

Access to Justice Review Public Hearing
Le Capelain Room, States Assembly Building
13:45 – 14:30, Friday 11 July 2014

Advisory Panel:

Senator P.F. Routier (Chairman)
Deputy J.H. Young of St. Brelade
Connétable J. Gallichan of St. Mary
Deputy M. Tadier of St. Brelade

Officers in support:

Mr. T. Walker
Mr. S. Cartwright

Attendees:

Advocate T. Hanson, Hanson Renouf
Advocate B. Corbett, Hanson Renouf

[13:46]

Senator P.F. Routier (Chairman):

You are very welcome. Thank you for making your submission. Just do a few introductions, just so we all know who we all are. Also for the recording; it is a public hearing and there will be a transcript of what is said. Okay? So, I am Senator Paul Routier, Assistant Chief Minister. I have been asked to chair this panel. I am joined by ...

Connétable J. Gallichan of St. Mary:

Constable Juliette Gallichan of St. Mary.

Deputy J.H. Young of St. Brelade:

Deputy John Young.

Deputy M. Tadier of St. Brelade:

Deputy Montfort Tadier.

Mr. T. Walker:

Officer in Support, Tom Walker.

Mr. S. Cartwright:

Steve Cartwright.

Mr. T. Hanson:

Would you like us to introduce ourselves?

Senator P.F. Routier:

If you could, please.

Mr. T. Hanson:

I am Timothy Hanson. I am an advocate and partner in Hanson and Renouf and former president of the Law Society.

Senator P.F. Routier:

Thank you.

Ms. B. Corbett:

I am Barbara Corbett. I am advocate at Hanson Renouf and I am a family lawyer.

Senator P.F. Routier:

Thank you very much and thanks for your written submission. It is also good to have an opportunity to expand on what you have presented to us so far. One of the suggestions that you made in your submission was that perhaps a legal aid chamber might be a way forward. I wonder if you would be able to expand on that and perhaps see how you would see that operating.

Mr. T. Hanson:

Yes. I qualified as an English barrister in 1989 and practiced in England for 12 years and practiced from chambers that barristers belonged to. Chambers have evolved considerably in England over the period that I was a barrister and equally over the period since I have been in Jersey. They have tended to become bigger and bigger. The barristers in those chambers are self-employed, but they pay a certain amount of money in terms of rent to use the premises and to share the expenses of the premises and pay the salaries of the clerks who administer it. Now, the beauty of a set of chambers is that each barrister has his or her own business. So, you can in large measure choose the nature of your practice. You have a certain amount of control over what happens with your practice. To some extent you are buffeted by various constraints because if you are not available the clerks are not going to give you the work on a regular basis. You have to

be impressing the solicitors or whoever is sending the work in. There have also been inroads more recently to allow direct public access. So, people off the street do not have to go via a solicitor, they can brief the barrister. So, that was the setup which I enjoyed very much. When I came back to Jersey in 2001 I experienced what solicitors in England experience which is to be an employee quite often over here in a big firm with not a great deal of influence over one's career and quite an emphasis on crunching out the billable hours. So for me it was quite an experience ticking away 6 minute units when I was working for a large firm over here and measuring my life in monetary terms, ebbing away, and I felt quite dispirited about that. So, I set up in my own right in 2005. That is the basic structure of a self-employed set of chambers, which each individual being self-employed.

Senator P.F. Routier:

May I just ask, I can understand the benefits for the practitioner, what would be the benefit for the person in the street who was wanting to access justice?

Mr. T. Hanson:

The first thing is if you created a system such as that and had it as the core of your legal aid system you would have to have some administrative support and bedrock beneath that, which I would suggest is the Citizens Advice Bureau, which is something that Barbara will develop further. I would see the 2 working in tandem. The benefit for the public is that you would have a given case, whether or not it is a criminal case or a civil case. You would be able to choose among those people in that legal aid chambers someone to represent you. So you automatically achieve a sense of choice for the client. There is also a sense of competition among those that are in the legal aid chambers. Moreover at the moment we are producing quite a lot of local lawyers through the Institute of Law, which is a great thing because the previous examination system had substantial defects, which the Institute of Law has largely eradicated. So, we are getting something like 15 to 20 lawyers each year. Quite frankly the firms in Jersey, the partnerships, cannot absorb them in due course all as partners. Indeed it is becoming more and more difficult for people to get a partnership in the Island. Indeed some people sometimes struggle even to get work. I am not quite sure how we have managed to employ all those advocates and Jersey solicitors that we have had. This would be a further way forward for people for career progression and quite an attractive one, in my view, because they could in effect have their own practice and have some control over their own destiny. What you would have from the public point of view is you would have the public being able to choose and you would also have specialist ... it would create a system of specialist practitioners, because there would be people that would be able to set their stall out and say: "I am just going to do family law work," or: "I am just going to do criminal work." There might be people, as there are in chambers in England, who are very good at doing a bit of both, but they concentrate in those areas. If they are paid a certain amount of money for the

work that they do, and we can discuss how that payment would happen, they have every incentive in doing a really good job and using that specialist knowledge that they will acquire over time to the benefit of the public.

Senator P.F. Routier:

Okay. Juliette, do you want to ask your question?

The Connétable of St. Mary:

Thank you. Do you think in setting up this legal aid chambers that enough lawyers to make it work?

Mr. T. Hanson:

I think there would. I have not picked up the phone and gone round all the firms trying to recruit people to something that does not exist. It would be quite a difficult task to answer that by ticks in boxes as to who might be prepared to do it. But, I can answer it from this point of view, that we regularly get requests of people to specialise in criminal law and family law. Criminal law is not an area where our firm wants to specialise. Indeed there are certain areas of practice in the Island which I would regard as Cinderella practices, whereby there are certain firms that are prepared to do the high profile criminal work. I can think of one firm in particular. No one really wants to be doing the low range typical day in day out criminal work. There are people with an appetite to do that work, who would like to do it. It would be financial suicide for firms to say: "Well, look, we are going to go out and we are going to promote our aspiring lawyers to do areas at work which are not paid. What happens is that people going through a firm ... I have experienced this myself. When I came back to Jersey in 2001 I had had at the bar in England a reasonable section of my being family work and acting for children. I had other practice areas. I went to the partners at my former firm and said: "I would really like to get on to do this work." They said: "Well, I am sorry we have got so and so that does that kind of work," although I did not think that so and so perhaps had the expertise that I could bring. They said: "Well, look, I would rather you were getting on with this piece of work, which generates some income for the firm." You end up doing that work because you know that in order to progress ... at the end of the day the partners are looking for someone to be generating money for the firm. They are not looking for someone to generate nothing.

The Connétable of St. Mary:

I just want to be quite clear that I have understood exactly, the actual legal aid chambers would be somewhere that people would go and spend a large portion of their career. It is not like it is now where you do it for 2 years or whatever. You are thinking this was going to be an interesting thing ...

Mr. T. Hanson:

Yes, there are people that genuinely want to do this type of work, as there are people in England that genuinely like doing this area of work. The constraints of essentially not being paid for it and the fact that firms have to make a profit in order to survive means that you have Cinderella type practice areas. In actual fact before - it is blowing our trumpet a little bit, but - Barbara and I really got going on representation for children when guardians started being appointed for children in care cases, which was 2008 ... because Barbara came over and we wanted to do some children work. I said: "Go and find out who represents children in public care cases." Barbara went away and came back horrified, as I was horrified, to find out that poor children caught up in public law care cases have had their human rights disregarded for centuries and were not represented at all. It was shambolic. We, in particular, drove that and there is now a very different system, thank goodness.

The Connétable of St. Mary:

I remember well that coming through the States, indeed.

Deputy J.H. Young:

Yes, coming back to your central proposal about the legal aid chambers, I wanted to check one particular thing. The people that take up work in the chambers would they be working exclusively for these legal aid chambers?

Mr. T. Hanson:

Yes, that would be the intention. The proposition I had was that you need to cover the costs to set up the chambers, so you need some accommodation, you some, in effect, clerk services you would have in a barrister's set of chambers, you would need know how resources, there would have to be insurance and so on. So there would be an outlay cost there. The lawyers would also be paid a rate which would be significantly reduced from what lawyers in the private area would be paid because they have their overheads covered by the States or a partnership between the States and the legal profession.

Deputy J.H. Young:

So the options then, obviously that comes with the key issue of funding, you put on the table 2 options, States funding, part States funding, are there any others? We were told earlier, for example, that if we added up the cost of legal aid overall it is at least £8 million and from what we were told that is being met by the legal sector. It occurs to me, could this not just be achieved by transfer of money from existing law firms into this structure that you are talking about. If they are incurring £8 million now, could they not just switch some of it over in a kind of a levy?

[14:00]

Mr. T. Hanson:

There are all sorts of ways of raising cash but you ...

Deputy J.H. Young:

Tell me about them.

Mr. T. Hanson:

In my view you have to start from the basic principle that the provision of legal aid is the responsibility of the States of Jersey. It is not the responsibility of lawyers. Lawyers ...

Deputy M. Tadier:

Can I just interrupt? How many of your colleagues share that opinion? There seem to be some who are saying it is fine as it is or it is fine but it needs a bit of tweaking.

Mr. T. Hanson:

That is a different issue, with respect.

Deputy M. Tadier:

Okay, well sorry to interrupt in that case.

Mr. T. Hanson:

No, no, that is fine. It is fine. Access to Justice is the rights guaranteed under Article 6 of the European Convention, which we have enshrined in our own domestic law now. Article 6 is a duty imposed on public bodies. The States of Jersey is the public body responsible for ensuring access to justice as are the judges who are part of the framework of the justice system. It is not, in fact, the duty of lawyers to go out and provide gratuitous legal services. It is just by a quirk of fate that a kind of poor man's support system has grown up over the centuries and that lawyers have taken an oath. Now, we have had the courts anxious to support the current system and, indeed, there is a judgment of Philip Bailhache I think in relation to a disciplinary matter against Advocate Sinel in which it was stated that it is a legal duty upon a lawyer to comply with the directions of the acting Batonnier and attend to legal aid affairs. We have a very peculiar system which is very laudable from the point of lawyers but if we were starting from scratch you would not start with this system, because any system that works on a rota does not allocate specialist lawyers to the particular legal problem that you have. Moreover, if you have a system where you are not paying very much or paying very little I question whether corners are going to be cut and difficult choices are going to

be taken by lawyers and I know for a fact that there are lawyers that I have seen who have taken difficult decisions as to whether or not to deal with a case, in which case they are probably not competent to deal with it or pay out of their own pocket, which is ludicrous and does happen, for another lawyer to go and do that work.

Deputy J.H. Young:

I think you are describing a system which is broken, are you not?

Mr. T. Hanson:

I am describing a system which in all credit to Jersey lawyers, Jersey lawyers generally make work despite all the factors against them and Jersey lawyers deserve a huge amount of praise because the system that Jersey lawyers are working to is exactly the type of system that they are trying to develop in England where you have all the lawyers and the judges going out on strike saying that people are going to suffer if you carry on like this.

Deputy J.H. Young:

Right, so just one last question on the funding. Presumably if one were to introduce this system, the firms that are able to absorb those costs at the moment, they would make saving, would they not, as a result of this?

Mr. T. Hanson:

Yes.

Deputy J.H. Young:

Would it therefore not be reasonable that there would be some discussion about them contributing towards the cost of this, the scheme that you propose?

Mr. T. Hanson:

My view is that the provision of legal aid is a partnership between the States of Jersey, the judges in the judicial system and the legal provision. The sooner that it is acknowledged that it is a partnership rather than someone waving a big stick at lawyers and saying: "Look, this is your problem, you should sort it out" the better because what should happen is that the States should put some money in and I would have thought that the legal provision generally would be prepared to contribute to that pot. I would also expect the legal profession to provide some kind of comfort blanket around the system so that were there teething problems we could cater for those problems.

Deputy J.H. Young:

One last question. How do you think your ... sorry, I think I have got your question, Monty, but I will ask it. How do you think your ideas are shared by the other members.

Deputy M. Tadier:

I can go home now.

Deputy J.H. Young:

Are your ideas radical, are you lonely in these views or do you think there is a consensus in the profession?

Mr. T. Hanson:

I think with new ideas, particularly with an old profession used to doing things in an old way, that there will be resistance to thoughts such as mine that I have articulated. But while I have not heard any arguments made personally against that idea, I would be concerned that it is the novelty of it that is a worry. Change takes a great deal of time in Jersey and people's attitudes take time to swing around.

Senator P.F. Routier:

Okay, shall we move on. We have some questions for you, I think. We are going to take what we had as our second question, we are going to take it first, revolving around divorce law.

Ms. B. Corbett:

Yes.

Senator P.F. Routier:

Perhaps you would like to expand on how you see things could be improved on divorce law.

Ms. B. Corbett:

Divorce law needs root and branch reform. The law we work to is the Matrimonial Causes Law 1949. Now, it has been amended many times since then but the fundamental basis of it dates back to 1937 because it was based on the English 1937 Act. So it is just out of touch with modern society completely. So there needs to be root and branch change there and, in doing that, you will save people's time and money for lawyers, clients and the courts because you do not need all the structures we have now. We have a whole array of information and structures about defended divorces and we have not had a defended divorce in at least 20 years. So there is no point in having all this stuff there that nobody ever uses. Divorce is very distressing the way it is done now because you have ... well, you do not have to, you can a divorce based on one year separation if you consent, or 2 years' separation if you do not, but if you have not been separated for a year you

then have to allege fault on the other side. Things have got a bit better since 2005 in that cruelty has gone and is now unreasonable behaviour. But it is still not very nice to be served with papers alleging that you have been unreasonable. Particularly galling is where, for example, a man goes off with another woman and then divorces his wife on her unreasonable behaviour. It is really unfair. That causes problems. Of course as soon as you get people being upset, angry and bitter you start polarising them and they start arguing about everything. They will argue about the children or turn the children against each other, they will argue about the money and everything escalates. You need to keep it calm and reasonable. If we can move to a better system, as has been moved to in England, almost an administrative system whereby you almost go to the Registrar and say: "It is over now, can we get out of this?" There are ways of doing it without default and if you can strip away a whole load of this extra fought-based divorce legislation that will also make it easier for same sex marriages to be incorporated into Jersey law. It can be done properly. In England it has not been done terribly easily because there are differences between marriages between people of the same sex or opposite sexes and that is because of the archaic law, because you have concepts of consolation and adultery. If you did away with the concepts you would not need to have any differences. So there are lots of things that could be done to make it better and cheaper and easier. Now, the reason that people wanted grounds divorce because in Jersey they have fought-based grounds, in England the only ground for divorce is an irrevocable breakdown of the marriage. But that was not accepted, I am not told it was because particular States Members, perhaps for religious reasons, did not want divorce to be too easy. There were other things that were brought in to stop divorce being too easy. You cannot get divorced until you have been married for 3 years. Well, these days when people have often been together for 10 years, got 3 children, get married and then after 18 months she goes off with somebody else, they are stuck married, they cannot even start the divorce process until they have been married for 3 years. It is not suitable for this day and age.

Senator P.F. Routier:

Time for your question.

The Connétable of St. Mary:

You will probably not be surprised to know that you are not the first person who has made these comments to us or similar comments. This being the case, why have the legal profession not brought forward some ideas for change before? Or have they been trying?

Ms. B. Corbett:

I have lots of times, and Tim has. We both have. Hanson Renouf has. Since the Family Department started we have regularly ...

Mr. T. Hanson:

Suggested no fault divorce.

Ms. B. Corbett:

Yes, exactly. At one point we had a big stand up argument in the *J.E.P. (Jersey Evening Post)* with Bob Key, but it was really quite nice because on paper it looked like we having lunch at Petit Greek afterwards and he was taking the position that he felt that fault should be kept in.

Mr. T. Hanson:

He felt it was reasonable that if, say, a husband went off and cheated on the wife that the wife could turn around and say: "Look, it is your fault." Whereas Barbara's ...

The Connétable of St. Mary:

Sorry, that is a very strange ... sorry.

Deputy M. Tadier:

The finance industry often drafts legislation for the States to do, is that something that lawyers could do? Basically draft the new legislation and we can present it?

Mr. T. Hanson:

I thought the job of legislation was your job? **[Laughter]**

Ms. B. Corbett:

We can tell you want to put in it.

The Connétable of St. Mary:

Would you find support across the wider legal profession do you think? We have had a couple of representations that mention this matrimonial area as being the key area. But is that generally felt right across the profession over here, do you think?

Ms. B. Corbett:

I think so, but family law is, and Tim spoke of the Cinderella areas of law, a Cinderella area. There are a few firms who specialise in family law and the quality of individual family law is good but the big firms are not interested. It does not make money, it is not an area that people want to spend their time thinking about so I think if you asked all lawyers they would not necessarily give you a common view. If you asked family lawyers, family lawyers will tell you that there needs to be reform. If you can move to something that takes away the heat it will be better for everybody concerned. But in particular legal aid certificates. As Tim and I were discussing earlier, the legal

aid clients are particularly vulnerable, they have lots and lots of other problems over and above whatever it is that their legal problem is. I had a case, and I cannot even close the case yet, that is been going of about 6 months or so, it is a relatively straightforward divorce, there are no assets, it is a legal aid case. We have more than £10,000 on clock in terms of chargeable hours of work that has been done. We cannot, of course, charge that. We could charge on the legal aid system this client £3,000 for work done. We are not going to because she has a very, very low income. That is a completely disproportionate amount of time for that kind of work but she has ... there have been difficulties and argy-bargy and abuse in the family and the husband was wanting to defend the divorce in the first place. It has just gone on and on and there was no need for it. None at all. People in those circumstances, once they have legal representation they will call and say: "What about the children?" this, that and the other and there are lots of peripheral matters that are not legal, they are not related to the case. Because we deal with them, because they are our clients and we provide a holistic service, we have to look after them. It will be better, moving on the C.A.B. (Citizens Advice Bureau) proposal if clients in those circumstances were able to have access to wider advice with generalists without taking up the time of lawyers, deciding whether it is right that daddy did not bring the bag back in time. Those things can be dealt with in other places. You can just have the lawyers doing the legal work.

Mr. T. Hanson:

Yes, and just developing that Citizens Advice Bureau suggestion. Your suggestion is that it needs beefing up. Sorry.

Deputy J.H. Young:

No, carry on.

Mr. T. Hanson:

The proposition that Barbara has is slightly different to the legal aid chambers. I see the Citizens Advice Bureau as the first port of call and being developed and the legal aid chambers operating in effect above it and is feed by the Citizens Advice Bureau to the extent that things cannot be filtered out. Barbara would see the Citizens Advice Bureau, in effect, having lawyers as salaried staff like a public defenders' unit but not exclusively dealing with criminals but dealing with a whole range of legal aid issues.

Deputy M. Tadler:

Would it be for advice purposes or would it take on case work?

Ms. B. Corbett:

Take on ... to go court. That was my model that I set out. Starting with the gatekeepers or everyone goes to the C.A.B. first of all, because I was a C.A.B. adviser for 10 years and I trained C.A.B. workers in England, people come in with a whole load of problems.

[14:15]

Again, a lot of the people that come in are vulnerable, they have mental health issues, they have low incomes, they have difficulty juggling matters. They might have abusive partners, whatever. There are whole load of things and just the legal bit ... whether it is a boundary dispute or a criminal matter or a divorce, that is only a little bit of what their problems are. It is better to have a look at all of their problems and try to resolve the whole thing and then funnel the legal bit to lawyers. Now, it would be sensible in my view for the lower level stuff to be kept in house at the C.A.B. with C.A.B. employed lawyers. Now, whether they are on secondment and paid by somebody ... the home firms or whatever, but it would make sense for there to be people there in house so they can just nip down the corridor and ask someone who deals with debt: "We have got a debt issue here as well can you just help with that?" and then we can present the case or whatever. It would be sensible for that lower level to present cases, the criminal cases, and the divorce cases. Hopefully they will be easy divorce cases and that can be ... the vast majority of the work that now is dealt with through legal aid. Sorry, have I gone out of order?

Senator P.F. Routier:

No, no, no, that is fine.

Deputy J.H. Young:

No, we have been following your ideas of interest and we have developed a couple of questions of where that leads to. Obviously at the moment we seem to have got a situation where all the family law matters are all dealt with adversarially, we have 2 parties, one goes to a lawyer, the other goes to a lawyer, they have got all the paraphernalia that you described, under the system with C.A.B. at the front end, as it were, and you have a chambers downstream - I think that is the model you have describe - can that system cope with having 2 different parties who are going to be ... no matter what you do there is going to be things in conflict between them? For example, the division of property, which at the moment, as I understand it, people run the risk of having their entire asset value wiped out through all the costs in this system. They come out with nothing.

Ms. B. Corbett:

Are you referring to conflicts?

Deputy J.H. Young:

Yes, how would that deal with it? Would both parties have to go to the C.A.B. and sort it out?

Ms. B. Corbett:

Yes, if the access through to legal aid, States assisted in effect, then, yes, they will all got to the same place and there would have to be Chinese walls in place. There would have to be a range of them, properly done. It depends on numbers. I do not know how many lawyers we would need. I do not know what the resources are, I do not know how big the building is. Those are things that would have to be looked into. But it is not beyond the wit of man to do it.

Deputy J.H. Young:

Right, so you would have Chinese walls within the structure.

Ms. B. Corbett:

Yes.

Deputy J.H. Young:

To ensure that the fair and legitimate interests of the parties are separated.

Mr. T. Hanson:

Can I just say in a legal aid chambers where everyone is self-employed ... and it happens up and down in the U.K. (United Kingdom) with barristers chambers, you can be prosecuting a case and there will be someone defending the case all in the same chambers and there are requirements on the clerks' team to ensure that everything is kept confidential from each barrister. That is managed.

Deputy J.H. Young:

Would that deal with a situation, say you had a legal aid case and then you had someone who was in a matrimonial or a family dispute with someone who was very wealthy who had unlimited funds to run up lawyer's costs ... would that deal with that? Would that cope with such a situation?

Mr. T. Hanson:

What, inequality in ...

Deputy J.H. Young:

Yes, you have 2 parties, massive inequality in their means.

Mr. T. Hanson:

Basically what would happen in that situation - it happens now - at the lawyer that would be selected by hopefully the client on advice out of the legal aid chambers would be a specialist in that area. Now, the wealthy individual can go and shop around the private law firms but at the moment we have got as system where someone gets a legal aid certificate and it can be given to a commercial lawyer, a conveyancing lawyer, a criminal lawyer or someone that has not got a clue about that area of law. Now, the big firms tend to deal with it because they developed a legal aid chambers. So it might go to their partner dealing with commercial law but they will shunt it off to their legal aid department to deal with it. That tends to work okay until you get to the smaller or middle sized firms ...

Deputy J.H. Young:

That is where it breaks down.

Mr. T. Hanson:

... where they do not have a legal aid department and they have to take a choice, either I do it or I have to pay someone else to go and do that work that is the responsibility of the States.

Deputy J.H. Young:

Thank you. One last question. The system you described, to me it sounds very sensible. To me it does. I do not understand why there has not been this reform before. You said it is government's job to do the legislation but where is the Jersey Law Society on this? Have they come forward with a position as a society and said: "We want this role changed?"

Mr. T. Hanson:

As the former head, when I was head of the Law Society, it was myself that got the meeting with the Chief Minister at which the Access to Justice review grew out of. But having said that, the views that I have expressed, for instance, the legal aid chambers, or the views that Barbara has expressed about Citizens Advice Bureau are not necessarily easily capable of support from the wider legal profession unless it is put to an EGM. But, frankly, with very different voices it can be very difficult.

Deputy J.H. Young:

Does that mean, in layman's terms, all the members of the Law Society have to sign up to a change in order for it happen?

Mr. T. Hanson:

No, no, no. What I would say is that you should go out to consultation but the Access to Justice review should do something, taking into account all the views. I do not think it is the province just of the Law Society to take the view.

Senator P.F. Routier:

That is hopefully what we are doing.

Ms. B. Corbett:

For the lawyers who are not affected by legal aid, and that is the majority, it is the most powerful, the ones who are paid the most, the ones who are partners of the big firms, they do not ever see any pay certificate, they never see a legal aid client. They are not that interested, to be honest. So to get them to think about it ... they are basically conservative so it is: "Let us carry on, it has always worked before, do not worry about it." Because they are not the ones who are dealing with people's lives.

Deputy J.H. Young:

Yes, but Monty's question is the one for me, for example, we get loads of commercial type financial legislation because there are drivers for it to come forward. There does not seem to be any drivers for ...

Ms. B. Corbett:

But they are the powerful lawyers, they are the big, well-paid partners in the very big law firms. We are lone voices sometimes.

Mr. T. Hanson:

Can I just say, when I first came back to the Island in 2001, I have put it in my submission, I was amazed that there was not very much consumer protection, there was not sex discrimination laws, there was not employment laws and yet, you know, you have got a nice statute about trust law, you have a lovely statute about company law, there are all sorts of other wonderful commercial type legislation but I was wondering who was driving all the other aspects of legislation that was required. I made the point that laws are not just to reflect mortality but I think they are a good signpost to what are the moral core values of the particular society in question. Now, that might be putting it a little harshly.

Deputy M. Tadier:

If I could just maybe ask a question? I see this as kind of the same issue that there is a mirror with the States in terms of the States reforming itself, it is never going to happen. It is arguable as well **[Laughter]** if it will happen, as a Member of P.P.C. (Privileges and Procedures Committee). It

seems to me you have come up with some very cogent and, I think, possibly workable solutions, although not to prejudge anything. But, as you said, you come from a conservative body of other lawyers and it seems to me that the appetite for change is not there. So who does it fall to ultimately to implement these eventual changes. Is it ultimately something the States need to do?

Ms. B. Corbett:

Yes, it is going to only be the States who would do it. If you think in England, the *Daily Mail* was absolutely vilifying the gay community right up almost until the passing of the Civil Partnerships Act and then all of a sudden you got double page spreads on how people were having lovely civil partnerships. The whole moral ethos, the whole structure has changed. The law changed first and the *Daily Mail* followed. Lots of time the *Daily Mail* goes and the law follows. The States can do it in Jersey. You can do it, you can change family law, you can change legal aid law, you can do it, it is your job.

The Connétable of St. Mary:

Can I just say, if the changes to family law do come about, presumably you have to take some of the cost out for the huge amount that is being spent on those cases now? Even so, with the Citizens Advice Bureau model, will there still be an increase, do you think, in cost overall and how would we get that funded?

Ms. B. Corbett:

I do not think there would be an increase overall. There would be a shift and there would need to be a great deal of resourcing for the C.A.B. obviously, but I think some of that money should come from States funding and it could well be that there is a levy on lawyers as well to make it work. But it will be a better system. It is not about saving money.

Mr. T. Hanson:

Can I just add one thing? At the moment the legal aid system is viewed as the problem for the private sector. So it is not the problem of the States particularly, despite under Article 6 it is the States that are responsible. It is the problem of the private sector lawyers. It is not even the problem of lawyers in the public sector working in the Law Officers Department or in States departments.

Ms. B. Corbett:

Who take the same oath.

Mr. T. Hanson:

Who take exactly the same oath and, in fact, I got in touch with the bar pro bono unit who have got nice offices off Chancery Lane and I said: "How do you deal with bar pro bono work?" because when is suggested that lawyers from the Viscount's office or lawyers from the Law Officers Department should be involved in some shape or fashion, they say: "Oh no, there is a conflict of interest so we do not get involved at all." I said: "Do you have government lawyers acting for the bar pro bono unit?" and they said: "Yes, they can do a whole load of stuff, whether or not it is producing guides or populating the website or alternatively, we have criminal lawyers who work for the C.P.S. (Crown Prosecution Service) who might represent someone in the County Court in a housing dispute, for instance, where there is no conflict." The kind of idea that there is a promise that a lawyer makes when he or she first takes their oath - but it is a promise that is only enforced in the private sector - is something that is fundamentally wrong. We are either all in it together and working together or we are not. In my view, in the short term, while you get something developed, you could have the C.A.B. - and Barbara has included the letter from the C.A.B. - developed with a contribution of all those lawyers that feel that they would otherwise be conflicted, and they can get on with the website, they can get on with some guides and they can help in other areas where they are not conflicted.

Ms. B. Corbett:

Or they can give generalist information and advice as well, because there would not be a conflict unless there was a case.

Deputy M. Tadier:

Just very quickly on the back of that, can the same be applied to the 15 year dispensation? Is there any reason to have that in place?

Mr. T. Hanson:

No, the 15 year dispensation just came about because that was what has evolved over time and lawyers have paid their debt in effect to society **[Laughter]** and it is commuted after 15 years. But, no. When we had the reception for the Commonwealth Judges' and Magistrates' Association, the head of the Association gave a speech in which he touched on our legal aid system and he suggested that it should be reviewed because he did not necessarily think it was right that lawyers above 15 years could not be called upon. The reality is there is some flexing to the system and what happens, say, if you get a murder or something, the legal aid vote will be used to pay for someone at Crown Advocate rates, and that is how they get over the system. But again, basically you have got a rota system that does not work and there are so many holes that have to be plugged, it just shows that you have got the wrong system and we need to move to a new system.

Senator P.F. Routier:

One last question. The C.A.B. model, can you point to other jurisdictions where that is going?

Ms. B. Corbett:

No, Jersey will be the very first.

Deputy J.H. Young:

That is what we thought.

Ms. B. Corbett:

That is what makes it so special.

Mr. T. Hanson:

Can I just say that it is useful to look at other jurisdictions? New Zealand, for instance, has a public defender's unit that does criminal work but if you are liable to be sentenced to 10 years or more they can go to the private sector and there is that kind of work between a public body and a private body working in unison. I see this as us all working in unison to achieve a better system.

Senator P.F. Routier:

Thank you both very much for your submission and your time today. I think it has been really good and I hope something positive will come out of it. Thank you very much indeed.

[14:29]