

# Education and Home Affairs Scrutiny Panel

## Draft Criminal Procedure Law Sub-Panel

### Record of Meeting

Date: 7th February 2018

Present	Deputy S. Y. Mézec, Chairman Deputy T. A. Vallois, Vice-Chairman Deputy R.J. Renouf
Apologies	
Absent	
In attendance	Mr N. Benbow, Chief Executive, Law Society of Jersey Mr J. Gollop, Advocate Mr M. Preston, Advocate  Mr A. Harris, Scrutiny Officer

Ref Back	Agenda matter	Action
<b>516/51</b>	<p><b>1. Draft Criminal Procedure (Jersey) Law 201-</b></p> <p>The Sub-Panel received Mr N. Benbow, Chief Executive, Law Society of Jersey, Mr J. Gollop, Advocate and Mr M. Preston, Advocate to discuss the Law Society of Jersey's submission on the Draft Criminal Procedure (Jersey) Law 201-("the draft law").</p> <p>Mr N. Benbow explained that the Law Society had identified a number of issues with the draft law and was thankful for the opportunity to raise these with the Sub-Panel. The Panel was told that the views of legal professionals had not been taken into account as much as they should have been, and only minor consultation had been undertaken on the proposed law. It was suggested that further consultation was required on a number of key changes to the current law. It was explained that the project to overhaul the criminal procedure law had started in 2003, but the original proposals had not been fit for purpose. Subsequently, the current draft law had been in development since 2012. The Society had been involved in various ways since then, however representation on the working groups was limited with decisions being made by a majority vote that had not always taken into account the balance necessary in the criminal justice system.</p> <p>It was explained that the draft law was heavily in favour of the Prosecution, and the criminal justice system should be a balance between the Police, Prosecution and Defence. It was explained that checks and balances were required in order to ensure fairness in the system.</p> <p>The following issues were highlighted to the Sub-Panel:</p> <p><u>Abolishing Committal proceedings in the Magistrates Court</u></p>	

The draft law included the abolition of the committal proceedings in the Magistrate's Court. Members of the Law Society challenged this change, as current practice would allow the defence team to question witnesses, raise queries, challenge a particularly weak case from the prosecution and allow the defence to challenge a case early before it went to a full trial at the Royal Court. In response to the notion that committal proceedings caused witnesses to testify twice (which in the instance of sexual abuse cases was unfavourable), it was noted that the defence team may not look to use this process, however it was a right for the defendant to challenge the case.

It was noted that this current system was not a problem in criminal procedure law and was directly copying the changes that had been made in the United Kingdom. It was questioned why this change needed to be made if there was no issue with current proceedings.

Article 75(9) – Introduction of the possibility of re-trials in light of a hung jury

The Law Society explained that this particular change created significant difficulties for the Island. It was noted that in the UK, a retrial was easier to manage as it could take place in a separate town or city if the first case was covered in the local media. This would facilitate the appointment of jurors who were unaware of the details of the case.

However, in Jersey the logistical implications of holding a trial in another jurisdiction would not be feasible, especially for witnesses. Advocate Gollop noted that he had been involved with the issue of retrials in the past, and due to the high profile nature of that particular trial it was not possible to recruit jurors who were unaware of the details of the case. After three attempts at a retrial, the defendant was acquitted. It was explained that if this article was to be introduced then a media blackout would be required for every jury trial, which went against the notion that justice should be carried out in a public manner.

The Law Society explained that this particular article allowed the prosecution to have "another bite of the cherry", when it could be argued that the case was not strong enough to produce a clear verdict from the jury. It was noted that the defence did not have any ability to demand a retrial in such circumstances.

It was stated that this particular article was also copied from UK legislation, and the implications of adopting it had not been thought through in a smaller jurisdiction. It was noted again that this seemed to be a change for changes' sake.

Article 63 – Jury selection and composition

The Law Society explained that this article allowed for police officers, lawyers and centeniers to act as members of the jury if they had not been involved in criminal proceedings over the past 12 months. It was noted that the Society was fundamentally opposed to this for a number of reasons.

Firstly, it was noted that this may have an undue effect on the jury process, as a lawyer, for example, may be able to use their knowledge of the court system to inform the other jurors of the process and therefore influence outcomes. It was also noted that the presence of police officers and Centeniers may create a perception of unfairness for defendants.

It was noted that the Law Society understood the need to expand the jury base to include certain types of people, however in light of the fact that there were approximately 200 police officers and 400 lawyers practising in the Island, not including 600 people would be insignificant in the grand scheme of jury selection.

The Law Society agreed that the introduction of reserve jurors would be of use, however, this should only be taken into account for trials scheduled to last longer than a week. It was noted that the draft law had been updated to take this into account.

The Law Society noted the change of the foreman being appointed by the jury and not the presiding officer. It was questioned why this was the case, although it was not expected that this would have any effect on the defendants. Again, the Society explained that this change was not based on a broken concept and therefore questioned why it needed to be changed at all.

#### Articles 84, 85 and 87 – Defence case statements and the right to silence

It was noted that the changes put forward in these articles were in line with those made in the UK and would mean that the defence would have to produce a defence case statement outlining the case it was presenting to the court. If a statement was not produced, then the jury or presiding officer could take adverse inferences from this.

It was explained that in Jersey, the right to silence was absolute in law, and importing the concept of defence case statements would be an abrogation of this right. It was noted that some defendants were happy to provide a defence case statement and in the event an alibi was being presented to the court, it was necessary already to provide one. However, the introduction of this article would undermine the right of the defendant to not speak on the matter until trial.

#### Schedule 3, Part 9A – Admissibility of evidence of bad character

This amendment to the *Police Procedures and Criminal Evidence (Jersey) Law 2003* allowed for the admissibility of evidence relating to a defendant's propensity to commit crimes. It was suggested by the Law Society that this was an outrageous addition to the law.

It was noted that this was copied from UK law, where the provisions were not clear and it was feared that adopting this approach would complicate the provisions in Jersey. It was noted that at present the prosecution was able to reference cases which bore a striking similarity to the one under consideration, however this amendment would expand the range of cases that the prosecution could reference. Concerns were raised that this was heavily in favour of the prosecution and could be seen as prejudicial. It was explained that inclusion of these provisions could have

	<p>an undue influence on juries and could run the risk of convictions being made on past history and not the facts laid out in the case being examined.</p> <p><u>Other Matters</u></p> <p>The Law Society explained that with the exception of certain issues, the draft law was in need of updating and there were some changes that it welcomed, namely:</p> <ul style="list-style-type: none"> <li>• The ability for cases in the Royal Court to be remitted to the Magistrate’s Court</li> <li>• The compelling of spouses to give evidence (especially in cases of domestic violence)</li> <li>• Unrepresented defendants being restricted from cross examining complainants</li> <li>• The introduction of special measures for vulnerable people and children to give evidence</li> </ul> <p>The Law Society explained that insufficient time had been given for the major issues in the draft law to be understood, and questions remained over the rationale for making changes which were taken directly from the UK. It was hoped that a clear explanation for these changes could be provided by the Minister for Home Affairs and H.M. Attorney General. The Sub-Panel thanked the Law Society representatives for attending and invited them to submit any further issues that they may have on the draft law.</p> <p>The Sub-Panel agreed that it would arrange a meeting with the Minister for Home Affairs, H.M. Attorney General and the relevant Officers involved in order to discuss the concerns raised and explore bringing forward amendments in relation to Articles 63, 75, 84, 85, 87 and Part 9A of schedule 3. It also agreed it would inform the Law Draftsman of the potential amendments in order to give enough time to lodge any prior to 6th March.</p> <p>The Sub-Panel requested the Officer to circulate a copy of the <i>Police Procedures and Criminal Evidence (Jersey) Law 2003</i> in order to aid it with its deliberation on Part 9A, Schedule 3 of the draft law.</p>	<p><b>AH</b></p>
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