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Sent by e-mail to: criminalprocedure@gov.je

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Dear Sirs,

SUBMISSION: NEW CRIMINAL PROCEDURE LEGISLATION

First of all I am not happy that this consultation has been scheduled to overlap with the summer holidays when many people who might have an interest in submitting comments about these draft proposals (including States Members and lawyers) are more likely to be taking a break and spending time outside of Jersey. On page 4 of the sparse 25-page consultation paper, it is stated that the current laws governing procedures in the criminal courts *"are in need of urgent replacement and modernisation"* (but no further explanation is provided as to why this is deemed to be the case). On the same page, it is also stated that the Minister intends to lodge the draft law before the end of 2017 *"with a view to it being debated early in 2018"*. Clearly the intention is to rush the new law through the States Assembly with the usual rubber-stamping debate before the scheduled elections in May 2018 so that the Minister can include it on her list of achievements when she stands for re-election.

Why this sudden urgency? The current legislation has lasted more than a century and a half and I cannot recall many substantial amendments being proposed and adopted over the past 30 years or more, which indicates to me that those responsible for administering criminal procedure in the courts are generally not too fussed about the state of the current legislation. The last reforms of any great substance were adopted by the States in October 2000. If the current laws have been deemed fit to regulate criminal procedures in the Jersey courts for longer than 150 years then I would argue that there should be no real need for its *"urgent replacement and modernisation"*. The issues under discussion are complex and involve important historical civil and human rights aspects which cannot simply be railroaded through the standard *'tick box'* States phoney consultation exercise. The consultation period

therefore needs to be extended and/or a greater effort made to consult with interested rights organisations outside of Jersey in order that a proper comparison can be made between the Jersey proposals and the situation that prevails in other common law systems, most importantly England and Wales.

I am also aware that on previous occasions when changes to the 1864 Law have been made or attempted to be made, the views of the UK authorities have been sought before the States were asked to adopt the proposals. I do not know whether this is still the practice but I suggest that from the point of view of protecting the existing ancient rights and privileges of islanders, it definitely should be, given the complete lack of effort and desire that today's States Assembly puts into offering any meaningful opposition to Ministers' propositions. As an example of this, I quote this extract from an answer about jury service given by the President of the Legislation Committee in the States Assembly on 22nd May 1984:

In March of this year the Committee approved, in principle, a draft law designed primarily to reduce the number of persons on a jury from twenty-four to fifteen. The draft law has been submitted to the Home Office for pre-audit, and will be brought before the States as soon as the Home Office comments have been received.

I also notice the complete lack of any meaningful statistics included in the consultation paper. For example, what are the historical conviction rates in Jersey for a defendant who is tried by (a) the Magistrate; (b) the Jurats (i.e. the Inferior Number) and (c) a Jury (i.e. the Assize)? If the courts have not been compiling such statistics then why not? Has no independent research ever been commissioned? How many people in recent years continue to be called for jury service more than once? The problem doesn't seem to be so acute in the past two decades but nevertheless I have concrete evidence that one islander was called for jury service 3 times during the decade 2000-09 and actually served on a jury twice out of those 3 times, which indicates to me that this is probably still an issue. We should have the right to know things like this as it should no longer be happening when so many people are now included on the Tableau Général. Where are the diversity statistics relating to the Jurats (e.g. average age, gender, ethnicity, occupation, directorships, whether they own their own home or rent, etc.)?

Moreover, given that the current legislation no longer disqualifies non-British nationals from serving on a jury, how many such foreign nationals have actually been selected for potential jury service by the process of the *tirage*? Of those, how many were ultimately discharged before serving and for what reasons? Many foreign nationals who are now eligible by law for jury service have clearly not yet mastered the English language, let alone accepted the many norms and traditions of this island community, and it is not clear to me how capable the current system is of identifying people who cannot understand English at an early stage before they are empanelled as jurors. We also have no idea whether their different cultural and religious heritage might make them more or less likely than British nationals to convict a defendant accused of certain types of offences.

Finally, I am unhappy that many of the more controversial elements of the existing law are being retained without question (or in some cases things that should be in the current Law but are not will still be missing from the new Law). The Consultation Paper arrogantly assumes that islanders never oppose the *status quo* so why even bother discussing them? Reference is made to the *"antiquated nature of the existing legislation"* which is ironic given that some of the current Law's most antiquated features are being automatically transferred to the new 21st century draft law.

The current distinction between statutory and non-statutory offences should not continue – the right to trial by jury should be extended to at least some of the most serious statutory offences:

1. I am very disappointed that the Consultation Paper dated 24th July 2017 on the proposed draft *Criminal Procedure (Jersey) Law 201-* completely fails to acknowledge the important historic role that the jury has played for more than 500 years in administering justice in Jersey.

2. The sparse 25-page Paper devotes barely 4 pages to the proposals relating to juries in Part 9 of the draft Law. It invites answers to 6 questions but the first 5 of these are comparative trivialities that are of little importance in the greater scheme of things (e.g. the proposed minimum and maximum ages that a person would qualify to be a juror in future).

3. Yet it was not always the case that the people who we chose to represent us in Jersey were so dismissive of the right to trial by jury. An extract from the (very long) proposition adopted by the States Assembly on 4th October 1786, calling for *"the re-establishment of the trial by Jury, the ancient and original jurisdiction of that island"*, stated the following (includes original spelling):

   The States after a full investigation of the ancient usage and records of the island; after examining several authentick documents and authorities, respecting the usage and practice, and the Vieux Contumier, which is the basis of the municipal laws and customs of the island, have found that the trial by Jury, in civil and mixt, as well as in criminal cases, is an ancient right and privilege belonging to the inhabitants of the island of Jersey: that the origin of juries is of the highest antiquity, that their decisions have taken place on affairs of the greatest importance and intricacy, of which sundry instances occur.

4. That proposition of 1786 then went on to highlight many cases taken from the ancient records of Jersey dating back as far as 1489 where juries had been called upon to decide on criminal, civil and mixed cases. It even referred to an *'extent'* that was undertaken in Jersey some 686 years ago:

   It is evident by the extent made in the year 1331, that the amount and value of the revenues and services owed to the King throughout the island, were

fixed and settled by Juries or Inquests, drawn from the twelve parishes respectively, and composed of twelve men each.

That proposition eventually led to Royal Commissioners visiting the island in 1791. However, it would appear that they never reached any firm conclusions to recommend to the Privy Council and the last mention of the matter was in 1793, after which it seems to have been quietly dropped.

5. As for the current draft Law, it has been translated from French into English (obviously for the benefit of young practising lawyers who cannot speak French) but apart from that, much of it has just been copied and pasted more or less wholesale from the 1864 Law without any attempt to examine how certain things came to be in the 1864 Law in the first place.

6. By far the most unforgiveable of these copy and paste jobs is in Article 46 of the new draft Law, where it is proposed to continue drawing the same arbitrary distinction that already applies between a ***'crime'***, a ***'délit'*** and a ***'contravention'*** for the purposes of deciding whether or not an accused can exercise his/her ancient Jersey right to be tried by a jury (originally composed of 24 jurors until 1988 when its number was reduced to 12).

7. The current 1864 Law only gives an accused a choice in his/her mode of trial if the offence happens to be categorised as either a *crime* or a *délit* - the former encompassing the most serious customary law (i.e. non-statutory) offences and the latter being the less serious customary law offences. A person charged with either a *crime* or a *délit* that falls outside the summary sentencing jurisdiction of the Magistrate's Court can choose to be tried either by the Royal Court sitting with a jury (i.e. *'the Assize' / 'enquête'*) or alternatively by the Royal Court sitting without a jury and composed only of the Bailiff (as sole judge of law) and 2 Jurats (i.e. *'the Inferior Number' / 'Nombre Inférieur sans enquête'*).

8. By comparison, a *contravention* has been taken to refer to a statutory offence since the early 1800's. A person accused of a contravention outside of the Magistrate's Court summary sentencing jurisdiction has no choice but to be tried by the Inferior Number of the Royal Court.

9. For the record, the summary sentencing jurisdiction of the Magistrate's Court (since 20th September 2016) is a fine of no more than £10,000 and/or a sentence of imprisonment of not more than 12 months. Before that date, the maximum fine was £5,000. This is also stated in the proposed Article 16 of the new draft Law. Since 2016, the States Assembly has been able to increase these maximum sentencing powers by way of Regulations only that do not require Royal Assent. I am concerned about this. Regulations put more power in the hands of the small group of elite people responsible for deciding what goes in them (principally the Minister, civil servants and the Law Officers). This is because by long tradition, subordinate legislation is only rarely subjected to any proper, contested debate or democratic vote when it is placed before the States. In effect, Regulations are rubber-stamped into Law although this should not be the case. This laxity can even apply to higher

legislation that requires Royal Assent. By way of example, the decision by the Assembly on 20th October 2015 to adopt a Law that, amongst other things, increased the sentencing powers of the Magistrate was pushed through on a standing vote only. Furthermore, included within the provisions of that 2015 Law were very drastic increases in the maximum levels of fines for many offences (e.g. driving without insurance automatically increased from the previous maximum fine of £2,000 to the new maximum of £10,000 as a result of the decision to increase the Level 3 fine by the same amount – that is a fivefold increase overnight).

10. There are a couple of late 19th century Jersey Laws which expressly state that the offences created in those statutes constitute either *crimes* or *délits*, which would make them potentially triable by jury. However, these are the exceptions to the general rule and the vast majority of modern statutory offences are instead classified as *contraventions* and can therefore only be tried by a judge and 2 Jurats (or alternatively the Magistrate).

11. This contrasts with the situation in UK statute Law which distinguishes between 3 categories of offences: (1) **Summary only**, being offences that only can only be tried summarily in the Magistrates' Court; (2) **Either way** offences, which can be tried either summarily in the Magistrates' Court or on indictment in the Crown Court, depending on the defendant's choice of mode of trial; (3) **Indictable only** offences, which are generally the most serious crimes that will often lead to a lengthy term of imprisonment.

12. Trials in the UK Crown Court have historically always been held with a jury. A 2003 Law change by the Blair government limited to some extent the previous absolute right to trial by jury in cases where there was deemed to be "a real and present danger" of jury tampering. In 2010, the UK media reported that for the first time in 350 years, 4 men (*"the Heathrow Heist Four"*) were convicted in the Crown Court by way of a trial without jury. However, that case was unusual and it was only decided (by the Court of Appeal) to hear it without a jury after 3 previous attempts at trial by jury had collapsed. Nevertheless, even taking into account the 2003 Law change, it is without doubt that the historic right to trial by jury in criminal cases is still far better protected in UK statute law than it has ever been in Jersey statute law.

13. The difference between the UK and Jersey when it comes to right to trial by jury is particularly stark in relation to drug offences. A recent Freedom of Information response showed that out of 100 convicted prisoners being held at HMP La Moye Prison in Jersey on 16th August 2017, the largest single category (29 inmates) were there for drug offences. Maximum sentences for some offences under the *Drug Trafficking Offences (Jersey) Law 1988* can be as high as life imprisonment, yet a person accused of such a crime has no statutory right for his/her case to be tried before a jury in the Royal Court due to the 153-year old arbitrary distinction between statutory and non-statutory offences. Yet if the person faced the same level of serious drug charge in the UK, where maximum sentences can also be as long as life imprisonment, the offence would most likely be classed as an Either way offence (otherwise an

Indictable only one) and the accused would most certainly be able to exercise his/her statutory right to be tried by a jury in the Crown Court.

14. In 1864, Jersey had very limited self-autonomy. The States Assembly that adopted the 1864 Law, which would have included Rectors and Jurats (the latter, by the way, simultaneously being also judges of law and fact in the Royal Court!) could hardly have foreseen the enormous growth in the creation of new statutory law offences in Jersey during the 20th and 21st centuries, together with the very long maximum sentences and stiff, often unlimited fines available to the Court.

15. It is only fair that if the Minister wants to recommend to the States the continuation of this arbitrary distinction between statutory and non-statutory offences that thorough research is undertaken and presented as part of the consultation process which reveals on what basis this distinction was deemed to be justified in the first place – and whether it is still justified today. However, this has not happened and it is unacceptable.

16. My own (admittedly brief) research has failed to uncover any clear answers as to why this historic distinction between offences came about and continues to exist today. In paragraph 1.25 of the educational guide called ***'Criminal Procedure'*** by **Prof. Robert McPeake** (although it is separately stated in the preamble that the authors of all the editions are Richard Holden and Advocate Matthew Jowitt), being part of the **Jersey Law Course 2014-15** syllabus (Institute of Law Jersey), the following extract appears under the sub-heading ***'Classification of offences: crimes, délits and contraventions'***:

    Crimes and délits are triable by the Magistrate, Jurats or jury; contraventions are triable by either the Magistrate or the Jurats only, where the proceedings are committed to the Royal Court. <u>There is no obvious reason for the distinction</u>, especially given that the majority of crimes committed and tried concern drugs offences which are both serious and contraventions without the right to jury trial.

17. I have underlined particular words in the extract above for added emphasis. Moreover, in an article called ***'The Right To Trial By Jury'*** published in Issue 1 of the Jersey and Guernsey Law Review 1998, **Advocate Mark Lewis** raised similar concerns to those of my own in respect of those charged in Jersey with statutory drugs offences having no right to choose trial by jury. He submitted that ***"here lies an obvious injustice"***.

18. That 1998 article by Advocate Lewis also highlighted the 3 categories of different offences under UK legislation (as I have already done) and stated:

    In England and Wales, as all offences are so categorised, there is no possibility of an accused being denied the right of trial by jury for anything other than a trivial offence which will carry at the most a maximum of six months' imprisonment.

19. Advocate Lewis then called for Jersey to adopt a similar categorisation of offences to the UK as ***"the only way to prevent further injustice"***. He referred to the right to trial by jury as ***"precious"*** but then added:

    Yet here in Jersey there are a number of unjustifiable restrictions placed on this right. Not only is there the restriction highlighted by the Corcoran case but there is no right to trial by jury in relation to statutory offences.

20. On the possible reasons for the historic distinction between statutory and non-statutory offences in Jersey Law, Advocate Lewis had this to say:

    There is no obvious justification for the distinction between common law and statutory offences. It appears to be the result of an historical accident. By apparent oversight Article 1 of the *Loi (1864) réglant la procedure criminelle* only provides for the right to elect trial by jury for *crimes* and *délits*.

21. In the last paragraph of his 1998 article, Advocate Lewis drew attention to the danger of the prosecution purposely seeking to charge the defendant with a statutory offence rather than a customary one in situations where similar offences existed under both statutory and customary Law:

    Finally there are certain circumstances where an accused can be charged with either a statutory or a common law offence. The recent creation of the statutory offence of causing death by dangerous driving now gives the prosecutor the choice of charging that offence (no trial by jury) or manslaughter (trial by jury). Is not the current system open to abuse? May not the person who brings the charge be tempted to bring it under a statutory provision in order to avoid the possibility of a trial by jury? Would it not be better to remove the temptation in the first place?

22. It is also noted that the same Minister responsible for this tick-box consultation exercise also launched another consultation on 1st September 2017 (with a very short 6-week period for comments to be submitted) relating to proposed new sexual offences legislation which, amongst other things, would (according to media reports) see drunken sex outlawed as rape. The start of this other consultation was particularly ill-timed and clumsy, coming as it did just one day after a man was found not guilty by a Jersey jury of the rape and indecent assault of a woman. According to media reports of that trial, the woman had admitted being drunk. From the point of view of this consultation rather than the other one, the creation of this new statutory offence of rape would in future give the prosecution a choice of whether to charge an accused with the statutory offence of rape, thereby denying him the right to be tried by a jury, or with the more traditional customary law offence of rape. Therefore in the light of this major forthcoming sexual offences legislation, Advocate Lewis' reference to ***"temptation"*** made two decades ago seems even more relevant today than when he originally made it.

The previous reforms adopted in 2000 should not just be unquestioningly transferred into the new legislation (e.g. the lower conviction thresholds to bar someone from jury service / the eligibility of foreign nationals with only 2 years residence in Jersey, etc.):

23. It is quite remarkable that although no committee of the States (or Minister) has ever proposed asking the Assembly to remove the distinction in the 1864 Law between statutory and non-statutory offences for the purposes of widening the scope of trial by jury, the Legislation Committee responsible for the last major reforms to the Law 17 years ago openly conceded that it had become ***"inappropriate"*** to preserve it. However, this was only for the purpose of henceforth disqualifying from jury service people who had previously committed either a *délit* or a *contravention* and, due to the anachronistic terms of the 1864 Law, were still eligible for jury service, whereas those who had previously committed a *félonie* or a *crime* were disqualified for life. On pages 2 and 3 of the Committee's report accompanying proposition *P.89/2000*, lodged on 6th June 2000, the Committee stated as follows:

Article 10 of the 1864 Law prohibits from jury service any person convicted of treason or "félonie ou crime". Therefore, someone who has been convicted of a délit or a contravention is not disqualified. This distinction is anomalous. A contravention is a statutory offence. A crime or délit is a customary law offence. (The word félonie is defunct). Disqualification from jury service however depends upon the distinction between customary law offences and statutory offences. The distinction was understandable in the 19th Century when statutory offences were of a less serious nature. Today, however, more serious offences have been created by statute. A person may be liable to imprisonment for importing drugs or fraudulently inducing people to invest money; yet technically he/she remains qualified to serve on a jury because Article 10 does not disqualify people who have committed statutory offences.

24. It is clear to me that the Kinnard Committee responsible for bringing these changes to the States in 2000 wanted to have its cake and eat it. Wendy Kinnard was, in my estimation, a social conservative who was trying to disguise that fact from her voters, notably by sharing office facilities at one time with a States Member who was regarded as left-leaning. She clearly had no desire whatsoever to widen the scope of trial by jury otherwise she would have recommended that. However, on the other hand she wanted to disqualify as many people with petty former convictions from jury service as she could possibly get away with. Whilst it is true that there was little justification for maintaining the status quo of 17 years ago in terms of which types of offences resulted in disqualification from jury service, her proposals, which, inevitably, were rubber-stamped through the Assembly in double quick time on a Standing Vote only, disqualified too many islanders from jury service for too long on the basis of having committed only minor offences in the past.

25. For example, the Kinnard reforms disqualified from Jersey jury service for life anyone who had been sentenced to **at least one month's imprisonment** at any time, whether in the island or elsewhere. Yet the equivalent UK legislation at that time, the *Juries Act 1974*, only disqualified for life someone who had been sentenced to **5 years or more** imprisonment (this still stands today although several other types of serious sentence now also carry a life disqualification). It should also be pointed out that when the Juries Act originally came into force, only those sentenced to life imprisonment were permanently barred from jury service. This was eventually reduced to a term of 5 years imprisonment by the Conservative Thatcher government in the 1980's. Therefore in terms of months served in prison, the Kinnard life disqualification period was 60 times longer than that which applied in the UK. She justified this only on the basis that the same one month imprisonment disqualification applied in France, yet France is a civil law country which does not share the same heritage in relation to jury service as the English-speaking common law countries. In spite of this vast, unjustified anomaly between the Kinnard disqualification ceiling and the UK one, I was totally dismayed to discover that the Minister proposes to copy and paste this one month term of imprisonment disqualification direct into the proposed new draft Law – see Article 61(3)(d).

26. Another unsolved issue with the Kinnard disqualification requirements is that it also expressly covers offences committed anywhere in the world – not just in Jersey or other parts of the UK. Once again the Minister proposes to copy and paste this into the new draft Law. By contrast, the UK legislation generally only covers offences committed in the UK, the Channel Islands or the Isle of Man, which I am sure is for very sensible and practical reasons. I can only assume that Kinnard extended the scope of sentences to include those committed anywhere in the World because she also simultaneously removed from the Law the existing requirement for a juror to be a British subject. By stipulating that offences committed abroad were also covered, the Law gives the impression that all foreign nationals living in Jersey whose names are selected for jury service are also subject to the same standard of conviction checks as apply to Jersey and British people.

27. However the words of the statute cannot possibly reflect what actually happens in reality. The huge administrative complexities of trying to obtain conviction records from foreign governments anywhere in the World within a very short timeframe would surely make this an impossible task in most cases. There would also be a need to pay for translation services in order to communicate with some of these foreign governments (how much is this costing?).

28. At the time when these Kinnard reforms were adopted, it could only be speculated as to how such checks might be carried out in the future and what problems might be encountered. However, it is now 17 years since the nationality requirement was removed in Jersey and statistics relating to how many conviction checks on foreign nationals have been attempted and how many of them have succeeded (and within the narrow timeframe to enable the person to be empanelled as a juror) must surely be available somewhere. I

presume that such information, if held by the Courts or the Viscount, would be classed as exempt if requested through a Freedom of Information request. It is therefore vital that the Minister supplies such information before she lodges her draft Law with the Assembly. How many such foreign nationals have served as jurors over the last 17 years and were reliable conviction records obtained from abroad in respect of all of them?

29. Because the 1864 Law does not state any particular length of prior residency in Jersey (or other parts of the UK) in order to qualify to serve on a Jersey jury, non-British nationals only have to satisfy the paltry 2-year residency requirement necessary in order to be registered to vote. By contrast, a **5-year residency** in the UK from the age of 13 is required under the Juries Act and I recommend that – presuming that the Minister will not re-establish the previous requirement to be a British subject – a 5-year residency requirement is also added to the draft Law.

The new legislation should expressly prohibit the parishes from carrying out their own checks (prior to submitting the list of potential jurors) in order to remove the names of registered electors that the parishes believe may not be eligible for jury service:

30. In 2004, I undertook some historic research into the way in which the island went about selecting islanders for jury service. I did this because anecdotal evidence suggested to me that people on low incomes and those who lived in rental accommodation never seemed to be called for jury service in Jersey and I could not find one single example from anyone I knew that had ever served on a jury.

31. The results of my research were quite shocking. I learnt that until the early 1990's, it was generally the practice of the parishes to forward to the Viscount only a small minority of names of parishioners from their respective electoral registers for inclusion as potential jurors. The list of names prepared by the parishes was/is called the *état nominatif*. It is from that initial list of names that the Viscount then makes further additions or deductions of his own before drawing up the *Tableau Général*, from which the names of at least 40 potential jurors at a time are then selected before an Assize (in the presence of 2 Jurats) by means of the *tirage* (lottery).

32. It was the long tradition of the parishes to operate their own individual vetting and selection procedure on parishioners for jury service purposes, yet the French wording of the 1864 Law (read in conjunction with the later 1912 Law which amended it) did not seem to me to make that clear. It required the Constable to submit in the first 15 days of November a list of the names and addresses of those in his parish aged between 25 and 65 who were capable of serving as jurors and who were not exempted.

33. On 2nd March 2004, I wrote a letter to the Attorney General, Mr. William Bailhache QC (who is now the Bailiff) querying the legality of the selection

procedures that the parishes had been operating under the 1864 Law and also asking whether the parishes were also conducting their own secret police record checks on parishioners prior to drawing up their lists. I am glad to say that I received full and thorough responses from both Mr. Bailhache as well as the Deputy Viscount, Mr. P. De Gruchy.

34. In brief summary, both the Attorney General and the Deputy Viscount refuted my claim that the parishes had been acting unlawfully. Of the requirement for the Constable to submit a list of potential jurors, the Deputy Viscount said in his letter to me dated 28th April 2004: ***"if it meant <u>all</u> of the inhabitants of the Parish (minus the statutory exceptions) in my view it would say so."*** Mr. Bailhache, in his letter to me dated 18th June 2004, described the existing vetting procedure of the parishes as ***"a sensible and practical method of proceeding."***

35. As to whether the parishes might be carrying out their own police checks on parishioners as part of their vetting procedure, Mr. Bailhache said:

    I do not know whether it is the practice of the Constables to make this enquiry, and your question is therefore academic. However I note from Article 4 of the 1912 Law that it is the obligation of the Constable to remit to the Viscount the état nominatif of the inhabitants of his Parish <u>who are capable of serving as jurors</u>, aged between 25 and 65 and excluding the exceptions set out in Article 9 of the 1864 Law and those in the following Article. (Empasis added).

    It seems to me that it follows from these provisions that if the Constable is aware that a potential juror has convictions which would disqualify him from serving, he is to remove the name of that person from the état nominatif. How the Constable fulfils the functions imposed upon him by Article 4 of the 1912 Law is a matter for him. It is incorrect to say, as you do, that Article 4 of the 1912 Law excludes mention of Article 10 of the 1864 Law.

36. I am prepared to accept, from a statutory interpretation viewpoint at least, that the opinions in 2004 of both the Attorney General and the Deputy Viscount are legally justified, based on the wording of the current laws. However, from a political viewpoint, I remain as opposed now as I was in 2004 to the parishes having the right to conduct these vetting procedures, particularly any unofficial police checks that might be undertaken on select individuals that may have come to the particular attention of the parishes for whatever reason (e.g. a parishioner who had made a complaint about the way the parish had treated him/her).

37. While it would not be practical for the parishes to conduct any widespread form of police checks, it concerns me that under the Law as it continues to apply today, the parish would still be legally justified in carrying out such a check on a parishioner today by unofficial means (such as utilising any records held on site at the Parish Hall by the Honorary Police). It is worrying that such an unofficial check made by the parish would presumably not be

detected if that same parishioner later made a Subject Access Request to the States Police in order to find out if any conviction checks had been made in respect of him. It should also be noted that when I wrote that letter in 2004, the parishes also had responsibility for paying welfare, meaning that, in smaller parishes at least, the same officer responsible for administering a person's welfare claim might well have been capable of getting secret access to the claimant's past convictions (or at any rate those committed within that parish) through a dual responsibility to draw up an annual list of potential jurors.

38. Article 62 of the proposed new draft Law gives power to the States to make Regulations, including the following (paragraph 1(b)):

    for the parishes or any other administration of the States to provide the Viscount with such information and in such form as may be specified, to enable the compilation of the jury list;

39. It therefore remains possible that the existing situation of the parishes conducting their own unregulated and unstated vetting procedures with the private approval of the Law Officers might continue under the new Law, possibly without the majority of the public being aware that the Law permits it. I would therefore recommend that the Law (and the report accompanying the proposition) makes it clear exactly what vetting powers, if any, it is proposed that the parishes should have. In that way, we would at least know for sure what the legislative intention is. However, I would strongly argue that that the parishes should be required to do no more than submit a full, unedited list of its electoral register to the Viscount, including those who may well be disqualified from jury service, and let the Viscount make any deletion from those lists, as he already does.

Yours faithfully,

J. Gosselin.