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## Law Reform: A Saskatchewan Viewpoint

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1. *Introduction*

The term "law reform" has a positive connotation. It indicates that those engaged in the process are at least optimistic to the extent that law can indeed be reformed and not merely changed. A variety of legislative shapes and administrative forms of law reform agencies has been created in this country over the last ten years. The objectives of law reform have been widely discussed in law review articles<sup>2</sup> and in the daily press<sup>3</sup>. There emerges a sense that reforming the law by way of a permanent law reform commission is a viable endeavour. Yet there is some difference of opinion about the approach to be taken and the objectives to be achieved. The words "law reform" have different meanings depending upon one's point of view.<sup>4</sup> An attempt is made here to illustrate three points of view, each having important ramifications in terms of the work undertaken and the goals achieved. Three simplistic hypothetical models are put forward in order to highlight, in a broad way, different meanings attributed to the term "law reform". In addition, the activities of the Law Reform Commission of Saskatchewan will be outlined.

2. *Models of Law Reform*

(a) *The Royal Commission Model*

This first model, designated for want of a better term, the Royal Commission model, resembles more a caricature than a representation of fact. The Royal Commission model of law reform appears to

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2. See L.C.B. Gower, "Reflections on Law Reform" (1973), 23 U. Tor. L.J. 257; N. Lyon, "Law Reform Needs Reform" (1974), 12 Osgoode Hall L.J. 421; J. Barnes, "The Law Reform Commission of Canada" (1975), 2 Dalhousie Law Journal 62; L. Skene, "The Nova Scotia Law Reform Advisory Commission: A Early Appraisal" (1975), 2 Dalhousie Law Journal 201.

3. Mr. Justice P. Hartt, Chairman, Law Reform Commission of Canada, Interview, Toronto Globe and Mail, Saturday, November 16, 1974, p. 1.

4. Professor T. J. Wuester of the College of Law, University of Saskatchewan, contributed his viewpoint to the discussions which preceded the preparation of the Comment.

be primarily utilized as a device for diffusing matters that the government of the day feels are particularly contentious. If the government is grappling with an issue which is potentially either politically explosive or disadvantageous, the law reform commission or similar agency may appear, to a pressured Minister, as a convenient mechanism for warehousing the problem by labelling it "legal" and "ripe for reform". Similarly, governments sometimes find it useful to rely on a body of experts to canvass a contentious matter and to report back to the government. The expertise and acknowledged independence of the experts may be used to lend credence and weight to proposals which the government already favours. Such a law reform commission may appear attractive to a government keenly interested in "culling out" matters with which it does not wish to deal immediately, or matters which it hopes need not be dealt with at all. Thus, the law reform commission may seem, in the eyes of certain politicians, as an appropriate burial ground for political and policy issues, rather than as an initiator of new ideas or as support for legislative change. The expectation may be that the issue referred will not see the light of day until public and political interest in it has died.

There are a number of variables within the conceptual framework of law reform which determine methodology, goals and, ultimately, values. Methodology will, in large part, be determined by the commission's perception of its role. For example, the Royal Commission model may be one which engages primarily in research pursuant to a reference from the government on the understanding that any report must be comprehensive; accordingly, the preparation of its report is long-term. Public hearings may be avoided or limited in scope. Discussions will take place informally and privately with those deemed to be "knowledgeable persons" in the field. In this way, public controversy and visibility are minimized.

Because part of the goal of the Royal Commission model is to diffuse politically contentious problems, reporting takes time. The report's contents, when made public, usually indicate considerable sensitivity to the political environment in which the commission functions. Recommendations are often not perceived as the ultimate objective of such an inquiry. Accordingly, the most appropriate recommendation might well be that further research and study of a particular area is required. A fair-minded approach is seen as requiring that the report canvass all alternatives without necessarily promoting a particular approach above others. The government is

thereby presented with a choice. In the past, some such approaches have been familiar to the functioning of certain Royal Commissions. A law reform agency, if it perform the foregoing functions, becomes an *ad hoc* Royal Commission yet institutionalized as part of the government bureaucracy. Such an agency becomes a useful governmental repository for bothersome issues and political “hot potatoes”, a body to which a government can turn in “troubled times”.

A law reform agency that is used by government primarily to cool political issues and to provide support, by way of research, for government policy, plays a symbiotic role with the government and its interests. Once that relationship is made explicit the agency’s usefulness as a non-partisan independent research body is impugned. A law reform agency in these circumstances serves certain symbolic purposes unrelated to the initiation of research and reform of consequence to the public generally.

(b) *The ‘Lawyers’ Law’ Model*

The “lawyers’ law” approach to law reform, which does not always exclude certain elements of the Royal Commission model, is one which primarily promotes the merits of conservatism. This approach has sometimes been cynically characterized as law reform which changes “squeak to squawk”. A law reform agency conscious of the fact that the legislature is primarily responsible for the majority of policy-oriented change, may view its role as one of rationalizing statutes, cleaning up statutory wording, clarifying statutory intent, and assisting in the updating of legal procedures and laws of interest mainly to the legal profession. This type of law reform agency will take the position that lawyers have no special contribution to make to the resolution of social conflict or to policy questions. Since it is difficult to draw a line between those matters which relate exclusively to law and those relating to policy, the agency finds itself continually retreating from potentially controversial social or policy issues to narrower areas where lawyers have acknowledged expertise. The commission views its usefulness within a carefully delimited professional scope. In this way, the commission avoids high visibility, potentially contentious public issues and political controversy.

Thus, a commission primarily engaged in a lawyers’ law role defines its work within a tightly-knit professional context. Lawyers,

judges and other professional groups are surveyed for their opinions on needed legal reforms and their responses are carefully considered. The commission defines its goals as primarily oriented to removing ambiguity in laws, providing greater clarity and certainty, and updating procedures while attempting to avoid social issues and contentious policy questions. Such reform is aimed at statutory amendment and requires skills in legislative draftsmanship and statutory interpretation. Much of the research can be accomplished in a good law library, utilizing comparative statutory materials and legal commentaries. There is little need for public debate as the matters are seen as primarily technical in nature and not easily understood by the general public. The questions considered are such that the public, in most cases, would be uninterested. There is little need for empirical research or the gathering of statistical data, for public attitudes are not considered relevant to this kind of legislative change.

This approach does not usually require fundamental assessment of policy-oriented problems, although it is always difficult to establish criteria for research which excludes policy questions and yet is directed to legislative change. The lawyers' law approach studiously attempts to avoid fundamental philosophical, social and political questions which may be viewed as tending to delay the reform of finite problem areas of the law. In this way amendments can be "packaged" expediently and made available to the legislature on a continuing basis. Such "production" may be viewed with some pleasure by those who can point to the commission as a body which is turning out recommendations on a regular basis. This level of productivity may provide some considerable contrast to a law reform agency engaged in the major reassessment of laws in relation to current social problems. Such an agency does not produce proposals for change in any consistent and continuing fashion. The lawyers' law approach provides simpler tasks more easily executed by those with a high level of technical legal skill. The reforms, however, are not aimed at altering fundamental legal arrangements; accordingly, the work of such a law reform agency seldom affects the interests of large numbers of people.

The lawyers' law approach could lead to a blurring of the distinguishing features between the role of a law reform agency and the research component of the Attorney General's Department. The Department is responding to government priorities. A law reform

agency, depending upon its enabling legislation, may, in addition to references from the Attorney General, initiate its own research projects with or without the approval of the Minister. If, however, a law reform body does not initiate projects, but responds only to the Minister's initiatives, that agency comes to resemble the research arm of the Attorney General's Department. Under these circumstances, the Minister may be justified in viewing law reform as an exercise which makes available to his Department additional personnel and legal experts who are engaged primarily in "housekeeping" functions in order to clean up and update areas of the law to which the government gives little political priority.

(c) *The Fundamental Change Model*

The fundamental change model attempts to assess where the public suffers most injustice under present law and to respond on the basis of that priority. This means that the commission is directly engaged in matters of high visibility and in public policy beyond mere legal "tinkering". The fundamental change model places a high value on initiation of new ideas and the fertilization of these ideas through multi-dimensional contacts throughout the public, governmental and professional spheres. Empirical investigations and the gathering of statistical data are of importance if ideas are to be just ahead of their time, and yet not totally out of step with public expectations. Continual consultations are a part of a process of not only assessing response, but also of raising public awareness to new ideas and fresh approaches that might not otherwise be considered. Such a process is basically outward-looking and not confined to the limits of a law library or to institutional research potential. Society itself becomes the crucible for experimentation and dialogue. Law reform is seen as an integrated program directed towards ultimate goals and long-term strategies. Fragmented approaches are to be avoided. Legislative change without appropriate public awareness and support is not seen as achieving ultimate objectives. Law reform is viewed as an educational and administrative process.

Leadership is a major component of the "fundamental change" process. New ideas have to be promoted by discussions with various strata of society. This demands of law reformers a high level of persuasiveness which would not be required by those engaged primarily in Royal Commission model and lawyers' law model enterprises. Along with the high public visibility of the persuaders

goes a high potential for criticism, based on a lack of understanding of goals and upon professional resistance to potential change which threatens established learning and procedures. This latter approach results in controversy not normally associated with the first two models. Public visibility enhances potential criticism and political debate. Recommendations may not be acceptable to certain professional groups and associations, because they impinge on their particularistic interests. The commission may, accordingly, be drawn into a public debate more appropriate to a political forum. The higher the visibility and public interest in the commission's recommendations, the greater its susceptibility to criticism.

There are inherent dangers in such high visibility involvement. The government may find some of the recommendations politically unattractive and, accordingly, assess the commission's efforts as disruptive. That is particularly the case if the government sees the commission as a Royal Commission model or a lawyers' law enterprise while the commission's self-image is based on the fundamental change conception. Once a commission engages in high-profile activities, the ambit of the commission's jurisdiction to deal with certain areas of legislative change can become confused with the role of government departments. Commission advocacy of the need for change may appear to the government to impinge upon its function. Ambiguity ensues when recommendations by the commission tend to reflect governmental priorities. This situation can be interpreted by the Opposition as an indication that the commission is merely bolstering government policy with legal research. Rejection of the commission's recommendations by the government creates even greater problems, for the Opposition may promote rejected commission recommendations to the embarrassment of the government.

Those who adopt the fundamental change model of law reform face the inevitable problem of unrealized expectations. The lack of realization of goals can relate to the abstract nature of grand designs for the accomplishment of reform accompanied by a disappointing public and professional response. The more modest the design and the less ambitious the concept, the more likely that recommendations will be found palatable by the legislative implementors. At the same time, if the proposals are so picune that there is little public or political interest one way or the other, implementation may remain very low on the political priority list. Accordingly, there is a fine line between the grand design which threatens to disrupt political

territorial imperatives and the minor matters that encourage little political response. There is a broad range of law reform which does not threaten what is seen as the government's prerogative and yet deals with essential issues which engage public and professional interest.

### 3. *Evaluation*

Those who see law reform as tied to the Royal Commission model judge the commission a success if it has diffused politically contentious issues and accomplished little more. If the commission reacts positively to government references, whatever their value, it serves an important political purpose. But the future of the commission may, in these circumstances, become closely tied to that of the government. Those who perceive the commission's function in terms of the lawyers' law model probably evaluate success by the number of proposed legislative amendments forthcoming, whether or not they are of any public importance. Success is not tied to any fundamental reform of an area of law, but may be achieved through fragmented proposals aimed primarily at clarification. The commission's contribution is made by its capacity for careful and thorough legal analysis carried out in an environment which is not subject to public pressures and political concern. According to the fundamental change model, success will, to some extent, depend upon the commission's assessment of a problem as one of social importance, on whether the commission has accurately assessed public response to the issue and, finally, on whether its proposals can be implemented in a realistic and workable way. Success may be seen as a heightening of public awareness of the need for law reform in certain critical areas. Public awareness leads to a more probable acceptance of legislative change and avoids resistance based on a lack of information. Law reform, from the fundamental change viewpoint, is a dynamic process which succeeds only if it involves a wide range of community participation and acceptance. Thus, evaluation is ultimately part of role perception; a perception which need not be unitary and is seldom unanimous. Evaluation of the success of law reform is tied to particular expectations regarding the reformer's role.

### 4. *Personnel*

Debate has occurred over the benefits of full-time law commissioners. Part-time commissioners bring to their work invaluable



practical experience and the ability to test ideas in a variety of professional contexts. They do not, however, have the time required for the volume of material to be considered if reform is to proceed in a regular way and without undue delay. As a result, part-time commissioners on the law reform commission are often limited to exercising a supervisory and policy-oriented role. They have little time to engage in research and the formulation of detailed proposals. If the law reform commission is to be composed only of full-time members, reliance upon outside consultants and their experience and expertise will be necessary if law reformers are not to grow too insular. The benefits of part-time commissioners associated with law reform commissions ought not to be underestimated. Part-time members add a necessary leavening to the research and policy proposals formulated by full-time staff<sup>5</sup>.

Research staff perform a variety of roles depending upon the nature of the commission. Personnel appropriate to the Royal Commission and the lawyers' law models may be totally inappropriate if the object is fundamental change. A Royal Commission model may require persons with high technical ability as well as personality traits that emphasize caution and patience. An impatient and innovative personality would disrupt the circumspect way in which a Royal Commission model might pursue its objectives. Such a model requires high levels of confidentiality and the ability to pursue research activities without public or media participation. Such personnel should be able to carry on their activities without a continual need to consult outside expertise, except for evidentiary purposes on specific points at issue. Activities are basically in-house in order to maintain confidentiality and control. Persons working in a Royal Commission model context would have to be particularly amenable to governmental suggestions relating to the activities that ought to be pursued and those that ought not to be. Initiatives would not be encouraged as this type of agency would be responding to governmental priorities and not to its own.

It is legal craftsman and, to some extent, even the technician, who makes the most useful contribution to the work of the lawyers' law model. Considerable legal expertise and experience is required in statutory interpretation and legal draftsmanship. Creative or

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5. An Amendment to The Law Reform Commission Act, provides that all commissioners are to be full-time members of the Law Reform Commission.

imaginative personalities might prove disruptive in an environment which places a high emphasis on careful technical resolution of legal issues. Since most of the research done by the lawyers' law model is directly relevant to the legal profession, personnel should be of high professional standing in order to maintain the respect of the Bar. The Royal Commission model and the lawyers' law model personnel will be members of the local Law Society and most familiar with the laws of their jurisdiction. The research personnel of both these models tend to work in isolation from the general public. Research activities are primarily in-house and those engaged in these activities are usually full-time members of the research staff. Thus, in these two models the personnel usually accept, and are acceptable within, the legal culture and are those who are seen as an integral part of the legal profession — those that can be "trusted" by lawyers not to engage in research activities which may disrupt professional prerogatives.

In the fundamental change model, legal competence remains basic. It is important that the personnel combine legal competence with a creative and imaginative approach which emphasizes new ideas and untried designs. Thus, most of the personnel in this model are innovative lawyers. Sociologists and political scientists as well as other academic and professional persons interested in the changing role of law are also attracted to such an agency. Some considerable employment of outside consultants from multi-disciplinary backgrounds is pursued. For example, projects relating to insanity engage the medical profession, those working in the mental health field, police officers, Crown prosecutors, the judiciary, defence lawyers and others. A wide-ranging variety of perspectives is encouraged. No one approach is considered inviolate. These individuals must also be able to translate theory and principle into realistic legislative proposals. Principles alone are not pursued without considering the administrative, procedural and societal ramifications of any proposed recommendations.

Since the personnel engaged in this model are in continuing contact with the public, there is some demand that values be articulated and tested by public discussion. High levels of communicative skills are required of the personnel for they must engage in discussions with those who may not agree with their basic professional philosophical context. Most important, writing skills, unlike those required in the Royal Commission and lawyers' law models, will be needed if recommendations are to be communicated

to the public in language which is easily understood. The emphasis upon public discourse presents a problem relating to the allocation of personnel resources. What is to be the percentage of time spent travelling across the country explaining the commission's proposals and discussing them with interested groups and organizations compared to the time required to complete research, to draft proposals, and to make recommendations? Such a commission may have to engage persons who do little else than travel, address organizations, communicate ideas and raise public awareness; while at the same time, there are others who are researching and drafting recommendations. There ought to be an intergration of the two functions. The person at the office should be open to the ideas expressed in the field, and the person who is in the field must be able to explain the technical implications of the proposals drafted at the office.

In areas of high political priority where target dates for legislative recommendations are considered essential, reliance upon outside research consultants leads to problems in meeting target dates and monitoring research. Under these circumstances, there is a growing need for in-house, full-time legal research staff. Such staff can be monitored closely by supervisory personnel. Target dates are more likely to be met when in-house staff is giving high priority to these matters on a full-time basis. Accordingly, as references from the Attorney General increase and legislative reform is required within a short period of time, there is a corresponding need to increase in-house research staff.

Personnel may be attracted to work with a commission on the basis of their own individual perception of what is meant by law reform, and that perception may not reflect the values of the employing agency. Without articulation of values, personnel may find that their aspirations for law reform cannot be answered by the model within which they find themselves. Individuals with unrealized aspirations may disrupt the primary goals pursued by the agency. There is little satisfaction in the pursuit of law reform in terms which are viewed as unnecessarily restrictive. Professor Glanville Williams has recently asked: "Who is the ideal law reformer? It would be easy to depict this Benthamite character, possessing enormous erudition and with an unremitting zeal for legal improvement. But it's not the habit of governments to fill their committees with such people. . . . The idea seems to be to obtain a committee that will make proposals likely to be acceptable to

lawyers in general, rather than one that will adventure much beyond current attitudes and presently conceived solutions'<sup>6</sup>.

## 5. *Law Reform Commission of Saskatchewan*

### (a) *Objectives*

The Law Reform Commission of Saskatchewan, as most law reform bodies, attempts to avoid characterization as a Royal Commission model and pursues its work in a way which endeavours to incorporate some of the features of the lawyers' law model while at the same time promoting fundamental change. Innovative major projects are not pursued to the exclusion of needed technical change. Legislative change is seen as one important element of law reform in Saskatchewan, but this does not preclude the Commission's examination of process and procedure nor its involvement in raising the level of awareness within the community to the advantages provided by the reform of laws in areas relevant to the public interest. The Commission sets its priorities, in consultation with the Attorney General, primarily on the basis of "where do people in the Province of Saskatchewan feel they suffer injustice under present provincial law?"

The Law Reform Commission Act, 1971 was proclaimed in November, 1973.<sup>7</sup> The Commission was established in 1974 with permanent offices in Saskatoon. Meetings between the full Commission and Commission staff started in February, 1974. The Commission consists of a full-time Chairman and two Commissioners who contribute their expertise on a part-time basis. One is a member of the Court of Appeal for Saskatchewan and the other is an experienced Saskatchewan practitioner. The Research Director to the Commission is a lawyer of some considerable practical experience. A young lawyer fills the position of legal research officer.<sup>8</sup> The

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6. G. Williams, "The Work of Criminal Law Reform" (1975), 13 *The Journal of the Society of Public Teachers of Law* 183.

7. The Law Reform Commission Act, 1971, S.S. 1971, c. 21, as amended by S.S. 1973, c. 54.

8. The Commission is made up of three Commissioners. Professor Brian A. Grosman is Chairman of the Commission on a full-time basis. The Honourable Mr. Justice E. D. Bayda of the Court of Appeal for Saskatchewan and Mr. George Taylor, Q.C., a Saskatchewan practitioner, are Commissioners. The Research Director is Mrs. Ellen Schmeiser of the Saskatchewan Bar and the Legal Research Officer is Ms Diane Pask, also of the Saskatchewan Bar: see generally, First Annual Report of the Law Reform Commission of Saskatchewan, 1974.

Commission staff is small. This permits the Chairman to be in close touch with developments in each of the major projects. In each project, the Commission has relied, to some extent, on faculty members of the College of Law of the University of Saskatchewan as research consultants<sup>9</sup>. Consultations take place at the Commission's offices. In this way, work is not "farmed out" but rather consultants are brought into the on-going work of the Commission. The consultants meet with the full-time staff and Commission members on a regular basis. Thus, the Commission attempts to combine the benefits of full-time research personnel with the scholarly interests of members of the College of Law.

The Commission is to provide the government and the legislature with non-partisan legal expertise for the review of provincial law. The Commission is a body that is available to assess criticisms of a significant nature that are from time to time directed by the public against particular laws and legislation. It further provides the government and the legislature with a means whereby it will be able to assess proposals for change in law and for the enactment of new laws. The Commission is charged with the obligation of reviewing the law and its application in Saskatchewan with scholarship and dispassion.

In the terms of The Law Reform Commission Act, 1971, the Commission shall take and keep under review all the law of the Province, including statute law, common law and judicial decisions, with a view to its systematic development and reform, including the codification, elimination of anomalies, repeal of obsolete and unnecessary enactments, reduction in the number of separate enactments and generally, the simplification and modernization of the law<sup>10</sup>. The Saskatchewan legislation follows almost exactly the English model<sup>11</sup>. Law reform projects must receive the approval of the Attorney General. Once approval has been obtained and the research completed, the recommendations are made by the Commission to the Attorney General in the form of a final report which must be tabled in the legislature. The non-partisan nature of the Commission's work is protected by the provision for tabling of

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9. Professor T. J. Wuester is consultant to the project on the division of matrimonial property. Professor R. C. C. Cuming is consultant to the project on secured personal property. Professor I. B. Saunders is consultant to the project on family law.

10. *Supra*, n. 5, section 6.

11. Law Reform Commission Act, 1965, c. 22.

the report, whether or not the government agrees with its contents<sup>12</sup>. The requirement of ministerial approval and the usual budgetary restraints limit to some extent the types of projects undertaken.

The Commission has considered the advisability of appending draft legislation to its final report to the Attorney General. The Commission believes that its recommendations cannot be presented in the form of principle alone, if implementation is to be a primary goal. Members of the Commission staff acquire substantial expertise when researching an area of the law. Such expertise in the area could not be expected of a legislative draftsman remote from the on-going work of the Commission. The communication of principles in the form of recommendations, with little else, would seriously inhibit the process of legislative implementation. Unrealistic demands placed upon legislative draftsmen to draft complex legislation to reflect broadly-worded recommendations may be avoided by Commission staff attempting to convert principle into wording which is precise and workable. The drafting of model legislation engages the Commission staff in a time-consuming and often frustrating exercise. Legislative draftsmanship requires skills and competence not easily acquired by the Commission staff. Detailed sections must be drafted in light of ramifications for ancillary legislation. Amending one statute inevitably means the amendment of others which touch upon the same or similar issues. Accordingly, model legislation ought to be accompanied by extensive commentary and explanatory notes. The Saskatchewan Law Reform Commission has entered upon the drafting process in the full realization of the inadequacies attaching to inexperience. Extensive consultations are required with lawyers, judges, registrars and others who will ultimately work with the proposed legislation in order that principles, when converted to legislative instruction, remain workable.

Modest budgetary and personnel resources in Saskatchewan require that a good liaison be pursued between the Saskatchewan Commission and all other law reform bodies. This is important not only in order to obtain commission reports and study papers as they are published but also to obtain some indication of the projects about to be undertaken by other law reform bodies so that there need not be a replication of research and duplication of effort. The Saskatchewan Commission has gained substantially from the

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12. *Supra*, n. 5, section 11.

research completed by other commissions in areas of mutual interest. An efficient system for sharing law reform information has not yet been developed. Sharing, at this stage, is carried out primarily on a personal contact basis. Some effort has been made to arrange for annual meetings of law reform agencies to facilitate this process.

(b) *Research Undertaken*

Early in the life of the Commission, the Attorney General requested that it consider reform of the law relating to the division of matrimonial property upon the ending of a marriage, whether by separation, divorce or death. The Commission has issued three mini-working papers on this subject. The First Mini-Working Paper titled "Division of Matrimonial Property; Problems Within the Present Law" outlines the present law relating to matrimonial property and the difficulties presented by the case law. The Second Mini-Working Paper titled "Possible Solutions to Problems Within the Present Law" outlines solutions adopted in England, New Zealand and Quebec, as well as the recommendations of the Ontario Law Reform Commission. The paper attempts to raise some fundamental questions and sets out a number of alternative approaches as possible solutions to current problems. In the Third Working Paper, titled "Division of Matrimonial Property; Tentative Proposals for Reform of Matrimonial Property Law", the Commission makes tentative proposals for legislative change.

The Commission has proposed: (a) legislation for the exercise of judicial discretion to apply to property in any marriage solemnized prior to the adoption of a deferred participation scheme<sup>13</sup>; (b) legislation providing for co-ownership of the matrimonial home to apply to the matrimonial home in any marriage; and, (c) legislation establishing a scheme of deferred participation to apply to matrimonial property (other than the home) in any marriage solemnized after adoption of such legislation<sup>14</sup>.

Any fundamental change in present laws relating to the division of matrimonial property will require changes in other statutes. The

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13. See Bill 5 of 1974-75, An Act to Amend The Married Women's Property Act, which received third reading in the Saskatchewan Legislature March 31, 1975.

14. See the Third Working Paper of the Law Reform Commission of Saskatchewan, "Division of Matrimonial Property — Tentative Proposals for Reform of Matrimonial Property Law", October 1974.

Commission is now engaged in reviewing these statutes with a view to recommending amendments as part of its Final Report on the division of matrimonial property. Matrimonial property division and maintenance obligations to the spouse and children are closely interrelated. Any change in the division of property would necessarily affect our support laws. This means that The Deserted Wives' and Children's Maintenance Act must be reviewed. The provisions of The Dependents' Relief Act and The Intestate Succession Act may require amendment. Certain provisions of The Homesteads Act may well become unnecessary if the proposals of the Commission are accepted. The Land Titles Act will require review and change in order to ensure that our registry system is adequate to deal with the practical considerations inherent in introduction of co-ownership of the matrimonial home. The Queen's Bench Act contains certain sections dealing with matrimonial problems which must be reviewed. Questions involving income tax, capital gains and gift tax are presently under consideration.

Public discussion on proposed law reform has been encouraged in Saskatchewan through the wide distribution of the mini-working papers. These papers are written for the general public and do not exceed forty pages in length. They provide legislators, organizations and the interested public with the background giving rise to the need for reform, a survey of solutions attempted or suggested in other jurisdictions, and the Commission's tentative proposals for change. The public is encouraged to communicate comments and criticisms to the Commission. The Commission has received many written responses which have commented upon the tentative proposals contained in the Third Working Paper. Before the Commission submits a Final Report on this question to the Attorney General recommending changes in the law, it believes that a sufficient time must be allowed for public and professional response to the proposals. Open meetings and workshops have been held throughout the province and questionnaires distributed. Public response is being analyzed prior to the drafting of the Final Report.

The Commission, with the approval of the Attorney General, initiated a research project on family law in 1974. This project deals with (a) family maintenance; (b) children and family law; and, (c) marriage. In the area of family maintenance, the Commission is examining proposals about the duty of parents to maintain their children. Research is also progressing on custody and guardianship.



These areas involve an examination of The Deserted Wives' and Children's Maintenance Act, The Queen's Bench Act, The Children of Unmarried Parents Act and sections of The Infants Act. Within this project, proposals with respect to the duty of children to maintain their parents will also be considered. This necessitates an examination of the little-used Parents' Maintenance Act. Substantial research time is being devoted to examining the need to provide more effective means for enforcing maintenance obligations. This requires an examination of The Attachment of Debts Act and The Reciprocal Enforcement of Maintenance Orders Act. Proposals with respect to the solemnization of marriage involve an examination of the provisions of The Marriage Act. This also involves a general consideration of the place of "common law marriages" and their recognition. It is expected that some research will also be undertaken with respect to marriage contracts.

The Commission has also commenced a study of consensual personal property security transactions, at two levels: the consumer financing level and the wholesale financing level. This study considers the advisability of adopting the "Model Uniform Personal Property Security Act" prepared by the Canadian Bar Association. Business practices and social policies affecting secured consumer level transactions are being examined in order to determine to what extent and in what manner basic chattel security laws ought to be modified. The Commission is considering whether the law regulating consumer credit transactions should be contained in a code. The Commission has prepared and distributed a background paper titled "Reform of Personal Property Security Law in Saskatchewan"<sup>15</sup>. One purpose of the paper is to make the general public and the business community aware of the Commission's interests in this area. It points out inadequacies and inequities inherent in the present law, reviews developments in Canada and in the United States, and tentatively suggests changes that are likely to be contained in any new Saskatchewan Personal Property Security Act as well as those changes which may be required in consumer credit law.

During the short period of its existence, the Commission has been involved in long-term projects involving major changes in substantive law. It has, however, also made some specific

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15. See "Reform of Personal Property Security Law in Saskatchewan", Background Paper, May 1975.

recommendations to the government on minor procedural matters and amendments to existing legislation. These have included proposed amendments to The Private Detectives Act, The Trustee Act and The Trust Companies Act.

#### 6. *Criteria for Law Reform*

No matter what combination of models dominates a particular law reform body, the pursuit of priorities is related to the availability of research resources, both in terms of personnel and finances. Legal expertise may be unavailable because of a lack of budgetary resources. Similarly, a commission cannot competently investigate a question relating to the law of trusts, no matter the largesse of available funding, if there is no one available who has the required expertise in the area.

Reforms should not be made piecemeal without a careful consideration of the broad implications that legislative change will mean, not only for the legal system, but for the community at large. Attempts at piecemeal statutory reform to meet a present contingency or pressure must be viewed with some caution. A law reform commission must take the time needed to consider carefully potential reforms. Recommendations must be based upon thorough research and sensitivity to the implications of suggested reform. In this sense, the commission is obviously not a replacement for legislative change taking place in individual government departments, nor is it to replace the need from time to time for a Royal Commission to investigate a highly controversial subject.

What law reformers do remains a moral and political question. It depends to a large extent on the relationship between the commission and the government. Shared expectations avoid problems of conflicting definitions about the commission's role. Different perceptions at governmental, professional and public levels confuse goals and confound objectives. Greater consideration by those engaged in law reform of criteria appropriate to their role will at least clarify alternatives. Directions taken by law reformers elsewhere in the common law world provide useful comparative approaches. Variations upon the Ontario and English Commission models of law reform have not been substantial. Fresh prescriptions for change may now be required in order to rescue law reform from traditional models and preconceived notions. If the legal system is to retain credibility, law reformers must be engaged in defining and

redefining their goals. This must be done with a sense of what it is possible to accomplish within present profession perspectives and governmental contexts. The problem is not only to find wisdom, but to make it work.