



LCC | CDC

Living Law | Pursuing Justice | Renewing Hope

RECALL TO REIMAGINE: (Re)Creating the Law Commission of Canada

REFLECTION PAPER | JUNE 2024



Law Commission
of Canada

Commission du droit
du Canada

Canada

Aussi disponible en français sous le titre : *Se souvenir pour réinventer: la (ré)création de la Commission du droit du Canada*

Law Commission of Canada

P.O. Box 56068, Ottawa RPO Minto Place, Ottawa, ON K1R 7Z1

Toll Free: 1-833-442-2606 | info@lcc-cdc.gc.ca | <https://www.canada.ca/en/law-commission-canada.html>

© His Majesty the King in Right of Canada, as represented by the Law Commission of Canada, 2024.

Cat. No.: JL2-80/2024E-PDF (Electronic PDF, English)

ISBN: 978-0-660-72426-3

Cat. No.: JL2-80/2024F-PDF (Electronic PDF, French)

ISBN: 978-0-660-72427-0



MISSION

The Law Commission of Canada is an independent agency committed to engaging the people of Canada in the ongoing and dynamic evolution of law.

A LAW COMMISSION OF CANADA REFLECTION PAPER

With contributions from

President Shauna Van Praagh

Commissioner Sarah Elgazzar

Commissioner Aidan Johnson

Jeanne Mayrand-Thibert

Isabelle Palad

Meg Pearson

Sophie-Natacha Robichaud

Kirk G. Shannon



Shauna Van Praagh
President



Sarah Elgazzar
Commissioner



Aidan Johnson
Commissioner

TABLE OF CONTENTS

INTRODUCTION	1
PART I – RECALL, REMEMBER, RETELL	1
A. Recall: The <i>Law Commission of Canada Act</i>	1
i. The <i>Why</i>	2
ii. The <i>How</i>	3
iii. The <i>Who</i>	3
B. Remember: The 1997-2006 Law Commission of Canada	4
Selected Reports	4
i. <i>Restoring Dignity</i>	4
ii. <i>Beyond Conjugalilty</i>	6
iii. <i>Voting Counts</i>	7
iv. <i>Canada’s Secured Transactions</i>	8
Selected Discussion Papers.....	8
C. Retell: Principal Elements of the Work of the Law Commission of Canada 1997-2006	10
PART II – REBUILD, RESITUATE, REIMAGINE.....	11
A. Rebuild	11
B. Resituate.....	13
C. Reimagine.....	14

INTRODUCTION

The spring of 2023 marked a fresh start for the Law Commission of Canada, an independent federal agency mandated with the study, review, and development of Canada’s law and legal systems in ways responsive to changing needs across this country. Active from 1997-2006, the Commission reemerged from a 17-year hibernation with the appointment of its new president on June 6, 2023. In reflecting on the evolution of law reform, the Commission’s inaugural president Roderick Macdonald reminded us to “see the past as prologue”.¹ This paper does exactly that. By exploring its past, today’s Law Commission of Canada situates itself in the present and prepares for the future.

This paper co-exists with a related initiative undertaken by the renewed Law Commission. In the period following its closure in 2006, much of the Commission’s existing work was scattered across multiple sites both inside and outside government. In order to share the history of formal federal law reform in Canada, the Commission will collect this work and make all associated sources and materials accessible to the public. The documents produced by the Law Commission of Canada over its initial nine-year lifespan will be gathered on our website. So too will reports and papers published by the Commission’s predecessor, the Law Reform Commission of Canada, in operation from 1971 to 1992. To the extent possible, this extensive and influential body of work will be consolidated in hard copy on the bookshelves of the current Law Commission of Canada office in Ottawa.

In this paper, the Law Commission of Canada demonstrates its commitment to learning from the past by drawing guidance and insights from the structure and work of its earlier version. As suggested by the paper’s title, recreating the Law Commission of Canada relies on imagination grounded in recall. The directives that frame Part I — “recall, remember and retell” — invite us to look back to the Law Commission of 1997-2006. Those of Part II — “rebuild, resituate, reimagine” — capture the mission and promise of today’s Law Commission. The work of recall should provide foundations to inspire and shape reimagined projects and potential.

PART I – RECALL, REMEMBER, RETELL

A. Recall: The *Law Commission of Canada Act*

The *Law Commission of Canada Act*, S.C. 1996, c. 9 (the “Act”) created the Law Commission of Canada and provides the formal framework for the work of the Commission. The Act sets out the Commission’s purpose (the *why*), its powers, duties, and modes of ensuring accountability (the *how*), and the Commission’s membership and organization (the *who*).

¹ Roderick Macdonald, “Continuity, Discontinuity, Stasis and Innovation” in Brian Opeskin & David Weisbrot, eds, *The Promise of Law Reform* (Sydney: The Federation Press, 2005) 87 at 96.

i. The *Why*

The Preamble to the *Act* reads as follows:

WHEREAS, after extensive national consultations, the Government of Canada has determined that it is desirable to establish a commission to provide independent advice on improvements, modernization and reform of the law of Canada, which advice would be based on the knowledge and experience of a wide range of groups and individuals;

Law Commission of Canada Act, SC 1996, c 9, Preamble.

As introduced by the Preamble, the 1996 *Act* offered a vision for a new, independent, and non-partisan agency dedicated to responding to the people of Canada in working to ensure a just legal system. The justification for establishing the Law Commission of Canada—emerging from consultations undertaken in 1994 by the Department of Justice with judges, law practitioners, over 80 non-governmental organizations, university professors, business groups, trade associations, unions, and the broader public—included: (1) the fast-paced nature of social and economic change and the complexity of issues faced by Canadians; (2) the need for independent study, long-term solutions and new approaches to law; (3) the need for inter-ministerial and intergovernmental cooperation; and (4) a growing interest among Canadians in having a say in the law reform process.²

Smaller than the Law Reform Commission of Canada, and supported by a substantially smaller budget, the Law Commission of Canada was defined by a fresh set of guiding principles. Together, the Preamble and the “Purpose” section of the *Act* provide the Commission’s *raison d’être*. In fulfilling its mandate, the Commission must “study and keep under systemic review” the law of Canada, with “a view to providing independent advice on improvements, modernization and reform that will ensure a just legal system” which meets the “changing needs of both Canadian society and the individuals that comprise it”.³ In doing so, the Commission must take a multidisciplinary approach which situates the legal system in its broad social and economic context.⁴ This can include developing new approaches and concepts of law with a view towards making the system more “efficient, economical and accessible”.⁵ In aspiring to be responsive to groups marked by particular needs and considerations, the Commission may act as institutional partner to a wide range of interested communities situated within or beyond law.⁶

² Law Commission of Canada. *Briefing Notes* (November 1997) at 3.

³ *Law Commission of Canada Act, SC 1996, c 9, s 3.*

⁴ *Ibid*, Preamble.

⁵ *Ibid*, ss 3(a)-(b).

⁶ *Ibid*, Preamble, s 3(c).

ii. The *How*

The *Act* sets parameters for the types of projects taken on by the Commission to fulfil its purpose. These projects are distinguished by distinct, albeit overlapping, vocations and forms. The Commission may design its own programs of study, disseminate the outputs of that evaluative work, sponsor or support conferences, and facilitate cooperative efforts between different stakeholders interested in the Commission's work.⁷

The *Act* envisages guidance for the Commission's projects from different sectors of the Canadian public,⁸ support from the Commission's Advisory Council,⁹ and consultation with the Minister of Justice.¹⁰ The Commission is accountable for the conduct of its affairs to all Canadians via an annual report to Parliament through the Minister of Justice.¹¹

iii. The *Who*

The *Act* establishes a Commission constituted by a full-time President and four part-time Commissioners. While the President is responsible for the substantive direction and projects of the Commission, administrative management of the agency is entrusted to an Executive Director.¹² A 12-24 member Advisory Council, including the Deputy Minister of Justice *ex officio*,¹³ serves to offer support and advice to the Commission on its strategic direction and long-term research programs and on the review of the Commission's performance.¹⁴

The *Act* specifically envisages Commissioners and Advisory Council members who come from a variety of sectors and broadly represent the socio-economic and cultural diversity of Canada.¹⁵ While participation in the work of the Commission is not restricted to members of the legal profession, the *Act* does specify the desirability of knowledge of both common law and civil law systems.¹⁶

⁷ *Ibid*, ss 4(a)-(d).

⁸ See e.g. Preamble: "WHEREAS, after extensive national consultations, the Government of Canada has determined that it is desirable to establish a commission to provide independent advice on improvements, modernization and reform of the law of Canada, which advice would be based on the knowledge and experience of a wide range of groups and individuals". See also s 3(c).

⁹ *Ibid*, s 19.

¹⁰ *Ibid*, s 5(1)(a).

¹¹ *Ibid*, s 6.

¹² See *ibid*, ss 7(1) and 16, respectively.

¹³ *Ibid*, s 18(1).

¹⁴ *Ibid*, s 19.

¹⁵ See *ibid*, ss 7(2)-(3), 18(1.1)-(1.2).

¹⁶ *Ibid*, ss 18(1.1)-(1.2).

B. Remember: The 1997-2006 Law Commission of Canada

The framework described above created a space within which the Law Commission of Canada explored and implemented a wide range of research programs, forms of engagement and substantive projects.

The three Commission presidents over that nine-year time period — Roderick Macdonald (1997-2000), Nathalie Des Rosiers (2000-2005) and Yves Le Bouthillier (2005-2006) — all came to the Commission as law professors. They brought a broad vision of teaching, learning, and scholarly inquiry to their leadership role and responsibilities in law reform and their critical engagement with diverse actors and institutions within and beyond the domain of law.

Within the Commission's first year, its then president articulated a guiding framework for its program of research based on law's governance of relationships. The framework was based on a concept of "living law"—the notion that law is both created and experienced by individuals in their daily lives. The Commission's work program itself was meant to address all forms of relationship in which law plays a role. The framework therefore organized the Commission's work around four particular relationships: the personal, the social, the economic and governance.

The quantity of work generated by the Commission between 1997 and 2006 is striking. Eight final reports,¹⁷ ten discussion papers, and over 150 study papers were produced. The Commission recorded more than 350 engagement activities including presentations at conferences, study panels, round tables, and feedback sessions.

Here, in "Remember" mode, we explore the key quality-related elements and shaping values found in the Commission's body of work by focusing on selected final reports and discussion papers. In addition to offering a brief synthesis of each document, we indicate ways in which aspects of the work continue to resonate today.

Selected Reports

i. *Restoring Dignity*

During the mandate of the Law Commission's first president, Roderick Macdonald, the Commission received a formal reference as envisaged by the *Act*. The Minister of Justice, the Honourable Anne McClellan, asked the Commission in November 1997 to initiate research and consultations to "address processes for dealing with institutional child physical and sexual

¹⁷ There were 7 final reports on substantive legal issues. These were *Restoring Dignity: Responding to Child Abuse in Canadian Institutions* (2000), *Beyond Conjuality: Recognizing and Supporting Close Personal Adult Relationships* (2001), *Transforming Relationships Through Participatory Justice* (2003), *Modernizing Canada's Secured Transactions Law: The Bank Act Security Provisions* (2004), *Voting Counts: Electoral Reform for Canada* (2004), *Leveraging Knowledge Assets: Reducing Uncertainty for Security Interests in Intellectual Property* (2004), *In Search of Security: The Future of Policing in Canada* (2006). The last report, much shorter than previous reports and tabled in 2007 following closure of the Commission, was entitled "For a Living Law: The Future of Law Reform in Canada".

abuse.”¹⁸ The resulting Report, entitled *Restoring Dignity: Responding to Child Abuse in Canadian Institutions*, was published three years later in 2000. It provided a constructive and wide-ranging framework of analysis aimed at both governments and the general Canadian public. By illustrating co-existing and intersecting modes of lawmaking and engagement with law, the Report also underscored close connections between legal education and law reform.

The Report is striking as an example of “law reform”. It is intentionally *not* framed as concrete advice or detailed recommendations easily turned into directives for legislative drafting or revision. Rather, it constitutes an extensive and thoughtful exploration of co-existing responses to institutional abuse available in Canadian law and society, with explicit recognition that each has unique strengths in addressing the needs of individual survivors, families, communities and society. The Report’s framework for understanding and comparing forms of response is shaped by eight identified human needs: remembrance, acknowledgement, apology, accountability, access to therapy, access to education, financial compensation, prevention and public awareness.

The Commission articulated several questions. It asked what constituted “total institutions” for children (whether characterized as special needs schools, child welfare facilities, youth detention facilities or residential schools for Indigenous young people). It asked about the range of individual and institutional actions and practices experienced by young people as abuse; in doing so the Commission noted the prevalence of physical and sexual abuse while also acknowledging emotional, psychological, spiritual, racial, and cultural forms of abuse. It asked about the spectrum of needs that emerges through a process focused on the perspectives of survivors and an accompanying commitment to ensuring information and support for survivors. Finally, it asked what response mechanisms exist in law and society for providing redress and illustrated the broad spectrum of intersecting approaches from criminal justice to civil liability, from children’s advocates to public inquiries, from community initiatives to compensation schemes.

In its preface, the Report underscored the fact that it was not final, but rather constituted “an invitation to reflect upon the issues” and a “call to help transform this Report’s recommendations into an agenda for action”¹⁹. That invitation and its accompanying call to action remain compelling and critical. How do the questions in the Report continue to resonate today? In Part I of the Report, we find: “[t]his task is not, however, just about how to compensate people [...] and it is not just about law. It is about understanding how our society views its children [...] It is about attitudes in Canada toward Aboriginal peoples [...] It is about facing up to some unpleasant truths [...] It is about our faith in certain institutions, and how misplaced that faith can sometimes be.”²⁰ The

¹⁸ Law Commission of Canada, *Restoring Dignity: Responding to Child Abuse in Canadian Institutions* (2000), Appendix A: Letter from the Honourable A. Anne McLellan, Minister of Justice and Attorney General of Canada, to Roderick Macdonald, President, Law Commission of Canada (14 November 1997), online: <https://publications.gc.ca/collections/collection_2008/lcc-cdc/JL2-7-2000-2E.pdf>.

¹⁹ *Ibid* at xiv.

²⁰ *Ibid* at 14.

Commission understood this first Report to combine law reform in the mode of repair of past harms with law reform in the mode of articulating a vision for the future.

In the years following the Report, Canadians saw specific actions and developments tied to residential schools, including a comprehensive settlement scheme, official apologies and the establishment of a Truth and Reconciliation Commission. More generally, we have experienced a significant shift in understanding, assessing and transforming governance practices and structures with respect to child welfare and protection.²¹ Many variations exist for models of co-existence of Indigenous, federal, provincial and territorial obligations and authority in this domain, and Canadians have much to learn from Indigenous communities in relation to the ongoing work of supporting our young people.

The focus on children reminds scholars, policy makers, and anyone thinking about law to grapple with the complexities of young people, and the intertwining of needs, interests and rights when it comes to supporting our youth. Issues requiring renewed attention more than two decades after the release of the Report include: the disproportionate presence of children from particular communities within systems of child welfare and protection; the need to make space for real hope and support for individuals entangled in youth criminal justice; and the range of meaningful responses to, and actors involved in, the health and wellbeing of young people whether in classrooms, on sports teams, at our borders, in digital spaces, or on the street.

ii. *Beyond Conjugal*

In 2001, the Law Commission of Canada, under the leadership of Nathalie Des Rosiers, released its second major Report entitled *Beyond Conjugal: Recognizing and Supporting Close Personal Adult Relationships*. The Report asks whether current regulatory approaches align with the diversity of close personal adult relationships in contemporary Canadian society. Why are laws and policies relying heavily on marriage as the predominant framework for personal relationships? What are the consequences of the assumptions attached to this model?

Like *Restoring Dignity*, *Beyond Conjugal* approaches law reform by combining repair for past harms with a blueprint for a more equitable future. It considers, for instance, the benefits of a registration system that would enable state recognition and support for both conjugal and non-conjugal unions. At the same time, it puts forth a set of questions to ensure the fair and effective implementation of relation-based terms. It proposes a methodology to assess laws that employ such terms, supported by examples in different statutory frameworks such as the *Canada Labour Code*, the *Canada Evidence Act*, the *Income Tax Act* and the *Employment Insurance Act*.

²¹ See e.g. *Reference re An Act respecting First Nations, Inuit and Métis children, youth and families*, 2024 SCC 5; Indigenous Services Canada, News Release, “Agreements-in-Principle reached on compensation and long-term reform of First Nations child and family services and Jordan’s Principle” (4 January 2022), online: <<https://www.canada.ca/en/indigenous-services-canada/news/2022/01/agreements-in-principle-reached-on-compensation-and-long-term-reform-of-first-nations-child-and-family-services-and-jordans-principle.html>>.

The Report, which includes the recommendation that “Parliament and provincial/territorial legislatures should move toward removing from their laws the restrictions on marriages between persons of the same sex”,²² led to important government discussions regarding the legal recognition of same-sex unions and nourished momentum for removing restrictions on same-sex marriage through eventual enactment of the *Civil Marriage Act* in 2005.²³ *Beyond Conjuality* provides a compelling and comprehensive model for examining “personal relationships” (as a broader theme of study) through the lens of law and policy. It was remarkable in its attention to intersecting and overlapping markers of identity—age, race and ethnicity, disability, religion, sexual orientation and gender—and to alignment with law of the dynamics surrounding these intersections. Reflected in the Commission’s later discussion papers, this approach is particularly evident in “Is Work Working?” and “Does Age Matter?”.

iii. *Voting Counts*

In 2004, the Commission produced *Voting Counts: Electoral Reform for Canada*. The Report connected elements of the Canadian electoral system to broad issues of civic apathy, low voter turnout, and less than robust public engagement, particularly among young adults.

For contemporary readers curious about the features of, and potential changes to, the Canadian electoral system, this Report constitutes a rich resource. It sheds light on efforts across the country to improve the democratic representation of Canadians in their government. It is a comprehensive reference that continues to be cited in scholarly articles.²⁴ Its comparative approach is particularly compelling, as it guides the reader through real world examples of methods for incorporating an element of proportionality in a system and assesses how such methods would apply to the specificities of Canada. Readers are offered descriptions of different types of electoral systems, including those of New Zealand, Japan, Germany, Scotland, and Wales.

Public concern over the protection of democracy in Canada persists, as do related issues tied to our electoral system and processes. We may think of, for example, the way campaign platforms are publicized and discussed, the accessibility and format of leaders’ debates, the style of

²² Law Commission of Canada, *Beyond Conjuality: Recognizing and Supporting Close Personal Adult Relationships* (2001), Recommendation 33, at 131.

²³ House of Commons, Standing Committee on Justice and Human Rights, *Evidence*, 37-2 (10 April 2003), online: <<https://www.ourcommons.ca/documentviewer/en/37-2/JUST/meeting-36/evidence>>. It is interesting to note that only recommendation 33 was adopted, contrary to the broader ambit of a report that fundamentally questioned the law’s attachment to the two-person couple. Indeed, as pointed out by Brenda Cossman and Bruce Ryder, “the legal definition of coupled conjuality has been extended to the previously excluded and as a result has become more deeply entrenched at the heart of the state’s approach to relationship recognition and support.” See Brenda Cossman & Bruce Ryder, “Beyond Beyond Conjuality” (2017) 30:2 Can J Fam L 227 at 241.

²⁴ Examples include: Donald J. Bourgeois & Jessica Spindler, *Election Law in Canada*, 2nd ed (LexisNexis Canada, 2021); Christopher S Elmendorf, “Election Commissions and Electoral Reform: An Overview” (2006) 5:4, *Election LJ* 425; Nicholas Aroney, “Democracy, Community, and Federalism in Electoral Apportionment Cases: The United States, Canada, and Australia in Comparative Perspective” (2008) 58:4, *U of T LJ* 421; and Brian Studniberg “Politics Masquerading as Principles: Representation by Population in Canada” (2009) 34:2, *Queen’s LJ* 611.

communication intrinsic to adversarial politics, and the need for personal security during campaigning. More generally, concerns are emerging about the impacts on the electoral system of advances in information and communication technology, notably social media and artificial intelligence.

Voting Counts illustrates the Commission's steadfast independence and commitment to critical analysis. The Report leaves the reader with a sense that change is possible, can be assessed effectively, and can result in significant and responsive improvement.

iv. *Canada's Secured Transactions*

Also in 2004, roughly four years before the 2008 financial crisis, the Law Commission published *Modernizing Canada's Secured Transactions Law: The Bank Act Security Provisions* with the goal of addressing the environment in which secured credit — a key piece of a functioning economy — is extended.

The logic of secured transactions is that promises to repay are backed by collateral engagements. This provides security to lenders, because if borrowers default on their loan, they can seize the item put up as a collateral engagement. The issue of secured transactions continues to be particularly important, because of their impact on interest rates and the broader economy. In a time of high inflation and continuous worries about the economy, this research field remains highly relevant.

While the methodology of *Voting Counts* was primarily comparative, *Canada's Secured Transactions* was grounded in history. The Report details the evolution of the Canadian secured transactions system arising from a federal system where banks can take provincial security interests as collateral to secure their loans or opt for a special federal security device that is available through the *Bank Act* security provisions. In its analysis of options to improve the system, the Report recommends the repeal of certain *Bank Act* provisions, given that the provinces and territories have enacted updated regimes and are best positioned to handle secured lending matters.

History is key in showing how areas of overlap in legislative competencies—banking, and property and civil rights matters—change over time in the context of evolving economic needs. In a current global economic environment characterized by high inflation, labour shortages, supply chain issues, low growth, digital transactions, and the use of cryptocurrency, the notions of secured transactions and lending risk continue to be significant and complex.

Selected Discussion Papers

Discussion papers published by the Law Commission of Canada between 1997 and 2006 were meant to question fundamental assumptions, summarize key insights from preliminary research and engagement, and invite further feedback. For most research projects, discussion papers provided background for later, more substantial, reports. Both *Beyond Conjugalities* and *Voting*

Counts, for example, were preceded by earlier discussion papers.²⁵ Several discussion papers, however, are simply stand-alone pieces that showcase the Commission’s reflections and critical analysis.

The discussion paper entitled *What is a Crime? Challenges and Alternatives*, published in 2003, addressed basic assumptions surrounding criminality. It posed several questions such as: How do we decide which behaviours warrant intervention so that they can be deterred? Have we come to rely too heavily on law to deal with unwanted behaviour? The paper illustrates a wide spectrum of formal and informal strategies to control or deter conduct beyond those associated with criminal law, including regulations, professional codes of conduct, and industry standards. It also explores what role schools, religious institutions and community organizations can play to deter conduct.

Links can be traced between this 2003 discussion paper and the Commission’s 2006 report, *In Search of Security: The Future of Policing in Canada*, that focused on criminal justice enforcement. Here we find policing understood not as a unitary phenomenon, but as a system of overlapping, complementary and mutually supportive networks. As an illustration, the report reminds readers of how public provincial policing is complemented by municipal modes of policing, private security bodies and community safety organizations. In addition, it addresses independence and accountability in law enforcement, by reflecting on whether existing legal mechanisms to enforce these principles corresponded to the evolving expectations of Canadians. The complex issues raised by the Commission with respect to criminality and enforcement continue to resonate today.

The discussion paper entitled *Is Work Working? Work Laws that Do a Better Job*, published in 2004, highlighted ongoing gaps between rules and realities connected to “work” for Canadians. It identified a broad spectrum of worker groups—self-employed and part-time workers, temporary agency workers, low paid and marginalized workers and stigmatized workers—for which formal structures in law and policy are inadequately responsive. The Report questions the assumption that one will have a working “career” and invites reflection on the prevalence of less stable working arrangements, including on the undervaluing of certain kinds of work, such as unpaid caregiving. The critical analysis found in *Is Work Working?* appears particularly pertinent in the wake of Canadians’ experience of the COVID-19 pandemic and related issues of labour shortages, essential work, flexible work arrangements, and disproportionate risk and harm.

In 2006 the Law Commission of Canada, assisted by its Virtual Scholar in Residence, John Borrows, published *Justice Within: Indigenous Legal Traditions*. This discussion paper explored the place of Indigenous legal traditions within Canada’s legally pluralistic state in which the common and civil law are recognized. It questions why Indigenous laws are often described as “custom” rather than “law” despite the well-developed norms and practices that governed social life, trade, dispute

²⁵ Not all final reports were preceded by discussion papers. The reports for *Modernizing Canada's Secured Transactions Law* and *Leveraging Knowledge Assets*, for example, were not preceded by discussion papers. Only a series of study papers were published prior to the release of the final reports.

resolution and the relationships between different nations. The paper puts forth critical reflections on the importance of Indigenous legal traditions to the health and success of Indigenous communities, governance, and cultural identity. It also poses questions as to the practical steps and challenges in implementing greater recognition of these traditions which the Commission continues to contemplate as part of its commitment towards reconciliation.

Through one of its last discussion papers, *Crossing Borders: Law in a Globalized World* (2006), the Law Commission explored the notion of “globalization” and its many facets, whether economic, political, societal, or technological. Topics include the interplay of domestic and international law framed by the limits of sovereignty in an interdependent world, the lack of transparency in the governance of international organizations, the federal monopoly on treaty-making and its impact on Canadian provinces, and the reality of uneven globalization across the globe.

Crossing Borders illustrated the Commission’s engagement with international law in a way that previous work had not. Our global conversations and connections were foreshadowed by the paper’s concluding insistence on the need for ongoing critical scrutiny of globalization and law-making: “issues that will only become more pressing with time, as global links increase and deepen.”²⁶

C. Retell: Principal Elements of the Work of the Law Commission of Canada 1997-2006

This overview of selected pieces of the Commission’s history allows us to offer general observations and draw important lessons.

First, the Law Commission of Canada took seriously its legislated mandate to devise novel approaches and new concepts of law in order to meet the changing needs of the people of Canada. This was succinctly articulated by Nathalie Des Rosiers, its second president, when she wrote: “[i]t was not a question of simply keeping the law up to date; it was necessary at times to rethink its role.”²⁷ Throughout each of the reports, discussion papers, research papers and public consultations, the Commission took a broader view of law reform, asking fundamental questions of legal architecture and often challenging preconceived notions of law’s traditional role in Canadian society.

Second, the Commission actively consulted with a broad range of stakeholders. In preparing the *Restoring Dignity* report, for example, the Commission consulted with survivors of institutional abuse, therapists who had counselled survivors, and lawyers who had acted on their behalf. There was a special consultation with members of the deaf community as well as workshops with

²⁶ Law Commission of Canada, *Crossing Borders: Law in a Globalized World* (2006), online: <<https://publications.gc.ca/collections/Collection/JL2-25-2006E.pdf>> at 44.

²⁷ Natalie Des Rosiers, “The Law Commission of Canada and Its Role in the Development of Policy” (speech delivered May 2003); see also Law Commission of Canada, *For a Living Law: The Future of Law Reform in Canada* (2007).

traditional Indigenous healers. *In Search of Security*, another project, relied on academic writing centered on criminology and criminal justice, in addition to consultations with members of both police training programs and the private security industry. These and other examples underscore the centrality of learning through listening and ongoing conversation for the work of law reform.

Third, we find in this review of the Commission's work a commitment to the productive integration of deep intellectual reflection with concrete and wide-ranging engagement. Understanding and reforming law relies on the constant combination of research and action. The Commission demonstrated over its incredibly intense nine years that it was a leader in gathering together jurists and non-jurists, in facilitating and directing a rich exchange of ideas, and in making tangible commitments and contributions to responsive and far-reaching evolution of law in our lives.

PART II – REBUILD, RESITUATE, REIMAGINE

A. Rebuild

The task of reconstructing the Law Commission of Canada after a 17-year pause is daunting. And yet the “recall” project set out above in Part I reveals the existence of solid and impressive foundations. Rebuilding becomes more accurately a project of renovation, shaped by existing structures while responsive to new possibilities, materials, and ideas. We value what we have inherited; at the same time, we recognize that both Canada and the world have changed in the intervening 17 years. We will therefore support and guide what will be a responsive and transformative renovation process.

Inspired and influenced by the spectrum of questions asked and projects developed by the Law Commission of Canada between 1997 to 2006, today's Commission aims to avoid compartmentalization in working with law and law reform. Often, we refer to law with labels that designate specific areas or subject matter: criminal law and family law are examples, as are more narrowly circumscribed sentencing law and child custody law. While those labels can be helpful, they can also hide the ways in which areas of law overlap. Child protection intersects with youth criminal justice; tax rules intersect with rules related to execution of a will; environmental regulation intersects with corporate responsibility. Intersections and overlap are always found with respect to substantive issues or problems in law. So too are they evident when we think of systems, jurisdictions, and disciplines. Landlord-tenant obligations interact with human rights guarantees, municipal rules interact with federal directives, Indigenous governance interacts with provincial regulations, and scientific advancements interact with legal frameworks. These examples illustrate how and why addressing law in sharply delineated compartments or categories can be misleading given the ways in which law functions in our lives.

Working in law reform requires awareness of, and ability to work with, the intersections and interactions that make law dynamic and responsive. The Law Commission of Canada understands law to be shaped and constantly nourished through interactions among individuals and

communities. Law is necessarily located within intersecting legal traditions, languages, and institutions. The Commission is a meeting point for research, reflection, and reform directions related to law in all its complexity.

This 21st century approach to law and law reform points to the four corners of the work that will be done by the Law Commission of Canada, whether within our program of research or included in our outreach and engagement initiatives. Those four corners—labelled “Dream, Repair, Build and Share”—constitute the distinct albeit intersecting purposes or vocations of our anticipated projects. In incorporating traces of the Commission’s past, each promises fresh possibilities for the future. Together, these four verbs function as a compass used to navigate the Commission’s path forward.

DREAM

First, the Commission’s work anticipates and may play some role in influencing future directions and development of law. It invites us to look to the horizon, to embrace uncertainty, to move beyond the visible challenges of the moment.

REPAIR

Second, the Commission may identify areas in which structures, rules or practices appear to be broken, and where a restart or rethink might be needed. Here, the accounts and suggestions of people with tangible experience may be particularly important and persuasive, and concrete, constructive recommendations may have striking value.

BUILD

Third, the Commission may strengthen connections or forge links across spheres including those of research, practice, policymaking, regulation, litigation, and judicial decision-making. Especially important in the face of divisive polarization in public discourse, the creation or reinforcement of such bridges works to support productive exchange and ongoing conversation.

SHARE

Fourth and finally, the Commission can contribute to meaningful legal literacy and enrichment of legal knowledge. Obviously, but not exclusively, the domain of formal university programs, learning about and understanding law is important for all participants in Canadian society—at all ages and for all kinds of reasons.

B. Resituate

Sustainable and successful renovation requires more than a grounding framework. It can also require awareness of the neighbourhood and community combined with acute sensitivity to evolving resources and possibilities. Renewing the Law Commission is thus not only a task of rebuilding but a task of resituating ourselves within Canada and on a global scale. That entails the initiation or revival of crucial relationships—including but not limited to those with formal law reform agencies across this country or around the world, organizations dedicated to public legal education, scholarly bodies supporting innovative research, or government actors engaged in the formulation of policies responsive to contemporary challenges.

Today's Law Commission of Canada should be ready to meet new neighbours: individuals, communities or institutions who may not have existed or participated within the networks relied upon and sustained by the earlier Commission. At the same time, neighbours or partners who seem familiar may have changed in substantial ways over the intervening years, such that reconnection is not as straightforward or easy as might be anticipated. Friendships, collaborations, and communities are crucial to securing the Commission's place and role—and they all require and thrive on trust, patience, and commitment.

Resituating the Law Commission of Canada is also a task of positioning the agency in time. The Law Commission of 1997 looked ahead to the end of the 20th century. Today's Commission finds itself on the cusp of the second quarter of the 21st. It is both appropriate and crucial to articulate some of the elements relevant to law reform that come with this moment. A tentative and necessarily incomplete list of those elements might include the following: an appreciation for and emphasis on learning *from* Indigenous communities, narratives and legal traditions; significant and constant displacement of people(s) around the world; destructive distrust of facts and of institutions that rely on fact-finding; acute need for complex understanding combined with sharp polarization and avoidance of difficult conversations; and substantial engagement and desire for empowerment on the part of youth, particularly in the face of uncertainty and risk.

These roughly sketched factors will require precision in the context of Canadian law, and it is far from a straightforward task to link general observations or experiences to possibilities and projects for the Law Commission of Canada. As was true for yesterday's Commission, today's will be attentive and responsive to the world in which it operates. It will understand Indigenous communities to be significant sites of meaningful law reform and ongoing evolution of rules and practices. It will learn from and aim to support promising initiatives to nourish strong and democratic institutions. It will both support and draw strength from the full range of identities, histories, and commitments of peoples across Canada, and it will be open to comparative insights and ideas developed in other places from which we might find fresh inspiration. Intergenerational exchange, Indigenous presence, the integration of local with global, the connections between guiding principles and evidence-based findings, innovative forms of outreach and dialogue: all

are part of the contemporary landscape within which the Law Commission of Canada will engage with interlocutors, map directions, and find its place(s) and voice(s).

C. Reimagine

The 1997-2006 period of the Law Commission of Canada might fruitfully be compared to and characterized as “childhood”. From birth to age 9, the Commission went through an extraordinarily intense and rich period of discovery and development. It immersed itself in, and at the same time defined, a “living law” approach to law reform. It acquired a broad range of language and movement skills, utilized remarkable flexibility and energy, and demonstrated deep and sustained curiosity. The enthusiasm, energy and range of inquiry exhibited by the Commission over that time seem infused with the wonder and potential associated with youthful play and exploration.

As the Law Commission of Canada returns—years after its “childhood”—we might imagine it heading into the phase of “adolescence”. Adolescence is a stage of human development marked by ongoing experimentation, shifting relations, and changing perspectives. It is a period of complexity: deep introspection combined with reaching out beyond the familiar, relying on others while dealing with the consequences of personal mistakes, feelings of insecurity intertwined with emerging self-awareness and confidence. Passing through adolescence to adulthood benefits from rootedness, support, and trust; that transition also thrives on adventure, curiosity, willingness to explore, and new modes of making connections and presenting oneself. Reimagination is a necessary ingredient in the process.

The three-part *raison d’être* chosen for today’s Law Commission of Canada—living law, pursuing justice, and renewing hope—signals its reimagined form and substance. These are co-existing and intersecting commitments for the Commission as it matures into a stable and strong site for the deep reflection and active engagement associated with meaningful law reform. The vision retains the principal importance of the notion of “living law”, foundational to its younger version. It adds “pursuing justice”, understanding this to be an ongoing endeavour always shared with peers and never limited to law and lawyers. Finally, it includes “renewing hope” to underscore optimism, regrowth, and the promise of paying attention to future generations.

Rebuilt, resituated, and reimagined, the Law Commission of Canada presents itself as an independent agency committed to engaging people across this country in the ongoing and dynamic evolution of law. Its work and contributions will combine research, outreach, and transformation. It looks forward to forging paths and projects shaped by active listening and constant learning, and developed through creative thinking and constructive engagement.



LAW COMMISSION OF CANADA

info@lcc-cdc.gc.ca | <https://www.canada.ca/en/law-commission-canada.html>