

Family Law

In March 1980, the Commission published its first Report as part of its First Programme of Law Reform, [*Report on Family Law \(LRC 1-1980\)*](#) in which is made its final recommendations regarding the matters covered in four of its Working Papers:

- [*Working Paper No. 4-1978*](#): The Law Relating to Breach of Promise of Marriage
- [*Working Paper No. 5 – 1978*](#): The law Relating to Criminal Conversation and the Enticement and Harboursing of a Spouse
- [*Working Paper No. 6-1979*](#): The Law Relating to Seduction and the Enticement and Harboursing of Child, and
- [*Working Paper No. 7-1979*](#): The Law Relating to Loss of Consortium and Loss of Services of a Child

The report also contained recommendations relating to matrimonial property. On central questions of principle, the Commission did not recommend any fundamental change in the recommendations in the Working Papers. The theme that runs throughout Papers No. 5 to No. 7 is that of protection of the family against damage to its continuity and stability and to the relationships between its members.

Criminal Conversation

The Report recommends that the action for criminal conversation should be abolished – Part II of the Bill (s.3). It does, however, recommend that there be instituted a family action for adultery, available to either spouse, for the benefit of both spouses and other members of the family living with the spouses and that the action should be available only where the spouses are ordinarily residing together at the time of the adultery. The Commission's proposals are implemented in Part III of the Bill (ss.4-8).

Enticement of a Spouse

The Report recommends that the present action for enticement of a spouse should be retained as a family action for damages but with certain amendments to the existing law. The new action is also dealt with in Part III of the Bill (ss.9-11).

Harboursing of a Spouse

The Report recommends that the tort of harboursing of a spouse should be abolished and this is effected in Part III of the Bill at section 3.

Loss of Consortium and Loss of the Services of a Child

The Report proposes that the existing causes of action (loss of consortium and loss of services of a child) should be replaced by single family actions for loss of consortium and for damages for personal injury to a child (Part IV of the Bill – ss. 12 to 15) that would be available to all the members of the family ordinarily resident with the injured party.

Seduction of a Child

The Report recommends that the existing action for seduction of a child should be abolished and replaced by a single family action for seduction of a female child. The proposed new family

action is covered in Part VI of the Bill (ss,16,17) and “seduction” will include rape and “seduced” will be construed accordingly – s.2(1) of the Bill.

Enticement and Harboursing of a Child

The Report recommends that the action for the enticement and harboursing of a child (irrespective of sex) should be retained as single family actions, the child’s right of action being merged into the family action, as in the case of actions for seduction of a female child. “Enticement” is defined in s.2(1) of the Bill.

Questions between Spouses as to Property

The Report recommends that section 12 of the *Married Women’s Statute Act 1957* be repealed and re-enacted in an extended form, designed to ensure that the Court can do justice in cases that may be regarded as falling outside the present scope of section 12, as where the defendant spouse has disposed of the property before application is made to the Court and has not made just and equitable payment to the plaintiff in respect of the property.

The Report also recommends that, where a spouse makes a contribution in money or money’s worth to the acquisition, improvement or maintenance of the family home, then subject to any agreement, arrangement or understanding between the parties, he or she will acquire a beneficial interest (or an enlarged share in the beneficial interest) of such an extent as appears just and equitable to the Court.

Breach of Promise of Marriage

The Report recommends that the action or breach of promise of marriage should be abolished. In its place, it recommends that there be enacted provisions specifying the rights of the parties to the terminated engagement to marry and the rights of others concerned in respect of certain property matters. These provisions are contained in Part IX of the Bill (ss.23-29).

All of the recommendations contained in the Report are similar in substance to those set out in Working Paper No. 4, subject to one modification regarding unjust enrichment. The Commission is of the view that it would be better to frame the legislative provisions in somewhat different terms to those originally proposed. Where a party to an agreement to marry that is terminated has received from a third party a substantial benefit other than a gift, the Report proposes that the Court should be able to make such order (including an order for compensation) as appears to it just and equitable in the circumstances. Another modification is where either party to the terminated agreement to marry has incurred substantial expenditure by reason of the agreement to marry. In such case, the Report proposes that he or she should be permitted to apply to the court for the recovery of any such expenditure and the Court may make such an order as appears to it just and equitable in the circumstances.

Draft Legislation in Report

All of the aforementioned recommendations were embodied in legislative form in the *Family Life Protection Bill 1980*, which, together with an explanatory memorandum, accompanied the Commission’s report as submitted to the Taoiseach.

Information on Implementation

The Commission's recommendations were implemented in part by the *Family Law Act 1981*.