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The Nova Scotia Law Reform Advisory Commission: An Early Appraisal

Loane Skene

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1. Introduction

The Nova Scotia Law Reform Advisory Commission has now been in existence for two and a half years, having been established by the *Law Reform Act* 1969[1] and constituted by an Order of the Governor in Council on January 25, 1972. As the members of the Commission are appointed for a period of two years, the term of appointment of the first members of the Commission expired on January 25 this year, but new members were not in fact appointed until June 25 this year. From February to June, the Commission was more or less in limbo.

In view of the recent appointment of the new members and the commencement of a new era in the Commission's activities, it is the purpose of these notes first to review the progress of the Commission in its first two years and second, to suggest ways in which the Commission might be improved or operate more effectively in future. The notes are divided into parts, each dealing with one aspect of the Commission and its activities — its construction, its terms of reference, its powers and the fetters on its powers, its programme and plans for the future, its procedure for implementing its plans, its finances, its relationship with the different branches of the legal profession and its general function in the community. The intention is not be be unduly critical of the Commission at this early stage, but rather to offer some constructive suggestions for its future development.

2. Constitution of the Commission

The Act provides that the Commission shall be composed of not less than five or more than ten members to be appointed by the Governor

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*Loane Skene is a former Research Officer with the Nova Scotia Law Reform Advisory Commission.

1. S.N.S. 1969, c. 14. Hereinafter sections of the Act are referred to without full citation.

in Council on the recommendation of the Attorney General.[2] To qualify for appointment, one must be an active or retired judge of the Supreme Court or county court or a barrister of the Supreme Court.[3] Appointments are for a term of two years, but a member may be reappointed.[4] Members (with the exception of the new Chairman) serve on a part-time basis and without remuneration.

The first ten members appointed to the Commission represented all branches of the profession — as one would expect, the majority were legal practitioners[5] (seven), with two members of the judiciary[6] (including the Chairman, the Honourable Mr. Justice A. Gordon Cooper) and one representative from the faculty of law at Dalhousie University[7]. Seven of the members resided in Halifax and the other three in Truro, Digby and Baddeck respectively. The second series of members consists of five legal practitioners[8], three members of the Judiciary[9] (including the Chairman, Mr. W. A. D. Gunn, who has recently retired from the Provincial Magistrates Court) and one representative from the Dalhousie Law Faculty[10]. Five of them reside in Halifax, and the others in Truro, Baddeck, Sydney and Port Hawkesbury.

The first Secretary and Executive Officer of the Commission was Mr. Graham D. Walker, by virtue of his office of Legislative Counsel of the province[11]. However on 25th June this year, Mr. John L. Harris was appointed full time Secretary and Executive Officer (in addition to his duties as Chief Electoral Officer of the

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2. S. 2(2).
3. S. 2(3).
4. S. 2(4).
5. Arthur R. Moriera, Q.C.; Lorne O. Clarke, Q.C.; R. MacLeod Rogers, Q.C.; Lilias M. Toward; L. J. Haynes; Peter G. Green; J. Gerald Godsoe Jr.
6. The Honourable Mr. Justice A. Gordon Cooper (Chairman) — a member of the Supreme Court of Nova Scotia, Appeal Division; the Honourable Mr. Justice Gordon L. S. Hart, a member of the Supreme Court of Nova Scotia, Trial Division, who retired in June 1973, being replaced by Judge P. J. T. O Hearn, Judge of the Halifax county court.
7. F. Murray Fraser, formerly Associate Dean of the Faculty of Law, Dalhousie University, Halifax.
8. Lorne O. Clarke, Q.C.; Lilias M. Toward, Q.C.; Arthur Mollon; Gerald J. Doucet and J. Gerald Godsoe.
9. The Honourable Mr. Justice Vincent Morrison; His Honour Judge Peter J. T. O'Hearn and W. A. D. Gunn, Q.C.
10. R. St. J. Macdonald, Q.C., Dean of the Faculty of Law, Dalhousie University.
11. S. 3(1) provides that the person who from time to time holds the office of Legislative Counsel or a person in the public service appointed by the Governor in Council shall be the Secretary and Executive Officer of the Commission.

Province). The Secretary's duties are set out in the Act and are to supervise any research or other projects undertaken by the Commission, to keep and maintain the records of the Commission, and to provide stenographic or other services required by the Commission.[12]

In having nine or ten members, the Commission is larger than most other provincial law reform agencies in Canada[13] and those familar with committee proceedings may wonder whether its efficiency will not be impaired by its size. Five, or even seven members would be equally effective and would no doubt have less difficulty in reaching agreement. However, this problem could be overcome if the ten members of the Commission split into sub-committees to handle particular projects. (This is discussed more fully below.)

The constitution of the Commission is similar to that of other provincial law reform bodies in its representation of the different branches of the profession. Few would quarrel with this — the members of the judiciary have an intimate knowledge of the law-making process in the courts; the practitioners have experience of the practical workings of the law and its day-to-day problems (which often do not reach the courts); and an academic has a broad outlook on the law as a whole. The appointment of members from outside Halifax ensures that all interests in the province are represented on the Commission, although it is hoped that the frequency of meetings will not be curtailed due to the inconvenience to these members of constant trips to Halifax.

Whether the members of the Commission should be salaried and serve full-time depends on the job that they are intended to do. If, as now appears to be the case with the Nova Scotia Commission, they are to act in a consultative and advisory capacity, discussing and making recommendations concerning research projects prepared by salaried research personnel, the best results will probably be obtained from people who are in contact with the day-to-day workings of the law in all its aspects and not from full-time

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12. S. 3(1).

13. This and subsequent comments in the text refer only to the law reform agencies of the common law provinces, i.e. the Alberta Institute of Law Research and Reform (governing board of 9); the Law Reform Commission of British Columbia (3 members); the Manitoba Law Reform Commission (7 members); the Ontario Law Reform Commission (9 members); the Law Reform Commission of Prince Edward Island (3 members); the Law Reform Commission of Saskatchewan (5 members).

reformers.[14] Such people will generally be busy and able to devote only a limited amount of time to the work of the Commission, but will no doubt be prepared to work without remuneration in view of the honour of being a member of the Commission and the contribution they are able to make to the improvement and development of the law. A two-year appointment, however, is too short[15] and the terms of appointment of members should over-lap, i.e., a third should be appointed and a third retire each year.[16] Although the members are eligible for reappointment, the bi-annual retirement and reappointment of members interrupts the pattern of the Commission's work and the development of long-term policies, a clear example of which occurred earlier this year when the Commission virtually ceased to exist for five months. It also encourages the postponement of current or planned projects until the commencement of the new members' term. A full-time Chairman is needed to ensure continuity in the Commission's programmes and to establish contact with other law reform agencies and other organizations and individuals. The recent appointment of the first full-time Chairman is therefore to be applauded.

The main points in which the constitution of the Commission differs from that of other provincial law reform agencies in Canada are first that its members are required by statute to be lawyers and second that its Secretary shall be the Legislative Counsel or a person in the public service appointed by the Governor in Council. The Nova Scotia Act is the only statute establishing a provincial law reform commission which stipulates that the members of the commission must be active or retired judges or barristers of the Supreme Court.[17] This means that although in theory (if not in practice) non-lawyers could be appointed as members of other provincial law reform bodies, they could not be appointed as members of the Nova Scotia Commission.

It has often been suggested that a law reform body should have some members who represent disciplines other than law —

14. See, L. C. B. Gower, *Reflections on Law Reform,* (1973) 23 U. of Tor. L. J. 257, at 260.

15. *Cf.*, British Columbia, 5 years; Manitoba, Chairman 7 years, other members 3 years; Ontario and Prince Edward Island, no term specified; Saskatchewan, members hold office during the pleasure of the Lieutenant Governor in Council.

16. The writer admits that rotating membership would be an innovation (albeit desirable), since in the provinces where members are appointed for a fixed term, all are appointed and retire at the same time.

17. S. 2(3).

sociologists, social scientists, economists, criminologists, etc., and in fact some law reform agencies do have such members.[18] However the view generally taken in Canada is that of the English Law Commission, aptly expressed by the Chairman of the Law Commission, Sir Leslie Scarman, as follows:

> The day to day work of a law reform agency is largely a research and drafting routine. It is this work which provides the basic memoranda setting out the law as it is and indicating where there are ambiguities, confusions, omissions, and anomalies. In this routine, the sociologists or laymen would have to play a waiting game. Their contribution to law reform appears to us to come at the stage where initial research has provided a description of the law as it is and a provisional identification of the matters requiring reform . .[19]

If the function of the members of a law reform commission is to act in a consultative or advisory capacity in selecting, reviewing and recommending proposals for law reform, the people best equipped to do that are lawyers. Members of other disciplines can assist most in the law reform process by advising on particular projects within their own specialized knowledge. (The procedure by which their advice could be obtained is discussed below.)

The provision that the Secretary of the Commission shall be the Legislative Counsel or a person in the public service appointed by the Governor in Council and that he shall have the duty of supervising all projects undertaken by the Commission[20] is the most important distinguishing feature of the Nova Scotia Commission. The Secretary is the only government representative on the Commission (although of course other government representatives could be appointed as members if they were also retired judges or barristers) and his position is clearly most influential. The advantages of this arrangement are first, that it encourages a good relationship between the Commission and the Government, and second, that it increases the likelihood of the Commission's bills being enacted by the Legislature.[21] However, convenient as this

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18. For example, the Alberta Institute of Law Research and Reform is required to have a representative of the University, who is a non-lawyer, on the Governing Board.

19. *Inside the English Law Commission,* (1971) 57 A.B.A.J. 867 at 867.

20. S. 3(1).

21. This was particularly so when the Secretary was the Legislative Counsel, since the Commission's bills were then in fact researched, drafted and approved by the same man wearing different hats. (Mr. Walker, in conversation with the writer, readily admitted that he would not so readily have approved the Commission's first three bills as Legislative Counsel, if he had not researched and drafted them himself

may be for ensuring that the Commission has maximum effect, it may lead the onlooker to believe that the Commission is a mere branch of "the Government" or the Attorney General's Department (an impression which will be increased by the fact that the Commission's offices are situated in the same building as the Attorney General's Department — in fact on the same floor — and they share the same library and secretarial facilities). Whether this is a bad thing is a moot point and is discussed more fully below under the heading "Control and Initiative".

3. Terms of Reference

The Act describes the function of the Commission as follows:

> 4. It shall be the function of the Commission and the Commission shall have power
> (a) to review at the request of the Attorney General any enactment and to recommend the repeal, revision or amendment of an enactment or any part thereof so reviewed;
> (b) to consider at the request of the Attorney General any matter that might be the subject of an enactment and, if an enactment is deemed desirable, recommend draft legislation for enactment.

Section 5(1) confers certain powers on the Commission with regard to research:

> 5. (1) With the approval of the Attorney General the Commission may inquire into and consider any matter relating to reform of the law having regard to the statute law, the common law, judicial decisions or any procedure under the statute or other law.

The Nova Scotia Act is the only statute establishing a provincial law reform commission which describes the functions and powers of the Commission in this way. The statutes establishing the other law reform commissions[22] state that the object of their respective commissions is to keep under review or consider reform of the law having regard to the statute law, common law, judicial decisions etc., for the purpose of which they may institute such research as they consider necessary. By including the functions and powers in separate sections (headed respectively "Legislation" and "Research") the Nova Scotia Act apparently means that it is the

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as Secretary of the Commission.) Now that the Secretary is appointed full-time (although he is also the Chief Electoral Officer), this comment may not apply.

22. British Columbia, *Law Reform Commission Act*, S.B.C. 1969, c. 14, s. 3; Manitoba, *The Law Reform Commission Act*, S.M. 1970, c. 95, s. 5(1); Ontario, *The Ontario Law Reform Commission Act*, R.S.O. 1970, c. 321, s. 2(1); Prince Edward Island, *The Law Reform Commission Act*, P.E.I. Acts 1970, c. 32, s. 3(1); Saskatchewan, *The Law Reform Commission Act* 1971, S.S. 1971, c. 21, s. 6.

function of the Commission to review the statute law and, *in the course of fulfilling that function,* the Commission shall have power to inquire into the "common law, judicial decisions or any procedure under the statute or other law" etc., in addition to the statute law. If *section 5* is subject to *section 4* in this way, the matters which may be considered by the Commission are limited to those which are or might be the subject of an enactment. The cynic will no doubt shrug his shoulders at this apparent restriction on the Commission's terms of reference, since in this much regulated age, it is difficult to imagine a subject that is not or might not be the subject of an enactment and only time will tell whether the limit is more conjectural than real!

In any event, even if the range of subjects which may be considered by the Commission in particular projects is as wide as that of other provincial law reform agencies, its objects clearly fall short of the broad outlook envisaged by the law reform commission acts of, for example, Manitoba and British Columbia, where the respective commissions of those provinces are charged with keeping the law generally under review and making recommendations for its improvement and modernization. Although the Commission quite rightly says in its First Annual Report that "The Act envisages a planned approach to law reform",[23] this aim might have been better achieved if the Commission were given broader general powers (and, equally important, the power to initiate and undertake its own research projects, a point which is discussed in the next part).

4. Control and Initiative

As noted above, the members of the Commission are appointed on the recommendation of the Attorney General. Although the Attorney General is no doubt influential in the selection of members of all provincial law reform commissions, only in Nova Scotia and Manitoba is his recommendation necessary for the appointment of members. Research personnel cannot be engaged by the Commission without his approval.

The Commission is required to report to the Attorney General — from time to time, and annually. This is the case with all of the provincial law reform agencies (save of course the Alberta Institute of Law Research and Reform, which is not an official body with a

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23. *Annual Report of the Nova Scotia Law Reform Advisory Commission* 1972, 5.

formal relationship to the government and the legislature); it may however delay the implementation of the Commission's proposals and it would perhaps be more expeditious for the Commission to table its reports directly with the Legislature.

However, the method by which the Attorney General is most able to control the activities of the Commission is in his selection of topics for research to be undertaken by the Commission. Under the Act (*section 4* supra), the Attorney General has sole responsibility for suggesting topics for research and the Commission can clearly not undertake any project without his approval. In fact, on its face, the Act does not permit the Commission to initiate projects even subject to the Attorney General's approval,[24] although it is clear from the Commission's First Annual Report that most of the projects undertaken to date have been suggested by the Commission and subsequently approved by the Attorney General.[25] If this practice continues, Nova Scotia and Saskatchewan will be the only provinces in which the Attorney General's approval is required for proposed projects — in Ontario, Manitoba, British Columbia and Prince Edward Island, the respective law reform commissions are charged with keeping the law under review and may inquire into and consider matters relating to the law within their jurisdictions, of their own initiative, without first seeking the Attorney General's approval. (This is not to say of course that they have unlimited power to act independently — they are subject to budgetary restrictions and will no doubt be reluctant to undertake projects which do not have some chance of being implemented in legislation. They will also want to maintain good relations with the Attorney General and the Legislature in order to ensure that their bills are passed[26].)

If the purpose of a law reform commission is to promote systematic reform by keeping the law as a whole under review, this

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24. Since s.4 provides that it is the function of the Commission to consider matters at the request of the Attorney General and s.5 appears to be subject to s.4.

25. See, *Annual Report* supra note 23, p. 6: "Eight projects were recommended to the Attorney General and approved by him." Of these eight projects, seven were suggested by Mr. Walker, and one (on Mechanics' Liens) was suggested by a brief to the Nova Scotia Government submitted by the Canadian Labour Council. All were approved by the Commission before being recommended to the Attorney General; per Mr. Walker, in conversation with the writer.

26. This is certainly so in Ontario — see, *Ontario Law Reform Commission (First) Annual Report* (1968) 11 Can. B.J. 122 at 126; H. Allan Leal, Q.C., *The Ontario Law Reform Commission,* (1966) 1 Can. Legal Studies 124 at 129-30.

is unlikely to be achieved by the Nova Scotia Commission as it is presently constituted. It has no general power to review the law; it is not entitled to initiate its own programmes (although the Attorney General may be amenable to its suggestions, he has power to veto any which he considers controversial or politically embarrassing to the government). The Commission may be open to suggestions from members of the profession and the public, but it is not in a position to commence research on those suggestions even if it approves them; it must undertake projects requested by the Attorney General and give them the priority determined by the Attorney General. In short, the Attorney General has the Commission under his thumb, however benevolent and, as he is a man with many other duties, who holds his position by a tenure that has little certainty or permanence, the result must be to undermine the autonomy of the Commission and impair the continuous and systematic development of the law in this province.

5. The Commission's Programme — Completed Projects and Future Plans

According to the Commission's First Annual Report, "The greater part of the (first) year was devoted to determining an approach to the whole question of law reform."[27] It was decided that planned law reform should be used to keep the law abreast of current social needs of the province and that this could best be achieved by studying whole areas of law rather than attempting to correct loopholes and anachronisms with piecemeal reforms. This "long-term" approach to law reform is consistent with the type of projects being undertaken by the Commission — research studies in particular areas contracted out to research personnel outside the Commission. (If "short-term", remedial amendments are to be instituted on a day-to-day basis, as errors, anomalies and inconsistencies are discovered or pointed out, the Commission would clearly need to have the power to review and consider the law as a whole and to initiate its own projects. It would also need a full-time research staff.)

The projects undertaken by the Commission in its first year (which, as stated above, were suggested by the Commission and approved by the Attorney General) concerned the reciprocal

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27. *Annual Report* supra note 23, p. 6.

enforcement of judgements; the filing, publication, consolidation and revision of regulations; and the establishment of the office of Public Trustee. The research involved in these studies was undertaken by the members of the Commission without external assistance and their recommendations to the Attorney General were made in the Commission's First Annual Report (which was published and circulated to interested parties). All of the Commission's recommendations were implemented in legislation in the next sitting of the Legislature.[28]

In its second year, the Commission engaged several research personnel to study, investigate and report to the Commission concerning each of its programmes for that year. Research in the following areas was undertaken respectively by the writer (full-time, personal property security transactions); Judge P. J. T. O Hearn, Judge of the county court (part-time, the grand jury system in Nova Scotia); Mrs. Lilias Toward, legal practitioner and member of the Commission (part-time, dower and curtesy); and Professor Peter E. Darby of the faculty of law, Dalhousie University (part-time, mechanics' liens). This year, two additional study papers have been submitted by the writer (on small claims and the *Collection Act* respectively). These research reports will apparently be discussed in due course by the newly-appointed members of the Commission, who will decide what further steps, if any, are to be taken by the Commission in respect of each of them, and report their findings and recommendations to the Attorney General. (The Act requires that the Commission report to the Attorney General at the conclusion of its deliberations on any matters as well as from time to time and annually[29].)

Generally, the Commission has established contact with other law reform commissions with a view to exchanging information, working and research papers etc. It acted as host for a meeting of representatives of the law reform commissions of the Atlantic Provinces and Canada, held in October 1973 at Dalhousie University, and the Chairman and Secretary attended a meeting of representatives of all the provincial law reform commissions at Winnipeg in August 1974.

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28. *The Reciprocal Enforcement of Judgements Act* S.N.S. 1973 c. 13; *The Regulations Act* S.N.S. 1973, c. 15; *The Public Trustee Act* S.N.S. 1973, c. 12. The latter required an amendment to *The Patients' Abandoned Property Act* R.S.N.S. c. 226, which was enacted as S.N.S. 1973, c. 46.
29. S. 8(1) and (2).

Insofar as it is possible to categorize areas of law as "lawyers' law" — areas which do not concern social or political objectives or are non-controversial except among lawyers (and it is of course impossible to separate all policy considerations from even the most technical problems[30]), the topics which have been studied by the Commission are certainly "lawyers' law". However, most matters within provincial jurisdiction are to a greater or lesser extent "lawyers' law" (e.g. property, contract, judicial administration) and with a Commission composed entirely of lawyers, supervised by the Attorney General and financed by the government to study particular topics rather than to review the law as a whole, it is probably to be expected that it will restrict its activities to such matters. Only if a law reform body is independent, able to act of its own initiative and charged with reviewing the law as a whole, will it be necessary or fruitful for it to pursue studies of a policy or sociological nature.

In selecting topics to be studied by the Commission, regard should be had to the work of other provincial law reform agencies, committees of the Canadian Bar Association and the Conference of Commissioners on Uniformity of Legislation in Canada. If the research reports prepared by other law reform bodies are available, the Commission will need to spend less time and money on its research and if a Model Act has been adopted by the Uniformity Commissioners, that may provide a basis for legislation in Nova Scotia (and also promote uniformity of legislation in all provinces). In short, the Commission's resources, both human and monetary, can be best utilized by building on the research of others, rather than starting from scratch on its own projects.

The Commission's view, as expressed by the former Secretary,[31] Mr. Graham D. Walker, is that it is not the purpose of the Commission to engage in academic exercises — the fact that research has been done on a particular topic in say Manitoba or

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30. A theme on which many writers have expounded; see: The Honourable Mr. Justice Scarman (as he then was), *Law Reform, the New Pattern*, The Lindsay Memorial Lectures delivered at the University of Keele November 1967 (London, Routledge and Kegal Paul, 1968) at 28-34; G. Sawer, *The Theory of Law Reform* (1970) 20 U. of Toronto L. J. 183 at 193-4; R. J. Sutton, *The English Law Commission, A New Philosophy of Law Reform* (1966-67) 20 Van L. Rev. 1009 at 1023-4; Richard F. Gosse, *Canadian Law Reform Agencies* (1970-71) 1-2 Can. B. Ass. J. 1, at 2-3.

31. In conversation with the writer.

Saskatchewan does not mean that research should be done on that topic in Nova Scotia. The Commission should decide, on the basis of the current needs of this province, which areas of law are working unsatisfactorily and need to be reformed. This view is of course well-founded, but should not preclude the use of the research materials of other law reform bodies as a basis for research here.

6. Procedure and Organization

As mentioned above, the procedure adopted by the Commission in its first year was to make its own investigation of the topics for proposed reform, discuss in a meeting of members the findings of those investigations and then report to the Attorney General with a draft bill to illustrate the way in which its recommendations could be implemented by legislation. In its second year, it engaged outside research workers to study the topics for proposed reform and report to the Commission. (This will no doubt be the practice in the future).

Since the research reports have only recently been submitted to the Commission, it is not yet known what procedure the Commission will adopt in dealing with them — will the members of the Commission as a whole, or in sub-committee, discuss the reports and on the basis of their discussion, make recommendations to the Attorney General? Will the authors of the reports and other "specialists" be invited to attend the Commission's discussion?[32] Will they send copies of the reports to interested persons (e.g. members of the judiciary, the local bar, academics practising in particular fields, professional organizations and other bodies and individuals who request a copy)[33] and invite them to make representations and submissions to the Commission?[34] Will they make press releases? Will they conduct a public hearing at which the people who will be affected by the proposed legislation can express their views?[35]

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32. This is the procedure of the Ontario Law Reform Commission — see, *Annual Report* supra note 26 at 125.
33. This is the procedure of the Ontario Law Reform Commission — see, *Annual Report* supra note 26 at 127; also of the English Law Commission — see, Sir Leslie Scarman, *Inside the English Law Commission* (1971) 57 A.B.A.J. 867 at 868.
34. The Commission has power under the Act to receive representations and submissions from any person body or the public — s.7(1) (a).
35. The Commission has power under the Act to hold a public hearing — s.7(1) (b), but it does not have power to summon witnesses.

It is vital to good law reform that proposed changes should be given the fullest possible consideration before they are implemented and this will be achieved most effectively by the Commission publicizing its findings and inviting comments from interested persons, before it reports to the Attorney General with its recommendations.[36] Whether this is done by the circulation of working papers, by press releases, by private submissions or public hearings, this will air the Commission's proposals and enable outside experts and those who will be affected by proposed changes to take part in the law reform process.[37] Furthermore, their comments will be far more valuable for being focussed directly on the matters being considered by the Commission than vague suggestions for reform or random general observations. If the consultation is done efficiently, it need not involve undue delays in the Commission's work.

When the Commission is better established and its workload heavier, it may be convenient for it to work through sub-committees (although it is not at present empowered to do this under the Act[38]). The sub-committees could be chaired by a member of the Commission and attended by the research personnel who have reported on the project under consideration and also other experts co-opted onto the sub-committee for one particular project. The sub-committee would report to the Commission as a whole and it could then give a fresh appraisal to the sub-committee's report.[39] This would enable the members of the Commission to specialize in particular areas and reduce the problems likely to arise with a large

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36. In fact, the Act should require that the Commission's findings be published or laid before the Legislature, whether or not that is authorized by the Attorney General. *Cf.* The English Law Commission — *Law Commission Act 1965* s. 3(2); *The Saskatchewan Law Reform Commission Act, S.S.* 1971 c.21, s. 11.

37. It will also aid the passage of the Commission's bills through the Legislature. As Professor Gower wryly comments: "The main reason (for promoting full consultation about law reform proposals during the preparatory stages of the Law Commission's report) is that if all those who think they ought to be consulted have not had an opportunity of objecting, they will take umbrage when the report is presented and be sure to raise objections then, thus making the proposals controversial." *Reflections on Law Reform,* supra note 14 at 262-3.

38. *Cf.* The Law Reform Commissions of British Columbia and Saskatchewan, both of which are empowered to appoint committees, the members of which need not be lawyers and to refer matters to such sub-committees for consideration and report to the Commission — S.B.C. 1969, c. 14, s.5 and S.S. 1971, c. 21, s.8(1) respectively.

39. This is the procedure of the English Law Reform Committee, See, R. E.

commission. Also as the members of such a sub-committee need not be lawyers, advantage could be taken of the views of other disciplines by inviting an economist, sociologist, political scientist or other appropriate persons to sit on the committee. Finally, since it would be the ideal way to utilize the specialized knowledge of an academic, at least one academic should sit on each sub-committee.

Although it is not essential that the Commission submit a draft bill with its report to the Attorney General, to illustrate the form of legislation which would put its recommendations into effect, this would no doubt facilitate and expedite the implementation of its proposals.

7. Finances

The whole of the Commission's funds are appropriated annually by the Legislature and paid out by the Attorney General.[40] The annual budget for 1973-74 was $75,000; for 1974-75 it is $120,000. All moneys appropriated by the Legislature for the purposes of the Commission are paid by the Attorney General into the Law Reform Fund, into which may also be paid any sums granted or given by any person, organization or body.[41]

Insofar as the Commission is government-financed, it is of course government-controlled, and although this is not unusual for Canadian provincial law reform agencies,[42] it is obvious that if the Commission had separate finance available to it, it would have greater independence of action. In this regard, perhaps the following avenues of finance could be considered, either for the general activities of the Commission or for specific projects: a provincial Law Foundation made up of the interest on lawyers' trust

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Megarry, *Law Reform* (1956) 34 Can. B. Rev., 691 at 693-4; also the English Law Commission — See, Sir Leslie Scarman, *Inside the English Law Commission* supra note 19 at 868 and *Law Reform, the New Pattern,* supra note 30 at 36.

40. S. 9(1).

41. S. 9(2). The Nova Scotia Act is the only statute establishing a provincial law reform commission which contains this provision and it does present a possibility for independent financing of particular projects.

42. All of the provincial law reform commissions are financed by their respective provincial governments. The Alberta Institute of Law Research and Reform is financed as to one third, by the provincial government, and as to two thirds, by the university.

accounts; a grant from the Foundation for Legal Research[43]; grants from other Foundations[44] or from the Canadian Bar Association.

8. Relationship with the University

To date, it appears, the Commission has taken little advantage of the resources available to it from the Faculty of Law at Dalhousie University. One member of the Commission and one research assistant have been academics and one other academic advised the Commission on points to be considered in the developments of a programme of law reform in Nova Scotia.[45]

Since the Commission is not entitled to initiate its own research programmes, it may be that research topics suggested by faculty members could or would not be implemented; however faculty suggestions would clearly stimulate interest in law reform and should be encouraged. Faculty members are also an obvious source of research personnel[46] and consultants and advisers on specific projects, where they could either comment on working papers, attend meetings of the Commission, or, as suggested above, serve on sub-committees of the Commission. The faculty too would benefit from the increased involvement of faculty as it would stimulate interest in legal research and attract new faculty members to the law school.

Another aspect of university involvement in law reform is student participation in legal research and the responsibility for that rests

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43. The Foundation has made grants for research projects in Canada — for example, in 1964 it granted $1,400 to the Committee on Security of Personal Property in Ontario (chaired first by the Hon. Roy Kellock, Q.C. and then by Professor Jacob S. Ziegel), which study was later taken over by the newly established Ontario Law Reform Commission.

44 This is a source of funds that has recently been tapped by the Canadian Bar Association for legal research, and it has apparently prepared a list of all the foundations whose objectives may encompass areas of concern to the law — per Mr. John L. Farris, then President of the Canadian Bar Association, in an interview, *Seeking Reforms in Canadian Law, 29 Feb. 1972, Fin. Post, 66.*

45. Professor W. H. Charles submitted a working paper to the Commission on this subject in November 1972.

46. This fact has been recognized by the Ontario Law Reform Commission, which "relies heavily for research personnel on the full-time staff of the five Ontario law schools", *Annual Report* supra note 26 at p. 124; also in Alberta, where the Institute is situated on the University campus, the Director and two members are academics, and its stated purpose is to encourage research by members of the Faculty of Law — See, W. F. Bowker, *Alberta's Institute of Law Research and Reform* (1968) 11 Can. B.J. 341 at 342-4.

with the university. Dalhousie University was once a pioneer in Canada in this field, as a Centre for Legislative Research was established at the Dalhousie Law School in 1950; its purpose was "first to provide law students with some experience in methods of research and drafting essential for effective legislation and secondly to make the results of this work whatever its worth, available to the legislature."[47] Work in the Centre was part of the legislation course and the Centre was based in a room provided in the law school building. Its Associate Director was the Legislative Counsel. Before it was discontinued in 1965, the students at the Centre did the basic research and preliminary drafting for the revision of the Nova Scotia Statutes covering the period from 1923 to 1954, which later came into force under the title "Revised Statutes of Nova Scotia 1954" and did the research upon which several statutes making significant changes in the law were based.[48] They also assisted the Conference of Commissioners for the Uniformity of Legislation in Canada in researching and drafting legislation which was later adopted by the Commissioners[49] Although a course in legislation is still taught at Dalhousie University, there has not been a counterpart to the Centre for Legislative Research since it was discontinued in 1965.

The contributions which such a Centre can make to organized law reform are obvious from the brief account of its activities given above — the students under the supervision of the professor teaching the legislation course, can suggest topics for research, do preliminary research (e.g. prepare comparative studies on the law in Nova Scotia on a particular subject and the law in other parts of Canada and the common law world) or more detailed research (perhaps to assist professional research personnel engaged by the Commission), conduct sociological surveys to gauge the opinion of persons likely to be affected by proposed reform, etc. Generally, the involvement of students in the law reform process will also promote interest in legal research and encourage active participation in law reform by students who will eventually become practitioners.

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47. Horace E. Read, then Dean of the Faculty of Law, Dalhousie University (1953) 33 Can. B. Rev. 248; also, by the same author, *The Public Responsibilities of the Law Teacher in Canada* (1961) 39 Can. B. Rev. 232 at 240.
48. *The Public Responsibilities of the Law Teacher in Canada* supra note 47 at p. 240.
49. Horace E. Read, *The Nova Scotia Centre for Legislative Research* (1956) 42 A.B.A.J. 572 at 573.

9. The Role of Practitioners in Law Reform

Like academics, members of the bar can participate in law reform at various stages — they can suggest topics for research and point out anomalies and inconsistencies in the law; they can (and do) serve as members of the Commission, or a sub-committee appointed by the Commission; they can advise on research and working papers prepared by the Commission or its research personnel, etc. At all stages, their advice and suggestions would of course be invaluable, as those who are in contact with the day to day workings of the law in practice should be the first to point out its difficulties and shortcomings.

Due to the practitioner's pressure of work however, or his disinclination to thrust himself forward, or his general inertia, his response to law reform proposals has been found by most commissions to be disappointing. The only way to overcome this general apathy of practitioners is to pin down particular people to comment on particular problems or proposals for reform; although they may be reluctant to come forward when approached as a body, they will probably be glad to assist when approached personally. (This is illustrated by the experience of the writer — when she first was appointed to undertake a research project for the Commission, a memorandum was circulated to all members of the bar in Nova Scotia, outlining the project and giving the address at which the writer could be contacted with suggestions for reforms in that area of the law. No one responded. Yet when the writer sought to discuss specific problems with particular practitioners, both in Halifax and other parts of the province, they were only too happy to find time for discussion and made many helpful suggestions.)

10. Relationship with Other Government Departments

Before the establishment of law reform commissions in Canada, it was the practice of many government departments to engage research personnel (often members of law faculties) to conduct investigations which often led to legislative reform. This practice has continued notwithstanding the existence of the new law reform agencies.

The Nova Scotia Commission is not empowered, as are some law reform agencies,[50] to provide direct advice and information to

50. For example, The Law Reform Commission of British Columbia S.B.C. c. 14, s.3(d).

government departments. Any studies undertaken in this regard would need to be referred to the Commission through the Attorney General. This is perhaps unfortunate, as the Commission should eventually be the body responsible for all organized law reform and legal research in the province and should be the most appropriate body to investigate suggested reforms in the context of the whole scope and fabric of the law. The Commission would not, of course, need or wish to be involved in the policy decisions to be made by the government department; it should obviously be the officials of the Lands and Forests Department who decide the limits of the hunting season, the bag limits, the use of snares or traps, which animals should be protected and when, etc. But the Department could give the Commission a statement of its intentions and objectives, or be represented on a sub-committee, and be advised by the Commission on methods of implementing its policies. This would encourage consistency and continuity in the development of all branches of the law and, although the resources of the present Commission might be strained if it were to enter such fields at this stage, this might be a long-term objective.

11. Conclusions

Although a full-time Chairman and Secretary have recently been appointed to the Commission, it is still little more than a government agency. Its members and research staff are recommended or appointed by the Attorney General; the topics for its research are selected by the Attorney General; it must report to the Attorney General and its recommendations will only be made public on his authorization; its research projects are supervised by the Secretary who is a person in the public service; its funds are appropriated by the Legislature and handled by the Attorney General; and its premises are adjacent to those of the Attorney General's Department. It is not surprising that all of its proposals to date have been implemented in legislation!

Its lack of autonomy is aggravated by its limited terms of reference, which restrict its function to a review of statute law on the request of the Attorney General. It has no broad mandate to keep the law as a whole under review and no initiative to make recommendations for reform in areas not designated by the Attorney General for study by the Commission. This makes systematic law reform impossible and means that the Commission will operate as a

research centre for projects that might otherwise have been undertaken by the Attorney General's Department. Its part-time, unsalaried members (with the exception of the new Chairman), appointed for a brief two-year term, can be expected to do little more than ratify or reject the proposals of the salaried research personnel. Such an arrangement is not conducive to the development of continuity and long-term policies.

In the course of these notes, various suggestions have been made for the improvement of the Commission. The appointment of a full-time Chairman and Secretary is certainly a step in the right direction but they should be appointed for a term of five or at least three years. The part-time members should be appointed for rotating terms of three or five years. The Commission could be empowered to act through sub-committees which could include non-lawyers; its terms of reference could be extended so that it has the general function of keeping the law as a whole under review and making recommendations for its improvement and modernization; and it could have the power to initiate its own research programmes which would be aided by an independent source of finance. It must continue to maintain a good relationship with the Legislature, to encourage the implementation of its recommendations. It must also evolve an effective system of consultation with academics, members of the profession, representatives of other disciplines and the general public to enable its proposals to be considered as fully as possible before they are implemented. In short, it should be an independent body, fulfilling the function for which it is especially designed — the promotion of planned and systematic law reform adapted to the social and economic needs of this province.