

2.10 Deputy T.M. Pitman of the Chief Minister regarding a review by the Legislation Advisory Panel of the terms of Article 3 of the Royal Court (Jersey) Law 1948 and the appointment process for Jurats:

Further to his response on 11th September 2012 that the Legislation Advisory Panel was looking at certain aspects of the terms of Article 3 of the Royal Court (Jersey) Law, would he clarify whether this will include the appointment process of the Jurats?

Senator I.J. Gorst (The Chief Minister):

I am asking my Assistant Minister, who is the Chairman of the Legislation Advisory Panel, to respond.

Senator P.M. Bailhache (Assistant Chief Minister - rapporteur):

I hope that these questions from the Deputy about Jurats have nothing to do with the fact that he and his wife recently brought an action for defamation against third parties and failed, because the Deputy must know that if he is dissatisfied with the outcome of his case or wishes to allege bias against any member of the court, he has a remedy and that remedy is to appeal to the Court of Appeal. If these questions about Jurats are entirely coincidental, the answer to the question is that the Legislation Advisory Panel is not looking at the appointment process for Jurats.

2.10.1 Deputy T.M. Pitman:

Yes, again it is very disappointing that the Senator seems to be sliding into these - what I have to say - personal attacks and trying to muddy the waters. I have every right as a States Member to ask about issues that concern a great many people and the Jurat system is very, very flawed. If I can just bring the Senator back to the real world, one of the key problems with the Jurat system is that it fails miserably in terms of providing a broad cross section of society, certainly in terms of ethnicity and class. I do not think any of that has anything to do with this but does the Assistant Minister not agree that if we had an appointments body certainly separate from former Crown Officers, a lot of that could be avoided and we could establish a broader base so people can have the right to a fair trial in line with Human Rights Article 6?

Senator P.M. Bailhache:

I made that observation because the judgment in the Deputy's case was delivered on 10th May 2012 and since then, he has asked questions about Jurats on 15th May, 10th July, 17th July, 11th September, 25th September and a number of questions also during October. I draw the Deputy's attention to paragraph 4 of the Code of Conduct for Elected Members: "Elected Members should base their conduct on a consideration of the public interest, avoid conflict between personal interest and public interest and resolve any conflict between the 2 at once and in favour of the public interest." I see at the moment nothing untoward about the appointment process for Jurats. Any person is eligible providing he or she meets the criteria for appointment as a Jurat and can be proposed by a Member of this Assembly or any other Member of the Electoral Assembly. The Chief Minister has said in answer to a written question that his mind is not closed to a review of the appointment process for Judges. Indeed, work has been continuing since the second interim report of the Constitution Review Group by the Law Officers' Department in that respect, but there is nothing untoward or unacceptable about the current process for the appointment of Jurats.

Deputy G.P. Southern:

I believe the Senator has just been allowed to impugn the motives of a Member and I would ask that he withdraw those statements.

The Deputy Bailiff:

What was the impugning?

Deputy G.P. Southern:

He is saying that the only reason why Deputy Pitman is asking these questions is of personal interest and not wider public interest when in fact the appointment system for Jurats is of public interest, clearly.

The Deputy Bailiff:

I understood the Senator to express the hope that the 2 things were not linked and that was not making any allegations of impropriety.

Deputy G.P. Southern:

That is an excellent rhetorical device.

Deputy M. Tadier:

If I may comment? If it is being expressed that the 2 are not linked, there seems to be an insinuation that they are not and if there is no insinuation, it seems to be entirely irrelevant to the question being asked. Therefore, it seems to be out of order on one or other counts of either being irrelevant or impugning a Member's motive because there should be no question that the question being asked - which is in order and has been passed by the Bailiff - is of public interest and there should not be any suggestion that there is an underlying personal motivation other than the public interest.

The Deputy Bailiff:

Deputy, the Chair is very reluctant to interfere on the grounds of relevance in this Assembly, I can assure you.

2.10.2 Deputy M.R. Higgins:

I must admit from where I was sitting I thought he was impugning the Deputy. Does the Assistant Minister not accept that many people do have concerns about the Jurat system and it has not been reviewed for many years? In the United Kingdom, many Magistrates and others have gone through a major review to make it more accessible to other members of the community other than those who currently make up the Jurat seats.

Senator P.M. Bailhache:

I hoped I made it clear to the Assembly that a review is under way at the present time and this matter is being looked at in the Law Officers' Department. My answer to the question was that the Legislation Advisory Panel does not have it on its agenda at the moment but the matter is being looked at in the Law Officers' Department.

Deputy M.R. Higgins:

I also asked, does he not accept that others have concerns about the Jurat system other than Deputy Pitman?

Senator P.M. Bailhache:

I do not know how many people have concerns about the appointment system for the appointment of a Jurat. All I am saying is that I have no concerns.

2.10.3 Deputy J.M. Maçon of St. Saviour:

The Senator commented that the Law Officers are working on a report. Is the Senator able to tell us what timeline they are working to and when that is to be delivered?

Senator P.M. Bailhache:

I did not say that the Law Officers are working on a report. I said that a report of the Constitution Review Group had been laid before this Assembly in 2008 and that among the recommendations of that report was that consideration be given to the setting up of a Judicial Appointments Commission. That is the work that is being undertaken by the Law Officers'

Department at the moment because of course there are a number of options which could be followed.

2.10.4 Senator S.C. Ferguson:

It is of public interest but not perhaps in the same light. It occurs to me that with all the changes we are making in retirement ages, perhaps we should be looking at that in relation to Jurats and so on because at the moment there is a fixed retirement age, but if we are putting up the normal retirement age, perhaps we should let Jurats work a bit longer and get a bit more work out of them.

Senator P.M. Bailhache:

The retirement age for Jurats was 70 at one stage and a short while ago that was increased to 72 although Jurats can, at the request of the Bailiff, come back to act in a particular case until they reach the age of 75. I hear what the Senator says and the closer I get to these particular ages, the more I think they have merit.

2.10.5 Deputy M. Tadier:

The Assistant Chief Minister said that there was nothing untoward in his opinion about the appointment process of Jurats. Can he answer the question whether he knows of any other jurisdiction in the world where the legislature and a group of advocates appoint members to the Royal Court or the courts?

Senator P.M. Bailhache:

I think there is only one other jurisdiction in the world so far as I am aware that has Jurats and that is Guernsey and there is an electoral body which I understand is very similar to the electoral body in Jersey which appoints Jurats in Guernsey.

2.10.6 Deputy M. Tadier:

A supplementary, if I may. On the untoward subject - and in my dictionary that also means inappropriate - does the Assistant Chief Minister consider, given the fact that this has not yet been looked at but will be looked at, it is too early to say whether or not there is something inappropriate about the way in which Jurats are appointed, given that he should be keeping an open mind on the subject and balancing up the fact in the modern day whether it is appropriate to have a separation of powers between advocates, States Members and those in the Royal Court?

Senator P.M. Bailhache:

When Ministers are questioned on the floor of the Assembly they have to express views and those views are very often subject to review if circumstances change or if other arguments are brought to bear. So far as the Jurat system is concerned, I think that Members should be aware that when visiting judges from the United Kingdom come to preside over the Royal Court and are introduced to the Jurat system for the first time, they are invariably enormously impressed with the division of responsibility between lay members of the court and professional judges which is inherent in our constitution.

[11:00]

We have nothing at all to be ashamed of in the context of our composition of the Royal Court. On the contrary; we have something in which we can be extremely proud.

2.10.7 Connétable J. Gallichan of St. Mary:

Notwithstanding the desirability or otherwise of any review - and I personally believe that it is healthy to review all things from time to time - would the Assistant Minister not agree with me that despite reservations expressed by Deputy Pitman, there is in fact a broad range of personal experience and background expressed by the Jurats currently and in the immediate past? This, in

fact, is open to all people who desire to make this incredible commitment to the Island irrespective of ethnicity or any other characteristics.

Senator P.M. Bailhache:

I am very grateful to the Connétable for that question and I entirely agree with everything that she has said. The Jurats put in an enormous amount of time and work in the exercise of their functions for no reward and the Island should be and I believe is extremely grateful to them.

[Approbation]

2.10.8 Deputy T.M. Pitman:

I do have to point out that the Senator - and I suppose it is unfortunate that you are brothers - but the Senator only a couple of weeks ago inferred, just because I highlighted his unprofessionalism with the bogus submissions to the Electoral Commission, that a member of my family was involved. Completely untrue. I became interested in this issue when I finally got hold of the Sharp Report which I was banned from and I think perhaps, with due respect, there might be a bit of a smokescreen here because this does highlight the problems I talk about. What other jurisdiction in the world would allow an individual to sit who has helped conceal child abuse? I have to say the Crown Officers in this Chamber now have done nothing about that for 14 years. That is where my concern originates from and just so the Senator is assured, I would tell him that yes, I was very concerned when I found out that such a Jurat had sat on my case but I did not find out that until I got the Sharp Report, which is banned by his Council of Ministers. Does he not agree that those are problems that need to be looked at and it is something to be embarrassed about?

Senator P.M. Bailhache:

May I first of all make it clear that I am in no sense impugning the integrity of Deputy Pitman. I am merely expressing the hope that all these questions about Jurats have nothing to do with his own personal experience. The Deputy has an unfortunate habit of making outrageous allegations and clothing them in the language of fact but there has been no concealment of child abuse at Victoria College or, so far as I am aware, in any other school. The document to which he refers is a document which was considered by all the authorities, by the Education Committee of the day, subsequently by different Ministers and there is nothing in that report which I think gives rise to any question of concern.

The Deputy Bailiff:

If I may just add, Deputy, that as you included within that question some quite serious allegations against Crown Officers, I could just add that the Crown Officer of the day, the Attorney General, the current Bailiff, was the person who insisted that report be sent to the Education Committee for consideration and I think that ought to be made public.

Deputy T.M. Pitman:

Thank for that. I do have an interest because it was a colleague of mine who blew the whistle on the Jervis-Dykes affair so I am very concerned about it.