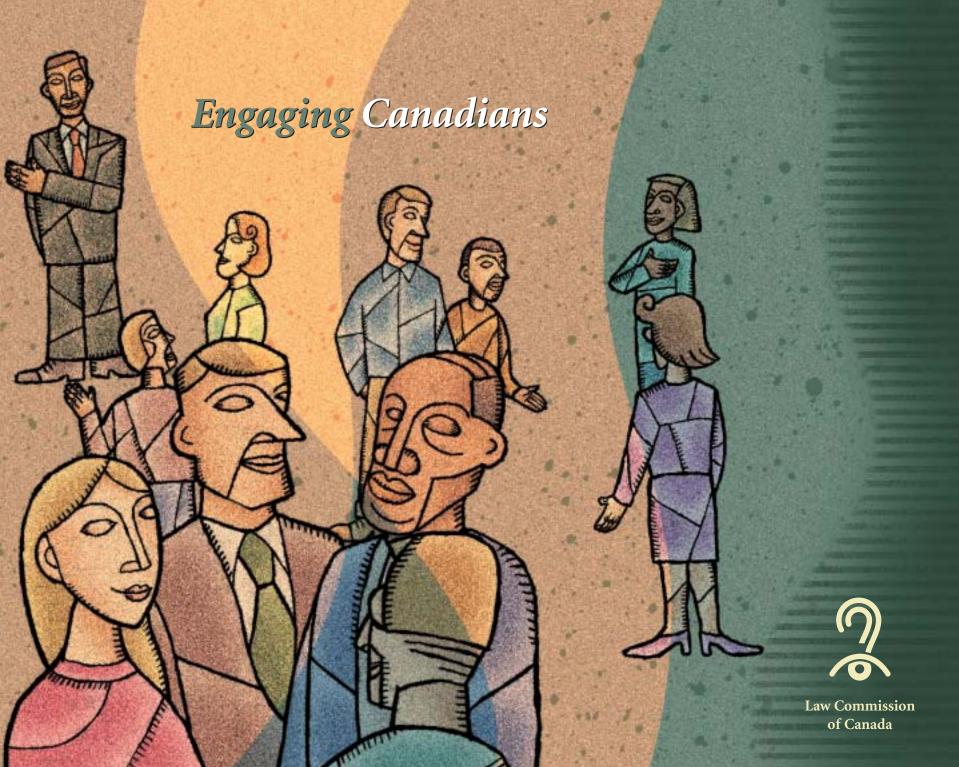




Law Commission of Canada



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Law Commission of Canada

www.lcc.gc.ca

**Nathalie Des Rosiers** 

(September 2000 – March 2001) President Montréal, Quebec

Gwen M. Boniface Commissioner Orillia, Ontario

Roderick A. Macdonald (April - June 2000) Past president Montréal, Quebec

Alan G. Buchanan Commissioner Belfast, Prince Edward Island

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.

Stephen Owen, Q.C. (April - October 2000) Commissioner Victoria, British Columbia



## President's Message

his year marks the Law Commission of Canada's fourth year of existence. It was a year to reaffirm and strengthen the Commission's original choices with respect to its orientation and methodology and to further the approach adopted at its inception:

- an approach that emphasizes understanding the reality of how the law is lived by Canadians and the impact of law on their lives;
- an approach that seeks to question some of the fundamental assumptions about law; and
- an approach that engages citizens in the process of understanding and renewing the law.

The commitment to engaging citizens in our work has been central to our activities during 2000–2001. All citizens deserve to be heard on questions of law reform; the challenge for the Commission is to ensure that its work and its approach are accessible — physically, intellectually and culturally. This annual report details ways in which we have fulfilled this commitment.

We will continue our efforts in that spirit in the years to come.

Engaging Canadians in the renewal and reform of the law requires more than sporadic consultations. It requires a genuine willingness to stimulate debate about the law among Canadians and to listen carefully to their views. Canadians experience the impact of the law on their personal relationships, their communities and their society. They have something to say about the role of law, its positive features and its less positive impacts. Engaging them in the renewal of the law means that we must create opportunities to listen to their stories and opinions and reflect on such insights.

Above all, engaging Canadians in the renewal of the law means working in a spirit of openness, responsiveness and honest reflection on the role of the law. That philosophy will continue to animate the Commission's work.

Nathalie Des Rosiers

President



# Engaging Canadians in the Renewal of the Law

he high level of scepticism in Canada with respect to traditional institutions such as the law poses special challenges to law reform. While Canadians respect the law, they appear to have a sense that it is disconnected from their daily lives and from the problems they see in society.

Canadians' sense of disaffection with the law has become apparent to the Law Commission of Canada in its ongoing consultations with Canadians. The Commission finds that many Canadians feel a sense of disengagement from the law, as if real life is outside the narrow scope of the law. Indeed, the law is more often seen as an impediment to an improved quality of life, rather than contributing to it.

#### **CITIZENS AT THE CENTRE**

That perception is in striking contrast with the view that citizens are, in fact, at the very centre of the law. Law is based on human relationships.

Our interactions make up the fabric of society and laws are formulated to facilitate these relationships, at the personal, social, economic and governance levels.

Citizens are also key because they change the law every day when they adapt these rules to their day-to-day lives. This "living law" serves — or should serve — as the basis for the reform and renewal of our formal laws.

Law reform is thus a circular process. Formal laws based on the relationships that we engage in are modified in our daily use. This living law in turn leads to changes in the formal law, to reform and renewal, and the cycle continues.

### Role of the Law Commission of Canada

The Commission may be an intermediary in this process. It serves as a mechanism to engage Canadians in their rightful place in the reform and renewal of the law and to enrich public

debate by presenting a range of possibilities for change. Its purpose is to help Canadians better understand the role that law plays in their lives and to encourage them to get involved in changing the law to meet their needs and values.

#### **Accomplishments**

The Commission continues to expand its efforts to be a visible and active intermediary for Canadians. In addition to publishing research papers and organizing discussion groups, conferences and meetings, it has also taken advantage of new ways to reach out to Canadians.

The Commission's Web site was redesigned this year to feature more resources and links and to allow for more interaction via comments boards, a webcast and discussion groups. Canadians can e-mail comments on discussion papers and other publications, view a clip from the Commission's video on restorative justice and order the video as well.

For example, the Commission hosted an interactive Web discussion or webcast on close personal adult relationships. Well-known journalist Francine Pelletier moderated a panel of experts on tax and family law and pensions. The webcast

technology allowed the Internet audience to e-mail their comments for incorporation into the webcast in real time. More than 500 Canadians logged onto the webcast, in addition to the hundreds of Canadians who commented on the discussion paper on the issue.

In recognition of the importance of the media as a

channel for improved understanding of the law, the Commission established the Justicia Awards for Excellence in Journalism in partnership with the Canadian Bar Association and the federal Department of Justice. These awards encourage the media to increase awareness among the Canadian public of fundamental legal issues by recognizing outstanding journalism about the Canadian justice system and the roles played by institutions and participants in the legal system.

"Those who reform the law in Canada are, above all, the public.
They renew the law by living it."

LAW COMMISSION OF CANADA
FIRST ANNUAL REPORT

Justicia Awards for Excellence in Journalism Encouraging the journalistic community to increase awareness among the Canadian public of fundamental legal issues by recognizing outstanding journalism about the Canadian justice system and the roles played by institutions and participants in the legal system.



#### **Speaking Truth to Power: A Treaty Forum**

This publication is a compilation of the papers and deliberations of a forum co-sponsored by the Law Commission of Canada and the B.C. Treaty Commission. The purpose of the forum was to explore new paths towards the successful conclusion of treaties between First Nations and other levels of government. The papers were published to help raise public understanding of the significance and complexities of the treaty process, as well as the differing perspectives and expectations various parties bring to the process.

The inaugural winners, presented at the August 2000 Annual Conference of the Canadian Bar Association, were the Halifax *Herald* for "Who's Killing Who," a 10-part series exploring how homicides are investigated and prosecuted, and *Le Point* of Société Radio Canada (the Frenchlanguage CBC network) for "Les murs de la maison plutôt que les barreaux de la prison," a study of conditional sentences in Québec that do not involve incarceration.

Publishing research and discussion papers — and taking an active role in disseminating ideas to interested groups and individuals — remains one of the Commission's most important outreach activities. Its recent study, *The Governance of Health Research Involving Human Subjects*, examined the moral and legal complexities of health research involving human subjects. This important study revealed substantial gaps between the ideals expressed in policies — intended to protect participants and provide social benefits — and the actual arrangements for accountability, effectiveness and other criteria of good governance.

# Reaching Out to Canadians in Their Personal Lives

## CLOSE PERSONAL ADULT RELATIONSHIPS

he Commission has been studying how Canadian law addresses close personal relationships between adults, the objectives behind those laws and whether the law's approach requires an overhaul.

Many laws in Canada confer benefits or impose responsibilities and obligations on people based on certain assumptions. In particular, the law has chosen marriage — and more recently, commonlaw partnerships — as the way to define close, caring relationships. Laws and policies have been implemented based on these marriage-type partnerships, whether or not their main purpose actually is to support spousal relationships.

Today, adult relationships and family patterns are more diverse than they were when many of our laws were developed. As a result, laws do not always reflect contemporary needs and values or reflect the wide range of relationships we find meaningful today.

Is it still appropriate to use spousal relationships and other traditional family groupings — parents, relatives and so forth — as the main legal basis to deliver benefits or to assign responsibilities toward other adults, or should we look to different concepts to ensure that a wider variety of relationships are taken into account? Should the state play a role in supporting the relationships that people form? How can it better play this role? The Commission is pursuing these and other questions.

"I often ask myself why the person to whom custody of the children is granted after a divorce is penalized when he or she forms a new couple. After I began living with a new partner, my family allowance, child tax credits, etc., were cut off, even reclaimed. Even my tax rate changed, although my income remained the same. It is apparently assumed that the *new common-law partner* assumes the responsibility to support the children born from the previous union. However, I can say that for many of us, that is not the case."

FROM THE COMMISSION'S WEB-BASED COMMENTS BOARD



"Should unpaid caregiving leave be available to employees to care for loved ones
who are not relatives? If so, should unemployment benefits or some other supplement for lost income also be available in this situation?"

SCENARIO DISCUSSION QUESTION

"Benefits should be granted according to individual need. Presumed dependency and duty to support, based on a predetermined and specified relationship which is sanctified by law, should not be part of the equation."

FROM THE COMMISSION'S WEB-BASED COMMENTS BOARD

#### **Accomplishments**

The Commission released a discussion paper on this issue in the spring of 2000. It worked to ensure wide distribution of the paper and organized a number of activities to solicit input and feedback from Canadians across the country.

The Commission developed a series of scenarios and questions for discussion to demonstrate the range of relationships and how they are affected by the law. Scenarios about different kinds of relationships people form were written as stories to bring the issues to life and illustrate the significance of the questions. The scenarios helped foster interest and understanding and provoked thought, discussion and feedback from Canadians on situations in which the law creates questionable advantages or disadvantages for adults who share close personal relationships.

The Commission made extensive use of the Internet to reach out to Canadians on this subject. Background information and resources were posted on the Web site, with links to other relevant sites. Throughout the consultation period from June 2000 to the end of January 2001, an



interactive Comments Board displayed — with permission of the authors — a cross-section of the insights that Canadians shared with the Commission. As previously mentioned, more than 500 Canadians joined the one-hour interactive webcast on the issue via their personal computers.

The Commission was grateful for the wide range of thoughtful input it received from dozens of organizations, as well as from hundreds of individual Canadians whose unique insights on the law they live were a valuable resource. "In order for various forms of supportive relationships to receive government recognition, benefits and status, it is not necessary to demolish the unique position of marriage in our society.

New policy can be designed to develop a 'win/win' situation for all relationships."

FROM THE
COMMISSION'S WEB-BASED
COMMENTS BOARD

# Reaching Out to Canadians in Their Communities

#### **RESTORATIVE JUSTICE**

he limitations of Canada's justice system in responding to conflict have long been recognized. The civil court experience — for those Canadians who can access the courts — can leave all parties feeling dissatisfied and disenfranchised. The same can be said of the criminal court experience: victims often feel detached from the process and offenders are not always held responsible for the concrete consequences of their behaviour.

The Commission has been exploring restorative justice as an alternative to how criminal justice can be delivered. It is also examining the potential for extension of restorative justice principles to other fields of law, such as family law, labour law and commercial law.

The starting point of restorative justice is the idea that conflicts that find their way into the criminal justice system are not only, or even primarily, transgressions against the state; rather, they represent the rupture of relationships between two or more people. Accordingly, restorative justice focuses on the physical, economic, emotional, psychological and spiritual elements of conflict.

Restorative justice programs attempt to repair the harm done by crime. This attempt goes beyond simple reparations to victims and involves a healing or therapeutic process for all parties, including offenders and the community. This attempt at social transformation is the strength of restorative justice programs but, as the Commission's research shows, these programs are not without their own limitations.

For example, sensitivity to victims' needs and concerns is a key feature of restorative justice principles, but, in practice, victims can feel forced into the process and can sometimes feel as if the

offender's needs are placed first. In particular, some women who were victims of domestic violence have expressed concerns related to the clearly inappropriate goal of "restoring" a relationship that has been marked by abuse or power imbalances.

The Commission will continue to explore the potential of restorative justice as a creative opportunity to improve the lives of all those who have been affected by conflicts leading to crimes.

#### **Accomplishments**

In 1999, the Commission invited input and feedback from Canadians on its discussion paper on restorative justice. This year, in addition to participating in a number of conferences and events on restorative justice, it sponsored two community forums on the topic — one in Charlottetown and one in Ottawa.

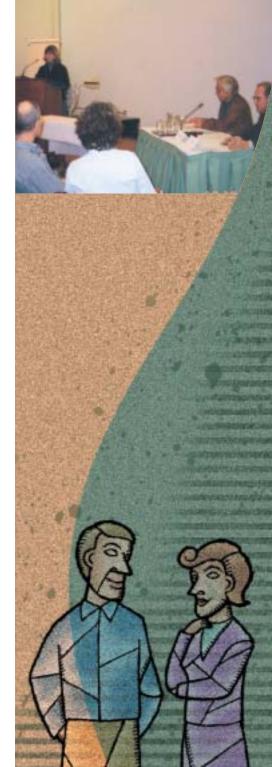
"The goal of social policy cannot be simply to eliminate conflict — an impossible task. It is, rather, to capitalize on the transformative potential of conflict, to use conflict as a springboard for moving towards a more just society."

DISCUSSION PAPER: FROM RESTORATIVE
JUSTICE TO TRANSFORMATIVE JUSTICE

The Community Forum on **Justice** held in Charlottetown was part of a larger event called "Conference 2000: Communities Challenging Violence." The forum attracted more than 100 participants from the community and featured a panel of eight people from diverse backgrounds who talked about their experiences with the criminal justice system and their perspectives on the potential of restorative justice for building stronger communities.

The Ottawa forum also drew more than 100 participants. It

featured Nils Christie, Professor of Criminology at the University of Oslo and internationally renowned expert on restorative justice, and James Scott, Program Coordinator of the Collaborative Justice Project in Ottawa.



#### "Communities and the Challenge of Conflict: New Perspectives on **Restorative Justice**"

This video explores the possibility of using restorative justice to help build stronger and more vibrant communities. The people who appear in the video present different views on restorative justice. Some claim that restorative justice has great potential to respond to the needs of victims and offenders and to empower communities, while others are more tentative in their appraisals.

The Commission has also produced a video on the potential and challenges of restorative justice, along with a study guide for use in education programs. The people who appear in the video present different views on restorative justice. Some claim that restorative justice has great potential to respond to the needs of victims and offenders and to empower communities, while others are more tentative in their appraisals. The video also captures the experiences of a victim and an offender who participated in a restorative justice program.

The Commission distributed approximately 1,000 copies of the video this year to community organizations and other groups across the country. The Commission has also screened the video at numerous events, including those held during Restorative Justice Week.

## LINKING WITH THE RESEARCH COMMUNITY

The key component of the Commission's work is research. The Commission takes a multidisciplinary approach to research, examining not only the legal aspects of various issues but also the psychological, sociological, economic and political aspects.

The Commission's approach to research is also characterized by an extensive use of partnerships with the research community. Although the Commission sponsors its own research, it also partners with other members of the research community to increase its ability to fund worthy projects. This interaction increases awareness, fosters more research, deepens the debate and broadens the constituency for the reform and renewal of the law.

The **Legal Dimensions Initiative** is one example of jointly funded research. Established in 1999, it is a legal and socio-legal research initiative sponsored annually by the Commission, the Canadian Association of Law Teachers (CALT), the Canadian Law and Society Association (CLSA) and the Canadian Council of Law Deans. Legal and socio-legal scholars are invited to submit proposals for research papers. Up to six proposals are selected for an award of \$3,000 as an honorarium to produce the paper, as well as expenses incurred to present the paper as a work in progress at the annual meetings of CALT and CLSA. The topic in 2000-2001 was "Social Relationships: Refocusing the Public/ Private Divide."

#### Legal Dimensions Papers for 2001

#### **DARIN BARNEY**

Invasions of Publicity: Digital Networks and the Privatization of the Public Sphere

### NICHOLAS BLOMLEY AND DAMIAN COLLINS

Private Needs and Public Space: Politics, Poverty and Anti-Panhandling by-laws in Canadian Cities

#### **NATHAN BRETT**

Inequality and the Divisions Between Public and Private

#### **CHRISTIAN BRUNELLE**

Emergence of 'Identity Associations' in Collective Labour Relations

#### LISA PHILIPPS

There's Only One Worker: Toward the Legal Integration of Paid Employment and Unpaid Caregiving

#### **STEPAN WOOD**

Green Revolution Greenwash? Voluntary Environmental Standards, Public Law and Private Authority in Canada



another example of a joint project, also established in 1999, by the Commission and the Social Sciences and Humanities Research Council (SSHRC). It encourages multidisciplinary approaches that explore and assess alternative policy options for law reform. Each year, the competition focuses on one of the Commission's research themes. The Commission structures its research around four complementary themes: personal relationships; social relationships; economic relationships and governance relationships.

increase research capacity, provide work that is relevant to students' studies and introduce the Commission to a new generation of legal and social sciences scholars. The program aims to employ up to four university students to conduct part-time research for the Commission during the academic year. Students are selected through a

competitive process. Because the work is for-

warded and returned by e-mail and telephone, the

Commission is able to hire students from across

the country.

Another new research program this year is the Virtual Scholar in Residence Program. It is a partnership with SSHRC established to support multidisciplinary research on law reform issues and to strengthen relationships between the Commission, academic disciplines and policy makers. The program provides funding that will allow a scholar based anywhere in Canada to work 'virtually' with the Commission for six months, using e-mail, tele- and video-conferencing, and other communications technologies to advance research on one of the Commission's four research themes.

The Law Commission of Canada will continue to build innovative research partnerships with public and private sector organizations, including the academic community and other centres of research. Our goal is to foster research from a wide range of perspectives by forging dynamic and creative networks of groups and individual Canadians interested in the reform and renewal of the law.

#### **Seeking New Ideas and Perspectives**

The Commission recognizes the value of new ideas and fresh perspectives that arise from free-ranging discussions. Its two Roundtables on Legislation invited law, sociology and anthropology scholars to discuss aspects of legislation from the perspective of their respective disciplines. After the first session, the scholars, unencumbered by the usual research parameters, wrote papers on such topics as plain language drafting, the implications of making laws available on the Internet and the meaning of preambles. Drafts of the papers were presented and discussed at the second roundtable in February 2001.

## Management Report

We have prepared the accompanying financial statement of the Law Commission of Canada in accordance with the reporting requirements and standards of the Receiver General for Canada. The financial statement was prepared in accordance with the significant accounting policies set out in note 2 of the statement on a basis consistent with that of the preceding year. Financial information included in the ministerial statements, in the Report on Plans and Priorities, and elsewhere in the Public Accounts of Canada is consistent with that contained in this financial statement, unless otherwise indicated.

Some of the information included in the financial statement is based on management's best estimates and judgements with due consideration given to materiality.

To fulfill its reporting and accounting responsibilities, the Commission maintains a set of accounts which provides a centralized record of financial transactions and maintains systems of financial management and internal controls at appropriate costs. They are designed to provide reasonable assurance that transactions are properly authorized by Parliament and are executed in accordance with prescribed regulations, and are properly recorded as to maintain accountability of Government funds and safeguard the Commission's assets. The Commission also seeks to assure the objectivity and integrity of data in its financial statements by careful selection, training and development of qualified staff, by organizational arrangements that provide appropriate divisions of responsibility, and by communication programs aimed at ensuring that its regulations, policies, standards and managerial authorities are understood throughout the Commission.

**Nathalie Des Rosiers** 

U/es Kories

President

**Bruno Bonneville** 

**Executive Director** 

#### **LAW COMMISSION OF CANADA**

Statement of Operations for the Year Ended March 31, 2001 (in dollars)

	2001	2000
Expenditures		
Professional and special services	1,112,943	1,118,250
Salaries and employee benefits	831,627	701,969
Travel, communication and publications	624,205	580,826
Commissioners and Commission meetings	376,602	400,960
Accommodation	65,141	65,626
Supply, materials and equipment	87,283	36,391
Advisory Council	22,263	45,103
Rental, repair, equipment maintenance and fit-up	65,884	40,806
Training, conferences and memberships	15,232	18,152
Other	11,771	8,068
Total expenditures	3,212,951	3,016,151
N		
Non-tax revenue	4 061	657
Refund of previous year's expenditures Other	4,861	-
	23,774	12,534
Total Non-tax revenue	28,635	13,191
Net cost of operations	3,184,316	3,002,960

The accompanying notes are an integral part of the Statement of Operations.

- 1. **Authority and Operations:** 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.
- 2. **Significant Accounting Policies:** The Statement of Operations has been prepared in accordance with the requirements and standards for reporting established by the Receiver General for Canada. The most significant accounting policies are as follows:
  - a) **Expenditure Recognition:** All expenditures are recorded for all goods and services received and/or performed up to March 31, 2001, in accordance with the government's payable-at-year-end accounting policies.
  - b) **Capital Purchases:** Acquisition of capital assets are charged to operating expenditures in the year of purchase.
  - c) Services Provided without Charge by Government Departments: Amounts for services provided without charge from government departments are included in the operating expenditures. They consist of accommodation costs and payments to employee insurance plans.

#### 3. Parliamentary Appropriations

	2001	2000
Law Commission of Canada – Vote 35	3,050,050	3,000,550
Budgetary Lapse	86,085	237,204
Total	2,963,965	2,763,346
Add: Statutory contributions to employee benefit plans	145,999	150,000
Total use of appropriations	3,109,964	2,913,346
Add: Services provided without charge by other		
government departments	102,987	102,805
Less: Non-tax revenue	4,861	657
	23,774	12,534
Net cost of operations	3,184,316	3,002,960

#### **ADVISORY COUNCIL MEMBERS**

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**Mary-Ellen Turpel-Lafond** Saskatoon, Saskatchewan

## **Events and Activities**

#### **SPEECHES**

#### 2000

La réforme du droit et ses organismes, President Macdonald, Conférence des juristes de l'État, Québec City, April 12

Reforming or rethinking the law? Canada's experience of law reform, President designate Nathalie Des Rosiers, Rencontre internationale des juristes d'expression française, Montpellier, France, July 1

Is it possible to tame the living law? The challenges of law reform, President Des Rosiers, conference on "Sources et instruments de justice en droit privé," Montréal, October 4

**Is age an outdated legal concept?** President Des Rosiers, 2<sup>nd</sup> Rencontres Sauvy — 13<sup>e</sup> Entretiens du centre Jacques-Cartier, Montréal, October 5

**Confidentiality, human relationships and law reform**, President Des Rosiers, conference on "Confidentiality and society: Psychotherapy, ethics and the law," Montréal, October 13

Governance and the citizen: The research agenda of the Law Commission of Canada, President Des Rosiers, Conference of Ontario Boards and Agencies, Toronto, November 17

**Empowerment of victims**, Commissioner Alan Buchanan, Pitblado Lectures, Winnipeg, November 17–18



#### 2001

Families, communities and peoples: Redress and healing for secondary victims of institutional abuse, President Des Rosiers, 2<sup>nd</sup> Annual National Summit on Institutional Liability for Sexual Assault and Abuse, Toronto, February 15

**Restorative justice**, President Des Rosiers, Department of Criminology, University of Ottawa, Ottawa, March 26

Penal law, President Des Rosiers, University of Ottawa, Ottawa, March 27

#### **PUBLICATIONS**

#### **Close Personal Adult Relationships**

Discussion Paper

Recognizing and Supporting Close Personal Relationships Between Adults, May 2000

Research Studies

The Evolution and Diversity of Relationships in Canadian Families, Tereza Janz, September 2000

What's sex got to do with it? Tax and the 'family', Claire Young, May 2000

The legal regulation of adult personal relationships: evaluating policy objectives and legal options in federal legislation, Brenda Cossman and Bruce Ryder, May 2000

Division of powers and jurisdictional issues relating to marriage, EGALE Canada, June 2000

#### **Governance Relationships**

Study

The Governance of Health Research Involving Human Subjects, May 2000

**Joint Publications** 

Speaking Truth to Power: A Treaty Forum, in partnership with the British Columbia Treaty Commission, February 2001

#### **EVENTS**

Presentation on Restoring Dignity, National Judicial Institute, London, April 11

Presentation on Restoring Dignity, Ligue des droits et libertés du Saguenay, Jonquière, May 5

Presentation to the National Advisory Council on Aging, Ottawa, May 10

Community Forum on Justice at "Conference 2000: Communities Challenging Violence," Charlottetown, June 14

Presentation on Restoring Dignity, Commissioner Gwen Boniface, Annual Meeting of the Ontario Criminal Injuries Compensation Board, Toronto, June 21

Discussion session on close personal adult relationships, First National Family Conference, Canadian Association for Community Living, Edmonton, October 19 Conference on "Médecine, technologie et humanisme : une alliance contre la nature?" Annual Meeting, Canadian Bioethics Society, Québec City, October 20

Presented a booth at "Family Support: A National Priority," Canadian Association of Family Resources Programs, Aylmer, October 20

Co-sponsored conference on "Understanding Restorative Justice from Principles to Practice," Simon Fraser University Centre for Restorative Justice, Vancouver, October 26–27. The Commission also gave a presentation on restorative justice at the Ron Wiebe Memorial Lecture and Dialogue on Restorative Justice held during this event.

Presentation, screening of video and discussion on restorative justice at conference on "Harmony in Healing: Broken Wings Take New Flight," Calgary, November 17

Forum on Community Participation in the Justice System: Restorative Justice Approaches to Conflict, Ottawa, November 28

## Acknowledgements

ver this past year, many people helped to support the work of the Law Commission of Canada. We are particularly grateful to:

- The Honourable A. Anne McLellan, Minister of Justice and Attorney General of Canada;
- Morris Rosenberg, Deputy Minister of Justice and Deputy Attorney General of Canada;
- Angela Connidis, Counsel, Department of Justice;
- Gérald Brazeau, Records Management Clerk; and
- Corporate Services at the Canadian Human Rights Commission.

The Law Commission of Canada has also benefited from the research contributions of:

- Karen Gorby and Shauna Labman, co-op students;
- Patricia DiSario and William Maclarkey, summer students;
- Simon Archer, Sofia Gutierrez, Tina Piper and Robert Poirier, the 'virtual' students who worked part-time; and
- Natalie L'Heureux, research assistant.