

**Annual Conference of the Northern Ireland Law Commission**  
**30<sup>th</sup> September 2010**

Summary of paper to be delivered by Mrs. Justice Catherine McGuinness,  
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**Reflections on the Process of Law Reform**

I am very happy to have been invited by the Hon. Mr. Justice McCloskey, Chair of the Northern Ireland Law Commission, to speak at this Annual Conference. As can be seen from the title given, I have been asked to reflect on the process of law reform. Clearly my reflections must be based in the main on my personal experience as President, since early 2005, of the Law Reform Commission of the Republic of Ireland, but I will also relay on the wisdom of the experience acquired by the LRC over its 35 years of existence since 1975. The Law Reform Commission is an independent statutory body established by the Law Reform Commission Act 1975. The Commission's principal role is to keep the law under review and to make proposals for reform, in particular by recommending the enactment of legislation to clarify and modernise the law. In the following paragraphs I give a brief summary of the aspects of our structure and our work to which I hope to refer in my contribution to the Conference.

I start with a short outline of the structure of the Law Reform Commission as set out in the Act of 1975, and refer to the role of Declan Costello, then Attorney General, later President of the High Court, in promoting the founding legislation. It was fortunate for the Commission that the then Attorney General was highly committed to the idea of a truly independent law reform body – political enthusiasm and commitment is important at all stages – and that he ensured that not only were the Commissioners to be independent in their legal thinking, but that they were to be independent in their selection of legal staff, and, within the budget given by grant-in-aid from the Office of the Attorney General, be independent in the running of their business. Over the years the Commission has found this of great importance. The administrative staff are civil servants of the State and, while we have suffered from lack of staff resources, the majority of these staff have been recruited directly to the

Commission rather than seconded from other Departments or areas of the public service.

From time to time, of course, the Commission has struggled with challenges to some aspects of its independence or with political indifference, and at present it suffers acute shortage of financial resources. At one period the Commission faced the situation well described by that great law reformer, Mr. Justice Michael Kirby, in his essay in the book *The Promise of Law Reform* (ed. Opeskin and Weisbrot 2005) when he said:

“Many ‘high-ups’ were unenthusiastic about too much change in the law. They looked with suspicion of ‘those who are paid to be reformers’”

I will continue by outlining the process used by the LRC in establishing and working through programmes of law reform, noting that the NI Law Commission has embarked on the same productive method of work. In selecting programmes, it is important to consult ordinary people as well as the “usual suspects” – legal bodies and government departments. Reference will also be made to the requests made by Attorneys General for reviews and recommendations in particular areas of the law which, in general, have come to the fore in current political controversy. It is noted that over the many years which the LRC’s First Programme of Law Reform continued there were periods when resources were extremely small, and when many excellent recommendations for change in the law were ignored and neglected. A number of these, however, rose phoenix-like in later years, such as the recently enacted Defamation Act, and the present plans for structured settlement in personal injury actions, first recommended by the Commission in 1996.

The paper will then outline the current projects of the Commission in the Law Reform area, with recent publications and current plans, in particular for the completion of Final Reports in a number of areas where Consultation Papers have already been published. A leading project has been the work done on Personal Debt Management and Debt Enforcement. The Commission has also continued its work on Restatement of Statutes and the maintenance and improvement of the Legislation Directory. The Commission has taken a constructive part in the government’s committee which is working towards eLegislation. In addition The Attorney General has requested a study and recommendations on the subject of mandatory sentencing.

Finally, the paper will refer to the challenges at present facing the Commission – challenges which are in all probability faced by other Law Commissions in these days of recession and budgetary cuts. The Commission’s budget for this year suffered a cut of 33 per cent, and this has meant a severe reduction in legal research staff, coupled with an equally damaging loss of administrative staff. This has resulted in a situation where the Commission is endeavouring to complete its Third Programme with much reduced resources, and where the lack of administrative staff has put a heavy burden on the few remaining staff and the full-time Commissioner. In the area of statutory reform the Commission is always faced with the challenge that much of our statute law remains in pre-1922 statutes, and that there is an urgent need to rationalise the recording of Statutory Instruments and their inclusion in the eISB.

The paper will conclude with some reference to speeches both by Mr. Justice Michael Kirby and by the former Chief Justice, Mr. Justice Ronan Keane, which were delivered at Annual Conferences of the LRC.

Catherine McGuinness