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Law Reform Commission of Canada

fifth annual report

a never-ending relay race

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CHAIRMAN
LAW REFORM
COMMISSION

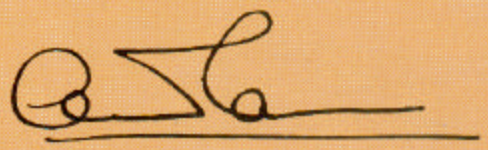
Ottawa, November 1976

The Honourable S. R. Basford,
Minister of Justice,
Ottawa, Canada.

Dear Mr. Minister:

In accordance with the provisions of Section 17 of the Law Reform Commission Act, I submit herewith the fifth annual report of the Law Reform Commission of Canada for the period June 1, 1975 to May 31, 1976.

Yours respectfully,



Antonio Lamer, j.s.c.

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a never-ending relay race

Law reform is like a never-ending relay race. As soon as one objectionable law is dealt with another takes its place. Just as the price of freedom is eternal vigilance, so the price of justice is eternal effort. The law reformer's race is never over. One lap complete, the next begins. One runner finishes, the next takes over and the team goes on continually.

Every so often, though, there comes a relay zone, a time to pass the baton. This is a moment to take stock, look back, review achievements and then once again press on. Such a moment came for the Commission in 1976.

This for the Commission was a special year. First, after five years of research, consultation and dialogue, certain portions of its work reached a culmination. Second, this was a year of reporting to Parliament — the Commission issued seven Reports embodying roughly two hundred recommendations. And third, their work now done, some members passed on

the baton and left the team. In these three respects the Commission reached a relay zone. This report, then, covers the period before the arrival of the new members of the team — Vice-Chairman Bouck and Commissioner Baudouin.

work accomplished

The Work of the Commission covered three main areas: criminal law and evidence, family law and administrative law.

Criminal Law

"A deep philosophical probe of criminal law" was what former Justice Minister John Turner expected from the Commission. Not fighting alligators but draining the swamp was to be our approach.

Originally, as we explained in earlier reports, we divided the field of criminal law into four areas. These were general principles, procedure, evidence and sentencing. Each was allotted to a project under a director.

The projects gave initial impetus to our research. They issued study papers, helped produce working papers, and to some extent, assisted towards our parliamentary reports. Now, however, they have been wound up and superseded by less specialized task forces because the project work made clear how far all aspects of the criminal law are interrelated.

Procedure, rules of evidence, sentencing and dispositions, even general principles — all these make sense only in the light of some unified approach to criminal law. The unified approach which we adopted rests on three foundations. First, it must be based on knowledge of reality. Second, it involves consideration of values. And third, it entails discussion, dialogue, persuasion.

First, reality. Good law reform must start with an understanding of what actually happens. Sometimes we had to find this out ourselves, as for instance when we discovered the number of strict liability offences, the practice of crown attorneys in the matter of discovery, and the make-up of the types of people sent to prison. Sometimes, as for example with the social effects of obscenity and pornography, we relied on the extensive fact-finding of other bodies. But whether we did the research ourselves or made use of research by others, our work rested on a basis of fact.

Next, values. Having found out what actually happens, we had to ask what ought to happen. Here, as explained in earlier reports, we tried to argue out the most rational and supportable preferences. Starting with certain shared values and concerns, we tried to spell out their implications for the criminal law.

This brings us to our third foundation-stone, persuasion. For better or worse Canada's particular brand of federalism distributes responsibility for criminal law between Ottawa and the provinces: the substance falls to Ottawa, the administration to the provinces. Some see this as a weakness. We, however, see it as a source of strength. Divided jurisdiction means that on many issues nobody can dictate what is to be. Instead there's need for pragmatism and consensus. The provinces and Ottawa have to sit down and agree upon ways of implementing new approaches. Our job is to work out such new approaches and demonstrate by argument and evidence that they are worth implementing.

This is what we tried to do in each area of criminal law. In the area of criminal law principles we tried to develop, in our working papers and parliamentary reports, a general criminal law philosophy, and within that general framework a satisfactory approach to the vexed problem of mental disorder in the criminal process. In sentencing we worked out, through several working papers, a unified strategy on sentences and dispositions, and embodied it in our parliamentary report. In evidence we produced, based on a variety of study papers and other work, a code of evidence which we presented to Parliament. Finally, in procedure, though so far no report has been issued, our efforts have been set out in working papers, tested in pilot projects and taken under review at inter-governmental level.

Family Law

Family law proved a special case. Not part of our original program, it was included in response to general request. Our initial questionnaire to people across Canada revealed that their major concern was family law.

Accordingly, we established a family law project, which produced a variety of study papers, helped issue four working papers, and assisted in a report which covered all important aspects of the subject. This completed the work of the family law project, which was then wound up.

Administrative Law

Administrative law is the third main area of our concern. Here too we set up a special project.

Administrative law, however, is a relatively recent area of law. Compared, say, to criminal law or even family law, it is recognized as a new phenomenon. For that reason, because of its diverse nature and the lack of research done on the federal administrative process, our work here has first been to determine how the administrative agencies actually function. We have completed several background studies of federal administrative agencies. These will allow us to say something about the area as a whole in a paper to be finalized in less than a year. Our working paper of 1975 on Expropriation led to a report to Parliament on that subject this year. We are also preparing a working paper on the Inquiries Act to be issued shortly.

Interaction

Criminal law, family law, administrative law — these then have been the three main areas of our work. In these areas, and in other fields, our work has resulted in growing interaction, influence and contacts. First, our work is becoming increasingly well known abroad, both within and outside the Commonwealth. For example, the Law Reform Commission of Australia requested copies of our Evidence Code; the Lord Chancellor of England paid a visit to the Commission and subsequently asked for copies to be sent to him of all our papers; Belgium sent for twenty copies of the report *Our Criminal Law*. This year too we received many visitors including a delegation from the Penal Code Revision Commission of France, a law reformer from Jamaica, the Minister of Justice of the Netherlands, the Minister of Justice of Israel, the Chairman of the Law Reform Commission of Australia and reformers from the Republic of Ireland.

In Canada, we have had growing contact and interaction with the provinces. This year we were requested to appear before the meeting of the Uniformity Commissioners in Halifax. At this meeting we presented our views on strict liability, mental disorder, procedure, evidence, sentencing and law reform. After full and lengthy discussion the Uniformity Commissioners endorsed our general approach and recommended that we spend a further five years on the criminal law.

Our interaction has extended also to those in the front line. This year, as in previous years, we sent a team to the Ontario Police College at Aylmer to assist in the advance training program for police chiefs. In addition, certain police chiefs have visited and consulted us about problems involving general principles of law and justice.

Finally, this year, we embodied our views in the reports issued to Parliament.

EVIDENCE
DISPO
AND
IN THE CRIMINAL PROCESS
FAMILY
EXPROPRIATION

reports to Parliament

Nineteen seventy-six has been a reporting year. The fruit of five years' work has appeared in seven Parliamentary reports. And each report embodies a large number of firm recommendations.

Our work, therefore, is mainly contained in these reports. Accordingly, this Annual Report neither summarizes nor details our efforts in each different area of law. Instead we briefly recapitulate here each separate report in chronological order.

Evidence

No facet of a lawyer's work so fascinates the layman as his trial skills, but laymen involved in trials are less enthusiastic. They find themselves confronted with technical and arbitrary rules. Conspicuous among these are the rules of evidence.

While certain rules of evidence are necessary for fairness and consistency, the time has come for complete reformulation on broader lines. We need easily available, clear and flexible rules. In short we need rationalization and simplification.

Accordingly, our proposed Evidence Code begins with general principles. Title I lays down that all relevant evidence is admissible but that evidence may be excluded if its probative value is substantially outweighed by other factors, e.g. the danger of undue prejudice. There follow six further titles setting out in detail the rules that flow logically from these principles.

Finally, a word on drafting, on bilingualism and on bijuralism. "A law", said Seneca, "should be brief in order that the citizen may grasp it more easily." To produce brevity and clarity we have at times departed from traditional ways of drafting, and added comments to the various rules. This aims to realize our conviction that the law — including the law of evidence — belongs to all of us. We have also been influenced by models in civil law jurisdictions. In addition, we have avoided drafting in one language and slavishly translating into the other. Instead we have tried to give the substance of each rule in terms appropriate to each language.

Dispositions and Sentences in the Criminal Process: Guidelines

This report consolidates all our work on dispositions and sentences. It is based on the assumption that attitudes are the primary forces shaping our approach to crime and that legislation controls at best the outer limits of this approach. The report is therefore presented as a guideline.

Basic to that guideline are the following principles. Criminal law should be used with restraint and for its proper purpose, and not just because it happens to be there. That purpose is partly to restore the peace and reconcile the offender, the victim and society. Mediation and other forms of reconciliation should be used as far as possible. And maximum use should be made of positive sanctions like restitution and community service orders.

There follow detailed guidelines as to dispositions, sentences and the sentencing process. On dispositions, the norm should be resolving conflict without resort to criminal law. Police and other agencies should assist in this. Police should screen out all cases that can be given a non-criminal disposition and should publish screening-out criteria. Prosecutors should use discretion to foster pre-trial settlement of criminal cases.

On sentences the report examines a whole range of possible sentences. In particular, it stresses that imprisonment should be used with restraint and limited to three types of cases: for dangerous offenders who must be *separated* from the community; for

cases where no lesser sanction would provide sufficient *denunciation;* and for cases of *wilful default,* where prison must remain the ultimate sanction.

On sentencing process, the report examines sentencing procedures, imposition of sentence, pre-sentence reports, the sentencing record, the duties of counsel, the Sentencing Supervision Board and the development of sentencing criteria.

The report ends with recommendations for policy formulation and implementation. First, the question of information and education. At present the state of statistics on the nature of crime and the administration of justice in Canada is deplorable, and remedying this must be a first priority. Lack of information is matched by lack of education, and rectifying this by developing law courses for schools and legal materials for the general public must be the next priority. Next, administration: here the report makes a variety of recommendations about the part played by the community, the police, the prosecution, the courts and those responsible for administering sentences. Lastly, the report outlines the legislative changes necessary for implementing these recommendations.

This report contains our overall probe of criminal law. Much present anxiety over crime and criminal law results from false expectations and misconceptions of the role of criminal law. Basically that role is to affirm and bolster fundamental social values.

That role is badly played today. Our criminal law is largely unsatisfactory. This is due to *overkill* — too many criminal laws, too many acts qualifying as crimes, too many "no-fault" offences, too many criminal charges, too many criminal cases in our courts and too many people in our prisons.

Criminal law, then, has to be reshaped. The secret is *restraint* — keep criminal law for "real" crimes, keep criminal liability for wrongful conduct, keep criminal trials for really serious cases and keep prison for the categories outlined in the Dispositions report.

Accordingly, the report suggests draft legislation abolishing strict liability, proposes tests of criminality for "real" crimes and tests of regulatory offences for "quasi-crimes", and advocates reorganization of the Criminal Code. It should distinguish "real" crimes and regulatory offences, eliminate excessive detail, use a more appropriate style and escape from its inadequate Victorian philosophy.

Mental Disorder in the Criminal Process

All our reports represent collaborative effort, but this report does so especially. It is the result of widespread consultation across Canada with psychiatrists and others concerned with mental disorder. And its importance lies in its being the junction of two phenomena that disturb: criminality and mental illness.

The report deals with the many ways mental disorder affects the criminal process. Its concern is the law's policy towards the mentally ill, the issue of fitness to stand trial, the problem of disposition of the mentally unfit and the use of mental health resources in the criminal process. Apart from the insanity defence, which is to be considered in the future, the report makes recommendations on every aspect of the matter — recommendations for implementation and recommendations for policy formulation.

In general, the Criminal Code sections on mental disorder need re-examination. Clear and accurate data must be provided by government to evaluate future changes in practice and procedure. And policies in this area should be premised on fairness to the mentally ill, on emphasis on pre-trial diversion of such persons and on review of all forms of their detention.

At pre-trial stage, screening out of mentally ill offenders should be encouraged by police and prosecution. Both should be trained to recognize and deal with such offenders. Screening policies should be based on known criteria. And they should be local to take into account community considerations.

At trial, exemption based on unfitness to plead should remain in order to promote fairness to the accused and ensure that he is a proper subject for criminal proceedings. Present limitations on the unfitness rule should be re-examined. Detention of the unfit accused should be regarded as a last resort. And "not guilty by reason of insanity" should be a real acquittal. The report goes on with detailed recommendations on implementation.

On disposition, the primary concern is fairness in the circumstances. Psychiatric treatment in the context of a just sentence plays a secondary role. Such treatment must be consented to by the offender. And, owing to the complexity of jurisdictional questions, there must be consultation among different levels of government and among the various agencies involved.

On use of mental health resources, the mental health expert's role in the criminal process is to advise the court but not usurp its function. But court procedures should enable such experts to give evidence on those aspects they know best. Scarce psychiatric resources must be used efficiently. In general, there should be no psychiatric treatment of individuals in the criminal process without their consent.

Expropriation

Our concern with expropriation began in 1972, following a suggestion by the Department of Justice. Though the enactment of a new Expropriation Act in 1970 made the subject less urgent, that Act left untouched over twelve hundred expropriation powers. Often, the law applying in any particular situation cannot all be found in one statute. A single federal statute containing all such powers and procedures seems essential.

The report sets out the following guiding principles of good expropriation law: *equality* — the same law for all expropriations and the same rights for all persons facing expropriation; *clarity and accessibility* — all the applicable law in one statute simply written and supplemented by a straightforward information booklet; *openness* — full disclosure by all expropriators of plans, rights, procedures, appraisal methods, prices paid and settlements reached; *fairness* — early notice of proposed expropriation, fair public hearings and fair compensation for all reasonable proven costs and losses; and *political responsibility* in the use of expropriation power.

To implement these guiding principles the report recommends:

— that all expropriation powers be contained in one statute;

— that the statute be clearly written and complemented by an information booklet;

— that the pre-expropriation hearing become an inquiry and that the statute include provisions rendering the individual's right to be heard meaningful, and that decisions about location be subject to testing by those who best know the proposed locale;

— that permanent negotiators be appointed in each province to assist voluntary settlement of compensation;

— that where compensation can't be agreed upon, the Trial Division of the Federal Court should decide; and

— that an owner should in principle receive full indemnity for all legal and other costs reasonably incurred.

Family Law

Families aren't primarily legal institutions. In the ordinary course of family life nothing is more remote than law. In crises, however, when the network of family relationships breaks down, law becomes an instrument for ordering such relationships.

As such, our law has many weaknesses. First, the entire legal process for dealing with family instability is fragmented. Second, the law concentrates on grounds for divorce to the detriment of such consequential issues as child welfare, property and support. Third, the legal framework for dealing with such questions doesn't accord with present social reality. Lastly, the position of children in this area of law is far from satisfactory — they have no standing to be heard.

To remedy these defects the report advocates a changed method of resolution of family problems. In particular it recommends:

— the establishment of *unified family courts* by agreement between federal and provincial governments;

— the acceptance of *marriage breakdown* as the sole ground for dissolution of marriage, such ground to be non-justiciable and conclusively established by the evidence of one spouse;

— the *settlement of consequential property and financial matters* separate from matters relating to breakdown of personal relations;

— the establishment of means to provide for *equal sharing of property* acquired by either spouse during marriage;

— the recognition of maintenance as designed to promote *economic rehabilitation* and to continue as long as reasonable need exists; and

— the recognition of the *fundamental rights of children* of a broken marriage to social, psychological and economic support, of the need of their views to be taken into account and of the necessity for decisions in these matters to be taken with a view to the children's own best interest.

Sunday Observance

This is a special report requested by the former Minister of Justice.

Sunday observance laws in Canada primarily serve a religious purpose — preventing profanation of the Lord's Day. They also serve a secular purpose — ensuring workers one day's rest in seven.

Today, there are four major problems in this area of law. First, prohibition of various activities on Sunday has been largely neutralized through provincial "opting out" legislation, non-prosecution and low penalties. Second, there is uncertainty regarding Sunday trucking. Third, the provinces' constitutional role isn't fully certain. And fourth, freedom of religion hasn't been satisfactorily reconciled with existing legislation.

To solve these problems the report recommends:

— that the *Lord's Day Act* be repealed;

— that the provinces and territories be free to enact independent secular measures respecting observance of Sunday and other holidays;

— that before repealing the *Act* the federal government allow provinces and territories time to review, amend and introduce their own measures;

— that transition from federal to provincial law not be long delayed; and

— that federal power to regulate Sunday interprovincial trucking be included as an interim measure in the federal *Motor Vehicle Transport Act.*

Implementation

Seven reports, then, and about two hundred recommendations. What next? What happens to them? This is a matter for the Minister of Justice, Government and Parliament. We have now passed the baton to them.

At the same time, while pressing on to look at other areas, aspects and problems, we don't dissociate ourselves from the work we have done. On the contrary, we remain ready and willing to consult, advise and assist in any other capacity, should we be called upon to do so. But law reform in these areas is now a matter for the Minister. It is to him that interested persons should now send their views on the reports, though we should welcome copies of such views.

the team

An institution is no better or worse than its personnel. The Commission has been fortunate to have had able and energetic staff at all levels — as Commissioners, researchers, administrators and support staff.

Some members of the team have now moved on. This year saw the retirement both of our first Chairman, The Honourable Mr. Justice E. Patrick Hartt and of Commissioner Johann W. Mohr. This report would be incomplete without recording our appreciation of their work.

Mr. Justice E. Patrick Hartt

In choosing Mr. Justice Hartt as our first Chairman, in 1971, the then Justice Minister, John Turner, said he wanted "young tigers". Subsequent years showed the aptness of that choice. During our first five years Mr. Justice Hartt was the mainspring of the Commission's work, the inventor of its unique style of law reform and the bearer of its greatest burdens. Combining realism, humanity and imagination, he set the Commission on its own distinctive, highly Canadian path.

Though regretting his retirement, we wish him every success and take consolation in his continuing association with the Commission and also in the fact that nothing so manifests the health of institutions as the orderly transfer of authority. Mr. Justice Antonio Lamer, who had been until April 1, 1976, Vice-Chairman, succeeded Mr. Hartt as Chairman. Mr. Justice John C. Bouck of the Supreme Court of British Columbia replaced Mr. Lamer as Vice-Chairman.

Dr. J. W. Mohr

Dr. Mohr was appointed Commissioner on January 1, 1973. Not a lawyer but a sociologist, he made a unique contribution to our work. In every area he brought to bear insights not only from his present expertise but also from his wide-ranging humanistic background. Linguist, anthropologist, criminologist and philosopher, he deepened and broadened all our deliberations by his fresh approach. In particular, his empirical and statistical expertise proved invaluable. While inevitably regretting his departure, we wish him well and are gratified to know that the lessons he taught have not been forgotten and that, like Mr. Justice Hartt, Dr. Mohr is continuing in association with the Commission. He is succeeded by Professor Jean-Louis Baudouin.

Researchers

Some of the research staff are still with the Commission. Some have now departed — to the bench, to practice and to the universities. None of our work would have been possible without their help.
A full list of researchers can be found at the back of this report.

Support Staff

In wartime, it was said, it took a hundred people on the ground to keep one pilot in the air. Likewise, behind the commissioners and researchers stands the essential support of the administrators, librarians, secretaries, records officers, publishers, translators, finance and accommodation personnel.

These are the people concerned with the mechanical aspects of the operations of the Commission. They provide the hardware so essential to any dynamic program of law reform. Whether it is the library, the publications or the wide-ranging consultation machinery and its feedback system, those are the tools without which research and policy formulation would encounter serious difficulty.

Library

Books — and legal books are no exception — do not provide all the answers. Still, they are important tools for the researchers. Our policy, established firmly when we first embarked upon our work, has been that our library would be a specialized legal instrument, strictly at the disposal of our research program.

Our librarian and her limited staff of two assistants have put together and maintained a basic collection which provides the essential reference material. To supplement these, an extensive program of inter-library loan is actively pursued in cooperation with the many libraries in operation in the National Capital region, both at government and private levels, and even further afield in the country.

Some of the most useful material, to keep abreast of the evolution of law and legal thinking, can be found in learned journals and periodicals. Our library subscribes to law reviews from all Canadian law schools and the most distinguished faculties abroad. In addition, a world-wide exchange scheme with foreign law reform agencies or bodies with similar aims, feeds us with research papers and reports on many topics of current interest. Our own research documents, many unpublished, are also part of our permanent collection. In this way, they are available to other interested parties who may consult them in our reading room or by obtaining them through an inter-library loan.

The overall responsibility for the implementation of the Commission's library policy rests with the Secretary of the Commission. In this task, he and the library staff have the assistance of the library committee — a permanent committee established by the Commission — which is chaired by a Commissioner.

Publications

To most people, law reform sounds like some abstract art form. Not to secretaries, translators, publishing technicians, shippers and countless other support staff. To them, law reform is an incessant flow of publications requiring a never-ending process of checks, counter-checks and tender care. The Commission publications are law reform in action, the visible expression of the Commission's mandate.

During the year under review, the Commission became a publishing house of respectable size producing seven bilingual reports to Parliament, seven bilingual working papers, seven study and background papers each in separate English and French editions, plus several reprints in professional publications, information folders and supplements, summaries and press releases. Some twenty-seven different publications were published with a total circulation of two million.

To oversee and direct this massive and yet intricate undertaking, the Secretary of the Commission has the support of a loyal and qualified staff, well convinced of its significant role, and proud of it. The stenographers type the many versions of research and other papers until the authors and Commissioners agree on contents. Then the operator of the text processor inputs text and typesetting signals in the memory of "the machine" that has become an invaluable device to the publishing program, affording savings in both time and money.

The Commission has established a certain style which many observers, both at home and abroad, have described as young, dynamic, refreshing — even swinging! This image is, in our view, just as much a consequence of the format of our publications as of their contents. The appearance of our publications helps us put our message across. Indeed, we consider it part of our work to make our papers as attractive as possible. The credit, however, should go, above all, to those members of our publishing staff who have, with imagination matched only by their skill, translated the Commission's objective into publications of superior professional quality. Our publications officer is the key to this result. Copy marking,

proofreading, supervising make-up and design, looking over the shoulder of the typesetter and printer — these and other myriad details are his lot.

Our papers and reports are issued simultaneously in both our official languages. Most, but not all, are originally drafted in English. Some are prepared in English and French concurrently. And some are first written in French, as was the study paper on codification. No matter what the original language may be, our translation output remains enormous.

Special care attends the preparation of translations. For each text we use the best translator available, someone familiar with the particular area of law under discussion, subject the translation to professional review, then edit it and finally have it scrutinized by one of our Commissioners. Coordinating this demanding work and reviewing most papers is the daily chore of our translation officer — an important chore indeed, for the Commission papers are equally official in both languages.

Our publications are our best means of information, consultation and participation. The publications clerk caters to more than eight thousand institutions and individuals showing interest in our various papers. Among them are judges and inmates, lawyers and consumers, parliamentarians and ordinary citizens, academics and students, fellow reformers from around the world and people hungry for changes at home. All are treated equally. Their interest in law reform is an integral part of our methodology, for without the common sense instilled by their comments our work might lose touch with reality.

Consultation

Comments come and go. They come in the form of hundreds of letters and briefs, meetings, conferences and seminars. They go in speeches, workshop discussions private exchanges and written comments. No written comment, though, remains unanswered. Although it is not always possible to give as detailed a reply as we would wish — the Commission is not and cannot act as legal counsel — all people writing us, whether they agree or disagree with a position we have taken, receive a letter in return. Letters are written by Commissioners, the secretary of the Commission and the research personnel. But the flow of communications is in the hands of our records, mailroom and other personnel, who register, catalogue, forward, copy and dispatch several thousand pieces of correspondence yearly. In a small organization such as this Commission, talent is often given a chance to prosper. Hence, a secretary will take over the task of preparing an exhaustive analysis of comments received on an area of law, so that the summary of comments may be made available to the interested parties, such as the Department of Justice, once the Commission's report has been transmitted to the Minister for tabling in Parliament.

Administrative Services

Many other important tasks are performed. In any good organization, many of the less conspicuous functions are essential to its smooth and efficient operation. So it is with the Commission. The meticulous and constant quality of the work of our accommodation and inventory clerks, duplicating and messenger clerks, as well as our shipping clerks, office managers, both at our head office in Ottawa and our regional office in Montreal, and our accounting personnel, is just as germane to the efficient operation of the Commission as some apparently more glamorous aspects of our work. To keep this machinery well oiled and moving, is the responsibility of our director of operations. In addition to his administrative duties in the field of finance, personnel and general services, he administers the many research contracts, short and long term, which form the supply line of research work for the Commission.

But all tasks, big or small, intellectual or material, require coordination. The Commission first prescribes the policies. Then the secretary of the Commission and specially appointed committees supervise their implementation. One of the key committees is the administrative committee presided over by the Chairman. Its main duty is the approval of contracts and the purchase of outside services. Its concern is one of efficiency with proper financial controls. Estimating the financial and personnel requirement to meet the research, consultation and information programs is an annual operation which requires from the committee not only foresight, for budgets are first prepared some eighteen months ahead of time, but also a strong negotiating skill and a large measure of persuasion. For, despite its intellectual independence from the executive arm of the government, the Commission must convince the Treasury Board before its estimates may be presented to Parliament for approval.

All these tasks are part of the job of law reform and, as such, contributed to a very productive year.

no finishing post

This, then, was our "production year". Although no records were broken, it marked the culmination of our first five years.

But law reform, as we said earlier, is never-ending. Reports too are not ends but beginnings. Of them we can say what an American scholar said of legal cases: they are not hitch-posts but guide-posts.

In criminal law our real work, we feel, is now beginning. Methods of implementing our pre-trial diversion system are being considered at inter-governmental levels and we are happy to be involved in these discussions. The expertise and contacts developed with regard to mental disorder are still being utilized and will be invaluable in examining the insanity defence. In general criminal law, we are completing work begun two years ago on a new draft law of theft and fraud, continuing, in the light of our reports to Parliament, the inquiry commenced five years ago on general criminal responsibility, mapping out the general plan of a forthcoming investigation into the question of life, death, law and values, and preparing to report on various items worked on during the year, including contempt of court, sexual offences, the jury, pre-trial procedures and pre-sentence procedures.

Our family law work is formally at an end. But family law is very much divided between federal and provincial jurisdiction. This means that new schemes, like those we recommend in our report, can't be dictated but require agreement. Such agreement needs federal/provincial consultation, and here again we are only too glad to help in any way we can.

Administrative law is different. Here our work is now coming into the forefront of our program. Our series of studies of various administrative agencies is nearing completion. A general paper will appear shortly and work is under way on a number of specific problem areas. We are also, as stated earlier, in the course of preparing a working paper on the Inquiries Act. Meanwhile our work on the implications of computerizing the payments system is continuing.

Finally, the question of drafting and codification. In the ultimate analysis, laws can be no better than their wording. If "the apparel oft proclaims the man", all the more so does the style proclaim the statute. To simplify the law, to make it more readily understandable and to bring it home to the people — this has always been our aim. Consistently with that aim we have tried — e.g. in drafting our Code of Evidence, in our draft legislative recommendations, and in our forthcoming draft on theft and fraud — to write in simple, straightforward language. We also issued a study paper on codification in which the fundamental problem of civil law codification in a common law context was examined.

The civil law approach, resting as it does on a more theoretical foundation, may be ideally attractive. How far it can be incorporated in practice in a legal system chiefly oriented towards common law is a question needing much more exploration. Meanwhile, whether through civil law-type codification or through other means, we have to fight against legal obscurity, complexity and confusion — all hurdles of law reform. It is of course a continuing struggle. This is a relay race without a finishing post.

commissioners and staff

The Commission

Chairman	The Honourable Antonio Lamer, Justice of the Superior Court of Québec
Vice-Chairman	The Honourable John C. Bouck, Justice of the Supreme Court of British Columbia
Commissioners	Dr. Gérard V. La Forest, Q.C. Mr. Jean-Louis Baudouin
Secretary	Mr. Jean Côté

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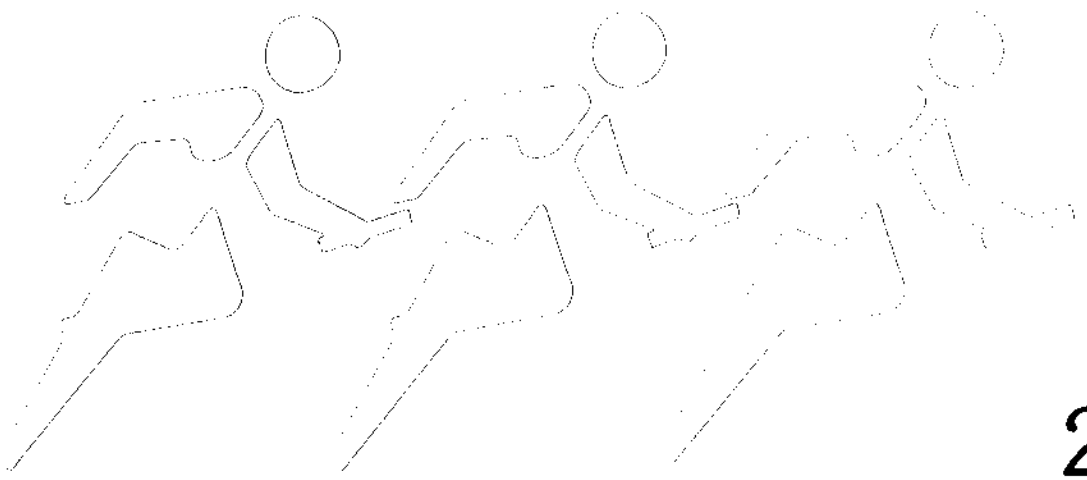

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