

STATES OF JERSEY



BAILIFF OF JERSEY: CESSATION OF DUAL RÔLE

**Lodged au Greffe on 9th July 2008
by Deputy S. Pitman of St. Helier**

STATES GREFFE

PROPOSITION

THE STATES are asked to decide whether they are of opinion –

- (a) to agree in principle that the dual rôle of the Bailiff as both President of the States and President of the Royal Court should cease and that the Bailiff and Deputy Bailiff should be replaced as Presiding Officers of the States by an elected Speaker and Deputy Speaker;
- (b) to charge the Privileges and Procedures Committee to bring forward for approval the necessary legislation and to report on the financial implications of giving effect to the decision so that the Speaker can be elected no later than after the elections in 2011.

DEPUTY S. PITMAN OF ST. HELIER

REPORT

A brief observation on recent historical background

I do not intend in bringing forward this proposition to reiterate lengthy tracts of past reports and argument, outlining again the whys and wherefores of how this Island's government came to have the present system of one individual occupying 2 key and overlapping rôles of being both Head of Legislature and Judiciary. Members will, I feel, most likely consider themselves as something of experts on the topic. Suffice to say that unfortunately we do not appear quite so 'expert' in progressing necessary reform.

In 2005 the States of Jersey changed from a structure of committee-based government to that of a ministerial system following recommendations from the Clothier Report and a number of subsequent debates. One of the key impetus for this change was to enhance the efficiency of the democratic process, and with this, ensure a more demonstrably open and transparent government.

It is now almost 3 years since the move to ministerial government was made. It is nearing 8 years since the recommendations of the Clothier Report. Discussion of the desirability and, indeed, need to separate the dual rôles of the Bailiff has been with us for a great deal longer. Yet here, as with States reform generally, this House, in line with its predecessors, has thus far proven itself incapable of delivering.

Now, I believe, is the ideal time for States Members to finally grasp this dilemma and set about resolving it: the public of Jersey is watching.

As all Members are all too painfully aware, rightly or wrongly there is a perception from large sections of the community and, indeed, outside it, that we in Jersey are a secretive culture. More than ever, I would put it to colleagues the onus is now on this House to ensure that –

'Not only is justice done, but that it may be seen by its people to be done'.

Confusing the need for reform with attacks on personalities

Too often in the past any suggestion of bringing ourselves in line with other modern democracies by ensuring the separation of both Legislature and Judiciary has been seized upon by some who would oppose change as an 'attack' on the individual holding this position. The reality of the matter is that nothing could be further from the truth. This proposition, and the light in which I would ask Members to consider it, is purely as a further step along the road of transparent and accountable government begun with the change to Ministerial Government in 2005.

Much has been said and written in allegation over recent months about the potential for conflict of interests, even of the potential for 'cover ups'. I do not bring this proposition forward out of any allegation – I bring this proposition for 2 simple reasons: to ensure that a situation where a conflict of interest could arise simply could not happen; furthermore, that the Island's public may see beyond any doubt that democracy cannot be compromised.

Transparency and the myth that the Bailiff (as President of the States) is not a 'political' figure

The argument that the Bailiff is not a political figure and may not exert influence upon the Assembly is one that holds little credence once under the spotlight –

- The present Bailiff *has* made political speeches: we have seen this only last year on the issue of the Liechtenstein Dialogue. Indeed, having raised the concern myself only to have the matter dismissed by the Chief Minister, it has to be stated that if taxation is not a 'political' matter than I do not know what is.
- In the not so distant past the Bailiff has played a key rôle in the removal and suspension of a Member of the States. The only recourse that member had was to appeal to the Royal Court: an institution of which the very same Bailiff was also the head. The fact that the Bailiff could quite clearly not then sit in judgement upon the issue as Head of the Judiciary is in reality wholly irrelevant. To deny the potential for

influence, whether intentional or otherwise, is to miss the point.

In the 21st century the carrying-out of justice surely must be *seen* to be beyond all doubt or reproach. This is what the people of Jersey so clearly want. As public servants it is equally surely our task to ensure this.

There is also little substance in refuting that the Bailiff within his current rôle as President of the House wields a significant degree of general political influence within control of both debate and the questions that may be asked. As former Senator, Ted Vibert, highlighted some 4 years ago—

'The right to approve the content of questions and personal statements is a subtle power that controls a certain amount of what a member can say in the House. It will be argued that this vetting process is to ensure that there is no breach of Standing Orders but this power is discretionary and open to question.'

Rightly or wrongly as we have witnessed only recently, some would venture the opinion that this power has on occasion been misapplied.

Why the alternatives are so much better

It has also been stated that the rôle of the Bailiff as President of the States is effectively to be that of a neutral umpire or referee, there to ensure the rules of debate are appropriately observed. This I believe is exactly what the rôle should be. More importantly, it also demonstrates why it is not necessary or desirable for the Bailiff to hold that rôle. Moreover, it reveals why that rôle can be better fulfilled by either of the alternatives I bring forward in this proposition.

The function of 'Speaker' has on many occasions been performed by the States Greffier, his Deputy, or even on occasion a senior member of the House as and when circumstance has demanded.

1. Electing a Speaker and Deputy Speaker from within the democratically elected members of this Assembly will remove the concern over an unelected individual, or one not *directly* employed specifically for that purpose and with the full knowledge of the public, misapplying political influence in the manner outlined above. Whilst undoubtedly necessitating the individuals undertaking to ensure they are fully 'up to speed' with the intricacies of Standing Orders, a further benefit would be that there will be no financial outlay or cost to the taxpayer. Indeed, as the success of the proposition would by nature necessitate that the financial salary currently applied to the position of Bailiff would need to be re-assessed there would actually be a saving to the taxpayer.
2. In alternatively 'recruiting' an individual from the public to fulfil the new position of 'Speaker of the States' and transferring the occasional rôle of Deputy Speaker to that of the States Greffier or Deputy Greffier (as is currently practised) the financial cost to the Island's taxpayers would, I believe, be fully offset by the savings made in reducing/refining the present rôle of Bailiff and Deputy Bailiff. Were one to further incorporate a procedure whereby all elected States Members were able to vote on the suitability and appointment of the Speaker, an additional bonus would surely be the removal of current assertions of political 'bias' witnessed on occasions. There must, I believe, be a significant number of private individuals within the Island (as advised by the current Greffier) – whether they be former or retired States Members, the current or retired Greffier or Deputy Greffiers, legal professionals, academics or even suitably skilled 'lay' men or women – who could and would be interested to fill this rôle admirably: fill the rôle and without any of the unintended potential conflict of interest existent within the present system.

The better of 2 good alternatives – zero negative impact on wider democratic issues

Upon consideration of these 2 undeniably workable alternatives to retaining the status quo, I put to Members that it is Option 2 that offers the greater benefit to the Assembly; further still, that has no unintended impact whatsoever on the wider democratic checks and balances inherent within our system of government.

Within **Option 1**– electing a Speaker from within the Assembly an unintended, but unavoidable consequence

would be that an individual, whether he/she be a Senator, Connétable or Deputy elected by the people to serve them within the Assembly would lose their right to vote. This I suggest to Members is an issue that cannot be lightly ignored for all the options other benefits and attractions.

After all, how would the electorate of St. Mary, St. Lawrence– or any parish or district feel – if suddenly that representative were to lose the ability to vote on their behalf?

In **Option 2**– the recruitment of an independent Speaker from within the ranks of the wider public – this dilemma does not exist. Independence of the Speaker is assured and the democratic balance of our 53-strong States Assembly is wholly unaffected: as the saying goes – surely a ‘win-win’ situation. Thus I recommend this to Members as the path to ensuring the present potential for conflict of interest is consigned to history. Just as importantly, I would add, this would be seen to be the case in the eyes of the public.

The new rôle of the Bailiff and its benefit to the rôle of Chief Minister in external relations

Should the above meet the approval of the Assembly, the rôle of Bailiff will be to remain as Chief Judge; a highly esteemed office in itself and in no way lessened by the democratically essential separation of powers and the removal of any political rôle. I reiterate again – we *must* move on from confusing positions with the personalities occupying them. Until we do democracy will, more often than not, remain moribund.

I also believe most strongly that, as has been suggested by former Senator Ted Vibert in 2004, a further positive result of this most necessary reform would be a more defined, and greatly enhanced rôle for the Chief Minister in dealing with our external relations with the UK and internationally.

Guidance or assistance where needed from the ‘Bailiff’ would remain, there to be utilised at the Chief Minister’s discretion when he or she felt it to be appropriate. It is, to use a well-worn cliché once again, a win-win proposition, creating a win-win reform. As such I urge all Members to give it their full support.

Financial and manpower statement

I do not believe that there need to be any additional financial and manpower implications arising from this proposition, but the precise implications may only be known once PPC brings forward final proposals on the appropriate way forward for an elected Speaker. If an additional post of elected Speaker is created there may be some additional cost, but this could well be offset by savings in relation to the judiciary where, for example, there may be a reduced requirement for Royal Court Commissioners. In view of this uncertainty my proposition asks PPC to report on the financial implications when the Committee brings forward the final proposals.