



LAW REFORM
COMMISSION/COIMISIÚN UM
ATHCHÓIRIÚ AN DLÍ

ANNUAL CONFERENCE 2011

SEXUAL OFFENCES AND CAPACITY

MONDAY 7 NOVEMBER 2011

LAW SOCIETY OF IRELAND
BLACKHALL PLACE, DUBLIN 7

PROGRAMME

8.00 - 9.00	Registration
9.00 - 9.10	Chairperson's Address The Honourable Mr Justice Peter Charleton Judge of the High Court
9.10 - 9.50	Sexual Offences and Capacity: Recent Reforms The Right Honourable Lord Justice (Sir James) Munby Judge of the Court of Appeal of England and Wales Chairman of the Law Commission of England and Wales
9.50 - 10.20	Incapacity and People with Intellectual Disabilities: A Social Construction Dr Fintan Sheerin Lecturer in Intellectual Disability Nursing
10.20 - 11.00	The Law of Sexual Offences: Capacity to Consent Law Reform Commission's Provisional Recommendations Patricia T Rickard-Clarke Commissioner Law Reform Commission
11.00 - 11.30	Coffee
11.30 - 12.00	Response to Commission's Provisional Recommendations Ms Frieda Finlay Chairperson Inclusion Ireland
12.00 - 12.30	A Prosecution Perspective Mr James Hamilton Director of Public Prosecutions
12.30 - 12.45	Panel Discussion
12.45 - 13.00	Concluding Remarks by the Chairperson

BIOGRAPHIES

The Honourable Mr Justice Peter Charleton

Mr Justice Charleton was called to the Bar in 1979 and to the Inner Bar in March 1995. He was appointed a judge of the High Court in December 2006

The Right Honourable Lord Justice (Sir James) Munby

Lord Justice Munby is Chairman of the Law Commission for England and Wales and a judge of the Court of Appeal for England and Wales.

Lord Justice Munby was educated at Magdalen College School, Oxford and Wadham College, Oxford. He was called to the English Bar, Middle Temple, in 1971. He was appointed Queen's Counsel in 1988 and made a Bencher of Middle Temple in 2000. He was knighted when appointed a High Court Judge in 2000, when he was assigned to the Family Division and the Administrative Court. He was appointed to the Privy Council in 2009. Lord Justice Munby has delivered many leading judgments in cases concerning capacity to consent, and since 2009 the English Law Commission has also published important proposals for reform in the area of "at risk" adults and intellectual disability.

Dr Fintan Sheerin

Fintan Sheerin is a lecturer in intellectual disabilities at TCD School of Nursing and Midwifery. He has worked for over 20 years in intellectual disability. He completed his PhD at University of Ulster in 2006, and has taught at third level since 1997. He has been on the board of ACENDIO – a European nursing organisation – for more than 10 years and is currently Vice-President. Founder and Chairman of the participatory-action movement IDRights (Intellectual Disability Rights), he is passionate about human rights and is setting up a centre for intellectual disability rights at Trinity College Dublin. Fintan is engaged in several research projects and has published widely. He is particularly interested in exploring how parents with intellectual disabilities can be supported to keep their children and is working with Inclusion Ireland in this regard.

Patricia Rickard-Clarke

Patricia Rickard-Clarke is a Commissioner with the Law Reform Commission. Formerly, she was a partner in McCann FitzGerald Solicitors specialising in taxation and trusts. She is a member of STEP (Society of Trust and Estate Practitioners). She is Chair of the Law Society's Mental Health and Capacity Task Force. She is also a member of the HSE's National Financial Abuse of Older People Working Group

Mrs Frieda Finlay

Frieda Finlay is a freelance artist. As the mother of a woman with an intellectual disability (now aged 38), Frieda has been a campaigner for the rights of people with a disability for many years.

She is chairperson of Inclusion Ireland and has represented it in advocating for changes in legislation and funding and the introduction of standards and inspection of services. She was instrumental in founding the National Institute for Intellectual Disabilities (NIID) Trinity College Dublin. In the early 1990s she was a member of the Commission on the Status of People with Disabilities which published A Strategy for Equality.

She is a member of the board of Stewarts Hospital, Carmona Special National School, and Bray Lakers (a parent organisation that runs day classes/activities and sport events for people with Intellectual Disabilities).

James Hamilton, Director of Public Prosecutions

James Hamilton was appointed Director of Public Prosecutions in 1999. He was called to the Bar of Ireland in 1973. He was the prosecuting counsel for County Donegal from 1977 until 1981 when he was appointed as a full-time legal adviser to the Attorney General. Prior to being appointed as DPP, he had been the Director General of the Office of the Attorney General. He was a member of the Constitution Review Group which published a comprehensive review of the Constitution of Ireland in 1996.

Since 1998, he has been a member of the Council of Europe's Commission for Democracy through Law (Venice Commission).

He was elected President of the International Association of Prosecutors in 2010.



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ABOUT THE CONFERENCE

Sexual Offences and Capacity is the 8th Annual Conference of the Law Reform Commission. At the Conference, the Commission will discuss its *Consultation Paper on Sexual Offences and Capacity* published in October. The Consultation Paper contains a detailed review of the current law on sexual offences involving persons with intellectual disability. The main statutory provision in this area is section 5 of the *Criminal Law (Sexual Offences) Act 1993*. The Consultation Paper notes that section 5 of the 1993 Act contains a number of significant deficiencies, notably that it does not fit with general policy on intellectual disability, both national and international, which seeks to maximise rights while at the same time respecting the need for appropriate protection.

The Consultation Paper has, therefore, provisionally recommended that section 5 of the 1993 Act should be repealed and replaced with appropriate legislative provisions that include a suitable rights-based approach. In particular, the Commission considers that any reform should be consistent with a functional approach to capacity, in which a person's capacity to consent is decided on the basis of whether he or she understands the nature and consequences of the decision involved. This functional approach to capacity is likely to be a key component of proposed mental capacity legislation, which would implement the Commission's 2006 *Report on Mental Capacity*.

The Consultation Paper emphasises that any change in section 5 of the 1993 Act should be seen in the wider context of the rights of those with intellectual disability, in particular to ensure that appropriate sexual education and information is in place. Because of this, the Annual Conference will also hear from those with direct experience of the policy framework, including service provision, within which any changes in this aspect of the law on sexual offences must be considered. The Conference will also include discussion of how the law in this area has been reformed in other countries and the effect that this has had on the analysis of capacity to consent in the law of sexual offences. The Consultation Paper complements the general review of the law of sexual offences currently being undertaken by the Department of Justice and Equality.

REGISTRATION

Registration may be made by email to events@lawreform.ie or by calling 01-6377600.

Places are strictly limited so reservation is essential.

Any queries in relation to the Conference may be made to events@lawreform.ie or by calling 01-6377600.

SUBSTITUTE ATTENDANCE

If you are unable to attend, a substitute can attend in your place. Notification of any substitution should be made in advance of the Conference.

UNAVOIDABLE CHANGES

It may be necessary to make changes to the content and timing of the Conference Programme or to substitute speakers.

VENUE

The President's Hall,
Law Society of Ireland,
Blackhall Place,
Dublin 7

CAR PARKING

There are a number of public car parks nearby. The nearest is Smithfield car park.

Further information is also available on our website www.lawreform.ie