

Annual Conference 2017 - 5th Programme.

People sometimes ask me - *What exactly is the LRC?* - And when I try to tell them their eyes **glaze over**.

I usually say - *Well, its an independent statutory body established in 1975 for the broad purpose of keeping our laws under review and, where necessary, making proposals for their reform - principally by the enactment of **legislation** intended to modernise and clarify our laws*".

I think that that explanation is correct but it usually draws the first **yawn** within seconds.

I have only recently realised that we now occupy the world of **soundbites** and **hashtags** and the **tweets**.

I'm not good at **soundbites** - I have never used a **hashtag** and I absolutely refuse to **tweet** about anything.

Until recently I thought that my advanced years and geriatric condition had provided me with a kind of **pass** on modern communications technology - but, as usual, I was wrong. I'm very far behind - but I'm trying to catch up.

Thankfully my technological shortcomings may not disadvantage me too much today - because I think everyone here knows what the LRC does (or tries to do) - and - you know also that the Commission has invited **you** here today to help **us**.

Many of us think that the concept of an independent Law Reform Agency is a fairly **modern** phenomenon - but then- many of us have been around for a long time.

When, in May of **1974**, the then AG Declan Costello was introducing in the Dail the Bill that was to become the *Law Reform Commission Act 1975* our present CJ - Mr J - FC (our Principal Speaker this morning) was just completing his 1st year at the Bar - our 3rd Speaker - Sen M Mc D - later a successor to Declan Costello as Ag (and later still a Min for J) was just about to be **called** to the **Bar**.

They both have witnessed the birth and infancy of the "new" agency.

However, our 2nd Speaker Ms Dearbhail Mc Donnell had not yet arrived on our planet so her perspective will be of particular interest.

And we have quite a few young men and women in the LRC and we like to think that their youth and energy will help keep the Commission vibrant and active.

What may surprise some is that, as long ago as 1966, the English Lord Chancellor Lord Gardiner had described Ireland as a country in which Law Reform was “*extremely active*”.

That was largely because the then Min for Justice Charles Haughey had, in 1962, published a White Paper entitled “*Programme of Law Reform*” and had followed that up with progressive legislation that included *The Guardianship of Infants Act 1964* and, in particular, the *Succession Act 1965*.

Things slowed down a little after that - but - **in 1966** an *Advisory Committee on Law Reform* was established and - **in 1969** the late Kadar Asmal was - with some others - arguing for the establishment of a permanent law reform agency similar to those that had, by then, been established in England and Scotland (in 1965).

And things had been happening elsewhere also. In 1971 the *Law Reform Commission of Canada* was established and in 1973 Australia enacted **its** *Law Reform Commission Act*.

Declan Costello had, of course, been listening and watching and, after his appointment as AG in 1973 he announced (in September 1974) that a new LRC for Ireland would be established on lines broadly similar to the agencies in England, Scotland, Australia and Canada.

He said that the programs of this new agency should not be confined to technical law, but should include laws that affect and influence **social policy**.

He explained that what he called “*the activity of reforming laws*” required particular “*legal knowledge and expertise*”, but that the necessary reform should not be confined to what he called “*lawyers' law*” - (later described by former CJ Keane as “*the elimination by statute of absurdities and anomalies in the law the removal of which would create no controversy*”).

Declan Costello said the mandate of the Commission should be wider than that - it should embrace the laws that affect everyday life, family law, consumer protection law, employer/employee laws, landlord and tenant law, personal injury law and the laws that regulate basic human rights.

In short, he wanted to ensure that this new agency would conduct ongoing examinations and reviews - and that the Commissions remit should extend to **all** the laws that affect and influence the everyday life of Irish citizens.

The Commission has sought to do that - that is - to focus upon laws that, **in a practical sense** affect the **everyday** life of Irish citizens.

Notwithstanding my own shortcomings in relation to hashtags and tweets the LRC has recently published a Report entitled *Harmful Communications and Digital Safety*.

That Report considered and recommended reform of the laws that regulate aspects of modern **Cyber Activity** - an activity that has recently and **increasingly** influenced daily life for many of our citizens.

The Report and its recommendations is, we hope, evidence that the Commissions Mandate to focus on **practical** and modern matters remains respected.

And that Mandate is consistent, perhaps, with one of the sentiments expressed recently by the CJ when he made his **Statement for the New Legal Year**, explaining that a **pilot project** has been undertaken to facilitate applications for leave to appeal to the Supreme Court being made and considered *online*.

And he said that this should be simply a *first step* towards an appellate process conducted by way of **online filing** and the use of Information Technology to support oral hearings and, in time, perhaps, **paperless** hearings.

Back in 1974 Declan Costello was explaining that the **then** new LRC should be an ongoing systemic and wide-ranging approach to law reform conducted by an **independent** body removed from urgent demands and political pressures.

He said that the Attorney General's Statute Law Reform and Consolidation Office should continue to exist, but should **interact** with the new Commission's programmes.

It was reported that he announced this proposed new measure with “*obvious enthusiasm*” and that the Bill was welcomed in the Dail where Deputies like Gerard Collins, John Kelly and Desmond O'Malley used the opportunity to identify laws that **they** believed to be urgently in need of reform.

However Mr. O'Malley warned that this might be a case of “*Jobs for the Boys*” and he hoped the Law Reform Commission would not be “*used as a place of refuge for disused hacks*”.

Some would say that this warning was ignored.

In the Seanad - Standing Orders were amended to allow the Attorney General to **personally** participate in a **debate** on the proposal and Senators Eoin Ryan, Alexis Fitzgerald, Brian Lenihan, Mary Robinson and Noel Browne outlined areas of law that **they** thought needed reform.

The legislation was duly enacted.

The resultant 1975 Act provides that the Commission’s research work must arise from two main sources:

1.) **Programmes of Reform** - These programs are prepared from time to time in consultation with the Attorney General and then sent to the Taoiseach for submission to the Government. As you may know, these programmes - for the possible reform of particular laws - cannot be commenced without specific Government (and Oireachtas) approval.

Each **Program** contains a number of **projects** concerning **specific** laws that (the Commission believes) may need to be reformed. The projects will have been chosen by the Commission from suggestions and submissions made during **a wide consultation process** with civil, professional, political and educational bodies and agencies and, of course with private citizens - This Conference is, of course part of that process.

2.) Separately the Act empowers **the Attorney General** to request the Commission to examine specific laws or legal topics, **whether included in the programme or not**, and to make proposals for the reform of **those laws** if necessary.

Such requests - sometimes known as **AG Referrals** - **must** be, (and invariably **are**) complied with by the Commission.

The 1975 Act expressly defines “**reform**” of our law as including “*its development, its codification (including in particular its simplification and modernisation) and the revision and consolidation of statute law.*”

Speaking at the similar Conference seeking suggestions for our **4th Program** in November 2012 Mr Justice Gerard Hogan spoke of the need for “*a more systematic statute book, less impenetrable legislation and greater democratic accountability*”.

It is difficult to disagree with that. As you may know, the Commission’s *Access to Legislation* Project including our *Legislation Directory* our *Classified List* and our *Revised Acts* are intended to assist in that endeavour.

Under the efficient gaze of Ms Alma Clissman I think that the Project achieves as much as is possible having regard to the resources available to it but, again, your suggestions would be appreciated if you have any.

Since its establishment the LRC has submitted four Programs of Law Reform, (containing more than 100 Projects), to the Taoiseach for approval by the Oireachtas. All were approved in full.

It has published more than 200 documents including Working Papers, Consultation Papers, Issues Papers and final Reports.

More than 100 Projects have been **completed** and approximately 70% of the Commissions recommendations have been implemented in legislation.

As part of its methodology and its consultative processes the Commission has arranged and hosted countless Conferences, seminars, meetings and discussions.

It has also regularly and carefully interacted and consulted with the LCs of CL nations like the England, Scotland, NZ, Australia Canada and the US - and with similar LR agencies in **Civil Law** jurisdictions in Europe and elsewhere.

We also interact with the agencies of some African and Asian countries - indeed - we will host a major delegation from Beijing (the China Law Society) here, in Dublin a week from now.

Next June the Annual Conference of the LR agencies of the “Four Jurisdictions” (England, Scotland, Ireland and the Channel Isles) will be held in Dublin. The Commission has hosted this and other events on multiple occasions in the past.

As I said, we are now in the process of developing our Fifth Program of Law Reform and we need your help.

Our consultation process includes the following measures:

(i), **Letters** have been sent to relevant government departments, NGOs, professional bodies, and other public interest groups and individuals **inviting** suggestions for reform of laws - to date we have received more 70 serious suggestions **after exclusion of repeated** suggestions and those that we believe to be frivolous or vexatious.

(ii), On the 11th October we held a very helpful **public consultation seminar** in the **Univ of Lim**.

We will have similar public **consultative seminars** in NUI Galway on 22nd Nov , in Dundalk on 9th Jan 2018 and in UCC on 31st Jan 2018.

(iii), Further **Meetings** will, in the near future, be held with relevant individuals and representative groups, including those who have made written submissions.

(iv), Of **greatest** importance **YOU** have kindly accepted our invitation to attend here today and to assist us by making suggestions for reform or investigation or change in particular laws.

(v), We can assure you that detailed consideration will be given to your suggestions and submissions and, indeed, to **all of the written submissions** which the Commission receives and, indeed, all **oral submissions**.

The Commission will apply the following criteria when selecting projects for inclusion in the Program:

(1)**Importance** – projects must meet a real and present **community need**.

(2)**Suitability** – projects must be **suitable** for analysis having regard to the **legal expertise** that is **available** to the Commission (although sometimes that expertise can be supplemented by appropriate consultation with other professionals and interested parties).

(3)**Resources and timeframe** – projects must be suitable for analysis in light of the **human and financial resources - current and projected**, at the Commission’s disposal; and should, if possible, be capable of being

completed within the remainder of the term of the current Commission, that is, **by August 2020**.

(4) **Avoid duplication**: the projects should not overlap with the work of **other** bodies engaged in law reform activities, but should complement such work where appropriate.

However, I would stress that this is just the **commencement** of this process.

It is important to emphasize that we are charged with making proposals for the *reform of our laws* - not with proposals for changes in *policy*, which is, of course, the responsibility of Government and the Oireachtas.

