Submission from Stuart Usher for the Legal Profession and Legal Aid (Scotland) Bill

INTRODUCTION: I would put your Committee on Notice that your Committee has forfeited any right it may have had in the past to call for evidence and conduct Hearings on the above Bill for the following reasons, inter-alia:

1. The Chief Adviser to your Committee on this matter is a Law Society member who sits on three Law Society Committees. She is also an ardent believer in the Self Regulation of the Legal Profession as practised by the Law Society to date.
2. The husband of one of the members of your Committee is a long-standing member of the Council of the Law Society.
3. The son of your Convenor is a lawyer.
4. Your Committee invited eight legal organisations, including the Law Society and the Faculty of Advocates; one Professor who is a Law Society Committee member and the Scottish Legal Services Ombudswoman to give it oral evidence. All these parties and individuals have a vested interest to ensure the Bill will allow them to continue to police their members and associates instead of an Independent Body to carry out this function in their place and stead. These organisations and individuals are “The Usual Suspects”, as referred to in the Media.
5. Your Committee invited only one organisation (Scotland Against Crooked Lawyers) which is in favour of the Bill having the powers to establish a Body independent of the Law Society, the Faculty of Advocates and all the above parties to police their members and licensees.
6. Your Committee also invited two other bodies (the Citizen’s Advice Bureau and the Scottish Consumer Council) that are not formally part of the Scottish Legal system but have Law Society members working within them and other personnel working for them who sit on Law Society Committees.
7. Your Committee failed to invite Consumers of Scottish Legal Services who have first hand knowledge and experience of the Law Society and Faculty of Advocates’ truly criminal handling of Complaints. These Consumers have hard evidence of criminality and cover-up by these two Bodies, inter-alia.

All the above actions by your Committee are in flagrant breach of the Scottish Parliamentary Rules governing the composition and functions of Scottish Parliamentary Committees, inter-alia. Your previous Convenor, Ms A Goldie, realised this, if somewhat late in the day, and did the honourable thing by resigning.

The manner in which your Committee has conducted itself in this matter is akin to some football Authority, like Fifa, organising a football match between two countries with Country A being allowed to have all 11 players playing for it and Country B only one player!

This being the case, de-facto, it is patently obvious that your Committee must disband itself forthwith. The Scottish Parliament should then establish a new Committee of persons who are entirely independent of the Law Society, the Faculty of Advocates and all other Legal Bodies, persons and organisations which are connected with the Scottish Legal system, however remotely.

MY RECOMMENDATIONS: Notwithstanding that your Committee is acting ultra-vires, inter-alia, and has forfeited whatever rights it may have had to act in this matter I will, without prejudice, give you my recommendations. One of my reasons for doing so is that this will enable me to hold your Committee to account at some future date in the event of your Committee not recommending that the new Bill should be drafted for the express purpose of removing all the present rights of the Law Society, the Faculty of Advocates and all the other Legal Bodies to receive, investigate, make determinations and discipline their various members in a manner which reflects the “Polluter Pays” principle.

The Bill, as presently drafted, will rectify few, if any, of the problems it purports to address. The immediate reason for this is that it was drafted by Law Society members working within the Scottish Parliament.
The Bill therefore should be re-drafted to ensure the following, inter-alia:

1. That the new Commission will be only Body in which all Complaints about the activities of lawyers and the Scottish Legal Justice system in general can be lodged.
2. That the new Commission will be the only Body which will have all the powers necessary for it to investigate all the Complaints that are lodged with it, in their whole entirety.
3. That the new Commission will be the only Body which will have all the Powers necessary for it to make the appropriate Determinations on all the Complaints it has received and investigated.
4. That the new Commission will be the only Body which will have the Power to hand down the appropriate Sanctions to lawyers arising from its Investigations and Determinations of the Complaints that are lodged with it concerning those lawyers.
5. That the new Commission will be the only Body which will have the Powers necessary for it to make good the losses sustained by Complainants in the cases where the new Commission determines that the losses were caused by lawyers in particular and the Scottish Legal system in general who were the subjects of the Complaint. In this regard we demand the Bill be drafted as follows:
   5.1 In cases where the new Commission determines that losses caused to Complainants were the consequence of genuine, bona-fide mistakes by lawyers, the new Commission should exonerate those lawyers. But that all such Losses should be made good in full, plus interest, by the lawyers’ Indemnity Insurance. This is what happens in car crashes; persons who are found to have not been the cause of a particular crash are fully compensated by their Insurance companies. Lawyers and legal organisations should be subject to exactly the same procedure.
   5.2 Where, however, the new Commission determines that losses caused to Complainants were the consequence of theft, embezzlement, fraud and other criminal activity by the lawyers complained about the new Commission must have the Powers to force these lawyers to make good the losses sustained by Complainants to the full extent of the lawyers’ worth. In the event of a lawyer’s worth still not being sufficient to cover the losses sustained by Complainants the new Commission must be given the powers to force all the other partners in the Law Firms of which the guilty lawyer is a partner or employee to meet the shortfall. We suggest that a ceiling of 20% of the worth of all these partners and employees be set to make good this shortfall. In the event that there still remains a shortfall this shortfall should be made good by the lawyers’ Indemnity Insurance. This form of sanction follows the “Polluter Pays” principle which was suggested as desirable in the Scottish Executive Consultation Paper last year (2005).
6. That no lawyer has any role to perform in the Reception, Investigation, Determination and Sanctioning of lawyers by the new Commission.
7. That all lawyers should be given full Rights of Audience in the Scottish Courts irrespective of which legal organisation they choose to belong to. In practical terms this means that any person who has the required legal qualifications should be allowed these full Rights of Audience whether or not they are members of the Law Society of Scotland or any other Legal Body. Such persons should have the choice of which organisation, if any, of which they wish to become a member.
8. That the present embargo on Consumers of Scottish Legal Services consulting Advocates and/or QC’s directly be scrapped. Consumers of legal services should be allowed to choose which person or organisation they wish to represent them in the Courts. This will open up the whole Legal Profession to competition. This scenario will result in diligent, honest lawyers prospering greatly and inefficient and dishonest lawyers being driven out of business very quickly. This sort of regime applies in all other spheres of commercial activity and there is no reason whatever why it should not apply to the legal profession.

CONCLUSION: Sources within the Scottish Parliament have drawn our attention to a Report which was published to-day (25/4/2006). This Report was produced by Professor McKrone of Edinburgh University at the behest of the Law Society of Scotland. Not surprisingly this Report dismisses the Scottish Executive Consultation and the conclusions it reached on this matter last year (2005) as being of no value and “dirty”(!), inter-alia. This is an example of the
Law Society mobilising academics in an attempt to discredit the clearly stated demands of the Scottish Public for the end of lawyers handling Complaints against their fellow lawyers and for the establishment of a body wholly independent of lawyers to carry out this function. The Scottish Executive Consultation demonstrated this by the overwhelming majority of 90%

Further the Law Society of Scotland recently commissioned an English Barrister to produce an Opinion on the contents of the new Bill. Again, not surprisingly, this lawyer produced an Opinion which stated that the new Bill, as presently drafted would, if enacted, be a serious breach of the Human Rights of all lawyers! This is patent nonsense and another example of the Law Society attempting to manipulate the Scottish Executive into abandoning even the pretence of establishing a more independent method of Complaints handling, as represented by the new Bill as presently drafted.

The Shirley Mckie case demonstrated criminal activity within the Scottish Legal system very clearly. There are dozens of other cases in our possession which demonstrate this same criminal activity, beyond all doubt. We recommend very strongly that your Committee, if it refuses to disband, take cognisance of these cases and ensures that the new Bill is drafted accordingly. We invite your Committee or, hopefully its more credible Successor, to contact us for this purpose at any time.