

MINUTES OF SPECIAL CONVOCATION

Thursday, 9th November, 2006
10:00 a.m.

PRESENT:

The Treasurer (Gavin MacKenzie), Aaron (by telephone), Alexander, Backhouse, Banack, Bobesich, Campion (by telephone), Carpenter-Gunn, Caskey, Chahbar (by telephone), Cherniak (by telephone), Coffey, Copeland, Crowe, Curtis, Dickson, Doyle, Dray, Eber, Filion, Finkelstein, Finlayson, Gold (by telephone), Gotlib (by telephone), Gottlieb, Harris, Heintzman, Henderson, Krishna, Lawrence, Legge, Manes, Millar, Murphy, Murray, Pawlitza, Potter, Robins, Ross, Ruby (by telephone), St. Lewis, Sandler, Silverstein (by telephone), Simpson, Swaye, Symes, Topp, Warkentin and Wright.

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Secretary: Katherine Corrick

The Reporter was sworn.

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IN PUBLIC

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GOVERNMENT RELATIONS AND PUBLIC AFFAIRS COMMITTEE REPORT

Re: Law Commission of Ontario

Report to Convocation
November 9, 2006

Government Relations & Public Affairs Committee

Committee Members
James R. Caskey, Co-Chair
Julian H. Porter, Co-Chair
Laurie Pawlitza, Vice Chair
Andrea Alexander
Marion Boyd
John Campion
Abdul A. Chahbar
Andrew Coffey
Paul Dray
Allan F. Lawrence
Judith Potter
Alan Silverstein
William J. Simpson
Michelle Strom

Purposes of Report: Decision

Prepared by the Policy Secretariat
Julia Bass 416 947 5228

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COMMITTEE PROCESS

1. The Committee met on October 11th 2006. Committee members in attendance were: James Caskey (Co-Chair), Julian Porter (Co-Chair), Laurie Pawlitza (Vice Chair), Andrea Alexander, Abdul Chahbar (by telephone), Paul Dray, Allan Lawrence, Judith Potter (by telephone), William Simpson and Michelle Strom. Bencher Neil Finkelstein attended for the discussion on the Law Commission. Staff in attendance were Malcolm Heins, Sheena Weir, Caterina Galati and Julia Bass. The Committee was also joined by guest speakers George Boddington and Peter Regenstrief of Policy Concepts Inc.

FOR DECISION PROPOSAL FOR A LAW COMMISSION OF ONTARIO

Motion

2. That the Law Society of Upper Canada participate in the creation of a new Law Commission of Ontario, including naming a member of the governing board and making an annual financial contribution of \$100,000 for five years.
3. That such participation be conditional on successful negotiations with the other parties according to the terms set out in the application to the Law Foundation of Ontario.

Introduction and Background

4. In his speech at the opening of the courts on January 4th, 2006 the Attorney General of Ontario announced his support for the establishment of a new Law Commission of Ontario. The press release is attached at Appendix 1, together with an excerpt from the Attorney General's speech. The previously existing body, the Ontario Law Reform Commission, was abolished 1995.
5. The proposal involves a partnership between the government, the Law Society, the Law Foundation, Osgoode Hall law school at York University and the other Ontario law schools. This would be similar to the model of the Alberta Law Reform Institute (ALRI) at the University of Alberta in Edmonton.
6. A grant application was submitted to the Law Foundation of Ontario for consideration at their board meeting in June. A copy is attached at Appendix 2.
7. The Law Foundation approved the proposal in the amount of \$485,000 per year for five years, on a number of conditions, including the following:
 - a. That the ministry of the Attorney General commit \$100,000 cash and \$120,000 in kind, per year for 5 years.
 - b. That the Law Society commit \$100,000 per year for five years and participate actively in the project.
 - c. That the law schools other than Osgoode Hall commit \$10,000 per year each for five years, and participate actively in the project.
 - d. Satisfactory completion of, and reporting on, proposed activities such as the creative symposium.

8. The approval letter from the Law Foundation is attached at Appendix 3.
9. The proposed budget totals roughly \$1.2 million, of which the Law Society's contribution would be \$100,000 per year.
10. The funding application included provision for working sessions for all the involved parties, to take place 'between June and October 2006'. This schedule has since been lengthened and discussions have continued between the Law Society, the ministry and the law schools. The resulting proposed governance structure for the Commission is attached at Appendix 4.
11. Of note is that the proposed governance structure provides the Law Society with strong representation on the governing board, on equal terms with the Law Foundation and the government.
12. The application contemplates the organization of a 'creative symposium' to identify 'top priority areas of study'. This event is now scheduled for November 30th.
13. The funding for the Law Society's contribution has been included in the 2007 budget, subject to approval by Convocation.
14. While the deans of the law schools other than Osgoode Hall have been participating in the planning discussions, they have not yet confirmed the extent of their financial contribution.

Other Law Commissions in Canada

15. On September 25th, the federal government cancelled 100% of the funding for the Law Commission of Canada (without repealing the constituting statute). The Commission has announced that it will be closing its doors in December of this year, as the government is their sole source of funding. This may be seen as showing the vulnerability of a structure that is entirely dependent on the government. Some media coverage of this is attached at Appendix 5.
16. An excerpt from a background paper on law reform commissions in Canada by Gavin Murphy (Legal Editor of the Commonwealth Law Bulletin) is attached at Appendix 6. Murphy's paper notes:

The Ontario Law Reform Commission was the first law reform commission in the sense understood within the Commonwealth, namely, a permanent body provided with stable human and financial resources. The Commission was created by statute in 1964, one year before its British counterparts and before any other continuing law reform institution in Canada.
17. Five other provinces currently have law reform bodies: British Columbia, Alberta, Saskatchewan, Manitoba and Nova Scotia. A list of these and some similar bodies in other jurisdictions is attached at Appendix 7, together with excerpts from the current websites of the provincial bodies.

18. Information on the law reform bodies in the other provinces is summarized in the following chart:

| NAME | STRUCTURE | FUNDING |
|--------------------------------------|---|---|
| B.C. Law Institute | Replaced abolished Law Reform Commission of BC in 1997. 14-member board, 8 appointed by stakeholders. | Sustaining funding from BC Law Foundation, some provincial funds since 2003, plus BC-CBA and Vancouver BA and several other supporters. |
| Alberta Law Reform Institute | Partnership of the province, the University of Alberta and the Law Society of Alberta since 1967. Located at University of Alberta. | Mainly funded by the three partners. |
| Saskatchewan Law Reform Commission | Established by Act of legislature in 1973, 9 commissioners appointed by Order in Council. | Mainly funded by Law Foundation of Saskatchewan and provincial department of justice. |
| Manitoba Law Reform Commission | 5 members appointed by Order in Council, including 1 judge, 1 law professor, 1 practising lawyer and 1 layperson. | Provincial department of justice and law foundation |
| Law Reform Commission of Nova Scotia | Established 1991. Six part time commissioners, including one judge, two community representatives, two N.S. Barristers' Society reps and one faculty member from Dalhousie. | Provincial government and law foundation. |

The Committee's Deliberations

19. The Committee agreed that the former Ontario Law Reform Commission played a useful role. While some Committee members felt that the government should take principal responsibility for such a body, it was noted that the proposed model would give the Commission more independence from government and that the involvement of the Law Society on the governing board would ensure that issues of concern to Law Society and the legal profession would be considered.
20. It was noted that smaller provinces have successfully established such bodies and that these have made important contributions to law reform, the administration of justice and access to justice.

21. The Committee was of the view that the Law Society's mandate "to maintain and advance the cause of justice and the rule of law", to "facilitate access to justice for the people of Ontario" and "to protect the public interest" supports participation in an important public interest initiative of this nature.
22. It was noted that the Law Foundation's conditional approval means that, if all of the partners cannot agree on the specified terms, the project may not proceed. Accordingly, the Committee was of the view that the Law Society's participation should also be expressed to be conditional.
23. On balance, the Committee was of the view that this is an important opportunity for the Law Society to work with the other partners on a project that can bring real benefits to the people of Ontario.

Appendix 1

For Immediate Release
January 4, 2006

ATTORNEY GENERAL TO ESTABLISH NEW
LAW COMMISSION OF ONTARIO

Commission To Make Justice System More Accessible

TORONTO — The McGuinty government intends to establish a new Law Commission of Ontario, Attorney General Michael Bryant announced today at the Opening of the Courts ceremony. "We will pursue discussions with the Law Foundation of Ontario, the Law Society of Upper Canada, Ontario's law schools, and the legal community," said Bryant. "The goal is to create a modern, relevant and responsive commission that will bring forward recommendations to improve the administration of Ontario's justice system and enhance access to justice."

Ontario has not had a law reform commission since 1995. The development of the new Law Commission of Ontario will be a joint effort. The government and its partners in the legal community will work to make this goal a reality in 2006.

"For many years, the previous Law Reform Commission was an important instrument of change in our province's legal system," said Bryant. "It was known to forward progressive ideas, ask tough questions and engage in creative, innovative, critical thinking. Our justice system needs the same capacity today."

The commission's mandate will be to work with government, the legal profession, the judiciary, the faculties and students of all Ontario law schools and the public, to:

- Examine issues of significant interest and importance
- Develop recommendations designed to improve the administration of Ontario's justice system and
- Enhance access to justice.

A significant aspect of the mandate of the commission will be to make the justice system more accessible and equitable by using modern technologies to collect and distribute legal knowledge and research. "I look forward to working with all involved groups on this important project," said

Bryant. "This is part of the McGuinty government's commitment to an effective and efficient legal system."

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Contacts:
Greg Crone
Minister's Office
(416) 326-1785

Brendan Crawley
Communications Branch (416) 326-2210

DRAFT Jan. 4, 2006 – FINAL

Notes for Remarks by

The Honourable Michael J. Bryant
Attorney General of Ontario

Opening of Courts

January 4, 2006

[EXCERPT]

Check Against Delivery

I'd also like to use this occasion to look ahead.

For many years, the Law Reform Commission was one of the most important instruments of change in our province.

It brought forward progressive ideas, it asked tough questions, it engaged in creative, innovative, critical thinking.

Yet, a decade ago the Law Reform Commission was scrapped. I think it's time to re-evaluate that decision.

Today, more than ever, we need to tap the best legal minds -- for practical and creative solutions to existing challenges, and to explore new directions for the rule of law.

Otherwise, assessment and reform of our legal system amounts to ad hoc efforts, more often than not driven (or not) by government.

After all, it is the province which has jurisdiction to administer justice.

A provincial Law Commission is the critical means by which a provincial justice system, with independent and government partners, examines reform in a rigorous, objective fashion. Many have called for this, and I have listened. I want to thank the many benchers who have spoken to me about this issue.

We are also fortunate to have the latest, but not the last, Law Reform Commissioner, Professor John McCamus of Osgoode Hall Law School, as a constant advocate for, and advisor to, the Law Commission's revival.

And I want to thank Chief Justice McMurtry, who has been calling for the revival of the Law Reform Commission for years.

To them and to the members of the legal profession I say "I agree." Let's do it. Let us revive the Commission, and let us do it together.

Today, I am announcing my intention to resurrect the Law Reform Commission. I will pursue discussions with the Law Foundation of Ontario, the Law Society of Upper Canada, Ontario's law schools, and the legal community.

Our shared goal is to establish a modern, relevant, and responsive Commission.

This will be an independent body that will work with the judiciary, academic institutions, the legal community, and the public, to examine important issues, and to develop recommendations on how to improve the administration of justice and enhance access to justice.

The new Law Commission will also have a mandate to make our justice system more accessible and equitable. There are a lot of ways to do this, for example, by using modern technologies to collect and disseminate legal knowledge and research.

I'm looking forward to seeing the new Law Commission get to work. Its reawakening is finally upon us.

Appendix 4

REVISED OCTOBER 17, 2006

Steering Committee: Recommendations regarding Governance of LCO

1. Constituting the Commission

Recommended Approach:

For the interim period, enter into a Founding Agreement with contributing partners. Signatories would include a representative from each of Osgoode Hall Law School, the Law Society, the

Law Deans and the Ministry of the Attorney General. Legislation establishing the Law Commission of Ontario could be introduced at a future date.

2. Structure and Appointments

A. Board of Governors

Recommended Approach:

The grant application set out that the makeup of the body would reflect regional diversity and include:

- 1 representative appointed by the Law Foundation,
- 1 representative appointed by the Law Deans (other than Osgoode Hall Law School),
- 1 representative appointed by Osgoode Hall Law School,
- 1 representative appointed by the Ministry of the Attorney General,
- 1 representative appointed by the Law Society,
- 1 representative appointed by the judiciary,
- other members as required and identified by the Board (e.g., drawn from a university outside the law schools or other communities)

Members of the Board of Governors would be volunteers. In order to have continuity for the vision and establishment of the Commission, the terms of the Board of Governors would be staggered. For the first Board of Governors: representatives appointed by the judiciary, the Law Deans (other than Osgoode Hall Law School) and the Ministry would be for 2 year terms; representatives appointed by Osgoode Hall Law School, the Law Society and the Law Foundation would be for 3 year terms. Following the first Board, all members would be appointed for a 3-year period. Members would continue to serve until a successor is appointed. Members may be reappointed. Members appointed to the Board of Governors cannot also be appointed to the Research Advisory Board.

In order to ensure that the appointees chosen for the Board of Governors meet regional and diversity criteria, the groups putting forward proposed appointees will be required to closely collaborate.

The Board of Governors would select one of their members to be the Chair of the Board. The Chair would be selected based on the following criteria:

- High level of professional achievement in his/ her field of endeavour
- Demonstrated commitment to law reform
- Strong managerial/leadership skills
- Interest in operational design and operational issues
- Energetic and able to make the required time commitment
- Excellent interpersonal skills – as the public face of the LCO – must be able to build good relations with a variety of stakeholders (academic community, LFO, Law Society, MAG)
- Political acuity

B. Research Advisory Board

Recommended Approach:

The body's makeup would reflect regional diversity and could include:

- 1 representative chosen by each law school (6),
- 1 representative chosen by the Ministry of the Attorney General,

- 1 representative chosen by the Law Society,
- 1 representative of the private bar chosen by the other representatives, and
- 1 representative of another discipline chosen by the other representatives.

The members of this board would be volunteers. Members' terms would be for a period of three years. Members would continue to serve until a successor is appointed. Members may be reappointed. Members appointed to the Research Advisory Board cannot also be appointed to the Board of Governors.

Members of the Research Advisory Board would select one of their members as Chair. The Chair would be selected based on the following criteria:

- Demonstrated commitment to law reform
- Outstanding academic and research background
- Ability and willingness to make interdisciplinary and inter-law school connections
- Excellent interpersonal skills
- Dynamic analytic and creative problem-solving abilities

3. Relationship between Board of Governors and Advisory Body

Recommended Approach:

The Board of Governors would be the decision-making body. It would deal with operational issues and make final determinations regarding research projects, the overall research agenda of the Commission and approving final reports. The Board of Governors would be the public face of the Commission. As such, the Chair and the Board of Governors would be responsible for making links with the private bar, federal and international research bodies as well as groups such as the Uniform Law Conference of Canada.

The Research Advisory Board would make recommendations to the Board of Governors regarding research projects, timelines etc. It would be responsible for recommending the establishment of multidisciplinary project teams drawing on members from several law schools, across other university faculties, the government and practicing bar. It would also have the ability to create ad hoc advisory groups with broad representation from various academic disciplines, the bar, government etc. to advise on particular projects.

The respective roles of the Board of Governors and the Research Advisory Board would be set out in the Founding Agreement.

The Founding Agreement would also set out the relationship between the Board of Governors, the Research Advisory Board and the Executive Director along the lines set out below:

- The Board of Governors will:
 - hire the Executive Director;
 - develop his/ her performance measures;
 - set and review the terms of employment.
- The Executive Director will:
 - report to the Board of Governors through the Chair;
 - be a non-voting member of the Board of Governors;
 - support the Board of Governors meetings and decision-making process;
 - consult with the Board of Governors on the operational running of the LCO;

- work with the Board of Governors to develop and support the research agenda, conduct RFPs, set timelines and ensure they are met, provide project management.
- assist the Board in the maintenance of ongoing stakeholder communications and management.
- The Executive Director will be responsible for:
 - the day to day running of the LCO;
 - hiring support staff, technological support;
 - the information posted on the website; and
 - the financial management of the LCO.
- The Executive Director will:
 - support the Research Advisory Board meetings and decision-making process;
 - work with the Board to develop and support the research agenda, develop multi-disciplinary teams for projects; develop and monitor timelines for projects and ad hoc advisory committees as required for particular projects.

4. Mandate of the Commission

Recommended Approach:

The mandate of the Commission would be to recommend law reform measures to:

- Enhance the legal system's relevance, effectiveness and accessibility;
- Improve the administration of justice through the clarification and simplification of the law;
- Consider the effectiveness and use of technology as a means to enhance access to justice;
- Stimulate critical debate about law and promote scholarly legal research; and
- Develop priority areas for study which are underserved by other research, determine ways to disseminate the information to those who need it and foster links with communities, groups and agencies.

5. Project Selection Criteria for Commission

The project selection criteria would be a list of factors to guide the Board of Governors when deciding which projects to pursue. Projects would not be required to meet all of these criteria. A recommended short list of project criteria is set out below. It is proposed that the project selection criteria would be refined at the Creative Symposium.

Recommended Approach:

- Has the need for intervention to reform the law been clearly demonstrated?
- Is the project coherent with the general strategic directions identified by the Commission?
- Will the project engage the concerns/ needs of those who might not otherwise have the resources to make their voices heard effectively through the policy process?
- Does the project have potential for collaborative efforts with other law reform bodies, government ministries or non-governmental research groups or take advantage of interdisciplinary perspectives?
- Does the project have the potential to be of interest and benefit the broader public?
- Would the project produce a worthwhile result?

- Administrative considerations, such as:
 - Can the project be completed in a timely manner to maintain its relevance?
 - Does the project duplicate work being done elsewhere?
 - Does the project make excessive demands on resources?

6. Designates for the Board of Governors and Research Advisory Board

Contributing partners will be asked to submit names for the Board of Governors and the Research Advisory Board during the week of October 26-Nov 3, 2006. Members of the Board of Governors and the Research Advisory Board will be appointed the week of November 6-10, 2006.

Appendix 6

LAW REFORM AGENCIES

By Gavin Murphy Legal Editor, Commonwealth Law Bulletin. [EXCERPT]

Ontario

The Ontario Law Reform Commission was the first law reform commission in the sense understood within the Commonwealth, namely, a permanent body provided with stable human and financial resources. The Commission was created by statute in 1964[66], one year before its British counterparts and before any other continuing law reform institution in Canada. *The Ontario Law Reform Commission Act, 1964* contains only five sections. Section 2 specified that it was the function of the Commission to inquire into reform of the law and consider any matter relating to it. The Commission's mandate included the examination of statute law, the common law, judicial decisions, the administration of justice, or any other subject referred to it by the Attorney General. There was no restriction regarding the number or qualifications of commissioners[67].

Unlike the British Commissions, the Ontario Law Reform Commission could initiate its own projects without obtaining prior approval. Nevertheless, it was obliged to report on its work periodically to the Attorney General of the province[68]. At its funding high point in the early 1990s, the Commission had an annual budget of almost \$1,700,000. By the time the Commission was closed, its financial resources had shrunk to \$687,700. The following table shows the evolution of the budget of the Commission[69].

Ontario Law Reform Commission Budget (Canadian dollars)

| | | |
|-----------|----|---------|
| 1965–1966 | \$ | 158,000 |
| 1966–1967 | \$ | 155,000 |
| 1967–1968 | \$ | 213,000 |
| 1968–1969 | \$ | 190,000 |
| 1969–1970 | \$ | 224,000 |
| 1970–1971 | \$ | 271,000 |
| 1971–1972 | \$ | 447,000 |
| 1972–1973 | \$ | 421,000 |

| | | |
|-----------|----|-----------|
| 1973–1974 | \$ | 393,700 |
| 1974–1975 | \$ | 394,500 |
| 1975–1976 | \$ | 468,900 |
| 1976–1977 | \$ | 476,700 |
| 1977–1978 | \$ | 524,300 |
| 1978–1979 | \$ | 644,400 |
| 1979–1980 | \$ | 708,500 |
| 1980–1981 | \$ | 810,400 |
| 1981–1982 | \$ | 892,700 |
| 1982–1983 | \$ | 979,300 |
| 1983–1984 | \$ | 1,052,800 |
| 1984–1985 | \$ | 1,099,400 |
| 1985–1986 | \$ | 1,128,200 |
| 1986–1987 | \$ | 1,145,700 |
| 1987–1988 | \$ | 1,215,300 |
| 1988–1989 | \$ | 1,225,000 |
| 1989–1990 | \$ | 1,325,900 |
| 1990–1991 | \$ | 1,620,400 |
| 1991–1992 | \$ | 1,670,200 |
| 1992–1993 | \$ | 1,690,800 |
| 1993–1994 | \$ | 1,006,600 |
| 1994–1995 | \$ | 980,000 |
| 1995–1996 | \$ | 902,700 |
| 1996–1997 | \$ | 687,700 |

To be selected for study by the Commission in its later years of operation, a project had to demonstrate a need for law reform that could not be effectively addressed elsewhere. There had to be a likelihood that the Commission's proposals would address the needs and concerns of groups who would not otherwise have the resources or degree of organisation to make their voices effectively heard. The Commission had to have the available personnel and the financial resources to initiate the project, and the nature of the subject was required not to be under review by other government agencies. A project had to have a likelihood of completion in a reasonable period of time, be consistent with any Commission statement of current priorities and have the potential for collaboration with other law reform bodies, government ministries or non-governmental research groups. Finally, there had to be an absence of reports by law reform bodies or other agencies that rendered study on a particular subject necessary, and there had to be a reasonable expectation of implementation of proposals for reform.

In contrast to most other law reform agencies, the Ontario Law Reform Commission had a large part of its research work conducted by outside teams of academic lawyers[70]. During the 1980s, the Commission consisted of one senior legal research officer and four legal research officers. Utilising outside expertise was possible because of the existence of a large number of academics at the province's six law schools[71].

A broad-based project advisory board was also set up. The board comprised practising lawyers, academics, representatives of appropriate interest groups and other interested parties who advised the Commission with respect to its projects. Once a draft report was completed, the commissioners reviewed it and the Commission's legal staff would make any necessary changes. A final report, which represented the Commission's views on a subject, was presented to the Attorney General. The final report sometimes included draft legislation[72].

The Commission was abolished in 1996, a victim of the government's policy to reduce the deficit and eliminate agencies considered non-essential.

Alberta

The next province to establish a permanent law reform agency was Alberta, which proceeded differently from Ontario. As noted earlier, senior members of the provincial Law Society of Alberta had set up a Law Reform Committee in 1964. By the end of 1966, the Law Society realised that the task of law reform in the province could not depend on a voluntary and unpaid committee with no permanent staff. Discussions therefore began in early 1967 between the Law Society, the Attorney General's department and the University of Alberta's faculty of law to establish a commission or institute of law reform within the university. From the beginning, all concerned felt that the faculty of law should play a significant role in the proposed body, and members of the faculty enthusiastically supported the proposal. The provincial government, the Law Society of Alberta and the University of Alberta entered into an agreement in November 1967 to provide for the establishment of the Alberta Institute of Law Research and Reform[73]. The objectives of the Institute are set out in the founding agreement and consist of four elements : conducting and directing research into law and the administration of justice, recommending ways in which the law may be made more effective, promoting legal research and reform, and working in cooperation with others, especially the faculties of law at the University of Alberta and the University of Calgary[74]. The Institute has been given a broad mandate. It has the power to engage in anything that falls within the term "law reform", and it can propose anything that will make the law more effective. The Institute commenced operations on 1 January 1968.

Research is a separate element of the Institute's objectives, and as a result, several projects have been undertaken that have not led to actual reform proposals[75]. The Institute's law reform reports have covered an extraordinary range of topics, from landlord and tenant law to compensation for victims of crime. The main criterion for the selection of a subject for consideration is its relevance to Alberta. Federal matters are not excluded, but they do not have a priority. Although the Institute has based some of its projects on government suggestions, it is not required to accept references from the government. The Institute is free to choose its own projects.

As of 1 January 2003, a board of thirteen members, including its director, who is also a member of the faculty of law at the University of Alberta, governed the Institute. The Institute is located at the university, and the government and university cover its operating expenses. The Institute is not statutorily protected, and its existence is dependent upon the continuing agreement of its three constituent bodies[76]. The name Alberta Law Reform Institute was adopted in 1989[77].

The Institute's board meets monthly to review the overall operations, approve all reports and consider the direction of research papers. Project funding for the Institute comes from the Alberta Law Foundation[78] and the provincial Department of Justice.

British Columbia

The statute creating the Law Reform Commission in British Columbia came into force on 1 July 1969[79]. The Commission began operations the following year. Its mandate and structure were similar to those of the Law Commission for England and Wales, including the requirement that the provincial Attorney General approve its research programs. The Commission's mandate was to recommend the examination of law needing reform and to suggest an agency, whether itself

or another body, to carry out the review. The Commission was usually composed of practising and academic lawyers. Despite numerous changes in staff during its early years, the Commission managed to produce a high volume of work.

The Commission ceased to exist at the end of March 1997, when the provincial government cut its funding. Over its 27 years of existence, the Commission produced more than 140 reports on a wide variety of topics[80]. It also initiated several Internet-based projects, including a law reform database and an index of its collection of law reform materials from throughout the Commonwealth.

Prior to the Commission's demise, the British Columbia Law Institute was created in January 1997 through incorporation under the province's Society Act. The Institute was formed in response to the decision by the Attorney General's department to withdraw funding for the Commission. At the time of the announced cuts, there was widespread concern that the disappearance of the Commission would create a void and result in the loss of tangible and intellectual assets.

Section 2 of a text, called its "Constitution", creates the Institute[81]. This section states that the purpose of the Institute is to promote the clarification and simplification of the law and its adaptation to modern social needs, to promote improvement of the administration of justice and respect for the rule of law, and to promote and carry out scholarly legal research. The internal rules[82] of the Institute provide that it is to be composed of fourteen members. Of these fourteen members, two are appointed by the Attorney General, two by the executive committee of the Law Society of British Columbia[83], two by the executive committee of the British Columbia branch of the Canadian Bar Association and one each by the deans of the law faculties of the University of British Columbia (Vancouver) and the University of Victoria. Every member of the Institute is also a director. Membership is for a term of five years, with the possibility of reappointment.

The British Columbia Law Institute did not receive any funds from the provincial government for its regular operations until the spring of 2003. At that time, the province's Ministry of Attorney General committed to provide funding to the Institute over the next three years. Sources of funding in the past have included the Law Foundation of British Columbia[84], the Law Society of British Columbia, the Canadian Bar Association and the Vancouver Bar Association[85]. Since 1998 the Institute has had charitable status, which means that any donation to the Institute can be used to reduce personal income tax. In 1999 it undertook a fundraising initiative, which proved successful. That same year, it received a grant from the federal Law Commission of Canada for the compilation of a database of federal legislative references to family-like relationships.

As of March 2003, the Institute had completed 24 reports. But efforts are not solely confined to law reform matters. The Institute is also mandated to prepare publications that will improve access to the law or provide a base from which reform work can be done. One example of the Institute's work that goes beyond law reform is a report on gender-neutral legal writing.

Nova Scotia

The province of Nova Scotia created the Law Reform Advisory Commission in 1969. The Commission began operations in 1972[86]. It consisted of between five and ten members, all drawn from the legal community, and it could inquire into any matter relating to reform of the law. However, its activities could only be carried on with the support of the province's Attorney

General[87]. The Commission shared support staff with a senior provincial law officer known as the legislative counsel, who was to be appointed secretary and executive officer of the Commission[88]. In 1976 the statute was amended to expand membership to between 10 and 15 members[89]. Up to five non-legal commissioners were permitted, although none was ever appointed. Also around this time the Commission hired a full-time permanent legal research officer, having previously relied on external consultants working under contract and its own members serving as volunteers[90].

The Commission continued to exist in law until its governing statute was repealed in 1990. But it was not active after 1981, when the terms of all of its members expired and no reappointments were made. The Commission's demise appears to have been due to financial concerns, lack of a consistent approach to law reform and the view that the provincial Ministry of the Attorney General could as effectively develop any necessary changes[91].

The Commission examined 17 areas of the law during its lifetime, including matters such as mechanic's liens, matrimonial property, changes of name and reciprocal enforcement of judgments. Some of its recommendations were in the form of separate reports, while others were presented as draft bills sent to the Attorney General. Publication of both annual and law reform reports could only take place with the approval of the Attorney General[92].

With the closure of the Law Reform Advisory Commission came the creation in 1990 of a new body, the Law Reform Commission of Nova Scotia[93]. The Commission acts as an independent advisor to the government, and this independence gives it the possibility to make recommendations on law reform in a non-partisan manner[94]. The Commission reports to the public and elected representatives of Nova Scotia through the provincial Attorney General.

The Law Reform Commission of Nova Scotia consists of between five and seven full-time or part-time commissioners drawn from the community : one judge appointed by Cabinet who is selected by the judges of Nova Scotia, two community representatives selected by the Cabinet, two representatives appointed by the Nova Scotia Barristers' Society, one member from the Dalhousie University faculty of law and one commissioner who must not be a law school graduate.

Under the provisions of the *Law Reform Commission Act*, the Commission reviews the laws of the province and makes recommendations for improvement. One of the Commission's priorities is to discuss law reform with the general public. These talks then form the basis on which the Commission determines if existing laws are adequately serving the people or whether legal reform is required. The Commission's projects cover an extensive range of social and legal issues[95]. Judges, the legal community and the public suggest the majority of projects for review, while others have been references from the government of Nova Scotia.

The Commission's final reports and recommendations are formally presented to the Minister of Justice and Attorney General for Nova Scotia. These reports are available to the public without cost. Commission reports once included draft legislation, but this is no longer the case. The Commission has neither the resources nor the expertise to prepare draft legislation[96].

In April 2000 the Commission was advised that the provincial government would provide no further financial assistance after 2000–2001. From April 2001 the Law Foundation of Nova Scotia[97] funded Commission activities in the entirety. However, discussions with the provincial Attorney General's office led to the restoration of government support in 2004[98].

Prince Edward Island

Prince Edward Island adopted a statute in 1970[99] establishing a law reform commission. The statute was modelled on the Ontario Law Reform Commission Act, 1964. The Prince Edward Island Law Reform Commission did not commence work until 1976. The chairman of the Commission was the Chief Justice of the province, and the other commissioners were prominent members of the legal profession. The Commission ceased to operate after the discontinuation of its budget in 1983. Throughout the Commission's existence, its staff consisted of only one lawyer. The Commission did not release formal reports or working papers. All recommendations were made briefly or in the form of draft legislation. The Commission evidently did not have strong support from the government or the legal community[100]. The founding statute was repealed in 1989 by virtue of its omission from the 1988 Revised Statutes of Prince Edward Island. Through provisions found in the provincial Legal Profession Act[101], the Law Foundation of Prince Edward Island[102] is now responsible for any law reform activities that may take place.

Manitoba

It was not until 1970 that the Manitoba legal community called for a full-time law reform agency patterned after the Ontario commission. Later that year, Manitoba enacted a statute[103] establishing its own law reform commission, and membership of the Manitoba Law Reform Commission was completed in February 1971.

The first chairman of the Commission was Francis Muldoon, later to become the third president of the Law Reform Commission of Canada. Until 1979, three of the seven commissioners were non-lawyers, and since that time there has always been at least one non-lawyer commissioner. Non-lawyers were appointed to encourage a wide range of viewpoints, and their inclusion resulted in reports being drafted in simple and easy-to-read, non-legal language. Like most other commissions, the Manitoba Law Reform Commission was given a wide mandate. Its duties were to inquire into and consider any matter relating to law in Manitoba and to formulate recommendations for reform. The Commission had to accept references from the provincial Attorney General and give them priority, but its activities were not restricted to responding to such references.

While the Commission functioned effectively from 1970 to 1986, by 1987 the government clearly intended to abolish it. However, the Commission was soon restored by a new government, which regarded the agency's existence and independence as a matter of priority. A new *Law Reform Commission Act* was assented to by the provincial government on 8 March 1990[104].

The Manitoba Law Reform Commission[105] is funded through grants from the provincial Department of Justice and the Manitoba Law Foundation[106]. The Commission is composed of at least five, but not more than seven commissioners appointed by the provincial Cabinet[107]. The membership must include a judge of the Court of Queen's Bench, a full-time member of the teaching staff of the University of Manitoba faculty of law, a lawyer entitled to practise in Manitoba who is not employed by the provincial government and a non-lawyer. One of the members is appointed president, and that person must be a lawyer.

In March 1997 the government announced its intention of finally eliminating the Commission. After protests, the government backed down and provided modest support to the Commission. As of 30 June 1997, all of the Commission's permanent staff were dismissed, and it operated with only a part-time administrator. There was no in-house legal research staff, and the

Commission had to hire outside consultants to undertake projects on its behalf. The Commission even acknowledged in 2001 that it lacked staff and resources to be active[108]. But with an increase in annual funding from the Manitoba Law Foundation from \$50,000 to \$65,000, it was able to hire a full-time legal researcher in August of that year. The law foundation increased its annual grant to \$100,000 for financial year 2002–2003[109].

Since its inception in 1970, the Commission has issued over 100 formal papers, of which over 75 percent have been implemented. Some of the Commission's most important recommendations acted upon by the provincial legislature have been in the areas of the administration of justice, family law and municipal law.

Saskatchewan

The Saskatchewan Law Reform Commission was established by law in 1971 [110]. The statute came into effect in 1973, and the Commission began work in February 1974. The Commission's functions are described in section 6 of the Act. These provisions are almost identical to those for the former British Columbia Law Reform Commission, which themselves were inspired by the requirements found in the United Kingdom's Law Commissions Act 1965 and the Canadian *Law Reform Commission Act* of 1971. The Saskatchewan Law Reform Commission is primarily mandated to keep all the law of the province under review. This objective is achieved through the systematic development and reform of the law, including codification, elimination of anomalies, repeal of obsolete and unnecessary enactments and, more generally, simplification and modernisation of the law[111].

Since 1973 the Commission has consisted of at least three members[112] who are appointed by Cabinet and hold office with Cabinet approval. As of February 2003, there were six members of the Commission. The chair, who is designated by Cabinet and acts as chief executive officer, is always a legal academic from the University of Saskatchewan. The governing statute allows the Commission to appoint committees to consider and report on any aspect of the Commission's work. Members of these committees need not be members of the Commission itself. Funding for the Commission comes from both the provincial government and the Saskatchewan Law Foundation[113].

Project suggestions can come from a number of sources, including the Minister of Justice, the Commission itself and its staff, the judiciary, the legal profession, professional organisations and the general public. After preliminary research, the Commission usually issues a background or consultation paper to facilitate public discussion. Tentative proposals may be released if the legal issues involved in the matter under review are complex. Upon completion of a project, the Commission's recommendations are submitted to the province's Minister of Justice as final proposals.

The Commission has made recommendations in a number of substantive areas over the years, including family law, commercial and contract law, insurance law, trust law, personal property security law and medical-legal law. The Commission completed three research projects during the 2001–2002 fiscal year[114]. The June 2001 report on a proposed law for the division and sale of land among co-owners included draft legislation.

Newfoundland

Legislation was enacted in 1971 to permit the creation of a law reform commission in Newfoundland[115]. It was not until a decade later, in 1981, that the first commissioners were

appointed and the Newfoundland Law Reform Commission commenced activities. The Commission was established to inquire into and consider matters relating to reform of the law in Newfoundland. Furthermore, the provincial Minister of Justice could refer any subject to the Commission.

The provincial Cabinet determined the number and names of Commission members, who were appointed for three-year, renewable terms. The Commission was not obliged to present an annual report to the government. Rather, it was required to report when it seemed advisable based on the progress of its work or when requested by the Minister of Justice. The Minister of Finance provided funding, on the request of the Minister of Justice, out of the provincial government revenues. Provision was made in 1991 for the Commission to receive funding from sources other than the government.

In the provincial Budget Speech of 1992, the Minister of Finance for Newfoundland announced that the government would no longer fund the Commission[116]. The principal motivating factor behind the Commission's abolition was, as so often the case, fiscal restraint.

New Brunswick

In 1971, New Brunswick established a Law Reform Branch within its Department of Justice, rather than creating a separate law reform agency. The Legal Research Section of the Law Reform Branch carried out the province's law reform work. In 1993, the Legal Research Section was closed and the Law Reform Branch was renamed the Legislative Services Branch[117].

Quebec

Quebec established a Civil Code Revision Office in 1955 to work on reform of the entire field of private law in the province. The primary role of the Office was to assess the fundamental principles behind the Civil Code's institutions[118]. From 1955 to 1960, the Office consisted of only one person. In 1960 it was expanded to four members and was asked to produce a new Civil Code.

The intensity of this undertaking increased significantly from 1966. Work was structured around 43 committees composed of between three and seven jurists, who were assisted by researchers and experts. Committee reports were prepared in both English and French, and each study was accompanied by a commentary. These reports were circulated among interested persons and groups for comments. A total of 64 reports were then compiled into one single document on the Civil Code, which was released in 1978[119]. The 1978 draft Civil Code was never implemented as such. However, the revision exercise led to reforms on several issues, including parental authority, and provided the basis for the final effort that eventually led to the adoption in 1991 of an entirely updated Civil Code. The work in that last phase was conducted on a different basis, this time without a law commission-type formal structure.

In 1992, the province enacted legislation to create the Quebec Law Reform Institute (Institut québécois de réforme du droit). According to the statute, the mission of the Institute is essentially the same as that of law reform bodies in the other provinces of Canada[120]. As with the federal Law Commission of Canada model, the Institute is required to consult the provincial Minister of Justice on its research programs and give priority to the Minister's requests for advice or research. Unlike the practice of the federal commission, the Quebec legislation provides that the majority of members, including the chair and vice-chair, are appointed on a full-time basis. Full-time members must be legally trained or have a long-standing interest in the

law. They are appointed for a term of not more than five years. Part-time members, whose terms shall not exceed three years, must be knowledgeable in the Institute's research areas. The Institute is to fulfil its mission by conducting or commissioning research, and it is to receive initial funding from the provincial government alone. The bill creating the Institute was assented to in the province's National Assembly on 23 June 1992. It is to come into force on a date to be fixed by the government[121]. As of March 2004, this statute had not been brought into force, so the proposed Institute has not yet come into existence.

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Source: http://www.justice.gc.ca/en/ps/inter/law_reform/page2.html

Appendix 7

LIST OF EXISTING LAW REFORM COMMISSIONS

Provincial Law Reform Commissions:

- B.C. Law Institute and Law Reform Database
- Alberta Law Reform Institute
- Saskatchewan Law Reform Commission
- Manitoba Law Reform Commission
- Law Reform Commission of Nova Scotia

Canadian Law Reform Commissions:

- Law Commission of Canada
- Canadian Forum on Civil Justice
- Uniform Law Conference of Canada

Foreign Law Reform Commissions:

- Australian Law Reform Commission
- Law Commission for England and Wales
- Law Reform Commission of Hong Kong
- Law Reform Commission of Ireland
- New Zealand Law Commission
- Scottish Law Commission
- South African Law Commission
- U.S. - American Law Institute - descriptions of restatements only
- U.S. - California Law Revision Commission
- U.S. - New Jersey Law Revision Commission
- U.S. - Commission on Civil Rights
- U.S. - Uniform Law Commissioners - National Conference of Commissioners on Uniform State Laws

Overview

The British Columbia Law Institute was created in January 1997 by incorporation under the *Provincial Society Act*. The broad purposes of the Institute, described in Article 2 of its Constitution, are to:

- promote the clarification and simplification of the law and its adaptation to modern social needs,

- promote improvement of the administration of justice and respect for the rule of law, and
- promote and carry out scholarly legal research.

The Institute was created in response to a decision by the Ministry of Attorney General to withdraw program funding from the Law Reform Commission of British Columbia. The disappearance of the Commission, without replacement, had the potential to create a serious vacuum in the legal resources available to the people of British Columbia and carried a significant risk that the tangible and intellectual assets of the Commission would become dissipated and irretrievably lost. The Institute was created as a successor body to mitigate this loss. The by-laws of the Institute provide that it is composed of 14 members, eight appointed by stakeholder groups and the balance serving as "members-at-large." Every member of the Institute is also a director.

ALRI

History

In 1993, the Alberta Law Reform Institute proudly marked 25 years of service to Albertans. It was on November 15th, 1967 that representatives of the Province of Alberta, the University of Alberta and the Law Society of Alberta signed the first agreement creating the Institute of Law Research and Reform. In January of 1968, the Institute formally commenced operations and held its first Board deliberations. The name Alberta Law Reform Institute was adopted in 1989.

About ALRI

The Institute delivers law reform proposals through specific projects.

Project Selection Criteria

The rationale for the program content includes a number of component principles:

- each project must meet a perceived community need by providing a remedy for a deficiency in the law or in the administration of justice.
- a project must be one that neither the political process or the administrative process is likely to deal with effectively.
- each project must be one that falls within the capability of the Institute, as a group of lawyers acting with the best available advice from segments of the public and from law and other disciplines.
- the total program must make contributions both to technical areas of law and to areas of law involving social policy.

Law Reform Commission of Saskatchewan

About the Commission

The Law Reform Commission of Saskatchewan was established by An Act to Establish a Law Reform Commission, proclaimed in force in November, 1973, and began functioning in February of 1974.

The Commission is incorporated by an Act of the Saskatchewan Legislature. Commissioners are appointed by Order-in Council. Its recommendations are independent, and are submitted to the Minister of Justice for consideration.

Projects are initiated by the Commission in response to suggestions from the public and the legal community, or at the request of the Minister of Justice. After preliminary research, the Commission usually issues background or consultation papers to facilitate consultation. Tentative Proposals may be issued if the legal issues involved in a project are complex. Upon completion of a project, the Commission's recommendations are formally submitted to the Minister as final Proposals.

At present, the Commission is funded primarily by grants from the Law Foundation of Saskatchewan and the Department of Justice.

What is the Law Reform Commission of Nova Scotia?

The Law Reform Commission of Nova Scotia was created in 1991 by the Government of Nova Scotia. The law which created the Commission is the Law Reform Commission Act, S.N.S. 1990, c. 17. The Commission is an independent advisor to the Government and is not a government department. The independence of the Commission enables it to make recommendations for law reform in a non-partisan manner. The Commission reports to the public and elected representatives of Nova Scotia, through the Minister of Justice and Attorney General for Nova Scotia.

The Law Reform Commission Act requires that there be between five and seven Commissioners. There are currently six part-time Commissioners: one judge selected by the judges of Nova Scotia; two community representatives selected by the Minister of Justice; two representatives of the Nova Scotia Barristers' Society; and one faculty representative from Dalhousie Law School. One of the Commissioners has been selected by the other Commissioners to act as President.

The Commission does not provide legal advice to individuals or organizations and does not intervene in individual cases. The Commission attempts, however, to provide the public with accurate legal information and often assists members of the public in locating legal information either directly or through other organizations. The Commission is funded by the Government of Nova Scotia and by the Law Foundation of Nova Scotia.

Attached to the original Report in Convocation file, copies of:

- (1) Copy of a grant application to the Law Foundation of Ontario.
(Appendix 2, pages 14 – 26)
- (2) Copy of a letter to Dean Patrick J. Monahan dated June 30, 2006 from Mary Shannon Brown, Executive Director, The Law Foundation of Ontario re: Grant No. 873-06.
(Appendix 3, pages 27 – 28)
- (3) Copies of the media coverage re: Law Commissions in Canada.
(Appendix 5, pages 34 – 37)

It was moved by Mr. Caskey, seconded by Ms. Pawlitzka, that Convocation approve the Law Society's participation in the proposal for a Law Commission of Ontario including making a \$100,000 contribution each year for five years.

Carried

ROLL-CALL VOTE

| | | | |
|----------------|---------|-------------|---------|
| Aaron | Against | Henderson | For |
| Alexander | For | Krishna | For |
| Backhouse | Against | Legge | Against |
| Banack | For | Manes | For |
| Bobesich | Against | Millar | For |
| Carpenter-Gunn | For | Murray | Against |
| Caskey | For | Pawlitzka | For |
| Chahbar | For | Potter | Against |
| Coffey | For | Robins | For |
| Copeland | Against | Ross | For |
| Crowe | Against | Ruby | Against |
| Curtis | Against | St. Lewis | Against |
| Dickson | For | Sandler | For |
| Doyle | For | Silverstein | Against |
| Dray | For | Simpson | For |
| Eber | For | Swaye | For |
| Filion | Abstain | Symes | Against |
| Finkelstein | For | Topp | Against |
| Finlayson | Against | Warkentin | For |
| Gotlib | For | Wright | For |
| Gottlieb | Against | | |
| Harris | For | | |
| Heintzman | For | | |

Vote: 26 For; 16 Against; 1 Abstention

MOTION – COMMITTEE APPOINTMENTS

It was moved by Mr. Henderson, seconded by Ms. Doyle,

THAT Thomas Heintzman be appointed Vice-Chair of the Professional Regulation Committee.

THAT Thomas Heintzman be appointed to the Proceedings Authorization Committee.

THAT Earl Cherniak be appointed Chair of the Proceedings Authorization Committee.

THAT Beth Symes be appointed Vice-Chair of the Proceedings Authorization Committee.

Carried

CONVOCATION ROSE AT 12:30 NOON

Confirmed in Convocation this 23rd day of November, 2006.

Treasurer