

LAW REFORM
COMMISSION
OF
NOVA SCOTIA



TWENTY-SEVENTH ANNUAL REPORT

April 1, 2017 to March 31, 2018

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:

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

The staff of the Commission are:

Rhoda Lemphers (to December 2017)
Legal Research Counsel

Shawn Harmon (from December 2017)
Legal Research Counsel

William H. Charles, Q.C.
Special Counsel

The Commission offices are located at:

Law Reform Commission of Nova Scotia
Suite 502 - 1690 Hollis Street
Halifax, Nova Scotia B3J 3J9

Telephone: (902) 423-2633
Email: info@lawreform.ns.ca
Web Site: www.lawreform.ns.ca

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THE COMMISSION

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

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

In 2017-2018 the Commission received operational funding from the Law Foundation of Nova Scotia. The Law Foundation, which funds work relating to law reform, legal education, and the administration of justice, receives its funds from the interest on lawyers' trust accounts. The Government of Nova Scotia also provided office premises.

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

In 2017-2018 the Commission employed Legal Research Counsel and a part-time Financial Administrator. As well, the Commission benefits from the continuing contribution of its founding President, William H. Charles, Q.C., as Special Counsel to the Commission. As always, he has provided valuable assistance with all Commission projects during the past year.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

THE YEAR IN REVIEW 2017 - 2018

Work Program and Publications

Matrimonial Property Act

In April of 2012, the Commission decided to review the Nova Scotia *Matrimonial Property Act* (MPA). It has been more than 30 years since the *Act* came into force, and it has not been substantially amended since then. Family law stakeholders have said that the *Act* is in need of reform in a number of areas. Both Nova Scotian society and the case the law around the MPA have advanced to the point where, unless the MPA is reformed, it will no longer be keeping pace with the changing needs of Nova Scotians.

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

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

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

The Commission published its Final Report on Family Property Division in September 2017. The Report was published on the Commission's website and publicized through print media, social media and by reaching out to stakeholders and respondents by mail and email.

The importance of ensuring that Nova Scotia's matrimonial property regime stays relevant to Nova Scotian families is hard to overstate. Family law reform will affect a significant proportion of the Nova Scotia population. In May 2010, the Ontario Civil Legal Needs Project Steering Committee released a report entitled, *Listening to Ontarians* reported that at June 2009 the most pervasive legal problems amongst low and middle-income Ontarians were family relationship problems at 12% of total sample.

The precise figures may vary from jurisdiction to jurisdiction, but even in the absence of Nova Scotia statistics it is nevertheless safe to assume that family law disputes represent a significant proportion of the legal problems experienced by low and middle-class families in this province. The large response that the Commission has received to the consultation on this project is indicative of the significance of this area of law to Nova Scotians.

Intestate Succession Act

The *Intestate Succession Act* governs the distribution of property of a deceased person who has not made a valid will, as well as any property which is not dealt with by a will. The *Act* has significant access to justice implications because it determines the distribution of property to the families of those who have not sought counsel to make a will.

It is important to note that this project will assist not only persons who cannot make a will whether by a lack of capacity or because they cannot afford legal counsel, but some figures show that over 40% of Canadians may not have a will. Not only will persons without a will benefit from this project, but where a will is found to be invalid, the testator may die intestate. This project therefore has extensive significance to Nova Scotians.

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

Among other things, the Commission is examining whether the *Act* should include common law partners as spouses, and if so under what conditions. The value of the spouse’s preferential share (currently \$50,000, or the deceased’s principal residence) is also a topic for study. The Commission is also looking at the question of who should be entitled to inherit from the deceased, aside from the spouse. Currently step-children who were not adopted by the deceased are not included, nor are children to whom the deceased stood *in loco parentis*. As well, the *Act* does not deal with various other biological and social relationships of parentage that may be formed by the use of reproductive technologies.

During the reporting year, the Commission convened an advisory committee of experts including senior wills and estates practitioners, the Public Trustee and members of academia to deliberate on possible proposals for reform contained in an extensive Issues Paper. Advisory group members deliberated on the whole of the Issues Paper and provided advice to Commissioners on making proposals for discussion for the Discussion Paper.

In order to gain public input, Commission staff compiled and disseminated a plain language survey on some of the central issues under review in the *Intestate Succession Act* project. The survey was disseminated online and publicized through social media. The survey was publicized

at public libraries, the Family Information Center, the courts and legal aid and hard copies of the survey were left at some of these locations.

Commissioners deliberated on the work of the advisory group and compiled a Discussion Paper comprised of proposals for reform of the *Intestate Succession Act*. The Discussion Paper will be published during the Summer of 2018.

New Projects and the Nova Scotia Commission for Access to Justice and Law Reform

Due to funding cuts, the Commission had to adjust its work plan for the 2017-2018 year and was not in a position to take on a new project. The Commission will be in a position to choose a new project during the 2018-2019 reporting year. This will include an examination of project suggestions we have received from interested members of the public, the legal profession, the academy and the judiciary. It will involve an assessment of the need for reform in the identified area(s), the Commission's capacity to make a meaningful contribution, complementary work being done by others, a feasibility study and a literature review.

In fact, any extra resources during the 2017-2018 year were targeted to developing a plan for the Nova Scotia Commission for Access to Justice and Law Reform, which will replace the Law Reform Commission next year.

During the 2018-2019 year, the Commission will develop an Access to Justice institute, which, along with carrying on the traditional law reform work of the Commission, will focus on serving as both a policy and research center and repository of access to justice data in Nova Scotia. This research will help to focus the new Commission's law reform work as our projects will focus specifically on furthering areas of access to justice in identified areas. This research will include the generation of metrics and data on A2J issues and activities both provincially and nationally. The institute will partner with other institutes, educational entities and organizations in gathering and sharing this research and data.

Besides promoting research and activity on access to justice, the institute will serve as a central repository for information and coordinating center on access to justice activity. It will serve as an information hub regarding A2J initiatives, programs and activities in all regions of the province, providing a coordinating function for A2J work, identifying gaps and duplication in work being done, as well as serving as a center for referral for inquiring individuals.

As such, the institute will not only work to promote access to justice as integral to law reform and the promotion of fair, efficient and effective law in Nova Scotia, but it will work to prevent the legal problems that vulnerable populations face every day in this province.

Finances & Administration

The Commission's financial statements are appear at the end of this report. During the reporting period, the Commission received operational funding in the amount of \$72,177 from the Law Foundation of Nova Scotia. The Commission's total revenue was \$73,343 inclusive of an HST rebate. The Commission's total expenses were \$73, 499. This left a deficit in operating funds of \$-156. The Commission carried forward surplus from prior years of \$11, 579 to cover this shortfall, which, minus payables and accruals is \$9889.

COMMISSIONERS AND STAFF 2017-2018

Commissioners

Darlene Jamieson, Q.C.

President

Darlene Jamieson was appointed to the Commission by the Council of the Nova Scotia Barristers' Society in June 2002. She was appointed as President of the Commission in June of 2012. She has been a partner in the law firm Merrick Jamieson Sterns Washington & Mahody since 1998, with preferred areas of practice being civil litigation, including insurance, banking, construction and employment law. She has held numerous and varied posts with the Nova Scotia Barristers' Society. In 2018, Darlene was inducted into the American College of Trial Lawyers.

Robert J. Currie

Vice-President

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

Kevin Coady

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

Brian R. Joseph

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

Department and the Privy Council Office, Government of Canada.

Richard J. Melanson

Richard Melanson was appointed to the Commission by the Council of the Nova Scotia Barristers' Society in September of 2012. He currently sits on the Utility and Review Board of Nova Scotia. Previous to his appointment to the UARB he was a partner with the Halifax law firm of Blois, Nickerson & Bryson LLP. His areas of practice included administrative law, bankruptcy and insolvency, civil litigation, corporate & commercial, intellectual property and real estate. Mr. Melanson graduated from the Université Sainte-Anne with a Bachelor of Arts (Honours) in 1981, and a Bachelor of Education (Honours) in 1983. In 1988 he graduated from Dalhousie Law School as Gold Medalist. He is a member of the Board of Examiners of Nova Scotia Social Workers' Association and chair of the Discipline Committee, and was a member of the Agreement on Internal Trade Working Group. He is a Director and current Treasurer of Canadian Parents for French - Nova Scotia.

Catherine D.A. Watson Coles

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

Staff

Rhoda Lemphers (to December 2017)

Legal Research Counsel

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

Shawn Harmon (from December 2017)

Legal Research Counsel

Shawn Harmon joined the Commission in January 2018. He has degrees from Saint Mary's University (BA), University of New Brunswick (LLB), and University of Edinburgh (LLM, PhD in Law). In addition, he has training in alternative dispute resolution processes and academic practice. He was called to the Nova Scotia bar in 1997, clerked for the Federal Court, Trial

Division, practiced at Huestis Ritch, and taught law at the University of Edinburgh. He is an Adjunct Professor at Dalhousie University and continues to teach, publish, and consult in areas of health law.

William H. Charles, Q.C.

Special Counsel

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

FINANCES FOR 2017-2018

Item Expense	Year End Mar 2017	Budget 2017-18	Year End March 31, 2018
REVENUE:			
Law Foundation Funding	84,914	72,177	72,177
NS Government	-	-	-
Sponsorship	-	-	-
Other	10,422	-	1,166
Interest	143	-	-
TOTAL	95,479	72,177	73,343
EXPENSES:			
Personnel	123,770	71,250	57,217
Commissioners expenses	-	-	-
Meeting costs	711	-	-
Library	2,178	2,500	2,070
Accounting fees	3,650	3,000	3,650
Memberships/Professional Fees	1,213	-	-
Information Technology	620	650	700
Internet Service & Website Hosting	2,303	1,800	1,575
Staff expenses	1,284	500	500
Rent/Parking	1,398	-	-
Rental Equipment	3,447	-	-
Insurance	1,287	1,245	1,331
Office supplies	340	250	185
Photocopying/printing	2,169	1,200	590
Postage & courier	853	500	107
Telephone	1,673	1,500	1500
Travel, Conferences	48	-	-
Professional Development	-	-	-
Office Equipment Maintenance	-	-	-
Bank service charges	3960	400	300
Miscellaneous	-	-	-
HST paid on purchases	1,483	1,800	3,594
GST paid on purchases	-	-	-
Contract research (projects)	-	-	-
TOTAL	148,823	86,595	73,319
Net Income	(53,343)	(14,418.00)	(24)

STATEMENT OF FINANCIAL POSITION

March 31	2018	2017
ASSETS		
Current		
Cash and cash equivalents	\$ 7,070	\$ 3,422
Accounts receivable	4,509	4,509
Prepaid expenses	0	0
HST receivable	0	1,934
	<u>\$ 11,579</u>	<u>\$ 9,865</u>
LIABILITIES		
Current		
Payables and accruals	\$ 1,690	\$ 0
NET ASSETS		
Accumulated surplus	<u>9,889</u>	<u>9,865</u>
	<u>\$ 11,579</u>	