



**THE JERSEY LAW COMMISSION
FIFTH ANNUAL REPORT 2000**

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:

Mr. David Moon, Solicitor, *Chairman*
Mr. David Lyons, English Solicitor
Advocate Alan Binnington
Mr. Clive Chaplin, Solicitor
Advocate John Wheeler

The Secretary is:

Mrs Lisa Biddlecombe

The address of the Jersey Law Commission is PO Box 87, St Helier, Jersey, JE4 8PX

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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 fifth Annual Report covering the activities of the Commission in the calendar year 2000.

**David Moon
Chairman**

PART I The Fifth Year

Eleven meetings were held during the year. The Commission completed one Topic (Best Evidence); made progress on three others (Real Property, Legitime, Complex Civil Litigation) and embarked on three new topics (Tutelles, Contract, Partnership).

The Commission had two retirements during the year, the first of Jurat Donald Le Boutillier, who resigned on 29 March, 2000 and the second of Advocate Keith Baker, both served as a Commissioner right from the establishment of the Commission. We are indebted to both gentlemen for all their hard work and support both in setting up the Commission in 1996 and assuming a full burden of work as a topic Commissioner once it was up and running. Their extensive knowledge of Jersey law and government was an invaluable asset, and their high standing in the community lent the Commission a degree of acceptance which greatly smoothed its path in its formative years. We would particularly wish to record our appreciation to Keith Baker, the first Chairman of the Commission, who was instrumental in setting up its operation on a sound basis. All of the Commissioners wish them a long and happy retirement.

The Commission was pleased to welcome three new Commissioners: Advocate Alan Binnington, Mr. Clive Chaplin, Solicitor, and Advocate John Wheeler, who were confirmed in office by the States on 8 February 2000.

PART II Topic Reports

II.i Topic 4 - The Best Evidence Rule

(Topic Commissioners: Jurat Donald Le Boutillier; Mr David Lyons)

(Topic Practitioner: Advocate Anthony Dessain)

Following the retirement of Jurat Donald Le Boutillier, David Lyons was appointed Topic Commissioner for this Topic.

The Consultation Paper, entitled “The Best Evidence Rule in Civil Proceedings,” was published in October 1999, both in printed form and on the Internet. We received only four letters in response to it.

After detailed consideration of the responses, a Final Topic Report was produced and presented to the Legislation Committee on 26th January 2001 and then to the States of Jersey in February. The Law Commission awaits to hear whether this Report has been passed to the Law Draughtsman. The Report is published both in printed form and on the internet.

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

(Topic Commissioner: Mr David Lyons)

(Topic Practitioner: Mr Peter Luce)

The Consultation Paper on this Topic was published in November 1998. The Final Topic Report was presented to the Legislation Committee on 7th December 1999 and published both in printed form and on the Internet.

We have been advised that the proposals contained therein have been approved by the States and have been passed to the States Law Draughtsman to progress.

II.iii **Topic 6 - The Jersey Law of Real Property.**

(Topic Commissioner: Mr David Moon)

(Topic Researchers: Advocate Helen Boleat, James Lawrence
and Advocate Andrew Bridgeford)

Mr Moon had experienced considerable difficulty in finding a Topic Practitioner and Researcher for this Topic. However, following an approach to the Senior Partners of law firms Advocate Helen Boleat of Crills, James Lawrence of Viberts and Advocate Andrew Bridgeford, expressed an interest in assisting Mr Moon with this Topic in March 2001. It is anticipated that a consultation paper for the Topic be produced towards the end of 2001, beginning of 2002.

II. iv **Topic 7 – Potentially Complex Civil Litigation**

(Topic Commissioner: Advocate Alan Binnington)

Advocate William Bailhache prepared a preliminary analysis of the problems to be considered under this Topic prior to his resignation on taking up the office of Attorney-General. Advocate Alan Binnington took up where Advocate Bailhache left off and, following further investigation, the Commission agreed that this Topic did not fall within the remit of the Commission's terms of reference, but that it ought to be considered by the newly formed Court Users Committee or similar body.

II. v **Topic 8 - Jersey Rules of Legitime**

(Topic Commissioner: Mr David Lyons)

(Topic Researcher: Advocate Keith Dixon)

Mr Lyons commenced work on this Topic in June 1999. Advocate Keith Dixon produced a preliminary paper on the Topic, which formed part of the Law Commission's response to the

Legislation Committee's consultation document RC3 2001 on Succession Rights which had been presented by the Legislation Committee to the States on 2nd January 2001. No further work is required to be done by the Law Commission until feedback has been received from the Legislation Committee.

II. vi **Topic 9 - The Law on Tutelles**

(Topic Commissioner: Clive Chaplin, Solicitor)

(Topic Researchers: Advocates Marion Whittaker and Rose Colley)

This Topic was approved by the Legislation Committee in 1999 and, following his appointment as Commissioner in February 2000, Mr Clive Chaplin assumed responsibility for the Topic. Steady progress is being made on the consultation document which is considering the introduction of arrangements for tutelles similar to those currently in existence for curatorships.

II. vii **Topic 10 - The Law of Contracts**

(Topic Commissioner: Advocate Alan Binnington)

(Topic Researcher: Advocate John Kelleher)

This Topic was approved by the Legislation Committee in 1999 for review by the Commission in due course. Following his appointment as Commissioner in February 2000 Advocate Alan Binnington assumed responsibility for this Topic. Steady progress is being made on the consultation document for this Topic.

II. viii **Topic 11 – Partnership Under Jersey Law**

(Topic Commissioner: Advocate John Wheeler)

A preliminary paper prepared by John Wheeler did not demonstrate any immediate problem sufficiently serious to merit a review by the Law Commission at the present time. It was agreed not to pursue this Topic for the timebeing.

II.xiv **Limited Liability Partnership Law**

Clive Chaplin conducted some initial research and produced a first memorandum as to whether any changes could be made to the Limited Liability Partnerships Law to make it more used. Following liaison with the Legislation Committee, the review was deemed to fall beyond the Law Commission's remit and was therefore not adopted as a new topic.

II.xv **Data Protection - Trusts (Jersey) Law**

The Law Commission was approached to see whether it would consider whether the Data Protection Law merited a review by it. Following liaison with the Attorney General it was noted that the whole question of data protection was under active reconsideration by other authorities in Jersey. This matter was therefore not pursued.

II.xvi. **The Rights of Beneficiaries to Information Regarding a Trust**

The Law Commission understands that the Topic Report on the Rights of Beneficiaries to information regarding a Trust was forwarded to the Finance & Economics Committee for

consideration and comments. The Commission therefore waits to hear whether this Topic will progress to legislation in due course.

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 following expenditure was incurred by the Commission in 2000

Printing & Stationery	£ 29.95
Advertising	£ 465.12
Research fees	£ 1,072.75
Travelling expenses	£ nil
Disbursements	£ 38.19
TOTAL	<u>£ 1,606.01</u>

PART IV Budgets

IV.i **Budget for 2000.** The States approved a budget for the Commission of £45,000 for 2000. As the Commission's costs were not as high as expected the under spend for 2000 was returned to the General Revenue of the States.

IV.ii **Budget for 2001.** The Legislation Committee approved the Commission's budget of £45,000 for 2001.

DAVID MOON, *Chairman*

DAVID LYONS

CLIVE CHAPLIN

ALAN BINNINGTON

JOHN WHEELER

July 2001

APPENDIX A **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 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 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;*
- (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 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.