

Scottish Law Commission recommends change in evidence rules



As the law stands, the prosecution in Scotland cannot rely upon previous convictions to help prove their case against an accused person. If an accused, charged with murder, has been convicted of a number of other murders, the jury will not know this when considering their verdict. Other jurisdictions – most notably England and Wales – have rules which allow such evidence. So the Scottish Law Commission have considered should Scots law be changed?

This is what they have reported:-

“In our [Report on Similar Fact Evidence and the Moorov Doctrine](#) (Scot Law Com No 229) which is published today, the answer is “yes”. We conclude that the present rules restricting the use of evidence that the accused has acted in a similar way on other occasions – including evidence that he or she has committed similar crimes – lack both logic and coherence. We recommend that the law recognise that such evidence can be highly relevant to the question of guilt or innocence. The Report argues that all relevant evidence – including evidence of similar previous convictions – should, in principle, be admissible. Included with the Report is a draft Bill which would give effect to our recommendations by replacing the present law with a clear and coherent statutory framework for the admission of all relevant evidence in criminal proceedings.

The [project on Similar Fact Evidence and the Moorov Doctrine](#) is the third and final project undertaken under a reference received from Scottish Ministers in November 2007.

The recommendations of the first project, Crown Appeals, were implemented in the Criminal Justice and Licensing (Scotland) Act 2010. The recommendations of the second report, [Double Jeopardy](#) (Scot Law Com No 218), led to the enactment of the Double Jeopardy (Scotland) Act 2011.

Patrick Layden QC, the lead Commissioner on the project, said:

“Evidence of how the accused has acted on another occasion is relevant to whether he has acted in a similar way in relation to the offence with which he is charged. It does not become irrelevant because he has been convicted on that other occasion. This Report, if implemented, will ensure that the jury can consider all relevant information.”

The report is the final in a series of studies commissioned Scottish Law Commission aimed at ensuring an appropriate balance between the rights of the accused and the ability of the Crown to prosecute in the public interest.

Justice Secretary Kenny MacAskill said:

“I welcome this report from the Scottish Law Commission. In 2007, in order to strengthen public confidence in the justice system, I asked the Commission, with its track record of independent analysis and Scots Law reform, to look at specific issues relating to evidence and criminal procedure. This is the third and final report from the Commission in this area.

“Previous recommendations on Crown Appeals and Double Jeopardy have now been enacted in law and prosecutors are currently reviewing cases which can be prosecuted anew under the Double Jeopardy Act as a consequence.

“Taken together, this comprehensive programme of reform has taken significant steps towards improving the public’s confidence in the justice system and in ensuring that our

criminal law is fit for the 21st century.

“Today’s report makes a strong case and I am grateful to the SLC for its thorough and authoritative work since 2007. I will consider the recommendations carefully.”

The first report, on Crown Appeals, was published in July 2008 and has been followed up by the enactment of sections 73-76 Criminal Justice and Licensing (Scotland) Act 2010.

The second report, on Double Jeopardy, was published in December 2009 and has been followed up by the enactment of the Double Jeopardy (Scotland) Act 2011.