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annual report of the LAW REFORM COMMISSION OF BRITISH COLUMBIA

1979

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LRC 45

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

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To the Honourable L. Allan Williams, Q.C.
Attorney-General for British Columbia

The Law Reform Commission of British Columbia has the honour to present its Annual Report, outlining the progress made by the Commission during the calendar year 1979.

I. INTRODUCTION

The Law Reform Commission of British Columbia was constituted by the *Law Reform Commission Act* which became law on July 1, 1969. The Commission began operating early in 1970 and we are looking forward to our tenth anniversary. During the past year, formal Reports were submitted to you on a variety of matters. They include Reports on Creditors' Relief Legislation, Guarantees of Consumer Debts, and the Parol Evidence Rule. The Commission has also issued Working Papers on the Law of Arbitration and on Civil Litigation in the Public Interest. The contents of these documents are described more particularly below.

During 1979 the composition of the Commission underwent a significant change with the appointment of three new Commissioners, and we look forward to the early appointment of a Chairman. The new appointments followed a period of uncertainty during which progress on our programme could not proceed at an optimal pace. In the circumstances, we feel that we have had a productive year and are particularly gratified in having completed certain long term studies and in having brought others much closer to conclusion. In addition, we have started work on a number of new projects.

II. MEMBERSHIP OF THE COMMISSION

As presently constituted the Commission consists of five members: Messrs. Peter Fraser, Kenneth C. Mackenzie, Bryan Williams, Professor Anthony F. Sheppard and Arthur L. Close. The latter three members were appointed to the Commission in October 1979. Details of the appointments of Messrs. Fraser and Mackenzie may be found in previous Annual Reports. Mr. Close, former Counsel to the Commission, serves full time and all other members serve part-time.

As we set out in our 1978 Annual Report, our last full-time Chairman, Douglas Lambert, was appointed to the Court of Appeal in July 1978 and Mr. Peter Fraser was appointed Acting Chairman while a successor was sought. He served in that capacity on a part-time basis. Mr. Fraser's designation as Acting Chairman was continued by a series of Orders-in-Council until he resigned as Chairman in October 1979. At present the Commission has no Chairman, acting or otherwise.

The change in composition of the Commission reflects the departure of two members who have made a significant contribution to its work. Professor Leon Getz was the first Counsel to the Commission and during the first year of its existence worked tirelessly to establish it as a "going concern." After a return to law teaching, he returned to the Commission in 1974 as our first full-time Chairman. His able leadership and his profound scholarship contributed immeasurably to our work. Professor Getz resigned as full-time Chairman in 1977 but he continued to serve as a part-time member until 1979.

Paul D. K. Fraser became a member of the Commission in 1974, and has served with distinction and dedication. His contribution to our work has been a notable one and numerous Reports reflect his humane and common sense approach to law reform. Both Messrs. Getz and Fraser will be greatly missed.

III. THE PROGRAMME

A. Carrying Out the Programme

1. *Research and Writing*

The kind of research that is required to carry out the programme requires the allocation of substantial amounts of time by qualified persons. This can be achieved by having the bulk of the research work done by personnel who are employed as full-time staff. Alternatively, the services of persons with special expertise can be retained on a part-time basis or occasional basis. Although in the early years of the Commission's operation a heavy reliance was placed on outside consultants, our experience has led to a preference for the former approach. Consequently, almost all the research and writing is now carried out by full-time members of the Commission staff.

2. *The Consultation Process*

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

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

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

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

B. The Projects

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

1. Debtor-Creditor Relationships

(*a*) *Enforcement of Judgments*

In 1979 the Commission's work on this project was concentrated in two areas: execution against shares and creditors' relief legislation. A final Report was submitted in January with respect to the latter.

The principal recommendation in the Report on Creditors' Relief Legislation is that the *Creditors' Relief Act,* R.S.B.C. 1960, c. 85 be repealed. The Report points out that provincial legislation designed to promote equality among execution creditors arose only because of an absence, at the turn of the century, of federal insolvency legislation that would achieve the same result. That hiatus has been

cured for over 60 years and the Commission recommends, for reasons set out in the Report, that it is appropriate for the Province to withdraw and let the issue of "equal distribution" be solely the concern of federal insolvency laws.

The Report, however, recognizes one useful function of the Act recommended for repeal in the "Creditors Relief Book" which provides a public register of information concerning execution proceedings taken by judgment creditors. It is recommended that this function be preserved in modified form in new legislation.

The study on execution against shares raises two main issues. The first is to develop appropriate machinery for the disposition of shares in so-called "private companies"—corporations having shares that are closely held and subject to transfer restrictions. For many years it was thought that such shares were not exigible but recent British Columbia jurisprudence suggests that they are. The difficulty is to balance the competing interests of the execution creditor, the judgment debtor, and other shareholders. The *Execution Act* provides no guidance on how this is to be done.

The second issue concerns the actual procedure to be employed in the seizure of shares. The *Execution Act* reflects a 19th century view of company law under which a share in a corporation is an intangible chose in action. The machinery for seizure provided by the Act involves the service of process on the transfer office of a company in order to effect a seizure of shares in the company. The trend of modern legislation in relation to the transfer of shares, and the practice of the marketplace, however, has been to emphasize the role of the share certificate, so that it is treated as something akin to a negotiable instrument. This study will consider how far the "notional seizure" provided by the *Execution Act* should be replaced by a requirement for the physical seizure of share certificates.

(*b*) *Reviewable Transactions*

This subject was added to the Programme in 1977 as a result of a preliminary examination of the *Bulk Sales Act*. It was concluded that it would be preferable to defer proceeding further on a separate project on bulk sales until we also examined the operation of other statutes such as the *Fraudulent Conveyances Act* and the *Fraudulent Preferences Act* which provide analogous relief. Accordingly the study was retitled as "Reviewable Transactions."

Late in 1979 we were able to give this project some attention. In particular, more detailed terms of reference have been prepared and preliminary research undertaken. Work will continue in 1980.

(*c*) *Law of Guarantees*

The law of guarantees was the subject of intense research by the Commission in 1977 and early 1978. This research revealed that the law of guarantees, and consumer guarantees in particular, is surrounded by a great deal of uncertainty and doubt, is in some respects inequitable, and is ripe for re-examination. A Working Paper setting out a number of proposals for change with respect to guarantees of consumer debts was circulated in 1978 and a final Report was submitted in 1979.

The Report sets out over 50 recommendations covering a wide variety of issues including the formalities that should be involved in the creation of a consumer guarantee, the disclosure of relevant information to the guarantor by the credit grantor, the rights of the guarantor after default and certain technical rules relating to liability and discharge. The implementation of these recommendations would significantly improve the position of guarantors of consumer debts.

(*d*) *Crown Liens*

A large number of provincial statutes create liens over real and personal property to secure money that is payable to the government or its agencies. Such liens tend to be legislated on an *ad hoc* basis and their scope and priority are often uncertain. There is no evidence in the statutes of any uniform policy or of a consistent set of principles with respect to such liens.

In the project on Crown liens we hope to rationalize this area of the law and achieve an appropriate balance between the needs and expectations of government, its debtors, and third parties. Preliminary research was undertaken in 1979 and work on this project will continue in 1980.

(*e*) *Joint Liability*

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

We also propose to examine the law concerning joint obligations and its relationship with the law of contributory negligence. In particular, the provisions of the *Contributory Negligence Act* relating to the apportionment of liability among persons jointly liable may need to be examined. We expect to profit from the work of the Uniform Law Conference in this area.

A person who discharges an obligation on which he is jointly liable with another may call upon that person to contribute toward the cost of discharging that obligation. This aspect of the law will also be examined. A preliminary research paper on this topic has been prepared and we hope to give it active consideration in 1980.

2. The Law of Damages

(*a*) *Personal Injury Claims*

The law concerning the award of damages for personal injury claims has recently been a matter of controversy. Such damages are awarded as a lump sum on a once-and-for-all basis. In assessing the amount to be awarded the court or jury is placed in the position of having to predict the future course of events on the basis of the best evidence available at the time. In the result an award that seemed realistic at the time it was made may prove to be inadequate or overly generous.

There have been a number of recent developments in this area. In England, the Royal Commission on Civil Liability and Compensation for Personal Injury, under the chairmanship of Lord Pearson, reported its recommendations in March 1978. In Canada, Mr. Justice Dickson of the Supreme Court of Canada suggested in a recent case that personal injury awards might be made subject to a periodic review.

(*b*) *Families' Compensation Act*

A related study was also added to the Programme in 1978. It concerns the operation of the *Families' Compensation Act*. This may ultimately be merged with the larger study described above, but, for the time being it will be treated as a discrete project on which a separate Report may be made.

Active research has not yet begun on either study although the gathering of background materials has commenced.

3. Statute Law Revision: Applicability of English Law

The *English Law Act,* R.S.B.C. 1960, c. 129, provides that the laws of England, as they existed on November 19, 1858 are in force in British Columbia to the extent that they are not inapplicable through local circumstances and have not been repealed or superseded by federal or provincial legislation. It follows from this that an uncertain number of English statutes are in force in this Province.

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

This has always been recognized as a long-term project and much of our work has been devoted to gathering background information. As a result of these efforts we now have a collection of comparative materials concerning law reform in this area which may be unrivalled in the Commonwealth. Considerable progress has been made in organizing these materials, and a preliminary list of statutes has been established. Our research in this area will continue in 1980.

4. The Parol Evidence Rule

Where the parties to a contract have embodied its terms in a written document, as a general rule extrinsic evidence is not admissible to add to, vary, subtract from or contradict the terms of the written instrument. This rule is often known as the parol evidence rule. There are a number of exceptions to the rule and in British Columbia the rule has been abrogated with respect to consumer contracts by the *Trade Practices Act,* S.B.C. 1974, c. 96, s. 27.

The rule and its scope were explored in a Report submitted to you in December. It was our conclusion that the rule no longer serves a useful purpose and should be abrogated.

5. Arbitration

The law covering Arbitration was the subject of intense research by the Commission in 1978 and 1979. The focus of our attention was commercial arbitration and the imperfections of the existing *Arbitration Act.* In April the Commission circulated a Working Paper that set out a number of proposals for change. We are in the process of evaluating the response to the Working Paper and developing our final recommendations. We hope to submit our final Report in 1980.

6. Civil Procedure

(*a*) *Civil Litigation in the Public Interest*

Generally speaking, a private individual has no standing to sue to protect the public at large from a wrongful invasion of its rights. He may only sue when the interference with the public right is such as to interfere with a private right of his own or where he has suffered special damage or has some interest peculiar to himself. Where such factors are absent only the Attorney-General, suing either alone or, more usually, at the relation of a private individual or public authority, may seek redress in the courts in respect of a wrongful invasion of a public right. The role of the Attorney-General has recently been a matter of particular controversy in England owing to the decision of the House of Lords in *Gouriet* v. *U.P.W.,* [1977] 3 W.L.R. 300.

In 1976 your predecessor requested that the Commission examine this area of the law. This has been done and in May 1979 a Working Paper was circulated

which set out tentative conclusions and proposals for change. The response to that Working Paper is now being considered. We hope to submit our final Report in 1980.

(*b*) *Class Actions*

It has long been recognized there are situations in which it is appropriate to allow a litigant to bring an action on his own behalf and on behalf of numerous other persons who may have similar claims. Rule 5 (11) of the Supreme Court Rules permits such actions but the scope and operation of the Rule is often uncertain, and its scope has been criticized as undesirably narrow.

It is particularly desirable that the law in this area be uniform throughout Canada and we intend, as far as possible, to co-ordinate this project with similar work being done within the Province of Quebec and by the Law Reform Commission of Ontario and, through the Uniform Law Conference, with the reforms adopted or under consideration in other provinces.

(*c*) *Prejudgment Interest Act*

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

7. Estates Projects

(*a*) *Wills and Succession*

This is a large study that encompasses a number of related topics. We expect to be circulating at least three working papers that relate to various aspects of the substantive law of succession. The first such Working Paper is virtually complete and we hope to circulate it early in 1980. It will explore the formalities of will making and set out a number of proposals for change.

A subsequent Working Paper will explore statutory succession rights such as those that arise under the *Administration Act* on an intestacy and under the *Testators' Family Maintenance Act.* A further paper will examine a number of miscellaneous rules of law relating to succession such as the presumptions relating to simultaneous deaths and the law concerning ademption, lapse and conversion.

(*b*) *Probate Procedure and Administration*

This will examine the law of British Columbia concerning the procedure used in obtaining letters probate and letters of administration and the law relating to the administration of the estates of deceased persons, with a view to its consolidation, rationalization and simplification. We hope to commence active work on this project in 1980.

8. Sale of Goods Legislation

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

It was agreed that a special Committee of the Conference should be struck to consider the desirability of promulgating a new Uniform Sale of Goods Act and whether the proposed Ontario legislation should form the basis of such a uniform Act. It was further agreed that those law reform agencies concerned with this issue should provide special assistance. We are pleased to advise of our participation in the work of the Committee. A consultant having special expertise in mercantile law matters has been engaged and will be working closely with the Committee.

9. Extrinsic Aids to Statutory Interpretation

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

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

A study on extrinsic aids to statutory interpretation was added to our Programme in 1979. It will examine the desirability of modifying the law so as to allow these materials to be introduced, for what they are worth, as an aid to construction.

10. Accounting on Foreclosure

In 1975 the Commission submitted a Report entitled "Security Interests in Real Property: Remedies on Default" (LRC 24). That Report explained and made recommendations concerning the rights and remedies available to lenders and borrowers following default by the borrower on a loan secured by a mortgage or agreement for sale of real property.

One aspect of foreclosure that was not explored in the Report and which had not emerged as an issue was the form of the "usual order" so far as it concerns the calculation of interest payable if the borrower is to redeem the property by discharging the debt. In two recent cases the courts have reached opposite conclusions.

In 1977 the Supreme Court of British Columbia in *Avco Finance Services Realty* v. *Gustafson,* (1977) 3 B.C.L.R. 67 held that the mortgagee in a foreclosure proceeding was entitled only to collect interest to the date of redemption. In 1978, the Court of Appeal in *North West Trust Co.* v. *Paramount Management Corp.,* (1979) 8 B.C.L.R. 199 overruled the *Avco* decision and re-established the prior practice that entitled mortgagees to full interest for the period of redemption regardless of the actual date of redemption.

In June 1979 your predecessor asked the Commission to examine the issues at stake and this matter was added to the Programme for study.

11. Limitation of Actions

On April 3, 1979 the Commission wrote to your predecessor recommending a modification of the special limitation periods set out in section 71 (4) (*b*) of the *Administration Act* and section 9 (3) of the *Contributory Negligence Act.* These

provisions impose a limitation period of one year for a tort claim, or a claim for contribution, against the estate of a deceased person. It was recommended, for the reasons set out, that these limitation periods be extended to two years.

The text of the letter in which this recommendation was made is included as Appendix C to this Report.

12. Defamation and Letters to the Editor

On September 10, 1979 the Commission wrote to your predecessor urging an amendment to the *Libel and Slander Act*. The text of the letter is included as Appendix D to this Report. The recommendation, for reasons set out in Appendix D, was that a provision be added to the Act concerning the defence of fair comment in relation to letters to the editor and similar publications.

The text of the recommended provision is that adopted by the Uniform Law Conference of Canada. It is set out below:

(1) Where the defendant published alleged defamatory matter that is an opinion expressed by another person, a defence of fair comment shall not fail for the reason only that the defendant did not hold the opinion if,

(*a*) the defendant did not know that the person expressing the opinion did not hold the opinion; and

(*b*) a person could honestly hold the opinion.

(2) For the purpose of this section, the defendant is not under a duty to inquire into whether the person expressing the opinion does or does not hold the opinion.

We reiterate this recommendation and are fortified in our conclusion by a recent Report of the Institute of Law Research and Reform that commends the uniform provision to the government of Alberta (Report No. 35, Defamation: Fair Comment and Letters to the Editor, October, 1979).

13. Subjects of Interest

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

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

IV. THE AVAILABILITY OF COMMISSION PUBLICATIONS

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

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

The Queen's Printer,
Parliament Buildings,
Victoria, B.C., V8V 4R6

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

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

V. PROGRESS ON THE PROGRAMME

In this portion of our Report we are pleased to sound a somewhat more optimistic note than has been the case for the past two years. The difficulty during this period has been that, with the exception of a few months in 1978, there had been no member of the Commission having as a prime responsibility the planning and accomplishment of its work. This set us back in the discharge of our task. In particular the recruiting and retaining of qualified personnel was made much more difficult and work on a number of important projects had to be deferred.

While the matter of the Chairmanship remains outstanding the recent appointments to the Commission are encouraging. First, they indicate that the Government has not lost sight of the Commission and the importance of its work. Secondly, the designation of our former counsel, Arthur Close, as a full-time member has regularized the internal administration of the Commission. We hope to see the matter of the Chairmanship resolved. Once that occurs we shall be in a position to approach our mandate with renewed vigour and enthusiasm.

VI. RELATIONSHIP WITH OTHER AGENCIES

Our ties with other law reform agencies continue to strengthen and prosper, both through the reciprocal arrangements for the exchange of documents and through personal contacts. A meeting of law reform bodies was held in August at Saskatoon and attended on behalf of British Columbia by K. C. Mackenzie and A. L. Close. This resulted in a fruitful exchange of information and discussion of mutual concerns. That meeting was followed by the Annual meeting of the Uniform Law Conference of Canada. Messrs. Mackenzie and Close were members of the British Columbia delegation to the Conference.

A useful result of our ties with the Uniform Law Conference is our participation in the Committee on sale of goods legislation described earlier in this Report. We welcome the opportunity to co-operate with other law reform agencies in a venture of this kind. This participation has also led to a renewal of our ties to the Law Foundation of British Columbia. The Foundation responded swiftly and generously to a request for financial assistance in connection with the sale of goods study.

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

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

VII. ACKNOWLEDGMENTS

As we have pointed out in previous Annual Reports, our policy of doing the greater part of our research work internally, rather than relying upon outside

consultants, has placed a heavy burden of responsibility upon the shoulders of our permanent staff. As usual they have responded to the challenge with energy, enthusiasm and careful scholarship. We wish to thank the members of our research staff.

Our support staff also make a notable contribution to the work of the Commission. They bring intelligence and efficiency to their duties and share a concern that our work should be of the highest quality in every respect. We thank them for their efforts on our behalf.

The past year was a year of transition in the staffing of the Commission. Very early in 1979 Mr. Anthony J. Spence, our Director of Research, left us with a view to obtaining his call and admission in this Province. Mr. Spence made a notable contribution to our work. Our Reports on Proof of Marriage in Civil Proceedings and on Waiver of Conditions Precedent in Contracts and our recent Working Paper on Civil Litigation in the Public Interest all bear the stamp of his scholarship. Happily, he will be returning to us in 1980 as Counsel to the Commission.

Later in the year Mr. Douglas Chalke, our Legal Research Officer, left us to join the staff of the newly established Ombudsman's office. His time with the Commission was devoted mainly to the project on Wills and Succession, a difficult assignment which he tackled with energy and care. We wish him every success in his exciting new role.

The loss of Messrs. Spence and Chalke was partially offset by Mr. Fred Hansford who joined the Commission staff as Legal Research Officer in October. Mr. Hansford was with us briefly in the summer of 1978 and has recently completed a B.C.L. at Oxford. We look forward to working with him.

During 1979 we also had the assistance of Mr. George Copley who joined the Commission staff for 6 months as a student-at-law under an experimental shared articles scheme. While he was with us he completed a number of valuable research documents.

Our support staff has also changed. Patricia Kilpatrick, who for 9 years served as Secretary to the Commission, left us in September, as did Marianne White in December. Our support staff presently consists of Sharon St. Michael, Secretary to the Commission, and Margaret Mortimore, stenographer.

The support which we have received from the organized bar and its individual members in past years continued in 1979. We rely heavily on the assistance of the legal profession in a number of ways. At the research stage of our projects, individual lawyers assist us in gathering facts and in acting as a "sounding board" with respect to various approaches to difficult issues. Requests for help of this kind are invariably the subject of a generous response. At the more formal stage of consultation, various Sections of the British Columbia Branch of the Canadian Bar Association assist our deliberations with thoughtful submissions on the various proposals and tentative conclusions set out in our Working Papers. We wish to thank all members of the bar who gave generously of their time and experience in the past year.

We also wish to acknowledge the contribution of the Judges Law Reform Committee. This Committee provides a continuing point of contact with the judiciary. The members of the Committee are Mr. Justice Lambert of the Court of Appeal, Mr. Justice Berger of the Supreme Court and Judge Hinds of the County Court. The members of the Committee assist us through responding to our Working Papers and other consultative documents and through bringing to our attention defects in the law that they are well situated to identify. They bring a unique perspective to bear on our work and we are grateful for their participation.

Finally, we wish to thank your predecessor, the Honourable Garde B. Gardom, Q.C., Mr. Richard Vogel, Deputy Attorney-General, and particularly Mr. Mark Krasnick, Associate Deputy Attorney-General, for the attention they have given to the Commission and its activities.

PETER FRASER

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1 January, 1980

Appendix A

REPORTS MADE BY THE LAW REFORM COMMISSION OF BRITISH COLUMBIA

No.	Title	Date	Recommendations Implemented in Whole or in Part by
1	Limitations—Abolition of Prescription*	Dec. 17, 1970	*Land Registry (Amendment) Act, 1971,* S.B.C. 1971, c. 30.
2	Annual Report, 1970*	Dec. 31, 1970	Not applicable.
3	Frustrated Contracts Legislation*	Feb. 17, 1971	*Frustrated Contracts Act,* S.B.C. 1974, c. 37; *Landlord and Tenant Act,* 1974, c. 45, s. 61 (*e*) *Commercial Tenancies Act,* R.S.B.C. 1960, c. 207, s. 34.
4	Debt Collection and Collection Agents*	Mar. 19, 1971	*Debt Collection Act,* S.B.C. 1973, c. 26.
5	Expropriation	Dec. 20, 1971	
6	Annual Report, 1971*	Dec. 31, 1971	Not applicable.
7	*Mechanics' Lien Act*	June 30, 1971	
8	Deficiency Claims and Repossessions	June 22, 1972	*Conditional Sales Act,* S.B.C. 1973, c. 19; *Bills of Sale Act,* S.B.C. 1973, c. 7.
9	Legal Position of the Crown	Dec. 12, 1972	*Crown Proceedings Act,* S.B.C. 1974, c. 24; *Interpretation Act,* S.B.C. 1974, c. 42, s. 13.
10	Annual Report, 1972	Dec. 31, 1972	Not applicable.
11	Interim Report on Evidence	Feb. 20, 1973	*Attorney-General Statutes Amendment Act, 1975,* S.B.C. 1975, c. 4, s. 6.
12	Pre-Judgment Interest	May 16, 1973	*Prejudgment Interest Act,* S.B.C. 1974, c. 65.
13	Landlord and Tenant—Residential Tenancies	Dec. 11, 1973	*Landlord and Tenant Act,* S.B.C. 1974, c. 45; now *Residential Tenancy Act,* S.B.C. 1977, c. 61.
14	Annual Report, 1973	Jan. 1, 1974	Not applicable.
15	Limitations—General	Mar. 25, 1974	*Limitations Act,* S.B.C. 1975, c. 37.
16	Costs of Accused on Acquittal	June 24, 1974	
17	Procedure Before Statutory Agencies	Nov. 18, 1974	
18	A Procedure for Judicial Review of the Actions of Statutory Agencies	Dec. 12, 1974	*Judicial Review Procedure Act,* S.B.C. 1976, c. 25.
19	Annual Report, 1974	Jan. 1, 1975	
20	Costs of Successful Unassisted Lay Litigants	Apr. 21, 1975	
21	The Termination of Agencies	Apr. 21, 1975	
22	Powers of Attorney and Mental Incapacity	May 12, 1975	*Attorney-General Statutes Amendment Act, 1979,* S.B.C. c. 2, s. 52.
23	Personal Property Security	Oct. 27, 1975	
24	Security Interests in Real Property: Remedies on Default	Dec. 1, 1975	*Miscellaneous Statutes (Court Rules) Amendment Act,* S.B.C. 1976, c. 33, s. 94 (*a*) [in part]; Supreme Court Rules, Rule 50 (11), 3 (2) [in part] *Land Titles Act,* S.B.C. 1978, c. 25 [in part].
25	Annual Report, 1975	Jan. 1, 1976	Not applicable.
26	Minors' Contracts	Feb. 24, 1976	
27	Extra-Judicial Use of Sworn Statements*	Apr. 26, 1976	*See,* e.g., *Mineral Act, 1977,* S.B.C. 1977, c. 54, s. 20 (2).
28	Rule in *Bain* v. *Fothergill*	June 28, 1976	*Conveyancing and Law of Property Act,* S.B.C. 1978, c. 16, s. 33.
29	Annual Report, 1976	Dec. 31, 1976	Not applicable.

* Report is out of print.

No.	Title	Date	Recommendations Implemented in Whole or in Part by
30	The Rule in *Hollington* v. *Hewthorn*	Jan. 11, 1977	*Evidence Amendment Act, 1977,* S.B.C. 1977, c. 70.
31	Waiver of Conditions Precedent in Contracts	Apr. 25, 1977	*Attorney-General Statutes Amendment Act, 1978,* S.B.C. 1978, c. 11, s. 8.
32	Proof of Marriage in Civil Proceedings	Apr. 25, 1977	*Attorney-General Statutes Amendment Act, 1979,* S.B.C. 1979, c. 2, s. 18.
33	The *Statute of Frauds*	June 24, 1977	
34	Tort Liability of Public Bodies	June 28, 1977	
35	*Offences Against the Person Act, 1828,* Section 28	Aug. 8, 1977	*Attorney-General Statutes Amendment Act, 1978,* S.B.C. 1978, c. 11, s. 8.
36	Annual Report, 1977	Jan. 1, 1978	Not applicable.
37	*Absconding Debtors Act* and *Bail Act:* Two Obsolete Acts	Mar. 17, 1978	*Attorney-General Statutes Amendment Act, 1978,* S.B.C. 1978, c. 11, s. 8.
38	The *Replevin Act*	May 19, 1978	
39	The *Attachment of Debts Act*	Oct. 27, 1978	
40	Execution Against Land	Oct. 27, 1978	
41	Annual Report, 1978	Jan. 1, 1979	Not applicable.
42	Creditor's Relief Legislation: A New Approach	Jan. 2, 1979	
43	Guarantees of Consumer Debts	June 1, 1979	
44	Parol Evidence Rule	Dec. 1, 1979	

Appendix B

MATTERS UNDER CONSIDERATION BY THE LAW REFORM COMMISSION OF BRITISH COLUMBIA

1. Debtor-Creditor Relationships
   (*a*) Enforcement of Judgments
   (*b*) Reviewable Transactions
   (*c*) Crown Liens
   (*d*) Joint Liability
2. The Law of Damages
   (*a*) Personal Injury Claims
   (*b*) *Families Compensation Act*
3. Applicability of English Law
4. Arbitration
5. Civil Procedure
   (*a*) Civil Litigation in the Public Interest
   (*b*) Class Actions
   (*c*) *Prejudgment Interest Act*
6. Estates Projects
   (*a*) Wills and Succession
   (*b*) Probate Procedure and Administration
7. Sale of Goods Legislation
8. Extrinsic Aids to Statutory Interpretation
9. Accounting on Foreclosure

Appendix C

TEXT OF THE COMMISSION'S LETTER CONCERNING LIMITATION OF ACTIONS

Representations have been made to the Commission on behalf of the Law Society of British Columbia concerning the limitation period set out in section 71 (4) (*b*) of the *Administration Act,* pursuant to which action against an estate must be commenced within twelve months of the date of death.

Although a number of special limitation periods were repealed by the *Limitations Act,* 1975, following the recommendations of the Commission in its Report on Limitations (LRC 15) this particular period was retained.

In recommending its retention, the Commission had in mind the general social policy that estates should be dealt with expeditiously and that it was not in the public interest that administration and distribution should be delayed for a significant period of time awaiting the pleasure of a potential litigant who might or might not choose to assert a claim.

Experience since the coming into force of the *Limitations Act,* however, persuades us that the merits of this policy of expeditious administration have been outweighed by accompanying disadvantages.

Before 1975, although it was coincidence rather than policy, the limitation period of one year set out in the *Administration Act* was identical to that governing personal injury claims arising out of motor-vehicle accidents. Thus, where the defendant was killed in an automobile accident, the *Administration Act* tended to be overlooked since it did not impose a limitation period shorter than that which would have applied if the defendant had not been killed. The new law of limitations has altered this situation. Most motor-vehicle accident cases are now governed by the two-year limitation period provided in section 3 (1) (*a*) of the *Limitations Act.* Thus the one-year limitation period in the *Administration Act* has acquired a significance it did not have in the past.

We understand, however, that the existence of that limitation period is still often overlooked and, in the result, a failure to sue within one year of the defendant's death in these cases results in the defeat of otherwise meritorious claims.

There are a number of points we think are relevant. First, in most cases there is an insurer standing behind the deceased tortfeasor to answer for the plaintiff's claim. In those cases the existence or nonexistence of the claim is irrelevant to the administration of the defendant's estate. Thus the limitation period, theoretically for the protection of the defendant's personal representatives and beneficiaries, in fact operates in favour of the insurer. It is difficult to see any rational policy reason for putting the insurer in a better position if the insured is dead than if he had survived.

Secondly, there has in recent years been some erosion of the policy of "expeditious administration." For example, it seems clear that awards of maintenance under the *Divorce Act* can provide that the support obligation survives the death of the respondent if the order so provides. Such awards have been made in British Columbia [*Brocklebank,* (1977) 24 R.F.L. 53]. The jurisdiction of the court in respect of such orders may also extend to their variation after the death of the respondent although the cases have not yet gone so far. A similar interpretation of the new *Family Relations Act* is possible.

Finally, two separate agencies concerned with law reform considered the survival of actions against estates and recommended changes in the law that would permit these actions to survive. In 1969 the Law Commission of England issued a Report on Proceedings Against Estates. It was the Commission's recommendation that a comparable special limitation period in England should be repealed and that the proceedings against estates should be governed by the normal limitation rules.

In 1963 the Uniform Law Conference of Canada promulgated a Uniform Survival of Actions Act. Under that Act the time to bring an action against an estate would be the *longer* of:

(*a*) the time otherwise limited for bringing the action; or
(*b*) one year from the defendant's death.

The Uniform Act has been enacted in New Brunswick.

Having regard to all the interests at stake, we conclude that some relaxation of this limitation period is called for. We hesitate to suggest its repeal entirely but we do believe that the period could be extended from one year to two years without a significant impact on the efficient and expeditious administration of estates and with the beneficial effect of eliminating one source of doubt and uncertainty in the calculation of limitation periods.

If section 71 (4) (*b*) of the *Administration Act* is so amended, it would follow that section 9 (3) of the *Contributory Negligence Act* should be similarly amended.

Appendix D

TEXT OF THE COMMISSION'S LETTER CONCERNING DEFAMATION AND LETTERS TO THE EDITOR

A recent case of the Supreme Court of Canada has significantly limited the availability of the defence of fair comment in defamation actions. In *Cherneskey* v. *Armadale Publications,* (1979) 90 D.L.R. (3d) 321, it was held that where an opinion on a matter of public interest that has been expressed by a person is published by a second person, the defence of fair comment is not available to the second person unless he agrees with the opinion. In more concrete terms, when a newspaper publishes a letter to the editor which expresses an opinion that may be defamatory, the newspaper can raise the defence of fair comment only if it agrees with that opinion.

When the decision emerged earlier this year, a study of the issues raised by the case was added to the Commission's programme. It seemed totally wrong in principle that the law should stifle freedom of expression and debate on important issues by encouraging the media to publish only opinions with which they agree.

Active research was put in abeyance, however, when it was learned that the Uniform Law Conference had placed this matter on the agenda for consideration at their 1979 meeting. It was given high priority, and a uniform provision was adopted in the terms set out in the Appendix. Its effect is to preserve the defence of fair comment for the final publisher so long as he acts in good faith. The Commission agrees with the substance of the provision.

The actual language of the provision does not command our wholehearted support. Its drafting was a compromise, but one on which the Conference as a whole could agree. The subject-matter, however, is one in which uniformity is particularly desirable and individual reservations with regard to the drafting should be submerged in its pursuit. A publication that is national in scope should not have to worry about the defence of fair comment varying from province to province.

The Commission urges that, in the coming legislative session, high priority be given to amending the *Libel and Slander Act* through the addition of such a provision.

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