

LAW REFORM  
COMMISSION  
OF  
NOVA SCOTIA



# Eighteenth Annual Report

April 1, 2008 to March 31, 2009

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COMMISSION  
OF  
NOVA SCOTIA



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## EIGHTEENTH ANNUAL REPORT

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April 1, 2008 to March 31, 2009

The Law Reform Commission of Nova Scotia was established by the Government of Nova Scotia under the *Law Reform Commission Act*, S.N.S. 1990, c.17. It began operation in 1991.

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The Commissioners for 2008-2009:

Anthony R. Chapman , President  
Diana Ginn  
Darlene Jamieson  
John L. McMullan  
E. Arleen Paris (Resigned August 2008)  
Kevin Coady  
Ronald A. MacDonald (Appointed February 2009)

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The Commission staff in 2008-2009:

John E.S. Briggs  
Executive Director and General Counsel

William H. Laurence  
Legal Research Counsel

Andrea Davidson  
Administrative Assistant

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*The work of the Law Reform Commission of Nova Scotia for fiscal year April 1, 2008 - March 31, 2009 was funded by the Law Foundation of Nova Scotia and by the Government of Nova Scotia.  
The Commission gratefully acknowledges this financial support.*

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## A. OVERVIEW OF THE LAW REFORM COMMISSION

The Law Reform Commission of Nova Scotia was created by the Government of Nova Scotia under the *Law Reform Commission Act*.<sup>1</sup> The Commission consists of between five and seven Commissioners (there are currently six), 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 members of the Faculty of Law, Dalhousie University. One of the Commissioners must not be a graduate in law.

### Mandate

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 province. 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 eight references from the Government. The references related respectively to the administrative justice system, the probate system, mental health provisions of the *Hospitals Act*, adoption information law,<sup>2</sup> grandparent-grandchild access, liability for contaminated sites arising under the *Environment Act*, the garnisheeing of wages, and the rule against perpetuities.

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 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 one third 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 represent the

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<sup>1</sup> S.N.S. 1990, c.17, reproduced at **Appendix A**.

<sup>2</sup> Reports on the administrative justice, probate, *Hospitals Act*, and grandparent-grandchild access projects have been completed. Following completion of background research, work on adoption information law was suspended after news in 2000 of the loss of government funding. The project was subsequently referred to a committee formed by the Minister of Community Services.

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.

## Law Reform Process

The Commission usually prepares two publications during the course of a project. The first publication, the *Discussion Paper*, 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.

The second publication is a *Final Report*, which is submitted to the Attorney General, and which is widely distributed. 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 process adopted by the Commission, of seeking expert advice, consulting widely, synthesizing feedback, deliberating and report writing, is a time-consuming one. It is a process, however, which is designed to give greater weight and credibility to the final recommendations which result. 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 38 project reports and 17 annual reports, which are listed at **Appendix C**. [All reports can be downloaded without cost from the Commission's website.]

## Effects of Law Reform Work

Recommendations in Commission Final Reports have been brought into effect in a number of ways. One way, which perhaps comes most readily to mind, is through incorporation in new or amended legislation. In May 2008 the government introduced and passed the *Personal Directives Act*. This legislation was based on the issues identified, and the proposals recommended, by the Commission in its 1995 Final Report: *Reform of the Laws Dealing with Adult Guardianship and Personal Health Care Decisions*.

In November 2008 the government also introduced Bill 236, *Amendments to the Judicature Act*, the purpose of which was to empower the Supreme Court of Nova Scotia and the Nova Scotia Court of Appeal to prevent a vexatious litigant from starting new proceedings or continuing existing proceedings. This proposed legislation was based on recommendations in the Commission's Final Report: *Vexatious Litigants* (April 2006). In 2007, Alberta legislators changed Alberta law based upon the Nova Scotia Law Reform Commission's report on Vexatious Litigants.

In recent years, acting on proposals in respective Commission Final Reports, the Nova Scotia government has also enacted changes to provincial law dealing with testamentary wills (*Wills Act*, S.N.S. 2006, c.49), mental health treatment and facilities (*Involuntary Psychiatric Treatment Act*, S.N.S. 2005, c.42) and builder's liens (*Builders's Lien Act*, S.N.S. 2004, c 14).

The influence of the Commission's work, however, goes beyond legislation. Certain Final Report recommendations have been implemented through government policies or protocols. Commission reports have also served an important educational function and have been used as course materials in high schools and at post-secondary institutions. Government, public interest groups, and other organizations have relied on Commission reports in order to develop awareness of issues and to focus discussions among interested people. For instance, *Law Reform Agencies*, a 2004 publication of the International Cooperation Group of the Federal Department of Justice, reflected the influence of Commission reports.

The contents of Commission reports have been referred to by a number of courts, including the Supreme Court of Canada, as part of their published case decisions. Judges have mentioned Commission reports in a number of contexts, including interim payment of damages, matrimonial property, administrative law, the jury system, powers of attorney and the legal status of the child born outside of marriage.

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 generally, during the course of legislative debates.

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, Commission staff continue to respond to inquiries 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.

## **Funding**

The Commission is currently funded jointly by the Government of Nova Scotia and the Law Foundation of Nova Scotia. 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 objectives specifically include law reform.<sup>3</sup>

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<sup>3</sup> *Legal Profession Act*, S.N.S. 2004, c. 28, s. 73.

## **B. THE YEAR IN REVIEW 2008 -2009**

### **Work Program and Publications:**

#### **➤ Civil Procedure Rules Revision Project**

The Rules Revision Project was the priority focus of the Commission's work programme since the project began in early 2004. On June 6, 2008 the project was successfully completed with approval of the new Civil Procedure Rules for Nova Scotia by the judges of the Supreme Court and the Court of Appeal. The new Rules went into effect on January 1<sup>st</sup>, 2009. Although the Commission's work on this project was largely complete in June 2008, it continued to provide occasional legal research and related assistance during the fall of 2008 and the spring of 2009. In addition, the Commission was consulted by the Nova Scotia Barristers' Society with respect to an educational and training programme for the practising Bar on the new Civil Procedure Rules.

#### **➤ Small Claims Court Project**

In the fall 2005 the Law Reform Commission initiated a collaborative project with social scientists from Saint Mary's University. The purpose of the project was to conduct an evaluation of the Nova Scotia Small Claims Court which at the time had been in existence for almost 25 years. The Small Claims Court was set up to provide an inexpensive, informal and expeditious forum within which disputes could be resolved without the necessity of retaining a lawyer. The Commission believed that, particularly at a time when access to justice is increasingly a concern, it would be useful to examine how well the Small Claims Court is meeting its original objectives. During Phase I, the project involved conducting structured interviews with Small Claims Court adjudicators, clerks and lawyers. Phase II involved administering a questionnaire to some 2,500 Small Claims Court users. The results of the structured interviews and an analysis of the data collected from the questionnaire survey has been published in a Final Report to the Commission prepared by faculty of Saint Mary's University and entitled: *Evaluation of the Nova Scotia Small Claims Court* (March 2009).

The Commission believes that the Final Report represents a valuable contribution to our understanding of the workings of the civil justice system generally and in particular user satisfaction with the Small Claims Court in Nova Scotia. The successful completion of this collaborative project also represents a useful and tangible expression of our partnership with Saint Mary's University. The Commission undertook the printing and widespread distribution of this Final Report which is also posted on the Commission's website.

### **Projects in Progress**

#### **➤ Contaminated Sites**

The Law Reform Commission began this project as a result of a Reference from the Attorney General under Section 8 (2)(b) of the *Law Reform Commission Act*. The Commission received the *Terms of Reference* for the project in February 2008. The primary focus of the project is on issues relating to the legal liability for contaminated sites arising under the provisions of the

*Environment Act.* A contaminated site is land with soil or water which contains unsafe levels of hazardous substances. The presence of those substances is often the result of long standing industrial activity. Some contaminated sites can be safely cleaned up and put back into productive use. The lack of contaminated site clean-up, however, can mean risk of significant adverse consequences to human health and quality of life as well as to environmental well being with harmful contaminants potentially remaining at many locations. This also has economic costs as potentially useful land lies underused or not used at all. By the end of the reporting period a draft Discussion Paper had been prepared for the consideration of Commissioners prior to being forwarded to the Queen's Printer. The Discussion Paper contains the Commission's preliminary proposals on how the law could be improved to promote the clean-up of contaminated sites, in particular so that they could be returned, if feasible, to productive use, while at the same time protecting human health and the environment. The Discussion Paper was given widespread distribution following the reporting period, in May 2009.

► **The Rule Against Perpetuities**

On 17 September, 2008, the Commission received a Reference from the Attorney General, under s. 8 (2)(b) of the *Law Reform Commission Act*, to examine the current Rule Against Perpetuities and to make recommendations to the government on its abolition, reform or otherwise. By the end of the reporting period the Commission had completed preliminary work on this project including, meetings with interested members of the Bar and, the establishment of a project Advisory Group. It is anticipated that a Discussion Paper on this project will be issued in the early fall of 2009.

► **Civil Procedure Rule 79.08 - Attachment of Debt or Other Obligation**

During the course of the passage of the new Civil Procedure Rules through the House of Assembly an issue arose with respect to then newly drafted Rule 79.08 - "Attachment of Debt or Other Obligation". The Commission received a formal Reference from the Attorney General under s. 8 (2)(b) of the *Law Reform Commission Act* on 24 November, 2008, seeking the Commission's advice with respect to Rule 79.08 and related matters. Since then the Commission has held several meetings and discussions with the Rules' drafters and other interested parties. Rule 79.08 has been subsequently rewritten by the Supreme Court so that it now has essentially the same financial impact as that of the previous rule. Although the central concern giving rise to the Reference has been largely dealt with as a result of changes to Rule 79.08 there remains a residual question relating to whether or not garnishee of wages should be a matter of legislation rather than a matter to be dealt with by the Civil Procedure Rules. Following further consultations, the Commission expects to report to the Attorney General on this issue in the fall of 2009.

► **Enforcement of Civil Judgments**

As a result of the Commission's work relating to the Small Claims Court it became apparent that the most often expressed concern of users of the Court had to do with enforcement of, or collection on, judgments by successful litigants. Further to discussions with the Nova Scotia Department of Justice the Commission was asked in December 2008, to conduct a project which

will focus on the issue of enforcement in the civil justice system at large rather than simply in the Small Claims Court. By the end of the reporting period the Commission had initiated preliminary meetings and other work on this project. It is anticipated that a Project Advisory Group will be established shortly followed by the development of a Discussion Paper.

### **External Activities and Relations**

The Commission and its staff consider it particularly important to maintain close liaison with the practicing Bar, the judiciary, the legal academic community, the Government, our Saint Mary's University partners, and others.

Commission staff have attended and participated in a number of external meetings and conferences during the past year in addition to many less formal activities. In particular the Commission's Executive Director participated in the Annual Meetings of:

- ▶ the Nova Scotia Barristers' Society
- ▶ the Federation of Law Reform Agencies of Canada
- ▶ the Uniform Law Conference of Canada

In addition the Executive Director attended various meetings and events hosted by such organizations as the Legal Information Society of Nova Scotia, the Canadian Bar Association - Nova Scotia Branch, and the Nova Scotia Barristers' Society.

In June 2008, the Executive Director in his capacity as President of the Federation of Law Reform Agencies of Canada attended the 40<sup>th</sup> anniversary of the Alberta Law Reform Institute in Edmonton, Alberta.

The Commission's senior Legal Research Counsel, William Laurence, was invited to participate in an international law reform study program entitled *Changing the Law: Successful reform*, in London England, in October 2008.

In February, 2009, the Executive Director attended the formal swearing in ceremony for Justice Thomas Cromwell's appointment to the Supreme Court of Canada. Justice Cromwell was a Commissioner of the Nova Scotia Law Reform Commission from 2002 to 2007. In March 2009, the Executive Director attended a 3 day symposium of the Federation of Law Reform Agencies of Canada in Victoria, British Columbia.

During the past year, the Executive Director met with, amongst others, the Attorney General and Deputy Attorney General of Nova Scotia, the President and Vice-President of Saint Mary's University, the President and the Executive Director of the Nova Scotia Barristers' Society, the President of the Canadian Bar Association-Nova Scotia Branch, the Director of the British Columbia Law Institute, and the Director of the Alberta Law Reform Institute, the Executive Director of the Ontario Law Commission, and the Executive Director of the Canadian Centre for Ethics and Public Affairs.

During the reporting period Commission work was mentioned in various regional news media as well as The Lawyers Weekly, the Canadian Bar Association and Nova Scotia Barristers' Society publications, other law reform agencies' reports, and Hansard.

### **Internal Administration and Organization**

The Commission currently has six Commissioners. In August 2008, Arlene Paris resigned as a Commissioner, having served since 2002. Ronald A. MacDonald was appointed as a Commissioner by an Order in Council in February 2009.

John E.S. Briggs continued to serve as Executive Director and General Counsel and William Laurence as Legal Research Counsel. The Commission's Administrative Assistant was Andrea Davidson who joined the Commission in May of 2008.

It should be noted that although Mr. William Laurence continued to serve as the Commission's Legal Research Counsel until the end of the reporting period it had become apparent by the end of the fiscal year that he would likely be departing to assume a new position with the Nova Scotia Department of Justice. Although his departure occurred outside the reporting period it would be entirely remiss not to acknowledge Mr. Laurence's outstanding service to the Law Reform Commission for a period of over 10 years. We at the Commission who have had the pleasure of working with "Bill" have no doubt that he will continue to provide exceptional public service to Nova Scotians while at the Department of Justice.

The Commission continues to benefit from the services of Professor William H. Charles, Q.C. as Special Counsel to the Commission. Professor Charles has provided valuable assistance with respect to all of the Commission projects during the past year and in particular on the Contaminated Sites Project.

### **Funding & Finances**

From the establishment of the Commission in 1991 until 2001, the Commission received on average two thirds of its funding from the Government of Nova Scotia, and the remaining one third from the Law Foundation of Nova Scotia. At the time of its establishment, it had been purposely decided in discussions between the Government and the Law Foundation that the Commission would be funded equally by both. It was believed that with this funding arrangement the Commission would be, and would be seen to be, more independent than if it received all of its funding from Government. The original (1991) Commission budget was \$300,000 (now \$415,523.47 based on the Bank of Canada inflation calculator) of which it was expected that the Law Foundation and Government would each provide half of the required core funding.

During the fiscal years 2001 until March 31, 2004 all of the Commission funding was provided by the Law Foundation of Nova Scotia. Since that time, until the present, the Commission has been funded approximately equally by the Law Foundation and the Government of Nova Scotia.

During the reporting period, the Commission received core funding in the amount of \$167,728.00 from the Law Foundation, and \$170,000 from the Department of Justice. In addition, the Government provided the Commission with \$30,000 in supplementary funding in support of our Contaminated Sites project.

The Commission's financial statement for the year ending 31 March 2009 is attached to this report as **Appendix B**.

The Commission continued to operate during the current fiscal year within its available resources. The Commission finished its fiscal year on 31 March, 2009 with a surplus of \$40,318.18 which included some \$36,739.06 of accrued project funding leaving a net operating surplus of \$3,579.12.

## C. The Continuing Need for Law Reform

Not surprisingly the Law Reform Commission believes that law reform is a vitality important ingredient in enhancing respect for the law and ultimately the maintenance of that bedrock principle of democracy - *the rule of law*.

There are no shortage of examples in the international arena of what happens to the quality of civil society in those parts of the globe where the rule of law does not operate.

The financial debacle which has engulfed most of the economies of the world during the past year provides another instructive, although perhaps less obvious, example. For some years a number of very knowledgeable individuals have argued for the need to have more responsible and responsive legislative and regulatory supervision of financial investment markets. It has unfortunately required the collapse of investment bankers and the near collapse of major international banks to drive home the point that indeed these arenas of economic life must be subject to clear rules and rigorous oversight.

In response to this financial crisis, a major thrust of Canadian government policy has been the establishment of *infrastructure* stimulus programmes. The legal system is a vitality important component of our infrastructure and one which affects all aspects of peoples lives: economic, social and political. The health of our legal infrastructure is just as important as that of the transportation infrastructure. It is essential that we have a regulatory and legal environment responsive to the needs of the 21<sup>st</sup> century. To achieve this objective requires the continuing maintenance of our legal system. The failure to attend to the on-going need to modernize, improve, and reform our laws on a systematic and regular basis only results in much greater costs - both sooner *and* later.

Law reform is most successful as a collaborative and cooperative process which involves many players - the bench, the Bar, elected officials, the public, the press, advocacy groups and interested individuals. The Commission's recent work on the Civil Procedure Rules, Contaminated Sites, and the Small Claims Court have reflected - as do all our projects - collaboration and cooperation with persons from a number of quarters. All of our projects involve advisory groups consisting of very knowledgeable and committed individuals who freely donate their time to the work of the Commission. We believe that Nova Scotians receive a very valuable benefit from the Commission on what is a relatively modest investment in the essential public service of law reform.

**In summary** the 2008-2009 fiscal year was very positive. The Commission successfully completed its work on the Civil Procedure Rules Revision Project, received and printed a Final Report on the Nova Scotia Small Claims Court project, completed a draft Discussion Paper on contaminated sites and initiated work on several other projects. The Commission also received two additional References from the Attorney General during the past year. We begin the new fiscal year 2009 with continuing optimism and enthusiasm for our work.

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## COMMISSIONERS AND STAFF

### Commissioners

#### **Anthony L. Chapman**, President

*Commissioner (2004 - )*

Mr. Chapman was appointed to the Commission by the Council of the Nova Scotia Barristers' Society in June 2004. He has been a member of the Nova Scotia Bar since 1980. A partner in the Halifax office of the law firm Cox & Palmer, Mr. Chapman specializes in corporate/commercial law, real property law, secured transactions, and environmental law. Mr. Chapman was appointed President in 2007.

#### **Kevin Coady**

*Commissioner (2007 - )*

Mr. Coady was appointed to the Commission by Order in Council in December 2007. Mr. 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 Coady Filliter and taught Criminal Law at Dalhousie University.

#### **Diana Ginn**

*Commissioner (2002 - )*

Ms. Ginn was appointed to the Commission by order in Council in June 2002. She is an associate professor at the Faculty of Law, Dalhousie University, teaching in the areas of property law, administrative law, health law and women in the law. Ms. Ginn specializes in research and writing in these subject areas, and has published numerous articles.

#### **Darlene Jamieson**

*Commissioner (2002 - )*

Ms. Jamieson was appointed to the Commission by the Council of the Nova Scotia Barristers' Society in June 2002. 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.

#### **John L. McMullan**

*Commissioner (2006 - )*

Dr. McMullan was appointed to the Commission by order in Council in February 2006. Dr. McMullan is a Professor of Sociology and Criminology and the former Chairperson and Criminology Graduate Studies Coordinator at Saint Mary's University. He is the author of several books and numerous articles on business crime, law enforcement, social regulation, media, law and justice, and gambling and social policy. Dr. McMullan is a multiple research award holder and he has served on many university, academic, professional, and government councils and boards. He is currently interested in the role of public inquiries and truth, and the legal context of new forms of permitted gambling in Canada.

**E. Arleen Paris***Commissioner (2002 - 2008 )*

Ms. Paris was appointed to the Commission by Order in Council in January 2002. She is a retired medical laboratory technologist, who worked with the Nova Scotia Department of Agriculture and Fisheries, as well as at hospitals in Nova Scotia and New Brunswick. Ms. Paris resigned from the Commission in August 2008.

**Ronald A. MacDonald***Commissioner (2009 - )*

Mr. MacDonald was appointed to the Commission by Order in Council in February 2009. He is retired from the Nova Scotia Teacher's Union where his duties included working with three levels of government, public affairs and various committee work. He has also been a newspaper reporter as well as a commentator for CBC covering local, regional and national affairs. Mr. MacDonald is a graduate of Mount Allison (B.A. and B.E.D.) and Dalhousie (M.A.) Universities. He remains active in a number of community projects including the North Sydney Historical Society.

**Staff****John E.S. Briggs***Executive Director & General Counsel*

Mr. Briggs, a graduate of Carleton, Queens and Oxford universities, was called to the Bar in 1974. He has been Executive Director of the Commission since 2001, and also acts as Outside Counsel to the Federal Minister of Justice on alleged miscarriage of justice cases. Mr. Briggs is a practicing member of the Bar in Nova Scotia and Ontario, and was President of the Federation of Law Reform Agencies of Canada from 2003 to 2008.

**William H. Laurence***Legal Research Counsel*

Mr. Laurence joined the Commission in September, 1998. He has a B.A. (Hon.) from Carleton University, an LL.B. from McGill University as well as an LL.M. and M.L.I.S. from Dalhousie University. He worked as a legal researcher and practiced law before joining the Commission.

**Andrea Davidson***Administrative Assistant*

Ms. Davidson joined the Commission in May 2008. She has a strong administrative background with an emphasis on the travel industry.

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

Professor 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.

## **Appendix A.**

*The Law Reform Commission Act*

## 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.**

Financial Report for the 2008 - 2009 Fiscal Year

**Law Reform Commission of Nova Scotia  
Balance Sheet as at 03/31/2009**

**ASSETS**

**CURRENT ASSETS**

Petty Cash		25.00
Bank Operating Account	8,127.38	
Cashable GICS	211,824.00	
T-Bill Account	0.00	
Total Cash		219,951.38
HST Receivable		<u>5,165.80</u>

**TOTAL CURRENT ASSETS** 225,142.18

**FIXED ASSETS**

Computer Equipment	19,059.16	
Accum. Computer Equipment	<u>-19,059.16</u>	
Net Office Equipment		<u>(0.00)</u>

Total Fixed Assets (0.00)

**TOTAL ASSETS** 225,142.18

**LIABILITIES**

**CURRENT LIABILITIES**

Vacation Payable		0.00
UIC Payable	0.00	
CPP Payable	0.00	
Income Tax Payable	<u>0.00</u>	
Receiver General Payable		<u>0.00</u>
Accrued income		184,824.00

**TOTAL CURRENT LIABILITIES** 184,824.00

**TOTAL LIABILITIES** 184,824.00

**EQUITY**

Surplus

Surplus Beginning of Year	10,576.82
Surplus Current Year	<u>29,741.36</u>
ACCUMULATED SURPLUS	40,318.18

**TOTAL EQUITY** 40,318.18

**LIABILITIES AND EQUITY** 225,142.18

Explanatory Note

The year 2008-2009 began with accrued project funding of \$6,739.06 which by year's end had increased to \$36,739.06, leaving a net operating surplus as at March 31, 2009 of \$3,579.12

**LAW REFORM COMMISSION OF NOVA SCOTIA**  
**Income Statement as at 3/31/09**

**REVENUE**

**OPERATING INCOME**

Department of Justice	200,000.00
NS Law Foundation Contribution	167,728.00
Interest Income	<u>1,728.44</u>
<b>TOTAL CONTRIBUTIONS</b>	<u>369,456.44</u>
<b>TOTAL REVENUE</b>	369,456.44

**EXPENSE**

**ADMINISTRATIVE EXPENSES**

Wages	225,477.20	
EI Expense	2,895.65	
CPP Expense	5,781.11	
Group Insurance Expense	<u>7,046.81</u>	

**TOTAL PERSONNEL RELATED** 241,200.77

Advertising		0.00
Commissioners Fees & Expenses		0.00
Electrical Expense		1,123.33
Meetings Costs		367.88
Library		3,757.43
Accounting Fees		780.00
Membership Dues		5,026.11
Computer Software/supplies/repairs		2,606.94
Internet		940.40
Staff Expenses		3,024.59
Rent	31,356.48	
Office Equipment Rental	3,074.57	
Insurance	<u>1,014.00</u>	

**TOTAL PREMISES RELATED** 35,445.05

Office Supplies	2,363.15	
Photocopy/Printing	5,111.22	
Postage & Courier	1,045.69	
Telephone Expense	2,824.26	
Travel/Conference/Workshop	12,079.83	
Staff Dev. & Registration Fee	4,037.80	
Office Equipment Maintenance	<u>199.95</u>	

**TOTAL OFFICE RELATED** 27,661.90

Bank Charges		273.57
HST Paid on Purchases		4,962.75
GST Paid on Purchases		.91
Total Project Related		<u>12,543.45</u>

**TOTAL ADMINISTRATION** 339,715.08

**TOTAL EXPENSE** 339,715.08

**NET INCOME** 29,741.36

## **Appendix C.**

List of Publications (by project) 1991-2009

## Law Reform Commission Publications

(As of March 31, 2009)

### 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)

### Custody and Access

- *Grandparent-Grandchild: Access* (Discussion Paper, January 2007)
- *Grandparent-Grandchild: Access* (Final Report, April 2007)

### 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)

### Future of the Law Reform Commission

- *A Continuing Need for Law Reform: The Case for the Law Reform Commission of Nova Scotia* (Report, December 2001)

### Interim Payment of Damages

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

#### *Mechanics' Lien Act*

- *Builders' Liens in Nova Scotia: Reform of the Mechanics' Lien Act* (Discussion Paper, January 2003)
- *Builders' Liens in Nova Scotia: Reform of the Mechanics' Lien Act* (Final Report, June 2003)

#### **Mental Health Provisions**

- *Mental Health Provisions of the Hospitals Act* (Discussion Paper, September 2000)
- *Mental Health Provisions of the Hospitals Act* (Final Report, February 2002)

#### **Mortgage Foreclosure and Sale**

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

#### **Privity of Contract**

- *Privity of Contract (Third Party Rights)* (Discussion Paper, March 2004)
- *Privity of Contract (Third Party Rights)* (Final Report, August 2004)

#### **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)

#### **Structured Settlements**

- *Court-ordered Structured Settlements for Personal Injury Damage Awards* (Background Paper, August 2004)

#### **Tortfeasors**

- *Joint Tortfeasors & the Common Law "Release Bar Rule"* (Final Report, July 2002)

#### **Vexatious Litigants**

- *Vexatious Litigants* (Discussion Paper, November 2005)
- *Vexatious Litigants* (Final Report, April 2006)

#### *Wills Act*

- *Reform of the Nova Scotia Wills Act* (Discussion Paper, July 2003)
- *Reform of the Nova Scotia Wills Act* (Final Report, November 2003)

### **Seventeen Annual Reports**

- April 1, 1991 - March 31, 1992
- April 1, 1992 - March 31, 1993
- April 1, 1993 - March 31, 1994
- April 1, 1994 - March 31, 1995
- April 1, 1995 - March 31, 1996
- April 1, 1996 - March 31, 1997
- April 1, 1997 - March 31, 1998
- April 1, 1998 - March 31, 1999
- April 1, 1999 - March 31, 2000
- April 1, 2000 - March 31, 2001
- April 1, 2001 - March 31, 2002
- April 1, 2002 - March 31, 2003
- April 1, 2003 - March 31, 2004
- April 1, 2004 - March 31, 2005
- April 1, 2005 - March 31, 2006
- April 1, 2006 - March 31, 2007
- April 1, 2007 - March 31, 2008