

3.7 Deputy R.G. Le Hérissier of the Minister for Home Affairs regarding a Police Disciplinary Tribunal:

Given the verdict of the Police Disciplinary Tribunal, is the Minister satisfied that the police acted with complete authority in the matter of bugging a vehicle in the case *Re Curtis Warren*?

Senator B.I. Le Marquand (The Minister for Home Affairs):

I do not feel able to express an opinion at this time. Of course, there will shortly be further legal proceedings concerning Curtis Warren at which these issues may be raised. I would, however, refer the Members of this Assembly to the judgments of the Court of Appeal in Jersey dated 5th May 2010 and of the Privy Council dated 28th March 2011, which in my view would represent the definitive position on the facts.

3.7.1 Deputy R.G. Le Hérissier:

I wonder if, for ease of reference, the Minister could summarise those particular views or opinions which he has just cited.

Senator B.I. Le Marquand:

I have not prepared a detailed summary but it is quite apparent that there was very heavy criticism of the actions of police officers in relation to the way in which certain aspects of the matter were dealt with.

3.7.2 Deputy M.R. Higgins:

Can the Minister for Home Affairs confirm whether the bugging of the vehicle was in accordance with the Regulation of Investigatory Powers Act in that it was duly authorised and can he tell us who authorised the bugging of the car, not just the tracker, but the ability to record conversations?

Senator B.I. Le Marquand:

It is my understanding that all the actions that took place within this jurisdiction were lawful but the bugging of the vehicle in France, and it travelled to other countries, was unlawful in those countries and unauthorised.

3.7.3 Deputy M.R. Higgins:

How, then, can the officers be totally exonerated and perhaps the Law Officers' Department be totally exonerated if it was lawful in this country but it was unlawful doing it elsewhere?

Senator B.I. Le Marquand:

Although it may to a layman appear that there was a direct correlation, in reality these are different sets of procedures, different burdens of proof, different facts to be proved and different evidence available. If I may give to the Assembly an example which may surprise them, a parallel example; the fact that a person may be convicted of driving without due care and attention, which is a criminal matter requiring a higher burden of proof, is not evidence in itself in a civil case for negligence. It is different proceedings and what has happened here is we have gone through the procedure and it has come out with the result it has come out with.

Deputy M.R. Higgins:

If I may say so, that was a non-answer. It was not explanatory at all.

3.7.4 Deputy T.M. Pitman:

Obviously we want all our police and the Law Officers to be singing from the hymn sheet so in fairness to his officers, the Detective Chief Inspector, I believe, stated that the complaint about all this did arise from the Attorney General. The Attorney General has assured us - and I

completely accept his word - that it was not him. Could the Minister for Home Affairs just clarify that the officer in question is not misleading anyone and who did make this complaint?

Senator B.I. Le Marquand:

I am unusually grateful to Deputy Pitman for his question because it does give me an opportunity to clarify something which has been puzzling me. There appears to have been a mistake made by the Deputy Chief Officer, either in his understanding of the question or in the way in which he expressed the answer, which has given the impression that what he was saying was that the disciplinary proceedings were initiated by the Law Officers. The Attorney General is correct, that is not so, but what did happen was this. There were discussions with the Law Officers' Department at an earlier stage and the Law Officers' Department were of the opinion that there should be a general review of procedures. I have not looked at what the exact question asked was but it depends what the exact question was and what the understanding of the Deputy Chief Officer was. It is clear that they were of the opinion that a general review should take place. That was the first stage and if Members would care to look at the written answer which I have given to the question of Deputy Tadier today, they will see I explained the first stage, a general review. Subsequently, as a result of that general review, the matter then led on to a detailed investigation of potential criminal matters and of potential disciplinary matters. Subsequently it led on to disciplinary charges but the Law Officers had no involvement in those latter stages, simply in initial matters. So I do not know whether the Deputy Chief Officer misunderstood the question or whether he had a wrong understanding of it but the correct position is that there was some advice from the Law Officers initially in relation to there being a review but nothing subsequently.

3.7.5 Deputy T.M. Pitman:

I am grateful to know that I always help my colleague, the Minister for Home Affairs. Perhaps he will help me on this occasion. Can he just clarify for me, not being a lawyer, that what he is saying is that a complaint was somehow generated in a past Attorney General's term of office and it sort of mushroomed? It all became part of a general review. It was not a complaint by anyone. Is that what he is saying?

[10:15]

Senator B.I. Le Marquand:

I think that is my understanding. Clearly, from the judgments, which had already occurred, of the Court of Appeal, there was very heavy criticism of certain officers in relation to this matter. There was going to be subsequently a judgment from the Privy Council in which there was a significant risk that that criticism would be repeated. There was even a risk that indeed the entire convictions might be overturned at that point and a decision was then made by the Chief Officer of Police to proceed with there being a review and if the review threw up things then to go on to other stages. The decision to start with the review was also in accordance with advice received.

3.7.6 Deputy M. Tadier:

Does the Minister agree that there is a perception in the minds of many of a perceived contradiction where on the one hand the Privy Council has allocated misconduct to the police officers and to at least one of the Law Officers and on the other hand we have, at the moment, the secret Police Disciplinary Tribunal, the findings of which have not been released apart from the fact to say that they have been cleared. Does the Minister acknowledge that there is an apparent contradiction?

Senator B.I. Le Marquand:

I think that is what was puzzling people but from my perception, realising these different procedures on different days, it is perfectly possible for them to have different outcomes. That is

not surprising to a lawyer. Can I just, if I may, comment on the issue of secret proceedings? In a later answer that I will be giving to another question, I will be pointing out that it was conducted in accordance with law and it is a requirement of the law at the moment that such hearings are conducted in private so there is nothing sinister about that whatsoever. It is the law.

3.7.7 Deputy M. Tadier:

I am not inferring that there is anything sinister, simply that it is not verifiable but hopefully at some point the findings will become public when it has all died down. Does the Minister think that perhaps the reason for the apparent difference in the verdict is that at the Privy Council hearing, the States of Jersey Police were not represented and that it was a case of Curtis Warren versus the Attorney General? It was not a case of Curtis Warren versus the Attorney General and the States of Jersey Police. Therefore the police had no say in what was presented to the Privy Council, had no way to put their side of the story whereas at the disciplinary hearing in Jersey, there was a chance for them to put their side of the story and therefore defend themselves. Is that the reason for the actual difference in verdict?

Senator B.I. Le Marquand:

That could be part of the reason. It is very unusual for evidence to be heard at any stage of the proceedings beyond the trial. It is sometimes heard before the Court of Appeal with special leave but it is virtually unheard of at the Privy Council but there are different burdens of proof involved. I am not sure in my own mind what the burden of proof would have been in relation to these issues in the original trial. I am not saying there is now because I am not sure, I have not researched it, but sometimes there is a situation where the burden of proof lies upon the prosecution to prove things beyond reasonable doubt and that sometimes goes to disproving allegations of misconduct and things of that nature. I do not know what the burden of proof was in this case but that is why I said different proceedings, different occasion or different evidence perhaps.

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

The Minister failed to answer Deputy Higgins' question. I will pose it again. Who authorised the bugging of the vehicles in this and other jurisdictions?

Senator B.I. Le Marquand:

I think there was an authorisation for bugging of vehicles in Jersey but it never happened so that is irrelevant. There was no authorisation other than by police officers according to the judgments in relation to the bugging of the vehicles outside but those would not be governed by our law but by foreign law because they are outside the jurisdiction.

3.7.9 Deputy M.R. Higgins:

Is it possible to seek clarification of that because ...

The Bailiff:

I am sorry, Deputy, it was Deputy Maçon's question and I think you have already asked a question and I have the Constable of St. John next. Deputy Maçon, do you wish a supplementary?

Deputy J.M. Maçon:

I will defer to Deputy Higgins.

The Bailiff:

No, you will not. [Laughter]

3.7.10 The Connétable of St. John:

Who instigated the investigation into the police officers? We know it was not the Attorney General so who instigated this inquiry into the behaviour of the police officers?

Senator B.I. Le Marquand:

This may be where the issue lies because the Connétable has just used the word “inquiry”. If we are talking about the initial review of procedures and so on, it was of course the Chief Officer of Police but he also received advice to that effect from the Law Officers. That is the initial stage that I am talking about.

3.7.11 The Connétable of St. John:

Therefore, if that was the case, when the inquiry was eventually held - or the investigation - it was done from off-Island, would it not have been better, Minister, that an independent group of people carry out the inquiry than another police force?

Senator B.I. Le Marquand:

I am not sure I have understood the question. The normal practice in relation to any police matter where there is involvement of an officer beyond a certain seniority is that it be conducted by a police force from off the Island. What happened here started with the review of matters. It then led to an investigation for potential criminal matters or for disciplinary matters. I am not sure if I have understood the question.

The Connétable of St. John:

Can I come back in? Yes, would it not have been better if the police authority had been involved in any inquiry so that it could be seen as being totally impartial?

Senator B.I. Le Marquand:

The Police Complaints Authority did get involved in relation to this matter at a certain stage in the process. Indeed, I have discussed the matter and what happened at the hearing with the Chairman of the Police Complaints Authority but it is normal for investigations to be done by police officers from forces outside. Indeed, as I have said before, the outcome of that investigation was a recommendation for disciplinary matters.

The Connétable of St. John:

I will put it in a written question, thank you.

Deputy T.M. Pitman:

Sorry, Sir, could I just seek your guidance? The Minister speaks very quietly. Could you just tell me did he say when Deputy Higgins tried to intervene that effectively no one authorised this?

The Bailiff:

I am sorry, you cannot have another question, Deputy.

Deputy T.M. Pitman:

We cannot hear, Sir, that is what I am saying. I do not want another question. I just could not hear.

The Bailiff:

I see, all right. You will have to speak up, Minister.

Senator B.I. Le Marquand:

I apologise. Deputy Higgins has his own question. I have also got questions without notice so there should be plenty of time for further review of this matter.

3.7.12 Deputy R.G. Le Hérisier:

In order that there be no lingering doubts which the officers will have to deal with, can the Minister assure us that having ultimate political responsibility for the police and having now undergone this inquiry having been cleared, that he is now satisfied that they acted with complete authority?

Senator B.I. Le Marquand:

We are back to where we started. I am not prepared to because of the fact that there are further proceedings pending. I am not prepared to express a view outside of what was said in the judgments of the senior courts.