

ACCESS TO JUSTICE
—
& LAW REFORM
—
INSTITUTE
— OF —
NOVA SCOTIA
—



TWENTY-EIGHTH ANNUAL REPORT

April 1, 2018 to March 31, 2019

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 Commission transitioned to the Access to Justice & Law Reform Institute, an incorporated non-profit, in January 2019.

The Members of the Board are:

Professor Robert J. Currie, President
Justice Darlene Jamieson
Catherine D. A. Watson Coles, Q.C.
Richard J. Melanson

The staff of the Institute are:

Ilana Dodi Luther
Executive Director

Sarah Burton
Legal Research Counsel

Shawn Harmon
Part-time Legal Research Counsel
(April 1, 2018-August 19, 2018)

William H. Charles, Q.C.
Special Counsel

The Institute offices are located at:

Access to Justice & Law Reform Institute of Nova Scotia
6061 University Avenue, Schulich School of Law
Halifax, Nova Scotia B3H 4R2

Telephone: (902) 494-7714
Email: info@lawreform.ns.ca
Web Site: www.lawreform.ns.ca

The Institute receives funding from the Government of Nova Scotia, the Government of Canada, and the Law Foundation of Nova Scotia and support from the Nova Scotia Barristers' Society and the Schulich School of Law. The Institute gratefully acknowledges this support.

THE INSTITUTE

During the 2018-2019 funding year, the Law Reform Commission of Nova Scotia transitioned to the Access to Justice & Law Reform Institute, an incorporated non-profit, in January 2019. The Law Reform Commission of Nova Scotia was created in 1991, pursuant to the *Law Reform Commission Act* to review Nova Scotia's laws and make recommendations for their improvement, modernization and reform.

In January 2019, the Access to Justice Coordinating Committee released its Final Report of recommendations. The Committee was comprised of justice stakeholders such as the Chief Justice of Nova Scotia, the Minister of Justice, Dean of the Law School, Executive Director of Legal Aid, President of the Canadian Bar Association – Nova Scotia Branch, representatives from the African Nova Scotian and Indigenous Communities and a member of the public. In its Final Report it recommended that the Law Reform Commission transition to the Access to Justice & Law Reform Institute of Nova Scotia stating:

The new Access to Justice & Law Reform Institute of Nova Scotia will serve as an access to justice hub and will be well-placed to coordinate projects that allow work encompassing both traditional law reform and access to justice orientation. This includes gathering and analysing data to help develop projects associated with government priorities, such as how to work collaboratively on access to justice initiatives, generating new policy goals, and developing legislative proposals to accomplish those goals.¹

In 2018-2019 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 and Government of Canada both provided funding to the Institute. As well, the Schulich School of Law provided office space and the Nova Scotia Barristers' Society provided in-kind support.

In 2018-2019 the Institute employed an Access to Justice Coordinator, Executive Director and Legal Research Counsel as well as a part-time Financial Administrator. The Institute was also able to employ a part-time research assistant, Ms. Desiree Jones. As well, the Institute 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 Institute projects during the past year.

The Institute's work is supported by volunteer effort from legal practitioners, experts and stakeholders who offer advice and expertise on the Institute's projects. For each project the Institute convenes one or more advisory groups to guide its research and to examine options for

¹ Access to Justice Coordinating Committee, *Final Report* (2018), online: http://courts.ns.ca/News_of_Courts/documents/A2JCCreport_WEB.pdf at 8.

reform. The time and effort given by these advisory group members is considerable, and the Institute could not do its work without them.

The previous work of the Institute, under the Law Reform Commission 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.

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 2018 - 2019

Work Program and Publications

Review of the *Intestate Succession Act*

The 2018-2019 year began with the Law Reform Commission finishing advisory group meetings on the *Intestate Succession Act* Issues Paper. The Institute has now published a Discussion Paper and online survey for public consultation presenting proposals for discussion as a result of advice we have garnered from the advisory group. Advisory group members met for 9 meetings for a total of over 20 hours of meetings and advice to the Commission. The advisory group is comprised of senior members of the bar including both rural and urban practitioners, the Public Trustee for Nova Scotia, and a senior trusts and estates academic.

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 distributes property to the family of the deceased without having to make an application to court. As such, making sure property is distributed fairly and in such a way that ensures as much as possible that family members are not financially disadvantaged on the death of the intestate is a prime concern.

The Institute has published an extensive Discussion Paper asking for feedback on its proposals for discussion for reform of the intestate succession regime. As well, the Institute has published a plain language survey for the public which is comprised of public legal education which has been distributed widely. Institute staff will be consulting with experts and the public on proposals for reform throughout the summer as well as holding public legal education sessions on the content of the current *Intestate Succession Act* and the importance of making 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 50% of Canadians may not have a will. This figure rises to 56% for Atlantic Canada. Our research indicates that low income persons and racialized Nova Scotians are more likely to die without a will. Furthermore, low income persons may not be able to afford the high cost of probate and may be prevented from transferring property from one generation to another thereby further exacerbating socio-economic marginalization.

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. Our review will help make sure that the *Act* is keeping pace with the changing family form and changing societal expectations.

Our review of the intestate succession regime not only looks at the spousal share and the inclusion of common law partners – thereby helping to ensure that the regime does not further the economic marginalization of potentially elder surviving spouses and partners – but it looks at other aspects of the changing family form such as the introduction of step-children and children to whom the intestate otherwise stands in loco parentis, adopted children, and children conceived by posthumous conception. The project also reviews the possibility of introducing a simplified procedure for small estates in Nova Scotia. The project will benefit not only the large number of Nova Scotians that die without wills but it will focus on promoting access to justice for low income Nova Scotians in particular.

Access to Justice Review Project

As the Institute has taken on a mandate of focusing on Access to Justice, during the 2018-2019 funding year we undertook the Access to Justice Review Project to develop a plan of action on addressing access to justice.

During the 2018-2019 funding year we compiled an Issues Paper setting out our legal research and literature review on Access to Justice, #TalkJustice survey data, community engagement feedback and interviews with experts identifying issues, challenges and strategies for collaboration. As well, we were able to produce a mapping of community and academic research, as well as cross jurisdictional scan of A2J services and innovations to help understand the A2J landscape.

The importance of the background research in the Issues Paper cannot be overstated. Without understanding how Access to Justice is understood in the case law and in policy discourse we cannot know landscape of where we are starting. As well, without getting a grasp on how access to justice differs for various groups we cannot know how to address the barriers experienced by those groups or advise Government on best practices for collaborating with those groups. The Issues Paper will provide a guide for work with our A2J Advisory Group setting out a plan of action on coordinating access to justice activities as part of the Institute's work program.

Without doing the research and understanding where we are coming from on access to justice we cannot know where we are going and how to address the Access to Justice Challenge in the most efficient and effective way possible.

A2J Portal

Institute staff have begun developing a public facing A2J Portal which will house data, research and reports compiled by the Institute as well as information setting out the A2J landscape in Nova Scotia. The portal will be online during the 2019-2020 fiscal year and will serve as a hub, or coordinating point for understanding the landscape of A2J in the Nova Scotia and a starting point for Nova Scotians to understand where they can get help. The portal will also serve as a research

platform and a collaborative space for researchers and social service providers on access to justice issues emerging from our community engagement work.

Legal Education

As per the Access to Justice Action Committee *Justice Development Goals*, we are building capacity on access to justice by contributing to legal education on A2J. Institute staff have been reaching out to the Law School community by engaging student volunteers, pro bono students, and taking on a public law placement student to undertake research on the Small Claims Court.

The Institute is currently in discussions with several professors (Darrel Pink, Richard Devlin, Jamie Baxter) teaching the Professional Responsibility class at the law school on developing an access to justice module for the class. In particular, Institute staff will be presenting research for the access to justice research project to bring the voices of Nova Scotians to the law school curriculum and help law students understand their professional responsibility in the context of personal relationships with their clients.

Updating the Small Claims Court Needs Assessment

As indicated above, the Institute will be hosting a Public Law Placement student from January to April 2019. The student will be undertaking a substantial research and writing project related to the theme of access to justice in Nova Scotia. In particular, the student will be following up on research conducted by the Commission in concert with Saint Mary's University in 2009, on the Small Claims Court in Nova Scotia and possibilities for access to justice innovations and law reform. Commission staff have begun organizing the work for the student's undertaking of this project and will be contacting court services shortly to get updated data for the student to begin this project.

In 2005, the Law Reform Commission, in conjunction with members of the psychology department at Saint Mary's University, undertook an "Evaluation of the Nova Scotia Small Claims Court", published in 2009, (the "2009 Evaluation") which was comprised of an overview of the court and interviews with stakeholders. From interviews there were a number of conclusions that emerged from the project including the fact that enforcement of orders emerged as a central issue of concern.

This led to the issuance of the Commission's *Enforcement of Civil Judgments Final Report*. In this report, research conducted by the Commission staff revealed that in 2011, 242 out of 544 execution orders issued out of Small Claims Court or 44.5%, were issued on behalf of credit lending agencies. For Supreme Court, 648 out of 802 execution orders issued (excluding 609 issued in favour of the Workers' Compensation Board) or 80.8%, were issued on behalf of credit

lending agencies.²

In light of this research, the Commission published a 60-page research paper in the course of this project on how to set a wage exemption so as to take into consideration assessments of low income and ensure that persons who are the subject of enforcement orders who may be caught in a cycle of overindebtedness are not further marginalized.

The Commission is very proud of this work that furthers access to justice for Nova Scotians. We are ultimately updating the research in the 2009 report to investigate where the Commission's next law reform project can best focus so as to yet again make both policy and legislative proposals to ensure access to justice for Nova Scotian using the Court system.

#TalkJustice

Since taking over the #TalkJustice project Institute staff have been implementing one of the central recommendations of the first phase of #TalkJustice: dedicated rural outreach to ensure the experiences we are collecting are representative of all Nova Scotians.

Staff have been engaging undertaken dedicated Community outreach and Engagement in the Lunenburg County area and will be moving out to Queens, New Glasgow and Cape Breton shortly. Staff have met with frontline service providers such as the Be the Peace Institute, Better Together Family Resource Center, Freeman House, Senior Safety Coordinators and have held focus groups compiling narratives from service users using the SenseMaker software. Since beginning a concerted focus on rural outreach in November, staff have compiled 57 narratives from users. Staff will continue with a target of 20 narratives a month.

Staff have also continued community engagement within Halifax Regional Municipality, with a focus on frontline service providers such as Elizabeth Fry society, Stepping Stone, Shelter Nova Scotia, Avalon Sexual Assault Center and are beginning engagement in the North Preston Community. The Institute has taken on consultant LaMeia Reddick from the North Preston Community and are developing a docuseries focused on the North Preston Community as a way to promote conversation on justice issues in the community and in other similarly situated communities across Nova Scotia.

Staff have also published findings from the SenseMaker data through data bulletins and infographics online and through social media.

² Law Reform Commission of Nova Scotia, *Final Report: Enforcement of Civil Judgments* (2014) at 19.

BOARD MEMBERS AND STAFF 2018 - 2019

Board Members

Justice Darlene Jamieson

The Honourable Justice Darlene Jamieson was appointed to the Commission by the Council of the Nova Scotia Barristers' Society in June 2002 and then re-appointed to the Board of the Institute in March 2019. She was appointed to the Supreme Court of Nova Scotia in November 2018. Before her appointment she was a partner in the law firm Merrick Jamieson Sterns Washington & Mahody 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, Justice Jamieson was inducted into the American College of Trial Lawyers.

Robert J. Currie

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.

Justice Kevin Coady (until March 2019)

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.

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, QC

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**Ilana Dodi Luther***Executive Director*

Ilana joined the Commission in June 2011. She has worked for legal aid in both Ontario and Nova Scotia. After receiving her Bachelor of Arts from Carleton University, she received a Master of Arts in Political Science from York University. In 2004, she received her law degree from Osgoode Hall Law School, followed by a Master of Laws from Harvard Law School. She has taught at the Schulich School of Law on a part-time basis. In 2015, Dr. Luther obtained her Doctorate in Law from Schulich School of Law. In 2017 she took a hiatus from the Commission to work as a policy analyst for the Government of Nova Scotia. She returned to serve as Executive Director in 2018.

Sarah Burton*Legal Research Counsel*

Sarah joined the Institute as legal research counsel in January 2019. Sarah obtained her law degree from Dalhousie University in 2008 and was called to the Nova Scotia and Alberta bars in 2009. She has a Masters in Law from the London School of Economics and is currently pursuing doctoral studies with the University of Ottawa. Sarah has worked as a civil litigator in one of Canada's leading law firms, and has been involved in cases before the Supreme Court of Canada. She also has worked with human rights and civil liberties organizations, where she focused on access to justice and public education.

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.