

COPY

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Justice 2 Committee
The Scottish Parliament
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Tom Minogue
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Thursday 6th February 03

Dear Mr Hough,

Petition 306 – Justice 2 Committee Meeting 30 October 2002

Further to your letter of 3rd February regarding the above I would confirm that it is my intention to submit 4 or perhaps 5 specific examples of tribunals/court cases where difficulties have arisen because of the tribunals/judges links with organisations such as the freemasons. I will as requested endeavour to have my written submissions with the Committee before the 4th March 2003 in order that the Committee and the Justice Minister may consider these matters. I would however point out that the my submissions are dependant on the agreement of the litigants/complainers concerned. In this regard I will be contacting the people involved in the cases I wish to cite immediately for their permission to publicise their views.

I would take this opportunity to express my disappointment that the Committee has taken the view that rather than dealing in principle with the question asked by my petition, the Committee have sought to assess my petition by way of examining examples provided by me. That said I respect the Committee's right to deal with this matter in whatever manner it thinks fit and I would certainly not wish to be seen to be overly critical of the Petitions system, which is a credit to the Scottish Parliament.

On a completely separate, though not unrelated matter I would like to record in the strongest terms my dissatisfaction with the conduct of the Deputy Convenor who has again chosen to publicly and unfairly lambast the ECHR. As you are aware in the past I have complained in writing about Mr Aitken's intemperate utterances on the ECHR to the Justice 2, Petitions, and Standards Committees. I have also complained to Pauline McNeill verbally. I will again complain that the Deputy Convener robs the Justice 2 Committee of its appearance of impartiality when dealing with a case (such as mine) arising out of a ECHR challenge. I have consulted my legal representative and he will be looking into this matter further with a view to lodging a complaint with the relevant authorities on my behalf.

Please acknowledge receipt of this letter by return.

Yours faithfully,

Thomas Minogue, Petitioner.

Tom Minogue

From: <Richard.Hough@scottish.parliament.uk>
To: <tomminogue@btinternet.com>
Sent: Monday, March 03, 2003 3:17 AM
Attach: 2003 03 03 Letter to T Minogue.doc
Subject: RE: Censorship of written submissions for PE 306

Dear Mr Minogue,

Thank you for recent email.

Please see the attached letter which I have posted to you this morning.

As indicated in this letter, the decision on whether to publish your submission in full on the Parliament's website is currently being considered by the Parliament's legal office. I have asked them to provide a written explanation for any decision made in relation to your submission. I will communicate this to you as and when any decision is made. Given that the addendum which you submitted this morning covers similar ground as the original submission, it will be treated in the same manner.

If you would like to give me a call, I would be happy to discuss this issue with you.

With Regards

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-----Original Message-----

From: Tom Minogue [mailto:tomminogue@btinternet.com]
Sent: 03 March 2003 18:43
To: richard.hough@scottish.parliament.uk
Cc: Tricia Marwick
Subject: Censorship of written submissions for PE 306

Dear Richard, further to our brief conversation this morning outside the

Justice 2 Committee

Mr Thomas Minogue
94 Victoria Terrace
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Room 3.10 Committee Chambers
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EH99 1SP

3 March 2003

Dear Mr Minogue,

I acknowledge receipt of your letter to the Justice 2 Committee of 3 March 2003, copies of which have been circulated to all Members of the Justice 2 Committee. I have also circulated to Committee Members copies of the addendum to the bound submission which you previously lodged with the Committee.

The papers and agenda for tomorrow's meeting of the Committee will be available on the parliamentary website today. For your convenience I have enclosed hard copies of the agenda and the Clerks note on Judicial Appointments relevant to tomorrow's meeting with the Minister for Justice.

As discussed this morning, we are currently taking advice from the Parliament's legal office on whether to publish your full submission on the Parliament's website. I will endeavour to keep you up to date on this issue.

In the meantime, if you have any queries, please do let me know.

With sincerely

Richard Hough
Assistant Clerk

Justice 2 Committee

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JUSTICE 2 COMMITTEE**6th Meeting 2003 (Session 1)****Tuesday 4 March 2003****Judicial Appointments**Introduction

1. Due to legislative and other commitments, this is the first real opportunity the Committee has had to consider the issue of judicial appointments with the Minister for Justice. The Committee has however, over a number of years, exchanged correspondence with the Minister on the issue. This paper seeks to provide a brief overview of some of the key areas relating to judicial appointments that the Committee has been involved in. It includes brief summaries of the following—
 - the establishment of a Judicial Appointments Board;
 - petition PE306 (Speculative Society and Masonic links to the Judiciary);
 - the current judicial review on Robbie the Pict / Skye Bridge case;
 - the current situation in England and Wales;

Establishment of the Judicial Appointments Board

2. The Justice 2 Committee (and its predecessor the Justice and Home Affairs Committee) has consistently expressed an interest in the establishment of the Judicial Appointments Board. The Committee has, in the past, expressed concerns on whether any new arrangements for judicial appointments will genuinely widen access to the judiciary.
3. On 27 July 1999, First Minister Donald Dewar announced that a full consultation on a review of the arrangements for judicial appointments would begin in the autumn. This followed an announcement by the Lord Chancellor establishing the independent scrutiny of judicial and QC appointments in England and Wales.¹
4. On 27 March 2000, Justice Minister Jim Wallace announced plans for “a radical modernisation of the judicial appointment” procedures in Scotland. The Minister announced that he was bringing forward proposals to create an Independent Judicial Appointments Commission to approve candidates for appointment as judges and sheriffs in Scotland. The Minister stated: “Those who sit in judgement on society must also reflect that society.” The Minister added that justice must not only be “fair and just”, but must be “seen to be fair and just.”²
5. The Justice and Home Affairs Committee was invited to comment on the Executive proposals and considered the issue of judicial appointments as early as

¹ Scottish Executive News Release, 27 July 1999
(http://www.scotland.gov.uk/news/releas99_7/se0169.htm)

² Scottish Executive News Release, 27 March 2000
(<http://www.scotland.gov.uk/news/2000/03/se0855.asp>)

26 April 2000 when it agreed to appoint Michael Matheson as a reporter on the Executive consultation paper. The Justice and Home Affairs Committee's response to the Executive consultation was published on 16 June 2000 and included the following points—

- the system of judicial appointments could and should be improved;
- the appointments system should be based on merit, be consistent with equal opportunities, be transparent and fair;
- the lack of ethnic minority or female representation on the bench was largely a result of the fact that, until recently, the composition of those studying law and thus entering the legal profession has not fully reflected the diversity of modern society³;
- a statement of the criteria used in making judicial appointments should be published;
- a lay element, as well as legally-qualified representation, should be introduced to the appointments process;
- vacancies for judges should be advertised;
- a prescribed format for applications might provide value in consistency;
- the establishment of a judicial appointments board should be created by statute;
- recruitment exercises should be conducted at fixed intervals rather than on an *ad hoc* basis;
- there would be merit in preparing a Code of Judicial Conduct;
- the Board's role should extend to consideration of applications for part-time sheriffs and temporary judges.⁴

6. On 31 May 2002 the Minister for Justice announced the establishment and membership of an independent Judicial Appointments Board which was to be responsible for the modernised process for judicial appointments. The Remit of the Judicial Appointments Board for Scotland is—

- to provide the First Minister with a list of candidates recommended for appointment to the offices of Judge of the Court of Session, Sheriff Principal, Sheriff and Part-time Sheriff
- to make such recommendations on merit, but in addition to consider ways of recruiting a Judiciary which is as representative as possible of the communities which they serve
- to undertake the recruitment and assessment process in an efficient and effective way.⁵

7. The Board was set up on an administrative basis in the first instance. It remains to be established on a statutory basis which will require primary legislation. The Board comprises a lay Chair, 4 lay members, a Court of Session Judge, a Sheriff Principal, a Sheriff, an advocate and a solicitor (See Annex A). The appointment of the Chair, Sir Neil McIntosh was announced on 8 April 2002. Candidates for appointment to the Judicial Appointments Board were not asked to disclose

³ Members may wish to note the recent appointment of Lady Cosgrove to the Privy Council and to the Inner House of the Court of Session

⁴ These are only some of the Committee's recommendations, for full report see Justice & Home Affairs Committee Paper JH/00/26/8

(http://www.scottish.parliament.uk/official_report/cttee/just-00/jup00-26.pdf)

⁵ www.judicialappointmentsscotland.gov.uk

membership of Freemasonry or any other secret society. They were however asked to disclose any possible conflict of interest which might arise if they were appointed, whether personally, in relation to their appointment, or in relation to their connections with any organisation. No candidate declared a potential conflict of interest.⁶

8. The Board was established to interview and recommend suitable candidates for the post of judge and sheriff to the First Minister. The new modernised recruitment process requires that posts for sheriffs and judges be advertised in the press and that all eligible applicants must be considered by the Board. (For full selection criteria see Annex B).
9. The first judges and sheriff principal to be appointed under the new modernised appointment process were announced on 1 November 2002. Mr Philip Brodie QC and Mr Alistair Campbell QC have been appointed as Senators of the College of Justice. The appointment of Sheriff Iain Macphail QC to be Sheriff Principal of Lothian and Borders in succession to Sheriff Principal Gordon Nicholson was also confirmed. The Minister for Justice said of the appointments:

"A lot of work has been required to get us to the point where we are today with a more open and transparent system that reflects the Executive's commitment to increased openness in public life. These appointments mark a significant departure from previous arrangements for recommending Judicial appointments."⁷

Petition PE306

10. Petition PE306 by Mr Thomas Minogue calls for the Scottish Parliament to request that all members of the Judiciary declare membership of organisations such as Freemasons and that such a register be made available on request.
11. The Public Petitions Committee (PPC) considered PE306 on 19 December 2000, 27 February 2001 and 13 March 2001 (at which point it was referred to the Justice 2 Committee). The Justice 2 Committee have considered the petition at its meetings on 24 April 2001, 23 May 2001, 26 September 2001, 30 October 2002 and 29 January 2003
12. The petitioner's principal concerns relate to the secrecy surrounding Freemasons and the impact membership of this organisation might have on the impartiality of the judiciary. In giving evidence to the PPC, the petitioner explained that he would like all members of the Judiciary to declare membership of organisations such as Freemasons and that such a register be made available to the public on request. Such a register would include justices of the peace, sheriffs and high court judges.⁸
13. The Committee wrote on 23 May 2001 to the Minister for Justice, asking him to consider whether the judiciary should be required to declare interests in the same way as members of public bodies were required to do under the new ethical

⁶ Written Answers, Answered by Mr Jim Wallace, 12 March 2002, S1W-23539

⁷ Scottish Executive News Release, 1 November 2002

(<http://www.scotland.gov.uk/pages/news/2002/11/SEJD140.aspx>)

⁸ PPC Official Report, 19 December 2000, col. 823

framework introduced by the Ethical Standards in Public Life etc. (Scotland) Act 2000.

14. The Minister's response indicated that he had difficulties with the proposal that judges should be required to declare interests as set out above as the ethical framework was not designed to apply to the independent judiciary, as it is inappropriate constitutionally. The Minister also reaffirmed his position that, aside from the petition, he had no indication of apparent concerns that membership of the freemasons may influence the judiciary in dispensing justice.⁹
15. The Committee agreed at its meeting on 26 September 2001 to note the Minister's response and to make a commitment to revisit the possibility of declarations of interest by the judiciary as part of consideration of the new judicial appointments procedures.
16. Following the introduction of the new judicial appointments system in May 2002, the Justice 2 Committee revisited the petition on 30 October 2002. This consideration also followed the provision, by the petitioner, of information and press cuttings relating to the existence of the Speculative Society which was considered by the Committee in the context of the petition. A letter from the Speculative Society stating that the Society was founded in 1764 as a Debating Society "for the purpose of improvement in literary composition and public speaking" and that this remains the aim of the Society was also considered.¹⁰
17. The Committee agreed to request that the Minister reconsider the matter and, in doing so, consider that the requirement to declare an interest be extended to membership of any group or society in which there could be deemed to be a perception of secrecy. The Committee also urged the Minister to consider the issue as part of the new judicial appointments procedure.
18. The Minister replied on 27 November 2002 indicating—
 - Aside from the petition by Mr Tom Minogue, no other individual appearing before the Sheriff Court has challenged a Sheriff to declare his position on membership of the Freemasons.
 - The Minister is satisfied that the Speculative Society is simply a debating society with membership drawn from the judiciary and other professions.
 - In drawing up application forms for its current campaign, the Judicial Appointments Board has not included questions about the Freemasonry or other societies and the Minister is not, at this stage, inclined to offer guidance on the matter.¹¹
19. On 26 January 2003, the petitioner wrote to the Committee indicating that he had specific examples of cases where difficulties that have arisen over the question of Sheriff/Judicial membership of the Freemasons and that he had evidence to suggest that "three of the Judicial Appointments board are confirmed members of the Speculative Society and several members are unconfirmed Masons"¹².

⁹ Letter from Minister for Justice, 13 September 2001

¹⁰ Letter from R Whiteman, Secretary to the Speculative Society, 29 July 2002

¹¹ Letter from the Minister for Justice, 27 November 2002

¹² Letter from the Thomas Minogue, the Petitioner, PE306, 26 January 2003

20. At its meeting on 29 January 2003, the Justice 2 Committee agreed to take no further action on petition PE306. However, the Committee agreed that if the petitioner was able to provide evidence of further specific cases where difficulties have arisen over the question of Sheriff/Judicial membership of the freemasons it would consider revisiting the matter.
21. The petitioner responded to the request by the Committee to provide evidence of further specific cases where difficulties have arisen over the question of Sheriff/Judicial membership of the freemasons with a document he has produced entitled *A Call for Registration of Interests In Organisations such as the Freemasons*. This document is circulated as Committee Paper J2/03/6/5.
22. In this document, the petitioner cites 5 specific cases in which he claims difficulties have arisen because of links with organisations such as the freemasons. The cases are as follows—
- a decision by the Social Security Commissioner in relation to Victor Duncan, Appellant v The Secretary of State, Respondent;
 - the Dunblane Inquiry;
 - the Lockerbie Trial and Appeal;
 - the Skye Bridge cases;
 - Stott v Minogue, Dunfermline Sheriff Court (the petitioners own experience);

Bail & Judicial Appointments Bill

23. The Bail, Judicial Appointments etc. (Scotland) Bill (SP Bill 17) was introduced formally on 25 May 2000 and the Justice and Home Affairs Committee was designated the lead committee on the Bill. Part 2 of the bill related to judicial appointments. It provided for the abolition of the office of temporary sheriff and the creation of a new judicial office of part-time sheriff. As a further measure, the bill proposed the creation of a new judicial office of part-time sheriff, with statutory conditions of tenure, in order to meet in full the convention's requirements on independence and impartiality. The bill also contained provisions relating to justices of the peace and district court prosecutions by local authorities.
24. The Stage 3 Debate of the Bill took place on 5 July 2000 and the Bill received Royal Assent on 9 August 2000.

Current judicial review involving Robbie the Pict

25. Robbie the Pict, a protester against the Skye Bridge tolls, is currently involved in a court action asking judges to reopen a case presided over by members of the Speculative Society. The case was called before Lords Gill, Kirkwood and Wheatley on 18 February 2003. Robbie the Pict asked the three judges whether they were freemasons - a question they have at this stage declined to answer. The petition was originally brought in December at the justiciary appeal court but was continued because one of the judges, Lord Osborne, was a known member of the Speculative Society. This legal challenge relates to his conviction at Dingwall Sheriff Court in November 1998 for failing to pay the Skye Bridge toll. Robbie the Pict wants his appeal, which questioned the legality of the Crown

paperwork authorising the tolls, to be reheard before judges with no connections to the Speculative Society.

Situation in England and Wales

26. The system for appointing judges and QCs in Scotland is different from the English system. The administration of the judicial appointments system in England is carried out on the Lord Chancellor's behalf by staff of the Judicial Group in the Lord Chancellor's Department. One of the Lord Chancellor's priorities is "to modernise the judicial appointments process" and make it "an open, effective and accessible system where everyone who is eligible for, and who wants, an appointment has a fair chance to secure it."¹³ Appointments must and will be made on merit irrespective of ethnic origin, gender, marital status, political affiliation, sexual orientation, religion or disability.

27. In 1999 Sir Leonard Peach, a former Commissioner for Public Appointments, carried out an inquiry into the judicial appointments procedures. Recommendations included the creation of the Commission for Judicial Appointments which was established in March 2001 to investigate complaints from candidates for judicial and Queen's Counsel appointments, to audit the appointments procedures and to consider any comments about the procedures which may be received from individuals or organisations.

28. In the English/Welsh system there are three parts to the general selection procedure of judicial appointments up to and including the level of Circuit Judge—

- a written application,
- consultation with those who are familiar with the applicant's work
- interview.

An unsuccessful applicant may discuss the outcome of his or her application with a Judicial Group official who will also give advice about how a candidate could do better in the next application should he or she wish to reapply.

29. Appointments to posts above the High Court are by invitation only. Applications are invited for appointment to the High Court although the Lord Chancellor reserves the right to appoint those who have not made an application. Senior Judicial Appointments (Lords of Appeal in Ordinary, Heads of Divisions and Lords Justices of Appeal) are appointed by The Queen on the recommendation of the Prime Minister, who receives advice from the Lord Chancellor. High Court Judges and Deputy High Court Judges are appointed by The Queen on the recommendation of the Lord Chancellor.

30. The system in England and Wales also requires that all new applicants for posts in the judiciary must indicate whether they are Freemasons. Serving members have also been asked to declare, on a voluntary basis, their links with

¹³ *Judicial Appointments*, Lord Chancellor's Department, October 2002
(<http://www.lcd.gov.uk/judicial/appointments/jappinfr.htm>)

freemasonry. However, there is no 'register' of membership and the information held in the Lord Chancellors Department is not open to public inspection.