

THE SHERIFFS' ASSOCIATION

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Ms Jenny Goldsmith
Assistant Clerk
Justice 1 Committee
The Scottish Parliament
Room 3.11
Committee Chambers
EDINBURGH EH 99 1SP

27 August 2001

Dear Ms Goldsmith

REGULATION OF LEGAL PROFESSION INQUIRY

The nature and scope of the Inquiry by the Justice 1 Committee of the Scottish Parliament into the Regulation of the Legal Profession in Scotland has been considered by the Council of the Sheriffs' Association, along with the invitation to submit written evidence.

I have been asked to inform you that the Council of our Association consider that it would be inappropriate for the Association to submit evidence on the nature, operation or effectiveness of the regulatory framework of the legal profession and of legal services in Scotland. This is because of the nature of the office of sheriff, the responsibilities and duties attaching thereto and the relationships involved. In particular, it is important that sheriffs neither interfere nor are seen to be interfering in the functioning of those who appear before them. While it may be proper in a particular case for a sheriff to make comments from the bench in the exercise of his or her judicial function, any general evidence would at best be anecdotal and would lie uneasily with the concept of an independent and impartial judiciary.

As far as sheriffs are concerned, Council has noted that Committee wishes the scope of the Inquiry to cover all branches of the legal profession in Scotland including amongst others, judges, (including sheriffs and justices).

Although it is a requirement for appointment that candidates for the shrieval bench be members of the legal profession, once appointed, in the exercise of their judicial functions, they are not subject to the regulatory framework applicable to either branch of the legal profession. The judiciary is independent of and distinct from other practising members of the legal profession.

The constitutional principle of the separation of the powers means that the judiciary is independent of the executive and the legislature.

Sheriffs discharge their judicial functions and duties within the framework of the laws of Scotland which provide that decisions by Sheriffs, in civil matters, can be tested on appeal to the Sheriff Principal, the Court of Session and, in appropriate cases to the House of Lords; in criminal cases decisions can be tested on appeal to the High Court of Justiciary. In respect of devolution issues, an appeal can be taken or a reference made to the Judicial Committee of the Privy Council. That appellate framework provides effective machinery for the review of judicial decisions.

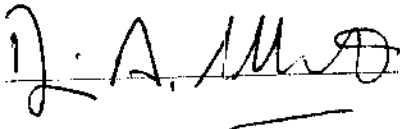
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The tenure and removal from office of Sheriffs are the subject of crucially important constitutional safeguards contained in the Sheriff Courts (Scotland) Act 1971 as amended and also adapted to take account of devolved Government. These provisions were noted with approval by the House of Lords in the Case of **Stewart v Secretary of State for Scotland** 1998 SC (HL) 81. Also under the provisions of the Act, the Sheriff Principal is given statutory responsibilities and powers in regard to the speedy and efficient disposal of business. Judicial independence is ensured within the existing system, in terms of which Parliament becomes involved only at the stage when the First Minister operates the statutory procedure by making an Order and laying it before Parliament.

That is the statutory procedure which presently regulates the conduct of sheriffs. It is the considered opinion of the Council of the Sheriffs' Association that any further regulation of the shrieval bench would compromise its independence and impartiality to such an extent as to be incompatible with Article 6 of the European Convention on Human Rights. As will be appreciated, the effects of this would be far reaching, as had been demonstrated in a number of cases recently.

In the circumstances Council do not intend to submit evidence as such. Council hopes, nevertheless, that what is said above will be of assistance to the Committee in setting the complex and delicate constitutional arrangements in their proper context. We are once again very grateful for having been consulted.

Yours sincerely

A handwritten signature in black ink, appearing to read 'B. A. Lockhart', written over a horizontal line.

SHERIFF B A LOCKHART