

2003

Law Commission of Canada

ANNUAL REPORT



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Mission

THE MISSION OF THE LAW COMMISSION OF CANADA IS TO ENGAGE CANADIANS IN THE RENEWAL OF THE LAW TO ENSURE THAT IT IS RELEVANT, RESPONSIVE, EFFECTIVE, EQUALLY ACCESSIBLE TO ALL, AND JUST.



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Message from the President



I am pleased to present the 2002–2003 *Annual Report* of the Law Commission of Canada. The work of the Commission continues to reflect issues of concern for Canadians, and gets to the heart of their relationship with the law and the legal system.

During the past year, the Commission has explored the impact of Canadians' search for security and reassurance in a changing world. Even before the events of September 11, 2001, society was concerned with security. People bought, and continue to buy, burglar alarm systems and security bars for the windows of their homes; they hire security guards to patrol their communities. Businesses install surveillance cameras. Opinion polls continue to reflect a feeling of insecurity among the population.

The Commission has examined, among other things, the impact of an increasing demand for law enforcement services. The international conference *In Search of Security*, which the Commission organized, was an unqualified success. This conference was the culmination of a series of consultations on issues relating to the role of the public and private sectors in the security field. The consultations revealed that citizens are concerned about the rapid expansion of private security services and the pressures on police forces resulting from the increased demand for protection.

The Commission also released a discussion paper entitled *What is a Crime? Challenges and Alternatives*. This paper aims at engaging Canadians in a discussion about the choices we have as a society to respond to behaviours that we are trying to discourage. In a society preoccupied by security concerns, there is often a reflex to turn to criminal law for solutions. Is that always appropriate? Why do we use the criminal justice system instead of other forms of intervention to control undesirable behaviour? Are the alternatives to criminal justice sufficient to respond effectively to society's needs? What can be done to lessen the feeling of insecurity?

In all its work, the Commission has witnessed the desire for participation in democratic institutions by all members of our society. This search for meaningful participation is reflected in expressions such as "democratic deficit," "citizen disengagement" and "democratic malaise." These expressions all highlight the need to re-energize our democratic institutions. In this regard, in September 2002, the Law Commission published a discussion paper entitled *Renewing Democracy: Debating Electoral Reform in Canada*, and is holding consultations on this subject across the country.

These projects and others described in this annual report reflect the Commission's relevance for Canadian society. The Commission continues to be committed to law reform that engages members of Canadian society in the renewal of their law. Canadians are entitled to good law and to a legal system that fulfils their aspirations for justice. The law reform process is part of our search for a just and equal society.

A handwritten signature in dark ink, reading "Nathalie Des Rosiers". The signature is written in a cursive, flowing style.

Nathalie Des Rosiers
President

Social Relationships

In Search of Security

“Many things such as airport security that used to be the job of police are now done by private security firms. ... Yet who knows how these people are trained and what their responsibilities are? All of this seems to be just happening without any kind of public or political response. The Law Commission’s discussion paper is just that: a talking point, an attempt to get an important issue on the public agenda. As the Commission points out, these are matters at the very heart of our democracy.”

Commentary by Michael Enright on *This Morning*, CBC Radio, May 12, 2002

A municipality investigates the possibility of contracting with a private security company to provide policing services. A business improvement association hires a private security firm to patrol the downtown streets at night. A team of forensic accountants from an international consulting firm investigates allegations of financial mismanagement by a Fortune 500 company. A government contracts with a private firm to provide security for a nuclear facility. A group of banks creates a fund to help finance a police organization’s fraud squad.

“The obvious answer [to the problem of crime] is more police officers. And we will have more police officers. ... We have been growing flat out for the last year and we know that we can grow by something not much more than 1,200 to 1,500 officers a year. ... So, yes, more cops, but we do not have enough time for that to be the sole solution. Unless we do something dramatic, we are sure that public dissatisfaction will grow and that local authorities, housing associations and private individuals will cease to look to the [Metropolitan Police] for a solution. ... We have talked relentlessly about the need for an extended police family and about the concept of a second tier force in London. ... They are known as Police Community Support Officers: they are the vertical model and they are here.”

Surprise News: Policing Works — A New Model of Patrol, Ian Blair, Deputy Commissioner, New Scotland Yard

A safe and secure environment is of fundamental importance to all individuals. But, as these examples suggest, what is less certain is how the provision of security ought to be organized and delivered. Increasingly, the provision of security is becoming privatized. Individuals, businesses, government institutions and other organizations are contracting with private companies that sell security as a commodity.

These private policing agencies have moved beyond simply protecting private property. They are often engaged in maintaining order, investigating crimes and making arrests in public spaces. In other words, they are performing many activities that were once exclusively performed by public police forces.

In April 2002, the Law Commission of Canada released a discussion paper, *In Search Security: The Role of Public Police and Private Agencies*, that explores who provides policing and security services in Canada. The Commission followed the discussion paper with a series of public fora on the future of policing, which stimulated debate in the media and in policing institutions.

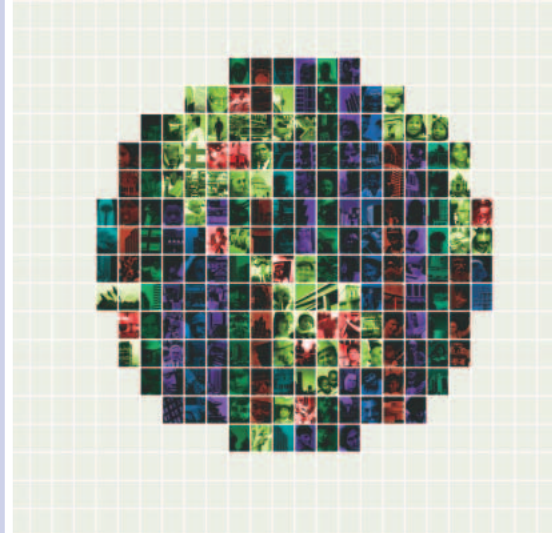


“Canada’s police are not happy about what they see as private security guards intruding on their beat.”

“There is an acute need for increased regulation of the private security industry and to delineate its role from the public police,” said Dale Kinnear, director of labour services for the Canadian Police Association. The issue arose at a Law Commission of Canada conference on policing and security. An association position paper says it appears some police managers and local and provincial authorities are looking at private security as a source of cheap labour to reduce costs. It argues against allowing private security guards to take over the duties and authorities of the public police.”

“Police officers defend turf;”

The Globe and Mail, March 10, 2003, page C10



Denise Reaume,
Professor of Law

These consultations culminated with *In Search of Security: An International Conference on Policing and Security*. The conference, which took place in Montréal from February 19 to 22, 2003, attracted more than 100 speakers from 22 countries, and more than 350 delegates, including public and private policing professionals, academics and students, officials from

municipal, provincial and federal governments, and members of the public.

The conference featured three plenary sessions and more than 30 workshops.

Conference Highlights

- *Policing and Security Around the World*, a Living Law Forum that was open to the general public and featured policing experts from the United Kingdom, France, Russia, Chile and Canada discussing trends in the delivery of security from an international perspective;

- an address by Serge Ménard, Quebec’s former Minister of Public Security; and
- three plenary sessions: *Exploring Public/Private Boundaries*, *The Work of Safety: Policing, People and Technology*, and *Too Much Security?*

Conference delegates stressed the need for improved communication and stronger partnerships among public police and private security agencies. They suggested some steps to take to make this happen:

- increase the level of co-operation between public police and private security services;
- clearly define the roles and responsibilities of private security agencies and develop common legislation and procedures for public police and private security agencies in all provinces and territories; and
- develop stronger lines of communication between public police and private security agencies.

Accountability was stressed by many of the participants as being crucial to co-operation between public police and private security agencies, as well as for the public.

Registrars Meeting

The regulation of the private security industry in Canada is a provincial responsibility. As part of the *In Search of Security* conference, the Law Commission of Canada invited the individuals responsible for administering private security legislation in each province to attend a special meeting.

This day-long meeting was the first time that the provincial registrars had come together to learn about initiatives being undertaken in each jurisdiction and to examine approaches to regulating the private security industry. The group agreed to reconvene in the fall of 2003 to continue its discussions.

Conflict Resolution: Towards Restorative Justice

Researchers and commentators often criticize the adversarial models of criminal and civil justice. In response, efforts have been made on the criminal side to find solutions to replace incarceration for offenders, to better respond to the needs of victims and to support communities. There has also been an attempt on the civil side to develop alternatives to courts to resolve contractual, family and other conflicts.

There is a close connection between restorative justice in criminal law and alternative dispute resolution mechanisms in civil law. They both attempt to institute a new awareness of the processes through which conflicts are identified and structured, and of what might be the optimal corrective results for conflicts.

Over the last few years, the Law Commission of Canada has consulted Canadians on their perceptions of the justice system and on the possibility that the principles and practices of restorative justice might provide an effective response to criminal and civil law conflicts.

The Commission's discussion paper, *From Restorative Justice to Transformative Justice*, has been widely distributed. The Commission also produced an educational video entitled *Communities and the Challenge of Conflict: Perspectives on Restorative Justice*, which explores the role of the community in conflict resolution, and funded several complementary projects dealing with conflict resolution.

The Commission will publish a report on the challenges of transformative and consensual justice in 2003-2004.

Restorative Justice Events

The Law Commission of Canada participated in several events in 2002 to further the dialogue about restorative justice.

In September, the Commission organized a panel discussion as part of the Canadian Criminal Justice Association's national conference on evaluating restorative justice programs. The panellists were Dr. Julie Macfarlane, a professor at Osgoode Hall Law School and also a 2002 Virtual Scholar in Residence with the Commission, and Avery Calhoun, a professor of social work at the University of Calgary.

In November, the Commission participated in a day-long Living Law Forum on *New Paths to Justice*. Participants looked at some new and innovative forms of dispute resolution that have emerged in the Canadian context, as well as alternative instruments for restoring societal relationships. The Forum featured sessions on the values behind conflict resolution processes and on new processes and their impact, as well as presentations by leading figures working for reconciliation in Africa following gross violations of human rights.



Reform of Democratic Institutions

"In many aspects of our lives, we have moved toward a model of decision-making that seeks diversity and broad representation. We view diversity as an enrichment that leads to innovative thinking and better decisions. It is interesting that, in many respects, despite the major demographic changes in our society, the composition of the House of Commons looks the same as it did in the 40s or 50s."

Nathalie Des Rosiers, President,
Law Commission of Canada



As part of its research on governance relationships, the Law Commission of Canada is studying decision-making mechanisms within institutions, both public and private, and is seeking to propose effective governance mechanisms within a framework of transparency and accountability.

In 2002–2003, the Commission examined the electoral system in Canada and published a discussion paper, *Renewing Democracy: Debating Electoral Reform in Canada*, that poses a series of questions to Canadians on the state of their democracy. Is the current electoral system adequate or does it require changes? Is the current structure best adapted to the political realities of this country? Does this system facilitate or hinder participation in public life? What are citizens' expectations of a voting system? Will changes made to the electoral system reduce the level of public discontent about government institutions?

The Commission then held consultations across Canada and heard from many Canadians who expressed a variety of concerns with the system of democratic governance, particularly with the current electoral system. The Commission plans to build on the results of its consultations and research to produce a report to Parliament. At the same time, the Commission will continue to consult with Canadians and support research that examines issues of democratic governance in contemporary Canadian society.

Governance Beyond Borders

Under the theme of governance, the Law Commission of Canada undertook to consider the ways in which law and institutions of governance could better serve the growing number of Canadians who see themselves not only as citizens of Canada, but as citizens of the world.

Law reform must respond to the pressures of globalization and must adapt its methodology and practice to a world in which governance occurs inside and outside of nation states. Law reform itself must take into account the impact of its recommendations for improved Canadian laws, policies and activities on the social and economic development of other countries.

In 2001, the Relationships in Transition competition, sponsored jointly by the Law Commission of Canada and the Social Sciences and Humanities Research Council, invited applicants to explore the potential impact of laws and policies on other countries. Five papers were commissioned. On September 20, 2002, the Law Commission held a roundtable with the five research teams and gave participants an opportunity to comment on the preliminary research findings and discuss areas for further exploration. As a follow-up to the research and the ideas generated during the roundtable, the Law Commission is beginning to explore the governance issues surrounding corporate social responsibility.

Electoral Reform Research Papers

Votes, Victories and Values: Probing the Issue of Electoral Reform in Canada (M. Mallet)

Renewing Canadian Democracy: Citizen Engagement in Voting System Reform. Phase One: Lessons from Around the World (D. Pilon)

Report on Proceedings — Renewing Democracy: Citizen Engagement in Voting System Reform (B. Crocker)

Electoral System Reform in Canada: Objectives, Advocacy and Implications for Governance (F. L. Seidle)

Citizen Engagement in Voting System Reform: A Plan for 21st Century Democratic Renewal in Canada (L. Gordon)

Valuing Canadians: The Options for Voting System Reform in Canada (B. Schwartz)

Legal Diversity and Pluralism

The relationships between communities raise important governance issues. Are the legal and political mechanisms that frame and structure these relationships adequate? Do they permit the development of healthy relationships? Since its inception, the Law Commission of Canada has supported research in this area, particularly with regard to Aboriginal communities. It has published a collection of papers on fiduciary relationships and it is continuing to examine this question in partnership with the Indigenous Bar Association.

The co-existence of different legal traditions creates challenges for institutions. What is needed to ensure that Aboriginal legal traditions flourish? What institutional accommodations are necessary? Are there lessons in the evolution of the civil law tradition in Quebec that can be helpful? These are some of the questions the Commission's ongoing research seeks to answer.

Relationships in Transition Published Studies

Deconstructing Engagement: Corporate Self-Regulation in Conflict Zones — Implications for Human Rights and Canadian Public Policy (G. Gagnon, A. Macklin and P. Simons)

Good Governance at Home and Abroad: Global Governance Relationships in Transition (R. Wolfe)

Contested Global Governance: States, the World Trade Organization, and Global Civil Society (R. Buchanan and A. Long)

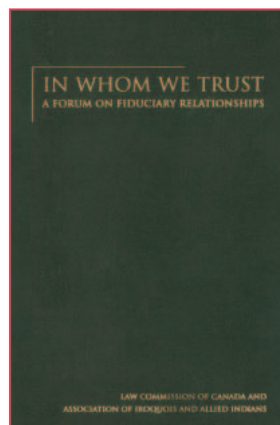
Summaries of these studies can be found on the Law Commission of Canada web site.

Representation

As part of its research on governance relationships, the Law Commission of Canada is examining issues relating to representation in Canada's system of democratic governance.

Traditional notions of representation focus on the importance of geographic representation, including whether Parliament or a provincial legislature equitably represents provinces or certain regions, and whether there is a clear line of accountability between constituents and their representatives.

In recent years, the debate about representation has broadened to include discussion of the growing need for representation of groups such as women, minorities and Aboriginal peoples, as well as of the structure and functioning of Parliament and legislatures themselves. For 2003, the Law Commission has commissioned three research projects to examine various issues relating to representation and democratic governance.



The Law Commission of Canada and the Association of Iroquois and Allied Indians published *In Whom We Trust* to explore the fiduciary relationship between governments and Aboriginal people, in theory and practice, in Canada and elsewhere in the world. The papers in the book bring together

state-of-the-art knowledge of the history, understanding and application of the fiduciary concept, and speak to the future possibilities of the concept, its promises and its difficulties.

Copies of this book can be purchased from Irwin Law.

“There are many factors that account for public alienation from the system of government. A key factor is the tendency for elections to produce “manufactured” majorities that in fact lack the support of most voters and then proceed to implement policies that do not reflect widely held values and preferences.”

Professor Stephen Philips,
Vancouver, B.C.

What is a Crime?

In contemporary society, there are a number of mechanisms and techniques to suggest, invite or compel appropriate behaviour and, conversely, to discourage, deter and punish behaviour considered detrimental. What is the most appropriate way to act when we want to encourage or discourage specific behaviours? Have we come to rely too heavily on the law to deal with unwanted behaviour? Why do we use criminal law rather than other strategies to respond to some behaviour?

The Law Commission of Canada released *What is a Crime? Challenges and Alternatives*, a discussion paper that examines the reasons why certain behaviour is defined as unwanted or criminal, as well as a range of strategies to attempt to reduce and prevent unwanted and criminal behaviour. The goal of the What is a Crime? project is to develop an analytical framework for understanding the processes that both underlie and inform our responses to unwanted behaviour, including the impacts of choosing various response and control mechanisms. The Commission invites Canadians to join the discussion by reflecting on the strategies that are used to confront unwanted behaviour, and searching for intervention strategies that are efficient, equal and just.



“...I believe that 60% or 80% of the 35,000 acts prohibited by the Criminal Code do not really deserve to be called crimes and should not be subject to the criminal courts. They really do not threaten our important values. In fact, calling them crimes is to pervert the concept of crime.”

Professor Marie Andrée Bertrand,
Université de Montréal



The Roderick A. Macdonald Essay Competition

In 2001, the Law Commission of Canada launched the Roderick A. Macdonald Essay Competition for high school students on the theme of “What is a Crime?” Six students won cash prizes for their essays.

English Essays

First Prize (\$500)

Trina Forrester
St. Mark High School, Manotick, Ontario
Cannabis Laws Up In Smoke

Second Prize (\$350)

Michael Blair
Dunbarton High School, Pickering, Ontario
What is a Crime?

Third Prize (\$200)

Megan James
Smith Falls and District Collegiate Institute,
Smith Falls, Ontario
Prostitution

French Essays

First Prize (\$500)

Marie-Michèle Gagnon and Stéphanie Gigoux
École polyvalente St-Joseph, Mont-Laurier, Quebec
Le jeu compulsif

Second Prize (\$350)

Cécile Orriendry and Léo Santo
École polyvalente St-Joseph, Mont-Laurier, Quebec
Prostitution

Third Prize (\$200)

Alexandrine Dumoulin
École polyvalente St-Joseph, Mont-Laurier, Quebec
L'euthanasie

2003 Legal Dimensions Initiative: Law and Risk

The theme for the fifth Annual Legal Dimensions Initiative was “Law and Risk.” A selection committee comprising members from each co-sponsoring organization (the Canadian Association of Law Teachers, the Canadian Law and Society Association, the Canadian Council of Law Deans, and the Law Commission of Canada) examined the proposals. The Law Commission of Canada has awarded research contracts to the individuals listed below:

Dayna Nadine Scott

Doctor of Jurisprudence candidate,
Osgoode Hall Law School

*The Precautionary Principle and its Potential
for the “Democratization” of Risk*

Duff R. Waring and Trudo Lemmens

Faculty of Law, University of Toronto

*A Legal Approach to Value Frameworks in Risk/Benefit
Assessments of Biomedical Research*

Mariana Valverde

Centre of Criminology, University of Toronto

Legal Knowledges of Risk

Danielle Pinard

Faculté de droit, Université de Montréal

*Les principes de preuve en matière de contrôle
de constitutionnalité vus sous l’angle d’une gestion de risques*

David MacAlister

School of Criminology, Simon Fraser University

*Use of Risk Assessments by Canadian Judges in the
Determination of Dangerous and Long-Term Offender
Status from 1997–2002*

Fu Jingkun

Faculty of Law, University of British Columbia

*The Transplantation of Law and Risk Based
on the Drafting of the Civil Code of China —
A Comparative Perspective*

*“...If we are neither effectively
detering nor incapacitating those
who commit the conduct we have
chosen to define as crime, what
are we doing? Why are we doing it?
And what are we failing to do
because of those choices?”*

Professor Diane Martin, York University,
Osgoode Hall Law School

Economic Relationships

Leveraging Knowledge Assets

The legal system and the tools available to manage economic relationships must reflect social and economic transitions. The Law Commission of Canada's work in this area deals with the implications for Canada's commercial infrastructure of the transition toward a more information-, technology- and service-based economy. The Commission is exploring one of the many questions raised by the transition to a knowledge-based economy, namely, the access to credit based on security in the context of intellectual property rights. Investment in new forms of wealth often requires adaptation from commercial practices and commercial law.

The Commission's project, *Leveraging Knowledge Assets — Resolving Uncertainty in Security Interests for Intellectual Property*, deals with some ambiguities in Canadian federal law relating to security interests in intellectual property. It argues that such ambiguities do cost the economy and that they ought to be resolved to the greatest extent possible.

The Bank Act

All Canadian provinces and territories have enacted secured transactions legislation that comprehensively governs the validity and enforcement of security rights related to personal property and moveables. But not all forms of security are exclusively governed by these provincial statutes. Sections 427 to 429 of the *Bank Act* provide a federal security regime, but it is restricted in scope. A *Bank Act* security can only be given to a bank, and only certain categories of borrowers are eligible to give the bank the security. As well, the security can be given only for certain categories of assets.

Prior to the enactment of modern provincial secured transactions legislation, it was accepted that the *Bank Act* security device played a valuable role in the Canadian economy. Now that the provinces and territories have modern secured transactions regimes, is it necessary to maintain the *Bank Act* regime? Does it contribute to uncertainty in commercial dealings?

The Law Commission's work in this area is being carried out in partnership with the Commercial Strategy of the Uniform Law Conference of Canada.



The Vulnerable Worker

Economic security is most often associated with work, and work is most often solely associated with the position an individual occupies in the labour market. However, work encompasses more than a paid job and it does not always lead to economic security. In light of this, the Commission is studying the ways in which the law allows people to attain economic security or impedes them from doing so.

The law plays an important role when we try to determine the types of work that are recognized, valued and rewarded, as well as those that are downgraded, poorly regarded and prohibited. Does the law recognize a sufficiently broad range of types of work? On what basis does the law recognize and reward certain kinds of work or certain categories of workers, and not others? What are the legal consequences when recognition and reward are absent?

These questions were explored in two research projects completed in 2002. In a report entitled *The Legal Concept of Employment: Marginalizing Workers*, authors Judith Fudge, Eric Tucker and Leah Vosko look at, through the lens of self-employment, how the law uses employment status to determine the personal scope of labour protection and social benefits.

The authors found that 25 percent of all self-employed workers have incomes of \$20,000 or less and only 22 percent have incomes of \$60,000 or more. They also determined that fully 47 percent of all self-employed women have incomes of \$20,000 or less.

“A close examination of self-employment in Canada suggests that the time has come to consider dissolving the distinction between employees and the self-employed for the purpose of labour protection, social wage, and revenue legislation.”

The Legal Concept of Employment: Marginalizing Workers,
Judith Fudge, Eric Tucker and Leah Vosko

In the second report, *Erotic Service/Erotic Dance Establishments: Two Types of Marginalized Labour*, authors Colette Parent and Christine Bruckert examine the ways in which sex and skin trade labour is organized. In addition, they look at the health and safety concerns of these two groups of workers and examine how the legal regulation of activities related to the sex and skin trades affects work done in these fields. The researchers identify the legal, social and economic resources that might position workers in the sex and skin trades to more effectively resist some of the oppressive aspects of their work.

Finally, in partnership with the Quebec Human Rights Commission, the Law Commission of Canada has sponsored a research project looking at the ways in which globalization and the information age have affected workers' mental health. The results of this study are expected by the end of 2003.

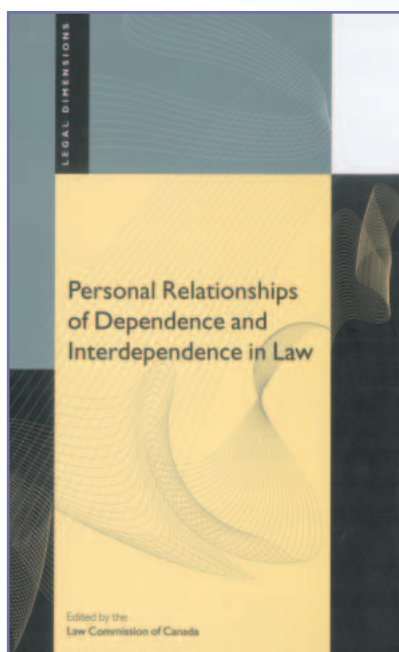
“In short, sex-trade workers in erotic establishments, erotic dancers as well as other workers in the service sector, navigate within a precarious workspace deprived of the benefits associated with wage earning. Treated as employees and subject to the expectations and rules of their workplace, they receive no salary and have no access to job stability or union protection under the Labour Code.”

Erotic Service/Erotic Dance Establishments: Two Types of Marginalized Labour,
Colette Parent and Christine Bruckert

Personal Relationships

Justice Between the Generations

Age is often used as a distinguishing characteristic in Canadian law. Many benefits are awarded and obligations or restrictions imposed on the basis of age. Some of these distinctions are overt, such as driving age, access to certain income support programs, eligibility to vote, mandatory retirement, discounts based on age, and age categories for automobile insurance. Other distinctions are very subtle, systemic or unwritten. These include laws and policies that may have a differential impact on a particular age group, such as job retraining, home-care funding and protective measures for vulnerable people.



Personal Relationships of Dependence and Interdependence in Law is a joint publishing venture of the Law Commission of Canada, UBC Press and Les Presses de l'Université Laval. The book contains the winning papers of the 2000 Legal Dimensions Initiative competition on the theme of personal relationships.

Differences between the generations have been highlighted in recent discussions around the aging population. We hear how the older generation is going to bankrupt the health care system and the pension regime while younger generations will face higher tuition, fewer publicly funded services and an increasing workload, particularly as informal caregivers. Some age distinctions are based on stereotypes and incorrect assumptions, while others are based on a desire to distribute society's wealth and resources between the generations.

But do these distinctions reflect reality? Do they lead to discrimination or inequality? Are there other criteria better suited to the government's objectives?

The Law Commission of Canada is currently preparing a discussion paper on age distinctions and relationships between the generations. The project focuses on two generations: older adults and children and youth. The paper will examine the age distinctions that affect these groups and evaluate the impact of law and its administration on the relationships between them.

A human rights approach to age distinctions in the law focuses on discrimination as a result of burdens being placed on individuals or groups that have been historically disadvantaged. The project will go beyond the human rights approach to examine age-related benefits in the law, to look at differential impacts on diverse populations within the identified groups and to consider the implications for intergenerational relationships.

Justice Between the Generations Study Panel

The Law Commission of Canada held a study panel on intergenerational justice issues on October 28, 2002 in Ottawa. The panel comprised experts from academia, community organizations and government, who convened to review the draft discussion paper on intergenerational justice. Members discussed the proposed content, issues and methodologies, and provided information and suggestions on additional contacts, consultations, related research and events.

Virtual Scholar in Residence Program

The Virtual Scholar in Residence is a joint initiative of the Law Commission of Canada and the Social Sciences and Humanities Research Council of Canada. The purpose of the program is to promote multidisciplinary research on law reform issues and to strengthen relationships between academics, the Commission and policy makers by providing support to individuals conducting innovative socio-legal research. The program provides funding for an individual to work with the Commission for eight months to advance the Commission's research agenda.

2002 Virtual Scholars in Residence

Professor William Bogart of the Faculty of Law, University of Windsor, is advancing the Commission's work on older adults and intergenerational justice. Professor Bogart has done extensive work on access to justice issues and the interplay between laws and society. His latest book, *Consequences — The Impact of Law and Its Complexity*, investigates how the law is tied to economics, education and political issues, and affects the ability to achieve consensus on issues of domestic policy.

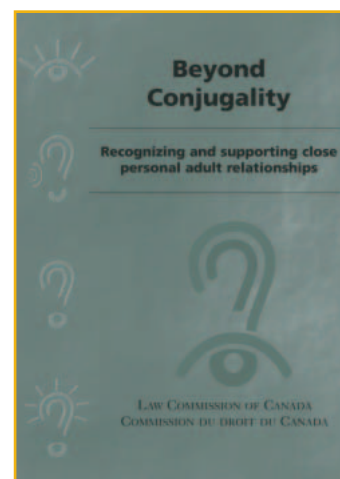
Dr. Julie Macfarlane, Visiting Professor at Osgoode Hall Law School, is working with the Commission to prepare a report on restorative justice. Dr. Macfarlane is an experienced mediator and facilitator as well as the editor of *Dispute Resolution: Readings and Case Studies and Rethinking Disputes: The Mediation Alternative*. Dr. Macfarlane recently completed the first study to ask Canadian lawyers about their experience with mandatory mediation and the impact it has had on their litigation practices.

“The Virtual Scholar in Residence program is an innovative way of linking academic research and policy-making.”

Nathalie Des Rosiers, President,
Law Commission of Canada

Beyond Conjuality

On January 30, 2003, Nathalie Des Rosiers, President of the Law Commission of Canada made a presentation to the House of Commons Standing Committee on Justice and Human Rights on the issue of same-sex marriage. The presentation was based on the recommendations arising from the Law Commission's report *Beyond Conjuality: Recognizing and Supporting Close Personal Adult Relationships*, which the Minister of Justice tabled in Parliament in January 2002. The presentation focused on the last chapter of the report, which reviews the role of governments in the legal organization of personal relationships — that is, the way governments provide legal structures that help people regulate their own affairs and protect their expectations.



“The Law Commission of Canada Report... examines the role of the State in creating legal structures that allow citizens to regulate their affairs. It ... examines the current legal infrastructures that support relationships in our society — private law, ascription, models of registration in some provinces and marriage. The Commission notes the inadequacies of our current legal infrastructures. Our law currently does not provide sufficient recognition and legal infrastructures for relationships other than conjugal. The Commission concluded that the diversity of relationships in Canada warranted an expansion of the range of mechanisms available to citizens to regulate their own affairs.”

Nathalie Des Rosiers, President, Law Commission of Canada,
Speech to the Standing Committee on Justice and Human
Rights on the issue of same-sex marriage

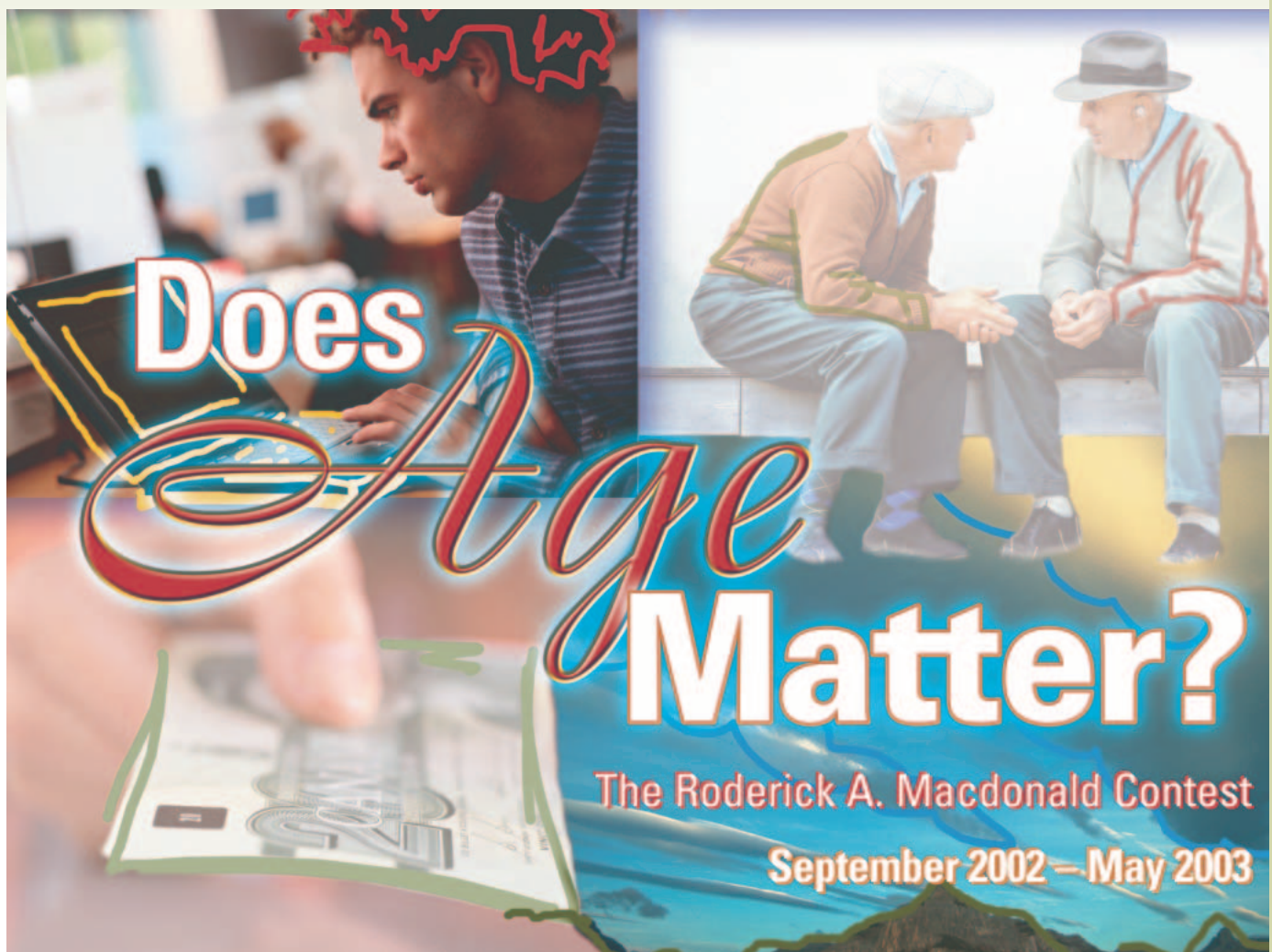
Roderick A. Macdonald Contest 2002

Does Age Matter?

In keeping with its mandate to involve Canadians and use innovative practices, the Law Commission of Canada seeks the perspectives of high school students through its annual Roderick A. Macdonald contest. Roderick Macdonald, the Commission's first president, firmly believed that young Canadians should be involved in improving Canada's laws.

The theme for the 2002 contest was Does Age Matter? What can we do to ensure that older adults and young people are treated fairly, without discrimination, while we promote justice and sharing between the generations? The Law Commission sought the perspectives of young people and older adults on intergenerational issues, such as each group's perceptions of the other, contributions of each age group to society, laws and policies that make distinctions based on age, the impact of an aging population, and the role of government in providing assistance to young people and older adults.

The winners will be announced in June 2003.



What's in a Family?

Nathalie Des Rosiers, President, Law Commission of Canada

“...Many social and legal policies have used “marriage,” or more recently *conjugal*ity, to define the appropriate focus for social policy purposes. Many statutes continue to be organized around the idea that economic and psychological interdependency is a fundamental characteristic of marriage and conjugal

ity. They fail to look, however, at other relationships that may share similar characteristics of pooled income, shared residence, or personal and psychological support. This is a mistake: focusing our social policies on marriage and conjugal

ity prevents us from adequately supporting other relationships. It also assumes that all marriages and conjugal relationships are the same. The reality is very different, as our Census now clearly demonstrates.

A wide variety of Canadian laws give benefits to or impose responsibilities and obligations on people because they live in relationships. Tax, immigration, and criminal statutes are just some of the laws where adult relationships come into play. ...

More than 1,800 sections in federal statutes, apart from the *Income Tax Act*, use terms like spouse, husband, and so on, to describe close personal relationships between adults. Many of these laws are based on assumptions about how people organize their personal lives, with whom they live, and whom they trust, care for, and depend on to meet their life needs. Some of these assumptions are out of date or inaccurate. As a result, some of these laws apply to more people than perhaps they should, whereas others might exclude people who should be included.

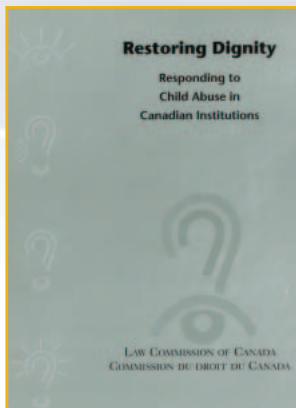
[The Law Commission of Canada’s report] *Beyond Conjugal*ity suggests that governments ought to pursue a more comprehensive approach to the legal recognition and support of the full range of close relationships among adults. It proposes a methodology to better reflect the diversity of relationships that ought to be supported because of their interdependency, irrespective of legal status.”

The complete article appeared in the December 2002 issue of The Scrivener, which is published by the Society of Notaries Public of British Columbia.

Restoring Dignity

Following the delivery of its report *Restoring Dignity: Responding to Child Abuse in Canadian Institutions*, the Law Commission of Canada developed several projects in partnership with various organizations to promote research initiatives in line with the report's general recommendations.

The Law Commission provided funding for a research project by the Centre for Research on Violence Against Women to provide Canadians with an estimate of some of the major economic costs and consequences directly associated with child abuse. This report will be published in 2003.



In 2002, the Commission contributed to the production of an educational video, *Options for Dealing with Abuse*, which was produced by the B.C. Law Courts Education Society. This very moving and insightful video presents the perspective of five survivors of abuse in residential schools.

It documents how their involvement in the legal process affected their

healing journeys. The video was used as the basis for a series of workshops throughout British Columbia to help survivors examine their options for redress. It was also used in a number of lectures given by the Law Commission to various groups.

In 2002, the Law Commission hosted a roundtable discussion to improve professional understanding of the issue of institutional child abuse. This event brought together teachers, lawyers, mental health professionals, physicians, children's advocates and other service providers to discuss a report prepared by Drs. Peter Jaffe and David Wolfe from the Centre for Children and Families in the Justice System in London, Ontario. This report, *Child Abuse in Community Institutions and Organizations: Improving Public and Professional Understanding*, stimulated an excellent discussion about strategies and best practices that are being undertaken to improve professional understanding of institutional child abuse.



"To me, healing is not having to hide who I am anymore, or what I think, or even what I feel (wipes tear) ... being able to speak and not be afraid to say something that's going to hurt someone. Healing is getting rid of that."

Rose

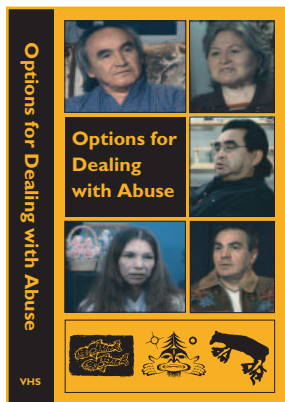
"We have our own definition in our own aboriginal terms and that's healing for us. So part of purchasing a boat and motor or materials for a cabin — that's education and healing for us. Reuniting with our family again."

Norman



"Our people were a proud race before the white people showed up. I want to be part of that proud race when I stand there and say my name is Seletze'. That is who I am — and this is what happened to me."

Delmar Johnnie



Excerpts from *Options for Dealing with Abuse*, a video produced by the B.C. Law Courts Education Society with contributions from the Law Commission of Canada

Consultations, Meetings and Conferences

Social Relationships

Order and Security

2002

April 17
Toronto

Consultations: San Romanoway
Tenants Association

April 18
Toronto

Association of Professional Security
Agencies

April 18
Toronto

Insurance Bureau of Canada

April 18–19
Toronto

American Society for Industrial Security
Meeting

May 2

Edmonton
Meeting with MLAs and with Policing
Alberta MLA Review Committee

May 9

Montréal
L'Association des directeurs
de police du Québec

May 9

Barrie
Annual Conference of Coordinators
of College Police Training Programs and
Police College Administrators

May 13

Montréal
Sûreté du Québec

May 22–24

L'Estérel
Regroupement des organismes
de justice alternative du Québec

May 23

Ottawa
Seminar at the Canadian Police College

May 28–29

Halifax
Speech to the Canadian Association
of Police Educators and Order and
Security Consultations

May 29

Halifax

Consultations with private security
industry and business community

May 30

Vancouver

Living Law Series on Order and Security

May 30

Vancouver

American Society for Industrial Security
Meeting

May 31

Vancouver

Consultations with the police association
and community

June 7

Ottawa

Prevention of Crime in Industry
Committee, Canadian Association
of Chiefs of Police

June 24

Ottawa

Board of Directors,
Canadian Police Association

June 27

Toronto

Retail Council of Canada's Resources
Protection Network

July 17–20

Keele, England

British Society of Criminology Conference

July 18

Toronto

Association canadienne des courtiers
en valeurs mobilières

August 17–18

Saskatoon

69th Annual International Conference
of the American Association of
Motor Vehicle Administrators

August 28–30

St. John's

Annual General Meeting of the Canadian
Police Association

October 16–18

Waterloo

Annual Meeting of the Ontario
Association of College and University
Security Administrators

October 22

Toronto

Canadian Alarm and Security Association
Annual Trade Show and Conference

November 15

Toronto

Canadian Association of Police
Boards Seminar

November 22

Ottawa

Corps of Commissionaires

November 22

Ottawa

Royal Canadian Mounted Police
Roundtable

2003

January 20

Montréal

Meeting of the Association
of Chiefs of Police of Quebec

February 3

Chatham

Police Association of Ontario

February 19–22

Montréal

In Search Of Security: An International
Conference on Order and Security

March 28

Oshawa

Central Ontario Crime Prevention
Association

Restorative Justice

2002

September 25

Hull

Association des services de réhabilitation
sociale du Québec

September 26–28

Gatineau

Canadian Criminal Justice Association
National Conference

October 21

Ottawa

Policy Research Initiative
on Restorative Justice

November 21

Ottawa

Restorative Justice Week Events

Governance Relationships

2002

September 20
Ottawa
Roundtable on Governance
Relationships in Transition

September 25–28
Edmonton
Canada: Global Model
for a Multicultural State

Reform of Democratic Institutions

2002

April 4–7
Innisfil
The Democratic Project

April 9
Ottawa
Community Forum on Electoral Reform

April 25–26
Ottawa
Forum: Renewing Democracy: Citizen
Engagement in Voting System Reform

October 5–6
Fredericton
Atlantic Political Science Association
Meeting

October 26
Montréal
Constitution and Democracy:
Ten Years After the Charlottetown Accord

November 12
Toronto
Electoral Reform Consultations

November 19
Ottawa
Electoral Reform Consultations

November 21
Vancouver
Electoral Reform Consultations

December 4–5
Charlottetown
Electoral Reform Consultations

2003

January 14–15
Montréal
Electoral Reform Consultations

January 25
Montréal
Reform of Democratic Institutions,
Voting System and Equality: Women's
Perspectives

February 4
London
Electoral Reform Consultations

March 4
Toronto
Reform of Democratic
Institutions — Institute for Research
on Public Policy

March 15
Sackville
Squaring the Circle Conference

What is a Crime?

2002

May 25
Toronto
Canadian Association of Law Teachers
Annual Conference

May 31
Vancouver
Canadian Law and Society
Association Conference

June 2
Vancouver
What is a Crime? Study Panel

September 26–28
Montréal
Instrument of Choice in Global
Democracies Conference

Economic Relationships

Leveraging Knowledge Assets

2002

August 18–22
Yellowknife
Uniform Law Conference
of Canada Committee

October 18–19
Toronto
Uniform Law Conference
of Canada Committee

2003

January 18–19
Toronto
Uniform Law Conference
of Canada Committee

February 6–7
Quebec City
Second International Forum
on Intellectual Property

March 15–16
Vancouver
Uniform Law Conference
of Canada Committee

Personal Relationships

Intergenerational Justice

2002

October 28
Ottawa
Study Panel on Justice Between
the Generations

2003

February 6
Quebec City
Quebec Bar Association —
Elder Law Section

March 20
Ottawa
Sommet des membres du Tribunal
des droits de la personne du Québec

Beyond Conjugality

2002

April 16–17
Vancouver
Play: *Through the Key Hole*

2003

January 30
Ottawa
Standing Committee on Justice
and Human Rights

Restoring Dignity

2002

October 21
Ottawa
Discussion on *Restoring Dignity* report

November 29
Ottawa
Seminar on the follow-up to the
Restoring Dignity report

2003

January 30
Ottawa
Residential School Networking Group

General

2002

May 24–26
Toronto
Canadian Association of Law Teachers

May 25–June 1
Toronto
Congress of the Social Sciences
and Humanities

May 30–June 1
Vancouver
Canadian Law and Society Association

June 1–3
Manoir Richelieu
Federal-Provincial-Territorial
Meeting of Deputy Ministers Responsible
for Justice

June 19–21
Darwin, Australia
Australasia Law Reform Agencies
Conference

June 21
Ottawa
Congrès annuel des juristes
d'expression française de l'Ontario

August 10–14
London
Canadian Bar Association Annual Meeting

September 12–14
Ottawa
Association for Canadian Studies
conference

October 2–4
Montréal
International Conference
on Law via the Internet

October 18–19
Toronto
Indigenous Bar Association
Annual Conference

October 23–25
Ottawa
2002 National Policy Research
Conference

October 26–27
Ottawa
Canadian Ethnocultural Council
Conference

November 2
Ottawa
Canadian Bar Association

November 12
Montréal
Conference on Rights
of Incarcerated People

December 3
Oakville
Iroquois Ridge High School
Law Symposium

2003

January 24–25
Montréal
Association of Canadian Studies
Conference on Diversity

March 20
Saskatoon
Conference on Racism and Hate

March 20–21
Ottawa
Canadian Centre for Management
Development Roundtable on Governance

March 22–23
Ottawa
National Association of Women
and the Law Conference

March 31
Ottawa
Forum of Canadian Ombudsmen

Staff and Advisory Council

Commission Staff

Bruno Bonneville
Lucie Gagné
Lise Traversy
Stéphane Bachand
Dennis Cooley
Lorraine Pelot
Steven Bittle
Karen Jensen
Jocelyne Geoffroy
Patricia Steele
Maryse St-Pierre
Gérald Brazeau
Danielle Mathurin
Chantal Bisson

Students

Geneviève Bélanger
Audrey Boctor
Megan Celhoffer
Susan Deer
Christopher Hynes
Aimée Karam
Korinda McLaine
Kate Ryan
Mark Simpson
Dawna Wong

Advisory Council

Sanjeev Anand (May 2003 to May 2006)
Jacques Auger (September 1997 to November 2002)
Darin Barney (October 2000 to November 2003)
Georges Berberi (May 2003 to May 2006)
Marie Andrée Bertrand (May 2003 to May 2006)
June Callwood (October 2000 to November 2003)
Geneviève Cartier (May 2003 to May 2006)
Paul-André Comeau (May 2003 to May 2006)
Bradley Crawford (September 1997 to November 2002)
Ervan Cronk (October 2002 to November 2005)
Janet Dench (October 2000 to November 2003)
Maragaret Denike (September 1997 to November 2002)
Irène d'Entremont (October 2000 to November 2003)
Wilma Derksen (October 2000 to November 2003)
Emerson Douyon (September 1997 to November 2002)
Jean Dragon (May 2003 to May 2006)
Leena Evic-Twerdin (October 2000 to November 2003)
Dave Farthing (October 2000 to November 2003)
Gerry Ferguson (September 1997 to November 2002)
Jean-Pierre Gariépy (October 2000 to November 2003)
F. Kenneth Hatt (May 2003 to May 2006)
Mavis Henry (October 2000 to November 2003)
Peggy J. Johnson (May 2003 to May 2006)
Andrée Lajoie (September 1997 to November 2002)
Heather MacFadgen (May 2003 to May 2006)
Hans Mohr (September 1997 to November 2002)
Michael Morrison (September 1997 to November 2002)
Katherine Peterson (September 1997 to November 2002)
Alan Reynolds (November 2000 to November 2003)
Mary-Ellen Turpel-Lafond (October 2000 to November 2003)

Management Report

Statement of Management Responsibility

Responsibility for the integrity and objectivity of the accompanying financial statements for the year ended March 31, 2003 and all information contained in this report rests with management.

These statements have been prepared in accordance with Treasury Board Accounting Standards based upon generally accepted accounting principles, using management's best estimates and judgements where appropriate. Readers of these statements are cautioned that the financial statements are not necessarily complete; certain assets, liabilities and expenses are only recorded at a government-wide level at this time. These statements should be read within the context of the significant accounting policies set out in the Notes.

Management has developed and maintains books, records, internal controls and management practices, designed to provide reasonable assurance that the Government's assets are safeguarded and controlled, that resources are managed economically and efficiently in the attainment of corporate objectives, and that transactions are in accordance with the *Financial Administration Act* and regulations as well as the Commission's policies and statutory requirements.

The transactions and financial statements of the Commission have not been audited.



Bruno Bonneville
Executive Director

June 3, 2003



Denis Pelchat
Senior Full-time Financial Officer

June 3, 2003

Statement of Financial Position (unaudited)

As at March 31 **2003** **2002**

(in dollars)

Assets

Financial Assets

Receivables		
External parties	78,613	48,817
Other government departments	3,297	70
Advances	1,000	1,000
Total Assets	82,910	49,887

Liabilities

Accounts payable and accrued liabilities	540,722	342,104
Provision for vacation pay and accumulated overtime	92,200	96,900
Total Liabilities	632,922	439,004

Net Assets

Net assets, beginning of year	(389,117)	(147,332)
Cost of operations	(3,182,008)	(3,301,142)
Net cash provided by government	2,893,113	2,936,757
Services provided without charge (notes 4 and 6)	128,000	122,600
Total Net Assets	(550,012)	(389,117)
Total Liabilities and Net Assets	82,910	49,887

The accompanying notes are an integral part of the financial statements.

Statement of Operations (unaudited)

For the year ended March 31	2003	2002
(in dollars)		
Expenses (notes 4 and 9)		
Salaries and wages	1,335,697	1,059,145
Professional and special services	935,402	1,372,887
Information	319,237	342,677
Travel and relocation	209,563	246,590
Rentals	137,046	110,133
Equipment expenses	103,552	11,332
Communication	59,959	74,973
Utilities, material and supplies	39,961	16,130
Repairs	36,986	27,486
Vacation pay and accumulated overtime	4,553	39,789
Miscellaneous	52	0
Cost of Operations	3,182,008	3,301,142

The accompanying notes are an integral part of the financial statements.

Statement of Cash Flow (unaudited)

For the year ended March 31	2003	2002
(in dollars)		
Operating activities		
Cost of operations	(3,182,008)	(3,301,142)
<i>Non-cash items included in Cost of operations</i>		
Services provided without charge	128,000	122,600
<i>Statement of Financial Position adjustments</i>		
Change in assets	(33,023)	(44,974)
Change in liabilities	193,918	286,759
Net Cash Provided by Government	(2,893,113)	(2,936,757)

The accompanying notes are an integral part of the financial statements.

Notes to the Financial Statements (unaudited)

I. Authority and purpose

The mandate of the Law Commission of Canada is derived from the *Law Commission of Canada Act*, which came into force in 1997. The Commission's expenditures are funded by an annual appropriation from Parliament.

The mandate of the Law Commission of Canada is to engage Canadians in the renewal of the law to ensure that it is relevant, responsive, effective, equally accessible to all, and just.

2. Significant accounting policies

These financial statements have been prepared on an accrual basis of accounting in accordance with Treasury Board Accounting Standards. These standards are based on Generally Accepted Accounting Principles in Canada. The primary source of the accounting principles is from the recommendations of the Public Sector Accounting Board of the Canadian Institute of Chartered Accountants supplemented by the recommendations of the Accounting Standards Board of the Canadian Institute of Chartered Accountants for situations not covered by the Public Sector Accounting Board. Readers of these statements are cautioned that the introduction of accrual accounting at the Commission level is evolutionary. Not all assets, liabilities and expenses applicable to the Commission are recorded at this time. As such, the financial statements are not necessarily complete. However, all such assets, liabilities and expenses are recorded at a government-wide level in the financial statements of the Government of Canada. The accompanying notes provide additional details and should be read with care.

The significant accounting policies include the following:

(a) Parliamentary appropriations

The Commission is primarily financed by the Government of Canada through Parliamentary appropriations. Appropriations provided to the Commission do not parallel financial reporting according to generally accepted accounting principles as they are, in a large part, based on cash flow requirements. Consequently, items recognized in the Statement of Operations and the Statement of Financial Position are not necessarily the same as those provided through appropriations from Parliament. Note 7 to these financial statements provides information regarding the source and disposition of these authorities.

(b) Net cash provided by government

All departments including agencies and departmental corporations operate within the Consolidated Revenue Fund (CRF) which is administered by the Receiver General for Canada. All cash receipts are deposited to the CRF and all cash disbursements made by departments are paid from the CRF. Net cash provided by government is the difference between all cash receipts and all cash disbursements, including transactions between departments and agencies.

(c) Expenses

Expenses are recorded when the underlying transaction or expense occurs subject to the following:

- Employee termination benefits are expensed by the Commission when paid. Estimated accruals are not recorded at the Commission level, rather they are recognized in the consolidated financial statements of the Government of Canada.
- Vacation pay and overtime are expensed in the year that the entitlement occurs.
- Contributions to superannuation plans are recognized in the period that the contributions are made. Actuarial surpluses or deficiencies are not recorded in the Commission's books but are recognized in the consolidated financial statements of the Government of Canada.

(d) Receivables

Receivables are stated at amounts expected to be ultimately realized. A provision is made for receivables where recovery is considered uncertain.

(e) Foreign currency transactions

Transactions involving foreign currencies are translated into Canadian dollar equivalents using rates of exchange in effect at the time of those transactions.

3. Measurement uncertainty

The preparation of financial statements requires management to make estimates and assumptions that affect the reported amounts of assets, liabilities, revenues and expenses reported in the financial statements. At the time of preparation of these statements, management believes the estimates and assumptions to be reasonable. The most significant item where estimates are used is payables at year-end (PAYE).

4. Change in accounting treatment

To conform with the directives outlined in the Treasury Board Accounting Standard 1.2 – Departmental and Agency Financial Statements, these statements now reflect the expenses of the services provided without charge as mentioned in note 6. However, there is no formal accounting entry to include these expenses in the Commission's Trial Balance. As such, the services provided without charge are eliminated through the Net Assets on the Statement of Financial Position.

In order to ensure comparability of the financial information, last year's financial statements have been restated to reflect this change. More precisely, the Salaries and wages and Rentals expenses have been increased by \$57,000 and \$65,600 respectively on the Statement of Operations. Also, the Net Assets on the Statement of Financial Position include an additional reconciling item of \$122,600 representing the total cost of the services provided without charge.

5. Related party transactions

The Commission is related in terms of common ownership to all Government of Canada departments, agencies, and Crown corporations. The Commission enters into transactions with these entities in the normal course of business. Certain of these transactions are on normal trade terms applicable to all individuals and enterprises, while others are services provided without charge to the Commission. (See note 6)

6. Services provided without charge

During the year, the Commission received services that were obtained without charge from other government departments and agencies. These amounts are reflected in the Statement of Operations.

	Current Year	Prior Year
(in dollars)		
Accommodation provided by PWGSC	67,600	65,600
Contributions covering employers' share of employees' insurance premiums and expenditures paid by TBS	60,400	57,000
	128,000	122,600

7. Parliamentary appropriations

	Current Year	Prior Year
(in dollars)		
Operating expenditures — Vote 35	2,915,000	2,870,000
Supplementary Vote 35a	47,896	143,050
Transfer from TB — Vote 15	36,000	60,000
	2,998,896	3,073,050
Lapsed	92,487	33,248
	2,906,409	3,039,802
Contributions to employee benefits plan	215,233	148,000
Use of Appropriations	3,121,642	3,187,802

8. Reconciliation Cost of operations to appropriations used

	Current Year	Prior Year
(in dollars)		
Cost of operations	3,182,008	3,301,142
Adjustments for items not affecting appropriations		
Services provided without charge	(128,000)	(122,600)
Adjustments of previous year's expenditures	62,934	47,135
Change in provision for vacation pay and accumulated overtime	4,700	(37,890)
Other	0	15
	(60,366)	(113,340)
Use of Appropriations	3,121,642	3,187,802

9. Comparative figures

Certain of the 2002 comparative figures have been reclassified to conform to the presentation in 2003:

- A provision of \$7,700 for accumulated overtime has been moved from Accounts payable and accrued liabilities to Provision for vacation pay and accumulated overtime on the Statement of Financial Position.
- Miscellaneous revenues have been eliminated and the amounts allocated to the proper expense item. Hence, Salaries and wages and Utilities, material and supplies have been adjusted by \$6,701 and \$1,635 respectively.
- An amount of \$33,650 representing refunds and adjustments of prior year's expenditures has been moved from Miscellaneous to Professional and special services.