

5.17 The Deputy of St. Martin of the Chief Minister regarding the withdrawal of part (d) of the Terms of Reference for the Napier Report:

I hope it is fifth time lucky. Following the Chief Minister's written answers on 18th January 2011, will he advise the actual date Mr. Napier was instructed to withdraw part (d) of the terms of reference and given the affidavit's significance to the suspension of the former Chief Police Officer explain why neither he nor the Deputy of St. Martin who were supposed to have oversight of the review were not consulted before the decision was taken?

Senator T.A. Le Sueur (The Chief Minister):

In my answer to a previous question I had already provided Members with the dates when Mr. Napier visited the Island to arrange the final commission for his review into the suspension of the previous Chief Officer of Police and to conduct interviews with witnesses. The Deputy Chief Executive Officer who was overseeing this piece of work did meet with Mr. Napier on 9th April 2010 and believes it was at that meeting that he and Mr. Napier discussed the relevance of retaining paragraph (d) as Mr. Power had indicated that he wished to participate in the review process. It was at this time that the final administrative arrangements were being made for Mr. Napier to conduct his interviews. Mr. Napier has also confirmed that he cannot remember the date precisely either. In the answer I provided to the Deputy of St. Martin on 18th January 2011, in answer to part (c) and part (d), of his question I advised that Mr. Napier had confirmed that when the removal of paragraph (d) of the terms of reference were discussed it did not seem important as it would not be necessary to rely only on the affidavit since it had become clear that Mr. Power was willing to talk to him. It was not a matter where instruction was necessary. I am totally satisfied that as Mr. Napier had full access to the affidavit, which he referred to in his final report and at the interview with Mr. Power, the removal of this section was not significant. It was therefore not necessary for this change to be referred to either myself or the Deputy of St. Martin.

5.17.1 The Deputy of St. Martin:

I gather then for the first time we have an answer that the Deputy Chief Executive Officer and Mr. Napier agreed that part (d) would be removed on 9th April. Will the Chief Minister inform Members whether in actual fact that information was given to the Council of Ministers when they met on 10th April that part (d) had been removed?

Senator T.A. Le Sueur:

I do not think it was ever agreed it would be removed. It was agreed it would not be necessary and I made that clear in my answer.

5.17.2 The Deputy of St. Martin:

Will the Chief Minister agree that part (d) had been removed because it was not in the Napier report?

Senator T.A. Le Sueur:

I agree, and I said in my response to a question 2 weeks ago that paragraph (d) had been omitted due to a typographical error but it made no difference because it was not necessary.

5.17.3 The Deputy of St. Martin:

I am afraid the Chief Minister is not understanding the question. The question is will the Chief Minister accept that the Council of Ministers were not informed when they met on 10th April that part (d) had been removed from the terms of reference?

Senator T.A. Le Sueur:

On 10th April to the best of my knowledge part (d) had not been removed at that stage. It was not discussed because it was not relevant.

[11:30]

5.17.4 Deputy R.G. Le Hérissier:

Could the Chief Minister identify what were the issues that required submission to himself and the Deputy of St. Martin in order that the review could proceed with the necessary consultation?

Senator T.A. Le Sueur:

That is perhaps an area which with hindsight was left fairly grey. I understood oversight of the review to really mean to be advised of the progress of the review in its ongoing stages. It did not occur to me that it related to the administrative arrangements of setting up the review because that struck me as being a totally irrelevant and unnecessary activity for either of us to undertake.

5.17.5 Deputy R.G. Le Hérissier:

Just to follow up, admittedly a lot of people feel obviously there is a lot of nit-picking going on but would the Chief Minister not accept that terms of reference are much more than an administrative matter? They go to the very core of any study, how you frame your terms of reference.

Senator T.A. Le Sueur:

I quite agree with the Deputy, but there was no indication or no suggestion that the requirements of part (d) of the terms of reference as originally envisaged would not be delivered when Mr. Power had already indicated that he was willing to talk and willing to provide the affidavit.

5.17.6 The Deputy of St. Mary:

The Chief Minister has just said that there was no requirement for part (d) because the then Chief Officer of Police had agreed to co-operate with the inquiry. Can the Chief Minister expand on that? How did it become clear at the meeting on 9th April that Mr. Power would be willing to talk with Mr. Napier; who made that clear?

Senator T.A. Le Sueur:

I was not present at the meeting on 9th April, so I am unable to answer that question.

5.17.7 Deputy M. Tadier:

Does the Minister agree that while it was, in his opinion, not necessary to keep part (d) of the terms of reference it was equally not necessary to remove it, and it would have caused a lot less trouble had it simply been kept in? Does he also agree that in fact it was on that basis which many States Members I believe decided against a Committee of Inquiry rather than in favour of this particular review? Does he therefore feel like he has misled some States Members on that basis?

Senator T.A. Le Sueur:

No, I think in the question the Deputy may have been confused about the date on which we debated the setting up of the Committee of Inquiry rather than a review of this nature. It was not my opinion that part (d) was not necessary, it was the opinion of Mr. Napier himself. I repeat the omission was not relevant. It was an oversight in a printed document but it makes no difference whatsoever to the outcome of the report because Mr. Napier had all the information. Whether that was specifically mentioned in the terms of reference or not it would have made no difference whatsoever to the outcome or the content of the report.

5.17.8 Deputy M. Tadier:

I would say that is a qualified statement, that is the opinion of the Chief Minister, it is not an objective fact, but does he agree that the terms of reference were agreed by this House, not by anybody else, and therefore if one of those terms was to be removed it should have been the decision of the House or at least those who were overseeing the review to be consulted first.

Senator T.A. Le Sueur:

That is again a matter of opinion, but I take the point of Deputy Le Hérissier that what is important is that the terms of reference are clearly understood by all parties concerned. Whether they are put down in writing or verbally or any other way they were agreed by this House and quite rightly they were undertaken, accepted and acknowledged by Mr. Napier when he produced his report. That to me is the practical outcome of the situation, whether the terms of reference were stated in a report, which I subsequently gave to the House, which had no particular significance, other than being a position paper.

5.17.9 Deputy M.R. Higgins:

Does the Chief Minister not accept that the repeated questions on the Napier inquiry are because of his lack of openness and transparency, not only in his actions but also in the answers that he keeps on putting back to this House? Until he does come clean he is going to be asked and asked and asked and the House will spend more hours on this topic.

Senator T.A. Le Sueur:

I cannot come any cleaner than I have been over the last 3 or 4 months in answering questions on this topic, questions received by a handful of people who seem to believe that there is something peculiar to hide in this. Mr. Napier has made it quite clear himself that he had all the information that he required. He was given all access to anything he did require and his report was published and produced in a totally open and transparent way, irrespective of what actual terms of reference may have been presented in a report I presented to the House in April, where I have already admitted there was a typographical error and paragraph (d) was accidentally omitted.

5.17.10 The Deputy of St. Martin:

I agree with Deputy Higgins. I think the answers have not been satisfactory today, but will the Chief Minister accept that the fact that part (d) was removed effectively meant that a number of witnesses who were mentioned in the affidavit were not questioned? That was the effect of removing part (d). So, in other words, Mr. Napier was under no obligation to follow through all the concerns raised in the affidavit. Will the Minister not agree?

Senator T.A. Le Sueur:

No, I would not agree. The affidavit was available to Mr. Napier and he referred to it in his report. It is a matter of his choice who he chooses to interview. Having read the affidavit himself, if he felt it was relevant to interview those people I am sure he would have asked to do so, but he did not, I understand, feel it was relevant and in the circumstances I stand by his judgment.