

Twenty Sixth Annual Report 2004



The Law Reform Commission

AN COIMISIÚN UM ATHCHÓIRIÚ AN DLÍ

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Attorney General
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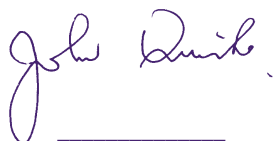
23 March 2005

Dear Attorney General

In accordance with Section 6 of the Law Reform Commission Act 1975, I have the honour, on behalf of the Law Reform Commission, to present the Twenty-Sixth Report (2004).

It covers the period 1 January 2004 to December 2004.

Yours sincerely,

A handwritten signature in dark ink, appearing to read "John Quirke". The signature is written in a cursive style with a large initial 'J'.

John Quirke
Secretary

TABLE OF CONTENTS

FOREWORD		6
THE COMMISSION: COMMISSIONERS AND STAFF		8
CHAPTER 1	OVERVIEW OF THE COMMISSION'S WORK IN 2004	10
	Functions of the Commission	10
	Strategy and Business Plan	10
	Methods of Work and Consultation Process	11
	The Second Programme for Law Reform	14
	References from the Attorney General	14
	Commission Publications in 2004	15
CHAPTER 2	THE COMMISSION'S PUBLICATIONS IN 2004	16
	Introduction	16
	The Law of Evidence	16
	Administrative Law	17
	Criminal Law	17
	Revenue Law	20
	Land Law and Conveyancing	22
	Family Law	24
CHAPTER 3	THE COMMISSION'S WORK IN PROGRESS IN 2004	26
	Introduction	26
	The Legal System	26
	The Law of Evidence	26
	Administrative Law	27
	Criminal Law	27
	Land Law and Conveyancing	27
	Vulnerable Groups and the Law	29
	Commercial Law and the Law of Obligations	29
CHAPTER 4	ADMINISTRATION	31
	Introduction	31
	The Commission	31
	Administrative Staff	31
	Research and Library	33
	Finance	34
CHAPTER 5	IMPLEMENTATION OF THE SECOND PROGRAMME BY THE COMMISSION	35
	Appendix A: Second Programme for Law Reform 2000-2007	42
	Appendix B: Working Groups	45
	Appendix C: Conferences and Visits	49
	Appendix D: List of Law Reform Commission Publications	51

FOREWORD

The Commission made further significant progress through the *Second Programme of Law Reform 2000 to 2007*, approved by the Government in 2000, in that 20 out of the 30 areas identified for investigation in the Programme have been tackled by the end of 2004. Between 2000 and 2004 the Commission has published 13 Reports and 19 Consultation Papers, of which 6 were in response to references from the Attorney General under the *Law Reform Commission Act 1975*. During 2004, the Commission published 2 Reports and 6 Consultation Papers.

In March, a *Consultation Paper on the Establishment of a DNA Database* was published, in response to a reference from the Attorney General. The Paper considered the pros and cons of such a repository and recommended the establishment of a limited Database of forensic DNA profiles generated from biological samples. These profiles can be electronically stored and searched for comparison with profiles from biological material found, for example, at the scene of a crime.

In March, two further Papers were launched by the Attorney General, Rory Brady SC. The first, a *Consultation Paper on Judgment Mortgages*, which described this procedure and its use to attach a debt by registering a charge on land, suggested several clarifying and simplifying reforms. The second, a *Consultation Paper on the Court Poor Box*, surveyed the present use of this disposition and the advantages and disadvantages associated with this flexible way of dealing with offenders culpable of less heinous offences by accepting an earnest of remorse and token of intention to behave by giving a sum to charity. The analysis sets out how this often avoids the lasting blot of a conviction on culprits whom the injured party and the community see as having paid a price for the wrong done to society by being hit in the pocket in a sum proportionate to their means.

In April, a *Consultation Paper on the Rights and Duties of Cohabitees* was produced which proposed reforms to assist 'qualified cohabitees', which in general refers to persons who have lived together in 'marriage like' relationship for a continuous period of three years. The Commission proposed that 'qualified cohabitees' should be given the right to apply to court for certain rights and reliefs following the ending the relationship. These include: the right to apply for a property adjustment order in exceptional circumstances; for relief under succession law where provision has not been made for them; and that they be given more recognition in the context of health care situations and decision-making.

In June, in response to a request from the Attorney General, a *Consultation Paper on Prosecution Appeals from Unduly Lenient Sentences in the District Court* was published. Having examined the pros and cons of such appeals and described comparatives abroad, the paper provisionally recommended that an appeal against undue leniency to the Circuit Court should be allowed, in addition to the existing appeal by way of case stated to the High Court.

A highlight of the year was the publication in October of the Commission's *Consultation Paper on the Reform and Modernisation of Land Law and Conveyancing Law*, followed by a conference on 'Modernising Irish Land and Conveyancing Law', jointly hosted by the Commission and the Department of Justice, Equality and Law Reform in November. The conference was attended by over 200 delegates and was addressed by a panel of international experts. These formed part of the Commission's *Joint Project on Land Law and Conveyancing Statutes* which was announced in June 2004 by the Commission and the Minister for Justice, Equality and Law Reform, with the aim of modernising and consolidating Irish land and conveyancing law. This project underlines the good relationship enjoyed with

Government departments with which we liaise. It also reflects another important aspect of the Commission's method of work. The research leading to the Consultation Paper was undertaken by the Commission's Substantive Law Working Group. The availability of the expertise and voluntary commitment of the members of this Group, and other similar Working Groups, greatly assists the Commission and is hugely to the public benefit.

The two Reports published during the year reflect the diverse nature of the content of the Second Programme and the wide range of issues referred to the Commission by the Attorney General. The *Report on Judicial Review Procedure* examined the long-established conventional judicial review procedure, as well as special statutory regimes in such fields as planning and refugee law. The recommendations made in the Report are aimed at supporting the measures already taken to cope with the massive increase in the number of such applications (now about 1,300 annually) and to ensure that they are dealt with in an efficient and timely manner consistent with the requirements of justice.

The *Report on a Fiscal Prosecutor and a Revenue Court* arose from a request by the Attorney General. In making recommendations, the Commission took account of the recent reorganisation of the Revenue Commissioners and their measures to encourage tax compliance. While the Commission concluded that neither a fiscal prosecutor nor a revenue court should be established, the Report made proposals for reform of the arrangements for the investigation and prosecution of revenue offences and other aspects of the revenue process.

The increase in the quality and quantity of publications is due to improved modes of consultation and work and to the diligence of the research team, and to the supportive work done by the small number of library and administrative staff. The Commission is grateful for the good cooperation it enjoys from Government Departments with which we liaise. The Commission continues to be appreciative of the support afforded by the Attorney General and the Director General of the Office of the Attorney General and their staff.

Declan Budd
PRESIDENT

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
(Full-time Commissioner)

Dr Hilary A Delany
BA, M Litt, PhD, Barrister-at-Law, Head of School of 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, Member of the Commission to Inquire into Child Abuse

John Quirke
Secretary/Head of Administration

COMMISSION STAFF IN 2004

Director of Research:

Raymond Byrne

BCL, LL.M, Barrister-at-Law,

on secondment from the School of Law and Government, Dublin City University

Legal Researchers:*

Deirdre Ahern LLB, LL.M (Cantab), Solicitor

Alan Brady LLB (Dub), LL.M (Lond), Attorney-at-Law (NY)

Patricia Brazil LLB, Barrister-at-Law

Ronan Flanagan LLB, LL.M (Cantab)

Glen Gibbons BA, LLB (NUI), LL.M (Cantab) (to September 2004)

Roberta Guiry BCL, LL.M (NUI)

Rosemary Healy-Rae, AITI, Barrister-at-Law

Orla Joyce BCL, LL.M (Cantab)

Darren Lehane BCL, LL.M (NUI)

Sinéad Ring BCL (Law and German), LL.M (NUI)

Trevor Redmond LLB, LL.M (Cantab) (to August 2004)

Eadaoin Rock LLB, LL.M (Cantab) (to July 2004)

Jennifer Schweppe BCL (Euro) (to August 2004)

Mary Townsend BCL, LL.M (NUI)

Aisling Wall BCL, LL.M (Cantab)

Administration Staff:

Project Manager: Pearse Rayel

Executive Officer: Denis McKenna

Legal Information Manager: Marina Greer, BA (Mod), H Dip LIS (to November 2004)

Conor Kennedy, BA, H Dip LIS

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

Private Secretary to the President: Liam Dargan

Clerical Officers

Alan Bonny

Debbie Murray

* Researchers are employed on short-term contracts. The Commission currently has authority to employ eight full-time legal researchers.

CHAPTER 1

OVERVIEW OF THE COMMISSION'S WORK IN 2004

FUNCTIONS OF THE COMMISSION

The Law Reform Commission is an independent statutory body whose main aim is to keep the law under review and to make practical proposals for its reform. It was established as a statutory body corporate by the *Law Reform Commission Act 1975*. Section 4 (1) of the 1975 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 a Programme for Law Reform

Section 4(2)(a) of the 1975 Act requires the Commission, in consultation with the Attorney General, to prepare from time to time programmes for the examination of different branches of the law, with a view to their reform. When such a programme is approved 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). Two such Programmes have been approved by Government. The First Programme for Law Reform was in place between 1975 and 2000. This was replaced by the Second Programme for Law Reform, which was approved by the Government in December 2000 and is a 7 year programme which is intended to run until 2007. The full text of the Second Programme is contained in Appendix A.

By references from the Attorney General

Section 4(2)(c) of the 1975 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.

STRATEGY AND BUSINESS PLAN

In 2003, the Commission drew up a revised Strategy and Business Plan, 2003-2005, which followed on from the previous Strategy and Business Plan, drawn up in 1998 and covering the period 1999-2002. The 1998 Plan followed the publication (in 1997) of the *Review of Organisation and Management of the Law Reform Commission*.

Role and Mission

The Strategy and Business Plan, 2003-2005 notes that the *Law Reform Commission Act 1975* is based on the assumption that it is appropriate to have a particular specialised body which has central role in reviewing the law as a whole, as opposed to institutions or bodies (including government departments) which have a special interest in a particular branch of the law which governs their own particular activities and functions. This also underlines the wide remit of the Commission under the 1975 Act. For this reason, the Plan identifies the mission 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."*

Implementation of Role and Mission

The Strategy and Business Plan pointed out that, in formulating the Second Programme of Law Reform, the Commission carried out a broad-based process of seeking views on what it should contain in order to ensure that it was comprehensive, that it took account of the large social changes that had taken place in Irish society, and was forward-looking. The Plan also provides that the Commission will engage in ongoing communication and co-operation with relevant bodies, including government departments and other agencies, to ensure that there is no duplication of effort between the Commission and other government bodies.

The Plan also states that the Commission will ensure continued interest in the law reform process by all stakeholders, whether government departments, other agencies, interest groups, the academic community, and the general public. The Plan identifies a number of means by which this is achieved, including seminars, public consultations, improved methods of publication and publicity (including through the Commission's website, www.lawreform.ie and specific focused contact with relevant organisations.

METHODS OF WORK AND CONSULTATION PROCESS

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 Commission is also conscious of the importance of ensuring that any proposals for reform are grounded in practice. In the course of preparing proposals, the Commission conducts informal consultations with legal practitioners and also with other relevant professional persons and representative bodies. The practical insights which these contacts provide constitute an important aspect of implementing the Commission's Strategy and Business Plan 2003-2005, and are acknowledged in the Commission's publications.

Methodology

To achieve the goals set out in the Second Programme for Law Reform and its Strategy and Business Plan 2003-2005, 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, whose members provide their expertise on a voluntary basis, in areas where significant expert input is necessary. A list of Working Groups and their membership is included in Appendix B.

Given the complexity of some of the issues that arise, the Commission regularly consults with experts in particular areas of legal and other professional knowledge 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, thus ensuring that continued progress through the Second Programme is achieved. In order to assist the Commission in monitoring their achievement of these targets, regular reviews of the Work Programme are conducted, which involves a practical implementation of the aims of the Strategy and Business Plan, 2003-2005. Chapter 3 outlines the Commission's work in progress in 2004.

The Consultation Process

The consultation process is of central importance to the Commission's work and its Strategy and Business Plan 2003-2005. Consultation may take several forms. In the initial stages of its research, the Commission may meet with experts or practitioners 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 be published by the Commission. 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.

Seminars

Before drafting a Report, the Commission hosts a seminar to which it invites interested parties, or those who have made submissions on a Consultation Paper. This is another important aspect of implementing the Commission's Strategy and Business Plan, 2003-2005. For each seminar, the Commission draws up a tailored list of persons, including members of the judiciary, legal practitioners, experts in a particular field, and other interested persons who wish to bring their knowledge and expertise to the Commission's consultative process. During 2004, the Commission hosted a number of seminars. In September, it held a seminar on the *Commission's Consultation Paper on the Establishment of a DNA Database*, published in March 2004. Among those who attended were members of the judiciary, legal practitioners, geneticists and those with forensic science expertise.

In October, the Commission hosted a seminar on its *Consultation Paper on Multi Party Litigation*, published in July 2003. This was attended by, for example, practitioners with a particular interest in personal injury litigation and those with expertise in insurance. In November, the Commissioner hosted a seminar on its *Consultation Paper on the Court Poor Box*, published in March 2004. This was attended by, amongst others, members of the judiciary from the District Court and Circuit Court involved in the application of the court poor box disposition as well as representatives of charities. In December, the Commission hosted a seminar on its *Consultation Paper on Corporate Killing*, published in October 2003. This was attended by representatives of employers and employees, in particular with an interest in occupational safety and health, as well as by those with an interest in corporate behaviour and organisational psychology.

Communication with Consultative Committee and Government Departments

As the Commission's Strategy and Business Plan 2003-2005 noted, 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 or by references from the Attorney General. It has been the practice of the Commission for many years to communicate with government departments as to the projects upon which it is currently engaged or is likely to be engaged in the foreseeable future. In 1998, the Government established a Consultative Committee under the auspices of the Office of the Attorney General, comprising representatives of certain government Departments, the Council of the Bar of Ireland, the Law Society of Ireland, as well as the Commission.

As outlined in its Strategy and Business Plan 2003-2005, the Commission also meets regularly with government departments, such as the Department of Justice, Equality and Law Reform, to review matters of mutual interest. These meetings enable both bodies to have a knowledge of issues being currently addressed by them and of progress in the legislative process. The Commission's *Joint Project on Land Law and Conveyancing Statutes* (discussed in detail in Chapter 3), announced in 2004 by the Commission and the Minister for Justice, Equality and Law Reform, and which aims to modernise and consolidate Irish land and conveyancing law, exemplifies the benefits of these meetings. Similarly, the Commission's work with the Department of Community, Rural and Gaeltacht Affairs in the area of charitable trusts (also discussed in Chapter 3), is an example of where such contacts ensure that there is no avoidable overlap where law reform is being contemplated in a specific area.

The Commission also communicates with other relevant agencies to ensure, as indicated in the

Strategy and Business Plan 2003-2005, that all appropriate opportunities for law reform are pursued. Arising from the publication of its *Consultation Paper on Law and the Elderly* in June 2003, which discussed some aspects of the financial abuse of the elderly, the Commission met in January 2004 with the Irish Financial Services Regulatory Authority (IFSRA) to discuss whether these matters could be addressed by IFSRA under its statutory framework. In February 2005, IFSRA published a draft Consumer Protection Code, which states (p.11): 'Warnings suggested by the Law Reform Commission in respect of equity release schemes are also included.'

Meetings with Oireachtas Committee

Since 1998, the Commission has held periodic meetings with the Oireachtas Joint Committee on Justice, Equality, Defence and Women's Rights to discuss the work programme of the Commission. A delegation from the Commission appeared before the Joint Committee on 24 November 2004 to discuss the joint project being undertaken by the Department of Justice, Equality and Law Reform and the Commission to update and modernise Irish land law and conveyancing law, as well as related projects on landlord and tenant law and multi-unit developments.

Following a presentation by the Commission there was a discussion with members of the Joint Committee on a question and answer basis. The Chairman of the Joint Committee expressed a wish to have more frequent meetings with representatives of the Law Reform Commission on appropriate topics, as they arise.

Conferences, Visits and Media Contacts

Commissioners and researchers regularly attend and participate in public seminars and conferences concerning areas of research connected with the Second Programme and the Commission's Rolling Programme of Work. Contacts with law reform bodies are also maintained through attendance at relevant seminars and through hosting visits from other law reform bodies. In addition, news and press releases are distributed to the media to coincide with publication of a Consultation Paper or Report.

In general, the Director of Research acts as media spokesperson for the Commission. Details of conferences attended and visits to and from law reform bodies during 2004 are contained in Appendix C.

THE 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 in December 2000. The full text is included in Appendix A. The Second Programme identifies over 30 topics grouped under different branches of the law for examination, with a view to their reform. These may be grouped under the following headings:

- 1 The Legal System
- 2 The Law of Evidence
- 3 Administrative Law
- 4 Criminal Law
- 5 Land Law and Conveyancing
- 6 Vulnerable Groups and the Law
- 7 Family Law
- 8 Commercial Law and the Law of Obligations

In addition to setting out over 30 specific topics for examination, the Second Programme noted that, if events require law reform in any area within any of the general 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. In particular, the Second Programme noted that 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 Second Programme notes that 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.

The Second Programme notes that the Commission has been involved in the negotiation and preparation of various international agreements, particularly in the area of private international law (the conflict of laws), including their implementation in Irish law. The Commission has published a large number of Reports on the implementation of Conventions prepared by UNIDROIT, UNCITRAL and the Hague Conference on Private International Law. The Commission remains conscious of the need to ensure that any proposals for reform are consistent with the State's international obligations in this area.

REFERENCES FROM THE ATTORNEY GENERAL

In 2004, the Commission published a *Report on a Fiscal Prosecutor and a Revenue Court* (LRC 72-2004), which followed from its *Consultation Paper on a Fiscal Prosecutor and a Revenue Court* (LRC CP 24-2003). These resulted from the request made in 2002 by the Attorney General, pursuant to section 4(2)(a) of the 1975 Act, to consider the establishment of a Revenue Court and a Fiscal Prosecutor, on foot of the views expressed in the DIRT Inquiry by the Oireachtas Committee on Public Accounts.

In 2003, two references were received from the Attorney General, requesting the Commission to consider: the establishment of a DNA Database; and the issue of providing for appeals against unduly lenient sentences in the District Court. In 2004, the Commission published a *Consultation Paper on the Establishment of a DNA Database* (LRC CP 29-2004) and a *Consultation Paper on Appeals against Unduly Lenient Sentences in the District Court* (LRC CP 33-2004).

COMMISSION PUBLICATIONS IN 2004

The Commission published two Reports and six Consultation Papers during 2004. These were:

- *Report on Judicial Review Procedure* (LRC 71-2004) (February 2004)
- *Consultation Paper on the Establishment of a DNA Database* (LRC CP 29-2004) (March 2004) (*)
- *Consultation Paper on Judgment Mortgages* (LRC CP 30-2004) (March 2004)
- *Consultation Paper on the Court Poor Box* (LRC CP 31-2004) (March 2004)
- *Consultation Paper on the Rights and Duties of Cohabitees* (LRC CP 32-2004) (April 2004)
- *Consultation Paper on Prosecution Appeals from Unduly Lenient Sentences in the District Court* (LRC CP 33-2004) (June 2004) (*)
- *Consultation Paper on the Reform and Modernisation of Land Law and Conveyancing Law* (LRC CP 34-2004) (October 2004)
- *Report on A Fiscal Prosecutor and A Revenue Court* (LRC 72 – 2004) (December 2004) (*)

Publications which arose from references from the Attorney General are marked by an asterisk (*).

Chapter 2 of this Report provides an outline of these publications against the background of the Second Programme of Law Reform.

CHAPTER 2

THE COMMISSION'S PUBLICATIONS IN 2004

INTRODUCTION

As mentioned in Chapter 1, the *Second Programme for Law Reform* identified a number of branches of the law for examination with a view to reform. These branches, together with any additional areas to take account of matters referred to the Commission at the request of the Attorney General, provide a convenient basis for outlining the published work of the Commission in 2004.

THE LAW OF EVIDENCE

Forensic Evidence: DNA

In 2004, the Commission published its *Consultation Paper on the Establishment of a DNA Database* (LRC CP 29-2004). In 2003, the Commission was requested by the Attorney General to examine the issue of the establishment of a DNA Database. In making its recommendations, the Commission took account of the broad and complex constitutional and human rights issues that may arise; and secondly, the more specific question of what classes of DNA profiles would make up any database. The Paper drew a distinction between the DNA samples and the DNA profiles in determining whether the sample or the profile or both should be destroyed. The DNA sample contains the whole of a person's DNA, while the DNA profile, extracted from the sample, consists of information regarding just a small section of an individual's DNA. While the DNA sample contains all of an individual's genetic information, the DNA profile is at present believed to contain very little personal information aside from parentage and relatedness.

The Paper provisionally recommended that only DNA profiles would be retained on the DNA database. The Paper recommended the establishment of a limited DNA Database, in which profiles of those reasonably suspected of, or convicted of, arrestable offences (those carrying, on conviction, a term of imprisonment of at least 5 years, for example murder, rape and burglary) and other serious crimes would be retained on the database.

The profiles of non-suspects or persons who have not been convicted of offences may only be retained on the DNA database if they consent. The Paper also recommended that a mass screen may be conducted if a Garda Superintendent approves. DNA crime scene samples could be retained indefinitely and DNA samples obtained directly from individuals (called comparator samples) would be destroyed after the final conclusion of the case for which they were obtained.

The Paper recommended that the DNA database would be used primarily for crime investigation purposes but could also be used for the identification of deceased and severely injured persons in limited circumstances. As to administrative arrangements, the Paper recommended that an independent Forensic Science Agency (into which the Forensic Science Laboratory would be merged) subject to external oversight should be responsible for holding the samples and acting as custodian of the DNA database. The Paper also recommended that strong security measures should be implemented to protect the DNA samples and the DNA database from unauthorised physical or electronic intrusion. Thus, it would be an offence to misuse the DNA samples or the DNA database. On the use of DNA evidence in court, the Paper recommended that pre-trial admissibility hearings may be appropriate and that, in all cases where it is sought to rely on DNA evidence alone, the jury should be warned of the dangers of convicting on this evidence in the absence of other supporting evidence, but that they may convict on such evidence alone where satisfied beyond reasonable doubt of the defendant's guilt.

ADMINISTRATIVE LAW

Judicial Review

In 2004, the Commission published its *Report on Judicial Review Procedure* (LRC 71-2004), which followed from its *Consultation Paper on Judicial Review Procedure* (LRC CP 20-2003). There has been an increased volume of judicial review applications coming before the courts in recent years: almost 1,300 judicial review applications were lodged in the High Court in 2002, of which over 500 were refugee/asylum/immigration cases. Three judges of the High Court are currently assigned to deal almost exclusively with judicial review cases, reflecting the complexity of these cases and the priority given by the High Court to them.

The Report examined the long-established conventional judicial review procedure, contained in O.84 of the *Rules of the Superior Courts 1986*, as well as numerous special statutory regimes in such fields as planning and refugees. The recommendations are aimed at supporting the measures already taken in the courts to ensure that judicial review cases are dealt with in an efficient and timely manner consistent with the requirements of justice.

In conventional judicial review, the Report recommends retention of the *ex parte* leave stage and the 'arguable case' test. It also recommends that, in exceptional cases, the leave stage be converted into a hearing involving both sides. It also recommends that, in relation to the availability of alternative remedies, a middle ground approach be applied in which the potential availability of alternative remedies should not, in itself, prevent an application for judicial review. In the context of statutory schemes for judicial review, the Report recommended retention of the leave stage and of the higher standard of 'substantial grounds,' which it considers is justifiable.

The Report recommends that the general time limit for applying for judicial review should be 6 months, subject to stricter time limits in some cases, such as planning and immigration cases. In that respect, the Report recommended that the fixed period within which applications for judicial review falling under the *Illegal Immigrants (Trafficking) Act 2000* are to be made, should be changed from 14 to 28 days, subject to the same judicial discretion to extend as currently exists. The Report also recommended that there should be further development of active judicial case management by the courts, including judicially supervised timetables to ensure that judicial review cases are progressed as speedily as possible and greater flexibility use of case management. In the context of costs, the Report recommended that the courts may make greater use of the power to apportion the costs appropriately. The Report did not recommend the introduction of an 'Administrative Court' or of a 'single order' in judicial review cases.

CRIMINAL LAW

Court Poor Box

In 2004, the Commission published its *Consultation Paper on the Court Poor Box* (LRC CP 31-2004). This Paper deals with the procedure which has been adopted over many years by the courts, particularly the District Court, where the judge may take the view that, although the prosecution has proved its case, it is not appropriate to enter a conviction, but that a contribution is made to the court poor box, the content of which is then given to relevant charities.

Use of the Court Poor Box

Typical cases where the Court Poor Box is used include being drunk or disorderly in a public place, careless driving, petty larceny, minor assaults or cruelty to animals. The payments to the Court Poor Box are generally less than 1,000 in each case, but there is a great deal of variation. In 1989, a court poor box payment of £25,000 was made in one case, while in 2003 a payment of 40,000 was made in another case. The amount paid to the Court Poor Box has grown steadily in recent years. In both 2002 and 2003, 1 million was donated to the Court Poor Box. Some of the main beneficiaries of these payments include the Society of St Vincent DePaul, the Garda Benevolent Fund, the North West Hospice and Victim Support.

Advantages and Disadvantages

Amongst the advantages of the court poor box system are that it enables a court to determine an appropriate outcome having regard to all the circumstances of a case (thus avoiding or reducing the need to record a conviction or term of imprisonment). For example, a person who drives for a living who is prosecuted for a minor road traffic offence may suffer disproportionately if he or she is convicted and disqualified from driving. Another important benefit of the court poor box system is that the charities who receive court poor box funds are sometimes linked to the type of crime which has been committed; for example, a charge of cruelty to animals might result in a payment to the ISPCA via the Court Poor Box.

Indeed, the Commission acknowledged in the Consultation Paper that one of the most important positive features of the Court Poor Box is that it reflects principles of restorative justice, in which the offender and the community can be reconciled. But the Commission also concluded that there were a number of disadvantages with the current system. For example, the Court Poor Box is not used by all judges of the District Court and so it is not universally available to first-time offenders. It has also been suggested that it allows the rich to buy their way out of a conviction and/or term of imprisonment.

The Commission does not accept that this is the case, but nevertheless believes that such negative public perception is damaging to the administration of justice. The Commission also noted that some judges may be using the Court Poor Box to impose an informal fine, greater than the maximum available under the relevant law: the potential diversion from the Exchequer of what might otherwise be collected in fines was also mentioned by the Oireachtas Committee of Public Accounts in its review of the *Annual Report of the Comptroller and Auditor General 1999*. The Commission also noted that it may not be appropriate for judges to be involved in the administration of the Court Poor Box funds and that there may be some Revenue-compliance issues with the current system. While the Court Poor Box is usually used in minor cases where a conviction would not be appropriate (and is therefore often used in conjunction with the *Probation Act* to avoid a criminal record), the Commission pointed out that it has sometimes been used where a conviction is recorded.

Main Recommendations

The Commission has provisionally recommended that the essential elements of the existing arrangement be put on a statutory basis, while omitting its adverse features. The Commission also recommended that the procedure be renamed the 'Court Charity Fund.' The proposed new statutory model would include the criteria to be used in its application, using an expanded version of the factors in the *Probation of Offenders Act 1907*, and also incorporating a revised version of the compensation order regime in the *Criminal Justice Act 1993*. The new disposition would be available only in respect of summary offences subject to a prescribed list of factors which the judge may take into account, including the trivial nature of the offence, the personal circumstances of the offender including character, family circumstances, age or health, and the need to avoid an injustice in a particular case.

The Commission recommended that if the court records a conviction, the "Court Charity Fund" disposition should not be available as a disposition. The Commission also recommended that the maximum amount payable to the Court Charity Fund would be set at the limit of the jurisdiction in tort, currently 6,350 in the District Court and 38,100 in the Circuit Court. The Commission also recommended that monies paid into the Court Charity Fund could perhaps be paid into a "ring fenced fund." This would mean that the money would not form part of the general Exchequer funds, but rather will be held separately and applied for the purpose specified in the legislation, in this case to charities which are established for the relief of poverty.



At the launch of the Consultation Paper on Prosecution Appeals from the District Court (from left) The Hon Mr Justice Declan Budd President of the Commission, Jennifer Schweppe Legal Researcher, Chief Justice Ronan Keane and Raymond Byrne Director of Research.

PROSECUTION APPEALS FROM THE DISTRICT COURT

In 2004, in response to a request from the Attorney General made in 2003, the Commission published a *Consultation Paper on Appeals against Unduly Lenient Sentences in the District Court* (LRC CP 33-2004). The Paper provisionally recommended that the Director of Public Prosecutions be empowered to appeal against unduly lenient sentences in the District Court. In coming to this conclusion, the Commission considers that the most persuasive argument is that it is in the public interest that offenders should be sentenced appropriately in relation to the crime that they have committed, and that a procedure should be in place for rectifying any undue leniency in the sentencing outcome.

The Commission is also of the opinion that it is in the public interest that any real or perceived inconsistency (failure to apply appropriate sentencing principles), rather than disparity (appropriate different sentencing outcomes, taking account of different circumstances), in sentencing practices in the District Court be remedied by way of appeal.

Filter System

The Commission accepted that there are arguments to be made against the introduction of such an appeal procedure, but concluded that such arguments are outweighed by introducing safeguards, notably a requirement to seek the consent of the Director of Public Prosecutions, into the procedure. This “filter system” would mean that, without affecting any existing right of appeal of any prosecuting authority (such as in health and safety at work cases), where a prosecutor is of the opinion that a District Court sentence is unduly lenient, the prosecutor should refer the case to the Director of Public Prosecutions to seek approval for an appeal within a defined time limit.

Scope of Appeals

The Commission recommended that the appeal system envisaged would be from any sentence imposed in the District Court on conviction including fines, imprisonment, community service orders, as well as conditional acquittals including orders made under the *Probation of Offenders Act 1907* or any other order made on a finding of guilt without entry of a conviction.

The Commission recommended that the appeal should be brought to the Circuit Court and that such an appeal provision should reflect the terms of section 2 of the *Criminal Justice Act 1993*,

allowing for the variation of the sentence as appropriate. The Commission considered that in considering appeals, the Circuit Court should use the test applied by the Court of Criminal Appeal when considering appeals taken from sentences on indictment under section 2 of the 1993 Act, that is, that there must be a substantial departure from the appropriate sentence amounting to an error of principle.

For example, if an offender was given the benefit of the *Probation of Offenders Act 1907* in the District Court, but the Circuit Court considered that a sentence of 9 months imprisonment was appropriate, the sentence might be changed on appeal. On the other hand, if the District Court imposed a 2 month sentence in the District Court and the Circuit Court considered that 3 or 4 months might have been given, the Commission does not envisage that this would be changed on appeal. The Commission also recommended that in respect of acquittals on the merits, the form of appeal should be the existing method in the *Summary Jurisdiction Act 1857*, namely an appeal on a point of law by way of case stated to the High Court.

Other Reforms

In the Paper, the Commission also considered other possible methods of dealing with any perception or reality of inconsistent sentencing in the District Court. It addressed the question of introducing sentencing guidelines, and reiterated its recommendation in its Report on Sentencing (LRC 53-1996) that presumptive sentencing guidelines should not be introduced in this jurisdiction as they would be inconsistent with the discretionary nature of Irish sentencing policy.

However, the Commission supported the views in the *Report of the Committee on Judicial Conduct and Ethics* (2000) that sentencing bench books might be prepared by the proposed Judicial Studies Committee (part of the proposed Judicial Council), an approach which is consistent with the views expressed by the Commission in its *Report on Sentencing*. The Commission also addressed the issue of the present and future scope of prosecuting counsel's role in the sentencing process, including counsel's role in expressing a view as to the merits or otherwise of a particular sentencing disposition.

REVENUE LAW

In 2004, the Commission published a *Report on a Fiscal Prosecutor and a Revenue Court* (LRC 72-2004), which followed from its *Consultation Paper on a Fiscal Prosecutor and a Revenue Court* (LRC CP 24-2003). The Report and Consultation Paper arose from a request by the Attorney General in 2002 to the Commission to consider the issue of the establishment of a Fiscal Prosecutor and a Revenue Court. This request arose from a recommendation to consider this in the *Final Report of the Committee of Public Accounts, Sub-Committee on Certain Revenue Matters* (the DIRT Inquiry). The Report noted that the establishment of either a Fiscal Prosecutor or a Revenue Court should be put in the context of whether either would assist in dealing with tax evasion, which it is acknowledged has become a major problem in Ireland.

The Commission took account of the recent reorganisation of the Revenue Commissioners, which also arose from recommendations in the DIRT Inquiry Report. This change, which includes the establishment of an Investigations and Prosecutions Division and a greater focus on prosecution, was completed in late 2003. While the Commission concluded that neither a fiscal prosecutor or revenue court be established, it also made significant recommendations for reform of the arrangements for the investigation and prosecution of revenue offences and other connected aspects of the revenue process.

Fiscal Prosecutor

The Report does not recommend the establishment of a separate office of a Director of Fiscal Prosecutions. The Commission noted the change of policy by the Revenue Commissioners concerning criminal prosecutions, in particular the greater emphasis on enforcement. This more stringent approach to exposing and prosecuting tax evasion led the Commission to conclude that

a specialist fiscal prosecutor should not be established. The Commission considered that the prosecution of revenue offences should continue to be part of the normal criminal process as revenue offences should not be treated any differently from other crimes.

The Commission concluded that the current prosecution arrangements were beneficial in drawing on the wealth of experience of the Office of the Director of Public Prosecutions, thus ensuring consistency in prosecution policy. The Report recommended that these arrangements should be monitored and reviewed over a period of 5 years.

Audit and Qualifying Disclosure

The Report made a number of recommendations relating to the Revenue audit process, in particular where these related to possible criminal charges. The Report welcomed the introduction of the truly global random audit arrangements being developed by the Revenue from 2004 onwards. In relation to the qualifying disclosure scheme, in which the possibility of prosecution is reserved for certain cases, the Commission recommended that this should be modified.

Prosecution Process

Although the Commission did not recommend the establishment of a fiscal prosecutor, the Report made some significant recommendations for reform both in relation to non-filing offences and in connection with other serious revenue offences. The Report recommended that the Revenue Commissioners might consider pursuing a specific strategy for those being prosecuted of a third or more non-filing offence. This could include the use of an automatic audit and a fast track prosecution system with emphasis on prosecution on indictment in egregious cases that lack mitigating circumstances. The Report also recommended that a memorandum of understanding be established between the Garda Síochána and the Revenue Commissioners in relation to the arrest and detention of suspected revenue offenders. As to prosecution expenses, the Report also recommended the introduction of an express legislative power for the Revenue Commissioners to claim certain, limited and exceptional, prosecution expenses in respect of revenue offences.

List of Tax Defaulters

The Report recommended that the threshold for publication of the names of tax defaulters should be index linked. The Report recommended that it be raised from its current level of 12,700 (set in 1983) to 25,000, and that this figure should be index linked in line with the Consumer Price Index. The Commission considered that index linking the figure will ensure that the list will continue to consist of serious tax defaulters. The Commission notes that section 134 of the *Finance Bill 2005* proposes to raise the threshold to 30,000 and to index link the amount by Ministerial order every 5 years.

Revenue Court

The Report did not recommend the establishment of a separate Revenue Court. The Commission considered that, as a matter of principle, it is important that revenue offences, like other “white collar” crimes, be seen as ordinary criminal offences. Therefore the Commission concluded that they should be dealt with in the ordinary criminal justice system rather than in a separate revenue court where a conviction may be perceived as having a lower stigma value. The Report also recommended the retention of the jury in the case of trials on indictment for revenue offences.

Reform of the Appeal Commissioners

The Commission also concluded that a discrete civil revenue court should not be established. In this respect, the Commission linked this conclusion to a series of recommendations intended to underpin the existing independence of the Appeal Commissioners and to ensure compliance with the European Convention on Human Rights. In particular, the Commission recommended that appointments should continue to be made by the Minister for Finance but following a nomination procedure from an expert appointments committee and that Appeal Commissioners should hold office for a 7 year, renewable term. As to the practice and jurisdiction of the Appeal

Commissioners, the Report made a large number of recommendations for reform. These include the listing of appeals from the Revenue Commissioners to the Office of the Appeal Commissioners, the administration of an oath to a witness, the recording of determinations, increasing the scope of their jurisdiction to include appeals against penalties and the issuing of precepts.

Appeals to the Circuit Court

The Report recommended that appeals from the Appeal Commissioners should lie to the Circuit Court, as opposed to the current arrangements in which the appeal is to a Circuit Court judge. The recommendation will clarify that a Registrar will be present in revenue appeals. The Report also recommended that the Revenue Commissioners right of appeal be extended to include the same rights of appeal as a taxpayer (currently, the Revenue Commissioners may only appeal in capital acquisitions tax cases).

At the launch of the Report on a Fiscal Prosecutor and a Revenue Court (from left) Marian Shanley Commissioner, The Hon Mr Justice Declan Budd President of the Commission, Brian Cowan Minister for Finance, Sinead Ring Legal Researcher, Patricia Rickard-Clarke Commissioner and Hilary Delany Commissioner.



LAND LAW AND CONVEYANCING

Land Law and Conveyancing in General, including e-conveyancing

The Commission made considerable progress in 2004 in addressing the many issues raised in the Second Programme concerning land law and conveyancing. In June 2004, the Minister for Justice, Equality and Law Reform announced details of a Joint Project on Land Law and Conveyancing Statutes being undertaken by the Department and the Commission to update and modernise Irish land and conveyancing law. Further details on the Joint Project are included in Chapter 3.

Reform and Modernisation of the Substantive Law

The first phase of the Joint Project ended with the publication in October 2004 of a *Consultation Paper on Reform and Modernisation of Land Law and Conveyancing Law* (LRC CP 34-2004). This Paper contains a review of existing legislation on substantive land law and conveyancing, which includes over 150 pre-1922 statutes, commencing with *De Donis Conditionalibus* of 1285 up to the *Conveyancing Act 1911*. This phase of the Joint Project was undertaken by the Commission's Substantive Law Working Group under the specialist leadership of Professor JCW Wylie, Professor of Law at Cardiff University.

The Paper proposes to repeal, update and reform (as appropriate) the law relating to land law and conveyancing with a view to preparing a codification Land Law Bill. Many of the recommendations in the Paper are for the repeal of statutes that have long been either obsolete or superseded by more recent legal developments. The Commission has also recommended the repeal of anachronistic statutes that remain on the Irish statute book, such as statutes which provide for rents that were once payable to the English Crown, those for 19th century land drainage projects, and those for forms of land ownership that no longer exist. The Consultation Paper also provisionally recommends the reform of some statutes that, although used frequently by conveyancers in everyday property transactions, date back almost 150 years and are framed in unnecessarily archaic language.

The Commission are greatly indebted to the members of the Working Group, chaired by Professor Wylie, for the ongoing commitment to this project.

Judgment Mortgages

In 2004, the Commission published a *Consultation Paper on Judgment Mortgages* (LRC CP 30-2004). The judgment mortgage is one of a number different procedures available to a judgment creditor seeking to enforce a judgment against a judgment debtor who fails or refuses to pay. The Paper reviews the current law, which is based upon the *Judgment Mortgage (Ireland) Act 1850* and the *Judgment Mortgage (Ireland) Act 1858*, with particular reference to the deficiencies in current law and procedures. The recommendations in this context will be incorporated into the Joint Project and the Reform and Modernisation of Land Law, discussed above.

Procedural Matters

The Commission recommended that legislation should clarify that a judgment creditor need not renew the judgment mortgage every five years. The Commission also recommended the repeal, to the extent necessary, of section 291 of the *Companies Act 1963* and its replacement with a provision to the effect that a judgment mortgage registered against an interest in land held by a company should enjoy priority as if it were a consensually created security.

The Commission also recommended that a judgment mortgage should be subject to the same registration requirements as applied to the other forms of security set out in section 99 of the *Companies Act 1963*. Accordingly failure by the judgment creditor to register particulars of the charge within 21 days of its creation should render the judgment mortgage void as against a liquidator and other creditors of the company.

General Reforms

The Commission recommended that the record of judgments be maintained in the Land Registry and the Registry of Deeds as appropriate, with regard primarily to the property, rather than being replaced by a central register of judgments referable to the names and addresses of judgment debtors.

The Commission recommended that a form of application should set out the necessary particulars, including the parties to the action and details of the property to be subject to the judgment mortgage. The Commission recommends that registration should be provided to operate as a charge by the judgment debtor over the property.

The Paper also recommended that a registered judgment mortgage has priority over (a) all later registered judgment mortgages and (b) all later encumbrances whether registered or not. However, the registered judgment mortgage should not have priority over any previous charges or equitable interests, whether registered or not. The Commission recommended that a judgment mortgage should 'travel with the land' and should bind all subsequent purchasers for value and volunteers. In the specific context of family homes, the Commission did not recommend that the law be amended to provide that the consent of a non-owning spouse be required for the purposes of registration of a judgment mortgage, but rather proposed that no order for sale of a family home pursuant to a judgment mortgage should be possible unless the court so orders.

FAMILY LAW

Rights and Duties of Cohabitees

In 2004, the Commission published a *Consultation Paper on the Rights and Duties of Cohabitees* (LRC CP 732-2004). The Consultation Paper examined the rights and duties of cohabitees under a number of headings, including property rights, succession, maintenance, social welfare, pensions, taxation, health care, and domestic violence. In addition, the Paper recommended that cohabitees should be encouraged to regulate their financial and property affairs by means of co-ownership agreements.

At the launch of the Consultation Paper on the Rights and Duties of Cohabitees (from left) Patricia Rickard-Clarke Commissioner, The Hon Mrs Justice Catherine McGuinness of the Supreme Court, The Hon Mr Justice Declan Budd President of the Commission and Marian Shanley Commissioner.



Qualified Cohabitees

The recommendations being proposed would apply to 'qualified cohabitees,' defined as persons who live together in a 'marriage like' relationship for a continuous period of three years or, where there is a child of the relationship, for two years. This includes relationships between same-sex or opposite-sex couples, neither of whom are married to each other or to any other person. The Commission argues that the exclusion of any person who is married is necessitated by Article 41 of the Constitution, which deals with the provisions in respect of the Family. Other forms of domestic relationship, such as that which exists between friends or family members who cohabit, are also excluded from the definition.

Application to Court for Relief

The Commission proposes that 'qualified cohabitees' should be given the right to apply to Court for certain rights and financial reliefs following the termination of the cohabiting relationship. The Consultation Paper concentrates on the rights and duties of cohabitees and does not analyse whether a form of partnership registration scheme should be introduced. The Consultation Paper states that this issue involves complex policy matters which merits separate discussion, though it notes that any such scheme, such as that contained in the British *Civil Partnership Act 2004*, would also include the specific issues dealt with in this Consultation Paper.

Specific Recommendations

The principal recommendations in the Consultation Paper are as follows. The Commission recommends that 'qualified cohabitees' should have the right to apply for a property adjustment order in exceptional circumstances. It also recommends that they would have the right to apply for relief under succession law where provision has not been made in the will of the deceased or under the intestacy rules. Equally, the Paper recommended that they would have the right to apply for a maintenance order in exceptional circumstances. In the context of social welfare legislation, the Paper recommended the extension of the definition of cohabitation to include those in same-sex relationships. The Paper also recommended that relationship of 'qualified cohabitees' should be recognised by the taxation code.

The Commission also recommended that 'qualified cohabittees' should be notice parties for the purposes of an Enduring Power of Attorney under the Power of Attorney Act 1996. The Paper also recommended that 'qualified cohabittees' be given greater recognition in the context of health care situations and decision-making involving their partners.

The Commission also recommended that 'qualified cohabittees' be included within the definition of dependants for the purposes of the *Civil Liability Act 1961* where it deals with civil actions for wrongful death. In addition, the Paper proposed a number of changes to the *Domestic Violence Act 1996*. These included: that the residency requirement in respect of barring orders for cohabiting couples of 6 out of the previous 9 months should be reduced to 3 out of the previous 12 months; that the residency requirement be removed for cohabittees seeking a barring order where they have the sole ownership or tenancy in the property; and that the residency requirement in respect of safety orders should be abolished.

CHAPTER 3

THE COMMISSION'S WORK IN PROGRESS IN 2004

INTRODUCTION

In Chapter 2, the Commission outlined its publications during 2004. This Chapter outlines the other elements of the Commission's rolling Work Programme under the *Second Programme for Law Reform*. As with Chapter 2, it is convenient to discuss the rolling Work Programme under the following branches of the law which are identified in the *Second Programme* for examination with a view to reform.

- 1 The Legal System
- 2 The Law of Evidence
- 3 Administrative Law
- 4 Criminal Law
- 5 Land Law and Conveyancing
- 6 Vulnerable Groups and the Law
- 7 Commercial Law and the Law of Obligations

This Chapter also provides an opportunity to discuss any relevant developments concerning implementation of proposals for law reform previously made by the Commission.

THE LEGAL SYSTEM

Class Actions and Representative Actions

During 2004, substantial progress was made on the preparation of a Report on Multi-Party Litigation, following the publication of the Commissions' *Consultation Paper on Multi-Party Litigation (Class Actions)* (LRC CP 25-2003). This Report will deal with the procedure to be followed when numerous persons are pursuing a similar cause of action against the same defendant (in Ireland, a recent example being the 'Army deafness claims'). The Report, which the Commission intends to publish in 2005, will examine how such litigation can be conducted in a procedurally fair and efficient manner, taking account of the interests of all parties.

Consolidation and Reform of the Courts Acts

In 2004, the Commission began preliminary work on a project to consolidate and reform the Courts Acts, encompassing not only the legislation passed since 1924 but also relevant pre-1922 legislation. The important and challenging project is being conducted by the Commission with the support of the Department of Justice, Equality and Law Reform and the Courts Service.

THE LAW OF EVIDENCE

Forensic Evidence

As noted in Chapter 2, the Commission published its *Consultation Paper on the Establishment of a DNA Database* (LRC CP 29-2004) in 2004. A seminar was held on the Paper in September 2004, and work began on the preparation of the Commission's Report on this topic.

ADMINISTRATIVE LAW

Public Inquiries including Tribunals of inquiry

Substantial progress was made during 2004 on the preparation of a *Report on Public Inquiries including Tribunals of Inquiries*, following the publication of the Commission's *Consultation Paper on Public Inquiries Including Tribunals of Inquiry* (LRC CP 22-2003). The Report will be published in the first half of 2005. The Commission notes that a number of the principles discussed in the Consultation Paper were incorporated into the *Commissions of Investigation Act 2004*.

CRIMINAL LAW

The Law of Homicide

In 2001, the Commission published its *Consultation Paper on Homicide: the Mental Element in Murder* (LRC CP 17-2001), which addressed the conceptual differences underpinning the distinction between murder and manslaughter in particular. In preparation for a Report on this important topic, the Commission will begin work in due course on a consultation paper on manslaughter.

Corporate Criminal Liability

In December 2004, the Commission held a seminar on its *Consultation Paper on Corporate Killing* (LRC CP 26-2003) and work has begun on the preparation of a Report on the subject.

Defences

In 2003, the Commission published its *Consultation Paper on Homicide: the Plea of Provocation* (LRC CP 27-2003), which forms part of a series of papers on defences in criminal law. Further progress was made during 2004 on two other Consultation Papers in this series, dealing with Legitimate Defence, and Duress and Necessity, respectively. The Commission intends to publish these Consultation Papers in 2005.

Restorative Justice

Restorative justice seeks to involve the offender, victim and community in the resolution of criminal behaviour. It is effectively a problem-solving approach to crime, involving the parties themselves and the community generally. The Commission continued during 2004 to examine two discrete topics under this heading, the Court Poor Box and the use of victim impact statements. As noted in Chapter 2, the Commission published its *Consultation Paper on the Court Poor Box* (LRC CP 31-2004) in 2004. Further progress was also made by the Commission in its examination of the use of victim impact statements. The Commission is also aware of the work being undertaken in this area generally by the National Crime Council.

LAND LAW AND CONVEYANCING

Substantive Law and e-Conveyancing

In addition to the publications referred to in Chapter 2, the Commission made considerable progress in 2004 in addressing the many issues raised in the Second Programme concerning land law and conveyancing. In June 2004, the Minister for Justice, Equality and Law Reform announced details of a *Joint Project on Land Law and Conveyancing Statutes* being undertaken by the Department and the Commission to update and modernise Irish land and conveyancing law. The Joint Project consists of three phases.

The Joint Project on Land Law and Conveyancing Statutes

Phase 1 consisted of a screening process during which existing legislation was reviewed with a view to identifying statutes which could simply be repealed without replacement and those which needed to be replaced with modern provisions. This was completed with the publication of the Commission's *Consultation Paper on the Reform and Modernisation of Land and Conveyancing Law* (LRC CP 34-2004), discussed in Chapter 2. Phase 2 involves an extensive consultation process, and included a conference on 'Modernising Irish Land and Conveyancing Law,' which was hosted by the Commission on 25 November 2004 at University College Dublin. The conference, attended by over 200 delegates, was addressed by international guest speakers and discussed the reform proposals identified in the Consultation Paper as well as the modernisation of the Land Registry and preparations for e-conveyancing. Phase 3 will involve the drafting of a Report by the Commission, to be published in 2005, which will have draft legislation to give effect to the proposals for reform appended to it.

At the Conference on Reform and Modernisation of Land Law and Conveyancing Law (from left) Catherine Tracey Chief Executive Office and Registrar of Deeds and Titles (speaker), Steve Kelway Land Registrar for England and Wales (speaker), Patricia Rickard-Clarke Commissioner (speaker), John O'Sullivan Information Systems Manager Land Registry (speaker), Kate Murray Director of Titles Province of Ontario Canada (speaker), Professor John Wylie Professor of Law Cardiff University (speaker), Michael McDowell Minister for Justice Equality and Law Reform, The Hon Mr Justice Declan Budd President of the Commission, The Hon Ms Justice Mary Laffoy (speaker), Dr Charles Harpum Barrister London (speaker), Professor Finbarr McAuley, Commissioner.



The e-conveyancing Project

The Joint Project forms part of the Commission's wider e-Conveyancing Project. This Project was established in early 2003 to fulfil the Commission's obligation under its Second Programme for Law Reform to review "conveyancing law and practice in areas where this could lead to savings for house purchasers", having as its ultimate objective the move towards an on-line paperless conveyancing transaction model. The Commission felt that addressing the issue of e-Conveyancing was particularly urgent given increased computerisation within Irish public bodies, such as the Land Registry's Electronic Access Service, and the completion of the Digital Map project. It also reflects developments in other jurisdictions, particularly Canada, New Zealand and England and Wales, where the move to an electronic form of conveyancing is significantly ahead of Ireland.

The e-Conveyancing Project is also a response to government policy as evidenced by the enactment of the *Electronic Commerce Act 2000* and the drive to implement its underlying philosophy as outlined in the Government Information Society Strategy, *New Connections*. As the Action Plan states, "the key significance of the Information Society is that it makes possible *new connections* – connections that challenge traditional assumptions about what is possible and when it is possible. Networking technologies are presenting a new range of possibilities to complement the ways we traditionally interact and do business".

Administrative, Procedural and Substantive Law Strands

In addition to the Joint Project on Land Law and Conveyancing Statutes, which focuses on the reform of the substantive law, the e-Conveyancing Project also involves two other broad “strands” or aspects, referred to as the Administrative Strand and the Procedural Strand respectively. The Administrative Strand is concerned with the application of information technology to conveyancing transactions and involves a study of how various public bodies provide a service for or information used in connection with such transactions. The Procedural Strand subjects the conveyancing process to a step-by-step analysis with a view to enabling the process to be carried out electronically. The Commission will be conducting such an analysis in 2005 with a view to making proposals as to how conveyancing practice will be reformed in an electronic based registration system. The Commission is grateful to the Information Society for informing us in 2004 that funding for this analysis would be made available in 2005.

The Law Relating to Condominiums (multi-unit developments)

In 2004, considerable progress was made on a consultation paper dealing with multi-unit developments, which include apartment developments. The Commission will publish this paper in 2005, and it will examine: whether there is a need for statutory regulation of such developments or whether ‘default’ or ‘rescue’ provisions would be sufficient; the problem areas of management structures; dispute resolution; service charges; and consumer protection.

The Law of Trusts including the Law of Charities

The Commission continued to work in consultation with relevant government Departments (in particular the Department of Community, Rural and Gaeltacht Affairs) who have been involved in the reform of charity law. As a result, the Commission began work in 2004 on the preparation of a Consultation Paper to examine the need to amend and reform the general law of trusts, in particular the law in relation to trustees. This resulted in the publication of a *Consultation Paper on Trust Law – General Proposals* (LRC CP 36-2005) and a *Consultation Paper on Charitable Trust Law – General Proposals* (LRC CP 37-2005), to which the Commission will return in its 2005 Annual Report.

VULNERABLE GROUPS AND THE LAW

The Law Affecting Persons with Physical, Mental or Learning Disabilities

In 2003, the Commission published a *Consultation Paper on Law and the Elderly* (LRC CP 23-2003). While the Consultation Paper directly addressed one category of vulnerable persons, the Commission received submissions from groups representing other categories of vulnerable persons, notably those with limited capacity in the eyes of the law. The Commission thus decided that it would be appropriate to follow up the Consultation Paper with further work on the definition of capacity in relation to vulnerable adults generally before proceeding to publication of a Report on the Law and the Elderly. Considerable progress was made in 2004 on this Paper, which will also examine the issue of consent to medical treatment, and the Commission intends to publish this Paper in the first half of 2005.

COMMERCIAL LAW AND THE LAW OF OBLIGATIONS

The Law of Torts

In 2002, the Commission published its *Report on Section 2 of the Civil Liability (Amendment) Act 1964: The Deductibility of Collateral Benefits from Awards of Damages* (LRC 68-2002), which followed from a request by the Attorney General. The Commission notes that section 27 of the *Civil Liability and Courts Act 2004* largely implemented the recommendations in the Report.

Contract Law

A number of Consultation Papers published by the Commission have involved consideration of aspects of contract law. For example, the *Consultation Paper on Law and the Elderly* (LRC CP 23-2003) considered the law relating to undue influence and unconscionable bargains. In 2004, the Commission also continued its work on the development of specific projects concerning contract law, in particular privity of contract and the rights of third parties. Following from this, the Commission will begin preparation in 2005 of a consultation paper on this topic.

Private International Law

The Second Programme notes that the Commission has been involved in the negotiation and preparation of various international agreements, particularly in the area of private international law (the conflict of laws), including their implementation in Irish law. The Commission has published a large number of Reports on the implementation of Conventions prepared by UNIDROIT, UNCITRAL and the Hague Conference on Private International Law. The Commission remains conscious of the need to ensure that any proposals for reform are consistent with the State's international obligations in this area.

The Information Society

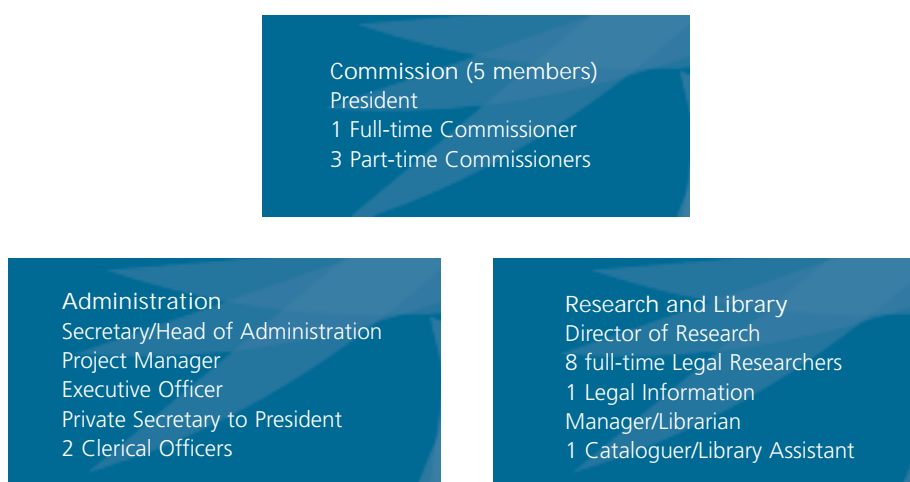
The Second Programme of Law Reform indicates that the Commission will examine aspects of electronic commerce and the internet, where appropriate having regard to activities undertaken or to be undertaken by Government Departments. The Commission's e-conveyancing project, discussed above, involves an important initiative concerning this element of the Second Programme.

CHAPTER 4

ADMINISTRATION

INTRODUCTION

In this Chapter, the Commission outlines the administrative aspects of its work. It focuses on the essential administrative arrangements and supports which ensure that the Commission's Rolling Work Programme can be carried out in practice. The following Table outlines the current structure of the Commission.



THE COMMISSION

The Commission consists of a President and four Commissioners. The Commissioners are appointed by the Government for a term of up to five years, and their appointment may be renewed. The current Commission consists of two full-time Commissioners and three part-time Commissioners. The President of the Commission in 2004, a High Court judge, is one of the full-time Commissioners. The other full-time Commissioner is a solicitor who, until her appointment, had been a partner in a large firm of solicitors. The three part-time Commissioners are, respectively, a barrister, who is also head of a university school of law; a university professor of law; and a solicitor, who is also a member of the Commission to Inquire into Child Sexual Abuse.

The Commission as a body takes all major decisions affecting the Commission. These include putting forward programmes for law reform, the research output of the Commission contained in Consultation Papers and Reports, as well as important administrative, financial and other matters. The Commission meets formally as a body at least once a month. In addition, its members meet frequently, and are in ongoing constant communication and consultation with each other and with Commission staff.

ADMINISTRATIVE STAFF

The Commission's day-to-day administration involves three main functions: general administration (including information technology), personnel and finance. These functions are carried into effect

by the Secretary/Head of Administration and other members of the administrative staff, acting under the direction of the Commission.

As to general administration, the Secretary/Head of Administration has primary responsibility for office management, including dissemination of relevant civil service circulars and guidelines, as well as liaising with the administrative staff on specific issues such as information technology. In relation to personnel matters, the Secretary/Head of Administration is responsible for monitoring pay and pay rates for the members and employees of the Commission (acting within Department of Finance guidelines), as well as for related issues such as safety and health.

As to finance, the Secretary/Head of Administration controls and monitors all income and expenditure of the Commission and prepares an annual estimate of expenditure for submission and approval by the Department of Finance. The Secretary/Head of Administration also prepares complete accounts annually for submission by the Commission to the Comptroller and Auditor General. The Accounting Officer of the Office of the Attorney General acts as Accounting Officer for the Commission. The finance function is discussed in more detail below.

In carrying out these functions, the Secretary/Head of Administration is supported by a small administrative team. This currently consists of a project manager, an executive officer, a private secretary to the President and two clerical officers. The duties of the project manager include the development of the profile of the Commission with specific responsibility for public relations and managing relationships with other agencies and government departments. He is also responsible for liaison with the Consultative Committee and the Joint Oireachtas Committee on Justice, Defence and Women's Rights. The Executive Officer's responsibilities are in the finance and personnel areas, including PMDS (Performance Management and Development System), staff training and the management of the Commission's website, www.lawreform.ie.

The Commission website 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 also contains the full text of all Consultation Papers and Reports published by the Commission. The Commission continues to monitor and update the website to ensure its continued effectiveness and to encourage detailed submissions in electronic format.

The private secretary to the President is also involved in implementation of the Commission's IT policy. The duties of the Clerical Officers include general administrative support to the Commission and also liaison with the Library staff.

The Commission has also established an executive committee to supervise ongoing review of administrative arrangements. This executive team meets on a regular basis to monitor and review the general administration of the Commission.

Employment and Disability

The Commission was in compliance with the 3% target for the employment of people with disabilities in the Public Sector during 2004.

Developments in 2004

During the year, a number of ongoing initiatives were in train. These included, in particular, the development of PMDS (Performance Management and Development System) initiatives for all staff. Training of staff, in particular in relation to IT matters, was provided during the year on a regular basis. During the year, the Commission also began a review of the safety and health needs of the Commission. In November 2004, the Commission prepared a revised Safety Statement and also tendered for consultancy services (including training) in this area, in line with relevant public procurement guidelines.



Members of the Administrative and Research Staff at the Conference on Reform and Modernisation of Land Law and Conveyancing Law (from left) Sinead Ring, Orla Joyce, Eithne Boland, Aisling Wall, Denis McKenna, Tracey O'Keeffe of the Department of Justice Equality and Law Reform, John Quirke Secretary of the Commission, Roberta Guiry, Alan Bonny, Mary Townsend, Alan Brady and Trevor Redmond.

RESEARCH AND LIBRARY

The primary role of the Commission's research staff is to act as the 'engine house' for the ongoing implementation of the Commission's rolling work programme.

Research Team

The research team is headed by the Director of Research, to whom the research staff report directly. The present Director of Research is on secondment from a university law school. At present, the Commission has authority to employ eight full-time Legal Researchers, who are usually engaged on one year contracts, which may be renewed. From time to time, the Commission also consults with external experts for particular projects and also establishes Working Groups on specific topics. The function of the Director of Research is to lead and manage the research teams, and generally advise and assist the researchers with a view to assuring an appropriate output and quality of work. This includes carrying out general background research, preparing issues papers, preparing draft documents and draft Consultation Papers and Reports for consideration by the Commission.

The Director conducts a number of seminars during the year for the researchers on areas of particular interest and the researchers regularly meet as a group to exchange views on the areas on which they are conducting research. Researchers also attend conferences on relevance areas of interest, including seminars organised by the Office of the Attorney General. Legal Researchers are also encouraged to publish in relevant law journals during their time with the Commission. This includes articles dealing with areas on which the researcher is actively involved. The Director of Research also generally acts as the media spokesperson for the Commission and, in conjunction with the President, the Secretary/Head of Administration and Project Manager, deals with parliamentary questions and other inquiries from the public.

Library

The primary role of the Commission's library, which is an indispensable tool of the Commission, 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. The library is staffed by a Legal Information Manager/Librarian and a Cataloguer/Library Assistant. Assistance is also provided, when required, by members of the administrative staff.

The Legal Information Manager/Librarian works in close consultation with the research teams to provide timely access to new hard-copy and electronic resources. An internal bulletin of current legal developments, focusing on new library acquisitions, is circulated to all staff on a monthly basis.

Developments in Unicorn System

The Unicorn Collection Management System enables sharing of resources between 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. Upgrading of the Unicorn system was completed in August 2004. This has resulted in increased efficiency and functionality of the Unicorn system and facilitates self-issue of library material by users.

iLINK

The installation of iLINK, completed in October 2004, allows each researcher to search the library catalogue from their own PC.

FINANCE

Income and 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 Office of the Attorney General. 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 library and IT system 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 2004. The Secretary/Head of Administration 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/Head of Administration

Throughout 2004, 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.

CHAPTER 5

IMPLEMENTATION OF THE SECOND PROGRAMME BY THE COMMISSION

INTRODUCTION

The Commission is taking this opportunity to review the progress made in the implementation of the *Second Programme for Law Reform 2000-2007* as well as the Commission's responses to references from the Attorney General.

Some general comments may help to identify the overall progress made in the implementation of the Second Programme.

- The Second Programme identifies 30 areas of law for examination with a view to their reform.
- A number of the projects actually undertaken by the Commission have involved considerable expansion of specific subject areas identified in the Second Programme; for example, the Joint Project on Reform and Modernising Land Law involves the repeal of over 150 pre-1922 statutes on land law and conveyancing and replacing them with a consolidating and codifying Land Law Bill.
- Between 2000 and 2004, the Commission published 13 Reports and 19 Consultation Papers.
- Of these 32 publications, 6 arose from references from the Attorney General.
- The 32 publications have dealt with 26 separate areas of law.
- Of the 30 areas identified in the Second Programme, the publications between 2000 and 2004 have dealt with 20 of these.
- By the end of 2005, the Commission hopes to have begun or completed projects dealing with 24 of the areas identified in the Second Programme.
- Of the 30 areas identified in the Second Programme, a number have been overtaken, whether in whole or in part, by other developments: see, for example, the comments on adoption (Family Law heading) and the *nemo dat quod non habet* rule (Commercial Law heading).

The remainder of this chapter reviews in detail the Commission's work since 2000 under the following headings, based on those in the Second Programme and also taking account of matters referred to the Commission by the Attorney General:

- 1 The Legal System
- 2 The Law of Evidence
- 3 Administrative Law
- 4 Criminal Law
- 5 Revenue Law
- 6 Land Law and Conveyancing
- 7 Vulnerable Groups and the Law
- 8 Family Law
- 9 Commercial Law and the Law of Obligations

1 THE LEGAL SYSTEM

Under this heading, the Second Programme identified 5 areas of law for examination with a view to their reform:

- Access to the law for the citizen and, in particular, the effectiveness of the promulgation and dissemination of statutes and statutory instruments.
- Limitation of actions.
- Class actions and representative actions taken in the public interest.
- Alternative dispute resolution.
- Statute Law: completion of the Commission's remit under its First Programme in the sphere of statutory drafting and interpretation.

1.1 General comment on implementation of areas under Legal System heading

Under this heading the Commission has begun or completed projects under each of the 5 areas.

1.2 Detailed comments on implementation of areas under Legal System heading

In relation to access to the law for the citizen, the Commission completed its *Report on Statutory Drafting and Interpretation: Plain Language and the Law* (LRC 61-2000). In addition, in 2004, the Commission began preliminary work on a project to consolidate and reform the Courts Acts, encompassing not only the legislation passed since 1924 but also relevant pre-1922 legislation. The project is being conducted by the Commission with the support of the Department of Justice, Equality and Law Reform and the Courts Service.

In relation to limitation of actions, the Commission published a *Report on The Statutes of Limitations: Claims in Contract and Tort in Respect of Latent Damage (Other than Personal Injury)* (LRC 64-2001). This arose from a reference to the Commission from the Attorney General.

Under the heading class actions and representative actions taken in the public interest, the Commission has published a *Consultation Paper on Multi-Party Litigation (Class Actions)* (LRC CP 25 – 2003) and intends to publish a Report on this area in 2005.

As to alternative dispute resolution, the Commission has engaged in preparatory meetings with interested parties and intends to begin a specific work project in 2005.

As to completion of the Commission's remit under its First Programme in the sphere of statutory drafting and interpretation, the Commission published its *Report on Statutory Drafting and Interpretation: Plain Language and the Law* (LRC 61-2000) in December 2000, contemporaneously with the agreement of the Second Programme with government.

2. THE LAW OF EVIDENCE

Under this heading, the Second Programme identified 2 areas of law for examination with a view to their reform:

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

2.1 General comment on implementation of areas under Evidence heading

Under this heading the Commission has begun or completed projects under the first area.

2.2 Detailed comments on implementation of areas under Evidence heading

In relation to forensic evidence, the Commission has published a *Consultation Paper on the Establishment of a DNA Database* (LRC CP 29-2004) and intends to publish a Report on this area in 2005. This arose from a reference from the Attorney General.

In relation to other aspects of the law of evidence in civil and criminal cases, the Commission will keep under review whether further projects should be undertaken in this area and notes that, under the First Programme of Law Reform, a *Report on the Rule Against Hearsay in Civil Cases* (LRC 25-1988) and a *Report on Oaths and Affirmations* (LRC 34-1990).

3. ADMINISTRATIVE LAW

Under this heading, the Second Programme identified 2 areas of law for examination with a view to their reform:

- Tribunals of inquiry.
- Appeals from administrative decisions including judicial review.

3.1 General comment on implementation of areas under Administrative Law heading

Under this heading the Commission has begun or completed projects under both areas.

3.2 Detailed comments on implementation of areas under Administrative Law heading

As to tribunals of inquiry, the Commission has published a *Consultation Paper on Public Inquiries Including Tribunals of Inquiry* (LRC CP 22 – 2003) and intends to publish a Report on this area in 2005.

As to appeals from administrative decisions including judicial review, the Commission has published a *Report on Judicial Review Procedure* (LRC 71-2004).

4. CRIMINAL LAW

Under this heading, the Second Programme identified 7 areas of law for examination with a view to their reform:

- The law of homicide.
- Defences including provocation, legitimate defence, duress and necessity.
- Inchoate offences.
- Procedure in criminal cases.
- Restorative Justice.
- Corporate criminal liability.
- Penalties for minor offences.

4.1 General comment on implementation of areas under Criminal Law heading

Under this heading the Commission has begun or completed projects under 6 of these 7 areas.

4.2 Detailed comments on implementation of areas under Criminal Law heading

As to the law of homicide, the Commission has published a *Consultation Paper on Homicide: The Mental Element in Murder* (LRC CP17-2001). The Commission intends to proceed to a Report on this topic after completion of a Consultation Paper on Manslaughter.

As to defences including provocation, legitimate defence, duress and necessity, the Commission has published a *Consultation Paper on Homicide: The Plea of Provocation*

(LRC CP 27 – 2003). It intends to publish two further Consultation Papers, on Legitimate Defence, and on Duress and Necessity, respectively, in 2005. The Commission also notes that, under the First Programme of Law Reform, a *Report on Intoxication* (LRC 51-1995) was published.

As to inchoate offences, the Commission will keep under review what projects should be undertaken in this area.

In connection with procedure in criminal cases, the Commission has published a *Consultation Paper on Prosecution Appeals in Cases brought on Indictment* (LRC CP19-2002) and a *Consultation Paper on Prosecution Appeals from Unduly Lenient Sentences in the District Court* (LRC CP 33-2004), the latter arising from a request from the Attorney General. In 2005, the Commission began to prepare a Report combining the material discussed in both Consultation Papers.

As to restorative justice, the Commission has published a *Consultation Paper on the Court Poor Box* (LRC CP 31-2004) and intends to publish a Report on this area in 2005. The Commission is also aware of the work being undertaken in this area generally by the National Crime Council.

As to corporate criminal liability, the Commission published a *Consultation Paper on Corporate Killing* (LRC CP 26 – 2003) and intends to publish a Report on this area in 2005.

In relation to penalties for minor offences, the Commission published a *Report on the Indexation of Fines: A Review of Developments* (LRC 65-2002) and a *Report on Penalties for Minor Offences* (LRC 69-2003).

5. REVENUE LAW

5.1 *Comment on Revenue Law heading*

Arising from a reference from the Attorney General, the Commission published a *Report on A Fiscal Prosecutor and A Revenue Court* (LRC 72 – 2004).

6. LAND LAW AND CONVEYANCING

Under the heading Real and Personal Property, the Second Programme identified 4 areas of law for examination with a view to their reform:

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

6.1 *General comment on implementation of areas under Land Law and Conveyancing heading*

Under this heading the Commission has begun or completed projects under 3 of these 4 areas. The wide scope of the Joint Project being undertaken under the fourth area has been noted in the Introduction, above.

6.2 *Detailed comments on implementation of areas under Land Law and Conveyancing heading*

As to the law of trusts including the law of charities, the Commission has published a *Consultation Paper on Trust Law: General Proposals* (LRC CP 35-2005) and a *Consultation Paper on Charitable Trust Law: General Proposals* (LRC CP 36-2005) and intends to publish Reports on

these areas in 2005, in liaison with the Department of Community, Rural and Gaeltacht Affairs. In 2005, the Commission will begin work on a further paper in this area, dealing with trusts under the Settled Land Acts.

In relation to succession law, the Commission will keep under review what projects should be undertaken in this area, taking account of work already undertaken by other bodies, such as the 2004 Restatement of the *Succession Act 1965* and the possible adoption of an EU Regulation in this area ('Brussels IV').

As to the law relating to condominiums, the Commission intends to publish a *Consultation Paper on Multi-Unit Developments (Condominiums)* in 2005.

In the context of the commitment to continue its general review of land and conveyancing law with the assistance of its standing specialist Working Group:

- the Commission began a Joint Project on the Reform and Modernisation of Land Law in conjunction with the Department of Justice, Equality and Law Reform in 2004. This resulted in the publication of a *Consultation Paper on the Reform and Modernisation of Land Law and Conveyancing Law* (LRC CP 34-2004).
- This builds on and will incorporate previous work by the Commission in this area, including a *Report on the Rule against Perpetuities and Cognate Rules* (LRC 62-2000), a *Report on the Variation of Trusts* (LRC 63-2000), a *Report on the Acquisition of Easements and Profits à Prendre by Prescription* (LRC 66-2002), a *Report on Title by Adverse Possession of Land* (LRC 67-2002), a *Report on Land Law and Conveyancing Law: (7) Positive Covenants over Freehold Land and other Proposals* (LRC 70-2003) and a *Consultation Paper on Judgment Mortgages* (LRC CP 30-2004).
- The Commission is also engaged in associated projects on the law of landlord and tenant, which resulted in the publication of a *Consultation Paper on Business Tenancies* (LRC CP 21-2003) and a *Consultation Paper on General Law of Landlord and Tenant* (LRC CP 28 – 2003).

7. VULNERABLE GROUPS AND THE LAW

Under this heading, the Second Programme identified 2 areas of law for examination with a view to their reform:

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

7.1 General comment on implementation of areas under Vulnerable Groups and the Law heading
Under this heading the Commission has begun projects under both areas.

7.2 Detailed comments on implementation of areas under Vulnerable Groups and the Law heading
As to law and the elderly, including the legal protection of older persons transferring assets and 'advance care directives' the Commission has published a *Consultation Paper on The Law and the Elderly* (LRC CP 23 – 2003). The Commission will publish a Report on this area following publication of a Consultation Paper on the second area under this heading.

In relation to the law affecting persons with physical, mental or learning disabilities, including issues of capacity, guardianship and the right to marry, the Commission will publish a *Consultation Paper on Vulnerable Persons: Capacity* in the first half of 2005.

8. FAMILY LAW

Under this heading, the Second Programme identified 2 areas of law for examination with a view to their reform:

- The law of adoption - a general review.
- Rights and duties of cohabitants.

8.1 General comment on implementation of areas under Family Law heading

Under this heading the Commission has begun projects under one of the two areas.

8.2 Detailed comments on implementation of areas under Family Law heading

As to the law of adoption - a general review, this has been superseded by a general review which is being conducted by the Department of Health and Children. The Commission also notes that, under the First Programme, it published a *Report on the Hague Convention on Protection of Children and Intercountry Adoption* (LRC 58-1998).

In connection with rights and duties of cohabitants, the Commission has published a *Consultation Paper on the Rights and Duties of Cohabitants* (LRC CP 32-2004).

9. COMMERCIAL LAW AND THE LAW OF OBLIGATIONS

Under four headings, the Law of Obligations, Commercial Law, Civil Rights Law and Law and the Information Society, the Second Programme identified 6 areas of law for examination with a view to their reform:

- The law of tort: aspects of the law of compensation for personal injuries.
- The law of contract: privity of contract and the rights of third parties.
- 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.
- Exceptions to the *nemo dat quod non habet* principle on transfer of title to goods.
- 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.
- 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.

9.1 General comment on implementation of areas under Commercial Law and Law of Obligations heading

Under this heading the Commission has begun or completed projects under 4 of these 6 areas.

9.2 Detailed comments on implementation of areas under Commercial Law and Law of Obligations heading

As to the law of tort: aspects of the law of compensation for personal injuries, the Commission has published a *Report on Aggravated, Exemplary and Restitutionary Damages*

(LRC 60-2000). The Commission has also published a *Report on Section 2 of the Civil Liability (Amendment) Act 1964: The Deductibility of Collateral Benefits from Awards of Damages* (LRC 68-2002), which arose from a reference from the Attorney General. The Commission's project on Alternative Dispute Resolution, above, will also touch on this area generally.

As to the law of contract: privity of contract and the rights of third parties, the Commission intends to begin a project on Privity of Contract in 2005, having already begun a preliminary examination of this area.

As to the commitment to review and examine current issues arising in the area of commercial law (mindful of the Government's proposal to establish a statutory Company Law Review Group), the Commission notes that the *Company Law Review Group* was established under the *Company Law Enforcement Act 2001*. The Commission will keep under review what projects should be undertaken in this area.

In connection with exceptions to the *nemo dat quod non habet* principle on transfer of title to goods, the Commission notes that the Criminal Justice (Theft and Fraud Offences) Act 2001 has already dealt with one aspect of this, but will keep under review what projects should be undertaken in this area.

As to electronic commerce and the Internet, the Commission's e-conveyancing project, discussed in the Introduction, involves a significant contribution to the general e-Government policy.

In relation to the law of privacy, Chapter 5 of the *Consultation Paper on the Court Poor Box* (LRC CP 31-2004) discussed the introduction of legislation providing for the expunging of certain offences from the record. The Commission will keep under review what further projects should be undertaken in this area and notes that, under the First Programme, it published a *Report on Privacy: Surveillance and the Interception of Communications* (LRC 57-1998).

APPENDIX A

SECOND PROGRAMME FOR EXAMINATION OF CERTAIN BRANCHES OF THE LAW WITH A VIEW TO THEIR REFORM: 2000-2007 APPROVED BY GOVERNMENT ON 19 DECEMBER 2000

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.

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 cohabitants.

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.

APPENDIX B

WORKING GROUPS

As noted in Chapter 1, under the *Law Reform Commission Act 1975*, the 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. 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.

Members of Working Group on e-Conveyancing:

- The Hon Mr Justice Declan Budd
- Commissioner Patricia T Rickard-Clarke
- Commissioner Marian Shanley
- Professor John C W Wylie (Leader of the Project)
- Vivienne Bradley, Solicitor
- Seamus Carroll, Department of Justice, Equality and Law Reform
- John Coyle, IT Manager, Courts Service
- Patrick Fagan, Solicitor
- Deirdre Fox, Solicitor
- Brian Gallagher, Solicitor
- Frank Lanigan, Solicitor
- Professor David Gwynn Morgan
- Chris Hogan, Senior Registrar, Land Registry
- Caroline Kelly, BL
- Deirdre Morris, Solicitor
- Marjorie Murphy, Solicitor
- Tracey O'Keeffe, Department of Justice, Equality and Law Reform
- John O'Sullivan, Information Systems Manager, Land Registry
- Doreen Shiven, BL

Trevor Redmond and Mary Redmond acted as Secretary/Researcher to the Group in 2004.

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.

Members of 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

Trevor Redmond and Mary Redmond acted as Secretary/Researcher to the Group in 2004.

Working Group on Multi Unit Developments:

In 2003 the Commission set up a further Working Group to assist its deliberations on the complex subject of multi Unit Developments. This followed discussions with the Department of the Environment, Heritage and Local Government.

Members of Working Group on Multi Unit Developments

- Commissioner Patricia T Rickard-Clarke
- Professor John C W Wylie (Leader of the Project)
- Sheena M Beale, Solicitor
- Brian M Gallagher, Solicitor
- Siobhan Kirwan, Chief Executive, O'Dwyer Property Management Limited
- Nuala McLoughlin, Department of the Environment, Heritage and Local Government
- Rory O'Donnell, Solicitor
- Jerry Sheehan, Solicitor
- Patrick Sweetman, Solicitor

Mary Townsend acts as Secretary/Researcher to the Group.

Working Group on Judicial Review Procedure

In 2002, the Commission formed a Working Group to examine the area of judicial review procedure. 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 was published in January 2003. The Working Group was reconvened when the consultation stage was completed. A Report on Judicial Review was published in February 2004.

Members of 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
- 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 Ó Caoimh
- 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

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 2004, the Commission published a Consultation Paper on Cohabitees.

Members of Ad Hoc Group on the Rights and Duties of Cohabitees

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

Darren Lehane acted as Secretary to the Group and as Researcher (with Úna Woods, University of Limerick).

Ad Hoc Group on Multi-Party Litigation (Class Actions)

During 2002, an *ad hoc* consultative group was established to determine the scope of this project. In 2003, the Commission published a Consultation Paper on Multi-Party Litigation (Class Actions).

Members of Ad Hoc Group on Multi-Party Litigation (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 Coughlan, Chief State Solicitor's Office
- Michael Cush, SC
- David McPartland BL
- His Honour Judge Alan Mahon
- Stuart Margetson, Solicitor
- Christine O'Rourke, Office of the Attorney General
- Susan Stapleton, Solicitor

Claire Hamilton acted as Secretary to the Group and as Researcher (with Liz Heffernan, University College Dublin).

At the Conference on Reform and Modernisation of Land Law and Conveyancing Law (from left) Michael McDowell Minister for Justice Equality and Law Reform with Professor John Wylie



APPENDIX C

CONFERENCES AND VISITS

As discussed in Chapter 1, Commissioners regularly attend and participate in public seminars and conferences concerning areas of research connected with the Second Programme and the Commission's Rolling Programme of Work. Contacts with law reform bodies are also maintained through attendance at relevant seminars and through hosting visits from other law reform bodies. Among the conferences attended and other visits in 2004 were the following.

In January, the President, Commissioner Rickard-Clarke, the Director of Research and Deirdre Ahern met with Mary O'Dea, Consumer Director of IFSRA, to discuss issues in relation to the recommendations made in the *Consultation Paper on Law and the Elderly*.

In January, Commissioner Rickard-Clarke and the Director of Research held a meeting with representatives of the Centre for Effective Dispute Resolution and practitioners, offices of McCann Fitzgerald, Solicitors

In February, Commissioner Rickard-Clarke attended "A Symposium on Financial Abuse of the Elderly and Probate Fraud" organized by the Institute of Legacy Management in association with STEP.

In March, Commissioner Rickard-Clarke, Professor John Wylie and Trevor Redmond held meetings with the eConveyancing Task Group, HM Land Registry London, and with the Secretary of the eConveyancing group, Law Society for England and Wales

In April, Commissioner Rickard-Clarke, the Director of Research and Legal Researcher, Deirdre Ahern held a meeting with the chief executive and Members of the Mental Health Commission concerning Capacity.

In April, Commissioner Rickard-Clarke presented a paper on *Reforming Wardship in Ireland-Law Reform Commission's proposals* to Conference of Public Guardians organised by the Courts Service.

In April Commissioner Rickard-Clarke spoke at the Annual Conference of the Association of Garda Superintendents on Law Reform.

In May Commissioner Rickard-Clarke attended an Conference of Public Trustees and Public Guardians in Victoria Canada and presented a paper on '*Wardship in Ireland- Proposal for Reform*'

In June, Colin Myerscough, Department of Constitutional Affairs, London, met with the Commission at its offices to discuss proposals concerning Public Inquiries

In June, Professor Robert Elgie, Dublin City University, presented a paper at the Commission's offices on Governance and Delegation

In July, Professor Robert Clark, University College Dublin, met with the Commission at its offices to discuss reform of contract and commercial law.

In July Commissioner Rickard-Clarke, the Director of Research and Darren Lehane made a presentation on '*The Rights and Duties of Cohabitees*' Ballymun Community Law Centre.

In July, the Director of Research attended a seminar on 'Making Consultation Count', organised by the Consultation Institute, Dublin

In July Commissioner Rickard-Clarke presented a paper '*Property Rights of Cohabitees*' to the Family Lawyers Association.

In September, the Commission had a meeting with the Secretariat of the Company Law Review Group in relation to Charity Law.

In September Commissioner Rickard-Clarke presented a paper on '*Rights and Duties of Cohabitees*' at a seminar entitled 'New Rights for Same Sex Couples at Work' organised by the Irish Congress of Trade Unions.

In September Commissioner Rickard-Clarke presented a paper on *Charity Law Reform* at the 13th Annual Conference of the Irish Charity Tax Reform Group.

In September Commissioner Rickard-Clarke presented a paper to a STEP Seminar on *Undue Influence and Unconscionability*.

In October, the Director of Research delivered a paper on Corporate Killing to a conference organised by the Health and Safety Authority and Chambers of Commerce, Navan

In October, Commissioner Rickard-Clarke and Orla Joyce attended a Conference on DNA Evidence, Dublin

In October, Commissioner Rickard-Clarke and a number of researchers attended the Law Society and Human Rights Commission Conference on the 'ECHR Act and Human Rights in Committed Relationships.'

In October, Professor Robert Gordon, Professor of Criminal Law at Simon Frazer University, British Columbia and Gerontologist presented a paper at the offices of the Commission on 'Assisted Decision Making'.

In November Commissioner Rickard-Clarke presented a paper on *Law Reform Initiatives on Legal Capacity and Decision Making for Adults with Intellectual Disability* the 9th NAMHI Parents Seminar on Legal Capacity and Decision Making.

In November, the Commission attended a meeting of the Oireachtas Committee on Justice, Equality, Defence and Women's Rights to discuss the Commission's Consultation *Paper on Modernising Irish Land and Conveyancing Law*.

In November Commissioner Rickard-Clarke presented a paper on Trusts and Settlements at the Commission's Conference on Modernising Irish Land and Conveyancing Law, in O'Reilly Hall UCD.

In December, Commissioner Rickard-Clarke and Legal Researcher, Deirdre Ahern attended a Seminar in London on 'Adult Legal Protection.'

APPENDIX D

LAW REFORM COMMISSION PUBLICATIONS

First Programme for Examination of Certain Branches of the Law with a View to their Reform (December 1976) (PrI 5984)

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)

Working Paper No 2-1977, The Law Relating to the Age of Majority, the Age for Marriage and Some Connected Subjects (November 1977)

Working Paper No 3-1977, Civil Liability for Animals (November 1977)

First (Annual) Report (1977) (PrI 6961)

Working Paper No 4-1978, The Law Relating to Breach of Promise of Marriage (November 1978)

Working Paper No 5-1978, The Law Relating to Criminal Conversation and the Enticement and Harboursing of a Spouse (December 1978)

Working Paper No 6-1979, The Law Relating to Seduction and the Enticement and Harboursing of a Child (February 1979)

Working Paper No 7-1979, The Law Relating to Loss of Consortium and Loss of Services of a Child (March 1979)

Working Paper No 8-1979, Judicial Review of Administrative Action: the Problem of Remedies (December 1979)

Second (Annual) Report (1978/79) (PrI 8855)

Working Paper No 9-1980, The Rule Against Hearsay (April 1980)

Third (Annual) Report (1980) (PrI 9733)

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)

Working Paper No 10-1981, Domicile and Habitual Residence as Connecting Factors in the Conflict of Laws (September 1981)

Fourth (Annual) Report (1981) (PI 742)

Report on Civil Liability for Animals (LRC 2-1982) (May 1982)

Report on Defective Premises (LRC 3-1982) (May 1982)

Report on Illegitimacy (LRC 4-1982) (September 1982)

Fifth (Annual) Report (1982) (PI 1795)

Report on the Age of Majority, the Age for Marriage and Some Connected Subjects (LRC 5-1983) (April 1983)

Report on Restitution of Conjugal Rights, Jactitation of Marriage and Related Matters (LRC 6-1983) (November 1983)

Report on Domicile and Habitual Residence as Connecting Factors in the Conflict of Laws (LRC 7-1983) (December 1983)

Report on Divorce a Mensa et Thoro and Related Matters (LRC 8-1983) (December 1983)

Sixth (Annual) Report (1983) (PI 2622)

Report on Nullity of Marriage (LRC 9-1984) (October 1984)

Working Paper No 11-1984, Recognition of Foreign Divorces and Legal Separations (October 1984)

Seventh (Annual) Report (1984) (PI 3313)

Report on Recognition of Foreign Divorces and Legal Separations (LRC 10-1985) (April 1985)
Report on Vagrancy and Related Offences (LRC 11-1985) (June 1985)
Report on the Hague Convention on the Civil Aspects of International Child Abduction and Some Related Matters (LRC 12-1985) (June 1985)
Report on Competence and Compellability of Spouses as Witnesses (LRC 13-1985) (July 1985)
Report on Offences Under the Dublin Police Acts and Related Offences (LRC 14-1985) (July 1985)
Report on Minors' Contracts (LRC 15-1985) (August 1985)
Report on the Hague Convention on the Taking of Evidence Abroad in Civil or Commercial Matters (LRC 16-1985) (August 1985)
Report on the Liability in Tort of Minors and the Liability of Parents for Damage Caused by Minors (LRC 17-1985) (September 1985)
Report on the Liability in Tort of Mentally Disabled Persons (LRC 18-1985) (September 1985)
Report on Private International Law Aspects of Capacity to Marry and Choice 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)
Eighth (Annual) Report (1985) (PI 4281)

Report on the Statute of Limitations: Claims in Respect of Latent Personal Injuries (LRC 21-1987) (September 1987)
Consultation Paper on Rape (December 1987)
Report on the Service of Documents Abroad re Civil Proceedings -the Hague Convention (LRC 22-1987) (December 1987)
Report on Receiving Stolen Property (LRC 23-1987) (December 1987)
Ninth (Annual) Report (1986-1987) (PI 5625)

Report on Rape and Allied Offences (LRC 24-1988) (May 1988) 4.01
Report on the Rule Against Hearsay in Civil Cases (LRC 25-1988) (September 1988)
Report on Malicious Damage (LRC 26-1988) (September 1988)
Report on Debt Collection: (1) The Law Relating to Sheriffs (LRC 27-1988) (October 1988)
Tenth (Annual) Report (1988) (PI 6542)

Report on Debt Collection: (2) Retention of Title (LRC 28-1988) (April 1989)
Report on the Recognition of Foreign Adoption Decrees (LRC 29-1989) (June 1989)
Report on Land Law and Conveyancing Law: (1) General Proposals (LRC 30-1989) (June 1989)
Consultation Paper on Child Sexual Abuse (August 1989)
Report on Land Law and Conveyancing Law: (2) Enduring Powers of Attorney (LRC 31-1989) (October 1989)
Eleventh (Annual) Report (1989) (PI 7448)

Report on Child Sexual Abuse (LRC 32-1990) (September 1990)
Report on Sexual Offences against the Mentally Handicapped (LRC 33-1990) (September 1990)
Report on Oaths and Affirmations (LRC 34-1990) (December 1990)

Report on Confiscation of the Proceeds of Crime (LRC 35-1991) (January 1991)
Consultation Paper on the Civil Law of Defamation (March 1991)
Report on the Hague Convention on Succession to the Estates of Deceased Persons (LRC 36-1991) (May 1991)
Twelfth (Annual) Report (1990) (PI 8292)
Consultation Paper on Contempt of Court (July 1991)
Consultation Paper on the Crime of Libel (August 1991)
Report on the Indexation of Fines (LRC 37-1991) (October 1991)
Report on the Civil Law of Defamation (LRC 38-1991) (December 1991)

Report on Land Law and Conveyancing Law: (3) The Passing of Risk from Vendor to Purchaser (LRC 39-1991) (December 1991); (4) Service of Completion Notices (LRC 40-1991) (December 1991)
Thirteenth (Annual) Report (1991) (PI 9214)

Report on the Crime of Libel (LRC 41-1991) (December 1991)

Report on United Nations (Vienna) Convention on Contracts for the International Sale of Goods 1980 (LRC 42-1992) (May 1992)

Report on the Law Relating to Dishonesty (LRC 43-1992) (September 1992)

Land Law and Conveyancing Law: (5) Further General Proposals (LRC 44-1992) (October 1992)

Consultation Paper on Sentencing (March 1993)

Consultation Paper on Occupiers' Liability (June 1993)

Fourteenth (Annual) Report (1992) (PN 0051)

Report on Non-Fatal Offences Against The Person (LRC 45-1994) (February 1994)

Consultation Paper on Family Courts (March 1994)

Report on Occupiers' Liability (LRC 46-1994) (April 1994)

Report on Contempt of Court (LRC 47-1994) (September 1994)

Fifteenth (Annual) Report (1993) (PN 1122)

Report on the Hague Convention Abolishing the Requirement of Legalisation for Foreign Public Documents (LRC 48-1995) (February 1995)

Consultation Paper on Intoxication as a Defence to a Criminal Offence (February 1995)

Report on Interests of Vendor and Purchaser in Land during the period between Contract and Completion (LRC 49-1995) (April 1995)

An Examination of the Law of Bail (LRC 50-1995) (August 1995)

Sixteenth (Annual) Report (1994) (PN 1919)

Report on Intoxication (LRC 51-1995) (November 1995)

Report on Family Courts (LRC 52-1996) (March 1996)

Seventeenth (Annual) Report (1995) (PN 2960)

Report on Sentencing (LRC 53-1996) (August 1996)

Consultation Paper on Privacy: Surveillance and the Interception of Communications (September 1996)

Report on Personal Injuries: Periodic Payments and Structured Settlements (LRC 54-1996) (December 1996)

Eighteenth (Annual) Report (1996) (PN 3760)

Consultation Paper on the Implementation of The Hague Convention on Protection of Children and Co-operation in Respect of Intercountry Adoption, 1993 (September 1997)

Report on The Unidroit Convention on Stolen or Illegally Exported Cultural Objects (LRC 55-1997) (October 1997)

Report on Land Law and Conveyancing Law; (6) Further General Proposals including the execution of deeds (LRC 56-1998) (May 1998)

Consultation Paper on Aggravated, Exemplary and Restitutionary Damages (May 1998)

Nineteenth (Annual) Report (1997) (PN 6218)

Report on Privacy: Surveillance and the Interception of Communications (LRC 57-1998) (June 1998)

Report on the Implementation of the Hague Convention on Protection of Children and Co-operation in Respect of Intercountry Adoption, 1993 (LRC 58-1998) (June 1998)

Consultation Paper on the Statutes of Limitation: Claims in Contract and Tort in Respect of Latent Damage (Other Than Personal Injury) (November 1998)

Twentieth (Annual) Report (1998) (PN 7471)

Consultation Paper on Statutory Drafting and Interpretation: Plain Language and the Law (LRC CP14-1999) (July 1999)

Consultation Paper on Section 2 of the Civil Liability (Amendment) Act, 1964: The Deductibility of

Collateral Benefits from Awards of Damages (LRC CP15-1999) (August 1999)
Report on Gazumping (LRC 59-1999) (October 1999)
Twenty First (Annual) Report (1999) (PN 8643)

Report on Aggravated, Exemplary and Restitutionary Damages (LRC 60-2000) (August 2000)
Second Programme for examination of certain branches of the law with a view to their reform: 2000-2007 (PN 9459) (December 2000)
Consultation Paper on the Law of Limitation of Actions arising from Non-Sexual Abuse Of Children (LRC CP16-2000) (September 2000)
Report on Statutory Drafting and Interpretation: Plain Language and the Law (LRC 61-2000) (December 2000)
Report on the Rule against Perpetuities and Cognate Rules (LRC 62-2000) (December 2000)
Report on the Variation of Trusts (LRC 63-2000) (December 2000)

Report on The Statutes of Limitations: Claims in Contract and Tort in Respect of Latent Damage (Other than Personal Injury) (LRC 64-2001) (March 2001)
Consultation Paper on Homicide: The Mental Element in Murder (LRC CP17-2001) (March 2001)
Seminar on Consultation Paper: Homicide: The Mental Element in Murder (LRC SP 1-2001)
Twenty Second (Annual) Report (2000) (PN 10629)

Consultation Paper on Penalties for Minor Offences (LRC CP18-2002) (March 2002)
Consultation Paper on Prosecution Appeals in Cases brought on Indictment (LRC CP19-2002) (May 2002)
Report on the Indexation of Fines: A Review of Developments (LRC 65-2002) (July 2002)
Twenty Third (Annual) Report (2001) (PN 11964)
Report on the Acquisition of Easements and Profits à Prendre by Prescription (LRC 66-2002) (December 2002)
Report on Title by Adverse Possession of Land (LRC 67-2002) (December 2002)
Report on Section 2 of the Civil Liability (Amendment) Act 1964: The Deductibility of Collateral Benefits from Awards of Damages (LRC 68-2002) (December 2002)

Consultation Paper on Judicial Review Procedure (LRC CP20-2003) (January 2003)
Report on Penalties for Minor Offences (LRC 69-2003) (February 2003)
Consultation Paper on Business Tenancies (LRC CP 21-2003) (March 2003)
Report on Land Law and Conveyancing Law: (7) Positive Covenants over Freehold Land and other Proposals (LRC 70-2003) (March 2003)
Consultation Paper on Public Inquiries Including Tribunals of Inquiry (LRC CP 22 – 2003) (March 2003)
Consultation Paper on The Law and the Elderly (LRC CP 23 – 2003) (June 2003)
Consultation Paper on A Fiscal Prosecutor and A Revenue Court (LRC CP 24 – 2003) (July 2003)
Consultation Paper on Multi-Party Litigation (Class Actions) (LRC CP 25 – 2003) (July 2003)
Consultation Paper on Corporate Killing (LRC CP 26 – 2003) (October 2003)
Consultation Paper on Homicide: The Plea of Provocation (LRC CP 27 – 2003) (October 2003)
Seminar on Consultation Paper: Law and the Elderly (LRC SP 2-2003) (November 2003)
Twenty Fourth (Annual) Report (2002)
Consultation Paper on General Law of Landlord and Tenant (LRC CP 28 – 2003) (December 2003)

Report on Judicial Review Procedure (LRC 71-2004) (February 2004)
Consultation Paper on the Establishment of a DNA Database (LRC CP 29-2004) (March 2004)
Consultation Paper on Judgment Mortgages (LRC CP 30-2004) (March 2004)
Consultation Paper on the Court Poor Box (LRC CP 31-2004) (March 2004)
Consultation Paper on the Rights and Duties of Cohabitees (LRC CP 32-2004) (April 2004)
Consultation Paper on Prosecution Appeals from Unduly Lenient Sentences in the District Court (LRC CP 33-2004) (June 2004)
Twenty Fifth (Annual) Report (2003) (July 2004)
Consultation Paper on the Reform and Modernisation of Land Law and Conveyancing Law (LRC CP 34-2004) (October 2004)
Report on A Fiscal Prosecutor and A Revenue Court (LRC 72 – 2004) (December 2004)

