

FOREWORD

The year 2002 was one of steady progress through the Second Work Programme of the Commission and at the end of the year there were seventeen research projects at various stages of completion. The Commission launched four Reports and two Consultation Papers during the year.

In March a Consultation Paper on Penalties for Minor Offences was launched by the then Attorney General, Michael McDowell SC. In May the publication of the Consultation Paper on Prosecution Appeals in Cases brought on Indictment was launched by Mr Justice Nial Fennelly. In July a Report giving a Review of Developments since 1991 in respect of the Indexation of Fines together with a draft bill was launched by Mrs Justice Susan Denham.

In December the Commission published the Report on Section 2 of the Civil Liability (Amendment) Act 1964, analysing and applying the principles underlying the Deductibility of Collateral Benefits (called 'special damages' by practitioners) from Awards of Damages. This paper was subsequently launched by Mr Justice Hugh Geoghegan.

Two Land Law Reports were completed in December 2002, the first dealing with Acquisition of Easements and Profits à Prendre by Prescription and the second covering Title by Adverse Possession of Land. Both Reports suggested clarification and simplification in respect of acquisition and were launched by Ms Justice Mary Laffoy.

A major development of the year was that the Commission, having reviewed its mandate to research in: "conveyancing law and practice in areas where this could lead to savings for house purchasers" under the Attorney General's reference of 1987, decided to explore a new project to fulfil the spirit of this request. The Commission believe that, in the light of technological developments, it should be possible to reduce the complexity and the time taken in relation to conveyancing transactions with benefits for both the general public and the legal profession. Urgency has been given to this initiative by the enactment of the *Electronic Commerce Act 2000* and by the Governmental drive to implement its underlying philosophy.

In November 2002, the Commission took the decision to launch an e-Conveyancing project. It is anticipated that the project will take several years to complete, and will cover a number of different issues, among them: the IT dimension; the procedural and administrative implications; as well as the land law involved. A working group of experts agreed to start work on the project early in 2003. The Commission has been fortunate that Professor John Wylie has agreed to act as leader for the e-Conveyancing Project. He is already contributing to the Commission by his great expertise and industry, notably with the Working Group on Landlord and Tenant law.

The Commission wishes to thank the members of the Land Law and Conveyancing Law Working Group for giving unstintingly of their erudition, experience, good judgment and frankness. We record our gratitude to them for their public spirit in finding the time to read our draft papers, for their attendance at meetings and for their readiness to help and encourage with their sage advice over the years since 1987.

The Commission looks forward to continuing the good relationship which we enjoy with the Government Departments with which we liaise. The Commission is also appreciative of the support afforded to it throughout the year from the Attorney General, and is grateful for the assistance given by the Director General and staff of the Office of the Attorney General.

Declan Budd
President

RÉAMHRÁ

Bliain réchúrsach ba ea 2002 maidir le dul chun cinn tríd an Dara Clár Oibre de chuid an Choimisiúin agus ag deireadh na bliana bhí seacht gcinn déag de thionscnaimh thaighde ag pointí áirithe i dtreo a gcríochnaithe. Sheol an Coimisiún ceithre Thuarascáil agus dhá Pháipéar Chomhairleacha i rith na bliana.

I mí na Márta sheol Mícheál Mac Dubhghaill SC, an tArd-Aighne an uair sin, Páipéar Comhairleach faoi Phionóis ar Mhionchionta. I mBealtaine sheol an Breitheamh Niall Fennelly foilsíú an Pháipéir Chomhairligh faoi Achomarcanna ar son an Iomchúisimh i gCásanna tionscnaithe de bharr Díotála. I mí Iúil sheol an Breitheamh Susan Denham Tuarascáil faoi Fhorbairtí ó 1991 i dtaobh Innéacsú Fíneála mar aon le dréachtbhille.

I mí na Nollag d'fhoilsigh an Coimisiún an Tuarascáil faoi Mhír 2 den Acht Dliteanais Shibhialta (Leasú) 1964, ag déanamh ainilise ar na prionsabail laistiar de Asbhainteacht Shochair Chomhthaobhacha (a dtugann cleachtóirí “damáistí speisialta” orthu) de Dhámhachtana Damáistí. Ina dhiaidh sin sheol an Breitheamh Hugh Geoghegan an Páipéar seo.

Críochnaíodh dhá Thuarascáil ar Dhlí na Talún faoi Nollaig 2002, an chéad cheann ag plé le Fáil Easúintí agus Brabúis à Prendre trí mheán Rúrachais agus an dara ceann ag clúdach Teideal trí mheán Sheilbh Chodarsnach Thalún. Mhol an dá Thuarascáil soiléiriú agus simpliú maidir le seilbh agus bhí siad seolta ag an mBreitheamh Mary Laffoy.

Ba fhorbairt mhór é i mbliana nuair a shocraigh an Coimisiún, tar éis measúnú a dhéanamh ar a ndualgas a bheith ag taighde i: “dlí agus cleachtadh an tíolachais i réimsí a laghdódh an costas ar cheannaitheoirí títhe” de réir tagairt an Ard-Aighne i 1987, tionscnamh nua a cur ar bun a chomhlíonadh sprid an iarratais sin. Creideann an Coimisiún, i bhfianaise dul chun cinn teicneolaíochta, gur cheart go bhféadfaí an chastacht agus an t-am a bhaineann le hidirbhirt tíolachais a laghdú agus go leanfadh sochair don phobal i gcoitinne agus do dhlíodóirí gairimiúla dá bharr. Tá dlús curtha leis an tionscnamh seo de bharr achtú *Acht na Tráchtála Leictreonaí 2000* agus de bharr fonn an Rialtas an fhealsúnacht laistiar dó a chur i gcrích.

I mí na Samhna shocraigh an Coimisiún ar thionscnamh e-Tíolachais a sheoladh. Ceaptar go dtógfaidh sé roinnt blianta leis an tionscnamh a chur i gcrích, agus go bpléifidh sé le hábhair éagsúla, ina measc: an diminsean IT; impleachtaí próiséis agus riaracháin; mar aon leis an dlí talún a bhaineann leis. D'aontaigh grúpa saothair tosú ar an tionscnamh go luath i 2003. Tá d'ádh ar an gCoimisiún gur aontaigh an tOllamh John Wylie a bheith mar cheannaire don Tionscnamh faoi e-Tíolachas. Tá sé ag cur go mór le hobair an Choimisiúin cheana lena shárchumas agus lena fhuinneamh, go háirithe agus é ag obair leis an nGrúpa Saothair faoi Dhlí Thiarnaí Talún agus Tionóntaithe.

Ba mhaith leis an gCoimisiún buíochas a ghabhail le baill an Ghrúpa Saothair ar Dhlí na Talún agus Dhlí an Tíolachais as a ngaois, a dtaithí, a ndeabhreithiúnas agus a macántacht. Tá ár mbuíochas ag dul dóibh as a ndeamhéin phoiblí a chuir faoi deara dóibh am a chaitheamh ag léamh ár ndréachtpháipéir, as freastal ar chruinnithe agus as a bheith réidh chun cuidiú agus chun spreagadh lena ndeachomhairle ar feadh na mblianta ó 1987.

Tá an Coimisiún ag súil le leanúint ar aghaidh leis an gcaidreamh maith atá againn leis na Ranna Rialtais a mbíimid ag plé leo. Is mór leis an gCoimisiún an tacaíocht a fuarthas tríd an mbliain ón Ard-Aighne, agus tá siad buíoch de chabhair Stiúrthóir Ginearálta agus foireann Oifig an Ard-Aighne.

Declan Budd
Uachtarán

THE COMMISSION

The Law Reform Commission consists of a President, one full-time Commissioner and three part-time Commissioners.

The Hon Mr Justice Declan Budd, Judge of the High Court (*President*)

Patricia T. Rickard-Clarke, BCL, Solicitor

Dr Hilary A Delany, BA, M Litt, PhD, Barrister-at-Law, Senior Lecturer in Law, Trinity College Dublin

Professor Finbarr McAuley, BCL, LLB, MPhil, LLD, Jean Monnet Professor of Criminal Law, University College Dublin

Marian Shanley, BCL, Solicitor

Secretary: John Quirke

STAFF DURING 2002

Director of Research:

Professor David Gwynn Morgan LLB, LLM, PhD, Barrister-at-Law, on secondment from his position as Professor of Law at University College Cork.

Legal Researchers:

*Simon Kieron Barr LLB (Hons), BSc

Patricia Brazil LLB

Dara Dowling BCL, LLM (University of Paris II), Barrister-at-Law

Claire Hamilton LLB (Ling Franc), Barrister-at-Law

Darren Lehane BCL, LLM (NUI)

Jane Mc Cullough, BCL, EMA (Padua), Barrister-at-Law

Brónagh Maher BCL

Claire Morrissey BCL (Int'l), LLM (K U Leuven)

Niamh O'Brien LLB LLM (Cantab), Barrister-at-Law

Mairéad O'Dwyer, MB, BCh, BAO, BCL, Barrister-at-Law

Mark O'Riordan BCL, Barrister-at-Law

Philip Perrins LLB, LLM (Cantab), of the Middle Temple, Barrister

Legal Information Manager: Marina Greer, BA (Mod), H Dip LIS

Cataloguer: Eithne Boland, BA (Hons), H Dip Ed, H Dip LIS

Project Manager: Pearse Rayel

Administrative Staff:

Liam Dargan (Private Secretary to the President)

Denis McKenna

**Teresa Hickey

Sharon Kineen

Gerard Shiel

**Researchers are employed on short-term contracts*

Simon Barr was employed for the full year 2002

*** For part of the year 2002*

FUNCTIONS OF THE COMMISSION

The Law Reform Commission was established as a statutory body corporate by the *Law Reform Commission Act 1975*.

Section 4 (1) of the Act states:

“The Commission shall keep the law under review, and in accordance with the provisions of this Act, shall undertake examinations and conduct research with a view to reforming the law, and formulate proposals for law reform.”

The content of the Commission’s research is determined and directed in two primary ways:

Under the Programme for Law Reform: Section 4(2)(a) of the Act requires the Commission, in consultation with the Attorney General, from time to time to prepare, for submission by the Taoiseach to the Government, programmes for the examination of different branches of the law, with a view to their reform. If a programme prepared by the Commission is approved (with or without amendment) by the Government, the Commission will examine and research the subjects set out in it and, if appropriate, formulate and submit to the Taoiseach proposals for the reform of the law in those areas under section 4(2)(b).

By references from the Attorney General: Section 4(2)(c) of the Act provides that the Attorney General may request the Commission to examine and research a particular area of the law and, further, may request that proposals for reform in that area be submitted to him. The Commission must comply with such a request whether or not such area of the law is included in the programme submitted by the Commission and approved of by the Government.

SECOND PROGRAMME FOR LAW REFORM

Following the procedure prescribed in section 4(2)(a) of the *Law Reform Commission Act 1975*, the Second Programme for Law Reform was approved by the Government on 19 December 2000. The Second Programme identifies branches of the law for examination, with a view to their reform, during the period 2000 – 2007, though many of the topics listed are of a long-term character and are likely to have a life of more than seven years.

The contents of the Second Programme are shown in Appendix A.

REFERENCES FROM THE ATTORNEY GENERAL

Following a request by the Government that the Law Reform Commission consider the issues of a fiscal prosecutor and a revenue court, which were among recommendations of the Parliamentary Inquiry into DIRT, in February 2002, a reference was received from the Attorney General pursuant to section 4(2)(a) of the 1975 Act formally requesting the Commission “to undertake a study to examine the possible benefits of a revenue court and fiscal prosecutor”.

STRATEGY AND BUSINESS PLAN

In November 1998, the Law Reform Commission drew up a Strategy and Business Plan, 1999-2001 following the publication (in 1997) of the *Review of Organisation and Management of the Law Reform Commission* and against the background of the formulation of the Second Programme for Law Reform.

The Plan, *inter alia*, refers to the need, recognised when the *Law Reform Commission Bill 1975* was introduced in the Oireachtas, for a systematic approach to law reform by an independent specialist body, which would enable the law to respond to a rapidly-changing society. The plan identified the role of the Law Reform Commission as being:

“to keep the laws of the State under independent, impartial and expert review, with a view to ensuring that they are regularly and systematically reformed.”

The Plan notes the importance of a comprehensive and forward-looking programme of law reform and the need to adapt current methods of work in order to achieve the goals to be set out in the Second Programme for Law Reform. It envisages adaptations such as the establishment of formal research teams and greater use of working groups and of standing committees of experts. It notes the importance of improving communication and co-operation with government departments, with universities and with law reform bodies abroad.

The Strategy and Business Plan is currently being updated following a review of the Commission’s goals, working methods and procedures, and against the background of the Second Programme for Law Reform approved by the Government in December 2000.

Communication with Government Departments

Government departments have their own responsibilities concerning the areas of law within their jurisdictions, and these sometimes overlap with matters which are covered by the Commission’s Programmes. It is the practice of the Commission to make known to government departments the projects within its Programme for Law Reform and references from the Attorney General upon which it is currently engaged or is likely to be engaged in the foreseeable future.

The Commission has an arrangement with the Department of Justice, Equality and Law Reform, providing for regular meetings to review matters of mutual interest. These meetings are proving very useful in that they enable both bodies to have a good working knowledge of issues being currently addressed by them.

Website

In order to create a greater degree of public awareness of the importance of law reform, the Commission has established a Website (www.lawreform.ie), which contains a comprehensive description of the Commission and its work, giving details of work in hand, and inviting comments and submissions on topics and Consultation Papers. The Website lists the Commission’s Consultation Papers and Reports. It also contains the full text of all Consultation Papers and Reports published by the Commission, which may be viewed online and downloaded.

During the next 2-3 years, the Commission intends to develop a more interactive Website to encourage detailed submissions in electronic format.

METHODS OF WORK

The Commission's Reports and Consultation Papers are based on careful and thorough research. In the course of research on any topic, consideration is given to case law, legislation, jurisprudence and academic writings, both domestic and international. The Commission gives particular attention to the laws of comparable jurisdictions, as well as to proposals put forward by law reform bodies in these jurisdictions.

The Consultation Process

The consultation process is of central importance to the Commission's work. Consultation may take several forms. In the initial stages of its research, the Commission may meet with experts working in a particular area, or representatives of interest groups. The Commission will then, in most cases, prepare a Consultation Paper (known up to 1985 as a Working Paper), which will either be published, or, if the subject is a specialised one, distributed to relevant experts. The Commission will seek written submissions from interested parties on the provisional recommendations made in the Consultation Paper. These submissions will be taken into account in the drafting of the final Report on the subject, and any issues or concerns they raise will be dealt with in the Report. In some cases, before the drafting of the Report, a seminar will be held to which the Commission may invite interested parties, or those who have made submissions.

Methodology

To achieve the goals set out in the Second Programme for Law Reform, the Commission establishes formal research teams with responsibility for each of the Commission's projects. Each team comprises a "lead Commissioner" as well as a Researcher to work with the Director of Research. The Commission also makes use of Working Groups in areas where significant expert input is necessary. Given the complexity of some of the issues that arise, it is sometimes necessary for the Commission to employ experts to provide specialist expertise on a particular subject.

The Commission carries out its work on the basis of a Rolling Work Programme, which contains target dates for the achievement of the various stages of work. In order to assist the Commission in monitoring their achievement of these targets, a Protocol on Research has been drawn up.

EXPERT WORKING GROUPS

Under its establishing Act, the Law Reform Commission may set up Working Groups to examine particular areas of the law. In addition to Working Groups, which meet on a regular basis during the lifetime of a particular project, the Commission has also set up *ad hoc* groups (which meet occasionally) to consult with on particular topics.

Working Group on Land Law and Conveyancing Law/e-Conveyancing

A Working Group on Land Law and Conveyancing Law was set up in 1987, in response to a request by the Attorney General for an examination by the Commission of certain aspects of conveyancing law and practice. As a result of the work of the Working Group a number of reports have been published in that area of law. In 2002 the Group produced two Reports—the first on the Acquisition of Easements and Profits á Prendre by Prescription and the other on Title by Adverse Possession of Land.

The Commission has recently reviewed the mandate of this Working Group. In the light of the Government's commitment to e-Government, technological developments generally and the introduction of e-Conveyancing in other jurisdictions, the Commission has set up a Working Group to undertake a project on e-Conveyancing. Professor John Wylie has agreed to lead discussions of the Group. While a core Working Group has been identified there will also be a number of panels of smaller expert groups dealing with specific items such as information technology, administrative and procedural matters (to include public law elements) as well as covering areas of substantive law.

Working Group on Landlord and Tenant Law

The Commission in 2001 initiated a major research project on Landlord and Tenant Law with a view to making recommendations for reform that would include proposals for consolidation of the existing landlord and tenant legislation, including a draft Bill. Professor John Wylie is leading in the projects undertaken by this Working Group.

The members of the Working Group consist of experienced practitioners and representatives of the Department of Justice, Equality and Law Reform and the Department of the Environment and Local Government.

Working Group on Judicial Review

The Commission in 2002 formed a Working Group to examine the area of judicial review. The Working Group, in addition to practitioners in private practice also consisted of representatives from each of the law offices of the State. A Consultation Paper on Judicial Review Procedure will be published in January 2003. The Working Group will be reconvened when the consultation stage has been completed.

Ad hoc Group on the Rights and Duties of Cohabitees

During 2002, an *ad hoc* consultative group was established to determine the scope of this project, and members of the group also participated in a seminar and discussion in December organized by the Commission. In the Consultation Paper being prepared, the Commission will examine the law in relation to the rights and duties of cohabitees and as to whom should be regarded as a ‘qualifying co-habitee’.

Ad Hoc Group on Class Actions

During 2002, an *ad hoc* consultative group was established to determine the scope of this project. The subject matter of a Consultation Paper being prepared by the Commission concerns the procedure to be followed when numerous persons are pursuing the same cause of action against the same defendant.

The members of the Expert Groups are shown in Appendix B.

PUBLICATIONS IN 2002

Reports

Report on the Indexation of Fines: A Review of Developments

In this Report, the Commission recommended the enactment of legislation which provides a mechanism for updating criminal fines in accordance with the changing value of money. The Commission concluded that such legislation is essential to combat the past and future effects of inflation on the value of criminal fines. The maximum fines which can be imposed for particular offences are specified in legislation, but their value is eroded over time by inflation. As a result, even where a court imposes a maximum fine, such a fine may not reflect the gravity of the offence in question, or the true maximum fine which the legislature had intended. Accordingly, the Commission recommended the enactment of a standard fine system, which would maintain the value of fines by reference to a price index.

The Commission made a similar recommendation in its *Report on the Indexation of Fines* in 1991. In the absence of legislation giving effect to this recommendation, the Commission decided to review developments in this area since 1991. The Commission's review of developments in other jurisdictions provided a significant added impetus to its recommendation: most of the jurisdictions surveyed had enacted legislative measures aimed at combating the erosion by inflation of criminal fine maxima.

The Commission also made recommendations in relation to the assessment of the amount of a fine by a court. In particular, it recommended that reforming legislation should provide that, when a court is determining the amount of a fine, it should, insofar as is practicable, have regard to the financial circumstances of the offender, and the nature of the burden that payment of a particular fine would impose upon the offender, and his or her dependants. The Commission also recommended that a court should have regard to such matters, irrespective of whether the effect of doing so would be to increase or to reduce the amount of the fine. The recommendations of the Commission in this regard were based upon the principle of equality of impact.

Report on the Acquisition of Easements and Profits à Prendre by Prescription

This Report concentrates on the prescriptive acquisition of easements and profits à prendre. An easement is a right exercisable by one landowner over the property of another landowner - *eg* a right of way. A profit à prendre is a right exercisable by a person for his or her own benefit over the land of another to take and keep anything derived therefrom - *eg* a right to cut turf or to hunt. Prescription is one method of acquisition of such rights and amounts to legal recognition of such rights due to the length of time the uninterrupted right has been exercised.

The Report recommends a reform of the rules relating to the prescriptive acquisition of such rights. The repeal of the current statutory scheme contained in the *Prescription Act 1832* and the *Prescription (Ireland) Act 1858* is recommended as well as the abolition of prescription at common law and by way of lost modern grant; and the replacement of these forms of prescription with new legislation (annexed to the Report). The draft legislation proposes a simplified and unified method of acquisition of easements and profits à prendre.

Report on Title by Adverse Possession of Land

This Report looks with a narrow focus on the historically deep-rooted problem in relation to the type of title acquired by a squatter to lands when that claimant has fulfilled the requisite period of adverse possession in respect of another's land. Ownership of land can be acquired after a period of adverse possession (usually at least 12 years). However, the exact type of title acquired may be doubtful and is in need of clarification. In particular, the title may be so dubious that it cannot be sold on - the result may be that there will be no-one who will think it worthwhile building or otherwise investing in this piece of land. This issue is particularly important where the person claiming possessory title is in occupation of leasehold land, as the actual position of the claimant vis-à-vis the landlord of the property has never been clear. The Report provides a solution to this problem by recommending that the successful claimant may obtain a transfer of the same interest as the dispossessed tenant owner had. This type of transfer is known as a 'parliamentary conveyance.' The Report contains detailed draft legislation for the introduction of a parliamentary conveyance to cover this problem.

Report on Section 2 of the Civil Liability (Amendment) Act, 1964: The Deductibility of Collateral Benefits from Awards of Damages

The Report responds to a request by the Attorney General to consider whether and to what extent section 2 of the *Civil Liability (Amendment) Act 1964* should be amended. Section 2 provides that payments known as "collateral benefits" shall not be taken into account in assessing an award of damages. "Collateral benefits" are payments, other than an award of damages, which a person may receive as compensation for personal injuries, and the term can include: payments under a contract of insurance, pension payments, social welfare payments, and sick pay among others. The present law, as enshrined in section 2, has the effect that victims of personal injuries may receive compensation from two sources in respect of the same loss.

The Report examines whether and to what extent, section 2 should be amended in order to avoid the risk of double compensation. It aims to ensure that a victim of personal injuries receives whatever monetary payments are necessary to compensate him or her for the loss suffered, but no more. One way of achieving this would be to reverse the policy of section 2, and deduct the amount of the collateral benefits from the amount of damages, on the basis that they are both designed to compensate for the same loss.

As each collateral benefit attracts different policy and practical considerations, the Report analyses each individually before recommending whether it should be deducted from an award of damages. In broad terms, the Commission recommends, that if in reality there is in fact double compensation, then the relevant portions of insurance payments, sick pay and social welfare payments should be deducted from awards of damages, subject to specific exceptions, such as where the injured person paid the insurance premiums on his or her own behalf. Charitable payments and pension payments should generally not be deducted from awards of damages.

Consultation Papers

Consultation Paper on Penalties for Minor Offences

This Consultation Paper examines the law governing penalties for minor offences. Article 38 of the Constitution states that, subject to certain exceptions, no person can be tried on a criminal offence without a jury. The main exceptions are “minor offences” which can be tried in the District Court without a jury. A minor offence is currently interpreted to mean an offence for which the punishment does not exceed 12 months imprisonment and a fine of €3,000 and these maxima therefore represent the cut-off point for a jury trial in this jurisdiction.

The Paper highlights some of the inadequacies of the present system of penalties for these offences. For example, should an individual be imprisoned for up to twelve months without the option of a jury trial? Further, should the District Court be restricted to imposing a maximum fine of €3,000 even where the offender is a medium or large company which cannot be incarcerated? In examining these and other issues the Commission carried out an extensive comparative study of other common law jurisdictions with a similar constitutional or statutory framework confining non-jury trial to less serious offences, namely, England and Wales, Australia, New Zealand and the United States of America.

This initial examination of the topic led the Commission to make four provisional recommendations relating to the prison sentences and fines which may be imposed for a minor offence. First, there should be a clear statutory headline to the effect that the Court may impose a prison sentence up to maximum of only six months for actual minor offences. This does not affect the twelve month limit on District Court jurisdiction where an accused consents to summary trial or where there is a guilty plea in a more serious case.

Secondly, there should be an obligation on a District Court judge to give brief written reasons for a decision to impose a custodial sentence. Thirdly, the law should be adjusted to state explicitly that higher fines may be imposed where an offender is well-off and finally, in the case of a corporation, the maximum fine possible should be increased to a level three times higher than that for natural persons.

Consultation Paper on Prosecution Appeals in Cases brought on Indictment

This Consultation Paper examines prosecution avenues of appeal against acquittals and rulings on issues made before the verdict in favour of the defence at criminal trials in cases brought on indictment (*ie* in the trial of relatively serious offences heard in the Circuit Court, Central Criminal Court or Special Criminal Court).

At present, whilst the defence have broad rights of appeal, there are few opportunities for the prosecution to challenge trial decisions. Furthermore, even in the limited circumstances in which a prosecution appeal is possible, the appellate court may only give its opinion as to whether the trial decision was correct and has no power to overturn an erroneous ruling or to refer the matter back to the court of trial.

The Commission conducted an historical and comparative review of the law in this area. It concluded that the law in this jurisdiction, like that in force in the United Kingdom, has been formulated largely on the basis of the nineteenth and early twentieth century notion that prosecution appeals were unacceptable in all but the most extraordinary of circumstances. In contrast, in other jurisdictions, such as Canada, New Zealand and some States of Australia, reform in the early

twentieth century took a different path and, as in many civil law jurisdictions, prosecutors have been granted broad powers of appeal against trial decisions favourable to the defence.

Notwithstanding these development elsewhere, the Commission was conscious of the potential burden that broader avenues of prosecution appeal could place on accused and acquitted persons in terms of (1) additional costs; (2) delay (delay could also affect other participants in the criminal justice system, including complainants, victims and witnesses); and (3) unfairness which would arguably flow from the infringement of the “double jeopardy” principle (which states that no person should be tried more than once on any particular charge).

The Commission discussed a range of law reform options including narrow appeal models, which would limit the role of the appellate courts and give greater emphasis to the interests of acquitted persons, and broader appeal models, which would stress the appellate court’s overarching duty to ensure that “justice” is achieved. The Commission expressed the view that Irish law should move from the current near token system of prosecution appeals to one in which prosecution appeals would represent a real and substantial element in the criminal process. As such, the majority provisionally recommended the adoption of a “with prejudice” model, which would allow appellate courts to order retrials of acquitted persons in certain circumstances.

WORK IN PROGRESS

THE LEGAL SYSTEM

Class Actions

The subject-matter of a Consultation Paper being prepared concerns the procedure to be followed when numerous persons are defendants in the same cause of action or are pursuing the same cause of action against the same defendant, as, for instance, the recent army deafness claims against the Minister for Defence. In principle, subject to one exception, these are all separate actions to be pursued independently of each other. This could lead to delays and duplication of costs.

There is one exception to the idea that all actions are independent of each other. This is the 'representative action'. However, there are several practical drawbacks to the representative action in a case involving several plaintiffs. In the first place, the court must be satisfied that the plaintiff has been authorised by the interested parties to sue in a representative capacity. Secondly, the action presupposes a common interest, narrowly defined. Thirdly, there is some uncertainty over the extent of the court's authority to award damages. Traditionally, the representative plaintiff was entitled only to declaratory and injunctive relief.

In view of this, the Commission is considering whether there are likely to be many claims of this type in the future, and, if so, whether a 'class action,' as introduced in common law jurisdictions such as Australia, New Zealand and Canada, could be contemplated as useful, economic and expedient.

Court Poor Box

This is a procedure which has been adopted over many years by the courts, particularly by the District Court, derived from traditional practice and apparently without direct statutory support. Following a criminal prosecution, the District Judge may take the view that, although the prosecution has proved its case, it is not appropriate to enter a conviction for usually the same reasons as under section 1 of the Probationary Offenders Act 1907. The Public Accounts Committee has raised the question as to the origins or utility of having a Court Poor Box.

The Commission intends to complete its deliberations in 2003.

Penalties for Minor Offences

A Consultation Paper examining the law governing penalties for minor offences, details of which are given elsewhere in this report, was published in March 2002, and was followed by a seminar in July 2002.

A Report will be published early in 2003.

Prosecution Appeals

A Consultation Paper in relation to prosecution appeals in cases brought on indictment, details of which are given elsewhere in this report was published in June 2002 and a Seminar was held in October 2002.

Restorative Justice and Alternatives to Custodial Sentencing

A Consultation Paper is in its early stages of preparation. Restorative Justice views crime as causing harm to both the victim and the community. It is effectively a problem-solving approach to crime, involving the parties themselves and the community generally. Restorative Justice seeks to attend to the needs of the victim and to try to reintegrate the offender into the community and thus prevent re-offending. The Commission intends to examine the developments in Restorative Justice in this jurisdiction and in other jurisdictions such as New Zealand, Australia and Canada, where it is already an integral part of the criminal justice system.

Revenue Court and Fiscal Prosecutor

In February 2002, the Attorney General asked the Law Reform Commission to consider the issues and “examine the possible benefits of a fiscal prosecutor and a revenue court” pursuant to section 4(2)(c) of the *Law Reform Commission Act 1975*.

The Commission will consider the adoption of the two new institutions, proposed in the reference, but has also examined the possibility of reforming the existing tribunals and courts: on the civil side, the Appeal Commissioners, Circuit Court and Superior Courts; and, in the criminal field, the present system for preparing and bringing revenue prosecutions and the criminal jurisdiction of the District and Circuit Court. Where appropriate the Commission will refer to models from other jurisdictions. A Consultation Paper will be published in 2003.

Victim Support

Work on the utility and efficiency of victim support statements and reports, their content and time span is under way and it is intended to publish a Consultation Paper.

ADMINISTRATIVE LAW

Judicial Review Procedure

There are probably more applications for judicial review, per head of population, in Ireland than in any other jurisdiction in the world. This procedure is a way of securing administrative justice in individual cases and also, more widely, of calling ministers, local authorities and other public bodies to account. Its essential features should be speed and accessibility. At present, we have not only the conventional general scheme for applying for judicial review, but also numerous special statutory regimes in such fields as planning or refugees.

The present law is working, it is thought, reasonably well, and there have been a number of improvements in practice. However, in such a crucial area which balances individual interests against effective policy-making and unhindered administration, it is right that there should be a thorough review of procedures. This includes such aspects as: the leave stage; time-limit; appeals to the Supreme Court, and the possibility of an Administrative Court. A Consultation Paper will be published early in 2003.

Public Inquiries Including Tribunals of Inquiry

The Commission is preparing a Consultation Paper on the subject of public inquiries. In recent years, such inquiries have been established in Ireland by the Oireachtas to inquire into various matters of urgent public concern. The most important are conducted under the auspices of the *Tribunals of Inquiry (Evidence) Act 1921*.

The Commission's analysis and proposals will be sufficiently broad to be used in improving the legislation and operation of all categories of public inquiry, including: inquiries under the *Committees of the Houses of the Oireachtas (Compellability, Privileges and Immunities of Witness) Act 1997*, local enquiries, transport accident enquiries and company investigations.

In this way, the Commission hope to capture good ideas and best practice from all sources (including any relevant foreign examples). These will then be available in an accessible form to encourage public debate. The Consultation Paper will include drafts of legislative changes, as well as recommendations as regards improvements to practice.

CRIMINAL LAW

Criminal Law and Procedure

In 2001, the Commission published a Consultation Paper dealing with the question of whether the existing definition of the mental element in murder is under-inclusive, *ie* whether some non-intentional killings deserve to be punished as murder on moral grounds, and considers whether this difficulty should be addressed by expanding the current *mens rea* for the offence to include reckless indifference to the value of human life.

A second Consultation Paper, examining the plea of provocation, is in course of preparation. The principal issue to be determined is whether the subjective test, which is currently applied in Ireland, should continue to apply in either its present form or some variation thereof, or whether a version of the objective test, which is applied in every other common law jurisdiction, should be introduced into Irish law. It is anticipated that this Paper will be completed in 2003.

A further Consultation Paper is being prepared in relation to legitimate defence in cases involving homicide. Its principal focus is the apparent disjunction between the common law rules on the use of lethal force and the new regime on defensive force introduced by the *Non-Fatal Offences Against the Person Act 1997*. The Consultation Paper will examine the traditional rules for the defence, including the threat requirements (namely, that life is endangered, and the threat is imminent and unlawful), and the response requirements (namely, that the defender's response is necessary and proportionate). The Consultation Paper will also considers which standard is most appropriate to the defence, namely, an objective, a subjective, or a mixed or dual standard. This Consultation Paper is likely to be completed in 2003.

Other Consultation Papers/Reports in the Homicide series will deal with the arguments for and against a new system of internal classification for murder and manslaughter, also the proper limits of the basic categories of homicide. Special attention will be given to the problem of the alleged over-inclusiveness of the current definition of murder – the claim that some forms of intentional killing do not warrant being labelled as murder on moral grounds, and to the various strategies that might be adopted to meet this difficulty. The aim of the Homicide series is to lay the groundwork for codification.

Corporate Killing

A Consultation Paper is currently being prepared which deals with the liability of corporations for the death of human persons. It is widely perceived that the law does not deal appropriately with corporations and the persons who control them in circumstances where corporate wrongs result in death. The Consultation Paper will review the current law and consider whether a new corporate offence should be introduced.

The Paper should be published in 2003.

REAL AND PERSONAL PROPERTY

e-Conveyancing

During 2002, the Commission reviewed “*conveyancing law and practice in areas where this could lead to savings for house purchasers*” as part of the 1987 Land Law reference from the Attorney General. It decided that, in order to fulfil this mandate in the 21st Century and in the light of the Government’s commitment to e-Government, it was appropriate to consider how technological developments could substantially reduce the time taken in conveyancing transactions. The Commission was also mindful of developments in other jurisdictions, and has commenced a new project on e-Conveyancing. As stated elsewhere in this Report, the Commission has again sought the assistance of a number of experts, and has set up a Working Group with specialist sub-groups. It is anticipated that the project will take 2 – 3 years to complete. Professor John Wylie has agreed to lead the discussions of the Group.

Landlord and Tenant

During 2001, the Commission set up a Working Group on all aspects of Landlord and Tenant Law under the guidance of Professor John Wylie. The Commission will be publishing the first Consultation Paper arising out of the deliberations of the Working Group on *Business Tenancies* in **2003**. The Group will continue its deliberations in 2003 on other aspects of the law in this area.

Law relating to Condominiums

The Commission carried out preliminary research on this topic and prepared a submission to the Company Law Review Group (CLRG) on the appropriate corporate structures to be used for such undertakings. It will liaise with the CLRG during 2003 with a view to making recommendations on a new corporate structure for multi-unit developments. The Commission will continue to work on this project in 2003.

FAMILY LAW

Rights and Duties of Cohabitees

The Commission is examining the law in relation to the rights and duties of cohabitees, that is, persons who are not married but live together. According to the 1996 Census, at that time there were about 30,000 such couples. The question (which has already been faced in some particular areas, like tax and welfare) is whether the law should recognise this relationship. The issue has various legal implications in the field of: the rights to and transfer of property; enduring powers of attorney; life assurance; pensions; succession rights; and provisions for children.

A central feature of this work is firstly the definition of cohabitation and cohabitees to be recommended and, secondly, if the existence of any particular relationship should be ratified or recognised. A Consultation Paper will be published in 2003.

VULNERABLE GROUPS AND THE LAW

Law and the Elderly

The increasing number of older people in our society makes this subject timely. The work currently underway reflects an increasing social awareness of the plight of vulnerable groups in our society. It is now recognised that there is a need to provide adequate legal safeguards for citizens who are themselves unable to vindicate their legal rights, whether because of advanced age, ill-health, mental incapacity, lack of education, or lack of familiarity with our legal structures.

While individual elderly citizens may be affected by almost every branch of law, a Consultation Paper is being prepared by the Commission which will address the areas of law which impact most frequently on our elderly population.

The Commission will review the Wards of Court System and assess whether a more available and active Guardianship system would be more appropriate to-day. The Paper will also examine and make recommendations in relation to elder abuse and look at the legal and financial safeguards that should be in place for substitute decision makers for the elderly.

INTERNATIONAL LAW

Hague Convention

The Commission continues its participation with the Hague Convention on Conflicts of Law.

CONSULTATIVE COMMITTEE

Following extensive consultation between the Commission and the Attorney General on the Final Report of the Review of Organisation and Management of the Law Reform Commission, the Government announced in March 1998 the establishment of a Consultative Committee under the auspices of the Office of the Attorney General, comprising representatives of certain Government Departments, the Bar Council, the Law Society, as well as the Commission.

The function of the Consultative Committee is to assist the Attorney General in his consultations with the Commission in relation to the Programmes for Law Reform and in the selection of specific topics for reference to the Commission, and to monitor the implementation of the Commission's recommendations.

The Second Programme for Law Reform was approved by the Government in December 2000. At this stage, therefore, the major function of the Committee is to monitor the implementation of recommendations of the Commission.

Having considered how best to ensure that recommendations contained in the Law Reform Commission's Reports which remain unimplemented could continue to be the subject of review by government departments and be considered for inclusion in the Government Legislative Programme, the Committee have decided on the following procedure:

- the Consultative Committee to report directly to the Attorney General the views it may have on unimplemented recommendations in Law Reform Commission Reports;
- the Attorney General to be asked to channel those views to the minister whose department has responsibility for the subject-matter and to seek a response;
- the Government Legislation Committee to be asked to note the outcome of the correspondence between the Attorney General and ministers;
- at the presentation of each Annual Report of the Law Reform Commission to the Government, the Department of the Taoiseach to be asked to consider whether the deliberations of the Consultative Committee and the response of ministers on unimplemented recommendations of Commission Reports should be brought to the attention of the Government.

LIBRARY

Library

The primary role of the Law Reform Commission library is to anticipate and respond to the needs of the Commissioners and the Commission's research team for library and information services in partnership with other libraries and information providers.

Developments in 2002

Installation of the Unicorn Collection Management System has been completed and is being used on a shared basis in the libraries of the Attorney General's Office, the Chief State Solicitor's Office and the Law Reform Commission. This produces a multi-library system allowing each library to operate independently whilst benefiting from shared OPAC (online public access catalogue) and cataloguing modules.

Library Resources & Services

The library's print collection includes books, legal journals, law reports, official publications, legislation, Irish unreported judgments and a unique collection of publications from law reform bodies around the world.

Library holdings are augmented using extensive links which have been built up with other organisations, including other libraries and government departments. Document delivery is provided by subscription to the Information Service at Trinity College Library, Dublin; the Institute for Advanced Legal Studies, London and the inside web service of the British Library.

The research teams have networked access from their desktops to the Internet and Lexis-Nexis, and to Eurolaw and the Irish Statute Book on CD-Rom. Further electronic services are under consideration.

The range of services provided by the library during the past year has included a current awareness service, document delivery, a research support and information service, training and loans (including interlibrary loans). In addition to queries from the research team, staff have also responded to external requests for information, as increasing interest in the collection has been shown by staff from government departments and other law libraries.

FINANCE

Income & Expenditure

The grant-in-aid approved by the Minister for Finance on the recommendation of the Attorney General represents almost the entirety of the Commission's income. Under the present accounting procedure, monies are drawn down on a monthly basis from the grant-in-aid with the consent of the Accounting Officer who is the Director General in the Attorney General's Office. The only other income derives from the sale of publications. It should be noted, however, that many publications are not sold but are distributed free to members of the judiciary, members of the Oireachtas and legal scholars, as well as to libraries in various countries and law reform agencies worldwide who in turn provide the Commission with copies of their work.

The expenses of the Law Reform Commission include rent and premises overheads, salaries of Commissioners and staff, emoluments of external researchers retained for specific tasks, the maintenance of the law library and the holding, from time to time, of public seminars.

Prompt Payment of Accounts

There were no late payments by the Law Reform Commission during 2002.

The Secretary keeps all current liabilities of the Commission under review with a view to their prompt discharge. The appropriate payments are made by the Commission in accordance with its internal procedures.

Standard payment periods are not specified in written contracts.

Statement by Secretary to the Commission

Throughout 2002, the Law Reform Commission was in compliance with the *Prompt Payment of Accounts Act 1997*.

The payment procedures outlined above were operational throughout this period. While these practices can only provide reasonable and not absolute assurance against material non-compliance with the Act, they would appear to have worked very well, in particular, in view of the fact that there were no late payments during the period under review.

CONFERENCES AND VISITS

Commissioner Rickard-Clarke and Professor Gwynn Morgan visited the University of Limerick, University College Galway, University College Cork and Queens University Belfast. The purpose of the visits was to brief the members of the academic institutions on the work of the Law Reform Commission, to invite them to inform the Commission of their particular areas of expertise so that this experience might be drawn on in, for instance helping to research Commission Papers or commenting thereon, to the mutual advantage of the Commission and the scholar.

The President, Commissioner Rickard-Clarke, Commissioner Shanley and Commissioner McAuley attended a conference in the University of Edinburgh organised by the Scottish Law Commission. The topic of the conference was “The Law of Insanity”. Commissioner McAuley delivered a Paper to the conference. The members of the Commission who attended had the opportunity to meet with members of the Scottish Law Commission.

Commissioner Rickard-Clarke and Commissioner Shanley attended the Annual Conference at the University of Leicester of the Society of Legal Scholars. The theme of the conference was ‘Legal Scholarship and Law Reform’. Each of the Commissions of England, Scotland, Northern Ireland and Ireland delivered a Paper on the work of each of the Commissions. Commissioner Rickard-Clarke delivered the Paper on behalf of the Irish Commission.

The President and Commissioner Rickard-Clarke were invited by the Department of Social, Community and Family Affairs to participate in the Informal Advisory Group on Charity Law Reform.

Commissioner Rickard-Clarke participated in the Arthur Cox Round Table Conference on the Reform of Charity Law.

Throughout the year, Commissioner Rickard-Clarke participated as a member of the Human Rights Advisory Committee on the ‘Treatment of Elderly in Institutions’.

The Legal Information Manager, Marina Greer, attended a conference in London on the subject of knowledge management. Topics covered included the techniques and technology of intranet design and exploitation.

Professor Gwynn Morgan attended a conference on Alternative Dispute Resolution in Copenhagen.

Commissioner Rickard-Clarke and Commissioner Shanley attended a Law Society Seminar on Disability.

VISITORS FROM OTHER JURISDICTIONS

- Gareth Johnston, Director, Law Reform Advisory Committee of Northern Ireland
- Professor Gerry Maher, member of the Scottish Law Commission
- Delegation of Supreme Court Judges from the Ugandan Law Reform Commission
- The Honourable Mr Justice Bruce Robertson, President of the New Zealand Law Commission

CONTACTS WITH VARIOUS OTHER BODIES

- Health and Safety Authority
- The Director of Corporate Enforcement
- Institute of Chartered Accountants in Ireland
- Institute of Taxation in Ireland
- Director of Public Prosecutions and Staff
- Irish Business and Employers Confederation (IBEC)
- Institute of Directors in Ireland
- CIF for Corporate Killing
- Revenue Commissioners

APPENDIX A

SECOND PROGRAMME FOR LAW REFORM

The Legal System

1. Access to the law for the citizen and, in particular, the effectiveness of the promulgation and dissemination of statutes and statutory instruments.
2. Limitation of actions.
3. Class actions and representative actions taken in the public interest.
4. Alternative dispute resolution.
5. Statute Law: completion of the Commission's remit under its First Programme in the sphere of statutory drafting and interpretation. (Report published in December 2002).

Evidence

6. Forensic evidence.
7. Other aspects of the law of evidence in civil and criminal cases.

Administrative Law

8. *Tribunals of inquiry.
9. Appeals from administrative decisions including judicial review.

Civil Rights Law

10. The law of privacy
 - (i) Privacy and the law of confidentiality;
 - (ii) Privacy in the context of the criminal justice system: longevity of criminal records and the expunging of certain offences from the record;
 - (iii) Privacy in specific institutional contexts: the workplace; the healthcare system; prisons.

Criminal Law

11. *The law of homicide.
12. Defences including provocation, legitimate defence, duress and necessity.
13. Inchoate offences.

14. Procedure in criminal cases.
15. Restorative Justice.
16. Corporate criminal liability.
17. *Penalties for minor offences.

Law of Obligations

18. The law of tort. *Aspects of the law of compensation for personal injuries.
19. The law of contract. Privity of contract and the rights of third parties.

Real and Personal Property

20. *The law of trusts including the law of charities.
21. *Succession law.
22. The law relating to condominiums.
23. The Commission will continue its general review of land and conveyancing law with the assistance of its standing specialist Working Group.

Commercial Law

24. Mindful of the Government's proposal to establish a statutory Company Law Review Group, current issues arising in the area of commercial law will, as appropriate, be reviewed and examined.
25. Exceptions to the *nemo dat quod non habet* principle on transfer of title to goods.

Law and The Information Society

26. Electronic commerce and the Internet, where appropriate having regard to activities undertaken or to be undertaken by Government Departments and in particular:
 - (i) privacy on the internet and encryption.
 - (ii) liability of service providers.

Vulnerable Groups and The Law

27. *Law and the elderly, including the legal protection of older persons transferring assets and ‘advance care directives’
28. The law affecting persons with physical, mental or learning disabilities, including issues of capacity, guardianship and the right to marry.

Family Law

29. The law of adoption - a general review.
30. Rights and duties of co-habitees.

International Law

31. Negotiation and preparation of various international agreements, including their implementation in Irish law. We pay particular regard to Ireland’s participation in conventions prepared by UNIDROIT, UNCITRAL and the Hague Conference on Private International Law.

Miscellaneous Provisions Bill

32. The Commission will continue to prepare an annual Law Reform (Miscellaneous Provisions Bill), as a vehicle for making minor reforms, ranging over the branches of the law which are covered by this Programme.

General

It is naturally difficult to anticipate change which may call for law reform in the future. Accordingly, the Commission considers it best to supplement the list of discrete topics given above by stating that if events require law reform in any area within any of the branches of the law set out above, the Commission will, where appropriate, and subject to the limits of its available resources, bring forward the necessary proposals.

The Commission retains a continuing interest in codification of the law and proposes to address the issue of codification with regard to matters falling within branches of the law set out in this Programme as appropriate.

In all these areas, the Commission will, where appropriate, have regard to the activities of other official bodies interested in law reform, among them the Courts Service, and be ready to co-operate with them.

Note: The topics identified by means of an asterisk will be given priority by the Commission in addressing its tasks under the Programme

APPENDIX B

WORKING GROUPS

Working Group on e-Conveyancing:

- Commissioner Patricia T Rickard-Clarke
- Commissioner Marian Shanley
- Professor John C W Wylie (Leader of the Project)
- Vivienne Bradley, Solicitor
- Patrick Fagan, Solicitor
- Deirdre Fox, Solicitor
- Brian Gallagher, Solicitor
- Professor David Gwynn Morgan
- Chris Hogan, Senior Registrar, Land Registry
- Caroline Kelly, BL
- Deirdre Morris, Solicitor
- Marjorie Murphy, Solicitor
- John O’Sullivan, Information Systems Manager, Land Registry
- Doreen Shivnen, BL

Mark O’Riordan acts as Secretary/Researcher to the Group.

Working Group on Landlord and Tenant Law

- The Hon Mr Justice Declan Budd
- Commissioner Patricia T Rickard-Clarke
- Professor David Gwynn Morgan
- Professor John C W Wylie (Leader of the Project)
- John F Buckley, Former Circuit Court Judge
- Ruth Cannon, BL
- Ernest Farrell, Solicitor
- Patrick Fagan, Solicitor
- Colin Keane, Solicitor
- Michael McGrath, SC
- Sheila McMahon, Department of Environment and Local Government
- Gavin Ralston, SC
- Regina Terry, BL, Department of Justice Equality and Law Reform
- John Walsh, Solicitor

Mark O’Riordan acts as Secretary/Researcher to the Group.

Working Group on Judicial Review

- The Hon Mr Justice Declan Budd
- Commissioner Patricia T Rickard-Clarke
- Commissioner Hilary A Delany
- Commissioner Marian Shanley
- Professor David Gwynn Morgan
- Seán Barton, Solicitor
- Marcus Beresford, Solicitor
- Conleth Bradley, BL
- Nuala Butler, BL
- David Clarke, Solicitor
- Sarah Farrell, BL
- Finola Flanagan, Director General, Office of Attorney General
- Paul Gallagher, SC
- Gerard Hogan, SC
- The Hon Mr Justice Peter Kelly
- Claire Loftus, Office of Chief Prosecution Solicitor
- Liz Mullan, Chief State Solicitor's Office
- Kerida Naidoo, BL
- The Hon Mr Justice Aindrias O'Caomh
- Dónal O'Donnell, SC
- Robert Sheehan, Office of the Director of Public Prosecutions
- Garrett Simons, BL
- Marie Torrens, BL
- Seamus Woulfe, BL

Patricia Brazil acted as Secretary/Researcher to the Group.

Ad Hoc Group on the Rights and Duties of Cohabitees

- Commissioner Patricia T Rickard-Clarke
- Commissioner Hilary A Delany
- Commissioner Marian Shanley
- Hugh Cunniam, Solicitor
- Margaret Dromey, Treoir (Federation of Services for Unmarried Parents and their Children)
- Rosemary Horgan, Solicitor
- Mary Lloyd, Family Mediation Service
- The Honourable Mrs Justice Catherine McGuinness
- Paul McCarthy, BL
- Professor David Gwynn Morgan
- Muriel Walls, Solicitor
- Úna Woods, Solicitor

Darren Lehane acts as Secretary/Researcher to the Group.

Ad Hoc Group on Class Actions

- The Hon Mr Justice Declan Budd
- Commissioner Patricia T Rickard-Clarke
- Commissioner Hilary A Delany
- Commissioner Marian Shanley
- Professor David Gwynn Morgan
- David Barniville BL
- Roderick Bourke, Solicitor
- Brian Carroll, University College Cork
- David Coleman, Solicitor
- Brendan Counihan, Chief State Solicitor's Office
- Michael Cush, SC
- Liz Heffernan, University College Dublin
- David McPartland BL
- Alan Mahon SC
- Stuart Margetson, Solicitor
- Christine O'Rourke, Office of the Attorney General
- Susan Stapleton, Solicitor

APPENDIX C

MATTERS EXAMINED UNDER THE FIRST PROGRAMME FOR LAW REFORM

MATTER EXAMINED	RESULTING REPORTS *
Administrative Law	Working Paper 8-1979 - Judicial Review of Administrative Action
Animals	Report on Civil Liability for Animals (LRC 2-1982)
Conflict of Laws	<p>Report on Domicile and Habitual Residence as Connecting Factors in the Conflict of Laws (LRC 7-1983)</p> <p>Report on the Recognition of Foreign Divorces and Legal Separations (LRC 10-1985)</p> <p>Report on the Hague Convention on the Taking of Evidence Abroad in Civil or Commercial Matters (LRC 16-1985)</p> <p>Report on Private International Law Aspects of Capacity to Marry and Choice of Law Proceedings for Nullity of Marriage (LRC 19-1985)</p> <p>Report on Jurisdiction in Proceedings for Nullity of Marriage (LRC 20-1985)</p> <p>Report on the Service of Documents Abroad re. Civil Proceedings (LRC 22-1987)</p> <p>Report on the Recognition of Foreign Adoption Decrees (LRC 29-1989)</p> <p>Report on the Hague Convention on Succession to the Estates of Deceased Persons (LRC 36-1991)</p> <p>Report on the Hague Convention Abolishing the Requirement of Legalisation for Foreign Public Documents (LRC 48-1995)</p>

	<p>Report on the UNIDROIT Convention on Stolen or Illegally Exported Cultural Objects (LRC 55-1997)</p> <p>Report on the Implementation of the Hague Convention on Protection of Children and Co-operation in respect of Intercountry Adoption, 1993 (LRC 58-1998)</p>
Criminal Law	<p>Report on Vagrancy and Related Offences (LRC 11-1985)</p> <p>Report on Offences under the Dublin Police Acts and Related Offences (LRC 14-1985)</p> <p>Report on Intoxication (LRC 51-1995)</p>
Evidence	<p>Report on the Rule against Hearsay in Civil Cases (LRC 25-1988)</p> <p>Report on the Competence and Compellability of Spouses as Witnesses (LRC 13-1985)</p> <p>Report on Oaths and Affirmations (LRC 34-1990)</p>
Family Law	<p>Working Paper No. 4, 1978 - The Law Relating to Breach of Promise of Marriage</p> <p>Working Paper No. 5, 1978 - The Law Relating to Criminal Conversation and the Enticement and Harboring of a Spouse</p> <p>Working Paper No. 6, 1979 - The Law Relating to Seduction and the Enticement and Harboring of a Child</p> <p>Working Paper No. 7, 1979 - The Law Relating to Loss of Consortium and Loss of Services of a Child</p> <p>First Report on Family Law (LRC 1-1981)</p> <p>Report on Illegitimacy (LRC 4-1982)</p> <p>Report on the Age of Majority, the Age for Marriage, and Connected Subjects (LRC 5-1983)</p>

	<p>Report on the Restitution of Conjugal Rights, Jactitation of Marriage and Related Matters (LRC 6-1983)</p> <p>Report on Divorce a Mensa Et Thoro and Related Matters (LRC 8-1983)</p> <p>Report on Nullity of Marriage (LRC 9-1984)</p> <p>Report on Family Courts (LRC 52-1996)</p>
Privacy	<p>Report on Privacy: Surveillance and the Interception of Communications (LRC 57-1998)</p>
Sales	<p>Working Paper No. 1-1977 - The Law Relating to the Liability of Builders, Vendors and Lessors for the Quality and Fitness of Premises</p> <p>Report on Defective Premises (LRC 3-1982)</p> <p>Report on Minors' Contracts (LRC 15-1985)</p> <p>Report on the UN (Vienna) Convention on Contracts for the International Sale of Goods 1980 (LRC 42-1992)</p>
Statute Law	<p>Report on Statutory Drafting and Interpretation: <i>Plain Language and the Law</i> (LRC 61 – 2000)</p>

* Where both a Working Paper and a Report, or both a Consultation Paper and a Report, have been published on the same topic, only the Report has been listed in this table. Working Papers and Consultation Papers have been listed only where they have not been followed by a Report. A full list of all the Law Reform Commission's publications appears on pages 40 to 46.

APPENDIX D

**MATTERS EXAMINED PURSUANT TO
REFERENCES FROM THE ATTORNEY GENERAL**

(Recorded in chronological order of the References)

MATTERS REFERRED	RESULTING REPORTS
<p>Conveyancing Law and Practice, and where this could lead to savings for house purposes (referred 1987).</p>	<p>Report on Land Law and Conveyancing Law: (1) General Proposals (LRC 30-1989)</p> <p>Report on Land Law and Conveyancing Law: (2) Enduring Powers of Attorney (LRC 31-1989)</p> <p>Report on Land Law and Conveyancing Law: (3) Passing the Risk from Vendor to Purchaser (LRC 39-1991)</p> <p>Report on Land Law and Conveyancing Law: (4) The Service of Completion Notices (LRC 40-1991)</p> <p>Report on Land Law and Conveyancing Law: (5) Further General Proposals (LRC 44-1992)</p> <p>Report on Interests of Vendor and Purchaser in Land during Period between Contract and Completion (LRC 49-1995)</p> <p>Report on Land Law and Conveyancing Law: (6) Further General Proposals Including the Execution of Deeds (LRC 56-1998)</p> <p>Report on the Rule against Perpetuities and Cognate Rules (LRC 62 – 2000)</p> <p>Report on the Variation of Trusts (LRC 63 – 2000)</p>
<p>The Law relating to Sheriffs, the collection of taxes and debt collection (referred 1987).</p>	<p>Report on Debt Collection: (1) the Law Relating to Sheriffs (LRC 27-1988)</p> <p>Report on Debt Collection: (2) Retention of Title</p>

<p>The Law relating to compensation for personal injuries cases including in particular:</p> <p>(1) provision for periodic payments and the making of provisional awards (referred 1987); and</p> <p>(2) the Statute of Limitations in cases of latent Personal Injury; and</p> <p>(3) Limitation in cases of Child non-sexual abuse.</p>	<p>Report on the Statute of Limitations in Cases of Latent Personal Injuries (LRC 21-1987)</p> <p>Report on Personal Injuries: Periodic Payments and Structured Settlements (LRC 54-1996)</p> <p>Consultation Paper on the Law of Limitation of Actions arising from Non-Sexual Abuse of Children (LRC-CP16-2000)</p>
<p>Aspects of Criminal Law, including:</p> <p>(1) sentencing policy;</p> <p>(2) indexation of fines;</p> <p>(3) confiscating the proceeds of crime; and</p> <p>(4) whether there is need to revise or update the law relating to the various offences which are mainly governed by pre-1922 legislation, including, in particular, the laws relating to dishonesty, malicious damage and offences against the person (referred 1987).</p> <p>Sexual Offences Generally (Including in particular the law relating to rape and the sexual abuse of children) (referred 1987).</p>	<p>Report on Receiving Stolen Property (LRC 23-1987)</p> <p>Report on Malicious Damage (LRC 26-1988)</p> <p>Report on the Confiscation of the Proceeds of Crime (LRC 35-1991)</p> <p>Report on the Indexation of Fines (LRC 37-1991)</p> <p>Report on the Crime of Libel (LRC 41-1991)</p> <p>Report on the Law Relating to Dishonesty (LRC 43-1992)</p> <p>Report on Non-Fatal Offences against the Person (LRC 45-1994)</p> <p>Report on Sentencing (LRC 53-1996)</p> <p>Report on Rape and Allied Offences (LRC 24-1988)</p> <p>Report on Child Sexual Abuse (LRC 32-1990)</p> <p>Report on Sexual Offences Against the</p>

	Mentally Handicapped (LRC 33-1990)
The Law of defamation and contempt of court (referred 1989).	Report on the Civil Law of Defamation (LRC 38-1991) Report on Contempt of Court (LRC 47-1994)
The law relating to occupiers' liability (referred 1992).	Report on Occupiers' Liability (LRC 46-1994)
The Law relating to Bail (referred 1994).	Report on an Examination of the Law of Bail (LRC 50-1995)
Aggravated, Exemplary and Restitutionary Damages (referred 1997).	Report on Aggravated, Exemplary and Restitutionary Damages (LRC 60 – 2000)
The Statutes of Limitation in cases in contract and tort involving latent damage other than personal injury (referred 1997). 'Gazumping'. Overlap between damages award in personal injuries action and other benefits received by the plaintiff.	Consultation Paper on the Statutes of Limitation: Claims in Contract and Tort in respect of Latent Damage (other than Personal Injury) (1998) Report on Gazumping (LRC 59-1999) The Deductibility of Collateral Benefits from Awards of Damages under Section 2 of the Civil Liability (Amendment) Act, 1964 (LRC-CP15-1999).

* Where both a Working Paper and a Report, or both a Consultation Paper and a Report, have been published on the same topic, only the Report has been listed in this table. Working Papers and Consultation Papers have been listed only where they have not been followed by a Report. A full list of all of the Law Reform Commission's publications appears on pages 40 to 46.

APPENDIX E

IMPLEMENTATION OF THE COMMISSION'S RECOMMENDATIONS

(The implementing legislation listed in the chart does not necessarily implement all the recommendations of the corresponding Report in full. In many cases only some of the Report's recommendations have been implemented by the legislation; in others the Commission's recommendations have been implemented only in a modified form.)

REPORT	IMPLEMENTING LEGISLATION
First Report on Family Law	<i>Family Law Act, 1981</i>
Report on Civil Liability for Animals	<i>Animals Act, 1985</i>
Report on Illegitimacy	<i>Status of Children Act, 1987</i>
Report on the Age of Majority, the Age for Marriage, and Connected Subjects	<i>Age of Majority Act, 1985</i> <i>Family Law Act, 1995</i>
Report on Restitution of Conjugal Rights, Jactitation of Marriage, and Related Matters	<i>Family Law Act, 1988</i> <i>Family Law Act, 1995</i>
Report on Domicile and Habitual Residence as Connecting Factors in the Conflict of Laws	<i>Domicile and Recognition of Foreign Divorces Act, 1986</i>
Report on Divorce <i>a Mensa et Thoro</i> and Related Matters	<i>Judicial Separation and Family Reform Act, 1989</i>
Report on the Recognition of Foreign Divorces and Legal Separations	<i>Domicile and Recognition of Foreign Divorces Act, 1986</i>
Report on Vagrancy and Related Offences	<i>Housing Act, 1988</i> <i>Criminal Law (Sexual Offences) Act, 1993</i> <i>Criminal Justice (Public Order) Act, 1994</i>
Report on the Hague Convention on the Civil Aspects of International Child Abduction and Some Related Matters	<i>Child Abduction and Enforcement of Custody Orders Act, 1991</i>
Report on the Competence and	<i>Criminal Evidence Act, 1992</i>

Compellability of Witnesses	
Report on Offences Under the Dublin Police Acts and Related Offences	<i>Criminal Justice (Public Order Act), 1994</i>
Report on Jurisdiction in Proceedings for Nullity of Marriage, Recognition of Foreign Nullity Decrees and the Hague Convention on the Celebration and Recognition of the Validity of Marriages	<i>Family Law Act, 1995</i>
Report on Receiving Stolen Property	<i>Larceny Act, 1990</i> <i>Criminal Justice Act, 1993</i> <i>Criminal Evidence Act, 1992</i> <i>Criminal Justice (No. 3) Act, 1994</i>
Report on the Statute of Limitations: Claims in respect of Latent Personal Injuries	<i>Statute of Limitations (Amendment) Act, 1991</i>
Report on the Service of Documents Abroad re Civil Proceedings (Hague Convention)	Hague Convention ratified 1994 Rules of the Superior Courts (no.3), 1994 (S.I. No.101 of 1994) <i>District Court (Service Abroad of Documents in Civil or Commercial Matters) Rules, 1994</i> (S.I. No.120 of 1994), now consolidated in <i>District Court Rules</i> (S.I. No.93 of 1997)
Report on Rape and Allied Offences	<i>Criminal Law (Rape) (Amendment) Act, 1990</i> <i>Criminal Justice Act, 1993</i>
Report on Malicious Damage	<i>Criminal Damage Act, 1991</i> <i>Criminal Justice Act, 1993</i>
Report on the Recognition of Foreign Adoption Decrees	<i>Adoption Act, 1991</i>

Report on Land Law and Conveyancing Law: (1) General Proposals	
Report on Land Law and Conveyancing: (2) Enduring Powers of Attorney	<i>Powers of Attorney Act, 1996</i>
Report on Child Sexual Abuse	<i>Child Care Act, 1991</i> <i>Criminal Evidence Act, 1992</i> <i>Criminal Law (Sexual Offences) Act, 1993</i> <i>Domestic Violence Act, 1996</i> <i>Criminal Justice (Miscellaneous Provisions) Act, 1997</i> <i>Protection for Persons Reporting Child Abuse Act, 1998</i>
Report on Sexual Offences Against the Mentally Handicapped	<i>Criminal Law (Sexual Offences) Act, 1993</i> <i>Criminal Justice (Miscellaneous Provisions) Act, 1997</i>
Report on the Confiscation of the Proceeds of Crime	<i>Criminal Justice (No. 3) Act, 1994</i>
Report on Non-Fatal Offences Against the Person	<i>Non-Fatal Offences Against the Person Act, 1997</i>
Report on Occupiers' Liability	<i>Occupiers' Liability Act, 1995</i>
Examination of the Law of Bail	<i>Bail Act, 1997</i>
Report on Family Courts	<i>Children Act, 1997</i>
Report on Sentencing	<i>Criminal Justice Act, 1999</i>
Report on Abolishing Requirement of Legalisation of Foreign Public Documents (Hague Convention)	Rules of the Superior Courts (No.1) (Proof of Foreign Diplomatic, Consular and Public Documents) 1999 – <i>SI No 3 of 1999</i>

LIST OF LAW REFORM COMMISSION'S PUBLICATIONS

First Programme for Examination of Certain Branches of the Law with a View to their Reform (December 1976) (Prl. 5984)	€0.13
Working Paper No. 1-1977, The Law Relating to the Liability of Builders, Vendors and Lessors for the Quality and Fitness of Premises (June 1977)	€ 1.40
Working Paper No. 2-1977, The Law Relating to the Age of Majority, the Age for Marriage and Some Connected Subjects (November 1977)	€1.27
Working Paper No. 3-1977, Civil Liability for Animals (November 1977)	€3.17
First (<u>Annual</u>) Report (1977) (Prl. 6961)	€0.51
Working Paper No. 4-1978, The Law Relating to Breach of Promise of Marriage (November 1978)	€1.27
Working Paper No. 5-1978, The Law Relating to Criminal Conversation and the Enticement and Harboursing of a Spouse (December 1978)	€1.27
Working Paper No. 6-1979, The Law Relating to Seduction and the Enticement and Harboursing of a Child (February 1979)	€1.90
Working Paper No. 7-1979, The Law Relating to Loss of Consortium and Loss of Services of a Child (March 1979)	€1.27
Working Paper No. 8-1979, Judicial Review of Administrative Action: the Problem of Remedies (December 1979)	€1.90
Second (<u>Annual</u>) Report (1978/79) (Prl. 8855)	€1.90
Working Paper No. 9-1980, The Rule Against Hearsay (April 1980)	€2.54
Third (<u>Annual</u>) Report (1980) (Prl. 9733)	€0.90
First Report on Family Law - Criminal Conversation, Enticement and Harboursing of a Spouse or Child, Loss of Consortium, Personal Injury to a Child, Seduction of a Child, Matrimonial Property and Breach of Promise of Marriage (LRC 1-1981) (March 1981)	€2.54
Working Paper No. 10-1981, Domicile and Habitual Residence as Connecting Factors in the Conflict of Laws (September 1981)	€2.22
Fourth (<u>Annual</u>) Report (1981) (Pl. 742)	€0.95
Report on Civil Liability for Animals (LRC 2-1982) (May 1982)	€1.27
Report on Defective Premises (LRC 3-1982) (May 1982)	€1.27

Report on Illegitimacy (LRC 4-1982) (September 1982)	€4.44
Fifth (<u>Annual</u>) Report (1982) (Pl. 1795)	€0.95
Report on the Age of Majority, the Age for Marriage and Some Connected Subjects (LRC 5-1983) (April 1983)	€1.90
Report on Restitution of Conjugal Rights, Jactitation of Marriage and Related Matters (LRC 6-1983) (November 1983)	€1.27
Report on Domicile and Habitual Residence as Connecting Factors in the Conflict of Laws (LRC 7-1983) (December 1983)	€1.90
Report on Divorce a Mensa et Thoro and Related Matters (LRC 8-1983) (December 1983)	€3.81
Sixth (<u>Annual</u>) Report (1983) (Pl. 2622)	€1.27
Report on Nullity of Marriage (LRC 9-1984) (October 1984)	€4.44
Working Paper No. 11-1984, Recognition of Foreign Divorces and Legal Separations (October 1984)	€2.54
Seventh (<u>Annual</u>) Report (1984) (Pl. 3313)	€1.27
Report on Recognition of Foreign Divorces and Legal Separations (LRC 10-1985) (April 1985)	€1.27
Report on Vagrancy and Related Offences (LRC 11-1985) (June 1985)	€3.81
Report on the Hague Convention on the Civil Aspects of International Child Abduction and Some Related Matters (LRC 12-1985) (June 1985)	€2.54
Report on Competence and Compellability of Spouses as Witnesses (LRC 13-1985) (July 1985)	€3.17
Report on Offences Under the Dublin Police Acts and Related Offences (LRC 14-1985) (July 1985)	€3.17
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Report on the Hague Convention on the Taking of Evidence Abroad in Civil or Commercial Matters (LRC 16-1985) (August 1985)	€2.54
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Report on Private International Law Aspects of Capacity to Marry and Choice	€4.44

of Law in Proceedings for Nullity of Marriage (LRC 19-1985) (October 1985)	
Report on Jurisdiction in Proceedings for Nullity of Marriage, Recognition of Foreign Nullity Decrees, and the Hague Convention on the Celebration and Recognition of the Validity of Marriages (LRC 20-1985) (October 1985)	€2.54
Eighth (<u>Annual</u>) Report (1985) (Pl. 4281)	€1.27
Report on the Statute of Limitations: Claims in Respect of Latent Personal Injuries (LRC 21-1987) (September 1987)	€5.71
Consultation Paper on Rape (December 1987)	€7.62
Report on the Service of Documents Abroad re Civil Proceedings -the Hague Convention (LRC 22-1987) (December 1987)	€2.54
Report on Receiving Stolen Property (LRC 23-1987) (December 1987)	€8.89
Ninth (<u>Annual</u>) Report (1986-1987) (Pl. 5625)	€1.90
Report on Rape and Allied Offences (LRC 24-1988) (May 1988)	€3.81
Report on the Rule Against Hearsay in Civil Cases (LRC 25-1988) (September 1988)	€3.81
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Report on Debt Collection: (1) The Law Relating to Sheriffs (LRC 27-1988) (October 1988)	€6.35
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Report on Debt Collection: (2) Retention of Title (LRC 28-1988) (April 1989)	€5.08
Report on the Recognition of Foreign Adoption Decrees (LRC 29-1989) (June 1989)	€6.35
Report on Land Law and Conveyancing Law: (1) General Proposals (LRC 30-1989) (June 1989)	€6.35
Consultation Paper on Child Sexual Abuse (August 1989)	€12.70
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Consultation Paper on the Civil Law of Defamation (March 1991)	€25.39
Report on the Hague Convention on Succession to the Estates of Deceased Persons (LRC 36-1991) (May 1991)	€8.89
Twelfth (<u>Annual</u>) Report (1990) (Pl. 8292)	€1.90
Consultation Paper on Contempt of Court (July 1991)	€25.39
Consultation Paper on the Crime of Libel (August 1991)	€13.97
Report on the Indexation of Fines (LRC 37-1991) (October 1991)	€8.25
Report on the Civil Law of Defamation (LRC 38-1991) (December 1991)	€8.89
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Report on Occupiers' Liability (LRC 46-1994) (April 1994)	€7.62
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Nineteenth (<u>Annual</u>) Report (1997) (PN. 6218)	€3.81
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Consultation Paper on The Statutes of Limitation: Claims in Contract and	€6.35

Tort in Respect of Latent Damage (Other Than Personal Injury) (November 1998)	
Twentieth (<u>Annual</u>) Report (1998) (PN. 7471)	€3.81
Consultation Paper on Statutory Drafting and Interpretation: <i>Plain Language and the Law</i> (July 1999) (LRC CP14-1999)	€7.62
Consultation Paper on Section 2 of the Civil Liability (<i>Amendment</i>) Act, 1964: <i>The Deductibility of Collateral Benefits from Awards of Damages</i> (August 1999) (LRC CP15-1999)	€9.52
Report on Gazumping (LRC 59-1999) (October 1999)	€6.35
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Second Programme for examination of certain branches of the law with a view to their reform: 2000-2007 (PN 9459)(December 2000)	€6.35
Consultation Paper on the Law of Limitation of Actions arising from Non-Sexual Abuse of Children (LRC-CP16-2000) (September 2000)	€6.35
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