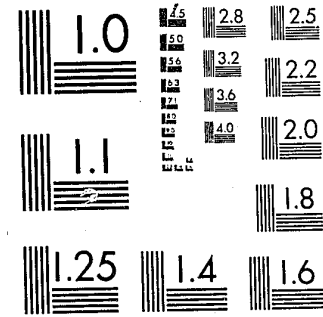


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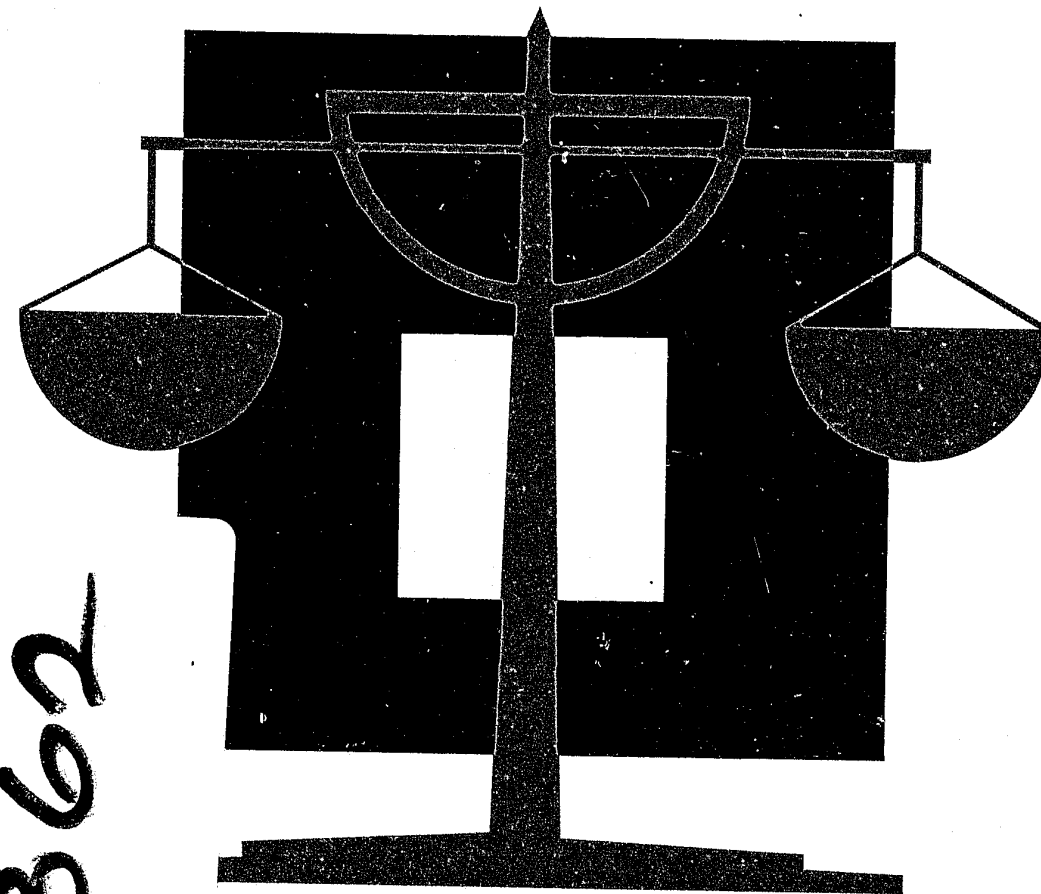
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Law Reform Commission of Saskatchewan



Third Annual Report 1976

Department of the Attorney General

75862



LAW REFORM COMMISSION OF SASKATCHEWAN

THIRD ANNUAL REPORT 1976

DEPARTMENT OF THE ATTORNEY GENERAL

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The law Reform Commission of Saskatchewan was established by section 2 of *The Law Reform Commission Act, 1971*, and began functioning in January of 1974.

The Commissioners are:

BRIAN A. GROSMAN, B.A., LL.B., LL.M.,
Chairman

GEORGE J. D. TAYLOR, Q.C.

MARJORIE A. GERWING

Kenneth P. R. Hodges is the Research Director. The secretaries are Sandra Hookway and Linda Mahl.

The Commission offices are located at Suite 1003 Canadian Imperial Bank of Commerce Building, 201 - 21st Street East, Saskatoon, Saskatchewan, Canada S7K 0B8.

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To The Honourable Roy J. Romanow, Q.C.
Attorney General for Saskatchewan

**THIRD ANNUAL REPORT
1976**

Dear Mr. Attorney General:

We have the honour to present the Third Annual Report of the Law Reform Commission of Saskatchewan for the year commencing January 1, 1976, and ending December 31, 1976.

INTRODUCTION

The Law Reform Commission Act, 1971, was given Royal Assent on April 2, 1971, and was proclaimed November 7, 1973. Professor Brian A. Grosman was appointed a member and the first Chairman of the Commission by order-in-council dated December 4, 1973. Professor Grosman assumed his position as full-time chairman on January 1, 1974. The remaining two members of the Commission who are part-time and who were appointed by subsequent orders-in-council originally were Mr. Justice E. D. Bayda and Mr. George J. D. Taylor, Q.C. The first meeting of the Commission was held on February 11, 1974.

Mr. Justice E. D. Bayda resigned and was replaced by Ms Marjorie A. Gerwing effective November 15, 1976.

The Law Reform Commission Act, 1971, provides in section 9 that 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.

The Law Reform Commission of Saskatchewan has the honour to present its Third Annual Report outlining the developments of the Commission, the formation of the Commission's programs, and reports distributed by the Commission during the calendar year 1976.

FUNCTIONS

In the terms of *The Law Reform Commission Act, 1971*: 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.

For the foregoing purpose the Commission 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.

The basic objectives of the Commission are intended to achieve the following advantages: (a) to provide the government and the Legislature with objectively-oriented machinery for the review of provincial law;

(b) to provide a body that will be available to assess criticisms of a significant nature that are from time to time directed by the public against particular laws and legislation;

(c) to provide the government and the Legislature with a means whereby they will be able to assess proposals for change in the law and for the enactment of new laws;

(d) to provide a body which is charged with the obligation of reviewing the law and its application in Saskatchewan critically with scholarship and dispassion.

The Law Reform Commission pursues its research activities at its offices in the City of Saskatoon. The basic research library which was accumulated during 1974 is being expanded and consists primarily of reference material, of digests, statutes and reports. All current reports of Law Reform Commissions in the common law world are obtained by the Commission for the library. The present library facilities at the Commission are sufficient for basic research, however, any intensive scholarly legal research must be carried on in close co-operation with the College of Law of the University of Saskatchewan. The College of Law has a fine law library which is of great assistance to the Commission in its work.

At least one meeting of the full Commission and Commission permanent staff is held each month. Suggested topics for the Commission's research program are brought before meetings of the full 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, 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. Ideally, much of the research should be done by the Commission's full-time staff. Most projects, however, require substantial outside consultation and expertise as a result of limited permanent staff resources. For its major projects, the Commission must rely for research personnel on the academic staff of the College of Law of the University of Saskatchewan. Professional law teachers are presently acting as research consultants on three major projects initiated by the Commission. Legal practitioners also act as consultants of the Commission from time to time. They give to the Commission a practical sense of the implications of possible

recommendations for legislative and procedural change. The participation of practising lawyers in the work of the Commission has been encouraged.

The outside researchers and consultants undertake the preparation of background papers, research reports, surveys, and legal briefs in order to assist the Commission in formulating its reports and recommendations. Non-legal expertise is also utilized to assist Commission research projects. Chartered accountants and social scientists have been engaged in advising the Commission from time to time.

Once the research study in a particular project is completed, the matter is placed on the Commission agenda for discussion and consideration. Quite often the consultant or consultants who prepare the study under review and other resource personnel will be invited to participate in the Commission meeting. The Commission may decide to prepare working papers for circulation to the public in order to obtain criticism and comment prior to the preparation of a Final Report to the Attorney General. This may entail public meetings, hearings and workshops over a period of time. Once 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.

THE PROGRAM

The Commission may undertake research either at the request of the Attorney General or pursuant to recommendations of the Commission approved by the Attorney General. Subject to budgetary restraints, limited personnel and finances, it is anticipated that the research workload of the Commission will increase each year during the first five years of its operation and then level off and hold fairly constant thereafter. This results from the need to cope with a backlog of legislative reform which has not otherwise been dealt with. The rate and level of increase in required research for law reform depends not only upon Commission initiatives, but to a large extent upon the number of references received by the commission from the Attorney General.

1. Division of Matrimonial Property

In the early spring of 1974, the Commission undertook to review the law relating to the distribution of matrimonial property with a view to making recommendations for change.

A research project was established which resulted in the preparation of three mini-working papers. These papers were issued in the months of June, September, and October of 1974. They were widely distributed throughout the province and beyond.

Many helpful briefs and comments were received and considered by the Commission. In the light of these submissions, research and writing continued on the project in 1975. In the spring of 1975, interim legislation which paralleled the first phase of the Commission's tentative proposals was enacted. The Commission

undertook to prepare draft legislation and extensive commentary which would embody the second phase of the Commission's tentative recommendations.

Pursuant to section 9 of *The Law Reform Commission Act, 1971*, the Commission submitted a report titled "Proposals for a Saskatchewan Matrimonial Homes Act" to the Attorney General on May 27, 1976. This report and recommendations relate to (1) the exercise of judicial discretion in the distribution of matrimonial property; and (2) co-ownership of the matrimonial home. The Commission distributed 1,400 copies of this report which contains its recommendations for reform of matrimonial property law in the Province of Saskatchewan. The main thrust of the report recommends a continuation of the exercise of judicial discretion in the distribution of matrimonial property and imposition of co-ownership of the matrimonial home by operation of law.

As the first phase of reform, the Commission proposed that legislation be passed giving the court wide power to order division of matrimonial property between spouses upon application to the court. It was recommended that the court should be empowered to divide the property of married persons as it sees fit in order to provide a fair and just division, according to the circumstances of each case, regardless of how title to that property is held or when it was acquired.

In March, 1975, section 22 of *The Married Women's Property Act* was amended by the Legislature to allow wide judicial discretion to be exercised in any question regarding the ownership or possession of property of married persons. Having been tabled for first reading on May 2, 1974, the amendment received third reading on March 31, 1975, and was proclaimed on May 1, 1975. While this legislation was prepared prior to completion of the Commission's final proposals and was passed as an interim measure pending the report of the Commission, it does reflect in large measure the proposals of the Commission as they relate to judicial discretion.

In the brief period that the amendment has been in force, there have been a significant number of applications before the courts. Many more equitable divisions of matrimonial property have been effected by negotiation and mutual agreement of spouses through their solicitors outside the court room. There is little doubt that the legislation has facilitated property arrangements between spouses which may not have been so easily accomplished in the past. Furthermore, the amendment appears to have found considerable acceptance in the legal profession, thus indicating that it provides a practical approach to the major problem faced by married people and their solicitors in resolving such property disputes.

Under the "Proposals for a Saskatchewan Matrimonial Homes Act", both spouses will own equal shares in the home. Both will have equal management, control and occupational rights in the home. The home may only be sold, mortgaged or otherwise dealt with by the spouses upon their mutual consent. Such consent must be freely given and indicated by the spouses' signatures on the document disposing of the interest in the matrimonial home.

In the report, the Commission recommends that the co-ownership of the matrimonial home principle be applied on a retroactive basis. The commission decided that because people of Saskatchewan do, almost unanimously, regard the matrimonial home as belonging to both husband and wife regardless of the state of the legal title, co-ownership should be enacted on a retroactive basis. The Commission did not think that this would be considered unfair or harsh by the majority of people. Those who feel otherwise may opt out of the legislation by

mutual agreement at any time. With some exceptions, the report recommends that co-ownership apply to all matrimonial homes in the province regardless of how or when the home was acquired. The report recommends that the principle apply regardless of which spouse holds title and even if one of the spouses has made no financial contribution toward the purchase or upkeep of the home. In the usual course of events, there will be no inquiry into contributions, intentions, conduct, or the merits of the individual circumstances.

There are two exceptions to the general co-ownership principle. First, it is proposed that the principle not apply where the spouses either before or after marriage have by written contract expressed their mutual agreement that their home or future home should not be subject to the co-ownership principle. The parties should be allowed to define their property rights by mutual agreement, subject only to specified limitations and safeguards.

Second, it is proposed that the co-ownership principle should not apply in certain instances where unusual circumstances would make co-ownership of the home unconscionable. Therefore, the Commission recommends in the report the adoption of judicial discretion to the extent that the courts, in limited circumstances, could vary the shares held by the spouses under the co-ownership principle. To assist the court in deciding how to exercise this discretion, examples of unusual circumstances are set out in the legislation.

The draft legislation is closely interrelated with existing legislative provisions. Its adoption would necessitate amendment of several Acts. *The Land Titles Act* will require thorough study in order to accommodate the draft legislation. *The Exemptions Act* will have to be amended to bring its provisions in line with current practice — namely, totally to exempt the principal residence. Further amendment will be required to section 22 of *The Married Women's Property Act* in order to provide that any matrimonial home and household goods as defined in the Act be removed from its purview.

The Commission, in its report, recommends that *The Homesteads Act* be repealed in the event that the proposed legislation is brought into force. The two Acts could hardly co-exist since the draft Act overlaps *The Homesteads Act* almost completely. Consideration must also be given to the possible exclusion of inter-spousal transactions from the scope of both *The Gift Tax Act* and *The Succession Duty Act, 1972*.

At present the Commission is attempting to set up procedures which will continue to keep it informed with regard to the results of applications made under the recent amendment to *The Married Women's Property Act*. The Commission also wishes to review the general effect of that legislation upon settlements made out of court. Further, the Commission is assessing both public and legislative response to its report on co-ownership of the matrimonial home. Such response will have a direct bearing on further recommendations, if any, in the area of matrimonial property.

As pointed out, the "Proposals for a Saskatchewan Matrimonial Homes Act" contain draft legislation which provides for both spouses owning equal shares in the home. As well as imposing co-ownership of the matrimonial home, the draft legislation deals with household goods used in the actual home of the married couple, regardless of whether their residence is a house or a rented apartment.

The "Proposals for a Saskatchewan Matrimonial Homes Act" may be obtained by writing to the offices of the Law Reform Commission of Saskatchewan.

2. Family Law Project

The Commission, with the consent of the Attorney General, initiated a research project on family law in June of 1974. This project deals with the specific areas of (a) family maintenance, (b) children's rights and maintenance, and (c) general questions dealing with marriage laws.

In the area of family maintenance, the Commission is examining proposals with respect to maintenance between husband and wife and the right of children to maintenance from their parents. This involves, among other things, an examination of *The Deserted Wives' and Children's Maintenance Act*, *The Queen's Bench Act*, *The Children of Unmarried Parents Act* and sections of *The Infants Act*. Within this project, proposals with respect to the duty of children to maintain their parents will also be considered. This necessitates an examination of the little-used *Parents' Maintenance Act*. Currently within this project substantial research time is being spent examining the provision of more effective means for enforcing maintenance obligations between husband and wife. This requires an examination of *The Attachment of Debts Act* and *The Reciprocal Enforcement of Maintenance Orders Act*.

Professor I. B. Saunders of the College of Law, University of Saskatchewan, was research consultant to the project. Both he and Mr. Byron Henderson, Legal Research Officer with the Commission, have left the Commission. As a result of their departure, there has been some delay in this project. Professor Anne Jayne of the University of Saskatchewan has recently been retained by the Commission to continue with the project emphasizing those areas dealing primarily with the child and the courts. Prior to the departure of Professor Saunders and Mr. Henderson, the Commission issued a background paper titled "Family Maintenance Between Husband and Wife" (November 1975). In January of 1976, a background paper, titled "Children's Maintenance" was released by the Commission at a press conference held in Regina on January 30, 1976. Approximately 1,250 copies of this paper were distributed to the public.

This paper looked at children's rights as part of the whole area of human rights. It dealt with questions such as the right of children to maintenance from their natural parents, adoptive parents, stepparents, legal guardians and foster parents. The paper outlined the need for reform in this area, emphasizing the present fragmented state of the law and its lack of clarity in a number of important areas. Some emphasis was placed upon the problem relating to the jurisdiction of our courts to award maintenance; problems specifically related to multiple jurisdiction and insufficient judicial powers. The question of the enforcement of maintenance orders was dealt with and tentative recommendations were made that would increase the efficiency of current mechanisms through the exploration of a variety of policy alternatives.

Professor Anne Jayne of the College of Law, University of Saskatchewan, has commenced research into specific areas of reform related to children's rights. Professor Jayne will be considering the parent-child and, more specifically, the

father-child relationship as it affects problems relating to equalization of status. In addition, it is necessary in this context to consider custody as it affects persons who are not the biological or adoptive parents. Essentially, Professor Jayne will consider the two fundamental rights, that of the child to maintenance and the reciprocal right of the person maintaining to have the companionship of the child. Professor Jayne is considering the various roles, i.e. foster, step, natural, adoptive parents, to consider to what extent the persons in these roles should have the rights and responsibilities that are now clearly granted to the natural mother of a child born out of wedlock and the mother and father of a child born in wedlock. After looking at the theoretical extent of rights and responsibilities, Professor Jayne will be examining the ways in which these rights and responsibilities can be brought into practical effect by way of procedural and enforcement practices.

3. Personal Property Security Law Project

The Commission, with the consent of the Attorney General, commenced a study during the summer of 1974, which involved an examination of the law affecting consensual personal property security transactions at two levels: the consumer financing level and the wholesale financing level.

Personal property security law regulates credit and loan transactions such as chattel mortgages, conditional sales contracts, assignments of debts and floating charges. Under these agreements, the creditor is given the power to seize the property of the debtor in the event of default in payment by the debtor. The law affecting these agreements is designed to define and regulate the exercise of the creditor's powers so as to ensure fairness. In addition, personal property security law provides a registry system through which third persons who deal with the debtor are notified of the prior claims of creditors.

The study is primarily concerned with the advisability of adopting a modified form of the *Model Uniform Personal Property Security Act* prepared by the Canadian Bar Association. The Commission has considered generally the form which applicable personal property security law should take in the light of business practices and social policies affecting secured transactions. Generally, the research has involved an analysis of the proposals contained in the *Model Act* in the light of local Saskatchewan conditions and in the light of developments in other jurisdictions since the *Model Act* was published. For comparative purposes, consideration has been given to the American Uniform Commercial Code. Eight internal study papers have been prepared dealing with various aspects of this area of the law. The project is under the direction of Professor R. C. C. Cuming of the College of Law of the University of Saskatchewan who is acting as a research consultant to the Commission. In addition to Professor Cuming, the Commission is fortunate to also have as a research consultant Professor R. B. Buglass of the College of Law whose contribution has been mainly in the area of conflicts of laws relating to personal property security transactions. The internal study papers prepared for the Commission are as follows:

Study Paper No. 1 "Background to and Basic Characteristics of the Model Uniform Personal Property Security Act, 1970"; Study Paper No. 2 "Scope of the Saskatchewan Personal Property Security Act"; Study Paper No. 3 "The Creation of a Security Interest"; Study Paper No. 4 "Perfection of Security Interest"; Study

Paper No. 5 "Priorities"; Study Paper No. 6 "Chattel Paper Under The Uniform Personal Property Security Act"; Study Paper No. 7 "Corporate Securities and Floating Charges"; Study Paper No. 8 "Conflicts of Laws".

These internal study papers constitute the first stage of the overall research plan. In addition to these study papers, a background paper has been prepared by Professor Cuming in consultation with the Chairman titled "Reform of Personal Property Security Law in Saskatchewan". This paper was released and distributed to the public in June of 1975. Copies of this background paper were sent to each member of the Bar of Saskatchewan with a letter requesting comment and criticism. The background paper is designed to indicate to the public and the legal profession that the study is being undertaken and to solicit from the public and the legal profession comments, criticism and suggestions. The background paper also deals with the consumer credit aspect of the study. Approximately 1,200 copies of the background paper have been distributed to date. Helpful comments have been received from lawyers and financial institutions.

On March 18, 1976, at a press conference in Saskatoon, the Law Reform Commission released its "Tentative Proposals for a Saskatchewan Personal Property Security Act". These proposals contained a comprehensive consideration of the law of secured personal property in Saskatchewan, developments in the United States and other jurisdictions within Canada as well as specific proposals for change. The "Tentative Proposals" also contain draft legislation for a new Saskatchewan Personal Property Security Act. Approximately 500 copies of the "Tentative Proposals" were distributed throughout Saskatchewan and elsewhere in Canada in order to obtain comment prior to the finalization of proposals and the legislation for submission to the Attorney General. Comments were received from a number of financial institutions and organizations as well as from the Saskatchewan Subsection of the Canadian Bar Association. These comments are currently being considered in anticipation of the release of the final report on this subject to the Attorney General, containing draft legislation, in the spring of 1977.

4. Consumer Credit Law 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. Secured consumer credit transactions are basically security agreements with special features which require additional regulation.

The study of consumer credit law is in its early stages at the present time. Two internal Study Papers have been prepared by Mr. Byron Henderson for use by the Commission staff. The first of these papers is titled "Wage Garnishment", and it evaluates the present and future role of wage garnishment in Saskatchewan. His second paper is titled "Default Under the Uniform Consumer Code and the Wisconsin Consumer Act", and it provides an analysis of two American approaches to consumer default. A third internal study paper titled "Security in Consumer Goods" was written for the Commission by Hugh J. D. McPhail, a student at law.

This third paper considers the arguments for and against the taking of security in the consumer credit market.

It was decided that before specific proposals for change in the law are developed, it was important to gather more information with regard to the nature of the consumer credit market in Saskatchewan and the extent to which more or different regulation is necessary. This information was sought from three sources: interviews with credit grantors, questionnaires administered through legal aid offices and from court records. During the months of June, July and August, 1975 extensive interviews were carried out in Saskatoon with credit grantors. Files at the Sheriff's office in Saskatoon have been examined in order to obtain information as to the use of chattel mortgages in consumer credit transactions.

Further research in the consumer credit project is presently being considered for the following areas:

1. Security: Security interests in necessities, security interest in highly depreciable consumer goods, cross-collateral security agreements, default, cure, seizure, sale and deficiencies.
2. Third party liability and defences available to the consumer against assignees and lenders.
3. The legal position of co-signors and guarantors to consumer loan contracts.
4. Advertising by credit grantors.
5. Collection remedies available to the unsecured creditor.
6. The extension of consumer credit through credit cards.
7. Regulation of debt collection practices.
8. Disclosure of the cost of credit and the consumer borrower's rights.
9. Leases of property as a form of consumer credit.
10. Situations in which a consumer might rescind his credit contract.
11. The use of insurance on the life of the borrower as security in a credit contract.
12. Possible improvements or alternatives to present credit enforcement procedures.

On November 12, 1976, a paper titled "Tentative Proposals for a Saskatchewan Consumer Credit Act" was circulated among the Commissioners. This paper prepared by Professor Cuming outlines the major constitutional aspects of consumer credit law as well as proposing certain protections for credit consumers. This paper, once thoroughly considered by the Commission, will be distributed to the public as a working paper.

5. The Collection and Analysis of Provincial Offences

The Commission, with the consent of the Attorney General, initiated research in the fall of 1975 into the collection and analysis of provincial offences. Provincial legislation was considered that contains offences that have quasi-criminal penalties or sanctions attached. All the sections and statutes within provincial legislation and selected municipal bylaws were surveyed with a view to (1) cataloguing these offences and penalties within appropriate categories of seriousness; (2) analyzing the nature of these offences in order to determine whether present sanctions are appropriate to the legislation under consideration; (3) determine whether sanction-

ing sections ought to be handled through court procedures or whether alternative procedures ought to be developed for handling them outside the adversarial system; (4) determine whether sections containing provincial sanctions ought to be reduced or consolidated; and (5) examine the effects of criminal stigmatization where it exists under provincial laws.

Phase one of the project dealing with the collection and analysis of provincial offences was completed in September of 1976 and the data is collected in four separate volumes.

A draft report prepared by Mr. Darryl Davies, research consultant to the Commission, is titled "Provincial Offences: Tentative Recommendations for Reform". This report deals with problems with present statutes governing provincial offences as well as making tentative recommendations for non-custodial methods of enforcement. The report sets out a number of alternative approaches to the present provincial sanctioning system including diversion, cautions, community service orders, weekend custody, and restitution orders. The report also considers the developments in England and in other provincial jurisdictions before making recommendations for reform.

It is expected that the report will be distributed in 1977.

6. Conflict of Interest Project

Pursuant to section 6 (see *The Law Reform Commission Act, 1971*), the Attorney General requested that the Commission initiate research into proposed conflict of interest legislation in order to prepare recommendations for reform.

This is a complex subject in which various legislative solutions have been put forward elsewhere in Canada, the United States, England, and in other countries. The Government of Saskatchewan has tabled a white paper on "Members of the Legislative Assembly of Saskatchewan and Conflict of Interest" with a draft bill attached. These materials were referred to the Commission by the Attorney General for its consideration and report.

The Commission, assisted by Dr. Norman Ward of the Economics and Political Science Department of the University of Saskatchewan and Professor Jeremy Williams formerly of the College of Law of the University of Saskatchewan, initiated research in the spring of 1976.

In the fall of 1976 when Mr. Ken Hodges joined the Commission as Research Director, he assumed some responsibility for the final preparation of a report on conflict of interest. A draft report of the Law Reform Commission of Saskatchewan on conflict of interest will be submitted in response to the direction of the Executive Council, early in the spring of 1977. The report includes recommendations dealing with conflict of interest and Members of the Legislative Assembly, as well as conflict of interest and candidates and public servants. It is expected that the report to the Attorney General and the Executive Council of Saskatchewan will contain draft amendments to legislation.

7. 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.

This project is funded by the Law Foundation of Saskatchewan. Professor Daniel Ish of the College of Law of the University of Saskatchewan undertook to review the present law of occupiers' liability and to make proposals for its reform. It is expected that a paper containing tentative proposals for reform in the area will be circulated to the public in 1977. Once public reaction and comment has been obtained, recommendations will be contained in a report to the Attorney General on this subject.

8. Other Projects

Research on several smaller areas of potential reform has been carried out. Much of this work is necessary to bring matters before the Commission in order that the Commission is able to decide whether these matters should be further researched, referred to the Attorney General, or otherwise dealt with. Several such projects have been considered.

(a) Medical-legal Matters

Due to certain budgetary restrictions, the Commission's consideration of a number of projects in the medical-legal area has been somewhat delayed. These projects will, however, be formulated in 1977 so that proposals can be put forward to the Attorney General for his consideration and to the Law Foundation in order to obtain funding for research in this area.

(b) Criminal Conversation

A case of criminal conversation was brought to the attention of the Commission for recommendation and reform. On June 30, 1976, the Law Reform Commission passed the following resolution:

The Law Reform Commission, having received a request from a practitioner with respect to the anomaly of the continued existence in Saskatchewan of an action for criminal conversation, which action is founded upon the notion that a husband has a property interest in the chastity of a spouse, recommends to the Attorney General of Saskatchewan that *The Queen's Bench Act* be amended so as to abolish the right of action.

The foregoing resolution was transmitted to the Attorney General by letter.

(c) The Wills Act

On June 30, 1976, the Commission considered a request of a practitioner with regard to a problem relating to the law relevant to the effect of divorce on a will. The Commission recommended to the Attorney General that

The Wills Act be amended to provide that upon a divorce, unless the contrary intention appears, the will of a divorced spouse shall be revoked insofar as it (a) appoints the other spouse to be a testator or testatrix of the will, as the case may be; and (b) insofar as it confers any benefit upon the divorced spouse of the testator or testatrix, as the case may be; it shall otherwise be valid for all purposes.

(d) Registration of Contracts

The Commission heard from a practitioner with regard to extending time limits for registration of contracts under *The Conditional Sales Act*, *The Bills of Sale Act*

and *The Saskatchewan Insurance Act*. After considering the matter, the Commission indicating to the Attorney General by letter that it approved of the practitioner's suggestion relating to such extension.

9. The Saskatchewan Law Foundation

The Saskatchewan Law Foundation 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. Discussions have been held between the Chairman and Mr. Donald K. MacPherson, Q.C., Chairman of the Law Foundation, with regard to the continuing relationship between the Law Reform Commission and the Law Foundation.

The Saskatchewan Law Foundation in the year 1976 funded the contractual position of Mr. Darryl Davies, consultant to the Commission on the Provincial Offences Project. This project has been substantially completed and will be reported early in the spring of 1977. In addition, the Foundation made available to the Commission funding for a Consumer Credit Project directed towards the reform of consumer credit law in Saskatchewan. The foundation also has provided funding for the initiation of research into occupiers' liability law in the province.

The Commission wishes to express its appreciation to the Saskatchewan Law Foundation for this important financial assistance. It is anticipated that the Law Foundation will, in the year 1977, provide on-going financial assistance to the Commission so that it can engage specialized services under contract which would not otherwise be available to the Commission.

OTHER LAW REFORM ORGANIZATIONS

The Commission has, during the course of this 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.

Modest budgetary and personnel resources in Saskatchewan require that a good liaison be pursued between the Saskatchewan Commission and all other law reform bodies. This is important not only in order to obtain commission reports and study papers as they are published but also to obtain some indication of the projects about to be undertaken by other law reform bodies so that there need not be a replication of research and duplication of effort. The Saskatchewan Commission has gained substantially from the research completed by other commissions in areas of mutual interest. An efficient system for sharing law reform information has not yet been developed. Sharing, at this stage, is carried out primarily on a personal contact basis. Some effort has been made to arrange for annual meetings of law reform agencies to facilitate this process.

The Chairman met with those Chairmen of other Law Reform Commissions in Canada who attended the Uniform Law Conference in Yellowknife, Northwest

Territories, on August 19 through to 27, 1976. Although there was no formal meeting of Chairmen of law reform agencies in Canada in 1976, there was an opportunity to meet at other gatherings such as the Uniform Law Conference and at the Canadian Bar Association 58th Annual Meeting in Winnipeg, Manitoba, August 29 to September 2, 1976.

The Chairman, on behalf of the Commission, also attended a seminar sponsored by the Program of Family Law and Social Welfare of the Faculty of Law, University of Toronto, November 19 through to 20, 1976. This seminar was devoted to the area of "The Child and the Courts", an area presently under examination by the Commission in its research project dealing with children's rights. The Chairman also attended a Conference on the Professions and Public Policy sponsored by the Law and Economics Program, Faculty of Law, University of Toronto, October 15 through to 16, 1976.

PERSONNEL

In the third year of its operation, the Commission has undergone considerable staff changes. On June 30, 1976, Mrs. Ellen Schmeiser, Research Director, resigned her position in order to return to the practice of law. Mr. Byron Henderson, a Crown Solicitor with the Commission, on the same date resigned in order to assume a teaching position at the College of Law. In September of 1976, Diane Pask, a Crown Solicitor with the Commission, left to assume her new position as Vice-Chairman of the Rent Appeal Commission of Saskatchewan. The Commission regrets the loss of Ellen Schmeiser, Byron Henderson and Diane Pask for their contribution to the research of the Commission was considerable.

In November of 1976, the Honourable Mr. Justice Edward D. Bayda resigned as a Commissioner. Mr. Justice Bayda served as a Commissioner with the Law Reform Commission for over two years. During that time, his contribution to the work of the Commission was most significant. His sound advice and judgment will be missed. On November 15, 1976, Marjorie A. Gerwing was appointed a Commissioner to replace the Honourable Mr. Justice Bayda. Ms Gerwing is a distinguished Regina lawyer.

In October of 1976, Mr. Ken Hodges, formerly City Solicitor and City Clerk in Moose Jaw, joined the Commission as Research Director. Mr. Hodges brings his considerable administrative and legal background to the work of the Commission. At the end of 1976 the Commission remains short-staffed by two professional positions out of a normal complement of three. It is to be hoped that these vacancies will be filled early in the new year.

Professor Iwan Saunders, who was a full-time consultant to the Commission on the Family Law Project, a project funded by the Law Foundation, terminated his contractual position on June 30, 1976, to assume his duties as a Professor at the new College of Law in Calgary. Professor Anne Jayne of the College of Law of the University of Saskatchewan has joined the Commission as a part-time research consultant in the area of family law.

In addition to Professor Anne Jayne and Professor Ronald Cuming, who continues with the Commission as a part-time research consultant dealing with secured personal property and consumer credit law, Professor Daniel Ish of the College of Law also joined the Commission in a similar part-time research

consultant basis in October of 1976 to conduct research into the area of occupiers' liability law in Saskatchewan.

Although the overall staffing situation of the Commission has been somewhat weakened by resignations and lack of replacement, the Commission is pleased that it was able to rely on outside consultants such as Professors Ronald Cuming, Anne Jayne, Daniel Ish and Mr. Darryl Davies, for their on-going efforts have helped to maintain a healthy level of law reform activity within the province.

In areas of high political priority where target dates for legislative recommendations are considered essential, reliance upon outside research consultants leads quite often to problems in meeting those target dates and monitoring research. Under these circumstances, there is a growing need for in-house, full-time legal research staff. Target dates are more likely to be met when in-house staff are giving high priority to these matters on a full-time basis. At a time, like the present, when the Commission is short-staffed and outside consultants have teaching and other commitments, considerable difficulty can be expected in meeting Commission commitments and levels of production associated with a full complement of full-time, well-trained Commission staff.

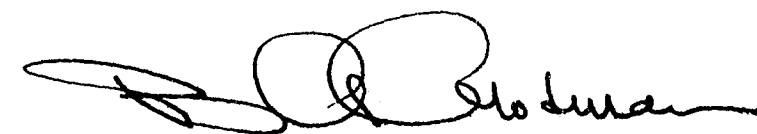
OFFICES

The Commission from its inception was located at Suite 403 Investors Building, 402 - 21st Street East, in Saskatoon. This location has been a convenient one close to the Law Library of the Court House, and to the College of Law's substantial research library. Space has been adequate to accommodate the growing library of the Commission, its meetings and its dealings with both the public and the profession.

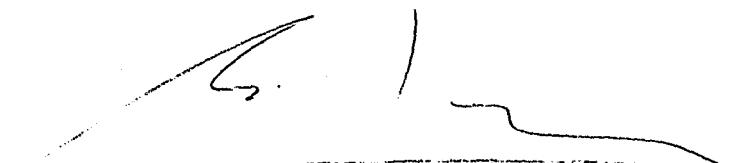
The Commission has moved its offices to a new location, Suite 1003 Canadian Imperial Bank of Commerce Building, 201 - 21st Street East, Saskatoon, Saskatchewan, Canada, S7K 0B8. All future correspondence and inquiries ought to be directed to this address.

CONCLUSION

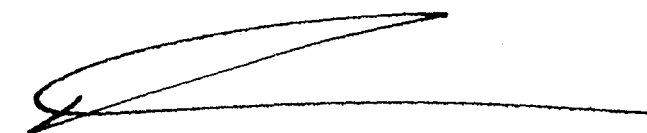
The Commission wishes to express its thanks to you, Mr. Attorney General, to the Acting Deputy Attorney General and to the members of your Department for the continued co-operation and assistance which has been extended to us. The Commission is encouraged by the progress achieved and looks forward to continuing achievement with the support of your Department, the Government and the Legislature.



Brian A. Grosman, *Chairman*



George J. D. Taylor, Q.C., *Commissioner*



Marjorie A. Gerwing, *Commissioner*

February 8, 1977.

1971

CHAPTER 21

An Act to establish a Law Reform Commission.

[Assented to April 2, 1971.]

HER Majesty by and with the advice and consent of the Legislative Assembly of Saskatchewan, enacts as follows:

- | | |
|------------------------|---|
| Short title | 1. This Act may be cited as <i>The Law Reform Commission Act, 1971</i> . |
| Commission constituted | 2. There is hereby constituted a commission to be known as the "Law Reform Commission of Saskatchewan", herein referred to as the "commission". |
| Membership | 3.—(1) The commission shall be composed of not less than three members appointed by 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. |
| 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. |
| 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. |

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.

Legal
research
by com-
mission

7. The commission may institute and direct legal research for the purpose of carrying out its functions.

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.

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.

Publication
of report by
commission

10. The Attorney General may authorize the commission to publish any report submitted to him.

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 be laid before the Legislative Assembly within fifteen days from the commencement of the session next following the end of the year for which the report is made.

Appropriation

12. Sums required for the purposes of this Act may be paid out of moneys appropriated by the Legislature for the purpose.

Coming
into force

13. This Act comes into force on a day to be fixed by proclamation of the Lieutenant Governor.

END