

3.15 Senator S.C. Ferguson of the H.M. Attorney General regarding the reimbursement of those defrauded by the principals in the Sunstone and De Lec case:

Could the Attorney General explain whether a “Pauline action” could have been brought against the principals in the Sunstone and De Lec case so that the assets might be traced and used to reimburse those who were defrauded and, if so, why was this not done?

Mr. T.J. Le Cocq Q.C., H.M. Attorney General:

Pauline actions are proceedings commenced by a creditor to set aside a prior transaction undertaken by a debtor taken by that debtor in order to defraud his creditors. It is a private law remedy which may be available to a creditor in private law proceedings. The action is not available to a prosecuting authority in a public prosecution. While I am not aware that any of the investors in the Sunstone and De Lec case considered any such relief I would not expect to be told, as whatever private law steps were taken by any of them would be exclusively a matter for them and their own lawyers.

3.15.1 Senator S.C. Ferguson:

Would there be a time limit and would legal aid be applicable in this case?

The Attorney General:

I am afraid I am not sure of the prescription period or limitation period applicable to Pauline actions. There would be, in my view, some form of time limit, even though it relates to a fraud, but that is a matter that I cannot give definitive advice on. As to the availability of legal aid, if there is a case that can be brought within the Island then if the applicants qualify for legal aid there is no reason why they should not receive legal aid to bring it.

The Bailiff:

Senator, I seem to remember sitting on a case; I think it is 10 years.

Senator S.C. Ferguson:

I thank the Attorney General and I thank you too, Sir.

3.15.2 Deputy J.H. Young:

The Attorney General has answered that it is a private matter and not one that he can get involved in. Could he not tell us: is there not any procedure available where a group of creditors, such as this group, can be assisted by Government to bring a group action in order to seek access to these private assets rather than us have to eventually have to deal with compensation out of taxpayers’ funds? Is there not a procedure available for the public to help through his department or whatever?

The Attorney General:

No. It is possible for a group of individuals if they have the same legal interest to bring what is termed a class action and to group together for the purposes of bringing private law proceedings, but it is not the function of the Law Officers’ Department to assist with private law proceedings. We are to there to deal with a public law function and not to vindicate private law rights on behalf of individuals.