisor, Canadian Mental Health Association, Nova Scotia Division
Professor Archie Kaiser	Dalhousie Law School
John Murphy	External Consultant, Nova Scotia Department of Health
Dr. Kim Plaxton	Dalhousie Health Services
Sergeant Robert F. Purcell	Special Advisor, Criminal Operations Branch, RCMP
Sharon Rudderham	Health Director/Advisor Union of Nova Scotia Indians
Lorraine Etter	Confederacy of Mainland Micmacs
Estelle Theriault, QC	Public Trustee
Dr. Scott Theriault	Staff Psychiatrist, The Nova Scotia Hospital

Written comments on Discussion Paper (2000-2001)

Catherine Anderson	Relative of Consumer
Wesley Anderson Jr.	Relative of Consumer
Wesley Anderson, Sr.	Former Husband of Consumer
Anonymous	
Patricia Bland	Administrator, Scotia Nursing Homes Ltd. Adult Residential Centre
Terry Burke	Relative of Consumer
Cynthia L. Chewter	Co-ordinator, Nova Scotia Association of Women and the Law
Dr. Linda Courey	Program Director, Mental Health Services, Cape Breton Healthcare Complex
Jeanne Desveaux	Law student and nurse
Jean-Pierre Galipeault	Program Supervisor, National Network for Mental Health
Dr. William G. Gill	Psychiatrist
Elinor M. Grandy	Member of public
John E. Gray, Ph.D.	Manager, Policy and Systems Development, Adult Mental Health Division, B.C. Ministry of Health
Jean Hughes	University Professor
H. Archibald Kaiser	University Professor
Suzanne L. Kennedy	Lawyer
Patrick Lee	Program Director, Mental Health Program IWK Grace Health Centre
Dr. Michael MacKenzie	Physician
John MacDougall	Member of public
Melanie Masters	Relative of Consumer
Todd Masters	Relative of Consumer
Dr. David Mulhall	Psychiatrist
Dr. R.D. Mullan	Medical Director, Kings Regional Rehabilitation Centre
Dr. Therese O'Neill	Psychiatrist
Capt. John Owens, Jr.	Consumer
Judith Pazder	Relative of Consumer
Dr. Michael D. Teehan	Psychiatrist
J. Walter Thompson	Lawyer
Suellen Wilson	Executive Director Halifax County Regional Rehabilitation Centre

Oral comments on Discussion Paper:

Anonymous	Mental Health Consumer
Terry Burke	Relative of Consumer
John MacDougall	Member of the public
Dr. Michael MacKenzie	Physician
Todd Masters	Relative of Consumer

14. Interim Payment of Damages

List of People and Organizations Who Commented on the Discussion Paper or on Rule 33

Oral comments (2000)

Trevor Wheeldon	Lawyer, MacMillan Wheeldon

Written comments (2000)

Peter D. Darling	Lawyer, Huestis Ritch
W. Dale Dunlop	Lawyer, Walker, Dunlop
D.W.J. Forgeron	Vice President, Atlantic Insurance Bureau of Canada
Jason P. Gavras	Lawyer, Pavey Gavras
Michael F. LeBlanc	Lawyer, Boyne Clarke
Hugh R. McLeod	Lawyer, Sole Practitioner
Tim Rattenbury	Lawyer, New Brunswick Department of Justice
W. Augustus Richardson	Lawyer, Huestis Ritch

APPENDIX C

Law Reform Commission Publications

Administrative Justice System (Agencies, Boards and Commissions - ABC Report)

- *Agencies Boards and Commissions: The Administrative Justice System* (Discussion Paper, January 1996)
- *Reform of the Administrative Justice System in Nova Scotia* (Final Report, January 1997)

Adult Guardianship/Advance Health Care Directives

- *Adult Guardianship in Nova Scotia* (Discussion Paper, September 1993)
- *Living Wills in Nova Scotia* (Discussion Paper, November 1994)
- *Adult Guardianship and Personal Health Care Decisions* (Final Report, November 1995)

Domestic Violence

- *Violence in a Domestic Context* (Discussion Paper, March 1993)
- *From Rhetoric to Reality, Ending Domestic Violence in Nova Scotia* (Final Report, February 1995)

Enduring Powers of Attorney

- *Enduring Powers of Attorney in Nova Scotia* (Discussion Paper, June 1998)
- *Enduring Powers of Attorney in Nova Scotia* (Final Report, September 1999)

Enforcement of Maintenance Obligations

- *Enforcement of Maintenance Obligations* (Discussion Paper, July 1992)
- *Enforcement of Maintenance Obligations* (Final Report, November 1992)

Hospitals Act

- *Mental Health Provisions of the Hospitals Act* (Discussion Paper, September 2000)

Interim Payment of Damages

- *Interim Payment of Damages* (Discussion Paper, January 2000)
- *Interim Payment of Damages* (Final Report, January 2001)

Jury System

- *Reform of the Jury System in Nova Scotia* (Discussion Paper, May 1993)
- *Reform of the Jury System in Nova Scotia* (Final Report, June 1994)

Matrimonial Property

- *Matrimonial Property in Nova Scotia: Suggestions for a New Family Law Act* (Discussion Paper, April 1996)
- *Reform of the Law Dealing with Matrimonial Property in Nova Scotia* (Final Report, March 1997)

Mortgage Foreclosure and Sale

- *Mortgage Foreclosure and Sale* (Discussion Paper, July 1997)
- *Mortgage Foreclosure and Sale* (Final Report, September 1998)

Probate

- *Probate Reform in Nova Scotia* (Discussion Paper, March 1998)
- *Probate Reform in Nova Scotia* (Final Report, March 1999)

Status of the Child Born Outside Marriage

- *The Legal Status of the Child Born Outside of Marriage in Nova Scotia* (Discussion Paper, August 1993)
- *The Legal Status of the Child Born Outside of Marriage in Nova Scotia* (Final Report, March 1995)

Annual Reports 1991 - 2000

APPENDIX D

Law Reform Commission Recommendations Brought into Effect in Legislation

Title and Date of Report	**Action**
Enforcement of Maintenance Obligations in Nova Scotia (1992)	*Maintenance Enforcement Act*, SNS 1994-95, c. 6 Amendment of the *Maintenance Enforcement Act*, SNS 1998, c. 30, to allow access to locked-in pension funds or RRSP contributions of parents or ex-spouses who fail to make court ordered payments
Reform of the Jury System in Nova Scotia (1994)	*Juries Act*, SNS 1998, c. 16
From Rhetoric to Reality, Ending Domestic Violence in Nova Scotia (1995)	Training of some 2000 government personnel in appropriate responses to domestic violence; establishment of monitoring committee
The Legal Status of the Child Born Outside of Marriage in Nova Scotia (1995)	The *Justice Administration Amendment (1998) Act*, SNS 1998, c. 8, amended the *Intestate Succession Act*, to end distinctions based upon whether or not a child was born outside of marriage
Reform of the Administrative Justice System in Nova Scotia (1997)	Establishment by government in 1998 of the course, "Foundations of Administrative Justice," to train members of tribunals that conduct hearings
Reform of the Law Dealing with Matrimonial Property in Nova Scotia (1997)	Extension of certain rights and obligations to common law relationships, including same-sex couples (*Law Reform 2000 Act*, SNS 2000, c. 29)

Title and Date of Report	**Action**
Probate Reform in Nova Scotia (1999)	*Probate Act*, SNS 2000, c. 31

APPENDIX E

"MEASURING SUCCESS IN LAW REFORM"

[Text of a Paper Prepared and Presented to the Meeting of Commonwealth Law Reform Agencies, Vancouver Trade and Convention Centre, 25 August 1996, by William Charles, Q.C., Co-President, Law Reform Commission of Nova Scotia. Reproduced with Permission of the Author].

I would like to thank the Commonwealth Law Conference for the invitation to attend the Conference along with my Co-Commissioner, Dale Sylliboy, as representative of the Law Reform Commission of Nova Scotia.

One of the important aspects of strategic planning involves the setting of targets and some method of evaluation designed to determine how close to the targets the strategic plan has been able to bring the institution for which the plan was devised. If we were to apply this approach to the operation of Law Reform Commissions, we would start with the mandate given to the Commissions, review their performance and then make some decision about that performance in light of the goals and objectives outlined in their mandate. The mandate or purpose of most Law Reform Commissions, however, is usually set out so broadly that evaluation of the performance of the Commission in any reasonably precise or specific way is very difficult but a general assessment is perhaps possible. For example, the principal objective or purpose of the Nova Scotia Law Reform Commission is stated in its enabling Statute to be:

> "to review the law and the legal system in the province and any matter relating to law in the province and to make recommendations for the improvement, modernization and reform, including recommendations for:
>
> (a) the development of new approaches to and new concepts to law that serve the changing needs of society and of individual members of society,
>
> (b) clarification and simplification of the law,
>
> (c) removal of provisions of the law that are outdated,
>
> (d) improvement of the administration of justice,
>
> (e) review of judicial and quasi judicial procedures."

Were we to examine our accomplishments over the past 5 years we could comfortably say that we have made recommendations which, we believe, will or would, if implemented, result in the improvement, modernization and reform of the law. We have made recommendations that would modernize the law in areas related to Juries, the Status of the Child, and Adult Guardianship. We have also suggested new approaches to the law in our reports on Enforcement of Maintenance

Orders, and Living Wills. We have recommended changes that would improve the administration of justice in the *Juries Act* and put forth recommendations in the Report on Domestic Violence that hopefully will result in more effective control of this type of physical abuse. In an Administrative Justice paper we reviewed judicial and quasi judicial procedures and have recommended certain changes.

On the face of it then, and taking what is, admittedly, a purely subjective view, we should feel satisfied that we have gone a long way to fulfilling our statutory mandate. But is this the only or perhaps the most important measure of success? Some would argue that the only measure of success that matters is whether law reform commission recommendations become law by being accepted, in whole or in part, by the government and enacted in statute form by a legislature. Anything less than becoming "the law of the land" is considered inconsequential. If this is the true measure of success is it a quantative assessment? For example, does it matter how many statutes are enacted each year that reflect commission reports? Does it make any difference whether they are long or short, declaratory of the existing law, housekeeping kinds of statutes, or statutes that herald a new policy direction? Is it enough to get a statute simply enacted as a law to qualify as a measure of success? Or does "success" mean not only legislative enactment but enactment of a statutory product that actually works, and achieves its purpose or purposes, even though this may take a few years to assess? Is it relevant how many amendments were required over a period of say 5 years following enactment?

Obviously enactment into legislation is not as straight forward a test as it might seem at first glance.

But are there other measures of success besides the two (2) just mentioned? Is the number of research projects completed and published in the form of a final Commission report by the Commission in a given year an equally valid performance indicator? Some projects are large in scope, require extensive sociological and economic data to be gathered perhaps with widespread public consultation. Others are narrower in scope, more manageable in size and take less time to complete. Performance cannot accurately be measured by means only of report production although this is certainly a common gauge that is used by some observers.

Some projects generate considerable reaction both for and against the project from interest groups and the media while others attract little or no attention. Does this mean that one project is more relevant and important than the other? Perhaps it is the number of "hits" a project report receives on the Internet that is the true measure of public interest in a project today and therefore success. Alternatively, the number of public requests for papers might establish relevance and constituency. Does a Commission do itself a disservice by making recommendations for change that do not involve the enactment of legislation but, rather, emphasize the needs for administrative or operational changes in the way that existing legislation is being implemented (or not). Is it enough for a Law Reform Commission to raise public awareness about a given issue which the Commission thinks is in need of reform or should a Commission, having identified an area in need of reform, go the whole route including proposing new legislation and lobbying to see that the government enacts it?

The Nova Scotia Law Reform Commission was reactivated[1] as an independent commission in 1991 in part in response to the "Marshall Inquiry"[2] which my colleague, Dale Sylliboy has referred to. As a result, issues of access to justice and equality seem to have been accorded greater weight in the earlier years than some other more technical or perhaps traditional types of projects.

As Dale noted, The Nova Scotia Law Reform Commission is composed of 2 members nominated by the Barristers' Society, 1 member representing the Courts, 1 representative of the Law School, and 3 members at large. Of the 3 members at large, the majority are usually non-legally trained persons.

The Commission has been concerned in the past with the public perception of areas of law that need to be reformed although we have not and do not conduct opinion polls as such. Perhaps it is our collective idea of what the public thinks are problems that guide us and we do receive suggestions for reform from some individuals and groups, but certainly our non-legal representatives can and do bring important guidance to the Commission in this regard. We obviously also receive input from the Bench and Bar representatives and the Law School representatives bring to the table concerns of the academic community.

One issue that our Commission has considered over the past few years is whether to take on a project that we think really has little chance of going forward to the legislature for their consideration either because it involves new costs or is low in terms of government priorities. Even though legislation is recommended by the Commission which we believe will not come to pass, is there value never the less in taking on the project and issuing a *Discussion Paper* and *Final Report*? The only value or benefit flowing from the exercise will be a certain amount of basic legal research in the particular area, perhaps some raising of public awareness and public discussion of the problems involved. Is this enough to warrant spending the Commissioners' limited resources on such a project?

The *Consultation Paper on Racial Equality*, recently published by the CBA Working Group on Racial Equality, in February 1996 suggested that: "Law Reform Commissions are uniquely placed to engage the legal profession, the public and government in discussion regarding issues of legal practice, substantive law and public policy."

Although the Report focused upon Racial Equality issues, the suggestion in the Report is equally relevant to a broader range of law reform issues.

The Nova Scotia Commission has decided as a matter of policy that raising public awareness as one aspect of public education is a valid and worthy objective and within our mandate when we consider whether or not to take on a project, or to publish a research paper or final report. Obviously, we cannot and would not want to adopt this approach too frequently unless we were able to

---

[1] There was an Independent Advisory Commission in 1970s which produced a number of reports, but eventually ceased to exist, largely due to lack of funds.

[2] The Royal Commission on the Donald Marshall, Jr. Prosecution, 1989.

demonstrate that at some point in time some of our efforts were effective, rewarded and did result in legislative action. In this we are conscious of our role relative to other agencies such as Public Legal Education and other advisory/research agencies such as the Human Rights Commission.

It was this awareness that eventually influenced the Commission not to undertake a project of law reform in the area of Human Rights that contemplated possible amendments to the Human Rights *Act* of Nova Scotia. The suggested changes would have involved the use of different procedures to help resolve human rights disputes and possible tougher sanctions. However, after considerable discussion of the proposed project by members of the Commission, the majority concluded that concerns expressed about the operational effectiveness of the Human Rights Commission flowed largely from a dissatisfaction with operational policies of the Human Rights Commission rather than from defects in the governing legislation. We were, therefore, extremely reluctant to intervene in what we considered to be a specialized agency's dissemination of its operational policy. In this situation any public education benefits were overridden by this concern.

An examination of some six projects that we have completed (and 2 partially completed) reveals that in five of the six reports, we recommended and provided draft legislation to reflect our recommendations. In only one project, so far, has the government reacted by passing legislation and creating constitution. However the government is gradually moving to review and adopt the recommendations in three others (Juries, Adult Guardianship and Status of the Child) and has accepted a recommendation not to legislate but to provide resources, training and accountability mechanisms in another one. I should note as a piece of contextual information that, while we have a good working relationship with the departments of government, the Commission has not taken an active advocacy role viz ? viz the legislative process. I am aware this is not the approach in many Commissions which have formal and informal meetings with legislative offices. However, this separation has also been seen as supportive of independence and it allows members of government departments to respond and comment on our work as well as provide assistance. Essentially we have taken the view that if the public and elected representatives find the recommendations to be of value then they will be adopted and debated on their merits.

A brief review of the six completed and two partially completed projects will give some idea of the thinking of the Commission. Reference will also be made to the extent to which our projects have connected with projects undertaken by the Uniform Law Conference of Canada.

1. Enforcement of Maintenance Obligations

The Commission's first project on the enforcement of maintenance obligations was one selected at the first meeting of the Commission in July, 1991. It was felt by a number of Commissioners that this was an area which was in urgent need of reform but, at the time, there was no suggestion that this was an area which required "new" legislation. Thus, from its inception the Commission broadly interpreted its mandate to include any range of policy suggestions for reform to the administration of the law as well as specific legislative changes. During the course of that project the options included amending both the *Family Maintenance Act* as well as the Rules of Court for the Supreme Court but, ultimately, the Commission decided to draft new maintenance enforcement legislation (at

the *Discussion Paper* stage as well as the *Final Report*) which includes creating a new government office.

To my knowledge there were no references to ULCC work during this project and there were no other initiatives although several other provinces had put reform in place which we considered.

2. Reform of the Jury System

This project also led to legislative and systemic change in the form of a new *Juries Act* and this appears to have been the direction from its commencement, since the *Act* is the primary vehicle for change given the provinces limited constitutional authority in this area. In the *Final Report* it was recommended that it would be simpler to actually replace the old act with a new one for ease of implementation as well as educational purposes.

This is one project where there was quite a lot of involvement with the Uniform Law Conference where Nova Scotia took the lead to bring the matter before the Conference. As stated in the *Final Report* at page 2:

> *In addition, the principles set out in this Report will be considered as a basis for reform in other jurisdictions in Canada by the Uniform Law Conference of Canada and also as part of a Federal/Provincial/Territorial initiative considering issues relating to representation and multiculturalism in the jury system in Canada.*

This was on the ULCC agenda in a broader form in August 1994 and 1995 with our Executive Director chairing the sessions. The ULCC initiative was broader in that it was also responding to a federal interest in reform on this issue. The Conference came to some agreement on principles regarding provincial laws and, as I understand it, the balance of the consideration now relates to federal reform of the *Criminal Code* procedures.

3. Domestic Violence

This was a more unusual project which could have taken two approaches. The one selected (at both the *Discussion Paper* stage as well as the *Final Report* stage) was that the current sanctions under the *Criminal Code* were appropriate and civil remedies were not necessary. A more consistent and effective enforcement of the existing *Criminal Code* provisions was thought to be the more useful response on the part of the justice system. A new statute could have been recommended to provide additional civil remedies in Supreme Court (an approach used in many provinces) but this was not the approach proposed by the Commissioners who felt the issues related to problems of social attitudes and problems in the delivery of the system not law per se. The Commission was also concerned about any suggestion that this type of violence is less than criminal conduct. Subsequential amendments to the *Family Maintenance Act*, the *Family Court Act* and the *Matrimonial Property Act* were included in the *Final Report* but
these were incidental to the primary recommendation of the Commission and this was that:

After a great deal of reflection, the Commission has concluded that while some changes could and should be made to the written laws, the heart of the problem lies in the way the existing law is given meaning in society - that is, how it is applied in cases of domestic violence...

Exercises of discretion in the delivery of legal services in cases of domestic violence must be structured to ensure that the government's policy and the laws prohibiting domestic violence is complied with by the people providing legal services. This can be achieved though a combination of structured decision-making and increased personal and public accountability including:

* *Developing system-wide inter-departmental Protocols for handling domestic violence cases and committing sufficient human, education and technical resources including modern communication systems to allow effective delivery;*

* *Adopting as the central principle the protection and security of the woman and any other endangered people as the priority for all decisions;*

* *Ensuring that the existing system for monitoring cases is enhanced and that there is personal accountability for individuals involved in implementing the Protocols; (at 3).*

With respect to this project it is interesting to note that the Commission's report appears to be the way the government has chosen to proceed in spite of a report released simultaneously by a staff member on the Attorney General's department suggesting new "civil legislation". In this case, though, clearly the end product of the Commission was not draft legislation and yet it has been "successfully" implemented by the government through allocating money and training to ensure better justice service and enforcement. For example, the Justice Department has designed, with the co-operation of police, transition houses, prosecutors, and violence support services, response forms and audit procedures to ensure individual and institutional compliance with the government policy on this issue.

In terms of the Uniform Law Conference, this is not an area which appears to be of interest to the Conference although almost every province/territory as well as the federal government have had numerous studies examining the issues and attempting to provide solutions.

4. Status of the Child Born Outside Marriage

The goal of this project from the outset was new legislation which would bring Nova Scotia's laws in line with the U.N. *Declaration on the Rights of the Child*. This was an area where Nova Scotia was (and continues to be, since the recommended legislation has yet to be introduced) behind other provinces and territories in Canada. Most other jurisdictions changed their laws to include some of

the reforms suggested by the Uniform Law Conference of Canada in its *Uniform Child Status Act*.[3] The Nova Scotia Department of Justice had initially considered this issue several years ago and supported the view of the Commission that it was an important area for law reform. Ironically, in spite of all this there has been no response from government on this proposed legislation although the Department of Justice is supportive of it. To a large extent, this has been a matter of legislative priority. The fact that the draft *Act* indirectly implements the recommendations of the Royal Commission on Reproductive Technology, may result in its adoption. The new *Act* was not the only suggestion made by the Commission as is evident from the following extract from the *Final Report*:

> *The Commission has included a number of suggestions on other related areas of social policy and legal change that the government might consider. The changes recommended in this Report will not, by themselves, remove the stigma that still may be attached to children born outside of marriage but they will ensure that discriminatory treatment is not supported or maintained by the legal system. (at 2)*

5. Adult Guardianship

This was a project taken on as a result of a submission from a group concerned specifically with the *Incompetent Persons Act* of Nova Scotia. From the start of the project it was anticipated that there would be a need to repeal this statute since it is antiquated and that it would likely be replaced by another piece of legislation. More specific issues which were not dealt with in the legislation, however, such as the need for legal aid, came in the form of a supplementary recommendations. In the *Final Report* (which was combined with the advance health care directives project, below) the main recommendation was draft legislation.

To my knowledge the Uniform Law Conference is not involved in a project in this area either. One aspect of the draft *Adult Guardianship Act* does touch upon a recent ULCC initiative. Section 24(4) of the draft Act discusses a trustee's obligations with respect to a portfolio of investments and includes the following commentary:

> *Section (4) is the same as found in the Trustee Act, R.S.N.S. 1989, c. 479 which was amended in 1995 and the duty seems an appropriate one for an estate guardian as well as a trustee. Before these amendments, trustees were permitted to invest in specific listed investments. These amendments were made in response to the 1970 Uniform Law Conference of Canada's model Prudent Investors Act. It should be noted that the Uniform Law Conference of Canada is amending its 1970 model Act in light of the 1994 American model Uniform Prudent Investor Act which implements a portfolio approach to investments. It may be appropriate to use this later model and to amend Nova Scotia's Trustee Act and Provincial Finance Act, R.S.N.S. 1989, c.365 at the same time.*

[3] Uniform Child Status Act, 1982, as am., 1991.

6. Living Wills/ Advance Health Care Directives

This was a spin-off project from the adult guardianship project since it was decided by the Commission that Nova Scotia needed a viable alternative to guardianship of the person and that an updated and expanded piece of legislation would assist. Again, then, this project was taken on with the anticipation that there would be significant amendments or repeal of the existing *Medical Consent Act* (which provided a proxy form of Advance Directive). This was a project which had already been addressed by Law Reform Commissions in Newfoundland, Saskatchewan, Manitoba and Alberta as well as by other initiatives in British Columbia and Ontario.

The Uniform Law Conference was involved with one aspect of this, inter-provincial recognition of advance health care directives, in that:

> *the Uniform Law Conference of Canada recommended that provinces pass a law recognizing advance health care directives made in other provinces which would be in keeping with the freedom of movement between provinces.*[4]

7. ABCs and the Administrative Justice System

This project is a little unusual only in the sense that it was an official Reference from the government and specifically asked the Commission to draft legislation. The Commission has published a *Discussion paper* which includes additional suggestions which do not necessitate legislative change:

> *The Commission believes that the institutions providing administrative justice should be reformed to better serve public and Government needs. In particular the Commission suggests that, aside from training and more considered structuring of agencies, there should be one Administrative Appeal Board for all administrative appeals in Nova Scotia. (at 3)*

This is also a project that the Uniform Law Conference has become involved with including draft legislation such as the: *Model Administrative Procedure Code* presented to the Uniform Law Conference of Canada, 1991 (prepared by Y. Ouellette). This approach is a fairly simple and straightforward one as compared to the detailed code suggested by the federal department of Justice. Since this is still at the *Discussion Paper* stage there has not been a final Commission decision as to the exact type of legislative approach to favour.

8. Matrimonial Property

This project is, in some respects, another spin off and builds on the earlier Maintenance Obligations Report and the Status of the Child Report. There was a concern expressed in the *Enforcement of*

---

[4] Report of the Uniform Law Conference of Canada Committee on Recognition of Foreign Health Care Directives (Document No. 840-663/069, 1992).

Maintenance Obligations Report that the law in Nova Scotia was in need of reform in its treatment of family assets and in the other *Report* the concern was that the social fact of increasing number of cohabitation including same sex relationships must be considered and accommodated in the law. It appears that this project will likely take the form of a draft Family Law *Act*.

Earlier in the paper we raised the question concerning the criteria to determine whether law reform commissions have been successful or not. If the criteria for judging success or failure in law reform is the batting average of enacted legislation, the Nova Scotia Law Reform Commission to date is only batting 143% out of 1000. It can be argued that the enactment of legislation indicates government and legislative approval of commissions' proposals and also indirectly public approval as well. This is obviously important in terms of general approval. In addition we have two funding sources, a fact which necessitates some degree of budget justification. Implicitly we face a "sunset clause" every year on the decision the two funders make to invest on the Commission rather than use their funds elsewhere. This reference to public approval raises the next question as to who counts when measuring the success of a law reform commission endeavour. Does the fact that government legislation is passed which, in general, even though not in every detail, adopts our recommendations, necessarily mean that our product is a good one or that we have met our general goal of reforming the law for the better? Certainly there will be groups who will not approve or appreciate the changes proposed in Law Reform Commission reports, particularly when the subject matter involves very emotional issues or requires the making of difficult policy choices.

A report and statute adopting it that merely modernizes an area of the law bringing it into line with contemporary social values and technological or other changes would not cause the same degree of reaction and criticism (except perhaps from lawyers who have become used to the provisions of the old law) as would a report and statute that reflects a new direction in legal development and policy. Even though a Commission report may not inspire legislation, can its worth be determined by the number and tone of comments received in response to the report or comments by the media or by the fact that many copies are ordered by a variety of sources or by the fact that the report is used as a source for law reform efforts by other agencies in other jurisdictions? We would argue that there is considerable value in such a report even though it does not receive legislative approval and does not result in a statute being enacted.

Even a report that engenders no interest, sparks no comment, criticism or otherwise, is ignored by both the public, the Bar, the government and interest groups, may still have some value as an educational device, or does it? How do we know how many people were somehow affected in the views or their information base but who made no objective sign that they did in fact benefit in some way? Without any objective evidence by way of reaction, comment or otherwise, we can only hope that the report had some impact. In a court of law this would not constitute good evidence.

Law Reform Commissions do not conduct public opinion polls to find out how the public has accepted or not accepted their efforts and their products. Perhaps we should. We would have to be careful to sample equally the various constituencies that make up our public because to sample the opinion of main street may very well produce a different reaction than a sampling of the Bench, the Bar, the Legislature, interest groups or academia.

Who is best situated to judge our effectiveness and the extent to which we have carried out or are carrying out our mandate? In this context I note the proposed structure for the Canada Law Commission which includes an interest board or advisory council which will evaluate that Commission's work and agenda. We make an Annual Report on our finances, agenda and projects that is tabled in the Legislature and so far we have received no feedback whatsoever on this report other than continued funding. Do we need an official report card? The environment gets assessed yearly by some organization, universities get ranked and commented upon by the MacLean survey, and T.V. shows have their ratings, but what about Law Reform Commissions? Who should do the evaluation? The people who support us financially? The people who are affected by our work? Should this happen even when legislation is not enacted or the media? Perhaps peer review by other Law Reform Commissions, if they had the time to do so, would provide an effective assessment of the Law Commission product.

Conclusion

Having raised a number of questions, I can only give you our limited response. We members of the Nova Scotia Law Reform Commission have not limited our projects to those that we believe will culminate in a draft statute. We believe something useful has been done if our Report brings about change in the actual operations and the functioning of some aspect of the law and increases public awareness of certain problems with which the law is attempting to grapple even though no legislation is either recommended or enacted. We have decided that there is value in raising public awareness of certain problems and the need for change even though nothing will done legislatively or perhaps even functionally because of cost problems or other implementation difficulties. We believe we have been successful if we can educate the public and raise public awareness about certain social issues by way of a *Discussion Paper* (which we try to write in an understandable style and provide freely to any person who asks). However, as we have already noted it is very difficult to determine just how much public awareness has been raised if there is no reaction to the *Paper* or *Report*. We may subjectively feel that having gone through the discussion process and the analytical process and the consultation process and grappled with difficult policy choices, that we have in our own mind produced a worthwhile product and one that improves the general condition of the law. But if there is no response from the public or from the legislature how are we to know whether in fact our efforts have been worthwhile or whether they have just been a waste of time? Admittedly, our approach, which emphasizes public education and public awareness, can be very difficult to measure in terms of success due to the potential lack of objective evidence of that success or failure. What does silence indicate? Most people would probably say it indicates a lack of interest in the topic or the problem or at least an interest that's so low that it doesn't prompt any kind of reaction. Lack of interest presumably means no perceived problem. Alternatively one could take the view that the suggestion seems to be sensible and not controversial.

For better or worse we have adopted a broader measure of success for ourselves than one based upon the enactment of legislation. Perhaps this is just a rationalization on our part given our low batting average to date. We have been tempted but have so far resisted the urge to actively lobby government officials to have our proposals placed on the legislative order paper. To be sure, subtle reminders of lack of action and missed opportunities to pass legislation are made on appropriate occasions by individual members of the Commission to those having some influence on the

legislative agenda, but so far no concerted lobbying has taken place. Whether or not those who fund our efforts feel the same way as we do about our success rate and whether they use the same criteria is unknown. So far, the funding from the Nova Scotia Law Foundation has been continued in spite of dramatic decreases in their revenues. Although the amounts allocated have decreased in recent years we have been greatly heartened by the fact that the grant we receive each year represents a very significant proportion of their total budget. Our other major donor, the provincial government, has continued to fund us at the original level in spite of financial constraint and government cutbacks.

Another measure of public approval, we think, is the increasing number of enquiries we have received from individuals and groups who ask us to recommend changes in the law that they think are necessary. The fact they see us as an important instrument of change is heartening and flattering, if not completely warranted.

Such is our experience with problems of implementation and the measurement of success. We look forward to hearing the views and experiences of others. I note that New South Wales, for example, has more often than not received formal references through the government.

Thank you for your attention.

APPENDIX F

REPORTED CASE DECISIONS WHICH DISCUSS THE CONTENTS OF LAW REFORM COMMISSION REPORTS

***Agnew* v. *Smith*, [2001] N.B.R. (2d) TBEd. AU.005 at para. 57, Drapeau, J.A. [re interim payment of damages]:**

> "The question of the standard of proof that should be applied in determining motions for advance payments has generated significant controversy in the few jurisdictions that allow such payments to be directed in cases where the issue of liability remains live. The various approaches that have found favour with the courts are canvassed in a discussion paper produced by the Law Reform Commission of Nova Scotia entitled *Interim Payment of Damages*, the salient parts of which read as follows:
>
> In some jurisdictions, interim payment is available even though liability is still in question, where a court is of the view that the plaintiff will be successful at trial. The fact that a court order is made, despite liability still being in question, has no bearing, however, on the issue of the defendant's liability, which will be decided by the trial judge. In England, seemingly the first jurisdiction to provide for court-ordered interim payment of damages, an order for interim payment can be made where the court is 'satisfied' that 'if the action proceeded to trial, the plaintiff would obtain judgment for substantial damages against the [defendant]... .' Similar language is used in legislation in New South Wales. An equivalent provision in Scotland allows for interim payment where the court is satisfied that the plaintiff 'would succeed in the action on the question of liability without any substantial finding of contributory negligence on his part....' A section in the New Brunswick *Insurance Act* also enables a judge to make an interim payment order if 'satisfied that the plaintiff will prove that the defendant is liable for those damages.'
>
> ... those jurisdictions which allow interim payment of damages even though liability is still in question differ in their choice of language to describe what the plaintiff must establish about the likelihood of his or her success at trial. A related issue involves the *standard of proof*, which refers to how satisfied the court must be that the plaintiff will succeed at trial. In criminal trials, the standard of proof is beyond a reasonable doubt. In civil (non-criminal) trials, a lower standard applies. It is often referred to as on the balance of probabilities, meaning more probable than not. Courts in England have interpreted the burden placed upon a plaintiff seeking interim payment to be something more than a *prima facie* (at first glance) standard, but something less than the criminal standard. In *Shearson Lehman Inc.* v. *Maclaine, Watson Ltd.*, Lloyd, L.J. explained:
>
> Something more than a *prima facie* case is clearly required; but not proof beyond reasonable doubt. The burden is high. But it is a civil burden on the balance of probabilities, not a

criminal burden. This involves no lasting hardship on the defendant since there is a provision for readjustment at the trial in case of an overpayment.

This decision was followed in *Ricci Burns Ltd.* v. *Toole*, where Ralph Gibson, L.J. noted:

The standard of proof on the probabilities is high but it is not necessary to exclude every possibility of failure because the order for interim payment may be reversed at trial.

In turn, Ralph Gibson, L.J. was following the reasoning given by May, L.J. in the case of *Gibbons* v. *Wall*, where further explanation of the civil burden of proof in cases involving interim payments was provided:

[T]he civil burden of proof ... is a flexible test ... and it depends upon the nature of that which has to be proved where on the flexible scale of the balance of probabilities one has to pitch the burden ... in the context of an application for an interim payment ... the burden is a high one within that standard if only because litigation of its nature involves no certainties. A plaintiff with what may appear on paper to be a strong case may find it fail at trial. If he does then he will have to repay the whole or to the extent that he fails, part of the interim payment. But ... the plaintiff may spend it ... . If he does it may be difficult ... to recover if he fails ultimately at trial. Clearly the burden resting upon an applicant in those circumstances is towards the top of the flexible scale.

A higher standard applies in Scotland, where the relevant rule requires a court to be 'satisfied' that a plaintiff 'would succeed in the action on the question of liability... .' Scottish courts interpret 'satisfied' in this context to mean that a plaintiff was 'practically certain' to succeed, or 'would almost certainly do so.' In other words, the standard is 'something less than complete certainty, but more than probability or even high probability.'

In *Roy* v. *St. Pierre*, the only reported decision to consider interim payment of damages in the context of the New Brunswick *Insurance Act*, the New Brunswick Court of Queen's Bench seems to have applied a lower standard than those used in England or Scotland. In allowing for an interim payment of $15,000 in a personal injury action which followed an automobile accident, Deschênes, J. stated his satisfaction 'in terms of probabilities that the defendant [would] be held liable for the accident ... ,' and that it was 'more likely than not the plaintiff [would] be entitled to recover damages ...' as a result of the accident. Deschênes, J. added that interim payment was awarded "on the basis of probabilities.'"

***CIBC Mortgage Corp.* v. *Jordan* (2001), 192 N.S.R. (2d) 393 at 396, Davison, J. (S.C.) [re matrimonial property]:**

> "Section 42 has been referred to as a 'second chance' section. Because the mortgagee can apply for foreclosure when the mortgagor defaults in a payment and, under a standard form of mortgage, require the mortgagor to pay the full amount owing under the mortgage, this section permits reinstatement of the mortgage. As stated by the Law Reform Commission in its report on mortgage foreclosure and sale:
>
> This reflects the second chance given by the law of equity to a borrower who missed payment but could make them up within a reasonable time."

***Future Inns Can. Inc.* v. LRB (1997), 160 N.S.R. (2d) 241 at 246, Chipman, J.A. (C.A.) [re administrative law]:**

> "In recent years, with the development of a multitude of tribunals with varying degrees of protection from judicial review, it has become fashionable for such tribunals to give reasons for their decisions. In many jurisdictions, the giving of reasons is now required by statute. In Nova Scotia, the Law Reform Commission has recommended that such legislation be enacted. See Final Report, *Reform of the Administrative Justice System in Nova Scotia*, January 1997, pp. 55-57."

***Johnson* v. *Johnson* (1998), 167 N.S.R. (2d) 201 at 211, Davison, J. (S.C.) [re matrimonial property]:**

> "The Law Reform Commission of Nova Scotia, in a discussion paper produced in April 1996 entitled *Matrimonial Property in Nova Scotia Suggestions for a New Family Law Act* referred to *Davey* v. *Davey* (supra) at p. 33 indicating the court's 'tendency to treat the discharge of general matrimonial debts more as a support issue than as a property issue'. The commission agreed with the court's approach and said this at p. 33:
>
> 'Consideration of the future earning capacity of the spouses is relevant if one treats the discharge of debts as relating to issues of entitlement to future support, while it is not relevant to the division of property under the *Matrimonial Property Act*. This approach is also consistent with recent Supreme Court of Canada decisions on support under the *Divorce Act*, 1985 , which state that property and support entitlements are simply two tools to achieve an equitable distribution of family resources on marriage breakdown, and that they may be combined in flexible ways.
>
> 'The courts' treatment of debts seems sensible. Clearly it is not appropriate to share the full value of assets which are not paid for. With regard to the matrimonial home, generally any outstanding mortgage debt will be dealt with either by selling the home, or by one party remaining in the home and becoming solely responsible for the debt (although other

possibilities are open under the *Act*). It is with regard to general living expenses that courts have exercised their discretion more freely. At first glance it may appear as if such treatment infringes spousal equality. It may also appear unfair that one spouse may have had the benefit of a certain standard of living without ultimately being responsible for half the debts incurred in reaching that living standard. However, the parties presumably incurred the debts on the basis of their joint incomes, which were not necessarily equal. Viewed in this light, it does not seem unfair that the spouses' responsibility for such debts should be roughly proportionate to their post-divorce incomes, rather than equal.'"

***Peddle* v. *Rowan Co.* (1993), 123 N.S.R. (2d) 24 at 28, Saunders, J. (S.C.) [re jury system]:**

"The *Civil Procedure Rules* say that parties have four challenges. Obviously this inconsistency should be resolved by amending the statute or the *Rules*. That point has recently been made by the Law Reform Commission of Nova Scotia in its draft discussion paper released April, 1993.

I am satisfied that no prejudice would be suffered by these defendants in having only four peremptory challenges. It would be an unfair advantage for the Rowan defendants to have a total of eight and the plaintiff to be restricted to just four. I will limit them accordingly."

***Walsh* v. *Bona* (2000), 183 N.S.R. (2d) 74 at 81-83, 95, Flinn, J.A. (C.A.) [re matrimonial property]:**

"In the Final Report on Reform of the Law Dealing with Matrimonial Property in Nova Scotia (Halifax: Law Reform Commission of Nova Scotia, March 1997) at p. 5, the Commission said the following concerning the adoption, in Nova Scotia, of the MPA in 1980:

'*The Matrimonial Property Act* was adopted in Nova Scotia in 1980 as part of a general law reform movement in all the common law provinces which attempted to address dissatisfaction with the existing law regarding division of property on the ending of marriage. Prior to these reforms the law had been based on a concept known as 'separate property'. This was a concept developed in the late nineteenth century which provided that upon marriage termination, whether by death or divorce, each spouse could retain only that property to which they could show legal title. In other words, there was no such thing as 'family property' or 'matrimonial assets'. This meant that in Nova Scotia until 1980, all property owned by a married couple was considered to belong either to the wife exclusively or to the husband exclusively, unless they had expressly obtained legal title together as co-owners of the property. While the concept of separate property may seem unfair or archaic from a contemporary perspective, it was originally adopted in 1884 in response to discontent with the common law's approach to matrimonial property. Prior to 1884 a husband was given full control over any property which his wife brought to the marriage or acquired during the marriage by any means. Separate property responded to the need of

married women to be recognized as full legal persons distinct from their husbands. Changes in the law of matrimonial property did not, however, affect the right of a wife to seek maintenance (also called support, or alimony) from her husband after divorce or separation. Both before and after the adoption of the *Married Women's Property Act*, R.S.N.S. 1884, c. 94; now R.S.N.S. 1989, c. 272 in Nova Scotia in 1884, a husband remained under an obligation to support his wife, an obligation which was in principle lifelong.

"For several decades after its adoption, separate property worked reasonably well in a large majority of cases. Questions of title to property between husband and wife are usually irrelevant while the parties are living in harmony. It is only when death, separation or divorce intervenes that questions of title become important. Even death of a spouse will not usually give rise to questions about title to property, as long as adequate provision has been made for the surviving spouse by will or by the law of intestate succession. In cases of separation or divorce, however, wives in particular were disadvantaged by the system of separate property. They had a claim to maintenance from their husbands (or ex-husbands), but no claim to any property *Egan and Nesbitt* v. *Canada* , [1995] 2 S.C.R. 513; 182 N.R. 161 to which he had sole title, even if that property had been acquired over the course of a long marriage and by their joint efforts. However, the low divorce rates which existed in Canada before the adoption of the federal *Divorce Act* , S.C. 1967-68, c. 24 in 1968, meant that the potential unfairness of the separate property system for divorced women did not come to public attention until the 1970s. Even then, judges were sometimes able to alleviate the harshness of separate property by ordering the ex-husband to pay a larger amount for lump-sum maintenance, as provided for under the *Divorce Act*.

"Rising divorce rates, increasing economic prosperity, and growing dissatisfaction with the traditional roles assigned to married women all led to intense scrutiny in the 1960s and 1970s of family law in general and of the law of matrimonial property in particular. This scrutiny was given particular momentum by the decision of the Supreme Court of Canada in *Murdoch* v. *Murdoch* , [1975] 1 S.C.R. 423. In that case, an Alberta rancher sought during the course of a divorce proceeding to have her interest in land legally recognized. Although the land had been effectively acquired through the joint efforts of both her and her husband during a 25 year marriage, title to the land was held solely in her husband's name. The Supreme Court of Canada concluded that she had no legal right to any share of it on marriage breakdown. The injustice of this state of affairs led provincial and territorial governments to consider legislative reform of matrimonial property law.

"Murdoch was important in that it pointed to the need to rethink not just the law of matrimonial property, but also the law regarding support obligations within the family (family maintenance), and the law dealing with the rights of surviving spouses against the estates of their deceased spouses (the law of succession). There was also a need to ensure that the family law of the various provinces and territories was in harmony with the federal *Divorce Act* of 1968. This Act, in addition to making divorce somewhat easier to obtain, also made it available on the same basis across Canada for the first time. The dramatic increase in the divorce rate after 1968 was undoubtedly the principal factor motivating the need to find 'orderly and equitable' ways to settle ex-spouses' financial affairs. The concept

of separate property, which assumed each spouse to be equally positioned to earn an income and acquire property, had been revealed as inadequate at both a practical and a psychological level. Practically speaking, the prevalence of the male-provider/female-dependent model in the postwar period meant that the assumption of an equal opportunity to earn income was meaningless. The separate property model also seemed to be based on a model of emotionless and rational calculation which was psychologically at odds with the acceptance of romantic love as the basis of marriage. Some provinces responded to the need for change by enacting omnibus family law reform legislation which covered both matrimonial property and family maintenance. Nova Scotia passed two acts, the *Family Maintenance Act* , R.S.N.S. 1989, c. 160 and the *Matrimonial Property Act* on the same date, June 5, 1980, and they came into effect on the same day, October 1, 1980.

"The Nova Scotia *Matrimonial Property Act* changed the existing law in two main ways:

(1) by creating a 'pool' of assets owned by either spouse, known as 'matrimonial assets', which could be divided, regardless of legal title, in equal shares between the spouses upon marriage breakdown, divorce or the death of a spouse; and

(2) by giving each spouse an equal right of possession in the matrimonial home, without regard to which spouse has the title in law; and providing that no sale or mortgage of the matrimonial home can occur without the consent of both spouses.

"The right to equal division is a presumption only, in that the Act also allows judges to make an unequal division in some cases, for example where the length of the marriage might indicate that an equal division would result in unfairness. The right to equal division arises only at the end of a marriage. Before then, each spouse retains title to whatever property is in their name, and they may freely dispose of it without the consent of the other spouse. The only exceptions to this are the right to equal possession of the matrimonial home, and to veto any sale or mortgage of it. These rights arise at the moment of marriage and continue during the marriage."
...
"In considering the objective of the MPA as a whole, the preamble is somewhat misleading. The functional objective of the legislation is, clearly, to provide for an orderly and equitable settlement of the economic affairs of married persons on the breakdown of the marriage relationship. As the Law Reform Commission of Nova Scotia, in its Final Report at p. 15, suggests:

'... it creates a mechanism which provides for the equal sharing of matrimonial assets on the termination of marriage. With the exception of the provisions relating to the home, the Act applies only at the end of a marriage, whether by death, divorce, annulment or final separation. It does not purport to tell people how they should arrange their affairs during their marriage, only what will happen to their property at the end.'"

***Young* v. *Guidry* (1995), 142 N.S.R. (2d) 188 at 191, Williams, J.F.C. (Fam. Ct.) [re legal status of the child born outside of marriage]:**

> "This statutory regime appears to be unique in Canada. It does not provide for a finding or presumption of paternity or parentage...I note that the Law Reform Commission of Nova Scotia has in its March 1995 report entitled *The Legal Status of the Child Born Outside of Marriage in Nova Scotia* recommended the implementation of legislation that would allow the court to make a 'declaration of parentage'".

APPENDIX G

Relevant References to Law Reform Commission in the House of Assembly Debates

Hon. Thomas McInnes, Attorney General (PC) – June 7, 1990, p. 4334 – re the "important piece of legislation" which set up the Law Reform Commission: "For far too long, perhaps, we have not had a Law Reform Commission here in the province. I think that was perhaps a shame because I think it is important that if we are to stay abreast of the law as it is created across the country that we have an independent group, independent to the extent that we can make it independent and we have tried to do that here, looking at new laws and law reform period."

Mr. John MacEachern, Member for Cape Breton East (LIB) – June 7, 1990, pp. 4337, 4339-4340 – re establishment of Law Reform Commission: "The Law Reform Commission, and this again even conceptually, it should be used to keep abreast with current social needs of the province and that this could be best achieved by studying whole areas of law and not specific things. That, in fact, is what was done. Again, there was a time when the commission in Nova Scotia was not only the largest in the country but it was at the vanguard of drafting provincial laws in the country."

"Before the enactment of this bill, Madam Speaker, Nova Scotia was the only province that had a commission and then allowed it to die. There was no other province that allowed its Law Reform Commission to die and, to quote the Attorney General, that was a shame. As a result, Nova Scotia's laws are passed without any independent judicial review, while other provinces have active and influential legal watchdogs.

Madam Speaker, it is very important to recognize that the Law Reform Commission is an addition or supplement to the present processes that we have. It updates, it keeps track of and it does something over and above everything else that is in place. It will complement both the judicial system and the judicial decisions. It will keep track of them and, at the same, help us in the carrying out of our responsibilities in the Legislatures."

Ms. Alexa McDonough, member for Halifax-Chebucto (NDP) – June 7, 1990, p. 4348 – re establishment of Law Reform Commission: "I think it will be a positive mark on the record of this Attorney General that he has introduced such a bill. It will be even more to his credit if he can ensure that the aspirations and intentions for that new Law Reform Commission are both supported and respected by himself, as Attorney General, and by the members of his Cabinet.

The Minister has clearly indicated that it is his intention to ensure that the Law Reform Commission functions as independently as it needs to. I think that it is clear the legislation has translated that intention into certain structures and provisions that would make that possible. I just hope that this minister at least, I am sure that he cannot guarantee the response of all his Cabinet colleagues, but I hope that the Attorney General at least will not repeat the sins of the earlier Attorney General, Harry How, in dealing a death blow to the commission when it decides it is not happy with the direction it is taking and decides it is somehow an embarrassment that enlightened recommendations for reform are being presented to the government and, in order to not have to deal with those

reform measures, that it is easier to let the commission expire than it is to get on with dealing with the tough issues."

Mr. Bernard Boudreau, Minister for Cape Breton The Lakes (LIB) – June 7, 1990, p. 4349 – re establishment of Law Reform Commission: "I think the Attorney General recognized, in our discussions, as did any reasonable-minded individual, that we were operating very much in a void. The responsibility of this Legislature, and primarily the government, to bring forth legislation to innovate, to blaze new trails in the area of legislation, is an onerous one, particularly when you do not take advantage of all the possibilities for assistance that exists. I think as long as we allowed the Law Reform Commission to lie dormant, we were missing a real opportunity to involve people and institutions who could be a great benefit to this House.

Hon. William Gillis, Minister of Justice (LIB) – November 24, 1994, pp. 5168-5172 – re maintenance enforcement: references in detail to the Law Reform Commission Final Report on maintenance enforcement and in particular, how it served as a guide for the *Maintenance Enforcement Act*.

Ms. Alexa McDonough, member for Halifax-Fairview (NDP) – November 25, 1994, p. 5201 – re maintenance enforcement: "The Minister of Justice has cited the Law Reform Commission recommendations as one of the major authorities for this legislation. I want to commend the Law Reform Commission for the important work that they have done."

The Honourable John Holm, Leader of the New Democratic Party – March 31, 1995, p. 53 – re domestic violence: "This year, the government promises to introduce a policy on family violence and it is a beginning. It is our hope, however, the government will go further. It is our sincere hope that after years of studying this life-threatening problem, the government will begin to effectively enforce existing laws and policies. This is the conclusion recently reached by the Law Reform Commission of Nova Scotia. But the commission further concludes that violence against women, 'is not an individualized problem between two people but a widespread form of oppression which has its roots in the historical treatment of women. It requires resources, education and leadership in order to eradicate it.' The upcoming budget must contain the necessary resources to begin this work in earnest, once and for all."

Ms. Eileen O'Connell, member for Halifax-Fairview (NDP) – April 17, 1997, pp. 553-554 – re administrative law project: summarized the main recommendations in the Commission's report on agencies, boards and commissions. She described the report as: "comprehensive," "very good," and one "of integrity and substance." The Commission itself she described as "a very good arms-length commission."

The Honourable James Smith, Minister of Justice (LIB) – November 16, 1998, pp. 3826, 3834 – re juries system: in introducing a new *Juries Act*, he acknowledged the direction provided by the Law Reform Commission's Final Report on juries.

Mr. James Muir, member for Truro-Bible Hill (PC) – November 16, 1998, p. 3830 – re juries system: acknowledged influence of the Commission's Final Report in relation to the new *Juries Act*.

Dr. John Hamm, Leader of the Progressive Conservative Party – November 16, 1998, p.3832 – re juries system: "Mr. Speaker, I welcome the opportunity to make a few remarks about the Juries Bill. It is my understanding that the Law Reform Commission, which reported back in 1994, resulted in this particular piece of legislation and it reflects some of the information that is contained in that report."

Mr. Kevin Deveaux, member for Cole Harbour - Eastern Passage (NDP) - April 7, 1999, p. 5513 - re administrative justice: "Mr. Speaker, if the Minister of Justice is serious, then I suggest he look at the Law Reform Commission report that said that both the position description and the appointment process must be open, clear and impartial, all of which are sound bases for democracy."

The Honourable Peter Christie, Minister of Community Services (PC) - November 23, 1999, p. 2556 - re adoption information: "I have asked my colleague, the Minister of Justice, to refer this issue to the province's Law Reform Commission for study and report prior to further debate in the House. The Law Reform Commission is a respected independent agency that is well equipped to review legislation of this kind."

Dr. James Smith, member for Dartmouth East (LIB) - November 23, 1999, p. 2558 - re adoption information: "The Law Reform Commission is a distinguished group of persons."

The Honourable Michael Baker, Minister of Justice (PC) - May 1, 2000, pp. 522-523 - re administrative tribunals (before Subcommittee of the Whole House on Supply): "Our legal services division is also actively involved in providing training for those sitting on agencies, boards and commissions. Following a recommendation of the Law Reform Commission that training be provided to administrative tribunals, a very successful program is now underway. There have been six training sections to date. With another round scheduled for the fall. It is a two-day program designed to provide participants with better understanding of their role and responsibility as tribunal members. The trainers are all volunteers, lawyers from both the department and the private Bar. Evaluation have been very positive and enthusiastic.

Mr. Howard Epstein, member for Halifax Chebucto (NDP) - October 27, 2000, pp. 7541-7542 – re electronic commerce legislation: "How useful it is to have a body of experts on the law, experts on new topics, able to engage with them and do the research that is necessary in order to amend our laws. How disappointing it is, therefore, to recall, when we have the example of Bill No. 61 in front of us, that this government is determined to dismantle and eliminate the Law Reform Commission of Nova Scotia. That is why I went into the history of where the bill came from."

"I want the members here to know that they - especially the government opposite - have brought forward to this House a small bill which is modelled, virtually word for word, on a Statute which was suggested by a law reform body that exists to deal with this kind of circumstance. They had benefitted from it. They expect the citizen of Nova Scotia to benefit from it. They expect the commercial interests in Nova Scotia to benefit from it. You know what? All of that is equally true with respect to the Law Reform Commission of Nova. That is why we established a Law Reform Commission a number of years ago in Nova Scotia. That is why it should continue to exist. That is

why this Government is making a big mistake in taking the funding away from the Law Reform Commission. A small amount of funding goes a long way."

Mr. Howard Epstein, member for Halifax Chebucto (NDP) - November 10, 2000, pp. 8651-8652 - re probate reform: "But, Mr. Speaker, there was another entity that was involved. The minister might well have drawn our attention to the fact that the Law Reform Commission of Nova Scotia actually did work on probate. The Law Reform Commission of Nova Scotia did very good work on probate and produced a report that I would say in advance of the phalanx of lawyers and trust company officials who were here laid out the foundation for what it is that ought to be in the bill that we are working on." [acknowledged as a true statement by the Honourable Michael Baker, Minister of Justice]

"I hear, if I may so again, the minister saying this is true. I am only sorry the minister did not recall it. It may be that in the minister's rush to forget the existence of the Law Reform Commission, he has banished it entirely from his mind. It is not absent from my mind, Mr. Speaker, and I want to draw the obvious lesson yet again for the members of this House, which is how valuable it is to us as a province to have in existence a vibrant, hard-working Law Reform Commission doing its job."

"The minister in bringing forward this bill has only illustrated for us yet again what a valuable service the Law Reform Commission does for not much money. I am sure that the minister and all members of the House understand my point in this regard. Indeed, I think this is the second bill that we have had come forward from the government this session which has had its antecedents in the work of the Law Reform Commission. There is no reason why it is that we could not continue to benefit from the research, analysis, expertise and hard work of the Law Reform Commission in the future."

Mr. Michel Samson, member for Richmond (LIB) - November 10, 2000, p. 8653 - re probate system: described the Commission's *Probate Act* Final Report as "just another indicator of the importance of the Law Reform Commission as an independent body to sit back and review some of these different Acts that we have here in this province and try to point out to government some of the changes which should be made."

"When one considers the small amount of money that it was costing to fund the Law Reform Commission, I have heard the minister say that he will dedicate some resources in his department to try to take over the role of the Law Reform Commission. With all due respect to the staff in his department, I don't think they can ever replace the work that was being done by the Law Reform Commission because I believe they are overworked to start off with in this department. That is not a knock against the quality of his staff or the capability, but they have a full plate to start off with. The Law Reform Commission was a body which could sit back and analyse laws and not be under the same time constraints or under the same pressure as what one would expect of the day-to-day Civil Service. It is with sincere hope that the minister and his government will reconsider the decision to cut funding to the Law Reform Commission and will, after seeing this type of legislation. I have no doubt the abundance of legislation being thrown at by this government is certainly in no small part due to the hard work of the Law Reform Commission over the years and I hope the minister will reconsider that."

The Honourable Russell MacKinnon, member for Cape Breton West (LIB) - November 10, 2000, p. 8659 - re probate system: "It is refreshing, as well, to see that this is bringing this facet of our legal process in line with other jurisdictions. It is long overdue. It is certainly something that I know the Law Reform Commission sunk its teeth into, and did an excellent job."

Mr. Graham Steele, member for Halifax Fairview (NDP) - May 8, 2001, pp. 2888-2889 - re administrative justice: brought to the government's attention the Commission's Report on agencies, boards and commissions. He suggested that the Report contained "a lot of wisdom," and "a lot of good ideas" which, if implemented, would lead to accountability and transparency in the appointment process for agencies, boards and commissions.

The Honourable Darrell Dexter, Leader of the Opposition (NDP) - May 10, 2001, p. 3028 - re *Hospitals Act*: the Commission *Hospitals Act* Discussion Paper indicated that advocacy services are not required for mental health patients.

Mr. Michel Samson, member for Richmond (LIB) - May 31, 2001, p. 4352 - re future of the Commission: as part of resolution number 1550, the motion for which was carried, stated that the Commission provides "a dedicated and valued service to the residents of Nova Scotia."

APPENDIX H

EXTERNAL INQUIRIES MADE TO LAW REFORM COMMISSION

(Recorded inquiries relate to the law or to aspects of the Commission's work. Inquiries have taken the form of telephone calls, faxes, letters, e-mails, or personal visits. For the most part, the list does not include inquiries which related to ongoing Commission projects. It also does not include suggestions for new projects, which are recorded separately. Commission staff responded to these inquiries by providing legal information, copies of Commission publications, and contact details for government departments and other organizations.)

Total 1997 (External Inquiry Log only adopted in September 1997)	**56**
Total 1998	**115**
Total 1999	**77**
Total 2000	**51**
Total 2001 (Up to and including November 2001)	**55**
TOTAL EXTERNAL INQUIRIES FROM: JAN 1997 TO NOV 2001	**354**

APPENDIX I

Financial Contributions (contrib.) of N.S. government (NS govt.)

and N.S. Law Foundation (LF)

to the Law Reform Commission, 1991 - 2001

Year	Total Expenses	Total Revenue	NS govt. contrib. (% of total revenue)	LF contr. (% of total revenue)
1991-1992 (14 months)[1]	$194,409	$293,289	$200,000 (68%)	$87,500 (30%)
1992-1993	$290,133	$253,797	$150,000 (59%)	$100,000 (39%)
1993-1994	$293,488	$318,577	$159,300[2] (50%)	$150,000 (47%)
1994-1995	$283,482	$232,520	$152,500 (66%)	$75,000 (32%)
1995-1996	$273,661	$256,027	$150,000 (59%)	$100,000 (39%)
1996-1997	$238,327	$278,058	$150,000 (54%)	$125,000 (45%)

[1] The Commission's fiscal year runs from April 1st to March 31st. The Commission began operations in February 1991. It received amounts of $50,000 from the NS govt. and $50,000 from the LF to cover the months of February and March 1991. These amounts were followed by grants of $150,000 and $37,000, respectively, to finance the 1991-1992 fiscal year.

[2] $150,000 was granted by the NS Department of Justice, and $9,300 was received from the Office of the Executive Council. In every other year, the NS Department of Justice provided all of the Commission's NS government funding. Not separately identified in the table is a $7,000 grant in 1993-1994 from the federal Department of Justice. This was the only occasion on which the Commission received a grant other than from the NS govt. or the LF.

Year	Total Expenses	Total Revenue	NS govt. contr. (% of total revenue)	LF contr. (% of total revenue)
1997-1998	$206,857	203037	$200,000 (99%)	0 (0%)
1998-1999	$221,264	$204,434	$150,000 (73%)	$50,000 (24%)
1999-2000	$213,773	192,674	$150,000 (78%)	$40,000 (21%)
2000-2001	$240,719	$254,309	$150,000 (60%)	$100,000 (39%)
2001-2002	$264,089 (estimated)	$275,522 (estimated)	0 (0%)	$250,000 (91%)

APPENDIX J

FINANCIAL CONTRIBUTIONS TO

CANADIAN LAW REFORM BODIES

Agency	Annual Budget[1]	Source of Funds	%
Law Reform Commission of Nova Scotia	$250,000	Law Foundation	100%
British Columbia Law Institute	$299,000	Law Foundation[2] Government Grants/other Fund raising	63% 26% 8% 3%
Alberta Law Reform Institute	$965,000	Law Foundation Government University of Alberta[3]	61% 33% 6%
Law Reform Commission of Saskatchewan	$110,000	Law Foundation Government[4]	50% 50%
Manitoba Law Reform Commission	$135,000	Law Foundation Government[5]	37% 63%

[1] Figures represent the current, or most recently completed, fiscal year. Unless otherwise noted, it is assumed that these figures account for all of an agency's operating expenses.

[2] The British Columbia Law Institute receives 100% of its "core funding" from the Law Foundation.

[3] University of Alberta also provides rent free premises for the Alberta Law Reform Institute as well as a number of administrative services.

[4] The Saskatchewan government has also funded a summer student and provided additional funding of $15,000-$20,000 for 2 projects.

[5] This includes $30,000 of special project funding. The Commission's rent of $10,700 is also paid for by the Dept. of Justice.

Agency	**Annual Budget**	**Source of Funds**	**%**
Law Commission of Canada	$3,212,951	Government	100%

APPENDIX K

Overview of Other Canadian law Reform Bodies

Introduction

This document provides details about provincial law reform agencies in Alberta, British Columbia, Manitoba, Newfoundland, Ontario, Prince Edward Island, and Saskatchewan. Of these law reform bodies, the Newfoundland, Ontario, and Prince Edward Island agencies have been closed. This document also describes the federal Law Commission of Canada. In addition, information is included on law reform initiatives in New Brunswick, the Northwest Territories, Nunavut, Quebec, and Yukon.

Alberta Law Reform Institute

Origin

Established in 1968, the Alberta Law Reform Institute adopted its current name in 1989. The Institute was founded not by statute, but by a renewable agreement among the Attorney General of Alberta, the University of Alberta, and the Law Society of Alberta. The Founding Agreement, first signed in 1967, is renewable every five years.

Mandate

The Institute's mandate is set out in the Founding Agreement:[1]

- *to conduct and direct research into law and the administration of justice;*
- *to consider matters of law reform with a view to proposing to the appropriate authority the means by which the law may be made more useful and effective; and*
- *to promote law research and reform.*

To achieve these objectives, the Institute is expected to work cooperatively with law faculties at the University of Alberta and the University of Calgary and with others.

Although the Institute has based some of its projects on government suggestions, it is not required to undertake references from government.[2]

Administration

The Institute is administered by a board. The board consists of certain "defined members," who represent the three founding bodies, and the Director, who represents the Institute. In addition to the three founding bodies, the law faculties at the University of Calgary and the University of

Alberta each appoint one board member. The defined members appoint not less than four and not more than seven other members at large. The board, which meets monthly, reviews the overall operations of the Institute and approves the direction of research projects and the content of reports. Institute work is facilitated by a number of standing and other committees: management and personnel; remuneration; project selection; specific project management; and *ad hoc*.

The Director, the Institute's chief executive officer, is appointed by the board members and by the Governors of the University of Alberta.

Funding

The Institute receives approximately 40% of its funding from the Alberta Department of Justice, with the remainder coming from that province's Law Foundation.[3] The Law Foundation provides funds based on three-year funding estimates. The University of Alberta provides the Institute with offices, administrative support, and an annual grant.

Project selection

In selecting a project, a number of "component principles" are applied. A project must meet a perceived community need, by redressing a deficiency in the law or in the administration of justice. Neither the political process, nor the administrative process should seem an effective means of dealing with the perceived deficiency. The Institute must be capable of completing a proposed project. Moreover, the Institute's work as a whole must contribute both to technical areas of law and to areas of law involving social policy.[4]

Whether a project is adopted is determined in accordance with a defined methodology. The first step is to screen suggestions received. The parameters of a topic are then outlined. At that point, the Institute gauges interest in a topic. Those results are analysed. If the decision is made to proceed further, then a project strategy or Business Case Plan is set out. Findings are then presented to the board, which decides whether or not to proceed with the Business Case Plan.[5]

Types of publications

As part of a project, the Institute might prepare a number of types of publications. A Research Paper is meant merely to share the results of research. It is released early in the course of a project. An Issues Paper goes further. It develops policy issues, outlines possible solutions, and seeks comments and consultations. Two other types of publications, the Consultation Memorandum and the Report for Discussion, are meant to provide all necessary background information to enable the reader to provide an informed response. The Consultation Memorandum identifies certain policy issues and seeks comments. It is destined for an audience reasonably familiar with the issues discussed. This type of publication is meant to achieve sufficient feedback in a fairly short period of time. A Report for Discussion similarly identifies issues and background information, provides proposed solutions, and seeks comments before proceeding, but is distributed more widely than a

Consultation Memorandum. A Final Report represents the Institute's "considered position" on particular issues. It may contain draft legislation or recommendations for legislative changes.

British Columbia Law Institute

Origin

The British Columbia Law Institute's predecessor body, the B.C. Law Reform Commission, began operations in 1970 and ended its work in March 1997. In January 1997, the Institute was incorporated under B.C. legislation. The Ministry of Attorney General permitted the Institute to assume the assets and program of the predecessor Commission. The Commission's tangible assets (library, office equipment and furniture, research files) were transferred to the Institute for a token amount. The Institute was granted a licence to deal with the Commission's intellectual property. The Institute also assumed the Commission's work in progress.

Mandate

As set out at article 2 of its Constitution, the Institute exists to:[6]

- *promote the clarification and simplification of the law and its adaptation to modern social needs;*
- *promote improvement of the administration of justice and respect for the rule of law; and*
- *promote and carry out scholarly legal research.*

Administration

The Institute is administered by a board of 14 members. Members serve for five-year, renewable terms. Eight members are appointed by "stakeholder groups": two by the Attorney General; two by the Law Society of B.C.; two by the B.C. branch of the Canadian Bar Association; one by the Dean of U.B.C. Law School; and one by the Faculty of Law, University of Victoria. The eight members appoint five members at large. Those five members at large in turn appoint an additional board member. Each member is also a director.

The Institute has an elected executive (Chair, Vice-Chair, Treasurer, and Secretary). It also has an Executive Director.

Funding

In the Institute's first year of operations, the Law Foundation of B.C. provided a grant for operations, as well as start-up money for a research fund. The Law Society of B.C. made available rent-free office space in the Law Society Building. Professional services were provided by Ernst

and Young (accountants) and Thorsteinsson's (tax lawyers). The B.C. branch of the C.B.A., the Vancouver Bar Association, and *The Advocate* magazine allocated general grants. The Institute also received grants in relation to specific projects. For example, the Canadian Bankers' Association provided funding in connection with the Institute's *Trustee Act* project.

In 1998, the Institute acquired charitable status, enabling it to issue tax receipts for donations received. The Institute also expressed its willingness to undertake work for the B.C. Government on a contractual basis.

In its second year, the Institute determined that a reliance on project funding would limit the types of projects which could be undertaken. It decided that project decisions should not be determined on the basis of whether a sponsor could be found. Rather, the only criteria would be whether a project should be undertaken, and if so, whether the Institute should be the body to do so. A decision was also made to launch a formal fundraising campaign, including the use of a fundraising consultant. The fundraising effort, which took place in the fall of 1999, is expected to be tried again in the future.

Following inquiries by the Institute, in August 1999 the Institute signed a Memorandum of Understanding with the Law Commission of Canada (L.C.C.), by which the L.C.C. funded the compilation of a database involving federal legislative references to family-like relationships.

The Institute is now housed at U.B.C., adjacent to the Faculty of Law. The Institute pays rent for this office space.

To offset some expenses, the Institute charges a fee for copies of most of its publications.

Project management

The Institute uses one of two approaches for managing project work. One approach involves the use of project committees. The committees work more or less independently of the board, though each committee normally has two or more board members as part of its own membership. The second approach is to rely on the Institute's internal resources, namely the Executive Director, research staff and board members.

Committees include membership from the board and from the wider community, where non-board members have particular perspectives or expertise in relation to the subject matter of a project. Committee members volunteer their time. Each committee includes a paid reporter who performs the required research and drafts reports and working documents in accordance with committee directions.

Types of publications

It is noteworthy that the Institute's publications are not confined to aspects of law reform. Rather, a second category involves "the creation of information resources to improve access to the law or to provide a base from which reform work can be done."[7] One example of the latter type of work is a report on gender-free legal writing.

Another distinction to note in the Institute's output is between reports completed internally and those completed by committees. Both approaches can lead to law reform reports. Those projects which do not strictly involve an aspect of law reform are completed internally.

The Institute seems to publish three types of reports directly involved with law reform. A Consultation Paper includes the legal background to a project, the nature of any debate, options for reform, the Institute's proposals, and an invitation for commentary on the part of readers. A Working Paper seems to be similar, identifying the results of Institute research, preliminary consultations, and analysis of issues. Unlike a Consultation Paper, however, a Working Paper is only distributed to a select audience. A Report contains the Institute's final recommendations for reform on a topic.

Law Commission of Canada

Origin

The Law Commission of Canada commenced operations in 1997, five years after its predecessor body, the Law Reform Commission of Canada, closed.[8]

Mandate

The Commission's mandate is set out at section 3 of the *Law Commission of Canada Act*:[9]

> *... 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, including*
>
> *(a) the development of new approaches to, and new concepts of, law;*
>
> *(b) the development of measures to make the legal system more efficient, economical and accessible;*

(c) the stimulation of critical debate in, and the forging of productive networks among, academic and other communities in Canada in order to ensure cooperation and coordination; and

(d) the elimination of obsolete laws and anomalies of the law.

Administration

The Commission consists of five Commissioners appointed by Cabinet on recommendation of the Minister of Justice. The President is a full-time Commissioner who acts as chief executive officer. The other four Commissioners serve on a part-time basis. It is not necessary for Commissioners to have legal training, but they should reflect a broad range of backgrounds and expertise. Commissioners serve for renewable terms of up to five years.[10]

An Advisory Council, of between 12 and 24 members appointed by the Commission, exists to assist the Commission. The Council advises on the Commission's strategic direction, its long-term program of studies, and on its yearly performance. The Council may also advise the Commission "on any other matters relating to the purpose of the Commission."[11] Council members are volunteers, who serve for renewable terms of up to three years. Council members need not have formal legal training, but as a group, they should be broadly representative of Canadian diversity and various disciplines. They should also reflect knowledge of the common law and civil law systems. The Advisory Council meets formally twice a year.[12]

An Executive Director, who is part of Commission staff, is responsible for the day-to-day supervision of Commission staff and work.

Funding

The Commission is a departmental corporation accountable to Parliament through the Minister of Justice. The Commission is able to receive grants from government and from external sources. It is also authorized to generate revenues through the sale of its publications and services.[13]

Project selection

The Commission is able to choose its own projects,[14] though the governing statute also includes a requirement to prepare reports following a ministerial request, "after consultation with the Commission and taking into consideration the workload and resources of the Commission...."[15]

As part of a long-term Strategic Direction, the Commission has engaged itself to be creative, balanced, and responsive when determining its research activities. Also part of the Strategic Direction are four complementary themes: personal relationships; social relationships; economic relationships; and government relationships.[16]

More particularly, the Commission has identified a number of criteria to be balanced in choosing the Commission's research program:[17]

I. General Relevance to Canadians

1. Overall Importance: is the project one that Canadians feel is important?

2. Public Profile: does the project have some existing or potential profile that would facilitate the Commission's consultations?

3. Inclusiveness: will the project engage the concerns and needs of those who might not otherwise have the resources or organization to make their voices heard effectively in the policy process?

4. Timeliness and Relevance: is the project one that can be completed in a timely manner so as to maintain its relevance?

II. Substantive Characteristics

1. Demonstrated Need for Reform: has the need for Commission intervention to reform the law been clearly demonstrated?

2. Scope: is the project cast so as to imply a consideration of broader issues of legal and social policy?

3. Interdisciplinarity: is the project framed in such as way as to take advantage of interdisciplinary perspectives?

III. Agenda of the Law Commission

1. Value-Added: does the project exploit the particular processes, capabilities and value-added elements of the Commission structure in a way that allows it to marshall resources to do what others cannot?

2. Coherence: is the project coherent with the general strategic directions identified by the Commission?

3. Uniqueness: does the project duplicate work being done elsewhere by the Department of Justice and other federal Departments?

4. Complementary: is the project helpful to and complementary with work that other law reform agencies are doing?

5. Collaboration: does the project have potential for collaborative efforts with other law reform bodies, government ministries or non-governmental research groups?

6. Cost-effectiveness: does the project make excessive demands on Commission personnel, or require the investment of disproportionate resources?

IV. Potential Impact of the Commission's Work

1. Feasibility: can the project actually be shaped so as to produce a worthwhile result?

2. Likelihood of Implementation: does the project stand a reasonable chance of attracting policy support within government?

3. Evaluation: will the project generate a product that can be assessed effectively according to the evaluation criteria adopted by the Commission?

4. Dissemination and Publications: does the project enable the Commission to broadly disseminate its output?

Project management

To assist the Commission in the undertaking of a project, the Commission may establish a Study Panel. Presided over by Commissioners, the Study Panel consists of "volunteer persons having specialized knowledge in, or particularly affected by, the matter to be studied."[18] Ordinarily at least one member of the Advisory Council will sit on a Study Panel.[19]

Types of publications

The Commission takes the view that it should be innovative and creative in publicizing its work:[20]

> *It has produced several different kinds of research documents: reports, consultation papers, newspaper op-ed pieces, pamphlets. Its Research studies, discussion papers and reports are available in various formats: print in several languages, braille, audio tapes, video cassettes and dedicated web-pages on the Internet are among those now in use.*

In terms of more traditional law reform publications issued by the Commission, a Report incorporates research and consultations, in order to provide necessary background information, identify relevant issues, and provide the Commission's recommendations on a topic. The Commission does not consider a Report to be "final" and still invites feedback from readers. A Research Study, though prepared on the Commission's behalf, does not necessarily reflect the

Commission's position on the topic. Rather, a Research Study is meant to enable well-informed policy discussions to take place.

Manitoba Law Reform Commission

Origin

The Manitoba Law Reform Commission, which began operations in 1971, is governed by the *Law Reform Commission Act*.[21] In 1987, the Manitoba government announced plans to dismantle the Commission. A change of government, however, meant that this was not effected. At that time, the new Government requested that the Commission study how the future existence and independence of the Commission could best be assured. The Commission's conclusions took the form of a report published in 1988,[22] and a number of the Commission's suggestions were implemented. In mid-1997, following a government decision to reduce its funding to one-quarter of the previous year's allocation, the Commission was compelled to dismiss its permanent staff. After public appeals, the Government chose not to proceed with a plan to repeal the statute which had created the Commission. Funding has not, however, been restored to sufficiently high levels to enable the hiring of permanent employees. Project research and draft reports are completed by external consultants retained on contract.

Mandate

The Commission's mandate is similar to that of the Nova Scotia Commission. The Manitoba Commission's duties are to enquire into and consider any matter relating to law in Manitoba with a view to making recommendations for the improvement, modernization and reform of law including:[23]

- *the removal of provisions of the law which are outdated or inconsistent;*
- *the maintenance and improvement of the administration of justice;*
- *the review of judicial and quasi-judicial procedures under any Act; and*
- *the development of new approaches to and new concepts of law in keeping with and responsive to the changing needs of society and of individual members of society.*

Administration

The Commission is made up of between five and seven people, who are appointed by Cabinet on recommendation of the Minister of Justice & Attorney General. One Commissioner serves as President. The President currently performs the duties formerly fulfilled by a full-time Executive Director. The governing statute requires that the commissioners include: a judge of the Court of Queen's Bench; a full-time member of the University of Manitoba Law Faculty; a Manitoba-

qualified lawyer not employed by the Government on a full-time basis; and a non-lawyer. The required composition of the Commission corresponds with a recommendation in the 1988 report. The Commission had advocated a diversity of viewpoints among the Commissioners. It had also suggested that the presence of a non-lawyer would help to make Commissioners' reports more readable to the public. In 1988, the Commission had proposed that Commissioners be: individuals of ability and stature; non-partisan in their work; representative of the legal community and the general public; and respected by the Government and the Legislature. The Commission had not been in favour of transferring any appointment choices outside of government. It had been suggested that this would only move the politics of the choice from a public to a private forum.[24]

In 1988, after examining the Alberta law reform model, the Commission concluded that a law reform body whose existence depends on the renewal of an agreement "would be plagued by instability." Moreover, the "apparent lack of permanence would seriously impair the important process of attracting and retaining high-quality legal staff."[25] By contrast, the Commission suggested that a law reform body which is the product of statute would enjoy permanence, stature and credibility.[26]

Funding

In its 1999-2000 Annual Report, the Commission recorded receipt of $50,000 from the Manitoba Department of Justice for general operating expenses and $30,000 from the Law Foundation, with another $50,000 approved for the next year.[27] The Commission had accumulated surpluses from previous years and had also received funds from certain government departments for specific projects.

In 1988, the Commission had suggested that project funding based upon separate budgets and personnel working only on specific projects was unrealistic and not in keeping with the way the Commission operated.[28] The Commission reported that according to other law reform bodies, project funding was inefficient and ineffective. By contrast, block funding, not tied to individual projects, would recognize the Commission's permanent structure and the authority exercised by the commissioners. In terms of expenditures, in 1988 the Commission had suggested that as long as the Commission operated within the scope of its legislative authority, it should be free to spend its funds in a manner decided by the Commissioners. This was essential, it had been suggested, for Commission independence.

Types of publications

In recent years, the Commission's practice seems to be to issue a single report per project. A report provides the necessary background information, identifies the relevant issues, and recommends changes to the law, including where relevant draft legislation or statutory amendments. On an infrequent basis, the Commission has issued other types of reports. A Discussion Paper identifies the legal background to a project, the issues relating to reform, and the Commission's tentative proposals. A Draft Paper places more of an emphasis on identifying options to be considered as

part of a reform project, rather than advocating certain proposals. These latter two types of reports both invite comments on the part of readers.

Newfoundland Law Reform Commission

Origin

Legislation to permit the creation of a law reform commission in Newfoundland was first enacted in 1971.[29] Although created in 1971, the Commission did not commence active operations until 1981, when the first commissioners were appointed.[30] The Commission is now closed, but its governing legislation[31] has not been repealed.

Mandate

The Commission was set up to inquire into and consider matters relating to:

- *reform of the law having regard to the statute law, the common law and judicial decisions;*
- *judicial and quasi-judicial procedures under an Act; or*
- *a subject referred to it by the Minister.*

For the purpose of carrying out its functions, the Commission was able to "institute and direct legal research."[32]

Administration

The number and names of Commission members were determined by Cabinet. Commissioners were appointed for three-year, renewable terms. The Commission did not have to present an annual report to government. Rather, it was only required to report "at the times that the progress of its work [made] it advisable," as well as when so required by the Minister of Justice.[33]

Funding

For the most part, the Commission was funded by government, with payment derived from the Consolidated Revenue Fund. In 1991, the governing statute was amended, to expressly allow the Commission to receive funding from sources other than government.[34] It does appear, however, that the Newfoundland Law Foundation was providing grants to the Commission before 1991.[35] The Newfoundland government stopped funding the Commission in 1992.[36]

Types of publications

The Commission's Research Papers would set out relevant background details, the state of the law, and suggestions for reform. A Research Paper would be widely distributed, to help generate feedback. A Working Document was similar in nature, but would only be circulated in a limited manner. A Final Report would include the Commission's final recommendations for reform, as well as perhaps some suggested legislative amendments.

Ontario Law Reform Commission

Origin

The Ontario Law Reform Commission was established in 1964, becoming the first permanent law reform commission in the Commonwealth.[37] The Commission was closed at the end of 1996, as part of a government policy to reduce expenditures by eliminating agencies and similar bodies considered non-essential.

Mandate

On its own initiative, the Commission could study any matter relating to:[38] reform of the law, statutory or judge-made; the administration of justice; or judicial or quasi-judicial procedures under any *Act*. The Commission was also required to inquire into and consider any subject referred to it by the Attorney General.

Administration

The governing statute required at least three commissioners, but did not set out any qualifications. In practice, there were five commissioners, including a Chair and Vice-Chair.[39] Formerly indefinite, in later years Commissioner terms were for three years and could be renewed once.[40]

In 1989, a continuing advisory board was created, to advise the Commission generally with respect to its agenda and to its work.[41]

The Commission was not required to report on an annual basis to government. Rather, it was required to report "from time to time" to the Attorney General. In practice, the Commission published annual reports and tabled all of its reports with the Legislature.

Funding

At a funding high point, in the early 1990s, the Commission had an annual budget of $1.6 million. At the time of its closure, its budget had shrunk to $560,000.[42] Government provided all of the Commission's funding.

Project selection

In 1993, the Commission adopted the following criteria for program selection:[43]

1. *A demonstrated need for reform.*

2. *Likelihood that the Commission's proposals will engage the needs and concerns of groups who would not otherwise have the resources or degree of organization to make their voices effectively heard.*

3. *Availability of personnel and financial resources within the Commission.*

4. *The nature of the subject is such that is it not likely to be subject of study by other government agencies for reasons such as the following:*

   - *the controversial nature of the subject.*
   - *the importance of the subject lies in the medium to longer term future.*
   - *the subject is one with respect to which the government itself suffers a conflict of interest.*
   - *the subject is one which is not likely to attract political attention, but is nonetheless in an area in which modernization or clarification of the law can have very important long term benefits for the public.*

5. *Likelihood of completion in a reasonable period of time.*

6. *Consistency with any Commission statement of current priorities.*

7. *Potential for collaborating with other law reform bodies, government ministries, or non-governmental research groups.*

8. *The absence of reports by law reform bodies or other agencies which render further study unnecessary.*

9. *Likelihood of implementation of proposals for reform.*

The Commission also had a practice of accepting government requests for studies without insisting on the need for a formal reference.[44]

Project management

One of two methodologies would be used to undertake a project.[45] A legal academic or other external expert could be engaged to conduct the required research and to prepare a draft report for approval by the Commissioners. The other methodology involved Commission legal staff completing the research and writing the draft report. If necessary, outside experts would be engaged to work on specific, narrowly defined issues. In the case of either methodology, where a large project was involved, project directors would be appointed. The director would assemble a research team, to be approved by the Commission.

Regardless of the methodology used, a project advisory board would be set up. It generally included practicing lawyers, legal and other academics, representatives of appropriate interest groups, and other interested parties.[46]

Once complete, a draft report would be reviewed by the Commissioners, and Commission legal staff would incorporate any suggested changes.

Types of publications

From its inception, the Commission often chose not to issue working papers. This stemmed, it has been suggested, from confidence that the Commission's expert research teams could not only complete necessary background research into a subject area, but identify all relevant issues.[47] On occasion, the Commission would consult either the public or specific groups, but this varied according to the project involved.

The two main types of publications issued by the Commission were Study Papers and Final Reports. For its Study Papers, the Commission often relied on external consultants. A Study Paper would provide any needed background information, set out the state of the law, identify relevant issues, and would often put forward specific proposals for reform. These proposals did not, however, represent the position of the Commission. A Final Report would contain similar information, except that its recommendations represented the Commission's final views on a topic. Final reports, which were presented to the Attorney General, sometimes included draft legislation.

On occasion, the Commission did issue other types of publications. The terms used to describe publications, as well as the purposes behind a particular publication type, were not always uniform. The Consultation Paper tended to describe the law, set out its problems, and indicate a range of possible solutions, with a tentative preference usually stated for one solution. It was given a wide distribution, in the hope of providing discussion. In the Commission's early days, Consultation Papers seemed to have been issued under the title "Tentative Proposals." Another type of publication was a Research Paper on a specific area of law. It identified necessary background information and could later be incorporated into a wider Study Paper.

Prince Edward Island Law Reform Commission

Origin

Although its brief governing statute was enacted in 1970,[48] the Prince Edward Island Law Reform Commission only began operations in 1976. It was active until 1983, when its budget was discontinued.[49] The governing statute was repealed in 1989, by virtue of its omission from the 1988 Revised Statutes of Prince Edward Island.[50]

Mandate

The Commission had the power to inquire into and consider any matter relating to:[51]

> *(a) reform of the law having regard to the statute law, the common law, and judicial decisions;*
> *(b) the administration of justice;*
> *(c) judicial and quasi-judicial procedures under any Act; or*
> *(d) any subject referred to it by the Minister of Justice.*

Administration

The governing statute provided that the Commission was to consist of three or more members appointed by Cabinet. In practice, the Chief Justice of Prince Edward Island served as Commission Chair, and other members were prominent lawyers. Throughout its existence, the Commission had only one legal staff member.[52]

Project selection

The Commission was hampered by a lack of resources, as well as a lack of interest from the legal profession and the government. This lack of support was reflected in the Commission's choice of projects. The Commission tended to rely on law reform reports from other provinces, as well as work completed by the Uniform Law Conference of Canada.[53]

Types of publication

The Commission did not issue any working papers or formal reports. Rather, it issued brief recommendations or produced draft legislation.[54] The Commission also issued annual reports.

Saskatchewan Law Reform Commission

Origin

The Saskatchewan Law Reform Commission, which began operations in 1974, is governed by *The Law Reform Commission Act*.[55] A body corporate, the Commission operates on a small budget, with only one staff member.

Mandate

The Commission's duties are detailed:[56]

> *The commission shall take and keep under review all the law of the province, including statute law, common law and judicial decisions, with a view to its systematic development and reform, including the codification, elimination of anomalies, repeal of obsolete and unnecessary enactments, reduction in the number of separate enactments and generally the simplification and modernization of the law, and for that purpose shall:*
>
> *(a) receive and consider any proposals for the reform of the law that may be made to it by the Minister of Justice;*
>
> *(b) prepare and submit to the Minister of Justice from time to time programs for the examination of different branches of the law with a view to their reform and shall recommend that an agency, whether the commission or a committee thereof or other body, carry out the examination;*
>
> *(c) undertake, at the request of the Minister of Justice or pursuant to recommendations of the commission approved by the Minister of Justice, the examination of particular branches of the law and the formulation, by means of draft bills or otherwise, of proposals for reform therein;*
>
> *(d) enter into agreements, with the approval of the Minister of Justice, with other organizations for law reform for the purposes of attaining the aims of the commission.*

Administration

The Commission takes the form of not less than three members, who are appointed by Cabinet, and who hold office at Cabinet's pleasure.[57] Cabinet designates one member as chair, who acts as chief executive officer. The governing statute specifically allows the Commission to appoint committees to consider and report on an aspect of the Commission's work. Committee members need not be members of the Commission itself.

Funding

The Commission's funding need not be confined to amounts received from government. Section 12 of the *Act* indicates that "[s]ums required for the purposes of this *Act* may be paid out of moneys appropriated by the Legislature for the purpose." It is noteworthy that *The Legal Profession Act, 1990*,[58] at s. 76, specifically identifies law reform as one of the purposes behind establishment of the Saskatchewan Law Foundation's fund. For many years, the Saskatchewan Law Foundation has provided a considerable portion of the Commission's funding.[59]

Project selection

Like the Nova Scotia Commission, the Saskatchewan Commission is willing to consider project suggestions from a number of sources: the Minister of Justice; the Commission itself or its staff; the judiciary; the legal profession; other professional organizations; and the general public.[60]

Types of publications

In connection with its projects, the Commission has published various types of reports. A Working Paper provides the summary of the present law and its effects. Its primary goal is to inform, though it also concludes by asking for public feedback. A Background Paper identifies the current law, the reasons for reform, and any reform options. It also invites public commentary. Public feedback is also invited in a third type of report, the title of which usually includes the term "Tentative Proposals." It identifies the background to a topic and sets out approaches to reform, including if relevant draft legislative changes. The Commission's Final Report includes the term "Proposals" in its title. This type of report, which sets out the Commission's final recommendations on a topic, takes into account feedback received in relation to the tentative proposals. A Final Report is presented to the Minister of Justice.

Other Canadian Jurisdictions

In New Brunswick, a branch of the Department of Justice carries on law reform initiatives. In 1971, rather than creating a stand-alone law reform agency, New Brunswick established a Law Reform Branch within its Department of Justice, with law reform work being completed by the Legal Research Section. In 1993, the Legal Research Section was closed, and the Law Reform Branch was renamed the Legislative Services Branch. It continues to issue law reform reports, as well as *Law Reform Notes*, a newsletter primarily meant for the New Brunswick legal profession.[61]

Quebec has never created an expert law reform body with a general mandate. The closest approximation was the Civil Code Revision Office, which operated from 1955 to 1978.[62] It is interesting to note, however that in 1992, Quebec enacted legislation, not yet in force, to create the Institut Québécois de Réforme du Droit. The Institute's mission is to "submit proposals to the Minister concerning the reform and development of law, through means which include adapting the judicial system to the needs of society, simplifying, codifying, and seeking consistency among the rules of law and rendering more humane the institutions involved in the administration of justice."[63] The Institute is required to consult the Minister on the research programs that it proposes to

undertake and shall give priority to requests for advice or research addressed to it by the Minister. The Quebec legislation provides that the majority of Institute members, including the Chair and the Vice-Chair, shall be appointed on a full-time basis. Full-time members must have legal training or a longstanding interest in the law. Full-time members are to be appointed for terms not exceeding five years. Part-time members, whose terms shall not exceed three years, must have competence in the Institute's research areas.[64]

For the most part, the Institute is to accomplish its mission by carrying out or commissioning research. It may also promote collaborative efforts in the judicial field or other research areas, study proposals for reform presented by interested persons and bodies, hold informational or consultational seminars and meetings, and publish studies or participate in publication efforts.[65] Although government is to fund the Institute, the legislation only refers to the Institute's first fiscal year.

There is no stand-alone body in Yukon that deals with law reform issues. Moreover, the Yukon Department of Justice does not have an individual or a group with the responsibility of overseeing law reform. Rather, each matter is considered as issues arise, with policy development and legislative drafting done concurrently.[66]

Law reform initiatives in the Northwest Territories tend to be organized as needed by government departments and agencies.[67] The Northwest Territories did have a Law Reform Committee, which published a number of working papers and final reports from 1987 to 1990.[68] In terms of non-governmental law reform initiatives, of note is that the Administrative Law Section of the CBA, NWT Branch, is engaged in drafting a report on a proposed *Administrative Procedures Act*. Funding for this work is provided by the NWT Department of Justice and the NWT Law Foundation.[69]

As in Yukon and the Northwest Territories, Nunavut has no permanent law reform body. No one person or branch of the Department of Justice has specific law reform responsibilities. It is likely, though, that the Policy Division of Justice, working in cooperation with the Legislation Division, would oversee any law reform work. Although Nunavut has no permanent law reform body, it does have the Maligarnit Qimmirujiit, a government-appointed body with a mandate, limited in time and scope, to report to the Premier on issues arising out of laws inherited from the Northwest Territories.[70]

Endnotes for Appendix K

1. Alberta Law Reform Institute, *Annual Report, 1992-1993* (Edmonton: The Institute, 1993) at 5.

2. Alberta Law Reform Institute, *Annual Report, 1990-1991* (Edmonton: The Institute, 1991) at 10.

3. Alberta Law Reform Institute, *Annual Report, July 1999 to June 2000* (Edmonton: The Institute, n.d.) at 2.

4. Note 3, above, at 7.

5. Note 3, above, at 9.

6. British Columbia Law Institute, *A Report on Year Two* (Vancouver: The Institute, n.d.) at 1.

7. British Columbia Law Institute, *A Report on Year Three* (Vancouver: The Institute, n.d.) at 4.

8. R.A. Macdonald, "Law Reform and its Agencies" (2000) 79 Can. Bar Rev. 99 at 101.

9. S.C. 1996, c. 9.

10. Note 9, above, ss. 7-10.

11. Note 9, above, s. 19.

12. Macdonald, note 8, above, at 103.

13. Macdonald, note 8, above, at 103.

14. Note 9, above, s. 4.

15. Note 9, above, s. 5.

16. Law Commission of Canada, "Strategic Agenda and Research Plan," online: Law Commission of Canada <http://www.lcc.gc.ca/about/agenda. html> (last updated: 1 February 2001).

17. Law Commission of Canada, "Criteria for Project Selection," note 16, above.

18. Note 9, above, s. 20.

19. Macdonald, note 8, above, at 104.

20. Note 8, above, at 105.

21. C.C.S.M. c. L95.

22. Manitoba Law Reform Commission, *Report on the Manitoba Law Reform Commission: A Framework for the Future* (Winnipeg: The Commission, 1988).

23. Manitoba Law Reform Commission, *Twenty-Ninth Annual Report, 1999-2000* (Winnipeg: The Commission, 2000) at 1.

24. Note 22, above, at 8-9.

25. Note 22, above, at 5.

26. Note 22, above, at 6.

27. Note 23, above, at 9.

28. Note 22, above, at 18.

29. *Newfoundland Law Reform Commission Act*, S.N. 1971, No. 38.

30. P. Handford, "The Changing Face of Law Reform" (1999) 73 Aus. L.J. 503 at 506.

31. *Law Reform Commission Act*, R.S.N. 1990, c. L-8.

32. Note 31, above, s. 7(2).

33. Note 31, above, s. 7(3).

34. S.N. 1991, c. 10, s. 7.1.

35. See, for example, Newfoundland Law Reform Commission, *Report on Limitation of Actions* (St. John's: The Commission, 1986) at vi.

36. Handford, note 30, above, at 514.

37. Ontario Law Reform Commission, *Final Report* (Toronto: The Commission, 1996) [hereinafter *Final Report*] at 15; W.H. Hurlburt, *Law Reform Commissions in the United Kingdom, Australia and Canada* (Edmonton: Juriliber, 1986) at 204.

38. *Ontario Law Reform Commission Act*, R.S.O. 1990, c. O.24, s. 2.

39. *Final Report*, note 37, above, at 17.

40. Note 37, above, at 17.

41. Note 37, above, at 22.

42. Note 37, above, at 7.

43. Ontario Law Reform Commission, *Annual Report 1993-94* (Toronto: The Commission, 1994) at 9.

44. *Final Report*, note 37, above, at 18.

45. Note 37, above, at 19.

46. Note 37, above, at 19.

47. Hurlburt, note 37, above, at 207.

48. *Law Reform Commission Act*, R.S.P.E.I. 1974, c. L-8.

49. Hurlburt, note 37, above, at 252.

50. *Statute Revision Act*, S.P.E.I. 1989, c. 6, ss. 5(e), 8, 10(2).

51. Note 50, above, s. 3.

52. Hurlburt, note 37, above, at 252.

53. Note 37, above, at 252-253.

54. Note 37, above, at 253.

55. R.S.S. 1978, c. L-8.

56. Note 55, above, s. 6.

57. There are currently seven members: letter from M. Rasmussen (Chair, Law Reform Commission of Saskatchewan) to W. Laurence (Law Reform Commission of Nova Scotia) (May 14, 2001).

58. S.S. 1990-91, c. L-10.1.

59. The Commission operates on about $100,000 per year: Law Reform Commission of Saskatchewan, Annual Report, 1999-2000 (Saskatchewan: The Commission, n.d.) at 8.

60. Note 59, above, at 2.

61. Handford, note 30, above, at 506, 514-515; New Brunswick, Department of Justice, *1999-2000 Annual Report* at 15, online: New Brunswick Department of Justice Homepage <www.gnb.ca/justice/index.htm> (last visited: 10 September 2001).

62. R.A. MacDonald, "Recommissioning Law Reform" (1997) 35 Alta. L. Rev. 831 at 839.

63. S.Q. 1992, c. 43, s. 2.

64. Note 63, above, s. 8.

65. Note 63, above, s. 3.

66. Letter from W.G. Craik (Yukon Justice) to W. Laurence (28 August 2001).

67. Letter from M. Aitken (Northwest Territories Justice) to W. Laurence (5 September 2001).

68. Northwest Territories Law Reform Committee, *An Act to Amend the Jury Act* ([Yellowknife]: the Committee, 1987); Aitken letter, note 67, above.

69. Aitken letter, note 67, above.

70. Letter from R. Armstrong (Nunavut Justice) to W. Laurence (28 September 2001).