



Law Reform Commission of British Columbia

ANNUAL REPORT

1993/94



"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...."

Law Reform Commission Act
Statutes of British Columbia 1969

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*
LYMAN R. ROBINSON, Q.C.
THOMAS G. ANDERSON

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Table of Contents

I	INTRODUCTION AND HIGHLIGHTS	1
II	COMMISSION MEMBERSHIP	2
III	THE PROGRAM	2
	1. Recreational Injuries: Liability and Waivers in Commercial Leisure Activities	3
	2. Conflicts of Interest: Directors and Societies	5
	3. Liens for Logging Work	7
	4. Pecuniary Loss and the <i>Family</i> <i>Compensation Act</i>	8
	5. The <i>Trustee Act</i>	9
	6. Land-Related Interests and the <i>Personal Property Security Act</i>	9
	7. Conflicting Property Rights	11
	8. Standardized Assumptions for Calculating Income Tax Gross-up and Management Fees in Assessing Damages	12
	9. Taxation and the Assessment of Income-Related Damage Awards	14
	10. Liability for Injury and Damage Caused by Animals	14
	11. Subjects of Interest	15
	12. Special Projects	15
	(a) The Internet Connection	15
	(b) Electronic Access to Commission Documents	16
	(c) Law Reform Database	17
	(d) <i>Limitation Act</i> Case Finder	17
IV	ACTION ON COMMISSION RECOMMENDATIONS	18
	1. The Buyer's Lien	18
	2. <i>Insurance Amendment Act, 1994</i>	18
	(a) Loss Appraisal Under the <i>Insurance Act</i> ...	18
	(b) Report on the <i>Insurance Act</i> , Section 26(1) .	18
	3. Report on Division of Pensions on Marriage Breakdown	19
	4. Report on Defamation	19
	5. A Lapsed Bill	19

V THE AVAILABILITY OF COMMISSION PUBLICATIONS	20
1. Printed Material	20
2. Electronic Access	21
VI ACKNOWLEDGMENTS	21
1. Commission Staff	21
2. Judges' Law Reform Committee	22
3. The Special Advisory Committee	23
4. The Law Foundation	23
5. The Legal Profession	24
6. Ministry and Government Personnel	24

APPENDICES

APPENDIX A REPORTS AND RECOMMENDATIONS MADE BY THE COMMISSION	26
APPENDIX B OTHER PUBLICATIONS	38
APPENDIX C PAST AND PRESENT MEMBERS OF THE COMMISSION ...	42
APPENDIX D SPECIAL ADVISORY COMMITTEE ON STANDARDIZING ASSUMPTIONS FOR CALCULATING INCOME TAX GROSS-UP AND MANAGEMENT FEES IN ASSESSING DAMAGES	43
APPENDIX E ACCESS TO THE QUEEN'S PRINTER BULLETIN BOARD	45

**To The Honourable Colin Gabelmann
Attorney General of the Province of British Columbia**

The Law Reform Commission of British Columbia has the honour to present its Annual Report for 1993/94. It outlines the progress made by the Commission during the period from April 1, 1993 to March 31, 1994.

I INTRODUCTION AND HIGHLIGHTS

The period under review was dominated by three projects referred to the Commission by the Attorney General. Two of these references were particularly large and demanding. Work on all of them is at the consultation stage and as part of that process the following documents were distributed for public comment and input:

- Consultation Paper on Recreational Injuries: Liability and Waivers in Commercial Leisure Activities
- Consultation Paper on Conflicts of Interest: Directors and Societies
- Consultation Paper on Land-Related Interests and the *Personal Property Security Act*

During this period final Reports were submitted on the following topics:

- Report on Standardized Assumptions for Calculating Income Tax Gross-up and Management Fees in Assessing Damages
- Report on Taxation and the Assessment of Income-Related Damage Awards

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. All of these developments are described in greater detail in Part III of this Report.

A significant development during the past year was the relocation of the Commission's premises - a measure made necessary by the consolidation of other Ministry operations. We relocated to other space within the same building complex and we have been able to configure it to suit our evolving needs more closely than the former premises.

II COMMISSION MEMBERSHIP

As presently constituted, the Commission consists of three members:

Arthur L. Close, Q.C.
Lyman R. Robinson, Q.C.
Thomas G. Anderson

A complete list of Commission members, past and present, is set out as Appendix C to this Report.

The term of office of Peter Burns, Q.C. came to an end during the year under review. We would like to place on record our appreciation of his contribution to our work during the seven years he served as a Commission member. This contribution was a notable one. He brought to our deliberations a rare combination of scholarly analysis and robust common sense. We miss him greatly.

We feel compelled to express our concerns over the fact that Government has not appointed new Commission members as the terms of existing members expire. Three years ago the Commission consisted of six members. Now our numbers are half that. Section 1(2) of the *Law Reform Commission Act* requires that we have at least three members and any further attrition will have a very serious effect on the ability of the Commission to carry out its functions.

III 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 and in two appendices to this Report.

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 contains a list of documents which the Commission has issued for consultation purposes.

1. RECREATIONAL INJURIES: LIABILITY AND WAIVERS IN COMMERCIAL LEISURE ACTIVITIES

This topic was referred to the Commission by the Attorney General in 1992. A catalyst for the reference was public complaints that the operators of ski facilities were requiring prospective skiers to sign very broadly drawn waivers of liability. These waivers purported not only to protect the operators from risks which are inherent to any participation sport, but also from liability for injuries caused by the operator's negligence. It has been questioned whether the ability to require such a waiver is in the public interest. Similar concerns arise in a variety of recreational activities. The Commission was also asked to review legislation proposed by the skiing industry as part of the study.

It is common knowledge that there is usually some risk of injury in sports activities. Injuries will occur at times no matter how good the equipment and facilities are. When accidents arise purely from the nature of the activity, no legal blame can be attached to other participants, nor to the operator of the recreational facility. But what about occasions when an injury is caused, in whole or in part, by some defect in the facility where the sport is carried on or in its operation, and could easily have been prevented by the operator without affecting the thrill of the sport?

This raises a number of questions about the allocation of risk between participants and operators. How far should operators be permitted to determine what the allocation of risk should be through the use of waivers of liability? Should a participant who has signed a waiver be prevented from suing for compensation, no matter what the circumstances? Should operators of recreational facilities have greater protection against ill-founded injury claims? If insurance costs are driving up the cost of participation, is the trade-off of giving up the right to sue for negligence in return for lower prices an appropriate one?

These issues are important because the B.C. economy depends to an increasing extent on the recreational sector. If the law relating to recreational safety is skewed in favour of operators on the one hand or in favour of recreational users on the other, it will harm the development of B.C.'s enormous recreational potential. It is important for international tourism, a vital growth industry, that B.C.'s recreational sector be perceived as neither prohibitively expensive due to high insurance rates, nor as a place where operators do not have to stand behind the safety of their operations.

The Law Reform Commission has developed tentative proposals for changing the law in this area. They are set out in a comprehensive consultation paper titled *Recreational Injuries: Liability and Waivers in Commercial Leisure Activities*. The Consultation Paper has been circulated widely for discussion and debate. The tentative proposals are summarized below.

Recreational Facilities, Risk, and Liability

The law should be clarified to ensure that a participant is deemed willingly to accept the risks inherent in a recreational activity for the purposes of the *Occupiers Liability Act*.

Waivers

The allowable scope of waivers should be defined to prevent them from over-reaching the legitimate purpose of protecting the operator against ill-founded claims. Waivers used in connection with recreational activities would not extend to injuries from certain sources of risk within the operator's control, namely:

- mechanical malfunctions
- unsafe operation of equipment by the operator or its employees
- unsafe conditions in an indoor recreational facility
- failure to meet commonly accepted safety standards in an outdoor recreational facility
- equipment that is unsafe for normal use at the time it is supplied by or rented from the operator
- breach of a specific safety requirement imposed by law
- risks that are unconnected with participation in a recreational activity.

The proposal would apply both to signed waivers and to terms printed on tickets.

Waivers by Minors and Parents

The practice of taking waivers by or on behalf of minors should be prohibited. Instead of a waiver, operators could require an acknowledgement-of-risk form from a minor or the minor's parent, which would serve as evidence that the minor accepted the inherent risks of the activity.

Skiing Safety Legislation

The Consultation Paper endorses the adoption of the Skier Responsibility Code, a recognized set of principles for safer skiing, as part of the law of B.C. This is one of the suggestions advanced by the B.C. skiing industry. Proposals are also made for legislation to clarify the safety obligations of ski area operators.

A Related Issue: Restricted Access to Privately Occupied Land for Recreational Purposes

To encourage occupiers to permit greater access for recreational activities, the Commission proposes that the obligations of occupiers towards persons permitted to enter or cross land for recreational purposes without paying for the privilege of doing so should be relaxed.

These tentative proposals have attracted a substantial volume of response and the Commission is in the process of considering it and the form its final recommendations to the Attorney General should take. We hope to submit our final Report before the end of 1994.

2. CONFLICTS OF INTEREST: DIRECTORS AND SOCIETIES

Early in 1992 the Honourable E.N. (Ted) Hughes examined aspects of the operation of the Commonwealth Games Society which is responsible for mounting the 1994 Commonwealth Games in Victoria. A particular focus was the awarding of construction contracts in circumstances that might constitute a conflict of interest for certain Board members. In the course of

his Report on this matter, Mr. Hughes raised a concern that the general rules which govern conflicts of interest in relation to societies and their officers no longer meet public expectations and that this matter should be referred by the Attorney General to the Law Reform Commission.

This matter was referred to us and as a result of our research we have developed a number of tentative proposals for changes in the law. These proposals are set out in a major Consultation Paper that forms the basis of our continuing dialogue with interested persons and groups. A notice that the Paper was available and that the Commission was anxious to receive comment on it was sent to over 7000 non-profit bodies in the province. The demand for copies of the Consultation Paper proved to be so overwhelming that it has gone to a second printing.

The Consultation Paper suggests that existing conflict of interest rules are not effective in protecting societies and similar non-profit bodies. The current law permits a director of a society to enter into a transaction with the society so long as the director's interest is disclosed and the transaction is approved by the other directors. Those rules permit a director to profit personally from his or her connection with the society. Many people have expressed concerns that this is an inappropriate result. The concern is heightened when the society is funded by what is, in substance, public money.

The Commission suggests that the law should be changed so that in almost all cases a director would not be permitted to enter into a business transaction with the society or otherwise receive money from it. This prohibition would extend to family members and business associates of a director. The only exceptions to the prohibition would be a very few carefully defined cases where the transaction would result in a significant benefit to the society. These transactions would be permitted.

In addition to proposing rules that apply expressly to society directors, the Consultation Paper also considers the position of other people involved with societies, such as members and volunteers, who may also face a conflict of interest. It suggests that a more flexible set of guidelines should regulate their conduct.

To stimulate comment draft legislation and draft guidelines are included in the Paper. While the focus of our study has been societies it is clear that the issues and the responses to them are not strictly confined to those bodies. We have therefore proposed that any reforming legislation should allow cabinet to make regulations extending the application of the legislation to governmental and non-governmental agencies that are analogous to societies.

A further issue is whether the legislation should establish an office that would provide societies with rulings on whether particular matters raise conflicts of interest and, if so, how to handle them. No proposal was made on this question but comment was expressly invited on whether an adviser would be useful and should be provided for in new legislation.

3. LIENS FOR LOGGING WORK

The *Woodworker Lien Act* is designed to protect or secure the interests of wage earners and other persons engaged in aspects of the forest industry. It is the frequent target of calls for reform and modernization. A quick reading of the Act makes it obvious why concerns are raised. The Act is a legal relic which embodies an archaic approach to statutory security. It is drafted in outmoded and inaccessible language. It establishes a registration scheme which achieves nothing. Procedures contained in the Act for the enforcement of the lien have escaped the modernization and rationalization that other aspects of civil procedure have received in recent years.

Late in 1992, we distributed a Working Paper that considered the operation of the *Woodworker Lien Act* (and a related statute, the *Tugboat Worker Lien Act*). The Working Paper considered both the repeal of these Acts and their possible replacement with new and modern legislation.

In particular it was tentatively proposed that the old concept of the woodworkers lien be replaced by a "forest work security interest" (FWSI) to secure unpaid amounts owed to various participants in the harvesting aspect of the forest industry. Although a FWSI would be created by operation of law and have some special features, for the most part its characteristics and

enforcement would be regulated by the *Personal Property Security Act*. Draft legislation was included in the Working Paper to show the form that new legislation might take.

The Commission has received and considered the responses to the Working Paper and is in the process of preparing its final Report.

4. PECUNIARY LOSS AND THE FAMILY COMPENSATION ACT

When a person is wrongfully injured by another, but the injuries do not prove to be fatal, the main focus of the law is compensating that person for loss arising from the injuries, although others close to the injured person may also suffer loss. When a person is wrongfully killed legislation shifts the law's concern more directly to compensating at least some who are affected by the death. In British Columbia, the legislation is called the *Family Compensation Act*. It is almost 150 years old.

As with much of the law the legal rights that people have when a family member is injured or killed have been developed by courts and legislatures in a piecemeal way. Even so, through the vigilance of the courts, assisted by an increasingly specialised bar, many of the principles of compensation for loss arising from personal injury and fatal accidents evolve in harmony with contemporary views. But this is not true of all aspects of this body of law. A review of recent cases reveals a series of inconsistencies and anomalies in the law, attributable in large measure to the fact that entirely different theories of compensation apply depending upon whether or not a person's injuries prove to be fatal.

A Working Paper titled *Pecuniary Loss and the Family Compensation Act* was published in November 1992. It explores the law governing third party rights when a person is wrongfully injured or killed by another and suggests some ideas for treating these rights with more consistency.

Responses to the Working Paper have been received and considered. Further work on this project awaits the outcome of certain cases currently before the Supreme Court of Canada

which may affect the content of our final recommendations. We hope to bring this project to a conclusion before the end of 1994.

5. THE TRUSTEE ACT

Basic research is underway for a general review of the *Trustee Act*. Particular attention will be paid to trustee powers, including those concerning investment, and to certain rules governing the administration of trust estates that may now be outdated. Modernization of the language of the *Trustee Act* is another objective. This is a relatively long-term project.

6. LAND-RELATED INTERESTS AND THE PERSONAL PROPERTY SECURITY ACT

In 1992 the Attorney General requested that the Commission review aspects of the relationship between the *Personal Property Security Act* and the *Land Title Act*. At the highest level of generality, we were asked to ascertain whether the two statutes operate harmoniously in their application to property which has the characteristics of both land and personal property, such as fixtures, growing crops and rights to the payment of money secured by interests in land. Do they strike an appropriate balance among the interests of lenders, borrowers and the public? A more specific aspect of the reference asked the Commission to consider some particular issues which have arisen in relation to the taking of security interests in fixtures.

We first proceeded on the more specific portion of the reference, giving it a relatively high priority, and early in 1993 submitted an *Interim Report on Fixtures and the Personal Property Security Act*. Work on the balance of the reference continued through 1993 and in January 1994 we issued our *Consultation Paper on Land-Related Interests and the Personal Property Security Act*. It addresses the remaining issues arising out of the reference.

The Consultation Paper focuses on three principal areas. The first is a consideration of two outstanding issues in relation to fixtures that were not addressed in the *Interim Report*. Both involve the question whether the concept of fixture itself requires

some modification. The second and third areas concern the status of money obligations that have particular links to land.

Fixtures revisited

The concept of fixture embraces items of equipment that might better be regarded as purely personal property by the law. The paper explores the possibility of defining "commercial apparatus," a class of property, that might, by legislation, be deemed to be personal property whatever its physical connection with land.

A further concern is the competition that can arise between a mortgagee of land and a financier who has taken a general security interest in all the debtor's personal property. If that security interest attaches before the goods are affixed to land, the financier may defeat an earlier mortgagee of the land. The fairness of this outcome may be questioned in certain circumstances when the goods are building components. The Consultation Paper explores alternatives that might achieve a result more in keeping with the expectations of the parties.

Rent and similar money obligations

Two categories of money obligation may be linked to land and issues arise as to their characterization. One category is the money obligation that arises directly out of an interest in land – rent, for example. When the right to such a payment is transferred should that transfer be regulated by the rules of real property, personal property, or some hybrid? The paper tentatively proposes that they should be characterized as real property.

Instruments and securities

The second category of money obligations of concern are those embodied in an instrument or a security. The same obligation may also be secured by a mortgage of land created either in the document itself or in a separate writing. It may also be secured by a fluid portfolio of mortgages owned by the obligor under the instrument or security. Proposals are made in the Consultation Paper to clarify the application of the PPSA to transactions involving these kinds of interests.

7. CONFLICTING PROPERTY RIGHTS

Everyone knows the adage that equates a person's home with a castle, but to what extent is this idea supported by law? Ancient principles recognizing an owner's absolute right to use and enjoy property have altered over the years because the extent to which one person can use land in a reasonable manner often involves the cooperation of a neighbour, particularly as communities become more crowded and individual parcels of land smaller.

But these changes have been modest, and there is a tension in the law between two opposed goals: protecting property rights, and advancing the reasonable use of land. To build on land, or to maintain an existing structure, to take two examples, may require passing over a neighbour's property, which the law of trespass forbids if the neighbour does not consent. One section in the statute books allows a court a very limited jurisdiction to allow an owner access over another's property to maintain a "dwelling house." In most cases, an unreasonable neighbour, however, is still free to refuse consent.

The case reports are full of examples where the ancient principles of law appear to fail the needs of modern property owners. Disputes between neighbours arise concerning access to landlocked land, access to allow construction of any structure and access to allow maintenance of structures other than "dwelling houses."

All of these cases reflect the natural conflict between ideas of ownership, protected by rights of trespass, and the realities of living in built-up communities, where people should be able to use their land in reasonable ways.

This project examines these legal issues, as well as a number of other related areas involving land where it appears that the law has somehow resisted the changes that have occurred in other areas of the law, and by so doing not kept step with modern needs. It is an old principle of law, for example, that (subject to prescriptive rights) a person excavating on one parcel of land need not be concerned about depriving buildings on adjoining parcels of land of lateral support. But this view emerged before modern ideas about negligence developed and has never been re-examined from that perspective.

Other related areas of the law that need review involve structures built on another's land. Where the structure encroaches, there is legislation that allows the court some ability to deal with the problem, but it may not provide an answer for a sub-surface encroachment, or for such things as mislocated driveways. Where the structure is built entirely on another's land, by mistake, there is no statutory response, although other provinces have enjoyed legislation resolving this issue for many decades.

Work has begun on identifying situations where the law appears to fail to deal adequately with problems like these. A Consultation Paper will explore the extent to which it is possible to develop legislation granting a court jurisdiction to modify or diminish ownership rights in land. Paradoxically such a jurisdiction would enhance property rights by increasing the ability of all owners to make more effective use of their land.

8. STANDARDIZED ASSUMPTIONS FOR CALCULATING INCOME TAX GROSS-UP AND MANAGEMENT FEES IN ASSESSING DAMAGES

The past two decades have seen significant changes in the way that damages for personal injuries, and those arising under the *Family Compensation Act*, are assessed. All of these changes have been aimed at achieving greater precision and fairness in the assessment of damages. Two particular ways in which the courts attempt to achieve precision are the subject of this project.

The first concerns an additional amount added to certain damage awards made to seriously injured persons to cover the cost of future care in order to prevent those awards from being prematurely exhausted through the operation of our income tax laws. This is the so-called "income tax gross-up." The second is the "management fee." This is an additional amount that, where necessary and appropriate, may be included in a damage award to compensate the injured party for the cost of engaging professional assistance in the management and investment of the award so that it will serve its purpose for the necessary length of time.

While these innovations contribute to a greater measure of precision in the assessment of awards, there is a price to be paid

in achieving it. Dealing with these issues tends to make trials longer and more complex. This results in greater expense to litigants and increased costs in the administration of civil justice generally.

In 1992, a suggestion was received from the Judges' Law Reform Committee¹ that the Law Reform Commission add to its program an examination of income tax gross-up and management fees. Its interest was stimulated by a suggestion that if a series of standardized assumptions could be developed in relation to calculating these elements of a damage award, the result could be a significant saving in time and money for litigants and the justice system.

Our approach to this topic involved the creation of a Special Advisory Committee² whose membership represented an appropriate blend of legal, actuarial, economic and taxation expertise. Its mandate was to consider the general feasibility of standardized assumptions for calculating income tax gross-up and management fees, identify the elements of these awards which are amenable to standardized assumptions and to recommend the contents of those assumptions.

The Committee, which acted on a *pro bono* basis, approached its task with great energy and after several months of sustained effort, submitted its Report to the Law Reform Commission. The Report of the Special Advisory Committee was subjected to a thorough review by the members of the Law Reform Commission. As a result of this review, we endorsed the Committee's recommendations and adopted them as our own. In January 1994 we submitted our own Report, which reproduced in full the Committee's Report.

The core recommendation made in the reports is that the *Law and Equity Act* be amended to enable the promulgation of "guidelines" to govern the calculation of income tax gross-ups and the awarding of management fees. This was accompanied by

1. See p. 22, *infra*.

2. The *Law Reform Commission Act*, R.S.B.C. 1979, c. 225, s. 4 contemplates the creation of such committees. The composition and terms of reference of the Special Advisory Committee are set out in Appendix D to this Report.

detailed and comprehensive recommendations as to the content of those guidelines.

9. TAXATION AND THE ASSESSMENT OF INCOME-RELATED DAMAGE AWARDS

Where a court makes an award of damages to an injured person to compensate for lost earnings, the damages are calculated and awarded as if that person's earnings attract no tax. This rule flows from a 1966 decision of the Supreme Court of Canada, *R. v. Jennings*, and reflects a theory that the injured party is to be compensated for a loss of income earning capacity rather than a loss of income itself.

This approach leads to anomalous results including the overcompensation of injured parties in many cases. In a Report submitted in January 1994, the Commission recommends that a provision be added to the *Law and Equity Act* that rationalizes the calculation of damages in respect of lost earnings and, in effect, overrules *R. v. Jennings*.

10. LIABILITY FOR INJURY AND DAMAGE CAUSED BY ANIMALS

When damage or injury is caused by an animal, there is no single theory of liability to which one can look to determine whether or not the owner of the animal is liable. Where the damage in question results from an event like an attack by a dog, a claim that the owner is liable might be based on simple negligence, occupier's liability, or an ancient cause of action known as *scienter*, depending on the circumstances of the attack. An element common to all of these causes of action is that the injured party must establish that the owner had some knowledge, or reason to know, that an animal attack was likely or possible. In practice, this may place an unfairly large burden on the injured plaintiff. The law in this area abounds with other anomalies as well.

So far as we are aware, the topic of liability for animals has never been the subject of any systematic study or attention by the legislature in this Province. This is in contrast to a large number

of other jurisdictions which have moved to examine and improve their laws in relation to animal-caused injury.

We have added this topic to our program as a matter for study and report. Our aim is to develop recommendations for a rationalized and modernized law in this area.

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 object is to determine if a particular topic is appropriate for formal inclusion in the program as a Commission project. Many of these matters arise out of particular suggestions made, and problems drawn to the Commission's attention, by the legal profession and members of the public.

12. SPECIAL PROJECTS

(a) The Internet Connection

In 1993 we arranged with a commercial "gateway" to gain access to the Internet system and the features associated with it. We have been exploring ways in which this facility can be used to enhance our effectiveness. There is a growing number of law-oriented forums and discussion groups within the Internet system and access allows us to monitor more closely current developments.

Access to the Internet has also allowed us to make electronic postings to the members of various groups that may have an interest in particular Commission projects, making them aware of the existence of our consultation documents and our wish to receive comment on them. We have received a significant volume of response through these postings. This is particularly true of our project on Recreational Liability where we were able to reach individual members of the public on a wide scale.

Since the Internet is essentially an international phenomenon much of the comment which it generates brings a fresh perspec-

tive to bear on our work. As we gain experience with this new tool we are confident that further possibilities will emerge.

(b) Electronic Access to Commission Documents

The Internet connection described above has led to a demand for access to Law Reform documents in electronic form and this demand is one that we have been striving to meet. In doing so we have been greatly assisted by the computerized Bulletin Board System maintained by the Provincial Queen's Printer (QPBS). A section of that facility has been reserved for Commission documents, in electronic form, making them available to users who wish to access them by computer on a "dial-in" basis using a standard modem and communications software.

All of the Consultation Papers and final Reports the Commission has issued during the year under review have been made available for downloading through the QPBS and the volume of downloads which has actually occurred has encouraged us to both continue and expand this service.

Accessing the QPBS through standard telephone lines is the optimal solution for British Columbia users, since such a connection can be made substantially free of long distance tolls from anywhere in the Province.³ We have, however, had a sufficient volume of requests from outside British Columbia that we have been exploring ways and means of servicing them. Large documents, such as Commission Reports, can be transmitted through the Internet system so long as the point of origin is a facility that has adopted the most widely supported file transfer protocol (FTP). Happily, the QPBS has just expanded its capabilities and become an "FTP site" within the Internet system. It now has the ability to transmit our documents worldwide to anyone requesting them via the Internet system⁴.

It is our aim to make all future Commission documents available in this way and we are also examining the feasibility of making a variety of past Commission Reports available for electronic distribution through this facility.

3. For users outside the Vancouver or Victoria telephone calling districts the QPBS uses a "callback" facility.

4. See Appendix E for details.

(c) Law Reform Database

Early in 1992 the Commission distributed the Law Reform Database. The Database serves as an electronic index, accessible through keyword searches, to over 5,000 publications of law reform bodies around the world. It was created to serve as a research tool to assist in ascertaining what attention particular topics may have received from law reform bodies.

The Database is distributed on computer disk and copies of it, along with a printed User's Manual, have been sent to over 700 institutions world-wide where legal research is carried out. This includes law schools and their libraries, Ministries of Justice and other government agencies concerned with legal policy making and law libraries which are an adjunct to court houses. The Database may also be downloaded by computer from the QPBS.

During the past 2 years, we have taken steps to keep the database current with a view to distributing a revised and expanded version of it in the future.

(d) Limitation Act Case Finder

A major initiative in 1992 was the creation of a computer database which embraces all of the case law surrounding British Columbia's *Limitation Act*. Because the *Limitation Act* is the product of recommendations made by the Commission, we have always had a particular interest in monitoring its operation. Over the years a substantial number of decisions have been gathered together. In order to make this resource available, we developed a database to act as a computerized index to this body of case law and act as a case finder that retrieves relevant cases in response to queries based on section number references or key words describing legal issues or relevant facts.

While the database was originally conceived as a research tool for internal use by the Law Reform Commission, we made it available to British Columbia's legal profession, and other recipients of our Annual Report, as one of the "electronic appendices" contained on the computer disk that accompanied our 1992/93 Annual Report. During the past year we have continued to monitor the cases arising under the *Limitation Act* with a view to issuing a revised version of the Case Finder in due course.

IV ACTION ON COMMISSION RECOMMENDATIONS

1. THE BUYER'S LIEN

In 1993 legislation was enacted to implement the recommendations made in our 1987 *Report on The Buyer's Lien: A New Consumer Remedy*. The *Consumer Protection Statutes Amendment Act, 1993*⁵ amended the *Sale of Goods Act*⁶ by adding a new Part 9. Part 9 will have the effect of strengthening the rights of consumers who prepay for goods which the seller fails to deliver.

2. INSURANCE AMENDMENT ACT, 1994

Bill 6, introduced into the current session of the Legislature, would amend the *Insurance Act* to implement recommendations made in two past Reports.

(a) Loss Appraisal Under the *Insurance Act*

This Report, submitted in 1989, considered the statutory appraisal procedures provided in the *Insurance Act*. Our research revealed that their application is uneven and, in some respects, uncertain. Recommendations were made that would result in the appraisal process being used with respect to a wider range of losses, including losses for business interruption. Bill 6 implements those recommendations.

(b) Report on the *Insurance Act*, Section 26(1)

Section 26(1) of the *Insurance Act* allows someone who suffers loss caused by an insured person to proceed directly against the insurer. This procedure is valuable where the insured is unwilling or unavailable to claim on the policy. Unfortunately, the way the section is drafted means that the direct right of action is not always available. In 1992 we submitted a Minor Report that recommended changes (implemented in Bill 6) to section 26 that would ensure that its policy is fully realized.

5. S.B.C. 1993, c. 39.

6. R.S.B.C. 1979, c. 370.

3. REPORT ON DIVISION OF PENSIONS ON MARRIAGE BREAKDOWN

When a marriage breaks down dividing pension rights between spouses can be expensive and complex. Our 1992 Report on this topic set out recommendations aimed at simplifying this process and making it operate more fairly.⁷ A Bill implementing these recommendations has been brought forward in the current session of the Legislature.⁸

4. REPORT ON DEFAMATION

A Report which we submitted in 1985 contained a number of recommendations for changes to the law of defamation. One of these recommendations has been brought forward in a Bill⁹ introduced into the current session of the provincial Legislature.

The recommendation involved would, in effect, reverse the much-criticized decision of the Supreme Court of Canada in *Cherneskey v. Armadale Publishers*.¹⁰ That decision significantly limited the availability of the defense of fair comment to newspapers with respect to the publication of letters to the editor.

5. A LAPSED BILL

In our 1989 *Report on the Commercial Tenancy Act* we recommended that this Act be repealed and replaced by new and modernized legislation in this area. A Bill introduced into the 1993 Session of the Legislature was aimed at implementing this recommendation. The Bill providing for a new *Commercial Tenancy Act*¹¹ was allowed to lapse at the end of the 1993 Session. We hope to see it reintroduced in due course.

7. *Report on the Division of Pensions on Marriage Breakdown* (LRC 123, 1992).

8. *Family Relations Amendment Act, 1994*, Bill 5.

9. Bill M 207, *Libel and Slander Act Amendment Act, 1994*, introduced March 17, 1994. At the date this Annual Report was finalized none of Bill 5, Bill 6 or Bill M207 had progressed beyond first reading.

10. (1978) 90 D.L.R. (3d) 321.

11. Bill 10, 1993.

V THE AVAILABILITY OF COMMISSION PUBLICATIONS

1. PRINTED MATERIAL

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 stocks last.

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The Commission is solely responsible for the distribution of its Consultation Papers (formerly called "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 Consultation Papers or to be placed on a mailing list to receive copies of all Consultation Papers.

The *Law Reform Database* is available on request from the Commission.

2. ELECTRONIC ACCESS

Electronic access to Commission documents was described earlier.¹² Up-to-date information on what is available can be obtained by contacting the Queen's Printer Bulletin Board Service. More complete information is set out in Appendix E to this Report.

The Law Reform Commission can be reached directly through Internet at the following E-mail address:

ARTHUR_CLOSE@MINDLINK.BC.CA

VI ACKNOWLEDGMENTS

1. 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 Gregory G. Blue for the intelligence and enthusiasm he brings to his work with us. He has carriage of the research and writing with respect to various

¹² See p. 16, *supra*.

projects, and responsibility for the legal aspects of our two special database projects. We would also like to acknowledge the very significant contribution he made as Reporter to the Special Advisory Committee.

We also wish to acknowledge the very important role played by Mark Hiltz. Mr. Hiltz, a professional librarian, has day-to-day responsibility for our database projects and the general supervision of the Commission's library. He also is the administrator of our internal computer network and coordinates the electronic distribution of our documents.

Our research group was also joined by three law students during the period under review. Peter Brady of the University of Victoria Faculty of Law and Michael Donaldson of the University of British Columbia Faculty of Law worked with us over the summer months, and Tom Zworski joined us during the first months of 1994 under the University of Victoria's Co-op Program. All 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 staff presently consists of Sharon St. Michael, Secretary to the Commission, who functions as office manager, and Linda Grant, who provides general office support services. We thank them for their efforts on our behalf.

2. 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 Committee assists us through responding to our Consultation Papers and by calling to our attention defects in the law that its members are well-situated to identify. The Committee members bring a unique perspective to bear on our work and their advice is invariably cogent and helpful.

As presently constituted, the Committee is composed of the following members:

The Honourable Mr. Justice H.P. Legg
 The Honourable Mr. Justice B.D. Macdonald
 The Honourable Madam Justice C.M. Huddart
 The Honourable Madam Justice M.V. Newbury
 The Honourable Madam Justice P. Kirkpatrick
 The Honourable Judge Donna Martinson

The Judges' Committee plays a major role in the law reform process and we wish to record our gratitude to the individual members of the bench who give so generously of their time and energy to this end.

3. THE SPECIAL ADVISORY COMMITTEE

The work of the Special Advisory Committee was described earlier in this Report. The Commission was fortunate that a group of knowledgeable and uniquely qualified individuals agreed to serve on the Committee.¹³ The resulting Report is a reflection of the diligence and expertise which they brought to their task. We would like to express our gratitude to each member of the Committee for the time and effort that has been devoted to this study.

Our particular thanks go to the Honourable Mr. Justice L.S.G. Finch who chaired the Committee.

4. THE LAW FOUNDATION

The Law Foundation of British Columbia continues to respond generously 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 fulfils that object and renders an important service to the people of the Province.

13. See Appendix D.

5. THE LEGAL PROFESSION

The support which we have received from the organized bar and its individual members has continued. We rely heavily on the assistance of the legal profession in a number of ways. At the research stage of our projects, individual lawyers assist us in gathering facts and in acting as a "sounding board" with respect to various approaches to difficult issues. Requests for help of this kind are invariably the subject of a generous response. At the more formal stage of consultation, various sections of the British Columbia Branch of the Canadian Bar Association assist us in our deliberations with thoughtful submissions on the proposals and tentative conclusions set out in our Consultation Papers. We wish to thank all members of the bar who give generously of their time and experience.

Our consultation with the legal profession has been greatly facilitated in recent years by the creation of the Legislation and Law Reform Committee of the British Columbia Branch of the Canadian Bar Association. This Committee provides us with a continuing point of contact on law reform matters. Gregory Steele, the Committee Chair, and Ann McLean, who serves the Committee as Legislation and Law Reform Officer, have both assisted us in a variety of ways and we are deeply indebted to them.

6. 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 also work closely with members of the Ministry's Policy and Legislation Services Division. A happy spirit of cooperation exists between our groups which, we believe, greatly enhances the effectiveness of the Law Reform Commission. Our thanks go to the individuals within that Division with whom our own personnel have worked during the past year.

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.

The team responsible for the Queen's Printer Bulletin Board System have been particularly helpful to us during the past year in assisting us to bring our work to a wider audience through their facilities for electronic distribution. Our special thanks go to Scott Brynen and Ken O'Connor.

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 Maureen Maloney, the Deputy Minister, Brian Neal, Q.C., Deputy Attorney General, Jo Thomson, Executive Director for Independent Operating Agencies, Boards and Commissions, and various officers within the Information Services, Data Services, 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.



LYMAN R. ROBINSON, Q.C.



THOMAS G. ANDERSON

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

No.	Title	Date	Recommendations Implemented in Whole or in Part by
10	Annual Report 1972*	Dec. 1972	Not applicable
11	Interim Report on Evidence*	Feb. 1973	<i>Attorney-General Statutes Amendment Act, 1975</i> , S.B.C. 1975, c. 4, s. 6 (see now <i>Evidence Act</i> , R.S.B.C. 1979, c. 116, ss. 37, 38).
12	Pre-Judgment Interest*	May 1973	<i>Prejudgment Interest Act</i> , S.B.C. 1974, c. 65 (see now <i>Court Order Interest Act</i> , R.S.B.C. 1979, c. 76).
13	Landlord and Tenant – Residential Tenancies*	Dec. 1973	<i>Landlord and Tenant Act</i> , S.B.C. 1974, c. 45 (see now <i>Residential Tenancy Act</i> , S.B.C. 1984, c. 10).
14	Annual Report 1973*	Jan. 1974	Not applicable
15	Limitations – General*	Mar. 1974	<i>Limitations Act</i> , S.B.C. 1975, c. 37 (see now <i>Limitation Act</i> , R.S.B.C. 1979, c. 236); <i>Law Reform Amendment Act</i> , 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	<i>Judicial Review Procedure Act</i> , S.B.C. 1976, c. 25 (see now <i>Judicial Review Procedure Act</i> , 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	<i>Miscellaneous Statutes Amendment Act (No. 1)</i> , 1987, S.B.C. 1987, c. 42, s. 91 (see now <i>Power of Attorney Act</i> , R.S.B. C. 1979, c. 334, ss. 1-4); <i>Miscellaneous Statutes Amendment Act (No. 2)</i> , 1987, S.B.C. 1987, c. 43, s. 104 (see now <i>Trustee Act</i> , R.S.B.C. 1979, c. 414, ss. 14(7), 14(11)).

No.	Title	Date	Recommendations Implemented in Whole or in Part by
22	Powers of Attorney and Mental Incapacity*	May 1975	<i>Attorney-General Statutes Amendment Act, 1979</i> , S.B.C. 1979, c. 2, s. 52 (see now <i>Power of Attorney Act</i> , R.S.B.C. 1979, c. 334, s. 7).
23	Personal Property Security*	Oct. 1975	<i>Personal Property Security Act</i> , S.B.C. 1989, c. 36.
24	Security Interests in Real Property: Remedies on Default*	Dec. 1975	<i>Miscellaneous Statutes (Court Rules) Amendment Act</i> , S.B.C. 1976, c. 33, s. 94(a) [in part] (see now <i>Law and Equity Act</i> , R.S.B.C. 1979, c. 224, s. 16); Supreme Court Rules, Rule 50 (11), 3(2) [in part]; <i>Land Titles Act</i> , S.B.C. 1978, c. 25 [in part] (see now <i>Land Title Act</i> , R.S.B.C. 1979, c. 219, ss. 224-225); <i>Attorney General Statutes Amendment Act</i> , S.B.C. 1980, c. 1, s. 15 (see now <i>Law and Equity Act</i> , R.S.B.C. 1979, c. 224, s. 21.1) [in part]; <i>Property Law Act</i> , R.S.B.C. 1979, c. 340, s. 28 [in part]; <i>Law Reform Amendment Act, 1985</i> , S.B.C. 1985, c. 10, s. 5 (see now <i>Law and Equity Act</i> , 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	<i>Law Reform Amendment Act, 1985</i> , S.B.C. 1985, c. 10, ss. 1, 2, 10 (see now <i>Infants Act</i> , 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., <i>Mineral Act, 1977</i> , S.B.C. 1977, c. 54, s. 20(2).
28	The Rule in <i>Bain v. Fothergill</i> *	June 1976	<i>Conveyancing and Law of Property Act</i> , S.B.C. 1978, c. 16, s. 33 (see now <i>Property Law Act</i> , R.S.B.C. 1979, c. 340, s. 33).
29	Annual Report 1976*	Dec. 1976	Not applicable

No.	Title	Date	Recommendations Implemented in Whole or in Part by
30	The Rule in <i>Hollington v. Hewthorn</i> *	Jan. 1977	<i>Evidence Amendment Act, 1977</i> , S.B.C. 1977, c. 70 (see now <i>Evidence Act</i> , R.S.B.C. 1979, c.116, ss. 15(3), 80, 81).
31	Waiver of Conditions Precedent in Contracts*	Apr. 1977	<i>Attorney-General Statutes Amendment Act, 1978</i> , S.B.C. 1978, c. 11, s. 8 (see now <i>Law and Equity Act</i> , R.S.B.C. 1979, c. 224, s. 49).
32	Proof of Marriage in Civil Proceedings*	June 1977	<i>Attorney-General Statutes Amendment Act, 1979</i> , S.B.C. 1979, c. 2, s. 18 (see now <i>Evidence Act</i> , R.S.B.C. 1979, c. 116, s. 58).
33	The <i>Statute of Frauds</i> *	June 1977	<i>Law Reform Amendment Act, 1985</i> , S.B.C. 1985, c. 10, ss. 7, 8 (see now <i>Law and Equity Act</i> , R.S.B.C. 1979, c. 224, s. 54).
34	Tort Liability of Public Bodies*	June 1977	----
35	<i>Offences Against the Person Act, 1828</i> , Section 28*	Aug. 1977	<i>Attorney-General Statutes Amendment Act, 1978</i> , S.B.C. 1978, c. 11, s. 8 (see now <i>Law and Equity Act</i> , R.S.B.C. 1979, c. 224, s. 3).
36	Annual Report 1977*	Jan. 1978	Not applicable
37	<i>Absconding Debtors Act and Bail Act: Two Obsolete Acts</i> *	Mar. 1978	<i>Attorney-General Statutes Amendment Act, 1978</i> , S.B.C. 1978, c. 11, ss. 1, 2.
38	The <i>Replevin Act</i> *	May 1978	Rules of Court, Rule 46 as amended Nov. 26, 1981 by B.C. Reg 467/81. <i>Attorney General Statutes Amendment Act, 1982</i> , S.B.C. 1982, c. 46, ss. 3-6, 25, 37-41.
39	The <i>Attachment of Debts Act</i> *	Oct. 1978	----
40	Execution against Land*	Oct. 1978	----
41	Annual Report 1978*	Jan. 1979	Not applicable

No.	Title	Date	Recommendations Implemented in Whole or in Part by
42	Creditors' Relief Legislation: A New Approach	Jan. 1979	----
43	Guarantees of Consumer Debts*	June 1979	<i>Consumer Protection Amendment Act</i> , 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; Defamation and Letters to the Editor)*	Jan. 1980	<i>Attorney General Statutes Amendment Act, 1980</i> , S.B.C. 1980, c. 1, ss. 7, 17 (see now <i>Estate Administration Act</i> , R.S.B.C. 1979, c. 114, s. 66(4)(b)); <i>Negligence Act</i> , R.S.B.C. 1979, c. 298, s. 7(3).
46	Civil Litigation in the Public Interest*	June 1980	----
47	Calculation of Interest on Foreclosure	Sept. 1980	<i>Attorney General Statutes Amendment Act, 1981</i> , S.B.C. 1981, c. 10, s. 28 (see now <i>Law and Equity Act</i> , R.S.B.C. 1979, c. 224, s. 18.1).
48	The Recovery of Unauthorized Disbursements of Public Funds	Sept. 1980	<i>Financial Administration Act</i> , S.B.C. 1981, c. 15, s. 67.
49	Annual Report 1980 (Discount Rates)*	Jan. 1981	<i>Attorney General Statutes Amendment Act, 1981</i> , S.B.C. 1981, c. 10, s. 30 (see now <i>Law and Equity Act</i> , R.S.B.C. 1979, c. 224, s. 51).
50	Cable Television and Defamation	Mar. 1981	<i>Law Reform Amendment Act, 1985</i> , S.B.C. 1985, c. 10, s. 9 (see now <i>Libel and Slander Act</i> , 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	<i>Attorney General Statutes Amendment Act (No. 2), 1990</i> , S.B.C. 1990, c. 34, s. 9 (see now <i>Law and Equity Act</i> , R.S.B.C. 1979, c. 224, s. 46) [in part].
53	Distress for Rent	Nov. 1981	----

No.	Title	Date	Recommendations Implemented in Whole or in Part by
54	Annual Report 1981	Jan. 1982	Not applicable
55	Arbitration	May 1982	<i>Commercial Arbitration Act</i> , S.B.C. 1986, c. 3. <i>Foreign Arbitral Awards Act</i> , 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	<i>Miscellaneous Statutes Amendment Act (No. 1), 1984</i> , S.B.C. 1984, c. 25, s. 63 (see now <i>Small Claims Act</i> , S.B.C. 1989, c. 38, s. 3(1)); <i>Miscellaneous Statutes Amendment Act (No. 2), 1984</i> , S.B.C. 1984, c. 26, s. 2.
60	Annual Report 1982*	Jan. 1983	Not applicable
61	Standing of a Common Law Spouse to Apply under the <i>Family Compensation Act</i> [Printed as an Appendix to LRC 73]*	Jan. 1983	<i>Family Law Reform Amendments Act</i> , 1985, S.B.C. 1985, c. 72, s. 3 (see now <i>Family Compensation Act</i> , R.S.B.C. 1979, c. 120, s. 1).
62	Interspousal Immunity in Tort	Mar. 1983	<i>Charter of Rights Amendments Act</i> , 1985, S.B.C. 1985, c. 68, ss. 50-53, 79, 83, 98 (see now <i>Law and Equity Act</i> , R.S.B.C. 1979, c. 224, s. 55).
63	Peremptory Challenges in Civil Jury Trials	June 1983	<i>Law Reform Amendment Act, 1985</i> , S.B.C. 1985, c. 10, ss. 3, 4 (see now <i>Jury Act</i> , R.S.B.C. 1979, c. 210, ss. 18, 18.1).
64	Breach of Promise of Marriage	Aug. 1983	<i>Family Law Reform Amendments Act</i> , 1985, S.B.C. 1985, c. 72, ss. 1, 36 (see now <i>Family Relations Act</i> , R.S.B.C. 1979, c. 121, s. 75).

No.	Title	Date	Recommendations Implemented in Whole or in Part by
65	Foreign Money Liabilities	Sept. 1983	<i>Foreign Money Claims Act</i> , S.B.C. 1990, c. 18.
66	Competing Rights to Mingled Property: Tracing and the Rule in Clayton's Case	Sept. 1983	----
67	Bulk Sales Legislation	Oct. 1983	<i>Law Reform Amendment Act, 1985</i> , S.B.C. 1985, c. 10, ss. 11-13.
68	Intentional Interference with Domestic Relations	Nov. 1983	<i>Family Law Reform Amendments Act, 1985</i> , S.B.C. 1985, c. 72, ss. 35, 37, 40 (see now <i>Family Relations Act</i> , 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 <i>Land (Wife Protection) Act</i> [Printed as an Appendix to LRC 73]*	Jan. 1984	<i>Charter of Rights Amendments Act, 1985</i> , S.B.C. 1985, c. 68, ss. 61-78 (see now <i>Land (Spouse Protection) Act</i> , R.S.B.C. 1979, c. 223).
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(25) to 37(29) as enacted by B.C. Reg. 55/93, s. 11 [in part].

No.	Title	Date	Recommendations Implemented in Whole or in Part by
78	The Authority of a Guardian	Jan. 1985	<i>Miscellaneous Statutes Amendment Act (No. 1), 1987</i> , S.B.C. 1987, c. 42, ss. 22, 23 (see now <i>Family Relations Act</i> , 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	<i>Miscellaneous Statutes Amendment Act (No. 1), 1987</i> , S.B.C. 1987, c. 42, ss. 92, 93 (see now <i>Power of Attorney Act</i> , 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	<i>Miscellaneous Statutes Amendment Act (No. 1), 1987</i> , S.B.C. 1987, c. 42, s. 51 (see now <i>Law and Equity Act</i> , 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	<i>Law Reform Amendment Act, 1988</i> , S.B.C. 1988, c. 42, s. 2, (see now <i>Infants Act</i> , 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	<i>Law Reform Amendment Act, 1988</i> , S.B.C. 1988, c. 42, ss. 5-7 (see now <i>Property Law Act</i> , R.S.B.C. 1979, c. 340, ss. 19.1-20.3).
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	The Action <i>Per Quod Servitium Amisit</i>	Nov. 1986	<i>Law Reform Amendment Act, 1988</i> , S.B.C. 1988, c. 42, s. 4.
90	The Court Order Interest Act	Jan. 1987	----

No.	Title	Date	Recommendations Implemented in Whole or in Part by
91	Obsolete Remedies against Estate Property: <i>Estate Administration Act</i> , Part 9	Mar. 1987	<i>Law Reform Amendment Act, 1988</i> , 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	<i>Consumer Protection Statutes Amend- ment Act, 1993</i> , S.B.C. 1993, c. 39 (see now <i>Sale of Goods Act</i> , R.S.B.C. 1979, c. 370, Part 9).
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 <i>Lis Pendens</i> [Printed as an Appendix to LRC 104]*	Nov. 1988	<i>Land Title Amendment Act, 1989</i> , S.B.C. 1989, c. 69, ss. 27, 28 (see now <i>Land Title Act</i> , R.S.B.C. 1979, c. 219, ss. 231, 235).
99	<i>The Land (Settled Estate) Act</i>	Nov. 1988	<i>Attorney General Statutes Amendment Act, 1989</i> , S.B.C. 1989, c. 64, ss. 8, 33, 34 (see now <i>Trust and Settlement Vari- ation Act</i> , R.S.B.C. 1979, c. 413, s. 3.1).
100	Co-Ownership of Land	Dec. 1988	----

No.	Title	Date	Recommendations Implemented in Whole or in Part by
101	Response to <i>Access to Justice - The Report of the Justice Reform Committee</i> [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	<i>Personal Property Security Act</i> , S.B.C. 1989, c. 36, s. 104 (see now <i>Land Title Act</i> , 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 <i>Motor Vehicle Act</i>	June 1989	<i>Miscellaneous Statutes Amendment Act (No. 2), 1990</i> , S.B.C. 1990, c. 58, s. 16 (see now <i>Motor Vehicle Act</i> , R.S.B.C. 1979, c. 288, s. 216) [in part].
107	Minor Report on Loss Appraisal under the <i>Insurance Act</i>	July 1989	----
108	<i>The Commercial Tenancy Act</i>	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	----

No.	Title	Date	Recommendations Implemented in Whole or in Part by
112	The Ultimate Limitation Period: <i>Limitation Act</i> , Section 8	Mar. 1990	----
113	Annual Report 1989/90*	Apr. 1990	Not applicable
114	Minor Report on Priority of Builders Liens under Bill 52	Oct. 1990	----
115	Minor Report on Affidavits: Alternatives to Oaths	Nov. 1990	<i>Affirmation Regulation Amendment</i> , B.C. Reg. 314/91.
116	Execution against Securities	Mar. 1991	----
117	Interim Report on Enforcing Judgments from outside the Province	Mar. 1991	----
118	Mortgages: Judicial Sales and Deficiency Claims	Mar. 1991	----
119	Annual Report 1990/91	Mar. 1991	Not applicable
120	Apartment Corporations	May 1991	----
121	The <i>Foreign Money Claims Act</i> : Regulations	Aug. 1991	----
122	The <i>Uniform Enforcement of Canadian Judgments Act</i>	Jan. 1992	<i>Enforcement of Canadian Judgments Act</i> , S.B.C. 1992, c. 37
123	Division of Pensions on Marriage Breakdown	Jan. 1992	----
124	Annual Report 1991/92	Apr. 1992	Not applicable

No.	Title	Date	Recommendations Implemented in Whole or in Part by
125	<i>Insurance Act</i> , Section 26(1) [Printed as an Appendix to LRC 132]	June 1992	----
126	Supreme Court Rule 54: Reciprocally Enforceable Judgments	Oct. 1992	Rules of Court, Rule 54 as enacted by B.C. Reg. 55/93, s. 21
127	Wrongful Interference with Goods	Nov. 1992	----
128	Non-Charitable Purpose Trusts	Nov. 1992	----
129	Informal Public Appeal Funds	Jan. 1993	----
130	Fixtures and the <i>Personal Property Security Act</i>	Jan. 1993	----
131	Apportionment of Costs and Contributory Negligence: Section 3 of the <i>Negligence Act</i>	Jan. 1993	----
132	Annual Report 1992/93	Apr. 1993	Not applicable
133	Standardized Assumptions for Calculating Income Tax Gross-up and Management Fees in Assessing Damages	Jan. 1994	----
134	Taxation and the Assessment of Income-Related Damage Awards	Jan. 1994	----
135	Annual Report 1993/94	Apr. 1994	Not applicable

APPENDIX B

OTHER PUBLICATIONS

A. Databases

The Law Reform Database and the *Limitation Act* Case Finder are described in the body of this Report.

B. Study Papers

Study Papers are documents prepared for the Law Reform Commission on particular topics by named authors. Published Study Papers are:

- S1 The Office of the Sheriff
by Gordon Turriff and Elizabeth Edinger, 1983
- S2 Family Property
by Thomas G. Anderson and Michael Karton, 1985
- S3 Court Jurisdiction
by John W. Horn, 1989

C. Working / Consultation Papers Issued by the Commission

Documents produced for consultation purposes frequently precede a final Report on the topic under consideration. In the following list all of the Working Papers and Consultation Papers except those marked with an asterisk (*) have in fact been superseded by a final Report.

No.	Title	Year
Working Papers		
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 <i>Mechanics' Lien Act</i>	1971
6	Expropriation	1971
7	Legal Position of the Crown	1972
8	Debtor-Creditor Relationships: Pre-Judgment Interest	1973

No.	Title	Year
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 <i>Powers of Attorney Act</i> 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 <i>Attachment of Debts Act</i>	1976
19	The Rule in <i>Hollington v. Hewthorn</i>	1976
20	The Statute of Frauds	1976
21	The Enforcement of Judgments: The <i>Creditors' Relief Act</i>	1976
22	The Enforcement of Judgments: Execution Against Land	1976
23	The <i>Replevin Act</i>	1977
24	Guarantees of Consumer Debts	1978
25	Arbitration	1979
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

No.	Title	Year
36	Competing Rights to Mingled Property: Tracing and the Rule in <i>Clayton's Case</i>	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 <i>Court Order Interest Act</i>	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
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 <i>Land (Settled Estate) Act</i>	1988
60	Vicarious Liability Under the <i>Motor Vehicle Act</i>	1988
61	<i>Commercial Tenancy Act</i>	1988
62	The Enduring Power of Attorney: Fine-Tuning the Concept	1989
63	Property Rights on Marriage Breakdown	1989

No.	Title	Year
64	The Enforcement of Judgments Between Canadian Provinces	1989
65	Division of Pensions on Marriage Breakdown	1990
66	Non-Charitable Purpose Trusts	1991
67	Wrongful Interference with Goods	1992
*68	Liens for Logging Work	1992
*69	Pecuniary Loss and the <i>Family Compensation Act</i>	1992
Consultation Papers		
*70	Recreational Injuries: Liability and Waivers in Commercial Leisure Activities	1993
*71	Conflicts of Interest: Directors and Societies	1993
*72	Land-Related Interests and the <i>Personal Property Security Act</i>	1994

*Final Report not yet issued

APPENDIX C

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, Q.C.	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, Q.C.	Chairman Commissioner	1974 to 1977 1974 to 1979
Hon. Mr. Justice J.D. Lambert	Commissioner Chairman	1976 to 1978 1978
Hon. Mr. Justice K.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 1992
Hon. Mdm. Justice M.V. Newbury	Commissioner	1984 to 1991
Lyman R. Robinson, Q.C.	Commissioner	1985 to date
Peter T. Burns, Q.C.	Commissioner	1986 to 1993
Thomas G. Anderson	Commissioner	1990 to date

APPENDIX D

SPECIAL ADVISORY COMMITTEE ON
STANDARDIZING ASSUMPTIONS FOR CALCULATING
INCOME TAX GROSS-UP AND MANAGEMENT FEES
IN ASSESSING DAMAGES

1. Terms of Reference:

- A. The Committee will consider the extent to which it is possible and desirable to standardize the assumptions which are relevant to

- (1) the calculation of a "gross up" of
 - (a) the future care portion of a personal injury award, or
 - (b) an award for loss of dependency in a fatal accident case

to adjust for the impact of taxation of income generated by the award, and

- (2) the provision of a "management fee" as part of an award.

If the Committee concludes that it is possible and desirable to standardize the assumptions it shall proceed as described below.

- B. If the Committee concludes that standardization with respect to the gross-up calculation is desirable, but is possible only if certain assumptions applicable to the calculation of all awards in personal injury and fatal accident cases that are based on future losses are also standardized, the Committee may consider and make recommendations concerning those additional assumptions.
- C. The Committee will identify the variables that will affect the gross-up calculation or the provision of a management fee and determine which of the variables

- (1) depend on the facts of individual cases and the evidence led to establish them, or
 - (2) should not depend on the facts of individual cases nor vary from case to case.
- D. The Committee will consider those variables in the second group and recommend a fair and balanced set of assumptions to fix their content.
- E. The committee will consider ways of making the assumptions easy to apply in practice including the possibility of their incorporation in tables, algorithms and computer programs, and make appropriate recommendations or, if possible devise the tools for this purpose.
- F. The Committee will consider and make recommendations concerning the most appropriate legal technique of mandating the use of the assumptions.
- G. The Committee will consider the need for a periodic review of the assumptions and the best way to constitute a review and implement any necessary revisions.

2. Committee Members

The Honourable Mr. Justice L.S.G. Finch
 Patrice Abrioux
 Allan Brown
 Rob Carson
 Arthur Close
 Jeremy Collisbird
 Gregory Steele
 Kevin Turnbull

APPENDIX E

ACCESS TO THE QUEEN'S PRINTER BULLETIN BOARD

The following bulletins were downloaded from the Queen's Printer Bulletin Board. The information contained in them was current at the time this Report was settled.

DIAL ACCESS NUMBERS FOR THE QUEEN'S PRINTER BULLETIN BOARD

The Queen's Printer Bulletin Board currently supports the following for dial access. All of our lines are capable of 14,400 baud (V.32/V.32bis)

- If you are calling from the Victoria area,
 (604) 356-0045
- If you are calling from Vancouver and the lower mainland,
 (604) 660-1264
- If you are calling from the rest of British Columbia, call our Victoria [356-0045] number. To lower your costs, read the Bulletin on toll-free callback.
- If you have a USRobotics HST type modem, you can call
 (604) 953-4014 or (604) 953-4015

TOLL-FREE CALLBACK WITHIN BRITISH COLUMBIA

To lower your costs if you are calling from outside of Greater Victoria or Greater Vancouver, we offer a system by which our Bulletin Board will call you back toll-free. In order to do this, you MUST have your modem connected to a telephone line with a direct dial phone number (not via a switchboard). Simply select \$ from the main menu, and follow the simple instructions.

CONNECTING TO THE QUEEN'S PRINTER BULLETIN BOARD
FROM THE INTERNET (VIA TELNET)

If you have access to the Internet (or B.C. Government MAN), you can TELNET to the Queen's Printer Bulletin Board at 142.36.126.234. All of the normal Bulletin Board functions are available to you except for file transfers [uploading and downloading]. For information on file transfers via the Internet, see the Bulletin on Transferring files via FTP.

FILE TRANSFERS FROM THE QUEEN'S PRINTER BULLETIN
BOARD ACROSS THE INTERNET (VIA FTP)

If you have access to the Internet (or B.C. Government MAN), you can FTP to the Queen's Printer Bulletin Board at

BBS.QP.GOV.BC.CA

or

142.36.126.234

Log in as ANONYMOUS, and use your e-mail address as the password.

Once you have connected look for the Law Reform Commission files in the following path:

/ROOT/GOVTINFO/LRC