



British Columbia Law Institute

A Report on Year One

About the British Columbia Law Institute

Our Mission

The British Columbia Law Institute was created in January 1997 by incorporation under the Provincial *Society Act*. The purposes of the Institute are to work toward the improvement and modernization of the law and the administration of, and access to, justice. It does this through research in relation to the law and the development of recommendations and proposals as to the ways in which the law of the province should be modified or evolve.

Background to the Creation of the Institute

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 after the end of March 1997. 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

After some consultation to test the support for maintaining an institutional law reform presence in British Columbia, the founding members incorporated the Institute as a successor body to the Commission. They had two hopes in mind. The first was that the Ministry of Attorney General would permit a “rollover” of the assets and program of the Commission into this new body. The second was that sufficient financial support could be found to enable the Institute to continue, at least in part, the work of the Commission and to carry out a modest law reform program. Both of these hopes have been realized.

BRITISH COLUMBIA LAW INSTITUTE

Constitution

...

2. The purposes of the society are to:

- (a) promote the clarification and simplification of the law and its adaptation to modern social needs,
- (b) promote improvement of the administration of justice and respect for the rule of law, and
- (c) promote and carry out scholarly legal research.

About Our Predecessor The Law Reform Commission of British Columbia

The Law Reform Commission was created in 1969 by an act of the Provincial Legislature and began its operations in 1970. The Commission ceased operations at the end of March 1997 following a decision by the Provincial Government to discontinue funding it.

Over its 27 years of its existence the Commission submitted more than 140 reports on a wide variety of topics.

Most of the Commission's work remains accessible. Printed copies of many of its reports and other documents are available through the Institute.



**Institute Chair
Gregory K. Steele**

Liaison with the Judiciary

An important priority has been to establish appropriate links between the Institute and the judiciary. We were therefore pleased when Honourable Brian Williams, Chief Justice of the Supreme Court of British Columbia, designated a member of his court, The Honourable Mr. Justice Malcolm Macaulay, to facilitate liaison between the Institute and the bench. Mr. Justice Macaulay is invited to all meetings of the Institute's Board and has participated freely in our deliberations.

How to Reach Us

British Columbia Law Institute
300-845 Cambie Street
Vancouver, BC V6B 5T2
Voice: (604) 602 1682 Fax: (604) 602 1683
E-mail: bcli@bcli.org WWW: <http://www.bcli.org>

The Institute's elected executive members are:

Gregory Steele - Chair
Ann McLean - Vice-chair
Gordon Turriff - Treasurer
Prof. Jamie Cassels - Secretary

Arthur L. Close, Q.C. serves as Executive Director.

Our Supporters

The Institute has received general support from a number of bodies. Foremost among these has been the Law Foundation of British Columbia which has provided a grant supporting the operational aspects of the Institute as well as "seed money" for a research fund. In kind support has come from the Law Society of British Columbia, which is providing the Institute with office space in the Law Society building, and from the accounting firm of Ernst & Young, and Thorsteinsson's, tax lawyers, through the provision of professional services..

General grants have also been received from the British Columbia Branch of the Canadian Bar Association, the Vancouver Bar Association and the Advocate magazine. Grants have also been received in support of specific projects. The Real Estate Foundation of British Columbia has provided a grant in relation to the Institute's work on new home warranties and the Canadian Bankers Association has provided financial assistance in relation to our work on the *Trustee Act*.

In April 1998, the Institute was formally registered as a charitable organization with Revenue Canada and it is now in a position to issue tax receipts for donations received. This will significantly broaden the base of potential financial support for the Institute and enable it to approach funding sources whose support is confined to registered charitable organizations.

The Institute's Program

Developing the Program

When the Institute became operational, its first priority was to launch a program of law reform. Two full day program planning sessions were held in April and May 1997 at which the Board began formulating a strategy for a program of law reform. What emerged from these deliberations were three projects identified as those which should form the first program of the Institute. They were selected with a number of criteria in mind.

- The projects should all be capable of being brought to completion within a reasonable period of time.
- They should be projects with the potential to attract significant support from outside sources.
- Where possible, the projects should build on work done by the Law Reform Commission.
- Among themselves, the projects should strike a balance between those in which social policy issues play a major role and those in which issues of legal policy predominate.

The three projects selected as part of the Institute's initial program are:

- Modernization of the *Trustee Act*
- New Home Warranties
- Damages for Sexual Assault

These projects, and what has been accomplished to date, are described elsewhere in this Report.

Since the initial direction of the Institute's work was established, its program has continued to evolve. The provincial government has made known to the Institute its need for assistance in two different areas and the Institute has, under contract, embarked on projects and developed the materials in relation to the recognition of spousal and family status and on the *Builders Lien Act*.

Finally, work is being carried out on a group of shorter projects. These include an examination of the need for rationalized conflict of law rules in relation to family property disputes, a manual on gender-free legal writing and proposals for a *Contract Law Reform Act*.

The Institute and the Internet

The Institute is dedicated to the use of the Internet as a medium for gathering and disseminating relevant legal information. The Institute maintains a site on the World Wide Web (WWW) at the following address:

<http://www.bcli.org>

There are a number of features at the website.

Institutional and Project Information

Visitors to our website will find comprehensive information respecting the Institute, its structure and up-to-date information respecting the status of its ongoing projects.

The Law Reform Database

This is a legal resource unique in the world. It is, in essence, a computerized index to over 6,000 reports, consultation documents and other publications of law reform agencies worldwide. The database can be searched interactively through keyword queries. We continue to enrich and enlarge the database as new law reform publications are received.

Most of the documents in the database are part of the Institute's collection of law reform materials. Later this year, we hope to offer a service which will make the documents themselves available to users who do not have access to them.

British Columbia Law Reform Commission Publications On-line

The Institute has carried forward the work of the Law Reform Commission in making the publications of that body available through the Internet. In the last year, over 50 new documents have been put on-line and the balance has been reformatted and recoded for enhanced browsing via the World Wide Web.

By the end of 1998, we hope to have all of the reports of the Law Reform Commission accessible so they may be browsed on-line or downloaded in either of the two most popular word processing formats.

Division of Pensions on Marriage Breakdown

This Internet resource, originally created by the Law Reform Commission, provides information on the operation of British Columbia's legislation in relation to pension division on divorce. This Institute continues to support this site and is in the process of updating it to reflect amendments to the legislation made in 1997 and the changes in section numbers flowing from the recent statute revision process.

Builders Lien Act Materials

Our website contains a link to the user support package on the New *Builders Lien Act*. This package was prepared by the Institute for the Ministry of Employment and Investment.

Limitation Act Case Finder

The Institute supports a database of cases decided under the *Limitation Act*. The database may be searched interactively through queries based on section numbers or keywords.

Carrying Out the Program

A major challenge confronting the Institute has been to carry out a program of law research and reform with minimal resources. We have been engaged in the process of pragmatic experimentation with a number of approaches.

For the three projects that were selected as part of the Institute's initial program, three broadly based Committees were created. The membership of these Committees consist of a mix of members of the BCLI Board and non-members who bring particular perspectives or expertise to bear on the subject matter. In each case, the Committee is served by a paid Reporter who carries out whatever research is required and, under the direction of the Committee, drafts its reports and working documents.

The project in relation to the recognition of spousal and family status is being carried out under the direct supervision of Board member Thomas G. Anderson who is acting as Project Coordinator and will be drafting the Institute's report on this topic.

The preparation of the "user package" in relation to the New *Builders Lien Act* was largely the work of Arthur L. Close, Q.C., Board member and the Institute's Executive Director.

Finally, the shorter projects are being carried out internally with the bulk of the work being carried by the Executive Director and the Institute's Research Assistant.

The Major Projects

Project on Modernization of the *Trustee Act*

The ultimate goal of this project is not merely to redraft the Act in modern language, but to make it serve the needs of contemporary trusteeship. Many features of the Act are out of keeping with present-day business practice and some are significant obstacles to efficient trust administration. This is especially true of the statutory investment powers and requirements relating to registration of securities.

In addition, the *Trustee Act* has been a catchall over the years for many kinds of provisions that do not necessarily concern trusts and should now be more properly located in the *Estate Administration Act*, the *Property Law Act* and possibly other statutes.

In overview, the essential tasks in this project are to:

- identify provisions in the Act that have outlived their usefulness, or are out of step with current business and financial practices and require revision on this ground, even if there is still a case for retention.
- formulate positions on the issues addressed by provisions requiring attention, or that are raised by their repeal.
- formulate positions on areas of trust law that may not be specifically addressed in the existing *Trustee Act*, but which call for consideration in light of the demands of modern trusteeship.
- once requisite policy decisions have been made, draft provisions to implement them.
- draft a new *Trustee Act* in modern language incorporating what needs to be retained from the current Act as well as provisions reflecting new policy.

The immediate goal of this project is to address discrete areas of the *Trustee Act* perceived to be particularly in need of reform. These are trustee investment powers and trustee remuneration.

A Consultation Paper on Trustee Investment Powers was circulated by our Project Committee in April 1998 and the responses to it are under consideration. Copies of the Consultation Paper are available on request from the Institute. It may also be accessed through the Internet at the Institute's WWW site. A paper on Trustee Remuneration will be available shortly.

The Members of the Project Committee are:

Prof. Donovan Waters, Q.C. (Chair)
Prof. James MacIntyre, Q.C.
Margaret Mason
Kathleen Cunningham
Arthur L. Close, Q.C.

Gregory R. Blue serves as Reporter to the Committee.

Managing the Legacy of the Law Reform Commission

In addition to "inheriting" the tangible assets of the Law Reform Commission, we have also succeeded to the use and management of its intangible assets including publications and work in progress.

Publications

Our principal goal in relation to the publications of the Law Reform Commission is to ensure that this body of work continues to remain accessible to the public. The Institute's role in this regard will be crystallized in a licence agreement between itself and the provincial government, which gives us the status to deal with these publications. This agreement will be settled shortly.

The steps the Institute has taken to ensure that the work of the Law Reform Commission is accessible through the Internet has already been described. The Institute also has an inventory of printed reports and documents which are available for a nominal charge. Ordering information may be found at our website.

Work in Progress

The Institute is also building on the work of the Law Reform Commission that was ongoing at the time it ceased operations. Two of the Institute's initial projects carry forward what were formally Law Reform Commission projects. These are:

- Modernization of the *Trustee Act*
- New Home Warranties

The Institute and the Uniform Law Conference

The Uniform Law Conference of Canada is an inter-provincial body created for the purpose of promoting uniformity of legislation among the Canadian territories and provinces. It is now in its 80th year of operation and a significant number of British Columbia Statutes are based on *Uniform Acts* promulgated by the Conference.

- Executive Director, Arthur L. Close was at the August 1997 meeting of the Conference in Whitehorse as an Institute representative.
- At the 1997 meeting, a *Uniform Act* titled "*Uniform Enforcement of Canadian Decrees Act*" was finalized. This was based on work carried out by Arthur L. Close, BCLI Executive Director. The BCLI Chair, Greg Steele, was also present at the meeting as a representative of the British Columbia Branch of the Canadian Bar Association.
- At the 1997 meeting, a *Uniform Act* titled "*Uniform Jurisdiction and Choice of Law Rules in Domestic Property Proceedings Act*" was finalized. A working group chaired by BCLI Board member Thomas G. Anderson had carriage of this project on behalf of the Conference.
- BCLI personnel continued to assist with ongoing Uniform Law Conference project through participation in working groups on:
 - *Uniform Foreign Judgments Act*
 - *Uniform International Sales Convention Act*
 - Uniform legislation in relation to the exigibility of income security assets.

Project on Damages for Sexual Assault

This project has no antecedents in the work of the B.C. Law Reform Commission. Rather, it reflects concerns that have come to the attention of individual members of the BCLI Board. This is not an area of the law in which a coherent set of principles has yet emerged from the cases. The cases reveal a tension between a desire on the part of the judges to give a remedy to deserving victims and a concern to keep damages within reasonable limits.

The Institute believes that this is an area in which the development of the law should be left primarily with the judges and that a need for major legislative intervention has not been demonstrated. At the same time we believe the courts would welcome a critical analysis of the issues involved that contains reasoned suggestions as to the way the law might develop. The principal focus of this project is to provide such a resource to assist the courts as difficult cases arise.

To carry it forward, a Project Committee was constituted in August, 1997 to examine the broad issue of damages in cases of sexual assault. The focus of the Committee's work is on analyzing the current state of the law, and proposing guidelines for dealing with the often difficult issues in such cases.

More specifically, the Project Committee has identified the following issues as meriting consideration:

- the character and forms of harm suffered by the survivors of sexual assault
- the relationship between civil actions for damages and other forms of compensation in sexual assault cases (e.g. Criminal Injuries Compensation)
- the nature of the civil action for damages for sexual assault. To what extent is liability insurance available?
- vicarious liability or direct negligence actions against employers, guardians, care providers, etc., and their implications for the availability of damages in sexual assault cases
- the nature of the calculation of damages in actions for sexual assault.
 - should an itemized approach be used, and if so, what heads of damages should be recognized?
 - should awards include punitive, exemplary or aggravated damages?
 - how should wage or income loss be calculated?
 - should there be a cap on damages for sexual assault overall, or on selected heads?

- what is the effect of the Court Order Interest Act?
- what is the relation between punitive damages and criminal sanctions - is there a problem of “double jeopardy”?
- the need for a distinctive analysis of the impact of sexual assault on children, the elderly, and persons with physical and/or mental disabilities, and the implications for damage awards
- the need for a distinctive analysis of the sexual abuse of Aboriginal persons in the context of residential schools, and the implications for damage awards
- an examination of the impact of institutional abuse on survivors, and implications for damage awards
- the role and treatment of expert evidence in sexual assault actions

As part of its process, the Project Committee will be consulting widely with groups and individuals who have an interest and/or expertise in this area. The consultation process will assist the Committee in identifying priority issues, in grounding its work in the experiences of those working in and around these issues, and in making its work as accessible as possible.

Members of the project committee on damages for sexual assault are:

Prof. John McLaren (Chair)
 Professor Christine Boyle
 Professor Jamie Cassels
 Arthur Close, Q.C.
 Megan Ellis
 Kathryn E. Neilson, Q.C.
 Etel Swedahl
 Dr. Roy O'Shaughnessy

The researcher/reporter for the committee is Jennifer Koshan.

Project on New Home Warranties

The general law affords very little protection to the buyer of a newly built home which proves to be deficient in workmanship or materials. This was vigorously pointed out by the British Columbia Court of Appeal in its 1994 decision in *Strata Plan NW2294 v. Oaktree Construction Inc.*, 93 B.C.L.R. (2d) 50. The deficiencies in the law were so great that they prompted Mr. Justice Lambert of that court to make a cry for statutory reform. His observations led the Law Reform Commission to add a project on new home warranties to its program and a significant body of work was carried out before the Commission ceased operations.

The Institute and Other Law Reform Bodies

A priority during the past year has been to establish and maintain links with other law reform bodies. Participation in the world wide “community” of law reform bodies is important. It ensures that the work of the Institute is widely exposed and ensures that the Institute is kept up-to-date with the work of other bodies through arrangements for the exchange of documents. Receiving the reports and documents from other law reform bodies enables us to keep the Law Reform Database up-to-date.

We also maintain special links with our Canadian counterparts. This is done through active participation in the Federation of Law Reform Agencies of Canada, an umbrella organization covering groups like the Institute and by participating in *ad hoc* gatherings of Canadian law reformers. An example of the latter was the attendance of an Institute representative at “Law Reform 2000” hosted by the Alberta Law Reform Institute in March 1998.

We were also honoured by a visit from Roderick MacDonald, the first Chair of the newly created Law Commission of Canada.

Builders Lien Act **User Materials**

The enactment in 1997 of the *Builders Lien Act* was the combination of 25 years of work toward the creation of new and modern legislation in this area. The background to the Act included a report issued by the Law Reform Commission in 1972. Over the years since that time, the Institute's Executive Director had participated in a variety of initiatives aimed at implementing the recommendations made in that report.

We felt the Institute had an institutional stake in this development and were therefore pleased to respond when the Ministry of Employment and Investment suggested that the Institute might prepare some materials that would assist users in coming to grips with this new legislation. Pursuant to this arrangement, two printed publications and an Internet website were developed. At the heart of these materials is a document titled "Questions and Answers on the New *Builders Lien Act*" which has been published both electronically and in printed format. The printed version, over 150 pages, may be ordered through the Ministry.

The electronic version has been heavily coded for easy Internet access and allows the user to move seamlessly between various parts of the publication and the legislation itself. It can be reached through a link at the Institute's WWW site. Some indication of the popularity of the electronic version of this document lies in the fact that, as of the end of May 1998, it had been accessed by users almost 40,000 times.

The Institute and its members remain convinced that this is an area where reform measures are called for and initiated a project to carry forward the work started by the Law Reform Commission albeit with a somewhat different and narrower focus.

The Institute's project on new home warranties emphasizes the "consumer protection" aspect of this problem. Reform options under consideration include:

- extending existing consumer protection legislation such as the *Trade Practice Act* to new home purchases
- developing a generic list of statutory warranties that would form part of every purchase and sale of a home, similar to the statutory warranties available to the buyers of personal property under the *Sale of Goods Act*
- developing measures that focus on disclosure, implemented perhaps through amendments to legislation such as the *Real Estate Act*, obliging sellers and their agents to disclose, before any binding agreement is entered into and in a separate document, the extent to which the buyer is or is not protected under the transaction.
- developing measures that give buyers more effective remedies against insolvent sellers.

This project is being carried out through a Project Committee whose members are:

Professor Mary-Anne Waldron (Chair)
Martin Taylor, Q.C.
Arthur L. Close, Q.C.
Glen Urquhart, Q.C.
David Morris
Derek Neale
John Fraser

The Reporter to the Committee is Gregory R. Blue.

The work of the Committee has taken place against a rapidly changing background of developments as the "leaky condo" issue has led to a quickening of interest by the Provincial Government and the construction industry in improved protection for new-home buyers.

Late in 1997, the Province's Ministry of Housing let it be known that it was proceeding with consultations leading to the possibility of introducing legislation in 1998. When this occurred, the focus of the Committee's work shifted to providing input into that consultation process.

In April that process was overtaken by the creation of the Commission of Inquiry into the Quality of Condominium Construction in British Columbia (Barrett Commission).

On April 29 a submission was made to the Barrett Commission on behalf of the Project Committee stressing the need for the creation of a regime of statutory warranties to overcome the anomalies in the law highlighted in the Oak Tree Construction case.

The future direction of the Committee's work will likely be determined by the recommendations made by the Barrett Commission and the action taken on those recommendations.

Project on Recognition of Spousal and Family Status

Statute and common law address in great detail the legal incidents of marriage. Until recently, statutes and the common law both largely ignored relationships outside marriage. This is particularly true of same sex relationships.

In Canada, statutes overlooking the position of common law and same sex spouses have been challenged in a series of cases (mostly emanating from Ontario) relying upon human rights legislation and the Charter of Rights. Some of the more important of these cases include:

Egan v. Canada, [1995] 2 S.C.R. 513 (employment benefits and pensions);
Vriend v. Alberta, (1998) 156 D.L.R.(4th) 385 (S.C.C.)
M. v H. (1996) 31 O.R. (3d) 417 (C.A.) on appeal to the S.C.C. (spousal support obligations);
Rosenberg v. Canada (Ont. C.A.; April 23, 1998; Doc. CA C22807) (employment benefits and pensions);

Some observations about the cases:

1. They confirm that legislation ignoring spousal relationships outside marriage is, more often than not, discriminatory and represents a blind spot to changes in the family structures of our communities.
2. The court review/challenge approach is very expensive (to the parties and to those affected by the far-ranging results of these reviews). It makes more sense to deal with these issues in an orderly, principled way, allowing time under revising legislation for all parties to come to grips with the revised rules.
3. Since cases are making their way to the appellate courts, there may be some reason to delay and await guidance. On the other hand, the appellate courts are not as well placed as an organization such as the Institute to review all aspects of the social dimensions of this kind of law reform initiative.

Short Projects

Report on the Need for Uniform Jurisdiction and Choice of Law Rules in Domestic Property Proceedings

Interprovincial migration has climbed steadily over the last two decades. The increased mobility of our population has meant that, increasingly, the law of more than one province or territory may be relevant to determining the rights of the parties when the marriage breaks down.

The courts may encounter difficulties in relation to both jurisdiction and choice of law. It is not always clear when a court has the power to hear a particular case and, if it does, whether the court should apply local law or the law of some other place. The British Columbia rules for resolving issues of this kind arose in the context of commercial disputes and are not well suited to resolving disputes in relation to family property. These issues were addressed in 1997 by the Uniform Law Conference of Canada which promulgated its Uniform Jurisdiction and Choice of Law Rules in *Domestic Property Proceedings Act* (the "Uniform Act").

In a short report issued in July 1998, the Institute examined the suitability of the *Uniform Act* for adoption in British Columbia, provided an overview of its operation and endorsed its enactment in this province as part of our *Family Relations Act*. A copy of the report is available from the Institute at a nominal charge.

**Gender-free Legal Writing:
Managing the Personal
Pronouns**

Many legal writers wish to adopt a style which is free of gender specific references. One of the most difficult aspects of achieving that goal is coping with the personal pronouns such as "he" "his" "him" "himself" etc.

This report, issued by the Institute in July 1998, is a "how to" manual on gender-free legal writing that focuses expressly on the personal pronouns. It describes a number of writing techniques, tips and tricks that will help legal writers achieve a gender-free result. The use of the techniques is illustrated by numerous examples.

The report is available from the Institute for a nominal charge.

Landmark legislation was passed by the B.C. government in the 1997 session of the legislature--the *Family Relations Amendment Act, 1997* ("FRAA")--amending the *Family Relations Act* to recognize same sex spousal relationships.

This legislation came into force on February 4/98. It sets out basic standards against which the principles adopted in other B.C. legislation must be tested.* To the extent that common law and same sex relationships are treated dissimilarly from marriage, it is fair to inquire whether such distinctions are maintainable.

The Ministry of the Attorney General has engaged the British Columbia Law Institute to undertake a project on Spousal Relationships which would consist of the following:

- A review and assessment of all references in the provincial statute books to "spouse," "husband" or "wife" (and other words denoting these kinds of relationships) to determine whether they are consistent with the principles endorsed by the legislature in the FRAA.
- If particular statutory references depart from the FRAA principles, the inquiry would be
 1. to determine whether the particular statutory references can be revised to harmonize with the FRAA principles and, if so
 2. to recommend the necessary amendments for that purpose.

The FRAA principles should be extended to other B.C. legislation unless there are sound reasons such as limitations imposed by federal legislation, for not doing so. This project will also attempt to provide solutions to overcome the practical difficulties that prevent equal treatment of the relationships.

Progress to date on this project has included the creation of a database of B.C. legislation (R.S.B.C. 1996, 1996 Supplement, and S.B.C. 1997 statutes) to assist in our analysis. It consists of all statutory references that use one or more of the following terms (or variations on them):

spouse, family, father, mother, child, daughter, son, sibling, relative, nephew, niece, step relationships, brother, sister, wife, husband, widow, marriage, related, in loco parentis, dependant, kin.

* In 1998, further legislation was introduced extending the principles of the FRAA to public sector pension plans. See Bill 38, *Pension Statutes Amendment Act (No. 2)* 1998.

Research has been carried out in the following areas:

- Cases under provincial human rights legislation addressing spousal and family status.
- Cases under the Charter of Rights relevant to spousal and family status.
- A review of the literature pertaining to spousal and family status.
- Preliminary identification of principles upon which to base legislative analysis.
- Preliminary analysis of B.C. statutes to identify extended definitions, exclusionary definitions, and statutes which use undefined family relationship terms.
- Analysis of extended definitions currently in use and which have been proposed (importance of dependency, cohabitation, duration of relationship, etc.).
- Identifying legal principles that currently determine the extent to which spousal and family status is recognized in the following areas (at this stage, the review has not been limited to matters exclusively within the competence of the province):
 - agreements between family members
 - competition respecting rights and entitlements when there is more than one spouse
 - conflicts of interest that arise by reason of family relationships
 - distinctions in rights, obligations and entitlements (and the extent to which these have been affected by recent amendments to the *Family Relations Act*) in the following family law areas:
 - children (adoption, protection of children)
 - division of property
 - spousal support
 - rights to marry and alternatives
 - employment issues: promotion/advancement; disqualification from employment; spousal and family based financial and non-financial benefits (basic and extended medical and dental care; pension plans; bereavement leave; sick leave; maternity and parental leave; marriage leave; leave to care for a sick family member); costs and tax issues.
- guardianship/committeeship
- hospitals (next-of-kin, visiting rights, organ donors, consent to health care, consent to autopsies)
- immigration
- information collection/vital statistics/privacy
- insurance issues
- limitation periods (particularly those that apply on the loss of status)
- prison (e.g., family and conjugal visits)
- relational injuries (family compensation)
- rights that arise on the end of a family relationship
- social assistance benefits: structure and entitlements: GAIN, OAS, Medical Services Plan, continuing care, prescription drug assistance, disability benefits,
- wills and succession rights

This Project is scheduled for completion by November, 1998.

Short Projects continued

Proposals For a Contract Law Reform Act

A report on this topic will be issued shortly. Its aim is to pull together, in a single statute, a number of provisions that modify the general law of contract. Some of these provisions are part of the current law and may be found in the *Law and Equity Act* and the *Frustrated Contract Act*. Other provisions are based on as yet unimplemented recommendations of the Law Reform Commission made in its past reports.

The basic purpose of this proposal is to make the law more accessible. Most of the current provisions are buried in a mass of complicated and unrelated provisions in the *Law and Equity Act* and a search for them can be a wasteful and frustrating exercise.

The *Contract Law Reform Act* we propose would have two functions. The first would be that described above - to consolidate and make accessible the existing enactment that affect the general law of contract. The second is to provide a suitable vehicle for the implementation of three Law Reform Commission reports in this area that have not yet been acted on. The report will set out the full text of a draft Act along with a commentary to give something of a flavour of the operation of its provisions.

Once issued, the report will be available from the Institute.

BRITISH COLUMBIA LAW INSTITUTE

Bylaws

...

4. (1) The society shall consist of 13 members as follows:

- (a) two persons appointed by the Attorney General;
- (b) two persons appointed by the executive committee of the Law Society of British Columbia;
- (c) two persons appointed by the executive committee of the British Columbia Branch of the Canadian Bar Association;
- (d) one person appointed by the Dean of the Faculty of Law, University of British Columbia;
- (e) one person appointed by the Dean of the Faculty of Law, University of Victoria;
- (f) five persons appointed by the persons appointed under clauses (a) to (e).

4 (2) The applicants for incorporation of the society are deemed to be persons appointed under Bylaw 4(1)(f).

(3) Membership in the society is for a term of 5 years or until successors are appointed, and a member may be reappointed.

...

25. The directors of the Society shall be the members of the Society from time to time and

- (a) every person who is appointed as a member under Bylaw 4(1) or is deemed to be appointed as a member under Bylaw 4(2) becomes a director at the time the person is appointed, and
- (b) every person who becomes a director, ceases to be a director at the time the person ceases to be a member

The People

The by-laws of the Institute provide that it is composed of 13 members, eight appointed by stakeholder groups and the balance serving as “members-at-large.” Every member is also a director.

Thomas G. Anderson

Member at large

Prof. Christine Boyle

U.B.C. Faculty of Law, Dean’s nominee

Prof. Jamie Cassels

U. Vic Faculty of Law, Dean’s nominee

Arthur L. Close, Q.C.

British Columbia Law Institute, Member at large

Sholto Hebenton, Q.C.

McCarthy Tetrault, Law Society nominee

Ravi. R. Hira, Q.C.

Watson Goepel Maledy, A.G. nominee

Gordon Turriff

Douglas Symes & Brissenden, Member at large

Prof. James MacIntyre, Q.C.

U.B.C., Law Society nominee

Ann McLean

Min. of A.G., CBA (BC) nominee

Douglas Robinson, Q.C.

Lawson Lundell & Co., CBA (BC) nominee

Gregory Steele

Steele Urquhart Payne, Member at large

Etel R. Swedahl

Swedahl McPherson, A.G. nominee

Hon. Martin Taylor, Q.C.

Davis & Company, Member at large

Conclusion

The members of the Institute are proud of what has been accomplished in the first year of its operation. Creating a body like this from scratch is no small task. It would not have been possible but for the generous support received from the persons and bodies mentioned earlier in this Report.

The role of the Law Foundation calls for particular comment. Apart from financial support, the Foundation has been a welcome source of advice and assistance on a whole range of issues and we have benefitted greatly through becoming a member of the group of Foundation supported agencies. Our particular thanks to Azim Dato, Q.C., a Governor of the Foundation with special responsibilities for liaison with the Institute and Pat Pitsula, the Executive Director of the Foundation.

We also wish to acknowledge the significant contribution made by the participation in our Project Committees - the members and Reporters and particularly those individuals who have accepted the responsibility of chairing the Committees: Professor Donovan Waters, Q.C., Professor John McLaren and Professor Mary-Anne Waldron.

Finally, we wish to acknowledge the important role played by the Institute staff in keeping things running smoothly on a day-to-day basis. They are: Tracy Lee, our secretary/receptionist and Marcus Patz, our librarian/webmaster.

Again we thank all those persons and bodies whose contribution has made our first year the success it is.