



Twenty-Fifth Report 2003



The Law Reform Commission

AN COIMISIÚN UM ATHCHÓIRIÚ AN DLÍ



The Law Reform Commission

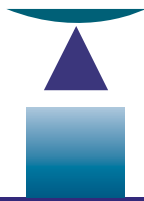
AN COIMISIÚN UM ATHCHÓIRIÚ AN DLÍ

Twenty-Fifth Report 2003

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The Law Reform Commission 2004

First Published
July 2004

ISSN 0332 - 0499
PN 3427



The Law Reform Commission



The Law Reform Commission

AN COIMISIÚN UM ATHCHÓIRIÚ AN DLÍ

35–39 Shelbourne Road, Ballsbridge, Dublin 4, Ireland

Telephone 353 1 637 7600 Fax 353 1 637 7601

E-mail: info@lawreform.ie Website: www.lawreform.ie

1 July 2004

Rory Brady, S.C.,
Attorney General,
Government Buildings,
Dublin 2.

Dear Attorney General,

In accordance with section 6 of the *Law Reform Commission Act 1975*, I have the honour to present the **Twenty-Fifth Report (2003)** of the Law Reform Commission.

It covers the period from 1st January 2003 to 31st December 2003.

Yours sincerely,

Declan Budd
President



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Foreword

During 2003, the Commission continued to make significant progress through the Second Programme of Law Reform, agreed with the Government in December 2000. The Commission published two Reports and nine Consultation Papers during the year.

The wide range of the Commission's Second Programme of Law Reform is reflected in the 30 separate matters identified for examination with a view to reform, including aspects of Administrative Law, Criminal Law and Procedure, Land Law and Conveyancing, the Legal System and Vulnerable Groups and the Law. The Commission's published output during the year reflected many aspects of these areas of law.

Thus, the *Consultation Paper on Judicial Review Procedure*, published in January (and on which a Report was published in February 2004), and the *Consultation Paper on Public Inquiries Including Tribunals of Inquiry*, published in March, deal with important aspects of administrative law, both procedural and substantive. Both papers helped to lay a basis for informed discussion and it is gratifying that recommendations made have been considered and several have been implemented. For example, in the context of public inquiries, suggestions made in the Consultation Paper about differing models for tribunals have been in debate, in particular in the Oireachtas discussion of the *Commissions of Investigation Bill 2003*. It is also hoped that the need for a central secretariat for public inquiries, recommended in the Consultation Paper, will also be recognised. Such a secretariat could build up a fund of information and precedents for those engaged in public inquiries.

The Programme's emphasis on the general criminal law is reflected in the *Consultation Paper on Corporate Killing* and the *Consultation Paper on Homicide: The Plea of Provocation*, both published in October. Similarly, the *Report on Penalties for Minor Offences*, published in February, explores an important aspect of the jurisdiction of the courts in criminal matters. On foot of a reference from the Attorney General, the Commission published the *Consultation Paper on A Fiscal Prosecutor and A Revenue Court* in July 2003, which includes an appraisal of the Revenue system and sets out options for reform, but concluded against changing to an independent Fiscal Prosecutor or a separate Revenue Court.

The Commission's long-standing commitment to reform of landlord and tenant law, land law and conveyancing (to which additional impetus was given by the e-conveyancing project begun in November 2002) is reflected in the *Consultation Paper on Business Tenancies and Report on Land Law and Conveyancing Law: (7) Positive Covenants over Freehold Land and other Proposals*, both published in March, and the *Consultation Paper on General Law of Landlord and Tenant*, published in December 2003.

In relation to the Legal System generally, the Commission published a *Consultation Paper on Multi-Party Litigation (Class Actions)* in July 2003 and work began in early 2004 on a Report to contain the Commission's recommendations on this important topic.

The reference in the Second Programme to Vulnerable Groups and the Law was reflected in the publication of the *Consultation Paper on Law and the Elderly* in June, and the Commission is particularly grateful to Her Excellency President Mary McAleese for her thoughtful comments when launching the Paper at the Commission.

In October, Professor David Gwynn Morgan completed his fruitful time directing research with the Commission. Since 1999, we have been indebted to him for his capacity for hard work, his ingenuity and objectivity, and his consideration for opposing viewpoints. So often he enlivened discussion with a sage and witty comment on an unexpected angle or with a pithy description.

The Commission is grateful for the assistance provided by the various Working Groups, some established for ad-hoc purposes such as the Working Group on Judicial Review Procedure, and others for long-term projects, such as the Working Groups on e-conveyancing and Landlord and Tenant Law. The continued availability of the expertise and voluntary commitment of the members of these Working Groups greatly assists the Commission in its ongoing work and is greatly to the public benefit.

The Commission is also grateful for the good relationship it enjoys with Government departments with which we liaise. The Commission is also appreciative of the support afforded it by the Attorney General and the Director General of the Office of the Attorney General and their staff.

Declan Budd
PRESIDENT



Réamhrá

I rith 2003, lean an Coimisiún ar aghaidh le dul chun cinn suntasach tríd an Dara Clár um Athchóiriú an Dlí a aontáíodh leis an Rialtas i mí na Nollag 2000. D'fhoilsigh an Coimisiún dhá Thuarascáil agus naoi gcinn de Pháipéir Chomhairleacha i gcaitheamh na bliana.

Léirítear réimse leathan Dara Clár um Athchóiriú an Dlí de chuid an Choimisiúin sna 30 ábhar a oithníodh le scrúdú d'fhonn iad a athchóiriú, gnéithe de Dhlí an Riaracháin, Dlí Coiriúil agus Próiséis, Dlí na Talún agus an Tíolacais, an Córas Dlí agus Aicmí Leochaileacha agus an Dlí. Léiríonn soláthar foilsitheoireachta an Choimisiúin i rith na bliana mórán gnéithe de na limistéir seo den dlí.

Dá bhrí sin pléann an *Páipéar Comhairliúcháin ar an Nós Imeachta a bhaineann le hAthbhreithniú Breithiúnach*, a foilsíodh i mí Eanáir (agus ar foilsíodh *Tuarascáil* faoi i mí Feabhra 2004) agus an *Páipéar Comhairliúcháin ar Fhiosrúcháin Phoiblí lena n-áirítear Binsí Fiosrúcháin*, a foilsíodh i mí na Márta le gnéithe tábhachtacha de dhlí an riaracháin maidir le próiséis agus ábhar araon. Leag an dá pháipéar bunús pléite agus is ábhar sásaimh é go ndearnadh machnamh ar mholtaí a rinneadh agus gur cuireadh cuid acu i bhfeidhm. Mar shampla, i gcomhthéacs na bhfiosrúcháin poiblí, rinneadh díospóireacht faoi mholtaí sa Phlé-Phaipéar i dtaobh modhanna difriúla le haghaidh binsí fiosraithe, go háirithe sa phlé san Oireachtas i dtaobh Bhille na gCoimisiún Fiosraithe. Táthar ag súil fosta, go n-aithneofar an riachtanas le haghaidh rúnaíocht lárnach i gcomhair na bhfiosrúcháin poiblí, mar a mholtar sa Phlé-Phaipéar. D'fhéadfadh a leithéid de rúnaíocht mórán eolais agus fasach a chruinniú dóibh siúd a bhíonn páirteach sna fiosrúcháin poiblí.

Léirítear an bhéim a chuireann an Coimisiún ar an dlí coiriúil i gcoitinne sa *Páipéar Comhairliúcháin ar Mharú Corparáideach* agus sa *Páipéar Comhairliúcháin ar Dhúnbhású: Briogadh a Phléadáil*, a foilsíodh le chéile i mí Dheireadh Fómhair. Sa tslí chéanna scrúdaíonn an *Tuarascáil ar Phionóis mar gheall ar Mhionchionta*, a foilsíodh i mí Feabhra, gné tábhachtach de dhlínse na gcúirteanna i gcúrsaí coiriúla. De bharr tagairt ón Ard-Aighne d'fhoilsigh an Coimisiún an *Páipéar Comhairliúcháin ar Ionchúisitheoir Fioscach agus Cúirt Ioncaim* a bhfuil breithniú den chóras loncaim ann agus a chuireann roghanna athchóirithe chun cinn, ach a shocraigh gan athrú a mholadh i dtreo Cúisitheoir neamhspleách Airgeadais nó Cúirt Ioncaim faoi leith.

Léiríonn an *Páipéar Comhairliúcháin ar Thionóntachtaí Gnó* agus an *Tuarascáil ar an Dlí Talún agus ar an Dlí Tíolachta: (7) Cúnaint Dheimhneacha ar Thalamh Ruilse agus Tograí eile*, ar foilsíodh an dá cheann acu i mí na Márta, agus an *Páipéar Comhairliúcháin ar an Dlí Thiarnaí Talún agus Tionóntaithe*, a foilsíodh i mí na Nollag, suim fhada an Choimisiúin (ar cuireadh dlús léi leis an tionscnamh e-tíolacais a tosaíodh i mí na Samhna 2002) in athchóiriú dlí thiarnaí talún agus tionóntaithe, dlí na talún agus an tíolacais.

Maidir leis an gCóras Dlí i gcoitinne, d'fhoilsigh an Coimisiún *Páipéar Comhairliúcháin ar Dhlíthíocht Il-Pháirtí (Caingne Aicme)* i mí Iúil 2003 agus cuireadh tús le hobair ar Thuarascáil a mbeidh moltaí an Choimisiúin ar an ábhar tábhachtach seo inti.

Léiríodh an tagairt sa Dara Clár d'Aicmí Leochaileacha agus an Dlí i bhfoilsíú an *Páipéar Comhairliúcháin ar an Dlí agus Daoine Scothaosta* i mí an Mheithimh, agus tá an Coimisiún thar a bheith buíoch dá Soilse, an tUachtarán Máire Mhic Giolla Íosa as a cuid ráite machnamhacha nuair a sheol sí an Páipéar ag an gCoimisiún.

I mí Dheireadh Fómhair chríochnaigh an tOllamh David Gwynn Morgan a théarma torthúil ag stiúir taighde sa Choimisiún. Ó 1999, táimid faoi chomaoine aige as a chumas cruaoibre, a intliúlacht agus a oibiachtúlacht, agus as tuairimí éagsúla a thabhairt san áireamh. Go mion minic spreag sé an plé le ráiteas ciallmhar agus greannmhar ar ghné gan choinne nó le tráchtairacht ghonta.

Tá an Coimisiún buíoch as an gcabhair atá curtha ar fáil ag na Grúpaí Oibre éagsúla, cuid acu tugtha le chéile ar chúiseanna aonuaire mar an Grúpa Oibre ar Nós Imeachta a bhaineann le hAthbhreithniú Breithiúnach, agus cuid eile ar thionscnaimh fhadthéarmacha, mar na Grúpaí Oibre ar e-tíolacais agus ar Dhlí Tiarnaí Talún agus Tionóntaithe. Cuidíonn toil leanúnach agus díograis deonach na mball de chuid na nGrúpaí Oibre go mór leis an gCoimisiún chun a ghnó a chur ar aghaidh agus is móide an leas poiblí dá mbar.

Tá an Coimisiún buíoch freisin as an dea-chaidreamh atá aige leis na ranna Rialtais a bhaineann leis. Is mór ag an gCoimisiún freisin an tacaíocht a fhaightear ón Ard-Aighne agus ó Stiúrthóir Ginearálta Oifig an Ard-Aighne agus óna gcuid foirne.

Declan Budd
UACHTARÁN



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 Mc Auley, BCL LLB, MPhil, LL.D,
*Jean Monnet Professor of Criminal Law,
University College Dublin.*



Marian Shanley, BCL,
Solicitor.



John Quirke,
Secretary.

Commission Staff in 2003

DIRECTOR OF RESEARCH:

Raymond Byrne,
BCL, LLM, Barrister-at-Law,
on secondment from the School of Law and
Government, Dublin City University*

LEGAL RESEARCHERS:**

Deirdre Ahern, *LLB, LLM (Cantab), Solicitor*
Simon Barr, *LLB (Hons), BSc*
Patricia Brazil, *LLB, Barrister-at-Law*
Nessa Cahill, *LLB, LLM (Bruges),
Barrister-at-Law*
Ronan Flanagan, *LLB, LLM (Cantab)*
Glen Gibbons, *BA, LLB (NUI), LLM (Cantab)*
Claire Hamilton, *LLB (Ling Franc), M Litt,
Barrister-at-Law*
Darren Lehane, *BCL, LLM (NUI)*
Claire Morrissey, *BCL (Int'l), LLM
(K U Leuven)*
Mark O'Riordan, *BCL, Barrister-at-Law*
Philip Perrins, *LLB, LLM (Cantab), of the
Middle Temple, Barrister*
Trevor Redmond, *LLB, LLM (Cantab)*
Eadaoin Rock, *LLB, LLM (Cantab)*
Jennifer Schweppe, *BCL (Euro)*

ADMINISTRATIVE STAFF:

Project Manager: **Pearse Rayel**
Legal Information Manager: **Marina Greer**,
BA (Mod), H Dip LIS
Cataloguer: **Eithne Boland**, *BA (Hons),
H Dip Ed, H Dip LIS*
Executive Officer: **Denis McKenna**
Private Secretary to the President: **Liam Dargan**
Clerical Officers:
Alan Bonny
Teresa Hickey***
Sharon Kineen
Debbie Murray
Gerry Shiel

* From September 2003

** Researchers are employed on short-term contracts

** The Commission notes with great regret the death
of Teresa Hickey in 2003



President Mary McAleese with Commissioners and staff of the Commission in June 2003 at the launch of the Consultation Paper *Law and the Elderly*.



Chapter One

Overview of the Commission's Work in 2003

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 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, which is discussed in the Commission's 2002 Annual Report, followed the publication (in 1997) of the *Review of Organisation and Management of the Law Reform Commission*. Both Plans identify the role 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." The Plans note the importance of a



comprehensive and forward-looking programme of law reform and the need to adapt current methods of work in order to achieve the goals to be set out in the Second Programme for Law Reform.

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.

Methodology

To achieve the goals set out in the Second Programme for Law Reform, 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 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, it is sometimes necessary for the Commission to employ experts to provide specialist expertise 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. In order to assist the Commission in monitoring their achievement of these targets, regular reviews of the Work Programme are conducted. Chapter 3 outlines the Commission's work in progress in 2003.

The Consultation Process

The consultation process is of central importance to the Commission's work. Consultation may take several forms. In the initial stages of its research, the Commission may meet with experts 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 either be published, or, if the subject is a specialised one, distributed to relevant experts. 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. In some cases, before the drafting of the Report, a seminar will be held to which the Commission may invite interested parties, or those who have made submissions.

Communication with Consultative Committee and Government Departments

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. To facilitate this communication and to ensure that other interested bodies were involved, 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. The Commission continues to keep the Consultative Committee informed of its rolling Work Programme through regular meetings, and these provide a valuable forum for exchange of information for all those involved.

The Commission also has an arrangement with the Department of Justice, Equality and Law Reform, providing for regular meetings to review matters of mutual interest. These meetings are proving very useful in that they enable both bodies to have a good working knowledge of issues being currently addressed by them

Meeting with Oireachtas Committee

In 2003, the Commission was invited by the Chairperson of the Joint Committee on Justice, Equality, Defence and Women's Rights to attend a meeting of the Joint Committee to discuss the current work programme of the Commission. A delegation from the Commission appeared before the Joint Committee in public session on 26 February. Following a presentation by the Commission, there was a discussion with members of the Joint Committee on a question and answer basis. The Chairperson indicated that the Joint Committee would explore further the issues raised at the meeting and hold regular meetings with the Commission in the future. The Commission greatly welcomes this development.

Conferences, Visits and Media Contacts

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. 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 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 2003

In February 2003, two references were received from the Attorney General pursuant to section 4(2)(a) of the 1975 Act formally 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). The Commission will return to these Consultation Papers in the Annual Report for 2004.

COMMISSION PUBLICATIONS IN 2003

The Commission published two Reports and nine Consultation Papers during 2003. These were:

- *Consultation Paper on Judicial Review Procedure* (LRC CP 20-2003) (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 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)
- *Consultation Paper on General Law of Landlord and Tenant* (LRC CP 28-2003) (December 2003)

NEW DIRECTOR OF RESEARCH APPOINTED



Raymond Byrne BCL LLM is a barrister and lecturer in law at the School of Law and Government, Dublin City University and was appointed as Director of Research at the Commission in September 2003. As one of the leading academic lawyers in Ireland, he has written extensively on a wide range of subjects, including commercial law, criminal procedure and occupational safety and health law.

Raymond is co-author (with Prof Paul McCutcheon) of the academic text *The Irish Legal System* (2001) and author of *Safety, Health and Welfare at Work Law in Ireland* (2001). He is also co-author (with Prof William Binchy) of the *Annual Review of Irish Law* series which has provided a comprehensive and authoritative account of Irish Law for the past 15 years.

He was editor of the *Irish Law Times*, a leading journal of Irish law, from 1995 to 2000 and a member of the Board of the Irish National Accreditation Board (a division of Forfás) from 2000 to 2003. He was chair of the Irish Council for Civil Liberties from 1990 to 1991.



Chapter Two

The Second Programme of Law Reform

INTRODUCTION

As mentioned in Chapter 1, the *Second Programme for Law Reform*, on which work began at the beginning of 2001, identified the following branches of the law 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. Family Law
8. Commercial Law and the Law of Obligations

The full text of the Second Programme is contained in Appendix A, but these branches provide a convenient basis for outlining the published work of the Commission in 2003.

THE LEGAL SYSTEM

Multi-Party Litigation (Class Actions)

In July 2003, the Commission published its *Consultation Paper on Multi-Party Litigation (Class Actions)* (LRC CP 25-2003). This Consultation Paper concerns the procedure to be followed when numerous persons are pursuing the same cause of action against the same defendant or defendants (in Ireland, a recent example being the 'Army deafness claims'). In principle, subject to one exception, these are all separate actions to be pursued independently of each other. The exception is the 'representative action', which the Commission considers involves a number of practical drawbacks in a case involving several plaintiffs. The issue of fair and expeditious determination of such causes of action needs to be examined in particular with a view to reducing the cost of litigation. The Commission provisionally recommended that a 'multi-party litigation' procedure, as currently exists in many other jurisdictions, ought to be established. Work began in 2004 on the preparation of the Commission's Report on this topic. The Report will endeavour to examine the cost benefit arguments of such multi-party type litigation.

THE LAW OF EVIDENCE

Forensic Evidence

In February 2003, the Commission was requested by the Attorney General to examine the issue of the establishment of a DNA Database. In March 2004, the Commission published its *Consultation Paper on the Establishment of a DNA Database* (LRC CP 29-2004). We will return to discuss this topic in our Annual Report for 2004.



ADMINISTRATIVE LAW

Judicial Review

In January 2003, the Commission published its *Consultation Paper on Judicial Review Procedure* (LRC CP 20-2003). This Consultation Paper examines the judicial review procedure, which is a way of securing administrative justice in individual cases and also, more widely, of calling ministers, local authorities and other public bodies to account. The Paper examines the long-established conventional judicial review procedure as well as numerous special statutory regimes in such fields as planning and refugees. In conventional judicial review, the Paper provisionally recommends retention of the leave stage and the 'arguable case' test. It also recommends that, in relation to the availability of alternative remedies, a middle ground approach be applied. In the context of statutory schemes for judicial review, the Paper provisionally recommends the retention of the leave stage and of the higher standard of 'substantial grounds,' which it considers is justifiable. A number of recommendations concern time limits in judicial review procedure, greater use of case management and the awarding of costs. The Paper did not recommend the introduction of an 'Administrative Court' or of a 'single order' in judicial review cases. The essential thrust of these recommendations were retained in the Commission's *Report on Judicial Review Procedure* (LRC 71-2004), published in 2004, to which the Commission will revert in its 2004 Annual Report.

Public Inquiries including Tribunals of Inquiry

In March 2003, the Commission published its *Consultation Paper on Public Inquiries Including Tribunals of Inquiry* (LRC CP 22-2003). This Consultation Paper comes against the background of the establishment in Ireland in recent years of numerous inquiries into various matters of public concern, ranging from major disasters involving loss of life to allegations of wrongdoing in the land development and planning process. Most of these have been conducted under the *Tribunals of Inquiry (Evidence) Act 1921*, as amended, which is perceived to produce inquiries that are excessively costly. The Paper provisionally recommends the enactment of legislation providing for a private, low-key inquiry which would focus on the wrong or malfunction that occurred in a system rather than on individual wrongdoing. The Commission also notes in the Consultation Paper the publication of the *Commissions of Investigation Bill 2003*, which is still before the Oireachtas at the time of writing this Annual Report. The Paper also recommended the establishment of a central secretariat for public inquiries, which could build up a fund of information and precedents for those engaged in public inquiries. It also recommends procedural changes concerning the selection of an appropriate form of inquiry, drafting terms of reference, the rights of individuals and organisations to be heard and represented and the awarding of legal costs. It also makes provisional recommendations on the effect of public inquiries on downstream civil and criminal proceedings.

CRIMINAL LAW

Corporate Criminal Liability

In October 2003, the Commission published its *Consultation Paper on Corporate Killing* (LRC CP 26-2003). This Consultation Paper deals with the liability of corporations for the death of human persons arising from gross recklessness. In light of the ongoing debate on the issue of whether,



and to what extent, corporate entities should be subject to the general criminal law, the Consultation Paper reviews the literature on this important matter. On the specific issue addressed, the Commission accepts that it is widely perceived that the current law does not deal adequately with corporations and the persons who control them in circumstances where corporate wrongs result in death. The Paper reviews the current law and provisionally recommends that a new offence of corporate killing should be introduced, to be prosecuted on indictment only, where gross recklessness of a 'high managerial agent' involving a substantial risk of causing serious personal injury is a cause of death. The offence would apply to 'undertakings, which would include public sector and private sector corporate entities and also unincorporated entities. It would provide for unlimited fines on corporations and other ancillary penalties such as community service and publicity orders. A separate offence for high managerial agents would carry a penalty of imprisonment for up to 5 years and disqualification from holding high management office.

Defences: Provocation

In October 2003, the Commission published its *Consultation Paper on Homicide: the Plea of Provocation* (LRC CP 27-2003). This Consultation Paper examines the plea of provocation, which operates as a partial defence to murder, reducing the offence to manslaughter. The Paper reviews the existing law in Ireland, which currently applies a subjective test for establishing the plea of provocation, thus largely reducing the issue to one of whether the accused lost control. The Paper provisionally recommends that a version of the objective test, which focuses on standards of conduct which could fairly be expected of accused persons in response to untoward provocative behaviour – and which is applied in almost every other common law jurisdiction - should be introduced. The Paper accepts that the objective test should take account of the accused's personal characteristics, but should not feature in assessing the power of self-control of the ordinary person. The Paper also recommends a more flexible approach to the traditional requirement that the provocation must be followed almost immediately by the killing, without a "cooling off" period. This would have a particular relevance to a violent domestic relationship.

Penalties for Minor Offences

In February 2003, the Commission published a *Report on Penalties for Minor Offences* (LRC 69-2003). This Report, which follows from a Consultation Paper of March 2002 (LRC CP 18-2002), recommends that, ideally, a term of imprisonment of more than 6 months should only apply following a jury trial, with a minority recommendation that this be implemented in legislation. The Report recommends that the current maximum permissible fines for minor offences conventionally included in legislation could be increased, having regard to the changes in the value of money. The Report also recommended that, where fines are imposed, the means of a defendant, whether an individual or a corporate body, should be taken into account. For corporate offenders, the Report recommends that the maximum fine possible should be increased by a factor of three times that applicable to an individual.

Procedure in Criminal Cases: Revenue

In July 2003, the Commission published a Consultation Paper on a Fiscal Prosecutor and a Revenue Court (LRC CP 24-2003). This Consultation Paper follows from a request from the Attorney General to the Commission in 2002 to consider the establishment of a specialist Fiscal



Prosecutor and Revenue Court. This in turn followed an Oireachtas (Parliamentary) Inquiry into Revenue Matters, which had examined this matter. While the Paper recommends that a number of changes to existing law and practice be made, it provisionally recommends that neither a Fiscal Prosecutor nor a separate Revenue Court be established. Among the reforms proposed were changes to the appeals procedure in revenue matters and for increased transparency in the selection of the Appeal Commissioners, who constitute the independent body which deals with some appeals in revenue matters. The Paper does not recommend the establishment of the equivalent of a Serious Fraud Office.

Prosecution Appeals from the District Court


In February 2003, the Attorney General requested the Commission to consider the issue of providing for appeals against unduly lenient sentences in the District Court. Substantial progress on this request was made during 2003 and a *Consultation Paper on Appeals against Unduly Lenient Sentences in the District Court* (LRC CP 33-2004) was published in 2004, to which we will revert in the 2004 Annual Report.

LAND LAW AND CONVEYANCING

Landlord and Tenant Law

The Commission also continues its work in connection with reform of the law of landlord and tenant and published two Consultation Papers in 2003. In March 2003, the Commission published a *Consultation Paper on Business Tenancies* (LRC CP 21-2003). This Consultation Paper is the first in a series on Landlord and Tenant Law which aims to consolidate landlord and tenant legislation in Ireland, including publication of a draft consolidated *Landlord and Tenant Bill*. Reiterating the Commission's views in its *Report on Land Law and Conveyancing Law: (1) General Proposals* (LRC 30-1989), the Paper provisionally recommends that while repeal of the current statutory scheme for business tenancies would not be justified, provision should be made for contracting-out where independent legal advice has been obtained in advance and subject to a prominent 'health warning.' The Paper also provisionally recommends: that a statutory definition of tenancy be put in place to distinguish a tenancy from other relationships, such as licences; that the State should be bound by landlord and tenant legislation; that the current arrangements on restrictions on the rights to a new tenancy be recast; that the maximum term of a new tenancy be fixed at 15 years; that new arrangements be put in place governing compensation for disturbance; that, on the issue of compensation for improvements, the law be amended so that tenants should be expected to take a more commercial view of improvements; and that new provisions concerning a landlord's arbitrary and unreasonable conduct be enacted.

In December 2003, the Commission published a *Consultation Paper on the General Law of Landlord and Tenant* (LRC CP 28-2003), the second in its series on Landlord and Tenant Law which aims to consolidate landlord and tenant legislation in Ireland. Unlike the first in this series, the *Consultation Paper on Business Tenancies* (LRC CP 21-2003) (above), this second Consultation Paper deals with the general law. The Consultation Paper reviews both common law and statute law, including the *Landlord and Tenant Amendment Act Ireland 1860* (commonly referred to as Deasy's Act) which continues as the foundation of the law of landlord and tenant in Ireland, and makes over one hundred provisional recommendations. It serves as a comprehensive



review of all aspects of the relationship of landlord and tenant, from the precise nature of that relationship and its formation to determination of tenancies and obligations of the respective parties.

Positive Covenants over Freehold Land and other Proposals

In March 2003, the Commission published a *Report on Land Law and Conveyancing: (7) Positive Covenants over Freehold Land and other Proposals* (LRC 70-2003). This Report deals with six distinct areas of land law and conveyancing, namely: the enforceability of freehold covenants; the definition of 'purchaser' under succession law; the situation where two or more joint tenants to a property die simultaneously; recommended legislation to deal with the problems associated with compulsory registration of certain property arising from the disestablishment of the Irish church in the 19th Century; the issue of a joint tenant unilaterally severing portion of a joint tenancy; and time limits governing claims to a deceased's estate. The Report's recommendations are consolidated into a draft *Land Law and Conveyancing Bill*.

VULNERABLE GROUPS AND THE LAW

Law and the Elderly

In June 2003, the Commission published a *Consultation Paper on Law and the Elderly* (LRC CP 23-2003). This Consultation Paper, part of a series reflecting an increasing social awareness of the needs of vulnerable groups in society, focuses on the needs of vulnerable or mentally incapable older people. The Paper deals with a number of diverse topics. It recommends that there should be a statutory presumption of capacity and a detailed statutory definition of general legal incapacity. It discusses current judicial and administrative arrangements for decision-making on behalf of incapacitated older persons, and makes substantial provisional recommendations for reformulation of the law of wardship by the addition of a new Office of the Public Guardian. It makes provisional recommendations concerning the legal protection of vulnerable older people with respect to financial and property transactions, the law governing wills and testamentary capacity. It also recommends changes concerning the law on enduring powers of attorney. In November 2003, the Commission published a *Seminar Paper on the Consultation Paper on Law and the Elderly* (LRC SP 2-2003) in conjunction with the public seminar held as part of the consultation process following from the publication of the Consultation Paper.



Chapter Three

The Commission's Work in Progress in 2003

INTRODUCTION

In Chapter 2, the Commission outlined its publications during 2003. 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. Family Law
8. 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

As noted in Chapter 2, the Commission published its *Consultation Paper on Multi-Party Litigation (Class Actions)* (LRC CP 25-2003) during the year. The Commission hopes to publish a Report on this topic in due course. The Report will endeavour to examine the cost benefit arguments of such multi-party type litigation.


Statutory Drafting and Interpretation

In December 2000, the Commission published its *Report on Statutory Drafting and Interpretation: Plain Language and the Law* (LRC 61-2000). The Commission was particularly conscious that the publication of this Report coincided with the publication of the Interpretation Bill 2000, which seeks to replace the *Interpretation Act 1937*. The Commission notes that the essential principles contained in the *Report on Statutory Drafting and Interpretation: Plain Language and the Law* were incorporated into the Interpretation Bill 2000 as passed by Dáil Éireann in July 2003.

LAW OF EVIDENCE

Forensic Evidence

In February 2003, the Commission was requested by the Attorney General to examine the issue



of the establishment of a DNA Database. Considerable progress was made during 2003 in the consideration of this complex issue. In 2004, the Commission published its *Consultation Paper on the Establishment of a DNA Database* (LRC CP 29-2004). The Commission will return to discuss this in its Annual Report for 2004.

ADMINISTRATIVE LAW

Judicial Review

In January 2003, the Commission published its *Consultation Paper on Judicial Review Procedure* (LRC CP 20-2003). Working in conjunction with its Working Group on Judicial Review Procedure, substantial progress was made in 2003 towards completion of a Report on this topic. This culminated in the *Report on Judicial Review Procedure* (LRC 71-2004), published in 2004, to which the Commission will revert in its 2004 Annual Report.

Public Inquiries including Tribunals of Inquiry

As noted in Chapter 2, in March 2003 the Commission published its *Consultation Paper on Public Inquiries Including Tribunals of Inquiry* (LRC CP 22-2003). In September 2003, the Commission organised a public seminar in connection with this topic with a view to publish a Report in 2004.

CRIMINAL LAW

Defences

As noted in Chapter 2, in October 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. Substantial progress was made during 2003 on two other Consultation Papers in this series, dealing with Legitimate Defence and Duress and Necessity.

Procedure in Criminal Cases: Revenue

As noted in Chapter 2, in July 2003 the Commission published a *Consultation Paper on a Fiscal Prosecutor and a Revenue Court* (LRC CP 24-2003). The Commission held a seminar on this Consultation Paper in Autumn 2003, and it is hoped that a Report on this will be published in 2004, to which we will revert in detail in the 2004 Annual Report.

Prosecution Appeals from the District Court

In February 2003, the Attorney General requested the Commission to consider the issue of providing for appeals against unduly lenient sentences in the District Court. Substantial progress on this request was made during 2003 and a *Consultation Paper on Appeals against Unduly Lenient Sentences in the District Court* (LRC CP 33-2004) was published in 2004, to which we will revert in the 2004 Annual Report.

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 engaged in the initial stages of scoping a Consultation Paper on this general topic during 2003. The Commission intends to examine the developments in Restorative Justice in this jurisdiction and in other jurisdictions such as New Zealand, Australia and Canada, where it is already an integral part of the criminal justice system. In the meantime, the Commission continued during 2003 to examine two discrete topics under this heading, the Court Poor Box and the use of victim impact statements. In March 2004, the Commission published its *Consultation Paper on the Court Poor Box* (LRC 31-2004), to which we will revert in the 2004 Annual Report.

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 2003 in addressing the many issues raised in the Second Programme concerning land law and conveyancing. The Commission is conscious that substantive land law and the law of conveyancing was in need of major reform with a view to its consolidation and restatements in modern form. The Commission accordingly concluded in 2002 that it should embark on a major project to modernise the substantive law, which needed to incorporate an e-conveyancing element. The Commission concluded that such a major project could only be undertaken jointly with other major stakeholders. The Commission is extremely grateful for the support given to it in this project by the Department of Justice, Equality and Law Reform. This project has a number of different elements. A major part involves a review of existing legislation on substantive land law and conveyancing (which includes over 100 pre-1922 statutes, commencing with *De Donis Conditionalibus* of 1285 up to the *Conveyancing Act 1911*) with a view to preparing a codification Bill which will repeal, update and reform (as appropriate) the law relating to land law and conveyancing. In this context, the Commission has agreed a programme of work covering the period 2003 to 2005 with the Department of Justice, Equality and Law Reform. This includes the production of a Consultation Paper (to include Heads of a Draft Bill) by October 2004, a Conference in November 2004, and following the normal consultation process, the preparation of draft legislation in 2005. The Commission are greatly indebted to the members of the Working Group, chaired by Professor John Wylie, for the ongoing commitment to this project.

The Law of Trusts including the Law of Charities

During 2003, the Commission continued to work in consultation with relevant government Departments who have been involved in the general reform of this area of law, in particular charity law, and progress was made in this respect during the year.

The Law relating to Condominiums (Multi-Unit Developments)

In 2003, the Commission formed an expert group on condominiums, which includes practitioners, property managers and representatives from the Department of the Environment, Heritage and Local Government. The Commission is aware that, in 2003, apartment developments (which are one of the multi-unit developments dealt with in this topic) represented up to 25% of the overall construction in the Irish property market. The working group will examine the need for statutory regulation of such developments or whether 'default' or 'rescue' provisions would be sufficient.



The Commission intends to publish a Consultation Paper on this area in due course, which will also examine the problem areas of management structures, dispute resolution, conveyancing service charges and consumer protection.

VULNERABLE GROUPS AND THE LAW

Law and the Elderly

In November 2003, the Commission organised a public seminar as part of the consultation process following from the publication of the *Consultation Paper on Law and the Elderly* (LRC CP 23-2003), discussed in Chapter 2.

The Law affecting Persons with Physical, Mental or Learning Disabilities

While the *Consultation Paper on Law and the Elderly* 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 in 2003 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. This work will also examine the issue of consent to medical treatment.

FAMILY LAW

Rights and Duties of Cohabitees

Substantial progress was made during 2003 on the completion a paper examining the rights and duties of cohabitees under a number of headings, including property, succession, maintenance, social welfare, pensions, taxation, health, conflicts of law and domestic violence. During 2003, the Commission decided that the paper should not deal with whether the status of cohabitation should be recognised, for example, by means of registered partnerships. In 2004, the Commission published its *Consultation Paper on the Rights and Duties of Cohabitees* (LRC CP 732-2004), which will be discussed in the 2004 Annual Report.

COMMERCIAL LAW AND THE LAW OF OBLIGATIONS

The Law of Torts

As discussed in the 2002 Annual Report, in December 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 head 25 of the General Scheme of a *Civil Liability and Courts Bill*, published in 2003, largely proposed to implement the recommendations in the Report. The Commission also notes that section 23 of the *Civil Liability and Courts Bill 2004*, as initiated in February 2004, contains a similar proposal.

The Information Society

The Second Programme 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 Commissions' e-conveyancing project, discussed above, involves an important initiative concerning this element of the Second Programme.



At the launch of the Commission's Consultation Paper on a Fiscal Prosecutor and a Revenue Court. L to r: The Chief Justice, Ronan Keane, Legal Researcher, Claire Morrissey, The Minister for Finance, Mr Charlie McCreevy T.D., who launched the Paper, and the President of the Commission, Mr Justice Declan Budd.



Chapter Four

Administration

INTRODUCTION

In this Chapter, the Commission outlines the administrative aspects of its work, which involve essential supports to the Commission in the implementation of its Rolling Work Programme.

LIBRARY

The primary role of the Law Reform Commission 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. In particular, 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.

WEBSITE

In order to create a greater degree of public awareness of the importance of law reform, the Commission has established a website (www.lawreform.ie), which 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 contains the full text of all Consultation Papers and Reports published by the Commission, which may be viewed online and downloaded. The Commission continues to monitor and update the website to ensure its continued effectiveness and to encourage detailed submissions in electronic format.

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 Attorney General's Office. 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 law library 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 2003. The Secretary 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 to the Commission

Throughout 2003, 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.

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 (Part 1 of 3)

* NOTE: The topics identified by means of an asterisk will be given priority by the Commission in addressing its tasks under the programme

TOPIC	MATTERS TO BE EXAMINED*
THE LEGAL SYSTEM	<p>Access to the law for the citizen and, in particular, the effectiveness of the promulgation and dissemination of statutes and statutory instruments.</p> <p>Limitation of actions.</p> <p>Class actions and representative actions taken in the public interest.</p> <p>Alternative dispute resolution.</p> <p>Statute Law: completion of the Commission's remit under its First Programme in the sphere of statutory drafting and interpretation.</p>
EVIDENCE	<p>Forensic evidence.</p> <p>Other aspects of the law of evidence in civil and criminal cases.</p>
ADMINISTRATIVE LAW	<p>* Tribunals of inquiry.</p> <p>Appeals from administrative decisions including judicial review.</p>
CIVIL RIGHTS LAW	<p>The law of privacy</p> <p>Privacy and the law of confidentiality;</p> <p>Privacy in the context of the criminal justice system: longevity of criminal records and the expunging of certain offences from the record;</p> <p>Privacy in specific institutional contexts: the workplace; the healthcare system; prisons.</p>
CRIMINAL LAW	<p>* The law of homicide.</p> <p>Defences including provocation, legitimate defence, duress and necessity.</p>

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
(Part 2 of 3)**

TOPIC	MATTERS TO BE EXAMINED*
CRIMINAL LAW	<p>Inchoate offences.</p> <p>Procedure in criminal cases.</p> <p>Restorative Justice.</p> <p>Corporate criminal liability.</p> <p>*Penalties for minor offences.</p>
LAW OF OBLIGATIONS	<p>The law of tort. Aspects of the law of compensation for personal injuries.</p> <p>The law of contract. Privity of contract and the rights of third parties.</p>
REAL AND PERSONAL PROPERTY	<p>*The law of trusts including the law of charities.</p> <p>*Succession law.</p> <p>The law relating to condominiums.</p> <p>The Commission will continue its general review of land and conveyancing law with the assistance of its standing specialist Working Group.</p>
COMMERCIAL LAW	<p>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.</p> <p>Exceptions to the <i>nemo dat quod non habet</i> principle on transfer of title to goods.</p>
LAW AND THE INFORMATION SOCIETY	<p>Electronic commerce and the Internet, where appropriate having regard to activities undertaken or to be undertaken by Government Departments and in particular:</p> <p>privacy on the internet and encryption.</p> <p>Liability of service providers.</p>

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
(Part 3 of 3)

TOPIC	MATTERS TO BE EXAMINED*
VULNERABLE GROUPS AND THE LAW	<p>Law and the elderly, including the legal protection of older persons transferring assets and 'advance care directives'</p> <p>The law affecting persons with physical, mental or learning disabilities, including issues of capacity, guardianship and the right to marry.</p>
FAMILY LAW	<p>The law of adoption – a general review.</p> <p>Rights and duties of co-habitees.</p>
INTERNATIONAL LAW	<p>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.</p>
MISCELLANEOUS PROVISIONS BILL	<p>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.</p>

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

(Part 1 of 4)

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:

- 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 Shivenen, BL

Trevor Redmond acts as Secretary/Researcher to the Group.

APPENDIX B

WORKING GROUPS

(Part 2 of 4)

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 acts as Secretary/Researcher to the Group.

WORKING GROUP ON JUDICIAL REVIEW PROCEDURE

The Commission in 2002 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

APPENDIX B

WORKING GROUPS

(Part 3 of 4)

- 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

- 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).

APPENDIX B

WORKING GROUPS

(Part 4 of 4)

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 Counihan, 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).

APPENDIX C

CONFERENCES AND VISITS

(Part 1 of 2)

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 2003 were the following:

In March, Commissioner Rickard-Clarke and Commissioner Shanley attended a Conference on Cohabitees held in the London School of Economics.

In April, the President of the Commission attended the 13th Annual Commonwealth Law Conference, held in Melbourne, Australia and the Fifth Worldwide Common Law Judiciary Conference, held in Sydney, Australia.

In May, Commissioner Rickard-Clarke presented a paper on The Law and the Elderly – A Case for Reform at the Annual Conference of the Society of Trust and Estate Practitioners (STEP) held in Dublin.

In May, members of the Commission had a meeting with Mary Hanafin TD, Minister of State at the Department of the Taoiseach (with special responsibility for the Information Society), on the subject of e-Conveyancing.

In September, Commissioner Rickard-Clarke presented a paper at a Discussion Forum on Mental Incapacity, held in Belfast.

In September, Commissioner Rickard-Clarke presented a paper on the subject of legal capacity at a Conference on Global Trends in Disability Law – the Context for Irish Law Reform, held by the Human Rights Commission, the Law Society of Ireland and the National Disability Authority.

In October, Commissioner Rickard-Clarke had a meeting with officials of the Department of Constitutional Affairs in London on the subject of Capacity.

In November, Commissioner Rickard-Clarke presented a paper at a Conference on Protection of Vulnerable Adults, held by the Western Health Board.

In November, Commissioner Rickard-Clarke chaired a session of a Conference on Legal Issues on Consent, held in Kerry by the National Federation of Voluntary Bodies.

In December, Commissioner Rickard-Clarke presented a paper at a Seminar on Legal Issues for the Elderly, held by the Dublin Solicitors Bar Association.

APPENDIX C

CONFERENCES AND VISITS

(Part 2 of 2)

The President is an *ex officio* member of the Working Group on the Jurisdiction of the Courts, established in 2001 by the Board of the Courts Service. The Working Group is chaired by The Hon. Mr Justice Nial Fennelly, Supreme Court. In May 2003, the Working Group published a *Report on the Criminal Jurisdiction of the Courts*.

Visitors to the Commission during the year included a delegation from the Ugandan Law Reform Commission and a group of judges from Lithuania.

LIST OF LAW REFORM COMMISSION'S PUBLICATIONS

All Publications on Website - www.lawreform.ie

First Programme for Examination of Certain Branches of the Law with a View to their Reform (December 1976) (PrI 5984)	€0.13
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)	€1.40
Working Paper No 2-1977, The Law Relating to the Age of Majority, the Age for Marriage and Some Connected Subjects (November 1977)	€1.27
Working Paper No 3-1977, Civil Liability for Animals (November 1977)	€3.17
First (Annual) Report (1977) (PrI 6961)	€0.51
Working Paper No 4-1978, The Law Relating to Breach of Promise of Marriage (November 1978)	€1.27
Working Paper No 5-1978, The Law Relating to Criminal Conversation and the Enticement and Harboursing of a Spouse (December 1978)	€1.27
Working Paper No 6-1979, The Law Relating to Seduction and the Enticement and Harboursing of a Child (February 1979)	€1.90
Working Paper No 7-1979, The Law Relating to Loss of Consortium and Loss of Services of a Child (March 1979)	€1.27
Working Paper No 8-1979, Judicial Review of Administrative Action: the Problem of Remedies (December 1979)	€1.90
Second (Annual) Report (1978/79) (PrI 8855)	€0.95
Working Paper No 9-1980, The Rule Against Hearsay (April 1980)	€2.54
Third (Annual) Report (1980) (PrI 9733)	€0.95
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)	€2.54
Working Paper No 10-1981, Domicile and Habitual Residence as Connecting Factors in the Conflict of Laws (September 1981)	€2.22
Fourth (Annual) Report (1981) (PI 742)	€0.95
Report on Civil Liability for Animals (LRC 2-1982) (May 1982)	€1.27

Report on Defective Premises (LRC 3-1982) (May 1982)	€1.27
Report on Illegitimacy (LRC 4-1982) (September 1982)	€4.44
Fifth (Annual) Report (1982) (PI 1795)	€0.95
Report on the Age of Majority, the Age for Marriage and Some Connected Subjects (LRC 5-1983) (April 1983)	€1.90
Report on Restitution of Conjugal Rights, Jactitation of Marriage and Related Matters (LRC 6-1983) (November 1983)	€1.27
Report on Domicile and Habitual Residence as Connecting Factors in the Conflict of Laws (LRC 7-1983) (December 1983)	€1.90
Report on Divorce a Mensa et Thoro and Related Matters (LRC 8-1983) (December 1983)	€3.81
Sixth (Annual) Report (1983) (PI 2622)	€1.27
Report on Nullity of Marriage (LRC 9-1984) (October 1984)	€4.44
Working Paper No 11-1984, Recognition of Foreign Divorces and Legal Separations (October 1984)	€2.54
Seventh (Annual) Report (1984) (PI 3313)	€1.27
Report on Recognition of Foreign Divorces and Legal Separations (LRC 10-1985) (April 1985)	€1.27
Report on Vagrancy and Related Offences (LRC 11-1985) (June 1985)	€3.81
Report on the Hague Convention on the Civil Aspects of International Child Abduction and Some Related Matters (LRC 12-1985) (June 1985)	€2.54
Report on Competence and Compellability of Spouses as Witnesses (LRC 13-1985) (July 1985)	€3.17
Report on Offences Under the Dublin Police Acts and Related Offences (LRC 14-1985) (July 1985)	€3.17
Report on Minors' Contracts (LRC 15-1985) (August 1985)	€4.44
Report on the Hague Convention on the Taking of Evidence Abroad in Civil or Commercial Matters (LRC 16-1985) (August 1985)	€2.54

Report on the Liability in Tort of Minors and the Liability of Parents for Damage Caused by Minors (LRC 17-1985) (September 1985)	€3.81
Report on the Liability in Tort of Mentally Disabled Persons (LRC 18-1985) (September 1985)	€2.54
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)	€4.44
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)	€2.54
Eighth (Annual) Report (1985) (PI 4281)	€1.27
Report on the Statute of Limitations: Claims in Respect of Latent Personal Injuries (LRC 21-1987) (September 1987)	€5.71
Consultation Paper on Rape (December 1987)	€7.62
Report on the Service of Documents Abroad re Civil Proceedings – the Hague Convention (LRC 22-1987) (December 1987)	€2.54
Report on Receiving Stolen Property (LRC 23-1987) (December 1987)	€8.89
Ninth (Annual) Report (1986-1987) (PI 5625)	€1.90
Report on Rape and Allied Offences (LRC 24-1988) (May 1988)	€3.81
Report on the Rule Against Hearsay in Civil Cases (LRC 25-1988) (September 1988)	€3.81
Report on Malicious Damage (LRC 26-1988) (September 1988)	€5.08
Report on Debt Collection: (1) The Law Relating to Sheriffs (LRC 27-1988) (October 1988)	€6.35
Tenth (Annual) Report (1988) (PI 6542)	€1.90
Report on Debt Collection: (2) Retention of Title (LRC 28-1988) (April 1989)	€5.08
Report on the Recognition of Foreign Adoption Decrees (LRC 29-1989) (June 1989)	€6.35
Report on Land Law and Conveyancing Law: (1) General Proposals (LRC 30-1989) (June 1989)	€6.35
Consultation Paper on Child Sexual Abuse (August 1989)	€6.35

Report on Land Law and Conveyancing Law: (2) Enduring Powers of Attorney (LRC 31-1989) (October 1989)	€12.70
Eleventh (Annual) Report (1989) (PI 7448)	€5.08
Report on Child Sexual Abuse (LRC 32-1990) (September 1990)	€1.90
Report on Sexual Offences against the Mentally Handicapped (LRC 33-1990) (September 1990)	€8.89
Report on Oaths and Affirmations (LRC 34-1990) (December 1990)	€5.08
Report on Confiscation of the Proceeds of Crime (LRC 35-1991) (January 1991)	€6.35
Consultation Paper on the Civil Law of Defamation (March 1991)	€7.62
Report on the Hague Convention on Succession to the Estates of Deceased Persons (LRC 36-1991) (May 1991)	€25.39
Twelfth (Annual) Report (1990) (PI 8292)	€8.89
Consultation Paper on Contempt of Court (July 1991)	€1.90
Consultation Paper on the Crime of Libel (August 1991)	€25.39
Report on the Indexation of Fines (LRC 37-1991) (October 1991)	€13.97
Report on the Civil Law of Defamation (LRC 38-1991) (December 1991)	€8.25
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)	€8.89
Thirteenth (Annual) Report (1991) (PI 9214)	€7.62
Report on the Crime of Libel (LRC 41-1991) (December 1991)	€2.54
Report on United Nations (Vienna) Convention on Contracts for the International Sale of Goods 1980 (LRC 42-1992) (May 1992)	€5.08
Report on the Law Relating to Dishonesty (LRC 43-1992) (September 1992)	€10.16
Land Law and Conveyancing Law: (5) Further General Proposals (LRC 44-1992) (October 1992)	€25.39

Consultation Paper on Sentencing (March 1993)	€7.62
Consultation Paper on Occupiers' Liability (June 1993)	€25.39
Fourteenth (Annual) Report (1992) (PN 0051)	€12.70
Report on Non-Fatal Offences Against The Person (LRC 45-1994) (February 1994)	€2.54
Consultation Paper on Family Courts (March 1994)	€25.39
Report on Occupiers' Liability (LRC 46-1994) (April 1994)	€12.70
Report on Contempt of Court (LRC 47-1994) (September 1994)	€7.62
Fifteenth (Annual) Report (1993) (PN 1122)	€12.70
Report on the Hague Convention Abolishing the Requirement of Legalisation for Foreign Public Documents (LRC 48-1995) (February 1995)	€2.54
Consultation Paper on Intoxication as a Defence to a Criminal Offence (February 1995)	€12.70
Report on Interests of Vendor and Purchaser in Land during the period between Contract and Completion (LRC 49-1995) (April 1995)	€12.70
An Examination of the Law of Bail (LRC 50-1995) (August 1995)	€10.16
Sixteenth (Annual) Report (1994) (PN 1919)	€12.70
Report on Intoxication (LRC 51-1995) (November 1995)	€2.54
Report on Family Courts (LRC 52-1996) (March 1996)	€2.54
Seventeenth (Annual) Report (1995) (PN 2960)	€12.70
Report on Sentencing (LRC 53-1996) (August 1996)	€3.17
Consultation Paper on Privacy: Surveillance and the Interception of Communications (September 1996)	€10.16
Report on Personal Injuries: Periodic Payments and Structured Settlements (LRC 54-1996) (December 1996)	€25.39
Eighteenth (Annual) Report (1996) (PN 3760)	€12.70

Consultation Paper on the Implementation of The Hague Convention on Protection of Children and Co-operation in Respect of Intercountry Adoption, 1993 (September 1997)	€7.62
Report on The Unidroit Convention on Stolen or Illegally Exported Cultural Objects (LRC 55-1997) (October 1997)	€12.70
Report on Land Law and Conveyancing Law; (6) Further General Proposals including the execution of deeds (LRC 56-1998) (May 1998)	€19.05
Consultation Paper on Aggravated, Exemplary and Restitutionary Damages (May 1998)	€10.16
Nineteenth (Annual) Report (1997) (PN 6218)	€19.05
Report on Privacy: Surveillance and the Interception of Communications (LRC 57-1998) (June 1998)	€3.81
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)	€25.39
Consultation Paper on the Statutes of Limitation: Claims in Contract and Tort in Respect of Latent Damage (Other Than Personal Injury) (November 1998)	€12.70
Twentieth (Annual) Report (1998) (PN 7471)	€6.35
Consultation Paper on Statutory Drafting and Interpretation: Plain Language and the Law (LRC CP14-1999) (July 1999)	€3.81
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)	€7.62
Report on Gazumping (LRC 59-1999) (October 1999)	€9.52
Twenty First (Annual) Report (1999) (PN 8643)	€6.35
Report on Aggravated, Exemplary and Restitutionary Damages (LRC 60-2000) (August 2000)	€3.81
Second Programme for examination of certain branches of the law with a view to their reform: 2000-2007 (PN 9459) (December 2000)	€7.62
Consultation Paper on the Law of Limitation of Actions arising from Non-Sexual Abuse Of Children (LRC CP16-2000) (September 2000)	€6.35

Report on Statutory Drafting and Interpretation: Plain Language and the Law (LRC 61-2000) (December 2000)	€7.62
Report on the Rule against Perpetuities and Cognate Rules (LRC 62-2000) (December 2000)	€7.62
Report on the Variation of Trusts (LRC 63-2000) (December 2000)	€10.16
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)	€7.62
Consultation Paper on Homicide: The Mental Element in Murder (LRC CP17-2001) (March 2001)	€7.62
Seminar on Consultation Paper: Homicide: The Mental Element in Murder (LRC SP 1-2001)	€6.35
Twenty Second (Annual) Report (2000) (PN 10629)	€3.81
Consultation Paper on Penalties for Minor Offences (LRC CP18-2002) (March 2002)	€5.00
Consultation Paper on Prosecution Appeals in Cases brought on Indictment (LRC CP19-2002) (May 2002)	€6.00
Report on the Indexation of Fines: A Review of Developments (LRC 65-2002) (July 2002) Twenty Third (Annual) Report (2001) (PN 11964)	€5.00
Report on the Acquisition of Easements and Profits à Prendre by Prescription (LRC 66-2002) (December 2002)	€5.00
Report on Title by Adverse Possession of Land (LRC 67-2002) (December 2002)	€5.00
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)	€5.00
Consultation Paper on Judicial Review Procedure (LRC CP20-2003) (January 2003)	€6.00
Report on Penalties for Minor Offences (LRC 69-2003) (February 2003)	€6.00
Consultation Paper on Business Tenancies (LRC CP 21-2003) (March 2003)	€6.00
Report on Land Law and Conveyancing Law: (7) Positive Covenants over Freehold Land and other Proposals (LRC 70-2003) (March 2003)	€5.00

Consultation Paper on Public Inquiries Including Tribunals of Inquiry (LRC CP 22 – 2003) (March 2003)	€5.00
Consultation Paper on The Law and the Elderly (LRC CP 23 – 2003) (June 2003)	€5.00
Consultation Paper on A Fiscal Prosecutor and A Revenue Court (LRC CP 24 – 2003) (July 2003)	€5.00
Consultation Paper on Multi-Party Litigation (Class Actions) (LRC CP 25 – 2003) (July 2003)	€6.00
Consultation Paper on Corporate Killing (LRC CP 26 – 2003) (October 2003)	€6.00
Consultation Paper on Homicide: The Plea of Provocation (LRC CP 27 – 2003) (October 2003)	€6.00
Seminar on Consultation Paper: Law and the Elderly (LRC SP 2-2003) (November 2003)	€6.00
Twenty Fourth (Annual) Report (2002)	€5.00
Consultation Paper on General Law of Landlord and Tenant (LRC CP 28 – 2003) (December 2003)	€10.00

