

20.11.30

8 Connétable K. Shenton-Stone of St. Martin of the Chair of the Privileges and Procedures Committee regarding new voting system for elections (OQ.347/2020):

Will the Chair state the minimum amount of time needed for the States Assembly to approve and install a new voting system for elections in Jersey in time for the 2022 general election; and will he set out, with reference to the allocated campaign periods and estimated cost, a possible timeline for organising and holding a referendum on electoral reform in 2021, should Amendment 4 to P.139/2020 be adopted?

Deputy R. Labey of St. Helier (Chair, Privileges and Procedures Committee):

P.P.C. (Privileges and Procedures Committee) is working within Venice Commission guidelines to have any changes to the composition and election of the States approved at least 12 months prior to the next election. P.139, if adopted this week, well we can make that timeframe, as we can, with changes to the Public Elections Law legislation to address the recommendations of the E.O.M. (Election Observation Mission) if we stay on track to lodge very early in the new year. If a referendum is approved in principle, it should then be referred to the commission to consider the referendum question. Based on previous experience, the commission would need at least 3 months to consider a suitable question, test it in focus groups and make recommendations to P.P.C. which could then be published in a report to the States Assembly. That takes us to March/April 2021 at the earliest. P.P.C. could then lodge in April or May a Referendum Act which may be debated after 3 weeks. If the Act is debated May/June, a referendum cannot take place until at least 3 months later which is September. If any amendments change the question, the further views of the commission would be sought and this could delay further. During that minimum period, the commission would aim to recruit and appoint lead campaign groups and ensure the dissemination of suitable public information. As they have not carried out these last stages before, it is not certain how long it would take to advertise, to select and appoint lead campaign groups, so we cannot be sure if everything could be completed by September. It might be safer to say October 2021. On costs, I see the Constable of Grouville quotes a cost of running a standalone referendum on his amendment as an estimate of £70,000. I have not seen the breakdown of that but if it does not include the cost of focus groups and the possibility of publicly funding the lead campaigns, it could rise.

3.8.1 The Connétable of St. Martin:

What is the minimum timeframe in which States Members can bring further amendments to the voting or electoral system in time for the 2022 election?

Deputy R. Labey:

Further amendments? I am not quite sure of the question. States Members would have to bring a proposition for it to be amended.

The Connétable of St. Martin:

Yes, sorry.

Deputy R. Labey:

So if the Constable is asking me if P.139 is not approved, I would say possibly January or February would be a cut-off point. It is difficult because it is about how long the law drafting takes for then the legislation to come back to the Assembly to be approved, so I think beyond February would be highly dodgy, highly unlikely.

3.8.2 Deputy M. Tadier of St. Brelade:

Could I ask the Chair if he thinks that there is merit if the referendum is passed in asking the Parishes to contribute to or to pay for the entirety of the costs of the referendum?

Deputy R. Labey:

I cannot begin to consider that just off the bat like that, I would need to look at it.

3.8.3 Senator S.Y. Mézec:

Would the Chair like to comment on the question of value for money of a referendum being held when there was one in 2013 where the overwhelming majority of the public voted for change and the winning option itself was one which very, very closely resembled P.139 anyway? Would he not consider that to be rather a repetition of an exercise that has already taken place?

Deputy R. Labey:

Yes, I think it would be a ridiculous repetition and a pointless waste of money. The Assembly needs to face facts. When it decided not to implement the result of the 2013 referendum, it basically said: "We are taking the responsibility on to sort this mess out." Now, if we cannot do that and we have to go running back to the people with a referendum, as I repeat, I think that would be frankly ridiculous and we would be laughed out of court. It would damage the reputation of the Assembly and further reduce the esteem in which we are held.

3.8.4 Senator L.J. Farnham:

Does the Chair - I am not sure if he can speak on behalf of the whole Privileges and Procedures Committee - think it is important prior to making significant changes to the democratic rights of all Islanders through electoral reform that the Islanders are given an opportunity to give their consent to any such change, for example, the removal of the Isle of Wight mandate?

Deputy R. Labey:

No, I do not believe that to be the case. The introduction of the Island-wide mandate was not via a referendum, nor was the removal of the rector and the jurats, nor was the reduction in the number of Senators. We have had a referendum and the result was unequivocal: 80 per cent of those who voted in that referendum voted for option A or option B which represented change, a reduction in the 3-tier system. So only 20 per cent voted for the status quo which might be interpreted as a "save the Senators" vote. We have had the referendum. What is before the Assembly now with P.139 is effectively option B but we think it is slightly better, 9 districts not 6, and there are amendments which look very much like option A and there is one that looks very much like the Clothier report. But, no, I think it is time for the Assembly to take responsibility, show leadership, which the Chief Minister has been accused of not showing recently in the vote of no confidence debate. Taking responsibility means taking leadership and then going to the electorate with an election. If they do not like the decisions we have made, they can chuck us out, that is democracy, but let us get on with this job, let us take responsibility.

3.8.5 Senator L.J. Farnham:

I think the answer to the question was, no, the public should not be consulted, but does he not agree that if an amendment to the proposition next week which calls for a referendum - of course any referendum result would have to be binding for the States to retain any credibility whatsoever - should have a more simplified format? A yes/no is far better than the attempt that was made last time; not only did we get a very poor turnout but I believe more people voted for options B and C I

think than ultimately A, I cannot remember if I have got that right, so the format used in the last referendum was flawed because the winner was the option that received fewer votes than the other 2 options.

The Deputy Bailiff:

Do you want to come to a question, please, Senator?

Senator L.J. Farnham:

Sorry, I thought I had made the question. Does the Chair agree that any referendum should not follow the format used in the last referendum which was flawed?

Deputy R. Labey:

Well I think that the answer to my last question was not that the public should be consulted but that the public has been consulted and the result was unequivocal, 80 per cent voted for change, voted for larger constituencies of the same size and of course there was the issue of whether the Constables were in by automatic right or not, and that is the one that came out on top. But if you just look at those figures, they are very consistent throughout the 12 Parishes in their voting, which means that it was not a flawed referendum. It was clearly easily understood by the voting public because their pattern of voting was very, very similar. There was no erraticism, it was nothing erratic, which leads me on to believe that they did understand, they did comprehend, they were not hoodwinked. We have to face that fact and not try to call into question now the result of that referendum as if the public were somehow not cognisant or not able to understand it. No, what they were saying to the Assembly was very, very clear and it is this: we want change and the Assembly has to deliver change. That is what we should do.

3.8.6 Deputy G.J. Truscott:

Regarding timing for the referendum, could the chair indicate when the election in 2022 is likely to be? Are we looking at a spring or autumn election?

Deputy R. Labey:

I thank the Deputy for his question. P.P.C. have floated, first of all with the Comité des Connétables, the notion of an election in 2022 on 22nd June. This is because we want to clear Liberation Day before nominations start and certainly before the electioneering starts, the weeks of the election. We thought we could get it in, nominations start after Liberation Day has happened, because we do not want to be on parade on Liberation Day as candidates in an election. It is quite wrong and quite unfair to the others who are not and we think we can get it in by 22nd June. We want to obviously speak to the Council of Ministers about that and I want to float that with the membership of the Assembly as a whole to see what Members think about that. That is our plan A at the moment.

3.8.7 Connétable R.A. Buchanan of St. Ouen:

I just wondered whether the Deputy has looked at the Guernsey model of the referendum which gave them the outcome that they have now, which was essentially a descending scale of options and the outcome being binding upon the Guernsey Assembly and whether he saw any merit in that.

Deputy R. Labey:

I do not because I believe that we have had a referendum, we did not implement it and I think the electorate would laugh us out of court if we went back to them, especially with the same question

which is effectively option B. The Constable may say that it was binding on the States of Guernsey, I am not sure you can ever bind a Parliament to enact a plebiscite.

[16:00]

I think a Parliament always is sovereign and I am not sure that legally it can be bound.

3.8.8 The Connétable of St. Ouen:

It was certainly my understanding of reading the Guernsey regulations that it was binding on them and they passed that as an Act of their Assembly before the referendum took place. Does he feel that having a binding referendum would give it more credibility?

Deputy R. Labey:

I do not think anything will give a referendum in Jersey credibility until the States has done what it said it would do in refusing the result of the referendum, and that is to sort the mess out and deliver change themselves. That is what we are charged with doing and that is what I think we should do. I think the referendum is taking us down a wrong-way street.

3.8.9 Connétable J.E. Le Maistre of Grouville:

Would the Chair concede that many outside observers, and indeed observers locally, think that because it was not a binary question it is not valid? Secondly, is he also aware that if you analyse the results of that very low turnout referendum that more people that voted on that day did not choose, or there were more people who voted on that day who did not want, number B either as a first or second choice? In other words, there were many people who did not give a second choice because they did not want the item B.

Deputy R. Labey:

I would have to look at the figures but I do not think the Constable is right on that. I think the referendum, as I have said before, because of the pattern of voting that was followed by so many of the Parishes, in fact, 10 out of 12 it was a very, very similar pattern, and I think with, was it St. Helier and St. Brelade, A came out on top in the first vote. So, I think from that we can conclude that the public knew what it was doing and knew what wishes it was expressing for the Assembly to follow. They are very, very clear; 80 per cent of those who voted, voted for a change to the status quo.

3.8.10 The Connétable of Grouville:

The question is: would the Chair not concede that although he says 80 per cent voted for change, there were 2 almost equal groups voting for very different change?

Deputy R. Labey:

It was not very different change. The district representatives were arranged to be elected by 6 districts of equal size. That was the Electoral Commission's attempt at achieving voter equity and voter equality across the Island which we do not have and which we must strive to implement as quickly as we can. The big difference between A and B was retaining the Constables' automatic right or not, and I think that was perfectly understandable. So most people, 80 per cent of people, as I repeat, very clearly voted for something that was a change to what exists now, a change to the status quo. There were 3 good campaigns and there was a lot of coverage and the voting patterns show that the public knew how they were voting and what they expressed.

3.8.11 Senator J.A.N. Le Fondré:

I am glad the Deputy, who I have a great deal of respect for, corrected his words in the last question because originally at one point he said that 80 per cent of the public voted for change. Obviously it was 80 per cent of the public voting who voted for change; that is quite different. I think I would like to ask him to address again his recollection and his use of the word “unequivocal” because my recollection is exactly the same as Senator Farnham’s and the Connétable of Grouville’s that with the difficulty it was not a binary choice that the majority of people voting did not vote for the winning option, and that was why the result was rejected by the Assembly. So it falls into 2 questions (a) why is he using the word “unequivocal” when obviously it was equivocal because that is why the Assembly did not support it and (b) what was the voter turnout during that referendum? Could he remind us?

Deputy R. Labey:

Well there were a lot of questions in there. Let us be clear, the Assembly did not accept the result of the referendum and implement option B because it was unpalatable to Members of the Assembly of the day. They could not implement it because they did not like it and they did not want it. The shame was that they allowed that question to go to referendum, they did not sort that out before it went to referendum and say: “Look, if this is going to pass, I am not having any of it.” No, they let it go to a referendum, they did not like the result, they would not implement the result for whatever reasons they had. But no one at the time was saying that the referendum in some way was flawed and I think it is interesting now. We can see what is happening, can we not? We can see what is happening with the position of Senator Le Fondré and Senator Farnham, perhaps the Constable of Grouville, I am not quite sure, that they want to discredit the referendum result because they do not like the result but it is the best piece of evidence that we have. It might have only been 23 per cent of the population but it is the 23 per cent of the population that made the effort to come out and vote. We know the reason why many of the other members of our electorates will not come out to vote is because they have given up on us. They have given up hope, as far as the States Assembly is concerned, because we are not putting our own House in order, giving them a simpler system, giving them votes across the Island that carry the same weight and power as somebody with a different postcode. We are not listening to the advice of electoral commissions or distinguished panels or the election observers now. It has got to stop and what P.P.C. has proposed now, P.139, represents a big, honest, significant compromise. It is an adjustment of option B to give 9 districts, not 6, so we are keeping things more local. I just hope that Members will see through all this smoke and mirrors and go straight to the heart of the matter, which is whenever we ask the public what they think of our system, they always say loud and clear, as they did in that referendum: “We went change.”

The Deputy Bailiff:

Now, we should not forget that there are other questions to get through before the 2-hour limit expires. It would be a pity not to get the chance to come to the end of those questions because of course the matters that this question is focusing on will be the subject of extensive debate later on this week.

Deputy M.R. Higgins:

I am going to withdraw my question because I think it would be adding fuel to the fire and I think it is better we get to the debate tomorrow.

3.8.12 The Connétable of St. Martin:

Several years have passed since the referendum and life has changed substantially since then and it has been mentioned this afternoon by Senator Mézec, and briefly by the Chair, that having a

referendum is just a repetition of the last referendum and not worth holding. Would the Chair not agree that the forthcoming debate is a repetition of the debate that we held earlier this year but that that debate did not give the answer that was sought?

Deputy R. Labey:

Yes, and after that debate, P.126, the Constable of St. Martin and the Constable of St. Ouen, who I sit very close to, were very kind to me in terms of the argument that I put forward for that, P.126. I asked them of course, P.7 was then due to be debated but was withdrawn by Senator Gorst, and I asked both of them how they felt about then debating P.7. Both of them gave me positive noises that they might have looked upon P.7 positively and voted for it. So that is why I have brought that back, I have accepted the compromises that we have to make, P.P.C. have adjusted P.7 to make it a little bit more generous I think in the allocation of the district representatives. I wanted to bring that back to the Assembly at the earliest opportunity because I honestly believe if Members will make the compromises on their red lines, as P.P.C. have done, and I mean this honestly, that we can find P.39 acceptable. I think the public of the Island will find it acceptable because it chimes with what they said in 2013 with the referendum. It would be a significant step forward. It would simplify our overly-complex system and I think it would set us in very, very good stead. I just ask Members to give it their best thought with an open mind in the next few days.