

## **2.15 Deputy T.M. Pitman of the H.M. Attorney General regarding directions given to witnesses in relation to naming other parties who allegedly carried out abuse at Haut de la Garenne:**

Were victims told by prosecution lawyers that they could only make statements relating to the couple who ran Haut la Garenne and could not name other parties who they alleged also carried out abuse at the home and if so, why would this have been the case?

### **Mr. H. Sharp Q.C., H.M. Solicitor General (The Solicitor General):**

For obvious reasons, I am not going to discuss an individual case in such detail but, as it happens, I can happily answer this question, merely by reference to the basic principles of procedures that apply in all criminal cases. Of course, a criminal crime is concerned with a consideration by a jury or Jurats of particular allegations made against particular defendants. It follows that a witness who attends a criminal trial may only give evidence that is in fact relevant to those particular allegations being considered by the court on that occasion. It is not uncommon for a prosecution witness to be capable of giving evidence in respect of additional matters not relevant to the trial in question. In those circumstances, it is best, and established practice, for the prosecution advocate to warn the witness that their evidence will be focused only on the particular topics relevant to the trial. A purpose of this helpful conversation is that it reduces the risk of a witness inadvertently giving inadmissible evidence in court that might very well be followed by a defence application to discharge the jury or Jurats and thereby stop the trial.

### **2.15.1 Deputy M.R. Higgins:**

Is it common practice for prosecution lawyers to ask witnesses for the prosecution to limit their evidence? For example, if the person was asked the question: "Did you make a complaint?" to sort of limit them so that they do not say who they made the complaint to. So, in other words, the question was being asked: "Did you make a complaint?" and they were advised not to name the person to whom they made the complaint to. Is that normal practice?

#### **The Solicitor General:**

The only time a prosecution lawyer is likely to lead a witness is when the witness is in fact in the witness box and a prosecution lawyer can sometimes lead a witness so as to prevent the adducing inadmissible evidence.

### **2.15.2 Deputy M.R. Higgins:**

Can I just follow that up and say is it usual just before the person goes in the witness box and before the court trial happens?

#### **The Solicitor General:**

As I had rather hoped I had just explained, a prosecution lawyer may perfectly properly warn a witness not to mention particular pieces of information if it reduces the risk of that witness inadvertently, because they will not know the rules of evidence, adducing something that the jury or Jurats cannot hear about. This is not some unusual occurrence. It happens day in day out in courts around the world and has done for hundreds of years. I have done it myself in many cases.

### **2.15.3 Deputy M. Tadier:**

Would it be normal practice for the individual witnesses or complainants to have it explained to them exactly why they should not be naming other parties because it seems to me that if this were done that would certainly help them to accept the restriction, whereas if they were not told they might think something was amiss.

#### **The Solicitor General:**

Prosecution advocates often tread with care because they do not want witnesses to start worrying about rules of evidence. Ordinarily, a prosecution advocate may well say: "This trial is about X. It is not about Y. Therefore, you must not mention Y."

**2.15.4 Deputy M.R. Higgins:**

Perhaps the Solicitor General could explain to me because I am still not clear on this aspect - and these are queries that come directly from victims - is it natural or normal practice for someone who is about to give evidence that they must not mention X because the trial is about Z and Y? When, as far as that victim is concerned, X was also part of that abuse and involved, and was at the same location, Haut la Garenne. The person would have wanted to name that person because they were still employed by the States. I just want to understand if that is not limiting their evidence because this is the concern of the victims.

**The Solicitor General:**

It is unfortunate if a witness attends a criminal trial, which is undoubtedly a very stressful experience and does not fully understand the process or perhaps what has happened but, as I have already said, there will be many occasions when a witness is capable of giving evidence in respect of matters that cannot be adduced in the particular trial and it is perfectly proper for the prosecution counsel to warn the witness. The trouble is, if the prosecution counsel does not warn the witness and the evidence goes in, then all that stress and worry about giving evidence will have to be repeated and experienced again at a second trial when the jury are discharged. That really would be very unfortunate and that is why prosecution counsel warn witnesses in those circumstances.