Scottish Parliament

Public Petitions Committee

Tuesday 8 October 2002

(*Morning*)

[THE CONVENER *opened the meeting at 10:03*]

Scottish Criminal Record Office (PE544)

The Convener: The next petition comes from Mr Allan J Bayle. It concerns the review of the Scottish Criminal Record Office. The petition calls for the Scottish Parliament to undertake an inquiry into the openness, transparency and admission of mistakes at the Scottish Criminal Record Office in relation to fingerprint identifications.

Although Mike Russell, who supports the petition, could not be here this morning, he has sent a letter, which he has asked me to read to the committee. It goes as follows:

"Thank you for agreeing to receive this petition and for the time you took to talk to Allan and to Iain McKie.

As I explained to you I am due to be in Quebec on a CPA delegation when your committee meets to consider the petition, and I am therefore writing to give my support to it.

I have known Allan for almost two years and he has

campaigned vigorously on behalf, not just of Shirley McKie, but more generally in support of a restoration of the highest standards to the forensic work of SCRO.

The other three petitioners are also known to me. Pat Wertheim and David Grieve have taken part in a number of events at the Parliament in order to encourage a broad understanding of the nature of the mistakes of the SCRO in the McKie and Asbury cases. Arie Zeelenberg was the independent assessor for the HMCIC report into SCRO and has an international reputation for his work in the Netherlands.

All the petitioners are of the highest standing in their field. They have, frankly, no need of the difficulties and complications involvement in this petition will bring, but they are signatories because, as I understand it, they believe that the continuation of the present state of denial by the SCRO (and now by the Justice Minister) with regard to the scientific basis of fingerprinting can and will do nothing but harm to the international reputation of, and application of, fingerprinting techniques.

They believe, as I do, that the only way to resolve the impasse that has now arisen between the SCRO on one hand and virtually the entire world fingerprinting community on the other is to seek the opinion of one of the foremost experts in the world to give his independent opinion. Staff Sargent Ashbaugh is an expert of that eminence and I understand his employers, the Royal Canadian Mounted Police, would permit him to undertake the task if they were approached by the Scottish Parliament Committee.

Accordingly, I would like to add my support to the request of the petitioners and would suggest that the petition be referred to one of the Justice Committees (perhaps Justice 1, given the fact that they have already asked the Justice Minister questions about the matter) with a view to a speedy request to the RCMP for assistance.

The work of Staff Sargent Ashbaugh need not take more than a couple of months and there is therefore enough time for the enquiry to bear fruit before Parliament is dissolved next year.

Finally, can I say that although the petition has arisen out of the McKie and Asbury cases, it is in no way solely concerned with them, indeed these cases are now on their way to resolution in the civil courts. What remains, however, is a climate of suspicion and doubt about the whole science of fingerprinting and how it is applied in Scotland, which seems at present to be different from the way it is applied anywhere else on the planet.

The petitioners, in that sense, want Scotland to rejoin the world. I hope your committee will help them in that task."

Is Dennis Canavan here in support of that petition?

Dennis Canavan (Falkirk West): No. I am here on a later one. I support this petition too, but I do not want to speak on it. I raised it in the chamber at question time two weeks ago.

The Convener: We turn to the suggested action on the petition. On legal advice, the Parliament agreed in May that it would be inappropriate to debate Mike Russell's motion, on the basis that the content of the speeches could be considered to breach the sub judice rule, given that the civil action related to the case was then before the courts. We have received confirmation from the legal office that civil action is still pending and that no date has been set for a hearing or proof. The court has advised that if a hearing is to take place, it is likely to be sometime in 2003. It is suggested that the petition is so closely linked to the McKie case that it would be almost impossible for the committee and certainly impossible for a subject committee to properly investigate the issues raised without referring to the case. Arguably, consideration of the petition could continue, but within strict parameters relating to what members can and cannot say. However, that would be particularly difficult to enforce and the risk would remain of a breach of the sub judice rule.

It is suggested that at this stage the committee could seek the initial views of the Executive on the general issues raised. On receipt of the Executive response we can consider whether there is merit in further detailed consideration of the petition. We could then also reach a view on whether such action should be deferred until the civil action in the court has been concluded. Are there any views?

Dr Ewing: I do not accept that the sub judice rule applies. I will explain why. I can talk about the delays in the law. I once successfully sued the *Sunday Mail*. It took 18 months in what my Queen's counsel said was a case that I was bound to win from day one; so 18 months is not unusual. We are talking about the case taking until 2003 or 2004.

This is a question of vital evidence in a great number of criminal cases, which all come before our courts. Are we saying that because one litigant raises a civil action—which is totally up to the litigant—that can delay consideration of our criminal law and the law of evidence? That is plainly stupid. I said so during the debate in Parliament. I got a lot of support, sotto voce, for what I said from certain Government ministers. I am sure that I am right. Any vexatious litigant—I am not suggesting that Ms McKie is vexatious, I am on her side—could by raising a civil action stop consideration of the revision of our criminal law. That cannot be right. I do not accept that the matter is sub judice.

The Convener: We will probably, in any case, write to the Executive to ask for its comments on the petition. At the same time as doing that, could we seek further legal advice and opinion on the point that Winnie Ewing has raised and report back within a short time scale?

Dr Ewing: I was a criminal lawyer before I took up this daft profession.

The Convener: Is it accepted that we write to the Executive to seek its comments on the petition and at the same time go back to its legal advisers on Winnie Ewing's point?

Dr Ewing: That was the question of whether a civil action by one litigant can hold up the revision of our criminal law. That could happen over and over again.

Dorothy-Grace Elder: At the lowest level, a reporter on a committee could investigate the matter privately, behind the scenes, without anything being voiced for many months. I agree with Winnie Ewing and she is the expert. The matter is not sub judice at all. The case will drag on into 2003 and possibly until after the election. This is nonsense. We have not spelled out what form of investigation is sought, but if it is an investigation by a committee reporter that is, as we all know, done quietly and the findings are eventually presented to a committee.

The Convener: This action does not rule out passing the petition on to one of the justice committees. We would have to write to the Executive anyway to

get its comments. This will help the justice committees, because they have a busy agenda and we can do the early work much more quickly than they could.

Dr Ewing: It was the Presiding Officer who indicated in a parliamentary answer that we should not comment because the matter was sub judice. He was asked who had advised him, but he was coy about that.

Phil Gallie: I sympathise with Winnie Ewing. The problem is that the only evidence that we appear to have concerning the reliability of so-called fingerprint experts relates specifically to the Shirley McKie case. Can the member point to any other cases in which the issue has arisen? Are we basing all our criticisms on the Shirley McKie case?

Dr Ewing: We are basing our comments on the core law regarding fingerprint evidence. The regime in Scotland is one of the strictest in the world—18 points of resemblance are required. All over the world fingerprint evidence is taken based on 16 or 12 points of resemblance. When Dr Simpson was asked officially to comment on this issue, he agreed that

"it is not an exact science."—[*Official Report*, 26 September 2002; c 14183.]

If fingerprint identification is a science at all, it is not an exact science. We tend to think of it as an exact science, because that is the way in which fingerprint evidence always used to be regarded. Now its reliability has been placed in doubt in many parts of the world—including parts of America, where each state has its own rules. In some states fingerprint evidence is not regarded as conclusive, although it is very damaging.

The Convener: The action that has been suggested does not rule out our taking a final decision on the issue. We are seeking the Executive's comments and taking further legal advice on the point that Winnie Ewing made about the sub judice rule. Do we agree to take the action that has been suggested and to return to the petition later?

Members *indicated agreement*.