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Clerks to the Committee
Delegated Powers and Law Reform Committee
Scottish Parliament
Edinburgh EH99 1SP
By E-Mail Only:
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Dear Clerks,

I write further to my appearance before the Delegated Powers and Law Reform Committee on 16 May, and in response to the invitation to raise any supplementary points in writing afterwards.

I have very little to add.

Firstly, following my reference to what the Faculty had said in an earlier response about the appropriateness of X being appointed executor to D's estate where X was responsible for the death of D, I now attach a copy of that response. It was sent in May 2019, during the course of a consultation on the law of succession, and the relevant part is between pages 10 and 13. We would adhere to those comments.

Secondly, and purely in relation to drafting, I wondered about the tentativeness of one of the subsections of section 6. As read, under section 6(1)(b), a court could remove T as trustee if T purports to carry out their duties in a way which 'might be inconsistent' with their fiduciary duty. That threshold would be unusual for the exercise of a statutory power. I would have expected the power to be exercisable only if the court concluded that the purported carrying out of duties **is** or **was** inconsistent with T's fiduciary duty. None of the other subsections has a tentative version of the threshold. Of course, I may be missing some key feature of this particular trigger, but I cannot see an explanation in the Scottish Law Commission report.

Thirdly, and again as a drafting point, on page 3 of our current response, the Faculty has made what is perhaps rather a fine-grained point about section 27. It appears to me that this could be solved if the reference in section 27(1) to subsection (3) were to be amended to a reference to subsection (3)(a).

Thank you for the opportunity to be part of an interesting discussion.

Yours sincerely,

Laura Dunlop, K.C.
Convenor, Law Reform Committee