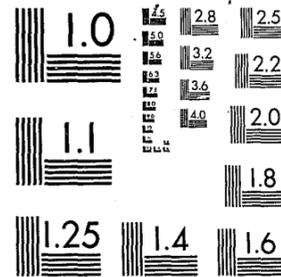


National Criminal Justice Reference Service



This microfiche was produced from documents received for inclusion in the NCJRS data base. Since NCJRS cannot exercise control over the physical condition of the documents submitted, the individual frame quality will vary. The resolution chart on this frame may be used to evaluate the document quality.



MICROCOPY RESOLUTION TEST CHART  
NATIONAL BUREAU OF STANDARDS-1963-A

Microfilming procedures used to create this fiche comply with the standards set forth in 41CFR 101-11.504.

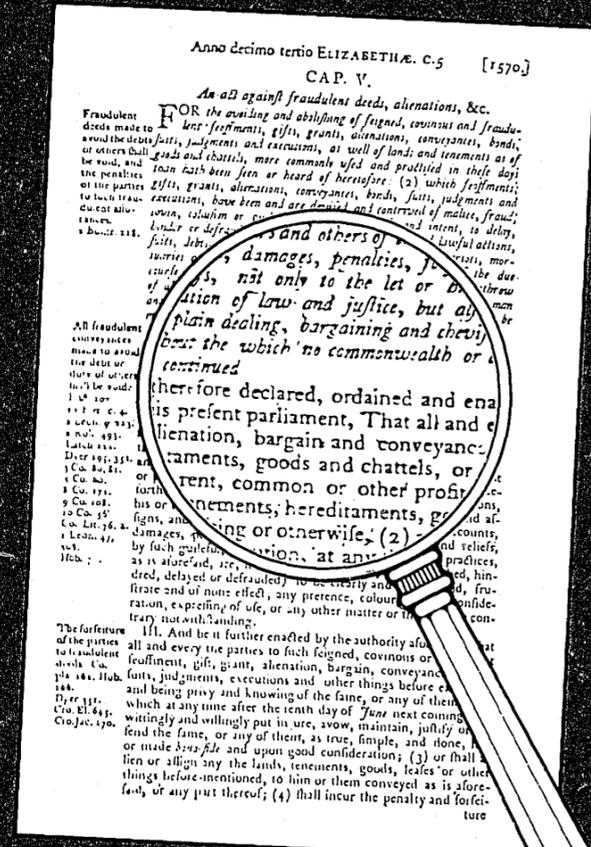
Points of view or opinions stated in this document are those of the author(s) and do not represent the official position or policies of the U. S. Department of Justice.

National Institute of Justice  
United States Department of Justice  
Washington, D. C. 20531

DATE FILMED

12/01/81

78789



**YEARLY REVIEW  
1980**

**Law Reform Commission of Saskatchewan  
Saskatoon, Saskatchewan**

**April, 1981**

**NCJRS**

**JUN - 1 1981**

**ACQUISITIONS**

U.S. Department of Justice 78789  
National Institute of Justice

This document has been reproduced exactly as received from the person or organization originating it. Points of view or opinions stated in this document are those of the authors and do not necessarily represent the official position or policies of the National Institute of Justice.

Permission to reproduce this copyrighted material has been granted by  
Law Reform Commission of Saskatchewan

to the National Criminal Justice Reference Service (NCJRS).

Further reproduction outside of the NCJRS system requires permission of the copyright owner.

The Law Reform Commission of Saskatchewan was established by *An Act to Establish a Law Reform Commission* proclaimed in November, 1973, and began functioning in February of 1974.

The Commissioners are:

PROFESSOR RONALD C. C. CUMING, B.A., LL.B., LL.M.,  
*Chairman*

MR. GEORGE J. D. TAYLOR, Q.C.

MS MARJORIE A. GERWING, B.A., LL.B.

Kenneth P. R. Hodges is the Research Director.

The Legal Research Officers are Harris Wineberg and Michael J. Finley. The secretaries are Sandra Ritchie and Pat Harasymchuk.

The Commission offices are located at the Sturdy-Stone Centre, 122 Third Avenue North, Saskatoon, Saskatchewan, S7K 2H6.

ISSN 0701-6948

## TABLE OF CONTENTS

Objectives of the Commission .....	5
Description of the Programs and Activities carried out during 1980 .....	6
1. Family Law Project .....	6
2. Consumer Credit Project .....	6
3. Provincial Offences Project .....	7
4. Occupiers' Liability Project .....	7
5. Medical-Legal Project .....	7
6. Administrative Law Project .....	7
7. The English Statutes Project .....	7
8. The Limitation of Actions Act Project .....	8
9. Frustrated Contracts Project .....	8
10. Sale of Goods Act Project .....	8
11. Products Liability Project .....	9
12. Guest Passenger Legislation .....	9
13. Real Property Law .....	9
14. Other Projects .....	10
15. Other Activities .....	10
Final Reports to the Attorney General in 1980 .....	11
1. Proposals for a Consent of Minors to Health Care Act .....	11
2. Proposals for an Occupiers' Liability Act .....	11
3. Proposals for a Definition of Death Act .....	12
Plans for the Year 1981 .....	13
Personnel .....	15
Law Foundation .....	15
Other Law Reform Organizations .....	15
Publications .....	16
<i>The Law Reform Commission Act</i> .....	17

#### NOTE

This is a review of the activities of the Commission throughout 1980, a synopsis of the final reports made to the Attorney General during the year, and a brief outline of the Commission's plans for 1981. This publication replaces the annual reports previously published each year, the last one being the Sixth Annual Report 1979.

## OBJECTIVES OF THE COMMISSION

*The Law Reform Commission Act* provides that:

"The commission shall take and keep under review all the law of the province, including statute law, common law and judicial decisions, with a view to its systematic development and reform, including the codification, elimination of anomalies, repeal of obsolete and unnecessary enactments, reduction in the number of separate enactments and generally the simplification and modernization of the law, and for that purpose shall:

- (a) receive and consider any proposals for the reform of the law that may be made to it by the Attorney General;
- (b) prepare and submit to the Attorney General from time to time programs for the examination of different branches of the law with a view to their reform and shall recommend that an agency, whether the commission or a committee thereof or other body, carry out the examination;
- (c) undertake, at the request of the Attorney General or pursuant to recommendations of the commission approved by the Attorney General, the examination of particular branches of the law and the formulation, by means of draft bills or otherwise, of proposals for reform therein;
- (d) enter into agreements, with the approval of the Attorney General, with other organizations for law reform for the purposes of attaining the aims of the commission." R.S.S. 1978, c. L-8, s. 6.

The Commission's role is to review provincial law objectively and to assess criticisms of a significant nature directed by the public from time to time against particular legislation and aspects of the common law.

Topics for the Commission's research program are brought before meetings of the Commission for consideration. These topics may originate on recommendation from the Attorney General, from the Commission and its staff, from the judiciary, from the legal profession, from other professional organizations, or from the public generally. If a proposal for law reform originates from sources other than the recommendation of the Attorney General, the Commission considers the proposal and, if it feels the proposal is one which requires research and report to the Attorney General, it will propose to the Attorney General that such research be undertaken. Once the consent of the Attorney General is obtained, a research program is instituted which culminates in a report to the Attorney General.

All research undertaken is closely supervised by the Chairman and Research Director. Much of the research is done by the Commission's full-time staff. Many projects, however, require substantial outside consultation and expertise.

Consequently, the Commission relies to some extent for research personnel on the academic staff of the College of Law of the University of Saskatchewan and elsewhere. Legal practitioners also act as consultants from time to time and give to the Commission a practical assessment of possible recommendations for legislative and procedural change. The participation of practising lawyers is being facilitated through financial assistance provided by the Law Foundation of Saskatchewan.

Once the research study in a particular project is completed, the matter is placed before the Commission for discussion and consideration. The Commission may decide to prepare background papers, or more likely papers in the form of tentative proposals, for circulation to the public in order to obtain criticism and comment prior to the preparation of a final report. This may entail public meetings, hearings and workshops over a period of time. After public comment has been assessed, the Commission's recommendations are embodied in a final report to the Attorney General. This report may contain general recommendations, specific legislation or drafting instructions suggesting the form of legislation which will best implement the recommendations of the final report.

# DESCRIPTION OF THE PROGRAMS AND ACTIVITIES CARRIED OUT DURING 1980

The programs and activities carried out during 1980 to a very large extent are a continuation of projects commenced from time to time beginning in 1974. Many of the projects are extensive in scope and involve research in a number of areas of law.

## 1. Family Law Project

The Commission, with the consent of the Attorney General, initiated a research project on family law in June of 1974.

In 1974 the Commission issued a background paper entitled "Family Maintenance Between Husband and Wife". Shortly thereafter a background paper entitled "Children's Maintenance" was released.

Two papers were completed in 1979: (1) "Tentative Proposals for Custody Law Reform, Part I: Substantive Law", and (2) "Tentative Proposals Relating to the Civil Rights of Children". A third paper entitled "Tentative Proposals for Custody Law Reform, Part II: Procedures and Support Services" was released in 1980.

Work in the area of maintenance and *The Married Persons' Property Act* is now being completed by members of the Commission staff. As well, the services of Professor Margaret Hughes of the College of Law, University of Saskatchewan, have been engaged to complete the work on illegitimacy which was commenced some time ago.

The Commission has undertaken to review *The Homesteads Act* and to consider whether or not the protection afforded by the *Act* is needed, and if so, whether or not it should be available to a husband as well as a wife. It is expected that the services of a consultant will be engaged early in 1981 with a view towards having a report released by the end of 1981.

## 2. Consumer Credit Project

The study of consumer credit law in Saskatchewan and proposals for reform of it is a part of the overall study of personal property security law in Saskatchewan. The Commission decided that proposals for the reform of basic chattel security law should be developed first, since the structure and terminology of a totally reformed personal property security law system would necessarily be part of the reform of consumer credit law. Pursuant to this approach, a final report titled "Proposals for a Saskatchewan Personal Property Security Act" was issued in July 1977.

*The Personal Property Security Act* which stems from the proposals was enacted by the Legislature in 1980. It is expected that it will be proclaimed in 1981.

The Consumer Credit Project is well underway and the following paper was released in 1980: "Tentative Proposals for a Consumer Credit Act, Part I: Background and Underlying Considerations, Part II: Statistics". A second paper entitled "Tentative Proposals for a Consumer Credit Act, Part III: Secured Consumer Credit Transactions, Summary of Recommendations" will be issued early in 1981. Further research is presently being considered for the following areas:

- Credit Grantor Responsibility for Defects in Merchants' Performance Obligations;
- Unsecured Collection Remedies;
- Extra-Judicial Debt Collection Practices;
- Credit Insurance;
- Enforcement of Credit Consumer Rights;
- Disclosure;
- Credit Reporting;
- Discrimination in Credit Granting;
- Consumer Education.

As the study progresses, it may be necessary to add to this list or consolidate two or more items into a single paper.

The Chairman of the Commission, Professor Ronald C. C. Cuming, is in charge of this project and has been continuing work thereon throughout 1980. He has been assisted by Professor Russ Buglass, College of Law, University of Saskatchewan; Professor Margaret Crowle, College of Home Economics, University of Saskatchewan; and Professor Rose Olfert, Department of Economics and Political Science, University of Saskatchewan. During the summer Mr. Glen Luther, student-at-law, also worked on the project.

## 3. Provincial Offences Project

A study of the doctrine of strict liability has been completed and a report entitled "Tentative Proposals for Defences to Provincial Offences" will be released early in 1981.

Consideration is now being given to the possibility of preparing reports on provincial summary offences procedures, the rationalization of penalties under provincial statutes, and sentencing options including discharges and suspension of sentences under provincial law as well as the feasibility of gearing fines to income.

## 4. Occupiers' Liability Project

In the fall of 1976 the Commission, with the consent of the Attorney General, initiated a study of occupiers' liability law in Saskatchewan with a view to reform. Professor Daniel Ish of the College of Law, University of Saskatchewan, reviewed the present law of occupiers' liability and made proposals for its reform. "Tentative Proposals for an Occupiers' Liability Act" were released in June of 1980 and a final report entitled "Proposals for an Occupiers' Liability Act" was completed in October of 1980.

## 5. Medical-Legal Project

In the summer of 1977 the Commission, with the consent of the Attorney General, initiated a Medical-Legal Project with a view to reform. A paper entitled "Tentative Proposals for a Consent of Minors to Health Care Act" was issued for public comment, criticism and discussion in November of 1978. There was considerable response from a number of groups, organizations and the general public. A final report to the Attorney General was released in February of 1980.

Ms Lise Taylor was engaged as a consultant to work in the areas of definition of death and artificial insemination. "Tentative Proposals for a Definition of Death Act" were released in June, and the final report to the Attorney General was released in December of 1980. Tentative proposals for legislation regulating artificial insemination are expected to be released in 1981.

The Commission staff prepared a report on the legal status of the dependant adult. This report entitled "Tentative Proposals for a Guardianship Act, Part I: Personal Guardianship" is to be released in January, 1981.

Professor Peter McKinnon of the College of Law, University of Saskatchewan, undertook a study of the law governing civil commitment and prepared a background paper. Tentative proposals for a new *Mental Health Act* are now being formulated by members of the Commission staff, and it is expected a report will be released in 1981.

## 6. Administrative Law Project

Preliminary research was done on this project during the summer of 1978 on (a) Statutory Powers of Decision in the Licensing/Inspection Category of the Statutes of Saskatchewan, and (b) A Review of Benefit/Compensation Statutes.

Ms Donna Greschner was engaged as a consultant on the project in August of 1980 and has been working in the areas of administrative procedures and remedies. Research findings covering these subjects will likely be released in 1981.

## 7. The English Statutes Project

This project involves consideration of the statute laws of England which are in force in this province. Too often lawyers are faced with the problem of determining whether or not an ancient English statute is or is not law in Saskatchewan. The British have been pruning and tidying their statutes for almost a century and in the interests of greater certainty, it is time for the common law provinces, including Saskatchewan, to put their own houses in order. Dr. Winston McCalla, formerly of the College of Law, University of Saskatchewan, has been acting as consultant. Dr. McCalla and members of the Commission staff are continuing work on the project. It is anticipated that a report will be released in 1981.

## 8. The Limitation of Actions Act Project

This project involves major policy issues including mandatory notices of claims within specific periods of time, commencing actions within specific periods of time and the categorization of various actions so as to determine the appropriate limitation period. Professor Clive Mostert of the College of Law, University of Saskatchewan, has agreed to act as consultant when other commitments permit him to do so. Much preliminary research was completed by a student in the summer of 1979. A list of the limitation periods to be found in the Statutes of Saskatchewan prepared for this project is being published in the *Saskatchewan Law Review* early in 1981 which will be of assistance to practising members of the Bar.

## 9. Frustrated Contracts Project

Saskatchewan is one of the few provinces that does not have legislation which regulates the rights of parties in cases where a frustrating event prevents or substantially affects performance of a contract. The common law rules dealing with frustration are generally unpredictable and unfair.

The Commission decided in 1979 to undertake a study of this area of law. The project consists of the following parts:

- (a) An analysis of the present common law of Saskatchewan applicable to frustration of contracts. This part will illustrate and discuss all the problems which have been covered by the frustrated contracts legislation.
- (b) An analysis of the common law and statutory provisions applicable to the frustration of contracts in the United States and the manner in which they deal with the problems which have been subjected to statutory regulation in commonwealth jurisdictions.  
Under heading (a) and (b) two types of issues will be dealt with:
  - (i) The circumstances in which the contract is deemed to be frustrated.
  - (ii) The legal effects of frustration.
- (c) Reasons for legislation. This part will analyze the desirability of passing an Act regulating the substantive and/or the remedial law of frustration.
- (d) Evaluation of the different statutes enacted elsewhere and their effect on the common law. This part will also contain a summary of recommendations and a proposed statute.

Professor Louis J. Romero, College of Law, University of Saskatchewan, is acting as the consultant on the project. It is expected that "Tentative Proposals for a Frustrated Contracts Act" will be published late in 1981.

## 10. Sale of Goods Act Project

Saskatchewan's sale of goods law, like that of all other common law provinces in Canada, is based almost entirely on the English *Sale of Goods Act* of 1893. While some areas of sales law have been subject to special legislative measures, the general law of sales has never been revised in Saskatchewan since its enactment. Veneration of nineteenth century English sales law by Canadians has not been shared by the English. Their statute has been amended four times. It would be inaccurate to conclude that existing sales law is totally out of touch with the realities of modern commercial activity. The basic concepts of the 1893 *Act* remain relevant. Judicial development of sales law has been substantial over the years and, generally has taken account of fundamental changes in sales practices. However, a strong case can be made for recodification and modernization of Canadian sales law.

In 1979, the Ontario Law Reform Commission released an extensive report on sale of goods law containing recommendations for extensive revision of the Ontario *Sale of Goods Act*. At the August meeting of the Uniform Law Conference held at Saskatoon, Saskatchewan, a motion was passed providing for the convening of a committee to examine the Ontario report and general sales law with a view to developing a uniform sale of goods act for all provinces in Canada.

In view of the fact that work in the area is to be carried out on a national level with the opportunity for co-operation among law reform agencies, the Commission decided that it should participate in the joint project under the auspices of the Uniform Law Conference.

The Uniform Law Conference Committee has met regularly throughout 1980. Professor Cuming has represented the Commission at these meetings and has proposed substantial amendments to the Ontario Law Reform Commission Draft Act. The Committee will report to the Uniform Law Conference in August of 1981.

## 11. Products Liability Project

The Saskatchewan *Consumer Products Warranties Act* provides a regime of "strict liability" for consumer products. In other words, the *Act* provides recovery for loss resulting from defects in consumer products even though the supplier is not negligent in placing the product on the market. However, the *Act* does not apply to a situation where the product which has resulted in loss or injury is not a "consumer product" within the meaning of the *Act* or where the consumer product has been obtained for purposes of resale or for use in a business. For example, if a vehicle or a piece of equipment was purchased for use in business and as a result of a defect in it a person is injured, liability for the defect would have to be established under the law of negligence. Of course, in any action involving the liability, the nature of the proceedings, the burden of proof and the extent of recovery would be different from what it would be if *The Consumer Products Warranties Act* applied. Generally, the injured person would be in a much less advantageous position than would be a person injured as a result of a defect in a consumer product.

The Canadian law of tort has been very slow to accept "strict liability" as a basis for liability in cases of defective products, although in some circumstances our law has moved toward strict liability through the use of the doctrine of *res ipsa loquitur*. By contrast, the courts in the United States jurisdictions have rejected negligence and have developed "strict liability" as a basis for compensation of persons injured by defective goods. There is little indication that Canadian courts are yet prepared to follow the American lead.

However, there is a very strong undercurrent of dissatisfaction with existing Canadian law of negligence. Recently, the Ontario Law Reform Commission published a report on products liability which recommended a modified strict liability scheme to be implemented by legislation.

It is the conclusion of the Law Reform Commission of Saskatchewan that the time has come to "rationalize" the law of Saskatchewan so as to ensure that the likelihood of recovery for loss resulting from defective products does not depend upon the almost fortuitous event that the product causing the injury was sold under a transaction to which *The Consumer Products Warranties Act* applies.

Mr. Baz Edmeades has been retained as consultant on this project and it is expected that his report will be available in 1981. Funding for a large portion of the project is being made available by the Law Foundation of Saskatchewan.

## 12. Guest Passenger Legislation

The Saskatchewan *Vehicles Act* provides that if a passenger establishes that the driver's conduct was wilful and wanton or if he establishes a contractual relationship and mere negligent conduct, a judgment for loss or damage resulting from the bodily injury or to the death of the person being carried in the motor vehicle will be given against the driver. However, failure to establish that the driver's conduct was wilful and wanton or that there was a contractual relationship between the driver and the passenger, will prevent the passenger from obtaining a judgment against the driver. Even in those cases where it is possible to obtain a judgment, the passenger may well find that he can only enforce the judgment against the driver, and in the appropriate case, the owner of the vehicle, but not against the insurer because of the provisions of *The Automobile Accident Insurance Act*. Law Reform Commissions in a number of provinces have recommended that the ordinary standard of care should apply to claims for bodily injuries by passengers. Professor Ronald Fritz of the College of Law, University of Saskatchewan, has been engaged by the Commission to consider the situation in Saskatchewan and to make recommendations for reform.

## 13. Real Property Law

The Commission is planning a major research project concentrating on the real property law of Saskatchewan. Its scope and format have yet to be determined. It has been decided that the best way to proceed with the project is to identify a few discreet, peripheral areas of real property which are a matter of immediate concern. Two areas have been identified which require attention:

- (1) the need for a *Quieting of Title Act*.
- (2) foreclosure of mortgages and charges against land and cancellation of agreements for sale (including *The Land Contracts (Actions) Act*).

Mr. Donald Purich, a sessional lecturer in real property at the College of Law, University of Saskatchewan, has agreed to act as a research consultant in connection with this aspect of the project. He has prepared a paper on the need for a *Quieting of Title Act* and tentative proposals dealing with this will be issued in 1981.

#### 14. Other Projects

Research on smaller areas of potential reform are carried out from time to time. Occasionally, such matters are referred to the Commission by the Attorney General but more often such matters come from legal practitioners and occasionally from citizens and organizations interested in specific legal issues.

Professor Ronald Fritz of the College of Law, University of Saskatchewan, prepared a background paper dealing with a conflict between *The Homesteads Act* and *The Matrimonial Property Act*. Under the latter *Act*, spouses are free to enter into interspousal contracts which deal with ownership of matrimonial property including property which is a "homestead" within the meaning of *The Homesteads Act*. It is not at all clear, however, that when a wife executes a valid and binding interspousal contract giving to her husband rights in homestead property, she is precluded thereafter from refusing consent to the transfer of such property. By refusing to give the requisite consent as provided in *The Homesteads Act*, she may be able to ignore with impunity her obligations under the interspousal contract, or use her rights under *The Homesteads Act* as a lever to force her husband into agreeing to amendments to the contract. The possibility of this happening interferes with the process of negotiation and contract formation in cases where homestead property is or may be involved. As a result of the research done by Professor Fritz, the Commission recommended minor amendments to *The Homesteads Act* and *The Matrimonial Property Act* so that such a conflict could not arise in the future.

#### 15. Other Activities

On occasion, representatives of the Commission have addressed or made presentations to service groups and other organizations and have explained the role of law reform to students in a number of colleges in Saskatoon and Regina. When reports are released by way of tentative proposals, press releases are issued, press conferences held and appearances made on radio and television as required. While law reform is a highly technical matter, nevertheless, law does not operate in a vacuum and, consequently, every effort is made to keep those interested in any of the Commission's activities fully informed. The Commission and its staff is always most receptive to comments from organizations and members of the public generally.

## Final Reports to the Attorney General in 1980

### 1. Proposals for a Consent of Minors to Health Care Act

In November 1978 the Commission issued its "Tentative Proposals for a Consent of Minors to Health Care Act" which contained a draft statute. The Commission's intention in proposing an act was to fix the age of 16 years as the age at which a person could consent to his or her own health care. The proposals would have freed health care practitioners from any anxiety in treating 16 and 17 year-olds arising from considerations of parental or guardian consent. Below the age of 16 years, the Commission's tentative proposals would have allowed a health care practitioner, aided by a second opinion, to provide health care to a person who was sufficiently mature to understand and appreciate the nature and consequences of the health care.

Public response to these tentative proposals fixed on the particular age which the Commission chose, namely 16, and the necessity of a second written opinion as to the particular minor's capacity. On the one hand people seem to feel that not all 16 and 17 year-olds were mature enough to consent on their own behalf, while on the other hand, people seem to feel that requiring a second written medical opinion as to a minor's capacity was placing too great a burden on health care practitioners, especially in rural Saskatchewan.

A great deal of emphasis in the public response to the Commission's tentative proposals was placed on questions of parental authority. As the Commission had concluded earlier, parental authority could never be invoked to deny health care to a minor child. A minor can contract for health care in the same manner as an adult and can consent to the same extent as an adult provided that capacity to understand and appreciate the nature and consequences of the health care is present.

In redrafting its final report to the Attorney General, the Commission attempted a codification of existing common law and thus refrained from recommending either a fixed age for a minor's consent or the necessity for a second opinion as to a minor's capacity. However, since the Commission was still of the opinion that in matters of health care, the paramount consideration is the welfare of the minor, the Commission proposed a procedure for the judicial determination of a minor's capacity to consent to health care. The Commission's recommendation for widening the ambit of *ex parte* orders for the purpose of its draft act to allow a mature minor to consent to his or her own health care without parental notification may be an extension of the present law.

### 2. Proposals for an Occupiers' Liability Act

The law of occupiers' liability with its emphasis on formal categories and labels has led to capricious results, unrealistic distinctions and a general contortion of articulated rules which govern the area. The categories are inconsistent with the modern tendency in torts law to generalize. The late Dean Wright observed:

[C]ategories have a habit of shading one into the other. This is inevitable since categories attempt to confine facts and facts have an annoying habit of resisting confinement. It would seem reasonably obvious to anyone not familiar with this part of the law that what we need are either more categories to fit the facts — which makes categorizing futile since there may not be enough different rules of law to fit each category — or a principle of law as elastic as the facts to which it must apply. (*Cases on the Law of Torts* (4th ed. 1967) 667.)

To a large extent, responsibility for injury on dangerous premises has withstood the tendency to measure the existence and scope of duties by ordinary negligence principles, that is, the broad standards of foreseeability of harm and reasonable conduct. However, occupiers' liability law has been influenced by ordinary negligence law and recent cases in the Supreme Court of Canada indicate that it may be on the verge of being subsumed by ordinary negligence law. Whether more satisfactory results would be obtained if ordinary negligence principles applied is an open question, but at least a more rational basis of liability would result.

In its final report to the Attorney General, the Commission recommended the enactment of legislation designed to simplify the law pertaining to occupiers' liability by eliminating formal categories of entrants (invitees, licensees, contractual entrants and trespassers) and replacing those categories with a more elastic principle of law, in essence, providing that an occupier of premises owes a duty to take such care as in all circumstances of the case is reasonable to see that any person on the premises will be safe in using the premises.

### 3. Proposals for a Definition of Death Act

These proposals recommend enactment of a definition of death as follows:

1. Death is the total and irreversible cessation of brain function.
- 2.—(1) Death may be determined by the irreversible cessation of spontaneous circulation and respiration or by any other means recognized by the ordinary standards of current medical practice.  
(2) Where mechanical support of respiration or circulation or respiration and circulation or both is being used, the determination of death by the attending physician shall be independently confirmed by another physician.

There are those who are opposed to legislating a definition of death on the basis that it is simply unnecessary. They argue that hospitals and medical associations are setting criteria for the determination of death, which are constantly being appraised in the light of developments in medical science, and that doctors abide by the criteria thus set. Those who do not are subject to civil and criminal charges even without legislation, simply for failing to meet current medical standards.

However, this view is not universal. One commentator writes:

Common law courts have never convicted a medical practitioner either for shortening the life of a suffering, terminal patient or for refusing to render life-sustaining aid. Yet men of goodwill wish to proceed not by predictions of what will befall them but by perceiving and conforming to their legal and moral obligations. No amount of Holmesian realism can persuade a physician that a prosecutor's willingness to look the other way may weaken his legal obligations. ("Prolonging Life", George P. Fletcher, 42 *Washington Law Review* (1967) 999 at 1000.)

The concept of death itself, as opposed to the criteria for the determination of death, should not be left to the medical profession. It is not really a medical issue, but rather a moral, ethical and philosophical one.

Nor should the judiciary be allowed to determine the concept of death. This process is slow, uncertain, subject to the constraints of precedent and *stare decisis* and does not provide for public input. (See Alexander M. Capron, "Determining Death: Do We Need a Statute?". Institute of Society, Ethics and the Life Sciences, Hastings-on-Hudson, New York 10706, No. 14, p. 6.)

Legislation on the definition of death will resolve the legal and moral dilemma in which the medical profession could so easily find itself. It will also simplify the determination of the time of death, a question which often arises. Such legislation need not hamper advances in medical science as is frequently feared; a simple statement as to the point at which death is said to have occurred is a philosophical not a medical question and does not stand in the way of advances in the means by which that condition can be determined.

Finally, legislation will enable organ transplantation, including transplantation of hearts, to proceed unhampered by any concerns as to the possible liability of the physicians involved.

## Plans to the Year 1981

### 1. Family Law Project

Tentative Proposals in the area of maintenance will be published in 1981. A report on *The Homesteads Act* will likely be available the latter part of 1981. At that time also a paper considering the position of the illegitimate child should be available. A final report based on the three reports entitled "Tentative Proposals for Custody Law Reform, Part I: Substantive Law", "Tentative Proposals Relating to the Civil Rights of Children" and "Tentative Proposals for Custody Law Reform, Part II: Procedures and Support Services" will in all likelihood be available early in 1981.

### 2. Consumer Credit Project

A paper entitled "Tentative Proposals for a Consumer Credit Act, Part III: Secured Consumer Credit Transactions, Summary of Recommendations" will be released early in 1981. Thereafter, the balance of the project will be released in a series of separate papers from time to time.

### 3. Provincial Offences Project

A report entitled "Tentative Proposals for Defences to Provincial Offences" which deals with the concept of strict liability is to be released early in 1981.

### 4. Medical-Legal Project

"Tentative Proposals for a Guardianship Act, Part I: Personal Guardianship" will be released early in 1981. In addition, papers on artificial insemination and a new *Mental Health Act* should also be available.

### 5. Administrative Law Project

Papers are expected to be available dealing with administrative procedures and remedies in 1981.

### 6. English Statutes Project

It is expected that the preliminary paper scheduled for 1980 will be available in 1981 for study and comments by members of the legal profession.

### 7. The Limitation of Actions Act Project

It is expected that a paper containing tentative proposals for reform in this area will be available during the latter part of 1981.

### 8. Frustrated Contracts Project

It is expected that a paper will be available sometime during 1981.

### 9. Sale of Goods Project

Once the Uniform Law Conference has adopted a *Uniform Sale of Goods Act*, the Commission will examine the desirability of recommending the Uniform Act or a modified version of it for enactment in Saskatchewan.

### 10. Products Liability Project

A paper dealing with products liability should be released in 1981.

### 11. Guest Passenger Legislation

A paper dealing with guest passenger legislation should be released in 1981.

### 12. Real Property Law Project

A paper dealing with Quieting of Title will be available in 1981. There may also be a paper dealing with foreclosure of mortgages and charges against land and cancellation of agreements for sale.

### 13. The Matrimonial Property Act

Early in 1981, the Attorney General requested the Commission to carry out a follow-up study of *The Matrimonial Property Act* in order to determine whether or not this legislation is functioning as originally intended. It is expected that this study will be completed by the end of 1981.

## PERSONNEL

### The Commission

*The Law Reform Commission Act* provides that the Commission shall be composed of not less than three members appointed by the Lieutenant Governor in Council and that one of the members shall be designated as chairman. Professor Brian A. Grosman was appointed first Chairman of the Commission by order in council dated December 4, 1973 and assumed his position as full-time Chairman on January 1, 1974. The remaining two members of the Commission who are part-time were originally Mr. Justice E. D. Bayda and Mr. George J. D. Taylor, Q.C. Mr. Justice E. D. Bayda resigned and was replaced by Miss Marjorie A. Gerwing effective November 15, 1976. Professor Grosman resigned as Chairman of the Commission effective December 31, 1977 and returned to the College of Law, University of Saskatchewan. Pending the appointment of his successor, Professor Grosman continued to serve in the capacity of Acting Chairman. On July 1, 1978, Professor Ronald C. C. Cuming of the College of Law, University of Saskatchewan was appointed Chairman.

### The Staff

Mr. Kenneth P. R. Hodges is the Research Director having joined the Commission in October of 1976. The Research Officers are Mr. Harris Wineberg who joined the Commission in October of 1977 and Mr. Michael J. Finley who joined the Commission in March of 1977.

The Commission also retains the services of a number of people as part-time consultants. The Commission is pleased to be able to rely on these outside consultants and is obliged to them for their ongoing efforts which have helped to maintain a healthy level of law reform activity within the province.

## LAW FOUNDATION

The Law Foundation of Saskatchewan has provided funding for specific programs of law reform at the request of the Law Reform Commission. These projects are considered by the Foundation on an individual basis as they are received. Apart from a number of projects which have been completed, the Law Foundation of Saskatchewan is making available to the Commission funding for the following projects: Consumer Credit, Medical-Legal, English Statutes, Limitation of Actions Act, Frustrated Contracts, Sale of Goods Act, Illegitimacy, Guest Passenger Legislation, Administrative Law, Real Property Law including Quieting of Title Act and Foreclosure and Cancellation Proceedings. The Commission wishes to express its appreciation to the Law Foundation of Saskatchewan for this important financial assistance.

## OTHER LAW REFORM ORGANIZATIONS

The Commission has, during the course of the year, continued to develop good liaison with other law reform agencies both in and outside Canada. This exchange of information is essential to the functioning of the Law Reform Commission of Saskatchewan. Such close liaison minimizes the replication of research and makes available to this Commission research papers, reports and proposals which can be adapted to the Saskatchewan legal environment without incurring the financial burden necessitated by initiating original legal research in each area undertaken. The Saskatchewan Commission has gained substantially from the research completed by other commissions in areas of mutual interest.

In order to maintain important contacts in areas of interest to the Commission and its research commitments, the Chairman, the Research Director and other members of the staff attended various meetings and conferences during the year. The Chairman and the Research Director were delegates to the Uniform Law Conference. The Chairman was also Secretary, Committee on a Uniform Personal Property Security Act, Commercial Law Section, Canadian Bar Association.

## PUBLICATIONS

1. First Mini-Working Paper, Division of Matrimonial Property, "Problems Within the Present Law", June 1974.
2. Second Mini-Working Paper, Division of Matrimonial Property, "Possible Solutions to Problems Within the Present Law", September 1974.
3. Third Working Paper, Division of Matrimonial Property, "Tentative Proposals for Reform of Matrimonial Property Law", October 1974.
- \*4. First Annual Report 1974.
5. Background Paper, "Reform of Personal Property Security Law in Saskatchewan", May 1975.
6. Background Paper, "Family Maintenance Between Husband and Wife", November 1975.
7. Background Paper, "Children's Maintenance", January 1976.
- \*8. Second Annual Report 1975.
- \*9. "Tentative Proposals for a Saskatchewan Personal Property Security Act", February 1976.
10. Report to the Attorney General, "Proposals for a Saskatchewan Matrimonial Homes Act", May 1976.
11. Report to the Attorney General, "Conflict of Interest", March 1977.
- \*12. Third Annual Report 1976.
13. Working Paper, "Provincial Offences: Tentative Recommendations for Reform", April 1977.
14. Report to the Attorney General, "Proposals for a Saskatchewan Personal Property Security Act", July 1977.
15. Fourth Annual Report 1977.
16. "Tentative Proposals for a Consent of Minors to Health Care Act", November 1978.
17. Fifth Annual Report 1978.
18. "Tentative Proposals for Reform of the Law Affecting Liability Between Husband and Wife and Related Insurance Contracts", March 1979.
19. "Tentative Proposals for Reform of the Jury Act", May 1979.
20. "Tentative Proposals for Custody Law Reform, Part I: Substantive Law", August 1979.
- \*21. "Proposals for Reform of the Law Affecting Liability Between Husband and Wife and Related Insurance Contracts", November 1979.
- \*22. "Proposals for Reform of the Jury Act", December 1979.
23. "Tentative Proposals Relating to the Civil Rights of Children", December 1979.
24. "Proposals for a Consent of Minors to Health Care Act", February 1980.
25. Sixth Annual Report 1979, March 1980.
26. "Tentative Proposals for Custody Law Reform, Part II: Procedures and Support Services", May 1980.
27. "Tentative Proposals for a Definition of Death Act", June 1980.
28. "Tentative Proposals for an Occupiers' Liability Act", June 1980.
29. "Tentative Proposals for a Consumer Credit Act, Part I: Background and Underlying Considerations, Part II: Statistics", August 1980.
30. "Proposals for an Occupiers' Liability Act", October 1980.
31. "Proposals for a Definition of Death Act", December 1980.

\*Out of Print.

## An Act to establish a Law Reform Commission.\*

- |                      |  |
|----------------------|--|
| Short title          | 1. This Act may be cited as <i>The Law Reform Commission Act</i> .   |
| Commission continued | 2. The Law Reform Commission of Saskatchewan, herein referred to as the "commission", is continued. 1971, c. 21, s. 2.   |
| Membership           | 3.—(1) The commission shall be composed of not less than three members appointed by the Lieutenant Governor in Council and shall hold office during the pleasure of the Lieutenant Governor in Council.<br><br>(2) The Lieutenant Governor in Council shall designate one of the members as chairman.<br><br>(3) The chairman shall be the chief executive officer of the commission and shall preside at all meetings and hearings of the commission.<br><br>(4) In the absence or disability of the chairman or if the office of chairman is for any reason vacant another member of the commission, appointed by the members, shall act as chairman. 1971, c. 21, s. 3; 1973, c. 54, s. 1.  |
| Remuneration         | 4. The members of the commission shall be paid such remuneration for their services and such allowances for travelling and other expenses as the Lieutenant Governor in Council may determine. 1971, c. 21, s. 4.  |
| Staff                | 5. The Lieutenant Governor in Council may appoint such officers and employees of the commission as are required for the proper conduct of the business of the commission and for the purposes of this Act. 1971, c. 21, s. 5.  |
| Duties of commission | 6. The commission shall take and keep under review all the law of the province, including statute law, common law and judicial decisions, with a view to its systematic development and reform, including the codification, elimination of anomalies, repeal of obsolete and unnecessary enactments, reduction in the number of separate enactments and generally the simplification and modernization of the law, and for that purpose shall:<br><br>(a) receive and consider any proposals for the reform of the law that may be made to it by the Attorney General;<br><br>(b) prepare and submit to the Attorney General from time to time programs for the examination of different branches of the law with a view to their reform and shall recommend that an agency, whether the commission or a committee thereof or other body, carry out the examination;<br><br>(c) undertake, at the request of the Attorney General or pursuant to recommendations of the commission approved by the Attorney General, the examination of particular branches of the law and the formulation, by means of draft bills or otherwise, of proposals for reform therein;<br><br>(d) enter into agreements, with the approval of the Attorney General, with other organizations for law reform for the purposes of attaining the aims of the commission. 1971, c. 21, s. 6. |

\*R.S.S. 1978, c. L-8.

Legal  
research by  
commission

7. The commission may institute and direct legal research for the purpose of carrying out its functions. 1971, c. 21, s. 7.

Committees  
of commis-  
sion

8.—(1) The commission may appoint committees, the members of which need not be members of the commission, and may refer any matter to the committees for consideration and report to the commission.

(2) Members of committees appointed under subsection (1) shall receive such remuneration for their services and such allowances for travelling and other expenses as the Lieutenant Governor in Council may determine. 1971, c. 21, s. 8.

Report by  
commission

9. The commission may report from time to time to the Attorney General and shall report to the Attorney General at any time upon his request, but shall report at least once yearly if no request is made. 1971, c. 21, s. 9.

Publication  
of report by  
commission

10. The Attorney General may authorize the commission to publish any report submitted to him. 1971, c. 21, s. 10.

Annual  
report by  
Attorney  
General

11. The Attorney General shall make and submit to the Lieutenant Governor in Council an annual report respecting any programs prepared by the commission and approved by him and any proposals for reform formulated by the commission pursuant to such programs, which report shall, in accordance with *The Tabling of Documents Act*, be laid before the Legislative Assembly. 1971, c. 21, s. 11.

Appropriation

12. Sums required for the purposes of this Act may be paid out of moneys appropriated by the Legislature for the purpose. 1971, c. 21, s. 12.

**END**