

## **2.8 Deputy J.A. Martin of St. Helier of the Chief Minister regarding the Criminal Offences (Jersey) Law 2009:**

Just for your information, I have put the Hansard report of the debate in question on Members' desks. Can the Minister confirm that the Assembly was fully advised when debating P.7/2007 - now enacted as the Criminal Offences (Jersey) Law 2009 - that this law would limit the right to trial by jury in Jersey and, can he detail which crimes would have been able to have a jury trial before this law was passed and those which will now have to be heard by Jurats?

### **Senator T.A. Le Sueur (The Chief Minister):**

This is rather a complex question and I think it would be sensible to take the parts of the question in reverse order. So the short answer to the second part of the question is that before the Criminal Offences (Jersey) Law came into force, all offences such as conspiracies, attempts or incitements to commit statutory offences, known as inchoate offences, and offences such as aiding, abetting, counselling or procuring a commission of some statutory offences, known as accomplice offences, would have been tried before a jury. Now, those offences are all tried by Jurats in the same way as the principal or completed statutory offence to which they relate because this removed the anomaly that existed whereby completed offences were tried before Jurats but incomplete forms for the same offence were tried before juries. For example, a charge of importation of a controlled drug, being a statutory offence, would be heard by Jurats, but a charge of conspiracy to import a controlled drug, being a common law offence, would be tried by a jury. This meant that there was one form of trial for the completed offence and a different form of trial for conspiring, attempting or inciting that offence and that seems anomalous. As to the first part of the question, the 2009 law was approved by this Assembly on 27th February 2007 and as Hansard shows it was approved without a great deal of discussion, although there was a 2-page explanatory note and report accompanying the proposition. So the proposition contained a number of provisions relating to statutory offences and was supported by that report. In the report it said that the mode of trial in respect of any such accomplice or inchoate offence was the same as for the statutory offence which related. It also stated in the report that inchoate and accomplice offences may be charged as offences of customary law, even though the principal offences to which they relate may be statutory offences. As I say, it is very legalistic but a review of Hansard shows that only one question was asked of a rapporteur and no questioning was raised about the methods or mode of trial.

### **2.8.1 Deputy J.A. Martin:**

Yes, I think that is exactly my point; this is not a debate about the rights of jury versus Jurat trials. Does the Chief Minister not agree if the States had been fully informed in plain English what this law absolutely meant in 2007, reading the rapporteur's interpretation - in fact it is reasonably simple to understand - we have just in fact taken away the right of jury trial to many, many people? I have an email from the A.G. (Attorney General) confirming that the trial of Curtis Warren would not now be able to be heard by a jury. Rightly or wrongly, there was no discussion in this House, it was put to us in legalese, as the Chief Minister said, and the debate was never had. Can the Minister confirm was this intentional, or it just slipped under the radar so there was no debate? It is a massive issue.

### **Senator T.A. Le Sueur:**

Well, clearly, a debate was had and it was up to Members at the time of the debate to raise whatever issues they felt inclined. I accept, reading the legislation, it is written in complex language, and all the more reason, therefore, that if Members had concern about that, they should have asked questions at the time. But certainly it was fully debated. It is very difficult to write complex legislation in plain, simple English. I am sure if only that could be done it would be done, but legislation has to be clear and understood and also has to reflect the terms of the principal legislation to which it relates. So, I would simply say to the Deputy that while it was complex legislation, those Members who had questions on it should have raised those questions at the time and not 2 and a half years later.

**2.8.2 Deputy G.P. Southern:**

Does the Chief Minister not agree that is facetious to blame the Memembers of this House? Was he aware of the implications of this particular law on the right to trial by jury, and did he or his Ministers or a President of the time not have a duty to report accurately to the House the long-term implications for the right to trial by jury in this case?

**Senator T.A. Le Sueur:**

I think the fact that this matter was debated and reported in a question of one page meant that it did not feature very highly on anyone's radar but nonetheless it is the duty of any Member with a concern on these matters to investigate them properly. Our duty in the States is to pass legislation and it is up to us to make sure that we know implications of legislation which we are passing.

**2.8.3 Deputy G.P. Southern:**

Does the Chief Minister accept that passing legislation may be done by fair means or foul and that in this case the fair means were not pursued fully? Did the Ministers or Presidents of the time fully understand the law that they were bringing to this House and its implications for a right to trial by jury, and if they did, did they not have a duty to inform the House that these implications were there?

**Senator T.A. Le Sueur:**

I resent the implication that this House passes legislation by fair means or foul. It passes legislation by fair means in an open government **[Interruption]** ...

**The Bailiff:**

Deputy, let the Chief Minister answer without interrupting.

**Senator T.A. Le Sueur:**

Every Member has the opportunity to debate and ask questions. As to how it is presented, it is a matter for the rapporteur at the time to decide how best to present the legislation, and if Members at the time feel uneasy about the way it was presented, it is for them to say so. I believe that this legislation should have been understood by those concerned but what it does, as I have clearly tried to outline, is to remove an anomaly whereby some offences were tried in one way and very similar offences were tried in a different way.

**The Bailiff:**

Deputy Martin, do you want a final question? I am sorry, I have seen Deputy Le Hérissier.

#### **2.8.4 Deputy R.G. Le Hérisssier:**

Would the Chief Minister not acknowledge that this demonstrates yet again - and we are all to blame - the need, on occasions like this, for proper legislative scrutiny? Would he not further acknowledge, while it appears to be a restriction of jury trial, of course, we still have a dual system: some trials by Jurat; some trials by jury?

#### **Senator T.A. Le Sueur:**

Certainly, I would not disagree with the need to make sure that any legislation we pass has been properly scrutinised and I hope that would be a responsibility, not only of a Scrutiny Panel, but of every Member. Certainly, in this particular case, as the report in Hansard shows, it was offered to the Scrutiny Panel at the time to review; they chose not to. That is their choice but it does not obviate the need of every Member in passing legislation to understand what they are doing.

#### **The Bailiff:**

Deputy Martin, do you wish to have a final question?

#### **2.8.5 Deputy J.A. Martin:**

Yes, the final question is: does the Chief Minister have any idea why it took over 2 and a half years to come back from Privy Council because I am told that is an exceptional amount of time? I think, obviously, they have a problem. It says right at the beginning in 2007: "This is human rights-compliant." I am not sure if it is.

#### **Senator T.A. Le Sueur:**

I cannot speak for the time it takes legislation to come back from Privy Council or to be registered. All I can say is that the law is now registered and has no doubt therefore been accepted by Privy Council as acceptable.

#### **Deputy R.G. Le Hérisssier:**

Could the Attorney General clarify its human rights compliancy?

#### **The Bailiff:**

No, sorry, this is a question to the Chief Minister; not a debate.

#### **Senator T.A. Le Sueur:**

I can simply say that a statement was made at the time that it was compliant.