

The Law Relating to Dishonesty

In September 1992, the Commission published a [*Report on the Law Relating to Dishonesty \(LRC 43-1992\)*](#), following a 1987 request by the Attorney General. The Report does not deal with business ethics, or insider dealing, or matters which would fall to be considered in the context of the reform of company law, although there may be some overlapping at the boundary between “ordinary” criminal offences and company law offences. The Commission did consider the English experience and also studied and adopted, where appropriate, the law in Australia, in New Zealand and the Model Penal Code of the American Law Institute.

As many prosecutions for dishonesty have been dismissed because of difficulties relating to the law of evidence, the Commission notes the implementation of several of its recommendations in the *Criminal Law (Evidence) Act, 1992* and, in the context of dishonesty, is particularly pleased to note provisions relating to proof of business records, as recommended in its Report on Receiving Stolen Goods. This reform, together with the reforms recommended in this Report, should have a considerable ameliorating impact on the prosecution of dishonesty.

A total of 71 recommendations are made in the Report, among the principal ones being:

- (1) The replacing of the present offences of larceny, larceny by a clerk or servant, embezzlement, fraudulent conversion and obtaining by false pretences by one offence of dishonest appropriation or theft;
- (2) The removal from the law of the necessity to prove an intention to deprive the owner permanently of property;
- (3) That deception in dishonesty may relate to future intentions;
- (4) That information would constitute property which can be appropriated;
- (5) That services can be dishonestly appropriated;
- (6) The creation of an offence of making off without payment;
- (7) The creation of an offence of using a cheque book or credit card without permission from the supplier;
- (8) The creation of an offence of dishonest use of a computer;
- (9) The creation of a general offence of dishonestly causing another to suffer financial prejudice or a risk of financial prejudice;
- (10) That persons shall be presumed in law to have caused financial prejudice who have been given money for a particular purpose and fail to account for same when an account is sought;
- (11) The creation of an offence of controlling a company at a time when an offence of dishonesty is committed;
- (12) That the Gardai be given a power of arrest without warrant for all dishonesty offences; and,
- (13) That it would be preferable to give the Gardai more resources than to establish a separated Serious Fraud Office.

Draft Legislation in Report

Draft legislative provisions are included in the Report.

Information on Implementation

Recommendations of the Commission were implemented by the *Criminal Justice (Theft and Fraud Offences) Act 2001*.