LAW REFORM COMMISSION OF BRITISH COLUMBIA

ANNUAL REPORT
1989/90

LRC 113

The Law Reform Commission of British Columbia was established by the *Law Reform Commission Act* in 1969 and began functioning in 1970.

The Commissioners are:

ARTHUR L. CLOSE, Q.C., *Chairman*

HON. RONALD I. CHEFFINS, Q.C., *Vice-Chairman*

MARY V. NEWBURY

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TO THE HONOURABLE BUD SMITH, Q.C.
ATTORNEY GENERAL OF THE PROVINCE OF BRITISH COLUMBIA

The Law Reform Commission of British Columbia has the honour to present its Annual Report for 1989/90.

I TWENTY YEARS OF LAW REFORM

It is difficult to tie the origins of the Law Reform Commission to a particular date, but 1989 and 1990 brought the 20th anniversary of two significant events: the enactment of the *Law Reform Commission Act*, the Commission's enabling statute, and the first formal meeting of its members. These were marked by the publication, in *The Advocate*, of a short retrospective titled "Twenty Years of Law Reform." For the benefit of our out-of-province readers, we are pleased to reprint it as Appendix F to this Annual Report.

II 1989/90 IN BRIEF

During the period under review, Reports were submitted to you on the following matters:

Severance of Unconstitutional Enactments

The *Commercial Tenancy Act*

Vicarious Liability under the *Motor Vehicle Act*

The Enduring Power of Attorney: Fine-Tuning the Concept

Loss Appraisal under the *Insurance Act*

Property Rights on Marriage Breakdown

The Ultimate Limitation Period: *Limitation Act*, Section 8

Notice Requirements in Proceedings Against Municipal Bodies

The last five reports noted all arise out of, or are connected with, matters identified in *Access to Justice, the Report of the Justice Reform Committee*, as suitable for examination by the Law Re-

form Commission. They were referred to us by the Attorney General for study and report.

In the past year, progress was also made on a number of other projects on the Commission's program, as these were brought closer to completion.

III PERSONALIA

As presently constituted the Commission consists of five members: Arthur L. Close, Q.C., Chairman; Hon. Ronald I. Cheffins, Q.C., Vice-Chairman; and Miss Mary Newbury, Professor Lyman R. Robinson, Q.C., and Dean Peter Burns, Q.C., Commissioners. Details of their appointments may be found in previous Annual Reports. All Commissioners, other than the Chairman, serve on a part-time basis. A full list of past and present members of the Commission is set as Appendix D to this Report.

We note with sadness the death in September 1989 of a former Chairman of the Commission. The Honourable Mr. Justice John S. Aikins joined the Commission in 1980. The 3-1/2 years he served as Chairman was a period of great productivity and his leadership contributed significantly to it. He is remembered with great respect and affection.

IV THE PROGRAM

The description below is limited to those projects which were active in the past year. Details of other projects may be found in earlier Annual Reports. Included as Appendix A is a table setting out all Reports which the Commission has made to date, and references to legislation in which the recommendations have been implemented in whole or in part. Appendix B sets out a list of the Working papers which the Commission has issued for consultation purposes.

1. Debtor-Creditor Relationship Topics

(a) Enforcement of Judgments Between Canadian Provinces

The law which surrounds the enforcement of out-of-province judgments is deficient. It reflects principles which evolved to govern the enforceability of judgments between nations rather than units of a federation. Their application in a Canadian context is dubious. For example, under the current rules a person seeking to enforce a judgment from Alberta is no better off in substance (and little better procedurally) than if the judgment were from Albania. Change has been stifled by a view that any relaxation of these rules must be approached on the basis of reciprocal arrangements between provinces. This seems wrong in principle and a larger view is called for.

In November 1989, a Working Paper titled *The Enforcement of Judgments Between Canadian Provinces* (WP 64) was released by the Commission for consultation. It proposes that money judgments emanating from the courts of other Canadian provinces should be enforceable in British Columbia on a "full faith and credit" basis and that the range of defences which can now be raised to resist the enforcement of an out-of-province judgment should no longer be available to the judgment debtor. A scheme which embodies this principle is set out in the form of draft legislation in the paper.

The scheme proposed by the Commission rejects reciprocity as an essential element of reform. A "full faith and credit" approach does not depend on other jurisdictions adopting a similar view. At the same time, this is clearly an area which would profit from concerted action at the national level. The Working Paper sets out some suggestions as to the form a national initiative might take.

(b) Execution Against Shares

The *Study Paper on The Office of the Sheriff* published by the Commission in 1983 identified a number of substantive and procedural problems which arise out of the law which currently governs the seizure and sale of shares by an execution creditor. These problems were examined in greater detail in our *Working*

Paper on Execution Against Shares (WP No. 55) which was circulated for criticism and comment in 1987.

The Working Paper tentatively concluded that there are a number of difficulties inherent in the current legislation which governs execution against shares and proceeded to develop detailed proposals for a new and modern scheme. The proposals were embodied in draft legislation to amend the *Court Order Enforcement Act*.

The priority which it was necessary to give to other projects on the Commission's program during the past year precluded any concerted attention directed to this one. We hope to be able to return to it later in 1990.

2. REAL PROPERTY LAW TOPICS

(a) Commercial Tenancy Act

This project examines selected topics in the law of landlord and tenant applicable to nonresidential tenancies. Its focus is a critical examination of the *Commercial Tenancy Act*. The Act is a pot-pourri of remedial legislation enacted at various times over the course of four centuries and which, for the most part, was incorporated into our statute book in the late 1890's. Many of its provisions were, even then, outdated and the passage of a further 90 years has only aggravated matters. The Act embodies obsolete concepts and employs obscure language which renders inaccessible important rules of law. There are also a number of important issues in the law relating to commercial tenancies that should be clarified and restated in legislation.

In December 1989 we submitted our final Report on the *Commercial Tenancy Act*. The Report takes a fresh look at virtually every provision of it and sets out the draft of a wholly new Act which aims to be simple and comprehensible.

(b) Joint Project on Land Title Law

The Alberta Law Reform Institute has been the catalyst for a joint project on land title law. Participating are representatives of law reform agencies and land registry officials from the western provinces, the territories and Ontario. We joined the

project early in 1987 and are participating in co-operation with the Director of Land Titles for the Province.

The joint project involves the preparation of draft materials under the auspices of the Institute. These have formed the focal point for discussion and debate among the participating jurisdictions. The most recent meeting of the group was held in Toronto in mid-October, 1989. The final report of the joint project will include "model" land title legislation. It should be available later in 1990.

3. VICARIOUS LIABILITY UNDER THE *MOTOR VEHICLE ACT*

Vicarious liability is a concept used in the *Motor Vehicle Act* to define the legal position of a person who owns a vehicle driven by another person in a way that gives rise to civil liability, or violates provincial law. Broadly speaking, the Act imposes liability on the owner of the vehicle for wrongs or offences that are committed by the operator.

The use of vicarious liability in this context raises a certain questions. Is the imposition of vicarious liability the best way of attaining the goals of the legislation? What should the limits of liability be? What kinds of defences should be available to an owner who is made liable for the acts of another? What kind of conduct, if any, should excuse him from liability? What sorts of persons should the notion of owner encompass? These are difficult and important issues. They arise out of a tension between the ends and the means. The goals served by vicarious liability are undoubtedly worthwhile and in the public interest. As a legal technique, however, it is difficult to reconcile with the widely-held view that only blameworthy conduct should attract punishment or liability -- a view reflected, at least in part, in the *Charter of Rights and Freedoms*.

In late June 1989 the Commission submitted its final *Report on Vicarious Liability under the Motor Vehicle Act* (LRC 106). Recommendations were made to modify the application of vicarious liability for offences by adopting alternative strategies. Recommendations were also made to clarify the meaning of "owner" for both civil and penal liability under the Act.

4. Property Rights On Marriage Breakdown

Late in 1983, a decision was taken by the Commission to re-enter the troubled area of family law. Among the largest and most difficult of the individual topics which were identified as suitable for potential action by the Commission was that of family property. As a preliminary step, we commissioned a survey of the then-current jurisprudence and practice surrounding the provisions of the *Family Relations Act* concerning family property. The research undertaken by Michael Karton and Tom Anderson formed the basis of a *Study Paper on Family Property* that was published in 1985. The Study Paper contained no formal recommendations by the Commission for changes to the *Family Relations Act* although the Paper did point out some directions that reform might take.

The Study Paper was issued with two aims in mind. First, as the introduction to the Paper stated, it was hoped that the paper might "lead to a more sophisticated understanding of, and approach to, the Act" which, in turn, might diminish the need for legislative change. Second, the Paper would provide a foundation for further Commission work in relation to family property. One area covered by the Paper that was subsequently brought forward as a formal report concerned *Spousal Agreements* (LRC 87, 1986).

In November 1987 the former Attorney General wrote to the Commission requesting that we review the law in relation to the property consequences of marriage breakdown, with particular emphasis on the status of property acquired before marriage and of inherited property. This reference opened up the balance of the issues canvassed in the Study Paper and further study and research was carried out. By the late summer of 1989, our work had advanced to the point where tentative proposals were settled.

These proposals contemplated a major overhaul of Part 3 of the *Family Relations Act* and were embodied in draft legislation which, in turn, was set out in a major Working Paper titled *Property Rights on Marriage Breakdown*. The Working Paper described in some detail the operation of our current law in relation to family property and concluded that it is deficient in a number of respects. The basic proposal in the Working Paper was that

our *Family Relations Act* should adopt, as several Canadian provinces have done, a principle that spouses should share equally in wealth that has been accumulated during marriage.

After the Working Paper went to press, the Law Reform Commission received a request from the Attorney General that our work in relation to property rights on marriage breakdown be expedited. In particular he asked that we "take all necessary steps to conclude the work of the Commission on this important topic before March 1990 in order that the Commission's Report will be available to the government for consideration when legislation is introduced next Spring."

The Attorney General's request presented a special challenge to both the Commission and to the various persons and groups who wished to make submissions and comment on the proposals set out in the Working Paper. The realities were that the Commission's consultation process had to be virtually complete by the end of 1989 if final recommendations were to be available to the Attorney General in the time requested and a deadline for response to the Working Paper was set at December 15, 1989.

The process of consultation is probably the most important part of any work we carry out and, in this project, it proved to be particularly useful. The advice we received convinced us that major changes in the law governing family property should be approached with great caution but that much of the necessary change could be accomplished through a few carefully crafted amendments to the current legislation. The Commission's final *Report on Property Rights on Marriage Breakdown* (LRC 111) was submitted in March 1990. It recommends that Part III of the *Family Relations Act* be amended to clarify the philosophy or reason for dividing family property between spouses on marriage breakdown. Changes are also recommended which will clarify the status of particular classes of property.

5. The Division Of Pension Rights On Marriage Breakdown

A matter referred to us separately, early in 1988, is the division of pension rights on marriage breakdown. This reference, obviously, is intimately connected with our more general work on property rights on marriage breakdown described above. Pen-

sions, however, raise a number of issues which make it sensible to deal with them separately. These issues are both theoretical and mechanical. Dividing rights to a future stream of income in a way which is fair to both spouses (as well as the plan and its administrator) is qualitatively different from dividing an existing asset of fixed value. Our basic research is proceeding.

6. Court Jurisdiction

In May 1989, the Commission issued a Study Paper concerned with the extra-territorial jurisdiction of the Supreme Court of British Columbia. The Study Paper derives from a research paper prepared by John Horn (now Supreme Court Master) for the Attorney General's Rules Revision Committee of which he is a member.

The Horn study was a response to a long-standing concern of the Committee about the effect of the revision of the Supreme Court Rules in the mid-1970s. The revised Rules significantly relaxed the former rules for service of legal process outside the province. The Committee's concern centred on the relationship between the rules governing service outside the province and the substantive jurisdiction of the court. This relationship is not free of ambiguity and, in altering the former, it is likely that the latter had also been changed in some way. The Committee felt that a relatively detailed study of court jurisdiction itself was required -- thus the Horn study.

The Horn study was considered by the Committee earlier in 1988 and, at that time, a question was raised whether the Law Reform Commission might have a role to play in further developments with respect to it. A number of factors which argued in favour of Law Reform Commission involvement, and our own sense that the Horn study was a document which deserved broader exposure, made us very receptive to an invitation that we participate, in some fashion, in carrying forward this work.

Our project on *The Enforcement Judgments Between Canadian Provinces* was been described earlier in this Report. Reform of the kind proposed in that project might well be accompanied by reform in relation to jurisdiction issues, both provincially and nationally. If that should occur, we would expect the Horn study to

provide a useful source of ideas as to the directions reform might take.

7. Severance Of Unconstitutional Enactments

In early May 1989, the Commission submitted a *Minor Report on Severance of Unconstitutional Enactments* (LRC 105). It reflects the Commission's concern that the availability of severance should be more visible. In particular, the Commission recommended that an omnibus severance provision be added to the *Interpretation Act*.

The Report points out that such a provision would not change the law in the sense that the ability of judges to employ severance where it ought to be used would be neither limited nor enlarged. What it would accomplish would be to focus attention on severance as an option to be borne in mind in all cases in which a provincial enactment may be *ultra vires* and it would also stake out, very clearly, a "default position" concerning the intent of the provincial legislature. The Minor Report is printed as Appendix F to this Report.

8. Justice Reform References

In *Access to Justice, the Report of the Justice Reform Committee,* several statutes were identified which the Committee felt merited further study and it recommended that a number of these be referred to the Law Reform Commission for that purpose. We commented on this suggestion in our response to that Report (LRC 101, 1988) and offered our own views on what might appropriately be referred to us.

On July 7, 1989, the Attorney General wrote to us as follows:

> I am writing to request the assistance of the Law Reform Commission respecting four statutes referred to in Access to Justice,the Report of the Justice Reform Committee.
>
> ...
>
> I wish to request that you address these following specific matters respecting each of the four above named statutes:
>
> > *Limitation Act* - an assessment of the merits of special limitation periods as applied to particular classes of people, such as different professional or occupational groups.

Patients Property Act - a specific re-examination of the concept of "enduring power of attorney".

Municipal Act - a re-examination of the recommendation in the Law Reform Commission's 1974 *Report on Limitations* that the requirement that sixty days notice be given to municipalities where a lawsuit for injury or loss is planned be repealed.

Insurance Act - a study of possible reforms respecting claims for losses due to interruption of business.

I am most interested in considering any recommendations which the Commission may develop respecting these matters for inclusion in the 1990 Legislation Program.

Set out below is what the Commission has done in response to this reference.

(a) Loss Appraisal under the Insurance Act

The aspect of the *Insurance Act* raised by the Attorney General involved "claims for losses due to interruption of business." Further inquiries revealed that the concern which gave rise to this reference was that the scope of the appraisal procedure provided in section 11 of the *Insurance Act* is unduly narrow. First, it is mandatory only in the case of losses caused by fire, but not with respect to property losses which are essentially similar in character, but which arise out of some other peril. Second, even where the loss is by fire, the appraisal procedure does not extend to quantifying losses of profit or losses arising out of business interruption which may be within the scope of the policy.

In July 1989, we submitted to the Attorney General a *Minor Report on Loss Appraisal under the Insurance Act* (LRC 107) which recommended amendments to the *Insurance Act* to remedy these deficiencies.

(b) The Enduring Power of Attorney: Fine-Tuning the Concept

An enduring power of attorney is one which, by its terms, retains its validity notwithstanding the subsequent mental incapacity of the principal. At common law, that incapacity terminated the power of attorney. Approximately 10 years ago, the *Power of Attorney Act* was amended to alter the common law rule and permit the creation of enduring powers of attorney. This

amendment reflected recommendations made by the Law Reform Commission in 1975. An enduring power of attorney provides a mechanism for the management of the property of a person who has come under a disability. It provides a simple alternative to the appointment of a guardian or committee by the court under the *Patients Property Act*.

The experience in British Columbia, and in other jurisdictions, with enduring powers of attorney have led to a re-examination of the concept, with a view to its improvement and refinement. For example, a difficulty with the enduring power of attorney, in the form currently authorized by the Act, is that it takes effect immediately rather than at the future time when its use is contemplated. Many principals are uncomfortable with that result. The answer to this concern, adapted from the laws of New York State, is the "springing power of attorney" which will become legally effective on the occurrence of an event (which may include incapacity) stipulated by the principal if the occurrence is evidenced in conformity with the enabling Act.

The Commission's final Report on this topic (LRC 110) was issued in February, 1990. It endorses the concept of the springing power of attorney as a device which should meet the concerns of principals and add an additional dimension of flexibility to the enduring power of attorney. Appropriate amendments to the *Power of Attorney Act* are recommended, along with certain other changes designed to clarify the relationship of that Act and the *Patients Property Act*.

(c) Notice Requirements in Proceedings Against Municipal Bodies

The *Municipal Act* and the *Vancouver Charter* both provide that a claim for damages against a municipality or the City may be successfully asserted only if the claimant has delivered a written notice of the claim within two months from the date the damage was suffered. In many cases a failure to give notice of the claim does not prejudice the municipality and the only function of the requirement is to provide a "technicality" behind which the municipality and its insurer can hide to defeat otherwise worthy claims. In 1974 the Commission recommended that these notice requirements be abolished.

As requested by the Attorney General, we have reconsidered this issue and in January, 1990, submitted our *Report on Notice Requirements in Proceedings Against Municipal Bodies* (LRC 109). In the Report we recommend that the notice provisions be retained but in a significantly modified form. The kinds of claims for which notice would be required would, under our recommendations, be limited to those having an "occupiers liability" character or which are based on nuisance. The recommendations also provide for a more generous saving provision which would enable the courts to avoid injustice in individual cases.

(d) The Ultimate Limitation Period: Limitation Act, Section 8

The request of the Attorney General to consider "the merits of special limitation periods as applied to particular classes of people, such as different professional or occupational groups" leads inescapably to section 8 of the *Limitation Act*. Section 8 provides for an "ultimate limitation period" (ULP) which places a "cap" on the effect of various rules which would otherwise postpone or interrupt the running of shorter limitation periods provided elsewhere in the Act. The ULP is of greatest significance in relation to the "discovery rule" which prevents a limitation period from running against a potential plaintiff until he has learned certain facts concerning his claim. Without a ULP a claim might continue to exist indefinitely, to the great disadvantage of the defendant.

Section 8 provides a general ULP of 30 years except where the defendant is a medical practitioner, a hospital, or a hospital employee. In the latter case the ULP is 6 years. This reference required that the operation of Section 8 be carefully reviewed and a number of issues considered concerning the claims of doctors, hospitals and other professional groups to special treatment under section 8.

The Commission's final Report (LRC 112), submitted in March 1990 recommended that both periods should be replaced by a single ULP of general application of 10 years. A 30 year period would be retained only in cases tainted by fraud. Further recommendations would modify the application of the ULP in other aspects. The rights of minors would be protected and the

time at which the ULP begins to run would be defined with greater precision.

9. THE LAW REFORM DATABASE

In 1988 the Commission began the process of creating a computerized database of law reform activity in Canada, the Commonwealth, and selected American jurisdictions. The database is intended to serve as a research tool to assist in ascertaining what attention particular topics may have received from law reform institutions. The database is ultimately expected to cover between 3 and 4 thousand documents, each document comprising a Report, Working Paper, or similar publication emanating from a law reform agency. The database was described in greater detail in our *Annual Report 1988/89*.

Work on the database continued in the last year at an accelerated pace. Early in 1990 the first phase was completed and a preliminary version of the database was distributed to selected users. The preliminary version covers virtually all reports and related documents issued by the full-time law reform agencies in Canada, Australia, England, New Zealand and Hong Kong. While numerically, these comprise less that half the documents which will ultimately be brought in to the database, for those doing research in Canada and the Commonwealth they are the most important and will probably meet 90%-95% of the research needs in this area. Details are available on request from the Commission.

10. DISCONTINUED PROJECTS

Our last Annual Report listed two projects on which active work has since been discontinued: Appeals from Statutory Agencies and Structured Compensation for Personal Injury. In both cases these are matters identified by the Justice Reform Committee as calling for action and which, we understand, are being dealt with internally by the Ministry of Attorney General.

11. SUBJECTS OF INTEREST

Preliminary research or the gathering of material regularly proceeds on a number of matters which are not yet part of the Commission's program or under active consideration for addition

to it. In most cases the preliminary work is to determine if a particular topic is appropriate for formal inclusion in the program as a Commission project. Many of these matters which are under preliminary consideration arise out of particular suggestions made, and problems drawn to the Commission's attention, by the legal profession and members of the public.

V ACTION ON COMMISSION RECOMMENDATIONS

A. INTRODUCTION

In previous Annual Reports we have expressed our pleasure in the interest taken in our work by successive Attorneys General, as reflected in the implementation of recommendations contained in past Commission Reports. This interest continued during the past year with legislation that carried forward Commission work and recommendations made in four different Reports.

B. *PERSONAL PROPERTY ACT*

The past year saw the enactment of a new *Personal Property Security Act*. This development was foreshadowed by the distribution, for discussion and comment, of a draft act and commentary in 1988. For the Law Reform Commission the enactment of this legislation represents the final step in a reform process that stretches back many years. This topic formed one of the first projects on the Commission's Program and in 1975 a lengthy *Report on Personal Property Security* (LRC 23) was submitted. In the ensuing years Commission personnel served on a number of bodies which worked toward the development of model and uniform legislation in this area.

The new Act represents, to us, the culmination of this process. It is "state of the art" in the sense that it incorporates all the latest and best thinking in this area and draws on the experience of jurisdictions which have had legislation of this kind in place for some time. We are pleased to note that many innovations and ideas which first appeared in our 1975 Report have been adopted. We believe that our Report, and subsequent in-

volvement, has made a useful contribution to the development of Canadian law in this area.

A second Commission Report was also implemented in the *Personal Property Security Act* as part of the consequential legislation and amendments. Amendments to the *Land Title Act* were made which reflect the recommendations made in the *Report on Floating Charges on Land* (LRC 103, 1989).

C. OTHER LEGISLATION

Two other Reports were also implemented in 1989. *Report on the Land (Settled Estate) Act* (LRC 99, 1988) was implemented through the repeal of that act and a minor amendment to the *Trust Variation Act*. Our *Minor Report on Practice in Relation to the Cancellation of a Certificate of Lis pendens* (LRC 98, 1988) was implemented through amendments to the *Land Title Act*.

VI THE AVAILABILITY OF COMMISSION PUBLICATIONS

All final Reports on major topics issued by the Commission are formally published with the intention that they be available to the public. From time to time the Commission also submits minor Reports, in the form of a letter to the Attorney General. These minor Reports are usually reproduced in full as appendices to the Annual Report which covers the period in which the minor Report was made. Our Annual Reports are distributed by the Commission and are available on request and free of charge so long as supplies last.

Crown Publications Inc. is responsible for the distribution of all Reports made by the Commission on particular topics. A nominal charge is made for copies of those Reports. Orders should be directed to:

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are now out of print and are not available for purchase. Those Reports are indicated with an asterisk in Appendix A.

Crown Publications Inc. maintains a "notification list" and all persons on the list are advised upon publication of a Commission Report, so they may order copies if they wish. Standing orders for Commission Reports may also be lodged by certain categories of buyer. Anyone who wishes to be added to the notification list, or wishes information concerning standing orders should contact Crown Publications Inc.

The Commission is solely responsible for the distribution of its Working Papers. These documents are usually produced in limited quantities and our supplies of them are invariably exhausted by, or shortly after, their initial distribution. Usually we are unable to respond to requests either for copies of past Working Papers or to be placed on a mailing list to receive copies of all Working Papers.

VII RELATIONSHIP WITH OTHER AGENCIES

Our ties with other law reform agencies continue to strengthen and prosper. This is achieved in a number of ways. The first is through the reciprocal arrangements for the exchange of documents which we maintain with law reform bodies throughout the common law world. We regard these arrangements as very important to our work.

Also of high importance is our participation in the work of the Law Reform Conference of Canada. This is the name adopted by the Canadian law reform agencies to describe the entity through which they act collectively. Until recently the principal function of the LRCC was to coordinate an annual meeting of agency representatives and this required only a loose structure. The LRCC is maturing and is in the process of reviewing its structure with a view to developing more formal and permanent machinery. This should enable it to function more effectively on behalf of the agencies involved.

The British Columbia Commission was a prime mover in a new venture for the LRCC. We developed the program for, and hosted, a three-day staff development workshop. It was designed to bring together a mix of senior and junior lawyers working full-

time in the law reform field to allow them to share their experiences. The workshop was held in mid-March 1990 and personnel from 8 different agencies participated. It appears to have been a profitable experience for all concerned.

We also have links to the Uniform Law Conference of Canada through the participation of our Chairman as a British Columbia delegate. A notable development in the past year was the promulgation of a *Uniform Foreign Money Claims Act* which largely adopted the recommendations made in our *Report on Foreign Money Liabilities* (LRC 65, 1983).

VIII ACKNOWLEDGMENTS

A. COMMISSION STAFF

As we have pointed out in previous Annual Reports, our policy of doing the greater part of our research work internally, rather than relying on outside consultants, places a heavy burden of responsibility on the shoulders of our permanent staff. They invariably respond to the challenge with energy, enthusiasm and careful scholarship. We wish to express our sincerest thanks to all those individuals who, in the past year, contributed to our work in this way.

Our particular thanks go to Thomas G. Anderson, Counsel to the Commission, for the loyalty and industry he has devoted to the affairs of the Commission. As our senior staff member, he bears a heavy responsibility for the over-all direction of the Commission's program as well as carriage of specific projects.

We were joined in 1989 by Gregory G. Blue who became part of our research staff in August. He has brought both intelligence and enthusiasm to his work with us and we are pleased to have him with us. In addition to research and writing with respect to various projects, he has participated in the work on the Law Reform Database. We also wish to thank the other members of the database team: Linda Grant, Marianne Reid, Bronwen Jamison, Anna Holeton and Linda Reid.

Over the summer months two students worked with us. Jennifer Hocking, of the University of British Columbia Faculty of Law, and Juliet Smith, of the University of Victoria Faculty of

Law, undertook basic research on a number of topics and provided the Commission's full-time research staff with valuable assistance.

Our support staff also make a notable contribution to the work of the Commission. They bring intelligence and efficiency to their duties and share a concern that our work should be of the highest quality in every respect. Our support staff presently consists of Sharon St. Michael, Secretary to the Commission, and Linda Grant, who operates our desktop publishing system. We thank them for their efforts on our behalf.

B. JUDGES' LAW REFORM COMMITTEE

The Judges' Law Reform Committee is important to our operation. This Committee provides a continuing point of contact with the judiciary. The current members of the Committee are The Honourable Madam Justice Huddart of the Supreme Court, The Honourable Judge Scarth of the Vancouver County Court, and His Honour Judge Collings of the Provincial Court. Other judges who were members of, or participated in the work of the Committee during 1989/90 included The Honourable Mr. Justice Locke and the Honourable Madam Justice Proudfoot of the Court of Appeal, The Honourable Mr. Justice Bruce Macdonald, The Honourable Mr. Justice Spencer, The Honourable Mr. Justice Donald and The Honourable Mr. Justice Cowan of the Supreme Court, and The Honourable Judge Ryan of the County Court.

The Committee assists us through responding to our Working Papers and other consultative documents and by calling to our attention defects in the law that its members are well-situated to identify. They bring a unique perspective to bear on our work. The responses and advice which the Committee provides are invariably cogent and helpful. The work of the Judges' Committee plays a major role in the law reform process and we are immensely grateful to the individual members of the bench who give so generously of their time and energy to this end.

C. THE LAW FOUNDATION

Previous Annual Reports have described the generous response of the Law Foundation of British Columbia to the Commission's requests for funding to help sustain its operation. In the past year, the Foundation again provided much needed assistance.

The support of law reform is listed as one of the Foundation's objects in the statute under which it is constituted. In enabling the Law Reform Commission to carry on with its functions, the Law Foundation truly fulfills that object and renders an important service to the people of the Province.

D. MINISTRY AND GOVERNMENT PERSONNEL

There are a number of individuals and agencies within Government who have in the past year, contributed to the work of the Commission.

The Law Reform Commission has always had a special relationship with the office of Legislative Counsel. Its personnel are invariably, within the limits of their resources, responsive and helpful when we request assistance in the preparation of proposed legislation. We particularly wish to thank Clifford S. Watt, Q.C., Chief Legislative Counsel, and the other members of his office.

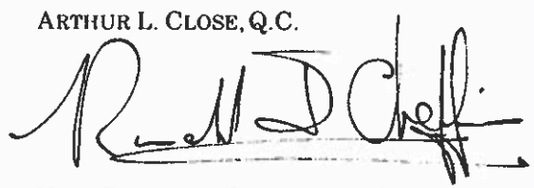
We also wish to express our appreciation to Ms Jane Taylor, Director of Library Services to the Ministry. She has assisted us in keeping our own collection up to date and provided access to new materials in a timely fashion.

Our thanks are also due to Ms Mary Beeching, Director, Public Affairs Division, for the Ministry of Attorney General. Her advice was of the greatest assistance in developing and distributing materials in relation to our work on family property and in meeting the special challenges which consultation presented in that project.

Finally, we wish to thank the Attorney General and all those within his Ministry who, during the period under review, in their dealings with the Commission on a day-to-day basis have

contributed to our work and made life easier. In particular our thanks go to The Honourable E. N. Hughes, Q.C., the Deputy Attorney General and various officers within the Information Services, Data Services, Policy Planning, Financial Services and the Facilities Management divisions and units of the Ministry. All have, in one way or another, assisted us greatly.

ARTHUR L. CLOSE, Q.C.



HON. RONALD I. CHEFFINS, Q.C.

MARY V. NEWBURY

LYMAN R. ROBINSON, Q.C.

PETER T. BURNS, Q.C.

APPENDIX A

REPORTS AND RECOMMENDATIONS MADE BY THE COMMISSION

No.	Title	Date	Recommendations Implemented in Whole or in Part by
1	Limitations--Abolition of Prescription*	Dec. 1970	*Land Registry (Amendment) Act, 1971*, S.B.C. 1971, c. 30, s. 8 (see now *Land Title Act*, R.S.B.C. 1979, c. 219, s. 24).
2	Annual Report, 1970*	Dec. 1970	Not applicable
3	Frustrated Contracts Legislation*	Feb. 1971	*Frustrated Contracts Act*, S.B.C. 1974, c. 37 (see now *Frustrated Contract Act*, R.S.B.C. 1979, c. 144); *Landlord and Tenant Act*, S.B.C. 1974, c. 45, s. 61(e) (see now *Residential Tenancy Act*, R.S.B.C. 1979, c. 365 s. 8(3)); *Commercial Tenancies Act*, R.S.B.C. 1960, c. 207, s. 34 (see now *Commercial Tenancy Act*, R.S.B.C. 1979, c. 54, s. 33).
4	Debt Collection and Collection Agents*	Mar. 1971	*Debt Collection Act*, S.B.C. 1973, c. 26 (see now *Debt Collection Act*, R.S.B.C. 1979, c. 88).
5	Expropriation*	Dec. 1971	*Expropriation Act*, S.B.C. 1987, c. 23.
6	Annual Report, 1971*	Dec. 1971	Not applicable
7	*Mechanics' Lien Act**	June 1972	*Builders Lien Amendment Act, 1984*, S.B.C. 1984, c. 16, s. 3 [in part]; *Builders Lien Amendment Act (No. 2), 1984*, S.B.C. 1984, c. 17, s. 1 [in part].
8	Deficiency Claims and Repossessions*	June 1972	*Conditional Sales Act*, S.B.C. 1973, c. 19 (see now *Sale of Goods on Condition Act*, R.S.B.C. 1979, c. 373); *Bills of Sale Act*, S.B.C. 1973, c. 7 (see now *Chattel Mortgage Act*, R.S.B.C. 1979, c. 48).
9	Legal Position of the Crown*	Dec. 1972	*Crown Proceedings Act*, S.B.C. 1974, c. 24 (see now *Crown Proceeding Act*, R.S.B.C. 1979, c. 86); *Interpretation Act*, S.B.C. 1974, c. 42, s. 13 (see now *Interpretation Act*, R.S.B.C. 1979, c. 206, s. 14).
10	Annual Report, 1972*	Dec. 1972	Not applicable

* Report is out of print.

No.	Title	Date	Recommendations Implemented in Whole or in Part by
11	Interim Report on Evidence*	Feb. 1973	*Attorney-General Statutes Amendment Act, 1975*, S.B.C. 1975, c. 4, s. 6 (see now *Evidence Act*, R.S.B.C. 1979, c. 116, ss. 37, 38).
12	Pre-Judgment Interest*	May 1973	*Prejudgment Interest Act*, S.B.C. 1974, c. 65 (see now *Court Order Interest Act*, R.S.B.C. 1979, c. 76).
13	Landlord and Tenant--Residential Tenancies*	Dec. 1973	*Landlord and Tenant Act*, S.B.C. 1974, c. 45 (see now *Residential Tenancy Act*, S.B.C. 1984, c. 10.
14	Annual Report, 1973*	Jan. 1974	Not applicable
15	Limitations--General*	Mar. 1974	*Limitations Act*, S.B.C. 1975, c. 37 (see now *Limitation Act*, R.S.B.C. 1979, c. 236); *Law Reform Amendment Act, 1985*, S.B.C. 1985, c. 10, s. 6 [in part].
16	Costs of Accused on Acquittal*	June 1974	----
17	Procedure Before Statutory Bodies*	Nov. 1974	----
18	A Procedure for Judicial Review of the Actions of Statutory Bodies*	Dec. 1974	*Judicial Review Procedure Act*, S.B.C. 1976, c. 25 (see now *Judicial Review Procedure Act*, R.S.B.C. 1979, c. 209).
19	Annual Report, 1974*	Jan. 1975	Not applicable
20	Costs of Successful Unassisted Lay Litigants*	Apr. 1975	----
21	The Termination of Agencies*	Apr. 1975	*Miscellaneous Statutes Amendment Act (No. 1), 1987*, S.B.C. 1987, c. 42, s. 91 (see now *Power of Attorney Act*, R.S.B.C. 1979, c. 334, ss. 1-4); *Miscellaneous Statutes Amendment Act (No. 2), 1987*, S.B.C. 1987, c. 43, s. 104 (see now *Trustee Act*, R.S.B.C. 1979, c. 414, ss. 14(7), 14(11).
22	Powers of Attorney and Mental Incapacity*	May 1975	*Attorney-General Statutes Amendment Act, 1979*, S.B.C. 1979, c. 2, s. 52 (see now *Power of Attorney Act*, R.S.B.C. 1979, c. 334, s. 7).

* Report is out of print.

No.	Title	Date	Recommendations Implemented in Whole or in Part by
23	Personal Property Security*	Oct. 1975	*Personal Property Security Act*, S.B.C. 1989, c. 36.
24	Security Interests in Real Property: Remedies on Default*	Dec. 1975	*Miscellaneous Statutes (Court Rules) Amendment Act*, S.B.C. 1976, c. 33, s. 94(a) [in part] (see now *Law and Equity Act*, R.S.B.C. 1979, c. 224, s. 16); Supreme Court Rules, Rule 50 (11), 3(2) [in part]; *Land Titles Act*, S.B.C. 1978, c. 25 [in part] (see now *Land Title Act*, R.S.B.C. 1979, c. 219, ss. 224-225); *Attorney General Statutes Amendment Act*, S.B.C. 1980, c. 1, s. 15 (see now *Law and Equity Act*, R.S.B.C. 1979, c. 224, s. 21.1) [in part]; *Property Law Act*, R.S.B.C. 1979, c. 340, s. 28 [in part]; *Law Reform Amendment Act, 1985*, S.B.C. 1985, c. 10, s. 5 (see now *Law and Equity Act*, R.S.B.C. 1979, c. 224, s. 16.1) [in part].
25	Annual Report, 1975*	Jan. 1976	Not applicable
26	Minors' Contracts*	Feb. 1976	*Law Reform Amendment Act, 1985*, S.B.C. 1985, c. 10, ss. 1, 2, 10 (see now *Infants Act*, R.S.B.C. 1979, c. 196, Part 2.1 (ss. 16.1- 16.11)).
27	Extra-Judicial Use of Sworn Statements*	Apr. 1976	See, e.g., *Mineral Act, 1977*, S.B.C. 1977, c. 54, s. 20(2).
28	Rule in *Bain* v. *Fothergill**	June 1976	*Conveyancing and Law of Property Act*, S.B.C. 1978, c. 16, s. 33 (see now *Property Law Act*, R.S.B.C. 1979, c. 340, s. 33).
29	Annual Report, 1976*	Dec. 1976	Not applicable
30	The Rule in *Hollington* v. *Hewthorn**	Jan. 1977	*Evidence Amendment Act, 1977*, S.B.C. 1977, c. 70 (see now *Evidence Act*, R.S.B.C. 1979, c.116, ss. 15(3), 80, 81).
31	Waiver of Conditions Precedent in Contracts*	Apr. 1977	*Attorney-General Statutes Amendment Act, 1978*, S.B.C. 1978, c. 11, s. 8 (see now *Law and Equity Act*, R.S.B.C. 1979, c. 224, s. 49).
32	Proof of Marriage in Civil Proceedings*	June 1977	*Attorney-General Statutes Amendment Act, 1979*, S.B.C. 1979, c. 2, s. 18 (see now *Evidence Act*, R.S.B.C. 1979, c. 116, s. 58).

* Report is out of print.

No.	Title	Date	Recommendations Implemented in Whole or in Part by
33	The *Statute of Frauds**	June 1977	*Law Reform Amendment Act, 1985*, S.B.C. 1985, c. 10, ss. 7, 8 (see now *Law and Equity Act*, R.S.B.C. 1979, c. 224, s. 54).
34	Tort Liability of Public Bodies*	June 1977	----
35	*Offences Against the Person Act, 1828*, Section 28*	Aug. 1977	*Attorney-General Statutes Amendment Act, 1978*, S.B.C. 1978, c. 11, s. 8 (see now *Law and Equity Act*, R.S.B.C. 1979, c. 224, s. 3).
36	Annual Report, 1977	Jan. 1978	Not applicable
37	*Absconding Debtors Act* and *Bail Act*: Two Obsolete Acts*	Mar. 1978	*Attorney-General Statutes Amendment Act, 1978*, S.B.C. 1978, c. 11, s. 8, ss. 1, 2.
38	The *Replevin Act**	May 1978	*Rules of Court*, Rule 46 as amended Nov. 26, 1981 by B.C. Reg 467/81. *Attorney General Statutes Amendment Act, 1982*, S.B.C. 1982, c. 46, ss. 3-6, 25, 37-41.
39	The *Attachment of Debts Act**	Oct. 1978	----
40	Execution Against Land*	Oct. 1978	----
41	Annual Report, 1978	Jan. 1979	Not applicable
42	Creditor's Relief Legislation: A New Approach	Jan. 1979	----
43	Guarantees of Consumer Debts*	June 1979	*Consumer Protection Amendment Act, 1980*, S.B.C. 1980, c. 6, s. 3. [in part].
44	Parol Evidence Rule	Dec. 1979	----
45	Annual Report 1979 (Limitation Periods in Actions Against Estates)	Jan. 1980	*Attorney General Statutes Amendment Act, 1980*, S.B.C. 1980, c. 1, ss. 7, 17 (see now *Estate Administration Act*, R.S.B.C. 1979, c. 114, s. 66(4)(b); *Negligence Act*, R.S.B.C. 1979, c. 298, s. 7(3).
46	Civil Litigation in the Public Interest	June 1980	----

* Report is out of print.

No.	Title	Date	Recommendations Implemented in Whole or in Part by
47	Calculation of Interest on Foreclosure	Sept. 1980	*Attorney General Statutes Amendment Act, 1981*, S.B.C. 1981, c. 10, s. 28 (see now *Law and Equity Act*, R.S.B.C. 1979, c. 224, s. 18.1).
48	The Recovery of Unauthorized Disbursements of Public Funds	Sept. 1980	*Financial Administration Act*, S.B.C. 1981, c. 15, s. 67.
49	Annual Report 1980 (Discount Rates)*	Jan. 1981	*Attorney General Statutes Amendment Act, 1981*, S.B.C. 1981, c. 10, s. 30 (see now *Law and Equity Act*, R.S.B.C. 1979, c. 224, s. 51).
50	Cable Television and Defamation	Mar. 1981	*Law Reform Amendment Act, 1985*, S.B.C. 1985, c. 10, s. 9 (see now *Libel and Slander Act*, R.S.B.C. 1979, c. 234, s. 1 ["broadcasting"]).
51	Benefits Conferred Under a Mistake of Law	Sept. 1981	----
52	The Making and Revocation of Wills*	Sept. 1981	----
53	Distress for Rent	Nov. 1981	----
54	Annual Report 1981	Jan. 1982	Not applicable
55	Arbitration	May 1982	*Commercial Arbitration Act*, S.B.C. 1986, c. 3. *Foreign Arbitral Awards Act*, S.B.C. 1985, c. 74 [in part].
56	Presumptions of Survivorship	Nov. 1982	----
57	The Crown as Creditor: Priorities and Privileges	Nov. 1982	----
58	Interpretation of Wills	Nov. 1982	----
59	Interest and Jurisdictional Limits in the County and Provincial Courts [Printed as an Appendix to LRC 60]	July 1982	*Miscellaneous Statutes Amendment Act (No. 1), 1984*, S.B.C. 1984, c. 25, s. 63 (see now *Small Claim Act*, R.S.B.C. 1979, c. 387, s. 2(3); *Miscellaneous Statutes Amendment Act (No. 2), 1984*, S.B.C. 1984, c. 26, s. 2 (see now *County Court Act*, R.S.B.C. 1979, c. 72, s. 29(2)).

* Report is out of print.

No.	Title	Date	Recommendations Implemented in Whole or in Part by
60	Annual Report 1982	Jan. 1983	Not applicable
61	Standing of a Common Law Spouse to Apply Under the *Family Compensation Act* [Printed as an Appendix to LRC 73]	Jan. 1983	*Family Law Reform Amendments Act, 1985*, S.B.C. 1985, c. 72, s. 3 (see now *Family Compensation Act*, R.S.B.C. 1979, c. 120, s. 1).
62	Interspousal Immunity in Tort	Mar. 1983	*Charter of Rights Amendments Act, 1985*, S.B.C. 1985, c. 68, ss. 50-53, 79, 83, 98 (see now *Law and Equity Act*, R.S.B.C. 1979, c. 224, s. 55.
63	Peremptory Challenges in Civil Jury Trials	June 1983	*Law Reform Amendment Act, 1985*, S.B.C. 1985, c. 10, ss. 3, 4 (see now *Jury Act*, R.S.B.C. 1979, c. 210, ss. 18, 18.1).
64	Breach of Promise of Marriage	Aug. 1983	*Family Law Reform Amendments Act, 1985*, S.B.C. 1985, c. 72, ss. 1, 36 (see now *Family Relations Act*, R.S.B.C. 1979, c. 121, s. 75).
65	Foreign Money Liabilities	Sept. 1983	----
66	Competing Rights to Mingled Property: Tracing and the Rule in *Clayton*'s Case	Sept. 1983	----
67	Bulk Sales Legislation	Oct. 1983	*Law Reform Amendment Act, 1985*, S.B.C. 1985, c. 10, ss. 11 - 13.
68	Intentional Interference with Domestic Relations	Nov. 1983	*Family Law Reform Amendments Act, 1985*, S.B.C. 1985, c. 72, ss. 35, 37, 40 (see now *Family Relations Act*, R.S.B.C. 1979, c. 121, s. 75 [in part].
69	Illegal Transactions	Nov. 1983	----
70	Statutory Succession Rights	Dec. 1983	----
71	Minor (Interim) Report on the *Land (Wife Protection) Act* [Printed as an Appendix to LRC 73]	Jan. 1984	*Charter of Rights Amendments Act, 1985*, S.B.C. 1985, c. 68, ss. 61-78 (see now *Land (Spouse Protection) Act*, R.S.B.C. 1979, c. 223).

* Report is out of print.

No.	Title	Date	Recommendations Implemented in Whole or in Part by
72	Minor Report on The Jurisdiction of Local Judges: Stays of Execution and Instalment Orders [Printed as an Appendix to LRC 73]	Feb. 1984	*Rules of Court*, Rule 42(25) as amended by B.C. Reg. 18/85, s. 15 (effective April 1, 1985).
73	Annual Report 1983/84	Apr. 1984	Not applicable
74	Covenants in Restraint of Trade*	Apr. 1984	----
75	Review of Civil Jury Awards	Sept. 1984	----
76	Compensation for Non-Pecuniary Loss*	Sept. 1984	----
77	Settlement Offers	Sept. 1984	*Rules of Court*, Rule 37(30) as enacted by B.C. Reg. 18/85, s. 10(b) [in part].
78	The Authority of a Guardian	Jan. 1985	*Miscellaneous Statutes Amendment Act (No. 1), 1987*, S.B.C. 1987, c. 42, ss. 22, 23 (see now *Family Relations Act*, R.S.B.C. 1979, c. 121, ss. 1, 25(2), 25(3)).
79	A Short Form General Power of Attorney [Printed as an Appendix to LRC 80]	Mar. 1985	*Miscellaneous Statutes Amendment Act (No. 1), 1987*, S.B.C. 1987, c. 42, ss. 92, 93 (see now *Power of Attorney Act*, R.S.B.C. 1979, c. 334, s. 8 and Schedule).
80	Annual Report 1984/85	Apr. 1985	Not applicable
81	Performance Under Protest*	May 1985	*Miscellaneous Statutes Amendment Act (No. 1), 1987*, S.B.C. 1987, c. 42, s. 52 (see now *Law and Equity Act*, R.S.B.C. 1979, c. 224, ss. 57, 58).
82	Minor Report on the Domicile of a Minor [Printed as an Appendix to LRC 86]	Sept. 1985	*Law Reform Amendment Act, 1988*, S.B.C. 1988, c. 42, s. 2. (see now *Infants Act*, R.S.B.C. 1979, c. 196, s. 19.1).
83	Defamation*	Sept. 1985	----
84	Personal Liability Under a Mortgage or Agreement for Sale	Sept. 1985	*Law Reform Amendment Act, 1988*, S.B.C. 1988, c. 42, ss. 5-7 (see now *Property Law Act*, R.S.B.C. 1979, c. 340, ss. 19.1-20.3).

* Report is out of print.

No.	Title	Date	Recommendations Implemented in Whole or in Part by
85	Mortgages of Land: The Priority of Further Advances	Jan. 1986	----
86	Annual Report 1985/86	Apr. 1986	Not applicable
87	Spousal Agreements	Aug. 1986	----
88	Shared Liability	Aug. 1986	----
89	Action *Per Quod Servitium Amisit*	Nov. 1986	*Law Reform Amendment Act, 1988*, S.B.C. 1988, c. 42, s. 4.
90	The *Court Order Interest Act*	Jan. 1987	----
91	Obsolete Remedies Against Estate Property: *Estate Administration Act*, Part 9	Mar. 1987	*Law Reform Amendment Act, 1988*, S.B.C. 1988, c. 42, ss. 1, 3, 8, 9.
92	Annual Report 1986/87	Apr. 1987	Not applicable
93	The Buyer's Lien: A New Consumer Remedy	Aug. 1987	----
94	Fraudulent Conveyances and Preferences	Jan. 1988	----
95	Annual Report 1987/88	Apr. 1988	Not applicable
96	Deeds and Seals	June 1988	----
97	Set-Off	July 1988	----
98	Minor Report on Practice in Relation to the Cancellation of a Certificate of *Lis Pendens* [Printed as an Appendix to LRC 104]	Nov. 1988	*Land Title Amendment Act, 1989*, S.B.C. 1989, c. 69, ss. 27, 28 (see now *Land Title Act*, R.S.B.C. 1979, c. 219, ss. 231, 235).
99	The *Land (Settled Estate) Act*	Nov. 1988	*Attorney General Statutes Amendment Act, 1989*, S.B.C. 1989, c. 64, ss. 8, 33, 34 (see now *Trust and Settlement Variation Act*, R.S.B.C. 1979, c. 413, s. 3.1).

[a] Report is out of print.

No.	Title	Date	Recommendations Implemented in Whole or in Part by
100	Co-Ownership of Land	Dec. 1988	----
101	Response to *Access to Justice* - the Report of the Justice Reform Committee [Printed as an Appendix to LRC 104]	Dec. 1988	Not applicable
102	Wills and Changed Circumstances	Jan. 1989	----
103	Floating Charges on Land	Jan. 1989	*Personal Property Security Act*, S.B.C. 1989, c. 36, s. 104 (see now *Land Title Act*, R.S.B.C. 1979, c. 219, s. 198.1).
104	Annual Report 1988/89	Apr. 1989	Not applicable
105	Minor Report on Severance of Unconstitutional Enactments [Printed as an Appendix to LRC 113]	May 1989	----
106	Vicarious Liability Under the *Motor Vehicle Act*	June 1989	----
107	Minor Report on Loss Appraisal under the *Insurance Act*	July 1989	----
108	The *Commercial Tenancy Act*	Dec. 1989	----
109	Notice Requirements in Proceedings Against Municipal Bodies	Jan. 1990	----
110	The Enduring Power of Attorney: Fine-tuning the Concept	Feb. 1990	----
111	Property Rights on Marriage Breakdown	Mar. 1990	----

[a] Report is out of print.

No.	Title	Date	Recommendations Implemented in Whole or in Part by
112	The Ultimate Limitation Period: *Limitation Act*, Section 8	Mar. 1990	----
113	Annual Report 1989/90	Apr. 1990	Not applicable

* Report is out of print.

APPENDIX B

WORKING PAPERS ISSUED BY THE COMMISSION

Number	Title	Year
1	Frustrated Contracts Legislation	1970
2	Abolition of Prescription	1970
3	Debt Collection and Collection Agents	1971
4	Deficiency Claims and Repossessions	1971
5	The *Mechanics' Lien Act*	1971
6	Expropriation (2 v.)	1971
7	Legal Position of the Crown	1972
8	Debtor-Creditor Relationships (Project No. 2) Part IV - Pre-Judgment Interest	1973
9	Costs of Accused on Acquittal	1973
10	A Procedure for Judicial Review of the Actions of Statutory Bodies	1974
11	Tort Liability of Public Bodies	1974
12	Powers of Attorney and Mental Incapacity	1974
13	Costs of Successful Litigants in Person	1974
14	The *Powers of Attorney Act* and the Termination of Agencies	1974
15	Security Interests in Real Property: Remedies on Default	1975
16	Minors' Contracts	1975
17	Extra-Judicial Use of Sworn Statements	1975
18	The Enforcement of Judgments: The *Attachment of Debts Act*	1976
19	The Rule in *Hollington* v. *Hewthorn*	1976
20	The Statute of Frauds	1976
21	The Enforcement of Judgments: The *Creditors' Relief Act*	1976
22	The Enforcement of Judgments: Execution Against Land	1976
23	The *Replevin Act*	1977
24	Guarantees of Consumer Debts	1978
25	Arbitration	1979

Number	Title	Year
26	Civil Litigation in the Public Interest	1979
27	The Calculation of Interest on Foreclosure	1980
28	The Making and Revocation of Wills	1980
29	Distress for Rent and Other Debts	1980
30	Benefits Conferred Under a Mistake of Law	1980
31	The Crown as Creditor: Priorities and Privileges	1981
32	Interpretation of Wills	1981
33	Foreign Money Liabilities	1981
34	Interspousal Immunity in Tort	1982
35	Statutory Succession Rights	1982
36	Competing Rights to Mingled Property: Tracing and the Rule in *Clayton's Case*	1982
37	Peremptory Challenges in Civil Jury Trials	1982
38	Illegal Contracts	1982
39	Breach of Promise of Marriage	1983
40	Bulk Sales Legislation	1983
41	Covenants in Restraint of Trade	1983
42	Intentional Interference with Domestic Relations	1983
43	Compensation for Non-Pecuniary Loss	1983
44	Review of Civil Jury Awards	1983
45	Settlement Offers	1984
46	Performance Under Protest	1984
47	Mortgages of Land: The Priority of Further Advances	1985
48	Personal Liability Under a Mortgage or Agreement for Sale	1985
49	The *Court Order Interest Act*	1985
50	Shared Liability	1985
51	Spousal Agreements	1985
52	The Buyer's Lien: A New Consumer Remedy	1986
53	Fraudulent Conveyances and Preferences	1986
54	Set-Off	1987

Number	Title	Year
55	Execution Against Shares	1987
56	Deeds and Seals	1987
57	Testamentary Intent and Unexpected Circumstances	1987
58	Co-Ownership of Land	1987
59	The *Land (Settled Estate) Act*	1988
60	Vicarious Liability Under the *Motor Vehicle Act*	1988
61	The *Commercial Tenancy Act*	1988
62	The Enduring Power of Attorney: Fine-tuning the Concept	1989
63	Property Rights on Marriage Breakdown	1989
64	The Enforcement of Judgments Between Canadian Provinces	1989

STUDY PAPERS

S1	The Office of the Sheriff	1983
S2	Family Property	1985
S3	Court Jurisdiction	1989

APPENDIX C

COMMISSION WORK REVIEWED AND CITED

Following is a partial list of reviews, articles, books, and cases in which the Commission's work has recently been referred to or discussed.

(a) Articles and Reviews

H.C. Alvarez, "The Role of Arbitration in Canada -- New Perspectives," (1987) 21 U.B.C. L. Rev. 247.

G. Bale, "Palm Tree Justice and Testator's Family Maintenance -- The Continuing Saga of Confusion and Uncertainty in the B.C. Courts," (1987) 26 E.T.R. 295.

W.A. Bogart, "Developments in the Canadian Law of Standing," (1984) 3 Civ. J.Q. 339.

W.A. Bogart, "Review - Law Reform Commission of British Columbia, Report on the Crown as Creditor: Priorities and Privileges," (1984) 48 C.B.R. 181.

Bowles and Whalen, "Working Paper on Foreign Money Liabilities," (1982) 60 Can. B. Rev. 805.

Bowles and Whalen, "Compound Interest: Could Multipliers be the Way Forward?" (1986) 136 N.L.J. 876.

Bowles and Whalen, "The Law of Interest: Dawn of a New Era?" (1986) 64 Can. B. Rev. 142.

P.C. Casey, "Friendly Acquisitions: Investigations and Practical Problems," (1987) Meredith Memorial Lectures 57.

F.M. Catzman, "Law Reform Commission of British Columbia, Bulk Sales Legislation, Working Paper No. 40," (1983) 8 Can. Bus. L.J. 109.

B. Crawford, "The Legal Aspect of Money, 4th ed., by F.A. Mann," (1982-3) 7 Can. Bus. L.J. 368.

G.H.L. Fridman, "Law Reform Commission of British Columbia, Competing Rights to Mingled Property: Tracing and the Rule in Clayton's Case, Working Paper No. 36," (1982-83) 7 Can. Bus. L.J. 353.

G.H.L. Fridman and J.G. McLeod, *Restitution*, Toronto, The Carswell Company Limited, 1982 at 166 to 172.

F.W. Hansford, Book Review, "Restitution by G.H.L. Fridman and James G. McLeod, ... Unjust Enrichment by George B. Klippert ..." (1984) 18 U.B.C.L. Rev. 177.

B.W. Harvey, "Report on Fraudulent Conveyances and Preferences (Law Reform Commission of British Columbia, 1988)," (1989) 8 C.J.Q. 3.

J.W. Horn, "Annotation, *Bank of Montreal* v. *Kim*," (1990) 36 C.P.C. (2d) 242.

G.B. Klippert, *Unjust Enrichment*, Toronto, Butterworth's, 1983 at 152 to 156.

P.B. Kutner, "Law Reform in Tort: Abolition of Liability for 'Intentional' Interference with Family Relationships," (1987) 17 Western Aust. L. Rev. 25.

H.W.D. Lewis, Note on "Rule in *Bain* v. *Fothergill*," (1985) 135 N.L.J. 479.

J.K. Maxton, "Execution of Wills: The Formalities Considered," [1982] 1 Canterbury L. Rev. 393.

F. Meisel, "British Columbia Law Reform Commission Report on Arbitration," [1983] Civ. J.Q. 197.

F. Meisel, Note on "Settlement Offers," [1986] Civ. J.Q. 99.

D.S. Moir, "Review: Family Property: A Study Paper prepared for the Law Reform Commission of British Columbia" (1987) 6 Can. J. Fam. L. 145.

M.H. Ogilvie, Review, "Report on Covenants in Restraint of Trade. Law Reform Commission of British Columbia," (1985) 63 Can. B. Rev. 250.

D.A. Potts and C.A. Matthews, "Procedural Concerns in Broadcast Libel," (1988) 10 Adv. Q. 29.

S.A. Rae, "Inflation and the Law of Contracts and Torts," (1982) 14 Ottawa L. Rev. 465.

J. T. Robertson, "Judgment on the Covenant at Order Nisi--A Response to Judicial Opinion, Accepted Practice and the Law Reform Commission of British Columbia," (1987) 21 U.B.C.L. Rev. 1.

L. Romero, "Law Reform Commission of British Columbia, Report on Deeds and Seals," (1989) 15 Can. Bus. L. J. 368.

S. Schwartz "Review - Law Reform Commission of British Columbia, Report on Illegal Contracts," (1985) 10 Can. Bus. L.J. 83.

L.M. Sherwood, "Contracts - Illegality and Section 305.1 of the Criminal Code," (1983) 61 Can. B. Rev. 866.

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APPENDIX D

PAST AND PRESENT MEMBERS OF THE COMMISSION

Hon. E.D. Fulton	Chairman	1970 to 1973
Hon. Mr. Justice F.U. Collier	Commissioner	1970 to 1971
Dr. Richard Gosse	Commissioner	1970 to 1972
Ronald C. Bray	Commissioner Acting Chairman	1971 to 1977 1973 to 1974
J. Noel Lyon	Commissioner	1972 to 1973
Allen A. Zysblat	Commissioner	1973 to 1976
Paul D.K. Fraser, Q.C.	Commissioner	1973 to 1979
Hon. Mr. Justice Peter Fraser	Commissioner Acting Chairman	1973 to 1982 1978 to 1979
Leon Getz	Chairman Commissioner	1974 to 1977 1974 to 1979
Hon. Mr. Justice J.D. Lambert	Commissioner Chairman	1976 to 1978 1978
Kenneth C. Mackenzie	Commissioner	1978 to 1983
Bryan Williams, Q.C.	Commissioner	1979 to 1984
Anthony F. Sheppard	Commissioner	1979 to 1984
Arthur L. Close, Q.C.	Commissioner Vice-Chairman Chairman	1979 to date 1983 to 1984 1984 to date
Hon. Mr. Justice J.S. Aikins	Chairman	1980 to 1983
Hon. Ronald. I. Cheffins, Q.C.	Commissioner Vice-Chairman	1983 to 1985 1984 to 1985 1987 to date
Mary V. Newbury	Commissioner	1984 to date
Lyman R. Robinson, Q.C.	Commissioner	1985 to date
Peter T. Burns, Q.C.	Commissioner	1986 to date

APPENDIX E

MINOR REPORT ON SEVERANCE OF UNCONSTITUTIONAL ENACTMENTS (LRC 105)

May 8, 1989

Dear Mr. Attorney:

Re: Minor Report on Severance of Unconstitutional Enactments (LRC 105)

When the law imposes limitations on the legislative competence of a sovereign body, questions of whether or not particular enactments have violated those limitations will always be present. In Canada, a variety of limitations has existed for many years, the most significant being the division of powers under the *Constitution Act, 1867*.[1] Recently, further limitations have been added. The most important of these are contained in the *Canadian Charter of Rights and Freedoms* set out in Part I of the *Constitution Act, 1982*. If an enactment of the Province is declared by the courts to be beyond the powers given to the provinces or to unjustifiably violate one of the freedoms protected by the *Charter* it will be of no effect.

The process of testing provincial legislation against constitutional requirements is a subtle one. An aspect of this subtlety comes into focus when some features of a questioned enactment suggest that it should be struck down on constitutional grounds, while other features are unquestionably valid. In such circumstances, three courses seem to be open to a court. The first two represent an all-or-nothing position. The enactment could either be sustained, or struck down, in its entirety. But, as a practical matter, not every enactment, or provision of an enactment, must necessarily fall if a portion of it is found to be invalid. Peripheral features of a legislative plan can often be removed without impairing the efficacy of the legislation as a whole. This suggests the third course which is to strike down part of the enactment only and to sustain the balance. To put it another way, the invalid portion is "severed" leaving the remainder intact.

1. 30-31 Victoria, c. 3.

Severance is a technique available to the courts to limit the consequences of holding an enactment to be invalid. When will this technique be employed? Professor Hogg observes:[2]

> [T]he question arises whether the court should "sever" the bad part, thereby preserving the good part, or whether the court should declare the entire statute to be bad. The rule which the courts have developed is that severance is inappropriate when the remaining good part "is so inextricably bound up with the part declared invalid that what remains cannot independently survive"; in that event it may be assumed that the legislative body would not have enacted the remaining part by itself.[3]
>
> ...
>
> The Privy Council and the Supreme Court of Canada have both been difficult to persuade that severance is appropriate. They have usually struck down the entire statute once an adverse conclusion has been reached as to the constitutionality of part. When one considers the large number of cases in which statutes have been held to be unconstitutional, the few cases in which severance has been ordered emphasize how rarely the occasion for its use has been held to arise.... Although the courts have not expressed themselves in these terms, there appears to be a presumption that a statute embodies a single statutory scheme of which all the parts are interdependent. In other words, there seems to be a presumption against severance.

We believe that in referring to a "presumption against severance," Professor Hogg somewhat overstates the position. There are many cases in which severance has occurred but this result attracts no attention because the question of severance was never put in issue. For example, in *Reference Re Motor Vehicle Act*[4] a provision of that Act concerning drivers' licence suspensions was in issue as a possible violation of the *Charter*. So far as we are aware, at no stage of the proceedings was it ever suggested that the whole of the Act was in danger of being struck down because one section was arguably tainted. The propriety of severance was so obvious that no one even thought it necessary to comment on this question. Similarly, decisions holding particular provisions of the *Criminal Code* to be unconstitutional have not meant that every part of the Code ceased to function. Examples like these arise frequently and it cannot be said that the courts hesitate to employ severance when it is manifestly appropriate to do so.

2. Hogg, *Constitutional Law of Canada* (2nd ed., 1985), 326. Another technique available to the courts to avoid a holding that a legislature has exceeded its powers is that of "reading down." This is described *ibid.* at 327.
3. The test described is from *A.-G. Alta.* v. *A.-G. Can.*, [1947] A.C. 503, 518 (Alberta Bill of Rights Case).
4. [1985] 2 S.C.R. 486.

Professor Hogg's comments are closer to the mark when an enactment embodies an integrated statutory scheme and the propriety of severance is not so clearcut. This creates an added dimension of difficulty for legislators and those who must advise them on constitutional matters. First, our experience under the *Charter* is limited and the courts are still in the process of articulating its application to provincial legislation. Whether or not a particular provision can lawfully be enacted by the province is no longer as predictable as it once was. Second, if the provision should, in some way, offend the *Charter*, the extent of the taint would be equally unpredictable given the uncertainty surrounding the use of severance by the courts.

Can the legislative process be made more certain in this regard? Professor Hogg suggests that the use of a "severance clause" might be beneficial:[5]

> A "severance clause" is a section of a statute that provides that, if any part of the statute is judicially held to be unconstitutional, the remainder of the Act is to continue to be effective. At the very least, such a clause should reverse the presumption against severance: instead of the presumption that the various parts of the statute are interdependent and inseverable, the presumption should be that the parts are independent and severable.

Severance clauses are particularly common in the United States. There it is not unusual for a court to hold that an enactment is invalid for constitutional reasons and severance is seen as one way of minimizing the dislocation that can be caused by such a decision.[6] Severance clauses are little used in Canada but they are not wholly unheard of.[7]

We believe that with the coming of the *Charter* there is a need for British Columbia statutes expressly to address the issue

5. Hogg, *supra*, n. 2 at 327.
6. The following is typical of an American severance clause:
   > If any provision of this Act or the application thereof to any person or circumstance is held invalid, the validity of the remainder of this Act and of the application of such provision to other persons and circumstances shall not be affected thereby.

   16 USCS s. 1439 (Marine Sanctuaries).
7. The *Natural Products Marketing Act, 1934*, S.C. 1934, c. 57, s. 26 provided:
   > If it be found that Parliament has exceeded its powers in the enactment of one or more of the provisions of this Act, none of the other or remaining provisions of the Act shall therefore be held to be inoperative or *ultra vires*, but the latter provisions shall stand as if they had been originally enacted as separate and independent enactments and as the only provisions of the Act; the intention of Parliament being to give independent effect to the extent of its powers to every enactment and provision in this Act contained.

   Ironically, the Privy Council refused to give effect to the severance clause and the entire statute was struck down. *See A.-G.B.C.* v. *A.-G. Can.*, [1937] A.C. 377.

of severance. One way of doing so would be the wider and more frequent use of severance clauses in individual statutes. While this approach seems to have found favour in the United States, we see two objections to it. First, if used selectively, it gives the appearance that the legislature itself has less than full confidence in its constitutional position with respect to those enactments declared to be severable. A severance clause might be seen as an invitation to would-be litigants to attack the enactment and as an invitation to the courts to vitiate it more readily than they might if the clause were omitted.

A second objection concerns those enactments which are not expressly declared to be severable. Would the courts be less ready to hold their provisions to be severable? It is not difficult to foresee an argument that the legislature, having declared statute X to be severable while remaining silent with respect to statute Y, must be taken to have intended that statute Y should not be severable. Whether or not such an argument is consistent with the established rules respecting the interpretation of statutes, it has a certain logic which might well play a subconscious role.

These objections can be met only if every enactment is the subject of a declaration that constitutionally invalid portions of it are severable.[8] But, the addition of a boiler-plate severability provision to every provincial statute is not only an extremely untidy solution; it is also a disproportionate response to the problem. A more rational way must be found to achieve the desired position.

We believe that this more rational way lies in adding a general statement to the *Interpretation Act*[9] respecting the severability of provincial enactments. This measure would be consistent with the way courts tend to characterize severance. As Professor Hogg points out:[10]

> To give some effect to a severance clause seems sound, since the clause indicates the legislative intent with respect to severance, and the courts have always claimed that the inquiry into severability is an inquiry into legislative intent.

8. Unless, of course, the express policy of the enactment is that it is *not* severable or the provisions of the legislation are so integrated that the valid portion of it cannot function without the invalid portion.
9. R.S.B.C. 1979, c. 206.
10. *Supra*, n. 5.

The function of the *Interpretation Act* is, of course, to assist the courts and others in discovering legislative intent.

An omnibus severance provision might be framed in the following fashion:

> Unless an enactment otherwise provides, where any portion of it, or its application to any person or in any circumstance, is held to be invalid, the invalidity does not affect
>
> (a) the remainder of the enactment, or
>
> (b) other applications of the enactment
>
> which can be given effect, consistent with the scheme of the enactment, without the invalid portion or application.

A provision along these lines would not change the law, in the sense that the ability of judges to employ severance where it ought to be used would be neither limited nor enlarged. What it would accomplish would be to focus attention on severance as an option to be borne in mind in all cases in which a provincial enactment may be *ultra vires*. It would also stake out very clearly a "default position" concerning the intent of the provincial legislature.

The worst thing which might occur would be that a court would sever a tainted provision, leaving in force something which the legislature, had it considered the issue, would not have enacted in isolation. If that should occur, the legislature can easily repeal the portion which the court leaves in place. This strikes us as less mischievous than to have an entire enactment struck down when a portion of it might usefully have been retained.

We recommend the addition of an omnibus severance provision to the *Interpretation Act*. Set out above is one way in which it might be drafted but other approaches are possible as well. The general policy is clear and we are content that this matter be left with Legislative Counsel.

This letter is to be taken as a Minor Report (LRC 105) of the Law Reform Commission recommending a change in the law as herein set out. This recommendation was approved by the Commission at a meeting on May 4, 1989.

Yours sincerely,

Arthur L. Close
Chairman

APPENDIX F

TWENTY YEARS OF LAW REFORM

A. Introduction

Three separate landmarks in the existence of the Law Reform Commission of British Columbia have occurred recently. Late in 1988, the Commission submitted its one-hundredth Report to the Attorney General. 1989 marked the 20th anniversary of the enactment of the *Law Reform Commission Act*,[1] the Commission's enabling statute. 1990 brought the 20th anniversary of the first formal meeting of its newly-appointed members -- the time when it became truly operational. These events seem to provide an opportunity to engage in a retrospective view of the Commission and its work.

The Law Reform Commission has its origins in an initiative which began almost five years before its formal creation:[2]

> In 1964 a group of law teachers perceived a need for systematic law reform in British Columbia and put forward a formal brief on the subject to the Attorney General. They recommended that a statutory commission be established...

This suggestion began to gather support and in 1967 the British Columbia branch of the Canadian Bar Association recommended the establishment of a law reform commission. That recommendation, along with the law teachers' brief, came under study by the government and later that year the Attorney General announced the government's intention to establish a law reform body.[3] The next year, the matter found its way into the Legislature:[4]

> In February, 1968, Hon. T.R. Berger, then an opposition member, introduced into the Legislature a private member's bill for the establishment of a law reform commission. The Attorney General announced to the 1968 annual meeting of the British Columbia branch that a law reform commission would be established, and in 1969 the Law Reform Commission Act duly created the Law Reform Commission of British Columbia. The bill was not opposed....

The Act received Royal Assent on April 2nd, 1969.

In the following months, various steps were taken to make the Commission operational. These included the appointment of the first Commissioners: Hon. E. D. Fulton (Chairman), (now) Hon. Mr Justice F. U. Collier and Dr. Richard Gosse. Dr. Gosse was the only full-time member. Also appointed as the first Counsel to the Commission was Leon Getz, who later became its Chairman. The actual work of the Commission dates from its first formal meeting which occurred on March 10, 1970.

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1. S.B.C. 1969, c. 14; now R.S.B.C. 1979, c. 225.
2. W. H. Hurlburt, *Law Reform Commissions in the United Kingdom, Australia and Canada* (1986) 223.
3. *Ibid.*
4. *Ibid.*

B. The Role of the Commission: An Evolving View

1. The Statutory Mandate

The function of the Commission is set out in section 2 of the Act:

> The commission is to take and keep under review all the law of the Province, including statute law, common law and judicial decisions, with a view to its systematic development and reform, including the codification, elimination of anomalies, repeal of obsolete and unnecessary enactments, reduction in the number of separate enactments and generally the simplification and modernization of the law....

2. The View: 1970

The Commission approached its mandate with idealism and energy. This is reflected in its first Annual Report which set out a number of observations concerning its role. It described the broader goals of law reform:[5]

> [I]t is the function of the law to govern the relationships between man and his fellows as individuals, between man and society collectively, and between man and his government. From which it follows that the highest goal for law makers and law reformers is to ensure that the laws as they are from time to time in force should reflect the highest concepts of what those relationships should be and the highest standards of individual and collective behaviour which the continuance of a civilized society demands of its members.

While the Commission recognized that this view, and the need for reform, were not new, the context was changing. It suggested that what was new was the recognition that society confronts an increasing pace of growth and development, a multiplicity of new relationships and problems created by them, and an urgent need for new methods and systems to regulate and deal with them. All these factors made it necessary to establish procedures for the continuing and systematic review of the law:[6]

> As this Commission understands it, the task that has been entrusted to it is to take part in this process by carrying out that review, identifying the areas where the law no longer reflects those concepts or promotes those standards, and by its reports and recommendations to assist the law makers to bring about the particular reforms and adjustments which are needed.

This view of its role was reflected in the initial program of law reform projects which the Commission developed in conjunction with the legal profession and the Ministry of Attorney General.[7] It was expected that the initial program would require 5 years to complete.

3. The View: 1974

Most of the initial program was completed; some of it was overtaken by events; in some cases the Commission's reach exceeded its grasp. Its experience with the initial program led the Commission to reflect further on its role:[8]

5. Law Reform Commission of British Columbia, *Annual Report, 1970* at 6.
6. *Ibid.*
7. *See* Law Reform Commission of British Columbia, *Annual Report, 1970* at 7.
8. Law Reform Commission of British Columbia, *Annual Report, 1974* at 5.

> [Section 2 of the *Law Reform Commission Act* sets out] extremely broad terms of reference, and during its first five years the Commission has to some degree been engaged in searching for an appropriate definition of its role under them. The experience of those five years has helped considerably to sharpen our view on this matter....

The Report went on to observe that all the Commissioners, and the entire professional staff of the Commission, were lawyers, and this imposes certain constraints. While lawyers' skills and values are important in the social process, they are not the whole of it. Lawyers are not specialists in omniscience, and while they do have a considerable and distinctive role to play in the modernization and improvement of the legal system, it is not the only one:[9]

> Lawyers, as lawyers, probably have little more to contribute than other citizens in the resolution of pressing social issues, except perhaps in the sense that they may have a heightened appreciation of the limitations of the law and its processes in the resolution of such issues. We have no special ability to resolve conflicting social values.

It suggested that the Commission is not an omnibus vehicle for law reform of all kinds. It is but one among a variety of mechanisms available for the purpose:[10]

> There are matters of law reform that should not be left to lawyers alone, although what those matters are cannot be stated with any precision. The judgment of when the Law Reform Commission is an apt vehicle is a sensitive one that must be made in the light of experience and an informed intuition.

These sentiments continue to guide the Commission in the selection of projects.

4. The View: 1980

Its 10th anniversary provided the Commission with an opportunity to make some empirical observations about its work. Two themes emerged from an examination of the subject matter of its past Reports. The first was that the work had been concentrated principally, although not exclusively, in areas having a high degree of legal complexity. This, it was said, flowed from our mandate to "simplify" the law; that which is in need of simplification must perforce be complex. The second theme was that legal relationships between citizen and citizen as opposed to the legal relationship between citizen and state had been emphasized in the program. The Commission commented:[11]

> The Law Reform Commission began active work in 1970. Like any institution, it has profited from experience; and, while none of the past Reports seem now to us to have been inappropriate, it is probably true that we have a more sophisticated understanding of the important factors governing the selection of projects in relation to our time and resources. What emerges is a cautious approach in developing our program, but one which we are anxious should not be misunderstood. Some of our Reports ... may seem to deal with obscure issues but ... are important. They have a very substantial impact, either in terms of altering the legal rights of members of the public or in terms of a saving of expense to both the public and to the government....

9. *Ibid.*
10. *Ibid.*
11. Law Reform Commission of British Columbia, *Annual Report, 1980* at 5.

It suggested that there are pragmatic reasons for a cautious approach and repeated the warning set out five years earlier that the Commission should not be regarded as an omnibus vehicle for broad social reforms. Its work should be confined to those areas in which its views are credible in the eyes of government and the public:[12]

> To fail in this would be to waste our resources and, in the long run, be harmful to the Commission.

5. A Comment: 1990

Since those observations were published 10 years ago the Commission has issued almost 60 additional reports on a variety of topics. An examination of them suggests that during the 1980's the Commission remained relatively faithful to the spirit of the views which emerged a decade earlier concerning its role. This has not been a conscious process. These patterns simply seem to confirm that the role which has evolved is one the that focuses the Commission's talents on the things it does best.

C. The Reports

Since 1970 the Commission has submitted 108 reports to the Attorney General. Of these, 20 were Annual Reports, most of which contained no substantive recommendations for reform.[13] While classifying and characterizing legal concepts can be a slippery and arbitrary exercise, sorting the Commission's published recommendations into a number of rough categories does yield a profile of its activities. Without worrying too much whether a particular Report should be characterized in one way as opposed to another, the following pattern emerges:

Legal process and civil procedure	17 reports
Debtor and creditor relationships	14 reports
Public and administrative law topics	10 reports
Contract law	9 reports
Tort law	7 reports
Wills and Trusts	7 reports
Secured transactions	7 reports
Evidence	5 reports
Family law	5 reports
Other topics	13 reports

12. *Ibid.*
13. Some early Annual Reports documented certain informal recommendations such as recommendations concerning limitation periods in actions against estates in the 1979 Annual Report or the recommendations respecting a statutory discount rate set out in the 1980 Annual Report. The Commission's current practice is to designate such recommendations as a "minor report" with an existence that is independent of the Annual Report in which it may be reprinted as an appendix for distribution purposes.

The compendious "other topics" includes reports in relation to landlord and tenant relationships, agency law, minors, and some things which resist characterization. The figures set out support the observations made in 1980 that the program has tended to emphasize private law matters.

A substantial volume of legislation has been enacted which reflects Commission work. A sampling:

Expropriation Act
Frustrated Contract Act
Crown Proceeding Act
Court Order Interest Act
Limitation Act
Judicial Review Procedure Act
Personal Property Security Act
Commercial Arbitration Act

Amendments, large and small, to numerous other acts are also based on Commission recommendations. It is also possible to point to numerous enactments which have been repealed as a result of Commission recommendations:

Prescription Act
Replevin Act
Sale of Goods in Bulk Act
Bail Act
Absconding Debtors Act
Land (Settled Estate) Act
Estate Administration Act, Part 9

A number of equally obsolete common law rules and causes of action have been abolished by statute, consequent on Commission recommendations. These include actions for:

breach of promise of marriage
harbouring or enticement of a spouse
action *per quod servitium amisit*

and

rule in *Bain* v. *Fothergill*
rule in *Hollington v. Hewthorn*

D. Implementation

A recent count reveals that 53 of the 90 Reports containing substantive recommendations have had legislative action of some kind taken on them.[14] These figures, which suggests that approximately 60% of the Commission's recommendations find their way into law, do not provide a wholly satisfactory guide to the extent to which its work has been implemented. In one way, they give the appearance that more has been achieved than is, in fact, the case. For example, one of the 53 reports is the 1972 Report on what is now the *Builders Lien Act*.[15] It makes the list, however, only through the implementation of a minor recommendation to eliminate an anomaly in relation to the filing of lien claims. The major recommendations made in the Report for a comprehensive revision and restructuring of the Act have not been acted on.

On the other hand, there are factors which suggest that the implementation rate is substantially better than the figures imply. The majority of unimplemented reports are concentrated in the most recent years of Commission activity. This reflects a certain inertia in the legislative process and the fact that developing and carrying out a legislative program is a long-term process. An extreme example of this inertia concerns expropriation. The Commission submitted its Report on this topic late in 1971 and its recommendations were not implemented until 1987.

Achieving a consensus within government and then getting the necessary time in a busy legislative session cannot be done overnight. It is unrealistic to expect early action or recommendations which call for a major legislative initiative and which cut across Ministry lines. The table below sets out an implementation rate which reflects the "aging factor." The older a report is, the more likely it is to be implemented.

Of The First 'N' Reports[16] Issued By The Commission	Percentage Implemented In Whole Or In Part
N	%
10	100%
20	85%
30	87%
40	78%
50	70%
60	68%
70	67%
80	63%
90	59%

14. These figures cover reports submitted, and implementation, up to the end of 1989.
15. R.S.B.C. 1979, c. 40. *See Report on the Mechanics' Lien Act* (LRC 7, 1972).
16. Excluded from 'N' are annual reports which contained no substantive recommendations.

Even the lowest of these figures constitutes an implementation record which compares favourably with similar law reform agencies in Canada and the Commonwealth.

E. The Commission Members

Since its creation, 19 individuals have served as members of the Law Reform Commission. Appointments have tended to be evenly balanced between academia and practice. Nine members were in active practice at the time of their appointment while eight were, or had a background as, law teachers. Two appointments which do not fit this pattern are the appointment of a "career law reformer" and of a sitting judge.

Commission experience is part of the background of a number of persons who have been appointed to the bench or have held high office within the Canadian Bar Association. Five individuals appointed to the Supreme Court of British Columbia, the Court of Appeal, or the Federal Court were, or had been Commission members. Three former members were presidents of the British Columbia Branch of the Canadian Bar Association and two of them went on to become national president.

Commissioners are appointed for a term of five years and appointments are renewable. The number of Commissioners has fluctuated between three (the statutory minimum) and six members. Its "historic" strength is five members. Most Commissioners serve on a part-time basis although at least one serves full-time. Since the mid-1970s it has been the practice that the Chairman of the Commission serves full-time. Over the past 20 years, the Commission has had five Chairmen and, in addition, two members served in an acting capacity for lengthy periods of time.

F. Developing the Program

1. Sources Of Projects

When, in 1970, the Commission developed the initial program of projects and studies which it intended to pursue, it engaged in a highly visible process of consultation with the Ministry of the Attorney General, the legal profession and the public. In the years which followed, changes in the Commission's program became incremental in nature. The way in which topics are selected for examination and report is much less visible today. Nonetheless, there is an underlying order.

Under section 2 of the *Law Reform Commission Act* the Attorney General may refer specific subjects to the Commission for examination and report. Various Attorneys General have done so on a number of occasions over the years, and about 30 percent of our Reports have their origins in such a reference. Ten years ago the Commission reflected on the role of the Attorney General in shaping its program. The Commission observed that section 2 raises the more general issue of its relationship to other branches of the Ministry of Attorney General and to the government in general and continued:[17]

17. Law Reform Commission of British Columbia, *Annual Report, 1980* at 7.

> It is clear that once a matter is before a law reform agency it must be free to develop its recommendations as it sees fit. This independence must exist in both substance and appearance. Less clear cut, however, is the degree of independence appropriate in the development of the program of a law reform agency. In British Columbia the Commission is almost entirely funded by government and, [our] ... Act plainly states that the Attorney General has important responsibilities in the development of the Commission's program for reform. It is equally plain that the Commission, while recognizing the statutory role of the Attorney General, must also exercise its independent judgment in developing its program. In the Commission's view the Act contemplates a balance between the requirements of government and the views of the Commission but leaves the precise equilibrium to be worked out between the Commission and the Attorney General.

The Commission concluded that, while it was anxious to ensure that its work is relevant and responsive to the needs of government, it was equally anxious to retain the independence to undertake work in areas it believes to be important, even if government of the day has not indicated a similar belief. This independence is critical to the Commission's credibility and usefulness to the people of the Province.

At the same time, the way in which the Commission develops the program does not always sit comfortably with the actual language of the *Law Reform Commission Act*. Section 2(b) exhorts the Commission to "prepare and submit to the Attorney General programs for the examination of different branches of the law" and section 6 speaks of "programs prepared by the commission and approved by [the Attorney General]." The only "approved program" the Commission ever had was its first one. Clearly, the concept of an "approved program" was obsolete by 1980 and the passage of a further 10 years has not revitalized it.

Most projects have their origins in sources other than references from the Attorney General. Many are generated internally. The Commission also receives suggestions for law reform measures or which identify areas of the law regarded as unsatisfactory. These suggestions emanate from the legal profession (both from individual practitioners and through the official organs of the bar such as the sections of the Canadian Bar Association), judges and the general public.

2. Criteria For Selection

Given the numbers and the various sources of topics for potential Commission projects, it is necessary to pick and choose among them. What considerations underlie a decision to select one topic, in preference to another, for action? There is no single criterion, but a number of the factors relevant to this decision are outlined below.

The Commission and its professional staff is composed wholly of lawyers and it, generally, tended to confine its work to areas where lawyers are recognized as having particular credibility. Its specialty is the formulation of legal policy. If in a particular topic, the issues of legal policy are less significant than policy issues on which other disciplines have greater expertise, it is less likely that the topic would form part of the program. This criteria is closely tied to the observations set out earlier respecting the role of the Commission.

The Commission's methodology also imposes certain limitations. A majority of its members serve on a part-time basis. The work of the Commission revolves around periodic meetings of the Commissioners at which research materials and draft reports are considered. This pattern means that certain kinds of projects would present grave difficulties. These would include projects which, by their nature, call for the day-to-day involvement of all Commissioners, or projects calling for extensive empirical research. Experience has demonstrated that, given the existing structure and methodology of the Commission, it functions most effectively in addressing short, discrete topics. This does not preclude large, long-term studies but the number of such projects that can be given active consideration at any one time is limited.

Many issues brought to the Commission's attention do not turn on defects in the substantive law. Rather, the defects are in matters of administration and the institutions through which the law is applied. While there is no hard and fast position on this, the Commission tends to be cautious in approaching topics which appear to call for altered institutional arrangements rather than "self-executing" changes in positive law.

The Commission also selects projects with a view to maintaining a program which is balanced in a number of ways. There is a balance between large projects and small projects. There is a balance between projects which are intensely theoretical and projects which are intensely practical. There is also a balance in respect of subject matter. It would be unfortunate if the Commission were perceived as devoting its resources wholly to lengthy projects on one narrow area of law however valuable or important work in that area might be.

A final consideration is the likelihood that recommendations on a particular topic will be adopted by the legislature. The issue of how far the program of a law reform agency should be shaped by implementation considerations is a difficult one on which views may, quite properly, vary widely. The view that has generally prevailed in this Commission over the years is that it should not be deterred from undertaking a study in which an important point of principle is involved by reason only that the government of the day may not share the Commission's sense of urgency with respect to reform in the area involved, or may be hostile to the recommendations likely to emerge. At the same time, it is necessary to be sensitive to the fact that the Commission is a publicly funded agency and this carries with it the responsibility to manage its resources in the way most likely to achieve results. Again, the issue resolves itself into one of achieving an appropriate balance.

G. Law Reform in the 1990's and Beyond

The Law Reform Commission is now into its third decade of advancing "the simplification and modernization of the law" in British Columbia and much still remains to be done. There is no shortage of topics and issues to occupy the Commission's attention and, given the pragmatic way in which the program is built, it is hazardous to make prophetic pronouncements as to what the law reform agenda will be over the next few years, and how it will be addressed. Still, it is possible to speculate on some themes which may emerge or grow in importance.

The Commission's primary means of carrying out its function has always been through formal recommendations set out in formal reports to the Attorney General. This undoubtedly will continue, but recent years have seen new vehicles emerge. In the past few years the Commission has published three "Study Papers" which embodied the research and views of named authors. The Commission saw these papers serving a number of purposes, but one of them was to achieve reform through education rather than legislation. This was made clear in the introductory note to a study paper which examined an aspect of the *Family Relations Act*:[18]

> [An] aim is to make the results of the research done for the commission available to the courts, the legal profession and the public generally. If this leads to a more sophisticated understanding of, and approach to, the Act, much will have been achieved and the pressure for legislative change may diminish.

The future may see the more extensive use of study papers and research papers with this goal in mind.

Another way in which the Commission contributes to reform other than through the publication of formal recommendations is through the participation of its full-time establishment in various ad hoc groups or committees concerned with legal change in areas not directly related to the Commission's program. The extent of such participation has increased in the last three years and, subject to available resources, may be expected to continue and develop further.

The 1990s may also see increased participation by the Commission in co-operative projects with other law reform bodies. Past experience with joint projects has not been wholly successful and they have not played a large role in the Commission's work. But the law reform community is maturing and a framework for co-operative ventures is beginning to emerge which may encourage a re-evaluation of their utility.

Particular projects are somewhat more difficult to predict but it is likely that some of the future work will involve topics which were the subject of past reports. On several occasions in recent years the commission has "revisited" past topics and this will probably occur with increasing frequency as the volume of past recommendations grows. There are two reasons why an old topic might be revisited. First, if it has been implemented, experience may suggest ways in which its operation can be improved. Improvement may take the form of "fine tuning"[19] or more radical changes may be called for.[20] Second, past recommendations may not have been accepted by the government but the problem to which they were directed persists or has been altered by intervening legal developments.[21] In that case a "second look" may be desirable.

18. Anderson and Karton, *Family Property* (Study Paper, 1985).
19. *See, e.g., The Enduring Power of Attorney: Fine-tuning the Concept* (WP 62, 1989). This considered legislation based on recommendations made in *Report on Powers of Attorney and Mental Incapacity* (LRC 22, 1975).
20. A good example is the subject of prejudgment interest. The scheme provided in the *Court Order Interest Act* is based on recommendations made in *Report on Pre-Judgment Interest* (LRC 12, 1973). It was comprehensively reviewed and major recommendations for change were made in *Report on the Court Order Interest Act* (LRC 90, 1987).
21. For example in *Report on Tort Liability of Public Bodies* (LRC 34, 1977) recommendations were made concerning the liability of highway authorities. *(cont....)*

Past work has another implication. It may provide a "platform" on which new legal structures may be erected. A case in point is the new *Personal Property Security Act*.[22] Not only does it constitute a revolution in commercial law in its own right, it might provide a vehicle for other changes. New legal rules respecting the enforcement of judgments through the seizure and sale of certain kinds of personal property might be developed in harmony with, and to use certain aspects of, the Act.[23] It might also be used to harmonize and modernize a variety of archaic lien laws.[24]

While the projects themselves may change and evolve, the need for law reform, and a full-time body devoted to advancing it, remains constant. Systematic and continuous law reform is not a luxury. It is a necessary adjunct to a rapidly evolving society governed by legislation and common law. It is important that it be performed by a body independent of the Government so that the interests of citizen and Crown can be impartially balanced.

The Commission has always held the view that over the years it has been "cost effective" in the sense that the saving in time and money that have been achieved by Government and individual citizens through modernized laws arising out of Commission work far outweighs the resources that have been devoted to it. Whether or not that can be demonstrated empirically, the Commission's achievements in improving and modernizing the law and advancing the cause of justice and the rule of law have been substantial.

21. *(...cont.)* They were based on a perceived defect in the law, as it then stood, which drew a distinction between "misfeasance" and "nonfeasance" on the part of highway authorities. Shortly after the report was issued the courts began to adopt a new analytical framework with respect to the liability of public bodies generally. It is uncertain how far the older concepts continue to play a role in determining liability.
22. S.B.C. 1989, c. 36. *See Report on Personal Property Security* (LRC 23,1975).
23. Some steps in this direction have been taken in the State of California. *See Code of Civil Procedure*, Part 2, Title 9, Division 2, Chapter 2, Article 3 (ss. 697.510 to 697.660) (West, 1987).
24. Liens arising under the *Woodworker Lien Act*, R.S.B.C. 1979, c. 436 and the *Tugboat Worker Lien Act*, R.S.B.C. 1979, c. 417 for example. In Ontario steps have been taken to assimilate repair and storage liens and harmonize them with personal property security legislation. *See Repair and Storage Liens Act, 1989*, S.O. 1989, c. 17.