Northern Ireland
Law Commission

The Honourable Mr Justice Bernard McCloskey presents:

BAIL IN CRIMINAL PROCEEDINGS

THE COMMISSION'S REPORT TO NORTHERN IRELAND GOVERNMENT

BELFAST SOLICITORS' ASSOCIATION
Law Society House
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I INTRODUCTION

[1] As Chairman of the Northern Ireland Law Commission, it is my pleasure to present this significant Report to the Government and public of Northern Ireland. The expectation that this will generate much interest in the legal profession, amongst the judiciary and in many sectors of the criminal justice system seems well founded.

[2] The Commission is an independent statutory body, established and governed by sections 50 to 52 of and Schedule 9 to the Justice (NI) Act 2002. The creation of the Commission is one of the significant reforms of the Northern Ireland legal system affected by this ground breaking statute. By section 50, the Commission is a body corporate, consisting of a Chairman and four Commissioners appointed by the Minister for Justice. Pursuant to section 51 of the 2002 Act, the Commission is obliged to keep under review the law of Northern Ireland with a view to its systematic development and reform. Specifically, the methods prescribed for the performance of this overarching duty are codification, the elimination of anomalies, the repeal of unused legislation and the reduction of the number of separate legislative provisions. Section 51 further provides that the Commission should undertake the simplification and modernisation of the law of Northern Ireland.

[3] By statute, each of the Commission's programmes of law reform must have the approval of the Minister for Justice. The act of granting such approval signifies, inter alia, ministerial acceptance that the authorised projects are of importance to Northern Ireland and that they reflect areas of the law in which an exercise of modernisation, simplification and the elimination of anomalies is considered necessary. It is for this reason that when the Commission completes any given project and presents its report, normally accompanied by draft legislation, there is a strong expectation that the Northern Ireland Assembly will legislate. The whole rationale and ethos of law reform would be dulled and undermined if this were not to occur. Furthermore, this expectation is harmonious with the legislative intention clearly underpinning the statutory provisions under which the Commission operates (contained in the Justice (NI) Act 2002).

II THE BROADER CANVAS

[4] The act of presenting this Report to the Government of Northern Ireland prompts reflection on the fundamental consideration that this is a society governed by the rule of law. In his landmark publication, Lord Bingham said the following of this cornerstone principle:

> "*The core of the existing principle is, I suggest, that all persons and authorities within the state, whether public or private, should be bound by and entitled to the benefit of laws publicly made, taking effect (generally) in the future and publicly administered in the courts.*[1]"

It is an incontestable reality that for many members of society the rule of law has the greatest and most visible impact in the criminal justice system. The latter has many components of which the law and practice of bail is one of the most important, given its impact on the liberty of the citizen and victims of crime. The rule of law is consistently and inexorably the elephant in the room (including the courtroom), often overlooked and not infrequently undervalued. An acute awareness of and full deference to the rule of law is a daily challenge confronting all criminal justice professionals, all practitioners of the law and all members of the judiciary. The rule of law provides the ultimate explanation for every legal rule and regulation and all litigation processes and procedures. These truisms, not less than fundamental in nature, are often overlooked.

[5] In this jurisdiction, there is no central governing instrument of bail legislation. This contrasts with many other jurisdictions including England and Wales, where the Bail Act was introduced in 1976 and the Republic of Ireland, where legislative provision x was made for bail in 1997. In Northern Ireland, there is a patchwork quilt of statutory sources, married with the exercise of the inherent jurisdiction of the High Court. This is considered unsatisfactory, given the substantial importance of bail in the context of the administration of criminal justice and the relatively intense degree of public interest and concern which this subject routinely generates. The Commission believes that there is a persuasive case for the enactment of a unifying instrument of legislation regulating comprehensively the roles and responsibilities of the primary agencies concerned – the police, the Public Prosecution Service and the courts – coupled with some simplification and modernisation of the law in this sphere.

[6] There is undoubtedly a substantial public interest in this project. There are various concerns about the existing law and practice in this sphere and material misunderstandings abound. In mid-project, there was a surge of publicity about the commission of offences by defendants granted bail. A newspaper publication suggested that more than 20,000 such offences – including 8 murders, 24 rapes and 150 robberies – were committed during a

[1] T Bingham, The Rule of Law, London: Allen Lane, 2010, p 8.

two year period. While no statutory scheme alone can aspire to resolve all of the difficulties that habitually arise in this area, the Commission earnestly expects that the proposed legislation will promote consistency and transparency in decision making by the police and the courts and will in turn increase public confidence in the criminal justice system.

[7] Compilation of this Report was preceded by an extensive public consultation exercise and full engagement by the Commission with all relevant stakeholders and interested parties, reflective of the diversity of the Northern Ireland community. The consultation paper was published in September 2010 and the Commission received a wide range of contributions in response. The Commission also held a number of public seminars to promote awareness of the project and encourage engagement from as wide a range of interested parties as possible. The responses and representations thereby generated have assisted the Commission greatly in its formulation of the recommendations in the final Report. Strikingly, there was overwhelming support for the adoption of a dedicated Bail Act in Northern Ireland. Many consultees agreed that the current legal framework in the field of bail is complex, disjointed and outdated. Such a measure will simplify and modernise the existing law, while simultaneously promoting consistency, transparency and accessibility. It will also enhance understanding of the operation of the bail system in all quarters, thereby strengthening public confidence in the criminal justice system as a whole.

[8] The Commission believes that the conclusions and recommendations of this Report are innovative, practical and realistic. I draw attention also to the Draft Bill which accompanies this Report. This addresses, in a logical and structured manner, the right of accused persons to bail; the topic of bail guarantors; enforcement following the grant of bail; and other important issues, including the repeal of street bail; police review of release on bail without charge; the necessity of providing reasons for bail decisions; including the imposition of conditions and special provision for children. Furthermore, the Report proposes the abolition of personal recognizances and sureties for surrender to custody, introducing, in their stead, a simplified regime of bail guarantors. Amongst the recommendations which were not considered appropriate for inclusion in the draft legislation. This has not, however, deterred the Commission from making proposals for non-legislative change, designed to achieve best practice in this sphere. In this context, I would highlight the proposals that a bail information scheme be established and a bail support programme developed. In addition, the Commission has given careful consideration to victims of crime and has recommended that an extra-statutory scheme designed to ensure the provision of prompt and accurate information to victims be established.

[9] The Commission's Report is as comprehensive as possible. However, it does not encompass bail in extradition proceedings or bail in immigration proceedings. This is explained by the view taken that both extradition and immigration are "*excepted*" matters under the scheme of the Northern Ireland

Act 1998 and, hence, outwith the legislative competence of the Northern Ireland Assembly.

[10] It is a fact that from time to time affected individuals and groups and public representatives express reservations about the grant of bail in particular cases. One of the aims of this Report is to ensure that a new bail statute will render such concerns increasingly rare as a result of, inter alia, the introduction of a bail model which will attract greater confidence, respect and acceptance throughout the community. This new model will enhance the highly desirable values of transparency, accessibility and comprehension. It is also appropriate to highlight that neither this Report nor its accompanying draft legislation proposes any dilution of one of the outstanding strengths of the bail law system, namely decision making by a truly independent and conscientious judiciary, one of the cornerstones of the rule of law in our society.

[11] The law reform proposals contained in this Report and reflected in the accompanying draft legislation are the product of an extensive and robust consultation exercise. The Commission has taken steps to ensure that all potentially interested and affected citizens, groups, organisations and professions have had the opportunity to ventilate their views and suggestions and, hence, influence the shape and content of this Report. This should provide significant reassurance to the local legislators who will make final decisions. Throughout the process culminating in this Report, care has been taken to ensure that the executive has been periodically informed of the progress of the project, its evolving orientation and its possible outcomes. Thus the Report will not take legislators by surprise.

[12] Credit and appreciation are due to those who can proudly claim responsibility for the compilation of this Report and its accompanying draft legislation. They are Bobby Hunniford and Professor Sean Doran, the Commissioners concerned; Katie Quinn, the senior project lawyer; Joan Kennedy and Patricia MacBride, the legal researchers; Maria Dougan, project lawyer; and Ronan Cormacain, the legislative drafter. It has been my pleasure to interact periodically with this highly committed and skilled team and I congratulate them unreservedly. They can justifiably take pride in the significant contribution which they have made to law reform in Northern Ireland.

[13] Thanks are also due to many other individuals and organisations who have assisted in the work leading to the publication of this Report. The Commission is indebted to Mr Tom Haire, Department of Justice, for his contribution to the project as a member of the Bail Steering Group. The Commission is grateful to all those individuals and organisations who took the time to respond to the bail consultation paper and to facilitate or participate in consultation meetings. Particular thanks are due to the young persons who met with the project team during the consultation period and freely expressed their views and experiences in relation to current bail laws. The Commission also had a number of useful discussions with Professor Ed Cape, University of

the West of England and Ken Jones, consultant legislative counsel. Gratitude should also be expressed to the wider team within the Commission, including Sara Duddy, Rebecca Ellis, Catherine O'Dwyer and Nicola Smith, who helped in the final preparation of the document for publication. The efforts of all personnel, in particular Departmental officials, who ensured the speedy laying of the Report before the Northern Ireland Assembly are also gratefully acknowledged.

III THE MISCHIEF AND THE OBJECTIVES

[14] I have already touched on the principal mischiefs: the absence of a central legislative instrument governing as comprehensively as possible all aspects of bail in this jurisdiction; the existing patchwork quilt of statutory sources; the unsatisfactory combination of sundry statutory provisions and the inherent jurisdiction of the High Court; the antiquity and complexity of the existing legal regime; public concern and misunderstandings about how this regime operates; a perceived lack of consistency, transparency and accessibility in bail decisions, bail decision making processes and the outworkings thereof; and the existence of certain unsatisfactory and undesirable practices.

[15] The overarching objective of the Commission's Report and accompanying draft legislation is to simplify and modernise the law in this sphere. This is a reflection of the Commission's fundamental statutory obligation. One discrete aspect of the Commission's objectives is to rectify existing deficiencies in certain practices. This is reflected in, particularly, the non-legislative proposals for the establishment of a bail information scheme and the development of a bail support programme. Furthermore, victims of crime have, inevitably, featured significantly in the Commission's researches and deliberations, giving rise to the proposal to develop an extra-statutory scheme designed to ensure that they receive prompt and accurate information in bail matters pertaining to the suspect/accused person.

[16] In its proposals, the Commission has devised a new bail law regime which it considers innovative, practical and realistic. The proposed regime is designed, *inter alia*, to attract greater confidence, respect and acceptance throughout the community. The Commission is confident that the new bail law model which it proposes will reduce the distance between members of the community and the legal system. It is a truism that, for members of society, legal practitioners and judges frequently seem aloof and distant, while the criminal justice system is alien and mysterious in its workings. The Law Commission's proposals are designed, *inter alia,* to address and minimise these particular mischiefs. The draft legislation incorporated in the Report is considered by the Commission to be a comprehensive, comprehensible and modern statutory model.

IV THE RECOMMENDATIONS OF THE REPORT

[17] These are as follows:

General

The following batch of recommendations focuses mainly on the interaction between the Police Service of Northern Ireland and the person suspected or accused of an offence:

- The introduction of a single unified Bail Act which will govern bail decision making by police officers and courts at the various tiers and stages of the criminal justice process.

- The formulation of a definition of "bail", in terms similar to those of the Criminal Justice (Northern Ireland) Order 2003, which, specifically, will embrace post-charge police bail; bail under a warrant endorsed for bail; court bail pending trial and during trial; bail pending sentence; bail pending appeal; and compassionate bail.[2]

- Separate approaches to pre-charge bail granted at a police station and elsewhere (i.e. so-called "street" bail).

- The removal of police powers to impose conditions on pre-charge bail granted at a police station; the extinguishment of the suspect's duty to surrender to custody and the related offence of surrender, to be substituted by a lesser requirement to attend a police station; and the creation of a right to have the decision to release on bail reviewed.

- The repeal of all police powers relating to the grant of bail elsewhere than at a police station.

- The creation of a duty to surrender to custody, the particulars whereof are a duty to surrender, at the appointed time, into the custody of a court or the custody of a prison governor.

- The formulation of a simplified offence of failure to surrender to custody.

- The exclusion from the proposed new bail legislation of any offence of breach of bail conditions.

- The creation of powers to issue warrants and powers to arrest without warrant for both failure and anticipated failure to surrender to the custody of a court or a prison governor.

- The retention of the power to arrest without warrant (in PACE) for failure to attend a police station in answer to pre-charge bail **and** the non-

[2] See Chapter IV, *infra*.

creation of any additional powers of arrest for anticipated failures of this kind.

- The creation of a power of arrest without warrant for breach and anticipated breach of conditions imposed on persons released on bail under a duty to surrender to a court or a prison governor.

- The imposition of a requirement to bring before a Magistrates Court as soon as reasonably practicable any person arrested without warrant for anticipated failure to surrender to custody or actual or anticipated breach of bail conditions.

- Empowering lay magistrates (subject to certain conditions) to issue a warrant for entry and search of premises in respect of a person who is liable to arrest without warrant for anticipated failure to surrender to bail or actual or anticipated breach of bail conditions.

Bail Guarantors

The Report makes a series of recommendations designed to simplify and modernise this discrete aspect of bail law and which are intended to give effect to the overarching principles of fairness, consistency and proportionality. One of the dominant factors in this context is the extant offence of failure to surrender to custody. The recommendations are:

- The abolition of personal recognizances and sureties, in the context of both police bail and court bail.

- The introduction of the new concepts of bail guarantor, bail guarantee and the guaranteed sum, giving rise to a new regime designed to underpin a person's surrender to custody following the grant of police or court bail; in tandem with the preservation of the deposit of a financial security as a precondition of release on bail. A bail guarantor must be of good character and connected with the bail applicant and have the capacity to pay the guaranteed sum. Security and bail guarantee will be alternatives. Forfeiture of the guaranteed sum will (as under the present regime) be a matter for the exercise of the court's discretion.

The Conditional Right to Bail

Many practitioners and courts will, with justification, view this as a fundamental cornerstone of the proposed new regime. The Commission's recommendations are as follows:

- The creation of a right of a person accused of or charged with an offence to be granted court, or police, bail, subject to the applicability of grounds

for refusal.[3] There will be no statutory presumption in favour of granting bail.

- The introduction of a specific power to defer the determination of bail applications pending receipt of sufficient information [giving statutory effect to existing court practice].

- The introduction of a single, unifying test of **necessity** governing the imposition of bail conditions by the police and the courts. This requires an assessment by the relevant authority that a condition is necessary for the purpose of preventing the accused from failing to surrender to custody; or committing an offence while on bail; or interfering with witnesses or otherwise obstructing the course of justice; or preventing serious public disorder. The authority is required to have regard to such conditions as it considers relevant. It **must** have regard to five specified considerations, **insofar as relevant**, namely the capacity of the accused to understand or comply with the condition, the times at which the accused normally works or carries out voluntary work or attends a school or other educational establishment; any responsibilities to family or dependants; the religious beliefs of the accused **or** any other requirement or condition to which he may be subject; and any other responsibilities or obligations of the accused.

- The assimilation of the existing statutory provisions regarding curfew conditions in the grant of bail by both the court and a custody officer.

New Process Requirements and Rights

This collection of process requirements and rights is of particular interest. They reflect the aim that the new bail regime should be as accessible,

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[3] See Clause 3 of the Draft Bail Bill - " (1) Bail may be refused where the bail authority has substantial grounds for believing that the accused would, if granted bail (a) fail to surrender to custody,
(b) commit an offence while on bail, or
(c) interfere with witnesses, or otherwise obstruct the course of justice, whether in relation to the accused's own case or any other person's case.
(2) Bail may be refused where the bail authority has substantial grounds for believing that the release of the accused would lead to serious public disorder.
(3) In making a decision under this section, the bail authority must have regard to any of the following considerations that are relevant –
(a) the nature and seriousness of the offence,
(b) the strength of the evidence against the accused,
(c) the character and history of the accused, including –
(i) any previous convictions, and
(ii) any previous grants of bail,
(d) the community ties and associations of the accused,
(e) whether if bail conditions were imposed, there would no longer be substantial grounds for believing that an event of the kind
mentioned in subsections (1) or (2) would occur, and
(f) any other considerations that appear relevant."

transparent and comprehensible to all interested parties as possible. They are also designed to make the proposed new regime efficacious and expeditious. The Commission's recommendations are the following:

- The imposition on the police and the courts of a duty to provide reasons for decisions to refuse bail or to impose or vary bail conditions; the corresponding requirement that this be recorded; and the conferral on the accused person of a right to secure a copy of the recording. The same regime will apply to decisions to grant bail and/or to impose conditions, coupled with a duty on the court to state in open court the bail conditions; the purpose thereof; and why the court considers the purpose/s relevant.

- The introduction of a requirement whereby the court must make a record of the appointed time and place for surrender to custody and any bail conditions **and** conferral of a right on the accused person to obtain a copy of such record.

- The preservation of the existing regime whereby an accused person who successfully applies for bail will not be released if in custody in relation to another offence.

Children and Young Persons

The Law Commission's Report perpetuates the practice whereby those belonging to this particular cohort, who are among the most vulnerable members of society, receive special attention and treatment, by virtue of their age and vulnerability. In broad terms, one side of the scales is occupied by considerations of the welfare, protection and best interests of the child or young person; while the counterbalance consists of the risks of reoffending or breaching bail conditions or interfering with the course of justice. It may be said that, ultimately, the two competing values are the protection of the public and the best interests of the child or young person. Some of the particular issues arising in this context include the unavailability of suitable accommodation, linked to the apparent absence of parental or family support. The Commission has recognised the need for the consideration by bail decision makers of a broader range of factors in cases of children and young persons. It endorses legislation reflecting Article 3 UNCRC, which provides that in all actions concerning children the best interests of the child shall be **a** primary consideration. The combination of UNHRC and a broad range of extant domestic statutory provisions make clear that the bail regime for children and young persons must confer protections and procedural safeguards additional to those enshrined in Article 5 ECHR.

Against this background, the Law Commission has formulated the following recommendations:

- The conferral of the same right to bail as on other persons.[4]

- The introduction of additional factors in bail decisions relating to children and young persons.[5]

- A prohibition on the refusal of bail solely on the ground that the child has no (or inadequate) accommodation.[6]

- The introduction of an amended definition of "*place of safety*" in Article 39(8) PACE, whereby the references to "*hospital or surgery*" and "*or any other suitable place the occupier of which is willing temporarily to receive the arrested juvenile*" will be expunged.

- Amendment of the Justice (Northern Ireland) Act 2002 to bring within the definition of "*place of safety*" both secure accommodation and the YOC.

- Amendment of those provisions of the 2002 Act requiring the remand to secure accommodation of persons in the age bracket of 10 – 13.

- Amendment of Article 13 of the Criminal Justice (Children) (NI) Order 1998 so as to prevent the remand of persons aged under eighteen years in a YOC.

- A presumption that a young person on remand will remain in the Juvenile Justice Centre on attaining eighteen years during the remand period unless it is in such person's best interests to be transferred to a YOC.

- The imposition of a related requirement on decision makers to consider the maturity, needs and understanding of the young person concerned; the likely duration of the remand period; and the suitability of the young person for transfer to the YOC.

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[4] *Supra*.

[5] See **Clause 4**:

"4. - (1) This section applies where the accused is a child.
(2) Bail must not be refused on the sole ground that the child does not have any, or any adequate, accommodation.
(3) In making a decision under section 3, the bail authority must have regard to –
(a) the age, maturity and understanding of the child,
(b) the physical, emotional and educational needs of the child, and
(c) the principles set out in subsection (4).
(4) Those principles are that –
(a) a primary consideration must be the best interests of the child, and
(b) bail can only be refused as a measure of last resort and for the shortest period of time possible."

[6] Ibid.

- The replication of the proposals relating to bail conditions and bail guarantors as regards adults.[7]

- The introduction of statutory guidance in relation to the imposition or variation of bail conditions.[8]

- The exclusion of curfew and electronic monitoring conditions in the case of children and young persons.[9]

- Making available to children and young persons on bail a range of accommodation options.

- Devising a bail support programme for children and young persons – to include an assessment at the earliest opportunity following charge and the provision of support services addressing accommodation needs; mental health and addiction considerations; training and employment; and other factors.[10]

- The imposition of a duty, in the wake of bail decisions, to explain to children and young persons in language appropriate to their age, maturity and understanding the obligation to surrender to custody at a particular time and place; the grounds and reasons for any denial of bail; and bail conditions, the purposes thereof and the reasons why such purposes are considered relevant.

Extra - Statutory Measures Proposed

In its report, the Law Commission recognises that there are certain extant practices which, though candidates for reform and improvement are not considered suitable for inclusion in the new Draft Bail Bill. Historically, it has long been recognised that while society is governed by the rule of law, legislation is not necessarily a panacea for all of society's ills. The Commission has also been alert to the need to ensure, so far as possible, that its proposals do not subject the public authorities concerned to an unrealistic and disproportionate burden in an era of acute financial stringency. Furthermore, in formulating its proposals for extra-statutory reform, the Commission has striven to forge a nexus with its statutory reform recommendations. In so doing, the Commission has sought in particular to be alert to the broader canvas, which includes a number of realities at community level.

These recommendations are:

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[7] *Supra*.

[8] To apply to adults also.

[9] See the proposal to repeal Article 43 of the Criminal Justice (NI) Order 2008.

[10] One of the "extra-statutory" proposals.

- The creation of a bail information scheme designed to provide to bail decision makers comprehensive, verified and prompt information at the earliest opportunity.

- The introduction of a bail support programme for adults, designed to address a potentially broad range of considerations – accommodation, addiction, mental health, employment and others.

- The provision of relevant and timely information regarding bail decisions to victims of crime – to extend to, at the victim's election, all key decisions in the criminal process concerned. Such information should be prompt, consistent and clearly understood.

These discrete proposals are a reflection of the breadth of the Commission's statutory remit under the 2002 Act. We are satisfied that this is not confined to merely proposing new or altered legislation. Rather, the Commission's portfolio is of more extensive reach.

V THE PROPOSED DEFINITION OF "BAIL"

[18] I draw particular attention to one discrete provision in the Draft Bail Bill as it constitutes, on any showing, a fundamental provision of the proposed new bail law regime. Clause 46 of the Draft Bail Bill provides:

> "46. - (1) In this Act, except where otherwise provided, 'bail' means bail grantable under the law –
> (a) in or in connection with proceedings for an offence, to a person who is accused or convicted of the offence, or
> (b) in connection with an offence to a person for whose arrest for the offence a warrant (endorsed for bail) is being issued.
> (2) In subsection (1) 'law' includes common law.
> (3) In this Act –
> 'bail authority' means the court or person by whom bail is grantable,
> 'bail guarantor' has the meaning given in section 13,
> 'child' means a person under the age of 18,
> 'lay magistrate sitting out of petty sessions' has the same meaning as in the Magistrates' Court (Northern Ireland) Order 1981,
> 'PACE' means the Police and Criminal Evidence (Northern Ireland) Order 1989,
> 'statutory provision' has the same meaning as in section 1(f) of the Interpretation Act (Northern Ireland) 1954, and 'surrender to custody' has the meaning given in section 24.
> (4) For the purposes of this Act any of the following are to be treated as a
> conviction –
> (a) a finding of guilt,
> (b) a finding under Article 51 of the Magistrates' Courts (Northern Ireland) Order 1981 (remand for inquiry into physical or mental condition) that the person charged did the act or made the omission charged,
> (c) a finding mentioned in Article 50A(1) of the Mental Health (Northern Ireland) Order 1986 (not guilty by reason of insanity, or unfit to be tried etc.),
> (d) a conviction of an offence for which an order is made placing the offender on probation or discharging the offender absolutely or conditionally.
> (5) Any substitution of 'bail guarantor' for 'surety or sureties' made by this Act to any statutory provision does not mean that 'bail guarantor' is limited to the singular in that statutory provision."

VI SOME RECENT BAIL JUDGMENTS

[19] In ***Re BG***, [2012] NIQB 13, this court lamented certain undesirable practices arising out of multiple bail applications and bail decisions in varying courts involving the same person. The court held:

(i) The rationale of any grant of bail is to confer liberty on the person concerned. Accordingly, a bail application which cannot have this outcome is misconceived.

(ii) In matters of bail, the High Court exercises an inherent jurisdiction. Accordingly, applications for bail to the High Court should be pursued as a last resort only.

(iii) It is inherently undesirable for any court to entertain an application for bail and to explore the content and scope of bail conditions in circumstances where the basic factor of immediacy, or currency, is absent.

(iv) To refuse applications of this kind is harmonious with Article 5(3) ECHR.

[20] In ***Re Strojwas' Application*** [2012] NIQB 53, the court held:

(i) The designated County Court judge had jurisdiction to determine the application for bail.

(ii) In those circumstances, the invocation of the inherent jurisdiction of the High Court was inappropriate.

[21] In ***Re MR's Application*** [2012] NIQB 52, the court held that in applications for bail in cases involving immigration type offences (unlawfully entering the United Kingdom, unlawfully remaining, unlawfully working, sham marriages and kindred offences) reasonable efforts should be made by all interested agencies, including in particular the applicant's legal representatives, to assemble certain basic documentary materials. The purpose of this is to ensure that the court's determination of the bail application is as fully informed as possible. Practitioners should also take care to complete the bail application pro-forma as comprehensively as possible and to include particulars of available sureties or other forms of guarantee; proposed bail address, any available employment; the applicant's personal resources and assets; and his connection with this jurisdiction.

[22] In ***Re Maughan's Application*** [2010] NIQB 16, this court, in the context of two applications to estreat the recognizance given by bail sureties:

(i) Noted the dichotomy whereby in compassionate bail cases such applications are initiated by the Court Office, whereas in all other cases the moving party is the PPS.

(ii) Held that the power of the PPS to do so was enshrined in Section 31 of the Justice (Northern Ireland) Act 2002.

(iii) Exhorted that in such applications Form No. 39 must be properly completed, containing all appropriate details and particulars.

(iv) Opined that it is preferable that all estreatment applications be brought by the PPS.

(v) Highlighted the disconnection between Order 57 and Order 79 of the Rules of the Court of Judicature.

VII THE WAY FORWARD

[23] It is appropriate to recall that the Law Commission has no legislative powers. By statute, its powers are confined to making proposals for legislation. The Bail in Criminal Proceedings Report must be considered in this context. All Law Commission Reports are transmitted to the Minister of Justice. Ultimately, legislation is a matter for the Northern Ireland Assembly. At present, it is the practice of the Government of Northern Ireland to consult in advance of any potential legislation. It would appear that this practice will apply also to Law Commission Reports. It is a matter of pleasure to record that the initial response of the Justice Minister has been both positive and encouraging. It is believed that there is widespread support for reform of the law in this sphere. A reasonable expectation that legislation will follow seems appropriate. While time will inevitably be consumed in observing established processes and procedures, a further element in future developments will, of course, be that of political will. One trusts that this will be forthcoming If the Law Commission is capable of making any positive contribution to future developments on the legislation front it will be both willing and available to do so. In the meantime, the representative bodies of the legal profession will doubtless give careful consideration to making appropriate representations to the Justice Minister, the Justice Committee and the Northern Ireland Assembly.

[24] Finally, I strongly commend this Report to Government. It is blessed with the strengths, virtues and qualities already highlighted. It is further enhanced by the accompanying draft legislation, consisting of a comprehensive and modern statutory model. The process of law reform in Northern Ireland will be barren indeed if Reports of this nature do not culminate in legislation. The thorough and comprehensive process preceding this Report strengthens an already formidable case for ensuing legislation. The Commission looks forward to seeing the draft bail legislation on the agendae of the Executive Committee and the Northern Ireland Assembly in the near future. In this respect, I am both encouraged and gratified by the very positive initial response of the Minister of Justice to the Report. The population of this country awaits, and deserves, the bail reform legislation which we earnestly commend to Government. All interested parties, agencies and professions will have a role to play in ensuring that this aspiration promptly becomes a reality.