

# THE SARKEE TIMES

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March 2007

Welcome to the inaugural edition of The Sarkee Times, your new Island newspaper.

The editor of La Vouair de Sercq has apparently recently been accused of biased reporting (to quote her own Editorial in the March 2007 edition: "I have been accused, in spoken and written words, of producing a biased report of Chief Pleas and of repeating others peoples' ideas."). Who knows whether the allegation is correct, we express no opinion. We do, however, urge our readers not to give Miss Cochrane too hard a time. After all, all people are, and all reporting is, to some extent, biased - a wise man once said that the sign of a press that is free is not reporting that is unbiased or balanced, but the existence of a wide spectrum of reporting representing all biases and all points of view.

We will, of course, endeavour to keep our own reporting as unbiased as we possibly can. But we will, with our kind readers' permission, where we feel that certain points of view have been over-represented in the rest of Sark press, try to represent different, perhaps opposing points of view, to ensure all viewpoints receive fair representation.

You may find your new newspaper at times irreverent, although, we hope, not impolite, and we hope you will find it enjoyable. This newspaper will not be afraid to speak up or even to target sacred cows from time to time **as long as the editors believe it is the right thing to do**, whilst not promoting or seeking to protect any vested interests.

We hope you enjoy your new newspaper and look forward to receiving your feedback!

The Editors

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## **DCA Admits Inappropriate Interference in Sark's Internal Affairs**

In this article we look at a DCA Statement recently circulated around the Island. What does this document say and is it accurate? The main message of this document appears to be that Sark must implement Option A and do it now, or else the DCA might perhaps have to "remedy the situation" at some point in the future. This has been understood by some to mean that the UK will legislate for Sark without Sark's consent, but a careful reader will notice that the DCA statement stands carefully silent as to how the UK might go about "remedying the situation".

**"UK legislation does not normally extend to the Crown Dependencies and must never be extended to them without their consent." (DCA publication "Background briefing on the Crown Dependencies: Jersey, Guernsey and the Isle of Man", June 2006)**

We suggest the UK has two options available if it feels Sark laws put the UK in breach of its international obligations: (1) to re-negotiate the international treaties it has committed itself to, or notify the appropriate body of a reservation/derogation, or, (2) to **persuade** Sark to change its legislation. The option of the UK legislating for Sark without Sark's consent is not one the UK (let alone Guernsey) can lawfully pursue. We quote the DCA's own document entitled "Background briefing on the Crown Dependencies: Jersey, Guernsey and the Isle of Man" dated June 2006: "UK legislation does not normally extend to the Crown Dependencies and **must never** be extended to them without their consent." (our emphasis). This quote is from Section 3, page 3 of this document, which our readers can obtain from the Internet at <http://www.dca.gov.uk/constitution/crown/bg-info-crown-dependencies.pdf>.

It is correct to say that the Westminster parliament can pass legislation and sign international treaties which also apply in the Crown Dependencies, and does so on occasion. However, the key phrase here is, it must never do so **without their consent**. This may not always have been the case, but it true today. Here is (at least one) reason why. Since 1951, the UK --- as the High Contracting Party, but not Sark which is not --- has been bound by the European Convention of Human Rights (ECHR). Since Sark elects no members of the Westminster legislature, that legislature's attempt to legislate for Sark would be a violation of the rights of the residents of Sark under the ECHR **by the United Kingdom** which is bound by the said convention. It is ironic that, were the UK to attempt to impose legislation upon Sark, such attempts would constitute a violation of the very same article of the ECHR the UK accuses Sark of violating. Thus, such interference would be open to challenge

by either judicial review proceedings in the UK courts or in the European Court of Human Rights (ECtHR) in Strasbourg. Unlike DCA's claims that Sark's status quo is non-compliant (a claim which has not been proved in any court of law), this claim **has** been tested in the ECtHR. In 1999, the ECtHR ruled by a 15:2 majority ruling that the human (ECHR) rights of the residents of Gibraltar were violated because EU legislation applied in Gibraltar but Gibraltar had no representation in the EU parliament. Thus there is precedent to suggest the UK government would lose in such court proceedings, were such interference to be contemplated by the UK government in the first place. There is nothing to prevent the UK government from exerting pressure on Sark or issuing veiled threats of imposing legislation should it wish to use these weapons, but were the UK government to actually attempt to impose legislation upon Sark and lose a case in the ECtHR, it would lose even those weapons --- in all its Crown Dependencies and Dependent Territories.

**"[Sark] can look forward to a future without further DCA interference." (DCA Statement, February 2007)**

The second principal message of this document appears to be that as soon as Sark submits to DCA's pressure as regards constitutional reform, the DCA will no longer interfere inappropriately in Sark's internal affairs. Although this message is somewhat at odds with the DCA's other statement that Option A is the will of Sark's people, **we welcome the DCA's admission that it is interfering in Sark's internal affairs**. But as far as this message is concerned, we ask: do you believe a bully who tells you that if you'll let him bully you just this once, he'll never do it again? Or, is it more likely that things will only get worse and the only ways to successfully rebuff bullying is to either stand up to it or walk away? Yielding to DCA pressure would set a precedent, and a dangerous one at that. The UK itself is increasingly losing its independence to the EU and must follow its diktats; the same EU that is trying to control and interfere with everyone, including its neighbours who are not its members, like Switzerland. Even if the UK is sincere in its assertion that it won't attempt to further interfere in Sark, will the EU - soon to be the UK's overlord - take the same view?

**"DCA officials are employed by the United Kingdom government and are employed to protect the interests of their employer."**

The third admission the document makes is that DCA actions have to "reflect the inherent balance of interests" [of Sark and the UK]. This is a polite way of the DCA telling us that they don't mind doing the right thing for us as long as it doesn't bother the UK too much but that it is their job first and foremost to act in the best interests of the UK. This is only natural; DCA officials are employed by the United Kingdom

government and are employed to protect the interests of their employer. Where these interests conflict with the interests of Sark, they have to do their duty and protect the interests of those who pay their salaries. And if that happens to go against the interests of Sark --- that's just too bad.

**"If the UK perceives itself to be at risk of challenge under ECHR due to Sark's constitutional arrangements, there is an easy way for the UK to get itself out of this quandary - all it needs to do is write to the Council of Europe and notify them of a derogation ... from Article 3 of the ECHR"**

If the UK perceives itself to be at risk of challenge under ECHR due to Sark's constitutional arrangements, there is an easy way for the UK to get itself out of this quandary - all it needs to do is write to the Council of Europe and notify them of a derogation or reservation from Article 3 of the ECHR. This would be far from unprecedented - the document <http://www.dca.gov.uk/peoples-rights/human-rights/pdf/appendix6.pdf> lists all of UK's currently active derogations and reservations from the international human rights conventions it has committed itself to, including 5 articles of the ECHR plus one entire ECHR protocol. Beware, though, before reading this document, as it is 54 pages long. Ah, but our critics will argue, such reservations and derogations are only reserved for very exceptional circumstances and cannot be issued willy nilly. Very well, then, so what very exceptional circumstances have warranted the UK to go to the trouble of issuing derogations and reservations from international human rights conventions in the past?

Article 2 of Protocol 1 to ECHR reads "No person shall be denied the right to education. In the exercise of any functions which it assumes in relation to education and to teaching, the State shall respect the right of parents to ensure such education and teaching in conformity with their own religions and philosophical convictions." This article's applicability in the UK is limited due to a UK reservation. And the justification used by the UK for this reservation? It was done in order to avoid "unreasonable public expenditure."

Article 11 of the ICPPR (UN International Covenant on Civil and Political Rights) reads: "No one shall be imprisoned merely on the ground of inability to fulfil a contractual obligation." This article does not apply in Jersey; the UK has issued a reservation from this article with the following justification: "The Jersey Authorities wish to retain the sanction of imprisonment for people who are able to pay their debts and are not making appropriate efforts to pay in good faith, for example those who have a high standard of living, with assets in someone else's name."

So it's not that hard, is it: when the UK deems that providing human rights compliant education is too expensive, or Jersey wants to keep being able to lock up its rich who are reluctant to pay their debts, the UK thinks it is reason enough to solve its human rights non-compliance problem by issuing a derogation or reservation. But when it comes to Sark, it seems it is too much trouble for the UK to fire off a letter to the Council of Europe and it is easier for them to let the Island go through 7 years of turmoil. Instead, they put unnecessary pressure on us to turn our quaint little island upside down --- and that is **before** it has even been proven in a court of law that there is any real ECHR compliance issue at all.

So much for the DCA and their "inherent balancing of interests of Sark and the UK".

**"Perhaps the most regrettable aspect of the DCA document is that continues to spread misinformation which has already been thoroughly refuted."**

Perhaps the most regrettable aspect of the DCA document is that continues to spread misinformation which has already been thoroughly refuted. Take its statement that electoral systems other than the one based on Option A are now indefensible in ECHR terms, for example. This assertion has been thoroughly demonstrated to be incorrect by the Opinions of Price & Price, Pleming and even Crown Advocate MacMahon. Perhaps the DCA would *prefer* this alternative for *political* reasons; but to say it is the only ECHR compliant option is just plain incorrect and today nobody with any credibility and legal knowledge concurs with the DCA's statement.

Not only that, but the document states that the Option A reform law is indisputably compliant with ECHR as it stands.

**"if the DCA is taking the view that only a legislature all of whose members are elected by uniform universal suffrage, then what of the DCA's and the Crown's own role?"**

We ask this question: if the DCA is taking the view that only a legislature all of whose members are elected by uniform universal suffrage, then what of the DCA's and the Crown's own role? Unlike the case of sovereign nations (such as the UK, Canada and Australia) where the parliament rules supreme and whose legislature therefore comprises of the parliament only (HM the Queen in those countries acts as a figurehead Queen of the UK, Queen of Canada and Queen of Australia, respectively), Sark's laws are subject to Royal Assent by the Crown which exercises a real power of veto, delegated through the Privy Council to unelected officials of the

DCA. Would the ECtHR not conclude that the Crown "is sufficiently involved in the specific legislative processes leading to the passage of certain types of legislation" to constitute part of the legislature of Sark, as it concluded the European Parliament is part of the legislature of Gibraltar for the same reason, and therefore conclude that Article 3 of Protocol No. 1 to ECHR applies to it? And if so, which organ of government is more likely to be in breach, the Chief Pleas (at least some of whose members are elected by Sark residents) or the Crown (which delegates the exercise of its powers to officials not elected by anybody). And which breach is more egregious?

**"what of the role of The States of Deliberation of Guernsey? Guernsey can pass laws relating to criminal matters which apply in Sark without reference to Sark ... residents of Sark have no role whatsoever in electing any members of The States of Deliberation"**

And what of the role of The States of Deliberation of Guernsey? Guernsey can pass laws relating to criminal matters which apply in Sark without reference to Sark. Does that not make The States of Deliberation "sufficiently involved in the specific legislative processes leading to the passage of certain types of legislation" to make it constitute part of the legislature of Sark? We point out that residents of Sark have no role whatsoever in electing any members of The States of Deliberation; but at least members of that legislature are, unlike DCA officials or the Lord Chancellor, elected by somebody.

**"is it right for Sark's constitutional reform to focus so hard and exclusively on a reform of Chief Pleas, which already has an elected element, while letting other elements of our legislature - Guernsey and the Crown ... under no democratic control at all? Particularly if we consider that those organs have a duty to protect the interests of other parties, whose interests may be, and often are, directly harmful to Sark."**

Regardless of the ECtHR views, is it right for Sark's constitutional reform to focus so hard and exclusively on a reform of Chief Pleas, which already has an elected element, while letting other elements of our legislature - Guernsey and the Crown - off unscathed, unscrutinised, and under no democratic control at all? Particularly if we consider that those organs have a **duty** to protect the interests of other parties, whose interests may be, and often are, directly harmful to Sark.

**"If Guernsey and the UK wish to live up to their claims of being the champions of human rights of Sark residents, we invite them to relinquish their roles in the legislative process of Sark"**

If Guernsey and the UK wish to live up to their claims of being the champions of human rights of Sark residents, we invite them to relinquish their roles in the legislative process of Sark and for such matters to be incorporated into the reform law as soon as possible.

**"The argument with which The Sarkee Times has the most sympathy is that Option A is the will of the people"**

The argument with which The Sarkee Times has the most sympathy is that Option A is the will of the people, although the DCA statement goes on to infer from that that the reform law based on Option A must be enacted without further delay. The Sarkee Times believes that the will of most people on Sark is first and foremost that the Island should be governed **locally**, without outside interference, and by people who do their jobs competently and honestly, by people who look after the interests of the Island rather than their own vested interests --- regardless of who these people are. The Sarkee Times is only too aware that not all Tenants fit that description.

But we also believe that most Sark people are tired and weary of the Island being split and want the rift in the community to heal. After all, who in their right mind really cares about politics and wants to be involved in it?

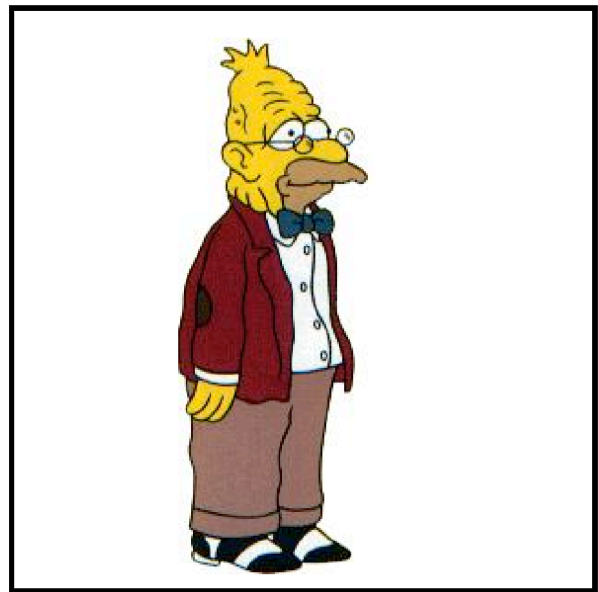
We believe that few of those who are upset with the current situation want to replace the current system with one which is going to leave the other half of the Island equally upset. Instead, we believe, most would prefer to seek a solution which will make everybody happy and would prefer to find such a solution locally, without outside pressure. We likewise believe that most people do not want to replace the existing system which, although not perfect, works reasonably well, with one which will replace one set of vested interests with another --- and possibly worse ones --- and want whatever reform law is put in place to include checks and balances which will ensure that this is the case.

The Sarkee Times suggests we should all acknowledge that the views of the Islanders are divided and respect the views of those whose views differ from our own. We should acknowledge that a majority --- albeit a modest one --- of Islanders expressed a preference for Option A over Option Z in the August 2006 Opinion poll. But likewise we should not forget the 44% of the people who voted in favour of Option Z in that poll, nor the 9 out of 10 people who voted in favour of maintaining status quo

in the poll organized by Jennifer Cochrane in 1999, or the 86% of the respondents of the poll organized by Simon Couldridge's in February 2007 who said they would have voted for no change at all or minimal change in the August 2006 poll but for the fact that that option was not offered. Thus any claims as to what the will of the people is should be made cautiously, for the answer to a poll depends on what question is asked and on what information (or misinformation) is in people's heads at the time.



"Mr. Simpson, sir, the judge wants a statement."  
 "I'm on holiday, Marge, can't you do it? Those country bumpkins won't know the difference anyway."



"We've just received these facts from the very important Mr. Simpson."

The DCA Statement states repeatedly that the DCA have no objection to the Seigneur retaining his powers. The Sarkee Times, being of a somewhat traditionalist persuasion, will certainly not be the one to argue against the DCA on this point. But we do find the view so adopted somewhat inconsistent. The Seigneur is clearly a part of Sark's legislature, and if the DCA is willing to accept that this element of Sark's legislature remains entirely unelected, how can it object to a certain --- perhaps small --- proportion of the Tenant constituency of the legislature remaining **elected**, albeit in a slightly different way to its remaining members?

The DCA Statement does not address at all the one element of the Option A reform law which does disturb The Sarkee Times, namely the fact that the reform law as it currently stands greatly expands the powers of the Seneschal. His appointment is extended from a 3 year one to one that lasts for life, and he gains the responsibility, in addition to being the head of the legislative as well as the judicial branch of the government, of being in charge of collating nominations of all candidates standing for elections as a member of Chief Pleas. This power is very substantial indeed, especially if less than 28 candidates put their names forward in the first instance. The Sarkee Times finds this increase of powers of an unelected official to near dictatorial proportions to be a glaring omission in a law whose purported aim is to bring



democracy to Sark. Let The Sarkee Times stress that it has no dispute with the present Seneschal whom it finds very amiable and agreeable, only discomfort with the concept of the position as created in the new law.

**"Peter Thompson was ... on holiday when [the DCA Statement] was being prepared ... who really prepared this document, and what were their qualifications? ... The amateurish nature of the document and the numerous flaws in its legal statements lead [us] to believe that it was a relatively junior official with little or no legal training."**

Is it a coincidence then that the DCA Statement was originally received by e-mail by the Seigneur and the Seneschal on 22 February (unsigned and, apparently, unattributed) rather than the Island's proper channel to the DCA which is the Constitutional Committee 2007? The Seneschal made a copy of that document available to members of the Constitutional Committee 2007 prior to the Chief Pleas meeting on 22 February but everyone else on the Island, including members of Chief Pleas, had to wait until Friday 2 March 2007 to see it. On that date, a copy of this statement was circulated together with the minutes of the February Chief Pleas meeting. A couple of days later, the Seigneur circulated a letter describing the documents' contents as "fact", as opposed, presumably, to other documents we have seen, including the advice of Britain's top constitutional lawyer Leolin Price CBE QC, which apparently are just opinions. The public copy of the DCA Statement was attributed to and signed by Peter Thompson, a DCA official. But Peter Thompson was, we are told, on holiday when this document was being prepared, which is why he could not sign the copy received on 22 February. Which leads us to ask - who really prepared this document, and what were their qualifications? The amateurish nature of the document and the numerous flaws in its legal statements lead The Sarkee Times to believe that it was a relatively junior official with little or no legal training. Is it fair then to call this document "fact" and the opinion of Leolin Price CBE QC a mere "opinion"? And who originally asked for this document to be created? Was it the junior DCA official himself or herself? Or was it perhaps Mr. Thompson calling in from his holiday especially to make that request?

**"why and how this DCA Statement found itself being circulated together with the minutes of Chief Pleas meeting of 22 February 2007, since this document has no connection whatsoever to that meeting"**

Another question which also troubles The Sarkee Times is why and how this DCA Statement found itself being circulated together with the minutes of Chief Pleas meeting of 22 February 2007, since this document has no connection whatsoever to that meeting. Is that not misleading? The Seneschal has in the past steadfastly (and, we maintain, correctly) refused to circulate other documents not related to a particular meeting of Chief Pleas in this manner on the grounds that to do so would be against Chief Pleas Rules of Procedure.

It appears to The Sarkee Times that what we have here is a stand-off between the government of Sark (the Chief Pleas) and the government of the UK (represented by the DCA), a power whose primary responsibility is to protect the interests of the UK, not Sark. The Sarkee Times is dismayed to see what appears to be an attempt by the DCA to keep the Seigneur and the Seneschal, two senior and highly respected Island dignitaries sweet. No doubt in the hope that the two will find favour with their point of view. We trust and hope they will know better than that.

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Unthinking respect for authority is the greatest enemy of truth.

--- Albert Einstein

Everybody thinks of changing the world. Nobody thinks of changing themselves.

--- Leo Tolstoy

Any jackass can kick a barn, but it takes a good carpenter to build one.

--- (origin unknown)

Under capitalism, man exploits man. Under communism, it's just the opposite.

--- J. K. Galbraith

The biggest argument against democracy is a five minute discussion with the average voter.

--- Sir Winston Churchill, 1874-1965

Sark is not only the loveliest and least spoiled of the Channel Islands, it is unparalleled insofar as it has maintained the special privileges granted to it centuries ago. Just so long as my life may be extended, I shall strive to maintain this little feudal paradise with all its traditions, laws and customs, an oasis of quiet and rest, unique in the present-day world.

--- Sybil Hathaway, Dame of Sark

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## **Is Sark the Laughing Stock of the World?**

It has been said that Sark is at risk of becoming the laughing stock of the world because we are taking too long to agree on our new constitution. How credible are such fears? Let's look at some facts.

**"the European Union itself is currently in the middle of its own constitutional debate which is anything but plain sailing ... Does the French and Dutch rejection of the European Union constitution make the EU the laughing stock of the world, and should the EU be ashamed of itself because the new draft constitution has not yet been put in place?"**

We presume first of all that it is common knowledge that the European Union itself is currently in the middle of its own constitutional debate which is anything but plain sailing. The member states' representatives have agreed the content of the document in principle but those with the final say to ratify and enact it have rejected it. Does the French and Dutch rejection of the European Union constitution make the EU the laughing stock of the world, and should the EU be ashamed of itself because the new draft constitution has not yet been put in place?

We note that all the jurisdictions examined below except Sark have fully elected legislatures.

### **Russia**

Respected Russian journalist Ivan Safronov, who reported on military affairs, mysteriously plunged to his death from the 5th floor of his apartment building Friday 5 March 2007, making him the 14th journalist to die under questionable circumstances in Putin's Russia, according to statistics compiled by the Committee to Protect Journalists. A former U.S. intelligence staffer familiar with Safronov said, "Ivan fell out of the window with his coat and hat on? Come on." The Times reported the FSB -- the Federal Security Bureau, which is the successor agency to the KGB -- was unhappy with Safronov's reporting on sensitive weapons systems. Safronov's death adds to the list of critics of the Putin regime and the FSB, who have died or been injured in strange circumstances in just the past six months:

- investigative journalist Anna Politkovskaya was gunned down in October 2006. The killers have not been caught.

- former spy Alexander Litvinenko was poisoned in November 2006 in London by the rare radioactive substance polonium, which was slipped into a teapot.
- Russian scholar Paul Joyal was shot and wounded in an attack outside his suburban Maryland home, a few days after appearing on NBC News in a program about the Litvinenko case.

Mr. Putin's party United Russia dominates the Russian parliament but it is losing the support of the electorate. On the other hand, the level of freedom in Russian elections, "depends on whom you ask" according to one Russian pollster and real opposition parties have not been able to make much headway getting into power. Political fixers at the Kremlin think they have found a solution to the failing fortunes of the party that was engineered to support President Vladimir Putin: create another one that pretends to be an opponent.

## **European Union**

On 3 April 2006, a British Member of the European Parliament (MEP), Gerard Batten, cited allegations by Alexander Litvinenko that Romano Prodi, former President of the European Commission and currently Italy Prime Minister, had been the KGB's top man in Italy.

On 2 April 1978, Prodi and other members of the faculty of the University of Bologna passed on a tip about a safe house where Aldo Moro, the former Prime Minister of Italy kidnapped by the Red Brigades (a violent communist terrorist organization in Italy), was detained. Prodi claimed he had been given the tip by the founders of the Christian Democratic Party, contacted from beyond the grave via a séance and a Ouija board.

What we would like to know is how many people still in the EU hierarchy Prodi had hired? The EU auditors have refused to certify EU accounts for 12 years running and 10% of the EU budget has been alleged to be fraud - where is it going and who is it funding?

## **United Kingdom**

Quoting Tim Dalyell from The Guardian, 27 March 2003: "My constituency Labour party has just voted to recommend that Tony Blair reconsider his position as party leader because he gave British backing to a war against Iraq without clearly expressed support from the UN."

Quoting 15 April 2006 edition of The Telegraph: "We no longer find it surprising;

that's the really shocking thing. Presented with allegations of vile corruption, we shrug our shoulders and mutter: "So what?" The article goes on: "The cash-for-honours scandal crosses the line between the shady and the corrupt, between the improper and the illegal. It is true that every political party has its share of shysters."

What is being alleged now, however, is not individual venality, but criminal conspiracy: the organised peddling by a political party of decorations and places in the legislature."

### **Isle of Man**

In 1972, four schoolboys are birched for assaulting a prefect. The case is taken to the European Court of Human Rights. In 1978, the ECtHR finally delivers a judgement, upholding the complaint and rules the Manx birching law non-ECHR-compliant. The Manx legislature deliberates; a derogation from ECHR is considered but deemed repugnant for political reasons. Birching happily continues on the statute books in the Isle of Man until 1993. At that point, the House of Keys repeals the birching law. The local politician who piloted the repeal bill through the House of Keys sold it to other members of that legislature by convincing them the issue was in the news so much it was no longer a deterrent. "The individual and families of anyone birched would benefit considerably by selling their stories to the newspapers".

### **Sark**

A 442 year old feudal society takes more than 7 years to decide the future of its constitution. After 7 years, when legal difficulties are discovered with the latest proposal for radical reform which promises to turn the Island upside down, Sark's parliament decides to pause to have the legal difficulties investigated. Shame on them! They are embarrassing the island and the whole world is watching them because they have nothing better to do and no problems of their own to take care of.

Baloney. I rest my case.

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A politician awoke in a hospital bed after a complicated operation, and found that the curtains were drawn around him. "Why are the curtains closed," he said. "Is it night?"

A nurse replied, "No, it is just that there is a fire across the street, and we didn't want you waking up and thinking that the operation was unsuccessful."

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Every decent man is ashamed of the government he lives under.

--- Henry Louis Mencken

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## Simplifying Sark's Lawmaking?

At the 22 February meeting of Chief Pleas members were told that from now on, Guernsey would be charging Sark for the drafting of Sark legislation. Initially, the charge will be £30,000 per year but we fear that this figure will increase in the future and may do so disproportionately at times when Sark and Guernsey do not see eye to eye, for example if Sark chooses to exercise more autonomy than Guernsey would like.

**"Deputy Dave Melling asked why it was necessary to hire legal draughtsmen to draft local legislation at all; could we not keep it simple and draft most local laws ourselves locally? We applaud Deputy Melling for bringing forward his excellent suggestion."**

Deputy Dave Melling asked why it was necessary to hire legal draughtsmen to draft local legislation at all; could we not keep it simple and draft most local laws ourselves locally? We applaud Deputy Melling for bringing forward his excellent suggestion. It sounds like common sense to us and we wholeheartedly support it.

We suggest going further, however: in addition to bringing the drafting of domestically created legislation in-house why not also scrap externally conceived legislation which is irrelevant or harmful to the Island? Most legislation passed in Sark today is devised by the Guernsey, United Kingdom or even European legislatures, and the volume of such legislation and the extent of its irrelevance to our local circumstances is ever increasing. The editors have learned that Sark had been asked to pass legislation in the past to forbid lorries passing through Sark on their way to Bosnia; Chief Pleas refused. But the legislation was returned to Chief Pleas who were asked to pass it again. Are we the only ones to think this is lunacy?

Sark is a small place that has worked well for centuries by being run on the basis of simplicity and common sense. Chief Pleas meetings used to take place three times a year and be finished by lunchtime; now they take place nearly every month and sometimes last a full two days. This is mainly due to externally inspired lawmaking. Unless we go back to basics, one of two things will inevitably happen: (1) we will end up with a paid civil service, or (2) we will be unable to cope and will have to surrender our autonomy to an external legislature better resourced and equipped to handle the volume of paperwork now passing through Chief Pleas. This argument will become even more urgent if the number of members is decreased to 28, as has been proposed.

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That government is best which governs the least, because its people discipline themselves.

--- Thomas Jefferson

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## **The Price & Price Joint Opinion**

Should we ignore this Opinion because it is "a load of b\*\*\*\*cks" (as most people who'd rather it never came along have described it), or should we ignore it because we've known what it says along (as those in Sark who do possess legal training but who find its conclusions inconvenient, conclude)? A careful reader will note that only one of these conclusions can be reached, since they are mutually contradictory.

It has been suggested that Mr. Price only said what he'd been paid to say and even that the Price & Price Joint Opinion cannot be trusted unless an Opinion on the Opinion is commissioned. What would such an Opinion be likely to say?

**"Mr Price is a well known and highly respected member of the Bar and the suggestion that he would say what he was paid to say is really very offensive in respect of a professional man who as matter of professional conduct is required to give his Opinion without fear or favour.**

**I can see nothing in what Mr Price said that I would regard as particularly controversial. The more controversial elements come from the contrary advice which is not consistent with my understanding of the legal position in the EU. Indeed as I recollect it the earlier Opinion accepted that there were other ways of proceeding than the one which was initially favoured. It is hardly surprising in those circumstances that Mr Price should reach the conclusions he did." (a respected fellow QC)**

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respect of a professional man who as matter of professional conduct is required to give his Opinion without fear or favour.

I can see nothing in what Mr Price said that I would regard as particularly controversial. The more controversial elements come from the contrary advice which is not consistent with my understanding of the legal position in the EU. Indeed as I recollect it the earlier Opinion accepted that there were other ways of proceeding than the one which was initially favoured. It is hardly surprising in those circumstances that Mr Price should reach the conclusions he did," said a fellow, independent eminent QC, who stays on Sark often and who has read the Opinion but otherwise has no connection with those who commissioned it or those who wrote it.

Dr. Stephen Henry says in the February 2007 issue of *La Vouair de Sercq*: "It is both disturbing and disappointing that Chief Pleas has abandoned the results of last September's Opinion Poll on the spurious grounds of *yet another legal opinion*, allegedly casting doubt on previous expert opinions."

But how many independent legal Opinions has Sark had in the past and which of them contradict Price & Price? The Fleming opinion does not contradict it, nor does even the Opinion of Crown Advocate MacMahon. The editors are not aware of any other independent legal Opinions Sark had received on the topics explored by Price & Price. Price & Price does go *further* than these Opinions, is bolder, and explores areas hitherto unexplored.

We need to distinguish *legal opinions* from *political statements* on legal and constitutional matters made by paid officials of the UK and Guernsey government who may (or in some cases, may not) possess legal training, such as the HM Procureur and the DCA officials. Those parties are in paid employment of either Guernsey or the United Kingdom government and as such it is their duty to represent and protect the interests of their employer, whose interests in this instance happen to be adversarial to Sark. Perhaps it will be said that when the HM Procureur advises Sark, it is his duty to protect Sark's interests, but even if this is so, how does he reconcile his duties to his employer and his duties to Sark? We suggest that if he is acting for Sark, he is so doing with a huge conflict of interest, and question the appropriateness of this arrangement. It certainly would never be allowed of a lawyer in private practice.

**It is not the Joint Opinion of Price & Price whose independence should be put into question, but rather the political statements on legal and constitutional matters of the HM Procureur and DCA officials, misunderstood by some to constitute legal advice.**

When it was first demonstrated that the majority of the August 2006 Opinion Poll had been miscalculated, many argued that there are as many ways of calculating the



majority as there are mathematicians; now all but everybody accepts that the experts were right and that a mistake had been made. Today we have to listen to the same argument all over again that there are as many legal opinions as there are lawyers. Yet nobody, not even the DCA, has come up with a rebuttal of, or a reasoned counter-argument to the Price & Price Opinion. We find this very pertinent.

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A thief believes that everyone steals.

--- (origin unknown)

It is dangerous to be right in matters on which the established authorities are wrong.

--- Francois Marie Arouet Voltaire, 1694-1778

The greatest obstacle to discovering the shape of the earth, the continents, and the oceans was not ignorance but the illusion of knowledge.

--- Daniel Boorstin

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John Donnelly, Leolin Price CBE QC, Kevin Hart, Evan Price

## **Instructions?**

There have been a lot of calls recently to publish the Instructions given to Leolin Price CBE QC and Evan Price on the basis of which they produced their Opinion. First of all, such calls presuppose that a single such document exists; an assumption we shall not dwell upon. Let's just say that the written communications between Messrs. Price & Price and their clients are being asked for.

We should note first of all that such communications are privileged, confidential between the client and their attorney and that nobody has the right to **demand** their disclosure.

Nevertheless, we believe such disclosure would be a good idea. But the playing field should be level. Why are written communications being asked for only from Messrs. Price & Price? We say all written communications or "instructions" should be asked for and provided: those given to other independent Counsel, but more importantly the communications between this island's officials and the HM Procureur and the DCA and its lawyers should also be made public. What Instructions were given to HM Procureur and the DCA lawyers and by whom that prompted them to give their legal "advice", and whom were they acting for?

**We say the Price & Price "instructions" and communications should be made public but not until and unless the playing field has been made level and all other instructions and communications are disclosed likewise.**

## **Who Commissioned Price & Price: A Barclay Conspiracy?**

In the February 2007 issue of La Vouair de Sercq Dr. Stephen Henry alleges that the Price & Price Joint Opinion was paid for by Sir David Barclay. A genuine, if careless, mistake, perhaps. More disappointing, however, were Dr. Henry's and Miss Cochrane's apologies in the March 2007 issue of La Vouair de Sercq.

**"Dr. Henry's apology quotes an advertisement by Sir David Barclay in the Guernsey Press of 15 January 2007 as saying 'the opinion, which he sought'. ... The trouble is, that advert contains no such statement"**

Dr. Henry's apology quotes an advertisement by Sir David Barclay in the Guernsey Press of 15 January 2007 as saying "the opinion, which he sought". This, explains Dr. Henry, led him to conclude that Sir David had paid for the Opinion. A reasonable

enough conclusion. Miss Cochrane concurs, referring to the same advertisement. The trouble is, that advert contains no such statement, nor any other statement implying the Barclays had sought, or paid for, the Opinion.

Miss Cochrane's apology further accuses John Donnelly of "admitting" he had paid for the opinion. My dictionary gives the following definition of the word "admit": "to confess to be true or to be the case, typically with reluctance". "to confess": "to admit or state that one has committed a crime or is at fault in some way; to admit or acknowledge something reluctantly". What did John do to warrant his statement being described in this way? As far as I'm aware, his reply was quite frank and in no way reluctant, nor did anybody suggest prior to that occasion that he had funded the cost of the Opinion. Is Miss Cochrane perhaps banking on John's rumoured closeness to the Barclays, and on people themselves reaching a conclusion she wants them to reach, which is, as it happens, untrue?

**"it was I that originally found and instructed, and originally paid, Leolin Price. I instructed Mr. Price because a lawyer formerly employed by the European Court of Human Rights had told me, in a casual conversation, that Sark had been incorrectly advised as to its ECHR obligations and I believed getting to the bottom of it was the right thing to do. I did so on my own initiative" (Tomaž Slivnik)**

For the benefit of those readers who missed my explanation at the public meeting: it was I that originally found and instructed, and originally paid, Leolin Price. I instructed Mr. Price because a lawyer formerly employed by the European Court of Human Rights had told me, in a casual conversation, that Sark had been incorrectly advised as to its ECHR obligations and I believed - and continue to believe - that getting to the bottom of it was **the right thing to do**. I did so on my own initiative, at the expense of my own time and money, and with no expectation to gain anything in return. I did not do so to protect anyone's vested interests, least of all my own --- only to protect the interests of the Island.

I asked Mr. Price questions, and never fed him any answers - and had I done so, I am quite certain he would not only have refused to comply, but would have taken offence at such requests.

When I was first instructing Mr. Price, I told a few people on Sark - John Donnelly, Kaye Char, Mrs. Rang and some others - about it and invited them to ask their own questions, and many did. Mr. Price and his clerk agreed with me to provide the

Opinion at a very much reduced rate of £2500, and Kaye and I agreed to split this cost 50%:50% in the worst case but to seek other contributors to evenly split the cost between us.

I circulated various drafts of the Opinion to the people who knew about it and the Opinion was not top secret; I know the drafts were certainly circulated to other people I had not circulated them to. Apparently, the Opinion was pretty good; Kaye even tried to cut me and everybody else who had been working on this off from Mr. Price and pass the Opinion off as based purely on her own research, but unsurprisingly a man of Mr. Price's calibre would have none of that. I never received any financial contribution from any party towards the Opinion, however, so at one point --- well after the questions had been asked and the answers given by Price & Price --- John Donnelly agreed to reimburse me the whole £2500 because he did not think it appropriate I should be bearing this cost myself. And that is the whole story.

Tomaž Slivnik

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Do what you feel in your heart to be right -- for you'll be criticized anyway. You'll be damned if you do, and damned if you don't.

--- Eleanor Roosevelt

It is better to be hated for what you are than to be loved for something you are not.

--- André Gide

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