

2017.03.28

### **3 Deputy M.R. Higgins of H.M. Attorney General regarding the bankruptcy provisions of Articles 8(3)(b) and 8(4)(b) of the States of Jersey Law 2005: [1(194)]**

Will Her Majesty's Attorney General advise Members what the legitimate aim is of the bankruptcy provisions in the States of Jersey Law 2005? Does he consider that Articles 8(3)(b) and 8(4)(b) are proportionate to that aim and, if so, why?

#### **Mr. R.J. McRae, H.M. Attorney General:**

The provisions the Deputy refers to in Articles 8(3)(a) and 8(4)(b) have been extant since the law was passed in 1966, the first States of Jersey Law. As we know, Article 8(3)(b) disqualifies Senators and Deputies from election if they are bankrupt; bankruptcy is defined in the Interpretation Law but such disqualification will cease if a person pays his debts in full or before the conclusion of the bankruptcy proceedings and in any other case on expiry of 5 years from the date upon which the bankruptcy proceedings are concluded. The same applies under 8(4)(b) in relation to compositions or arrangements with creditors; the same requirement to pay debts in full or another case to wait for 5 years before being eligible to stand. But integral provisions, although subject to a rather longer list of disqualifications, apply to the office of Jurat, pursuant to Article 3 of the Royal Court Law 1948. This provision in respect of different public offices is well recognised in Jersey law. It is hard now to speculate as to the original reason for these provisions because there is no report or record of debate in respect of the 1948 law or the 1966 law now in existence.

#### **The Deputy Bailiff:**

Attorney, the time normally allowed for answers is one minute 30 seconds. You are now one minute and 50 seconds, I wonder if you can ...

#### **The Attorney General:**

Sir, I am only halfway through, I do apologise. [Laughter]

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

It is an important issue, Sir, so hopefully you will allow more time.

#### **The Deputy Bailiff:**

Perhaps you could continue for the time being but I will allow extra time for supplemental questions if need be.

#### **The Attorney General:**

I am grateful, Sir. The principle in relation to the rule regarding Senators and Deputies was presumably along the lines that it was thought wrong for people who were incapable of managing their own financial affairs, to the extent that they became insolvent, to be put in charge of other people's financial affairs unless they either paid off their creditors in the course of the bankruptcy or at least had the chance to prove that they could re-establish themselves in the following 5 years. Is that provision in Article 8(4) legitimate and proportionate for human rights purposes? In that regard I refer the Deputy to the lengthy written answer I have given today and, in short, for the reasons set out in that answer, it is a legitimate and proportionate purpose for the purposes of human rights legislation.

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

In fact just so it is absolutely clear to Members, the reason I raised this was from a proposition I brought a short while ago and I did not realise the Bankruptcy Law was as onerous as it is for States Members because the Attorney General advised us that any ordinary bankrupt has to have 5 years to pay off his debts and if he pays off his debts and he is cleared. But a States Member or someone who is thinking of applying for the States is barred for another 5 years on top of that. In my research there is no other State that has a provision like that and, therefore, this is why my question was whether it was proportionate. I have read the answer to the Attorney General's question and I might say that I am ...

**The Deputy Bailiff:**

Deputy, this does have to be a question.

**Deputy M.R. Higgins:**

Okay, just a question. Okay, my question then is: what is the procedure for challenging this particular provision because I think it is about time we did challenge the Human Rights Law in the Island and the interpretation of it? Would there be assistance from the States in terms of a quality of arms, so it is on a point of law?

**The Attorney General:**

There was a misunderstanding in the question, the early part of the question. It was suggested there was some special rule for bankruptcy in relation to States Members; there is not. All persons in Jersey are subject to the same provisions in relation to bankruptcy and discharge. But the point is that a discharged bankrupt who failed to pay his debts during the course of bankruptcy is not eligible for election for the following 5 years. In terms of a challenge, of course it is possible for a person to mount a challenge to any legislation and invite the court to issue a declaration that legislation is incompatible with human rights legislation and then the matter could be looked at afresh by this Assembly. But, ultimately, it is a matter for this Assembly to determine whether or not it wishes to change these provisions.

**Deputy M.R. Higgins:**

Just the question of the quality of arms ...

**The Deputy Bailiff:**

I beg your pardon, Deputy Mézec, I did not see your light. Deputy Mézec.

**3.3.2 Deputy S.Y. Mézec:**

That is okay, I did put it in on late. The question I would like to ask is: what are the legal consequences of the Articles in the States of Jersey Law that make bankruptcy something that inhibits ...

**The Deputy Bailiff:**

Sorry, I beg your pardon, Deputy. Deputy Labey, I think in leaving you are leaving us inquorate, so if you would come back until ... please do continue, Deputy.

**Deputy S.Y. Mézec:**

I just wanted to ask, what are the legal implications of the Articles in the States of Jersey Law that prohibit somebody from becoming a Senator or Deputy if they are bankrupt? Is it those clauses just being removed? Are there any unintended consequences of doing that or would the only

consequence of that simply be that people who are bankrupt would be able to become Senators and Deputies?

**The Attorney General:**

Yes, if the provisions were removed then persons who are bankrupt would be capable of standing as Deputy or Senator.

**3.3.3 Deputy M.R. Higgins:**

I would like to draw all Members' attention to the fact that it does not apply to the Constables and, therefore, it is discriminatory in human rights terms as well. Could the Attorney General advise whether funds would be available from the States on this because, as we all know, bringing a court action in Jersey is impossible for an individual unless he has very deep pockets? It is an important issue regarding this Assembly.

**The Attorney General:**

A person challenging these provisions may or may not be entitled to legal aid, otherwise they would be unrepresented and they would look to the Court to assist them in the course of any proceedings.