Law Reform Commission of Canada

Commission de réforme du droit du Canada

# 10th annual report

## 1980-1981

Canada

LAW REFORM COMMISSION
OF CANADA

# TENTH ANNUAL REPORT
1980-1981

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PRESIDENT
LAW REFORM
COMMISSION

Ottawa
December, 1981

The Honourable Jean Chrétien,
P.C., M.P.,
Minister of Justice,
Ottawa, Canada.

Dear Mr. Minister:

In accordance with section 17 of the *Law Reform Commission Act*, I submit herewith the Tenth Annual Report of the Law Reform Commission of Canada for the period June 1, 1980 to May 31, 1981.

Yours respectfully,

F. C. Muldoon

Francis C. Muldoon, Q.C.

*This is the Tenth Annual Report of the Law Reform Commission of Canada. This Report describes the Commission's activities during the period from June 1, 1980 to May 31, 1981.*

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# 1

# Introduction

## ▫ The Commission

The Commission was established by the *Law Reform Commission Act,* to which Royal Assent was accorded on June 26, 1970, and which came into force on June 1, 1971. The statute originally provided for a Commission composed of a Chairman, a Vice-Chairman, two other full-time Commissioners and two part-time Commissioners, to be appointed by the Governor in Council on the recommendation of the Minister of Justice and Attorney General of Canada. The statute was amended by Parliament in 1975, to provide for a Commission composed of a Chairman, a Vice-Chairman and three other full-time Commissioners, all appointed in the same manner as before, each for a term not exceeding seven years. The statute was amended in 1981 by altering the Chairman's title to President and the Vice-Chairman's title to Vice-President. The statute further provides that the President, the Vice-President and at least one other Commissioner shall be a person in receipt of a salary or annuity under the *Judges Act,* or a barrister or advocate of not less than ten years standing at the bar of any province; and that the President or the Vice-President and at least one other Commissioner be a judge of the Superior Court of Québec or a member of the Bar of that province. All the Commissioners are bound to devote the whole of their time to the performance of their duties under the *Law Reform Commission Act.*

Mr. Francis C. Muldoon, Q.C., of the Manitoba Bar, has been President, and Judge Edward James Houston, of the County of York, in Ontario, has been a Commissioner during the whole year spanned by this Annual Report. Mr. Justice Jacques Ducros of the Superior Court of Québec was Vice-President until March 16, 1981, when his resignation was accepted, thus enabling him to return to the bench as was his wish. His great strength is his knowledge and understanding of criminal law which we shall miss. As of March 16, 1981, Mr. Réjean F. Paul, Q.C., of the Québec Bar, was appointed a Commissioner. Mr. Paul, before his appointment, was Director of the regional office of the federal Department of Justice in Montréal.

Thus, at the end of the year, the Commission is composed of the minimum statutory quorum of only three Commissioners.

Mr. Jean Côté is Secretary of the Commission. Mr. Michael H. F. Webber is the Director of Operations.

## □ The Commission's Mandate

The Law Reform Commission of Canada is a continuing organization whose objects are established by Parliament and are described fully in section 11 of the *Law Reform Commission Act*. In brief, the Commission is to study and to keep under review the federal laws of Canada, with a view to making recommendations for their improvement, modernization and reform. Specifically included among the Commission's statutory objects is innovation in the development of new approaches to — and new concepts of — the law in keeping with and responsive to the changing needs of modern Canadian society and the individual members of that society. Specifically mandated by the *Law Reform Commission Act* is the Commission's making reform recommendations which reflect the distinctive concepts and institutions of the common law and the civil law legal systems of bi-jural Canada. This statutory objective also sets the Commission upon the path of reconciliation of differences and discrepancies in the *expression* and *application* of the law arising out of differences in those concepts and institutions.

The Commission is required by statute to submit, from time to time, for the approval of the Minister of Justice, specific programs of study of particular laws or branches of law; and it must include in such programs any study requested by the Minister to which, in his opinion, it is desirable in the public interest that special priority be accorded by the Commission. The Commission is then empowered by statute to initiate and carry out any studies and research of a legal nature as it deems necessary for the proper discharge of its functions, including studies and research relating to the laws, legal systems and institutions of other jurisdictions whether in Canada or abroad.

Wherever appropriate, the Commission is required to make use of technical and other information, advice and assistance available from departments, branches and agencies of the Government of Canada. Moreover, every department, branch or agency is under a statutory obligation to make available to the Commission all such information, advice and assistance as may be necessary to enable the Commission properly to discharge its functions.

Section 16 of the *Law Reform Commission Act* requires the Commission to prepare and submit to the Minister of Justice a Report on the results of each study, including the Commission's recommendations in the form which the Commission thinks most suitable to facilitate the explanation and understanding of those recommendations. The Minister, in turn, is required by the Act to cause each Report to be laid before Parliament within fifteen days of his receiving it, or if Parliament be not then sitting, within fifteen days after Parliament is next sitting.

## □ Some Operational Observations

### Meetings

The Commission held eleven formal meetings during the period under review. The minimum statutory requirement mentioned in subsection 9(2) of the *Law Reform Commission Act* is six meetings.

## Reports

A list of the Reports which the Commission has submitted to Parliament is Appendix A to this Report. Because the Commission's Reports must all be laid before Parliament in both official languages, the Commission does not issue so-called informal reports, a technique of reporting which is practised by some provincial law reform bodies. All of the Commission's Reports are both formal and published.

## Recommendations

Appendix B shows the Commission's tentative and final recommendations which, over the years, have been judicially noted by various courts.

## Publications

Publications issued during fiscal year 1980-1981, which ended on March 31, 1981, are set forth in Appendix C to this Report.

## Personnel

During the year under review, ending May 31, 1981, the personnel strength of the Commission varied according to seasonal and functional factors. From December 31, 1979, the date of expiry of Professor Jean-Louis Baudouin's term of office until the end of the year under review there have always been no more than three Commissioners, two fewer than the full statutory complement of five. During the past year there were 61 consultants of all categories, including 53 research consultants, identified in Appendix D, all of whom provided their services to the Commission for the whole or part of the year. They were retained on a contractual basis in accordance with subsection 7(2) of the *Law Reform Commission Act*. The Secretary is the ranking public servant of the Commission and all of the support staff, with the occasional exception of temporary office assistants, are public servants. The number of staff during most of the year was 34.

Not included in this figure but worth mentioning are two categories of temporary employees whose assistance to the operations of the Commission has been invaluable. First, ten law students were employed, mostly during summer months, as assistants to researchers, thus providing projects with competent basic legal research and analysis while giving these jurists-to-be an insight into the Commission's activities. Second, the Commission's huge mailing operations at time of releases of new publications were greatly helped by the able assistance of persons sponsored by the Ottawa and District Association for the Mentally Retarded.

## Consultations

The Commission's program of consultations carried out pursuant to section 15 of the *Law Reform Commission Act* is described in relation to our principal projects later in the Report.

## Official Languages Policies

The Commission continues to take particular care and pride in adhering to the letter and the spirit of the *Official Languages Act*. Being in constant consultation with the public, the Commission serves Canadians wherever they live throughout our bilingual country, in the official language of their choice. In his 1980 Annual Report, the Commissioner of Official Languages, referring to the Commission's overall performance in the area of official languages, asserted that the Commission

"continues to be one of the best institutions this office has audited to date and rates high in just about all of the aspects we examined". Further improvement is the constant goal of the Commission and the appreciation expressed by the Commissioner of Official Languages is an encouragement in that pursuit.

During the year under review, Treasury Board and the Commission jointly signed a "Letter of Understanding" having the effect of exempting the Commission from providing the Board with a detailed and lengthy report on the application of the Official Languages Policy. This was in recognition of the exceptionally good performance of the Commission in this regard.

Whether Canadians or not, people who communicated with the Commission were served in the Canadian official language of their choice.

In the administrative support areas, francophone employees have been strongly encouraged to employ their official language for written communications. A noticeable improvement has been achieved in this respect. Meetings, notes and verbal invitations were used to achieve this. At the close of the period, all bilingual positions but one were staffed by qualified bilingual employees, an improvement over the previous year. The one exception was an employee then attending upgrading language training.

The situation also improved in the research area where the number of francophones represented, at the end of October, 1980, was 27% of the total of regular researchers in comparison with 15% in October, 1979. Research documents continued to be drafted in the language of the author.

During the period under review, the Commission was the object of one complaint lodged with the Commissioner of Official Languages. It related to unilingual documents and proved to be unfounded.

### Expenditures

The total expenditures incurred by the Commission during the fiscal year April 1, 1980 to March 31, 1981, amounted to $2.28 million. The sum of $894 thousand was expended on the research program, including translation costs and remuneration of those Commissioners who are not in receipt of a salary under the *Judges Act*. The information and publications activity cost $322,500, while administrative costs amounted to $1,063,400.

## □ Influence on Law Reform

The influence of the Law Reform Commission of Canada on the shaping of the laws of Canada has been described in previous Annual Reports. The four principal spheres in which the Commission can be influential are the legislative; the judicial; the administrative; and the general public receptiveness to law reform.

Several of the Commission's recommendations found expression in legislative bills which were introduced in Parliament by the government.

Bill C-43, *Access to Information and Privacy*, introduced by the Secretary of State on July 17, 1980, reflected a concern of the Commission expressed in Report 1: *Evidence*. Clause 3 of the Bill would repeal section 41 of the *Federal Court Act* as the Commission recommended in paragraph 89(c) of the *Evidence Code* proposed in Report 1. While the Bill would establish its own particular grounds for access to information, clause 47 would allow the Federal Court to review any material being withheld from disclosure. This is in harmony with the intentions of the Commission as expressed in subsection 43(4) of the proposed *Evidence Code*.

Bill C-53 dealt with sexual offences and the protection of young persons. This Bill, introduced by the Minister of Justice on January 12, 1981, would have achieved a primary objective recommended by the Commission in Report 10: *Sexual Offences*. The *Criminal Code* would have been amended such that sexual interference with male or female persons under fourteen years of age or in a position of dependency would become an offence. Similarly, solicitation committed by persons of either sex would have become an offence. Furthermore, the Bill would have implemented certain of the Commission's proposals advanced in Report 1: *Evidence*. While the Commission in paragraph 88(*b*) of the proposed *Evidence Code* would have abrogated any rule requiring corroboration as a basis for conviction, Bill C-53 in clause 18 would at least have abrogated this rule in respect of sexual offences. Clause 18 also espoused the Commission's view expressed in subsection 17(2) of the *Evidence Code* relating to the character of the victim of a sexual offence and the necessity of an *in camera* hearing before admission of such evidence.

Bill C-61, the *Young Offenders Act*, introduced by the Solicitor General of Canada on February 16, 1981, draws from some of the Commission's solutions offered in Report 2: *Guidelines — Dispositions and Sentences in the Criminal Process*. While the Commission would have such dispositions available in all criminal proceedings, this Bill, in respect of young offenders, codified methods of pre-trial settlements or diversion. Furthermore, the Bill specifically recognized restitution and community service orders as possible sentences.

In clause 4(4), as a protection to the young offender, admissions or confessions made during pre-trial settlements would be inadmissible in any civil or criminal proceedings. This protection was recommended by the Commission in section 26 of the *Evidence Code* set out in Report 1: *Evidence*. Furthermore the Bill would have codified the duty of a judge to instruct a young person on his duty to tell the truth as a witness. This provision is similar to section 51 of the *Evidence Code*.

Bill C-38, the *Garnishment, Attachment and Pension Diversion Act*, was introduced by the Minister of Justice on June 27, 1980. This Bill would have put into law the primary recommendations of the Commission expressed in Report 8: *The Exigibility to Attachment of Remuneration Payable by the Crown in Right of Canada*. Clause 5 of the Bill provides garnishment of salaries and other remuneration payable on behalf of the Crown according to provincial garnishment law. This was the thrust of the Commission's Report.

# 2

# Reports to Parliament

Since the end of the year which was the subject of our Ninth Annual Report, the Commission has submitted to Parliament the following Report.

## □ *Criteria for the Determination of Death* — Report 15, dated March, 1981

The subject of this Report is a legal definition of the fact and, therefore, in effect, the time of the death of a human being. The Report is based on Working Paper 23 entitled *Criteria for the Determination of Death* published early in 1979 which was widely distributed and received a very positive, and even enthusiastic response in Canada and elsewhere. Numerous scientific and juridical groups were formally consulted by the Commission on this reform project in order to learn their views on our tentative proposals.

Moreover, the opinion of a great number of individuals in Canada and abroad has also been canvassed, and many people and groups spontaneously communicated their responses to the Commission.

The factual incidents of the death of a human being have doubtless never changed over the course of the history of our species on this planet, and insofar as one can foresee, they never will change. The problem which the Working Paper and the Report addressed, however, resides in how the law regards death and in the determination of which factual incidents the law recognizes.

To date, the law has concentrated on that which could be observed by means of less sophisticated technology over the centuries: heartbeat, respiration and circulation of blood. Medical experience shows that the absence of each of these functions, or of all of them together does not equate to the death of a person although, without intervention, the absence of one or all of these functions will rapidly cause death. New technology has not changed the fact of death, but it has changed an inaccurate perception of death to an accurate perception, which is: the irreversible cessation of all brain functions. Unfortunately the law in Canada has not uniformly adopted the accurate perception, if it has adoted it at all. The accurate definition, to date, has been adopted only by the Manitoba Legislature, but naturally, only for all purposes within the legislative competence of that legislature. There are valid purposes too, in regard to the legislative jurisdiction of Parliament, for establishing precise criteria for the determination of

death. The accuracy of the definition carries the benefit of rendering the law consonant with the factual reality: the precision of the criteria carries the benefit of obviating doubtful application of the law.

In Working Paper 23, the Commission posed two questions:

- Is a legislative intervention, establishing the general criteria for dermination of death, advisable in the present circumstances?
- If so, is the definition proposed by the Commission in its preliminary recommendations, socially, medically and legally acceptable?

After engaging in the thorough consultations already mentioned the Commission concluded, with some modifications of the second and third paragraphs of the tentative text (which are only supplementary to the principal proposed reform), that the answer to each question is definitely affirmative. Moreover, the Commission also concluded that the definitive criteria ought to be established so as to apply, wherever appropriate, to the whole body of law which is presently and prospectively within the constitutional domain of Parliament, not merely to the actual statutes of Parliament.

Because the Commission's ultimate recommendations in Report 15 are concisely expressed on this subject so as to constitute a single statutory section, they can be conveniently repeated here:

*The Commission recommends that*

*the Parliament of Canada adopt the following amendment to the Interpretation Act, R.S.C. 1970, c. I-23.*

*Section 28 A — Criteria of Death*

*For all purposes within the jurisdiction of the Parliament of Canada,*

*(1) a person is dead when an irreversible cessation of all that person's brain functions has occurred.*

*(2) the irreversible cessation of brain functions can be determined by the prolonged absence of spontaneous circulatory and respiratory functions.*

*(3) when the determination of the prolonged absence of spontaneous circulatory and respiratory functions is made impossible by the use of artificial means of support, the irreversible cessation of brain functions can be determined by any means recognized by the ordinary standards of current medical practice.*

Because the Commission's published and publicized Reports to Parliament express final views and recommendations for reform in a particular area of law, the Commission then leaves that subject for the appropriate response by the government of the day, or by Parliament. In terms of any such particular subject the Commission considers itself to be *functus officio* and does not attempt to lobby for implementation of its recommendations. This self-restraint is one means of evincing the Commission's independence, which is both explicitly and implicitly defined by the *Law Reform Commission Act*. Adoption of this method of operation would not necessarily prevent the Commission from reassessing the same area of law at a future time if trends indicated a need to embark on further study of such subject.

## □ Study of Reports by Parliamentary Committee

Because the *Law Reform Commission Act* makes it clear that the Commission reports to Parliament, we have recommended in previous Annual Reports that a parliamentary committee examine the Commission's Reports as soon as possible after their tabling in Parliament for the purpose of formulating an opinion as to possible immediate implementation of the reform recommendations expressed in the Reports. Even though such a process would occur after the submission of Reports on various subjects, it could still serve as an ultimate form of consultation, providing the mutual benefits of familiarization and explanation for legislators and for the Commission alike. Such a process, it hardly needs to be emphasized, would also be time consuming for legislators and for the Commission alike. The Commission remains willing to enter into such a process in relation to those of our Reports upon which legislators would be interested to call upon us.

In regard to our project of studies in criminal law the three phase review process will now, however, involve the systematic examination of the Commission's Reports by the Department of Justice in conjunction with the Ministry of the Solicitor General. One of the agreed collaborative techniques incorporated into this criminal law review process is the undertaking of the Commission to indicate with each Report whether the included recommendations for reform would be apt for immediate legislative implementation or ought to be stored for later integration into the finished product, a modern Canadian criminal code. When one considers the vast scope, the painstaking details, the value-laden assessment of what ought to be included and what dispositions ought to be effected in regard to that which ought to be excluded from the finished product, the reason for that undertaking can be clearly appreciated.

Again in terms of responsive examination of the Commission's Reports, we are informed that the Department of Justice is also establishing a process for the analysis and review of our Reports in the field of administrative law. This process, too, is designed to formulate policy concerning the possible legislative implementation of the Commission's recommendations for reform in that field.

While both of the above mentioned processes involve examination of Reports by and for the executive branch of government, as distinct from the legislative branch to whom the Commission actually is required by statute to report, those processes may be seen to dilute somewhat the need for examination of Reports by a parliamentary committee.

# 3

# Working Papers

Working Papers are statements of the Commission's law reform positions at the time of publication and contain tentative recommendations for reform in a particular area. Such recommendations are not final and the primary purpose of the Working Paper is to elicit comment and provide a vehicle for consultation.

During the year under review ending on May 31, 1981, three Working Papers were drafted for consideration by Commissioners before their public release. They dealt with Criminal Liability and Defences, Cessation of Medical Treatment, and Behaviour Alteration. At the close of the period under review, the Commission had not yet taken position on the issue related to these topics.

# 4

# Administrative Law Project

It is not surprising that administrative law has become one of the Commission's major fields of study. Governmental activity now extends to almost all aspects of life in society and penetrates to the very core of the everyday life of the average citizen: transportation, unemployment, pensions, food prices and television. Thus, administrative law has a daily impact on everyone's activities.

## □ Papers

This year was one of consolidation from several points of view. We put the finishing touches on our studies of agencies and on most of the ongoing horizontal studies. The research that remains to be done is for the longer term and will take some time before it can be circulated in written form.

We published three topical studies, the first two dealing with specific agencies. The study on *Canada Labour Relations Board* dealt with the powers, composition, procedure and decision-making process of the Board, the necessity for and cost of judicial review of this agency, and relations between the Board on the one hand and Parliament, the Department of Labour, the media and participants on the other. The study put forward certain recommendations regarding the organization and procedure of the Board: it has already adopted some of these. The paper on *The Canadian Radio-Television and Telecommunications Commission* followed a slightly different plan: background, powers and procedure in broadcasting matters; powers and procedure in telecommunications matters; decision-making process; political and judicial controls; public participation; conclusions and suggestions regarding organization. The third study recommended the creation of a *Council on Administration*. It noted certain problems encountered by our administrative law system, explored the strengths and weaknesses of the organizational remedies which other jurisdictions (the United Kingdom, the United States, Australia) have found for these problems, and examined the functions which a Canadian Council might be required to perform in various areas, including the scrutiny of legislation, the appointment of agency members, the redress of grievances against agencies, and the clarification and articulation of the goals of Canadian administrative law. The study also recommended further consideration of certain details of the proposed model, which we are now in the process of doing. Two studies already completed, *Tariff Board* and *Parliament and Administrative Agencies*, are subject to the inevitable delays of translation and printing.

## □ Conferences

We continued to take an active part in the work of the Study Group on Administrative Tribunals, headed by Janet V. Scott, Q.C., Chairman of the Immigration Appeal Board. Last year we expressed the hope that the group would take over the organization of the annual seminar for members of administrative tribunals. We regret that this seminar could not be held this year and hope that last spring's silence was only an interlude.

We continued to take part in conferences for administrative law specialists. This year we attended the following meetings:

- Annual meeting of the Administrative Law Section of the Canadian Bar Association in Montréal, Québec in August 1980;
- Intensive professional training session in public and administrative law (SIAC 2) of the Québec Bar in February 1981;
- Part One of the second Anglo-Canadian comparative administrative law seminar, held in Birmingham, England in May, 1980. The co-ordinator of the administrative law project presented a paper entitled "Reform of Canadian Federal Administrative Law: Working Paper 25 and its Aftermath".

## □ Consultations

We have continued and in fact extended the consultations which constitute one of the essential ingredients in our research work. We have of course continued to meet with members and legal counsel of the agencies as well as other public employees, and we have continued to attend meetings of the Study group on Administrative Tribunals. However, we have also made closer contact than in the past with the academic world and with foreign specialists. In this connection, worthy of mention are the visits of Messrs. Michael Harris, of the University of Adelaide (Australia), and Jeremy McBride of the University of Birmingham (United Kingdom), and our particularly useful exchanges with the Australian Administrative Review Council.

While taking part in the Birmingham seminar referred to above, the project co-ordinator undertook a round of consultations on Working Paper 25, "Independent Administrative Agencies", with various British administrative law specialists. As a result of this mission we were able to strengthen our contacts in that country and to update our understanding of the situation there. The people whom he met seemed in general to be favourably impressed by the document.

## □ Work Progress

### *Working Paper No. 25, "Independent Administrative Agencies"*

The Commission has all but concluded its consultations on this working paper. In general, the reaction has been positive. We have now undertaken preparation of the report to Parliament, which will be developed from the working paper. The report will suggest a framework for the reform of independent agencies. We intend to circulate an initial version of this document for discussion and comment. A final version will be worked out through further consultation,

which will take into account as wide a range of viewpoints as possible.

### *Impartiality in the Administrative Process*

The research in this area has now been completed, and we expect to publish a study paper on this subject. The information we have collected appears to indicate, among other things, that there is some confusion in the case law as to the exact nature of the rules applicable to members of agencies.

### *The Powers and Procedures of Agencies Performing Jurisdictional Functions*

The purpose of this extensive project, which has already been under way for some time, is to compare theory and practice in the area of agencies' powers and procedures. We are also trying to obtain agencies' opinions on their mandate, procedure, powers and philosophy in relation to these matters, the problems which they present and the solutions which might be found. Finally, we are trying to see whether a reordering or rationalization of legislative provisions is possible.

To do this, we have first analysed the enactments thoroughly, recorded and classified information by type of power and by agency. This was followed by interviews with about a dozen agencies. The high point of this data-gathering exercise will be a multiple-choice questionnaire to be answered by all jurisdictional agencies. We will be able to test certain working hypotheses on the basis of the information so obtained, to assess the extent of the existing powers and procedures and the way in which they are used, and come to a conclusion on the merits of the existing allocation of powers.

### *Sanctions, Compliance Policy and Administrative Law*

This study seeks to assess the effectiveness of various types of "sanctions" in administrative law and to suggest guidelines which may be used in selecting those which are most appropriate to the area of activity, the client, the type of behaviour and so on. We are also seeking to determine which bodies are in the best position to ensure that the clients of an agency comply with its administrative policy: the agency itself, the government, the courts or some other body.

At the end of the year we completed the preparation of a preliminary conceptual model, based on a series of empirical studies of the approaches taken by agencies. The resulting draft will shortly be quite widely circulated. We think that the conclusions we have arrived at, though preliminary, are of sufficient interest for us to communicate them to a wide range of persons at once. Essentially, we think that the existing legislation gives a misleading picture of the problems raised by the question of compliance. In fact, it appears that this problem of perception can become an obstacle to the functioning of the programs. Repressive action is too often invoked instead of negotiation. Society tends to think too much in terms of morality, not enough in terms of results. In short, it may well be the approach we adopt which needs to be altered.

The President has assumed the duties of Commissioner in charge of the Administrative Project.

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# Criminal Law Project

The Commission's master plan for this project was given the green light by Cabinet, towards the end of 1980, with additional funds becoming available in the fiscal year 1981/82. Immediately, we put in motion a recruiting program to obtain the services of qualified personnel for the acceleration of our research activities. Many new specialists have now joined the ranks of our professional staff and many more will report to our offices in the next few months.

Intensification of our systematic consultation program with governments, the judiciary and the legal profession is described later in this chapter.

The "comprehensive and accelerated review of criminal law" or, in short, "the review" as it has become known, involves three distinct phases: Phase 1 — Formulation of recommendations, Phase 2 — Decision-Making, and Phase 3 — Implementation. Phase 1 is, on the whole, the major responsibility of the Commission, performing its role of independent adviser to Parliament and the federal government through the Minister of Justice. Phase 2 is the responsibility of the Department of Justice, working in co-operation with the Ministry of the Solicitor General. Phase 3 belongs to Parliament and the government. In a nutshell, the Commission advises on policies and issues (Phase 1) which the government determines (Phase 2) and Parliament implements (Phase 3).

The work of Phase 1 is now under way and will gather momentum during the coming months. The plan calls for completion of the review in five and a half years. The success of the entire review of criminal law depends to a large extent on the ability of the Commission to carry out Phase 1 to its successful completion. For this achievement, the Commission needs the support and active assistance of all consultation groups and the public at large, a close relationship with the Department of Justice and the Ministry of the Solicitor General, and the utmost professionalism of its own staff. All together we are embarked on this monumental and complex task. With the continuous goodwill and efforts of all, we should partake a few years hence in the satisfaction of recommending to Parliament and the people of Canada, a modern thoroughly considered Canadian *Criminal Code* which should serve this country well for many decades to come.

## ▫ Substantive Criminal Law

As emphasized in last year's annual report, major work continued to concentrate on the general provisions of the *Criminal Code*.

These included the subject of Criminal Liability and Defences, the question of Corporate Liability, the problem of Attempted Crimes and the Issue of the Rule of Law in connection with the Criminal Law. At the same time work has also continued on certain areas of the Special Part of Criminal Law. These include the subjects of Homicide, Assault and Related Offences, and Contempt of Court.

Clearly the General Part, and particularly that part relating to Criminal Liability and Defences has faced us with the largest problem, not only because many provisions which should appear in a comprehensive *Code* are not to be found in the present *Criminal Code* of Canada but also because we have used our work in this area as a model on which to pattern future working papers. Consistently with our new procedure of consulting regularly with our Advisory Panel of eminent judges and with the Government Consultation Group, we held several meetings on Criminal Liability and Defences with both bodies during the year. After careful consideration of the many valuable comments, criticisms and suggestions thus obtained, the Commission is about to publish its already much sifted, and no doubt still to be refined, schema on this subject in a Working Paper. Because unanimity about such a complex and innovative study is quite elusive, the Commission cannot any longer forgo the larger constituency of opinion which that publication will provide.

Corporate Liability has also been a major preoccupation during the year. The question whether holding corporations criminally liable makes good practical as well as theoretical sense has been extensively explored through consultations with lawyers, economists, and officials from the Department of Corporate and Consumer Affairs. In addition these consultations also focussed on procedural, evidentiary and other problems involved in prosecuting company directors and other company officers. As a result of the opinions canvassed and the consultations held a preliminary paper on the topic is almost complete.

Criminal Attempts also raise difficult legal questions. Of these by far the hardest is to find a satisfactory way to draw the line between those acts qualifying as attempted crimes and those acts amounting merely to preparation. On these and related issues our endeavours have continued and the drafting of a Working Paper on the topic is well under way.

The last aspect of the General Part which has concerned us during the year related to the Rule of Law. The principles which fall under this title and which are sometimes grouped together under the maxim *nulla poena, nullum crimen, sine lege,* — no one should be criminally liable or punishable except for an offence already clearly defined by existing law — is obviously of fundamental importance to the criminal law of any civilized country. We are now actively engaged in the preparation of a Working Paper which will explore how best to incorporate these principles explicitly into a restructured *Criminal Code*.

Within the Special Part of Criminal Law our efforts have concentrated on Homicide, Assault and Related Offences and Contempt of Court. Homicide and Assault have both formed the subject matter of discussions with the Advisory Panel and Government Consultation Group. So far these discussions have focussed on the issues arising as to both these topics. In the light of those consultations and of the extensive research work already done in previous years, we are now preparing a

Working Paper on the subject of Homicide and a Working Paper on Assault and Related Offences is well under way.

As for Contempt of Court we have proceeded to prepare a Report to Parliament. Preliminary versions of this report have been subject to extensive consultations and in the light of these the Report is in process of being approved.

Judge Edward J. Houston is the Commissioner in charge of the substantive law aspect of the Criminal Law Project.

## □ Criminal Procedure

Consonant with the Commission's objective of producing a comprehensive code of criminal procedure, the activities of the Criminal Procedure Project during the past year have been directed primarily to three areas: (1) Police Discretion, Powers and Procedures, (2) Pre-trial and Trial Procedure, and (3) Classification of Offences.

### Police Discretion, Powers and Procedures

*Police Discretion*

- *Legal Status of the Police in Canada:* The legal status of the police is widely perceived as having important implications for their governance and accountability. Yet, there is considerable lack of understanding and no little disagreement as to what legal status the police might actually have in Canada. In consequence, it becomes imperative to analyze and clarify the legal status of Canadian police. Only thus can one meaningfully evaluate the constraints, both internal and external, upon the exercise by the police of their law enforcement powers and, correspondingly, appreciate the scope of police discretion and the mechanisms available to define its limits and curb its abuse. The Commission has accordingly contracted for and received a study paper which (a) defines, to the extent possible, the current legal status of the police in Canada, (b) identifies the origins and circumstances under which the current definitions of the legal status of the police in Canada have evolved and been adopted, and (c) examines the implications of the current legal status of the police for their governance and accountability in Canada, and for the definition and control of police discretion.

- *Police Priorities and Allocation of Resources:* As a companion piece to its inquiry into the legal status of the police, the Commission has published a study which examines how the resources provided to the police are utilized and distributed among competing or complementary police functions. Where the former study addresses the legal dimensions of police governance and accountability, the latter study develops their policy dimensions. Integral to this development is a distinction between operational discretion (e.g., the decision to investigate or charge) and political discretion (e.g., the determination of the types of service to be provided to the public from public moneys). The study concludes that the manner in which the police set their

priorities and allocate their resources is properly a matter of political rather than institutional policy.

With the benefit of these studies, the Commission expects to be in a better position to specify which aspects of police discretion and accountability are appropriate for codification as matters of criminal law and procedure.

## *Police Powers*

- *Search with Warrant:* The results of our seven-city survey of search warrant practices were rendered in narrative form for purposes of consultation with the individual police forces and warrant-issuing judicial officials who participated in our surveys. These consultations have now been completed in Vancouver, Edmonton, Winnipeg and Toronto; the Montreal consultation is to be undertaken shortly. We have decided against similar consultations in the two remaining cities, Fredericton and Saint John, because their volume of search warrants issued was too small to permit an individual, city-by-city analysis.

  Once the Montréal consultation has been completed and assessed, the Commission will be publishing a study paper on police powers of search and seizure with warrant.

  The past year has also seen the publication of a study paper entitled *The Issuance of Search Warrants: A Manual,* which describes the present legal standards governing the issuance of search warrants. This paper is not directed principally to the whole sequence of warrant procedures: it has been written primarily with the adjudicator, the issuing justice, in mind. The manual provided the basis upon which we evaluated the legality of the search warrants obtained from our seven-city survey.

- *Search without Warrant:* Since search without warrant is numerically, if not also intrinsically, more significant than search with warrant the Commission has given considerable attention to this subject. Because of the complexity and expense of survey work in this area, we have limited our empirical research to a single, ten-day survey in the Metropolitan Toronto Police Department's Division 14. The results of this survey are presently being rendered in narrative form, firstly for consultation with the Metropolitan Toronto Police, and secondly, for incorporation within a forthcoming study paper on search without warrant.

- *Writs of Assistance:* The Commission will shortly be publishing a three-part study on writs of assistance. The first part traces the writ's origins and history in England and Canada. The second part analyses the juridical character of Canadian writs of assistance, observing that what the writ represents is a licensed regime of search and seizure without warrant. Reasons advanced to justify the use of the writ will be considered. The third section develops the data acquired in the course of a four-month, seven-city survey of writ of assistance practices, which was con-

ducted simultaneously with a similar survey of search warrant practices.

- *Disposition of Things Seized:* The Commission has recently contracted for a study directed to developing a comprehensive code of rules and procedures for the disposition of things seized, both with and without warrant. The study is to be limited to crime-related seizures, including seizures pursuant to the *Narcotic Control Act* and the *Food and Drugs Act*.

- *Electronic Surveillance:* As part of its work on police powers of search and seizure, the criminal procedure project is examining the policy dimensions of police surveillance. Although the inquiry focusses primarily upon electronic surveillance, it also embraces such other techniques of police surveillance as visual observation and "tailing" of suspects; the use of informants and undercover agents; data collection for the purpose of creating individual "profiles"; finger-printing and identity checks. Common to all of these surveillance techniques is an official interference with or intrusion upon individual privacy. Therefore, the policy dimensions of these various techniques should facilitate their common analysis and resolution.

- *Inspections and Regulatory Searches:* An inventory has been prepared of the 119 items of federal legislation (other than the *Criminal Code*) which confer powers of search and seizure upon enforcement personnel. These powers have been distinguished according to whether they provide for inspections (i.e., routine monitoring to ensure compliance with legislative prescriptions), or for investigative searches (i.e., to obtain evidence with respect to breaches of legislative prescriptions reasonably believed to have been committed). As well, a background paper has been prepared which articulates provisional criteria for identifying the kinds of legislation for which one or both of these varieties of search power may be appropriate. To complement this general analysis, a second background paper has been prepared which examines the search powers and procedures appropriate to the enforcement of such revenue protection legislation as the *Income Tax Act*. A third study, dealing with the enforcement of Customs and Excise legislation, has been started but is not yet completed. Upon completion, the three studies will be combined with a proposed code of procedure and published in a study paper on regulatory search and seizure.

## *Police Procedures*

- *Police Identification Procedures:* A study paper dealing with police identification procedures has now been completed and will shortly be considered for publication by the Commission. The paper describes the results of several small-scale studies directed to assessing the reliability of eyewitness accounts; the persuasive force of such accounts with juries; the need for and efficacy of warnings to juries about the limitations of such testimony; and the appropriate use of expert testimony from psychologists concerning the fallibility of eyewitness accounts. The research also includes a description of the

identification practices presently followed in thirteen major urban police departments in order to ensure the reliability and acceptability of civilian evidence of identification.

This study also includes an examination of the issue of compensation for wrongful conviction and detention. Because this subject is very much a matter of joint federal and provincial concern, the study confines itself to recommending a model scheme for compensation; defining the criteria of eligibility for compensation; and suggesting a program of federal-provincial discussions for implementation and administration of a compensation scheme.

- *Police Interrogation Procedures:* The Commission has concluded that there is ample published research in this area to permit it to proceed directly, in working paper format, to the formulation of tentative recommendations regarding police interrogation procedures and the related procedures for challenging the admissibility of pre-trial statements. A working paper is therefore being developed from existing research in consultation with our advisory groups. The Working Paper recommendations will naturally take into account the need for effective investigation of crime as well as the privilege against self-incrimination. The recommendations will be designed for incorporation within that portion of the proposed code of criminal procedure which relates to police identification, interrogation and custodial procedures.

## Pre-Trial Procedure

The preliminary inquiry together with proposals for disclosure and discovery will be considered here. Although this matter has been mentioned in previous Annual Reports, its place in the three-phase Comprehensive and Accelerated Review of Criminal Law requires this Commission to begin the identification of issues in February, 1982 and, after consultations, ultimately to submit our Report to Parliament in December, 1983. That process will provide ample opportunity for determining how the Government, after being informed by its Phase Two consultations, views the Commission's preliminary recommendations on pre-trial procedure expressed in Report 9, *Criminal Procedure: Part I — Miscellaneous Amendments,* submitted in February, 1978. It will be recalled that Report 9 concluded with the following paragraph:

> The Commission recommends that legislation in conformity with the proposed draft be enacted by Parliament, without delay, as the first step toward a general reform and overhaul of criminal procedures. It requires streamlined efficacy to escape the slough of delay in which the system is bogging down. The present system operates at full blast and yet it creaks ominously because it is tied to anachronisms which weigh it heavily and dissipate its thrust. The correctives which the Commission proposes ought to be applied now, and before any major re-design or entirely new vehicle is tried, as may be proposed in forthcoming Reports on Criminal Procedure.

Moreover, the process described in our comprehensive review plan will also provide ample opportunity for assessing the various experimental discovery projects sponsored by the Department of Justice, notably those conducted in Montréal and Vancouver. Finally, that process will provide ample opportunity for thorough consideration of such larger and also preliminary concerns as

classification of offences and the organization and jurisdiction of courts.

- *The Jury*: The Commission has now completed a wide-ranging series of consultations with the judiciary and the legal profession on the recommendations proposed in its Working Paper on the jury. As well, the Commission has had the benefit of a report prepared by a Committee of the County Court Judges of Ontario. The Commission is presently engaged in preparing its Report to Parliament on this subject.

### Classification of Offences

Central to the Commission's workplan for a code of criminal procedure is a wholesale re-classification of offences according to their procedural characteristics. As presently conceived, the classes of offence would be determined by reference to the penalty structure, to ensure that procedural characteristics are scaled to the degree of penal liability entailed in conviction. To date, the Commission's tentative plans for classification of offences have been discussed with only two of its advisory panels. Following further consultation on this subject, the Commission will be proceeding directly to publication of its views in working paper form.

Mr. Réjean Paul, Q.C., has assumed responsibility for the Criminal Procedure Project since the 16th of March 1981.

## □ Consultations in Criminal Law

The program of systematic consultation about our work in criminal law was launched in 1980. It is described in the last Annual Report.

During the year under review, the Advisory Panel on Criminal Law met four times, once in Montréal and Toronto, and twice in Ottawa. The discussions covered such topics as criminal liability and defences, assaults and homicide, offences against the administration of justice, police powers and electronic surveillance and classification of offences. Two new eminent jurists kindly accepted our invitation to join the panel, thus bringing its composition to nine judges. The new members are the Hon. Alan B. Macfarlane of the Supreme Court of British Columbia and the Hon. Calvin F. Tallis of the Supreme Court of the Northwest Territories.

On the Crown side, the Government consultation group, comprised of representatives of all Attorneys General and Ministers of Justice of Canada, convened six times for two to three day meetings. Much the same topics on which the Advisory Panel was consulted formed the agenda of this particular group but with notable additions, such as "Contempt of Court', "The Jury', "Medical Treatment and Criminal Law', "Sterilization', "Criteria for Determination of Death'. Time was also devoted to some soul-searching on "What is a Crime?". Four consultations took place at the Commission's Headquarters in Ottawa and one each in Victoria and Calgary.

At our invitation, the Canadian Bar Association designated a permanent advisory group comprised, to begin with, of three distinguished members of the defence bar:

Joel Pink of Halifax, Nova Scotia,

Don Sorochan of Vancouver, British Columbia,

G. Greg Brodsky, Q.C. of Winnipeg, Manitoba,

We are most thankful to John P. Nelligan, Q.C., who as Chairman of the Legislation and Law Reform Committee of the Canadian Bar Association was instrumental in assembling this group, during the last months of his term of office. The Commission hopes that the C.B.A. will expand the regional representation of this group in order to accord us an even larger base of experience for consultation.

This C.B.A. group will meet with the Commission, as required, to convey its comments, suggestions and criticisms on the Commission's tentative views as formulated in Working Papers.

Other consultations were mentioned earlier in this Report, under the various projects' activities.

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# Protection of Life Project

## □ Continuing Research and Publications

During the year under review, research and writing were carried out on the following topics:

1. Criteria for the Determination of Death
2. Cessation of Medical Treatment
3. Behaviour Alteration

A final Report to Parliament was published and submitted in March 1981 on the subject of *Criteria for the Determination of Death*. This Report, Number 15 in the Commission's Reports to Parliament, was preceded by a Working Paper on the same subject published in 1979. The Report is described more fully in Chapter 2 of this Annual Report.

The proposed legislative formulation expressed in Report 15 was originally submitted for responses to a very large number of individuals and groups within the areas of medicine, law, nursing and hospital administration. Among the professional groups who endorsed the Commission's proposal with no or few reservations were the following: the Canadian Neurological Society, the Canadian Neurosurgical Society, the Association for French Speaking Physicians of Canada, the Canadian Nurses Association, the Corporation professionnelle des médecins du Québec, the Alberta Medical Association, the Manitoba Medical Association, the Prince Edward Island Medical Society, the British Columbia Medical Association and the Canadian Medical Association.

Research and writing continues on the two remaining Working Papers of this phase of the project, namely, Cessation of Medical Treatment and Behaviour Alteration. The Commission expects that these papers will be published in 1982.

## □ Consultation, Conferences and Travel

In the preparation of Report Number 15 and the two remaining Working Papers, consultations were continued with numerous individuals and representatives of various private and professional organizations. Among these were: bioethicists, medical and legal specialists, members of various federal

and provincial government departments, psychologists, hospital administrators, theologians, philosophers, and nurses.

The responsible Commissioner, project co-ordinator and other project members spoke to or otherwise contributed to various meetings, conferences and committees dealing with issues of relevance to this project. Among them were the following:

- Canadian Hospital Association, Health Care Organization and Management Course, Ottawa.
- Canadian Congress of Neurological Sciences, panel on Moral, Ethical and Legal Issues in the Neurosciences, Ottawa.
- Westminister Institute for Ethics and Human Values, Workshop on Bioethics, London, Ontario.
- Catholic Health Association of Canada, Workshop on Public Policy, Health Care and the Family, Halifax, N.S.
- Simon Fraser University, Seminar on Moral Problems in Health Care, Vancouver, B.C.
- Canadians for Health Research, panel on Biomedical Research and the Law, Ottawa.
- St. Francis Xavier University, speech to the Faculties of Philosophy and Nursing on euthanasia, ethics and the law.
- Dying with Dignity Association inaugural meeting, Toronto, Ontario.
- Canadian Philosophical Association annual meeting, workshop on the determination of death, Halifax, N.S.
- Science Council of Canada, Committee on Science and the Legal Process.
- The Centre for Bioethics, Clinical Research Institute of Montreal, symposium on prenatal diagnosis, Montreal.

As in the previous year, contacts and relationships were also actively pursued with key organizations abroad.

## □ Towards a Second Phase

During the last few months of the period under review, the Commission decided to undertake a second phase of research within the Protection of Life project. Careful consideration was accorded to possible directions for these studies. The major issue will become that of environmental pollution, and this phase gets underway in the summer of 1981. In many respects this new phase and issue has evolved naturally from the work already undertaken to date in this project.

To this point the medico-legal issues addressed have focused on the legal and ethical rights and responsibilities involved in individual acts of medical treatment. Both previous research and wide consultation indicate the need and even the urgency now to address comprehensively the law's response to the wider challenges presented by environmental pollution, occupational safety and hazardous products. The concerns will still be those of human health and quality of life, but now under the rubric of seeking more adequate legal safeguards and sanctions for the prevention as opposed to only the treatment of disease and disability, and for the protection of human health.

This new phase of the project will begin by an analysis and evaluation of present federal powers, federal statutes and jurisprudence relevant to issues of pollution, hazardous products and occupational safety. While the criminal law power will serve as a major focus, other federal powers will be considered as well, namely the trade and commerce power, the general power, and taxing, spending and import powers. Initial attention will also be directed to the *Criminal Code*, particularly the common nuisance and mischief sections. Central to this study and any eventual recommendations by the Commission will be careful weighing of the pros and cons of classifying serious acts of pollution as "real crimes" rather than regulatory offences.

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# Other Work of the Commission

## □ Relationships with the Public

The *Law Reform Commission Act* exacts that the head office of the Commission be located in the National Capital Region and yet, the Commission suffers by contrast with provincial law reform agencies, because of the geographic expanse of Canada and accordingly the mutual difficulty of access to and with the vast public which the Commission serves.

The Commission maintains a regional office in Montréal in order palpably to accommodate its mandate regarding the bi-jural nature of our country, but there are no other regional offices.

This state of affairs obliges Commissioners and staff to attend various events related to the work of the Commission which occur from time to time throughout Canada. An isolated Law Reform Commission cannot very well discharge its statutory mandate. Accordingly, the Commissioners personally respond to as many requests to speak to groups or participate in panel discussions on the law across Canada as time permits. Evidently, positive response cannot be accorded to every such invitation because of either pressure of other duties or expense to the taxpayer who ultimately pays the bill.

The Commission actively provided information services to the public during the year under review. All requests for copies of Reports, Working Papers and Study Papers were met. Sometimes documents are requested in numbers which would exhaust our inventory and our correspondents have to make do with fewer than requested. Manifestly if we cannot supply a copy to each student or prison inmate in Canada, we can at least furnish their respective institutions' library with a copy upon request. Distribution was effected into all regions of Canada. We also respond to numerous requests from abroad.

## □ Relationships with Other Law Reform Agencies

All law reform organizations with whom we have contact have been invariably most cordial and helpful to us. It makes good sense to take full advantage of the work of other law reform bodies in Canada, and abroad. Such organizations, of course, are immersed in their

own particular priorities no less than the Law Reform Commission of Canada. Because those divergent priorities in each jurisdiction are intensely important, the interests of various law reform agencies will necessarily and properly not coincide at any particular moment. However, full advantage of the work of others is always offered, and gratefully taken whenever possible.

The President attended some sessions of a meeting of representatives of provincial law reform organizations, held the day before the opening plenary session of the Uniform Law Conference of Canada in Charlottetown, Prince Edward Island, in August, 1980.

During the year, the Government of Canada appointed the President and Commissioners Houston and Paul to be members of the federal delegation to the Uniform Law Conference of Canada. The Commission was pleased to be able to participate officially in this important meeting of the various jurisdictions of our country in light of the interest in law reform which is evident among these representatives of the two major levels of government.

At the invitation of the Deputy Minister of Justice and the Deputy Solicitor General of Canada, the Commissioners may attend all, and have found time to attend several meetings of, the Joint (departmental) Criminal Justice Committee which meets time and again in Ottawa. This Joint Criminal Justice Committee provides one helpful means of keeping the Commission informed of the many criminal justice projects of both departments of the government. We also have the opportunity of discussing the subject matter of some of the Commission's forthcoming Reports with officials of the Department of Justice in informal meetings. The Commission invariably invites response to its tentative proposals from senior law officers of the department, as well as their participation in most of those of our group consultations which take place in Ottawa.

Senior officers of both the above-mentioned departments are, of course, included in our government group consultations on the criminal law.

## □ Visitors

In addition to the various knowledgeable consultants who honour us from time to time by their attendance to provide expert help in our work, the Commission receives visits by notable personages from various regions and from other countries. During the year under review, we have been honoured to receive the following persons (listed in alphabetical sequence) at the Commission:

- Prof. Koichi Bai, Faculty of Law, Tokyo Metropolitan University
- Prof. Bruce Elman, Faculty of Law, University of Alberta
- Roland Graser, Head, Department of Criminology, University of Durban-Westville, South Africa
- Michael Harris, Senior Lecturer, Faculty of Law, University of Adelaide, South Australia
- Graham J. Kelly, Counsellor, Attorney-General Department, Embassy of Australia, Washington, D.C.
- Al-Joaid Mayoud, Student, Special Security Forces, Riyad, Saudi Arabia

- Al-Mozaini Salih, Criminology Department, Special Security Forces, Riyad, Saudi Arabia
- Margaret Shone, Counsel, Institute of Law Research and Reform, Edmonton, Alberta
- Prof. Andreij Wurzynowski, Faculty of Law, Warszawa University, Poland

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# Appreciation and Acknowledgments

The Commission greatly prizes the co-operation and help which it is accorded by the many persons and organizations whom it consults. In this context, it is fitting to make particular mention of those whom the Commission most frequently relies on for advice: the Canadian Bar Association and its various sections; the Canadian Association of Chiefs of Police and, in particular, its Law Amendment Committee; the Canadian Nurses Association; the Canadian Hospital Association; the Canadian Medical Association; various members of the Solicitor General's Department as well as of the Departments of Justice, both federal and provincial.

We were saddened to learn of the death on September 12th, 1980, of Sir Rupert Cross, Vinerian Professor of Law at Oxford University. Because of his expert knowledge of criminal law and evidence, his advice was much sought in matters of law reform in England and elsewhere. We in Canada were particularly grateful for his advice, assistance and encouragement concerning both the general part of criminal law and the law of evidence.

# APPENDIX A

## REPORTS OF THE LAW REFORM COMMISSION OF CANADA

| Subject | Date Submitted |
|---|---|
| 1. Evidence | December 19, 1975 |
| 2. Guidelines — Disposition and Sentences in the Criminal Process | February 6, 1976 |
| 3. Our Criminal Law | March 25, 1976 |
| 4. Expropriation | April 8, 1976 |
| 5. Mental Disorder in the Criminal Process | April 13, 1976 |
| 6. Family Law | May 4, 1976 |
| 7. Sunday Observance | May 19, 1976 |
| 8. The Exigibility to Attachment of Remuneration Payable by the Crown in Right of Canada | December 19, 1977 |
| 9. Criminal Procedure: Part I — Miscellaneous Admendments | February 23, 1978 |
| 10. Sexual Offences | November 29, 1978 |
| 11. The Cheque | March 8, 1979 |
| 12. Theft and Fraud | March 16, 1979 |
| 13. Advisory and Investigatory Commissions | April 18, 1980 |
| 14. Judicial Review and the Federal Court | April 25, 1980 |
| 15. Criteria for the Determination of Death | April 8, 1981 |

# APPENDIX B

## PUBLICATIONS AND RECOMMENDATIONS JUDICIALLY NOTED

### CRIMINAL LAW

*Diversion*

- R. v. Jones (1975), 25 C.C.C. (2d) 256, at p. 257 (Ont. Div. Ct.)

*Mental Disorder*

- R. v. Haymour (1977), 21 C.C.C. (2d) 30 (B.C. Prov. Ct.)
- *R. v. Rabey* (1978), 79 D.L.R. (3d) 414, 37 C.C.C. (2d) 461, 40 C.R.N.S. 56, 17 O.R. (2d) 1 (C.A.)
- *R. v. Simpson* (1977), 77 D.L.R. (3d) 507, 35 C.C.C. (2d) 337, (1977) 16 O.R. (2d) 129 (C.A.)
- *R. v. Avadluk* (1979), 24 A.R. 530 (N.W.T. S.C.)

*Plea Bargaining*

- R. v. Wood, [1976] 2 W.W.R. 135, 26 C.C.C. (2d) 100 (Alta. C.A.)

*Sentencing*

- R. v. Earle (1975), 8 A.P.R. 488 (Nfld. Dist. Ct.)
- *R. v. Groves* (1977), 39 C.R.N.S. 366, 79 D.L.R. (3d) 561, 37 C.C.C. (2d) 429, 17 O.R. (2d) 65 (H.C.)
- *R. v. Jones* (1975), 25 C.C.C. (2d) 256 (Ont. Div. Ct.)
- *R. v. MacLeod* (1977), 32 C.C.C. (2d) 315 (N.S.S.C.)
- *R. v. McLay* (1976), 19 A.P.R. 135 (N.S.C.A.)
- *R. v. Shand* (1976), 64 D.L.R. (3d) 626, 11 O.R. (2d) 28 (Co. Ct.)
- *Turcotte c. Gagnon*, [1974] R.P.Q. 309
- *R. v. Wood*, [1976] 2 W.W.R. 135, 26 C.C.C. (2d) 100 (Alta. C.A.)
- *R. v. Zelensky*, [1977] 1 W.W.R. 155 (Man. C.A.)
- *R. v. Zelensky*, [1978], 2 S.C.R. 940; [1978] 3 W.W.R. 693; 2 C.R. (3d) 107
- *R. v. MacLean* (1979), 32 N.S.R. (2d) 650, 54 A.P.R. 650, 49 C.C.C. (2d) 552 (C.A.)
- *R. v. Irwin* (1979), 16 A.R. 566, 48 C.C.C. (2d) 423, 10 C.R. (3d) S-33 (C.A.)

*Limits of Criminal Law*

- R. v. Southland, [1978] 6 W.W.R. 166 (Man. Prov. Ct.)

*Strict Liability*

- Hilton Canada Ltd. v. Gaboury (juge) et al., [1977] C.A. 108 (Que.)
- *R. v. Sault Ste-Marie*, [1978] 2 S.C.R. 1299, 3 C.R. (3d) 30, 21 N.R. 295

*Sexual Offences*

- R. v. Moore (1979), 41 A.P.R. 476; 30 N.S.R. 638 (C.A.)
- *Protection de la Jeunesse* — 13, [1980] T.J. 2022 (Qué.)

## *CRIMINAL PROCEDURE*

### *Pre-trial*

- R. v. Mastroianni (1976), 36 C.C.C. (2d) 97 (Ont. Prov. Cr.)
- *Magna v. The Queen* (1977), 40 C.R.N.S. 1, (Que. C.S.)
- *R. v. Barnes* (1979), 49 C.C.C. (2d) 334, 12 C.R. (3d) 180, 74 A.P.. 277 (Nfld. Dist. Ct.)

### *EVIDENCE*

- R. v. A.N. (1977), 77 D.L.R. (3d) 252 (B.C. Prov. Cr., Fam. Div.)
- *R. v. Cronshaw and Dupon,* (1977), 33 C.C.C. (2d) 183 (Ont. Prov. Ct.)
- *R. v. Stratton* (1978), 90 D.L.R. (3d) 420, 21 O.R. (2d) 258, 42 C.C.C. (2d) 449 (C.A.)
- *R. v. Czipps* (1979), 25 O.R. (2d) 527, 48 C.C.C. (2d) 166, 101 D.L.R. (3d) 323 (C.A.)
- *R. v. MacPherson* (1980), 36 N.S.R. (2d) 674, 64 A.P.R. 674, 52 C.C.C. (2d) 547 (C.A.)

### *FAMILY LAW*

- Re Dadswell (1977), 27 R.F.L. 214 (Ont. Prov. Ct.)
- *Gagnon v. Dauphinais,* [1977] C.S. 352 (Que.)
- *Marcus v. Marcus,* [1977] 4 W.W.R. 458 (B.C.C.A.)
- *Reid v. Reid* (1977), 67 D.L.R. (3d) 46; 25 R.F.L. 209, 11 O.R. (2d) 622 (Div. Ct.)
- *Rowe v. Rowe* (1976), 24 R.F.L. 306 (B.C.S.C.)
- *Wakaluk v. Wakaluk* (1977), 25 R.F.L. 292 (Sask. C.A.)
- *Kruger v. Kruger and Baun* (1979), 11 R.F.L. (2d) 52 (Ont. C.A.)

### *PROTECTION OF LIFE*

- Re Eve (1980), 27 Nfld. & P.E.I. R. 97, 74 A.P.R. 97, 115 D.L.R. (3d) 283 (P.E.I. C.A.)

### *ADMINISTRATIVE LAW*

#### *Independent Administrative Agencies*

- Re James Richardson & Sons Ltd. and Minister of National Revenue, [1981] 2 W.W.R. 357, 117 D.L.R. (3d) 557 (Man. Q.B.)

### *OTHER*

#### *Statutes — Discretionary Powers*

- R. v. Vandenbussche (1979), 50 C.C.C. (2d) 15 (Ont. Dist. Ct.)

# APPENDIX C

## PUBLICATIONS ISSUED DURING FY 1980-1981

*REPORTS TO PARLIAMENT*

Report 15 — Criteria for the Determination of Death

*ADMINISTRATIVE LAW SERIES*
*STUDY PAPERS*

Canada Labour Relations Board

Council on Administration

Canadian Radio-Television and telecommunications Commission

*CRIMINAL LAW SERIES*
*STUDY PAPERS*

Search and Seizure
— Powers of Private Security Personnel

The Police — A Policy Paper

*MODERNIZATION OF STATUTES SERIES*
*STUDY PAPERS*

Practical Tools to Improve Interprovincial Enforcement of Maintenance Orders After Divorce

*GENERAL*

9th Annual Report 1979-1980

# APPENDIX D

## RESEARCH CONSULTANTS FOR THE WHOLE OR PART OF THE YEAR UNDER REVIEW

ALLEN, Jon, J., LL.B. (Western Ontario), LL.M. (London), Member: Law Society of Upper Canada.

BARNES, John, Prof., B.A. (Oxon.), B.C.L. (Oxon.). Barrister-at-Law, English Bar.

BAUDOUIN, Jean-Louis, B.A. (Paris), B.C.L. (McGill), D.J. (Paris), D.E.S. (Madrid and Strasbourg). Member: Quebec Bar.

BECKER, Calvin A., B.A. (Saskatchewan), LL.B. (Toronto), LL.M. (Osgoode-York), Ph.D. (Cantab.). Member: British Columbia Bar.

BOUCHARD, Mario, D.E.C., LL.L. (Montreal), LL.M. (Quebec). Member: Quebec Bar.

BROOKS, W. Neil, B.A. (Alberta), LL.B. (British Columbia). Member: Ontario Bar.

CAMPBELL, R. Lynn, LL.B. (Western Ontario), LL.M. (London School of Economics). Member: Ontario Bar.

CASTEL, Jean-Gabriel, LL.B. (Michigan), B.Sc. (Aix-Marseilles), LL.L. (Paris), S.J.D. (Harvard). Member: Ontario Bar.

CLIFFORD, John C., B.A. (Western Ontario), LL.B. (Dalhousie). Member: Nova Scotia Bar.

COHEN, Stanley A., B.A. (Manitoba), LL.B. (Osgoode-York), LL.M. (Toronto). Member: Manitoba Bar.

CONLY, W. Dennis, B.A. (Western Ontario), M.S.W. (Carleton).

CRANE, Brian A., B.A. (British Columbia), LL.B. (British Columbia), A.M. (Columbia). Member: Ontario Bar.

DEL BUONO, Vincent M., B.A. (York) M.A. (Toronto), LL.B. (Toronto), LL.M. (Toronto). Member: Alberta Bar.

EDDY, Howard R., B.A. (Harvard), J.D. (Washington), LL.B. (Queen's). Member: Washington State Bar and Ontario Bar.

EDGE, Rory R., LL.B. (Manitoba). Member: Manitoba Bar.

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FITZGERALD, Patrick J., M.A. (Oxon). Barrister-at-Law, English Bar.

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