

Sheila Webster - Opening of legal year speech, 25 September 2023

Lord President, my Lords and my Ladies

It is an honour and a privilege to be here at today's Opening of the Legal Year, representing the solicitor profession and recognising the contribution it makes to Scotland's legal sector.

We're at the end of another year of profound change and challenges, both for the world and our profession, alongside a number of proud achievements.

On the whole our profession continues to grow and prosper, but we don't take that healthy state for granted. We remain all-too-aware of the challenges ahead of us, and that some practitioners providing vital services to the Scottish justice system continue to struggle.

Change is not just something that lies in the distant future. The Scottish Government's legislative agenda means that we're on the precipice of profound change in how solicitors are regulated, and, in the criminal sector, in how the justice sector itself is likely to operate.

At the top of the list for our members on that change agenda is the Regulation of Legal Services Bill. We have recognized for some time that reform is required to better protect consumers while allowing the legal profession to thrive.

However, it is deeply unfortunate that the Bill put forward is unacceptable in its current form. I know that many in this room share our significant concerns at the proposal to give Scottish Ministers unprecedented powers to intervene directly in the regulation of the legal profession.

It is absolutely critical that we can act freely for clients, with no risk of government interference. That's why an independent legal profession is one of the basic requirements for a functioning democracy.

So this element of the Bill is not something where there is room for debate or compromise; it is wrong, and must be removed urgently. Otherwise, Scotland risks being viewed internationally as a country whose legal system is open to abuse. This would not only damage our global reputation but make Scotland a less attractive jurisdiction in which to do business.

It's a pity that such a serious flaw has detracted from the positive elements of the Bill, which we wholeheartedly support, such as introducing new forms of regulation for legal businesses and imposing restrictions on who can call themselves a lawyer. We will keep pushing for the changes required, including the need for additional improvements to the overly slow and complex legal complaints system.

There are serious concerns too over some aspects of the Victims, Witnesses, and Justice Reform (Scotland) Bill. Key parts of this Bill risk seriously undermining the integrity of Scotland's criminal justice system, most notably in our view the proposal for a pilot of judge-only rape trials.

Trial by jury for serious crimes is a cornerstone of our justice system. Even on a pilot basis, judge-only trials would put that fundamental right in jeopardy with no discernible benefits. We cannot identify convincing evidence as to how removing the role of juries would change the conviction rate for this category of crime.

The near universal opposition from Scottish solicitors should make it clear that our members will not support any proposal that risks causing miscarriages of justice and that the pilot is deeply flawed. This, and the removal of Scotland's third, "not proven", verdict are thus not proposals we can support.

That is not to say that there shouldn't be change to how criminal trials are conducted. That is why we support significant parts of the Bill including around the anonymity of complainers in sexual offence cases, the establishment of a new Commissioner, and a focus on trauma informed practice.

Whilst we continue to have serious concerns about some aspects of the Scottish Government's agenda, we are glad that legal issues feature so prominently. A new framework for embedding international human rights in Scotland is an important and welcome commitment, and we look forward to seeing the full detail of what is proposed.

We were however bitterly disappointed earlier this month at the launch of the Programme for Government, as legal aid was once again absent from the Programme. We remain without the long-lasting reform needed to protect access to justice for the most vulnerable people in our society.

Legal aid remains in crisis and it is the least advantaged in our communities and our legal aid practitioners who are paying the price for that inaction. Time is running out and we are concerned at the prospect of what will happen as a crisis is ignored.

Away from the Scottish Parliament, there are many other challenges and opportunities that the Law Society is working on, a number of which are not only challenges for the legal sector. Climate action and net zero have jumped back up the news agenda in recent weeks, and we continue to be active in this critical area through our recently formed Sustainability Committee. The legal sector must be awake to the future challenges posed by climate change and related government policy, and to doing its part to tackle what is likely to be the greatest moral challenge of our time.

Artificial intelligence is similarly a development that simply cannot be ignored. We need to be engaged and conscientious to ensure A-I is a booster not a buster for our profession. That's why my predecessor as Law Society President, Murray Etherington, is now the Chairman of our LawscotTech Advisory Board. We're determined to lead the profession in this important area, not just identifying risk but also opportunity.

I want to end with one clear and unambiguous reason for optimism. Fresh ideas and dynamism are a welcome byproduct as our profession grows. Trainees are the literal future of our profession, and last year a new record was set as we registered 788 traineeships across our practice year. We're confident that new trainee numbers have remained close to that high this year. It is yet another reason why we're determined to safeguard our profession and plan for the future challenges these future leaders will inherit.

Thank you.