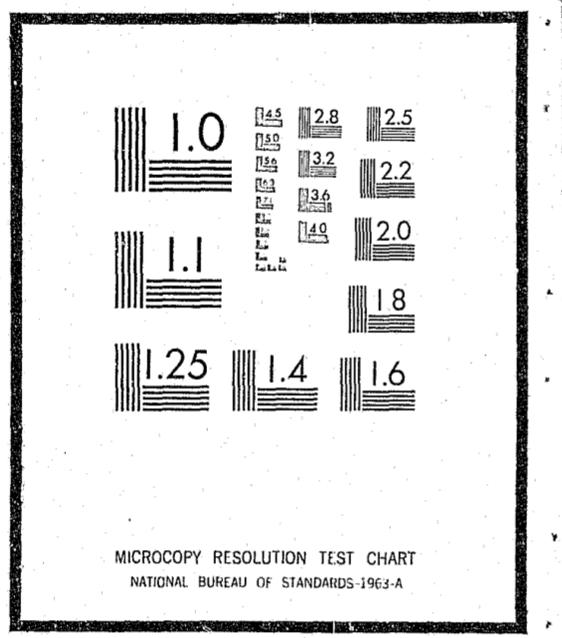


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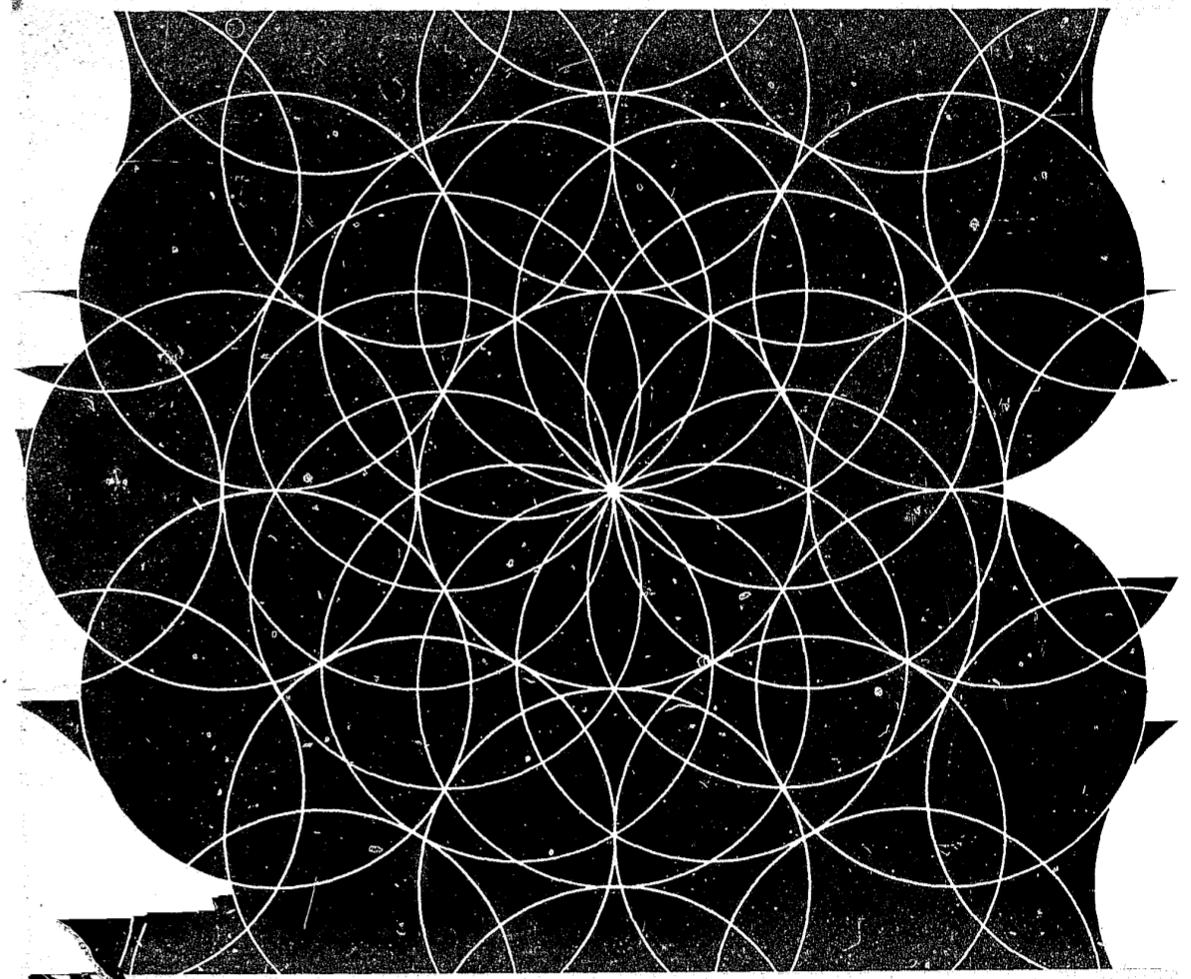
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## Third Annual Report



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LAW REFORM COMMISSION  
COMMISSION DE RÉFORME DU DROIT

THIRD ANNUAL REPORT, 301)  
1974

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ACQUISITIONS

April 1, 1974

The Manitoba Law Reform Commission was established by "The Law Reform Commission Act" in 1970 and began functioning in 1971.

The Commissioners are:

Francis C. Muldoon, Q.C., *Chairman*

R. Dale Gibson

C. Myrna Bowman

Robert G. Smethurst, Q.C.

Val Werier

Sybil Shack

Kenneth R. Hanly

Professor Paul Thomas is Chief Research Officer to the Commission. The Secretary of the Commission is Miss Suzanne Pelletier.

The Commission offices are located at 331 Law Courts Building, Winnipeg, Manitoba.



MANITOBA

LAW REFORM COMMISSION  
COMMISSION DE RÉFORME DU DROIT

To The Honourable Howard Pawley, Q.C.  
*Attorney-General of Manitoba*

### THIRD ANNUAL REPORT

1974

This is the Third Annual Report of The Manitoba Law Reform Commission. This Report describes the Commission's activities during the period from the end of February, 1973 until the end of February, 1974.

#### I. INTRODUCTION

##### The Commission

The Commission was established by "The Law Reform Commission Act" to which Royal Assent was accorded on July 21st, 1970, and which came into force on October 1st, 1970. The statute provides for the Commission to be composed of seven members appointed by the Lieutenant-Governor-in-Council on the recommendation of the minister charged with the administration of the Act. The Honourable the Attorney-General has in fact been the designated minister from the beginning. The statute further provides that the chairman of the Commission is to be appointed for a term not exceeding seven years and the other commissioners are to be appointed for a term not exceeding three years.

Mr. Francis C. Muldoon, Q.C., was appointed by Order-in-Council as a member of the Commission and as its Chairman, effective October 1st, 1970, for a term of seven years. Professor R. Dale Gibson, Mrs. C. Myrna Bowman, Mr. Robert G. Smethurst, Q.C., Mr. Val Werier, Miss Sybil Shack, and Dr. Kenneth Ralph Hanly were re-appointed by Order-in-Council, effective February 12, 1973, to continue as members of the Commission for a further term of one year. Mr. Muldoon is a full-time member and the other Commissioners are part-time members.

Professor Paul Thomas, of the Faculty of Law, University of Manitoba, has served as Chief Research Officer of the Commission since July 1, 1973 during the absence of Professor John M. Sharp on sabbatical leave. Mr. Peter J.E. Cole is the Commission's Research Officer. Miss Suzanne Pelletier is Secretary to the Commission.

The Commission continues to meet regularly at its premises, 331 Law Courts Building, Winnipeg.

#### Functions

Section 5(2) of "The Law Reform Commission Act" requires the Commission to report from time to time to the Attorney-General. From the time of its establishment the Commission has followed the practice of reporting on specific projects in its program as and when the research work on such projects is believed to be fully accomplished and the Commission has formulated its recommendations for legislative action. Sometimes, but rarely, these reports include a draft bill to illustrate the form which, we envisage, the remedial legislation might take. Primarily, however, the Commission is content merely to consult informally with Legislative Counsel, Mr. R.H. Tallin, and his deputy, Mr. A.C. Balkaran, who are unflinchingly helpful.

A list of the Reports which the Commission has submitted from and after the appointment of the full complement of Commissioners in 1971 is Appendix A to this Report.

#### Operational Observations

In our Second Annual Report we expressed the need of full-time research assistance for the Commission. In June of 1973, we were fortunate in securing the services of Mr. Peter J.E. Cole, a recent graduate who is a barrister and solicitor, as a full-time Research Officer. Mr. Cole has performed helpful research for the Commission in our Highway Traffic Act study and in the Commission's studies in family law, particularly in the area of matrimonial property. We were also fortunate in securing the services, as a part-time research assistant, of Mrs. Patricia G. Ritchie who has several years' experience as a practising barrister and solicitor in Winnipeg. Mrs. Ritchie has provided assistance in numerous studies, not the least of which was our Report on Pre-licensing Education for Real Estate Agents in Manitoba.

Over the summer, law students were employed by the Commission. In early spring of each of the past few years, the Legal Research Institute of the Faculty of Law, University of Manitoba, calls for applications from, and interviews, every law student who expresses an interest in summer employment in legal research and writing. These applicants constitute the whole and sole pool of law students acquainted with the laws of Manitoba. We are indebted to the Institute for permitting the Chairman and/or another Commissioner to peruse the applications, attend the interviews and ultimately to retain as summer employees those student applicants who seem most suitable for working in the Commission's programme of studies, and who are interested in our work. During the summer of 1973, we employed a

first-year law student, Mr. Léo Teillet who assisted us in research of various aspects of our contempt of court study, especially in material available to us only in the French language. He also assisted by interviewing consenting prisoners in correctional institutions, who were imprisoned for failure to pay fines. We employed a second-year law student Mr. Wayne Stilling who performed a research survey of statute law and jurisprudence in the matter of contempt of court.

During the past year, a sub-committee of the Commission, consisting of Mr. Muldoon, Mrs. Bowman, Prof. Thomas and Mr. Cole has met on several occasions to identify for the Commission just principles and new concepts of family law, on the subjects of maintenance, custody and disposition of matrimonial property. The sub-committee is producing study papers on these subjects for the internal use of the Commission.

"The Law Reform Commission Act" requires the Commission to meet at least four times in each year but, as in previous years, meetings have been held with almost fortnightly regularity. During the period of this Report our meetings have almost invariably commenced at 3:00 p.m. or 3:30 p.m. and have continued into the evening until either the agenda or the Commissioners were exhausted.

It will be noted that the Commission consists of one full-time member and six part-time members of whom half are lawyers and half are not. Except for one or two instances of illness or absence from the province, attendance at all meetings since the creation of the Commission has been utterly faithful on the part of all Commissioners. Our practice is to circulate study papers and other material for consideration and discussion along with the previous minutes and forthcoming agenda about a week in advance of a scheduled meeting. We realized recently how dependent our operations are upon the Manitoba government postal service which collects all official mail for posting or internal distribution from the Winnipeg Court House. Although posted a week prior to our scheduled meeting on that recent occasion, none of the material was delivered to Commissioners until the day after the meeting. We were gratified to learn that measures are being taken to improve the mail service. That will aid us greatly.

In our practice, all Commissioners actually sign all formal Reports to evince responsibility and usually even solidarity. Informal Recommendations are formulated upon the explicit direction and with the consensus of the Commission as a whole in meeting assembled. So it is that not only the highly important substance, but also the less important form of all of the Commission's recommendations are considered and approved by the Commissioners, subject, of course, to the necessary compromises or dissents which are a common and normal attribute of multiple member deliberations everywhere. In our case, those deliberations frequently involve consideration of outside opinions or empirical research.

The foregoing operational observations make it clear, we believe, that if the Commission's opinion is sought in relation to a matter of priority or urgency, the Commission simply cannot respond within days or frequently even within a few weeks of a reference being made. Because of the manner in which the Commission is constituted by statute and by appointment, it is

not the body from which to seek quick legal opinions. That being so, the wisdom of the provisions of Sections 1(b), 5(1)(e) and 6(2) of the Act, authorizing one particular cabinet minister only (in fact, the Attorney-General) to transmit official government references, is abundantly apparent.

## II. PROGRAMME

The Commission may embark on projects of its own, subject to cost approval by the Attorney-General; and it must undertake, and in specified circumstances accord priority to, any subject referred to it by the minister.

### Completed Projects

#### Formal Reports

Since the tendering of our Second Annual Report, the following consecutively numbered studies were completed and comprised the subjects of formal statutory Reports to the Honourable the Attorney-General.

#### 11. The Advisability of a Good Samaritan Law in Manitoba, dated March 8th, 1973.

This study was referred to us by the Attorney-General in June, 1972. We consulted that wide variety of organizations whose members are called to, or would ordinarily offer assistance at, an accident scene where people are injured. Neither they nor we could discover any incidents in which the courts had pronounced judgments in Canada against those who render emergency aid. Since the law of negligence in this area as defined and enforced by our courts operates satisfactorily, we concluded that no recommendations for reform are warranted.

#### 12. Section 110 of "The Real Property Act" dated April 11th, 1973.

The cited provision of this Act accords an element of immortality to otherwise moribund Manitoba mortgages made pursuant to the Act, by eliminating any limitation period, except as to liabilities under mortgage covenants for payment of money. The provision appears to be unique to Manitoba among the provinces in which the Torrens System of land titles operates. The repeal of the provision was recommended together with a summary means of extinguishing consequentially statute-barred mortgages.

#### 13. Pre-licensing Education for Real Estate Agents in Manitoba, dated December 3, 1973.

It seems apparent that in most real estate transactions in which an agent is involved, the agent is, in a figurative but effective sense, the 'architect' of the transaction. In common, as we discovered, with the Public Utilities Board, we think it would be in the public

interest for all applicants for real estate sales and brokerage registration to qualify for licensing by the successful completion of a practical and comprehensive course of studies. Other than the Maritimes all other provinces in Canada require such pre-licensing qualification.

#### 14. Special, Enduring Powers of Attorney, dated January 8, 1974.

Majority apart, mental capacity is the prime basis of legal capacity. Even though a power of attorney may be validly created, the supervening insanity or other serious mental incapacity of the donor terminates the authority of the attorney. This is precisely the time at which the donor, especially in instances of senile degeneration, most needs the services of a trusted agent. A special enduring power of attorney, with specified safeguards for the security of the donor's estate and terminable by the donor's death is the subject of the recommendations expressed in this Report.

#### 15. The Administration of Justice in Manitoba

##### Part I: The Control of post-arrest/pre-trial detention, dated February 26, 1974.

In most instances the confinement of an arrested person, who is accused of breach of the penal laws, is carried out by the police force by whom the prisoner was arrested. In most cases, then, the accusers have complete dominion over the accused. This is one aspect of the administration of justice in which the rights of the individual can appear to be quite divorced from the spirit and letter of the law. This is so because the confinement of an accused person upon and after arrest is often the crucial pivot-point in the scales of our criminal justice system. It can certainly be crucial to the investigation of alleged breaches of the law, in terms of what the person accused of such breaches chooses to say to the investigators who are holding that person in captivity. It is an event which is invariably crucial to the accused captive, in terms of his or her lawful right to be silent despite close interrogation, and the right, while in captivity, to retain legal counsel. This aspect of the administration of justice provides a significant test of our basic ideas of human dignity and even-handed justice on the part of a self-governing people. It is closely related to the enforcement of the criminal law and to the police powers of the state, both federal and provincial. Because of the ever-present possibility — sometimes transformed into a reality — of abusive police behaviour toward a detained accused for the purpose of obtaining confession, the Commission considers that custodial facilities like court facilities, should everywhere and always be 'neutral territory'. They should be accessible to police investigators, but not under the control of the investigators. Eliminating police authority over places for the detention of arrested people, whether

accused persons or material witnesses, would help to upgrade the image and reputation of police investigators. The transfer of such authority to a neutral custodial force is the subject of the recommendations expressed in this Report.

#### Informal Recommendations

Informal recommendations are designated according to the year in which they are expressed, and by alphabetical sequence in the order of their being forwarded. Thus, those reported last year were designated 2A, 2B, etc. Since the submission of our Second Annual Report the following consecutively designated informal recommendations have been submitted, by letter, to the Honourable the Attorney-General:

- 3A — Recommendation to confer the matrimonial jurisdiction of the Court of Queen's Bench upon a County Court Judge, as a local judge of the Queen's Bench within the Eastern Judicial District, dated March 30, 1973.
- 3B — Recommendation to correct an error of syntax inadvertently made in the 1970 revision of the statutes in regard to the newly formulated Section 51 of "The Queen's Bench Act". This deals with the reception of English law into Manitoba. The original expression was contained in former Section 50 of that Act in one prodigious run-on sentence whose principal virtue lay in the words "except as the said laws and the said rules. . ." modifying the preceding expressions. In the 1970 revision, the run-on provisions of the former Section 50 appear in more comprehensible modules as subsections (1) to (5) of Section 51. However, the partitioning of the former Section 50 has left the provision "except as those laws and those rules. . ." appearing to modify only the preceding expressions of the new subsection (4) to the exclusion of the new subsection (3). The correction could be effected by having that key expression substantially repeated in both subsections (3) and (4), or alternatively the subsections could again be appropriately merged, as legislative counsel deems best; dated September 26, 1973.
- 3C — Recommendation to confer jurisdiction to extend the time for payment of fines upon Provincial Judges other than the one who imposed such fines, by means of (a) an appropriate amendment to "The Summary Convictions Act" affecting only provincial penal statute operations; or (b) persuading the federal Minister of Justice or the Criminal Law Section of the Conference of Commissioners on Uniformity of Legislation in

Canada to recommend amending Sections 646(11) and 722(10) of the *Criminal Code* to the same effect, which would be the better course; dated October 16, 1973.

- 3D — Recommendation to update the Index to the Statutes of Manitoba so as to accommodate in the loose-leaf continuing consolidation all amendments and indices to new Acts enacted since the 1970 revision; dated October 23, 1973.
- 3E — Recommendation to repeal Section 212 of "The Liquor Control Act" which forbids *ex parte* trials of charges under that Act, while such proceedings are permitted under other provincial statutes and, indeed, under Part XXIV of the *Criminal Code*; dated December 19, 1973.

#### Projects in Progress

##### 1. The Highway Traffic Act

Development of this project has proceeded apace since the hiring of our one full-time research officer, Mr. Cole. We expect to be able to submit our formal Report in the near future.

##### 2. Family Law

This is a long-term, on-going project whose enormous importance has not been increased, but has surely been emphasized by the decision of the Supreme Court of Canada in the much publicized case of *Murdoch v. Murdoch*.

During the past year the Commission has established a sub-committee to develop principles for reform in the concepts of the spousal maintenance obligation and disposition of family property. The sub-committee consists of: one of the Commissioners, Mrs. Bowman; the Chairman, Mr. Muldoon; our Chief Research Officer, Prof. Thomas; and our Research Officer, Mr. Cole. It has produced study papers for consideration by the Commissioners from which we expect to develop a Working Paper for public comment and criticism, and in all likelihood we shall be retaining a project director and assistants to aid the Commission in developing final reform proposals.

During the past year, as early as March 30th, 1973 when the idea was conceived by us and partly formulated in our informal recommendation 3A and again with more detail in October, we recommended to the Attorney-General that federal cooperation should be sought in establishing an integrated (but not exclusive) family Court in Manitoba as a pilot project. We recommended that this proposed experimental family Court be presided over by judges appointed by the Governor-General of Canada pursuant to Section 96 of *The B.N.A. Act* so that its jurisdiction to adjudicate

all family related disputes would be unquestioned. In fact, in order to provide a circumscribed and readily monitored operational test, we recommended that the pilot project be conducted in a Manitoba County Court. That is to say, the designated County Court would hear and determine all divorce cases and all separation, child custody, family maintenance, adoption, guardianship and partition and sale of property cases which would arise within its district. Such integrated jurisdiction alone would require a 'Section 96' judge as of course would the necessary ancillary but original jurisdiction in injunction, *habeas corpus*, and other prerogative remedies. For the purpose of actually testing the concept for the first time in Canada, however, it would not be necessary to create a special division of the province's superior court, because a County Court is already an administrative integrity. We suggested a competent conciliation service be appended to the pilot project court so that a full sequence of (1) reconciliation, if desired; (2) conciliation, if possible; and (3) adjudication, if necessary, would be available to persons who suffer family problems with legal ramifications. As with most public or private disputes in a civilized society, the ultimate, if not always the most satisfactory, solution is a judicial resolution of the dispute according to the law of the particular society. Although a test court actually functioning in a circumscribed area would, if the population were a typically Canadian blend of ethnology and life-style, be usefully monitored, yet it would be no test at all if it depended on the performance of one judge alone. We therefore suggested the County Court of St. Boniface for the pilot project. The territorial jurisdiction is circumscribed; the resident population is a kind of microcosm of the population of Canada at large; and additional County Court Judges are readily available west of the Red River in Winnipeg. We have specifically refrained from recommending that the proposed pilot project be conducted on the basis of exclusively specialized family law jurisdiction: we consider that the test would be more realistic and practical if the family law jurisdictional ingredients were *added* to the Court's present county court jurisdiction. The calls for specialized courts arise in the fields not only of family law, but also of administrative law, commercial law, criminal law and others. Our observations lead us to conclude that the quality of justice dispensed by a judge of broad jurisdiction is generally higher than that dispensed by a judge of 'tunnel' jurisdiction. After all skilful attempts at reconciliation and conciliation, if people still are to have their disputed rights and responsibilities determined according to law, the ultimate disposition must be judicial — compassionate, understanding, prudent and alert, but above all judicial.

After public release of our pilot project proposal by the Honourable the Attorney-General in mid-January 1974, we communicated it to the Law Reform Commission of Canada, the

Alberta Institute of Law Research and Reform and the British Columbia Royal Commission on Family and Children's Law headed by the Honourable Mr. Justice Thomas R. Berger. The proposal has evoked interest among those bodies and an expression of support from the Law Reform Commission of Canada. Toward the end of February, 1974, the federal Commission's Working Paper I entitled *The Family Court* was issued, and we noted that, except for the doubts expressed in it about county court jurisdiction and the call for an exclusively specialized bench, the concepts and recommendations are virtually identical with our own. Indeed, we think that our proposed pilot project is exactly the kind of test suggested in *The Family Court*, and that it would be an extremely apt model for the integrated family tribunal proposed in that Working Paper.

In regard to our proposed pilot project, we have interested the Manitoba Family Law Subsection of the Canadian Bar Association in undertaking, as a project of its own, the identification of the specific jurisdictional ingredients needed to be conferred by both Parliament and the Legislature upon the pilot project family court.

### 3. Contempt of Court

Since our last Annual Report we have undertaken, with the Honourable the Attorney-General's statutory approval, a joint study of this subject with the Law Reform Commission of Canada. Our Project Director is Mr. Paul V. Walsh, a Winnipeg lawyer. Under his direction we engaged the services of Mr. Wayne Stilling, a law student, to research the voluminous common law jurisprudence on this subject. Our other summer student assistant, Mr. Léo Teillet, performed for the project some needed translation of statute law and jurisprudence expressed in French. Mr. Walsh has developed some general principles in a study paper which is to be further developed by a judicial study group who have kindly agreed to aid the project. We have the advantage of a study paper produced by a similar judicial study group convened by the federal Commission. Although complete unanimity is not essential, we are sanguine about the possibility of producing basically identical recommendations for reform from this joint study with the Law Reform Commission of Canada.

### 4. Mechanics' Liens

Our project directors, Prof. A.B. Bass and Mr. John T. McJannet, after considerable study, research and consultation within and outside the province have produced a series of recommendations which will be reviewed with our project directors by the Commission at our next few meetings. After that process a Working Paper will be prepared and circulated for comment.

## 5. Administrative Procedures

As reported in our previous Annual Reports, our Project Director has undertaken to develop rational reform proposals in this important matter. We have, to date, received the first two of five chapters of his expected paper. This project was referred to us as a high priority item by the Attorney-General in May of 1971, although in much narrower terms than we expect to develop it. We are profoundly disappointed in the lack of production in this project. We have therefore decided to terminate our arrangement with our project director and to secure the services of some other competent replacement as soon as possible.

## 6. Definition of Death

Continuing consultation with members of the medical and legal professions and with hospital administrators has revealed that this project is well conceived. A formal Report is expected in the near future.

## 7. The Rule in *Saunders v. Vautier*

The rule, which relates to the enforcement of trusts, for the accumulation of income in which no person has any interest but the legatees, is not of high impact in today's society. We have various comparative jurisprudential and tax implication studies on the subject. Other more pressing concerns have kept this matter off our fortnightly agenda for some time. We shall attempt to formulate recommendations either for constructive change or for leaving the matter unchanged as and when time permits.

## 8. Purchase of Houses and *Caveat Emptor*

We have circulated a second, more specific Working Paper on this subject. It has generated considerable interest in the news media and among the public. Many representations have been made by purchasers outlining their woes to the Commission. Institutional responses have been promised by, and are expected from, builders, mortgage lenders, real estate sales groups, trust companies and others. Depending on the number and comprehensiveness of those expected responses, the Commission may consider further elaboration at public hearings, although the utility of such events is erratic and no real substitute for articulate, carefully thought-out written responses. The Commission will act upon this project proposal, in light of the responses as quickly as possible given the exigencies of our composition and meeting schedules.

## 9. Extension of "*The Unconscionable Transactions Relief Act*" Concept to Other or All Contracts

New material demonstrating the application of this concept in New South Wales for many years in the field of industrial contracts of work has come to hand. The judicial technique of

avoidance of harsh and unconscionable contracts clearly stems from equitable principles which seem to be moribund and little invoked in Manitoba today. One may wonder why these principles which provide apt instruments of justice are so rarely raised or applied. Perhaps knowledge of, and familiarity with, the body of equitable principles has diminished among the members of the bar and the bench, or perhaps those principles seem irrelevant in a world of commercial transactions now somewhat policed by consumer protection bureaux operating under recent legislative enactment. Some folk are of the opinion, an opinion shared at least historically by the bench itself, that judges are not the persons to be revising people's 'sacred' contracts. The experience in New South Wales seems to indicate that superior court judges acting as industrial commissioners rise quite well to the challenge of doing substantial justice for the parties to a contract of work found to be harsh or unconscionable. One could hardly expect less of Manitoba judges! Recommendations in this area, though they may appear to some as radical in substance, will have to be cautiously formulated. The subject requires further study.

## 10. Computer Selected Sums in Manitoba Statutes

This Report will soon be submitted to the Honourable the Attorney-General.

## 11. The Legal Status of Trans-sexual Persons

The designation of an appropriate, professionally qualified gender identity group with legal status, and upon whom the Recorder of Vital Statistics could officially rely for information, is an as yet unresolved problem in this relatively low priority project.

## 12. Simplification of Residential Mortgage Forms

We have, during the past year, attempted to recruit a number of persons who enjoy both practical and academic knowledge of the subject to be our project director, but without success, to date. We have discovered some who are intrigued by the subject, but intimidated by the time commitment despite the prospect of reasonable remuneration. We hope to have the project afoot in the next several months.

## 13. Alternatives to Jail - Fines and Other Correctional Measures

During the summer of 1973 most prisoners in provincial correctional institutions, who were (1) willing to be interviewed, (2) not out in a work camp, and (3) were imprisoned for non-payment of a fine, were interviewed by research persons employed by the Commission on the assurance that they would not be personally identified in any study paper or published material. We have also conducted an extensive survey of other jurisdictions' penal provisions and practices. Much of the

interviewing and legal research was conducted by our summer student assistant, Mr. Léo Teillet, under the supervision of Prof. Thomas. Proposals for reform are being prepared for the Commission's consideration by two Commissioners, Dr. Hanly and Mr. Werier.

#### 14. Administration of Justice — "The Jury Act"

A series of proposals for reform of jury procedures has been developed from our previous researches by Prof. Thomas. The Commission is presently considering the proposals and ought soon to be able to submit a formal Report on this aspect of the administration of justice.

#### 15. A Bill of Rights for Manitoba

The Commission has been fortunate in engaging the services of Prof. Walter Tarnopolsky of Osgoode Hall and author *inter alia* of the well known scholarly opus entitled *The Canadian Bill of Rights*. Prof. Tarnopolsky will be presenting his initial proposals to the Commission in April, 1974. They will deal specifically with our terms of reference on this project which was referred to us by the Honourable the Attorney-General in February, 1973.

#### 16. The Elections Act

This subject was referred to us by the Honourable A.H. Mackling, Q.C., on July 16, 1973. We immediately sought the opinions and experiences of all candidates and all returning officers who took part in the 1973 provincial general election. We have invited, as well, the comments of the major political parties and of the public at large. While the election proceedings were still fresh in mind, our requests yielded a large number of responses. We are presently conducting a legal research survey of electoral procedures in other democratic states, and principally the parliamentary democracies.

#### 17. Mental Health Laws

The Commission initiated a study of mental health laws, with emphasis on compulsory examination and treatment provisions, since mention of this project was made in our last Annual Report. The delicate problem is to balance the protection aspects of such legislation as against the civil liberties aspects. It seems unfortunate to us, at this stage of our consideration, that a person should have to submit, even to psychiatric examination, not to consider treatment, without first having an opportunity to persuade a judge that the examination is neither necessary for the individual nor in the public interest, if such be that person's attitude. A departmental proposal for certain amendments to the statute was referred to us in the midst of our study, and we have considered it together with the other material which we have.

#### 18. Exemptions — Garnishment, Judgments and Executions

This subject was referred to us by the Honourable Howard Pawley, Q.C., on December 20, 1973. Mrs. Ritchie and Mr. Cole have been researching not only the legislation of other provinces and states, but also the often conflicting interpretations of legislation within our own and other provinces. This project is on a current footing.

#### 19. Other Projects

Another project which the Commission has proposed relates to review of the statutory and contractual provisions, practices and jurisprudence of fire insurance in Manitoba. To the close of the period covered by this Report, we have not received the Attorney-General's approval under Section 6(4) of "The Law Reform Commission Act". We consider the matter of importance because in view of the complexity of insurance policy provisions and statutory conditions, an insured's expectations of the coverage bought can often exceed the reality. The overlay of jurisprudence which frequently masks the apparent operation of statutory provisions needs rationalization for clarity's sake.

It will be noted that review of "The Mental Health Act" which was mentioned under this general heading of 'other projects' in our last Annual Report has been added to our list of specific studies. At the suggestion of the Attorney-General, we shall be considering the impact, if any, of the recent case of *Re Broadway Enterprises Ltd.* on minority shareholders' rights.

### III. TECHNIQUES OF PROGRAMME FULFILLMENT

#### Research

The Commission has benefitted from the engagement last summer of a full-time research officer and a part-time research assistant. The lack of such personnel last year, together with the serious illness of Prof. Sharp (whose recovery gave us joy) caused a hiatus in the Commission's production of formal Reports. We anticipate much enhanced performance in the forthcoming year.

The situation regarding research materials remains felicitous. We gratefully acknowledge the kindness and prompt cooperation we receive at the Law Society's Great Library, the E.K. Williams Library at Robson Hall and the Provincial Library.

The Commission has not acquired an extensive library for its own use, because our premises in the Winnipeg Court House are 'just down the corridor' from the Law Society's Great Library. This, we suggest, is a factor which should be borne in mind by those who are charged with the responsibility of allocating space in the Court House consequent upon the forthcoming completion of the new office building on the east side of Kennedy Street. The judiciary and this Commission, among all of the present occupants of the Court House, are the only constant users of the Great Library.

## Consultation

We continue to engage in widely cast canvasses of public opinion through newspaper ads, as well as the consulting of various labour, business, voluntary and professional interests in the community in specific instances. The Commission continues to believe in a multifarious process of consultation.

Another belief, stated in our Second Annual Report, 1973, is that all who are interested in law reform should be enabled promptly to learn what recommendations for reform this Commission is submitting to the Attorney-General from time to time. Since that Second Annual Report we have maintained our agreement with Hon. Howard Pawley, Attorney-General, for free release of all the Commission's Reports and Recommendations to the media one month after submission to the Attorney-General.

Suggestions for reform are being received from individual members of the public, the Bench and the Bar, and are always welcome. Sometimes they find a place in current or prospective projects. Some suggestions may have to be 'stored' for a future project. From time to time it is apparent, a suggestion can be forwarded directly to the Attorney-General for consideration or perhaps referred to a sub-section of the Bar Association for its view. The Commission has, for example, requested the Bar to express an opinion on avoidance of costs on the part of unindebted persons in deflecting inapplicable liens in the Land Titles Offices, which liens are registered against persons of the same or similar names; and to express views on the legal recognition of so-called action groups, so that people without a strict legal standing could take action relating to matters such as the environment and products liability, for example. Thus far, for whatever reasons, Bar organizations have not proved to be helpful in these matters.

In further effort to familiarize the public with the work of the Commission the Chairman almost invariably accepts public speaking invitations which are non-partisan and otherwise convenient. Likewise, invitations to discuss law reform at large or in detail on radio or television broadcasts are rarely declined by the Chairman or other Commissioners.

## IV. LIAISONS WITH OTHER ORGANIZATIONS

### Other Law Reform Bodies

All law reform agencies with whom we have contact have been most cordial and helpful to us. It makes abundant good sense to us to take full advantage of the work which has been, and is being, done by other law reform bodies in Canada, and abroad. Indeed, Section 6(1) of "*The Law Reform Commission Act*" clearly provides that the Commission may

... in its discretion and with the concurrence of the minister undertake any study pursuant to its duties as a joint project of the commission and any one or more other law reform commissions, agencies or bodies in Canada or elsewhere, and enter into such

contractual or other joint project, including arrangements for the provision of personnel or other resources of the commission to any such commission, agency or body.

This is a two-way street. As and when study papers are released to us by other law reform bodies with an invitation to comment, the Commission regards it as an important obligation to cooperate and, when possible, to respond. The effort to respond, we think, is particularly important in relation to proposals of the Law Reform Commission of Canada. Because the laws of other provinces may vary significantly from Manitoba's the proposals for the reform of those laws do not always generate an urgent call for response on our part. However, the proposals for reform of the federal laws of Canada relate to laws which are in force in Manitoba as well as in the rest of the country and, thus, those proposals in particular claim our attention. By way of example, we mention our study of, and response to, the Law of Evidence paper, dealing with The Compellability of the Accused and the Admissibility of his Statements which was circulated by the Law Reform Commission of Canada during the spring of 1973. Further reference to this task is made later in this Report in regard to the Commission's liaison with the legal profession.

The Commission enjoys a close relationship with the Conference of Commissioners on Uniformity of Legislation in Canada in that Mr. Muldoon and Mr. Smethurst are two of the Manitoba Commissioners in this organization. The Conference provides a body of useful material which is, of itself, the substance of law reform.

The Commission has generally kept in contact with other law reform bodies in Canada and some others in the Commonwealth, and we have enjoyed cordial cooperation with them. We note specially the prompt help on our *caveat emptor* paper we received from the British Institute of International and Comparative Law, through its Commonwealth Legal Advisory Service and in particular Mr. H.H. Marshall, C.M.G., Q.C. Once again we are indebted to H. Allan Leal, Q.C., the distinguished Chairman of the Ontario Law Reform Commission, for his kind help to us during his visit to Winnipeg as a guest lecturer at Robson Hall late in February. Dean Wilbur Bowker, Q.C., Director of the Alberta Institute of Law Research and Reform, has also accorded us numerous helpful services for which we are grateful.

Among our distinguished visitors during the past year, we were delighted to receive Mr. Justice E. Patrick Hartt and Mrs. Hartt in early November. We gained much from the opportunity of discussing subjects of mutual interest in general and the integrated family court in particular with the esteemed Chairman of the Law Reform Commission of Canada. In February we were honoured by a visit from another member of the federal Commission in the person of Dr. J.W. Mohr. We were also graced by a visit of the newly appointed Chairman of the Law Reform Commission of Saskatchewan, Mr. Brian A. Grosman and Mrs. Grosman. It was also our pleasure to receive at the Commission's premises Mr. Robert Watt, Secretary of the Law Reform Commission of New South Wales, Australia.

### Liaison with the Legal Profession

The Chairman of this Commission continues to be an invited member of the Manitoba Council of the Canadian Bar Association. The Commission highly esteems this gracious gesture and especially because of the opportunity it affords for closer collaboration with the Manitoba Branch of the Canadian Bar Association in our mutual interest and work in law reform.

The Council of the Manitoba Bar Association held a mid-winter meeting at Minaki Lodge, Ontario, on the weekend of February 15th-17th, 1974. Three Commissioners, Mrs. Bowman, Prof. Gibson and Mr. Muldoon attended to participate in a discussion on the subject "What's Right/What's Wrong - with the Administration of Justice in Manitoba?" Mr. Muldoon served as Chairman of a panel and of the ensuing discussion in which attending members of the Bar participated. The panel members were: A.H. Mackling, Q.C. former Attorney-General of Manitoba; Myrna Bowman; D'Arcy Bancroft, a practitioner in The Pas; George Lockwood, a practitioner and member of the Legal Aid Board; and Rae Tallin, Legislative Counsel. Topics explored by the panel and in the discussion were: The structure and number of our courts; the need for and potential proliferation of specialized courts and administrative tribunals; the question of civil trial by jury; the control of police behaviour; the need for reciprocity in the enforcement of maintenance and custody orders; the provision of judicial services to northern Manitoba; and the separation of provincial judges courts from police facilities.

Collaboration with members of the legal profession continues. In our consideration of the fifth paper of the Law Reform Commission of Canada's Law of Evidence project, we enlisted the assistance of Mr. G. Greg Brodsky and Mr. David E. Bowman, both barristers of Winnipeg. These gentlemen were of great help to the Commission in formulating our response to the Law of Evidence Paper.

Finally we must express appreciation to the President and Benchers of the Law Society of Manitoba, and particularly its Secretary, Mr. Harold St. Geo. Stubbs, Q.C., for his many courtesies to the Commission.

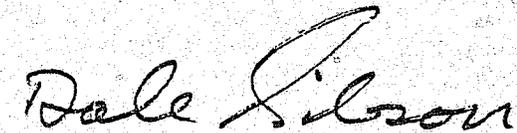
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The Commission appreciates the general supportiveness it receives from the Honourable the Attorney-General, Howard Pawley, Q.C., and his Deputy, Gordon E. Pilkey, Q.C. We mention also, the cooperation of Mr. J.A.D. Graham, Assistant Deputy Minister in charge of administration for the Attorney-General's department. During the past year, G.R. Goodman, Q.C., was appointed Associate Deputy Minister responsible *inter alia* for liaison with this Commission. We look forward to cordial relations with Mr. Goodman.

Signed this 1st day of April, 1974.



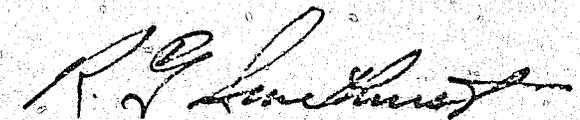
F.C. Muldoon, Chairman



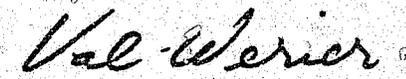
R. Dale Gibson, Commissioner



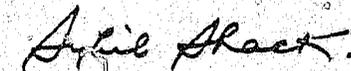
C. Myrna Bowman, Commissioner



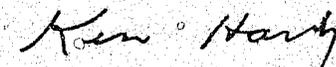
R.G. Smethurst, Commissioner



Val Werier, Commissioner



Sybil Shack, Commissioner



Kenneth R. Hanly, Commissioner

APPENDIX A

REPORTS OF THE MANITOBA LAW REFORM COMMISSION

Subject	Date Submitted	Recommendations Implemented by
#1 Jury Service for Registered Indians	April 7, 1971	An Act to Amend the Jury Act, S.M. 1971, cap. 32 Royal Assent July 27, 1971
#2 Summary Disposition of Builders' and Workmen's Liens	April 13, 1971	—
#3 Disposition of Maintenance Judgments in Land Titles Offices	May 25, 1971	An Act to Amend The Judgments Act, S.M. 1972, cap. 4, Royal Assent May 9, 1972
#4 "An Act Respecting Billiard and Pool Rooms" Proposed Repeal	October 19, 1971	—
#5 Recommended Right of Mortgagors to Obtain Annual Statements	October 19, 1971	An Act to Amend The Mortgage Act, S.M. 1972, cap. 28, Royal Assent July 6, 1972
#6 Enactment of a Mineral Declaratory Act	December 20, 1971	The Sand and Gravel Act, S.M. 1972, cap. 34 Royal Assent July 6, 1972 An Act to Amend The Mines Act, (sec. 11), S.M. 1972, cap. 70, Royal Assent July 20, 1972 An Act to Amend The Real Property Act (secs. 15 and 16) S.M. 1972, cap. 37 Royal Assent July 6, 1972
#7 Powers of Entry, Search and Seizure in The City of Winnipeg Act	January 24, 1972	An Act to Amend The City of Winnipeg Act (secs. 26, 37, 68, 69, 89 and, in part secs. 38, 39 and 63) S.M. 1972, cap. 93 Royal Assent July 20, 1972
#1A Auto Engine Numbers in Section 11 of "The Bills of Sale Act"	May 11, 1971	The Statute Law Amendment Act (sec. 3) S.M. 1972, cap. 81, Royal Assent July 20, 1972
#1B (a) Prospect of Mortgagors' Relief from Provisions of Sec. 20(6) of "The Mortgage Act"	December 29, 1971	(change not recommended)
(b) Right to have Mortgage Discharged upon payment in full after 5 years	December 29, 1971	—

Subject	Date Submitted	Recommendations Implemented by
#1C Amending provisions as to costs in Part II of "The County Courts Act" to avoid inconsistency with intent of this new legislation	January 12, 1972	An Act to Amend "The County Court Act", S.M. 1972, cap. 38, Royal Assent July 6, 1972
First Annual Report, 1972	March 13, 1972	(not applicable)
#8 Section 45 of the Offences Against the Person Act, 1861	July 27, 1972	An Act to Amend "The Tortfeasors and Contributory Negligence Act", S.M. 1973, cap. 13 Royal Assent May 25, 1973
#9 A Review of "The Privacy Act" with proposed amendments to the Criminal Code of Canada	September 11, 1972	(change not recommended)
#10 The Abolition of Inter-spousal Immunity in Tort	December 19, 1972	An Act to Amend "The Married Women's Property Act", S.M. 1973, cap. 12; An Act to Amend "The Tortfeasors and Contributory Negligence Act", S.M. 1973, cap. 13; An Act to Amend "The Criminal Injuries Compensation Act", S.M. 1973, cap. 23, Royal Assent May 25, 1973
#2A Comments on draft Bill to Amend "The Jury Act"	April 21, 1972	An Act to Amend "The Jury Act" (in part) S.M. 1972, cap. 56, Royal Assent July 11, 1972
#2B Relaxation of Limit of Number of Trustees under "The Trustee Act"	June 22, 1972	An Act to Amend "The Trustee Act" S.M. 1972, cap. 60, Royal Assent July 11, 1972
#2C Uniformity of Definition of Age as between "The Age of Majority Act" (Man.) and the Criminal Code and The Interpretation Act (Can.)	August 14, 1972	(not applicable for provincial amendment)
#2D Automatic Attachment of Wages for Maintenance Orders	November 27, 1972	—
Second Annual Report, 1973	March 20, 1973	(not applicable)
#11 The Advisability of a Good Samaritan Law	March 8, 1973	(change not recommended)

Subject	Date Submitted	Recommendations Implemented by
#12 Sec. 110 of "The Real Property Act" — the immortal Manitoba mortgage	April 11, 1973	—
#13 Pre-licensing Education for Real Estate Agents in Manitoba	December 3, 1973	—
#14 Special Enduring Powers of Attorney	January 8, 1974	—
#15 Control of post-arrest pre-trial detention	February 26, 1974	—
#3A Conferring of matrimonial jurisdiction upon a County Court judge as a local judge of the Queen's Bench within the Eastern Judicial District	March 30, 1973	—
#3B Correcting recent error in sec. 51 of "The Queen's Bench Act"	September 26, 1973	—
#3C Conferring jurisdiction to extend time for payment of fines upon provincial judges other than those who imposed such fines	October 16, 1973	—
#3D Up-dating index to the statutes of Manitoba	October 23, 1973	Indexing commenced
#3E Repeal of sec. 212 of "The Liquor Control Act"	December 19, 1973	—

**END**