



PUBLIC PETITION NO.

PE01436

Name of petitioner

Colette Barrie

Petition title

Abolition of the requirement for corroboration

Petition summary

Calling on the Scottish Parliament to urge the Scottish Government to pass new Criminal Justice System legislation which allows for the retrospective abolition of the corroboration requirement thus ensuring full access to justice for victims of crime.

Action taken to resolve issues of concern before submitting the petition

My personal experience of being a victim in a case which failed to proceed owing to the requirement for corroboration made me aware of the full impact which this rule has on victims of crime.

I am not alone. I have researched the impact which the requirement for corroboration has had on other victims and I am dismayed by some of my findings. For example, just 92 out of 882 reported rape cases were prosecuted against in 2009 / 2010. This means that 90% of those accused of rape were never held to account. It is therefore possible that those who are indeed guilty have gone on to rape more victims.

Prior to submitting this petition, I have sought to challenge the corroboration requirement and have spoken to / corresponded with key staff within the offices of the:

- Procurator Fiscal
- Crown Office
- Solicitor General
- Lord Advocate
- Minister for Justice

From the responses / information I have received, it is clear that the only effective challenge to this requirement is to petition for its abolition.

I have made it known that I will both initiate such a petition and that I will then support it via launching a public campaign (details of which may be found at www.abolishcorroborationnow.com).

Petition background information

I am responsible for the conception and creation of this petition.

Under Scots Law, single source evidence – even although the witness is credible and reliable – is in itself insufficient and a second source is required. I am not the sole victim

in my own particular case but, owing to a number of reasons, the other victim withdrew shortly before the trial and thus removed the 'second source'. On the day that the trial was due to start, the Lord Advocate ruled that the trial could not proceed; thus denying me access to justice and destroying all my hopes for 'closure'.

One of the reasons that the Criminal Justice System exists is so that we are prohibited from taking the Law into our own hands. In handing over our victimisation to the State, we subscribe to the notion that the violation caused by the crime extends to society as a whole and not purely to the victim as an individual. The expectation therefore is that, through the application of Criminal Justice, the State will dispense appropriate punishment and protect us all from future harm.

As did I, so too have many thousands of victims entrusted their victimisation to the Scottish State. The corroboration requirement has denied justice not only to myself and these victims but also to the Scottish society as a whole. For living unpunished and unknown within its midst, are those guilty of some truly heinous crimes.

New legislation which alters the rules of evidence, allowing single source evidence alone to satisfy the rules of sufficiency, needs to be retrospective / reactive so that victims and society can be better served by the justice system which exists in order to protect them. This protection comes from reducing the risk and impact of harm – psychological and physical – perpetrated by offenders.

In making the Double Jeopardy (Scotland) Act 2011 retrospective, the legislators state that '.....it is immaterial whether the conviction or, as the case may be, the acquittal was before or after the coming into force of the Act'.

Other examples of retrospective legislation are those Acts brought into statute in order to address War Crimes and Tax Avoidance. Both such Acts also decree that the timing of the offence in relation to the legislation is immaterial.

The same must apply to legislation which abolishes the corroboration requirement, It is immaterial whether the offence was committed before or after the coming into force of such legislation; what is material – what matters – is that the justice system punishes the guilty and protects the innocent.

There are many voices within the Scottish Legal system itself calling for the abolition of a requirement which many legal practitioners witness as causing miscarriages of justice.

In 2010, the Scottish Government commissioned the High Court judge, Lord Carloway, to conduct an independent review of key elements of Scottish criminal law.

The requirement for corroboration was one of these key elements and Lord Carloway is unequivocal in his observation that it is an archaic rule which has no place in a modern criminal justice system. He recommends that it is abolished immediately.

His full review report was published in November 2011 and has generated much debate within the criminal justice system and legal professions.

<http://www.scotland.gov.uk/About/CarlowayReview>

There are many supporters for this recommended change to legislation – of the practitioners to whom I have spoken, all are in favour of it.

The rule is archaic and belongs to an era when capital punishment resided amongst the consequences of wrongful conviction. We now live in a more enlightened age wherein our adversarial criminal justice system is sufficiently sophisticated as to ensure proper testing of the evidence.

As Lord Carloway comments; 'if a person is the victim of a criminal act and is capable of identifying the perpetrator, that person's case should be judged on the quality of the testimony. Its progress should not depend on a formal requirement, compliance with which is often a matter of chance.

If the judge or jury is satisfied beyond all reasonable doubt of guilt of the accused, why should a conviction not follow?' (Carloway Review, P279, paragraph 7.2.42)

Amongst the arguments against abolishing corroboration is one which suggests that

the system would then require every allegation of rape made by a believable complainer to go to trial and this would be unworkable in practice. Other arguments against new legislation also focus on the financial implications.

I believe our society to be civilised. Surely then such arguments are incompatible with our values? Are we really to deny justice to a believable complainer simply because it is too costly or onerous to activate the machinery which delivers it?

There is no supporting evidence for another popular anti-abolition argument which suggests that we will be left with a system which is more vulnerable to miscarriages of justice. For surely we need only to emulate other jurisdictions which still apply a test of sufficiency; for example: '...an objective, impartial and reasonable jury or judge hearing a case alone, properly directed and acting in accordance with the law, is more likely than not to convict the defendant of the charge alleged'

I am not alone in my opinion that the only miscarriage of justice is the one created by a requirement that prevents such evidence being presented and such a conviction being possible.

I have been informed that sometime later this year, the Scottish Government is planning to conduct a Public Consultation on the Carloway Review report and this includes the recommendation to abolish corroboration. In order to raise public awareness ahead of this, I have launched a campaign (which can be found at www.abolishcorroborationnow.com) and seek to have this petition made available on-line so that other voices can be heard.

Unique web address

<http://www.scottish.parliament.uk/GettingInvolved/Petitions/PE1436>

Related information for petition

Do you wish your petition to be hosted on the Parliament's website to collect signatures online?

NO

How many signatures have you collected so far?

1

Closing date for collecting signatures online

N/A

Comments to stimulate online discussion