

**LAW REFORM COMMISSION
OF BRITISH COLUMBIA**

**ANNUAL REPORT
1981**

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AUTHORITY OF THE LEGISLATIVE ASSEMBLY

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

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TO THE HONOURABLE ALLAN WILLIAMS, Q.C.
ATTORNEY GENERAL OF THE PROVINCE OF BRITISH COLUMBIA

The Law Reform Commission of British Columbia has the honour to present its Annual Report for 1981, outlining the progress made by the Commission during that year.

I GENERAL

During the past year, formal Reports were submitted to you on Cable Television and Defamation, Benefits Conferred Under a Mistake of Law, The Making and Revocation of Wills, and Distress for Rent. The Commission has also issued Working Papers on the Crown as Creditor: Priorities and Privileges; Foreign Money Liabilities; and the Interpretation of Wills. These documents are described in greater detail below.

As presently constituted the Commission consists of six members: the Chairman, The Honourable Mr. Justice John S. Aikins; and Messrs. Peter Fraser, Kenneth C. Mackenzie, Bryan Williams, Professor Anthony F. Shepard and Arthur L. Close. Messrs. Fraser, Mackenzie, Williams and Shepard serve on a part-time basis. Details of the appointments of our members may be found in previous Annual Reports.

In our 1980 Annual Report we referred to a "revitalization" of the Commission that had commenced in 1979. We stated:

The work of the Commission has gained a momentum that is now beginning to yield tangible results and which is expected to continue through 1981.

We believe this optimism was justified as we have had a most productive year. A number of projects were completed through the submission of final Reports during 1981 and significant progress was made on other projects. We expect our work in 1982 will proceed at a comparable pace.

Our 1980 Annual Report also referred to our office space.

The only impediment [to our progress] is that the Commission's suite of offices is now too small to house adequately its research staff and library. We are currently exploring the possibility of obtaining more commodious premises with the officials within your Ministry responsible for facilities management.

This matter was taken in hand during 1981 and we are happy to report that the process of rehousing the Commission in new premises is in its final stages. A suite of offices has been secured at the Toronto Dominion Tower, Fifth Floor, 700 West Georgia Street, Vancouver, which is currently being altered to suit our needs. These premises will provide the room we need to house our operation and allow for a degree of expansion. We expect our physical move will occur in April 1982.

II THE PROGRAMME

A. CARRYING OUT THE PROGRAMME

1. RESEARCH AND WRITING

The research to carry out the programme calls for time-consuming work by qualified persons. This can be achieved by having the research done by personnel who are employed as full-time staff, or by persons with special expertise who are retained on a part-time or occasional basis. Although in the early years the Commission relied heavily on outside consultants, our experience has led to a preference for the former approach. Consequently, most of the research and writing is now done by full-time members of the Commission staff.

2. THE CONSULTATION PROCESS

The Commission makes a general practice of inviting comment and criticism on its research and analysis before submitting a formal Report to you on any particular subject. This process of consultation greatly assists the Commission in developing proposals for the reform of the law that are both relevant and sound.

The chief means by which the Commission carries out this process is through the circulation of Working Papers to those who would find of interest the subject under study. A Working Paper sets out the views of the Commission, and the background on which these views are based, and invites comment.

Occasionally, when the topic under consideration makes wide circulation of a Working Paper inappropriate, copies of a draft Report may be given limited circulation for comment.

Whatever consultation mechanism is adopted, the tentative conclusions are thoroughly re-examined in the light of the comment and criticism received and final recommendations developed accordingly.

B. THE PROJECTS

The description below is limited to those projects upon which Reports have been made in the past year or upon which work is in progress. Details of other Reports, and of projects which have been discontinued may be found in earlier Annual Reports. Included as Appendix A is a table setting out all Reports which the Commission has made to date, and references to legislation in which the recommendations have been implemented in whole or in part. In Appendix B, another table sets out those matters which are now under consideration.

1. DEBTOR-CREDITOR RELATIONSHIPS

(a) *The Crown as Creditor: Priorities and Privileges*

The Crown, in its capacity as creditor, enjoys a unique privilege under our law. One aspect of its special position is its prerogative right to prior payment. It also has the benefit of a large number of provincial statutes which create liens over real and personal property to secure money that is payable to the government or its agencies. Such liens tend to be legislated on an *ad hoc* basis and their scope and priorities are often uncertain. There is no evidence in the statutes of any uniform policy or of a consistent set of principles with respect to such liens.

In June, the Commission issued a Working Paper (No. 31) which examined the priorities and privileges of the Crown at common law and under statute. Tentative proposals were made for the abolition or modification of some of the Crown's special privileges and priorities with a view to rationalizing this area of the law and achieving an appropriate balance between the needs and expectations of government, its debtors, and third parties.

(b) *Reviewable Transactions*

A study on the operation of the *Sale of Goods in Bulk Act*, *Fraudulent Conveyance Act* and *Fraudulent Preference Act* is currently in progress. Background research on the law respecting the current operation of the

Fraudulent Conveyance Act and the *Fraudulent Preference Act* is virtually complete. Substantial research on the *Sale of Goods in Bulk Act* has also been done.

This project is a large one and we cannot predict with confidence when we will be in a position to issue a Working Paper. Work on this matter suffered a setback through the loss of our staff member who had carriage of the research.

Our work to date has raised questions about the utility of these Acts, particularly the *Fraudulent Preference Act*. It seems safe to say at this point that among the options for reform which we shall be considering will be one for the outright repeal of one or more of the Acts, and a rationalization and modernization of what remains.

(c) *Joint Liability*

There are a number of aspects to the project on joint liability. The first is an examination of the distinction between joint liability and joint and several liability, which can be crucial. For example, a judgment obtained against a person jointly liable will bar any action against the others with whom he is liable. If the liability is joint and several, judgment obtained against one will not bar any action against the others.

We also propose to examine the law concerning joint obligations and its relationship to the law of contributory negligence. In particular, the provisions of the *Negligence Act* relating to the apportionment of liability, and rights of contribution among persons jointly liable need to be examined. We expect to profit from the work of the Uniform Law Conference in this area. The work of the Conference in developing new uniform legislation is nearing completion.

(d) *Enforcement of Judgments*

Our work on execution against shares and securities has been deferred pending the outcome of our study on the office of the sheriff. The latter study will provide us with much needed information concerning current practices in relation to execution against shares and any conclusions arising out of that study may well have an impact on the direction taken by our research and recommendations in respect of shares. We also expect to profit from the work of the Ontario Law Reform Commission in this area.

2. PERSONAL INJURY COMPENSATION

(a) *Periodic Payments*

A project on personal injury claims was added to the Commission's program in 1978, largely as a result of the dissatisfaction with the present system of personal injury compensation that had been voiced in the Supreme Court of Canada and that arose out of work and studies in other jurisdictions. The scope and emphasis of the project were left undefined while background materials were gathered and certain preliminary research undertaken with a view to developing appropriate terms of reference.

Our views on this topic have now sharpened considerably and we have identified as the principal issue in this project whether a credible scheme can be developed whereby, as an alternative to the present "lump sum" awards, a court award of compensation for personal injuries can take the form of a

stream of periodic payments. Active work on this topic has commenced and will continue in 1982.

(b) *Compensation for Non-pecuniary Losses*

In August you requested that we undertake a study in the general area of compensation for non-pecuniary losses in personal injury cases and accordingly we have added this matter to our programme.

At the present time we are gathering background materials and monitoring current developments in the courts, including the recent decision of the Supreme Court of Canada in *Lindal v. Lindal*, with a view to formulating more precise terms of reference for the study. Those terms of reference include consideration of the \$100,000 ceiling on damages in respect of pain, suffering and loss of amenities said to have been established in 1978 by the Supreme Court of Canada in the well known "trilogy" of personal injury cases. They will also include an examination of the mechanisms available for the assessment and review of damage awards.

(c) *Family Compensation Act*

Under the *Family Compensation Act* an action may be brought in respect of the death of a person where the death is caused by the wrongful act of another. The action may be brought only for the benefit of certain near relatives of the deceased, and the claim is limited to the loss of future pecuniary benefits that the deceased would have provided. It has been suggested that the class of persons for whose benefit an action may be brought under the *Act* is too limited and should be broadened. We will therefore be examining the desirability of broadening this class to include other persons who may have been dependent upon the deceased.

3. APPLICABILITY OF ENGLISH STATUTE LAW

Section 2 of the *Law and Equity Act*, R.S.B.C. 1979, c. 224 provides that the laws of England, as they existed on November 19, 1858 are in force in British Columbia to the extent that they are not inapplicable through local circumstances and have not been repealed or superseded by federal or provincial legislation. It follows from this that an uncertain number of English statutes are in force in this Province.

The aim of this project is to introduce a degree of certainty concerning the extent to which English statute law is in force here. We hope to identify those statutes which are in force, with a view to rationalizing this aspect of our statute law.

This has always been recognized as a long-term project and much of our work has been devoted to gathering background information. Considerable progress has been made in organizing these materials, and a preliminary list of statutes has been established. Our research in this area will continue in 1982.

4. ARBITRATION

The law covering Arbitration was the subject of intense research by the Commission in 1978 and 1979. The focus of our attention was commercial arbitration and the imperfections of the existing *Arbitration Act*. In April 1979 the Commission circulated a Working Paper that set out a number of proposals

for change. The process of developing our final recommendations is now virtually complete and we hope to submit our final Report early in 1982.

5. CIVIL PROCEDURE

(a) *Foreign Money Liabilities*

This project was added to our programme in 1981 and concerns the difficulties that arise when a person's claim is based on a loss suffered in a foreign currency. The most widely accepted view is that judgment must be given in Canadian currency in an amount determined by the conversion rate prevailing when the cause of action arose (date of breach). This can work a significant injustice on the plaintiff when Canadian currency has declined in value between the date of breach and the date his claim is satisfied.

In December we distributed a Working Paper which examines the issues involved and recent developments in other jurisdictions, and sets out tentative proposals for changes in the law.

(b) *Prejudgment Interest*

The *Court Order Interest Act* (formerly entitled the *Prejudgment Interest Act*) was enacted to implement recommendations made in a Report (LRC 12) submitted by the Commission in 1973. Seven years of experience under the *Act* has produced a growing body of jurisprudence and is sufficient time for most difficulties in the legislation to have emerged. The Commission has embarked on an examination of the operation of the *Act* and will be reporting in due course on what, if any, changes are desirable.

Complementing our own work in respect of prejudgment interest is that of the Uniform Law Conference of Canada aimed at developing a uniform act suitable for adoption across Canada. At the 1980 meeting of the Conference the underlying policy issues were the subject of intense consideration and it is expected that in 1982 a Draft Act will be available to that body.

6. ESTATES PROJECTS

A number of discrete studies are being carried out under this heading which are more particularly described below. We are fortunate to have the assistance and advice of Mr. J.C. Scott-Harston, Q.C. in connection with these studies and wish to express our gratitude for the time and effort he has devoted to them.

(a) *The Making and Revocation of Wills*

In September the Commission submitted its final Report on the Making and Revocation of Wills (LRC 52). The Report examines the formalities imposed by statute on the making of testamentary instruments. This examination is not restricted to wills. It includes a consideration of the designation of beneficiaries under registered retirement savings plans, registered home ownership savings plans, employee benefit plans, and insurance policies, which have become increasingly significant.

The Report explores a number of issues concerning the validity of wills. These issues include the capacity of minors, soldiers' and mariners' wills, the international form of will, the effect of wills improperly executed, the capacity of witnesses, and the formal validity of wills which violate a foreign law

made relevant by British Columbia choice of law rules. The Commission makes recommendations concerning all these matters.

(b) *The Interpretation of Wills*

Once a will has been admitted to probate, doubts may arise concerning the meaning of words used by the testator. Over several hundred years the law has developed a bewildering array of rules concerning the construction of words used in a will. Many of these rules are both archaic and obscure. In this part of the project we examine these rules with a view to proposing changes which will enable courts more readily to ascertain and give effect to the testator's true intent. A Working Paper setting out our tentative proposals was circulated in November.

(c) *Statutory Succession Rights*

The right of a person to succeed to the property of another on death may arise by will or by statute. In our Report on Making and Revocation of Wills and our Working Paper on Interpretation of Wills, we were concerned mainly with testamentary succession rights. In this part of the project we propose to examine rights which flow from statute, and which exist regardless of a deceased person's intent. These rights may be mandatory, such as those which arise upon an intestacy under the *Estate Administration Act*, or they may be discretionary like those accorded to certain persons under the *Wills Variation Act*.

A number of fundamental issues arise. Who should enjoy a statutory succession right? On what basis should courts interfere with other vested rights in exercising their discretion under the *Wills Variation Act*? What relief should be granted under such an act? What should be the position of a surviving spouse having regard to interests that may arise upon marriage breakdown under the *Family Relations Act*?

Our background research in this area is complete and we are in the process of preparing a Working Paper which we hope to circulate in 1982.

(d) *The Effect of Testamentary Instruments*

Even where the testator's original intent is beyond dispute, events may occur which render it impossible to give effect to his intent. A beneficiary may predecease the testator. Property disposed of by will may have become altered in form. In this fourth part of the Estates Project the Commission will examine a number of issues arising out of such occurrences. In particular, we will examine the legal rules concerning lapse, ademption, conversion, election, disclaimer, and survivorship.

(e) *Probate Procedure and Administration*

It is planned that this study will examine the law of British Columbia concerning the procedure used in obtaining letters probate or letters of administration, and the law relating to the administration of the estates of deceased persons, with a view to its consolidation, rationalization, and simplification. We will also consider the procedural implications of recommendations made in other parts of the project. Since changes in the law concerning procedure depend to some extent upon the substantive law, it is anticipated that aspects of our work on this topic will be deferred until the completion of the other parts of the Wills and Estates Project.

7. SALE OF GOODS LEGISLATION

Early in 1979 the Ontario Law Reform Commission submitted a massive Report on the law concerning the sale of goods. It recommended the enactment of new legislation to replace a statute similar to the *Sale of Goods Act* in force in this province. The adoption of the recommended Act in Ontario only, however, would lead to a serious departure from the high degree of legislative uniformity that presently exists among the common law provinces.

To meet this concern a special Committee of the Uniform Law Conference was struck to consider the desirability of promulgating a new Uniform Sale of Goods Act and whether the proposed Ontario legislation should form the basis of such a uniform Act. Those law reform agencies concerned with this issue provided special assistance. We engaged Professor David Vaver of the Faculty of Law, University of British Columbia, as a consultant on this project and he has worked closely with the Committee.

The work of the Committee was completed in July 1981 and a Report setting out its conclusions and recommendations was presented to the Uniform Law Conference for consideration at the annual meeting in August. The Report consists of an introduction, a Draft Uniform Sale of Goods Act with extensive comments and annotations, a table of concordance to the work of the Ontario Law Reform Commission and a comparative analysis of the Draft Uniform Act with the civil law of Quebec.

At the 1981 meeting of the Uniform Law Conference of Canada the Report of the Sales Committee was received and the Draft Act was formally adopted by the Conference as a Uniform Act. The proceedings of the Uniform Law Conference will soon be published and those proceedings should include the full text of the Report. The Report and Uniform Draft Act will therefore be widely available.

No doubt the Uniform Act will be the subject of intensive study and discussion by the legal profession and by the Ministries of Government concerned with this branch of the law with a view to its possible adoption.

We wish to thank Professor Vaver for the effort he has devoted to this study and the significant contribution he made to the work of the Sales Committee.

8. EXTRINSIC AIDS TO STATUTORY INTERPRETATION

Section 8 of the *Interpretation Act* provides that a statute shall be given "such fair, large and liberal construction as best ensures the attainment of its objects." In ascertaining these "objects," however, the courts are largely confined to an examination of the legislation itself. As a general rule a court may not have regard to other sources that may assist in discovering the "objects" of legislation or the "intention" of the legislature that enacted it.

Two sources that are frequently cited as being of potential assistance are the reports of legislative debates (Hansard) and the reports of Royal Commissions, law reform agencies and the like that may have preceded legislation. The generally accepted legal position is that the former are wholly inadmissible as an aid to interpretation and that the latter are admissible only to identify the "evil" sought to be remedied by the legislation.

A study on extrinsic aids to statutory interpretation was added to our programme some time ago in which we proposed to examine the desirability

of modifying the law so as to allow these materials to be introduced, for what they are worth, as an aid to construction. Since that time, however, a number of cases have emerged which tend toward a relaxation of the general position described above, and it may be that judicial developments will eliminate any need for legislative intervention. Accordingly we have discontinued active work on this project, although we will maintain a "watching brief" by collecting and considering further materials as they become available.

9. CABLE TELEVISION AND DEFAMATION

Cable television has become a significant medium of communication in this province and its importance will likely continue to grow in the coming years. With this growth has come an increased vulnerability of cable operators to defamation proceedings and an increased danger to persons who may be defamed in an imputation disseminated by cable. The *Libel and Slander Act* contains special provisions that define the legal position of conventional broadcasters but these do not apply to cable television operators.

In a short Report (LRC 50) issued in March 1981 we recommended that the legal position of cable television operators under the *Libel and Slander Act* be assimilated to that of conventional broadcasters so that they would share corresponding benefits and burdens.

10. OFFICE OF THE SHERIFF

An addition to the Commission's programme in 1980 was a study of the office of the sheriff. It entails a comprehensive examination of the powers and duties of the sheriff and current practices in the day-to-day operation of the sheriff's office. A historical review of the evolution of the sheriff's office in British Columbia and an examination of the practice in other jurisdictions is also being undertaken. Work on this study will continue in 1982. We are indebted to the Law Foundation for financial support they have given the study.

11. BENEFITS CONFERRED UNDER A MISTAKE OF LAW

In September the Commission submitted its final Report on this topic (LRC 51). The Report examines the common law rule that benefits conferred under a mistake of law are not recoverable. Although that rule is nearly two hundred years old, it has long been a source of dissatisfaction and injustice. It may be contrasted with cases involving mistakes of fact, in which a person who has conferred a benefit under a mistake has a *prima facie* right of recovery.

In recent years, Canadian courts have accepted the principle of unjust enrichment as the foundation of our law of restitution. The Supreme Court of Canada has affirmed that the basis of an action to recover a benefit conferred under a mistake is unjust enrichment. The continued existence of an arbitrary rule under which a person who has received a benefit under a mistake of law may retain it is incompatible with that principle. The principle that a person who has been unjustly enriched at the expense of another is *prima facie* obliged to return the benefit so received is well-entrenched in Canadian law. Moreover, Canadian courts have not been insensitive to the potential injustice to which the common law rule might lead, and have therefore created a

bewildering array of exceptions to the rule. The result is to make cases involving mistakes of law complex and uncertain. The recommendations contained in our Report are intended to rationalize the law respecting the rights of those who act under a mistake of law, and to ensure that the courts are able to grant relief in appropriate cases by application of restitutionary principles.

In the last few years, our courts have been faced with a number of cases involving payments made to municipalities pursuant to the terms of an *ultra vires* bylaw. We have made recommendations specifically addressing the problems arising from these cases which, if implemented, would simplify the law and yield more just results.

12. ILLEGAL CONTRACTS

As a general rule, Canadian courts decline to grant relief to parties who have either deliberately or unwittingly entered into an "illegal" contract. The law concerning when a contract may be characterized as illegal, and the exceptions to the general rule, are uncertain and inconsistent. It may be doubted whether the drastic results which flow from characterizing a contract as "illegal" are necessary to uphold public policy.

We are in the process of preparing a Working Paper examining the issues arising out of a total or partial abrogation of the general rule denying relief to the parties to an illegal contract.

13. DISTRESS FOR RENT

This project, added to our programme in 1980, examines the desirability of retaining the present right of a landlord of commercial premises to seize goods belonging to the tenant and to sell them to satisfy unpaid arrears of rent. The effect of the present law is to give the landlord a priority over the rights of other creditors who may also wish to see their debts satisfied out of the tenant's property. It may also jeopardize the interests of innocent third parties.

In November 1981 we submitted our final Report on this matter (LRC 53). It was recommended that the landlord's right of distress should be retained but in the context of a wholly new *Rent Distress Act* which would remedy a majority of defects in the existing law. A draft Act was included as part of our Report.

14. TORTS AND THE FAMILY

There are two projects under this heading, both concerning topics which we have monitored for several years as subjects of interest. Developments in the past year suggested the time was ripe to add them formally to our programme.

(a) *Interspousal Immunity in Tort*

This study will examine the rule enshrined in section 10 of the *Married Women's Property Act* that one spouse cannot sue the other in tort except for the protection of his or her separate property. We will also be examining the

implications of a change in this rule with respect to insurance legislation and insurance contracts.

(b) *Miscellaneous Causes of Action*

There are a number of causes of action which are concerned with the interests of individuals in their family relationships. Some are based on tort, such as actions relating to the enticement or harbouring of a spouse or child or claims arising out of a personal injury to a family member. Others are based on contract such as an action for damages for breach of promise of marriage. Still others are founded on statute, such as an action for damages for adultery under section 76 of the *Family Relations Act*. In this study these and similar causes of action will be examined to determine whether they still serve a useful function, and whether any new remedies would be desirable in this context.

15. FOLLOWING TRUST MONEY: THE RULE IN CLAYTON'S CASE

When trust monies are mingled in a single trust account, and the balance falls below the amount required to satisfy or repay the trust monies, the courts may determine entitlement to the fund by applying the rule in *Clayton's Case*; *Devaynes v. Noble* (1816), 1 Mer. 572, 35 E.R. 767. In the absence of evidence to the contrary, this rule of convenience provides a presumption that the sum first paid into the account is the sum first paid out, or that the first item on the debit side of the account is discharged or reduced by the first item on the credit side.

The rule is based upon elementary accounting principles, and in the usual course it is a practical and accurate description of banking practice. The rule itself, however, only applies when a claimant seeks an equitable remedy, such as a declaration of equitable lien or charge, or constructive trust.

The rule, while subject to exceptions which favour the interest of the beneficiary *vis à vis* his trustee, operates harshly when the monies of more than one beneficiary are involved in a mixed fund which is depleted. Because the competition is between innocent parties, the principles underlying the exceptions to the rule do not come into effect. A beneficiary, merely because his money was deposited first in time, may be required to bear the entire shortfall.

An examination of this rule and its operation was added to our programme in 1981.

16. SUBJECTS OF INTEREST

Preliminary research or the gathering of material is proceeding on a number of matters which are not yet part of the Commission's programme. In most cases this is to determine if a particular topic is appropriate for formal inclusion in the programme as a Commission project.

Many of these matters which are under preliminary consideration arise out of particular suggestions made, and problems drawn to the Commission's attention, by the legal profession and members of the public. This kind of assistance is always welcome. Even if the particular suggestion or problem is not one which is appropriate for Commission study we are often able to transmit it to a person or agency which is in a position to act.

III THE AVAILABILITY OF COMMISSION PUBLICATIONS

All final Reports issued by the Commission have been published in a typeset format, with the intention that they be available to the public. Our Annual Reports are distributed by the Commission and are available on request and free of charge so long as stocks last.

The Provincial Queen's Printer is responsible for the distribution of all Reports made by the Commission on particular topics. A nominal charge is made for copies of those Reports. Orders and inquiries as to prices should be directed to:

The Queen's Printer
Publications
Parliament Buildings,
Victoria, B.C. V8V 4R6
Telephone: 387-1901

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

The Queen's Printer maintains a "notification list" and upon publication of a Commission Report, all persons on the list are so advised. Anyone who wishes to be added to that list should contact the Queen's Printer.

Working Papers are produced in a typescript format by an offset process, and the Commission is responsible for their distribution. Working Papers are usually produced in limited quantities and our supplies of them are invariably exhausted by, or shortly after, their initial distribution. Usually, therefore, we are unable to respond to requests for copies of past Working Papers.

IV ACTION ON COMMISSION RECOMMENDATIONS

All the Reports made by the Commission are listed in Appendix A together with a note of the legislation implementing recommendations made in those Reports. We think it helpful, however, to highlight legislation enacted during the past year that is based upon recommendations we have made.

Section 28 of the *Attorney General Statutes Amendment Act 1981* implements the recommendation made by the Commission in its Report on the Calculation of Interest on Foreclosure (LRC 47). The section amends the *Law and Equity Act* by the addition of a section 18.1 to follow section 18. The new section provides that in foreclosure proceedings the court shall, unless exceptional circumstances exist, order that the payment of interest is to be calculated and payable to the date payment is made to redeem the property. This reverses the result of the decision of the Court of Appeal in *North West Trust Co. v. Paramount Management Corp.*, (1979) 8 B.C.L.R. 199, which re-established the practice that entitled mortgages to interest for the full period of redemption, usually six months, regardless of the actual date that the property was redeemed.

Section 30 of the *Attorney General Statutes Amendment Act 1981* adds a section 51 to the *Law and Equity Act* which permits the Chief Justice of the Supreme Court to prescribe the discount rate to be used in calculating the present value of future damages in personal injury actions. The section is

based upon legislation suggested by the Commission to the Chief Justice in November 1980 in response to a request from the Deputy Attorney General that the Commission provide assistance to the Chief Justice and the Ministry of Attorney General on this topic. The views of the Commission were set out in a letter to the Chief Justice dated November 18, 1980. The text of this letter and the suggested draft legislation (with drafting notes) are set out in Appendix C to the Commission's Annual Report for 1980.

Section 67 of the *Financial Administration Act* implements the recommendation made by the Commission in its Report on The Recovery of Unauthorized Disbursements of Public Funds (LRC 48). In that Report the Commission examined the rule in *Auckland Harbour Board v. The King*, [1924] A.C. 318 (P.C.), that the government has an unqualified right to recover funds paid out of the Consolidated Revenue Fund without lawful authority. Section 67 partially abrogates that common law rule. Although the provincial government retains its *prima facie* right to recover funds paid out in error, a recipient may now raise any defence which would generally apply in an action to recover money paid out under a mistake of fact in an analogous situation. The provincial government's right is therefore no longer unqualified.

In its Report on the *Replevin Act* (LRC 38; now titled *Recovery of Goods Act*) the Commission recommended that the Act be repealed and replaced by a new, more general, remedy contained in the Rules of Court permitting the interim recovery of personal property. This new remedy is embodied in a revised Rule 46 added to the Rules by Regulation in November (B.C. Reg. 467/81) which comes into effect on March 1, 1982. The *Recovery of Goods Act* has not yet been repealed.

V RELATIONSHIP WITH OTHER AGENCIES

Our ties with other law reform agencies continue to strengthen and prosper, both through the reciprocal arrangements for the exchange of documents and through personal contacts. As has been usual in recent years a meeting of Canadian law reform bodies was held in August. It was attended on behalf of British Columbia by the Chairman, A.L. Close and Anthony Spence, Counsel to the Commission. This resulted in a fruitful exchange of information and discussion of mutual concerns. That meeting was followed by the Annual meeting of the Uniform Law Conference of Canada. The Chairman and Messrs. Close and Spence were members of the British Columbia delegation to the Conference.

A useful result of our ties with the Uniform Law Conference has been our participation in the Committee on sale of goods legislation described earlier in this Report. In July 1981 we were pleased to host a meeting of a drafting subcommittee of the Sales Law Committee.

Although the Commission reported on Personal Property Security in 1975, it continues to keep abreast of more recent developments in this area through the participation of Mr. Close in the Special Committee of the Canadian Bar Association on a Model Personal Property Security Act under the Chairmanship of Professor Jacob Ziegel. The work of the Committee is

now virtually complete and a revised Model Act was submitted to the Canadian Bar Association in August 1981.

During the past year we were honoured by visits from members of three other law reform agencies: Mr. Denis Gressier of the New South Wales Law Reform Commission; Professor Ronald C.C. Cuming, Chairman of the Saskatchewan Law Reform Commission; and Mr. Frank Muldoon, Q.C., Chairman of the Law Reform Commission of Canada.

Our relationship with other agencies of Government, both within and without the Ministry of Attorney General, continues to be wholly satisfactory.

VI ACKNOWLEDGEMENTS

As we have pointed out in previous Annual Reports, our policy of doing the greater part of our research work internally, rather than relying upon outside consultants, has placed a heavy burden of responsibility upon the shoulders of our permanent staff. As usual they have responded to the challenge with energy, enthusiasm and careful scholarship.

Our research staff currently consists of Mr. Anthony J. Spence, Counsel to the Commission, and Mr. Thomas Anderson and Ms. Gail Black, our staff lawyers. We wish to thank them for the very significant contribution they make to our work.

In October 1981 we lost the services of Mr. Frederick Hansford who has returned to private practice. During his two years as a member of our legal research staff, he made a notable contribution to our work. Our Reports on Benefits Conferred Under a Mistake of Law, Recovery of Unauthorized Disbursements of Public Funds, and the Making and Revocation of Wills all bear the stamp of his scholarship. He also left us with a legacy of draft materials relating to reviewable transactions and illegal contracts which will come to fruition in due course. We wish to express our sincere thanks for his contribution and wish him well in his future endeavours.

Our support staff also make a notable contribution to the work of the Commission. They bring intelligence and efficiency to their duties and share a concern that our work should be of the highest quality in every respect. Our support staff presently consists of Sharon St. Michael, Secretary to the Commission, and Terry Lesperance and Janet Ellis, stenographers. We thank them for their efforts on our behalf.

The support which we have received from the organized bar and its individual members in past years continued in 1981. 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 various proposals and tentative conclusions set out in our Working Papers. We wish to thank all members of the bar who gave generously of their time and experience in the past year.

We also wish to repeat our thanks to Mr. J.C. Scott-Harston, Q.C. for his assistance in connection with our estates projects.

The two law schools in the Province have also greatly assisted us in our consultation processes. New procedures have been established which have facilitated and co-ordinated comment from the faculty members. The response we have received in this way has been most valuable. We wish particularly to thank Dean K.M. Lysyk of the Faculty of Law, University of British Columbia and Dean L.R. Robinson of the Faculty of Law, University of Victoria and their colleagues.

Our thanks also goes to the Law Foundation of British Columbia. The Foundation has responded swiftly and generously to our requests for financial assistance in connection with particular projects.

We also wish to acknowledge the contribution of the Judges Law Reform Committee. This Committee provides a continuing point of contact with the judiciary. The members of the Committee are The Honourable Mr. Justice Lambert of the Court of Appeal (Chairman), The Honourable Mr. Justice Taylor, The Honourable Mr. Justice Hinds and The Honourable Mr. Justice Spencer of the Supreme Court, His Honour Judge Macdonald of the County Court and His Honour Judge Collings of the Provincial Court. The members of the Committee assist us through responding to our working papers and other consultative documents and through bringing to our attention defects in the law that they are well-situated to identify. They bring a unique perspective to bear on our work and we are grateful for their participation.

The process of acquiring new premises has brought us into close contact with the Facilities Management Unit of the Ministry of Attorney General. We wish to express our appreciation to Messrs. Tom Morris and Chris Brambell of that Unit for the assistance and advice they have given us throughout.

Finally, we wish to thank you, Mr. Attorney General, and others within your Ministry for the attention that has been given to the Commission and its activities in 1981.

JOHN S. AIKINS
PETER FRASER
KENNETH C. MACKENZIE
BRYAN WILLIAMS
ANTHONY F. SHEPPARD
ARTHUR L. CLOSE

1 January 1982

Appendix A

REPORTS AND RECOMMENDATIONS MADE BY THE LAW REFORM COMMISSION OF BRITISH COLUMBIA

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 (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, R.S.B.C. 1979, c. 365, s. 8(3)); Commercial Tenancies Act, R.S.B.C. 1960, c. 207, s. 34 (see now Commercial Tenancy Act, R.S.B.C. 1979, c. 54, s. 33).</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	—
6	Annual Report, 1971*	Dec. 1971	Not applicable
7	Mechanics' Lien Act	June 1972	—
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, s. 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, R.S.B.C. 1979, c. 365).</i>

* Report is out of print.

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).
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	—
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	—
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); <i>Attorney General Statutes Amendment Act</i> , S.B.C. 1980, s. 11 [in part].
25	Annual Report, 1975	Jan. 1976	Not applicable
26	Minors' Contracts	Feb. 1976	—
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).
28	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).

* Report is out of print.

No.	Title	Date	Recommendations Implemented in Whole or in Part by
32	Proof of Marriage in Civil Proceedings	Apr. 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	—
34	Tort Liability of Public Bodies	June 1977	—
35	Offences Against the Person Act, 1828, 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</i> and <i>Bail Act</i> : Two Obsolete Acts	Mar. 1978	<i>Attorney-General Statutes Amendment Act</i> , 1978, S.B.C. 1978, c. 11, s. 8.
38	The <i>Replevin Act</i>	May 1978	Rules of Court, Rule 46 as amended Nov. 26, 1981 by B.C. Reg. 467/81.
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	Creditor's Relief Legislation: A New Approach	Jan. 1979	—
43	Guarantees of Consumer Debts	June 1979	<i>Consumer Protection Amendment Act</i> , 1980, S.B.C. 1980, c. 6, s. 3. [in part].
44	Parol Evidence Rule	Dec. 1979	—
45	Annual Report 1979	Jan. 1980	<i>Attorney General Statutes Amendment Act</i> , 1980, S.B.C. 1980, c. 1, ss. 7, 17 (Limitation periods in actions against estates).
46	Civil Litigation in the Public Interest	June 1980	—
47	Calculation of Interest on Foreclosure	Sept. 1980	<i>Attorney General Statutes Amendment Act</i> , 1981, S.B.C. 1981, c. 10, s. 28.
48	The Recovery of Unauthorized Disbursements of Public Funds	Sept. 1980	<i>Financial Administration Act</i> , S.B.C. 1981, c. 15, s. 67.
49	Annual Report 1980	Jan. 1981	<i>Attorney General Statutes Amendment Act</i> , 1981, S.B.C. 1981, c. 10, s. 30 (Discount Rates).
50	Cable Television and Defamation	March 1981	—
51	Benefits Conferred Under a Mistake of Law	Sept. 1981	—
52	The Making and Revocation of Wills	Sept. 1981	—
53	Distress for Rent	Nov. 1981	—

Appendix B**MATTERS UNDER CONSIDERATION BY LAW REFORM
COMMISSION OF BRITISH COLUMBIA**

1. Debtor-Creditor Relationships
 - (a) The Crown as Creditor: Priorities and Privileges
 - (b) Reviewable Transactions
 - (c) Joint Liability
 - (d) Enforcement of Judgments
2. Personal Injury Compensation
 - (a) Periodic Payments
 - (b) Compensation for Non-pecuniary Losses
 - (c) *Family Compensation Act*
3. Statute Law Revision: Applicability of English Law
4. Arbitration
5. Civil Procedure
 - (a) Foreign Money Liabilities
 - (b) Prejudgment Interest
6. Estates Projects
 - (a) The Interpretation of Wills
 - (b) Statutory Succession Rights
 - (c) The Effect of Testamentary Instruments
 - (d) Probate Procedure and Administration
7. Office of the Sheriff
8. Illegal Contracts
9. Torts and the Family
 - (a) Interspousal Immunity in Tort
 - (b) Miscellaneous Causes of Action
10. Following Trust Money: the Rule in *Clayton's Case*