

### **3.17 Deputy T.M. Pitman of the Attorney General regarding independent forensic testing of disputed statements and documents:**

Does a defendant have a legal right to request independent forensic testing of disputed statements and documents?

**Mr. T.J. Le Cocq Q.C., H.M. Attorney General:**

Yes. All persons charged with criminal offences have a right to a fair trial process and it is the duty of the courts and the prosecution to ensure that this happens. If a person charged with a criminal offence alleges as part of his case that the evidence against him has been forged or otherwise tampered with then that person may ask the prosecution for access to the disputed material so that it can be examined by an expert instructed by the defendant. The prosecution will normally make such arrangements as are reasonable in the circumstances of each case. If arrangements cannot be agreed, the defendant may then apply to the court, which can then give appropriate directions and rulings. The question also refers to disputed statements. If a defendant disputes the truthfulness or accuracy of a statement made by a witness, the normal procedure is for that witness to be called to give live evidence so that their account may be challenged in cross-examination.

#### **3.17.1 Deputy T.M. Pitman:**

I thank the Attorney General for his very informative response. Could he just enlarge slightly to say would this process of independent analysis of disputed documents or statements, does that have to take place in a certain facility? Is it down to the prosecution? Who controls the situation?

**The Attorney General:**

Ultimately if a process cannot be agreed, the situation is controlled by the court because the court will make whatever directions and orders it needs to in the circumstances. The prosecution will be anxious to ensure the integrity of the evidence, in other words, to come up with a system which ensures that the evidence is not compromised, it remains protected, but the prosecution will agree reasonable procedures to the extent that it can to ensure that any such evidence can be independently assessed. As I said, in the event that there is no agreement, then ultimately the matter is under the control of the court and the court will give whatever directions are appropriate.

#### **3.17.2 Deputy T.M. Pitman:**

Is the Attorney General then saying that it is possible one has a legal right to request the independent forensic statements and documents but one does not have a legal right to receive them necessarily as it is at the court's discretion? Is that the correct interpretation?

**The Attorney General:**

Everything that is subject to an application to the court carries with it the possibility that it will be acceded to or that it will be refused. I go back to the fundamental principle, however, that everyone is entitled to a fair trial and the courts are there to uphold that, as is the prosecution. If it is an important part of a defendant's case that a document or some other statement has been forged or altered, then it seems to be inevitable that the court will permit that to be tested forensically.

#### **3.17.3 Deputy T.M. Pitman:**

Irrespective of whether that allegation is made and simply the other party wishes to have possession or to see those documents and statements, what is the appeal mechanism if and when permission is refused by the court to give those documents over?

**The Attorney General:**

I am not sure I understand the question but the court makes a number of trial directions as it goes along. The trial takes place and it is at that stage that an appeal can lie against any conviction which follows from that.

**Deputy T.M. Pitman:**

The question was to whom is the appeal made if the court refuses?

**The Attorney General:**

If the court refuses, then an appeal would ultimately lie to the Court of Appeal on appeal against conviction if there were a conviction in that case.

**3.17.4 Deputy T.M. Pitman:**

Just so I understand, I think the point that Deputy Tadier was trying to get at, that I believe the Attorney General made reference to, if the trial was going on but if a case is finished and it comes to light or it is alleged that it comes to light that a document is disputed, contested, does that right to have this independent forensic analysis still exist?

**The Attorney General:**

Could I ask if the Deputy is talking about a situation in which a trial has taken place, there has been a conviction, avenues to the Court of Appeal have been exhausted and finished with, in other words, generally procedurally the matter has been concluded? Can I ask the Deputy if that is the factual matrix that he is asking me to address?

**Deputy T.M. Pitman:**

I think I am trying to get a basic principle. As I say, evidence can come to light at any stage I imagine and what I am trying to say is if someone was already in prison and then it comes to light that something might not be as it should, do they still have that right to bring this to the attention and get some redress?

**The Attorney General:**

Yes, if the appeal procedure has not been exhausted, then it would be possible for a defendant in appropriate circumstances to appeal out of time and if there were strong reasons, then I am sure the court would order that new evidence be sought about a particular disputed document. If the appeal procedure has been exhausted, there remains under Article 43 of the Court of Appeal Law the ability to refer a matter to the Lieutenant Governor who himself can, in appropriate circumstances, refer matters to the Court of Appeal.

**3.17.5 Deputy T.M. Pitman:**

Could I just ask, is the Lieutenant Governor the final call for any person in this situation that the Attorney General has just described?

**The Attorney General:**

We are moving into the realms of enormously hypothetical situations. I am aware of no actual situation, I think, which goes beyond the Lieutenant Governor. Once the appeal procedure, which in some circumstances could be appealed as far as the Privy Council has been exhausted, then it is only under Article 43 can matters be referred to the Lieutenant Governor for him to exercise his discretion in those circumstances.