

## **Review of the Roles of the Crown Officers, Jersey**

I offer a few comments solely on the role of the Procureur (Attorney General) and Comptroller (Solicitor General) – collectively referred to as the Law Officers.

I preface these remarks by stating the obvious – that any observations I offer can only relate to Guernsey. I do so, however, to stress my suspicion that there may be some disparity between the two jurisdictions not only in relation to the actual duties and functions performed by the respective Law Officers, but also in the manner and perception of their performance. I must also add that I have deliberately not sought the views of the current post holders in Guernsey. I would not wish them to be contaminated by my observations in the event of a similar review of their roles taking place in Guernsey.

As for my terms of office, I was Comptroller from 1982 – 1992, Procureur from 1992 – 1999 and Deputy Bailiff from 1999 – 2002. I further served as a Lieutenant Bailiff (an officer with purely judicial duties) for a further three years until 2005.

In 1851 the office of Comptroller fell vacant. It was not filled up. In 1859 the States unsuccessfully petitioned Her Majesty that it be so. In 1861 a further petition was filed, this time successfully. I mention this solely because the petitioners, whilst describing the collective duties/functions of the Law Officers – speaking not voting rights in the States, constituent part of the Royal Court (and Police Court) in Criminal and Civil matters, the preparation and discussion of new laws, and ex-officio “guardians of every public interest” – emphasised that, together, the Law Officers were the Ministers of Justice. In my view, that emphasis is equally applicable today.

Constitutionally, I believe the duties of a Law Officer in Guernsey to be as follows:

- Legal Advisors to the Crown (so described by the Royal Commissioners in 1846) as distinct to the description in the Jersey Terms of Reference as “acting in the interests of the Crown”.
- Chief Prosecutors, in the sense that all prosecutions are conducted in the name of the Law Officers.
- Ex-officio “guardians of every public interest”.
- To an extent, legal advisors to the States.

These duties, save the last, are reflected in the terms of the Oath of Office which we take on appointment as “Procureur (Contrôle) de la Reine aupres de cette Cour Royale.”

The truth is, however, that the discharge of those duties now comprises an increasingly small percentage of the Law Officers’ time (by which I mean that of their chambers as a whole). Their role is now overwhelmingly, as opposed to partly, dominated by States business, in the widest sense of encompassing not only domestic but all variety of international matters, either compulsorily imposed or voluntarily assumed; and whether by way of drafting legislation, providing legal advice or generally giving assistance or comfort. Thus the predominance of advice to the States in the description of the roles of the Attorney General and Solicitor General in Jersey ( Terms of Reference part 2) would I believe also be accurate for Guernsey in respect of actual work load, and probably political, if not wider, perception.

In my terms of office, the Law Officers were in charge of a small team in which they undertook personally much of the work required of their department. For example, during my term as office as Comptroller, the Law Officers personally conducted all the Court work required of their office:- criminal prosecutions in the Royal Court, all child care cases and occasional prosecutions in the Magistrates Court, and, outside their constitutional duties, all



administrative appeals in the Royal Court on behalf of the relevant States Department. By the time I was Procureur Advocates within Chambers had started to do some of that work. Furthermore, during both periods of office, a Law Officer would personally take responsibility for all draft legislation which emanated from the Chambers. Now, Court appearances by a Law Officer are rare, and I doubt whether a Law Officer has time to peruse much of the draft legislation due to the volume of it.

I think simple statistics most starkly reveal the way in which the roles of the Law Officers have changed in the last twelve years or so. When I stepped down as Procureur in 1999, the Chambers employed half a dozen professional lawyers (apart from the Law Officers), which itself was an increase of 50% from the mid 1990s thanks to more accommodation being made available. Today that number of lawyers exceeds thirty. The Law Officers are now in charge of a growing empire.

Subject to adequate resources being placed at their disposal, I believe the Law Officers will continue to manage reasonably well in meeting new challenges and increasing demands (despite the usual sniping).

There is, however, a danger. If, as appears to be the case, the Law Officers are called upon to play an ever more important role in the government of the Island and seem to acquire more power, so strains may start to emerge between those demands and their fundamental duty to the Crown. This rightly raises the question of accountability.

In my view, there can never be any doubt as to whom the Law Officers are accountable. It must, and can only be, the Crown. The fact that they are paid by the States is immaterial, that was and has been the financial arrangement since the Second World War in respect of the Crown Estate. I am uneasy in the extreme, however, that the Crown should be responsible for the Law Officers' role in the area of political governance or administration, as opposed to the discharge of their constitutional duties. The greater part of their work is now no more than government legal advisors, the government being the States. (I am aware that the Attorney General in the United Kingdom is the Government's senior legal advisor, but that is to Her Majesty's Government. The States are not HM Government).

I offer the thought that the time may be fast approaching when this distinction in functions is acknowledged and addressed. Is it really necessary that all legislation should be drafted by the Law Officers? I am aware of their historic duties of preparing and discussing legislation, but that was in the days when most of the legislation was approved by the Royal Court, or at least the members of the Royal Court had a major part in the legislative process as members of the States.

Why should not different States departments have their own lawyers? Or a pool of States lawyers be established for whom the Law Officers (and thus the Crown) have no responsibility? This might have one advantage of making the politicians and the public more directly aware of the costs of their employment which stem directly from purely political demands.

I recognise that to proceed down this path would raise problems, as in some areas it may be difficult to identify clearly whether matters are properly the province of the Law Officers or the fully States employed lawyers. These problems are not insurmountable.

I have the deepest respect for the office of Procureur and Comptroller, though in the public eye they play only a small part in the Island's traditions and heritage, in contrast to the office of Bailiff. Indeed, even in my time, they were widely regarded as being members of the States. Their complete impartiality must remain paramount.

