

4.13 Deputy T.M. Pitman of the Solicitor General regarding the court proceedings of 3rd November 2010 against former Senator Stuart Syvret:

Deputy T.M. Pitman:

Before asking my question and intending no disrespect, I was somewhat surprised that the Deputy Bailiff or the Bailiff was involved in the vetting of this question. I believe both Crown Officers would have had some involvement in some of these matters in the past. Could I ask: does the Chair think it appropriate that he presides over this question as well?

The Bailiff:

Yes, I have absolutely no reason not to preside over this question, Deputy.

Deputy T.M. Pitman:

Okay. I just thought I would raise it. Thank you, Sir.

The Bailiff:

So, to the question.

Deputy T.M. Pitman:

In the course of court proceedings of 3rd November 2010 against former Senator Stuart Syvret, the Crown Advocate for the prosecution stated that no intercession had been made by the prosecution with the N.M.C. (Nursing and Midwifery Council) in London, could the Attorney General - or rather the Solicitor General today - therefore state whether the letter from the same Crown Advocate to the NMC dated 28th May 2010 was an intercession and, if not, what the purpose of the letter was?

Mr. H. Sharp Q.C., H.M. Solicitor General:

The former Senator ran a defence in his criminal trial that related in part to disciplinary proceedings that were taking place in the U.K. The Crown Advocate who prosecuted the case arranged for there to be disclosure to the defence in respect of those same disciplinary proceedings. However, it was anticipated that the disciplinary process would not conclude until after the criminal trial. Therefore, the Crown Advocate decided to present the prosecution case on the basis that while the disciplinary matter was one for the U.K. authorities alone, the Jersey Criminal Court would be invited to consider the criminal charges on the assumption of a particular outcome to the disciplinary matter, that outcome being one that assisted the defence case. Against that background, the Crown Advocate wrote a letter to the N.M.C. dated 28th May 2010. The purpose of the letter was to give the disciplinary body notice that their material was to be disclosed in the criminal case. This is a standard letter that is often written by the prosecutor to third parties in the course of criminal proceedings relating to disclosure. The letter also mentioned the stance to be taken at trial by the Crown, as I have already described. A letter that gives notice about the proposed disclosure in criminal proceedings to a third party does not constitute an intercession. That is to say, it did not constitute an intervention in the disciplinary proceedings on behalf of another. For those reasons it follows that the Crown Advocate was correct to say on 3rd November 2010 that there had not been an intercession by the prosecution in respect of the U.K. disciplinary proceedings. Indeed, the Crown Advocate's conduct was scrupulously fair and was key to ensuring that the former Senator received a fair trial.

[11:30]

4.13.1 Deputy T.M. Pitman:

I thank the Solicitor General for his detailed answer. It was quite a long answer. I believe he said that the Crown Advocate assumed that matters would be progressed somewhat quicker than they were. So, could I not then ask: everybody is entitled to justice, so whatever one calls this intercession/intervention, surely it is still a fact that the Crown Advocate should have ensured the

situation arose when this intercession/intervention letter was declared before the court, yet he did not? Does the Solicitor General agree?

The Solicitor General:

The issue arose during the cross-examination of a witness by Mr. Syvret. During the cross-examination of that witness, who was a police officer, Mr. Syvret put to the witness that the police force had somehow interfered with the U.K. disciplinary body and that had caused the disciplinary body to join into some wide conspiracy and thereby, to use Mr. Syvret's exact words: "Park this case." That is to say, to park the disciplinary proceedings for the benefit of the Crown. The cross-examination continued. The witness denied, of course, that any such conspiracy had occurred and said he could not answer for the U.K. authorities. At the end of the cross-examination, Mr. Syvret, former Senator Syvret, said: "Well, if this intercession, i.e. if this conspiracy is not the fault of the States of Jersey Police then [and again I quote] it has to come from the prosecution." That is the circumstances in which the Crown Advocate stood up and said, and I am quoting again from the transcript which I have just been reading: "There has been no intercession by the prosecution with the N.M.C." The Crown Advocate went on to say rightly that Mr. Syvret had received disclosure from the Crown and as far as the Crown were concerned, the Crown Advocate made it plain that they assumed an outcome in that process which was favourable to the defendant in the presentation of his case at trial. What the Crown Advocate was dealing with is an allegation that in some way there had been some wide conspiracy involving the N.M.C. His answer was entirely accurate and it is very difficult to understand what basis the question has just been put to me.

4.13.2 Deputy M.R. Higgins:

As with every answer we get from the Solicitor General, we need to take it away and digest it, look at the written word and try and figure out what he is saying, because he is very, very good with words. Perhaps he could tell us ... I have got 2 questions in a sense. Do Crown Advocates and Crown Advocate prosecutors have a duty to act honestly and transparently with the court and with the defence? Can he tell me, for example, whether the Advocate concerned gave a copy of his letter to the N.M.C. to, in this case, former Senator Syvret and was he totally open about its contents?

The Solicitor General:

The Crown Advocate in any case has duties to ensure that there is a fair trial by way of making sure that there is appropriate disclosure in the case. In this case, the Crown Advocate ensured that there was disclosure. When faced with the practical difficulty in terms of timing, that is to say one would not know the outcome of the disciplinary proceedings until after the criminal trial, the Crown made a concession that was favourable to the defence, which improved the defence's case. So that is why I said in my opening answer that the Crown Advocate had acted scrupulously fairly in ensuring that the defendant had had a fair trial. The second part of the question, I believe, relates to whether or not the Crown Advocate provided the letter to the defendant. As I understand the chronology, Mr. Syvret had his appeals, he lost his appeals, he then raised this point in private correspondence with the Crown Advocate, the Crown Advocate provided the letter that he had written to the N.M.C. to Mr. Syvret himself. Frankly, it was not disclosable, he did not need to give it to Mr. Syvret, but he did nonetheless.

4.13.3 Deputy M.R. Higgins:

Supplementary? Does the Solicitor General not feel it would have been better had the Crown Advocate given him a copy of the letter at the trial, rather than waiting for the end of a case and then for this thing to have to be raised again and again?

The Solicitor General:

As I have just explained, the issue at trial was whether or not there was a conspiracy between prosecution authorities in Jersey and the N.M.C. to halt the disciplinary proceedings so as to improve the Crown's position at trial. That was the issue. The letter does not bear on that issue. There is nothing in that letter that has anything to do with the conspiracy theory that was being advanced by the former Senator during the trial.

4.13.4 Deputy T.M. Pitman:

I do think it is a shame that the Solicitor General has to keep using this conspiracy theory. It does seem a way just to undermine somebody's case. However, what I would like to ask - again, I do thank him for his answers - given that I am also aware of transcripts, which clearly show the very same Crown Advocate informed the court within another hearing against Mr. Syvret that he had read a particular document, but it was completely irrelevant, yet on another later hearing stated that he had not read the document at all. Surely that is deeply worrying. When you take that in hand with this matter, I could ask: would the Solicitor General agree to request an independent and comprehensive external investigation into all those proceedings hearings and transcripts involving Mr. Syvret? If not, why?

The Solicitor General:

When I received this question on Friday afternoon I took the trouble to read the transcripts, the letters, the email correspondence that related to the issue which is raised in the actual question. There is nothing in the transcripts or the correspondence that gives any rise for concern and nothing that changes my opinion that the Crown Advocate was scrupulously fair in what he did in dealing with the outcome of a future disciplinary process. If the Deputy has got some other information which he has not chosen to show me this morning prior to asking me that question I will look at it. But, at the moment, there is absolutely no basis to be at all concerned about the conduct of this Crown Advocate.

Deputy T.M. Pitman:

Just a supplementary? If I can help the Solicitor General ... I can obviously only ask one question at a time, we have a limit, but I will come back to him at the very next sitting. Thank you.