

3.7 Deputy T.M. Pitman of the Chief Minister regarding the election of Jurats:

Following on from my oral question of 17th July 2012, can the Deputy Chief Minister advise what progress, if any, has been made to review and update the Royal Court (Jersey) Law 1948 to ensure that in future, all those being elected as Jurats are of sound character and judgment and to ensure that any Jurat subsequently found to have demonstrated seriously flawed judgment or behaviour can be removed?

Senator B.I. Le Marquand (Deputy Chief Minister - rapporteur):

On 17th July, the Chief Minister, in answer to an oral question from Deputy Pitman, explained that there was in fact in train a process by which the Legislation Advisory Panel was looking at certain aspects of the terms of Article 3 of the Royal Court (Jersey) Law 1948. The Deputy was then invited to a meeting of the Legislation Advisory Panel on 27th July to discuss this matter, but I understand he was unable to attend because of another engagement. This invitation still stands, so I understand, and the Deputy is welcome to attend the next meeting of the panel at the end of September. I am sure the panel will be very open to taking on board his concerns.

3.7.1 Deputy T.M. Pitman:

A supplementary, Sir. I should just point out that I did not attend that meeting and nor will I, because I believe they have a former Crown Officer chairing that who is heavily conflicted in the problems involved. My question is given the reality that for the past 14 years the Government and judiciary allowed the man to sit in judgment of ordinary decent men and women as a Jurat, even though the Sharp Report reveals that his judgment towards justice was so warped or clearly flexible that he was happy to help conceal child abuse in order to protect the good name of the school in which he was a teacher. Does the Deputy Chief Minister not agree that this is a matter of the gravest concern and urgency? I should say, Sir, to be fair to all the current Jurats, I am obviously talking about former Jurat [name omitted in accordance with Standing Order 160(3A)].

The Deputy Bailiff:

No, I am sorry, Deputy Trevor Pitman, that is completely unacceptable. It is out of order. You are not entitled under Standing Order 104(2)(f) to refer to a Jurat where his conduct is not the subject of the proposition or the question and your question is about the Royal Court (Jersey) Law 1948. You are not entitled to refer to him because the use of the name is not unavoidable and it is not directly relevant. I therefore direct you to withdraw that reference.

Deputy T.M. Pitman:

I do apologise for breaking Standing Orders. Obviously there will be naming in the proposition I am going to bring about in the Committee of Inquiry as to why this has been covered up, but I of course withdraw that at the present time and thank you for your guidance.

The Deputy Bailiff:

I also direct the Greffier to withdraw the reference pursuant to Standing Order 109, paragraph 7. The names are to be omitted from the transcript. Deputy Chief Minister.

Senator B.I. Le Marquand:

I understand the concern of the Deputy in relation to this area and I also understand his concerns in relation to a specific matter, but the fact is that there will not be any change unless there is some form of amendment to Article 3. I would urge him, if he feels unable to attend the Legislation Advisory Panel, to write to the panel to express his concerns. There are in existence already certain safeguards. Any candidate for Jurat has to go through a criminal records check, as one would expect, of anybody who was aspiring to be a member of the judiciary and there is an existing process for the removal of Jurats from office either by non-attendance or lack of competence. I am saying that in a very general sense, that would probably be where someone's

mental capacity had declined. Indeed, there is a process for the superior member of the Royal Court to petition Her Majesty in Council to remove a particular Jurat. Now, it may be that Deputy Pitman feels that that ought to be tidied up, but as I said, unless there are amendments to that process which is statutory and in Article 3, then there will not be any changes.

3.7.2 Senator L.J. Farnham:

Could the Deputy Chief Minister advise Members, if he can advise Members, exactly where political responsibility and accountability for justice does lie within the Island?

Senator B.I. Le Marquand:

This is a very good question indeed, and my own view of this is that there is no direct political accountability for justice. Because of the peculiar nature of our constitution, the Bailiff would be viewed as having the overall responsibility in relation to this area. But we do not have the equivalent of a Minister for Justice as such and therefore there is no direct line of political accountability in relation to the areas which could be properly subject to such accountability. That is a hole in our current constitutional position. For that very reason, in recent years, a joint working group has been set up which includes the Chief Minister, the Minister for Home Affairs, the Bailiff and various other officers to try to seek to bridge this gap, but when it is a matter of political accountability, my view is that there is a gap.

3.7.3 Senator L.J. Farnham:

A supplementary on the back of that answer, Sir. Could I ask the Deputy Chief Minister to undertake discussions, open discussions, at Council of Ministers level with a view to investigating the possibility of the Island having a Ministry for Justice or at least a Department for Justice?

Senator B.I. Le Marquand:

I think it is a matter that I can properly discuss with the Chief Minister when he returns. I think it is not a matter for me to initiate on my own account. It is a matter for him to consider and that I will seek to do.

3.7.4 Deputy M. Tadier:

It is always good to rely on a faithful Assistant Minister to ask questions of your own Minister. He presumably does not have the same direct access that the Constables have been telling us about to Ministers, which is ironic. The question is, I think - let us phrase Deputy Pitman's question in perhaps a different way - that there have been 2 occasions certainly that I can think of where on this occasion which we are talking about, a Jurat turned a blind eye to child abuse or allegedly turned a blind eye to child abuse, then became a Jurat, and this is before he was appointed. I can remember an occasion when an Attorney General turned a blind eye and assisted in, one would argue, covering child abuse in the honorary system, and that individual then went on to become Bailiff and then Senator. The question to the Minister for Home Affairs is what safeguards should we be putting in place, given that they are 2 fairly high-profile cases where possibly even in the public sector and private sector, a general background check may have removed or barred these individuals from taking those positions? Will the Deputy Chief Minister and the Chief Minister be looking at these issues seriously to make sure that the good name of Jurats and other officeholders in future are not tarnished in this way?

Senator B.I. Le Marquand:

I first of all have to rebut the innuendo that I put my Assistant Minister up to asking the question which you have just asked, if there was such a question.

Deputy M. Tadier:

No, there was no innuendo.

Senator B.I. Le Marquand:

No, okay. I withdraw any suggestion of innuendo and I did not put him up to that. He just gave me warning of this particular issue, which is an issue which has concerned him for some time. The issue in relation to the vetting of people who play public roles is an important issue; there is no question about that. But as with the election of Members of the States, any vetting process is limited in its functionality, and if I can take that as an analogy for a moment, a person only ceases to be a Member of the States if they are convicted of an offence for which they suffer a penalty of 6 months' imprisonment or more. So there you have a parallel situation. There has to be a judgment taken in any individual case if information comes to the attention of authorities as to whether what has come to the attention of the authorities is sufficiently serious to warrant a reference to the appropriate body with a view to disciplinary matters. That will be a matter of judgment in any individual case, no matter who we are referring to.

Deputy M. Tadier:

A final supplementary, Sir?

The Deputy Bailiff:

No, one moment, Deputy. One moment, please. Deputy Tadier, in your last question, in your question to the Deputy Chief Minister, you suggested that a former Attorney General who later became a Bailiff then subsequently a Senator had condoned in some way child abuse. That is what I understood the innuendo or the thrust of that part of the question. Did you mean to say that?

Deputy M. Tadier:

First of all, I think it is important to remember parliamentary privilege, that we have the right to speak openly and robustly, even though it may not be convenient for certain individuals to hear that. I think if we wait for Hansard to come out, I am quite sure that I also said: "One might argue and one might view that as" and that certainly is a very common opinion that I have heard from constituents and people that I have canvassed when I have been out and about in public. So I am willing to wait for Hansard to come out and if there are any sanctions that need to be taken against me for my freedom of speech, Sir, I am willing to face those consequences, but I am sure that I qualified my arguments and my comments in such a way that they were reasonable, Sir, and I stand by those.

The Deputy Bailiff:

I am not seeking to curtail your freedom of speech in any way. I am seeking to ensure that Standing Orders are respected. One of those Standing Orders are that you are not to impute improper motives directly or by innuendo to any Member of the States and I am simply seeking to establish whether you are making any comment yourself that Senator Bailhache - because rightly, that is to whom you were referring - was guilty of condoning child abuse.

Deputy M. Tadier:

If the Greffier is willing to take the Chair, and I will be willing to talk to an independent Chair who is free from any perception of conflict of interest, then I will be willing to discuss this issue further. But as it currently stands, Sir, I am not willing to engage further in this conversation.

The Deputy Bailiff:

Deputy Tadier, it is not a question of whether you are willing to engage. It is a question of whether you are prepared to deal with questions from the Chair about what you said. Now, the question is are you making any allegation that Senator Bailhache was condoning child abuse?

[10:45]

Deputy M. Tadier:

I think this is already in the public domain. I am simply reiterating what is in the public domain, Sir.

The Deputy Bailiff:

Are you making any allegation?

Deputy M. Tadier:

Allegation of what, Sir?

The Deputy Bailiff:

That Senator Bailhache was condoning child abuse.

Deputy M. Tadier:

Senator Bailhache was condoning child abuse...

The Deputy Bailiff:

Are you making any allegation?

Deputy M. Tadier:

I do not think I made that allegation, Sir.

The Deputy Bailiff:

So you are not?

Deputy M. Tadier:

I did not make that allegation, Sir.

The Deputy Bailiff:

So you are not making it?

Deputy M. Tadier:

I did not make that allegation, Sir.

The Deputy Bailiff:

Well, if you did not make it, then I think all Members and the public who are listening will take it that you do not make it because that is what it must mean. A final supplementary, Deputy Trevor Pitman.

3.7.5 Deputy T.M. Pitman:

I welcome Senator Farnham's question because it proves and demonstrates the fact I was going to highlight, that there is no real responsibility taken here and that has been the position for 14 years. So if I could just put it to the Deputy Chief Minister, the reality of why this should be a concern, and this is not just conjecture and innuendo, it is all in the Sharp Report. What I am worried about - and I hope he is - is that an individual was allowed to become a Jurat, having refused to look at video evidence of a colleague and friend abusing children and then writing to authorities to say there may be no case to answer and seeking that colleague be allowed to continue working at the school because that Jurat thought there would be no danger or problem, even though some of those children would be children who had been abused. He also asked if eventually that colleague could be allowed to resign with some dignity, because he had served the school so conscientiously. That is an outrageous situation, does the Minister not agree with me, and it should not be covered up.

The Deputy Bailiff:

Deputy Pitman that is not a question that arises out of your question, which is about changes to the Royal Court (Jersey) Law 1948 and not about the conduct of particular Jurats in the past.

Deputy T.M. Pitman:

I was trying, perhaps in my clumsy way, to say does he agree that that change must be urgently made so that that cannot happen again? I hope that is relevant.

The Deputy Bailiff:

Well, if that is the question, it was very clumsily put. Deputy Chief Minister.

Senator B.I. Le Marquand:

I certainly agree that there ought to be a proper disciplinary process for Judges, including Jurats, and that is a matter that clearly falls within Article 3. I certainly hope that that will be looked at seriously, notwithstanding the fact that Deputy Trevor Pitman is not intending to attend upon the committee as part of that review. But I think that it probably does not just extend to Jurats, it probably also extends to a need to review other judicial officers, and again, I am trying to avoid referring to any specific individual in this context. This is a matter of public confidence that if there are serious issues which warrant a disciplinary procedure that such a procedure take place as early, fairly and appropriately as possible.