



Scrutiny Office

Lord Carswell
Chairman
Review of the Rôles of the Crown Officers
Highland's College
St. Saviour
JE4 9QA

Our Ref: 499/3(22)

23rd March 2010

Dear Lord Carswell,

Further to our letter of 9th February 2010 to you in respect of the review into the rôles of the Crown Officers, the Chairmen's Committee has now requested all Scrutiny Panels and the Public Accounts Committee for their views on this and received responses. These were considered at the Committee meeting of 18th March 2010.

The points made were as follows:-

1. Corporate Services Scrutiny Panel:-

In recent years, there has been an increasing attempt to impose United Kingdom frameworks on Government in Jersey (e.g. Clothier). The Panel accepts that reviews are a useful tool in ensuring and maintaining the suitability and practicality of any public office or rôle. However, there is concern that posts such as the Crown Officers represent more than simply a function of government. Perhaps as significant as the important rôles of these high-ranking public offices, are the traditions of the Island dating back to the 13th century, which are inherent in the posts. Traditions are fundamentally important to any society in maintaining the personality and uniqueness of the location. Whilst the Panel accepts that change is often necessary to meet the demands and standards of the modern world, Jersey needs to protect its traditions where possible by resisting change for the sake of change. The rôle and function of the Crown Officers are, in the opinion of the Corporate Services Scrutiny Panel, positions that function to meet the needs of the community they serve;

2. Education and Home Affairs Scrutiny Panel

In relation to the Legal advice debate, the restrictions placed upon the release of legal advice to Scrutiny Panels by the AG have inhibited their work. His strict interpretation of who is "his client" and the confidentiality which flows from that means that we don't know the role the legal advice played in that decision. Sometimes, it is crucial and heavily influences the nature of the policy. Legal policy advice should be released. During the Prison Board of Visitors Review the issue of seeking external legal advice caused problems. Prior to seeking external advice, the Sub-Panel had contacted HM Attorney General to request legal advice on this issue. The Sub-Panel subsequently agreed it wished to receive advice from an independent source, and Mr Cooper was therefore tasked with providing this advice. The advice from Mr Cooper was made public in the Sub-Panel's report; however it was not possible to release the Attorney General's legal advice.

The Attorney General raised concerns with the Sub-Panel's approach, and it was believed that the Sub-Panel should not have sought two sources of legal advice. As a result of the constraints involved in receiving legal advice from the Attorney General (the inability to make this advice public) the Sub-Panel believes that in future the Panel should simply seek external legal advice from the start, without seeking advice from the Attorney General. This approach would prevent this situation from occurring again;

3. Environment Scrutiny Panel

Members note that there is a potential for difficulty where the law officers are advising both Scrutiny Panels and Ministers on specific matters under review. Members also note a potential conflict for Crown officers in their different roles of providing legal advice to Ministers and acting as prosecutor under laws such as the Waste Management Law and Water Pollution Laws. In the latter cases the Crown Officers may find themselves taking action against the departments they have been advising;

4. Health, Social Security and Housing Scrutiny Panel

The Panel recommended Scrutiny Report (SR8/2005) "Provision of Legal Advice to Scrutiny Panels", (x6 copies attached) should be submitted to the review. This was produced subsequent to difficulties accessing legal advice during the Shadow Scrutiny Phase.

The Committee hopes that the information above and the scrutiny report is a useful submission to contribute to you as soon as possible after our March meeting.

Yours sincerely



Senator B. E. Shenton

cc: Mr W. Millow, Project Manager