

The Jersey Law Commission



Annual Report 1997

To be laid before the States by the President of the Legislation Committee pursuant to the Proposition to establish the Commission approved by the States on 30 July 1996

THE JERSEY LAW COMMISSION

The Jersey Law Commission was set up by a Proposition laid before the States of Jersey and approved by the States Assembly on 30 July 1996.

The Commissioners are:

Advocate Keith Baker, *Chairman*

Jurat Donald Le Boutillier

Mr David Lyons

Mr David Moon

Advocate William Bailhache

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CONTENTS OF THIS REPORT

Foreword by the Chairman

PART 1 The second year - our first full year

PART II Topic Reports

II.i The principle of the
Accountability of Trustees.

II.ii
The
Best
Evidence
Rule.

II.iii
Dégrèvement
and
its
relationship
to the
Bankruptcy
(Désastre)
(Jersey)
Law
1990.

PART III The cost of the
Commission

PART IV Budgets

IV.i
Budget
for
1997

IV.ii
Budget
for
1998

APPENDIX A The role of the
Commission

APPENDIX B The
Commission's working
method

THE JERSEY LAW COMMISSION

SECOND ANNUAL REPORT 1997

To the President of the Legislation Committee of the States of Jersey

I have the honour to present to you, on behalf of the Jersey Law
Commission, pursuant

to the Proposition to establish the Commission approved by the States on
30 July 1996, our second Annual Report covering the activities of the
Commission in the calendar year 1997.

In doing so I extend a warm welcome to our two distinguished new
Commissioners, senior Solicitor Mr David Moon and Advocate William
Bailhache, and express our appreciation to your Committee, to the Jersey
Law Society and to the States Assembly for the eventual endorsement of
our invitation to them to join the Commission.

Keith Baker

Chairman

PART I The Second Year - our first full year

I.i This has been the year of starting work in earnest. Whilst much of our
first part-year was spent setting up our structure and procedures, we
have now engaged researchers and got down to the tasks of setting out
what we believe to be the present state of the law and assembling our
thoughts on how, if at all, the law should be amended.

I.ii The Commissioners have held nine meetings during the year and, following the abandonment of Topics Nos 1 and 2 during the first year, we have proceeded with work on the following topics:

Topic
3.
The
principle
of the
Accountability
of
Trustees.

Topic
4.
The
Best
Evidence
Rule.

Topic
5
Dégrèvement
and
its
relationship
to the
Bankruptcy
(Désastre)
(Jersey)
Law
1990.

I.iii Preliminary work was also done by Mr Lyons on the possibility of embarking on an additional topic: the Simplification of Civil Litigation (with special reference to small claims) - but we are not yet in a position to recommend it to the Legislation Committee for formal adoption by the Commission.

PART II Topic Reports

II.i Topic 3 - The Accountability of Trustees

(Topic Commissioner: Advocate Keith Baker)

(Topic Practitioner: Advocate Cyman Davies)

As mentioned in our 1996 Report, our first piece of research on this topic took the form of a most helpful opinion from senior Chancery Counsel in England, Mr John Mowbray QC. We were then fortunate enough to secure the services of Mr Stuart Bridge, Fellow of Queen's College, Cambridge, who has carried out a detailed analysis of the problem under consideration, and conducted thorough research into the state of Jersey trust law and its comparison with that of other jurisdictions. In consultation with the Topic Commissioner and Practitioner he has prepared a Consultation Paper, which it is hoped will have been published by the time that this Annual Report comes before the States. That will have completed the first four stages of our six-stage standard working procedure (set out again this year in Appendix B below.)

II.ii **Topic 4 - The Best Evidence Rule**

(Topic Commissioner: Jurat Donald Le Boutillier)

(Topic Practitioner: Advocate Anthony Dessain)

The Topic Commissioner and Practitioner have researched the subject in so far as it relates to civil proceedings. Our task has been greatly simplified by the fact that the Hearsay Rule was considered in recent years by the English Law Commission and that we have had access to the Consultation Paper prepared by the Commission and the Report which was presented to Parliament on the subject.

We are in the course of preparing a Consultation Paper which will be published later this year.

II.iii **Topic 5 - Dégrèvement and its relationship to the Bankruptcy (Désastre)(Jersey) Law 1990.**

(Topic Commissioner: Mr David Lyons)

(Topic Practitioner: Mr Peter Luce)

In addition to having the benefit of the services of the Topic Practitioner the Commission has employed as the Topic Researcher Mr Peter Bisson, who has had many years practical experience of the operation of the Propriété Foncière Law of

1880 in relation to dégrèvement and other insolvency procedures. The Commission has also been assisted by the Viscount and his department and by the Judicial Greffier and its officers dealing with dégrèvement and their views and observations will be incorporated in a Consultation Paper which should be published and circulated for comment in March 1998.

PART III The cost of the Commission

III.i The Commission's resources are made available by the States of Jersey through the Legislation Committee, based on budgets submitted by the Commission and approved by that Committee. A budget of £50,000 was approved for 1997.

III.ii The following expenditure was incurred by the Commission in 1997:

Stationery £449.69

Telephone & fax £246.50

Research fees £9,400.00

Travelling expenses Nil

TOTAL £10,096.19

PART IV Budgets

IV.i **Budget for 1997.** Although our expenditure in 1997 was but a fraction of the budget of £50,000 for that year it has to be remembered that in the first year of work on a topic the main costs will necessarily be confined to those of research. At the end of the research period there will be the further costs of preparing and publishing one or more consultation papers, organising the consultation process, liaison with the Law Draftsman on the form of any consequent legislation and publication of the Commission's final report. Although we are hoping to work at the rate of three topics per year it is not expected that each topic will be completely contained within a particular year. 3 years or so is the more likely time span of each particular topic, and there will therefore always be substantial overlap and the full momentum of the commission's expenditure is unlikely to be reached until its third year of operation.

IV.ii **Budget for 1998.** The States have already approved a budget of £75,000 for 1998.

IV.iii **Budget for 1999.** We still believe that we shall need to have at our disposal at least £25,000 for each of three topics, and we are therefore seeking a budget of £75,000 for 1999.

KEITH BAKER, *Chairman*
DONALD LE BOUTILLIER
DAVID LYONS
DAVID MOON
WILLIAM BAILHACHE

February 1998

APPENDIX A The role of the Commission

The Commission is a body established by the States of Jersey. Although the Commission works in close consultation with the Legislation Committee, which also organises its funding and acts as its channel of communication with the States, it is an independent body whose reports will be made available, unaltered, to the public.

The role of the Commission is defined in its terms of reference, which are set out as follows in the proposition establishing it:

It shall be the duty of the Commission to identify aspects of Jersey law which it considers should be examined with a view to their development and reform, including in particular the elimination of anomalies, the repeal of obsolete and unnecessary enactments, the reduction of the number of separate enactments and generally the simplification and modernisation of the law, and to those ends:

(a) to receive and consider any proposals for the reform of the law which may be

made or referred to them;

(b) to prepare and submit to the Legislation Committee from time to time programmes for the examination of different branches of the law with a view to reform;

(c) undertake, pursuant to any such recommendations approved by the Legislation Committee, the examination of particular branches of the law, such consultation thereon as the Commission shall think fit, and the formulation by means of draft bills or otherwise of proposals for such reform.

APPENDIX B The Commission's working method

Upon accepting a topic for review the Commission appoints one of its members to act as the **Topic Commissioner** to conduct and co-ordinate all of the Commission's work on that topic. On his recommendation the Commission seeks to appoint a Jersey lawyer currently practising in that field as **Topic Practitioner** to assist him generally and to ensure that the Commission's work remains relevant to the issues actually arising in day-to-day practice. Neither the Topic Commissioner nor the Topic Practitioner are paid by the Commission. Any necessary legal research will usually be carried out by others: either by professional researchers under contract or by experts willing to give their time as a public service.

The procedure for the review of each topic will commonly fall into the following steps:

1. Finding out whether there is a problem and if there is, defining exactly what it is.
2. Researching and summarising the existing law relevant to the topic.
3. Suggesting how the relevant law might be

changed to solve the problem.

4. Preparing and publishing a consultative document based on items 1, 2 and 3.
5. Receiving and discussing representations made in response to the consultative document.
6. Preparing and publishing a final report culminating in either a detailed brief for the Law Draftsman or in a draft law prepared in consultation with the Law Draftsman.

[Home Page](#)