

Written Remarks of the Attorney General, Séamus Woulfe SC

delivered on the launch of
The Law Reform Commission's 5th Programme of Law Reform

05 June 2019

1. Introduction

- 1.1 President Laffoy, Commissioners, Ladies and Gentlemen, good evening. I'm delighted to be here this evening to launch the Fifth Programme of Law Reform of the Law Reform Commission. It is great to see so many of you here this evening to mark the opening of a new chapter in the work of the Commission, and indeed to commend the work that it has done so effectively to date.
- 1.2 As the President has mentioned in her Foreword to the Fifth Programme, there is "...considerable diversity in the range and focus..." of the projects included in the Programme. I would like to mention in particular a number of the projects which are included. Before doing so however, I believe it may be instructive to consider briefly the history of the Commission's Programmes of Law Reform, the development of the Fifth Programme itself, and how we got to the point we are at.

2. History of Programmes of Law Reform

- 2.1 The Commission's law reform role is carried out primarily under Programmes of Law Reform pursuant to section 4 of the Law Reform Commission Act 1975. 4th January 1977 saw An Taoiseach Liam Cosgrave SC, TD, lay before both Houses of the Oireachtas the (rather directly entitled) '*First Programme for examination of certain branches of the law with a view to their reform*'.
2.2 That First Programme contained a broad and diverse range of projects. It proposed to examine a variety of areas, including appeals from certain administrative decisions, recognition of foreign divorces, sentencing, an examination of the protection of privacy, including purely personal privacy, and questions of evidence, among many other matters.
2.3 The decision to include such a wide range and remit of matters in the First Programme is also mirrored in the Fifth Programme. However, perhaps reflective of the pace and speed of development in the law, it is interesting to note the duration of each Programme. As mentioned at paragraphs 2.05 and 2.06 of this Programme, the First Programme ran from 1977 to 1999 – 22 years. The Second ran from 2000 to end 2007 – seven years. The Third, 2008 to 2012, 4 years. The Fourth ran from 2013 to 2018, and now the Fifth runs from 2019.
2.4 It is clear that while the work and remit of the Commission has not reduced, the time in which it has to complete projects has. The conclusion of these projects is only possible due to the hard work, dedication, and unwavering professionalism and expertise of the Commissioners and their staff.
2.5 The diversity of projects is also reflective, I believe, of the broader aim and purpose of the Commission. When last I spoke here, I was launching the Report on Regulatory Powers and Corporate Offences on 23 October 2018. At the time, I recalled the establishment of the

Commission in 1975, and the comments of the then Attorney General Declan Costello SC, TD, who moved the Bill establishing the Commission in both the Dáil and the Seanad.

- 2.6 At Second Stage in the Dáil, he outlined the intention behind creating the Law Reform Commission, which I believe is reflected in the broad and diverse range of projects included in this Programme. He said:

If a community's laws become inadequate for the functions for which they were designed, if they become obsolete, or are too numerous, or over-refined by judicial interpretation, then cases of individual injustices will multiply and society as a whole will suffer. Governments in a dynamic fast-changing world should ensure that the laws are kept under constant review and are regularly and systematically reformed.

- 2.7 Clearly, the range of projects in the Fifth Programme reflects the need to ensure that the law in all areas is 'kept under constant review'. I have no doubt that the work of the Commission under the Fifth Programme will continue to contribute to the vital development and reform of the law.

3. Development of the 5th Programme

- 3.1 Before turning to mention a number of projects included in the Programme, I would like to mention the process leading to its formation. The President points out in her Foreword (and it is outlined in Part 2 of the Programme) that "*The importance of public consultation in relation to the content and the Commission's development of a Programme of Law Reform cannot be emphasised too strongly...*", and I would like to record my support for this.
- 3.2 The level of engagement between all parties involved in the development of this Programme has led, as with previous Programmes, to an ambitious and valuable Programme of work. This is a very real way of giving effect to the Government Commitment in the Programme for Partnership Government to implement a progressive programme of law reform.
- 3.3 The process leading to the Fifth Programme is briefly outlined in Part 2 of the Programme at pages 21 to 25, and I would encourage you all to take a few moments to read it. It is an example of a thorough process to create a valuable and robust Programme. Wide public consultation over 6 months (including inviting submissions specifically from a wide range of NGOs and public bodies), and 5 separate consultative meetings throughout the country all fed into this process.
- 3.4 Finally, the draft Programme was considered by the Attorney General's Consultative Committee on Law Reform, and referred by the Government to the Oireachtas Joint Committee on Justice and Equality, before finally being approved by Government on 20 March 2019 in accordance with section 5(1) of the Law Reform Commission Act 1975.
- 3.5 Even a brief overview of this process makes clear the level of work and time which has been committed to this Programme by so many people. I would like to thank you all for your contributions and input at all stages.

4. (Project 1) Reform of Non-Court Adjudicative Bodies and Appeals to Courts

- 4.1 The first project contained within the Fifth Programme I would like to mention is Project 1, Reform of Non-Court Adjudicative Bodies and Appeals to Courts. This is an important and timely topic, for many reasons, and its inclusion is most welcome.

- 4.2 The area of 'Regulatory Law' has grown from the broader Administrative Law, and was relatively unknown only 10 or 15 years ago. Initially, it predominately related to professional disciplinary matters under statutes applicable to doctors, nurses, pharmacists, veterinarians etc., although it has expanded considerably in recent years.
- 4.3 It can be seen from time to time that provision is made for an appeal to the High Court from an administrative or quasi-judicial body. However, it can happen that there is little to no regulation of the manner in which that appeal should be taken – or indeed the form it should take. For example, the case of *Chesnokov v an tÁrd-Chláraitheoir* [2015] IEHC 497 concerned the refusal by an tÁrd-Chláraitheoir to register the birth of a Russian man who claimed he was born in Henrietta Street in 1940. In that case, an appeal was taken against the refusal pursuant to section 60(8) of the Civil Registration Act 2004, and considerable time was spent in the High Court arguing what form the appeal should take. This is of course just one example of such a provision.
- 4.4 Reform and development of this area is of course on-going, and an example of this is of course the Regulated Professions (Health and Social Care) (Amendment) Bill 2019 which is currently awaiting Committee Stage in the Dáil, having been initiated on 15 February 2019. The purpose of this Bill is to improve processes within the health professional regulatory bodies, and to give further effect to the European Union Professional Qualifications Directive, as amended (Directive 2005/36/EC), which provides *inter alia* mechanisms for the recognition of qualifications as well as matters related to disciplinary processes.
- 4.5 As is noted in the Programme, however, the range and multitude of quasi-judicial and administrative bodies has grown on a somewhat piecemeal basis. Of course, the multitude of these bodies is necessary and somewhat inevitable in the modern administrative state. However, a systematic and coherent system of organisation is worth considering. The inclusion of this project will hopefully allow the Commission to address that, and build on its previous work in the areas of evidence and procedure.

5. (Projects 4/5) Structured Sentencing and the Review and Consolidation of the Law on Sexual Offences

- 5.1 Projects 4 and 5 also warrant particular mention. An examination of Structured Sentencing and a Review and Consolidation of the Law on Sexual Offences are two large and complex areas of work. The Commission will of course be building on large amounts of work and specific projects which it has undertaken in the past, and these will certainly assist in the development of these projects.
- 5.2 The judiciary in this jurisdiction have consistently ensured the equitable administration of justice at all times, and we must at all times remain vigilant to ensure the Separation of Powers is maintained. However, there is a contrast to be drawn between the Irish approach to sentencing and that in other jurisdictions which provide a more structured sentencing framework. As is noted in the Fifth Programme, in recent years the Appellate Courts here have examined this area in particular contexts providing sentencing guidelines for a number of offences. In addition, the Government has brought forward provisions to formalise the process of sentencing guidelines in the context of the Judicial Council Bill currently before the Seanad. The expert examination of this area by the Commission will assist in further developing this important area of law.

5.3 Separately, a Review and Consolidation of the Law on Sexual Offences is also an extremely important project. This area of law is exceptionally sensitive, and deals with matters which are of the utmost importance in the criminal justice system. We have seen the review of certain aspects of this area of law in neighbouring jurisdictions recently, and the Department of Justice and Equality is also undertaking an examination of certain matters. A review by the Commission, particularly in light of recent legislative reforms such as the Criminal Law (Sexual Offences) Act 2017, the Domestic Violence Act 2018, and ratification of the Istanbul Convention, is most welcome.

6. (Project 9) Caps on Damages in Personal Injuries Litigation

6.1 Another project I would like to point out in particular is Project 9, an examination of caps on damages in personal injuries litigation. This is an area which has been the subject of much discussion in recent times for a variety of reasons. It is most welcome that the Commission will be examining the possibility of placing a cap on damages, and indeed considering the desirability of doing so, taking into account the work of the Cost of Insurance Working Group and the Personal Injuries Commission. The Government will shortly be bringing forward provisions to allow a Committee (Personal Injuries Committee) to provide guidelines for personal injuries, through the Judicial Council Bill.

7. (Project 14) Aspects of Family Law (Divorce)

7.1 Finally, I would like to mention Project 14, Aspects of Family Law, which will examine in particular the requirement for proper provision in the granting of a divorce, and the recognition of foreign divorces.

7.2 This is particularly timely in light of the recent referendum in which the People approved amendments Article 41 of the Constitution. The payments of lump sum awards in divorces, for example, and consistency of approach will all be examined in the context of the amended Constitutional provisions.

8. Conclusion

8.1 Overall therefore, it is clear that the development of the Fifth Programme has involved considerable work and time, and indeed continues a tradition of commendable work by the Commission in developing previous Programmes.

8.2 The inclusion of so many worthwhile projects – many of which I have not had time to mention – means the Commission will certainly have a large workload in the years ahead, but it also means we can look forward to valuable reports on areas which deserve careful consideration by Government and by society as a whole.

Thank you.

ENDS