

STATES OF JERSEY



STATUTORY NUISANCES LAW: REVIEW

**Lodged au Greffe on 31st October 2008
by Deputy P.V.F. Le Claire of St. Helier**

STATES GREFFE

PROPOSITION

THE STATES are asked to decide whether they are of opinion –

to request the Minister for Health and Social Services to review the current provisions of the Statutory Nuisances (Jersey) Law 1999, and in particular the provisions relating to the service of abatement notices under Article 5, as they relate to–

- (a) industrial activities conducted by the public sector;
- (b) industrial activities conducted by the private sector;
- (c) premises providing a venue for wedding receptions;
- (d) premises providing a venue for similar events; and
- (e) businesses located in close proximity to residences,

with a view to ascertaining whether the current provisions are operating appropriately and to bring forward to the Assembly for approval any amendments that may be deemed necessary as a result of the review.

DEPUTY P.V.F. LE CLAIRE OF ST. HELIER

REPORT

Since the introduction of the Statutory Nuisance Law, I have made several representations to the Health Protection Team on numerous occasions about the smells from the Compost Site and Incinerator Ash Pit operations at La Collette and emissions from the Bellozanne Incinerator and sewerage plants, even emissions from businesses in town that were adversely affecting St. Helier residents.

In many cases I have been disappointed in the actions taken by the Health Protection team, as they merely amounted to inaction in most cases. No action on behalf of dozens of concerned residents, and bewildering over-reaction to the detriment of small businesses on such things as single wedding functions that stayed open for their guests until 12 o'clock at night.

It has become evident to me that in cases which are definitely causing a nuisance but are operated by the States, deliberate steps are taken to avoid serving abatement notices by the Health Ministry, when in other private circumstances they would have been and indeed have. How is this possible under any responsibly governed society?

I was amazed recently when I learned of the efforts of the Health Protection Team, who were busy conducting tests to ascertain impacts to health in relation to hosts of wedding functions and business events in the countryside, whilst seemingly choosing to ignore calls for action in town over serious industrial pollution.

In looking into the correspondence that the Health Protection Team was sending to people in this situation, I was struck by the feeling that the Department appeared to be heavy-handed with the little guy, but not at all with the States entities or large polluters in Jersey when applying the Law in practice. In fact, it was even reported to me that one officer informed a concerned party that ... "I am the Law and I decide, how and when, it is applied!" ... even though the concerned member of the Public tells me he was merely trying to ascertain his own position, he was thoroughly shocked by the officer's remarks.

The inaction of the Department's officers and the Ministry is something of note. This was especially noticed when the Department seemed to fall over backwards in their efforts to continue to allow the continuity of operations of large industrial polluters that seriously do create a nuisance to people in St. Helier on the grounds that it would be a costly exercise and one they could not win if it was ever taken to court.

Operations conducted on a weekly or daily basis that were, and in fact still are, adversely affecting thousands of people at a time, in heavily populated areas in Jersey are routinely waved off by the Department and allowed to continue. How many of these industrial facilities were ever issued abatement notices under these circumstances? None to my knowledge. In fact, when I reported issues to the Environmental Health Protection Team as a Town Deputy on behalf of residents, businesses and constituents in part of my District in Havre des Pas I was treated at first with contempt, and latterly just ignored. I even made representations to the Bailiff for the officer concerned to be disciplined and was told I would have to take it up with his Chief Officer. I did but that only seemed to allow me to be ignored with less contempt than at first.

Pollution which was reported as being detrimental and a considerable nuisance to town residents was being dismissed without even so much as a sample questionnaire. Despite residents reporting adverse health issues and obnoxious smells driving them from their homes due to the compost site operations the compost site continued. A meeting with the Head of the Department and residents was set up by me through the 'Friends of Havre des Pas' but little was achieved. Even when statements from the Minister for Transport and Technical Services were made admitting that the operations were causing a nuisance in the States, nothing was ever acted upon by Health Protection.

Why?

Amongst other occurrences, I, together with the Constable and the Parish, were effectively ignored even when the Connétable was acting under legal advice sanctioned by the Parishioners he was in effect sidelined and ignored.

Why?

Ignored perhaps, because it was the States who were polluting and it was the States who were creating the nuisance. The defence that best practice was being deployed was not only incorrect but so pathetically unsupportable I shudder to think what would have happened if the States were asked to justify that as a defence in court.

If the Health Protection team can justify the curtailing of operations of a private business when considering a single complainant in the countryside, how can they justify ignoring an entire Parish constituted and represented and supported by the Connétable and its Deputies at the same time in Town, together with supporting letters from G.P.s?

How can the Public be satisfied that the controls and checks and balances and the application of the Law is there for all to benefit from? They evidently from this experience cannot.

The policing of the Law, it would appear, is being determined by the Department and judged by them also. Not only do we have the statements from the Public that the officer told the concerned party that he thought he was the Law and he was the one who decided how and when it was applied, but also they seem to act without proper regard to the instruction of their own Minister. The Minister certainly was surprised to learn when I telephoned him to say that the Department had served an abatement notice on the Monday. He was surprised because he had specifically instructed the Head of the Department not to issue an abatement notice the Friday before.

Meanwhile, in any event, the Seigneur at this time was trying his level best to meet the demands of the Department and had even had a meeting with myself and the Minister some days earlier to offer a compromise. Although these were in my view unreasonable conditions placed upon him by the Department and he was in ongoing correspondence with them, they chose to act rather than reply to his letters in full. The Seigneur was attempting, at the same time, not to jeopardise the functions that were being held at St. Ouer's Manor that helped him maintain the extensive grounds that are enjoyed by the Public. Recent weddings bringing over hundreds of non-Island residents from the U.K. (tourists ...see dictionary: Jersey/history) and General Motors who recently launched their new car from here.

I cannot understand how, when even the Honorary Police and the Connétable were shaking their heads at this particular complainant, were the Department, contrary to the instructions of the Minister, justified and comfortably able to serve the abatement notice regardless, to satisfy themselves and one complainant, under the premise, no doubt, of compliance. The fact that they did so with less than 12 hours for the Seigneur to effectively organise his appeal, as he had instructed them by letter that he was going to be away, defies explanation. It is, I would submit, a Department that has totally lost its way. I acknowledge that the Law may need changing but I am sorry, even the best Law, with the current administrators of this Department would fail, and despite statements to the contrary, it needs political direction and better oversight.

I understand the Seigneur is to appeal this, but his only route under the Law at present, once the abatement notice has been issued, is through the Royal Court. An extremely expensive and heavy-handed way of getting justice in my view and in a situation where the Minister was yet to authorise such an action in any event.

How many other businesses have been similarly affected?

I believe, as does the Minister, that there needs to be an interim port of appeal in these circumstances, perhaps to the Minister himself or even to an independent arbiter through an independent process which could help to determine what is right, without the necessity of going straight to the Royal Court in all circumstances. For many individuals when facing the option of ceasing business or going to the Royal Court, there really is no choice but to accede to the pressure, which in some cases may have materialised from a single complainant. In some cases to the detriment of thousands of others. There really is a difficulty in considering whether one should defend oneself in court over something like this, if one believes that the outcome may in practice deliver the same loss to business practice, coupled with a legal bill that could bankrupt defendants in many cases.

The parity and impartiality of Laws and the application of them should be the foundation for good governance in any jurisdiction, but when one looks at the States' own evidence for carcinogenic operations such as those at

Bellozanne and La Collette from the Incinerator, the J.E.C. Chimney and the Fuel Farm entering the local environment, one is struck by the words: "It's one Law for us and another Law for them!".

How can it be possible for the Health Protection Team and the Minister for Health and Social Services not to issue abatement notices when hundreds of people have complained about the pollution that the States engages in and ignores on a daily basis? Pollution that is documented throughout the States' own reports over and over again.

I believe that the Law needs to be thoroughly reviewed and perhaps could be the subject of scrutiny when it is. Its revision however, requires urgent attention, and I appeal to all Members, and Ministers in particular, to consider the consequences of the continued application of this Law as currently being applied, and ask for their support, for without it I anticipate that serious challenges to other functions and activities throughout the Island will be ahead of us.

Financial and manpower implications

How much money would it cost to do this? I believe it should be undertaken, and I cannot quantify the cost other than to say a Scrutiny Panel could assist in driving down costs. The review of any Law is, or at least should be, part of a Legislature's core activity in any event. I apologise I can't be more helpful. Perhaps the Ministers and H.M. Attorney General could report on the costs of defending or taking actions through the Royal Court in such circumstances and the comparative costs of reviewing and amending this Law.