

## **INDEPENDENT REVIEW OF ROLE(S) OF CROWN OFFICERS**

Submission by Maurice F. Dubras

31<sup>st</sup> March 2010

Right Honourable The Lord Carswell and Members of the panel

Mrs Marie-Louise Backhurst

Mr Geoffrey Crill

Dr Sandra Mountford

Mr Ian Strang

I have decided to offer this submission, though somewhat reluctantly, given that it is late in the period open for submission due to my earlier absence from the island. I trust that I can apply myself sufficiently clearly and succinctly to the issues at hand, in the time available to me, so as to be of some value and contribution to your deliberations.

The issues included in your Terms of Reference are of considerable import to the future of the Island; on the one hand, they must not be treated lightly or in haste. On the other hand, this Review is timely given the related matters of the Island's governance generally and the recent discussions and reports regarding its constitutional relationship to the Crown and the Island's place with regard to other parts of the Commonwealth and our neighbours in Normandy and the other Channel Islands. We must not be unaware too of the growing connection we have developed through the nature of our treaties and other agreements with Europe and the wider world. I submit, therefore, that your Review cannot be looked at in isolation or in part.

I hope that you will be minded to utilise the opportunity provided by item (3) of the Terms of Reference to consider the matters at hand in a broader context and more holistically than perhaps the authors intended.

### **Roles of the Bailiff & Deputy Bailiff**

I have had an interest in this aspect of Island life for many years; one could not grow up in the later years of occupation and soon thereafter and not be aware of the important role played by then incumbent. One learned why Lord Coutanche deserved the recognition he received and the respect in which he and his Office were held. As a teenager, occasional attendance in the public galleries of the States and the Royal Court reinforced these impressions, however much they were from observation and reputation rather than at close hand.

It was not until nearly twenty years ago on my return from Canada that I became exposed to an occasional social and then professional contact, which subsequently was transformed in 1996 to that of a colleague member of the States Assembly. Over nine years the specifics of that relationship evolved, developing as my role changed, and of course it was complemented by the occasional presence of States Members in the Royal Court for swearings-in and meetings of the Electoral College. Therefore, I feel that I have experienced and worked with the several roles of the Bailiff and the Deputy Bailiff.

Given the ancient beginnings of the role of Bailiff (ref: Balleine's History of Jersey; and Jersey 2004 (Everard, J. A. & Holt J. C.)), we must be very careful when contemplating any significant change but we must not shy away from effecting such change as is demonstrably necessary.

It has been my opinion for some time now that it is no longer appropriate for the States Legislature to be presided over by the Bailiff or the Deputy Bailiff. Not only have I discussed my view with the previous incumbent but I have reflected it in an amendment that I brought to reduce the number of States Members; I proposed that the total number to be elected by the public should include one to be chosen by the members to preside. This is normal practice in most parliaments and legislatures within the Commonwealth. I do not agree with the argument that some put forward about lack of representation. I urge you to consult with a representative number of CPA presiding officers in this regard. I have sat in on a number of UK and commonwealth parliaments and legislatures and believe that there is well established practice and justification for elected members to preside over those deliberations and it is time for Jersey to be an exception no longer.

My reasoning is based on the belief that, notwithstanding the manner in which the role of President has been carried out in recent years, the world has moved on and there must be seen to be no opportunity for the dual role of Chief Justice and Presiding Officer or 'Speaker' to be challenged or considered to be in conflict.

Having seen at first hand on visits to Normandy the high regard with which our cousins hold the Office of Bailiff, I remain persuaded that we must not dispense with the traditional function and title. However, the duties and responsibilities can and must change. While I believe there is no question of the Bailiff continuing to be the President of the Royal Court and the head of the Judiciary, I note that some are questioning the function of 'civic head'. This includes acting as Lieutenant Governor at times when there is no incumbent.

Clearly, the specific responsibilities of this role have to be very carefully reviewed through this process and a determination made as to the appropriate separation and allocation of duties between those of Chief Minister and Chief Justice/Bailiff. I experienced at first hand the start of that process when the latter started to give way to the President of the then Policy and Resources Committee, following the Clothier Review. Successive Presidents took on, through discussion and agreement, functions previously executed by the Bailiff and protocols were developed and no doubt have continued to be formulated or revised under the current ministerial arrangement. Any such period of transition is evolutionary and this Review is crucial to its continuation.

My expectation is that, in due course, it is likely that the concept of a single 'civic head' is dispensed with and the dual roles and responsibilities of Bailiff and Chief Minister become clarified and as unambiguous as possible. Similarly, order of precedence on various 'state' occasions, the facilities provided and the appropriate 'trappings of office' and so on need to be worked out without delving into relative trivia.

In these matters, due regard must be taken of the Lieutenant Governor's place in the process of executing his role as the monarch's representative. Indeed the procedures for communicating with the UK government, on the one hand, and the different arrangements for receiving the Queen's approval of legislation within the Bailiwicks compared to the Isle of Man, on the other hand, are cases in point which are in need of serious review – perhaps issues for another day in the not too distant future. However, I believe you need to be acquainted with these processes as currently carried out if you are to determine properly and completely the future and appropriate separation of and balance between the powers of the executive, the legislature, the law officers' department and the judiciary.

### **Roles of the Attorney General and Solicitor General**

My interest in the functioning of these two roles has been based primarily on experience gained during the nine years in which I represented the electors of St. Lawrence. Apart from the general knowledge gained and the advice received through the deliberations of the States Assembly, I had first hand experience on many of the Committees to which I was elected, but most particularly Policy and Resources and those acting as the Planning Authority or its sub-committees. I have also had reason, since 2005, to witness or work directly with the Crown Officers in my active 'retirement' capacities.

In summary, as an Island community, we are fortunate to have very qualified and appropriately motivated people willing to carry out these functions, appointed by the Queen, rather than in a publically-elected capacity as with the UK and other governments. I am firmly of the belief that the roles and the incumbents must remain independent and outside the 'political' environment, while providing advice within the legislative and 'machinery of government' processes.

One of the dilemmas in seeking candidates for these roles, that I perceive, is whether it is appropriate for them to have been elected to the States at some time prior to their appointment, as in the recent past with individuals who have subsequently become Crown Officers. While it might be seen an asset for them in becoming well-rounded individuals there is a concern in my mind that that such experiences might make it difficult for them as a Crown Officer to avoid expressing 'political views' or giving professional advice that might be interpreted by others as such. To exclude such public service in considering Crown appointments might be against individual human rights – however, I am not sure that any 'scientific' research has been conducted to ascertain the pros and cons. It would be interesting to know if others have had similar concerns about the risks of incumbents crossing such a 'boundary'.

The only function with which I have some difficulty is the apparent 'cross-over' for the Attorney General to be also the Head of the Honorary Police. Given that the Clothier Review of the policing system within the Island has yet to be fully implemented, notwithstanding the progress that has been made, it appears that this function continues to be one that requires resolution. Hopefully, the advent of a Police Authority now under active consideration again will resolve this matter and your Review should assist in that process.

With regard to the matter of whether and how the Attorney General provides comprehensive advice to both the executive, or government, and scrutiny arms of the States legislature, I had some experience from both perspectives during the period of the shadow-scrutiny process.

I understood the Attorney General's position and supported his views. At the same time, I believe that the Law Officer's department should be the source of information provided to Scrutiny as well as to the executive and the States Assembly. I am confident that this situation and the protocols surrounding it can be worked out, as part of the natural evolution of the transition from the former to the present approach to governing the Island and legislating for our needs. Clearly the aim should be to enable all Members to have sight of the same information, albeit with confidentiality requirements, and that exceptions should be at an absolute minimum. However, since four years have passed, I may now be somewhat out-of-date in my understanding and others will be able to provide you with better information and clearer views in light of general experience.

While I uphold the principles of openness and freedom of information, I remain of the mind that there are always cases when 'the need to know' stricture can apply in the public interest though, again, this has to be by exception rather than the rule. Jersey has made considerable progress in this regard and views will always be mixed along some sort of continuum in these matters. Similarly, there is the balance between the rights of the individual to privacy and those of the general public or taxpayers.

Procedures must be in place to ensure that the above are appropriately safeguarded.

If any of the above comments require further clarification or amplification, please do not hesitate to contact me. Thank you for the opportunity to comment.

Maurice F. Dubras

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