

STATES OF JERSEY



BAILIFF OF JERSEY: INVESTIGATION INTO DUAL ROLE

**Lodged au Greffe on 20th March 2008
by Deputy P.V.F. Le Claire of St. Helier**

STATES GREFFE

PROPOSITION

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

- (a) to agree that the advantages and disadvantages of ending the current dual roles of the Bailiff and Deputy Bailiff as members of both the Legislature and the Judiciary should be investigated; and
- (b) to request the Chief Minister, in consultation with the Privileges and Procedures Committee and others as appropriate, to report to the States on the constitutional and practical consequences of any such change to enable the States to hold an informed ‘in Committee’ discussion on this matter before any recommendations for change are brought forward for debate at the earliest opportunity but no longer than 6 months from agreeing to do so.

DEPUTY P.V.F. LE CLAIRE OF ST. HELIER

REPORT

I would ask members to consider the value of an 'in Committee' debate on this issue with full knowledge and background reports of the issues involved, prior to there being agreed a date for a debate on the removal of the posts by an elected member, that may ask our approval for a debate on this prior to that knowledge being collated and widely disseminated.

I would like the States to decide whether or not they believe that the time has come for there to be a separation of the dual roles of the Bailiff and Deputy Bailiff as President and un-elected Speaker of the States and as the most senior members of the Judiciary, or whether they are content to remain with the status quo.

What are the alternatives?

There is, of course, probably no end to alternatives, but some international examination on the comparative jurisdictions within a democratic framework can be easily undertaken I am sure.

It might be that in the future one alternative would be that the President and Speaker of the States of Jersey would be distinct, in that the President may be an elected member such as the Chief Minister, and the Speaker could be the Greffier of the States; but that all follows the initial principle being agreed.

It might be possible that, in the future a separate system will have consequences in recruitment for the posts and the financing of them also, and these need to be understood as well.

What is absolutely certain is that there have been repeated concerns about the need for States members to understand the constitutional implications prior to making any decision on change.

What are the issues?

Is a Bailiwick without a Bailiff still a Bailiwick? Is our position as a Crown Dependency peculiar due to the Crown appointments? Do the Crown appointments give the U.K. any hold over our jurisdiction that might bar any further progressions in establishing our own unique identity?

It is obvious that these questions and many more need to be answered prior to any decision being made, as we would not want to cause a crisis in the Presidency of the States or the Courts.

What are the dual roles?

It is important to note that the Bailiff has three clear and distinct roles and functions within the community which need to be better understood in terms of replacing or changing these. In practice these three areas are –

1. The States.
2. The Courts.
3. The Civic Duties.

All of these and any others not here identified need to be better understood, in particular by States members, as it is no longer satisfactory that the issue is just dismissed out of hand whenever it is raised, due to the call for the need to be cognizant of the so called "far-reaching constitutional implications."

Some of these may be far-reaching and some will certainly not be, as with, for example, issuing entertainment licences and governing the States at Question Time.

Issues which relate to our constitution need by definition to be well understood by our community, and more importantly agreeable to our community.

The U.S.A. have for hundreds of years put great store in their Constitution and make it a point of education for students and immigrants: we should do the same. At this time it is not possible to explain them and it has never

been an option to agree with them or not because they are not known by the Public generally. If they were, then it might be possible to go on the States websites and download all the issues as they are.

In the future it may be possible that the President and Speaker may be elected from within the community by the States members themselves. It might also be possible for the Chief Justice to continue to be an appointment of the Crown.

Whether or not final legislation or decisions are made of this kind is a matter for further debate and consideration. In proposing we debate the principle at least then we have done that, if nothing else.

I would like to make it known, for the record, that this proposal has not been tabled as a criticism of the current post-holders of the Presidency of the States – the Bailiff of Jersey, Sir Philip Bailhache, or the Deputy Bailiff, Michael Birt, for whom I have the highest regard, as I am sure members agree.

This debate will engage us, no doubt in some large degree, with the intricacies of law and the application and practicalities of such a change.

I do not therefore intend to draw up an extensive report at this stage; but request that the Chief Minister and Privileges and Procedures Committee, having enquired and researched the issues with the manpower and resources available to them, submit a paper without delay on what is already known, or make a statement in the house as to its intentions in this regard.

Given this approach, I will submit a further question to the Chief Minister and the President of PPC in this regard without delay so that we will be in a position to know their intentions in this regard.

The questions as approved with their answers are tabled below. As members can see, the PPC, although having been questioned about this during several constitutional debates by myself and others in debates far preceding these events, had actually done and have continued to choose to do nothing.

Their answer is what one would expect, it is the usual one that prevents debate even in principle upon these matters.

In my view it is time we knew what the “far-reaching constitutional consequences” are.

I hope members agree that an in Committee debate will enable us to know.

The meeting that has been postponed now on a number of occasions for a briefing has not, understandably, happened yet. I was instrumental in calling for this and I hope that it will be possible for us to have it before much more delay.

“TUESDAY, 29th JANUARY 2008

1.4 DEPUTY P.V.F. LE CLAIRE OF ST. HELIER OF THE CHAIRMAN OF THE PRIVILEGES AND PROCEDURES COMMITTEE REGARDING A MACHINERY OF GOVERNMENT REVIEW OF NON-ELECTED MEMBERS:

Question

Does the Privileges and Procedures Committee plan to begin a consultation process regarding the Review of the Machinery of Government in relation to the non-elected members of the States?

Answer

The recent review of the machinery of government reforms, on which the Privileges and Procedures

Committee has already reported (R.105/2007 refers), had detailed terms of reference and looked at the changes that had already been made. The Committee is currently consulting on the recommendations made.

The review into the composition and election of the States Assembly was a separate piece of work, and the Committee was disappointed that following lengthy consideration, no changes have been made in relation to the composition and election of elected members.

The Committee has no plans to review the role of non-elected members in the Assembly. Any review of non-elected representatives would have far-reaching constitutional consequences and would not be a matter for the Committee alone.”

Financial and manpower implications

The immediate reports to undertake the outline of work necessary are, I believe, within the budget abilities of the States. I believe that it may be necessary for extra manpower to be used in drawing up the reports, but I am not privileged to know them at this time or the desire or otherwise of the Chief Minister and Privileges and Procedures Committee to address them at this time. I am informed that a lot of reports and work on this subject have already been tabled with Policy and Resources and its successor the Council of Ministers. It is time we all saw them.