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Law Reform Commission
of Canada

Commission de réforme du droit
du Canada

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*18th
Annual
Report*

Canada

*Law
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of
Canada*

**EIGHTEENTH
ANNUAL
REPORT**

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Ottawa

The Honourable A. Kim Campbell, P.C., M.P.,
Minister of Justice,
Ottawa, Canada.

Dear Ms. Campbell:

In accordance with section 17 of the *Law Reform
Commission Act*, I submit herewith the Eighteenth
Annual Report of the Law Reform Commission of
Canada for the period June 1, 1988 to May 31, 1989.

Yours respectfully,

A handwritten signature in black ink, appearing to read 'A. Linden', with a long horizontal flourish extending to the right.

Allen M. Linden
President
Law Reform Commission of Canada



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HIGHLIGHTS

PUBLICATIONS

CRIMES AGAINST THE FOETUS 17

Working Paper 58 recommends that there should be a new offence of "Foetal Destruction or Harm". Lawful abortion would be an exception. Up to 22 weeks, an abortion would be allowed where medically authorized to protect a woman's physical and psychological health. After 22 weeks, abortion would be restricted to circumstances where the woman's life is in danger or to protect her against serious physical injury. The key to this approach is to recognize both maternal autonomy and protection of the foetus without arbitrarily obliterating one right in favour of the other. In addition an alternative three-stage approach was recommended. There was also a dissent.

TOWARD A UNIFIED CRIMINAL COURT 18

Working Paper 59 envisions the creation of a unified court in all provinces, with exclusive jurisdiction to try all crimes. Judges of this new Criminal Court would be appointed by the Governor General in accordance with the *Constitution Act, 1867*, or the Act would be amended to allow the provinces and territories to make their own appointments to the Criminal Court.

***COMPELLING APPEARANCE,
INTERIM RELEASE AND PRE-TRIAL
DETENTION*** 17

How should police or courts compel accused persons or witnesses to attend court for trial? When should police or courts grant "interim release" to accused persons? When should they impose detention instead of release prior to trial? These are just a few of the issues explored in Working Paper 57.

POLLUTION CONTROL IN CANADA 18

The regulatory approach to pollution control — using licences to control emissions, and prosecution for offences — is the most appropriate and effective way of dealing with environmental misbehaviour. This is the thesis of the Study Paper *Pollution Control in Canada*.

IMPLEMENTATION

SIGNIFICANT JUDICIAL DECISIONS 14

The Commission's publications and recommendations have been cited in 23 cases including four Supreme Court decisions. These are: *Holmes v. The Queen*, *Corbett v. The Queen*, *R. v. Higgins* and *R. v. Dymont*.

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PEOPLE AND EVENTS

***APPOINTMENT OF NEW
PROJECT CO-ORDINATOR*** 7

Dr. Burleigh Trevor-Deutsch was appointed Co-ordinator of the Protection of Life Project.

***SCALES OF JUSTICE (MEDIA)
AWARDS*** 10

Three Scales of Justice Awards and two Certificates of Merit were presented to five members of the news media (print, radio and television) for their outstanding work.

***CALT SYMPOSIUM ON
REPORT 31*** 26

From October 14 to 16, 1988, a distinguished group of criminal law professors from the Canadian Association of Law Teachers met to present papers and exchange ideas on *Report 31: Recodifying Criminal Law*. Papers from this meeting are to be published in the Queen's Law Journal in the fall of 1989.

LAW DAY DINNER 9

Special guests at the LRC-CBA co-sponsored Law Day Dinner were the Minister of Justice the Honourable Doug Lewis and Mr. Keith Spicer, then editor-in-chief of the Ottawa Citizen.

***PUBLIC MEETINGS IN
ST. JOHN'S AND VICTORIA*** 26

More than 125 people in St. John's and 250 people in Victoria attended public meetings co-sponsored by the Law Reform Commission and local legal-information organizations. Participants discussed the new *Criminal Code* offences. Topics ranged from environmental pollution to endangerment and criminal intoxication.

REFORM OF SENTENCING 28

The Commission participated in an international conference, sponsored by the Society for the Reform of Criminal Law to discuss "Reform of Sentencing, Parole, and Early Release". The keynote speaker of the conference, which took place in Ottawa, was the Chief Justice of Canada, the Rt. Hon. Brian Dickson.

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TACKLING THE TOUGH ISSUE

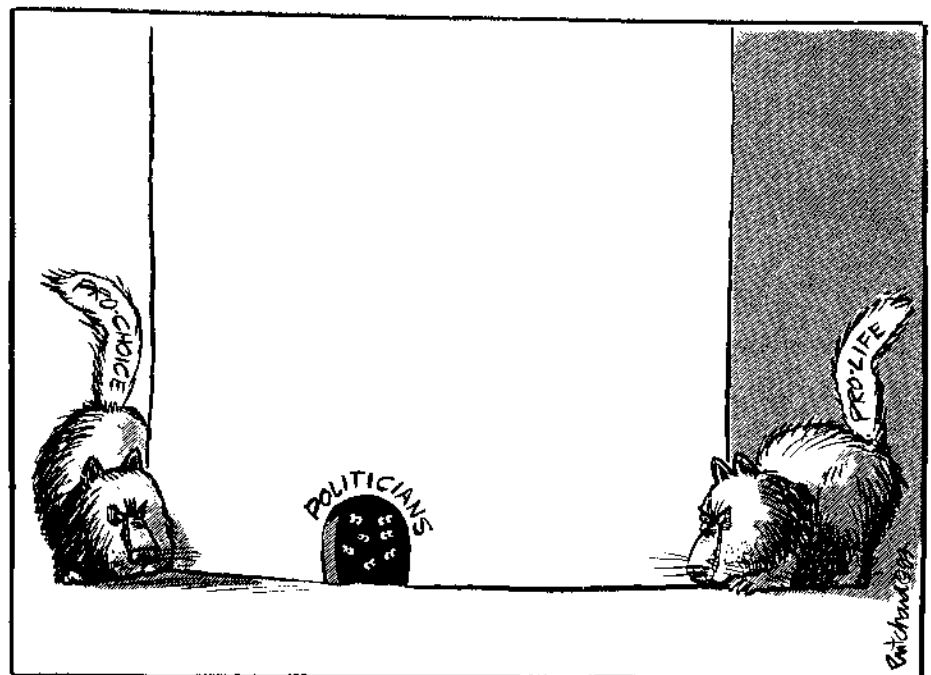
Abortion is one of the most controversial and emotionally charged issues currently being discussed in our society. The polarized views on this issue are deeply felt and passionately held. Those on one side believe that from the moment of conception there is human life which must be absolutely protected from abortion — no matter what the circumstances. The other side believes that a woman has the right to control her own life and her own body including the decision to bear a child.

For almost 20 years the debate on abortion has focused on section 251 of the *Criminal Code*. However, on January 28, 1988 the Supreme Court of Canada in *R. v. Morgentaler* struck down section 251 as being contrary to the Canadian *Charter of Rights and Freedoms*. At the same time this legislative vacuum was created, the Commission was nearing the completion of a four year special study on the status of the foetus, including the issue of abortion. A group of four men and four women worked on this study. The group included leading scholars drawn from the fields of biology, philosophy, sociology and law. Members of the medical profession and other related professions and organizations were also consulted on a regular basis. Although all the members of the working group had their own moral convictions they endeavoured to set aside these personal views to assist in developing public policies most conducive to the common good.

In 1986 the group produced a comprehensive consultation document called *Options for Abortion Policy Reform*.

Hundreds of copies were sent out to groups, hospitals, doctors and other interested members of the public for their comments. As well, the Commission held formal consultations with representatives of the Federal and Provincial Attorneys General, eminent members of the judiciary from across Canada, prominent criminal lawyers and distinguished members of the legal academic community. The comments, criticisms and advice received from these consultants helped the Commission to formulate its policy on abortion.

This abortion policy is an integral part of the Commission's recommendations on the legal status of the foetus. These recommendations were published in Working Paper 58, *Crimes Against the Foetus*. In this paper, released on February 23, 1989, the Commission recommends that the *Criminal Code* contain a separate and distinct chapter dealing with all wrongful harm done to the foetus. More specifically, the Commission recommends that the *Code* contain a new general offence of "Foetal Destruction or Harm". This offence should state that: "Everyone



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commits a crime who (a) purposely, recklessly or negligently causes destruction or serious harm to a foetus; or (b) being a pregnant woman, purposely causes destruction or serious harm to her foetus by any act or by failing to make reasonable provision for assistance in respect of her delivery." This provision, however, would not apply to those performing lawful abortions.

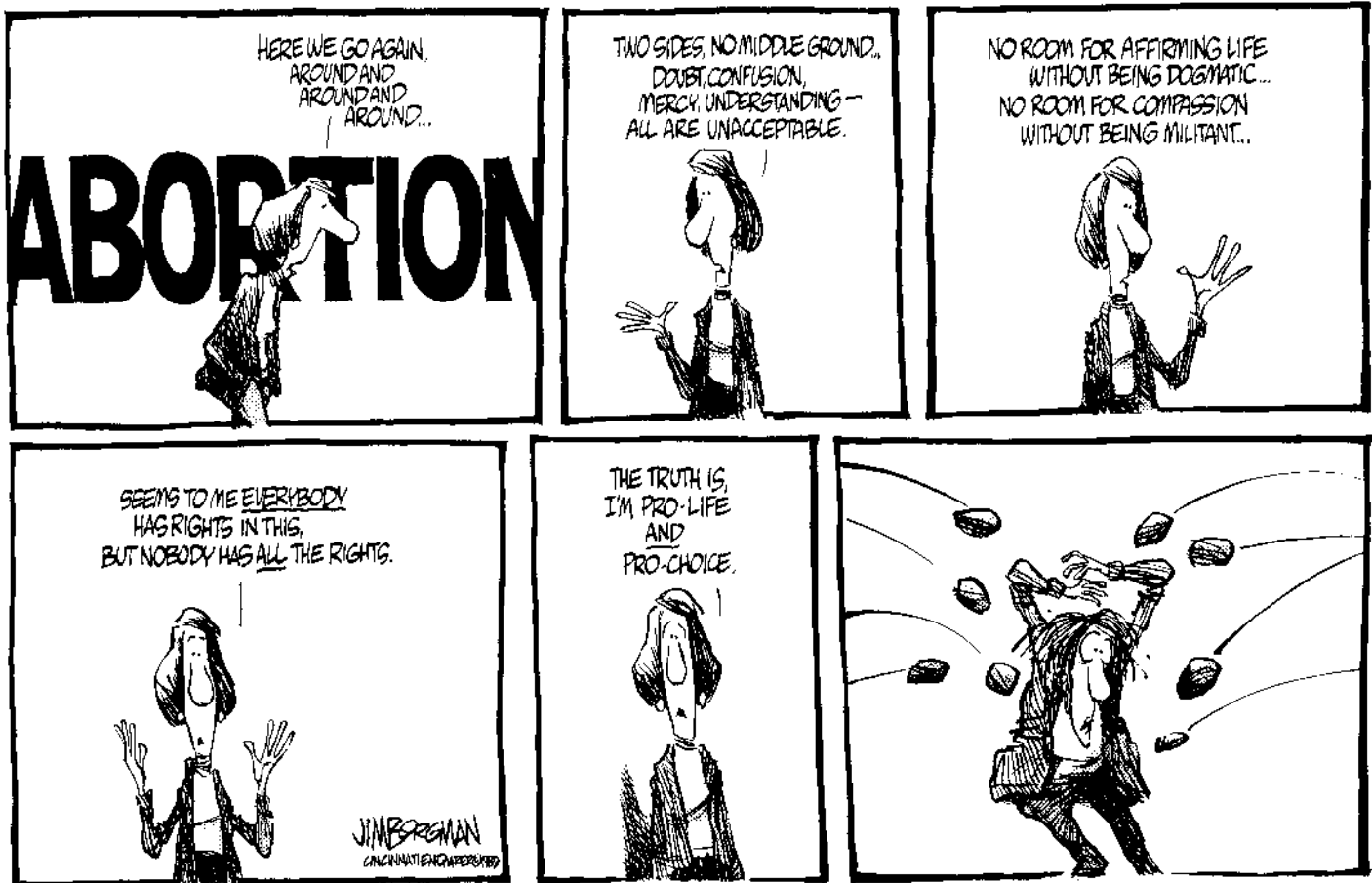
In formulating its legislative proposal for lawful abortions the Commission sought to recognize reproductive freedom and maternal autonomy while according increasing recognition, respect and protection to the foetus as it develops. The

key to the Commission's approach is to recognize both maternal autonomy and protection of the foetus without arbitrarily obliterating one right in favour of the other. In attempting to balance these rights, the Commission not only seeks to create a fair and just proposal but one that will be constitutionally sound.

The Commission has recommended a two stage approach. Up to 22 weeks an abortion should be allowed where medically authorized to protect a woman's physical and psychological health. After 22 weeks, in keeping with the idea that the foetus merits increasing protection as it develops, abortion would be restricted

to circumstances where the woman's life is in danger or to protect her against serious physical injury. Abortion would also be allowed at any stage where the foetus suffers from a lethal defect or defects of such severity that medical treatment could be legally withheld at birth.

A minority view of the Commission recommended a three-stage approach. This view, which was the recommendation of the Special Working Group, is in keeping with the judgment of Madam Justice Wilson in the *Morgentaler* case. In the first stage (up to 12 weeks) abortion would be a private matter between a woman and her doctor. The second stage



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(12-22 weeks) would correspond to the first of the two-stage approach. The last trimester would correspond to the second stage of the two stage approach.

One Commissioner dissented. The Commissioner's view is that abortion should be restricted to the situation where the continuation of a pregnancy would be likely to endanger a woman's life or seriously and substantially endanger her health and there is no other commonly accepted medical procedure for effectively treating this health risk.

The response to the Commission's proposals was overwhelming. These proposals received the most media coverage of any of our documents. This coverage included 2½ hours of television time and 7 hours of radio time as well as over 200 newspaper articles including 48 editorials.

Jean-Claude Leclerc of *Le Devoir* commented: "The Law Reform Commission, as might have been expected from a body with a very strong legal approach, has been unable to resolve the abortion dilemma.... On the other hand, the report contains enough legal elements to indicate that the legislative protection of the human life has made great progress — in a direction that seems favourable to

the unborn child.... All things considered, a legislation inspired by the Commission's report is not an impossible option to consider or to implement". (Feb. 23, 1989)

The Ottawa Citizen, wrote: "the federal Law Reform Commission's report on the issue is a refreshing reminder that there are still rational thinkers out there.... The influential Commission's report [has] good commonsense proposals.... [it] has come up with a fair compromise between the anti-abortion and pro-choice positions. And if we must have a law — many argue we don't need one — this is a good point at which to resume the debate". (Feb. 24, 1989)

The Globe and Mail concluded that "[a]lthough the recommendation has failed to satisfy either extreme — no policy could — it does address both concerns! It permits a woman to obtain an abortion during the early stages of pregnancy, while providing strong protection for the fetus later on. It is a compromise most Canadians would probably find palatable" (Feb. 25, 1989). *Star Phoenix* of Saskatoon remarked that "if new laws are in the works, the Canadian Law Reform Commission's recommendations of just a few weeks ago offer the best available blueprint" (March 11, 1989).

Medicine Hat News commented that "A law based on the Commission's suggestions would take no extreme stand either way, and would reflect the opinions of the majority of Canadians". (March 10, 1989)

The Commission is well aware of the fact that a perfect solution which would satisfy everyone is an impossible dream. The goal of the Commission has been to search for a practical compromise, a solution which is fair and just, rational and principled, as well as workable and acceptable to the majority of Canadians. We believe that our recommendations articulated in Working Paper 58 meet these goals.

The recent flurry of court cases in the summer of 1989 has shown that an absence of legislative guidelines can create confusion and foster litigation, which is costly both in human and financial terms. It is expected that Parliament will be asked to legislate on this issue in the autumn. We suggest that Working Paper 58, suitably amended if necessary, could furnish Parliament with a solid base upon which to shape a law which will both be constitutionally sound and acceptable to the majority of Canadians.

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WHO ARE WE AND WHAT DO WE DO?

Our Mandate

The Law Reform Commission of Canada has a broad mandate. According to the *Law Reform Commission Act* (1971), the Commission was created as a permanent and independent body to review on a continuing basis all the federal laws of Canada and to make recommendations for their improvement, modernization and reform; to develop new approaches to the law that are in keeping with, and responsive to, the changing needs of modern Canadian society; and to reflect in its recommendations the distinctive concepts and institutions of the common law and civil law legal systems in Canada.

Our Accomplishments

Eighteen years after the creation of the Commission, we are very proud of our achievements and successes. We have produced 32 Reports to Parliament, 59 Working Papers, 73 published Study Papers, over 175 unpublished Study Papers and we have contributed to the private publication of more than 150 books and articles. Approximately 1.6 million copies of our publications have been distributed.

Over the years, the Commission has tried to blend pragmatism with idealism, because we feel that sensible law reform must be both practical and theoretically sound. Our goal is to promote laws which are modern, principled, rational, comprehensive, egalitarian, and readily intelligible to ordinary citizens as well as lawyers and judges. Where possible, we use empirical research. We seek to develop laws which, in conformity with the rule of law, are codified, and therefore, will be more certain and accessible to the public.

Although a lot of energy has been focused on producing a modern Criminal Code for Canada, the

Commission has also been in the forefront in exploring modern-day social issues affecting our federal laws. To this end we have engaged in profound studies leading to recommendations on evidence, family law, administrative law, environmental law and medico-legal issues such as the legal determination of death, euthanasia, sterilization, behaviour alteration and most recently the issues relating to the legal status of the foetus.

Over the years, the Commission has succeeded in changing a fair number of laws, in altering administrative and legal attitudes and practices, in assisting the judiciary in their decision making, in stimulating research and educating the public on matters of legal importance. Nevertheless, there is still much more to do. To this end the Commission is developing a practical and relevant new programme of research which focuses on the key legal concerns of today's society.

The Current Team

Joining President Linden and Vice-President Létourneau in carrying out the duties of the Commission are three distinguished Commissioners: Mr. Joseph Maingot Q.C., former Parliamentary Counsel and Law Clerk of the House of Commons, was the Commissioner, along with the Vice-President, in charge of the Criminal Procedure Project until his term ended April, 1989; Mr. John Frecker, a barrister and solicitor from St. John's, Newfoundland, is the Commissioner in charge of the Administrative Law Project; and Judge Michèle Rivet of the Quebec Court is in charge of the Protection of Life Project which is based in Montréal.

The Commissioners are supported in their work by four Project Co-ordinators. They are Professor

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Patrick Fitzgerald, Substantive Criminal Law; Mr. Stanley A. Cohen, Criminal Procedure; Dr. Patrick Robardet, Administrative Law; and Dr. Burleigh Trevor-Deutsch, Protection of Life. Dr. Trevor-Deutsch joined the Commission in July 1988. He has a Ph.D in Vertebrate Ecology and an LL.B. with an emphasis in Administrative and Environmental Law. He has taught in the Biology Departments of McGill University and Laurentian University. He has been an Advisor to the Indian Commission of Ontario, a legal researcher, Office of the Law Clerk and Parliamentary Counsel, House of Commons and between 1978 and 1981 he gave a weekly science commentary which was nationally syndicated on CBC radio.

Ms. Joyce Miller, a member of the Ontario Bar, is the Special Assistant to the President.



Dr. Burleigh Trevor-Deutsch,
Co-ordinator, Protection
of Life Project

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INFLUENCE ON LAW REFORM

The influence of the work of the Commission extends out over many different areas. Through in-depth research and by publishing its findings the Commission advances legal scholarship; educates the public on the legal system and justice; influences the opinion of lawyers who assist the courts in moving the law along new paths; changes attitudes; affects conduct and promotes legislative reform.

Legal Research

Research is the most important activity of the Commission. To make recommendations to Parliament we must research the history and purpose of the present law, then identify and analyze its defects, and determine ways in which it can be improved.

Once the research and analysis is completed, recommendations are made and published with commentary in Reports to Parliament, Working Papers and Study Papers (see Appendices A, B, C). One important consequence of the publication and dissemination of this legal research is that it acts as a catalyst, engaging Canadian legal scholars in further research and writings on important areas in need of reform. It also subjects the Commission's work to an objective critical analysis. Many articles have been written about the Commission, its history, function, philosophy and recommendations (see Appendix F). All of this scholarly activity stimulates thinking about law reform, creates a deeper understanding of the issues involved and helps promote

action by formal or informal implementation of the Commission's recommendations.

The excellent quality of the Commission's research is universally recognized. Its reputation for excellence is firmly established not only in Canada — in 1984, the Commission received the Archambault-Fauteux Award for its contribution to legal research — but abroad as well. Indeed, requests for our publications come from all over the world. As well, some of our work has been translated. Legal scholars from many different countries have relied on our work, praised it, and criticized it in their legal journals. In this way the Commission has acted as an important link in disseminating Canadian legal scholarship to other countries.

In addition to stimulating scholarly research, the Commission provides excellent training for young legal scholars who have just completed their formal schooling. In return for their training, these young scholars have provided us with their energy, enthusiasm, hard work and solid legal scholarship. After leaving, many Commission researchers have continued their interest in scholarship, becoming law professors, government policy-makers or active practitioners working at the frontiers of law reform. We believe that through its legal research, the Commission has helped to foster, build and disseminate, nationally and internationally, a uniquely Canadian perspective on legal scholarship.

Educating the Public

One of the key objectives of the Commission in its search for better laws is carrying on a dialogue with the public. We want to find out what people feel about our present laws, how they think the laws can be improved and whether the Commission's recommendations can meet some of their concerns.

The Commission carries on this dialogue in different ways. One way is through informal public meetings. This year the Commission held two such meetings, one in St. John's, Newfoundland, the other in Victoria, British Columbia.

The St. John's meeting, which was organized with the assistance of the Public Legal Information Association of Newfoundland, brought out more than 125 people to discuss the Commission's proposed new Criminal Code. Topics discussed included: corporal punishment, endangerment, environmental pollution and criminal intoxication. A similar meeting in Victoria was organized with the help of The Law Centre Association of Victoria. Over 250 people attended what turned out to be an equally lively and stimulating public meeting as that held in St. John's.

Another way in which the Commission reaches out to engage in public participation is through the free distribution of all our publications. The public is invited to comment on our recommendations. Their

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responses are recorded and their suggestions considered in the formulation of our final recommendations to Parliament.

This year the Commission received over 28,000 requests for our publications and we distributed over 50,000 free copies of our papers bringing the total distribution to 1.6 million copies.

The Commission also reaches out to the public through information kiosks that are set up at various conferences. During the course of this year, the Commission was present at the *10e Salon du livre de l'Estrie*; the 5th Annual Conference of Canadian Administrative Tribunals; and the *18e Salon international du livre de Québec*. At times, with the co-operation of various organizations, law reform material is inserted into delegate kits as it was at this year's national Conference on Access to Civil Justice.

The Commission's publications also serve as reference tools in high schools, universities and law schools. Police colleges refer to our material, especially our papers on police powers, when training future peace officers.

In 1983, to commemorate the date of the coming into force of the *Charter*, the Canadian Bar Association decided to designate April 17 as "Law Day". The purpose of this day is to make Canadians more aware of the law by informing them about our justice system and law reform. As part of the Law Day events, the Law Reform Commission of Canada, in co-operation with the Canadian Bar Association, organizes an annual Law Day dinner in Ottawa, and invites the general public to come and meet and exchange ideas with members of the legal profession. This year over 300 members of the public attended the dinner which was held at the Chateau Laurier Hotel in Ottawa.

The Minister of Justice, the Honourable Doug Lewis was the keynote speaker at this year's Law Day dinner and Mr. Keith Spicer, the then Editor-in-Chief of *The Ottawa Citizen* presented the 4th Annual Scales of Justice Awards. These awards are sponsored by the Canadian Bar Association and the Law Reform Commission of Canada. The competition is open to all

Canadian newspapers, magazines, television and radio stations, wire services and news syndicates and their reporters. The awards are presented for excellence in reporting on issues that foster greater public understanding of the inherent values of the Canadian legal and judicial system.



The Honourable Doug Lewis, Minister of Justice and Attorney General of Canada

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from left to right, John Cahill, CFRA; Genevieve Wescott, W5; Dawna Trebiez, W5; Renée Pellerin, CBC; Bernie Lucht, CBC; Kirk Makin, The Globe and Mail; and Anne Kershaw, Kingston Whig-Standard.

The 1989 recipients of the Scales of Justice Awards were: Kirk Makin, of *The Globe and Mail* for "Melvin Stanton Aftermath", a series of in-depth reports on the Canadian system of corrections and release; CTV's W-5 for "Prime Target" a programme which dealt with a controversial criminal case based on the testimony of a mentally-handicapped victim and CBC Radio's programme "Ideas" for its broadcast of "The People's Charter", an examination of the impact of the Canadian Charter of Rights and Freedoms on Canadian law and society.

In addition, Certificates of Merit were awarded to Anne Kershaw of the *Whig-Standard* for her article "Law School Confidential" which highlighted debate over the existence of sexism and racism at Queen's University Law School, and to radio station C100 FM in Halifax for "Justice Behind Closed Doors", a look at how plea bargaining works.

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Consulting Young Canadians

During the months of October and November, a special project was initiated to consult young Canadians about the Commission's proposed new Criminal Code. The object was to promote a better understanding of our criminal justice system at the secondary school level. A booklet entitled "A New Criminal Code for Canada?", a questionnaire and a video were offered to high schools and universities across Canada. The material was designed to educate, to encourage discussion and to elicit the views of Canada's youth.

More than 3,700 schools were contacted. Of those, 575 schools requested a total of 37,409 booklets; 32,442 questionnaires; and 653 videos.

The Commission was much encouraged by the enthusiastic response to our questionnaire. The following pages show the results received from 6,031 students and teachers. Their comments were not only interesting but they were also very helpful. The programme was such a success that we plan to continue this type of consultation process.



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QUESTIONNAIRE

We are interested in your opinion. Please indicate whether you agree or disagree with the following proposals:

	AGREE	DISAGREE	NO OPINION
1. Canada needs a new Criminal Code.	5,715	215	101
Whether you agree or not with the above, would you please indicate your position on the following:			
2. Corporal punishment should be allowed in schools <i>ONLY</i> with the consent of the parents of the child.	3,269	2,733	38
3. The <i>Criminal Code</i> should hold <i>equally responsible</i> those who commit crimes while drunk or while sober.	4,706	1,296	29
4. Would you agree or disagree with the Law Reform Commission's proposed changes in the areas of:			
a) homicide; and	4,982	948	101
b) crimes against animals.	5,454	540	37
5. The five forms of common law contempt of court should be <i>codified</i> .	5,061	838	132
6. Those who endanger the lives of others by their inaction should be held criminally accountable, even if no harm results from the inaction.	5,364	625	42
7. Our criminal law should prosecute those who fail to take reasonable steps to rescue someone in danger where it can be done without endangering the rescuer.	4,960	1,022	49
8. The <i>Criminal Code</i> should provide a special penalty for those who provide a market for stolen property.	5,308	690	33
9. In addition to provincial and federal environmental protection laws, the <i>Criminal Code</i> should permit the prosecution of serious polluters.	5,637	357	25
10. Instead of numerous clauses creating particular aggravated offences or specifying factors for each separate offence, the <i>Criminal Code</i> should use one unifying provision to all crimes against personal safety and liberty. (excepting crimes of homicide)	4,635	1,294	102
11. The <i>Criminal Code</i> should be cleansed of archaic crimes such as duelling, waterskiing at night and stealing from oyster beds.	5,086	911	34



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**A Sample of Comments
Received with the Questionnaire**

“This new Criminal Code is excellent. It excludes old offences and makes modern ones more clear. I think it will work out very well.” (Student)

“It is about time that some kind of modernization of the *Criminal Code* was seriously undertaken.” (Student)

“I am generally concerned about how long it is taking for the revision of the *Criminal Code*. We need a *Code* that can be understood by everyone; not everybody is a lawyer or judge. Understanding is the first step to appreciating.” (Student)

“The changes are clear ...” (Student)

“I was amazed that the Commission was able to pare down the old *Criminal Code* to such a great extent.” (Teacher)

“The Commission has presented a strong case regarding the proposed Code. It would seem, from the information given us, that Canada’s need for a new Code is great. A *Code* which is 97 years old, although written with the best intentions for justice, can scarcely be viewed as totally applicable to our situation today. Therefore I agree that the *Criminal Code* needs to be revised.” (Student)

“It would be nice if these changes could take place very soon because I feel that they are very reasonable and would be very effective.” (Student)

“A reform would be a just and fair improvement for everyone.” (Student)

“Let’s start getting the *Criminal Code* to work for us.” (Teacher)

“Introducing this new reform may finally unify Canada, and strengthen its [aging] law system.” (Student)



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Judicial Decisions

As in the past, our Reports, Working Papers and Studies have been cited in written decisions by members of the judiciary at all levels of the Canadian court system. Judges have used our work in areas as diverse as family law, evidentiary questions, administrative law and statutory interpretation. It is particularly gratifying to note that our work in criminal law and procedure has proved useful to judges now striving for the correct application of the *Charter* to the criminal law.

Over the years our work has been cited in over 183 judgments including 30 instances of citation by the Supreme Court of Canada. (See Appendix G) This year, we have located references to our publications and recommendations in 23 cases.

The Supreme Court referred to our publications in four important cases this year. In *Holmes v. The Queen*, [1988] 1 S.C.R. 914, the court considered whether section 309(1) of the *Criminal Code*, "possession of instruments suitable for housebreaking" infringed an accused's right to be presumed innocent. In his reasons, the Chief Justice quoted from the introduction to our Working Paper 48, *Criminal Intrusion* (1986) which he stated "captures succinctly society's interest in curbing property crimes". In *Corbett v. The Queen*, [1988] 1 S.C.R. 670, the court ruled that the cross-examination of an accused on his prior criminal record did not violate his right to a fair trial. In dissenting reasons, however, Mr. Justice La Forest agreed with our Study Paper, *Evidence: 3. Credibility* (1972) that "section 12 of the *Canada Evidence Act* is based on the fallacy that it is rational to treat the accused like an ordinary non-party witness." In *R. v. Higgins*, [1988] 2 S.C.R. 387, the Court, in overruling a decision of the Saskatchewan Court of Appeal, took notice of our Working Paper 34, *Investigative Tests* (1984) upon which the

lower court had relied in part in reaching its decision. In *R. v. Dymont*, [1988] 2 S.C.R. 417, wherein the court had to decide whether a sample of blood taken from the accused by his doctor and given to a policeman constituted an illegal seizure, Mr. Justice La Forest emphasized in his concluding remarks, the importance of clear rules for the guidance of police conduct. He based his comments on Report 25, *Obtaining Forensic Evidence* (1985) which he quoted as follows: "Besides protecting those individual interests that are directly threatened by the spectre of unchecked state power and unfettered police discretion, the creation of legal rules is necessary to provide the police with adequate guidance as to how they should conduct criminal investigations, and thereby to ensure that such investigations conform to the standards set by the *Canadian Charter of Rights and Freedoms*."

Both the Ontario and Alberta Courts of Appeal in *R. v. Andrews* (1988), 65 O.R. (2d) 161 and *R. v. Keegstra*, [1988] 5 W.W.R. 211, considered this year whether the offence of communicating statements promoting hatred against an identifiable group infringed the constitutional right of freedom of expression. Although the courts came to opposite conclusions, both cited our Working Paper 50, *Hate Propaganda* (1986). Additionally, the Alberta Court of Appeal referred to our Study Paper, *Evidence: 8. Burdens of Proof and Presumptions* (1973) on the issue of the constitutionality of the reverse onus provisions of section 281.2 of the *Criminal Code*. Mr. Justice Kerans stated, "I adopt the words of the Law Reform Commission ...: 'We think that any purpose achieved by casting on the accused a burden of persuasion can be equally accomplished by casting upon him a burden of producing evidence Reverse onus clauses are created for reasons of social policy — the need for strict law enforcement, fairness — the accused has greater access to the evidence, or proba-

bility — the non-existence of the element of the crime is so improbable that it would be a waste of time to require the Crown to disprove it in every case. All of these purposes can be accomplished by the creation of a presumption that shifts only the burden of producing evidence.'"

Our work in administrative law was used in two reported cases this year. In *Tetreault-Gadoury v. Canada Employment and Immigration Commission* (1988), 53 D.L.R. (4th) 384, Madam Justice Desjardins noted that our Study Paper by Alan Leadbeater entitled *Council on Administration* (1980) supported her observations and those of others that there is enormous diversity of function and position in administrative tribunals in Canada. Our Working Paper 17, *Commissions of Inquiry: A New Act* (1977) was cited by Madam Justice Glube of the Trial Division of the Nova Scotia Supreme Court in *MacKeigan v. Hickman* (1988), 43 C.C.C. (3d) 287, a case arising out of the Donald Marshall Inquiry. The issue in this case concerned the power of the Inquiry to compel judges to appear before it. In *R. v. Hebb* (1989), 89 N.S.R. (2d) and 227 A.P.R. 137, the same court quashed a warrant for committal issued for failure to pay a fine on the grounds that various aspects of the *Criminal Code* section under which the warrant was issued were discriminatory. In doing so, the court relied in part on Working Paper 6, *Fines* (1974) in which we recommended "that judges be prohibited from imposing a fine and simultaneously imposing a sentence of imprisonment to be served in the event that the fine is not paid."

The Study Paper by John Swaigen and Gail Bunt entitled *Sentencing in Environmental Cases* (1985) was referred to in two cases involving the sentencing of corporate polluters. In *R. v. Shamrock Chemicals* (13 February 1989), St. Thomas, the Ontario Provincial Court referred to the publication in reviewing

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the principles of sentencing applicable to pollution cases. In *R. v. Gulf Canada Corporation* (1987), 2 C.E.L.R. (N.S.) 261 the Northwest Territories Territorial Court expressed concern "that fines alone will not mould law-abiding corporate behaviour," noting that "this concern is evident in the Law Reform Commission of Canada's Report".

Our work on the jury was referred to in two reported cases. The Saskatchewan Court of Appeal in *R. v. Favel* (1987), 39 C.C.C. (3d) 378 cited Report 16, *The Jury* (1982) in connection with our recommendations regarding the abolition of "stand asides" and the placing of the prosecutor and accused on an equal footing by allowing them the same number of peremptory challenges. Such recommendations, should they be enacted, would "lay to rest a continuing debate and would lessen the likelihood of a court being called upon to deal with this issue on a case by case basis", according to Mr. Justice Tallis. Our Working Paper 27, *The Jury in Criminal Trials* (1980) was referred to by the Northwest Territories Court of Appeal in *R. v. Emile*, [1988] 5 W.W.R. 481, for its description of the functions of a jury.

An issue which is becoming increasingly important to Canadians, namely, whether a "person" includes a foetus not yet born alive, was dealt with by the British Columbia Court of Appeal this year. In *R. v. Sullivan* (1988), 43 C.C.C. (3d) 65, the court referred to our definition of "person" in Report 30, *Recodifying Criminal Law* (1986) as "already born by having completely proceeded in a living state from the mother's body ..." and so ruled.

Our work was cited in two cases dealing with section 214 of the *Criminal Code* (classification of murder). In *R. v. Arkell* (1988), 64 C.R. (3d) 340, the British Columbia Court of Appeal referred to Working Paper 33, *Homicide* (1984) on the issue of the organizing principle of section 214(5). In *R. v. Bowen and Kay*, [1989] 2 W.W.R. 213, the Alberta Court

of Queen's Bench referred to Working Paper 11, *Imprisonment and Release* (1975) in a discussion of the objectives of the penal system.

In *Kourtessis v. M.N.R.* (1989), 44 C.C.C. (3d) 79, the British Columbia Supreme Court considered the constitutionality of section 231.1 of the *Income Tax Act* which authorizes a judge to issue a warrant to enter and seize documents or things if he is satisfied that there are reasonable grounds that an offence was committed. The court concluded that "reasonableness" was sufficiently high a standard to satisfy *Charter* requirements. It cited Working Paper 30, *Police Powers: Search and Seizure in Criminal Law Enforcement*, (1983) and Report 24, *Search and Seizure*, (1984) which it noted proposes the same standard.

The Quebec courts used our work in 3 cases. Our Study Paper, *Drafting Laws in French*, (1981) by Marie Lajoie, Wallace Schwab and Michel Sparer was used by the Court of Appeal in *G.G. v. A.D.* (1987), 11 Q.A.C. 200 to assist them with a point of statutory interpretation. In *Hébert v. Marx*, [1988] R.J.Q. 2185, the Superior Court cited our Working Paper 52, *Private Prosecutions* (1986) and our Working Paper 15, *Criminal Procedure: Control of the Process* (1975) in deciding that a prosecutor did not act arbitrarily in directing that a proceeding be stayed under section 579 of the *Criminal Code*.

And finally, Mr. Justice Paul of the Superior Court in *R. v. Bertrand* (16 May 1989, Québec 200-01-009288-873) quoted extensively from our Report 17, *Contempt* (1982) in a case dealing with that issue. He concluded his reasons with the following comments: "The year 1992 will mark the centennial of our *Criminal Code*. I sincerely hope that the law of contempt will be consolidated before that time. A consolidation is long overdue and would be a wonderful present to the people of Canada".

Changing Conduct

Over the years the Commission's in-depth analyses, practical studies and sound recommendations have had the effect of influencing needed reforms and changes in the day-to-day practices and procedures in various areas of criminal law, family law and administrative law, without Parliamentary intervention.

In administrative law, the Commission continues to influence the practices and operations of various federal agencies. While, in the past, this influence was exerted mainly over independent government agencies, our work has now extended to departments, in order to contribute directly to the reform of government. Our 1987-88 survey of federal inspectorates has prompted these organizations to reflect on their function and the common aspects of their operations. We have established contacts with 80 inspectorates within more than 30 federal institutions. In order to support initiatives of individual managers, our consultants have also presented papers at two seminars. One was held in Ottawa, in February 1989, by the Interdepartmental Committee on Law Enforcement Management, composed of federal senior managers, and the other was held by inspectors of Health and Welfare Canada in Cornwall, in November 1988.

This practical, informal influence of law reform on conduct is well illustrated in the implementation of recommendations from the Commission's Working Paper 32 and Report 23, *Questioning Suspects* by the Halton Regional Police Force "Taping of Police Interviews Project" (Project TIP) started in July, 1985.

A two year study by the Halton Police Force, assisted by the Commission, confirmed the Commission's recommendations that videotaping police interviews would not only fairly and efficiently expedite the administration of justice, but it would also reduce costs.

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Plea discussions is another area in which the Commission has been influential in changing conduct. A meeting last year with Ontario Crown Attorneys to discuss the Commission's paper on plea discussions has resulted, as one Crown informed the Commission, in a fundamental rethinking of their procedures in this area.

Legislation

As noted earlier, we can influence law reform by stimulating research, by educating the public on matters of legal importance, by assisting the judiciary in their decision making, and by altering administrative and legal attitudes and practices. A fifth way in which we can influence law reform is through the enactment of legislation. Although this is not the only measure of our success, we are pleased to report that fourteen out of thirty-two of our Reports have been enacted — at least in part — by Parliament. (See Appendix A)

A number of recommendations on criminal procedure dealt with in our publications, extending back more than a decade, have been enacted in the *Criminal Law Amendment Act, 1985*. Commission recommendations included in the *Act* were: the abolition of writs of assistance; the introduction of telewarrants; the authorization of pretrial conferences and motions; the taking of blood samples; some matters of search and seizure; changes to the jury system; and issues of jurisdiction. In addition the *Divorce Act, 1985* adopted the Commission's recommendations on no-fault divorce, encouraging mediation to settle disputes, and the equitable distribution of property aimed at overcoming economic hardship arising from the breakdown of the marriage. (See, Report 6 on *Family Law* (1976)).

In 1988 a number of the Commission's recommendations, made over the past decade with respect to assisting victims

of crime, were reflected in the underlying policy of the mini-Code enacted by Parliament, for assisting victims of crime. The new provisions included in the *Criminal Code* aim at: (1) protecting the identity of victims and witnesses by the use of a publication ban; (2) facilitating prompt return of property by use of alternative evidence, e.g., using photographic evidence; (3) allowing victims to make statements at sentencing; (4) giving restitution where appropriate without the victim having to apply for it; and (5) laying fine surcharges to be used for victim services.

The Commission is pleased with the efforts made and the continuing plans of the government to bring in amendments on mental disorder, arson, homicide and other subjects we have worked on.

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PUBLICATIONS

The Commission publishes three categories of documents: Reports to Parliament, Working Papers and Study Papers. To date we have published 32 Reports, 59 working Papers, and 75 Study Papers. This past year we published 1 Report, 3 Working Papers, and 3 Study Papers.

Reports to Parliament

Commission Reports present the final views of the Commissioners on a given area of the law. Once a Report has been tabled in Parliament, the advisory role of the Commission is completed in respect of this particular topic. It then becomes a matter for the Government and Parliament to act upon, if they choose.

Report 32 *Our Criminal Procedure*

This Report contains a set of principles which reflect the various rules of procedure the Commission has proposed in its numerous Working Papers and Reports published over the past 18 years. The principles enunciated in this report will guide the development of a Criminal Code of Procedure which is simple and clearly expressed; which seeks fairness yet promotes efficiency; which practices restraint and is accountable yet protects society; and which encourages the active involvement and participation of the citizen. In essence, these principles will constitute the basis for the Commission's new Code of Criminal Procedure.

Illustrations of how the principles apply to work that has been undertaken by the Commission are given in Report 32.

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.

Working Paper 57 *Compelling Appearance, Interim Release and Pre-trial Detention*

This Working Paper examines several important questions about criminal procedure. For instance how should police or courts compel accused persons or witnesses to attend court for trial? When should police or courts grant "interim release" to these persons? When should they impose detention instead of release prior to trial? What should be done to ensure a person's right to make full answer and defence in such detention?

In proposing answers to these questions, the Commission applied the seven general principles, outlined in Report 32, *Our Criminal Procedure*, to the law of interim release. (See note above for principles). In addition to answering these questions the Paper also suggests solutions to some constitutional problems which have surfaced since the enactment of the *Charter of Rights and Freedoms*. Most notably it addresses the problem of reverse onus clauses and suggests that current 'reverse' onus clauses in the

Criminal Code's interim release provisions are unnecessary and ought not to be incorporated in a new Code of Criminal Procedure.

Working Paper 58 *Crimes Against The Foetus*

This paper recommends that the *Criminal Code* contain a separate and distinct chapter which would deal with all wrongful harms against the foetus. Included in this new chapter would be a new offence of "Foetal Destruction or Harm" which would make it a crime to purposely, recklessly or negligently cause death or serious harm to a foetus. Included also would be exceptions for medical treatment and for lawful abortion.

Medical treatment would be a defence to a crime against the foetus where it did not involve risk of destruction or harm disproportionate to the expected benefits and where it was applied with the mother's consent for therapeutic or diagnostic purposes.

The underlying principle of the Commission's abortion proposal is to balance reproductive freedom and maternal autonomy with the increasing recognition, respect and protection afforded the foetus as it develops. The key to this approach is to recognize maternal autonomy and protection of the foetus without arbitrarily obliterating one right in favour of the other. To this end the Commission has recommended a two stage approach

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which would reflect a balance of these two competing interests. As well the paper presents a minority position, an alternative three stage approach, and a dissent by one of the Commissioners.

This Working Paper generated much discussion and received wide coverage in the media. Comments on the Paper can be found on page 5.

Working Paper 59 *Toward A Unified Criminal Court*

The principal recommendation of this paper is the creation of a unified court with exclusive jurisdiction to try all crimes. The paper further recommends that either judges of the Criminal Court should be appointed by the Governor General in accordance with the *Constitution Act, 1867*, or that the *Constitution Act, 1867* should be amended to allow the provinces and territories to make appointments to the Criminal Court.

The Paper also recommends that unification of criminal courts could, as an interim measure, be allowed to proceed in stages. In provinces with a three-level system of criminal courts, the number of levels should be reduced to two, consisting of a Provincial Court and a Supreme Court. Under a two-level system of criminal courts, the *Criminal Code* should confer jurisdiction on the Provincial Court to hear all non-jury trials. Within a period fixed by statute, all courts exercising criminal jurisdiction should ultimately be amalgamated in a single unified court.

The recent bill presented to the Ontario legislature, an *Act to amend the Courts of Justice Act, 1984* which sets out legislation for the unification of all courts in Ontario may be considered consistent with the Commission's approach. Also an editorial in *The Ottawa Citizen* strongly endorsed our recommendations by stating: "The Law Reform Commission of Canada has presented a solid case

for the creation of a unified criminal court with jurisdiction to try all crimes".

Study Papers

Often, before a Working Paper is published, background information, in the form of a Study Paper, is accumulated through research and empirical studies. Many of these studies are not published but are catalogued in our library. However, a select number of these papers which convey valuable, original, topical material, are published by the Commission. It should be noted, however, that the views expressed in these papers remain those of the author and not of the Commission.

Pollution Control in Canada: The Regulatory Approach in The 1980s

This Study Paper by Kernaghan Webb was prepared for the Administrative Law Project. The paper is an examination of the growth and development of the regulatory approach to pollution control in Canada as well as a critique of the Commission's recommendation (in Report 31) that there be included in the *Criminal Code* a specific crime against the environment.

The author contends that the regulatory approach to pollution control — using licences to control emissions, and prosecution for offences — is the most appropriate and effective way of dealing with environmental misbehaviour. He points out that the majority of pollution offences which reach the court are not intentional, and thus lack the mental element associated with criminal activity.

The paper calls for a number of reforms to current environmental protection efforts, such as: a systematic re-examination of federal and provincial pollution control legislation; and publication of annual reports on the state of government efforts to control pollution.

Inspection: A Case Study and Selected References

This Study Paper by John Clifford was prepared for the Administrative Law Project. The paper sets out findings from field research of Transport Canada's aviation safety inspectorates; indexed listings of literature, official documents, legislation and cases; and a general framework for understanding inspection. On the basis of this work, the Commission has designed and administered a survey of federal inspectorate managers. All of this work is background for specific recommendations for reform which the Commission will be making over the next two years.

The Administrative Appeals Tribunal of Australia

This Study Paper by Terence Ison was prepared for the Administrative Law Project. The paper describes the function and purpose of the Australian Administrative Appeals Tribunal (AAT) and examines factors that may be relevant in the consideration of any similar institution in Canada.

In the author's view administrative appeals in Canada should be conducted more in an inquisitorial fashion where the judge plays a more active role in directing the inquiry. The author also concludes that the structure for administrative appeals in Canada is fragmented. However, he cautions against wholesale adoption of the highly centralized AAT model. Instead, he recommends that limited consolidation of appeal tribunals working in similar areas should be considered.

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CURRENT RESEARCH

Substantive Criminal Law Project

The President, Mr. Justice Allen Linden, is responsible for the direction of the Substantive Criminal Law Project. Professor Patrick J. Fitzgerald is the Project Co-ordinator and is responsible for the supervision and direction of research.

The present aim of the Project is to complete the remaining chapters and provisions of the proposed new Criminal Code for Canada. This past year the Project has prepared a draft chapter on sex crimes, pornography and prostitution; done research on securities frauds, intellectual property and firearms; worked towards preparation of a chapter on sentencing and re-examined the General Part provisions in Report 31 on conduct, culpability and involvement in crimes with a view to possible simplification. These new chapters and provisions will be added to what was included in Report 31 on *Recodifying Criminal Law*. The project has also co-operated with the Protection of Life Project in preparing Working Paper 58, *Crimes Against the Foetus*.

Criminal Procedure Project

Vice-President Gilles Létourneau is the Commissioner responsible for the Criminal Procedure Project. Stanley A. Cohen is the Project Co-ordinator and is responsible for the supervision and direction of research. The ultimate objective of the Project is the preparation of a code of criminal procedure that will comprehensively address all major areas of criminal

procedure, including police and investigative powers, and pretrial, trial and appeal procedure.

In 1988 the Project published a statement enunciating general principles of criminal procedure. Report 32, *Our Criminal Procedure*, sets out the guiding principles which inform the work of the Commission in all of the procedural areas which it reports on. This document, even prior to its publication, served as a reference point for both the preparation of particular Working Papers and the drafting of component parts of the code of criminal procedure.

Several key elements in the Project's work have already been completed. All of the preliminary work on the subject of police powers has been published in the form of Working Papers and/or Reports.

For the past few years the Project has taken a two-track approach to the completion of its work on the Code of Criminal Procedure.

The first track is the development and completion of all outstanding Working Papers and Reports. The Project recently published Working Paper 59, *Toward a Unified Criminal Court*. A Working Paper on plea discussions and agreements is currently in the advanced stages of the publication process. Other Working Papers on remedies, appeals, extraordinary remedies, costs, trial within a reasonable time, the judge and conduct of trial, double jeopardy, pleas and verdicts

and powers of the Attorney General are nearly complete and the Project anticipates their approval and publication in the days ahead.

The link between the Project's core work on criminal procedure and the field of human rights law is an intimate one. The relationship between the two is especially evident in the study which the Commission has jointly undertaken with the Aboriginal Justice Inquiry in Manitoba on "The Native Offender and the Sentencing Process". That study, after a process of joint consultation is expected to be published in the spring of 1990.

The second track is Codification. The Project's recent endeavours have largely concentrated on the development of the first volume of a code of criminal procedure pertaining to police and investigatory powers. Title One of this volume, subtitled "*Police Powers: Search and Related Matters*", will be published shortly. Title Two, pertaining to arrest and investigation, is well advanced and the Project anticipates its publication in the fall of 1990. The remainder of the work will be assembled in an additional volume devoted to the pretrial, trial and appeal processes. In due course the Commission will begin to present these components to its regular consultation groups and then will invite greater public involvement in the consultation process.

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Protection of Life Project

Judge Michèle Rivet is the Commissioner responsible for the Protection of Life Project. Dr. Burleigh Trevor-Deutsch, appointed in July, is the Project Co-ordinator.

The Protection of Life Project, based in Montréal, was established in 1975. Originally the Project's primary goal was to analyze the strengths and weaknesses of existing health related federal law to better respond to both technological developments and evolving values. The emphasis was on the criminal aspects of the practice of medicine. This gave rise to studies on euthanasia and the cessation of medical treatment, sterilization and the mentally handicapped, behaviour alteration, the legal definition of death, medical treatment and the criminal law, informed consent, and the sanctity and quality of life. In 1986, recommendations and conclusions drawn from these separately published papers were collected and presented to Parliament in Report 28, *Some Aspects of Medical Treatment and Criminal Law*.

This year the project published a major study in the form of a Working Paper, entitled *Crimes Against the Foetus*. (For details on this Paper, please see page 17.)

In March, the Commission approved the publication of a study dealing with biomedical experimentation on humans. It addresses the question of what types of experimentation should be allowed, controlled or forbidden. It also focuses on issues of consent to experimental treatment and the cost-benefit analysis which must be made to justify such treatment. This encompasses a variety of issues including the amount of information patients should be provided with to allow them to exercise informed consent. Children, prisoners and the mentally handicapped function under special constraints which make the legal validity of their consent even more difficult to assess. Publication of this Working Paper is expected in the fall of 1989.



Protection of Life Project: seated from left to right: Burleigh Trevor-Deutsch, Her Honour Judge Michèle Rivet and Marielle Harvey.

Standing from left to right: Derek Jones, Isabelle Panisset, Denis Deslauriers, Anne Marcoux and Jean-François Brault.

Following up on this study is one dealing with testing of new drugs on humans. There comes a time in the history of every therapeutic drug or treatment when the first human trials must take place. At what level of risk are such trials justifiable? This is the cost-benefit analysis which must be undertaken and for which a legal minimum standard should be clarified. The first draft of this study is expected in the spring of 1990.

A study on the desirability of a national ethics committee has been completed and will be critically considered by a panel of experts during a Commission consultation scheduled for June of 1989.

Work on three other studies in the medical field is proceeding rapidly with a view to submitting them for consultation by a panel of experts, in November of 1989.

The first of these concerns medically assisted reproduction, including surrogacy. Consultants in medicine, ethics, constitutional law and health law have brought their expertise to this very current topic. The delicate balance of social merits, risks and individual rights is being investigated.

Second, the problem of the shortage of transferable organs, tissues and bodily substances is being addressed. As medical transplant technology progresses, so will the demand for bodily parts from cadavers and live donors. While donation is to be encouraged, this study addresses the issues of informed consent, and protection of donors and their families, and commercialization.

Finally, the Project is studying individual genetic patrimony as it impinges on human dignity. In the near future, tech-

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nology will allow us to alter our genetic make-up which constitutes the hereditary link with our parents, siblings and ancestors. While this holds out hope for the cure of genetic disease, there exists the potential for less desirable uses of these techniques. Is genetic patrimony an element of human dignity? Is there a right to an unaltered genetic heritage? And under what circumstances is genetic alteration of humans appropriate? These are the main issues addressed in this study.

In 1981, the Protection of Life Project added a new component to its health-related concerns: the protection of the environment. The basic philosophical thrust remained the same, that of the protection of life and health, this time in the context of technological hazards that threaten human integrity. Papers published by the Commission in this area include *Political Economy of Environmental Hazards, Crimes Against the Environment, Behaviour Alteration and the Criminal Law, Workplace Pollution, and Pesticides in Canada: an Examination of Federal Legislation and Policy*.

This year, the environmental law thrust consisted of two lines of related research: environmental law enforcement in the 1990's and responsibility for contaminated lands.

Of all the issues associated with protection of the environment, the question of appropriate philosophy or approach to such protection is the source of the most controversy and debate. The classical arguments in this area centre on the relative merits of an approach which emphasizes persuasion as opposed to one which stresses punishment. The study on this subject examines the different approaches to enforcement of environmental laws, in Canada and internationally. The successes and failures, here and abroad, will form the basis of the paper's recommendations as to how to proceed with environmental law enforcement in the next decade.

In a more specific context, the problem of contaminated land in Canada is worse than generally thought, and existing laws regarding liability for clean-up costs are, in many cases, more cumbersome than necessary. This study is an exhaustive examination of the nature and the extent of contamination. National and international legislation for pollution control are being examined and compared. The Project anticipates that this will lead to recommendations for a comprehensive approach to dealing with contaminated lands and those who may be liable for their reclamation.

Drafts of both of the environmental studies will be submitted early in the new fiscal year and the Project expects to submit them for expert consultation during the spring of 1990.

Administrative Law Project

The Commissioner responsible for the Administrative Law Project is Mr. John P. Frecker. The Project Co-ordinator is Dr. Patrick Robardet.

In line with the 1986-87 project theme, entitled "a fresh start in administrative law", and the theme for 1987-88, "bridging the gap between law and administration", work continued on the construction of federal administrative law.

With respect to policy implementation, our broad approach to compliance, based on the large number of measures available for this purpose, is reflected in the study paper entitled *Pollution Control in Canada: The Regulatory Approach in the 1980s*, published in early 1988. This paper recommends that the government make wider use of non-criminal sanctions for environmental offences, rather than including crimes against the environment in the *Criminal Code*. Furthermore, work on environmental mediation, which was the topic of a preliminary report submitted to the Commission before the end of the 1988-89 fiscal year, will continue

during 1989-90. The study on an economic approach to administrative law, which was the subject of an interdisciplinary seminar in June 1988, was completed and was submitted to a law journal for publication.

Within the perspective developed by Working Paper 51, entitled *Policy Implementation, Compliance and Administrative Law* (1986), the 1987-88 research on inspectorates resulted in a study of aviation safety, and a paper entitled *Inspection: A Case Study and Selected References* was published at the end of the 1988-89 fiscal year. A framework for federal inspections will be addressed more fully in another Working Paper. A progress report on this topic was submitted to a session of the Law and Society Association (Learned Societies Conference, University of Windsor, June 1988) during a presentation entitled "Controlling the Middlemen". Subsequently, a draft working paper entitled *Administrative Policing: Its Nature and Authorization* was examined at a formal consultation in May 1989. After undergoing revision, it will be published as a Working Paper during the next fiscal year. Finally, research has enabled us to prepare a list of inspectorates, presented in the form of institutional profiles. The Commission plans to make these available in a special format, entitled *Administrative Policing: Some Federal Inspectorates*.

In the matter of statutory offences, the Commission followed closely the initiatives of the federal Minister of Justice and, together with this department and the Office of Privatization and Regulatory Affairs, planned and organized a tripartite conference on "Responses to Non-Compliance with Legal Standards" in May 1988. As planned, the conference proceedings were published in May 1989 as Volume I of the series "Issues in Regulatory Enforcement", under the aforementioned title. The Commission intends

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to keep abreast of any developments arising from this study session and to carry on its work in this field.

The many favourable reactions to the approach proposed in the consultation document entitled *Towards a Modern Federal Administrative Law*, published in June 1987, led the Commission to join the Faculty of Law of the University of Toronto in organizing a national conference in September 1988 on the following topic: "Law and Leviathan: The Administrative Law Challenge in the 1990s". The conference was planned by a committee of the deans of several law faculties and was co-chaired by Commissioner John Frecker and Dean Robert Prichard of the University of Toronto. Specialists in the fields of public law, political science and public administration gathered to explore avenues of reform that would enable administrative law to fulfil its mandate with respect to the activities of the modern federal state. The final versions of the presentations and comments made at the conference were sent to the *University of Toronto Law Journal* at the end of 1988. The official proceedings will also appear in a special Commission publication. The subjects examined included the following:

- The nature of the administrative state
- The impact of law in the administrative state
- Normative order in the administrative state
- New perspectives on the choice of mechanisms — problems posed by administrative law
- Alternatives to bureaucratic forms of organization
- Problems posed by group decisions
- Correcting the consequences of state interventions.

Over the past year, research into the legal status of the federal administration continued to focus on the liability of the Crown. The second draft of a consultation document on this topic was the subject of limited consultation in June 1988.

A study on the limitation periods in federal law was submitted in June 1988. This study, to propose a more streamlined system, is to be supplemented with information on Quebec law during 1989-90. The study on federal fiscal immunity, focusing on the economic consequences of the application of section 125 of the *Constitution Act, 1867*, indicated that no serious financial consequences would result from such applications. The study was examined at a study session in June 1988, and the final version was submitted in August of that year. The two authors will be publishing it in article form.

Administrative institutions and action continue to be a major research theme of the Administrative Law Project. For example, the issue of what form administrative institutions should take was examined in a preliminary study on the assessment of environmental impacts, submitted to the Commission in August 1988. Before a more general document can be prepared on the consequences of choices between institutional models, other studies will have to be done.

The studies on administrative appeals and the federal ombudsman, announced in our *Fifteenth Annual Report*, are at different stages of completion. A study of administrative appeals had to be delayed until 1989-90, pending the availability of the consultant who was approached. However, the study paper on *The Administrative Appeals Tribunal of Australia* was published at the end of this reporting year.

The study on a proposal for creation of an office of Federal Ombudsman is progressing well. Three documents were prepared prior to official consultation on this topic in May 1989. The first, entitled *A Federal Ombudsman for Canada*, dealt with the principle of establishing the office of ombudsman. A second, more limited study focused on the attitudes of federal parliamentarians to the ombudsman proposal. Finally, a study, entitled

Responsabilité administrative et motifs d'intervention d'un ombudsman fédéral, looked at the grounds for intervention by the proposed ombudsman. In accordance with our recommendation in Working Paper 25 on *Independent Administrative Agencies* (1980), a draft working paper is to be preceded by a study of the jurisdiction and organization of an office of Federal Ombudsman. This complementary study will be completed before the end of the 1989 calendar year.

With respect to the study on the practices and procedures of the Immigration Appeal Board, the implementation within the Board of several previous recommendations obviates the necessity of publishing this study, which was partially revised during the second half of this reporting year. The Commission will continue to monitor progress made in this area under the new Immigration and Refugee Board. A seminar held in January 1989 and dealing with the key issues to be faced under the new legislation made it possible to gather the opinions of a group of senior officials, academics and jurists. Following this survey, done in conjunction with a presentation given by an academic invited in January 1989 as a scholar in residence, the Commission plans to conduct systematic research into the operation of the new Immigration and Refugee Board during a six-month period in 1989-90. Finally, the Commission notes that a report was submitted in January 1989, following the Public Service Commission study on appeal boards, in which it participated.

As for the efficiency and fairness of federal departments' and agencies' activities as a whole, the Commission is continuing research into administrative procedures and decision-making. As indicated in Report 26, entitled *Independent Administrative Agencies*, these issues lend themselves well to collaboration on the part of jurists and other specialists. A seminar dealing with federal legislation on administrative procedure, scheduled for the

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summer of 1989, is currently being organized in concert with the Canadian Bar Association.

Throughout the year, administrative law consultants intervened with federal agencies in order to further the cause of law reform and the reform of administrative action. They also made presentations or attended seminars and workshops on topics such as the evolution of Canadian administrative law (ICLEM, Ottawa, February 1989), inspectorates reform (ICLEM, Ottawa, February 1989), the inherent jurisdiction of administrative tribunals (Conference of the Council of Canadian Administrative Tribunals, Ottawa, April 1989), administrative decision-making (Institute of Public Administration of Canada, Annual Meeting, Ottawa, August 1988), administrative diligence (Conference of the *Association des juristes d'expression française de l'Ontario*, Hull, February 1989), the role of private parties in inspection and the public's role in pollution control (Learned Societies, Windsor, June 1988).

As we have seen, 1988-89 was a year for consolidation in terms of bridging the gap between law and administrative action. A new research program was submitted in 1987 for extensive consultation. Progressively closer ties were established with a number of other institutions in order to participate in the vast movement aimed at reforming administrative procedures. In 1989-90, the Commission plans to accelerate priority issues, such as the creation of an office of Federal Ombudsman, statutory offences, administrative policing, financial incentives used for policy implementation and possibly, a report to Parliament regarding federal administrative law. The Commission also intends to organize a conference on the allocation of grants and incentives, to be held towards the end of the 1990 calendar year. The formal meetings previously scheduled for 1989-90 will take place with the Canadian Bar Association and

the Ombudsmen of Canada in order to discuss draft papers which are currently being formulated.

Human Rights

The Commission is expanding its preliminary research activities into the human rights field, with the help of Stanley A. Cohen, Special Counsel, Charter of Rights.

The bulk of our current legislation was developed before the enactment of our *Canadian Charter of Rights and Freedoms* and modern Human Rights statutes. The Commission has found that at this stage in the life of the *Charter* and in the aftermath of Supreme Court of Canada pronouncements concerning the paramount importance of Human Rights legislation, we increasingly confront laws and institutions that are in flux and require improvement.

Since the Commission's inception, work in virtually every area of concern has been rights-oriented. This has been especially noticeable in the field of Criminal Procedure and is attested to in the Commission's philosophy as expressed in Report 32, *Our Criminal Procedure*.

During the past year, the Commission, under the umbrella of our existing research programme has begun to explore the larger dimensions of human rights in the Canadian legal context and plans to enhance its involvement in the field of human rights. The Commission has commissioned a study, now in its draft stages, to explore the policy dimension of the federal jurisdiction over the field of human rights, and has also embarked upon a joint venture with the Public Inquiry into the Administration of Justice and Aboriginal People in Manitoba to study the impact of the sentencing process on the native offender in Canada. The Commission is continuing its support of a study by a leading Canadian scholar on public international law in the Canadian legal context — in particular, the context of the *Charter* and legal rights.

The Commission plans to establish a human rights advisory group to guide its continuing work in this area, and to identify subjects upon which the Commission can make a unique contribution. The Commission's study on the federal dimensions of human rights in Canada will provide a suitable focus for this initial exercise. It is hoped that this advisory group will be formally convened during the next year.

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CONSULTATIONS

The Commission seeks to involve the public in our decision-making process through formal and informal consultations. We believe that the more we can encourage people, whether professionals or members of the general public, to discuss their ideas about law and principles of law, the greater will be their awareness of approaches to law reform and the greater the opportunity for effective change in the way law affects individuals. The Commission has organized public meetings on issues such as physical discipline of children by parents and teachers, wife battering, vandalism, and violence in sports. We also consult regularly with judges from all jurisdictions, the police and the RCMP, defence lawyers, Crown prosecutors, law professors and other specialized groups and individuals. We receive valuable advice from these groups and individuals and their contribution is an essential element in the development of our recommendations to Parliament.

Regular Consultations

Criminal Law

As part of its involvement arising out of Criminal Law Review, the Commission regularly consults with major interest groups. These include an advisory panel of judges from across Canada; a delegation of defence lawyers nominated by the Canadian Bar Association; chiefs of police; legal scholars chosen by the Canadian Association of Law Teachers; and representatives from the federal and provincial governments. Through these consultations, the Commission benefits from the advice of key players in the criminal justice system.

This year meetings were held in St. John's, Nfld., and Victoria, B.C. The Commission wishes to thank all our consultants for donating their time and contributing so generously to the cause of law reform:

Advisory Panel of Judges

The Hon. Madam Justice Claire
Barrette-Joncas
Superior Court of Québec, Montréal

The Hon. Judge Stephen Borins
District Court of Ontario, Toronto

The Hon. Mr. Justice William A. Craig
Court of Appeal of British Columbia,
Vancouver

The Hon. Mr. Justice Alexander Hickman
Supreme Court of Newfoundland, St. John's

The Hon. Mr. Justice Fred Kaufman
Court of Appeal of Québec, Montréal

The Hon. Mr. Justice Gérard V. La Forest
Supreme Court of Canada, Ottawa

The Hon. Mr. Justice Antonio Lamer
Supreme Court of Canada, Ottawa

The Hon. Patrick J. LeSage
Associate Chief Judge, Ontario District
Court, Toronto

The Hon. Mr. Justice Angus L. MacDonald
Supreme Court of Nova Scotia, Appeal
Division, Halifax

The Hon. Mr. Justice Alan B. Macfarlane
Court of Appeal of British Columbia,
Vancouver

The Hon. Mr. Justice G. Arthur Martin
Court of Appeal of Ontario, Toronto

The Hon. Mr. Justice David C. McDonald
Court of Queen's Bench of Alberta,
Edmonton

The Hon. Mr. Justice Wallace T. Oppal
Supreme Court of British Columbia,
Vancouver

The Hon. Mr. Justice Melvin Rothman
Court of Appeal of Québec, Montréal

The Hon. Judge Robert Salhany
District Court of Ontario, Kitchener

The Hon. Mr. Justice William A. Stevenson
Court of Appeal of Alberta, Edmonton

The Hon. Mr. Justice Calvin F. Tallis
Court of Appeal of Saskatchewan, Regina

Canadian Bar Association Members

Mr. G. Greg Brodsky, Q.C., Winnipeg

Mr. Edward L. Greenspan, Q.C., Toronto

Mr. Gordon F. Gregory, Q.C., Fredericton

Mr. Morris Manning, Q.C., Toronto

Mr. Serge Ménard, Bâtonnier du Québec,
Montréal

Mr. Richard Peck, Vancouver

Mr. Joel E. Pink, Q.C., Halifax

Mr. Robert Pollack, Winnipeg

Mr. Michel Proulx, Montréal

Mr. Marc Rosenberg, Toronto

Mr. Donald J. Sorochan, Vancouver

Mr. Richard H. Vogel, Q.C., Vancouver

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Canadian Association of Chiefs of Police

Chief Greg Cohoon
Moncton Police Force, Moncton (N.B.)

Chief Thomas G. Flanagan
Ottawa Police Force, Ottawa (Ont.)

Mr. Guy Lafrance
Montreal Urban Community, Montreal (Que.)

Staff Sgt. John Lindsay
Edmonton Police Force, Edmonton (Alta.)

Chief Collin Millar
Hamilton-Wentworth Regional Police,
Hamilton (Ont.)

Chief Herbert Stephen
Winnipeg Police Department,
Winnipeg (Man.)

Canadian Association of Law Teachers

Professor Bruce Archibald
Dalhousie University

Professor Eric Colvin
University of Saskatchewan

Professor Anne Stalker
University of Calgary

Professor Donald R. Stuart
Queen's University

Federal/Provincial Government Group

M^c Jean-François Dionne
Ministère de la Justice, Québec

Gordon S. Gale, Q.C.
Department of the Attorney General, Nova
Scotia

M^c Daniel Grégoire
Ministère de la Justice, Québec

John Guy, Q.C.
Department of the Attorney General,
Manitoba

Richard Hubley
Department of Justice, Prince Edward Island

Robert Hyslop
Department of Justice, Newfoundland

Howard Morton, Q.C.
Ministry of the Attorney General of Ontario

Richard Mosley
Department of Justice, Ottawa

Carol Snell
Department of Justice, Saskatchewan

Edwin Tollefson, Q.C.
Department of Justice, Ottawa

Michael Watson
Department of the Attorney General, Alberta

Eugene Westhaver, Q.C.
Department of Justice, New Brunswick

Hal Yacowar
Ministry of the Attorney General, British
Columbia

Administrative Law

On May 11 and 12, 1989, the Commission held the first meeting of its new Administrative Law Advisory Group, in Stratford, Ontario. The regular members of this group (see below), as well as a number of special guests who were invited because of their expertise and interests, were asked to discuss the following documents: *A Federal Ombudsman for Canada* by V. Seymour Wilson, *Responsabilité administrative et motifs d'intervention d'un ombudsman fédéral* by Patrick Robardet and *Administrative Policing: Its Nature and Authorization* by John C. Clifford.

This consultation made it possible to analyze how attitudes to the creation of an office of Federal Ombudsman have evolved since the 1977 release of the *Report of the Committee on the Concept of the Ombudsman*, the first reading in 1978 of Bill C-43 proposing the creation of an office of Federal Ombudsman and the recommendation for the creation of this office in Working Paper 26, *Independent Administrative Agencies*, published by the Commission in 1980. The discussion process will enable the Commission to revise the proposals contained

in these papers and to submit a draft working paper on the creation of an office of Federal Ombudsman.

Dr. O.P. Dwivedi
Professor and Chairman, Department of
Political Studies
University of Guelph

Mr. Alan Gilmore
Principal
Office of the Auditor General of Canada.

Mr. Jacques Meunier
Adjoint du Protecteur du Citoyen du Québec

Mr. Stephen Owen
Ombudsman of British Columbia

Dr. R. Phidd
Department of Political Studies, University of
Guelph

*Administrative Law Advisory Group
(ALAG)*

Donald Brown, Q.C., Canadian Bar
Association

Professor Phillip Bryden, University of
British Columbia

Douglas Colbourne, C.A., Chairman of the
CCTA

Robert Cousineau, Q.C., Public Service
Commission of Canada

Brian Crane, Q.C., Gowling & Henderson

Professor Stéphane Dion, Université de
Montréal

René Dussault, École nationale
d'administration publique, Université du
Québec (now a justice of the Quebec Court of
Appeal)

Charles Ferris, Office of the Ombudsman,
New-Brunswick

Michael Jeffery, Q.C., Editor in Chief of the
*Canadian Journal of Administrative Law and
Practice*

Professor Andrée Lajoie, Université de
Montréal

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Paul Lordon, Q.C., Department of Justice
Canada

His Honour Judge Mark MacGuigan, Federal
Court of Canada

His Honour Judge Andrew MacKay, Federal
Court of Canada

Professor Wade MacLauchlan, Dalhousie
University

Henry Molot, Q.C., Department of Justice
Canada

Professor Paul Pross, Dalhousie University

Professor Fred Vaughan, University of
Guelph

Public Meetings

The Commission held two public meetings this year, one in St. John's, Newfoundland, the other in Victoria, British Columbia. The St. John's meeting, which was organized with the assistance of the staff of the Public Legal Information Association of Newfoundland, brought out more than 125 people. The participants engaged in a lively discussion on the Commission's proposed new Criminal Code. The topics discussed included: corporal punishment, endangerment, environmental pollution and criminal intoxication. A similar meeting in Victoria was organized with the help of The Law Centre Association of Victoria. Over 250 people attended what turned out to be an equally lively and stimulating public meeting as that held in St. John's.

Special Consultations

The category of special consultations is meant to describe specific consultative events held with groups, institutions or professionals who are concerned with the work of the Commission. The past year the Commission participated in the following events.

Symposium on Report 31: Recodifying Criminal Law

In the fall of 1988 members of the Commission met with a group of Criminal Law professors from the Canadian Association of Law Teachers at a special symposium at Millcroft Inn in Alton, Ontario to discuss Report 31: *Recodifying Criminal Law*. The conference, which lasted two days included formal presentation of papers as well as informal discussions and exchange of ideas. A number of the papers presented at the conference are to be published in the *Queen's Law Journal* in the fall of 1989 which is devoting an entire issue to this conference. Those participating in the conference include the following CALT members:

Professor Bruce Archibald
Dalhousie University

Professor Peter Barton
University of Western Ontario

Professor Alan S. Brudner
University of Toronto

Dean Peter Burns, Q.C.
University of British Columbia

Professor Eric Colvin
University of Saskatchewan

Professor Ronald Delisle
Queen's University

Professor Gerry Ferguson
University of Victoria

Professor Martin Friedland
University of Toronto



Public Meeting held in St. John's, Newfoundland
Seated from left to right: Peter Ringrose, Executive Director of Public Legal Information Association of Newfoundland; John Frecker, Commissioner, LRC; Gilles Létourneau, Vice-President, LRC; Mr. Justice Allen M. Linden, President, LRC; Her Honour Judge Michèle Rivet, Commissioner, LRC; Joseph Maingot, former Commissioner, LRC.

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Professor Jacques Gagné
Université Laval

Professor Donald Galloway
Queen's University

Professor Rachel Grondin
University of Ottawa

Professor Archibald Kaiser
Dalhousie University

Professor Dennis Klinck
McGill University

Professor Patrick Knoll
University of Calgary

Professor Diana Majury
University of Western Ontario

Professor Allan Manson
Queen's University

Dean Peter MacKinnon
University of Saskatchewan

Professor Chester Mitchell
Carleton University

Professor Timothy Quigley
University of Saskatchewan

Professor Douglas Schmeiser
University of Saskatchewan

Professor Brian Slattery
Osgoode Hall Law School

Professor Anne Stalker
University of Calgary

Professor Donald Stuart
Queen's University

Professor Sydney J. Usprich
University of Western Ontario

Professor Alan Young
Osgoode Hall Law School

Exclusion of Evidence (Remedies)

In the late spring a special meeting was held to discuss the Commission's work on the exclusion of evidence as a remedy. The one day meeting was held at the Conference Centre in Toronto. The group invited to the meeting included a mixture of lawyers, law professors and judges. The participants were:

Professor Bruce Archibald
Dalhousie Law School

Mr. Patrick Healy
Montreal

Mr. Kenneth Jull
Toronto

The Hon. Mr. Justice David McDonald
Court of Queen's Bench of Alberta

Professor Alan W. Mewett, Q.C.
University of Toronto

Professor David Paciocco
University of Ottawa

Mr. Edwin Tollefson, Q.C.
Department of Justice

Professor Louise Viau
Université de Montréal

The Control of Prosecutions

A special one day meeting was held in the late spring to discuss the Commission's Working Paper on *The Control of Prosecutions: The Attorney General and The Crown Prosecutor*. This meeting which was held in Toronto at the Conference Centre brought together a diverse group of people, which included former provincial Attorneys-General and federal Ministers of Justice and Solicitors-General, former deputy law officers and other experts interested in the topic. The participants were:

Professor J. Ll. J. Edwards
University of Toronto

The Honourable Gregory T. Evans
Toronto

Mr. Gordon F. Gregory, Q.C.
Fredericton

The Hon. Mr. Justice Alexander Hickman
Chief Justice, Supreme Court
Trial Division
St. John's, Newfoundland

The Hon. Ramon J. Hnatyshyn, P.C., Q.C.
Ottawa

The Hon. Robert Kaplan, M.P., P.C.
Ottawa

Mr. Herbert Marx, P.C., M.N.A.
Québec

The Hon. Mr. Justice Mark MacGuigan, P.C.
Federal Court of Canada

Mr. Marc Rosenberg
Toronto

Mr. Brian R.D. Smith, Q.C., M.L.A.
British Columbia

Professor Philip C. Stenning
University of Toronto, Centre of Criminology

Mr. Richard H. Vogel, Q.C.
Vancouver

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CO-OPERATION WITH OTHER INSTITUTIONS

During the course of the last year, the Commission continued to co-operate with many other institutions involved in law reform. We continued our co-operation with the two legal departments of the federal government — the Department of Justice and the Solicitor General of Canada — and provincial governmental officials. We maintained contact with the Parliamentary Committee on Justice and Solicitor General.

We remained in contact with the Canadian Judicial Council, the Canadian Judges Conference, the Canadian Institute for the Administration of Justice, the John Howard Society and the Canadian Criminal Justice Association.

Our close co-operation continued with other Canadian law reform agencies and similar bodies around the world. The newsletter, *Law Reform*, containing news from the various law reform bodies in Canada and abroad was continued. We attended the meeting of the Law Reform Conference of Canada.

We have maintained close ties with the Society for the Reform of Criminal Law. In August, 1988 we participated in its first international conference held in the Parliament Buildings in Ottawa. That conference, chaired by Sheriff Gordon Nicholson of the Scotland Law Commission, considered various aspects of the "Reform of Sentencing, Parole, and Early Release". The keynote address was given by the Chief Justice of Canada, the Rt. Hon. Brian Dickson. We also participated in the Society's second conference held in March 1989 at the Opera House in Sydney, Australia. The conference focused on the topic of "Investigating crimes and apprehending suspects: police powers and citizens' rights". The Rt. Hon. Sir Anthony Mason, Chief Justice of Australia, gave the keynote address.

Next January the Society will meet in Washington to discuss the subject of "Criminal Code Reform". The Hon. Mr. Justice Allen Linden, President of the Law Reform Commission of Canada will chair this conference.

As in other years, the Commission worked closely with the Canadian Bar Association. We reported, as is our custom, to both the mid-winter meeting and the annual meeting. As noted earlier in this report, we jointly organized the Law Day dinner in Ottawa at which the guest speaker was the Minister of Justice, the Honourable Doug Lewis. At this dinner, the fourth annual Scales of Justice Awards were presented to media figures who contributed to a better understanding of the legal system of Canada.

The Commission continued its close association with the Canadian Association of Law Teachers (CALT), participating in the organization of its annual meeting in Quebec City and consulting with the criminal law and administrative law teachers at that time. We maintain a summer research intern programme, and have a contact person in each Canadian law school. This year, the CALT-LRC Award for an outstanding contribution to legal research and law reform went to Professor Stephen Waddams of the University of Toronto.

The Commission is involved in many organizations on the international level. For example it has participated in the 1988 "Journées Strasbourgeoises" of the Canadian Institute for Advanced Legal Studies on NRT and presented a document. The Commission was also invited to participate in France in the "Journées officielles" of the *Comité consultatif national d'éthique pour les sciences de la vie et de la santé* which were held in Paris, in December of 1988, as one of a selected few foreign participants. In January 1989, members of the Commission met in Paris with the French government's *Commission de justice pénale et droits de l'homme* for a working session. These meetings give evidence of the ever increasing participation of the Law Reform Commission in the community at an international level.

The Commission also participated in a meeting with the Parliamentary Committee on Justice and Solicitor General which brought together other institutions to discuss mutual interests. This meeting included the National Parole Board, the Canadian Human Rights Commission and the Offices of the Information and Privacy Commissioners.

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ADMINISTRATION

The operations of the Commission are the responsibility of the Secretary of the Commission, who is the ranking public servant of the Commission. He is assisted by the Director of Operations.

Meetings

Activities continued again this year at a brisk pace. The Commission held 21 formal meetings.

Regional Operations

Within a year of its establishment, the Commission had opened a Québec regional office, located in Montréal. This presence in the civil law province has proved invaluable to the Commission in the fulfilment of its statutory responsibility to reflect "the distinctive concepts and institutions of [both] the common law and civil law legal systems in Canada, and the reconciliation of differences and discrepancies in the expression and application of the law arising out of differences in those concepts and institutions;" (*Law Reform Commission Act*, section 11(b)). The Commission is well attuned to the thinking and aspirations of the legal community and the general public in Québec.

Official Languages Policy

The Commissioner of Official Languages recognized the excellent record of the Commission in the application of the official languages policy and to this effect the Commission has received tributes from the Official Languages Commissioner which indicates "consistently high achiever". The Commission intends to maintain its record.

Translation

The Commission wishes to express its gratitude to the translators of the Department of the Secretary of State, who translate the Commission's publications. In particular, we would like to thank Messrs. Richard Jacques, Pierre Ducharme, Christian Després, and Ms. Marcelle Gendron, for their outstanding work over the years.

Library

The library of the Law Reform Commission maintains a core collection of Canadian and foreign legal materials and publications of other law reform bodies around the world. Books and documents in other fields are acquired as needed, depending on the priorities of the Commission's projects. The library provides reference and inter-library loan services to support the needs of its researchers.

Personnel

During the fiscal year ending March 31, 1989, the personnel strength of the Commission varied according to seasonal and functional factors. The Commission used the services of research consultants for varying lengths of time during that period (see Appendix H). They were retained on a contractual basis in accordance with subsection 7(2) of the *Law Reform Commission Act*. All of the support staff, with the occasional exception of temporary office assistants, are public servants. The Commission this year used its forty-four authorized person years.

We also wish to acknowledge the help given us by certain temporary employees whose assistance has been invaluable but who are not included in the person-year figure. The Commission's enormous mailing operations when new publications were released were greatly helped by the assistance of persons sponsored by the Ottawa and District Association of the Mentally Retarded.

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Information Services

The media plays a special role in informing the public on issues of law reform. The print media has taken an active interest in the Commission's work this year. Over 440 articles and editorials have been identified. The electronic media conducted and aired 250 broadcasts including interviews with Commission members and consultants.

In addition, earlier Commission documents still receive media attention long after their publication. For instance, our recommendations on "crimes against animals" have generated a great deal of comment and continue to do so. Also our works on such issues as euthanasia and environmental pollution continue to be the subject of media attention.

Finances

The Commission was allotted a budget of \$4,717,000 for fiscal year 1988-89. Of that amount, \$4,534,909 (96.1%) was spent by the organization in the course of doing business. The amount unspent, \$182,091, is attributable for the most part to delays in processing employees' salary adjustments. (Please refer to table for budget breakdown: figures are still subject to final audit).

FISCAL YEAR 1988-89		\$	\$
Operating Budget			4,717,000
Expenditures by Standard Object*			
01 Personnel Salaries & Wages (including employee benefits)	1,818,903		
02 Transportation & Communications	448,321		
03 Information	177,534		
04 Professional & Special Services	1,830,911		
05 Rentals	61,265		
06 Purchased Repair & Upkeep	14,254		
07 Materials & Supplies	145,483		
09 Furniture & Equipment	38,182		
12 Other Expenditures	56		
TOTAL	<u>4,534,909</u>		<u>4,534,909</u>
Amount unspent			<u>182,091</u>

* Figures supplied by Supply and Services Canada

General Administration

Included under this heading are: information and library service; mail and records management; material, property and telecommunications management; text processing, and secretarial services; printing and duplicating services; personnel services and contract administration.

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VISITORS

Professor Leroy A. Bakken, Hamline Law School, Hamline University, St. Paul, Minnesota

Mr. Jia Chamgay, Bureau of Legislative Affairs, Beijing, China

Mr. Gordon F. Coles, Special Adviser, Constitutional and Intergovernmental Affairs, Nova Scotia

Ms. Margaret A. Culin, Law Commission, Wellington, New Zealand

The Honourable Justice M. Einfeld, Judge of the Federal Court of Australia and President, Australian Human Rights and Equal Opportunity Commission, Sydney, Australia

Ms. Lucille Fraser, Justice of the Peace, Middlesex, England

Detective Inspector Steve Ireland, New South Wales Police Department, Sydney, Australia

Professor Itsukino Namoyagashi, Faculty of Law, Niigata University, Japan

Mr. J. W. Kitchen, AC-Delco Division of General Motors, Oshawa, Ontario

His Excellency R. R. Koh, High Commissioner for Lesotho

Mr. Andreas N. Loizov, President of the Supreme Court of Cyprus, Nicosia, Cyprus

Mr. Peter J. Matrie, Chief Judge, District Court, Wellington, New Zealand

Dean James MacPherson, Osgoode Hall Law School, Toronto

Mr. Arthur C.I. Mbanejo, Pro-Chancellor, Obafemi Awolowo University, Ile-Ife, Nigeria

Sr. Alberto Hernandez Mon, President, Administrative Reform Commission, Bogota, Colombia

Mr. Edward Nugee, Q.C., Deputy High Court Judge, Lincoln's Inn, London, England

Mrs. Rachel Nugee, Justice of the Peace, Hampstead, London, England

Mrs. Nicholas Padfield, Trinity Hall College, Cambridge, England

Mr. Dean Peachey, Network for Community Justice and Conflict Resolution, Kitchener, Ontario

Mr. Patrick Peacock, President, Canadian Bar Association

Mr. Tom Pigot, Central Criminal Court (Old Bailey), London, England

Mr. Rocky Pollack, Chairman, Criminal Code Task Force, Canadian Bar Association

His Excellency Jaime Vidal, Ambassador of Colombia

Ms. Norma M. Wade, Justice of the Peace, Registrar, Supreme Court, Hamilton, Bermuda

Mr. Dean H. Wilson, Automotive Industries Association of Canada, Ottawa, Ontario

APPENDICES

APPENDIX A REPORTS TO PARLIAMENT

The Reports along with the response of Parliament and other institutions to our recommendations are listed below.

1. Evidence (1975)

An Act to enact the Access to Information Act and the Privacy Act, to amend the Federal Court Act and the Canada Evidence Act and to amend certain other Acts in consequence thereof, S.C. 1980-81-82-83, c. 111 (*Code ss. 43(4), 89(c)*).

An Act to amend the Criminal Code in relation to sexual offences and other offences against the person and to amend certain other Acts in relation thereto or in consequence thereof, S.C. 1980-81-82-83, c. 125 (*Code ss. 88(b)*).

Young Offenders Act, S.C. 1980-81-82-83, c. 110 (*Code ss. 16, 51*).

Canadian Charter of Rights and Freedoms, Constitution Act, 1982, Part I of Schedule B, *Canada Act 1982*, c. 11 (U.K.), s. 24(2) (*Code s. 15*).

Bill S-33, "An Act to give effect, for Canada, to the Uniform Evidence Act adopted by the Uniform Law Conference of Canada" first reading November 18, 1982, Senator Olson.

2. Guidelines — Dispositions and Sentences in the Criminal Process (1976)

Young Offenders Act, S.C. 1980-81-82-83, c. 110 (*Code ss. 26, 51*).

Publication of a policy paper by the Government of Canada, *Sentencing* (February 1984).

An Act to Amend the Criminal Code (Victims of Crime), S.C. 1988, c. 30.

Bill C-155, "An Act to Amend the Criminal Records Act," first reading, August 25, 1988, The Solicitor General of Canada.

Bill C-154, "An Act to Establish the Office of the Correctional Investigator", first reading, August 25, 1988, The Solicitor General of Canada.

Proposed Amendments to the Parole Act and the Penitentiary Act, The Solicitor General of Canada, August 16, 1988.

3. Our Criminal Law (1976)

Publication of a policy paper by the Government of Canada, *The Criminal Law in Canadian Society* (August 1982).

Criminal Law Amendment Act, 1985, S.C. 1985, c. 19 (Repeal of *Code ss. 423(2) (Conspiracy)* and 253 (Venereal Diseases)).

Report of the Special Committee on Pornography and Prostitution (Paul Fraser, Chairman), *Pornography and Prostitution* (1985).

4. Expropriation (1976)

An Act to amend the National Energy Board Act, S.C. 1980-81-82-83, c. 80.

5. Mental Disorder in the Criminal Process (1976)

Proposed Amendments to the Criminal Code (Mental Disorder), The Minister of Justice, June 23, 1986.

6. Family Law (1976)

Publication by the Department of Justice of a booklet entitled *Divorce Law in Canada: Proposals for Change* (1984).

An Act to Amend the Divorce Act, S.C. 1986, c. 3.

Divorce Act, 1985, S.C. 1986, c. 4.

7. Sunday Observance (1976)

R. v. Big M Drug Mart, [1985] 1 S.C.R. 295.

8. The Exigibility to Attachment of Remuneration Payable by the Crown in Right of Canada (1977)

Garnishment, Attachment and Pension Diversion Act, S.C. 1980-81-82-83, c. 100, s. 5.

9. Criminal Procedure — Part I: Miscellaneous Amendments (1978)

Criminal Law Amendment Act, 1985, S.C. 1985, c. 19. (*Code ss. 464, 485(2), 485(3), 486, 491, 495, 553.1 and 574(5)*).

10. Sexual Offences (1978)

An Act to amend the Criminal Code in relation to sexual offences and other offences against the person and to amend certain other Acts in relation thereto or in consequence thereof, S.C. 1980-81-82-83, c. 125.

An Act to Amend the Criminal Code and the Canada Evidence Act, S.C. 1987, c. 24.

An Act to Amend the Criminal Code (Victims of Crime), S.C. 1988, c. 30.

11. The Cheque: Some Modernization (1979)

Bill C-19, "An Act to amend the Criminal Code ..." first reading February 7, 1984, The Minister of Justice.

12. Theft and Fraud (1979)

Bill C-19, "An Act to amend the Criminal Code ..." first reading February 7, 1984, The Minister of Justice.

13. Advisory and Investigatory Commissions (1980)

Under consideration by the Department of Justice.

14. Judicial Review and the Federal Court (1980)

Minister of Justice's Draft proposal to amend the *Federal Court Act* (August 29, 1983).

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25. *Obtaining Forensic Evidence: Investigative Procedures in Respect of the Person* (1985)

Under consideration by the Department of Justice.

26. *Independent Administrative Agencies* (1985)

Under consideration by the Department of Justice.

**27. *Disposition of Seized Property* (1986)
Criminal Law Amendment Act, 1985, S.C.
1985, c. 19.**

An Act to Amend the Criminal Code, the Food and Drugs Act and the Narcotic Control Act, S.C. 1988, c. 51.

An Act to Amend the Criminal Code (Victims of Crime), S.C. 1988, c. 30.

28. *Some Aspects of Medical Treatment and Criminal Law* (1986)

Under consideration by the Department of Justice.

29. *Arrest* (1986)

Under consideration by the Department of Justice.

30. *Recodifying Criminal Law — Volume 1* (1986)

An Act to Amend the Criminal Code, S.C.
1987, c. 13 (Draft Code s. 35).

31. *Recodifying Criminal Law: Revised and enlarged edition of Report 30* (1987)

Under consideration by the Department of Justice.

32. *Our Criminal Procedure* (1988)

Under consideration by the Department of Justice.

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**APPENDIX B
WORKING PAPERS**

Although the recommendations contained in Working Papers are not final, from time to time they do have an impact on legislation. Some current examples include the *Canadian Environmental Protection Act*, S.C. 1988, c. 22 (Working Paper 44, *Crimes Against the Environment* (1985)) and *An Act To Amend the Criminal Code (War Crimes)* S.C. 1987, c. 37 (Working Paper 37, *Extraterritorial Jurisdiction* (1984)).

1. *The Family Court* (1974). 55 p.
2. *The Meaning of Guilt: Strict Liability* (1974). 38 p.
3. *The Principles of Sentencing and Dispositions* (1974). 35 p.
4. *Discovery* (1974). 44 p.
5. *Restitution and Compensation* (1974). 25 p. (Bound with Working Paper 6.)
6. *Fines* (1974). 30 p. (Bound with Working Paper 5.)
7. *Diversion* (1975). 25 p.
8. *Family Property* (1975). 45 p.
9. *Expropriation* (1975). 106 p.
10. *Limits of Criminal Law: Obscenity: A Test Case* (1975). 49 p.
11. *Imprisonment and Release* (1975). 46 p.
12. *Maintenance on Divorce* (1975). 40 p.
13. *Divorce* (1975). 70 p.
14. *The Criminal Process and Mental Disorder* (1975). 61 p.
15. *Criminal Procedure: Control of the Process* (1975). 60 p.
16. *Criminal Responsibility for Group Action* (1976). 68 p.
17. *Commissions of Inquiry: A New Act* (1977). 91 p.
18. *Federal Court: Judicial Review* (1977). 54 p.
19. *Theft and Fraud: Offences* (1977). 123 p.
20. *Contempt of Court: Offences against the Administration of Justice* (1977). 69 p.
21. *Payment by Credit Transfer* (1978). 126 p.
22. *Sexual Offences* (1978). 66 p.
23. *Criteria for the Determination of Death* (1979). 77 p.
24. *Sterilization: Implications for Mentally Retarded and Mentally Ill Persons* (1979). 157 p.
25. *Independent Administrative Agencies* (1980). 212 p.
26. *Medical Treatment and Criminal Law* (1980). 136 p.
27. *The Jury in Criminal Trials* (1980). 164 p.
28. *Euthanasia, Aiding Suicide and Cessation of Treatment* (1982). 79 p.
29. *The General Part: Liability and Defences* (1982). 204 p.
30. *Police Powers: Search and Seizure in Criminal Law Enforcement* (1983). 356 p.
31. *Damage to Property: Vandalism* (1984). 65 p.
32. *Questioning Suspects* (1984). 104 p.
33. *Homicide* (1984). 117 p.
34. *Investigative Tests* (1984). 166 p.
35. *Defamatory Libel* (1984). 99 p.
36. *Damage to Property: Arson* (1984). 44 p.
37. *Extraterritorial Jurisdiction* (1984). 210 p.
38. *Assault* (1984). 59 p.
39. *Post-Seizure Procedures* (1985). 77 p.
40. *Legal Status of the Federal Administration* (1985). 106 p.
41. *Arrest* (1985). 143 p.
42. *Bigamy* (1985). 32 p.
43. *Behaviour Alteration and the Criminal Law* (1985). 48 p.
44. *Crimes against the Environment* (1985). 75 p.
45. *Secondary Liability* (1985). 53 p.
46. *Omissions, Negligence and Endangering* (1985). 42 p.
47. *Electronic Surveillance* (1986). 109 p.
48. *Criminal Intrusion* (1986). 25 p.
49. *Crimes against the State* (1986). 72 p.
50. *Hate Propaganda* (1986). 57 p.
51. *Policy Implementation, Compliance and Administrative Law* (1986). 105 p.
52. *Private Prosecutions* (1986). 51 p.
53. *Workplace Pollution* (1986). 94 p.
54. *Classification of Offences* (1986). 92 p.
55. *The Charge Document in Criminal Cases* (1987). 57 p.
56. *Public and Media Access to the Criminal Process* (1987). 106 p.
57. *Compelling Appearance, Interim Release and Pre-trial Detention* (1988). 138 p.
58. *Crimes Against the Foetus* (1989). 106 p.
59. *Toward a Unified Criminal Court* (1989). 72 p.

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APPENDIX C
PUBLISHED STUDIES, STUDY PAPERS, BACKGROUND PAPERS
AND CONFERENCE PAPERS

Administrative Law

1. Anisman, Philip. *A Catalogue of Discretionary Powers in the Revised Statutes of Canada 1970* (1975). 1025 p.
2. *The Immigration Appeal Board* (1976). 88 p.
3. Carrière, Pierre and Silverstone, Sam. *The Parole Process: A Study of the National Parole Board* (1977). 157 p.
4. Doern, G. Bruce. *The Atomic Energy Control Board: An Evaluation of Regulatory and Administrative Processes and Procedures* (1977). 85 p.
5. Lucas, Alastair, R. *The National Energy Board: Policy, Procedure and Practice* (1977). 216 p.
6. Mullan, David J. *The Federal Court Act: Administrative Law Jurisdiction* (1977). 117 p.
7. Issalys, Pierre and Watkins, Gaylord. *Unemployment Insurance Benefits: A Study of Administrative Procedure in the Unemployment Insurance Commission* (1978). 342 p.
8. Seminar for Members of Federal Administrative Tribunals, April 5-7, 1978. *Speakers' Remarks* (1978). 253 p.
9. Fox, David. *Public Participation in the Administrative Process* (1979). 174 p.
10. Franson, Robert T. *Access to Information: Independent Administrative Agencies* (1979). 80 p.
11. Issalys, Pierre. *The Pension Appeals Board: A Study of Administrative Procedure in Social Security Matters* (1979). 360 p.
12. Janisch, H.N., Piric, A.J. and Charland, W. *The Regulatory Process of the Canadian Transport Commission* (1979). 151 p.
13. Seminar for Members of Federal Administrative Tribunals, March 19-22, 1979. *Selected Proceedings*. Edited by C.C. Johnston (1979). 90 p.
14. Slayton, Philip. *The Anti-dumping Tribunal* (1979). 111 p.
15. Vandervort, Lucinda. *Political Control of Independent Administrative Agencies* (1979). 190 p.
16. Kelleher, Stephen. *Canada Labour Relations Board* (1980). 106 p.
17. Leadbeater, Alan. *Council on Administration* (1980). 88 p.
18. Seminar for Members of Federal Administrative Tribunals, March 1-12, 1980, at Touraine, Québec. *Speakers' Remarks and Excerpts from Discussion Periods*. Edited by C.C. Johnston (1980). 156 p.
19. Eddy, Howard R. *Sanctions, Compliance Policy and Administrative Law* (1981). 141 p.
20. Johnston, Christopher C. *The Canadian Radio-television and Telecommunications Commission* (1981). 144 p.
21. Slayton, Philip and Quinn, John J. *The Tariff Board* (1981). 154 p.
22. Slatter, Frans. *Parliament and Administrative Agencies* (1982). 154 p.
23. Frecker, John *et al.* *Towards a Modern Federal Administrative Law* (1987). 27 p.
24. Mockle, Daniel. *Immunity from Execution* (1987). 103 p.
25. Clifford, John. *Inspection: A Case Study and Selected References* (1988). 108 p.
26. Webb, Kernaghan. *Pollution Control in Canada: The Regulatory Approach in the 1980s* (1988). 91 p.
27. Obscenity (1972). 81 p.
28. *Fitness to Stand Trial* (1973). 57 p.
29. *A Proposal for Costs in Criminal Cases (1973)*. 20 p.
30. *Discovery in Criminal Cases* (1974). 261 p.
31. *Discovery in Criminal Cases: Report on the Questionnaire Survey* (1974). 116 p.
32. Schmeiser, Douglas A. *The Native Offender and the Law* (1974). 90 p.
33. *Studies in Strict Liability* (1974). 251 p.
34. *Studies on Sentencing* (1974). 205 p.
35. *Studies on Diversion* (1975). 255 p.
36. Becker, Calvin. *The Victim and the Criminal Process* (1976). 338 p.
37. *Community Participation in Sentencing* (1976). 249 p.
38. *Fear of Punishment: Deterrence* (1976). 149 p.
39. Harrison, Irene. *Public and Press Response to Sentencing Working Papers* (1976). 135 p.
40. Macnaughton-Smith, Peter. *Permission to Be Slightly Free* (1976). 307 p.
41. *Studies on Imprisonment* (1976). 327 p.
42. *Towards a Codification of Canadian Criminal Law* (1976). 56 p.
43. *Preparing for Trial: Report of Conference Held in Ottawa, March 23-24, 1977* (1977). 342 p.
44. Kennedy, Carole. *Evaluation of the Comments Received on Working Paper 22 "Sexual Offences"* (1978). 46 p.
45. *The Jury* (1979). 473 p.
46. Stenning, Philip C. and Shearing, Clifford D. *Search and Seizure: Powers of Private Security Personnel* (1979). 204 p.
47. Grant, Alan. *The Police: A Policy Paper* (1980). 97 p.
48. Paikin, Lee. *The Issuance of Search Warrants* (1980). 119 p.
49. Stenning, Philip C. *Legal Status of the Police* (1981). 169 p.
50. Brooks, Neil. *Police Guidelines: Pretrial Eyewitness Identification Procedures* (1983). 260 p.
51. Smith, Maurice H. *Origins of Writ of Assistance Search in England, and Its Historical Background in Canada* (1984). 99 p.

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52. Brooks, Neil and Fudge, Judy. *Search and Seizure under the Income Tax Act: Summary of a Study Paper* (1985). 23 p.
53. Miller, Joyce. *The Audio-Visual Taping of Police Interviews with Suspects and Accused Persons by Halton Regional Police Force: An Evaluation* (1988). 23 p.

Evidence

54. *Evidence: 1. Competence and Compellability. 2. Manner of Questioning Witnesses. 3. Credibility. 4. Character* (1972). 60 p.
55. *Evidence: 5. Compellability of the Accused and the Admissibility of His Statements* (1973). 42 p.
56. *Evidence: 6. Judicial Notice. 7. Opinion and Expert Evidence. 8. Burdens of Proof and Presumptions* (1973). 67 p.
57. *Evidence: 9. Hearsay* (1974). 20 p.
58. *Evidence: 10. The Exclusion of Illegally Obtained Evidence* (1974). 36 p.
59. *Evidence: 11. Corroboration* (1975). 19 p.
60. *Evidence: 12. Professional Privileges before the Courts* (1975). 26 p.

Family Law

61. London, Jack R. *Tax and the Family* (1975). 349 p.
62. Payne, Julien. *A Conceptual Analysis of Unified Family Courts* (1975). 681 p.
63. *Studies on Divorce* (1975). 313 p.
64. *Studies on Family Property Law* (1975). 401 p.
65. Kennedy, Carole. *Evaluation of Comments Received in the Area of Family Law* (1976). 88 p.
66. Ryan, Edward F. *Enforcement of Maintenance Obligations* (1976). 47 p.
67. Bowman, C. Myrna. *Practical Tools to Improve Interprovincial Enforcement of Maintenance Orders after Divorce* (1980). 50 p.

Protection of Life

Phase I — Medico-legal Issues

68. Keyserlingk, Edward W. *Sanctity of Life or Quality of Life* (1979). 224 p.
69. Somerville, Margaret A. *Consent to Medical Care* (1980). 186 p.

Phase II — Environmental Issues

70. Schrecker, Theodore F. *Political Economy of Environmental Hazards* (1984). 112 p.
71. Swaigen, John and Bunt, Gail. *Sentencing in Environmental Cases* (1985). 81 p.
72. Castrilli, J.F. and Vigod, Toby. *Pesticides in Canada: An Examination of Federal Law and Policy* (1987). 131 p.

Miscellaneous

73. *First Research Programme of the Law Reform Commission of Canada* (1972). 21 p.
74. Eddy, Howard R. *The Canadian Payment System and the Computer: Issues for Law Reform* (1974). 80 p.
75. Lajoie, Marie, Schwab, Wallace and Sparer, Michel. *Drafting Laws in French* (1981). 296 p.

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**APPENDIX D
UNPUBLISHED PAPERS PREPARED FOR
THE LAW REFORM COMMISSION**

The following papers supplement the list of over 300 unpublished papers which appear in previous Annual Reports.

Unpublished papers are available for consultation in the Commission's library and can be purchased on microfiche from private companies. Please contact the Commission for additional information.

Bélanger, Jacques. "Atteintes à la vie privée" (1983). 103 p.

Eichler, Margrit and Poole, Phebe. "The Incidence of Preconception Contracts for the Production of Children among Canadians" (1988). 260 p.

Eisenberg, Tracey. "Internal Instructions: Research in Progress" (1987). 52 p.

Kitchen, Harry M. and Vaillancourt, François. "The Impact of the Fiscal Immunity of the Federal Crown and its Agents: The Case of Real Property Taxes" (1988). 85 p.

Linden, Allen. "Brief to the Standing Committee on Justice and Solicitor General [Sentencing]" (1987). 55 p.

"Report of the Working Group on Chapter 2 of the Law Reform Commission of Canada Report 30 'Recodifying Criminal Law'" (1988). 118 p.

"Report of the Working Group on Chapter 3 of the Law Reform Commission of Canada Report 30, Vol. I, 'Recodifying Criminal Law'" (1987). 80 p.

"Report of the Working Group on the Legal Status of the Foetus" (1988). 293 p.

Waller, Irvin C.J. "Making Canada Safer from Crime: Pragmatic Action and Law Reform" (1988). 127 p.

Wilson, David. "Rethinking Administrative Appeals" (1986). 232. p.

Zambrowsky, Josh. "The Future of Criminal Law" (1988). 74 p.

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**APPENDIX E
ARTICLES PUBLISHED INDEPENDENTLY
WITH LAW REFORM COMMISSION INVOLVEMENT**

The following is a selection of publications with which Commission personnel have been involved this year.

- Cohen, S.A. "Indirect Interrogation: Jailhouse Informers and the Right to Counsel" (1989), 68 C.R. (3d) 58.
- Cohen, S.A. "Search Incident to Arrest: How Broad an Exception to the Warrant Requirement?" (1988), 63 C.R. (3d) 182.
- Cohen, S.A. "Searching for Answers under Section 8: The Cases of *Simmons*, *Beare* and *Dyment*" (1989), 66 C.R. (3d) 369.
- Jones, D. "Artificial Procreation, Societal Reconceptions: Legal Insight from France" (1988), 36 American J. Comp. Law 525.
- Jones, D. and Sheppard N. "AIDS and Disability Employment Discrimination in and beyond the Classroom" (1989), 12 Dalhousie L.J. 103.
- Létourneau, G. "Problématique de la violence dans les loisirs et moyens d'action corrective et préventive : l'expérience québécoise et canadienne" (1988), 19 R.G.D. 653.
- MacKinnon, P. "Costs and Compensation for the Innocent Accused" (1988), 67 Can. Bar Rev. 489.
- Miller, J. "Artificial Reproduction Raises New Legal Issues" *Lawyers' Weekly*, Jan. 29, 1989, p. 4.
- "Pas un coup de maître : la pornographie révisée" (1989), 1:4 *Maîtres* 23.

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**APPENDIX F
SOME ARTICLES ABOUT
THE LAW REFORM COMMISSION AND ITS WORK**

The following is a list of articles which have been published about the Commission and its work this year. Additional material is listed in previous annual reports.

- Archibald, B.P. "The Constitutionalization of the General Part of the Criminal Law" (1988), 67 Can. Bar Rev. 403.
- Archibald, B.P. "Crime and Punishment: The Constitutional Requirements for Sentencing Reform in Canada" (1988), 22 R.J.T. 307.
- Browne, A. "Foregoing Life-Sustaining Treatment: The Canadian Law Reform Commission and the President's Commission" in J.E. Thornton and E.R. Winkler, eds. *Ethics and Aging: The Right to Live, The Right to Die*. (Vancouver: University of British Columbia Press, 1988) at 172.
- Gagnon, A. "La Commission de réforme du droit du Canada : le radar du parlement" (1988), 5:1 Le Monde Juridique 16.
- Kluge, E.H.W. "Behaviour Alteration, the Law Reform Commission and the Courts: An Ethical Perspective" (1988), 11 Dalhousie L.J. 864.
- Linden, A. and Miller, J. "Abortion: A Proposal for Reform" in M.E. Hughes and D. Pask, eds. *National Themes in Family Law: Selected Papers Presented at the 1987 Canadian Association of Law Teachers Family Law Conference*. (Toronto: Carswell, 1988) at 181.
- Memeteau, G. "Volonté du malade opposée à l'intérêt du malade: provocation à une réflexion hérétique" (1988), 18 R.D.U.S. 265.
- Miller, J. "Animal Group Seeks Law Reform Comment" *Lawyers' Weekly*, June 2, 1989, p. 3.
- Pradel, J. "Un regard français sur le projet canadien de code pénal – les nouvelles dispositions sur la responsabilité" (1988), 22 R.J.T. 183.
- Rich, P. "Abortion Law Reform: 'Let Doctors Decide when Abortion is Necessary'" *Medical Post*, Dec. 6, 1988, p. 1.
- Robardet, P. "L'évolution du droit administratif fédéral : démarche de la Commission de réforme du droit du Canada" (1989), 2 C.J.A.L.P. 223.
- Shore, J. "New Law Coming from LRC Fetal Crimes Paper?" *Lawyers' Weekly*, April 14, 1989, p. 4.
- Ward, R. "Officially Induced Error of Law" (1988), 52 Sask. L. Rev. 89.

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**APPENDIX G
LAW REFORM COMMISSION PUBLICATIONS
REFERRED TO BY THE COURTS**

Evidence: 3. Credibility (1972)

Corbett v. The Queen, [1988] 1 S.C.R. 670; [1988] 4 W.W.R. 481; 28 B.C.L.R. (2d) 145; 41 C.C.C. (3d) 385.

Evidence: 4. Character (1972)

R. v. Corbett (1984), 17 C.C.C. (3d) 129; 43 C.R. (3d) 193 (B.C.C.A.).

R. v. Konkin, [1983] 1 S.C.R. 388; 3 C.C.C. (3d) 289.

R. v. LeGallant (1986), 33 D.L.R. (4th) 444; [1986] 6 W.W.R. 372; 6 B.C.L.R. (2d) 105; 29 C.C.C. (3d) 291; 54 C.R. (3d) 46 (C.A.).

R. v. Tran (1988), 46 C.C.C. (3d) 40 (Man. C.A.).

Evidence: 5. Compellability of the Accused and the Admissibility of His Statements (1973)

R. v. Corbett (1984), 17 C.C.C. (3d) 129; 43 C.R. (3d) 193 (B.C.C.A.).

Evidence: 7. Opinion and Expert Evidence (1973)

Haida Inn Partnership v. Touche Ross and Co. (1989), 34 B.C.L.R. (2d) 80 (S.C.).

Evidence: 8. Burdens of Proof and Presumptions (1973)

R. v. Carroll (1983), 40 Nfld. & P.E.I.R. 147; 115 A.P.R. 147; 4 C.C.C. (3d) 131 (P.E.I.C.A.).

R. v. Keegstra, [1988] 5 W.W.R. 211; 87 A.R. 177; 43 C.C.C. (3d) 150; 65 C.R. (3d) 289 (C.A.).

The Family Court (Working Paper 1, 1974)

Re Dadswell (1977), 27 R.F.L. 214 (Ont. Prov. Ct.).

Re MacBride and MacBride (1986), 58 O.R. (2d) 230; 35 D.L.R. (4th) 115 (Unified Fam. Ct.).

Reid v. Reid (1977), 11 O.R. (2d) 622; 67 D.L.R. (3d) 46; 25 R.F.L. 209 (Div. Ct.).

Strict Liability (Working Paper 2, 1974)

Hilton Canada Ltd. c. Gaboury (juge), [1977] C.A. 108.

R. v. MacDougall (1981), 46 N.S.R. (2d) 47; 89 A.P.R. 47; 60 C.C.C. (2d) 137 (C.A.).

R. v. Sault Ste. Marie, [1978] 2 S.C.R. 1299; 21 N.R. 295; 3 C.R. (3d) 30.

The Principles of Sentencing and Dispositions (Working Paper 3, 1974)

R. v. Groves (1977), 17 O.R. (2d) 65; 79 D.L.R. (3d) 561; 37 C.C.C. (2d) 429; 39 C.R.N.S. 366 (H.C.).

R. v. Irwin (1979), 16 A.R. 566; 48 C.C.C. (2d) 423; 10 C.R. (3d) S-33 (C.A.).

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

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.).

Turcotte v. Gagnon, [1974] R.P.Q. 309.

Criminal Procedure — Discovery (Working Paper 4, 1974)

Kristman v. R. (1984), 12 D.L.R. (4th) 283; 13 C.C.C. (3d) 522 (Alta. Q.B.).

Magna v. The Queen, [1977] C.S. 138; 40 C.R.N.S. 1.

R. v. Barnes (1979), 74 A.P.R. 277; 49 C.C.C. (2d) 334; 12 C.R. (3d) 180 (Nfld. Dist. Ct.).

R. v. Brass (1981), 15 Sask. R. 214; 64 C.C.C. (2d) 206 (Q.B.).

R. v. Scott (1984), 16 C.C.C. (3d) 511 (Sask. C.A.).

Restitution and Compensation (Working Paper 5, 1974)

R. v. Groves (1977), 17 O.R. (2d) 65; 79 D.L.R. (3d) 561; 37 C.C.C. (2d) 429; 39 C.R.N.S. 366 (H.C.).

R. v. Zelensky, [1978] 2 S.C.R. 940; (1978), 21 N.R. 372; [1978] 3 W.W.R. 693; 2 C.R. (3d) 107.

Fines (Working Paper 6, 1974)

R. v. Hebb (1989), 89 N.S.R. (2d) and 227 A.P.R. 137 (S.C.T.D.)

Discovery in Criminal Cases (1974)

Skogman v. R., [1984] 2 S.C.R. 93; (1984), 11 D.L.R. (4th) 161; [1984] 5 W.W.R. 52; 13 C.C.C. (3d) 161; 41 C.R. (3d) 1.

Evidence: 10. The Exclusion of Illegally Obtained Evidence (1974)

R. v. A.N. (1977), 77 D.L.R. (3d) 252 (B.C. Prov. Ct., Fam. Div.).

R. v. Stevens (1983), 58 N.S.R. (2d) 413; 123 A.P.R. 413; 7 C.C.C. (3d) 260 (C.A.).

Studies on Strict Liability (1974)

R. v. Gonder (1981), 62 C.C.C. (2d) 326 (Yukon Terr. Ct.).

In Sight of Land ... (Fourth Annual Report, 1974-1975)

R. v. Earle (1975), 8 A.P.R. 488 (Nfld. Dist. Ct.).

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

Evidence (Report 1, 1975)

Catholic Children's Aid Society of Metropolitan Toronto v. S. (J.) (1987), 62 O.R. (2d) 702 (Prov. Ct. — Fam. Div.).

Graat v. R., [1982] 2 S.C.R. 819; (1982), 144 D.L.R. (3d) 267; 45 N.R. 451; 2 C.C.C. (3d) 365; 31 C.R. (3d) 289.

Posluns v. Rank City Wall Canada Ltd. (1983), 39 O.R. (2d) 134 (Co. Ct.).

R. v. Alarie (1982), 28 C.R. (3d) 73 (Qué. C.S.P.).

R. v. Auclair, [1987] R.J.Q. 142 (S.C.).

R. v. Cassibo (1983), 39 O.R. (2d) 288; 70 C.C.C. (2d) 498 (C.A.).

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- R. v. Corbett* (1984), 17 C.C.C. (3d) 129; 43 C.R. (3d) 193 (B.C.C.A.).
- R. v. Cronshaw and Dupon* (1977), 33 C.C.C. (2d) 183 (Ont. Prov. Ct.).
- R. v. Czipps* (1979), 25 O.R. (2d) 527; 101 D.L.R. (3d) 323; 48 C.C.C. (2d) 166 (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.).
- R. v. Perron*, [1983] C.S.P. 1103.
- R. v. Samson (No. 7)* (1982), 37 O.R. (2d) 237; 29 C.R. (3d) 215 (Co. Ct.).
- R. v. Stevens* (1983), 58 N.S.R. (2d) 413; 123 A.P.R. 413; 7 C.C.C. (3d) 260 (C.A.).
- R. v. Stewart* (1981), 33 O.R. (2d) 1; 125 D.L.R. (3d) 576; 60 C.C.C. (2d) 407 (C.A.).
- R. v. Stratton* (1978), 21 O.R. (2d) 258; 90 D.L.R. (3d) 420; 42 C.C.C. (2d) 449 (C.A.).
- R. v. Sweryda* (1987), 34 C.C.C. (3d) 325 (Alta C.A.).
- Vetrovec v. The Queen*, [1982] 1 S.C.R. 811; 136 D.L.R. (3d) 89; 41 N.R. 606; [1983] 1 W.W.R. 193; 67 C.C.C. (2d) 1; 27 C.R. (3d) 404.
- Diversion** (Working Paper 7, 1975)
- R. v. Jones* (1975), 25 C.C.C. (2d) 256 (Ont. Div. Ct.).
- Limits of Criminal Law — Obscenity: A Test Case** (Working Paper 10, 1975)
- Germain v. The Queen*, [1985] 2 S.C.R. 241; 21 D.L.R. (4th) 296; 62 N.R. 87; 21 C.C.C. (3d) 289.
- R. v. Southland Corp.*, [1978] 6 W.W.R. 166 (Man. Prov. Ct.).
- Imprisonment and Release** (Working Paper 11, 1975)
- R. v. Bowen and Kay*, [1989] 2 W.W.R. 213; 91 A.R. 264 (Q.B.).
- R. v. Earle* (1975), 8 A.P.R. 488 (Nfld. Dist. Ct.).
- R. c. Harris*, [1985] C.S.P. 1011.
- 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. Moulard* (1982), 38 Nfld. & P.E.I.R. 281; 108 A.P.R. 281 (Nfld. Prov. Ct.).
- R. v. Shand* (1976), 11 O.R. (2d) 28; 64 D.L.R. (3d) 626 (Co. Ct.).
- Reference Re Section 94(2) of Motor Vehicle Act, R.S.B.C. 1979, c. 288**, [1985] 2 S.C.R. 486; 24 D.L.R. (4th) 536; 63 N.R. 266; [1986] 1 W.W.R. 481; 69 B.C.L.R. 145; 23 C.C.C. (3d) 289; 48 C.R. (3d) 289.
- Maintenance on Divorce** (Working Paper 12, 1975)
- Marcus v. Marcus*, [1977] 4 W.W.R. 458 (B.C.C.A.).
- Messier v. Delage*, [1983] 2 S.C.R. 401; (1984), 2 D.L.R. (4th) 1.
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- COUGHLAN, Stephen G., *B.A.* (Ottawa), *M.A.* (Toronto), *Ph.D.* (Toronto), *LL.B.* (Dalhousie); Member, Nova Scotia Bar. *Exclusion of Evidence; The Control of Prosecutions: The Attorney General and The Crown Prosecutor; Code of Criminal Procedure.*
- CRAWFORD, G. Mark. Summer Student. *The Unrepresented Accused.*
- DOOB, Anthony, *B.A.*, (Harvard), *Ph.D.* (Stanford); Director, Centre of Criminology, University of Toronto. *Plea Bargaining; Public Attitudes to Plea Bargaining.*
- EDWARDS, J. L. J., *LL.D.* (Cantab.). *The Control of Prosecutions: The Attorney General and The Crown Prosecutor.*
- GILMOUR, Glenn A., *B.A.*, *LL.B.* (Queen's); Member, Ontario Bar. *Code of Criminal Procedure.*
- GOLD & FUERST. *Appeals in Criminal Cases.*
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- MACLEOD, Rhonda, Criminology Student, Carleton University. *Previous Convictions and Increased Penalties.*
- MORIN, André Albert, *LL.L.* (Ottawa); Member, Québec Bar. *Extra-ordinary Remedies; Costs; Contempt of Court; Jury; Entrapment; Code of Criminal Procedure.*

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- THE SOCIETY FOR THE REFORM OF CRIMINAL LAW. *Consultation on Investigating Crime and Apprehending Suspects: Police Powers and Citizens' Rights.*
- STENNING, Philip, *B.A.* (Cantab.), *LL.M.* (Osgoode), *S.J.D.* (Toronto); Associate Professor, Centre of Criminology, University of Toronto. *The Control of Prosecutions: The Attorney General and The Crown Prosecutor; Arrest and Compelling Appearance.*
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- BAUDOIN, Jean-Louis, *B.A.* (Paris), *B.C.L.* (McGill), *D.J.* (Paris), *D.É.S.* (Madrid and Strasbourg); Member, Québec Bar. *Biomedical Experimentation Involving Human Subjects; Towards a National Biomedical Ethics Council.*
- BEAUDOIN, Gérald-A., *O.C., Q.C., B.A., M.A., LL.L.* (Montréal), *D.É.S.* (Ottawa); Director, Human Rights Center, University of Ottawa. *Crimes Against the Foetus.*
- BRAULT, Jean-François, *LL.L., D.M.A.* *Towards a National Biomedical Ethics Council; Paramedical Personnel and their Relationship with Patients.*
- DICKENS, Bernard M., *LL.B., LL.M., Ph.D.* Criminology (King's, London), *LL.D.* Medical Jurisprudence (London); Professor, University of Toronto. *Biotechnology.*
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- GILHOOLY, Joseph R., *B.A., M.A.* (Carleton). *Biotechnology; Crimes Against the Foetus.*
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- SIMAND, Harriet, *B.A.* (Trent), *Patenting Life-Forms and Owning Human Tissue; New Reproductive Technology Research; Computers and the Right to Privacy; Provisions for Performance of Abortions.*
- STITT, BAKER & MCKENZIE, Barristers & Solicitors (Toronto). *Contaminated Lands.*
- TREMBLAY, Louis-Stéphane, *LL.B., LL.M.* (Montréal). *Towards a National Biomedical Ethics Council.*
- VANCHESTEIN, Erick, *LL.B.* (Québec). *Rare Medical Resources.*

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