

Submission to the *Review of Crown Officers* on behalf of the Jersey Human Rights Group.

The Jersey Human Rights Group was set up in 2009 to '*promote knowledge of Human Rights Standards through research, publication and the dissemination of information; to monitor human rights standards in Jersey, examine existing and proposed laws and practices in Jersey for compliance with Human Rights standards and lobby for reform in order to achieve compliance with Human Rights standards.*'

As such, we welcome the opportunity to make a submission to this review, which we think is very important and long overdue.

The rôles of the Crown Officers, as they currently stand, do have implications that are of concern to us on a human rights basis.

The most obvious concern is in relation to the rôles of the Bailiff and Deputy Bailiff; the absence of a separation of powers and the implications this has in relation to defendants being able to receive a *fair trial* from an '*independent and impartial tribunal*' (Cf. Article 10 of the UN declaration of human rights and Article 6, section 1 of the ECHR).

The arguments for the separation of powers are well rehearsed and have been accepted as norms in most modern civilized jurisdictions from as far back as the 18th Century, with the new Republics of the USA and France seeing this as fundamental to their constitutions. Indeed, Montesquieu had already (much before the French Revolution) noted that *the independence of the judiciary has to be real, and not apparent merely*. This is echoed by the well known contemporary saying that justice must not simply be done, but be *seen* to be done.

It is a widely accepted norm, also put forward by Montesquieu and others, that *the judiciary should be independent of both the legislature and the executive*. Under our current system, where the judge is not only speaker of the assembly, but has also, in his '*previous life*' as Attorney and Solicitor General, given legal/political advice to both the legislative and executive (Council of Ministers), this cannot be said to be the case.

Those who support tradition for traditions sake will say that under the current system in Jersey there is no *real* conflict; that the men (for they always are men) who are appointed to these positions are very diligent in making sure that they remove themselves in cases where the charge of a conflict might occur, and that they are '*jolly good chaps*' anyway, so one need not worry. It is not our place to comment on this, but to restate the position that both the ECHR and the UN declaration on Human rights state that as well as having a right to a fair trial that the tribunal should be impartial and **independent**. Whilst

debate can be had about whether under our current system the Bailiff and Deputy Bailiff are 'fair and impartial', it must be pointed out that they – or rather their positions – are not *independent*, not in the true sense of the word.

We believe therefore that the current situation with the Bailiff and Deputy Bailiff serving as both (unelected) speaker of the States Assembly and as Chief and Deputy Chief Judges is not human rights compliant and it is certainly not in keeping with natural justice, which would want to see a clear separation of the rôles of the legislature and judiciary.

The group would stop short of recommending what should be done in the event of the roles being separated, but to reinforce the last comment, we point out that the arguments in favour of having a legally qualified Speaker fall down when one considers that the Bailiff and Deputy Bailiff are often aided by the Greffier on the interpretation of standing orders. This is because it is a firm grasp of standing orders, rather than the law, *per se*, which is of most value to a presiding officer. It should also be noted that it is not unusual for the Greffier to preside in the absence of the other chairs. And this he appears to do no less competently.

With regards to the rôle of the Attorney General and Solicitor General, the group does have concerns, though these may be more generally to do with best practice and natural justice rather than specific human rights. We would, however, invite the panel consider whether the same principle of separation of powers should apply to the Attorney and Solicitor Generals, whose rôles span both the States Chamber and the Royal Court.

Conclusion:

The group believes that in order to make the Status Quo human rights compliant and also in the interest of best practice, the roles of the Bailiff and Deputy Bailiff should be the subject of a Human Rights audit.

We also would welcome a 'rationalisation' of the rôles of the two law officers so that any appearance of conflict, real or perceived, is removed.

However whilst the Jersey Human Rights Group may have a view as to the rôle of the Crown Officers we believe that it would be opportune for the Review Panel to initiate a Human Rights Audit by an independent lawyer on the compliance or otherwise of the existing Crown Officers set up.

We also believe it is almost impossible to determine just what Human Rights Treaties/Conventions actually apply in Jersey. In the absence of a complete and authoritative list it is impossible for the Crown Officers to state with any authority whether legislation or practice is compliant or not and that it is not just a matter of looking at the ECHR (European Convention on Human Rights).

We believe an audit irrespective of the outcome will reflect well on Jersey internationally and if changes are necessary it will bring Jersey up-to-date with the rest of the world.

Finally, we would like to thank the panel for their work. We look forward to reading your report and recommendations with interest.

Jersey Human Rights Group