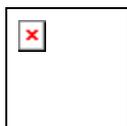


**THE JERSEY LAW COMMISSION: REPORT FOR 1999**

---

**Presented to the States on 12th September 2000  
by the Legislation Committee**

---



**STATES OF JERSEY**

**STATES GREFFE**

150

2000

R.C.30

Price code: B

## REPORT

### 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 30th July 1996.

The Commissioners are -

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

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

### Contents of this report

Foreword by the Chairman

PART I The fourth year

PART II Topic reports

- II.i The Best Evidence Rule
- II.ii Dégrèvement and its relationship to the Bankruptcy (Désastre) (Jersey) Law 1990
- II.iii The Jersey Law of Real Property
- II.iv Potentially complex civil litigation
- II.v Jersey Rules of L<sup>é</sup>gitime
- II.vi The Law of Tutelles
- II.vii The Law of Contracts
- II.viii Partnership Law

PART III The cost of the Commission

PART IV Budgets

- IV.i Budget for 1999
- IV.ii Budget for 2000
- IV.iii Budget for 2001

APPENDIX A The rôle of the Commission

APPENDIX B The Commission's working method

### The Jersey Law Commission Fourth Annual Report 1999

*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 30th July 1996, our fourth Annual Report covering the activities of the Commission in the calendar year 1999.

Signed

*Keith Baker, Chairman.*

### PART I - The fourth year

Ten meetings were held during the year. The Commission completed one Topic (Dégrèvement); made progress on two others (Best Evidence; Real Property); embarked on two new topics (L<sup>é</sup>gitime; Complex Civil Litigation); and received the approval of the Legislation Committee to proceed with the review of three others in due course (Tutelles; Contract; Partnership).

The Commission encountered difficulties throughout 1999 in finding Topic Practitioners to assist the Commissioners with research into their Topics. However, following a most generous response to our recent approach to senior partners of local law firms, the Commission is now in possession of a list of volunteer Topic Practitioners which will greatly assist us in the future.

Advocate William Bailhache was regrettably obliged to resign in December 1999, on becoming Attorney-General. During his all-too-brief period as a Commissioner he made a characteristically active and penetrating contribution to our work, and we shall miss him.

We shall also miss Jurat Donald Le Boutillier, who resigned on 29th March 2000, after serving as a Commissioner right from the beginning. We are indebted to him for all his hard work and support both in setting up the Commission in 1996 and in taking a full burden of work as a topic Commissioner once it was up and running. His extensive knowledge of Jersey law and government was an invaluable asset, and his high standing in the community lent the Commission a degree of acceptance which greatly smoothed its path in its formative years. All of the Commissioners wish him a long and happy retirement.

Since the end of 1999 we have been 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 8th February 2000. We greatly look forward to working with them.

## **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 has been 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, we are now preparing our Final Report for presentation to the Legislation Committee in due course.

### **II.ii Topic 5 - Dégrevement 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.

It is now up to the States to decide whether they wish to adopt our proposal that Dégrevement should be abolished. Our work is finished.

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

(Topic Commissioner: Mr. David Moon)

This new Topic was approved by the Legislation Committee in November 1998 for review by the Commission. Mr Moon commenced work on it at the beginning of 1999, but difficulty was experienced in finding a Topic Practitioner to assist him. This delayed work on the preparation of the Consultation Paper. We are hoping that a volunteer to act as Topic Practitioner will now come forward.

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

(Topic Commissioner: Advocate William Bailhache)

Advocate William Bailhache prepared a preliminary analysis of the problems to be considered under this Topic, but work was interrupted by his impending resignation on taking up the office of Attorney-General in 2000.

Since the end of 1999 Advocate Alan Binnington has been appointed as the new Topic Commissioner. He is considering the preliminary analysis of this Topic prepared by Advocate William Bailhache before making his recommendations about how to proceed.

II.v Topic 8 - Jersey Rules of L gitime

(Topic Commissioner: Mr. David Lyons)

Mr. Lyons commenced work on this Topic in June 1999, and is in correspondence with a number of persons in academic and other circles who are assisting him with carrying out the preliminary enquiries and research for the preparation of the Consultation Paper.

II.vi Topic 9 - The Law on Tutelles

This Topic was approved by the Legislation Committee in 1999, for review by the Commission in due course. Since the end of the year Mr. Clive Chaplin has been appointed as the Topic Commissioner.

II.vii Topic 10 - The Law of Contracts

This Topic was approved by the Legislation Committee in 1999 for review by the Commission in due course, and a Topic Commissioner will be appointed as soon as possible.

II.viii Topic 11 – Partnership Law

This Topic was approved by the Legislation Committee in 1999 for review by the Commission in due course, and a Topic Commissioner will be appointed as soon as possible.

**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 1999 -

	�
Printing and stationery	3,022.25
Advertising	110.00
Research fees	1,825.90
Travelling expenses	Nil
<b>TOTAL</b>	<b><u>4,958.15</u></b>

**PART IV - Budgets**

IV.i Budget for 1999. The States approved the Commission’s budget for 1999 of  75,000. As the Commission’s costs were not as high as expected, the underspend for 1999 was returned to the General Revenue of the States.

IV.ii Budget for 2000. The States have approved the Commission’s budget of  45,000 for 2000.

IV.iii Budget for 2001. We expect to be requesting a budget of  45,000 again for the calendar year 2001.

Signed

*Keith Baker, Chairman*

*David Lyons*

*David Moon*

*Clive Chaplin*

*Alan Binnington*

*John Wheeler*

May 2000.

### **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.”.*

**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.