

## **The Role of the Bailiff and Deputy Bailiff as Chief Justice, President of the States and Civic Head of the island.**

The combined role of the Bailiff as Chief Justice, President of the States and civic head of the island is a hugely important part of our heritage. It is unique to the Channel Islands and sets us apart from other jurisdictions under the Crown. It has served us well and there are no compelling reasons to tamper with it. We may do so at our peril.

As Chief Justice – we have been blessed with a succession of remarkably able and highly intelligent lawyers willing to forsake the attractions of private practice to give service to the Courts and the island. In these uncertain times it is especially important that judgments made in the island, particularly on financial matters, should be of the highest standard to uphold the reputation of the island as a world class well regulated finance centre. It is of the utmost importance therefore to continue to attract lawyers of the highest calibre to aspire to the office of Bailiff and, while it is of course by no means certain that such men are more likely to be attracted to the post by the additional trappings, it must be borne in mind that the honour attached to attaining the position of Bailiff with its significant heritage and opportunities to serve the island in a variety of ways cannot be underestimated.

As President of the States – hitherto the Bailiffs have performed this task with integrity, patience and good humour – occasionally in very trying circumstances. There have been few complaints. They do not have a vote and in reality can have little influence on debate save that they are able to select speakers and curtail their speeches. However, in a House full of vociferous and independent members, were the Bailiff to show favour this would quickly be brought to the attention of the press and public and it simply has not happened. There have been some complaints from a very few disaffected politicians but is that a reason to change a system which for the most part works well?

The argument in some quarters is that the Bailiff is not an elected member of the States but as he has no vote is this relevant? For the States members to appoint a President from their midst would be denying some of the electorate their spokesman as Jersey does not have a party system and members are elected for their individual qualities and aspirations. Indeed a member may risk his seat at the next election if he has abandoned his constituents to take on the role of President.

Alternatively a salaried post could be created. Indeed the Greffier and his assistant do perform the function well in the absence of the Bailiff and his Deputy – but it would require an additional permanent post to be created and funded from an already strained and unpopularly expensive civil service budget. The logistics of such a post would not be easy either as the timing of States sittings is unpredictable.

At the moment there is a President who by virtue of his legal training and selection for high office is certain to be highly intelligent, clear thinking, articulate and authoritative and is willing to perform the office along with his other duties. Why change – for the dubious reason of “political correctness” – when the present system works?

As Civic Head of State – traditionally the Bailiff has been civic head of state and recent Bailiffs have fulfilled this duty with distinction. None more so than the recently retired Sir Philip Bailhache who has been inspirational and instrumental in developing so many areas of island life – in the arts, in heritage, in race relations to mention just three. By virtue of the role being combined with that of Chief Justice the incumbents have always been men of high intellectual ability which must be an asset in the social duties demanded of them both in the island and internationally but is also hugely important when constitutional issues arise. That it is not to say however that if the civic head were to be a States member individuals of equal ability may not be available but realistically it is less likely and in any case presents other problems.

It seems the alternative being put forward as civic head is the Chief Minister. As a politician he is likely to have been elected by the whole island (he is likely, though not certain, to be a Senator ) but he will not at that point have been chosen by the electorate as Chief Minister. That choice falls to fellow States members who will have political reasons for their selection and will not necessarily be concerned to elect someone with the qualities required of a civic head. Furthermore normally in democracies the electorate knows who is to be Prime Minister or President when they go to the polls and of course where there is a Prime Minister there is usually another civic head. Jersey is a tiny jurisdiction which does not need the separate role of a civic head and the resources that would demand. In addition the ministerial system is still in its infancy with many attendant problems. It may yet change. It is possible that a Chief Minister could have had very little experience of public life whereas the historical *cursus honorum* of the Bailiff, though not inevitable, is likely to produce a civic head much more comfortable with and able to perform the exacting duties required of him. He is also likely

to be in office in excess of four years and is not subject to the fickle vicissitudes of political life. A successful vote of no confidence in a chief minister would remove him as civic head at once. The continuity assured by having the Bailiff as civic head and the consequent possibility for him to establish strong links with other jurisdictions should not be underestimated.

The traditional role of the Bailiff has served us well and can continue to do so. All three functions being intertwined has enhanced both the office and each individual function and given us Bailiffs of great distinction.

### **The Role of the Attorney General and Solicitor General**

I struggle to see what changes are needed in their roles.

They are qualified lawyers who as such are required to attend States sessions to be available to members to give legal advice they or the President may ask for. They do not have the opportunity for political intervention.

They will obviously give the same interpretation of the law to ministers and Scrutiny alike and there could be an argument for allowing Scrutiny to get a second opinion. However that may be very expensive to the state and could be used much too frequently. At the end of the day the law officers are professional and it must be expected that they will give their opinion entirely without political favour.

As far as their role as Chief Prosecutor and head of the Jersey honorary police is concerned I concede there may be a problem of “perception” particularly when controversial and emotive cases arise, but I make the same point of professionalism. The Attorney General and Solicitor General are selected both for their intellectual rigour and their integrity and are perfectly capable of recognising where there may be a conflict for them. Indeed pressure of work on the Crown Officers’ Department means prosecuting counsel from the private sector are frequently instructed and this avenue is always open to them. The Attorney General rarely, if ever, prosecutes a case. To separate the functions of the Crown Office would require setting up another department with all the attendant expense and I remain to be convinced that this is at all necessary. It is certainly not desirable in the current economic climate!

**Jill Clapham**