



Law Reform
Commission

Yearly Review 1981

CR 57
4-158

Saskatchewan

83496

Anno decimo tertio ELIZABETHÆ. C.5 [1570.]
CAP. V.

An act against fraudulent deeds, alienations, &c.

FOR the avoiding and abolishing of feigned, covinous and fraudulent
deeds made to
avoid the duties
of justice and execution, as well of lands and tenements as of
or others such goods and chattels, more commonly used and practised in this day
than hath been seen or heard of heretofore: (1) which feignments;
gifts, grants, alienations, conveyances, bonds, suits, judgments and
executions, have been and are devised and contrived of malice, fraud,
deceit, collusion or guile, and intent, to delay,
hindre or defraud the parties and others of
suits, judgments, damages, penalties, fees, costs, and the due
course of law, and to the let or obstruction
of the execution of law and justice, but always
in plain dealing, bargaining and cheery
deals: the which no commonwealth or
country should
continued

therefore declared, ordained and enacted
by this present parliament, That all and every
alienation, bargain and conveyance
of tenements, goods and chattels, or
rent, common or other profits, or
tenements, hereditaments, goods and
chattels, or otherwise: (2) and all
suits, judgments, damages, penalties, fees, costs, and reliefs,
by such feignments, contrived, devised, hindered, delayed or
defrauded, as is afore said, or otherwise, shall be void, frustrate
and of none effect, any pretence, colour, or confidence
contrary thereto notwithstanding.

III. And be it further enacted by the authority aforesaid, That
all and every the parties to such feigned, covinous or
fraudulent, gift, grant, alienation, bargain, conveyance
of tenements, goods and chattels, or rent, common or other profits,
or tenements, hereditaments, goods and chattels, or otherwise,
which at any time after the tenth day of June next coming
writingly and willingly put in use, avow, maintain, justify or
send the same, or any of them, as true, simple, and done,
or made by him and upon good consideration; (3) or shall
lien or assign any the lands, tenements, goods, leases or other
things before mentioned, to him or them conveyed as is afore
said, or any put thereof; (4) shall incur the penalty and forfei-
ture

YEARLY REVIEW 1981

Law Reform Commission of Saskatchewan
Saskatoon, Saskatchewan

U.S. Department of Justice
National Institute of Justice

83496

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April, 1982

NCJRS

APR 27 1982

ACQUISITIONS

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 Michael J. Finley and Eric Cline.
The secretaries are Sandra Ritchie and Pat Harasymchuk.

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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 1981

The programs and activities carried out during 1981 to a large extent are a continuation of projects commenced from time to time beginning in 1974. Some 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 *The Married Persons' Property Act* was completed early in 1981 and a report entitled "Tentative Proposals for an Equality of Status of Married Persons Act" was issued in May. A final report to the Attorney General entitled "Proposals on Custody, Parental Guardianship and the Civil Rights of Minors" was issued in December, 1981.

Research in the area of maintenance has now been completed and a report dealing with Maintenance Enforcement will be released early in 1982.

Ms Susan Campbell has been engaged to complete the work on illegitimacy which was commenced some years ago.

The Commission has been reviewing *The Matrimonial Property Act* which came into force on January 1, 1980, along with the relationship of that Act and *The Homesteads Act* as well as *The Dependents' Relief Act* and *The Intestate Succession Act*. It is expected that a report by way of tentative proposals will be released early in 1982. Ms Susan Campbell has been assisting Commission staff in this particular aspect of the project.

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 entitled "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 and came into force on May 1, 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" was issued in May, 1981. Further research is presently being considered for the following areas:

- Credit Grantor Responsibility for Defects in Merchants' Performance Obligations;
- 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 1981. He has been assisted by Professor Margaret Crowle, College of Home Economics, University of Saskatchewan, Ms Susan Campbell and Mr. Ted LeValliant.

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" was released early in 1981. A final report will be forwarded to the Attorney General during the first half of 1982.

4. Medical-Legal Project

A report dealing with the legal status of the dependent adult, entitled "Tentative Proposals for a Guardianship Act, Part I: Personal Guardianship" was released in January, 1981. There has been a considerable amount of response from the general public and in particular, interest has been shown in the report by the Saskatchewan Association for the Mentally Retarded. It is expected that a final report will be released during the first half of 1982.

"Tentative Proposals for a Human Artificial Insemination Act" were released in November. Ms Lise Taylor did some of the background research for these proposals.

Following a study of the law governing civil commitment, "Tentative Proposals for a Compulsory Mental Health Care Act" were released late in 1981. In the same area of the law, Professor Peter MacKinnon of the College of Law, University of Saskatchewan, has been studying committal under Lieutenant Governor's Warrants.

5. 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 consultant on the project in August of 1980 and has been working in the areas of administrative procedures and remedies. A report covering these subjects will likely be released by the summer of 1982.

6. 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. A report will be released in 1982.

7. 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.

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.

A short report entitled "Tentative Proposals for Changes in Limitations Legislation, Part I: The Effect of Limitations on Title to Real Property" was released in July, 1981. Since then, Mr. Jim Russell has been working on the project and a further report is expected to be released in 1982.

8. 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.

9. 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 met regularly throughout 1980 and early 1981. Professor Cuming represented the Commission at these meetings and proposed substantial amendments to the Ontario Law Reform Commission Draft Act. The Committee reported to the Uniform Law Conference in August of 1981 and its report containing a uniform draft act was accepted.

10. 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, 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.

A considerable amount of work was done during the first six months in 1981. The consultant, however, was unable to complete his report before leaving the Commission, and that being so, the project is in abeyance at the present time.

11. 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.

12. 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 were identified as those 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 prepared a paper on the need for a *Quieting of Title Act*. The Commission came to the conclusion that with changes in the limitation periods governing titles, there was no need for such an Act. These changes were put forward in the Commission's report entitled, "Tentative Proposals for Changes in Limitations Legislation, Part I: The Effect of Limitations on Title to Real Property", issued as part of its Limitations of Actions Act Project in July, 1981.

Work is now being done in the area of foreclosure of mortgages and cancellation of agreements for sale.

13. The Land Titles Act Project

The Commission decided during the latter part of 1981 to undertake a fundamental review of *The Land Titles Act*. Particular attention will be paid to the machinery of the land titles system, the function of the registrar, the forms described by the *Act*, the effect of registration, transfers, mortgages, leases and caveats with or without sup-

porting documents, obsolete or what may be obsolete sections as well as the relationship of other statutes with *The Land Titles Act* such as *The Tax Enforcement Act*, *The Mineral Taxation Act* and *The Planning and Development Act*. Research will be carried on throughout 1982.

14. Review of *The Coroners Act*

In response to suggestions received from a number of legal practitioners in Saskatchewan, the Commission decided to undertake a review of *The Coroners Act*. Some question the usefulness of the inquest in modern society; others are concerned about specific matters such as:

- (1) jurisdiction and powers of coroners;
- (2) the coroner's absolute discretion as to who shall be called as witnesses and who shall be given standing;
- (3) the development of a type of professional jury rather than a jury picked at random;
- (4) the right to counsel at an inquest;
- (5) the right to be heard;
- (6) the coroner's power to commit for contempt;
- (7) questions of evidence such as self-incrimination and compellability;
- (8) the crown attorney's role;
- (9) the authority of the Attorney General to stay or to permit an inquest to proceed in the face of criminal charges;
- (10) the effectiveness of recommendations made by a coroner's jury;
- (11) quashing an inquest.

Review of the substantive and procedural law governing inquests is long overdue. It is expected that research into the Act will be undertaken throughout 1982.

15. New Home Warranties

An increasing number of Saskatchewan residents are buying newly constructed houses for use as family residences. However, the sale of houses by model and the growing specialization in components such as air conditioning and heating systems, have made it much more difficult for consumers to ensure that they are obtaining a building which meets certain basic standards of durability and safety. Unlike the purchaser of consumer goods, the purchaser of a new home in Saskatchewan is forced to rely substantially on common law. It is somewhat anomalous that the purchaser of a small appliance such as a toaster obtains the full protection afforded by the warranty provisions of *The Consumer Products Warranties Act*, whereas the purchaser of a house which has a much greater value receives no similar statutory protection and very little protection under the common law. At common law, in the absence of an express statement by the builder, implied warranties as to fitness of habitation or quality of workmanship and materials only apply if the house is not yet completed. If it is completed, the doctrine of *caveat emptor*, long since abolished in the area of sale of goods, still applies.

The deficiencies in the common law were recognized in Ontario, and a *New Home Warranties Act* was passed in 1967. The Commission is exploring the feasibility of a study which would lead to recommendations for legislation providing purchasers of new homes in Saskatchewan with an adequate measure of legal protection against construction and material deficiencies and which would bring the law applicable to the sale and purchase of new homes more in line with that applicable to the sale and purchase of consumer goods.

16. The Enforcement of Money Judgments

The law of Saskatchewan dealing with the enforcement of money judgments is very much in need of modernization, consolidation and rationalization. Much of it developed at a time when social and economic conditions were very different from what they now are. At no time in the history of Saskatchewan has this area of the law been examined as a whole. Existing law is, as a result, unco-ordinated, extremely complex and in some respects, inadequate.

In addition, the rules of court are presently being revised, including those rules dealing with judgment enforcement. It is therefore an appropriate time to deal with an archaic and inadequate system.

This is a large and complex area of the law. It is expected that the study will take two or three years to complete.

17. The Guardianship Act: Part II: Property Guardianship

The Commission has engaged the services of a consultant, Mr. Jim Russell to undertake a study of the law governing guardianship of the property of mentally incapacitated persons. Existing legislation is contained in several statutes such as *The Mentally Disordered Persons Act*, *The Administration of Estates of Mentally Disordered Persons Act*, *The Mental Health Act*, and *The Trustee Act*. The study will include a detailed review of the provisions of *The Mentally Disordered Persons Act* which in some aspects are out of date.

18. 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 Report to the Attorney General in 1981

1. Proposals on Custody, Parental Guardianship, and the Civil Rights of Minors

The Commission published the following tentative proposals relating to child custody and guardianship in three reports:

1. Tentative Proposals for Custody Law Reform, Part I: Substantive Law (August, 1979).
2. Tentative Proposals for Custody Law Reform, Part II: Procedures and Support Services (May, 1980).
3. Tentative Proposals Relating to the Civil Rights of Children (December, 1979).

The first report examines the law applicable to disputes between parents (and occasionally, parents and other persons) concerning the custody of children. The second report discusses the procedural reforms, including provision of counselling and investigative services attached to the court, which are required to ensure that the principles of custody law are carried into effect in practice. The third report is not obviously related to the others, but child custody is virtually synonymous with guardianship of the person of the child, and in our legal system, it is the authority exercised by parents and other guardians which determines those principal limitations placed on the civil rights of children. The third report then examines the scope of custodial authority exercised by parents and guardians.

The Commission's approach to child custody law is based on a conception of the nature of childhood, the role of parents, and the responsibility of the community which is reflected in the *United Nations Declaration of the Rights of the Child, 1959*. The preamble to the Declaration states that it is intended to extend "faith in human rights and the worth of the human person" to provide "special safeguards and care" for children "for their own good and the good of society". The focus of the Declaration is on the child as a member of his community, and as a person in his own right.

Children are placed by birth in the care of their parents. The parents are guardians of the person of their children, charged with responsibility to care for their children and prepare them for adulthood as mature, responsible citizens. The authority of parents must be protected if they are to carry out that role, but it does not follow that parental authority should be exercised for any purpose other than the child's welfare. When parents fail, the community must intervene. For that reason, *The Family Services Act* permits the Department of Social Services to remove children who are "in need of protection" from their parents. More relevant to the topic, the courts as *parens patriae* — the protector of children — are the ultimate arbitrators of disputes between separating and divorcing parents who cannot agree upon division of custodial authority. The Saskatchewan *Infants Act* now recognizes that the welfare of the infant is the sole concern of the courts in a custody application. The Commission's recommendations in regard to the substantive law of custody are intended to reinforce that focus on child welfare.

The resolution of custody disputes requires a sensitive weighing of a complex range of factors. Simply enacting new guidelines for application in custody cases is not enough to ensure that the law will achieve its goals. Much of the practical work of developing support services and associated procedures has been undertaken by the Unified Family Court established through joint federal-provincial funding. The starting point of the Commission's inquiry into support services and procedural reform has been the experience in those courts. The Commission believes that the importance of procedural reform in custody matters requires that at least minimal procedural rules to carry the intent of custody legislation into effect be included in *The Infants Act*. The proposals therefore recommend enactment of such procedural rules in the *Act*. Much remains however to be fleshed out by rules of court and administrative changes in the court structure. The Commission makes twenty recommendations in all, some of which are as follows:

- No inference shall be drawn as to the welfare of the child merely from the fact that a person to whom custody may be awarded has committed an act which would be, as between spouses, grounds for divorce or judicial separation.
- The financial resources of the persons to whom custody might be awarded is relevant to the issue of maintenance, but not custody, except to the extent that maintenance, available social assistance, and the other financial resources of a person to whom custody may be awarded, are not sufficient to provide acceptable economic security for the child.
- In considering an application for custody under this *Act*, no inference shall be drawn that one parent should be preferred over the other on account of his or her status as father or mother, or on account of the tender years of the child.
- The culture in which the child has been raised.

- No order shall be made for division and sharing of custodian authority unless such an order is in the interests of the child's welfare, and there is a reasonable prospect that the persons between whom custodian authority may be shared will co-operate.
 - Courts with jurisdiction in custody and other family law matters should be staffed with intake workers who can provide basic information concerning court proceedings and conciliation services. Conciliation services should be voluntary in all cases.
 - The court may, at any time in custody proceedings, appoint an *amicus curiae* for the purpose of assisting the court in
 - (i) determining and assessing the wishes of an infant, or
 - (ii) providing evidence relevant to the infant's interests in any case in which a custody investigation and other evidence available to the court does not appear to be adequate for resolution of the issue of custody and access.
 - When the wishes of a mature infant are relevant, the *amicus curiae* shall make the wishes of the infant available to the court, together with such evidence as may be obtained to aid the court in assessment of the infant's wishes.
 - . . . , the court may make a declaratory order confirming custody rights which have arisen
 - (a) under a previous court order;
 - (b) under a separation agreement; or
 - (c) through *de facto* custody.
- The order may include a direction to any police force or constable in the province to enforce the order by return of the child to the lawful custodian named in the order, if the court is of the opinion that such a direction is necessary because the person who has possession of the infant
- (a) appears to be attempting to leave the jurisdiction, or
 - (b) has concealed, or is attempting to conceal, the infant, or
 - (c) may forcefully resist return of the child to the lawful custodian named in the order.

Plans for the Year 1982

1. Family Law Project

Tentative Proposals in the area of maintenance will be published in 1982. The results of a study of *The Matrimonial Property Act* will also be released. A paper considering the position of the illegitimate child may be available by the end of the year. A Final Report entitled "Proposals for an Equality of Status of Married Persons Act" will in all likelihood be available in 1982.

2. Consumer Credit Project

Work will continue on this project. It is expected that tentative proposals will be released in 1982 dealing with the cost of credit disclosure, credit insurance, consumer education and credit grantors' liability for merchants' default in performance.

3. Provincial Offences Project

A Final Report entitled "Proposals for Defences to Provincial Offences" should be released in 1982.

4. Medical-Legal Project

A Final Report entitled "Proposals for a Guardianship Act, Part I: Personal Guardianship" should be released in 1982. In addition, a report entitled "Tentative Proposals for a Guardianship Act, Part II: Property Guardianship" will be released later on in the year.

5. Administrative Law Project

A paper dealing with administrative procedures and remedies will be released early in 1982.

6. English Statutes Project

A paper dealing with old English statutes in force in the province will be available in 1982 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 the area of limitations which were scheduled for 1981 will be available later on in 1982.

8. Frustrated Contracts Project

It is expected that a paper will be released during 1982.

9. Sale of Goods Project

The Uniform Law Conference *Uniform Sale of Goods Act* will be studied to determine its appropriateness for enactment in Saskatchewan.

10. Products Liability Project

A paper dealing with products liability is unlikely to be available in 1982, but it is expected that further work will be undertaken on the project.

11. Guest Passenger Legislation

A paper dealing with guest passenger legislation will be released in 1982.

12. Real Property Law Project

There may be a paper dealing with foreclosure of mortgages and cancellation of agreements for sale sometime during 1982.

13. The Land Titles Act Project

It is expected that a paper will be issued during the latter part of 1982.

14. Review of the Coroners Act

A paper may be available in the latter part of 1982.

15. New Home Warranties

It is unlikely that a paper will be released in this area during 1982.

16. The Enforcement of Money Judgments

It is expected that the basic research into this project will be well underway during 1982.

17. Property Guardianship

It is expected that a paper will be released during the latter part of 1982.

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 Ms 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. Michael J. Finley who joined the Commission in March of 1977 and Mr. Eric Cline who joined the Commission in June of 1981.

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, English Statutes, Limitation of Actions Act, Frustrated Contracts, Sale of Goods Act, Illegitimacy, Guest Passenger Legislation, Administrative Law, Real Property Law, New Home Warranties, The Enforcement of Money Judgments, and Property Guardianship. The Commission wishes to express its appreciation to the Law Foundation of Saskatchewan for its 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.
32. Tentative Proposals for a Guardianship Act, Part I: Personal Guardianship, January 1981.

33. Tentative Proposals for Defences to Provincial Offences, February 1981.
34. Yearly Review 1980, April 1981.
35. Tentative Proposals for a Consumer Credit Act, Part III: Secured Consumer Credit Transactions, Summary of Recommendations, May 1981.
36. Tentative Proposals for an Equality of Status of Married Persons Act, May 1981.
37. Tentative Proposals for Changes in Limitations Legislation, Part I: The Effect of Limitations on Title to Real Property, July, 1981.
38. Tentative Proposals for a Human Artificial Insemination Act, November 1981.
- *39. Proposals on Custody, Parental Guardianship, and the Civil Rights of Minors, December 1981.
40. Tentative Proposals for a Compulsory Mental Health Care Act, November 1981.

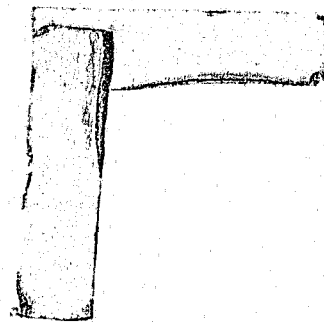
*Out of Print.

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. (2) The Lieutenant Governor in Council shall designate one of the members as chairman. (3) The chairman shall be the chief executive officer of the commission and shall preside at all meetings and hearings of the commission. (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: (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. 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 commission	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 <i>The Tabling of Documents Act</i> , 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