

Law Reform Commission of British Columbia

Annual Report

1994/95



"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

LRC 142

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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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 1994/95. It outlines the progress made by the Commission during the period from April 1, 1994 to March 31, 1995.

I INTRODUCTION AND HIGHLIGHTS

During the period under review the Commission's program continued to be dominated by three projects referred to it by the Attorney General.

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

We have now submitted a final Report on the first of these topics and our work on the other two is in its final stages. Despite the resources devoted to these projects (two of them were particularly large and demanding), the Commission was also able to bring forward recommendations on a number of other topics.

In summary, the period under review was a productive time for the Commission, with Reports submitted on the following matters:

- Recreational Injuries: Liability and Waivers in Commercial Leisure Activities
- The *Woodworker Lien Act*
- The *Tugboat Worker Lien Act*
- Pecuniary Loss and the *Family Compensation Act*
- Supplementary Report on *Foreign Money Claims Act: Regulations* (Minor Report)
- *Labour Regulation Act* (Minor 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. All of these developments are described in greater detail in Part III of this Report.

The progress made in the past year occurred despite a drastic decline in the financial resources of the Commission. It was only at the beginning of our 1994/95 financial year that we learned that government support for the operation of the Commission was to be reduced to less than 60% of the level of the previous year. It was clear that if the Law Reform Commission was to survive it could only be through a drastic reduction in its scale of operation to match the funds that, realistically, were available. We prepared and implemented a revised

operating budget aimed at achieving such a reduction. This involved staff cuts and major reductions in virtually all budget expenditure headings. This was a painful exercise but the Commission remains a viable institution, albeit one that now functions on a smaller scale.

It is difficult to oppose, in principle, rational efforts by governments, carried out in good faith, to reduce expenditure. The Commission cannot expect to be immune when hard decisions must be made concerning the allocation of limited resources among competing programs and agencies. It is important, however, that these decisions be properly informed. The lack of notice and consultation that surrounded this budget decision is a matter of serious concern.

It is also important to note, however, that these events have had their positive aspects. In forcing us to reexamine virtually every aspect of our operation, we have discovered areas in which improvements and efficiencies were possible. For example, our publication strategy has been totally revised to de-emphasize the distribution of Commission publications in printed form in favour of electronic distribution on computer disk and through computer downloading and the internet.

We hope that the period of drastic operational adjustments is now behind us and look forward to 1995-96 as a year when we focus fully on the task of law reform.

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.

We feel compelled to reiterate our concerns over the fact that Government has not appointed new Commission members as the terms of existing members expire. Four years ago the Commission consisted of six members. Now our numbers are half that. For almost two years the Commission has operated with three members, the minimum number stipulated in the *Law Reform Commission Act*. This is not a healthy situation and if allowed to continue may have a 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

In the autumn of 1994 the Commission submitted its Report on *Recreational Injuries: Liability and Waivers in Commercial Leisure Activities*. It was a response to the Attorney General's request that the Commission examine the law relating to the tort liability of commercial recreational operators, especially with regard to conventional recreational skiing. The Report was preceded by a Consultation Paper, which received wide distribution in print and in electronic form and generated much useful comment.

Background

The reference to the Commission arose from two roughly parallel developments. Around the beginning of 1992 several provincial government ministries received complaints about the breadth of some waivers used by recreational operators. At about the same time, the Canada West Ski Areas Association (CWSAA) resumed its efforts on behalf of the skiing industry to secure the enactment of a *Ski Area Safety Act* modelled on American legislation dealing with risk and liability in alpine skiing. The Commission was also asked to review the draft Act proposed by the CWSAA.

The Report reviews the present law governing civil liability and waivers in commercial recreation, and contains a detailed analysis of the CWSAA legislative proposal. The Commission's conclusions are set out in 24 recommendations. The recommendations cover two related issues in addition to matters coming strictly within the Attorney General's terms of reference. These are, firstly, the ability of non-profit recreational organizations to make use of comprehensive waivers and, secondly, decreasing access to land for recreational use resulting from fear of liability on the part of landowners and occupiers.

Occupiers Liability

A catalyst for the renewal of the CWSAA's legislative initiative was *Waldick v. Malcolm*, a 1990 decision of the Supreme Court of Canada in the area of occupier's liability that led to consternation in the general insurance industry. Within the skiing industry, the specific concern surrounding *Waldick v. Malcolm* was that it might prevent a ski area operator from successfully defending a personal injury claim on the basis of the inherent risk involved in the sport, unless the skier had signed an express waiver or release of liability.

The Commission concluded that the common law defence of inherent risk was likely unimpaired, but that any uncertainty about its survival should be removed. The Report accordingly recommends that anyone who voluntarily takes part in a recreational activity be deemed to have willingly accepted the inherent risk associated with the activity for the purpose of the *Occupiers Liability Act*. "Inherent risk" in this context should be understood as being risk incidental to and inseparable from a recreational activity that cannot be removed by the exercise of reasonable care without changing the fundamental nature of the activity.

Fear of liability is causing landowners and Crown tenure holders to restrict access to land and foreshore for recreational uses. This problem affects sports like hiking, climbing, canoeing and kayaking, which are extensively pursued in British Columbia and are important for tourism. The Report recommends that persons entering land without payment for

recreational purposes be deemed to do so at their own risk for the purpose of the *Occupiers Liability Act*, unless they are invited onto the land by the occupier. Merely permitting recreationists to enter or cross land would not amount to an invitation.

Alpine Skiing

The Report concludes that parts of the draft *Ski Area Safety Act* proposed by the CWSAA should be enacted. These include the *Skier Responsibility Code*, a widely recognized set of principles for safety in skiing, and the obligations to ski under control and within the limits of one's ability. (These obligations largely codify the present case law in any event.) The Commission recommends against making a breach of the *Skier Responsibility Code* or other safety obligations of skiers a provincial offence. Instead, the authority of operators to enforce the Code by revocation of a skier's ticket or pass and expulsion from the ski area should be legislatively confirmed.

The Commission recommends against enacting some other parts of the CWSAA draft Act that would insulate the operator from liability almost entirely. Those provisions would have accomplished this by effectively precluding courts from examining the circumstances behind skiing accidents in sufficient depth to distinguish between occurrences that are truly fortuitous and those that are not. This would mean that even if an accident was caused primarily because the operator breached a statutory duty, such as by allowing grooming equipment to be operated on a run without a warning light or audible signal, the operator would still be immune. In the Commission's view this would shield the skiing industry from legal responsibility to an excessive degree. While recreational skiers obviously must bear the risk that arises from their own lack of skill and which is inherent to the sport, the Commission was unconvinced by the CWSAA's position that any legal responsibility of the operator towards the skier should end at the top of the chairlift.

The Commission found the list of ski area operators' duties set out in the CWSAA draft Act to be relatively minimal in comparison to the degree of regulation under which much of the American ski industry operates. The list falls short of many safety measures that can be found at British Columbia ski areas. The Commission considered that a realistic and definitive list of ski area operators' safety obligations should be developed by an expert and broadly based advisory body and be implemented by regulation.

Waivers

The Report comes to grips with the conflicting interests reflected in the controversy over the use of comprehensive waivers: the economic health of the recreational industries on one hand and public safety on the other. From the industry standpoint, a waiver is essential to prevent unlimited exposure to liability that would cause insurance costs to become unmanageable, or even lead insurers to withdraw coverage altogether. The concern about public safety arises because comprehensive waivers protect operators not only against frivolous claims, but also from legal responsibility for their own negligence and that of their employees. With potential liability greatly reduced or eliminated, an operator may be slower to correct a dangerous situation or make needed safety improvements, particularly if it involves significant cost.

The scope that comprehensive waivers can have is little understood by the public. A belief persists that waivers "are not worth the paper they're written on" or that they "don't hold up in court." Even though this fallacy has been repeatedly contradicted in recent, fairly well-publicized cases in British Columbia, the Commission still received comments in this vein.

The Report recommends a compromise between the "industry" and "public safety" standpoints that makes specified sources of risk beyond the reach of waivers. These are sources of risk within the operator's ability to control, but over which users of recreational facilities have little or no ability to influence. This approach continues to allow a wide degree of protection to recreational operators without letting waivers over-reach their legitimate purpose and operate in a manner contrary to the public interest. The position of minors would remain unchanged from the present: a waiver obtained from a minor would continue to be unenforceable. But in its place an operator could use an acknowledgment of risk form that could serve as evidence that a minor and the minor's parents consciously assumed the inherent risk involved in an activity.

To remove the temptation to include an operator in a lawsuit for "deep pockets" reasons when another person is primarily or exclusively at fault, the Report recommends that when a waiver is in place, an operator could not be called upon to bear any greater portion of the plaintiff's loss than its own share of the fault. In legal terms, the operator's liability should be several only, rather than joint and several, for non-disclaimable sources of risk.

Other Recommendations

In the Commission's view, the concern surrounding civil liability in recreation is rooted less in the law itself than in the pressure on insurance rates stemming from the high cost of litigation. The Report sets out some non-legislative recommendations directed at reducing this pressure in sports-related cases. One recommendation is for the use of early neutral evaluation (a means of alternate dispute resolution or "ADR") in sports-related personal injury cases. Neutral evaluation of injury claims would serve both as a screening mechanism to discourage tenuous claims from proceeding and as a means of inducing early settlement where it is warranted. The Report also urges the development and active promotion of a personal accident insurance programme specifically for skiers.

2. CONFLICTS OF INTEREST: DIRECTORS AND SOCIETIES

In 1992 the Honourable E.N. (Ted) Hughes examined aspects of the operation of the Commonwealth Games Society which was 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.

The Consultation Paper attracted a significant volume of response. It has been considered by the Commission and we are now in the process of developing our final recommendations.

3. 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.

While many of the principles of compensation for loss arising from personal injury and fatal accident have continued to evolve to reflect contemporary views, this is not true of all

aspects of this body of law. Some issues of policy have arisen upon which further legal development by the courts seems to be foreclosed and, if change is needed, it must be introduced through legislation. 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. These are some of the issues of law governing the recovery of pecuniary loss raised by these cases:

- compensation is available to a child for the loss of a parent in a fatal accident case. The loss experienced by a child in some *non-fatal* cases, may be just as extreme but, even so, compensation for the loss is unavailable. Should compensation be available on this head in at least some non-fatal injury cases?
- when third parties reasonably incur expenses on behalf of an injured person, those expenses are recoverable when the injuries are *not fatal*. Different rules of recovery apply when the victim's injuries prove to be fatal. Should the fatal accident rules be restated?
- who should be able to bring claims for compensation in fatal accident cases?

In August 1994 the Commission submitted its Report on *Pecuniary Loss and the Family Compensation Act*. The Report recommends replacing the *Family Compensation Act* with new legislation that will rationalize rights of recovery for pecuniary loss suffered by a relative or dependent of a person who is wrongfully injured or killed by another.

The Commission's conclusions were:

New Legislation

New legislation should be enacted to replace the *Family Compensation Act*, and to restate rights claimants have when an injured person survives the injuries.

Claimants

Except as noted in the following recommendations, the new legislation should allow claims in fatal and non-fatal accident cases only by those people who are currently able to make a claim in fatal accident cases under the *Family Compensation Act*.

Representative Proceedings in Fatal Accident Cases

The current procedure followed for protecting relational third party rights in *fatal accident* cases remains fundamentally sound. The new legislation should require a claimant to pursue a claim through the injured person's personal representative.

Representative Proceedings in Non-Fatal Accident Cases

The current procedure followed for protecting relational third party rights in *non-fatal accident* cases remains fundamentally sound. The new legislation should require a claimant to pursue a claim through the injured person.

Lost Support and Lost Services in Fatal Accident Cases

(a) The new legislation should carry forward the current policy with respect to claims for lost support and lost services. While claimants should be entitled to compensation for lost support and lost services when the injured person dies, no such claim should exist while the injured person lives.

(b) The list of persons able to claim compensation for lost support and for lost services under the new legislation should include anyone who was financially dependent on the deceased.

(c) The new legislation should carry forward the current policy about assessing lost support. A claimant's lost support in any case, including circumstances where the claimant's entitlement to support from the injured person is based on an agreement or court order, must be determined by

(i) reference to the level of support actually paid by, or recovered from, the deceased during the deceased's lifetime, and

(ii) the level of support that probably would have been paid by or recovered from, the deceased had the wrong causing the death of the deceased not occurred.

(d) Where a person's rights of support are based on a court order or an agreement with the deceased, and the person receives a judgment under the new legislation for lost support, then rights of support against the estate should abate in accordance with recovery under the judgment. Nothing in the new legislation, however, should affect rights against the estate under other legislation, such as the *Wills Variation Act* or the *Estate Administration Act*.

Pecuniary Loss (Other than Lost Support)

The new legislation should allow in fatal and non-fatal accident cases claims against the wrongdoer to be brought on behalf of any person who suffers the following items of loss or expense:

- (a) actual expenses reasonably incurred for the benefit of the person injured or killed;
- (b) a reasonable allowance for travel expenses actually incurred in visiting the person during treatment or recovery;
- (c) where, as a result of the injury, the claimant provides nursing, housekeeping or other services for the person, a reasonable allowance for loss of income or the value of the services.

(It is contemplated that claimants would still be able to recover funeral and medical expenses as they currently can under the *Family Compensation Act*.)

Guidance, Care and Companionship

The new legislation should allow, in a non-fatal accident case, a "child" to recover compensation for loss of guidance, care and companionship arising from injury to a "parent" where the parent's injuries are of a kind that, in substance, the loss suffered by the child is comparable to the loss that would have occurred if the parent's injuries had been fatal. ("Child" and "parent" should be given the same expanded meanings they have under the *Family Compensation Act*.)

Grief Counselling

The new legislation should allow, in both fatal and non-fatal accident cases, a court to award damages to pay for grief counselling or other treatment to

(a) a person listed as a claimant under the *Family Compensation Act*, and

(b) a person who was part of the deceased's domestic household

if the counselling or treatment is reasonably necessary to assist in adjusting to the injury or death of the victim.

4. THE WOODWORKER LIEN ACT

In June 1994 the Commission submitted its Report on the *Woodworker Lien Act*, a provincial statute designed to protect the interests of those who earn their living in the forest industry. It was enacted almost 100 years ago and since that time little has been done to modernize it to meet changing economic circumstances. In its current form the Act is a legal relic which embodies an archaic approach to statutory security. It is drafted in outmoded and inaccessible language. The range of persons entitled to claim a lien is unclear. 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.

The Report concludes that the *Woodworker Lien Act* is beyond repair and no amount of revision or redrafting can save it. A wholly new and modern Act is required. The Commission recommends a wholly new form of statutory security built on the concepts of the *Personal Property Security Act* and designed to work in harmony with it. The specific features of the Commission's recommendations are embodied in a draft *Forest Work Security Act* contained in the Report.

Under the Act a "forest work security interest" (FWSI), the pivotal legal concept of the draft, arises by operation of law on favour of a "forest worker" in specified circumstances over "forest products." "Forest work" the activity that will give rise to a FWSI is defined with reference to timber harvesting work carried out at either a "harvesting site" or a "handling site." The Act maintains the FWSI only so long as the forest products subject to it have a physical link to the harvesting operation and it terminates if they are no longer at a "harvesting site" or a "handling site." The Act also contains special priority rules. Subject to these special

features, most aspects of the FWSI, including its enforcement, are governed by the *Personal Property Security Act*.

The Report concludes with the observation that the purpose of the *Woodworker Lien Act*, both as originally conceived and as identified in the cases construing it, is the protection of workers' wages. Today, however, this purpose is served comprehensively and efficiently by other legislation. Duplicating that legislation serves little purpose, so the protection of workers' wages is, of itself, not a function that warrants the retention of a statute like the *Woodworker Lien Act*. There are, however, many persons who participate in the forest industry whose economic position is similar to that of wage earners but who are not protected by most forms of wage protection legislation. Small contractors and "one person companies" are obvious examples. If there is a continuing role for legislation like the *Woodworker Lien Act*, it is to serve the needs of these persons as well as conventional wage earners.

5. THE TUGBOAT WORKER LIEN ACT

In June 1994 the Commission submitted a Report on the *Tugboat Worker Lien Act*. Our examination of this statute arose out of our work in relation to the *Woodworker Lien Act* - both acts concern liens on forest products. Despite its title, the *Tugboat Worker Lien Act* has nothing to do with safeguarding the interests of persons employed in the towboat industry. Rather, it provides an extraordinary collection device to tugboat operators for unpaid towage fees.

The Commission's research reveals that the *Tugboat Worker Lien Act* was originally conceived as a mechanism to aid small struggling logging operators who were unable to obtain towage services. It is a product of economic conditions which no longer prevail. It adds little to other remedies that are available to tugboat operators under the general law and is seldom, if ever, used. Moreover, the constitutional basis for provincial legislation in this area is dubious at best and if the Act were seriously challenged there is a great likelihood that it would be held to be unconstitutional because of the federal government's jurisdiction over maritime law. The Act is obsolete. The Report recommends that it be repealed.

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 focused 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 explored the possibility of defining "commercial apparatus," a class of property that legislation might deem 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 explored 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 Consultation Paper tentatively proposed that real property rules apply.

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. Proposals were made in the Consultation Paper to clarify the application of the PPSA to transactions involving these kinds of interests.

The responses to the Consultation Paper have been considered and we hope to submit our final recommendations shortly.

7. SUPPLEMENTARY REPORT ON THE FOREIGN MONEY CLAIMS ACT: REGULATIONS

This short Report, submitted in January 1995, supplements a Report made in 1991 concerning the appropriate content of regulations to be made under the *Foreign Money Claims Act*. A development since 1991 is that provincial legislation concerning post-judgment interest has come into force. This Report contains supplementary recommendations to ensure that the rules respecting post-judgment interest on foreign money claims operate in harmony with that measure. The full text of this Report is set out as Appendix F to this Annual Report.

8. REPORT ON THE LABOUR REGULATION ACT

The *Labour Regulation Act* was enacted almost 90 years ago to regulate hours of work in certain mineral processing operations. The Act is now obsolete, having been entirely superseded by the *Employment Standards Act*. In a short Report submitted in April, the Commission recommended that the *Labour Regulation Act* be repealed. The full text of this Report is set out as Appendix E to this Annual Report.

9. LEGAL CONSEQUENCES OF A LAND TITLE OFFICE SHUTDOWN

Early in 1993 a Special Committee was struck by the Law Society to examine the impact of computerization of the Land Title Branch on the practise of law from the public interest perspective. The coming of ALTOS 2 gave this exercise special urgency. Among the recommendations brought forward by that Committee was the following:

The Law Reform Commission be asked to consider the consequences of a computer shutdown at the Land Title Branch.

The following extract from the Committee Report provides the background to that recommendation.

Under the present system, Land Title Branch computers are down approximately twice per month, for a period of 20 minutes to three hours at a time. Further computerization will likely exacerbate the problem. Most agreements and undertakings with respect to completion of a transaction do not acknowledge the possibility of computer down-time and do not provide for an alternate sequence of events to occur if registration cannot be completed.

The Committee was referred to the comments of Madame Justice Southin, in *Norfolk v. Aikens* (1990), 41 B.C.L.R. (2d) 145. The case involved a difficult conveyance which was made even more complicated by a computer shut-down at the Land Title Branch on the closing date. At page 153, Southin, J.A. stated:

I digress to suggest that the Law Reform Commission ought to address the difficulties which will be created not only by computer failure but also by any other event such as an earthquake which prevents the Land Title Office from functioning.

On receiving the Committee's recommendation, the Law Reform Commission added to its program a project on the Legal Consequences of a Land Title Office Shutdown. Work is proceeding on it.

10. CONFLICTING PROPERTY RIGHTS

The adage that equates a person's home with a castle is a familiar one, 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, however, an unreasonable neighbour 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. The tendency to increase density within multiple-dwelling developments and employ non-traditional ways of situating dwelling units in urban areas have increased the potential for conflict.

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 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.

11. STANDBY GUARDIANS

Certain American jurisdictions have enacted legislation which permits the guardian of a child to appoint a standby guardian to act if the current guardian is incapable of serving. Apparently it is used frequently by persons who are suffering from a terminal illness and expect that a significant period of physical and/or mental disability will precede death. We have added to our program a project that will consider whether similar legislation might be introduced into British Columbia. The project will also consider the issues that arise when a guardian wishes to appoint a temporary guardian to act while the guardian is unavailable such as, for example, where the guardian is temporarily travelling outside the province.

12. NEW HOME WARRANTIES

In *The Owners, Strata Plan NW 2294 v. Oak Tree Construction Inc.* the British Columbia Court of Appeal considered the extent to which the buyers of newly built homes receive the benefit of any warranties arising by operation of law. Mr. Justice Lambert was critical of the current law and suggested that this was a matter particularly suitable for consideration by the Law Reform Commission of British Columbia. Accordingly, we have added to our program a project on this topic. The project will also embrace a consideration of the new home warranty program operated by the building industry in this province.

13. 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.

14. 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.

15. 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.

16. SPECIAL PROJECTS

(a) Introduction

Throughout its history, the Law Reform Commission has closely monitored developments in computer and communications technology both as a means to enable it to carry out its function more effectively, and to consider ways the law might respond to the challenges presented by new technology. There are four particular areas in which the Commission has been active.

(b) The Internet Connection

For the past 18 months we have had 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 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.

(c) Electronic Access to Commission Documents

The Internet connection described above has made us aware of the potential electronic distribution holds for the dissemination of Law Reform documents. Electronic distribution now forms a major part of our new publication strategy. The main vehicle for this is the computerized bulletin board system and on-line facility maintained by the Provincial Queen's Printer (QPBBBS). A section of that facility has been reserved for Commission documents, in electronic form, making them available to users for access by computer either through the Internet or on a "dial-in" basis using a standard modem and communications software.

A large number of Commission publications are accessible through the QPBBBS. These include all current Reports and Consultation Papers as well as most past Reports going back to 1982. These documents may be browsed on-line or downloaded. The Commission's databases are also available for downloading. Technical information concerning access to Commission documents on the QPBBBS is set out in Appendix D.

(d) Law Reform Database

Three years ago 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 was distributed on computer disk and copies of it, along with a printed User's Manual, were 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 through the QPBBS.

Since its initial distribution we have taken steps to keep the database current with a view to, one day, preparing an updated edition. This process is about to come to fruition with the creation of a revised and expanded version of the database. This new version will embrace the work of a number of additional law reform bodies and include the most recent work of others. We expect that it will be available for distribution in April or May of 1995.

(e) *Limitation Act Case Finder*

Another initiative has been 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 both as a computerized index to this body of case law and 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. Since that time 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

Last year's Annual Report advised that legislation -- the *Family Relations Amendment Act, 1994* -- had been introduced to implement recommendations made in the Commission's 1992 Report on Division of Pensions on Marriage Breakdown. The legislation received royal assent on June 22, 1994. As the Commission recommended, the legislation provides the basic structure for pension division, leaving the detailed mechanics of the various procedures to be described in regulations. The regulations have now been promulgated. The legislation is effective July 1, 1995.

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.

Crown Publications Inc. is responsible for the distribution of the printed version 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:

CROWN PUBLICATIONS INC.
521 Fort Street
Victoria, B.C. V8W 1E7

Telephone: (604) 386-4636
FAX: (604) 386-0221

Orders may be placed in person or by mail or telephone. Visa, Mastercard and American Express are accepted. A number of our older Reports 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.

2. ELECTRONIC ACCESS

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

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 projects, and responsibility for the legal aspects of our two special database projects.

We also wish to acknowledge the very important contribution of our librarians. Mark Hiltz had day-to-day responsibility for our database projects and the general supervision of the

Commission's library. He was the administrator of our internal computer network and coordinated the electronic distribution of our documents. Mr. Hiltz left us in December to take up a new position and many of his duties were assumed by Georgina Flynn who joined us at that time. We wish Mr. Hiltz well in his future endeavours and welcome Ms. Flynn to our ranks.

Our research group was also joined by two law students during the period under review. Tom Jurkovic of the University of Victoria Faculty of Law and Lois Patterson of the University of British Columbia Faculty of Law worked with us over the summer months. They undertook basic research on a number of topics and provided the Commission's full-time research staff with valuable assistance.

Finally, we must acknowledge the notable contribution to our work made by Sharon St. Michael, Secretary to the Commission, who functions as office manager. She brings intelligence and efficiency to her duties and shares a concern that our work should be of the highest quality in every respect. We thank Ms. St. Michael for her 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 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. This support was particularly important this year in the light of the very serious decline in Government funding for the work of the Commission. Despite a diminution of its own revenues, the Foundation was able to maintain its support for the Commission at its previous level.

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.

4. 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.

5. 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.

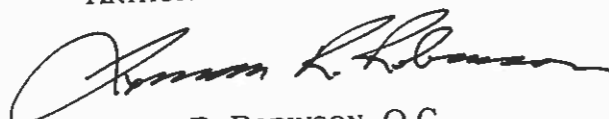
We also wish to express our appreciation to Ms. Jane Taylor, Director of Library Services to the Ministry. She has assisted us in keeping our own collection up to date and provided access to new materials in a timely fashion.

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.

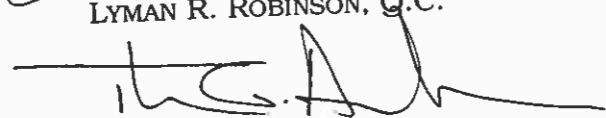
Finally, we wish to thank the Attorney General and all those within his Ministry who, during the period under review, in their dealings with the Commission on a day-to-day basis have contributed to our work and made life easier. In particular our thanks go to Maureen Maloney, the Deputy Minister, the Honourable Brian Neal, former Deputy Attorney General, Jo Thomson, former 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, S.B.C. 1971, c. 30, s. 8 (see now Land Title Act, R.S.B.C. 1979, c. 219, s. 24).</i>
2	Annual Report 1970*	Dec. 1970	Not applicable
3	Frustrated Contracts Legislation*	Feb. 1971	<i>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, S.B.C. 1984, 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).</i>
4	Debt Collection and Collection Agents*	Mar. 1971	<i>Debt Collection Act, S.B.C. 1973, c. 26 (see now Debt Collection Act, R.S.B.C. 1979, c. 88).</i>
5	Expropriation*	Dec. 1971	<i>Expropriation Act, S.B.C. 1987, c. 23.</i>
6	Annual Report 1971*	Dec. 1971	Not applicable
7	<i>Mechanics' Lien Act*</i>	June 1972	<i>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].</i>
8	Deficiency Claims and Repossessions*	June 1972	<i>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).</i>
9	Legal Position of the Crown*	Dec. 1972	<i>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).</i>
10	Annual Report 1972*	Dec. 1972	Not applicable
11	Interim Report on Evidence*	Feb. 1973	<i>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).</i>
12	Pre-Judgment Interest*	May 1973	<i>Prejudgment Interest Act, S.B.C. 1974, c. 65 (see now Court Order Interest Act, R.S.B.C. 1979, c. 76).</i>
13	Landlord and Tenant - Residential Tenancies*	Dec. 1973	<i>Landlord and Tenant Act, S.B.C. 1974, c. 45 (see now Residential Tenancy Act, S.B.C. 1984, c. 10).</i>

No.	Title	Date	Recommendations Implemented in Whole or in Part by
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)).
22	Powers of Attorney and Mental Incapacity*	May 1975	<i>Attorney-General Statutes Amendment Act</i> , 1979, 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); <i>Supreme Court Rules</i> , 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</i> , 1985, 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</i> , 1985, 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</i> , 1977, S.B.C. 1977, c. 54, s. 20(2).

No.	Title	Date	Recommendations Implemented in Whole or in Part by
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
30	The Rule in <i>Hollington v. Hewthorn</i> *	Jan. 1977	<i>Evidence Amendment Act</i> , 1977, 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</i> , 1978, 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</i> , 1979, 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</i> , 1985, 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</i> , 1978, 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</i> , 1978, 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</i> , 1982, 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
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	----

No.	Title	Date	Recommendations Implemented in Whole or in Part by	No.	Title	Date	Recommendations Implemented in Whole or in Part by
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, 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).</i>	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, 1985, S.B.C. 1985, c. 72, s. 3 (see now Family Compensation Act, R.S.B.C. 1979, c. 120, s. 1).</i>
46	Civil Litigation in the Public Interest*	June 1980	----	62	Interspousal Immunity in Tort	Mar. 1983	<i>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).</i>
47	Calculation of Interest on Foreclosure	Sept. 1980	<i>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).</i>	63	Peremptory Challenges in Civil Jury Trials	June 1983	<i>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).</i>
48	The Recovery of Unauthorized Disbursements of Public Funds	Sept. 1980	<i>Financial Administration Act, S.B.C. 1981, c. 15, s. 67.</i>	64	Breach of Promise of Marriage	Aug. 1983	<i>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).</i>
49	Annual Report 1980 (Discount Rates)*	Jan. 1981	<i>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).</i>	65	Foreign Money Liabilities	Sept. 1983	<i>Foreign Money Claims Act, S.B.C. 1990, c. 18.</i>
50	Cable Television and Defamation	Mar. 1981	<i>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"])</i>	66	Competing Rights to Mingled Property: Tracing and the Rule in <i>Clayton's Case</i>	Sept. 1983	----
51	Benefits Conferred under a Mistake of Law	Sept. 1981	----	67	Bulk Sales Legislation	Oct. 1983	<i>Law Reform Amendment Act, 1985, S.B.C. 1985, c. 10, ss. 11-13.</i>
52	The Making and Revocation of Wills*	Sept. 1981	<i>Attorney General Statutes Amendment Act (No. 2), 1990, S.B.C. 1990, c. 34, s. 9 (see now Law and Equity Act, R.S.B.C. 1979, c. 224, s. 46) [in part].</i>	68	Intentional Interference with Domestic Relations	Nov. 1983	<i>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].</i>
53	Distress for Rent	Nov. 1981	----	69	Illegal Transactions	Nov. 1983	----
54	Annual Report 1981	Jan. 1982	Not applicable	70	Statutory Succession Rights	Dec. 1983	----
55	Arbitration	May 1982	<i>Commercial Arbitration Act, S.B.C. 1986, c. 3. Foreign Arbitral Awards Act, S.B.C. 1985, c. 74 [in part].</i>	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, S.B.C. 1985, c. 68, ss. 61-78 (see now Land (Spouse Protection) Act, R.S.B.C. 1979, c. 223).</i>
56	Presumptions of Survivorship	Nov. 1982	----	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).
57	The Crown as Creditor: Priorities and Privileges	Nov. 1982	----	73	Annual Report 1983/84*	Apr. 1984	Not applicable
58	Interpretation of Wills	Nov. 1982	----	74	Covenants in Restraint of Trade*	Apr. 1984	----
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, S.B.C. 1984, c. 25, s. 63 (see now Small Claims Act, S.B.C. 1989, c. 38, s. 3(1)); Miscellaneous Statutes Amendment Act (No. 2), 1984, S.B.C. 1984, c. 26, s. 2.</i>	75	Review of Civil Jury Awards	Sept. 1984	----
60	Annual Report 1982*	Jan. 1983	Not applicable	76	Compensation for Non-Pecuniary Loss*	Sept. 1984	----

No.	Title	Date	Recommendations Implemented in Whole or in Part by
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].
78	The Authority of a Guardian	Jan. 1985	<i>Miscellaneous Statutes Amendment Act (No. 1)</i> , 1987, 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)</i> , 1987, 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)</i> , 1987, 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</i> , 1988, 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</i> , 1988, 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</i> , 1988, S.B.C. 1988, c. 42, s. 4.
90	The <i>Court Order Interest Act</i>	Jan. 1987	----
91	Obsolete Remedies against Estate Property: <i>Estate Administration Act</i> , Part 9	Mar. 1987	<i>Law Reform Amendment Act</i> , 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	<i>Consumer Protection Statutes Amendment Act</i> , 1993, 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	----

No.	Title	Date	Recommendations Implemented in Whole or in Part by
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</i> , 1989, 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	The <i>Land (Settled Estate) Act</i>	Nov. 1988	<i>Attorney General Statutes Amendment Act</i> , 1989, S.B.C. 1989, c. 64, ss. 8, 33, 34 (see now <i>Trust and Settlement Variation Act</i> , R.S.B.C. 1979, c. 413, s. 3.1).
100	Co-Ownership of Land	Dec. 1988	----
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)</i> , 1990, 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	<i>Insurance Amendment Act</i> , 1994, S.B.C. 1994, c. 7, s. 1 (see now <i>Insurance Act</i> , R.S.B.C. 1979, c. 200, s. 11).
108	The <i>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	----

No.	Title	Date	Recommendations Implemented in Whole or in Part by
111	Property Rights on Marriage Breakdown	Mar. 1990	----
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	<i>Enforcement of Canadian Judgments Act</i> , S.B.C. 1992, c. 37, s. 14 (in part).
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	<i>Family Relations Amendment Act</i> , 1994, S.B.C. 1994, c. 6 (see now <i>Family Relations Act</i> , R.S.B.C. 1979, c. 121, Part 3.1); <i>Division of Pensions Regulation</i> , B.C. Reg. 77/95, O.I.C. 196/95.
124	Annual Report 1991/92	Apr. 1992	Not applicable
125	<i>Insurance Act</i> , Section 26(1) [Printed as an Appendix to LRC 132]	June 1992	<i>Insurance Amendment Act</i> , 1994, S.B.C. 1994, c. 2, s. 1 (see now <i>Insurance Act</i> , R.S.B.C. 1979, c. 200, s. 26).
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	----

No.	Title	Date	Recommendations Implemented in Whole or in Part by
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
136	Minor Report on the <i>Labour Regulation Act</i> [Printed as an Appendix to LRC 142]	Apr. 1994	----
137	<i>Woodworker Lien Act</i>	June 1994	----
138	<i>Tugboat Worker Lien Act</i>	June 1994	----
139	Pecuniary Loss and the <i>Family Compensation Act</i>	Aug. 1994	----
140	Recreational Injuries: Liability and Waivers in Commercial Leisure Activities	Sept. 1994	----
141	Supplementary Report on the <i>Foreign Money Claims Act</i> Regulations [Printed as an Appendix to LRC 142]	Jan. 1995	----
142	Annual Report 1994/95	Apr. 1995	Not applicable

* Report is out of print

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	1972
7	Legal Position of the Crown	1973
8	Debtor-Creditor Relationships: Pre-Judgment Interest	1973
9	Costs of Accused on Acquittal	1974
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	

No.	Title	Year
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: <i>The 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: <i>The 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
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

No.	Title	Year
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
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

ACCESS TO THE QUEEN'S PRINTER BULLETIN BOARD AND INTERNET FACILITY

The following information was current at the time this Report was settled but some particulars are subject to change as the system is refined over time.

Dial-in Access

The QPBBS supports the following for dial access on lines are capable of 14,400 baud (V.32/V.32bis). The telephone number is:

(604) 953 4013

After log-on, a logical series of menus will take the user to the law reform documents. Long distance charges will apply to calls originating outside the Victoria area.

Internet Access

The QPBBS supports internet access in any of 4 modes: TELNET, FTP, Gopher and WWW. All forms of internet access require the user to specify an address or "resource locator" that will consist wholly or partly of the QPBBS address the domain address:

bbs.qp.gov.bc.ca

World Wide Web (WWW)

The QPBBS supports WWW access. This is the preferred mode as it supports the greatest range of access options and the most logical structure for convenient use. The Internet address of the Commission's "home page" for WWW access is:

http://bbs.qp.gov.bc.ca/lrc/lrhome.htm

Telnet

Users can Telnet to the Queen's Printer Bulletin Board at the domain address. All of the normal Bulletin Board functions are available except for file downloading.

FTP

Users can FTP to the QPBBS at the domain address. Log in as ANONYMOUS, and use your e-mail address as the password. Once connected look for the Law Reform Commission documents in the following path:

/govtinfo/lawrefor

Documents may be downloaded by FTP.

Gopher

The QPBBS offers a Gopher server. Access is through the domain address. Documents may be downloaded through gopher.

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

arthur_close@mindlink.bc.ca

APPENDIX E

SUPPLEMENTARY REPORT ON THE *FOREIGN MONEY CLAIMS ACT: REGULATIONS*

January 5, 1995

The Honourable Colin Gabelmann
Attorney General for the
Province of British Columbia
Parliament Buildings
Victoria, B.C., V8V 1X4

Dear Mr. Attorney:

**Re: Supplementary Report on the *Foreign Money Claims Act: Regulations*
(Minor Report LRC 141)**

The *Foreign Money Claims Act*, an important piece of international trade legislation, was enacted in 1990 but its proclamation was deferred pending the development of a regulation to harmonize the operation of the Act with provincial legislation concerning interest. In 1991, the Law Reform Commission submitted a Minor Report that set out recommendations as to its content, including the text of a draft regulation.

An issue the 1991 Report did not address concerned post-judgment interest on foreign money claims. At that time post-judgment interest was still a matter for federal legislation. While provincial legislation was on the horizon, its precise form and content was not yet fixed. In 1992 Part 2 of the *Court Order Interest Act* was brought into force and it is now clearer what supplementary measures, if any, might be needed to allow our 1991 recommendations to operate smoothly with this new post-judgment interest legislation.

We have reviewed our 1991 draft regulation in the light of this new legislation and we are satisfied that the scheme of the draft regulation fits very well with Part 2. We have only two suggestions to make. First, to dispel any uncertainty concerning the application of the draft regulation to Part 2, the defined expression "final prejudgment period" should be renamed and revised. Second, the term "foreign prime rate" should be revised to harmonize it with a corresponding expression in Part 2.

There are two appendices to this Minor Report. Appendix A sets out a revised version of the 1991 draft regulation. It incorporates the drafting changes we suggest. Words to be deleted are contained in square brackets and words added have been underlined. Appendix B contains, for convenient reference, Part 2 of the *Court Order Interest Act*.

Yours sincerely,

Arthur L. Close, Q.C.
Chair

ALC/ss

Appendix to Minor Report (A)

Recommended Regulation (Revised)

**Foreign Money Claims Act
Foreign Money Claims Act Regulations**

Definitions

1. In these regulations

"[final prejudgment] post IMF Table period" means the period from

(a) the time to which the most recently published interest rate pertaining to a foreign currency in the IMF Table relates, to

(b) the date [judgment is given] to which interest is calculated.

"foreign prime rate" means the interest rate in effect from time to time in a country other than Canada, applicable to the currency of that country, which is most closely analogous to the rate of interest [charged by Canadian chartered banks on loans to their most creditworthy customers] referred to in section 7(1) of the Court Order Interest Act.

"IMF Table" means the Lending Rates Table 60p of the International Financial Statistics issued by the International Monetary Fund.

"periodical" means a publication which is issued weekly or more frequently, and which is, or can be made, available in the province.

Foreign Prime Rate to be Applied

2. Interest awarded under the *Court Order Interest Act* on a judgment to which section 1 of the *Foreign Money Claims Act* applies shall be at the foreign prime rate.

Ascertaining Foreign Prime Rate for Scheduled Countries

3. (1) An interest rate set out in the IMF Table for the currency of a country listed in the Schedule is presumed to be the foreign prime rate, and a statement in the IMF Table that an interest rate was in effect at a particular time is proof that the interest rate was in effect at that time.

(2) Publication in a periodical that a purported foreign prime rate was in effect at a particular time during the [final prejudgment] post IMF Table period is proof that the interest rate was in effect at that time.

(3) Where an interest rate is not proved under subsection (2), the interest rate in effect during the [final prejudgment] post IMF Table period shall be presumed to be the interest rate pertaining to the currency in issue most recently published in an IMF Table

4) An interest rate proved under subsection (1) or (2) or presumed under subsection (3) may be rebutted by evidence to the contrary.

Enforcement Process

4. (1) Legal process for the enforcement of money judgments, to which the *Court Order Enforcement Act* applies, shall issue only for the money payable under the order as of the date the process issues, determined in accordance with section 1(1) of the *Foreign Money Claims Act*, and for the purposes of determining the amount for which legal process is issued the conversion date is the last day, before the day on which the process is issued, that the bank referred to in section 1(1) quotes a Canadian dollar equivalent to the other currency.
- (2) Subsection (1) does not apply to the registration of a judgment at a Land Title Office under section 80 of the *Court Order Enforcement Act*.

SCHEDULE

Section 3 applies to the currencies of the following countries:

Australia	Belgium	Finland	France	Germany
Greece	Indonesia	Ireland	Italy	Japan
Korea	Malaysia	Netherlands	Norway	Portugal
South Africa	Spain	Sweden	Switzerland	United Kingdom
United States	Venezuela	New Zealand		

Appendix to Minor Report (B)

Court Order Interest Act, R.S.B.C. 1979, c. 76
Part 2: Post-judgment Interest

Interest rate

7. (1) In this section "interest rate" means an annual simple interest rate that is equal to the prime lending rate of the banker of the government.

(2) A pecuniary judgment shall bear simple interest from the later of the date the judgment is pronounced or the date money is payable under the judgment.

(3) During the first 6 months of a year interest shall be calculated at the interest rate as at January 1 and during the last 6 months interest shall be calculated at the interest rate as at July 1.

(4) Notwithstanding subsection (2), interest in respect of a judgment pronounced before the coming into force of this Part shall be calculated from the later of the date this Part comes into force or the date money is payable under the judgment.

Court may vary rate

8. Where the court of original jurisdiction considers it appropriate, it may, on the application of a person affected by or interested in a judgment, vary the rate of interest applicable under section 7 or fix a different date from which interest shall be calculated.

Interest deemed included in judgment

9. (1) Interest under this Part shall be deemed to be included in the judgment for enforcement purposes.
- (2) A partial payment of a judgment shall be applied first to outstanding interest owed on the judgment.

APPENDIX F

Minor Report on the *Labour Regulation Act*

20 April 1994

The Honourable Colin Gabelmann
 Attorney General of British Columbia
 Rm. 232, Parliament Buildings
 Victoria, B.C.
 V8V 1X4

Dear Mr. Attorney:

Re: Minor Report on the *Labour Regulation Act* (LRC 136)

One of the duties of the Law Reform Commission is to keep the statute law of the Province under continual review and to recommend the repeal of obsolete and unnecessary enactments. In this regard, our attention has been drawn to the *Labour Regulation Act*, R.S.B.C. 1979, c. 213. A copy of the Act is attached for your convenient reference.

This statute was originally enacted in 1907, before much of our modern labour relations and employment standards legislation was in place. It was one of a number of *Labour Regulation Acts* passed at the turn of the century. It restricts the hours of labour at a coke oven, smelter, concentrator or mineral separation plant to eight hours in any 24-hour period, and sets fines for violation at the historic levels of not less than \$20 nor more than \$100. An unusually antiquated feature is that the fine may be imposed on an employee working longer than the standard eight hours, as well as on the employer.

Hours of work in provincially regulated industries are now governed by Part 3 of the *Employment Standards Act*, S.B.C. 1980, c. 10. While section 29 of that Act also prescribes an 8-hour day (or 40-hour week) as the standard, the *Labour Regulation Act* is not on all fours with the scheme of the newer statute. The *Employment Standards Act* is more comprehensive and more flexible in providing for overtime pay and for variations under a collective agreement or an authorization given by the Director of Employment Standards. This was recognized by an amendment passed in 1981, making section 1(1) of the *Labour Regulation Act* subject to Part 3 of the *Employment Standards Act*. That such an amendment was made, however, begs the question as to whether there is any need to retain the *Labour Regulation Act* at all.

The Commission raised the matter with a legal adviser to the Director of Employment Standards, who communicated with the Director regarding it. The answer we have received is that the *Labour Regulation Act* has been entirely superseded.

Accordingly, the Commission recommends that the *Labour Regulation Act*, R.S.B.C. 1979, c. 214, be repealed. The Commission adopted this recommendation at a meeting on 12 April 1994.

This letter is to be taken as a Minor Report (No. 136) of the Law Reform Commission.

Yours sincerely,

Arthur L. Close, Q.C.
 Chair