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The Manitoba Law Reform Commission: A Critical Evaluation

Paul Thomas

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1. Introduction

The Manitoba Law Reform Commission began work in November, 1970. Its Third Annual Report, signed on April 1st, 1974, indicates that the Commission has submitted fifteen formal reports to the Attorney-General for Manitoba.[1] The recommendations contained in seven of these reports have been implemented by legislation.[2] In the case of two other reports, a change in the law was not recommended and no change was made.[3] The Commission has also made twelve informal reports by way of letter to the Attorney-General.[4] The recommendations contained in four of the

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*Paul Thomas, Associate Professor of Law, Dalhousie University; former Chief Research Officer to The Manitoba Law Reform Commission.

1. Jury Service for Registered Indians; Summary Disposition of Builders and Workmen's Liens; Disposition of Maintenance Judgements in Land Titles Offices; An Act Respecting Billiard and Pool Rooms — Proposed Repeal; Right of Mortgagors to Obtain Annual Statements; Enactment of a Mineral Declaratory Act; Powers of Entry, Search and Seizure in The City of Winnipeg Act; Section 45 of the Offences Against the Person Act, 1861; A Review of "The Privacy Act" with proposed amendments to the Criminal Code of Canada; The Abolition of Inter-Spousal Immunity in Tort; The Advisability of a Good Samaritan Law; Section 110 of the "Real Property Act" — the immortal Manitoba Mortgage; Pre-licencing Education for Real Estate Agents in Manitoba; Special, Enduring Powers of Attorney; Control of post arrest pre-trial detention.
2. Jury Service for Registered Indians; Disposition of Maintenance Judgements in Land Titles Offices; Right of Mortgagors to Obtain Annual Statements; Enactment of Mineral Declaratory Act; Powers of Entry, Search and Seizure in the City of Winnipeg Act; Section 45 of the Offences Against the Person Act 1861; The Abolition of Inter-Spousal Immunity in Tort.
3. Review of "The Privacy Act" with proposed amendments to the Criminal Code of Canada; The Advisability of a Good Sameritan Law.
4. Auto Engine Numbers in Section 11 of "The Bills of Sale Act"; Mortgagor's relief from Section 20(6) of "The Mortgage Act" together also with the right to have mortgage discharged upon payment in full after five years; Amending provisions as to costs in Part II of "The County Courts Act" to avoid inconsistency with intent of this new legislation; Comments on draft Bill to amend "The Jury Act"; Relaxation of Limit of Number of Trustees under "The Trustee Act"; Uniformity of Definition of Age as between "The Age of Majority Act (Man.) and The Criminal Code and The Interpretation Act (Can.); Automatic Attachment of Wages for Maintenance Orders; Conferring of Matrimonial Jurisdiction upon a County Court judge as a local judge of the Queen's Bench within the Eastern

informal reports have been implemented by legislation.[5] In the case of another report, no change in the law was recommended.[6] One additional report concerned the question of uniformity between a provincial statute and two related federal statutes.[7] Since the publication of the Third Annual Report, four formal reports[8] and three informal reports[9] have been made. This makes a total of nineteen formal reports and fifteen informal reports. Six recommendations have also been implemented since the last annual report, two in the case of formal reports[10] and four further informal reports.[11] Thus, legislative action has been taken on nine of nineteen formal reports and no legislative action was recommended by the Commission in the case of two other formal reports. Of the fifteen informal reports, eight have been implemented by legislation, in one no change was recommended by the Commission, and in another, federal-provincial negotiations are involved. It is understood that, in the case of two further formal reports, the provincial government is actively considering the Commission's recommendations.[12]

The Commission's "legislative pay-off rate"[13] is not cited as evidence of law reform in action. The latter phrase connotes far

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Judicial District; Correcting recent error in Section 51 of "The Queen's Bench Act"; Conferring jurisdiction to extend time for payment of fines upon provincial judges other than those who imposed such fines; Up-dating index to the Statutes of Manitoba; Repeal of Section 212 of "The Liquor Control Act".

5. Auto Engine Numbers in Section 11 of "The Bills of Sale Act"; Amending provisions as to costs in Part II of "The County Courts Act"; Comments on draft Bill to amend "The Jury Act"; Relaxation of Limit of Number of Trustees under "The Trustee Act".

6. Prospects of Mortgagors' Relief from Provisions of Sec. 20(6) of "The Mortgage Act".

7. Uniformity of Definition of Age as between "The Age of Majority Act" (Man.) and The Criminal Code and The Interpretation Act (Can.).

8. A Legal Definition of Death; A Uniform Law on the Form of An International Will; Examination of the Rule in *Saunders* v. *Vautier*; Reform of The Jury Act.

9. Inter-Provincial Subpoena's; Enforcement of Custody Orders; Report on Statutory Sums.

10. Section 110 of "The Real Property Act" — the immortal Manitoba mortgage; Proposed repeal of Billiard and Pool Rooms Act.

11. Automatic Attachment of Wages for Maintenance Orders; Correction of error in Section 51 of "The Queen's Bench Act"; Repeal of Sec. 212 of "Liquor Control Act"; Conferring of Matrimonial Jurisdiction on a County Court judge as a local judge of the Queen's Bench within the Eastern Judical District.

12. Control of post-arrest pre-trial detention; Pre-Licencing Education for Real Estate Agents in Manitoba.

13. This term is employed by Barnes in "The Law Reform Commission of Canada" (1975), 2 Dalhousie L. J. 62 at 68.

more than a description of percentages in legislative implementation.[14] Rather, the "rate" is cited to demonstrate that, as regards the subject matter involved, this unusual Commission of lawyers, laymen and part-timers has at least commended itself to the legislature in the first three and a half years of its existence. Perhaps the very presence of laymen as commissioners has had an influence; perhaps the nature of the subject matter dealt with has had a role to play; perhaps the Commission's visibility in the community is a factor; perhaps the attitude of government to the notion of a law commission may be important. All these factors are present in Manitoba, together, of course, with others of a negative nature, such as, for example, the suggestion that law reform is better left to government, or that the judiciary should continue its development of the common law on a case by case basis. The least that can be said is that the Commission has justified itself to the politicians.

The Commission today stands at a crossroads. It will probably expand its personnel in the near future and this will mean more systematized research and indeed a greater output of material. Important projects loom large. The Commission's working papers on A Bill of Rights for Manitoba, The Purchase of Homes and The Doctrine of Caveat Emptor; Mechanics Liens; and Family Law Part I — The Support Obligation, Part II — Property Disposition, are already in circulation. Major projects on The Highway Traffic Act, The Jury Act and The Elections Act are in the mill. Public, executive and legislative reaction to this work will be important to the Commission as will be acceptance of its developing project under the umbrella of "The Administration of Justice in Manitoba." In September 1975, it will move from its confined quarters in the Law Courts Building in Winnipeg to modern premises adjacent to The Law Courts. (Unfortunately, the Commission will be located on the same floor as senior officials from the Department of the Attorney-General.) It is timely therefore to offer a preliminary appraisal of the Commission's activities.

2. *Evolution Of The Present Commission*

The movement to create a law reform commission for Manitoba antedates the coming to power of Mr. Schreyer's N. D. P. government in 1969, though that event brought the movement to

14. And see the analysis of Lyon in "Law Reform Needs Reform" (1974), 12 Osgoode Hall L. J. 421; also Barnes (supra) at pp. 66-72.

fruition. By 1969, however, all political parties in Manitoba were favourably disposed to the idea of creating a distinct and permanent law reform body.

In 1962 a body designated "The Law Reform Committee" was set up by the Attorney-General. Intended as an advisory body to the Attorney-General, and meeting under his chairmanship, this group was described by one commentator as a "cumbersome group of over thirty members, consisting mainly of busy practitioners, has no funds or full-time personnel and meets three times a year."[15] Members of the Committee were drawn from across the province. Meetings normally took up a full day at each sitting. Apparently some of the members were not always available for meetings so that there was much discontinuity in the proceedings.[16] Despite this, the Committee is remembered by the profession and by some members of the Legislative Assembly as having accomplished useful work.[17] Writing in 1969, Professor Ruth L. Deech observed that: "Although the Committee is voluntary and part-time, meeting only three times a year, its output has been high. By 1967 thirty-six topics had been studied by the Committee, over half of which resulted in enactments, a remarkable achievement by comparison with other voluntary part-time law reform committees."[18] The Committee additionally, was not exclusively concerned matters set down by the Attorney-General; problems raised by members of the profession were also placed on its agenda.

A number of events combined to stimulate interest in the development of a permanent law reform body. The creation of the Ontario Law Reform Commission in 1964 and the English and Scottish Law Commissions in 1965 set the stage. In 1967, the Chairman of the English Law Commission, Sir Leslie Scarman, delivered the Manitoba Law School Foundation Lecture[19] and, while in Manitoba, he met with the Attorney-General and leaders of

15. Gosse, "Canadian Law Reform Agencies" (1970), 1 Jour. of C.B.A. 1.

16. This was made clear by the Attorney-General for Manitoba, Mr. Mackling, in introducing the Law Reform Commission Bill for second reading. Mr. Mackling cited two factors for such discontinuity, namely, that Committee members were sometimes involved in litigation that took them out of the City of Winnipeg and also the involved life to which the profession was subject. See Debates and Proceedings of The Legislative Assembly of Manitoba, 1970, 2nd Session, 29th Legislature Vol. IV, No's 106-145 at p. 3218.

17. Id. at p. 3387. See in particular the address of L. W. Sherman M.L.A.

18. "Law Reform: The Choice of Method" (1969), 47 C.B.R. 395 at 416.

19. See Scarman, "Law Reform: Lessons from English Experience" (1967), 3 Man. L. J. 47.

the Bar in order to explore the possibilities for a commission in Manitoba. It was felt in some quarters that the creation of a distinct law reform body for Manitoba would cause needless duplication of effort. Chief in espousing this view, perhaps, was Gerald Rutherford, former Legislative Counsel to the Manitoba Legislative Assembly and Secretary to The Law Reform Committee. Rutherford suggested that a Western Provinces Law Commission be formed, funded by the four western provinces and providing a unified effort in law reform. This proposal was being actively mooted even after the creation of the Alberta Institute of Law Research and Reform in 1968 and up to the passage of The Law Reform Commission Act of British Columbia in 1969.[20]

Prior to 1964, legal education in Manitoba was conducted on a part-time basis. Students, over a period of four years, attended morning lectures and spent the balance of the working day with the firms to which they were articled. This system bred no great academic legal tradition and even today some members of the Bar feel that a full-time legal education is a wasteful exercise. In March 1968, however, a committee of the Faculty of Law under the chairmanship of Professor R. Dale Gibson reported that there was a need to develop a research arm to the Law School. That report envisaged a legal research institute with a full-time director of research, student research assistance, faculty participation on a full-time basis, assistance from members of the practicing profession and employment of such full-time researchers as the work at hand and finances available called for . It is difficult to determine, from the committee's report, whether the Institute was intended to become a law reform body for the province. The report stated that "to do any meaningful work a Manitoba Institute will have to organized on a scale similar to that of the Alberta Institute, eventually."[21] The committee envisaged the Institute undertaking "Substantial studies for the government or other interested organizations, to provide assistance to other university projects requiring legal advice, and to launch significant studies at the Institute's own initiative involving restatement, codification and reform of the law."[22] Whatever the intentions of the committee, it appears clear that, after the committee met with representatives of

20. S.B.C. 1969, C. 14.
21. The Legal Research Institute of The University of Manitoba, Report of The Director, 1968-69 at p. 1.
22. Ibid.

the Law Society and of the Department of the Attorney-General on March 18th, 1968, the Institute would not serve as a law commission for the province. Rather, it was agreed that, "It would be a research agency which could undertake research for a provincial or interprovincial Law Commission if such were established, and, in the meantime, could carry on research for the existing Law Reform Committee and for the Conference On Uniformity Of Legislation, in addition to doing research of its own initiative and for other purposes."[23]

The proposal for the Institute as outlined at the March 18th meeting was endorsed by the Senate of the University of Manitoba on May 15th, 1968 and shortly thereafter the Legal Research Institute of The University of Manitoba came into being. Clearly, it was the hope of those associated with the Faculty of Law that any permanent law commission that might be created would be closely connected with the Legal Research Institute. While the Institute began by developing its own research programme under the guidance of the then acting Director, Professor John M. Sharp, negotiations were also begun with the Attorney-General's Department for the funding of projects which the Institute might carry out for that Department. The first Director's Report of the Institute was published on October 14th, 1969. It shows that a number of projects were under way but that the bulk of the Institute's work was performed during the summer months by full-time faculty members and student research assistants. The Director, in his commentary on the organization of the Institute at that time, expressed some unease with the situation: "One problem now facing the Institute is whether, now faced with urgent research tasks which it is willing to undertake, it can carry on its work through the rest of the year; the public interest and the well-being of the Institute itself demand this, yet the fact that the Director is at present a Faculty member with teaching duties who can, therefore, only devote part-time energies to the Institute, militates against this."[24] He strongly suggested that the Institute's Committee consider, first, whether a full-time director be sought, and, if so, on what terms and with what aims; and, secondly, whether the activities of the Institute be placed on an all-year round basis. If either or both of those questions were resolved in the affirmative, then what funding procedures should be employed?[25]

23. Supra, footnote 21 at p. 3.
24. Supra, footnote 21 at p. 9.
25. Supra, footnote 21 at pp. 9-10.

Professor Sharp's comments seem to have been taken to heart; a search for a full-time Director was begun and certain candidates interviewed. Meanwhile, the Twenty-Eighth Legislature of Manitoba was dissolved and the provincial election of 1969 called. One of the bills that was in preparation when dissolution occurred was a bill which sought to establish The Manitoba Law Reform Commission.

The Attorney-General in the newly-elected N. D. P. government, the Honourable A. H. Mackling, seems to have been committed to the idea of a permanent law reform body from the start. Discussions were begun with representatives of the Bar, the Faculty of Law, and other interested parties, such as the Legislative Counsel to the Manitoba Assembly and the Chairman of The Ontario Law Reform Commission. It was suggested by the representatives of the Faculty of Law that a law reform body could have permanent quarters in the newly constructed Robson Hall to which the Faculty of Law moved in January 1970. This would have a number of advantages. Office space would be made available and there would be immediate access to the developing E. K. Williams Law Library. Additionally, the proximity of full-time faculty members might be useful, and full co-operation would clearly be forthcoming from the Legal Research Institute. Those representing the Bar at the meetings with the new Attorney-General felt otherwise. Any Commission that might be formed should be accessible to the profession and should be located in the Law Courts Building in downtown Winnipeg rather than in Robson Hall on the university campus at Fort Garry, some seven or so miles away. Some felt, additionally, that the best research for reform purposes would be done by practicing lawyers employed from time to time as the Commission's programme dictated, rather than by academics whose suggestions, it was said, might be out of tune with practical realities. There was also no question but that the chairman of any commission would be drawn from the practicing side of profession rather than from the Faculty of Law.

The views of the practicing profession prevailed. After Royal Assent was given to The Law Reform Commission Act[26] on July 21st 1970, it was made known that the Commission would be located in two rooms on the third floor of the Law Courts Building. The full-time Chairman of the Commission was to be Frank Muldoon Q. C., an eminent member of the Manitoba Bar, whose

26. S.M., 1970, C. 95. The Act came into force on October 1st 1970.

appointment came into effect on October 1st, 1970. A link was, however, forged between the Commission and the Faculty of Law in that the part-time Chief Research Officer to the Commission would come from Robson Hall. Professor J. M. Sharp, Director of the Legal Research Institute, was appointed to this post; but he remained as part-time Director of the Institute and taught part-time at the Faculty of Law.[27]

In introducing The Law Reform Commission Bill to Second Reading on June 24th, 1970, the Attorney-General, Mr. Mackling, stated that the Commission would not be composed entirely of lawyers: "The composition of the Commission will recognize the fact that other citizens of other vocations will have an important role to play in the review of the laws in this province, as is the case with the supreme law-making body composed of the honourable members present. In my discussions with members of the Law Society and the Bar Association, they have accepted the principle that I have just enunciated."[28] While the Chairman of the Commission, under the Act, was designated a Commissioner,[29] six other Commissioners were to be appointed. Of the six, three non-lawyers and three lawyers (one of whom was a professor of law) were appointed by Order-in-Council effective February 12th 1971.

Apart from the fact that the Chief Research Officer to the Commission has, on occasion, concurrently filled the post of Director of the Legal Research Institute, there has been little community of effort between Institute and Commission. Additionally, the unease expressed by Professor Sharp in his 1969 report has been fully justified.[30] The majority of the Institute's work is now carried out by student research assistants for the Director or other Faculty members over the summer months. The Director is part-time and unpaid and the Institute relies, for its existence, on grants from private agencies to fund particular projects. While the

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27. Professor Sharp carried out these duties from 1970 until July 1972 when the writer was appointed Director of the Legal Research Institute. In the academic year 1973-4, the writer served as Chief Research Officer to the Manitoba Commission while Professor Sharp was on sabbatical leave and continued as Director of the Legal Research Institute.
28. Supra, footnote 16 at p. 3217.
29. S.M., 1970, C. 95, Sec. 2(2).
30. The Legal Research Institute of The University of Manitoba, Report of The Director, 1968-69 at p. 9.

Institute has produced some valuable work over the last few years,[31] by initiating research of its own volition, an important part of its intended role has not developed. It will be recalled that the meeting of March 18th, 1968, between the then Attorney-General, representatives of the Bar and the Law School, envisaged the Institute as a research agency which could undertake research for a provincial commission.[32] While some of the Institute's work has been employed by the Commission in its deliberations,[33] and the Chairman of the Commission serves on the Institute's governing Committee, the Commission has developed its own research arm and in no way relies on the Institute. It is interesting to speculate whether the Institute would today play a greater role in provincial law reform had Professor Sharp's recommendations of 1969 been followed.

3. Personnel of the Commission

Under The Law Reform Commission Act,[34] the Commission is to consist of seven members to be appointed by the Lieutenant Governor in Council[35] and one of these is to be the Chairman.[36] The Chairman shall be appointed for a term not exceeding seven years and the remaining Commissioners for up to three years,[37] but any or all may be re-appointed.[38] At the creation of the Commission, the Chairman was appointed for a term of seven years while the other commissioners were each appointed for one year. These latter appointments have continued to be renewed on a year to year basis and all the original Commissioners retain their places on the Commission.

Although the Act is couched in terms broad enough to encompass a Commission of full-time Commissioners, all but the Chairman are part-time. All the Commissioners receive payment for their work

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31. See, for example, its report on "Privacy and the Law" by J. M. Sharp and R. Dale Gibson (1968) and its "Law Reform Reconnaissance Programme," Volume 1 (1972) and Volume 2 (1974).
32. Supra, footnote 30 at p. 3.
33. For example, "The Constitutionality of Definition of Death Legislation", "The Rights and status of Post-Operative Transsexuals", "Unconscionability: The Contractual Standard of Decency". These papers were developed as part of the "Law Reconnaissance Programme".
34. S.M., 1970, C. 95.
35. Sec. 2(1).
36. Sec. 2(2).
37. Sec. 3(1).
38. Sec. 3(2).

with the Commission. The Act is silent as to what vocation a prospective Commissioner should follow. In fact, the Commission comprises four persons with legal training and three lay persons. Of the three lay persons, one is a journalist, one a professor of philosophy at Brandon University and one a Winnipeg high-school principal. Of the seven Commissioners, two are women, a lawyer and a high-school principal. Most of the Commissioners are well known in the community. All three lay Commissioners are what might be described as "professional people" with a good standard of education and a high level of income. It is interesting to speculate whether one or more of the lay Commissioners might be replaced by someone not falling into the preceding category.

Section 6(4) of the Act allows the Commission to hire such employees as may be necessary to carry out its duties. At present the Commission employs a part-time Chief Research Officer, a full-time Research Officer, and a full-time Secretary. A part-time Research Assistant was employed in 1973 and for most of 1974. Senior students from the Faculty of Law at the University of Manitoba have been employed over the last two summers. Section 6(4) also allows the Commission to hire, on a temporary basis, and for specific projects, persons having technical or specialized knowledge in particular fields. The Commission has taken advantage of this power by appointing suitable persons as "Project Director" over the last three years, but with varying degrees of success.[39]

The Commission thus works with a small staff. The Chairman of the Commission has performed a number of varied tasks. Until the appointment of a full-time Research Officer in 1973, the preparation of research reports was solely in the hands of the Chairman and the Chief Research Officer, unless a project director was appointed to lead a given project and produce a report. Sometimes the Chairman or the Chief Research Officer would produce a draft and would

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39. There has been some disappointment in this respect both with practitioners and academics. Working papers and reports have, however, been produced as the result of the excellent contribution made by the following Project Directors: Professor Walter Tarnapolsky, Osgoode Hall Law School, (A Bill of Rights for Manitoba); Dr. M. G. Saunders, Director, Electro-Ensephlograph Department, Winnipeg Health Sciences Centre (Definition of Death); Professor A. B. Bass, Faculty of Law, University of Manitoba and Mr. J. T. McJannett, Pitblado Hoskin & Co., Winnipeg (Reform of the concept of Mechanics' Liens); Professor G. Nemiroff, Faculty of Law, University of Manitoba (Some aspects of reforming fire insurance law).

discuss it themselves before submission for the Commission's consideration. With the appointment of Mr. Peter Cole as full-time Research Officer, a tripartite research effort came into being. Any one of the three persons mentioned might develop a paper which would be read by the other two and the consensus presented to the Commission. Sometimes a joint effort would be made and the third person consulted before submission to the Commission. Depending on the scope of the project or the subject matter of the material, the Chairman, Chief Research Officer or the Research Officer may prepare the initial draft from the raw research material provided by summer research students or a part-time research assistant. Thus, whatever preparation route is taken, all reports will be read and discussed by the Chairman before being placed before the Commission.

The Chairman is responsible for day to day administration of the Commission's affairs. He prepares budgets, seeks out project directors when necessary, consults with staff, answers most of the mail directed to the Commission and assumes the role of public relations officer. The latter duty includes the handling of complaints from the general public regarding the state of the law in a given area and drawing such problems to the attention of the Commission. The Chairman appears on television and gives radio interviews and is much in demand in this respect when the Commission's reports and working papers are released to the public. He submits himself, as representing the Commission, to public scrutiny in halls and theatres in the province. It is the Chairman who deals with the majority of queries from members of the Legislative Assembly, the Bar Association, the Law Society, and the Attorney-General's Department.

The Chairman carries a heavy burden, and in some respects the Commission is imprinted with the personality of the Chairman. This is not only with regard to the Commission's image but is important in determining the efficacy of the internal workings of the Commission. The present Chairman has enjoyed a fruitful and harmonious relationship with his staff. Clearly the personalities of those holding the various posts involved has been a major factor in this relationship. However, some confusion may be discerned in staff activity. The Chief Research Officer to the Commission is a part-time employee. Normally he is concerned with overall supervision of the research personnel and research procedure. Occasionally, in his absence, a problem will arise whereby the

Chairman feels compelled to direct research activity so as to fulfill that current need. Thus research schedules may have to be changed or modified and the Chief Research Officer later informed. In the writer's opinion, any confusion so generated could be eradicated by the appointment of a full-time Chief Research Officer in constant contact with the activities of the Chairman and the research staff.

The relationship between the Chairman and the Commissioners must be viewed with great interest. He must deal with three lawyers and three laymen and must seek to ensure that all Commissioners be given an equal opportunity to appreciate the nature of the problem in question and an adequate opportunity to express themselves. In short, he is concerned that there be no second-class Commissioners. To ensure that this be so, the Chairman may well allow discussion to become protracted; indeed he is often concerned that decisions be made on a near unanimous basis. Both Chairman and research staff face particular problems in presenting research reports of a highly technical nature to a Commission containing lay persons. In these instances, technical jargon must of necessity be employed in reports to give full-force and effect to an idea or proposal. The Chairman or some other lawyer present, must then explain the technical side before discussion can begin. There is no guarantee that that explaination is truly understood and, in some cases, a return to first principles may have to be made when it is thought that discussion has developed apace. The Chairman faces a heavy burden in seeking to outline to lay Commissioners how a present proposal will affect the wider operations of the common law. Even with technical questions, the Chairman must seek to ensure that lay Commissioners realise the legal implications of their decisions. He must also ensure that the lawyers on the Commission do not exert an over-bearing influence on the others. It is true to say that, in particular cases, some lay Commissioners take it for granted that the views of the lawyers are not to be impugned, and may take their cue from the latter without detailed investigation or substantive comment.

The Chief Research Officer to the Commission works on a part-time basis. When the Commission began its work, the Chief Research Officer also held the post of Director of The Legal Research Institute of The University of Manitoba and discharged teaching duties at the law school. About half the Chief Research Officer's salary is paid by the Department of the Attorney-General; the other half comes from the University. The directorship of the

Legal Research Institute is an unpaid post. With these many duties to perform, it may well be that a Chief Research Officer cannot do full justice to all the posts in question. At present, the posts of Director of the Legal Research Institute and Chief Research Officer of the Law Reform Commission are held by different people. It is probable that the Commission will soon appoint a full-time Chief Research Officer. In the past, the Chief Research Officer devoted as much of his time as possible to the development of materials for the consideration of the Commission either working alone or in concert with other staff members. Additionally he sought to set up research frameworks for forthcoming projects, consulted with the Chairman on priorities in the Commission's activities and discussed the contents of agendas for meetings. He attended meetings of the Commission as a non-voting participant, expressed his view (and was questioned by the Commissioners) on the material under consideration and the state of current research activity. The Chief Research Officer may also act as Counsel to the Commission. This function has been exercised only when the Commission has held public hearings.

The effectiveness of a part-time Chief Research Officer must be seriously questioned. Not only is there discontinuity in supervision of research assistants, there is discontinuity in formulating and completing his own research. Even more questionable is the utilization of part-time research assistants. Clearly there is a greater chance of making errors when personnel operate on a part-time basis. Further, it may be demoralizing for full-time staff to contend with the vagaries of a part-timer. In fine, there is no substitute for a small full-time research staff with well defined functions and an integrated research plan. Hopefully, such a position will be reached in the near future and when it is, the functions of Chairman and Chief Research Officer should be defined with some degree of clarity.

4. Setting Priorities and Developing Research

Section 6(2) of the Law Reform Commission Act states that "The commission shall include in any program for studies prepared by it any study requested by the minister to which, in his opinion, it is desirable in the public interest that special priority should be given by the commission; and the commission shall, in determining its priorities for studies in relation to any such program be governed by any request so made to it." Section 6(1) also gives the Commission

discretion to carry out such research as it deems necessary and to consider any proposals for reform that may be referred to it by any body or person.[40] In determining the programme of study, a list is drawn up of subjects meriting the Commission's consideration. After taking account of the "priority studies" of the Attorney-General, the Commission considers proposals laid before it by the Chairman, Commissioners, and member of the public. A discussion takes place and projects are itemized in order of importance.

Once the Commissioners have established priorities, and have decided that a report be provided by research staff rather than by an outside project director, the execution of such instructions is normally a matter for consultation between Chairman and Chief Research Officer. In carrying out research, the following procedures have become common. A tentative research plan is formulated, sometimes with deadlines for completion of the various components, and an ultimate deadline is set for possible submission of a first report to the Commissioners. In carrying out research, the law as it stands is first investigated, and aid is then sought, wherever possible, from those working from day to day with the law in question. Their opinions may be specifically referred to in the first research report to the Commissioners. Reference is also made to the law in other jurisdictions within and without Canada as is deemed necessary. The reports of other Commissions are carefully considered together with law journal articles. Armed with this material a report is drafted for the consideration of the Commissioners. Normally, the objective is to set forth the alternatives reflected by the material studied, together with a synopsis of the statements of those in the fields who have been interviewed. An attempt is made to draft the report in as non-technical a manner as possible so that it will be understandable to the lay Commissioners. A discussion will, however, take place among the research personnel and Chairman before the report, with any post-discussion changes, is sent to the Commissioners.

Up to the present time, the projects developed by the staff have not involved large scale research. Consequently, the existing research personnel have been capable of handling the workload. However, more efficient and extensive research could have been produced had there been two more full-time research assistants on the Commission's staff.

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40. Sec. 6(1) (a) and (b).

5. Meetings of the Commission

Under Section 7(1) of The Law Reform Commission Act, the Commission is required to meet at least six times a year. Under the present Chairman, however, the Commission has normally met once every two weeks throughout the year, perhaps with the exception of July and August. The Commissioners' attendance record has been excellent, especially in light of the fact that they are professional people with demanding schedules and that meetings are usually begun in the afternoon of a working day. The Commission has never met without the Chairman in attendance and until the early summer of 1973, no Commissioner had ever missed a meeting.[41] The Commission normally convenes at 3:00 p.m. and works until 6:30 p.m. when it will adjourn to a restaurant for dinner. Returning at 8:00 or 8:30 p.m., work will continue till 11:00 p.m. or later. In the last year or so due to pressure of business, meetings begun at 3:00 p.m. have continued into the night with perhaps a half-hour break for light refreshments on the premises.

With the appointment of a full-time Research Officer and the utilization of part-time and summer assistants, the volume of material presented to the Commission has increased substantially in the last eighteen months. There have been several results from this development. Some Commissioners have found the required amount of reading to be extremely onerous, if not impossible at times. This is probably more true in the case of the lawyers than of the laymen. The result, of course, is that sometimes reports must be hurriedly read and this leads eventually to the production of protracted and unnecessary discussion. Secondly, the decision-making of the Commissioners has not kept pace with the flow of reports from the research staff. There is thus a backlog of business at the time of writing. This in turn has led to a good deal of frustration among those associated with the Commission, mindful of the fact that the provincial government and the public are expecting certain reports by promised dates. The frustration has taken a number of forms. The Commission has sought to deal with parts of a number of projects at each meeting. This may be worth while when the final form of one or two reports is being considered

41. Section 7(2) of The Law Reform Commission Act states that the attendance of four Commissioners constitutes a quorum. Since the Chairman is a Commissioner by virtue of section 2(2) of the Act, the attendance of three Commissioners and the Chairman will be sufficient.

and a new report is being considered for the first time. However, if a number of projects, each in a different stage of development, is being considered at the same meeting, a number of problems arise. The part-time Commissioners must change their focus of attention and seek to recall not only the arguments put forward in the research material at hand but also the philosophy enunciated on the subject at previous meetings. Sometimes a re-examination of previous decisions will arise when the Chairman refreshes memories, and in some cases a change in philosophy takes place. This modus operandi has now been abandoned in favour of dealing exclusively with one report at consecutive meetings in an attempt to clear the backlog. Frustration may also be felt by research staff who have to return to a research report completed months before to re-write it in accordance with the wishes of the Commissioners. Additional difficulties can be envisaged in the Chairman's relationship with the Attorney-General's Department should the present trend continue.

The Commissioners have worked hard to make the Commission a reality in the province. Meetings have sometimes been long and arduous and there really is no standardized formula for coming to decisions. A great burden falls upon the Chairman in leading a discussion before such a Commission as is constituted in Manitoba. And as previously noted, there is a great desire for consensus. The Commissioners on the whole tend to favour research reports that present alternative proposals. Such reports present the loose parameters within which discussion can develop, though the presentation of personal views and experiences by Commissioners has not been thereby excluded. Research reports presenting a single solution probably provoke a search for alternative solutions in an attempt to ensure that all possible avenues are explored. This may be the case where it is evident that a project director has taken a highly subjective view of the problem in question.

Relations between the Commissioners themselves and the Commissioners and the Chairman have been uniformly harmonious. Of particular interest is the relationship between the lawyers and lay Commissioners. Generally, the lawyers seek to be as helpful as possible to lay members in making known the effect of proposals being considered. This does not prevent a lawyer Commission from being forthright or even dogmatic in expressing a particular view. In the writer's opinion, a fair balance is struck among the lawyer Commissioners between those who may loosely be described as conservative and those who are more liberal in their attitudes.

Discernible traits in the attitudes of the lay Commissioners may be found. Some may rely on personal experiences in developing their views. Others, by virtue of their positions in the community will come with pre-conceived ideas. All of them have been preoccupied, at some stage or other, with the fact that the language of the law mystifies the layman and thus maintain that statutes should be written in the language of the people. Statutes, they maintain, should be shortened and written in everyday prose, providing the citizen with an easier source of reference. It is difficult to assess the degree to which lay Commissioners may be confused by legal problems of a technical nature. It is also impossible to say how much reliance is placed by them on the views of the lawyers when such questions are being discussed. It is a matter of speculation as to whose views, among the lawyers, would be held in highest esteem by lay commissioners if reliance took place. Despite these unknown factors, the lay members are well prepared, ask perinent questions, participate actively in discussions, and are generally enthusiastic in their approach to the Commission's work. But there are times when certain queries or statements reveal a lack of understanding or some confusion with the discussion in progress. However, the great benefit of having lay Commissioners is that they add a new perspective to discussion. Fundamental propositions, unquestioned by the lawyer, may be raised by the laymen, and discussed. Sometimes the questioning of such propositions is fruitless and time-wasting; sometimes a new approach to a problem may ultimately result. At all times, however, such questioning certainly places the onus on the lawyer members to produce a worthwhile policy base to justify a proposition under discussion.

When a research report containing alternative proposals is placed before the Commission, the objective of the Commissioners will be to decide on the general recommendations they wish to make. Normally it takes a number of meetings to work out a formula acceptable to the members. At this stage, persons working in the field in question may be invited to join the Commissioners in the discussions. The matter is then referred back to the research staff to draft a report in accordance with the Commissioners' wishes. This new draft will be worked through by the Commissioners on a line by line or page by page basis. The draft may again be sent back to the research staff for substantive amendment. If it is generally satisfactory, minor changes in the draft may be made by the Chairman, a staff member or by the Secretary to the Commission. It

is then returned to the Commissioners for final approval. The report, in this form, may be issued as the final report, or, if it is thought desirable, it may be circulated as a working paper. In the latter case, the Commissioners will later re-examine their recommendations in light of the comment on the working paper received by the Commission.

A similar modus operandi is adopted when a research report is presented by a project director. Normally, the Commission regards the project director as being responsible for participating at Commission meetings and for amending the report if so required.

6. *Reporting Procedures*

Under Section 5 of The Law Reform Commission Act, the Commission must report to a minister charged, under Section 1, with the administration of the Act. The Attorney-General has been the designated minister from the start. The Commission must report from time to time to the minister on the activities of the Commission as well as making an annual report.[42] The Commission must inquire into and consider any matter relating to law in Manitoba referred to it by the minister, and the Commission must report to the minister at the conclusion of its deliberations.[43]

Up to February, 1974, the Commission had always dealt directly with the Attorney-General himself in most matters relating to the Commission. No Attorney-General has ever put pressure on the Commission either to produce reports or indeed to decide in any particular way. Relations with the Attorney-General's Department have been most cordial. When requests and demands from other departments of government have been made, the Commission has always taken the view that it is responsible to the Attorney-General, and to him alone. While this has caused some surprise in some cases, and has initially been regarded as an affront in others, harmony has been restored when the role of the Commission has been explained to those involved. It is perhaps important that those in government be aware that a law reform commission is not a body that will produce "on demand" for an interested department. In February 1974, Mr. Gil Goodman, Associate Deputy Attorney-General was designated liaison officer between the Commission and the Attorney-General's Department. While it is a little early to say

42. Sec. 5(2).
43. Sec. 5(3).

how this relationship will develop, it would seem to be working well. The present Attorney-General also carries another portifolio and thus it is perhaps advantageous to have a liaison person with whom matters may be discussed on a continuous basis. Not only does Mr. Goodman read Commission reports and gives advice thereon to the Attorney-General, he also seeks out the opinion of the Chairman of the Commission as to what recommendations are apt for legislative action as well as keeping up with the progress of the various projects. It may well be that the Associate Deputy Attorney-General will do a little gentle prodding for completion of projects and that, in the writer's opinion, is not necessarily a reprehensible thing.

When seized of a particular question, the Commission proceeds in a number of ways. If the matter is regarded as a relatively minor matter which will additionally not affect a particular interest group to any significant degree; or a request for an opinion on a small matter is made by the Attorney-General, the Commission will produce an "informal report". Such a report will be developed by the Commissioners from a research report produced by the research staff. An "informal report" is forwarded to the Attorney-General by letter, is not normally officially published, but is reported in the Annual Report.

When a major project is under discussion a more elaborate procedure is followed. In its initial stages of deliberation, the Commission, if it thinks fit, will hold public hearings[44] or may request half a dozen people knowledgeable in the field to meet with the Commission.[45] Having taken counsel in this way, if necessary, and having considered any research report produced by a project director or the research staff, the Commission will work towards producing a final report or a working paper for circulation to the public for comment, if this is thought to be apposite. A working paper is in fact circulated to those persons and bodies on the Commission's mailing list and to interest groups in the community as well as to any member of the public requiring a copy.[46] The

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44. Such hearings were, for example, held in connection with the project concerning reform of the law relating to mechanics liens.

45. This procedure was adopted in developing projects relating to "A Definition of Death"; "The Control of Post-Arrest/Pre-Trial Detention" and "Reform of Certain Aspects of The Mental Health Act".

46. Working papers have been circulated on such subjects as Mechanics Liens; A Bill of Rights for Manitoba; Purchase of Homes and the Doctrine of Caveat

practice of circulating working papers has become a recognized feature of the law reform process. Such a paper, stating the problem, identifying alternative solutions and enunciating a tentative reform proposal, is more likely to elicit an informed response than merely requesting submissions in writing from interest groups without more. However, from the viewpoint of helping a commission along in its decision-making, are responses to working papers useful or are interest groups so biased as to make a response not worthy of consideration? Clearly, it is impossible to generalize about this matter. Experience indicates that where interest groups directly affected by proposed changes are responding to a working paper, two types of reply are discernable. Sometimes both types of responses are found in one submission. The first consists of explosive statements of disagreement coupled with a declaration that things have always been done in a certain way and that if the law is changed as proposed, disaster will result. Secondly, a more utilitarian approach may be taken. It will be stated that if things are to develop as indicated by the reform proposal, and nothing can be done by the interest group to avoid the general trend, then the formulation of a policy in that direction should be proceeded with not as suggested by the Commission but as now indicated in the present submission. In the latter case, the Commission at least has the benefit of constructive thinking from those involved with the question on a day to day basis. In practice, however, how much notice do commissioners take of responses to working papers? In the case of Manitoba this is a difficult question to answer, especially in light of the present situation where the Commission is burdened by work. Having looked at internal research reports and having spent hours thrashing out policy, it would be reasonable to think that commissioners would have rather definite views in mind before considering responses to working papers. It is fair to say, however, that the Manitoba Commissioners have raised and debated ideas mentioned in submissions to working papers received from interest groups and members of the public. What is raised, however, is in the discretion of the various Commissioners and, being human, Commissioners will also have inherent biases pro and con particular interest groups.

Emptor; Special and Enduring Powers of Attorney; Extension of "The Unconscionable Transactions Relief Act" Concept to Other or All Contracts; Reform of The Law Relating to Fire Insurance; Family Law: Part I — The Support Obligation, Part II — Property Disposition.

Even if the dimmest view were to be taken of the value of working papers as part of the process of developing a final report, argements can be made for the practice for other reasons. It is difficult to disagree with Professor Gower when he says that: ". . .it is vital to promote full consultation about law reform proposals during the preparatory stage of the Commission's report. The main reason is that if all those who think they ought to be consulted have not had the opportunity of objecting, they will take umbrage when the report is presented and be sure to raise objections then, thus making the proposals controversial."[47] Professor Gower readily admits, however, that were a commission to adopt the proposals of an interest group instead of its own original proposals, further controversy might arise. Other interest groups whose proposals were not adopted might claim inadequate consultation on the proposal finally adopted.[48] Apparently the English Law Commission has had this problem and found it necessary in a few cases to circulate a second working paper.[49]

The overriding benefit of the working paper is that is seeks to offer the citizen an opportunity to communicate with those given the task of recommending changes in the law. Communication of this kind may be a burden or hindrance to a commission, but it should expect to assume the obligations inherent in the concept. If commissions, however, believe that the preparation of working papers and the evaluation of responses is a counter productive process, could the burden of public consultation be shifted elsewhere? Could such consultation be left to a governmental body after a commission's report was in? Clearly it could, and equally as clearly, no commission should seek to impede government in addressing itself to the people. However, submission of views to an independent law reform body, as long as that commission is a credible body in the eye of the public, has the great advantage of

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47. Gower, "Reflections on Law Reform" (1972), 23 Univ. of Tor. L.J. 257 at 263.

48. Ibid. Perhaps, however, complaints regarding lack of adequate consultation are merely a hazard inherent to the process of such attempted communication. Consider, for example, the statement of W. F. Bowker in The Institute of Law Research and Reform, University of Alberta, Five Year Report, 1968-73 at p. 9: "The experience thus far shows that the securing of information is most time consuming; and no matter how much effort one makes to learn the facts and obtain the views of others, some groups or individuals inevitably express criticism because they were not consulted."

49. Supra, footnote 47 at p. 263.

eliminating partisanship. Supporters of the government of the day and those in opposition, should, with confidence, be able to submit proposals to a law reform body without fear of attribution or prejudice. Such confidence is something that must be built up by a commission. The Manitoba Commission enjoys a fair degree of confidence not only with the public at large but also with members of the Legislative Assembly. Perhaps commissions should seek to generate more confidence in themselves in the eyes of all political parties. A response from a major political party to a commission proposal might be most valuable. What if an opposition party made a proposal that was ultimately embodied in a commission's final report? What would the government's reaction be if it knew of the opposition party's submission? Given sufficient confidence in the law reform body's independence, would the government in power be inclined still to look at the proposals seriously? At least it might be argued that a government in power would give greater scrutiny to an opposition proposal if that proposal had survived a law reform commission filter, than if the proposal were thrust at it in an emotional partisan manner before a legislature assembled. It may be that in the ultimate analysis it is wrong to weigh the utility of putting out a working paper in developing a final report. Such attempted communication may be one of those salutory safety valves on the pressures which build up in our society.

In its reports, the Commission has rarely attempted to produce draft legislation, though it has made suggestions, using the language of legislation, for the drafting of certain sections.[50] In a couple of instances, the legislative counsel was consulted and draft legislation has been produced as a result.[51] It has been argued that unless a reform body formulates the draft bill that it wants, many valuable proposals will never get in the statute book.[52] Additionally if no such draft is provided, there may be an unintentional variation between report and bill — arising from the difficulty of one person seeking to express another's ideas.[53] It has thus also been argued that proposing draft legislation requires a commission to formulate

50. See, for example, the reports on "Definition of Death", "A Uniform Law On the Form of an International Will", and "Special and Enduring Powers of Attorney".

51. Right of Mortgagors to Obtain Annual Statements; Right to have mortgage discharged upon payment in full after five years.

52. Scarman, "Law Reform: The New Pattern" (1967), at p. 35.

53. See Bowker, "Organized Law Reform in Alberta" (1969), 19 Univ. of Tor. L.J. 376 at 386.

its proposals in more detail than merely making general recommendations.[54] For these reasons, some commissions retain draftsmen as part of the organization. The English Law Commission, for example, employs four draftsmen, and parliamentary counsel are seconded to work on particular projects from the early stages.[55] Other law reform bodies produce draft bills without the aid of a draftsman. The New South Wales Law Commission always seeks to provide draft legislation though none of the Commission's staff have formal training in drafting.[56] The Alberta Institute, in the last few years, has produced draft bills in connection with important projects.[57] This drafting in the main, has been produced by the Director.

In Manitoba, there is some desire to provide draft legislation with reports. Clearly, with the presently constituted Commission, it is impractical to employ a full-time draftsman. The Commission, at best, might investigate seconding a draftsman in developing particular projects in the future. The present Legislative Counsel to the Manitoba Legislature has been most receptive to the queries of Commission personnel in the past. Perhaps his advice, together with the efforts of the senior members of the research staff is all that is required to produce adequate results. It is not the purpose of a provincial commission to dictate the form of a bill to government or a legislative draftsman. As long as commission proposals are faithfully translated into legislative language in the report so as to demonstrate the effect of recommendations with precision, then the purpose of presenting draft legislation will be fulfilled.

By agreement between the Manitoba Commission and the Attorney-General, when a formal final report is made to the Attorney-General, a month must elapse before the Commission makes the report public. The Attorney-General, of course, can

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54. See Conacher, "Law Reform in Action and in Prospect" (1969), 43 Aust. L.J. 513 at 515.
55. See Farrar, "Law Reform and the Law Commission" (1974), pp. 31-2; Gower, "Reflections On Law Reform" (1973), 23 U Tor. L.J. 257 at 261.
56. Supra, footnote 54.
57. See, for example the Institute's "Report on the Rule Against Perpetuities", Report No. 6, (August 1971); "Expropriation", Report No. 12, (March 1973); "Minor's Contracts", Report No. 14 (January 1975). The Institute's present practice of providing draft legislation seems to be a reversal of a previously declared policy. Professor Bowker in "Organized Law Reform in Alberta", (1969), 19 U Tor. L.J. 376 felt that although ideally a bill should accompany recommendations, the Institute had adopted a policy of not providing such bills.

make the report public at any time after receiving it. The purpose of the one month delay is to afford the Attorney-General an opportunity to read and digest the report before being subjected to public questioning. If the Attorney-General has not made the report public one month after receiving it, the Commission will do so of its own volition.

7. *Strength and Weaknesses*

The Commission has thus far been largely a part-time Commission. In the near future, a full-time research staff will be brought together. This is most desirable. However, it may mean that the Chairman will no longer have to bear a research load or be involved in formulating final drafts for the Commission. This, clearly, will be determined by the Chairman. The result of having a full-time staff will be increased research output. Some Commissioners, at times, find it difficult to handle the present load and it may be that one or two resignations may occur if the load is increased to any great extent. The case pro and con full-time commissioners has been debated exhaustively elsewhere.[58] It may indeed be conceded that if three of the Commissioners (presumably all lawyers) were employed full-time, greater efficiency and continuity would result. It has, however, been asked whether full-time lawyer commissioners may, eventually, lose contact with practical problems as they develop in the workaday world of practice.[59] If true, this factor may be important to the Manitoba Commission where, at present, there is reliance within the Commission on the practical experience of those working in the legal system. Additionally, it is debatable whether practitioners of the quality now working with the Commission could be persuaded to become full-time employees even for two or three years.

One of the most interesting features of the Commission is the effect and contribution of the lay Commissioners. It is extremely difficult to make a total evaluation of the efficacy and impact of these Commissioners. As has already been noted, commentators on the process of organized law reform have rejected the utility of

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58. See Gower, "Reflections on Law Reform" (1973), 23 Univ. of Tor. L.J. 257 at 259-60; Farrar, "Law Reform and The Law Commission" (London), (1974), at pp. 121-2; Deech "Law Reform: The Choice of Method" (1969), 47 Can. B.R. 395 at 418.
59. Sawer, "The Legal Theory of Law Reform" (1970), 20 Univ. of Tor. L.J. 183 at 194.

employing lay persons at various stages of formulating proposals. Loane Skene, for example, has written: "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."[60]

This statement suggests that lawyers should make final proposals to government, counselled in particular projects by those knowledgeable in the field under study. Certainly, it is the belief of the Manitoba Commission that there should, whenever possible, be full consultation with those charged with the administration of a legal rule and with those working in the field governed by that rule. Such consultation is sought at the research stage and at the working paper stage. But why should the consultative and advisory function be the exclusive domain of the lawyer? Why should a person having no specialized knowledge in the field in question be excluded from enquiry and decision-making? While it is difficult to disagree with Sawer when he says that a lay commissioner cannot represent the infinite diversity of lay interests in law reform,[61] the experience of the Manitoba Commission suggests that the presence of laymen is valuable. Perhaps lay commissioners do prolong discussions; perhaps they are at a grave disadvantage when discussing certain questions because of lack of technical knowledge; perhaps they do rely on lawyer commissioners to convince them from time to time; perhaps, to the lawyer, they do make impractical suggestions. But in the cut and thrust of commission debate, lay commissioners sometimes raise fundamental questions which must be seriously considered and they do make worthwhile suggestions. The crucial question is whether the contribution of lay commissioners should be weighed with that of the practicing lawyers on an on-going basis? It would be wrong to do so. As long as it is found that lay persons provide some measure of informed public view to the deliberations of the commission then their presence is worthwhile. For the "purist", it is at least some consolation that four lawyers and legally trained research staff have also been involved in making decisions! But there is some attempt at check and balance, albeit

60. Skene, "The Nova Scotia Law Reform Advisory Commission: An Early Appraisal" (1975), 2 Dalhousie L.J. 201 at 205.
61. Supra, footnote 59.

imperfect, between lawyer and citizen, involved. One source of disappointment in the contribution made by the lay Commissioners to the work of the Commission may be noted. After a list of subjects for possible study has been drawn up, they have always been vocal in determining priorities from such a list. However, the number of suggestions made by them for topics to be put on the list has been very small.

While the value of lay commissioners as a working part of the Commission is purely a matter of individual opinion, the influence such commissioners have on bodies and persons outside the Commission is but a matter of speculation. It would seem that from the political viewpoint, the fact that laymen are involved in formulating the recommendations of a law reform body may be important. Should a government adopt a commission proposal and present a bill implementing such recommendation to a legislature, there may well be additional confidence in government ranks that the bill represents to some extent the collective suggestions of an independent body of informed laymen and lawyers. Or, at least, that fact can be readily pointed out. But whether this factor will be of practical political significance will also be dependent on the acceptance of the commission in the community and how visible that confidence has become. In the case of the Manitoba Commission, the next two years will probably show to what extent these factors will play a role. Recommendations on controversial subjects will be dealt with by a government, which, though now having a sound working majority, will be facing an important provincial election. That government may be additionally fortified by the fact that it has chosen a commission whose personnel represent all sides of the political spectrum.

8. *The Future of Law Reform in Manitoba*

At present, the Manitoba Law Reform Commission has plenty of work to occupy its time. Indeed, the volume of work may be too burdensome for some of the Commissioners. Though the research side of the Commission is somewhat inefficient today, this factor will be eradicated with the employment of a full-time staff and adherence to a well formulated research plan. The decision-making side of the Commission is inherently inefficient. There are lay Commissioners to be considered as well as the occasional dogmatism or impatience of lawyers. Additionally, all the defects of a part-time commission exist. What alternatives are available for

Manitoba? Should the budget assigned to the Commission be utilized solely to employ three full-time lawyers and two full-time research assistants? Would the same number of research assistants be employed to serve three part-time lawyers? Or is there a need for a Law Reform Commission at all? Could the Legal Research Institute of the University of Manitoba be utilized to provide research proposals for the provincial government?

Arguments can readily be found to build up or knock down these alternatives. Recitation of such arguments at this stage would seem fruitless. It may well be that some observers of the Manitoba Commission yearn for a small group of well motivated lawyers to perform the tasks laid down in The Law Reform Commission Act. But the fact is that the experiment of 1969 is not drawing heavy criticism. There is no way of telling whether such apparent acceptance can be maintained or developed in the years to come. Perhaps in some instances a commission can be used for purely political purposes, as for example where government refers a contentious issue to a commission for study knowing that the machinery of that organization will move slowly and thus remove the question from view for some time. If this were regularly so, however, the function of that commission would soon fall into disrepute. Happily, this form of manipulation does not seem to be happening in Manitoba at the present time. Confidence is also developed once the independence of a commission is established in the community. It is essential that independence be maintained in formulating the commission's programme and in answering particular questions posed for opinion by an attorney-general. Indeed anyone dealing with a commission should be confident that any communication directed to that body will only come under the scrutiny of commission personnel so that total confidentiality be preserved.

The Manitoba Law Reform Commission thus far has produced some important reports in relation, generally, to relatively small projects. The development of those larger projects now in the works, together with the probable increase in research staff, will test the acceptance and credibility of the Commission as presently constituted.[62]

62. The writer would like to express his appreciation to the following persons for providing background material for this article and for being receptive to the writer's queries: F. C. Muldoon Q. C., Chairman, Manitoba Law Reform Commission; R. Dale Gibson, Commissioner, Manitoba Law Reform Commission and Professor of Law, University of Manitoba, and Dean C. H. C. Edwards, Faculty of Law, University of Manitoba.

Horace Emerson Read

Since we last met in Faculty Council the Dalhousie Law School has suffered a grievous loss. Horace Read has gone and we — some of us old colleagues, some of us old students and all of us friends and admirers of his — are left to mourn him.

This is not the place to rehearse at length his wellknown public achievements and public service, such as: Chairman of the Regulations Revision Committee, Royal Canadian Navy, during the last war; long-time Chairman of the Nova Scotia Labour Relations Board; long-time member of the Conference of Governing Bodies of the Legal Profession; long-time member of the Conference of Commissioners on the Uniformity of Legislation; Honorary President of the Nova Scotia Barristers' Society 1966-67; and Canadian Delegate to the Conference on Private International Law at The Hague in 1968. Nor is it the place to celebrate his distinguished career as a student at Acadia, at this School and at Harvard and later as a scholar and teacher at the University of Minnesota.

What we, as students of the Law in this Faculty, think of at once when we think of Horace — and thank him for — is his devotion to legal scholarship and his devotion to the teaching of law. As a scholar he was productive, imaginative and, above all, solid: witness his trail-breaking book on *Recognition and Enforcement of Foreign Judgments*, his pioneering *Cases and Materials on Legislation* and his many articles in legal periodicals. As a teacher he was, once again, both imaginative and solid and cared about the law he was trying to teach and cared about the students who were trying to learn from him.

But what we most deeply admire about him — and most deeply thank him for — is the love he had for this School and the unsparing service which, because of that love, he gave to it throughout his long life. As a young teacher in the lean days of 1925-34, as Dean in the difficult and formative years of 1950-64 and as, during the last few years and right to the end of his life, historian of the origin and development of this Faculty, the Dalhousie Law School was always first in his thoughts. We shall miss him but we shall not forget him.

Be it therefore resolved by the Council of the Faculty of Law of Dalhousie University that this, their inadequate tribute to the memory of Dean Emeritus Horace Emerson Read, be recorded in the minutes of this meeting and that a copy of it be sent, with deepest sympathy, to Mrs. Read.

Resolution of the Council of the Faculty of Law,
Dalhousie University, 7th March 1975

The Dalhousie Law Journal

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