

Your Ref:
Our Ref: PM/NJS

19th September 2002

Deputy I S Nicholls
President – Tourism Committee
Summerland Villa
Roussel Street
St Helier
JERSEY
JE2 3PP

Dear Deputy Nicholls

Human Rights Audit

At the request of the Judicial Greffier I have carried out an audit on all legislation in which the Judicial Greffe is involved in any way in order to identify any potential compliance difficulties as regards Human Rights.

The Judicial Greffe, amongst other matters, provides a clerk for the quarterly meetings of the Licensing Assembly (Assembly of Governor, Bailiff and Jurats), issues Acts of the Licensing Assembly and records the annual renewals of liquor licences.

The Tourism Committee are responsible for the Licensing (Jersey) Law 1974 (the Law) by which the Licensing Assembly is empowered to grant or revoke liquor licenses or to attach and vary conditions to any liquor licence. In the case of applications for grant of licenses, Article 5 of the Law provides for such applications to be considered by the relevant Parish Assembly, details of the proposed applications are inserted in the Jersey Gazette and persons who wish to be heard have the right to address the Parish Assembly. A person who has addressed the Parish Assembly may address the Licensing Assembly and a person who was not heard at the Parish Assembly but who has given at least seven days written notice may address the Licensing Assembly. File dated 19 Sep 2002 printed on 19 Jun 2017 for release to Deputy Higgins

notice to the Judicial Greffier may apply to be heard at the Licensing Assembly and the Licensing Assembly may, in its absolute discretion, hear such person or his or her representative.

Article 6(11) of the Law provides that the holder of a licence can raise any matter concerning a licence at any session of the Licensing Assembly provided he notifies the Bailiff, Constable of the Parish concerned, the Committee and the Attorney General with the specifics of the licence he wishes to raise. Such applications may involve extending the area covered by the existing licence and the licensee may wish to remove conditions imposed on an existing licence, for example, to remove a public bar designation or to remove a condition imposed by the Assembly restricting opening hours to less than those normally available to a holder of that particular category of licence. No publicity or notice is given in relation to such ex-parte applications and persons who may be affected by such applications are not aware that an application is to be made to the Assembly and are therefore unable to address the Licensing Assembly if that person wishes to oppose the application made on behalf of the holder of the licence. The Article 6(11) procedure has been subject to criticism by the Court of Appeal in the case of *The Yacht Hotel-v-Licensing Assembly*. I enclose a copy of the judgment. The relevant paragraph appears at paragr 6 of the judgment and I understand that Her Majesty's Solicitor General has already written to the Committee in this regard.

The lack of any opportunity (or effective opportunity) for the owner of an adjoining property to object to certain types of ex-parte application might infringe Article 6 and 8 of the Convention Rights.

One remedy would be for the Licensing Assembly to refuse to consider any Article 6(11) application unless the matter had first been dealt with at a Parish Assembly. The Committee may however consider it desirable to amend the Law so that all ex-parte applications are first considered by the Parish Assembly at the same time that the Parish Assembly considers application to be made to the Licensing Assembly for grants of new licenses. I have not consulted the Bailiff or Jurats in relation to this matter, but the Committee, if it is minded to amend the Law, may wish to obtain the views of the Bailiff and Her Majesty's Attorney General prior to giving instructions to the Law Draftsman.

Yours sincerely

Advocate P Matthews
Deputy Judicial Greffier