Northern Ireland Assembly

Committee for Justice

OFFICIAL REPORT (Hansard)

Criminal Justice Bill: Attorney General Briefing

14 February 2013

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Members present for all or part of the proceedings:
Mr Paul Givan (Chairperson)
Mr Raymond McCartney (Deputy Chairperson)
Mr Seán Lynch
Mr Alban Maginness
Ms Rosaleen McCorley
Mr Jim Wells

Witnesses:

Mr John Larkin	Attorney General for Northern Ireland
Ms Maura McCallion	Office of the Attorney General for Northern Ireland
Ms Laura Thompson	Office of the Attorney General for Northern Ireland

The Chairperson: This is the briefing from the Attorney General on the reintroduction of a clause 34-style duty. At our meeting on 10 January, we considered correspondence from the Minister regarding the possible introduction of a clause 34-style provision in the Criminal Justice Bill to place a statutory duty on public bodies to ensure that they take account of crime, antisocial behaviour and community safety implications in exercising their functions. The previous Justice Committee looked at the issue. Reservations were expressed at that time by the Attorney General, which the Committee agreed with. Therefore, the clause did not go forward. I invite forward the Attorney General, who will touch on the clause again. Then, members will, I am sure, have some questions.

Mr John Larkin (Attorney General for Northern Ireland): I am very grateful to be here, Chairman. The gravamen of my concerns is set out in the letter, which members of the Committee have. As you have rightly said, that we are even using the term clause 34 is because it relates to the Bill that became the Justice Act (Northern Ireland) 2011. Those Committee members who served on the previous Committee will be familiar with the exchange that took place on that occasion.

It strikes me that, in broad terms, the objective of working towards public safety and an increasingly crime-free environment is indisputably worthy. Public bodies should do that and be encouraged to do that. I speak against interest, as a lawyer formally in private practice, and one who looks forward to the golden orchard of which Mr Wells so feelingly speaks from time to time. If it is desired to make work for lawyers, the present draft of clause 34 is wholly admirable. If it is intended to secure a culture of thinking about policy in broad terms so as to design out crime, if that is possible, and to be aware of public concerns and issues of public safety, clause 34, as it presently stands, is not a useful vehicle.

Members may be familiar with the approach taken in Ireland. The Irish legislation has a similar duty, but renders it non-justiciable. In a sense, that strikes me as being almost a waste of the time of a legislature.

I think that maybe what is at issue here is part of a larger culture. Recently, in the United States, there has been an awakening of the danger of hypercriminalisation and hyperlegislation. Do we really need to legislate this area? Is it not an area where the valid policy goals — perfectly valid, it seems to me — could be achieved at much less social and, in some cases, overt financial cost, which could come from generating litigation by using the provision?

The Chairperson: Do members have any questions?

Mr A Maginness: Is there any way of making clause 34 more acceptable? I know that you had some ideas the last time.

Mr Larkin: I suggested that it could only be justiciable, using the analogy of the Contempt of Court Act 1981, by or with the consent of the Attorney General, as a kind of independent filter against futile and burdensome litigation. The Minister was open to that. However, my sense is that that emerged very late in the Committee's deliberations and maybe did not really have a chance to marinate with the Committee. That, I suppose, one puts forward simply as a way in which, it seems to me, the obvious problems with the clause as it currently stands could be abated, to an extent. The larger question, which is par excellence for the Committee and Assembly, is this: do you need such a vehicle at all? Certainly a control, such as that which exists for contempt of court, would be one way to go.

Mr A Maginness: It really is a charter for an inventive lawyer.

Mr Larkin: Culture is part of the context. It may be that the culture in other regions is not as litigious as our own. Our culture is highly litigious. That is partly a compliment to the very skilful lawyers who will seize upon all kinds of points. However, pointless litigation that delivers nothing in concrete improvements simply cannot be for the larger public good, and it could, in fact, end up becoming an acute burden on the public bodies that this legislation is no doubt designed to assist.

The Chairperson: That is fine. Thank you very much.

Mr Larkin: Everyone is so exhausted at this stage. *[Laughter.]*

Mr A Maginness: Mr Dickson is away; you have exhausted him so much.

Mr Larkin: A stout defence of the ministerial position.

Mr McCartney: We are a failure fee in open session. *[Laughter.]*

The Chairperson: Attorney General and your team, thank you very much for taking the time to facilitate the Committee.

Mr A Maginness: Chair, do we have to take a position on this as a Committee?

The Chairperson: I think that the Minister is inviting us to say what our view would be on it.

Mr A Maginness: I do not know what my party thinks. We did discuss it some time ago during the previous Bill. There was not much enthusiasm for it, but the position may well have changed.

The Chairperson: We will come back to it next week, and we can give a little more thought to it in the intervening period.