Nullity of Marriage

In October 1984, the Commission published its Report on *Nullity of Marriage (LRC 9-1984)* following an August 1976 request from the then Attorney General, Mr. Declan Costello, S.C. regarding the prohibited degrees of relationship in the law of marriage, and the application of foreign law in cases in which the Courts of this country have jurisdiction to grant a decree of nullity of marriage and an August 1977 request from the then Attorney General, Mr. Anthony Hederman, S.C. to undertake an examination of and conduct research in the "Law relating to Nullity of Marriage".

The Report sets out the existing grounds for annulment of marriage under State law and makes detailed recommendations for reform as follows:

(1) Prior subsisting marriage
A prior subsisting marriage renders a marriage void. A marriage which has been annulled by an ecclesiastical tribunal of the Catholic Church but not by the courts of the State is a prior subsisting marriage and renders a subsequent marriage by either of the parties invalid under the law of the State. The Report does not propose any change in this ground.

(2) *Formal defect*
Failure to comply with certain (not all) statutory formalities of marriage renders a marriage void. No proposals for change in the laws relating to the formalities of marriage are made in the Report. The Report does however express the view that while the present law works well in practice it needs to be updated and consolidated.

(3) *Lack of age (non age)*
The Report reiterates proposals made in this regard in its *Report on the Age of Majority, the Age for Marriage and Some Connected Subjects (LRC 5-1983)*.

(4) *Prohibited degrees of relationship*
The Report recommends that the existing prohibitions on the basis of consanguinity should be retained. The Report further recommends that all prohibitions based on affinity should be abolished. It is also proposed that the legislation should state that marriages between a parent and adoptive child and between adoptive brothers and sisters are void.

(5) *Impotence*
Under existing law a spouse's entitlement to petition for a decree of nullity on the ground of his or her own impotence is subject to certain limitations. The Report recommends that these limitations should be removed. Wilful refusal (as distinct from inability) to consummate the marriage is not a ground for annulment and the Report proposes no change in this regard.

(6) *Want to mental capacity*
The Report recommends that this ground of annulment should be formulated as follows: a marriage should be invalid on the ground of want of mental capacity where, at the time

of the marriage, either spouse is unable to understand the nature of marriage and its obligations or where a spouse enters a marriage when, at the time of the marriage, on account of his or her want of mental capacity, he or she is unable to discharge the essential obligations of marriage.

(7) ***Homosexual orientation***

The Report recommends that there should be a separate ground whereby a marriage might be annulled, on the petition of either spouse, if one spouse has at the time of the marriage so strong a homosexual orientation as to make it impossible for the couple to form a genuine life-long marriage relationship.

(8) ***Duress***

The Report recommends that it should be made clear by legislation that a petition for nullity of marriage based on duress should not be dismissed by reason only of the fact that a party married as a result of a "just threat".

(9) ***Fraud, mistake and non-disclosure***

Under present law fraud or mistake will render a marriage void only in very narrow circumstances – essentially where either party is misled or mistaken as to the nature of the ceremony or the identity of the other party. The Report recommends that there should also be a more general ground of fraud or mistake and it should be a ground for annulment that a party was induced to enter into a marriage as a result of a fraudulent misrepresentation made by or on behalf of the other party to the marriage. It is also recommended that certain cases of fraudulent non-disclosure should afford grounds for nullity.

The Report also recommends the retention of the distinction between void and voidable marriages. The Report recommends that formal defect, prohibited degrees of relationship, lack of age and prior subsisting marriage should continue to render a marriage void but that all the other grounds of nullity should render a marriage voidable. The Report recommends that void marriages should not be capable of ratification and that approbation of voidable marriages should be replaced by a more generally-expressed criterion whereby the court may refuse to grant a decree where in all the circumstances it would not be proper to do so. The Report recommends that wide-ranging judicial powers should be introduced regarding property and maintenance rights of parties to an invalid marriage.

The Report recommends that children of persons whose marriage is void or voidable should have the same succession rights as children born to parents who are validly married but parties to a void marriage or to a voidable marriage that has been annulled should have no succession rights in each other's estate.

Finally, the Report recommends that:

(a) The grounds of formal defect, prior subsisting marriage, mistake, duress, impotence, lack of mental capacity and homosexual orientation (all of which are identical with or similar to an existing ground) should apply retrospectively;

(b) No marriage celebrated before the enactment of the legislation which was void on the ground of prohibited degree of relationship should be validated retrospectively by the legislation;

(c) The proposed grounds of fraudulent misrepresentation and of fraudulent non-disclosure (other than fraudulent non-disclosure of an intention not to consummate the marriage) should not be retrospective;

(d) The proposals made in relation to bars to a decree or and its effects should apply retrospectively.

Draft Legislation in Report

Draft legislative provisions are included in the Report.

Information on Implementation