

STATES OF JERSEY

JERSEY LAW COMMISSION: REPORT FOR 2005

**Presented to the States
by the Chief Minister**

STATES GREFFE

REPORT

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: Mr David Lyons, Chairman, English Solicitor
 Advocate Alan Binnington
 Mr Clive Chaplin, Solicitor
 Advocate Kerry Lawrence
 Advocate John Kelleher
 Mr Peter Hargreaves, Chartered Accountant

The Secretary is: Ms Elaine McGoogan

The address of the Jersey Law Commission is Whiteley Chambers, Don Street, St Helier, Jersey, JE4 9WG

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The Jersey Law Commission Ninth Annual Report 2005

To the Chief Minister 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 Ninth Annual Report covering the activities of the Commission in the calendar year 2005.

Signed

David Lyons, Chairman

PART I – The Ninth Year

Ten meetings were held during the year.

PART II – Topic Reports and other issues considered by the Commission

II.i Topic 4 – The Best Evidence Rule

Topic Commissioners: Jurat Donald Le Boutillier, Mr David Lyons
Topic Practitioner: Advocate Anthony Dessain

The Final Topic Report was produced and presented to the Legislation Committee on 26 January 2001. The recommendations contained therein were approved by the States of Jersey and have been passed to the States Law Draftsman to progress to legislation.

II.ii Topic 6 – The Jersey Law of Real Property

Topic Commissioner: Mr David Moon, Solicitor
Topic Practitioner: Advocates Helen Boléat, James Lawrence and Andrew Bridgeford

The Commission issued a Consultation Paper on this topic in September 2002. It evoked considerable interest and comment which the Commission evaluated in preparing its Report. This Report was submitted to the Legislation Committee in October 2004 and following comments from the Committee the Commission is taking two further topics for consideration (a) the grant of probate to executors in respect of Jersey immovable property and (b) the prohibition on trusts of Jersey situs immovable property.

II.iii Topic 8 – Jersey Rules of L^égitime

Topic Commissioner: Mr David Lyons
Topic Practitioner: Advocate Keith Dixon

The Commission submitted comments to the Legislation Committee in response to the Legislation Committee's Consultation Document R.C.3/2001 on Succession Rights, which had been presented by the Legislation Committee to the States on 2 January 2001. No further work is required to be done by the Commission until instruction has been received from the Legislation Committee.

II.iv Topic 9 – The Law on Tutelles

Topic Commissioner: Mr Clive Chaplin
Topic Practitioner: Advocates Marion Whittaker and Rose Colley

The Commission's Report of July 2002 on this Topic was laid before the States by the Legislation Committee and approved by the States on 10 September 2002. Its recommendations are now with the Law Draftsman for implementation in a new statute.

II.v Topic 10 – The Law of Contracts

Topic Commissioner: Advocate Alan Binnington
Topic Practitioner: Advocate John Kelleher

A Consultation Paper on this Topic was issued in October 2002. The Commission's Report was issued in February 2004 and the Commission is awaiting further information in relation to its implementation. In order to progress matters, the Commission has asked Advocates Binnington and Kelleher to prepare a draft Code in line with the proposals in its report.

II.vi Topic 12 – The Law of Charities

Topic Commissioner: Mr Clive Chaplin
Topic Practitioner: Advocate Philip Le Cornu

A Consultation Paper was issued in January 2004 and numerous comments and suggestions were received. Having considered and debated the comments, the Commission determined to issue a second Consultation Paper. Extensive work and consultation on this topic took place in 2005. The Second Consultation Paper will be issued in 2006.

II.vii The Law on Security

Topic Commissioner: Mr David Lyons
Topic Practitioners: Mr Chris Renouf, Solicitor, Mr Peter Luce, Solicitor and Mr Peter Bisson

Arising from a request of the Jersey Financial Services Commission to review a consultation document by the Company Law Review Steering Group in relation to the registration of company charges, the Commission decided to review security interests and charges over property in general. Commissioners John Wheeler and David Lyons undertook preliminary research as a result of which the Commission decided to consider Security as a new Topic.

Progress on this topic has not been rapid and in relation to security over intangible movable property, legislation is imminent to replace the Security Interests (Jersey) Law. Because of this The Commission determined to concentrate on security over immovable property.

Following the retirement of John Wheeler, David Lyons supplemented the original topic practitioner, Chris Renouf, with Peter Luce and Peter Bisson. Work was completed in December 2005 and a paper will be published in 2006.

II.viii The Rights of Beneficiaries to Information Regarding a Trust

Topic Commissioner: Advocate Keith Baker
Topic Practitioner: Mr Stuart Bridge

The Commission understands that the Topic Report on the Rights of Beneficiaries to information regarding a Trust was forwarded to the Finance and Economics Committee for consideration and comments. The Commission therefore waits to hear whether this Topic will progress to legislation in due course.

II.ix Prescription and Limitation

Topic Commissioner: Advocate Alan Binnington
Topic Practitioner: Advocate Tim Hanson

Extensive preliminary research has been undertaken and is now being analysed by the Topic Practitioner. A Consultation Paper is expected in 2006.

II.x The Jersey Law of Partnership

Topic Commissioner: Advocate Kerry Lawrence
Topic Practitioner: Michael Heywood of Counsel

Following preliminary research by Advocate Lawrence the Commission felt that real progress would only be made on this extensive topic if Counsel were employed to undertake the necessary research. Advocate Lawrence has drafted instructions dealing with many preliminary points and these were awaiting Counsel's views at the end of 2005. A consultation paper is expected in 2006.

II.xi Dobson v Public Services Committee of the States of Jersey

Advocate Lawrence wrote to the Legislation Committee setting out the views of the Commission, which was that the law as it stands is clear, and so not in need of revision for clarification purposes. However, the Court judgment had suggested the time may have come for the law to change for public policy reasons. As this would be a political decision, it was considered appropriate for the relevant States Committee to consider the issue, and then, if change were called for, the Law Commission may be able to assist by way of a review of the scope of changes elsewhere.

II.xii Trusts of Jersey Immovable Property

Mr Peter Hargreaves was asked to produce a preliminary paper on this subject.

II.xiii Executors and Immovable Property

Advocate John Kelleher was asked to produce a preliminary paper on this subject.

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.

III.ii The Commission spent a total of £43,735 in 2005 from a budget of £46,125.

PART IV – Budget

IV.i Budget for 2006

The Legislation Committee set the Commission's budget for 2006 at £32,600.

PART V – Commissioners

Advocate John Wheeler resigned as a Commissioner on 31 December 2004. The Commission forwarded to the Legislation Committee the names of Peter Hargreaves and John Kelleher for confirmation of their appointment by the States of Jersey. Messrs Hargreaves and Kelleher were appointed on 5th July 2005.

PART VI - General

The Commission continues to function efficiently and economically but problems are emerging in the production of well researched Consultation Papers. Practising lawyers have given their time to assist the Commission either free or at greatly reduced rates but they are constrained by commercial pressures and the demands of full paying clients.

The Commission has striven to contain its expenditure within its agreed budgets and to monitor the fees paid to its consultants. In recent years no request has been received from the Legislation Committee for a budget estimate from the Commission and the payment of invoices from consultants has been slow and laborious. If the Commission is to continue to function as it would wish, both of these issues need to be addressed by the Chief Minister through the Legislation Advisory Panel.

Signed

David Lyons, Chairman

Clive Chaplin

Alan Binnington

Kerry Lawrence

Peter Hargreaves

John Kelleher

The rôle 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 organised its funding and acts as its channel of communication with the States, it is an independent body which reports will be made available, unaltered, to the public.

The rôle 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; and*
- (c) to 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

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. The Topic Commissioner is not paid by the Commission and in practice the Topic Practitioner has not asked for payment, although payment has been made in some cases where necessary. 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.