

## Review of the Roles of the Crown Officers

Submission by Mr. P.F. Horsfall CBE 26/07/10.

- Mechanisms and structures for governing a nation's affairs that have evolved over centuries should not be changed for change's sake. There must be clear evidence that change is essential.
- The islands position in relation to the Crown is of great importance, going back as it does to 1066 when "our Duke" became King William the first of England. That link to the crown survives to this day and the Island proudly claims to be different because it is a "Crown Dependency". It is difficult to see how this position does not carry acceptance of the Crown retaining rights, for example, the appointment of the Bailiff and others.

### 1 The role of the Bailiff

#### a The Bailiff as Civic Head of the Island.

As Civic Head, although without political power, the Bailiff confers dignity, authority and gravitas, much of which arises from being appointed by the Crown, to the position. This has been the case for centuries and works well. Why change and if change is proposed, change to what?

One alternative that has been suggested is that the Chief Minister is regarded as the Civic Head. This would be an easy option but it is flawed. Firstly because the Chief Minister is appointed by the States Assembly and not directly by the people, and secondly because

the position becomes political, and even more so in the future, should the States move to party politics, as may well happen.

It has been suggested that a "President" should be elected by the people. This is complicated and could also become political, added to which Jersey is only a mini community and does not require a President and all that the title implies.

The best solution is to have a Civic Head that is non-political, has the necessary gravitas and the standing arising from being designated by the Crown as a result of the centuries old quirky Crown Dependency standing. This is exactly what the Island has, it functions well and there is no sound and pressing reason for change.

b The Bailiff as Chief Justice.

There is little to say on this subject. The Crown appoints the Bailiff and the Bailiff is Chief Justice. This has worked well for centuries and is not contentious in itself. The contention arises in considering this role in conjunction with his role as President of the States.

c The Bailiff as President of the States

In the States Assembly the Bailiff presides as Speaker and in the experience of the writer, who sat in the House for 27 years under three Bailiffs, performs the role extremely well. The Bailiff brings, authority, respect, a profound knowledge of standing orders and the gravitas and dignity required of the Presiding Officer. He is perfectly equipped to perform the role.

However, it is sometimes suggested that this role is in conflict with the Bailiff's role as Chief Justice. While this may be a perception, in reality, it does not exist in fact. The Bailiff presides and ensures that standing orders are observed. He ensures that business is conducted in a logical and orderly manner; he does not influence or contribute to the debate. If he did interfere politically, Members would not allow it to pass lightly. Again, in 27 years in the House, the writer never once saw an instance of interference or any action by the Bailiff that influenced any debate.

In his role as Chief Justice, the Bailiff applies law as approved by the Legislature exactly as he would whoever had presided over the debate that created it. There is no problem in reality.

However, should one still take the view that the two roles should be separated, one has to ask how a "speaker" would be appointed, bearing in mind that the person has to conduct debates and other business in a proper and impartial manner while having authority and commanding the respect of the House.

One way of achieving this would be for Members to elect one of their number to the role of speaker. This would have to be a person of ability commanding the respect of the House. That almost certainly means a senior Member. The problem with this is that any such Member would have an important role in Government and the States cannot spare such a person at this time. The Island is going through complicated and difficult times and it is hard to see who, of ability, could be spared whether they are engaged in Government or in Scrutiny.



When in the House, the writer presided on a number of occasions at the request of the Bailiff and enjoyed the opportunity but, at the time, concluded that it worked well because it was occasional, but could not see which Member of sufficient seniority could be spared on a permanent basis.

It has been suggested that a rota of senior lawyers could be established and they would take it in turns to preside. This suggestion is fatuous, there would be no continuity, "whose turn is it this week", and with respect to all individual lawyers, would devalue the Office and the House, reducing it to the standing of a debating society.

The writer's opinion is that the role of the Bailiff presiding over the States and being Chief Justice is an ancient one, the incumbent has all the authority, dignity and gravitas arising from an appointment made by the Crown, no actual problems have been identified, no workable sensible alternatives have been produced so why change for change's sake. As a Crown Dependency Jersey is different, so long as no one is disadvantaged, let it remain different.

## 2 The roles of the Attorney General and Solicitor General

In the writer's experience the Attorney General or Solicitor General perform an excellent job in giving legal advice to the States. That they have a seat in the House is valuable in that during debates a legal question or point can arise and having one of them present means that instant advice is available. Were that not the case, the House would possibly have to adjourn to await any advice required. That they also give legal advice to

Ministers and Council of Ministers is common sense in the interests of consistency of advice to the Assembly and to the Governing body.

With regard to the Scrutiny Panels, the situation is not so clear. The Panels should also use the Crown Officers for advice when possible but in the event of time constraint and need for immediacy, or a confrontational situation between a Panel and a Minister or Council of Ministers they should be able to engage independent advice. This is the current practice and seems to be a sensible one.

As for the Attorney General being the Head of the Jersey Honorary Police, there has to be such a Head and the Attorney General appears to be a logical choice with the added benefit that he is well placed to provide the Honorary Police with guidance and take an overview on general discipline of the Honorary Force. However, the writer does not feel qualified to make any considered comment on the workings of the Honorary Police.

### General Conclusion

The Terms of Reference of the Review of the Roles of the Crown Officers includes two specific circumstances that the Review Panel should take into consideration. In reverse order they are:

"The nature of a small jurisdiction, the Island's traditions and heritage, the resources required and difficulties (if any) that have arisen in practice."

The writer is unaware of any significant difficulties that have arisen and attaches great weight to the other points of, small, tradition, resources and heritage. Consequently little reason for change is perceived and the danger is change for change's sake.

The second is:

"The principle of modern democratic and accountable governance and human rights."

All these things are very important and could be the subject of a separate paper but in the context of the Review of the Roles of Crown Officers the writer does not perceive a problem. Modern, democratic and accountable may be a problem for the Assembly but it does not arise from the Roles of the Crown Officers. Roles that have served the Island well over a very long time and should remain essentially unchanged.

A handwritten signature in black ink, appearing to read 'P.F. Horsfall', with a horizontal line underneath the name.

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