

ISSUED ON BEHALF OF THE SCOTTISH LAW COMMISSION
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BEFORE 1100 HOURS 2 DECEMBER 2009
AT WHICH TIME A NEWS CONFERENCE WILL BE HELD

SCOTTISH LAW COMMISSION UPDATES RULE AGAINST SECOND TRIAL

The Scottish Law Commission have today published their report on *Double Jeopardy*, containing recommendations to restate in legislation the centuries-old rule prohibiting prosecutors from attempting to retry citizens who have been acquitted.

This rule was developed by the judges, in the face of opposition from prosecutors, and protects innocent people from repeated prosecution. The Commission is recommending that it be set out in legislation, and clarified.

But they have also recommended that it should not apply where the original trial has been corrupted, for instance by jury-rigging or intimidation of witnesses, or where the person acquitted has later admitted committing the offence.

On the question of whether the law should be changed to allow retrials on the basis of new evidence, the Commission note that there are strong arguments either way and make no recommendation. But they have provided a framework for such a change, should Parliament choose to go down that road.

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

"The rule against double jeopardy has protected the citizens of Scotland against repeated prosecutions for hundreds of years. Essentially, it prevents the state from running the criminal prosecution system on a "Heads we win; tails, let's play again until you lose" basis. So we are recommending that it should be kept, and put into legislation.

We have a division of opinion within the Commission on whether there should be a possibility of a retrial on the basis of new evidence. The arguments are difficult. It is important for decisions of the courts to be final. People who have been tried once should be able to get on with their lives without the possibility of further proceedings hanging over them. It would not be right to allow the state, with its large resources, to try, try and try again to get a conviction. And anyone who has been through the trauma of a criminal prosecution, and been found not guilty, should not have to go through that again. On the other hand, if there is genuinely new evidence, it is open to Parliament to take the view that justice demands another trial."

The Commission's report recommends that there should be no second trial for an offence which is more serious, or less serious, than the one for which a person has already been tried. But where a victim has died, that should be treated as a separate offence.

If Parliament does decide to introduce the possibility of retrial, the Commission recommend that it should be confined to the most serious offences – rape or murder – but that Ministers should be able to seek Parliament's consent to add further offences in the future.

They also recommend that any change in the law should only be for the future – none of the people who responded to the Commission's consultation was able to point to any case of an acquittal where there was new evidence which would justify a retrial. And a retrospective change would take away the present rights of acquitted persons.

NOTES TO EDITORS

1. The Scottish Law Commission was set up in 1965 to promote the reform of the law of Scotland. The Chairman is the Hon Lord Drummond Young, a Court of Session judge. The other Commissioners are Laura J Dunlop QC, Professor George L Gretton, Patrick Layden QC TD, and Professor Hector L MacQueen. The Chief Executive is Malcolm McMillan.

2. **A News Conference will be held on 2 December 2009 at 1100 hours** at the Commission's office, 140 Causewayside, Edinburgh EH9 1PR (Tel: 0131 668 2131, Fax: 0131 662 4900, email: info@scotlawcom.gov.uk). You are invited to be represented. Media copies of the paper will be available at the News Conference or can be collected from the Commission's office. The paper may also be viewed on our website at www.scotlawcom.gov.uk or purchased from TSO (tsoshop.co.uk).

3. Further information can be obtained by contacting Patrick Layden, at the above address.