STATES OF JERSEY

REFERENDUM ON STATES REFORM: OUTCOME

Lodged au Greffe on 6th June 2013
by Senator B.I. Le Marquand

STATES GREFFE

PROPOSITION

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

(a) to agree that the outcome of the Referendum on States Reform held on 24th April 2013 does not provide a sufficiently clear mandate for change to Option B (namely a revised structure of 12 Connétables and 30 Deputies elected in 6 new large electoral districts); and

(b) to request the Privileges and Procedures Committee to seek alternatives for reform of the Assembly.

SENATOR B.I. LE MARQUAND

REPORT

Summary

This proposition is intended to be debated only if P.64/2013 fails to achieve the necessary support of an absolute majority of Members (26 Members).

The Privileges and Procedures Committee has now lodged Proposition P.64/2013 which, amongst other things, seeks to bring the reform proposals contained in Option B into effect. There is certainly opposition in the Assembly to the Option B proposals, and in my view I consider it likely that P.64/2013 will fail to achieve the necessary support of an absolute majority of Members (26 Members). If that occurs, then I believe that this proposition will provide a helpful way forward.

The purposes of the Proposition are –

(1) firstly, to enable Members to consider whether or not, as a principle, the results of the recent Referendum are a sufficient mandate to make significant, permanent, structural changes to the Constitution of the States of Jersey; and

(2) secondly, to request the Privileges and Procedures Committee to seek alternatives for reform of the Assembly.

Introduction

I am seeking to obtain a decision from the States Assembly in the terms of the proposition. I do so, firstly, in order to clarify both in the minds of the Members of the Assembly and in the minds of the general public, the important issue as to whether the referendum has provided a mandate for Option B.

I am aware that some Members of the Assembly have been arguing and will continue to argue that such a mandate now exists. If that were so then that would clearly be a matter to which the Members of the States Assembly would wish to give significant weight.

However, if, as I now assert, no such mandate exists, then that is also a matter to which significant weight should be given.

This proposition should not lead to a debate about the merits or demerits of different packages of change proposals, because it will only be proposed following the failure of P.64/2013 to achieve the necessary support of an absolute majority, and the merits or demerits of different change proposals will already have been fully debated.

Background

On 17th April 2013, the States Assembly debated P.39/2013 and the amendment thereto, which were attempts, in advance of the Referendum vote, to determine the percentage of the electorate who would be required to vote if the Referendum vote were to be acted upon. The main proposition sought to set a figure of 40% and the Amendment a figure of 51%.

I was unable to support either the Proposition or the Amendment for a number of reasons, as follows –

(a) Because the proposition and amendment by implication gave the Referendum a more Binding Status then was intended when the original Referendum proposition was agreed by the States Assembly (it having been generally agreed that the Referendum was advisory and not binding).

(b) Because it was possible with a lower turnout than 40% to have some idea of what the electorate were saying. The clarity of that picture was always going to be obscured once the States had made a decision not to allow a fourth category, Option D (None of the Above). Indeed, I warned the Assembly at the time of the Referendum debate that there would always be a high level of uncertainty as to how many people had not voted because they wanted to vote Option D but this was not available to them. If, for example, there had been a turnout of 35% and more than 60% had voted for Option A or Option B on the first ballot, then that would have given a reasonably clear picture.

(c) Because, in my view, even though I was unhappy with the structure of the original form of the Referendum, once this decision had been taken, it appeared to me that the Members of the States had a duty to those who had voted to try as far as possible to make as much sense as they could of the outcome.

Therefore, I believe that it will be very helpful, both to the electorate and to the Members of the Assembly, that we demonstrate that we are treating the electorate with respect by seeking to make what sense we can of the outcome of the Referendum. I say here 'the electorate' because we also have a duty to respect the views of those who would have voted Option D if it had existed, and of those who were so confused by the whole process that they did not vote at all.

My perspective

I therefore now offer my perspective on this. What can we deduce from the results?

My personal view is that I believe that the following deductions can be made –

(a) That the majority of the electorate who voted wanted to see change. The combination of the Option A and Option B votes point in that direction, and if Option D had existed, in my view, it would have supported that. Indeed, although supporting Option C, I and many others were clearly indicating that they wanted Option D and were only supporting Option C because they did not like either Option A or Option B.

(b) That the majority of the electorate who voted wanted to see a reduction in the size of the States Assembly. It is unfortunate that there was no size option available between 42 and 49. The combination of Option A and Option B preferred 42 to 49, but we do not know what would have happened if there had been an option with 43, 44 or 45.

(c) That the majority of the electorate who voted wanted to retain the Connétables as Members of the States Assembly. Although the difficulty of the absence of Option D remains, I believe that the picture here is reasonably clear. I am of the opinion that the vast majority of those who voted C wanted to retain the Connétables in the States. The vast majority of those who gave a second option gave Option B as their second choice, as opposed to Option A as their second choice. In addition to that, of the Option C voters who did not express a second preference (and I am amongst these), I am confident that far more of these would want to keep the Connétables in the States then would not want this.

These are, of course, my own deductions, and individual members of the States Assembly and members of the public will have drawn their own deductions from these results. Some Members of this Assembly may have drawn conclusions in relation to the role of Senator, and some may have drawn conclusions about a move away from small constituencies (apart from for the Connétables), and some members of the public probably feel that with a low turnout that absolutely nothing can be deduced at all.

I do not seek, through this debate, to achieve a verdict on all or any of these issues.

However, I do consider it appropriate to for this Assembly to consider whether a sufficient mandate exists for implementing Option B.

The case against the existence of a mandate for Option B

The case for the existence of a mandate existing for Option B is, in my view, very weak indeed. It is based simply upon the assertion that Option B won the referendum. In the sense of the second round of the ballot with the Option C votes disappearing unless a second preference were exercised, that is so. However, the whole referendum process was set up in order to produce a winner. In a previous debate I spoke about it being set up in order to give the impression that there was a majority for a particular view, even if no such majority existed.

As the summer Grand Slam tennis season is now here, I will draw an analogy with the semi-finals at Wimbledon. Normally, in the semi-finals there will be 4 players left, Option A, Option B, Option C and Option D. Unfortunately, in this case, Option D was disqualified by the Tournament Management Committee, so we only have 3 semi-finalists. So they played a 'Round Robin' tournament against each other of 2 sets per match. A and B drew one set each, and A and B both beat C by 2 sets to nil. So A and B advance to the final, where B beats A. So B is the winner of the tournament. This works quite well in terms of a tennis tournament, but what does this mean in terms of a mandate? What if the A supporters and the C supporters and the D supporters (whose player was not even allowed to compete) still do not want B to win?

Now I shall attempt some analysis of the figures which are in my view rather telling.

Here are the figures for the percentage of the registered electorate who voted for each option in the first round, ignoring spoilt papers.

TOTAL NUMBER OF VOTES: 16,624 OUT OF AN ELECTORATE OF 63,945

OPTION A	6,581 =	39.59% of 26.0% =	10.29%
OPTION B	6,804 =	40.93% of 26.0% =	10.64%
OPTION C	3,239 =	19.48% of 26.0% =	5.07%

Option B obtained 40.93% of 26.0% = 10.64% of the registered electorate. That is approximately 2 electors out of every 19.

Here are the figures for the second round, ignoring spoilt papers.

OPTION A	6,707 =	40.35% of 26.0% =	10.49%
OPTION B	8,190 =	49.27% of 26.0% =	12.81%

The missing 10.38% of those who voted, or 2.7% of the electorate, is made up from the Option C voters who did not give a second preference.

Even if the Option C voters' second options are given to B, that only comes to about 12.81% of the registered electorate. In my earlier analysis, I argue that the split between the transfers of Option C votes to Option B votes is so great that it can only be explained by a desire on the part of the Option C voters to keep the Connétables in the States even if C finished in third place. I am bound to ask the question as to the extent to which the transferred C vote can be seen as anything else than support for the Connétables. If it were nothing other than support for the Connétables, then the Option B vote would remain at 10.64%, but if half the C vote transfers can be properly treated as some kind of support for Option B vote, then that would leave the Option B vote on 11.73%, which is about 2 electors in 17.

I turn now to the percentages of votes cast. In so doing I am completely eliminating the supporters of Option D. It seems to me that those who are arguing in favour of a mandate are really saying that they do not count because their candidate has been disqualified. But they still exist.

The Members of the States Assembly will ignore them at their peril. They are already unhappy with the whole process and many of them will feel completely cheated by the process if we now act as if they do not exist. In addition, I am ignoring those who did not, for whatever reason, vote.

But even if we make the bold double assumption that neither the Option D voters nor those who did not vote should be considered, then what is the effect of the referendum result. In the first round of the ballot, B gets 40.93%. That is more than 9% below 50%. To put it another way, 59.07 % of those who voted did not vote for B in the first round.

What about the second round. Now, of course, in order to achieve a winner in the second round another group, namely those who do not transfer their vote, has to disappear. We, because I am one of them, now join the Option D supporters and those who did not vote by being consigned to oblivion. We cease to exist. But we do still exist. We are still alive and well and many of us are still living within the Assembly.

I have already argued that the Option C transfer votes should not be transferred across to Option B for the purposes of determining a mandate. But even if they are, then with the Option C non-transfer votes still in existence, Option B still does not get to 50% of the total votes cast. It gets close, but stops at 49.27 % of the 26% who voted, which is 12.81% of the registered electorate.

In my view, the most that can be said for Option B is that it won a sporting contest. I know that this will disappoint the B supporters, but there simply is no mandate for this particular package of change. Which means, at the end of the day, that it will be down to the Members of this Assembly to decide the way forward if P.64/2013 (which embodies the Option B package of change) fails to obtain the necessary absolute majority.

The way forward

If P.64/2013 obtains an absolute majority, then this Proposition will fall away. However, my concern is that, if we are not careful, the whole reform process within the life of the present Assembly may fail. It could fail in 2 different ways as follows –

(i) One way would be if the supporters of Option B were to refuse to accept that there is no mandate for it and were to continue to present it to the States. They might particularly be tempted to do this if P.64/2013 won the vote without obtaining the necessary absolute majority of 26 Members.

(ii) Another way would be if the Privileges and Procedures Committee were to become so discouraged that they simply gave up on electoral reform during the life of this Assembly. I accept that that possibility is less likely.

It is my view that if P.64/2013 fails to achieve the absolute majority, then that Committee should seek to consult with the Members of this Assembly in order to seek to achieve a compromise solution which is acceptable to an absolute majority. That approach is fully consistent with the kind of consensus politics which used to be a major feature of this Assembly, and which I believe that the general public would prefer to see, particularly in relation to a matter such as this.

Financial and manpower implications

There are no financial or manpower implications arising from this proposition.