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

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 this talk I will give a brief summary of the aspects of our structure and our work.

I will begin with a short outline of the structure of the Law Reform Commission as set out in the Act of 1975. (Refer to Section 3 of the Act) It is important to recognise 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. (Section 3(14) and Section 10). 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’”. Over quite a period in former years the then government allowed the term of office of the Commission to end and did not appoint new Commissioners. (Refer to history of law reform bodies, eg the abolition and re-incarnation of the Law Commission of Canada)

I continue by outlining the process used by the LRC in establishing and working through programmes of law reform. (Refer to Section 4 in some detail) The Commission, accordingly, has worked in accordance with programmes of law reform, and is at present making good progress in the Third Programme 2008-2014. In selecting programmes, it is important to consult ordinary people as well as the “usual suspects” – legal bodies and government departments. Describe the process of forming the Third Programme, will be found on website [www.lawreform.ie](http://www.lawreform.ie). The Act also provides for requests by the Attorney General for reviews and recommendations in particular areas of the law which, in general, have come to the fore in current political controversy. (Section 4(2)(c)). Give examples – adoption, good Samaritan, mandatory sentences.

Over the many years during 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 2009, and the present plans for structured settlement in personal injury actions, first recommended by the Commission in 1996.

In recent years, however, the Commission has followed a practice of including a draft Bill in all final Reports where reform of legislation is recommended. This has produced a sea change in the rate of implementation of our recommendations. From 2000 onwards seventy per cent of recommendations have either become law or are working their way through the sometimes lengthy procedures of the Oireachtas on their way to becoming law. In a number of cases, indeed, where reform and modernisation of the law to meet the needs of

society is urgently needed, the Commission finds itself responding to [public demand, through Oireachtas questions, etc. Examples: Multi-unit developments, Mental Capacity Bill, Personal Debt Enforcement. On other occasions major reforms are recommended in areas where there has been no direct “political” pressure, but where reform and modernisation is more than overdue eg Land and Conveyancing Law Reform Act 2009 no more rule against perpetuities.

I will now give a brief outline of 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. (See separate sheet). 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. Urgent restatement of the Central Bank Acts. Preparation of list of statutes in force – extraordinary that this has not been available before, Ireland very behindhand in this area, OECD comments. The Commission has taken a constructive part in the government’s committee which is working towards eLegislation. All this forms part of the “smart economy” policy.

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.

Behind and beyond all this detail, and regardless of the varying resources available, the Commission must always keep in mind the purpose and

philosophy of law reform, the need for law to meet the needs of society, and for reform to be a great deal more than “lawyers law”, the tidying up of anomalies or the technical improvement of what already exists – important though that is.

I will therefore conclude with a reference to the speech by the former Chief Justice, Mr. Justice Ronan Keane, which was delivered at the 30<sup>th</sup> Anniversary Conference of the LRC at Farmleigh in 2005. The former CJ first quoted a speech by Lord Brougham in the House of Lords in 1828, in which he had praised the work of Napoleon in introducing the legal code in France. (Quote page 1) Judge Keane went on to consider the role of a law reform commission. (Quote page 3-4 marked).

**Note:** Reminder that a great deal of material and information on LRC to be found on website.

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