Scottish Parliament

Public Petitions Committee

Tuesday 3 December 2002

(*Morning*)

[THE DEPUTY CONVENER *opened the meeting at 10:07*]

Scottish Criminal Record Office (PE544)

The Deputy Convener: Let us proceed to the last current petition before us. It relates to a review of the Scottish Criminal Record Office. The petition called 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.

Members will wish to note that an e-mail has been received from Mr T Milligan, a copy of which is attached to members' papers. He claims to have been an inspector with the Scottish Criminal Record Office fingerprint bureau from 1982 until his retirement in June 2000. He refutes the claims that have been made in the petition, and calls for it to be rejected. He provides a comprehensive explanation of his view that expert fingerprint evidence is a professional opinion, and that a review of that area of the Scottish Criminal Record Office's work has already been undertaken.

We have received a brief response from the Scottish Executive, in which it indicates that it does not want to risk being held in contempt of court by providing its full comments on the issues that are raised in the petition, as they are so closely linked to the case of Shirley McKie. The Executive points out that a review of the fingerprint bureau was carried out following Ms McKie's acquittal on a charge of perjury in May 1999. As a result, several changes, some involving additional funding, have been made or are under consideration. Those include a change in the standard used for identification to a non-numeric standard, as recommended by Her Majesty's chief inspector of constabulary.

Members may recall that, at the committee's meeting on 8 October, Winnie Ewing suggested that it may be possible for a group or individuals to restrict debate in the Parliament on any issue by raising a related court action, thus prompting the application of the sub judice rule. The committee agreed to seek further advice from the Parliament's legal team on that issue.

First, the advice received indicates that although it is technically possible that someone could deliberately restrict a debate by raising a court action, the chances of that happening are highly unlikely. Proceedings do not become active for the purposes of the sub judice rule by someone simply raising a court action. The Contempt of Court Act 1981 provides that, in a civil case, proceedings become active when the record is closed. That does not usually take place until some months after proceedings have been served—sometimes very much longer—and involves the defender lodging defences, and adjustments being lodged by both sides to the action. Therefore, if someone wanted to restrict debate, they would have to plan several months, or even years, ahead.

Secondly, matters do not remain active indefinitely. They usually cease to be active when the courts have disposed of the case. Therefore, it is only for a very specific time that any debate would be restricted. As the Presiding Officer explained to the Parliament in relation to the

Shirley McKie case, it is open to the Parliament to debate the matter once the courts have disposed of the case.

The third point to note is that matters that are sub judice may be referred to in proceedings if the Presiding Officer has given permission to do so, under standing order 7.5.1. Therefore, if it was suspected that someone had raised an action for the purposes of preventing debate, it is open to the Presiding Officer to allow discussion of the matter if he so chooses.

As suggested previously, 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 investigate properly the issues raised without referring to the case. Although the Executive has been unable to comment fully on the issues raised in the petition for legal reasons, there appears to be a clear case for ultimately referring it to either the Justice 1 Committee or the Justice 2 Committee for further consideration. However, it is recommended that this committee should agree to defer such action until the civil action in the courts has been concluded, for the following reasons.

First, it would be particularly difficult to consider fully the issues raised in the petition if strict parameters as to what members could or could not say were enforced, and the risk of a breach of the sub judice rule would remain. Secondly, it is questionable, given the limited time available before the election, that a subject committee would have the time to conduct a detailed inquiry of the nature that the petition would appear to merit. Thirdly, it would be beneficial if any further inquiry conducted by the Parliament could refer to the McKie case and discuss the mistakes that were made. That would allow an informed debate as to how those mistakes could be prevented from occurring again in the future.

Ultimately, we would expect that the petition would go to either the Justice 1 Committee or the Justice 2 Committee, but that is the advice that this committee has been given.

Dr Ewing: I declare an interest as a member, albeit non-practising, of the Law Society of Scotland.

I agree with most of the advice on suggested action. I do not think that it is very likely that anyone would raise an action to be litigious, although, in my experience, that has happened quite a bit. McKie is quite genuine in her civil action, for her own purposes. I do not know the woman, but that is my impression.

I take issue with many points in the paper. The time worries me, because I do not agree with what is normal in an action and what is meant by "active" and "passive". I take it that the moment of truth is when the record is closed and defences are sub judice. I accept that point. However, I do not agree that that happens as quickly as suggested in the paper. I have been a litigant only once, and it was ghastly. I had to sue the *Sunday Mail*, which I did successfully. It took 18 months—a very long time before the record was closed; yet I had what was regarded as a cast-iron case and won.

Until now, fingerprint evidence has been regarded as virtually unanswerable. The case relates to the authenticity of that evidence—Mr Milligan would agree with that, because he said that fingerprint evidence was opinion. I have never heard that before and I admire Mr Milligan for saying it, because if fingerprint evidence is opinion, it is challengeable, and it had never really been challengeable until the case that we are discussing. Now, many criminal cases will take place in which doubt will hang over the authenticity of fingerprint evidence, and that will happen for a long time—it could be 18 months or more. Is that good?

The Deputy Convener: Nothing that you say is wrong. You agreed that when the record is closed, the matter is sub judice. You say that a further inquiry should be conducted and we agree. The question is about timing, over which we have no control. We agree with our legal advice. We can do something about some matters but not others.

Dr Ewing: Will we do nothing for all the criminal cases that will take place?

The Deputy Convener: That is a matter for the courts to recognise.

Dr Ewing: The court has not said what you have said. The piece of paper that I am holding does not say what the court said.

The Deputy Convener: We are only a few weeks from Christmas. When we return at the beginning of January, that will be the realistic time for the Justice 1 or Justice 2 Committee to progress the issue.

Dr Ewing: I know that. I agree with you.

The Deputy Convener: We are at the mercy of the advice that we have received, no matter what the merits or otherwise of the arguments are.

Dr Ewing: I would like it to be minuted that, now that the authenticity of fingerprint evidence is in doubt—as Mr Milligan agreed—I am concerned about the time lapse before an inquiry into fingerprint evidence is held. I have given examples of other countries that have different points of reference for fingerprint evidence, which relate to the number of markers and other matters. We could have an inquiry without the Justice 1 or Justice 2 Committee, if the Crown Office agreed to do it. The inquiry would not be against that body; it would be in its interest.

The Deputy Convener: The Justice 1 or Justice 2 Committee will take on board those issues.

Dr Ewing: May I have my objection minuted?

The Deputy Convener: Yes. I am sure that that is not a problem. Any member can have anything raised.

Dorothy-Grace Elder: I second Dr Ewing's objection. I am sorry that we are giving you a rough time, convener, when you have been so nice to us all. I am alarmed that many people are in jail because of someone's opinion. Fingerprinting has been called an art form, not a science, but we have all come to believe in it over the decades. The situation is outstandingly alarming for the justice system. We must speed up a proper inquiry.

The Deputy Convener: Do we agree to the recommendations that have been suggested?

Dorothy-Grace Elder: We accept that we do not have time ourselves.

The Deputy Convener: The qualifications that Dr Ewing and Dorothy-Grace Elder wanted will be minuted. We will agree to the recommendations and the suggested action.