

31st March, 2010

Dear Lord Carswell and Panel

I submit this document and supporting evidence to you and your panel, to be taken as consideration in your examination of the position of the Bailiff, Deputy Bailiff, Attorney General and Solicitor General.

When public debate concerning such issues – and the all-too-frequent failures of the Jersey authorities – takes place, it is common to hear the claim that those who criticise the status quo "have no evidence". Such criticism is, of course, baseless. Therefore I welcome this opportunity to submit to you and your Panel a substantial body of evidence which all goes to the argument that Jersey must have an effective separation of powers, because the current system is plainly not working to the public good.

I will not repeat the deep and extensive range of hard evidence, testimony and explanation that is contained in the submitted documents. I am sure that you, your panel and members of the public will each be able to draw their own conclusions from this body of material once it is published.

It can be seen – on the submitted evidence – that Jersey does not possess functioning checks and balances.

On the contrary – so massively conflicted are such state functions as the prosecution system and judiciary in Jersey, that nothing less than an immediate and complete separation of powers will work to the public good.

It is sometimes claimed that, because Jersey is a small island, and with certain traditions in its public administration and its power structures – that allowances have to be made – that regard has to be given – to those traditions – and that, somehow, it is neither desirable nor practical to imagine a full separation of powers of the kind one would encounter in most modern democracies.

The reverse is the case.

Precisely because Jersey is such a small community – without the different levels of government, diverse range of media, and of organised political opposition that one finds in larger countries – the crucial functions of state checks and balances – if anything – need to be far more separate – and effective – here in Jersey – than in a larger country.

The most cursory examination of the island's administrative history shows it to be lacking in truly effective and functioning checks and balances.

That fact is much further illustrated by the events of recent years.

We have a major scandal concerning many gross child protection failures; various disasters the authorities have failed to deal with over a period of many decades.

But yet – we have seen a decorated, nationally respected Chief Constable suspended from his post – without meaningful access to due process, nor any credible public explanation.

A judiciary is supposed to act in ways which are above and beyond political considerations.

If a government has acted in ways which are reprehensible, incompetent or even criminal – any effective judiciary being non-political – should have no hesitation in holding such a government to account.

The fact that any judicial findings – and legal cases – may end in results that are profoundly problematic or crushingly embarrassing for the government – should – and must – be a matter of complete irrelevance to the judiciary and the courts.

The judiciary must find upon the objective facts and an objective interpretation of the law.

Yet – in Jersey – the fact that the head and deputy head of the judiciary are also entwined with the legislature – and, indeed, revel in their designation as "civic leaders" of the island – plainly renders their judicial function hopelessly compromised.

They have a common purpose – a shared objective – in politically defending the island's traditional establishment.

One need only consider the quite extraordinary Political speech made by the former Bailiff, Sir Philip Bailhache – during Liberation Day in 2008. It was a speech a politician may have made.

It was not a speech that could have been properly made by an active member of the judiciary.

Similar observations concerning the hopelessly conflicted nature of the Attorney General and Solicitor General must be made.

Embodied within these two post-holders we find a frankly extraordinary range of conflicted and mutually exclusive powers and functions.

The post holders are de facto – yet unelected – politicians – who routinely make politically influential interventions in the States assembly.

Both have an automatic right of attendance at the Council of Ministers.

Both have an automatic right of attendance at the Privileges and Procedures Committee.

Both routinely supply legal and political advice to states departments.

The Attorney General will determine all questions of prosecution – including those potential charges against States employees and departments.

But – at the same time will have provided legal advice to the executive.

We can thus have a situation – as has happened in recent events – whereby the Attorney General can advise a Chief Minister what he should, or should not say – in order to minimise potential claims from child abuse victims – yet, then be later responsible for determining whether the alleged assailants of those victims should be prosecuted.

It is a manifestly incredible state of affairs.

If that were not bad enough – we have a situation in which the Attorney General is the head of 12 parish police forces – and, has a degree of power over the 12 parish Connétables – who are members of the legislature.

The above-described state of affairs would be absurd and unsustainable even upon a theoretical basis.

However - in light of the evidenced case my submission makes – the current arrangements simply cannot continue.

On the contrary. The fact that the size of Jersey tends to lead, inevitably, to various forms of conflict of interest – makes it all the more imperative that – in order to overcome that problem so that the public good be served – a far more rigorous approach to a separation of powers has to be adopted.

It is also clear that objections, to the effect that such changes would be complex or costly, just do not withstand serious scrutiny.

For example – the question of who would chair the States assembly is often raised – as though it were some form of intractable problem.

It plainly is not.

States debates are frequently chaired by the Greffier or the Deputy Greffier; an arrangement that is simple, cost-free – and which has worked perfectly acceptably.

Indeed – it has worked a good deal more successfully than having a politicised Bailiff or Deputy Bailiff chairing the assembly.

I noted that in one of the submissions made to your panel, a former States member, Mr. R. Jeune claims that he can never recall an occasion when any form of political bias or interference has been exhibited by a Bailiff.

I'm afraid that claim cannot withstand any scrutiny. The former Bailiff, Sir Philip Bailhache caused me to be unlawfully excluded from the States assembly for 6 months – during 1996 – because a whistleblower had revealed to me a serious conflict of interests on Mr. Jeune's part.

No provision for indefinite suspension from the assembly existed – and the Bailiff expressly prevented me – and other members – from speaking on my behalf.

In response to the proposition, I prepared a set of formal Ministerial Comments. The then Bailiff, Sir Philip Bailhache, prevented those Comments from being officially published.

To evidence the utter dysfunction – frankly, the dangerousness of much of Jersey's public administration – and how that situation is both caused and maintained by the present massive degree of confliction and non-functioning of checks and balances – I refer the following evidence.

- 1: Letter from me to the Justice Secretary, Jack Straw, 27th March, 2008.
- 2: Sharp report into concealed child abuse at Victoria College, 1999.
- 3: E-mail of a Police Officer, concerning obstructions and threats he faced during the Victoria College investigation, August 2007.
- 4: File-note written by Jersey's Chief Constable, Graham Power, July 2007, in which he records the unlawful and anti-democratic plot of civil servants to engineer my dismissal.
- 5: Memorandum by Lenny Harper – June 2008.
- 6: Affidavit of Lenny Harper – January 2009.
- 7: Published, evidenced statement by Lenny Harper – September 2009.
- 8: Published, evidenced explanation by Senator Syvret of civil service corruption; October 2009.
- 9: Published, evidenced explanation by Senator Syvret of civil service and Crown Officer Corruption; December, 2009.
- 10: Affidavit of Chief Constable, Graham Power.
- 11: Report 1 of the Association of Chief Police Officers; March 2008.
- 12: Report 2 of the Association of Chief Police Officers; March 2008.
- 13: Dylan Southern report into the concealed abuses by Jane and Alan McGuire at the Blanch Pierre children's' home.

I have tried to confine my submission to a small sample of the evidence of record. There is more, in addition to the above, which could be submitted.

However – I am confident that this submission demonstrates a society which has no proper functioning or effective checks and balances; a state of affairs largely down to the concentration of powers and conflicts of interest to be observed in the present arrangements.

The public good requires an immediate and complete separation of powers.

Thank you for giving this matter your attention.

Yours sincerely,

Senator Stuart Syvret

States of Jersey.